CITY OF ONTARIO

Regular City Council/Housing Authority/Industrial Development Authority Meeting
OCTOBER 15, 2024

City Hall
303 East B Street, Ontario, CA 91764

MAYOR PAUL S. LEON • MAYOR PRO TEM DEBRA DORST-PORADA
COUNCIL MEMBERS ALAN D. WAPNER, JIM W. BOWMAN AND RUBEN VALENCIA

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

WELCOME TO A MEETING OF THE ONTARIO CITY COUNCIL

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

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

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

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

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

ACCOMODATIONS

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

ORDER OF BUSINESS

The regular City Council, Housing Authority, Industrial Development 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)

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

PLEDGE OF ALLEGIANCE

Mayor pro Tem Porada

INVOCATION

Rev. Benjamin Barlow, First Christian Church of Ontario

SPECIAL CEREMONIES

PROCLAMATION OF OCTOBER 20-26, 2024 AS FRIENDS OF LIBRARIES WEEK

That the City Council proclaim the week of October 20-26, 2024 as Friends of Libraries Week.

ATTACHMENT: PROCLAMATION OF OCTOBER 20-26, 2024 AS FRIEND OF LIBRARIES WEEK.docx

PROCLAMATION OF OCTOBER 6-12, 2024 AS NATIONAL FIRE PREVENTION WEEK

That the City Council proclaim the week of October 6-12, 2024 as National Fire Prevention Week.

ATTACHMENT: NFPW_Proclamation_2024.docx

PUBLIC COMMENTS 6:30 P.M.

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

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

AGENDA REVIEW/ANNOUNCEMENTS

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

INFORMATION RELATIVE TO POSSIBLE CONFLICT OF INTEREST

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

CONSENT CALENDAR

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

Each member of the public wishing to address the City Council on items listed on the Consent Calendar will be given a total of 2 minutes.

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1. APPROVAL OF MINUTES

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

ATTACHMENT: 20240917 Meeting Minutes (Not Official Until Approved)

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2. BILLS & PAYROLL

Bills September 13, 2024 through September 26, 2024, and Payroll August 25, 2024 through September 7, 2024.

3. AN AMENDMENT TO A DESIGN SERVICES AGREEMENT WITH INFRASTRUCTURE ENGINEERING CORPORATION, AN ARDURRA GROUP CORPORATION, FOR THE FOURTH STREET STORM DRAIN PROJECT

That the City Council approve and authorize the City Manager, or his designee, to execute Amendment No. 18 to the On-Call Design Services Agreement with Infrastructure Engineering Corporation, an Ardurra Group Corporation, of Newport Beach, California, to provide additional engineering design services and construction support for water main improvements for the Fourth Street Storm Drain Project in the amount of $494,235, for a revised not-to-exceed authorization amount of $9,651,703, and extend the contract term to allow for the completion of ongoing projects; and authorize the City Manager, or his designee, to execute said amendment and future amendments within the authorization limits.

ATTACHMENT: 02 - IEC Amendment No.18.pdf

4. A RESOLUTION APPROVING AN IMPROVEMENT AGREEMENT, IMPROVEMENT SECURITY AND FINAL TRACT MAP NO. 20536 GENERALLY LOCATED WEST OF ARCHIBALD AVENUE BETWEEN CHINO AVENUE AND EAST RIVERSIDE DRIVE WITHIN THE COUNTRYSIDE SPECIFIC PLAN

That the City Council adopt a Resolution approving an Improvement Agreement, Improvement Security and Final Tract Map No. 20536 generally located west of Archibald Avenue between Chino Avenue and East Riverside Drive within the Countryside Specific Plan.

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF ONTARIO, CALIFORNIA, APPROVING AN IMPROVEMENT AGREEMENT, IMPROVEMENT SECURITY AND FINAL TRACT MAP NO. 20536 GENERALLY LOCATED WEST OF ARCHIBALD AVENUE BETWEEN CHINO AVENUE AND EAST RIVERSIDE DRIVE WITHIN THE COUNTRYSIDE SPECIFIC PLAN.

ATTACHMENT: 20241015 TM-20536^01 EX.pdf
ATTACHMENT: 20241015 TM-20536 02^RESO^RM
ATTACHMENT: 20241015 TM-20536^03 SIA.pdf

5. AN AGREEMENT WITH THE CITY OF CHINO FOR OPERATIONS AND MAINTENANCE OF THE LANDSCAPED MEDIAN ON EUCLID AVENUE

That the City Council authorize the City Manager, or his designee, to execute an Agreement with the City of Chino for the shared operations and maintenance of the landscaped median on Euclid Avenue between Riverside Drive and Merrill Avenue.

ATTACHMENT: 20241015 Landscaped Median O M Agreement 01^Agreement

6. A CONSTRUCTION CONTRACT WITH SULLY-MILLER CONTRACTING COMPANY; A

PROFESSIONAL SERVICES AGREEMENT WITH STANTEC CONSULTING SERVICES INC.; AND AN AMENDMENT TO THE PROFESSIONAL SERVICES AGREEMENT WITH ARDURRA GROUP, INC. FOR THE GROVE AVENUE AND HOLT BOULEVARD STREET AND TRUNK SEWER IMPROVEMENTS PROJECT

That the City Council take the following actions:

A. Award a Construction Contract to Sully-Miller Contracting Company of Brea, CA, for the construction of the Grove Avenue at Holt Boulevard Intersection Widening and North Vineyard Avenue Sanitary Sewer Project, in the contract amount of $20,323,888 plus a fifteen percent (15%) contingency of $3,048,584, for a total not-to-exceed authorization amount of $23,372,472; and authorize the City Manager, or his designee, to execute said contract and file a notice of completion at the conclusion of all construction activities related to the project.
B. Authorize the City Manager, or his designee, to execute a Professional Services Agreement with Stantec Consulting Services Inc. of Irvine, California, for the North Vineyard Avenue Sanitary Sewer Project, for $212,900 plus an additional fifteen percent (15%) contingency of $31,935 for a total not-to-exceed authorization amount of $244,835 for construction engineering services.
C. Authorize the City Manager, or his designee, to execute Amendment No. 5 to the Professional Services Agreement with Ardurra Group, Inc. of El Segundo, CA, for the North Vineyard Avenue Sanitary Sewer Project, by $191,148 plus an additional ten percent (10%) contingency of $19,115 for a new total not-to-exceed authorization amount of $4,312,812 for construction management, inspection, and material testing services.

ATTACHMENT: 01-EXHIBIT A Location Map.pdf
ATTACHMENT: 04-Ardurra Amendment No. 5.pdf
ATTACHMENT: 02- ST1511 Sully-Miller Contract.pdf
ATTACHMENT: 03 - UT1018 Stantec Contract.pdf

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

That the City Council adopt 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.

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.

ATTACHMENT: Comm Imp Special Assessments for County Tax Rolls 01^RESO^RM
ATTACHMENT: Special Assessments^02 - Exhibit A.pdf
ATTACHMENT: Special Assessments^03 - Exhibit B.pdf
ATTACHMENT: Special Assessments^04 - Exhibit C.pdf

8. A CHANGE ORDER TO THE CONSTRUCTION CONTRACT WITH RESOURCE ENVIRONMENTAL, INC. FOR THE EMERGENCY DEMOLITION OF THE PROPERTY AT 9155/9381 E. RIVERSIDE DRIVE

That the City Council take the following actions:

A. Authorize the City Manager, or his designee, to execute Change Order No. 1 to the Construction Contract with Resource Environmental, Inc., of Cerritos, California, in the amount of $1,422,409 for a total not-to-exceed contract amount of $3,163,409; and
B. Authorize the City Manager, or his designee, to execute all documents required for the completion of the project including, but not limited to, contracts, agreements, assessments, easements, reduction of retention accounts and filing a notice of completion at the conclusion of all construction related activities.

ATTACHMENT: Resource Environmental- Change Order No. 1.pdf

9. AWARD A CONSTRUCTION CONTRACT TO OPTIMA RPM, INC. FOR THE WELLNESS CAMPUS PROJECT AND AMENDMENTS TO THE DESIGN SERVICES AGREEMENT WITH HMC ARCHITECTS FOR THE DESIGN OF THE WELLNESS CAMPUS PROJECT AND TITLE 24 COMMISSIONING SERVICES FOR THE CITY SERVICES BUILDING PROJECT

That the City Council take the following actions:

A. Reject Spec 7 Con's bid for Bid No. 1846 - D&C24-011 Ontario Motor Inn Renovation as being nonresponsive, and
B. Authorize the City Manager, or his designee, to execute a Construction Contract Bid No. 1846 - D&C24-011 Ontario Motor Inn Renovation with Optima RPM, Inc., of Irvine, California, for the renovation of a City-owned motel for emergency and temporary housing units located at 1522 W. Mission Blvd. in the amount of $4,098,000 and authorize a 20% contingency of $819,600 for a total not-to-exceed contract amount of $4,917,600, and
C. Authorize the City Manager, or his designee, to execute Amendment No. 5 to the Design Services Agreement with HMC Architects, of Ontario, California, to provide on-call architectural services for the design of the Wellness Campus Project in the amount of $1,141,485 for a total not-to-exceed contract amount of $9,236,815;
D. Authorize the City Manager, or his designee, to execute Amendment No. 6 to the Design Services Agreement with HMC Architects, of Ontario, California, to provide Title 24 Commissioning Services for the City Services Building Project in the amount of $44,510 for a total not-to-exceed contract amount of $9,281,325; and
E. Authorize the City Manager, or his designee, to execute all documents required for the completion of the project including, but not limited to, contracts, agreements, assessments, easements, reduction of retention accounts and filing a notice of completion at the conclusion of all construction related activities.

ATTACHMENT: HMC- Amendment No. 5.pdf
ATTACHMENT: Optima RPM, Inc.- Construction Contract.pdf
ATTACHMENT: HMC- Amendment No. 6.pdf

10. AN AMENDMENT TO THE PROFESSIONAL SERVICES AGREEMENT WITH GALLAGHER BENEFIT SERVICES INC. FOR SPECIALIZED RECRUITMENT SUPPORT

That the City Council authorize the City Manager, or his designee, to execute Amendment No. 2 to the Professional Services Agreement with Gallagher Benefit Services Inc., of Berkeley, California, for specialized recruitment services in the amount of $100,000 for a total a not-to-exceed amount of $342,885.

ATTACHMENT: Amendment No. 2_Gallagher Benefit Services Inc..pdf

11. PROFESSIONAL DESIGN SERVICES AGREEMENTS FOR ON-CALL ARCHITECTURAL SERVICES FOR THE ONTARIO MUSEUM OF HISTORY AND ART

That the City Council take the following actions:

A. Reject the protest from MAAM Architects for D&C23-009 Museum On-Call Architect as the selection was based on qualifications, and

B. Authorize the City Manager or his designee to complete and execute the following three-year Professional Design Services Agreement for On-Call Architectural Services for a total compensation amount of $1,000,000 over three (3) years and extend the agreements for up to two (2) additional one-year periods:

1. Frederick Fisher & Partners, of Los Angeles, California for a total contract amount not-to-exceed $250,000;
2. Architectural Resources Group, of Los Angeles, California for a total contract amount not-to-exceed $150,000;
3. Page & Turnbull, of Los Angeles, California for a total contract amount not-to-exceed $150,000;
4. HMC Architects, of Ontario, California for a total contract amount not-to-exceed $150,000;
5. Smithgroup, of Los Angeles, California for a total contract amount not-to-exceed $150,000; and
6. Johnson Favaro, of Culver City, California for a total contract amount not-to-exceed $150,000; and

C. Authorize 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.

ATTACHMENT: HMC- Design Services Agreement.pdf
ATTACHMENT: Johnson Favaro- Design Services Agreement.pdf
ATTACHMENT: Page & Turnbull- Design Services Agreement.pdf
ATTACHMENT: Smithgroup- Design Services Agreement.pdf
ATTACHMENT: ARG- Design Services Agreement.pdf
ATTACHMENT: FFP- Design Services Agreement.pdf

12. A CONSTRUCTION CONTRACT WITH PHILBIN CONSTRUCTION COMPANY FOR MASS GRADING AND AN AMENDMENT TO THE PROFESSIONAL SERVICES AGREEMENT WITH SWA

GROUP, INC. FOR ONTARIO'S GRAND PARK PROJECT

That the City Council take the following actions:

A. Authorize the City Manager, or his designee, to complete and execute Construction Contract No. D&C21-005 - Grand Park Phase 1 Rough Grading with Philbin Construction Company, of Laguna Niguel, California, for the mass grading and debris removal at Ontario's Grand Park in the amount of $4,534,000 plus a 20% contingency of $906,800 for a total not-to-exceed contract amount of $5,440,800, and
B. Authorize the City Manager, or his designee, to execute Amendment No. 1 to the Professional Services Agreement with SWA Group, Inc., of Laguna Beach, California, for additional engineering services in the preparation of the design and construction documents for Ontario's Grand Park Project in the amount of $141,359 for a not-to-exceed amount of $6,114,355; and
C. Authorize 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, lot line adjustments, reduction of retention accounts, contracts and contract amendments within the authorization limits, and filing a notice of completion at the conclusion of all construction related activities.

ATTACHMENT: Philbin Construction Company- Construction Contract.pdf
ATTACHMENT: SWA Group, Inc.- Amendment No. 1.pdf

13. A CONSTRUCTION CONTRACT WITH BEST DRILLING AND PUMP, INC. FOR THE DRILLING OF WELL NO. 53 PROJECT, ONTARIO MUNICIPAL UTILITIES COMPANY CONTRACT NO. UT 1063

That the City Council approve the plans and specifications and award Contract No. UT 1063 to Best Drilling and Pump, Inc. of Colton, California, for the Drilling of Well No. 53 Project, in the amount of $1,919,431 plus a 15% contingency of $287,915, for a total not-to-exceed amount of $2,207,346, a term of 100 calendar days after issuance of notice to proceed, and authorize the City Manager, or his designee, to execute said contract and file a notice of completion at the conclusion of all construction activities related to the project.

ATTACHMENT: Figure 1
ATTACHMENT: 20241015 Construction Contract UT1063 CC^01.pdf

14. AWARD OF 24 CONSTRUCTION CONTRACTS IN CONNECTION WITH THE CONSTRUCTION OF THE ONTARIO PROFESSIONAL BASEBALL STADIUM, AWARD A CONSTRUCTION CONTRACT TO BOMEL CONSTRUCTION FOR THE PROFESSIONAL BASEBALL STADIUM PARKING STRUCTURE, AUTHORIZE AN AGREEMENT WITH KIZH NATION RESOURCE MANAGEMENT FOR EARTHWORK MONITORING FOR THE ONTARIO SPORTS COMPLEX, APPROVE AN AMENDMENT TO THE PROFESSIONAL SERVICES AGREEMENT WITH RMA GROUP FOR SPECIAL INSPECTION FOR THE PROFESSIONAL BASEBALL STADIUM AND SPORTS COMPLEX, APPROVE AN AMENDMENT TO THE PROFESSIONAL SERVICES AGREEMENT WITH TILDEN-COIL FOR CONSTRUCTION MANAGEMENT OF THE ONTARIO SPORTS COMPLEX, AND CONSIDER, AND ADOPT A RESOLUTION FOR THE INTENT TO ISSUE TAX-EXEMPT OBLIGATIONS

That the City Council take the following actions:

A. Authorize the City Manager, or his designee, to execute 24 Construction Contracts to provide various construction services for Bid No. 1831 - D&C23-011 - Minor League Baseball Stadium in the amount of $131,994,503 and authorize a combined contingency of $19,700,000 for a total not-to-exceed contract amount of $151,694,503,
   1. 01 - Concrete, Structural – Gonsalves & Santucci, Inc. dba Conco: $18,387,000
   2. 03 - Masonry & Brick Veneer – Haxton Masonry, Inc.: $5,631,000
   3. 05 - Railings – KCB Towers, Inc.: $4,395,560
   4. 07 - Roofing – Commercial Roofing Systems, Inc.: $3,099,320
   5. 08 - Waterproofing – Best Contracting Services, Inc.: $1,308,000
   6. 09 - Sheet Metal – Best Contracting Services, Inc.: $5,299,448
   7. 10 - Door, Frames, Hardware – Star Hardware, Inc.: $874,900
   8. 11- Aluminum & Glazing – Golden State Glazing, Inc.: $3,312,066
   9. 12 - Framing, Drywall & Insulation – Caston, Inc.: $7,258,585
   10. 13 - Acoustical Ceiling & Treatment – Southcoast Acoustical Interiors, Inc.: $613,250
   11. 14 - Finish Flooring – Progressive Surface Solutions, LLC: $1,348,000
   12. 16 - Ceramic Tile – Continental Marble & Tile Co.: $1,611,806
   13. 17 - Painting & Wall Covering – Magnum Drywall, Inc.: $1,048,000
   14. 18 - General Package – Inland Building Construction Companies, Inc.: $12,355,400
   15. 19 - Aquatics – California Commercial Pools, Inc.: $2,548,000
   16. 21 - Food Service Equipment – Kamran and Company, LLC: $5,429,700
   17. 22 - Fire Sprinkler – JPI Development Group, Inc.: $1,315,000
   18. 23 - Plumbing – Continental Plumbing, Inc.: $8,194,613
   19. 24 - Site Utilities – Kerns, Inc.: $3,280,580
   20. 25 - HVAC – Westland Mechanical: $7,115,000
   21. 26 - Electrical & Low Voltage – Rancho Pacific Electric Construction, Inc.: $25,999,500
   22. 27 - Landscape & Irrigation – Brightview Landscape Development, Inc.: $7,433,570
   23. 28 - Fences & Gates – Econo Fence, Inc.: $2,009,205
   24. 29 - Asphaltic Paving – Terra Pave, Inc.: $2,127,000, and
B. That the City Council reject bid from Brady West, Inc. as non-responsive on Bid No. 1831 -D&C23-011 – Minor League Baseball Stadium in the Ontario Ballpark Section 12 Framing and Drywall and award the bid to the next lowest responsible bidder, and
C. That the City Council reject all bids received for Bid No. 1831 -D&C23-011 – Minor League Baseball Stadium in the Ontario Ballpark Sections 02 Site Concrete; 06 Finish Carpentry; 20 Signage and authorize Staff to solicit new bids for these trades in relation to the Professional Baseball Stadium, and
D. That the City Council reject the bid protest from CMD Electric for Bid No. 1831 - D&C23-011 Minor League Baseball Stadium, and
E. Authorize the City Manager, or his designee, to execute a Construction Contract with Bomel Construction Company, Inc., of Ontario, California, to provide construction services for Bid No. 1829 - D&C23-011B Professional Baseball Stadium Parking Structure in the amount of $31,225,000 and authorize a contingency of $4,700,000 for a total not-to-exceed contract amount of $35,925,000 and waive any and all irregularities and reject any and all protests, including by way of illustration and not by limitation the protest of

Swinerton Builders, and

F. Authorize an agreement with Kizh Nation Resources Management to monitor all groundwork to ensure the Native American Cultural Resources are properly mitigated per the approved Environmental Impact Report in the amount of $186,046, and
G. Authorize the City Manager or his designee to execute Amendment No. 1 to the Professional Services Agreement with RMA Group, of Rancho Cucamonga, California, to provide on-call geotechnical consulting, materials testing and special inspection for the Ontario Sports Complex Project in the amount of $2,242,360 for a total not-to-exceed contract amount of $2,442,360, and
H. Authorize the City Manager or his designee to execute Amendment No. 5 to the Professional Services Agreement with Tilden-Coil Constructors, Inc., of Riverside, California, for the procurement of long lead electrical gear for the Professional Baseball Stadium and Professional Baseball Stadium Parking Structure, fee adjustment for the mass grading and general conditions of the Professional Baseball Stadium in the amount of $14,066,782 for a total not-to-exceed contract amount of $45,968,259, and
I. Authorize the extension of working hours to be Monday through Saturday from 6:00 am to 11:00 pm and on Sunday from 8:00 am to 6:00 pm for the duration of the construction of the Professional Baseball Stadium and Parking Structure, and
J. Authorize the City Manager or his designee to execute all documents required for the completion of the project including, but not limited to, contracts, agreements, assessments, easements, reduction of retention accounts, and filing a notice of completion at the conclusion of all construction related activities; and
K. Consider and adopt a Resolution making a declaration of intent to issue tax-exempt obligations for the City's public capital improvements.

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF ONTARIO, CALIFORNIA, REGARDING ITS INTENTION TO ISSUE TAX-EXEMPT OBLIGATIONS FOR PUBLIC CAPITAL IMPROVEMENTS.

ATTACHMENT: 01- Concrete Structural - Conco.pdf
ATTACHMENT: 03 Masonry - Haxton Masonry, Inc..pdf
ATTACHMENT: 05 Railings - KCB Towers, Inc..pdf
ATTACHMENT: 07 Roofing - Commercial Roofing Systems, Inc..pdf
ATTACHMENT: 08 Waterproofing - Best Contracting Services, Inc..pdf
ATTACHMENT: 09 Sheet Metal - Best Contracting Services, Inc..pdf
ATTACHMENT: 10 Doors, Frames, Hardware - Star Hardware, Inc..pdf
ATTACHMENT: 11 Aluminum & Glazing - Golden State Glazing, Inc..pdf
ATTACHMENT: 12 Framing, Drywall, Insulation - Caston, Inc..pdf
ATTACHMENT: 13 Acoustical Ceiling & Treatment - Southcoast Acoustical Interiors, Inc..pdf
ATTACHMENT: 14 Finish Flooring - Progressive Surface Solutions, LLC.pdf
ATTACHMENT: 16 Ceramic Tile - Continental Marble & Tile Co..pdf
ATTACHMENT: 17 Painting & Wall Covering - Magnum Drywall, Inc..pdf
ATTACHMENT: 18 General Package - Inland Building Construction Companies, Inc..pdf
ATTACHMENT: 19 Aquatics - California Commercial Pools, Inc..pdf
ATTACHMENT: 21 Food Service Equipment - Kamran and Company, LLC.pdf
ATTACHMENT: 22 Fire Sprinkler - JPI Development Group, Inc..pdf

ATTACHMENT: 23 Plumbing - Continental Plumbing.pdf
ATTACHMENT: 24 Site Utilities - Kerns, Inc..pdf
ATTACHMENT: 25 HVAC - Westland Mechanical.pdf
ATTACHMENT: 26 Electrical & Low Voltage - Rancho Pacific Electric Construction, Inc..pdf
ATTACHMENT: 27 Landscaping & Irrigation - Brightview Landscape Development, Inc..pdf
ATTACHMENT: 28 Fence and Gates - Econo Fence, Inc..pdf
ATTACHMENT: 29 Asphaltic Paving - Terra Pave, Inc..pdf
ATTACHMENT: Bomel Construction Company, Inc.- Construction Contract.pdf
ATTACHMENT: Tilden- Coil Constructors, Inc. - Amendment No. 5.pdf
ATTACHMENT: Kizh Nation- Native American Monitoring Service Agreement.pdf
ATTACHMENT: Amendment No. 1 - RMA Group.pdf
ATTACHMENT: Tax Exempt Obligations RESO^RM

15. A LEASE AGREEMENT BETWEEN THE CITY OF ONTARIO AND THE INTERNATIONAL AIRPORT AUTHORITY

That the City Council approve a Lease Agreement ("Agreement") between the City of Ontario ("City") and the Ontario International Airport Authority ("Authority") for the use of the City-owned property located at 1236 East Airport Drive ("Property") for a five-year term with the option to extend for up to two additional five-year terms.

ATTACHMENT: OIAA Lease 1236 Airport Staff Report Exhibit A^01.pdf
ATTACHMENT: OIAA Lease 1236 Airport Drive^02.pdf

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

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

17. A SPECIAL SERVICES AGREEMENT WITH SAN BERNARDINO COUNTY FOR WIDE AREA NETWORK AND GENERAL INNOVATION AND TECHNOLOGY DEPARTMENT SERVICES.

That the City Council authorize the City Manager or his designee to execute a Special Services Agreement with San Bernardino County, with its principal place of business in San Bernardino, California, for Wide Area Network and General Innovation and Technology Department Services for a total contract not-to-exceed amount of $9,969,488.

ATTACHMENT: Ontario PD-CON-ITD-24031-Ontario PD WAN srvs BBK Edits-c1 3-with_corrections.pdf

18. ADOPTION OF AN ORDINANCE AMENDING SECTION 2-1.203 OF THE ONTARIO MUNICIPAL CODE RELATING TO SALARY COMPENSATION FOR THE CITY COUNCIL

That the City Council adopt an Ordinance amending Section 2-1.203 of the Ontario Municipal Code relating to Salary Compensation for the Mayor and the City Council.

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF ONTARIO, CALIFORNIA, AMENDING

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF ONTARIO, CALIFORNIA, AMENDING SECTION 2-1.203 OF THE ONTARIO MUNICIPAL CODE RELATING TO SALARY COMPENSATION FOR THE CITY COUNCIL.

ATTACHMENT: Salary Increase ORD^RM

PUBLIC HEARING

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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19. A PUBLIC HEARING TO CONSIDER THE SALE OF ONTARIO INDUSTRIAL DEVELOPMENT AUTHORITY OWNED PROPERTY IN ACCORDANCE WITH GOVERNMENT CODE SECTION 52201; MAKING CERTAIN FINDINGS; AND ADOPTION OF A RESOLUTION APPROVING A PURCHASE AND SALE AGREEMENT BETWEEN THE ONTARIO INDUSTRIAL DEVELOPMENT AUTHORITY AND RICHARD FERNANDO BARBA

That the Ontario Industrial Development Authority conduct a public hearing to consider the sale of Authority-owned property; and adopt a resolution approving a Purchase and Sale Agreement ("Agreement") between the Ontario Industrial Development Authority ("Authority") and Richard Fernando Barba ("Developer") (on file in the Records Management Department); and authorize the Executive Director to execute the Agreement and all other documents required for implementation of the Agreement.

A RESOLUTION OF THE ONTARIO INDUSTRIAL DEVELOPMENT AUTHORITY, OF THE CITY OF ONTARIO, CALIFORNIA, APPROVING A PURCHASE AND SALE AGREEMENT BETWEEN THE ONTARIO INDUSTRIAL DEVELOPMENT AUTHORITY AND RICHARD FERNANDO BARBA FOR THE PURCHASE AND SALE OF CERTAIN REAL PROPERTY LOCATED AT 928 EAST CALIFORNIA STREET, 960 EAST CALIFORNIA STREET, 1042 EAST CALIFORNIA STREET, 807 SOUTH GREENWOOD AVENUE, 814 SOUTH GREENWOOD AVENUE, AND 815 SOUTH GREENWOOD AVENUE, ONTARIO.

ATTACHMENT: Barba Purchase and Sale Staff Report Exhibit A^01.pdf
ATTACHMENT: Barba Purchase and Sale 02^OIDA^RESO^RM

20. A PUBLIC HEARING TO CONSIDER THE SALE OF ONTARIO INDUSTRIAL DEVELOPMENT AUTHORITY OWNED PROPERTY IN ACCORDANCE WITH GOVERNMENT CODE SECTION 52201; MAKING CERTAIN FINDINGS; AND ADOPTION OF A RESOLUTION APPROVING A PURCHASE AND SALE AGREEMENT BETWEEN THE ONTARIO INDUSTRIAL DEVELOPMENT AUTHORITY AND ANADALUSIA DEVELOPMENT COMPANY

That the Ontario Industrial Development Authority conduct a public hearing to consider the sale of Authority-owned property; and adopt a resolution approving a Purchase and Sale Agreement ("Agreement") between the Ontario Industrial Development Authority ("Authority")

and Anadalusia Development Company ("Developer") (on file in the Records Management Department); and authorize the Executive Director to execute the Agreement and all other documents required for implementation of the Agreement.

A RESOLUTION OF THE ONTARIO INDUSTRIAL DEVELOPMENT AUTHORITY, OF THE CITY OF ONTARIO, CALIFORNIA, APPROVING A PURCHASE AND SALE AGREEMENT BETWEEN THE ONTARIO INDUSTRIAL DEVELOPMENT AUTHORITY AND ANADALUSIA DEVELOPMENT COMPANY FOR THE PURCHASE AND SALE OF CERTAIN REAL PROPERTY LOCATED AT 936 SOUTH GROVE AVENUE, ONTARIO.

ATTACHMENT: Anadalusia Staff Report Exhibit A^01.pdf
ATTACHMENT: Anadalusia IDA Purchase and Sale 02^OIDA^RESO^RM

21. AN APPEAL OF THE PLANNING COMMISSION DECISION APPROVING FILE NOS. PMTT23-008 AND PDEV23-037

That the City Council conduct a public hearing on the appeal and after receiving all public testimony, uphold the Planning Commission's decision to approve Tentative Tract Map No. 20659 (File No. PMTT23-008) and a Development Plan (File No. PDEV23-037) and deny the appeal.

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF ONTARIO, CALIFORNIA, DENYING AN APPEAL AND UPHOLDING THE PLANNING COMMISSION'S DECISION TO APPROVE FILE NO. PMTT23-008, FOR TENTATIVE TRACT MAP NO. 20659, SUBDIVIDING 3.1 ACRES OF LAND INTO ONE PARCEL FOR CONDOMINIUM PURPOSES LOCATED AT 1355 WEST 5TH STREET, WITHIN THE LDR-5 (LOW DENSITY RESIDENTIAL – 2.1 TO 5.0 DU/AC) ZONING DISTRICT, AND MAKING FINDINGS IN SUPPORT THEREOF—APN: 1008-551-12.

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF ONTARIO, CALIFORNIA, DENYING AN APPEAL AND UPHOLDING THE PLANNING COMMISSION'S DECISION TO APPROVE FILE NO. PDEV23-037, A DEVELOPMENT PLAN TO CONSTRUCT 70 MULTIPLE-FAMILY RESIDENTIAL CONDOMINIUM UNITS, INCLUDING 7 MODERATE INCOME AFFORDABLE UNITS ON 3.1 ACRES OF LAND LOCATED AT 1355 WEST 5TH STREET, WITHIN THE LDR-5 (LOW DENSITY RESIDENTIAL – 2.1 TO 5.0 DU/AC) ZONING DISTRICT, AND MAKING FINDINGS IN SUPPORT THEREOF—APN: 1008-551-12.

ATTACHMENT: 20241015 PMTT23-008 PDEV23-037^01 PC Back-up.pdf
ATTACHMENT: 20241015 PMTT23-008 PDEV23-037^02 Appeal document.pdf
ATTACHMENT: 20241015 PMTT23-008 PDEV23-037^03 Applicant Response.pdf
ATTACHMENT: 20241015 PMTT23-008 PDEV23-037 04^PMTT^RESO^RM
ATTACHMENT: 20241015 PMTT23-008 PDEV23-037 05^PDEV^RESO^RM

22. A RESOLUTION TO ESTABLISH BROADBAND FEES FOR ONTARIONET

That the City Council adopt a Resolution to adopt a schedule of fees, as well as charges for late or declined payments, including the maximum and minimum rates that OntarioNet may charge customers to access and use OntarioNet's fiber optic network to connect to the Internet and to obtain communications services, upon the recommendation of the City

Manager, and to delegate authority to the City Manager to establish rate plans for residential and small business customers, and negotiate contract rates with large commercial customers within those established ranges, and to set all the other terms, conditions and policies applicable to customer access and use of OntarioNet's fiber optic network and related services.

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF ONTARIO, CALIFORNIA, ADOPTING FEES FOR USE OF THE ONTARIONET FIBER OPTIC NETWORK AND OTHER ASSOCIATED LOCAL GOVERNMENT PROPERTY.

ATTACHMENT: Adopting OntarioNet Broadband Fees 01^RESO^RM

23. AN APPEAL OF THE PLANNING COMMISSION'S DECISION TO UPHOLD THE ZONING ADMINISTRATOR'S INTERPRETATION AND DETERMINATION DECISION FOR FILE NOS. PDET23-005, PDET23-007, PDET23-008, PDET23-009, PDET23-010, PDET23-015 AND PDET23-016

That the City Council conduct a public hearing on the Appeals and after receiving all public testimony, uphold the Planning Commission's decision to uphold Zoning Administrator Decision No's. ZA23-024 (File No. PDET23-005), ZA23-030 (File No. PDET23-007), ZA23-031 (File No. PDET23-008), ZA23-032 (File No. PDET23-009), ZA23-033 (File No. PDET23-010), ZA23-038 (File No. PDET23-015) and ZA23-039 (File No. PDET23-016) and deny the Appeals.

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF ONTARIO, CALIFORNIA, TO UPHOLD THE PLANNING COMMISSION'S DECISION TO UPHOLD THE ZONING ADMINISTRATOR'S INTERPRETATION AND DETERMINATION DECISION (FILE NO. PDET23-005) THAT THE ONTARIO DEVELOPMENT CODE DIVISION 5.03, SECTION 5.03.250(E)(1) IS APPLICABLE AND ENFORCEABLE TO THE OPERATION TO THE HOTEL HACIENDA, LOCATED AT 2425 SOUTH ARCHIBALD AVENUE, WITHIN THE COMMUNITY COMMERCIAL ZONING DISTRICT, AND MAKING FINDINGS IN SUPPORT THEREOF—APN: 1083-071-26.

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF ONTARIO, CALIFORNIA, TO UPHOLD THE PLANNING COMMISSION'S DECISION TO UPHOLD THE ZONING ADMINISTRATOR'S INTERPRETATION AND DETERMINATION DECISION (FILE NO. PDET23-007) THAT THE ONTARIO DEVELOPMENT CODE DIVISION 5.03, SECTION 5.03.250(E)(1) IS APPLICABLE AND ENFORCEABLE TO THE OPERATION TO THE BRIGHT STAR MOTEL, LOCATED AT 1530 WEST MISSION BOULEVARD, WITHIN THE LIGHT INDUSTRIAL ZONING DISTRICT, AND MAKING FINDINGS IN SUPPORT THEREOF—APN: 1011-221-15.

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF ONTARIO, CALIFORNIA, TO UPHOLD THE PLANNING COMMISSION'S DECISION TO UPHOLD THE ZONING ADMINISTRATOR'S INTERPRETATION AND DETERMINATION DECISION (FILE NO. PDET23-008) THAT THE ONTARIO DEVELOPMENT CODE DIVISION 5.03, SECTION 5.03.250(E)(1) IS APPLICABLE AND ENFORCEABLE TO THE OPERATION TO THE DAYS INN ONTARIO MOTEL, LOCATED AT 1405 EAST 4TH STREET, WITHIN THE NEIGHBORHOOD COMMERCIAL ZONING DISTRICT, AND MAKING FINDINGS IN SUPPORT THEREOF—APN: 0108-381-32.

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF ONTARIO, CALIFORNIA, TO UPHOLD THE

PLANNING COMMISSION'S DECISION TO UPHOLD THE ZONING ADMINISTRATOR'S INTERPRETATION AND DETERMINATION DECISION (FILE NO. PDET23-009) THAT THE ONTARIO DEVELOPMENT CODE DIVISION 5.03, SECTION 5.03.250(E)(1) IS APPLICABLE AND ENFORCEABLE TO THE OPERATION TO THE ECONOMY INN, LOCATED AT 2301 SOUTH EUCLID AVENUE, WITHIN THE COMMUNITY COMMERCIAL ZONING DISTRICT, AND MAKING FINDINGS IN SUPPORT THEREOF—APN: 1051-071-04.

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF ONTARIO, CALIFORNIA, TO UPHOLD THE PLANNING COMMISSION'S DECISION TO UPHOLD THE ZONING ADMINISTRATOR'S INTERPRETATION AND DETERMINATION DECISION (FILE NO. PDET23-010) THAT THE ONTARIO DEVELOPMENT CODE DIVISION 5.03, SECTION 5.03.250(E)(1) IS APPLICABLE AND ENFORCEABLE TO THE OPERATION TO THE MAYFAIR INN, LOCATED AT 1120 EAST HOLT BOULEVARD, WITHIN THE INDUSTRIAL PARK ZONING DISTRICT, AND MAKING FINDINGS IN SUPPORT THEREOF—APN: 1049-141-25.

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF ONTARIO, CALIFORNIA, TO UPHOLD THE PLANNING COMMISSION'S DECISION TO UPHOLD THE ZONING ADMINISTRATOR'S INTERPRETATION AND DETERMINATION DECISION (FILE NO. PDET23-015) THAT THE ONTARIO DEVELOPMENT CODE DIVISION 5.03, SECTION 5.03.250(E)(1) IS APPLICABLE AND ENFORCEABLE TO THE OPERATION TO THE SANDS MOTEL, LOCATED AT 1240 WEST MISSION BOULEVARD, WITHIN THE LIGHT INDUSTRIAL ZONING DISTRICT, AND MAKING FINDINGS IN SUPPORT THEREOF—APN: 1101-211-03.

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF ONTARIO, CALIFORNIA, TO UPHOLD THE PLANNING COMMISSION'S DECISION TO UPHOLD THE ZONING ADMINISTRATOR'S INTERPRETATION AND DETERMINATION DECISION (FILE NO. PDET23-016) THAT THE ONTARIO DEVELOPMENT CODE DIVISION 5.03, SECTION 5.03.250(E)(1) IS APPLICABLE AND ENFORCEABLE TO THE OPERATION TO THE WEST COAST INN, LOCATED AT 1211 NORTH GROVE AVENUE, WITHIN THE NEIGHBORHOOD COMMERCIAL ZONING DISTRICT, AND MAKING FINDINGS IN SUPPORT THEREOF—APN: 1047-451-25.

ATTACHMENT: 20240903 Hotel Appeals PC^Back-up
ATTACHMENT: File No. PDET23-005 Hotel Hacienda - Appeal 02^RESO^RM
ATTACHMENT: File No. PDET23-007 Bright Star Motel - Appeal 03^RESO^RM
ATTACHMENT: File No. PDET23-008 Days Inn Ontario - Appeal 04^RESO^RM
ATTACHMENT: File No. PDET23-009 Economy Inn - Appeal 05^RESO^RM
ATTACHMENT: File No. PDET23-010 Mayfair Inn - Appeal 06^RESO^RM
ATTACHMENT: File No. PDET23-015 Sands Motel - Appeal 07^RESO^RM
ATTACHMENT: File No. PDET23-016 West Coast Inn - Appeal 08^RESO^RM

ADMINISTRATIVE REPORTS/DISCUSSION/ACTION

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24. A RESOLUTION AUTHORIZING THE DISSOLUTION OF THE CHINO BASIN WATER BANK PLANNING AUTHORITY AND APPROVING AN AMENDMENT TERMINATING THE

AUTHORITY'S JOINT POWERS AGREEMENT BY AND AMONG THE CITY OF ONTARIO, INLAND EMPIRE UTILITIES AGENCY, CUCAMONGA VALLEY WATER DISTRICT, AND MONTE VISTA WATER DISTRICT

That the City Council adopt a Resolution authorizing the City Manager, or his designee, to dissolve the Chino Basin Water Bank Planning Authority and approve an Amendment terminating the Joint Powers Agreement by and among the City of Ontario, Inland Empire Utilities Agency, Cucamonga Valley Water District, and Monte Vista Water District.

A RESOLUTION OF THE CITY COUNCIL OF ONTARIO, CALIFORNIA, AGREEING TO DISSOLVE THE CHINO BASIN WATER BANK PLANNING AUTHORITY AND APPROVE AN AMENDMENT TERMINATING THE AUTHORITY'S JOINT POWERS AGREEMENT.

ATTACHMENT: 20241015 Chino Basin Water Bank 02^RESO^RM
ATTACHMENT: Attachment A - Amendment Terminating Joint Exercise of Powers Agreement_rev07172024.docx

STAFF MATTERS

City Manager Ochoa

COUNCIL MATTERS

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

ADJOURNMENT

CITY OF ONTARIO *Agenda Report* **October 15, 2024**	**SECTION:** **SPECIAL CEREMONIES**
Department: Library Prepared By: Kelly Zackmann Department: Prepared By: Kelly Zackmann Staff Member Presenting: Helen McAlary, Executive Director Community Life and Culture Reviewed By: Lacey A Rightmer Approved By:	Submitted To: Council/OHA Approved: _____ Continued To: _____ Denied: _____ Item No:

SUBJECT: PROCLAMATION OF OCTOBER 20-26, 2024 AS FRIENDS OF LIBRARIES WEEK

RECOMMENDATION: That the City Council proclaim the week of October 20-26, 2024 as Friends of Libraries Week.

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

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

BACKGROUND & ANALYSIS:

This year marks the 19th Annual National Friends of Libraries Week, celebrated during the week of October 20-26, 2024. Friends of the library groups advocate for local libraries and fundraise to support library programs and activities, purchase books and equipment, and provide engaging resources for the community. Friends of the library groups are run by volunteers who organize and manage used bookstores, plan fundraisers, and recruit new members.

The Friends of Ontario City Library, a 501(c)(3) non-profit organization, was founded in 1968 and incorporated in 1973. For over fifty years, the Friends of Ontario City Library has raised thousands of dollars to support Ontario City Library programs and services by selling used books at their bookstores located at each library branch. The Friends of Ontario City Library also raises money through special book sales, fundraising events, and memberships.

The Friends of Ontario City Library has given over $31,000 to support Ontario City Library programs and services this year. The money has been used to fund events such as Summer at Ontario City Library, children's reading programs, One Book, One Ontario, and the Library's first ever MakerCon. Funds were also used to purchase new hotspots for library patrons to check out, tote bags for patrons to check out to carry books, and various program supplies.

The Friends of Ontario City Library members advocate for the Library by engaging with the community at events and through social media. They encourage people to join the Friends of Ontario City Library and get involved in serving the community. Residents interested in learning more about the Friends of Ontario City Library are invited to explore their website, friendsofontariocitylibrary.org, or contact them by email at focl22@hotmail.com or by phone at (909) 395-2224.

National Friends of Libraries Week is a time to celebrate and recognize the hard work and dedication of the Friends of Ontario City Library. Members volunteer their time to promote and enhance our library. The week offers the opportunity to raise awareness about the Friends of Libraries groups and encourage community members to get involved and support their local libraries.

Staff recommends that the City Council recognize and commend the Friends of Ontario City Library for their tireless efforts in supporting the Ontario City Library. The City Council is also encouraged to help spread awareness of National Friends of Libraries Week and ways in which residents can contribute to serving their community.

PROCLAMATION OF OCTOBER 20-26, 2024
AS FRIENDS OF LIBRARIES WEEK

WHEREAS, libraries are the cornerstone of our community, serving as a vital resource for all, fostering a love for reading, lifelong learning, and open access to information; and

WHEREAS, the Friends of Libraries across the nation, including the Friends of Ontario City Library, play an essential role in enhancing our libraries through their volunteer and financial support, promoting literacy and education within our community; and

WHEREAS, the Friends of Ontario City Library members tirelessly advocate for the Ontario City Library, raise funds for special programs and resources, support literacy, and provide invaluable assistance through volunteer service, contributing to the enrichment of the Library's offerings; and

WHEREAS, the 19th Annual National Friends of the Library Week, October 20-26, 2024, offers the citizens of Ontario an opportunity to acknowledge and thank the Friends of Ontario City Library for their dedication, to support their efforts, and to recognize the vital role libraries and Friends groups play in the educational system and community life; and

WHEREAS, the City of Ontario encourages citizens to join the Friends of Ontario City Library, to participate in the celebration of National Friends of the Library Week, and to become active supporters of our library system, thereby ensuring that our libraries continue to serve as centers of learning and community engagement; and

NOW, THEREFORE, the City of Ontario, its City Council and staff members do hereby proclaim the week of October 20-26, 2024, as **FRIENDS OF LIBRARIES WEEK** in the City of Ontario and urges everyone to celebrate this week by visiting the Ontario City Library, acknowledging the significant contributions of the Friends of Ontario City Library, and participating in the various events and activities organized by our libraries.

CITY OF ONTARIO *Agenda Report* **October 15, 2024**	**SECTION:** **SPECIAL CEREMONIES**
Department: Fire Department Prepared By: Michelle Starkey Department: Prepared By: Michelle Starkey Staff Member Presenting: Mike Gerken, Fire Chief Approved By:	Submitted To: Council/OHA Approved: _____ Continued To: _____ Denied: _____ Item No:

SUBJECT: PROCLAMATION OF OCTOBER 6-12, 2024 AS NATIONAL FIRE PREVENTION WEEK

RECOMMENDATION: That the City Council proclaim the week of October 6-12, 2024 as National Fire Prevention Week.

THE FOLLOWING COUNCIL GOALS ARE BEING ACHIEVED:
Maintain the Current High Level of Public Safety

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

BACKGROUND & ANALYSIS: Since 1922, the National Fire Protection Association (NFPA) has sponsored the public observance of Fire Prevention Week. In 1925, President Calvin Coolidge proclaimed Fire Prevention Week a national observance, making it the longest-running public health observance in this country. During Fire Prevention Week, children, adults, and teachers learn how to stay safe in case of a fire. Fire Departments across the nation provide lifesaving public education in an effort to drastically decrease casualties caused by fires.

Fire Prevention Week is observed each year during the week of October 9th in commemoration of the Great Chicago Fire, which began on October 8, 1871, and caused devastating damage. This horrific conflagration killed more than 250 people, left 100,000 homeless, destroyed more than 17,400 structures, and burned more than 2,000 acres of land.

In a fire, mere seconds can mean the difference between a safe escape and a tragedy. Fire safety education isn't just for school children. Teenagers, adults, and the elderly are also at risk of fires, making it important for every member of the community to take some time every October during Fire Prevention Week to make sure they understand how to stay safe in case of a fire. Ontario residents are encouraged to learn more about fire safety by visiting www.ontarioca.gov/fire for more information and resources.

PROCLAMATION OF OCTOBER 6th through October 12th, 2024
AS NATIONAL FIRE PREVENTION WEEK

WHEREAS, the City of Ontario is committed to ensuring the safety and security of all those living and visiting the city; and

WHEREAS, fire is a serious public safety concern both locally and nationally, and homes are the locations where people are at greatest risk from fire; and

WHEREAS, home fires killed more than 2,700 people in the United States in 2022, according to the National Fire Protection Association (NFPA), and fire departments in the United States responded to 360,000 home fires; and

WHEREAS, roughly three out of five fire deaths happen in homes with either no smoke alarms or with no working smoke alarms; and

WHEREAS, working smoke alarms cut the risk of dying in reported home fires almost in half; and

WHEREAS, smoke alarms sense smoke well before you can, alerting you to danger in the event of fire in which you may have as little as two minutes to escape safely; and

WHEREAS, City of Ontario residents should install smoke alarms in every sleeping room, outside each separate sleeping area, and on every level of the home; and

WHEREAS, City of Ontario residents will make sure their smoke alarms meet the needs of all their family members, including those with sensory or physical disabilities; and

WHEREAS, City of Ontario residents should test smoke alarms at least once a month.

WHEREAS, residents who have planned and practiced a home fire escape plan are more prepared and will therefore be more likely to survive a fire; and

WHEREAS, City of Ontario residents are responsive to public education measures and are able to take personal steps to increase their safety from fire, especially in their homes; and

WHEREAS, the 2024 Fire Prevention Week theme, “Smoke alarms: Make them work for you”, serves to remind us the importance of having working smoke alarms in the home.

THEREFORE, the City of Ontario, its City Council and staff members do hereby proclaim October 6th through 12th, 2024 as:

NATIONAL FIRE PREVENTION WEEK

GIVEN UNDER THE CORPORATE SEAL OF THE CITY OF ONTARIO, CALIFORNIA this 15th day of October 2024.

_____
PAUL S. LEON, MAYOR

ATTEST:

_____
Claudia Isbell, ASSISTANT CITY CLERK

ONTARIO CITY COUNCIL/
ONTARIO HOUSING AUTHORITY
MINUTES
SEPTEMBER 17, 2024
(Not Official Until Approved)

JOINT MEETINGS

The regular meetings of the Ontario City Council and the Housing Authority were held on Tuesday, September 17, 2024 at Ontario City Hall, 303 E. B Street Ontario, California.

OPEN MEETING CALLED TO ORDER

Mayor Leon called the joint meetings to order at 6:30 p.m.

ROLL CALL

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

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

PLEDGE OF ALLEGIANCE

The Pledge of Allegiance was led by Council Member Valencia.

INVOCATION

The invocation was led by Rev. Edward Gabriel from Our Lady of Guadalupe Parish.

PUBLIC COMMENT

Assistant City Clerk Isbell announced there were no written comments.

Mayor Leon called upon the first speaker:
Fernando Origuela, invited Council and residents to participate in National Walk to School Day on October 6th.
Brad Neumann, spoke on his personnel grievance.
Karen Haughey, representative from San Bernardino County Board of Supervisor, Curt Hagman's office invited Council and residents to upcoming events.

AGENDA REVIEW/ANNOUNCEMENTS

City Manager Ochoa announced the need to pull Item No. 7 until further notice.

INFORMATION RELATIVE TO POSSIBLE CONFLICTS OF INTEREST

There were no conflicts of interest announced by the City Council.

CONSENT CALENDAR

MOTION: Moved by Mayor pro Tem Porada, seconded by Council Member Bowman, and carried by a unanimous vote 4-0 with Council Member Wapner absent, to approve the Consent Calendar without Item No. 7.

1. APPROVAL OF MINUTES

Approved minutes for the special study session of the City Council and Housing Authority of August 16, 2024 and, the regular meetings of the City Council and Housing Authority of August 20, 2024 and approving same as on file in the Records Management Department.

2. BILLS & PAYROLL

Approved bills August 9, 2024 through August 29, 2024, in the amount of $40,876,159.18, and Payroll July 28, 2024 through August 10, 2024 in the amount of $5,804,028.27.

3. AN AMENDMENT TO A DESIGN SERVICES AGREEMENT WITH EXP US SERVICES FOR THE SAN ANTONIO STORM DRAIN PROJECT

The City Council approved Amendment No. 3 to the On-call Design Services Agreement with EXP US Services, Inc. of San Bernardino, California, to provide additional engineering design services for the San Antonio Storm Drain Project in the amount of $41,291 for a revised not-to-exceed authorization amount of $1,075,343; and authorized the City Manager, or his designee, to execute said amendment and future amendments within the authorization limits.

4. A RESOLUTION APPROVING A SUBDIVISION IMPROVEMENT AGREEMENT, IMPROVEMENT SECURITY, AND FINAL TRACT MAP NO. 20524, LOCATED AT THE NORTHEAST CORNER OF MILL CREEK AVENUE AND CHINO AVENUE

The City Council adopted a Resolution approving a Subdivision Improvement Agreement, Improvement Security, and Final Tract Map No. 20524, located at the northeast corner of Mill Creek Avenue and Chino Avenue, in the Edenglen Specific Plan.

RESOLUTION NO. 2024-160 A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF ONTARIO, CALIFORNIA, APPROVING A SUBDIVISION IMPROVEMENT AGREEMENT, IMPROVEMENT SECURITY, AND FINAL TRACT MAP NO. 20524, LOCATED AT THE NORTHEAST CORNER OF MILL CREEK AVENUE AND CHINO AVENUE.

5. A RESOLUTION ADOPTING THE MEASURE I FIVE-YEAR CAPITAL PROJECT NEEDS ANALYSIS FOR FISCAL YEARS 2025-26 TO 2029-30

The City Council considered and adopted a Resolution approving the Fiscal Year 2025-26 through Fiscal Year 2029-30 Measure I Five-Year Capital Project Needs Analysis (CPNA) and authorized the City Manager, or his designee, to approve changes to the plan as may be required by the City and/or San Bernardino County Transportation Authority (SBCTA).

RESOLUTION NO. 2024-161 A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF ONTARIO, CALIFORNIA, ADOPTING THE MEASURE I FIVE-YEAR CAPITAL PROJECT NEEDS ANALYSIS FOR FISCAL YEARS 2025-26 TO 2029-30.

6. ACCEPT A WRITTEN PETITION TO CREATE A COMMUNITY FACILITIES DISTRICT AND ADOPT A RESOLUTION OF INTENTION TO ESTABLISH CITY OF ONTARIO COMMUNITY FACILITIES DISTRICT NO. 72 (LOMA CREEK LOGISTICS CENTER SERVICES) AND TO AUTHORIZE THE LEVY OF SPECIAL TAXES

The City Council considered and:

A. Accepted a written petition from IV3 Loma Creek Logistics, LLC ("Landowner"), to create a Community Facilities District ("CFD") and to waive certain procedural matters, under the Mello-Roos Community Facilities Act of 1982; and
B. Adopted a Resolution of Intention to establish City of Ontario Community Facilities District No. 72 (Loma Creek Logistics Center Services); authorized 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, November 5, 2024.

RESOLUTION NO. 2024-162 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. 72 (LOMA CREEK LOGISTICS CENTER SERVICES) AND TO AUTHORIZE THE LEVY OF A SPECIAL TAX THEREIN.

7. AUTHORIZE THE AGREEMENT FOR GROUND AMBULANCE SERVICES WITH CONSOLIDATED FIRE AGENCIES (CONFIRE) AND CITY OF ONTARIO

This item was pulled.

8. AN AMENDMENT TO THE DESIGN SERVICES AGREEMENT WITH POPULOUS, INC. FOR ARCHITECTURAL AND ENGINEERING SERVICES FOR THE ONTARIO PROFESSIONAL BASEBALL STADIUM AND PARKING STRUCTURE 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 Populous, Inc., of Los Angeles, California, to provide additional planning, design, and engineering services for the Ontario Professional Baseball Stadium and Parking Structure Project in the amount of $4,039,800 for a new total not-to exceed contract amount of $13,814,810; 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, easements, reduction of retention accounts, and filing a notice of completion at the conclusion of all construction related activities.

9. AUTHORIZE CHANGE ORDER NO. 4 TO THE CONSTRUCTION CONTRACT WITH MCCARTHY BUILDING COMPANIES, INC. FOR DESIGN-BUILD CONSTRUCTION SERVICES FOR THE CITY HALL PARKING STRUCTURE PROJECT

The City Council took the following actions:

A. Authorized the City Manager, or his designee, to execute Change Order No. 4 to the Construction Contract with McCarthy Building Companies, Inc., of Newport Beach, California, for Design-Build Construction Services for the City Hall Parking Structure Project in the amount of $1,066,997 for a total not-to-exceed contract amount of $31,924,928, and
B. Authorized a contingency of $2,700,000 for a total not-to-exceed contract amount of $34,624,928; 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, lot line adjustments, reduction of retention accounts, contracts and contract amendments within the authorization limits, and filing a notice of completion at the conclusion of all construction related activities.

10. A CONSTRUCTION CONTRACT WITH RESOURCE ENVIRONMENTAL, INC. FOR THE EMERGENCY DEMOLITION OF THE PROPERTY AT 9155/9381 E. RIVERSIDE DRIVE

The City Council took the following actions:

A. Authorized the City Manager, or his designee, to execute Construction Contract No. D&C24-005 Emergency Dairy and Residence Abatement and Demolition with Resource Environmental, Inc., of Cerritos, California, for the emergency demolition and site clearance activities on City-owned property located at 9155/9381 E. Riverside Drive for a total contract amount not-to-exceed $1,741,000; 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, easements, reduction of retention accounts and filing a notice of completion at the conclusion of all construction related activities.

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

The City Council took the following actions:

A. Authorized the City Manager, or his designee, to execute Amendment No. 1 to the Design Services Agreement with RJM Design Group, Inc., of San Juan Capistrano, California, to provide on-call landscape architectural services for the Ontario Sports Complex Project in the amount of $408,865 for a total not-to-exceed contract amount of $658,865; 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, easements, reduction of retention accounts, and filing a notice of completion at the conclusion of all construction related activities.

12. APPROVAL OF CO-OPERATIVE PURCHASES FOR FLEET EQUIPMENT AND PARTS

The City Council took the following actions:

A. Authorized the co-operative purchase and delivery of telematics, telemetry, and Global Positioning Systems (GPS) equipment in an amount not-to-exceed of $750,000 over five years from Geotab USA, Inc., of Las Vegas, Nevada, consistent with the terms and conditions of the CA-State Contract DGS-1-19-58-69, and
B. Authorized the co-operative purchase and delivery of automotive parts and materials in an amount not-to-exceed of $750,000 over five (5) years from Advanced Auto Parts, of Ontario, California, consistent with the terms and conditions of the OMNIA Contract R-LD-23013-01, and
C. Authorized the co-operative purchase and delivery of Bridgestone tires and supplies in an amount not-to-exceed of $500,000 over five (5) years from Southern Tire Mart of, Columbia, Mississippi, consistent with the terms and conditions of the NASPO Contract 24158;

D. Authorized the co-operative purchase and delivery of Goodyear tires and supplies in an amount not-to-exceed $500,000 over five (5) years from Daniel's Tire, of Santa Fe Springs, California, consistent with the terms and conditions of the CA-State Contract DGS-1-23-26-01A.

13. AUTHORIZE THE PURCHASE OF FLEET VEHICLES

The City Council took the following actions:

A. Awarded Bid No. 1773 and authorized the purchase and delivery of three (3) Ford F150 XLT pick-up trucks in the amount of $221,421 plus a 10% contingency of $22,142 to mitigate any unforeseen issues with supply chain surcharges and manufactures price increases, for a total not-to-exceed amount of $243,563 from Proper Performance, LLC, of New Wilmington, Pennsylvania, and
B. Awarded Bid No. 1774 and authorized the purchase and delivery of two (2) Ford F150 Lariat pick-up trucks in the amount of $164,023 plus a 10% contingency of $16,402 to mitigate any unforeseen issues with supply chain surcharges and manufactures price increases, for a total not-to-exceed amount of $180,425 from Proper Performance, LLC, of New Wilmington, Pennsylvania, and
C. Authorized the cooperative purchase and delivery of sixteen (16) Dodge Durango Pursuit Vehicles in the amount of $951,240 plus a 10% contingency of $95,124 to mitigate any unforeseen issues with supply chain surcharges and manufactures price increases, for a total amount not-to-exceed of $1,046,364 from National Auto Fleet Group, of Watsonville, California, consistent with the terms and conditions of the Sourcewell Cooperative Contract No. 091521-NAF, and
D. Authorized the cooperative purchase and delivery of one (1) Petersen Industries CNG Freightliner Grapple Loader Truck in the amount of $367,081 plus a 10% contingency of $36,708 to mitigate any unforeseen issues with supply chain surcharges and manufactures price increases, for a total not-to-exceed amount of $403,789 from Municipal Maintenance Equipment, of Sacramento, California, consistent with the terms and conditions of the Sourcewell Cooperative Contract No. 040621-PII; and
E. Authorized the cooperative purchase and delivery of three (3) EV Battle Motors Refuse roll-o trucks in the amount of $1,644,434 plus a 10% contingency of $164,444 to mitigate any unforeseen issues with supply chain surcharges and manufactures price increases, for a total not-to-exceed amount of $1,808,879 from Velocity Truck Centers, of Whittier, California, consistent with the terms and conditions of the Sourcewell Cooperative Contract No. 032824-CRN.

14. ACCEPTANCE OF ENERGY EFFICIENCY AND CONSERVATION BLOCK GRANT PROGRAM FUNDING FROM THE UNITED STATES DEPARTMENT OF ENERGY

The City Council authorized the City Manager, or his designee, to execute all documents necessary to accept grant award funds in the amount of $218,330 from the U.S. Department of Energy (DOE) for the Energy Efficiency and Conservation Block Grant (EECBG) Program.

15. AN AMENDMENT TO THE PROFESSIONAL SERVICES AGREEMENT WITH ICS SOFTWARE, LLC FOR CONSULTING SERVICES, APPLICATION DEVELOPMENT, AND DATABASE ADMINISTRATION

The City Council authorized the City Manager, or his designee, to execute Amendment No. 1 to the Professional Services Agreement with ICS Software, LLC, of Claremont, California, for consulting services, application development, and database administration, increasing the authorized contract amount by $450,000 for a total contract amount not-to-exceed $900,000 and extending the term of the agreement by two years to July 31, 2027.

16. A CONSTRUCTION CONTRACT WITH LOENGREEN, INC. AND AN AMENDMENT TO THE DESIGN SERVICES AGREEMENT WITH THIRTIETH STREET ARCHITECTS FOR THE DOWNTOWN MOBILITY HUB PROJECT

That the City Council took the following actions:

A. Authorized the City Manager, or his designee, to execute Construction Contract No. D&C23-026 with Loengreen, Inc., of Los Angeles, California, for the Downtown Mobility Hub Project in the amount of $4,040,000, and
B. Authorized a 10% contingency of $404,000 for a total not-to-exceed contract amount of $4,444,000 to address any unforeseen issues that arise during construction, and
C. Authorized the City Manager, or his designee, to execute Amendment No. 7 to the Design Services Agreement with Thirtieth Street Architects, Inc., of Costa Mesa, California, for the Downtown Mobility Hub Project in the amount of $148,300 for a total not-to-exceed contract amount of $954,900; and
D. Authorized the City Manager, or his designee, to execute all documents required for the completion of the project including, but not limited to, contracts, agreements, assessments, easements, reduction of retention accounts, and filing a notice of completion at the conclusion of all construction related activities.

17. AN AMENDMENT TO THE PROFESSIONAL SERVICES AGREEMENT WITH INTERPERSONAL FREQUENCY, LLC., FOR WEBSITE REDESIGN SERVICES

The City Council authorized the City Manager, or his designee, to execute Amendment No. 1 to the Professional Services Agreement with Interpersonal Frequency, LLC of McLean, VA, for website redesign, increasing the contract amount by $43,613 for a total contract not-to-exceed amount of $1,045,588.

18. AWARD CONSTRUCTION CONTRACTS TO ANDERSON CHARNESKY STRUCTURAL STEEL, INC. AND CREW, INC. FOR THE STRUCTURAL STEEL, GRADING AND DEMOLITION FOR THE PROFESSIONAL BASEBALL STADIUM LOCATED AT THE ONTARIO REGIONAL SPORTS COMPLEX

The City Council took the following actions:

A. Authorized the City Manager, or his designee, to execute a Construction Contract with Anderson Charnesky Structural Steel, Inc., of Beaumont, California, to provide construction services for D&C23-011 Professional Baseball Stadium - Steel in the amount of $15,717,000 and authorize a contingency of $1,600,000 for a total not-to-exceed contract amount of $17,317,000, and
B. Authorized the City Manager, or his designee, to execute a Construction Contract with Crew, Inc., of Compton, California, to provide construction services for D&C23-011A Sports Complex Mass Grading in the amount of $41,870,320 and authorize a contingency of $4,200,000 for a total not-to-exceed contract amount of $46,070,320, and
C. Authorized the extension of working hours to be Monday through Saturday from 6:00 am to 11:00 pm and on Sunday from 8:00 am to 6:00 pm for the duration of the construction of the Professional Baseball Stadium; and
D. Authorized the City Manager, or his designee, to execute all documents required for the completion of the project including, but not limited to, contracts, agreements, assessments, easements, reduction of retention accounts, and filing a notice of completion at the conclusion of all construction related activities.

19. AN AMENDMENT TO THE PROFESSIONAL SERVICES AGREEMENT WITH RONALD IVIE FOR ADDITIONAL BROADBAND STRATEGY, DEVELOPMENT, AND OPERATIONS SUPPORT CONSULTING

The City Council approved and authorized the City Manager, or his designee, to execute Amendment No. 1 to the Professional Services Agreement with Ronald Ivie, of Eagle, Idaho, for additional broadband strategy, development and operations support consulting services, in the amount of $180,000, for a revised not-to-exceed total of $1,080,000.

20. A RESOLUTION AMENDING THE APPENDIX TO THE CITY OF ONTARIO CONFLICT OF INTEREST CODE

The City Council adopted a Resolution amending the Appendix to the Conflict of Interest Code to update position classification titles and filing requirements for City employees.

RESOLUTION NO. 2024-163 A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF ONTARIO, CALIFORNIA, APPROVING AND ADOPTING AN AMENDED APPENDIX OF THE CONFLICT OF INTEREST CODE PURSUANT TO THE POLITICAL REFORM ACT OF 1974.

21. APPROVAL OF A SIDE LETTER AMENDING THE MEMORANDUM OF UNDERSTANDING FOR THE ONTARIO FIRE MANAGEMENT GROUP IN ACCORDANCE WITH MODIFICATIONS REQUIRED BY CALPERS

The City Council adopted a Resolution to approve a side letter amending the City of Ontario ("City") and Ontario Fire Management Group ("OFMG") Memorandum of Understanding (MOU) from July 1, 2023 to June 30, 2027, in accordance with modifications required by the California Public Employees Retirement System (CalPERS) to ensure that pension benefits are properly calculated.

RESOLUTION NO. 2024-164 A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF ONTARIO, CALIFORNIA, APPROVING A SIDE LETTER AMENDING THE MEMORANDUM OF UNDERSTANDING FOR EMPLOYEES REPRESENTED BY THE ONTARIO FIRE MANAGEMENT GROUP.

PUBLIC HEARINGS

22. A PUBLIC HEARING TO RECEIVE TESTIMONY AND ADOPT THE CONSOLIDATED ANNUAL PERFORMANCE AND EVALUATION REPORT (CAPER) FOR THE 2023-24 FISCAL YEAR

The City Council took the following actions:

A. Held a public hearing to receive testimony on the draft Consolidated Annual Performance and Evaluation Report (CAPER) for the Fiscal Year 2023-24 (on file in the Records Management Department);
B. Directed sta to prepare and transmit to the U.S. Department of Housing and Urban Development (HUD) the final CAPER, which will address all public comments received on the draft CAPER; and
C. Authorized the City Manager to revise for accuracy and execute any and all documents necessary and/or desirable to transmit the CAPER to HUD.

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

Mayor Leon opened the public hearing and inquired if anyone was interested in speaking to the item. Hearing no one, Mayor Leon opened the item for a discussion or motion.

MOTION: Moved by Council Member Bowman, seconded by Mayor pro Tem Porada and carried by a unanimous vote 4-0 with Council Member Wapner absent, to adopt the Consolidated Annual Performance and Evaluation Report.

STAFF MATTERS

City Manager Ochoa made no announcements.

COUNCIL MATTERS

Council Member Valencia announced the upcoming Route 66 Cruisin Reunion.

Council Member Bowman announced he too was looking forward to Route 66 Cruisin Reunion.

Mayor pro Tem Porada announced the Ontario Heritage's upcoming Cemetery Tour.

Mayor Leon spoke on the West End Animal Services Agency.

ADJOURNMENT

Mayor Leon adjourned the meetings of the Joint Agencies at 6:49 p.m. and announced the next regular meeting was scheduled for October 1, 2024.

Respectfully submitted,

_____
SHEILA MAUTZ, CITY CLERK/SECRETARY

APPROVED:

_____
PAUL S. LEON, MAYOR/CHAIRMAN

CITY OF ONTARIO *Agenda Report* **October 15, 2024**	**SECTION:** **CONSENT CALENDAR**
Department: Community Development Prepared By: Andrew Garland Staff Member Presenting: Scott Murphy, Executive Director Community Development Approved By:	Submitted To: Council/OHA Approved: _____ Continued To: _____ Denied: _____ Item No: 3

SUBJECT: **AN AMENDMENT TO A DESIGN SERVICES AGREEMENT WITH INFRASTRUCTURE ENGINEERING CORPORATION, AN ARDURRA GROUP CORPORATION, FOR THE FOURTH STREET STORM DRAIN PROJECT**

RECOMMENDATION: That the City Council approve and authorize the City Manager, or his designee, to execute Amendment No. 18 to the On-Call Design Services Agreement with Infrastructure Engineering Corporation, an Ardurra Group Corporation, of Newport Beach, California, to provide additional engineering design services and construction support for water main improvements for the Fourth Street Storm Drain Project in the amount of $494,235, for a revised not-to-exceed authorization amount of $9,651,703, and extend the contract term to allow for the completion of ongoing projects; and authorize the City Manager, or his designee, to execute said amendment and future amendments within the authorization limits.

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

FISCAL IMPACT: In September 2022, the City Council approved an Amendment with Infrastructure Engineering Corporation in the amount of $209,930 for the design of the Fourth Street Storm Drain Project (SM2301/DIF Project No. SD-063). The proposed Amendment No. 18 in the amount of $494,235 will increase the project not-to-exceed total to $704,165, and the on-call contract not-to-exceed total to $9,651,703.

The Fiscal Year 2024-25 Adopted Budget includes remaining, unencumbered appropriations for design services in the amount of $90,070 in OMC Local Adjacent Storm Drain Development Impact Fee (DIF) Funds for the Fourth Street Storm Drain Project. The portion of the proposed amendment directly related to the storm drain will be funded by the Storm Drain DIF in the amount of $81,809. The remaining $412,426 is directly related to water main replacement and will be funded by Ontario Municipal Utilities Company (OMUC) Water Capital Enterprise Funds.

BACKGROUND & ANALYSIS: In May 2019, the City awarded an on-call Design Services Agreement to Infrastructure Engineering Corporation, an Ardurra Group Corporation, and in September 2022, executed Amendment No. 10 for engineering design services for the Fourth Street Storm Drain Project. During design, the Engineering Department collaborated with OMUC to identify opportunities to replace and relocate aging infrastructure in the project vicinity. OMUC has requested that water main replacement be incorporated into the project and will provide funding for these improvements. Amendment No. 18 will revise the scope of services for the Fourth Street Storm Drain Project to include supplemental storm drain design and support, water main improvements and plan implementation, and supplemental bid and construction support. This Amendment will also extend the term of the contract to June 30, 2027, to allow for completion of this project and other ongoing projects. This is the first amendment for the design of the Fourth Street Storm Drain Project.

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

PAUL S. LEON
MAYOR

DEBRA PORADA
MAYOR PRO TEM

ALAN D. WAPNER
JIM W. BOWMAN
RUBEN VALENCIA
COUNCIL MEMBERS

SHEILA MAUTZ
CITY CLERK

JAMES R. MILHISER
TREASURER

SCOTT OCHOA
CITY MANAGER

AMENDMENT NO. 18 TO THE DESIGN SERVICES AGREEEMENT BETWEEN THE CITY OF ONTARIO AND INFRASTRUCTURE ENGINEERING CORPORATION, AN ARDURRA GROUP CORPORATION

1. Parties and Date.

This Amendment No. 18 to the Agreement (as defined herein) is made and entered as of _____, by and between the City of Ontario ("City") and **Infrastructure Engineering Corporation, an Ardurra Group 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 "**UT1032 On-Call Professional Engineering Services"** dated **May 7, 2019** ("Agreement").

2.2 Amendment Purpose. The City and Consultant desire to amend the Agreement to **include additional storm drain design and support, water main improvements and supplemental bid and construction support for the Fourth Street Storm Drain Project in the amount of Four Hundred Ninety-Four Thousand Two Hundred Thirty-Five and 0/100 Dollars ($494,235.00)**; and increase the total not-to-exceed compensation amount to **Nine Million Six Hundred Fifty-One Thousand Seven Hundred Three and 0/100 Dollars ($9,651,703.00).** The Parties have heretofore entered that Amendment No. 1 dated December 3, 2019, Amendment No. 2 dated December 16, 2019, Amendment No. 3 dated February 19, 2020, Amendment No. 4 dated January 27, 2021, Amendment No. 5 dated January 27, 2021, Amendment No. 6 dated January 27, 2021, Amendment No. 7 dated January 27, 2021, Amendment No. 8 dated July 6, 2021, Amendment No. 9 dated May 7, 2022, Amendment No. 10 dated September 6, 2022, Amendment No. 11 dated September 20, 2022, Amendment No. 12 dated November 1, 2022, Amendment No. 13 dated December 9, 2022, Amendment No. 14 dated December 9, 2022, Amendment No. 15 dated February 7, 2023, Amendment No. 16 dated August 15, 2023 and Amendment No. 17 dated January 16, 2024.

2.3 Amendment Authority. This Amendment No. **18** is authorized pursuant to Section 3

of the Agreement.

3. Terms.

3.1 Amendment. **Section 3.1.1, and 3.1.2** of the Agreement is hereby amended in its entirety to read as follows:

3.1.1 Scope of Services. Consultant promises and agrees to furnish to City all labor, materials, tools, equipment, services, and incidental and customary work necessary to fully and adequately supply the professional engineering and related services necessary for the full and adequate completion of the Project consistent with the provisions of this Agreement (hereinafter referred to as "Services"). The Services are more particularly described throughout this Agreement, including Exhibit "A" attached hereto and incorporated herein by reference. All Services shall be subject to, and performed in accordance with, this Agreement, any exhibits attached hereto and incorporated herein by reference, and all applicable local, state and federal laws, rules and regulations. All Services performed by Consultant shall be subject to the sole and discretionary approval of the City, which approval shall not be unreasonably withheld. Additionally, Consultant shall comply with all Federal requirement applicable to the Services as set forth in Exhibit "A".

3.1.2 Term. The term of this Agreement is hereby amended to extend to June 30, 2027 to allow for the completion of the Fourth Street Storm Drain Project, 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.

3.2 Continuing Effect of Agreement. Except as amended by this Amendment No. **18**, all other provisions of the Agreement remain in full force and effect and shall govern the actions of the parties under this Amendment No. 18. From and after the date of this Amendment No. **18**, whenever the term "Agreement" appears in the Agreement, it shall mean the Agreement as amended by this Amendment No. **18**.

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. **18**.

3.4 Severability. If any portion of this Amendment No. 3 is declared invalid, illegal, or otherwise unenforceable by a court of competent jurisdiction, the remaining provisions shall continue in full force and effect.

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

[SIGNATURES ON FOLLOWING PAGE]

SIGNATURE PAGE FOR AMENDMENT NO. 18 TO DESIGN SERVICES AGREEMENT BETWEEN THE CITY OF ONTARIO AND INFRASTRUCTURE ENGINEERING CORPORATION, AN ARDURRA GROUP CORPORATION

IN WITNESS WHEREOF, the Parties have entered into this Amendment No. 18 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

INFRASTRUCTURE ENGINEERING CORPORATION, AN ARDURRA GROUP CORPORATION

By: _____

Its: _____

Printed Name: _____

By: _____

Its: _____

Printed Name: _____

ARDURRA

September 12, 2024

Tricia M. Espinoza, PE, QSD/QSP
Assistant City Engineer
City of Ontario
303 East B Street
Ontario, CA 91764

SUBJECT: FOURTH STREET STORM DRAIN PROJECT SUPPLEMENT BUDGET REQUEST – AMENDMENT FOR SUPPLEMENTAL SERVICES (WATER IMPROVEMENTS & STORM DRAIN)

Dear Tricia:

Ardurra Group Inc. (Ardurra) appreciates the opportunity to continue serving the City of Ontario on the Fourth Street Storm Drain Improvement Project. We very much appreciate the opportunity to submit this amendment for additional budget for the efforts described in this proposal.

SCOPE OF WORK

The scope of work for this amendment includes the following tasks:

TASK 1 – PROJECT MANAGEMENT, COORDINATION, AND MEETINGS

Ardurra will continue to manage the project tasks, schedule, and budget for the supplemental efforts. We anticipate having biweekly meetings for the duration of the project (assume 10 total virtual meetings), and Ardurra will continue to coordinate with the City and utility agencies.

TASK 2 - SUPPLEMENTAL STORM DRAIN SUPPORT

Due to existing utility conflicts, Ardurra will make the necessary adjustments to the storm drain alignment to comply with OMUC's required separation from sewer and water. The new alignment will go through Harvard Place instead of Princeton. We will update the alignment and provide the City with an interim submittal for coordination and concurrence prior to providing the 90% submittal. Additionally, Ardurra will make the necessary modifications to the plans, specifications, and cost estimate to incorporate the proposed water improvements.

TASK 3 – OMUC WATER MAIN IMPROVEMENTS – PS&E

A summary of the OMUC Water Main Improvements to the 1348 Pressure Zone is as follows:

Location	Linear Footage	Existing	Proposed
5th Street (El Dorado Ave to Baker Ave)	!,500 lf	6-in dia	8-in dia
Baker Avenue (4th St to 6th St)	2,700 lf	6-in dia	8-in dia
Harvard Place (Baker St to Corona Ave)	1,400 lf	6-in dia	8-in dia
Corona Avenue (4th St to 5th St)	1,400 lf	6-in dia	8-in dia
Total	**7,000 lf**		

Task 3.1 Data Collection and Utility Mapping

Ardurra will prepare and submit additional utility data requests to supplement the utility base mapping. The supplement data collection and utility mapping will cover the proposed water improvements.

Task 3.2 Supplemental Surveying and Mapping

Ardurra will request additional survey to supplement the existing topographic information we currently have. The supplemental survey will cover the proposed water improvements.

Task 3.3 Supplemental Existing Utility Potholing

Ardurra will request additional potholes to supplement the existing pothole information we currently have. The supplemental potholes will cover the limits for the proposed water improvements.

Task 3.4 Prepare 30% Plans Only

Ardurra will field verify the surveying and mapping and the existing utilities mapped. The horizontal alignment will be developed, currently assumed as a replace in-place to avoid DDW waivers, unknown and/or unexpected existing utility crossings that may lead to any delays, and to minimize the extension of existing water service lines. Once the City reviews and approves the horizontal alignment, Ardurra will use the 30% plans to prepare the Utility Pothole Plan. If the horizontal alignment is revised during subsequent phases of design, those revisions will be considered a scope revision. Minor adjustments in the horizontal alignment are included in this amendment.

Task 3.5 Prepare Contract Documents

NOTE: This scope assumes that all deliverables will be submitted electronically. The City has moved to processing all reviews, planchecks, encroachment permits, bidding the project, etc. via their online system.

Ardurra will prepare bid ready set of Contract Documents, including construction drawings, special provisions, technical specifications, and engineer's cost estimates (PS&E). Ardurra will prepare milestone submittals at the 60%, 90%, and 100% levels for the City's review. Ardurra will then prepare a Bid Set Document for uploading to PlanetBids. Ardurra will utilize the City's front end documents and will prepare technical specifications using the City's/OMUC's Standards and Greenbook.

Ardurra's project manager, a registered Civil Engineer in the state of California and the Engineer of Record for the project, will sign and seal each original final mylar. In addition, the project manager will sign and stamp the title page of the specifications to be included in the Contract Documents and the design calculations for the project.

A complete set of construction plans will be prepared to indicate construction elements. Plans will be prepared on "D" size 24"x36" sheets at 1"=40' horizontal scale and submitted electronically. Project deliverables shall conform to applicable City Standards, AWWA Industry Standards, and California Waterworks Standards. The deliverable of this task shall be a complete set of bid ready plans, specifications, and opinion of probable construction cost, prepared in accordance with said standards.

TASK 4 – OMUC WATER MAIN IMPROVEMENTS – BID PHASE SERVICES

During bidding, Ardurra will provide interpretation and consultation regarding questions and/or requests for clarification of the plans and specifications. Ardurra will assist and support the City by taking the lead in preparing bid addenda as required to provide clarification to contract documents and responses to Requests for Information (RFI). Ardurra will help City staff with technical details required for the staff report to the City Council.

Task 4.1 Pre-Bid Conference

Ardurra will attend one (1) pre-bid meeting and answer questions from potential bidders. Ardurra will facilitate, prepare agenda, prepare meeting minutes, and distribute meeting minutes to City for publishing on its electronic bid management system, PlanetBids.

Task 4.2 Request for Information

Ardurra will respond to questions as directed by the City. Assumed ten (10) total.

Task 4.3 Prepare and Issue Addenda

Ardurra will prepare up to three (3) addenda as required. The addenda will be submitted to City Staff for review and publishing on PlanetBids.

Task 4.5 Review/Evaluate Bidder Qualifications

Ardurra will contact Bidders reference and review their qualifications meet the contract document requirements.

Task 4.6 Bid Review & Recommendation for Award

Ardurra will perform a bid evaluation for the two lowest bids including, review of bid documents to ensure all forms were submitted and complete, contact references, and verify contractor and subcontractor's State licenses. Consultant will provide to the City, a written recommendation for award to the lowest responsible Bidder.

Task 4.7 Conformed Documents

Ardurra will incorporate any design changes and/or clarifications arising from the biding phase questions and/or amendments into the contract documents to form a set of conformed documents. The conformed documents will be forward to the City in electronic format. City will print the necessary copies for Contractor's use and other project team members.

TASK 5 – OMUC WATER MAIN IMPROVEMENTS – ESDC

Attend construction progress site meetings and provide support services, including technical review of submittals, RFIs, change orders, claim mitigation efforts, generation of support calculations, review of applicable standards, and presentation of acceptable alternatives or solutions. Upon completion of construction activities, the City's team will forward one set of red-lined drawings to the Consultant to review and sign/approve as Finalized digital As-Builts record drawings.

General Requirements

Provide project management, administration, invoicing, billing, and monthly progress reports. This task shall also include communication, coordination and cooperation with the City's staff and the City's Construction Manager.

Pre-Construction Meeting

Attend the preconstruction meeting at City's offices and coordinate with City's construction management team.

Construction Meetings

Attend biweekly construction progress meetings. Assuming the construction duration is 12 months, the total number of meetings is twenty-four (24).

Attend periodic site visits to monitor the progress and performance and assess any conflicts that may arise during the course of construction and will coordinate these visits with the City's Construction Management team. Assumed up to ten (10) site visits may be required.

Change Order Management

Assist the City's team with negotiating and coordinate the implementation of contract change orders during the construction process. City's team will compile change order supporting documentation, such as inspection reports, test reports, drawings, sketches, photographs, and other materials as required. Ardurra will review and evaluate the appropriateness of all proposed change orders, advise the City as to their effect on the contract time and cost, and perform independent estimates of the proposed change order work when necessary, as well as recommend approval or denial. Assumed ten (10) total.

Requests for Information (RFI)

Review and respond to the contractor's Request for Information (RFI) for the duration of the project. Responses will be provided within five (5) working days and in accordance with the Contract Documents. Assumed twenty (20) total.

Submittal Management

Review and respond to contractor's submittals for the duration of the project. Assure contractor submittals are in conformance with the Contract Documents. Document the status of submittals, received and corresponding responses, via a Submittal Log and provide the City with an updated log for the entire project duration. Assumed fifty (50) total.

Design Revisions

Prepare construction field order changes and design changes, as required during construction. Assume ten (10) total.

Post Construction

Prepare record drawings per City's standard process. Final drawings provided via PDF along with accompanying CAD files.

TASK 6 – SUPPLEMENTAL ENGINEERING SUPPORT DURING CONSTRUCTION

Ardurra anticipates requiring supplemental construction support during construction. This includes attending additional construction progress site meetings (up to 3) and providing additional support services, including technical review of submittals and RFIs.

TASK 7 – PROJECT CONTINGENCY

Ardurra is including a ten percent (10%) contingency for water and storm drain tasks.

EXCLUSIONS/ASSUMPTIONS

The following was used as a basis for this amendment:

- It is assumed work will not be within Caltrans right of way, therefore an encroachment is not included,
- Traffic control plans are not included,
- Water Quality Management Plan is not included,
- Permits or plan checks associated with Cucamonga Valley Water District are not included,
- Environmental clearance (CEQA/NEPA), amendments or associated services are not included,
- Roadway Improvement Design is not included.
- The pothole budget is based on fifty (50) potholes. This is only an estimate, should the number of potholes be reduced, the remaining supplemental pothole budget will not be used. If there is a need for additional potholes, the additional cost for potholes will be charged on a per hole basis.
- Items not included in this amendment, or the original proposal are excluded from the scope of work.

PROPOSED FEE

The maximum authorized compensation for this amendment is $494,235 and will not be exceeded without prior written authorization. Below is a breakdown of project related fees (Please see Exhibit A for a detailed breakdown of hours and fee).

The existing agreement remains unchanged except as specifically modified in this Amendment.

We sincerely appreciate the opportunity to provide this proposal to the City of Ontario. Please contact me at avoyiatzes@ardurra.com or Jose Hernandez at jhernandez@ardurra.com should you have any questions or require additional information.

Respectfully,

Anissa Voyiatzes, PE, ENV-SP
Group Leader, Engineering and Municipal Services

cc: Jose Hernandez, PE, Ardurra Group, Inc.

FEE SCHEDULE
City of Ontario/Ontario Municipal Utilities Company (OMUC)
Professional Design Services for Fourth Street Storm Drain and Water Improvements Project

Fourth Street Storm Drain and Water Improvements Project Amendment		Labor Hours											Subconsultants					Total
		PIC	OMUC PIC	QMP	OMUC QMP	Project Manager	OMUC Design Lead	OMUC Project Engineer	Senior Designer/Project Engineer	OMUC CAD Designer	Engineer I	OMUC Project Coordinator	Surveyor	Utility Pothole Contractor	Subconsultant Markup	Direct Costs	Labor Hrs	
	Hourly Rates	$ 258	$ 280	$ 258	$ 250	$ 227	$ 210	$ 165	$ 165	$ 165	$ 133	$ 135						
Task 1	**Project Management**																	
1.1	Project Management					20											20	$ 4,540
1.2	Additional Coordination and Meetings					12			12								24	$ 4,704
																	Project Management	**$ 9,244**
Task 2	**Update PS&E**																	
2.1	Update PS&E to reflect realignment			2		20			80		88						190	$ 29,960
2.2	Update PS&E to incorporate OMUC improvements			2		20			60		80						162	$ 25,596
2.3	Qa/Qc	2		4		8											14	$ 3,364
																	Update PS&E	**$ 58,920**
Task 3	**OMUC Water Main Improvements - PS&E**																	
3.1	Data Collection and Utility Mapping						4	24		24		2					54	$ 9,030
3.2	Supplemental Surveying and Mapping						4	16		16		2	$ 35,600		$ 5,340		38	$ 47,330
3.3	Supplemental Existing Utility Potholing						12	16		16		2		$ 53,750	$ 8,062.50		46	$ 69,883
3.4	Prepare 30% Plans Only		4		8		24	80		80		2					198	$ 34,830
3.5	**Prepare Contract Documents**																	
	60% PS&E		2		8		40	80		80		2					212	$ 37,630
	90% PS&E		2		8		40	80		80		2					212	$ 37,630
	100% PS&E		2		8		24	40		40		2					116	$ 21,070
	Bid Documents		2		8		24	40		40		2					116	$ 21,070
																	OMUC Water Main Improvements - PS&E	**$ 278,473**
Task 4	**OMUC Water Main Improvements - Bidding Support**																	
4.1	Pre-Bid Conference						1										1	$ 210
	Miscellaneous Bid Phase Services																	
4.2	Request for Information (5)						8										8	$ 1,680
4.3	Prepare and Issue Addenda (3)						24										24	$ 5,040
4.4	Review/Evaluate Bidder Qualifications				1		2										3	$ 670
4.5	Bid Review & Recommendation for Award				1		2										3	$ 670
4.6	Conformed Documents				1		4	24		4		2					35	$ 5,980
																	OMUC Water Main Improvements - Bidding Support	**$ 14,250**
Task 5	**OMUC Water Main Improvements - ESDC**																	
5.1	General Requirements		4				24					12					40	$ 7,780
5.2	Pre-Construction		1				1										2	$ 490
5.3	Construction Meetings (weekly meetings, total 24)		12				40									$ 2,000	52	$ 13,760
5.4	Change Order Management (10 total)						24	8									32	$ 6,360
5.5	Requests for Information (20 total)						20	24				20					64	$ 10,860
5.6	Submittal Management (50 total)						24	60				40					124	$ 20,340
5.7	Design Revisions (10 total)		2		4		24	32				10					72	$ 13,230
5.8	Post Construction (As-builts)						12	40				2					54	$ 9,390
																	OMUC Water Main Improvements - ESDC	**$ 82,210**
Task 6	**Supplemental Engineering Support During Construction**																	
6.1	Address RFIs					2			8								10	$ 1,774
6.2	Review Submittals					2			8								10	$ 1,774
6.3	Additonal three (3) progress meetings					6					6					500	12	$ 2,660
																	Supplemental Engineering Support During Construction	**$ 6,208**
	Total Hours:	**2**	**31**	**8**	**47**	**90**	**382**	**564**	**168**	**380**	**174**	**102**					**1948**	
	Project Costs:	**$ 516**	**$ 8,680**	**$ 2,064**	**$ 11,750**	**$ 20,430**	**$ 80,220**	**$ 93,060**	**$ 27,720**	**$ 62,700**	**$ 23,142**	**$ 13,770**				**$ 2,500**		*$ 449,305*
Task 7	**Project Contingency**																	
7.1	Fourth Street SD 10% Contingency																	*$ 7,437*
7.2	OMUC Water Main 10% Contingency																	*$ 37,493*
																	Project Total	**$ 494,235**

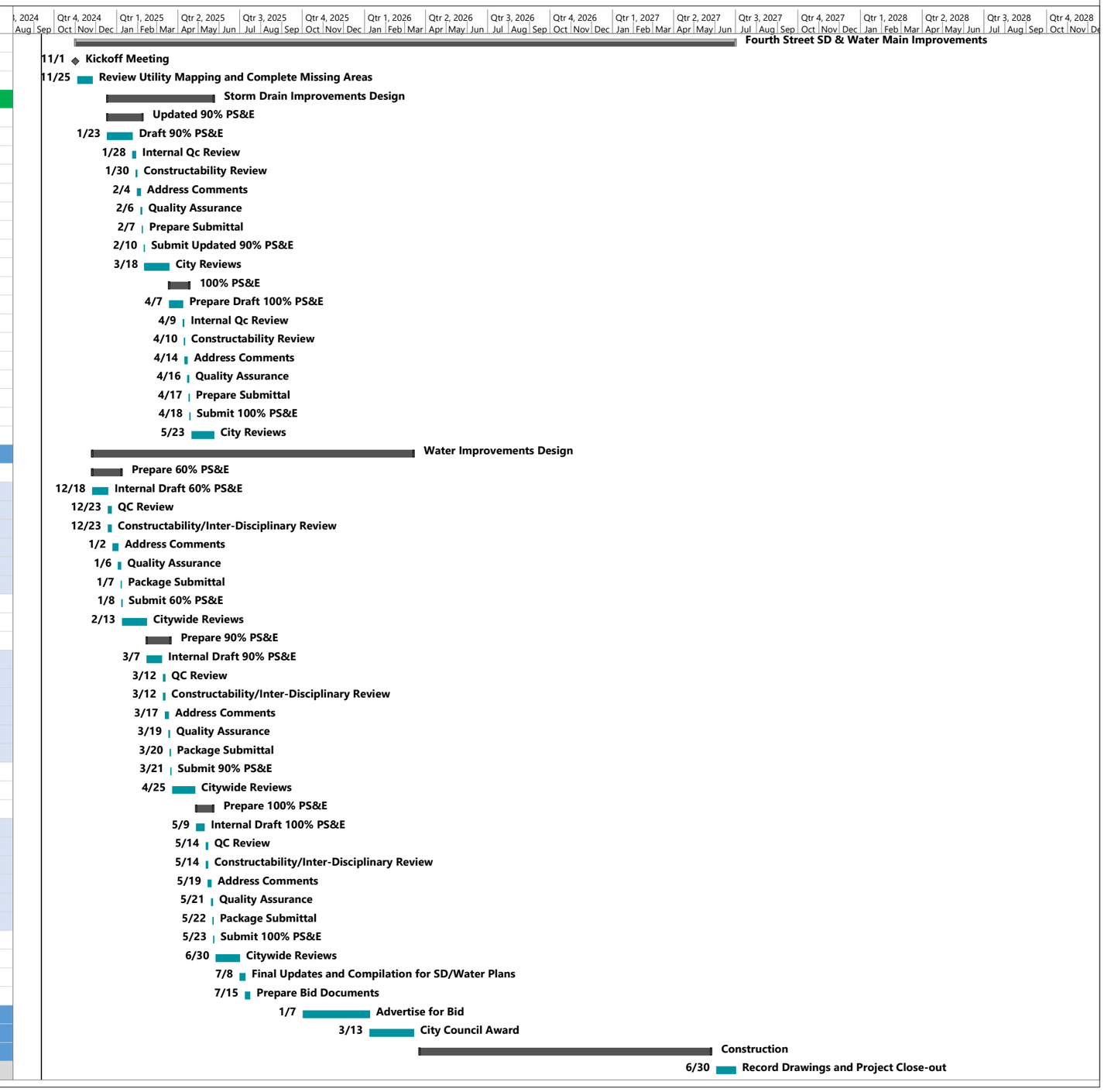
Summary Breakdown	
OMUC Water Main Improvements	***$ 412,426***
Fourth Street SD Improvements	***$ 81,809***
Total	*$ 494,235*

CITY OF ONTARIO SOUTHERN CALIFORNIA

Fourth Street Storm Drain and OMUC Water Main Improvements Design Schedule

ARDURRA

ID	Task Name	Duration	Start	Finish	Predecessors
0	**Fourth Street SD & Water Main Improvements**	**658 days**	**Fri 11/1/24**	**Wed 6/30/27**	
1	Kickoff Meeting	0 days	Fri 11/1/24	Fri 11/1/24	
2	Review Utility Mapping and Complete Missing Areas	15 days	Mon 11/4/24	Mon 11/25/24	1FS+1 day
3	**Storm Drain Improvements Design**	**106 days**	**Wed 12/18/24**	**Fri 5/23/25**	
4	*Updated 90% PS&E*	**32 days**	**Wed 12/18/24**	**Fri 2/7/25**	
5	*Draft 90% PS&E*	21 days	Wed 12/18/24	Thu 1/23/25	2FS+14 days
6	*Internal Qc Review*	3 days	Fri 1/24/25	Tue 1/28/25	5
7	*Constructability Review*	2 days	Wed 1/29/25	Thu 1/30/25	6
8	*Address Comments*	3 days	Fri 1/31/25	Tue 2/4/25	7
9	*Quality Assurance*	2 days	Wed 2/5/25	Thu 2/6/25	8
10	*Prepare Submittal*	1 day	Fri 2/7/25	Fri 2/7/25	9
11	***Submit Updated 90% PS&E***	1 day	Mon 2/10/25	Mon 2/10/25	10
12	***City Reviews***	25 days	Tue 2/11/25	Tue 3/18/25	11
13	**100% PS&E**	**22 days**	**Wed 3/19/25**	**Thu 4/17/25**	
14	Prepare Draft 100% PS&E	14 days	Wed 3/19/25	Mon 4/7/25	12
15	Internal Qc Review	2 days	Tue 4/8/25	Wed 4/9/25	14
16	Constructability Review	1 day	Thu 4/10/25	Thu 4/10/25	15
17	Address Comments	2 days	Fri 4/11/25	Mon 4/14/25	16
18	Quality Assurance	2 days	Tue 4/15/25	Wed 4/16/25	17
19	Prepare Submittal	1 day	Thu 4/17/25	Thu 4/17/25	18
20	**Submit 100% PS&E**	1 day	Fri 4/18/25	Fri 4/18/25	19
21	**City Reviews**	25 days	Mon 4/21/25	Fri 5/23/25	20
22	**Water Improvements Design**	315 days	Tue 11/26/24	Fri 3/13/26	
23	Prepare 60% PS&E	24 days	Tue 11/26/24	Tue 1/7/25	
24	*Internal Draft 60% PS&E*	*15 days*	*Tue 11/26/24*	*Wed 12/18/24*	*2*
25	*QC Review*	*3 days*	*Thu 12/19/24*	*Mon 12/23/24*	*24*
26	*Constructability/Inter-Disciplinary Review*	*3 days*	*Thu 12/19/24*	*Mon 12/23/24*	*24*
27	*Address Comments*	*3 days*	*Thu 12/26/24*	*Thu 1/2/25*	*25,26*
28	*Quality Assurance*	*2 days*	*Fri 1/3/25*	*Mon 1/6/25*	*27*
29	*Package Submittal*	*1 day*	*Tue 1/7/25*	*Tue 1/7/25*	*28*
30	***Submit 60% PS&E***	***1 day***	***Wed 1/8/25***	***Wed 1/8/25***	29
31	***Citywide Reviews***	***25 days***	***Thu 1/9/25***	***Thu 2/13/25***	***30***
32	Prepare 90% PS&E	24 days	Fri 2/14/25	Thu 3/20/25	31
33	*Internal Draft 90% PS&E*	*15 days*	*Fri 2/14/25*	*Fri 3/7/25*	*31*
34	*QC Review*	*3 days*	*Mon 3/10/25*	*Wed 3/12/25*	*33*
35	*Constructability/Inter-Disciplinary Review*	*3 days*	*Mon 3/10/25*	*Wed 3/12/25*	*33*
36	*Address Comments*	*3 days*	*Thu 3/13/25*	*Mon 3/17/25*	*34,35*
37	*Quality Assurance*	*2 days*	*Tue 3/18/25*	*Wed 3/19/25*	*36*
38	*Package Submittal*	*1 day*	*Thu 3/20/25*	*Thu 3/20/25*	*37*
39	***Submit 90% PS&E***	***1 day***	***Fri 3/21/25***	***Fri 3/21/25***	38
40	***Citywide Reviews***	***25 days***	***Mon 3/24/25***	***Fri 4/25/25***	***39***
41	Prepare 100% PS&E	**19 days**	**Mon 4/28/25**	**Thu 5/22/25**	**39**
42	*Internal Draft 100% PS&E*	*10 days*	*Mon 4/28/25*	*Fri 5/9/25*	*40*
43	*QC Review*	*3 days*	*Mon 5/12/25*	*Wed 5/14/25*	*42*
44	*Constructability/Inter-Disciplinary Review*	*3 days*	*Mon 5/12/25*	*Wed 5/14/25*	*42*
45	*Address Comments*	*3 days*	*Thu 5/15/25*	*Mon 5/19/25*	*43,44*
46	*Quality Assurance*	*2 days*	*Tue 5/20/25*	*Wed 5/21/25*	*45*
47	*Package Submittal*	*1 day*	*Thu 5/22/25*	*Thu 5/22/25*	*46*
48	***Submit 100% PS&E***	***1 day***	***Fri 5/23/25***	***Fri 5/23/25***	47
49	***Citywide Reviews***	***25 days***	***Tue 5/27/25***	***Mon 6/30/25***	***48***
50	Final Updates and Compilation for SD/Water Plans	5 days	Tue 7/1/25	Tue 7/8/25	49
51	Prepare Bid Documents	5 days	Wed 7/9/25	Tue 7/15/25	50
52	**Advertise for Bid**	60 days	Thu 10/2/25	Wed 1/7/26	51FS+11 wks
53	**City Council Award**	**45 days**	**Thu 1/8/26**	**Fri 3/13/26**	**52**
54	**Construction**	**297 days**	**Mon 3/23/26**	**Tue 5/25/27**	
71	Record Drawings and Project Close-out	20 days	Thu 6/3/27	Wed 6/30/27	70FS+5 days



CITY OF ONTARIO *Agenda Report* **October 15, 2024**	**SECTION:** **CONSENT CALENDAR**
Department: Engineering Prepared By: Angela Truong Staff Member Presenting: Scott Murphy, Executive Director Community Development Reviewed By: Raymond Lee, Khoi Do Approved By:	Submitted To: Council/OHA Approved: _____ Continued To: _____ Denied: _____ Item No: 4

SUBJECT: **A RESOLUTION APPROVING AN IMPROVEMENT AGREEMENT, IMPROVEMENT SECURITY AND FINAL TRACT MAP NO. 20536 GENERALLY LOCATED WEST OF ARCHIBALD AVENUE BETWEEN CHINO AVENUE AND EAST RIVERSIDE DRIVE WITHIN THE COUNTRYSIDE SPECIFIC PLAN**

RECOMMENDATION: That the City Council adopt a Resolution approving an Improvement Agreement, Improvement Security and Final Tract Map No. 20536 generally located west of Archibald Avenue between Chino Avenue and East Riverside Drive within the Countryside Specific Plan.

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

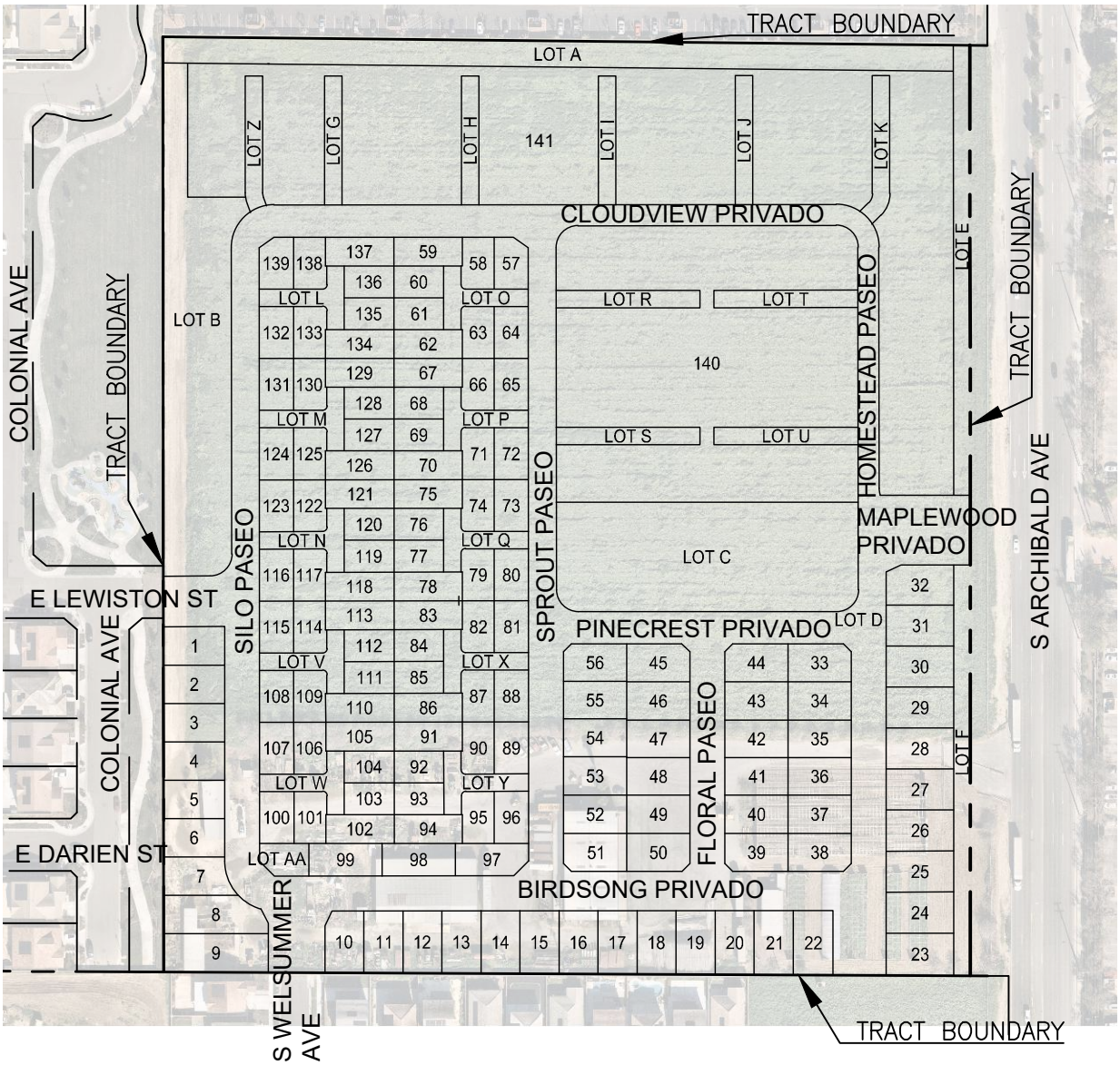
FISCAL IMPACT: There is not a direct fiscal impact associated with this action. All public infrastructure improvements required for this project will be constructed by the Developer at its sole cost.

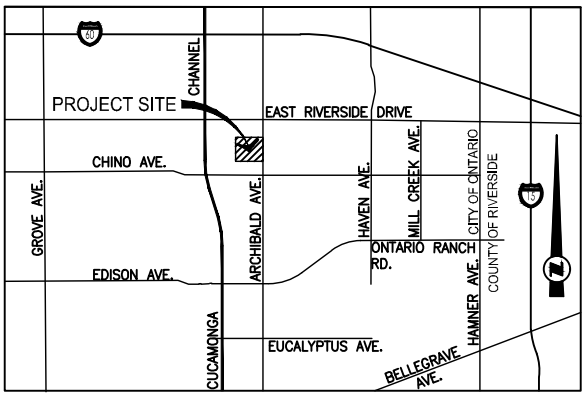
BACKGROUND & ANALYSIS: Final Tract Map No. 20536, consisting of 141 numbered lots and 27 lettered lots on approximately 23 acres of land, as shown on Exhibit A, has been submitted by the Developer, Lennar Homes. Tentative Tract Map No. 20536 was approved by the Planning Commission on May 23, 2023.

Improvements will include streets, sewer main and lateral, water main and lateral, recycled water lateral, fiber optic conduits, and parkway landscaping with irrigation. All landscape improvements will be consistent with current City approved water wise landscape standards.

The Developer has entered into an Improvement Agreement with the City for Final Tract Map No.

20536 and posted adequate security to ensure construction of the required improvements. This map meets all conditions of the Subdivision Map Act and the Ontario Municipal Code and has been reviewed and approved by the City Engineer.





VICINITY MAP

N.T.S

200' 0' 100' 200'

SCALE: 1" = 200'

EXHIBIT A

TM 20536
LENNAR HOMES

P:\146\001\Exhibits\Final Eng\146-001 Exhibit A.dwg September 4, 2024 7:02 PM

RESOLUTION NO. _____

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF ONTARIO, CALIFORNIA, APPROVING AN IMPROVEMENT AGREEMENT, IMPROVEMENT SECURITY AND FINAL TRACT MAP NO. 20536 GENERALLY LOCATED WEST OF ARCHIBALD AVENUE BETWEEN CHINO AVENUE AND EAST RIVERSIDE DRIVE WITHIN THE COUNTRYSIDE SPECIFIC PLAN.

WHEREAS, Tentative Tract Map No. 20536, submitted for approval by RB Ontario LLC and later acquired by Lennar Homes, was approved by the Planning Commission of the City of Ontario on May 23, 2023; and

WHEREAS, Tentative Tract Map No. 20536 consists of 141 numbered lots and 27 lettered lots, in the City of Ontario, County of San Bernardino, State of California, being a subdivision of Parcels 1 and 2 of Parcel Map 9486, as per Map filed in Book 107 of Parcel Maps, Pages 98 and 99, Records of the County Recorder of Said County; and

WHEREAS, to meet the requirements established as prerequisite to final approval of Tract Map No. 20536, Lennar Homes has offered the Improvement Agreement together with good and sufficient improvement security, in conformance with the City Attorney's approved format, for approval and execution by the City; and

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

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

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

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

3. That Final Tract Map No. 20536 be approved and that the City Clerk be authorized to execute the statement thereon on behalf of said City.

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

PASSED, APPROVED, AND ADOPTED this 15th day of October, 2024.

_____
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. 2024- was duly passed and adopted by the City Council of the City of Ontario at their regular meeting held October 15, 2024 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. 2024- duly passed and adopted by the Ontario City Council at their regular meeting held October 15, 2024.

_____
SHEILA MAUTZ, CITY CLERK

(SEAL)

RECORDED AT THE REQUEST OF
AND WHEN RECORDED RETURN TO:

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

(Exempt from Filing Fees – Government Code § 6103)

SPACE ABOVE THIS LINE FOR RECORDER'S USE

SUBDIVISION IMPROVEMENT AGREEMENT

FOR COMPLETION OF PUBLIC IMPROVEMENTS

TRACT MAP NO. 20536

between

THE CITY OF ONTARIO

a California municipal corporation

and

Lennar Homes of California, LLC, a

California limited liability company

SUBDIVISION IMPROVEMENT AGREEMENT
FOR COMPLETION OF PUBLIC IMPROVEMENTS

TRACT MAP NO. 20536

I. PARTIES AND DATE

This Subdivision Improvement Agreement for the Completion of Public Improvements ("Agreement") is entered into as of this ____ day of _____, 20__, by and between the City of Ontario, a California municipal corporation ("City") and Lennar Homes of California, LLC, a California limited liability company ("Developer"). City and Developer are sometimes hereinafter individually referred to as "Party" and hereinafter collectively referred to as the "Parties."

II. RECITALS

A. Developer's tentative parcel map for real property located within City, a legal description of which is attached hereto as Exhibit "A" ("Property"), was conditionally approved by the Ontario Planning Commission on May 23, 2023. The tentative tract map is identified in City records as Tract Map No. 20536 ("Map").

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

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

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

III. TERMS

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

1.1 Definitions. For purposes of enforcing this Agreement, the term "City" shall include, but shall not be limited to, City Council, Public Works Director, City Engineer,

Community Development Director, Building Official, or any of their authorized representatives. City shall have the sole and absolute discretion to determine which public body, public official, or public employee may act on behalf of City for any particular purpose.

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

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

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

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

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

conditions, plans, specifications, standard drawings, and special amendments thereto on file with City, as well as all applicable federal, state, and local laws, ordinances, regulations, codes, standards, and other requirements applicable at the time work is actually commenced.

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

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

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

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

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

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

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

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

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

4.0 Construction Schedule. Unless extended pursuant to Section 4.1 of this Agreement, Developer shall fully and adequately complete or have completed the Public Improvements within twelve (12) months following approval of the final Map. At least fifteen (15) days prior to the

commencement of such work, Developer shall notify the City Engineer in writing of the date fixed by Developer for commencement of the work.

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

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

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

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

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

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

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

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

10.0 Acceptance of Improvements; As-Built or Record Drawings. If the Public Improvements are properly completed by Developer and approved by the City Engineer, and if they comply with all applicable federal, state and local laws, ordinances, regulations, codes, standards, and other requirements, the City Council shall be authorized to accept the Public Improvements. The City Council may, in its sole and absolute discretion, accept fully completed portions of the Public Improvements prior to such time as all of the Public Improvements are complete, which shall not release or modify Developer's obligation to complete the remainder of the Public Improvements within the time required by this Agreement. Upon the total or partial acceptance of the Public Improvements by City, the City Clerk shall file with the Recorder's Office of the County of San Bernardino, a notice of completion for the accepted Public Improvements in accordance with California Civil Code Section 9204, at which time the accepted Public

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

11.0 Default; Notice; Remedies.

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

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

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

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

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

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

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

13.0 Security.

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

Estimated Costs have changed, Developer shall adjust the Security in the amount requested by City. Developer's compliance with this Section shall in no way limit or modify Developer's indemnification obligation under this Agreement. Security shall be on forms approved by the City for the purposes and amounts as follows:

13.1.1 Performance Bond. To guarantee the faithful performance of the Public Improvements and all the provisions of this Agreement, to protect City if Developer is in default as set forth in this Agreement, and to secure Developer's one-year guarantee and warranty of the Public Improvements, including the maintenance of all landscaping in a vigorous and thriving condition, Developer shall provide City security in the amount of **Three Million Four Hundred Ninety Five thousands one hundred eighty three** Dollars (**$ $3,495,183.22**), which sum shall be not less than one hundred percent (100%) of the Estimated Costs (Bonds attached in Exhibit "C" and Engineering Cost Estimate attached in Exhibit "B"). The City may, in its sole and absolute discretion, partially release a portion or portions of the security provided under this section as the Public Improvements are accepted by City, as provided herein, provided that Developer is not in default on any provision of this Agreement or condition of approval for the Map, and the total remaining security is not less than twenty-five percent (25%) of the Estimated Costs. All security provided under this section shall be released at the end of the Warranty period (as defined above), or any extension thereof as provided in this Agreement, provided that Developer is not in default on any provision of this Agreement or condition of approval for the Map.

13.1.2 Labor & Material Bond. To secure payment to the contractor and subcontractors, laborers, material men and other persons furnishing labor, materials, or equipment for performance of the Public Improvements and this Agreement, Developer shall provide City security in the amount of **Three Million Four Hundred Ninety Five thousands one hundred eighty three** DOLLARS (**$3,495,183.22**), which sum shall not be less than one hundred percent (100%) of the Estimated Costs (Bonds attached in Exhibit "C" and Engineering Cost Estimate attached in Exhibit "B").. The security provided under this subsection may be released by written authorization of the City Engineer after one (1) year or within the time limits established in California Government Code section 66499.7 from the date City accepts the final Public Improvements at the discretion of City. The amount of such security shall be reduced by the total of all stop notice or mechanic's lien claims of which City is aware, plus an amount equal to twenty percent (20%) of such claims for reimbursement of City's anticipated administrative and legal expenses arising out of such claims.

13.1.3 Monument Security. To guarantee payment by the Developer to the engineer or surveyor whose certificate appears on the final map for the setting of all subdivision boundaries, lot corners and street centerline monuments, as well as the furnishing of all centerline tie notes to the City, prior to the City's execution of this Agreement, Developer shall deposit cash with the City in the amount of One Thousand Dollars ($1,000). Said cash deposit may be released after receipt by the City of the centerline tie notes and written acknowledgment of payment in full from the engineer or surveyor.

13.1.4 Warranty Bond. To provide in the amount of ten percent (10%) of the Estimated Costs of the Work to guarantee and warrant the Work, for a period of one year following its completion and acceptance, against any defective work or labor done, or defective

materials furnished, as required by California Government Code Section 66499.3(d). Any unused portion of the guarantee and warranty security shall be released one year after acceptance of the required improvements by the City Council.

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

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

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

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

16.0 Insurance.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

16.11 Additional Insurance Provisions

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

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

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

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

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

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

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

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

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

19.0 General Provisions.

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

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

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

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

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

DEVELOPER:
Lennar Homes of California, LLC
4140 Temescal Canyon Rd., Suite 410
Corona, CA 92883
Attn: Geoffrey Smith

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

[SIGNATURE PAGE FOLLOWS]

CITY OF ONTARIO

By: _____
Scott Ochoa, City Manager

Lennar Homes of California, LLC

By: _____
Signature

Geoffrey L. Smith
Print Name

Vice President
Title

ATTEST:

By: _____
Sheila Mautz, City Clerk

By: _____
Signature

_____
Print Name

_____
Title

APPROVED AS TO FORM:

By: _____
Best Best & Krieger, City Attorney

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

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

STATE OF CALIFORNIA)
COUNTY OF Riverside)

On May 2, 2024 before me, Kim Strutton, Notary Public, personally appeared Geoffrey L. Smith, who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

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

WITNESS my hand and official seal.

Signature: K Strutton (seal)

KIM STRUTTON
Notary Public - California
Riverside County
Commission # 2405490
My Comm. Expires May 24, 2026

EXHIBIT "A"

LEGAL DESCRIPTION OF PROPERTY

TRACT NO. 20536

Legal Description of Property

PARCEL A: (APN: 0218-111-60-0-000)
PARCEL 1 OF PARCEL MAP NO. 9486, IN THE COUNTY OF SAN BERNARDINO, STATE OF CALIFORNIA, AS PER PLAT RECORDED IN BOOK 107 OF PARCEL MAPS, PAGES 98 AND 99, RECORDS OF SAID COUNTY.

PARCEL A1: AN EASEMENT FOR A WELLSITE TOGETHER WITH THE CONSTRUCTION AND MAINTENANCE OF WATER PIPE LINES ALONG WITH SUCH RIGHTS APPURTENANT TO THE REPAIR AND MAINTENANCE OF PUMPING PLANT EQUIPMENT TOGETHER WITH ALL NECESSARY RIGHTS OF INGRESS AND EGRESS. SAID EASEMENT LAYING WITHIN PARCEL 2, PARCEL MAP NO. 9486, IN THE COUNTY OF SAN BERNARDINO, STATE OF CALIFORNIA, AS PER PLAT RECORDED IN BOOK 107 OF PARCEL MAPS, PAGES 98 AND 99, RECORDS OF SAID COUNTY, MORE PARTICULARLY DESCRIBED AS FOLLOWS:

PARCEL NO. 1: COMMENCING AT THE SOUTHWEST CORNER OF SAID PARCEL 2; THENCE SOUTH 89 DEG. 45' 04" EAST ALONG THE SOUTH LINE OF SAID PARCEL 2, A DISTANCE OF 360.00 FEET TO THE TRUE POINT OF BEGINNING; THENCE NORTH 0 DEG. 14' 56" EAST A DISTANCE OF 40.00 FEET; THENCE SOUTH 89 DEG. 45' 04" EAST A DISTANCE OF 40.00 FEET; THENCE SOUTH 0 DEG. 14' 56" WEST, A DISTANCE OF 40.00 FEET TO A POINT ON THE SOUTH LINE PARCEL 2; THENCE NORTH 89 DEG. 45' 04" WEST 40.00 FEET TO THE TRUE POINT OF BEGINNING.

PARCEL NO. 2: A 20 FOOT EASEMENT LYING 10 FEET EITHER SIDE OF THE FOLLOWING DESCRIBED CENTERLINE: COMMENCING AT THE SOUTHWEST CORNER OF SAID PARCEL 2; THENCE SOUTH 89 DEG. 45' 04" EAST ALONG THE SOUTH LINE OF SAID PARCEL 2, A DISTANCE OF 360.00 FEET; THENCE NORTH 0 DEG. 14' 56" EAST A DISTANCE OF 10.00 FEET TO THE TRUE POINT OF BEGINNING; THENCE NORTH 89 DEG. 45' 04" WEST PARALLEL WITH THE SOUTH LINE OF SAID PARCEL 2, A DISTANCE OF 330.00 FEET; THENCE NORTH 0 DEG. 02' 14" WEST A DISTANCE OF 305.00 FEET, MORE OR LESS, TO THE POINT OF TERMINUS ON THE NORTH LINE OF SAID PARCEL 2.

PARCEL B: (APN: 0218-111-61-0-000) PARCEL 2 OF PARCEL MAP NO. 9486, IN THE COUNTY OF SAN BERNARDINO, STATE OF CALIFORNIA, AS PER PLAT RECORDED IN BOOK 107 OF PARCEL MAPS, PAGES 98 AND 99, RECORDS OF SAID COUNTY.

EXHIBIT "B"

LIST OF PUBLIC IMPROVEMENTS

TRACT NO. 20536

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

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

[ATTACH APPROVED ENGINEERING COST ESTIMATE]

[ENGINEERING COST ESTIMATE ATTACHED BEHIND THIS PAGE]

CITY OF ONTARIO

ENGINEERING DEPARTMENT

Project Cost Estimate

Date 3/15/2024
Project Number TM-20536 In-Tract Improvements
Location Tract 20536 N/O Chino Ave, W/O Archibald Ave.
Computed By EL/SH
Contact Phone No. 949-522-7100

Attached project estimate prepared by (or under the direction of)

Signature of Registered Civil Engineer

RCE No. 84264 Exp. Date: 9/30/2025

REGISTERED PROFESSIONAL ENGINEER
ERIC LISSNER
No. 84264
CIVIL
STATE OF CALIFORNIA

Civil Engineer Stamp

ACCEPTED
03/22/2024
CITY OF ONTARIO
ENGINEERING DEPARTMENT

FOR BONDING PURPOSES ONLY

Approved By:
Date:

ENGINEERING DEPARTMENT

Summary of Estimated Cost of Construction in Public Right-Of-Way

For Encroachment Permit Fee Calculation

Date 3/15/2024
Project Number TM-20536 In-Tract Improvements
Location Tract 20536 N/O Chino Ave, W/O Archibald Ave.
Computed By EL/SH
Contact Phone No. 949-522-7100

A.	STREET	Sub-Total	**$6,174.35**
B.	WATER	Sub-Total	**$695,520.02**
C.	RECYCLED WATER	Sub-Total	**$25,786.53**
D.	SEWER	Sub-Total	**$779,778.33**
E.	STORM DRAIN	Sub-Total	**$20,882.86**
F.	FIBER OPTIC	Sub-Total	**$202,486.38**
	TOTAL ESTIMATED CONSTRUCTION COST		**$1,730,628.46**

Construction Inspection Fee **$73,542.65**
(Exc. Landscape & Utility Poles Sections)
(Inc. $164 Inspection Base Fee)

Refundable Cash Deposit
(Collect only if security not posted with Final Map)
= **$1,730,628.46**

$500.00 Min

PERMIT FEE **$116.00**

TRAFFIC CONTROL PERMIT FEE **$103.00**

ENCROACHMENT PERMIT FEE TOTAL **$1,804,390.11**

ENGINEERING DEPARTMENT

Summary of Estimated Cost of Construction in Public Right-Of-Way

For Plan Check Fee Calculation

Date 3/15/2024
Project Number TM-20536 In-Tract Improvements
Location Tract 20536 N/O Chino Ave, W/O Archibald Ave.
Computed By EL/SH
Contact Phone No. 949-522-7100

A.	STREET (Exc. Utility Poles Section)	Sub-Total	**$6,174.35**
B.	WATER	Sub-Total	**$695,520.02**
C.	RECYCLED WATER	Sub-Total	**$25,786.53**
D.	SEWER	Sub-Total	**$779,778.33**
E.	STORM DRAIN	Sub-Total	**$20,882.86**
F.	FIBER OPTIC	Sub-Total	**$202,486.38**
G.	LANDSCAPING (Inc. Neighborhood Edge and Median)	Sub-Total	
	TOTAL ESTIMATED CONSTRUCTION COST (A+B+C+D+E+F+G)		**$1,730,628.46**
		Plan Check Fee	**$62,648.75**

For Office Use Only

TOTAL ESTIMATED CONSTRUCTION COST (A+B+C+D+E)		**$1,528,142.08**
	Plan Check Fee	**$55,318.74**

ENGINEERING DEPARTMENT

Summary of Estimated Cost of Construction in Public Right-Of-Way

For Security (i.e. Bond) Amount

(For Subdivision Maps Only)

Date 3/15/2024
Project Number TM-20536 In-Tract Improvements
Location Tract 20536 N/O Chino Ave, W/O Archibald Ave.
Computed By EL/SH
Contact Phone No. 949-522-7100

A.	STREET	Sub-Total	**$208,660.73**
B.	WATER	Sub-Total	**$695,520.02**
C.	RECYCLED WATER	Sub-Total	**$25,786.53**
D.	SEWER	Sub-Total	**$779,778.33**
E.	STORM DRAIN	Sub-Total	**$20,882.86**

CONTINGENCY FOR UNSIGNED PLANS (10%) **$173,062.85**

TOTAL SECURITY (i.e. BOND) ESTIMATE AMOUNT **$1,903,691.31**

SECURITY (BOND) AMOUNTS

Performance Bond **$1,903,691.31**
(100% of estimated cost)

Labor and Material Bond **$1,903,691.31**
(100% of estimated cost)

Maintenance Bond* $190,369.13
(10% of Performance Bond)

Monumentation Cash Deposit** **$44,500.00**
(No. of Monmuments to set: **443**)

* To be provided prior to release of Performance Bond

**To be provided if monumentation is not completed by the time of Final (Parcel) Map approval

ENGINEERING DEPARTMENT

Date 3/15/2024
Project Number TM-20536 In-Tract Improvements

		Total Length in feet to be constructed
A.	WATER MAIN	**4900**
B.	SEWER MAIN	**4002**
C.	STORM DRAIN MAIN	**152**
D.	RECYCLED WATER	**64**
E.	FIBER OPTIC	**14897**

* To be provided to the Fiscal Services Department

ENGINEERING DEPARTMENT

Construction Cost Estimate Form

Street Improvements

Date 3/15/2024

Project Number TM-20536 In-Tract Improvements

Location Tract 20536 N/O Chino Ave, W/O Archibald Ave.

Computed By EL/SH

Contact Phone No. 949-522-7100

CONSTRUCTION ITEM DESCRIPTION	QTY	UNIT	COST	TOTAL
PAVING *A.C. PAVEMENT ($0.39/IN/S.F. A.C. & $0.19/IN/S.F. CAB)				
A.C. UP TO 6" THICKNESS	767	S.F.	$2.34	$1,794.78
CRUSHED AGREGGATE BASE UP TO 8" THICKNESS	767	S.F.	$1.52	$1,165.84
A.C. PAVEMENT		Ton	$65.00	
A.C. BERM		L.F.	$13.00	
2" GRIND UP TO 5' IN WIDTH	158	L.F.	$2.00	$316.00
SAWCUT	32	L.F.	$3.50	$112.00
IMPORT FILL (INCLUDING COMPACTION)		C.Y.	$25.00	
PREPARATION OF SUBGRADE		S.F.	$0.50	
A.C. PAVEMENT REMOVAL		S.F.	$3.50	
SLURRY SEAL (RPM TYPE II)		S.F.	$0.17	
TRENCH BACKFILL AND COMPACTION		S.F.	$3.50	
CONCRETE				
CURB & GUTTER	48	L.F.	$15.00	$720.00
P.C.C. CURB ONLY		L.F.	$12.00	
CROSS GUTTER/SPANDREL		S.F.	$7.00	
SIDEWALK	242	S.F.	$4.75	$1,149.50
WHEELCHAIR RAMP		EA.	$2,200.00	
TRAFFIC ISLAND		S.F.	$9.50	
CONCRETE PAVEMENT (PCC - REINFORCED, UP TO 10" THICKNESS)		S.F.	$7.80	
			10% Contingency	$525.81
			Street Improvements Sub-Total	$5,783.93

Construction Cost Estimate Form

Street Improvements

DRIVE APPROACHES				
RESIDENTIAL		S.F.	$6.50	
COMMERCIAL		S.F.	$8.50	
REMOVAL				
REMOVAL OF CONCRETE		S.F.	$3.50	
REMOVAL OF BERM, A.C. OR P.C.C.		L.F.	$6.50	
ADJUSTMENT TO GRADE				
MANHOLE		EA.	$600.00	
WATER VALVE		EA.	$325.00	
CLEANOUT		EA.	$265.00	
DRAINAGE				
PARKWAY DRAIN		EA.	$1,800.00	
SIGNS				
REFLECTOR SIGN AND POST		EA.	$175.00	
STREET NAME SIGN		EA.	$475.00	
TRAFFIC SIGN AND POST		EA.	$300.00	
LIGHTING				
STREET LIGHT - 70, 100 WATT (INCLUDING CONDUIT & PULL BOXES)		EA.	$6,200.00	
- 150, 250 WATT (INCLUDING CONDUIT & PULL BOXES)		EA.	$6,500.00	
STREET LIGHT SERVICE PEDESTAL		EA.	$4,100.00	
STREET LIGHT SERVICE DUAL PEDESTAL		EA.	$5,900.00	
STRIPING				
SIGNING & STRIPING LOCAL STREET		L.F.	$4.50	
SIGNING & STRIPING COLLECTOR STREET		L.F.	$8.75	
SIGNING & STRIPING ARTERIAL STREET		L.F.	$12.75	
PAINTED LEGEND		EA.	$80.00	
THERMOPLASTIC LEGEND		EA.	$165.00	
			10% Contingency	
			Street Improvements Sub-Total	

Construction Cost Estimate Form

Street Improvements

TRAFFIC SIGNALS				
NEW TRAFFIC SIGNAL		EA.	$355,600.00	
MODIFY EXISTING SIGNAL (STREET WIDENING, PER CORNER)		EA.	$88,900.00	
REMOVE EXISTING SIGNAL		EA.	$25,000.00	
REPLACE/RESTORE T.S. DETECTION LOOP		EA.	$425.00	
TRAFFIC SIGNAL INTERCONNECT CONDUIT		L.F.	$17.00	
TRAFFIC SIGNAL INTERCONNECT CONDUIT & CABLE		L.F.	$20.00	
ADD LEFT TURN PHASING		L.S.	$30,000.00	
ADD LEFT TURN PHASING		L.S.	$30,000.00	
LANDSCAPE				
PARKWAY TREE WITH IRRIGATION		EA.	$525.00	
PARKWAY LANDSCAPING		S.F.	$6.00	
(INCLUDING IRRIGATION FACILITIES)				
NEIGHBORHOOD EDGE AND/OR MEDIAN LANDSCAPING		S.F.	$6.00	
(INCLUDING IRRIGATION FACILITIES)				
NEIGHBORHOOD EDGE AND/OR MEDIAN TREE		EA.	$525.00	
(INCLUDING IRRIGATION FACILITIES)				
UTILITY POLES				
RELOCATION OF POLE		EA.	$18,000.00	
UNDERGROUNDING OF POWER LINES		L.F.	$350.00	
UNDERGROUNDING OF COMMUNICATION LINES		L.F.	$90.00	
FIBER OPTIC				
CONDUIT PLACEMENT TRENCH/BORE (INCLUDES HANDHOLES)		L.F.	$45.00	
(ARTERIAL/COLLECTOR STREETS - MAIN BACKBONE)				
IN-TRACT LOCAL STREETS				
FIBER CONDUIT PLACEMENT	14897	L.F.	$5.70	$84,912.90
FIBER TRENCH	11254	L.F.	$6.50	$73,151.00
HANDHOLE - FLOWER POT (FP)	25	EA.	$125.00	$3,125.00
HANDHOLE - HH-3	45	EA.	$250.00	$11,250.00
HANDHOLE - HH-4		EA.	$375.00	
OTHER				
BORE (AC PAVEMENT)		L.F.	$20.00	
BORE (PARKWAY)		L.F.	$10.00	
MICRO TRENCHING		L.F.	$8.15	
DRY UTILITY TRENCH (AC PAVEMENT)		L.F.	$56.00	
DRY UTILITY TRENCH (PARKWAY)		L.F.	$8.00	
			10% Contingency	$17,243.89
			Street Improvements Sub-Total	$189,682.79
TRAFFIC CONTROL		L.S.	$5,375.33	$5,375.33
MOBILIZATION, SWPPP, EROSION CONTROL		L.S.	$7,818.67	$7,818.67
(Sub-Total Transferred to Item "A" on Summary Sheet)				$208,660.73

Construction Cost Estimate form

Water Improvements

Date 3/15/2024
Project Number TM-20536 In-Tract Improvements
Location Tract 20536 N/O Chino Ave, W/O Archibald Ave.
Computed By EL/SH
Contact Phone No. 949-522-7100

CONSTRUCTION ITEM DESCRIPTION	QTY	UNIT	COST	TOTAL
WATER / FIRE MAIN				
6" IN EASEMENT AREA ONLY (NOT IN PAVED STREET)		L.F.	$30.00	
8" IN EASEMENT AREA ONLY (NOT IN PAVED STREET)	4900	L.F.	$40.00	$196,000.00
10" IN EASEMENT AREA ONLY (NOT IN PAVED STREET)		L.F.	$45.00	
8" INC. EXC., BACKFILL & PVMT RESTORATION	144	L.F.	$90.00	$12,960.00
10" INC. EXC., BACKFILL & PVMT RESTORATION		L.F.	$95.00	
12" INC. EXC., BACKFILL & PVMT RESTORATION		L.F.	$105.00	
16" INC. EXC., BACKFILL & PVMT RESTORATION		L.F.	$115.00	
WATER SERVICE				
(EXCLUDES AC REMOVAL AND REPLACEMENT)				
1" WATER SERVICE WITH METER BOX	141	EA.	$1,000.00	$141,000.00
2" WATER SERVICE WITH METER BOX	13	EA.	$2,200.00	$28,600.00
FIRE HYDRANT				
(EXCLUDES AC REMOVAL AND REPLACEMENT)				
BREAK-OFF TYPE FIRE HYDRANT (INC. CONNECTION)	19	EA.	$5,400.00	$102,600.00
RELEASE / BLOW-OFF				
(EXCLUDES AC REMOVAL AND REPLACEMENT)				
AIR RELEASE VALVE (INC. CONNECTION)	2	EA.	$4,600.00	$9,200.00
BLOW-OFF VALVE (INC. CONNECTION)	1	EA.	$4,500.00	$4,500.00
10% Contingency				$49,486.00
Water Improvements Sub-Total				$544,346.00

Construction Cost Estimate form

Water Improvements

BACKFLOW ($1000/IN)				
RP 2" AND SMALLER	13	EA.	$3,000.00	$39,000.00
DDC ABOVE GROUND (UP TO 6" DIAMETER)		EA.	$7,000.00	
GATE VALVE				
6"		EA.	$550.00	
8"	51	EA.	$850.00	$43,350.00
10"		EA.	$1,250.00	
12"	2	EA.	$1,375.00	$2,750.00
16"		EA.	$3,425.00	
HOT TAP				
HOT TAP WITH VALVE		EA.	$1,750.00	
CONNECTION TO EXISTING 6" MAIN		EA.	$3,500.00	
CONNECTION TO EXISTING 8" MAIN	2	EA.	$3,750.00	$7,500.00
CONNECTION TO EXISTING 12" MAIN		EA.	$4,100.00	
INSTALL TEE	11	EA.	$300.00	$3,300.00
REMOVE EXISTING BLIND FLANGE	2	EA.	$475.00	$950.00
CONCRETE THRUST BLOCK		EA.	$585.00	
OTHER				
REMOVE EXISTING 4" TEMPORARY BLOWOFF	2	EA.	$300.00	$600.00
			10% Contingency	$9,745.00
			Water Improvements Sub-Total	$107,195.00
TRAFFIC CONTROL		L.S.	17917.38	$17,917.38
MOBILIZATION, SWPPP, EROSION CONTROL		L.S.	**26061.64**	**$26,061.64**
(Sub-Total Transferred to Item "B" on Summary Sheet)				**$695,520.02**

Construction Cost Estimate form

Recycled Water Improvements

Date 3/15/2024
Project Number TM-20536 In-Tract Improvements
Location Tract 20536 N/O Chino Ave, W/O Archibald Ave.
Computed By EL/SH
Contact Phone No. 949-522-7100

CONSTRUCTION ITEM DESCRIPTION	QTY	UNIT	COST	TOTAL
WATER / FIRE MAIN				
6" IN EASEMENT AREA ONLY (NOT IN PAVED STREET)		L.F.	$30.00	
8" IN EASEMENT AREA ONLY (NOT IN PAVED STREET)		L.F.	$40.00	
10" IN EASEMENT AREA ONLY (NOT IN PAVED STREET)		L.F.	$45.00	
8" INC. EXC., BACKFILL & PVMT RESTORATION	64	L.F.	$90.00	$5,760.00
10" INC. EXC., BACKFILL & PVMT RESTORATION		L.F.	$95.00	
12" INC. EXC., BACKFILL & PVMT RESTORATION		L.F.	$105.00	
16" INC. EXC., BACKFILL & PVMT RESTORATION		L.F.	$115.00	
WATER SERVICE				
(EXCLUDES AC REMOVAL AND REPLACEMENT)				
1" WATER SERVICE WITH METER BOX		EA.	$1,000.00	
2" WATER SERVICE WITH METER BOX	1	EA.	$2,200.00	$2,200.00
FIRE HYDRANT				
(EXCLUDES AC REMOVAL AND REPLACEMENT)				
BREAK-OFF TYPE FIRE HYDRANT (INC. CONNECTION)		EA.	$5,400.00	
RELEASE / BLOW-OFF				
(EXCLUDES AC REMOVAL AND REPLACEMENT)				
AIR RELEASE VALVE	1	EA.	$4,600.00	$4,600.00
BLOW-OFF VALVE	1	EA.	$4,500.00	$4,500.00
			10% Contingency	$1,706.00
			Water Improvements Sub-Total	$18,766.00

Construction Cost Estimate form

Recycled Water Improvements

BACKFLOW ($1000/IN)				
RP 2" AND SMALLER		EA.	$3,000.00	
DDC ABOVE GROUND (UP TO 6" DIAMETER)		EA.	$7,000.00	
GATE VALVE				
6"		EA.	$550.00	
8"	1	EA.	$850.00	$850.00
10"		EA.	$1,250.00	
12"		EA.	$1,375.00	
16"		EA.	$3,425.00	
HOT TAP				
HOT TAP WITH VALVE		EA.	$1,750.00	
CONNECTION TO 8" MAIN	1	EA.	$3,750.00	$3,750.00
CONNECTION TO 12" MAIN		EA.	$4,100.00	
INSTALL TEE		EA.	$300.00	
REMOVE EXISTING BLIND FLANGE		L.S.	$475.00	
CONCRETE THRUST BLOCK		EA.	$585.00	
OTHER				
INSTALL END CAP	1	EA.	$300.00	$300.00
			10% Contingency	$490.00
			Water Improvements Sub-Total	$5,390.00
TRAFFIC CONTROL		L.S.	664.29	$664.29
MOBILIZATION, SWPPP, EROSION CONTROL		L.S.	**966.24**	**$966.24**
(Sub-Total Transferred to Item "C" on Summary Sheet)				**$25,786.53**

ENGINEERING DEPARTMENT

Construction Cost Estimate Form

Sewer Improvements

Date 3/15/2024

Project Number TM-20536 In-Tract Improvements

Location Tract 20536 N/O Chino Ave, W/O Archibald Ave.

Computed By EL/SH

Contact Phone No. 949-522-7100

CONSTRUCTION ITEM DESCRIPTION	QTY	UNIT	COST	TOTAL
SEWER MAIN (VCP ONLY)				
8" & SMALLER IN EASEMENT AREA ONLY (NOT IN PAVED STREET)	3860	L.F.	$40.00	$154,400.00
10" IN EASEMENT AREA ONLY (NOT IN PAVED STREET)		L.F.	$60.00	
12" & LARGER IN EASEMENT AREA ONLY (NOT IN PAVED STREET)		L.F.	$63.00	
8" INC. EXCAVATION, BACKFILL & PAVEMENT RESTORATION	142	L.F.	$70.00	$9,940.00
10" INC. EXCAVATION, BACKFILL & PAVEMENT RESTORATION		L.F.	$75.00	
12" INC. EXCAVATION, BACKFILL & PAVEMENT RESTORATION		L.F.	$80.00	
15" INC. EXCAVATION, BACKFILL & PAVEMENT RESTORATION		L.F.	$90.00	
18" INC. EXCAVATION, BACKFILL & PAVEMENT RESTORATION		L.F.	$95.00	
21" INC. EXCAVATION, BACKFILL & PAVEMENT RESTORATION		L.F.	$105.00	
24" INC. EXCAVATION, BACKFILL & PAVEMENT RESTORATION		L.F.	$115.00	
MANHOLE				
MANHOLE	23	EA.	$4,050.00	$93,150.00
DROP MANHOLE		EA.	$4,100.00	
VAULT		EA.	$3,500.00	
MONITORING FACILITY / NON TRAFFIC AREA		EA.	$1,750.00	
MONITORING MANHOLE		EA.	$4,100.00	
CLEANOUT	92	EA.	$1,750.00	$161,000.00
REMOVE/ABANDON EXISTING MANHOLE	2	EA.	$1,200.00	$2,400.00
REMOVE EXISTING SEWER				
UP TO 12" DIAMETER	136	L.F.	$55.00	$7,480.00
GREATER THAN 12" DIAMETER		L.F.	$70.00	
			10% Contingency	$42,837.00
			Sewer Improvements Sub-Total	**$471,207.00**

Construction Cost Estimate Form
Sewer Improvements

LATERAL				
4" HOUSE CONNECTION TO SEWER MAIN IN STREET	71	EA.	$2,925.00	$207,675.00
6" & SMALLER VCP SEWER LATERAL / EASEMENT	650	L.F.	$42.00	$27,300.00
6" & SMALLER VCP SEWER LATERAL / PAVED STREET		L.F.	$70.00	
SEWER CHIMNEY		EA.	$1,170.00	
SEWER SADDLE		EA.	$1,170.00	
WYE 4" x 8" TYPICAL		EA.	$115.00	
OIL/GREASE INTERCEPTOR NOT IN STREET		EA.	$1,750.00	
INSTALL/RECONNECT SEWER LATERAL	48	L.F.	$15.00	$720.00
OTHER				
			10% Contingency	$23,569.50
			Sewer Improvements Sub-Total	**$259,264.50**
TRAFFIC CONTROL		L.S.	$20,087.97	$20,087.97
MOBILIZATION, SWPPP, EROSION CONTROL		L.S.	**29218.9**	**$29,218.86**
(Sub-Total Transferred to Item "D" on Summary Sheet)				**$779,778.33**

ENGINEERING DEPARTMENT

Construction Cost Estimate form

Storm Drain Improvements

Date 3/15/2024
Project Number TM-20536 In-Tract Improvements
Location Tract 20536 N/O Chino Ave, W/O Archibald Ave.
Computed By EL/SH
Contact Phone No. 949-522-7100

CONSTRUCTION ITEM DESCRIPTION	QTY	UNIT	COST
STORM DRAIN (RCP SIZE X $3.25 / INCH OF I.D. UP TO 60" DIAMETER)			
36" RCP INC. EXC., BACKFILL & PAVEMENT RESTORATION	152	L.F.	$117.00
63" RCP INC. EXC., BACKFILL & PAVEMENT RESTORATION		L.F.	$210.00
66" RCP INC. EXC., BACKFILL & PAVEMENT RESTORATION		L.F.	$260.00
72" RCP INC. EXC., BACKFILL & PAVEMENT RESTORATION		L.F.	$290.00
78" RCP INC. EXC., BACKFILL & PAVEMENT RESTORATION		L.F.	$305.00
81" RCP INC. EXC., BACKFILL & PAVEMENT RESTORATION		L.F.	$320.00
84" RCP INC. EXC., BACKFILL & PAVEMENT RESTORATION		L.F.	$330.00
90" RCP INC. EXC., BACKFILL & PAVEMENT RESTORATION		L.F.	$350.00
96" RCP INC. EXC., BACKFILL & PAVEMENT RESTORATION		L.F.	$365.00
102" RCP INC. EXC., BACKFILL & PAVEMENT RESTORATION		L.F.	$470.00
108" RCP INC. EXC., BACKFILL & PAVEMENT RESTORATION		L.F.	$480.00
24" X 36" CMPA (10 GUAGE)		L.F.	$140.00
27" X 43" CMPA (10 GUAGE)		L.F.	$150.00
LATERAL			
18" RCP OR SMALLER		L.F.	$45.00
(INC. EXC., BACKFILL & PAVEMENT RESTORATION)			
MANHOLE		EA.	$4,500.00
10% Contingency			
Storm Drain Improvements Sub-Total			

Construction Cost Estimate form
Storm Drain Improvements

CATCH BASIN			
CATCH BASIN LESS THAN 7' IN WIDE		L.F.	$409.50
7' WIDE - CB WITH SCREEN INLET		E.A.	$3,900.00
10' WIDE- CB WITH SCREEN INLET		E.A.	$4,200.00
14' WIDE - CB WITH SCREEN INLET		E.A.	$4,700.00
21' WIDE - CB WITH SCREEN INLET		E.A.	$4,900.00
LOCAL DEPRESSION FOR UP TO 10' WIDE CB		L.S.	$585.00
LOCAL DEPRESSION FOR > 10' WIDE CB		L.S.	$1,200.00
REINFORCED CONCRETE BOX			
(INC. EXCAVATION, BACKFILL & PAVEMENT RESTORATION)			
4' X 6' RCB		L.F.	$400.00
7' X 6' RCB		L.F.	$470.00
7' X 8.5' RCB		L.F.	$560.00
7' X 9.5' RCB		L.F.	$575.00
8' X 11' RCB		L.F.	$585.00
8' X 13' RCB		L.F.	$600.00
9' X 9' RCB		L.F.	$610.00
9' X 12' RCB		L.F.	$650.00
OUTLET STRUCTURE		EA.	$700.00
INLET STRUCTURE		EA.	
TRANSITION STRUCTURE		L.S.	$1,700.00
OTHER			
10% Contingency			
Storm Drain Improvements Sub-Total			
TRAFFIC CONTROL		L.S.	$537.97
MOBILIZATION, SWPPP, EROSION CONTROL		L.S.	**782.496**
(Sub-Total Transferred to Item "E" on Summary Sheet)			

TOTAL
$17,784.00
$1,778.40
$19,562.40

$537.97
$782.50
$20,882.86

CITY OF ONTARIO

ENGINEERING DEPARTMENT

Project Cost Estimate

Date 3/4/2024
Project Number 146-001 (TM-20536 Offsite Improvements)
Location Archibald Ave 665' to 1730' N/O Chino Ave
Computed By EL/SH
Contact Phone No. 949-522-7100

For public improvements, excluding frontage street improvements and signing and striping

Attached project estimate prepared by (or under the direction of)

Signature of Registered Civil Engineer

RCE No. 84264 Exp. Date: 9/30/2023

REGISTERED PROFESSIONAL ENGINEER ERIC LISSNER No. 84264 CIVIL STATE OF CALIFORNIA

Civil Engineer Stamp

ACCEPTED
03/20/2024
CITY OF ONTARIO
ENGINEERING DEPARTMENT

FOR BONDING PURPOSES ONLY

Approved By:
Date:

ENGINEERING DEPARTMENT

Summary of Estimated Cost of Construction in Public Right-Of-Way

For Encroachment Permit Fee Calculation

Date 6/12/2023
Project Number 146-001 (TM-20536 Offsite Improvements)
Location Archibald Ave 665' to 1730' N/O Chino Ave
Computed By EL/SH
Contact Phone No. 949-522-7100

A.	STREET	Sub-Total	**$1,116,278.24**
B.	WATER	Sub-Total	
C.	RECYCLED WATER	Sub-Total	
D.	SEWER	Sub-Total	
E.	STORM DRAIN	Sub-Total	
F.	FIBER OPTIC	Sub-Total	**$55,536.15**
	TOTAL ESTIMATED CONSTRUCTION COST		**$1,171,814.39**

Construction Inspection Fee **$49,848.93**
(Exc. Landscape & Utility Poles Sections)
(Inc. $164 Inspection Base Fee)

Refundable Cash Deposit
(Collect only if security not posted with Final Map)
= **$1,171,814.39**

$500.00 Min

PERMIT FEE **$116.00**

TRAFFIC CONTROL PERMIT FEE **$103.00**

ENCROACHMENT PERMIT FEE TOTAL **$1,221,882.32**

ENGINEERING DEPARTMENT

Summary of Estimated Cost of Construction in Public Right-Of-Way

For Plan Check Fee Calculation

Date 6/12/2023
Project Number 146-001 (TM-20536 Offsite Improvements)
Location Archibald Ave 665' to 1730' N/O Chino Ave
Computed By EL/SH
Contact Phone No. 949-522-7100

A.	STREET (Exc. Utility Poles Section)	Sub-Total	**$1,116,278.24**
B.	WATER	Sub-Total	
C.	RECYCLED WATER	Sub-Total	
D.	SEWER	Sub-Total	
E.	STORM DRAIN	Sub-Total	
F.	FIBER OPTIC	Sub-Total	**$55,536.15**
G.	LANDSCAPING (Inc. Neighborhood Edge and Median)	Sub-Total	**$180,255.59**
	TOTAL ESTIMATED CONSTRUCTION COST (A+B+C+D+E+F+G)		**$1,352,069.99**
		Plan Check Fee	**$48,944.93**

For Office Use Only

TOTAL ESTIMATED CONSTRUCTION COST (A+B+C+D+E)	**$1,116,278.24**
Plan Check Fee	**$40,409.27**

CITY OF ONTARIO

ENGINEERING DEPARTMENT

Summary of Estimated Cost of Construction in Public Right-Of-Way

For Security (i.e. Bond) Amount

(For Subdivision Maps Only)

Date 6/12/2023

Project Number 146-001 (TM-20536 Offsite Improvements)

Location Archibald Ave 665' to 1730' N/O Chino Ave

Computed By EL/SH

Contact Phone No. 949-522-7100

A.	STREET	Sub-Total	**$1,446,810.83**
B.	WATER	Sub-Total	
C.	RECYCLED WATER	Sub-Total	
D.	SEWER	Sub-Total	
E.	STORM DRAIN	Sub-Total	

CONTINGENCY FOR UNSIGNED PLANS (10%) **$144,681.08**

TOTAL SECURITY (i.e. BOND) ESTIMATE AMOUNT **$1,591,491.91**

SECURITY (BOND) AMOUNTS

Performance Bond (100% of estimated cost)	**$1,591,491.91**
Labor and Material Bond (100% of estimated cost)	**$1,591,491.91**
Maintenance Bond* (10% of Performance Bond)	$159,149.19
Monumentation Cash Deposit**	**$1,000.00**

(No. of Monmuments to set:)

* To be provided prior to release of Performance Bond

**To be provided if monumentation is not completed by the time of Final (Parcel) Map approval

ENGINEERING DEPARTMENT

Date 6/12/2023
Project Number 146-001 (TM-20536 Offsite Improvements)

		Total Length in feet to be constructed
A.	WATER MAIN	
B.	SEWER MAIN	
C.	STORM DRAIN MAIN	
D.	RECYCLED WATER	
E.	FIBER OPTIC	**1051**

* To be provided to the Fiscal Services Department



ENGINEERING DEPARTMENT

Construction Cost Estimate Form
Street Improvements

Date 6/12/2023
Project Number 146-001 (TM-20536 Offsite Improvements)
Location Archibald Ave 665' to 1730' N/O Chino Ave
Computed By EL/SH
Contact Phone No. 949-522-7100

CONSTRUCTION ITEM DESCRIPTION	QTY	UNIT	COST	TOTAL
PAVING *A.C. PAVEMENT ($0.39/IN/S.F. A.C. & $0.19/IN/S.F. CAB)				
A.C. UP TO 6" THICKNESS	11211	S.F.	$3.12	$34,978.32
CRUSHED AGREGGATE BASE UP TO 8" THICKNESS	11211	S.F.	$1.90	$21,300.90
A.C. PAVEMENT		Ton	$65.00	
A.C. BERM		L.F.	$13.00	
2" GRIND UP TO 5' IN WIDTH	16258	S.F.	$0.40	$6,503.20
SAWCUT	2159	L.F.	$3.50	$7,556.50
IMPORT FILL (INCLUDING COMPACTION)		C.Y.	$25.00	
PREPARATION OF SUBGRADE	11211	S.F.	$0.50	$5,605.50
A.C. PAVEMENT REMOVAL	20200	S.F.	$3.50	$70,700.00
SLURRY SEAL (RPM TYPE II)		S.F.	$0.17	
TRENCH BACKFILL AND COMPACTION		S.F.	$3.50	
CONCRETE				
CURB & GUTTER	897	L.F.	$15.00	$13,455.00
P.C.C. CURB ONLY	600	L.F.	$12.00	$7,200.00
CROSS GUTTER/SPANDREL	690	S.F.	$7.00	$4,830.00
SIDEWALK	6844	S.F.	$4.75	$32,509.00
WHEELCHAIR RAMP	4	EA.	$2,200.00	$8,800.00
TRAFFIC ISLAND	1610	S.F.	$9.50	$15,295.00
CONCRETE PAVEMENT (PCC - REINFORCED, UP TO 10" THICKNESS)	25628	S.F.	$7.80	$199,898.40
			10% Contingency	$42,863.18
			Street Improvements Sub-Total	$471,495.00

Construction Cost Estimate Form
Street Improvements

DRIVE APPROACHES				
RESIDENTIAL		S.F.	$6.50	
COMMERCIAL		S.F.	$8.50	
REMOVAL				
REMOVAL OF CONCRETE		S.F.	$3.50	
REMOVAL OF BERM, A.C. OR P.C.C.	38	L.F.	$6.50	$247.00
ADJUSTMENT TO GRADE				
MANHOLE	6	EA.	$600.00	$3,600.00
WATER VALVE	1	EA.	$325.00	$325.00
CLEANOUT		EA.	$265.00	
DRAINAGE				
PARKWAY DRAIN		EA.	$1,800.00	
SIGNS				
REFLECTOR SIGN AND POST		EA.	$175.00	
STREET NAME SIGN		EA.	$475.00	
TRAFFIC SIGN AND POST	10	EA.	$300.00	$3,000.00
LIGHTING				
STREET LIGHT - 70, 100 WATT (INCLUDING CONDUIT & PULL BOXES)	6	EA.	$6,200.00	$37,200.00
- 150, 250 WATT (INCLUDING CONDUIT & PULL BOXES)		EA.	$6,500.00	
STREET LIGHT SERVICE PEDESTAL	1	EA.	$4,100.00	$4,100.00
STREET LIGHT SERVICE DUAL PEDESTAL		EA.	$5,900.00	
STRIPING				
SIGNING & STRIPING LOCAL STREET		L.F.	$4.50	
SIGNING & STRIPING COLLECTOR STREET		L.F.	$8.75	
SIGNING & STRIPING ARTERIAL STREET	7856	L.F.	$12.75	$100,164.00
PAINTED LEGEND		EA.	$80.00	
THERMOPLASTIC LEGEND	11	EA.	$165.00	$1,815.00
			10% Contingency	$15,045.10
			Street Improvements Sub-Total	$165,496.10

Construction Cost Estimate Form
Street Improvements

TRAFFIC SIGNALS				
NEW TRAFFIC SIGNAL	1	EA.	$355,600.00	$355,600.00
MODIFY EXISTING SIGNAL (STREET WIDENING, PER CORNER)		EA.	$88,900.00	
REMOVE EXISTING SIGNAL		EA.	$25,000.00	
REPLACE/RESTORE T.S. DETECTION LOOP		EA.	$425.00	
TRAFFIC SIGNAL INTERCONNECT CONDUIT		L.F.	$17.00	
TRAFFIC SIGNAL INTERCONNECT CONDUIT & CABLE		L.F.	$20.00	
ADD LEFT TURN PHASING		L.S.	$30,000.00	
LANDSCAPE				
PARKWAY TREE WITH IRRIGATION	24	EA.	$525.00	$12,600.00
PARKWAY LANDSCAPING	11347	S.F.	$6.00	$68,082.00
(INCLUDING IRRIGATION FACILITIES)				
NEIGHBORHOOD EDGE AND/OR MEDIAN LANDSCAPING	20247	S.F.	$6.00	$121,482.00
(INCLUDING IRRIGATION FACILITIES)				
NEIGHBORHOOD EDGE AND/OR MEDIAN TREE	61	EA.	$525.00	$32,025.00
(INCLUDING IRRIGATION FACILITIES)				
UTILITY POLES				
RELOCATION OF POLE		EA.	$18,000.00	
UNDERGROUNDING OF POWER LINES		L.F.	$350.00	
UNDERGROUNDING OF COMMUNICATION LINES		L.F.	$90.00	
FIBER OPTIC				
CONDUIT PLACEMENT TRENCH/BORE (INCLUDES HANDHOLES)	1051	L.F.	$45.00	$47,295.00
(ARTERIAL/COLLECTOR STREETS - MAIN BACKBONE)				
IN-TRACT LOCAL STREETS				
FIBER CONDUIT PLACEMENT		L.F.	$5.70	
FIBER TRENCH		L.F.	$6.50	
HANDHOLE - FLOWER POT (FP)		EA.	$125.00	
HANDHOLE - HH-3		EA.	$250.00	
HANDHOLE - HH-4		EA.	$375.00	
OTHER				
BORE AC PAVEMENT		L.F.	$20.00	
BORE PARKWAY		L.F.	$10.00	
MICRO TRENCHING		L.F.	$8.15	
DG TRAIL	7974	S.F.	$2.00	$15,948.00
			10% Contingency	$65,303.20
			Street Improvements Sub-Total	$718,335.20
TRAFFIC CONTROL		L.S.	$37,271.47	$37,271.47
MOBILIZATION, SWPPP, EROSION CONTROL		L.S.	$54,213.05	$54,213.05
(Sub-Total Transferred to Item "A" on Summary Sheet)				$1,446,810.83

Construction Cost Estimate form

Water Improvements

Date 6/12/2023
Project Number 146-001 (TM-20536 Offsite Improvements)
Location Archibald Ave 665' to 1730' N/O Chino Ave
Computed By EL/SH
Contact Phone No. 949-522-7100

CONSTRUCTION ITEM DESCRIPTION	QTY	UNIT	COST	TOTAL
WATER / FIRE MAIN				
6" IN EASEMENT AREA ONLY (NOT IN PAVED STREET)		L.F.	$30.00	
8" IN EASEMENT AREA ONLY (NOT IN PAVED STREET)		L.F.	$40.00	
10" IN EASEMENT AREA ONLY (NOT IN PAVED STREET)		L.F.	$45.00	
8" INC. EXC., BACKFILL & PVMT RESTORATION		L.F.	$90.00	
10" INC. EXC., BACKFILL & PVMT RESTORATION		L.F.	$95.00	
12" INC. EXC., BACKFILL & PVMT RESTORATION		L.F.	$105.00	
16" INC. EXC., BACKFILL & PVMT RESTORATION		L.F.	$115.00	
WATER SERVICE				
(EXCLUDES AC REMOVAL AND REPLACEMENT)				
1" WATER SERVICE WITH METER BOX		EA.	$1,000.00	
2" WATER SERVICE WITH METER BOX		EA.	$2,200.00	
FIRE HYDRANT				
(EXCLUDES AC REMOVAL AND REPLACEMENT)				
BREAK-OFF TYPE FIRE HYDRANT (INC. CONNECTION)		EA.	$5,400.00	
RELEASE / BLOW-OFF				
(EXCLUDES AC REMOVAL AND REPLACEMENT)				
AIR RELEASE VALVE (INC. CONNECTION)		EA.	$4,600.00	
BLOW-OFF VALVE (INC. CONNECTION)		EA.	$4,500.00	
			10% Contingency	
			Water Improvements Sub-Total	

Construction Cost Estimate form

Water Improvements

BACKFLOW ($1000/IN)				
RP 2" AND SMALLER		EA.	$3,000.00	
GATE VALVE				
6"		EA.	$550.00	
8"		EA.	$850.00	
10"		EA.	$1,250.00	
12"		EA.	$1,375.00	
16"		EA.	$3,425.00	
HOT TAP				
HOT TAP WITH VALVE		EA.	$1,750.00	
CONNECTION TO EXISTING 6" MAIN		EA.	$3,500.00	
CONNECTION TO EXISTING 8" MAIN		EA.	$3,750.00	
CONNECTION TO EXISTING 12" MAIN		EA.	$4,100.00	
INSTALL TEE		EA.	$300.00	
REMOVE EXISTING BLIND FLANGE		EA.	$475.00	
CONCRETE THRUST BLOCK		EA.	$585.00	
OTHER				
			10% Contingency	
			Water Improvements Sub-Total	
TRAFFIC CONTROL		L.S.		
MOBILIZATION, SWPPP, EROSION CONTROL		L.S.		
(Sub-Total Transferred to Item "B" on Summary Sheet)				

Construction Cost Estimate form

Recycled Water Improvements

Date 6/12/2023
Project Number 146-001 (TM-20536 Offsite Improvements)
Location Archibald Ave 665' to 1730' N/O Chino Ave
Computed By EL/SH
Contact Phone No. 949-522-7100

CONSTRUCTION ITEM DESCRIPTION	QTY	UNIT	COST	TOTAL
WATER / FIRE MAIN				
6" IN EASEMENT AREA ONLY (NOT IN PAVED STREET)		L.F.	$30.00	
8" IN EASEMENT AREA ONLY (NOT IN PAVED STREET)		L.F.	$40.00	
10" IN EASEMENT AREA ONLY (NOT IN PAVED STREET)		L.F.	$45.00	
8" INC. EXC., BACKFILL & PVMT RESTORATION		L.F.	$90.00	
10" INC. EXC., BACKFILL & PVMT RESTORATION		L.F.	$95.00	
12" INC. EXC., BACKFILL & PVMT RESTORATION		L.F.	$105.00	
16" INC. EXC., BACKFILL & PVMT RESTORATION		L.F.	$115.00	
WATER SERVICE				
(EXCLUDES AC REMOVAL AND REPLACEMENT)				
1" WATER SERVICE WITH METER BOX		EA.	$1,000.00	
2" WATER SERVICE WITH METER BOX		EA.	$2,200.00	
FIRE HYDRANT				
(EXCLUDES AC REMOVAL AND REPLACEMENT)				
BREAK-OFF TYPE FIRE HYDRANT (INC. CONNECTION)		EA.	$5,400.00	
RELEASE / BLOW-OFF				
(EXCLUDES AC REMOVAL AND REPLACEMENT)				
AIR RELEASE VALVE		EA.	$4,600.00	
BLOW-OFF VALVE		EA.	$4,500.00	
			10% Contingency	
			Water Improvements Sub-Total	

Construction Cost Estimate form

Recycled Water Improvements

BACKFLOW ($1000/IN)				
RP 2" AND SMALLER		EA.	$3,000.00	
DDC ABOVE GROUND (UP TO 6" DIAMETER)		EA.	$7,000.00	
GATE VALVE				
6"		EA.	$550.00	
8"		EA.	$850.00	
10"		EA.	$1,250.00	
12"		EA.	$1,375.00	
16"		EA.	$3,425.00	
HOT TAP				
HOT TAP WITH VALVE		EA.	$1,750.00	
CONNECTION TO 8" MAIN		EA.	$3,750.00	
CONNECTION TO 12" MAIN		EA.	$4,100.00	
INSTALL TEE		EA.	$300.00	
REMOVE EXISTING BLIND FLANGE		L.S.	$475.00	
CONCRETE THRUST BLOCK		EA.	$585.00	
OTHER				
			10% Contingency	
			Water Improvements Sub-Total	
TRAFFIC CONTROL		L.S.		
MOBILIZATION, SWPPP, EROSION CONTROL		L.S.		
(Sub-Total Transferred to Item "C" on Summary Sheet)				

ENGINEERING DEPARTMENT

Construction Cost Estimate Form

Sewer Improvements

Date 6/12/2023

Project Number 146-001 (TM-20536 Offsite Improvements)

Location Archibald Ave 665' to 1730' N/O Chino Ave

Computed By EL/SH

Contact Phone No. 949-522-7100

CONSTRUCTION ITEM DESCRIPTION	QTY	UNIT	COST	TOTAL
SEWER MAIN (VCP ONLY)				
8" & SMALLER IN EASEMENT AREA ONLY (NOT IN PAVED STREET)		L.F.	$40.00	
10" IN EASEMENT AREA ONLY (NOT IN PAVED STREET)		L.F.	$60.00	
12" & LARGER IN EASEMENT AREA ONLY (NOT IN PAVED STREET)		L.F.	$63.00	
8" INC. EXCAVATION, BACKFILL & PAVEMENT RESTORATION		L.F.	$70.00	
10" INC. EXCAVATION, BACKFILL & PAVEMENT RESTORATION		L.F.	$75.00	
12" INC. EXCAVATION, BACKFILL & PAVEMENT RESTORATION		L.F.	$80.00	
15" INC. EXCAVATION, BACKFILL & PAVEMENT RESTORATION		L.F.	$90.00	
18" INC. EXCAVATION, BACKFILL & PAVEMENT RESTORATION		L.F.	$95.00	
21" INC. EXCAVATION, BACKFILL & PAVEMENT RESTORATION		L.F.	$105.00	
24" INC. EXCAVATION, BACKFILL & PAVEMENT RESTORATION		L.F.	$115.00	
MANHOLE				
MANHOLE		EA.	$4,050.00	
DROP MANHOLE		EA.	$4,100.00	
VAULT		EA.	$3,500.00	
MONITORING FACILITY / NON TRAFFIC AREA		EA.	$1,750.00	
MONITORING MANHOLE		EA.	$4,100.00	
CLEANOUT		EA.	$1,750.00	
REMOVE/ABANDON EXISTING MANHOLE		EA.	$1,200.00	
REMOVE EXISTING SEWER				
UP TO 12" DIAMETER		L.F.	$55.00	
GREATER THAN 12" DIAMETER		L.F.	$70.00	
			10% Contingency	
			Sewer Improvements Sub-Total	

Construction Cost Estimate Form
Sewer Improvements

LATERAL				
4" HOUSE CONNECTION TO SEWER MAIN IN STREET		L.S.	$2,925.00	
6" & SMALLER VCP SEWER LATERAL / EASEMENT		L.F.	$42.00	
6" & SMALLER VCP SEWER LATERAL / PAVED STREET		L.F.	$70.00	
SEWER CHIMNEY		EA.	$1,170.00	
SEWER SADDLE		EA.	$1,170.00	
WYE 4" x 8" TYPICAL		EA.	$115.00	
OIL/GREASE INTERCEPTOR NOT IN STREET		EA.	$1,750.00	
OTHER				
				10% Contingency
				Sewer Improvements Sub-Total
TRAFFIC CONTROL		L.S.		
MOBILIZATION, SWPPP, EROSION CONTROL		L.S.		
(Sub-Total Transferred to Item "D" on Summary Sheet)				

ENGINEERING DEPARTMENT

Construction Cost Estimate form

Storm Drain Improvements

Date 6/12/2023
Project Number 146-001 (TM-20536 Offsite Improvements)
Location Archibald Ave 665' to 1730' N/O Chino Ave
Computed By EL/SH
Contact Phone No. 949-522-7100

CONSTRUCTION ITEM DESCRIPTION	QTY	UNIT	COST	TOTAL
STORM DRAIN (RCP SIZE X $3.25 / INCH OF I.D. UP TO 60" DIAMETER)				
36" RCP INC. EXC., BACKFILL & PAVEMENT RESTORATION		LF	$117.00	
63" RCP INC. EXC., BACKFILL & PAVEMENT RESTORATION		L.F.	$210.00	
66" RCP INC. EXC., BACKFILL & PAVEMENT RESTORATION		L.F.	$260.00	
72" RCP INC. EXC., BACKFILL & PAVEMENT RESTORATION		L.F.	$290.00	
78" RCP INC. EXC., BACKFILL & PAVEMENT RESTORATION		L.F.	$305.00	
81" RCP INC. EXC., BACKFILL & PAVEMENT RESTORATION		L.F.	$320.00	
84" RCP INC. EXC., BACKFILL & PAVEMENT RESTORATION		L.F.	$330.00	
90" RCP INC. EXC., BACKFILL & PAVEMENT RESTORATION		L.F.	$350.00	
96" RCP INC. EXC., BACKFILL & PAVEMENT RESTORATION		L.F.	$365.00	
102" RCP INC. EXC., BACKFILL & PAVEMENT RESTORATION		L.F.	$470.00	
108" RCP INC. EXC., BACKFILL & PAVEMENT RESTORATION		L.F.	$480.00	
24" X 36" CMPA (10 GUAGE)		L.F.	$140.00	
27" X 43" CMPA (10 GUAGE)		L.F.	$150.00	
LATERAL				
18" RCP OR SMALLER		L.F.	$45.00	
(INC. EXC., BACKFILL & PAVEMENT RESTORATION)				
MANHOLE		EA.	$4,500.00	
			10% Contingency	
			Storm Drain Improvements Sub-Total	

Construction Cost Estimate form
Storm Drain Improvements

CATCH BASIN				
CATCH BASIN LESS THAN 7' IN WIDE		L.F.	$409.50	
7' WIDE - CB WITH SCREEN INLET		E.A.	$3,900.00	
10' WIDE- CB WITH SCREEN INLET		E.A.	$4,200.00	
14' WIDE - CB WITH SCREEN INLET		E.A.	$4,700.00	
21' WIDE - CB WITH SCREEN INLET		E.A.	$4,900.00	
LOCAL DEPRESSION FOR UP TO 10' WIDE CB		L.S.	$585.00	
LOCAL DEPRESSION FOR > 10' WIDE CB		L.S.	$1,200.00	
REINFORCED CONCRETE BOX				
(INC. EXCAVATION, BACKFILL & PAVEMENT RESTORATION)				
4' X 6' RCB		L.F.	$400.00	
7' X 6' RCB		L.F.	$470.00	
7' X 8.5' RCB		L.F.	$560.00	
7' X 9.5' RCB		L.F.	$575.00	
8' X 11' RCB		L.F.	$585.00	
8' X 13' RCB		L.F.	$600.00	
9' X 9' RCB		L.F.	$610.00	
9' X 12' RCB		L.F.	$650.00	
OUTLET STRUCTURE		EA.	$700.00	
INLET STRUCTURE		EA.		
TRANSITION STRUCTURE		L.S.	$1,700.00	
OTHER				
			10% Contingency	
			Storm Drain Improvements Sub-Total	
TRAFFIC CONTROL		L.S.		
MOBILIZATION, SWPPP, EROSION CONTROL		L.S.		
(Sub-Total Transferred to Item "E" on Summary Sheet)				

EXHIBIT "C"

SURETY BONDS AND OTHER SECURITY

TRACT NO. 20536

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

FAITHFUL PERFORMANCE BOND: $1,903,691.31
Surety: Harco National Insurance Company
Attorney-in-fact: Amanda R. Turman-Avina
Address:
4200 Six Forks Road, Suite 1400
Raleigh, NC 27609

PAYMENT BOND: $1,903,691.31
Surety: Harco National Insurance Company
Attorney-in-fact: Amanda R. Turman-Avina
Address:
4200 Six Forks Road, Suite 1400
Raleigh, NC 27609

FAITHFUL PERFORMANCE BOND: $1,591,491.91
Surety: Lexon Insurance Company
Attorney-in-fact: Laura E. Sudduth
Address:
10002 Shelbyville Road, Suite 100
Louisville, KY 40223

PAYMENT BOND: $1,591,491.91
Surety: Lexon Insurance Company
Attorney-in-fact: Laura E. Sudduth
Address:
10002 Shelbyville Road, Suite 100
Louisville, KY 40223

GUARANTEE AND WARRANTY SECURITY BOND: **$349,518.32**
To be posted upon completion of the Public Improvements by Developer and approval and acceptance by the City.

CASH MONUMENT SECURITY: **$1000.00**
Amount deposited per Cash Receipt No. 355662
Date: 7/2/2024

Staff Selfie Scavenger Hunt

Principal Project Manager Facilities & Fleet Maintenance OMUC	Senior Human Resources Analyst Human Resources Administration Annex	Administrative Officer Community Development Administration Annex	Risk Management Specialist Risk Management Annex
Dan Beers	Marquie Lugo	Matthew Hernandez	Stefanie Padilla
Street Maintenance Supervisor Parks & Street Maintenance OMUC	Street Maintenance Supervisor Parks & Street Maintenance OMUC	Parks and Maintenance Manager Parks & Street Maintenance OMUC	Utilities Supervisor Sewer Utility Operations OMUC
Daniel Leon	Casey Cameron	Tim Masot	Danny Fernandez
Real Estate Administrative Director Economic Development City Hall	Administrative Officer - Confidential Innovation, Performance & Audit City Hall	Senior Deputy Fire Chief Bureau of Fire Prevention City Hall	Utilities Customer Services Specialist Utilities Customer Services OMUC
Charity Hernandez	Ria Pavia	Paul Ehrman	Kiley Rodriguez
Records Coordinator Records Management City Hall	Community Improvement Director Community Improvement Emporia	Integrated Waste Director Integrated Waste Operations OMUC	Housing Services Director Ontario Housing Authority City Hall
Karen Morrison	Angela Magana	Blaine Ishii	Katryna Gonzalez

Executed in Duplicate

Bond No. 0809084

CITY OF ONTARIO

FAITHFUL PERFORMANCE BOND FOR SUBDIVISION IMPROVEMENT AGREEMENT

PROJECT: Parcel / Tract No. 20536

WHEREAS, the conditions placed on the tentative/parcel map for Parcel/Tract No. **20536** require that the City of Ontario, a municipal corporation of the State of California ("CITY"), by its City Council, and **Lennar Homes of California, LLC** ("PRINCIPAL") enter into an agreement ("Agreement") whereby the PRINCIPAL agrees to install and complete certain designated public improvements ("Public Improvements"); and

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

NOW, THEREFORE, PRINCIPAL and **Harco National Insurance Company** ("SURETY"), a corporation organized and existing under the laws of the State of **Illinois**, and duly authorized to transact business under the laws of the State of California, are held and firmly bound unto CITY in the sum of **ONE MILLION NINE HUNDRED THREE THOUSAND SIX HUNDRED NINETY-ONE AND 31/100 DOLLARS ($1,903,691.31)**, said sum being not less than one hundred percent (100%) of the total cost of the Public Improvements as set forth in the Agreement, we bind ourselves, our heirs, executors and administrators, successors and assigns, jointly and severally, firmly by these presents.

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

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

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

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

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

IN WITNESS WHEREOF, this instrument has been duly executed by PRINCIPAL and SURETY above named, on **April 16**, 20**24**.

Harco National Insurance Company
Name of Surety

4200 Six Forks Road, Suite 1400
Raleigh, NC 27609
Mailing Address of Surety

(919) 833-1600
Telephone No. of Surety

By: Amanda R Turman-Avina
Attorney in Fact **Amanda R. Turman-Avina**

Lennar Homes of California, LLC, a California limited liability company
Principal

By:
Title: Vice President - Geoffrey Smith

and

By: _____
Title: _____

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

AXV
K MANAGEMENT
TE 5/17/2024
pproved Disapproved
NITIAL

MANAGEMENT
DATE _____
Approved Disapproved
INITIAL _____

ACKNOWLEDGMENT

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

State of California
County of Riverside)

On April 19, 2024 before me, Kim Strutton, Notary Public
(insert name and title of the officer)

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

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

WITNESS my hand and official seal.

Signature K Strutton (Seal)

KIM STRUTTON
Notary Public - California
Riverside County
Commission # 2405490
My Comm. Expires May 24, 2026

State of Texas
County of Harris } ss:

On April 16, 2024, before me, a Notary Public in and for said County and State, residing therein, duly commissioned and sworn, personally appeared

Amanda R. Turman-Avina

known to me to be Attorney-in-Fact of Harco National Insurance Company the corporation described in and that executed the within and foregoing instrument, and known to me to be the person who executed the said instrument in behalf of the said corporation, and he duly acknowledged to me that such corporation executed the same.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal, the day and year stated in this certificate above.

My Commission Expires August 24, 2027

MARIO ARZAMENDI NOTARY PUBLIC STATE OF TEXAS Notary I.D. 130343350 My Comm. Expires Aug. 24, 2027

Mario Arzamendi Notary Public

POWER OF ATTORNEY

Bond # 0809084

HARCO NATIONAL INSURANCE COMPANY
INTERNATIONAL FIDELITY INSURANCE COMPANY

Member companies of IAT Insurance Group, Headquartered: 4200 Six Forks Rd, Suite 1400, Raleigh, NC 27609

KNOW ALL MEN BY THESE PRESENTS: That **HARCO NATIONAL INSURANCE COMPANY**, a corporation organized and existing under the laws of the State of Illinois, and **INTERNATIONAL FIDELITY INSURANCE COMPANY**, a corporation organized and existing under the laws of the State of New Jersey, and having their principal offices located respectively in the cities of Rolling Meadows, Illinois and Newark, New Jersey, do hereby constitute and appoint

JESSICA RICHMOND, MARIO ARZAMENDI, LAURA E. SUDDUTH, STEPHANIE GROSS, JENNIE GOONIE, TEUTA LURI, MADISON DIAZ, KATIE CANALES, MARY A. GARCIA, MISTY WITT, AMANDA R. TURMAN-AVINA, BARBARA NORTON, CRISTINA NINO

Houston, TX

their true and lawful attorney(s)-in-fact to execute, seal and deliver for and on its behalf as surety, any and all bonds and undertakings, contracts of indemnity and other writings obligatory in the nature thereof, which are or may be allowed, required or permitted by law, statute, rule, regulation, contract or otherwise, and the execution of such instrument(s) in pursuance of these presents, shall be as binding upon the said **HARCO NATIONAL INSURANCE COMPANY** and **INTERNATIONAL FIDELITY INSURANCE COMPANY**, as fully and amply, to all intents and purposes, as if the same had been duly executed and acknowledged by their regularly elected officers at their principal offices.

This Power of Attorney is executed, and may be revoked, pursuant to and by authority of the By-Laws of **HARCO NATIONAL INSURANCE COMPANY** and **INTERNATIONAL FIDELITY INSURANCE COMPANY** and is granted under and by authority of the following resolution adopted by the Board of Directors of **INTERNATIONAL FIDELITY INSURANCE COMPANY** at a meeting duly held on the 13th day of December, 2018 and by the Board of Directors of **HARCO NATIONAL INSURANCE COMPANY** at a meeting held on the 13th day of December, 2018.

"**RESOLVED**, that (1) the Chief Executive Officer, President, Executive Vice President, Senior Vice President, Vice President, or Secretary of the Corporation shall have the power to appoint, and to revoke the appointments of, Attorneys-in-Fact or agents with power and authority as defined or limited in their respective powers of attorney, and to execute on behalf of the Corporation and affix the Corporation's seal thereto, bonds, undertakings, recognizances, contracts of indemnity and other written obligations in the nature thereof or related thereto; and (2) any such Officers of the Corporation may appoint and revoke the appointments of joint-control custodians, agents for acceptance of process, and Attorneys-in-fact with authority to execute waivers and consents on behalf of the Corporation; and (3) the signature of any such Officer of the Corporation and the Corporation's seal may be affixed by facsimile to any power of attorney or certification given for the execution of any bond, undertaking, recognizance, contract of indemnity or other written obligation in the nature thereof or related thereto, such signature and seals when so used whether heretofore or hereafter, being hereby adopted by the Corporation as the original signature of such officer and the original seal of the Corporation, to be valid and binding upon the Corporation with the same force and effect as though manually affixed."

IN WITNESS WHEREOF, **HARCO NATIONAL INSURANCE COMPANY** and **INTERNATIONAL FIDELITY INSURANCE COMPANY** have each executed and attested these presents on this 31st day of December, 2023

INTERNATIONAL FIDELITY INSURANCE COMPANY CORPORATE SEAL 1904 NEW JERSEY

STATE OF NEW JERSEY
County of Essex

STATE OF ILLINOIS
County of Cook

HARCO NATIONAL INSURANCE COMPANY CORPORATE SEAL 1984 ILLINOIS

Michael F. Zurcher
Executive Vice President, Harco National Insurance Company
and International Fidelity Insurance Company

On this 31st day of December, 2023 , before me came the individual who executed the preceding instrument, to me personally known, and, being by me duly sworn, said he is the therein described and authorized officer of **HARCO NATIONAL INSURANCE COMPANY** and **INTERNATIONAL FIDELITY INSURANCE COMPANY**; that the seals affixed to said instrument are the Corporate Seals of said Companies; that the said Corporate Seals and his signature were duly affixed by order of the Boards of Directors of said Companies.

CATHY CRUZ NOTARY PUBLIC STATE OF NEW JERSEY

IN TESTIMONY WHEREOF, I have hereunto set my hand affixed my Official Seal, at the City of Newark, New Jersey the day and year first above written.

Cathy Cruz a Notary Public of New Jersey
My Commission Expires April 16, 2029

CERTIFICATION

I, the undersigned officer of **HARCO NATIONAL INSURANCE COMPANY** and **INTERNATIONAL FIDELITY INSURANCE COMPANY** do hereby certify that I have compared the foregoing copy of the Power of Attorney and affidavit, and the copy of the Sections of the By-Laws of said Companies as set forth in said Power of Attorney, with the originals on file in the home office of said companies, and that the same are correct transcripts thereof, and of the whole of the said originals, and that the said Power of Attorney has not been revoked and is now in full force and effect.

IN TESTIMONY WHEREOF, I have hereunto set my hand on this day, April 16, 2024

A00592

Irene Martins, Assistant Secretary

Executed in Duplicate

Bond No. 0809084

CITY OF ONTARIO

LABOR & MATERIAL BOND FOR SUBDIVISION IMPROVEMENT AGREEMENT

PROJECT: Parcel / Tract No. 20536

WHEREAS, the conditions placed on the tentative/parcel map for Parcel/Tract No. **20536** require that the City of Ontario, a municipal corporation of the State of California ("CITY"), by its City Council, and **Lennar Homes of California, LLC** ("PRINCIPAL") enter into an agreement ("Agreement") whereby the PRINCIPAL agrees to install and complete certain designated public improvements ("Public Improvements"); and

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

NOW, THEREFORE, PRINCIPAL and **Harco National Insurance Company** ("SURETY"), a corporation organized and existing under the laws of the State of **Illinois**, and duly authorized to transact business under the laws of the State of California, are held and firmly bound unto CITY and to any and all material men, persons, companies or corporations furnishing materials, provisions, and other supplies used in, upon, for or about the performance of the Public Improvements, and all persons, companies or corporations renting or hiring teams, or implements or machinery, for or contributing to the Public Improvements to be done, and all persons performing work or labor upon the same and all persons supplying both work and materials as aforesaid excepting the PRINCIPAL, the sum of **ONE MILLION NINE HUNDRED THREE THOUSAND SIX HUNDRED NINETY-ONE AND 31/100 DOLLARS, ($1,903,691.31)**, said sum being not less than 100% of the total cost of the Public Improvements under the terms of the Improvement Agreement, we bind ourselves, our heirs, executors and administrators, successors and assigns jointly and severally, firmly by these presents.

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

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

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

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

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

IN WITNESS WHEREOF, this instrument has been duly executed by PRINCIPAL and SURETY above named, on **April 16**, 2024.

Harco National Insurance Company
Name of Surety

4200 Six Forks Road, Suite 1400
Raleigh, NC 27609
Mailing Address of Surety

(919) 833-1600
Telephone No. of Surety

By: Amanda R. Turman-Avina
Attorney in Fact **Amanda R. Turman-Avina**

Lennar Homes of California, LLC,
a California limited liability company
Principal

By:
Title: Vice President - Geoffrey Smith

and

By:
Title:

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

RISK MANAGEMENT
DATE 5/17/2024
Approved Disapproved
INITIAL

ACKNOWLEDGMENT

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

State of California
County of Riverside)

On April 19, 2024 before me, Kim Strutton, Notary Public
(insert name and title of the officer)

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

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

WITNESS my hand and official seal.

KIM STRUTTON
Notary Public - California
Riverside County
Commission # 2405490
My Comm. Expires May 24, 2026

Signature K Strutton (Seal)

State of Texas
County of Harris } ss:

On April 16, 2024, before me, a Notary Public in and for said County and State, residing therein, duly commissioned and sworn, personally appeared

Amanda R. Turman-Avina

known to me to be Attorney-in-Fact of Endurance Assurance Corporation the corporation described in and that executed the within and foregoing instrument, and known to me to be the person who executed the said instrument in behalf of the said corporation, and he duly acknowledged to me that such corporation executed the same.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal, the day and year stated in this certificate above.

My Commission Expires August 24, 2027

MARIO ARZAMENDI NOTARY PUBLIC STATE OF TEXAS Notary I.D. 130343350 My Comm. Expires Aug. 24, 2027

Mario Arzamendi Notary Public

POWER OF ATTORNEY

Bond # 0809084

HARCO NATIONAL INSURANCE COMPANY
INTERNATIONAL FIDELITY INSURANCE COMPANY

Member companies of IAT Insurance Group, Headquartered: 4200 Six Forks Rd, Suite 1400, Raleigh, NC 27609

KNOW ALL MEN BY THESE PRESENTS: That **HARCO NATIONAL INSURANCE COMPANY**, a corporation organized and existing under the laws of the State of Illinois, and **INTERNATIONAL FIDELITY INSURANCE COMPANY**, a corporation organized and existing under the laws of the State of New Jersey, and having their principal offices located respectively in the cities of Rolling Meadows, Illinois and Newark, New Jersey, do hereby constitute and appoint

JESSICA RICHMOND, MARIO ARZAMENDI, LAURA E. SUDDUTH, STEPHANIE GROSS, JENNIE GOONIE, TEUTA LURI, MADISON DIAZ, KATIE CANALES, MARY A. GARCIA, MISTY WITT, AMANDA R. TURMAN-AVINA, BARBARA NORTON, CRISTINA NINO

Houston, TX

their true and lawful attorney(s)-in-fact to execute, seal and deliver for and on its behalf as surety, any and all bonds and undertakings, contracts of indemnity and other writings obligatory in the nature thereof, which are or may be allowed, required or permitted by law, statute, rule, regulation, contract or otherwise, and the execution of such instrument(s) in pursuance of these presents, shall be as binding upon the said **HARCO NATIONAL INSURANCE COMPANY** and **INTERNATIONAL FIDELITY INSURANCE COMPANY**, as fully and amply, to all intents and purposes, as if the same had been duly executed and acknowledged by their regularly elected officers at their principal offices.

This Power of Attorney is executed, and may be revoked, pursuant to and by authority of the By-Laws of **HARCO NATIONAL INSURANCE COMPANY** and **INTERNATIONAL FIDELITY INSURANCE COMPANY** and is granted under and by authority of the following resolution adopted by the Board of Directors of **INTERNATIONAL FIDELITY INSURANCE COMPANY** at a meeting duly held on the 13th day of December, 2018 and by the Board of Directors of **HARCO NATIONAL INSURANCE COMPANY** at a meeting held on the 13th day of December, 2018.

"**RESOLVED**, that (1) the Chief Executive Officer, President, Executive Vice President, Senior Vice President, Vice President, or Secretary of the Corporation shall have the power to appoint, and to revoke the appointments of, Attorneys-in-Fact or agents with power and authority as defined or limited in their respective powers of attorney, and to execute on behalf of the Corporation and affix the Corporation's seal thereto, bonds, undertakings, recognizances, contracts of indemnity and other written obligations in the nature thereof or related thereto; and (2) any such Officers of the Corporation may appoint and revoke the appointments of joint-control custodians, agents for acceptance of process, and Attorneys-in-fact with authority to execute waivers and consents on behalf of the Corporation; and (3) the signature of any such Officer of the Corporation and the Corporation's seal may be affixed by facsimile to any power of attorney or certification given for the execution of any bond, undertaking, recognizance, contract of indemnity or other written obligation in the nature thereof or related thereto, such signature and seals when so used whether heretofore or hereafter, being hereby adopted by the Corporation as the original signature of such officer and the original seal of the Corporation, to be valid and binding upon the Corporation with the same force and effect as though manually affixed."

IN WITNESS WHEREOF, **HARCO NATIONAL INSURANCE COMPANY** and **INTERNATIONAL FIDELITY INSURANCE COMPANY** have each executed and attested these presents on this 31st day of December, 2023

INTERNATIONAL FIDELITY INSURANCE COMPANY CORPORATE SEAL 1904 NEW JERSEY

STATE OF NEW JERSEY
County of Essex

STATE OF ILLINOIS
County of Cook

HARCO NATIONAL INSURANCE COMPANY CORPORATE SEAL 1964 ILLINOIS

Michael F. Zurcher
Executive Vice President, Harco National Insurance Company
and International Fidelity Insurance Company

On this 31st day of December, 2023 , before me came the individual who executed the preceding instrument, to me personally known, and, being by me duly sworn, said he is the therein described and authorized officer of **HARCO NATIONAL INSURANCE COMPANY** and **INTERNATIONAL FIDELITY INSURANCE COMPANY**; that the seals affixed to said instrument are the Corporate Seals of said Companies; that the said Corporate Seals and his signature were duly affixed by order of the Boards of Directors of said Companies.

CATHY CRUZ NOTARY PUBLIC STATE OF NEW JERSEY

IN TESTIMONY WHEREOF, I have hereunto set my hand affixed my Official Seal, at the City of Newark, New Jersey the day and year first above written.

Cathy Cruz a Notary Public of New Jersey
My Commission Expires April 16, 2029

CERTIFICATION

I, the undersigned officer of **HARCO NATIONAL INSURANCE COMPANY** and **INTERNATIONAL FIDELITY INSURANCE COMPANY** do hereby certify that I have compared the foregoing copy of the Power of Attorney and affidavit, and the copy of the Sections of the By-Laws of said Companies as set forth in said Power of Attorney, with the originals on file in the home office of said companies, and that the same are correct transcripts thereof, and of the whole of the said originals, and that the said Power of Attorney has not been revoked and is now in full force and effect.

IN TESTIMONY WHEREOF, I have hereunto set my hand on this day, April 16, 2024

A00592

Irene Martins, Assistant Secretary

Executed in Duplicate

Bond No. LICX1214358

CITY OF ONTARIO

LABOR & MATERIAL BOND FOR SUBDIVISION IMPROVEMENT AGREEMENT

PROJECT: Parcel / Tract No. 20536

WHEREAS, the conditions placed on the tentative/parcel map for Parcel/Tract No. **20536** require that the City of Ontario, a municipal corporation of the State of California ("CITY"), by its City Council, and **Lennar Homes of California, LLC** ("PRINCIPAL") enter into an agreement ("Agreement") whereby the PRINCIPAL agrees to install and complete certain designated public improvements ("Public Improvements"); and

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

NOW, THEREFORE, PRINCIPAL and **Lexon Insurance Company** ("SURETY"), a corporation organized and existing under the laws of the State of **Texas**, and duly authorized to transact business under the laws of the State of California, are held and firmly bound unto CITY and to any and all material men, persons, companies or corporations furnishing materials, provisions, and other supplies used in, upon, for or about the performance of the Public Improvements, and all persons, companies or corporations renting or hiring teams, or implements or machinery, for or contributing to the Public Improvements to be done, and all persons performing work or labor upon the same and all persons supplying both work and materials as aforesaid excepting the PRINCIPAL, the sum of **ONE MILLION FIVE HUNDRED NINETY-ONE THOUSAND FOUR HUNDRED NINETY-ONE AND 91/100 DOLLARS**, (**$1,591,491.91**), said sum being not less than 100% of the total cost of the Public Improvements under the terms of the Improvement Agreement, we bind ourselves, our heirs, executors and administrators, successors and assigns jointly and severally, firmly by these presents.

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

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

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

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

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

IN WITNESS WHEREOF, this instrument has been duly executed by PRINCIPAL and SURETY above named, on **April 16**, 2024.

Lexon Insurance Company
Name of Surety

10002 Shelbyville Road, Suite 100
Louisville, KY 40223
Mailing Address of Surety

(615) 553-9500
Telephone No. of Surety

By: Laura E Sudduth
Attorney in Fact **Laura E. Sudduth**

Lennar Homes of California, LLC,
a California limited liability company
Principal

By:
Title: Vice President - Geoffrey Smith

and

By:
Title:

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

RISK MANAGEMENT
DATE 5/17/2024 AXV
Approved Disapproved
INITIAL SP

ACKNOWLEDGMENT

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

State of California
County of Riverside)

On April 19, 2024 before me, Kim Strutton, Notary Public
(insert name and title of the officer)

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

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

WITNESS my hand and official seal.

Signature K Strutton (Seal)

KIM STRUTTON
Notary Public - California
Riverside County
Commission # 2405490
My Comm. Expires May 24, 2026

State of Texas
County of Harris } ss:

On April 16, 2024, before me, a Notary Public in and for said County and State, residing therein, duly commissioned and sworn, personally appeared

Laura E. Sudduth

known to me to be Attorney-in-Fact of Lexon Insurance Company the corporation described in and that executed the within and foregoing instrument, and known to me to be the person who executed the said instrument in behalf of the said corporation, and he duly acknowledged to me that such corporation executed the same.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal, the day and year stated in this certificate above.

My Commission Expires January 25, 2026

Amanda R Turman-Avina

Amanda R Turman-Avina Notary Public

AMANDA R TURMAN-AVINA
Notary Public, State of Texas
Comm. Expires 01-25-2026
Notary ID 12404865-4

SOMPO INTERNATIONAL
INSURANCE

POWER OF ATTORNEY

2640

KNOW ALL BY THESE PRESENTS, that **Endurance Assurance Corporation**, a Delaware corporation ("EAC"), **Endurance American Insurance Company**, a Delaware corporation ("EAIC"), **Lexon Insurance Company**, a Texas corporation ("LIC"), and/or **Bond Safeguard Insurance Company**, a South Dakota corporation ("BSIC"), each, a "Company" and collectively, "**Sompo International**," do hereby constitute and appoint: **Mary Ann Garcia, Laura E. Sudduth, Barbara Norton, Jessica Richmond, Stephanie Gross, Amanda R. Turman-Avina, Jennie Goonie, Teuta Luri, Misty Witt, Cristina Nino, Katie Canales, Madison Diaz** as true and lawful Attorney(s)-In-Fact to make, execute, seal, and deliver for, and on its behalf as surety or co-surety; bonds and undertakings given for any and all purposes, also to execute and deliver on its behalf as aforesaid renewals, extensions, agreements, waivers, consents or stipulations relating to such bonds or undertakings provided, however, that no single bond or undertaking so made, executed and delivered shall obligate the Company for any portion of the penal sum thereof in excess of the sum of **One Hundred Million Dollars ($100,000,000.00).**

Such bonds and undertakings for said purposes, when duly executed by said attorney(s)-in-fact, shall be binding upon the Company as fully and to the same extent as if signed by the President of the Company under its corporate seal attested by its Corporate Secretary.

This appointment is made under and by authority of certain resolutions adopted by the board of directors of each Company by unanimous written consent effective the 30th day of March, 2023 for BSIC and LIC and the 17th day of May, 2023 for EAC and EAIC, a copy of which appears below under the heading entitled "Certificate".

This Power of Attorney is signed and sealed by facsimile under and by authority of the following resolution adopted by the board of directors of each Company by unanimous written consent effective the 30th day of March, 2023 for BSIC and LIC and the 17th day of May, 2023 for EAC and EAIC and said resolution has not since been revoked, amended or repealed:

RESOLVED, that the signature of an individual named above and the seal of the Company may be affixed to any such power of attorney or any certificate relating thereto by facsimile, and any such power of attorney or certificate bearing such facsimile signature or seal shall be valid and binding upon the Company in the future with respect to any bond or undertaking to which it is attached.

IN WITNESS WHEREOF, each Company has caused this instrument to be signed by the following officers, and its corporate seal to be affixed this 25th day of May, 2023.

Endurance Assurance Corporation
By: Richard M Appel
Richard Appel; SVP & Senior Counsel

Endurance American Insurance Company
By: Richard M Appel
Richard Appel; SVP & Senior Counsel

Lexon Insurance Company
By: Richard M Appel
Richard Appel; SVP & Senior Counsel

Bond Safeguard Insurance Company
By: Richard M Appel
Richard Appel; SVP & Senior Counsel

ACKNOWLEDGEMENT

On this 25th day of May, 2023, before me, personally came the above signatories known to me, who being duly sworn, did depose and say that he/they is/an officer of each of the Companies; and that he executed said instrument on behalf of each Company by authority of his office under the by-laws of each Company.

By: Amy Taylor
Amy Taylor, Notary Public - My Commission Expires 3/9/27

CERTIFICATE

I, the undersigned Officer of each Company, DO HEREBY CERTIFY that:

1. That the original power of attorney of which the foregoing is a copy was duly executed on behalf of each Company and has not since been revoked, amended or modified; that the undersigned has compared the foregoing copy thereof with the original power of attorney, and that the same is a true and correct copy of the original power of attorney and of the whole thereof;
2. The following are resolutions which were adopted by the board of directors of each Company by unanimous written consent effective 30th day of March, 2023 for BSIC and LIC and the 17th day of May, 2023 for EAC and EAIC and said resolutions have not since been revoked, amended or modified:

   "RESOLVED, that each of the individuals named below is authorized to make, execute, seal and deliver for and on behalf of the Company any and all bonds, undertakings or obligations in surety or co-surety with others: RICHARD M. APPEL, MATTHEW E. CURRAN, MARGARET HYLAND, SHARON L. SIMS, CHRISTOPHER L. SPARRO,

   and be it further

   RESOLVED, that each of the individuals named above is authorized to appoint attorneys-in-fact for the purpose of making, executing, sealing and delivering bonds, undertakings or obligations in surety or co-surety for and on behalf of the Company."
3. The undersigned further certifies that the above resolutions are true and correct copies of the resolutions as so recorded and of the whole thereof.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the corporate seal this 16th day of April, 2024.

By: Daniel S. Lurie, Secretary

NOTICE: U. S. TREASURY DEPARTMENT'S OFFICE OF FOREIGN ASSETS CONTROL (OFAC)

No coverage is provided by this Notice nor can it be construed to replace any provisions of any surety bond or other surety coverage provided. This Notice provides information concerning possible impact on your surety coverage due to directives issued by OFAC. **Please read this Notice carefully.**

The Office of Foreign Assets Control (OFAC) administers and enforces sanctions policy, based on Presidential declarations of "national emergency". OFAC has identified and listed numerous foreign agents, front organizations, terrorists, terrorist organizations, and narcotics traffickers as "Specially Designated Nationals and Blocked Persons". This list can be located on the United States Treasury's website – https://www.treasury.gov/resource-center/sanctions/SDN-List.

In accordance with OFAC regulations, if it is determined that you or any other person or entity claiming the benefits of any coverage has violated U.S. sanctions law or is a Specially Designated National and Blocked Person, as identified by OFAC, any coverage will be considered a blocked or frozen contract and all provisions of any coverage provided are immediately subject to OFAC. When a surety bond or other form of surety coverage is considered to be such a blocked or frozen contract, no payments nor premium refunds may be made without authorization from OFAC. Other limitations on the premiums and payments may also apply.

Any reproductions are void.
Surety Claims Submission: LexonClaimAdministration@sompo-intl.com
Telephone: 615-553-9500 Mailing Address: Sompo International; 12890 Lebanon Road; Mount Juliet, TN 37122-2870

Executed in Duplicate

Bond No. LICX1214358

CITY OF ONTARIO

FAITHFUL PERFORMANCE BOND FOR SUBDIVISION IMPROVEMENT AGREEMENT

PROJECT: Parcel / Tract No. 20536

WHEREAS, the conditions placed on the tentative/parcel map for Parcel/Tract No. **20536** require that the City of Ontario, a municipal corporation of the State of California ("CITY"), by its City Council, and **Lennar Homes of California, LLC** ("PRINCIPAL") enter into an agreement ("Agreement") whereby the PRINCIPAL agrees to install and complete certain designated public improvements ("Public Improvements"); and

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

NOW, THEREFORE, PRINCIPAL and **Lexon Insurance Company** ("SURETY"), a corporation organized and existing under the laws of the State of **Texas**, and duly authorized to transact business under the laws of the State of California, are held and firmly bound unto CITY in the sum of **ONE MILLION FIVE HUNDRED NINETY-ONE THOUSAND FOUR HUNDRED NINETY-ONE AND 91/100 DOLLARS ($1,591,491.91)**, said sum being not less than one hundred percent (100%) of the total cost of the Public Improvements as set forth in the Agreement, we bind ourselves, our heirs, executors and administrators, successors and assigns, jointly and severally, firmly by these presents.

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

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

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

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

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

IN WITNESS WHEREOF, this instrument has been duly executed by PRINCIPAL and SURETY above named, on **April 16**, 2024.

Lexon Insurance Company
Name of Surety

10002 Shelbyville Road, Suite 100
Louisville, KY 40223
Mailing Address of Surety

(615) 553-9500
Telephone No. of Surety

By: Laura E Sudduth
Attorney in Fact **Laura E. Sudduth**

Lennar Homes of California, LLC, a California limited liability company
Principal

By: _____
Title: Vice President - Geoffrey Smith

and

By: _____
Title: _____

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

RISK MANAGEMENT
DATE 5/17/2024
Approved Disapproved
INITIAL

ACKNOWLEDGMENT

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

State of California
County of Riverside)

On April 19, 2024 before me, Kim Strutton, Notary Public
(insert name and title of the officer)

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

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

WITNESS my hand and official seal.

Signature K Strutton (Seal)

KIM STRUTTON
Notary Public - California
Riverside County
Commission # 2405490
My Comm. Expires May 24, 2026

State of Texas
County of Harris } ss:

On April 16, 2024, before me, a Notary Public in and for said County and State, residing therein, duly commissioned and sworn, personally appeared

Laura E. Sudduth

known to me to be Attorney-in-Fact of Lexon Insurance Company the corporation described in and that executed the within and foregoing instrument, and known to me to be the person who executed the said instrument in behalf of the said corporation, and he duly acknowledged to me that such corporation executed the same.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal, the day and year stated in this certificate above.

My Commission Expires January 25, 2026

Amanda R Turman-Avina

Amanda R Turman-Avina Notary Public

AMANDA R TURMAN-AVINA
Notary Public, State of Texas
Comm. Expires 01-25-2026
Notary ID 12404865-4

CITY OF ONTARIO *Agenda Report* **October 15, 2024**	**SECTION:** **CONSENT CALENDAR**
Department: Engineering Prepared By: Raymond Lee Staff Member Presenting: Scott Murphy, Executive Director Community Development Reviewed By: Khoi Do Approved By:	Submitted To: Council/OHA Approved: _____ Continued To: _____ Denied: _____ Item No: 5

SUBJECT: AN AGREEMENT WITH THE CITY OF CHINO FOR OPERATIONS AND MAINTENANCE OF THE LANDSCAPED MEDIAN ON EUCLID AVENUE

RECOMMENDATION: That the City Council authorize the City Manager, or his designee, to execute an Agreement with the City of Chino for the shared operations and maintenance of the landscaped median on Euclid Avenue between Riverside Drive and Merrill Avenue.

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

FISCAL IMPACT: There is not a direct fiscal impact associated with this action. Ontario and Chino are each responsible for 50% of the operations and maintenance costs of the landscaped median on Euclid Avenue between Riverside Drive and Merrill Avenue. Appropriations for Ontario's portion of the cost from the Ontario Ranch Services Community Facility Districts (CFDs) fund will be included in the City's Annual Operating Budget once the median is constructed and is accepted by both cities.

BACKGROUND & ANALYSIS: The easterly half of Euclid Avenue, between Riverside Drive and Merrill Avenue, is owned by the City of Ontario and the westerly owned by Caltrans and maintained by the City of Chino. The General Plans for both cities identify the extension of the Euclid Avenue median south from Riverside Drive to Merrill Avenue. At present, there is no improved landscaped median along this segment of Euclid Avenue.

In anticipation of current and future development projects that will require the construction of portions of the median, both cities desire to enter into an agreement for the coordination of the operations and maintenance of the future landscaped median. This Agreement describes and outlines the maintenance responsibilities and operational functions to be performed by each City and specifies the distribution of costs between Ontario and Chino. This Agreement has been reviewed and approved by the City Engineer and City Attorney's for both cities.

AGREEMENT FOR
OPERATIONS AND MAINTENANCE OF
RAISED LANDSCAPED MEDIAN ON EUCLID AVENUE

THIS AGREEMENT is made and entered into on this _____ day of _____, 2022, by and between the City of Ontario (hereinafter referred to as ONTARIO) and the City of Chino (hereinafter referred to as CHINO).

WITNESSETH

WHEREAS, certain raised landscaped median has been installed at locations identified in Exhibit A that are jointly owned by ONTARIO and CHINO; and

WHEREAS, ONTARIO and CHINO desire to set forth herein the particular maintenance and operations functions to be performed by each, and to specify the distribution of costs of said maintenance and operations functions between ONTARIO and CHINO:

NOW, THEREFORE, IT IS AGREED AS FOLLOWS:

1. This Agreement applies to the operations and maintenance of raised landscaped median at locations identified in Exhibit A, attached hereto and made a part hereof.

2. The party responsible for performing the operations and maintenance functions shall be as indicated in Exhibit A.

3. Operations work to be performed under this Agreement includes scheduled irrigation.

4. Routine maintenance work to be performed under this Agreement includes grass clipping, trimming, mowing, pruning, fertilizing, litter and debris removal, seeding, weed control and removal, disease treatment and control, scheduled inspection and preventative maintenance, furnishing electric energy, and performing necessary repairs and replacements as required to ensure satisfactory service. Installation of additional facilities is not a maintenance function under this agreement.

5. Extraordinary maintenance to be performed under this Agreement includes repair or replacement of facilities or landscaping when caused by “Acts of God,” civil disorder, vehicle collision, vandalism, third party recklessness or willful acts, equipment obsolescence, failure or malfunction of the irrigation system, and/or worn out equipment replacement when it is upgraded or replaced in like kind. Extraordinary maintenance shall also include repairing and replacement of irrigation controllers and cabinets, water services, irrigation valves, meter boxes, conduits, and other appurtenances.

6. Expenses for extraordinary maintenance shall be shared by the cities based on the percentages specified in Exhibit A. These expenses shall be assessed regardless of whether the actual damage occurred within the ONTARIO or CHINO area of the intersection or median. All extraordinary services or repairs shall be

performed by the agency identified as the responsible party in Exhibit A. The party performing the extraordinary services shall prepare an itemized invoice for the other party for said costs to include materials, replacement equipment, salaries, wages and equipment rental, etc.

Whenever extraordinary expenses are incurred as a result of damage caused by a third party, the party with jurisdiction over the location where the damage took place shall make every reasonable effort to recover the costs of said damage from the responsible third party. Any and all recovered funds, less the costs associated with the recovery effort, shall be disbursed to both ONTARIO and CHINO as per the percentage splits shown in Exhibit A.

7. ONTARIO and CHINO shall bill each other for the cost of services provided. Billings shall be made quarterly as set forth in Exhibit A. The cost of maintenance referred to herein shall include all direct costs, plus a 10% functional and administrative overhead assessment to cover indirect costs incurred in providing the maintenance services.

8. This Agreement shall become effective upon execution by both parties and shall supersede any and all previous median landscape operations and maintenance agreements between ONTARIO and CHINO regarding the raised landscaped median at locations identified in Exhibit A, except any such agreements wherein ONTARIO and CHINO are not the only parties thereto.

9. Exhibit A may be amended, as needed, to add or delete locations or to change cost splits, as evidenced by signed approval of the respective City Engineers, or their designees, by submittal of a revised Exhibit A, which shall, upon said approval, become part of this Agreement and shall supersede and cancel all previous exhibits.

10. ONTARIO and CHINO shall submit in writing any dispute in billing within thirty (30) working days after receipt of billing. Otherwise ONTARIO and CHINO shall pay for services within thirty (30) days after receipt of billing.

11. This Agreement shall remain in full force and effect until terminated by either party following a sixty (60) day written notice of intention to terminate.

12. ONTARIO agrees to indemnify, defend (with counsel approved by CHINO) and hold harmless CHINO and its officers, employees, agents and authorized volunteers from any and all claims actions, losses, damages, and/or liability resulting from ONTARIO's negligent acts or omissions which arise from ONTARIO's performance of its obligations under this Agreement.

    CHINO agrees to indemnify, defend (with counsel approved by ONTARIO) and hold harmless ONTARIO and its officers, employees, agents and authorized volunteers from any and all claims actions, losses, damages, and/or liability resulting from CHINO's negligent acts or omissions which arise from CHINO's performance of its obligations under this Agreement.

13. Nothing in the provisions of this Agreement is intended to create duties or obligations to, or rights in third parties not parties to this contract or affect the legal liability of either party to the contract by imposing any standard of care respecting the maintenance of the subject intersections and medians different from the standard of care imposed by law.

14. Delivery of Notices. All notices permitted or required under this Agreement shall be given to the respective parties at the following address, or at such other address as the respective parties may provide in writing for this purpose:

CHINO: City of Chino
13220 Central Avenue
Chino, CA 91710
ATTN: City Engineer

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

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed by their respective official thereunto duly authorized.

CITY OF ONTARIO

By:_____
City Manager

Dated:_____

APPROVED AS TO FORM:

By:_____
Best Best & Krieger LLP
City Attorney

ATTEST:

By:_____
City Clerk

CITY OF CHINO

By:_____
City Manager

Dated:_____

APPROVED AS TO FORM:

By:_____
Fred Galante
City Attorney

ATTEST:

By:_____
City Clerk

AGREEMENT FOR

OPERATIONS AND MAINTENANCE OF JOINTLY OWNED

RAISED LANDSCAPED MEDIANS

EXHIBIT A

Maintained by the City of ONTARIO			
No.	Location	Cost Split	
		ONTARIO	CHINO
1	Euclid Avenue between Eucalyptus Avenue and Merrill Avenue	50%	50%

CITY OF ONTARIO *Agenda Report* **October 15, 2024**	**SECTION:** **CONSENT CALENDAR**
Department: Engineering Prepared By: Jaime Maciel-Carrera Staff Member Presenting: Scott Murphy, Executive Director Community Development Approved By:	Submitted To: Council/OHA Approved: _____ Continued To: _____ Denied: _____ Item No: 6

SUBJECT: **A CONSTRUCTION CONTRACT WITH SULLY-MILLER CONTRACTING COMPANY; A PROFESSIONAL SERVICES AGREEMENT WITH STANTEC CONSULTING SERVICES INC.; AND AN AMENDMENT TO THE PROFESSIONAL SERVICES AGREEMENT WITH ARDURRA GROUP, INC. FOR THE GROVE AVENUE AND HOLT BOULEVARD STREET AND TRUNK SEWER IMPROVEMENTS PROJECT**

RECOMMENDATION: That the City Council take the following actions:

A. Award a Construction Contract to Sully-Miller Contracting Company of Brea, CA, for the construction of the Grove Avenue at Holt Boulevard Intersection Widening and North Vineyard Avenue Sanitary Sewer Project, in the contract amount of $20,323,888 plus a fifteen percent (15%) contingency of $3,048,584, for a total not-to-exceed authorization amount of $23,372,472; and authorize the City Manager, or his designee, to execute said contract and file a notice of completion at the conclusion of all construction activities related to the project.
B. Authorize the City Manager, or his designee, to execute a Professional Services Agreement with Stantec Consulting Services Inc. of Irvine, California, for the North Vineyard Avenue Sanitary Sewer Project, for $212,900 plus an additional fifteen percent (15%) contingency of $31,935 for a total not-to-exceed authorization amount of $244,835 for construction engineering services.
C. Authorize the City Manager, or his designee, to execute Amendment No. 5 to the Professional Services Agreement with Ardurra Group, Inc. of El Segundo, CA, for the North Vineyard Avenue Sanitary Sewer Project, by $191,148 plus an additional ten percent (10%) contingency of $19,115 for a new total not-to-exceed authorization amount of $4,312,812 for construction management, inspection, and material testing services.

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)
Pursue City's Goals and Objectives by Working with Other Governmental Agencies
Invest in the Growth and Evolution of the Cityâ€™s Economy

FISCAL IMPACT: The Fiscal Year 2024-25 Adopted Budget includes appropriations for the Construction Contract to Sully-Miller Contracting Company of Brea, CA, for the Grove Avenue and Holt Boulevard Intersection Widening and North Vineyard Avenue Sanitary Sewer Project in Measure I-Valley Major Project fund, Old Model Colony Local Street Development Impact Fee (Local Street DIF) fund, Sewer Capital, and Local Adjacent Sewer fund. The construction cost for the Street Improvements is $12,282,492 plus an additional fifteen percent (15%) contingency of $1,842,374. Reimbursement of 55.6% ($6,852,420) of these funds will come from Measure I in accordance with the Measure I 2010-2040 Strategic Plan and 44.4% ($5,472,077) of these funds will come from Local Street DIF. The construction cost for the Sewer Improvements portion is $8,041,396 plus an additional fifteen percent (15%) contingency of $1,206,210. The Construction Contract to Sully-Miller Contracting Company of Brea, CA in the amount of $20,323,888 plus a fifteen percent (15%) contingency of $3,048,584, for a total not-to-exceed authorization amount of $23,372,472. If approved, additional appropriations will be included in a future Quarterly Budget Update Report to council as needed.

The Fiscal Year 2024-25 Adopted Budget includes appropriations for the Professional Services Agreement with Stantec Consulting Services Inc. of Irvine, California, for the North Vineyard Avenue Sanitary Sewer Project, in the Sewer Capital fund for $212,900 plus an additional fifteen percent (15%) contingency of $31,935 for a total not-to-exceed authorization amount of $244,835 for construction engineering services. If approved, additional appropriations will be included in a future Quarterly Budget Update Report to council as needed.

The Fiscal Year 2024-25 Adopted Budget includes appropriations for the proposed Amendment No 5 for Construction Management and Inspection Services to the Professional Services Agreement with Ardurra Group, Inc. in the Sewer Capital fund for the project specific task order for the North Vineyard Avenue Sanitary Sewer Project. The Amendment increases the Agreement amount by $191,148, to a not-to-exceed contract amount of $4,089,828, plus an additional ten percent (10%) contingency of $19,115 for Fiscal Year 2024-25, for a revised total not-to-exceed authorization of $4,312,812. If approved, additional appropriations will be included in a future Quarterly Budget Update Report to the City Council as needed.

BACKGROUND & ANALYSIS: The Grove Avenue and Holt Boulevard Intersection Widening will address the inadequate level of service at the intersection. The level of service analysis for this intersection shows that it currently operates at a level of service "F" which represents constricted, jammed, or bumper-to-bumper traffic conditions that impair and restrict the movement of vehicles out of the intersection approach lanes. These improvements are designed to alleviate traffic and congestion along Grove Avenue and Holt Boulevard and will improve motorist and pedestrian safety, reduce motorist delays, and improve air quality. The Street Improvements are per the City of Ontario General Plan and fall within the limits of the approved Grove Avenue Corridor Project EIR.

The North Vineyard Avenue Sanitary Sewer Project at Grove Avenue and Holt Boulevard was identified in The Sewer Master Plan, which identified future capacity deficiencies in Vineyard Avenue

south of Holt Boulevard to Airport Drive and an easement within the Ontario Airport.

In July 2020, Stantec completed a feasibility study, which recommended the construction of approximately 7,500 linear feet of 21-inch sewer in Holt Boulevard, between Vineyard Avenue and Grove Avenue, and Grove Avenue, between Holt Boulevard and Airport Drive, that will redirect flows from Vineyard Ave to an existing 21-inch City sewer in Grove Avenue. It was also recommended that other flows be diverted to an existing 36-inch Inland Empire Utility Agency (IEUA) sewer at Grove Avenue.

In November 2020, Stantec was tasked to prepare construction documents for the Vineyard Avenue Sewer Diversion Project under their On-Call Design Agreement. In May 2024, Stantec completed construction documents for the Vineyard Avenue Sewer Diversion Project under their On-Call Design Agreement.

The general scope of work under the construction contract consists of but is not limited to widening the approaches to the intersection of Grove Avenue and Holt Boulevard, the construction of roadway improvements, sewer systems, storm drain systems, water systems, grading, landscaping, traffic signals, street lighting, utilities, and associated removals/relocations, and protection and relocation of existing facilities. The sewer system construction consists of approximately 410 linear feet of 20-inch Ductile Iron Pipe (DIP) and 175 linear feet of 21-inch Vitrified Clay Pipe (VCP) using a surface open-trenching construction method, and 1,000 linear feet of 21-inch VCP with 48-inch steel casing pipe using the trenchless construction method on Grove Avenue from Airport Drive to Holt Boulevard and Holt Boulevard from Grove Avenue to 500 feet East of Grove Avenue.

A project location map is provided for reference as Exhibit "A."

On September 20, 2024, four (4) bids were received for the Project through the City's electronic bid management system in response to Bid No. 1837. The bids ranged from a low bid amount of $20,323,888 to a high bid amount of $27,462,940. The four (4) bids are summarized below.

Bidder	Location	Amount
Sully-Miller Contracting Company	Brea, CA	$20,323,888.00
Nationwide Contracting Services, Inc.	Huntington Beach, CA	$23,530,242.81
Norstar Plumbing and Engineering, Inc.	Alta Loma, CA	$23,570,982.20
Riverside Construction Company, Inc.	Riverside, CA	$27,462,940.00

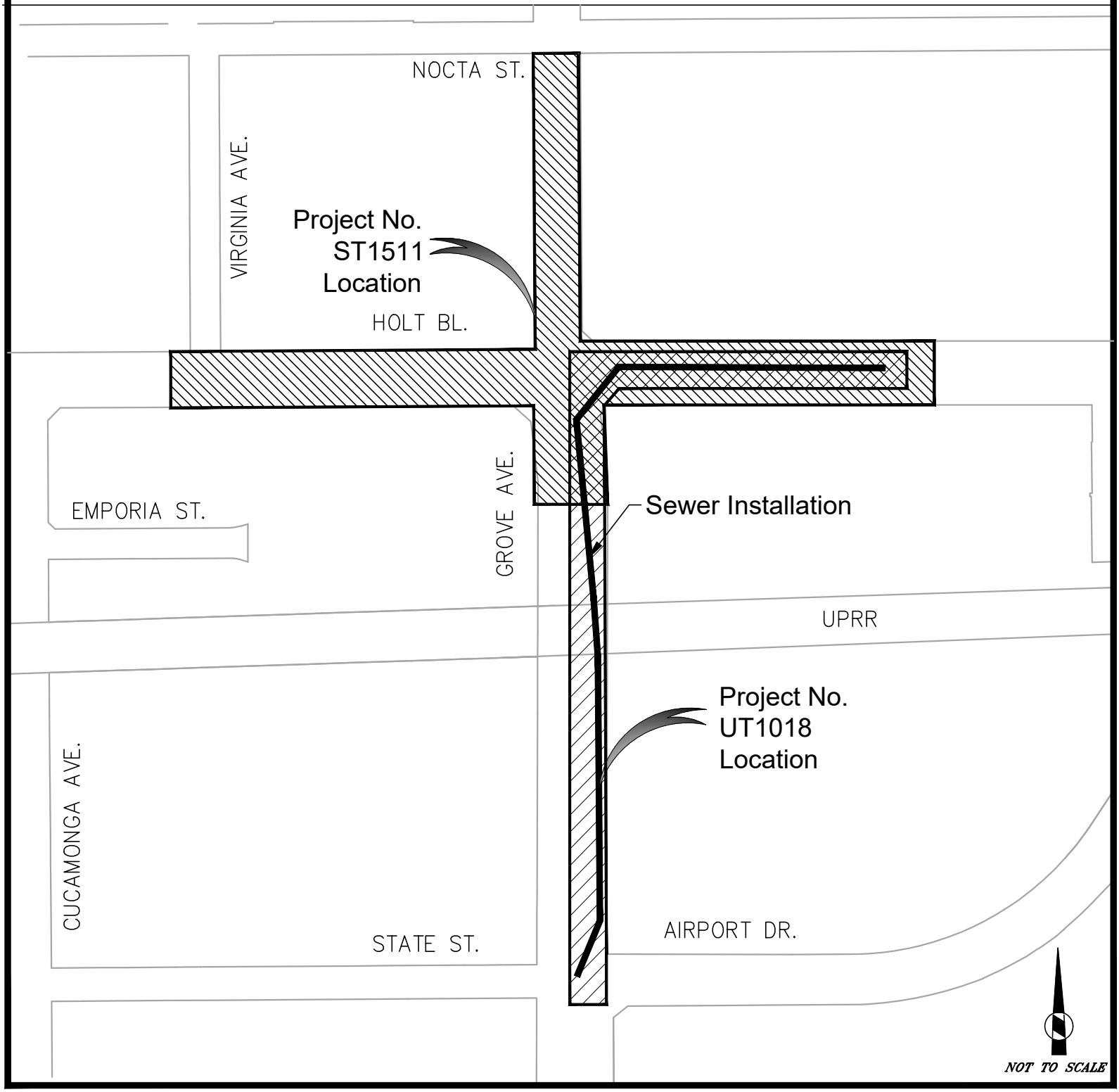
Staff reviewed the apparent lowest bid and determined that Sully-Miller Contracting Company met the requirements for recommendation as the lowest responsive and responsible bidder.

Support services will be required during the project's construction. Stantec Consulting Services Inc. will provide construction engineering services for the Sewer Improvements as the Engineer of Record and develop the project plans and specifications. Parsons Transportation Group Inc. is already contracted to provide construction engineering services for the Street Improvements as the Engineer of Record. Ardurra Group, Inc. will provide construction management, inspection, and Material Testing services as they are currently in a contract with the City to provide such services.

ENVIRONMENTAL REVIEW: Pursuant to California Environmental Quality Act (CEQA) section 21166 and sections 15162 and 15163 of the CEQA Guidelines, the Grove Avenue Corridor Project EIR (FHWA Highway ID No. HPLUL-5092(039)/CEQA SCH# 2014101071) was approved by the City in July 2021 via Resolution 2021-085 for the Grove Ave at Holt Blvd Street and Trunk Sewer Improvements Project. The Project improvements fall within the limits of the Grove Avenue Corridor Project EIR and will not result in new or substantially more adverse, significant environmental impacts than those disclosed in the Grove Avenue Corridor Project EIR.

GROVE AVENUE AT HOLT BOULEVARD STREET & TRUNK SEWER IMPROVEMENTS PROJECT

PROJECT NO. ST1511 AND UT1018



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

PAUL S. LEON
MAYOR

DEBRA PORADA
MAYOR PRO TEM

ALAN D. WAPNER
JIM W. BOWMAN
RUBEN VALENCIA
COUNCIL MEMBERS

SHEILA MAUTZ
CITY CLERK

JAMES R. MILHISER
TREASURER

SCOTT OCHOA
CITY MANAGER

AMENDMENT NO. 5

TO THE PROFESSIONAL SERVICES AGREEMENT

BETWEEN THE CITY OF ONTARIO AND

ARDURRA GROUP, INC.

1. Parties and Date.

This Amendment No. 5 to the Agreement (as defined herein) is made and entered into as of this ___ day of _____, 2024, by and between the City of Ontario ("City") and **Ardurra Group, Inc.**, a Florida Corporation with its principal place of business at 1960 East Grand Avenue, Suite 300, El Segundo, CA 90245 ("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 "On-Call Construction Management and Inspection" dated August 17, 2021 ("Agreement").

2.2 Amendment Purpose. The City and Consultant desire to amend the Agreement for construction management and inspection services for the Grove Ave at Holt Blvd Street and Trunk Sewer Improvements Project - ST1511 and UT1018 sewer improvements adding **One Hundred Ninety One Thousand One Hundred Forty Seven and 50/100 Dollars ($191,147.50)** for a total not-to-exceed compensation amount of **Four Million Eighty Nine Thousand Eight Hundred Twenty Eight and 00/100 Dollars ($4,089,828)** with the term of the Agreement to remain through August 17, 2025. The Parties have heretofore entered into that Amendment No. 1 dated July 5, 2022, Amendment No. 2 dated December 19, 2023, Amendment No. 3 dated July 16, 2024 and Amendment No. 4 dated July 16, 2024.

2.3 Amendment Authority. This Amendment No. 5 is authorized pursuant to Section 3 of the Agreement.

3. Terms.

3.1 Amendment. Section 3.2 of the Agreement is hereby amended in its entirety to read as follows:

> 3.2.1. Compensation
>
> Consultant shall receive compensation, including authorized reimbursements, for all Services rendered under this Agreement at the rates set forth in Exhibits "C", "C-1", "C-2" and "C-3" attached hereto and incorporated herein by reference. In no event shall the total amount paid for services rendered by Consultant during the extended period from August 17, 2021 through August 16, 2022, exceed the sum of **Two Hundred and Sixty Thousand and 00/100 ($260,000)**; and from August 17, 2022 through August 16, 2023, exceed the sum of **Four Hundred Thousand and 00/100 ($400,000)**; and from August 17, 2023 through August 16, 2024, exceed the sum of **One Million Six Hundred Eleven Thousand Two Hundred Eight and 00/100 ($1,611,208)**; and from August 17, 2024 through August 17, 2025, exceed the sum of **One Million Eight Hundred Eighteen Thousand Six Hundred Twenty and 00/100 ($1,818,620)**; with a revised cumulative contract total not-to-exceed amount of **Four Million Eighty Nine Thousand Eight Hundred Twenty Eight and 00/100 Dollars ($4,089,828)** covering the period from August 17, 2021 through August 17, 2025. 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. 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. 5 TO ON-CALL CONSTRUCTION MANAGEMENT AND INSPECTION BETWEEN THE CITY OF ONTARIO AND ARDURRA GROUP, 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

Ardurra Group, Inc.

By:_____

Its:_____

Printed Name:_____

By:_____

Its:_____

Printed Name:_____

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EXHIBIT C-3

ARDURRA

March 4, 2024

Mr. Jaime Maciel-Carrera, TE
Senior Associate Engineer
City of Ontario
JMCarrera@ontarioca.gov

SUBJECT: AMENDMENT PROPOSAL REQUEST TO PROVIDE PROFESSIONAL CONSTRUCTION MANAGEMENT SERVICES FOR THE ADDED OMUC PLANS FOR THE SEWER IMPROVEMENTS AS PART OF THE GROVE AVENUE AND HOLT BOULEVARD INTERSECTION WIDENING PROJECT

Dear Mr. Maciel-Carrera,

Pursuant to our recent discussion, Ardurra Group, Inc. (Ardurra) is pleased to submit this amendment request to augment proposed efforts on the City of Ontario's (City) Grove Avenue and Holt Boulevard Widening project to provide additional construction management (CM) services for the added OMUC plans for the sewer improvements as part of the widening project.

PROJECT UNDERSTANDING / SCOPE OF WORK

Ardurra understands that the City is seeking construction management services for the additional scope for the sewer improvements along Grove Avenue and Holt Boulevard. As part of this project, we understand the work consists of the installation of a 21" VCP sewer pipe, 20" DI sewer main, and 60" precast manhole, and all other appurtenances. The additional work will be completed within the original construction duration for the Grove Avenue and Holt Boulevard widening project.

Ardurra acknowledges the added improvements will increase CM efforts. Our proposed amendment fee is estimated, and we will efficiently manage the budgets. Please be advised that depending on how efficiently the project is completed Ardurra may need to request an additional amendment. Please refer to the proposed estimate on the following page in support of these requested additional services to successfully deliver this project.

Please feel free to contact me at (949) 533-3012 or oalameddine@ardurra.com should you have any questions or require additional information. We look forward to continuing to work closely with the City on this important project.

Sincerely,

Omar Alamaddine
Project and Construction Management Group Leader

cc: Dino D'Emilia, PE, F.ASCE, QSD

ESTIMATED FEE

Amendment Fee Request
Construction Management, Inspection, and Material Testing
for the added OMUC Plans for the Sewer Improvements
As Part of the Grove Avenue and Holt Boulevard Intersection Widening Project
City of Ontario

Pre-Construction Phase[9] (Period 8/1/2023 - 7/31/2024)		5 Working Days		
TITLE	Est. Hours / Day[9]	Total Hours	Hourly Rate	Extended Fee
Senior Construction Manager[1,7]	2.50	12.50	$ 221.00	$ 2,762.50
Prevailing Wage Inspector[1, 2, 3, 4, 5, 6]	8.00	40.00	$ 163.00	$ 6,520.00
Project Controls Engineer[1,7]	4.00	20.00	$ 127.00	$ 2,540.00
Subtotal Pre-Construction Phase				$ 11,822.50
Construction Phase[9] (10 Months) (Period 8/1/2023 - 7/31/2024		20 Working Days		
TITLE	Est. Hours / Day[9]	Total Hours	Hourly Rate	Extended Fee
Senior Construction Manager[1,7]	4.00	80.00	$ 221.00	$ 17,680.00
Prevailing Wage Inspector[1, 2, 3, 4, 5, 6]	8.00	160.00	$ 163.00	$ 26,080.00
Project Controls Engineer[1,7]	5.00	100.00	$ 127.00	$ 12,700.00
Subtotal Construction Phase				$ 56,460.00
Construction Phase[9] (5 Months) (Period 8/1/2024 - 7/31/2025)		20 Working Days		
TITLE	Est. Hours / Day[9]	Total Hours	Hourly Rate	Extended Fee
Senior Construction Manager[1,7]	4.00	80.00	$ 228.00	$ 18,240.00
Prevailing Wage Inspector[1, 2, 3, 4, 5, 6]	8.00	160.00	$ 169.00	$ 27,040.00
Project Controls Engineer[1,7]	5.00	100.00	$ 131.00	$ 13,100.00
Subtotal Construction Phase				$ 58,380.00
Post-Construction Phase[9] (Period 8/1/2024 - 7/31/2025)		5 Working Days		
TITLE	Est. Hours / Day[9]	Total Hours	Hourly Rate	Extended Fee
Senior Construction Manager[1,7]	2.50	12.50	$ 228.00	$ 2,850.00
Prevailing Wage Inspector[1, 2, 3, 4, 5, 6]	8.00	40.00	$ 169.00	$ 6,760.00
Project Controls Engineer[1,7]	5.00	25.00	$ 131.00	$ 3,275.00
Subtotal Post-Construction Phase				$ 12,885.00
Other Direct Costs				
Item				Amount
SBCTA West Valley Connector Project Coordination (Allowance)				$ 10,000.00
Constructability Review (Allowance)			$ 221.00	$ 10,000.00
Procore or CIPO License Fee[8] *(Based on $2M Estimated Construction Value)*				$ 4,600.00
Miscellaneous ODCs (Allowance)				$ 2,000.00
Geotechnical and Material Testing (Allowance)				$ 25,000.00
Subtotal Other Direct Costs				$ 51,600.00
Total Estimated Fee				**$ 191,147.50**

Notes:

- Terms and conditions shall be pursuant to the City of Ontario On-Call Construction Management and Inspection Services Contract dated August 17, 2021.
    1. The above hourly rates include wages, fringe and general and administrative overhead and fee, as well as typical supplies, tools and equipment required to perform services. Construction management software is not included in the base rate.
    2. Rate applies to the first four hours of overtime during the week and/or first eight hours of overtime on Saturdays; all overtime in excess of four hours during the week or eight hours on Saturdays is paid at the Sunday/holiday rate.
    3. Prevailing Wage Rates are subject to increases pursuant to the State of California's Department of Industrial Relations Wage Rate Determinations. Ardurra's Billing Rates will increase in proportion to the DIR increase, plus overhead and profit. The current rates are based on Determination # SC-23-63-2-2023-1D issued February 22, 2023 and include the predetermined increase on July 1, 2024.
    4. A Special Shift is any shift that starts after 5:00 PM and before 6:00 AM.
    5. The following minimum callout applies to Inspection staff, in accordance with Industrial Welfare Commission Order #16-2001:
        - Cancellation of 8 hours scheduled inspection after inspector's arrival on site: 4-hour minimum
        - Cancellation of 4 hours scheduled inspection after inspector's arrival on site: 2-hour minimum
    6. For contracts involving public works inspection services, Ardurra requires the awarding public agency to complete DIR form PWC-100 solely for Ardurra as the prime contractor specific to the awarded contract name and amount. A half-hour per week, per inspector labor compliance charge will be billed for all Prevailing Wage inspection assignments.
    7. Rates are based on the specified fiscal years in Ardurra's executed contract. Should the project schedule extend, rates will be adjusted based on the applicable year.
    8. Ardurra will make a final determination on the utilization of either Procore or CIPO for web-based contract management once services are engaged.
    9. Additional fee may be required if phase duration and level of effort is exceeded.
- **Web-Based Contract Administration:** Selected/specified cloud-based service billed at cost plus fifteen percent (15%).
- **Reimbursable Expenses (Other Direct Costs):** Ordinary identifiable non-salary costs that are directly attributable to the project, such as regular commuter travel costs, standard equipment, tools and software, etc., are included in the fee estimated above. Extraordinary expenses, such as oversized and/or color reproduction costs, vehicle identification decals, site facility hard phone line and/or internet service charges, non-commuter project miles and/or other travel expenses to remote (over 50 miles one-way) fabrication yards/batch plants, overnight postage/couriers, etc., are billed at actual

cost plus fifteen percent (15%) to cover overhead and administration. Travel charges to a casting/fabrication yard or batch plant will include the hourly billing rate plus travel expenses as listed in the Caltrans Travel Guide (State rates). Mileage is billed at the current IRS rate (currently $0.655/mile). An allowance for extraordinary charges is included as Other Direct Costs (ODC) in the fee table above. Extraordinary charges above and beyond the estimated ODC allowance will not be billed to the client unless specifically included in the contract or requested and approved by the client in writing prior to incurring the additional expense.

- **Escalation:** This rate schedule is effective through July 31, 2026 per our executed agreement dated August 17, 2021. Should the project duration be extended beyond July 31, 2026, rates will be subject to prevailing wage increases as noted above, as well as an adjustment of five percent (5%) per calendar year or in accordance with the Consumer Price Index, whichever is greater.
- **Exclusions to Scope and Fee:** The following items are specifically excluded:
  - Legal advice
  - Temporary field office facilities, equipment, furniture, utilities and/or services
  - Construction labor, materials and/or equipment
  - Additional services not specifically called for in the proposal
  - Expert witness services
  - Standby services

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

PAUL S. LEON
MAYOR

DEBRA PORADA
MAYOR PRO TEM

ALAN D. WAPNER
JIM W. BOWMAN
RUBEN VALENCIA
COUNCIL MEMBERS

SHEILA MAUTZ
CITY CLERK

JAMES R. MILHISER
TREASURER

SCOTT OCHOA
CITY MANAGER

SECTION 00500
CONTRACT

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

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

GROVE AVE AT HOLT BLVD STREET AND TRUNK SEWER IMPROVEMENTS PROJECT-ST1511 AND UT1018

The Contractor and its surety shall be liable to the City for any damages arising as a result of the Contractor's failure to comply with this obligation.

ARTICLE 2. **TIME FOR COMPLETION**. Time is of the essence in the performance of the Work. The Work shall be commenced on the date stated in the City's Notice to Proceed. The Contractor shall complete all Work required by the Contract Documents within **380 working days** from the commencement date stated in the Notice to Proceed, herein after the Contract Time. By its signature hereunder, Contractor agrees the Contract Time for completion set forth above is adequate and reasonable to complete the Work.

ARTICLE 3. **CONTRACT PRICE**. The City shall pay to the Contractor as full compensation for the performance of the Contract, subject to any additions or deductions as provided in the Contract Documents, and including all applicable taxes and costs, the sum of

Twenty Million Three Hundred Twenty-Three Thousand Eight Hundred Eighty-Eight 00/100

Dollars ($20,323,888.00), hereinafter the Contract Price. Payment shall be made as set forth in the General Conditions.

ARTICLE 4. LIQUIDATED DAMAGES. The Contractor acknowledges that the City will sustain actual damages for each and every day completion of the Project is delayed beyond the Contract Time. Because of the nature of the Project, it would be impracticable or extremely difficult to determine the City's actual damages. Accordingly, as provided in Government Code section 53069.85, it is agreed that the Contractor will pay the City the sum of **$13,200** for each and every calendar day of delay in completing the Work beyond the time prescribed in the Contract Documents for finishing the Work, as Liquidated Damages and not as a penalty or forfeiture. In the event the Liquidated Damages are not paid, the Contractor agrees the City may deduct that amount from any money due or that may become due the Contractor under the Contract. This Article does not affect the City's rights to other damages or remedies specified in the Contract Documents or allowed by law.

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

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

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

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

- Notice Inviting Bids
- Instructions to Bidders
- Bid Form
- Contractor's Certificate Regarding Workers' Compensation form
- Bid Bond
- List of Subcontractors form
- Contractor Information and Experience Form
- Non-Collusion Declaration form
- Public Works Contractor Registration Certification form
- Iran Contracting Act Certification form
- Contract
- Performance Bond

- Payment Bond
- Environmental documents and approvals (If Applicable)
- General Conditions
- Special Conditions
- Standard Specifications for Public Works Construction (Greenbook), 2021 Edition, except Sections 1-9
- Technical Specifications
- Addenda (If Applicable)
- Plans and Drawings
- Approved and fully executed Change Orders
- Applicable Local Agency Standards and Specifications, as last revised
- Federal Requirements (If Applicable)
- Any other documents contained in or incorporated into the Contract

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

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

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

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

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

[REMAINDER OF PAGE LEFT INTENTIONALLY BLANK]

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

CITY OF ONTARIO

By: _____
Scott Ochoa
City Manager

ATTEST:

By: _____
Sheila Mautz, City Clerk

APPROVED AS TO FORM:

By: _____
Best Best & Krieger LLP
City Attorney

By: _____

Its: Vice President

Printed Name: Scott Bottomley

By: _____

Its: Assistant Secretary

Printed Name: Jeff Galterio

747612 Class A-General Contracting
Contractor's License Number and Classification

1000003664
DIR Registration Number

END OF CONTRACT

SECTION 00610
PERFORMANCE BOND

KNOW ALL PERSONS BY THESE PRESENTS:

THAT WHEREAS, the City of Ontario (hereinafter referred to as "City") has awarded to Sully-Miller Contracting Company (hereinafter referred to as the "Contractor") an agreement for GROVE AVE AT HOLT BLVD STREET AND TRUNK SEWER IMPROVEMENTS PROJECT-ST1511 AND UT1018 (hereinafter referred to as the "Project").

WHEREAS, the work to be performed by the Contractor is more particularly set forth in the Contract Documents for the Project dated _____, (hereinafter referred to as "Contract Documents"), the terms and conditions of which are expressly incorporated herein by reference; and

WHEREAS, the Contractor is required by said Contract Documents to perform the terms thereof and to furnish a bond for the faithful performance of said Contract Documents.

NOW, THEREFORE, we, Sully-Miller Contracting Company the undersigned Contractor and Liberty Mutual Insurance Company / Berkshire Hathaway Specialty Insurance Company as Surety, a corporation organized and duly authorized to transact business under the laws of the State of California, are held and firmly bound unto the City in the sum of Twenty Million Three Hundred Twenty-Three Thousand Eight Hundred Eighty-Eight and 00/100 DOLLARS, ($ 20,323,888.00), said sum being not less than one hundred percent (100%) of the total amount of the Contract, for which amount well and truly to be made, we bind ourselves, our heirs, executors and administrators, successors and assigns, jointly and severally, firmly by these presents.

THE CONDITION OF THIS OBLIGATION IS SUCH, that, if the Contractor, his or its heirs, executors, administrators, successors or assigns, shall in all things stand to and abide by, and well and truly keep and perform the covenants, conditions and agreements in the Contract Documents and any alteration thereof made as therein provided, on its part, to be kept and performed at the time and in the manner therein specified, and in all respects according to their intent and meaning; and shall faithfully fulfill all obligations including the one-year guarantee of all materials and workmanship; and shall indemnify and save harmless the City, its officers and agents, as stipulated in said Contract Documents, then this obligation shall become null and void; otherwise it shall be and remain in full force and effect.

As a condition precedent to the satisfactory completion of the Contract Documents, unless otherwise provided for in the Contract Documents, the above obligation shall hold good for a period of one (1) year after the acceptance of the work by City, during which time if Contractor shall fail to make full, complete, and satisfactory repair and replacements and totally protect the City from loss or damage resulting from or caused by defective materials or faulty workmanship, Surety shall undertake and faithfully fulfill all such obligations. The obligations of Surety hereunder shall continue so long as any obligation of Contractor remains. Nothing herein shall limit the City's rights or the Contractor or Surety's obligations under the Contract, law or equity, including, but not limited to, California Code of Civil Procedure section 337.15.

Whenever Contractor shall be, and is declared by the City to be, in default under the Contract Documents, the Surety shall remedy the default pursuant to the Contract Documents, or shall promptly, at the City's option:

1. Take over and complete the Project in accordance with all terms and conditions in the Contract Documents; or

2. Obtain a bid or bids for completing the Project in accordance with all terms and conditions in the Contract Documents and upon determination by Surety of the lowest responsive and responsible bidder, arrange for a Contract between such bidder, the Surety and the City, and make available as work progresses sufficient funds to pay the cost of completion of the Project, less the balance of the contract price, including other costs and damages for which Surety may be liable. The term "balance of the contract price" as used in this paragraph shall mean the total amount payable to Contractor by the City under the Contract and any modification thereto, less any amount previously paid by the City to the Contractor and any other set offs pursuant to the Contract Documents.

3. Permit the City to complete the Project in any manner consistent with local, California and federal law and make available as work progresses sufficient funds to pay the cost of completion of the Project, less the balance of the contract price, including other costs and damages for which Surety may be liable. The term "balance of the contract price" as used in this paragraph shall mean the total amount payable to Contractor by the City under the Contract and any modification thereto, less any amount previously paid by the City to the Contractor and any other set offs pursuant to the Contract Documents.

Surety expressly agrees that the City may reject any contractor or subcontractor which may be proposed by Surety in fulfillment of its obligations in the event of default by the Contractor.

Surety shall not utilize Contractor in completing the Project nor shall Surety accept a bid from Contractor for completion of the Project if the City, when declaring the Contractor in default, notifies Surety of the City's objection to Contractor's further participation in the completion of the Project.

The Surety, for value received, hereby stipulates and agrees that no change, extension of time, alteration or addition to the terms of the Contract Documents or to the Project to be performed thereunder shall in any way affect its obligations on this bond, and it does hereby waive notice of any such change, extension of time, alteration or addition to the terms of the Contract Documents or to the Project, including but not limited to the provisions of sections 2819 and 2845 of the California Civil Code.

[REMAINDER OF PAGE LEFT INTENTIONALLY BLANK]

IN WITNESS WHEREOF, we have hereunto set our hands and seals this 30th day of September, 20 24.

(Corporate Seal)

Contractor/Principal Sully-Miller Contracting Company

By _____

Title JEFF GALTERIO, ASSISTANT SECRETARY

Liberty Mutual Insurance Company / Berkshire Hathaway Specialty Insurance Company

(Corporate Seal) Surety

_____

Attorney-in-Fact Michelle Anne McMahon

Signatures of those signing for the Contractor and Surety must be notarized and evidence of corporate authority attached.

(Attach Attorney-in-Fact Certificate) Title Attorney-In -Fact

The rate of premium on this bond is $3.328 per thousand. The total amount of premium charges, $ 67,638.

(The above must be filled in by corporate attorney.)

THIS IS A REQUIRED FORM

Any claims under this bond may be addressed to:

(Name and Address of Surety) Liberty Mutual Insurance Company / Berkshire Hathaway Specialty Insurance Company
175 Berkeley Street, Boston, MA 02116
1314 Douglas Street, Suite 1300, Omaha, NE 68102 - 1944

(Name and Address of Agent or Victoria Campbell
2010 Main Street, Suite 1050
Irvine, CA 92614

(Name and Address of Agent or Representative for service of process in California, if different from above)

(Telephone number of Surety and Agent or Representative for service of process in California)
949-885-1206

NOTE: A copy of the Power-of-Attorney authorizing the person signing on behalf of the Surety to do so must be attached hereto.

Notary Acknowledgment

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

STATE OF CALIFORNIA
COUNTY OF **Orange**

On **October 2** (Date), 20**24**, before me, **M. Sykes** (Name And Title Of Officer (e.g. "Jane Doe, Notary Public")), Notary Public, personally appeared **Jeff Galterio** (Name(s) of Signer(s)), who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

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

M. SYKES
COMM. #2380341
NOTARY PUBLIC • CALIFORNIA
ORANGE COUNTY
Comm. Expires Oct. 27, 2025

Place Notary Seal Above

WITNESS my hand and official seal.

M. Sykes

Signature of Notary Public

OPTIONAL

Though the information below is not required by law, it may prove valuable to persons relying on the document

and could prevent fraudulent removal and reattachment of this form to another document.

CAPACITY CLAIMED BY SIGNER

☐ Individual
☒ Corporate Officer
Assistant Secretary
Title(s)

☐ Partner(s) ☐ Limited ☐ General

☐ Attorney-In-Fact
☐ Trustee(s)
☐ Guardian/Conservator
☐ Other:

Signer is representing:
Name Of Person(s) Or Entity(ies)

Sully-Miller Contracting Company

DESCRIPTION OF ATTACHED DOCUMENT

Performance Bond - City of Ontario
Title or Type of Document

1
Number of Pages

October 2, 2024
Date of Document

None
Signer(s) Other Than Named Above

Notary Acknowledgment

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

STATE OF ~~CALIFORNIA~~ Connecticut
COUNTY OF Hartford

On September 30, 2024, before me, Imani Schley, Notary Public, personally
Date — Name And Title Of Officer (e.g. "Jane Doe, Notary Public")
appeared Michelle Anne McMahon, who proved to me on the basis of satisfactory
Name(s) of Signer(s)
evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

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

IMANI SCHLEY
NOTARY PUBLIC - #192452
STATE OF CONNECTICUT
MY COMMISSION EXPIRES AUG. 31, 2029
Place Notary Seal Above

WITNESS my hand and official seal.

Signature of Notary Public Imani Schley

OPTIONAL

Though the information below is not required by law, it may prove valuable to persons relying on the document

and could prevent fraudulent removal and reattachment of this form to another document.

CAPACITY CLAIMED BY SIGNER

- ☐ Individual
- ☐ Corporate Officer

Title(s)

- ☐ Partner(s) ☐ Limited ☐ General
- ☒ Attorney-In-Fact
- ☐ Trustee(s)
- ☐ Guardian/Conservator
- ☐ Other:

Signer is representing:
Name Of Person(s) Or Entity(ies)

DESCRIPTION OF ATTACHED DOCUMENT

Title or Type of Document

Number of Pages

Date of Document

Signer(s) Other Than Named Above

This Power of Attorney limits the acts of those named herein, and they have no authority to bind the Company except in the manner and to the extent herein stated.

Liberty Mutual Insurance Company
The Ohio Casualty Insurance Company
West American Insurance Company

Certificate No: **8211476-985949**

POWER OF ATTORNEY

KNOWN ALL PERSONS BY THESE PRESENTS: That The Ohio Casualty Insurance Company is a corporation duly organized under the laws of the State of New Hampshire, that Liberty Mutual Insurance Company is a corporation duly organized under the laws of the State of Massachusetts, and West American Insurance Company is a corporation duly organized under the laws of the State of Indiana (herein collectively called the "Companies"), pursuant to and by authority herein set forth, does hereby name, constitute and appoint, Danielle M. Bechard; Jonathan Gleason; Jennifer Godere; Richard Hackner; Michelle Anne McMahon; Nicholas Miller; Doritza Mojica; Sarah Murtha; Kathryn Pryor; Robyn Salley; Joshua Sanford; Gentry Stewart; Kyle Williams; Connor Wolpert

all of the city of Hartford state of CT each individually if there be more than one named, its true and lawful attorney-in-fact to make, execute, seal, acknowledge and deliver, for and on its behalf as surety and as its act and deed, including but not limited to consents of surety for the release of retained percentages and/or final estimates on construction contracts or similar authority requested by the Department of Transportation, State of Florida, and the execution of such undertakings, bonds, recognizances and other surety obligations, in pursuance of these presents and shall be as binding upon the Companies as if they have been duly signed by the president and attested by the secretary of the Companies in their own proper persons.

IN WITNESS WHEREOF, this Power of Attorney has been subscribed by an authorized officer or official of the Companies and the corporate seals of the Companies have been affixed thereto this 12th day of March, 2024.

Liberty Mutual Insurance Company
The Ohio Casualty Insurance Company
West American Insurance Company

By: _____
David M. Carey, Assistant Secretary

State of PENNSYLVANIA
County of MONTGOMERY ss

On this 12th day of March, 2024 before me personally appeared David M. Carey, who acknowledged himself to be the Assistant Secretary of Liberty Mutual Insurance Company, The Ohio Casualty Company, and West American Insurance Company, and that he, as such, being authorized so to do, execute the foregoing instrument for the purposes therein contained by signing on behalf of the corporations by himself as a duly authorized officer.

IN WITNESS WHEREOF, I have hereunto subscribed my name and affixed my notarial seal at Plymouth Meeting, Pennsylvania, on the day and year first above written.

Commonwealth of Pennsylvania - Notary Seal
Teresa Pastella, Notary Public
Montgomery County
My commission expires March 28, 2025
Commission number 1126044
Member, Pennsylvania Association of Notaries

By: _____
Teresa Pastella, Notary Public

This Power of Attorney is made and executed pursuant to and by authority of the following By-laws and Authorizations of The Ohio Casualty Insurance Company, Liberty Mutual Insurance Company, and West American Insurance Company which resolutions are now in full force and effect reading as follows:

ARTICLE IV – OFFICERS: Section 12. Power of Attorney.
Any officer or other official of the Corporation authorized for that purpose in writing by the Chairman or the President, and subject to such limitation as the Chairman or the President may prescribe, shall appoint such attorneys-in-fact, as may be necessary to act in behalf of the Corporation to make, execute, seal, acknowledge and deliver as surety any and all undertakings, bonds, recognizances and other surety obligations. Such attorneys-in-fact, subject to the limitations set forth in their respective powers of attorney, shall have full power to bind the Corporation by their signature and execution of any such instruments and to attach thereto the seal of the Corporation. When so executed, such instruments shall be as binding as if signed by the President and attested to by the Secretary. Any power or authority granted to any representative or attorney-in-fact under the provisions of this article may be revoked at any time by the Board, the Chairman, the President or by the officer or officers granting such power or authority.

ARTICLE XIII – Execution of Contracts: Section 5. Surety Bonds and Undertakings.
Any officer of the Company authorized for that purpose in writing by the chairman or the president, and subject to such limitations as the chairman or the president may prescribe, shall appoint such attorneys-in-fact, as may be necessary to act in behalf of the Company to make, execute, seal, acknowledge and deliver as surety any and all undertakings, bonds, recognizances and other surety obligations. Such attorneys-in-fact subject to the limitations set forth in their respective powers of attorney, shall have full power to bind the Company by their signature and execution of any such instruments and to attach thereto the seal of the Company. When so executed such instruments shall be as binding as if signed by the president and attested by the secretary.

Certificate of Designation – The President of the Company, acting pursuant to the Bylaws of the Company, authorizes David M. Carey, Assistant Secretary to appoint such attorneys-in-fact as may be necessary to act on behalf of the Company to make, execute, seal, acknowledge and deliver as surety any and all undertakings, bonds, recognizances and other surety obligations.

Authorization – By unanimous consent of the Company's Board of Directors, the Company consents that facsimile or mechanically reproduced signature of any assistant secretary of the Company, wherever appearing upon a certified copy of any power of attorney issued by the Company in connection with surety bonds, shall be valid and binding upon the Company with the same force and effect as though manually affixed.

I, Renee C. Llewellyn, the undersigned, Assistant Secretary, The Ohio Casualty Insurance Company, Liberty Mutual Insurance Company, and West American Insurance Company do hereby certify that the original power of attorney of which the foregoing is a full, true and correct copy of the Power of Attorney executed by said Companies, is in full force and effect and has not been revoked.

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed the seals of said Companies this 30th day of September, 2024.

By: _____
Renee C. Llewellyn, Assistant Secretary

Not valid for mortgage, note, loan, letter of credit, currency rate, interest rate or residual value guarantees.

For bond and/or Power of Attorney (POA) verification inquiries, please call 610-832-8240 or email HOSUR@libertymutual.com

LMS-12881 LMIC OCIC WAIC Multi Co FLDOT 02/21

Berkshire Hathaway Specialty Insurance

Power Of Attorney

BERKSHIRE HATHAWAY SPECIALTY INSURANCE COMPANY
NATIONAL INDEMNITY COMPANY / NATIONAL LIABILITY & FIRE INSURANCE COMPANY

Know all men by these presents, that **BERKSHIRE HATHAWAY SPECIALTY INSURANCE COMPANY**, a corporation existing under and by virtue of the laws of the State of Nebraska and having an office at One Lincoln Street, 23rd Floor, Boston, Massachusetts 02111, **NATIONAL INDEMNITY COMPANY**, a corporation existing under and by virtue of the laws of the State of Nebraska and having an office at 3024 Harney Street, Omaha, Nebraska 68131 and **NATIONAL LIABILITY & FIRE INSURANCE COMPANY**, a corporation existing under and by virtue of the laws of the State of Connecticut and having an office at 100 First Stamford Place, Stamford, Connecticut 06902 (hereinafter collectively the "Companies"), pursuant to and by the authority granted as set forth herein, do hereby name, constitute and appoint: **Michelle Anne McMahon, Victoria M. Campbell, Wendy Lewis, 525 Market St, Suite 3400 of the city of San Francisco, State of California,** their true and lawful attorney(s)-in-fact to make, execute, seal, acknowledge, and deliver, for and on their behalf as surety and as their act and deed, any and all undertakings, bonds, or other such writings obligatory in the nature thereof, in pursuance of these presents, the execution of which shall be as binding upon the Companies as if it has been duly signed and executed by their regularly elected officers in their own proper persons. **This authority for the Attorney-in-Fact shall be limited to the execution of the attached bond(s) or other such writings obligatory in the nature thereof.**

In witness whereof, this Power of Attorney has been subscribed by an authorized officer of the Companies, and the corporate seals of the Companies have been affixed hereto this date of August 24, 2023. This Power of Attorney is made and executed pursuant to and by authority of the Bylaws, Resolutions of the Board of Directors, and other Authorizations of **BERKSHIRE HATHAWAY SPECIALTY INSURANCE COMPANY, NATIONAL INDEMNITY COMPANY** and **NATIONAL LIABILITY & FIRE INSURANCE COMPANY**, which are in full force and effect, each reading as appears on the back page of this Power of Attorney, respectively. **The following seals of the Companies and signatures by an authorized officer of the Company may be affixed by facsimile or digital format, which shall be deemed the equivalent of and constitute the written signature of such officer of the Companies and original seals of the Companies for all purposes regarding this Power of Attorney, including satisfaction of any signature and seal requirements on any and all undertakings, bonds, or other such writings obligatory in the nature thereof, to which this Power of Attorney applies.**

BERKSHIRE HATHAWAY SPECIALTY INSURANCE COMPANY,

By: _____
David Fields, Executive Vice President

NATIONAL INDEMNITY COMPANY,
NATIONAL LIABILITY & FIRE INSURANCE COMPANY,

By: _____
David Fields, Vice President

NOTARY
State of Massachusetts, County of Suffolk, ss:
On this 24th day of August, 2023, before me appeared David Fields, Executive Vice President of BERKSHIRE HATHAWAY SPECIALTY INSURANCE COMPANY and Vice President of NATIONAL INDEMNITY COMPANY and NATIONAL LIABILITY & FIRE INSURANCE COMPANY, who being duly sworn, says that his capacity is as designated above for such Companies; that he knows the corporate seals of the Companies; that the seals affixed to the foregoing instrument are such corporate seals; that they were affixed by order of the board of directors or other governing body of said Companies pursuant to its Bylaws, Resolutions and other Authorizations, and that he signed said instrument in that capacity of said Companies.
[Notary Seal]

JOHN C. SKINNER
Notary Public, Commonwealth of Massachusetts
My Commission Expires January 22, 2027

_____
Notary Public

I, Ralph Tortorella, the undersigned, Officer of **BERKSHIRE HATHAWAY SPECIALTY INSURANCE COMPANY, NATIONAL INDEMNITY COMPANY** and **NATIONAL LIABILITY & FIRE INSURANCE COMPANY**, do hereby certify that the above and foregoing is a true and correct copy of the Power of Attorney executed by said Companies which is in full force and effect and has not been revoked. IN TESTIMONY WHEREOF, see hereunto affixed the seals of said Companies this September 30, 2024.

_____
Ralph Tortorella, Officer

To verify the authenticity of this Power of Attorney please contact us at: BHSI Surety Department, Berkshire Hathaway Specialty Insurance Company, One Lincoln Street, 23rd Floor Boston, MA 02111 | (770) 625-2516 or by email at Jennifer.Porter@bhspecialty.com *THIS POWER OF ATTORNEY IS VOID IF ALTERED*

To notify us of a claim please contact us on our 24-hour toll free number at (855) 453-9675, via email at claimsnotice@bhspecialty.com, via fax to (617) 507-8259, or via mail.

BERKSHIRE HATHAWAY SPECIALTY INSURANCE COMPANY (BYLAWS)

ARTICLE V.

CORPORATE ACTIONS

. . . .

EXECUTION OF DOCUMENTS:

. . . .

Section 6.(b) The President, any Vice President or the Secretary, shall have the power and authority:

(1) To appoint Attorneys-in-fact, and to authorize them to execute on behalf of the Company bonds and other undertakings, and

(2) To remove at any time any such Attorney-in-fact and revoke the authority given him.

NATIONAL INDEMNITY COMPANY (BY-LAWS)

Section 4. Officers, Agents, and Employees:

A. The officers shall be a President, one or more Vice Presidents, a Secretary, one or more Assistant Secretaries, a Treasurer, and one or more Assistant Treasurers none of whom shall be required to be shareholders or Directors and each of whom shall be elected annually by the Board of Directors at each annual meeting to serve a term of office of one year or until a successor has been elected and qualified, may serve successive terms of office, may be removed from office at any time for or without cause by a vote of a majority of the Board of Directors, and shall have such powers and rights and be charged with such duties and obligations as usually are vested in and pertain to such office or as may be directed from time to time by the Board of Directors; and the Board of Directors or the officers may from time to time appoint, discharge, engage, or remove such agents and employees as may be appropriate, convenient, or necessary to the affairs and business of the corporation.

NATIONAL INDEMNITY COMPANY (BOARD RESOLUTION ADOPTED AUGUST 6, 2014)

RESOLVED, That the President, any Vice President or the Secretary, shall have the power and authority to (1) appoint Attorneys-in-fact, and to authorize them to execute on behalf of this Company bonds and other undertakings and (2) remove at any time any such Attorney-in-fact and revoke the authority given.

NATIONAL LIABILITY & FIRE INSURANCE COMPANY (BY-LAWS)

ARTICLE IV

Officers

Section 1. Officers, Agents and Employees:

A. The officers shall be a president, one or more vice presidents, one or more assistant vice presidents, a secretary, one or more assistant secretaries, a treasurer, and one or more assistant treasurers, none of whom shall be required to be shareholders or directors, and each of whom shall be elected annually by the board of directors at each annual meeting to serve a term of office of one year or until a successor has been elected and qualified, may serve successive terms of office, may be removed from office at any time for or without cause by a vote of a majority of the board of directors. The president and secretary shall be different individuals. Election or appointment of an officer or agent shall not create contract rights. The officers of the Corporation shall have such powers and rights and be charged with such duties and obligations as usually are vested in and pertain to such office or as may be directed from time to time by the board of directors; and the board of directors or the officers may from time to time appoint, discharge, engage, or remove such agents and employees as may be appropriate, convenient, or necessary to the affairs and business of the Corporation.

NATIONAL LIABILITY & FIRE INSURANCE COMPANY (BOARD RESOLUTION ADOPTED AUGUST 6, 2014)

RESOLVED, That the President, any Vice President or the Secretary, shall have the power and authority to (1) appoint Attorneys-in-fact, and to authorize them to execute on behalf of this Company bonds and other undertakings and (2) remove at any time any such Attorney-in-fact and revoke the authority given.

SECTION 00620
PAYMENT BOND

KNOW ALL MEN BY THESE PRESENTS That

WHEREAS, the City of Ontario (hereinafter designated as the "City"), by action taken or a resolution passed _____, 20____ has awarded to Sully-Miller Contracting Company hereinafter designated as the "Principal," a contract for the work described as follows:

GROVE AVE AT HOLT BLVD STREET AND TRUNK SEWER IMPROVEMENTS PROJECT-ST1511 AND UT1018 (the "Project"); and

WHEREAS, the work to be performed by the Principal is more particularly set forth in the Contract Documents for the Project dated _____ ("Contract Documents"), the terms and conditions of which are expressly incorporated by reference; and

WHEREAS, said Principal is required to furnish a bond in connection with said contract; providing that if said Principal or any of its Subcontractors shall fail to pay for any materials, provisions, provender, equipment, or other supplies used in, upon, for or about the performance of the work contracted to be done, or for any work or labor done thereon of any kind, or for amounts due under the Unemployment Insurance Code or for any amounts required to be deducted, withheld, and paid over to the Employment Development Department from the wages of employees of said Principal and its Subcontractors with respect to such work or labor the Surety on this bond will pay for the same to the extent hereinafter set forth.

NOW THEREFORE, we, the Principal and Liberty Mutual Insurance Company / Berkshire Hathaway Specialty Insurance Company as Surety, are held and firmly bound unto the City in the penal sum of Twenty Million Three Hundred Twenty-Three Thousand Eight Hundred Eighty-Eight and 00/100 Dollars ($ 20,323,888.00) lawful money of the United States of America, for the payment of which sum well and truly to be made, we bind ourselves, our heirs, executors, administrators, successors and assigns, jointly and severally, firmly by these presents.

THE CONDITION OF THIS OBLIGATION IS SUCH that if said Principal, his or its subcontractors, heirs, executors, administrators, successors or assigns, shall fail to pay any of the persons named in Section 9100 of the Civil Code, fail to pay for any materials, provisions or other supplies, used in, upon, for or about the performance of the work contracted to be done, or for any work or labor thereon of any kind, or amounts due under the Unemployment Insurance Code with respect to work or labor performed under the contract, or for any amounts required to be deducted, withheld, and paid over to the Employment Development Department or Franchise Tax Board from the wages of employees of the contractor and his subcontractors pursuant to Section 18663 of the Revenue and Taxation Code, with respect to such work and labor the Surety or Sureties will pay for the same, in an amount not exceeding the sum herein above specified.

This bond shall inure to the benefit of any of the persons named in Section 9100 of the Civil Code so as to give a right of action to such persons or their assigns in any suit brought upon this bond.

It is further stipulated and agreed that the Surety on this bond shall not be exonerated or released from the obligation of this bond by any change, extension of time for performance, addition, alteration or modification in, to, or of any contract, plans, specifications, or agreement pertaining or relating to any scheme or work of improvement herein above described, or pertaining or relating to the furnishing of labor, materials, or equipment therefore, nor by any change or modification of any terms of payment or extension of the time for any payment pertaining or

relating to any scheme or work of improvement herein above described, nor by any rescission or attempted rescission of the contract, agreement or bond, nor by any conditions precedent or subsequent in the bond attempting to limit the right of recovery of claimants otherwise entitled to recover under any such contract or agreement or under the bond, nor by any fraud practiced by any person other than the claimant seeking to recover on the bond and that this bond be construed most strongly against the Surety and in favor of all persons for whose benefit such bond is given, and under no circumstances shall Surety be released from liability to those for whose benefit such bond has been given, by reason of any breach of contract between the owner or City and original contractor or on the part of any obligee named in such bond, but the sole conditions of recovery shall be that claimant is a person described in Section 9100 of the Civil Code, and has not been paid the full amount of his claim and that Surety does hereby waive notice of any such change, extension of time, addition, alteration or modification herein mentioned and the provisions of sections 2819 and 2845 of the California Civil Code.

IN WITNESS WHEREOF, we have hereunto set our hands and seals this 30th day of September, 2024.

(Corporate Seal)

Sully-Miller Contracting Company
Contractor/Principal

By _____

Title JEFF GALTERIO, ASSISTANT SECRETARY

Liberty Mutual Insurance Company / Berkshire Hathaway Specialty Insurance Company

(Corporate Seal)

Surety

By _____
Attorney-in-Fact Michelle Anne McMahon

Title Attorney-In-Fact

Signatures of those signing for the Contractor and Surety must be notified and evidence of corporate authority attached. A Power-of-Attorney authorizing the person signing on behalf of the Surety to do so much be attached hereto.

NOTE: A copy of the Power-of-Attorney authorizing the person signing on behalf of the Surety to do so must be attached hereto.

Notary Acknowledgment

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

STATE OF CALIFORNIA
COUNTY OF **Orange**

On **October 2**, 20**24**, before me, **M. Sykes**, Notary Public, personally
Date — Name And Title Of Officer (e.g. "Jane Doe, Notary Public")
appeared **Jeff Galterio**, who proved to me on the basis of satisfactory
Name(s) of Signer(s)
evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

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

M. SYKES
COMM. #2380341
NOTARY PUBLIC • CALIFORNIA
ORANGE COUNTY
Comm. Expires Oct. 27, 2025

Place Notary Seal Above

WITNESS my hand and official seal.

M. Sykes

Signature of Notary Public

OPTIONAL

Though the information below is not required by law, it may prove valuable to persons relying on the document

and could prevent fraudulent removal and reattachment of this form to another document.

CAPACITY CLAIMED BY SIGNER

☐ Individual
☒ Corporate Officer
Assistant Secretary
Title(s)
☐ Partner(s) ☐ Limited ☐ General
☐ Attorney-In-Fact
☐ Trustee(s)
☐ Guardian/Conservator
☐ Other:
Signer is representing:
Name Of Person(s) Or Entity(ies)
Sully-Miller Contracting Company

DESCRIPTION OF ATTACHED DOCUMENT

Payment Bond - City of Ontario
Title or Type of Document
1
Number of Pages
October 2, 2024
Date of Document
None
Signer(s) Other Than Named Above

Notary Acknowledgment

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STATE OF ~~CALIFORNIA~~ Connecticut
COUNTY OF Hartford

On September 30, 2024, before me, Imani Schley, Notary Public, personally
(Date) (Name And Title Of Officer (e.g. "Jane Doe, Notary Public"))
appeared Michelle Anne McMahon, who proved to me on the basis of satisfactory
(Name(s) of Signer(s))
evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

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

IMANI SCHLEY
NOTARY PUBLIC - #192452
STATE OF CONNECTICUT
MY COMMISSION EXPIRES AUG. 31, 2029

Place Notary Seal Above

WITNESS my hand and official seal.

Signature of Notary Public Imani Schley

OPTIONAL

Though the information below is not required by law, it may prove valuable to persons relying on the document

and could prevent fraudulent removal and reattachment of this form to another document.

CAPACITY CLAIMED BY SIGNER

- ☐ Individual
- ☐ Corporate Officer

Title(s)

- ☐ Partner(s) ☐ Limited ☐ General
- ☒ Attorney-In-Fact
- ☐ Trustee(s)
- ☐ Guardian/Conservator
- ☐ Other:

Signer is representing:
Name Of Person(s) Or Entity(ies)

DESCRIPTION OF ATTACHED DOCUMENT

Title or Type of Document

Number of Pages

Date of Document

Signer(s) Other Than Named Above

This Power of Attorney limits the acts of those named herein, and they have no authority to bind the Company except in the manner and to the extent herein stated.

Liberty Mutual Insurance Company
The Ohio Casualty Insurance Company
West American Insurance Company

Certificate No: 8211476-985949

POWER OF ATTORNEY

KNOWN ALL PERSONS BY THESE PRESENTS: That The Ohio Casualty Insurance Company is a corporation duly organized under the laws of the State of New Hampshire, that Liberty Mutual Insurance Company is a corporation duly organized under the laws of the State of Massachusetts, and West American Insurance Company is a corporation duly organized under the laws of the State of Indiana (herein collectively called the "Companies"), pursuant to and by authority herein set forth, does hereby name, constitute and appoint, Danielle M. Bechard; Jonathan Gleason; Jennifer Godere; Richard Hackner; Michelle Anne McMahon; Nicholas Miller; Doritza Mojica; Sarah Murtha; Kathryn Pryor; Robyn Salley; Joshua Sanford; Gentry Stewart; Kyle Williams; Connor Wolpert

all of the city of Hartford state of CT each individually if there be more than one named, its true and lawful attorney-in-fact to make, execute, seal, acknowledge and deliver, for and on its behalf as surety and as its act and deed, including but not limited to consents of surety for the release of retained percentages and/or final estimates on construction contracts or similar authority requested by the Department of Transportation, State of Florida, and the execution of such undertakings, bonds, recognizances and other surety obligations, in pursuance of these presents and shall be as binding upon the Companies as if they have been duly signed by the president and attested by the secretary of the Companies in their own proper persons.

IN WITNESS WHEREOF, this Power of Attorney has been subscribed by an authorized officer or official of the Companies and the corporate seals of the Companies have been affixed thereto this 12th day of March, 2024.

Liberty Mutual Insurance Company
The Ohio Casualty Insurance Company
West American Insurance Company

By: _____
David M. Carey, Assistant Secretary

State of PENNSYLVANIA
County of MONTGOMERY ss

On this 12th day of March, 2024 before me personally appeared David M. Carey, who acknowledged himself to be the Assistant Secretary of Liberty Mutual Insurance Company, The Ohio Casualty Company, and West American Insurance Company, and that he, as such, being authorized so to do, execute the foregoing instrument for the purposes therein contained by signing on behalf of the corporations by himself as a duly authorized officer.

IN WITNESS WHEREOF, I have hereunto subscribed my name and affixed my notarial seal at Plymouth Meeting, Pennsylvania, on the day and year first above written.

Commonwealth of Pennsylvania - Notary Seal
Teresa Pastella, Notary Public
Montgomery County
My commission expires March 28, 2025
Commission number 1126044
Member, Pennsylvania Association of Notaries

By: _____
Teresa Pastella, Notary Public

This Power of Attorney is made and executed pursuant to and by authority of the following By-laws and Authorizations of The Ohio Casualty Insurance Company, Liberty Mutual Insurance Company, and West American Insurance Company which resolutions are now in full force and effect reading as follows:

ARTICLE IV – OFFICERS: Section 12. Power of Attorney.
Any officer or other official of the Corporation authorized for that purpose in writing by the Chairman or the President, and subject to such limitation as the Chairman or the President may prescribe, shall appoint such attorneys-in-fact, as may be necessary to act in behalf of the Corporation to make, execute, seal, acknowledge and deliver as surety any and all undertakings, bonds, recognizances and other surety obligations. Such attorneys-in-fact, subject to the limitations set forth in their respective powers of attorney, shall have full power to bind the Corporation by their signature and execution of any such instruments and to attach thereto the seal of the Corporation. When so executed, such instruments shall be as binding as if signed by the President and attested to by the Secretary. Any power or authority granted to any representative or attorney-in-fact under the provisions of this article may be revoked at any time by the Board, the Chairman, the President or by the officer or officers granting such power or authority.

ARTICLE XIII – Execution of Contracts: Section 5. Surety Bonds and Undertakings.
Any officer of the Company authorized for that purpose in writing by the chairman or the president, and subject to such limitations as the chairman or the president may prescribe, shall appoint such attorneys-in-fact, as may be necessary to act in behalf of the Company to make, execute, seal, acknowledge and deliver as surety any and all undertakings, bonds, recognizances and other surety obligations. Such attorneys-in-fact subject to the limitations set forth in their respective powers of attorney, shall have full power to bind the Company by their signature and execution of any such instruments and to attach thereto the seal of the Company. When so executed such instruments shall be as binding as if signed by the president and attested by the secretary.

Certificate of Designation – The President of the Company, acting pursuant to the Bylaws of the Company, authorizes David M. Carey, Assistant Secretary to appoint such attorneys-in-fact as may be necessary to act on behalf of the Company to make, execute, seal, acknowledge and deliver as surety any and all undertakings, bonds, recognizances and other surety obligations.

Authorization – By unanimous consent of the Company's Board of Directors, the Company consents that facsimile or mechanically reproduced signature of any assistant secretary of the Company, wherever appearing upon a certified copy of any power of attorney issued by the Company in connection with surety bonds, shall be valid and binding upon the Company with the same force and effect as though manually affixed.

I, Renee C. Llewellyn, the undersigned, Assistant Secretary, The Ohio Casualty Insurance Company, Liberty Mutual Insurance Company, and West American Insurance Company do hereby certify that the original power of attorney of which the foregoing is a full, true and correct copy of the Power of Attorney executed by said Companies, is in full force and effect and has not been revoked.

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed the seals of said Companies this 30th day of September, 2024.

By: _____
Renee C. Llewellyn, Assistant Secretary

Not valid for mortgage, note, loan, letter of credit, currency rate, interest rate or residual value guarantees.

For bond and/or Power of Attorney (POA) verification inquiries, please call 610-832-8240 or email HOSUR@libertymutual.com.

LMS-12881 LMIC OCIC WAIC Multi Co FLDOT 02/21

Berkshire Hathaway Specialty Insurance

Power Of Attorney

BERKSHIRE HATHAWAY SPECIALTY INSURANCE COMPANY
NATIONAL INDEMNITY COMPANY / NATIONAL LIABILITY & FIRE INSURANCE COMPANY

Know all men by these presents, that **BERKSHIRE HATHAWAY SPECIALTY INSURANCE COMPANY**, a corporation existing under and by virtue of the laws of the State of Nebraska and having an office at One Lincoln Street, 23rd Floor, Boston, Massachusetts 02111, **NATIONAL INDEMNITY COMPANY**, a corporation existing under and by virtue of the laws of the State of Nebraska and having an office at 3024 Harney Street, Omaha, Nebraska 68131 and **NATIONAL LIABILITY & FIRE INSURANCE COMPANY**, a corporation existing under and by virtue of the laws of the State of Connecticut and having an office at 100 First Stamford Place, Stamford, Connecticut 06902 (hereinafter collectively the "Companies"), pursuant to and by the authority granted as set forth herein, do hereby name, constitute and appoint: **Michelle Anne McMahon, Victoria M. Campbell, Wendy Lewis, 525 Market St, Suite 3400 of the city of San Francisco, State of California,** their true and lawful attorney(s)-in-fact to make, execute, seal, acknowledge, and deliver, for and on their behalf as surety and as their act and deed, any and all undertakings, bonds, or other such writings obligatory in the nature thereof, in pursuance of these presents, the execution of which shall be as binding upon the Companies as if it has been duly signed and executed by their regularly elected officers in their own proper persons. **This authority for the Attorney-in-Fact shall be limited to the execution of the attached bond(s) or other such writings obligatory in the nature thereof.**

In witness whereof, this Power of Attorney has been subscribed by an authorized officer of the Companies, and the corporate seals of the Companies have been affixed hereto this date of August 24, 2023. This Power of Attorney is made and executed pursuant to and by authority of the Bylaws, Resolutions of the Board of Directors, and other Authorizations of **BERKSHIRE HATHAWAY SPECIALTY INSURANCE COMPANY, NATIONAL INDEMNITY COMPANY** and **NATIONAL LIABILITY & FIRE INSURANCE COMPANY**, which are in full force and effect, each reading as appears on the back page of this Power of Attorney, respectively. **The following seals of the Companies and signatures by an authorized officer of the Company may be affixed by facsimile or digital format, which shall be deemed the equivalent of and constitute the written signature of such officer of the Companies and original seals of the Companies for all purposes regarding this Power of Attorney, including satisfaction of any signature and seal requirements on any and all undertakings, bonds, or other such writings obligatory in the nature thereof, to which this Power of Attorney applies.**

BERKSHIRE HATHAWAY SPECIALTY INSURANCE COMPANY,

By: _____
David Fields, Executive Vice President

NATIONAL INDEMNITY COMPANY, NATIONAL LIABILITY & FIRE INSURANCE COMPANY,

By: _____
David Fields, Vice President

NOTARY
State of Massachusetts, County of Suffolk, ss:
On this 24th day of August, 2023, before me appeared David Fields, Executive Vice President of BERKSHIRE HATHAWAY SPECIALTY INSURANCE COMPANY and Vice President of NATIONAL INDEMNITY COMPANY and NATIONAL LIABILITY & FIRE INSURANCE COMPANY, who being duly sworn, says that his capacity is as designated above for such Companies; that he knows the corporate seals of the Companies; that the seals affixed to the foregoing instrument are such corporate seals; that they were affixed by order of the board of directors or other governing body of said Companies pursuant to its Bylaws, Resolutions and other Authorizations, and that he signed said instrument in that capacity of said Companies.
[Notary Seal]

JOHN C. SKINNER
Notary Public, Commonwealth of Massachusetts
My Commission Expires January 22, 2027

_____
Notary Public

I, Ralph Tortorella, the undersigned, Officer of **BERKSHIRE HATHAWAY SPECIALTY INSURANCE COMPANY, NATIONAL INDEMNITY COMPANY** and **NATIONAL LIABILITY & FIRE INSURANCE COMPANY**, do hereby certify that the above and foregoing is a true and correct copy of the Power of Attorney executed by said Companies which is in full force and effect and has not been revoked. IN TESTIMONY WHEREOF, see hereunto affixed the seals of said Companies this September 30, 2024.

_____
Ralph Tortorella, Officer

To verify the authenticity of this Power of Attorney please contact us at: BHSI Surety Department, Berkshire Hathaway Specialty Insurance Company, One Lincoln Street, 23rd Floor Boston, MA 02111 | (770) 625-2516 or by email at Jennifer.Porter@bhspecialty.com *THIS POWER OF ATTORNEY IS VOID IF ALTERED*

To notify us of a claim please contact us on our 24-hour toll free number at (855) 453-9675, via email at claimsnotice@bhspecialty.com, via fax to (617) 507-8259, or via mail.

BERKSHIRE HATHAWAY SPECIALTY INSURANCE COMPANY (BYLAWS)

ARTICLE V.

CORPORATE ACTIONS

. . . .

EXECUTION OF DOCUMENTS:

. . . .

Section 6.(b) The President, any Vice President or the Secretary, shall have the power and authority:

(1) To appoint Attorneys-in-fact, and to authorize them to execute on behalf of the Company bonds and other undertakings, and

(2) To remove at any time any such Attorney-in-fact and revoke the authority given him.

NATIONAL INDEMNITY COMPANY (BY-LAWS)

Section 4. Officers, Agents, and Employees:

A. The officers shall be a President, one or more Vice Presidents, a Secretary, one or more Assistant Secretaries, a Treasurer, and one or more Assistant Treasurers none of whom shall be required to be shareholders or Directors and each of whom shall be elected annually by the Board of Directors at each annual meeting to serve a term of office of one year or until a successor has been elected and qualified, may serve successive terms of office, may be removed from office at any time for or without cause by a vote of a majority of the Board of Directors, and shall have such powers and rights and be charged with such duties and obligations as usually are vested in and pertain to such office or as may be directed from time to time by the Board of Directors; and the Board of Directors or the officers may from time to time appoint, discharge, engage, or remove such agents and employees as may be appropriate, convenient, or necessary to the affairs and business of the corporation.

NATIONAL INDEMNITY COMPANY (BOARD RESOLUTION ADOPTED AUGUST 6, 2014)

RESOLVED, That the President, any Vice President or the Secretary, shall have the power and authority to (1) appoint Attorneys-in-fact, and to authorize them to execute on behalf of this Company bonds and other undertakings and (2) remove at any time any such Attorney-in-fact and revoke the authority given.

NATIONAL LIABILITY & FIRE INSURANCE COMPANY (BY-LAWS)

ARTICLE IV

Officers

Section 1. Officers, Agents and Employees:

A. The officers shall be a president, one or more vice presidents, one or more assistant vice presidents, a secretary, one or more assistant secretaries, a treasurer, and one or more assistant treasurers, none of whom shall be required to be shareholders or directors, and each of whom shall be elected annually by the board of directors at each annual meeting to serve a term of office of one year or until a successor has been elected and qualified, may serve successive terms of office, may be removed from office at any time for or without cause by a vote of a majority of the board of directors. The president and secretary shall be different individuals. Election or appointment of an officer or agent shall not create contract rights. The officers of the Corporation shall have such powers and rights and be charged with such duties and obligations as usually are vested in and pertain to such office or as may be directed from time to time by the board of directors; and the board of directors or the officers may from time to time appoint, discharge, engage, or remove such agents and employees as may be appropriate, convenient, or necessary to the affairs and business of the Corporation.

NATIONAL LIABILITY & FIRE INSURANCE COMPANY (BOARD RESOLUTION ADOPTED AUGUST 6, 2014)

RESOLVED, That the President, any Vice President or the Secretary, shall have the power and authority to (1) appoint Attorneys-in-fact, and to authorize them to execute on behalf of this Company bonds and other undertakings and (2) remove at any time any such Attorney-in-fact and revoke the authority given.

CERTIFICATE OF INCUMBENCY AND RESOLUTION

I, Anthony L. Martino, II, do hereby certify that I am the Secretary of Sully-Miller Contracting Company, a Delaware corporation, and that as such I have access to and custody of the corporate records and minute books of said corporation.

And I do hereby further certify that the following persons are duly elected officers of said corporation.

TITLE	NAME
Chairman Of The Board	Marcus Leavitt
President	William Joseph Thomas Boyd
Vice President, CFO, Treasurer and Assistant Secretary	Jae Won
Vice President and Assistant Secretary	Scott Bottomley
Secretary	Anthony L. Martino, II
Assistant Secretary	Jeff Galterio
Assistant Secretary	Mark Pachura

I further certify that the following is a true and correct copy of a resolution duly adopted by the Board of Directors of said Company at a meeting held on December 14, 2023, and that this resolution has not been in any way rescinded, annulled, or revoked but the same is still in full force and effect:

BID TENDERS: GENERAL

RESOLVED, that any officer of the Corporation be and they hereby are authorized in the name and on behalf of the Corporation, under its corporate seal or otherwise (i) to prepare proposals and bids for the supplying of construction materials and the performance by itself or in joint venture, of work of whatsoever nature in connection with the construction or paving of highways, roads and airports and in connection with earthworks and civil engineering projects of all kinds, together with all work incidental thereto, (ii) to execute and submit any and all such proposals and bids to any governmental authority, instrumentality, or agency of the United States, its several states, territories and possessions, including without limitation, any municipality or other political or corporate subdivision thereof, and to any corporation, partnership, sole proprietorship, or other business entity, (iii) in connection with any such submission, to deliver bid deposits or bonds as may be required and (iv) to execute and deliver definitive agreements binding the Corporation to perform work in accordance with any proposals and bids authorized hereby.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the corporate seal this 8th day of April 2024.

By: _____

(SEAL)

Anthony L. Martino, II
Secretary
Sully-Miller Contracting Company
135 S. State College Blvd., Ste. 400
Brea, CA 92821

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

PAUL S. LEON
MAYOR

DEBRA PORADA
MAYOR PRO TEM

ALAN D. WAPNER
JIM W. BOWMAN
RUBEN VALENCIA
COUNCIL MEMBERS

SHEILA MAUTZ
CITY CLERK

JAMES R. MILHISER
TREASURER

SCOTT OCHOA
CITY MANAGER

CITY OF ONTARIO
PROFESSIONAL SERVICES AGREEMENT

1. PARTIES AND DATE.

This Agreement is made and entered as of _____, by and between the City of Ontario, a municipal corporation organized under the laws of the State of California with its principal place of business at 303 East "B" Street, Ontario, California 91764-4196, County of San Bernardino, State of California ("City") and **Stantec Consulting Services Inc.**, a **Corporation**, with its principal place of business at **38 Technology Drive, Irvine, CA 92618**("Consultant"). City and Consultant are sometimes individually referred to herein as "Party" and collectively as "Parties."

2. RECITALS.

2.1 Consultant.

Consultant desires to perform and assume responsibility for the provision of certain professional services required by the City on the terms and conditions set forth in this Agreement. Consultant represents that it is experienced in providing **Construction Engineering Services** to public clients, is licensed in the State of California, and is familiar with the plans of City.

2.2 Project.

City desires to engage Consultant to render such professional services for the **OMUC Contract No. UT 1018 Grove Avenue and Holt Boulevard Trunk Sewer Improvements Project** ("Project") as set forth in this Agreement.

3. TERMS.

3.1 Scope of Services and Term.

3.1.1 General Scope of Services. Consultant promises and agrees to furnish to the City all labor, materials, tools, equipment, services, and incidental and customary work necessary to fully and adequately supply the professional **Construction Engineering** consulting services necessary for the Project ("Services"). The Services are more particularly described in Exhibit "A" attached hereto and incorporated herein by reference. All Services shall be subject to, and performed in accordance with, this Agreement, the exhibits attached hereto and incorporated herein by reference, and all applicable local, state and federal laws, rules and

regulations.

3.1.2 Term. The term of this Agreement shall be from **October 15th, 2024 to October 15th, 2027**, unless earlier terminated as provided herein. Consultant shall complete the Services within the term of this Agreement, and shall meet any other established schedules and deadlines. The Parties may, by mutual, written consent, extend the term of this Agreement if necessary to complete the Services.

3.2 Compensation.

3.2.1 Compensation. Consultant shall receive compensation, including authorized reimbursements, for all Services rendered under this Agreement at the rates set forth in Exhibit "C" attached hereto and incorporated herein by reference. The total compensation shall not exceed **Two Hundred Twelve Thousand Nine Hundred** ($**212,900**) without written approval of the City Council or City Manager, as applicable. Extra Work may be authorized, as described below, and if authorized, will be compensated at the rates and manner set forth in this Agreement.

3.2.2 Payment of Compensation. Consultant shall submit to City a monthly invoice which indicates work completed and hours of Services rendered by Consultant. The invoice shall describe the amount of Services provided since the initial commencement date, or since the start of the subsequent billing periods, as appropriate, through the date of the invoice. City shall, within 30 days of receiving such invoice, review the invoice and pay all non-disputed and approved charges. If the City disputes any of Consultant's fees, the City shall give written notice to Consultant within thirty (30) days of receipt of an invoice of any disputed fees set forth therein. Payment shall not constitute acceptance of any Services completed by Consultant. The making of final payment shall not constitute a waiver of any claims by the City for any reason whatsoever.

3.2.3 Reimbursement for Expenses. Consultant shall not be reimbursed for any expenses unless authorized in writing by City, or included in Exhibit "C" of this Agreement.

3.2.4 Extra Work. At any time during the term of this Agreement, City may request that Consultant perform Extra Work. As used herein, "Extra Work" means any work which is determined by City to be necessary for the proper completion of the Project, but which the Parties did not reasonably anticipate would be necessary at the execution of this Agreement. Consultant shall not perform, nor be compensated for, Extra Work without written authorization from the City.

3.3 Responsibilities of Consultant.

3.3.1 Independent Contractor; Control and Payment of Subordinates. The Services shall be performed by Consultant or under its supervision. Consultant will determine the means, methods and details of performing the Services subject to the requirements of this Agreement. City retains Consultant on an independent contractor basis and not as an employee. Any personnel performing the Services on behalf of Consultant shall not be employees of City and shall at all times be under Consultant's exclusive direction and control. Neither City, or any of its officials, officers, directors, employees or agents shall have control over the conduct of Consultant or any of Consultants officers, employees or agents, except as set forth in this Agreement. Consultant shall pay all wages, salaries, and other amounts due such personnel in connection with their performance of Services under this Agreement and as required by law.

Consultant shall be responsible for all reports and obligations respecting such additional personnel, including, but not limited to: social security taxes, income tax withholding, unemployment insurance, disability insurance, and workers' compensation insurance.

3.3.2 Schedule of Services. Consultant shall perform the Services in a prompt and timely manner and in accordance with the Schedule of Services set forth in Exhibit "B" attached hereto and incorporated herein by reference. Consultant represents that it has the professional and technical personnel required to perform the Services expeditiously. Upon request of City, Consultant shall provide a more detailed schedule of anticipated performance to meet the Schedule of Services.

3.3.3 Conformance to Applicable Requirements. All work prepared by Consultant shall be subject to the approval of City.

3.3.4 Substitution of Key Personnel. Consultant has represented to City that certain key personnel will perform and coordinate the Services under this Agreement. Should one or more of such personnel become unavailable, Consultant may substitute other personnel of at least equal competence upon written approval of City. In the event that City and Consultant cannot agree as to the substitution of key personnel, City shall be entitled to terminate this Agreement for cause. The key personnel for performance of this Agreement are as follows: **Jeff Dunn PE**.

3.3.5 City's Representative. The City hereby designates **Dennis Mejia, PE, Utilities Engineering Division Manager**, or his/her designee, to act as its representative in all matters pertaining to the administration and performance of this Agreement ("City's Representative"). City's Representative shall have the power to act on behalf of the City for review and approval of all products submitted by Consultant but not the authority to enlarge the Scope of Services or change the total compensation due to Consultant under this Agreement. The City Manager shall be authorized to act on City's behalf and to execute all necessary documents which enlarge the Scope of Services or change the Consultant's total compensation subject to the provisions contained in this Agreement. Consultant shall not accept direction or orders from any person other than the City Manager, City's Representative or his/her designee.

3.3.6 Consultant's Representative. Consultant hereby designates **Jeff Dunn (License No.C58455)**, or his/her designee, to act as its representative for the performance of this Agreement ("Consultant's Representative"). Consultant's Representative shall have full authority to represent and act on behalf of the Consultant for all purposes under this Agreement. The Consultant's Representative shall supervise and direct the Services, using his/her best skill and attention, and shall be responsible for all means, methods, techniques, sequences, and procedures and for the satisfactory coordination of all portions of the Services under this Agreement.

3.3.7 Coordination of Services. Consultant agrees to work closely with City staff in the performance of Services and shall be available to City's staff, consultants and other staff at all reasonable times.

3.3.8 Standard of Care; Performance of Employees. Consultant shall perform all Services under this Agreement in a skillful and competent manner, consistent with the standards generally recognized as being employed by professionals in the same discipline in the State of California. Consultant represents and maintains that it is skilled in the professional calling

necessary to perform the Services. Consultant warrants that all employees and subconsultants shall have sufficient skill and experience to perform the Services assigned to them. Consultant represents that it, its employees and subconsultants have all licenses, permits, qualifications and approvals of whatever nature that are legally required to perform the Services, and that such licenses and approvals shall be maintained throughout the term of this Agreement. Consultant shall perform, at its own cost and expense and without reimbursement from the City, any services necessary to correct errors or omissions which are caused by the Consultant's failure to comply with the standard of care provided for herein. Any employee of the Consultant or its subconsultants who is determined by the City to be uncooperative, incompetent, a threat to the adequate or timely completion of the Project, a threat to the safety of persons or property, or any employee who fails or refuses to perform the Services in a manner acceptable to the City, shall be promptly removed from the Project by the Consultant and shall not be re-employed to perform any of the Services or to work on the Project.

3.3.9 Period of Performance.

3.3.9.1 Consultant shall perform and complete all Services under this Agreement within the term set forth in Section 3.1.2 above ("Performance Time"). Consultant shall also perform the Services in strict accordance with any completion schedule or Project milestones described in Exhibits "A" or "B" attached hereto, or which may be separately agreed upon in writing by the City and Consultant ("Performance Milestones"). Consultant agrees that if the Services are not completed within the aforementioned Performance Time and/or pursuant to any such Performance Milestones developed pursuant to provisions of this Agreement, it is understood, acknowledged and agreed that the City will suffer damage.

3.3.9.2 Neither City nor Consultant shall be considered in default of this Agreement for delays in performance caused by circumstances beyond the reasonable control of the non-performing Party. For purposes of this Agreement, such circumstances include a Force Majeure Event. A Force Majeure Event shall mean an event that materially affects a Party's performance and is one or more of the following: (1) Acts of God or other natural disasters; (2) terrorism or other acts of a public enemy; (3) orders of governmental authorities (including, without limitation, unreasonable and unforeseeable delay in the issuance of permits or approvals by governmental authorities that are required for the services); (4) strikes and other organized labor action occurring at the site and the effects thereof on the services, only to the extent such strikes and other organized labor action are beyond the control of Consultant and its subcontractors, and to the extent the effects thereof cannot be avoided by use of replacement workers; and (5) pandemics, epidemics or quarantine restrictions. For purposes of this section, "orders of governmental authorities," includes ordinances, emergency proclamations and orders, rules to protect the public health, welfare and safety, and other actions of a public agency applicable to the services and Agreement.

3.3.9.3 Should a Force Majeure Event occur, the non-performing Party shall, within a reasonable time of being prevented from performing, give written notice to the other Party describing the circumstances preventing continued performance and the efforts being made to resume performance of this Agreement. Force Majeure Events and/or delays, regardless of the Party responsible for the delay, shall not entitle Consultant to any additional compensation. Notwithstanding the foregoing in this section, the City may still terminate this Agreement in accordance with the termination provisions of this Agreement.

3.3.10 Laws and Regulations; Employee/Labor Certification.

3.3.10.1 Compliance with Laws. Consultant shall keep itself fully informed of and in compliance with all local, state and federal laws, rules and regulations in any manner affecting the performance of the Project or the Services, including all Cal/OSHA requirements, and shall give all notices required by law. Consultant shall be liable for all violations of such laws and regulations in connection with the Services and this Agreement. All violations of such laws and regulations shall be grounds for the City to terminate the Agreement for cause.

3.3.10.2 Employment Eligibility; Consultant. Consultant certifies that it fully complies with all requirements and restrictions of state and federal law respecting the employment of undocumented aliens, including, but not limited to, the Immigration Reform and Control Act of 1986, as may be amended from time to time and shall require all subconsultants and sub-subconsultants to comply with the same. Consultant certifies that it has not committed a violation of any such law within the five (5) years immediately preceding the date of execution of this Agreement, and shall not violate any such law at any time during the term of the Agreement.

3.3.10.3 Equal Opportunity Employment. Consultant represents that it is an equal opportunity employer and it shall not discriminate against any subconsultant, employee or applicant for employment because of race, religion, color, national origin, handicap, ancestry, sex or age. Such non-discrimination shall include, but not be limited to, all activities related to initial employment, upgrading, demotion, transfer, recruitment or recruitment advertising, layoff or termination. Consultant shall also comply with all relevant provisions of City's Minority Business Enterprise program, Affirmative Action Plan or other related programs or guidelines currently in effect or hereinafter enacted.

3.3.10.4 Air Quality. To the extent applicable, Consultant must fully comply with all applicable laws, rules and regulations in furnishing or using equipment and/or providing services, including, but not limited to, emissions limits and permitting requirements imposed by the South Coast Air Quality Management District (SCAQMD) and/or California Air Resources Board (CARB). Consultant shall indemnify City against any fines or penalties imposed by SCAQMD, CARB, or any other governmental or regulatory agency for violations of applicable laws, rules and/or regulations by Consultant, its subconsultants, or others for whom Consultant is responsible under its indemnity obligations provided for in this Agreement.

3.3.10.5 Water Quality Management and Compliance. Consultant shall keep itself and all subcontractors, staff, and employees fully informed of and in compliance with all local, state and federal laws, rules and regulations that may impact, or be implicated by the performance of the Services including, without limitation, all applicable provisions of the City's ordinances regulating water quality and storm water; the Federal Water Pollution Control Act (33 U.S.C. § 1251, *et seq.*); the California Porter-Cologne Water Quality Control Act (Water Code § 13000 *et seq*.); and any and all regulations, policies, or permits issued pursuant to any such authority. Consultant must additionally comply with the lawful requirements of the City, and any other municipality, drainage district, or other local agency with jurisdiction over the location where the Services are to be conducted, regulating water quality and storm water discharges. City may seek damages from Consultant for delay in completing the Services caused by Consultant's failure to comply with the laws, regulations and policies described in this Section, or any other relevant water quality law, regulation, or policy.

3.3.10.6 Safety. Consultant shall execute and maintain its work so as to avoid injury or damage to any person or property. In carrying out its Services, the Consultant shall at all times be in compliance with all applicable local, state and federal laws, rules and

regulations, and shall exercise all necessary precautions for the safety of employees appropriate to the nature of the work and the conditions under which the work is to be performed.

3.3.11 Insurance.

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

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

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

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

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

(D) Professional Liability (Errors & Omissions): Professional Liability insurance or Errors & Omissions insurance appropriate to Consultant’s profession with limits of not less than $2,000,000. Covered professional services shall specifically include all work to be performed under the Agreement and delete any exclusions that may potentially affect the work to be performed (for example, any exclusions relating to lead, asbestos, pollution, testing, underground storage tanks, laboratory analysis, soil work, etc.). If coverage is written on a claims-made basis, the retroactive date shall precede the effective date of the initial Agreement and continuous coverage will be maintained or an extended reporting period will be exercised for a period of at least five (5) years from termination or expiration of this Agreement.

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

(A) Commercial General Liability: (1) Additional Insured: The City, its officials, officers, employees, agents, and volunteers shall be additional insureds with regard to liability and defense of suits or claims arising out of the performance of the Agreement. Additional Insured Endorsements shall not (1) be restricted to "ongoing operations"; (2) exclude "contractual liability"; (3) restrict coverage to "sole" liability of Consultant; or (4) contain any other exclusions contrary to the terms or purposes of this Agreement. For all policies of Commercial General Liability insurance, Consultant shall provide endorsements in the form of ISO CG 20 10 10 01 and 20 37 10 01 (or endorsements providing the exact same coverage) to effectuate this requirement. (2) Cancellation: Required insurance policies shall not be canceled or the coverage reduced until a thirty (30) day written notice of cancellation has been served upon the City except ten (10) days shall be allowed for non-payment of premium.

(B) Automobile Liability: (1) Additional Insured: The City, its directors, officials, officers, employees, agents, and volunteers shall be covered as additional insureds with respect to the ownership, operation, maintenance, use, loading or unloading of any auto owned, leased, hired or borrowed by the Vendor or for which the Vendor is responsible. (2) Cancellation: Required insurance policies shall not be canceled or the coverage reduced until a thirty (30) day written notice of cancellation has been served upon the City except ten (10) days shall be allowed for non-payment of premium.

(C) Professional Liability (Errors & Omissions): 1) Cancellation: Required insurance policies shall not be canceled or the coverage reduced until a thirty (30) day written notice of cancellation has been served upon the City except ten (10) days shall be allowed for non-payment of premium. (2) This insurance shall be written on a policy form coverage specifically designed to protect against acts, errors or omissions of the Consultant. “Covered Professional Services” as designated in the policy must specifically include work performed under this Agreement. The policy must “pay on behalf of” the insured and include a provision establishing the insurer’s duty to defend.

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

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

3.3.11.5 Waiver of Subrogation. All required insurance coverages, except for the professional liability coverage, shall contain or be endorsed to waiver of subrogation in favor of the City, its officials, officers, employees, agents, and volunteers or shall specifically allow Consultant or others providing insurance evidence in compliance with these specifications

to waive their right of recovery prior to a loss. Consultant hereby waives its own right of recovery against City, and shall require similar written express waivers and insurance clauses from each of its subconsultants.

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

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

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

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

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

3.3.11.11 Additional Insurance Provisions

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

(B) If at any time during the life of the Agreement, any policy of insurance required under this Agreement does not comply with these specifications or is canceled

and not replaced, City has the right but not the duty to obtain the insurance it deems necessary and any premium paid by City will be promptly reimbursed by Consultant or City will withhold amounts sufficient to pay premium from Consultant payments. In the alternative, City may cancel this Agreement.

(C) The City may require the Consultant to provide complete copies of all insurance policies in effect for the duration of the Project.

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

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

(F) Consultant shall report to the City, in addition to Consultant's insurer, any and all insurance claims submitted by Consultant in connection with the Services under this Agreement.

3.3.11.12 Insurance for Subconsultants. Consultant shall include all subconsultants engaged in any work for Consultant relating to this Agreement as additional insureds under the Consultant's policies, or the Consultant shall be responsible for causing subconsultants to purchase the appropriate insurance in compliance with the terms of these Insurance Requirements, including adding the City, its officials, officers, employees, agents, and volunteers as additional insureds to the subconsultant's policies. All policies of Commercial General Liability insurance provided by Consultant's subconsultants performing work relating to this Agreement shall be endorsed to name the City, its officials, officers, employees, agents and volunteers as additional insureds using endorsement form ISO CG 20 38 04 13 or an endorsement providing equivalent coverage. Consultant shall not allow any subconsultant to commence work on any subcontract relating to this Agreement until it has received satisfactory evidence of subconsultant's compliance with all insurance requirements under this Agreement, to the extent applicable. The Consultant shall provide satisfactory evidence of compliance with this section upon request of the City.

3.4 Labor Code Requirements.

3.4.1 Prevailing Wages. Consultant is aware of the requirements of California Labor Code Section 1720, et seq., and 1770, et seq., as well as California Code of Regulations, Title 8, Section 16000, et seq., ("Prevailing Wage Laws"), which require the payment of prevailing wage rates and the performance of other requirements on "public works" and "maintenance" projects. If the Services are being performed as part of an applicable "public works" or "maintenance" project, as defined by the Prevailing Wage Laws, and if the total compensation is $1,000 or more, Consultant agrees to fully comply with such Prevailing Wage Laws. City shall provide Consultant with a copy of the prevailing rates of per diem wages in effect at the commencement of this Agreement. Consultant shall make copies of the prevailing rates of per diem wages for each craft, classification or type of worker needed to execute the Services

available to interested parties upon request, and shall post copies at the Consultant's principal place of business and at the project site. It is the intent of the parties to effectuate the requirements of sections 1771, 1774, 1775, 1776, 1777.5, 1813, and 1815 of the Labor Code within this Agreement, and Consultant shall therefore comply with such Labor Code sections to the fullest extent required by law. Consultant shall defend, indemnify and hold the City, its officials, officers, employees, agents, and volunteers free and harmless from any claim or liability arising out of any failure or alleged failure to comply with the Prevailing Wage Laws.

3.4.2 Registration/DIR Compliance. If the Services are being performed on a public works project of over $25,000 when the project is for construction, alteration, demolition, installation, or repair work, or a public works project of over $15,000 when the project is for maintenance work, in addition to the foregoing, then pursuant to Labor Code sections 1725.5 and 1771.1, the Consultant and all subconsultants must be registered with the Department of Industrial Relations ("DIR"). Consultant shall maintain registration for the duration of the Project and require the same of any subconsultants.

3.4.3 Compliance Monitoring. This Project may also be subject to compliance monitoring and enforcement by the DIR. It shall be Consultant's sole responsibility to comply with all applicable registration and labor compliance requirements, including the submission of payroll records directly to the DIR. Any stop orders issued by the DIR against Consultant or any subconsultant that affect Consultant's performance of services, including any delay, shall be Consultant's sole responsibility. Any delay arising out of or resulting from such stop orders shall be considered Consultant caused delay and shall not be compensable by the City. Consultant shall defend, indemnify and hold the City, its officials, officers, employees and agents free and harmless from any claim or liability arising out of stop orders issued by the DIR against Consultant or any subconsultant.

3.4.4 Labor Certification. By its signature hereunder, Consultant certifies that it is aware of the provisions of Section 3700 of the California Labor Code which require every employer to be insured against liability for Worker's Compensation or to undertake self-insurance in accordance with the provisions of that Code, and agrees to comply with such provisions before commencing the performance of the Services.

3.5 Termination of Agreement.

3.5.1.1 Grounds for Termination. City may, by written notice to Consultant, terminate the whole or any part of this Agreement at any time and without cause by giving written notice to Consultant of such termination, and specifying the effective date thereof, at least seven (7) days before the effective date of such termination. Upon termination, Consultant shall be compensated only for those Services which have been adequately rendered to City, and Consultant shall be entitled to no further compensation. Consultant may not terminate this Agreement except for cause. The rights and remedies of the City provided in this section shall not be exclusive and are in addition to any other rights and remedies provided by law, equity or under this Agreement.

3.5.1.2 Effect of Termination. If this Agreement is terminated as provided herein, City may require Consultant to provide all finished or unfinished Documents and Data and other information of any kind prepared by Consultant in connection with the performance of Services under this Agreement. Consultant shall be required to provide such document and other information within fifteen (15) days of the request.

3.5.1.3 Additional Services. In the event this Agreement is terminated in whole or in part as provided herein, City may procure, upon such terms and in such manner as it may determine appropriate, services similar to those terminated.

3.6 Indemnification.

3.6.1 To the fullest extent permitted by law, Consultant shall defend (with counsel of City's choosing), indemnify and hold the City, its officials, officers, employees, volunteers, and agents free and harmless from any and all claims, demands, causes of action, costs, expenses, liability, loss, damage or injury of any kind, in law or equity, to property or persons, including wrongful death, in any manner arising out of, pertaining to, or incident to any acts, errors or omissions, or willful misconduct of Consultant, its officials, officers, employees, subcontractors, consultants or agents in connection with the performance of the Consultant's Services, the Project or this Agreement, including without limitation the payment of all damages, expert witness fees and attorney's fees and other related costs and expenses except such loss or damage caused by the sole negligence or willful misconduct of the City. Consultant's obligation to indemnify shall survive expiration or termination of this Agreement and shall not be restricted to insurance proceeds, if any, received by Consultant, the City, its officials, officers, employees, agents, or volunteers.

3.6.2 If Consultant's obligation to defend, indemnify, and/or hold harmless arises out of Consultant's performance as a "design professional" (as that term is defined under Civil Code section 2782.8), then, and only to the extent required by Civil Code section 2782.8, which is fully incorporated herein, Consultant's indemnification obligation shall be limited to claims that arise out of, pertain to, or relate to the negligence, recklessness, or willful misconduct of the Consultant, and, upon Consultant obtaining a final adjudication by a court of competent jurisdiction, Consultant's liability for such claim, including the cost to defend, shall not exceed the Consultant's proportionate percentage of fault.

3.7 General Provisions.

3.7.1 Accounting Records. Consultant shall maintain complete and accurate records with respect to all costs and expenses incurred under this Agreement. All such records shall be clearly identifiable. Consultant shall allow a representative of City during normal business hours to examine, audit, and make transcripts or copies of such records and any other documents created pursuant to this Agreement. Consultant shall allow inspection of all work, data, documents, proceedings, and activities related to the Agreement for a period of three (3) years from the date of final payment under this Agreement.

3.7.2 Independent Contractors and Subcontracting.

3.7.2.1 Use of Consultants. Consultant is aware of statutory and case law regarding classification of workers as independent contractors, including California Labor Code Section 2750.3 and Dynamex Operations West, Inc. v. Superior Court, 4 Cal. 5th 903 (2018). To ensure that Consultant is in compliance with the California Labor Code, Consultant shall only utilize its employees to provide the Services. Consultant may not provide the services through any independent contractor, subcontractor or subconsultant ("Subcontractor(s)") unless approved by the City as set forth in Section 3.7.2.2 below. Consultant represents and warrants that all personnel who perform the Services on Consultant's behalf are Consultant's employees, and that Consultant complies with all applicable laws, rules and regulations governing its

employees, including, but not limited to, the California Labor Code, Unemployment Insurance Code and all applicable Industrial Welfare Commission Wage Orders.

3.7.2.2 Prior Approval Required. Consultant shall not use any Subcontractor to provide the Services, or any portion of the work required by this Agreement, without prior written approval of City. In the event that City authorizes Consultant to use a Subcontractor, Consultant shall enter into a written agreement with the Subcontractor, which must include all provisions of the Agreement, including a restriction on the Subcontractor's use of further independent contractors, subcontractors or subconsultants without the City's prior written consent.

3.7.3 Delivery of Notices. All notices permitted or required under this Agreement shall be given to the respective parties at the following address, or at such other address as the respective parties may provide in writing for this purpose:

Consultant: **Stantec Consulting Services Inc.**
38 Technology Drive Suite 200,
Irvine CA 92618
ATTN: **Jeff Dunn**

City: City of Ontario
303 East "B" Street
Ontario, CA 91764
ATTN: **Dennis Mejia, P.E., Utilities Engineering Division Manager, OMUC**

Such notice shall be deemed made when personally delivered or when mailed, forty-eight (48) hours after deposit in the U.S. Mail, first class postage prepaid and addressed to the party at its applicable address. Actual notice shall be deemed adequate notice on the date actual notice occurred, regardless of the method of service.

3.7.4 Ownership of Materials and Confidentiality.

3.7.4.1 Documents & Data; Licensing of Intellectual Property. This Agreement creates a non-exclusive and perpetual license for City to copy, use, modify, reuse, or sublicense any and all copyrights, designs, and other intellectual property embodied in plans, specifications, studies, drawings, estimates, and other documents or works of authorship fixed in any tangible medium of expression, including but not limited to, physical drawings or data magnetically or otherwise recorded on computer diskettes, which are prepared or caused to be prepared by Consultant under this Agreement ("Documents & Data"). All Documents & Data shall be and remain the property of City, and shall not be used in whole or in substantial part by Consultant on other projects without the City's express written permission. Within thirty (30) days following the completion, suspension, abandonment or termination of this Agreement, Consultant shall provide to City reproducible copies of all Documents & Data, in a form and amount required by City. City reserves the right to select the method of document reproduction and to establish where the reproduction will be accomplished. The reproduction expense shall be borne by City at the actual cost of duplication. In the event of a dispute regarding the amount of compensation to which the Consultant is entitled under the termination provisions of this Agreement, Consultant shall provide all Documents & Data to City upon payment of the undisputed amount. Consultant shall have no right to retain or fail to provide to City any such documents pending resolution of

the dispute. In addition, Consultant shall retain copies of all Documents & Data on file for a minimum of fifteen (15) years following completion of the Project, and shall make copies available to City upon the payment of actual reasonable duplication costs. Before destroying the Documents & Data following this retention period, Consultant shall make a reasonable effort to notify City and provide City with the opportunity to obtain the documents.

3.7.4.2 Subconsultants. Consultant shall require all subconsultants to agree in writing that City is granted a non-exclusive and perpetual license for any Documents & Data the subconsultant prepares under this Agreement. Consultant represents and warrants that Consultant has the legal right to license any and all Documents & Data. Consultant makes no such representation and warranty in regard to Documents & Data which were prepared by design professionals other than Consultant or its subconsultants, or those provided to Consultant by the City.

3.7.4.3 Right to Use. City shall not be limited in any way in its use or reuse of the Documents and Data or any part of them at any time for purposes of this Project or another project, provided that any such use not within the purposes intended by this Agreement or on a project other than this Project without employing the services of Consultant shall be at City's sole risk. If City uses or reuses the Documents & Data on any project other than this Project, it shall remove the Consultant's seal from the Documents & Data and indemnify and hold harmless Consultant and its officers, directors, agents and employees from claims arising out of the negligent use or re-use of the Documents & Data on such other project. Consultant shall be responsible and liable for its Documents & Data, pursuant to the terms of this Agreement, only with respect to the condition of the Documents & Data at the time they are provided to the City upon completion, suspension, abandonment or termination. Consultant shall not be responsible or liable for any revisions to the Documents & Data made by any party other than Consultant, a party for whom the Consultant is legally responsible or liable, or anyone approved by the Consultant.

3.7.4.4 Indemnification. Consultant shall defend, indemnify and hold the City, its directors, officials, officers, employees, volunteers and agents free and harmless, pursuant to the indemnification provisions of this Agreement, for any alleged infringement of any patent, copyright, trade secret, trade name, trademark, or any other proprietary right of any person or entity in consequence of the use on the Project by City of the Documents & Data, including any method, process, product, or concept specified or depicted.

3.7.4.5 Confidentiality. All ideas, memoranda, specifications, plans, procedures, drawings, descriptions, computer program data, input record data, written information, and other Documents & Data either created by or provided to Consultant in connection with the performance of this Agreement shall be held confidential by Consultant. Such materials shall not, without the prior written consent of City, be used by Consultant for any purposes other than the performance of the Services. Nor shall such materials be disclosed to any person or entity not connected with the performance of the Services or the Project. Nothing furnished to Consultant which is otherwise known to Consultant or is generally known, or has become known, to the related industry shall be deemed confidential. Consultant shall not use City's name or insignia, photographs of the Project, or any publicity pertaining to the Services or the Project in any magazine, trade paper, newspaper, television or radio production or other similar medium without the prior written consent of City.

3.7.4.6 Confidential Information. The City shall refrain from releasing Consultant's proprietary information ("Proprietary Information") unless the City's legal counsel determines that the release of the Proprietary Information is required by the California Public Records Act or other applicable state or federal law, or order of a court of competent jurisdiction, in which case the City shall notify Consultant of its intention to release Proprietary Information. Consultant shall have five (5) working days after receipt of the release notice to give City written notice of Consultant's objection to the City's release of Proprietary Information. Consultant shall indemnify, defend and hold harmless the City, and its officers, directors, employees, and agents from and against all liability, loss, cost or expense (including attorney's fees) arising out of a legal action brought to compel the release of Proprietary Information. City shall not release the Proprietary Information after receipt of an objection notice unless either: (1) Consultant fails to fully indemnify, defend (with City's choice of legal counsel), and hold City harmless from any legal action brought to compel such release; and/or (2) a final and non-appealable order by a court of competent jurisdiction requires that City release such information.

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

3.7.6 Entire Agreement. This Agreement contains the entire agreement of the Parties with respect to the subject matter hereof, and supersedes all prior negotiations, understandings or agreements.

3.7.7 Attorneys' Fees. If either party commences an action against the other party, either legal, administrative or otherwise, arising out of or in connection with this Agreement, the prevailing party in such litigation shall be entitled to have and recover from the losing party reasonable attorneys' fees and all costs of such action.

3.7.8 Governing Law. This Agreement shall be governed by the laws of the State of California. Venue shall be in San Bernardino County. In addition to any and all contract requirements pertaining to notices of and requests for compensation or payment for extra work, disputed work, claims and/or changed conditions, Consultant must comply with the claim procedures set forth in Government Code sections 900 et seq. prior to filing any lawsuit against the City. Such Government Code claims and any subsequent lawsuit based upon the Government Code claims shall be limited to those matters that remain unresolved after all procedures pertaining to extra work, disputed work, claims, and/or changed conditions have been followed by Consultant. If no such Government Code claim is submitted, or if any prerequisite contractual requirements are not otherwise satisfied as specified herein, Consultant shall be barred from bringing and maintaining a valid lawsuit against the City.

3.7.9 Time of Essence. Time is of the essence for each and every provision of this Agreement.

3.7.10 City's Right to Employ Other Consultants. City reserves right to employ other consultants in connection with this Project.

3.7.11 Successors and Assigns. This Agreement shall be binding on the successors and assigns of the parties.

3.7.12 Assignment or Transfer. Consultant shall not assign, sublet, or transfer this

Agreement or any rights under or interest in this Agreement without the written consent of the City, which may be withheld for any reason. Any attempt to so assign or so transfer without such consent shall be void and without legal effect and shall constitute grounds for termination. Consultant shall not subcontract any portion of the Services required by this Agreement, except as expressly stated herein, without prior written approval of City. Subcontracts, if any, shall contain a provision making them subject to all provisions stipulated in this Agreement.

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

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

3.7.15 Waiver. No waiver of any default shall constitute a waiver of any other default or breach, whether of the same or other covenant or condition. No waiver, benefit, privilege, or service voluntarily given or performed by a Party shall give the other Party any contractual rights by custom, estoppel, or otherwise.

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

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

3.7.18 Prohibited Interests. Consultant maintains and warrants that it has not employed nor retained any company or person, other than a bona fide employee working solely for Consultant, to solicit or secure this Agreement. Consultant warrants that it has not paid nor has it agreed to pay any company or person, other than a bona fide employee working solely for Consultant, any fee, commission, percentage, brokerage fee, gift or other consideration contingent upon or resulting from the award or making of this Agreement. Consultant further agrees to file, or shall cause its employees or subconsultants to file, a Statement of Economic Interest with the City's Filing Officer as required under state law in the performance of the Services. For breach or violation of this warranty, City shall have the right to rescind this Agreement without liability. For the term of this Agreement, no member, officer or employee of City, during the term of his or her service with City, shall have any direct interest in this Agreement, or obtain any present or anticipated material benefit arising therefrom.

3.7.19 Authority to Enter Agreement. Consultant has all requisite power and authority to conduct its business and to execute, deliver, and perform the Agreement. Each Party warrants that the individuals who have signed this Agreement have the legal power, right, and authority to make this Agreement and bind each respective Party.

3.7.20 Counterparts. This Agreement may be signed in counterparts, each of which shall constitute an original.

3.7.21 Survival. All rights and obligations hereunder that by their nature are to continue after any expiration or termination of this Agreement, including, but not limited to, the indemnification obligations, shall survive any such expiration or termination.

SIGNATURES ON NEXT PAGE

SIGNATURE PAGE TO PROFESSIONAL SERVICES AGREEMENT
BETWEEN THE CITY OF ONTARIO AND
Stantec Consulting Services Inc.

IN WITNESS WHEREOF, each of the Parties has caused this Agreement to be executed on the day and year first above written.

CITY OF ONTARIO

Approved By:

_____
Scott Ochoa
City Manager

Approved as to Form:

_____
Best Best & Krieger LLP
City Attorney

Attested By:

_____
City Clerk

Stantec Consulting Services Inc.

By: _____

Its: _____

Printed Name: _____

By: _____

Its: _____

Printed Name: _____

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

EXHIBIT "A"

SCOPE OF SERVICES

Construction Engineering Services
for
OMUC Project No. UT 1018,
Grove Avenue and Holt Boulevard Trunk Sewer Improvements Project

Consultant's proposal will be incorporated as part of the Professional Services Agreement, attached herein as Attachment "1". Consultant will be responsible for providing Scope of Services for the OMUC Project No. UT 1018, Grove Avenue and Holt Boulevard Trunk Sewer Improvements Project.

General Project Description:

The City of Ontario's Municipal Utilities Company (OMUC) is implementing a sewer system capital improvements project on Grove Avenue from Airport Drive to Holt Boulevard and Holt Boulevard from Grove Avenue to 500 feet East of Grove Avenue. To mitigate existing deficiencies in the sewer system in the area.

The work consists of the installation of approximately 411 linear feet of 20-inch Ductile Iron Class 350 with Protecto 401 Ceramic Epoxy Lining Sewer Main, 176 linear feet of 21-inch Extra Strength VCP Sewer Main, 18 linear feet of 15-inch Extra Strength VCP Sewer Main, and trenchless installation of approximately 1,016 linear feet of 48-inch steel casing pipe by pipe jacking method with 21-inch Vitrified Clay Jaking Pipe inside casing pipe, and construction of new sewer manholes. The work under this contract also consists of connection to the existing 21-inch VCP sewer at Airport Drive and connections to the existing 12-inch sewer and the existing IEUA manhole and 36-inch sewer both connections at Grove Ave and Holt Blvd Intersection, removing and abandoning of small portion of existing 12-inch sewer and modifying the existing manhole, bypass of sewer flows, implementation of traffic control during construction, concrete and asphalt concrete pavement repair and street restoration.

The Contractor will furnish all transportation, materials, tools, time, equipment, labor, and supplies to complete the improvements, together with the appurtenant work necessary or incidental to complete, in a workmanlike manner, the improvements as contemplated and as intended by the Plans and these Technical Specifications.

All work will be performed during the day between the hours of 7:00 am to 4:00 pm.

The contract time for the Project is Three Hundred and Eighty (380) calendar days.

The Project will close bids on September 20, 2024, and the Construction Contract is anticipated to be awarded during the City Council Meeting on October 15, 2024.

The project is a prevailing wage project.

Please retrieve the Plans and Specifications using the information below:

https://ontariocagov-my.sharepoint.com/:f:/g/personal/21453_ontarioca_gov/EgZ5S0_m9kdGslaZvXyYbS0BDy-v4lxZrKmApPlhsnxlJQ?e=qLGesU

1. GENERAL REQUIREMENTS:

1.1 Basic Services. Consultant agrees to perform all the necessary professional, engineering, and any other necessary engineering services mutually agreeable to the parties for the Project in a timely and professional manner, consistent with the standards of the profession, including those provided for herein.

1.2 Exclusions from Basic Services. "N/A", NOT APPLICABLE.

1.3 Additional Services. "N/A", NOT APPLICABLE.

1.4 Communication with City. Consultant will participate in consultations and conferences with authorized representatives of City and/or other local, regional, or State agencies concerned with the Project, which may be necessary for the completion of the Project or the development of documents in accordance with the applicable standards and requirements of law and the City. Such consultations and conferences will continue throughout the planning and development of the Project. Consultant will take direction only from the City's Representative, or any other representative specifically designated by the City for this Project, including any Construction Manager contracted by the City.

1.4.1 **Bi-Weekly Project Check-ins.** Consultant will participate in bi-weekly project conference call Microsoft Team meetings with the City, Construction Manager, Contractor, and other relevant parties.

1.4.2 **Meeting Agendas and Minutes with Action Items.** "N/A", NOT APPLICABLE.

1.4.3 **Monthly Billings.** Invoices will include, at a minimum, budget for each task or sub-task, number of hours spent with hourly rate by labor classification during the month and cumulative total for the project for each task. In addition, the monthly invoices will identify indirect and other project related costs incurred during the month. Consultant will provide to the Project Manager one (1) electronic copy (smart pdf).

1.4.4 **Monthly Billing Status Reports.** A Monthly Billing Status Report will be submitted with the Monthly Billing Invoice, which includes: summary of work completed and review of work status relative to the budget. Any divergences between work completed and budget expended needs to be specifically explained.

1.4.5 **Updated Project Schedule.** "N/A", NOT APPLICABLE.

1.4.6 **Updated Project Budget.** "N/A", NOT APPLICABLE.

1.4.7 **Pre-Construction Meeting:** Consultant will attend the Project Pre-Construction meeting.

1.4.8 **Decision Log:** "N/A", NOT APPLICABLE.

1.4.9 **Format of Deliverables:** Consultant will submit all original documents in one or more of the followings formats as directed to by the City: MS Word, MS Excel, MS Project, MS Power Point, PDF, AutoCAD, Arc GIS.

1.5 Coordination and Cooperation with Construction Manager. The City may contract out a construction manager to administer and coordinate all or any part of the Project on its behalf. If the City does so, it will provide a copy of its agreement with the Construction Manager so that the Consultant will be fully aware of the duties and responsibilities of the Construction Manager. The Consultant will cooperate with the Construction Manager and respond to any requests or directives authorized by the City to be made or given by the Construction Manager. The Consultant will request clarification from the City in writing if the Consultant should have any questions regarding the authority of the Construction Manager.

2. CONSTRUCTION ENGINEERING SERVICES:

Consultant is to provide construction engineering services during the Pre-Construction, Construction, and Post-Construction Phases for the OMUC Project No. UT 1018, Trunk Sewer Improvements Project. Upon start of construction, City's team will provide active construction management services. Consultant will provide support services for review of submittals, RFIs, change orders, claim mitigation efforts, and attend construction progress site meetings. Upon completion of construction activities, City's team will forward one set of red-lined drawings to the Consultant to review and sign off on as Finalized As-Builts record drawings on mylar.

Construction Observation Services

City's team will provide construction observation, inspection services on a full-time basis while the Contractor is engaged in construction activities to ensure that the construction proceeds in a safe manner, while strictly adhering to the contract requirements. City's team will maintain daily record of field activities including progress photos and identify issues of concern. City will retain the services of a geotechnical firm to provide services such as compaction testing. Special attention will be given to the construction activities within Southern California Gas and Edison Transmission Lines. The City's team will also ensure that the Contractor maintains redlines to document changes to accommodate deviations from the contract drawings and specifications. Upon completion of construction activities, the Contractor will provide City's team with one set of red-lined record drawings. City's team will forward one set of red-lined drawings to the Consultant to review and sign off on one full size set (24" X 36") of As-Builts record drawings on bond paper.

Phase 2.1 Pre-Construction

Item 2.1.1 Pre-Construction Meeting

Consultant will attend a Pre-Construction meeting with the Contractor and all stakeholders including City staff and utility representatives. City's Construction Management team will prepare a meeting agenda, facilitate the meeting, and prepare meeting minutes and distribution of minutes to all attendees. Consultant will provide technical support to City addressing any questions arising from the pre-construction meeting.

Phase 2.2 Construction

Item 2.2.1 On-Site Construction Management and Inspection

City's Inspection and Construction Management team will provide observation and monitoring of the quality of the construction work.

Consultant will perform periodic site visits to monitor the progress, performance and assess any conflicts which may arise during the course of construction and will coordinate these visits with the City's

Construction Management team. It is estimated that up to ten (10) site visits may be required.

Item 2.2.3 Change Order Management

Consultant will assist City's team with negotiating and coordinate the implementation of contract change orders during the construction process. City's team will compile change order supporting documentation, such as inspection reports, test reports, drawings, sketches, photographs, and other materials as required. Consultant will review and evaluate the appropriateness of all proposed change orders; advise City as to their effect on the contract time and cost; and perform independent estimates of the proposed change order work when necessary, as well as recommend approval or denial. Consultant should anticipate responding up to ten (10) change orders.

Item 2.2.4 Requests for Information (RFIs)

Consultant will provide timely RFI review, as requested by City's team, which will include coordination with City's team and Consultant will provide a clear and concise written response to City's team. City's Construction Manager will maintain the RFI log and records. Consultant should anticipate responding up to twenty (20) RFIs.

Item 2.2.5 Submittal Management

City's Construction Manager will coordinate submittal review with Consultant to ensure timely submittal review and acceptance including review of material and equipment submittals for compliance with contract documents. City's Construction Manager will maintain the submittal log and records. Consultant should anticipate responding up to seventy-five (75) submittals.

Item 2.2.6 Design Revisions

Consultant will coordinate with the Construction Manager and Contractor regarding any proposed design deviations from the original plans and specifications, requested either by the Contractor or the City, or as a result of Contractor's pothole information. Consultant will issue revised plans as a result of any design revision. Consultant should anticipate responding up to six (6) event design changes.

Consultant shall prepare, at no additional expense to the City, all revisions to documents and/or drawings made necessary by errors and omissions in the originally approved Construction Documents.

Phase 2.3 Post Construction

Item 2.3.1 Final Inspection and Punch List

City's team will compile a detailed "punch list" in coordination with Consultant. City will oversee the complete performance of all punch list items and final clean-up before the Contractor moves off-site.

Item 2.3.2 Coordinate Close-Out and Submittal of Final Documents

City's team will monitor the Contractor's and subcontractor's progress to finalize and submit all project records and documents. City will obtain all record drawings, contract required documents, lien releases and written warranties from the City's Construction Manager.

Once OMUC's Project Manager provides Consultant written approval of the record drawings and specifications, Consultant will forward to City the complete set of original as-built mylar drawings and specifications. The Consultant's tracing shall be of such quality that clear and legible prints may be made

without appreciable and objectionable loss of detail. If the complexity of the changes is such that tracing does not produce clear and legible prints, the affected sheets shall be re-plotted, signed by the Engineer of Record, and reproduced on mylar.

Task 2.3.3 Final Payment

City's team will evaluate Contractor's final payment application. Consultant will assist City in resolving any outstanding matters and provide approval and recommendation for final payment. City will file a Notice of Completion with the County.

EXHIBIT "B"
SCHEDULE OF SERVICES

Consultant will invoice City on a monthly cycle based on the following fee schedule. Consultant will include with each invoice a detailed progress report that indicates the amount of budget spent on each phase and the total amount spent against the Total Compensation. Consultant will inform City regarding any out-of-scope work being performed by Consultant for which Consultant intends to seek compensation from City.

EXHIBIT "C"
CONSULTANT'S PROPOSAL

CITY OF ONTARIO *Agenda Report* **October 15, 2024**	**SECTION:** **CONSENT CALENDAR**
Department: Community Improvement Prepared By: Douglas J Sorel Staff Member Presenting: Scott Murphy, Executive Director Community Development Approved By:	Submitted To: Council/OHA Approved: _____ Continued To: _____ Denied: _____ Item No: 7

SUBJECT: A RESOLUTION FOR PLACEMENT OF SPECIAL ASSESSMENTS ON THE SAN BERNARDINO COUNTY TAX ROLLS

RECOMMENDATION: That the City Council adopt 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.

THE FOLLOWING COUNCIL GOALS ARE BEING ACHIEVED:
Operate in a Businesslike Manner
Focus Resources in Ontario's Commercial and Residential Neighborhoods

FISCAL IMPACT: The levy of special assessments will result in the recovery of $32,383.05 in costs that the City has expended for inspection or abatement of property violations, as well as the collection of $101,919.00 associated with civil penalties and/or fines for continued violations, for a total of $134,302.05 related to 159 parcels. When received, these reimbursements will be deposited into the General Fund. The special assessment revenue is included in the Fiscal Year 2024-25 Adopted Budget.

BACKGROUND & ANALYSIS: The City has established administrative citations and fines for property maintenance violations and fees and penalties associated with the Systematic Health and Safety Inspection Program, Abandoned and Distressed Property Program, and Weed and Refuse Abatement Program. These costs, fines, fees, and penalties are recovered through placement of special tax assessments upon the properties. The placement of special assessments and collection of revenue is done under Ordinance 3046, Property Appearance (Title 5, Chapter 22 of the Ontario Municipal Code); Chapter 9 of the Uniform Code for the Abatement of Dangerous Buildings; and Ordinance 2920 for civil penalties for continued violations of the Ontario Municipal Code and fines associated with administrative citations (Title 1, Chapters 2 and 5 of the Ontario Municipal Code). The City and County currently have a contractual agreement regarding the implementation of special assessments; however, a Resolution authorizing the placement of the specific assessments is required. During this assessment cycle, the Community Improvement Department has billed property owners for: the abatement of violations; the issuance of fines associated with administrative citation; the issuance of fees and penalties associated with the Systematic Health

and Safety Inspection Program; the issuance of registration fees and civil penalties associated with the Abandoned and Distressed Property Program; the issuance of notice and re-inspection fees; and, civil penalties for the Weed and Refuse Abatement Program on 270 parcels. Of these, there are remaining amounts due on 159 parcels. Attached are itemized accounts of: 1) costs associated with inspection or abatement as shown in Exhibit A of the Resolution; 2) civil penalties and/or fines for continued violations as shown in Exhibit B of the Resolution; and 3) total amounts per parcel as shown in Exhibit C of the Resolution. All affected property owners were given notice of the imposition of special assessments via certified mail as provided in Ontario Municipal Code Section 1-4.05(a) and have either not requested an appeal or have exhausted the appellate procedure in Ontario Municipal Code Section 1-4.05(b).

RESOLUTION NO. _____

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.

WHEREAS, Ordinance No. 3046, Property Appearance (Title 5, Chapter 22, of the Ontario Municipal Code) and Chapter 9 of the Uniform Code for the Abatement of Dangerous Buildings provide for the abatement of property nuisances by repair, rehabilitation, demolition or removal; and

WHEREAS, under Resolution 94-112, Resolution ORA-499, and the Cooperation and Reimbursement Agreement entered into on the 15th day of November, 1994, by the City of Ontario and the Ontario Redevelopment Agency, the Ontario Redevelopment Agency made a one-time advance to the City of One Hundred Fifty Thousand Dollars ($150,000) to repair or abate dangerous buildings and properties throughout the City; and

WHEREAS, under a first amendment to the Cooperation and Reimbursement Agreement entered into on the 16th day of July 1996, by the City of Ontario and the Ontario Redevelopment Agency, the Ontario Redevelopment Agency made an additional advance to the City of One Hundred Thousand Dollars ($100,000) to continue to repair or abate dangerous buildings and properties throughout the City; and

WHEREAS, under Resolution 94-113, Resolution ORA-500, and the Cooperation and Reimbursement Agreement entered into on the 15th day of November 1994, by the City of Ontario and the Ontario Redevelopment Agency, the Ontario Redevelopment Agency made a one-time advance to the City of Thirty Thousand Dollars ($30,000) to repair or abate dangerous buildings and properties in the 6th and Grove area; and

WHEREAS, under Resolution 94-12, Resolution ORA-464, and the Cooperation and Reimbursement Agreement entered into on the 22nd day of February 1994, by the City of Ontario and the Ontario Redevelopment Agency, the Ontario Redevelopment Agency made a one-time advance to the City of One Hundred Fifty Thousand Dollars ($150,000) to repair or demolish dangerous buildings throughout the City; and

WHEREAS, Ordinance No. 2894, Systematic Health and Safety Inspection Program (Title 8, Chapter 17, of the Ontario Municipal Code), provides for the collection of unpaid service fees, plus any penalties and accrued interest by Special Assessment; and

WHEREAS, Ordinance No. 2920, provides for the assessment of civil penalties for continued violations of the Ontario Municipal Code (Title 1, Chapter 2 of the Ontario Municipal Code), and for fines associated with administrative citations to be collected by Special Assessment (Title 1, Chapter 5 of the Ontario Municipal Code), and establishes a uniform procedure before imposing such Special Assessments (Title 1, Chapter 4 of the Ontario Municipal Code); and

WHEREAS, the above said ordinances, resolutions and agreements provide for recovery of costs incurred in the abatement of violations by means of a Special Assessment placed on the tax rolls; and

WHEREAS, the City has incurred costs involved in the abatement of violations under the Ontario Municipal Code and Uniform Code for the Abatement of Dangerous Buildings, issuing Notices of Violation, and administering the Systematic Health and Safety Program and wishes to recover said costs; and

WHEREAS, the owners of all parcels listed in Exhibit A, B, and C were given notice of imposition of such Special Assessment as provided in Ontario Municipal Code Section 1-4.05(a), and either have not requested an appeal, or have exhausted the appellate procedure provided in Ontario Municipal Code Section 1-4.05(b); and

WHEREAS, the City has an executed contract with the San Bernardino County Board of Supervisors for collection of said assessments;

NOW, THEREFORE, BE IT RESOLVED that the City Council:

1. Confirmed the costs associated with inspection or abatement on the properties as set forth in the report in Exhibit A; and

2. Confirmed the civil penalties and/or fines for continued violations on the properties as set forth in the report in Exhibit B; and

3. Confirmed that Exhibit C contains the total amount assessed for both confirmed costs and confirmed civil penalties and/or fines for each of the properties; and

4. Found and determined that the report, and Exhibits contained therein are true and accurate; and

5. Adopts the above said report and finds that the costs of inspection or abatement on the properties listed are the costs set forth in Exhibit A, the civil penalties and/or fines for continued violations are the penalties and/or fines as set forth in Exhibit B, and the same are hereby charged and placed as special assessments upon the respective properties; and

6. Directs Exhibit C shall be sent to the Auditor-Controller of San Bernardino County and shall be collected on the County tax roll.

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

PASSED, APPROVED, AND ADOPTED this 15th day of October, 2024.

_____
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. 2024- was duly passed and adopted by the City Council of the City of Ontario at their regular meeting held October 15, 2024 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. 2024- duly passed and adopted by the Ontario City Council at their regular meeting held October 15, 2024.

_____
SHEILA MAUTZ, CITY CLERK

(SEAL)

City of Ontario
Community Improvement Department
2025/2026 Tax Roll Year Special Assessments
Exhibit A - Costs Associated with Inspection or Abatement

Parcel Number	Address	Amount Due
0108-441-01	1430 N GROVE AV, Ontario, CA 91764	62.76
0108-481-18	1665 E OLIVE ST, Unit:A, Ontario, CA 91764	140.00
0108-481-20	1681 E OLIVE ST, Unit:A, Ontario, CA 91764	140.00
0108-481-23	1695 E OLIVE ST, Unit:A, Ontario, CA 91764	140.00
0108-481-24	1751 E OLIVE ST, Unit:A, Ontario, CA 91764	140.00
0108-481-25	1753 E OLIVE ST, Unit:A, Ontario, CA 91764	140.00
0108-481-26	1755 E OLIVE ST, Unit:A, Ontario, CA 91764	140.00
0108-481-27	1759 E OLIVE ST, Unit:A, Ontario, CA 91764	140.00
0108-571-07	1673 E SEVENTH ST, Ontario, CA 91764	62.03
0108-573-04	1735 N CORONA AV, Ontario, CA 91764	147.00
0110-013-27	512 N GROVE AV, Ontario, CA 91764	91.00
0110-051-39	1247 E ELMA ST, Ontario, CA 91761	73.13
0110-071-06	1381 E HOLT BL, Ontario, CA 91761	239.00
0110-071-07	1381 E HOLT BL, Ontario, CA 91761	148.00
0110-144-05	1625 E G ST, Building:1, Unit:A, Ontario, CA 91764	2,530.00
0110-153-10	756 N AMADOR AV, Ontario, CA 91764	46.00
0110-321-80	0 E INLAND EMPIRE BL, Ontario, CA 91764	267.00
0110-342-21	1732 E FOURTH ST, Ontario, CA 91764	153.03
0110-431-10	750 N ARCHIBALD AV, Building:1, Unit:E, Ontario, CA 91764	91.00
0110-442-17	2059 E SENTINEL PRIVADO, Ontario, CA 91764	91.00
0110-512-35	845 N BAKER AV, Ontario, CA 91764	91.00
0113-221-23	1218 E AIRPORT DR, Ontario, CA 91761	613.94
0113-564-27	1945 E RIVERSIDE DR, Building:1, Unit:19, Ontario, CA 91761	87.00
0210-182-60	0 N HAVEN AV, Ontario, CA 91764	148.00
0210-192-25	0 E GUASTI RD, Ontario, CA 91761	239.00
0210-193-14	3480 E SHELBY ST, Ontario, CA 91764	239.00
0210-212-47	3949 E GUASTI RD, Unit:B, Ontario, CA 91761	91.00
0210-321-60	1302 N BALBOA AV, Ontario, CA 91764	805.31
0210-601-12	1055 N SMIDERLE LP, Ontario, CA 91764	46.00
0216-013-04	2349 S WALKER AV, Ontario, CA 91761	267.00
0216-471-30	1231 E COTTONWOOD ST, Ontario, CA 91761	91.00
0218-043-39	2937 E GRAFTON ST, Building:, Unit:, Ontario, CA 91761	91.00
0218-101-03	0 E RIVERSIDE DR, Ontario, CA 91761	288.00
0218-101-04	0 E RIVERSIDE DR, Ontario, CA 91761	148.00
0218-101-05	0 E RIVERSIDE DR, Ontario, CA 91761	148.00
0218-101-06	0 E RIVERSIDE DR, Ontario, CA 91761	148.00
0218-111-04	0 S ONTARIO AV, Ontario, CA 91761	148.00
0218-111-45	13213 S ONTARIO AV, Ontario, CA 91761	203.20
0218-151-37	13888 S HAVEN AV, Ontario, CA 91761	91.00
0218-161-10	0 S HAVEN AV, Ontario, CA 91761	91.00
0218-211-37	4222 E ONTARIO RANCH RD, Building:, Unit:, Ontario, CA 91762	91.00
0218-272-02	3473 E SWEETBAY WY, Ontario, CA 91761	727.00
0218-312-06	11091 E EDISON AV, Ontario, CA 91762	91.00
0218-473-25	3170 E MAYACAMA WY, Ontario, CA 91761	91.00

City of Ontario
Community Improvement Department
2025/2026 Tax Roll Year Special Assessments
Exhibit A - Costs Associated with Inspection or Abatement

Parcel Number	Address	Amount Due
0218-653-42	2944 E MERRITT PASEO, Building:, Unit:, Ontario, CA 9176	91.00
0218-911-01	2943 E THOROUGHBRED ST, Ontario, CA 91761	285.00
0238-152-25	2060 S WINEVILLE AV, Building:1, Unit:A, Ontario, CA 9176	371.00
1008-272-07	1520 N MOUNTAIN AV, Building:B, Unit:106, Ontario, CA 91762	91.00
1008-522-02	1118 N MOUNTAIN AV, Building:2, Ontario, CA 91762	91.00
1010-152-22	952 W J ST, Ontario, CA 91762	46.00
1010-493-03	816 W VESTA ST, Ontario, CA 91762	91.00
1010-552-05	1426 W HOLT BL, Building:1, Unit:D, Ontario, CA 91762	20.00
1010-552-37	1502 W HOLT BL, Ontario, CA 91762	91.00
1011-361-19	1411 W MISSION BL, Ontario, CA 91762	91.00
1011-361-23	0 W MISSION BL, Ontario, CA 91762	140.00
1011-521-15	1448 W CLAIR ST, Ontario, CA 91762	91.00
1014-141-71	1045 W JACARANDA ST, Ontario, CA 91762	46.00
1014-531-38	2037 S MAGNOLIA AV, Ontario, CA 91762	46.00
1047-143-01	1235 E EIGHTH ST, Ontario, CA 91764	148.00
1047-201-15	1551 N ELEVENTH AV, Ontario, CA 91764	91.00
1047-302-01	767 W LA DENEY DR, Ontario, CA 91762	91.00
1047-493-14	836 E YALE ST, Ontario, CA 91764	137.00
1047-594-13	1228 N GRANITE AV, Ontario, CA 91762	46.00
1048-013-13	712 W I ST, Ontario, CA 91762	91.00
1048-052-14	132 W J ST, Ontario, CA 91762	91.00
1048-091-10	560 E FOURTH ST, Unit:A, Ontario, CA 91764	46.00
1048-123-17	1023 E I ST, Ontario, CA 91764	741.62
1048-202-06	712 E H ST, Ontario, CA 91764	764.39
1048-211-20	859 E GRANADA CT, Ontario, CA 91764	147.00
1048-471-14	1117 E HOLT BL, Ontario, CA 91761	91.00
1048-471-20	1104 E NOCTA ST, Ontario, CA 91761	91.00
1048-481-21	1014 E NOCTA ST, Ontario, CA 91761	92.00
1048-512-29	717 E HOLT BL, Ontario, CA 91761	91.00
1048-522-11	503 E HOLT BL, Ontario, CA 91764	91.00
1048-565-11	112 W B ST, Ontario, CA 91762	91.00
1048-566-07	303 N EUCLID AV, Building:1, Ontario, CA 91762	87.00
1049-011-03	751 W HOLT BL, Ontario, CA 91762	25.00
1049-021-26	559 W HOLT BL, Ontario, CA 91762	91.00
1049-043-02	219 W MAIN ST, Ontario, CA 91762	148.00
1049-043-03	211 W MAIN ST, Ontario, CA 91762	148.00
1049-065-11	396 E HOLT BL, Building:3, Ontario, CA 91761	1,610.30
1049-101-09	752 E HOLT BL, Building:1, Ontario, CA 91761	3,160.85
1049-101-39	844 E HOLT BL, Ontario, CA 91761	867.35
1049-303-29	601 S CYPRESS AV, Ontario, CA 91762	641.00
1049-392-06	1050 S GROVE AV, Ontario, CA 91761	239.00
1049-481-12	652 E BELMONT ST, Ontario, CA 91761	91.00
1049-502-10	656 E MAITLAND ST, Ontario, CA 91761	91.00
1049-531-37	329 E ACACIA ST, Ontario, CA 91761	148.70

City of Ontario
Community Improvement Department
2025/2026 Tax Roll Year Special Assessments
Exhibit A - Costs Associated with Inspection or Abatement

Parcel Number	Address	Amount Due
1049-531-39	329 E ACACIA ST, Unit:A, Ontario, CA 91761	119.85
1049-571-10	613 W MAITLAND ST, Ontario, CA 91762	91.00
1049-583-63	722 PHILLIPS ST W, Unit:9, Ontario, CA 91762	46.00
1050-091-17	1445 S SULTANA AV, Ontario, CA 91761	1,807.00
1050-282-10	1701 S FERN AV, Ontario, CA 91762	46.00
1050-401-11	220 E FRANCIS ST, Ontario, CA 91761	91.00
1050-401-29	229 E GREVILLEA ST, Ontario, CA 91761	91.00
1050-431-28	0 S BON VIEW AV, Ontario, CA 91761	91.00
1050-553-03	614 E BIRCH CT, Ontario, CA 91761	680.90
1050-624-15	2115 S SAN ANTONIO AV, Ontario, CA 91762	107.00
1051-071-02	2315 S EUCLID AV, Building:1, Ontario, CA 91761	91.00
1051-321-51	2528 S GROVE AV, Ontario, CA 91761	1,331.48
1051-391-54	618 E TAM O'SHANTER ST, Ontario, CA 91761	46.00
1052-141-04	7711 E RIVERSIDE DR, Ontario, CA 91761	239.00
1052-171-02	0 S GROVE AV, Ontario, CA 91761	239.00
1052-381-01	13647 S EUCLID AV, Ontario, CA 91761	239.00
1052-381-03	0 S EUCLID AV, Ontario, CA 91761	91.00
1052-381-04	0 S EUCLID AV, Ontario, CA 91761	91.00
1052-381-05	0 S EUCLID AV, Ontario, CA 91761	91.00
1052-381-11	0 S EUCLID AV, Ontario, CA 91761	91.00
1052-381-12	0 S EUCLID AV, Ontario, CA 91761	91.00
1052-551-02	7316 E SCHAEFER AV, Ontario, CA 91761	729.50
1053-151-04	8025 SCHAEFER AV E, Ontario, CA 91761	388.40
1073-111-22	14610 S ARCHIBALD AV, Ontario, CA 91710	91.00
1073-171-07	10869 E EUCALYPTUS AV, Ontario, CA 91762	91.00
1073-281-28	2717 E MURDOCK LN, Ontario, CA 91762	765.00
1073-333-28	2650 E MABEL LN, Ontario, CA 91762	2,434.31
1083-061-09	2665 E RIVERSIDE DR, Unit:G, Ontario, CA 91761	91.00
1083-441-03	3660 E GRIZZLEY CREEK CT, Ontario, CA 91761	46.00
		32,383.05

City of Ontario
Community Improvement Department
2025/2026 Tax Roll Year Special Assessments
Exhibit B - Civil Penalties and/or Fines for Continued Violations

Parcel Number	Address	Amount Due
0108-631-76	1859 E SEVENTH ST, Ontario, CA 91764	220.00
0110-071-06	1381 E HOLT BL, Ontario, CA 91761	500.00
0110-071-07	1381 E HOLT BL, Ontario, CA 91761	500.00
0110-442-17	2059 E SENTINEL PRIVADO, Ontario, CA 91764	120.00
0113-285-12	2409 S VINEYARD AV, Unit:D, Ontario, CA 91761	220.00
0113-285-12	2411 S VINEYARD AV, Unit:A, Ontario, CA 91761	120.00
0113-351-15	1261 S GROVE AV, Ontario, CA 91761	220.00
0113-395-15	2161 E MAPLE PRIVADO, Ontario, CA 91761	840.00
0113-415-36	1535 S BAKER AV, Building:1, Ontario, CA 91761	20.00
0113-564-23	2911 S SPYGLASS CT, Ontario, CA 91761	490.00
0113-581-12	1710 E MONTICELLO CT, Building:1, Ontario, CA 91761	640.00
0113-591-13	2330 S BAKER AV, Ontario, CA 91761	340.00
0113-621-02	1510 E CEDAR ST, Ontario, CA 91761	20.00
0210-182-60	0 N HAVEN AV, Ontario, CA 91764	500.00
0210-192-25	0 E GUASTI RD, Ontario, CA 91761	500.00
0210-193-14	3480 E SHELBY ST, Ontario, CA 91764	500.00
0210-211-43	735 N MILLIKEN AV, Unit:E, Ontario, CA 91764	120.00
0216-281-02	2845 S WALKER AV, Ontario, CA 91761	340.00
0216-291-03	1539 E MERION ST, Ontario, CA 91761	120.00
0216-341-16	2522 S CALAVERAS PL, Ontario, CA 91761	420.00
0216-391-66	1466 E BERMUDA DUNES ST, Ontario, CA 91761	220.00
0218-101-03	0 E RIVERSIDE DR, Ontario, CA 91761	500.00
0218-101-04	0 E RIVERSIDE DR, Ontario, CA 91761	500.00
0218-101-05	0 E RIVERSIDE DR, Ontario, CA 91761	500.00
0218-101-06	0 E RIVERSIDE DR, Ontario, CA 91761	500.00
0218-111-04	0 S ONTARIO AV, Ontario, CA 91761	500.00
0218-452-08	3942 S ALEXANDER AV, Ontario, CA 91761	120.00
0238-014-03	990 N ONTARIO MILLS DR, Building:1, Unit:B, Ontario, CA 91764	340.00
1008-272-07	1520 N MOUNTAIN AV, Building:B, Unit:106, Ontario, CA 91762	120.00
1008-522-02	1118 N MOUNTAIN AV, Building:2, Ontario, CA 91762	220.00
1010-493-03	816 W VESTA ST, Ontario, CA 91762	220.00
1010-543-32	1364 W HOLT BL, Ontario, CA 91762	120.00
1010-552-37	1502 W HOLT BL, Ontario, CA 91762	120.00
1010-552-38	1512 W HOLT BL, Building:2, Ontario, CA 91762	760.00
1014-111-04	1519 S OAKS AV, Ontario, CA 91762	170.00
1014-173-17	1646 S CYPRESS AV, Ontario, CA 91762	320.00
1014-191-54	1745 S MOUNTAIN AV, Building:1, Ontario, CA 91762	129.00
1047-143-01	1235 E EIGHTH ST, Ontario, CA 91764	500.00
1047-241-09	1524 N EUCLID AV, Ontario, CA 91764	520.00
1047-372-12	634 E BONNIE BRAE CT, Ontario, CA 91764	170.00
1047-462-18	1117 N GROVE AV, Building:1, Ontario, CA 91764	340.00
1047-542-02	1106 N EUCLID AV, Ontario, CA 91764	320.00
1048-101-12	1049 N BERLYN AV, Ontario, CA 91764	20.00
1048-412-05	720 E F ST, Ontario, CA 91764	220.00

City of Ontario
Community Improvement Department
2025/2026 Tax Roll Year Special Assessments
Exhibit B - Civil Penalties and/or Fines for Continued Violations

Parcel Number	Address	Amount Due
1048-413-03	812 E F ST, Ontario, CA 91764	220.00
1049-043-02	219 W MAIN ST, Ontario, CA 91762	500.00
1049-043-03	211 W MAIN ST, Ontario, CA 91762	500.00
1049-092-18	231 S PLEASANT AV, Ontario, CA 91761	81,500.00
1049-203-01	0 S TAYLOR AV, Ontario, CA 91761	120.00
1049-367-11	902 S HOPE AV, Ontario, CA 91761	170.00
1049-368-04	917 S HOPE AV, Ontario, CA 91761	150.00
1049-392-06	1050 S GROVE AV, Ontario, CA 91761	500.00
1049-411-01	1383 S CUCAMONGA AV, Ontario, CA 91761	120.00
1049-431-16	1050 E BELMONT ST, Ontario, CA 91761	420.00
1049-441-30	1138 S GREENWOOD AV, Ontario, CA 91761	340.00
1049-481-12	652 E BELMONT ST, Ontario, CA 91761	120.00
1050-361-16	1940 S FERN AV, Ontario, CA 91762	120.00
1050-401-29	229 E GREVILLEA ST, Ontario, CA 91761	340.00
1051-311-68	2538 S HOLMES PL, Ontario, CA 91761	220.00
1051-321-51	2530 S GROVE AV, Ontario, CA 91761	120.00
1051-321-62	2522 GROVE AV S, Unit:A, Ontario, CA 91761	120.00
1052-141-04	7711 E RIVERSIDE DR, Ontario, CA 91761	500.00
1052-171-02	0 S GROVE AV, Ontario, CA 91761	500.00
1052-381-01	13647 S EUCLID AV, Ontario, CA 91761	500.00
1053-101-01	7435 E SCHAEFER AV, Ontario, CA 91761	420.00
1083-061-04	2950 S ARCHIBALD AV, Ontario, CA 91761	220.00
		101,919.00

City of Ontario
Community Improvement Department
2025/2026 Tax Roll Year Special Assessments
Exhibit C - Total Amounts per Parcel

Parcel Number	Address	Amount Due
0108-441-01	1430 N GROVE AV, Ontario, CA 91764	62.76
0108-481-18	1665 E OLIVE ST, Unit:A, Ontario, CA 91764	140.00
0108-481-20	1681 E OLIVE ST, Unit:A, Ontario, CA 91764	140.00
0108-481-23	1695 E OLIVE ST, Unit:A, Ontario, CA 91764	140.00
0108-481-24	1751 E OLIVE ST, Unit:A, Ontario, CA 91764	140.00
0108-481-25	1753 E OLIVE ST, Unit:A, Ontario, CA 91764	140.00
0108-481-26	1755 E OLIVE ST, Unit:A, Ontario, CA 91764	140.00
0108-481-27	1759 E OLIVE ST, Unit:A, Ontario, CA 91764	140.00
0108-571-07	1673 E SEVENTH ST, Ontario, CA 91764	62.03
0108-573-04	1735 N CORONA AV, Ontario, CA 91764	147.00
0108-631-76	1859 E SEVENTH ST, Ontario, CA 91764	220.00
0110-013-27	512 N GROVE AV, Ontario, CA 91764	91.00
0110-051-39	1247 E ELMA ST, Ontario, CA 91761	73.13
0110-071-06	1381 E HOLT BL, Ontario, CA 91761	739.00
0110-071-07	1381 E HOLT BL, Ontario, CA 91761	648.00
0110-144-05	1625 E G ST, Building:1, Unit:A, Ontario, CA 91764	2,530.00
0110-153-10	756 N AMADOR AV, Ontario, CA 91764	46.00
0110-321-80	0 E INLAND EMPIRE BL, Ontario, CA 91764	267.00
0110-342-21	1732 E FOURTH ST, Ontario, CA 91764	153.03
0110-431-10	750 N ARCHIBALD AV, Building:1, Unit:E, Ontario, CA 9176	91.00
0110-442-17	2059 E SENTINEL PRIVADO, Ontario, CA 91764	211.00
0110-512-35	845 N BAKER AV, Ontario, CA 91764	91.00
0113-221-23	1218 E AIRPORT DR, Ontario, CA 91761	613.94
0113-285-12	2409 S VINEYARD AV, Unit:D, Ontario, CA 91761	220.00
0113-285-12	2411 S VINEYARD AV, Unit:A, Ontario, CA 91761	120.00
0113-351-15	1261 S GROVE AV, Ontario, CA 91761	220.00
0113-395-15	2161 E MAPLE PRIVADO, Ontario, CA 91761	840.00
0113-415-36	1535 S BAKER AV, Building:1, Ontario, CA 91761	20.00
0113-564-23	2911 S SPYGLASS CT, Ontario, CA 91761	490.00
0113-564-27	1945 E RIVERSIDE DR, Building:1, Unit:19, Ontario, CA 91761	87.00
0113-581-12	1710 E MONTICELLO CT, Building:1, Ontario, CA 91761	640.00
0113-591-13	2330 S BAKER AV, Ontario, CA 91761	340.00
0113-621-02	1510 E CEDAR ST, Ontario, CA 91761	20.00
0210-182-60	0 N HAVEN AV, Ontario, CA 91764	648.00
0210-192-25	0 E GUASTI RD, Ontario, CA 91761	739.00
0210-193-14	3480 E SHELBY ST, Ontario, CA 91764	739.00
0210-211-43	735 N MILLIKEN AV, Unit:E, Ontario, CA 91764	120.00
0210-212-47	3949 E GUASTI RD, Unit:B, Ontario, CA 91761	91.00
0210-321-60	1302 N BALBOA AV, Ontario, CA 91764	805.31
0210-601-12	1055 N SMIDERLE LP, Ontario, CA 91764	46.00
0216-013-04	2349 S WALKER AV, Ontario, CA 91761	267.00
0216-281-02	2845 S WALKER AV, Ontario, CA 91761	340.00
0216-291-03	1539 E MERION ST, Ontario, CA 91761	120.00
0216-341-16	2522 S CALAVERAS PL, Ontario, CA 91761	420.00

City of Ontario
Community Improvement Department
2025/2026 Tax Roll Year Special Assessments
Exhibit C - Total Amounts per Parcel

Parcel Number	Address	Amount Due
0216-391-66	1466 E BERMUDA DUNES ST, Ontario, CA 91761	220.00
0216-471-30	1231 E COTTONWOOD ST, Ontario, CA 91761	91.00
0218-043-39	2937 E GRAFTON ST, Building:, Unit:, Ontario, CA 91761	91.00
0218-101-03	0 E RIVERSIDE DR, Ontario, CA 91761	788.00
0218-101-04	0 E RIVERSIDE DR, Ontario, CA 91761	648.00
0218-101-05	0 E RIVERSIDE DR, Ontario, CA 91761	648.00
0218-101-06	0 E RIVERSIDE DR, Ontario, CA 91761	648.00
0218-111-04	0 S ONTARIO AV, Ontario, CA 91761	648.00
0218-111-45	13213 S ONTARIO AV, Ontario, CA 91761	203.20
0218-151-37	13888 S HAVEN AV, Ontario, CA 91761	91.00
0218-161-10	0 S HAVEN AV, Ontario, CA 91761	91.00
0218-211-37	4222 E ONTARIO RANCH RD, Building:, Unit:, Ontario, CA 91762	91.00
0218-272-02	3473 E SWEETBAY WY, Ontario, CA 91761	727.00
0218-312-06	11091 E EDISON AV, Ontario, CA 91762	91.00
0218-452-08	3942 S ALEXANDER AV, Ontario, CA 91761	120.00
0218-473-25	3170 E MAYACAMA WY, Ontario, CA 91761	91.00
0218-653-42	2944 E MERRITT PASEO, Building:, Unit:, Ontario, CA 91761	91.00
0218-911-01	2943 E THOROUGHBRED ST, Ontario, CA 91761	285.00
0238-014-03	990 N ONTARIO MILLS DR, Building:1, Unit:B, Ontario, CA 91764	340.00
0238-152-25	2060 S WINEVILLE AV, Building:1, Unit:A, Ontario, CA 91761	371.00
1008-272-07	1520 N MOUNTAIN AV, Building:B, Unit:106, Ontario, CA 91762	211.00
1008-522-02	1118 N MOUNTAIN AV, Building:2, Ontario, CA 91762	311.00
1010-152-22	952 W J ST, Ontario, CA 91762	46.00
1010-493-03	816 W VESTA ST, Ontario, CA 91762	311.00
1010-543-32	1364 W HOLT BL, Ontario, CA 91762	120.00
1010-552-05	1426 W HOLT BL, Building:1, Unit:D, Ontario, CA 91762	20.00
1010-552-37	1502 W HOLT BL, Ontario, CA 91762	211.00
1010-552-38	1512 W HOLT BL, Building:2, Ontario, CA 91762	760.00
1011-361-19	1411 W MISSION BL, Ontario, CA 91762	91.00
1011-361-23	0 W MISSION BL, Ontario, CA 91762	140.00
1011-521-15	1448 W CLAIR ST, Ontario, CA 91762	91.00
1014-111-04	1519 S OAKS AV, Ontario, CA 91762	170.00
1014-141-71	1045 W JACARANDA ST, Ontario, CA 91762	46.00
1014-173-17	1646 S CYPRESS AV, Ontario, CA 91762	320.00
1014-191-54	1745 S MOUNTAIN AV, Building:1, Ontario, CA 91762	129.00
1014-531-38	2037 S MAGNOLIA AV, Ontario, CA 91762	46.00
1047-143-01	1235 E EIGHTH ST, Ontario, CA 91764	648.00
1047-201-15	1551 N ELEVENTH AV, Ontario, CA 91764	91.00
1047-241-09	1524 N EUCLID AV, Ontario, CA 91764	520.00
1047-302-01	767 W LA DENEY DR, Ontario, CA 91762	91.00
1047-372-12	634 E BONNIE BRAE CT, Ontario, CA 91764	170.00
1047-462-18	1117 N GROVE AV, Building:1, Ontario, CA 91764	340.00
1047-493-14	836 E YALE ST, Ontario, CA 91764	137.00
1047-542-02	1106 N EUCLID AV, Ontario, CA 91764	320.00

City of Ontario
Community Improvement Department
2025/2026 Tax Roll Year Special Assessments
Exhibit C - Total Amounts per Parcel

Parcel Number	Address	Amount Due
1047-594-13	1228 N GRANITE AV, Ontario, CA 91762	46.00
1048-013-13	712 W I ST, Ontario, CA 91762	91.00
1048-052-14	132 W J ST, Ontario, CA 91762	91.00
1048-091-10	560 E FOURTH ST, Unit:A, Ontario, CA 91764	46.00
1048-101-12	1049 N BERLYN AV, Ontario, CA 91764	20.00
1048-123-17	1023 E I ST, Ontario, CA 91764	741.62
1048-202-06	712 E H ST, Ontario, CA 91764	764.39
1048-211-20	859 E GRANADA CT, Ontario, CA 91764	147.00
1048-412-05	720 E F ST, Ontario, CA 91764	220.00
1048-413-03	812 E F ST, Ontario, CA 91764	220.00
1048-471-14	1117 E HOLT BL, Ontario, CA 91761	91.00
1048-471-20	1104 E NOCTA ST, Ontario, CA 91761	91.00
1048-481-21	1014 E NOCTA ST, Ontario, CA 91761	92.00
1048-512-29	717 E HOLT BL, Ontario, CA 91761	91.00
1048-522-11	503 E HOLT BL, Ontario, CA 91764	91.00
1048-565-11	112 W B ST, Ontario, CA 91762	91.00
1048-566-07	303 N EUCLID AV, Building:1, Ontario, CA 91762	87.00
1049-011-03	751 W HOLT BL, Ontario, CA 91762	25.00
1049-021-26	559 W HOLT BL, Ontario, CA 91762	91.00
1049-043-02	219 W MAIN ST, Ontario, CA 91762	648.00
1049-043-03	211 W MAIN ST, Ontario, CA 91762	648.00
1049-065-11	396 E HOLT BL, Building:3, Ontario, CA 91761	1,610.30
1049-092-18	231 S PLEASANT AV, Ontario, CA 91761	81,500.00
1049-101-09	752 E HOLT BL, Building:1, Ontario, CA 91761	3,160.85
1049-101-39	844 E HOLT BL, Ontario, CA 91761	867.35
1049-203-01	0 S TAYLOR AV, Ontario, CA 91761	120.00
1049-303-29	601 S CYPRESS AV, Ontario, CA 91762	641.00
1049-367-11	902 S HOPE AV, Ontario, CA 91761	170.00
1049-368-04	917 S HOPE AV, Ontario, CA 91761	150.00
1049-392-06	1050 S GROVE AV, Ontario, CA 91761	739.00
1049-411-01	1383 S CUCAMONGA AV, Ontario, CA 91761	120.00
1049-431-16	1050 E BELMONT ST, Ontario, CA 91761	420.00
1049-441-30	1138 S GREENWOOD AV, Ontario, CA 91761	340.00
1049-481-12	652 E BELMONT ST, Ontario, CA 91761	211.00
1049-502-10	656 E MAITLAND ST, Ontario, CA 91761	91.00
1049-531-37	329 E ACACIA ST, Ontario, CA 91761	148.70
1049-531-39	329 E ACACIA ST, Unit:A, Ontario, CA 91761	119.85
1049-571-10	613 W MAITLAND ST, Ontario, CA 91762	91.00
1049-583-63	722 PHILLIPS ST W, Unit:9, Ontario, CA 91762	46.00
1050-091-17	1445 S SULTANA AV, Ontario, CA 91761	1,807.00
1050-282-10	1701 S FERN AV, Ontario, CA 91762	46.00
1050-361-16	1940 S FERN AV, Ontario, CA 91762	120.00
1050-401-11	220 E FRANCIS ST, Ontario, CA 91761	91.00
1050-401-29	229 E GREVILLEA ST, Ontario, CA 91761	431.00

City of Ontario
Community Improvement Department
2025/2026 Tax Roll Year Special Assessments
Exhibit C - Total Amounts per Parcel

Parcel Number	Address	Amount Due
1050-431-28	0 S BON VIEW AV, Ontario, CA 91761	91.00
1050-553-03	614 E BIRCH CT, Ontario, CA 91761	680.90
1050-624-15	2115 S SAN ANTONIO AV, Ontario, CA 91762	107.00
1051-071-02	2315 S EUCLID AV, Building:1, Ontario, CA 91761	91.00
1051-311-68	2538 S HOLMES PL, Ontario, CA 91761	220.00
1051-321-51	2528 S GROVE AV, Ontario, CA 91761	1,331.48
1051-321-51	2530 S GROVE AV, Ontario, CA 91761	120.00
1051-321-62	2522 GROVE AV S, Unit:A, Ontario, CA 91761	120.00
1051-391-54	618 E TAM O'SHANTER ST, Ontario, CA 91761	46.00
1052-141-04	7711 E RIVERSIDE DR, Ontario, CA 91761	739.00
1052-171-02	0 S GROVE AV, Ontario, CA 91761	739.00
1052-381-01	13647 S EUCLID AV, Ontario, CA 91761	739.00
1052-381-03	0 S EUCLID AV, Ontario, CA 91761	91.00
1052-381-04	0 S EUCLID AV, Ontario, CA 91761	91.00
1052-381-05	0 S EUCLID AV, Ontario, CA 91761	91.00
1052-381-11	0 S EUCLID AV, Ontario, CA 91761	91.00
1052-381-12	0 S EUCLID AV, Ontario, CA 91761	91.00
1052-551-02	7316 E SCHAEFER AV, Ontario, CA 91761	729.50
1053-101-01	7435 E SCHAEFER AV, Ontario, CA 91761	420.00
1053-151-04	8025 SCHAEFER AV E, Ontario, CA 91761	388.40
1073-111-22	14610 S ARCHIBALD AV, Ontario, CA 91710	91.00
1073-171-07	10869 E EUCALYPTUS AV, Ontario, CA 91762	91.00
1073-281-28	2717 E MURDOCK LN, Ontario, CA 91762	765.00
1073-333-28	2650 E MABEL LN, Ontario, CA 91762	2,434.31
1083-061-04	2950 S ARCHIBALD AV, Ontario, CA 91761	220.00
1083-061-09	2665 E RIVERSIDE DR, Unit:G, Ontario, CA 91761	91.00
1083-441-03	3660 E GRIZZLEY CREEK CT, Ontario, CA 91761	46.00
159		**134,302.05**

CITY OF ONTARIO *Agenda Report* **October 15, 2024**	**SECTION:** **CONSENT CALENDAR**
Department: Public Works Prepared By: Cynthia Heredia-Torres Staff Member Presenting: Tito Haes, Executive Director Public Works Reviewed By: Andrea Ampig, Bonnie Tam Approved By:	Submitted To: Council/OHA Approved: _____ Continued To: _____ Denied: _____ Item No: 8

SUBJECT: **A CHANGE ORDER TO THE CONSTRUCTION CONTRACT WITH RESOURCE ENVIRONMENTAL, INC. FOR THE EMERGENCY DEMOLITION OF THE PROPERTY AT 9155/9381 E. RIVERSIDE DRIVE**

RECOMMENDATION: That the City Council take the following actions:

A. Authorize the City Manager, or his designee, to execute Change Order No. 1 to the Construction Contract with Resource Environmental, Inc., of Cerritos, California, in the amount of $1,422,409 for a total not-to-exceed contract amount of $3,163,409; and
B. Authorize the City Manager, or his designee, to execute all documents required for the completion of the project including, but not limited to, contracts, agreements, assessments, easements, reduction of retention accounts and filing a notice of completion at the conclusion of all construction related activities.

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

FISCAL IMPACT: The Fiscal Year 2024-25 Adopted Budget includes appropriations in the Capital Projects-Measure Q Fund for the PA2416 Regional Sports Complex- Baseball Stadium project. The proposed Change Order No. 1 to the Construction Contract with Resource Environmental, Inc. is in the amount of $1,422,409 for a total not-to-exceed contract amount $3,163,409.

BACKGROUND & ANALYSIS: The Construction Contract with Resource Environmental, Inc. for the emergency demolition of the property at 9155/9381 E. Riverside Drive was approved by the City Council on September 17, 2024. The project included immediate demolition of the property due to the state of disrepair and building code violations. The condition of the site posed an immediate risk to public safety. Due to unanticipated surface conditions and site requirements to improve soil condition, there is a need to increase the cost of the construction contract to cover overall mitigation measures in the amount of $1,422,409.

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

PAUL S. LEON
MAYOR

DEBRA PORADA
MAYOR PRO TEM

ALAN D. WAPNER
JIM W. BOWMAN
RUBEN VALENCIA
COUNCIL MEMBERS

SHEILA MAUTZ
CITY CLERK

JAMES R. MILHISER
TREASURER

SCOTT OCHOA
CITY MANAGER

CITY OF ONTARIO
CHANGE ORDER

Project: D&C24-005 Emergency Dairy & Residence Abatement & Demolition

Change Order Number: **1**

Change Order Date:

Contract Date: **9/17/24**

To: Resource Environmental
13100 Alondra Blvd, Suite 108
Cerritos, CA 90703
Attn: Jim Rawson

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:

Change in scope due to site requirements

#	Description	Amount
PCO1	Remove and dispose of 37 Acres of Grass and vegetation	$1,422,409

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	$ 1,741,000.00
Net change by previously authorized Change Orders	$ 0
The Contract Price prior to this Change Order was	$ 1,741,000.00
The Contract Price will be changed by this Change Order in the amount of	$ 1,422,409.00
The new Contract Price including this Change Order will be	$ 3,163,409.00

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

The Contract Time will be: increased ☒ decreased ☐ unchanged ☐ by	15 Days
The Contract Time prior to this Change Order was	30 Days
The new Contract Time including this Change Order will be	45 Days

(BB&K 2020)
46700.00100\33457526.1

Attachments:

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) Cynthia Skiff, President	Date

Approved:

(Signature) Tito Haes, Executive Director Public Works	Date

Approved:

(Signature) Scott Ochoa, City Manager	Date

CITY OF ONTARIO *Agenda Report* **October 15, 2024**	**SECTION:** **CONSENT CALENDAR**
Department: Public Works Prepared By: Cynthia Heredia-Torres Staff Member Presenting: Tito Haes, Executive Director Public Works Reviewed By: Andrea Ampig, Bonnie Tam Approved By:	Submitted To: Council/OHA Approved: _____ Continued To: _____ Denied: _____ Item No: 9

SUBJECT: **AWARD A CONSTRUCTION CONTRACT TO OPTIMA RPM, INC. FOR THE WELLNESS CAMPUS PROJECT AND AMENDMENTS TO THE DESIGN SERVICES AGREEMENT WITH HMC ARCHITECTS FOR THE DESIGN OF THE WELLNESS CAMPUS PROJECT AND TITLE 24 COMMISSIONING SERVICES FOR THE CITY SERVICES BUILDING PROJECT**

RECOMMENDATION: That the City Council take the following actions:

A. Reject Spec 7 Con's bid for Bid No. 1846 - D&C24-011 Ontario Motor Inn Renovation as being nonresponsive, and
B. Authorize the City Manager, or his designee, to execute a Construction Contract Bid No. 1846 - D&C24-011 Ontario Motor Inn Renovation with Optima RPM, Inc., of Irvine, California, for the renovation of a City-owned motel for emergency and temporary housing units located at 1522 W. Mission Blvd. in the amount of $4,098,000 and authorize a 20% contingency of $819,600 for a total not-to-exceed contract amount of $4,917,600, and
C. Authorize the City Manager, or his designee, to execute Amendment No. 5 to the Design Services Agreement with HMC Architects, of Ontario, California, to provide on-call architectural services for the design of the Wellness Campus Project in the amount of $1,141,485 for a total not-to-exceed contract amount of $9,236,815;
D. Authorize the City Manager, or his designee, to execute Amendment No. 6 to the Design Services Agreement with HMC Architects, of Ontario, California, to provide Title 24 Commissioning Services for the City Services Building Project in the amount of $44,510 for a total not-to-exceed contract amount of $9,281,325; and
E. Authorize the City Manager, or his designee, to execute all documents required for the completion of the project including, but not limited to, contracts, agreements, assessments, easements, reduction of retention accounts and filing a notice of completion at the conclusion of all construction related activities.

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

Encourage, Provide or Support Enhanced Recreational, Educational, Cultural and Healthy City Programs, Policies and Activities

FISCAL IMPACT: The proposed Construction Contract with Optima RPM, Inc. is in the amount of $4,098,000 plus a 20% contingency of $819,600 for a total not-to-exceed contract amount of $4,917,600.

The proposed Amendment No. 5 to the Design Services Agreement with HMC Architects (HMC) is in the amount of $1,141,485 for a total not-to-exceed contract amount of $9,236,815. The total contract amount of $9,236,815 includes on-call work performed for various citywide projects. The total cost of the proposed actions for the Wellness Campus Project is in an amount of $6,059,085. The Fiscal Year 2024-2025 Adopted Budget includes appropriations in the Capital Projects- Measure Q Fund for the PF2423 Continuum of Care – West Mission Temporary Campus.

The proposed Amendment No. 6 to the Design Services Agreement with HMC is in the amount of $44,510 for a total not-to-exceed contract amount of $9,281,325. The total contract amount of $9,281,325 includes on-call work performed for various citywide projects. The Fiscal Year 2024-2025 Adopted Budget includes appropriations in the Capital Projects Fund for PF2310 Civic Center Expansion – City Services Building.

BACKGROUND & ANALYSIS: As the City focuses on resources on expanding services as part of the Continuum of Care, the City needs a space to house individuals as the current access center is too small to accommodate the needs of the City's unhoused and at-risk community.

As part of this effort, the City acquired the Ontario Motor Inn, a 12,250 sq ft motel located at 1522 West Mission Blvd that will require renovation and modernization to accommodate offices and emergency and temporary housing units.

On September 24, 2024, 14 bids were received for Bid No. 1846 - D&C24-011 Ontario Motor Inn Renovation. The bids ranged from $16,800 to $6,939,800. The bids are summarized below:

Bidder	Location	Amount
Spec 7 Con	Lakeside, CA	$16,800
Optima RPM, Inc.	Irvine, CA	$4,098,000
R2BUILD	Laguna Hills, CA	$4,460,000
IPI Construction	Panorama City, CA	$4,488,988
PERERA CONSTRUCTION	Ontario, CA	$4,493,386
Tovey/Shultz Construction, Inc.	Lake Elsinore, CA	$4,826,752
Wakeco, Inc.	Temecula, CA	$4,949,000
Cal-City Construction, Inc.	Cerritos, CA	$5,142,020
AWI Builders, Inc.	Burbank, CA	$5,291,911
Morillo Construction Inc.	Pasadena, CA	$5,398,000
PUB Construction, Inc.	Diamond Bar, CA	$5,666,000

Woodcliff Corporation	Los Angeles, CA	$5,785,000
Nationwide Contracting Services, Inc.	Huntington Beach, CA	$6,785,000
Golden Gate Steel, Inc.	Norwalk, CA	$6,939,800

During Staff's review of Spec 7 Con's bid, it was revealed that Spec 7 Con failed to submit a digital and original bid bond to the City prior to bid closing in accordance with the project specifications, which renders their bid non-responsive. Based on Spec 7 Con's failure to adhere to the project specifications, Staff recommends the City Council reject the bid submitted by Spec 7 Con as non-responsive. Staff reviewed the bids and recommend that the City Council award the contract to Optima RPM Inc., as the lowest responsible bidder submitting a responsive bid that met all the required specifications, credentials, pricing, favorable reference checks, ability to perform the work in a timely manner, and their successful completion of this type of work in the past.

Staff is recommending executing Amendment No. 5 to the Design Services Agreement with HMC for the Design Development Services for the Wellness Campus Project. HMC has divided the project into 3 tasks: The first task is to provide a conceptual design package previously completed to fit the new site and accommodate the renovated motel. The second task is to prepare plans and specifications for the Motor Inn remodel. The third task is the new buildings and site work for the new campus that will incorporate the motel into the new campus.

Staff is also recommending executing Amendment No. 6 to the Design Services Agreement with HMC to include Title 24 commissioning for the new City Services Building. HMC's original contract for the City Services Building did not include Title 24 commissioning which is required by code, for all new commercial buildings over 10,000 square feet.

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

PAUL S. LEON
MAYOR

DEBRA PORADA
MAYOR PRO TEM

ALAN D. WAPNER
JIM W. BOWMAN
RUBEN VALENCIA
COUNCIL MEMBERS

SHEILA MAUTZ
CITY CLERK

JAMES R. MILHISER
TREASURER

SCOTT OCHOA
CITY MANAGER

AMENDMENT NO. 5 TO THE DESIGN SERVICES AGREEMENT BETWEEN THE CITY OF ONTARIO AND HMC GROUP DBA HMC ARCHITECTS

1. Parties and Date.

This Amendment No. 5 to the Agreement (as defined herein) is made and entered as of _____, by and between the City of Ontario ("City") and **HMC Group dba HMC Architects**, a 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 "Design Service Agreement" dated January 1, 2020 ("Agreement").

2.2 Amendment Purpose. The City and Consultant desire to amend the Agreement and add the design scope for D&C24-011 Ontario Motor Inn Renovation and increase the not to exceed amount by **One Million One Hundred Forty-One Thousand Four Hundred Eighty-Five Dollars ($1,141,485).** The parties have heretofore entered into Amendment No. 1 dated July 22, 2022, Amendment No. 2 dated March 21, 2023, Amendment No. 3 dated September 5, 2023, and Amendment No. 4 dated July 16, 2024.

2.3 Amendment Authority. This Amendment No. 5 is authorized pursuant to Section 3.37 of the Agreement.

3. Terms.

3.1 Amendment. Section 3.1.1 and 3.10.1 of the Agreement is hereby amended in its entirety to read as follows:

> "3.1.1 Scope of Services. Consultant promises and agrees to furnish to City all labor, materials, tools, equipment, services, and incidental and customary work necessary to fully and adequately supply the professional architectural and related services necessary for the full and adequate completion of the Project consistent with the provisions of this Agreement (hereinafter referred to as "Services"). The Services are more particularly described throughout

this Agreement, including Exhibit "A" attached hereto and incorporated herein by reference. All Services shall be subject to, and performed in accordance with, this Agreement, any exhibits attached hereto and incorporated herein by reference, and all applicable local, state and federal laws, rules and regulations. All Services performed by Consultant shall be subject to the sole and discretionary approval of the City, which approval shall not be unreasonably withheld. Additionally, Consultant shall comply with all Federal requirements applicable to the Services as set forth in Exhibit "A-I."

"3.10.1 Consultant's Compensation for Basic Services. City shall pay to consultant, for the performance of all Services rendered under this Agreement, with the total not to exceed amount of **Nine Million Two Hundred Thirty-Six Thousand Eight Hundred Fifteen Dollars ($9,236,815**) ("Total Compensation"). This Total Compensation amount shall be based upon, and may be adjusted according to, the fee schedule and related terms and conditions attached hereto as Exhibit "A" and incorporated herein by reference. The total compensation, as may be adjusted upon mutual agreement, shall constitute complete and adequate payment for Services under this Agreement."

Task list and not to exceed fees are included in Exhibit "A".

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. 5 TO THE DESIGN SERVICES AGREEMENT BETWEEN THE CITY OF ONTARIO AND HMC GROUP DBA HMC ARCHITECTS

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

HMC GROUP dba HMC ARCHITECT

By: _____

Its: _____

Printed Name: _____

By: _____

Its: _____

Printed Name: _____

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

HMC Architects

July 24, 2024

Mrs. Helen McAlary
Executive Director Community Life & Culture
City of Ontario
208 W. Emporia Street
Ontario, CA 91761
HMcAlary@ontarioca.gov

Regarding: Proposal for Architectural & Engineering Services
City of Ontario
Access Center (AC)
HMC #2518004-100, #2254004-200, #2518004-300

Dear Mrs. McAlary:

HMC Group (HMC) is pleased to submit the following Proposal to provide Architectural, Engineering, and Specialty Consultant Services for the above-mentioned Project.

A. Proposed Project:

The Project will consist of a new campus with three main components:

- A modernization of an existing motel of approximately 12,250 SF to accommodate offices, Emergency and Temporary Housing units.
- A new two-story Access Center and Emergency Housing building of approximately 29,000 SF.
- A new OSHPD 3 Recuperative Care building with medical rooms, medication and pharmacy room, and physician room of approximately 5,000 SF.
- New two-story Temporary Housing units of approximately 28,000 SF.
- The campus will include outdoor gathering spaces, dog park, fitness area, playground, and community gardens, and associated site improvements including paving, parking, accessible path of travel and landscape.
- The Scope of Services will be divided into Tasks; Task 1 shall be Programming and Conceptual Design, Task 2 shall be Schematic Design through Contract Administration of the Modernization of Existing Motel, and Task 3 shall be Schematic Design through Contract Administration of the New Buildings and Site.

B. Site Description:

The Project is located at 1502-1522 W. Mission Blvd., Ontario CA, 91761.

C. Scope of Services:

Task 1: Programming and Conceptual Design (#2254004-100)

1. Programming:
   a. Work with the City to understand current and future needs for the Access Center.
   b. Prepare space program by category with square footages and quantity.
   c. Prepare room data sheets for each type of space indicating unique requirements.

   d. Prepare a conceptual adjacency diagram.
   e. Facilitate a maximum of five (5) Stakeholder Engagement Workshop to engage user groups to listen and gather feedback about current facilities and future needs. Review and discuss findings with the City and confirm final program.
   f. Develop a Cost Plan for the Project based on the program.
   g. Compare the Cost Plan with the Project budget and if necessary, modify the Scope of Work with Owner to reconcile the Cost Plan and Project budget.
2. Conceptual Site Planning:
   a. Prepare a site analysis diagram, incorporating existing site conditions, environmental conditions, and unique opportunities identified by the stakeholder group.
   b. Prepare up to three site concept options.
   c. Prepare one final conceptual site plan.
3. Preliminary Design:
   a. Prepare up to three preliminary massing concept options.
   b. Develop one massing concept into a final preliminary design.
   c. Develop a maximum of five (5) perspective renderings for public presentations; renderings will be preliminary vignettes illustrating the general look and feel of the Access Center, rather than photorealistic renderings, due to the amount of information at this stage of development
4. Cost Estimate:
   a. Prepare a cost estimate of the preliminary design.
5. Final Deliverables:
   a. Programming and Conceptual Design package will include program summary, program room data sheets, adjacency diagram, preliminary floor plans, preliminary site plans, preliminary massing concept, and preliminary renderings.
6. Topographic Survey:
   a. Provide Topographic and ALTA Survey with boundaries and easements,
   b. Provide Ground Penetrating Radar (GPR) and Utility Mapping
7. Geotechnical Report:
   a. Provide Geotechnical Report
   b. Provide Phase 1 Environmental Site Assessment (ESA)
8. Civil Engineering:
   a. Provide preliminary hydrology and drainage study necessary for Environmental Review.
   b. Provide preliminary stormwater quality management plan necessary for Environmental Review.
   c. Provide preliminary earthwork calculations with final import or export soil quantities.
9. Environmental Documentation:
   a. Coordinate with lead agency on Environmental Review.
   b. Provide Initial Study (IS) and Negative Declaration (ND) or Mitigated Negative Declaration (MND).
   c. Provide technical analysis required for IS/MND, including Air Quality IS/MND Assessment, Construction and Operation HRA, GHG IS/MND Assessment, Energy IS/MND Assessment, Noise Assessment, Traffic VMT, and Transportation Assessment.

Task 2: Existing Building Modernization (#2254004-200)

1. At each phase of design, HMC shall facilitate a Milestone Page Turn meeting with the Owner to review milestone deliverables and gather feedback. At the conclusion of each meeting, Owner to provide Notice to Proceed into next phase, which represents an understanding and approval of Scope, Schedule and Budget as indicated in the Submittal.
    a. HMC to provide 100% Schematic Design Submittal, which includes design drawings and rough order of magnitude cost estimate. Attachment "D" HMC Production Document Deliverables does not apply to this Scope of Work.
    b. HMC to provide 100% Design Development Submittal, which includes design drawings. Attachment "D" HMC Production Document Deliverables does not apply to this Scope of Work.
    c. HMC to provide 100% Construction Document Submittal, which includes design drawings and specifications. Attachment "D" HMC Production Document Deliverables does not apply to this Scope of Work.
2. Obtain City of Ontario Planning and Building Department approval for the Project.
3. Assist with Bidding, which include answering pre-bid RFIs, providing addenda as required, and evaluation of contractor bids.
4. Provide Contract Administration services, HMC anticipates the following:
    a. Attending one (1) preconstruction meeting with City & General Contractor.
    b. Attending approximately twelve (12) weekly Owner, Architect, Contractor (OAC) meetings.
    c. Attending approximately six (6) Construction Observation visits from the A/E team (if attending OACs in-person, construction observation visits will coincide with OACs).
    d. Responding to approximately thirty (30) Submittals (shop drawings, product data, etc.).
    e. Responding to approximately eighty (80) Requests for Information (RFI).
    f. Reviewing and approving monthly contractor Pay Applications.
    g. Preparing one (1) A/E Punch List of the construction prior to Owner occupancy.
    h. Reviewing contractor-prepared Closeout Documents (subcontractor and material provider warranties, operations & maintenance manuals, contractor's as-built drawings).

Task 3: New Buildings and Site (#2254004-300)

1. Facilitate a Design Workshop to review floor plan concepts from prior planning phase, engage stakeholders, and build consensus on final direction.
2. At each phase of design, HMC shall facilitate an all-day Milestone Page Turn meeting with the Owner to review milestone deliverables and gather feedback. HMC shall provide a cost estimate, and if necessary, steps to reconcile the estimate with the Project budget. At the conclusion of each meeting, Owner to provide Notice to Proceed into next phase, which represents an understanding and approval of Scope, Schedule and Budget as indicated in the Submittal.
    a. HMC to provide 100% Schematic Design Submittal, which includes design drawings, Architecture/Engineering (A/E) basis of design narratives, and cost estimate. Refer to Attachment "D" HMC Production Document Deliverables for additional information.
    b. HMC to provide 100% Design Development Submittal, which includes design drawings and an updated cost estimate. Refer to Attachment "D" HMC Production Document Deliverables for additional information.

c. HMC to provide 100% Construction Document Submittal, which includes design drawings, specifications, and an updated cost estimate. Refer to Attachment "D" HMC Production Document Deliverables for additional information.

3. Obtain City of Ontario Planning and Building Department approval for the Project.
4. Assist with Bidding, which include answering pre-bid RFIs, providing addenda as required, and evaluation of contractor bids.
5. Provide Contract Administration services, HMC anticipates the following:
   a. Attending one (1) preconstruction meeting with City & General Contractor.
   b. Attending approximately ninety (90) weekly Owner, Architect, Contractor (OAC) meetings.
   c. Attending approximately sixty (60) Construction Observation visits from the A/E team (if attending OACs in-person, construction observation visits will coincide with OACs).
   d. Responding to approximately two hundred (200) Submittals (shop drawings, product data, etc.).
   e. Responding to approximately four hundred (400) Requests for Information (RFI).
   f. Reviewing and approving monthly contractor Pay Applications.
   g. Preparing one (1) A/E Punch List of the construction prior to Owner occupancy.
   h. Reviewing contractor-prepared Closeout Documents (subcontractor and material provider warranties, operations & maintenance manuals, contractor's as-built drawings).

D. Preliminary Schedule:

Refer to Attachment "E" for the Preliminary Project Schedule. This is intended to provide a rough timeline of the project based on known information at this time but is subject to change as additional information is discovered as the project moves forward through the subsequent phases.

Note: The Owner and Architect agree and acknowledge that the performance of the Architect's services may depend upon other parties and circumstances which the Architect cannot control. The schedule and fee, therefore, may be extended by agreement between the Owner and Architect, except where the Architect is solely responsible for Project delays.

E. Assumptions / Exclusions:

a. Services
   a. Task 1 Services include:
      - Architectural
      - Civil Engineering
      - Landscape Architecture
      - Cost Estimation
      - Topographic, Utility, & Alta Survey(s), Geotechnical Report, CEQA/Entitlements Services
   b. Task 2 Basic Services include:
      - Architectural
      - Civil Engineering

- Structural Engineering
- Mechanical, Plumbing, and Electrical Engineering

c. Task 2 Supplemental Services include:
- Fire Alarm Engineering
- Fire Protection Engineering
- Data/Telecom/Low Voltage Engineering
- Security (Intrusion/CCTV) Engineering
- Cost Estimation
- Fundamental Commissioning
- Furniture, Fixtures, and Equipment (FF&E)
- Topographic Survey

d. Task 3 Basic Services include:
- Architectural
- Civil Engineering
- Landscape Architecture
- Structural Engineering
- Mechanical, Plumbing, and Electrical Engineering

e. Task 3 Supplemental Services include:
- Fire Alarm Engineering
- Fire Protection Engineering
- Acoustical Engineering
- Data/Telecom/Low Voltage Engineering
- Security (Intrusion/CCTV) Engineering
- Food Service Consultant
- Photovoltaic and Battery Storage Design
- Cost Estimation
- Fundamental Commissioning
- Furniture, Fixtures, and Equipment (FF&E)
- Signage and Wayfinding Design
- Lighting Design
- Branding/Identity Design

f. Specialty consultants other than those listed in this Proposal are excluded.

b. Energy and Sustainability
   a. LEED, WELL, Zero Energy Building, or other sustainable certification(s) of any type related to this Project are excluded.
   b. Fundamental Commissioning, as required by the 2022 California Energy Code and the CALGreen Code, is included.
   c. Design of photovoltaics and battery storage system, per 2022 California Energy Code, is included.
   d. Commissioning or training of systems are excluded.
   e. Detailed on-site renewable energy and/or IAQ management plans are excluded.
   f. QSP monitoring services; horizontal control plans; Standard Urban Stormwater Mitigation Plan (SUSMP), and off-site work is excluded.
   g. QSD services for development of Storm Water Pollution Prevention Plan (SWPPP) is included. Fees for submission of SWPPP shall be paid for by Owner.

c. Construction
   a. It is assumed that project delivery method is Design-Bid-Build for Task 2 and CM Multi-Prime (CMMP) for Task 3.

b. Construction duration is preliminarily estimated at a maximum of four (4) calendar months for Task 2 and twenty-two (22) calendar months for Task 3. Should the construction schedule be extended through no fault of the architect, additional services for extended Contract Administration services shall apply.
c. It is assumed Task 2 and Task 3 will be constructed at different times, but that Task 3 will be constructed in one phase by the same CM Multi-Prime entity.
d. Construction staking during construction is excluded and shall be provided by General Contractor.

d. Fees
   a. Agency and permit fees are excluded.
   b. Testing and inspection fees are excluded.

e. Deliverables
   a. Development of Record Drawings from Contractor's As-Builts is excluded.
   b. Hard copy prints of Construction Documents and Specifications are excluded.

F. Compensation:

HMC will provide the services listed in the Scope of Work above for a fixed fee of as follows:

Task 1 shall be a fixed fee of **Four Hundred Ninety-Seven Thousand, Nine Hundred Sixty-Nine Dollars ($497,969)** based on consultants' proposals and HMC's estimated hours to complete the Scope of Services listed in Section C. Refer to Section H for Additional Services.

Task 1: Programming and Conceptual Design

Architectural	$181,610
Topographic Survey / GPR	$82,961
Civil Engineering (incl. CEQA Support)	$81,828
Geotechnical Report (inc. CEQA Support)	$39,456
Environmental Consultant	$84,514
Cost Estimation	$27,600
Task 1 Total Fee	**$497,969**

Task 2 shall be a fixed fee of **Five Hundred Ninety-Three Thousand, Five Hundred Sixteen Dollars ($593,516)** based on consultants' proposals and HMC's estimated hours to complete the Scope of Services listed in Section C. Refer to Section H for Additional Services.

Task 2: Existing Building Modernization

Architectural	$281,776
Civil Engineering / Topographic Survey	$34,100
Structural Engineering	$15,400
Mechanical/Plumbing/Electrical Engineering	$123,750
Fire Alarm/Fire Protection Engineering	$39,820
Data/Telecom/Low Voltage/Security Engineering	$51,370
Cost Estimation	$8,800
Fundamental Commissioning	$5,500
Furniture, Fixtures, and Equipment (FF&E)	$33,000
Task 2 Total Fee	**$593,516**

Task 3 shall be a fixed fee, based on estimated construction cost of the Project. Task 3 fee shall be reconciled through Contract Amendment after completion of conceptual design estimate at the end of Task 1.

G. Additional Services:

If Additional Services are required beyond the original Scope of Work, such services described in Attachment “B”, HMC will bill on an hourly basis per Attachment “A”, HMC Standard Hourly Rate Schedule.

H. Reimbursable Expenses:

Reimbursable expenses are preliminarily estimated not to exceed **Fifty Thousand Dollars ($50,000)**. Reimbursable expenses are in addition to compensation for Consulting Services, including printing, plotting, delivery, and other expenses related to Agency review, Bidding, Construction or other Owner requested costs. Expense of fees paid for securing approval of authorities having jurisdiction over the Project. The Architect's compensation shall be computed based on one and one fifteenth (1.15) times the amounts invoiced to the Architect.

Please review this Proposal and if it meets with your approval, please send HMC your Standard Form of Agreement for signature.

If you have any questions or need additional information, please contact me at (626) 826-9108.

Sincerely,



Brandon Gullotti AIA, NCARB, Assoc. DBIA
Principal In Charge
HMC Architects

Encl.: Attachment “A” – Standard Rate Schedule
Attachment “B” – Additional Services List
Attachment “D” – HMC Production Deliverables
Attachment “E” – Preliminary Project Schedule

cc: Sarah Gradillas, File-02 Contracts Information-03 AOA\PROPOSALS

HMC Architects DESIGN FOR GOOD

ATTACHMENT "A"

HMC Rate Schedule
Hourly Rate by Professional Category
(Not all categories need apply to this contract)

Description		Rates
Principal in Charge	$	370
Sr Project Manager/Sr Project Architect/Sr Technical Manager	$	270
Project Manager/Project Architect/Technical Manager	$	255
Job Captain/Technical Leader	$	215
Project Coordinator	$	185
Senior Construction Administrator	$	275
Construction Administrator	$	255
Project Administration Support	$	150
Design Principal	$	370
Senior Project Designer	$	270
Project Designer	$	255
Design Leader	$	215
Designer II	$	165
Designer	$	150
Sustainability Director	$	305
Specifications Writer	$	235
Visualization Arts	$	215

These are the current hourly rates effective July 1, 2024, through June 30, 2025 and are subject to change one time annually effective July 1st

ATTACHMENT "B"

ADDITIONAL SERVICES

The Additional Services described in this Attachment are not included in Basic Services and they shall be paid for by the Owner as provided in this Agreement, in addition to the compensation for Basic Services, Additional Services may only be provided if authorized or confirmed in writing by the Owner and Architect.

Project Representation Beyond Basic Services:

1. ***Revisions:*** Making revisions in Drawings, Specifications, Project Manual or other documents when such revisions are:

   a. Inconsistent with approvals or instructions previously given by the Owner;

   b. Required by the enactment, revised interpretation, jurisdictional differences in interpretation, or revision of codes, laws or regulations subsequent to the preparation of such documents, or additional costs caused by delays resulting from such.

2. ***Project Changes:*** Providing services required because of changes in the Project including, but not limited to, size, quality, complexity, the Owner's schedule, or the method of bidding or negotiating and contracting for construction.

3. ***Change Orders:*** Preparing Drawings, Specifications and other documentation, analysis and supporting data, evaluating Contractor's proposals, and providing other services in connection with Change Orders and directives.

4. ***Default:*** Providing services made necessary by the default or termination of the Contractor, by defects or deficiencies in the Work of the Contractor, or by failure of performance of either the Owner, Contractor or others performing services or providing work on the Project.

5. ***Contractor's Submittals:*** Reviewing a Contractor's submittal out of sequence from the submittal schedule agreed to by the Architect.

6. ***Contractor's RFI:*** Responding to the Contractor's requests for information where such information is available to the Contractor from a careful study and comparison of the Contract Documents, field conditions, Contractor-prepared coordination drawings, or prior Project correspondence or documentation.

7. ***Claims:*** Providing services in connection with claims submitted by Contractor or others.

8. ***Hearings, Proceedings:*** Providing services in connection with the preparation for, or attendance at, public hearings or other meetings, or legal proceedings, except where the Architect is a party thereto.

Contingent Additional Services

1. ***Existing or Other Facilities:*** Providing services to investigate facilities or existing conditions or to make measured drawings thereof.

2. ***Detailed Estimates:*** Providing detailed estimates of Construction Cost.

3. ***Providing Other Consultants:*** Providing services of consultants, if any other than those specified as Basic Services under this Agreement.

4. ***Post Completion/Extended Construction:*** Providing services after the original completion date not due to the fault of the Architect/Engineer or after issuance to the Owner of the final Certificate for Payment, or thirty (30) days after the date of Substantial Completion of the Work, whichever is earlier.

5. ***Project Hold/Resumption:*** If the Project is placed on hold by the Owner for more than 90 days due to circumstances beyond the direct control of the Architect, the schedule shall be adjusted and the Architect's compensation shall be equitably adjusted to provide for expenses incurred in the interruption and resumption of the Architect's services.

6. ***Other Additional Services:*** Providing any other services not otherwise included in this Agreement.

ATTACHMENT "D"

HMC PRODUCTION DELIVERABLES

100% Schematic Design Submittal

- **Project Schedule**
- **Program & Budget**
- **Design, Energy Conservation, Code Analysis**
- **Architectural Requirements**

  Site Civil and Landscape Drawings

  - Site demolition.
  - Locations of existing site utilities.
  - Overall dimensions of proposed new or altered buildings, property lines, setbacks, roadways and distance from site features. Indicate service drives, easements, parking patterns, walks, stairs, ramps, retaining walls, fences, fire hydrants, above and below ground storage (dry & wet), and equipment.
  - Topography and proposed finished elevations of building entrances and major access ways.
  - Method of site drainage and retention.
  - Site profile sections as necessary to depict grade breaks.
  - Landscape design and features of green and hardscaped areas.
  - Narrative Report documenting findings and design impacts from site investigations, geotechnical and environmental reports.

  Floor Plans

  - Room names with cross reference to sizes required by project program.
  - Overall dimensions, grid, partition, and column layouts with door & window openings.
  - Demolition plan if required by the project.

  Elevations and Sections

  - Exterior elevations depicting height and relationship to natural and graded ground contours.
  - Sections as needed to explain the structure or its design features.

  Code Analysis

  - Allowable building area calculations in accordance with construction type, side yards, setbacks, fire sprinkler increases, zoning code floor area ratios if applicable and building height compliance.
  - Floor plans depicting exit system, occupancy and area separations.
  - Mixed occupancy ratios if applicable.
  - Calculated plumbing fixture counts.

  Architectural Narrative

  - General description of architectural materials and building systems

- **Structural Requirements**
  - Written description of the recommended structural system and the basis of recommendation over other approaches.
  - Conceptual foundation and framing plans.

- **Plumbing Requirements**
  - Written analysis of the calculated load demands and capacity of existing systems and available utility services – including fire service, sanitary systems, natural gas, domestic water, storm retention and release.
  - Plumbing plans with diagrammatic water service, storage, roof drainage, fire risers if applicable and invert elevations at points of connection with site utilities.

- **HVAC Requirements**
  - Written analysis of the calculated loads of systems. Description of recommended system and the basis of recommendation over other approaches.
  - Conceptual single-line mechanical diagram showing major ducts and equipment. Identification and sizes of primary service ducts, locations and weights of major equipment items including cooling towers, chillers, pumps, fans, air-handling units, compressors and related items.
  - Capacity of existing systems if applicable based on record drawings, field inspections and/or test reports.
  - Description of hoods and ducting with relationship between exhaust and fresh air supply.

- **Electrical & Telecommunications Requirements**
  - Site electrical plan, indicating method of service for electrical power, telecommunications, and fire alarm systems.
  - Single line diagram showing:
    1. Method of service.
    2. Major transformers and transformer substations.
    3. Major switchboards, motor control centers, panels and distribution boards.
    4. Major components of emergency power.
    5. Major components of telecommunications systems – BDF, IDF, point of connection to existing backbone if applicable.
  - Basis of design narrative report for lighting approach and other applicable systems such as public address, fire alarm, security, call systems and pneumatic tube.

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100% Design Development Submittal

- **Updated Project Schedule**
- **Updated Program & Budget**
- **Updated Design, Energy Conservation, Code Analysis**
- **Expanded Architectural Requirements**

Site Civil and Landscape Drawings

- Site demolition, with location of existing structures and utilities abandoned and to remain.
- Composite site utility plan with invert elevations to utility service points of connection.
- Off-site improvements.
- Overall dimensions of proposed new or altered buildings, property lines, setbacks, roadways and distance from site features. Indicate service drives, easements, parking layouts, walks, stairs, ramps, retaining walls, fences, fire hydrants, above and below ground storage (dry & wet), and equipment with reference to a benchmark or datum point.
- Topography and proposed finished elevations of building entrances and access ways, walks, stairs, ramps, retaining walls, fences.
- Method of site drainage and retention, design details and hydrology calculations.
- Site profile sections as necessary to depict grade breaks and transition details.
- Landscape design with plant & tree selections, pedestrian and green space features - hardscaped design, patterns and details to explain the concept.
- Updated Narrative Report documenting findings and design impacts from site investigations, geotechnical and environmental reports.

Floor Plans

- Room names with cross reference to sizes required by project program with defined corridors, lobbies, stairs, elevators, toilet rooms, janitors' closets, and mechanical/electrical equipment rooms.
- Overall dimensions, grid, partition, and column layouts with door & window openings with provisions for making facilities accessible to and usable by the disabled.
- Location of plumbing fixtures such as floor drains, drinking fountains, showers, fire-hose cabinets, fire extinguisher cabinets, fume & exhaust hoods.
- Major built-in features such as fixed seating, food service equipment, display cases, counters, shelves, lockers, laboratory workspaces, and casework.
- Contract or movable furniture systems layouts indicating differences between fixed and movable furniture systems and equipment.
- Floor and wall finish patterns and accents.

- Demolition plan if required by the project.

Reflected Ceiling Plans

- Lighting layouts, ceiling systems and design elements such soffits, troughs, vaults, and coffers.

Roof Plans

- Indicating roof mounted equipment, slopes, ridges, drains, roof screens, parapet heights, roofing material, roof hatches and other associated equipment.

Elevations and Sections

- Exterior elevations depicting height and relationship to natural and graded ground contours.
- Depict all building elements including penthouses, entrances, canopies, windows, doors, stairs, platforms, louvers, stacks, and similar items with indicated finish of materials.
- Sections as needed to explain the structure or its design features. Including longitudinal and traverse sections for each major area, indicating floor elevations, ceiling heights, tunnels and unexcavated areas, basements, rooflines, and parapets, passages between buildings if applicable – sections cross referenced to floor plans.
- Coordinate and indicate HVAC distribution and hood venting.

Interior Elevations

- Elevations of all major rooms and design features with details to explain concept and design.

Schedules

- Door Schedule denoting size, type, frame, rating assembly, material and special comments.
- Window Schedule denoting size, type, frame, glazing, window covering if applicable and special comments.
- Finish Schedule denoting material finish of floor, floor base, wall & ceiling.

Updated Code Analysis

- Allowable building area calculations in accordance with construction type, side yards, setbacks, fire sprinkler increases, zoning code floor area ratios if applicable and building height compliance.
- Floor plans depicting exit system, occupancy and area separations.
- Mixed occupancy ratios if applicable.
- Calculated plumbing fixture counts.
- Illustrate code implications from preliminary review and interpretations of agencies.

Enlarged Room Plans

- Equipment rooms indicating layout of equipment to ensure sufficient space has been allocated.
- Toilet Rooms and support services rooms.
- Special design feature rooms.

Outline Specifications

- Updated and more detailed description for all finishes and materials, building components and systems as compared with the schematic design documents submittal - including specifications for structural, mechanical, plumbing, electrical/telecommunications and building support systems.
- Division 01- General Requirements.

- **Structural Requirements**
  - Updated written description of the recommended structural system and the basis of recommendation over other approaches.
  - Foundation and framing plans based on load calculations and seismic analysis.

- **Plumbing Requirements**
  - Updated written analysis of the calculated load demands and capacity of existing systems and available utility services – including fire service, sanitary systems, natural gas, domestic water, storm retention and release.
  - Plumbing plans with diagrammatic water service, storage, roof drainage, fire risers if applicable and invert elevations at points of connection with site utilities, including sizes based on calculations.
  - Riser diagrams if applicable.

- **HVAC Requirements**
    - Updated written analysis of the calculated loads of systems. Description of recommended system and the basis of recommendation over other approaches.
    - Double line mechanical plan showing primary duct layout and single line secondary supply and return distribution. Identification of sizes and bottom of duct elevations of primary service ducts, locations and weights of major equipment items including cooling towers, chillers, pumps, fans, air-handling units, compressors and related items.
    - Supply and return zones for each occupancy.
    - Capacity of existing systems if applicable based on record drawings, field inspections and/or test reports.
    - Hoods, exhaust fans and ducting with destination points of exhaust.
    - Equipment schedules.
    - Mechanical rooms depicting equipment demonstrating that sufficient space has been allocated.

- **Electrical & Telecommunications Requirements**
    - Site electrical plan, indicating method of service for electrical power, telecommunications, and fire alarm systems.
    - Updated Single line diagram showing:
        1. Method of service.
        2. Major transformers and transformer substations.
        3. Major switchboards, motor control centers, panels and distribution boards.
        4. Major components of emergency power.
        5. Major components of telecommunications systems – BDF, IDF, point of connection to existing backbone if applicable.
    - Electrical floor plan indicating distribution layout of electrical power, signal and telecommunications.
    - Lighting plan and fixture schedule.
    - Updated basis of design narrative report for lighting approach and other applicable systems such as public address, fire alarm, security, call systems and pneumatic tube.

100% Construction Documents Submittal

Production

The following outline of documents represent the minimum construction document phase submittals which shall include working drawings and specifications from all disciplines with updated estimates of probable cost reflecting current work to date.

Narrative

- Summary of reports, code analysis, and reconciliation of governmental agency requirements and applicable regulations.

Statement of Sustainable Design

- Documentation of compliance with California Energy Code.
- Statement demonstrating application of environmentally responsible design.

Estimate of Probable Cost

- Updated estimate from design development phase

Civil Drawings

- Existing civil survey
- Site demolition plan where project applicable
- Site plan
- Over excavation, grading and drainage plan
- Site profile sections
- Details
- Composite site utilities plan
- Horizontal control plans

Landscape Drawings

- Finished grading plan
- Irrigation plans
- Irrigation details
- Planting plan
- Planting details
- Hardscape (paving) plan
- Site amenity and feature details

Architectural Drawings

- Title Sheet
- Site & building demolition plan where project applicable
- Site Plan
- Phasing site and floor plans where project applicable
- Life/Safety plans including applicable code analysis and tabulations
- Key, reference and enlarged floor plans
- Reflected ceiling plans
- Roof Plans
- Exterior elevations and building sections
- Furniture and equipment plans where project applicable
- Wayfinding, signage plans where project applicable
- Interior and casework elevations
- Partition, ceiling, and design feature details
- Door, window and interior finish schedules
- Enlarged wall sections
- Stair and elevator plans, sections and details where project applicable
- Materials board – updated from design development phase.
- Finish and Furniture Sample Binders
- Detail of anchorage for all fixed equipment in accordance with building code requirements.
- Stamp all drawings and specifications as required by law by architect of record.

Structural Drawings

- Foundation plans.
- Framing plans.
- Building sections.
- Framing and column schedules.
- Details of connections, special assemblies and expansion, drift and seismic joints.
- Details of structural framing systems for support of nonstructural components and equipment.
- Structural drawings accompanied with computations, stress diagrams, and other pertinent data.

Plumbing Drawings

- Site utility sewer lines sized with invert elevations at points of connection.
- Building waste line layouts, sized with vent stacks and connections to drains, fixtures and equipment.
- Building hot & cold water supply layouts, sized with circulation mains, tanks, branches, risers and connections to fixtures and equipment.
- Riser diagrams for supply and waste systems.
- Fire extinguishing equipment, risers and standpipes where project applicable.
- Plumbing fixtures, tanks, and pumps with drainage and supply connections.
- Layout and size of natural gas, vacuums and medical gas systems where project applicable.
- Detail sections demonstrating coordination of structural, HVAC and piping systems.
- Plumbing drawings indicating complete plumbing system in detail and shall include methods for fastening equipment to the structure to resist seismic forces.

HVAC Drawings

- Schedules and legends
- Floor plans, sections indicating air and piping systems including all branch distribution.
- Sections, details and enlarged floor plans depicting layouts of mechanical equipment rooms.
- Air balance schedule for outside, supply, return, and exhaust air and sections demonstrating sufficient clearances and volumes for air flows and access of equipment where project applicable.

- Flow diagrams for chilled water, condenser water, and boilers where project applicable.
- Air riser diagrams where project applicable.
- Plans and detail sections depicting HVAC systems and branches with duct and pipe sizes for heating, steam, refrigeration, exhaust and ventilation where project applicable.
- Auxiliary HVAC required for 24/7 operating equipment service systems where project applicable.
- Energy calculations.
- HVAC drawings shall indicate the complete heating, ventilating, and air-conditioning systems in detail and shall include methods for fastening equipment to the structure to resist seismic forces.

Electrical and Telecommunication Drawings

- Electrical service to building from public utility, with size of feeders
- Site and building transformers locations
- Main switchboard power panels, light panels and associated equipment.
- Feeder and conduit sizes.
- Site and building light fixtures, receptacles, switches and power outlets.
- Telecommunication system, routing, distribution, terminal cabinets, backboards and coordinated mechanical requirements.
- Fire alarm system and connection to existing system where project applicable.
- Emergency power, generator, transfer switches, fuel tanks and auxiliary service where project applicable.
- Electrical drawings shall indicate sufficient level of detail to illustrate connections, routings, and other items in complex areas. All wiring shall be final sized. Detailed methods for fastening equipment to the structure to resist seismic forces shall be indicated – drawings shall indicate feeder and conduit sizes, schedule of feeder breakers or switches, light fixtures, receptacles, switches, and power outlets, BDF & IDF terminal racks/cabinets and/or backboards, cabling/wiring risers and routing.

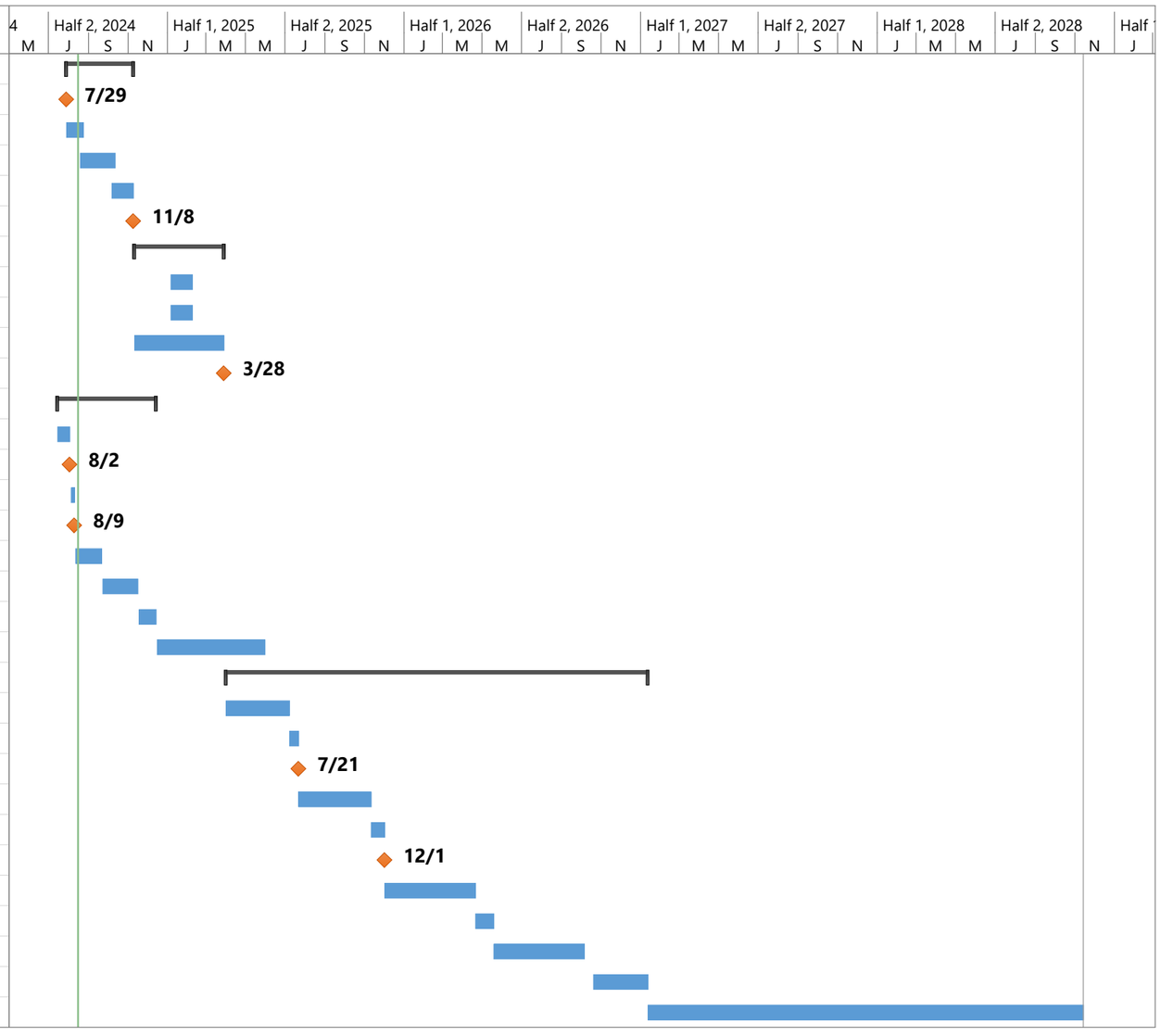
Specifications

- CSI format specifications from each respective discipline including Division- 01, General Conditions and Supplementary Conditions. Specifications shall demonstrate adherence with client's standards and contracted vendors and suppliers where project applicable.
- Bidding Requirements, Notice to Bidders and Bid Forms.

ATTACHMENT "E"

PRELIMINARY PROJECT SCHEDULE

ID	Task Name	Duration	Start	Finish
1	**Task 1a: Programming and Conceptual Design**	**75 days**	**Mon 7/29/24**	**Fri 11/8/24**
2	Notice to Proceed	0 days	Mon 7/29/24	Mon 7/29/24
3	Programming	4 wks	Mon 7/29/24	Fri 8/23/24
4	Concept Development	8 wks	Mon 8/19/24	Fri 10/11/24
5	Cost Estimate & Final Package	5 wks	Mon 10/7/24	Fri 11/8/24
6	City Review & Approval	0 wks	Fri 11/8/24	Fri 11/8/24
7	**Task 1b: Environmental Review**	**100 days**	**Mon 11/11/24**	**Fri 3/28/25**
8	Topographic Survey / GPR	5 wks	Mon 1/6/25	Fri 2/7/25
9	Geotechnical Report	5 wks	Mon 1/6/25	Fri 2/7/25
10	Initial Study	20 wks	Mon 11/11/24	Fri 3/28/25
11	(Mitigated) Negative Declaration	0 days	Fri 3/28/25	Fri 3/28/25
12	**Task 2: Existing Building Modernization**	**110 days**	**Mon 7/15/24**	**Fri 12/13/24**
13	Schematic Design	3 wks	Mon 7/15/24	Fri 8/2/24
14	City Review & Approval / NTP into DD	0 wks	Fri 8/2/24	Fri 8/2/24
15	Design Development	1 wk	Mon 8/5/24	Fri 8/9/24
16	City Review & Approval / NTP into CD	0 wks	Fri 8/9/24	Fri 8/9/24
17	Construction Documents	6 wks	Mon 8/12/24	Fri 9/20/24
18	Agency Review & Approval	8 wks	Mon 9/23/24	Fri 11/15/24
19	Bidding & Negotiations	4 wks	Mon 11/18/24	Fri 12/13/24
20	Task 2 Contract Administration (Estimated)	6 mons	Mon 12/16/24	Fri 5/30/25
21	**Task 3: New Buildigs and Site**	**465 days**	**Tue 4/1/25**	**Mon 1/11/27**
22	Schematic Design	14 wks	Tue 4/1/25	Mon 7/7/25
23	Cost Estimate	2 wks	Tue 7/8/25	Mon 7/21/25
24	City Review & Approval / NTP into DD	0 wks	Mon 7/21/25	Mon 7/21/25
25	Design Development	16 wks	Tue 7/22/25	Mon 11/10/25
26	Cost Estimate	3 wks	Tue 11/11/25	Mon 12/1/25
27	City Review & Approval / NTP into CD	0 wks	Mon 12/1/25	Mon 12/1/25
28	Construction Documents	20 wks	Tue 12/2/25	Mon 4/20/26
29	Cost Estimate	4 wks	Tue 4/21/26	Mon 5/18/26
30	Agency Review & Approval	20 wks	Tue 5/19/26	Mon 10/5/26
31	Bidding & Negotiations	12 wks	Tue 10/20/26	Mon 1/11/27
32	Task 3 Contract Administration (Estimated)	24 mons	Tue 1/12/27	Mon 11/13/28



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

PAUL S. LEON
MAYOR

DEBRA PORADA
MAYOR PRO TEM

ALAN D. WAPNER
JIM W. BOWMAN
RUBEN VALENCIA
COUNCIL MEMBERS

SHEILA MAUTZ
CITY CLERK

JAMES R. MILHISER
TREASURER

SCOTT OCHOA
CITY MANAGER

CONTRACT FOR CONSTRUCTION

This Contract for Construction ("Contract"), No. _____ is made and entered as of _____, by and between City of Ontario, with its principal place of business at 303 East "B" Street, Ontario, CA 91764, sometimes hereinafter called the "City" and Optima RPM Inc., sometimes hereinafter called "Contractor."

WITNESSETH: That the parties hereto have mutually covenanted and agreed, and by these presents do covenant and agree with each other as follows:

ARTICLE 1. SCOPE OF WORK.

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

D&C24-011 ONTARIO MOTOR INN RENOVATION

Contractor is an independent contractor and not an agent of the City. The Contractor and its surety shall be liable to the City for any damages arising as a result of the Contractor's failure to comply with this obligation.

ARTICLE 2. TIME FOR COMPLETION.

Time is of the essence in the performance of the Work. The Work shall be commenced on the date stated in the City's Notice to Proceed. The Contractor shall complete all Work required by the Contract Documents within **250** calendar days from the commencement date stated in the Notice to Proceed. By its signature hereunder, Contractor agrees the time for completion set forth above is adequate and reasonable to complete the Work.

ARTICLE 3. CONTRACT PRICE.

The City shall pay to the Contractor as full compensation for the performance of the Contract, subject to any additions or deductions as provided in the Contract Documents, and including all applicable taxes and costs, the sum of Four Million Ninety-Eight Thousand Dollars ($4,098,000.00). Payment shall be made as set forth in the General Conditions. The City will pay to Contractor compensation based upon the prices set forth in the Bid Schedule.

ARTICLE 4. LIQUIDATED DAMAGES.

Contractor acknowledges that the City will sustain actual damages for each and every Day completion of the Project is delayed beyond the Contract Time. Because of the nature of the Project, it would be impracticable or extremely difficult to determine the City's actual damages. Accordingly, in accordance with Government Code section 53069.85, it is agreed that the Contractor will pay the City the sum of **$500** for each and every calendar day of delay beyond the time prescribed in the Contract Documents for finishing the Work, as Liquidated Damages and not as a penalty or forfeiture. In the event this is not paid, the Contractor agrees the City may deduct that amount from any money due or that may become due the Contractor under the Contract. This Section does not exclude recovery of other damages specified in the Contract Documents. Liquidated damages may be deducted from progress payments due Contractor, Project retention or may be collected directly from Contractor, or from Contractor's surety. These provisions for liquidated damages shall not prevent the City, in case of Contractor's default, from terminating the Contractor.

ARTICLE 5. COMPONENT PARTS OF THE CONTRACT.

The "Contract Documents" include the following:

Notice Inviting Bids
Instructions to Bidders
Bid Forms
Bid Acknowledgement
Bid Schedule
Bid Guarantee
Designation of Subcontractors
Information Required of Bidders
Non-Collusion Declaration Form
Iran Contracting Act Certification
Public Works Contractor DIR Registration Certification
Performance Bond
Payment (Labor and Materials) Bond
Contract for Construction
General Conditions
Special Conditions
Specifications
Addenda
Construction Plans and Drawings
Standard Specifications for Public Works Construction "Greenbook", latest edition, Except Sections 1-9
Applicable Local Agency Standards and Specifications, as last revised

Reference Specifications
Approved and fully executed Change Orders
Permits
Any other documents contained in or incorporated into the Contract

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

All of the Contract Documents are intended to be complementary. Work required by one of the Contract Documents and not by others shall be done as if required by all. In the event of conflict, the various Contract Documents will be given effect in the order set forth in the General Conditions. This Contract shall supersede any prior agreement of the parties.

ARTICLE 6. PROVISIONS REQUIRED BY LAW AND CONTRACTOR COMPLIANCE.

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

ARTICLE 7. INDEMNIFICATION.

Contractor shall provide indemnification and defense as set forth in the General Conditions.

ARTICLE 8. PREVAILING WAGES.

Contractor shall be required to pay the prevailing rate of wages in accordance with the Labor Code which such rates shall be made available at the City's Office or may be obtained online at http://www.dir.ca.gov and which must be posted at the job site.

ARTICLE 9. FALSE CLAIMS.

Contractor acknowledges that if a false claim is submitted to the City, it may be considered fraud and Contractor may be subject to criminal prosecution. Contractor acknowledges that the False Claims Act, California Government Code sections 12650, et seq., provides for civil penalties where a person knowingly submits a false claim to a public entity. These provisions include within their scope false claims made with deliberate ignorance of the false information or in reckless disregard of the truth or falsity of the information. In the event the City seeks to recover penalties pursuant to the False Claims Act, it is entitled to recover its litigation costs, including attorneys' fees. Contractor hereby acknowledges that the filing of a false claim may the Contractor to an administrative debarment proceeding wherein Contractor may be prevented from further bidding on public contracts for a period of up to five (5) years.

[REMAINDER OF PAGE LEFT INTENTIONALLY BLANK]

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

CITY OF ONTARIO

By: _____
Scott Ochoa
City Manager

ATTEST:

By: _____
Sheila Mautz, City Clerk

APPROVED AS TO FORM:

By: _____
Best Best & Krieger LLP
City Attorney

Optima RPM Inc.

By: _____

Its: _____

Printed Name: _____

[DELETE THE FOLLOWING SIGNATURE LINE IF NOT **REQUIRED**]

By: _____

Its: _____

Printed Name: _____

_____
Contractor's License Number and Classification

_____
DIR Registration Number

[IF CORPORATION, TWO SIGNATURES, PRESIDENT **OR** VICE PRESIDENT **AND** SECRETARY **OR** TREASURER **REQUIRED]**

END OF CONTRACT

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

PAUL S. LEON
MAYOR

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CITY CLERK

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TREASURER

SCOTT OCHOA
CITY MANAGER

AMENDMENT NO. 6 TO THE DESIGN SERVICES AGREEMENT BETWEEN THE CITY OF ONTARIO AND HMC GROUP DBA HMC ARCHITECTS

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 **HMC Group dba HMC Architects**, a 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 "Design Service Agreement" dated January 1, 2020 ("Agreement").

2.2 Amendment Purpose. The City and Consultant desire to amend the Agreement and add scope of services to provide Title 24 Commissioning Services for the City Services Building and increase the not to exceed amount by **Forty-Four Thousand Five Hundred Ten Dollars ($44,510).** The parties have heretofore entered into Amendment No. 1 dated July 22, 2022, Amendment No. 2 dated March 21, 2023, Amendment No. 3 dated September 5, 2023, Amendment No. 4 dated July 16, 2024, and Amendment No. 5 dated October 15, 2024.

2.3 Amendment Authority. This Amendment No. 6 is authorized pursuant to Section 3.37 of the Agreement.

3. Terms.

3.1 Amendment. Section 3.1.1 and 3.10.1 of the Agreement is hereby amended in its entirety to read as follows:

> "3.1.1 Scope of Services. Consultant promises and agrees to furnish to City all labor, materials, tools, equipment, services, and incidental and customary work necessary to fully and adequately supply the professional architectural and related services necessary for the full and adequate completion of the Project consistent with the provisions of this Agreement (hereinafter referred to as "Services"). The Services are more particularly described throughout this Agreement, including Exhibit "A" attached hereto and incorporated

herein by reference. All Services shall be subject to, and performed in accordance with, this Agreement, any exhibits attached hereto and incorporated herein by reference, and all applicable local, state and federal laws, rules and regulations. All Services performed by Consultant shall be subject to the sole and discretionary approval of the City, which approval shall not be unreasonably withheld. Additionally, Consultant shall comply with all Federal requirements applicable to the Services as set forth in Exhibit "A-I."

3.10.1 Consultant's Compensation for Basic Services. City shall pay to Consultant, for the performance of all Services rendered under this Agreement, with the total not to exceed amount of **Nine Million Two Hundred Eighty-One Thousand Three Hundred Twenty-Five Dollars ($9,281,325**) ("Total Compensation"). This Total Compensation amount shall be based upon, and may be adjusted according to, the fee schedule and related terms and conditions attached hereto as Exhibit "A" and incorporated herein by reference. The total compensation, as may be adjusted upon mutual agreement, shall constitute complete and adequate payment for Services under this Agreement.

Task list and not to exceed fees are included in Attachment "A".

3.2 Continuing Effect of Agreement. Except as amended by this Amendment No. 6, all other provisions of the Agreement remain in full force and effect and shall govern the actions of the parties under this Amendment No. 6. From and after the date of this Amendment No. 6, whenever the term "Agreement" appears in the Agreement, it shall mean the Agreement as amended by this Amendment No. 6.

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. 6.

3.4 Severability. If any portion of this Amendment No. 6 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 DESIGN SERVICES AGREEMENT BETWEEN THE CITY OF ONTARIO AND HMC GROUP DBA HMC ARCHITECTS

IN WITNESS WHEREOF, the Parties have entered into this Amendment No. 6 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

HMC GROUP dba HMC ARCHITECT

By: _____

Its: _____

Printed Name: _____

By: _____

Its: _____

Printed Name: _____

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

HMC Architects

March 25, 2024

Dan Beers
Design & Construction Principal Project Manager, City of Ontario
1333 S Bon View Ave
Ontario, CA 91761

Regarding: Proposal for Amendment Revision
City of Ontario: City Services Building
Amendment 1 – Title 24 Commissioning Services
HMC #2518003000

Dear Dan:

HMC Architects submits this Proposal to provide Architectural, Engineering and Design Services for work incurred to include:

1) Title 24 Commissioning Services (Cx)

1. **Scope of Work**
   The City of Ontario has requested the Title 24 Commissioning Services for the City Services Building be included in the Architect's contract. The consultant will provide Cx services related to all HVAC systems/controls, indoor light systems/controls, water heating systems/controls and processes required by Title 24. See also Exhibit A for detailed tasks and scope. This scope does not include Fundamental, Building Enclosure or Enhanced Commissioning.

2. **Design Requirements and Deliverables**
   The Design team will coordinate with the Cx Agent providing them with the 50% CD progress prints for review and comment and guiding their efforts during the remaining design and construction phases.

3. **Schedule**
   The activities of the Cx Agent will be parallel with the project's progress.

4. **Compensation**
   The following are the proposed fees for the above Amendment:

Architecture - HMC			$	8,810
Commissioning - DWE			$	35,700
Sub Total			$	44,510
Expenses			$	-
		TOTAL	**$**	**44,510**

We hope this proposal is acceptable to the City of Ontario. Please let us know if you have any additional questions or need further information.

Sincerely,
HMC Architects
Sandra Howard
Sandra Howard, Principal Architect

Exhibit.: A – Design West Engineering proposal

CC: Brandon Gullotti, Andrew Cartwright, Simon Solis, Sarah Gradillas (HMC)

EXHIBIT A

DESIGN WEST ENGINEERING

Date: March 14, 2024

Company: HMC Architects
3546 Concours Street
Ontario, CA 91764

Attention: Sandra Corazzelli

Subject: Ontario City Hall Annex Cx
Our Proposal #P-2316272

PROJECT SCOPE

To provide services as the Commissioning Authority (CxA) for Title 24 Commissioning of the Ontario City Hall Annex Cx project located in Ontraio, CA. Design West Engineering, Inc. will act as CxA to meet the requirements of Title 24 Commissioning for the proposed building and to verify and ensure that the building is designed, constructed, and calibrated to operate as intended. The primary role of the CxA is to develop and coordinate for the building systems, a comprehensive review of the construction documents, the execution of a testing plan, and observe and document performance. Design West Engineering, Inc. will verify and document that specified systems are functioning in accordance with the Design Intent and in accordance with the Contract Documents.

COMMISSIONING APPROACH

Design West Engineering has developed a scope of work specific to this project which we believe maximizes the value to the client. Our main driver will be satisfying the criteria of Title 24. Through careful review of this project's specific needs versus typical commissioning activities we have been able to eliminate tasks and activities which do not suit the HVAC and lighting systems common to this building type. Please carefully review each item in the Inclusion/Exclusion list. Those items required by Title 24 are identified as such. If any item in the exclusion list is desired by the Owner/Architect please let us know.

PROVIDED BY CLIENT

Deliverables and submittals will be consistent with the project requirement design guidelines. It is the responsibility of the respective contractors to demonstrate operation, and document proper operation of their systems and equipment, throughout the commissioning process. Additional fees will be required if Design West Engineering, Inc. is to provide services beyond the design and construction phase tasks described in this proposal.

SERVICES INCLUDED

Systems subject to commissioning under this proposal include all HVAC systems and controls, indoor lighting systems and controls, water heating systems and controls, and Irrigation Systems and controls, and covered processes as required by Title 24. For these systems and components, the CxA services include those listed in the following table.

Task	Description
Owner's Project Requirements	Title 24 requires development of the Owner's Project Requirements during Schematic Design. The CxA will assist the Owner in development of the Owner's Project Requirements document.
Commissioning Plan	Development of, and update to, the project's Commissioning Plan. The Cx plan details each aspect of the commissioning process, how commissioning will impact the design and construction phase of the project and the responsibilities of each team member in the commissioning process, as required by Title 24.
Commissioning Specifications	Development of, and update to, the project's Commissioning Measures. Cx measures will be incorporated into the construction documents to ensure each contractor can understand, and therefore accurately bid, their roles and responsibilities in the commissioning process, as required by Title 24.
Cx Design Review – 90% CDs	Perform a focused review of the design drawings and specifications for all commissioned systems per Title 24. Comments back to the design team are focused on clarifying sequences of operation, increasing the operability and maintainability of the building and ensuring the design meets each aspect of the OPR.
Title 24 Forms	Complete all required Title 24 forms for plan approval.
Cx Coordination Meetings	Coordinate and host commissioning meetings throughout the construction process to resolve issues discovered during site inspections and functional testing.
Site Inspections – Qty (3)	Site inspections are intended to identify installation issues at the earliest point possible to avoid change orders and impacts to the construction schedule.
Functional Performance Testing	Thoroughly test all modes of operation for the major HVAC, indoor lighting and water heating systems, as required by Title 24. The intent will be to verify and document intended performance of equipment and systems in accordance with system design criteria in the contract documents.

Re-Testing of Deficient Systems	The CxA will functionally test the installed equipment and identify any issues in the Cx Issues Log. Suggestions on correction of the deficiency and coordination of the repair will be completed through the Cx Issues Log Resolution process. Re-testing of deficient equipment will be completed by the Cx Agent.
Cx Issues Log Resolution	Site inspections and functional testing typically lead to a list of unresolved issues. The CxA will coordinate the resolution of these issues with the design and construction team to ensure the requirements of the contract documents are delivered.
Systems Manual Development	Document the operational aspects of the building to ensure the building can be operated and maintained by the Owner's facility's team in a manner that meets the Owner's Project Requirements, as required by Title 24.
Owner Training - Systems	Train the Owner's facility staff on the use and functionality of the Systems Manual as required by Title 24.
Commissioning Report	Develop a Commissioning Report, as required by Title 24, detailing each aspect of the commissioning process. Recommendations are provided to the Owner for the subject project as well as future projects.

SERVICES EXCLUDED

The following describes those services that are to be provided by others and/or have been eliminated from the commissioning scope of work to optimize the cost to the Owner.

Task	Description
Completion of the Certificate(s) of Installation	Per Title 24, Certificate(s) of Installation are to be completed by the installing contractor. Each contractor is responsible for maintaining these forms in an orderly manner to facilitate review by the building inspector. The CxA will copy the contractor's forms for inclusion in the Systems Manual.
Completion of the Certificate(s) of Acceptance	Per Title 24, Certificate(s) of Acceptance are to be completed by the Certified Acceptance Technician. Each contractor is responsible for maintaining these forms in an orderly manner to facilitate review by the building inspector. The CxA will copy the contractor's forms for inclusion in the Systems Manual.
LEED related Tasks and Activities	This proposal excludes LEED related tasks and activities. LEED commissioning services and related LEED credits can be provided if the project chooses to pursue LEED certification.
Testing of Systems not required by Title 24	Any and all systems not required by Title 24 are excluded from the Cx scope of work. This exclusion applies to, but is not limited to: building envelope, vertical transport, security systems, data and communication systems, cold domestic and process water systems and life safety systems. Testing of these systems can be provided by the CxA at the hourly rate detailed below.
Opposite Season Testing	Opposite season testing is testing that occurs during actual weather conditions. This eliminates the need for overrides during construction-phase functional performance testing. Simple HVAC systems do not typically require actual weather conditions to test system functionality. However, this testing can be provided by the CxA at the hourly rate detailed below. An additional site visit from both the CxA and the installing contractor will be required.

FEE

We propose to provide Title 24 Commissioning services for the proposed project as follows:

Title 24 Cx	Fee
Design Phase	$5,440.00
Construction Phase	$30,260.00
Total	$35,700.00

NOTES

1) Additional commissioning services can be provided at the rate of $180.00 per hour.
2) Attendance at on-site meeting(s), other than listed above, will be performed for the additional fee of $500.00 per trip for up to two hours. Site meeting time in excess of two hours will be billed at $180.00 per hour.
3) Design West Engineering shall be provided by the client such information as is available to the client and the clients' consultants and contractors and shall be entitled to rely upon the accuracy and completeness thereof.
4) Design West Engineering's fees are based on the understanding that the existing utilities and equipment have adequate capacity unless noted otherwise above. Any additional engineering required for upgrade will be provided at our regular hourly rates. Any services required during construction, outside of those listed previously, will be performed at our regular hourly rates.
5) If either party to this contract brings action to enforce this contract, the prevailing party shall recover its attorney's fees and cost from the losing party.

TERMS AND CONDITIONS

Project will be billed on a progressive billing schedule, invoices due net 30 days.

The following Terms and Conditions will govern all services performed on behalf of Client and are hereby incorporated into the Services Fee Proposal.

1) **Design Services.** Design documents including plans, specifications and reports represent Design West Engineering's ("DWE") judgment as a design professional with respect to the proper commissioning of equipment and components of the work. It is recognized, however, that DWE does not have control over contractor's proper performance of the work, including but not limited to the contractor's means, methods, techniques, sequences and procedures of construction. Accordingly, DWE cannot and does not warrant or represent that equipment and components of the work will not vary from the requirements of the contract documents or comply with applicable codes. DWE does not perform any work of a contractor and its Design Services are limited to design, plans, and oversight only. No withholding, deductions or offsets shall be made from DWE's compensation for any reason unless DWE has been found to be legally liable for such amounts. Payment of DWE's fees shall be a condition precedent to bringing any action or suit against DWE.
2) **Payment.** All fees and other charges will be billed to Client monthly and will be due and payable no later

than 30 days after the date of invoice. Payment to DWE will not be withheld, postponed or made contingent on the construction, completion or success of the project or upon receipt by the Client of project funds, offsetting reimbursements, or credits from other parties.

3) Additional Services. Any services not explicitly described as being performed by DWE or its subconsultants are excluded. If agreed to in writing by Client and DWE, DWE will provide additional services. Client will pay DWE for such additional services in accordance with DWE's current fee schedule or as otherwise agreed by Client and DWE in writing. These Terms and Conditions will apply to all additional services provided by DWE. In the case of additional services added to the Engineering Fee Proposal, DWE's liability shall be limited to the extent of the additional fee for the specific additional services added.
4) Professional Standards. Subject to all conditions set forth herein, DWE will only be liable for breaching its obligation to perform its services to the level of competency maintained by other practicing engineering professionals in the same or similar community performing the same services at the same time as they were performed by DWE. DWE makes no warranties, either express or implied. DWE does not guarantee the completion or quality of performance of contracts by the construction contractor or subcontractors, or other third parties, nor accepts responsibility for their acts, omissions or any safety precautions.
5) Independent Contractor. The relationship of DWE to Client shall at all times be that of an independent contractor. DWE shall not be liable for the acts of Client or its agents in performing Work.
6) Document Ownership. DWE holds copyright for all tracings, calculations, and other original documents produced by DWE and such documents shall be the property of DWE, except when otherwise provided by law, governmental requirement, or by prior agreement, these documents become public property or the property of the Client. A limited license is granted to use the documents for the specific purposes and project covered by the Agreement. Reproduction of these documents either in hard copy or soft copy (including posting on the web) is prohibited without copyright permission. No right to create modifications or derivatives of DWE documents is granted pursuant to this limited license. You may not remove any copyright or other proprietary notices contained in the documents and information. Any product, process or technology described in the documents may be the subject of other Intellectual Property rights reserved by DWE. The drawings, specifications, and reproductions thereof are instruments of service to be used only for the specific project covered by the Agreement between the Client and DWE. DWE assumes no liability for misinterpretation, modification, or misuse by others of any instruments of service prepared by DWE in accordance with its services.
7) Electronic Documents. If DWE provides Client any design documents, including but not limited to plans and specifications, in electronic form ("Electronic Documents"), acceptance and use of the Electronic Documents by Client shall be at Client's sole risk and Client will: (a) Waive and covenant not to sue DWE alleging any inaccuracy or defect in the Electronic Documents; (b) Agree that DWE makes no representation with regard to the compatibility of the Electronic Documents with Client's software or hardware; and (c) to the fullest extent permitted by law, indemnify, hold harmless, reimburse and defend DWE from, for and against any alleged claim, damage, liability, or cost, including but not limited to attorneys' fees, that may arise from Client's use of the Electronic Documents or any subsequent modification of the Electronic Documents by any person or entity.
8) Schedule. DWE will perform its services with reasonable diligence consistent with sound professional practice as ordinarily provided by engineers practicing in the same or similar locality under the same or similar circumstances. Client will require its other consultants and contractors to incorporate into their schedule's reasonable periods of time for DWE to perform its services and will require that they

coordinate their services with DWE's services. Client is aware that many factors outside DWE's control may affect DWE's ability to timely perform and complete its services and Client agrees that DWE is not responsible for damages arising directly or indirectly from any delays, including but not limited to liquidated damages.

9) Cost Estimates. Any cost estimates provided by DWE will be based on DWE's professional experience and judgment. However, Client agrees that DWE has no control over market conditions or bidding procedures and, as a result, DWE does not warrant that bids or construction costs will not vary from DWE's cost estimates.
10) Construction Support. If specifically included in the scope of DWE's services, construction support services will be performed solely for the purpose of reviewing portions of the work for general conformance with the design concept set forth in the contract plans and specifications. These services are different from inspection or other quality-control services. The Client shall coordinate the contractor's involvement in any DWE construction support services and shall provide DWE all necessary contracts and documents to perform the same. DWE will not provide any administration of the contract between the contractor and the Client. DWE is not a contractor and does not provide the services of a contractor under any circumstances. DWE will not supervise, direct or have control over any contractor's work, nor will DWE have any responsibility for the means, methods, techniques, sequences or procedures of construction selected by the contractor, nor will DWE be responsible for the contractor's safety precautions and programs in connection with the work, nor will DWE be responsible for the contractor's failure to perform the work in accordance with the requirements of the contract documents or applicable building or structural codes, nor will DWE be responsible for the acts or omissions of the Contractor or of any other persons or entities performing portions of the work, all of which are the sole responsibility of the contractor or its agents.
11) Submittal Review. DWE will review and render appropriate services on shop drawings, product data, samples, and other submittals required by the contract documents. Such review shall be solely for general conformance with the design concept and the information shown on the contract documents. DWE's review will not include review of the accuracy or completeness of details, such as quantities, dimensions, weights or gauges, fabrication processes, construction means or methods, compliance with applicable building or structural codes, coordination of the work of other trades or construction safety precautions, all of which are the sole responsibility of the contractor. DWE's review will be conducted with reasonable promptness while allowing sufficient time in DWE's judgment to permit adequate review. Review of a specific item shall not indicate acceptance of an assembly of which the item is a part. DWE will not review and will not be responsible for any deviations from the contract documents not clearly identified in writing on the submittal by the contractor, nor will DWE be required to review partial submissions or those for which submissions for correlated items have not been received.
12) Property Release. Client hereby irrevocably grants to DWE, its employees, agents, licensees, independent contractors and assigns, permission to use, reuse, display, broadcast, perform, reproduce, distribute, transmit, reprint and commercialize, in any manner or media now known or later developed, photographs or artwork depicting property for which DWE performs services ("Content") for any purpose (excluding defamation) which may include, among others, advertising, promotion, marketing and packaging for DWE's products or services. Client agrees that the Content may be combined with other content, text and graphics and cropped, altered or modified.
13) Copyright License. Client hereby irrevocably grants to DWE, its employees, agents, licensees, independent contractors and assigns the perpetual, assignable, royalty-free, worldwide right and license to use any photograph depicting property for which DWE performs services ("Content"), in whole or in

part, including the rights to reproduce, sublicense, transfer, publish, distribute, publicly display, broadcast, download, transmit, modify and prepare derivative works, in any manner or media now known or later developed, for the marketing and sale of DWE products or services and for any other business purpose or activity relating to DWE. Client waives any right to inspect or approve DWE's use of the Content, including written copy that may be created in connection therewith.

14) Termination for Convenience. Either DWE or Client may terminate this Agreement at any time with or without cause upon giving the other party seven (7`) calendar days' prior written notice. Client will pay DWE for all services rendered and all costs incurred up to the date of termination, along with all other reasonable termination costs, including but not limited to expenses directly attributable to termination for which the Architect is not otherwise compensated, plus an amount for the DWE's anticipated profit on the value of the services not performed by DWE. If no notice of termination is given, DWE's obligations created by this Agreement will be terminated upon completion of the services.
15) Notice of Deficiencies. Client shall provide prompt written notice within thirty (30) days of when Client becomes aware or should have reasonably been aware of any fault or defect in the project, including errors, omissions or inconsistencies in the services and work product provided by DWE.
16) Indemnity. Subject to all provisions of this Agreement and to the fullest extent permitted by law, Client shall indemnify, hold harmless, reimburse and defend (with counsel of DWE's choice) DWE, its employees, officers, directors and agents from, for and against all actual or alleged claims, losses, damages, costs and expenses arising from or related to the work, the Project, or this Agreement (with the sole exception that Client will have no duty to indemnify DWE from claims or losses to the extent those claims or losses are caused by the fault or negligence of DWE or its employees as adjudicated by a court of competent jurisdiction). Under no circumstances shall DWE be liable for any actual or alleged claims, losses, damages, costs and expenses arising from or related to the work, fault, or negligence of its subconsultants.
17) Modifications. No change, modification, or amendment to this Agreement will be valid unless agreed to by both of the parties hereto in writing.
18) Successors and Assigns. This Agreement shall inure to the benefit of and shall be binding upon each of the parties hereto and such parties' partners, successors, executors, administrators, and assigns.
19) Severability. In the event any clause or portion thereof in this Agreement is deemed invalid or unenforceable by a court or arbitrator of competent jurisdiction, then that clause or portion thereof will be treated as if it were omitted at the time of execution, and the remaining terms of this Agreement shall survive and be enforceable.
20) Arbitration. Client agrees that any claim, damage, or dispute arising out of these Terms and Conditions or any services performed by DWE will be resolved by binding and confidential arbitration before a single arbitrator in the place where the project is located. The parties shall mutually select the arbitrator and the rules applicable to the arbitration process. Unless the parties mutually agree otherwise, the arbitration shall be administered by the American Arbitration Association in accordance with its Construction Industry Arbitration Rules in effect on the date of this Agreement. As a condition precedent to serving a demand for arbitration, Client agrees that it will obtain a written certificate executed by an independent design professional with similar experience on similar projects and licensed in the jurisdiction in which the project is located certifying that DWE failed to meet the applicable standard of care. Client will provide DWE with a copy of the certificate and all written analysis supporting the certificate's findings at least 30 days before serving a demand for arbitration. Client and DWE agree that any party hereto shall commence all claims and causes of action within the period specified by applicable law but in any case not more than Seven (7) years after the date of substantial

completion of the project. Client and DWE waive all claims and causes of action not commenced or noticed in accordance with the time periods in this section.

21) **Governing Law:** The laws of the State that the project is constructed will govern the validity of this Agreement, its interpretation and performance. Any dispute arising in any way from this Agreement shall be subject to the jurisdiction of the courts of that State.
22) **Client's Terms.** Any terms and conditions set forth or referenced in Client's purchase order, requisition, or other notice of authorization to proceed are inapplicable to the services provided under this proposal or any related agreement, except when specifically accepted or confirmed in writing and signed by DWE.
23) **No Third Party Beneficiaries.** DWE's responsibilities under this Agreement run only to Client. DWE's responsibilities do not extend to any third party including, without limitation, the successors and assigns of Client, any Client's Association or any individual unit owner associated with Client. To the fullest extent permitted by law, no party has any third-party beneficiary or other rights arising from or related to the services provided by DWE.
24) **Limitation of Liability.** Client agrees that, in recognition of the relative risks and benefits of the project, DWE's aggregate joint, several and individual liability, whether for breach of contract, breach of warranty, negligence, professional malpractice, strict liability or otherwise will be limited to an amount no greater than $1 million or DWE's fee, whichever amount is lesser. This provision will survive the termination or expiration of this Agreement.
25) **Limitation of Remedy.** Client covenants that it will not, under any circumstances, bring a lawsuit, arbitration demand, or claim of any kind against DWE's individual employees, officers, directors, or agents and that Client's sole remedy will be against DWE, Inc.
26) **Waiver of Consequential Damages.** Neither DWE nor any of its officers, directors, employees or agents will be liable for any indirect, punitive, consequential, liquidated, or exemplary damages of any nature, including but not limited to fines, penalties or lost profits, whether said claim is based upon contract, warranty, tort (including negligence and strict liability) indemnity or any other theory of law, and the Client expressly waives all rights and remedies with respect to the same.
27) **Entire Agreement.** This Agreement contains all terms and conditions agreed on by the parties hereto, and no other agreements, oral or otherwise, regarding the subject matter of this Agreement, shall be deemed to exist, or bind any of the parties hereto.

We reserve the right to present a "Seven Day Notice of Cancellation of Services" and suspend all work on this project should the terms be in default, until receipt of all delinquent items.

If above stated terms are agreeable, please sign and return one copy of this proposal to our office. If this agreement is not signed and returned and we are asked to proceed with the project, all conditions contained herein shall constitute a contract for services. Design West Engineering reserves the right to revise the fee stated herein if not accepted within a period on 60 days from the date of the proposal.

We appreciate the opportunity to work with you on this project. We look forward to your response.

Respectfully,



Darrell Johnson
DESIGN WEST ENGINEERING

Accepted by (Sign): _____

Accepted by (Print):_____

Date: _____

Client Job Number: _____

DWE Proposal Number: P-2316272

Bill To: (If different from client listed on proposal)

Company:_____

Name: _____

Address: _____

Email: _____

Phone: _____

CITY OF ONTARIO *Agenda Report* **October 15, 2024**	**SECTION:** **CONSENT CALENDAR**
Department: Human Resources Prepared By: Amanda Elias Staff Member Presenting: Angela C. Lopez, Executive Director Human Resources Approved By:	Submitted To: Council/OHA Approved: _____ Continued To: _____ Denied: _____ Item No: 10

SUBJECT: AN AMENDMENT TO THE PROFESSIONAL SERVICES AGREEMENT WITH GALLAGHER BENEFIT SERVICES INC. FOR SPECIALIZED RECRUITMENT SUPPORT

RECOMMENDATION: That the City Council authorize the City Manager, or his designee, to execute Amendment No. 2 to the Professional Services Agreement with Gallagher Benefit Services Inc., of Berkeley, California, for specialized recruitment services in the amount of $100,000 for a total a not-to-exceed amount of $342,885.

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

FISCAL IMPACT: The Fiscal Year 2024-25 Adopted Budget includes, and any subsequent Proposed Budget will consist of, appropriations from the General Fund for these services, as necessary. The proposed Amendment No. 2 increases the Agreement amount by $100,000 for a revised total not-to-exceed amount of $342,885. Each City Agency will assume fiscal responsibility to ensure that departmental expenditures related to specialized recruitment services remain within the Agency's annual budgets.

BACKGROUND & ANALYSIS: On January 18, 2022, the City Council authorized a Professional Services Agreement with Gallagher Benefit Services Inc. for Classification and Compensation Study services following a competitive Request for Proposals process. Gallagher Benefit Services Inc. was the top candidate. At the time the agreement was executed, the not-to-exceed compensation amount was set at $141,933 for the duration of the Agreement term.

On December 6, 2022, the City Council approved Amendment No. 1 to extend the Agreement's term to December 22, 2025, increase the not-to-exceed amount to $242,885, and expand its scope to include specialized support for Citywide recruitment-related activities.

The Human Resources/Risk Management Agency has identified a need for specialized recruitment support. Gallagher Benefit Services Inc. will provide targeted services to attract and retain top talent for specialized positions, helping the City remain competitive. Due to a competitive labor market, enhanced recruitment services are required to fill specialized positions. Gallagher Benefit Services Inc.'s expertise is essential for managing recruitments effectively, including creating candidate

profiles, developing job bulletins, facilitating screening processes, and conducting background checks for hard-to-fill and critical roles throughout the City.

City Staff recommends that the City Council approve Amendment No. 2 to increase the not-to-exceed amount and continue using Gallagher Benefit Services Inc. to deliver high-quality and timely specialized recruitment support.

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

PAUL S. LEON
MAYOR

DEBRA PORADA
MAYOR PRO TEM

ALAN D. WAPNER
JIM W. BOWMAN
RUBEN VALENCIA
COUNCIL MEMBERS

SHEILA MAUTZ
CITY CLERK

JAMES R. MILHISER
TREASURER

SCOTT OCHOA
CITY MANAGER

AMENDMENT NO. 2 TO THE PROFESSIONAL SERVICES AGREEMENT BETWEEN THE CITY OF ONTARIO AND GALLAGHER BENEFIT 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 **Gallagher Benefit Services, Inc**., **a 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 **"Classification and Compensation Study"** dated **December 21, 2021** ("Agreement").

2.2 Amendment Purpose. The City and Consultant desire to amend the Agreement to **increase compensation**. The Parties have heretofore entered into **Amendment No. 1, dated December 22, 2022**.

2.3 Amendment Authority. This Amendment No. 2 is authorized pursuant to Section 3.7.14 of the Agreement.

3. Terms.

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

> "Compensation. Consultant shall receive compensation, including authorized reimbursements, for all Services rendered under this Agreement at the rates set forth in Exhibit "A" attached hereto and incorporated herein by reference. The total compensation shall not exceed three hundred forty-two thousand, eight hundred and eighty-five dollars ($342,885) 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. 2, all other provisions of the Agreement remain in full force and effect and shall govern the actions of the

parties under this Amendment No. 2. From and after the date of this Amendment No. 2, whenever the term "Agreement" appears in the Agreement, it shall mean the Agreement as amended by this Amendment No. 2.

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

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

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

[SIGNATURES ON FOLLOWING PAGE]

SIGNATURE PAGE FOR AMENDMENT NO. 2 TO PROFESSIONAL SERVICES AGREEMENT BETWEEN THE CITY OF ONTARIO AND GALLAGHER BENEFIT 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:

_____
Scott Ochoa
City Manager

Approved as to Form:

_____
Best Best & Krieger LLP
City Attorney

Attested By:

_____
City Clerk

GALLAGHER BENEFIT SERVICES, INC.

By: _____

Its: _____

Printed Name: _____

By: _____

Its: _____

Printed Name: _____

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

Koff & Associates
A Gallagher Company

PRICING PROPOSAL

Project

- Executive R**ecruitment Services**

Professional Fee and Expenses

- Total not-to-exceed professional fee of $25,000 per recruitment, which includes all professional services and expenses, including brochure development and design, advertising, printing and shipping, associated consultant travel if required, and background.
- Invoices will be billed monthly in four equal increments of $6,250.

Note: Expenses do not include candidate travel.

Optional: Recruitment Video
In addition to the standard recruitment brochure, K&A can develop a Recruitment Video to better highlight the positive elements of the organization and community. These videos have proven to attract more job seekers and effectively expand the talent pool. Videos run approximately three-minutes in length and highlight the workplace environment, local landscape, and include interviews with selected staff. This video is optional and costs $3,500.

Placement Guarantee

K&A Recruiting is committed to recommending only the most qualified candidates who meet all the necessary requirements and qualifications and are also a cultural fit for the City. We proactively recruit for each search effort until a successful candidate is placed.

Therefore, we promise to present to the Hiring Authority a selective pool of candidates that met or exceeded our standards during the thorough screening processes and have been identified as ideal matches for the position. Should the Hiring Authority disapprove of all final candidates or should none pass the final interview and reference check process, we will work to find a new slate of candidates at no added cost, with the possible exception of necessary advertising.

In addition, for full recruitments for executive and mid-management positions, should the incumbent leave the position or be terminated from employment within 12 months of hire due to performance issues, we commit to conducting a one-time additional executive search to identify a replacement and only charge related expenses as described in the Pricing Proposal.

Overall, K&A Recruiting's retention rate during the first 12 months of hire is robust and has been above 95% over the last 37 years.

Recruiting Process During Covid-19 Crisis

We will work to counterbalance market forces and build a pipeline of potential candidates through strong marketing and branding efforts, including videos, job postings, and a social media campaign. Our ongoing communication with candidates helps with reputation and keeps them engaged; so, when there is an opportunity that matches their background, we reduce the time-to-hire. As always, communication is key. Candidates who experience a warm, communicative recruitment experience are more likely to maintain their interest and are more likely to feel welcomed into the organization. The recruitment experience is the first impression your employee receives and is a crucial factor in employee engagement and tenure.

We have embraced the virtual interview. The push into virtual technologies due to the pandemic was generally new for many public agencies. Our crystal ball tells us that virtual interviewing is not going away regardless of how the public sector world evolves going forward beyond the pandemic. Although virtual interviewing may have become necessary during this crisis, it is not a temporary strategy that should fall to the wayside; how we communicate in virtual interviews is essential and will continue to be as we move forward.

To conduct an effective virtual interview, simple steps can be taken to ensure a predictable and high-quality process. We will be clear on exactly how the interview process will go and what candidates should expect. We are savvy at navigating the technology and can help with technical challenges on the fly. Coaching panel members to maintain a professional demeanor during virtual interviews and eliminate smartphone or other competing screen distractions, just as you would in person, can also help the process.

K&A Recruiting Organizational Diversity Statement

This statement reaffirms our commitment to affirmative action efforts and providing equal employment opportunities to all employees and applicants for employment in accordance with equal opportunity and affirmative action laws.

We affirm our personal and official support of these policies, which provide that K&A Recruiting is committed to implementing the affirmative action policies, programs, and procedures included in this plan to ensure that employment practices are free from discrimination. Employment practices include but are not limited to the following: hiring, promotion, demotion, transfer, recruitment or recruitment advertising, layoff, disciplinary action, termination, rates of pay or other forms of compensation, and selection for training, including apprenticeship. We will provide reasonable accommodation to applicants and employees with disabilities.

OTHER: PROFESSIONAL SERVICES AGREEMENT ACKNOWLEDGEMENT

We will be pleased to sign the City's professional services agreement for recruitment services, however we respectfully request that the City will allow for a period of negotiation of certain terms in the professional services contract related to liability, indemnity, insurance, and other terms. We have found that we have always come to an agreement with all of our clients in the past and appreciate the City's flexibility in reviewing certain terms in a collaborative fashion between our legal counsels.

INSURANCE ACKNOWLEDGEMENT

Gallagher shall at all times during the term of this Agreement and for a period of two (2) years thereafter, obtain and maintain in force the following minimum insurance coverages and limits at its own expense:

- Commercial General Liability (CGL) insurance on an ISO form number CG 00 01 (or equivalent) covering claims for bodily injury, death, personal injury, or property damage occurring or arising out of the performance of this Agreement, including coverage for premises, products, and completed operations, on an occurrence basis, with limits no less than $2,000,000 per occurrence;
- Workers Compensation insurance with statutory limits, as required by the state in which the work takes place, and Employer's Liability insurance with limits no less than $1,000,000 per accident for bodily injury or disease. Insurer will be licensed to do business in the state in which the work takes place;
- Automobile Liability insurance on an ISO form number CA 00 01 covering all hired and non-owned automobiles with limit of $1,000,000 per accident for bodily injury and property damage;
- Umbrella Liability insurance providing excess coverage over all limits and coverages with a limits no less than $10,000,000 per occurrence or in the aggregate;
- Errors & Omissions Liability insurance, including extended reporting conditions of two (2) years with limits of no less than $5,000,000 per claim, or $10,000,000 in the aggregate;
- Cyber Liability, Technology Errors & Omissions, and Network Security & Privacy Liability insurance, including extended reporting conditions of two (2) years with limits no less than $2,000,000 per claim and in the aggregate, inclusive of defense cost; and
- Crime insurance covering third-party crime and employee dishonesty with limits of no less than $1,000,000 per claim and in the aggregate.
- All commercial insurance policies shall be written with insurers that have a minimum AM Best rating of no less than A-VI, and licensed to do business in the state of operation. Any cancelled or non-renewed policy will be replaced with no coverage gap, and a Certificate of Insurance evidencing the coverages set forth in this section shall be provided to Client upon request.

Koff & Associates
A Gallagher Company

SIGNATURE PAGE

We thank you for your consideration of our proposal. We are committed to providing high-quality service and investing in a long-term partnership.

This proposal is valid for ninety (90) days.

Respectfully submitted,

By: KOFF & ASSOCIATES

State of California



Frank Rojas **Date: November 3, 2022**

Recruitment Manager

CITY OF ONTARIO *Agenda Report* **October 15, 2024**	**SECTION:** **CONSENT CALENDAR**
Department: Public Works Prepared By: Gil H Mars Staff Member Presenting: Tito Haes, Executive Director Public Works Reviewed By: Andrea Ampig, Bonnie Tam Approved By:	Submitted To: Council/OHA Approved: _____ Continued To: _____ Denied: _____ Item No: 11

SUBJECT: PROFESSIONAL DESIGN SERVICES AGREEMENTS FOR ON-CALL ARCHITECTURAL SERVICES FOR THE ONTARIO MUSEUM OF HISTORY AND ART

RECOMMENDATION: That the City Council take the following actions:

A. Reject the protest from MAAM Architects for D&C23-009 Museum On-Call Architect as the selection was based on qualifications, and
B. Authorize the City Manager or his designee to complete and execute the following three-year Professional Design Services Agreement for On-Call Architectural Services for a total compensation amount of $1,000,000 over three (3) years and extend the agreements for up to two (2) additional one-year periods:
    1. Frederick Fisher & Partners, of Los Angeles, California for a total contract amount not-to-exceed $250,000;
    2. Architectural Resources Group, of Los Angeles, California for a total contract amount not-to-exceed $150,000;
    3. Page & Turnbull, of Los Angeles, California for a total contract amount not-to-exceed $150,000;
    4. HMC Architects, of Ontario, California for a total contract amount not-to-exceed $150,000;
    5. Smithgroup, of Los Angeles, California for a total contract amount not-to-exceed $150,000; and
    6. Johnson Favaro, of Culver City, California for a total contract amount not-to-exceed $150,000; and

C. Authorize 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.

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

Invest in the Growth and Evolution of the City's Economy
Encourage, Provide or Support Enhanced Recreational, Educational, Cultural and Healthy City Programs, Policies and Activities
Operate in a Businesslike Manner

FISCAL IMPACT: The proposed Design Services Agreement with Frederick Fisher & Partners is in the amount of $83,333 per year for a total not-to-exceed contract amount of $250,000. The proposed Design Services Agreement with Architectural Resources Group is in an amount of $50,000 per year for a total not-to-exceed contract amount of $150,000. The Proposed Design Services Agreement with Page & Turnbull is in an amount of $50,000 per year for a total not-to-exceed contract amount of $150,000. The Proposed Design Services Agreement with HMC Architects is in an amount of $50,000 per year for a total not-to-exceed contract amount of $150,000. The Proposed Design Services Agreement with Smithgroup is in an amount of $50,000 per year for a total not-to-exceed contract amount of $150,000. The Proposed Design Services Agreement with Johnson Favaro is in an amount of $50,000 per year for a total not-to-exceed contract amount of $150,000.

BACKGROUND & ANALYSIS: The Ontario Museum of History & Arts has the need for On-Call Architectural Services for work that cannot be provided by City Staff. Staff is recommending contracts with a total of six qualified firms that each have their own specialty consisting of adaptive reuse of historic buildings, experience in creative design spaces, exhibition specialty, and preservation expertise. This multiple firm contract process assures that a timely and cost-effective option is always available for each task order. Additionally, Staff recommends that all contracts be executed between the firms and the City, so that any city agencies can use these firms. This procedure reduces overhead charges and increases efficiency in completing critical projects, ultimately resulting in well-executed projects.

On July 8, 2024, the City solicited requests for proposals for Invitation No. 1819 for On-Call Architectural Services and responses from the following companies were evaluated:

Architectural Firm	Location
Architectural Resources Group	Los Angeles, CA
Frederick Fisher & Partners	Los Angeles, CA
Hammel Green & Associates	Santa Monica, CA
HMC Architects	Ontario, CA
Johnson Favaro	Culver City, CA
MAAM	Los Angeles, CA
Page & Turnbull	Los Angeles, CA
Smithgroup	Los Angeles, CA
TOLO Architecture	Los Angeles, CA

Utilizing a qualifications-based selection process, consistent with Gov. Code, § 4529.12, Staff reviewed the requests for proposals. MAAM protests the Notice of Intent to Award on the grounds that Staff did not select an SBE (Small Business Enterprise) or WBE (Woman Business Enterprise).

MAAM's protest should be rejected because SBE status was not considered nor required to be considered under Gov. Code, § 4529.12. Even if considered, it would not change Staff's determination that the selected firms are more qualified. WBE status was not considered because Article I, section 31 of the California Constitution (Proposition 209) prohibits such considerations in these circumstances (where there is no federal funding imposing such a mandate).

Frederick Fisher & Partners, Architectural Resources Group, Page & Turnbull, HMC Architects, Smithgroup and Johnson Favaro were deemed to be the most qualified firms. The recommendation to award Professional Design Services Agreements to these firms is based on their broad range of expertise as demonstrated by interviews and the capability to perform highly complex work in a timely manner.

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TREASURER

SCOTT OCHOA
CITY MANAGER

CITY OF ONTARIO
DESIGN SERVICES AGREEMENT

1. PARTIES AND DATE.

This Agreement is made and entered into as of _____, by and between the City of Ontario, a municipal corporation organized and operating under the laws of the State of California with its principal place of business at 303 East "B" Street, Ontario, California 91764-4196, County of San Bernardino, State of California ("City"), and **HMC Group dba HMC Architects** a Corporation**,** with its principal place of business at 3546 Concours Street, Ontario, CA 91764 (hereinafter referred to as "Consultant"). City and Consultant are sometimes individually referred to herein as "Party" and collectively as "Parties."

2. RECITALS.

2.1 City. City is a municipal corporation organized under the laws of the State of California, with power to contract for services necessary to achieve its purpose.

2.2 Consultant**.** Consultant desires to perform and assume responsibility for the provision of certain professional architectural design services required by the City on the terms and conditions set forth in this Agreement. Consultant warrants that it is fully licensed, qualified, and willing to perform the services required by this Agreement; provided, however, that if Consultant is a corporation or other organization, the Project Consultant designated pursuant to Section 3.2, and not the Consultant itself, shall be fully licensed to practice as an architect in the State of California.

2.3 Project**.** City desires to engage Consultant to render such services for the **Museum Improvements On-Call Architectural Services** ("Project") as set forth in this Agreement.

3. TERMS

3.1 Employment of Consultant.

3.1.1 Scope of Services. Consultant promises and agrees to furnish to City all labor, materials, tools, equipment, services, and incidental and customary work necessary to fully and adequately supply the professional architectural and related services necessary for the full and adequate completion of the Project consistent with the provisions of this Agreement (hereinafter referred to as "Services"). The Services are more particularly described throughout this Agreement, including Exhibit "A" attached hereto and incorporated herein by reference. All Services shall be subject to, and performed in accordance with, this Agreement, any exhibits

attached hereto and incorporated herein by reference, and all applicable local, state and federal laws, rules and regulations. All Services performed by Consultant shall be subject to the sole and discretionary approval of the City, which approval shall not be unreasonably withheld.

3.1.2 Term. The term of this Agreement shall be from **November 4, 2024,** to **November 4, 2027**, unless earlier terminated as provided herein. The City shall have the unilateral option, at its sole discretion, to renew this Agreement automatically for no more than two (2) additional one-year terms. Consultant shall complete the Services within the term of this Agreement, and shall meet any other established schedules and deadlines.

3.2 Project Consultant; Key Personnel.

3.2.1 **Project Architect**. Consultant shall name a specific individual to act as Project Consultant, subject to the approval of City. Consultant hereby designates Kyle Peterson (License No. C-32052) to act as the Project Architect for the Project. The Project Architect shall: (1) maintain oversight of the Services; (2) have full authority to represent and act on behalf of the Consultant for all purposes under this Agreement; (3) supervise and direct the Services using his or her best skill and attention; (4) be responsible for the means, methods, techniques, sequences and procedures used for the Services; (5) adequately coordinate all portions of the Services; and (6) act as principal contact with City and all contractors, consultants, engineers and inspectors on the Project. Any change in the Project Architect shall be subject to the City's prior written approval, which approval shall not be unreasonably withheld. The new Project Architect shall be of at least equal competence as the prior Project Architect. In the event that City and Consultant cannot agree as to the substitution of a new Project Architect, City shall be entitled to terminate this Agreement for cause.

3.2.2 Key Personnel. In addition to the Project Architect, Consultant has represented to the City that certain additional key personnel, engineers and consultants will perform the Services under this Agreement. Should one or more of such personnel, engineers or consultants become unavailable, Consultant may substitute others of at least equal competence upon written approval of the City. In the event that City and Consultant cannot agree as to the substitution of key personnel, engineers or consultants, City shall be entitled to terminate this Agreement for cause. The key additional personnel, engineers and consultants for performance of this Agreement are as follows: Samantha Eklund, Project Manager. Sergio Lechuga, Interior Design Principal.

3.3 Hiring of Consultants and Personnel.

3.3.1 Right to Hire or Employ. Consultant shall have the option, unless City objects in writing after notice, to employ at its expense architects, engineers, experts or other consultants qualified and licensed to render services in connection with the planning and/or administration of the Project, and to delegate to them such duties as Consultant may delegate without relieving Consultant from administrative or other responsibility under this Agreement. Consultant shall be responsible for the coordination and cooperation of Consultant's architects, engineers, experts or other consultants. All consultants, including changes in consultants, shall be subject to approval by City in its sole and reasonable discretion. Consultant shall notify City of the identity of all consultants at least fourteen (14) days prior to their commencement of work to allow City to review their qualifications and approve to their participation on the Project in its sole and reasonable discretion.

3.3.2 Qualification and License. All architects, engineers, experts and other consultants retained by Consultant in performance of this Agreement shall be qualified to perform the Services assigned to them, and shall be licensed to practice in their respective professions, where required by law.

3.3.3 Standards and Insurance. All architects, engineers, experts and other consultants hired by Consultant shall be required to meet all of the same standards and insurance requirements set forth in this Agreement, unless other standards or requirements are approved by the City in writing. Unless changes are approved in writing by the City, Consultant's agreements with its consultants shall contain a provision making them subject to all provisions stipulated in this Agreement.

3.3.4 Assignments or Staff Changes. Consultant shall promptly obtain written City approval of any assignment, reassignment or replacement of such architects, engineers, experts and consultants, or of other staff changes of key personnel working on the Project. As provided in the Agreement, any changes in Consultant's consultants and key personnel shall be subject to approval by City.

3.3.5 Draftsman and Clerical Support. Draftsmen and clerical personnel shall be retained by Consultant at Consultant's sole expense.

3.4 Standard of Care.

3.4.1 Standard of Care. Consultant shall perform all Services under this Agreement in a skillful and competent manner, consistent with the standards generally recognized as being employed by professionals qualified to perform the Services in the same discipline in the State of California, and shall be responsible to City for damages sustained by the City and delays to the Project as specified in the indemnification provision of this Agreement. Without limiting the foregoing, Consultant shall be fully responsible to the City for any increased costs incurred by the City as a result of any such delays in the design or construction of the Project. Consultant represents and maintains that it is skilled in the professional calling necessary to perform the Services. Consultant warrants and represents that all of its employees, architects, engineers, experts and other consultants shall have sufficient skill and experience to perform the Services assigned to them. Finally, Consultant represents that it, its employees, architects, engineers, experts and other consultants have all licenses, permits, qualifications and approvals of whatever nature that are legally required to perform the Services assigned to or rendered by them and that such licenses and approvals shall be maintained throughout the term of this Agreement. As provided for in the indemnification provisions of this Agreement, Consultant shall perform, at its own cost and expense and without reimbursement from the City, any services necessary to correct errors or omissions which are caused by the Consultant's failure to comply with the standard of care provided for herein.

3.4.2 Performance of Employees. Any employee or consultant who is determined by the City to be uncooperative, incompetent, a threat to the adequate or timely completion of the Project, a threat to the safety of persons or property, or any employee or consultant who fails or refuses to perform the Services in a manner acceptable to the City, shall be promptly removed from the Project by the Consultant and shall not be re-employed to perform any of the Services or to work on the Project.

3.5 Laws and Regulations.

3.5.1 Knowledge and Compliance. Consultant shall keep itself fully informed of and in compliance with all applicable local, state and federal laws, rules and regulations in any manner affecting the performance of the Services or the Project, and shall give all notices required of the Consultant by law. Consultant shall be liable, pursuant to the standard of care and indemnification provisions of this Agreement, for all violations of such laws and regulations in connection with its Services. Consultant shall defend, indemnify and hold City, its officials, officers, employees and agents free and harmless, pursuant to the indemnification provisions of this Agreement, from any claim or liability arising out of any failure or alleged failure to comply with such laws, rules or regulations.

3.5.2 Drawings and Specifications. Consultant shall cause all drawings and specifications to conform to any applicable requirements of federal, state and local laws, rules and regulations, including the Uniform Building Code, in effect as of the time the drawings and specifications are prepared or revised during the latest phase of the Services described in Exhibit "A" attached hereto. Any significant revisions made necessary by changes in such laws, rules and regulations after this time may be compensated as Additional Services which were not known or reasonably should not have been known by Consultant. Consultant shall cause the necessary copies of such drawings and specifications to be filed with any governmental bodies with approval jurisdiction over the Project, in accordance with the Services described in Exhibit "A" attached hereto. For the preparation of all such drawings and specifications, the Consultant shall use Computer Aided Design Drafting ("CADD") (e.g., AutoCAD) or other technology acceptable to the Consultant and City.

3.5.3 Americans with Disabilities Act. Consultant will use its best professional efforts to interpret all applicable federal, state and local laws, rules and regulations with respect to access, including those of the Americans with Disabilities Act ("ADA"). Consultant shall inform City of the existence of inconsistencies of which it is aware or reasonably should be aware between federal and state accessibility laws, rules and regulations, as well as any other issues which are subject to conflicting interpretations of the law, and shall provide the City with its interpretation of such inconsistencies and conflicting interpretations. Unless Consultant brings such inconsistencies and conflicting interpretations to the attention of the City and requests City's direction on how to proceed, the Consultant's interpretation of such inconsistencies and conflicting interpretations shall be the sole responsibility and liability of Consultant, and the Consultant shall correct all plans, specifications and other documents prepared for the Project at no additional cost if its interpretations are shown to be incorrect. In the event that the Consultant request's City's direction on how to proceed with respect to any inconsistent and/or conflicting interpretation, the Consultant shall be responsible to the City only pursuant to the indemnification provisions of this Agreement.

3.5.4 Permits, Approvals and Authorizations. Consultant shall provide City with a list of all permits, approvals or other authorizations required for the Project from all federal, state or local governmental bodies with approval jurisdiction over the Project. Consultant shall then assist the City in obtaining all such permits, approvals and other authorizations. The costs of such permits, approvals and other authorizations shall be paid by the City.

3.5.5 Water Quality Management and Compliance. Consultant shall keep itself and all subcontractors, staff, and employees fully informed of and in compliance with all local, state and federal laws, rules and regulations that may impact, or be implicated by the performance of the Services including, without limitation, all applicable provisions of the City's ordinances

regulating water quality and storm water; the Federal Water Pollution Control Act (33 U.S.C. § 1251 *et seq*.); the California Porter-Cologne Water Quality Control Act (Cal Water Code §§ 13000-14950); and any and all regulations, policies, or permits issued pursuant to any such authority. Consultant shall additionally comply with the lawful requirements of the City, and any other municipality, drainage district, or other local agency with jurisdiction over the location where the Services are to be conducted, regulating water quality and storm water discharges. Failure to comply with laws, regulations, and ordinances listed in this Section is a violation of federal and state law.

3.6 Independent Contractor.

3.6.1 Control and Payment of Subordinates. City retains Consultant on an independent contractor basis and Consultant is not an employee of City. Consultant is not an employee for state tax, federal tax or any other purpose, and is not entitled to the rights or benefits afforded to City's employees. Any additional personnel performing the Services under this Agreement on behalf of Consultant shall also not be employees of City, and shall at all times be under Consultant's exclusive direction and control. Consultant shall pay all wages, salaries, and other amounts due such personnel in connection with their performance of Services under this Agreement and as required by law. Consultant shall be responsible for all reports and obligations respecting such additional personnel, including, but not limited to: social security taxes, income tax withholding, unemployment insurance, disability insurance, and workers' compensation insurance.

3.7 Schedule of Services.

3.7.1 Consultant Services. Consultant shall fully and adequately complete the Services described in this Agreement and in Exhibit "A" attached hereto and incorporated herein by reference.

3.7.2 Timely Performance Standard. Consultant shall perform all Services hereunder as expeditiously as is consistent with professional skill and care, as well as the orderly progress of the Project work so as not to be the cause, in whole or in part, of delays in the completion of the Project or in the achievement of any Project milestones, as provided herein. Specifically, Consultant shall perform its Services so as to allow for the full and adequate completion of the Project within the time required by the City and within any completion schedules adopted for the Project. Consultant agrees to coordinate with City's staff, contractors and consultants in the performance of the Services, and shall be available to City's staff, contractors and consultants at all reasonable times.

3.7.3 Performance Schedule. Consultant shall prepare an estimated time schedule for the performance of Consultant's Services, to be adjusted as the Project proceeds. Such schedule shall be subject to the City's review and approval, which approval shall not be unreasonably withheld, and shall include allowances for periods of time required for City's review and approval of submissions, and for approvals of authorities having jurisdiction over Project approval and funding. If City and Consultant cannot mutually agree on a performance schedule, City shall have the authority to immediately terminate this Agreement. The schedule shall not be exceeded by Consultant without the prior written approval of City. If the Consultant's Services are not completed within the time provided by the agreed upon performance schedule, or any milestones established therein, it is understood, acknowledged and agreed that the City will suffer damage for which the Consultant will be responsible.

3.7.4 Excusable Delays. Any delays in Consultant's work caused by the following may be added to the time for completion of any obligations of Consultant: (1) the actions of City or its employees; (2) the actions of those in direct contractual relationship with City; (3) the actions of any governmental agency having jurisdiction over the Project; (4) the actions of any parties not within the reasonable control of the Consultant; and (5) any Force Majeure Event (as defined herein) or other unforeseen occurrence not due to any fault or negligence on the part of Consultant. Neither the City nor the Consultant shall be liable for damages, liquidated or otherwise, to the other on account of such delays.

3.7.5 Force Majeure Events. Neither City nor Consultant shall be considered in default of this Agreement for delays in performance caused by circumstances beyond the reasonable control of the non-performing Party. For purposes of this Agreement, such circumstances include a Force Majeure Event. A Force Majeure Event shall mean an event that materially affects a Party's performance and is one or more of the following: (1) Acts of God or other natural disasters; (2) terrorism or other acts of a public enemy; (3) orders of governmental authorities (including, without limitation, unreasonable and unforeseeable delay in the issuance of permits or approvals by governmental authorities that are required for the services); (4) strikes and other organized labor action occurring at the site and the effects thereof on the services, only to the extent such strikes and other organized labor action are beyond the control of Consultant and its subcontractors, and to the extent the effects thereof cannot be avoided by use of replacement workers; and (5) pandemics, epidemics or quarantine restrictions. For purposes of this section, "orders of governmental authorities," includes ordinances, emergency proclamations and orders, rules to protect the public health, welfare and safety, and other actions of a public agency applicable to the Services and Agreement. Should a Force Majeure Event occur, the non-performing Party shall, within fifteen (15) calendar days of the beginning of an Force Majeure Event, give written notice to the other Party describing the circumstances preventing continued performance and the efforts being made to resume performance of this Agreement. Force Majeure Events shall not entitle Consultant to any additional compensation. Notwithstanding the foregoing in this section, the City may still terminate this Agreement in accordance with the termination provisions of this Agreement.

3.7.6 Request for Excusable Delay Credit. The Consultant shall, within fifteen (15) calendar days of the beginning of any excusable delay, notify the City in writing of the causes of delay (unless City grants in writing a further period of time to file such notice prior to the date of final payment under the Agreement). City will then ascertain the facts and the extent of the delay, and grant an extension of time for completing the Services when, in its sole judgment, the findings of fact justify such an extension. The City's findings of fact thereon shall be final and conclusive on the Parties. Extensions of time shall apply only to that portion of the Services affected by the delay and shall not apply to other portions of the Services not so affected. The sole remedy of Consultant for extensions of time shall be an extension of the performance time at no cost to the City. If Additional Services are required as a result of an excusable delay, the Parties shall mutually agree thereto pursuant to the Additional Services provision of this Agreement. Should Consultant make an application for an extension of time, Consultant shall submit evidence that the insurance policies required by this Agreement remain in effect during the requested additional period of time.

3.8 Additional Services.

3.8.1 Request for Services. At City's request, Consultant may be asked to perform services not otherwise included in this Agreement, not included within the basic services

listed in Exhibit “A” attached hereto, and/or not customarily furnished in accordance with generally accepted architectural practice.

3.8.2 Definition. As used herein, “Additional Services” mean: (1) any work which is determined by City to be necessary for the proper completion of the Project, but which the Parties did not reasonably anticipate would be necessary for the Consultant to perform at the execution of this Agreement; or (2) any work listed as Additional Services in Exhibit “A” attached hereto. Consultant shall not perform, nor be compensated for, Additional Services without prior written authorization from City and without an agreement between the City and Consultant as to the compensation to be paid for such services. City shall pay Consultant for any approved Additional Services, pursuant to the compensation provisions herein, so long as such services are not made necessary through the fault of Consultant pursuant to the indemnification provision of this Agreement.

3.8.3 Examples of Additional Services. Such Additional Services shall not include any redesign or revisions to drawings, specifications or other documents when such revisions are necessary in order to bring such documents into compliance with applicable laws, rules, regulations or codes of which Consultant was aware or should have been aware pursuant to the laws and regulations provision of this Agreement above. Such Additional Services may include, but shall not be limited to:

(a) Separately Bid Portions of Project. Plan preparation and/or administration of work on portions of the Project separately bid.

(b) Furniture and Interior Design. Assistance to City, if requested, for the selection of moveable furniture, equipment or articles which are not included in the Construction Documents.

(c) Fault of Contractor. Services caused by delinquency, default or insolvency of contractor, or by major defects in the work of the contractor, provided that any such services made necessary by the failure of Consultant to detect and report such matters when it reasonably should have done so shall not be compensated.

(d) Inconsistent Approvals or Instructions. Revisions in drawings, specifications or other documents when such revisions are inconsistent with written approvals or instructions previously given and are due to causes beyond the control of Consultant.

(e) Legal Proceedings. Serving as an expert witness on City's behalf or attending legal proceedings to which the Consultant is not a party.

(f) Damage Repair. Supervision of repair of damages to any structure.

(g) Extra Environmental Services. Additional work required for environmental conditions (e.g. asbestos or site conditions) not already contemplated within the Consultant's services for the Project.

3.9 City Responsibilities. City’s responsibilities shall include the following:

3.9.1 Data and Information. City shall make available to Consultant all necessary data and information concerning the purpose and requirements of the Project, including scheduling and budget limitations, objectives, constraints and criteria. As part of the budget

limitation information, the City shall provide the Consultant with a preliminary construction budget ("City's Preliminary Construction Budget").

3.9.2 Project Survey. If required pursuant to the scope of the Project and if requested by Consultant, City shall furnish Consultant with, or direct Consultant to procure at City's expense, a survey of the Project site prepared by a registered surveyor or civil engineer, any other record documents which shall indicate existing structures, land features, improvements, sewer, water, gas, electrical and utility lines, topographical information and boundary dimensions of the site, and any other such pertinent information.

3.9.3 Bid Phase. Distribute Construction Documents to bidders and conduct the opening and review of bids for the Project.

3.9.4 Testing. Retain consultant(s) to conduct chemical, mechanical, soils, geological or other tests required for proper design of the Project, and furnish such surveys, borings, test pits, and other tests as may be necessary to reveal conditions of the site which must be known to determine soil condition or to ensure the proper development of the required drawings and specifications.

3.9.5 Required Inspections and Tests. Retain consultant(s) to conduct materials testing and inspection or environmental/hazardous materials testing and inspection pursuant to any applicable laws, rules or regulations.

3.9.6 Fees of Reviewing or Licensing Agencies. Directly pay or reimburse the payment of all fees required by any reviewing or licensing agency, or other agency having approval jurisdiction over the Project.

3.9.7 City's Representative. The City hereby designates the City Manager, or his or her designee, to act as its representative for the performance of this Agreement ("City's Representative"). City's Representative shall have the power to act on behalf of the City for all purposes under this Contract. The City Manager hereby **designates Marissa Kucheck, Museum Director**, or his or her designee, as the City's contact for the implementation of the Services hereunder. Contractor shall not accept direction or orders from any person other than the City's Representative or his or her designee.

3.9.8 Review and Approved Documents. Review all documents submitted by Consultant, including change orders and other matters requiring approval by the City Council or other officials. City shall advise Consultant of decisions pertaining to such documents within a reasonable time after submission, so as not to cause unreasonable delay as provided in the excusable delay provisions of this Agreement above.

3.10 Compensation.

3.10.1 Consultant's Compensation for Basic Services. City shall pay to Consultant, for the performance of all Services rendered under this Agreement, the total not to exceed amount of **One Hundred Fifty Thousand Dollars ($150,000**) ("Total Compensation"). This Total Compensation amount shall be based upon, and may be adjusted according to, the fee schedule and related terms and conditions attached hereto as Exhibit "B" and incorporated herein by reference. The Total Compensation, as may be adjusted upon mutual agreement, shall constitute complete and adequate payment for Services under this Agreement.

3.10.2 Payment for Additional Services. At any time during the term of this Agreement, City may request that Consultant perform Additional Services. As used herein, Additional Services means any work which is determined by City to be necessary for the proper completion of the Project, but which the Parties did not reasonably anticipate would be necessary at the execution of this Agreement. Any additional work in excess of this amount must be approved by the City. If authorized, such Additional Services will be compensated at the rates and in the manner set forth in Exhibit "C" attached hereto and incorporated herein by reference, unless a flat rate or some other form of compensation is mutually agreed upon by the Parties. If City requires Consultant to hire consultants to perform any Additional Services, Consultant shall be compensated therefore at the rates and in the manner set forth in Exhibit "C" attached hereto and incorporated herein by reference, unless a flat rate or some other form of compensation is mutually agreed upon by the Parties. City shall have the authority to review and approve the rates of any such consultants. In addition, Consultant shall be reimbursed for any expenses incurred by such consultants pursuant to the terms and conditions of Section 3.10.3.

3.10.3 Reimbursable Expenses. Reimbursable expenses are in addition to compensation for the Services and Additional Services. Consultant shall not be reimbursed for any expenses unless authorized in writing by City, which approval may be evidenced by inclusion in Exhibit "C" attached hereto. Such reimbursable expenses shall include only those expenses which are reasonably and necessarily incurred by Consultant in the interest of the Project. Consultant shall be required to acquire prior written consent in order to obtain reimbursement for the following: (1) extraordinary transportation expenses incurred in connection with the Project; (2) out-of-town travel expenses incurred in connection with the Project; (3) fees paid for securing approval of authorities having jurisdiction over the Project; (4) bid document duplication costs in excess of $1,000; and (5) other costs, fees and expenses in excess of $1,000.

3.10.4 Payment to Consultant. Consultant's compensation and reimbursable expenses shall be paid by City to Consultant no more often than monthly. Such periodic payments shall be made based upon the percentage of work completed, and in accordance with the phasing and funding schedule provided in Exhibit "B" and the compensation rates indicated in Exhibit "C" attached hereto and incorporated herein by reference. In order to receive payment, Consultant shall present to City an itemized statement which indicates Services performed, percentage of Services completed, method for computing the amount payable, and the amount to be paid. The statement shall describe the amount of Services provided since the initial commencement date, or since the start of the subsequent billing periods, as appropriate, through the date of the statement, as well as those expenses for which reimbursement is requested for that statement period. The amount paid to Consultant shall never exceed the percentage amounts authorized by the phasing and funding schedule located in Exhibit "B" attached hereto. City shall, within thirty (30) days of receiving such statement, review the statement and pay all approved charges thereon pursuant to the provisions of Civil Code Section 3320. Disputed amounts shall be resolved by the Parties in a mutually agreeable manner.

Payments made for Additional Services shall be made in installments, not more often than monthly, proportionate to the degree of completion of such services or in such other manner as the Parties shall specify when such services are agreed upon, and in accordance with any authorized fee or rate schedule. In order to receive payment, Consultant shall present to City an itemized statement which indicates the Additional Services performed, percentage of Additional Services completed, method for computing the amount payable, and the amount to be paid. The statement shall describe the amount of Additional Services provided since the initial commencement date, or since the start of the subsequent billing periods, as appropriate, through the date of the statement. City shall, within thirty (30) days of receiving such statement, review

the statement and pay all approved charges thereon pursuant to the provisions of Civil Code Section 3320. Disputed amounts shall be resolved by the Parties in a mutually agreeable manner.

Upon cancellation or termination of this Agreement, Consultant shall be compensated as set forth in the termination provision herein.

3.10.5 Withholding Payment to Consultant. The City may withhold payment, in whole or in part, to the extent reasonably necessary to protect the City from claims, demands, causes of action, costs, expenses, liabilities, losses, damages, or injuries of any kind to the extent arising out of or caused by the negligence, recklessness, or willful misconduct protected under the indemnification provisions of this Agreement. Failure by City to deduct any sums from a progress payment shall not constitute a waiver of the City's right to such sums. The City may keep any moneys which would otherwise be payable at any time hereunder and apply the same, or so much as may be necessary therefor, to the payment of any expenses, losses, or damages as determined by the City, incurred by the City for which Consultant is liable under the Agreement or state law. Payments to the Consultant for compensation and reimbursable expenses due shall not be contingent on the construction, completion or ultimate success of the Project. Payment to the Consultant shall not be withheld, postponed, or made contingent upon receipt by the City of offsetting reimbursement or credit from Parties not within the Consultant's reasonable control.

3.10.6 Prevailing Wages. Consultant is aware of the requirements of California Labor Code Sections 1720, et seq., and 1770, et seq., as well as California Code of Regulations, Title 8, Section 16000, et seq., ("Prevailing Wage Laws"), which require the payment of prevailing wage rates and the performance of other requirements on certain "public works" and "maintenance" projects. If the Services are being performed as part of an applicable "public works" or "maintenance" project, as defined by the Prevailing Wage Laws, and If the total compensation is $1,000 or more, Consultant agrees to fully comply with and to require its consultants to fully comply with such Prevailing Wage Laws. City shall provide Consultant with a copy of the prevailing rates of per diem wages in effect at the commencement of this Agreement. Consultant shall make copies of the prevailing rates of per diem wages for each craft, classification or type of worker needed to execute the Services available to interested parties upon request, and shall post copies at the Consultant's principal place of business and at the Project site. It shall be mandatory upon the Consultant and all subconsultants to comply with all California Labor Code provisions, which include but are not limited to prevailing wages (Labor Code Sections 1771, 1774 and 1775), employment of apprentices (Labor Code Section 1777.5), certified payroll records (Labor Code Sections 1771.4 and 1776), hours of labor (Labor Code Sections 1813 and 1815) and debarment of contractors and subcontractors (Labor Code Section 1777.1). The requirement to submit certified payroll records directly to the Labor Commissioner under Labor Code section 1771.4 shall not apply to work performed on a public works project that is exempt pursuant to the small project exemption specified in Labor Code Section 1771.4. Consultant shall defend, indemnify and hold the City, its elected officials, officers, employees and agents free and harmless from any claims, liabilities, costs, penalties or interest arising out of any failure or alleged failure of the Consultant or its consultants to comply with the Prevailing Wage Laws.

(a) Registration/DIR Compliance. If the Services are being performed as part of an applicable "public works project" of over $25,000 when the project is for construction, alteration, demolition, installation, or repair work, or a public works project of over $15,000 when the project is for maintenance work, in addition to the foregoing, then pursuant to Labor Code sections 1725.5 and 1771.1, the Consultant and all subconsultants performing such Services must be registered with the Department of Industrial Relations ("DIR"). Consultant shall maintain

registration for the duration of the Project and require the same of any subconsultants. This project may also be subject to compliance monitoring and enforcement by the DIR. It shall be Consultant's sole responsibility to comply with all applicable registration and labor compliance requirements, including the submission of payroll records directly to the DIR. Any stop orders issued by the Department of Industrial Relations against Consultant or any subconsultant that affect Consultant's performance of services, including any delay, shall be Consultant's sole responsibility. Any delay arising out of or resulting from such stop orders shall be considered Consultant caused delay and shall not be compensable by the City. Consultant shall defend, indemnify and hold the City, its officials, officers, employees and agents free and harmless from any claim or liability arising out of stop orders issued by the Department of Industrial Relations against Consultant or any subconsultant.

3.10.7 Automated Clearing House ("ACH") payments. It is the City's policy to pay its consultant invoices via electronic fund transfers through the ACH network. All payments due and owing pursuant to a properly issued and correct invoice or under this Agreement shall be made through electronic ACH transfers, unless otherwise agreed upon by both Parties in writing. Consultant shall provide the City with ACH payment details whereby the City shall initiate the ACH transfers to Consultant in the amount required pursuant to a properly issued and correct invoice or under this Agreement. Each Party shall undertake any and all required actions and execute any required documents, instruments, or agreements required to effectuate the requirements of this Section. In the event the City erroneously deposits funds into an account, or otherwise deposits funds to which Consultant is not entitled: (1) Consultant shall immediately notify the City and the financial institution; (2) Consultant shall not withdraw any of the funds which were erroneously deposited or to which Consultant is not entitled; and (3) Consultant authorizes both the City and financial institution to take all actions necessary to correct the error and return to the City all funds erroneously deposited or to which Consultant is not entitled.

3.11 Notice to Proceed.

Consultant shall not proceed with performance of any Services under this Agreement unless and until the City provides a written notice to proceed.

3.12 Termination, Suspension and Abandonment.

3.12.1 Grounds for Termination; Consultant's Termination for Cause. City hereby reserves the right to suspend or abandon, at any time and for any reason, all or any portion of the Project and the construction work thereon, or to terminate this Agreement at any time with or without cause. Consultant shall be provided with at least seven (7) days advanced written notice of such suspension, abandonment or termination. In the event of such suspension, abandonment or termination, Consultant shall be paid for Services and reimbursable expenses rendered up to the date of such suspension, abandonment or termination, pursuant to the schedule of payments provided for in this Agreement, less any claims against or damages suffered by City as a result of the default, if any, by Consultant. Consultant hereby expressly waives any and all claims for damages or compensation arising under this Agreement, except as set forth herein, in the event of such suspension, abandonment or termination. Consultant may terminate this Agreement for substantial breach of performance by the City such as failure to make payment to Consultant as provided in this Agreement.

3.12.2 City's Suspension of Work. If Consultant's Services are suspended by City, City may require Consultant to resume such Services within ninety (90) days after written notice

from City. When the Project is resumed, the Total Compensation and schedule of Services shall be equitably adjusted upon mutual agreement of the City and Consultant.

3.12.3 Documents and Other Data. Upon suspension, abandonment or termination, Consultant shall provide to City all preliminary studies, sketches, working drawings, specifications, computations, and all other Project Documents, as defined below, to which City would have been entitled at the completion of Consultant's Services under this Agreement. Upon payment of the amount required to be paid to Consultant pursuant to the termination provisions of this Agreement, City shall have the rights, as provided in this Agreement hereinafter, to use such Project Documents prepared by or on behalf of Consultant under this Agreement. Consultant shall make such documents available to City upon request and without additional compensation other than as may be approved as a reimbursable expense.

3.12.4 Employment of other Consultants. In the event this Agreement is terminated in whole or in part as provided herein, City may procure, upon such terms and in such manner as it may determine appropriate, services similar to those terminated.

3.13 Ownership and Use of Documents; Confidentiality.

3.13.1 Ownership. All plans, specifications, original or reproducible transparencies of working drawings and master plans, preliminary sketches, architectural presentation drawings, structural computations, estimates and any other documents prepared pursuant to this Agreement, including, but not limited to, any other works of authorship fixed in any tangible medium of expression such as writings, physical drawings and data magnetically or otherwise recorded on computer diskettes (hereinafter referred to as the "Project Documents") shall be and remain the property of City. Although the official copyright in all Project Documents shall remain with the Consultant or other applicable subcontractors or consultants, the Project Documents shall be the property of City whether or not the work for which they were made is executed or completed. Within thirty (30) calendar days following completion of the Project, Consultant shall provide to City copies of all Project Documents required by City. In addition, Consultant shall retain copies of all Project Documents on file for a minimum of fifteen (15) years following completion of the Project, and shall make copies available to City upon the payment of reasonable duplication costs. Before destroying the Project Documents following this retention period, Consultant shall make a reasonable effort to notify City and provide City with the opportunity to obtain the documents.

3.13.2 Right to Use. Consultant grants to City the right to use and reuse all or part of the Project Documents, at City's sole discretion and with no additional compensation to Consultant, for the following purposes:

(a) The construction of all or part of this Project.

(b) The repair, renovation, modernization, replacement, reconstruction or expansion of this Project at any time;

(c) The construction of another project by or on behalf of the City for its ownership and use;

City is not bound by this Agreement to employ the services of Consultant in the event such documents are used or reused for these purposes. City shall be able to use or reuse the Project Documents for these purposes without risk of liability to the Consultant or third parties with respect

to the condition of the Project Documents, and the use or reuse of the Project Documents for these purposes shall not be construed or interpreted to waive or limit City's right to recover for latent defects or for errors or omissions of the Consultant.

Any use or reuse by City of the Project Documents on any project other than this Project without employing the services of Consultant shall be at City's own risk with respect to third parties. If City uses or reuses the Project Documents on any project other than this Project, it shall remove the Consultant's seal from the Project Documents and hold harmless Consultant and its officers, directors, agents and employees from claims arising out of the negligent use or re-use of the Project Documents on such other project.

3.13.3 License. This Agreement creates a non-exclusive and perpetual license for City to copy, use, modify or reuse any and all Project Documents and any intellectual property rights therein. Consultant shall require any and all subcontractors and consultants to agree in writing that City is granted a non-exclusive and perpetual license for the work of such subcontractors or consultants performed pursuant to this Agreement.

3.13.4 Right to License. Consultant represents and warrants that Consultant has the legal right to license any and all copyrights, designs and other intellectual property embodied in the Project Documents that Consultant prepares or causes to be prepared pursuant to this Agreement. Consultant shall indemnify and hold City harmless pursuant to the indemnification provisions of this Agreement for any breach of this Section. Consultant makes no such representation and warranty in regard to previously prepared designs, plans, specifications, studies, drawings, estimates or other documents that were prepared by design professionals other than Consultant and provided to Consultant by City.

3.13.5 Confidentiality. All Project Documents, either created by or provided to Consultant in connection with the performance of this Agreement, shall be held confidential by Consultant to the extent they are not subject to disclosure pursuant to the Public Records Act. All Project Documents shall not, without the written consent of City, be used or reproduced by Consultant for any purposes other than the performance of the Services. Consultant shall not disclose, cause or facilitate the disclosure of the Project Documents to any person or entity not connected with the performance of the Services or the Project. Nothing furnished to Consultant which is otherwise known to Consultant or is generally known, or has become known, to the related industry shall be deemed confidential. Consultant shall not use City's name or insignia, photographs of the Project, or any publicity pertaining to the Services or the Project in any magazine, trade paper, newspaper, television or radio production or other similar medium without the written consent of City.

3.14 Indemnification.

3.14.1 To the fullest extent permitted by law, Consultant shall defend (with counsel of City's choosing), indemnify and hold the City, its officials, officers, employees, volunteers, and agents free and harmless from any and all claims, demands, causes of action, costs, expenses, liability, loss, damage or injury of any kind, in law or equity, to property or persons, including wrongful death, in any manner arising out of, pertaining to, or incident to any acts, errors or omissions, or willful misconduct of Consultant, its officials, officers, employees, subcontractors, consultants or agents in connection with the performance of the Consultant's Services, the Project or this Agreement, including without limitation the payment of all damages, expert witness fees and attorney's fees and other related costs and expenses except such loss or damage caused by the sole negligence or willful misconduct of the City. Consultant's obligation to indemnify shall

survive expiration or termination of this Agreement and shall not be restricted to insurance proceeds, if any, received by Consultant, the City, its officials, officers, employees, agents, or volunteers.

3.14.2 If Consultant's obligation to defend, indemnify, and/or hold harmless arises out of Consultant's performance as a "design professional" (as that term is defined under Civil Code section 2782.8), then, and only to the extent required by Civil Code section 2782.8, which is fully incorporated herein, Consultant's indemnification obligation shall be limited to claims that arise out of, pertain to, or relate to the negligence, recklessness, or willful misconduct of the Consultant, and, upon Consultant obtaining a final adjudication by a court of competent jurisdiction, Consultant's liability for such claim, including the cost to defend, shall not exceed the Consultant's proportionate percentage of fault.

3.15 Insurance. Consultant shall not commence work under this Agreement until it has provided evidence satisfactory to the City that it has secured all insurance required under this Section. In addition, Consultant shall not allow any subconsultant to commence work on any subcontract until it has provided evidence satisfactory to the City that the subconsultant has secured all insurance required under this section.

3.15.1 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, Consultant shall, at its expense, procure and maintain in full force and effect for the duration 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.

3.15.2 Additional Insured. The City of Ontario, its officials, officers, employees, agents, and volunteers shall be named as additional insureds on Consultant's and its subconsultants' policies of commercial general liability and automobile liability insurance using the endorsements and forms specified herein or exact equivalents.

3.15.3 Commercial General Liability

(a) The Consultant shall take out and maintain, during the performance of all work under this Agreement, in amounts not less than specified herein, Commercial General Liability Insurance, in a form and with insurance companies acceptable to the City.

(b) Coverage for Commercial General Liability insurance shall be at least as broad as the following: Insurance Services Office Commercial General Liability coverage (Occurrence Form CG 00 01) or exact equivalent. Commercial General Liability Insurance must include coverage for the following:

(i) Bodily Injury and Property Damage

(ii) Personal Injury/Advertising Injury

(iii) Premises/Operations Liability

(iv) Products/Completed Operations Liability

(v) Aggregate Limits that Apply per Project

(vi) Explosion, Collapse and Underground (UCX) exclusion deleted

(vii) Contractual Liability with respect to this Contract

(viii) Broad Form Property Damage

(ix) Independent Consultants Coverage

(c) The policy shall contain no endorsements or provisions limiting coverage for (1) contractual liability; (2) cross liability exclusion for claims or suits by one insured against another; (3) products/completed operations liability; or (4) contain any other exclusion contrary to the Agreement.

(d) The policy shall give City, the City Council and each member of the City Council, its officers, employees, agents and City designated volunteers additional insured status using ISO endorsement forms CG 20 10 10 01 and 20 37 10 01, or endorsements providing the exact same coverage.

(e) The general liability program may utilize either deductibles or provide coverage excess of a self-insured retention, subject to written approval by the City, and provided that such deductibles shall not apply to the City as an additional insured.

3.15.4 Automobile Liability

(a) At all times during the performance of the work under this Agreement, the Consultant shall maintain Automobile Liability Insurance for bodily injury and property damage including coverage for owned, non-owned and hired vehicles, in a form and with insurance companies acceptable to the City.

(b) Coverage for automobile liability insurance shall be at least as broad as Insurance Services Office Form Number CA 00 01 covering automobile liability (Coverage Symbol 1, any auto).

(c) The policy shall give City, the City Council and each member of the City Council, its officers, employees, agents and City designated volunteers additional insured status.

(d) Subject to written approval by the City, the automobile liability program may utilize deductibles, provided that such deductibles shall not apply to the City as an additional insured, but not a self-insured retention.

3.15.5 Workers' Compensation/Employer's Liability

(a) Consultant certifies that he/she is aware of the provisions of Section 3700 of the California Labor Code which requires every employer to be insured against liability for workers' compensation or to undertake self-insurance in accordance with the provisions of that code, and he/she will comply with such provisions before commencing work under this Agreement.

(b) To the extent Consultant has employees at any time during the term of this Agreement, at all times during the performance of the work under this Agreement, the Consultant shall maintain full compensation insurance for all persons employed directly by him/her to carry out the work contemplated under this Agreement, all in accordance with the "Workers' Compensation and Insurance Act," Division IV of the Labor Code of the State of California and any acts amendatory thereof, and Employer's Liability Coverage in amounts indicated herein. Consultant shall require all subconsultants to obtain and maintain, for the period required by this Agreement, workers' compensation coverage of the same type and limits as specified in this Section.

3.15.6 Professional Liability (Errors and Omissions)

(a) At all times during the performance of the work under this Agreement the Consultant shall maintain professional liability or Errors and Omissions insurance appropriate to its profession, in a form and with insurance companies acceptable to the City and in an amount indicated herein. This insurance shall be written on a policy form coverage specifically designed to protect against acts, errors or omissions of the Consultant. "Covered Professional Services" as designated in the policy must specifically include work performed under this Agreement. The policy must "pay on behalf of" the insured and must include a provision establishing the insurer's duty to defend.

3.15.7 Minimum Policy Limits Required

(a) The following insurance limits are required for the Agreement:

Coverage	Combined Single Limit
Commercial General Liability	$2,000,000 per occurrence/ $4,000,000 aggregate for bodily injury, personal injury, and property damage
Automobile Liability	$2,000,000 per occurrence for bodily injury and property damage
Employer's Liability	$1,000,000 per occurrence
Professional Liability	$2,000,000 per claim and aggregate (errors and omissions)

(b) Defense costs shall be payable in addition to the limits.

(c) Requirements of specific coverage or limits contained in this Section are not intended as a limitation on coverage, limits, or other requirement, or a waiver of any coverage normally provided by any insurance. Any available coverage shall be provided to the parties required to be named as Additional Insured pursuant to this Agreement.

3.15.8 Evidence Required

(a) Prior to execution of the Agreement, the Consultant shall file with the City evidence of insurance from an insurer or insurers certifying to the coverage of all insurance required herein. Such evidence shall include original copies of the ISO CG 00 01 (or insurer's equivalent) signed by the insurer's representative and Certificate of Insurance (Acord

Form 25-S or equivalent), together with required endorsements. All evidence of insurance shall be signed by a properly authorized officer, agent, or qualified representative of the insurer and shall certify the names of the insured, any additional insureds, where appropriate, the type and amount of the insurance, the location and operations to which the insurance applies, and the expiration date of such insurance.

3.15.9 Policy Provisions Required

(a) Consultant shall provide the City at least thirty (30) days prior written notice of cancellation of any policy required by this Agreement, except that the Consultant shall provide at least ten (10) days prior written notice of cancellation of any such policy due to non-payment of premium. If any of the required coverage is cancelled or expires during the term of this Agreement, the Consultant shall deliver renewal certificate(s) including the General Liability Additional Insured Endorsement to the City at least ten (10) days prior to the effective date of cancellation or expiration.

(b) The Commercial General Liability Policy and Automobile Policy shall each contain a provision stating that Consultant's policy is primary insurance and that any insurance, deductible, or self-insurance maintained by the City, its officials, officers, employees, agents, or volunteers shall not contribute with this primary insurance. Policies shall contain or be endorsed to contain such provisions.

(c) The retroactive date (if any) of each policy is to be no later than the effective date of this Agreement. Consultant shall maintain such coverage continuously for a period of at least three years after the completion of the work under this Agreement. Consultant shall purchase a one (1) year extended reporting period A) if the retroactive date is advanced past the effective date of this Agreement; B) if the policy is cancelled or not renewed; or C) if the policy is replaced by another claims-made policy with a retroactive date subsequent to the effective date of this Agreement.

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

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

3.15.10 Qualifying Insurers

(a) All policies required shall be issued by acceptable insurance companies, as determined by the City, which satisfy the following minimum requirements: Each such policy shall be from a company or companies with a current A.M. Best's rating of no less than A:VII and admitted to transact in the business of insurance in the State of California, or

otherwise allowed to place insurance through surplus line brokers under applicable provisions of the California Insurance Code or any federal law.

3.15.11 Additional Insurance Provisions

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

(b) If at any time during the life of the Agreement, any policy of insurance required under this Agreement does not comply with these specifications or is canceled and not replaced, City has the right but not the duty to obtain the insurance it deems necessary and any premium paid by City will be promptly reimbursed by Consultant or City will withhold amounts sufficient to pay premium from Consultant payments. In the alternative, City may cancel this Agreement.

(c) The City may require the Consultant to provide complete copies of all insurance policies in effect for the duration of the Project.

(d) Neither the City nor the City Council, nor any member of the City Council, nor any of the officials, officers, employees, agents or volunteers shall be personally responsible for any liability arising under or by virtue of this Agreement.

3.15.12 Subconsultant Insurance Requirements

(a) Consultant shall not allow any subcontractors or subconsultants to commence work on any subcontract until they have provided evidence satisfactory to the City that they have secured all insurance required under this Section. Policies of commercial general liability insurance provided by such subcontractors or subconsultants shall be endorsed to name the City as an additional insured using ISO form CG 20 38 04 13 or an endorsement providing the exact same coverage. If requested by Consultant, City may approve different scopes or minimum limits of insurance for particular subcontractors or subconsultants.

3.16 Records.

Consultant shall maintain complete and accurate records with respect to all costs and expenses incurred under this Agreement. All such records shall be clearly identifiable. Consultant shall allow a representative of City during normal business hours to examine, audit, and make transcripts or copies of such records and any other documents created pursuant to this Agreement. Consultant shall allow inspection of all work, data, documents, proceedings, and activities related to the Agreement for a period of five (5) years from the date of final payment under this Agreement.

3.17 Standardized Manufactured Items.

Consultant shall cooperate and consult with City in the use and selection of manufactured items on the Project, including but not limited to, paint, hardware, plumbing, mechanical and electrical equipment, fixtures, roofing materials and floor coverings. All such manufactured items

shall be standardized to City's criteria to the extent such criteria do not interfere with building design.

3.18 Limitation of Agreement.

This Agreement is limited to and includes only the work included in the Project described herein. Any additional or subsequent construction at the site of the Project, or at any other City site, will be covered by, and be the subject of, a separate Agreement for architectural services between City and the Consultant chosen therefor by City.

3.19 Mediation.

Disputes arising from this Agreement may be submitted to mediation if mutually agreeable to the Parties hereto. The type and process of mediation to be utilized shall be subject to the mutual agreement of the Parties.

3.20 Successors and Assigns.

This Agreement shall be binding upon and shall inure to the benefit of the successors in interest, executors, administrators and assigns of each Party to this Agreement. However, Consultant shall not assign or transfer by operation of law or otherwise any or all of its rights, burdens, duties or obligations without the prior written consent of City. Any attempted assignment without such consent shall be invalid and void.

3.21 Asbestos Certification.

Consultant shall certify to City, in writing and under penalty of perjury, that to the best of its knowledge, information and belief no asbestos-containing material or other material deemed to be hazardous by the state or federal government was specified as a building material in any construction document that the Consultant prepares for the Project. Consultant shall require all consultants who prepare any other documents for the Project to submit the same written certification. Consultant shall also assist the City in ensuring that contractors provide City with certification, in writing and under penalty of perjury, that to the best of their knowledge, information and belief no material furnished, installed or incorporated into the Project contains asbestos or any other material deemed to be hazardous by the state or federal government. These certifications shall be part of the final Project submittal. Consultant shall include statements in its specifications that materials containing asbestos or any other material deemed to be hazardous by the state or federal government are not to be included.

3.22 No Third Party Rights.

This Agreement shall not create any rights in, or inure to the benefits of, any third party except as expressly provided herein.

3.23 Governing Law.

This Agreement shall be construed in accordance with, and governed by, the laws of the State of California. Venue shall be in San Bernardino County.

3.24 Exhibits and Recitals.

All exhibits and recitals contained herein and attached hereto are material parts of this Agreement and are incorporated as if fully set forth.

3.25 Severability.

Should any provision in the Agreement be held by a court of competent jurisdiction to be invalid, void, or unenforceable, the remaining provisions shall continue in full force and effect.

3.26 Non-Waiver.

None of the provisions of this Agreement shall be considered waived by either Party, unless such waiver is specifically specified in writing.

3.27 Safety.

Consultant shall execute and maintain its work so as to avoid injury or damage to any person or property. In carrying out its Services, the Consultant shall at all times be in compliance with all applicable local, state and federal laws, rules and regulations, and shall exercise all necessary precautions for the safety of its employees, consultant and subcontractors appropriate to the nature of the work and the conditions under which the work is to be performed.

3.28 Harassment Policy.

Consultant shall provide a copy of the City's Harassment Policy to each of its employees assigned to perform the tasks under this Agreement. Consultant shall submit to the City's Personnel Manager a statement signed by each of its employees who are assigned to perform the Services under this Agreement certifying receipt of City's Harassment Policy and certifying that they have read the Harassment Policy. A finding by the City that any of Consultant's employees has harassed a City employee shall be grounds for appropriate discipline, up to and including such employee's removal from performance of this Agreement at City's request.

3.29 Delivery of Notices.

All notices permitted or required under this Agreement shall be given to the respective Parties at the following address, or at such other address as the respective Parties may provide in writing for this purpose:

CITY:

City of Ontario

303 East “B” Street

Ontario, CA 91764

Attn: Ms. Marissa Kucheck, Museum Director

CONSULTANT:

HMC Group dba HMC Architects
3546 Concours Street
Ontario, CA 91764
Attn: Kyle Peterson

Such notice shall be deemed made when personally delivered or when mailed, forty-eight (48) hours after deposit in the U.S. Mail, first class postage prepaid and addressed to the Party

at its applicable address. Actual notice shall be deemed adequate notice on the date actual notice occurred, regardless of the method of service.

3.30 Time of Essence.

Time is of the essence for each and every provision of this Agreement.

3.31 City's Right to Employ Other Consultants.

City reserves right to employ other consultants, including designers, in connection with this Project or other projects.

3.32 Prohibited Interests.

3.32.1 Solicitation. Consultant maintains and warrants that it has not employed nor retained any company or person, other than a bona fide employee working solely for Consultant, to solicit or secure this Agreement. Further, Consultant warrants that it has not paid nor has it agreed to pay any company or person, other than a bona fide employee working solely for Consultant, any fee, commission, percentage, brokerage fee, gift or other consideration contingent upon or resulting from the award or making of this Agreement. For breach or violation of this warranty, City shall have the right to rescind this Agreement without liability.

3.32.2 Conflict of Interest. For the term of this Agreement, no director, official, officer or employee of City, during the term of his or her service with City, shall have any direct interest in this Agreement, or obtain any present or anticipated material benefit arising therefrom.

3.33 Equal Opportunity Employment.

Consultant represents that it is an equal opportunity employer and that it shall not discriminate against any employee or applicant for employment because of race, religion, color, national origin, ancestry, sex, age or any other classification protected by federal or state law. Such non-discrimination shall include, but not be limited to, all activities related to initial employment, upgrading, demotion, transfer, recruitment or recruitment advertising, layoff or termination. Consultant shall also comply with all relevant provisions of City's minority business enterprise program, affirmative action plan or other related programs or guidelines currently in effect or hereinafter enacted.

3.34 Labor Certification.

By its signature hereunder, Consultant certifies that it is aware of the provisions of Section 3700 of the California Labor Code which require every employer to be insured against liability for Worker's Compensation or to undertake self-insurance in accordance with the provisions of that Code, and agrees to comply with such provisions before commencing the performance of the Services.

3.35 Subcontracting.

As specified in this Agreement, Consultant shall not subcontract any portion of the Services required by this Agreement, except as expressly stated herein, without prior written approval of City. Subcontracts, if any, shall contain a provision making them subject to each and every provision of this Agreement.

3.36 Supplemental Conditions.

Any supplemental conditions shall be attached as an exhibit to this Agreement, and that exhibit shall be incorporated herein by reference.

3.37 Entire Agreement.

This Agreement, with its exhibits, contains the entire agreement of the Parties hereto, and supersedes any and all other prior or contemporaneous negotiations, understandings and oral or written agreements between the Parties hereto. Each Party acknowledges that no representations, inducements, promises or agreements have been made by any person which are not incorporated herein, and that any other agreements shall be void. Furthermore, any modification of this Agreement shall only be effective if in writing signed by all Parties hereto.

SIGNATURES ON FOLLOWING PAGE

SIGNATURE PAGE FOR DESIGN SERVICES AGREEMENT
BETWEEN THE CITY OF ONTARIO
AND HMC GROUP DBA HMC ARCHITECTS

IN WITNESS WHEREOF, the Parties have executed this Agreement as of the date first written above.

CITY OF ONTARIO

Approved By:

_____
Scott Ochoa
City Manager

Approved as to Form:

_____
Best Best & Krieger LLP
City Attorney

Attested By:

_____
City Clerk

HMC Group dba HMC Architects

By: _____

Its: _____

Printed Name: _____

By: _____

Its: _____

Printed Name: _____

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

EXHIBIT "A"
SCOPE OF SERVICES

1. GENERAL REQUIREMENTS.

1.1 Basic Services. Consultant agrees to perform all the necessary professional architectural, engineering (e.g. mechanical, electrical, plumbing, structural, site engineering, and any other necessary engineering services mutually agreeable to the Parties) and construction administration services for the Project in a timely and professional manner, consistent with the standards of the profession, including those provided for herein.

1.2 Exclusions from Basic Services. The following services shall be excluded from the basic services listed above: To be determined on a case-by-case basis for this On-Call, as needed Architectural services

1.3 Additional Services. Consultant shall perform the following Additional Services for the Project: N/A

1.4 Communication with City. Consultant shall participate in consultations and conferences with authorized representatives of City and/or other local, regional, or state agencies concerned with the Project, which may be necessary for the completion of the Project or the development of the drawings, specifications and documents in accordance with the applicable standards and requirements of law and the City. Such consultations and conferences shall continue throughout the planning and construction of the Project and the contractor's warranty period. Consultant shall take direction only from the City's Representative, or any other representative specifically designated by the City for this Project, including any construction manager hired by the City.

1.5 Coordination and Cooperation with Construction Manager. The City may hire a construction manager to administer and coordinate all or any part of the Project on its behalf. If the City does so, it shall provide a copy of its agreement with the construction manager so that the Consultant will be fully aware of the duties and responsibilities of the construction manager. The Consultant shall cooperate with the construction manager and respond to any requests or directives authorized by the City to be made or given by the construction manager. The Consultant shall request clarification from the City in writing if the Consultant should have any questions regarding the authority of the construction manager.

2. INITIAL PLANNING PHASE.

During the initial planning phase of the Project, Consultant shall do all of the following, as well as any incidental services thereto:

2.1 Project Feasibility. Provide advice and assistance to City in determining the feasibility of the Project, analysis of the type and quality of materials and construction to be selected, the site location, and other initial planning matters.

2.2 Meeting Budget and Project Goals. Consultant shall notify City in writing of potential complications, cost overruns, unusual conditions, and general needs that potentially impact the Project budget and time line, including the City's Preliminary Construction Budget. Consultant shall use its best judgment in determining the balance between the size, type and quality of construction to achieve a satisfactory solution within the Project's budget and

construction allowance. It shall be the duty of the Consultant to design the Project within budget. As discussed herein, including in Section 7.3, if the lowest responsive and responsible bid for the Project exceeds the budget by the stated amount, Consultant may be required to make the necessary changes in the drawing and specifications, at its sole cost and expense, to bring the bids within the required budget.

2.3 Permits, Approvals and Authorizations. As indicated in Section 3.5.4 of the Agreement, Consultant shall assist City in securing easements, encroachment permits, rights of way, dedications, infrastructures and road improvements, as well as coordinating with utilities and adjacent property owners.

3. SCHEMATIC PLAN PHASE.

During the schematic plan phase of the Project, Consultant shall do all of the following, as well as any incidental services thereto:

3.1 Funding Documents. Consultant shall provide a site plan and all other Project-related information necessary and required for an application by City to any federal, state, regional, or local agencies for funds to finance the construction Project.

3.2 Schematic Plans. In cooperation with City, Consultant shall prepare preliminary plans and studies, schematic drawings, site utilization plans, and phasing plans showing the scale and relationship of the components of the Project, the plot plan development at the site, and the proposed architectural concept of the buildings ("Schematic Plans"). Consultant shall incorporate the functional requirements of City into the Schematic Plans. The Schematic Plans shall meet all laws, rules and regulations of the State of California. The Schematic Plans shall show all rooms incorporated in each building of the Project in single-line drawings, and shall include all revisions required by City or by any federal, state, regional or local agency having jurisdiction over the Project. All architectural drawings for the Project shall be in a form suitable for reproduction.

3.3 Preliminary Project Budget. Consultant shall use the City's Preliminary Construction Budget and its own expertise and experience with the Project to establish a preliminary project budget or allowance in a format required by City ("Consultant's Preliminary Project Budget"). The purpose of the Consultant's Preliminary Project Budget is to show the probable Project cost in relation to City's Preliminary Construction Budget and the construction standards of any applicable funding agency. If Consultant perceives site considerations which render the Project expensive or cost prohibitive, Consultant shall disclose such conditions in writing to City immediately. As discussed herein, including in Section 7.3, if the lowest responsive and responsible bid for the Project exceeds the budget by more than the stated amount, Consultant may be required to make the necessary changes in the drawings and specifications, at its sole cost and expense, to bring the bids within the required budget Consultant shall provide a preliminary written time schedule for the performance of all construction work on the Project.

3.4 Copies of Schematic Plans and Other Documents. Consultant, at its own expense, shall provide a complete set of the Schematic Plans described herein for City's review and approval. Additionally, at City's expense, Consultant shall provide such documents as may be required by any federal, state, regional or local agencies concerned with the Project. Any additional copies required by City shall be provided at actual cost to City.

4. DESIGN DEVELOPMENT PHASE.

During the design development phase of the Project, Consultant shall do all of the following, as well as any incidental services thereto:

4.1 Design Development Documents. Once City provides Consultant with specific written approval of the Schematic Plans described herein, Consultant shall prepare design development documents consisting of: (1) site and floor plans; (2) elevations; and (3) any other drawings and documents sufficient to fix and describe the types and makeup of materials, as well as the size and character of the Project's structural, mechanical and electrical systems, and to outline the Project specifications ("Design Development Documents"). The Design Development Documents shall be prepared in sufficient form to present to the City Council for approval.

4.2 Copies of Design Development and Other Documents. Consultant, at its own expense, shall provide a complete set of the Design Development Documents described herein for City's review and approval. Additionally, at City's expense, Consultant shall provide such documents as may be required by any federal, state, regional or local agencies concerned with the Project. Any additional copies required by City shall be provided at actual cost to City.

4.3 Updated Project Budget. Consultant shall use its Preliminary Project Budget and expertise and experience with the Project to establish an updated estimate of probable construction costs, containing detail consistent with the Design Development Documents as set forth herein and containing a breakdown based on types of materials and specifications identified herein ("Consultant's Updated Project Budget").

4.4 Timetable. Consultant shall provide a written timetable for full and adequate completion of the Project to City.

4.5 Application for Approvals. Consultant shall assist City in applying for and obtaining required approvals from all federal, state, regional or local agencies concerned with the Project. Consultant shall furnish and process all architectural and engineering information required to prepare and process applications to applicable utilities in order to secure priorities and materials, to aid in the construction of the Project and to obtain final Project approval and acceptance by any of the above agencies as may be required.

4.6 Color and Other Aesthetic Issues. Consultant shall provide, for City's review and approval, a preliminary schedule of all color materials and selections of textures, finishes and other matters involving an aesthetic decision about the Project.

5. FINAL WORKING DRAWINGS AND SPECIFICATIONS.

During the final working drawings and specifications phase of the Project, Consultant shall do all of the following, as well as any incidental services thereto:

5.1 Final Working Drawings and Specifications. Once City provides Consultant with specific written approval of the Design Development Documents described herein, Consultant shall prepare such complete working drawings and specifications as are necessary for developing complete bids and for properly executing the Project work in an efficient and thorough manner ("Final Working Drawings and Specifications"). Such Final Working Drawings and Specifications shall be developed from the Schematic Plans and Design Development Documents approved by City. The Final Working Drawings and Specifications shall set forth in

detail all of the following: (1) the Project construction work to be done; (2) the materials, workmanship, finishes, and equipment required for the architectural, structural, mechanical, and electrical systems; and (3) the utility service connection equipment and site work. As indicated in Section 3.9.2 of the Agreement, City may be requested to supply Consultant with the necessary information to determine the proper location of all improvements on and off site, including record drawings ("as-built drawings") in City's possession. Consultant will make a good-faith effort to verify the accuracy of such information by means of a thorough interior and exterior visual survey of site conditions. City shall also make a good-faith effort to verify the accuracy of the as-built drawings and provide any supplemental information to Consultant which may not be shown on the as-built drawings.

5.2 Form. The Final Working Drawings and Specifications must be in such form as will enable Consultant and City to secure the required permits and approvals from all federal, state, regional or local agencies concerned with the Project. In addition, the Final Working Drawings and Specifications must be in such form as will enable City to obtain, by competitive bidding, a responsible and responsive bid within the applicable budgetary limitations and cost standards. The Final Working Drawings and Specifications shall be clear and legible so that uniform copies may be on standard architectural size paper, properly indexed and numbered, and shall be capable of being clearly copied and assembled in a professional manner by Consultant.

5.3 Approval and Revisions. City shall review, study, and check the Final Working Drawings and Specifications presented to it by Consultant, and request any necessary revisions or obtain any necessary approvals by the City Council, subject to the approval of all federal, state, regional or local agencies concerned with the Project. Consultant shall make all City-requested changes, additions, deletions, and corrections in the Final Working Drawings and Specifications at no additional cost, so long as they are not in conflict with the requirements of public agencies having jurisdiction or prior approval, or inconsistent with earlier City direction or Consultant's professional judgment. Consultant shall bring any such conflicts and/or inconsistencies to the attention of City. The Parties agree that Consultant, and not the City, possesses the requisite expertise to determine the constructability of the Final Working Drawings and Specifications. However, the City reserves the right to conduct one or more constructability review processes with the Final Working Drawings and Specifications, and to hire an independent architect or other consultant to perform such reviews. Any such independent constructability review shall be at City's expense. Consultant shall make all City-requested changes, additions, deletions, and corrections in the Final Working Drawings and Specifications which may result from any constructability review, at no additional cost to the City, so long as they are not in conflict with the requirements of public agencies having jurisdiction or prior approval, or inconsistent with earlier City direction or Consultant's professional judgment. If such changes, additions, deletions or corrections are inconsistent with prior City direction, Consultant shall make such alterations and be compensated therefore pursuant to the Additional Services provision of this Agreement.

5.4 Costs of Construction. It is understood by Consultant that should the Final Working Drawings and Specifications be ordered by City, City shall specify the sum of money set aside to cover the total cost of construction of the work, exclusive of Consultant's fees. Should it become evident that the total construction cost will exceed the specified sum, Consultant shall at once present a statement in writing to the City's Representative setting forth this fact and giving a full statement of the cost estimates on which the conclusion is based.

5.5 Copies of Final Working Drawings and Specifications and Other Documents. Consultant, at its own expense, shall provide a complete set of the Final Working Drawings and Specifications described herein for City's review and approval. Additionally, at City's expense,

Consultant shall provide such documents as may be required by any federal, state, regional or local agencies concerned with the Project. Any additional copies required by City shall be provided at actual cost to City.

6. CONSTRUCTION CONTRACT DOCUMENTS.

During the construction contract documents phase of the Project, Consultant shall do all of the following, as well as any incidental services thereto:

6.1 Bid and Contract Documents. If so required by City, Consultant shall assist City in the completion of all bid and construction documents, including but not limited to, the Notice Inviting Bids, Instructions to Bidders, Contract Bid Forms (including Alternate Bids as requested by City), `Contract, General Conditions, Supplementary General Conditions, Special Conditions, DVBE and other applicable affirmative action documents, Performance Bond, Payment Bond, Escrow Agreement for Security Deposits, and any other certifications and documents required by federal, state and local laws, rules and regulations which may be reasonably required in order to obtain bids responsive to the specifications and drawings. All such documents shall be subject to the approval of City and City's legal counsel.

6.2 Final Estimate. At the time of delivery of these bid and construction documents, which shall include the Final Working Drawings and Specifications (collectively referred to herein as the "Construction Documents"), Consultant shall provide City with its final estimate of probable construction cost ("Consultant's Final Estimate"). As discussed herein, including in Section 7.3, it shall be the Consultant's duty to design the Project within budget.

7. BID PHASE.

During the bid phase of the Project, Consultant shall do all of the following, as well as any incidental services thereto:

7.1 Reproducible Construction Documents. Once City provides Consultant with specific written approval of the Construction Documents and Consultant's Final Estimate, Consultant shall provide to City one set of reproducible Construction Documents.

7.2 Distribution of Contract Documents and Review of Bids. Consultant shall assist City in distributing the Construction Documents to bidders and conducting the opening and review of bids for the Project.

7.3 Over Budget. If the apparent lowest responsive and responsible bid on the Project exceeds the Consultant's Final Estimate by more than five percent (5%), City may request Consultant to amend, at Consultant's sole cost and expense, the Final Drawings and Specifications in order to rebid the Project and receive a lowest responsive and responsible bid equal to or less than the Consultant's Final Estimate. All revisions necessary to bring the lowest responsible and responsive bid within the Consultant's Final Estimate, including any omissions, deferrals or alternates, shall be made in consultation with, and subject to the approval of, the City.

8. CONSTRUCTION PHASE.

During the construction phase of the Project, Consultant shall do all of the following, as well as any incidental services thereto:

8.1 Observation. The Project Consultant shall observe work executed from the Final Working Drawings and Specifications in person, provided that City may, in its discretion, consent to such observation by another competent representative of Consultant.

8.2 General Administration. Consultant shall provide general administration of the Construction Documents and the work performed by the contractors.

8.3 Pre-Construction Meeting. Consultant shall conduct one or more pre-construction meetings, as the City determines is needed for the Project, with all interested Parties.

8.4 Site Visits of Contractor's Work. Consultant shall conduct site visits to observe each contractors' work for general conformance with the Construction Documents and with any approved construction schedules or milestones. Such site visits shall be conducted as often as are necessary and appropriate to the stage of construction, according to the City's sole discretion, but in no event less than weekly.

8.5 Site Visits of Inspector's Work. Consultant shall conduct site visits to communicate and observe the activities of the City inspectors. Such site visits shall be conducted as often as is mutually acceptable to Consultant and City. Consultant shall direct the City inspectors and the Project contractors to coordinate the preparation of record drawings indicating dimensions and location of all "as-built" conditions, including but not limited to, underground utility lines.

8.6 Coordination of Subconsultants. Consultant shall cause all architects, engineers and other consultants, as may be hired by Consultant or City, to observe the work completed under their disciplines as required, and approve and review all test results for general conformance with the Construction Documents.

8.7 Reports. Consultant shall make regular reports as may be required by applicable federal, state or local laws, rules or regulations, as well as the federal, state, regional or local agencies concerned with the Project.

8.8 Construction Meetings; Minutes. Consultant shall attend all construction meetings and provide written reports/minutes to the City after each construction meeting in order to keep City informed of the progress of the work. Such meetings shall occur at a frequency necessary for the progress of the Project work, according to the City's sole discretion, but no less than weekly.

8.9 Written Reports. Consultant shall make written reports to City as necessary to inform City of problems arising during construction, changes contemplated as a result of each such problems, and progress of the Project work.

8.10 Written Records. Consultant shall keep accurate written records of the progress and quality of the Project work and the time schedules, and shall advise the contractors and City of any deviations from the time schedule which could delay timely completion of the Project.

8.11 Material and Test Reports. Consultant shall check and process, in a timely manner, all required material and test reports for the Project work. In addition, Consultant shall provide notice of any deficiencies in material or work reflected in such reports, as well as its recommendation for correction of such deficiencies, to the contractors and City.

8.12 Review and Response to Submissions. Consultant shall review and respond, in a timely manner, to all schedules, submittals, shop drawings, samples, information requests, change requests, and other submissions of the contractor and subcontractors for compliance with, or alterations and additions to, the Construction Documents. Consultant's review and response shall be done in such a manner so as to ensure the timely and uninterrupted progress of the Project work.

8.13 Rejection of Work. Consultant shall promptly reject, as discussed with City, work or materials which do not conform to the Construction Documents. Consultant shall immediately notify the City and contractor(s) of such rejections. Consultant shall also have the authority to recommend to the City that additional inspection or testing of the work be performed, whether or not such work is fabricated, installed or completed.

8.14 Substitutions. Consultant shall consult with City, in a timely manner, with regard to substitution of materials, equipment and laboratory reports thereof, prior to the City's final written approval of such substitutions. Consultant's consultation shall be done in such a manner so as to ensure the timely and uninterrupted progress of the Project work.

8.15 Revised Documents and Drawings. Consultant shall prepare, at no additional expense to City, all documents and/or drawings made necessary by errors and omissions in the originally approved Construction Documents.

8.16 Change Requests and Material Changes. Consultant shall evaluate and advise City, in a timely manner and in writing, of any change requests and material change(s) which may be requested or necessary in the Project plans and specifications. Consultant shall provide the City with its opinion as to whether such change requests should be approved, denied or revised. If the City has not hired a construction manager or other person to do so, the Consultant shall prepare and execute all change orders and submit them to the City for authorization. If the City has designated a construction manager or other person to prepare all change orders, the Consultant shall review all change orders prepared by such person, execute them and deliver them to the City for authorization if they meet with the Consultant's approval, or submit them to the City with recommendations for revision or denial if necessary. Consultant shall not order contractors to make any changes affecting the contract price without approval by City of such a written change order, pursuant to the terms of the Construction Documents. Consultant may order, on its own responsibility and pending City Council approval, changes necessary to meet construction emergencies, if written approval of City's Representative is first secured.

8.17 Applications for Payment. Consultant shall examine, verify and approve contractor's applications for payment, and shall issue certificates for payment in amounts approved by the City's inspector.

8.18 Final Color and Product Selection. Consultant shall coordinate final color and product selection with City's original design concept.

8.19 Substantial Completion. Consultant shall determine the date of substantial completion, in consultation with the City.

8.20 Punch List. After determining that the Project is substantially complete, Consultant shall participate in the inspection of the Project and shall review all remaining deficiencies and minor items needed to be corrected or completed on the Project, including those identified on the punch list prepared by the contractor ("Punch List Items"). Consultant shall notify

contractor in writing that all Punch List Items must be corrected prior to final acceptance of the Project and final payment. Consultant shall also notify City of all Punch List Items.

8.21 Warranties. Consultant shall review materials assembled by the contractor and subcontractors with regard to all written warranties, guarantees, owners' manuals, instruction books, diagrams, record "as built" drawings, and any other materials required from the contractors and subcontractors pursuant to the Construction Documents. Consultant shall coordinate and provide these materials to the City.

8.22 Certificate of Completion. Consultant shall participate in any further inspections of the Project necessary to issue Consultant's Certificate of Completion and final certificate for payment.

8.23 Documents for Project Close-Out. Consultant shall cause all other architects, engineers and other consultants, as may be hired by Consultant, to file any and all required documentation with the City or other governmental authorities necessary to close out the Project. Consultant shall assist the City in obtaining such documentation from all other architects, engineers, or other consultants.

9. AS-BUILT DRAWINGS.

During the as-built drawings phase of the Project, Consultant shall do all of the following, as well as any incidental services thereto:

9.1 As-Built Drawings and Specifications. Not later than thirty (30) days after substantial completion of the Project, before receipt of final payment, Consultant shall review and forward the Final Working Drawings and Specifications, indicating on them all changes made by change orders or otherwise pursuant to the Construction Documents, as well as all information called for on the specifications, thus producing an "as-built" set of Final Working Drawings and Specifications ("As-Built Drawings and Specifications"). The As-Built Drawings and Specifications shall show, among other things, the location of all concealed pipe, buried conduit runs and other similar elements within the completed Project. Consultant shall personally review and certify that the As-Built Drawings and Specifications are a correct representation of the information supplied to Consultant by any inspectors and the contractor, and shall obtain certifications from any inspectors and the contractor that the drawings are correct.

9.2 Approval. Once City provides Consultant with specific written approval of the As-Built Drawings and Specifications, Consultant shall forward to City the complete set of original As-Built Drawings and Specifications or a complete set of reproducible duplicate As-Built Drawings and Specifications. The tracing shall be of such quality that clear and legible prints may be made without appreciable and objectionable loss of detail.

9.3 Documents for Final Payment. Prior to the receipt of Consultant's final payment, Consultant shall forward to City all of the following: (1) one clear and legible set of reproductions of the computations; (2) the original copy of the specifications; (3) the As-Built Drawings and Specifications as required herein; and (4) Consultant's Certificate of Completion.

10. WARRANTY PERIOD.

During the warranty period phase of the Project, Consultant shall do all of the following, as well as any incidental services thereto:

10.1 Advice. Consultant shall provide advice to City on apparent deficiencies in the Project during any applicable warranty periods for the Project.

EXHIBIT "B"
FEE AND PHASING/FUNDING SCHEDULES

1. FEE SCHEDULE.

Consultant will invoice City on a monthly cycle based on the following fee schedule. Consultant will include with each invoice a detailed progress report that indicates the amount of budget spent on each phase and the total amount spent against the Total Compensation. Consultant will inform City regarding any out-of-scope work being performed by Consultant for which Consultant intends to seek compensation from City.

2. PHASING/FUNDING SCHEDULE.

Progress payments towards Total Compensation shall never exceed the following percentages of Total Compensation as of the phase indicated:

Initial Planning Phase:	_____ percent (%____)
Schematic Plan Phase:	_____ percent (%____)
Design Development Phase:	_____ percent (%____)
Final Working Drawings & Specifications Phase:	_____ percent (%____)
Construction Contract Documents Phase:	_____ percent (%____)
Bid Phase:	_____ percent (%____)
Construction Phase:	_____ percent (%____)
As-Built Drawings Phase:	_____ percent (%____)
Warranty Period Phase:	_____ percent (%____)

Note: No Phasing/Funding Schedule is necessary until a project task is issued under the contract

EXHIBIT "C"
COMPENSATION RATES AND REIMBURSABLE EXPENSES

1. HOURLY COMPENSATION RATES. BELOW

HMC Rate Schedule

Standard Hourly Rate by Professional Category.

DESCRIPTION	RATES
Principal In Charge	$395
Sr Project Manager/Sr Project Architect/Sr Technical Manager	$290
Project Manager/Project Architect/Technical Manager	$275
Job Captain/Technical Leader	$230
Project Coordinator	$200
Senior Construction Administrator	$295
Construction Administrator	$275
Project Administration Support	$160
Design Principal	$395
Senior Project Designer	$290
Project Designer	$275
Design Leader	$230
Designer II	$180
Designer	$160
Sustainability Director	$325
Specifications Writer	$250
Visualization Arts	$230

2. REIMBURSABLE EXPENSES.

Reimbursable expenses shall be billed at cost plus 15% and include the typical:

-Reproduction costs, travel costs, special renderings, consultants retained with client approval

3. ADDITIONAL SERVICES.

Additional Services shall be computed at the actual hourly rates listed above.

4. ADDITIONAL CONSULTANTS.

If City requires Consultant to hire consultants to perform any Additional Services, Consultant shall be compensated therefore at the Consultant's actual hourly rates plus 15%. Owner shall have the authority to review and approve the rates of any such consultants.

CITY OF ONTARIO
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PAUL S. LEON
MAYOR

DEBRA PORADA
MAYOR PRO TEM

ALAN D. WAPNER
JIM W. BOWMAN
RUBEN VALENCIA
COUNCIL MEMBERS

SHEILA MAUTZ
CITY CLERK

JAMES R. MILHISER
TREASURER

SCOTT OCHOA
CITY MANAGER

CITY OF ONTARIO
DESIGN SERVICES AGREEMENT

1. PARTIES AND DATE.

This Agreement is made and entered into as of _____, by and between the City of Ontario, a municipal corporation organized and operating under the laws of the State of California with its principal place of business at 303 East "B" Street, Ontario, California 91764-4196, County of San Bernardino, State of California ("City"), and **Johnson Favaro, LLP**, a Partnership with its principal place of business at 5898 Blackwelder Street, Culver City, CA 90232 (hereinafter referred to as "Consultant"). City and Consultant are sometimes individually referred to herein as "Party" and collectively as "Parties."

2. RECITALS.

2.1 City. City is a municipal corporation organized under the laws of the State of California, with power to contract for services necessary to achieve its purpose.

2.2 Consultant**.** Consultant desires to perform and assume responsibility for the provision of certain professional architectural design services required by the City on the terms and conditions set forth in this Agreement. Consultant warrants that it is fully licensed, qualified, and willing to perform the services required by this Agreement; provided, however, that if Consultant is a corporation or other organization, the Project Consultant designated pursuant to Section 3.2, and not the Consultant itself, shall be fully licensed to practice as an architect in the State of California.

2.3 Project**.** City desires to engage Consultant to render such services for the **Museum Improvement On-Call Architectural Services** ("Project") as set forth in this Agreement.

3. TERMS

3.1 Employment of Consultant.

3.1.1 Scope of Services. Consultant promises and agrees to furnish to City all labor, materials, tools, equipment, services, and incidental and customary work necessary to fully and adequately supply the professional architectural and related services necessary for the full and adequate completion of the Project consistent with the provisions of this Agreement (hereinafter referred to as "Services"). The Services are more particularly described throughout this Agreement, including Exhibit "A" attached hereto and incorporated herein by reference. All Services shall be subject to, and performed in accordance with, this Agreement, any exhibits attached hereto and incorporated herein by reference, and all applicable local, state and federal

laws, rules and regulations. All Services performed by Consultant shall be subject to the sole and discretionary approval of the City, which approval shall not be unreasonably withheld.

3.1.2 Term. The term of this Agreement shall be from **November 4, 2024,** to **November 4, 2027**, unless earlier terminated as provided herein. The City shall have the unilateral option, at its sole discretion, to renew this Agreement automatically for no more than two (2) additional one-year terms. Consultant shall complete the Services within the term of this Agreement, and shall meet any other established schedules and deadlines.

3.2 Project Consultant; Key Personnel.

3.2.1 **Project Architect**. Consultant shall name a specific individual to act as Project Consultant, subject to the approval of City. Consultant hereby designates Jim Favaro (License No. C32185) to act as the Project Architect for the Project. The Project Architect shall: (1) maintain oversight of the Services; (2) have full authority to represent and act on behalf of the Consultant for all purposes under this Agreement; (3) supervise and direct the Services using his or her best skill and attention; (4) be responsible for the means, methods, techniques, sequences and procedures used for the Services; (5) adequately coordinate all portions of the Services; and (6) act as principal contact with City and all contractors, consultants, engineers and inspectors on the Project. Any change in the Project Architect shall be subject to the City's prior written approval, which approval shall not be unreasonably withheld. The new Project Architect shall be of at least equal competence as the prior Project Architect. In the event that City and Consultant cannot agree as to the substitution of a new Project Architect, City shall be entitled to terminate this Agreement for cause.

3.2.2 Key Personnel. In addition to the Project Architect, Consultant has represented to the City that certain additional key personnel, engineers and consultants will perform the Services under this Agreement. Should one or more of such personnel, engineers or consultants become unavailable, Consultant may substitute others of at least equal competence upon written approval of the City. In the event that City and Consultant cannot agree as to the substitution of key personnel, engineers or consultants, City shall be entitled to terminate this Agreement for cause. The key additional personnel, engineers and consultants for performance of this Agreement are as follows: Steve Johnson, Principal Project Architect; Ingrid Dennert, As. Project Manager; Kevin Geraghty, Sr. Design Associate

3.3 Hiring of Consultants and Personnel.

3.3.1 Right to Hire or Employ. Consultant shall have the option, unless City objects in writing after notice, to employ at its expense architects, engineers, experts or other consultants qualified and licensed to render services in connection with the planning and/or administration of the Project, and to delegate to them such duties as Consultant may delegate without relieving Consultant from administrative or other responsibility under this Agreement. Consultant shall be responsible for the coordination and cooperation of Consultant's architects, engineers, experts or other consultants. All consultants, including changes in consultants, shall be subject to approval by City in its sole and reasonable discretion. Consultant shall notify City of the identity of all consultants at least fourteen (14) days prior to their commencement of work to allow City to review their qualifications and approve to their participation on the Project in its sole and reasonable discretion.

3.3.2 Qualification and License. All architects, engineers, experts and other consultants retained by Consultant in performance of this Agreement shall be qualified to perform

the Services assigned to them, and shall be licensed to practice in their respective professions, where required by law.

3.3.3 Standards and Insurance. All architects, engineers, experts and other consultants hired by Consultant shall be required to meet all of the same standards and insurance requirements set forth in this Agreement, unless other standards or requirements are approved by the City in writing. Unless changes are approved in writing by the City, Consultant's agreements with its consultants shall contain a provision making them subject to all provisions stipulated in this Agreement.

3.3.4 Assignments or Staff Changes. Consultant shall promptly obtain written City approval of any assignment, reassignment or replacement of such architects, engineers, experts and consultants, or of other staff changes of key personnel working on the Project. As provided in the Agreement, any changes in Consultant's consultants and key personnel shall be subject to approval by City.

3.3.5 Draftsman and Clerical Support. Draftsmen and clerical personnel shall be retained by Consultant at Consultant's sole expense.

3.4 Standard of Care.

3.4.1 Standard of Care. Consultant shall perform all Services under this Agreement in a skillful and competent manner, consistent with the standards generally recognized as being employed by professionals qualified to perform the Services in the same discipline in the State of California, and shall be responsible to City for damages sustained by the City and delays to the Project as specified in the indemnification provision of this Agreement. Without limiting the foregoing, Consultant shall be fully responsible to the City for any increased costs incurred by the City as a result of any such delays in the design or construction of the Project. Consultant represents and maintains that it is skilled in the professional calling necessary to perform the Services. Consultant warrants and represents that all of its employees, architects, engineers, experts and other consultants shall have sufficient skill and experience to perform the Services assigned to them. Finally, Consultant represents that it, its employees, architects, engineers, experts and other consultants have all licenses, permits, qualifications and approvals of whatever nature that are legally required to perform the Services assigned to or rendered by them and that such licenses and approvals shall be maintained throughout the term of this Agreement. As provided for in the indemnification provisions of this Agreement, Consultant shall perform, at its own cost and expense and without reimbursement from the City, any services necessary to correct errors or omissions which are caused by the Consultant's failure to comply with the standard of care provided for herein.

3.4.2 Performance of Employees. Any employee or consultant who is determined by the City to be uncooperative, incompetent, a threat to the adequate or timely completion of the Project, a threat to the safety of persons or property, or any employee or consultant who fails or refuses to perform the Services in a manner acceptable to the City, shall be promptly removed from the Project by the Consultant and shall not be re-employed to perform any of the Services or to work on the Project.

3.5 Laws and Regulations.

3.5.1 Knowledge and Compliance. Consultant shall keep itself fully informed of and in compliance with all applicable local, state and federal laws, rules and regulations in any

manner affecting the performance of the Services or the Project, and shall give all notices required of the Consultant by law. Consultant shall be liable, pursuant to the standard of care and indemnification provisions of this Agreement, for all violations of such laws and regulations in connection with its Services. Consultant shall defend, indemnify and hold City, its officials, officers, employees and agents free and harmless, pursuant to the indemnification provisions of this Agreement, from any claim or liability arising out of any failure or alleged failure to comply with such laws, rules or regulations.

3.5.2 Drawings and Specifications. Consultant shall cause all drawings and specifications to conform to any applicable requirements of federal, state and local laws, rules and regulations, including the Uniform Building Code, in effect as of the time the drawings and specifications are prepared or revised during the latest phase of the Services described in Exhibit "A" attached hereto. Any significant revisions made necessary by changes in such laws, rules and regulations after this time may be compensated as Additional Services which were not known or reasonably should not have been known by Consultant. Consultant shall cause the necessary copies of such drawings and specifications to be filed with any governmental bodies with approval jurisdiction over the Project, in accordance with the Services described in Exhibit "A" attached hereto. For the preparation of all such drawings and specifications, the Consultant shall use Computer Aided Design Drafting ("CADD") (e.g., AutoCAD) or other technology acceptable to the Consultant and City.

3.5.3 Americans with Disabilities Act. Consultant will use its best professional efforts to interpret all applicable federal, state and local laws, rules and regulations with respect to access, including those of the Americans with Disabilities Act ("ADA"). Consultant shall inform City of the existence of inconsistencies of which it is aware or reasonably should be aware between federal and state accessibility laws, rules and regulations, as well as any other issues which are subject to conflicting interpretations of the law, and shall provide the City with its interpretation of such inconsistencies and conflicting interpretations. Unless Consultant brings such inconsistencies and conflicting interpretations to the attention of the City and requests City's direction on how to proceed, the Consultant's interpretation of such inconsistencies and conflicting interpretations shall be the sole responsibility and liability of Consultant, and the Consultant shall correct all plans, specifications and other documents prepared for the Project at no additional cost if its interpretations are shown to be incorrect. In the event that the Consultant request's City's direction on how to proceed with respect to any inconsistent and/or conflicting interpretation, the Consultant shall be responsible to the City only pursuant to the indemnification provisions of this Agreement.

3.5.4 Permits, Approvals and Authorizations. Consultant shall provide City with a list of all permits, approvals or other authorizations required for the Project from all federal, state or local governmental bodies with approval jurisdiction over the Project. Consultant shall then assist the City in obtaining all such permits, approvals and other authorizations. The costs of such permits, approvals and other authorizations shall be paid by the City.

3.5.5 Water Quality Management and Compliance. Consultant shall keep itself and all subcontractors, staff, and employees fully informed of and in compliance with all local, state and federal laws, rules and regulations that may impact, or be implicated by the performance of the Services including, without limitation, all applicable provisions of the City's ordinances regulating water quality and storm water; the Federal Water Pollution Control Act (33 U.S.C. § 1251 *et seq*.); the California Porter-Cologne Water Quality Control Act (Cal Water Code §§ 13000-14950); and any and all regulations, policies, or permits issued pursuant to any such authority. Consultant shall additionally comply with the lawful requirements of the City, and any other

municipality, drainage district, or other local agency with jurisdiction over the location where the Services are to be conducted, regulating water quality and storm water discharges. Failure to comply with laws, regulations, and ordinances listed in this Section is a violation of federal and state law.

3.6 Independent Contractor.

3.6.1 Control and Payment of Subordinates. City retains Consultant on an independent contractor basis and Consultant is not an employee of City. Consultant is not an employee for state tax, federal tax or any other purpose, and is not entitled to the rights or benefits afforded to City's employees. Any additional personnel performing the Services under this Agreement on behalf of Consultant shall also not be employees of City, and shall at all times be under Consultant's exclusive direction and control. Consultant shall pay all wages, salaries, and other amounts due such personnel in connection with their performance of Services under this Agreement and as required by law. Consultant shall be responsible for all reports and obligations respecting such additional personnel, including, but not limited to: social security taxes, income tax withholding, unemployment insurance, disability insurance, and workers' compensation insurance.

3.7 Schedule of Services.

3.7.1 Consultant Services. Consultant shall fully and adequately complete the Services described in this Agreement and in Exhibit "A" attached hereto and incorporated herein by reference.

3.7.2 Timely Performance Standard. Consultant shall perform all Services hereunder as expeditiously as is consistent with professional skill and care, as well as the orderly progress of the Project work so as not to be the cause, in whole or in part, of delays in the completion of the Project or in the achievement of any Project milestones, as provided herein. Specifically, Consultant shall perform its Services so as to allow for the full and adequate completion of the Project within the time required by the City and within any completion schedules adopted for the Project. Consultant agrees to coordinate with City's staff, contractors and consultants in the performance of the Services, and shall be available to City's staff, contractors and consultants at all reasonable times.

3.7.3 Performance Schedule. Consultant shall prepare an estimated time schedule for the performance of Consultant's Services, to be adjusted as the Project proceeds. Such schedule shall be subject to the City's review and approval, which approval shall not be unreasonably withheld, and shall include allowances for periods of time required for City's review and approval of submissions, and for approvals of authorities having jurisdiction over Project approval and funding. If City and Consultant cannot mutually agree on a performance schedule, City shall have the authority to immediately terminate this Agreement. The schedule shall not be exceeded by Consultant without the prior written approval of City. If the Consultant's Services are not completed within the time provided by the agreed upon performance schedule, or any milestones established therein, it is understood, acknowledged and agreed that the City will suffer damage for which the Consultant will be responsible.

3.7.4 Excusable Delays. Any delays in Consultant's work caused by the following may be added to the time for completion of any obligations of Consultant: (1) the actions of City or its employees; (2) the actions of those in direct contractual relationship with City; (3) the actions of any governmental agency having jurisdiction over the Project; (4) the actions of any

parties not within the reasonable control of the Consultant; and (5) any Force Majeure Event (as defined herein) or other unforeseen occurrence not due to any fault or negligence on the part of Consultant. Neither the City nor the Consultant shall be liable for damages, liquidated or otherwise, to the other on account of such delays.

3.7.5 Force Majeure Events. Neither City nor Consultant shall be considered in default of this Agreement for delays in performance caused by circumstances beyond the reasonable control of the non-performing Party. For purposes of this Agreement, such circumstances include a Force Majeure Event. A Force Majeure Event shall mean an event that materially affects a Party's performance and is one or more of the following: (1) Acts of God or other natural disasters; (2) terrorism or other acts of a public enemy; (3) orders of governmental authorities (including, without limitation, unreasonable and unforeseeable delay in the issuance of permits or approvals by governmental authorities that are required for the services); (4) strikes and other organized labor action occurring at the site and the effects thereof on the services, only to the extent such strikes and other organized labor action are beyond the control of Consultant and its subcontractors, and to the extent the effects thereof cannot be avoided by use of replacement workers; and (5) pandemics, epidemics or quarantine restrictions. For purposes of this section, "orders of governmental authorities," includes ordinances, emergency proclamations and orders, rules to protect the public health, welfare and safety, and other actions of a public agency applicable to the Services and Agreement. Should a Force Majeure Event occur, the non-performing Party shall, within fifteen (15) calendar days of the beginning of an Force Majeure Event, give written notice to the other Party describing the circumstances preventing continued performance and the efforts being made to resume performance of this Agreement. Force Majeure Events shall not entitle Consultant to any additional compensation. Notwithstanding the foregoing in this section, the City may still terminate this Agreement in accordance with the termination provisions of this Agreement.

3.7.6 Request for Excusable Delay Credit. The Consultant shall, within fifteen (15) calendar days of the beginning of any excusable delay, notify the City in writing of the causes of delay (unless City grants in writing a further period of time to file such notice prior to the date of final payment under the Agreement). City will then ascertain the facts and the extent of the delay, and grant an extension of time for completing the Services when, in its sole judgment, the findings of fact justify such an extension. The City's findings of fact thereon shall be final and conclusive on the Parties. Extensions of time shall apply only to that portion of the Services affected by the delay and shall not apply to other portions of the Services not so affected. The sole remedy of Consultant for extensions of time shall be an extension of the performance time at no cost to the City. If Additional Services are required as a result of an excusable delay, the Parties shall mutually agree thereto pursuant to the Additional Services provision of this Agreement. Should Consultant make an application for an extension of time, Consultant shall submit evidence that the insurance policies required by this Agreement remain in effect during the requested additional period of time.

3.8 Additional Services.

3.8.1 Request for Services. At City's request, Consultant may be asked to perform services not otherwise included in this Agreement, not included within the basic services listed in Exhibit "A" attached hereto, and/or not customarily furnished in accordance with generally accepted architectural practice.

3.8.2 Definition. As used herein, "Additional Services" mean: (1) any work which is determined by City to be necessary for the proper completion of the Project, but which the

Parties did not reasonably anticipate would be necessary for the Consultant to perform at the execution of this Agreement; or (2) any work listed as Additional Services in Exhibit "A" attached hereto. Consultant shall not perform, nor be compensated for, Additional Services without prior written authorization from City and without an agreement between the City and Consultant as to the compensation to be paid for such services. City shall pay Consultant for any approved Additional Services, pursuant to the compensation provisions herein, so long as such services are not made necessary through the fault of Consultant pursuant to the indemnification provision of this Agreement.

3.8.3 Examples of Additional Services. Such Additional Services shall not include any redesign or revisions to drawings, specifications or other documents when such revisions are necessary in order to bring such documents into compliance with applicable laws, rules, regulations or codes of which Consultant was aware or should have been aware pursuant to the laws and regulations provision of this Agreement above. Such Additional Services may include, but shall not be limited to:

(a) Separately Bid Portions of Project. Plan preparation and/or administration of work on portions of the Project separately bid.

(b) Furniture and Interior Design. Assistance to City, if requested, for the selection of moveable furniture, equipment or articles which are not included in the Construction Documents.

(c) Fault of Contractor. Services caused by delinquency, default or insolvency of contractor, or by major defects in the work of the contractor, provided that any such services made necessary by the failure of Consultant to detect and report such matters when it reasonably should have done so shall not be compensated.

(d) Inconsistent Approvals or Instructions. Revisions in drawings, specifications or other documents when such revisions are inconsistent with written approvals or instructions previously given and are due to causes beyond the control of Consultant.

(e) Legal Proceedings. Serving as an expert witness on City's behalf or attending legal proceedings to which the Consultant is not a party.

(f) Damage Repair. Supervision of repair of damages to any structure.

(g) Extra Environmental Services. Additional work required for environmental conditions (e.g. asbestos or site conditions) not already contemplated within the Consultant's services for the Project.

3.9 City Responsibilities. City's responsibilities shall include the following:

3.9.1 Data and Information. City shall make available to Consultant all necessary data and information concerning the purpose and requirements of the Project, including scheduling and budget limitations, objectives, constraints and criteria. As part of the budget limitation information, the City shall provide the Consultant with a preliminary construction budget ("City's Preliminary Construction Budget").

3.9.2 Project Survey. If required pursuant to the scope of the Project and if requested by Consultant, City shall furnish Consultant with, or direct Consultant to procure at

City's expense, a survey of the Project site prepared by a registered surveyor or civil engineer, any other record documents which shall indicate existing structures, land features, improvements, sewer, water, gas, electrical and utility lines, topographical information and boundary dimensions of the site, and any other such pertinent information.

3.9.3 Bid Phase. Distribute Construction Documents to bidders and conduct the opening and review of bids for the Project.

3.9.4 Testing. Retain consultant(s) to conduct chemical, mechanical, soils, geological or other tests required for proper design of the Project, and furnish such surveys, borings, test pits, and other tests as may be necessary to reveal conditions of the site which must be known to determine soil condition or to ensure the proper development of the required drawings and specifications.

3.9.5 Required Inspections and Tests. Retain consultant(s) to conduct materials testing and inspection or environmental/hazardous materials testing and inspection pursuant to any applicable laws, rules or regulations.

3.9.6 Fees of Reviewing or Licensing Agencies. Directly pay or reimburse the payment of all fees required by any reviewing or licensing agency, or other agency having approval jurisdiction over the Project.

3.9.7 City's Representative. The City hereby designates the City Manager, or his or her designee, to act as its representative for the performance of this Agreement ("City's Representative"). City's Representative shall have the power to act on behalf of the City for all purposes under this Contract. The City Manager hereby designates Marissa Kucheck, Museum Director, or his or her designee, as the City's contact for the implementation of the Services hereunder. Contractor shall not accept direction or orders from any person other than the City's Representative or his or her designee.

3.9.8 Review and Approved Documents. Review all documents submitted by Consultant, including change orders and other matters requiring approval by the City Council or other officials. City shall advise Consultant of decisions pertaining to such documents within a reasonable time after submission, so as not to cause unreasonable delay as provided in the excusable delay provisions of this Agreement above.

3.10 Compensation.

3.10.1 Consultant's Compensation for Basic Services. City shall pay to Consultant, for the performance of all Services rendered under this Agreement, the total not to exceed amount of **One Hundred Fifty Thousand Dollars ($150,000**) ("Total Compensation"). This Total Compensation amount shall be based upon, and may be adjusted according to, the fee schedule and related terms and conditions attached hereto as Exhibit "B" and incorporated herein by reference. The Total Compensation, as may be adjusted upon mutual agreement, shall constitute complete and adequate payment for Services under this Agreement.

3.10.2 Payment for Additional Services. At any time during the term of this Agreement, City may request that Consultant perform Additional Services. As used herein, Additional Services means any work which is determined by City to be necessary for the proper completion of the Project, but which the Parties did not reasonably anticipate would be necessary at the execution of this Agreement. Any additional work in excess of this amount must be

approved by the City. If authorized, such Additional Services will be compensated at the rates and in the manner set forth in Exhibit "C" attached hereto and incorporated herein by reference, unless a flat rate or some other form of compensation is mutually agreed upon by the Parties. If City requires Consultant to hire consultants to perform any Additional Services, Consultant shall be compensated therefore at the rates and in the manner set forth in Exhibit "C" attached hereto and incorporated herein by reference, unless a flat rate or some other form of compensation is mutually agreed upon by the Parties. City shall have the authority to review and approve the rates of any such consultants. In addition, Consultant shall be reimbursed for any expenses incurred by such consultants pursuant to the terms and conditions of Section 3.10.3.

3.10.3 Reimbursable Expenses. Reimbursable expenses are in addition to compensation for the Services and Additional Services. Consultant shall not be reimbursed for any expenses unless authorized in writing by City, which approval may be evidenced by inclusion in Exhibit "C" attached hereto. Such reimbursable expenses shall include only those expenses which are reasonably and necessarily incurred by Consultant in the interest of the Project. Consultant shall be required to acquire prior written consent in order to obtain reimbursement for the following: (1) extraordinary transportation expenses incurred in connection with the Project; (2) out-of-town travel expenses incurred in connection with the Project; (3) fees paid for securing approval of authorities having jurisdiction over the Project; (4) bid document duplication costs in excess of $1,000; and (5) other costs, fees and expenses in excess of $1,000.

3.10.4 Payment to Consultant. Consultant's compensation and reimbursable expenses shall be paid by City to Consultant no more often than monthly. Such periodic payments shall be made based upon the percentage of work completed, and in accordance with the phasing and funding schedule provided in Exhibit "B" and the compensation rates indicated in Exhibit "C" attached hereto and incorporated herein by reference. In order to receive payment, Consultant shall present to City an itemized statement which indicates Services performed, percentage of Services completed, method for computing the amount payable, and the amount to be paid. The statement shall describe the amount of Services provided since the initial commencement date, or since the start of the subsequent billing periods, as appropriate, through the date of the statement, as well as those expenses for which reimbursement is requested for that statement period. The amount paid to Consultant shall never exceed the percentage amounts authorized by the phasing and funding schedule located in Exhibit "B" attached hereto. City shall, within thirty (30) days of receiving such statement, review the statement and pay all approved charges thereon pursuant to the provisions of Civil Code Section 3320. Disputed amounts shall be resolved by the Parties in a mutually agreeable manner.

Payments made for Additional Services shall be made in installments, not more often than monthly, proportionate to the degree of completion of such services or in such other manner as the Parties shall specify when such services are agreed upon, and in accordance with any authorized fee or rate schedule. In order to receive payment, Consultant shall present to City an itemized statement which indicates the Additional Services performed, percentage of Additional Services completed, method for computing the amount payable, and the amount to be paid. The statement shall describe the amount of Additional Services provided since the initial commencement date, or since the start of the subsequent billing periods, as appropriate, through the date of the statement. City shall, within thirty (30) days of receiving such statement, review the statement and pay all approved charges thereon pursuant to the provisions of Civil Code Section 3320. Disputed amounts shall be resolved by the Parties in a mutually agreeable manner.

Upon cancellation or termination of this Agreement, Consultant shall be compensated as set forth in the termination provision herein.

3.10.5 Withholding Payment to Consultant. The City may withhold payment, in whole or in part, to the extent reasonably necessary to protect the City from claims, demands, causes of action, costs, expenses, liabilities, losses, damages, or injuries of any kind to the extent arising out of or caused by the negligence, recklessness, or willful misconduct protected under the indemnification provisions of this Agreement. Failure by City to deduct any sums from a progress payment shall not constitute a waiver of the City's right to such sums. The City may keep any moneys which would otherwise be payable at any time hereunder and apply the same, or so much as may be necessary therefor, to the payment of any expenses, losses, or damages as determined by the City, incurred by the City for which Consultant is liable under the Agreement or state law. Payments to the Consultant for compensation and reimbursable expenses due shall not be contingent on the construction, completion or ultimate success of the Project. Payment to the Consultant shall not be withheld, postponed, or made contingent upon receipt by the City of offsetting reimbursement or credit from Parties not within the Consultant's reasonable control.

3.10.6 Prevailing Wages. Consultant is aware of the requirements of California Labor Code Sections 1720, et seq., and 1770, et seq., as well as California Code of Regulations, Title 8, Section 16000, et seq., ("Prevailing Wage Laws"), which require the payment of prevailing wage rates and the performance of other requirements on certain "public works" and "maintenance" projects. If the Services are being performed as part of an applicable "public works" or "maintenance" project, as defined by the Prevailing Wage Laws, and If the total compensation is $1,000 or more, Consultant agrees to fully comply with and to require its consultants to fully comply with such Prevailing Wage Laws. City shall provide Consultant with a copy of the prevailing rates of per diem wages in effect at the commencement of this Agreement. Consultant shall make copies of the prevailing rates of per diem wages for each craft, classification or type of worker needed to execute the Services available to interested parties upon request, and shall post copies at the Consultant's principal place of business and at the Project site. It shall be mandatory upon the Consultant and all subconsultants to comply with all California Labor Code provisions, which include but are not limited to prevailing wages (Labor Code Sections 1771, 1774 and 1775), employment of apprentices (Labor Code Section 1777.5), certified payroll records (Labor Code Sections 1771.4 and 1776), hours of labor (Labor Code Sections 1813 and 1815) and debarment of contractors and subcontractors (Labor Code Section 1777.1). The requirement to submit certified payroll records directly to the Labor Commissioner under Labor Code section 1771.4 shall not apply to work performed on a public works project that is exempt pursuant to the small project exemption specified in Labor Code Section 1771.4. Consultant shall defend, indemnify and hold the City, its elected officials, officers, employees and agents free and harmless from any claims, liabilities, costs, penalties or interest arising out of any failure or alleged failure of the Consultant or its consultants to comply with the Prevailing Wage Laws.

(a) Registration/DIR Compliance. If the Services are being performed as part of an applicable "public works project" of over $25,000 when the project is for construction, alteration, demolition, installation, or repair work, or a public works project of over $15,000 when the project is for maintenance work, in addition to the foregoing, then pursuant to Labor Code sections 1725.5 and 1771.1, the Consultant and all subconsultants performing such Services must be registered with the Department of Industrial Relations ("DIR"). Consultant shall maintain registration for the duration of the Project and require the same of any subconsultants. This project may also be subject to compliance monitoring and enforcement by the DIR. It shall be Consultant's sole responsibility to comply with all applicable registration and labor compliance requirements, including the submission of payroll records directly to the DIR. Any stop orders issued by the Department of Industrial Relations against Consultant or any subconsultant that affect Consultant's performance of services, including any delay, shall be Consultant's sole

responsibility. Any delay arising out of or resulting from such stop orders shall be considered Consultant caused delay and shall not be compensable by the City. Consultant shall defend, indemnify and hold the City, its officials, officers, employees and agents free and harmless from any claim or liability arising out of stop orders issued by the Department of Industrial Relations against Consultant or any subconsultant.

3.10.7 Automated Clearing House ("ACH") payments. It is the City's policy to pay its consultant invoices via electronic fund transfers through the ACH network. All payments due and owing pursuant to a properly issued and correct invoice or under this Agreement shall be made through electronic ACH transfers, unless otherwise agreed upon by both Parties in writing. Consultant shall provide the City with ACH payment details whereby the City shall initiate the ACH transfers to Consultant in the amount required pursuant to a properly issued and correct invoice or under this Agreement. Each Party shall undertake any and all required actions and execute any required documents, instruments, or agreements required to effectuate the requirements of this Section. In the event the City erroneously deposits funds into an account, or otherwise deposits funds to which Consultant is not entitled: (1) Consultant shall immediately notify the City and the financial institution; (2) Consultant shall not withdraw any of the funds which were erroneously deposited or to which Consultant is not entitled; and (3) Consultant authorizes both the City and financial institution to take all actions necessary to correct the error and return to the City all funds erroneously deposited or to which Consultant is not entitled.

3.11 Notice to Proceed.

Consultant shall not proceed with performance of any Services under this Agreement unless and until the City provides a written notice to proceed.

3.12 Termination, Suspension and Abandonment.

3.12.1 Grounds for Termination; Consultant's Termination for Cause. City hereby reserves the right to suspend or abandon, at any time and for any reason, all or any portion of the Project and the construction work thereon, or to terminate this Agreement at any time with or without cause. Consultant shall be provided with at least seven (7) days advanced written notice of such suspension, abandonment or termination. In the event of such suspension, abandonment or termination, Consultant shall be paid for Services and reimbursable expenses rendered up to the date of such suspension, abandonment or termination, pursuant to the schedule of payments provided for in this Agreement, less any claims against or damages suffered by City as a result of the default, if any, by Consultant. Consultant hereby expressly waives any and all claims for damages or compensation arising under this Agreement, except as set forth herein, in the event of such suspension, abandonment or termination. Consultant may terminate this Agreement for substantial breach of performance by the City such as failure to make payment to Consultant as provided in this Agreement.

3.12.2 City's Suspension of Work. If Consultant's Services are suspended by City, City may require Consultant to resume such Services within ninety (90) days after written notice from City. When the Project is resumed, the Total Compensation and schedule of Services shall be equitably adjusted upon mutual agreement of the City and Consultant.

3.12.3 Documents and Other Data. Upon suspension, abandonment or termination, Consultant shall provide to City all preliminary studies, sketches, working drawings, specifications, computations, and all other Project Documents, as defined below, to which City would have been entitled at the completion of Consultant's Services under this Agreement. Upon

payment of the amount required to be paid to Consultant pursuant to the termination provisions of this Agreement, City shall have the rights, as provided in this Agreement hereinafter, to use such Project Documents prepared by or on behalf of Consultant under this Agreement. Consultant shall make such documents available to City upon request and without additional compensation other than as may be approved as a reimbursable expense.

3.12.4 Employment of other Consultants. In the event this Agreement is terminated in whole or in part as provided herein, City may procure, upon such terms and in such manner as it may determine appropriate, services similar to those terminated.

3.13 Ownership and Use of Documents; Confidentiality.

3.13.1 Ownership. All plans, specifications, original or reproducible transparencies of working drawings and master plans, preliminary sketches, architectural presentation drawings, structural computations, estimates and any other documents prepared pursuant to this Agreement, including, but not limited to, any other works of authorship fixed in any tangible medium of expression such as writings, physical drawings and data magnetically or otherwise recorded on computer diskettes (hereinafter referred to as the "Project Documents") shall be and remain the property of City. Although the official copyright in all Project Documents shall remain with the Consultant or other applicable subcontractors or consultants, the Project Documents shall be the property of City whether or not the work for which they were made is executed or completed. Within thirty (30) calendar days following completion of the Project, Consultant shall provide to City copies of all Project Documents required by City. In addition, Consultant shall retain copies of all Project Documents on file for a minimum of fifteen (15) years following completion of the Project, and shall make copies available to City upon the payment of reasonable duplication costs. Before destroying the Project Documents following this retention period, Consultant shall make a reasonable effort to notify City and provide City with the opportunity to obtain the documents.

3.13.2 Right to Use. Consultant grants to City the right to use and reuse all or part of the Project Documents, at City's sole discretion and with no additional compensation to Consultant, for the following purposes:

(a) The construction of all or part of this Project.

(b) The repair, renovation, modernization, replacement, reconstruction or expansion of this Project at any time;

(c) The construction of another project by or on behalf of the City for its ownership and use;

City is not bound by this Agreement to employ the services of Consultant in the event such documents are used or reused for these purposes. City shall be able to use or reuse the Project Documents for these purposes without risk of liability to the Consultant or third parties with respect to the condition of the Project Documents, and the use or reuse of the Project Documents for these purposes shall not be construed or interpreted to waive or limit City's right to recover for latent defects or for errors or omissions of the Consultant.

Any use or reuse by City of the Project Documents on any project other than this Project without employing the services of Consultant shall be at City's own risk with respect to third parties. If City uses or reuses the Project Documents on any project other than this Project, it shall

remove the Consultant's seal from the Project Documents and hold harmless Consultant and its officers, directors, agents and employees from claims arising out of the negligent use or re-use of the Project Documents on such other project.

3.13.3 License. This Agreement creates a non-exclusive and perpetual license for City to copy, use, modify or reuse any and all Project Documents and any intellectual property rights therein. Consultant shall require any and all subcontractors and consultants to agree in writing that City is granted a non-exclusive and perpetual license for the work of such subcontractors or consultants performed pursuant to this Agreement.

3.13.4 Right to License. Consultant represents and warrants that Consultant has the legal right to license any and all copyrights, designs and other intellectual property embodied in the Project Documents that Consultant prepares or causes to be prepared pursuant to this Agreement. Consultant shall indemnify and hold City harmless pursuant to the indemnification provisions of this Agreement for any breach of this Section. Consultant makes no such representation and warranty in regard to previously prepared designs, plans, specifications, studies, drawings, estimates or other documents that were prepared by design professionals other than Consultant and provided to Consultant by City.

3.13.5 Confidentiality. All Project Documents, either created by or provided to Consultant in connection with the performance of this Agreement, shall be held confidential by Consultant to the extent they are not subject to disclosure pursuant to the Public Records Act. All Project Documents shall not, without the written consent of City, be used or reproduced by Consultant for any purposes other than the performance of the Services. Consultant shall not disclose, cause or facilitate the disclosure of the Project Documents to any person or entity not connected with the performance of the Services or the Project. Nothing furnished to Consultant which is otherwise known to Consultant or is generally known, or has become known, to the related industry shall be deemed confidential. Consultant shall not use City's name or insignia, photographs of the Project, or any publicity pertaining to the Services or the Project in any magazine, trade paper, newspaper, television or radio production or other similar medium without the written consent of City.

3.14 Indemnification.

3.14.1 To the fullest extent permitted by law, Consultant shall defend (with counsel of City's choosing), indemnify and hold the City, its officials, officers, employees, volunteers, and agents free and harmless from any and all claims, demands, causes of action, costs, expenses, liability, loss, damage or injury of any kind, in law or equity, to property or persons, including wrongful death, in any manner arising out of, pertaining to, or incident to any acts, errors or omissions, or willful misconduct of Consultant, its officials, officers, employees, subcontractors, consultants or agents in connection with the performance of the Consultant's Services, the Project or this Agreement, including without limitation the payment of all damages, expert witness fees and attorney's fees and other related costs and expenses except such loss or damage caused by the sole negligence or willful misconduct of the City. Consultant's obligation to indemnify shall survive expiration or termination of this Agreement and shall not be restricted to insurance proceeds, if any, received by Consultant, the City, its officials, officers, employees, agents, or volunteers.

3.14.2 If Consultant's obligation to defend, indemnify, and/or hold harmless arises out of Consultant's performance as a "design professional" (as that term is defined under Civil Code section 2782.8), then, and only to the extent required by Civil Code section 2782.8, which

is fully incorporated herein, Consultant's indemnification obligation shall be limited to claims that arise out of, pertain to, or relate to the negligence, recklessness, or willful misconduct of the Consultant, and, upon Consultant obtaining a final adjudication by a court of competent jurisdiction, Consultant's liability for such claim, including the cost to defend, shall not exceed the Consultant's proportionate percentage of fault.

3.15 Insurance. Consultant shall not commence work under this Agreement until it has provided evidence satisfactory to the City that it has secured all insurance required under this Section. In addition, Consultant shall not allow any subconsultant to commence work on any subcontract until it has provided evidence satisfactory to the City that the subconsultant has secured all insurance required under this section.

3.15.1 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, Consultant shall, at its expense, procure and maintain in full force and effect for the duration 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.

3.15.2 Additional Insured. The City of Ontario, its officials, officers, employees, agents, and volunteers shall be named as additional insureds on Consultant's and its subconsultants' policies of commercial general liability and automobile liability insurance using the endorsements and forms specified herein or exact equivalents.

3.15.3 Commercial General Liability

(a) The Consultant shall take out and maintain, during the performance of all work under this Agreement, in amounts not less than specified herein, Commercial General Liability Insurance, in a form and with insurance companies acceptable to the City.

(b) Coverage for Commercial General Liability insurance shall be at least as broad as the following: Insurance Services Office Commercial General Liability coverage (Occurrence Form CG 00 01) or exact equivalent. Commercial General Liability Insurance must include coverage for the following:

(i) Bodily Injury and Property Damage

(ii) Personal Injury/Advertising Injury

(iii) Premises/Operations Liability

(iv) Products/Completed Operations Liability

(v) Aggregate Limits that Apply per Project

(vi) Explosion, Collapse and Underground (UCX) exclusion deleted

(vii) Contractual Liability with respect to this Contract

(viii) Broad Form Property Damage

(ix) Independent Consultants Coverage

(c) The policy shall contain no endorsements or provisions limiting coverage for (1) contractual liability; (2) cross liability exclusion for claims or suits by one insured against another; (3) products/completed operations liability; or (4) contain any other exclusion contrary to the Agreement.

(d) The policy shall give City, the City Council and each member of the City Council, its officers, employees, agents and City designated volunteers additional insured status using ISO endorsement forms CG 20 10 10 01 and 20 37 10 01, or endorsements providing the exact same coverage.

(e) The general liability program may utilize either deductibles or provide coverage excess of a self-insured retention, subject to written approval by the City, and provided that such deductibles shall not apply to the City as an additional insured.

3.15.4 Automobile Liability

(a) At all times during the performance of the work under this Agreement, the Consultant shall maintain Automobile Liability Insurance for bodily injury and property damage including coverage for owned, non-owned and hired vehicles, in a form and with insurance companies acceptable to the City.

(b) Coverage for automobile liability insurance shall be at least as broad as Insurance Services Office Form Number CA 00 01 covering automobile liability (Coverage Symbol 1, any auto).

(c) The policy shall give City, the City Council and each member of the City Council, its officers, employees, agents and City designated volunteers additional insured status.

(d) Subject to written approval by the City, the automobile liability program may utilize deductibles, provided that such deductibles shall not apply to the City as an additional insured, but not a self-insured retention.

3.15.5 Workers' Compensation/Employer's Liability

(a) Consultant certifies that he/she is aware of the provisions of Section 3700 of the California Labor Code which requires every employer to be insured against liability for workers' compensation or to undertake self-insurance in accordance with the provisions of that code, and he/she will comply with such provisions before commencing work under this Agreement.

(b) To the extent Consultant has employees at any time during the term of this Agreement, at all times during the performance of the work under this Agreement, the Consultant shall maintain full compensation insurance for all persons employed directly by him/her to carry out the work contemplated under this Agreement, all in accordance with the "Workers' Compensation and Insurance Act," Division IV of the Labor Code of the State of California and any acts amendatory thereof, and Employer's Liability Coverage in amounts indicated herein. Consultant shall require all subconsultants to obtain and maintain, for the period

required by this Agreement, workers' compensation coverage of the same type and limits as specified in this Section.

3.15.6 Professional Liability (Errors and Omissions)

(a) At all times during the performance of the work under this Agreement the Consultant shall maintain professional liability or Errors and Omissions insurance appropriate to its profession, in a form and with insurance companies acceptable to the City and in an amount indicated herein. This insurance shall be written on a policy form coverage specifically designed to protect against acts, errors or omissions of the Consultant. "Covered Professional Services" as designated in the policy must specifically include work performed under this Agreement. The policy must "pay on behalf of" the insured and must include a provision establishing the insurer's duty to defend.

3.15.7 Minimum Policy Limits Required

(a) The following insurance limits are required for the Agreement:

Coverage	Combined Single Limit
Commercial General Liability	$2,000,000 per occurrence/ $4,000,000 aggregate for bodily injury, personal injury, and property damage
Automobile Liability	$2,000,000 per occurrence for bodily injury and property damage
Employer's Liability	$1,000,000 per occurrence
Professional Liability	$2,000,000 per claim and aggregate (errors and omissions)

(b) Defense costs shall be payable in addition to the limits.

(c) Requirements of specific coverage or limits contained in this Section are not intended as a limitation on coverage, limits, or other requirement, or a waiver of any coverage normally provided by any insurance. Any available coverage shall be provided to the parties required to be named as Additional Insured pursuant to this Agreement.

3.15.8 Evidence Required

(a) Prior to execution of the Agreement, the Consultant shall file with the City evidence of insurance from an insurer or insurers certifying to the coverage of all insurance required herein. Such evidence shall include original copies of the ISO CG 00 01 (or insurer's equivalent) signed by the insurer's representative and Certificate of Insurance (Acord Form 25-S or equivalent), together with required endorsements. All evidence of insurance shall be signed by a properly authorized officer, agent, or qualified representative of the insurer and shall certify the names of the insured, any additional insureds, where appropriate, the type and amount of the insurance, the location and operations to which the insurance applies, and the expiration date of such insurance.

3.15.9 Policy Provisions Required

(a) Consultant shall provide the City at least thirty (30) days prior written notice of cancellation of any policy required by this Agreement, except that the Consultant shall provide at least ten (10) days prior written notice of cancellation of any such policy due to non-payment of premium. If any of the required coverage is cancelled or expires during the term of this Agreement, the Consultant shall deliver renewal certificate(s) including the General Liability Additional Insured Endorsement to the City at least ten (10) days prior to the effective date of cancellation or expiration.

(b) The Commercial General Liability Policy and Automobile Policy shall each contain a provision stating that Consultant's policy is primary insurance and that any insurance, deductible, or self-insurance maintained by the City, its officials, officers, employees, agents, or volunteers shall not contribute with this primary insurance. Policies shall contain or be endorsed to contain such provisions.

(c) The retroactive date (if any) of each policy is to be no later than the effective date of this Agreement. Consultant shall maintain such coverage continuously for a period of at least three years after the completion of the work under this Agreement. Consultant shall purchase a one (1) year extended reporting period A) if the retroactive date is advanced past the effective date of this Agreement; B) if the policy is cancelled or not renewed; or C) if the policy is replaced by another claims-made policy with a retroactive date subsequent to the effective date of this Agreement.

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

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

3.15.10 Qualifying Insurers

(a) All policies required shall be issued by acceptable insurance companies, as determined by the City, which satisfy the following minimum requirements: Each such policy shall be from a company or companies with a current A.M. Best's rating of no less than A:VII and admitted to transact in the business of insurance in the State of California, or otherwise allowed to place insurance through surplus line brokers under applicable provisions of the California Insurance Code or any federal law.

3.15.11 Additional Insurance Provisions

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

(b) If at any time during the life of the Agreement, any policy of insurance required under this Agreement does not comply with these specifications or is canceled and not replaced, City has the right but not the duty to obtain the insurance it deems necessary and any premium paid by City will be promptly reimbursed by Consultant or City will withhold amounts sufficient to pay premium from Consultant payments. In the alternative, City may cancel this Agreement.

(c) The City may require the Consultant to provide complete copies of all insurance policies in effect for the duration of the Project.

(d) Neither the City nor the City Council, nor any member of the City Council, nor any of the officials, officers, employees, agents or volunteers shall be personally responsible for any liability arising under or by virtue of this Agreement.

3.15.12 Subconsultant Insurance Requirements

(a) Consultant shall not allow any subcontractors or subconsultants to commence work on any subcontract until they have provided evidence satisfactory to the City that they have secured all insurance required under this Section. Policies of commercial general liability insurance provided by such subcontractors or subconsultants shall be endorsed to name the City as an additional insured using ISO form CG 20 38 04 13 or an endorsement providing the exact same coverage. If requested by Consultant, City may approve different scopes or minimum limits of insurance for particular subcontractors or subconsultants.

3.16 Records.

Consultant shall maintain complete and accurate records with respect to all costs and expenses incurred under this Agreement. All such records shall be clearly identifiable. Consultant shall allow a representative of City during normal business hours to examine, audit, and make transcripts or copies of such records and any other documents created pursuant to this Agreement. Consultant shall allow inspection of all work, data, documents, proceedings, and activities related to the Agreement for a period of five (5) years from the date of final payment under this Agreement.

3.17 Standardized Manufactured Items.

Consultant shall cooperate and consult with City in the use and selection of manufactured items on the Project, including but not limited to, paint, hardware, plumbing, mechanical and electrical equipment, fixtures, roofing materials and floor coverings. All such manufactured items shall be standardized to City's criteria to the extent such criteria do not interfere with building design.

3.18 Limitation of Agreement.

This Agreement is limited to and includes only the work included in the Project described herein. Any additional or subsequent construction at the site of the Project, or at any other City site, will be covered by, and be the subject of, a separate Agreement for architectural services between City and the Consultant chosen therefor by City.

3.19 Mediation.

Disputes arising from this Agreement may be submitted to mediation if mutually agreeable to the Parties hereto. The type and process of mediation to be utilized shall be subject to the mutual agreement of the Parties.

3.20 Successors and Assigns.

This Agreement shall be binding upon and shall inure to the benefit of the successors in interest, executors, administrators and assigns of each Party to this Agreement. However, Consultant shall not assign or transfer by operation of law or otherwise any or all of its rights, burdens, duties or obligations without the prior written consent of City. Any attempted assignment without such consent shall be invalid and void.

3.21 Asbestos Certification.

Consultant shall certify to City, in writing and under penalty of perjury, that to the best of its knowledge, information and belief no asbestos-containing material or other material deemed to be hazardous by the state or federal government was specified as a building material in any construction document that the Consultant prepares for the Project. Consultant shall require all consultants who prepare any other documents for the Project to submit the same written certification. Consultant shall also assist the City in ensuring that contractors provide City with certification, in writing and under penalty of perjury, that to the best of their knowledge, information and belief no material furnished, installed or incorporated into the Project contains asbestos or any other material deemed to be hazardous by the state or federal government. These certifications shall be part of the final Project submittal. Consultant shall include statements in its specifications that materials containing asbestos or any other material deemed to be hazardous by the state or federal government are not to be included.

3.22 No Third Party Rights.

This Agreement shall not create any rights in, or inure to the benefits of, any third party except as expressly provided herein.

3.23 Governing Law.

This Agreement shall be construed in accordance with, and governed by, the laws of the State of California. Venue shall be in San Bernardino County.

3.24 Exhibits and Recitals.

All exhibits and recitals contained herein and attached hereto are material parts of this Agreement and are incorporated as if fully set forth.

3.25 Severability.

Should any provision in the Agreement be held by a court of competent jurisdiction to be invalid, void, or unenforceable, the remaining provisions shall continue in full force and effect.

3.26 Non-Waiver.

None of the provisions of this Agreement shall be considered waived by either Party, unless such waiver is specifically specified in writing.

3.27 Safety.

Consultant shall execute and maintain its work so as to avoid injury or damage to any person or property. In carrying out its Services, the Consultant shall at all times be in compliance with all applicable local, state and federal laws, rules and regulations, and shall exercise all necessary precautions for the safety of its employees, consultant and subcontractors appropriate to the nature of the work and the conditions under which the work is to be performed.

3.28 Harassment Policy.

Consultant shall provide a copy of the City's Harassment Policy to each of its employees assigned to perform the tasks under this Agreement. Consultant shall submit to the City's Personnel Manager a statement signed by each of its employees who are assigned to perform the Services under this Agreement certifying receipt of City's Harassment Policy and certifying that they have read the Harassment Policy. A finding by the City that any of Consultant's employees has harassed a City employee shall be grounds for appropriate discipline, up to and including such employee's removal from performance of this Agreement at City's request.

3.29 Delivery of Notices.

All notices permitted or required under this Agreement shall be given to the respective Parties at the following address, or at such other address as the respective Parties may provide in writing for this purpose:

CITY:	CONSULTANT:
City of Ontario	Johnson Favaro
303 East “B” Street	5898 Blackwelder Street
Ontario, CA 91764	Culver City, CA 90232
Attn: Marissa Kucheck, Museum Director	Attn: Jim Favaro

Such notice shall be deemed made when personally delivered or when mailed, forty-eight (48) hours after deposit in the U.S. Mail, first class postage prepaid and addressed to the Party at its applicable address. Actual notice shall be deemed adequate notice on the date actual notice occurred, regardless of the method of service.

3.30 Time of Essence.

Time is of the essence for each and every provision of this Agreement.

3.31 City's Right to Employ Other Consultants.

City reserves right to employ other consultants, including designers, in connection with this Project or other projects.

3.32 Prohibited Interests.

3.32.1 Solicitation. Consultant maintains and warrants that it has not employed nor retained any company or person, other than a bona fide employee working solely for Consultant, to solicit or secure this Agreement. Further, Consultant warrants that it has not paid nor has it agreed to pay any company or person, other than a bona fide employee working solely for Consultant, any fee, commission, percentage, brokerage fee, gift or other consideration contingent upon or resulting from the award or making of this Agreement. For breach or violation of this warranty, City shall have the right to rescind this Agreement without liability.

3.32.2 Conflict of Interest. For the term of this Agreement, no director, official, officer or employee of City, during the term of his or her service with City, shall have any direct interest in this Agreement, or obtain any present or anticipated material benefit arising therefrom.

3.33 Equal Opportunity Employment.

Consultant represents that it is an equal opportunity employer and that it shall not discriminate against any employee or applicant for employment because of race, religion, color, national origin, ancestry, sex, age or any other classification protected by federal or state law. Such non-discrimination shall include, but not be limited to, all activities related to initial employment, upgrading, demotion, transfer, recruitment or recruitment advertising, layoff or termination. Consultant shall also comply with all relevant provisions of City's minority business enterprise program, affirmative action plan or other related programs or guidelines currently in effect or hereinafter enacted.

3.34 Labor Certification.

By its signature hereunder, Consultant certifies that it is aware of the provisions of Section 3700 of the California Labor Code which require every employer to be insured against liability for Worker's Compensation or to undertake self-insurance in accordance with the provisions of that Code, and agrees to comply with such provisions before commencing the performance of the Services.

3.35 Subcontracting.

As specified in this Agreement, Consultant shall not subcontract any portion of the Services required by this Agreement, except as expressly stated herein, without prior written approval of City. Subcontracts, if any, shall contain a provision making them subject to each and every provision of this Agreement.

3.36 Supplemental Conditions.

Any supplemental conditions shall be attached as an exhibit to this Agreement, and that exhibit shall be incorporated herein by reference.

3.37 Entire Agreement.

This Agreement, with its exhibits, contains the entire agreement of the Parties hereto, and supersedes any and all other prior or contemporaneous negotiations, understandings and oral or written agreements between the Parties hereto. Each Party acknowledges that no representations, inducements, promises or agreements have been made by any person which are not incorporated herein, and that any other agreements shall be void. Furthermore, any modification of this Agreement shall only be effective if in writing signed by all Parties hereto.

SIGNATURES ON FOLLOWING PAGE

SIGNATURE PAGE FOR DESIGN SERVICES AGREEMENT BETWEEN THE CITY OF ONTARIO AND JOHNSON FAVARO, LLP

IN WITNESS WHEREOF, the Parties have executed this Agreement as of the date first written above.

CITY OF ONTARIO	**JOHNSON FAVARO, LLP**
Approved By:	
_____	By: _____
Scott Ochoa City Manager	Its: _____
Approved as to Form:	Printed Name: _____
_____	By: _____
Best Best & Krieger LLP City Attorney	Its: _____
	Printed Name: _____
Attested By:	[If Corporation, TWO SIGNATURES, President OR Vice President AND Secretary OR Treasurer REQUIRED]
_____	
City Clerk	

EXHIBIT "A"
SCOPE OF SERVICES

1. GENERAL REQUIREMENTS.

1.1 Basic Services. Consultant agrees to perform all the necessary professional architectural, engineering (e.g. mechanical, electrical, plumbing, structural, site engineering, and any other necessary engineering services mutually agreeable to the Parties) and construction administration services for the Project in a timely and professional manner, consistent with the standards of the profession, including those provided for herein.

1.2 Exclusions from Basic Services. The following services shall be excluded from the basic services listed above: COMMON EXCLUSIONS: civil engineering, landscape architectural, soils engineering, geotechnical services, hazardous waste or toxic substances engineering or other SERVICES.

1.3 Additional Services. Consultant shall perform the following Additional Services for the Project: "N/A"

1.4 Communication with City. Consultant shall participate in consultations and conferences with authorized representatives of City and/or other local, regional, or state agencies concerned with the Project, which may be necessary for the completion of the Project or the development of the drawings, specifications and documents in accordance with the applicable standards and requirements of law and the City. Such consultations and conferences shall continue throughout the planning and construction of the Project and the contractor's warranty period. Consultant shall take direction only from the City's Representative, or any other representative specifically designated by the City for this Project, including any construction manager hired by the City.

1.5 Coordination and Cooperation with Construction Manager. The City may hire a construction manager to administer and coordinate all or any part of the Project on its behalf. If the City does so, it shall provide a copy of its agreement with the construction manager so that the Consultant will be fully aware of the duties and responsibilities of the construction manager. The Consultant shall cooperate with the construction manager and respond to any requests or directives authorized by the City to be made or given by the construction manager. The Consultant shall request clarification from the City in writing if the Consultant should have any questions regarding the authority of the construction manager.

2. INITIAL PLANNING PHASE.

During the initial planning phase of the Project, Consultant shall do all of the following, as well as any incidental services thereto:

2.1 Project Feasibility. Provide advice and assistance to City in determining the feasibility of the Project, analysis of the type and quality of materials and construction to be selected, the site location, and other initial planning matters.

2.2 Meeting Budget and Project Goals. Consultant shall notify City in writing of potential complications, cost overruns, unusual conditions, and general needs that potentially impact the Project budget and time line, including the City's Preliminary Construction Budget. Consultant shall use its best judgment in determining the balance between the size, type and

quality of construction to achieve a satisfactory solution within the Project's budget and construction allowance. It shall be the duty of the Consultant to design the Project within budget. As discussed herein, including in Section 7.3, if the lowest responsive and responsible bid for the Project exceeds the budget by the stated amount, Consultant may be required to make the necessary changes in the drawing and specifications, at its sole cost and expense, to bring the bids within the required budget.

2.3 Permits, Approvals and Authorizations. As indicated in Section 3.5.4 of the Agreement, Consultant shall assist City in securing easements, encroachment permits, rights of way, dedications, infrastructures and road improvements, as well as coordinating with utilities and adjacent property owners.

3. SCHEMATIC PLAN PHASE.

During the schematic plan phase of the Project, Consultant shall do all of the following, as well as any incidental services thereto:

3.1 Funding Documents. Consultant shall provide a site plan and all other Project-related information necessary and required for an application by City to any federal, state, regional, or local agencies for funds to finance the construction Project.

3.2 Schematic Plans. In cooperation with City, Consultant shall prepare preliminary plans and studies, schematic drawings, site utilization plans, and phasing plans showing the scale and relationship of the components of the Project, the plot plan development at the site, and the proposed architectural concept of the buildings ("Schematic Plans"). Consultant shall incorporate the functional requirements of City into the Schematic Plans. The Schematic Plans shall meet all laws, rules and regulations of the State of California. The Schematic Plans shall show all rooms incorporated in each building of the Project in single-line drawings, and shall include all revisions required by City or by any federal, state, regional or local agency having jurisdiction over the Project. All architectural drawings for the Project shall be in a form suitable for reproduction.

3.3 Preliminary Project Budget. Consultant shall use the City's Preliminary Construction Budget and its own expertise and experience with the Project to establish a preliminary project budget or allowance in a format required by City ("Consultant's Preliminary Project Budget"). The purpose of the Consultant's Preliminary Project Budget is to show the probable Project cost in relation to City's Preliminary Construction Budget and the construction standards of any applicable funding agency. If Consultant perceives site considerations which render the Project expensive or cost prohibitive, Consultant shall disclose such conditions in writing to City immediately. As discussed herein, including in Section 7.3, if the lowest responsive and responsible bid for the Project exceeds the budget by more than the stated amount, Consultant may be required to make the necessary changes in the drawings and specifications, at its sole cost and expense, to bring the bids within the required budget Consultant shall provide a preliminary written time schedule for the performance of all construction work on the Project.

3.4 Copies of Schematic Plans and Other Documents. Consultant, at its own expense, shall provide a complete set of the Schematic Plans described herein for City's review and approval. Additionally, at City's expense, Consultant shall provide such documents as may be required by any federal, state, regional or local agencies concerned with the Project. Any additional copies required by City shall be provided at actual cost to City.

4. DESIGN DEVELOPMENT PHASE.

During the design development phase of the Project, Consultant shall do all of the following, as well as any incidental services thereto:

4.1 Design Development Documents. Once City provides Consultant with specific written approval of the Schematic Plans described herein, Consultant shall prepare design development documents consisting of: (1) site and floor plans; (2) elevations; and (3) any other drawings and documents sufficient to fix and describe the types and makeup of materials, as well as the size and character of the Project's structural, mechanical and electrical systems, and to outline the Project specifications ("Design Development Documents"). The Design Development Documents shall be prepared in sufficient form to present to the City Council for approval.

4.2 Copies of Design Development and Other Documents. Consultant, at its own expense, shall provide a complete set of the Design Development Documents described herein for City's review and approval. Additionally, at City's expense, Consultant shall provide such documents as may be required by any federal, state, regional or local agencies concerned with the Project. Any additional copies required by City shall be provided at actual cost to City.

4.3 Updated Project Budget. Consultant shall use its Preliminary Project Budget and expertise and experience with the Project to establish an updated estimate of probable construction costs, containing detail consistent with the Design Development Documents as set forth herein and containing a breakdown based on types of materials and specifications identified herein ("Consultant's Updated Project Budget").

4.4 Timetable. Consultant shall provide a written timetable for full and adequate completion of the Project to City.

4.5 Application for Approvals. Consultant shall assist City in applying for and obtaining required approvals from all federal, state, regional or local agencies concerned with the Project. Consultant shall furnish and process all architectural and engineering information required to prepare and process applications to applicable utilities in order to secure priorities and materials, to aid in the construction of the Project and to obtain final Project approval and acceptance by any of the above agencies as may be required.

4.6 Color and Other Aesthetic Issues. Consultant shall provide, for City's review and approval, a preliminary schedule of all color materials and selections of textures, finishes and other matters involving an aesthetic decision about the Project.

5. FINAL WORKING DRAWINGS AND SPECIFICATIONS.

During the final working drawings and specifications phase of the Project, Consultant shall do all of the following, as well as any incidental services thereto:

5.1 Final Working Drawings and Specifications. Once City provides Consultant with specific written approval of the Design Development Documents described herein, Consultant shall prepare such complete working drawings and specifications as are necessary for developing complete bids and for properly executing the Project work in an efficient and thorough manner ("Final Working Drawings and Specifications"). Such Final Working Drawings and Specifications shall be developed from the Schematic Plans and Design Development Documents approved by City. The Final Working Drawings and Specifications shall set forth in

detail all of the following: (1) the Project construction work to be done; (2) the materials, workmanship, finishes, and equipment required for the architectural, structural, mechanical, and electrical systems; and (3) the utility service connection equipment and site work. As indicated in Section 3.9.2 of the Agreement, City may be requested to supply Consultant with the necessary information to determine the proper location of all improvements on and off site, including record drawings ("as-built drawings") in City's possession. Consultant will make a good-faith effort to verify the accuracy of such information by means of a thorough interior and exterior visual survey of site conditions. City shall also make a good-faith effort to verify the accuracy of the as-built drawings and provide any supplemental information to Consultant which may not be shown on the as-built drawings.

5.2 Form. The Final Working Drawings and Specifications must be in such form as will enable Consultant and City to secure the required permits and approvals from all federal, state, regional or local agencies concerned with the Project. In addition, the Final Working Drawings and Specifications must be in such form as will enable City to obtain, by competitive bidding, a responsible and responsive bid within the applicable budgetary limitations and cost standards. The Final Working Drawings and Specifications shall be clear and legible so that uniform copies may be on standard architectural size paper, properly indexed and numbered, and shall be capable of being clearly copied and assembled in a professional manner by Consultant.

5.3 Approval and Revisions. City shall review, study, and check the Final Working Drawings and Specifications presented to it by Consultant, and request any necessary revisions or obtain any necessary approvals by the City Council, subject to the approval of all federal, state, regional or local agencies concerned with the Project. Consultant shall make all City-requested changes, additions, deletions, and corrections in the Final Working Drawings and Specifications at no additional cost, so long as they are not in conflict with the requirements of public agencies having jurisdiction or prior approval, or inconsistent with earlier City direction or Consultant's professional judgment. Consultant shall bring any such conflicts and/or inconsistencies to the attention of City. The Parties agree that Consultant, and not the City, possesses the requisite expertise to determine the constructability of the Final Working Drawings and Specifications. However, the City reserves the right to conduct one or more constructability review processes with the Final Working Drawings and Specifications, and to hire an independent architect or other consultant to perform such reviews. Any such independent constructability review shall be at City's expense. Consultant shall make all City-requested changes, additions, deletions, and corrections in the Final Working Drawings and Specifications which may result from any constructability review, at no additional cost to the City, so long as they are not in conflict with the requirements of public agencies having jurisdiction or prior approval, or inconsistent with earlier City direction or Consultant's professional judgment. If such changes, additions, deletions or corrections are inconsistent with prior City direction, Consultant shall make such alterations and be compensated therefore pursuant to the Additional Services provision of this Agreement.

5.4 Costs of Construction. It is understood by Consultant that should the Final Working Drawings and Specifications be ordered by City, City shall specify the sum of money set aside to cover the total cost of construction of the work, exclusive of Consultant's fees. Should it become evident that the total construction cost will exceed the specified sum, Consultant shall at once present a statement in writing to the City's Representative setting forth this fact and giving a full statement of the cost estimates on which the conclusion is based.

5.5 Copies of Final Working Drawings and Specifications and Other Documents. Consultant, at its own expense, shall provide a complete set of the Final Working Drawings and Specifications described herein for City's review and approval. Additionally, at City's expense,

Consultant shall provide such documents as may be required by any federal, state, regional or local agencies concerned with the Project. Any additional copies required by City shall be provided at actual cost to City.

6. CONSTRUCTION CONTRACT DOCUMENTS.

During the construction contract documents phase of the Project, Consultant shall do all of the following, as well as any incidental services thereto:

6.1 Bid and Contract Documents. If so required by City, Consultant shall assist City in the completion of all bid and construction documents, including but not limited to, the Notice Inviting Bids, Instructions to Bidders, Contract Bid Forms (including Alternate Bids as requested by City), `Contract, General Conditions, Supplementary General Conditions, Special Conditions, DVBE and other applicable affirmative action documents, Performance Bond, Payment Bond, Escrow Agreement for Security Deposits, and any other certifications and documents required by federal, state and local laws, rules and regulations which may be reasonably required in order to obtain bids responsive to the specifications and drawings. All such documents shall be subject to the approval of City and City's legal counsel.

6.2 Final Estimate. At the time of delivery of these bid and construction documents, which shall include the Final Working Drawings and Specifications (collectively referred to herein as the "Construction Documents"), Consultant shall provide City with its final estimate of probable construction cost ("Consultant's Final Estimate"). As discussed herein, including in Section 7.3, it shall be the Consultant's duty to design the Project within budget.

7. BID PHASE.

During the bid phase of the Project, Consultant shall do all of the following, as well as any incidental services thereto:

7.1 Reproducible Construction Documents. Once City provides Consultant with specific written approval of the Construction Documents and Consultant's Final Estimate, Consultant shall provide to City one set of reproducible Construction Documents.

7.2 Distribution of Contract Documents and Review of Bids. Consultant shall assist City in distributing the Construction Documents to bidders and conducting the opening and review of bids for the Project.

7.3 Over Budget. If the apparent lowest responsive and responsible bid on the Project exceeds the Consultant's Final Estimate by more than five percent (5%), City may request Consultant to amend, at Consultant's sole cost and expense, the Final Drawings and Specifications in order to rebid the Project and receive a lowest responsive and responsible bid equal to or less than the Consultant's Final Estimate. All revisions necessary to bring the lowest responsible and responsive bid within the Consultant's Final Estimate, including any omissions, deferrals or alternates, shall be made in consultation with, and subject to the approval of, the City.

8. CONSTRUCTION PHASE.

During the construction phase of the Project, Consultant shall do all of the following, as well as any incidental services thereto:

8.1 Observation. The Project Consultant shall observe work executed from the Final Working Drawings and Specifications in person, provided that City may, in its discretion, consent to such observation by another competent representative of Consultant.

8.2 General Administration. Consultant shall provide general administration of the Construction Documents and the work performed by the contractors.

8.3 Pre-Construction Meeting. Consultant shall conduct one or more pre-construction meetings, as the City determines is needed for the Project, with all interested Parties.

8.4 Site Visits of Contractor's Work. Consultant shall conduct site visits to observe each contractors' work for general conformance with the Construction Documents and with any approved construction schedules or milestones. Such site visits shall be conducted as often as are necessary and appropriate to the stage of construction, according to the City's sole discretion, but in no event less than weekly.

8.5 Site Visits of Inspector's Work. Consultant shall conduct site visits to communicate and observe the activities of the City inspectors. Such site visits shall be conducted as often as is mutually acceptable to Consultant and City. Consultant shall direct the City inspectors and the Project contractors to coordinate the preparation of record drawings indicating dimensions and location of all "as-built" conditions, including but not limited to, underground utility lines.

8.6 Coordination of Subconsultants. Consultant shall cause all architects, engineers and other consultants, as may be hired by Consultant or City, to observe the work completed under their disciplines as required, and approve and review all test results for general conformance with the Construction Documents.

8.7 Reports. Consultant shall make regular reports as may be required by applicable federal, state or local laws, rules or regulations, as well as the federal, state, regional or local agencies concerned with the Project.

8.8 Construction Meetings; Minutes. Consultant shall attend all construction meetings and provide written reports/minutes to the City after each construction meeting in order to keep City informed of the progress of the work. Such meetings shall occur at a frequency necessary for the progress of the Project work, according to the City's sole discretion, but no less than weekly.

8.9 Written Reports. Consultant shall make written reports to City as necessary to inform City of problems arising during construction, changes contemplated as a result of each such problems, and progress of the Project work.

8.10 Written Records. Consultant shall keep accurate written records of the progress and quality of the Project work and the time schedules, and shall advise the contractors and City of any deviations from the time schedule which could delay timely completion of the Project.

8.11 Material and Test Reports. Consultant shall check and process, in a timely manner, all required material and test reports for the Project work. In addition, Consultant shall provide notice of any deficiencies in material or work reflected in such reports, as well as its recommendation for correction of such deficiencies, to the contractors and City.

8.12 Review and Response to Submissions. Consultant shall review and respond, in a timely manner, to all schedules, submittals, shop drawings, samples, information requests, change requests, and other submissions of the contractor and subcontractors for compliance with, or alterations and additions to, the Construction Documents. Consultant's review and response shall be done in such a manner so as to ensure the timely and uninterrupted progress of the Project work.

8.13 Rejection of Work. Consultant shall promptly reject, as discussed with City, work or materials which do not conform to the Construction Documents. Consultant shall immediately notify the City and contractor(s) of such rejections. Consultant shall also have the authority to recommend to the City that additional inspection or testing of the work be performed, whether or not such work is fabricated, installed or completed.

8.14 Substitutions. Consultant shall consult with City, in a timely manner, with regard to substitution of materials, equipment and laboratory reports thereof, prior to the City's final written approval of such substitutions. Consultant's consultation shall be done in such a manner so as to ensure the timely and uninterrupted progress of the Project work.

8.15 Revised Documents and Drawings. Consultant shall prepare, at no additional expense to City, all documents and/or drawings made necessary by errors and omissions in the originally approved Construction Documents.

8.16 Change Requests and Material Changes. Consultant shall evaluate and advise City, in a timely manner and in writing, of any change requests and material change(s) which may be requested or necessary in the Project plans and specifications. Consultant shall provide the City with its opinion as to whether such change requests should be approved, denied or revised. If the City has not hired a construction manager or other person to do so, the Consultant shall prepare and execute all change orders and submit them to the City for authorization. If the City has designated a construction manager or other person to prepare all change orders, the Consultant shall review all change orders prepared by such person, execute them and deliver them to the City for authorization if they meet with the Consultant's approval, or submit them to the City with recommendations for revision or denial if necessary. Consultant shall not order contractors to make any changes affecting the contract price without approval by City of such a written change order, pursuant to the terms of the Construction Documents. Consultant may order, on its own responsibility and pending City Council approval, changes necessary to meet construction emergencies, if written approval of City's Representative is first secured.

8.17 Applications for Payment. Consultant shall examine, verify and approve contractor's applications for payment, and shall issue certificates for payment in amounts approved by the City's inspector.

8.18 Final Color and Product Selection. Consultant shall coordinate final color and product selection with City's original design concept.

8.19 Substantial Completion. Consultant shall determine the date of substantial completion, in consultation with the City.

8.20 Punch List. After determining that the Project is substantially complete, Consultant shall participate in the inspection of the Project and shall review all remaining deficiencies and minor items needed to be corrected or completed on the Project, including those identified on the punch list prepared by the contractor ("Punch List Items"). Consultant shall notify

contractor in writing that all Punch List Items must be corrected prior to final acceptance of the Project and final payment. Consultant shall also notify City of all Punch List Items.

8.21 Warranties. Consultant shall review materials assembled by the contractor and subcontractors with regard to all written warranties, guarantees, owners' manuals, instruction books, diagrams, record "as built" drawings, and any other materials required from the contractors and subcontractors pursuant to the Construction Documents. Consultant shall coordinate and provide these materials to the City.

8.22 Certificate of Completion. Consultant shall participate in any further inspections of the Project necessary to issue Consultant's Certificate of Completion and final certificate for payment.

8.23 Documents for Project Close-Out. Consultant shall cause all other architects, engineers and other consultants, as may be hired by Consultant, to file any and all required documentation with the City or other governmental authorities necessary to close out the Project. Consultant shall assist the City in obtaining such documentation from all other architects, engineers, or other consultants.

9. AS-BUILT DRAWINGS.

During the as-built drawings phase of the Project, Consultant shall do all of the following, as well as any incidental services thereto:

9.1 As-Built Drawings and Specifications. Not later than thirty (30) days after substantial completion of the Project, before receipt of final payment, Consultant shall review and forward the Final Working Drawings and Specifications, indicating on them all changes made by change orders or otherwise pursuant to the Construction Documents, as well as all information called for on the specifications, thus producing an "as-built" set of Final Working Drawings and Specifications ("As-Built Drawings and Specifications"). The As-Built Drawings and Specifications shall show, among other things, the location of all concealed pipe, buried conduit runs and other similar elements within the completed Project. Consultant shall personally review and certify that the As-Built Drawings and Specifications are a correct representation of the information supplied to Consultant by any inspectors and the contractor, and shall obtain certifications from any inspectors and the contractor that the drawings are correct.

9.2 Approval. Once City provides Consultant with specific written approval of the As-Built Drawings and Specifications, Consultant shall forward to City the complete set of original As-Built Drawings and Specifications or a complete set of reproducible duplicate As-Built Drawings and Specifications. The tracing shall be of such quality that clear and legible prints may be made without appreciable and objectionable loss of detail.

9.3 Documents for Final Payment. Prior to the receipt of Consultant's final payment, Consultant shall forward to City all of the following: (1) one clear and legible set of reproductions of the computations; (2) the original copy of the specifications; (3) the As-Built Drawings and Specifications as required herein; and (4) Consultant's Certificate of Completion.

10. WARRANTY PERIOD.

During the warranty period phase of the Project, Consultant shall do all of the following, as well as any incidental services thereto:

10.1 Advice. Consultant shall provide advice to City on apparent deficiencies in the Project during any applicable warranty periods for the Project.

EXHIBIT "B"
FEE AND PHASING/FUNDING SCHEDULES

1. FEE SCHEDULE.

Consultant will invoice City on a monthly cycle based on the following fee schedule. Consultant will include with each invoice a detailed progress report that indicates the amount of budget spent on each phase and the total amount spent against the Total Compensation. Consultant will inform City regarding any out-of-scope work being performed by Consultant for which Consultant intends to seek compensation from City.

2. PHASING/FUNDING SCHEDULE.

Progress payments towards Total Compensation shall never exceed the following percentages of Total Compensation as of the phase indicated:

Initial Planning Phase:	_____ percent (%____)
Schematic Plan Phase:	_____ percent (%____)
Design Development Phase:	_____ percent (%____)
Final Working Drawings & Specifications Phase:	_____ percent (%____)
Construction Contract Documents Phase:	_____ percent (%____)
Bid Phase:	_____ percent (%____)
Construction Phase:	_____ percent (%____)
As-Built Drawings Phase:	_____ percent (%____)
Warranty Period Phase:	_____ percent (%____)

Note: No Phasing/Funding Schedule is necessary until a project task is issued under the contract

EXHIBIT "C"
COMPENSATION RATES AND REIMBURSABLE EXPENSES

1. HOURLY COMPENSATION RATES.

HOURLY RATES

JOHNSON FAVARO - ARCHITECT

Principal Architect	$260
Associate Principal	$215
Senior Design Associate	$200
Design Associate	$200
Designer	$175
Junior Designer	$150
Administration	$140

2. REIMBURSABLE EXPENSES.

Reimbursable Expenses shall be billed at cost plus 15% and shall include typica; reimbursables such as reproduction costs,

Additional Services shall be computed at the actual hourly rates listed above.

3. ADDITIONAL CONSULTANTS.

If City requires Consultant to hire consultants to perform any Additional Services, Consultant shall be compensated therefore at the Consultant's actual hourly rates plus 15%. Owner shall have the authority to review and approve the rates of any such consultants.

CITY OF ONTARIO
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PAUL S. LEON
MAYOR

DEBRA PORADA
MAYOR PRO TEM

ALAN D. WAPNER
JIM W. BOWMAN
RUBEN VALENCIA
COUNCIL MEMBERS

SHEILA MAUTZ
CITY CLERK

JAMES R. MILHISER
TREASURER

SCOTT OCHOA
CITY MANAGER

CITY OF ONTARIO
DESIGN SERVICES AGREEMENT

1. PARTIES AND DATE.

This Agreement is made and entered into as of _____, by and between the City of Ontario, a municipal corporation organized and operating under the laws of the State of California with its principal place of business at 303 East "B" Street, Ontario, California 91764-4196, County of San Bernardino, State of California ("City"), and **Page & Turnbull, Inc.**, a Corporation with its principal place of business at 523 W. 6th Street, Suite 103, Los Angeles, CA 90014 (hereinafter referred to as "Consultant"). City and Consultant are sometimes individually referred to herein as "Party" and collectively as "Parties."

2. RECITALS.

2.1 City. City is a municipal corporation organized under the laws of the State of California, with power to contract for services necessary to achieve its purpose.

2.2 Consultant**.** Consultant desires to perform and assume responsibility for the provision of certain professional architectural design services required by the City on the terms and conditions set forth in this Agreement. Consultant warrants that it is fully licensed, qualified, and willing to perform the services required by this Agreement; provided, however, that if Consultant is a corporation or other organization, the Project Consultant designated pursuant to Section 3.2, and not the Consultant itself, shall be fully licensed to practice as an architect in the State of California.

2.3 Project**.** City desires to engage Consultant to render such services for the **Museum Improvements On-Call Architectural** ("Project") as set forth in this Agreement.

3. TERMS

3.1 Employment of Consultant.

3.1.1 Scope of Services. Consultant promises and agrees to furnish to City all labor, materials, tools, equipment, services, and incidental and customary work necessary to fully and adequately supply the professional **architectural** and related services necessary for the full and adequate completion of the Project consistent with the provisions of this Agreement (hereinafter referred to as "Services"). The Services are more particularly described throughout this Agreement, including Exhibit "A" attached hereto and incorporated herein by reference. All Services shall be subject to, and performed in accordance with, this Agreement, any exhibits attached hereto and incorporated herein by reference, and all applicable local, state and federal laws, rules and regulations. All Services performed by Consultant shall be subject to the sole and discretionary approval of the City, which approval shall not be unreasonably withheld.

3.1.2 Term. The term of this Agreement shall be from **November 4, 2024,** to **November 4, 2027**, unless earlier terminated as provided herein. The City shall have the unilateral option, at its sole discretion, to renew this Agreement automatically for no more than two (2) additional one-year terms. Consultant shall complete the Services within the term of this Agreement, and shall meet any other established schedules and deadlines.

3.2 Project Consultant; Key Personnel.

3.2.1 **Project Architect**. Consultant shall name a specific individual to act as Project Consultant, subject to the approval of City. Consultant hereby designates John Lesak (License No. C26607) to act as the Project Architect for the Project. The Project Architect shall: (1) maintain oversight of the Services; (2) have full authority to represent and act on behalf of the Consultant for all purposes under this Agreement; (3) supervise and direct the Services using his or her best skill and attention; (4) be responsible for the means, methods, techniques, sequences and procedures used for the Services; (5) adequately coordinate all portions of the Services; and (6) act as principal contact with City and all contractors, consultants, engineers and inspectors on the Project. Any change in the Project Architect shall be subject to the City's prior written approval, which approval shall not be unreasonably withheld. The new Project Architect shall be of at least equal competence as the prior Project Architect. In the event that City and Consultant cannot agree as to the substitution of a new Project Architect, City shall be entitled to terminate this Agreement for cause.

3.2.2 Key Personnel. In addition to the Project Architect, Consultant has represented to the City that certain additional key personnel, engineers and consultants will perform the Services under this Agreement. Should one or more of such personnel, engineers or consultants become unavailable, Consultant may substitute others of at least equal competence upon written approval of the City. In the event that City and Consultant cannot agree as to the substitution of key personnel, engineers or consultants, City shall be entitled to terminate this Agreement for cause. The key additional personnel, engineers and consultants for performance of this Agreement are as follows: Jim McLane, Project Manager; Heather Mangrum, Job Captain

3.3 Hiring of Consultants and Personnel.

3.3.1 Right to Hire or Employ. Consultant shall have the option, unless City objects in writing after notice, to employ at its expense architects, engineers, experts or other consultants qualified and licensed to render services in connection with the planning and/or administration of the Project, and to delegate to them such duties as Consultant may delegate without relieving Consultant from administrative or other responsibility under this Agreement. Consultant shall be responsible for the coordination and cooperation of Consultant's architects, engineers, experts or other consultants. All consultants, including changes in consultants, shall be subject to approval by City in its sole and reasonable discretion. Consultant shall notify City of the identity of all consultants at least fourteen (14) days prior to their commencement of work to allow City to review their qualifications and approve to their participation on the Project in its sole and reasonable discretion.

3.3.2 Qualification and License. All architects, engineers, experts and other consultants retained by Consultant in performance of this Agreement shall be qualified to perform the Services assigned to them, and shall be licensed to practice in their respective professions, where required by law.

3.3.3 Standards and Insurance. All architects, engineers, experts and other consultants hired by Consultant shall be required to meet all of the same standards and insurance requirements set forth in this Agreement, unless other standards or requirements are approved by the City in writing. Unless changes are approved in writing by the City, Consultant's agreements with its consultants shall contain a provision making them subject to all provisions stipulated in this Agreement.

3.3.4 Assignments or Staff Changes. Consultant shall promptly obtain written City approval of any assignment, reassignment or replacement of such architects, engineers, experts and consultants, or of other staff changes of key personnel working on the Project. As provided in the Agreement, any changes in Consultant's consultants and key personnel shall be subject to approval by City.

3.3.5 Draftsman and Clerical Support. Draftsmen and clerical personnel shall be retained by Consultant at Consultant's sole expense.

3.4 Standard of Care.

3.4.1 Standard of Care. Consultant shall perform all Services under this Agreement in a skillful and competent manner, consistent with the standards generally recognized as being employed by professionals qualified to perform the Services in the same discipline in the State of California, and shall be responsible to City for damages sustained by the City and delays to the Project as specified in the indemnification provision of this Agreement. Without limiting the foregoing, Consultant shall be fully responsible to the City for any increased costs incurred by the City as a result of any such delays in the design or construction of the Project. Consultant represents and maintains that it is skilled in the professional calling necessary to perform the Services. Consultant warrants and represents that all of its employees, architects, engineers, experts and other consultants shall have sufficient skill and experience to perform the Services assigned to them. Finally, Consultant represents that it, its employees, architects, engineers, experts and other consultants have all licenses, permits, qualifications and approvals of whatever nature that are legally required to perform the Services assigned to or rendered by them and that such licenses and approvals shall be maintained throughout the term of this Agreement. As provided for in the indemnification provisions of this Agreement, Consultant shall perform, at its own cost and expense and without reimbursement from the City, any services necessary to correct errors or omissions which are caused by the Consultant's failure to comply with the standard of care provided for herein.

3.4.2 Performance of Employees. Any employee or consultant who is determined by the City to be uncooperative, incompetent, a threat to the adequate or timely completion of the Project, a threat to the safety of persons or property, or any employee or consultant who fails or refuses to perform the Services in a manner acceptable to the City, shall be promptly removed from the Project by the Consultant and shall not be re-employed to perform any of the Services or to work on the Project.

3.5 Laws and Regulations.

3.5.1 Knowledge and Compliance. Consultant shall keep itself fully informed of and in compliance with all applicable local, state and federal laws, rules and regulations in any manner affecting the performance of the Services or the Project, and shall give all notices required of the Consultant by law. Consultant shall be liable, pursuant to the standard of care and indemnification provisions of this Agreement, for all violations of such laws and regulations in

connection with its Services. Consultant shall defend, indemnify and hold City, its officials, officers, employees and agents free and harmless, pursuant to the indemnification provisions of this Agreement, from any claim or liability arising out of any failure or alleged failure to comply with such laws, rules or regulations.

3.5.2 Drawings and Specifications. Consultant shall cause all drawings and specifications to conform to any applicable requirements of federal, state and local laws, rules and regulations, including the Uniform Building Code, in effect as of the time the drawings and specifications are prepared or revised during the latest phase of the Services described in Exhibit "A" attached hereto. Any significant revisions made necessary by changes in such laws, rules and regulations after this time may be compensated as Additional Services which were not known or reasonably should not have been known by Consultant. Consultant shall cause the necessary copies of such drawings and specifications to be filed with any governmental bodies with approval jurisdiction over the Project, in accordance with the Services described in Exhibit "A" attached hereto. For the preparation of all such drawings and specifications, the Consultant shall use Computer Aided Design Drafting ("CADD") (e.g., AutoCAD) or other technology acceptable to the Consultant and City.

3.5.3 Americans with Disabilities Act. Consultant will use its best professional efforts to interpret all applicable federal, state and local laws, rules and regulations with respect to access, including those of the Americans with Disabilities Act ("ADA"). Consultant shall inform City of the existence of inconsistencies of which it is aware or reasonably should be aware between federal and state accessibility laws, rules and regulations, as well as any other issues which are subject to conflicting interpretations of the law, and shall provide the City with its interpretation of such inconsistencies and conflicting interpretations. Unless Consultant brings such inconsistencies and conflicting interpretations to the attention of the City and requests City's direction on how to proceed, the Consultant's interpretation of such inconsistencies and conflicting interpretations shall be the sole responsibility and liability of Consultant, and the Consultant shall correct all plans, specifications and other documents prepared for the Project at no additional cost if its interpretations are shown to be incorrect. In the event that the Consultant request's City's direction on how to proceed with respect to any inconsistent and/or conflicting interpretation, the Consultant shall be responsible to the City only pursuant to the indemnification provisions of this Agreement.

3.5.4 Permits, Approvals and Authorizations. Consultant shall provide City with a list of all permits, approvals or other authorizations required for the Project from all federal, state or local governmental bodies with approval jurisdiction over the Project. Consultant shall then assist the City in obtaining all such permits, approvals and other authorizations. The costs of such permits, approvals and other authorizations shall be paid by the City.

3.5.5 Water Quality Management and Compliance. Consultant shall keep itself and all subcontractors, staff, and employees fully informed of and in compliance with all local, state and federal laws, rules and regulations that may impact, or be implicated by the performance of the Services including, without limitation, all applicable provisions of the City's ordinances regulating water quality and storm water; the Federal Water Pollution Control Act (33 U.S.C. § 1251 *et seq.*); the California Porter-Cologne Water Quality Control Act (Cal Water Code §§ 13000-14950); and any and all regulations, policies, or permits issued pursuant to any such authority. Consultant shall additionally comply with the lawful requirements of the City, and any other municipality, drainage district, or other local agency with jurisdiction over the location where the Services are to be conducted, regulating water quality and storm water discharges. Failure to

comply with laws, regulations, and ordinances listed in this Section is a violation of federal and state law.

3.6 Independent Contractor.

3.6.1 Control and Payment of Subordinates. City retains Consultant on an independent contractor basis and Consultant is not an employee of City. Consultant is not an employee for state tax, federal tax or any other purpose, and is not entitled to the rights or benefits afforded to City's employees. Any additional personnel performing the Services under this Agreement on behalf of Consultant shall also not be employees of City, and shall at all times be under Consultant's exclusive direction and control. Consultant shall pay all wages, salaries, and other amounts due such personnel in connection with their performance of Services under this Agreement and as required by law. Consultant shall be responsible for all reports and obligations respecting such additional personnel, including, but not limited to: social security taxes, income tax withholding, unemployment insurance, disability insurance, and workers' compensation insurance.

3.7 Schedule of Services.

3.7.1 Consultant Services. Consultant shall fully and adequately complete the Services described in this Agreement and in Exhibit "A" attached hereto and incorporated herein by reference.

3.7.2 Timely Performance Standard. Consultant shall perform all Services hereunder as expeditiously as is consistent with professional skill and care, as well as the orderly progress of the Project work so as not to be the cause, in whole or in part, of delays in the completion of the Project or in the achievement of any Project milestones, as provided herein. Specifically, Consultant shall perform its Services so as to allow for the full and adequate completion of the Project within the time required by the City and within any completion schedules adopted for the Project. Consultant agrees to coordinate with City's staff, contractors and consultants in the performance of the Services, and shall be available to City's staff, contractors and consultants at all reasonable times.

3.7.3 Performance Schedule. Consultant shall prepare an estimated time schedule for the performance of Consultant's Services, to be adjusted as the Project proceeds. Such schedule shall be subject to the City's review and approval, which approval shall not be unreasonably withheld, and shall include allowances for periods of time required for City's review and approval of submissions, and for approvals of authorities having jurisdiction over Project approval and funding. If City and Consultant cannot mutually agree on a performance schedule, City shall have the authority to immediately terminate this Agreement. The schedule shall not be exceeded by Consultant without the prior written approval of City. If the Consultant's Services are not completed within the time provided by the agreed upon performance schedule, or any milestones established therein, it is understood, acknowledged and agreed that the City will suffer damage for which the Consultant will be responsible.

3.7.4 Excusable Delays. Any delays in Consultant's work caused by the following may be added to the time for completion of any obligations of Consultant: (1) the actions of City or its employees; (2) the actions of those in direct contractual relationship with City; (3) the actions of any governmental agency having jurisdiction over the Project; (4) the actions of any parties not within the reasonable control of the Consultant; and (5) any Force Majeure Event (as defined herein) or other unforeseen occurrence not due to any fault or negligence on the part of

Consultant. Neither the City nor the Consultant shall be liable for damages, liquidated or otherwise, to the other on account of such delays.

3.7.5 Force Majeure Events. Neither City nor Consultant shall be considered in default of this Agreement for delays in performance caused by circumstances beyond the reasonable control of the non-performing Party. For purposes of this Agreement, such circumstances include a Force Majeure Event. A Force Majeure Event shall mean an event that materially affects a Party's performance and is one or more of the following: (1) Acts of God or other natural disasters; (2) terrorism or other acts of a public enemy; (3) orders of governmental authorities (including, without limitation, unreasonable and unforeseeable delay in the issuance of permits or approvals by governmental authorities that are required for the services); (4) strikes and other organized labor action occurring at the site and the effects thereof on the services, only to the extent such strikes and other organized labor action are beyond the control of Consultant and its subcontractors, and to the extent the effects thereof cannot be avoided by use of replacement workers; and (5) pandemics, epidemics or quarantine restrictions. For purposes of this section, "orders of governmental authorities," includes ordinances, emergency proclamations and orders, rules to protect the public health, welfare and safety, and other actions of a public agency applicable to the Services and Agreement. Should a Force Majeure Event occur, the non-performing Party shall, within fifteen (15) calendar days of the beginning of an Force Majeure Event, give written notice to the other Party describing the circumstances preventing continued performance and the efforts being made to resume performance of this Agreement. Force Majeure Events shall not entitle Consultant to any additional compensation. Notwithstanding the foregoing in this section, the City may still terminate this Agreement in accordance with the termination provisions of this Agreement.

3.7.6 Request for Excusable Delay Credit. The Consultant shall, within fifteen (15) calendar days of the beginning of any excusable delay, notify the City in writing of the causes of delay (unless City grants in writing a further period of time to file such notice prior to the date of final payment under the Agreement). City will then ascertain the facts and the extent of the delay, and grant an extension of time for completing the Services when, in its sole judgment, the findings of fact justify such an extension. The City's findings of fact thereon shall be final and conclusive on the Parties. Extensions of time shall apply only to that portion of the Services affected by the delay and shall not apply to other portions of the Services not so affected. The sole remedy of Consultant for extensions of time shall be an extension of the performance time at no cost to the City. If Additional Services are required as a result of an excusable delay, the Parties shall mutually agree thereto pursuant to the Additional Services provision of this Agreement. Should Consultant make an application for an extension of time, Consultant shall submit evidence that the insurance policies required by this Agreement remain in effect during the requested additional period of time.

3.8 Additional Services.

3.8.1 Request for Services. At City's request, Consultant may be asked to perform services not otherwise included in this Agreement, not included within the basic services listed in Exhibit "A" attached hereto, and/or not customarily furnished in accordance with generally accepted architectural practice.

3.8.2 Definition. As used herein, "Additional Services" mean: (1) any work which is determined by City to be necessary for the proper completion of the Project, but which the Parties did not reasonably anticipate would be necessary for the Consultant to perform at the execution of this Agreement; or (2) any work listed as Additional Services in Exhibit "A" attached

hereto. Consultant shall not perform, nor be compensated for, Additional Services without prior written authorization from City and without an agreement between the City and Consultant as to the compensation to be paid for such services. City shall pay Consultant for any approved Additional Services, pursuant to the compensation provisions herein, so long as such services are not made necessary through the fault of Consultant pursuant to the indemnification provision of this Agreement.

3.8.3 Examples of Additional Services. Such Additional Services shall not include any redesign or revisions to drawings, specifications or other documents when such revisions are necessary in order to bring such documents into compliance with applicable laws, rules, regulations or codes of which Consultant was aware or should have been aware pursuant to the laws and regulations provision of this Agreement above. Such Additional Services may include, but shall not be limited to:

(a) Separately Bid Portions of Project. Plan preparation and/or administration of work on portions of the Project separately bid.

(b) Furniture and Interior Design. Assistance to City, if requested, for the selection of moveable furniture, equipment or articles which are not included in the Construction Documents.

(c) Fault of Contractor. Services caused by delinquency, default or insolvency of contractor, or by major defects in the work of the contractor, provided that any such services made necessary by the failure of Consultant to detect and report such matters when it reasonably should have done so shall not be compensated.

(d) Inconsistent Approvals or Instructions. Revisions in drawings, specifications or other documents when such revisions are inconsistent with written approvals or instructions previously given and are due to causes beyond the control of Consultant.

(e) Legal Proceedings. Serving as an expert witness on City's behalf or attending legal proceedings to which the Consultant is not a party.

(f) Damage Repair. Supervision of repair of damages to any structure.

(g) Extra Environmental Services. Additional work required for environmental conditions (e.g. asbestos or site conditions) not already contemplated within the Consultant's services for the Project.

3.9 City Responsibilities. City's responsibilities shall include the following:

3.9.1 Data and Information. City shall make available to Consultant all necessary data and information concerning the purpose and requirements of the Project, including scheduling and budget limitations, objectives, constraints and criteria. As part of the budget limitation information, the City shall provide the Consultant with a preliminary construction budget ("City's Preliminary Construction Budget").

3.9.2 Project Survey. If required pursuant to the scope of the Project and if requested by Consultant, City shall furnish Consultant with, or direct Consultant to procure at City's expense, a survey of the Project site prepared by a registered surveyor or civil engineer, any other record documents which shall indicate existing structures, land features, improvements,

sewer, water, gas, electrical and utility lines, topographical information and boundary dimensions of the site, and any other such pertinent information.

3.9.3 Bid Phase. Distribute Construction Documents to bidders and conduct the opening and review of bids for the Project.

3.9.4 Testing. Retain consultant(s) to conduct chemical, mechanical, soils, geological or other tests required for proper design of the Project, and furnish such surveys, borings, test pits, and other tests as may be necessary to reveal conditions of the site which must be known to determine soil condition or to ensure the proper development of the required drawings and specifications.

3.9.5 Required Inspections and Tests. Retain consultant(s) to conduct materials testing and inspection or environmental/hazardous materials testing and inspection pursuant to any applicable laws, rules or regulations.

3.9.6 Fees of Reviewing or Licensing Agencies. Directly pay or reimburse the payment of all fees required by any reviewing or licensing agency, or other agency having approval jurisdiction over the Project.

3.9.7 City's Representative. The City hereby designates the City Manager, or his or her designee, to act as its representative for the performance of this Agreement ("City's Representative"). City's Representative shall have the power to act on behalf of the City for all purposes under this Contract. The City Manager hereby designates Marissa Kucheck, Museum Director, or his or her designee, as the City's contact for the implementation of the Services hereunder. Contractor shall not accept direction or orders from any person other than the City's Representative or his or her designee.

3.9.8 Review and Approved Documents. Review all documents submitted by Consultant, including change orders and other matters requiring approval by the City Council or other officials. City shall advise Consultant of decisions pertaining to such documents within a reasonable time after submission, so as not to cause unreasonable delay as provided in the excusable delay provisions of this Agreement above.

3.10 Compensation.

3.10.1 Consultant's Compensation for Basic Services. City shall pay to Consultant, for the performance of all Services rendered under this Agreement, the total not to exceed amount of **One Hundred Fifty Thousand Dollars ($150,000**) ("Total Compensation"). This Total Compensation amount shall be based upon, and may be adjusted according to, the fee schedule and related terms and conditions attached hereto as Exhibit "B" and incorporated herein by reference. The Total Compensation, as may be adjusted upon mutual agreement, shall constitute complete and adequate payment for Services under this Agreement.

3.10.2 Payment for Additional Services. At any time during the term of this Agreement, City may request that Consultant perform Additional Services. As used herein, Additional Services means any work which is determined by City to be necessary for the proper completion of the Project, but which the Parties did not reasonably anticipate would be necessary at the execution of this Agreement. Any additional work in excess of this amount must be approved by the City. If authorized, such Additional Services will be compensated at the rates and in the manner set forth in Exhibit "C" attached hereto and incorporated herein by reference,

unless a flat rate or some other form of compensation is mutually agreed upon by the Parties. If City requires Consultant to hire consultants to perform any Additional Services, Consultant shall be compensated therefore at the rates and in the manner set forth in Exhibit "C" attached hereto and incorporated herein by reference, unless a flat rate or some other form of compensation is mutually agreed upon by the Parties. City shall have the authority to review and approve the rates of any such consultants. In addition, Consultant shall be reimbursed for any expenses incurred by such consultants pursuant to the terms and conditions of Section 3.10.3.

3.10.3 Reimbursable Expenses. Reimbursable expenses are in addition to compensation for the Services and Additional Services. Consultant shall not be reimbursed for any expenses unless authorized in writing by City, which approval may be evidenced by inclusion in Exhibit "C" attached hereto. Such reimbursable expenses shall include only those expenses which are reasonably and necessarily incurred by Consultant in the interest of the Project. Consultant shall be required to acquire prior written consent in order to obtain reimbursement for the following: (1) extraordinary transportation expenses incurred in connection with the Project; (2) out-of-town travel expenses incurred in connection with the Project; (3) fees paid for securing approval of authorities having jurisdiction over the Project; (4) bid document duplication costs in excess of $1,000; and (5) other costs, fees and expenses in excess of $1,000.

3.10.4 Payment to Consultant. Consultant's compensation and reimbursable expenses shall be paid by City to Consultant no more often than monthly. Such periodic payments shall be made based upon the percentage of work completed, and in accordance with the phasing and funding schedule provided in Exhibit "B" and the compensation rates indicated in Exhibit "C" attached hereto and incorporated herein by reference. In order to receive payment, Consultant shall present to City an itemized statement which indicates Services performed, percentage of Services completed, method for computing the amount payable, and the amount to be paid. The statement shall describe the amount of Services provided since the initial commencement date, or since the start of the subsequent billing periods, as appropriate, through the date of the statement, as well as those expenses for which reimbursement is requested for that statement period. The amount paid to Consultant shall never exceed the percentage amounts authorized by the phasing and funding schedule located in Exhibit "B" attached hereto. City shall, within thirty (30) days of receiving such statement, review the statement and pay all approved charges thereon pursuant to the provisions of Civil Code Section 3320. Disputed amounts shall be resolved by the Parties in a mutually agreeable manner.

Payments made for Additional Services shall be made in installments, not more often than monthly, proportionate to the degree of completion of such services or in such other manner as the Parties shall specify when such services are agreed upon, and in accordance with any authorized fee or rate schedule. In order to receive payment, Consultant shall present to City an itemized statement which indicates the Additional Services performed, percentage of Additional Services completed, method for computing the amount payable, and the amount to be paid. The statement shall describe the amount of Additional Services provided since the initial commencement date, or since the start of the subsequent billing periods, as appropriate, through the date of the statement. City shall, within thirty (30) days of receiving such statement, review the statement and pay all approved charges thereon pursuant to the provisions of Civil Code Section 3320. Disputed amounts shall be resolved by the Parties in a mutually agreeable manner.

Upon cancellation or termination of this Agreement, Consultant shall be compensated as set forth in the termination provision herein.

3.10.5 Withholding Payment to Consultant. The City may withhold payment, in whole or in part, to the extent reasonably necessary to protect the City from claims, demands, causes of action, costs, expenses, liabilities, losses, damages, or injuries of any kind to the extent arising out of or caused by the negligence, recklessness, or willful misconduct protected under the indemnification provisions of this Agreement. Failure by City to deduct any sums from a progress payment shall not constitute a waiver of the City's right to such sums. The City may keep any moneys which would otherwise be payable at any time hereunder and apply the same, or so much as may be necessary therefor, to the payment of any expenses, losses, or damages as determined by the City, incurred by the City for which Consultant is liable under the Agreement or state law. Payments to the Consultant for compensation and reimbursable expenses due shall not be contingent on the construction, completion or ultimate success of the Project. Payment to the Consultant shall not be withheld, postponed, or made contingent upon receipt by the City of offsetting reimbursement or credit from Parties not within the Consultant's reasonable control.

3.10.6 Prevailing Wages. Consultant is aware of the requirements of California Labor Code Sections 1720, et seq., and 1770, et seq., as well as California Code of Regulations, Title 8, Section 16000, et seq., ("Prevailing Wage Laws"), which require the payment of prevailing wage rates and the performance of other requirements on certain "public works" and "maintenance" projects. If the Services are being performed as part of an applicable "public works" or "maintenance" project, as defined by the Prevailing Wage Laws, and If the total compensation is $1,000 or more, Consultant agrees to fully comply with and to require its consultants to fully comply with such Prevailing Wage Laws. City shall provide Consultant with a copy of the prevailing rates of per diem wages in effect at the commencement of this Agreement. Consultant shall make copies of the prevailing rates of per diem wages for each craft, classification or type of worker needed to execute the Services available to interested parties upon request, and shall post copies at the Consultant's principal place of business and at the Project site. It shall be mandatory upon the Consultant and all subconsultants to comply with all California Labor Code provisions, which include but are not limited to prevailing wages (Labor Code Sections 1771, 1774 and 1775), employment of apprentices (Labor Code Section 1777.5), certified payroll records (Labor Code Sections 1771.4 and 1776), hours of labor (Labor Code Sections 1813 and 1815) and debarment of contractors and subcontractors (Labor Code Section 1777.1). The requirement to submit certified payroll records directly to the Labor Commissioner under Labor Code section 1771.4 shall not apply to work performed on a public works project that is exempt pursuant to the small project exemption specified in Labor Code Section 1771.4. Consultant shall defend, indemnify and hold the City, its elected officials, officers, employees and agents free and harmless from any claims, liabilities, costs, penalties or interest arising out of any failure or alleged failure of the Consultant or its consultants to comply with the Prevailing Wage Laws.

(a) Registration/DIR Compliance. If the Services are being performed as part of an applicable "public works project" of over $25,000 when the project is for construction, alteration, demolition, installation, or repair work, or a public works project of over $15,000 when the project is for maintenance work, in addition to the foregoing, then pursuant to Labor Code sections 1725.5 and 1771.1, the Consultant and all subconsultants performing such Services must be registered with the Department of Industrial Relations ("DIR"). Consultant shall maintain registration for the duration of the Project and require the same of any subconsultants. This project may also be subject to compliance monitoring and enforcement by the DIR. It shall be Consultant's sole responsibility to comply with all applicable registration and labor compliance requirements, including the submission of payroll records directly to the DIR. Any stop orders issued by the Department of Industrial Relations against Consultant or any subconsultant that affect Consultant's performance of services, including any delay, shall be Consultant's sole

responsibility. Any delay arising out of or resulting from such stop orders shall be considered Consultant caused delay and shall not be compensable by the City. Consultant shall defend, indemnify and hold the City, its officials, officers, employees and agents free and harmless from any claim or liability arising out of stop orders issued by the Department of Industrial Relations against Consultant or any subconsultant.

3.10.7 Automated Clearing House ("ACH") payments. It is the City's policy to pay its consultant invoices via electronic fund transfers through the ACH network. All payments due and owing pursuant to a properly issued and correct invoice or under this Agreement shall be made through electronic ACH transfers, unless otherwise agreed upon by both Parties in writing. Consultant shall provide the City with ACH payment details whereby the City shall initiate the ACH transfers to Consultant in the amount required pursuant to a properly issued and correct invoice or under this Agreement. Each Party shall undertake any and all required actions and execute any required documents, instruments, or agreements required to effectuate the requirements of this Section. In the event the City erroneously deposits funds into an account, or otherwise deposits funds to which Consultant is not entitled: (1) Consultant shall immediately notify the City and the financial institution; (2) Consultant shall not withdraw any of the funds which were erroneously deposited or to which Consultant is not entitled; and (3) Consultant authorizes both the City and financial institution to take all actions necessary to correct the error and return to the City all funds erroneously deposited or to which Consultant is not entitled.

3.11 Notice to Proceed.

Consultant shall not proceed with performance of any Services under this Agreement unless and until the City provides a written notice to proceed.

3.12 Termination, Suspension and Abandonment.

3.12.1 Grounds for Termination; Consultant's Termination for Cause. City hereby reserves the right to suspend or abandon, at any time and for any reason, all or any portion of the Project and the construction work thereon, or to terminate this Agreement at any time with or without cause. Consultant shall be provided with at least seven (7) days advanced written notice of such suspension, abandonment or termination. In the event of such suspension, abandonment or termination, Consultant shall be paid for Services and reimbursable expenses rendered up to the date of such suspension, abandonment or termination, pursuant to the schedule of payments provided for in this Agreement, less any claims against or damages suffered by City as a result of the default, if any, by Consultant. Consultant hereby expressly waives any and all claims for damages or compensation arising under this Agreement, except as set forth herein, in the event of such suspension, abandonment or termination. Consultant may terminate this Agreement for substantial breach of performance by the City such as failure to make payment to Consultant as provided in this Agreement.

3.12.2 City's Suspension of Work. If Consultant's Services are suspended by City, City may require Consultant to resume such Services within ninety (90) days after written notice from City. When the Project is resumed, the Total Compensation and schedule of Services shall be equitably adjusted upon mutual agreement of the City and Consultant.

3.12.3 Documents and Other Data. Upon suspension, abandonment or termination, Consultant shall provide to City all preliminary studies, sketches, working drawings, specifications, computations, and all other Project Documents, as defined below, to which City would have been entitled at the completion of Consultant's Services under this Agreement. Upon

payment of the amount required to be paid to Consultant pursuant to the termination provisions of this Agreement, City shall have the rights, as provided in this Agreement hereinafter, to use such Project Documents prepared by or on behalf of Consultant under this Agreement. Consultant shall make such documents available to City upon request and without additional compensation other than as may be approved as a reimbursable expense.

3.12.4 Employment of other Consultants. In the event this Agreement is terminated in whole or in part as provided herein, City may procure, upon such terms and in such manner as it may determine appropriate, services similar to those terminated.

3.13 Ownership and Use of Documents; Confidentiality.

3.13.1 Ownership. All plans, specifications, original or reproducible transparencies of working drawings and master plans, preliminary sketches, architectural presentation drawings, structural computations, estimates and any other documents prepared pursuant to this Agreement, including, but not limited to, any other works of authorship fixed in any tangible medium of expression such as writings, physical drawings and data magnetically or otherwise recorded on computer diskettes (hereinafter referred to as the "Project Documents") shall be and remain the property of City. Although the official copyright in all Project Documents shall remain with the Consultant or other applicable subcontractors or consultants, the Project Documents shall be the property of City whether or not the work for which they were made is executed or completed. Within thirty (30) calendar days following completion of the Project, Consultant shall provide to City copies of all Project Documents required by City. In addition, Consultant shall retain copies of all Project Documents on file for a minimum of fifteen (15) years following completion of the Project, and shall make copies available to City upon the payment of reasonable duplication costs. Before destroying the Project Documents following this retention period, Consultant shall make a reasonable effort to notify City and provide City with the opportunity to obtain the documents.

3.13.2 Right to Use. Consultant grants to City the right to use and reuse all or part of the Project Documents, at City's sole discretion and with no additional compensation to Consultant, for the following purposes:

(a) The construction of all or part of this Project.

(b) The repair, renovation, modernization, replacement, reconstruction or expansion of this Project at any time;

(c) The construction of another project by or on behalf of the City for its ownership and use;

City is not bound by this Agreement to employ the services of Consultant in the event such documents are used or reused for these purposes. City shall be able to use or reuse the Project Documents for these purposes without risk of liability to the Consultant or third parties with respect to the condition of the Project Documents, and the use or reuse of the Project Documents for these purposes shall not be construed or interpreted to waive or limit City's right to recover for latent defects or for errors or omissions of the Consultant.

Any use or reuse by City of the Project Documents on any project other than this Project without employing the services of Consultant shall be at City's own risk with respect to third parties. If City uses or reuses the Project Documents on any project other than this Project, it shall

remove the Consultant's seal from the Project Documents and hold harmless Consultant and its officers, directors, agents and employees from claims arising out of the negligent use or re-use of the Project Documents on such other project.

3.13.3 License. This Agreement creates a non-exclusive and perpetual license for City to copy, use, modify or reuse any and all Project Documents and any intellectual property rights therein. Consultant shall require any and all subcontractors and consultants to agree in writing that City is granted a non-exclusive and perpetual license for the work of such subcontractors or consultants performed pursuant to this Agreement.

3.13.4 Right to License. Consultant represents and warrants that Consultant has the legal right to license any and all copyrights, designs and other intellectual property embodied in the Project Documents that Consultant prepares or causes to be prepared pursuant to this Agreement. Consultant shall indemnify and hold City harmless pursuant to the indemnification provisions of this Agreement for any breach of this Section. Consultant makes no such representation and warranty in regard to previously prepared designs, plans, specifications, studies, drawings, estimates or other documents that were prepared by design professionals other than Consultant and provided to Consultant by City.

3.13.5 Confidentiality. All Project Documents, either created by or provided to Consultant in connection with the performance of this Agreement, shall be held confidential by Consultant to the extent they are not subject to disclosure pursuant to the Public Records Act. All Project Documents shall not, without the written consent of City, be used or reproduced by Consultant for any purposes other than the performance of the Services. Consultant shall not disclose, cause or facilitate the disclosure of the Project Documents to any person or entity not connected with the performance of the Services or the Project. Nothing furnished to Consultant which is otherwise known to Consultant or is generally known, or has become known, to the related industry shall be deemed confidential. Consultant shall not use City's name or insignia, photographs of the Project, or any publicity pertaining to the Services or the Project in any magazine, trade paper, newspaper, television or radio production or other similar medium without the written consent of City.

3.14 Indemnification.

3.14.1 To the fullest extent permitted by law, Consultant shall defend (with counsel of City's choosing), indemnify and hold the City, its officials, officers, employees, volunteers, and agents free and harmless from any and all claims, demands, causes of action, costs, expenses, liability, loss, damage or injury of any kind, in law or equity, to property or persons, including wrongful death, in any manner arising out of, pertaining to, or incident to any acts, errors or omissions, or willful misconduct of Consultant, its officials, officers, employees, subcontractors, consultants or agents in connection with the performance of the Consultant's Services, the Project or this Agreement, including without limitation the payment of all damages, expert witness fees and attorney's fees and other related costs and expenses except such loss or damage caused by the sole negligence or willful misconduct of the City. Consultant's obligation to indemnify shall survive expiration or termination of this Agreement and shall not be restricted to insurance proceeds, if any, received by Consultant, the City, its officials, officers, employees, agents, or volunteers.

3.14.2 If Consultant's obligation to defend, indemnify, and/or hold harmless arises out of Consultant's performance as a "design professional" (as that term is defined under Civil Code section 2782.8), then, and only to the extent required by Civil Code section 2782.8, which

is fully incorporated herein, Consultant's indemnification obligation shall be limited to claims that arise out of, pertain to, or relate to the negligence, recklessness, or willful misconduct of the Consultant, and, upon Consultant obtaining a final adjudication by a court of competent jurisdiction, Consultant's liability for such claim, including the cost to defend, shall not exceed the Consultant's proportionate percentage of fault.

3.15 Insurance. Consultant shall not commence work under this Agreement until it has provided evidence satisfactory to the City that it has secured all insurance required under this Section. In addition, Consultant shall not allow any subconsultant to commence work on any subcontract until it has provided evidence satisfactory to the City that the subconsultant has secured all insurance required under this section.

3.15.1 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, Consultant shall, at its expense, procure and maintain in full force and effect for the duration 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.

3.15.2 Additional Insured. The City of Ontario, its officials, officers, employees, agents, and volunteers shall be named as additional insureds on Consultant's and its subconsultants' policies of commercial general liability and automobile liability insurance using the endorsements and forms specified herein or exact equivalents.

3.15.3 Commercial General Liability

(a) The Consultant shall take out and maintain, during the performance of all work under this Agreement, in amounts not less than specified herein, Commercial General Liability Insurance, in a form and with insurance companies acceptable to the City.

(b) Coverage for Commercial General Liability insurance shall be at least as broad as the following: Insurance Services Office Commercial General Liability coverage (Occurrence Form CG 00 01) or exact equivalent. Commercial General Liability Insurance must include coverage for the following:

(i) Bodily Injury and Property Damage

(ii) Personal Injury/Advertising Injury

(iii) Premises/Operations Liability

(iv) Products/Completed Operations Liability

(v) Aggregate Limits that Apply per Project

(vi) Explosion, Collapse and Underground (UCX) exclusion deleted

(vii) Contractual Liability with respect to this Contract

(viii) Broad Form Property Damage

(ix) Independent Consultants Coverage

(c) The policy shall contain no endorsements or provisions limiting coverage for (1) contractual liability; (2) cross liability exclusion for claims or suits by one insured against another; (3) products/completed operations liability; or (4) contain any other exclusion contrary to the Agreement.

(d) The policy shall give City, the City Council and each member of the City Council, its officers, employees, agents and City designated volunteers additional insured status using ISO endorsement forms CG 20 10 10 01 and 20 37 10 01, or endorsements providing the exact same coverage.

(e) The general liability program may utilize either deductibles or provide coverage excess of a self-insured retention, subject to written approval by the City, and provided that such deductibles shall not apply to the City as an additional insured.

3.15.4 Automobile Liability

(a) At all times during the performance of the work under this Agreement, the Consultant shall maintain Automobile Liability Insurance for bodily injury and property damage including coverage for owned, non-owned and hired vehicles, in a form and with insurance companies acceptable to the City.

(b) Coverage for automobile liability insurance shall be at least as broad as Insurance Services Office Form Number CA 00 01 covering automobile liability (Coverage Symbol 1, any auto).

(c) The policy shall give City, the City Council and each member of the City Council, its officers, employees, agents and City designated volunteers additional insured status.

(d) Subject to written approval by the City, the automobile liability program may utilize deductibles, provided that such deductibles shall not apply to the City as an additional insured, but not a self-insured retention.

3.15.5 Workers' Compensation/Employer's Liability

(a) Consultant certifies that he/she is aware of the provisions of Section 3700 of the California Labor Code which requires every employer to be insured against liability for workers' compensation or to undertake self-insurance in accordance with the provisions of that code, and he/she will comply with such provisions before commencing work under this Agreement.

(b) To the extent Consultant has employees at any time during the term of this Agreement, at all times during the performance of the work under this Agreement, the Consultant shall maintain full compensation insurance for all persons employed directly by him/her to carry out the work contemplated under this Agreement, all in accordance with the "Workers' Compensation and Insurance Act," Division IV of the Labor Code of the State of California and any acts amendatory thereof, and Employer's Liability Coverage in amounts indicated herein. Consultant shall require all subconsultants to obtain and maintain, for the period

required by this Agreement, workers' compensation coverage of the same type and limits as specified in this Section.

3.15.6 Professional Liability (Errors and Omissions)

(a) At all times during the performance of the work under this Agreement the Consultant shall maintain professional liability or Errors and Omissions insurance appropriate to its profession, in a form and with insurance companies acceptable to the City and in an amount indicated herein. This insurance shall be written on a policy form coverage specifically designed to protect against acts, errors or omissions of the Consultant. "Covered Professional Services" as designated in the policy must specifically include work performed under this Agreement. The policy must "pay on behalf of" the insured and must include a provision establishing the insurer's duty to defend.

3.15.7 Minimum Policy Limits Required

(a) The following insurance limits are required for the Agreement:

Coverage	Combined Single Limit
Commercial General Liability	$2,000,000 per occurrence/ $4,000,000 aggregate for bodily injury, personal injury, and property damage
Automobile Liability	$2,000,000 per occurrence for bodily injury and property damage
Employer's Liability	$1,000,000 per occurrence
Professional Liability	$2,000,000 per claim and aggregate (errors and omissions)

(b) Defense costs shall be payable in addition to the limits.

(c) Requirements of specific coverage or limits contained in this Section are not intended as a limitation on coverage, limits, or other requirement, or a waiver of any coverage normally provided by any insurance. Any available coverage shall be provided to the parties required to be named as Additional Insured pursuant to this Agreement.

3.15.8 Evidence Required

(a) Prior to execution of the Agreement, the Consultant shall file with the City evidence of insurance from an insurer or insurers certifying to the coverage of all insurance required herein. Such evidence shall include original copies of the ISO CG 00 01 (or insurer's equivalent) signed by the insurer's representative and Certificate of Insurance (Acord Form 25-S or equivalent), together with required endorsements. All evidence of insurance shall be signed by a properly authorized officer, agent, or qualified representative of the insurer and shall certify the names of the insured, any additional insureds, where appropriate, the type and amount of the insurance, the location and operations to which the insurance applies, and the expiration date of such insurance.

3.15.9 Policy Provisions Required

(a) Consultant shall provide the City at least thirty (30) days prior written notice of cancellation of any policy required by this Agreement, except that the Consultant shall provide at least ten (10) days prior written notice of cancellation of any such policy due to non-payment of premium. If any of the required coverage is cancelled or expires during the term of this Agreement, the Consultant shall deliver renewal certificate(s) including the General Liability Additional Insured Endorsement to the City at least ten (10) days prior to the effective date of cancellation or expiration.

(b) The Commercial General Liability Policy and Automobile Policy shall each contain a provision stating that Consultant's policy is primary insurance and that any insurance, deductible, or self-insurance maintained by the City, its officials, officers, employees, agents, or volunteers shall not contribute with this primary insurance. Policies shall contain or be endorsed to contain such provisions.

(c) The retroactive date (if any) of each policy is to be no later than the effective date of this Agreement. Consultant shall maintain such coverage continuously for a period of at least three years after the completion of the work under this Agreement. Consultant shall purchase a one (1) year extended reporting period A) if the retroactive date is advanced past the effective date of this Agreement; B) if the policy is cancelled or not renewed; or C) if the policy is replaced by another claims-made policy with a retroactive date subsequent to the effective date of this Agreement.

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

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

3.15.10 Qualifying Insurers

(a) All policies required shall be issued by acceptable insurance companies, as determined by the City, which satisfy the following minimum requirements: Each such policy shall be from a company or companies with a current A.M. Best's rating of no less than A:VII and admitted to transact in the business of insurance in the State of California, or otherwise allowed to place insurance through surplus line brokers under applicable provisions of the California Insurance Code or any federal law.

3.15.11 Additional Insurance Provisions

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

(b) If at any time during the life of the Agreement, any policy of insurance required under this Agreement does not comply with these specifications or is canceled and not replaced, City has the right but not the duty to obtain the insurance it deems necessary and any premium paid by City will be promptly reimbursed by Consultant or City will withhold amounts sufficient to pay premium from Consultant payments. In the alternative, City may cancel this Agreement.

(c) The City may require the Consultant to provide complete copies of all insurance policies in effect for the duration of the Project.

(d) Neither the City nor the City Council, nor any member of the City Council, nor any of the officials, officers, employees, agents or volunteers shall be personally responsible for any liability arising under or by virtue of this Agreement.

3.15.12 Subconsultant Insurance Requirements

(a) Consultant shall not allow any subcontractors or subconsultants to commence work on any subcontract until they have provided evidence satisfactory to the City that they have secured all insurance required under this Section. Policies of commercial general liability insurance provided by such subcontractors or subconsultants shall be endorsed to name the City as an additional insured using ISO form CG 20 38 04 13 or an endorsement providing the exact same coverage. If requested by Consultant, City may approve different scopes or minimum limits of insurance for particular subcontractors or subconsultants.

3.16 Records.

Consultant shall maintain complete and accurate records with respect to all costs and expenses incurred under this Agreement. All such records shall be clearly identifiable. Consultant shall allow a representative of City during normal business hours to examine, audit, and make transcripts or copies of such records and any other documents created pursuant to this Agreement. Consultant shall allow inspection of all work, data, documents, proceedings, and activities related to the Agreement for a period of five (5) years from the date of final payment under this Agreement.

3.17 Standardized Manufactured Items.

Consultant shall cooperate and consult with City in the use and selection of manufactured items on the Project, including but not limited to, paint, hardware, plumbing, mechanical and electrical equipment, fixtures, roofing materials and floor coverings. All such manufactured items shall be standardized to City's criteria to the extent such criteria do not interfere with building design.

3.18 Limitation of Agreement.

This Agreement is limited to and includes only the work included in the Project described herein. Any additional or subsequent construction at the site of the Project, or at any other City site, will be covered by, and be the subject of, a separate Agreement for architectural services between City and the Consultant chosen therefor by City.

3.19 Mediation.

Disputes arising from this Agreement may be submitted to mediation if mutually agreeable to the Parties hereto. The type and process of mediation to be utilized shall be subject to the mutual agreement of the Parties.

3.20 Successors and Assigns.

This Agreement shall be binding upon and shall inure to the benefit of the successors in interest, executors, administrators and assigns of each Party to this Agreement. However, Consultant shall not assign or transfer by operation of law or otherwise any or all of its rights, burdens, duties or obligations without the prior written consent of City. Any attempted assignment without such consent shall be invalid and void.

3.21 Asbestos Certification.

Consultant shall certify to City, in writing and under penalty of perjury, that to the best of its knowledge, information and belief no asbestos-containing material or other material deemed to be hazardous by the state or federal government was specified as a building material in any construction document that the Consultant prepares for the Project. Consultant shall require all consultants who prepare any other documents for the Project to submit the same written certification. Consultant shall also assist the City in ensuring that contractors provide City with certification, in writing and under penalty of perjury, that to the best of their knowledge, information and belief no material furnished, installed or incorporated into the Project contains asbestos or any other material deemed to be hazardous by the state or federal government. These certifications shall be part of the final Project submittal. Consultant shall include statements in its specifications that materials containing asbestos or any other material deemed to be hazardous by the state or federal government are not to be included.

3.22 No Third Party Rights.

This Agreement shall not create any rights in, or inure to the benefits of, any third party except as expressly provided herein.

3.23 Governing Law.

This Agreement shall be construed in accordance with, and governed by, the laws of the State of California. Venue shall be in San Bernardino County.

3.24 Exhibits and Recitals.

All exhibits and recitals contained herein and attached hereto are material parts of this Agreement and are incorporated as if fully set forth.

3.25 Severability.

Should any provision in the Agreement be held by a court of competent jurisdiction to be invalid, void, or unenforceable, the remaining provisions shall continue in full force and effect.

3.26 Non-Waiver.

None of the provisions of this Agreement shall be considered waived by either Party, unless such waiver is specifically specified in writing.

3.27 Safety.

Consultant shall execute and maintain its work so as to avoid injury or damage to any person or property. In carrying out its Services, the Consultant shall at all times be in compliance with all applicable local, state and federal laws, rules and regulations, and shall exercise all necessary precautions for the safety of its employees, consultant and subcontractors appropriate to the nature of the work and the conditions under which the work is to be performed.

3.28 Harassment Policy.

Consultant shall provide a copy of the City's Harassment Policy to each of its employees assigned to perform the tasks under this Agreement. Consultant shall submit to the City's Personnel Manager a statement signed by each of its employees who are assigned to perform the Services under this Agreement certifying receipt of City's Harassment Policy and certifying that they have read the Harassment Policy. A finding by the City that any of Consultant's employees has harassed a City employee shall be grounds for appropriate discipline, up to and including such employee's removal from performance of this Agreement at City's request.

3.29 Delivery of Notices.

All notices permitted or required under this Agreement shall be given to the respective Parties at the following address, or at such other address as the respective Parties may provide in writing for this purpose:

CITY:	CONSULTANT:
City of Ontario	Page & Turnbull, Inc.
303 East “B” Street	523 W. 6th Street, Suite 1013
Ontario, CA 91764	Los Angeles, CA 90014
Attn: Marissa Kucheck, Museum Director	Attn: John Lesak

Such notice shall be deemed made when personally delivered or when mailed, forty-eight (48) hours after deposit in the U.S. Mail, first class postage prepaid and addressed to the Party at its applicable address. Actual notice shall be deemed adequate notice on the date actual notice occurred, regardless of the method of service.

3.30 Time of Essence.

Time is of the essence for each and every provision of this Agreement.

3.31 City's Right to Employ Other Consultants.

City reserves right to employ other consultants, including designers, in connection with this Project or other projects.

3.32 Prohibited Interests.

3.32.1 Solicitation. Consultant maintains and warrants that it has not employed nor retained any company or person, other than a bona fide employee working solely for Consultant, to solicit or secure this Agreement. Further, Consultant warrants that it has not paid nor has it agreed to pay any company or person, other than a bona fide employee working solely for Consultant, any fee, commission, percentage, brokerage fee, gift or other consideration contingent upon or resulting from the award or making of this Agreement. For breach or violation of this warranty, City shall have the right to rescind this Agreement without liability.

3.32.2 Conflict of Interest. For the term of this Agreement, no director, official, officer or employee of City, during the term of his or her service with City, shall have any direct interest in this Agreement, or obtain any present or anticipated material benefit arising therefrom.

3.33 Equal Opportunity Employment.

Consultant represents that it is an equal opportunity employer and that it shall not discriminate against any employee or applicant for employment because of race, religion, color, national origin, ancestry, sex, age or any other classification protected by federal or state law. Such non-discrimination shall include, but not be limited to, all activities related to initial employment, upgrading, demotion, transfer, recruitment or recruitment advertising, layoff or termination. Consultant shall also comply with all relevant provisions of City's minority business enterprise program, affirmative action plan or other related programs or guidelines currently in effect or hereinafter enacted.

3.34 Labor Certification.

By its signature hereunder, Consultant certifies that it is aware of the provisions of Section 3700 of the California Labor Code which require every employer to be insured against liability for Worker's Compensation or to undertake self-insurance in accordance with the provisions of that Code, and agrees to comply with such provisions before commencing the performance of the Services.

3.35 Subcontracting.

As specified in this Agreement, Consultant shall not subcontract any portion of the Services required by this Agreement, except as expressly stated herein, without prior written approval of City. Subcontracts, if any, shall contain a provision making them subject to each and every provision of this Agreement.

3.36 Supplemental Conditions.

Any supplemental conditions shall be attached as an exhibit to this Agreement, and that exhibit shall be incorporated herein by reference.

3.37 Entire Agreement.

This Agreement, with its exhibits, contains the entire agreement of the Parties hereto, and supersedes any and all other prior or contemporaneous negotiations, understandings and oral or written agreements between the Parties hereto. Each Party acknowledges that no representations, inducements, promises or agreements have been made by any person which are not incorporated herein, and that any other agreements shall be void. Furthermore, any modification of this Agreement shall only be effective if in writing signed by all Parties hereto.

SIGNATURES ON FOLLOWING PAGE

SIGNATURE PAGE FOR DESIGN SERVICES AGREEMENT BETWEEN THE CITY OF ONTARIO AND PAGE & TURNBULL, INC.

IN WITNESS WHEREOF, the Parties have executed this Agreement as of the date first written above.

CITY OF ONTARIO	**PAGE & TURNBULL, INC.**
Approved By:	
_____	By: _____
Scott Ochoa City Manager	Its: _____
Approved as to Form:	Printed Name: _____
_____	By: _____
Best Best & Krieger LLP City Attorney	Its: _____
	Printed Name: _____
Attested By:	
_____	[If Corporation, TWO SIGNATURES, President OR Vice President AND Secretary OR Treasurer REQUIRED]
City Clerk	

EXHIBIT "A"
SCOPE OF SERVICES

1. GENERAL REQUIREMENTS.

1.1 Basic Services. Consultant agrees to perform all the necessary professional architectural, engineering (e.g. mechanical, electrical, plumbing, structural, site engineering, and any other necessary engineering services mutually agreeable to the Parties) and construction administration services for the Project in a timely and professional manner, consistent with the standards of the profession, including those provided for herein.

1.2 Exclusions from Basic Services. The following services shall be excluded from the basic services listed above: COMMON EXCLUSIONS: civil engineering, landscape architectural, soils engineering, geotechnical services, hazardous waste or toxic substances engineering or other SERVICES.

1.3 Additional Services. Consultant shall perform the following Additional Services for the Project: "N/A"

1.4 Communication with City. Consultant shall participate in consultations and conferences with authorized representatives of City and/or other local, regional, or state agencies concerned with the Project, which may be necessary for the completion of the Project or the development of the drawings, specifications and documents in accordance with the applicable standards and requirements of law and the City. Such consultations and conferences shall continue throughout the planning and construction of the Project and the contractor's warranty period. Consultant shall take direction only from the City's Representative, or any other representative specifically designated by the City for this Project, including any construction manager hired by the City.

1.5 Coordination and Cooperation with Construction Manager. The City may hire a construction manager to administer and coordinate all or any part of the Project on its behalf. If the City does so, it shall provide a copy of its agreement with the construction manager so that the Consultant will be fully aware of the duties and responsibilities of the construction manager. The Consultant shall cooperate with the construction manager and respond to any requests or directives authorized by the City to be made or given by the construction manager. The Consultant shall request clarification from the City in writing if the Consultant should have any questions regarding the authority of the construction manager.

2. INITIAL PLANNING PHASE.

During the initial planning phase of the Project, Consultant shall do all of the following, as well as any incidental services thereto:

2.1 Project Feasibility. Provide advice and assistance to City in determining the feasibility of the Project, analysis of the type and quality of materials and construction to be selected, the site location, and other initial planning matters.

2.2 Meeting Budget and Project Goals. Consultant shall notify City in writing of potential complications, cost overruns, unusual conditions, and general needs that potentially impact the Project budget and time line, including the City's Preliminary Construction Budget. Consultant shall use its best judgment in determining the balance between the size, type and

quality of construction to achieve a satisfactory solution within the Project's budget and construction allowance. It shall be the duty of the Consultant to design the Project within budget. As discussed herein, including in Section 7.3, if the lowest responsive and responsible bid for the Project exceeds the budget by the stated amount, Consultant may be required to make the necessary changes in the drawing and specifications, at its sole cost and expense, to bring the bids within the required budget.

2.3 Permits, Approvals and Authorizations. As indicated in Section 3.5.4 of the Agreement, Consultant shall assist City in securing easements, encroachment permits, rights of way, dedications, infrastructures and road improvements, as well as coordinating with utilities and adjacent property owners.

3. SCHEMATIC PLAN PHASE.

During the schematic plan phase of the Project, Consultant shall do all of the following, as well as any incidental services thereto:

3.1 Funding Documents. Consultant shall provide a site plan and all other Project-related information necessary and required for an application by City to any federal, state, regional, or local agencies for funds to finance the construction Project.

3.2 Schematic Plans. In cooperation with City, Consultant shall prepare preliminary plans and studies, schematic drawings, site utilization plans, and phasing plans showing the scale and relationship of the components of the Project, the plot plan development at the site, and the proposed architectural concept of the buildings ("Schematic Plans"). Consultant shall incorporate the functional requirements of City into the Schematic Plans. The Schematic Plans shall meet all laws, rules and regulations of the State of California. The Schematic Plans shall show all rooms incorporated in each building of the Project in single-line drawings, and shall include all revisions required by City or by any federal, state, regional or local agency having jurisdiction over the Project. All architectural drawings for the Project shall be in a form suitable for reproduction.

3.3 Preliminary Project Budget. Consultant shall use the City's Preliminary Construction Budget and its own expertise and experience with the Project to establish a preliminary project budget or allowance in a format required by City ("Consultant's Preliminary Project Budget"). The purpose of the Consultant's Preliminary Project Budget is to show the probable Project cost in relation to City's Preliminary Construction Budget and the construction standards of any applicable funding agency. If Consultant perceives site considerations which render the Project expensive or cost prohibitive, Consultant shall disclose such conditions in writing to City immediately. As discussed herein, including in Section 7.3, if the lowest responsive and responsible bid for the Project exceeds the budget by more than the stated amount, Consultant may be required to make the necessary changes in the drawings and specifications, at its sole cost and expense, to bring the bids within the required budget Consultant shall provide a preliminary written time schedule for the performance of all construction work on the Project.

3.4 Copies of Schematic Plans and Other Documents. Consultant, at its own expense, shall provide a complete set of the Schematic Plans described herein for City's review and approval. Additionally, at City's expense, Consultant shall provide such documents as may be required by any federal, state, regional or local agencies concerned with the Project. Any additional copies required by City shall be provided at actual cost to City.

4. DESIGN DEVELOPMENT PHASE.

During the design development phase of the Project, Consultant shall do all of the following, as well as any incidental services thereto:

4.1 Design Development Documents. Once City provides Consultant with specific written approval of the Schematic Plans described herein, Consultant shall prepare design development documents consisting of: (1) site and floor plans; (2) elevations; and (3) any other drawings and documents sufficient to fix and describe the types and makeup of materials, as well as the size and character of the Project's structural, mechanical and electrical systems, and to outline the Project specifications ("Design Development Documents"). The Design Development Documents shall be prepared in sufficient form to present to the City Council for approval.

4.2 Copies of Design Development and Other Documents. Consultant, at its own expense, shall provide a complete set of the Design Development Documents described herein for City's review and approval. Additionally, at City's expense, Consultant shall provide such documents as may be required by any federal, state, regional or local agencies concerned with the Project. Any additional copies required by City shall be provided at actual cost to City.

4.3 Updated Project Budget. Consultant shall use its Preliminary Project Budget and expertise and experience with the Project to establish an updated estimate of probable construction costs, containing detail consistent with the Design Development Documents as set forth herein and containing a breakdown based on types of materials and specifications identified herein ("Consultant's Updated Project Budget").

4.4 Timetable. Consultant shall provide a written timetable for full and adequate completion of the Project to City.

4.5 Application for Approvals. Consultant shall assist City in applying for and obtaining required approvals from all federal, state, regional or local agencies concerned with the Project. Consultant shall furnish and process all architectural and engineering information required to prepare and process applications to applicable utilities in order to secure priorities and materials, to aid in the construction of the Project and to obtain final Project approval and acceptance by any of the above agencies as may be required.

4.6 Color and Other Aesthetic Issues. Consultant shall provide, for City's review and approval, a preliminary schedule of all color materials and selections of textures, finishes and other matters involving an aesthetic decision about the Project.

5. FINAL WORKING DRAWINGS AND SPECIFICATIONS.

During the final working drawings and specifications phase of the Project, Consultant shall do all of the following, as well as any incidental services thereto:

5.1 Final Working Drawings and Specifications. Once City provides Consultant with specific written approval of the Design Development Documents described herein, Consultant shall prepare such complete working drawings and specifications as are necessary for developing complete bids and for properly executing the Project work in an efficient and thorough manner ("Final Working Drawings and Specifications"). Such Final Working Drawings and Specifications shall be developed from the Schematic Plans and Design Development Documents approved by City. The Final Working Drawings and Specifications shall set forth in

detail all of the following: (1) the Project construction work to be done; (2) the materials, workmanship, finishes, and equipment required for the architectural, structural, mechanical, and electrical systems; and (3) the utility service connection equipment and site work. As indicated in Section 3.9.2 of the Agreement, City may be requested to supply Consultant with the necessary information to determine the proper location of all improvements on and off site, including record drawings ("as-built drawings") in City's possession. Consultant will make a good-faith effort to verify the accuracy of such information by means of a thorough interior and exterior visual survey of site conditions. City shall also make a good-faith effort to verify the accuracy of the as-built drawings and provide any supplemental information to Consultant which may not be shown on the as-built drawings.

5.2 Form. The Final Working Drawings and Specifications must be in such form as will enable Consultant and City to secure the required permits and approvals from all federal, state, regional or local agencies concerned with the Project. In addition, the Final Working Drawings and Specifications must be in such form as will enable City to obtain, by competitive bidding, a responsible and responsive bid within the applicable budgetary limitations and cost standards. The Final Working Drawings and Specifications shall be clear and legible so that uniform copies may be on standard architectural size paper, properly indexed and numbered, and shall be capable of being clearly copied and assembled in a professional manner by Consultant.

5.3 Approval and Revisions. City shall review, study, and check the Final Working Drawings and Specifications presented to it by Consultant, and request any necessary revisions or obtain any necessary approvals by the City Council, subject to the approval of all federal, state, regional or local agencies concerned with the Project. Consultant shall make all City-requested changes, additions, deletions, and corrections in the Final Working Drawings and Specifications at no additional cost, so long as they are not in conflict with the requirements of public agencies having jurisdiction or prior approval, or inconsistent with earlier City direction or Consultant's professional judgment. Consultant shall bring any such conflicts and/or inconsistencies to the attention of City. The Parties agree that Consultant, and not the City, possesses the requisite expertise to determine the constructability of the Final Working Drawings and Specifications. However, the City reserves the right to conduct one or more constructability review processes with the Final Working Drawings and Specifications, and to hire an independent architect or other consultant to perform such reviews. Any such independent constructability review shall be at City's expense. Consultant shall make all City-requested changes, additions, deletions, and corrections in the Final Working Drawings and Specifications which may result from any constructability review, at no additional cost to the City, so long as they are not in conflict with the requirements of public agencies having jurisdiction or prior approval, or inconsistent with earlier City direction or Consultant's professional judgment. If such changes, additions, deletions or corrections are inconsistent with prior City direction, Consultant shall make such alterations and be compensated therefore pursuant to the Additional Services provision of this Agreement.

5.4 Costs of Construction. It is understood by Consultant that should the Final Working Drawings and Specifications be ordered by City, City shall specify the sum of money set aside to cover the total cost of construction of the work, exclusive of Consultant's fees. Should it become evident that the total construction cost will exceed the specified sum, Consultant shall at once present a statement in writing to the City's Representative setting forth this fact and giving a full statement of the cost estimates on which the conclusion is based.

5.5 Copies of Final Working Drawings and Specifications and Other Documents. Consultant, at its own expense, shall provide a complete set of the Final Working Drawings and Specifications described herein for City's review and approval. Additionally, at City's expense,

Consultant shall provide such documents as may be required by any federal, state, regional or local agencies concerned with the Project. Any additional copies required by City shall be provided at actual cost to City.

6. CONSTRUCTION CONTRACT DOCUMENTS.

During the construction contract documents phase of the Project, Consultant shall do all of the following, as well as any incidental services thereto:

6.1 Bid and Contract Documents. If so required by City, Consultant shall assist City in the completion of all bid and construction documents, including but not limited to, the Notice Inviting Bids, Instructions to Bidders, Contract Bid Forms (including Alternate Bids as requested by City), `Contract, General Conditions, Supplementary General Conditions, Special Conditions, DVBE and other applicable affirmative action documents, Performance Bond, Payment Bond, Escrow Agreement for Security Deposits, and any other certifications and documents required by federal, state and local laws, rules and regulations which may be reasonably required in order to obtain bids responsive to the specifications and drawings. All such documents shall be subject to the approval of City and City's legal counsel.

6.2 Final Estimate. At the time of delivery of these bid and construction documents, which shall include the Final Working Drawings and Specifications (collectively referred to herein as the "Construction Documents"), Consultant shall provide City with its final estimate of probable construction cost ("Consultant's Final Estimate"). As discussed herein, including in Section 7.3, it shall be the Consultant's duty to design the Project within budget.

7. BID PHASE.

During the bid phase of the Project, Consultant shall do all of the following, as well as any incidental services thereto:

7.1 Reproducible Construction Documents. Once City provides Consultant with specific written approval of the Construction Documents and Consultant's Final Estimate, Consultant shall provide to City one set of reproducible Construction Documents.

7.2 Distribution of Contract Documents and Review of Bids. Consultant shall assist City in distributing the Construction Documents to bidders and conducting the opening and review of bids for the Project.

7.3 Over Budget. If the apparent lowest responsive and responsible bid on the Project exceeds the Consultant's Final Estimate by more than five percent (5%), City may request Consultant to amend, at Consultant's sole cost and expense, the Final Drawings and Specifications in order to rebid the Project and receive a lowest responsive and responsible bid equal to or less than the Consultant's Final Estimate. All revisions necessary to bring the lowest responsible and responsive bid within the Consultant's Final Estimate, including any omissions, deferrals or alternates, shall be made in consultation with, and subject to the approval of, the City.

8. CONSTRUCTION PHASE.

During the construction phase of the Project, Consultant shall do all of the following, as well as any incidental services thereto:

8.1 Observation. The Project Consultant shall observe work executed from the Final Working Drawings and Specifications in person, provided that City may, in its discretion, consent to such observation by another competent representative of Consultant.

8.2 General Administration. Consultant shall provide general administration of the Construction Documents and the work performed by the contractors.

8.3 Pre-Construction Meeting. Consultant shall conduct one or more pre-construction meetings, as the City determines is needed for the Project, with all interested Parties.

8.4 Site Visits of Contractor's Work. Consultant shall conduct site visits to observe each contractors' work for general conformance with the Construction Documents and with any approved construction schedules or milestones. Such site visits shall be conducted as often as are necessary and appropriate to the stage of construction, according to the City's sole discretion, but in no event less than weekly.

8.5 Site Visits of Inspector's Work. Consultant shall conduct site visits to communicate and observe the activities of the City inspectors. Such site visits shall be conducted as often as is mutually acceptable to Consultant and City. Consultant shall direct the City inspectors and the Project contractors to coordinate the preparation of record drawings indicating dimensions and location of all "as-built" conditions, including but not limited to, underground utility lines.

8.6 Coordination of Subconsultants. Consultant shall cause all architects, engineers and other consultants, as may be hired by Consultant or City, to observe the work completed under their disciplines as required, and approve and review all test results for general conformance with the Construction Documents.

8.7 Reports. Consultant shall make regular reports as may be required by applicable federal, state or local laws, rules or regulations, as well as the federal, state, regional or local agencies concerned with the Project.

8.8 Construction Meetings; Minutes. Consultant shall attend all construction meetings and provide written reports/minutes to the City after each construction meeting in order to keep City informed of the progress of the work. Such meetings shall occur at a frequency necessary for the progress of the Project work, according to the City's sole discretion, but no less than weekly.

8.9 Written Reports. Consultant shall make written reports to City as necessary to inform City of problems arising during construction, changes contemplated as a result of each such problems, and progress of the Project work.

8.10 Written Records. Consultant shall keep accurate written records of the progress and quality of the Project work and the time schedules, and shall advise the contractors and City of any deviations from the time schedule which could delay timely completion of the Project.

8.11 Material and Test Reports. Consultant shall check and process, in a timely manner, all required material and test reports for the Project work. In addition, Consultant shall provide notice of any deficiencies in material or work reflected in such reports, as well as its recommendation for correction of such deficiencies, to the contractors and City.

8.12 Review and Response to Submissions. Consultant shall review and respond, in a timely manner, to all schedules, submittals, shop drawings, samples, information requests, change requests, and other submissions of the contractor and subcontractors for compliance with, or alterations and additions to, the Construction Documents. Consultant's review and response shall be done in such a manner so as to ensure the timely and uninterrupted progress of the Project work.

8.13 Rejection of Work. Consultant shall promptly reject, as discussed with City, work or materials which do not conform to the Construction Documents. Consultant shall immediately notify the City and contractor(s) of such rejections. Consultant shall also have the authority to recommend to the City that additional inspection or testing of the work be performed, whether or not such work is fabricated, installed or completed.

8.14 Substitutions. Consultant shall consult with City, in a timely manner, with regard to substitution of materials, equipment and laboratory reports thereof, prior to the City's final written approval of such substitutions. Consultant's consultation shall be done in such a manner so as to ensure the timely and uninterrupted progress of the Project work.

8.15 Revised Documents and Drawings. Consultant shall prepare, at no additional expense to City, all documents and/or drawings made necessary by errors and omissions in the originally approved Construction Documents.

8.16 Change Requests and Material Changes. Consultant shall evaluate and advise City, in a timely manner and in writing, of any change requests and material change(s) which may be requested or necessary in the Project plans and specifications. Consultant shall provide the City with its opinion as to whether such change requests should be approved, denied or revised. If the City has not hired a construction manager or other person to do so, the Consultant shall prepare and execute all change orders and submit them to the City for authorization. If the City has designated a construction manager or other person to prepare all change orders, the Consultant shall review all change orders prepared by such person, execute them and deliver them to the City for authorization if they meet with the Consultant's approval, or submit them to the City with recommendations for revision or denial if necessary. Consultant shall not order contractors to make any changes affecting the contract price without approval by City of such a written change order, pursuant to the terms of the Construction Documents. Consultant may order, on its own responsibility and pending City Council approval, changes necessary to meet construction emergencies, if written approval of City's Representative is first secured.

8.17 Applications for Payment. Consultant shall examine, verify and approve contractor's applications for payment, and shall issue certificates for payment in amounts approved by the City's inspector.

8.18 Final Color and Product Selection. Consultant shall coordinate final color and product selection with City's original design concept.

8.19 Substantial Completion. Consultant shall determine the date of substantial completion, in consultation with the City.

8.20 Punch List. After determining that the Project is substantially complete, Consultant shall participate in the inspection of the Project and shall review all remaining deficiencies and minor items needed to be corrected or completed on the Project, including those identified on the punch list prepared by the contractor ("Punch List Items"). Consultant shall notify

contractor in writing that all Punch List Items must be corrected prior to final acceptance of the Project and final payment. Consultant shall also notify City of all Punch List Items.

8.21 Warranties. Consultant shall review materials assembled by the contractor and subcontractors with regard to all written warranties, guarantees, owners' manuals, instruction books, diagrams, record "as built" drawings, and any other materials required from the contractors and subcontractors pursuant to the Construction Documents. Consultant shall coordinate and provide these materials to the City.

8.22 Certificate of Completion. Consultant shall participate in any further inspections of the Project necessary to issue Consultant's Certificate of Completion and final certificate for payment.

8.23 Documents for Project Close-Out. Consultant shall cause all other architects, engineers and other consultants, as may be hired by Consultant, to file any and all required documentation with the City or other governmental authorities necessary to close out the Project. Consultant shall assist the City in obtaining such documentation from all other architects, engineers, or other consultants.

9. AS-BUILT DRAWINGS.

During the as-built drawings phase of the Project, Consultant shall do all of the following, as well as any incidental services thereto:

9.1 As-Built Drawings and Specifications. Not later than thirty (30) days after substantial completion of the Project, before receipt of final payment, Consultant shall review and forward the Final Working Drawings and Specifications, indicating on them all changes made by change orders or otherwise pursuant to the Construction Documents, as well as all information called for on the specifications, thus producing an "as-built" set of Final Working Drawings and Specifications ("As-Built Drawings and Specifications"). The As-Built Drawings and Specifications shall show, among other things, the location of all concealed pipe, buried conduit runs and other similar elements within the completed Project. Consultant shall personally review and certify that the As-Built Drawings and Specifications are a correct representation of the information supplied to Consultant by any inspectors and the contractor, and shall obtain certifications from any inspectors and the contractor that the drawings are correct.

9.2 Approval. Once City provides Consultant with specific written approval of the As-Built Drawings and Specifications, Consultant shall forward to City the complete set of original As-Built Drawings and Specifications or a complete set of reproducible duplicate As-Built Drawings and Specifications. The tracing shall be of such quality that clear and legible prints may be made without appreciable and objectionable loss of detail.

9.3 Documents for Final Payment. Prior to the receipt of Consultant's final payment, Consultant shall forward to City all of the following: (1) one clear and legible set of reproductions of the computations; (2) the original copy of the specifications; (3) the As-Built Drawings and Specifications as required herein; and (4) Consultant's Certificate of Completion.

10. WARRANTY PERIOD.

During the warranty period phase of the Project, Consultant shall do all of the following, as well as any incidental services thereto:

10.1 Advice. Consultant shall provide advice to City on apparent deficiencies in the Project during any applicable warranty periods for the Project.

EXHIBIT "B"
FEE AND PHASING/FUNDING SCHEDULES

1. FEE SCHEDULE.

Consultant will invoice City on a monthly cycle based on the following fee schedule. Consultant will include with each invoice a detailed progress report that indicates the amount of budget spent on each phase and the total amount spent against the Total Compensation. Consultant will inform City regarding any out-of-scope work being performed by Consultant for which Consultant intends to seek compensation from City.

2. PHASING/FUNDING SCHEDULE.

Progress payments towards Total Compensation shall never exceed the following percentages of Total Compensation as of the phase indicated:

Initial Planning Phase:	_____ percent (%____)
Schematic Plan Phase:	_____ percent (%____)
Design Development Phase:	_____ percent (%____)
Final Working Drawings & Specifications Phase:	_____ percent (%____)
Construction Contract Documents Phase:	_____ percent (%____)
Bid Phase:	_____ percent (%____)
Construction Phase:	_____ percent (%____)
As-Built Drawings Phase:	_____ percent (%____)
Warranty Period Phase:	_____ percent (%____)

Note: No Phasing/Funding Schedule is necessary until a project task is issued under the contract

EXHIBIT "C"
COMPENSATION RATES AND REIMBURSABLE EXPENSES

1. HOURLY COMPENSATION RATES.

Staff Hourly Rates

LABOR CATEGORY	PER HOUR
Founding Principal	$315.00
Principal	$260.00 - $300.00
Director	$190.00 - $235.00
Senior Architect / Senior Project Manager	$215.00
Architect 2 / Project Manager	$180.00
Architect 1	$165.00
Senior Designer / Senior Project Manager	$190.00
Designer 2 / Project Manager	$155.00
Designer 1	$130.00
Junior Designer	$120.00
Senior Cultural Resources Planner / Senior Project Manager	$165.00
Cultural Resources Planner 2 / Project Manager	$145.00
Cultural Resources Planner 1	$130.00
Junior Cultural Resources Planner	$115.00

LABOR CATEGORY	PER HOUR
Senior Materials Conservation Specialist / Senior Project Manager	$190.00
Materials Conservation Specialist 2 / Project Manager	$175.00
Materials Conservation Specialist 1	$135.00
Junior Materials Conservation Specialist	$120.00
Interns	$110.00
Marketing Manager	$190.00
Marketing Coordinator 2	$165.00
Marketing Coordinator 1	$145.00
Controller	$220.00
Senior Project Accountant	$185.00
Project Accountant 2	$165.00
Project Accountant 1	$135.00
Office Administrator	$120.00

2. REIMBURSABLE EXPENSES.

Reimbursables

Reimbursable expenses shall include the following:

- Cost of printing or duplication of drawings, specifications, reports, and cost estimates.
- Tolls, parking fees, and local travel charged in accordance with IRS code.
- Long distance telephone service and facsimile charges.
- Cost of models, special renderings, photography, special printing of publications, maps, and other supplies required for the project.
- Postage and delivery charges.
- Fees for local licenses and permits required to perform professional services.
- Travel, lodging, subsistence, and out-of-pocket expenses for authorized travel in connection with contract services.

3. ADDITIONAL SERVICES.

Additional Services shall be computed at the actual hourly rates listed above.

4. ADDITIONAL CONSULTANTS.

If City requires Consultant to hire consultants to perform any Additional Services, Consultant shall be compensated therefore at the Consultant's actual hourly rates plus 15%. Owner shall have the authority to review and approve the rates of any such consultants.

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

PAUL S. LEON
MAYOR

DEBRA PORADA
MAYOR PRO TEM

ALAN D. WAPNER
JIM W. BOWMAN
RUBEN VALENCIA
COUNCIL MEMBERS

SHEILA MAUTZ
CITY CLERK

JAMES R. MILHISER
TREASURER

SCOTT OCHOA
CITY MANAGER

CITY OF ONTARIO
DESIGN SERVICES AGREEMENT

1. PARTIES AND DATE.

This Agreement is made and entered into as of _____, by and between the City of Ontario, a municipal corporation organized and operating under the laws of the State of California with its principal place of business at 303 East "B" Street, Ontario, California 91764-4196, County of San Bernardino, State of California ("City"), and **Smithgroup, Inc.**, a Corporation with its principal place of business at 550 South Hope Street, Suite 1950, Los Angeles, CA 90071 (hereinafter referred to as "Consultant"). City and Consultant are sometimes individually referred to herein as "Party" and collectively as "Parties."

2. RECITALS.

2.1 City. City is a municipal corporation organized under the laws of the State of California, with power to contract for services necessary to achieve its purpose.

2.2 Consultant**.** Consultant desires to perform and assume responsibility for the provision of certain professional architectural design services required by the City on the terms and conditions set forth in this Agreement. Consultant warrants that it is fully licensed, qualified, and willing to perform the services required by this Agreement; provided, however, that if Consultant is a corporation or other organization, the Project Consultant designated pursuant to Section 3.2, and not the Consultant itself, shall be fully licensed to practice as an architect in the State of California.

2.3 Project**.** City desires to engage Consultant to render such services for the **Museum Improvements On-Call Architectural Services** ("Project") as set forth in this Agreement.

3. TERMS

3.1 Employment of Consultant.

3.1.1 Scope of Services. Consultant promises and agrees to furnish to City all labor, materials, tools, equipment, services, and incidental and customary work necessary to fully and adequately supply the professional architectural and related services necessary for the full and adequate completion of the Project consistent with the provisions of this Agreement (hereinafter referred to as "Services"). The Services are more particularly described throughout this Agreement, including Exhibit "A" attached hereto and incorporated herein by reference. All Services shall be subject to, and performed in accordance with, this Agreement, any exhibits

attached hereto and incorporated herein by reference, and all applicable local, state and federal laws, rules and regulations. All Services performed by Consultant shall be subject to the sole and discretionary approval of the City, which approval shall not be unreasonably withheld.

3.1.2 Term. The term of this Agreement shall be from **November 4, 2024,** to **November 4, 2027**, unless earlier terminated as provided herein The City shall have the unilateral option, at its sole discretion, to renew this Agreement automatically for no more than two (2) additional one-year terms. Consultant shall complete the Services within the term of this Agreement, and shall meet any other established schedules and deadlines.

3.2 Project Consultant; Key Personnel.

3.2.1 **Project Architect**. Consultant shall name a specific individual to act as Project Consultant, subject to the approval of City. Consultant hereby designates Richey Madison (License No. T24359) to act as the Project Architect for the Project. The Project Architect shall: (1) maintain oversight of the Services; (2) have full authority to represent and act on behalf of the Consultant for all purposes under this Agreement; (3) supervise and direct the Services using his or her best skill and attention; (4) be responsible for the means, methods, techniques, sequences and procedures used for the Services; (5) adequately coordinate all portions of the Services; and (6) act as principal contact with City and all contractors, consultants, engineers and inspectors on the Project. Any change in the Project Architect shall be subject to the City's prior written approval, which approval shall not be unreasonably withheld. The new Project Architect shall be of at least equal competence as the prior Project Architect. In the event that City and Consultant cannot agree as to the substitution of a new Project Architect, City shall be entitled to terminate this Agreement for cause.

3.2.2 Key Personnel. In addition to the Project Architect, Consultant has represented to the City that certain additional key personnel, engineers and consultants will perform the Services under this Agreement. Should one or more of such personnel, engineers or consultants become unavailable, Consultant may substitute others of at least equal competence upon written approval of the City. In the event that City and Consultant cannot agree as to the substitution of key personnel, engineers or consultants, City shall be entitled to terminate this Agreement for cause. The key additional personnel, engineers and consultants for performance of this Agreement are as follows: Jame Anderson, Museum Leadership; Andrea Cabalo, Project Manager; Crystal Chum, Project Architect; Don Posson, Engineer.

3.3 Hiring of Consultants and Personnel.

3.3.1 Right to Hire or Employ. Consultant shall have the option, unless City objects in writing after notice, to employ at its expense architects, engineers, experts or other consultants qualified and licensed to render services in connection with the planning and/or administration of the Project, and to delegate to them such duties as Consultant may delegate without relieving Consultant from administrative or other responsibility under this Agreement. Consultant shall be responsible for the coordination and cooperation of Consultant's architects, engineers, experts or other consultants. All consultants, including changes in consultants, shall be subject to approval by City in its sole and reasonable discretion. Consultant shall notify City of the identity of all consultants at least fourteen (14) days prior to their commencement of work to allow City to review their qualifications and approve to their participation on the Project in its sole and reasonable discretion.

3.3.2 Qualification and License. All architects, engineers, experts and other consultants retained by Consultant in performance of this Agreement shall be qualified to perform the Services assigned to them, and shall be licensed to practice in their respective professions, where required by law.

3.3.3 Standards and Insurance. All architects, engineers, experts and other consultants hired by Consultant shall be required to meet all of the same standards and insurance requirements set forth in this Agreement, unless other standards or requirements are approved by the City in writing. Unless changes are approved in writing by the City, Consultant's agreements with its consultants shall contain a provision making them subject to all provisions stipulated in this Agreement.

3.3.4 Assignments or Staff Changes. Consultant shall promptly obtain written City approval of any assignment, reassignment or replacement of such architects, engineers, experts and consultants, or of other staff changes of key personnel working on the Project. As provided in the Agreement, any changes in Consultant's consultants and key personnel shall be subject to approval by City.

3.3.5 Draftsman and Clerical Support. Draftsmen and clerical personnel shall be retained by Consultant at Consultant's sole expense.

3.4 Standard of Care.

3.4.1 Standard of Care. Consultant shall perform all Services under this Agreement in a skillful and competent manner, consistent with the standards generally recognized as being employed by professionals qualified to perform the Services in the same discipline in the State of California, and shall be responsible to City for damages sustained by the City and delays to the Project as specified in the indemnification provision of this Agreement. Without limiting the foregoing, Consultant shall be fully responsible to the City for any increased costs incurred by the City as a result of any such delays in the design or construction of the Project. Consultant represents and maintains that it is skilled in the professional calling necessary to perform the Services. Consultant warrants and represents that all of its employees, architects, engineers, experts and other consultants shall have sufficient skill and experience to perform the Services assigned to them. Finally, Consultant represents that it, its employees, architects, engineers, experts and other consultants have all licenses, permits, qualifications and approvals of whatever nature that are legally required to perform the Services assigned to or rendered by them and that such licenses and approvals shall be maintained throughout the term of this Agreement. As provided for in the indemnification provisions of this Agreement, Consultant shall perform, at its own cost and expense and without reimbursement from the City, any services necessary to correct errors or omissions which are caused by the Consultant's failure to comply with the standard of care provided for herein.

3.4.2 Performance of Employees. Any employee or consultant who is determined by the City to be uncooperative, incompetent, a threat to the adequate or timely completion of the Project, a threat to the safety of persons or property, or any employee or consultant who fails or refuses to perform the Services in a manner acceptable to the City, shall be promptly removed from the Project by the Consultant and shall not be re-employed to perform any of the Services or to work on the Project.

3.5 Laws and Regulations.

3.5.1 Knowledge and Compliance. Consultant shall keep itself fully informed of and in compliance with all applicable local, state and federal laws, rules and regulations in any manner affecting the performance of the Services or the Project, and shall give all notices required of the Consultant by law. Consultant shall be liable, pursuant to the standard of care and indemnification provisions of this Agreement, for all violations of such laws and regulations in connection with its Services. Consultant shall defend, indemnify and hold City, its officials, officers, employees and agents free and harmless, pursuant to the indemnification provisions of this Agreement, from any claim or liability arising out of any failure or alleged failure to comply with such laws, rules or regulations.

3.5.2 Drawings and Specifications. Consultant shall cause all drawings and specifications to conform to any applicable requirements of federal, state and local laws, rules and regulations, including the Uniform Building Code, in effect as of the time the drawings and specifications are prepared or revised during the latest phase of the Services described in Exhibit "A" attached hereto. Any significant revisions made necessary by changes in such laws, rules and regulations after this time may be compensated as Additional Services which were not known or reasonably should not have been known by Consultant. Consultant shall cause the necessary copies of such drawings and specifications to be filed with any governmental bodies with approval jurisdiction over the Project, in accordance with the Services described in Exhibit "A" attached hereto. For the preparation of all such drawings and specifications, the Consultant shall use Computer Aided Design Drafting ("CADD") (e.g., AutoCAD) or other technology acceptable to the Consultant and City.

3.5.3 Americans with Disabilities Act. Consultant will use its best professional efforts to interpret all applicable federal, state and local laws, rules and regulations with respect to access, including those of the Americans with Disabilities Act ("ADA"). Consultant shall inform City of the existence of inconsistencies of which it is aware or reasonably should be aware between federal and state accessibility laws, rules and regulations, as well as any other issues which are subject to conflicting interpretations of the law, and shall provide the City with its interpretation of such inconsistencies and conflicting interpretations. Unless Consultant brings such inconsistencies and conflicting interpretations to the attention of the City and requests City's direction on how to proceed, the Consultant's interpretation of such inconsistencies and conflicting interpretations shall be the sole responsibility and liability of Consultant, and the Consultant shall correct all plans, specifications and other documents prepared for the Project at no additional cost if its interpretations are shown to be incorrect. In the event that the Consultant request's City's direction on how to proceed with respect to any inconsistent and/or conflicting interpretation, the Consultant shall be responsible to the City only pursuant to the indemnification provisions of this Agreement.

3.5.4 Permits, Approvals and Authorizations. Consultant shall provide City with a list of all permits, approvals or other authorizations required for the Project from all federal, state or local governmental bodies with approval jurisdiction over the Project. Consultant shall then assist the City in obtaining all such permits, approvals and other authorizations. The costs of such permits, approvals and other authorizations shall be paid by the City.

3.5.5 Water Quality Management and Compliance. Consultant shall keep itself and all subcontractors, staff, and employees fully informed of and in compliance with all local, state and federal laws, rules and regulations that may impact, or be implicated by the performance of the Services including, without limitation, all applicable provisions of the City's ordinances

regulating water quality and storm water; the Federal Water Pollution Control Act (33 U.S.C. § 1251 *et seq*.); the California Porter-Cologne Water Quality Control Act (Cal Water Code §§ 13000-14950); and any and all regulations, policies, or permits issued pursuant to any such authority. Consultant shall additionally comply with the lawful requirements of the City, and any other municipality, drainage district, or other local agency with jurisdiction over the location where the Services are to be conducted, regulating water quality and storm water discharges. Failure to comply with laws, regulations, and ordinances listed in this Section is a violation of federal and state law.

3.6 Independent Contractor.

3.6.1 Control and Payment of Subordinates. City retains Consultant on an independent contractor basis and Consultant is not an employee of City. Consultant is not an employee for state tax, federal tax or any other purpose, and is not entitled to the rights or benefits afforded to City's employees. Any additional personnel performing the Services under this Agreement on behalf of Consultant shall also not be employees of City, and shall at all times be under Consultant's exclusive direction and control. Consultant shall pay all wages, salaries, and other amounts due such personnel in connection with their performance of Services under this Agreement and as required by law. Consultant shall be responsible for all reports and obligations respecting such additional personnel, including, but not limited to: social security taxes, income tax withholding, unemployment insurance, disability insurance, and workers' compensation insurance.

3.7 Schedule of Services.

3.7.1 Consultant Services. Consultant shall fully and adequately complete the Services described in this Agreement and in Exhibit "A" attached hereto and incorporated herein by reference.

3.7.2 Timely Performance Standard. Consultant shall perform all Services hereunder as expeditiously as is consistent with professional skill and care, as well as the orderly progress of the Project work so as not to be the cause, in whole or in part, of delays in the completion of the Project or in the achievement of any Project milestones, as provided herein. Specifically, Consultant shall perform its Services so as to allow for the full and adequate completion of the Project within the time required by the City and within any completion schedules adopted for the Project. Consultant agrees to coordinate with City's staff, contractors and consultants in the performance of the Services, and shall be available to City's staff, contractors and consultants at all reasonable times.

3.7.3 Performance Schedule. Consultant shall prepare an estimated time schedule for the performance of Consultant's Services, to be adjusted as the Project proceeds. Such schedule shall be subject to the City's review and approval, which approval shall not be unreasonably withheld, and shall include allowances for periods of time required for City's review and approval of submissions, and for approvals of authorities having jurisdiction over Project approval and funding. If City and Consultant cannot mutually agree on a performance schedule, City shall have the authority to immediately terminate this Agreement. The schedule shall not be exceeded by Consultant without the prior written approval of City. If the Consultant's Services are not completed within the time provided by the agreed upon performance schedule, or any milestones established therein, it is understood, acknowledged and agreed that the City will suffer damage for which the Consultant will be responsible.

3.7.4 Excusable Delays. Any delays in Consultant's work caused by the following may be added to the time for completion of any obligations of Consultant: (1) the actions of City or its employees; (2) the actions of those in direct contractual relationship with City; (3) the actions of any governmental agency having jurisdiction over the Project; (4) the actions of any parties not within the reasonable control of the Consultant; and (5) any Force Majeure Event (as defined herein) or other unforeseen occurrence not due to any fault or negligence on the part of Consultant. Neither the City nor the Consultant shall be liable for damages, liquidated or otherwise, to the other on account of such delays.

3.7.5 Force Majeure Events. Neither City nor Consultant shall be considered in default of this Agreement for delays in performance caused by circumstances beyond the reasonable control of the non-performing Party. For purposes of this Agreement, such circumstances include a Force Majeure Event. A Force Majeure Event shall mean an event that materially affects a Party's performance and is one or more of the following: (1) Acts of God or other natural disasters; (2) terrorism or other acts of a public enemy; (3) orders of governmental authorities (including, without limitation, unreasonable and unforeseeable delay in the issuance of permits or approvals by governmental authorities that are required for the services); (4) strikes and other organized labor action occurring at the site and the effects thereof on the services, only to the extent such strikes and other organized labor action are beyond the control of Consultant and its subcontractors, and to the extent the effects thereof cannot be avoided by use of replacement workers; and (5) pandemics, epidemics or quarantine restrictions. For purposes of this section, "orders of governmental authorities," includes ordinances, emergency proclamations and orders, rules to protect the public health, welfare and safety, and other actions of a public agency applicable to the Services and Agreement. Should a Force Majeure Event occur, the non-performing Party shall, within fifteen (15) calendar days of the beginning of an Force Majeure Event, give written notice to the other Party describing the circumstances preventing continued performance and the efforts being made to resume performance of this Agreement. Force Majeure Events shall not entitle Consultant to any additional compensation. Notwithstanding the foregoing in this section, the City may still terminate this Agreement in accordance with the termination provisions of this Agreement.

3.7.6 Request for Excusable Delay Credit. The Consultant shall, within fifteen (15) calendar days of the beginning of any excusable delay, notify the City in writing of the causes of delay (unless City grants in writing a further period of time to file such notice prior to the date of final payment under the Agreement). City will then ascertain the facts and the extent of the delay, and grant an extension of time for completing the Services when, in its sole judgment, the findings of fact justify such an extension. The City's findings of fact thereon shall be final and conclusive on the Parties. Extensions of time shall apply only to that portion of the Services affected by the delay and shall not apply to other portions of the Services not so affected. The sole remedy of Consultant for extensions of time shall be an extension of the performance time at no cost to the City. If Additional Services are required as a result of an excusable delay, the Parties shall mutually agree thereto pursuant to the Additional Services provision of this Agreement. Should Consultant make an application for an extension of time, Consultant shall submit evidence that the insurance policies required by this Agreement remain in effect during the requested additional period of time.

3.8 Additional Services.

3.8.1 Request for Services. At City's request, Consultant may be asked to perform services not otherwise included in this Agreement, not included within the basic services

listed in Exhibit "A" attached hereto, and/or not customarily furnished in accordance with generally accepted architectural practice.

3.8.2 Definition. As used herein, "Additional Services" mean: (1) any work which is determined by City to be necessary for the proper completion of the Project, but which the Parties did not reasonably anticipate would be necessary for the Consultant to perform at the execution of this Agreement; or (2) any work listed as Additional Services in Exhibit "A" attached hereto. Consultant shall not perform, nor be compensated for, Additional Services without prior written authorization from City and without an agreement between the City and Consultant as to the compensation to be paid for such services. City shall pay Consultant for any approved Additional Services, pursuant to the compensation provisions herein, so long as such services are not made necessary through the fault of Consultant pursuant to the indemnification provision of this Agreement.

3.8.3 Examples of Additional Services. Such Additional Services shall not include any redesign or revisions to drawings, specifications or other documents when such revisions are necessary in order to bring such documents into compliance with applicable laws, rules, regulations or codes of which Consultant was aware or should have been aware pursuant to the laws and regulations provision of this Agreement above. Such Additional Services may include, but shall not be limited to:

(a) Separately Bid Portions of Project. Plan preparation and/or administration of work on portions of the Project separately bid.

(b) Furniture and Interior Design. Assistance to City, if requested, for the selection of moveable furniture, equipment or articles which are not included in the Construction Documents.

(c) Fault of Contractor. Services caused by delinquency, default or insolvency of contractor, or by major defects in the work of the contractor, provided that any such services made necessary by the failure of Consultant to detect and report such matters when it reasonably should have done so shall not be compensated.

(d) Inconsistent Approvals or Instructions. Revisions in drawings, specifications or other documents when such revisions are inconsistent with written approvals or instructions previously given and are due to causes beyond the control of Consultant.

(e) Legal Proceedings. Serving as an expert witness on City's behalf or attending legal proceedings to which the Consultant is not a party.

(f) Damage Repair. Supervision of repair of damages to any structure.

(g) Extra Environmental Services. Additional work required for environmental conditions (e.g. asbestos or site conditions) not already contemplated within the Consultant's services for the Project.

3.9 City Responsibilities. City's responsibilities shall include the following:

3.9.1 Data and Information. City shall make available to Consultant all necessary data and information concerning the purpose and requirements of the Project, including scheduling and budget limitations, objectives, constraints and criteria. As part of the budget

limitation information, the City shall provide the Consultant with a preliminary construction budget ("City's Preliminary Construction Budget").

3.9.2 Project Survey. If required pursuant to the scope of the Project and if requested by Consultant, City shall furnish Consultant with, or direct Consultant to procure at City's expense, a survey of the Project site prepared by a registered surveyor or civil engineer, any other record documents which shall indicate existing structures, land features, improvements, sewer, water, gas, electrical and utility lines, topographical information and boundary dimensions of the site, and any other such pertinent information.

3.9.3 Bid Phase. Distribute Construction Documents to bidders and conduct the opening and review of bids for the Project.

3.9.4 Testing. Retain consultant(s) to conduct chemical, mechanical, soils, geological or other tests required for proper design of the Project, and furnish such surveys, borings, test pits, and other tests as may be necessary to reveal conditions of the site which must be known to determine soil condition or to ensure the proper development of the required drawings and specifications.

3.9.5 Required Inspections and Tests. Retain consultant(s) to conduct materials testing and inspection or environmental/hazardous materials testing and inspection pursuant to any applicable laws, rules or regulations.

3.9.6 Fees of Reviewing or Licensing Agencies. Directly pay or reimburse the payment of all fees required by any reviewing or licensing agency, or other agency having approval jurisdiction over the Project.

3.9.7 City's Representative. The City hereby designates the City Manager, or his or her designee, to act as its representative for the performance of this Agreement ("City's Representative"). City's Representative shall have the power to act on behalf of the City for all purposes under this Contract. The City Manager hereby designates Marissa Kucheck, Museum Director, or his or her designee, as the City's contact for the implementation of the Services hereunder. Contractor shall not accept direction or orders from any person other than the City's Representative or his or her designee.

3.9.8 Review and Approved Documents. Review all documents submitted by Consultant, including change orders and other matters requiring approval by the City Council or other officials. City shall advise Consultant of decisions pertaining to such documents within a reasonable time after submission, so as not to cause unreasonable delay as provided in the excusable delay provisions of this Agreement above.

3.10 Compensation.

3.10.1 Consultant's Compensation for Basic Services. City shall pay to Consultant, for the performance of all Services rendered under this Agreement, the total not to exceed amount of **One Hundred Fifty Thousand Dollars ($150,000**) ("Total Compensation"). This Total Compensation amount shall be based upon, and may be adjusted according to, the fee schedule and related terms and conditions attached hereto as Exhibit "B" and incorporated herein by reference. The Total Compensation, as may be adjusted upon mutual agreement, shall constitute complete and adequate payment for Services under this Agreement.

3.10.2 Payment for Additional Services. At any time during the term of this Agreement, City may request that Consultant perform Additional Services. As used herein, Additional Services means any work which is determined by City to be necessary for the proper completion of the Project, but which the Parties did not reasonably anticipate would be necessary at the execution of this Agreement. Any additional work in excess of this amount must be approved by the City. If authorized, such Additional Services will be compensated at the rates and in the manner set forth in Exhibit "C" attached hereto and incorporated herein by reference, unless a flat rate or some other form of compensation is mutually agreed upon by the Parties. If City requires Consultant to hire consultants to perform any Additional Services, Consultant shall be compensated therefore at the rates and in the manner set forth in Exhibit "C" attached hereto and incorporated herein by reference, unless a flat rate or some other form of compensation is mutually agreed upon by the Parties. City shall have the authority to review and approve the rates of any such consultants. In addition, Consultant shall be reimbursed for any expenses incurred by such consultants pursuant to the terms and conditions of Section 3.10.3.

3.10.3 Reimbursable Expenses. Reimbursable expenses are in addition to compensation for the Services and Additional Services. Consultant shall not be reimbursed for any expenses unless authorized in writing by City, which approval may be evidenced by inclusion in Exhibit "C" attached hereto. Such reimbursable expenses shall include only those expenses which are reasonably and necessarily incurred by Consultant in the interest of the Project. Consultant shall be required to acquire prior written consent in order to obtain reimbursement for the following: (1) extraordinary transportation expenses incurred in connection with the Project; (2) out-of-town travel expenses incurred in connection with the Project; (3) fees paid for securing approval of authorities having jurisdiction over the Project; (4) bid document duplication costs in excess of $1,000; and (5) other costs, fees and expenses in excess of $1,000.

3.10.4 Payment to Consultant. Consultant's compensation and reimbursable expenses shall be paid by City to Consultant no more often than monthly. Such periodic payments shall be made based upon the percentage of work completed, and in accordance with the phasing and funding schedule provided in Exhibit "B" and the compensation rates indicated in Exhibit "C" attached hereto and incorporated herein by reference. In order to receive payment, Consultant shall present to City an itemized statement which indicates Services performed, percentage of Services completed, method for computing the amount payable, and the amount to be paid. The statement shall describe the amount of Services provided since the initial commencement date, or since the start of the subsequent billing periods, as appropriate, through the date of the statement, as well as those expenses for which reimbursement is requested for that statement period. The amount paid to Consultant shall never exceed the percentage amounts authorized by the phasing and funding schedule located in Exhibit "B" attached hereto. City shall, within thirty (30) days of receiving such statement, review the statement and pay all approved charges thereon pursuant to the provisions of Civil Code Section 3320. Disputed amounts shall be resolved by the Parties in a mutually agreeable manner.

Payments made for Additional Services shall be made in installments, not more often than monthly, proportionate to the degree of completion of such services or in such other manner as the Parties shall specify when such services are agreed upon, and in accordance with any authorized fee or rate schedule. In order to receive payment, Consultant shall present to City an itemized statement which indicates the Additional Services performed, percentage of Additional Services completed, method for computing the amount payable, and the amount to be paid. The statement shall describe the amount of Additional Services provided since the initial commencement date, or since the start of the subsequent billing periods, as appropriate, through the date of the statement. City shall, within thirty (30) days of receiving such statement, review

the statement and pay all approved charges thereon pursuant to the provisions of Civil Code Section 3320. Disputed amounts shall be resolved by the Parties in a mutually agreeable manner.

Upon cancellation or termination of this Agreement, Consultant shall be compensated as set forth in the termination provision herein.

3.10.5 Withholding Payment to Consultant. The City may withhold payment, in whole or in part, to the extent reasonably necessary to protect the City from claims, demands, causes of action, costs, expenses, liabilities, losses, damages, or injuries of any kind to the extent arising out of or caused by the negligence, recklessness, or willful misconduct protected under the indemnification provisions of this Agreement. Failure by City to deduct any sums from a progress payment shall not constitute a waiver of the City's right to such sums. The City may keep any moneys which would otherwise be payable at any time hereunder and apply the same, or so much as may be necessary therefor, to the payment of any expenses, losses, or damages as determined by the City, incurred by the City for which Consultant is liable under the Agreement or state law. Payments to the Consultant for compensation and reimbursable expenses due shall not be contingent on the construction, completion or ultimate success of the Project. Payment to the Consultant shall not be withheld, postponed, or made contingent upon receipt by the City of offsetting reimbursement or credit from Parties not within the Consultant's reasonable control.

3.10.6 Prevailing Wages. Consultant is aware of the requirements of California Labor Code Sections 1720, et seq., and 1770, et seq., as well as California Code of Regulations, Title 8, Section 16000, et seq., ("Prevailing Wage Laws"), which require the payment of prevailing wage rates and the performance of other requirements on certain "public works" and "maintenance" projects. If the Services are being performed as part of an applicable "public works" or "maintenance" project, as defined by the Prevailing Wage Laws, and If the total compensation is $1,000 or more, Consultant agrees to fully comply with and to require its consultants to fully comply with such Prevailing Wage Laws. City shall provide Consultant with a copy of the prevailing rates of per diem wages in effect at the commencement of this Agreement. Consultant shall make copies of the prevailing rates of per diem wages for each craft, classification or type of worker needed to execute the Services available to interested parties upon request, and shall post copies at the Consultant's principal place of business and at the Project site. It shall be mandatory upon the Consultant and all subconsultants to comply with all California Labor Code provisions, which include but are not limited to prevailing wages (Labor Code Sections 1771, 1774 and 1775), employment of apprentices (Labor Code Section 1777.5), certified payroll records (Labor Code Sections 1771.4 and 1776), hours of labor (Labor Code Sections 1813 and 1815) and debarment of contractors and subcontractors (Labor Code Section 1777.1). The requirement to submit certified payroll records directly to the Labor Commissioner under Labor Code section 1771.4 shall not apply to work performed on a public works project that is exempt pursuant to the small project exemption specified in Labor Code Section 1771.4. Consultant shall defend, indemnify and hold the City, its elected officials, officers, employees and agents free and harmless from any claims, liabilities, costs, penalties or interest arising out of any failure or alleged failure of the Consultant or its consultants to comply with the Prevailing Wage Laws.

(a) Registration/DIR Compliance. If the Services are being performed as part of an applicable "public works project" of over $25,000 when the project is for construction, alteration, demolition, installation, or repair work, or a public works project of over $15,000 when the project is for maintenance work, in addition to the foregoing, then pursuant to Labor Code sections 1725.5 and 1771.1, the Consultant and all subconsultants performing such Services must be registered with the Department of Industrial Relations ("DIR"). Consultant shall maintain registration for the duration of the Project and require the same of any subconsultants. This

project may also be subject to compliance monitoring and enforcement by the DIR. It shall be Consultant's sole responsibility to comply with all applicable registration and labor compliance requirements, including the submission of payroll records directly to the DIR. Any stop orders issued by the Department of Industrial Relations against Consultant or any subconsultant that affect Consultant's performance of services, including any delay, shall be Consultant's sole responsibility. Any delay arising out of or resulting from such stop orders shall be considered Consultant caused delay and shall not be compensable by the City. Consultant shall defend, indemnify and hold the City, its officials, officers, employees and agents free and harmless from any claim or liability arising out of stop orders issued by the Department of Industrial Relations against Consultant or any subconsultant.

3.10.7 Automated Clearing House ("ACH") payments. It is the City's policy to pay its consultant invoices via electronic fund transfers through the ACH network. All payments due and owing pursuant to a properly issued and correct invoice or under this Agreement shall be made through electronic ACH transfers, unless otherwise agreed upon by both Parties in writing. Consultant shall provide the City with ACH payment details whereby the City shall initiate the ACH transfers to Consultant in the amount required pursuant to a properly issued and correct invoice or under this Agreement. Each Party shall undertake any and all required actions and execute any required documents, instruments, or agreements required to effectuate the requirements of this Section. In the event the City erroneously deposits funds into an account, or otherwise deposits funds to which Consultant is not entitled: (1) Consultant shall immediately notify the City and the financial institution; (2) Consultant shall not withdraw any of the funds which were erroneously deposited or to which Consultant is not entitled; and (3) Consultant authorizes both the City and financial institution to take all actions necessary to correct the error and return to the City all funds erroneously deposited or to which Consultant is not entitled.

3.11 Notice to Proceed.

Consultant shall not proceed with performance of any Services under this Agreement unless and until the City provides a written notice to proceed.

3.12 Termination, Suspension and Abandonment.

3.12.1 Grounds for Termination; Consultant's Termination for Cause. City hereby reserves the right to suspend or abandon, at any time and for any reason, all or any portion of the Project and the construction work thereon, or to terminate this Agreement at any time with or without cause. Consultant shall be provided with at least seven (7) days advanced written notice of such suspension, abandonment or termination. In the event of such suspension, abandonment or termination, Consultant shall be paid for Services and reimbursable expenses rendered up to the date of such suspension, abandonment or termination, pursuant to the schedule of payments provided for in this Agreement, less any claims against or damages suffered by City as a result of the default, if any, by Consultant. Consultant hereby expressly waives any and all claims for damages or compensation arising under this Agreement, except as set forth herein, in the event of such suspension, abandonment or termination. Consultant may terminate this Agreement for substantial breach of performance by the City such as failure to make payment to Consultant as provided in this Agreement.

3.12.2 City's Suspension of Work. If Consultant's Services are suspended by City, City may require Consultant to resume such Services within ninety (90) days after written notice from City. When the Project is resumed, the Total Compensation and schedule of Services shall be equitably adjusted upon mutual agreement of the City and Consultant.

3.12.3 Documents and Other Data. Upon suspension, abandonment or termination, Consultant shall provide to City all preliminary studies, sketches, working drawings, specifications, computations, and all other Project Documents, as defined below, to which City would have been entitled at the completion of Consultant's Services under this Agreement. Upon payment of the amount required to be paid to Consultant pursuant to the termination provisions of this Agreement, City shall have the rights, as provided in this Agreement hereinafter, to use such Project Documents prepared by or on behalf of Consultant under this Agreement. Consultant shall make such documents available to City upon request and without additional compensation other than as may be approved as a reimbursable expense.

3.12.4 Employment of other Consultants. In the event this Agreement is terminated in whole or in part as provided herein, City may procure, upon such terms and in such manner as it may determine appropriate, services similar to those terminated.

3.13 Ownership and Use of Documents; Confidentiality.

3.13.1 Ownership. All plans, specifications, original or reproducible transparencies of working drawings and master plans, preliminary sketches, architectural presentation drawings, structural computations, estimates and any other documents prepared pursuant to this Agreement, including, but not limited to, any other works of authorship fixed in any tangible medium of expression such as writings, physical drawings and data magnetically or otherwise recorded on computer diskettes (hereinafter referred to as the "Project Documents") shall be and remain the property of City. Although the official copyright in all Project Documents shall remain with the Consultant or other applicable subcontractors or consultants, the Project Documents shall be the property of City whether or not the work for which they were made is executed or completed. Within thirty (30) calendar days following completion of the Project, Consultant shall provide to City copies of all Project Documents required by City. In addition, Consultant shall retain copies of all Project Documents on file for a minimum of fifteen (15) years following completion of the Project, and shall make copies available to City upon the payment of reasonable duplication costs. Before destroying the Project Documents following this retention period, Consultant shall make a reasonable effort to notify City and provide City with the opportunity to obtain the documents.

3.13.2 Right to Use. Consultant grants to City the right to use and reuse all or part of the Project Documents, at City's sole discretion and with no additional compensation to Consultant, for the following purposes:

(a) The construction of all or part of this Project.

(b) The repair, renovation, modernization, replacement, reconstruction or expansion of this Project at any time;

(c) The construction of another project by or on behalf of the City for its ownership and use;

City is not bound by this Agreement to employ the services of Consultant in the event such documents are used or reused for these purposes. City shall be able to use or reuse the Project Documents for these purposes without risk of liability to the Consultant or third parties with respect to the condition of the Project Documents, and the use or reuse of the Project Documents for these purposes shall not be construed or interpreted to waive or limit City's right to recover for latent defects or for errors or omissions of the Consultant.

Any use or reuse by City of the Project Documents on any project other than this Project without employing the services of Consultant shall be at City's own risk with respect to third parties. If City uses or reuses the Project Documents on any project other than this Project, it shall remove the Consultant's seal from the Project Documents and hold harmless Consultant and its officers, directors, agents and employees from claims arising out of the negligent use or re-use of the Project Documents on such other project.

3.13.3 License. This Agreement creates a non-exclusive and perpetual license for City to copy, use, modify or reuse any and all Project Documents and any intellectual property rights therein. Consultant shall require any and all subcontractors and consultants to agree in writing that City is granted a non-exclusive and perpetual license for the work of such subcontractors or consultants performed pursuant to this Agreement.

3.13.4 Right to License. Consultant represents and warrants that Consultant has the legal right to license any and all copyrights, designs and other intellectual property embodied in the Project Documents that Consultant prepares or causes to be prepared pursuant to this Agreement. Consultant shall indemnify and hold City harmless pursuant to the indemnification provisions of this Agreement for any breach of this Section. Consultant makes no such representation and warranty in regard to previously prepared designs, plans, specifications, studies, drawings, estimates or other documents that were prepared by design professionals other than Consultant and provided to Consultant by City.

3.13.5 Confidentiality. All Project Documents, either created by or provided to Consultant in connection with the performance of this Agreement, shall be held confidential by Consultant to the extent they are not subject to disclosure pursuant to the Public Records Act. All Project Documents shall not, without the written consent of City, be used or reproduced by Consultant for any purposes other than the performance of the Services. Consultant shall not disclose, cause or facilitate the disclosure of the Project Documents to any person or entity not connected with the performance of the Services or the Project. Nothing furnished to Consultant which is otherwise known to Consultant or is generally known, or has become known, to the related industry shall be deemed confidential. Consultant shall not use City's name or insignia, photographs of the Project, or any publicity pertaining to the Services or the Project in any magazine, trade paper, newspaper, television or radio production or other similar medium without the written consent of City.

3.14 Indemnification.

3.14.1 To the fullest extent permitted by law, Consultant shall defend (with counsel of City's choosing), indemnify and hold the City, its officials, officers, employees, volunteers, and agents free and harmless from any and all claims, demands, causes of action, costs, expenses, liability, loss, damage or injury of any kind, in law or equity, to property or persons, including wrongful death, in any manner arising out of, pertaining to, or incident to any acts, errors or omissions, or willful misconduct of Consultant, its officials, officers, employees, subcontractors, consultants or agents in connection with the performance of the Consultant's Services, the Project or this Agreement, including without limitation the payment of all damages, expert witness fees and attorney's fees and other related costs and expenses except such loss or damage caused by the sole negligence or willful misconduct of the City. Consultant's obligation to indemnify shall survive expiration or termination of this Agreement and shall not be restricted to insurance proceeds, if any, received by Consultant, the City, its officials, officers, employees, agents, or volunteers.

3.14.2 If Consultant's obligation to defend, indemnify, and/or hold harmless arises out of Consultant's performance as a "design professional" (as that term is defined under Civil Code section 2782.8), then, and only to the extent required by Civil Code section 2782.8, which is fully incorporated herein, Consultant's indemnification obligation shall be limited to claims that arise out of, pertain to, or relate to the negligence, recklessness, or willful misconduct of the Consultant, and, upon Consultant obtaining a final adjudication by a court of competent jurisdiction, Consultant's liability for such claim, including the cost to defend, shall not exceed the Consultant's proportionate percentage of fault.

3.15 Insurance. Consultant shall not commence work under this Agreement until it has provided evidence satisfactory to the City that it has secured all insurance required under this Section. In addition, Consultant shall not allow any subconsultant to commence work on any subcontract until it has provided evidence satisfactory to the City that the subconsultant has secured all insurance required under this section.

3.15.1 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, Consultant shall, at its expense, procure and maintain in full force and effect for the duration 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.

3.15.2 Additional Insured. The City of Ontario, its officials, officers, employees, agents, and volunteers shall be named as additional insureds on Consultant's and its subconsultants' policies of commercial general liability and automobile liability insurance using the endorsements and forms specified herein or exact equivalents.

3.15.3 Commercial General Liability

(a) The Consultant shall take out and maintain, during the performance of all work under this Agreement, in amounts not less than specified herein, Commercial General Liability Insurance, in a form and with insurance companies acceptable to the City.

(b) Coverage for Commercial General Liability insurance shall be at least as broad as the following: Insurance Services Office Commercial General Liability coverage (Occurrence Form CG 00 01) or exact equivalent. Commercial General Liability Insurance must include coverage for the following:

(i) Bodily Injury and Property Damage

(ii) Personal Injury/Advertising Injury

(iii) Premises/Operations Liability

(iv) Products/Completed Operations Liability

(v) Aggregate Limits that Apply per Project

(vi) Explosion, Collapse and Underground (UCX) exclusion deleted

(vii) Contractual Liability with respect to this Contract

(viii) Broad Form Property Damage

(ix) Independent Consultants Coverage

(c) The policy shall contain no endorsements or provisions limiting coverage for (1) contractual liability; (2) cross liability exclusion for claims or suits by one insured against another; (3) products/completed operations liability; or (4) contain any other exclusion contrary to the Agreement.

(d) The policy shall give City, the City Council and each member of the City Council, its officers, employees, agents and City designated volunteers additional insured status using ISO endorsement forms CG 20 10 10 01 and 20 37 10 01, or endorsements providing the exact same coverage.

(e) The general liability program may utilize either deductibles or provide coverage excess of a self-insured retention, subject to written approval by the City, and provided that such deductibles shall not apply to the City as an additional insured.

3.15.4 Automobile Liability

(a) At all times during the performance of the work under this Agreement, the Consultant shall maintain Automobile Liability Insurance for bodily injury and property damage including coverage for owned, non-owned and hired vehicles, in a form and with insurance companies acceptable to the City.

(b) Coverage for automobile liability insurance shall be at least as broad as Insurance Services Office Form Number CA 00 01 covering automobile liability (Coverage Symbol 1, any auto).

(c) The policy shall give City, the City Council and each member of the City Council, its officers, employees, agents and City designated volunteers additional insured status.

(d) Subject to written approval by the City, the automobile liability program may utilize deductibles, provided that such deductibles shall not apply to the City as an additional insured, but not a self-insured retention.

3.15.5 Workers' Compensation/Employer's Liability

(a) Consultant certifies that he/she is aware of the provisions of Section 3700 of the California Labor Code which requires every employer to be insured against liability for workers' compensation or to undertake self-insurance in accordance with the provisions of that code, and he/she will comply with such provisions before commencing work under this Agreement.

(b) To the extent Consultant has employees at any time during the term of this Agreement, at all times during the performance of the work under this Agreement, the Consultant shall maintain full compensation insurance for all persons employed directly by him/her to carry out the work contemplated under this Agreement, all in accordance with the

"Workers' Compensation and Insurance Act," Division IV of the Labor Code of the State of California and any acts amendatory thereof, and Employer's Liability Coverage in amounts indicated herein. Consultant shall require all subconsultants to obtain and maintain, for the period required by this Agreement, workers' compensation coverage of the same type and limits as specified in this Section.

3.15.6 Professional Liability (Errors and Omissions)

(a) At all times during the performance of the work under this Agreement the Consultant shall maintain professional liability or Errors and Omissions insurance appropriate to its profession, in a form and with insurance companies acceptable to the City and in an amount indicated herein. This insurance shall be written on a policy form coverage specifically designed to protect against acts, errors or omissions of the Consultant. "Covered Professional Services" as designated in the policy must specifically include work performed under this Agreement. The policy must "pay on behalf of" the insured and must include a provision establishing the insurer's duty to defend.

3.15.7 Minimum Policy Limits Required

(a) The following insurance limits are required for the Agreement:

Coverage	Combined Single Limit
Commercial General Liability	$2,000,000 per occurrence/ $4,000,000 aggregate for bodily injury, personal injury, and property damage
Automobile Liability	$2,000,000 per occurrence for bodily injury and property damage
Employer's Liability	$1,000,000 per occurrence
Professional Liability	$2,000,000 per claim and aggregate (errors and omissions)

(b) Defense costs shall be payable in addition to the limits.

(c) Requirements of specific coverage or limits contained in this Section are not intended as a limitation on coverage, limits, or other requirement, or a waiver of any coverage normally provided by any insurance. Any available coverage shall be provided to the parties required to be named as Additional Insured pursuant to this Agreement.

3.15.8 Evidence Required

(a) Prior to execution of the Agreement, the Consultant shall file with the City evidence of insurance from an insurer or insurers certifying to the coverage of all insurance required herein. Such evidence shall include original copies of the ISO CG 00 01 (or insurer's equivalent) signed by the insurer's representative and Certificate of Insurance (Acord Form 25-S or equivalent), together with required endorsements. All evidence of insurance shall be signed by a properly authorized officer, agent, or qualified representative of the insurer and shall certify the names of the insured, any additional insureds, where appropriate, the type and

amount of the insurance, the location and operations to which the insurance applies, and the expiration date of such insurance.

3.15.9 Policy Provisions Required

(a) Consultant shall provide the City at least thirty (30) days prior written notice of cancellation of any policy required by this Agreement, except that the Consultant shall provide at least ten (10) days prior written notice of cancellation of any such policy due to non-payment of premium. If any of the required coverage is cancelled or expires during the term of this Agreement, the Consultant shall deliver renewal certificate(s) including the General Liability Additional Insured Endorsement to the City at least ten (10) days prior to the effective date of cancellation or expiration.

(b) The Commercial General Liability Policy and Automobile Policy shall each contain a provision stating that Consultant's policy is primary insurance and that any insurance, deductible, or self-insurance maintained by the City, its officials, officers, employees, agents, or volunteers shall not contribute with this primary insurance. Policies shall contain or be endorsed to contain such provisions.

(c) The retroactive date (if any) of each policy is to be no later than the effective date of this Agreement. Consultant shall maintain such coverage continuously for a period of at least three years after the completion of the work under this Agreement. Consultant shall purchase a one (1) year extended reporting period A) if the retroactive date is advanced past the effective date of this Agreement; B) if the policy is cancelled or not renewed; or C) if the policy is replaced by another claims-made policy with a retroactive date subsequent to the effective date of this Agreement.

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

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

3.15.10 Qualifying Insurers

(a) All policies required shall be issued by acceptable insurance companies, as determined by the City, which satisfy the following minimum requirements: Each such policy shall be from a company or companies with a current A.M. Best's rating of no less than A:VII and admitted to transact in the business of insurance in the State of California, or otherwise allowed to place insurance through surplus line brokers under applicable provisions of the California Insurance Code or any federal law.

3.15.11 Additional Insurance Provisions

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

(b) If at any time during the life of the Agreement, any policy of insurance required under this Agreement does not comply with these specifications or is canceled and not replaced, City has the right but not the duty to obtain the insurance it deems necessary and any premium paid by City will be promptly reimbursed by Consultant or City will withhold amounts sufficient to pay premium from Consultant payments. In the alternative, City may cancel this Agreement.

(c) The City may require the Consultant to provide complete copies of all insurance policies in effect for the duration of the Project.

(d) Neither the City nor the City Council, nor any member of the City Council, nor any of the officials, officers, employees, agents or volunteers shall be personally responsible for any liability arising under or by virtue of this Agreement.

3.15.12 Subconsultant Insurance Requirements

(a) Consultant shall not allow any subcontractors or subconsultants to commence work on any subcontract until they have provided evidence satisfactory to the City that they have secured all insurance required under this Section. Policies of commercial general liability insurance provided by such subcontractors or subconsultants shall be endorsed to name the City as an additional insured using ISO form CG 20 38 04 13 or an endorsement providing the exact same coverage. If requested by Consultant, City may approve different scopes or minimum limits of insurance for particular subcontractors or subconsultants.

3.16 Records.

Consultant shall maintain complete and accurate records with respect to all costs and expenses incurred under this Agreement. All such records shall be clearly identifiable. Consultant shall allow a representative of City during normal business hours to examine, audit, and make transcripts or copies of such records and any other documents created pursuant to this Agreement. Consultant shall allow inspection of all work, data, documents, proceedings, and activities related to the Agreement for a period of five (5) years from the date of final payment under this Agreement.

3.17 Standardized Manufactured Items.

Consultant shall cooperate and consult with City in the use and selection of manufactured items on the Project, including but not limited to, paint, hardware, plumbing, mechanical and electrical equipment, fixtures, roofing materials and floor coverings. All such manufactured items shall be standardized to City's criteria to the extent such criteria do not interfere with building design.

3.18 Limitation of Agreement.

This Agreement is limited to and includes only the work included in the Project described herein. Any additional or subsequent construction at the site of the Project, or at any other City site, will be covered by, and be the subject of, a separate Agreement for architectural services between City and the Consultant chosen therefor by City.

3.19 Mediation.

Disputes arising from this Agreement may be submitted to mediation if mutually agreeable to the Parties hereto. The type and process of mediation to be utilized shall be subject to the mutual agreement of the Parties.

3.20 Successors and Assigns.

This Agreement shall be binding upon and shall inure to the benefit of the successors in interest, executors, administrators and assigns of each Party to this Agreement. However, Consultant shall not assign or transfer by operation of law or otherwise any or all of its rights, burdens, duties or obligations without the prior written consent of City. Any attempted assignment without such consent shall be invalid and void.

3.21 Asbestos Certification.

Consultant shall certify to City, in writing and under penalty of perjury, that to the best of its knowledge, information and belief no asbestos-containing material or other material deemed to be hazardous by the state or federal government was specified as a building material in any construction document that the Consultant prepares for the Project. Consultant shall require all consultants who prepare any other documents for the Project to submit the same written certification. Consultant shall also assist the City in ensuring that contractors provide City with certification, in writing and under penalty of perjury, that to the best of their knowledge, information and belief no material furnished, installed or incorporated into the Project contains asbestos or any other material deemed to be hazardous by the state or federal government. These certifications shall be part of the final Project submittal. Consultant shall include statements in its specifications that materials containing asbestos or any other material deemed to be hazardous by the state or federal government are not to be included.

3.22 No Third Party Rights.

This Agreement shall not create any rights in, or inure to the benefits of, any third party except as expressly provided herein.

3.23 Governing Law.

This Agreement shall be construed in accordance with, and governed by, the laws of the State of California. Venue shall be in San Bernardino County.

3.24 Exhibits and Recitals.

All exhibits and recitals contained herein and attached hereto are material parts of this Agreement and are incorporated as if fully set forth.

3.25 Severability.

Should any provision in the Agreement be held by a court of competent jurisdiction to be invalid, void, or unenforceable, the remaining provisions shall continue in full force and effect.

3.26 Non-Waiver.

None of the provisions of this Agreement shall be considered waived by either Party, unless such waiver is specifically specified in writing.

3.27 Safety.

Consultant shall execute and maintain its work so as to avoid injury or damage to any person or property. In carrying out its Services, the Consultant shall at all times be in compliance with all applicable local, state and federal laws, rules and regulations, and shall exercise all necessary precautions for the safety of its employees, consultant and subcontractors appropriate to the nature of the work and the conditions under which the work is to be performed.

3.28 Harassment Policy.

Consultant shall provide a copy of the City's Harassment Policy to each of its employees assigned to perform the tasks under this Agreement. Consultant shall submit to the City's Personnel Manager a statement signed by each of its employees who are assigned to perform the Services under this Agreement certifying receipt of City's Harassment Policy and certifying that they have read the Harassment Policy. A finding by the City that any of Consultant's employees has harassed a City employee shall be grounds for appropriate discipline, up to and including such employee's removal from performance of this Agreement at City's request.

3.29 Delivery of Notices.

All notices permitted or required under this Agreement shall be given to the respective Parties at the following address, or at such other address as the respective Parties may provide in writing for this purpose:

CITY:	CONSULTANT:
City of Ontario	Smithgroup, Inc.
303 East “B” Street	550 South Hope Street, Suite 1950
Ontario, CA 91764	Los Angeles, CA 90071
Attn: Marissa Kucheck, Museum Director	Attn: Richey Madison

Such notice shall be deemed made when personally delivered or when mailed, forty-eight (48) hours after deposit in the U.S. Mail, first class postage prepaid and addressed to the Party at its applicable address. Actual notice shall be deemed adequate notice on the date actual notice occurred, regardless of the method of service.

3.30 Time of Essence.

Time is of the essence for each and every provision of this Agreement.

3.31 City's Right to Employ Other Consultants.

City reserves right to employ other consultants, including designers, in connection with this Project or other projects.

3.32 Prohibited Interests.

3.32.1 Solicitation. Consultant maintains and warrants that it has not employed nor retained any company or person, other than a bona fide employee working solely for Consultant, to solicit or secure this Agreement. Further, Consultant warrants that it has not paid nor has it agreed to pay any company or person, other than a bona fide employee working solely for Consultant, any fee, commission, percentage, brokerage fee, gift or other consideration contingent upon or resulting from the award or making of this Agreement. For breach or violation of this warranty, City shall have the right to rescind this Agreement without liability.

3.32.2 Conflict of Interest. For the term of this Agreement, no director, official, officer or employee of City, during the term of his or her service with City, shall have any direct interest in this Agreement, or obtain any present or anticipated material benefit arising therefrom.

3.33 Equal Opportunity Employment.

Consultant represents that it is an equal opportunity employer and that it shall not discriminate against any employee or applicant for employment because of race, religion, color, national origin, ancestry, sex, age or any other classification protected by federal or state law. Such non-discrimination shall include, but not be limited to, all activities related to initial employment, upgrading, demotion, transfer, recruitment or recruitment advertising, layoff or termination. Consultant shall also comply with all relevant provisions of City's minority business enterprise program, affirmative action plan or other related programs or guidelines currently in effect or hereinafter enacted.

3.34 Labor Certification.

By its signature hereunder, Consultant certifies that it is aware of the provisions of Section 3700 of the California Labor Code which require every employer to be insured against liability for Worker's Compensation or to undertake self-insurance in accordance with the provisions of that Code, and agrees to comply with such provisions before commencing the performance of the Services.

3.35 Subcontracting.

As specified in this Agreement, Consultant shall not subcontract any portion of the Services required by this Agreement, except as expressly stated herein, without prior written approval of City. Subcontracts, if any, shall contain a provision making them subject to each and every provision of this Agreement.

3.36 Supplemental Conditions.

Any supplemental conditions shall be attached as an exhibit to this Agreement, and that exhibit shall be incorporated herein by reference.

3.37 Entire Agreement.

This Agreement, with its exhibits, contains the entire agreement of the Parties hereto, and supersedes any and all other prior or contemporaneous negotiations, understandings and oral or written agreements between the Parties hereto. Each Party acknowledges that no representations, inducements, promises or agreements have been made by any person which are not incorporated herein, and that any other agreements shall be void. Furthermore, any modification of this Agreement shall only be effective if in writing signed by all Parties hereto.

SIGNATURES ON FOLLOWING PAGE

SIGNATURE PAGE FOR DESIGN SERVICES AGREEMENT
BETWEEN THE CITY OF ONTARIO
AND SMITHGROUP, INC.

IN WITNESS WHEREOF, the Parties have executed this Agreement as of the date first written above.

CITY OF ONTARIO

Approved By:

_____
Scott Ochoa
City Manager

Approved as to Form:

_____
Best Best & Krieger LLP
City Attorney

Attested By:

_____
City Clerk

SMITHGROUP, INC.

By: _____

Its: _____

Printed Name: _____

By: _____

Its: _____

Printed Name: _____

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

EXHIBIT "A"
SCOPE OF SERVICES

1. GENERAL REQUIREMENTS.

1.1 Basic Services. Consultant agrees to perform all the necessary professional architectural, engineering (e.g. mechanical, electrical, plumbing, structural, site engineering, and any other necessary engineering services mutually agreeable to the Parties) and construction administration services for the Project in a timely and professional manner, consistent with the standards of the profession, including those provided for herein.

1.2 Exclusions from Basic Services. The following services shall be excluded from the basic services listed above: COMMON EXCLUSIONS: civil engineering, landscape architectural, soils engineering, geotechnical services, hazardous waste or toxic substances engineering or other SERVICES.

1.3 Additional Services. Consultant shall perform the following Additional Services for the Project: "N/A"

1.4 Communication with City. Consultant shall participate in consultations and conferences with authorized representatives of City and/or other local, regional, or state agencies concerned with the Project, which may be necessary for the completion of the Project or the development of the drawings, specifications and documents in accordance with the applicable standards and requirements of law and the City. Such consultations and conferences shall continue throughout the planning and construction of the Project and the contractor's warranty period. Consultant shall take direction only from the City's Representative, or any other representative specifically designated by the City for this Project, including any construction manager hired by the City.

1.5 Coordination and Cooperation with Construction Manager. The City may hire a construction manager to administer and coordinate all or any part of the Project on its behalf. If the City does so, it shall provide a copy of its agreement with the construction manager so that the Consultant will be fully aware of the duties and responsibilities of the construction manager. The Consultant shall cooperate with the construction manager and respond to any requests or directives authorized by the City to be made or given by the construction manager. The Consultant shall request clarification from the City in writing if the Consultant should have any questions regarding the authority of the construction manager.

2. INITIAL PLANNING PHASE.

During the initial planning phase of the Project, Consultant shall do all of the following, as well as any incidental services thereto:

2.1 Project Feasibility. Provide advice and assistance to City in determining the feasibility of the Project, analysis of the type and quality of materials and construction to be selected, the site location, and other initial planning matters.

2.2 Meeting Budget and Project Goals. Consultant shall notify City in writing of potential complications, cost overruns, unusual conditions, and general needs that potentially impact the Project budget and time line, including the City's Preliminary Construction Budget. Consultant shall use its best judgment in determining the balance between the size, type and

quality of construction to achieve a satisfactory solution within the Project's budget and construction allowance. It shall be the duty of the Consultant to design the Project within budget. As discussed herein, including in Section 7.3, if the lowest responsive and responsible bid for the Project exceeds the budget by the stated amount, Consultant may be required to make the necessary changes in the drawing and specifications, at its sole cost and expense, to bring the bids within the required budget.

2.3 Permits, Approvals and Authorizations. As indicated in Section 3.5.4 of the Agreement, Consultant shall assist City in securing easements, encroachment permits, rights of way, dedications, infrastructures and road improvements, as well as coordinating with utilities and adjacent property owners.

3. SCHEMATIC PLAN PHASE.

During the schematic plan phase of the Project, Consultant shall do all of the following, as well as any incidental services thereto:

3.1 Funding Documents. Consultant shall provide a site plan and all other Project-related information necessary and required for an application by City to any federal, state, regional, or local agencies for funds to finance the construction Project.

3.2 Schematic Plans. In cooperation with City, Consultant shall prepare preliminary plans and studies, schematic drawings, site utilization plans, and phasing plans showing the scale and relationship of the components of the Project, the plot plan development at the site, and the proposed architectural concept of the buildings ("Schematic Plans"). Consultant shall incorporate the functional requirements of City into the Schematic Plans. The Schematic Plans shall meet all laws, rules and regulations of the State of California. The Schematic Plans shall show all rooms incorporated in each building of the Project in single-line drawings, and shall include all revisions required by City or by any federal, state, regional or local agency having jurisdiction over the Project. All architectural drawings for the Project shall be in a form suitable for reproduction.

3.3 Preliminary Project Budget. Consultant shall use the City's Preliminary Construction Budget and its own expertise and experience with the Project to establish a preliminary project budget or allowance in a format required by City ("Consultant's Preliminary Project Budget"). The purpose of the Consultant's Preliminary Project Budget is to show the probable Project cost in relation to City's Preliminary Construction Budget and the construction standards of any applicable funding agency. If Consultant perceives site considerations which render the Project expensive or cost prohibitive, Consultant shall disclose such conditions in writing to City immediately. As discussed herein, including in Section 7.3, if the lowest responsive and responsible bid for the Project exceeds the budget by more than the stated amount, Consultant may be required to make the necessary changes in the drawings and specifications, at its sole cost and expense, to bring the bids within the required budget Consultant shall provide a preliminary written time schedule for the performance of all construction work on the Project.

3.4 Copies of Schematic Plans and Other Documents. Consultant, at its own expense, shall provide a complete set of the Schematic Plans described herein for City's review and approval. Additionally, at City's expense, Consultant shall provide such documents as may be required by any federal, state, regional or local agencies concerned with the Project. Any additional copies required by City shall be provided at actual cost to City.

4. DESIGN DEVELOPMENT PHASE.

During the design development phase of the Project, Consultant shall do all of the following, as well as any incidental services thereto:

4.1 Design Development Documents. Once City provides Consultant with specific written approval of the Schematic Plans described herein, Consultant shall prepare design development documents consisting of: (1) site and floor plans; (2) elevations; and (3) any other drawings and documents sufficient to fix and describe the types and makeup of materials, as well as the size and character of the Project's structural, mechanical and electrical systems, and to outline the Project specifications ("Design Development Documents"). The Design Development Documents shall be prepared in sufficient form to present to the City Council for approval.

4.2 Copies of Design Development and Other Documents. Consultant, at its own expense, shall provide a complete set of the Design Development Documents described herein for City's review and approval. Additionally, at City's expense, Consultant shall provide such documents as may be required by any federal, state, regional or local agencies concerned with the Project. Any additional copies required by City shall be provided at actual cost to City.

4.3 Updated Project Budget. Consultant shall use its Preliminary Project Budget and expertise and experience with the Project to establish an updated estimate of probable construction costs, containing detail consistent with the Design Development Documents as set forth herein and containing a breakdown based on types of materials and specifications identified herein ("Consultant's Updated Project Budget").

4.4 Timetable. Consultant shall provide a written timetable for full and adequate completion of the Project to City.

4.5 Application for Approvals. Consultant shall assist City in applying for and obtaining required approvals from all federal, state, regional or local agencies concerned with the Project. Consultant shall furnish and process all architectural and engineering information required to prepare and process applications to applicable utilities in order to secure priorities and materials, to aid in the construction of the Project and to obtain final Project approval and acceptance by any of the above agencies as may be required.

4.6 Color and Other Aesthetic Issues. Consultant shall provide, for City's review and approval, a preliminary schedule of all color materials and selections of textures, finishes and other matters involving an aesthetic decision about the Project.

5. FINAL WORKING DRAWINGS AND SPECIFICATIONS.

During the final working drawings and specifications phase of the Project, Consultant shall do all of the following, as well as any incidental services thereto:

5.1 Final Working Drawings and Specifications. Once City provides Consultant with specific written approval of the Design Development Documents described herein, Consultant shall prepare such complete working drawings and specifications as are necessary for developing complete bids and for properly executing the Project work in an efficient and thorough manner ("Final Working Drawings and Specifications"). Such Final Working Drawings and Specifications shall be developed from the Schematic Plans and Design Development Documents approved by City. The Final Working Drawings and Specifications shall set forth in

detail all of the following: (1) the Project construction work to be done; (2) the materials, workmanship, finishes, and equipment required for the architectural, structural, mechanical, and electrical systems; and (3) the utility service connection equipment and site work. As indicated in Section 3.9.2 of the Agreement, City may be requested to supply Consultant with the necessary information to determine the proper location of all improvements on and off site, including record drawings ("as-built drawings") in City's possession. Consultant will make a good-faith effort to verify the accuracy of such information by means of a thorough interior and exterior visual survey of site conditions. City shall also make a good-faith effort to verify the accuracy of the as-built drawings and provide any supplemental information to Consultant which may not be shown on the as-built drawings.

5.2 Form. The Final Working Drawings and Specifications must be in such form as will enable Consultant and City to secure the required permits and approvals from all federal, state, regional or local agencies concerned with the Project. In addition, the Final Working Drawings and Specifications must be in such form as will enable City to obtain, by competitive bidding, a responsible and responsive bid within the applicable budgetary limitations and cost standards. The Final Working Drawings and Specifications shall be clear and legible so that uniform copies may be on standard architectural size paper, properly indexed and numbered, and shall be capable of being clearly copied and assembled in a professional manner by Consultant.

5.3 Approval and Revisions. City shall review, study, and check the Final Working Drawings and Specifications presented to it by Consultant, and request any necessary revisions or obtain any necessary approvals by the City Council, subject to the approval of all federal, state, regional or local agencies concerned with the Project. Consultant shall make all City-requested changes, additions, deletions, and corrections in the Final Working Drawings and Specifications at no additional cost, so long as they are not in conflict with the requirements of public agencies having jurisdiction or prior approval, or inconsistent with earlier City direction or Consultant's professional judgment. Consultant shall bring any such conflicts and/or inconsistencies to the attention of City. The Parties agree that Consultant, and not the City, possesses the requisite expertise to determine the constructability of the Final Working Drawings and Specifications. However, the City reserves the right to conduct one or more constructability review processes with the Final Working Drawings and Specifications, and to hire an independent architect or other consultant to perform such reviews. Any such independent constructability review shall be at City's expense. Consultant shall make all City-requested changes, additions, deletions, and corrections in the Final Working Drawings and Specifications which may result from any constructability review, at no additional cost to the City, so long as they are not in conflict with the requirements of public agencies having jurisdiction or prior approval, or inconsistent with earlier City direction or Consultant's professional judgment. If such changes, additions, deletions or corrections are inconsistent with prior City direction, Consultant shall make such alterations and be compensated therefore pursuant to the Additional Services provision of this Agreement.

5.4 Costs of Construction. It is understood by Consultant that should the Final Working Drawings and Specifications be ordered by City, City shall specify the sum of money set aside to cover the total cost of construction of the work, exclusive of Consultant's fees. Should it become evident that the total construction cost will exceed the specified sum, Consultant shall at once present a statement in writing to the City's Representative setting forth this fact and giving a full statement of the cost estimates on which the conclusion is based.

5.5 Copies of Final Working Drawings and Specifications and Other Documents. Consultant, at its own expense, shall provide a complete set of the Final Working Drawings and Specifications described herein for City's review and approval. Additionally, at City's expense,

Consultant shall provide such documents as may be required by any federal, state, regional or local agencies concerned with the Project. Any additional copies required by City shall be provided at actual cost to City.

6. CONSTRUCTION CONTRACT DOCUMENTS.

During the construction contract documents phase of the Project, Consultant shall do all of the following, as well as any incidental services thereto:

6.1 Bid and Contract Documents. If so required by City, Consultant shall assist City in the completion of all bid and construction documents, including but not limited to, the Notice Inviting Bids, Instructions to Bidders, Contract Bid Forms (including Alternate Bids as requested by City), `Contract, General Conditions, Supplementary General Conditions, Special Conditions, DVBE and other applicable affirmative action documents, Performance Bond, Payment Bond, Escrow Agreement for Security Deposits, and any other certifications and documents required by federal, state and local laws, rules and regulations which may be reasonably required in order to obtain bids responsive to the specifications and drawings. All such documents shall be subject to the approval of City and City's legal counsel.

6.2 Final Estimate. At the time of delivery of these bid and construction documents, which shall include the Final Working Drawings and Specifications (collectively referred to herein as the "Construction Documents"), Consultant shall provide City with its final estimate of probable construction cost ("Consultant's Final Estimate"). As discussed herein, including in Section 7.3, it shall be the Consultant's duty to design the Project within budget.

7. BID PHASE.

During the bid phase of the Project, Consultant shall do all of the following, as well as any incidental services thereto:

7.1 Reproducible Construction Documents. Once City provides Consultant with specific written approval of the Construction Documents and Consultant's Final Estimate, Consultant shall provide to City one set of reproducible Construction Documents.

7.2 Distribution of Contract Documents and Review of Bids. Consultant shall assist City in distributing the Construction Documents to bidders and conducting the opening and review of bids for the Project.

7.3 Over Budget. If the apparent lowest responsive and responsible bid on the Project exceeds the Consultant's Final Estimate by more than five percent (5%), City may request Consultant to amend, at Consultant's sole cost and expense, the Final Drawings and Specifications in order to rebid the Project and receive a lowest responsive and responsible bid equal to or less than the Consultant's Final Estimate. All revisions necessary to bring the lowest responsible and responsive bid within the Consultant's Final Estimate, including any omissions, deferrals or alternates, shall be made in consultation with, and subject to the approval of, the City.

8. CONSTRUCTION PHASE.

During the construction phase of the Project, Consultant shall do all of the following, as well as any incidental services thereto:

8.1 Observation. The Project Consultant shall observe work executed from the Final Working Drawings and Specifications in person, provided that City may, in its discretion, consent to such observation by another competent representative of Consultant.

8.2 General Administration. Consultant shall provide general administration of the Construction Documents and the work performed by the contractors.

8.3 Pre-Construction Meeting. Consultant shall conduct one or more pre-construction meetings, as the City determines is needed for the Project, with all interested Parties.

8.4 Site Visits of Contractor's Work. Consultant shall conduct site visits to observe each contractors' work for general conformance with the Construction Documents and with any approved construction schedules or milestones. Such site visits shall be conducted as often as are necessary and appropriate to the stage of construction, according to the City's sole discretion, but in no event less than weekly.

8.5 Site Visits of Inspector's Work. Consultant shall conduct site visits to communicate and observe the activities of the City inspectors. Such site visits shall be conducted as often as is mutually acceptable to Consultant and City. Consultant shall direct the City inspectors and the Project contractors to coordinate the preparation of record drawings indicating dimensions and location of all "as-built" conditions, including but not limited to, underground utility lines.

8.6 Coordination of Subconsultants. Consultant shall cause all architects, engineers and other consultants, as may be hired by Consultant or City, to observe the work completed under their disciplines as required, and approve and review all test results for general conformance with the Construction Documents.

8.7 Reports. Consultant shall make regular reports as may be required by applicable federal, state or local laws, rules or regulations, as well as the federal, state, regional or local agencies concerned with the Project.

8.8 Construction Meetings; Minutes. Consultant shall attend all construction meetings and provide written reports/minutes to the City after each construction meeting in order to keep City informed of the progress of the work. Such meetings shall occur at a frequency necessary for the progress of the Project work, according to the City's sole discretion, but no less than weekly.

8.9 Written Reports. Consultant shall make written reports to City as necessary to inform City of problems arising during construction, changes contemplated as a result of each such problems, and progress of the Project work.

8.10 Written Records. Consultant shall keep accurate written records of the progress and quality of the Project work and the time schedules, and shall advise the contractors and City of any deviations from the time schedule which could delay timely completion of the Project.

8.11 Material and Test Reports. Consultant shall check and process, in a timely manner, all required material and test reports for the Project work. In addition, Consultant shall provide notice of any deficiencies in material or work reflected in such reports, as well as its recommendation for correction of such deficiencies, to the contractors and City.

8.12 Review and Response to Submissions. Consultant shall review and respond, in a timely manner, to all schedules, submittals, shop drawings, samples, information requests, change requests, and other submissions of the contractor and subcontractors for compliance with, or alterations and additions to, the Construction Documents. Consultant's review and response shall be done in such a manner so as to ensure the timely and uninterrupted progress of the Project work.

8.13 Rejection of Work. Consultant shall promptly reject, as discussed with City, work or materials which do not conform to the Construction Documents. Consultant shall immediately notify the City and contractor(s) of such rejections. Consultant shall also have the authority to recommend to the City that additional inspection or testing of the work be performed, whether or not such work is fabricated, installed or completed.

8.14 Substitutions. Consultant shall consult with City, in a timely manner, with regard to substitution of materials, equipment and laboratory reports thereof, prior to the City's final written approval of such substitutions. Consultant's consultation shall be done in such a manner so as to ensure the timely and uninterrupted progress of the Project work.

8.15 Revised Documents and Drawings. Consultant shall prepare, at no additional expense to City, all documents and/or drawings made necessary by errors and omissions in the originally approved Construction Documents.

8.16 Change Requests and Material Changes. Consultant shall evaluate and advise City, in a timely manner and in writing, of any change requests and material change(s) which may be requested or necessary in the Project plans and specifications. Consultant shall provide the City with its opinion as to whether such change requests should be approved, denied or revised. If the City has not hired a construction manager or other person to do so, the Consultant shall prepare and execute all change orders and submit them to the City for authorization. If the City has designated a construction manager or other person to prepare all change orders, the Consultant shall review all change orders prepared by such person, execute them and deliver them to the City for authorization if they meet with the Consultant's approval, or submit them to the City with recommendations for revision or denial if necessary. Consultant shall not order contractors to make any changes affecting the contract price without approval by City of such a written change order, pursuant to the terms of the Construction Documents. Consultant may order, on its own responsibility and pending City Council approval, changes necessary to meet construction emergencies, if written approval of City's Representative is first secured.

8.17 Applications for Payment. Consultant shall examine, verify and approve contractor's applications for payment, and shall issue certificates for payment in amounts approved by the City's inspector.

8.18 Final Color and Product Selection. Consultant shall coordinate final color and product selection with City's original design concept.

8.19 Substantial Completion. Consultant shall determine the date of substantial completion, in consultation with the City.

8.20 Punch List. After determining that the Project is substantially complete, Consultant shall participate in the inspection of the Project and shall review all remaining deficiencies and minor items needed to be corrected or completed on the Project, including those identified on the punch list prepared by the contractor ("Punch List Items"). Consultant shall notify

contractor in writing that all Punch List Items must be corrected prior to final acceptance of the Project and final payment. Consultant shall also notify City of all Punch List Items.

8.21 Warranties. Consultant shall review materials assembled by the contractor and subcontractors with regard to all written warranties, guarantees, owners' manuals, instruction books, diagrams, record "as built" drawings, and any other materials required from the contractors and subcontractors pursuant to the Construction Documents. Consultant shall coordinate and provide these materials to the City.

8.22 Certificate of Completion. Consultant shall participate in any further inspections of the Project necessary to issue Consultant's Certificate of Completion and final certificate for payment.

8.23 Documents for Project Close-Out. Consultant shall cause all other architects, engineers and other consultants, as may be hired by Consultant, to file any and all required documentation with the City or other governmental authorities necessary to close out the Project. Consultant shall assist the City in obtaining such documentation from all other architects, engineers, or other consultants.

9. AS-BUILT DRAWINGS.

During the as-built drawings phase of the Project, Consultant shall do all of the following, as well as any incidental services thereto:

9.1 As-Built Drawings and Specifications. Not later than thirty (30) days after substantial completion of the Project, before receipt of final payment, Consultant shall review and forward the Final Working Drawings and Specifications, indicating on them all changes made by change orders or otherwise pursuant to the Construction Documents, as well as all information called for on the specifications, thus producing an "as-built" set of Final Working Drawings and Specifications ("As-Built Drawings and Specifications"). The As-Built Drawings and Specifications shall show, among other things, the location of all concealed pipe, buried conduit runs and other similar elements within the completed Project. Consultant shall personally review and certify that the As-Built Drawings and Specifications are a correct representation of the information supplied to Consultant by any inspectors and the contractor, and shall obtain certifications from any inspectors and the contractor that the drawings are correct.

9.2 Approval. Once City provides Consultant with specific written approval of the As-Built Drawings and Specifications, Consultant shall forward to City the complete set of original As-Built Drawings and Specifications or a complete set of reproducible duplicate As-Built Drawings and Specifications. The tracing shall be of such quality that clear and legible prints may be made without appreciable and objectionable loss of detail.

9.3 Documents for Final Payment. Prior to the receipt of Consultant's final payment, Consultant shall forward to City all of the following: (1) one clear and legible set of reproductions of the computations; (2) the original copy of the specifications; (3) the As-Built Drawings and Specifications as required herein; and (4) Consultant's Certificate of Completion.

10. WARRANTY PERIOD.

During the warranty period phase of the Project, Consultant shall do all of the following, as well as any incidental services thereto:

10.1 Advice. Consultant shall provide advice to City on apparent deficiencies in the Project during any applicable warranty periods for the Project.

EXHIBIT "B"
FEE AND PHASING/FUNDING SCHEDULES

1. FEE SCHEDULE.

Consultant will invoice City on a monthly cycle based on the following fee schedule. Consultant will include with each invoice a detailed progress report that indicates the amount of budget spent on each phase and the total amount spent against the Total Compensation. Consultant will inform City regarding any out-of-scope work being performed by Consultant for which Consultant intends to seek compensation from City.

2. PHASING/FUNDING SCHEDULE.

Progress payments towards Total Compensation shall never exceed the following percentages of Total Compensation as of the phase indicated:

Initial Planning Phase:	_____ percent (%____)
Schematic Plan Phase:	_____ percent (%____)
Design Development Phase:	_____ percent (%____)
Final Working Drawings & Specifications Phase:	_____ percent (%____)
Construction Contract Documents Phase:	_____ percent (%____)
Bid Phase:	_____ percent (%____)
Construction Phase:	_____ percent (%____)
As-Built Drawings Phase:	_____ percent (%____)
Warranty Period Phase:	_____ percent (%____)

Note: No Phasing/Funding Schedule is necessary until a project task is issued under the contract

EXHIBIT "C"
COMPENSATION RATES AND REIMBURSABLE EXPENSES

1. HOURLY COMPENSATION RATES.

SMITHGROUP

LOS ANGELES | SAN DIEGO OFFICES

WAGE RATES BY CLASSIFICATION FOR 2024*

CLASS DESCRIPTION	BILLING RATE	CLASS DESCRIPTION	BILLING RATE
Architect I	$130	Lighting Designer, Senior	$170
Architect II	$170	Lighting Designer, Principal	$265
Architect III	$220	Lab Planner	$235
Architect IV	$260	Sr. Lab Planner	$315
Architect V	$310	Health Planner	$235
Interiors I	$130	Sr. Health Planner	$315
Interiors II	$160	Sr. Building Performance Analyst	$225
Interiors III	$210	BIM Technologist	$315
Interiors IV	$250	Data Scientist	$260
Interiors V	$300	Information Analyst	$190
Engineer I	$150	Webmaster	$255
Engineer II	$190	Technology Strategist	$340
Engineer III	$230	Visualization Specialist	$205
Engineer IV	$260	Administrative Assistant	$120
Engineer V	$320	Construction Administrative Coordinator	$160
Landscape Architect I	$130	Intern	$105
Landscape Architect II	$160	Specification Writer	$270
Landscape Architect III	$180	Technical Admin	$255
Landscape Architect IV	$240	Principal	$320
Landscape Architect V	$300	Vice President	$360
Lighting Designer	$135		

2. REIMBURSABLE EXPENSES.

REIMBURSABLES

Mileage at current IRS allowable rate and parking expenses incurred by office employees are charged at cost. Per Diem rates $150 per day, per employee. Prints, messenger service, subsistence, air travel, and other direct expenses will be charged at cost plus ten percent. The services of outside consultants will be charged at cost plus fifteen percent.

3. ADDITIONAL SERVICES.

Additional Services shall be computed at the actual hourly rates listed above.

4. ADDITIONAL CONSULTANTS.

If City requires Consultant to hire consultants to perform any Additional Services, Consultant shall be compensated therefore at the Consultant's actual hourly rates plus 15%. Owner shall have the authority to review and approve the rates of any such consultants.

CITY OF ONTARIO
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(909) 395-2000 FAX (909) 395-2070 OntarioCA.gov

PAUL S. LEON
MAYOR

DEBRA PORADA
MAYOR PRO TEM

ALAN D. WAPNER
JIM W. BOWMAN
RUBEN VALENCIA
COUNCIL MEMBERS

SHEILA MAUTZ
CITY CLERK

JAMES R. MILHISER
TREASURER

SCOTT OCHOA
CITY MANAGER

CITY OF ONTARIO
DESIGN SERVICES AGREEMENT

1. PARTIES AND DATE.

This Agreement is made and entered into as of _____, by and between the City of Ontario, a municipal corporation organized and operating under the laws of the State of California with its principal place of business at 303 East "B" Street, Ontario, California 91764-4196, County of San Bernardino, State of California ("City"), and **Architectural Resources Group**, **Inc.,** a **Corporation**, with its principal place of business at 9 Pier, The Embarcadero, Suite 107, San Francisco, CA 94111 (hereinafter referred to as "Consultant"). City and Consultant are sometimes individually referred to herein as "Party" and collectively as "Parties."

2. RECITALS.

2.1 City. City is a municipal corporation organized under the laws of the State of California, with power to contract for services necessary to achieve its purpose.

2.2 Consultant**.** Consultant desires to perform and assume responsibility for the provision of certain professional architectural design services required by the City on the terms and conditions set forth in this Agreement. Consultant warrants that it is fully licensed, qualified, and willing to perform the services required by this Agreement; provided, however, that if Consultant is a corporation or other organization, the Project Consultant designated pursuant to Section 3.2, and not the Consultant itself, shall be fully licensed to practice as an architect in the State of California.

2.3 Project**.** City desires to engage Consultant to render such services for the **Museum Improvements On-Call Architectural Services** ("Project") as set forth in this Agreement.

3. TERMS

3.1 Employment of Consultant.

3.1.1 Scope of Services. Consultant promises and agrees to furnish to City all labor, materials, tools, equipment, services, and incidental and customary work necessary to fully and adequately supply the professional architectural and related services necessary for the full and adequate completion of the Project consistent with the provisions of this Agreement (hereinafter referred to as "Services"). The Services are more particularly described throughout this Agreement, including Exhibit "A" attached hereto and incorporated herein by reference. All Services shall be subject to, and performed in accordance with, this Agreement, any exhibits

attached hereto and incorporated herein by reference, and all applicable local, state and federal laws, rules and regulations. All Services performed by Consultant shall be subject to the sole and discretionary approval of the City, which approval shall not be unreasonably withheld

3.1.2 Term. The term of this Agreement shall be from **November 4, 2024,** to **November 4**, **2027,** unless earlier terminated as provided herein. The City shall have the unilateral option, at its sole discretion, to renew this Agreement automatically for no more than two (2) additional one-year terms. Consultant shall complete the Services within the term of this Agreement, and shall meet any other established schedules and deadlines.

3.2 Project Consultant; Key Personnel.

3.2.1 **Project Architect**. Consultant shall name a specific individual to act as Project Consultant, subject to the approval of City. Consultant hereby designates Liz MacLean (License No. C-39534) to act as the Project Architect for the Project. The Project Architect shall: (1) maintain oversight of the Services; (2) have full authority to represent and act on behalf of the Consultant for all purposes under this Agreement; (3) supervise and direct the Services using his or her best skill and attention; (4) be responsible for the means, methods, techniques, sequences and procedures used for the Services; (5) adequately coordinate all portions of the Services; and (6) act as principal contact with City and all contractors, consultants, engineers and inspectors on the Project. Any change in the Project Architect shall be subject to the City's prior written approval, which approval shall not be unreasonably withheld. The new Project Architect shall be of at least equal competence as the prior Project Architect. In the event that City and Consultant cannot agree as to the substitution of a new Project Architect, City shall be entitled to terminate this Agreement for cause.

3.2.2 Key Personnel. In addition to the Project Architect, Consultant has represented to the City that certain additional key personnel, engineers and consultants will perform the Services under this Agreement. Should one or more of such personnel, engineers or consultants become unavailable, Consultant may substitute others of at least equal competence upon written approval of the City. In the event that City and Consultant cannot agree as to the substitution of key personnel, engineers or consultants, City shall be entitled to terminate this Agreement for cause. The key additional personnel, engineers and consultants for performance of this Agreement are as follows: Kimbro Frutiger, Project Manager and Scott Severson.

3.3 Hiring of Consultants and Personnel.

3.3.1 Right to Hire or Employ. Consultant shall have the option, unless City objects in writing after notice, to employ at its expense architects, engineers, experts or other consultants qualified and licensed to render services in connection with the planning and/or administration of the Project, and to delegate to them such duties as Consultant may delegate without relieving Consultant from administrative or other responsibility under this Agreement. Consultant shall be responsible for the coordination and cooperation of Consultant's architects, engineers, experts or other consultants. All consultants, including changes in consultants, shall be subject to approval by City in its sole and reasonable discretion. Consultant shall notify City of the identity of all consultants at least fourteen (14) days prior to their commencement of work to allow City to review their qualifications and approve to their participation on the Project in its sole and reasonable discretion.

3.3.2 Qualification and License. All architects, engineers, experts and other consultants retained by Consultant in performance of this Agreement shall be qualified to perform the Services assigned to them, and shall be licensed to practice in their respective professions, where required by law.

3.3.3 Standards and Insurance. All architects, engineers, experts and other consultants hired by Consultant shall be required to meet all of the same standards and insurance requirements set forth in this Agreement, unless other standards or requirements are approved by the City in writing. Unless changes are approved in writing by the City, Consultant's agreements with its consultants shall contain a provision making them subject to all provisions stipulated in this Agreement.

3.3.4 Assignments or Staff Changes. Consultant shall promptly obtain written City approval of any assignment, reassignment or replacement of such architects, engineers, experts and consultants, or of other staff changes of key personnel working on the Project. As provided in the Agreement, any changes in Consultant's consultants and key personnel shall be subject to approval by City.

3.3.5 Draftsman and Clerical Support. Draftsmen and clerical personnel shall be retained by Consultant at Consultant's sole expense.

3.4 Standard of Care.

3.4.1 Standard of Care. Consultant shall perform all Services under this Agreement in a skillful and competent manner, consistent with the standards generally recognized as being employed by professionals qualified to perform the Services in the same discipline in the State of California, and shall be responsible to City for damages sustained by the City and delays to the Project as specified in the indemnification provision of this Agreement. Without limiting the foregoing, Consultant shall be fully responsible to the City for any increased costs incurred by the City as a result of any such delays in the design or construction of the Project. Consultant represents and maintains that it is skilled in the professional calling necessary to perform the Services. Consultant warrants and represents that all of its employees, architects, engineers, experts and other consultants shall have sufficient skill and experience to perform the Services assigned to them. Finally, Consultant represents that it, its employees, architects, engineers, experts and other consultants have all licenses, permits, qualifications and approvals of whatever nature that are legally required to perform the Services assigned to or rendered by them and that such licenses and approvals shall be maintained throughout the term of this Agreement. As provided for in the indemnification provisions of this Agreement, Consultant shall perform, at its own cost and expense and without reimbursement from the City, any services necessary to correct errors or omissions which are caused by the Consultant's failure to comply with the standard of care provided for herein.

3.4.2 Performance of Employees. Any employee or consultant who is determined by the City to be uncooperative, incompetent, a threat to the adequate or timely completion of the Project, a threat to the safety of persons or property, or any employee or consultant who fails or refuses to perform the Services in a manner acceptable to the City, shall be promptly removed from the Project by the Consultant and shall not be re-employed to perform any of the Services or to work on the Project.

3.5 Laws and Regulations.

3.5.1 Knowledge and Compliance. Consultant shall keep itself fully informed of and in compliance with all applicable local, state and federal laws, rules and regulations in any manner affecting the performance of the Services or the Project, and shall give all notices required of the Consultant by law. Consultant shall be liable, pursuant to the standard of care and indemnification provisions of this Agreement, for all violations of such laws and regulations in connection with its Services. Consultant shall defend, indemnify and hold City, its officials, officers, employees and agents free and harmless, pursuant to the indemnification provisions of this Agreement, from any claim or liability arising out of any failure or alleged failure to comply with such laws, rules or regulations.

3.5.2 Drawings and Specifications. Consultant shall cause all drawings and specifications to conform to any applicable requirements of federal, state and local laws, rules and regulations, including the Uniform Building Code, in effect as of the time the drawings and specifications are prepared or revised during the latest phase of the Services described in Exhibit "A" attached hereto. Any significant revisions made necessary by changes in such laws, rules and regulations after this time may be compensated as Additional Services which were not known or reasonably should not have been known by Consultant. Consultant shall cause the necessary copies of such drawings and specifications to be filed with any governmental bodies with approval jurisdiction over the Project, in accordance with the Services described in Exhibit "A" attached hereto. For the preparation of all such drawings and specifications, the Consultant shall use Computer Aided Design Drafting ("CADD") (e.g., AutoCAD) or other technology acceptable to the Consultant and City.

3.5.3 Americans with Disabilities Act. Consultant will use its best professional efforts to interpret all applicable federal, state and local laws, rules and regulations with respect to access, including those of the Americans with Disabilities Act ("ADA"). Consultant shall inform City of the existence of inconsistencies of which it is aware or reasonably should be aware between federal and state accessibility laws, rules and regulations, as well as any other issues which are subject to conflicting interpretations of the law, and shall provide the City with its interpretation of such inconsistencies and conflicting interpretations. Unless Consultant brings such inconsistencies and conflicting interpretations to the attention of the City and requests City's direction on how to proceed, the Consultant's interpretation of such inconsistencies and conflicting interpretations shall be the sole responsibility and liability of Consultant, and the Consultant shall correct all plans, specifications and other documents prepared for the Project at no additional cost if its interpretations are shown to be incorrect. In the event that the Consultant request's City's direction on how to proceed with respect to any inconsistent and/or conflicting interpretation, the Consultant shall be responsible to the City only pursuant to the indemnification provisions of this Agreement.

3.5.4 Permits, Approvals and Authorizations. Consultant shall provide City with a list of all permits, approvals or other authorizations required for the Project from all federal, state or local governmental bodies with approval jurisdiction over the Project. Consultant shall then assist the City in obtaining all such permits, approvals and other authorizations. The costs of such permits, approvals and other authorizations shall be paid by the City.

3.5.5 Water Quality Management and Compliance. Consultant shall keep itself and all subcontractors, staff, and employees fully informed of and in compliance with all local, state and federal laws, rules and regulations that may impact, or be implicated by the performance of the Services including, without limitation, all applicable provisions of the City's ordinances

regulating water quality and storm water; the Federal Water Pollution Control Act (33 U.S.C. § 1251 *et seq*.); the California Porter-Cologne Water Quality Control Act (Cal Water Code §§ 13000-14950); and any and all regulations, policies, or permits issued pursuant to any such authority. Consultant shall additionally comply with the lawful requirements of the City, and any other municipality, drainage district, or other local agency with jurisdiction over the location where the Services are to be conducted, regulating water quality and storm water discharges. Failure to comply with laws, regulations, and ordinances listed in this Section is a violation of federal and state law.

3.6 Independent Contractor.

3.6.1 Control and Payment of Subordinates. City retains Consultant on an independent contractor basis and Consultant is not an employee of City. Consultant is not an employee for state tax, federal tax or any other purpose, and is not entitled to the rights or benefits afforded to City's employees. Any additional personnel performing the Services under this Agreement on behalf of Consultant shall also not be employees of City, and shall at all times be under Consultant's exclusive direction and control. Consultant shall pay all wages, salaries, and other amounts due such personnel in connection with their performance of Services under this Agreement and as required by law. Consultant shall be responsible for all reports and obligations respecting such additional personnel, including, but not limited to: social security taxes, income tax withholding, unemployment insurance, disability insurance, and workers' compensation insurance.

3.7 Schedule of Services.

3.7.1 Consultant Services. Consultant shall fully and adequately complete the Services described in this Agreement and in Exhibit "A" attached hereto and incorporated herein by reference.

3.7.2 Timely Performance Standard. Consultant shall perform all Services hereunder as expeditiously as is consistent with professional skill and care, as well as the orderly progress of the Project work so as not to be the cause, in whole or in part, of delays in the completion of the Project or in the achievement of any Project milestones, as provided herein. Specifically, Consultant shall perform its Services so as to allow for the full and adequate completion of the Project within the time required by the City and within any completion schedules adopted for the Project. Consultant agrees to coordinate with City's staff, contractors and consultants in the performance of the Services, and shall be available to City's staff, contractors and consultants at all reasonable times.

3.7.3 Performance Schedule. Consultant shall prepare an estimated time schedule for the performance of Consultant's Services, to be adjusted as the Project proceeds. Such schedule shall be subject to the City's review and approval, which approval shall not be unreasonably withheld, and shall include allowances for periods of time required for City's review and approval of submissions, and for approvals of authorities having jurisdiction over Project approval and funding. If City and Consultant cannot mutually agree on a performance schedule, City shall have the authority to immediately terminate this Agreement. The schedule shall not be exceeded by Consultant without the prior written approval of City. If the Consultant's Services are not completed within the time provided by the agreed upon performance schedule, or any milestones established therein, it is understood, acknowledged and agreed that the City will suffer damage for which the Consultant will be responsible.

3.7.4 Excusable Delays. Any delays in Consultant's work caused by the following may be added to the time for completion of any obligations of Consultant: (1) the actions of City or its employees; (2) the actions of those in direct contractual relationship with City; (3) the actions of any governmental agency having jurisdiction over the Project; (4) the actions of any parties not within the reasonable control of the Consultant; and (5) any Force Majeure Event (as defined herein) or other unforeseen occurrence not due to any fault or negligence on the part of Consultant. Neither the City nor the Consultant shall be liable for damages, liquidated or otherwise, to the other on account of such delays.

3.7.5 Force Majeure Events. Neither City nor Consultant shall be considered in default of this Agreement for delays in performance caused by circumstances beyond the reasonable control of the non-performing Party. For purposes of this Agreement, such circumstances include a Force Majeure Event. A Force Majeure Event shall mean an event that materially affects a Party's performance and is one or more of the following: (1) Acts of God or other natural disasters; (2) terrorism or other acts of a public enemy; (3) orders of governmental authorities (including, without limitation, unreasonable and unforeseeable delay in the issuance of permits or approvals by governmental authorities that are required for the services); (4) strikes and other organized labor action occurring at the site and the effects thereof on the services, only to the extent such strikes and other organized labor action are beyond the control of Consultant and its subcontractors, and to the extent the effects thereof cannot be avoided by use of replacement workers; and (5) pandemics, epidemics or quarantine restrictions. For purposes of this section, "orders of governmental authorities," includes ordinances, emergency proclamations and orders, rules to protect the public health, welfare and safety, and other actions of a public agency applicable to the Services and Agreement. Should a Force Majeure Event occur, the non-performing Party shall, within fifteen (15) calendar days of the beginning of an Force Majeure Event, give written notice to the other Party describing the circumstances preventing continued performance and the efforts being made to resume performance of this Agreement. Force Majeure Events shall not entitle Consultant to any additional compensation. Notwithstanding the foregoing in this section, the City may still terminate this Agreement in accordance with the termination provisions of this Agreement.

3.7.6 Request for Excusable Delay Credit. The Consultant shall, within fifteen (15) calendar days of the beginning of any excusable delay, notify the City in writing of the causes of delay (unless City grants in writing a further period of time to file such notice prior to the date of final payment under the Agreement). City will then ascertain the facts and the extent of the delay, and grant an extension of time for completing the Services when, in its sole judgment, the findings of fact justify such an extension. The City's findings of fact thereon shall be final and conclusive on the Parties. Extensions of time shall apply only to that portion of the Services affected by the delay and shall not apply to other portions of the Services not so affected. The sole remedy of Consultant for extensions of time shall be an extension of the performance time at no cost to the City. If Additional Services are required as a result of an excusable delay, the Parties shall mutually agree thereto pursuant to the Additional Services provision of this Agreement. Should Consultant make an application for an extension of time, Consultant shall submit evidence that the insurance policies required by this Agreement remain in effect during the requested additional period of time.

3.8 Additional Services.

3.8.1 Request for Services. At City's request, Consultant may be asked to perform services not otherwise included in this Agreement, not included within the basic services

listed in Exhibit “A” attached hereto, and/or not customarily furnished in accordance with generally accepted architectural practice.

3.8.2 Definition. As used herein, “Additional Services” mean: (1) any work which is determined by City to be necessary for the proper completion of the Project, but which the Parties did not reasonably anticipate would be necessary for the Consultant to perform at the execution of this Agreement; or (2) any work listed as Additional Services in Exhibit “A” attached hereto. Consultant shall not perform, nor be compensated for, Additional Services without prior written authorization from City and without an agreement between the City and Consultant as to the compensation to be paid for such services. City shall pay Consultant for any approved Additional Services, pursuant to the compensation provisions herein, so long as such services are not made necessary through the fault of Consultant pursuant to the indemnification provision of this Agreement.

3.8.3 Examples of Additional Services. Such Additional Services shall not include any redesign or revisions to drawings, specifications or other documents when such revisions are necessary in order to bring such documents into compliance with applicable laws, rules, regulations or codes of which Consultant was aware or should have been aware pursuant to the laws and regulations provision of this Agreement above. Such Additional Services may include, but shall not be limited to:

(a) Separately Bid Portions of Project. Plan preparation and/or administration of work on portions of the Project separately bid.

(b) Furniture and Interior Design. Assistance to City, if requested, for the selection of moveable furniture, equipment or articles which are not included in the Construction Documents.

(c) Fault of Contractor. Services caused by delinquency, default or insolvency of contractor, or by major defects in the work of the contractor, provided that any such services made necessary by the failure of Consultant to detect and report such matters when it reasonably should have done so shall not be compensated.

(d) Inconsistent Approvals or Instructions. Revisions in drawings, specifications or other documents when such revisions are inconsistent with written approvals or instructions previously given and are due to causes beyond the control of Consultant.

(e) Legal Proceedings. Serving as an expert witness on City's behalf or attending legal proceedings to which the Consultant is not a party.

(f) Damage Repair. Supervision of repair of damages to any structure.

(g) Extra Environmental Services. Additional work required for environmental conditions (e.g. asbestos or site conditions) not already contemplated within the Consultant's services for the Project.

3.9 City Responsibilities. City’s responsibilities shall include the following:

3.9.1 Data and Information. City shall make available to Consultant all necessary data and information concerning the purpose and requirements of the Project, including scheduling and budget limitations, objectives, constraints and criteria. As part of the budget

limitation information, the City shall provide the Consultant with a preliminary construction budget ("City's Preliminary Construction Budget").

3.9.2 Project Survey. If required pursuant to the scope of the Project and if requested by Consultant, City shall furnish Consultant with, or direct Consultant to procure at City's expense, a survey of the Project site prepared by a registered surveyor or civil engineer, any other record documents which shall indicate existing structures, land features, improvements, sewer, water, gas, electrical and utility lines, topographical information and boundary dimensions of the site, and any other such pertinent information.

3.9.3 Bid Phase. Distribute Construction Documents to bidders and conduct the opening and review of bids for the Project.

3.9.4 Testing. Retain consultant(s) to conduct chemical, mechanical, soils, geological or other tests required for proper design of the Project, and furnish such surveys, borings, test pits, and other tests as may be necessary to reveal conditions of the site which must be known to determine soil condition or to ensure the proper development of the required drawings and specifications.

3.9.5 Required Inspections and Tests. Retain consultant(s) to conduct materials testing and inspection or environmental/hazardous materials testing and inspection pursuant to any applicable laws, rules or regulations.

3.9.6 Fees of Reviewing or Licensing Agencies. Directly pay or reimburse the payment of all fees required by any reviewing or licensing agency, or other agency having approval jurisdiction over the Project.

3.9.7 City's Representative. The City hereby designates the City Manager, or his or her designee, to act as its representative for the performance of this Agreement ("City's Representative"). City's Representative shall have the power to act on behalf of the City for all purposes under this Contract. The City Manager hereby designates Gil Mars, Project Manager, or his or her designee, as the City's contact for the implementation of the Services hereunder. Contractor shall not accept direction or orders from any person other than the City's Representative or his or her designee.

3.9.8 Review and Approved Documents. Review all documents submitted by Consultant, including change orders and other matters requiring approval by the City Council or other officials. City shall advise Consultant of decisions pertaining to such documents within a reasonable time after submission, so as not to cause unreasonable delay as provided in the excusable delay provisions of this Agreement above.

3.10 Compensation.

3.10.1 Consultant's Compensation for Basic Services. City shall pay to Consultant, for the performance of all Services rendered under this Agreement, the total not to exceed amount of **One Hundred Fifty Thousand Dollars ($150,000**) ("Total Compensation"). This Total Compensation amount shall be based upon, and may be adjusted according to, the fee schedule and related terms and conditions attached hereto as Exhibit "B" and incorporated herein by reference. The Total Compensation, as may be adjusted upon mutual agreement, shall constitute complete and adequate payment for Services under this Agreement.

3.10.2 Payment for Additional Services. At any time during the term of this Agreement, City may request that Consultant perform Additional Services. As used herein, Additional Services means any work which is determined by City to be necessary for the proper completion of the Project, but which the Parties did not reasonably anticipate would be necessary at the execution of this Agreement. Any additional work in excess of this amount must be approved by the City. If authorized, such Additional Services will be compensated at the rates and in the manner set forth in Exhibit "C" attached hereto and incorporated herein by reference, unless a flat rate or some other form of compensation is mutually agreed upon by the Parties. If City requires Consultant to hire consultants to perform any Additional Services, Consultant shall be compensated therefore at the rates and in the manner set forth in Exhibit "C" attached hereto and incorporated herein by reference, unless a flat rate or some other form of compensation is mutually agreed upon by the Parties. City shall have the authority to review and approve the rates of any such consultants. In addition, Consultant shall be reimbursed for any expenses incurred by such consultants pursuant to the terms and conditions of Section 3.10.3.

3.10.3 Reimbursable Expenses. Reimbursable expenses are in addition to compensation for the Services and Additional Services. Consultant shall not be reimbursed for any expenses unless authorized in writing by City, which approval may be evidenced by inclusion in Exhibit "C" attached hereto. Such reimbursable expenses shall include only those expenses which are reasonably and necessarily incurred by Consultant in the interest of the Project. Consultant shall be required to acquire prior written consent in order to obtain reimbursement for the following: (1) extraordinary transportation expenses incurred in connection with the Project; (2) out-of-town travel expenses incurred in connection with the Project; (3) fees paid for securing approval of authorities having jurisdiction over the Project; (4) bid document duplication costs in excess of $1,000; and (5) other costs, fees and expenses in excess of $1,000.

3.10.4 Payment to Consultant. Consultant's compensation and reimbursable expenses shall be paid by City to Consultant no more often than monthly. Such periodic payments shall be made based upon the percentage of work completed, and in accordance with the phasing and funding schedule provided in Exhibit "B" and the compensation rates indicated in Exhibit "C" attached hereto and incorporated herein by reference. In order to receive payment, Consultant shall present to City an itemized statement which indicates Services performed, percentage of Services completed, method for computing the amount payable, and the amount to be paid. The statement shall describe the amount of Services provided since the initial commencement date, or since the start of the subsequent billing periods, as appropriate, through the date of the statement, as well as those expenses for which reimbursement is requested for that statement period. The amount paid to Consultant shall never exceed the percentage amounts authorized by the phasing and funding schedule located in Exhibit "B" attached hereto. City shall, within thirty (30) days of receiving such statement, review the statement and pay all approved charges thereon pursuant to the provisions of Civil Code Section 3320. Disputed amounts shall be resolved by the Parties in a mutually agreeable manner.

Payments made for Additional Services shall be made in installments, not more often than monthly, proportionate to the degree of completion of such services or in such other manner as the Parties shall specify when such services are agreed upon, and in accordance with any authorized fee or rate schedule. In order to receive payment, Consultant shall present to City an itemized statement which indicates the Additional Services performed, percentage of Additional Services completed, method for computing the amount payable, and the amount to be paid. The statement shall describe the amount of Additional Services provided since the initial commencement date, or since the start of the subsequent billing periods, as appropriate, through the date of the statement. City shall, within thirty (30) days of receiving such statement, review

the statement and pay all approved charges thereon pursuant to the provisions of Civil Code Section 3320. Disputed amounts shall be resolved by the Parties in a mutually agreeable manner.

Upon cancellation or termination of this Agreement, Consultant shall be compensated as set forth in the termination provision herein.

3.10.5 Withholding Payment to Consultant. The City may withhold payment, in whole or in part, to the extent reasonably necessary to protect the City from claims, demands, causes of action, costs, expenses, liabilities, losses, damages, or injuries of any kind to the extent arising out of or caused by the negligence, recklessness, or willful misconduct protected under the indemnification provisions of this Agreement. Failure by City to deduct any sums from a progress payment shall not constitute a waiver of the City's right to such sums. The City may keep any moneys which would otherwise be payable at any time hereunder and apply the same, or so much as may be necessary therefor, to the payment of any expenses, losses, or damages as determined by the City, incurred by the City for which Consultant is liable under the Agreement or state law. Payments to the Consultant for compensation and reimbursable expenses due shall not be contingent on the construction, completion or ultimate success of the Project. Payment to the Consultant shall not be withheld, postponed, or made contingent upon receipt by the City of offsetting reimbursement or credit from Parties not within the Consultant's reasonable control.

3.10.6 Prevailing Wages. Consultant is aware of the requirements of California Labor Code Sections 1720, et seq., and 1770, et seq., as well as California Code of Regulations, Title 8, Section 16000, et seq., ("Prevailing Wage Laws"), which require the payment of prevailing wage rates and the performance of other requirements on certain "public works" and "maintenance" projects. If the Services are being performed as part of an applicable "public works" or "maintenance" project, as defined by the Prevailing Wage Laws, and If the total compensation is $1,000 or more, Consultant agrees to fully comply with and to require its consultants to fully comply with such Prevailing Wage Laws. City shall provide Consultant with a copy of the prevailing rates of per diem wages in effect at the commencement of this Agreement. Consultant shall make copies of the prevailing rates of per diem wages for each craft, classification or type of worker needed to execute the Services available to interested parties upon request, and shall post copies at the Consultant's principal place of business and at the Project site. It shall be mandatory upon the Consultant and all subconsultants to comply with all California Labor Code provisions, which include but are not limited to prevailing wages (Labor Code Sections 1771, 1774 and 1775), employment of apprentices (Labor Code Section 1777.5), certified payroll records (Labor Code Sections 1771.4 and 1776), hours of labor (Labor Code Sections 1813 and 1815) and debarment of contractors and subcontractors (Labor Code Section 1777.1). The requirement to submit certified payroll records directly to the Labor Commissioner under Labor Code section 1771.4 shall not apply to work performed on a public works project that is exempt pursuant to the small project exemption specified in Labor Code Section 1771.4. Consultant shall defend, indemnify and hold the City, its elected officials, officers, employees and agents free and harmless from any claims, liabilities, costs, penalties or interest arising out of any failure or alleged failure of the Consultant or its consultants to comply with the Prevailing Wage Laws.

(a) Registration/DIR Compliance. If the Services are being performed as part of an applicable "public works project" of over $25,000 when the project is for construction, alteration, demolition, installation, or repair work, or a public works project of over $15,000 when the project is for maintenance work, in addition to the foregoing, then pursuant to Labor Code sections 1725.5 and 1771.1, the Consultant and all subconsultants performing such Services must be registered with the Department of Industrial Relations ("DIR"). Consultant shall maintain

registration for the duration of the Project and require the same of any subconsultants. This project may also be subject to compliance monitoring and enforcement by the DIR. It shall be Consultant's sole responsibility to comply with all applicable registration and labor compliance requirements, including the submission of payroll records directly to the DIR. Any stop orders issued by the Department of Industrial Relations against Consultant or any subconsultant that affect Consultant's performance of services, including any delay, shall be Consultant's sole responsibility. Any delay arising out of or resulting from such stop orders shall be considered Consultant caused delay and shall not be compensable by the City. Consultant shall defend, indemnify and hold the City, its officials, officers, employees and agents free and harmless from any claim or liability arising out of stop orders issued by the Department of Industrial Relations against Consultant or any subconsultant.

3.10.7 Automated Clearing House ("ACH") payments. It is the City's policy to pay its consultant invoices via electronic fund transfers through the ACH network. All payments due and owing pursuant to a properly issued and correct invoice or under this Agreement shall be made through electronic ACH transfers, unless otherwise agreed upon by both Parties in writing. Consultant shall provide the City with ACH payment details whereby the City shall initiate the ACH transfers to Consultant in the amount required pursuant to a properly issued and correct invoice or under this Agreement. Each Party shall undertake any and all required actions and execute any required documents, instruments, or agreements required to effectuate the requirements of this Section. In the event the City erroneously deposits funds into an account, or otherwise deposits funds to which Consultant is not entitled: (1) Consultant shall immediately notify the City and the financial institution; (2) Consultant shall not withdraw any of the funds which were erroneously deposited or to which Consultant is not entitled; and (3) Consultant authorizes both the City and financial institution to take all actions necessary to correct the error and return to the City all funds erroneously deposited or to which Consultant is not entitled.

3.11 Notice to Proceed.

Consultant shall not proceed with performance of any Services under this Agreement unless and until the City provides a written notice to proceed.

3.12 Termination, Suspension and Abandonment.

3.12.1 Grounds for Termination; Consultant's Termination for Cause. City hereby reserves the right to suspend or abandon, at any time and for any reason, all or any portion of the Project and the construction work thereon, or to terminate this Agreement at any time with or without cause. Consultant shall be provided with at least seven (7) days advanced written notice of such suspension, abandonment or termination. In the event of such suspension, abandonment or termination, Consultant shall be paid for Services and reimbursable expenses rendered up to the date of such suspension, abandonment or termination, pursuant to the schedule of payments provided for in this Agreement, less any claims against or damages suffered by City as a result of the default, if any, by Consultant. Consultant hereby expressly waives any and all claims for damages or compensation arising under this Agreement, except as set forth herein, in the event of such suspension, abandonment or termination. Consultant may terminate this Agreement for substantial breach of performance by the City such as failure to make payment to Consultant as provided in this Agreement.

3.12.2 City's Suspension of Work. If Consultant's Services are suspended by City, City may require Consultant to resume such Services within ninety (90) days after written notice

from City. When the Project is resumed, the Total Compensation and schedule of Services shall be equitably adjusted upon mutual agreement of the City and Consultant.

3.12.3 Documents and Other Data. Upon suspension, abandonment or termination, Consultant shall provide to City all preliminary studies, sketches, working drawings, specifications, computations, and all other Project Documents, as defined below, to which City would have been entitled at the completion of Consultant's Services under this Agreement. Upon payment of the amount required to be paid to Consultant pursuant to the termination provisions of this Agreement, City shall have the rights, as provided in this Agreement hereinafter, to use such Project Documents prepared by or on behalf of Consultant under this Agreement. Consultant shall make such documents available to City upon request and without additional compensation other than as may be approved as a reimbursable expense.

3.12.4 Employment of other Consultants. In the event this Agreement is terminated in whole or in part as provided herein, City may procure, upon such terms and in such manner as it may determine appropriate, services similar to those terminated.

3.13 Ownership and Use of Documents; Confidentiality.

3.13.1 Ownership. All plans, specifications, original or reproducible transparencies of working drawings and master plans, preliminary sketches, architectural presentation drawings, structural computations, estimates and any other documents prepared pursuant to this Agreement, including, but not limited to, any other works of authorship fixed in any tangible medium of expression such as writings, physical drawings and data magnetically or otherwise recorded on computer diskettes (hereinafter referred to as the "Project Documents") shall be and remain the property of City. Although the official copyright in all Project Documents shall remain with the Consultant or other applicable subcontractors or consultants, the Project Documents shall be the property of City whether or not the work for which they were made is executed or completed. Within thirty (30) calendar days following completion of the Project, Consultant shall provide to City copies of all Project Documents required by City. In addition, Consultant shall retain copies of all Project Documents on file for a minimum of fifteen (15) years following completion of the Project, and shall make copies available to City upon the payment of reasonable duplication costs. Before destroying the Project Documents following this retention period, Consultant shall make a reasonable effort to notify City and provide City with the opportunity to obtain the documents.

3.13.2 Right to Use. Consultant grants to City the right to use and reuse all or part of the Project Documents, at City's sole discretion and with no additional compensation to Consultant, for the following purposes:

(a) The construction of all or part of this Project.

(b) The repair, renovation, modernization, replacement, reconstruction or expansion of this Project at any time;

(c) The construction of another project by or on behalf of the City for its ownership and use;

City is not bound by this Agreement to employ the services of Consultant in the event such documents are used or reused for these purposes. City shall be able to use or reuse the Project Documents for these purposes without risk of liability to the Consultant or third parties with respect

to the condition of the Project Documents, and the use or reuse of the Project Documents for these purposes shall not be construed or interpreted to waive or limit City's right to recover for latent defects or for errors or omissions of the Consultant.

Any use or reuse by City of the Project Documents on any project other than this Project without employing the services of Consultant shall be at City's own risk with respect to third parties. If City uses or reuses the Project Documents on any project other than this Project, it shall remove the Consultant's seal from the Project Documents and hold harmless Consultant and its officers, directors, agents and employees from claims arising out of the negligent use or re-use of the Project Documents on such other project.

3.13.3 License. This Agreement creates a non-exclusive and perpetual license for City to copy, use, modify or reuse any and all Project Documents and any intellectual property rights therein. Consultant shall require any and all subcontractors and consultants to agree in writing that City is granted a non-exclusive and perpetual license for the work of such subcontractors or consultants performed pursuant to this Agreement.

3.13.4 Right to License. Consultant represents and warrants that Consultant has the legal right to license any and all copyrights, designs and other intellectual property embodied in the Project Documents that Consultant prepares or causes to be prepared pursuant to this Agreement. Consultant shall indemnify and hold City harmless pursuant to the indemnification provisions of this Agreement for any breach of this Section. Consultant makes no such representation and warranty in regard to previously prepared designs, plans, specifications, studies, drawings, estimates or other documents that were prepared by design professionals other than Consultant and provided to Consultant by City.

3.13.5 Confidentiality. All Project Documents, either created by or provided to Consultant in connection with the performance of this Agreement, shall be held confidential by Consultant to the extent they are not subject to disclosure pursuant to the Public Records Act. All Project Documents shall not, without the written consent of City, be used or reproduced by Consultant for any purposes other than the performance of the Services. Consultant shall not disclose, cause or facilitate the disclosure of the Project Documents to any person or entity not connected with the performance of the Services or the Project. Nothing furnished to Consultant which is otherwise known to Consultant or is generally known, or has become known, to the related industry shall be deemed confidential. Consultant shall not use City's name or insignia, photographs of the Project, or any publicity pertaining to the Services or the Project in any magazine, trade paper, newspaper, television or radio production or other similar medium without the written consent of City.

3.14 Indemnification.

3.14.1 To the fullest extent permitted by law, Consultant shall defend (with counsel of City's choosing), indemnify and hold the City, its officials, officers, employees, volunteers, and agents free and harmless from any and all claims, demands, causes of action, costs, expenses, liability, loss, damage or injury of any kind, in law or equity, to property or persons, including wrongful death, in any manner arising out of, pertaining to, or incident to any acts, errors or omissions, or willful misconduct of Consultant, its officials, officers, employees, subcontractors, consultants or agents in connection with the performance of the Consultant's Services, the Project or this Agreement, including without limitation the payment of all damages, expert witness fees and attorney's fees and other related costs and expenses except such loss or damage caused by the sole negligence or willful misconduct of the City. Consultant's obligation to indemnify shall

survive expiration or termination of this Agreement and shall not be restricted to insurance proceeds, if any, received by Consultant, the City, its officials, officers, employees, agents, or volunteers.

3.14.2 If Consultant's obligation to defend, indemnify, and/or hold harmless arises out of Consultant's performance as a "design professional" (as that term is defined under Civil Code section 2782.8), then, and only to the extent required by Civil Code section 2782.8, which is fully incorporated herein, Consultant's indemnification obligation shall be limited to claims that arise out of, pertain to, or relate to the negligence, recklessness, or willful misconduct of the Consultant, and, upon Consultant obtaining a final adjudication by a court of competent jurisdiction, Consultant's liability for such claim, including the cost to defend, shall not exceed the Consultant's proportionate percentage of fault.

3.15 Insurance. Consultant shall not commence work under this Agreement until it has provided evidence satisfactory to the City that it has secured all insurance required under this Section. In addition, Consultant shall not allow any subconsultant to commence work on any subcontract until it has provided evidence satisfactory to the City that the subconsultant has secured all insurance required under this section.

3.15.1 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, Consultant shall, at its expense, procure and maintain in full force and effect for the duration 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.

3.15.2 Additional Insured. The City of Ontario, its officials, officers, employees, agents, and volunteers shall be named as additional insureds on Consultant's and its subconsultants' policies of commercial general liability and automobile liability insurance using the endorsements and forms specified herein or exact equivalents.

3.15.3 Commercial General Liability

(a) The Consultant shall take out and maintain, during the performance of all work under this Agreement, in amounts not less than specified herein, Commercial General Liability Insurance, in a form and with insurance companies acceptable to the City.

(b) Coverage for Commercial General Liability insurance shall be at least as broad as the following: Insurance Services Office Commercial General Liability coverage (Occurrence Form CG 00 01) or exact equivalent. Commercial General Liability Insurance must include coverage for the following:

(i) Bodily Injury and Property Damage

(ii) Personal Injury/Advertising Injury

(iii) Premises/Operations Liability

(iv) Products/Completed Operations Liability

(v) Aggregate Limits that Apply per Project

(vi) Explosion, Collapse and Underground (UCX) exclusion deleted

(vii) Contractual Liability with respect to this Contract

(viii) Broad Form Property Damage

(ix) Independent Consultants Coverage

(c) The policy shall contain no endorsements or provisions limiting coverage for (1) contractual liability; (2) cross liability exclusion for claims or suits by one insured against another; (3) products/completed operations liability; or (4) contain any other exclusion contrary to the Agreement.

(d) The policy shall give City, the City Council and each member of the City Council, its officers, employees, agents and City designated volunteers additional insured status using ISO endorsement forms CG 20 10 10 01 and 20 37 10 01, or endorsements providing the exact same coverage.

(e) The general liability program may utilize either deductibles or provide coverage excess of a self-insured retention, subject to written approval by the City, and provided that such deductibles shall not apply to the City as an additional insured.

3.15.4 Automobile Liability

(a) At all times during the performance of the work under this Agreement, the Consultant shall maintain Automobile Liability Insurance for bodily injury and property damage including coverage for owned, non-owned and hired vehicles, in a form and with insurance companies acceptable to the City.

(b) Coverage for automobile liability insurance shall be at least as broad as Insurance Services Office Form Number CA 00 01 covering automobile liability (Coverage Symbol 1, any auto).

(c) The policy shall give City, the City Council and each member of the City Council, its officers, employees, agents and City designated volunteers additional insured status.

(d) Subject to written approval by the City, the automobile liability program may utilize deductibles, provided that such deductibles shall not apply to the City as an additional insured, but not a self-insured retention.

3.15.5 Workers' Compensation/Employer's Liability

(a) Consultant certifies that he/she is aware of the provisions of Section 3700 of the California Labor Code which requires every employer to be insured against liability for workers' compensation or to undertake self-insurance in accordance with the provisions of that code, and he/she will comply with such provisions before commencing work under this Agreement.

(b) To the extent Consultant has employees at any time during the term of this Agreement, at all times during the performance of the work under this Agreement, the Consultant shall maintain full compensation insurance for all persons employed directly by him/her to carry out the work contemplated under this Agreement, all in accordance with the "Workers' Compensation and Insurance Act," Division IV of the Labor Code of the State of California and any acts amendatory thereof, and Employer's Liability Coverage in amounts indicated herein. Consultant shall require all subconsultants to obtain and maintain, for the period required by this Agreement, workers' compensation coverage of the same type and limits as specified in this Section.

3.15.6 Professional Liability (Errors and Omissions)

(a) At all times during the performance of the work under this Agreement the Consultant shall maintain professional liability or Errors and Omissions insurance appropriate to its profession, in a form and with insurance companies acceptable to the City and in an amount indicated herein. This insurance shall be written on a policy form coverage specifically designed to protect against acts, errors or omissions of the Consultant. "Covered Professional Services" as designated in the policy must specifically include work performed under this Agreement. The policy must "pay on behalf of" the insured and must include a provision establishing the insurer's duty to defend.

3.15.7 Minimum Policy Limits Required

(a) The following insurance limits are required for the Agreement:

Coverage	Combined Single Limit
Commercial General Liability	$2,000,000 per occurrence/ $4,000,000 aggregate for bodily injury, personal injury, and property damage
Automobile Liability	$2,000,000 per occurrence for bodily injury and property damage
Employer's Liability	$1,000,000 per occurrence
Professional Liability	$2,000,000 per claim and aggregate (errors and omissions)

(b) Defense costs shall be payable in addition to the limits.

(c) Requirements of specific coverage or limits contained in this Section are not intended as a limitation on coverage, limits, or other requirement, or a waiver of any coverage normally provided by any insurance. Any available coverage shall be provided to the parties required to be named as Additional Insured pursuant to this Agreement.

3.15.8 Evidence Required

(a) Prior to execution of the Agreement, the Consultant shall file with the City evidence of insurance from an insurer or insurers certifying to the coverage of all insurance required herein. Such evidence shall include original copies of the ISO CG 00 01 (or insurer's equivalent) signed by the insurer's representative and Certificate of Insurance (Acord

Form 25-S or equivalent), together with required endorsements. All evidence of insurance shall be signed by a properly authorized officer, agent, or qualified representative of the insurer and shall certify the names of the insured, any additional insureds, where appropriate, the type and amount of the insurance, the location and operations to which the insurance applies, and the expiration date of such insurance.

3.15.9 Policy Provisions Required

(a) Consultant shall provide the City at least thirty (30) days prior written notice of cancellation of any policy required by this Agreement, except that the Consultant shall provide at least ten (10) days prior written notice of cancellation of any such policy due to non-payment of premium. If any of the required coverage is cancelled or expires during the term of this Agreement, the Consultant shall deliver renewal certificate(s) including the General Liability Additional Insured Endorsement to the City at least ten (10) days prior to the effective date of cancellation or expiration.

(b) The Commercial General Liability Policy and Automobile Policy shall each contain a provision stating that Consultant's policy is primary insurance and that any insurance, deductible, or self-insurance maintained by the City, its officials, officers, employees, agents, or volunteers shall not contribute with this primary insurance. Policies shall contain or be endorsed to contain such provisions.

(c) The retroactive date (if any) of each policy is to be no later than the effective date of this Agreement. Consultant shall maintain such coverage continuously for a period of at least three years after the completion of the work under this Agreement. Consultant shall purchase a one (1) year extended reporting period A) if the retroactive date is advanced past the effective date of this Agreement; B) if the policy is cancelled or not renewed; or C) if the policy is replaced by another claims-made policy with a retroactive date subsequent to the effective date of this Agreement.

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

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

3.15.10 Qualifying Insurers

(a) All policies required shall be issued by acceptable insurance companies, as determined by the City, which satisfy the following minimum requirements: Each such policy shall be from a company or companies with a current A.M. Best's rating of no less than A:VII and admitted to transact in the business of insurance in the State of California, or

otherwise allowed to place insurance through surplus line brokers under applicable provisions of the California Insurance Code or any federal law.

3.15.11 Additional Insurance Provisions

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

(b) If at any time during the life of the Agreement, any policy of insurance required under this Agreement does not comply with these specifications or is canceled and not replaced, City has the right but not the duty to obtain the insurance it deems necessary and any premium paid by City will be promptly reimbursed by Consultant or City will withhold amounts sufficient to pay premium from Consultant payments. In the alternative, City may cancel this Agreement.

(c) The City may require the Consultant to provide complete copies of all insurance policies in effect for the duration of the Project.

(d) Neither the City nor the City Council, nor any member of the City Council, nor any of the officials, officers, employees, agents or volunteers shall be personally responsible for any liability arising under or by virtue of this Agreement.

3.15.12 Subconsultant Insurance Requirements

(a) Consultant shall not allow any subcontractors or subconsultants to commence work on any subcontract until they have provided evidence satisfactory to the City that they have secured all insurance required under this Section. Policies of commercial general liability insurance provided by such subcontractors or subconsultants shall be endorsed to name the City as an additional insured using ISO form CG 20 38 04 13 or an endorsement providing the exact same coverage. If requested by Consultant, City may approve different scopes or minimum limits of insurance for particular subcontractors or subconsultants.

3.16 Records.

Consultant shall maintain complete and accurate records with respect to all costs and expenses incurred under this Agreement. All such records shall be clearly identifiable. Consultant shall allow a representative of City during normal business hours to examine, audit, and make transcripts or copies of such records and any other documents created pursuant to this Agreement. Consultant shall allow inspection of all work, data, documents, proceedings, and activities related to the Agreement for a period of five (5) years from the date of final payment under this Agreement.

3.17 Standardized Manufactured Items.

Consultant shall cooperate and consult with City in the use and selection of manufactured items on the Project, including but not limited to, paint, hardware, plumbing, mechanical and electrical equipment, fixtures, roofing materials and floor coverings. All such manufactured items

shall be standardized to City's criteria to the extent such criteria do not interfere with building design.

3.18 Limitation of Agreement.

This Agreement is limited to and includes only the work included in the Project described herein. Any additional or subsequent construction at the site of the Project, or at any other City site, will be covered by, and be the subject of, a separate Agreement for architectural services between City and the Consultant chosen therefor by City.

3.19 Mediation.

Disputes arising from this Agreement may be submitted to mediation if mutually agreeable to the Parties hereto. The type and process of mediation to be utilized shall be subject to the mutual agreement of the Parties.

3.20 Successors and Assigns.

This Agreement shall be binding upon and shall inure to the benefit of the successors in interest, executors, administrators and assigns of each Party to this Agreement. However, Consultant shall not assign or transfer by operation of law or otherwise any or all of its rights, burdens, duties or obligations without the prior written consent of City. Any attempted assignment without such consent shall be invalid and void.

3.21 Asbestos Certification.

Consultant shall certify to City, in writing and under penalty of perjury, that to the best of its knowledge, information and belief no asbestos-containing material or other material deemed to be hazardous by the state or federal government was specified as a building material in any construction document that the Consultant prepares for the Project. Consultant shall require all consultants who prepare any other documents for the Project to submit the same written certification. Consultant shall also assist the City in ensuring that contractors provide City with certification, in writing and under penalty of perjury, that to the best of their knowledge, information and belief no material furnished, installed or incorporated into the Project contains asbestos or any other material deemed to be hazardous by the state or federal government. These certifications shall be part of the final Project submittal. Consultant shall include statements in its specifications that materials containing asbestos or any other material deemed to be hazardous by the state or federal government are not to be included.

3.22 No Third Party Rights.

This Agreement shall not create any rights in, or inure to the benefits of, any third party except as expressly provided herein.

3.23 Governing Law.

This Agreement shall be construed in accordance with, and governed by, the laws of the State of California. Venue shall be in San Bernardino County.

3.24 Exhibits and Recitals.

All exhibits and recitals contained herein and attached hereto are material parts of this Agreement and are incorporated as if fully set forth.

3.25 Severability.

Should any provision in the Agreement be held by a court of competent jurisdiction to be invalid, void, or unenforceable, the remaining provisions shall continue in full force and effect.

3.26 Non-Waiver.

None of the provisions of this Agreement shall be considered waived by either Party, unless such waiver is specifically specified in writing.

3.27 Safety.

Consultant shall execute and maintain its work so as to avoid injury or damage to any person or property. In carrying out its Services, the Consultant shall at all times be in compliance with all applicable local, state and federal laws, rules and regulations, and shall exercise all necessary precautions for the safety of its employees, consultant and subcontractors appropriate to the nature of the work and the conditions under which the work is to be performed.

3.28 Harassment Policy.

Consultant shall provide a copy of the City's Harassment Policy to each of its employees assigned to perform the tasks under this Agreement. Consultant shall submit to the City's Personnel Manager a statement signed by each of its employees who are assigned to perform the Services under this Agreement certifying receipt of City's Harassment Policy and certifying that they have read the Harassment Policy. A finding by the City that any of Consultant's employees has harassed a City employee shall be grounds for appropriate discipline, up to and including such employee's removal from performance of this Agreement at City's request.

3.29 Delivery of Notices.

All notices permitted or required under this Agreement shall be given to the respective Parties at the following address, or at such other address as the respective Parties may provide in writing for this purpose:

CITY:

City of Ontario

303 East “B” Street

Ontario, CA 91764

Attn: Ms. Marissa Kucheck, Museum Director

CONSULTANT:

Architectural Resources Group
Pier 9, The Embarcadero, Suite 107
San Francisco, CA 94111
Attn: Katie Horak

Such notice shall be deemed made when personally delivered or when mailed, forty-eight (48) hours after deposit in the U.S. Mail, first class postage prepaid and addressed to the Party

at its applicable address. Actual notice shall be deemed adequate notice on the date actual notice occurred, regardless of the method of service.

3.30 Time of Essence.

Time is of the essence for each and every provision of this Agreement.

3.31 City's Right to Employ Other Consultants.

City reserves right to employ other consultants, including designers, in connection with this Project or other projects.

3.32 Prohibited Interests.

3.32.1 Solicitation. Consultant maintains and warrants that it has not employed nor retained any company or person, other than a bona fide employee working solely for Consultant, to solicit or secure this Agreement. Further, Consultant warrants that it has not paid nor has it agreed to pay any company or person, other than a bona fide employee working solely for Consultant, any fee, commission, percentage, brokerage fee, gift or other consideration contingent upon or resulting from the award or making of this Agreement. For breach or violation of this warranty, City shall have the right to rescind this Agreement without liability.

3.32.2 Conflict of Interest. For the term of this Agreement, no director, official, officer or employee of City, during the term of his or her service with City, shall have any direct interest in this Agreement, or obtain any present or anticipated material benefit arising therefrom.

3.33 Equal Opportunity Employment.

Consultant represents that it is an equal opportunity employer and that it shall not discriminate against any employee or applicant for employment because of race, religion, color, national origin, ancestry, sex, age or any other classification protected by federal or state law. Such non-discrimination shall include, but not be limited to, all activities related to initial employment, upgrading, demotion, transfer, recruitment or recruitment advertising, layoff or termination. Consultant shall also comply with all relevant provisions of City's minority business enterprise program, affirmative action plan or other related programs or guidelines currently in effect or hereinafter enacted.

3.34 Labor Certification.

By its signature hereunder, Consultant certifies that it is aware of the provisions of Section 3700 of the California Labor Code which require every employer to be insured against liability for Worker's Compensation or to undertake self-insurance in accordance with the provisions of that Code, and agrees to comply with such provisions before commencing the performance of the Services.

3.35 Subcontracting.

As specified in this Agreement, Consultant shall not subcontract any portion of the Services required by this Agreement, except as expressly stated herein, without prior written approval of City. Subcontracts, if any, shall contain a provision making them subject to each and every provision of this Agreement.

3.36 Supplemental Conditions.

Any supplemental conditions shall be attached as an exhibit to this Agreement, and that exhibit shall be incorporated herein by reference.

3.37 Entire Agreement.

This Agreement, with its exhibits, contains the entire agreement of the Parties hereto, and supersedes any and all other prior or contemporaneous negotiations, understandings and oral or written agreements between the Parties hereto. Each Party acknowledges that no representations, inducements, promises or agreements have been made by any person which are not incorporated herein, and that any other agreements shall be void. Furthermore, any modification of this Agreement shall only be effective if in writing signed by all Parties hereto.

SIGNATURES ON FOLLOWING PAGE

SIGNATURE PAGE FOR DESIGN SERVICES AGREEMENT
BETWEEN THE CITY OF ONTARIO
AND ARCHIECTURAL RESOURCES GROUP

IN WITNESS WHEREOF, the Parties have executed this Agreement as of the date first written above.

CITY OF ONTARIO

Approved By:

_____
Scott Ochoa
City Manager

Approved as to Form:

_____
Best Best & Krieger LLP
City Attorney

Attested By:

_____
City Clerk

ARCHITECTURAL RESOURCES GROUP

By: _____

Its: _____

Printed Name: _____

By: _____

Its: _____

Printed Name: _____

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

EXHIBIT "A"
SCOPE OF SERVICES

1. GENERAL REQUIREMENTS.

1.1 Basic Services. Consultant agrees to perform all the necessary professional architectural, engineering (e.g. mechanical, electrical, plumbing, structural, site engineering, and any other necessary engineering services mutually agreeable to the Parties) and construction administration services for the Project in a timely and professional manner, consistent with the standards of the profession, including those provided for herein.

1.2 Exclusions from Basic Services. The following services shall be excluded from the basic services listed above: To be determined on a case-by-case basis for this On-Call, as needed Architectural services

1.3 Additional Services. Consultant shall perform the following Additional Services for the Project: N/A

1.4 Communication with City. Consultant shall participate in consultations and conferences with authorized representatives of City and/or other local, regional, or state agencies concerned with the Project, which may be necessary for the completion of the Project or the development of the drawings, specifications and documents in accordance with the applicable standards and requirements of law and the City. Such consultations and conferences shall continue throughout the planning and construction of the Project and the contractor's warranty period. Consultant shall take direction only from the City's Representative, or any other representative specifically designated by the City for this Project, including any construction manager hired by the City.

1.5 Coordination and Cooperation with Construction Manager. The City may hire a construction manager to administer and coordinate all or any part of the Project on its behalf. If the City does so, it shall provide a copy of its agreement with the construction manager so that the Consultant will be fully aware of the duties and responsibilities of the construction manager. The Consultant shall cooperate with the construction manager and respond to any requests or directives authorized by the City to be made or given by the construction manager. The Consultant shall request clarification from the City in writing if the Consultant should have any questions regarding the authority of the construction manager.

2. INITIAL PLANNING PHASE.

During the initial planning phase of the Project, Consultant shall do all of the following, as well as any incidental services thereto:

2.1 Project Feasibility. Provide advice and assistance to City in determining the feasibility of the Project, analysis of the type and quality of materials and construction to be selected, the site location, and other initial planning matters.

2.2 Meeting Budget and Project Goals. Consultant shall notify City in writing of potential complications, cost overruns, unusual conditions, and general needs that potentially impact the Project budget and time line, including the City's Preliminary Construction Budget. Consultant shall use its best judgment in determining the balance between the size, type and quality of construction to achieve a satisfactory solution within the Project's budget and

construction allowance. It shall be the duty of the Consultant to design the Project within budget. As discussed herein, including in Section 7.3, if the lowest responsive and responsible bid for the Project exceeds the budget by the stated amount, Consultant may be required to make the necessary changes in the drawing and specifications, at its sole cost and expense, to bring the bids within the required budget.

2.3 Permits, Approvals and Authorizations. As indicated in Section 3.5.4 of the Agreement, Consultant shall assist City in securing easements, encroachment permits, rights of way, dedications, infrastructures and road improvements, as well as coordinating with utilities and adjacent property owners.

3. SCHEMATIC PLAN PHASE.

During the schematic plan phase of the Project, Consultant shall do all of the following, as well as any incidental services thereto:

3.1 Funding Documents. Consultant shall provide a site plan and all other Project-related information necessary and required for an application by City to any federal, state, regional, or local agencies for funds to finance the construction Project.

3.2 Schematic Plans. In cooperation with City, Consultant shall prepare preliminary plans and studies, schematic drawings, site utilization plans, and phasing plans showing the scale and relationship of the components of the Project, the plot plan development at the site, and the proposed architectural concept of the buildings ("Schematic Plans"). Consultant shall incorporate the functional requirements of City into the Schematic Plans. The Schematic Plans shall meet all laws, rules and regulations of the State of California. The Schematic Plans shall show all rooms incorporated in each building of the Project in single-line drawings, and shall include all revisions required by City or by any federal, state, regional or local agency having jurisdiction over the Project. All architectural drawings for the Project shall be in a form suitable for reproduction.

3.3 Preliminary Project Budget. Consultant shall use the City's Preliminary Construction Budget and its own expertise and experience with the Project to establish a preliminary project budget or allowance in a format required by City ("Consultant's Preliminary Project Budget"). The purpose of the Consultant's Preliminary Project Budget is to show the probable Project cost in relation to City's Preliminary Construction Budget and the construction standards of any applicable funding agency. If Consultant perceives site considerations which render the Project expensive or cost prohibitive, Consultant shall disclose such conditions in writing to City immediately. As discussed herein, including in Section 7.3, if the lowest responsive and responsible bid for the Project exceeds the budget by more than the stated amount, Consultant may be required to make the necessary changes in the drawings and specifications, at its sole cost and expense, to bring the bids within the required budget Consultant shall provide a preliminary written time schedule for the performance of all construction work on the Project.

3.4 Copies of Schematic Plans and Other Documents. Consultant, at its own expense, shall provide a complete set of the Schematic Plans described herein for City's review and approval. Additionally, at City's expense, Consultant shall provide such documents as may be required by any federal, state, regional or local agencies concerned with the Project. Any additional copies required by City shall be provided at actual cost to City.

4. DESIGN DEVELOPMENT PHASE.

During the design development phase of the Project, Consultant shall do all of the following, as well as any incidental services thereto:

4.1 Design Development Documents. Once City provides Consultant with specific written approval of the Schematic Plans described herein, Consultant shall prepare design development documents consisting of: (1) site and floor plans; (2) elevations; and (3) any other drawings and documents sufficient to fix and describe the types and makeup of materials, as well as the size and character of the Project's structural, mechanical and electrical systems, and to outline the Project specifications ("Design Development Documents"). The Design Development Documents shall be prepared in sufficient form to present to the City Council for approval.

4.2 Copies of Design Development and Other Documents. Consultant, at its own expense, shall provide a complete set of the Design Development Documents described herein for City's review and approval. Additionally, at City's expense, Consultant shall provide such documents as may be required by any federal, state, regional or local agencies concerned with the Project. Any additional copies required by City shall be provided at actual cost to City.

4.3 Updated Project Budget. Consultant shall use its Preliminary Project Budget and expertise and experience with the Project to establish an updated estimate of probable construction costs, containing detail consistent with the Design Development Documents as set forth herein and containing a breakdown based on types of materials and specifications identified herein ("Consultant's Updated Project Budget").

4.4 Timetable. Consultant shall provide a written timetable for full and adequate completion of the Project to City.

4.5 Application for Approvals. Consultant shall assist City in applying for and obtaining required approvals from all federal, state, regional or local agencies concerned with the Project. Consultant shall furnish and process all architectural and engineering information required to prepare and process applications to applicable utilities in order to secure priorities and materials, to aid in the construction of the Project and to obtain final Project approval and acceptance by any of the above agencies as may be required.

4.6 Color and Other Aesthetic Issues. Consultant shall provide, for City's review and approval, a preliminary schedule of all color materials and selections of textures, finishes and other matters involving an aesthetic decision about the Project.

5. FINAL WORKING DRAWINGS AND SPECIFICATIONS.

During the final working drawings and specifications phase of the Project, Consultant shall do all of the following, as well as any incidental services thereto:

5.1 Final Working Drawings and Specifications. Once City provides Consultant with specific written approval of the Design Development Documents described herein, Consultant shall prepare such complete working drawings and specifications as are necessary for developing complete bids and for properly executing the Project work in an efficient and thorough manner ("Final Working Drawings and Specifications"). Such Final Working Drawings and Specifications shall be developed from the Schematic Plans and Design Development Documents approved by City. The Final Working Drawings and Specifications shall set forth in

detail all of the following: (1) the Project construction work to be done; (2) the materials, workmanship, finishes, and equipment required for the architectural, structural, mechanical, and electrical systems; and (3) the utility service connection equipment and site work. As indicated in Section 3.9.2 of the Agreement, City may be requested to supply Consultant with the necessary information to determine the proper location of all improvements on and off site, including record drawings ("as-built drawings") in City's possession. Consultant will make a good-faith effort to verify the accuracy of such information by means of a thorough interior and exterior visual survey of site conditions. City shall also make a good-faith effort to verify the accuracy of the as-built drawings and provide any supplemental information to Consultant which may not be shown on the as-built drawings.

5.2 Form. The Final Working Drawings and Specifications must be in such form as will enable Consultant and City to secure the required permits and approvals from all federal, state, regional or local agencies concerned with the Project. In addition, the Final Working Drawings and Specifications must be in such form as will enable City to obtain, by competitive bidding, a responsible and responsive bid within the applicable budgetary limitations and cost standards. The Final Working Drawings and Specifications shall be clear and legible so that uniform copies may be on standard architectural size paper, properly indexed and numbered, and shall be capable of being clearly copied and assembled in a professional manner by Consultant.

5.3 Approval and Revisions. City shall review, study, and check the Final Working Drawings and Specifications presented to it by Consultant, and request any necessary revisions or obtain any necessary approvals by the City Council, subject to the approval of all federal, state, regional or local agencies concerned with the Project. Consultant shall make all City-requested changes, additions, deletions, and corrections in the Final Working Drawings and Specifications at no additional cost, so long as they are not in conflict with the requirements of public agencies having jurisdiction or prior approval, or inconsistent with earlier City direction or Consultant's professional judgment. Consultant shall bring any such conflicts and/or inconsistencies to the attention of City. The Parties agree that Consultant, and not the City, possesses the requisite expertise to determine the constructability of the Final Working Drawings and Specifications. However, the City reserves the right to conduct one or more constructability review processes with the Final Working Drawings and Specifications, and to hire an independent architect or other consultant to perform such reviews. Any such independent constructability review shall be at City's expense. Consultant shall make all City-requested changes, additions, deletions, and corrections in the Final Working Drawings and Specifications which may result from any constructability review, at no additional cost to the City, so long as they are not in conflict with the requirements of public agencies having jurisdiction or prior approval, or inconsistent with earlier City direction or Consultant's professional judgment. If such changes, additions, deletions or corrections are inconsistent with prior City direction, Consultant shall make such alterations and be compensated therefore pursuant to the Additional Services provision of this Agreement.

5.4 Costs of Construction. It is understood by Consultant that should the Final Working Drawings and Specifications be ordered by City, City shall specify the sum of money set aside to cover the total cost of construction of the work, exclusive of Consultant's fees. Should it become evident that the total construction cost will exceed the specified sum, Consultant shall at once present a statement in writing to the City's Representative setting forth this fact and giving a full statement of the cost estimates on which the conclusion is based.

5.5 Copies of Final Working Drawings and Specifications and Other Documents. Consultant, at its own expense, shall provide a complete set of the Final Working Drawings and Specifications described herein for City's review and approval. Additionally, at City's expense,

Consultant shall provide such documents as may be required by any federal, state, regional or local agencies concerned with the Project. Any additional copies required by City shall be provided at actual cost to City.

6. CONSTRUCTION CONTRACT DOCUMENTS.

During the construction contract documents phase of the Project, Consultant shall do all of the following, as well as any incidental services thereto:

6.1 Bid and Contract Documents. If so required by City, Consultant shall assist City in the completion of all bid and construction documents, including but not limited to, the Notice Inviting Bids, Instructions to Bidders, Contract Bid Forms (including Alternate Bids as requested by City), `Contract, General Conditions, Supplementary General Conditions, Special Conditions, DVBE and other applicable affirmative action documents, Performance Bond, Payment Bond, Escrow Agreement for Security Deposits, and any other certifications and documents required by federal, state and local laws, rules and regulations which may be reasonably required in order to obtain bids responsive to the specifications and drawings. All such documents shall be subject to the approval of City and City's legal counsel.

6.2 Final Estimate. At the time of delivery of these bid and construction documents, which shall include the Final Working Drawings and Specifications (collectively referred to herein as the "Construction Documents"), Consultant shall provide City with its final estimate of probable construction cost ("Consultant's Final Estimate"). As discussed herein, including in Section 7.3, it shall be the Consultant's duty to design the Project within budget.

7. BID PHASE.

During the bid phase of the Project, Consultant shall do all of the following, as well as any incidental services thereto:

7.1 Reproducible Construction Documents. Once City provides Consultant with specific written approval of the Construction Documents and Consultant's Final Estimate, Consultant shall provide to City one set of reproducible Construction Documents.

7.2 Distribution of Contract Documents and Review of Bids. Consultant shall assist City in distributing the Construction Documents to bidders and conducting the opening and review of bids for the Project.

7.3 Over Budget. If the apparent lowest responsive and responsible bid on the Project exceeds the Consultant's Final Estimate by more than five percent (5%), City may request Consultant to amend, at Consultant's sole cost and expense, the Final Drawings and Specifications in order to rebid the Project and receive a lowest responsive and responsible bid equal to or less than the Consultant's Final Estimate. All revisions necessary to bring the lowest responsible and responsive bid within the Consultant's Final Estimate, including any omissions, deferrals or alternates, shall be made in consultation with, and subject to the approval of, the City.

8. CONSTRUCTION PHASE.

During the construction phase of the Project, Consultant shall do all of the following, as well as any incidental services thereto:

8.1 Observation. The Project Consultant shall observe work executed from the Final Working Drawings and Specifications in person, provided that City may, in its discretion, consent to such observation by another competent representative of Consultant.

8.2 General Administration. Consultant shall provide general administration of the Construction Documents and the work performed by the contractors.

8.3 Pre-Construction Meeting. Consultant shall conduct one or more pre-construction meetings, as the City determines is needed for the Project, with all interested Parties.

8.4 Site Visits of Contractor's Work. Consultant shall conduct site visits to observe each contractors' work for general conformance with the Construction Documents and with any approved construction schedules or milestones. Such site visits shall be conducted as often as are necessary and appropriate to the stage of construction, according to the City's sole discretion, but in no event less than weekly.

8.5 Site Visits of Inspector's Work. Consultant shall conduct site visits to communicate and observe the activities of the City inspectors. Such site visits shall be conducted as often as is mutually acceptable to Consultant and City. Consultant shall direct the City inspectors and the Project contractors to coordinate the preparation of record drawings indicating dimensions and location of all "as-built" conditions, including but not limited to, underground utility lines.

8.6 Coordination of Subconsultants. Consultant shall cause all architects, engineers and other consultants, as may be hired by Consultant or City, to observe the work completed under their disciplines as required, and approve and review all test results for general conformance with the Construction Documents.

8.7 Reports. Consultant shall make regular reports as may be required by applicable federal, state or local laws, rules or regulations, as well as the federal, state, regional or local agencies concerned with the Project.

8.8 Construction Meetings; Minutes. Consultant shall attend all construction meetings and provide written reports/minutes to the City after each construction meeting in order to keep City informed of the progress of the work. Such meetings shall occur at a frequency necessary for the progress of the Project work, according to the City's sole discretion, but no less than weekly.

8.9 Written Reports. Consultant shall make written reports to City as necessary to inform City of problems arising during construction, changes contemplated as a result of each such problems, and progress of the Project work.

8.10 Written Records. Consultant shall keep accurate written records of the progress and quality of the Project work and the time schedules, and shall advise the contractors and City of any deviations from the time schedule which could delay timely completion of the Project.

8.11 Material and Test Reports. Consultant shall check and process, in a timely manner, all required material and test reports for the Project work. In addition, Consultant shall provide notice of any deficiencies in material or work reflected in such reports, as well as its recommendation for correction of such deficiencies, to the contractors and City.

8.12 Review and Response to Submissions. Consultant shall review and respond, in a timely manner, to all schedules, submittals, shop drawings, samples, information requests, change requests, and other submissions of the contractor and subcontractors for compliance with, or alterations and additions to, the Construction Documents. Consultant's review and response shall be done in such a manner so as to ensure the timely and uninterrupted progress of the Project work.

8.13 Rejection of Work. Consultant shall promptly reject, as discussed with City, work or materials which do not conform to the Construction Documents. Consultant shall immediately notify the City and contractor(s) of such rejections. Consultant shall also have the authority to recommend to the City that additional inspection or testing of the work be performed, whether or not such work is fabricated, installed or completed.

8.14 Substitutions. Consultant shall consult with City, in a timely manner, with regard to substitution of materials, equipment and laboratory reports thereof, prior to the City's final written approval of such substitutions. Consultant's consultation shall be done in such a manner so as to ensure the timely and uninterrupted progress of the Project work.

8.15 Revised Documents and Drawings. Consultant shall prepare, at no additional expense to City, all documents and/or drawings made necessary by errors and omissions in the originally approved Construction Documents.

8.16 Change Requests and Material Changes. Consultant shall evaluate and advise City, in a timely manner and in writing, of any change requests and material change(s) which may be requested or necessary in the Project plans and specifications. Consultant shall provide the City with its opinion as to whether such change requests should be approved, denied or revised. If the City has not hired a construction manager or other person to do so, the Consultant shall prepare and execute all change orders and submit them to the City for authorization. If the City has designated a construction manager or other person to prepare all change orders, the Consultant shall review all change orders prepared by such person, execute them and deliver them to the City for authorization if they meet with the Consultant's approval, or submit them to the City with recommendations for revision or denial if necessary. Consultant shall not order contractors to make any changes affecting the contract price without approval by City of such a written change order, pursuant to the terms of the Construction Documents. Consultant may order, on its own responsibility and pending City Council approval, changes necessary to meet construction emergencies, if written approval of City's Representative is first secured.

8.17 Applications for Payment. Consultant shall examine, verify and approve contractor's applications for payment, and shall issue certificates for payment in amounts approved by the City's inspector.

8.18 Final Color and Product Selection. Consultant shall coordinate final color and product selection with City's original design concept.

8.19 Substantial Completion. Consultant shall determine the date of substantial completion, in consultation with the City.

8.20 Punch List. After determining that the Project is substantially complete, Consultant shall participate in the inspection of the Project and shall review all remaining deficiencies and minor items needed to be corrected or completed on the Project, including those identified on the punch list prepared by the contractor ("Punch List Items"). Consultant shall notify

contractor in writing that all Punch List Items must be corrected prior to final acceptance of the Project and final payment. Consultant shall also notify City of all Punch List Items.

8.21 Warranties. Consultant shall review materials assembled by the contractor and subcontractors with regard to all written warranties, guarantees, owners' manuals, instruction books, diagrams, record "as built" drawings, and any other materials required from the contractors and subcontractors pursuant to the Construction Documents. Consultant shall coordinate and provide these materials to the City.

8.22 Certificate of Completion. Consultant shall participate in any further inspections of the Project necessary to issue Consultant's Certificate of Completion and final certificate for payment.

8.23 Documents for Project Close-Out. Consultant shall cause all other architects, engineers and other consultants, as may be hired by Consultant, to file any and all required documentation with the City or other governmental authorities necessary to close out the Project. Consultant shall assist the City in obtaining such documentation from all other architects, engineers, or other consultants.

9. AS-BUILT DRAWINGS.

During the as-built drawings phase of the Project, Consultant shall do all of the following, as well as any incidental services thereto:

9.1 As-Built Drawings and Specifications. Not later than thirty (30) days after substantial completion of the Project, before receipt of final payment, Consultant shall review and forward the Final Working Drawings and Specifications, indicating on them all changes made by change orders or otherwise pursuant to the Construction Documents, as well as all information called for on the specifications, thus producing an "as-built" set of Final Working Drawings and Specifications ("As-Built Drawings and Specifications"). The As-Built Drawings and Specifications shall show, among other things, the location of all concealed pipe, buried conduit runs and other similar elements within the completed Project. Consultant shall personally review and certify that the As-Built Drawings and Specifications are a correct representation of the information supplied to Consultant by any inspectors and the contractor, and shall obtain certifications from any inspectors and the contractor that the drawings are correct.

9.2 Approval. Once City provides Consultant with specific written approval of the As-Built Drawings and Specifications, Consultant shall forward to City the complete set of original As-Built Drawings and Specifications or a complete set of reproducible duplicate As-Built Drawings and Specifications. The tracing shall be of such quality that clear and legible prints may be made without appreciable and objectionable loss of detail.

9.3 Documents for Final Payment. Prior to the receipt of Consultant's final payment, Consultant shall forward to City all of the following: (1) one clear and legible set of reproductions of the computations; (2) the original copy of the specifications; (3) the As-Built Drawings and Specifications as required herein; and (4) Consultant's Certificate of Completion.

10. WARRANTY PERIOD.

During the warranty period phase of the Project, Consultant shall do all of the following, as well as any incidental services thereto:

10.1 Advice. Consultant shall provide advice to City on apparent deficiencies in the Project during any applicable warranty periods for the Project.

EXHIBIT "B"
FEE AND PHASING/FUNDING SCHEDULES

1. FEE SCHEDULE.

Consultant will invoice City on a monthly cycle based on the following fee schedule. Consultant will include with each invoice a detailed progress report that indicates the amount of budget spent on each phase and the total amount spent against the Total Compensation. Consultant will inform City regarding any out-of-scope work being performed by Consultant for which Consultant intends to seek compensation from City.

2. PHASING/FUNDING SCHEDULE.

Progress payments towards Total Compensation shall never exceed the following percentages of Total Compensation as of the phase indicated:

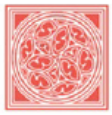
Initial Planning Phase:	_____ percent (%____)
Schematic Plan Phase:	_____ percent (%____)
Design Development Phase:	_____ percent (%____)
Final Working Drawings & Specifications Phase:	_____ percent (%____)
Construction Contract Documents Phase:	_____ percent (%____)
Bid Phase:	_____ percent (%____)
Construction Phase:	_____ percent (%____)
As-Built Drawings Phase:	_____ percent (%____)
Warranty Period Phase:	_____ percent (%____)

Note: No Phasing/Funding Schedule is necessary until a project task is issued under the contract

EXHIBIT "C"
COMPENSATION RATES AND REIMBURSABLE EXPENSES

1. HOURLY COMPENSATION RATES. BELOW

2. REIMBURSABLE EXPENSES. BELOW



Architectural
Resources Group

STANDARD BILLING RATES

1. Direct personnel expense shall be billed at the following rates, including time for meetings, public meetings, and presentations:

Principal	$280.80 to $356.40/hour
Senior Project Manager	$216.00 to $270/hour
Project Manager	$194.40 to $226.80/hour
Senior Architect	$105.20 to $259.20/hour
Architect 3	$194.40 to $226.80/hour
Designer 3	$189.00 to $226.80/hour
Historian/ Planner 3	$189.00 to $226.80/hour
Conservator 3	$189.00 to $226.80/hour
Architect 2	$178.20 to $189.00/hour
Designer 2	$167.40 to $183.60/hour
Historian/ Planner 2	$167.40 to $183.60/hour
Conservator 2	$167.40 to $183.60/hour
Architect 1	$156.60 to $172.80/hour
Designer 1	$156.60 to $162.00/hour
Historian/ Planner 1	$156.60 to $162.00/hour
Conservator 1	$156.60 to $162.00/hour
Intern	$108.00 to $151.20/hour
Administrative Personnel	$108.00 to $151.20/hour

2. Reimbursable Expenses shall be billed at cost plus 15% and shall include the following:
   a. Reproduction costs such as printing or duplication of drawings, specifications, and written reports.
   b. Lodging, subsistence, and out-of-pocket expenses for authorized travel in connection with work.
   c. Travel: (including local) IRS allowable rate plus tolls and parking, or cost of air travel.
   d. Special teleconference or database access charges.
   e. Cost of models, special renderings, photography, special process printing, special printed reports or publications and maps.
   f. Postage and delivery charges.
   g. Professional consultants retained with client approval.
   h. Specialized equipment rental (required by the project).

3. Equipment Use Fee of $250 shall be charged for specialized equipment like the Thermal Imaging Camera, 3D Camera, or Binocular Microscope.

4. Rates effective January 1, 2024 thru December 31, 2027.

3. ADDITIONAL CONSULTANTS.

If City requires Consultant to hire consultants to perform any Additional Services, Consultant shall be compensated therefore at the Consultant's actual hourly rates plus 15%. Owner shall have the authority to review and approve the rates of any such consultants.

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

PAUL S. LEON
MAYOR

DEBRA PORADA
MAYOR PRO TEM

ALAN D. WAPNER
JIM W. BOWMAN
RUBEN VALENCIA
COUNCIL MEMBERS

SHEILA MAUTZ
CITY CLERK

JAMES R. MILHISER
TREASURER

SCOTT OCHOA
CITY MANAGER

CITY OF ONTARIO
DESIGN SERVICES AGREEMENT

1. PARTIES AND DATE.

This Agreement is made and entered into as of _____, by and between the City of Ontario, a municipal corporation organized and operating under the laws of the State of California with its principal place of business at 303 East "B" Street, Ontario, California 91764-4196, County of San Bernardino, State of California ("City"), and **Frederick Fisher & Partners**, a Corporation**,** with its principal place of business at 12248 Santa Monica Boulevard, Los Angeles, CA 90025 (hereinafter referred to as "Consultant"). City and Consultant are sometimes individually referred to herein as "Party" and collectively as "Parties."

2. RECITALS.

2.1 City. City is a municipal corporation organized under the laws of the State of California, with power to contract for services necessary to achieve its purpose.

2.2 Consultant**.** Consultant desires to perform and assume responsibility for the provision of certain professional architectural design services required by the City on the terms and conditions set forth in this Agreement. Consultant warrants that it is fully licensed, qualified, and willing to perform the services required by this Agreement; provided, however, that if Consultant is a corporation or other organization, the Project Consultant designated pursuant to Section 3.2, and not the Consultant itself, shall be fully licensed to practice as an architect in the State of California.

2.3 Project**.** City desires to engage Consultant to render such services for the **Museum Improvements On-Call Architectural Services** ("Project") as set forth in this Agreement.

3. TERMS

3.1 Employment of Consultant.

3.1.1 Scope of Services. Consultant promises and agrees to furnish to City all labor, materials, tools, equipment, services, and incidental and customary work necessary to fully and adequately supply the professional architectural and related services necessary for the full and adequate completion of the Project consistent with the provisions of this Agreement (hereinafter referred to as "Services"). The Services are more particularly described throughout this Agreement, including Exhibit "A" attached hereto and incorporated herein by reference. All Services shall be subject to, and performed in accordance with, this Agreement, any exhibits

attached hereto and incorporated herein by reference, and all applicable local, state and federal laws, rules and regulations. All Services performed by Consultant shall be subject to the sole and discretionary approval of the City, which approval shall not be unreasonably withheld.

3.1.2 Term. The term of this Agreement shall be from **November 4, 2024,** to **November 4, 2027**, unless earlier terminated as provided herein. The City shall have the unilateral option, at its sole discretion, to renew this Agreement automatically for no more than two (2) additional one-year terms. Consultant shall complete the Services within the term of this Agreement, and shall meet any other established schedules and deadlines.

3.2 Project Consultant; Key Personnel.

3.2.1 **Project Architect**. Consultant shall name a specific individual to act as Project Consultant, subject to the approval of City. Consultant hereby designates Frederick Fisher (License No. C10281) to act as the Project Architect for the Project. The Project Architect shall: (1) maintain oversight of the Services; (2) have full authority to represent and act on behalf of the Consultant for all purposes under this Agreement; (3) supervise and direct the Services using his or her best skill and attention; (4) be responsible for the means, methods, techniques, sequences and procedures used for the Services; (5) adequately coordinate all portions of the Services; and (6) act as principal contact with City and all contractors, consultants, engineers and inspectors on the Project. Any change in the Project Architect shall be subject to the City's prior written approval, which approval shall not be unreasonably withheld. The new Project Architect shall be of at least equal competence as the prior Project Architect. In the event that City and Consultant cannot agree as to the substitution of a new Project Architect, City shall be entitled to terminate this Agreement for cause.

3.2.2 Key Personnel. In addition to the **Project Architect**, Consultant has represented to the City that certain additional key personnel, engineers and consultants will perform the Services under this Agreement. Should one or more of such personnel, engineers or consultants become unavailable, Consultant may substitute others of at least equal competence upon written approval of the City. In the event that City and Consultant cannot agree as to the substitution of key personnel, engineers or consultants, City shall be entitled to terminate this Agreement for cause. The key additional personnel, engineers and consultants for performance of this Agreement are as follows: Joseph Coriaty, Partner-In-Charge; Marisa Kurtzman, Programming & Planning Director; Nathan Prevendar, Project Manager; Takashige Ikawa.

3.3 Hiring of Consultants and Personnel.

3.3.1 Right to Hire or Employ. Consultant shall have the option, unless City objects in writing after notice, to employ at its expense architects, engineers, experts or other consultants qualified and licensed to render services in connection with the planning and/or administration of the Project, and to delegate to them such duties as Consultant may delegate without relieving Consultant from administrative or other responsibility under this Agreement. Consultant shall be responsible for the coordination and cooperation of Consultant's architects, engineers, experts or other consultants. All consultants, including changes in consultants, shall be subject to approval by City in its sole and reasonable discretion. Consultant shall notify City of the identity of all consultants at least fourteen (14) days prior to their commencement of work to allow City to review their qualifications and approve to their participation on the Project in its sole and reasonable discretion.

3.3.2 Qualification and License. All architects, engineers, experts and other consultants retained by Consultant in performance of this Agreement shall be qualified to perform the Services assigned to them, and shall be licensed to practice in their respective professions, where required by law.

3.3.3 Standards and Insurance. All architects, engineers, experts and other consultants hired by Consultant shall be required to meet all of the same standards and insurance requirements set forth in this Agreement, unless other standards or requirements are approved by the City in writing. Unless changes are approved in writing by the City, Consultant's agreements with its consultants shall contain a provision making them subject to all provisions stipulated in this Agreement.

3.3.4 Assignments or Staff Changes. Consultant shall promptly obtain written City approval of any assignment, reassignment or replacement of such architects, engineers, experts and consultants, or of other staff changes of key personnel working on the Project. As provided in the Agreement, any changes in Consultant's consultants and key personnel shall be subject to approval by City.

3.3.5 Draftsman and Clerical Support. Draftsmen and clerical personnel shall be retained by Consultant at Consultant's sole expense.

3.4 Standard of Care.

3.4.1 Standard of Care. Consultant shall perform all Services under this Agreement in a skillful and competent manner, consistent with the standards generally recognized as being employed by professionals qualified to perform the Services in the same discipline in the State of California, and shall be responsible to City for damages sustained by the City and delays to the Project as specified in the indemnification provision of this Agreement. Without limiting the foregoing, Consultant shall be fully responsible to the City for any increased costs incurred by the City as a result of any such delays in the design or construction of the Project. Consultant represents and maintains that it is skilled in the professional calling necessary to perform the Services. Consultant warrants and represents that all of its employees, architects, engineers, experts and other consultants shall have sufficient skill and experience to perform the Services assigned to them. Finally, Consultant represents that it, its employees, architects, engineers, experts and other consultants have all licenses, permits, qualifications and approvals of whatever nature that are legally required to perform the Services assigned to or rendered by them and that such licenses and approvals shall be maintained throughout the term of this Agreement. As provided for in the indemnification provisions of this Agreement, Consultant shall perform, at its own cost and expense and without reimbursement from the City, any services necessary to correct errors or omissions which are caused by the Consultant's failure to comply with the standard of care provided for herein.

3.4.2 Performance of Employees. Any employee or consultant who is determined by the City to be uncooperative, incompetent, a threat to the adequate or timely completion of the Project, a threat to the safety of persons or property, or any employee or consultant who fails or refuses to perform the Services in a manner acceptable to the City, shall be promptly removed from the Project by the Consultant and shall not be re-employed to perform any of the Services or to work on the Project.

3.5 Laws and Regulations.

3.5.1 Knowledge and Compliance. Consultant shall keep itself fully informed of and in compliance with all applicable local, state and federal laws, rules and regulations in any manner affecting the performance of the Services or the Project, and shall give all notices required of the Consultant by law. Consultant shall be liable, pursuant to the standard of care and indemnification provisions of this Agreement, for all violations of such laws and regulations in connection with its Services. Consultant shall defend, indemnify and hold City, its officials, officers, employees and agents free and harmless, pursuant to the indemnification provisions of this Agreement, from any claim or liability arising out of any failure or alleged failure to comply with such laws, rules or regulations.

3.5.2 Drawings and Specifications. Consultant shall cause all drawings and specifications to conform to any applicable requirements of federal, state and local laws, rules and regulations, including the Uniform Building Code, in effect as of the time the drawings and specifications are prepared or revised during the latest phase of the Services described in Exhibit "A" attached hereto. Any significant revisions made necessary by changes in such laws, rules and regulations after this time may be compensated as Additional Services which were not known or reasonably should not have been known by Consultant. Consultant shall cause the necessary copies of such drawings and specifications to be filed with any governmental bodies with approval jurisdiction over the Project, in accordance with the Services described in Exhibit "A" attached hereto. For the preparation of all such drawings and specifications, the Consultant shall use Computer Aided Design Drafting ("CADD") (e.g., AutoCAD) or other technology acceptable to the Consultant and City.

3.5.3 Americans with Disabilities Act. Consultant will use its best professional efforts to interpret all applicable federal, state and local laws, rules and regulations with respect to access, including those of the Americans with Disabilities Act ("ADA"). Consultant shall inform City of the existence of inconsistencies of which it is aware or reasonably should be aware between federal and state accessibility laws, rules and regulations, as well as any other issues which are subject to conflicting interpretations of the law, and shall provide the City with its interpretation of such inconsistencies and conflicting interpretations. Unless Consultant brings such inconsistencies and conflicting interpretations to the attention of the City and requests City's direction on how to proceed, the Consultant's interpretation of such inconsistencies and conflicting interpretations shall be the sole responsibility and liability of Consultant, and the Consultant shall correct all plans, specifications and other documents prepared for the Project at no additional cost if its interpretations are shown to be incorrect. In the event that the Consultant request's City's direction on how to proceed with respect to any inconsistent and/or conflicting interpretation, the Consultant shall be responsible to the City only pursuant to the indemnification provisions of this Agreement.

3.5.4 Permits, Approvals and Authorizations. Consultant shall provide City with a list of all permits, approvals or other authorizations required for the Project from all federal, state or local governmental bodies with approval jurisdiction over the Project. Consultant shall then assist the City in obtaining all such permits, approvals and other authorizations. The costs of such permits, approvals and other authorizations shall be paid by the City.

3.5.5 Water Quality Management and Compliance. Consultant shall keep itself and all subcontractors, staff, and employees fully informed of and in compliance with all local, state and federal laws, rules and regulations that may impact, or be implicated by the performance of the Services including, without limitation, all applicable provisions of the City's ordinances

regulating water quality and storm water; the Federal Water Pollution Control Act (33 U.S.C. § 1251 *et seq*.); the California Porter-Cologne Water Quality Control Act (Cal Water Code §§ 13000-14950); and any and all regulations, policies, or permits issued pursuant to any such authority. Consultant shall additionally comply with the lawful requirements of the City, and any other municipality, drainage district, or other local agency with jurisdiction over the location where the Services are to be conducted, regulating water quality and storm water discharges. Failure to comply with laws, regulations, and ordinances listed in this Section is a violation of federal and state law.

3.6 Independent Contractor.

3.6.1 Control and Payment of Subordinates. City retains Consultant on an independent contractor basis and Consultant is not an employee of City. Consultant is not an employee for state tax, federal tax or any other purpose, and is not entitled to the rights or benefits afforded to City's employees. Any additional personnel performing the Services under this Agreement on behalf of Consultant shall also not be employees of City, and shall at all times be under Consultant's exclusive direction and control. Consultant shall pay all wages, salaries, and other amounts due such personnel in connection with their performance of Services under this Agreement and as required by law. Consultant shall be responsible for all reports and obligations respecting such additional personnel, including, but not limited to: social security taxes, income tax withholding, unemployment insurance, disability insurance, and workers' compensation insurance.

3.7 Schedule of Services.

3.7.1 Consultant Services. Consultant shall fully and adequately complete the Services described in this Agreement and in Exhibit "A" attached hereto and incorporated herein by reference.

3.7.2 Timely Performance Standard. Consultant shall perform all Services hereunder as expeditiously as is consistent with professional skill and care, as well as the orderly progress of the Project work so as not to be the cause, in whole or in part, of delays in the completion of the Project or in the achievement of any Project milestones, as provided herein. Specifically, Consultant shall perform its Services so as to allow for the full and adequate completion of the Project within the time required by the City and within any completion schedules adopted for the Project. Consultant agrees to coordinate with City's staff, contractors and consultants in the performance of the Services, and shall be available to City's staff, contractors and consultants at all reasonable times.

3.7.3 Performance Schedule. Consultant shall prepare an estimated time schedule for the performance of Consultant's Services, to be adjusted as the Project proceeds. Such schedule shall be subject to the City's review and approval, which approval shall not be unreasonably withheld, and shall include allowances for periods of time required for City's review and approval of submissions, and for approvals of authorities having jurisdiction over Project approval and funding. If City and Consultant cannot mutually agree on a performance schedule, City shall have the authority to immediately terminate this Agreement. The schedule shall not be exceeded by Consultant without the prior written approval of City. If the Consultant's Services are not completed within the time provided by the agreed upon performance schedule, or any milestones established therein, it is understood, acknowledged and agreed that the City will suffer damage for which the Consultant will be responsible.

3.7.4 Excusable Delays. Any delays in Consultant's work caused by the following may be added to the time for completion of any obligations of Consultant: (1) the actions of City or its employees; (2) the actions of those in direct contractual relationship with City; (3) the actions of any governmental agency having jurisdiction over the Project; (4) the actions of any parties not within the reasonable control of the Consultant; and (5) any Force Majeure Event (as defined herein) or other unforeseen occurrence not due to any fault or negligence on the part of Consultant. Neither the City nor the Consultant shall be liable for damages, liquidated or otherwise, to the other on account of such delays.

3.7.5 Force Majeure Events. Neither City nor Consultant shall be considered in default of this Agreement for delays in performance caused by circumstances beyond the reasonable control of the non-performing Party. For purposes of this Agreement, such circumstances include a Force Majeure Event. A Force Majeure Event shall mean an event that materially affects a Party's performance and is one or more of the following: (1) Acts of God or other natural disasters; (2) terrorism or other acts of a public enemy; (3) orders of governmental authorities (including, without limitation, unreasonable and unforeseeable delay in the issuance of permits or approvals by governmental authorities that are required for the services); (4) strikes and other organized labor action occurring at the site and the effects thereof on the services, only to the extent such strikes and other organized labor action are beyond the control of Consultant and its subcontractors, and to the extent the effects thereof cannot be avoided by use of replacement workers; and (5) pandemics, epidemics or quarantine restrictions. For purposes of this section, "orders of governmental authorities," includes ordinances, emergency proclamations and orders, rules to protect the public health, welfare and safety, and other actions of a public agency applicable to the Services and Agreement. Should a Force Majeure Event occur, the non-performing Party shall, within fifteen (15) calendar days of the beginning of an Force Majeure Event, give written notice to the other Party describing the circumstances preventing continued performance and the efforts being made to resume performance of this Agreement. Force Majeure Events shall not entitle Consultant to any additional compensation. Notwithstanding the foregoing in this section, the City may still terminate this Agreement in accordance with the termination provisions of this Agreement.

3.7.6 Request for Excusable Delay Credit. The Consultant shall, within fifteen (15) calendar days of the beginning of any excusable delay, notify the City in writing of the causes of delay (unless City grants in writing a further period of time to file such notice prior to the date of final payment under the Agreement). City will then ascertain the facts and the extent of the delay, and grant an extension of time for completing the Services when, in its sole judgment, the findings of fact justify such an extension. The City's findings of fact thereon shall be final and conclusive on the Parties. Extensions of time shall apply only to that portion of the Services affected by the delay and shall not apply to other portions of the Services not so affected. The sole remedy of Consultant for extensions of time shall be an extension of the performance time at no cost to the City. If Additional Services are required as a result of an excusable delay, the Parties shall mutually agree thereto pursuant to the Additional Services provision of this Agreement. Should Consultant make an application for an extension of time, Consultant shall submit evidence that the insurance policies required by this Agreement remain in effect during the requested additional period of time.

3.8 Additional Services.

3.8.1 Request for Services. At City's request, Consultant may be asked to perform services not otherwise included in this Agreement, not included within the basic services

listed in Exhibit “A” attached hereto, and/or not customarily furnished in accordance with generally accepted architectural practice.

3.8.2 Definition. As used herein, “Additional Services” mean: (1) any work which is determined by City to be necessary for the proper completion of the Project, but which the Parties did not reasonably anticipate would be necessary for the Consultant to perform at the execution of this Agreement; or (2) any work listed as Additional Services in Exhibit “A” attached hereto. Consultant shall not perform, nor be compensated for, Additional Services without prior written authorization from City and without an agreement between the City and Consultant as to the compensation to be paid for such services. City shall pay Consultant for any approved Additional Services, pursuant to the compensation provisions herein, so long as such services are not made necessary through the fault of Consultant pursuant to the indemnification provision of this Agreement.

3.8.3 Examples of Additional Services. Such Additional Services shall not include any redesign or revisions to drawings, specifications or other documents when such revisions are necessary in order to bring such documents into compliance with applicable laws, rules, regulations or codes of which Consultant was aware or should have been aware pursuant to the laws and regulations provision of this Agreement above. Such Additional Services may include, but shall not be limited to:

(a) Separately Bid Portions of Project. Plan preparation and/or administration of work on portions of the Project separately bid.

(b) Furniture and Interior Design. Assistance to City, if requested, for the selection of moveable furniture, equipment or articles which are not included in the Construction Documents.

(c) Fault of Contractor. Services caused by delinquency, default or insolvency of contractor, or by major defects in the work of the contractor, provided that any such services made necessary by the failure of Consultant to detect and report such matters when it reasonably should have done so shall not be compensated.

(d) Inconsistent Approvals or Instructions. Revisions in drawings, specifications or other documents when such revisions are inconsistent with written approvals or instructions previously given and are due to causes beyond the control of Consultant.

(e) Legal Proceedings. Serving as an expert witness on City's behalf or attending legal proceedings to which the Consultant is not a party.

(f) Damage Repair. Supervision of repair of damages to any structure.

(g) Extra Environmental Services. Additional work required for environmental conditions (e.g. asbestos or site conditions) not already contemplated within the Consultant's services for the Project.

3.9 City Responsibilities. City’s responsibilities shall include the following:

3.9.1 Data and Information. City shall make available to Consultant all necessary data and information concerning the purpose and requirements of the Project, including scheduling and budget limitations, objectives, constraints and criteria. As part of the budget

limitation information, the City shall provide the Consultant with a preliminary construction budget ("City's Preliminary Construction Budget").

3.9.2 Project Survey. If required pursuant to the scope of the Project and if requested by Consultant, City shall furnish Consultant with, or direct Consultant to procure at City's expense, a survey of the Project site prepared by a registered surveyor or civil engineer, any other record documents which shall indicate existing structures, land features, improvements, sewer, water, gas, electrical and utility lines, topographical information and boundary dimensions of the site, and any other such pertinent information.

3.9.3 Bid Phase. Distribute Construction Documents to bidders and conduct the opening and review of bids for the Project.

3.9.4 Testing. Retain consultant(s) to conduct chemical, mechanical, soils, geological or other tests required for proper design of the Project, and furnish such surveys, borings, test pits, and other tests as may be necessary to reveal conditions of the site which must be known to determine soil condition or to ensure the proper development of the required drawings and specifications.

3.9.5 Required Inspections and Tests. Retain consultant(s) to conduct materials testing and inspection or environmental/hazardous materials testing and inspection pursuant to any applicable laws, rules or regulations.

3.9.6 Fees of Reviewing or Licensing Agencies. Directly pay or reimburse the payment of all fees required by any reviewing or licensing agency, or other agency having approval jurisdiction over the Project.

3.9.7 City's Representative. The City hereby designates the City Manager, or his or her designee, to act as its representative for the performance of this Agreement ("City's Representative"). City's Representative shall have the power to act on behalf of the City for all purposes under this Contract. The City Manager hereby designates Marissa Kucheck, Museum Director or his or her designee, as the City's contact for the implementation of the Services hereunder. Contractor shall not accept direction or orders from any person other than the City's Representative or his or her designee.

3.9.8 Review and Approved Documents. Review all documents submitted by Consultant, including change orders and other matters requiring approval by the City Council or other officials. City shall advise Consultant of decisions pertaining to such documents within a reasonable time after submission, so as not to cause unreasonable delay as provided in the excusable delay provisions of this Agreement above.

3.10 Compensation.

3.10.1 Consultant's Compensation for Basic Services. City shall pay to Consultant, for the performance of all Services rendered under this Agreement, the total not to exceed amount of **Two Hundred Fifty Thousand Dollars ($250,000**) ("Total Compensation"). This Total Compensation amount shall be based upon, and may be adjusted according to, the fee schedule and related terms and conditions attached hereto as Exhibit "B" and incorporated herein by reference. The Total Compensation, as may be adjusted upon mutual agreement, shall constitute complete and adequate payment for Services under this Agreement.

3.10.2 Payment for Additional Services. At any time during the term of this Agreement, City may request that Consultant perform Additional Services. As used herein, Additional Services means any work which is determined by City to be necessary for the proper completion of the Project, but which the Parties did not reasonably anticipate would be necessary at the execution of this Agreement. Any additional work in excess of this amount must be approved by the City. If authorized, such Additional Services will be compensated at the rates and in the manner set forth in Exhibit "C" attached hereto and incorporated herein by reference, unless a flat rate or some other form of compensation is mutually agreed upon by the Parties. If City requires Consultant to hire consultants to perform any Additional Services, Consultant shall be compensated therefore at the rates and in the manner set forth in Exhibit "C" attached hereto and incorporated herein by reference, unless a flat rate or some other form of compensation is mutually agreed upon by the Parties. City shall have the authority to review and approve the rates of any such consultants. In addition, Consultant shall be reimbursed for any expenses incurred by such consultants pursuant to the terms and conditions of Section 3.10.3.

3.10.3 Reimbursable Expenses. Reimbursable expenses are in addition to compensation for the Services and Additional Services. Consultant shall not be reimbursed for any expenses unless authorized in writing by City, which approval may be evidenced by inclusion in Exhibit "C" attached hereto. Such reimbursable expenses shall include only those expenses which are reasonably and necessarily incurred by Consultant in the interest of the Project. Consultant shall be required to acquire prior written consent in order to obtain reimbursement for the following: (1) extraordinary transportation expenses incurred in connection with the Project; (2) out-of-town travel expenses incurred in connection with the Project; (3) fees paid for securing approval of authorities having jurisdiction over the Project; (4) bid document duplication costs in excess of $1,000; and (5) other costs, fees and expenses in excess of $1,000.

3.10.4 Payment to Consultant. Consultant's compensation and reimbursable expenses shall be paid by City to Consultant no more often than monthly. Such periodic payments shall be made based upon the percentage of work completed, and in accordance with the phasing and funding schedule provided in Exhibit "B" and the compensation rates indicated in Exhibit "C" attached hereto and incorporated herein by reference. In order to receive payment, Consultant shall present to City an itemized statement which indicates Services performed, percentage of Services completed, method for computing the amount payable, and the amount to be paid. The statement shall describe the amount of Services provided since the initial commencement date, or since the start of the subsequent billing periods, as appropriate, through the date of the statement, as well as those expenses for which reimbursement is requested for that statement period. The amount paid to Consultant shall never exceed the percentage amounts authorized by the phasing and funding schedule located in Exhibit "B" attached hereto. City shall, within thirty (30) days of receiving such statement, review the statement and pay all approved charges thereon pursuant to the provisions of Civil Code Section 3320. Disputed amounts shall be resolved by the Parties in a mutually agreeable manner.

Payments made for Additional Services shall be made in installments, not more often than monthly, proportionate to the degree of completion of such services or in such other manner as the Parties shall specify when such services are agreed upon, and in accordance with any authorized fee or rate schedule. In order to receive payment, Consultant shall present to City an itemized statement which indicates the Additional Services performed, percentage of Additional Services completed, method for computing the amount payable, and the amount to be paid. The statement shall describe the amount of Additional Services provided since the initial commencement date, or since the start of the subsequent billing periods, as appropriate, through the date of the statement. City shall, within thirty (30) days of receiving such statement, review

the statement and pay all approved charges thereon pursuant to the provisions of Civil Code Section 3320. Disputed amounts shall be resolved by the Parties in a mutually agreeable manner.

Upon cancellation or termination of this Agreement, Consultant shall be compensated as set forth in the termination provision herein.

3.10.5 Withholding Payment to Consultant. The City may withhold payment, in whole or in part, to the extent reasonably necessary to protect the City from claims, demands, causes of action, costs, expenses, liabilities, losses, damages, or injuries of any kind to the extent arising out of or caused by the negligence, recklessness, or willful misconduct protected under the indemnification provisions of this Agreement. Failure by City to deduct any sums from a progress payment shall not constitute a waiver of the City's right to such sums. The City may keep any moneys which would otherwise be payable at any time hereunder and apply the same, or so much as may be necessary therefor, to the payment of any expenses, losses, or damages as determined by the City, incurred by the City for which Consultant is liable under the Agreement or state law. Payments to the Consultant for compensation and reimbursable expenses due shall not be contingent on the construction, completion or ultimate success of the Project. Payment to the Consultant shall not be withheld, postponed, or made contingent upon receipt by the City of offsetting reimbursement or credit from Parties not within the Consultant's reasonable control.

3.10.6 Prevailing Wages. Consultant is aware of the requirements of California Labor Code Sections 1720, et seq., and 1770, et seq., as well as California Code of Regulations, Title 8, Section 16000, et seq., ("Prevailing Wage Laws"), which require the payment of prevailing wage rates and the performance of other requirements on certain "public works" and "maintenance" projects. If the Services are being performed as part of an applicable "public works" or "maintenance" project, as defined by the Prevailing Wage Laws, and If the total compensation is $1,000 or more, Consultant agrees to fully comply with and to require its consultants to fully comply with such Prevailing Wage Laws. City shall provide Consultant with a copy of the prevailing rates of per diem wages in effect at the commencement of this Agreement. Consultant shall make copies of the prevailing rates of per diem wages for each craft, classification or type of worker needed to execute the Services available to interested parties upon request, and shall post copies at the Consultant's principal place of business and at the Project site. It shall be mandatory upon the Consultant and all subconsultants to comply with all California Labor Code provisions, which include but are not limited to prevailing wages (Labor Code Sections 1771, 1774 and 1775), employment of apprentices (Labor Code Section 1777.5), certified payroll records (Labor Code Sections 1771.4 and 1776), hours of labor (Labor Code Sections 1813 and 1815) and debarment of contractors and subcontractors (Labor Code Section 1777.1). The requirement to submit certified payroll records directly to the Labor Commissioner under Labor Code section 1771.4 shall not apply to work performed on a public works project that is exempt pursuant to the small project exemption specified in Labor Code Section 1771.4. Consultant shall defend, indemnify and hold the City, its elected officials, officers, employees and agents free and harmless from any claims, liabilities, costs, penalties or interest arising out of any failure or alleged failure of the Consultant or its consultants to comply with the Prevailing Wage Laws.

(a) Registration/DIR Compliance. If the Services are being performed as part of an applicable "public works project" of over $25,000 when the project is for construction, alteration, demolition, installation, or repair work, or a public works project of over $15,000 when the project is for maintenance work, in addition to the foregoing, then pursuant to Labor Code sections 1725.5 and 1771.1, the Consultant and all subconsultants performing such Services must be registered with the Department of Industrial Relations ("DIR"). Consultant shall maintain

registration for the duration of the Project and require the same of any subconsultants. This project may also be subject to compliance monitoring and enforcement by the DIR. It shall be Consultant's sole responsibility to comply with all applicable registration and labor compliance requirements, including the submission of payroll records directly to the DIR. Any stop orders issued by the Department of Industrial Relations against Consultant or any subconsultant that affect Consultant's performance of services, including any delay, shall be Consultant's sole responsibility. Any delay arising out of or resulting from such stop orders shall be considered Consultant caused delay and shall not be compensable by the City. Consultant shall defend, indemnify and hold the City, its officials, officers, employees and agents free and harmless from any claim or liability arising out of stop orders issued by the Department of Industrial Relations against Consultant or any subconsultant.

3.10.7 Automated Clearing House ("ACH") payments. It is the City's policy to pay its consultant invoices via electronic fund transfers through the ACH network. All payments due and owing pursuant to a properly issued and correct invoice or under this Agreement shall be made through electronic ACH transfers, unless otherwise agreed upon by both Parties in writing. Consultant shall provide the City with ACH payment details whereby the City shall initiate the ACH transfers to Consultant in the amount required pursuant to a properly issued and correct invoice or under this Agreement. Each Party shall undertake any and all required actions and execute any required documents, instruments, or agreements required to effectuate the requirements of this Section. In the event the City erroneously deposits funds into an account, or otherwise deposits funds to which Consultant is not entitled: (1) Consultant shall immediately notify the City and the financial institution; (2) Consultant shall not withdraw any of the funds which were erroneously deposited or to which Consultant is not entitled; and (3) Consultant authorizes both the City and financial institution to take all actions necessary to correct the error and return to the City all funds erroneously deposited or to which Consultant is not entitled.

3.11 Notice to Proceed.

Consultant shall not proceed with performance of any Services under this Agreement unless and until the City provides a written notice to proceed.

3.12 Termination, Suspension and Abandonment.

3.12.1 Grounds for Termination; Consultant's Termination for Cause. City hereby reserves the right to suspend or abandon, at any time and for any reason, all or any portion of the Project and the construction work thereon, or to terminate this Agreement at any time with or without cause. Consultant shall be provided with at least seven (7) days advanced written notice of such suspension, abandonment or termination. In the event of such suspension, abandonment or termination, Consultant shall be paid for Services and reimbursable expenses rendered up to the date of such suspension, abandonment or termination, pursuant to the schedule of payments provided for in this Agreement, less any claims against or damages suffered by City as a result of the default, if any, by Consultant. Consultant hereby expressly waives any and all claims for damages or compensation arising under this Agreement, except as set forth herein, in the event of such suspension, abandonment or termination. Consultant may terminate this Agreement for substantial breach of performance by the City such as failure to make payment to Consultant as provided in this Agreement.

3.12.2 City's Suspension of Work. If Consultant's Services are suspended by City, City may require Consultant to resume such Services within ninety (90) days after written notice

from City. When the Project is resumed, the Total Compensation and schedule of Services shall be equitably adjusted upon mutual agreement of the City and Consultant.

3.12.3 Documents and Other Data. Upon suspension, abandonment or termination, Consultant shall provide to City all preliminary studies, sketches, working drawings, specifications, computations, and all other Project Documents, as defined below, to which City would have been entitled at the completion of Consultant's Services under this Agreement. Upon payment of the amount required to be paid to Consultant pursuant to the termination provisions of this Agreement, City shall have the rights, as provided in this Agreement hereinafter, to use such Project Documents prepared by or on behalf of Consultant under this Agreement. Consultant shall make such documents available to City upon request and without additional compensation other than as may be approved as a reimbursable expense.

3.12.4 Employment of other Consultants. In the event this Agreement is terminated in whole or in part as provided herein, City may procure, upon such terms and in such manner as it may determine appropriate, services similar to those terminated.

3.13 Ownership and Use of Documents; Confidentiality.

3.13.1 Ownership. All plans, specifications, original or reproducible transparencies of working drawings and master plans, preliminary sketches, architectural presentation drawings, structural computations, estimates and any other documents prepared pursuant to this Agreement, including, but not limited to, any other works of authorship fixed in any tangible medium of expression such as writings, physical drawings and data magnetically or otherwise recorded on computer diskettes (hereinafter referred to as the "Project Documents") shall be and remain the property of City. Although the official copyright in all Project Documents shall remain with the Consultant or other applicable subcontractors or consultants, the Project Documents shall be the property of City whether or not the work for which they were made is executed or completed. Within thirty (30) calendar days following completion of the Project, Consultant shall provide to City copies of all Project Documents required by City. In addition, Consultant shall retain copies of all Project Documents on file for a minimum of fifteen (15) years following completion of the Project, and shall make copies available to City upon the payment of reasonable duplication costs. Before destroying the Project Documents following this retention period, Consultant shall make a reasonable effort to notify City and provide City with the opportunity to obtain the documents.

3.13.2 Right to Use. Consultant grants to City the right to use and reuse all or part of the Project Documents, at City's sole discretion and with no additional compensation to Consultant, for the following purposes:

(a) The construction of all or part of this Project.

(b) The repair, renovation, modernization, replacement, reconstruction or expansion of this Project at any time;

(c) The construction of another project by or on behalf of the City for its ownership and use;

City is not bound by this Agreement to employ the services of Consultant in the event such documents are used or reused for these purposes. City shall be able to use or reuse the Project Documents for these purposes without risk of liability to the Consultant or third parties with respect

to the condition of the Project Documents, and the use or reuse of the Project Documents for these purposes shall not be construed or interpreted to waive or limit City's right to recover for latent defects or for errors or omissions of the Consultant.

Any use or reuse by City of the Project Documents on any project other than this Project without employing the services of Consultant shall be at City's own risk with respect to third parties. If City uses or reuses the Project Documents on any project other than this Project, it shall remove the Consultant's seal from the Project Documents and hold harmless Consultant and its officers, directors, agents and employees from claims arising out of the negligent use or re-use of the Project Documents on such other project.

3.13.3 License. This Agreement creates a non-exclusive and perpetual license for City to copy, use, modify or reuse any and all Project Documents and any intellectual property rights therein. Consultant shall require any and all subcontractors and consultants to agree in writing that City is granted a non-exclusive and perpetual license for the work of such subcontractors or consultants performed pursuant to this Agreement.

3.13.4 Right to License. Consultant represents and warrants that Consultant has the legal right to license any and all copyrights, designs and other intellectual property embodied in the Project Documents that Consultant prepares or causes to be prepared pursuant to this Agreement. Consultant shall indemnify and hold City harmless pursuant to the indemnification provisions of this Agreement for any breach of this Section. Consultant makes no such representation and warranty in regard to previously prepared designs, plans, specifications, studies, drawings, estimates or other documents that were prepared by design professionals other than Consultant and provided to Consultant by City.

3.13.5 Confidentiality. All Project Documents, either created by or provided to Consultant in connection with the performance of this Agreement, shall be held confidential by Consultant to the extent they are not subject to disclosure pursuant to the Public Records Act. All Project Documents shall not, without the written consent of City, be used or reproduced by Consultant for any purposes other than the performance of the Services. Consultant shall not disclose, cause or facilitate the disclosure of the Project Documents to any person or entity not connected with the performance of the Services or the Project. Nothing furnished to Consultant which is otherwise known to Consultant or is generally known, or has become known, to the related industry shall be deemed confidential. Consultant shall not use City's name or insignia, photographs of the Project, or any publicity pertaining to the Services or the Project in any magazine, trade paper, newspaper, television or radio production or other similar medium without the written consent of City.

3.14 Indemnification.

3.14.1 To the fullest extent permitted by law, Consultant shall defend (with counsel of City's choosing), indemnify and hold the City, its officials, officers, employees, volunteers, and agents free and harmless from any and all claims, demands, causes of action, costs, expenses, liability, loss, damage or injury of any kind, in law or equity, to property or persons, including wrongful death, in any manner arising out of, pertaining to, or incident to any acts, errors or omissions, or willful misconduct of Consultant, its officials, officers, employees, subcontractors, consultants or agents in connection with the performance of the Consultant's Services, the Project or this Agreement, including without limitation the payment of all damages, expert witness fees and attorney's fees and other related costs and expenses except such loss or damage caused by the sole negligence or willful misconduct of the City. Consultant's obligation to indemnify shall

survive expiration or termination of this Agreement and shall not be restricted to insurance proceeds, if any, received by Consultant, the City, its officials, officers, employees, agents, or volunteers.

3.14.2 If Consultant's obligation to defend, indemnify, and/or hold harmless arises out of Consultant's performance as a "design professional" (as that term is defined under Civil Code section 2782.8), then, and only to the extent required by Civil Code section 2782.8, which is fully incorporated herein, Consultant's indemnification obligation shall be limited to claims that arise out of, pertain to, or relate to the negligence, recklessness, or willful misconduct of the Consultant, and, upon Consultant obtaining a final adjudication by a court of competent jurisdiction, Consultant's liability for such claim, including the cost to defend, shall not exceed the Consultant's proportionate percentage of fault.

3.15 Insurance. Consultant shall not commence work under this Agreement until it has provided evidence satisfactory to the City that it has secured all insurance required under this Section. In addition, Consultant shall not allow any subconsultant to commence work on any subcontract until it has provided evidence satisfactory to the City that the subconsultant has secured all insurance required under this section.

3.15.1 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, Consultant shall, at its expense, procure and maintain in full force and effect for the duration 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.

3.15.2 Additional Insured. The City of Ontario, its officials, officers, employees, agents, and volunteers shall be named as additional insureds on Consultant's and its subconsultants' policies of commercial general liability and automobile liability insurance using the endorsements and forms specified herein or exact equivalents.

3.15.3 Commercial General Liability

(a) The Consultant shall take out and maintain, during the performance of all work under this Agreement, in amounts not less than specified herein, Commercial General Liability Insurance, in a form and with insurance companies acceptable to the City.

(b) Coverage for Commercial General Liability insurance shall be at least as broad as the following: Insurance Services Office Commercial General Liability coverage (Occurrence Form CG 00 01) or exact equivalent. Commercial General Liability Insurance must include coverage for the following:

(i) Bodily Injury and Property Damage

(ii) Personal Injury/Advertising Injury

(iii) Premises/Operations Liability

(iv) Products/Completed Operations Liability

(v) Aggregate Limits that Apply per Project

(vi) Explosion, Collapse and Underground (UCX) exclusion deleted

(vii) Contractual Liability with respect to this Contract

(viii) Broad Form Property Damage

(ix) Independent Consultants Coverage

(c) The policy shall contain no endorsements or provisions limiting coverage for (1) contractual liability; (2) cross liability exclusion for claims or suits by one insured against another; (3) products/completed operations liability; or (4) contain any other exclusion contrary to the Agreement.

(d) The policy shall give City, the City Council and each member of the City Council, its officers, employees, agents and City designated volunteers additional insured status using ISO endorsement forms CG 20 10 10 01 and 20 37 10 01, or endorsements providing the exact same coverage.

(e) The general liability program may utilize either deductibles or provide coverage excess of a self-insured retention, subject to written approval by the City, and provided that such deductibles shall not apply to the City as an additional insured.

3.15.4 Automobile Liability

(a) At all times during the performance of the work under this Agreement, the Consultant shall maintain Automobile Liability Insurance for bodily injury and property damage including coverage for owned, non-owned and hired vehicles, in a form and with insurance companies acceptable to the City.

(b) Coverage for automobile liability insurance shall be at least as broad as Insurance Services Office Form Number CA 00 01 covering automobile liability (Coverage Symbol 1, any auto).

(c) The policy shall give City, the City Council and each member of the City Council, its officers, employees, agents and City designated volunteers additional insured status.

(d) Subject to written approval by the City, the automobile liability program may utilize deductibles, provided that such deductibles shall not apply to the City as an additional insured, but not a self-insured retention.

3.15.5 Workers' Compensation/Employer's Liability

(a) Consultant certifies that he/she is aware of the provisions of Section 3700 of the California Labor Code which requires every employer to be insured against liability for workers' compensation or to undertake self-insurance in accordance with the provisions of that code, and he/she will comply with such provisions before commencing work under this Agreement.

(b) To the extent Consultant has employees at any time during the term of this Agreement, at all times during the performance of the work under this Agreement, the Consultant shall maintain full compensation insurance for all persons employed directly by him/her to carry out the work contemplated under this Agreement, all in accordance with the "Workers' Compensation and Insurance Act," Division IV of the Labor Code of the State of California and any acts amendatory thereof, and Employer's Liability Coverage in amounts indicated herein. Consultant shall require all subconsultants to obtain and maintain, for the period required by this Agreement, workers' compensation coverage of the same type and limits as specified in this Section.

3.15.6 Professional Liability (Errors and Omissions)

(a) At all times during the performance of the work under this Agreement the Consultant shall maintain professional liability or Errors and Omissions insurance appropriate to its profession, in a form and with insurance companies acceptable to the City and in an amount indicated herein. This insurance shall be written on a policy form coverage specifically designed to protect against acts, errors or omissions of the Consultant. "Covered Professional Services" as designated in the policy must specifically include work performed under this Agreement. The policy must "pay on behalf of" the insured and must include a provision establishing the insurer's duty to defend.

3.15.7 Minimum Policy Limits Required

(a) The following insurance limits are required for the Agreement:

Coverage	Combined Single Limit
Commercial General Liability	$2,000,000 per occurrence/ $4,000,000 aggregate for bodily injury, personal injury, and property damage
Automobile Liability	$2,000,000 per occurrence for bodily injury and property damage
Employer's Liability	$1,000,000 per occurrence
Professional Liability	$2,000,000 per claim and aggregate (errors and omissions)

(b) Defense costs shall be payable in addition to the limits.

(c) Requirements of specific coverage or limits contained in this Section are not intended as a limitation on coverage, limits, or other requirement, or a waiver of any coverage normally provided by any insurance. Any available coverage shall be provided to the parties required to be named as Additional Insured pursuant to this Agreement.

3.15.8 Evidence Required

(a) Prior to execution of the Agreement, the Consultant shall file with the City evidence of insurance from an insurer or insurers certifying to the coverage of all insurance required herein. Such evidence shall include original copies of the ISO CG 00 01 (or insurer's equivalent) signed by the insurer's representative and Certificate of Insurance (Acord

Form 25-S or equivalent), together with required endorsements. All evidence of insurance shall be signed by a properly authorized officer, agent, or qualified representative of the insurer and shall certify the names of the insured, any additional insureds, where appropriate, the type and amount of the insurance, the location and operations to which the insurance applies, and the expiration date of such insurance.

3.15.9 Policy Provisions Required

(a) Consultant shall provide the City at least thirty (30) days prior written notice of cancellation of any policy required by this Agreement, except that the Consultant shall provide at least ten (10) days prior written notice of cancellation of any such policy due to non-payment of premium. If any of the required coverage is cancelled or expires during the term of this Agreement, the Consultant shall deliver renewal certificate(s) including the General Liability Additional Insured Endorsement to the City at least ten (10) days prior to the effective date of cancellation or expiration.

(b) The Commercial General Liability Policy and Automobile Policy shall each contain a provision stating that Consultant's policy is primary insurance and that any insurance, deductible, or self-insurance maintained by the City, its officials, officers, employees, agents, or volunteers shall not contribute with this primary insurance. Policies shall contain or be endorsed to contain such provisions.

(c) The retroactive date (if any) of each policy is to be no later than the effective date of this Agreement. Consultant shall maintain such coverage continuously for a period of at least three years after the completion of the work under this Agreement. Consultant shall purchase a one (1) year extended reporting period A) if the retroactive date is advanced past the effective date of this Agreement; B) if the policy is cancelled or not renewed; or C) if the policy is replaced by another claims-made policy with a retroactive date subsequent to the effective date of this Agreement.

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

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

3.15.10 Qualifying Insurers

(a) All policies required shall be issued by acceptable insurance companies, as determined by the City, which satisfy the following minimum requirements: Each such policy shall be from a company or companies with a current A.M. Best's rating of no less than A:VII and admitted to transact in the business of insurance in the State of California, or

otherwise allowed to place insurance through surplus line brokers under applicable provisions of the California Insurance Code or any federal law.

3.15.11 Additional Insurance Provisions

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

(b) If at any time during the life of the Agreement, any policy of insurance required under this Agreement does not comply with these specifications or is canceled and not replaced, City has the right but not the duty to obtain the insurance it deems necessary and any premium paid by City will be promptly reimbursed by Consultant or City will withhold amounts sufficient to pay premium from Consultant payments. In the alternative, City may cancel this Agreement.

(c) The City may require the Consultant to provide complete copies of all insurance policies in effect for the duration of the Project.

(d) Neither the City nor the City Council, nor any member of the City Council, nor any of the officials, officers, employees, agents or volunteers shall be personally responsible for any liability arising under or by virtue of this Agreement.

3.15.12 Subconsultant Insurance Requirements

(a) Consultant shall not allow any subcontractors or subconsultants to commence work on any subcontract until they have provided evidence satisfactory to the City that they have secured all insurance required under this Section. Policies of commercial general liability insurance provided by such subcontractors or subconsultants shall be endorsed to name the City as an additional insured using ISO form CG 20 38 04 13 or an endorsement providing the exact same coverage. If requested by Consultant, City may approve different scopes or minimum limits of insurance for particular subcontractors or subconsultants.

3.16 Records.

Consultant shall maintain complete and accurate records with respect to all costs and expenses incurred under this Agreement. All such records shall be clearly identifiable. Consultant shall allow a representative of City during normal business hours to examine, audit, and make transcripts or copies of such records and any other documents created pursuant to this Agreement. Consultant shall allow inspection of all work, data, documents, proceedings, and activities related to the Agreement for a period of five (5) years from the date of final payment under this Agreement.

3.17 Standardized Manufactured Items.

Consultant shall cooperate and consult with City in the use and selection of manufactured items on the Project, including but not limited to, paint, hardware, plumbing, mechanical and electrical equipment, fixtures, roofing materials and floor coverings. All such manufactured items

shall be standardized to City's criteria to the extent such criteria do not interfere with building design.

3.18 Limitation of Agreement.

This Agreement is limited to and includes only the work included in the Project described herein. Any additional or subsequent construction at the site of the Project, or at any other City site, will be covered by, and be the subject of, a separate Agreement for architectural services between City and the Consultant chosen therefor by City.

3.19 Mediation.

Disputes arising from this Agreement may be submitted to mediation if mutually agreeable to the Parties hereto. The type and process of mediation to be utilized shall be subject to the mutual agreement of the Parties.

3.20 Successors and Assigns.

This Agreement shall be binding upon and shall inure to the benefit of the successors in interest, executors, administrators and assigns of each Party to this Agreement. However, Consultant shall not assign or transfer by operation of law or otherwise any or all of its rights, burdens, duties or obligations without the prior written consent of City. Any attempted assignment without such consent shall be invalid and void.

3.21 Asbestos Certification.

Consultant shall certify to City, in writing and under penalty of perjury, that to the best of its knowledge, information and belief no asbestos-containing material or other material deemed to be hazardous by the state or federal government was specified as a building material in any construction document that the Consultant prepares for the Project. Consultant shall require all consultants who prepare any other documents for the Project to submit the same written certification. Consultant shall also assist the City in ensuring that contractors provide City with certification, in writing and under penalty of perjury, that to the best of their knowledge, information and belief no material furnished, installed or incorporated into the Project contains asbestos or any other material deemed to be hazardous by the state or federal government. These certifications shall be part of the final Project submittal. Consultant shall include statements in its specifications that materials containing asbestos or any other material deemed to be hazardous by the state or federal government are not to be included.

3.22 No Third Party Rights.

This Agreement shall not create any rights in, or inure to the benefits of, any third party except as expressly provided herein.

3.23 Governing Law.

This Agreement shall be construed in accordance with, and governed by, the laws of the State of California. Venue shall be in San Bernardino County.

3.24 Exhibits and Recitals.

All exhibits and recitals contained herein and attached hereto are material parts of this Agreement and are incorporated as if fully set forth.

3.25 Severability.

Should any provision in the Agreement be held by a court of competent jurisdiction to be invalid, void, or unenforceable, the remaining provisions shall continue in full force and effect.

3.26 Non-Waiver.

None of the provisions of this Agreement shall be considered waived by either Party, unless such waiver is specifically specified in writing.

3.27 Safety.

Consultant shall execute and maintain its work so as to avoid injury or damage to any person or property. In carrying out its Services, the Consultant shall at all times be in compliance with all applicable local, state and federal laws, rules and regulations, and shall exercise all necessary precautions for the safety of its employees, consultant and subcontractors appropriate to the nature of the work and the conditions under which the work is to be performed.

3.28 Harassment Policy.

Consultant shall provide a copy of the City's Harassment Policy to each of its employees assigned to perform the tasks under this Agreement. Consultant shall submit to the City's Personnel Manager a statement signed by each of its employees who are assigned to perform the Services under this Agreement certifying receipt of City's Harassment Policy and certifying that they have read the Harassment Policy. A finding by the City that any of Consultant's employees has harassed a City employee shall be grounds for appropriate discipline, up to and including such employee's removal from performance of this Agreement at City's request.

3.29 Delivery of Notices.

All notices permitted or required under this Agreement shall be given to the respective Parties at the following address, or at such other address as the respective Parties may provide in writing for this purpose:

CITY:	CONSULTANT:
City of Ontario	Frederick Fisher & Partners
303 East “B” Street	12248 Santa Monica Blvd.
Ontario, CA 91764	Los Angeles, CA 90025
Attn: Marissa Kucheck, Museum Director	Attn: Frederick Fisher

Such notice shall be deemed made when personally delivered or when mailed, forty-eight (48) hours after deposit in the U.S. Mail, first class postage prepaid and addressed to the Party

at its applicable address. Actual notice shall be deemed adequate notice on the date actual notice occurred, regardless of the method of service.

3.30 Time of Essence.

Time is of the essence for each and every provision of this Agreement.

3.31 City's Right to Employ Other Consultants.

City reserves right to employ other consultants, including designers, in connection with this Project or other projects.

3.32 Prohibited Interests.

3.32.1 Solicitation. Consultant maintains and warrants that it has not employed nor retained any company or person, other than a bona fide employee working solely for Consultant, to solicit or secure this Agreement. Further, Consultant warrants that it has not paid nor has it agreed to pay any company or person, other than a bona fide employee working solely for Consultant, any fee, commission, percentage, brokerage fee, gift or other consideration contingent upon or resulting from the award or making of this Agreement. For breach or violation of this warranty, City shall have the right to rescind this Agreement without liability.

3.32.2 Conflict of Interest. For the term of this Agreement, no director, official, officer or employee of City, during the term of his or her service with City, shall have any direct interest in this Agreement, or obtain any present or anticipated material benefit arising therefrom.

3.33 Equal Opportunity Employment.

Consultant represents that it is an equal opportunity employer and that it shall not discriminate against any employee or applicant for employment because of race, religion, color, national origin, ancestry, sex, age or any other classification protected by federal or state law. Such non-discrimination shall include, but not be limited to, all activities related to initial employment, upgrading, demotion, transfer, recruitment or recruitment advertising, layoff or termination. Consultant shall also comply with all relevant provisions of City's minority business enterprise program, affirmative action plan or other related programs or guidelines currently in effect or hereinafter enacted.

3.34 Labor Certification.

By its signature hereunder, Consultant certifies that it is aware of the provisions of Section 3700 of the California Labor Code which require every employer to be insured against liability for Worker's Compensation or to undertake self-insurance in accordance with the provisions of that Code, and agrees to comply with such provisions before commencing the performance of the Services.

3.35 Subcontracting.

As specified in this Agreement, Consultant shall not subcontract any portion of the Services required by this Agreement, except as expressly stated herein, without prior written approval of City. Subcontracts, if any, shall contain a provision making them subject to each and every provision of this Agreement.

3.36 Supplemental Conditions.

Any supplemental conditions shall be attached as an exhibit to this Agreement, and that exhibit shall be incorporated herein by reference.

3.37 Entire Agreement.

This Agreement, with its exhibits, contains the entire agreement of the Parties hereto, and supersedes any and all other prior or contemporaneous negotiations, understandings and oral or written agreements between the Parties hereto. Each Party acknowledges that no representations, inducements, promises or agreements have been made by any person which are not incorporated herein, and that any other agreements shall be void. Furthermore, any modification of this Agreement shall only be effective if in writing signed by all Parties hereto.

SIGNATURES ON FOLLOWING PAGE

SIGNATURE PAGE FOR DESIGN SERVICES AGREEMENT
BETWEEN THE CITY OF ONTARIO
AND FREDERICK FISHER & PARTNERS

IN WITNESS WHEREOF, the Parties have executed this Agreement as of the date first written above.

CITY OF ONTARIO

Approved By:

_____
Scott Ochoa
City Manager

Approved as to Form:

_____
Best Best & Krieger LLP
City Attorney

Attested By:

_____
City Clerk

FREDERICK FISHER & PARTNERS

By: _____

Its: _____

Printed Name: _____

By: _____

Its: _____

Printed Name: _____

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

EXHIBIT "A"
SCOPE OF SERVICES

1. GENERAL REQUIREMENTS.

1.1 Basic Services. Consultant agrees to perform all the necessary professional architectural, engineering (e.g. mechanical, electrical, plumbing, structural, site engineering, and any other necessary engineering services mutually agreeable to the Parties) and construction administration services for the Project in a timely and professional manner, consistent with the standards of the profession, including those provided for herein.

1.2 Exclusions from Basic Services. The following services shall be excluded from the basic services listed above: COMMON EXCLUSIONS: civil engineering, landscape architectural, soils engineering, geotechnical services, hazardous waste or toxic substances engineering or other SERVICES.]

1.3 Additional Services. Consultant shall perform the following Additional Services for the Project: N/A

1.4 Communication with City. Consultant shall participate in consultations and conferences with authorized representatives of City and/or other local, regional, or state agencies concerned with the Project, which may be necessary for the completion of the Project or the development of the drawings, specifications and documents in accordance with the applicable standards and requirements of law and the City. Such consultations and conferences shall continue throughout the planning and construction of the Project and the contractor's warranty period. Consultant shall take direction only from the City's Representative, or any other representative specifically designated by the City for this Project, including any construction manager hired by the City.

1.5 Coordination and Cooperation with Construction Manager. The City may hire a construction manager to administer and coordinate all or any part of the Project on its behalf. If the City does so, it shall provide a copy of its agreement with the construction manager so that the Consultant will be fully aware of the duties and responsibilities of the construction manager. The Consultant shall cooperate with the construction manager and respond to any requests or directives authorized by the City to be made or given by the construction manager. The Consultant shall request clarification from the City in writing if the Consultant should have any questions regarding the authority of the construction manager.

2. INITIAL PLANNING PHASE.

During the initial planning phase of the Project, Consultant shall do all of the following, as well as any incidental services thereto:

2.1 Project Feasibility. Provide advice and assistance to City in determining the feasibility of the Project, analysis of the type and quality of materials and construction to be selected, the site location, and other initial planning matters.

2.2 Meeting Budget and Project Goals. Consultant shall notify City in writing of potential complications, cost overruns, unusual conditions, and general needs that potentially impact the Project budget and time line, including the City's Preliminary Construction Budget. Consultant shall use its best judgment in determining the balance between the size, type and

quality of construction to achieve a satisfactory solution within the Project's budget and construction allowance. It shall be the duty of the Consultant to design the Project within budget. As discussed herein, including in Section 7.3, if the lowest responsive and responsible bid for the Project exceeds the budget by the stated amount, Consultant may be required to make the necessary changes in the drawing and specifications, at its sole cost and expense, to bring the bids within the required budget.

2.3 Permits, Approvals and Authorizations. As indicated in Section 3.5.4 of the Agreement, Consultant shall assist City in securing easements, encroachment permits, rights of way, dedications, infrastructures and road improvements, as well as coordinating with utilities and adjacent property owners.

3. SCHEMATIC PLAN PHASE.

During the schematic plan phase of the Project, Consultant shall do all of the following, as well as any incidental services thereto:

3.1 Funding Documents. Consultant shall provide a site plan and all other Project-related information necessary and required for an application by City to any federal, state, regional, or local agencies for funds to finance the construction Project.

3.2 Schematic Plans. In cooperation with City, Consultant shall prepare preliminary plans and studies, schematic drawings, site utilization plans, and phasing plans showing the scale and relationship of the components of the Project, the plot plan development at the site, and the proposed architectural concept of the buildings ("Schematic Plans"). Consultant shall incorporate the functional requirements of City into the Schematic Plans. The Schematic Plans shall meet all laws, rules and regulations of the State of California. The Schematic Plans shall show all rooms incorporated in each building of the Project in single-line drawings, and shall include all revisions required by City or by any federal, state, regional or local agency having jurisdiction over the Project. All architectural drawings for the Project shall be in a form suitable for reproduction.

3.3 Preliminary Project Budget. Consultant shall use the City's Preliminary Construction Budget and its own expertise and experience with the Project to establish a preliminary project budget or allowance in a format required by City ("Consultant's Preliminary Project Budget"). The purpose of the Consultant's Preliminary Project Budget is to show the probable Project cost in relation to City's Preliminary Construction Budget and the construction standards of any applicable funding agency. If Consultant perceives site considerations which render the Project expensive or cost prohibitive, Consultant shall disclose such conditions in writing to City immediately. As discussed herein, including in Section 7.3, if the lowest responsive and responsible bid for the Project exceeds the budget by more than the stated amount, Consultant may be required to make the necessary changes in the drawings and specifications, at its sole cost and expense, to bring the bids within the required budget Consultant shall provide a preliminary written time schedule for the performance of all construction work on the Project.

3.4 Copies of Schematic Plans and Other Documents. Consultant, at its own expense, shall provide a complete set of the Schematic Plans described herein for City's review and approval. Additionally, at City's expense, Consultant shall provide such documents as may be required by any federal, state, regional or local agencies concerned with the Project. Any additional copies required by City shall be provided at actual cost to City.

4. DESIGN DEVELOPMENT PHASE.

During the design development phase of the Project, Consultant shall do all of the following, as well as any incidental services thereto:

4.1 Design Development Documents. Once City provides Consultant with specific written approval of the Schematic Plans described herein, Consultant shall prepare design development documents consisting of: (1) site and floor plans; (2) elevations; and (3) any other drawings and documents sufficient to fix and describe the types and makeup of materials, as well as the size and character of the Project's structural, mechanical and electrical systems, and to outline the Project specifications ("Design Development Documents"). The Design Development Documents shall be prepared in sufficient form to present to the City Council for approval.

4.2 Copies of Design Development and Other Documents. Consultant, at its own expense, shall provide a complete set of the Design Development Documents described herein for City's review and approval. Additionally, at City's expense, Consultant shall provide such documents as may be required by any federal, state, regional or local agencies concerned with the Project. Any additional copies required by City shall be provided at actual cost to City.

4.3 Updated Project Budget. Consultant shall use its Preliminary Project Budget and expertise and experience with the Project to establish an updated estimate of probable construction costs, containing detail consistent with the Design Development Documents as set forth herein and containing a breakdown based on types of materials and specifications identified herein ("Consultant's Updated Project Budget").

4.4 Timetable. Consultant shall provide a written timetable for full and adequate completion of the Project to City.

4.5 Application for Approvals. Consultant shall assist City in applying for and obtaining required approvals from all federal, state, regional or local agencies concerned with the Project. Consultant shall furnish and process all architectural and engineering information required to prepare and process applications to applicable utilities in order to secure priorities and materials, to aid in the construction of the Project and to obtain final Project approval and acceptance by any of the above agencies as may be required.

4.6 Color and Other Aesthetic Issues. Consultant shall provide, for City's review and approval, a preliminary schedule of all color materials and selections of textures, finishes and other matters involving an aesthetic decision about the Project.

5. FINAL WORKING DRAWINGS AND SPECIFICATIONS.

During the final working drawings and specifications phase of the Project, Consultant shall do all of the following, as well as any incidental services thereto:

5.1 Final Working Drawings and Specifications. Once City provides Consultant with specific written approval of the Design Development Documents described herein, Consultant shall prepare such complete working drawings and specifications as are necessary for developing complete bids and for properly executing the Project work in an efficient and thorough manner ("Final Working Drawings and Specifications"). Such Final Working Drawings and Specifications shall be developed from the Schematic Plans and Design Development Documents approved by City. The Final Working Drawings and Specifications shall set forth in

detail all of the following: (1) the Project construction work to be done; (2) the materials, workmanship, finishes, and equipment required for the architectural, structural, mechanical, and electrical systems; and (3) the utility service connection equipment and site work. As indicated in Section 3.9.2 of the Agreement, City may be requested to supply Consultant with the necessary information to determine the proper location of all improvements on and off site, including record drawings ("as-built drawings") in City's possession. Consultant will make a good-faith effort to verify the accuracy of such information by means of a thorough interior and exterior visual survey of site conditions. City shall also make a good-faith effort to verify the accuracy of the as-built drawings and provide any supplemental information to Consultant which may not be shown on the as-built drawings.

5.2 Form. The Final Working Drawings and Specifications must be in such form as will enable Consultant and City to secure the required permits and approvals from all federal, state, regional or local agencies concerned with the Project. In addition, the Final Working Drawings and Specifications must be in such form as will enable City to obtain, by competitive bidding, a responsible and responsive bid within the applicable budgetary limitations and cost standards. The Final Working Drawings and Specifications shall be clear and legible so that uniform copies may be on standard architectural size paper, properly indexed and numbered, and shall be capable of being clearly copied and assembled in a professional manner by Consultant.

5.3 Approval and Revisions. City shall review, study, and check the Final Working Drawings and Specifications presented to it by Consultant, and request any necessary revisions or obtain any necessary approvals by the City Council, subject to the approval of all federal, state, regional or local agencies concerned with the Project. Consultant shall make all City-requested changes, additions, deletions, and corrections in the Final Working Drawings and Specifications at no additional cost, so long as they are not in conflict with the requirements of public agencies having jurisdiction or prior approval, or inconsistent with earlier City direction or Consultant's professional judgment. Consultant shall bring any such conflicts and/or inconsistencies to the attention of City. The Parties agree that Consultant, and not the City, possesses the requisite expertise to determine the constructability of the Final Working Drawings and Specifications. However, the City reserves the right to conduct one or more constructability review processes with the Final Working Drawings and Specifications, and to hire an independent architect or other consultant to perform such reviews. Any such independent constructability review shall be at City's expense. Consultant shall make all City-requested changes, additions, deletions, and corrections in the Final Working Drawings and Specifications which may result from any constructability review, at no additional cost to the City, so long as they are not in conflict with the requirements of public agencies having jurisdiction or prior approval, or inconsistent with earlier City direction or Consultant's professional judgment. If such changes, additions, deletions or corrections are inconsistent with prior City direction, Consultant shall make such alterations and be compensated therefore pursuant to the Additional Services provision of this Agreement.

5.4 Costs of Construction. It is understood by Consultant that should the Final Working Drawings and Specifications be ordered by City, City shall specify the sum of money set aside to cover the total cost of construction of the work, exclusive of Consultant's fees. Should it become evident that the total construction cost will exceed the specified sum, Consultant shall at once present a statement in writing to the City's Representative setting forth this fact and giving a full statement of the cost estimates on which the conclusion is based.

5.5 Copies of Final Working Drawings and Specifications and Other Documents. Consultant, at its own expense, shall provide a complete set of the Final Working Drawings and Specifications described herein for City's review and approval. Additionally, at City's expense,

Consultant shall provide such documents as may be required by any federal, state, regional or local agencies concerned with the Project. Any additional copies required by City shall be provided at actual cost to City.

6. CONSTRUCTION CONTRACT DOCUMENTS.

During the construction contract documents phase of the Project, Consultant shall do all of the following, as well as any incidental services thereto:

6.1 Bid and Contract Documents. If so required by City, Consultant shall assist City in the completion of all bid and construction documents, including but not limited to, the Notice Inviting Bids, Instructions to Bidders, Contract Bid Forms (including Alternate Bids as requested by City), `Contract, General Conditions, Supplementary General Conditions, Special Conditions, DVBE and other applicable affirmative action documents, Performance Bond, Payment Bond, Escrow Agreement for Security Deposits, and any other certifications and documents required by federal, state and local laws, rules and regulations which may be reasonably required in order to obtain bids responsive to the specifications and drawings. All such documents shall be subject to the approval of City and City's legal counsel.

6.2 Final Estimate. At the time of delivery of these bid and construction documents, which shall include the Final Working Drawings and Specifications (collectively referred to herein as the "Construction Documents"), Consultant shall provide City with its final estimate of probable construction cost ("Consultant's Final Estimate"). As discussed herein, including in Section 7.3, it shall be the Consultant's duty to design the Project within budget.

7. BID PHASE.

During the bid phase of the Project, Consultant shall do all of the following, as well as any incidental services thereto:

7.1 Reproducible Construction Documents. Once City provides Consultant with specific written approval of the Construction Documents and Consultant's Final Estimate, Consultant shall provide to City one set of reproducible Construction Documents.

7.2 Distribution of Contract Documents and Review of Bids. Consultant shall assist City in distributing the Construction Documents to bidders and conducting the opening and review of bids for the Project.

7.3 Over Budget. If the apparent lowest responsive and responsible bid on the Project exceeds the Consultant's Final Estimate by more than five percent (5%), City may request Consultant to amend, at Consultant's sole cost and expense, the Final Drawings and Specifications in order to rebid the Project and receive a lowest responsive and responsible bid equal to or less than the Consultant's Final Estimate. All revisions necessary to bring the lowest responsible and responsive bid within the Consultant's Final Estimate, including any omissions, deferrals or alternates, shall be made in consultation with, and subject to the approval of, the City.

8. CONSTRUCTION PHASE.

During the construction phase of the Project, Consultant shall do all of the following, as well as any incidental services thereto:

8.1 Observation. The Project Consultant shall observe work executed from the Final Working Drawings and Specifications in person, provided that City may, in its discretion, consent to such observation by another competent representative of Consultant.

8.2 General Administration. Consultant shall provide general administration of the Construction Documents and the work performed by the contractors.

8.3 Pre-Construction Meeting. Consultant shall conduct one or more pre-construction meetings, as the City determines is needed for the Project, with all interested Parties.

8.4 Site Visits of Contractor's Work. Consultant shall conduct site visits to observe each contractors' work for general conformance with the Construction Documents and with any approved construction schedules or milestones. Such site visits shall be conducted as often as are necessary and appropriate to the stage of construction, according to the City's sole discretion, but in no event less than weekly.

8.5 Site Visits of Inspector's Work. Consultant shall conduct site visits to communicate and observe the activities of the City inspectors. Such site visits shall be conducted as often as is mutually acceptable to Consultant and City. Consultant shall direct the City inspectors and the Project contractors to coordinate the preparation of record drawings indicating dimensions and location of all "as-built" conditions, including but not limited to, underground utility lines.

8.6 Coordination of Subconsultants. Consultant shall cause all architects, engineers and other consultants, as may be hired by Consultant or City, to observe the work completed under their disciplines as required, and approve and review all test results for general conformance with the Construction Documents.

8.7 Reports. Consultant shall make regular reports as may be required by applicable federal, state or local laws, rules or regulations, as well as the federal, state, regional or local agencies concerned with the Project.

8.8 Construction Meetings; Minutes. Consultant shall attend all construction meetings and provide written reports/minutes to the City after each construction meeting in order to keep City informed of the progress of the work. Such meetings shall occur at a frequency necessary for the progress of the Project work, according to the City's sole discretion, but no less than weekly.

8.9 Written Reports. Consultant shall make written reports to City as necessary to inform City of problems arising during construction, changes contemplated as a result of each such problems, and progress of the Project work.

8.10 Written Records. Consultant shall keep accurate written records of the progress and quality of the Project work and the time schedules, and shall advise the contractors and City of any deviations from the time schedule which could delay timely completion of the Project.

8.11 Material and Test Reports. Consultant shall check and process, in a timely manner, all required material and test reports for the Project work. In addition, Consultant shall provide notice of any deficiencies in material or work reflected in such reports, as well as its recommendation for correction of such deficiencies, to the contractors and City.

8.12 Review and Response to Submissions. Consultant shall review and respond, in a timely manner, to all schedules, submittals, shop drawings, samples, information requests, change requests, and other submissions of the contractor and subcontractors for compliance with, or alterations and additions to, the Construction Documents. Consultant's review and response shall be done in such a manner so as to ensure the timely and uninterrupted progress of the Project work.

8.13 Rejection of Work. Consultant shall promptly reject, as discussed with City, work or materials which do not conform to the Construction Documents. Consultant shall immediately notify the City and contractor(s) of such rejections. Consultant shall also have the authority to recommend to the City that additional inspection or testing of the work be performed, whether or not such work is fabricated, installed or completed.

8.14 Substitutions. Consultant shall consult with City, in a timely manner, with regard to substitution of materials, equipment and laboratory reports thereof, prior to the City's final written approval of such substitutions. Consultant's consultation shall be done in such a manner so as to ensure the timely and uninterrupted progress of the Project work.

8.15 Revised Documents and Drawings. Consultant shall prepare, at no additional expense to City, all documents and/or drawings made necessary by errors and omissions in the originally approved Construction Documents.

8.16 Change Requests and Material Changes. Consultant shall evaluate and advise City, in a timely manner and in writing, of any change requests and material change(s) which may be requested or necessary in the Project plans and specifications. Consultant shall provide the City with its opinion as to whether such change requests should be approved, denied or revised. If the City has not hired a construction manager or other person to do so, the Consultant shall prepare and execute all change orders and submit them to the City for authorization. If the City has designated a construction manager or other person to prepare all change orders, the Consultant shall review all change orders prepared by such person, execute them and deliver them to the City for authorization if they meet with the Consultant's approval, or submit them to the City with recommendations for revision or denial if necessary. Consultant shall not order contractors to make any changes affecting the contract price without approval by City of such a written change order, pursuant to the terms of the Construction Documents. Consultant may order, on its own responsibility and pending City Council approval, changes necessary to meet construction emergencies, if written approval of City's Representative is first secured.

8.17 Applications for Payment. Consultant shall examine, verify and approve contractor's applications for payment, and shall issue certificates for payment in amounts approved by the City's inspector.

8.18 Final Color and Product Selection. Consultant shall coordinate final color and product selection with City's original design concept.

8.19 Substantial Completion. Consultant shall determine the date of substantial completion, in consultation with the City.

8.20 Punch List. After determining that the Project is substantially complete, Consultant shall participate in the inspection of the Project and shall review all remaining deficiencies and minor items needed to be corrected or completed on the Project, including those identified on the punch list prepared by the contractor ("Punch List Items"). Consultant shall notify

contractor in writing that all Punch List Items must be corrected prior to final acceptance of the Project and final payment. Consultant shall also notify City of all Punch List Items.

8.21 Warranties. Consultant shall review materials assembled by the contractor and subcontractors with regard to all written warranties, guarantees, owners' manuals, instruction books, diagrams, record "as built" drawings, and any other materials required from the contractors and subcontractors pursuant to the Construction Documents. Consultant shall coordinate and provide these materials to the City.

8.22 Certificate of Completion. Consultant shall participate in any further inspections of the Project necessary to issue Consultant's Certificate of Completion and final certificate for payment.

8.23 Documents for Project Close-Out. Consultant shall cause all other architects, engineers and other consultants, as may be hired by Consultant, to file any and all required documentation with the City or other governmental authorities necessary to close out the Project. Consultant shall assist the City in obtaining such documentation from all other architects, engineers, or other consultants.

9. AS-BUILT DRAWINGS.

During the as-built drawings phase of the Project, Consultant shall do all of the following, as well as any incidental services thereto:

9.1 As-Built Drawings and Specifications. Not later than thirty (30) days after substantial completion of the Project, before receipt of final payment, Consultant shall review and forward the Final Working Drawings and Specifications, indicating on them all changes made by change orders or otherwise pursuant to the Construction Documents, as well as all information called for on the specifications, thus producing an "as-built" set of Final Working Drawings and Specifications ("As-Built Drawings and Specifications"). The As-Built Drawings and Specifications shall show, among other things, the location of all concealed pipe, buried conduit runs and other similar elements within the completed Project. Consultant shall personally review and certify that the As-Built Drawings and Specifications are a correct representation of the information supplied to Consultant by any inspectors and the contractor, and shall obtain certifications from any inspectors and the contractor that the drawings are correct.

9.2 Approval. Once City provides Consultant with specific written approval of the As-Built Drawings and Specifications, Consultant shall forward to City the complete set of original As-Built Drawings and Specifications or a complete set of reproducible duplicate As-Built Drawings and Specifications. The tracing shall be of such quality that clear and legible prints may be made without appreciable and objectionable loss of detail.

9.3 Documents for Final Payment. Prior to the receipt of Consultant's final payment, Consultant shall forward to City all of the following: (1) one clear and legible set of reproductions of the computations; (2) the original copy of the specifications; (3) the As-Built Drawings and Specifications as required herein; and (4) Consultant's Certificate of Completion.

10. WARRANTY PERIOD.

During the warranty period phase of the Project, Consultant shall do all of the following, as well as any incidental services thereto:

10.1 Advice. Consultant shall provide advice to City on apparent deficiencies in the Project during any applicable warranty periods for the Project.

EXHIBIT "B"
FEE AND PHASING/FUNDING SCHEDULES

1. FEE SCHEDULE.

Consultant will invoice City on a monthly cycle based on the following fee schedule. Consultant will include with each invoice a detailed progress report that indicates the amount of budget spent on each phase and the total amount spent against the Total Compensation. Consultant will inform City regarding any out-of-scope work being performed by Consultant for which Consultant intends to seek compensation from City.

2. PHASING/FUNDING SCHEDULE.

Progress payments towards Total Compensation shall never exceed the following percentages of Total Compensation as of the phase indicated:

Initial Planning Phase:	_____ percent (%____)
Schematic Plan Phase:	_____ percent (%____)
Design Development Phase:	_____ percent (%____)
Final Working Drawings & Specifications Phase:	_____ percent (%____)
Construction Contract Documents Phase:	_____ percent (%____)
Bid Phase:	_____ percent (%____)
Construction Phase:	_____ percent (%____)
As-Built Drawings Phase:	_____ percent (%____)
Warranty Period Phase:	_____ percent (%____)

Note: No Phasing/Funding Schedule is necessary until a project task is issued under the contract

EXHIBIT "C"
COMPENSATION RATES AND REIMBURSABLE EXPENSES

1. HOURLY COMPENSATION RATES.

Proposed Hourly Rates

Design Principal	$375
Principal In Charge	$325
Design Lead	$220
Project Manager	$180
Project Architect	$180
Designer	$125

2. REIMBURSABLE EXPENSES.

Reimbursable Expenses shall be billed at cost plus 15% and shall include standard reimbursable expenses

3. ADDITIONAL SERVICES.

Additional Services shall be computed at the actual hourly rates listed above.

4. ADDITIONAL CONSULTANTS.

If City requires Consultant to hire consultants to perform any Additional Services, Consultant shall be compensated therefore at the Consultant's actual hourly rates plus 15%. Owner shall have the authority to review and approve the rates of any such consultants.

CITY OF ONTARIO *Agenda Report* **October 15, 2024**	**SECTION:** **CONSENT CALENDAR**
Department: Public Works Prepared By: Daniel P Beers Staff Member Presenting: Tito Haes, Executive Director Public Works Reviewed By: Andrea Ampig, Bonnie Tam Approved By:	Submitted To: Council/OHA Approved: _____ Continued To: _____ Denied: _____ Item No: 12

SUBJECT: **A CONSTRUCTION CONTRACT WITH PHILBIN CONSTRUCTION COMPANY FOR MASS GRADING AND AN AMENDMENT TO THE PROFESSIONAL SERVICES AGREEMENT WITH SWA GROUP, INC. FOR ONTARIO'S GRAND PARK PROJECT**

RECOMMENDATION: That the City Council take the following actions:

A. Authorize the City Manager, or his designee, to complete and execute Construction Contract No. D&C21-005 - Grand Park Phase 1 Rough Grading with Philbin Construction Company, of Laguna Niguel, California, for the mass grading and debris removal at Ontario's Grand Park in the amount of $4,534,000 plus a 20% contingency of $906,800 for a total not-to-exceed contract amount of $5,440,800, and
B. Authorize the City Manager, or his designee, to execute Amendment No. 1 to the Professional Services Agreement with SWA Group, Inc., of Laguna Beach, California, for additional engineering services in the preparation of the design and construction documents for Ontario's Grand Park Project in the amount of $141,359 for a not-to-exceed amount of $6,114,355; and
C. Authorize 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, lot line adjustments, reduction of retention accounts, contracts and contract amendments within the authorization limits, and filing a notice of completion at the conclusion of all construction related activities.

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

FISCAL IMPACT: The Fiscal Year 2024-25 Adopted Budget includes appropriations in the Park Impact Fund for Ontario Grand Park- Phase 1. The Construction Contract with $4,534,000 plus a 20% contingency of $906,800 for a total not-to-exceed contract amount of $5,440,800. Amendment No. 1 to the Professional Services Agreement with SWA Group, Inc. is in the amount of $141,359 for a not-to-exceed amount of $6,114,355. The total amount of all recommended actions in an amount

not-to-exceed $5,582,159.

BACKGROUND & ANALYSIS: On December 21, 2021, the City Council approved the conceptual "Grand Park" Master Plan and the Preliminary Park Design for Phase 1. Phase 1 builds upon the framework established in the Conceptual Park Master Plan and is comprised of approximately 130 acres of land and occurs within the eastern portion of Ontario Ranch. This phase is bordered by Grand Park Street to the north, Eucalyptus Avenue to the south, Haven Avenue on the east and Archibald Avenue on the west. This portion of the park contains meadows, trails, and a field for recreational use that also serves as a storm water capture system. Day one core park amenities are proposed in the center of this phase, which include a Market Alley where farmer's markets, food trucks and community events can be organized. There are plans for a community barn and farm hub, kids' corral (a children's playground), and a 5,000 capacity amphitheater along the central plaza.

On May 21, 2024, the City Council awarded a contract to SWA Group for the design of Ontario's Grand Park. During the design phase, additional engineering services were needed in the amount of $141,359 for a total contract amount of $6,114,355. Staff recommends awarding Amendment No. 1 to the Professional Service Agreement with SWA for the design and construction documents for Ontario's Grand Park.

On September 24, 2024, the City solicited proposals for Invitation No. 1845 for the mass grading and debris removal on the Ontario Grand Park. Twelve (12) bids were received. Philbin Construction Company of Laguna Niguel, CA was the apparent low bidder at $4,534,000. Staff reviewed the bid and found it met the bid criteria and standards necessary to perform the work.

Vendor	Location	Amount
Philbin Construction Company	Laguna Niguel, CA	$4,534,000
Southern California Grading, Inc.	Irvine, CA	$4,781,000
Miller Equipment Co., Inc.	Lancaster, CA	$5,500,000
Act 1 Construction	Norco, CA	$6,645,000
Empire Equipment Service, Inc.	Mira Loma, CA	$6,695,655
Sukut Construction, Inc.	Santa Ana, CA	$7,187,775
Lucy Environmental Services Group	Encino, CA	$7,400,000
Crew, Inc.	Compton, CA	$7,843,000
Doja	Ontario, CA	$9,579,500
Resource Environmental, Inc.	Cerritos, CA	$11,355,000
Gerald Miller Construction, Inc.	Riverside, CA	$12,848,260
Legion Contractors, Inc.	Los Angeles, CA	$12,888,000

Philbin Construction Company, of Laguna Niguel, California, is the apparent low bidder that met all the required specifications with a base cost of $4,534,000. Based on the proposal, credentials, pricing and favorable reference checks, staff recommends awarding Construction Contract D&C21-005 – Great Park Phase 1 Mass Grading to Philbin Construction Company.

Ontario's Grand Park is scheduled to be operational by Summer of 2027.

CITY OF ONTARIO
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PAUL S. LEON
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DEBRA PORADA
MAYOR PRO TEM

ALAN D. WAPNER
JIM W. BOWMAN
RUBEN VALENCIA
COUNCIL MEMBERS

SHEILA MAUTZ
CITY CLERK

JAMES R. MILHISER
TREASURER

SCOTT OCHOA
CITY MANAGER

SECTION 00500 – CONTRACT FOR CONSTRUCTION

This Contract for Construction ("Contract"), No. **D&C21-005 Grand Park Phase 1 Rough Grading** is made and entered as of _____, by and between City of Ontario, with its principal place of business at 303 East "B" Street, Ontario, CA 91764, sometimes hereinafter called the "City" and **Philbin Construction Company**, sometimes hereinafter called "Contractor."

WITNESSETH: That the parties hereto have mutually covenanted and agreed, and by these presents do covenant and agree with each other as follows:

ARTICLE 1. SCOPE OF WORK.

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

Ontario Grand Park Rough Grading

Contractor is an independent contractor and not an agent of the City. The Contractor and its surety shall be liable to the City for any damages arising as a result of the Contractor's failure to comply with this obligation.

ARTICLE 2. TIME FOR COMPLETION.

Time is of the essence in the performance of the Work. The Work shall be commenced on the date stated in the City's Notice to Proceed. The Contractor shall complete all Work required by the Contract Documents within 182 calendar days from the commencement date stated in the Notice to Proceed. By its signature hereunder, Contractor agrees the time for completion set forth above is adequate and reasonable to complete the Work.

ARTICLE 3. CONTRACT PRICE.

The City shall pay to the Contractor as full compensation for the performance of the Contract, subject to any additions or deductions as provided in the Contract Documents, and including all applicable taxes and costs, the sum of **Four Million Five Hundred Thirty-Four Thousand Dollars ($4,534,000).** Payment shall be made as set forth in the General Conditions. The City will pay to Contractor compensation based upon the prices set forth in the Bid Schedule.

ARTICLE 4. LIQUIDATED DAMAGES.

Contractor acknowledges that the City will sustain actual damages for each and every Day completion of the Project is delayed beyond the Contract Time. Because of the nature of the Project, it would be impracticable or extremely difficult to determine the City's actual damages. Accordingly, in accordance with Government Code section 53069.85, it is agreed that the Contractor will pay the City the sum of $500 for each and every calendar day of delay beyond the time prescribed in the Contract Documents for finishing the Work, as Liquidated Damages and not as a penalty or forfeiture. In the event this is not paid, the Contractor agrees the City may deduct that amount from any money due or that may become due the Contractor under the Contract. This Section does not exclude recovery of other damages specified in the Contract Documents. Liquidated damages may be deducted from progress payments due Contractor, Project retention or may be collected directly from Contractor, or from Contractor's surety. These provisions for liquidated damages shall not prevent the City, in case of Contractor's default, from terminating the Contractor.

ARTICLE 5. COMPONENT PARTS OF THE CONTRACT.

The "Contract Documents" include the following:

Notice Inviting Bids
Instructions to Bidders
Bid Forms
Bid Acknowledgement
Bid Schedule
Bid Guarantee
Designation of Subcontractors
Non-Collusion Declaration Form
Iran Contracting Act Certification
Public Works Contractor DIR Registration Certification
Performance Bond
Payment (Labor and Materials) Bond
Contract for Construction
General Conditions
Special Conditions
Specifications
Addenda
Construction Plans and Drawings
Standard Specifications for Public Works Construction "Greenbook", latest edition, Except Sections 1-9
Applicable Local Agency Standards and Specifications, as last revised
Reference Specifications
Approved and fully executed Change Orders
Permits
Scope of Work Summary
Any other documents contained in or incorporated into the Contract

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

All of the Contract Documents are intended to be complementary. Work required by one of the Contract Documents and not by others shall be done as if required by all. In the event of conflict, the various Contract Documents will be given effect in the order set forth in the General Conditions. This Contract shall supersede any prior agreement of the parties.

ARTICLE 6. PROVISIONS REQUIRED BY LAW AND CONTRACTOR COMPLIANCE.

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

ARTICLE 7. INDEMNIFICATION.

Contractor shall provide indemnification and defense as set forth in the General Conditions.

ARTICLE 8. PREVAILING WAGES.

Contractor shall be required to pay the prevailing rate of wages in accordance with the Labor Code which such rates shall be made available at the City's Office or may be obtained online at http://www.dir.ca.gov and which must be posted at the job site.

ARTICLE 9. FALSE CLAIMS.

Contractor acknowledges that if a false claim is submitted to the City, it may be considered fraud and Contractor may be subject to criminal prosecution. Contractor acknowledges that the False Claims Act, California Government Code sections 12650, et seq., provides for civil penalties where a person knowingly submits a false claim to a public entity. These provisions include within their scope false claims made with deliberate ignorance of the false information or in reckless disregard of the truth or falsity of the information. In the event the City seeks to recover penalties pursuant to the False Claims Act, it is entitled to recover its litigation costs, including attorneys' fees. Contractor hereby acknowledges that the filing of a false claim may the Contractor to an administrative debarment proceeding wherein Contractor may be prevented from further bidding on public contracts for a period of up to five (5) years.

[REMAINDER OF PAGE LEFT INTENTIONALLY BLANK]

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

CITY OF ONTARIO

By: _____
Scott Ochoa
City Manager

ATTEST:

By: _____
Sheila Mautz, City Clerk

APPROVED AS TO FORM:

By: _____
Best Best & Krieger LLP
City Attorney

Philbin Construction Company

By: _____

Its: _____

Printed Name: _____

[DELETE THE FOLLOWING SIGNATURE LINE IF NOT **REQUIRED**]

By: _____

Its: _____

Printed Name: _____

_____
Contractor's License Number and Classification

_____
DIR Registration Number

[IF CORPORATION, TWO SIGNATURES, PRESIDENT **OR** VICE PRESIDENT **AND** SECRETARY **OR** TREASURER **REQUIRED]**

END OF CONTRACT

Notary Acknowledgment

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

STATE OF CALIFORNIA
COUNTY OF _____

On _____, 20___, before me, _____, Notary Public, personally

appeared _____, who proved to me on the basis of satisfactory

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

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

WITNESS my hand and official seal.

_____
Signature of Notary Public

OPTIONAL

Though the information below is not required by law, it may prove valuable to persons relying on the document and could prevent fraudulent removal and reattachment of this form to another document.

CAPACITY CLAIMED BY SIGNER

☐ Individual
☐ Corporate Officer

_____
Title(s)

☐ Partner(s) ☐ Limited ☐ General
☐ Attorney-In-Fact
☐ Trustee(s)
☐ Guardian/Conservator
☐ Other:

Signer is representing:
Name Of Person(s) Or Entity(ies)

_____

_____

DESCRIPTION OF ATTACHED DOCUMENT

_____
Title or Type of Document

_____
Number of Pages

_____
Date of Document

_____
Signer(s) Other Than Named Above

SECTION 00610 – BOND FORMS

Performance Bond

KNOW ALL PERSONS BY THESE PRESENTS:

THAT WHEREAS, the City of Ontario, with its principal place of business at 303 East "B" Street, Ontario, CA 91764, (hereinafter referred to as the "City") has awarded to Philbin Construction Company, (hereinafter referred to as the "Contractor") an agreement for **Contract No.** D&C21-005 Grand Park Phase 1 Rough Grading, (hereinafter referred to as the "Project").

WHEREAS, the work to be performed by the Contractor is more particularly set forth in the Contract Documents for the Project dated _____, (hereinafter referred to as "Contract Documents"), the terms and conditions of which are expressly incorporated herein by reference; and

WHEREAS, the Contractor is required by said Contract Documents to perform the terms thereof and to furnish a bond for the faithful performance of said Contract Documents.

NOW, THEREFORE, we, _____, the undersigned Contractor and _____ as Surety, a corporation organized and duly authorized to transact business under the laws of the State of California, are held and firmly bound unto the City in the sum of Four Million Five Hundred Thirty-Four Thousand DOLLARS, ($4,534,000), said sum being not less than one hundred percent (100%) of the total amount of the Contract, for which amount well and truly to be made, we bind ourselves, our heirs, executors and administrators, successors and assigns, jointly and severally, firmly by these presents.

THE CONDITION OF THIS OBLIGATION IS SUCH, that, if the Contractor, his or its heirs, executors, administrators, successors or assigns, shall in all things stand to and abide by, and well and truly keep and perform the covenants, conditions and agreements in the Contract Documents and any alteration thereof made as therein provided, on its part, to be kept and performed at the time and in the manner therein specified, and in all respects according to their intent and meaning; and shall faithfully fulfill all obligations including the one (1) year guarantee of all materials and workmanship; and shall indemnify and save harmless the City, its officials, officers, employees, and authorized volunteers, as stipulated in said Contract Documents, then this obligation shall become null and void; otherwise it shall be and remain in full force and effect.

As a part of the obligation secured hereby and in addition to the face amount specified therefore, there shall be included costs and reasonable expenses and fees including reasonable attorney's fees, incurred by the City in enforcing such obligation.

As a condition precedent to the satisfactory completion of the Contract Documents, unless otherwise provided for in the Contract Documents, the above obligation shall hold good for a period of one (1) year after the acceptance of the work by the City, during which time if Contractor shall fail to make full, complete, and satisfactory repair and replacements and totally protect the City from loss or damage resulting from or caused by defective materials or faulty workmanship. The obligations of Surety hereunder shall continue so long as any obligation of Contractor remains. Nothing herein shall limit the City's rights or the Contractor or Surety's obligations under the Contract, law or equity, including, but not limited to, California Code of Civil Procedure Section 337.15.

Whenever Contractor shall be, and is declared by the City to be, in default under the Contract Documents, the Surety shall remedy the default pursuant to the Contract Documents, or shall promptly, at the City's option:

i. Take over and complete the Project in accordance with all terms and conditions in the Contract Documents; or

ii. Obtain a bid or bids for completing the Project in accordance with all terms and conditions in the Contract Documents and upon determination by Surety of the lowest responsive and responsible bidder, arrange for a Contract between such bidder, the Surety and the City, and make available as work progresses sufficient funds to pay the cost of completion of the Project, less the balance of the contract price, including other costs and damages for which Surety may be liable. The term "balance of the contract price" as used in this paragraph shall mean the total amount payable to Contractor by the City under the Contract and any modification thereto, less any amount previously paid by the City to the Contractor and any other set offs pursuant to the Contract Documents.

iii. Permit the City to complete the Project in any manner consistent with California law and make available as work progresses sufficient funds to pay the cost of completion of the Project, less the balance of the contract price, including other costs and damages for which Surety may be liable. The term "balance of the contract price" as used in this paragraph shall mean the total amount payable to Contractor by the City under the Contract and any modification thereto, less any amount previously paid by the City to the Contractor and any other set offs pursuant to the Contract Documents.

Surety expressly agrees that the City may reject any contractor or subcontractor which may be proposed by Surety in fulfillment of its obligations in the event of default by the Contractor.

Surety shall not utilize Contractor in completing the Project nor shall Surety accept a bid from Contractor for completion of the Project if the City, when declaring the Contractor in default, notifies Surety of the City's objection to Contractor's further participation in the completion of the Project.

The Surety, for value received, hereby stipulates and agrees that no change, extension of time, alteration or addition to the terms of the Contract Documents or to the Project to be performed thereunder shall in any way affect its obligations on this bond, and it does hereby waive notice of any such change, extension of time, alteration or addition to the terms of the Contract Documents or to the Project.

[REMAINDER OF PAGE LEFT INTENTIONALLY BLANK]

IN WITNESS WHEREOF, we have hereunto set our hands and seals this _____ day of _____, 20___.

(Corporate Seal)

_____
Contractor/ Principal

By_____

Title_____

(Corporate Seal)

_____
Surety

By _____
Attorney-in-Fact

(Attach Attorney-in-Fact Certificate)

Title_____

The rate of premium on this bond is _____ per thousand. The total amount of premium charges is $_____.
(The above must be filled in by corporate attorney.)

THIS IS A REQUIRED FORM

Any claims under this bond may be addressed to:

(Name and Address of Surety) _____
_____
_____

(Name and Address of Agent or Representative for service of process in California, if different from above) _____
_____
_____

(Telephone number of Surety and Agent or Representative for service of process in California) _____

Notary Acknowledgment

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

STATE OF CALIFORNIA
COUNTY OF _____

On _____, 20___, before me, _____, Notary Public, personally

appeared _____, who proved to me on the basis of satisfactory

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

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

WITNESS my hand and official seal.

_____
Signature of Notary Public

OPTIONAL

Though the information below is not required by law, it may prove valuable to persons relying on the document and could prevent fraudulent removal and reattachment of this form to another document.

CAPACITY CLAIMED BY SIGNER

☐ Individual
☐ Corporate Officer

_____
Title(s)

☐ Partner(s) ☐ Limited ☐ General
☐ Attorney-In-Fact
☐ Trustee(s)
☐ Guardian/Conservator
☐ Other:

Signer is representing:
Name Of Person(s) Or Entity(ies)

_____
_____

DESCRIPTION OF ATTACHED DOCUMENT

_____
Title or Type of Document

_____
Number of Pages

_____
Date of Document

_____
Signer(s) Other Than Named Above

NOTE: This acknowledgment is to be completed for Contractor/Principal.

Notary Acknowledgment

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COUNTY OF _____

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appeared _____, who proved to me on the basis of satisfactory

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

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

WITNESS my hand and official seal.

_____
Signature of Notary Public

OPTIONAL

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CAPACITY CLAIMED BY SIGNER

☐ Individual
☐ Corporate Officer

_____
Title(s)

☐ Partner(s) ☐ Limited ☐ General
☐ Attorney-In-Fact
☐ Trustee(s)
☐ Guardian/Conservator
☐ Other:

Signer is representing:
Name Of Person(s) Or Entity(ies)

_____

_____

DESCRIPTION OF ATTACHED DOCUMENT

_____
Title or Type of Document

_____
Number of Pages

_____
Date of Document

_____
Signer(s) Other Than Named Above

NOTE: This acknowledgment is to be completed for the Attorney-in-Fact. The Power-of Attorney to local representatives of the bonding company must also be attached.

END OF PERFORMANCE BOND

Payment Bond (Labor and Materials).

KNOW ALL MEN BY THESE PRESENTS That

WHEREAS, the City of Ontario , with its principal place of business at 303 East "B" Street, Ontario, CA 91764 (hereinafter designated as the "City"), by action taken or a resolution passed _____ , 20_____, has awarded to Philbin Construction Company hereinafter designated as the "Principal," a contract for the work described as follows: **Contract No. D&C21-005 Grand Park Phase 1 Rough Grading** (the "Project"); and

WHEREAS, the work to be performed by the Contractor is more particularly set forth in the Contract Documents for the Project dated _____, (hereinafter referred to as "Contract Documents"), the terms and conditions of which are expressly incorporated herein by reference; and

WHEREAS, said Principal is required to furnish a bond in connection with said contract; providing that if said Principal or any of its Subcontractors shall fail to pay for any materials, provisions, provender, equipment, or other supplies used in, upon, for or about the performance of the work contracted to be done, or for any work or labor done thereon of any kind, or for amounts due under the Unemployment Insurance Code or for any amounts required to be deducted, withheld, and paid over to the Employment Development Department from the wages of employees of said Principal and its Subcontractors with respect to such work or labor the Surety on this bond will pay for the same to the extent hereinafter set forth.

NOW THEREFORE, we, the Principal and _____ as Surety, are held and firmly bound unto the City in the penal sum of _____ Dollars ($_____) lawful money of the United States of America, for the payment of which sum well and truly to be made, we bind ourselves, our heirs, executors, administrators, successors and assigns, jointly and severally, firmly by these presents.

THE CONDITION OF THIS OBLIGATION IS SUCH that if said Principal, his or its subcontractors, heirs, executors, administrators, successors or assigns, shall fail to pay any of the persons named in Civil Code Section 9100, fail to pay for any materials, provisions or other supplies, used in, upon, for or about the performance of the work contracted to be done, or for any work or labor thereon of any kind, or amounts due under the Unemployment Insurance Code with respect to work or labor performed under the contract, or for any amounts required to be deducted, withheld, and paid over to the Employment Development Department or Franchise Tax Board from the wages of employees of the contractor and his subcontractors pursuant to Revenue and Taxation Code Section 18663, with respect to such work and labor the Surety or Sureties will pay for the same, in an amount not exceeding the sum herein above specified, and also, in case suit is brought upon this bond, all litigation expenses incurred by the City in such suit, including reasonable attorneys' fees, court costs, expert witness fees and investigation expenses.

This bond shall inure to the benefit of any of the persons named in Civil Code Section 9100 so as to give a right of action to such persons or their assigns in any suit brought upon this bond.

It is further stipulated and agreed that the Surety on this bond shall not be exonerated or released from the obligation of this bond by any change, extension of time for performance, addition, alteration or modification in, to, or of any contract, plans, specifications, or agreement pertaining or relating to any scheme or work of improvement herein above described, or pertaining or relating to the furnishing of labor, materials, or equipment therefore, nor by any change or modification of

any terms of payment or extension of the time for any payment pertaining or relating to any scheme or work of improvement herein above described, nor by any rescission or attempted rescission or attempted rescission of the contract, agreement or bond, nor by any conditions precedent or subsequent in the bond attempting to limit the right of recovery of claimants otherwise entitled to recover under any such contract or agreement or under the bond, nor by any fraud practiced by any person other than the claimant seeking to recover on the bond and that this bond be construed most strongly against the Surety and in favor of all persons for whose benefit such bond is given, and under no circumstances shall Surety be released from liability to those for whose benefit such bond has been given, by reason of any breach of contract between the owner or the City and original contractor or on the part of any obligee named in such bond, but the sole conditions of recovery shall be that claimant is a person described in Civil Code Section 9100, and has not been paid the full amount of his claim.

The Surety, for value received, hereby stipulates and agrees that no change, extension of time, alteration or addition to the terms of the Contract to be performed thereunder, shall in any way affect its obligations on this bond, and it does hereby waive notice of any such change, extension of time, alteration or addition to the terms of Contract, including but not limited to, the provisions of Sections 2819 and 2845 of the California Civil Code.

IN WITNESS WHEREOF, we have hereunto set our hands and seals this _____ day of _____, 20__.

(Corporate Seal)

_____
Contractor/ Principal

By_____

Title_____

(Corporate Seal)

_____
Surety

By _____
Attorney-in-Fact

(Attach Attorney-in-Fact Certificate)

Title_____

Notary Acknowledgment

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

STATE OF CALIFORNIA
COUNTY OF _____

On _____, 20___, before me, _____, Notary Public, personally

appeared _____, who proved to me on the basis of satisfactory

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

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

WITNESS my hand and official seal.

_____
Signature of Notary Public

OPTIONAL

Though the information below is not required by law, it may prove valuable to persons relying on the document and could prevent fraudulent removal and reattachment of this form to another document.

CAPACITY CLAIMED BY SIGNER

☐ Individual
☐ Corporate Officer

_____
Title(s)

☐ Partner(s) ☐ Limited ☐ General
☐ Attorney-In-Fact
☐ Trustee(s)
☐ Guardian/Conservator
☐ Other:

Signer is representing:
Name Of Person(s) Or Entity(ies)

_____

_____

DESCRIPTION OF ATTACHED DOCUMENT

_____
Title or Type of Document

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Number of Pages

_____
Date of Document

_____
Signer(s) Other Than Named Above

NOTE: This acknowledgment is to be completed for Contractor/Principal.

Notary Acknowledgment

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COUNTY OF _____

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appeared _____, who proved to me on the basis of satisfactory

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

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☐ Partner(s) ☐ Limited ☐ General
☐ Attorney-In-Fact
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☐ Guardian/Conservator
☐ Other:

Signer is representing:
Name Of Person(s) Or Entity(ies)

_____
_____

DESCRIPTION OF ATTACHED DOCUMENT

_____
Title or Type of Document

_____
Number of Pages

_____
Date of Document

_____
Signer(s) Other Than Named Above

NOTE: This acknowledgment is to be completed for the Attorney-in-Fact. The Power-of-Attorney to local representatives of the bonding company must also be attached.

END OF PAYMENT BOND

SECTION 00700 – GENERAL CONDITIONS

ARTICLE 1 -TERMS; DEFINITIONS

1.1 Defined Terms

A. Whenever used in the Contract Documents and printed with initial capital letters, the terms listed below will have the meanings indicated which are applicable to both the singular and plural thereof. In addition to terms specifically defined below, terms with initial capital letters in the Contract Documents include references to identified articles and paragraphs, and the titles of other documents or forms.

1. Act of God – An earthquake of magnitude of 3.5 or higher on the Richter scale or a tidal wave.

2. Addenda -- Written or graphic instruments issued prior to the submission of Bids which clarify, correct, or change the Contract Documents.

3. Additional Work -- New or unforeseen work will be classified as "Additional Work" when the Engineer determines that it is not covered by the Contract.

4. Applicable Laws -- The laws, statutes, ordinances, rules, codes, regulations, permits, and licenses of any kind, issued by local, state or federal governmental authorities or private authorities with jurisdiction (including utilities), to the extent they apply to the Work.

5. Architect means the architect, engineer, or other design professional engaged by the City to design and perform general observation of the work of construction and interpret the Drawings and Specifications for the Project.

6. Bid -- The offer or proposal of a Bidder submitted on the prescribed form setting forth the prices and other terms for the Work to be performed.

7. Bid Guarantee -- The Bid Bond, cashier's check, or certified check to be made by the Bidder, which is to accompany the Bid as a guaranty of good faith to enter into a written contract.

8. Bidder -- The individual or entity who submits a Bid directly to the City.

9. Change Order ("CO") -- A document that authorizes an addition, deletion, or revision in the Work or an adjustment in the Contract Price or the Contract Times, issued on or after the Effective Date of the Contract, in accordance with the Contract Documents and in the form contained in the Contract Documents.

10. Change Order Request ("COR") -- A request made by the Contractor for an adjustment in the Contract Price and/or Contract Times as the result of a Contractor-claimed change to the Work.

11. City's Representative – The City of Ontario, and acting through properly authorized agents, such as the Construction Manager, Engineer or such other agents acting within the scope of the particular duties entrusted to them. Also sometimes

referred to as the “City’s Representative” or “Representative” in the Contract Documents. The terms the City and Owner may be used interchangeably

12. Claim -- A demand or assertion by the City or Contractor seeking an adjustment of Contract Price or Contract Times, or both, or other relief with respect to the terms of the Contract. A demand for money or services by a third party is not a Claim.

13. Construction Manager. The Construction Manager (CM) is a consultant to the City contracted to assist in Project planning, management and construction of the Project. If there is a Construction Manager, they may assist in various aspects of the Project including, but not limited to submittal review / submittal coordination, monitoring the progress of the construction, reviewing and monitoring the schedule, progress of work, monitoring pay requests, facilitating communications, advising the City and its Board on various aspects of the construction process, monitoring the RFI, COR, CCD, ICD, RFP, Claims, Disputes and other Project related processes. All communications regarding the Project shall be done through the CM and any communications related to the Project shall copy the CM. The CM is not responsible for Contractor’s means and methods for safety and/or their construction process for the Work.

14. Contract -- The entire integrated written agreement between the City and Contractor concerning the Work. “Contract” may be used interchangeably with “Agreement” in the Contract Documents. The Contract supersedes prior negotiations, representations, or agreements, whether written or oral, and includes all Contract Documents.

15. Contract Documents -- The documents listed in Section 00 52 13, Article 5 of the Contract for Construction. Some documents provided by the City to the Bidders and Contractor, including but not limited to reports and drawings of subsurface and physical conditions are not Contract Documents.

16. Contract Price -- Amount to be paid by the City to the Contractor as full compensation for the performance of the Contract and completion of the Work, subject to any additions or deductions as provided in the Contract Documents, and including all applicable taxes and costs.

17. Contract Time -- The number of days or the dates stated in the Contract Documents to: achieve defined milestones, if any; and to complete the Work so that it is ready for final payment.

18. Contractor -- The individual or entity with which the City has contracted for performance of the Work.

19. Contractor’s Designated On-Site Representative -- The Contractor’s Designated On-Site Representative will be identified by the Contractor and shall not be changed without prior written consent of the City.

20. Critical Supply Shortage -- An unusual shortage in materials that is (a) supported by documented proof that Contractor made every effort to obtain such materials from all available sources; (b) such shortage is due to the fact that such materials are not physically available from single or multiple sources or could have been

obtained only at exorbitant prices entirely inconsistent with current and standard rates taking into account the quantities involved and the usual industry practices in obtaining such quantities; and (c) such shortages and the difficulties in obtaining alternate sources of materials could not have been known or anticipated by Contractor at the time it submitted its bid or entered the Contract. Market fluctuations in prices of materials, whether or not resulting from a Force Majeure Event, does not constitute a Critical Supply Shortage.

21. Day -- A calendar day of 24 hours measured from midnight to the next midnight.

22. Defective Work -- Work that is unsatisfactory, faulty, or deficient; or that does not conform to the Contract Documents; or that does not meet the requirements of any inspection, reference standard, test, or approval referenced in the Contract Documents.

23. Demobilization -- The complete dismantling and removal by the Contractor of all of the Contractor's temporary facilities, equipment, and personnel at the Site.

24. Drawings -- That part of the Contract Documents prepared by of the Engineer of Record which graphically shows the scope, extent, and character of the Work to be performed by Contractor. Shop Drawings and other Contractor Submittals are not Drawings as so defined.

25. Effective Date of the Contract -- The date indicated in the Contract on which it becomes effective, but if no such date is indicated, it means the date on which the Contract is signed and delivered by the last of the two parties to sign and deliver.

26. Engineer -- Whenever not qualified, shall mean the City Engineer or the Engineer authorized to act for and in behalf of the City, acting either directly or through properly authorized agents, such agents acting severally within the scope of the particular duties entrusted to them.

27. Force Majeure Event -- An event that materially affects a party's performance and is one or more of the following: (1) Acts of God or other natural disasters occurring at the Site; (2) terrorism or other acts of a public enemy; (3) orders of governmental authorities (including, without limitation, unreasonable and unforeseeable delay in the issuance of permits or approvals by governmental authorities that are required for the Work); (4) pandemics, epidemics or quarantine restrictions; (5) strikes and other organized labor action occurring at the Site and the effects thereof on the Work, only to the extent such strikes and other organized labor action are beyond the control of Contractor and its Subcontractors, of every Tier, and to the extent the effects thereof cannot be avoided by use of replacement workers; and (6) a Critical Supply Shortage. For purposes of this section, "orders of governmental authorities," includes ordinances, emergency proclamations and orders, rules to protect the public health, welfare and safety, and other actions of the City in its capacity as a municipal authority.

28. Hazardous Waste -- The term "Hazardous Waste" shall have the meaning provided in Section 104 of the Solid Waste Disposal Act (42 U.S.C. § 6903) as amended from time to time, or any substance or material identified as hazardous under any

state or federal statute governing handling, disposal and/or cleanup of any such substance or material, whichever is more restrictive.

29. Holiday – City recognized holidays. These are not necessarily project recognized holidays. Refer to Section 00750-Special Conditions for listed recognized project holidays:

    New Year's Day - January 1
    President's Day – Third Monday in February
    Memorial Day - Last Monday in May
    Independence Day - July 4
    Labor Day - First Monday in September
    Veteran's Day - November 11
    Thanksgiving Day - Fourth Thursday in November
    Friday after Thanksgiving
    Christmas Eve – December 24
    Christmas Day - December 25
    Day After Christmas – December 26
    New Year's Eve – December 31

    If any Holiday listed above falls on a Saturday, Saturday and the preceding Friday are both Holidays. If the Holiday should fall on a Sunday, Sunday and the following Monday are both Holidays.

30. Notice of Award -- The written notice by the City to the Successful Bidder stating that upon timely compliance by the Successful Bidder with the conditions precedent listed therein, the City will sign and deliver the Contract.

31. Notice of Completion -- The form which may be executed by the City constituting final acceptance of the Project.

32. Notice to Proceed -- A written notice given by the City to Contractor fixing the date on which the Contractor may proceed with the Work and when Contract Times will commence to run.

33. Project -- The total construction of which the Work to be performed under the Contract Documents may be the whole, or a part.

34. Record Drawings – The record set of as-builts prepared by the Contractor during the Work in accordance with the requirements of the General Conditions.

35. Recyclable Waste Materials -- Materials removed from the Site which are required to be diverted to a recycling center rather than an area landfill. Recyclable Waste Materials include, but are not limited to, asphalt, concrete, brick, concrete block, and rock.

36. Sample -- A physical example furnished by the Contractor to illustrate materials, equipment or workmanship; to establish standards by which the Work will be judged.

37. Schedule also known as the “Project Construction Schedule” is a practical way in which the Work will be accomplished. The Project Construction Schedule will be developed and managed by the Construction Manager. Refer to Article 8 of the General Conditions, 00750 – Special Conditions, and Division 01 – General Requirements.

38. Schedule of Submittals -- A schedule, prepared and maintained by Contractor, of required submittals and the time requirements to facilitate scheduled performance of related construction activities.

39. Shop Drawings -- All drawings, diagrams, illustrations, schedules, and other data or information which are specifically prepared or assembled by or for Contractor and submitted by Contractor to illustrate some portion of the Work.

40. Site -- Lands or areas indicated in the Contract Documents as being furnished by the City upon which the Work is to be performed, including rights-of-way and easements for access thereto, and such other lands furnished by the City which are designated for the use of Contractor.

41. Specifications -- That part of the Contract Documents consisting of written requirements for materials, equipment, systems, standards and workmanship as applied to the Work, and certain administrative requirements and procedural matters applicable thereto.

42. Stop Payment Notice -- A written notice as defined in Civil Code section 8044.

43. Subcontractor -- An individual or entity other than a Contractor having a contract with any other entity than the City for performance of any portion of the Work at the Site.

44. Submittal -- Written and graphic information and physical samples prepared and supplied by the Contractor demonstrating various portions of the Work.

45. Substantial Completion/ Substantially Complete(d) is not reached unless and until each of the following four (4) conditions have been met: (1) all contractually required items have been installed with the exception of only minor and Incomplete Punch List Items; (2) All Fire/Life Safety Systems have been installed, and are working and signed off, and all building systems including mechanical, electrical and plumbing are all functioning; (3) all other City Inspection Card for the Project have been approved and signed off; and (4) the Project is fit for occupancy and its intended use. For the purposes of this Contract, any references to the Completion Date means the Substantial Completion Date

46. Successful Bidder -- The responsible Bidder submitting a responsive Bid to whom the City makes an award.

47. Supplier -- A manufacturer, fabricator, supplier, distributor, material man, or vendor having a direct contract with Contractor or with any Subcontractor to furnish materials or equipment used in the performance of the Work or to be incorporated in the Work.

48. Underground Facilities -- All underground pipelines, conduits, ducts, cables, wires, manholes, vaults, tanks, tunnels, or other such facilities or attachments, and any encasements containing such facilities, including those that convey electricity, gases, steam, liquid petroleum products, telephone or other communications, cable television, water, wastewater, storm water, other liquids or chemicals, or traffic or other control systems.

49. Unit Price Work -- Work to be paid for on the basis of unit prices as provided by the Contractor in its Bid or as adjusted in accordance with the Contract Documents.

50. Warranty -- A guarantee provided to the City by the Contractor that the Work will remain free of defects and suitable for its intended use for the period required by the Contract Documents or the longest period permitted by the law of this state, whichever is longer.

51. Work -- The entire construction or the various separately identifiable parts thereof required to be provided under the Contract Documents. Work includes and is the result of performing or providing all labor, services, and documentation necessary to produce such construction, and furnishing, installing, and incorporating all materials and equipment into such construction, all as required by the Contract Documents.

1.1 Terminology.

A. The words and terms below are not defined but, when used in the Contract Documents, have the indicated meaning.

1. The word “furnish,” when used in connection with services, materials, or equipment, shall mean to supply and deliver said services, materials, or equipment to the Site (or some other specified location) ready for use or installation and in usable or operable condition.

2. The word “install,” when used in connection with services, materials, or equipment, shall mean to put into use or place in final position said services, materials, or equipment complete and ready for intended use.

3. The words “perform” or “provide,” when used in connection with services, materials, or equipment, shall mean to furnish and install said services, materials, or equipment complete and ready for intended use.

4. Regardless of whether “furnish,” “install,” “perform,” or “provide” is used in connection with services, materials, or equipment, an obligation of Contractor is implied.

B. Unless stated otherwise in the Contract Documents, words or phrases that have a well-known technical or construction industry or trade meaning are used in the Contract Documents in accordance with such recognized meaning.

ARTICLE 2 -PRELIMINARY MATTERS

2.1 Delivery of Contract Documents

A. Within ten (10) Days after receipt of the Notice of Award and before the City will execute the Contract, the Contractor shall furnish and file with the City a signed Contract and the necessary Performance Bond, Payment Bond, and Certificates of Insurance and Endorsements, as well as any other documents specified in the Contract Documents.

2.2 Bonds

A. Contractor shall submit the bonds on the forms provided with the Contract Documents, duly executed by a responsible corporate surety admitted to transact surety business in the State of California, as defined in Code of Civil Procedure section 995.120, and listed in the United States Department of the Treasury circular entitled "Companies Holding Certificates of Authority as Acceptable Sureties on Federal Bonds and as Acceptable Reinsuring Companies," authorized to do business in the State of California and acceptable to the City conditioned upon the faithful performance by the Contractor of all requirements of the Contract Documents. Each of the bonds shall be in a sum no less than one hundred percent (100%) of the Contract Price. Bonds shall be delivered to the City within ten (10) Days after receipt of the Notice of Award and before execution of the Contract by the City.

2.3 Evidence of Insurance

A. Prior to commencing any Work but no later than ten (10) Days after receipt of the Notice of Award, the Contractor shall submit or cause to be submitted any and all Certificates of Insurance and Endorsements, showing that the Contractor has the required insurance, to the attention of the City. Such insurance is to be provided at the sole cost and expense of the Contractor. No Work shall be performed until all of the required insurance has been received and approved.

2.4 Execution of the Contract

A. Upon receipt of the required Contract Documents, the City will execute the Contract, establishing the Effective Date of the Contract.

2.5 Contractor's Failure to Perform

A. Should Contractor fail to comply with timelines provided above, the City shall retain the right to enforce and collect on the Contractor's Bid Guarantee, rescind award to the Contractor and award the Contract to the next lowest responsive, responsible bidder as determined by the City. If the City elects to accept bonds and insurance submitted late, the Contract Times will begin to run as of the date stated in the Notice to Proceed. However, the number of days beyond the original ten (10) Days it took to receive the properly executed Contract and related items may be deducted from the Contract Times.

2.6 Commencement of Contract Times; Notice to Proceed

A. The City will not issue a Notice to Proceed until after the Effective Date of the Contract. Work shall commence within ten (10) Days of the date stated in the Notice to Proceed. The Contract Times begin to run on the date specified in the Notice to Proceed. No Work shall be done at the Site prior to the issuance of the Notice to Proceed.

2.7 Copies of Documents

A. Contractor shall maintain a clean, undamaged set of Contract Documents, including Submittals, at the Project site.

2.8 Substitution Requests, Schedule of Submittals, and Schedule

A. Substitution Requests. Within thirty-five (35) days of Contract award (unless otherwise specified in the Contract Documents), Contractor shall provide all substitution requests as further described in the General Conditions.

B. Schedule of Submittals. Within five (5) Days after the issuance of the Notice of Proceed (unless otherwise specified in the Contract Documents), Contractor shall submit to the City a Schedule of Submittals that conforms with the requirements of Section 00 72 00, Article 5.21.

C. Schedule. Within ten (10) days after the issuance of the Notice of Proceed (unless otherwise specified in the Contract Documents), the Contractor shall submit man-power for each activity noted in the construction schedule.

2.9 Preconstruction Conference; Designation of Authorized Representatives.

A. Before any Work at the Site is started, a conference attended by the City, Construction Manager, Contractor, Engineer, and others as appropriate will be held to establish a working understanding among the parties as to the Work and to discuss the schedules referred to herein, procedures for handling Submittals and Shop Drawings, processing applications for payment, and maintaining required records.

B. At this conference the City, Construction Manager, and Contractor each shall designate, in writing, a specific individual to act as its authorized representative with respect to the services and responsibilities under the Contract. Such individuals shall have the authority to transmit instructions, receive information, render decisions relative to the Contract, and otherwise act on behalf of each respective party.

2.10 Subcontractor Mobilization Meeting.

A. Prior to the start of each major Subcontractor's Site Work, the Contractor, the involved Subcontractor, Construction Manager, and Engineer shall attend a pre-start meeting to discuss the schedule, coordination, procedures, and other administrative issues.

2.11 Authority of Council; Engineer

A. The City Council has the final authority in all matters affecting the Work. Within the scope of the Contract, the Engineer has the authority to enforce compliance with the Contract Documents. The Contractor shall promptly comply with instructions from the Engineer.

B. The decision of the Architect / Engineer is final and binding on all questions relating to:

1. quantities;

2. acceptability of material, equipment, or work;

3. execution, progress or sequence of work;

4. interpretation of the Plans, Specifications, or other Contract Documents; and

5. Any other areas specifically identified in the Contract Documents or under the law.

C. Compliance with instructions from the Architect / Engineer shall be a condition precedent to any payment under the Contract, unless otherwise ordered by the City Council.

2.12 Mobilization

A. When a Bid item is included in the Bid Schedule for mobilization, the costs of Work in advance of construction operations and not directly attributable to any specific bid item will be included in the progress estimate. When no bid item is provided for mobilization payment for such costs will be deemed to be included in the other items of the Work.

B. Payment for mobilization based on the lump sum provided in the Bid Schedule, shall constitute full compensation for all such Work. No payment for mobilization will be made until all of the listed items have been completed to the satisfaction of the Engineer. The scope of the Work included under mobilization shall include, but shall not be limited to, the following principal items:

19. Obtaining and paying for all bonds, insurance, and permits.

20. Moving on to the Project Site of all Contractor's plant and equipment required for the first month's operations.

21. Installing temporary construction power, wiring, and lighting facilities, as applicable.

22. Establishing fire protection system, as applicable.

23. Developing and installing a construction water supply, as applicable.

24. Providing and maintaining the field office trailers for the Contractor, if necessary, and the Engineer (if specified), complete, with all specified furnishings and utility services.

25. Providing on-site sanitary facilities and potable water facilities as specified per Cal-OSHA and these Contract Documents.

26. Furnishing, installing, and maintaining all storage buildings or sheds required for temporary storage of products, equipment, or materials that have not yet been installed in the Work. All such storage shall meet manufacturer's specified storage requirements, and the specific provisions of the specifications, including temperature and humidity control, if recommended by the manufacturer, and for all security.

27. Arranging for and erection of Contractor's work and storage yard.

28. Posting all OSHA required notices and establishment of safety programs per Cal-OSHA.

29. Full-time presence of Contractor's superintendent at the job Site as required herein.

30. Submittal of construction schedule as required by the Contract Documents.

ARTICLE 3 -CONTRACT DOCUMENTS; INTENT

3.1 Examination of Drawings, Specifications, and Site of Work

A. Examination of Contract Documents; Site. Before commencing any portion of the Work, Contractor shall again carefully examine all applicable Contract Documents, the Project Site, and other information given to Contractor as to materials and methods of construction and other Project requirements. Contractor shall immediately notify the Architect / Engineer through the Construction Manager of any potential error, inconsistency, ambiguity, conflict, or lack of detail or explanation. If Contractor performs, permits, or causes the performance of any Work which is in error, inconsistent or ambiguous, or not sufficiently detailed or explained, Contractor shall bear any and all resulting costs, including, without limitation, the cost of correction. In no case shall the Contractor or any Subcontractor proceed with Work if uncertain as to the applicable requirements.

B. Additional Instructions. After notification of any error, inconsistency, ambiguity, conflict, or lack of detail or explanation, the Engineer will provide any required additional instructions, by means of drawings or other written direction, necessary for proper execution of Work.

C. Quality of Parts, Construction and Finish. All parts of the Work shall be of the best quality of their respective kinds and the Contractor must use all diligence to inform itself fully as to the required construction and finish.

D. Contractor's Variation from Contract Document Requirements. If it is found that the Contractor has varied from the requirements of the Contract Documents including

the requirement to comply with all Applicable Laws, the Engineer may at any time, before or after completion of the Work, order the improper Work removed, remade or replaced by the Contractor at the Contractor's expense.

3.2 Intent of Contract Documents

A. The Contract Documents are complementary; what is required by any one will be binding as if required by all. It is the intent of the Contract Documents to describe a functionally complete Project (or part thereof) to be constructed in accordance with the Contract Documents. Any labor, documentation, services, materials, or equipment that reasonably may be inferred from the Contract Documents or from prevailing custom or trade usage as being required to produce the indicated result will be provided whether or not specifically called for, at no additional cost to the City.

B. The Contractor shall furnish, unless otherwise provided in the Contract Documents, all materials, implements, machinery, equipment, tools, supplies and labor necessary to the prosecution and completion of the Project.

C. Clarifications and interpretations of the Contract Documents shall be issued by the Engineer as provided in these General Conditions.

D. If utilities to equipment/fixtures are not shown but are necessary to operate the equipment/fixtures, the utilities service installation is considered to be part of the Work. The implied Work will conform to the appropriate sections of the Contract Documents.

E. Organization of the Contract Documents into divisions, sections, and articles, and arrangement of drawings shall not control the Contractor in dividing Work among Subcontractors or in establishing the extent of Work to be performed by any trade.

3.3 Reference Standards.

A. Standards, Specifications, Codes, Laws, and Regulations.

1. Reference to federal specifications, federal standards, other standards, specifications, manuals, or codes of any technical society, organization, or association, or to Applicable Laws, whether such reference be specific or by implication, shall mean the standard, specification, manual, code, or Applicable Laws in effect at the time of opening of Bids (or on the Effective Date of the Contract if there were no Bids), except as may be otherwise specifically stated in the Contract Documents.

2. No provision of any such standard, specification, manual, or code, or any instruction of a Supplier, shall be effective to change the duties or responsibilities of the City, Contractor, or any of their Subcontractors, consultants, agents, or employees, from those set forth in the Contract Documents. No such provision or instruction shall be effective to assign to the City, or any of their officers, directors, members, partners, employees, agents, consultants, or subcontractors, any duty or authority to supervise or direct the performance of the Work or any duty or authority to undertake responsibility inconsistent with the provisions of the Contract Documents.

3.4 Reporting and Resolving Discrepancies; Order of Precedence.

A. Reporting Discrepancies.

1. The Contract Documents are intended to be fully cooperative and complementary. Before undertaking each part of the Work, Contractor shall carefully study and compare the Contract Documents and check and verify pertinent figures therein and all applicable field measurements. Contractor shall promptly report in writing to the City any conflict, error, ambiguity, or discrepancy which Contractor discovers, should have discovered, or has actual knowledge of, and shall obtain a written interpretation or clarification from the City before proceeding with any Work affected thereby. If, during the performance of the Work, Contractor discovers any conflict, error, ambiguity, or discrepancy within the Contract Documents, or between the Contract Documents and (i) any Applicable Law, (ii) any standard, specification, manual, or code, or (iii) any instruction of any Supplier, then Contractor shall promptly submit a written Request for Information (RFI) to the City. Contractor shall not proceed with the Work affected thereby (except in an emergency) until an amendment or supplement to the Contract Documents has been issued by one of the methods indicated in the Contract Documents, and any Work performed by Contractor before receipt of an amendment or supplement shall be at Contractor's own risk.

2. REQUEST FOR INFORMATION ("RFI")

a. Definition

A RFI is a written request prepared by the Contractor requesting the Architect to provide additional information necessary to clarify or amplify an item which the Contractor believes is not clearly shown or called for in the Drawings or Specifications, or to address problems which have arisen under field conditions.

i. A RFI shall not be used as a vehicle to generate time extensions.

ii. Resubmission of the same or similar RFI is not acceptable. RFI's that are similar should be addressed in Project meetings where the requestor (Contractor, Subcontractor or vendor) is able to address the particular issue with the Architect or Engineer and a resolution addressed in the minutes.

iii. A RFI response applicable to a specific area cannot be extended to other situations unless specifically addressed in writing within the RFI or in a separate RFI.

iv. RFI's should provide a proposed solution and should adequately describe the problem that has arisen.

b. Scope

The RFI shall reference all the applicable Contract Documents including Specification section, detail, page numbers, Drawing numbers, and sheet

numbers, etc. The Contractor shall make suggestions and interpretations of the issue raised by the RFI. An RFI cannot modify the Contract Cost, Contract Time, or the Contract Documents.

c. Response Time

The Architect must respond to a RFI within a reasonable time after receiving such request. If the Architect's response results in a change in the Work, then such change shall be effected by a written CO, COR RFP or ICD, if appropriate. If the Architect cannot respond to the RFI within a reasonable time, the Architect shall notify the CM and Contractor, with a copy to the City, of the amount of time that will be required to respond.

d. Cost Incurred

The Contractor shall be responsible for any costs incurred for professional services, which shall be subject to a Deductive Change Order, if an RFI requests an interpretation or decision of a matter where the information sought is equally available to the party making such request. City, at its sole discretion, shall issue a Deductive Change Order to Contractor for all such professional services arising from this Article

B. Order of Precedence.

1. In case of conflicts between the Contract Documents, the order of precedence shall be as follows:

a. Permits from other agencies as may be required by law

b. Change Orders, most recent first

c. Contract

d. Addenda, most recent first

e. Special Conditions

f. Specifications

g. Construction Plans and Drawings(Contract Drawings)

h. General Conditions

i. Instructions to Bidders

j. Notice Inviting Bids

k. Contractor's Bid (Bid Forms)

l. Standard Specifications for Public Works Construction "Greenbook" latest edition (Sections 1-9 Excluded)

m. Applicable Local Agency Standards and Specifications

n. Standard Drawings

o. Reference Documents

2. With reference to the Drawings the order of precedence shall be as follows:

a. Figures govern over scaled dimensions

b. Detail drawings govern over general drawings

c. Addenda/Change Order drawings govern over Drawings

d. Contract Drawings govern over Standard Drawings

e. Contract Drawings govern over Shop Drawings

3. Notwithstanding the orders of precedence established above, in the event of conflicts, the higher standard, higher quality and most expensive shall always apply.

3.5 Amending and Supplementing Contract Documents.

A. The Contract Documents may be amended to provide for additions, deletions, and revisions in the Work or to modify the terms and conditions thereof only by Change Order or written amendment to the Contract duly executed by the parties.

B. The requirements of the Contract Documents may be supplemented, and minor variations and deviations in the Work may be authorized at no cost to the City, by one or more of the following ways:

1. The City's review of a Submittal, Shop Drawing, Sample or substitution request without exception (subject to the provisions of the Contract Documents); or

2. The City's issuance of a response to an RFI.

C. However, no review or RFI response will reduce or modify the Contractor's obligation to fully satisfy and comply with the requirements of the Contract Documents.

3.6 Reuse of Documents.

A. Contractor and any Subcontractor or Supplier shall not:

1. have or acquire any title to or ownership rights in any of the Drawings, Specifications, or other documents (or copies of any thereof) prepared by or bearing the seal of Engineer of Record or its consultants, including electronic media editions; or

2. reuse any such Drawings, Specifications, other documents, or copies thereof on extensions of the Project or any other project without written consent of the City and Engineer of Record and specific written verification or adaptation by Engineer of Record.

B. The prohibitions of this Article will survive final payment, or termination of the Contract. Nothing herein shall preclude Contractor from retaining copies of the Contract Documents for record purposes.

ARTICLE 4 -INDEMNIFICATION; INSURANCE

4.1 Indemnification

A. To the fullest extent permitted by law, Contractor shall immediately defend (with counsel of the City's choosing), indemnify and hold harmless the City, Construction Manager, Architect, Engineer, its officials, officers, agents, employees, and representatives, and each of them from and against:

1. Any and all claims, demands, causes of action, costs, expenses, injuries, losses or liabilities, in law or in equity, of every kind or nature whatsoever, but not limited to, injury to or death, including wrongful death, of any person, and damages to or destruction of property of any person, arising out of, related to, or in any manner directly or indirectly connected with the Work or this Contract, including claims made by subcontractors for nonpayment, including without limitation the payment of all consequential damages and attorney's fees and other related costs and expenses, however caused, regardless of whether the allegations are false, fraudulent, or groundless, and regardless of any negligence of the City, Construction Manager, Architect, Engineer or its officers, employees, or authorized volunteers (including passive negligence), except the sole negligence or willful misconduct or active negligence of the City, Construction Manager, Architect, Engineer, or its officials, officers, employees, or authorized volunteers.

2. Contractor's defense and indemnity obligation herein includes, but is not limited to damages, fines, penalties, attorney's fees and costs arising from claims under the Americans with Disabilities Act (ADA) or other federal or state disability access or discrimination laws arising from Contractor's Work during the course of construction of the improvements or after the Work is complete, as the result of defects or negligence in Contractor's construction of the improvements.

3. Any and all actions, proceedings, damages, costs, expenses, fines, penalties or liabilities, in law or equity, of every kind or nature whatsoever, arising out of, resulting from, or on account of the violation of any governmental law or regulation, compliance with which is the responsibility of Contractor;

4. Any and all losses, expenses, damages (including damages to the Work itself), attorney's fees, and other costs, including all costs of defense which any of them may incur with respect to the failure, neglect, or refusal of Contractor to faithfully perform the Work and all of Contractor's obligations under Contract. Such costs, expenses, and damages shall include all costs, including attorney's fees, incurred by the indemnified parties in any lawsuit to which they are a party.

B. Contractor shall immediately defend, at Contractor's own cost, expense and risk, with the counsel of the City choosing, any and all such aforesaid suits, actions or other legal proceedings of every kind that may be brought or instituted against the City, Construction Manager, Architect, Engineer, its officials, officers, agents, employees and representatives. Contractor shall pay and satisfy any judgment,

award or decree that may be rendered against the City, Construction Manager, Architect, Engineer, its officials, officers, employees, agents, employees and representatives, in any such suit, action or other legal proceeding. Contractor shall reimburse the City, Construction Manager, Architect, Engineer, its officials, officers, agents, employees and representatives for any and all legal expenses and costs incurred by each of them in connection therewith or in enforcing the indemnity herein provided. The only limitations on this provision shall be those imposed by Civil Code section 2782.

C. The provisions of this Article shall survive the termination of this Contract howsoever caused, and no payment, partial payment, or acceptance of occupancy in whole or part of the Work shall waive or release any of the provisions of this Article.

4.2 Insurance

The Contractor shall obtain, and at all times during performance of the Work of Contract, maintain all of the insurance described in this Article. Contractor shall not commence Work under this Contract until it has provided evidence satisfactory to the City that it has secured all insurance required hereunder. Contractor shall not allow any Subcontractor to commence work on any subcontract until it has provided evidence satisfactory to the City that the subcontractor has secured all insurance required under this Article. Failure to provide and maintain all required insurance shall be grounds for the City to terminate this Contract for cause. Contractor shall furnish the City with original certificates of insurance and endorsements effective coverage required by this Contract on forms satisfactory to the City. The certificates and endorsements for each insurance policy shall be signed by a person authorized by that insurer to bind coverage on its behalf, and shall be on forms acceptable to the City. All certificates and endorsements must be received and approved by the City before Work commences.

A. **Additional Insureds; Waiver of Subrogation**. The City, Construction Manager, Architect, Engineer, its officials, officers, employees, agents and authorized volunteers shall be named as Additional Insureds on Contractor's All Risk policy and on Contractor's and its subcontractors' policies of Commercial General Liability and Automobile Liability insurance using, for Contractor's policy/ies of Commercial General Liability insurance, ISO CG forms 20 10 and 20 37 (or endorsements providing the exact same coverage, including completed operations), and, for subcontractors' policies of Commercial General Liability insurance, ISO CG form 20 38 (or endorsements providing the exact same coverage). Notwithstanding the minimum limits set forth in this Contract for any type of insurance coverage, all available insurance proceeds in excess of the specified minimum limits of coverage shall be available to the parties required to be named as Additional Insureds hereunder. All insurance coverage maintained or procured pursuant to this Contract shall be endorsed to waive subrogation against the City, Construction Manager, Architect, Engineer, its officers, officials**,** agents, employees or volunteers or shall specifically allow Contractor - or others providing insurance evidence in compliance with these specifications - to waive their right of recovery prior to a loss. Contractor hereby waives its own right of recovery against the City, Construction Manager, Architect, Engineer, and shall require similar written express waivers and insurance clauses from each of its subcontractors. Copies of these waivers shall be submitted to the City prior to commencement of work.

B. **Workers' Compensation Insurance**. The Contractor shall provide workers' compensation insurance for all of the employees engaged in Work under this Contract, on or at the Site, and, in case of any sublet Work, the Contractor shall require the subcontractor similarly to provide workers' compensation insurance for all the latter's employees as prescribed by State law. Any class of employee or employees not covered by a subcontractor's insurance shall be covered by the Contractor's insurance. In case any class of employees engaged in work under this Contract, on or at the Site, is not protected under the Workers' Compensation Statutes, the Contractor shall provide or shall cause a subcontractor to provide, adequate insurance coverage for the protection of such employees not otherwise protected. The Contractor is required to secure payment of compensation to his employees in accordance with the provisions of section 3700 of the Labor Code. The Contractor shall file with the City certificates of his insurance protecting workers. Company or companies providing insurance coverage shall be acceptable to the City, if in the form and coverage as set forth in the Contract Documents.

C. **Employer's Liability Insurance**. Contractor shall provide Employer's Liability Insurance, including Occupational Disease, in the amount of at least one million dollars ($1,000,000.00) per person per accident. Contractor shall provide the City with a certificate of Employer's Liability Insurance. Such insurance shall comply with the provisions of the Contract Documents. The policy shall be endorsed, if applicable, to provide a Borrowed Servant/Alternate Employer Endorsement and contain a Waiver of Subrogation in favor of the City.

D. **Commercial General Liability Insurance**. Contractor shall provide "occurrence" form Commercial General Liability insurance coverage at least as broad as the most current ISO CGL Form 00 01, including but not limited to, premises liability, contractual liability, products/completed operations, personal and advertising injury which may arise from or out of Contractor's operations, use, and management of the Site, or the performance of its obligations hereunder. The policy shall not contain any exclusion contrary to this Contract including but not limited to endorsements or provisions limiting coverage for (1) contractual liability (including but not limited to ISO CG 24 26 or 21 39); or (2) cross-liability for claims or suits against one insured against another. Policy limits shall not be less than $10,000,000 per occurrence for bodily injury, personal injury and property damage. If Commercial General Liability Insurance or other form with a general aggregate limit is used, either the general aggregate limit shall apply separately to this project/location or the general aggregate limit shall be twice the required occurrence limit. Defense costs shall be paid in addition to the limits.

19. Such policy shall comply with all the requirements of this Article. The limits set forth herein shall apply separately to each insured against whom claims are made or suits are brought, except with respect to the limits of liability. Further the limits set forth herein shall not be construed to relieve the Contractor from liability in excess of such coverage, nor shall it limit Contractor's indemnification obligations to the City, and shall not preclude the City from taking such other actions available to the City under other provisions of the Contract Documents or law.

20. All general liability policies provided pursuant to the provisions of this Article shall comply with the provisions of the Contract Documents.

21. All general liability policies shall be written to apply to all bodily injury, including death, property damage, personal injury, owned and non-owned equipment, blanket contractual liability, completed operations liability, explosion, collapse, under-ground excavation, removal of lateral support, and other covered loss, however occasioned, occurring during the policy term, and shall specifically insure the performance by Contractor of that part of the indemnification contained in these General Conditions relating to liability for injury to or death of persons and damage to property.

22. If the coverage contains one or more aggregate limits, a minimum of 50% of any such aggregate limit must remain available at all times; if over 50% of any aggregate limit has been paid or reserved, the City may require additional coverage to be purchased by Contractor to restore the required limits. Contractor may combine primary, umbrella, and as broad as possible excess liability coverage to achieve the total limits indicated above. Any umbrella or excess liability policy shall include the additional insured endorsement described in the Contract Documents.

23. All policies of general liability insurance shall permit and Contractor does hereby waive any right of subrogation which any insurer of Contractor may acquire from Contractor by virtue of the payment of any loss.

E. **Automobile Liability Insurance**. Contractor shall provide Automobile Liability Insurance at least as broad as ISO CA 00 01 (Any Auto) in the amount of, at least, one million dollars ($5,000,000) per accident for bodily injury and property damage. Such insurance shall provide coverage with respect to the ownership, operation, maintenance, use, loading or unloading of any auto owned, leased, hired or borrowed by Contractor or for which Contractor is responsible, in a form and with insurance companies acceptable to the City. All policies of automobile insurance shall permit and Contractor does hereby waive any right of subrogation which any insurer of Contractor may acquire from Contractor by virtue of the payment of any loss.

F. **Builder's Risk ["All Risk"]**

1. The City shall maintain Builder's Risk, Course of Construction or similar first party property coverage issued on a replacement cost value basis consistent with the total replacement cost of all insurable Work and the existing buildings where Work is being performed for the Project included within the Contract Documents. Coverage is to insure against risks of accidental direct physical loss. Contractor shall be responsible for the applicable Fifty Thousand Dollar ($50,000) deductible under the City builder's risk insurance policy for damage to work of Contractor or any Subcontractor of any tier including damage to work of other Contractors caused by Contractor or its Subcontractors.

G. **Contractor's Pollution Liability Coverage**. Contractor shall provide pollution liability insurance in an amount not less than $5,000,000 per occurrence and $10,000,000 aggregate.

H. Contractor shall require all tiers of Subcontractors working under this Contract to provide the insurance required under this Article unless otherwise agreed to in

writing by the City. Contractor shall make certain that any and all Subcontractors hired by Contractor are insured in accordance with this Contract. If any Subcontractor's coverage does not comply with the foregoing provisions, Contractor shall indemnify and hold the City, Construction Manager, Architect, and Engineer harmless from any damage, loss, cost, or expense, including attorneys' fees, incurred by the City as a result thereof.

I. Notwithstanding the minimum limits set forth in this Contract for any type of insurance coverage, if Contractor maintains higher limits than the minimums shown above, the City requires and shall be entitled to coverage for the higher limits maintained by the Contractor. Any available insurance proceeds in excess of the specified minimum limits of insurance and coverage shall be available to the City.

J. **Form and Proof of Carriage of Insurance**

19. Any insurance carrier providing insurance coverage required by the Contract Documents shall be admitted to and authorized to do business in the State of California unless waived, in writing, by the City's Risk Manager. Carrier(s) shall have an A.M. Best rating of not less than an A:VII. Insurance deductibles or self-insured retentions must be declared by the Contractor. At the election of the City the Contractor shall either 1) reduce or eliminate such deductibles or self-insured retentions, or 2) procure a bond which guarantees payment of losses and related investigations, claims administration, and defense costs and expenses. If umbrella or excess liability coverage is used to meet any required limit(s) specified herein, the Contractor shall provide a "follow form" endorsement satisfactory to the City indicating that such coverage is subject to the same terms and conditions as the underlying liability policy.

20. Each insurance policy required by this Contract shall be endorsed to state that: (1) coverage shall not be suspended, voided, reduced or cancelled except after thirty (30) days prior written notice by certified mail, return receipt requested, has been given to the City; and (2) any failure to comply with reporting or other provisions of the policies, including breaches of warranties, shall not affect coverage provided to the City, Construction Manager, Architect, Engineer, its officials, officers, agents, employees, and volunteers.

21. The Certificates(s) and policies of insurance shall contain or shall be endorsed to contain the covenant of the insurance carrier(s) that it shall provide no less than thirty (30) days written notice be given to the City prior to any material modification or cancellation of such insurance. In the event of a material modification or cancellation of coverage, the City may terminate the Contract or stop the Work in accordance with the Contract Documents, unless the City receives, prior to such effective date, another properly executed original Certificate of Insurance and original copies of endorsements or certified original policies, including all endorsements and attachments thereto evidencing coverage's set forth herein and the insurance required herein is in full force and effect. Contractor shall not take possession, or use the Site, or commence operations under this Contract until the City has been furnished original Certificate(s) of Insurance and certified original copies of endorsements or policies of insurance including all endorsements and any and all other attachments as required in this Article. The original

endorsements for each policy and the Certificate of Insurance shall be signed by an individual authorized by the insurance carrier to do so on its behalf.

22. The Certificate(s) of Insurance, policies and endorsements shall so covenant and shall be construed as primary, and the City's, Construction Manager's, Architect's, Engineer's insurance and/or deductibles and/or self-insured retentions or self-insured programs shall not be construed as contributory.

23. The City reserves the right to adjust the monetary limits and types of insurance coverages during the term of this Contract including any extension thereof if, in the City's reasonable judgment, the amount or type of insurance carried by the Contractor becomes inadequate.

24. Contractor shall report to the City, in addition to the Contractor's insurer, any and all insurance claims submitted by the Contractor in connection with the Work under this Contract.

25. Products/completed operations coverage shall extend a minimum of three years after the project completion. Coverage shall be included on behalf of the insured for covered claims arising out of the actions of independent contractors. If the insured is using subcontractors, the policy must include work performed "by or on behalf" of the insured. Policy shall contain no language that would invalidate or remove the insurer's duty to defend or indemnify for claims or suits expressly excluded from coverage. Policy shall specifically provide for a duty to defend on the part of the insurer. The City, Construction Manager, Architect, Engineer, its officers, officials, agents employees, and volunteers shall be included as insureds under the policy.

ARTICLE 5 -CONTRACTOR RESPONSIBILITIES; REGULATORY REQUIREMENTS

5.1 Applicable Laws

A. Contractor shall give all notices required by and shall comply with all Applicable Laws applicable to the performance of the Work. Except where otherwise expressly required by Applicable Laws, neither the City nor the City's Representative shall be responsible for monitoring Contractor's compliance with any Applicable Laws. If Contractor performs any Work knowing or having reason to know that it is contrary to Applicable Laws, Contractor shall bear all claims, costs, losses, and damages (including but not limited to all fees and charges of engineers, construction manager, architects, attorneys, and other professionals and all court or arbitration or other dispute resolution costs) arising out of or relating to such Work.

5.2 Permits and Licenses

A. Permits and licenses necessary for prosecution of the Work shall be secured and paid for by Contractor, including, but not limited to, excavation permit, for plumbing, mechanical and electrical work and for operations in or over public streets or right of way under jurisdiction of public agencies other than the City, unless otherwise specified in the Contract Documents.

B. The Contractor shall arrange and pay for all off-site inspection of the Work related to permits and licenses, including certification, required by the specifications, drawings, or by governing authorities, except for such off-site inspections delineated as the City's responsibility pursuant to the Contract Documents.

C. Before acceptance of the Work, the Contractor shall submit all licenses, permits, certificates of inspection and required approvals to the City.

5.3 Taxes

A. Contractor shall pay all sales, consumer, use, and other similar taxes required to be paid in accordance with the Applicable Laws of the place of the Project which are applicable during the performance of the Work. In accordance with Revenue and Taxation Code section 107.6, the Contract Documents may create a possessory interest subject to personal property taxation for which Contractor will be responsible.

5.4 Traffic Control

A. Traffic control plans, if required, shall be prepared at Contractor's expense. Traffic control shall be performed at Contractor's expense in accordance with the requirements of the City and/or the local agency with jurisdiction. Costs for traffic control plans, implementation of traffic control, or traffic signal services required by the City shall be included in the Contractor's Bid.

B. All warning signs and safety devices used by the Contractor to perform the Work shall conform to the requirements contained in the State of California, Department of Transportation's current edition of "Manual of Traffic Controls for Construction and Maintenance Work Zones" or to the requirements of the local agency. The Contractor shall also be responsible for all traffic control required by the agency having jurisdiction over the Project on the intersecting streets. Contractor must submit a traffic control plan to the agency having jurisdiction over the Project for approval prior to starting Work.

C. The Contractor's representative on the site responsible for traffic control shall produce evidence that he/she has completed training acceptable to the California Department of Transportation for safety through construction zones. All of the streets in which the Work will occur shall remain open to traffic and one lane of traffic maintained at all times unless otherwise directed by the agency of jurisdiction. Businesses and residences adjacent to the Work shall be notified forty-eight (48) hours in advance of closing of driveways. The Contractor shall make every effort to minimize the amount of public parking temporarily eliminated due to construction in areas fronting businesses. No stockpiles of pipe or other material will be allowed in traveled right-of-ways after working hours unless otherwise approved by the Engineer.

5.5 Safety

A. Contractor shall be solely responsible for all safety precautions and programs in connection with the Work. Such responsibility does not relieve Subcontractors of their responsibility for the safety of persons or property in the performance of their

work, nor for compliance with applicable safety laws. Contractor shall comply with all Applicable Laws relating to the safety of persons or property, or to the protection of persons or property from damage, injury, or loss; and shall erect and maintain all necessary safeguards for such safety and protection. Contractor shall notify owners of adjacent property and of Underground Facilities and other utility owners when prosecution of the Work may affect them, and shall cooperate with them in the protection, removal, relocation, and replacement of their property.

B. The Contractor shall maintain emergency first aid treatment for his employees which complies with the Federal Occupational Safety and Health Act of 1970 (29 U.S.C. § 651 *et seq*.), and California Code of Regulations, Title 8, Industrial Relations Division 1, Department of Industrial Relations, Chapter 4. The Contractor shall ensure the availability of emergency medical services for its employees in accordance with California Code of Regulations, Title 8, Section 1512. The Contractor shall submit an Illness and Injury Prevention Program and a Project Site specific safety program to the City prior to beginning Work. Contractor shall maintain a confined space program that meets or exceeds the City's standards. Contractor needs to make themselves aware of the City's safety policies and procedures, and shall meet or exceed all City standards in areas where the City must enter to perform inspections.

C. Hazard Communication Programs. Contractor shall be responsible for coordinating any exchange of material safety data sheets or other hazard communication information required to be made available to or exchanged between or among employers at the Site in accordance with Applicable Laws.

5.6 Hazardous Materials

A. The City shall not be responsible for any Hazardous Waste brought to the site by the Contractor. If the Contractor: (i) introduces and/or discharges a Hazardous Waste onto the site in a manner not specified by the Contract Documents; and/or (ii) disturbs a Hazardous Material identified in the Contract Documents, the Contractor shall hire a qualified remediation contractor at Contractor's sole cost to eliminate the condition as soon as possible. Under no circumstance shall the Contractor perform Work for which it is not qualified. The City, in its sole discretion, may require the Contractor to retain at Contractor's cost an independent testing laboratory.

B. If the Contractor encounters a Hazardous Waste which may cause foreseeable injury or damage, Contractor shall immediately: (i) secure or otherwise isolate such condition; (ii) stop all Work in connection with such material or substance (except in an emergency situation); and (iii) notify the City (and promptly thereafter confirm such notice in writing).

C. Subject to Contractor's compliance with this Article 5.6(B), the City shall verify the presence or absence of the Hazardous Waste reported by the Contractor, except as qualified under Article 5.6(A) and Article 5.6(B) in the event such material or substance is found to be present, verify that the levels of the hazardous material are below OSHA Permissible Exposure Levels and below levels which would classify the material as a state of California or federal hazardous waste. When the material falls below such levels, Work in the affected area shall resume upon direction by the City.

D. Contractor shall indemnify and hold harmless the City, Construction Manager, Architect, and Engineer from and against claims, damages, losses and expenses, arising from a Hazardous Waste on the Project Site, if such Hazardous Waste exceeded OSHA Permissible Exposure Levels or levels which would classify the material as a state of California or federal hazardous waste, and was either i) shown on the Contract Documents or information available to bidders; or (ii) brought to the site by Contractor. Nothing in this paragraph shall obligate the Contractor to indemnify the City in the event of the sole or active negligence or willful misconduct of the City, Construction Manager, Architect, and Engineer its officers, agents, or employees.

5.7 Sanitary Facilities.

A. Contractor shall provide sanitary temporary toilet buildings and hand washing facilities for the use of all workers. All toilets and hand washing facilities shall comply with local codes and ordinances. Toilets shall be placed inside sealed secondary containment devices installed on a flat, level surface. Accumulated liquids in the secondary containment devices shall be properly removed and legally disposed without spillage onto the ground. Toilets shall be kept supplied with toilet paper and shall have workable door fasteners. Toilets and hand washing facilities shall be serviced no less than once weekly and shall be present in a quantity of not less than 1 per 20 workers as required by Cal/OSHA regulations. The toilets and hand washing facilities shall be maintained in a sanitary condition at all times. Use of toilet and hand washing facilities in the Work under construction shall not be permitted. Any other sanitary facilities required by Cal/OSHA shall be the responsibility of the Contractor.

5.8 Dust Control

A. Contractor, at its expense, shall maintain all excavations, embankments, haul roads, permanent access roads, plant sites, waste disposal areas, borrow areas, and all other work areas free from dust. Industry accepted methods of dust control suitable for the area involved, such as sprinkling, chemical treatment, light bituminous treatment or similar methods, will be permitted.

5.9 Air Pollution Control

A. Contractor shall comply with all air pollution control rules, regulations, ordinances and statutes. All containers of paint, thinner, curing compound, solvent or liquid asphalt shall be labeled to indicate that the contents fully comply with the applicable material requirements.

B. Without limiting the foregoing, Contractor must fully comply with all applicable laws, rules and regulations in furnishing or using equipment and/or providing services, including, but not limited to, emissions limits and permitting requirements imposed by the Air Quality Management District with jurisdiction over the Project and/or California Air Resources Board (CARB). Contractor shall specifically be aware of the application of these limits and requirements to "portable equipment", which definition includes any item of equipment with a fuel-powered engine. Contractor shall indemnify the City against any fines or penalties imposed by the air quality management district, CARB, or any other governmental or regulatory agency for its

violations of Applicable Laws as well as those of its subcontractors or others for whom Contractor is responsible under its indemnity obligations provided for in the Contract Documents.

5.10 Water Quality Management and Compliance

A. Storm, surface, ground, nuisance, or other waters may be encountered at various times during construction of the Work. The Contractor hereby acknowledges that it has investigated the risk arising from such waters, has prepared its Bid accordingly, and assumes any and all risks and liabilities arising therefrom.

B. Contractor shall keep itself and all subcontractors, staff, and employees fully informed of and in compliance with all local, state and federal laws, rules and regulations that may impact, or be implicated by the performance of the Work including, without limitation, all applicable provisions regulating discharges of storm water; the Federal Water Pollution Control Act (33 U.S.C. § 13000 et seq.); the California Porter-Cologne Water Quality Control Act (Cal Water Code §§ 13000-14950); and any and all regulations, policies, or permits issued pursuant to any such authority. These include, but are not limited to California State Water Resources Control Board Order Number 2009-0009-DWQ (NPDES Permit No. CAS000002), as amended by Order Numbers 2010-0014-DWQ, 2012-0006-DWQ, and any subsequent amendment to or renewal thereof, State Water Resources Control Board Order No. 2013-0001-DWQ (NPDES Order No. CAS000004), Santa Ana Regional Water Quality Control Board No. R8-2010-0036 (NPDES No. CAS618036), and any amendment or renewal thereof.

C. Contractor shall comply with all conditions of the State Water Resources Control Board ("State Water Board") National Pollutant Discharge Elimination System General Permit for Waste Discharge Requirements for Discharges of Storm Water Runoff Associated with Construction Activity ("Construction General Permit") for all construction activity which results in the disturbance of in excess of one acre of total land area or which is part of a larger common area of development or sale. Contractor shall comply with the lawful requirements of the City, and any other applicable municipality, drainage district, or other local agency with jurisdiction over the location where the Work is to be conducted, regarding discharges of storm water to separate storm drain systems or other watercourses under their jurisdiction, including applicable requirements in municipal storm water management programs.

D. Unless otherwise specified in the Special Conditions or other portion of the Contract Documents, the City has not prepared a Storm Water Pollution Prevention Plan ("SWPPP") or other storm water compliance plan for the Project Site. Contractor shall be responsible for filing the Notice of Intent ("NOI") and for obtaining coverage under the Construction General Permit. This includes filing all necessary documentation including the Permit Registration Documents ("PRDs") through the Stormwater Multiple Applications and Report Tracking System ("SMARTS"); preparing and implementing a SWPPP for the Work site; implementing all other provisions, and monitoring and reporting requirements required by the Construction General Permit; and providing a Qualified SWPPP Developer ("QSD") and Qualified SWPPP Practitioner ("QSP"), as necessary for all Work site activities, including but not limited to preparation and submittal of all reports, plans, inspections, and monitoring information in compliance with the Construction General Permit. All

submittals shall be coordinated with the City's Legally Responsible Person and Authorized Signatory as those terms are defined in the Construction General Permit. Before any NOI, PRD, SWPPP, or other Construction General Permit-related document may be submitted to the State Water Board or implemented on the Project site, it must first be reviewed and approved by the City and/or City's designee. Contractor shall include all costs of compliance with specified requirements in the Contract Price.

E. The City retains the right to develop its own documentation for the Project site, including but not limited to the SWPPP, and in the alternative may require Contractor to adopt and implement portions of the City developed SWPPP. The City expressly reserves the right to procure coverage under the Construction General Permit for the Work site if Contractor fails to draft satisfactory PRDs or SWPPP or otherwise fails to proceed in a manner that complies with the requirements of the Construction General Permit. The City additionally reserves the right to hire additional contractors to maintain compliance at the Work site. Whether Contractor has adequately maintained compliance with the Construction General Permit shall be the City's sole determination. Any costs incurred by the City in procuring coverage under the Construction General Permit, or drafting and/or implementing a SWPPP for the Work site shall be paid by Contractor.

F. Notwithstanding the above, for those Work sites where construction activity results in the disturbance of less than one acre of total land area and/or do not need coverage under the Construction General Permit, the Contractor shall be responsible for preparing and implementing an Erosion and Sediment Control Plan in accordance with State Water Resources Control Board Order No. 2013-0001-DWQ (NPDES Order No. CAS000004) and any amendment to or renewal thereof.

G. Failure to comply with the Construction General Permit, laws, regulations, and ordinances listed in this Article is a violation of federal and state law. Notwithstanding any other indemnity contained in these Contract Documents, Contractor agrees to indemnify and hold harmless the City, Construction Manager, Architect, and Engineer its officials, officers, agents, employees and authorized volunteers from and against any and all claims, demands, fees, costs, expenses, or losses or liabilities of any kind or nature which the City, its officials, officers, agents, employees and authorized volunteers may sustain or incur for noncompliance with the Permit, laws, regulations, and ordinances listed above, arising out of or in connection with the Work, except for liability resulting from the sole established negligence, willful misconduct or active negligence of the City, its officials, officers, agents, employees or authorized volunteers.

H. The City reserves the right to defend any enforcement action or civil action brought against the City for Contractor's failure to comply with any applicable water quality law, regulation, or policy. Contractor hereby agrees to be bound by, and to reimburse the City for the costs associated with, any settlement reached between the City and any relevant enforcement entity.

5.11 Environmental Quality Protection

A. The Contractor shall comply with all requirements of applicable federal, state, and local environmental rules and regulations. Any infractions of said rules and

regulations by the Contractor during the term of the Contract, which result in penalties, will be the responsibility of the Contractor. The City operates under a number of environmental permits issued by various agencies. If due to an action, inaction, or negligence by the Contractor, the City becomes subject to non-compliance penalties, the cost of such penalties shall be borne by the Contractor.

B. The Contractor shall exercise care to preserve the natural landscape and vegetation, and shall conduct operations so as to prevent unnecessary destruction, scarring, or defacing of the natural surroundings in the vicinity of the Work. Movement of crews and equipment within the rights-of-way and over routes provided for access to the Work shall be performed in a manner to prevent damage to property. When no longer required, construction roads shall be restored to original contours. Upon completion of the Work, and following removal of construction facilities and required cleanup, land used for construction purposes and not required for the completed installation shall be scarified and regraded, as required, so that all surfaces are left in a condition that will facilitate natural revegetation, provide for proper drainage, and prevent erosion.

C. If, in the performance of the Work, evidence of the possible occurrence of any Federally listed threatened or endangered plant or animal is discovered, the Contractor shall notify the City Representative immediately, giving the location and nature of the findings. Written confirmation of the evidence, location and nature of the findings shall be forwarded to City within two (2) Days. The Contractor shall immediately cease all construction activities in the immediate area of the discovery to the extent necessary to protect the endangered plant or animal. If directed by the City Representative, Contractor will refrain from working in the immediate area, suspend the Work in its entirety, or alter its performance to ensure full compliance with all applicable permits, laws and regulations. Any City directed changes to the Work as a result of a siting will be pursuant to the Contract Documents. Any costs or delays incurred by City or the Contractor due to unreasonable or false notification of an endangered plant or animal will be borne by the Contractor.

D. If, in the performance of the Work, Contractor should unearth cultural resources (for example, human remains, animal bones, stone tools, artifacts and/or midden deposits) through excavation, grading, watering or other means, the Contractor shall notify the construction/archeological monitor and/or the City Representative immediately, giving the location and nature of the findings. Written confirmation of the evidence, location and nature of the findings shall be forwarded to the construction/archeological monitor and/or City within two (2) Days. The Contractor shall immediately cease all construction activities in the immediate area of the discovery to the extent necessary to protect the cultural resource. If directed by the City Representative, Contractor will refrain from working in the immediate area, suspend the Work in its entirety, or re-sequence and/or alter its performance to ensure full compliance with all applicable permits, laws and regulations. Should the presence of cultural resources be confirmed, the Contractor will assist the City Representative and the construction/archeological monitor in the preparation and implementation of a data recovery plan. The Contractor shall provide such cooperation and assistance as may be necessary to preserve the cultural resources for removal or other disposition. Any City directed changes to the Work as a result of the cultural resource will be pursuant to the Contract Documents. Should Contractor, without permission, injure, destroy, excavate, appropriate, or remove

any cultural resource on or adjacent to the Site, it will be subject to disciplinary action, arrest and penalty under applicable law. The Contractor shall be principally responsible for all costs of mitigation and/or restoration of cultural resources related to the unauthorized actions identified above. Contractor shall be required to pay for unauthorized damage and mitigation costs to cultural resources (historical and archeological resources) as a result of unauthorized activities that damage cultural resources and shall indemnify City pursuant to the Contract Documents.

5.12 Excessive Noise

A. Contractor shall use only such equipment on the Work and in such state of repair so that the emission of sound therefrom is within the noise tolerance level of that equipment as established by Cal/OSHA. Contractor shall comply with the most restrictive of the following: (1) local sound control and noise level rules, regulations and ordinances and (2) the requirements contained in these Contract Documents, including hours of operation requirements.

B. No internal combustion engine shall be operated on the Project without a muffler of the type recommended by the manufacturer. Should any muffler or other control device sustain damage or be determined to be ineffective or defective, the Contractor shall promptly remove the equipment and shall not return said equipment to the job until the device is repaired or replaced. Said noise and vibration level requirements shall apply to all equipment on the job or related to the job, including but not limited to, trucks, transit mixers or transit equipment that may or may not be owned by the Contractor.

5.13 Diversion of Recyclable Waste Material

A. In compliance with the applicable City's waste reduction and recycling efforts, Contractor shall divert all Recyclable Waste Materials to appropriate recycling centers as required for compliance with the local jurisdiction's waste diversion ordinances. Contractor will be required to submit weight tickets and written proof of diversion with its monthly progress payment requests. Contractor shall complete and execute any certification forms required by the City or other applicable agencies to document Contractor's compliance with these diversion requirements. All costs incurred for these waste diversion efforts shall be the responsibility of the Contractor.

5.14 Inspector's Field Office.

A. Provided by the Construction Manager. .

5.15 Contractor's Supervision.

A. Contractor shall continuously keep at the Project site, a competent and experienced full-time Project superintendent acceptable to the City. Superintendent must be able to proficiently speak, read and write in English and shall have the authority to make decisions on behalf of the Contractor. Contractor shall continuously provide efficient supervision of the Project.

5.16 Workers.

A. Contractor shall at all times enforce strict discipline and good order among its employees. Contractor shall not employ on the Project any unfit person or any one not skilled in the Work assigned to him or her.

B. Any person in the employ of the Contractor whom the City may deem incompetent or unfit shall be dismissed from the Work and shall not be employed on this Project.

5.17 Independent Contractors.

A. Contractor shall be an independent contractor for the City and not an employee. Contractor understands and agrees that it and all of its employees shall not be considered officers, employees, or agents of the City and are not entitled to benefits of any kind normally provided employees of the City, including but not limited to, state unemployment compensation or workers' compensation. Contractor assumes full responsibility for the acts and omissions of its employees or agents related to the Work.

5.18 Verification of Employment Eligibility.

A. By executing the Contract, Contractor verifies that it fully complies with all requirements and restrictions of state and federal law respecting the employment of undocumented aliens, including, but not limited to, the Immigration Reform and Control Act of 1986, as may be amended from time to time, and shall require all subcontractors, sub-subcontractors and consultants to comply with the same. Each person executing this Contract on behalf of Contractor verifies that he or she is a duly authorized officer of Contractor and that any of the following shall be grounds for the City to terminate the Contract for cause: (1) failure of the Contractor or its Subcontractors, sub-subcontractors or consultants to meet any of the requirements provided for in this Article; (2) any misrepresentation or material omission concerning compliance with such requirements; or (3) failure to immediately remove from the Work any person found not to be in compliance with such requirements.

5.19 Labor.

A. Hours of Work

1. As provided in Article 3 (commencing at section 1810), Chapter 1, Part 7, Division 2 of the Labor Code, Contractor stipulates that eight (8) hours of labor shall constitute a legal day's work. The time of service of any worker employed at any time by the Contractor or by any subcontractor on any subcontract under this Contract upon the Work or upon any part of the Work contemplated by this Contract is limited and restricted to eight (8) hours during any one calendar day and 40 hours during any one calendar week, except as hereinafter provided. Notwithstanding the provisions herein above set forth, work performed by employees of Contractor in excess of eight (8) hours per day, and 40 hours during any one week, shall be permitted upon this public work upon compensation for all hours worked in excess of eight (8) hours per day at not less than one and one-half times the basic rate of pay.

2. The Contractor and every Subcontractor shall keep an accurate record showing the name of and actual hours worked each calendar day and each calendar week by each worker employed in connection with the Work or any part of the Work contemplated by this Contract. The record shall be kept open at all reasonable hours to the inspection of the City and to the Division of Labor Law Enforcement, Department of Industrial Relations of the State of California.

3. The Contractor shall pay to the City a penalty of twenty-five dollars ($25.00) for each worker employed in the execution of this Contract by the Contractor or by any subcontractor for each calendar day during which such worker is required or permitted to work more than eight (8) hours in any calendar day and 40 hours in any one calendar week in violation of the provisions of Article 3 (commencing at section 1810), Chapter 1, Part 7, Division 2 of the Labor Code.

4. Any work necessary to be performed after regular working hours, or on Saturdays and Sundays or other holidays, shall be performed without additional expense to the City.

5. If Contractor gives notice of an inspection pursuant to the Contract Documents, the City will provide inspection during normal working hours from 7:00 a.m. to 3:30 p.m. Monday through Friday. Requested inspections before or after this time will be charged to the Contractor as reimbursable inspection time. Inspections on weekends requires two (2) Days' notice for review and approval. Upon written request and approval the 8.5 hour working day may be changed to other limits subject to city/county ordinance.

6. It shall be unlawful for any person to operate, permit, use, or cause to operate any of the following at the Project Site, other than between the hours of 7:00 a.m. to 5:00 p.m., unless otherwise approved by the City:

    a. Powered Vehicles

    b. Construction Equipment

    c. Loading and Unloading Vehicles

    d. Domestic Power Tools

B. Payroll Records; Labor Compliance

1. Pursuant to Labor Code section 1776, Contractor and all subcontractors shall maintain weekly certified payroll records, showing the names, addresses, Social Security numbers, work classifications, straight time and overtime hours worked each day and week, and the actual per diem wages paid to each journeyman, apprentice, worker, or other employee employed by them in connection with the Work under this Contract. Contractor shall certify under penalty of perjury that records maintained and submitted by Contractor are true and accurate. Contractor shall also require Subcontractor(s) to certify weekly payroll records under penalty of perjury.

2. In accordance with Labor Code section 1771.4, the Contractor and each Subcontractor shall furnish the certified payroll records directly to the Department of Industrial Relations ("DIR") on the specified interval and format prescribed by the DIR, which may include electronic submission. Contractor shall comply with all requirements and regulations from the DIR relating to labor compliance monitoring and enforcement. The requirement to submit certified payroll records directly to the Labor Commissioner under Labor Code section 1771.4 shall not apply to work performed on a public works project that is exempt pursuant to the small project exemption specified in Labor Code Section 1771.4.

3. Any stop orders issued by the DIR against Contractor or any Subcontractor that affect Contractor's performance of Work, including any delay, shall be Contractor's sole responsibility. Any delay arising out of or resulting from such stop orders shall be considered Contractor caused delay subject to any applicable liquidated damages and shall not be compensable by the City. Contractor shall defend, indemnify and hold the City, Construction Manager, Architect, Engineer, and its officials, officers, employees and agents free and harmless from any claim or liability arising out of stop orders issued by the DIR against Contractor or any Subcontractor.

4. The payroll records described herein shall be certified and submitted by the Contractor at a time designated by the City. The Contractor shall also provide the following:

    a. A certified copy of the employee's payroll records shall be made available for inspection or furnished to such employee or his or her authorized representative on request.

    b. A certified copy of all payroll records described herein shall be made available for inspection or furnished upon request of the DIR.

5. Unless submitted electronically, the certified payroll records shall be on forms provided by the Division of Labor Standards Enforcement ("DLSE") of the DIR or shall contain the same information as the forms provided by the DLSE.

6. Any copy of records made available for inspection as copies and furnished upon request to the public or any public agency, the City, the Division of Apprenticeship Standards or the Division of Labor Standards Enforcement shall be marked or obliterated in such a manner as to prevent disclosure of an individual's name, address and social security number. The name and address of the Contractor awarded the Contract or performing the Contract shall not be marked or obliterated.

7. In the event of noncompliance with the requirements of this Article, the Contractor shall have ten (10) Days in which to comply subsequent to receipt of written notice specifying in what respects the Contractor must comply with this Article. Should noncompliance still be evident after such 10-day period, the Contractor shall pay a penalty of one hundred dollars ($100.00) to the City for each calendar day, or portion thereof, for each worker, until strict compliance is effectuated. Upon the request of the Division of Apprenticeship Standards or the Division of Labor

Standards Enforcement, such penalties shall be withheld from progress payment then due.

8. The responsibility for compliance with this Article shall rest upon the Contractor.

C. Prevailing Rates of Wages

1. The Contractor is aware of the requirements of Labor Code sections 1720 *et seq.* and 1770 *et seq.*, as well as California Code of Regulations, Title 8, Section 16000 *et seq.* ("Prevailing Wage Laws"), which require the payment of prevailing wage rates and the performance of other requirements on certain "public works" and "maintenance" projects. Since this Project involves an applicable "public works" or "maintenance" project, as defined by the Prevailing Wage Laws, and since the total compensation is $1,000 or more, Contractor agrees to fully comply with such Prevailing Wage Laws. The Contractor shall obtain a copy of the prevailing rates of per diem wages at the commencement of this Contract from the website of the Division of Labor Statistics and Research of the Department of Industrial Relations located at www.dir.ca.gov. In the alternative, the Contractor may view a copy of the prevailing rate of per diem wages which are on file at the City's Administration Office and shall be made available to interested parties upon request. Contractor shall make copies of the prevailing rates of per diem wages for each craft, classification, or type of worker needed to perform work on the Project available to interested parties upon request, and shall post copies at the Contractor's principal place of business and at the Project site. Contractor shall defend, indemnify and hold the City, Construction Manager, Architect, Engineer, and its officials, officers, employees and authorized volunteers free and harmless from any claims, liabilities, costs, penalties or interest arising out of any failure or allege failure to comply with the Prevailing Wage Laws.

2. The Contractor shall forfeit as a penalty to the City not more than Two Hundred Dollars ($200.00), pursuant to Labor Code section 1775, for each calendar day, or portion thereof, for each worker paid less than the prevailing wage rate as determined by the Director of the DIR for such work or craft in which such worker is employed for any public work done under the Contract by it or by any Subcontractor under it. The difference between such prevailing wage rate and the amount paid to each worker for each calendar day or portion thereof, for which each worker was paid less than the prevailing wage rate, shall be paid to each worker by the Contractor.

3. Contractor shall post, at appropriate conspicuous points on the Project Site, a schedule showing all determined general prevailing wage rates and all authorized deductions, if any, from unpaid wages actually earned.

D. Public Works Contractor Registration

1. Pursuant to Labor Code sections 1725.5 and 1771.1, the Contractor and its Subcontractors must be registered with the DIR prior to the execution of a contract to perform public works. By entering into this Contract, Contractor represents that it is aware of the registration requirement and is currently registered with the DIR. Contractor shall maintain a current registration for the duration of the Project. Contractor shall further include the requirements of Labor Code sections 1725.5

and 1771.1 in any subcontract and ensure that all Subcontractors are registered at the time this Contract is entered into and maintain registration for the duration of the Project. Notwithstanding the foregoing, the contractor registration requirements mandated by Labor Code Sections 1725.5 and 1771.1 shall not apply to work performed on a public works project that is exempt pursuant to the small project exemption specified in Labor Code Sections 1725.5 and 1771.1.

E. Employment of Apprentices

1. Contractor and all Subcontractors shall comply with the requirements of Labor Code sections 1777.5 and 1777.6 in the employment of apprentices.

2. Information relative to apprenticeship standards, wage schedules, and other requirements may be obtained from the Director of Industrial Relations, ex officio the Administrator of Apprenticeship, San Francisco, California, or from the Division of Apprenticeship Standards and its branch offices.

3. Knowing violations of Labor Code section 1777.5 will result in forfeiture not to exceed one hundred dollars ($100.00) for each calendar day of non-compliance pursuant to Labor Code section 1777.7.

F. Nondiscrimination/Equal Employment Opportunity

1. Pursuant to Labor Code section 1735 and other applicable provisions of law, the Contractor and its Subcontractors shall not discriminate against any employee or applicant for employment because of race, religious creed, color, national origin, ancestry, physical disability, mental disability, medical condition, marital status, sex, age, sexual orientation, or any other classifications protected by law on this Project. The Contractor will take affirmative action to insure that employees are treated during employment or training without regard to their race, religious creed, color, national origin, ancestry, physical disability, mental disability, medical condition, marital status, sex, age, sexual orientation, or any other classifications protected by law.

G. Debarment of Contractors and Subcontractors

1. Contractors or Subcontractors may not perform work on a public works project with a subcontractor who is ineligible to perform work on a public project pursuant to Labor Code section 1777.1 or 1777.7. Any contract on a public works project entered into between a contractor and a debarred subcontractor is void as a matter of law. A debarred subcontractor may not receive any public money for performing work as a subcontractor on a public works contract. Any public money that is paid, or may have been paid to a debarred subcontractor by a contractor on the project shall be returned to the City. The Contractor shall be responsible for the payment of wages to workers of a debarred subcontractor who has been allowed to work on the Project.

5.20 Subcontracts.

A. Contractor agrees to bind every Subcontractor to the terms of the Contract Documents as far as such terms are applicable to Subcontractor's portion of the

Work. Contractor shall be as fully responsible to the City for the acts and omissions of its subcontractors and of persons either directly or indirectly employed by its subcontractors, as Contractor is for acts and omissions of persons directly employed by Contractor. Nothing contained in these Contract Documents shall create any contractual relationship between any subcontractor and the City.

B. The City reserves the right to accept all subcontractors. The City's acceptance of any Subcontractor under this Contract shall not in any way relieve Contractor of its obligations in the Contract Documents.

C. Prior to substituting any Subcontractor listed in the Bid Forms, Contractor must comply with the requirements of the Subletting and Subcontracting Fair Practices Act pursuant to California Public Contract Code section 4100 et seq.

5.21 Progress Meetings

A. The Construction Manager shall schedule and hold regular progress meetings at least weekly and at other times as requested by Architect / Engineer or as required by progress of the Work. The Construction Manager, Contractor, and City shall attend each meeting. Contractor may at its discretion request attendance by representatives of its Suppliers, manufacturers, and other Subcontractors. The Construction Manager will preside at the progress meetings and will arrange for keeping and distributing the minutes. The purpose of the meetings is to review the progress of the Work, maintain coordination of efforts, discuss changes in scheduling, and resolve other problems which may develop. During each meeting, the Contractor shall present any issues which may impact its progress with a view to resolve these issues expeditiously. Refer to the Division 01 for additional requirements.

5.22 Submittals

A. Schedule of Submittals. Within five (5) Days after the Notice to Proceed (unless otherwise specified in the Contract Documents), Contractor will prepare and deliver a Schedule of Submittals to the City that has been fully integrated with the progress schedule and identifies each Submittal required by the Contract Documents as well as the date on which Contractor will deliver each Submittal to the City. Critical submittals as identified in the Section 00750 – Special Conditions will be required prior to first payment. The balance of the submittals will be required within 60 days from the Notice to Proceed. The Contractor is responsible for any schedule delays resulting from the Submittal process.

B. Submittal Procedures.

1. Contractor will follow the following procedures for each Submittal, Shop Drawing and Sample required by the Contract Documents:

   a. Submittals must be transmitted electronically.

   b. Transmittals will be sequentially numbered. Contractor to mark revised Submittals with original number and sequential alphabetic suffix.

c. Each Submittal will identify the Project, Contractor, Subcontractor and Supplier, pertinent Drawing and detail number, and Specification Section number appropriate to Submittal.

d. By transmitting a Submittal, Contractor certifies it has reviewed and approved each Submittal, verified products required, field dimensions, adjacent construction Work, and that coordination of information is according to requirements of the Work and Contract Documents.

e. Identify variations in Contract Documents and product or system limitations that may differ and/or be detrimental to successful performance of completed Work.

f. When Submittal is revised for resubmission, Contractor shall promptly address the City's comments and resubmit. Contractor shall identify changes made since previous submission.

g. The City's review of Shop Drawings shall not relieve Contractor from responsibility for deviations from the Contract Documents unless Contractor has, in writing, called the City's attention to such deviations at time of submission and the City has taken no exception to the deviation. The City's review of Shop Drawings shall not relieve Contractor from responsibility for errors in Shop Drawings.

h. Submittals not required by the Contract Documents or requested by the City will not be acknowledged or processed.

i. Incomplete Submittals will not be reviewed by the City. Delays resulting from incomplete Submittals are not the responsibility of the City.

j. Contractor shall not be entitled to any extension of the Contract Times as a result of the Submittal process.

k. Contractor shall allow a minimum of 20 working days for review of Submittals unless otherwise specified in the Contract Documents.

2. Where a Submittal, Shop Drawing or Sample is required by the Contract Documents or the Schedule of Submittals, any related Work performed prior to the City review and approval of the pertinent submittal will be performed at the sole risk and expense and responsibility of Contractor.

C. Schedule Milestone for Submittals. Contractor must submit all Submittals required by the Contract Documents in accordance with the Schedule of Submittals. If Contractor fails to submit the Submittals in accordance with the Schedule of Submittals, Contractor will be solely liable for any delays or impacts caused by the delayed Submittal, whether direct or indirect. Contractor will be liable for the time calculated from the date the Submittal is due until the date a compliant Submittal is made. A compliant Submittal will be one that is complete and satisfies the requirements of the Contract Documents.

5.23 Shop Drawings and Sample Submittal Procedures.

A. Before submitting each Shop Drawing or Sample, Contractor shall have:

1. Reviewed and coordinated each Shop Drawing or Sample with other Shop Drawings and Samples and with the requirements of the Work and the Contract Documents;

2. Determined and verified all field measurements, quantities, dimensions, specified performance and design criteria, installation requirements, materials, catalog numbers, and similar information with respect thereto;

3. Determined and verified the suitability of all materials offered with respect to the indicated application, fabrication, shipping, handling, storage, assembly, and installation pertaining to the performance of the Work; and

4. Determined and verified all information relative to Contractor's responsibilities for means, methods, techniques, sequences, and procedures of construction, and safety precautions and programs incident thereto.

B. With each Submittal, Contractor shall give the City specific written notice of any variations that the Shop Drawing or Sample may have from the requirements of the Contract Documents. This notice shall be both a written communication separate from the Shop Drawings or Sample Submittal and, in addition, a specific notation made on each Shop Drawing or Sample submitted to the City for review and approval of each such variation.

C. Shop Drawings.

1. Data shown on the Shop Drawings will be complete with respect to quantities, dimensions, specified performance and design criteria, materials, and similar data to show the City the services, materials, and equipment Contractor proposes to provide and to enable the City to review the information for assessing conformance with information given and design concept expressed in Contract Documents.

2. When required by individual Specification sections, provide Shop Drawings signed and sealed by a professional engineer responsible for designing components shown on Shop Drawings. Shop Drawings must include signed and sealed calculations to support design in a form suitable for submission to and approval by authorities having jurisdiction.

3. Shop Drawings for steel structures shall consist of shop details, erection and other working Drawings showing details, dimensions, sizes of members and other information necessary for the complete fabrication and erection of the metal work.

4. Shop Drawings of concrete structures shall consist of such detailed drawings as may reasonably be required for the successful prosecution of the Work and which are not included in the Drawings furnished by the Engineer. These may include drawings for false work, bracing, centering and form work, masonry layout diagrams, and diagrams for bent reinforcement.

5. Contractor shall make revisions and provide additional information when required by authorities having jurisdiction.

D. Samples. Clearly identify each Sample as to material, Supplier, pertinent data such as catalog numbers, the use for which intended and other data as required to enable the City to review the submittal for assessing conformance with information given and design concept expressed in Contract Documents. Samples should be of appropriate size and detail to assess functional, aesthetic, color, texture, patterns and finish selection.

E. City's Review.

1. The City will review Shop Drawings and Samples in accordance with the Schedule of Submittals. The City's review and acceptance will be only to determine if the items covered by the Submittals will, after installation or incorporation in the Work, conform to the information given in the Contract Documents and be compatible with the design concept of the completed Project as a functioning whole as indicated by the Contract Documents.

2. The City review and approval will not extend to means, methods, techniques, sequences, or procedures of construction (except where a particular means, method, technique, sequence, or procedure of construction is specifically and expressly called for by the Contract Documents) or to safety precautions or programs incident thereto. The review and approval of a separate item as such will not indicate approval of the assembly in which the item functions.

3. The City's review and acceptance shall not relieve Contractor from responsibility for any variation from the requirements of the Contract Documents unless the City has given written approval of each such variation by specific written notation thereof incorporated in or accompanying the Shop Drawing or Sample.

F. Resubmittal Procedures. Contractor shall make corrections required by the City and shall return corrected Shop Drawings and submit, as required, new Samples for review and approval. Contractor shall direct specific attention in writing to revisions other than the corrections called for by the City on previous Submittals.

5.24 Record ("As-Built") Drawings.

A. The Construction Manager shall maintain one record set of Contract Documents at the Site or digitally in an acceptable format. On these, it shall mark all Project conditions, locations, configurations, and any other changes or deviations which may vary from the information represented in the original Contract Documents, including buried or concealed construction and utility features which are revealed during the course of construction. Special attention shall be given to recording the horizontal and vertical location of all buried utilities that differ from the locations indicated, or which were not indicated on the Drawings. For all Projects involving the installation of any pipeline, Contractor shall survey and record the top of the pipe at a minimum of every 100 linear feet, and at each bend, recording both the horizontal and vertical locations. Said Drawings shall be supplemented by any detailed sketches as necessary or directed to fully indicate the Work as actually constructed. Any required as-built drawings of civil engineering elements of the Work shall be prepared by a registered civil engineer.

B. These master Record Drawings of the as-built conditions, including all revisions made necessary by Addenda and Change Orders, shall be maintained up-to-date during the progress of the Project. Red ink shall be used for alterations and notes. Notes shall identify relevant Change Orders by number and date. Record Drawings shall be accessible to the Engineer at all times during the construction period. Failure on the Contractor's part to keep Record Drawings current could result in withholding partial payment.

C. Upon completion of the Project and as a condition of final acceptance, the Construction Manager shall finalize and deliver a complete set of Record Drawings to the Engineers. The information submitted by the Contractor will be assumed to be correct, and the Contractor shall be responsible for, and liable to the City, for the accuracy of such information, and for any errors or omissions which may or may not appear on the Record Drawings.

D. Unless otherwise called for by the Contract Documents, the cost of all material, equipment, and labor required to complete the Record Drawings shall be included in Contractor's bid and distributed in the Bid Schedule. No additional compensation shall be made to the Contractor for this Work.

5.25 Layout and Field Engineering.

A. The Contractor shall utilize a properly licensed surveyor to perform all layout surveys required for the control and completion of the Work, and all necessary surveys to compute quantities of Work performed.

5.26 Separate Contracts and Cooperation.

A. Separate Contracts. The City reserves the right to let other contracts in connection with this Work or on the Project site. Contractor shall permit other contractors reasonable access and storage of their materials and execution of their work and shall properly connect and coordinate its Work with theirs. To ensure proper execution of its subsequent Work, Contractor shall immediately inspect work already in place and shall at once report to the Engineer any problems with the Work in place or discrepancies with the Contract Documents.

B. Cooperation. Contractor shall ascertain to its own satisfaction the scope of the Project and nature of any other contracts that have been or may be awarded by the City in prosecution of the Project to the end that Contractor may perform this Contract in the light of such other contracts, if any. Nothing herein contained shall be interpreted as granting to Contractor exclusive occupancy at site of the Project. Contractor shall not cause any unnecessary hindrance or delay to any other contractor working on the Project. If simultaneous execution of any contract for the Project is likely to cause interference with performance of some other contract or contracts, the Engineer shall decide which Contractor shall cease Work temporarily and which contractor shall continue or whether work can be coordinated so that contractors may proceed simultaneously. The City shall not be responsible for any damages suffered or for extra costs incurred by Contractor resulting directly or indirectly from award, performance, or attempted performance of any other contract or contracts on the Project Site.

5.27 Work Site.

A. Limitation of Use of Site and Other Areas. Rights-of-way, easements, or rights-of-entry for the Work will be provided by the City. Unless otherwise specified in the Special Provisions, the Contractor shall make arrangements, pay for, and assume all responsibility for acquiring, using, and disposing of additional work areas and facilities temporarily required. The Contractor shall indemnify and hold the City, Construction Manager, Architect, and Engineer harmless from all claims for damages caused by such actions. Contractor shall confine construction equipment, the storage of materials and equipment, and the operations of workers to the Site and other areas permitted by Applicable Laws, and shall not unreasonably encumber the Site and other areas with construction equipment or other materials or equipment. Contractor shall assume full responsibility for any damage to any such land or area, or to City or occupant thereof, or of any adjacent land or areas resulting from the performance of the Work.

B. Site Maintenance. During the progress of the Work, Contractor shall keep the Site and other areas free from accumulations of waste materials, rubbish, and other debris. Removal and disposal of such waste materials, rubbish, and other debris shall conform to Applicable Laws. The Contractor shall furnish trash bins for all debris from construction. All debris shall be placed in trash bins daily. Forms and false-work that are to be re-used shall be stacked neatly concurrently with their removal. Forms and false-work that are not to be re-used shall be disposed of concurrently with their removal.

C. Cleaning. Prior to Completion of the Work, Contractor shall clean the Site and make it ready for utilization by the City. At the completion of the Work Contractor shall remove from the Site all tools, appliances, construction equipment and machinery, and surplus materials and shall restore to original condition all property not designated for alteration by the Contract Documents.

5.28 Utility Usage.

A. All temporary utilities, including but not limited to electricity, water, gas, and telephone, used on the Work shall be furnished and paid for by Contractor. Contractor shall provide necessary temporary distribution systems, including meters, if necessary, from distribution points to points on the Work where the utility is needed. Upon completion of the Work, Contractor shall remove all temporary distribution systems. Contractor shall provide necessary and adequate utilities and pay all costs for water, electricity, gas, oil, and sewer charges required for completion of the Work, including but not limited to startup and testing required in the Contract Documents. All permanent meters installed shall be listed in the Contractor's name until the Work is accepted. For Work to be performed in existing City facilities, Contractor may use the City's existing utilities, provided such use is reasonable under the circumstances. If Contractor uses the City utilities, it will not need to compensate the City for reasonably consumption of utilities, but Contractor will be responsible for any excessive, unreasonable or wasteful utility usage. Amounts due the City under this section may be deducted from progress payments.

5.29 Protection of Work and Property.

A. The Contractor shall digitally record video and take photographs of the Project site and adjacent improvements in a manner and quality that clearly depicts the existing condition of the Project Site and adjacent improvements immediately prior to the start of Work (minimum 1080p video and 4MP photo). All videos and photographs shall be date and time stamped. The Contractor shall submit the video and photos in digital format on a memory stick before the commencement of Work, along with a map outlining the route and locations of the videos and/or photographs. The Contractor shall be responsible for all damages to persons or property that occur as a result of the Work. Contractor shall be responsible for the proper care and protection of all materials delivered and Work performed until completion and final acceptance by the City. All Work shall be solely at the Contractor's risk.

B. Contractor shall adequately protect adjacent property from settlement or loss of lateral support as necessary. Contractor shall comply with all applicable safety laws and building codes to prevent accidents or injury to persons on, about, or adjacent to the Project site where Work is being performed. Contractor shall erect and properly maintain at all times, as required by field conditions and progress of work, all necessary safeguards, signs, barriers, lights, and watchmen for protection of workers and the public, and shall post danger signs warning against hazards created in the course of construction.

C. Contractor shall provide such heat, covering, and enclosures as are necessary to protect all Work, materials, equipment, appliances, and tools against damage by weather conditions.

D. Contractor shall take adequate precautions to protect existing sidewalks, curbs, pavements, utilities, and other adjoining property and structures, and to avoid damage thereto, and Contractor shall repair any damage thereto caused by the Work operations. Contractor shall:

1. Enclose the working area with a substantial barricade, and arrange work to cause minimum amount of inconvenience and danger to the public.

2. Provide substantial barricades around any shrubs or trees indicated to be preserved.

3. Deliver materials to the Site over a route designated by the City.

4. Provide any and all dust control required and follow the applicable air quality regulations as appropriate. If the Contractor does not comply immediately with a notice from the City or a public agency responsible for air quality, the City shall have the authority to provide dust control and deduct the cost from payments to the Contractor.

5. Confine Contractor's apparatus, the storage of materials, and the operations of its workers to limits required by law, ordinances, permits, or directions of the City. Contractor shall not unreasonably encumber the Site with its materials.

6. Take care to prevent disturbing or covering any survey markers, monuments, or other devices marking property boundaries or corners. If such markers are disturbed by accident, they shall be replaced by a civil engineer or land surveyor acceptable to the City, at no cost to the City.

7. Ensure that existing facilities, fences and other structures are all adequately protected and that, upon completion of all Work, all facilities that may have been damaged are restored to a condition acceptable to the City.

8. Preserve and protect from injury all buildings, pole lines and all directional, warning and mileage signs that have been placed within the right-of-way.

9. At the completion of work each day, leave the Work and the Site in a clean, safe condition.

10. Comply with any stage construction and/or traffic handling plans. Access to residences and businesses shall be maintained at all times, except with the City's written approval. Any request for approval to reduce or restrict access to residences and business must be submitted to the City at least seven (7) Days in advance, and the City may issue or withhold approval in its sole discretion.

E. These precautionary measures will apply continuously and not be limited to normal working hours. Full compensation for the work involved in the protection and preservation of life, safety and property as above specified shall be considered as included in the prices paid for the various contract items of Work, and no additional allowance will be made therefor.

F. Should damage to persons or property occur as a result of the Work, Contractor shall promptly notify the City, in writing. Contractor shall be responsible for proper investigation, documentation, including video or photography, to adequately memorialize and make a record of what transpired. The City shall be entitled to inspect and copy any such documentation, video, or photographs.

G. Contractor shall maintain all investigation documentation including video and/or photographs for a minimum of four (4) years following completion of the Project.

5.30 Emergencies.

A. In emergencies affecting the safety or protection of persons or the Work or Property at the Site or adjacent thereto, the Contractor, without special instruction or authorization from the City or the Engineer, is obligated to act to prevent threatened damage, injury or loss. The Contractor shall give the Engineer prompt written notice if the Contractor believes that any significant changes in the Work or variations from the Contract Documents have been caused thereby.

ARTICLE 6 -MATERIALS; INSPECTION

6.1 Access to Work.

A. The City, Construction Manage, Architect, Engineer, their consultants and other representatives and personnel, independent testing laboratories, and governmental

agencies with jurisdictional interests will have access to the Site and the Work at reasonable times for their observation, inspection, and testing. Contractor shall provide them proper and safe conditions for such access and advise them of Contractor's safety procedures and programs.

6.2 Materials.

A. Except as otherwise specifically stated in the Contract Documents, Contractor shall provide and pay for all materials, labor, tools, equipment, water, lights, power, transportation, superintendence, temporary constructions of every nature, and all other services and facilities whatsoever necessary to execute and complete this Contract within the Contract Time. Unless otherwise specified, all materials, parts, and equipment furnished by the Contractor in the Work shall be new, the best of their respective kinds and grades as noted and/or specified, and workmanship shall be of good quality.

B. No materials, supplies, or equipment for Work under this Contract shall be purchased subject to any chattel mortgage or under a conditional sale or other agreement by which an interest therein or in any part thereof is retained by the seller or supplier. Contractor warrants good title to all material, supplies, and equipment installed or incorporated in the Work and agrees upon completion of all work to deliver the Project, to the City free from any claims, liens, or charges.

C. Materials shall be furnished in ample quantities and at such times as to ensure uninterrupted progress of the Work and shall be stored properly and protected as required by the Contract Documents. Contractor shall be entirely responsible for damage or loss by weather or other causes to materials or Work. Materials shall be stored on the Project Site in such manner so as not to interfere with any operations of the City or any independent contractor.

D. Contractor shall verify all measurements, dimensions, elevations, and quantities before ordering any materials or performing any Work, and the City shall not be liable for Contractor's failure to so. Except for an adjustment to Unit Price Work for item overruns and underruns in accordance with the Contract Documents, no additional compensation, over and above payment for the actual quantities at the prices set out in the Bid Schedule, will be allowed because of differences between actual measurements, dimension, elevations and quantities and those indicated on the Plans and in the Specifications. Any difference therein shall be submitted to the Engineer for consideration before proceeding with the Work.

6.3 Test and Inspections.

A. Inspection and Testing of Work and Materials

1. If the Contract Documents, the Engineer, or any instructions, laws, ordinances, or public authority requires any part of the Work to be tested or approved, Contractor shall provide the Engineer at least two (2) working days' notice of its readiness for observation or inspection. If inspection is by a public authority other than the City, Contractor shall promptly inform the City of the date fixed for such inspection. Required certificates of inspection (or similar) shall be secured by Contractor.

Costs for City testing and inspection shall be paid by the City. Costs of tests for Work found not to be in compliance shall be paid by the Contractor.

2. The Contractor shall pay for the cost of any minimum "show up" costs of a materials testing technician that was called for by the Contractor but ultimately the Contractor work was not ready for the inspection. Any such costs shall be deducted from any amounts due to the Contractor.

3. If any Work is done or covered up without the required testing or approval, the Contractor shall uncover or deconstruct the Work, and the Work shall be redone after completion of the testing at the Contractor's cost in compliance with the Contract Documents.

4. Where inspection and testing are to be conducted by an independent laboratory or agency, materials or samples of materials to be inspected or tested shall be selected by such laboratory or agency, or by the City, and not by Contractor. Unless otherwise stated and as provided by the Contract Documents, the City shall employ and pay for the services of an independent testing laboratory to perform all inspections, tests, or approvals required by the Contract Documents. All tests or inspections of materials shall be made in accordance with the commonly recognized standards of national organizations.

5. Reexamination of Work may be ordered by the City. If so ordered, Work must be uncovered or deconstructed by Contractor. If Work is found to be in accordance with the Contract Documents, the City shall pay the costs of reexamination and reconstruction. If such work is found not to be in accordance with the Contract Documents, Contractor shall pay all costs.

B. Testing of Materials

1. In advance of manufacture of materials to be supplied by Contractor which must be tested or inspected, Contractor shall notify the City so that the City may arrange for testing at the source of supply. Any materials which have not satisfactorily passed such testing and inspection shall not be incorporated into the Work.

2. If the manufacture of materials to be inspected or tested will occur in a plant or location greater than sixty (60) miles from the City, the Contractor shall pay for any excessive or unusual costs associated with such testing or inspection, including but not limited to excessive travel time, standby time and required lodging.

3. Unless otherwise specified in the Special Provisions, all initial testing and a reasonable amount of retesting will be performed under the direction of the Engineer, and at no expense to the Contractor. The Contractor shall notify the Engineer in writing, at least 15 days in advance, of its intention to use materials for which tests are specified, to allow sufficient time to perform the tests. The notice shall name the proposed supplier and source of material. If the notice of intent to use is sent before the materials are available for testing or inspection, or is sent so far in advance that the materials on hand at the time will not last but will be replaced by a new lot prior to use on the Work, it will be the Contractor's responsibility to re-notify the Engineer when samples which are representative may be obtained.

4. A Certificate of Compliance shall be furnished to the Engineer prior to the use of any material or assembled material for which these Specifications so require or if so required by the Engineer. The Engineer may waive the materials testing requirements and accept a Certificate of Compliance. Material test data may be required by the Engineer to be included with the submittal. Materials used on the basis of a Certificate of Compliance may be sampled and tested at any time. The submission of a Certificate of Compliance shall not relieve the Contractor of responsibility for incorporating material into the Work which conforms to the requirements of the Contract Documents, and any material not conforming to the requirements will be subject to rejection by the Engineer whether in place or not.

5. Copies of mill certificates of composition and quality of all component materials (reinforcing steel, structural steel, lumber, etc.) incorporated in the construction of the Work shall be provided to the City at the time of delivery. City shall retain the right to reject any raw material not provided with a mill certificate at the time of delivery.

6. If, after incorporating such materials into the Work, it is found that sources of supply that have been approved do not furnish a uniform product, or if the product from any source proves unacceptable at any time, the Contractor shall furnish approved material from other approved sources. If any product proves unacceptable after improper storage, handling or for any other reason it shall be rejected, not incorporated into the Work, and shall be removed from the Project Site all at the Contractor's expense.

6.4 Requests for Substitutions.

A. For the purposes of this provision, the term "substitution" shall mean the substitution of any material, method or service substantially equal to or better in every respect to that indicated in the Standard Specifications or otherwise referenced herein.

B. Pursuant to Public Contract Code section 3400(b), the City may make a finding that is described in the Notice Inviting Bids that designates certain products, things, or services by specific brand or trade name.

C. Unless specifically designated in the Special Conditions, whenever any material, process, or article is indicated or specified by grade, patent, or proprietary name or by name of manufacturer, such specifications shall be deemed to be used for the purpose of facilitating the description of the material, process, or article desired and shall be deemed to be followed by the words "or equal." Contractor may, unless otherwise stated, offer for substitution any material, process, or article which may be substantially equal to or better in every respect to that so indicated or specified in the Contract Documents. However, the City has adopted uniform standards for certain materials, processes, and articles.

D. The Contractor shall submit substitution requests, together with substantiating data, for substitution of any "or equal" material, process, or article no later than ten (10) calendar days prior to the bid date. Provisions regarding submission of substitution requests shall not in any way authorize an extension of time for the performance of this Contract. If a substitution request is rejected by the City, the Contractor shall provide the material, method or service specified herein. The City shall not be

responsible for any costs incurred by the Contractor associated with substitution requests. The burden of proof as to the equality of any material, process, or article shall rest with the Contractor. The Engineer has the complete and sole discretion to determine if a material, process, or article is substantially equal to or better than that specified and to approve or reject all substitution requests.

E. Substantiating data as described above shall include, at a minimum, the following information:

1. A signed affidavit from the Contractor stating that the material, process, or article proposed as a substitution is substantially equal to or better than that specified in every way except as may be listed on the affidavit.

2. Illustrations, specifications, catalog cut sheets, and any other relevant data required to prove that the material, process, or article is substantially equal to or better than that specified.

3. A statement of the cost implications of the substitution being requested, indicating whether and why the proposed substitution will reduce or increase the amount of the contract.

4. Information detailing the durability and lifecycle costs of the proposed substitution.

F. Failure to submit all the required substantiating data detailed above in a timely manner so that the substitution request can be adequately reviewed may result in rejection of the substitution request. The Engineer is not obligated to review multiple submittals related the same substitution request resulting from the Contractor's failure to initially submit a complete package.

G. Time limitations within this Article shall be strictly complied with and in no case will an extension of time for completion of the contract be granted because of Contractor's failure to provide substitution requests at the time and in the manner described herein.

H. The Contractor shall bear the costs of all the City work associated with the review of substitution requests.

I. If substitution requests approved by the Engineer require that Contractor furnish materials, methods or services more expensive than that specified, the increased costs shall be borne by Contractor.

J. Products Specified Which Are Commercially Unavailable

1. If the Contractor fails to make a request for substitutions for products, prior to the submission of its bid, and such products subsequently become commercially unavailable, the Contractor may request a substitution for such commercially unavailable item. The decision to grant this request is solely at the City's discretion. The written approval of the City, consistent with the procedure for Change Orders, shall be required for the use of a proposed substitute material. The City may condition its approval of the substitution upon the delivery to City of an extended warranty or other assurances of adequate

performance of the substitution as well as an equitable deduction in the Contract Price should the substituted item cost less than the Specified Item. All risks of delay due to approval of a requested substitution by any other governmental agency having jurisdiction, shall be on the requesting party. All additional costs, review costs, all procurement and construction delays, and all costs for review by the Architect or its consultants shall be the responsibility of the Contractor and will be deducted from Contractor's pay request.

ARTICLE 7 -SUBSURFACE AND PHYSICAL CONDITIONS; UTILITIES

7.1 Soils Investigations.

A. When a soils investigation report for the Site is available, such report is provided for informational purposes only. Any information obtained from such report as to subsurface soil condition, or to elevations of existing grades or elevations of underlying rock, is approximate only and is not guaranteed. Contractor acknowledges that any soils investigation report (including any borings) was prepared for purposes of design only and Contractor is required to examine the Site before submitting its Bid and must make whatever tests it deems appropriate to determine the condition of the soil.

7.2 Ownership of Site Materials Found.

A. The title to water, soil, rock, gravel, sand, minerals, timber and any other materials developed or obtained in the excavation or other operations of Contractor or any of its Subcontractors in the performance of the Contract, and the right to use said items in carrying out the Contract, or to dispose of same, is hereby expressly reserved by the City. Neither Contractor nor any of its Subcontractors nor any of their representatives or employees shall have any right, title, or interest in said materials, nor shall they assert or make any claim thereto. Contractor will, as determined by the City's Representative, be permitted to use in the Work without charge, any such materials which meet the requirements of the Contract Documents, provided the City shall have the right to use or consume these materials without payment to a third party.

7.3 Existence of Utilities at the Work Site.

A. Existing Utilities

1. The location of known existing utilities and pipelines are shown on the Plans in their approximate locations. However, nothing herein shall be deemed to require the City to indicate the presence of existing service laterals or appurtenances whenever the presence of such utilities on the site of the project can be inferred from the presence of other visible facilities, such as buildings, cleanouts, meter and junction boxes, on or adjacent to the Site of the Project.

2. The City will assume the responsibility for the timely removal, relocation, or protection of existing main or trunk line utility facilities located on the Project site if such utilities are not identified by the City in the Contract Documents or which cannot reasonably be inferred from the presence of other visible facilities.

B. Utility Location

1. It shall be the Contractor's responsibility to determine the exact location and depth of all utilities, including service connections, which have been marked by the respective utility owners and which the Contractor believes may affect or be affected by the Contractor's operations. The Contractor shall not be entitled to additional compensation nor time extensions for work necessary to avoid interferences nor for repair to damaged utilities if the Contractor does not expose all such existing utilities as required by this Article.

2. The locating of utilities shall be in conformance with Government Code Section 4216 et seq. except for the City's utilities located on the City's property and not on public right-of-way.

3. A "High Priority Subsurface Installation" is defined in Government Code Section 4216 (j) as "high-pressure natural gas pipelines with normal operating pressures greater than 415kPA gauge (60psig) or greater than six inches nominal pipe diameter, petroleum pipelines, pressurized sewage pipelines, high-voltage electric supply lines, conductors, or cables that have a potential to ground of greater than or equal to 60kv, or hazardous materials pipelines that are potentially hazardous to workers or the public if damaged."

4. A "Subsurface Installation" is defined in Government Code Section 4216 (s) as "any underground pipeline, conduit, duct, wire, or other structure, except nonpressurized sewer lines, nonpressurized storm drains, or other nonpressurized drain lines."

5. Pursuant to Government Code Section 4216.2 the Contractor shall contact the appropriate regional notification center at least two (2) working days but not more than 14 Days before performing any excavation. The date of the notification shall not count as part of the two-working-day notice. Before notifying the appropriate regional notification center, the Contractor shall delineate the area to be excavated. The Contractor shall request that the utility owners conduct a utility survey and mark or otherwise indicate the location of their service. The Contractor shall furnish to the Engineer written documentation of its contact(s) with the regional notification center prior to commencing excavation at such locations.

6. After the utility survey is completed, the Contractor shall commence "potholing" or hand digging to determine the actual location of the pipe, duct, or conduit and in accordance with Government Code Section 4216.4 if the excavation within the "tolerance zone" of a subsurface installation. The Engineer shall be given notice prior to commencing potholing operations. The Contractor shall uncover all piping and conduits, to a point one (1) foot below the pipe, where crossings, interferences, or connections are shown on the Drawings, prior to trenching or excavating for any pipe or structures, to determine actual elevations. New pipelines shall be laid to such grade as to clear all existing facilities, which are to remain in service for any period subsequent to the construction of the run of pipe involved.

7. The Contractor's attention is directed to the requirements of Government Code Section 4216.2 (c) which provides: "When the excavation is proposed within 10 feet of a high priority subsurface installation, the operator of the high priority

subsurface installation shall notify the excavator of the existence of the high priority subsurface installation to set up an onsite meeting prior to the legal excavation start date and time or at a mutually agreed upon time to determine actions or activities required to verify the location and prevent damage to the high priority subsurface installation. As part of the meeting, the excavator shall discuss with the operator the method and tools that will be used during the excavation and the information the operator will provide to assist in verifying the location of the subsurface installation. The excavator shall not begin excavating until after the completion of the onsite meeting." The Contractor shall notify the Engineer in advance of this meeting.

C. Utility Relocation and Repair

1. If interferences occur at locations other than those indicated in the Contract Documents with reasonable accuracy, the Contractor shall notify the Engineer in writing. The Engineer will supply a method for correcting said interferences in accordance with the responsibilities of this section and Government Code Section 4215. To the extent any delay is caused thereby, Contractor shall submit a notice of delay within five (5) Days of discovery of the circumstances giving rise to the delay in accordance with Article 9.1 Change Orders and Time Extensions.

2. Care shall be exercised by the Contractor to prevent damage to adjacent existing facilities and public or private works; where equipment will pass over these obstructions, suitable planking shall be placed. If high priority subsurface installations are damaged and the operator cannot be contacted, the Contractor shall call 911 emergency services.

3. The City will compensate the Contractor for the costs of locating and repairing damage not due to the failure of the Contractor to exercise reasonable care, and for removing or relocating such main or trunk line utility facilities not indicated in the Contract Documents with reasonable accuracy, and for the cost of equipment on the Project necessarily idled during such work. The payment for such costs will be made as provided in Article 9.1 Change Orders and Time Extensions. The Contractor shall not be assessed liquidated damages for delay in completion of the Project, when such delay is caused by the failure of the City or utility company to provide for removal or relocation of such utility facilities. Requests for extensions of time arising out of utility relocation or repair delays shall be filed in accordance with Article 9.1 Change Orders and Time Extensions and Article 9.3 Time for Completion and Liquidated Damages.

4. The public utility, where it is the owner of the affected utility, shall have the sole discretion to perform repairs or relocation work or permit the Contractor to do such repairs or relocation work at a reasonable price. The right is reserved to the City and the owners of utilities or their authorized agents to enter upon the Work area for the purpose of making such changes as are necessary for the rearrangement of their facilities or for making necessary connections or repairs to their properties. The Contractor shall cooperate with forces engaged in such work and shall conduct its operations in such a manner as to avoid any unnecessary delay or hindrance to the work being performed by such forces and shall allow the respective utilities time to relocate their facility.

5. When the Contract Documents indicate that a utility is to be relocated, altered or constructed by others, the City will conduct all negotiations with the utility company and the work will be done at no cost to the Contractor, unless otherwise stipulated in the Contract Documents.

6. Temporary or permanent relocation or alteration of utilities desired by the Contractor for its own convenience shall be the Contractor's responsibility and it shall make arrangements and bear all costs for such work.

D. Construction at Existing Utilities

1. Where the Work to be performed crosses or otherwise interferes with water, sewer, gas, or oil pipelines; buried cable; or other public or private utilities, the Contractor shall perform construction in such a manner so that no damage will result to either public or private utilities. It shall be the responsibility of the Contractor to determine the actual locations of, and make accommodates to maintain, all utilities.

2. Before any utility is taken out of service, permission shall be obtained by the Contractor from the owner. The owner, any impacted resident or business owner and the City Representative will be advised of the nature and duration of the utility outage as well as the Contractor's plan for providing temporary utilities if required by the owner. The Contractor shall be liable for all damage which may result from its failure to maintain utilities during the progress of the Work, and the Contractor shall indemnify City as required by the Contract Documents from all claims arising out of or connected with damage to utilities encountered during construction; damages resulting from disruption of service; and injury to persons or damage to property resulting from the negligent, accidental, or intentional breaching of utilities.

3. Unless otherwise called for by the Contract Documents, the cost of all material, equipment, and labor required to complete this work, shall be included in Contractor's bid and distributed in the schedule of pay Items. No additional compensation shall be made to the Contractor for this work.

7.4 Trenches

A. Trenches Five Feet or More in Depth.

1. Contractor shall submit to the Engineer at the preconstruction meeting, a detailed plan showing the design of shoring, bracing, sloping or other provisions to be made for worker protection from hazards of caving ground during the excavation of any trench or trenches five feet or more in depth. If such plan varies from shoring system standards established by the Construction Safety Orders of the California Code of Regulations, Department of Industrial Relations, the plan shall be prepared by a California registered civil or structural engineer. The plan shall not be less effective than the shoring, bracing, sloping, or other provisions of the Construction Safety Orders, as defined in the California Code of Regulations. The Contractor shall designate in writing the "competent person" as defined in Title 8, California Code of Regulations, who shall be present at the Work Site each day that trenching/excavation is in progress. The "competent person" shall prepare and provide daily trenching/excavation inspection reports to the Engineer.

Contractor shall also submit a copy of its annual California Occupational Safety and Health Administration (Cal/OSHA) trench/excavation permit.

B. Excavations Deeper than Four Feet.

1. If the Work involves excavating trenches or other excavations that extend deeper than four (4) feet below the surface, Contractor shall promptly within three (3) Days, and before the excavation is further disturbed, notify the City in writing of any of the following conditions:

   a. Material that the Contractor believes may be material that is hazardous waste, as defined in section 25117 of the Health and Safety Code, that is required to be removed to a Class I, Class II, or Class III disposal site in accordance with provisions of existing law.

   b. Subsurface or latent physical conditions at the site differing from those indicated.

   c. Unknown physical conditions at the site of any unusual nature, different materially from those ordinarily encountered and generally recognized as inherent in work of the character provided for in the Contract

2. The City shall promptly investigate the conditions, and if it finds that the conditions do so materially differ, or do involve hazardous waste, and cause a decrease or increase in Contractor's cost of, or the time required for, performance of any part of the Work, shall issue a Change Order under the procedures described in Article 9.1 Change Orders and Time Extensions.

3. In the event that a dispute arises between the City and the Contractor as to whether the conditions materially differ, or involve hazardous waste, or cause a decrease or increase in the Contractor's cost of, or time required for, performance of any part of the Work, the Contractor shall not be excused from any scheduled completion date provided for by the Contract, but shall proceed with all Work to be performed under the Contract. Contractor shall retain any and all rights provided either by contract or by law which pertain to the resolution of disputes and protests between the parties.

ARTICLE 8 -PROSECUTION OF THE WORK

8.1 Contractor's Means and Methods.

A. Contractor is solely responsible for the means and methods utilized to perform the Work. In no case shall the Contractor's means and methods deviate from commonly used industry standards.

8.2 Construction Schedule.

A. General Requirements. The schedule shall be prepared by the Construction Manager. Refer to Division 01 for additional information and contract requirement(s).

8.3 Time for Completion and Liquidated Damages

A. Time for Completion. The time for completion set forth in Article 2 of the Contract for Construction shall commence: (1) on the date stated in the Notice to Proceed, or (2) if the Notice to Proceed does not specify a commencement date, then on the date of the Notice to Proceed and shall be completed by Contractor in the time specified in the Contract Documents. The City is under no obligation to consider early completion of the Project; and the Contract completion date shall not be amended by the City's receipt or acceptance of the Contractor's proposed earlier completion date. Any difference in time between the Contractor's early completion and the Contract Time shall be considered a part of the Project float. Contractor shall not be entitled to compensation, and the City will not compensate Contractor, for delays which impact early completion. Contractor shall not, under any circumstances, receive additional compensation from the City (including but not limited to indirect, general, administrative or other forms of overhead costs) for the period between the time of earlier completion proposed by the Contractor and the Contract completion date.

B. Liquidated Damages. If the Work is not completed within the Contract Time(s), it is understood that the City will suffer damage. In accordance with Government Code section 53069.85 and Public Contract Code section 7102, being impractical and infeasible to determine the amount of actual damage, it is agreed that Contractor shall pay to the City as fixed and liquidated damages, and not as a penalty, the sum stipulated in the Contract for each calendar day of delay until the Work is fully completed. Contractor and its surety shall be liable for any liquidated damages. Any money due or to become due the Contractor may be retained to cover liquidated damages.

C. Inclement Weather. Contractor shall abide by the City's determination of what constitutes inclement weather. Time extensions for inclement weather shall only be granted when the Work stopped during inclement weather is on the critical path of the Project schedule. Contractor shall not be entitled to reverse liquidated damages for time extensions resulting from inclement weather.

D. Extension of Time. Contractor's entitlement to an extension of the Contract Time is limited to a City-caused extension of the critical path, reduced by the Contractor's concurrent delays, and established by a proper time impact analysis. Contractor shall not be charged liquidated damages because of any delays in completion of the Work due to unforeseeable causes beyond the control and without the fault or negligence of Contractor (or its Subcontractors or Suppliers). The City shall ascertain the facts and extent of delay and grant extension of time for completing the Work when, in its judgment, the facts justify such an extension. Contractor shall not be entitled to an adjustment in the Contract Times for delays within the control of Contractor. Delays attributable to and within the control of a Subcontractor or Supplier shall be deemed to be delays within the control of Contractor.

E. Reverse Liquidated Damages. Consistent with Public Contract Code Section 7102, Contractor will be compensated for damages incurred due to unreasonable delays to the critical path for which the City is responsible. The parties agree that determining Contractor's exact delay damages are and will continue to be impracticable and extremely difficult. As such, for each calendar day in excess of

the time for completion set forth in Article 2 of the Contract for Construction, the City shall pay to the Contractor the sum stipulated in the Contract per day. Such amount shall constitute the only payment allowed for any City-caused delays and shall necessarily include all overhead, all profits, all administrative costs, all bond costs, all labor, materials, equipment and rental costs and any other costs, expenses and fees incurred or sustained as a result of such delays. Contractor shall not be entitled to reverse liquidated damages for any change in the Work in which Contractor is compensated for overhead and profit through a change in Unit Price Work or a Change Order resulting in a lump sum or allowed mark-up for the additional Work. The amount of reverse liquidated damages shall be reduced by Contractor's concurrent delays.

F. Force Majeure. In accordance with subparagraphs "D" and "E" above, the Contractor shall not be charged liquidated damages, and the City shall not be responsible, for any delays resulting from a Force Majeure Event. If a delay to the critical path results from a Force Majeure Event, the Contractor will be entitled to a time extension but will not receive an adjustment to the Contract Price or any other compensation. Such a non-compensable adjustment shall be Contractor's sole and exclusive remedy for such delays.

G. No Damages for Reasonable Delay. The City's liability to Contractor for delays for which the City is responsible shall be limited to only an extension of time unless such delays were unreasonable under the circumstances. In no case shall the City be liable for any costs which are borne by the Contractor in the regular course of business, including, but not limited to, home office overhead and other ongoing costs. Damages caused by unreasonable City delay shall be based on actual costs only, no proportions or formulas shall be used to calculate any delay damages.

H. Procedure for Time Extensions and Delay Damages. Contractor shall not be entitled to any extension of time or any reverse liquidated damages unless Contractor properly notices the delay and adjustment to compensation and requests a Change Order in accordance with Article 9.1 Change Orders and Time Extensions. Contractor's failure to timely and fully comply with the Change Order procedures in the Contract Documents shall constitute a waiver of Contractor's right to a time extension or reverse liquidated damages.

8.4 Contractor's Responsibility for Work.

A. Until the acceptance of the Work by the Engineer as evidenced in writing, it shall be under the charge and care of the Contractor. The Contractor shall take every necessary precaution against injury or damage to any part thereof by the action of the elements or from any cause whether arising from the execution or non-execution of the Work. The Contractor shall rebuild, repair, restore and make good at its own expense all injuries or damages to any portion of the Work before its completion and acceptance. In the event of damage proximately caused by an Act of God, as defined by Section 7105 of the Public Contract Code, the City will pay for repair or restoration to damaged Work in excess of 5% of the total Bid.

8.5 CITY'S RIGHT TO CARRY OUT THE WORK DUE TO PARTIAL DEFAULT IN A SPECIFIC SEGREGATED AREA OF WORK (48 HOUR NOTICE TO CURE AND CORRECT)

If the Contractor Defaults or neglects to carry out the Work in accordance with the Contract Documents, the City may provide forty-eight (48) hour written notice to cure (a shorter period of time in the case of Emergency or a critical path activity delay) Contractor's Partial Default in a specific segregated area of work. The City's right to issue a Partial Default of the Contractor's Work and take over that segregated area of Work includes, but is not limited to:

1. Failure to supply adequate workers on the entire Project or any part thereof;
2. Failure to supply a sufficient quantity of materials;
3. Failure to perform any provision of this Contract;
4. Failure to comply with safety requirements, or due to Contractor is creation of an unsafe condition;
5. Cases of bona fide emergency;
6. Failure to order materials in a timely manner;
7. Failure to prepare Deferred Approval items or Shop Drawings in a timely manner;
8. Failure to comply with Baseline or Updated Schedule, meet critical Milestones which would result in a delay to the critical path, or delay the Contract Time;
9. Failure to comply with the Subletting and Subcontracting Fair Practices, Public Contract Code section 4100, et seq.
10. Failure to meet the requirements of the Americans with Disabilities Act;
11. Failure to complete Punch List work;
12. Failure to proceed on an Immediate Change Directive;
13. Failure to correct a Notice of Deviation.

If during the forty eight (48) hour period, the Contractor fails to Cure and correct the deficiency noted in the 48 hour notice of Partial Default with diligence and promptness, the City may correct such deficiencies without prejudice to other remedies the City may have, including a Termination for Cause as set forth herein. If there are inadequate funds remaining the Project balance or in the Retention Escrow to address at least 150% of the costs set forth in Article 3 in Contract For Construction, the City may copy the Surety on the written notice of Partial Default. If a notice to the Surety is provided, except in the cases of emergency or critical path delay, the Surety has the option to take over and complete the Work described in the written notice if Surety personally delivers notice to City that it intends to perform such work. In the case where written

notice has been provided, the City shall allow Surety seven (7) days to perform the Work.

8.6 Occupancy.

A. The City reserves the right to occupy or utilize any portion of the Work at any time before completion, and such occupancy or use shall not constitute acceptance of any part of Work covered by this Contract. This use shall not relieve the Contractor of its responsibilities under the Contract.

8.7 Securities for Money Withheld

A. Pursuant to section 22300 of the Public Contract Code of the State of California, Contractor may request the City to make retention payments directly to an escrow agent or may substitute securities for any money withheld by the City to ensure performance under the contract. At the request and expense of Contractor, securities equivalent to the amount withheld shall be deposited with the City or with a state or federally chartered bank as the escrow agent who shall return such securities to Contractor upon satisfactory completion of the contract. Deposit of securities with an escrow agent shall be subject to a written agreement substantially in the form provided in section 22300 of the Public Contract Code.

8.8 The City's Right to Suspend/Terminate the Contract

A. Suspension of Work by the City

1. The City may, at its sole option, decide to suspend at any time the performance of all or any portion of the Work by notice in writing to Contractor. Such notice of suspension of Work will designate the amount and type of plant, labor, and equipment to be committed to the Project during the period of suspension. Contractor shall use its best efforts to utilize its plant, labor, and equipment in such a manner as to minimize costs associated with suspension.

2. Upon receipt of any such notice, Contractor shall, unless the notice requires otherwise:

   a. Immediately discontinue Work on the date and to the extent specified in the notice;

   b. Place no further orders or subcontracts for material, services, or facilities with respect to suspended Work other than to the extent required in the notice;

   c. Promptly make every reasonable effort to obtain suspension upon terms satisfactory to the City's Representative of all orders, subcontracts, and rental agreements to the extent they relate to performance of Work suspended; and

   d. Continue to protect and maintain the Work including those portions on which Work has been suspended.

3. Except as provided by this Article, as full and complete compensation for such suspension, Contractor shall be granted an adjustment in the Contract Price based

on a negotiated daily rate that reflects the Contractor's actual costs associated with the demobilized condition of the Site and an extension of the Contract Times equal to the number of days performance of Work is suspended; provided, however, that no adjustment of Contract Price or extension of Contract Times shall be granted if the suspension results from Contractor's non-compliance with the requirements of the Contract.

B. Termination for Cause by the City:

1. In the sole estimation of the City, if the Contractor refuses or fails to prosecute the Work or any separable part thereof with such diligence as will insure its completion within the time specified by the Contract Documents, or any extension thereof, or fails to complete such Work within such time, or if the Contractor should be adjudged a bankrupt, or if it should make a general assignment for the benefit of its creditors, or if a receiver should be appointed on account of its insolvency, or the Contractor or any of its subcontractors should violate any of the provisions of this Contract, the City may serve written notice upon the Contractor and its surety of the City's intention to terminate this Contract. This notice of intent to terminate shall contain the reasons for such intention to terminate this Contract, and a statement to the effect that the Contractor's right to perform this Contract shall cease and terminate upon the expiration of ten (10) Days unless such violations have ceased and arrangements satisfactory to the City have been made for correction of said violations.

2. After expiration of the ten (10) Day period, the City may terminate the Contract by providing a Notice of Termination to the Contractor. The City may take over and complete the Work by any method it may deem appropriate, including enforcement of the Project performance bond. Contractor and its surety shall be liable to the City for any excess costs or other damages incurred by the City to complete the Work. If the City takes over the Work, the City may, without liability for so doing, take possession of and utilize in completing the Work such materials, appliances, plant, and other property belonging to the Contractor as may be on the Site.

3. Upon termination, Contractor shall not be entitled to receive any further payment from the City, except for Work which was duly performed prior to the effective date of the Notice of Termination. Contractor shall submit an invoice for final payment within thirty (30) Days of the effective date of the Notice of Termination. The City may withhold from final payment up to 150% of any disputed amounts, including any amounts which may be necessary to repair defective Work, complete unfinished Work, or are otherwise occasioned by Contractor's failure to perform its duties under the Contract.

C. Termination for Convenience by the City:

1. The City may terminate performance of the Work called for by the Contract Documents in whole or, from time to time, in part, upon ten (10) Days written notice if the City determines that a termination is in the City's interest.

2. The Contractor shall terminate all or any part of the Work upon delivery to the Contractor of a Notice of Termination specifying that the termination is for the

convenience of the City, the extent of termination, and the effective date of such termination.

3. After receipt of Notice of Termination, and except as directed by the City's Representative, the Contractor shall, regardless of any delay in determining or adjusting any amounts due under this termination for convenience clause, immediately proceed with the following obligations:

    a. Stop Work as specified in the Notice.

    b. Complete any Work specified in the Notice of Termination in a least cost/shortest time manner while still maintaining the quality called for under the Contract Documents.

    c. Leave the property upon which the Contractor was working and upon which the facility (or facilities) forming the basis of the Contract Document is situated in a safe and sanitary manner such that it does not pose any threat to the public health or safety.

    d. Terminate all subcontracts to the extent that they relate to the portions of the Work terminated.

    e. Place no further subcontracts or orders, except as necessary to complete the continued portion of the Contract.

    f. Submit to the City's Representative, within ten (10) Days from the effective date of the Notice of Termination, all of the usual documentation called for by the Contract Documents to substantiate all costs incurred by the Contractor for labor, materials and equipment through the effective date of the Notice of Termination. Any documentation substantiating costs incurred by the Contractor solely as a result of the City's exercise of its right to terminate this Contract pursuant to this clause, which costs the contractor is authorized under the Contract documents to incur, shall: (1) be submitted to and received by the Engineer no later than 30 Days after the effective date of the Notice of Termination; (2) describe the costs incurred with particularity; and (3) be conspicuously identified as “Termination Costs occasioned by the City's Termination for Convenience.” If the City rejects any costs, Contractor shall be deemed to waive the rejected costs unless Contractor files a Claim within thirty (30) Days of the rejection pursuant to Article 9.2.

    g. Contractor shall be entitled to receive only the amounts payable under this Article, and Contractor specifically waives any claim for any other amounts or damages, including, but not limited to, any claim for consequential damages or lost profits. The provisions in this Article are in addition to and not in limitation of any other rights or remedies available to the City.

4. Termination of the Contract shall not relieve surety of its obligation for any just claims arising out of or relating to the Work performed.

5. Notwithstanding any other provision of this Article, when immediate action is necessary to protect life and safety or to reduce significant exposure or liability, the

City may immediately order Contractor to cease Work on the Project until such safety or liability issues are addressed to the satisfaction of the City or the Contract is terminated.

6. If the City terminates Contractor for cause, and if it is later determined that the termination was wrongful, such default termination shall automatically be converted to and treated as a termination for convenience. In such event, Contractor shall be entitled to receive only the amounts payable under this section, and Contractor specifically waives any claim for any other amounts or damages, including, but not limited to, any claim for consequential damages or lost profits.

8.9 Completion and Acceptance of Work

A. Final Inspection. Upon written notice from Contractor that the entire Work is complete, the Engineer will promptly make a final inspection with the City and Contractor and will notify Contractor in writing of all particulars in which this inspection reveals that the Work is incomplete or defective. Contractor shall immediately take such measures as are necessary to complete such Work or remedy such deficiencies.

B. Final Acceptance. The acceptance of the Work on behalf of the City will be made by the Engineer. Such acceptance by the City shall not constitute a waiver of defects. After Contractor has, in the opinion of the Engineer, satisfactorily completed all corrections identified during the final inspection and has delivered, in accordance with the Contract Documents, all maintenance and operating instructions, schedules, guarantees, bonds, certificates or other evidence of insurance, certificates of inspection, Record Documents, and other documents required by the Contract Documents, the City shall execute a Notice of Completion, constituting final acceptance and completion of the Project, except as may be expressly noted.

8.10 Warranty and Guaranty of Work.

A. Contractor hereby warrants that materials and Work shall be completed in conformance with the Contract Documents and that the materials and Work provided will fulfill the requirements of this Warranty. Contractor hereby agrees to repair or replace, at the discretion of the City, any or all Work that may prove to be defective in its workmanship, materials furnished, methods of installation or fail to conform to the Contract Document requirements together with any other Work which may be damaged or displaced by such defect(s) within a period of one (1) year (or as otherwise indicated in the Contract Documents or in any guarantee or warranty provided by any manufacturer or supplier of equipment or materials incorporated into the Work, whichever is later) from the date of the Notice of Completion of the Project without any expense whatever to the City, ordinary wear and tear and unusual abuse and neglect excepted. Contractor shall be required to promptly repair or replace defective equipment or materials, at Contractor's option. All costs associated with such corrective actions and testing, including the removal, replacement, and reinstitution of equipment and materials necessary to gain access, shall be the sole responsibility of the Contractor.

B. For any Work so corrected, Contractor's obligation hereunder to correct defective Work shall be reinstated for an additional one (1) year period, commencing with the

date of acceptance of such corrected Work. The reinstatement of the one (1) year warranty shall apply only to that portion of work that was corrected. Contractor shall perform such tests as the City may require to verify that any corrective actions, including, without limitation, redesign, repairs, and replacements comply with the requirements of the Contract. In the event of Contractor's failure to comply with the above-mentioned conditions within ten (10) Days after being notified in writing of required repairs, to the reasonable satisfaction of the City, the City shall have the right to correct and replace any defective or non-conforming Work and any work damaged by such work or the replacement or correction thereof at Contractor's sole expense. Contractor shall be obligated to fully reimburse the City for any expenses incurred hereunder immediately upon demand.

C. In addition to the warranty set forth in this Article, Contractor shall obtain for the City all warranties that would be given in normal commercial practice and assign to the City any and all manufacturer's or installer's warranties for equipment or materials not manufactured by Contractor and provided as part of the Work, to the extent that such third-party warranties are assignable and extend beyond the warranty period set forth in this Article. Contractor shall furnish the City with all warranty and guarantee documents prior to final acceptance of the Project by the City as required.

D. When specifically indicated in the Contract Documents or when directed by the Engineer, the City may furnish materials or products to the Contractor for installation. In the event any act or failure to act by Contractor shall cause a warranty applicable to any materials or products purchased by the City for installation by the Contractor to be voided or reduced, Contractor shall indemnify the City from and against any cost, expense, or other liability arising therefrom, and shall be responsible to the City for the cost of any repairs, replacement or other costs that would have been covered by the warranty but for such act or failure to act by Contractor.

E. The Contractor shall remedy at its expense any damage to City-owned or controlled real or personal property.

F. The City shall notify the Contractor, in writing, within a reasonable time after the discovery of any failure, defect, or damage. The Contractor shall within ten (10) Days after being notified commence and perform with due diligence all necessary Work. If the Contractor fails to promptly remedy any defect or damage, the City shall have the right to replace, repair or otherwise remedy the defect, or damage at the Contractor's expense.

G. In the event of any emergency constituting an immediate hazard to health, safety, property, or licensees, when caused by Work of the Contractor not in accordance with the Contract requirements, the City may undertake at Contractor's expense, and without prior notice, all Work necessary to correct such condition.

H. Acceptance of Defective Work.

1. If, instead of requiring correction or removal and replacement of defective Work, the City prefers to accept it, the City may do so. Contractor shall pay all claims, costs, losses, and damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals and all court or arbitration or other dispute resolution costs) attributable to the City's evaluation of and

determination to accept such defective Work and for the diminished value of the Work. If any acceptance of Defective Work occurs prior to release of the Project retention, a Change Order will be issued incorporating the necessary revisions in the Contract Documents with respect to the Work, and the City shall be entitled to an appropriate decrease in the Contract Price, reflecting the diminished value of Work and all costs incurred by the City. If the acceptance of defective occurs after release of the Project retention, an appropriate amount will be paid by Contractor to the City.

I. The City May Correct Defective Work

1. If Contractor fails within a reasonable time after written notice from the City to correct Defective Work, or to remove and replace rejected Work as required by the City, or if Contractor fails to perform the Work in accordance with the Contract Documents, or if Contractor fails to comply with any other provision of the Contract Documents, the City may, after seven (7) Days written notice to Contractor, correct, or remedy any such deficiency.

2. In connection with such corrective or remedial action, the City may exclude Contractor from all or part of the Site, take possession of all or part of the Work and suspend Contractor's services related thereto, take possession of Contractor's tools, appliances, construction equipment and machinery at the Site, and incorporate in the Work all materials and equipment stored at the Site or for which the City has paid Contractor but which are stored elsewhere. Contractor shall allow the City, and the agents, employees, other contractors, and consultants of each of them, access to the Site to enable the City to exercise the rights and remedies to correct the Defective Work.

3. All claims, costs, losses, and damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals and all court or arbitration or other dispute resolution costs) incurred or sustained by the City correcting the Defective Work will be charged against Contractor, and a Change Order will be issued incorporating the necessary revisions in the Contract Documents with respect to the Work; and the City shall be entitled to an appropriate decrease in the Contract Price. Such claims, costs, losses and damages will include but not be limited to all costs of repair, or replacement of work of others destroyed or damaged by correction, removal, or replacement of defective Work.

4. If the Change Order is executed after all payments under the Contract have been paid by the City and the Project Retention is held in an escrow account as permitted by the Contract Documents, Contractor will promptly alert the escrow holder, in writing, of the amount of Retention to be paid to the City. If the Change Order is executed after release of the Project retention, an appropriate amount will be paid by Contractor to the City. Contractor shall not be allowed an extension of the Contract Times because of any delay in the performance of the Work attributable to the City correcting Defective Work.

J. Nothing in the warranty or in the Contract Documents shall be construed to limit the rights and remedies available to the City at law or in equity, including, but not limited to, Code of Civil Procedure section 337.15.

ARTICLE 9 -CHANGE ORDERS; DISPUTE RESOLUTION

9.1 Change Orders and Time Extensions

All changes to the Contract, including compensation increases and time extensions, shall be through a written Change Order in accordance with this Article. The City, without invalidating the Contract, may order changes in the Work consisting of additions, deletions or other revisions, and Contractor's compensation and the time for completion shall be adjusted accordingly. Whenever any change is made as provided for herein, such change shall be considered and treated as though originally included in the Contract, and shall be subject to all terms, conditions, and provisions of the original Contract. Contractor shall not be entitled to claim or bring suit for damages, whether for loss of profits or otherwise, on account of any decrease or omission of any item or portion of Work to be done. No dispute, disagreement, or failure of the parties to reach agreement on the terms of the Change Order shall relieve the Contractor from the obligation to proceed with performance of the Work, including Additional Work, promptly and expeditiously. Any alterations, extensions of time, Additional Work, or any other changes may be made without securing consent of the Contractor's surety or sureties.

A. Change in Contract Procedures

1. City Directive. The City may direct changes in the Work by delivering a written directive. To the extent the work directive results in a change to compensation or time, Contractor must timely request a Change Order and comply with all Change Order procedures in accordance with this Article. Notwithstanding issuance of a work directive, Contractor's failure to timely request a Change Order shall constitute a waiver by Contractor of any adjustment to compensation or time extension for Work performed under the directive. The City shall not be liable to Contractor for Work performed or omitted by Contractor in reliance on verbal orders.

2. Contractor's Notice of Change/Delay. If Contractor intends to initiate a Change Order Request, then Contractor shall provide the City with written notice of the underlying facts and circumstances that gave rise to the proposed change within the following times:

   a. If due to unknown subsurface or latent physical conditions, within three (3) Days from the discovery date or prior to the alterations of the conditions, whichever is earlier.

   b. If due to a Force Majeure Event, as soon as reasonably practicable under the conditions, which shall be no longer than three (3) Days from the date the Contractor discovers that the Force Majeure Event gives rise to a change, unless that the conditions are such that notice within three (3) Days is not possible or practicable.

   c. If due to any other matter that may involve an adjustment to the Contract Time or the Contract Price, within seven (7) days from the discovery date.

   To be considered valid and complete, the notice of change/delay shall include a general statement of the circumstances giving rise to the notice of change/delay and a reasonable order of magnitude estimate of the additional costs and/or time.

If the circumstances give rise to both a cost adjustment and time extension, Contractor shall submit the notice of change and notice of delay concurrently.

3. Request for Change in Compensation and/or Extension of Time. Contractor shall submit a Change Order Request for any adjustment to Contractor's compensation and/or any extension of time. The Change Order Request shall be made prior to incurring any expense and within fourteen (14) Days from either Contractor's notice of change/delay or the City's directive ordering the change. The Change Order Request shall include all of the following information (unless inapplicable to the change):

   a. A detailed description of the circumstances giving rise to the request;

   b. A complete itemized cost proposal, including itemized pricing for first tier Subcontractors;

   c. Supporting documentation for all costs;

   d. A time impact analysis showing the impact of the delay to the critical path to completion;

   e. If any added costs or information cannot be determined at the time of the Change Order Request, the reason the costs or information cannot be determined at the time; and

   f. Certification to the accuracy of the Change Order Request under penalty of perjury.

   For any costs or information that cannot be determined at the time Contractor submits the Change Order Request, Contractor shall submit to the City notice of the costs or information and all supporting documentation within five (5) Days of when the costs or other information become subject to determination.

4. City's Final Decision on Change Order; Ordered Changes. If the City denies the Change Order Request or disagrees with the proposal submitted by Contractor, it will notify the Contractor, and the City will provide its opinion of the appropriate price and/or time extension. If no agreement can be reached, the City shall have the right to order the Work performed on a time and materials basis or to issue a unilateral Change Order setting forth the City's determination of the reasonable additions or savings in costs and time attributable to the extra or deleted work.

5. Time and Material Charges. The City shall also have the right to order changes in the Work to be performed promptly by the Contractor on a time and materials basis or to issue a unilateral Change Order setting forth the City's determination of the reasonable additions or savings in costs and time attributable to the extra or deleted work. The City's determination shall become final and binding if the Contractor fails to submit a Claim in writing to the City within fourteen (14) Days of the issuance of the unilateral Change Order, disputing the terms of the unilateral Change Order and providing such supporting documentation for its position as the City may reasonably require.

6. Contractor's Waiver of Further Relief. **CONTRACTOR'S FAILURE TO PROVIDE A COMPLETE AND TIMELY NOTICE OF CHANGE/DELAY AND/OR CHANGE ORDER REQUEST, OR TO COMPLY WITH ANY OTHER REQUIREMENT OF THIS ARTICLE, SHALL CONSTITUTE A WAIVER BY CONTRACTOR OF THE RIGHT TO A CONTRACT ADJUSTMENT ON ACCOUNT OF SUCH CIRCUMSTANCES AND A WAIVER OF ANY RIGHT TO FURTHER RECOURSE OR RECOVERY BY REASON OF OR RELATED TO SUCH CHANGE BY MEANS OF THE CLAIMS DISPUTE RESOLUTION PROCESS OR BY ANY OTHER LEGAL PROCESS OTHERWISE PROVIDED FOR UNDER APPLICABLE LAWS.**

   Contractor recognizes and acknowledges that timely submission of a formal written notice of change/delay and Change Order Request, whether or not the circumstances of the change may be known to the City or available to the City through other means, is not a mere formality but is of crucial importance to the ability of the City to promptly identify, prioritize, evaluate and mitigate the potential effects of changes. Any form of informal notice, whether verbal or written (including, without limitation, statements in requests for information, statements in Submittals, statements at any job meeting or entries on monthly reports, daily logs or job meeting minutes), that does not strictly comply with the formal requirements of this Article, shall accordingly be insufficient.

7. Change Order Format

   a. A Change Order signed by the Contractor indicates the Contractor's agreement therewith, including any adjustment in compensation or extension of time, and the full and final settlement of all costs (direct, indirect and overhead) related to the Work authorized by the Change Order.

   b. The City may designate the forms to be used for notices, requests, and Change Orders. If so designated, Contractor may only use such forms. Contractor shall not reserve a right to assert impact costs, extended job site costs, extended overhead, constructive acceleration and/or actual acceleration beyond what is stated in the Change Order. No Claims shall be allowed for impact, extended overhead costs, constructive acceleration and/or actual acceleration due to a multiplicity of changes and/or clarifications. The Contractor may not change or modify the City's Change Order form in an attempt to reserve additional rights.

B. Determining Adjustments to Compensation.

1. Limitation on Costs. Contractor shall not be entitled to any compensation for Work subject to a Change Order except as expressly set forth in this Article. The mark-up added in instances of Additional Work shall constitute the entire amount of profit, any mark-ups, any field or home office overhead costs, including personnel, equipment or office space, any materials, or any costs of equipment idle time for such Work.

2. Unit Price Change Orders. When the actual quantity of a Unit Price Work item varies from the Bid Schedule, compensation for the change in quantity will be calculated by multiplying the actual quantity by the unit price. This calculation may

result in either an additive or deductive Change Order. Bid items included on the Bid Schedule may be deducted from the Work in their entirety without any negotiated extra costs. Because Unit Price Work includes overhead and profit as determined by Contractor at the time of its Bid submission, no mark up or deduction for overhead and profit will be allowed.

3. Lump Sum Change Orders. Whenever possible, any changes affecting compensation shall be in a lump sum mutually agreed by the Contractor and the City.

4. Time and Materials Change Orders. The City may direct the Contractor to proceed with the Additional Work with payment to be made on the basis of actual cost of the labor and materials required to complete the Additional Work. If the Project is federally funded, a time and materials Change Order shall only be issued after a determination that no other Change Order is suitable and the Change Order shall include a ceiling price that the Contractor exceeds at its own risk.

5. Federally Funded Projects. For any change in price to the Contract, general and administrative expenses shall be negotiated and must conform to the cost principles set forth under at 2 C.F.R. Part 200, subpart E, and profit shall be negotiated as a separate element of the cost. To establish a fair and reasonable profit, consideration must be given to the complexity of the Additional Work to be performed, the risk borne by the Contractor, the Contractor's investment, the amount of subcontracting, the quality of its record of past performance, and industry profit rates in the surrounding geographical area for similar work.

6. Allowed Costs. Estimates for lump sum quotations and accounting for time-and-material work shall be limited to direct expenditures necessitated specifically by the change and shall be segregated as follows:

    a. Labor. The costs of labor will be the actual cost for wages prevailing locally for each craft or type of worker at the time the Additional Work is done, plus employer payments of payroll taxes and insurance, health and welfare, pension, vacation, apprenticeship funds, and other direct costs resulting from federal, state or local laws, as well as assessment or benefits required by lawful collective bargaining agreements. The use of a labor classification which would increase the Additional Work cost will not be permitted unless the Contractor establishes the necessity for such additional costs. Labor costs for equipment operators and helpers shall be reported only when such costs are not included in the invoice for equipment rental.

    b. Materials. The cost of materials reported shall be at the lowest current price at which such materials are locally available in the quantities involved, plus sales tax, freight and delivery. Materials costs shall be based upon supplier or manufacturer’s invoice.

    c. Tool and Equipment Use. Regardless of ownership, the rates to be used in determining equipment use shall not exceed listed rates prevailing locally at equipment rental agencies, or distributors, at the time the work is performed. The Contractor shall furnish cost data supporting the establishment of the rental rate. The rental rate to be applied for use of each items of equipment

shall be the rate resulting in the least total cost to the City for the total period of use. The City shall the make the final determination as to an equitable rental rate for the equipment. No payment will be made for the use of small tools, which have a replacement value of $1,000 or less.

i. The rental time to be paid for equipment shall be the time the equipment is in productive operation on the Additional Work being performed. Rental time will not be allowed while equipment is inoperative due to breakdowns.

ii. All equipment shall, in the opinion of the City, be in good working condition and suitable for the purpose for which the equipment is to be used. Equipment with no direct power unit shall be powered by a unit of at least the minimum rating recommended by the manufacturer.

iii. Before construction equipment is used on any Additional Work, the Contractor shall plainly stencil or stamp an identifying number thereon at a conspicuous location, and shall furnish to the City, in duplicate, a description of the equipment and its identifying number.

iv. When hourly rates are listed, any part of an hour less than 30 minutes of operation shall be considered to be 1/2-hour of operation, and any part of an hour greater than 30 minutes will be considered one hour of operation. When daily rates are listed, any part of a day less than 4 hours operation shall be considered to be 1/2-day of operation.

d. Allowed Mark-up. The allowed mark-up for any and all overhead (including supervision and home and field office costs) and profit on work added to the Contract shall be determined in accordance with the following provisions:

i. “Net Cost” is defined as the actual costs of labor, materials and tools and equipment only, excluding overhead and profit. The costs of applicable insurance and bond premium will be reimbursed to the Contractor and Subcontractors at cost only, without mark-up. Contractor shall provide the City with documentation of the costs, including but not limited to payroll records, invoices, and such other information as the City may reasonably request.

ii. For Work performed by the Contractor’s forces the allowed mark-up shall not exceed fifteen (15%) percent of labor costs, ten percent (10%) of material costs, and ten percent (10%) of the cost of tools and equipment use.

iii. For Work performed by a Subcontractor, the added cost for overhead and profit shall not exceed fifteen percent (15%) of the Subcontractor’s Net Cost of the Work to which the Contractor may add up to five percent (5%) of the Subcontractor’s Net Cost.

iv. For Work performed by a sub-subcontractor, the added cost for overhead and profit shall not exceed fifteen percent (15%) of the sub-subcontractor’s Net Cost for Work to which the Subcontractor and

Contractor may each add up to an additional five percent (5%) of the Net Cost of the lower tier subcontractor.

v. No additional mark-up will be allowed for lower tier subcontractors, and in no case shall the added cost for overhead and profit payable by the City exceed twenty-five percent (25%) of the Net Cost as defined herein, of the party that performs the Work.

vi. Calculation of the mark-up will be subject to the limitations above and to calculation as further detailed in (b)(B)(5) above.

d. Documentation of Time-and-Material Costs.

i. T&M Daily Sheets. Contractor MUST notify the Construction Manager of the assigned manpower, equipment and Work expectations prior to the commencement of the T&M work. Contractor must submit timesheets, materials invoices, records of equipment hours, and records of rental equipment hours to the City's for an approval signature each day that Work is performed on a time-and-material basis. This process to continue until all T&M work is completed. If the Contractor or their Subcontractor has not properly notified the Construction Manager as stated above, Contractor concedes to cost as determined by the Construction Manager.The Construction Manager's signature on time sheets only serves as verification that the Work was performed and is not indicative of the City's agreement to Contractor's entitlement to the cost.

ii. T&M Summary Sheet. Contractor shall submit a T&M Summary Sheet, which shall include total actual costs, within five (5) Days following completion of Additional Work on a time-and-material basis. Contractor's total actual cost shall be presented in a summary table in an electronic spreadsheet file by labor, material, equipment, and any other costs, along with documentation supporting the costs. Contractor's failure to submit the T&M Summary Sheet within five (5) Days of completion of the Additional Work will result in Contractor's waiver for any reimbursement of any costs associated with the Additional Work.

e. Excluded Costs. The following costs or any other home or field office overhead costs, all of which are to be considered administrative costs covered by the Contractor's mark-up, shall not be allowed costs and shall not be included in any lump sum proposals or time-and-materials invoices:

(i) Overhead Cost. Payroll costs and other compensation of Contractor's officers, executives, principals, general managers, engineers, architects, estimators, attorneys, auditors, accountants, purchasing and contracting agents, timekeepers, clerks, and other personnel employed by Contractor whether at the Site or in Contractor's principal office or any branch office, material yard, or shop for general administration of the Work;

(ii) Office Expenses. Expenses of Contractor's principal and branch offices;

(iii) Capital Expenses. Any part of Contractor's capital expenses, including interest on Contractor's capital employed for the Additional Work and charges against Contractor for delinquent payments;

(iv) Negligence. Costs due to the negligence of Contractor or any Subcontractor or Supplier, or anyone directly or indirectly employed by any of them or for whose acts any of them may be liable, including without limitation the correction of Defective Work, disposal of materials or equipment wrongly supplied, and making good any damage to property;

(v) Small Tools. Cost of small tools valued at less than $1,000 and that remain the property of Contractor;

(vi) Administrative Costs. Costs associated with the preparation of Change Orders (whether or not ultimately authorized), cost estimates, or the preparation or filing of Claims;

(vii) Anticipated Lost Profits. Expenses of Contractor associated with anticipated lost profits or lost revenues, lost income or earnings, lost interest on earnings, or unpaid retention;

(viii) Home Office Overhead. Costs derived from the computation of a "home office overhead" rate by application of the *Eichleay, Allegheny*, burden fluctuation, or other similar methods;

(ix) Special Consultants and Attorneys. Costs of special consultants or attorneys, whether or not in the direct employ of Contractor, employed for services specifically related to the resolution of a Claim, dispute, or other matter arising out of or relating to the performance of the Additional Work.

(x) Other. Other overhead or general expense costs of any kind and the cost of any item not specifically and expressly included in the Contract Documents; including but not limited to: submittals, drawings, field drawings, shop drawings, including submissions of drawings; field inspection; general superintendence; computer services; reproduction services; salaries of project engineer, superintendent, timekeeper, storekeeper, and secretaries; janitorial services; small tools, incidentals and consumables; temporary on-site facilities (offices, telephones, high speed internet access, plumbing, electrical power, lighting; platforms, fencing, water); surveying; estimating; protection of work; handling and disposal fees; final cleanup; other incidental work; related warranties; insurance and bond premiums.

(xi) Compliance with Federal Cost Principles. If the Project is federally funded, any costs that are not allowable, reasonable and allocable to the Project, under generally accepted accounting principles and the applicable federal requirements.

9.2 Procedure for Resolving Claims.

Contractor shall timely comply with any and all requirement of the Contract Documents pertaining to notices and requests for changes to the Contract Time or Contract Price, including but not limited to all requirements of Article 9.1, as a prerequisite to filing any claim governed by this Article. The failure to timely submit a notice of delay or notice of change, or to timely request a change to the time for completion or Contractor's compensation, or to timely provide any other notice or request required herein shall constitute a waiver of the right to further pursue the claim under the Contract or at law.

A. Intent. Effective January 1, 1991, Section 20104 et seq., of the California Public Contract Code prescribes a process utilizing informal conferences, non-binding judicial supervised mediation, and judicial arbitration to resolve disputes on construction claims of $375,000 or less. Effective January 1, 2017, Section 9204 of the Public Contract Code prescribes a process for negotiation and mediation to resolve disputes on construction claims. The intent of this Article is to implement Sections 20104 et seq. and Section 9204 of the California Public Contract Code. This Article shall be construed to be consistent with all applicable law, including but not limited to these statutes.

B. Claims. For purposes of this Article, "Claim" means a separate demand by the Contractor for:

1. An adjustment to the time for completion including, without limitation, for relief from damages or penalties for delay assessed by the City;

2. Payment by the City of money or damages arising from Work done by or on behalf of the Contractor pursuant to the Contract, payment for which is not otherwise expressly provided or to which the Contractor is not otherwise entitled; or

3. An amount the payment of which is disputed by the City.

A "Claim" does not include any demand for payment for which the Contractor has failed to provide notice, request a Change Order, or otherwise failed to follow any procedures contained in the Contract Documents.

C. Filing Claims. Claims governed by this Article may not be filed unless and until the Contractor completes any and all requirements of the Contract Documents pertaining to notices and requests for changes to the Contract Time or Contract Price, and Contractor's request for a change has been denied in whole or in part. Claims governed by this Article must be filed no later than thirty (30) Days after a request for change has been denied in whole or in part or after any other event giving rise to the Claim. The Claim shall be submitted in writing to the City and shall include on its first page the following words in 16 point capital font: "THIS IS A CLAIM." The Claim shall include all information and documents necessary to substantiate the Claim, including but not limited to those identified below. Nothing in this Article is intended to extend the time limit or supersede notice requirements otherwise provided by Contract Documents. Failure to follow such contractual requirements shall bar any Claims or subsequent proceedings for compensation or payment thereon.

D. **Documentation.** The Contractor shall submit all Claims in the following format:

1. Summary description of Claim including basis of entitlement, merit and amount of time or money requested, with specific reference to the Contract Document provisions pursuant to which the Claim is made

2. List of documents relating to Claim:

   a. Specifications

   b. Drawings

   c. Clarifications (Requests for Information)

   d. Schedules

   e. Other

3. Chronology of events and correspondence

4. Narrative analysis of Claim merit

5. Analysis of Claim cost, including calculations and supporting documents

6. Time impact analysis in the form required by the Contract Documents or, if the Contract Documents do not require a particular format, CPM format, if an adjustment of the Contract Time is requested

E. City's Response. Upon receipt of a Claim pursuant to this Article, the City shall conduct a reasonable review of the Claim and, within a period not to exceed 45 Days, shall provide the Contractor a written statement identifying what portion of the Claim is disputed and what portion is undisputed. Any payment due on an undisputed portion of the Claim will be processed and made within 60 Days after the City issues its written statement.

1. If the City needs approval from its governing body to provide the Contractor a written statement identifying the disputed portion and the undisputed portion of the Claim, and the City's governing body does not meet within the 45 Days or within the mutually agreed to extension of time following receipt of a Claim sent by registered mail or certified mail, return receipt requested, the City shall have up to three (3) Days following the next duly publicly noticed meeting of the City's governing body after the 45-Day period, or extension, expires to provide the Contractor a written statement identifying the disputed portion and the undisputed portion.

2. Within 30 Days of receipt of a Claim, the City may request in writing additional documentation supporting the Claim or relating to defenses or Claims the City may have against the Contractor. If additional information is thereafter required, it shall be requested and provided pursuant to this subdivision, upon mutual agreement of the City and the Contractor. The City's written response to the Claim, as further documented, shall be submitted to the Contractor within 30 Days (if the Claim is

less than $50,000, within 15 Days) after receipt of the further documentation, or within a period of time no greater than that taken by the Contractor in producing the additional information or requested documentation, whichever is greater.

F. Meet and Confer. If the Contractor disputes the City's written response, or the City fails to respond within the time prescribed, the Contractor may so notify the City, in writing, either within 15 Days of receipt of the City's response or within 15 Days of the City's failure to respond within the time prescribed, respectively, and demand in writing an informal conference to meet and confer for settlement of the issues in dispute. Upon receipt of a demand, the City shall schedule a meet and confer conference within 30 Days for settlement of the dispute.

G. Mediation. Within 10 business days following the conclusion of the meet and confer conference, if the Claim or any portion of the Claim remains in dispute, the City shall provide the Contractor a written statement identifying the portion of the Claim that remains in dispute and the portion that is undisputed. Any payment due on an undisputed portion of the Claim shall be processed and made within 60 Days after the City issues its written statement. Any disputed portion of the Claim, as identified by the Contractor in writing, shall be submitted to nonbinding mediation, with the City and the Contractor sharing the associated costs equally. The public entity and Contractor shall mutually agree to a mediator within 10 business days after the disputed portion of the Claim has been identified in writing, unless the parties agree to select a mediator at a later time.

1. If the parties cannot agree upon a mediator, each party shall select a mediator and those mediators shall select a qualified neutral third party to mediate with regard to the disputed portion of the Claim. Each party shall bear the fees and costs charged by its respective mediator in connection with the selection of the neutral mediator.

2. For purposes of this Article, mediation includes any nonbinding process, including, but not limited to, neutral evaluation or a dispute review board, in which an independent third party or board assists the parties in dispute resolution through negotiation or by issuance of an evaluation. Any mediation utilized shall conform to the timeframes in this Article.

3. Unless otherwise agreed to by the City and the Contractor in writing, the mediation conducted pursuant to this section shall excuse any further obligation under Section 20104.4 to mediate after litigation has been commenced.

4. The mediation shall be held no earlier than the date the Contractor completes the Work or the date that the Contractor last performs Work, whichever is earlier. All unresolved Claims shall be considered jointly in a single mediation, unless a new unrelated Claim arises after mediation is completed.

H. Procedures After Mediation. If following the mediation, the Claim or any portion remains in dispute, the Contractor must file a Claim pursuant to Chapter 1 (commencing with Section 900) and Chapter 2 (commencing with Section 910) of Part 3 of Division 3.6 of Title 1 of the Government Code prior to initiating litigation. For purposes of those provisions, the running of the period of time within which a Claim must be filed shall be tolled from the time the Contractor submits his or her

written Claim pursuant to subdivision (a) until the time the Claim is denied, including any period of time utilized by the meet and confer conference.

I. Civil Actions. The following procedures are established for all civil actions filed to resolve Claims of $375,000 or less:

1. Within 60 Days, but no earlier than 30 Days, following the filing or responsive pleadings, the court shall submit the matter to non-binding mediation unless waived by mutual stipulation of both parties or unless mediation was held prior to commencement of the action in accordance with Public Contract Code section 9204 and the terms of this Contract. The mediation process shall provide for the selection within 15 Days by both parties of a disinterested third person as mediator, shall be commenced within 30 Days of the submittal, and shall be concluded within 15 Days from the commencement of the mediation unless a time requirement is extended upon a good cause showing to the court.

2. If the matter remains in dispute, the case shall be submitted to judicial arbitration pursuant to Chapter 2.5 (commencing with Section 1141.10) of Title 3 of Part 3 of the Code of Civil Procedure, notwithstanding Section 1114.11 of that code. The Civil Discovery Act of 1986 (Article 3 (commencing with Section 2016) of Chapter 3 of Title 3 of Part 4 of the Code of Civil Procedure) shall apply to any proceeding brought under this subdivision consistent with the rules pertaining to judicial arbitration. In addition to Chapter 2.5 (commencing with Section 1141.10) of Title 3 of Part 3 of the Code of Civil Procedure, (A) arbitrators shall, when possible, be experienced in construction law, and (B) any party appealing an arbitration award who does not obtain a more favorable judgment shall, in addition to payment of costs and fees under that chapter, also pay the attorney's fees on appeal of the other party.

J. Government Code Claim Procedures.

1. This Article does not apply to tort claims and nothing in this Article is intended nor shall be construed to change the time periods for filing tort claims or actions specified by Chapter 1 (commending with Section 900) and Chapter 2 (commencing with Section 910) of Part 3 of Division 3.5 of Title 1 of the Government Code.

2. In addition to any and all requirements of the Contract Documents pertaining to notices of and requests for adjustment to the Contract Time, Contract Price, or compensation or payment for Additional Work, disputed Work, construction claims and/or changed conditions, the Contractor must comply with the claim procedures set forth in Government Code Section 900, et seq. prior to filing any lawsuit against the City.

3. Such Government Code claims and any subsequent lawsuit based upon the Government Code claims shall be limited to those matters that remain unresolved after all procedures pertaining to adjustment of the Contract Time or Contract Price for Additional Work, disputed Work, construction claims, and/or changed conditions have been followed by Contractor. If Contractor does not comply with the Government Code claim procedure or the prerequisite contractual requirements, Contractor may not file any action against the City.

4. **A Government Code claim must be filed no earlier than the date the Work is completed or the date the Contractor last performs Work on the Project, whichever occurs first. A Government Code claim shall be inclusive of all unresolved Claims known to Contractor or that should reasonably by known to Contractor excepting only new unrelated Claims that arise after the Government Code claim is submitted.**

K. Non-Waiver. The City's failure to respond to a Claim from the Contractor within the time periods described in this Article or to otherwise meet the time requirements of this Article shall result in the Claim being deemed rejected in its entirety, and shall not constitute a waiver of any rights under this Article.

ARTICLE 10 - MEASUREMENT; PAYMENT

10.1 Cost Breakdown.

A. Lump Sum Work.

1. Contractor shall furnish on forms approved by the City within ten (10) Days of the Notice to Proceed, a schedule of values allocating the entire Contract Price to the various portions of the Work and prepared in such a form and supported by such data to substantiate its accuracy as the Engineer may require. This schedule of values, unless objected to by the Engineer, shall be used as a basis for reviewing the Contractor's applications for payment. Contractor shall submit the schedule of values prior to submitting its first application for payment, and the City will not issue any payment until it receives and approves the schedule of values.

a. Break Down of Schedule of Values. Schedule of Values shall be broken down by:

i. Administration:
   a) Bond Premium (not to exceed the bond premium amount)
   b) General Conditions (not to exceed 8% of the subtotal of the cost of the work)
   c) Alternates (each as it applies)
   d) Mobilization & Demobilization (not to exceed 2% of contract total)
   e) Submittals (all submittals on one-line item, not to exceed 2% of contract total)
   f) Allowance
   g) SWPPP
   h) Punch-list (Including all subcontractors, 2.5% of the contract's total)
   i) Closeout (Including all subcontractors, 2.5% of the contract's total)

ii. Site: by Specification Section (if applicable)
   a) Material (including subcontractor name)
      1) Rough
      2) Finish
      3) Testing
   b) Labor (including subcontractor name)
      1) Rough
      2) Finish
      3) Testing

iii. Building and Floor: by Specification Section (if applicable)
   a) Material (including subcontractor name)
      1) Rough
      2) Finish
      3) Testing
   b) Labor (including subcontractor name)
      1) Rough
      2) Finish
      3) Testing

b. Based on Contractor Bid Costs. The Schedule of Values shall be based on the costs from Contractor's bid to the City. However, the submission of the Schedule of Values shall not be front loaded so the Contractor is paid a greater value than the value of the Work actually performed and shall not shift funds from parts of the Project that are later to Work that is performed earlier.

c. Purchase of Materials and Equipment and Cost Fluctuations. The Contractor is required to order, obtain, and store materials and equipment sufficiently in advance of its Work at no additional cost or advance payment from City to assure that there will be no delays. Contractor understands that materials fluctuate in value and shall have adequately addressed market fluctuations through agreements with Contractor vendors or by other means. Contractor further understands and incorporates into Contractor's bid cost any wage rate increases during the Project for the Contractor's labor force as well as all other Subcontractor and vendor labor forces. City shall not be responsible for market fluctuations in costs or labor rate increases during the Project. Contractor further has incorporated any and all cost increases in areas of Work where there may be schedule variations so that cost increases are not passed through to the City.

B. Unit Price Work.

1. Where the Contract Documents provide that all or part of the Work is to be Unit Price Work, initially the Contract Price will be deemed to include for all Unit Price Work an amount equal to the sum of the unit price for each separately identified item of Unit Price Work multiplied by the estimated quantity of each item as indicated in the Contract. The estimated quantities of items of Unit Price Work are not guaranteed and are solely for the purpose of comparison of Bids and determining an initial Contract Price. Each unit price will be deemed to include an amount considered by Contractor to be adequate to cover Contractor's overhead and or profit for each separately identified item.

2. Unless otherwise specified, payment will be based on the actual quantities of Work as verified and approved by the Engineer, based on the price per unit as set forth in the Bid.

3. The City or Contractor may initiate a Change Order or Change Order Request to adjust the Contract Price in accordance with Contractor Documents based on

actual quantities of Unit Price Work. The City or Contractor may make a claim for an adjustment in the Unit Price in accordance with the Contract Documents if:

a. the quantity of any item of Unit Price Work performed by Contractor differs by twenty-five percent (25%) or more from the estimated quantity of such item indicated in the Contract; and

b. there is no corresponding adjustment with respect to any other item of Work; and

c. Contractor believes that Contractor is entitled to an increase in unit price as a result of having incurred additional expense or the City believes that the City is entitled to a decrease in unit price and the parties are unable to agree as to the amount of any such increase or decrease.

10.2 Progress Estimates and Payment.

A. By the tenth (10th) Day of the following calendar month, Contractor shall submit to Engineer a payment request which shall set forth in detail the value of the Work done for the period beginning with the date Work was first commenced and ending on the end of the calendar month for which the payment request is prepared. Contractor shall include an adjusted list of actual quantities, verified by the Engineer, for unit price items listed, if any, in the Bid. Contractor shall include any amount earned for authorized Additional Work. Contractor shall certify under penalty of perjury, that all cost breakdowns and periodic estimates accurately reflect the Work on the Project.

B. From the total thus computed, a deduction shall be made in the amount of five percent (5%) for retention, except where the City has adopted a finding that the Work done under the Contract is substantially complex, and then the amount withheld as retention shall be the percentage specified in the Notice Inviting Bids. From the remainder a further deduction may be made in accordance with Section C below. The amount computed, less the amount withheld for retention and any amounts withheld as set forth below, shall be the amount of the Contractor's payment request.

1. First Payment Request. The following items, if applicable, must be completed before the first payment request will be accepted for processing:
   a. Executed contract with City;

   b. Bond and insurance endorsements received and accepted by City;

   c. Manpower loading;

   d. Submittal Schedule;

   e. Copies of authorizations and licenses from governing authorities;

   f. List of all Subcontractors, with names, license numbers, telephone numbers, and scope of work;

   g. Approved Schedule of Values;

h. Copies of necessary permits;

i. Installation of temporary facilities and fencing (if applicable);

j. IIPP /Safety Program on file with the Construction Manager; and

k. Receipt of critical submittals as noted in 00750 – Special Conditions.

2. Second Payment Request. The second payment request will not be processed until all Submittals and Shop Drawings have been accepted for review by the Architect.

3. All Payment Requests. No payment requests will be processed unless Contractor has submitted / Completed and /or confirmed, but not limited to:
   a. Current daily work reports,

   b. Current safety meeting minutes,

   c. Current as-builts,

   d. Current insurance certificates,

   e. Current certified payroll,

   f. Current SWPPP log / maintenance,

   g. Conditional and Unconditional Waivers & Release required by Trade Contractor only,

   h. Any other contract requirement(s).

C. The City may withhold a sufficient amount or amounts of any payment or payments otherwise due to Contractor, as in its judgment may be necessary to cover:

1. Payments which may be past due and payable for just claims against Contractor or any Subcontractors for labor or materials furnished in and about the performance of work on the Project under this Contract.

2. Defective work not remedied.

3. Failure of Contractor to make proper payments to his Subcontractor or for material or labor.

4. Completion of the Contract if there is a reasonable doubt that the Work can be completed for balance then unpaid.

5. Damage to another contractor or a third party.

6. Amounts which may be due the Count for claims against Contractor.

7. Failure of Contractor to keep the Record Drawings up to date.

8. Failure to provide update on construction schedule as required herein.

9. Site cleanup.

10. Failure to comply with Contract Documents.

11. Liquidated damages.

12. Legally permitted penalties.

D. The City may apply such withheld amount or amounts to payment of such claims or obligations at its discretion with the exception of subsections (C)(1), (3), and (5) of this Article, which must be retained or applied in accordance with applicable law. In so doing, the City shall be deemed the agent of Contractor and any payment so made by the City shall be considered as a payment made under contract by the City to Contractor and the City shall not be liable to Contractor for such payments made in good faith. Such payments may be made without prior judicial determination of claim or obligations. The City will render Contractor a proper accounting of such funds disbursed on behalf of Contractor.

E. Upon receipt, the Engineer shall review the payment request to determine whether it is undisputed and suitable for payment. If the payment request is determined to be unsuitable for payment, it shall be returned to Contractor as soon as practicable but not later than seven (7) Days after receipt, accompanied by a document setting forth in writing the reasons why the payment request is not proper. The City shall make the progress payment within 30 Days after the receipt of an undisputed and properly submitted payment request from Contractor, provided that a release of liens and claims has been received from the Contractor pursuant to Civil Code section 8132. The number of days available to the City to make a payment without incurring interest pursuant to this paragraph shall be reduced by the number of Days by which the Engineer exceeds the seven (7) Day requirement.

F. A payment request shall be considered properly executed if funds are available for payment of the payment request and payment is not delayed due to an audit inquiry by the financial officer of the City.

G. The City shall have the right to adjust any estimate of quantity and to subsequently correct any error made in any estimate for payment.

H. No Waiver No payment by City hereunder shall be interpreted so as to imply that City has inspected, approved, or accepted any part of the Work. Contractor specifically understands that Title 24 Section 4-343 which states:

> "It is the duty of the contractor to complete the work covered by his or her contract in accordance with the approved Plans and Specifications, therefore. The Contractor in no way is relieved of any responsibility by the activities of the City, Architect, Construction Manager, Engineer, or Inspector in the performance of such duties... In no case, however, shall the instruction of the Architect or registered Engineer be construed to cause

work to be done with is not in conformity with the approved Plans, Specifications, and change orders..."

Notwithstanding any payment, the City may enforce each and every provision of this Contract which includes, but is not limited to, the Performance Bond and Payment Bond. The City may correct any error subsequent to any payment. In no event shall the Contractor or the Surety be released or exonerated from performance under this Contract when the City overpays the Contractor based upon any mistake, inaccuracy, error or falsification in any estimate that is included in any Request for Payment.

10.3 **Completion of the Work**

A. Close-Out Procedures

1. Incomplete Punch Items. When the Contractor considers the Work Substantially Complete (See Article 1 for definition of Substantially Complete), the Contractor shall prepare and submit to the City a comprehensive list of minor items to be completed or corrected (hereinafter "Incomplete Punch Items" or "Punch List"). The Contractor and/or its Subcontractors shall proceed promptly to complete and correct the Incomplete Punch Items listed. Failure to include an item on such list does not alter the responsibility of the Contractor to complete all Work in accordance with the Contract Documents. Contractor is aware that Title 24 Section 4-343(a) provides:

   "RESPONSIBILITIES. IT IS THE DUTY OF THE CONTRACTOR TO COMPLETE THE WORK COVERED BY HIS OR HER CONTRACT IN ACCORDANCE WITH THE APPROVED PLANS AND SPECIFICATIONS. THEREFOR, THE CONTRACTOR IN NO WAY IS RELIEVED OF ANY RESPONSIBILITY BY THE ACTIVITIES OF THE CITY, ARCHITECT, ENGINEER, OR INSPECTOR IN THE PERFORMANCE OF SUCH DUTIES.

2. Punch List Is Prepared Only After the Project Is Substantially Complete. If any of the conditions noted in Article 1 defining Substantial Completion are not met, the Inspector, Architect or City may reject Contractor's Incomplete Punch Items as premature. If the Architect and Inspector commence review of Incomplete Punch Items, all rights are reserved until the Project actually meets the definition of Substantially Complete. Liquidated Damages, warranties, and other contractual rights are not affected by Incomplete Punch Items unless otherwise addressed in these General Conditions.

   Once the Inspector and the Architect determine the Project is Substantially Complete, a Certificate of Substantial Completion shall be issued. The Architect shall prepare a Punch List of items which is an inspection report of the Work, if any, required in order to complete the Contract Documents and ensure compliance with the Approved Plans so the Project may be Completed by the Contractor and final Close-Out is approved. When all Work for the Project is Complete, including Punch Lists and all Work complies with the approved

Contract Documents and Change Orders, the Project has reached Final Completion.

3. Time for Completion of Punch List. Contractor shall only be given a period of no more than twenty (20) days to complete the Punch List for the Project. During the Punch List period, the Contractor's Superintendent and Project Manager shall remain engaged in the Project and shall not be removed or replaced. If the Punch List is not completed at the end of the Punch List time, then Contractor shall issue a valued Punch List within 5 days after the date the Punch List time ends. If Contractor does not issue such a list, the City or Architect may issue a valued Punch List to the Contractor and withhold up to 150% of the value of the Punch List Work.

    a. Extension of Time to Complete Punch List. If Contractor cannot finish the Punch List Work during the time period allotted, the Contractor may make a written request for a Non-Compensable Punch List time extension accompanied by an estimate of the number of additional days it will take to complete the Punch List Work for a written consent from the City to allow continued Punch List Work. Punch List time extensions are a maximum of twenty (20) days for each request and must be accompanied by an itemized valued Punch List.

    b. If there is no valued Punch List accompanying any request or if Contractor intends to undertake Punch List without the continued support and supervision of its Superintendent and Project Manager, the City, Construction Manager or Architect may issue a valued Punch List, reject the Punch List Time Extension and deduct 150% of the valued Punch List.

4. City Rejection of Written Request for Punch List Time Extensions. The City has the option of rejecting Punch List Time Extension requests. The City may proceed and deduct the value of remaining Punch List Work. If the City rejects the Punch List Time Extension request, then Contractor shall cease Work on the Project.

5. Punch List Liquidated Damages to Compensate for Added City Project Costs. If the total time utilized for Punch List exceeds forty (40) days [the original twenty (20) day period, plus an additional twenty (20) day period that has been requested in writing], the Contactor shall be charged Liquidated Damages of at least $1,000 per day for continued Punch List Work to partially compensate the Architect, and Construction Manager's extended time on the Project. This Punch List Liquidated Damage number is based on additional costs for the Architect and Construction Manager to reinspect Punch List items and perform the administration of the Close-out.

6. Starting at sixty (60) days of Punch List (an excessive number of days to complete Punch List), the City shall be entitled to adjust Punch List Liquidated Damages to an estimate of the actual costs incurred to oversee, monitor and inspect the Punch List. If costs exceed $1,000 per day, the anticipated extended contract charges for Architect, Construction Manager, and any other costs that will be incurred due

to the extended Punch List shall be itemized and a daily rate of Punch List Liquidated Damages shall be presented in writing to the Contractor within five (5) days following the receipt of a written request for Punch List Time Extension by the Contractor that extends the Punch List time beyond sixty (60) days. This written notice of actual Punch List Liquidated Damages may be provided to the Contractor at any time following the first written request for Punch List Time extension. The adjusted actual Punch List Liquidated Damage amount shall be applicable as Punch List Liquidated Damages commencing on the fortieth (40th) day of Punch List.

B. Close-Out Requirements for Final Completion of the Project

1. Utility Connections. Buildings shall be connected to water, gas, sewer, and electric services, complete and ready for use. Service connections shall be made and existing services reconnected.

2. As-Builts Up to Date and Complete. The intent of this procedure is to obtain an exact "As-Built" record of the Work upon completion of the project. The following information shall be carefully and correctly drawn on the prints and all items shall be accurately located and dimensioned from finished surfaces of building walls on all As-Built Drawings:

   a. The exact location and elevations of all covered utilities, including valves, cleanouts, etc. must be shown on As-Built Drawings

   b. Contractor is liable and responsible for inaccuracies in As-Built Drawings, even though they become evident at some future date.

   c. Upon completion of the Work and as a condition precedent to approval of Retention Payment, Contractor shall obtain the Inspector's approval of the "As-Built" information.

   d. City may withhold the cost to hire a draftsman and potholing and testing service to complete Record As-Built Drawings at substantial cost if the Contractor does not deliver a complete set of Record As-Built Drawings. This shall result in withholding of between $10,000 to $20,000 per building that does not have a corresponding Record As-Built Drawing.
      i. Any Work not installed as originally indicated on Drawings.
      ii. All Close-Out requirements as noted.
      iii. ADA Work that must be corrected to receive certification.
      iv. Maintenance Manuals. At least thirty (30) days prior to final inspection, three (3) copies of complete operations and maintenance manuals, repair parts lists, service instructions for all electrical and mechanical equipment, and equipment warranties shall be submitted. All installation, operating, and maintenance information and Drawings shall be bound in 8½" x 11" binders. Provide a table of contents in front and all items shall be indexed with tabs. Each manual shall also contain a list of

Subcontractors, with their addresses and the names of persons to contact in cases of emergency. Identifying labels shall provide names of manufactures, their addresses, ratings, and capacities of equipment and machinery.

a) Maintenance manuals shall also be delivered in electronic media for the Project. Any demonstration videos shall also be provided on electronic media.

v. Inspection Requirements. Before calling for final inspection, Contractor shall determine that the following Work has been performed:

b) The Work has been completed.

c) All fire/ life safety items are completed and in working order.

d) Mechanical and electrical Work complete, fixtures in place, connected and tested.

e) Electrical circuits scheduled in panels and disconnect switches labeled.

f) Painting and special finishes complete.

g) Doors complete with hardware, cleaned of protective film relieved of sticking or binding and in working order.

h) Tops and bottoms of doors sealed.

i) Floors waxed and polished as specified.

j) Broken glass replaced and glass cleaned.

k) Grounds cleared of Contractor's equipment, raked clean of debris, and trash removed from Site.

l) Work cleaned, free of stains, scratches, and other foreign matter, replacement of damaged and broken material.

m) Finished and decorative work shall have marks, dirt and superfluous labels removed.

n) Final cleanup.

o) All Work pursuant to the Contract Documents.

p) Furnish a letter to City stating that the City's Representative or other designated person or persons have been instructed in working characteristics of mechanical and electrical equipment.

10.4 Final Acceptance and Payment

A. Following the City's acceptance of the Work, the Contractor shall submit to the City a written statement of the final quantities of unit price items for inclusion in the final payment request. The City shall have the right to adjust any estimate of quantity and to correct any error made in any estimate for payment.

B. When the Work has been accepted there shall be paid to Contractor a sum equal to the Contract Price less any amounts previously paid Contractor and less any amounts withheld by the City from Contractor under the terms of the Contract. The final five percent (5%), or the percentage specified in the Notice Inviting Bids where the City has adopted a finding of substantially complete, shall not become due and payable until as required by Public Contract Code section 7107. If the Contractor

has placed securities with the City as described herein, the Contractor shall be paid a sum equal to one hundred percent (100%) of the Contract Price less any amounts due the City under the terms of the Contract.

C. Unless Contractor advises the City in writing prior to acceptance of the final five percent (5%) or the percentage specified in the Notice Inviting Bids where the City has adopted a finding of completion, or the return of securities held as described herein, said acceptance shall operate as a release to the City of all claims and all liability to Contractor for all things done or furnished in connection with this Work and for every act of negligence of the City and for all other claims relating to or arising out of this Work. If Contractor advises the City in writing prior to acceptance of final payment or return of the securities that there is a dispute regarding the amount due the Contractor, the City may pay the undisputed amount contingent upon the Contractor furnishing a release of all undisputed claims against the City with the disputed claims in stated amounts being specifically excluded by Contractor from the operation of the release. No payments, however, final or otherwise, shall operate to release Contractor or its sureties from the Faithful Performance Bond, Labor and Material Payment Bond, or from any other obligation under this Contract.

D. In case of suspension of the Contract any unpaid balance shall be and become the sole and absolute property of the City to the extent necessary to repay the City any excess in the cost of the Work above the Contract Price.

E. Final payment shall be made no later than 60 Days after the date of acceptance of the Work by the City or the date of occupation, beneficial use and enjoyment of the Work by the City including any operation only for testing, start-up or commissioning accompanied by cessation of labor on the Work, provided that a release of liens and claims has been received from the Contractor pursuant to Civil Code section 8136. In the event of a dispute between the City and the Contractor, the City may withhold from the final payment an amount not to exceed 150% of the disputed amount.

F. Within ten (10) Days from the time that all or any portion of the retention proceeds are received by Contractor, Contractor shall pay each of its Subcontractors from whom retention has been withheld each Subcontractor's share of the retention received. However, if a retention payment received by Contractor is specifically designated for a particular Subcontractor, payment of the retention shall be made to the designated Subcontractor if the payment is consistent with the terms of the subcontract.

ARTICLE 11 -MISCELLANEOUS

11.1 Patents.

A. Contractor shall hold and save the City, Construction Manager, Architect, Engineer, officials, officers, employees, and authorized volunteers harmless from liability of any nature or kind of claim therefrom including costs and expenses for or on account of any patented or unpatented invention, article or appliance manufactured, furnished or used by Contractor in the performance of this Contract.

11.2 Document Retention & Examination

A. In accordance with Government Code section 8546.7, records of both the City and the Contractor shall be subject to examination and audit by the State Auditor General for a period of three (3) years after final payment.

B. Contractor shall make available to the City any of the Contractor's other documents related to the Project immediately upon request of the City.

C. In addition to the State Auditor rights above, the City shall have the right to examine and audit all books, estimates, records, contracts, documents, bid documents, subcontracts, and other data of the Contractor (including computations and projections) related to negotiating, pricing, or performing the modification in order to evaluate the accuracy and completeness of the cost or pricing data at no additional cost to the City, for a period of four (4) years after final payment.

11.3 Notice.

A. All notices shall be in writing and either served by personal delivery or mailed to the other party. Written notice to the Contractor shall be addressed to Contractor's principal place of business unless Contractor designates another address in writing for service of notice. Notice to the City shall be addressed to the City as designated in the Notice Inviting Bids unless the City designates another address in writing for service of notice. Notice shall be effective upon receipt or five (5) Days after being sent by first class mail, whichever is earlier. Notice given by facsimile shall not be effective unless acknowledged in writing by the receiving party.

11.4 Notice of Third Party Claims

A. Pursuant to Public Contract Code section 9201, the City shall provide the Contractor with timely notification of the receipt of any third-party claims relating to the Contract. The City is entitled to recover reasonable costs incurred in providing such notification.

11.5 State License Board Notice

A. Contractors are required by law to be licensed and regulated by the Contractors' State License Board which has jurisdiction to investigate complaints against contractors if a complaint regarding a patent act or omission is filed within four (4) years of the date of the alleged violation. A complaint regarding a latent act or omission pertaining to structural defects must be filed within ten (10) years of the date of the alleged violation. Any questions concerning a contractor may be referred to the Registrar, Contractors' State License Board, P.O. Box 26000, Sacramento, California 95826.

11.6 Assignment of Contract

A. Contractor shall not assign, transfer, convey, sublet or otherwise dispose of the rights or title of interest of any or all of this contract without the prior written consent of the City. Any assignment or change of Contractor's name of legal entity without the written consent of the City shall be void. Any assignment of money due or to

become due under this Contract shall be subject to a prior lien for services rendered or material supplied for performance of Work called for under the Contract Documents in favor of all persons, firms, or corporations rendering such services or supplying such materials to the extent that claims are filed pursuant to the Civil Code, the Code of Civil Procedure or the Government Code.

11.7 Change In Name And Nature Of Contractor's Legal Entity.

A. Should a change be contemplated in the name or nature of the Contractor's legal entity, the Contractor shall first notify the City in order that proper steps may be taken to have the change reflected on the Contract and all related documents. No change of Contractor's name or nature will affect the City's rights under the Contract, including but not limited to the bonds.

11.8 Prohibited Interests

A. No City official or representative who is authorized in such capacity and on behalf of City to negotiate, supervise, make, accept, or approve, or to take part in negotiating, supervising, making, accepting or approving any engineering, inspection, construction or material supply contract or any subcontract in connection with construction of the project, shall be or become directly or indirectly interested financially in the Contract.

11.9 Controlling Law

A. Notwithstanding any subcontract or other contract with any subcontractor, supplier, or other person or organization performing any part of the Work, this Contract shall be governed by the law of the State of California excluding any choice of law provisions.

11.10 Jurisdiction; Venue

A. Contractor and any subcontractor, supplier, or other person or organization performing any part of the Work agrees that any action or suits at law or in equity arising out of or related to the bidding, award, or performance of the Work shall be maintained in the Superior Court of San Bernardino County, California, and expressly consent to the jurisdiction of said court, regardless of residence or domicile, and agree that said court shall be a proper venue for any such action.

11.11 Cumulative Remedies.

A. The duties and obligations imposed by these General Conditions and the rights and remedies available hereunder to the parties hereto are in addition to, and are not to be construed in any way as a limitation of, any rights and remedies available to any or all of them which are otherwise imposed or available by Applicable Laws, by special warranty or guarantee, or by other provisions of the Contract Documents. The provisions of this Article will be as effective as if repeated specifically in the Contract Documents in connection with each particular duty, obligation, right, and remedy to which they apply.

11.12 Survival of Obligations.

A. All representations, indemnifications, warranties, and guarantees made in, required by, or given in accordance with the Contract Documents, as well as all continuing obligations indicated in the Contract Documents, will survive final payment, completion, and acceptance of the Work or termination or completion of the Contract or termination of the services of Contractor.

11.13 Headings.

A. Article and paragraph headings are inserted for convenience only and do not constitute parts of these General Conditions.

11.14 Assignment of Antitrust Actions

A. In accordance with §7103.5(b) of the California Public Contract Code, Contractor and Subcontractors must conform to the following requirements:

1. In entering into a public works contract or a subcontract to supply goods, services, or materials pursuant to a public works contract, Contractor or Subcontractor offer and agree to assign to the awarding body all rights, title, and interest in and to all causes of action it may have under §4 of the Clayton Act (15 U.S.C. Sec. 15) or under the Cartwright Act (Chapter 2 (commencing with §16700) of Part 2 of Division 7 of the Business and Professions Code) arising from purchases of goods, services, or materials pursuant to the public works contract or the subcontract.

2. This assignment must be made and become effective at the time the awarding body tenders to Contractor, without further acknowledgment by the parties.

11.15 All Legal Provisions Included

A. Contractor shall give all notices and comply with all federal, state and local laws, ordinances, rules and regulations bearing on conduct of work as indicated and specified by their terms. References to specific laws, rules or regulations in this Contract are for reference purposes only, and shall not limit or affect the applicability of provisions not specifically mentioned. If Contractor observes that drawings and specifications are at variance therewith, he shall promptly notify City in writing and any necessary changes shall be adjusted as provided for in this Contract for changes in Work. If Contractor performs any Work knowing it to be contrary to such laws, ordinances, rules and regulations, and without such notice to City, he shall bear all costs arising therefrom.

B. Contractor shall be responsible for familiarity with the Americans with Disabilities Act ("ADA") (42 U.S.C. § 12101 et seq.). The Work will be performed in compliance with ADA laws, rules and regulations. Contractor shall comply with the Historic Building Code, including, but not limited to, as it relates to the ADA, whenever applicable.

C. Contractor acknowledges and understands that, pursuant to Public Contract Code section 20676, sellers of "mined material" must be on an approved list of sellers published pursuant to Public Resources Code section 2717(b) in order to supply mined material for this Contract.

D. No City official or representative who is authorized in such capacity and on behalf of City to negotiate, supervise, make, accept, or approve, or to take part in negotiating, supervising, making, accepting or approving any engineering, inspection, construction or material supply contract or any subcontract in connection with construction of the Work, shall be or become directly or indirectly interested financially in the Contract.

E. All provisions of law required to be inserted in the Contract or Contract Documents pursuant to any Applicable Laws shall be and are inserted herein. If through mistake, neglect, oversight, or otherwise, any such provision is not herein inserted or inserted in improper form, upon the application of either party, the Contract or Contract Documents shall be changed by City, at no increase in Contract Price or extension in Contract Times, so as to strictly comply with the Applicable Laws and without prejudice to the rights of either party hereunder.

SECTION 00750 – SPECIAL CONDITIONS

The following supplements modify the General Conditions. Where a portion of the General Conditions is modified and or deleted by these Special Conditions, the unaltered portions of the General Conditions shall remain in effect.

Article 4

4.2 Insurance

The Contractor must carry the appropriate insurance limits as identified by Bid Category. Contractor may choose either Option A or Option B as identified in the tables below.

	Commercial General Liability	Automobile Liability Insurance	Umbrella	Contractor's Pollution Liability Coverage
Option A:	$10,000,000	$5,000,000		$5,000,000/$10,000,000
Option B:	$1,00,000	$1,000,000	$22,000,000	$5,000,000/$10,000,000

5.10 Water Quality Management and Compliance

SWPPP to be provided by the Architect

Article 8

8.3 Time for Completion and Liquidated Damages

A. Time for Completion
   Project Recognized Holidays:
   The project recognizes the following seven (7) holidays ONLY:
   1) New Years' Day,
   2) Memorial Day,
   3) July 4th,
   4) Labor Day,
   5) Thanksgiving Day,
   6) the day following Thanksgiving day, and
   7) Christmas.

ALL other days in the calendar year is considered a Work Day. Any day that the Contractor recognizes as a holiday that is above and beyond the list noted above, Contractor will be expected to be on-site with the correct crew size. Contractor shall include in their base bid all cost associated with any additional holidays Contractor and /or their subcontractor recognizes.
In the event a CONTRACTOR does not perform on all scheduled work days in accordance with the baseline or revised construction schedule a determined value of $500 per day will be assessed. No make up days will be accepted. This will be in addition to actual project delays and Liquidated Damages.

B. Liquidated Damages.

Contractor will be liable to the City for Liquidated Damages for each calendar day of delay in the amount of $1,200.

END OF SPECIAL CONDITIONS

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

PAUL S. LEON
MAYOR

DEBRA PORADA
MAYOR PRO TEM

ALAN D. WAPNER
JIM W. BOWMAN
RUBEN VALENCIA
COUNCIL MEMBERS

SHEILA MAUTZ
CITY CLERK

JAMES R. MILHISER
TREASURER

SCOTT OCHOA
CITY MANAGER

AMENDMENT NO. 1 TO THE PROFESSIONAL SERVICES AGREEMENT BETWEEN THE CITY OF ONTARIO AND SWA GROUP, INC.

1. Parties and Date.

This Amendment No. 1 to the Agreement (as defined herein) is made and entered as of _____, by and between the City of Ontario ("City") and **SWA Group, Inc.**, a 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 Agreement" dated May 21, 2024 ("Agreement").

2.2 Amendment Purpose. The City and Consultant desire to amend the Agreement to revise the scope of services for additional surveying, inspection, and reporting services to the D&C21-005 Grand Park Phase 1 Project increasing the agreement amount by One Hundred Forty-One Thousand Three Hundred Fifty-Nine Dollars ($141,359) for a new total not to exceed amount of Six Million One Hundred Fourteen Thousand and Three Hundred Fifty-Five Dollars ($6,114,355).

2.3 Amendment Authority. This Amendment No. 1 is authorized pursuant to Section 3.7.14 of the Agreement.

3. Terms.

3.1 Amendment. Section 3.1.1 and 3.2.1 of the Agreement is hereby amended in its entirety to read as follows:

> "3.1.1 General Scope of Services. Consultant promises and agrees to furnish to the City all labor, materials, tools, equipment, services, and incidental and customary work necessary to fully and adequately supply the professional Architecture, Landscape Architecture, and Engineering consulting services necessary for the Project ("Services"). The services are more particularly described in Exhibit "A" attached hereto and incorporated herein by reference. All Services shall be subject to, and

performed in accordance with, this Agreement, the exhibits attached hereto and incorporated herein by reference, and all applicable local, state and federal laws, rules and regulations."

"3.2.1 Compensation. Consultant shall receive compensation, including authorized reimbursements, for all Services rendered under this Agreement at the rates set forth in Exhibit "C" attached hereto and incorporated herein by reference. The total compensation shall not exceed **Six Million One Hundred Fourteen Thousand and Three Hundred Fifty-Five Dollars ($6,114,355)** 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."

Exhibit A is hereby amended and replaced with Attachment A attached hereto and incorporated herein by reference.

3.2 Continuing Effect of Agreement. Except as amended by this Amendment No. 1, all other provisions of the Agreement remain in full force and effect and shall govern the actions of the parties under this Amendment No. 1. From and after the date of this Amendment No. 1, whenever the term "Agreement" appears in the Agreement, it shall mean the Agreement as amended by this Amendment No. 1.

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. 1.

3.4 Severability. If any portion of this Amendment No. 1 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. 1 TO THE PROFESSIONAL SERVICES AGREEMENT BETWEEN THE CITY OF ONTARIO AND SWA GROUP, INC.

IN WITNESS WHEREOF, the Parties have entered into this Amendment No. 1 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

SWA GROUP, INC.

By: _____

Its: _____

Printed Name: _____

By: _____

Its: _____

Printed Name: _____

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

swa Laguna Beach

570 Glenneyre Street
Laguna Beach, California
92651-2453
+1.949.497.5471
www.swagroup.com

Sean O'Malley
Xiao Zheng
Dhaval Barbhaya
Stephen Rydzon

July 31, 2024

City of Ontario
1333 S. Bone View Avenue
Ontario, CA 91764

Attention: Dan Beers, Design & Construction – Principal Project Manager
Subject: Extra Work Authorization Request – Purchase Order No. PO-03528
Design & Preparation of the Construction Plans for the Ontario Grand Park Project Phase 1
Ontario, San Bernardino County, California (ONTT402)

Dear Dan:

This letter is in response to your request for SWA's team to provide Additional Services on the subject project. The scope of these services will be:

A. Additional Engineering Services:

    1. Alternative services as outlined in attached Exhibit A.

B. Coordination with the engineering team.

These services will be provided for the fixed lump sum of One Hundred Forty-One Thousand Three Hundred Fifty-Nine (141,359) Dollars, under the terms and conditions of our Professional Services Agreement with you dated May 21, 2024

In order to meet the schedule requirement, we are proceeding with the work as directed by Dan Beers, prior to receiving your written authorization. Under these circumstances, it is understood that you are responsible for payment for these services. If you are not in agreement with these conditions, please notify us to stop work on these services immediately.

We request your written authorization for these services.

If this is not your understanding, or if you have questions regarding the above, please contact Principal Steve Rydzon.

Sincerely yours,

SWA Group



Sean O'Malley
Contracting Agent
Landscape Architect, CA License #3286
Landscape Architects are licensed by the State of California

701 N. Parkcenter Drive, Santa Ana, CA 92705
www.tait.com | 714.560.8200

July 26, 2024
Mr. Steve Rydzon, PLA, ASLA
SWA
570 Glenneyre Street
Laguna Beach, CA 92651-2453

Re: ONTARIO GRAND PARK REQUEST FOR AUTHORIZATION FOR ALTENRATE WORK ITEMS

Per request from City of Ontario, TAIT has prepared the following scope of work document that outlines the previously proposed alternate work tasks (ALT 1 -8) which were included in our original proposal as well as the newly requested alternate work tasks (ALT 12-15). This proposal is based on the previously submitted proposal for which all terms and conditions will be based. Work on the following tasks will not be initiated without prior approval from the City.

SCOPE OF WORK

Alt 1: Pickup Survey & Drone Aerial Process
Scope includes setting field aerial control, flight of drone aerial survey, and office post processing of the drone aerial survey to create a new aerial background and contour. Scope also includes processing of color orthographic image for use in backgrounds. This task will be required if the existing aerial survey is outdated and will be essential in validating the final earthwork figures.

Alt 2: Full Street Cross sections on Grand Park Avenue
Scope includes Conducting topographic pickup survey and post office processing for street sections on Grand Park Street from Archibald to the eastern limits of Grand Park Street. Purpose of survey will be to verify design join conditions at the perimeter of the site. If design survey data is not available this task will be required in order to complete the on-site park grading efforts.

Alt 3: Half Street Sections on Archibald, Euclid, & Haven
Scope includes Conducting topographic pickup survey and post office processing for half street sections (where widening is required) or parkway survey (where ultimate conditions exist) on Archibald Avenue, Eucalyptus Avenue, and Haven Avenue. Purpose of survey will be to verify design join conditions at the perimeter of the site. If design survey data is not available this task will be required in order to complete the on-site park grading efforts.

Alt 4: Full Boundary & Encumbrance Mapping
This task includes office processing hours to review and draft the existing record boundary and encumbrances as reflected in a single title report. This does not include a boundary survey or final boundary mapping. This task will be required should there not be an existing condition encumbrance map and correlating preliminary title report that could be provided to TAIT for use as background and reference purposes.

Alt 5: Dip Utility Inverts
This task includes field survey hours required to dip existing sewer, storm drain, and other utilities. Task assumes a max of three mobilizations up to three field days. This task will be required should there not be any existing survey data verifying as-built elevations for critical utility joins.

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Alt. 8. Utility Locating/Potholing

The need for utility locating/potholing will be reviewed as part of the initial design phase of this project. Depending on the alternative selected and based on the City's desire to either verify any unknown crossings during design or defer to construction, TAIT will work with the City to obtain location specific proposals for any necessary utility locating, potholing, or tracing that may be desired. TAIT has provided a budgetary fee of $20,000 to cover the costs of any anticipated utility locating services on this contract. Upon authorization of the alternate work item, TAIT will obtain bids from qualified contractors and will work with the City to maximize this budget item.

Alt. 12. Mass Grading SWPPP & Erosion Control Plans

The proposed design will include requirements of the County of San Bernardino. Scope includes:

- Per the requirements of the new General Permit, Erosion Control Plans will be prepared for the following stages of design:
  - Existing Condition Erosion Control Plan
  - Mass Graded Condition Erosion Control Plan
- Standards and details will be provided on the plan to protect drainage appurtenances and other improvements.
- TAIT will research available data to complete the Application for Notice of Intent (NOI). The NOI information will be entered into the State's SMARTS on-line system after the owner has set up the site on the system. TAIT will assist the owner however, the owner will be required to complete the sections and requirements of the SMARTS system and submit payment for the permit coverage as required by the Permit.
- The Erosion Control Plan will be prepared to supplement the Storm Water Pollution Prevention Plan (SWPPP) and prepared in conjunction with the NOI. As the Qualified SWPPP Developer (QSD), TAIT will prepare the SWPPP for electronic submittal on the SMARTS system.
- As part of the California General Permit (CGP), a designated Legally Responsible Person (LRP) will be required to upload the Permit Registration Documents (PRD's) for your site. TAIT will provide the engineering documents to the LRP for their use.
- The General Contractor (GC) will be responsible for the Qualified SWPPP Practitioner (QSP). The QSP will file the annual report and close the project with the Notice of Termination.
- This task does NOT includes the newly required QSD inspections which are estimated as part of a separate alternate task.
- This task does NOT include final precise grad condition erosion control plans which are also estimated as a separate alternate task.
- It is assumed that the City's NOI will remain active across the Mass Grading and Precise Grading phases and that a separate SWPPP will not be required for subsequent phases of work. Updates to the uploaded documents are assumed to be conducted as part of a separate task.

Alt. 13. Mass Grading QSD Inspections

Per the requirements of the new California General Permit, the designated QSD must conduct construction field inspections in addition to the required QSP inspections. This task assumes a maximum of 4 inspections and that construction mass grading will not extend beyond a 12 month period.

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Alt. 14. Precise Grading Erosion Control Plan & SWPPP Updates

This task includes the hours required to prepare construction phase erosion control plans for the precise grading phase of the project. It is assumed that the precise grading plans will be included in the bid documents. TAIT will also upload the new Erosion control plan and update the SWPPP documents for the subsequent precise grading phase.

Alt. 15. Precise Grading QSD Inspections

Per the requirements of the new California General Permit, the designated QSD must conduct construction field inspections in addition to the required QSP inspections. This task assumes a maximum of 8 inspections and that precise grading will not extend beyond a 24 month period.

CITY OF ONTARIO *Agenda Report* **October 15, 2024**	**SECTION:** **CONSENT CALENDAR**
Department: Utilities Prepared By: Thomas Palmieri Staff Member Presenting: Scott Burton, Utilities General Manager Reviewed By: Dennice Raygoza, Albert G Gastelum, Michael Sigsbee Approved By:	Submitted To: Council/OHA Approved: _____ Continued To: _____ Denied: _____ Item No: 13

SUBJECT: **A CONSTRUCTION CONTRACT WITH BEST DRILLING AND PUMP, INC. FOR THE DRILLING OF WELL NO. 53 PROJECT, ONTARIO MUNICIPAL UTILITIES COMPANY CONTRACT NO. UT 1063**

RECOMMENDATION: That the City Council approve the plans and specifications and award Contract No. UT 1063 to Best Drilling and Pump, Inc. of Colton, California, for the Drilling of Well No. 53 Project, in the amount of $1,919,431 plus a 15% contingency of $287,915, for a total not-to-exceed amount of $2,207,346, a term of 100 calendar days after issuance of notice to proceed, and authorize the City Manager, or his designee, to execute said contract and file a notice of completion at the conclusion of all construction activities related to the project.

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

FISCAL IMPACT: The recommended Construction Contract award to Best Drilling and Pump, Inc. is for $1,919,431 plus a 15% contingency of $287,915, for a total not-to-exceed amount of $2,207,346.

The Fiscal Year 2024-25 Adopted Capital Improvement Program Budget includes appropriations in the amount of $1,500,000 from the Water Capital Fund. If approved, additional appropriations in the Water Capital Fund will be included in the next Quarter Budget Update Report to the City Council as needed. Appropriations were not originally included in the budget to avoid over-appropriation of funds. This project is one of several projects identified in the recent Water Bond issuance approved by the City Council on July 17, 2024. There is no impact to the General Fund.

BACKGROUND & ANALYSIS: The City currently has eighteen (18) active groundwater wells. The Water Master Plan identifies the need for additional groundwater wells to expand existing water

supply capacity and reliability to meet the future water demands of Ontario. Proposed Well No. 53 will be located on the southwest side of Doubleday Avenue, approximately 950 feet west of Dupont Avenue (See Figure 1). Well No. 53 will be the second of four new wells that will be installed around the east side of Ontario International Airport.

In August 2022, the City contracted with Albert A. Webb Associates (Consultant) for drilling and equipping design of Well No. 53. The drilling design portion of the scope of work included a preliminary design report (PDR) which, upon its completion and approval, the City authorized the Consultant to proceed with creating a complete set of construction plans and specifications to drill and construct an approximately 1,000 foot deep well that is anticipated to produce 2,000 to 3,000 gallons per minute of drinking water. The work under this construction contract consists of drilling, installation of well conductor casing and louvered well screen, well capacity testing, and other ancillary work necessary to provide a potable water well.

Once the well drilling construction phase under the proposed contract has been completed, the Consultant will proceed with design of the well housing facility and equipment design that will then be constructed under a separate contract (Phase 2). That design will consist of an aboveground masonry building, well pump and motor, an on-site chlorine generation system, instrumentation, and landscaping.

On July 15, 2024, five (5) bids were received for Bid No. 1823, The Drilling of Well No. 53 OMUC Contract No. UT 1063. The bids ranged from a low bid amount of $1,919,431 to a high bid amount of $3,774,013 as summarized below.

Bidder	**Location**	**Amount**
Best Drilling and Pump, Inc.	Colton, CA	$1,919,431
Nor-Cal Pump & Drilling, Inc.	Yuba City, CA	$1,926,925
South West Pump & Drilling, Inc.	Coachella, CA	$2,269,037
WildRose Drilling	Rocklin, CA	$2,269,037
Bakersfield Well & Pump Company	Bakersfield, CA	$3,774,013

Staff reviewed bids for responsiveness and pricing and recommends awarding to Best Drilling and Pump, Inc.

ENVIRONMENTAL REVIEW: The Project is categorically exempt from the requirements of the California Environmental Quality Act (CEQA) pursuant to Section 15332 (Class 32, In-Fill Development Projects) of the CEQA Guidelines.

Figure 1

Equipping Well No. 53 Project

City of Ontario



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

PAUL S. LEON
MAYOR

DEBRA PORADA
MAYOR PRO TEM

ALAN D. WAPNER
JIM W. BOWMAN
RUBEN VALENCIA
COUNCIL MEMBERS

SHEILA MAUTZ
CITY CLERK

JAMES R. MILHISER
TREASURER

SCOTT OCHOA
CITY MANAGER

SECTION 00500
CONTRACT

THIS CONTRACT is made and entered as of _____, in the County of San Bernardino, State of California, by and between the City of Ontario, hereinafter called City, and **Best Drilling and Pump, Inc.**, hereinafter called Contractor. The City and the Contractor for the considerations stated herein agree as follows:

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

OMUC CONTRACT NO. UT 1063
DRILLING OF WELL NO. 53 PROJECT

The Contractor and its surety shall be liable to the City for any damages arising as a result of the Contractor's failure to comply with this obligation.

ARTICLE 2. TIME FOR COMPLETION. Time is of the essence in the performance of the Work. The Work shall be commenced on the date stated in the City's Notice to Proceed. The Contractor shall complete all Work required by the Contract Documents within **One Hundred (100) calendar days** from the commencement date stated in the Notice to Proceed, herein after the Contract Time. By its signature hereunder, Contractor agrees the Contract Time for completion set forth above is adequate and reasonable to complete the Work.

ARTICLE 3. CONTRACT PRICE. The City shall pay to the Contractor as full compensation for the performance of the Contract, subject to any additions or deductions as provided in the Contract Documents, and including all applicable taxes and costs, the sum of **One Million, Nine Hundred Nineteen Thousand, Four Hundred Thirty-One** Dollars ($**1,919,431**), hereinafter the Contract Price. Payment shall be made as set forth in the General Conditions.

ARTICLE 4. LIQUIDATED DAMAGES. The Contractor acknowledges that the City will sustain actual damages for each and every day completion of the Project is delayed beyond the Contract Time. Because of the nature of the Project, it would be impracticable or extremely difficult to determine the City's actual damages. Accordingly, as provided in Government Code section 53069.85, it is agreed that the Contractor will pay the City the sum of **$5,200** for each and every calendar day of delay in completing the Work beyond the time prescribed in the Contract Documents for finishing the Work, as Liquidated Damages and not as a penalty or forfeiture. In the event the Liquidated Damages are not paid, the Contractor agrees the City may deduct that amount from any money due or that may become due the Contractor under the Contract. This

Article does not affect the City's rights to other damages or remedies specified in the Contract Documents or allowed by law.

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

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

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

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

1. Notice Inviting Bids
2. Instructions to Bidders
3. Bid Form
4. Contractor's Certificate Regarding Workers' Compensation form
5. Bid Bond
6. List of Subcontractors form
7. Contractor Information and Experience Form
8. Non-Collusion Declaration form
9. Public Works Contractor Registration Certification form
10. Iran Contracting Act Certification form
11. Contract
12. Performance Bond
13. Payment Bond
14. Environmental documents and approvals (If Applicable)
15. General Conditions
16. Special Conditions
17. Standard Specifications for Public Works Construction (Greenbook), **Latest** Edition, except Sections 1-9
18. Technical Specifications
19. Addenda (If Applicable)
20. Plans and Drawings
21. Approved and fully executed change orders
22. Federal Requirements (If Applicable)
23. Any other documents contained in or incorporated into the Contract

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

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

supersede any prior agreement of the parties.

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

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

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

ARTICLE 9. CONTRACTOR REGISTRATION AND LABOR COMPLIANCE. Pursuant to Labor Code sections 1725.5 and 1771.1, all contractors and subcontractors that wish to bid on, be listed in a bid proposal, or enter into a contract to perform public work must be registered with the Department of Industrial Relations. No bid will be accepted nor any contract entered into without proof of the contractor's and subcontractors' current registration with the Department of Industrial Relations to perform public work. This Project will be subject to compliance monitoring and enforcement by the Department of Industrial Relations. Notwithstanding the foregoing, the contractor registration requirements mandated by Labor Code Sections 1725.5 and 1771.1 shall not apply to work performed on a public works project that is exempt pursuant to the small project exemption specified in Labor Code Sections 1725.5 and 1771.1.

This Project is subject to compliance monitoring and enforcement by the Department of Industrial Relations. It shall be the Contractor's sole responsibility to evaluate and pay the cost of complying with all labor compliance requirements under this Contract and applicable law.

ARTICLE 10. FALSE CLAIMS. Contractor acknowledges that if a false claim is submitted to the City, it may be considered fraud and Contractor may be subject to criminal prosecution. Contractor acknowledges that the False Claims Act, California Government Code sections 12650, et seq., provides for civil penalties where a person knowingly submits a false claim to a public entity. These provisions include within their scope false claims made with deliberate ignorance of the false information or in reckless disregard of the truth or falsity of the information. In the event the City seeks to recover penalties pursuant to the False Claims Act, it is entitled to recover its litigation costs, including attorneys' fees. Contractor hereby acknowledges that the filing of a false claim may the Contractor to an administrative debarment proceeding wherein Contractor may be prevented from further bidding on public contracts for a period of up to five (5) years.

[REMAINDER OF PAGE LEFT INTENTIONALLY BLANK]

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

CITY OF ONTARIO

By: _____
Scott Ochoa
City Manager

ATTEST:

By: _____
Sheila Mautz, City Clerk

APPROVED AS TO FORM:

By: _____
Best Best & Krieger LLP
City Attorney

Best Drilling and Pump, Inc.
President OR Vice President

By: _____

Its: _____

Printed Name: _____

Secretary OR Treasurer

By: _____

Its: _____

Printed Name: _____

_____
Contractor's License Number and Classification

_____
DIR Registration Number

END OF CONTRACT

CITY OF ONTARIO *Agenda Report* **October 15, 2024**	**SECTION:** **CONSENT CALENDAR**
Department: Public Works Prepared By: Daniel P Beers Staff Member Presenting: Tito Haes, Executive Director Public Works Reviewed By: Andrea Ampig, Bonnie Tam Approved By:	Submitted To: Council/OHA Approved: _____ Continued To: _____ Denied: _____ Item No: 14

SUBJECT: **AWARD OF 24 CONSTRUCTION CONTRACTS IN CONNECTION WITH THE CONSTRUCTION OF THE ONTARIO PROFESSIONAL BASEBALL STADIUM, AWARD A CONSTRUCTION CONTRACT TO BOMEL CONSTRUCTION FOR THE PROFESSIONAL BASEBALL STADIUM PARKING STRUCTURE, AUTHORIZE AN AGREEMENT WITH KIZH NATION RESOURCE MANAGEMENT FOR EARTHWORK MONITORING FOR THE ONTARIO SPORTS COMPLEX, APPROVE AN AMENDMENT TO THE PROFESSIONAL SERVICES AGREEMENT WITH RMA GROUP FOR SPECIAL INSPECTION FOR THE PROFESSIONAL BASEBALL STADIUM AND SPORTS COMPLEX, APPROVE AN AMENDMENT TO THE PROFESSIONAL SERVICES AGREEMENT WITH TILDEN-COIL FOR CONSTRUCTION MANAGEMENT OF THE ONTARIO SPORTS COMPLEX, AND CONSIDER, AND ADOPT A RESOLUTION FOR THE INTENT TO ISSUE TAX-EXEMPT OBLIGATIONS**

RECOMMENDATION: That the City Council take the following actions:

A. Authorize the City Manager, or his designee, to execute 24 Construction Contracts to provide various construction services for Bid No. 1831 - D&C23-011 - Minor League Baseball Stadium in the amount of $131,994,503 and authorize a combined contingency of $19,700,000 for a total not-to-exceed contract amount of $151,694,503,
   1. 01 - Concrete, Structural – Gonsalves & Santucci, Inc. dba Conco: $18,387,000
   2. 03 - Masonry & Brick Veneer – Haxton Masonry, Inc.: $5,631,000
   3. 05 - Railings – KCB Towers, Inc.: $4,395,560
   4. 07 - Roofing – Commercial Roofing Systems, Inc.: $3,099,320
   5. 08 - Waterproofing – Best Contracting Services, Inc.: $1,308,000
   6. 09 - Sheet Metal – Best Contracting Services, Inc.: $5,299,448
   7. 10 - Door, Frames, Hardware – Star Hardware, Inc.: $874,900
   8. 11- Aluminum & Glazing – Golden State Glazing, Inc.: $3,312,066
   9. 12 - Framing, Drywall & Insulation – Caston, Inc.: $7,258,585
   10. 13 - Acoustical Ceiling & Treatment – Southcoast Acoustical Interiors, Inc.: $613,250
   11. 14 - Finish Flooring – Progressive Surface Solutions, LLC: $1,348,000
   12. 16 - Ceramic Tile – Continental Marble & Tile Co.: $1,611,806
   13. 17 - Painting & Wall Covering – Magnum Drywall, Inc.: $1,048,000

14. 18 - General Package – Inland Building Construction Companies, Inc.: $12,355,400
15. 19 - Aquatics – California Commercial Pools, Inc.: $2,548,000
16. 21 - Food Service Equipment – Kamran and Company, LLC: $5,429,700
17. 22 - Fire Sprinkler – JPI Development Group, Inc.: $1,315,000
18. 23 - Plumbing – Continental Plumbing, Inc.: $8,194,613
19. 24 - Site Utilities – Kerns, Inc.: $3,280,580
20. 25 - HVAC – Westland Mechanical: $7,115,000
21. 26 - Electrical & Low Voltage – Rancho Pacific Electric Construction, Inc.: $25,999,500
22. 27 - Landscape & Irrigation – Brightview Landscape Development, Inc.: $7,433,570
23. 28 - Fences & Gates – Econo Fence, Inc.: $2,009,205
24. 29 - Asphaltic Paving – Terra Pave, Inc.: $2,127,000, and

B. That the City Council reject bid from Brady West, Inc. as non-responsive on Bid No. 1831 - D&C23-011 – Minor League Baseball Stadium in the Ontario Ballpark Section 12 Framing and Drywall and award the bid to the next lowest responsible bidder, and
C. That the City Council reject all bids received for Bid No. 1831 -D&C23-011 – Minor League Baseball Stadium in the Ontario Ballpark Sections 02 Site Concrete; 06 Finish Carpentry; 20 Signage and authorize Staff to solicit new bids for these trades in relation to the Professional Baseball Stadium, and
D. That the City Council reject the bid protest from CMD Electric for Bid No. 1831 - D&C23-011 Minor League Baseball Stadium, and
E. Authorize the City Manager, or his designee, to execute a Construction Contract with Bomel Construction Company, Inc., of Ontario, California, to provide construction services for Bid No. 1829 - D&C23-011B Professional Baseball Stadium Parking Structure in the amount of $31,225,000 and authorize a contingency of $4,700,000 for a total not-to-exceed contract amount of $35,925,000 and waive any and all irregularities and reject any and all protests, including by way of illustration and not by limitation the protest of Swinerton Builders , and
F. Authorize an agreement with Kizh Nation Resources Management to monitor all groundwork to ensure the Native American Cultural Resources are properly mitigated per the approved Environmental Impact Report in the amount of $186,046, and
G. Authorize the City Manager or his designee to execute Amendment No. 1 to the Professional Services Agreement with RMA Group, of Rancho Cucamonga, California, to provide on-call geotechnical consulting, materials testing and special inspection for the Ontario Sports Complex Project in the amount of $2,242,360 for a total not-to-exceed contract amount of $2,442,360, and
H. Authorize the City Manager or his designee to execute Amendment No. 5 to the Professional Services Agreement with Tilden-Coil Constructors, Inc., of Riverside, California, for the procurement of long lead electrical gear for the Professional Baseball Stadium and Professional Baseball Stadium Parking Structure, fee adjustment for the mass grading and general conditions of the Professional Baseball Stadium in the amount of $14,066,782 for a total not-to-exceed contract amount of $45,968,259, and
I. Authorize the extension of working hours to be Monday through Saturday from 6:00 am to 11:00 pm and on Sunday from 8:00 am to 6:00 pm for the duration of the construction of the Professional Baseball Stadium and Parking Structure, and
J. Authorize the City Manager or his designee to execute all documents required for the completion of the project including, but not limited to, contracts, agreements, assessments, easements, reduction of retention accounts, and filing a notice of completion at the

conclusion of all construction related activities; and

K. Consider and adopt a Resolution making a declaration of intent to issue tax-exempt obligations for the City's public capital improvements.

THE FOLLOWING COUNCIL GOALS ARE BEING ACHIEVED:

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

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

FISCAL IMPACT:

24 Construction Contracts- Professional Baseball Stadium

The Fiscal Year 2024-25 Adopted Budget includes appropriations in the Capital Projects-Measure Q Fund for the Regional Sports Complex-Professional Baseball Stadium project. The proposed contract award to the 24 contractors for the construction of the D&C23-011 Minor League Baseball Stadium is in the amount of $131,518,716 plus a combined contingency of $19,000,000 for a total not-to-exceed contract amount of $150,518,716.

Bomel Construction

The Fiscal Year 2024-25 Adopted Budget includes appropriations in the Capital Projects-Measure Q Fund for the Regional Sports Complex-Professional Baseball Stadium Parking Structure project. The proposed Construction Contract with Bomel Construction for the construction of the D&C23-011B Professional Baseball Stadium Parking Structure is in the amount of $31,225,000 plus a contingency of $4,700,000 for a total not-to-exceed contract amount of $35,925,000.

Kizh Nation Resources Management

The Fiscal Year 2024-25 Adopted Budget includes appropriations in the Capital Projects-Measure Q Fund for the Regional Sports Complex-Sports Fields project. The proposed agreement with Kizh Nation Resources Management is in the amount of $186,046.

RMA Group

The Fiscal Year 2024-25 Adopted Budget includes appropriations in the Capital Projects-Measure Q Fund for the Regional Sports Complex-Sports Fields project. The proposed Amendment No. 1 to the Professional Services Agreement with RMA Group for on-call geotechnical consulting, materials testing and special inspection for the Ontario Sports Complex Project is in the amount of $2,242,360 for a total not-to-exceed contract amount of $2,442,360.

Tilden-Coil Constructors, Inc.

The Fiscal Year 2024-25 Adopted Budget includes appropriations in the Capital Projects-Measure Q Fund for the Regional Sports Complex-Professional Baseball Stadium, Regional Sports Complex-Professional Baseball Stadium Parking Structure, and Regional Sports Complex-Sports Fields projects. The proposed Amendment No. 5 to the Professional Services Agreement with Tilden-Coil Constructors, Inc. includes the procurement of long lead electrical gear for the Professional Baseball Stadium in the amount of $1,908,839 and the Professional Baseball Stadium Parking Structure in the amount of $412,105, the fee adjustment for the mass grading in the amount of

$588,673, and the fee adjustment for general conditions of the Professional Baseball Stadium in the amount of $11,157,165. The total amount for the proposed Amendment No. 5 is in an amount of $14,066,782 for a total not-to-exceed contract amount of $45,968,259. The total not-to-exceed contract amount of $45,968,259 includes work performed for other projects citywide.

BACKGROUND & ANALYSIS: On August 6, 2024, the City Council approved the Environmental Impact Report for the Ontario Regional Sports Complex. The Ontario Regional Sports Complex includes a new Professional Baseball Stadium located at the Northwest corner of Riverside Drive and Hellman Avenue. On September 17, 2024, the City Council awarded the Structural Steel and Grading Contracts for the Professional Baseball Stadium at the Ontario Regional Sports Complex.

Ontario Municipal Code Section 5-29.09 states construction activity that produces loud noise is only allowed between 7:00 am and 6:00 pm on Monday through Friday, and on Saturday and Sunday between 9:00 am and 6:00 pm. Staff is proposing to extend the construction hours to Monday through Saturday from 6:00 am to 11:00 pm, and on Sunday from 8:00 am to 6:00 pm. The proposed extended construction hours will allow the City to meet their contractual obligation with the contracted minor league baseball team to have the Professional Baseball Stadium completed and operational by April 1, 2026.

On September 17, 2024, ninety-nine (99) bids were received for Bid No. 1831 - D&C23-011 – Minor League Baseball Stadium. Below is a list of the lowest responsible/responsive bids received:

Bid Package No.	Bidder	Location	Amount
01 - Concrete, Structural	Gonsalves & Santucci, Inc. dba Conco	Concord, CA	$18,387,000
03 - Masonry & Brick Veneer	Haxton Masonry, Inc.	Yuma, AZ	$5,631,000
05 - Railings	KCB Towers, Inc	Banning, CA	$4,395,560
07 - Roofing	Commercial Roofing Systems, Inc.	Arcadia, CA	$3,099,320
08 - Waterproofing	Best Contracting Services, Inc.	Gardena, CA	$1,308,000
09 - Sheet Metal	Best Contracting Services, Inc.	Gardena, CA	$5,299,448
10 - Door, Frames, Hardware	Star Hardware	Ontario, CA	$874,900
11- Aluminum & Glazing	Golden State Glazing, Inc.	Yucaipa, CA	$3,278,946
12 - Framing, Drywall & Insulation	Caston, Inc.	San Bernadino, CA	$7,186,000
13 - Acoustical Ceiling & Treatment	Southcoast Acoustical Interiors, Inc.	Fontana, CA	$607,118
14 - Finish Flooring	Progressive Surface Solutions, LLC	Tustin, CA	$1,348,000

16 - Ceramic Tile	Continental Marble & Tile Co.	Corona, CA	$1,611,806
17 - Painting & Wall Covering	Magnum Drywall, Inc.	San Jose, CA	$1,048,000
18 - General Package	Inland Building Construction Companies, Inc.	San Bernardino, CA	$12,355,400
19 - Aquatics	California Commercial Pools	Glendora, CA	$2,548,000
21 - Food Service Equipment	Kamran and Company, LLC	Santa Barbara, CA	$5,429,700
22 - Fire Sprinkler	JPI Development Group, Inc.	Murrieta, CA	$1,315,000
23 - Plumbing	Continental Plumbing, Inc.	Jurupa Valley, CA	$8,194,613
24 - Site Utilities	Kerns, Inc.	Hesperia, CA	$3,247,775
25 - HVAC	Westland Mechanical	Rancho Cucamonga, CA	$7,043,850
26 - Electrical & Low Voltage	Rancho Pacific Electric Construction, Inc.	Rancho Cucamonga, CA	$25,739,505
27 - Landscape & Irrigation	Brightview Landscape Development, Inc.	Irvine, CA	$7,433,570
28 - Fences & Gates	Econo Fence, Inc.	Riverside, CA	$2,009,205
29 - Aphaltic Paving	Terra Pave, Inc.	Whittier, CA	$2,127,000

Tilden – Coil Constructors, Inc., the City's Construction Management Company for the Sport Complex Project, and City Staff reviewed each bid and each company's qualifications and responsiveness to the bid requirements. Based on the credentials, pricing, and reference checks, Staff recommends awarding Construction Contract D&C23-011 Minor League Baseball Stadium to all the above referenced companies.

Bid packages 02-Site Concrete; 06-Finish Carpentry; 20-Signage had inconsistent bids, and several bidders were deemed non-responsive. To get a competitive and fair cost, Staff recommends rejecting all bids for these categories and re-bid. On September 17, 2024, the City Council awarded a contract for Bid Package No. 04- Steel: Structural & Misc. to Anderson Charneskey Structural Steel. Bid Package No. 04 was bid earlier than the rest of the Professional Baseball Stadium due to the long lead time to manufacture the steel columns. Bid Package No. 15 was not used and the work was combined with Bid Package No. 16 to create one bid package.

Brady West, Inc. bid for package 12-Framing and Drywall, was deemed non-responsive because it was not secured by a bid bond in the form required by the project manual and is therefore substantively deficient. The bond Brady West, Inc. supplied does not include the attorney's fees language required by the bond required per the project manual. Staff recommends that Brady West, Inc.'s bid is deemed non-responsive and to award the contract to the next lowest bidder.

Bid package 26, Rancho Pacific Electric Construction is the apparent low bidder. On September 27,

2024, the City received a protest letter from CMD Electric Inc. stating that due to local preference, CMD Electric should be the second lowest bidder. CMD Electric Inc. also stated that Rancho Pacific Electric was non-responsive. Staff consulted with the City Attorney who wrote CMD Electric Inc. a letter on October 1, 2024, stating that Rancho Pacific Electric Construction is the lowest responsive and responsible bidder. CMD Electric Inc.'s protest is without merit and Rancho Pacific Electric Construction remains the lowest responsible and responsive bidder.

On September 17, 2024, four (4) bids were received for Bid No. 1829 - D&C23-011B – Minor League Baseball Stadium Parking Structure. The bids ranged from $29,754,637 to $35,526,934. The bids are summarized below:

Bidder	**Location**	**Amount**
McCarthy Building Companies, Inc. – Withdrew due to mathematical error	Newport Beach, CA	$29,754,637
Bomel Construction	Ontario, CA	$31,225,000
Swinerton	Santa Ana, CA	$34,992,000
W.M Klorman Construction	Woodland Hills, CA	$35,526,934

Bomel Construction, of Ontario, California, submitted the lowest responsible bid that met all the required specifications with a base cost of $31,225,000. Based on the credentials, pricing, and reference checks, Staff recommends awarding Construction Contract D&C23-011B Minor League Baseball Stadium Parking Structure to Bomel Construction. The City received a protest letter from Swinerton Builders alleging that Bomel Construction's bid was non-responsive. City staff determined that Bomel Construction's bid was responsive, that Bomel Construction is responsible, and that the contract should be awarded to Bomel Construction's bid. City staff recommends that the City Council waive any and all irregularities and reject any and all protests including by way of illustration and not by limitation the protest of Swinerton Builders.

On August 6, 2024, the City Council approved the Environmental Impact Report for the Ontario Sports Complex. Part of the Environmental Impact Report was to have the local indigenous tribe monitor earth moving activities to ensure the proper treatment of any Native American artifacts that might be unearthed. Per the Environmental Impact Report, Kizh Nation Resources Management is the local Native American Tribe that will be performing the monitoring of all the Earthwork that occurs during the construction of the Ontario Sports Complex.

On May 2, 2023, the City Council approved a Professional Services Agreement with RMA Group. RMA Group performed the phase 1 geo-technical report for the Ontario Sports Complex project. The construction of the Professional Baseball Stadium, Parking Structure, and Offsite Improvements require geotechnical consulting, materials testing, and special inspection. Staff recommends approving Amendment No. 1 to the Professional Services Agreement with RMA Group due to its familiarity with the project.

There is currently a long lead time for the procurement of electrical switch gears. The Amendment to the Professional Services Agreement with Tilden-Coil Constructors, Inc. will allow for Tilden-Coil

Constructors, Inc. to purchase the Electrical Switch Gear for the Professional Baseball Stadium and Professional Baseball Stadium Parking Structure. The Amendment also includes fee adjustments for the mass grading and general conditions of the Professional Baseball Stadium. Tilden-Coil's fee is based upon the actual cost of the project. Since the mass grading and the Professional Baseball Stadium have been bid and the actual costs have been received, a fee adjustment must be applied.

The City intends to finance the acquisition, construction, and installation of certain public capital improvements, including the Regional Sports Complex project and all associated on-site and offsite infrastructure and public art associated therewith, with the proceeds of the sale of tax-exempt obligations. Staff recommends approval of a Reimbursement Resolution, which permits the City to reimburse itself for certain costs incurred prior to the issuance of bonds, as allowed under the Internal Revenue Code.

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

PAUL S. LEON
MAYOR

DEBRA PORADA
MAYOR PRO TEM

ALAN D. WAPNER
JIM W. BOWMAN
RUBEN VALENCIA
COUNCIL MEMBERS

SHEILA MAUTZ
CITY CLERK

JAMES R. MILHISER
TREASURER

SCOTT OCHOA
CITY MANAGER

SECTION 00500 – CONTRACT FOR CONSTRUCTION

This Contract for Construction ("Contract"), No. D&C23-011 is made and entered as of _____, by and between City of Ontario, with its principal place of business at 303 East "B" Street, Ontario, CA 91764, sometimes hereinafter called the "City" and **Gonsalves & Santucci, Inc. dba Conco**, sometimes hereinafter called "Contractor."

WITNESSETH: That the parties hereto have mutually covenanted and agreed, and by these presents do covenant and agree with each other as follows:

ARTICLE 1. SCOPE OF WORK.

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

Ontario Ballpark - Concrete Structural

Contractor is an independent contractor and not an agent of the City. The Contractor and its surety shall be liable to the City for any damages arising as a result of the Contractor's failure to comply with this obligation.

ARTICLE 2. TIME FOR COMPLETION.

Time is of the essence in the performance of the Work. The Work shall be commenced on the date stated in the City's Notice to Proceed. The Contractor shall complete all Work required by the Contract Documents **per the contract schedule and within 531 calendar days** from the commencement date stated in the Notice to Proceed. By its signature hereunder, Contractor agrees the time for completion set forth above is adequate and reasonable to complete the Work.

ARTICLE 3. CONTRACT PRICE.

The City shall pay to the Contractor as full compensation for the performance of the Contract, subject to any additions or deductions as provided in the Contract Documents, and including all applicable taxes and costs, the sum of **Eighteen Million Three Hundred Eighty-Seven Thousand Dollars ($18,387,000)**. Payment shall be made as set forth in the General Conditions. The City will pay to Contractor compensation based upon the prices set forth in the Bid Schedule.

ARTICLE 4. LIQUIDATED DAMAGES.

Contractor acknowledges that the City will sustain actual damages for each and every Day completion of the Project is delayed beyond the Contract Time. Because of the nature of the Project, it would be impracticable or extremely difficult to determine the City's actual damages. Accordingly, in accordance with Government Code section 53069.85, it is agreed that the Contractor will pay the City the sum of $35,000 for each and every calendar day of delay beyond the time prescribed in the Contract Documents for finishing the Work, as Liquidated Damages and not as a penalty or forfeiture. In the event this is not paid, the Contractor agrees the City may deduct that amount from any money due or that may become due the Contractor under the Contract. This Section does not exclude recovery of other damages specified in the Contract Documents. Liquidated damages may be deducted from progress payments due Contractor, Project retention or may be collected directly from Contractor, or from Contractor's surety. These provisions for liquidated damages shall not prevent the City, in case of Contractor's default, from terminating the Contractor.

ARTICLE 5. COMPONENT PARTS OF THE CONTRACT.

The "Contract Documents" include the following:

Notice Inviting Bids
Instructions to Bidders
Bid Forms
Bid Acknowledgement
Bid Schedule
Bid Guarantee
Designation of Subcontractors
Non-Collusion Declaration Form
Iran Contracting Act Certification
Public Works Contractor DIR Registration Certification
Performance Bond
Payment (Labor and Materials) Bond
Contract for Construction
General Conditions
Special Conditions
Specifications
Addenda
Construction Plans and Drawings
Standard Specifications for Public Works Construction "Greenbook", latest edition, Except Sections 1-9
Applicable Local Agency Standards and Specifications, as last revised
Reference Specifications
Approved and fully executed Change Orders
Permits
Scope of Work Summary
Any other documents contained in or incorporated into the Contract

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

All of the Contract Documents are intended to be complementary. Work required by one of the Contract Documents and not by others shall be done as if required by all. In the event of conflict,

the various Contract Documents will be given effect in the order set forth in the General Conditions. This Contract shall supersede any prior agreement of the parties.

ARTICLE 6. PROVISIONS REQUIRED BY LAW AND CONTRACTOR COMPLIANCE.

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

ARTICLE 7. INDEMNIFICATION.

Contractor shall provide indemnification and defense as set forth in the General Conditions.

ARTICLE 8. PREVAILING WAGES.

Contractor shall be required to pay the prevailing rate of wages in accordance with the Labor Code which such rates shall be made available at the City's Office or may be obtained online at http://www.dir.ca.gov and which must be posted at the job site.

ARTICLE 9. FALSE CLAIMS.

Contractor acknowledges that if a false claim is submitted to the City, it may be considered fraud and Contractor may be subject to criminal prosecution. Contractor acknowledges that the False Claims Act, California Government Code sections 12650, et seq., provides for civil penalties where a person knowingly submits a false claim to a public entity. These provisions include within their scope false claims made with deliberate ignorance of the false information or in reckless disregard of the truth or falsity of the information. In the event the City seeks to recover penalties pursuant to the False Claims Act, it is entitled to recover its litigation costs, including attorneys' fees. Contractor hereby acknowledges that the filing of a false claim may the Contractor to an administrative debarment proceeding wherein Contractor may be prevented from further bidding on public contracts for a period of up to five (5) years.

[REMAINDER OF PAGE LEFT INTENTIONALLY BLANK]

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

CITY OF ONTARIO

By: _____
Scott Ochoa
City Manager

ATTEST:

By: _____
Sheila Mautz, City Clerk

APPROVED AS TO FORM:

By: _____
Best Best & Krieger LLP
City Attorney

Gonsalves & Santucci, Inc. dba Conco

By: _____

Its: _____

Printed Name: _____

By: _____

Its: _____

Printed Name: _____

_____
Contractor's License Number and Classification

_____
DIR Registration Number

[IF CORPORATION, TWO SIGNATURES, PRESIDENT **OR** VICE PRESIDENT **AND** SECRETARY **OR** TREASURER **REQUIRED]**

END OF CONTRACT

Notary Acknowledgment

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

STATE OF CALIFORNIA
COUNTY OF _____

On _____, 20___, before me, _____, Notary Public, personally

appeared _____, who proved to me on the basis of satisfactory

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

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

WITNESS my hand and official seal.

_____
Signature of Notary Public

OPTIONAL

Though the information below is not required by law, it may prove valuable to persons relying on the document and could prevent fraudulent removal and reattachment of this form to another document.

CAPACITY CLAIMED BY SIGNER

□ Individual
□ Corporate Officer

_____
Title(s)

□ Partner(s) □ Limited □ General
□ Attorney-In-Fact
□ Trustee(s)
□ Guardian/Conservator
□ Other:

Signer is representing:
Name Of Person(s) Or Entity(ies)

_____

_____

DESCRIPTION OF ATTACHED DOCUMENT

_____
Title or Type of Document

_____
Number of Pages

_____
Date of Document

_____
Signer(s) Other Than Named Above

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

PAUL S. LEON
MAYOR

DEBRA PORADA
MAYOR PRO TEM

ALAN D. WAPNER
JIM W. BOWMAN
RUBEN VALENCIA
COUNCIL MEMBERS

SHEILA MAUTZ
CITY CLERK

JAMES R. MILHISER
TREASURER

SCOTT OCHOA
CITY MANAGER

SECTION 00500 – CONTRACT FOR CONSTRUCTION

This Contract for Construction ("Contract"), No. D&C23-011 is made and entered as of _____, by and between City of Ontario, with its principal place of business at 303 East "B" Street, Ontario, CA 91764, sometimes hereinafter called the "City" and **Haxton Masonry, Inc.**, sometimes hereinafter called "Contractor."

WITNESSETH: That the parties hereto have mutually covenanted and agreed, and by these presents do covenant and agree with each other as follows:

ARTICLE 1. SCOPE OF WORK.

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

Ontario Ballpark - Masonry

Contractor is an independent contractor and not an agent of the City. The Contractor and its surety shall be liable to the City for any damages arising as a result of the Contractor's failure to comply with this obligation.

ARTICLE 2. TIME FOR COMPLETION.

Time is of the essence in the performance of the Work. The Work shall be commenced on the date stated in the City's Notice to Proceed. The Contractor shall complete all Work required by the Contract Documents **per the contract schedule and within 531 calendar days** from the commencement date stated in the Notice to Proceed. By its signature hereunder, Contractor agrees the time for completion set forth above is adequate and reasonable to complete the Work.

ARTICLE 3. CONTRACT PRICE.

The City shall pay to the Contractor as full compensation for the performance of the Contract, subject to any additions or deductions as provided in the Contract Documents, and including all applicable taxes and costs, the sum of **Five Million Six Hundred Thirty-One Thousand Dollars ($5,631,000)**. Payment shall be made as set forth in the General Conditions. The City will pay to Contractor compensation based upon the prices set forth in the Bid Schedule.

ARTICLE 4. LIQUIDATED DAMAGES.

Contractor acknowledges that the City will sustain actual damages for each and every Day completion of the Project is delayed beyond the Contract Time. Because of the nature of the

Project, it would be impracticable or extremely difficult to determine the City's actual damages. Accordingly, in accordance with Government Code section 53069.85, it is agreed that the Contractor will pay the City the sum of $10,000 for each and every calendar day of delay beyond the time prescribed in the Contract Documents for finishing the Work, as Liquidated Damages and not as a penalty or forfeiture. In the event this is not paid, the Contractor agrees the City may deduct that amount from any money due or that may become due the Contractor under the Contract. This Section does not exclude recovery of other damages specified in the Contract Documents. Liquidated damages may be deducted from progress payments due Contractor, Project retention or may be collected directly from Contractor, or from Contractor's surety. These provisions for liquidated damages shall not prevent the City, in case of Contractor's default, from terminating the Contractor.

ARTICLE 5. COMPONENT PARTS OF THE CONTRACT.

The "Contract Documents" include the following:

Notice Inviting Bids
Instructions to Bidders
Bid Forms
Bid Acknowledgement
Bid Schedule
Bid Guarantee
Designation of Subcontractors
Non-Collusion Declaration Form
Iran Contracting Act Certification
Public Works Contractor DIR Registration Certification
Performance Bond
Payment (Labor and Materials) Bond
Contract for Construction
General Conditions
Special Conditions
Specifications
Addenda
Construction Plans and Drawings
Standard Specifications for Public Works Construction "Greenbook", latest edition, Except Sections 1-9
Applicable Local Agency Standards and Specifications, as last revised
Reference Specifications
Approved and fully executed Change Orders
Permits
Scope of Work Summary
Any other documents contained in or incorporated into the Contract

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

All of the Contract Documents are intended to be complementary. Work required by one of the Contract Documents and not by others shall be done as if required by all. In the event of conflict, the various Contract Documents will be given effect in the order set forth in the General Conditions. This Contract shall supersede any prior agreement of the parties.

ARTICLE 6. PROVISIONS REQUIRED BY LAW AND CONTRACTOR COMPLIANCE.

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

ARTICLE 7. INDEMNIFICATION.

Contractor shall provide indemnification and defense as set forth in the General Conditions.

ARTICLE 8. PREVAILING WAGES.

Contractor shall be required to pay the prevailing rate of wages in accordance with the Labor Code which such rates shall be made available at the City's Office or may be obtained online at http://www.dir.ca.gov and which must be posted at the job site.

ARTICLE 9. FALSE CLAIMS.

Contractor acknowledges that if a false claim is submitted to the City, it may be considered fraud and Contractor may be subject to criminal prosecution. Contractor acknowledges that the False Claims Act, California Government Code sections 12650, et seq., provides for civil penalties where a person knowingly submits a false claim to a public entity. These provisions include within their scope false claims made with deliberate ignorance of the false information or in reckless disregard of the truth or falsity of the information. In the event the City seeks to recover penalties pursuant to the False Claims Act, it is entitled to recover its litigation costs, including attorneys' fees. Contractor hereby acknowledges that the filing of a false claim may the Contractor to an administrative debarment proceeding wherein Contractor may be prevented from further bidding on public contracts for a period of up to five (5) years.

[REMAINDER OF PAGE LEFT INTENTIONALLY BLANK]

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

CITY OF ONTARIO

By: _____
Scott Ochoa
City Manager

ATTEST:

By: _____
Sheila Mautz, City Clerk

APPROVED AS TO FORM:

By: _____
Best Best & Krieger LLP
City Attorney

Haxton Masonry, Inc.

By: _____

Its: _____

Printed Name: _____

By: _____

Its: _____

Printed Name: _____

_____
Contractor's License Number and Classification

_____
DIR Registration Number

[IF CORPORATION, TWO SIGNATURES, PRESIDENT **OR** VICE PRESIDENT **AND** SECRETARY **OR** TREASURER **REQUIRED]**

END OF CONTRACT

Notary Acknowledgment

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

STATE OF CALIFORNIA
COUNTY OF _____

On _____, 20___, before me, _____, Notary Public, personally

appeared _____, who proved to me on the basis of satisfactory

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

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

WITNESS my hand and official seal.

_____
Signature of Notary Public

OPTIONAL

Though the information below is not required by law, it may prove valuable to persons relying on the document and could prevent fraudulent removal and reattachment of this form to another document.

CAPACITY CLAIMED BY SIGNER

☐ Individual
☐ Corporate Officer

_____
Title(s)

☐ Partner(s) ☐ Limited ☐ General
☐ Attorney-In-Fact
☐ Trustee(s)
☐ Guardian/Conservator
☐ Other:

Signer is representing:
Name Of Person(s) Or Entity(ies)

_____

_____

DESCRIPTION OF ATTACHED DOCUMENT

_____
Title or Type of Document

_____
Number of Pages

_____
Date of Document

_____
Signer(s) Other Than Named Above

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

PAUL S. LEON
MAYOR

DEBRA PORADA
MAYOR PRO TEM

ALAN D. WAPNER
JIM W. BOWMAN
RUBEN VALENCIA
COUNCIL MEMBERS

SHEILA MAUTZ
CITY CLERK

JAMES R. MILHISER
TREASURER

SCOTT OCHOA
CITY MANAGER

SECTION 00500 – CONTRACT FOR CONSTRUCTION

This Contract for Construction ("Contract"), No. D&C23-011 is made and entered as of _____, by and between City of Ontario, with its principal place of business at 303 East "B" Street, Ontario, CA 91764, sometimes hereinafter called the "City" and **KCB Towers, Inc.**, sometimes hereinafter called "Contractor."

WITNESSETH: That the parties hereto have mutually covenanted and agreed, and by these presents do covenant and agree with each other as follows:

ARTICLE 1. SCOPE OF WORK.

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

Ontario Ballpark - Railings

Contractor is an independent contractor and not an agent of the City. The Contractor and its surety shall be liable to the City for any damages arising as a result of the Contractor's failure to comply with this obligation.

ARTICLE 2. TIME FOR COMPLETION.

Time is of the essence in the performance of the Work. The Work shall be commenced on the date stated in the City's Notice to Proceed. The Contractor shall complete all Work required by the Contract Documents **per the contract schedule and within 531 calendar days** from the commencement date stated in the Notice to Proceed. By its signature hereunder, Contractor agrees the time for completion set forth above is adequate and reasonable to complete the Work.

ARTICLE 3. CONTRACT PRICE.

The City shall pay to the Contractor as full compensation for the performance of the Contract, subject to any additions or deductions as provided in the Contract Documents, and including all applicable taxes and costs, the sum of **Four Million Three Hundred Ninety-Five Thousand Five Hundred Sixty Dollars ($4,395,560)**. Payment shall be made as set forth in the General Conditions. The City will pay to Contractor compensation based upon the prices set forth in the Bid Schedule.

ARTICLE 4. LIQUIDATED DAMAGES.

Contractor acknowledges that the City will sustain actual damages for each and every Day completion of the Project is delayed beyond the Contract Time. Because of the nature of the Project, it would be impracticable or extremely difficult to determine the City's actual damages. Accordingly, in accordance with Government Code section 53069.85, it is agreed that the Contractor will pay the City the sum of $10,000 for each and every calendar day of delay beyond the time prescribed in the Contract Documents for finishing the Work, as Liquidated Damages and not as a penalty or forfeiture. In the event this is not paid, the Contractor agrees the City may deduct that amount from any money due or that may become due the Contractor under the Contract. This Section does not exclude recovery of other damages specified in the Contract Documents. Liquidated damages may be deducted from progress payments due Contractor, Project retention or may be collected directly from Contractor, or from Contractor's surety. These provisions for liquidated damages shall not prevent the City, in case of Contractor's default, from terminating the Contractor.

ARTICLE 5. COMPONENT PARTS OF THE CONTRACT.

The "Contract Documents" include the following:

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Non-Collusion Declaration Form
Iran Contracting Act Certification
Public Works Contractor DIR Registration Certification
Performance Bond
Payment (Labor and Materials) Bond
Contract for Construction
General Conditions
Special Conditions
Specifications
Addenda
Construction Plans and Drawings
Standard Specifications for Public Works Construction "Greenbook", latest edition, Except Sections 1-9
Applicable Local Agency Standards and Specifications, as last revised
Reference Specifications
Approved and fully executed Change Orders
Permits
Scope of Work Summary
Any other documents contained in or incorporated into the Contract

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

All of the Contract Documents are intended to be complementary. Work required by one of the Contract Documents and not by others shall be done as if required by all. In the event of conflict,

the various Contract Documents will be given effect in the order set forth in the General Conditions. This Contract shall supersede any prior agreement of the parties.

ARTICLE 6. PROVISIONS REQUIRED BY LAW AND CONTRACTOR COMPLIANCE.

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

ARTICLE 7. INDEMNIFICATION.

Contractor shall provide indemnification and defense as set forth in the General Conditions.

ARTICLE 8. PREVAILING WAGES.

Contractor shall be required to pay the prevailing rate of wages in accordance with the Labor Code which such rates shall be made available at the City's Office or may be obtained online at http://www.dir.ca.gov and which must be posted at the job site.

ARTICLE 9. FALSE CLAIMS.

Contractor acknowledges that if a false claim is submitted to the City, it may be considered fraud and Contractor may be subject to criminal prosecution. Contractor acknowledges that the False Claims Act, California Government Code sections 12650, et seq., provides for civil penalties where a person knowingly submits a false claim to a public entity. These provisions include within their scope false claims made with deliberate ignorance of the false information or in reckless disregard of the truth or falsity of the information. In the event the City seeks to recover penalties pursuant to the False Claims Act, it is entitled to recover its litigation costs, including attorneys' fees. Contractor hereby acknowledges that the filing of a false claim may the Contractor to an administrative debarment proceeding wherein Contractor may be prevented from further bidding on public contracts for a period of up to five (5) years.

[REMAINDER OF PAGE LEFT INTENTIONALLY BLANK]

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

CITY OF ONTARIO

By: _____
Scott Ochoa
City Manager

ATTEST:

By: _____
Sheila Mautz, City Clerk

APPROVED AS TO FORM:

By: _____
Best Best & Krieger LLP
City Attorney

KCB Towers, Inc.

By: _____

Its: _____

Printed Name: _____

By: _____

Its: _____

Printed Name: _____

_____
Contractor's License Number and Classification

_____
DIR Registration Number

[IF CORPORATION, TWO SIGNATURES, PRESIDENT **OR** VICE PRESIDENT **AND** SECRETARY **OR** TREASURER **REQUIRED]**

END OF CONTRACT

Notary Acknowledgment

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

STATE OF CALIFORNIA
COUNTY OF _____

On _____, 20___, before me, _____, Notary Public, personally

appeared _____, who proved to me on the basis of satisfactory

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

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

WITNESS my hand and official seal.

_____
Signature of Notary Public

OPTIONAL

Though the information below is not required by law, it may prove valuable to persons relying on the document and could prevent fraudulent removal and reattachment of this form to another document.

CAPACITY CLAIMED BY SIGNER

☐ Individual
☐ Corporate Officer

_____
Title(s)

☐ Partner(s) ☐ Limited ☐ General
☐ Attorney-In-Fact
☐ Trustee(s)
☐ Guardian/Conservator
☐ Other:

Signer is representing:
Name Of Person(s) Or Entity(ies)

_____

_____

DESCRIPTION OF ATTACHED DOCUMENT

_____
Title or Type of Document

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Number of Pages

_____
Date of Document

_____
Signer(s) Other Than Named Above

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

PAUL S. LEON
MAYOR

DEBRA PORADA
MAYOR PRO TEM

ALAN D. WAPNER
JIM W. BOWMAN
RUBEN VALENCIA
COUNCIL MEMBERS

SHEILA MAUTZ
CITY CLERK

JAMES R. MILHISER
TREASURER

SCOTT OCHOA
CITY MANAGER

SECTION 00500 – CONTRACT FOR CONSTRUCTION

This Contract for Construction ("Contract"), No. D&C23-011 is made and entered as of _____, by and between City of Ontario, with its principal place of business at 303 East "B" Street, Ontario, CA 91764, sometimes hereinafter called the "City" and **Commercial Roofing Systems, Inc.**, sometimes hereinafter called "Contractor."

WITNESSETH: That the parties hereto have mutually covenanted and agreed, and by these presents do covenant and agree with each other as follows:

ARTICLE 1. SCOPE OF WORK.

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

Ontario Ballpark - Roofing

Contractor is an independent contractor and not an agent of the City. The Contractor and its surety shall be liable to the City for any damages arising as a result of the Contractor's failure to comply with this obligation.

ARTICLE 2. TIME FOR COMPLETION.

Time is of the essence in the performance of the Work. The Work shall be commenced on the date stated in the City's Notice to Proceed. The Contractor shall complete all Work required by the Contract Documents **per the contract schedule and within 531 calendar days** from the commencement date stated in the Notice to Proceed. By its signature hereunder, Contractor agrees the time for completion set forth above is adequate and reasonable to complete the Work.

ARTICLE 3. CONTRACT PRICE.

The City shall pay to the Contractor as full compensation for the performance of the Contract, subject to any additions or deductions as provided in the Contract Documents, and including all applicable taxes and costs, the sum of **Three Million Ninety-Nine Thousand Three Hundred Twenty Dollars ($3,099,320)**. Payment shall be made as set forth in the General Conditions. The City will pay to Contractor compensation based upon the prices set forth in the Bid Schedule.

ARTICLE 4. LIQUIDATED DAMAGES.

Contractor acknowledges that the City will sustain actual damages for each and every Day completion of the Project is delayed beyond the Contract Time. Because of the nature of the

Project, it would be impracticable or extremely difficult to determine the City's actual damages. Accordingly, in accordance with Government Code section 53069.85, it is agreed that the Contractor will pay the City the sum of $15,000 for each and every calendar day of delay beyond the time prescribed in the Contract Documents for finishing the Work, as Liquidated Damages and not as a penalty or forfeiture. In the event this is not paid, the Contractor agrees the City may deduct that amount from any money due or that may become due the Contractor under the Contract. This Section does not exclude recovery of other damages specified in the Contract Documents. Liquidated damages may be deducted from progress payments due Contractor, Project retention or may be collected directly from Contractor, or from Contractor's surety. These provisions for liquidated damages shall not prevent the City, in case of Contractor's default, from terminating the Contractor.

ARTICLE 5. COMPONENT PARTS OF THE CONTRACT.

The "Contract Documents" include the following:

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Instructions to Bidders
Bid Forms
Bid Acknowledgement
Bid Schedule
Bid Guarantee
Designation of Subcontractors
Non-Collusion Declaration Form
Iran Contracting Act Certification
Public Works Contractor DIR Registration Certification
Performance Bond
Payment (Labor and Materials) Bond
Contract for Construction
General Conditions
Special Conditions
Specifications
Addenda
Construction Plans and Drawings
Standard Specifications for Public Works Construction "Greenbook", latest edition, Except Sections 1-9
Applicable Local Agency Standards and Specifications, as last revised
Reference Specifications
Approved and fully executed Change Orders
Permits
Scope of Work Summary
Any other documents contained in or incorporated into the Contract

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

All of the Contract Documents are intended to be complementary. Work required by one of the Contract Documents and not by others shall be done as if required by all. In the event of conflict, the various Contract Documents will be given effect in the order set forth in the General Conditions. This Contract shall supersede any prior agreement of the parties.

ARTICLE 6. PROVISIONS REQUIRED BY LAW AND CONTRACTOR COMPLIANCE.

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

ARTICLE 7. INDEMNIFICATION.

Contractor shall provide indemnification and defense as set forth in the General Conditions.

ARTICLE 8. PREVAILING WAGES.

Contractor shall be required to pay the prevailing rate of wages in accordance with the Labor Code which such rates shall be made available at the City's Office or may be obtained online at http://www.dir.ca.gov and which must be posted at the job site.

ARTICLE 9. FALSE CLAIMS.

Contractor acknowledges that if a false claim is submitted to the City, it may be considered fraud and Contractor may be subject to criminal prosecution. Contractor acknowledges that the False Claims Act, California Government Code sections 12650, et seq., provides for civil penalties where a person knowingly submits a false claim to a public entity. These provisions include within their scope false claims made with deliberate ignorance of the false information or in reckless disregard of the truth or falsity of the information. In the event the City seeks to recover penalties pursuant to the False Claims Act, it is entitled to recover its litigation costs, including attorneys' fees. Contractor hereby acknowledges that the filing of a false claim may the Contractor to an administrative debarment proceeding wherein Contractor may be prevented from further bidding on public contracts for a period of up to five (5) years.

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

CITY OF ONTARIO

By: _____
Scott Ochoa
City Manager

ATTEST:

By: _____
Sheila Mautz, City Clerk

APPROVED AS TO FORM:

By: _____
Best Best & Krieger LLP
City Attorney

Commercial Roofing Systems, Inc.

By: _____

Its: _____

Printed Name: _____

By: _____

Its: _____

Printed Name: _____

_____
Contractor's License Number and Classification

_____
DIR Registration Number

[IF CORPORATION, TWO SIGNATURES, PRESIDENT **OR** VICE PRESIDENT **AND** SECRETARY **OR** TREASURER **REQUIRED]**

END OF CONTRACT

Notary Acknowledgment

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

STATE OF CALIFORNIA
COUNTY OF _____

On _____, 20___, before me, _____, Notary Public, personally

appeared _____, who proved to me on the basis of satisfactory

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

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

WITNESS my hand and official seal.

_____
Signature of Notary Public

OPTIONAL

Though the information below is not required by law, it may prove valuable to persons relying on the document and could prevent fraudulent removal and reattachment of this form to another document.

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□ Individual
□ Corporate Officer

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Title(s)

□ Partner(s) □ Limited □ General
□ Attorney-In-Fact
□ Trustee(s)
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□ Other:

Signer is representing:
Name Of Person(s) Or Entity(ies)

_____

_____

DESCRIPTION OF ATTACHED DOCUMENT

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Title or Type of Document

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Number of Pages

_____
Date of Document

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Signer(s) Other Than Named Above

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

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MAYOR

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ALAN D. WAPNER
JIM W. BOWMAN
RUBEN VALENCIA
COUNCIL MEMBERS

SHEILA MAUTZ
CITY CLERK

JAMES R. MILHISER
TREASURER

SCOTT OCHOA
CITY MANAGER

SECTION 00500 – CONTRACT FOR CONSTRUCTION

This Contract for Construction ("Contract"), No. D&C23-011 is made and entered as of _____, by and between City of Ontario, with its principal place of business at 303 East "B" Street, Ontario, CA 91764, sometimes hereinafter called the "City" and **Best Contracting Services, Inc.**, sometimes hereinafter called "Contractor."

WITNESSETH: That the parties hereto have mutually covenanted and agreed, and by these presents do covenant and agree with each other as follows:

ARTICLE 1. SCOPE OF WORK.

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

Ontario Ballpark - Waterproofing

Contractor is an independent contractor and not an agent of the City. The Contractor and its surety shall be liable to the City for any damages arising as a result of the Contractor's failure to comply with this obligation.

ARTICLE 2. TIME FOR COMPLETION.

Time is of the essence in the performance of the Work. The Work shall be commenced on the date stated in the City's Notice to Proceed. The Contractor shall complete all Work required by the Contract Documents **per the contract schedule and within 531 calendar days** from the commencement date stated in the Notice to Proceed. By its signature hereunder, Contractor agrees the time for completion set forth above is adequate and reasonable to complete the Work.

ARTICLE 3. CONTRACT PRICE.

The City shall pay to the Contractor as full compensation for the performance of the Contract, subject to any additions or deductions as provided in the Contract Documents, and including all applicable taxes and costs, the sum of **One Million Three Hundred Eight Thousand Dollars ($1,308,000)**. Payment shall be made as set forth in the General Conditions. The City will pay to Contractor compensation based upon the prices set forth in the Bid Schedule.

ARTICLE 4. LIQUIDATED DAMAGES.

Contractor acknowledges that the City will sustain actual damages for each and every Day completion of the Project is delayed beyond the Contract Time. Because of the nature of the Project, it would be impracticable or extremely difficult to determine the City's actual damages. Accordingly, in accordance with Government Code section 53069.85, it is agreed that the Contractor will pay the City the sum of $15,000 for each and every calendar day of delay beyond the time prescribed in the Contract Documents for finishing the Work, as Liquidated Damages and not as a penalty or forfeiture. In the event this is not paid, the Contractor agrees the City may deduct that amount from any money due or that may become due the Contractor under the Contract. This Section does not exclude recovery of other damages specified in the Contract Documents. Liquidated damages may be deducted from progress payments due Contractor, Project retention or may be collected directly from Contractor, or from Contractor's surety. These provisions for liquidated damages shall not prevent the City, in case of Contractor's default, from terminating the Contractor.

ARTICLE 5. COMPONENT PARTS OF THE CONTRACT.

The "Contract Documents" include the following:

Notice Inviting Bids
Instructions to Bidders
Bid Forms
Bid Acknowledgement
Bid Schedule
Bid Guarantee
Designation of Subcontractors
Non-Collusion Declaration Form
Iran Contracting Act Certification
Public Works Contractor DIR Registration Certification
Performance Bond
Payment (Labor and Materials) Bond
Contract for Construction
General Conditions
Special Conditions
Specifications
Addenda
Construction Plans and Drawings
Standard Specifications for Public Works Construction "Greenbook", latest edition, Except Sections 1-9
Applicable Local Agency Standards and Specifications, as last revised
Reference Specifications
Approved and fully executed Change Orders
Permits
Scope of Work Summary
Any other documents contained in or incorporated into the Contract

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

All of the Contract Documents are intended to be complementary. Work required by one of the Contract Documents and not by others shall be done as if required by all. In the event of conflict,

the various Contract Documents will be given effect in the order set forth in the General Conditions. This Contract shall supersede any prior agreement of the parties.

ARTICLE 6. PROVISIONS REQUIRED BY LAW AND CONTRACTOR COMPLIANCE.

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

ARTICLE 7. INDEMNIFICATION.

Contractor shall provide indemnification and defense as set forth in the General Conditions.

ARTICLE 8. PREVAILING WAGES.

Contractor shall be required to pay the prevailing rate of wages in accordance with the Labor Code which such rates shall be made available at the City's Office or may be obtained online at http://www.dir.ca.gov and which must be posted at the job site.

ARTICLE 9. FALSE CLAIMS.

Contractor acknowledges that if a false claim is submitted to the City, it may be considered fraud and Contractor may be subject to criminal prosecution. Contractor acknowledges that the False Claims Act, California Government Code sections 12650, et seq., provides for civil penalties where a person knowingly submits a false claim to a public entity. These provisions include within their scope false claims made with deliberate ignorance of the false information or in reckless disregard of the truth or falsity of the information. In the event the City seeks to recover penalties pursuant to the False Claims Act, it is entitled to recover its litigation costs, including attorneys' fees. Contractor hereby acknowledges that the filing of a false claim may the Contractor to an administrative debarment proceeding wherein Contractor may be prevented from further bidding on public contracts for a period of up to five (5) years.

[REMAINDER OF PAGE LEFT INTENTIONALLY BLANK]

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

CITY OF ONTARIO

By: _____
Scott Ochoa
City Manager

ATTEST:

By: _____
Sheila Mautz, City Clerk

APPROVED AS TO FORM:

By: _____
Best Best & Krieger LLP
City Attorney

Best Contracting Services Inc.

By: _____

Its: _____

Printed Name: _____

By: _____

Its: _____

Printed Name: _____

_____
Contractor's License Number and Classification

_____
DIR Registration Number

[IF CORPORATION, TWO SIGNATURES, PRESIDENT **OR** VICE PRESIDENT **AND** SECRETARY **OR** TREASURER **REQUIRED]**

END OF CONTRACT

Notary Acknowledgment

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

STATE OF CALIFORNIA
COUNTY OF _____

On _____, 20___, before me, _____, Notary Public, personally

appeared _____, who proved to me on the basis of satisfactory

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

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WITNESS my hand and official seal.

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Signature of Notary Public

OPTIONAL

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CAPACITY CLAIMED BY SIGNER

□ Individual
□ Corporate Officer

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Title(s)

□ Partner(s) □ Limited □ General
□ Attorney-In-Fact
□ Trustee(s)
□ Guardian/Conservator
□ Other:

Signer is representing:
Name Of Person(s) Or Entity(ies)

_____

_____

DESCRIPTION OF ATTACHED DOCUMENT

_____
Title or Type of Document

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Number of Pages

_____
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Signer(s) Other Than Named Above

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

PAUL S. LEON
MAYOR

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ALAN D. WAPNER
JIM W. BOWMAN
RUBEN VALENCIA
COUNCIL MEMBERS

SHEILA MAUTZ
CITY CLERK

JAMES R. MILHISER
TREASURER

SCOTT OCHOA
CITY MANAGER

SECTION 00500 – CONTRACT FOR CONSTRUCTION

This Contract for Construction ("Contract"), No. D&C23-011 is made and entered as of _____, by and between City of Ontario, with its principal place of business at 303 East "B" Street, Ontario, CA 91764, sometimes hereinafter called the "City" and **Best Contracting Services, Inc.**, sometimes hereinafter called "Contractor."

WITNESSETH: That the parties hereto have mutually covenanted and agreed, and by these presents do covenant and agree with each other as follows:

ARTICLE 1. SCOPE OF WORK.

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

Ontario Ballpark - Sheet Metal

Contractor is an independent contractor and not an agent of the City. The Contractor and its surety shall be liable to the City for any damages arising as a result of the Contractor's failure to comply with this obligation.

ARTICLE 2. TIME FOR COMPLETION.

Time is of the essence in the performance of the Work. The Work shall be commenced on the date stated in the City's Notice to Proceed. The Contractor shall complete all Work required by the Contract Documents **per the contract schedule and within 531 calendar days** from the commencement date stated in the Notice to Proceed. By its signature hereunder, Contractor agrees the time for completion set forth above is adequate and reasonable to complete the Work.

ARTICLE 3. CONTRACT PRICE.

The City shall pay to the Contractor as full compensation for the performance of the Contract, subject to any additions or deductions as provided in the Contract Documents, and including all applicable taxes and costs, the sum of **Five Million Two Hundred Ninety-Nine Thousand Four Hundred Forty-Eight Dollars ($5,299,448)**. Payment shall be made as set forth in the General Conditions. The City will pay to Contractor compensation based upon the prices set forth in the Bid Schedule.

ARTICLE 4. LIQUIDATED DAMAGES.

Contractor acknowledges that the City will sustain actual damages for each and every Day completion of the Project is delayed beyond the Contract Time. Because of the nature of the Project, it would be impracticable or extremely difficult to determine the City's actual damages. Accordingly, in accordance with Government Code section 53069.85, it is agreed that the Contractor will pay the City the sum of $15,000 for each and every calendar day of delay beyond the time prescribed in the Contract Documents for finishing the Work, as Liquidated Damages and not as a penalty or forfeiture. In the event this is not paid, the Contractor agrees the City may deduct that amount from any money due or that may become due the Contractor under the Contract. This Section does not exclude recovery of other damages specified in the Contract Documents. Liquidated damages may be deducted from progress payments due Contractor, Project retention or may be collected directly from Contractor, or from Contractor's surety. These provisions for liquidated damages shall not prevent the City, in case of Contractor's default, from terminating the Contractor.

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The "Contract Documents" include the following:

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Applicable Local Agency Standards and Specifications, as last revised
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Any other documents contained in or incorporated into the Contract

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All of the Contract Documents are intended to be complementary. Work required by one of the Contract Documents and not by others shall be done as if required by all. In the event of conflict,

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ARTICLE 9. FALSE CLAIMS.

Contractor acknowledges that if a false claim is submitted to the City, it may be considered fraud and Contractor may be subject to criminal prosecution. Contractor acknowledges that the False Claims Act, California Government Code sections 12650, et seq., provides for civil penalties where a person knowingly submits a false claim to a public entity. These provisions include within their scope false claims made with deliberate ignorance of the false information or in reckless disregard of the truth or falsity of the information. In the event the City seeks to recover penalties pursuant to the False Claims Act, it is entitled to recover its litigation costs, including attorneys' fees. Contractor hereby acknowledges that the filing of a false claim may the Contractor to an administrative debarment proceeding wherein Contractor may be prevented from further bidding on public contracts for a period of up to five (5) years.

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

CITY OF ONTARIO

By: _____
Scott Ochoa
City Manager

ATTEST:

By: _____
Sheila Mautz, City Clerk

APPROVED AS TO FORM:

By: _____
Best Best & Krieger LLP
City Attorney

Best Contracting Services Inc.

By: _____

Its: _____

Printed Name: _____

By: _____

Its: _____

Printed Name: _____

_____
Contractor's License Number and Classification

_____
DIR Registration Number

[IF CORPORATION, TWO SIGNATURES, PRESIDENT **OR** VICE PRESIDENT **AND** SECRETARY **OR** TREASURER **REQUIRED]**

END OF CONTRACT

Notary Acknowledgment

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

STATE OF CALIFORNIA
COUNTY OF _____

On _____, 20___, before me, _____, Notary Public, personally

appeared _____, who proved to me on the basis of satisfactory

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

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

WITNESS my hand and official seal.

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Signature of Notary Public

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☐ Individual
☐ Corporate Officer

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Title(s)

☐ Partner(s) ☐ Limited ☐ General
☐ Attorney-In-Fact
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☐ Guardian/Conservator
☐ Other:

Signer is representing:
Name Of Person(s) Or Entity(ies)

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DESCRIPTION OF ATTACHED DOCUMENT

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JIM W. BOWMAN
RUBEN VALENCIA
COUNCIL MEMBERS

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SCOTT OCHOA
CITY MANAGER

SECTION 00500 – CONTRACT FOR CONSTRUCTION

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WITNESSETH: That the parties hereto have mutually covenanted and agreed, and by these presents do covenant and agree with each other as follows:

ARTICLE 1. SCOPE OF WORK.

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

Ontario Ballpark - Doors, Frames, Hardware

Contractor is an independent contractor and not an agent of the City. The Contractor and its surety shall be liable to the City for any damages arising as a result of the Contractor's failure to comply with this obligation.

ARTICLE 2. TIME FOR COMPLETION.

Time is of the essence in the performance of the Work. The Work shall be commenced on the date stated in the City's Notice to Proceed. The Contractor shall complete all Work required by the Contract Documents **per the contract schedule and within 531 calendar days** from the commencement date stated in the Notice to Proceed. By its signature hereunder, Contractor agrees the time for completion set forth above is adequate and reasonable to complete the Work.

ARTICLE 3. CONTRACT PRICE.

The City shall pay to the Contractor as full compensation for the performance of the Contract, subject to any additions or deductions as provided in the Contract Documents, and including all applicable taxes and costs, the sum of **Eight Hundred Seventy-Four Thousand Nine Hundred Dollars ($874,900)**. Payment shall be made as set forth in the General Conditions. The City will pay to Contractor compensation based upon the prices set forth in the Bid Schedule.

ARTICLE 4. LIQUIDATED DAMAGES.

Contractor acknowledges that the City will sustain actual damages for each and every Day completion of the Project is delayed beyond the Contract Time. Because of the nature of the

Project, it would be impracticable or extremely difficult to determine the City's actual damages. Accordingly, in accordance with Government Code section 53069.85, it is agreed that the Contractor will pay the City the sum of $15,000 for each and every calendar day of delay beyond the time prescribed in the Contract Documents for finishing the Work, as Liquidated Damages and not as a penalty or forfeiture. In the event this is not paid, the Contractor agrees the City may deduct that amount from any money due or that may become due the Contractor under the Contract. This Section does not exclude recovery of other damages specified in the Contract Documents. Liquidated damages may be deducted from progress payments due Contractor, Project retention or may be collected directly from Contractor, or from Contractor's surety. These provisions for liquidated damages shall not prevent the City, in case of Contractor's default, from terminating the Contractor.

ARTICLE 5. COMPONENT PARTS OF THE CONTRACT.

The "Contract Documents" include the following:

Notice Inviting Bids
Instructions to Bidders
Bid Forms
Bid Acknowledgement
Bid Schedule
Bid Guarantee
Designation of Subcontractors
Non-Collusion Declaration Form
Iran Contracting Act Certification
Public Works Contractor DIR Registration Certification
Performance Bond
Payment (Labor and Materials) Bond
Contract for Construction
General Conditions
Special Conditions
Specifications
Addenda
Construction Plans and Drawings
Standard Specifications for Public Works Construction "Greenbook", latest edition, Except Sections 1-9
Applicable Local Agency Standards and Specifications, as last revised
Reference Specifications
Approved and fully executed Change Orders
Permits
Scope of Work Summary
Any other documents contained in or incorporated into the Contract

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

All of the Contract Documents are intended to be complementary. Work required by one of the Contract Documents and not by others shall be done as if required by all. In the event of conflict, the various Contract Documents will be given effect in the order set forth in the General Conditions. This Contract shall supersede any prior agreement of the parties.

ARTICLE 6. PROVISIONS REQUIRED BY LAW AND CONTRACTOR COMPLIANCE.

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

ARTICLE 7. INDEMNIFICATION.

Contractor shall provide indemnification and defense as set forth in the General Conditions.

ARTICLE 8. PREVAILING WAGES.

Contractor shall be required to pay the prevailing rate of wages in accordance with the Labor Code which such rates shall be made available at the City's Office or may be obtained online at http://www.dir.ca.gov and which must be posted at the job site.

ARTICLE 9. FALSE CLAIMS.

Contractor acknowledges that if a false claim is submitted to the City, it may be considered fraud and Contractor may be subject to criminal prosecution. Contractor acknowledges that the False Claims Act, California Government Code sections 12650, et seq., provides for civil penalties where a person knowingly submits a false claim to a public entity. These provisions include within their scope false claims made with deliberate ignorance of the false information or in reckless disregard of the truth or falsity of the information. In the event the City seeks to recover penalties pursuant to the False Claims Act, it is entitled to recover its litigation costs, including attorneys' fees. Contractor hereby acknowledges that the filing of a false claim may the Contractor to an administrative debarment proceeding wherein Contractor may be prevented from further bidding on public contracts for a period of up to five (5) years.

[REMAINDER OF PAGE LEFT INTENTIONALLY BLANK]

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

CITY OF ONTARIO

By: _____
Scott Ochoa
City Manager

ATTEST:

By: _____
Sheila Mautz, City Clerk

APPROVED AS TO FORM:

By: _____
Best Best & Krieger LLP
City Attorney

Star Hardware, Inc.

By: _____

Its: _____

Printed Name: _____

By: _____

Its: _____

Printed Name: _____

_____
Contractor's License Number and Classification

_____
DIR Registration Number

[IF CORPORATION, TWO SIGNATURES, PRESIDENT **OR** VICE PRESIDENT **AND** SECRETARY **OR** TREASURER **REQUIRED]**

END OF CONTRACT

Notary Acknowledgment

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

STATE OF CALIFORNIA
COUNTY OF _____

On _____, 20___, before me, _____, Notary Public, personally

appeared _____, who proved to me on the basis of satisfactory

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

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

WITNESS my hand and official seal.

_____
Signature of Notary Public

OPTIONAL

Though the information below is not required by law, it may prove valuable to persons relying on the document and could prevent fraudulent removal and reattachment of this form to another document.

CAPACITY CLAIMED BY SIGNER

□ Individual
□ Corporate Officer

_____
Title(s)

□ Partner(s) □ Limited □ General
□ Attorney-In-Fact
□ Trustee(s)
□ Guardian/Conservator
□ Other:

Signer is representing:
Name Of Person(s) Or Entity(ies)

_____

_____

DESCRIPTION OF ATTACHED DOCUMENT

_____
Title or Type of Document

_____
Number of Pages

_____
Date of Document

_____
Signer(s) Other Than Named Above

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

PAUL S. LEON
MAYOR

DEBRA PORADA
MAYOR PRO TEM

ALAN D. WAPNER
JIM W. BOWMAN
RUBEN VALENCIA
COUNCIL MEMBERS

SHEILA MAUTZ
CITY CLERK

JAMES R. MILHISER
TREASURER

SCOTT OCHOA
CITY MANAGER

SECTION 00500 – CONTRACT FOR CONSTRUCTION

This Contract for Construction ("Contract"), No. D&C23-011 is made and entered as of _____, by and between City of Ontario, with its principal place of business at 303 East "B" Street, Ontario, CA 91764, sometimes hereinafter called the "City" and **Golden State Glazing, Inc.**, sometimes hereinafter called "Contractor."

WITNESSETH: That the parties hereto have mutually covenanted and agreed, and by these presents do covenant and agree with each other as follows:

ARTICLE 1. SCOPE OF WORK.

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

Ontario Ballpark - Aluminum and Glazing

Contractor is an independent contractor and not an agent of the City. The Contractor and its surety shall be liable to the City for any damages arising as a result of the Contractor's failure to comply with this obligation.

ARTICLE 2. TIME FOR COMPLETION.

Time is of the essence in the performance of the Work. The Work shall be commenced on the date stated in the City's Notice to Proceed. The Contractor shall complete all Work required by the Contract Documents **per the contract schedule and within 531 calendar days** from the commencement date stated in the Notice to Proceed. By its signature hereunder, Contractor agrees the time for completion set forth above is adequate and reasonable to complete the Work.

ARTICLE 3. CONTRACT PRICE.

The City shall pay to the Contractor as full compensation for the performance of the Contract, subject to any additions or deductions as provided in the Contract Documents, and including all applicable taxes and costs, the sum of **Three Million Three Hundred Twelve Thousand Sixty-Six Dollars ($3,312,066)**. Payment shall be made as set forth in the General Conditions. The City will pay to Contractor compensation based upon the prices set forth in the Bid Schedule.

ARTICLE 4. LIQUIDATED DAMAGES.

Contractor acknowledges that the City will sustain actual damages for each and every Day completion of the Project is delayed beyond the Contract Time. Because of the nature of the Project, it would be impracticable or extremely difficult to determine the City's actual damages. Accordingly, in accordance with Government Code section 53069.85, it is agreed that the Contractor will pay the City the sum of $25,000 for each and every calendar day of delay beyond the time prescribed in the Contract Documents for finishing the Work, as Liquidated Damages and not as a penalty or forfeiture. In the event this is not paid, the Contractor agrees the City may deduct that amount from any money due or that may become due the Contractor under the Contract. This Section does not exclude recovery of other damages specified in the Contract Documents. Liquidated damages may be deducted from progress payments due Contractor, Project retention or may be collected directly from Contractor, or from Contractor's surety. These provisions for liquidated damages shall not prevent the City, in case of Contractor's default, from terminating the Contractor.

ARTICLE 5. COMPONENT PARTS OF THE CONTRACT.

The "Contract Documents" include the following:

Notice Inviting Bids
Instructions to Bidders
Bid Forms
Bid Acknowledgement
Bid Schedule
Bid Guarantee
Designation of Subcontractors
Non-Collusion Declaration Form
Iran Contracting Act Certification
Public Works Contractor DIR Registration Certification
Performance Bond
Payment (Labor and Materials) Bond
Contract for Construction
General Conditions
Special Conditions
Specifications
Addenda
Construction Plans and Drawings
Standard Specifications for Public Works Construction "Greenbook", latest edition, Except Sections 1-9
Applicable Local Agency Standards and Specifications, as last revised
Reference Specifications
Approved and fully executed Change Orders
Permits
Scope of Work Summary
Any other documents contained in or incorporated into the Contract

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

All of the Contract Documents are intended to be complementary. Work required by one of the Contract Documents and not by others shall be done as if required by all. In the event of conflict,

the various Contract Documents will be given effect in the order set forth in the General Conditions. This Contract shall supersede any prior agreement of the parties.

ARTICLE 6. PROVISIONS REQUIRED BY LAW AND CONTRACTOR COMPLIANCE.

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

ARTICLE 7. INDEMNIFICATION.

Contractor shall provide indemnification and defense as set forth in the General Conditions.

ARTICLE 8. PREVAILING WAGES.

Contractor shall be required to pay the prevailing rate of wages in accordance with the Labor Code which such rates shall be made available at the City's Office or may be obtained online at http://www.dir.ca.gov and which must be posted at the job site.

ARTICLE 9. FALSE CLAIMS.

Contractor acknowledges that if a false claim is submitted to the City, it may be considered fraud and Contractor may be subject to criminal prosecution. Contractor acknowledges that the False Claims Act, California Government Code sections 12650, et seq., provides for civil penalties where a person knowingly submits a false claim to a public entity. These provisions include within their scope false claims made with deliberate ignorance of the false information or in reckless disregard of the truth or falsity of the information. In the event the City seeks to recover penalties pursuant to the False Claims Act, it is entitled to recover its litigation costs, including attorneys' fees. Contractor hereby acknowledges that the filing of a false claim may the Contractor to an administrative debarment proceeding wherein Contractor may be prevented from further bidding on public contracts for a period of up to five (5) years.

[REMAINDER OF PAGE LEFT INTENTIONALLY BLANK]

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

CITY OF ONTARIO

By: _____
Scott Ochoa
City Manager

ATTEST:

By: _____
Sheila Mautz, City Clerk

APPROVED AS TO FORM:

By: _____
Best Best & Krieger LLP
City Attorney

Golden State Glazing, Inc.

By: _____

Its: _____

Printed Name: _____

By: _____

Its: _____

Printed Name: _____

_____
Contractor's License Number and Classification

_____
DIR Registration Number

[IF CORPORATION, TWO SIGNATURES, PRESIDENT **OR** VICE PRESIDENT **AND** SECRETARY **OR** TREASURER **REQUIRED]**

END OF CONTRACT

Notary Acknowledgment

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

STATE OF CALIFORNIA
COUNTY OF _____

On _____, 20___, before me, _____, Notary Public, personally

appeared _____, who proved to me on the basis of satisfactory

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

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

WITNESS my hand and official seal.

_____
Signature of Notary Public

OPTIONAL

Though the information below is not required by law, it may prove valuable to persons relying on the document and could prevent fraudulent removal and reattachment of this form to another document.

CAPACITY CLAIMED BY SIGNER

☐ Individual
☐ Corporate Officer

_____
Title(s)

☐ Partner(s) ☐ Limited ☐ General
☐ Attorney-In-Fact
☐ Trustee(s)
☐ Guardian/Conservator
☐ Other:

Signer is representing:
Name Of Person(s) Or Entity(ies)

_____

_____

DESCRIPTION OF ATTACHED DOCUMENT

_____
Title or Type of Document

_____
Number of Pages

_____
Date of Document

_____
Signer(s) Other Than Named Above

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

PAUL S. LEON
MAYOR

DEBRA PORADA
MAYOR PRO TEM

ALAN D. WAPNER
JIM W. BOWMAN
RUBEN VALENCIA
COUNCIL MEMBERS

SHEILA MAUTZ
CITY CLERK

JAMES R. MILHISER
TREASURER

SCOTT OCHOA
CITY MANAGER

SECTION 00500 – CONTRACT FOR CONSTRUCTION

This Contract for Construction ("Contract"), No. D&C23-011 is made and entered as of _____, by and between City of Ontario, with its principal place of business at 303 East "B" Street, Ontario, CA 91764, sometimes hereinafter called the "City" and **Caston, Inc.**, sometimes hereinafter called "Contractor."

WITNESSETH: That the parties hereto have mutually covenanted and agreed, and by these presents do covenant and agree with each other as follows:

ARTICLE 1. SCOPE OF WORK.

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

Ontario Ballpark - Framing, Drywall, Insullation

Contractor is an independent contractor and not an agent of the City. The Contractor and its surety shall be liable to the City for any damages arising as a result of the Contractor's failure to comply with this obligation.

ARTICLE 2. TIME FOR COMPLETION.

Time is of the essence in the performance of the Work. The Work shall be commenced on the date stated in the City's Notice to Proceed. The Contractor shall complete all Work required by the Contract Documents **per the contract schedule and within 531 calendar days** from the commencement date stated in the Notice to Proceed. By its signature hereunder, Contractor agrees the time for completion set forth above is adequate and reasonable to complete the Work.

ARTICLE 3. CONTRACT PRICE.

The City shall pay to the Contractor as full compensation for the performance of the Contract, subject to any additions or deductions as provided in the Contract Documents, and including all applicable taxes and costs, the sum of **Seven Million Two Hundred Fifty-Eight Thousand Five Hundred Eighty-Five Dollars ($7,258,585)**. Payment shall be made as set forth in the General Conditions. The City will pay to Contractor compensation based upon the prices set forth in the Bid Schedule.

ARTICLE 4. LIQUIDATED DAMAGES.

Contractor acknowledges that the City will sustain actual damages for each and every Day completion of the Project is delayed beyond the Contract Time. Because of the nature of the Project, it would be impracticable or extremely difficult to determine the City's actual damages. Accordingly, in accordance with Government Code section 53069.85, it is agreed that the Contractor will pay the City the sum of $25,000 for each and every calendar day of delay beyond the time prescribed in the Contract Documents for finishing the Work, as Liquidated Damages and not as a penalty or forfeiture. In the event this is not paid, the Contractor agrees the City may deduct that amount from any money due or that may become due the Contractor under the Contract. This Section does not exclude recovery of other damages specified in the Contract Documents. Liquidated damages may be deducted from progress payments due Contractor, Project retention or may be collected directly from Contractor, or from Contractor's surety. These provisions for liquidated damages shall not prevent the City, in case of Contractor's default, from terminating the Contractor.

ARTICLE 5. COMPONENT PARTS OF THE CONTRACT.

The "Contract Documents" include the following:

Notice Inviting Bids
Instructions to Bidders
Bid Forms
Bid Acknowledgement
Bid Schedule
Bid Guarantee
Designation of Subcontractors
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Public Works Contractor DIR Registration Certification
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Applicable Local Agency Standards and Specifications, as last revised
Reference Specifications
Approved and fully executed Change Orders
Permits
Scope of Work Summary
Any other documents contained in or incorporated into the Contract

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

All of the Contract Documents are intended to be complementary. Work required by one of the Contract Documents and not by others shall be done as if required by all. In the event of conflict,

the various Contract Documents will be given effect in the order set forth in the General Conditions. This Contract shall supersede any prior agreement of the parties.

ARTICLE 6. PROVISIONS REQUIRED BY LAW AND CONTRACTOR COMPLIANCE.

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

ARTICLE 7. INDEMNIFICATION.

Contractor shall provide indemnification and defense as set forth in the General Conditions.

ARTICLE 8. PREVAILING WAGES.

Contractor shall be required to pay the prevailing rate of wages in accordance with the Labor Code which such rates shall be made available at the City's Office or may be obtained online at http://www.dir.ca.gov and which must be posted at the job site.

ARTICLE 9. FALSE CLAIMS.

Contractor acknowledges that if a false claim is submitted to the City, it may be considered fraud and Contractor may be subject to criminal prosecution. Contractor acknowledges that the False Claims Act, California Government Code sections 12650, et seq., provides for civil penalties where a person knowingly submits a false claim to a public entity. These provisions include within their scope false claims made with deliberate ignorance of the false information or in reckless disregard of the truth or falsity of the information. In the event the City seeks to recover penalties pursuant to the False Claims Act, it is entitled to recover its litigation costs, including attorneys' fees. Contractor hereby acknowledges that the filing of a false claim may the Contractor to an administrative debarment proceeding wherein Contractor may be prevented from further bidding on public contracts for a period of up to five (5) years.

[REMAINDER OF PAGE LEFT INTENTIONALLY BLANK]

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

CITY OF ONTARIO

By: _____
Scott Ochoa
City Manager

ATTEST:

By: _____
Sheila Mautz, City Clerk

APPROVED AS TO FORM:

By: _____
Best Best & Krieger LLP
City Attorney

Caston, Inc.

By: _____

Its: _____

Printed Name: _____

By: _____

Its: _____

Printed Name: _____

_____
Contractor's License Number and Classification

_____
DIR Registration Number

[IF CORPORATION, TWO SIGNATURES, PRESIDENT **OR** VICE PRESIDENT **AND** SECRETARY **OR** TREASURER **REQUIRED]**

END OF CONTRACT

Notary Acknowledgment

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

STATE OF CALIFORNIA
COUNTY OF _____

On _____, 20___, before me, _____, Notary Public, personally

appeared _____, who proved to me on the basis of satisfactory

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

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

WITNESS my hand and official seal.

_____
Signature of Notary Public

OPTIONAL

Though the information below is not required by law, it may prove valuable to persons relying on the document and could prevent fraudulent removal and reattachment of this form to another document.

CAPACITY CLAIMED BY SIGNER

☐ Individual
☐ Corporate Officer

_____
Title(s)

☐ Partner(s) ☐ Limited ☐ General
☐ Attorney-In-Fact
☐ Trustee(s)
☐ Guardian/Conservator
☐ Other:

Signer is representing:
Name Of Person(s) Or Entity(ies)

_____

_____

DESCRIPTION OF ATTACHED DOCUMENT

_____
Title or Type of Document

_____
Number of Pages

_____
Date of Document

_____
Signer(s) Other Than Named Above

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

PAUL S. LEON
MAYOR

DEBRA PORADA
MAYOR PRO TEM

ALAN D. WAPNER
JIM W. BOWMAN
RUBEN VALENCIA
COUNCIL MEMBERS

SHEILA MAUTZ
CITY CLERK

JAMES R. MILHISER
TREASURER

SCOTT OCHOA
CITY MANAGER

SECTION 00500 – CONTRACT FOR CONSTRUCTION

This Contract for Construction ("Contract"), No. D&C23-011 is made and entered as of _____, by and between City of Ontario, with its principal place of business at 303 East "B" Street, Ontario, CA 91764, sometimes hereinafter called the "City" and **Southcoast Acoustical Interiors, Inc.**, sometimes hereinafter called "Contractor."

WITNESSETH: That the parties hereto have mutually covenanted and agreed, and by these presents do covenant and agree with each other as follows:

ARTICLE 1. SCOPE OF WORK.

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

Ontario Ballpark - Acoustical Ceiling and Treatment

Contractor is an independent contractor and not an agent of the City. The Contractor and its surety shall be liable to the City for any damages arising as a result of the Contractor's failure to comply with this obligation.

ARTICLE 2. TIME FOR COMPLETION.

Time is of the essence in the performance of the Work. The Work shall be commenced on the date stated in the City's Notice to Proceed. The Contractor shall complete all Work required by the Contract Documents **per the contract schedule and within 531 calendar days** from the commencement date stated in the Notice to Proceed. By its signature hereunder, Contractor agrees the time for completion set forth above is adequate and reasonable to complete the Work.

ARTICLE 3. CONTRACT PRICE.

The City shall pay to the Contractor as full compensation for the performance of the Contract, subject to any additions or deductions as provided in the Contract Documents, and including all applicable taxes and costs, the sum of **Six Hundred Thirteen Thousand Two Hundred Fifty Dollars ($613,250)**. Payment shall be made as set forth in the General Conditions. The City will pay to Contractor compensation based upon the prices set forth in the Bid Schedule.

ARTICLE 4. LIQUIDATED DAMAGES.

Contractor acknowledges that the City will sustain actual damages for each and every Day completion of the Project is delayed beyond the Contract Time. Because of the nature of the Project, it would be impracticable or extremely difficult to determine the City's actual damages. Accordingly, in accordance with Government Code section 53069.85, it is agreed that the Contractor will pay the City the sum of $10,000 for each and every calendar day of delay beyond the time prescribed in the Contract Documents for finishing the Work, as Liquidated Damages and not as a penalty or forfeiture. In the event this is not paid, the Contractor agrees the City may deduct that amount from any money due or that may become due the Contractor under the Contract. This Section does not exclude recovery of other damages specified in the Contract Documents. Liquidated damages may be deducted from progress payments due Contractor, Project retention or may be collected directly from Contractor, or from Contractor's surety. These provisions for liquidated damages shall not prevent the City, in case of Contractor's default, from terminating the Contractor.

ARTICLE 5. COMPONENT PARTS OF THE CONTRACT.

The "Contract Documents" include the following:

Notice Inviting Bids
Instructions to Bidders
Bid Forms
Bid Acknowledgement
Bid Schedule
Bid Guarantee
Designation of Subcontractors
Non-Collusion Declaration Form
Iran Contracting Act Certification
Public Works Contractor DIR Registration Certification
Performance Bond
Payment (Labor and Materials) Bond
Contract for Construction
General Conditions
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Construction Plans and Drawings
Standard Specifications for Public Works Construction "Greenbook", latest edition, Except Sections 1-9
Applicable Local Agency Standards and Specifications, as last revised
Reference Specifications
Approved and fully executed Change Orders
Permits
Scope of Work Summary
Any other documents contained in or incorporated into the Contract

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

All of the Contract Documents are intended to be complementary. Work required by one of the Contract Documents and not by others shall be done as if required by all. In the event of conflict,

the various Contract Documents will be given effect in the order set forth in the General Conditions. This Contract shall supersede any prior agreement of the parties.

ARTICLE 6. PROVISIONS REQUIRED BY LAW AND CONTRACTOR COMPLIANCE.

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

ARTICLE 7. INDEMNIFICATION.

Contractor shall provide indemnification and defense as set forth in the General Conditions.

ARTICLE 8. PREVAILING WAGES.

Contractor shall be required to pay the prevailing rate of wages in accordance with the Labor Code which such rates shall be made available at the City's Office or may be obtained online at http://www.dir.ca.gov and which must be posted at the job site.

ARTICLE 9. FALSE CLAIMS.

Contractor acknowledges that if a false claim is submitted to the City, it may be considered fraud and Contractor may be subject to criminal prosecution. Contractor acknowledges that the False Claims Act, California Government Code sections 12650, et seq., provides for civil penalties where a person knowingly submits a false claim to a public entity. These provisions include within their scope false claims made with deliberate ignorance of the false information or in reckless disregard of the truth or falsity of the information. In the event the City seeks to recover penalties pursuant to the False Claims Act, it is entitled to recover its litigation costs, including attorneys' fees. Contractor hereby acknowledges that the filing of a false claim may the Contractor to an administrative debarment proceeding wherein Contractor may be prevented from further bidding on public contracts for a period of up to five (5) years.

[REMAINDER OF PAGE LEFT INTENTIONALLY BLANK]

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

CITY OF ONTARIO

By: _____
Scott Ochoa
City Manager

ATTEST:

By: _____
Sheila Mautz, City Clerk

APPROVED AS TO FORM:

By: _____
Best Best & Krieger LLP
City Attorney

Southcoast Acoustical Interiors, Inc

By: _____

Its: _____

Printed Name: _____

By: _____

Its: _____

Printed Name: _____

_____
Contractor's License Number and Classification

_____
DIR Registration Number

[IF CORPORATION, TWO SIGNATURES, PRESIDENT **OR** VICE PRESIDENT **AND** SECRETARY **OR** TREASURER **REQUIRED]**

END OF CONTRACT

Notary Acknowledgment

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

STATE OF CALIFORNIA
COUNTY OF _____

On _____, 20___, before me, _____, Notary Public, personally

appeared _____, who proved to me on the basis of satisfactory

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

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

WITNESS my hand and official seal.

_____
Signature of Notary Public

OPTIONAL

Though the information below is not required by law, it may prove valuable to persons relying on the document and could prevent fraudulent removal and reattachment of this form to another document.

CAPACITY CLAIMED BY SIGNER

☐ Individual
☐ Corporate Officer

_____
Title(s)

☐ Partner(s) ☐ Limited ☐ General
☐ Attorney-In-Fact
☐ Trustee(s)
☐ Guardian/Conservator
☐ Other:

Signer is representing:
Name Of Person(s) Or Entity(ies)

_____

_____

DESCRIPTION OF ATTACHED DOCUMENT

_____
Title or Type of Document

_____
Number of Pages

_____
Date of Document

_____
Signer(s) Other Than Named Above

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

PAUL S. LEON
MAYOR

DEBRA PORADA
MAYOR PRO TEM

ALAN D. WAPNER
JIM W. BOWMAN
RUBEN VALENCIA
COUNCIL MEMBERS

SHEILA MAUTZ
CITY CLERK

JAMES R. MILHISER
TREASURER

SCOTT OCHOA
CITY MANAGER

SECTION 00500 – CONTRACT FOR CONSTRUCTION

This Contract for Construction ("Contract"), No. D&C23-011 is made and entered as of _____, by and between City of Ontario, with its principal place of business at 303 East "B" Street, Ontario, CA 91764, sometimes hereinafter called the "City" and **Progressive Surface Solutions, LLC**, sometimes hereinafter called "Contractor."

WITNESSETH: That the parties hereto have mutually covenanted and agreed, and by these presents do covenant and agree with each other as follows:

ARTICLE 1. SCOPE OF WORK.

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

Ontario Ballpark - Finish Flooring

Contractor is an independent contractor and not an agent of the City. The Contractor and its surety shall be liable to the City for any damages arising as a result of the Contractor's failure to comply with this obligation.

ARTICLE 2. TIME FOR COMPLETION.

Time is of the essence in the performance of the Work. The Work shall be commenced on the date stated in the City's Notice to Proceed. The Contractor shall complete all Work required by the Contract Documents **per the contract schedule and within 531 calendar days** from the commencement date stated in the Notice to Proceed. By its signature hereunder, Contractor agrees the time for completion set forth above is adequate and reasonable to complete the Work.

ARTICLE 3. CONTRACT PRICE.

The City shall pay to the Contractor as full compensation for the performance of the Contract, subject to any additions or deductions as provided in the Contract Documents, and including all applicable taxes and costs, the sum of **One Million Three Hundred Forty-Eight Thousand Dollars ($1,348,000)**. Payment shall be made as set forth in the General Conditions. The City will pay to Contractor compensation based upon the prices set forth in the Bid Schedule.

ARTICLE 4. LIQUIDATED DAMAGES.

Contractor acknowledges that the City will sustain actual damages for each and every Day completion of the Project is delayed beyond the Contract Time. Because of the nature of the Project, it would be impracticable or extremely difficult to determine the City's actual damages. Accordingly, in accordance with Government Code section 53069.85, it is agreed that the Contractor will pay the City the sum of $10,000 for each and every calendar day of delay beyond the time prescribed in the Contract Documents for finishing the Work, as Liquidated Damages and not as a penalty or forfeiture. In the event this is not paid, the Contractor agrees the City may deduct that amount from any money due or that may become due the Contractor under the Contract. This Section does not exclude recovery of other damages specified in the Contract Documents. Liquidated damages may be deducted from progress payments due Contractor, Project retention or may be collected directly from Contractor, or from Contractor's surety. These provisions for liquidated damages shall not prevent the City, in case of Contractor's default, from terminating the Contractor.

ARTICLE 5. COMPONENT PARTS OF THE CONTRACT.

The "Contract Documents" include the following:

Notice Inviting Bids
Instructions to Bidders
Bid Forms
Bid Acknowledgement
Bid Schedule
Bid Guarantee
Designation of Subcontractors
Non-Collusion Declaration Form
Iran Contracting Act Certification
Public Works Contractor DIR Registration Certification
Performance Bond
Payment (Labor and Materials) Bond
Contract for Construction
General Conditions
Special Conditions
Specifications
Addenda
Construction Plans and Drawings
Standard Specifications for Public Works Construction "Greenbook", latest edition, Except Sections 1-9
Applicable Local Agency Standards and Specifications, as last revised
Reference Specifications
Approved and fully executed Change Orders
Permits
Scope of Work Summary
Any other documents contained in or incorporated into the Contract

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

All of the Contract Documents are intended to be complementary. Work required by one of the Contract Documents and not by others shall be done as if required by all. In the event of conflict,

the various Contract Documents will be given effect in the order set forth in the General Conditions. This Contract shall supersede any prior agreement of the parties.

ARTICLE 6. PROVISIONS REQUIRED BY LAW AND CONTRACTOR COMPLIANCE.

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

ARTICLE 7. INDEMNIFICATION.

Contractor shall provide indemnification and defense as set forth in the General Conditions.

ARTICLE 8. PREVAILING WAGES.

Contractor shall be required to pay the prevailing rate of wages in accordance with the Labor Code which such rates shall be made available at the City's Office or may be obtained online at http://www.dir.ca.gov and which must be posted at the job site.

ARTICLE 9. FALSE CLAIMS.

Contractor acknowledges that if a false claim is submitted to the City, it may be considered fraud and Contractor may be subject to criminal prosecution. Contractor acknowledges that the False Claims Act, California Government Code sections 12650, et seq., provides for civil penalties where a person knowingly submits a false claim to a public entity. These provisions include within their scope false claims made with deliberate ignorance of the false information or in reckless disregard of the truth or falsity of the information. In the event the City seeks to recover penalties pursuant to the False Claims Act, it is entitled to recover its litigation costs, including attorneys' fees. Contractor hereby acknowledges that the filing of a false claim may the Contractor to an administrative debarment proceeding wherein Contractor may be prevented from further bidding on public contracts for a period of up to five (5) years.

[REMAINDER OF PAGE LEFT INTENTIONALLY BLANK]

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

CITY OF ONTARIO

By: _____
Scott Ochoa
City Manager

ATTEST:

By: _____
Sheila Mautz, City Clerk

APPROVED AS TO FORM:

By: _____
Best Best & Krieger LLP
City Attorney

Progressive Surface Solutions, LLC

By: _____

Its: _____

Printed Name: _____

By: _____

Its: _____

Printed Name: _____

_____
Contractor's License Number and Classification

_____
DIR Registration Number

[IF CORPORATION, TWO SIGNATURES, PRESIDENT **OR** VICE PRESIDENT **AND** SECRETARY **OR** TREASURER **REQUIRED]**

END OF CONTRACT

Notary Acknowledgment

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

STATE OF CALIFORNIA
COUNTY OF _____

On _____, 20___, before me, _____, Notary Public, personally

appeared _____, who proved to me on the basis of satisfactory

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

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

WITNESS my hand and official seal.

_____
Signature of Notary Public

OPTIONAL

Though the information below is not required by law, it may prove valuable to persons relying on the document and could prevent fraudulent removal and reattachment of this form to another document.

CAPACITY CLAIMED BY SIGNER

☐ Individual
☐ Corporate Officer

_____
Title(s)

☐ Partner(s) ☐ Limited ☐ General
☐ Attorney-In-Fact
☐ Trustee(s)
☐ Guardian/Conservator
☐ Other:

Signer is representing:
Name Of Person(s) Or Entity(ies)

_____

_____

DESCRIPTION OF ATTACHED DOCUMENT

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Title or Type of Document

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Number of Pages

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Date of Document

_____
Signer(s) Other Than Named Above

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

PAUL S. LEON
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DEBRA PORADA
MAYOR PRO TEM

ALAN D. WAPNER
JIM W. BOWMAN
RUBEN VALENCIA
COUNCIL MEMBERS

SHEILA MAUTZ
CITY CLERK

JAMES R. MILHISER
TREASURER

SCOTT OCHOA
CITY MANAGER

SECTION 00500 – CONTRACT FOR CONSTRUCTION

This Contract for Construction ("Contract"), No. D&C23-011 is made and entered as of _____, by and between City of Ontario, with its principal place of business at 303 East "B" Street, Ontario, CA 91764, sometimes hereinafter called the "City" and **Continental Marble & Tile Co.**, sometimes hereinafter called "Contractor."

WITNESSETH: That the parties hereto have mutually covenanted and agreed, and by these presents do covenant and agree with each other as follows:

ARTICLE 1. SCOPE OF WORK.

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

Ontario Ballpark - Ceramic Tile

Contractor is an independent contractor and not an agent of the City. The Contractor and its surety shall be liable to the City for any damages arising as a result of the Contractor's failure to comply with this obligation.

ARTICLE 2. TIME FOR COMPLETION.

Time is of the essence in the performance of the Work. The Work shall be commenced on the date stated in the City's Notice to Proceed. The Contractor shall complete all Work required by the Contract Documents **per the contract schedule and within 531 calendar days** from the commencement date stated in the Notice to Proceed. By its signature hereunder, Contractor agrees the time for completion set forth above is adequate and reasonable to complete the Work.

ARTICLE 3. CONTRACT PRICE.

The City shall pay to the Contractor as full compensation for the performance of the Contract, subject to any additions or deductions as provided in the Contract Documents, and including all applicable taxes and costs, the sum of **One Million Six Hundred Eleven Thousand Eight Hundred Six Dollars ($1,611,806)**. Payment shall be made as set forth in the General Conditions. The City will pay to Contractor compensation based upon the prices set forth in the Bid Schedule.

ARTICLE 4. LIQUIDATED DAMAGES.

Contractor acknowledges that the City will sustain actual damages for each and every Day completion of the Project is delayed beyond the Contract Time. Because of the nature of the Project, it would be impracticable or extremely difficult to determine the City's actual damages. Accordingly, in accordance with Government Code section 53069.85, it is agreed that the Contractor will pay the City the sum of $10,000 for each and every calendar day of delay beyond the time prescribed in the Contract Documents for finishing the Work, as Liquidated Damages and not as a penalty or forfeiture. In the event this is not paid, the Contractor agrees the City may deduct that amount from any money due or that may become due the Contractor under the Contract. This Section does not exclude recovery of other damages specified in the Contract Documents. Liquidated damages may be deducted from progress payments due Contractor, Project retention or may be collected directly from Contractor, or from Contractor's surety. These provisions for liquidated damages shall not prevent the City, in case of Contractor's default, from terminating the Contractor.

ARTICLE 5. COMPONENT PARTS OF THE CONTRACT.

The "Contract Documents" include the following:

Notice Inviting Bids
Instructions to Bidders
Bid Forms
Bid Acknowledgement
Bid Schedule
Bid Guarantee
Designation of Subcontractors
Non-Collusion Declaration Form
Iran Contracting Act Certification
Public Works Contractor DIR Registration Certification
Performance Bond
Payment (Labor and Materials) Bond
Contract for Construction
General Conditions
Special Conditions
Specifications
Addenda
Construction Plans and Drawings
Standard Specifications for Public Works Construction "Greenbook", latest edition, Except Sections 1-9
Applicable Local Agency Standards and Specifications, as last revised
Reference Specifications
Approved and fully executed Change Orders
Permits
Scope of Work Summary
Any other documents contained in or incorporated into the Contract

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

All of the Contract Documents are intended to be complementary. Work required by one of the Contract Documents and not by others shall be done as if required by all. In the event of conflict,

the various Contract Documents will be given effect in the order set forth in the General Conditions. This Contract shall supersede any prior agreement of the parties.

ARTICLE 6. PROVISIONS REQUIRED BY LAW AND CONTRACTOR COMPLIANCE.

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

ARTICLE 7. INDEMNIFICATION.

Contractor shall provide indemnification and defense as set forth in the General Conditions.

ARTICLE 8. PREVAILING WAGES.

Contractor shall be required to pay the prevailing rate of wages in accordance with the Labor Code which such rates shall be made available at the City's Office or may be obtained online at http://www.dir.ca.gov and which must be posted at the job site.

ARTICLE 9. FALSE CLAIMS.

Contractor acknowledges that if a false claim is submitted to the City, it may be considered fraud and Contractor may be subject to criminal prosecution. Contractor acknowledges that the False Claims Act, California Government Code sections 12650, et seq., provides for civil penalties where a person knowingly submits a false claim to a public entity. These provisions include within their scope false claims made with deliberate ignorance of the false information or in reckless disregard of the truth or falsity of the information. In the event the City seeks to recover penalties pursuant to the False Claims Act, it is entitled to recover its litigation costs, including attorneys' fees. Contractor hereby acknowledges that the filing of a false claim may the Contractor to an administrative debarment proceeding wherein Contractor may be prevented from further bidding on public contracts for a period of up to five (5) years.

[REMAINDER OF PAGE LEFT INTENTIONALLY BLANK]

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

CITY OF ONTARIO

By: _____
Scott Ochoa
City Manager

ATTEST:

By: _____
Sheila Mautz, City Clerk

APPROVED AS TO FORM:

By: _____
Best Best & Krieger LLP
City Attorney

Continental Marble & Tile Co.

By: _____

Its: _____

Printed Name: _____

By: _____

Its: _____

Printed Name: _____

_____
Contractor's License Number and Classification

_____
DIR Registration Number

[IF CORPORATION, TWO SIGNATURES, PRESIDENT **OR** VICE PRESIDENT **AND** SECRETARY **OR** TREASURER **REQUIRED]**

END OF CONTRACT

Notary Acknowledgment

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

STATE OF CALIFORNIA
COUNTY OF _____

On _____, 20___, before me, _____, Notary Public, personally

appeared _____, who proved to me on the basis of satisfactory

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

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

WITNESS my hand and official seal.

_____
Signature of Notary Public

OPTIONAL

Though the information below is not required by law, it may prove valuable to persons relying on the document and could prevent fraudulent removal and reattachment of this form to another document.

CAPACITY CLAIMED BY SIGNER

☐ Individual
☐ Corporate Officer

_____
Title(s)

☐ Partner(s) ☐ Limited ☐ General
☐ Attorney-In-Fact
☐ Trustee(s)
☐ Guardian/Conservator
☐ Other:

Signer is representing:
Name Of Person(s) Or Entity(ies)

_____

_____

DESCRIPTION OF ATTACHED DOCUMENT

_____
Title or Type of Document

_____
Number of Pages

_____
Date of Document

_____
Signer(s) Other Than Named Above

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

PAUL S. LEON
MAYOR

DEBRA PORADA
MAYOR PRO TEM

ALAN D. WAPNER
JIM W. BOWMAN
RUBEN VALENCIA
COUNCIL MEMBERS

SHEILA MAUTZ
CITY CLERK

JAMES R. MILHISER
TREASURER

SCOTT OCHOA
CITY MANAGER

SECTION 00500 – CONTRACT FOR CONSTRUCTION

This Contract for Construction ("Contract"), No. D&C23-011 is made and entered as of _____, by and between City of Ontario, with its principal place of business at 303 East "B" Street, Ontario, CA 91764, sometimes hereinafter called the "City" and **Magnum Drywall, Inc.**, sometimes hereinafter called "Contractor."

WITNESSETH: That the parties hereto have mutually covenanted and agreed, and by these presents do covenant and agree with each other as follows:

ARTICLE 1. SCOPE OF WORK.

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

Ontario Ballpark - Painting and Wall Covering

Contractor is an independent contractor and not an agent of the City. The Contractor and its surety shall be liable to the City for any damages arising as a result of the Contractor's failure to comply with this obligation.

ARTICLE 2. TIME FOR COMPLETION.

Time is of the essence in the performance of the Work. The Work shall be commenced on the date stated in the City's Notice to Proceed. The Contractor shall complete all Work required by the Contract Documents **per the contract schedule and within 531 calendar days** from the commencement date stated in the Notice to Proceed. By its signature hereunder, Contractor agrees the time for completion set forth above is adequate and reasonable to complete the Work.

ARTICLE 3. CONTRACT PRICE.

The City shall pay to the Contractor as full compensation for the performance of the Contract, subject to any additions or deductions as provided in the Contract Documents, and including all applicable taxes and costs, the sum of **One Million Forty-Eight Thousand Dollars ($1,048,000)**. Payment shall be made as set forth in the General Conditions. The City will pay to Contractor compensation based upon the prices set forth in the Bid Schedule.

ARTICLE 4. LIQUIDATED DAMAGES.

Contractor acknowledges that the City will sustain actual damages for each and every Day completion of the Project is delayed beyond the Contract Time. Because of the nature of the

Project, it would be impracticable or extremely difficult to determine the City's actual damages. Accordingly, in accordance with Government Code section 53069.85, it is agreed that the Contractor will pay the City the sum of $10,000 for each and every calendar day of delay beyond the time prescribed in the Contract Documents for finishing the Work, as Liquidated Damages and not as a penalty or forfeiture. In the event this is not paid, the Contractor agrees the City may deduct that amount from any money due or that may become due the Contractor under the Contract. This Section does not exclude recovery of other damages specified in the Contract Documents. Liquidated damages may be deducted from progress payments due Contractor, Project retention or may be collected directly from Contractor, or from Contractor's surety. These provisions for liquidated damages shall not prevent the City, in case of Contractor's default, from terminating the Contractor.

ARTICLE 5. COMPONENT PARTS OF THE CONTRACT.

The "Contract Documents" include the following:

Notice Inviting Bids
Instructions to Bidders
Bid Forms
Bid Acknowledgement
Bid Schedule
Bid Guarantee
Designation of Subcontractors
Non-Collusion Declaration Form
Iran Contracting Act Certification
Public Works Contractor DIR Registration Certification
Performance Bond
Payment (Labor and Materials) Bond
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General Conditions
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Construction Plans and Drawings
Standard Specifications for Public Works Construction "Greenbook", latest edition, Except Sections 1-9
Applicable Local Agency Standards and Specifications, as last revised
Reference Specifications
Approved and fully executed Change Orders
Permits
Scope of Work Summary
Any other documents contained in or incorporated into the Contract

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

All of the Contract Documents are intended to be complementary. Work required by one of the Contract Documents and not by others shall be done as if required by all. In the event of conflict, the various Contract Documents will be given effect in the order set forth in the General Conditions. This Contract shall supersede any prior agreement of the parties.

ARTICLE 6. PROVISIONS REQUIRED BY LAW AND CONTRACTOR COMPLIANCE.

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

ARTICLE 7. INDEMNIFICATION.

Contractor shall provide indemnification and defense as set forth in the General Conditions.

ARTICLE 8. PREVAILING WAGES.

Contractor shall be required to pay the prevailing rate of wages in accordance with the Labor Code which such rates shall be made available at the City's Office or may be obtained online at http://www.dir.ca.gov and which must be posted at the job site.

ARTICLE 9. FALSE CLAIMS.

Contractor acknowledges that if a false claim is submitted to the City, it may be considered fraud and Contractor may be subject to criminal prosecution. Contractor acknowledges that the False Claims Act, California Government Code sections 12650, et seq., provides for civil penalties where a person knowingly submits a false claim to a public entity. These provisions include within their scope false claims made with deliberate ignorance of the false information or in reckless disregard of the truth or falsity of the information. In the event the City seeks to recover penalties pursuant to the False Claims Act, it is entitled to recover its litigation costs, including attorneys' fees. Contractor hereby acknowledges that the filing of a false claim may the Contractor to an administrative debarment proceeding wherein Contractor may be prevented from further bidding on public contracts for a period of up to five (5) years.

[REMAINDER OF PAGE LEFT INTENTIONALLY BLANK]

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

CITY OF ONTARIO

By: _____
Scott Ochoa
City Manager

ATTEST:

By: _____
Sheila Mautz, City Clerk

APPROVED AS TO FORM:

By: _____
Best Best & Krieger LLP
City Attorney

Magnum Drywall, Inc.

By: _____

Its: _____

Printed Name: _____

By: _____

Its: _____

Printed Name: _____

_____
Contractor's License Number and Classification

_____
DIR Registration Number

[IF CORPORATION, TWO SIGNATURES, PRESIDENT **OR** VICE PRESIDENT **AND** SECRETARY **OR** TREASURER **REQUIRED]**

END OF CONTRACT

Notary Acknowledgment

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

STATE OF CALIFORNIA
COUNTY OF _____

On _____, 20___, before me, _____, Notary Public, personally

appeared _____, who proved to me on the basis of satisfactory

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

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

WITNESS my hand and official seal.

_____
Signature of Notary Public

OPTIONAL

Though the information below is not required by law, it may prove valuable to persons relying on the document and could prevent fraudulent removal and reattachment of this form to another document.

CAPACITY CLAIMED BY SIGNER

☐ Individual
☐ Corporate Officer

_____
Title(s)

☐ Partner(s) ☐ Limited ☐ General
☐ Attorney-In-Fact
☐ Trustee(s)
☐ Guardian/Conservator
☐ Other:

Signer is representing:
Name Of Person(s) Or Entity(ies)

_____

_____

DESCRIPTION OF ATTACHED DOCUMENT

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Title or Type of Document

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Number of Pages

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Date of Document

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Signer(s) Other Than Named Above

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ALAN D. WAPNER
JIM W. BOWMAN
RUBEN VALENCIA
COUNCIL MEMBERS

SHEILA MAUTZ
CITY CLERK

JAMES R. MILHISER
TREASURER

SCOTT OCHOA
CITY MANAGER

SECTION 00500 – CONTRACT FOR CONSTRUCTION

This Contract for Construction ("Contract"), No. D&C23-011 is made and entered as of _____, by and between City of Ontario, with its principal place of business at 303 East "B" Street, Ontario, CA 91764, sometimes hereinafter called the "City" and **Inland Building Construction Companies, Inc.**, sometimes hereinafter called "Contractor."

WITNESSETH: That the parties hereto have mutually covenanted and agreed, and by these presents do covenant and agree with each other as follows:

ARTICLE 1. SCOPE OF WORK.

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

Ontario Ballpark - General Package

Contractor is an independent contractor and not an agent of the City. The Contractor and its surety shall be liable to the City for any damages arising as a result of the Contractor's failure to comply with this obligation.

ARTICLE 2. TIME FOR COMPLETION.

Time is of the essence in the performance of the Work. The Work shall be commenced on the date stated in the City's Notice to Proceed. The Contractor shall complete all Work required by the Contract Documents **per the contract schedule and within 531 calendar days** from the commencement date stated in the Notice to Proceed. By its signature hereunder, Contractor agrees the time for completion set forth above is adequate and reasonable to complete the Work.

ARTICLE 3. CONTRACT PRICE.

The City shall pay to the Contractor as full compensation for the performance of the Contract, subject to any additions or deductions as provided in the Contract Documents, and including all applicable taxes and costs, the sum of **Twelve Million Three Hundred Fifty-Five Thousand Four Hundred Dollars ($12,355,400)**. Payment shall be made as set forth in the General Conditions. The City will pay to Contractor compensation based upon the prices set forth in the Bid Schedule.

ARTICLE 4. LIQUIDATED DAMAGES.

Contractor acknowledges that the City will sustain actual damages for each and every Day completion of the Project is delayed beyond the Contract Time. Because of the nature of the Project, it would be impracticable or extremely difficult to determine the City's actual damages. Accordingly, in accordance with Government Code section 53069.85, it is agreed that the Contractor will pay the City the sum of $20,000 for each and every calendar day of delay beyond the time prescribed in the Contract Documents for finishing the Work, as Liquidated Damages and not as a penalty or forfeiture. In the event this is not paid, the Contractor agrees the City may deduct that amount from any money due or that may become due the Contractor under the Contract. This Section does not exclude recovery of other damages specified in the Contract Documents. Liquidated damages may be deducted from progress payments due Contractor, Project retention or may be collected directly from Contractor, or from Contractor's surety. These provisions for liquidated damages shall not prevent the City, in case of Contractor's default, from terminating the Contractor.

ARTICLE 5. COMPONENT PARTS OF THE CONTRACT.

The "Contract Documents" include the following:

Notice Inviting Bids
Instructions to Bidders
Bid Forms
Bid Acknowledgement
Bid Schedule
Bid Guarantee
Designation of Subcontractors
Non-Collusion Declaration Form
Iran Contracting Act Certification
Public Works Contractor DIR Registration Certification
Performance Bond
Payment (Labor and Materials) Bond
Contract for Construction
General Conditions
Special Conditions
Specifications
Addenda
Construction Plans and Drawings
Standard Specifications for Public Works Construction "Greenbook", latest edition, Except Sections 1-9
Applicable Local Agency Standards and Specifications, as last revised
Reference Specifications
Approved and fully executed Change Orders
Permits
Scope of Work Summary
Any other documents contained in or incorporated into the Contract

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

All of the Contract Documents are intended to be complementary. Work required by one of the Contract Documents and not by others shall be done as if required by all. In the event of conflict,

the various Contract Documents will be given effect in the order set forth in the General Conditions. This Contract shall supersede any prior agreement of the parties.

ARTICLE 6. PROVISIONS REQUIRED BY LAW AND CONTRACTOR COMPLIANCE.

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

ARTICLE 7. INDEMNIFICATION.

Contractor shall provide indemnification and defense as set forth in the General Conditions.

ARTICLE 8. PREVAILING WAGES.

Contractor shall be required to pay the prevailing rate of wages in accordance with the Labor Code which such rates shall be made available at the City's Office or may be obtained online at http://www.dir.ca.gov and which must be posted at the job site.

ARTICLE 9. FALSE CLAIMS.

Contractor acknowledges that if a false claim is submitted to the City, it may be considered fraud and Contractor may be subject to criminal prosecution. Contractor acknowledges that the False Claims Act, California Government Code sections 12650, et seq., provides for civil penalties where a person knowingly submits a false claim to a public entity. These provisions include within their scope false claims made with deliberate ignorance of the false information or in reckless disregard of the truth or falsity of the information. In the event the City seeks to recover penalties pursuant to the False Claims Act, it is entitled to recover its litigation costs, including attorneys' fees. Contractor hereby acknowledges that the filing of a false claim may the Contractor to an administrative debarment proceeding wherein Contractor may be prevented from further bidding on public contracts for a period of up to five (5) years.

[REMAINDER OF PAGE LEFT INTENTIONALLY BLANK]

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

CITY OF ONTARIO

By: _____
Scott Ochoa
City Manager

ATTEST:

By: _____
Sheila Mautz, City Clerk

APPROVED AS TO FORM:

By: _____
Best Best & Krieger LLP
City Attorney

Inland Building Construction Companies, Inc.

By: _____

Its: _____

Printed Name: _____

By: _____

Its: _____

Printed Name: _____

_____
Contractor's License Number and Classification

_____
DIR Registration Number

[IF CORPORATION, TWO SIGNATURES, PRESIDENT **OR** VICE PRESIDENT **AND** SECRETARY **OR** TREASURER **REQUIRED]**

END OF CONTRACT

Notary Acknowledgment

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

STATE OF CALIFORNIA
COUNTY OF _____

On _____, 20___, before me, _____, Notary Public, personally

appeared _____, who proved to me on the basis of satisfactory

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

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

WITNESS my hand and official seal.

_____
Signature of Notary Public

OPTIONAL

Though the information below is not required by law, it may prove valuable to persons relying on the document and could prevent fraudulent removal and reattachment of this form to another document.

CAPACITY CLAIMED BY SIGNER

☐ Individual
☐ Corporate Officer

_____
Title(s)

☐ Partner(s) ☐ Limited ☐ General
☐ Attorney-In-Fact
☐ Trustee(s)
☐ Guardian/Conservator
☐ Other:

Signer is representing:
Name Of Person(s) Or Entity(ies)

_____

_____

DESCRIPTION OF ATTACHED DOCUMENT

_____
Title or Type of Document

_____
Number of Pages

_____
Date of Document

_____
Signer(s) Other Than Named Above

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

PAUL S. LEON
MAYOR

DEBRA PORADA
MAYOR PRO TEM

ALAN D. WAPNER
JIM W. BOWMAN
RUBEN VALENCIA
COUNCIL MEMBERS

SHEILA MAUTZ
CITY CLERK

JAMES R. MILHISER
TREASURER

SCOTT OCHOA
CITY MANAGER

SECTION 00500 – CONTRACT FOR CONSTRUCTION

This Contract for Construction ("Contract"), No. D&C23-011 is made and entered as of _____, by and between City of Ontario, with its principal place of business at 303 East "B" Street, Ontario, CA 91764, sometimes hereinafter called the "City" and **California Commercial Pools, Inc.**, sometimes hereinafter called "Contractor."

WITNESSETH: That the parties hereto have mutually covenanted and agreed, and by these presents do covenant and agree with each other as follows:

ARTICLE 1. SCOPE OF WORK.

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

Ontario Ballpark - Aquatics

Contractor is an independent contractor and not an agent of the City. The Contractor and its surety shall be liable to the City for any damages arising as a result of the Contractor's failure to comply with this obligation.

ARTICLE 2. TIME FOR COMPLETION.

Time is of the essence in the performance of the Work. The Work shall be commenced on the date stated in the City's Notice to Proceed. The Contractor shall complete all Work required by the Contract Documents **per the contract schedule and within 531 calendar days** from the commencement date stated in the Notice to Proceed. By its signature hereunder, Contractor agrees the time for completion set forth above is adequate and reasonable to complete the Work.

ARTICLE 3. CONTRACT PRICE.

The City shall pay to the Contractor as full compensation for the performance of the Contract, subject to any additions or deductions as provided in the Contract Documents, and including all applicable taxes and costs, the sum of **Two Million Five Hundred Forty-Eight Thousand Dollars ($2,548,000)**. Payment shall be made as set forth in the General Conditions. The City will pay to Contractor compensation based upon the prices set forth in the Bid Schedule.

ARTICLE 4. LIQUIDATED DAMAGES.

Contractor acknowledges that the City will sustain actual damages for each and every Day completion of the Project is delayed beyond the Contract Time. Because of the nature of the Project, it would be impracticable or extremely difficult to determine the City's actual damages. Accordingly, in accordance with Government Code section 53069.85, it is agreed that the Contractor will pay the City the sum of $10,000 for each and every calendar day of delay beyond the time prescribed in the Contract Documents for finishing the Work, as Liquidated Damages and not as a penalty or forfeiture. In the event this is not paid, the Contractor agrees the City may deduct that amount from any money due or that may become due the Contractor under the Contract. This Section does not exclude recovery of other damages specified in the Contract Documents. Liquidated damages may be deducted from progress payments due Contractor, Project retention or may be collected directly from Contractor, or from Contractor's surety. These provisions for liquidated damages shall not prevent the City, in case of Contractor's default, from terminating the Contractor.

ARTICLE 5. COMPONENT PARTS OF THE CONTRACT.

The "Contract Documents" include the following:

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Instructions to Bidders
Bid Forms
Bid Acknowledgement
Bid Schedule
Bid Guarantee
Designation of Subcontractors
Non-Collusion Declaration Form
Iran Contracting Act Certification
Public Works Contractor DIR Registration Certification
Performance Bond
Payment (Labor and Materials) Bond
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Applicable Local Agency Standards and Specifications, as last revised
Reference Specifications
Approved and fully executed Change Orders
Permits
Scope of Work Summary
Any other documents contained in or incorporated into the Contract

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All of the Contract Documents are intended to be complementary. Work required by one of the Contract Documents and not by others shall be done as if required by all. In the event of conflict,

the various Contract Documents will be given effect in the order set forth in the General Conditions. This Contract shall supersede any prior agreement of the parties.

ARTICLE 6. PROVISIONS REQUIRED BY LAW AND CONTRACTOR COMPLIANCE.

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

ARTICLE 7. INDEMNIFICATION.

Contractor shall provide indemnification and defense as set forth in the General Conditions.

ARTICLE 8. PREVAILING WAGES.

Contractor shall be required to pay the prevailing rate of wages in accordance with the Labor Code which such rates shall be made available at the City's Office or may be obtained online at http://www.dir.ca.gov and which must be posted at the job site.

ARTICLE 9. FALSE CLAIMS.

Contractor acknowledges that if a false claim is submitted to the City, it may be considered fraud and Contractor may be subject to criminal prosecution. Contractor acknowledges that the False Claims Act, California Government Code sections 12650, et seq., provides for civil penalties where a person knowingly submits a false claim to a public entity. These provisions include within their scope false claims made with deliberate ignorance of the false information or in reckless disregard of the truth or falsity of the information. In the event the City seeks to recover penalties pursuant to the False Claims Act, it is entitled to recover its litigation costs, including attorneys' fees. Contractor hereby acknowledges that the filing of a false claim may the Contractor to an administrative debarment proceeding wherein Contractor may be prevented from further bidding on public contracts for a period of up to five (5) years.

[REMAINDER OF PAGE LEFT INTENTIONALLY BLANK]

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

CITY OF ONTARIO

By: _____
Scott Ochoa
City Manager

ATTEST:

By: _____
Sheila Mautz, City Clerk

APPROVED AS TO FORM:

By: _____
Best Best & Krieger LLP
City Attorney

California Commercial Pools, Inc.

By: _____

Its: _____

Printed Name: _____

By: _____

Its: _____

Printed Name: _____

_____
Contractor's License Number and Classification

_____
DIR Registration Number

[IF CORPORATION, TWO SIGNATURES, PRESIDENT **OR** VICE PRESIDENT **AND** SECRETARY **OR** TREASURER **REQUIRED]**

END OF CONTRACT

Notary Acknowledgment

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

STATE OF CALIFORNIA
COUNTY OF _____

On _____, 20___, before me, _____, Notary Public, personally

appeared _____, who proved to me on the basis of satisfactory

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

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

WITNESS my hand and official seal.

_____
Signature of Notary Public

OPTIONAL

Though the information below is not required by law, it may prove valuable to persons relying on the document and could prevent fraudulent removal and reattachment of this form to another document.

CAPACITY CLAIMED BY SIGNER

☐ Individual
☐ Corporate Officer

_____
Title(s)

☐ Partner(s) ☐ Limited ☐ General
☐ Attorney-In-Fact
☐ Trustee(s)
☐ Guardian/Conservator
☐ Other:

Signer is representing:
Name Of Person(s) Or Entity(ies)

_____

_____

DESCRIPTION OF ATTACHED DOCUMENT

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Title or Type of Document

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Number of Pages

_____
Date of Document

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Signer(s) Other Than Named Above

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

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MAYOR

DEBRA PORADA
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ALAN D. WAPNER
JIM W. BOWMAN
RUBEN VALENCIA
COUNCIL MEMBERS

SHEILA MAUTZ
CITY CLERK

JAMES R. MILHISER
TREASURER

SCOTT OCHOA
CITY MANAGER

SECTION 00500 – CONTRACT FOR CONSTRUCTION

This Contract for Construction ("Contract"), No. D&C23-011 is made and entered as of _____, by and between City of Ontario, with its principal place of business at 303 East "B" Street, Ontario, CA 91764, sometimes hereinafter called the "City" and **Kamran and Company, LLC**, sometimes hereinafter called "Contractor."

WITNESSETH: That the parties hereto have mutually covenanted and agreed, and by these presents do covenant and agree with each other as follows:

ARTICLE 1. SCOPE OF WORK.

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

Ontario Ballpark - Food Service Equipment

Contractor is an independent contractor and not an agent of the City. The Contractor and its surety shall be liable to the City for any damages arising as a result of the Contractor's failure to comply with this obligation.

ARTICLE 2. TIME FOR COMPLETION.

Time is of the essence in the performance of the Work. The Work shall be commenced on the date stated in the City's Notice to Proceed. The Contractor shall complete all Work required by the Contract Documents **per the contract schedule and within 531 calendar days** from the commencement date stated in the Notice to Proceed. By its signature hereunder, Contractor agrees the time for completion set forth above is adequate and reasonable to complete the Work.

ARTICLE 3. CONTRACT PRICE.

The City shall pay to the Contractor as full compensation for the performance of the Contract, subject to any additions or deductions as provided in the Contract Documents, and including all applicable taxes and costs, the sum of **Five Million Four Hundred Twenty-Nine Thousand Seven Hundred Dollars ($5,429,700)**. Payment shall be made as set forth in the General Conditions. The City will pay to Contractor compensation based upon the prices set forth in the Bid Schedule.

ARTICLE 4. LIQUIDATED DAMAGES.

Contractor acknowledges that the City will sustain actual damages for each and every Day completion of the Project is delayed beyond the Contract Time. Because of the nature of the Project, it would be impracticable or extremely difficult to determine the City's actual damages. Accordingly, in accordance with Government Code section 53069.85, it is agreed that the Contractor will pay the City the sum of $25,000 for each and every calendar day of delay beyond the time prescribed in the Contract Documents for finishing the Work, as Liquidated Damages and not as a penalty or forfeiture. In the event this is not paid, the Contractor agrees the City may deduct that amount from any money due or that may become due the Contractor under the Contract. This Section does not exclude recovery of other damages specified in the Contract Documents. Liquidated damages may be deducted from progress payments due Contractor, Project retention or may be collected directly from Contractor, or from Contractor's surety. These provisions for liquidated damages shall not prevent the City, in case of Contractor's default, from terminating the Contractor.

ARTICLE 5. COMPONENT PARTS OF THE CONTRACT.

The "Contract Documents" include the following:

Notice Inviting Bids
Instructions to Bidders
Bid Forms
Bid Acknowledgement
Bid Schedule
Bid Guarantee
Designation of Subcontractors
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Applicable Local Agency Standards and Specifications, as last revised
Reference Specifications
Approved and fully executed Change Orders
Permits
Scope of Work Summary
Any other documents contained in or incorporated into the Contract

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

All of the Contract Documents are intended to be complementary. Work required by one of the Contract Documents and not by others shall be done as if required by all. In the event of conflict,

the various Contract Documents will be given effect in the order set forth in the General Conditions. This Contract shall supersede any prior agreement of the parties.

ARTICLE 6. PROVISIONS REQUIRED BY LAW AND CONTRACTOR COMPLIANCE.

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

ARTICLE 7. INDEMNIFICATION.

Contractor shall provide indemnification and defense as set forth in the General Conditions.

ARTICLE 8. PREVAILING WAGES.

Contractor shall be required to pay the prevailing rate of wages in accordance with the Labor Code which such rates shall be made available at the City's Office or may be obtained online at http://www.dir.ca.gov and which must be posted at the job site.

ARTICLE 9. FALSE CLAIMS.

Contractor acknowledges that if a false claim is submitted to the City, it may be considered fraud and Contractor may be subject to criminal prosecution. Contractor acknowledges that the False Claims Act, California Government Code sections 12650, et seq., provides for civil penalties where a person knowingly submits a false claim to a public entity. These provisions include within their scope false claims made with deliberate ignorance of the false information or in reckless disregard of the truth or falsity of the information. In the event the City seeks to recover penalties pursuant to the False Claims Act, it is entitled to recover its litigation costs, including attorneys' fees. Contractor hereby acknowledges that the filing of a false claim may the Contractor to an administrative debarment proceeding wherein Contractor may be prevented from further bidding on public contracts for a period of up to five (5) years.

[REMAINDER OF PAGE LEFT INTENTIONALLY BLANK]

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

CITY OF ONTARIO

By: _____
Scott Ochoa
City Manager

ATTEST:

By: _____
Sheila Mautz, City Clerk

APPROVED AS TO FORM:

By: _____
Best Best & Krieger LLP
City Attorney

Kamran and Company, LLC

By: _____

Its: _____

Printed Name: _____

By: _____

Its: _____

Printed Name: _____

_____
Contractor's License Number and Classification

_____
DIR Registration Number

[IF CORPORATION, TWO SIGNATURES, PRESIDENT **OR** VICE PRESIDENT **AND** SECRETARY **OR** TREASURER **REQUIRED]**

END OF CONTRACT

Notary Acknowledgment

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

STATE OF CALIFORNIA
COUNTY OF _____

On _____, 20___, before me, _____, Notary Public, personally

appeared _____, who proved to me on the basis of satisfactory

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

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

WITNESS my hand and official seal.

_____
Signature of Notary Public

OPTIONAL

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CAPACITY CLAIMED BY SIGNER

☐ Individual
☐ Corporate Officer

_____
Title(s)

☐ Partner(s) ☐ Limited ☐ General
☐ Attorney-In-Fact
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☐ Guardian/Conservator
☐ Other:

Signer is representing:
Name Of Person(s) Or Entity(ies)

_____

_____

DESCRIPTION OF ATTACHED DOCUMENT

_____
Title or Type of Document

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Number of Pages

_____
Date of Document

_____
Signer(s) Other Than Named Above

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

PAUL S. LEON
MAYOR

DEBRA PORADA
MAYOR PRO TEM

ALAN D. WAPNER
JIM W. BOWMAN
RUBEN VALENCIA
COUNCIL MEMBERS

SHEILA MAUTZ
CITY CLERK

JAMES R. MILHISER
TREASURER

SCOTT OCHOA
CITY MANAGER

SECTION 00500 – CONTRACT FOR CONSTRUCTION

This Contract for Construction ("Contract"), No. D&C23-011 is made and entered as of _____, by and between City of Ontario, with its principal place of business at 303 East "B" Street, Ontario, CA 91764, sometimes hereinafter called the "City" and **JPI Development Group, Inc.**, sometimes hereinafter called "Contractor."

WITNESSETH: That the parties hereto have mutually covenanted and agreed, and by these presents do covenant and agree with each other as follows:

ARTICLE 1. SCOPE OF WORK.

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

Ontario Ballpark - Fire Sprinklers

Contractor is an independent contractor and not an agent of the City. The Contractor and its surety shall be liable to the City for any damages arising as a result of the Contractor's failure to comply with this obligation.

ARTICLE 2. TIME FOR COMPLETION.

Time is of the essence in the performance of the Work. The Work shall be commenced on the date stated in the City's Notice to Proceed. The Contractor shall complete all Work required by the Contract Documents **per the contract schedule and within 531 calendar days** from the commencement date stated in the Notice to Proceed. By its signature hereunder, Contractor agrees the time for completion set forth above is adequate and reasonable to complete the Work.

ARTICLE 3. CONTRACT PRICE.

The City shall pay to the Contractor as full compensation for the performance of the Contract, subject to any additions or deductions as provided in the Contract Documents, and including all applicable taxes and costs, the sum of **One Million Three Hundred Fifteen Thousand Dollars ($1,315,000)**. Payment shall be made as set forth in the General Conditions. The City will pay to Contractor compensation based upon the prices set forth in the Bid Schedule.

ARTICLE 4. LIQUIDATED DAMAGES.

Contractor acknowledges that the City will sustain actual damages for each and every Day completion of the Project is delayed beyond the Contract Time. Because of the nature of the Project, it would be impracticable or extremely difficult to determine the City's actual damages. Accordingly, in accordance with Government Code section 53069.85, it is agreed that the Contractor will pay the City the sum of $25,000 for each and every calendar day of delay beyond the time prescribed in the Contract Documents for finishing the Work, as Liquidated Damages and not as a penalty or forfeiture. In the event this is not paid, the Contractor agrees the City may deduct that amount from any money due or that may become due the Contractor under the Contract. This Section does not exclude recovery of other damages specified in the Contract Documents. Liquidated damages may be deducted from progress payments due Contractor, Project retention or may be collected directly from Contractor, or from Contractor's surety. These provisions for liquidated damages shall not prevent the City, in case of Contractor's default, from terminating the Contractor.

ARTICLE 5. COMPONENT PARTS OF THE CONTRACT.

The "Contract Documents" include the following:

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Bid Forms
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All of the Contract Documents are intended to be complementary. Work required by one of the Contract Documents and not by others shall be done as if required by all. In the event of conflict,

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ARTICLE 7. INDEMNIFICATION.

Contractor shall provide indemnification and defense as set forth in the General Conditions.

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Contractor shall be required to pay the prevailing rate of wages in accordance with the Labor Code which such rates shall be made available at the City's Office or may be obtained online at http://www.dir.ca.gov and which must be posted at the job site.

ARTICLE 9. FALSE CLAIMS.

Contractor acknowledges that if a false claim is submitted to the City, it may be considered fraud and Contractor may be subject to criminal prosecution. Contractor acknowledges that the False Claims Act, California Government Code sections 12650, et seq., provides for civil penalties where a person knowingly submits a false claim to a public entity. These provisions include within their scope false claims made with deliberate ignorance of the false information or in reckless disregard of the truth or falsity of the information. In the event the City seeks to recover penalties pursuant to the False Claims Act, it is entitled to recover its litigation costs, including attorneys' fees. Contractor hereby acknowledges that the filing of a false claim may the Contractor to an administrative debarment proceeding wherein Contractor may be prevented from further bidding on public contracts for a period of up to five (5) years.

[REMAINDER OF PAGE LEFT INTENTIONALLY BLANK]

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

CITY OF ONTARIO

By: _____
Scott Ochoa
City Manager

ATTEST:

By: _____
Sheila Mautz, City Clerk

APPROVED AS TO FORM:

By: _____
Best Best & Krieger LLP
City Attorney

JPI Development Group, Inc.

By: _____

Its: _____

Printed Name: _____

By: _____

Its: _____

Printed Name: _____

_____
Contractor's License Number and Classification

_____
DIR Registration Number

[IF CORPORATION, TWO SIGNATURES, PRESIDENT **OR** VICE PRESIDENT **AND** SECRETARY **OR** TREASURER **REQUIRED]**

END OF CONTRACT

Notary Acknowledgment

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

STATE OF CALIFORNIA
COUNTY OF _____

On _____, 20___, before me, _____, Notary Public, personally

appeared _____, who proved to me on the basis of satisfactory

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

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

WITNESS my hand and official seal.

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Signature of Notary Public

OPTIONAL

Though the information below is not required by law, it may prove valuable to persons relying on the document and could prevent fraudulent removal and reattachment of this form to another document.

CAPACITY CLAIMED BY SIGNER

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☐ Corporate Officer

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Title(s)

☐ Partner(s) ☐ Limited ☐ General
☐ Attorney-In-Fact
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☐ Guardian/Conservator
☐ Other:

Signer is representing:
Name Of Person(s) Or Entity(ies)

_____

_____

DESCRIPTION OF ATTACHED DOCUMENT

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Title or Type of Document

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Number of Pages

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Date of Document

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Signer(s) Other Than Named Above

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CITY MANAGER

SECTION 00500 – CONTRACT FOR CONSTRUCTION

This Contract for Construction ("Contract"), No. D&C23-011 is made and entered as of _____, by and between City of Ontario, with its principal place of business at 303 East "B" Street, Ontario, CA 91764, sometimes hereinafter called the "City" and **Continental Plumbing, Inc.**, sometimes hereinafter called "Contractor."

WITNESSETH: That the parties hereto have mutually covenanted and agreed, and by these presents do covenant and agree with each other as follows:

ARTICLE 1. SCOPE OF WORK.

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

Ontario Ballpark - Plumbing

Contractor is an independent contractor and not an agent of the City. The Contractor and its surety shall be liable to the City for any damages arising as a result of the Contractor's failure to comply with this obligation.

ARTICLE 2. TIME FOR COMPLETION.

Time is of the essence in the performance of the Work. The Work shall be commenced on the date stated in the City's Notice to Proceed. The Contractor shall complete all Work required by the Contract Documents **per the contract schedule and within 531 calendar days** from the commencement date stated in the Notice to Proceed. By its signature hereunder, Contractor agrees the time for completion set forth above is adequate and reasonable to complete the Work.

ARTICLE 3. CONTRACT PRICE.

The City shall pay to the Contractor as full compensation for the performance of the Contract, subject to any additions or deductions as provided in the Contract Documents, and including all applicable taxes and costs, the sum of **Eight Million One Hundred Ninety-Four Thousand Six Hundred Thirteen Dollars ($8,194,613)**. Payment shall be made as set forth in the General Conditions. The City will pay to Contractor compensation based upon the prices set forth in the Bid Schedule.

ARTICLE 4. LIQUIDATED DAMAGES.

Contractor acknowledges that the City will sustain actual damages for each and every Day completion of the Project is delayed beyond the Contract Time. Because of the nature of the Project, it would be impracticable or extremely difficult to determine the City's actual damages. Accordingly, in accordance with Government Code section 53069.85, it is agreed that the Contractor will pay the City the sum of $25,000 for each and every calendar day of delay beyond the time prescribed in the Contract Documents for finishing the Work, as Liquidated Damages and not as a penalty or forfeiture. In the event this is not paid, the Contractor agrees the City may deduct that amount from any money due or that may become due the Contractor under the Contract. This Section does not exclude recovery of other damages specified in the Contract Documents. Liquidated damages may be deducted from progress payments due Contractor, Project retention or may be collected directly from Contractor, or from Contractor's surety. These provisions for liquidated damages shall not prevent the City, in case of Contractor's default, from terminating the Contractor.

ARTICLE 5. COMPONENT PARTS OF THE CONTRACT.

The "Contract Documents" include the following:

Notice Inviting Bids
Instructions to Bidders
Bid Forms
Bid Acknowledgement
Bid Schedule
Bid Guarantee
Designation of Subcontractors
Non-Collusion Declaration Form
Iran Contracting Act Certification
Public Works Contractor DIR Registration Certification
Performance Bond
Payment (Labor and Materials) Bond
Contract for Construction
General Conditions
Special Conditions
Specifications
Addenda
Construction Plans and Drawings
Standard Specifications for Public Works Construction "Greenbook", latest edition, Except Sections 1-9
Applicable Local Agency Standards and Specifications, as last revised
Reference Specifications
Approved and fully executed Change Orders
Permits
Scope of Work Summary
Any other documents contained in or incorporated into the Contract

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

All of the Contract Documents are intended to be complementary. Work required by one of the Contract Documents and not by others shall be done as if required by all. In the event of conflict,

the various Contract Documents will be given effect in the order set forth in the General Conditions. This Contract shall supersede any prior agreement of the parties.

ARTICLE 6. PROVISIONS REQUIRED BY LAW AND CONTRACTOR COMPLIANCE.

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

ARTICLE 7. INDEMNIFICATION.

Contractor shall provide indemnification and defense as set forth in the General Conditions.

ARTICLE 8. PREVAILING WAGES.

Contractor shall be required to pay the prevailing rate of wages in accordance with the Labor Code which such rates shall be made available at the City's Office or may be obtained online at http://www.dir.ca.gov and which must be posted at the job site.

ARTICLE 9. FALSE CLAIMS.

Contractor acknowledges that if a false claim is submitted to the City, it may be considered fraud and Contractor may be subject to criminal prosecution. Contractor acknowledges that the False Claims Act, California Government Code sections 12650, et seq., provides for civil penalties where a person knowingly submits a false claim to a public entity. These provisions include within their scope false claims made with deliberate ignorance of the false information or in reckless disregard of the truth or falsity of the information. In the event the City seeks to recover penalties pursuant to the False Claims Act, it is entitled to recover its litigation costs, including attorneys' fees. Contractor hereby acknowledges that the filing of a false claim may the Contractor to an administrative debarment proceeding wherein Contractor may be prevented from further bidding on public contracts for a period of up to five (5) years.

[REMAINDER OF PAGE LEFT INTENTIONALLY BLANK]

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

CITY OF ONTARIO

By: _____
Scott Ochoa
City Manager

ATTEST:

By: _____
Sheila Mautz, City Clerk

APPROVED AS TO FORM:

By: _____
Best Best & Krieger LLP
City Attorney

Continental Plumbing, Inc.

By: _____

Its: _____

Printed Name: _____

By: _____

Its: _____

Printed Name: _____

_____
Contractor's License Number and Classification

_____
DIR Registration Number

[IF CORPORATION, TWO SIGNATURES, PRESIDENT **OR** VICE PRESIDENT **AND** SECRETARY **OR** TREASURER **REQUIRED]**

END OF CONTRACT

Notary Acknowledgment

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

STATE OF CALIFORNIA
COUNTY OF _____

On _____, 20___, before me, _____, Notary Public, personally

appeared _____, who proved to me on the basis of satisfactory

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

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

WITNESS my hand and official seal.

_____
Signature of Notary Public

OPTIONAL

Though the information below is not required by law, it may prove valuable to persons relying on the document and could prevent fraudulent removal and reattachment of this form to another document.

CAPACITY CLAIMED BY SIGNER

☐ Individual
☐ Corporate Officer

_____
Title(s)

☐ Partner(s) ☐ Limited ☐ General
☐ Attorney-In-Fact
☐ Trustee(s)
☐ Guardian/Conservator
☐ Other:

Signer is representing:
Name Of Person(s) Or Entity(ies)

_____

_____

DESCRIPTION OF ATTACHED DOCUMENT

_____
Title or Type of Document

_____
Number of Pages

_____
Date of Document

_____
Signer(s) Other Than Named Above

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

PAUL S. LEON
MAYOR

DEBRA PORADA
MAYOR PRO TEM

ALAN D. WAPNER
JIM W. BOWMAN
RUBEN VALENCIA
COUNCIL MEMBERS

SHEILA MAUTZ
CITY CLERK

JAMES R. MILHISER
TREASURER

SCOTT OCHOA
CITY MANAGER

SECTION 00500 – CONTRACT FOR CONSTRUCTION

This Contract for Construction ("Contract"), No. D&C23-011 is made and entered as of _____, by and between City of Ontario, with its principal place of business at 303 East "B" Street, Ontario, CA 91764, sometimes hereinafter called the "City" and **Kerns, Inc. A California Corporation**, sometimes hereinafter called "Contractor."

WITNESSETH: That the parties hereto have mutually covenanted and agreed, and by these presents do covenant and agree with each other as follows:

ARTICLE 1. SCOPE OF WORK.

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

Ontario Ballpark - Site Utilities

Contractor is an independent contractor and not an agent of the City. The Contractor and its surety shall be liable to the City for any damages arising as a result of the Contractor's failure to comply with this obligation.

ARTICLE 2. TIME FOR COMPLETION.

Time is of the essence in the performance of the Work. The Work shall be commenced on the date stated in the City's Notice to Proceed. The Contractor shall complete all Work required by the Contract Documents **per the contract schedule and within 531 calendar days** from the commencement date stated in the Notice to Proceed. By its signature hereunder, Contractor agrees the time for completion set forth above is adequate and reasonable to complete the Work.

ARTICLE 3. CONTRACT PRICE.

The City shall pay to the Contractor as full compensation for the performance of the Contract, subject to any additions or deductions as provided in the Contract Documents, and including all applicable taxes and costs, the sum of **Three Million Two Hundred Eighty Thousand Five Hundred Eighty Dollars ($3,280,580)**. Payment shall be made as set forth in the General Conditions. The City will pay to Contractor compensation based upon the prices set forth in the Bid Schedule.

ARTICLE 4. LIQUIDATED DAMAGES.

Contractor acknowledges that the City will sustain actual damages for each and every Day completion of the Project is delayed beyond the Contract Time. Because of the nature of the Project, it would be impracticable or extremely difficult to determine the City's actual damages. Accordingly, in accordance with Government Code section 53069.85, it is agreed that the Contractor will pay the City the sum of $25,000 for each and every calendar day of delay beyond the time prescribed in the Contract Documents for finishing the Work, as Liquidated Damages and not as a penalty or forfeiture. In the event this is not paid, the Contractor agrees the City may deduct that amount from any money due or that may become due the Contractor under the Contract. This Section does not exclude recovery of other damages specified in the Contract Documents. Liquidated damages may be deducted from progress payments due Contractor, Project retention or may be collected directly from Contractor, or from Contractor's surety. These provisions for liquidated damages shall not prevent the City, in case of Contractor's default, from terminating the Contractor.

ARTICLE 5. COMPONENT PARTS OF THE CONTRACT.

The "Contract Documents" include the following:

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Instructions to Bidders
Bid Forms
Bid Acknowledgement
Bid Schedule
Bid Guarantee
Designation of Subcontractors
Non-Collusion Declaration Form
Iran Contracting Act Certification
Public Works Contractor DIR Registration Certification
Performance Bond
Payment (Labor and Materials) Bond
Contract for Construction
General Conditions
Special Conditions
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Construction Plans and Drawings
Standard Specifications for Public Works Construction "Greenbook", latest edition, Except Sections 1-9
Applicable Local Agency Standards and Specifications, as last revised
Reference Specifications
Approved and fully executed Change Orders
Permits
Scope of Work Summary
Any other documents contained in or incorporated into the Contract

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

All of the Contract Documents are intended to be complementary. Work required by one of the Contract Documents and not by others shall be done as if required by all. In the event of conflict,

the various Contract Documents will be given effect in the order set forth in the General Conditions. This Contract shall supersede any prior agreement of the parties.

ARTICLE 6. PROVISIONS REQUIRED BY LAW AND CONTRACTOR COMPLIANCE.

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

ARTICLE 7. INDEMNIFICATION.

Contractor shall provide indemnification and defense as set forth in the General Conditions.

ARTICLE 8. PREVAILING WAGES.

Contractor shall be required to pay the prevailing rate of wages in accordance with the Labor Code which such rates shall be made available at the City's Office or may be obtained online at http://www.dir.ca.gov and which must be posted at the job site.

ARTICLE 9. FALSE CLAIMS.

Contractor acknowledges that if a false claim is submitted to the City, it may be considered fraud and Contractor may be subject to criminal prosecution. Contractor acknowledges that the False Claims Act, California Government Code sections 12650, et seq., provides for civil penalties where a person knowingly submits a false claim to a public entity. These provisions include within their scope false claims made with deliberate ignorance of the false information or in reckless disregard of the truth or falsity of the information. In the event the City seeks to recover penalties pursuant to the False Claims Act, it is entitled to recover its litigation costs, including attorneys' fees. Contractor hereby acknowledges that the filing of a false claim may the Contractor to an administrative debarment proceeding wherein Contractor may be prevented from further bidding on public contracts for a period of up to five (5) years.

[REMAINDER OF PAGE LEFT INTENTIONALLY BLANK]

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

CITY OF ONTARIO

By: _____
Scott Ochoa
City Manager

ATTEST:

By: _____
Sheila Mautz, City Clerk

APPROVED AS TO FORM:

By: _____
Best Best & Krieger LLP
City Attorney

Kerns, Inc. A California Corporation

By: _____

Its: _____

Printed Name: _____

By: _____

Its: _____

Printed Name: _____

_____
Contractor's License Number and Classification

_____
DIR Registration Number

[IF CORPORATION, TWO SIGNATURES, PRESIDENT **OR** VICE PRESIDENT **AND** SECRETARY **OR** TREASURER **REQUIRED]**

END OF CONTRACT

Notary Acknowledgment

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

STATE OF CALIFORNIA
COUNTY OF _____

On _____, 20___, before me, _____, Notary Public, personally

appeared _____, who proved to me on the basis of satisfactory

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

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

WITNESS my hand and official seal.

_____
Signature of Notary Public

OPTIONAL

Though the information below is not required by law, it may prove valuable to persons relying on the document and could prevent fraudulent removal and reattachment of this form to another document.

CAPACITY CLAIMED BY SIGNER

☐ Individual
☐ Corporate Officer

_____
Title(s)

☐ Partner(s) ☐ Limited ☐ General
☐ Attorney-In-Fact
☐ Trustee(s)
☐ Guardian/Conservator
☐ Other:

Signer is representing:
Name Of Person(s) Or Entity(ies)

_____

_____

DESCRIPTION OF ATTACHED DOCUMENT

_____
Title or Type of Document

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Number of Pages

_____
Date of Document

_____
Signer(s) Other Than Named Above

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

PAUL S. LEON
MAYOR

DEBRA PORADA
MAYOR PRO TEM

ALAN D. WAPNER
JIM W. BOWMAN
RUBEN VALENCIA
COUNCIL MEMBERS

SHEILA MAUTZ
CITY CLERK

JAMES R. MILHISER
TREASURER

SCOTT OCHOA
CITY MANAGER

SECTION 00500 – CONTRACT FOR CONSTRUCTION

This Contract for Construction ("Contract"), No. D&C23-011 is made and entered as of _____, by and between City of Ontario, with its principal place of business at 303 East "B" Street, Ontario, CA 91764, sometimes hereinafter called the "City" and **Westland Mechanical**, sometimes hereinafter called "Contractor."

WITNESSETH: That the parties hereto have mutually covenanted and agreed, and by these presents do covenant and agree with each other as follows:

ARTICLE 1. SCOPE OF WORK.

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

Ontario Ballpark - HVAC

Contractor is an independent contractor and not an agent of the City. The Contractor and its surety shall be liable to the City for any damages arising as a result of the Contractor's failure to comply with this obligation.

ARTICLE 2. TIME FOR COMPLETION.

Time is of the essence in the performance of the Work. The Work shall be commenced on the date stated in the City's Notice to Proceed. The Contractor shall complete all Work required by the Contract Documents **per the contract schedule and within 531 calendar days** from the commencement date stated in the Notice to Proceed. By its signature hereunder, Contractor agrees the time for completion set forth above is adequate and reasonable to complete the Work.

ARTICLE 3. CONTRACT PRICE.

The City shall pay to the Contractor as full compensation for the performance of the Contract, subject to any additions or deductions as provided in the Contract Documents, and including all applicable taxes and costs, the sum of **Seven Million One Hundred Fifteen Thousand Dollars ($7,115,000)**. Payment shall be made as set forth in the General Conditions. The City will pay to Contractor compensation based upon the prices set forth in the Bid Schedule.

ARTICLE 4. LIQUIDATED DAMAGES.

Contractor acknowledges that the City will sustain actual damages for each and every Day completion of the Project is delayed beyond the Contract Time. Because of the nature of the Project, it would be impracticable or extremely difficult to determine the City's actual damages. Accordingly, in accordance with Government Code section 53069.85, it is agreed that the Contractor will pay the City the sum of $25,000 for each and every calendar day of delay beyond the time prescribed in the Contract Documents for finishing the Work, as Liquidated Damages and not as a penalty or forfeiture. In the event this is not paid, the Contractor agrees the City may deduct that amount from any money due or that may become due the Contractor under the Contract. This Section does not exclude recovery of other damages specified in the Contract Documents. Liquidated damages may be deducted from progress payments due Contractor, Project retention or may be collected directly from Contractor, or from Contractor's surety. These provisions for liquidated damages shall not prevent the City, in case of Contractor's default, from terminating the Contractor.

ARTICLE 5. COMPONENT PARTS OF THE CONTRACT.

The "Contract Documents" include the following:

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Bid Forms
Bid Acknowledgement
Bid Schedule
Bid Guarantee
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Applicable Local Agency Standards and Specifications, as last revised
Reference Specifications
Approved and fully executed Change Orders
Permits
Scope of Work Summary
Any other documents contained in or incorporated into the Contract

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

All of the Contract Documents are intended to be complementary. Work required by one of the Contract Documents and not by others shall be done as if required by all. In the event of conflict,

the various Contract Documents will be given effect in the order set forth in the General Conditions. This Contract shall supersede any prior agreement of the parties.

ARTICLE 6. PROVISIONS REQUIRED BY LAW AND CONTRACTOR COMPLIANCE.

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

ARTICLE 7. INDEMNIFICATION.

Contractor shall provide indemnification and defense as set forth in the General Conditions.

ARTICLE 8. PREVAILING WAGES.

Contractor shall be required to pay the prevailing rate of wages in accordance with the Labor Code which such rates shall be made available at the City's Office or may be obtained online at http://www.dir.ca.gov and which must be posted at the job site.

ARTICLE 9. FALSE CLAIMS.

Contractor acknowledges that if a false claim is submitted to the City, it may be considered fraud and Contractor may be subject to criminal prosecution. Contractor acknowledges that the False Claims Act, California Government Code sections 12650, et seq., provides for civil penalties where a person knowingly submits a false claim to a public entity. These provisions include within their scope false claims made with deliberate ignorance of the false information or in reckless disregard of the truth or falsity of the information. In the event the City seeks to recover penalties pursuant to the False Claims Act, it is entitled to recover its litigation costs, including attorneys' fees. Contractor hereby acknowledges that the filing of a false claim may the Contractor to an administrative debarment proceeding wherein Contractor may be prevented from further bidding on public contracts for a period of up to five (5) years.

[REMAINDER OF PAGE LEFT INTENTIONALLY BLANK]

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

CITY OF ONTARIO

By: _____
Scott Ochoa
City Manager

ATTEST:

By: _____
Sheila Mautz, City Clerk

APPROVED AS TO FORM:

By: _____
Best Best & Krieger LLP
City Attorney

Westland Mechanical

By: _____

Its: _____

Printed Name: _____

By: _____

Its: _____

Printed Name: _____

_____
Contractor's License Number and Classification

_____
DIR Registration Number

[IF CORPORATION, TWO SIGNATURES, PRESIDENT **OR** VICE PRESIDENT **AND** SECRETARY **OR** TREASURER **REQUIRED]**

END OF CONTRACT

Notary Acknowledgment

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

STATE OF CALIFORNIA
COUNTY OF _____

On _____, 20___, before me, _____, Notary Public, personally

appeared _____, who proved to me on the basis of satisfactory

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

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

WITNESS my hand and official seal.

_____
Signature of Notary Public

OPTIONAL

Though the information below is not required by law, it may prove valuable to persons relying on the document and could prevent fraudulent removal and reattachment of this form to another document.

CAPACITY CLAIMED BY SIGNER

☐ Individual
☐ Corporate Officer

_____
Title(s)

☐ Partner(s) ☐ Limited ☐ General
☐ Attorney-In-Fact
☐ Trustee(s)
☐ Guardian/Conservator
☐ Other:

Signer is representing:
Name Of Person(s) Or Entity(ies)

_____

_____

DESCRIPTION OF ATTACHED DOCUMENT

_____
Title or Type of Document

_____
Number of Pages

_____
Date of Document

_____
Signer(s) Other Than Named Above

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

PAUL S. LEON
MAYOR

DEBRA PORADA
MAYOR PRO TEM

ALAN D. WAPNER
JIM W. BOWMAN
RUBEN VALENCIA
COUNCIL MEMBERS

SHEILA MAUTZ
CITY CLERK

JAMES R. MILHISER
TREASURER

SCOTT OCHOA
CITY MANAGER

SECTION 00500 – CONTRACT FOR CONSTRUCTION

This Contract for Construction ("Contract"), No. D&C23-011 is made and entered as of _____, by and between City of Ontario, with its principal place of business at 303 East "B" Street, Ontario, CA 91764, sometimes hereinafter called the "City" and **Rancho Pacific Electric Construction, Inc**., sometimes hereinafter called "Contractor."

WITNESSETH: That the parties hereto have mutually covenanted and agreed, and by these presents do covenant and agree with each other as follows:

ARTICLE 1. SCOPE OF WORK.

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

Ontario Ballpark - Electrical and Low Voltage

Contractor is an independent contractor and not an agent of the City. The Contractor and its surety shall be liable to the City for any damages arising as a result of the Contractor's failure to comply with this obligation.

ARTICLE 2. TIME FOR COMPLETION.

Time is of the essence in the performance of the Work. The Work shall be commenced on the date stated in the City's Notice to Proceed. The Contractor shall complete all Work required by the Contract Documents **per the contract schedule and within 531 calendar days** from the commencement date stated in the Notice to Proceed. By its signature hereunder, Contractor agrees the time for completion set forth above is adequate and reasonable to complete the Work.

ARTICLE 3. CONTRACT PRICE.

The City shall pay to the Contractor as full compensation for the performance of the Contract, subject to any additions or deductions as provided in the Contract Documents, and including all applicable taxes and costs, the sum of **Twenty-Five Million Nine Hundred Ninety-Nine Thousand Five Hundred Dollars ($25,999,500)**. Payment shall be made as set forth in the General Conditions. The City will pay to Contractor compensation based upon the prices set forth in the Bid Schedule.

ARTICLE 4. LIQUIDATED DAMAGES.

Contractor acknowledges that the City will sustain actual damages for each and every Day completion of the Project is delayed beyond the Contract Time. Because of the nature of the Project, it would be impracticable or extremely difficult to determine the City's actual damages. Accordingly, in accordance with Government Code section 53069.85, it is agreed that the Contractor will pay the City the sum of $35,000 for each and every calendar day of delay beyond the time prescribed in the Contract Documents for finishing the Work, as Liquidated Damages and not as a penalty or forfeiture. In the event this is not paid, the Contractor agrees the City may deduct that amount from any money due or that may become due the Contractor under the Contract. This Section does not exclude recovery of other damages specified in the Contract Documents. Liquidated damages may be deducted from progress payments due Contractor, Project retention or may be collected directly from Contractor, or from Contractor's surety. These provisions for liquidated damages shall not prevent the City, in case of Contractor's default, from terminating the Contractor.

ARTICLE 5. COMPONENT PARTS OF THE CONTRACT.

The "Contract Documents" include the following:

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Bid Forms
Bid Acknowledgement
Bid Schedule
Bid Guarantee
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Public Works Contractor DIR Registration Certification
Performance Bond
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Standard Specifications for Public Works Construction "Greenbook", latest edition, Except Sections 1-9
Applicable Local Agency Standards and Specifications, as last revised
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Permits
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Any other documents contained in or incorporated into the Contract

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[REMAINDER OF PAGE LEFT INTENTIONALLY BLANK]

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

CITY OF ONTARIO

By: _____
Scott Ochoa
City Manager

ATTEST:

By: _____
Sheila Mautz, City Clerk

APPROVED AS TO FORM:

By: _____
Best Best & Krieger LLP
City Attorney

Rancho Pacific Electric Construction, Inc.

By: _____

Its: _____

Printed Name: _____

By: _____

Its: _____

Printed Name: _____

_____
Contractor's License Number and Classification

_____
DIR Registration Number

[IF CORPORATION, TWO SIGNATURES, PRESIDENT **OR** VICE PRESIDENT **AND** SECRETARY **OR** TREASURER **REQUIRED]**

END OF CONTRACT

Notary Acknowledgment

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

STATE OF CALIFORNIA
COUNTY OF _____

On _____, 20___, before me, _____, Notary Public, personally

appeared _____, who proved to me on the basis of satisfactory

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

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

WITNESS my hand and official seal.

_____
Signature of Notary Public

OPTIONAL

Though the information below is not required by law, it may prove valuable to persons relying on the document and could prevent fraudulent removal and reattachment of this form to another document.

CAPACITY CLAIMED BY SIGNER

☐ Individual
☐ Corporate Officer

_____
Title(s)

☐ Partner(s) ☐ Limited ☐ General
☐ Attorney-In-Fact
☐ Trustee(s)
☐ Guardian/Conservator
☐ Other:

Signer is representing:
Name Of Person(s) Or Entity(ies)

_____

_____

DESCRIPTION OF ATTACHED DOCUMENT

_____
Title or Type of Document

_____
Number of Pages

_____
Date of Document

_____
Signer(s) Other Than Named Above

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

PAUL S. LEON
MAYOR

DEBRA PORADA
MAYOR PRO TEM

ALAN D. WAPNER
JIM W. BOWMAN
RUBEN VALENCIA
COUNCIL MEMBERS

SHEILA MAUTZ
CITY CLERK

JAMES R. MILHISER
TREASURER

SCOTT OCHOA
CITY MANAGER

SECTION 00500 – CONTRACT FOR CONSTRUCTION

This Contract for Construction ("Contract"), No. D&C23-011 is made and entered as of _____, by and between City of Ontario, with its principal place of business at 303 East "B" Street, Ontario, CA 91764, sometimes hereinafter called the "City" and **BrightView Landscape Development, Inc.**, sometimes hereinafter called "Contractor."

WITNESSETH: That the parties hereto have mutually covenanted and agreed, and by these presents do covenant and agree with each other as follows:

ARTICLE 1. SCOPE OF WORK.

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

Ontario Ballpark - Landscaping and Irrigation

Contractor is an independent contractor and not an agent of the City. The Contractor and its surety shall be liable to the City for any damages arising as a result of the Contractor's failure to comply with this obligation.

ARTICLE 2. TIME FOR COMPLETION.

Time is of the essence in the performance of the Work. The Work shall be commenced on the date stated in the City's Notice to Proceed. The Contractor shall complete all Work required by the Contract Documents **per the contract schedule and within 531 calendar days** from the commencement date stated in the Notice to Proceed. By its signature hereunder, Contractor agrees the time for completion set forth above is adequate and reasonable to complete the Work.

ARTICLE 3. CONTRACT PRICE.

The City shall pay to the Contractor as full compensation for the performance of the Contract, subject to any additions or deductions as provided in the Contract Documents, and including all applicable taxes and costs, the sum of **Seven Million Four Hundred Thirty-Three Thousand Five Hundred Seventy Dollars ($7,433,570)**. Payment shall be made as set forth in the General Conditions. The City will pay to Contractor compensation based upon the prices set forth in the Bid Schedule.

ARTICLE 4. LIQUIDATED DAMAGES.

Contractor acknowledges that the City will sustain actual damages for each and every Day completion of the Project is delayed beyond the Contract Time. Because of the nature of the Project, it would be impracticable or extremely difficult to determine the City's actual damages. Accordingly, in accordance with Government Code section 53069.85, it is agreed that the Contractor will pay the City the sum of $10,000 for each and every calendar day of delay beyond the time prescribed in the Contract Documents for finishing the Work, as Liquidated Damages and not as a penalty or forfeiture. In the event this is not paid, the Contractor agrees the City may deduct that amount from any money due or that may become due the Contractor under the Contract. This Section does not exclude recovery of other damages specified in the Contract Documents. Liquidated damages may be deducted from progress payments due Contractor, Project retention or may be collected directly from Contractor, or from Contractor's surety. These provisions for liquidated damages shall not prevent the City, in case of Contractor's default, from terminating the Contractor.

ARTICLE 5. COMPONENT PARTS OF THE CONTRACT.

The "Contract Documents" include the following:

Notice Inviting Bids
Instructions to Bidders
Bid Forms
Bid Acknowledgement
Bid Schedule
Bid Guarantee
Designation of Subcontractors
Non-Collusion Declaration Form
Iran Contracting Act Certification
Public Works Contractor DIR Registration Certification
Performance Bond
Payment (Labor and Materials) Bond
Contract for Construction
General Conditions
Special Conditions
Specifications
Addenda
Construction Plans and Drawings
Standard Specifications for Public Works Construction "Greenbook", latest edition, Except Sections 1-9
Applicable Local Agency Standards and Specifications, as last revised
Reference Specifications
Approved and fully executed Change Orders
Permits
Scope of Work Summary
Any other documents contained in or incorporated into the Contract

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

All of the Contract Documents are intended to be complementary. Work required by one of the Contract Documents and not by others shall be done as if required by all. In the event of conflict,

the various Contract Documents will be given effect in the order set forth in the General Conditions. This Contract shall supersede any prior agreement of the parties.

ARTICLE 6. PROVISIONS REQUIRED BY LAW AND CONTRACTOR COMPLIANCE.

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

ARTICLE 7. INDEMNIFICATION.

Contractor shall provide indemnification and defense as set forth in the General Conditions.

ARTICLE 8. PREVAILING WAGES.

Contractor shall be required to pay the prevailing rate of wages in accordance with the Labor Code which such rates shall be made available at the City's Office or may be obtained online at http://www.dir.ca.gov and which must be posted at the job site.

ARTICLE 9. FALSE CLAIMS.

Contractor acknowledges that if a false claim is submitted to the City, it may be considered fraud and Contractor may be subject to criminal prosecution. Contractor acknowledges that the False Claims Act, California Government Code sections 12650, et seq., provides for civil penalties where a person knowingly submits a false claim to a public entity. These provisions include within their scope false claims made with deliberate ignorance of the false information or in reckless disregard of the truth or falsity of the information. In the event the City seeks to recover penalties pursuant to the False Claims Act, it is entitled to recover its litigation costs, including attorneys' fees. Contractor hereby acknowledges that the filing of a false claim may the Contractor to an administrative debarment proceeding wherein Contractor may be prevented from further bidding on public contracts for a period of up to five (5) years.

[REMAINDER OF PAGE LEFT INTENTIONALLY BLANK]

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

CITY OF ONTARIO

By: _____
Scott Ochoa
City Manager

ATTEST:

By: _____
Sheila Mautz, City Clerk

APPROVED AS TO FORM:

By: _____
Best Best & Krieger LLP
City Attorney

BrightView Landscape Development, Inc.

By: _____

Its: _____

Printed Name: _____

By: _____

Its: _____

Printed Name: _____

_____
Contractor's License Number and Classification

_____
DIR Registration Number

[IF CORPORATION, TWO SIGNATURES, PRESIDENT **OR** VICE PRESIDENT **AND** SECRETARY **OR** TREASURER **REQUIRED]**

END OF CONTRACT

Notary Acknowledgment

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

STATE OF CALIFORNIA
COUNTY OF _____

On _____, 20___, before me, _____, Notary Public, personally

appeared _____, who proved to me on the basis of satisfactory

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

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

WITNESS my hand and official seal.

_____
Signature of Notary Public

OPTIONAL

Though the information below is not required by law, it may prove valuable to persons relying on the document and could prevent fraudulent removal and reattachment of this form to another document.

CAPACITY CLAIMED BY SIGNER

☐ Individual
☐ Corporate Officer

_____
Title(s)

☐ Partner(s) ☐ Limited ☐ General
☐ Attorney-In-Fact
☐ Trustee(s)
☐ Guardian/Conservator
☐ Other:

Signer is representing:
Name Of Person(s) Or Entity(ies)

_____

_____

DESCRIPTION OF ATTACHED DOCUMENT

_____
Title or Type of Document

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Number of Pages

_____
Date of Document

_____
Signer(s) Other Than Named Above

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

PAUL S. LEON
MAYOR

DEBRA PORADA
MAYOR PRO TEM

ALAN D. WAPNER
JIM W. BOWMAN
RUBEN VALENCIA
COUNCIL MEMBERS

SHEILA MAUTZ
CITY CLERK

JAMES R. MILHISER
TREASURER

SCOTT OCHOA
CITY MANAGER

SECTION 00500 – CONTRACT FOR CONSTRUCTION

This Contract for Construction ("Contract"), No. D&C23-011 is made and entered as of _____, by and between City of Ontario, with its principal place of business at 303 East "B" Street, Ontario, CA 91764, sometimes hereinafter called the "City" and **Econo Fence, Inc.**, sometimes hereinafter called "Contractor."

WITNESSETH: That the parties hereto have mutually covenanted and agreed, and by these presents do covenant and agree with each other as follows:

ARTICLE 1. SCOPE OF WORK.

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

Ontario Ballpark - Fence and Gates

Contractor is an independent contractor and not an agent of the City. The Contractor and its surety shall be liable to the City for any damages arising as a result of the Contractor's failure to comply with this obligation.

ARTICLE 2. TIME FOR COMPLETION.

Time is of the essence in the performance of the Work. The Work shall be commenced on the date stated in the City's Notice to Proceed. The Contractor shall complete all Work required by the Contract Documents **per the contract schedule and within 531 calendar days** from the commencement date stated in the Notice to Proceed. By its signature hereunder, Contractor agrees the time for completion set forth above is adequate and reasonable to complete the Work.

ARTICLE 3. CONTRACT PRICE.

The City shall pay to the Contractor as full compensation for the performance of the Contract, subject to any additions or deductions as provided in the Contract Documents, and including all applicable taxes and costs, the sum of **Two Million Nine Thousand Two Hundred Five Dollars ($2,009,205)**. Payment shall be made as set forth in the General Conditions. The City will pay to Contractor compensation based upon the prices set forth in the Bid Schedule.

ARTICLE 4. LIQUIDATED DAMAGES.

Contractor acknowledges that the City will sustain actual damages for each and every Day completion of the Project is delayed beyond the Contract Time. Because of the nature of the Project, it would be impracticable or extremely difficult to determine the City's actual damages. Accordingly, in accordance with Government Code section 53069.85, it is agreed that the Contractor will pay the City the sum of $10,000 for each and every calendar day of delay beyond the time prescribed in the Contract Documents for finishing the Work, as Liquidated Damages and not as a penalty or forfeiture. In the event this is not paid, the Contractor agrees the City may deduct that amount from any money due or that may become due the Contractor under the Contract. This Section does not exclude recovery of other damages specified in the Contract Documents. Liquidated damages may be deducted from progress payments due Contractor, Project retention or may be collected directly from Contractor, or from Contractor's surety. These provisions for liquidated damages shall not prevent the City, in case of Contractor's default, from terminating the Contractor.

ARTICLE 5. COMPONENT PARTS OF THE CONTRACT.

The "Contract Documents" include the following:

Notice Inviting Bids
Instructions to Bidders
Bid Forms
Bid Acknowledgement
Bid Schedule
Bid Guarantee
Designation of Subcontractors
Non-Collusion Declaration Form
Iran Contracting Act Certification
Public Works Contractor DIR Registration Certification
Performance Bond
Payment (Labor and Materials) Bond
Contract for Construction
General Conditions
Special Conditions
Specifications
Addenda
Construction Plans and Drawings
Standard Specifications for Public Works Construction "Greenbook", latest edition, Except Sections 1-9
Applicable Local Agency Standards and Specifications, as last revised
Reference Specifications
Approved and fully executed Change Orders
Permits
Scope of Work Summary
Any other documents contained in or incorporated into the Contract

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

All of the Contract Documents are intended to be complementary. Work required by one of the Contract Documents and not by others shall be done as if required by all. In the event of conflict,

the various Contract Documents will be given effect in the order set forth in the General Conditions. This Contract shall supersede any prior agreement of the parties.

ARTICLE 6. PROVISIONS REQUIRED BY LAW AND CONTRACTOR COMPLIANCE.

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

ARTICLE 7. INDEMNIFICATION.

Contractor shall provide indemnification and defense as set forth in the General Conditions.

ARTICLE 8. PREVAILING WAGES.

Contractor shall be required to pay the prevailing rate of wages in accordance with the Labor Code which such rates shall be made available at the City's Office or may be obtained online at http://www.dir.ca.gov and which must be posted at the job site.

ARTICLE 9. FALSE CLAIMS.

Contractor acknowledges that if a false claim is submitted to the City, it may be considered fraud and Contractor may be subject to criminal prosecution. Contractor acknowledges that the False Claims Act, California Government Code sections 12650, et seq., provides for civil penalties where a person knowingly submits a false claim to a public entity. These provisions include within their scope false claims made with deliberate ignorance of the false information or in reckless disregard of the truth or falsity of the information. In the event the City seeks to recover penalties pursuant to the False Claims Act, it is entitled to recover its litigation costs, including attorneys' fees. Contractor hereby acknowledges that the filing of a false claim may the Contractor to an administrative debarment proceeding wherein Contractor may be prevented from further bidding on public contracts for a period of up to five (5) years.

[REMAINDER OF PAGE LEFT INTENTIONALLY BLANK]

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

CITY OF ONTARIO

By: _____
Scott Ochoa
City Manager

ATTEST:

By: _____
Sheila Mautz, City Clerk

APPROVED AS TO FORM:

By: _____
Best Best & Krieger LLP
City Attorney

Econo Fence, Inc.

By: _____

Its: _____

Printed Name: _____

By: _____

Its: _____

Printed Name: _____

_____
Contractor's License Number and Classification

_____
DIR Registration Number

[IF CORPORATION, TWO SIGNATURES, PRESIDENT **OR** VICE PRESIDENT **AND** SECRETARY **OR** TREASURER **REQUIRED]**

END OF CONTRACT

Notary Acknowledgment

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

STATE OF CALIFORNIA
COUNTY OF _____

On _____, 20___, before me, _____, Notary Public, personally

appeared _____, who proved to me on the basis of satisfactory

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

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

WITNESS my hand and official seal.

_____
Signature of Notary Public

OPTIONAL

Though the information below is not required by law, it may prove valuable to persons relying on the document and could prevent fraudulent removal and reattachment of this form to another document.

CAPACITY CLAIMED BY SIGNER

☐ Individual
☐ Corporate Officer

_____
Title(s)

☐ Partner(s) ☐ Limited ☐ General
☐ Attorney-In-Fact
☐ Trustee(s)
☐ Guardian/Conservator
☐ Other:

Signer is representing:
Name Of Person(s) Or Entity(ies)

_____

_____

DESCRIPTION OF ATTACHED DOCUMENT

_____
Title or Type of Document

_____
Number of Pages

_____
Date of Document

_____
Signer(s) Other Than Named Above

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

PAUL S. LEON
MAYOR

DEBRA PORADA
MAYOR PRO TEM

ALAN D. WAPNER
JIM W. BOWMAN
RUBEN VALENCIA
COUNCIL MEMBERS

SHEILA MAUTZ
CITY CLERK

JAMES R. MILHISER
TREASURER

SCOTT OCHOA
CITY MANAGER

SECTION 00500 – CONTRACT FOR CONSTRUCTION

This Contract for Construction ("Contract"), No. D&C23-011 is made and entered as of _____, by and between City of Ontario, with its principal place of business at 303 East "B" Street, Ontario, CA 91764, sometimes hereinafter called the "City" and **Terra Pave, Inc.**, sometimes hereinafter called "Contractor."

WITNESSETH: That the parties hereto have mutually covenanted and agreed, and by these presents do covenant and agree with each other as follows:

ARTICLE 1. SCOPE OF WORK.

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

Ontario Ballpark - Asphaltic Paving

Contractor is an independent contractor and not an agent of the City. The Contractor and its surety shall be liable to the City for any damages arising as a result of the Contractor's failure to comply with this obligation.

ARTICLE 2. TIME FOR COMPLETION.

Time is of the essence in the performance of the Work. The Work shall be commenced on the date stated in the City's Notice to Proceed. The Contractor shall complete all Work required by the Contract Documents **per the contract schedule and within 531 calendar days** from the commencement date stated in the Notice to Proceed. By its signature hereunder, Contractor agrees the time for completion set forth above is adequate and reasonable to complete the Work.

ARTICLE 3. CONTRACT PRICE.

The City shall pay to the Contractor as full compensation for the performance of the Contract, subject to any additions or deductions as provided in the Contract Documents, and including all applicable taxes and costs, the sum of **Two Million One Hundred Twenty-Seven Thousand Dollars ($2,127,000)**. Payment shall be made as set forth in the General Conditions. The City will pay to Contractor compensation based upon the prices set forth in the Bid Schedule.

ARTICLE 4. LIQUIDATED DAMAGES.

Contractor acknowledges that the City will sustain actual damages for each and every Day completion of the Project is delayed beyond the Contract Time. Because of the nature of the

Project, it would be impracticable or extremely difficult to determine the City's actual damages. Accordingly, in accordance with Government Code section 53069.85, it is agreed that the Contractor will pay the City the sum of $20,000 for each and every calendar day of delay beyond the time prescribed in the Contract Documents for finishing the Work, as Liquidated Damages and not as a penalty or forfeiture. In the event this is not paid, the Contractor agrees the City may deduct that amount from any money due or that may become due the Contractor under the Contract. This Section does not exclude recovery of other damages specified in the Contract Documents. Liquidated damages may be deducted from progress payments due Contractor, Project retention or may be collected directly from Contractor, or from Contractor's surety. These provisions for liquidated damages shall not prevent the City, in case of Contractor's default, from terminating the Contractor.

ARTICLE 5. COMPONENT PARTS OF THE CONTRACT.

The "Contract Documents" include the following:

Notice Inviting Bids
Instructions to Bidders
Bid Forms
Bid Acknowledgement
Bid Schedule
Bid Guarantee
Designation of Subcontractors
Non-Collusion Declaration Form
Iran Contracting Act Certification
Public Works Contractor DIR Registration Certification
Performance Bond
Payment (Labor and Materials) Bond
Contract for Construction
General Conditions
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Specifications
Addenda
Construction Plans and Drawings
Standard Specifications for Public Works Construction "Greenbook", latest edition, Except Sections 1-9
Applicable Local Agency Standards and Specifications, as last revised
Reference Specifications
Approved and fully executed Change Orders
Permits
Scope of Work Summary
Any other documents contained in or incorporated into the Contract

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

All of the Contract Documents are intended to be complementary. Work required by one of the Contract Documents and not by others shall be done as if required by all. In the event of conflict, the various Contract Documents will be given effect in the order set forth in the General Conditions. This Contract shall supersede any prior agreement of the parties.

ARTICLE 6. PROVISIONS REQUIRED BY LAW AND CONTRACTOR COMPLIANCE.

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

ARTICLE 7. INDEMNIFICATION.

Contractor shall provide indemnification and defense as set forth in the General Conditions.

ARTICLE 8. PREVAILING WAGES.

Contractor shall be required to pay the prevailing rate of wages in accordance with the Labor Code which such rates shall be made available at the City's Office or may be obtained online at http://www.dir.ca.gov and which must be posted at the job site.

ARTICLE 9. FALSE CLAIMS.

Contractor acknowledges that if a false claim is submitted to the City, it may be considered fraud and Contractor may be subject to criminal prosecution. Contractor acknowledges that the False Claims Act, California Government Code sections 12650, et seq., provides for civil penalties where a person knowingly submits a false claim to a public entity. These provisions include within their scope false claims made with deliberate ignorance of the false information or in reckless disregard of the truth or falsity of the information. In the event the City seeks to recover penalties pursuant to the False Claims Act, it is entitled to recover its litigation costs, including attorneys' fees. Contractor hereby acknowledges that the filing of a false claim may the Contractor to an administrative debarment proceeding wherein Contractor may be prevented from further bidding on public contracts for a period of up to five (5) years.

[REMAINDER OF PAGE LEFT INTENTIONALLY BLANK]

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

CITY OF ONTARIO

By: _____
Scott Ochoa
City Manager

ATTEST:

By: _____
Sheila Mautz, City Clerk

APPROVED AS TO FORM:

By: _____
Best Best & Krieger LLP
City Attorney

Terra Pave, Inc.

By: _____

Its: _____

Printed Name: _____

By: _____

Its: _____

Printed Name: _____

_____
Contractor's License Number and Classification

_____
DIR Registration Number

[IF CORPORATION, TWO SIGNATURES, PRESIDENT **OR** VICE PRESIDENT **AND** SECRETARY **OR** TREASURER **REQUIRED]**

END OF CONTRACT

Notary Acknowledgment

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

STATE OF CALIFORNIA
COUNTY OF _____

On _____, 20___, before me, _____, Notary Public, personally

appeared _____, who proved to me on the basis of satisfactory

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

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

WITNESS my hand and official seal.

_____
Signature of Notary Public

OPTIONAL

Though the information below is not required by law, it may prove valuable to persons relying on the document and could prevent fraudulent removal and reattachment of this form to another document.

CAPACITY CLAIMED BY SIGNER

☐ Individual
☐ Corporate Officer

_____
Title(s)

☐ Partner(s) ☐ Limited ☐ General
☐ Attorney-In-Fact
☐ Trustee(s)
☐ Guardian/Conservator
☐ Other:

Signer is representing:
Name Of Person(s) Or Entity(ies)

_____

_____

DESCRIPTION OF ATTACHED DOCUMENT

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Title or Type of Document

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Number of Pages

_____
Date of Document

_____
Signer(s) Other Than Named Above

CITY OF ONTARIO
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PAUL S. LEON
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ALAN D. WAPNER
JIM W. BOWMAN
RUBEN VALENCIA
COUNCIL MEMBERS

SHEILA MAUTZ
CITY CLERK

JAMES R. MILHISER
TREASURER

SCOTT OCHOA
CITY MANAGER

SECTION 00500 – CONTRACT FOR CONSTRUCTION

This Contract for Construction ("Contract"), No. D&C23-011 is made and entered as of October 15, 2024, by and between City of Ontario, with its principal place of business at 303 East "B" Street, Ontario, CA 91764, sometimes hereinafter called the "City" and Bomel Construction Company, Inc., sometimes hereinafter called "Contractor."

WITNESSETH: That the parties hereto have mutually covenanted and agreed, and by these presents do covenant and agree with each other as follows:

ARTICLE 1. SCOPE OF WORK.

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

Ontario Ballpark Parking Structure

Contractor is an independent contractor and not an agent of the City. The Contractor and its surety shall be liable to the City for any damages arising as a result of the Contractor's failure to comply with this obligation.

ARTICLE 2. TIME FOR COMPLETION.

Time is of the essence in the performance of the Work. The Work shall be commenced on the date stated in the City's Notice to Proceed. The Contractor shall complete all Work required by the Contract Documents 361 calendar days from the commencement date stated in the Notice to Proceed. By its signature hereunder, Contractor agrees the time for completion set forth above is adequate and reasonable to complete the Work.

ARTICLE 3. CONTRACT PRICE.

The City shall pay to the Contractor as full compensation for the performance of the Contract, subject to any additions or deductions as provided in the Contract Documents, and including all applicable taxes and costs, the sum of Thirty-One Million, Two Hundred Twenty-Five Thousand Dollars ($31,225,000). Payment shall be made as set forth in the General Conditions. The City will pay to Contractor compensation based upon the prices set forth in the Bid Schedule.

ARTICLE 4. LIQUIDATED DAMAGES.

Contractor acknowledges that the City will sustain actual damages for each and every Day completion of the Project is delayed beyond the Contract Time. Because of the nature of the Project, it would be impracticable or extremely difficult to determine the City's actual damages. Accordingly, in accordance with Government Code section 53069.85, it is agreed that the Contractor will pay the City the sum of $15,000 for each and every calendar day of delay beyond the time prescribed in the Contract Documents for finishing the Work, as Liquidated Damages and not as a penalty or forfeiture. In the event this is not paid, the Contractor agrees the City may deduct that amount from any money due or that may become due the Contractor under the Contract. This Section does not exclude recovery of other damages specified in the Contract Documents. Liquidated damages may be deducted from progress payments due Contractor, Project retention or may be collected directly from Contractor, or from Contractor's surety. These provisions for liquidated damages shall not prevent the City, in case of Contractor's default, from terminating the Contractor.

ARTICLE 5. COMPONENT PARTS OF THE CONTRACT.

The "Contract Documents" include the following:

Notice Inviting Bids
Instructions to Bidders
Bid Forms
Bid Acknowledgement
Bid Schedule
Bid Guarantee
Designation of Subcontractors
Non-Collusion Declaration Form
Iran Contracting Act Certification
Public Works Contractor DIR Registration Certification
Performance Bond
Payment (Labor and Materials) Bond
Contract for Construction
General Conditions
Special Conditions
Specifications
Addenda
Construction Plans and Drawings
Standard Specifications for Public Works Construction "Greenbook", latest edition, Except Sections 1-9
Applicable Local Agency Standards and Specifications, as last revised
Reference Specifications
Approved and fully executed Change Orders
Permits
Scope of Work Summary
Any other documents contained in or incorporated into the Contract

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

All of the Contract Documents are intended to be complementary. Work required by one of the Contract Documents and not by others shall be done as if required by all. In the event of conflict,

the various Contract Documents will be given effect in the order set forth in the General Conditions. This Contract shall supersede any prior agreement of the parties.

ARTICLE 6. PROVISIONS REQUIRED BY LAW AND CONTRACTOR COMPLIANCE.

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

ARTICLE 7. INDEMNIFICATION.

Contractor shall provide indemnification and defense as set forth in the General Conditions.

ARTICLE 8. PREVAILING WAGES.

Contractor shall be required to pay the prevailing rate of wages in accordance with the Labor Code which such rates shall be made available at the City's Office or may be obtained online at http://www.dir.ca.gov and which must be posted at the job site.

ARTICLE 9. FALSE CLAIMS.

Contractor acknowledges that if a false claim is submitted to the City, it may be considered fraud and Contractor may be subject to criminal prosecution. Contractor acknowledges that the False Claims Act, California Government Code sections 12650, et seq., provides for civil penalties where a person knowingly submits a false claim to a public entity. These provisions include within their scope false claims made with deliberate ignorance of the false information or in reckless disregard of the truth or falsity of the information. In the event the City seeks to recover penalties pursuant to the False Claims Act, it is entitled to recover its litigation costs, including attorneys' fees. Contractor hereby acknowledges that the filing of a false claim may the Contractor to an administrative debarment proceeding wherein Contractor may be prevented from further bidding on public contracts for a period of up to five (5) years.

[REMAINDER OF PAGE LEFT INTENTIONALLY BLANK]

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

CITY OF ONTARIO

By: _____
Scott Ochoa
City Manager

ATTEST:

By: _____
Sheila Mautz, City Clerk

APPROVED AS TO FORM:

By: _____
Best Best & Krieger LLP
City Attorney

Bomel Construction Company, Inc.

By: _____

Its: _____

Printed Name: _____

By: _____

Its: _____

Printed Name: _____

_____
Contractor's License Number and Classification

_____
DIR Registration Number

[IF CORPORATION, TWO SIGNATURES, PRESIDENT **OR** VICE PRESIDENT **AND** SECRETARY **OR** TREASURER **REQUIRED]**

END OF CONTRACT

Notary Acknowledgment

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

STATE OF CALIFORNIA
COUNTY OF _____

On _____, 20___, before me, _____, Notary Public, personally

appeared _____, who proved to me on the basis of satisfactory

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

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

WITNESS my hand and official seal.

_____
Signature of Notary Public

OPTIONAL

Though the information below is not required by law, it may prove valuable to persons relying on the document and could prevent fraudulent removal and reattachment of this form to another document.

CAPACITY CLAIMED BY SIGNER

☐ Individual
☐ Corporate Officer

_____
Title(s)

☐ Partner(s) ☐ Limited ☐ General
☐ Attorney-In-Fact
☐ Trustee(s)
☐ Guardian/Conservator
☐ Other:

Signer is representing:
Name Of Person(s) Or Entity(ies)

_____

_____

DESCRIPTION OF ATTACHED DOCUMENT

_____
Title or Type of Document

_____
Number of Pages

_____
Date of Document

_____
Signer(s) Other Than Named Above

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

PAUL S. LEON
MAYOR

DEBRA PORADA
MAYOR PRO TEM

ALAN D. WAPNER
JIM W. BOWMAN
RUBEN VALENCIA
COUNCIL MEMBERS

SHEILA MAUTZ
CITY CLERK

JAMES R. MILHISER
TREASURER

SCOTT OCHOA
CITY MANAGER

AMENDMENT NO. 5 TO THE PROFESSIONAL SERVICES AGREEMENT BETWEEN THE CITY OF ONTARIO AND TILDEN-COIL CONSTRUCTORS, INC.

1. Parties and Date.

This Amendment No. 5 to Professional Services Agreement ("Amendment No. 5") is made and entered into as of this _____ day of _____2024, by and between the City of Ontario ("City") and **Tilden-Coil Constructors, Inc.**, a California 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 Agreement dated April 4, 2023 ("Original Agreement") as modified by successive numbered amendments dated August 15, 2023 ("Amendment No. 1"), March 5, 2024 ("Amendment No. 2"), April 16, 2024 ("Amendment No. 3"), and July 16, 2024 ("Amendment No. 4") (collectively, the "Existing Agreement").

2.2 Amendment Purpose. The Parties desire to amend the Existing Agreement to provide for the acquisition of certain long lead time equipment necessary for the prosecution of the **Baseball Stadium Project** ("Project"), the contract for which to be acquired by Consultant, assigned by Consultant to City at any time deemed appropriate by City, and ultimately assigned by City to the contractor it is in the process of procuring to deliver the Project. The Parties desire to amend the existing Agreement to adjust the fee for mass grading and general conditions for the Baseball Stadium Project.

2.3 Amendment Authority. This Amendment No. 5 is authorized pursuant to Section 3.7.14 of the Original Agreement.

3. Terms.

3.1 Definitions. Section 3.10.1 of the Agreement is hereby amended in its entirety to read as follows:

> "Section 3.10.1 Consultant's Compensation for Basic Services. City shall pay to Consultant for the performance of all Services rendered under this Agreement, with the total not to exceed amount of **Forty-Five Million Nine Hundred Sixty-Eight Thousand Two Hundred Fifty-Nine Dollars ($45,968,259)** ("Total Compensation"). This total compensation amount shall be based upon, and may be adjusted according to the fee schedule and related terms and conditions attached hereto as "Exhibit A" and incorporated herein by reference. The total compensation, as may be adjusted upon mutual agreement, shall constitute complete and adequate payment for Services under this Agreement."

Exhibit A is hereby deleted in its entirety and replaced with Attachment A attached hereto and incorporated herein by reference.

3.2 Long Lead Time Procurement Services. The services described in Exhibit 1 to this Amendment No. 5 ("Long Lead Time Procurement Services") are hereby added to those Services described in Attachment A to Amendment No. 3. Consultant shall be reimbursed by City for costs actually and reasonably incurred by Consultant in performing the Long Lead Time Procurement Services when such costs are incurred with the prior written approval of the City, provided that such costs shall not exceed the sum of **Two Million Three-Hundred Twenty Thousand Nine Hundred Forty-Four Dollars and Zero Cents ($2,320,944.00)** Consultant hereby irrevocably assigns to City all right, title, and interest in the equipment to be procured in connection with the Long Lead Time Procurement Services, and City may accept such assignment at any time, for any reason or no reason, in City's sole and absolute discretion.

3.3 Continuing Effect of Agreement. Except as amended by this Amendment No. 5, all other provisions of the Existing 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 Existing Agreement, it shall mean the Existing Agreement as amended by this Amendment No. 5.

3.4 Adequate Consideration. The Parties hereto irrevocably stipulate and agree that they have each received adequate and independent consideration for the performance of the obligations they have undertaken pursuant to this Amendment No. 5.

3.5 Severability. If any portion of this Amendment No. 5 is declared invalid, illegal, or otherwise unenforceable by a court of competent jurisdiction, the Existing Agreement and those remaining provisions of this Amendment No. 5 shall continue in full force and effect.

3.6 Integration. This Amendment No. 5 represents the entirety of the Parties' understanding relating to the subject of this Amendment No. 5, 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. 5 TO THE PROFESSIONAL SERVICES AGREEMENT BETWEEN THE CITY OF ONTARIO AND TILDEN-COIL CONSTRUCTORS, 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

TILDEN-COIL CONSTRUCTORS, INC.

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

By:_____

Its:_____

Printed Name:_____

By:_____

Its:_____

Printed Name:_____

Tilden-Coil CONSTRUCTORS
Building with Integrity Since 1938

September 20, 2024

Tito Haes, Executive Director Public Works
City of Ontario
1333 S. Bon View
Ontario, CA 91761

Re: Updated Proposal to procure long-lead electrical gear for the New Ballpark and Parking Structure Project

Dear Tito,

We have updated our request for procurement of electrical gear which was authorized on August 8, 2024 (See Attachment A) to be inclusive of CM Fee and a supply bond by the Prime Contractor, thus completing the Contract Price for this procurement.

Cost of Equipment (Rancho Pacific Electric, Inc.)	$1,437,700
Changes to Single line	$ 396,887
Cost of Supply Bond (Rancho Pacific Electric, Inc)	$ 3,486
CM Fee at 3.85%	$ 70,766
Total	$1,908,839

Please note that we have already proceeded with the procurement of the equipment as previously authorized on August 8, 2024 and this revised proposal is only an update to the contract price. We have attached the most current pricing from the vendor dated 9/12/24.

Sincerely

Jason Howarth
Project Executive
Tilden-Coil Constructors
Building with Integrity Since 1938
P: 951.684.5901 Ext. 209
Cell: 951.764.8929

Tilden-Coil CONSTRUCTORS
Building with Integrity Since 1938

EXHIBIT A

Tilden-Coil CONSTRUCTORS
Building with Integrity Since 1938

August 8, 2024

Cynthia Heredia-Torres
303 E. B St.
Ontario, CA 91764

REF: Request to procure electrical gear for long lead items by Tilden-Coil Constructors through a New Amendment.

Dear Mrs. Heredia-Torres,

As a follow-up to your request, we are updating the request for procurement of electrical gear from our recent conversations via a new Amendment and the Tilden-Coil Fee would be 3.85% based on the value of the equipment and is consistent with our other amendments. The attached quote from RPE has several options and the one that best fits the schedule objectives and confirmed by Ontario would be in the amount 1,437,700. Signature of this letter would be confirming our direction to proceed with the procurement of electrical gear and associated electrical long lead items. This step will increase the chances of securing the required electrical gear needed for power to the stadium project. Reimbursement of this cost and fee would be submitted for payment through the new Amendment/PO being processed.

The gear and equipment will be delivered to 303 E. B St., Ontario, CA 91764 and be received by Ontario until needed at the project site. Please countersign this letter to confirm the procurement approach and reimbursement process. The vendor quote is attached for back up.

Sincerely,

Jason Howarth
Project Executive
Tilden-Coil Constructors

Confirmation
Signature from Dan Beers: _____ **Date:** 8/8/24
Tito Haes, Executive Director Public Works

3612 Mission Inn Avenue • Riverside, CA 92501 • Tel 951.684.5901 Fax 951.684.0725

Tilden-Coil CONSTRUCTORS™
Building with Integrity Since 1938

Rancho Pacific Electric Construction Inc.

August 5, 2024

Tilden-Coil Constructors, Inc.
3612 Mission Inn Ave
Riverside, CA 92501

RE: Ontario Baseball Stadium Gear Procurement – Ontario, CA

ATTN: Jason Howarth

We are pleased to submit our proposal for the Switchgear Procurement for the above reference project, per Electrical Drawings E5-0, E5-1, E5-2, E9-1-01, E9-1-02, E9-2-01, E9-2-02, E9-2-03, E9-2-04, E9-2-05, E9-2-06, E9-3-01, E9-3-02, E9-3-03, E9-3-04 and E9-3-05 all dated 06/14/2024. Electrical Specification Section 260504, 260548, 260553, 262200, 262413, 262416, 262816 and 264313 dated 06/14/24. No addendum noted.

Inclusions:

1. SCE Main Switchboards; Service 1 Utility Gear, MDP-2 and MDP-3
2. Distribution Switchboards; MDP-1, 1DP3N-2H, 1S1N-2H, 1DP1N-2H2, 2DP1N-2T, 2DP3N-2H, 2DP3N-2C and 2DP1N-2C
3. Transformers; 1T1N-1H, 1T1N-2H1, 1T1N-2H2, 1T1N-3H1, 2T1N-2T, 2T1N-2L, 2T1E-2H, 2T1O-2H, 2T1N-2C1, 2T1N-2C2, 2T1N-3L and 2T1E-3L
4. Interior (NEMA 1) Panelboards with integral TVSS units; 2FP3E-2T, 2FP3O-2T, 2FP1E-2H, 2FP3E-2H, 2FP1O-2H, 2FP1E-3H, 2FP3E-3H and 2FP1O-3H
5. Panelboards (NEMA 1) Panelboards as shown on single line; 1P3N-1H, 1P1N-1H2, 1P1N-1H1, 1P3N-2H, 1K2N-2T, 1K1N-2H, 1P1N-2H1, 1P1N-2H2, 1K1N-2F1, 1P1N-2F1, 1KIN-2F2, 1P3N-3H, 1P1N-3H1, 1P1N-3H2, 1K1N-3H2, 1K1N-3H1, 1P1N-3H3, 1P1N-3H4, 1P1N-3F1, 1P1N-3F2, 1P3N-3F, 2P1N-1T, 2P3N-2T1, 2P3N-2T2, 2P1N-2T1, 2P3N-2L, 2P1N-2L, 2K1N02L1, 2K1N-2L2, 2FP3E-2L, 2K1N-2T, 2P3N-2C, 2P1N. 2C1, 2P1N-2C2, 2P1N,2C4, 2SP1N-2C1, 2SP1N-2C2, 2SP1N-2C3, SP1N-2C3 and 2FP3E-2C
6. Panelboards (NEMA3R) as shown on single line; SPL1, SPL2, SPL3 and SPL7
7. Panel Contactor and Enclosures as shown on single line; 1K3N-2H2, 1K3N-2H1, 1K3N-2F2, 1K3N-3H1
8. Panelboards (NEMA3R) **not** shown on single line; SPL4, SPL5 and SPL6
9. Panelboards (NEMA 1) Panelboards **not** shown on single line per panel schedule drawing; 1K1N-2T1, 1K3N-2T, 1P3N-F1, 1P1N-3H, 2K3N-2L1, 2K3N-2T and 2P1N-2C4
10. Disconnects as shown on the single line diagram
11. Sales tax for all equipment
12. Standard shipping of electrical equipment
13. Submittals and shop drawings for all equipment noted above
14. Receiving and inventory of equipment at RPEC office location, once confirmed shop all equipment to owner warehouse (owner's warehouse shall have forklift and pallet jacks for off-loading equipment)

Excludes:

1. Any cost changes for new and/or revised drawings
2. Utility company unforeseen changes
3. Any cost associated with upsizing lug configurations and sizing for circuit breakers
4. Supplying lugs for transformers (provided by electrical contractor awarded the building)
5. Installation of equipment
6. **Any cost associated with 3rd party testing, short circuit, acceptance and arch flash studies**
7. Additional cost for dedicated trucks, drivers or air freight

9063 Santa Anita Ave. Rancho Cucamonga, CA 91730 phone: (909) 476-1022 fax: (909) 476-1099
LIC#B & C10-1047107 – DIR#1000062492
www.RanchoPacificElectric.com

Tilden-Coil CONSTRUCTORS™
Building with Integrity Since 1938

Rancho Pacific Electric Construction Inc.

PROCUREMENT NOTE: Rancho Pacific Electric Construction shall not be responsible for any failure of their manufactures and/or vendors to perform, or delay in performance of, its obligations resulting in procuring materials or equipment resulting from COVID-19 pandemic, events beyond their control or any future epidemic and Rancho Pacific Electric Construction shall not be entitled to any damages resulting thereof.

Schedule for Deliverables

- Written Commitment to RPEC – August 14, 2024
- Received Engineer Revised Drawing Changes – August 22, 2024
- Submittals and Shop Drawings delivered to TCC – September 16, 2024
- Receive Engineer's Reviewed of Submittals & Shop Drawings – September 30, 2024
- Revised/Corrections of submittals delivered to TCC – October 14, 2024
- Release of Switchgear Package – October 21, 2024

Switchgear Options (all times below are after receipt of approved submittals):

Eaton (Cutler Hammer) Standard Lead Times – Texas Facility:			
Main Switchboards (Inclusion #1)	42 – 46 Weeks + 10-Days for Freight		
Distribution Boards (Inclusion #2)	38 – 42 Weeks + 10-Days for Freight		
Transformers (Inclusion #3)	14 – 16 Weeks + 10-Days for Freight		
Panel Boards (Inclusion #4 – 8)	24 – 30 Weeks + 10-Days for Freight		
Disconnects (Inclusion #9)	4 – 6 Weeks + 10-Days for Freight		
Total Cost for Items Noted Above:		**$**	**972,000.00**

Eaton (Cutler Hammer) Expedited Lead Times – Rialto, CA Facility:			
Main Switchboards (Inclusion #1)	28 – 32 Weeks		
Distribution Boards (Inclusion #2)	28 – 32 Weeks		
Transformers (Inclusion #3)	14 – 16 Weeks		
Panel Boards (Inclusion #4 – 8)	24 – 30 Weeks		
Disconnects (Inclusion #9)	4 – 6 Weeks		
Total Cost for Items Noted Above:		**$**	**1,437,700.00**

Square D Standard Lead Times – Texas/S. Carolina Facility:			
Main Switchboards (Inclusion #1)	56 – 60 Weeks + 10-Days for Freight		
Distribution Boards (Inclusion #2)	39 – 42 Weeks + 10-Days for Freight		
Transformers (Inclusion #3)	14 – 16 Weeks + 10-Days for Freight		
Panel Boards (Inclusion #4 – 8)	29 – 32 Weeks + 10-Days for Freight		
Disconnects (Inclusion #9)	4 – 6 Weeks + 10-Days for Freight		
Total Cost for Items Noted Above:		**$**	**1,177,300.00**

Square D Expedited Lead Times – Texas/S. Carolina Facility:			
Main Switchboards (Inclusion #1)	26 – 30 Weeks + 10-Days for Freight		
Distribution Boards (Inclusion #2)	26 – 30 Weeks + 10-Days for Freight		
Transformers (Inclusion #3)	14 – 16 Weeks + 10-Days for Freight		
Panel Boards (Inclusion #4 – 8)	26 – 30 Weeks + 10-Days for Freight		
Disconnects (Inclusion #9)	4 – 6 Weeks + 10-Days for Freight		
Total Cost for Items Noted Above:		**$**	**1,461,800.00**

9063 Santa Anita Ave. Rancho Cucamonga, CA 91730 phone: (909) 476-1022 fax: (909) 476-1099
LIC#B & C10-1047107 – DIR#1000062492
www.RanchoPacificElectric.com

Tilden-Coil CONSTRUCTORS
Building with Integrity Since 1938

Rancho Pacific Electric Construction Inc.

This proposal is subject to review after thirty (30) calendar days.

If there are any questions please feel free to contact me at the office

Respectfully submitted,

Doug Munsey – Chief Estimator
909-476-1022
dougm@rpeinc.net

Tilden-Coil CONSTRUCTORS
Building with Integrity Since 1938

September 25, 2024

Dan Beers, Design & Construction – Principal Project Manager
City of Ontario
1333 S. Bon View
Ontario, CA 91761

Re: CM Contract Price Adjustment for the City of Ontario Mass Grading Project

Dear Dan,

As we have concluded the preconstruction phase of the Mass Grading project, we are requesting an adjustment to our contract price to align with the project's current scope, budget and schedule goals.

Original Construction Budget: $26,580,097
Current Construction Budget: $41,870,320

	Contract Amount	**Revised Contract Amount**	**Change**
1. Preconstruction:	$31,500	$31,500 (no change)	$0
2. CM Fee (3.85%):	$1,023,334	$1,612,007	$588,673
3. General Conditions:	$1,442,946	$1,442,946	$0
4. Total (1-3)	$2,497,780	$3,086,453	$588,673

The CM Fee has been adjusted based upon the current sum of prime contracts. The CM Fee shall also be adjusted at the conclusion of the project based upon the project's total construction cost. Fifteen Percent (15%) of the CM Fee shall be paid during the design/preconstruction phase of the project and Eighty-Five Percent (85%) shall be paid during the construction phase of the project.

The general conditions budget was previously authorized by the City in Amendment No.2, dated March 5, 2024. General Conditions inclusions are listed in Attachment A. General conditions expenses shall be reimbursable and provided to the city without fee markup by the CM. The billable hourly rates previously authorized by the City in Amendment No.2, dated March 5, 2024 were utilized to develop the general conditions budget. This billable hourly rate list has been updated to include one additional position as identified and attached hereto as Attachment A. Rental rates for items included within the general conditions are attached hereto as Attachment A. In the event of an approved schedule extension, the general conditions budget shall be adjusted using the daily rate of $6,062.

We look forward to continuing our relationship with the City of Ontario. Please do not hesitate to contact me with any questions.

Sincerely

Jason Howarth
Project Executive
Tilden-Coil Constructors
Building with Integrity Since 1938
P: 951.684.5901 Ext. 209
Cell: 951.764.8929

Tilden-Coil CONSTRUCTORS
Building with Integrity Since 1938

ATTACHMENT A
Tilden-Coil Constructors, Inc.
General Conditions Inclusions and Standard Rental Rates

General Conditions Inclusions

Included within the general conditions budget are the following:

1. Construction manager's labor - to be billed at the billable hourly rates attached
2. Recycling/trash for CM Office – reimbursement
3. Safety Measures, safety equipment – reimbursement
4. Traffic control/signage – reimbursement
5. Rumble plates – rental
6. Caretaker/security – reimbursement
7. Temporary fencing and gates – reimbursement
8. Water filled barriers – rental
9. Vandalism/Graffiti repair – reimbursement
10. Office trailer rental, mobilization, demobilization, alarm – reimbursement
11. Storage bins – rental
12. Project signage – reimbursement
13. Temporary power poles and connection to office – reimbursement
14. Temp lighting supplementation – rental
15. Fuel (Equipment, supervision, management) – reimbursement
16. Fuel storage tank – rental
17. Small tools/equipment repair – reimbursement
18. On-site transportation – rental
19. Equipment rental – rental
20. Printing services – reimbursement
21. Progress photo/video documentation – rental
22. Construction surveying – reimbursement
23. Telephones, cell phones, internet – reimbursement
24. Computers, hardware, software, licensing – rental
25. Office copier, office plotter, office furnishings, office supplies, office cleaning, drinking water, postage/shipping, meetings/partnering – reimbursement
26. Owner purchases (ECORP) - reimbursement
27. CM GL/PL Insurance expense – fixed value

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Billable Hourly Rates

Rates include escalation through ***July 2028*** and shall be subject to adjustment annually in alignment with the consumer price index for the area.

Position	Hourly Rate
Project Executive	$187.00
Production Director	$187.00
Safety Officer	$139.00
Sr. Project Manager	$156.00
Sr. Superintendent	$156.00
Project Manager	$139.00
Assistant Project Manager	$129.00
Superintendent	$139.00
Area/Assistant Superintendent	$127.00
Scheduler	$158.00
BIM Manager	$175.00
BIM Specialist	$151.00
BIM Technician	$135.00
TCC Survey	$151.00
Preconstruction Manager	$136.00
Sr. Project Engineer	$124.00
Project Engineer	$113.00
Sr. Estimator	$136.00
Estimator	$106.00
Preconstruction Coordinator*	$64.00
Labor Compliance Coordinator*	$72.00
Accountant*	$108.00
Sr. Project Administrator*	$79.00
Project Administrator*	$70.00
Project Engineer Intern*	$43.00
Field Labor*	$103.00

*Overtime rates for positions identified are billed at 1.5x for hours billed in excess of 40 hours in a given week. All other positions are billed at the listed rate for overtime hours.

Tilden-Coil CONSTRUCTORS
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Rental Rates

The rates set forth herein shall govern the billing for all general conditions and equipment rentals as applicable to the project. The rates specified are fixed and shall apply for the duration of the Project unless otherwise modified in writing by mutual agreement of the Parties. All billable items related to general conditions and equipment usage shall be invoiced in accordance with these established rates. The rates are valued until July of 2026 and if the project continues beyond this date, are subject to a CPI increase percentage increase per year.

Description	Day	Week	Month
Traffic Control:			
Barricades - "A" frames without flashing unit	$2.00	$8.00	$24.00
Barricades - Street closure	$6.00	$24.00	$72.00
Delineators/cones	$1.00	$4.00	$12.00
Water Filled Barriers	prorate	prorate	$55.00
Dust Control:			
Trailer mounted water tank	$24.00	$72.00	$216.00
Fire hose per 100' with nozzle and hydrant wrench	$8.00	$24.00	$72.00
Dewatering/Erosion Control:			
Water Pump - Submersible with hose	$30.00	$100.00	$300.00
Trash/Sewage Pump	$75.00	$250.00	$850.00
Rumble Plates	prorate	prorate	$135.00
Temporary Heating:			
Heaters 50,000 to 150,000 BTU	$190.00	$225.00	$650.00
Trailer Rental & Expenses:			
Singlewide	prorate	prorate	$450.00
Doublewide	prorate	prorate	$900.00
8' x 28'	prorate	prorate	$175.00
Temp Power Poles & Connection:			
Bull chords - 100'	prorate	prorate	$40.00
Temp power boxes	prorate	prorate	$150.00
Storage Bins:			
20' Storage Container	prorate	prorate	$100.00
Gang Boxes - skid mount	prorate	prorate	$100.00
Gang Boxes - rolling interior casters	prorate	prorate	$100.00
Plan Boxes - Knack	prorate	prorate	$100.00
Temp Lighting:			
Light String (without bulbs)	$4.00	$12.00	$36.00
Light Stand (without bulb)	$4.00	$12.00	$36.00
Wobble Lights	$15.00	$30.00	$85.00
Light Towers	$247.00	$490.00	$950.00
Small Tools/Equipment:			
Radial Arm - Towable	$50.00	$150.00	$450.00

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Description	Day	Week	Month
Core Drilling Machine	$120.00	$400.00	$1,200.00
Whacker	$70.00	$210.00	$630.00
Fan - Industrial or Pedestal Mount	$45.00	$120.00	$250.00
Generator - 5K watt	$103.00	$333.00	$750.00
Fuel Storage Tank	prorate	prorate	$300.00
Equipment Rental:			
Skiploader - 2wd	$155.00	$620.00	$3,000.00
Skiploader - 4wd	$165.00	$660.00	$3,000.00
Skidsteer Bobcat	$355.00	$1,200.00	$3,200.00
Backhoe	$500.00	$1,400.00	$3,300.00
Reachlift/Gradall	$700.00	$2,000.00	$4,600.00
Towable Air Compressor	$425.00	$1,100.00	$2,300.00
Jackhammer with chisels, points, spades	$60.00	$180.00	$540.00
Flatbed - 1 ton	$95.00	$350.00	$790.00
Flatbed or Dumptruck	$185.00	$740.00	$1,400.00
Water Truck	prorate	prorate	$3,650.00
Trailer - Lowboy	$100.00	$366.00	$900.00
Forklift	prorate	$1,000.00	$3,000.00
Site Transportation			
Site Supervision Vehicle (Golf Cart)	prorate	prorate	$700.00
Site Supervision Vehicle (4-6 seat UTV, 4WD)	prorate	prorate	$1,120.00
BIM Equipment:			
BIM Total Station	prorate	prorate	$4,500.00
3D Site Scanner	prorate	prorate	$6,500.00
Drone (Includes licensing fees for processing software)	prorate	prorate	$1,500.00
Office Equipment:			
Copier	prorate	prorate	$400.00
Plotter	prorate	prorate	$350.00
Printer/Copier (Small, Single Feed)	prorate	prorate	$200.00
Computer/workstation (includes hardware, software, BIM coordination licensing fees)	prorate	prorate	$400.00
BIM Coordination Software	prorate	prorate	$4,762.00
iPad/Tablet	prorate	prorate	$150.00

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September 20, 2024

Tito Haes, Executive Director Public Works
City of Ontario
1333 S. Bon View
Ontario, CA 91761

Re: Updated Proposal to procure long-lead electrical gear for the Parking Structure Project associated with the Ballpark

Dear Tito,

We have updated our request for procurement of electrical gear which was authorized on August 13, 2024 (See Attachment A) to be inclusive of CM Fee and a supply bond by the Prime Contractor, thus completing the Contract Price for this procurement.

Cost of Equipment (Rancho Pacific Electric, Inc.)	$386,000
Changes to Single Line	$ 10,074
Cost of Supply Bond (Rancho Pacific Electric, Inc)	$753
CM Fee at 3.85%	$15,278
Total	$412,105

Please note that we have already proceeded with the procurement of the equipment as previously authorized on August 13, 2024 and this revised proposal is only an update to the contract price. We have attached the most current pricing from the vendor dated 9/12/24.

Sincerely

Jason Howarth
Project Executive
Tilden-Coil Constructors
Building with Integrity Since 1938
P: 951.684.5901 Ext. 209
Cell: 951.764.8929

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EXHIBIT A

Tilden-Coil CONSTRUCTORS™
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August 13, 2024

Cynthia Heredia-Torres
303 E. B St.
Ontario, CA 91764

REF: Request to procure electrical gear for long lead items by Tilden-Coil Constructors through a New Amendment for Parking Garage.

Dear Mrs. Heredia-Torres,

As a follow-up to your request, we are updating the request for procurement of electrical gear from our recent conversations via a new Amendment and the Tilden-Coil Fee would be 3.85% based on the value of the equipment and is consistent with our other amendments. The attached quote from RPE has two options and the one that best fits the schedule objectives would be in the amount $386,000. Signature of this letter would be confirming our direction to proceed with the procurement of electrical gear and associated electrical long lead items. This step will increase the chances of securing the required electrical gear needed for power to the parking garage project. Reimbursement of this cost and fee would be submitted for payment through the new Amendment/PO being processed.

The gear and equipment will be delivered to 303 E. B St., Ontario, CA 91764 and be received by Ontario until needed at the project site. Please countersign this letter to confirm the procurement approach and reimbursement process. The vendor quote is attached for back up.

Sincerely,

Jason Howarth
Project Executive
Tilden-Coil Constructors

Confirmation
Signature from Ontario Client: _____ **Date:** 8/13/24

3612 Mission Inn Avenue • Riverside, CA 92501 • Tel 951.684.5901 Fax 951.684.0725

Tilden-Coil CONSTRUCTORS
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Rancho Pacific Electric Construction Inc.

August 13, 2024

Tilden-Coil Constructors, Inc.
3612 Mission Inn Ave
Riverside, CA 92501

RE: Ontario Baseball Parking Structure Gear Procurement – Ontario, CA

ATTN: Jason Howarth

We are pleased to submit our proposal for the Switchgear Procurement for the above reference project, per Electrical Drawings E4-0, E6-0, E6-1, E6-2 and E6-3 all dated 06/28/2024. Electrical Specification Section 260504, 260548, 260553, 262200, 262413, 262416, 262816 and 264313 dated 06/14/24. No addendum noted.

Inclusions:

1. SCE Main Switchboards; Service Entrance Switchboard PG and Service Entrance Switchboard EV
2. Distribution Switchboards; MDP-PG and PG-EV-MDP
3. Transformers; TX-PG and TX-PG-O
4. Panelboards (NEMA 1) Panelboards as shown on single line; PG-H, PG-L, PG-L2, PG-HE, PG-HO. PG-LO, PG-EV-L1A, PG-EV-L1B, PG-EV-L1C, PG-EV-2LA, PG-EV-L2B, PG-EV-L2C, PG-EV-L3A, PG-EV-L3B and PG-EV-L3C
5. Sales tax for all equipment
6. Standard shipping of electrical equipment
7. Submittals and shop drawings for all equipment noted above
8. Receiving and inventory of equipment at RPEC office location, once confirmed shop all equipment to owner warehouse (owner's warehouse shall have forklift and pallet jacks for off-loading equipment)

Excludes:

1. Any cost changes for new and/or revised drawings
2. Utility company unforeseen changes
3. Any cost associated with upsizing lug configurations and sizing for circuit breakers
4. Supplying lugs for transformers (provided by electrical contractor awarded the building)
5. Supplying two (2) disconnects for Elevator Control Panels and two (2) disconnects for ATS units
6. Supplying Fire Pump Control Panel
7. Supplying Level 3 EV Chargers
8. Installation of equipment
9. **Any cost associated with 3rd party testing, short circuit, acceptance and arch flash studies**
10. Additional cost for dedicated trucks, drivers or air freight

PROCUREMENT NOTE: Rancho Pacific Electric Construction shall not be responsible for any failure of their manufactures and/or vendors to perform, or delay in performance of, its obligations resulting in procuring materials or equipment resulting from COVID-19 pandemic, events beyond their control or any future epidemic and Rancho Pacific Electric Construction shall not be entitled to any damages resulting thereof.

9063 Santa Anita Ave. Rancho Cucamonga, CA 91730 phone: (909) 476-1022 fax: (909) 476-1099
LIC#B & C10-1047107 – DIR#1000062492
www.RanchoPacificElectric.com

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Rancho Pacific Electric Construction Inc.

Schedule for Deliverables

- Written Commitment to RPEC – August 16, 2024
- Received Engineer Revised Drawing Changes – August 22, 2024
- Submittals and Shop Drawings delivered to TCC – September 16, 2024
- Receive Engineer's Reviewed of Submittals & Shop Drawings – September 30, 2024
- Revised/Corrections of submittals delivered to TCC – October 14, 2024
- Release of Switchgear Package – October 21, 2024

Switchgear Options (all times below are after receipt of approved submittals):

Eaton (Cutler Hammer) Standard Lead Times – Texas Facility:			
Main Switchboards (Inclusion #1)	42 – 46 Weeks + 10-Days for Freight		
Distribution Boards (Inclusion #2)	38 – 42 Weeks + 10-Days for Freight		
Transformers (Inclusion #3)	14 – 16 Weeks + 10-Days for Freight		
Panel Boards (Inclusion #4 – 8)	24 – 30 Weeks + 10-Days for Freight		
Total Cost for Items Noted Above:		**$**	**295,700.00**

Eaton (Cutler Hammer) Expedited Lead Times – Rialto, CA Facility:			
Main Switchboards (Inclusion #1)	28 – 32 Weeks		
Distribution Boards (Inclusion #2)	28 – 32 Weeks		
Transformers (Inclusion #3)	14 – 16 Weeks		
Panel Boards (Inclusion #4 – 8)	24 – 30 Weeks		
Total Cost for Items Noted Above:		**$**	**386,000.00**

This proposal is subject to review after thirty (30) calendar days.

If there are any questions please feel free to contact me at the office

Respectfully submitted,

Doug Munsey – Chief Estimator
909-476-1022
dougm@rpeinc.net

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~~September 4th, 2024~~ (Updated 9/25/24)

Dan Beers, Design & Construction – Principal Project Manager
City of Ontario
1333 S. Bon View
Ontario, CA 91761

Re: CM Contract Price Adjustment for the City of Ontario New Minor League Baseball Stadium and Parking Structure

Dear Dan,

As we have concluded the preconstruction phase of the New Ballpark and Parking Structure project, we are requesting an adjustment to our contract price to align with the project's current scope, budget and schedule goals.

Original Construction Budget: $86,000,000
Current Construction Budget: $194,168,280 (inclusive of alternate for PV panels on parking structure)
Current Schedule: September 2024 to March 2026 plus 2 months of closeout (21 total months)

	Contract Amount	**Revised Contract Amount**	**Change**
1. Preconstruction:	$228,000	$228,000 (no change)	$0
2. CM Fee (3.85%):	$3,311,000	$7,475,479	$4,164,479
3. General Conditions:	$5,910,365	$12,903,051	$6,992,686
4. Total (1-3)	$9,449,365	$20,606,530	$11,157,165

The CM Fee has been adjusted based upon the current sum of prime contracts. The CM Fee shall also be adjusted at the conclusion of the project based upon the project's total construction cost. Fifteen Percent (15%) of the CM Fee shall be paid during the design/preconstruction phase of the project and Eighty-Five Percent (85%) shall be paid during the construction phase of the project.

The general conditions budget has been updated to reflect a staffing approach appropriate for a project of this size to be completed within a fast-tracked construction schedule which includes up to a seven-day work schedule, expanded hours and overtime allowance. General Conditions inclusions are listed in Attachment A. General conditions expenses shall be reimbursable and provided to the city without fee markup by the CM. The billable hourly rates previously authorized by the City in Amendment No.2, dated March 5, 2024 were utilized to develop the general conditions budget. This billable hourly rate list has been updated to include one additional position as identified and attached hereto as Attachment A. Rental rates for items included within the general conditions are attached hereto as Attachment A. In the event of an approved schedule extension, the general conditions budget shall be adjusted using the daily rate of $20,400.

We look forward to continuing our relationship with the City of Ontario. Please do not hesitate to contact me with any questions.

Sincerely

Jason Howarth
Project Executive
Tilden-Coil Constructors
Building with Integrity Since 1938
P: 951.684.5901 Ext. 209
Cell: 951.764.8929

Tilden-Coil CONSTRUCTORS
Building with Integrity Since 1938

ATTACHMENT A
Tilden-Coil Constructors, Inc.
General Conditions Inclusions and Standard Rental Rates

General Conditions Inclusions

Included within the general conditions budget are the following:

1. Construction manager's labor - to be billed at the billable hourly rates attached
2. Recycling/trash for CM Office – reimbursement
3. Safety Measures, safety equipment – reimbursement
4. Traffic control/signage – reimbursement
5. Rumble plates – rental
6. Caretaker/security – reimbursement
7. Temporary fencing and gates – reimbursement
8. Water filled barriers – rental
9. Vandalism/Graffiti repair – reimbursement
10. Office trailer rental, mobilization, demobilization, alarm – reimbursement
11. Storage bins – rental
12. Project signage – reimbursement
13. Temporary power poles and connection to office – reimbursement
14. Temp lighting supplementation – rental
15. Fuel (Equipment, supervision, management) – reimbursement
16. Fuel storage tank – rental
17. Small tools/equipment repair – reimbursement
18. On-site transportation – rental
19. Equipment rental – rental
20. Printing services – reimbursement
21. Progress photo/video documentation – rental
22. Construction surveying – reimbursement
23. Telephones, cell phones, internet – reimbursement
24. Computers, hardware, software, licensing – rental
25. Office copier, office plotter, office furnishings, office supplies, office cleaning, drinking water, postage/shipping, meetings/partnering – reimbursement
26. Owner purchases (ECORP) - reimbursement
27. CM GL/PL Insurance expense – fixed value

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Billable Hourly Rates

Rates include escalation through ***July 2028*** and shall be subject to adjustment annually in alignment with the consumer price index for the area.

Position	Hourly Rate
Project Executive	$187.00
Production Director	$187.00
Safety Officer	$139.00
Sr. Project Manager	$156.00
Sr. Superintendent	$156.00
Project Manager	$139.00
Assistant Project Manager	$129.00
Superintendent	$139.00
Area/Assistant Superintendent	$127.00
Scheduler	$158.00
BIM Manager	$175.00
BIM Specialist	$151.00
BIM Technician	$135.00
TCC Survey	$151.00
Preconstruction Manager	$136.00
Sr. Project Engineer	$124.00
Project Engineer	$113.00
Sr. Estimator	$136.00
Estimator	$106.00
Preconstruction Coordinator*	$64.00
Labor Compliance Coordinator*	$72.00
Accountant*	$108.00
Sr. Project Administrator*	$79.00
Project Administrator*	$70.00
Project Engineer Intern*	$43.00
Field Labor*	$103.00

*Overtime rates for positions identified are billed at 1.5x for hours billed in excess of 40 hours in a given week. All other positions are billed at the listed rate for overtime hours.

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Rental Rates

The rates set forth herein shall govern the billing for all general conditions and equipment rentals as applicable to the project. The rates specified are fixed and shall apply for the duration of the Project unless otherwise modified in writing by mutual agreement of the Parties. All billable items related to general conditions and equipment usage shall be invoiced in accordance with these established rates. The rates are valued until July of 2026 and if the project continues beyond this date, are subject to a CPI increase percentage increase per year.

Description	Day	Week	Month
Traffic Control:			
Barricades - "A" frames without flashing unit	$2.00	$8.00	$24.00
Barricades - Street closure	$6.00	$24.00	$72.00
Delineators/cones	$1.00	$4.00	$12.00
Water Filled Barriers	prorate	prorate	$55.00
Dust Control:			
Trailer mounted water tank	$24.00	$72.00	$216.00
Fire hose per 100' with nozzle and hydrant wrench	$8.00	$24.00	$72.00
Dewatering/Erosion Control:			
Water Pump - Submersible with hose	$30.00	$100.00	$300.00
Trash/Sewage Pump	$75.00	$250.00	$850.00
Rumble Plates	prorate	prorate	$135.00
Temporary Heating:			
Heaters 50,000 to 150,000 BTU	$190.00	$225.00	$650.00
Trailer Rental & Expenses:			
Singlewide	prorate	prorate	$450.00
Doublewide	prorate	prorate	$900.00
8' x 28'	prorate	prorate	$175.00
Temp Power Poles & Connection:			
Bull chords - 100'	prorate	prorate	$40.00
Temp power boxes	prorate	prorate	$150.00
Storage Bins:			
20' Storage Container	prorate	prorate	$100.00
Gang Boxes - skid mount	prorate	prorate	$100.00
Gang Boxes - rolling interior casters	prorate	prorate	$100.00
Plan Boxes - Knack	prorate	prorate	$100.00
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Light String (without bulbs)	$4.00	$12.00	$36.00
Light Stand (without bulb)	$4.00	$12.00	$36.00
Wobble Lights	$15.00	$30.00	$85.00
Light Towers	$247.00	$490.00	$950.00
Small Tools/Equipment:			
Radial Arm - Towable	$50.00	$150.00	$450.00

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Whacker	$70.00	$210.00	$630.00
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Generator - 5K watt	$103.00	$333.00	$750.00
Fuel Storage Tank	prorate	prorate	$300.00
Equipment Rental:			
Skiploader - 2wd	$155.00	$620.00	$3,000.00
Skiploader - 4wd	$165.00	$660.00	$3,000.00
Skidsteer Bobcat	$355.00	$1,200.00	$3,200.00
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Trailer - Lowboy	$100.00	$366.00	$900.00
Forklift	prorate	$1,000.00	$3,000.00
Site Transportation			
Site Supervision Vehicle (Golf Cart)	prorate	prorate	$700.00
Site Supervision Vehicle (4-6 seat UTV, 4WD)	prorate	prorate	$1,120.00
BIM Equipment:			
BIM Total Station	prorate	prorate	$4,500.00
3D Site Scanner	prorate	prorate	$6,500.00
Drone (Includes licensing fees for processing software)	prorate	prorate	$1,500.00
Office Equipment:			
Copier	prorate	prorate	$400.00
Plotter	prorate	prorate	$350.00
Printer/Copier (Small, Single Feed)	prorate	prorate	$200.00
Computer/workstation (includes hardware, software, BIM coordination licensing fees)	prorate	prorate	$400.00
BIM Coordination Software	prorate	prorate	$4,762.00
iPad/Tablet	prorate	prorate	$150.00

NATIVE AMERICAN MONITORING SERVICE AGREEMENT

This agreement for Native American monitoring services is entered into on September 4, 2024 by and between, KIZH NATION RESOURCES MANAGEMENT ("KNRM"), and City of Ontario (City of Ontario or the "Lead Agency") (collectively referred to as, the "Parties"), for the compliance of the development project located at Ontario Regional Sports Complex-9373 East Riverside Drive, Ontario California 91761 (the "Project Site"), with the mitigation measures adopted by the Project lead agency, pursuant to the California Environmental Quality Act ("CEQA) (hereinafter, the "Project").

RECITALS

WHEREAS, the Tribe consulted with the lead agency regarding the adverse impacts the Project will have on tribal cultural resources ("TCR") at, on, and/or beneath the Project Site, and proposed mitigation measures to reduce those impacts below the threshold of significance as required by the California Environmental Quality Act ("CEQA");

WHEREAS, the lead agency found that substantial evidence supported the adoption of the Tribe's proposed TCR mitigation measures and made those mitigations mandatory conditions of the Project approval (collectively, the "Mitigations");

WHEREAS, the purpose of this Agreement is for the protection and preservation of the Tribe's TCRs and compliance of the Project with the adopted Mitigations.

Accordingly, KNRM and City of Ontario hereby agree as follows:

[*CONTINUED ON THE FOLLOWING PAGE*]

MONITORING AGREEMENT

1. SCOPE OF WORK

1.1. KNRM's Native American monitor will be physically present on the Project Site at all times ground-disturbing Project activities are occurring. To implement the "tribal cultural resource" ("TCR") Mitigations adopted for this Project, KNRM's monitor shall:

a) Monitor all "ground disturbing activities," including but not limited to, demolition, grubbing/clearing, rough grading, precise grading, mass grading, trenching, excavation, boring, augering, and weed abatement on previously disturbed and undisturbed ground;
b) Identify uncovered and/or discovered TCRs, including but not limited to Native American artifacts, village sites, trade routes, midden deposits, ceremonial locations, human remains, and grave goods (collectively referred to as, "TCR" or "TCRs");
c) Ensure all TCRs, especially human remains and associated grave goods, are treated with culturally appropriate dignity and respect, and are handled and/or removed from the Project Site in accordance with the Tribe's ceremonial and cultural practices ;
d) Attend and participate in Project meetings, including trainings and conferences, to inform Project personnel about the potential for TCR discoveries and the appropriate courses of action if/when a discovery occurs;
e) Create daily logs of observations made during monitoring, and provide written reports detailing each TCR discovery, including but not limited to, the date and time, location on the Project Site, nature of the soil in the discovery location, facts pertaining to the Project activities in that area, the location of the perimeter around the TCR discovery that the monitor establishes to protect the location, and any cultural findings; and
f) Report discoveries to the Tribal Chairman and/or the Tribal Archaeologist, and incorporate their input regarding the treatment of the TCR(s).

1.2. In order to fully and effectively execute the monitoring services identified in Section 1.1 and section 1.2 above, the Parties agree that KNRM's monitor shall possess all of the following rights, which may be asserted at any time and at any location on the Project Site:

a) To access any/all areas of the Project Site necessary to physically observe the "ground-disturbing activities", as that phrase is defined in Section 1.1(a) above, as those ground-disturbing activities are occurring;
b) To halt construction activity within the surrounding 50 feet (or more where deemed necessary by KNRM's monitor) of a discovered TCR;
c) To meet and confer with the Project Supervisor in a timely manner regarding how to re-direct Project activities in the vicinity of a discovered TCR and the time frame for imposing a no-work perimeter around a discovered TCR;
d) To meet and confer with the Project Supervisor in a timely manner regarding issues pertaining to effectively monitoring the Project Site in a manner that ensures compliance with the Mitigations;
e) To be timely notified of all Project meetings, including safety meetings, trainings, scheduling, etc., and permitted to attend any/all meetings; and
f) To be treated in a respectful and courteous manner by all Project management, staff, personnel, contractors, and subcontractors.

2. DISCOVERY OF NATIVE AMERICAN ARTIFACTS, GRAVE GOODS, AND/OR HUMAN REMAINS

2.1. If TCRs are found, the Tribe will retain it/them in the form and/or manner the Tribe deems appropriate, for educational purposes.

2.2. If human remains and/or grave goods are discovered or recognized at the Project Site, all damage or disturbance shall immediately cease, and the county coroner shall be notified per Public Resources Code Section 5097.98, and Health & Safety Code Section 7050.5. Human remains and grave/burial goods shall be treated alike per California Public Resources Code section 5097.98(d)(1) and (2).

2.3. The Lead Agency expressly acknowledges the obligations required of it under governing State and Federal laws, including but not limited to, the California Public Resources Code, California Health & Safety Code, California Government Code, and California Code of Regulations, in the event human remains are discovered on the Project Site, and expressly agrees to comply with all such obligations, and to the extent possible, obtain compliance of the property owner in the event human remains are discovered on the Project Site but on land not owned and/or controlled by the Lead Agency.

2.4. Pursuant to Public Resources Code Section 5097.98, subsections (d) and (e), if human remains or associated burial goods are found on the Project Site and in an area that is under the ownership and/or control of the Lead Agency, the Lead Agency agrees to provide a designated area on the property at which to reinter the remains and/or burial goods with appropriate dignity that is not subject to further disturbance.

2.5. In the event that human remains and/or burial goods are found within the Project Site but in an area that is outside of the ownership and/or control of the Lead Agency, the Lead Agency will make a reasonable effort to secure an agreement with the property owner to reinter the remains and/or burial goods with appropriate dignity in a designated area on the Project Site that is not subject to further disturbance, as is required of the property owner pursuant to Public Resources Code Section 5097.98, subsections (d) and (e). If such an agreement with the property owner cannot be reached, to the extent feasible, the Lead Agency will provide a designated area on the Project Site that is within the Lead Agency's ownership and/or control, for reinternment of the human remains and/or burial goods.

2.6. If the portion of the Project Site where human remains and/or burial goods are discovered is within the ownership and/or control of the Lead Agency, pursuant to Public Resources Code Section 5097.98(b), the Lead Agency shall ensure that the immediate area surrounding the discovery will be isolated and remain undisturbed until recommendations by the designated most likely descendent (within approximately 48-hours). The grading and excavation may continue outside of the isolated area.

3. FEES AND INVOICES

3.1. The Lead Agency agrees to pay KNRM for the above described monitoring services for the Project at the following rates:

a) The standard, day-time rate per monitor is one hundred dollars ($105.00) per hour for an eight (8) hour day ("Standard Workday"). A night differential rate of $115.00 per hour will be applied for monitoring performed at or after 6 p.m. The night rate for monitoring that exceeds 8 hours per day, or 40 hours per week is $172.50 per hour
b) The rate for monitoring that exceeds 8 hours per day, or 40 hours per week is $ 157.50 per hour.
c) The rate for monitoring performed on a Saturday or Sunday is $172.50 per hour.
d) The rate for project management services, including but not limited to, consultant communications, monitor coordination, project documentation, is one hundred and Forty-five dollars ($145) per hour;
e) The rate for Project Director services, including consultation, Project meetings and trainings, and communications, documentation, and coordination pertaining to compliance issues, is two hundred dollars ($200) per hour;
f) The rate for KNRM's Compliance Officer Specialist (COS) is responsible for ensuring all projects are working in a safe, healthy, and professional work environment. The KNRM compliance officer performs project inspections to assess that project applicants and KNRM monitors are following all safety and environmental laws per Federal and State regulations at a rate of one hundred and Twenty dollars ($120) per hour;
g) In the event TCRs are discovered (whether prehistoric or historic), a KNRM Archaeologist (who meets the Secretary of the Interior's standards for Professional Archaeology), shall be retained in addition to the monitor to assess the TCR, at a rate of one hundred and fifty dollars ($150) per hour;
h) Mileage shall be reimbursed at the Federal Standard Rate for travel to and from the Project Site, to/from KNRM's office located at 910 N. Citrus Avenue, Covina, California;
i) Lodging is required if the monitor must travel 40 miles or more to the Project site, and is reimbursed at the rate of two-hundred dollars ($200) per night; *and*
j) Per diem for meals at the rate of seventy-five dollars ($75) per day.

3.2. If it is unreasonable for one monitor to fulfill their duties because Project Activities are occurring concurrently, at more than one location on the Project Site and at a distance impractical for a single monitor to serve simultaneously, then an additional monitor will be required at identical rates and on identical terms.

3.3. KNRM shall invoice Lead Agency for fees monthly. The Lead Agency shall make payment to KNRM not later than thirty (30) days following the invoice date (Net 30). An advance deposit is required from the Lead Agency, in an amount equal to twenty-five percent (25%) of the estimated cost budgeted for the Project, prior to any work performed by KNRM under this Agreement. Invoices not paid within 30 days of the invoice date are subject to a finance charge equal to ten percent (10%) of the monthly invoice total each additional month payment is not received. Checks shall be made payable to "Kizh Nation Resources Management" and mailed to:

Kizh Nation Resources Management
910 N. Citrus Ave
Covina, CA 91722

3.4. The Lead Agency's estimated hours of monitoring services utilized for the Project budget (if any) shall not constitute or be interpreted as a limitation on the monintoring services performed for this Project by KNRM if additional monitoring is necessary to satisfy the Project mitigations and conditions of approval.

4. NOTICE

4.1. To ensure there are no delays and to esure a monitor is present onsite we request a minimum of 72 hours advance notice to assist with scheduling efforts (Although we are sensitive to last minute changes and we will try to accommodate). **Please submit your monitor requests to: KNRM Dispatch to knrmdispatch@gmail.com or text or call (626) 825-8248. For immediate assistance you may contact Andrew Salas (626) 926-4131. For archaeological services you can contact our Tribal Archaeologist John Torres at indigenous.crm@gmail.com or (909)705-6241.**

4.2. In the event a scheduled Standard Workday is canceled entirely or the hours are altered for any reason, the Lead Agency shall promptly notify KNRM no later than 5:00 p.m. PST on the business day prior to the altered day, at the "Contact Information" set forth in Section 5 below. If KNRM has not received timely notice of a schedule cancellation or change, a minimum fee of four hundred twenty dollars ($420.00) shall be applied per late cancellation event.

4.3. All communications pertaining to or that may impact KNRM's implementation of the services set forth in section 1 of this Agreement shall be made in writing and per the contact information in section 5 below.

5. CONTACT INFORMATION

5.1. Notices to KNRM:

Telephone - (626) 926-4131

KNRM Office - (626) 521-5827

Email: admin@knrm-nsn.us

5.2. **Lead Agency:**

Name: City of Ontario

Phone: 909-395-2806

Email: dbeers@ontarioca.gov

5.3. **On-Site Project Contact** (i.e., "Project Supervisor")

Name: Daniel Beers

Phone: 909-395-2806

Email: dbeers@ontarioca.gov

5.4 **Billing Contact information**

Name: Daniel Beers

Phone: 909-395-2806

Email: dbeers@ontarioca.gov

6. LIMITATION OF LIABILITY AND LIQUIDATED DAMAGES

6.1. Despite any language in this Agreement to the contrary, KNRM's obligations under this Agreement (including any actual or alleged breach or default by KNRM) do not constitute personal obligations of the individual partners, directors, officers, members or shareholders of KNRM or the Tribe, or the partners or members of KNRM or the Tribe. The Lead Agency shall not seek recourse against the individual partners, directors, officers, members or shareholders of KNRM or the Tribe, or any of their personal assets for satisfaction of any liability with respect to this Agreement.

6.2. In consideration of the benefits accruing hereunder to the Lead Agency and notwithstanding anything contained in this Agreement to the contrary, the Lead Agency hereby covenants and agrees for itself and all of its successors and assigns that the liability of KNRM and the Tribe for KNRM's obligations under this Agreement (including any liability as a result of any actual or alleged failure, breach or default hereunder by KNRM or any alleged tort committed in connection with KNRM's work), shall be limited solely to KNRM's insurance coverage as provided in Section 7 of this Agreement.

6.3. In the event the Lead Agency performs (directly or through a contractor, subcontractor, agent, representative or otherwise at the Lead Agency's direction) or allows to be performed ground-disturbing work without a monitor present in violation of Mitigations and in breach of this Agreement, KNRM will suffer substantial harm for which it is impracticable to fix actual damages. To limit or prevent further harm, the Lead Agency agrees and consents to the immediate issuance of a Stop Work Order by the Project lead agency, which shall stay in full force and effect unless and until the Parties resolve the non-compliance events and resulting damages.

6.4. In an effort to liquidate in advance the sum that should represent such damages and to avoid the additional costs Lead Agency will incur to remedy that breach by redoing all non-compliant ground-disturbing Project activities with a KNRM monitor present, Lead Agency agrees to pay KNRM a "Noncompliance Fee" equal to the cost of redoing all non-compliant ground-disturbing Project activities, plus KNRM's monitoring fees for monitoring those activities. You acknowledge that you have been given notice of this Noncompliance Fee and agree that such a fee is fair and reasonable.

7. INSURANCE

7.1. A certificate of general liability insurance coverage can be provided upon request.

7.2. KNRM does not hold an automobile liability policy for the monitors. Vehicles are only used for transportation to and from the Project Site. Each individual monitor is required to carry automobile insurance pursuant to California State law. Proof of a monitor's automobile insurance can be provided upon request.

8. MISCELLANEOUS

8.1. Governing Law. This Agreement shall be governed by, and construed pursuant to, the laws of the state of California.

8.2. Recitals. All recitals set forth in this Agreement are contractual.

8.3. Terms and Headings. Section headings of this Agreement are for convenience, are merely descriptive, and do not alter the rights of the parties.

8.4. Time. Time is of the essence with respect to performance of every provision of this Agreement in which time or performance is a factor. All references in this Agreement to "days" shall mean calendar days unless specifically modified herein to be "business" days.

8.5. Professional Fees. If either KNRM or Lead Agency should bring suit against the other with respect to this Agreement, then all reasonable costs and expenses incurred by the prevailing party therein (including, without limitation, its accountants', attorneys', experts' and other professional's fees, expenses and court costs), shall be paid by the other party.

8.6. Waiver. The waiver by either party of any breach by the other party of any term, covenant or condition herein contained shall not be deemed to be a waiver of any subsequent breach of the same or any other term, covenant and condition herein contained, nor shall any custom or practice which may become established between the Parties in the administration of the terms hereof be deemed a waiver of, or in any way affect, the right of any party to insist upon the performance by the other in strict accordance with said terms.

8.7. Prior Agreements; Amendments. This Agreement, contains all of the covenants, provisions, agreements, conditions and understandings between the Parties concerning the Project and any other matter covered or mentioned in this Agreement, and no prior agreement or understanding, oral or written, express or implied, pertaining to the Project or any such other matter shall be effective for any purpose. No provision of this Agreement may be amended or added to except by an agreement in writing signed by the Parties hereto or their respective successors in interest. The Parties acknowledge that all prior agreements, representations and negotiations are deemed superseded by the execution of this Agreement to the extent they are not expressly incorporated herein. The Parties hereto acknowledge and agree that each has participated in the negotiation and drafting of this Agreement; therefore, in the event of an ambiguity in, or dispute regarding the interpretation of, this Agreement, the interpretation of this Agreement shall not be resolved by any rule of interpretation providing for interpretation against the party who caused the uncertainty to exist or against the draftsman. Any deletion of language from this Agreement prior to its execution by the Parties shall not be construed to raise any presumption, canon of construction or implication, including, without limitation, any implication that the Parties intended thereby to state the converse of the deleted language.

8.8. Separability. The invalidity or unenforceability of any provision of this Agreement shall in no way affect, impair or invalidate any other provision hereof, and such other provisions shall remain valid and in full force and effect to the fullest extent permitted by law.

8.9. Force Majeure. In the event that either party hereto shall be delayed or hindered in or prevented from the performance of any act required hereunder by reason of strikes, lock-outs, labor troubles, inability to procure materials, failure of power, governmental moratorium or other governmental action or inaction (including failure, refusal or delay in issuing permits, approvals and/or authorizations), orders/closures/restrictions pertaining to COVID-19, injunction or court order, riots,

insurrection, war, fire, earthquake, flood, inclement weather in excess of average for the San Bernardino County area or other natural disaster or other reason of a like nature not the fault of the party delayed in performing work or doing acts required under the terms of this Agreement (herein collectively, "Force Majeure Delays"), then performance of such act shall be excused for the period of the delay and the period for the performance of any such act shall be extended for a period equivalent to the period of such delay, provided the delayed party has notified the other party of the Force Majeure Delay within five (5) business days of learning of the same, such notice specifically describes the Force Majeure Delay and its expected duration, and the delayed party regularly updates the other party of the status of the same and the delayed party takes all commercially reasonable efforts to mitigate the effects and minimize the duration of the delay. The provisions of this Section 7.9 shall not apply to nor operate to excuse Lead Agency (or any third-party contractor operating on behalf of Lead Agency) from the payment of any fees owed to or the reimbursement of costs incurred by KNRM in accordance with the terms of this Agreement, nor extend the date for payment of same to KNRM.

8.10. Counterparts. This Agreement may be executed in one or more counterparts, each of which shall constitute an original and all of which shall be one and the same agreement. Facsimile and electronic signatures are valid and binding.

8.11. Lead Agency's Authority. The agent/representative of the Lead Agency that executes this Agreement represents and warrants that: (a) the Lead Agency is qualified to do business in the state of California; (b) such persons executing this Agreement are duly authorized to execute and deliver this Agreement on the Lead Agency's behalf, or a duly adopted resolution of the Lead Agency's board of directors; and (c) this Agreement is binding upon the Lead Agency in accordance with its terms.

IN WITNESS WHEREOF, the Parties have executed this Agreement as of _____,2024.

"LEAD AGENCY" [City of Ontario]

*By: _____

Print Name: _____

Print Title: _____

"KNRM" KIZH NATION RESOURCES MANAGEMENT

*By: _____

Print Name: _____

Print Title: _____

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

PAUL S. LEON
MAYOR

DEBRA PORADA
MAYOR PRO TEM

ALAN D. WAPNER
JIM W. BOWMAN
RUBEN VALENCIA
COUNCIL MEMBERS

SHEILA MAUTZ
CITY CLERK

JAMES R. MILHISER
TREASURER

SCOTT OCHOA
CITY MANAGER

AMENDMENT NO. 1 TO THE PROFESSIONAL SERVICES AGREEMENT BETWEEN THE CITY OF ONTARIO AND RMA GROUP

1. Parties and Date.

This Amendment No. 1 to the Agreement (as defined herein) is made and entered as of _____, by and between the City of Ontario ("City") and **RMA Group**, a 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 "On-Call Material Testing & Geotechnical Engineering Services" dated May 2, 2023 ("Agreement").

2.2 Amendment Purpose. The City and Consultant desire to amend the Agreement to include environmental site assessments, asbestos and lead assessments, construction inspection and testing services for D&C23-011 Professional Baseball Stadium and increase the amount by Two Million Two Hundred Forty-Two Thousand Three Hundred Sixty Dollars ($2,242,360) for a new total not-to-exceed amount of Two Million Four Hundred Forty-Two Thousand Three Hundred Sixty Dollars ($2,442,360).

2.3 Amendment Authority. This Amendment No. 1 is authorized pursuant to Section 3.7.14 of the Agreement.

3. Terms.

3.1 Amendment. Sections 3.1.1 and 3.2.1 of the Agreement is hereby amended in its entirety to read as follows:

> "3. 1. 1 General Scope of Services. Consultant promises and agrees to furnish to the City all labor, materials, tools, equipment, services, and incidental and customary work necessary to fully and adequately supply the professional material testing and geotechnical engineering services necessary for the Project ("Services"). The Services are more particularly described in Exhibit "A" attached hereto and incorporated herein by reference. All Services shall be subject to, and performed in accordance with, this Agreement, the exhibits attached hereto and incorporated herein by reference, and all applicable local, state and

federal laws, rules and regulations."

"3.2.1 Compensation. Consultant shall receive compensation, including authorized reimbursements, for all Services rendered under this Agreement at the rates set forth in Exhibit "C" attached hereto and incorporated herein by reference. The total compensation shall not exceed **Two Million Four Hundred Forty-Two Thousand Three Hundred Sixty Dollars ($2,442,360)** 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."

Exhibit A is hereby amended in its entirety and replaced with Attachment A attached hereto and incorporated herein by reference.

3.2 Continuing Effect of Agreement. Except as amended by this Amendment No. 1, all other provisions of the Agreement remain in full force and effect and shall govern the actions of the parties under this Amendment No. 1. From and after the date of this Amendment No. 1, whenever the term "Agreement" appears in the Agreement, it shall mean the Agreement as amended by this Amendment No. 1.

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. 1.

3.4 Severability. If any portion of this Amendment No. 1 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. 1 TO PROFESSIONAL SERVICES AGREEMENT BETWEEN THE CITY OF ONTARIO AND RMA GROUP

IN WITNESS WHEREOF, the Parties have entered into this Amendment No. 1 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

RMA Group

By: _____

Its: _____

Printed Name: _____

By: _____

Its: _____

Printed Name: _____

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

RMA Group
Every Project Matters

Proposal No: 00-243036-P

September 11, 2024

City of Ontario
1425 S Bon View Ave.
Ontario, CA 91761

Attention: Daniel Beers

Subject: Proposal to Provide Construction Inspection and Testing Services
Ontario Sports Park
Riverside Dr and Ontario Ave
Ontario, CA

RMA Group is pleased to present our proposal to provide construction inspection and testing services for the Ontario Sports Park Construction Testing and Inspection project.

PROJECT UNDERSTANDING

We understand that the project will consist of construction of a regional Sport Park to include a baseball stadium, hotel, retail structures, parking structures, sports fields and courts and other related infrastructure. We have provided below a scope of work typical of the proposed construction with testing and inspection requirements in line with the California Building Code, Standard Specifications for Public Works Construction (Greenbook) and the City of Ontario.

SCOPE OF WORK

A detailed description of the tasks required to complete this scope of work and an estimate of the costs associated with our work are detailed herein.

Grading Observation and Testing

Our services will consist of observing rough grading operations, performing soil tests, and submittal of a soil grading report.

Our representative will observe rough grading operations on a fulltime basis. Water content, in place density (compaction), maximum density-optimum moisture, expansion index, organic content and soluble sulfate tests that will be performed at a frequency and at locations selected by the soil engineer. Our laboratory can perform other soils tests, if requested, at an additional charge. During the course of construction we will notify the owner in writing, with copy to the contractor if, at any time in our opinion, the work is not in conformity to the plans and specifications.

Upon completion of the work we will prepare a final report for the owner which will summarize our observations and the results of all tests performed. The final report will contain recommendations and opinions regarding the conformance of the completed rough grading to the intent of the plans, soil engineering reports, and specifications. We expect multiple grading reports will be needed and will accommodate these requests.

Due to the proposed import requirements of the site we understand that there may be additional testing requirements for the import. Geotechnical testing requirements of import soil are typically expansion index and corrosion analysis tests to verify that the soils are compatible with the site soils. Other tests typically included in import analysis are chemical tests for contaminants. The actual type of test is dependent of source location use and amount is based on the volume of soil to be imported to the site. The testing may be done by the soil seller, which we would then review or by us, as directed by the City. It should be noted that the typical time for test results is 5days from delivery to the laboratory. In order to limit delays of import test results supplied by the seller would be acceptable and prudent.

Compaction Testing of Trench Backfill and Street Improvements

Our services will consist of compaction testing of the backfill of the utility trenches and subgrade and aggregate base for paved areas on site and within the street right of way.

We will provide a technician to perform in place density tests (compaction tests) by either the sand cone method (ASTM D1556) or the nuclear gauge method (ASTM D6938), water content tests, and maximum density optimum moisture tests per ASTM D1557 at locations selected by <your / our> representative. Testing would be performed after compaction has been completed by the contractors and observation of compaction methods used by the contractor would not be included in the scope of our work.

Trench backfill compaction tests would be taken at locations and frequencies in accordance with guidelines provided by the governing public agency. If the governing public agency does not have established testing guidelines then the following guidelines would be used. Test locations on the main trenches would be spaced no more than 200 linear feet apart. Compaction tests would be taken at mid depth in the backfill zone and in the subgrade zone in trenches with depths of 4 feet or less. One half of the tests shall be taken from each depth. Trenches deeper than 4 feet would be tested in each 4 foot lift and the subgrade zone. No tests would be taken in the bedding or pipe zone. Excavating test holes in excess of 1.0 feet in depth would not be included within the work scope.

Subgrade compaction tests of paved areas on site and within the street right of way would be taken at locations be selected by our technician that represent the surface appearance of the subgrade at the time of testing. Test locations would be spaced no more than 500 linear feet apart.

A written report summarizing the results of all tests performed will be prepared upon completion of the work. The report will not contain a rendering, opinion, certificate, or warranty, of the compaction of the materials tested. Multiple reports can be completed as requested.

Compaction Testing for Asphalt Concrete Pavements

This scope of service will consist of materials testing of asphaltic concrete used in the construction of private roadway and parking area improvements. These services will include monitoring the temperature and rolling procedure and the determination of the in place density testing of asphalt concrete using the nuclear gauge (ASTM D2950). Laboratory testing will be performed to determine the laboratory test maximum density of the asphaltic concrete in accordance with ASTM D2041.

Special Inspection and Testing of Reinforced Concrete Construction

This scope of services will include engineering review of concrete mix designs, inspection of concrete batch plant operations (if needed), special inspection of reinforced concrete construction including post tensioned inspections of the parking structures slabs and field sampling and laboratory testing of concrete and reinforcing steel used in concrete construction for the project.

Our materials engineer would review mix designs submitted by the contractor and the results of tests performed on the aggregates. A written report of our review of the concrete mix design submittal will be prepared upon the completion of the work.

This scope of work will include the inspection of concrete batch plant operations, if requested. We will provide an inspector during concrete batch plant operations to monitor the batch weights and provide periodic inspection of the aggregate stockpiles and cement bins. Written reports of all inspections will be provided on a daily basis and at the completion of the work.

We will provide an ICC certified special inspector to perform inspection of the concrete form work, reinforcing steel placement, and concrete placements. He will perform periodic inspection of the formwork for shape, location and dimensions of the concrete member being formed. He will provide periodic inspection to verify the proper size and placement of reinforcing steel and embedded anchors.

Our inspector will provide continuous inspection during the placement of structural concrete to verify proper application techniques. Our inspector will sample fresh concrete and obtain samples for strength testing, perform slump tests and monitor the temperature of the concrete. A set of test cylinders will be made from each 150 cubic yards of concrete or fraction thereof for each class of concrete placed each day. Four test cylinders will be cast for each set.

Strength test cylinders will be cured in our laboratory until they are tested in accordance to ASTM C192. Compression tests would be performed in accordance to ASTM C39 at 7 and 28 days, respectively. Copies of the results of all compression tests will be provided upon completion of the test.

Samples of the reinforcing steel to be used for production of concrete would be tested in accordance to ASTM A370 and A615 test methods. Written reports of all tests presenting applicable information would be prepared at the completion of testing.

Special Inspection and Testing of Reinforced Masonry Construction

This scope of services will include special inspection of reinforced masonry construction and field sampling and laboratory testing of mortar, grout and masonry used for the project.

This scope of work will include the inspection of grout batch plant operations. We will provide an inspector during grout batch plant operations to monitor the batch weights and provide periodic inspection of the aggregate stockpiles and cement bins. Written reports of all inspections will be provided on a daily basis and at the completion of the work.

We will provide an ICC certified special inspector to perform inspection of the masonry work, reinforcing steel placement, and grout placements. He will perform periodic inspection of the masonry work for fit up, jointing and the general details of the work being constructed. He will provide periodic inspection to verify the proper size and placement of reinforcing steel and embedded anchors.

Our inspector will provide continuous inspection during the placement of grout and mortar to verify proper application techniques. Our inspector will sample fresh grout and mortar to obtain samples for strength testing.

Strength test cylinders will be obtained for grout and mortar. The strength test samples will be cured in our laboratory until they are tested in accordance to ASTM C192. Compression tests would be performed on grout samples in accordance to ASTM C1019, and mortar samples will be tested in accordance with ASTM C780. Samples will be tested at 7 and 28 day ages

Samples of the masonry units delivered to the project will be sampled and tested to verify conformance with the project requirements in accordance with ASTM C90. Written reports of all tests presenting applicable information would be prepared at the completion of testing.

Special Inspection of Structural Steel Construction

This scope of services will consist of inspection of structural steel erection, high strength bolting and field welding procedures and completed welds for conformance to approved plans, specifications, and building codes. Shop inspection may be done upon request. We have assumed that the steel manufacture will be done in an approved shop.

We will provide an inspector that has been certified by AWS as a special inspector for welding. His work would consist of inspection of all welds made in the field for compliance with the approved plans and job specifications. He shall make a systematic record of all welds, including a list of defective welds and a manner of correction of defects. The inspector will check the material, equipment, details of construction and procedures, as well as the welds. He would also check the ability of the welder.

Our inspector will perform periodic inspection during erection of structural steel to verify the materials utilized are properly marked and traceable. He will collect mill certifications for the materials and inspect joint details to verify conformance at each connection. He will also inspect the installation of the high strength bolts for conformance to the job specifications.

Non-Destructive testing of the completed welds will be performed as required. The inspector may use Ultra Sonic, Magnetic Particle or Dye Penetrants as appropriate to inspect completed welds and assure the adequacy of the welding.

Special Inspection and Testing of Post Installed Anchors

This scope of services will include performing special inspection and testing as required of post installed anchors for compliance with the approved plans, job specifications, ICC-ES reports, and building codes.

We will provide an inspector certified by ICC to perform inspection of the installation of post installed anchors. These inspections typically consist of epoxy dowel, wedge anchor, and hold downs. He shall make a list of defective work and a manner of correction of defects.

This scope of work may also include pull or torque testing of installed anchors as required by the project plans or job specifications. We will provide a technician to perform the required testing on a randomly selected number of anchors based on the frequency of testing specified.

The results of all tests and inspections will be provided to the designated representative in written daily reports of inspection and testing.

Project Administration, Engineering Oversight, and Reporting

This scope of work will include all administrative, project management, engineering oversight, and reporting. This may include, but is not limited to, ensuring RMA Group has all necessary documents and information needed to complete the requested work, reviewing plans and specifications, dispatching services, reviewing both lab and daily reports, distribution, and invoicing time.

Phase II Environmental Site Assessments and Asbestos and Lead Assessments

Our proposed scope of work will consist of asbestos and lead testing of the existing structures on the properties east of Edison Avenue and limited Phase II assessments of the properties east of Edison Avenue and during demolition of the Petersma property.

ASBESTOS AND LEAD BUILDING MATERIAL SURVEY

- Our proposed scope of work will consist of testing of the building materials in the existing buildings in preparation for their demolition. The survey and testing of the existing building materials will be completed by Charles Taylor Environmental Technical Services. Their tasks will include a review of the existing buildings and collecting samples of various building materials for possible asbestos. Samples of drywall, wallboard from the ceilings and walls, floor coverings and mastic, roof vapor barrier, insulation, stucco, window putty, asphalt, transite pipe (if visible on the surface or in the structures), brick mortar, acoustic tiles and other materials that may be encountered during the structure surveys. Physical samples will be collected for asbestos tests and the materials will also be tested for lead content at the location with a handheld XRF analyzer. The asbestos samples will be analyzed in their laboratory utilizing polarizing light microscopy to determine percentage of asbestos in the sample.
- A report will be generated detailing the results of their structure survey and testing.

LIMITED PHASE II SITE ASSESSMENTS

Limited Phase II site assessments will be done on each of the separate parcels: the Petersma property along with the 4 properties east of Edison Avenue. Our scope of work will include the following:

- A review of the Phase 1 Reports for the subject properties completed by Converse Consultants. This will be done to develop specific areas of concern based upon the findings of the Phase 1 reports, specifically any environmental concerns that are listed in their Conclusions and Recommendations. We will also review the Phase II ESA report completed for the Petersma property by Converse consultants to determine the condition of the property during that assessment and any follow-on recommendations in that report, if any.
- A site reconnaissance of each property. The purpose of the reconnaissance will be to determine any changes at the sites from the Phase I (and the Petersma Phase II report) and the current conditions and determine if new recognized environment conditions may exist at the site that are not discussed in the reports
- Testing of soil and other materials at the sites. Possible anticipated testing includes:
    - EPA 8081 Organo-chlorine Pesticides
    - EPA 8141 Organo-phosphorous Pesticides
    - EPA 8151 Chlorinated Herbicides
    - EPA 6010 and 7471 TTLC 17 Metals
    - EPA 8015 Total Petroleum Hydrocarbons
    - EPA 8021 or 8260 Volatile Organic Compounds
    - EPA 8270 semi-Volatile Organic Compounds

  The samples will be collected utilizing sterile sampling equipment, placed into sterile glass jars and placed on ice for transport to an EPS and Cal EPA certified testing laboratory. All samples will include a proper chain of custody. Samples collected at the properties east of Edison Avenue will include randomly selected sites and will include the recommended metals, pesticide and herbicide tests along with TPH, VOCs and semiVOC tests for areas of stained soils, if needed. Tests for heavy metals, TPH, VOCs and semiVOCs may be done on demolition debris and questionable soil encountered during demolition and soil within the garage located in the center of the property, where elevated TPH was encountered and documented in Converse's Phase II. This sampling will include TPH, semiVOCs, VOCs and metals for disposal of soil and to determine extent and verify removal of soil with elevated TPH levels.
- Report preparation. A report will be prepared for each of the five parcels (the Petersma property and the 4 parcels located east of Edison Avenue). The report will include the results of our report reviews, site reconnaissance and laboratory testing and any further recommendations for remediation.

Attachments to the report will include maps showing the conditions observed during the site reconnaissance and sample locations, photographs of the site, aerial photographs, U.S. Geological quadrangle maps or site generated maps, a statement of qualifications of the persons performing the assessment, and a list of references used during preparation of the report.

The findings, opinions, and conclusions contained in the report will be our professional opinion of the condition of the site at the date of the reports and not a warranty, guaranty, or positive assertion as to the presence, absence or extent of contamination at the site or in the vicinity of the site.

In the event of additional significant potential environmental hazards are discovered during the course of our investigation, we will notify you. In addition, current regulations may require that the owner/client of the property report findings of toxic materials to the appropriate agency or agencies.

VINEYARD AVENURE SEWER EXTENSION GEOTECHNICAL REPORT

Based on our review of the project plans, we understand that as part of the Ontario Sports Park project a sewer line is planned that will include sewer line installation along the Vineyard Avenue alignment from Riverside Drive to Eucalyptus Avenue, along Chino Avenue from Ontario Avenue to Vineyard Avenue and a portion of the existing Ontario Avenue. Depths of the proposed sewer line range from about 16 feet to 36 feet. Therefore we have prepared this proposal to outline the scope of work required to provide a geotechnical engineering investigation to support the planned design of the sewer line including open cut and jack and bore construction.

SCOPE OF WORK

Our services will consist of office research, field exploration, laboratory testing, review of the compiled data, and preparation of a written report containing recommendations developed in accordance to generally accepted engineering and geologic principles and practices.

OFFICE RESEARCH

Our office research will consist of the following:

- Review of literature to obtain background information of regional geology, seismicity and groundwater.
- Review of State of California Alquist-Priolo Earthquake Fault Zone and Seismic Hazard Zone maps.
- Review of Safety Elements of city and county general plans.
- Examination of aerial photographs.

FIELD INVESTIGATION

The field exploration will consist of the following:

- Marking proposed points of subsurface exploration with white paint or white stakes and contacting Underground Service Alert for mark-out of underground utilities.

- We have assumed that we will no cost encroachment permit from the City of Ontario for the proposed 1-2 borings within the existing improved section of Vineyard Avenue between Chino and Schaefer Avenues. We

will provide a traffic control plan to the City for approval and will provide traffic control for the boring(s) based upon the current version of the MUTCD and our boring operations.

- Drilling of approximately 7 exploratory borings to a maximum depth of 45 feet. The proposed borings will be drilled to a depth of 5 feet below the proposed invert elevation at the location of the boring along the alignment which according to the plans is 16 to 36 feet below the ground surface. The location of the sewer line that borders the Sports Park proper will include information for design based upon borings drilled within the property and near the proposed alignment, thereby reducing the total number of borings for the sewer line. 1 to 2 of the borings will be drilled within the existing improved section of Vineyard Avenue and the remaining 5 to 6 will be drilled within unimproved sections of the alignment south of Schaefer Avenue extending to Eucalyptus Avenue. The unapproved section of the alignment crosses existing dairies and agricultural fields and access to those properties would need to be obtained through the City. The exact locations of those borings may be determined based upon available access.

- Logging of the borings and identification of the various earth materials encountered during the exploration.

- Samples of the major earth units will be obtained and the in-place density of the various strata encountered in the exploration will be determined.

LABORATORY TESTING

Laboratory testing will be performed in accordance to the specifications of ASTM International. The following laboratory tests will be performed on the major soil and bedrock types encountered during the exploration.

- Atterberg limits
- Moisture and density of drive tube samples
- Direct shear test
- Expansion index test
- Laboratory moisture determination
- Maximum density - optimum moisture density
- R-value
- Soluble sulfate analysis
- Corrosion analysis (pH and resistivity)

Laboratory testing of any hazardous materials or substances that may be encountered is not included within this scope of services.

GEOTECHNICAL ENGINEERING ANALYSIS AND REPORT PREPARATION

A written report will prepared presenting the results of the office research, field exploration, laboratory testing and engineering analysis. It will include information on the nature, distribution and strength of the existing soils, and recommendations for grading procedures and design criteria for corrective measures, when necessary. The report will also include a description of the geology of the site and conclusions and recommendations regarding the effect of geologic conditions on the proposed development.

Specific items that will be addressed in our report will include:

- Regional geology and seismicity, groundwater, site soil and geologic conditions, and flooding potential.
- Recommendations regarding earthwork, grading and fill placement.
- Earthwork shrinkage and subsidence.
- Recommendations for removals and over-excavation.
- Anticipated excavation characteristics of earth units.
- Stability of cut, fill and temporary slopes.
- Seismic design parameters and evaluation of secondary seismic hazards including the potential for soil liquefaction.
- Preliminary corrosion evaluation.
- Utility trench backfill recommendations.
- Preliminary structural pavement sections.
- Recommendations for grading and post grading geotechnical observation and testing.

The report will also include logs of borings, a map showing the locations of points of subsurface exploration, and other attachments.

Our recommendations will be consistent with sound engineering and geologic practices and shall incorporate federal, state and local laws, codes, ordinances and regulations which, in our professional opinion, are applicable at the time that our professional services are rendered.

TERMS AND CONDITIONS

Fee Proposal

We propose to perform the previously described services on an hourly or test rate basis in accordance with the attached fee schedule. Our estimate is based on information given to RMA Group by City including a construction schedule and project plans and the following assumed construction durations. Our estimate of charges for the proposed services is as follows:

Construction Activity	Duration and/or Allocated Hours	Estimated Costs
Grading Observation and Testing	1,600 hours	$400,075.00
Compaction Testing of Trench Backfill and Street Improvements	2,400 hours	$396,350.00
Compaction Testing for Asphalt Concrete Pavements	320 hours	$58,310.00
Special Inspection and Testing of Reinforced Concrete Construction	2,400 hours	$593,450.00
Special Inspection and Testing of Reinforced Masonry Construction	640 hours	$118,125.00
Special Inspection of Structural Steel Construction	2,240 hours	$310,000.00
Special Inspection and Testing of Post Installed Anchors	360 hours ea: inspection and testing	$105,300.00
Project Administration, Engineering Oversight, and Reporting		$117,200.00
Allowance		$10,000.00
TOTAL (CONSTRUCTION TESTING AND INSPECTION)		**$2,108,810.00**

Item		Lump Sum
Lead and Asbestos Assessment of Existing Structures		
Site Assessments and Reports		$20,500.00
Asbestos Testing		$35,460.00
	Subtotal	$53,960.00
Phase II Property Assessments		
Site Assessment Reports		**$20,960.00**
Soil Testing		$22,140.00
	Subtotal	$43,100.00
TOTAL (PHASE II AND LEAD AND ASBESTOS ASSESSMENTS)		**$97,060.00**
Vineyard Avenue Sewer Extension Geotechnical Report		
Geotechnical Office Research and Field Exploration		$25,840.00
Geotechnical Laboratory Testing		$7,410.00
Geotechnical Engineering Analysis and Report Preparation		$3,240.00
TOTAL (VINEYARD AVENUE SEWER EXTENSION GEOTECHNICAL REPORT)		**$36,490.00**
	TOTAL	**$2,242,360.00**

Assumptions

Assumptions made in developing our fee proposal include:

- Due to the proposed schedule overtime and double time charges have been estimated and are included in the attached estimate worksheets.

Added Services

Our base estimate may vary due to unforeseen circumstances that may develop during the work or due to extended construction duration. Under these circumstances, a revision to our scope, schedule, and/or fee will likely be required. RMA Group will notify you if/when we anticipate that it will be necessary for us to provide services in addition to our base scope and will obtain written confirmation that we are authorized to do so.

PROFESSIONAL INSURANCE

We maintain liability and workers' compensation insurance coverage and amounts consistent with industry standards for the services being proposed herein. Certificates of insurance will be provided upon request.

CLOSURE

Our services will be performed in a manner consistent with the level of care and skill ordinarily exercised by members of the same profession currently providing the same or similar services under similar circumstances in the same locality and in accordance with applicable standards in effect at the time the services are performed. This warranty is in lieu of all other warranties, either expressed or implied.

By signing below, you hereby authorize RMA Group to proceed with services outlined in this proposal and agree that all services and anything arising out of or in any way related to this proposal will be governed by RMA Group's Fee Schedule and General Conditions which are attached hereto and are incorporated herein by reference. This authorization to proceed constitutes an agreement between you and RMA Group and is made in consideration of the mutual promises and covenants contained herein and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged.

Thank you for the opportunity to submit this proposal. We look forward to working with you on this project. If you have any questions regarding this proposal, please contact the undersigned.

Authorized By:
City of Ontario

(Signature)

(Title)

(Date)

Respectfully submitted,
RMA Group

Kenneth Dowell, PG, CEG
Project Geologist

ESTIMATE WORKSHEET
Grading Observation and Testing

Item	Quantity	Unit	Unit Price	Total
Pick-up and Delivery of Test Specimens	40	HR	$120.00	$4,800.00
Supervising Soil Technician	80	HR	$200.00	$16,000.00
Administrative	120	HR	$90.00	$10,800.00
Project Engineer - Office	20	HR	$220.00	$4,400.00
Drafting	40	HR	$130.00	$5,200.00
Project Geologist - Field	40	HR	$200.00	$8,000.00
ASTM D4829 Expansion Index of Soils	5	EA	$270.00	$1,350.00
ASTM D1557 Max Density Optimum Moisture	20	EA	$395.00	$7,900.00
CT417 Soluble Sulfates	5	EA	$155.00	$775.00
CT422 Chloride Content	5	EA	$135.00	$675.00
CT643 Resistivity and pH	5	EA	$155.00	$775.00
Nuclear Density Test Gauge	180	Unit	$50.00	$9,000.00
Project Geologist - Office	40	HR	$200.00	$8,000.00
Soils Engineering Technician Double Time	100	HR	$260.00	$26,000.00
Soils Technician Rough Grading	1,600	HR	$130.00	$208,000.00
Soils Technician Rough Grading Overtime	320	HR	$195.00	$62,400.00
ASTM D2974 Moisture, Ash, Organic Matter	50	EA	$120.00	$6,000.00
Allowance for Analytical Testing of Soil	1	EA	$20,000.00	$20,000.00
	Subtotal:			**$400,075.00**

ESTIMATE WORKSHEET
Compaction Testing of Trench Backfill and Street Improvements

Item	Quantity	Unit	Unit Price	Total
Pick-up and Delivery of Test Specimens	40	HR	$120.00	$4,800.00
Soils Engineering Technician	2,400	HR	$130.00	$312,000.00
Administrative	80	HR	$90.00	$7,200.00
ASTM D1557 Max Density Optimum Moisture	20	EA	$395.00	$7,900.00
Project Engineer - Office	40	HR	$220.00	$8,800.00
Supervising Soil Technician	40	HR	$200.00	$8,000.00
ASTM C136 Sieve Analysis, Combined Agg	5	EA	$290.00	$1,450.00
Nuclear Density Test Gauge	300	Unit	$50.00	$15,000.00
Soils Engineering Technician Overtime	160	HR	$195.00	$31,200.00
	Subtotal:			**$396,350.00**

ESTIMATE WORKSHEET
Compaction Testing for Asphalt Concrete Pavements

Item	Quantity	Unit	Unit Price	Total
Public Works Inspector - Asphalt Paving	320	HR	$130.00	$41,600.00
Administrative	20	HR	$90.00	$1,800.00
Pick-up and Delivery of Test Specimens	8	HR	$120.00	$960.00
ASTM D2041 Maximum Theoretical Density	8	EA	$350.00	$2,800.00
ASTM D2726 Core Density (SSD)	50	EA	$75.00	$3,750.00
Nuclear Density Test Gauge	40	Unit	$50.00	$2,000.00
Asphalt Coring	40	HR	$135.00	$5,400.00
	Subtotal:			**$58,310.00**

ESTIMATE WORKSHEET
Special Inspection and Testing of Reinforced Concrete Construction

Item	Quantity	Unit	Unit Price	Total
Pick-up and Delivery of Test Specimens	300	HR	$120.00	$36,000.00
ID Reinforcing or Structural Steel	100	HR	$130.00	$13,000.00
Special Inspector Reinforced Concrete	2,400	HR	$130.00	$312,000.00
ACI Concrete Technician	1,000	HR	$130.00	$130,000.00
ASTM C39 Concrete Cyl Cured or Tested	1,000	EA	$55.00	$55,000.00
ASTM A370 Rebar Tension up to #8	25	EA	$70.00	$1,750.00
ASTM A370 Bend Test Rebar up to #8	25	EA	$60.00	$1,500.00
Administrative	100	HR	$90.00	$9,000.00
Project Engineer - Office	160	HR	$220.00	$35,200.00
	Subtotal:			**$593,450.00**

ESTIMATE WORKSHEET
Special Inspection and Testing of Reinforced Masonry Construction

Item	Quantity	Unit	Unit Price	Total
ID Reinforcing or Structural Steel	40	HR	$130.00	$5,200.00
Special Inspector Masonry	640	HR	$130.00	$83,200.00
ASTM C780 Mortar Cylinder Compression	90	EA	$50.00	$4,500.00
ASTM C1019 Grout Prism Compression	90	EA	$55.00	$4,950.00
ASTM E519 Assemblage Comp Str 8" Block	5	EA	$155.00	$775.00
ASTM E519 Assemblage Comp Str 12" Block	5	EA	$140.00	$700.00
ASTM A370 Rebar Tension up to #8	5	EA	$70.00	$350.00
ASTM A370 Bend Test Rebar up to #8	5	EA	$60.00	$300.00
Administrative	40	HR	$90.00	$3,600.00
Project Engineer - Office	20	HR	$220.00	$4,400.00
Pick-up and Delivery of Test Specimens	80	HR	$120.00	$9,600.00
ASTM C140 Block Moisture & Absorption	5	SET	$110.00	$550.00
	Subtotal:			**$118,125.00**

ESTIMATE WORKSHEET
Special Inspection of Structural Steel Construction

Item	Quantity	Unit	Unit Price	Total
AWS Certified Welding Inspector- Field	2,240	HR	$130.00	$291,200.00
Non Destructive Testing ASNT Level II	80	HR	$135.00	$10,800.00
Administrative	40	HR	$90.00	$3,600.00
Project Engineer - Office	20	HR	$220.00	$4,400.00
	Subtotal:			**$310,000.00**

ESTIMATE WORKSHEET

Project Administration, Engineering Oversight, and Reporting

Item	Quantity	Unit	Unit Price	Total
Project Manager - Office	160	HR	$200.00	$32,000.00
Project Engineer - Office	160	HR	$220.00	$35,200.00
Project Geologist - Office	160	HR	$200.00	$32,000.00
Administrative	200	HR	$90.00	$18,000.00
	Subtotal:			**$117,200.00**

ESTIMATE WORKSHEET
Special Inspection and Testing of Post Installed Anchors

Item	Quantity	Unit	Unit Price	Total
Special Inspector Post Installed Anchors	360	HR	$130.00	$46,800.00
Pull | Torque Testing Technician	360	HR	$130.00	$46,800.00
Administrative	40	HR	$90.00	$3,600.00
Proof Load Testing Equipment	45	DAY	$180.00	$8,100.00
	Subtotal:			**$105,300.00**

RMA Group
Every Project Matters

FEE SCHEDULE

Personnel Charges - Professional Staff

Product Name	Units	Rate ($)
Project Engineer - Laboratory	HR	$220.00
Administrative	HR	$90.00
Principal Engineer - Office	HR	$250.00
Principal Engineer - Field	HR	$250.00
Principal Engineer - Consultation	HR	$250.00
Principal Engineer - Job Conference	HR	$250.00
Principal Engineer - Expert Witness	HR	$600.00
Principal Engineer - Court Appearance	HR	$800.00
Project Engineer - Office	HR	$220.00
Project Engineer - Field	HR	$220.00
Project Engineer - Consultation	HR	$220.00
Project Engineer - Job Conference	HR	$220.00
Staff Engineer - Office	HR	$180.00
Staff Engineer - Field	HR	$180.00
Drafting	HR	$130.00
Project Manager - Office	HR	$200.00
Project Manager - Field	HR	$200.00
Project Manager - Job Conference	HR	$200.00
Principal Geologist - Office	HR	$230.00
Principal Geologist - Field	HR	$230.00
Principal Geologist - Consultation	HR	$230.00
Principal Geologist - Job Conference	HR	$230.00
Principal Geologist - Expert Witness	HR	$500.00
Principal Geologist - Court Appearance	HR	$700.00
Project Geologist - Office	HR	$200.00
Project Geologist - Field	HR	$200.00
Project Geologist - Consultation	HR	$200.00
Project Geologist - Job Conference	HR	$200.00
Qualified SWPPP Developer QSD	HR	$200.00
Staff Geologist - Office	HR	$170.00
Staff Geologist - Field	HR	$170.00
Qualified SWPPP Practitioner QSP	HR	$180.00

Personnel Charges - Field Staff

Product Name	Units	Rate ($)
Soils Engineering Technician	HR	$130.00
Soils Technician Compaction Testing	HR	$130.00
Soils Technician Rough Grading	HR	$130.00
Soils Technician Retesting	HR	$130.00
Public Works Inspector	HR	$130.00
Public Works Technician	HR	$130.00
Public Works Inspector - Asphalt Paving	HR	$130.00
Public Works Inspector - Asphalt Plant	HR	$130.00
Public Works Inspector - Concrete Paving	HR	$130.00
Public Works Inspector - Concrete Plant	HR	$130.00
Public Works Technician - Asphalt	HR	$130.00
Public Works Technician - Concrete	HR	$130.00
Laboratory Technician - Field Lab	HR	$120.00

Lead Roadway and Structures Inspector	HR	$140.00
Structures Inspector	HR	$140.00
Roadway Inspector	HR	$140.00
Civil Inspector	HR	$140.00
Building Inspector	HR	$140.00
Special Inspector (ICC)	HR	$130.00
Mechanical | Electrical Inspector	HR	$145.00
Special Inspector Reinforced Concrete	HR	$130.00
Special Inspector Prestressed Concrete	HR	$130.00
Special Inspector Concrete Batch Plant	HR	$130.00
ACI Concrete Technician	HR	$130.00
Pick-up and Delivery of Test Specimens	HR	$120.00
ID Reinforcing or Structural Steel	HR	$130.00
Special Inspector Fire Proofing	HR	$130.00
Special Inspector Post Installed Anchors	HR	$130.00
Special Inspector Roofing/Waterproofing	HR	$130.00
Special Inspector Masonry	HR	$130.00
Special Inspector Masonry (DSA)	HR	$130.00
Special Inspector Shotcrete	HR	$130.00
Special Inspector Post Tensioned Concrete	HR	$130.00
Special Inspector Fire Stopping	HR	$145.00
AWS Certified Welding Inspector- Field	HR	$130.00
AWS Certified Welding Inspector- Shop	HR	$130.00
Special Inspector Structural Steel	HR	$130.00
Special Inspector High Strength Bolting	HR	$130.00
Special Inspector Wood Construction	HR	$130.00
Non Destructive Testing ASNT Level II	HR	$135.00
Non Destructive Testing ASNT Level III	HR	$250.00
Coatings Technician	HR	$145.00
Special Inspector Fiber Wrap	HR	$130.00
Radiographic Testing Crew	HR	$500.00
Pull | Torque Testing Technician	HR	$130.00
Project Inspector (IOR)	HR	$145.00
Asphalt Coring	HR	$135.00
Concrete Coring	HR	$135.00
Horizontal Wall Coring	HR	$135.00
Assistant Wall Coring	HR	$130.00
Lead Utility Location Technician	HR	$150.00
Lead Concrete Scanning Technician	HR	$150.00
Supervising Soil Technician	HR	$200.00
Supervising Public Works Inspector	HR	$200.00
Supervising Special Inspector	HR	$200.00
Quality Control Manager	HR	$225.00
Reinforced Polymer Special Inspector	HR	$150.00

Laboratory Tests - Steel

Product Name	Units	Rate ($)
ASTM E605 Spray Applied Fireproofing Den	EA	$135.00
ASTM A370 Rebar Tension up to #8	EA	$70.00
ASTM A370 Rebar Tension #9 to #11	EA	$85.00
ASTM A370 Rebar Tension #14	EA	$125.00
ASTM A370 Rebar Tension #18	EA	$180.00

ASTM A370 Bend Test Rebar up to #8	EA	$60.00
ASTM A370 Bend Test Rebar #9 to #11	EA	$70.00
ASTM A370 Bend Test Rebar #14	EA	$125.00
ASTM A370 Bend Test Rebar # 18	EA	$180.00
ASTM A370 Headed Bar Prod. Lot up to #8	LOT	$275.00
ASTM A370 Headed Bar Prod. Lot #9 to #11	LOT	$335.00
ASTM A370 Headed Bar Prod. Lot #14	LOT	$515.00
ASTM A370 Headed Bar Prod. Lot #18	LOT	$670.00
ASTM A416 Stress-Strain Analysis	EA	$250.00
ASTM A416 Tensile Test Only	EA	$175.00
ASTM A370 Tensile Up to 100K lbs (Each)	EA	$85.00
ASTM A370 Tensile Up to 200K lbs (Each)	EA	$100.00
ASTM A370 Tensile Up to 300K lbs (Each)	EA	$120.00
ASTM A370 Tensile Up to 400K lbs (Each)	EA	$180.00
ASTM A370 Tensile 400K - 500K lbs (Each)	EA	$365.00
ASTM A370 Tensile Stress-Strain Percent	EA	$205.00
AWS Weld: Macroetch	EA	$120.00
AWS Weld: Fracture	EA	$95.00
AWS Bend Test	EA	$85.00
ASTM A370 Rockwell Hardness (Each)	EA	$120.00
Steel Chemical Analysis	EA	$255.00
ASTM F606 Bolt Axial Tensile to 7/8”	EA	$70.00
ASTM F606 Bolt Wedge Tensile to 7/8”	EA	$100.00
ASTM F606 Bolt: Axial 7/8” - 1 1/2”	EA	$105.00
ASTM F606 Bolt Wedge Tens 7/8” to 1 1/2"	EA	$120.00
ASTM F606 Bolt: Proof Load up to 7/8"	EA	$110.00
ASTM F606 Bolt: Proof Load up to 1 1/2"	EA	$135.00
ASTM F606 Nut: Proof Load up to 7/8"	EA	$75.00
ASTM F606 Nut: Proof Load up to 1 1/2"	EA	$120.00

Laboratory Tests - Soil

Product Name	Units	Rate ($)
ASTM D4318 Plasticity Index of Soils	EA	$335.00
ASTM D1883 California Bearing Ratio	EA	$750.00
ASTM D2435 Consolidation	EA	$295.00
ASTM D2435 Consolidation with Time Rate	EA	$355.00
ASTM D3080 Direct Shear, Consol&Drained	EA	$285.00
ASTM D4829 Expansion Index of Soils	EA	$270.00
ASTM D2166 Unconfined Comp Strength	EA	$335.00
ASTM D5333 Hydro Collapse Potential	EA	$260.00
ASTM D2050 Tri-Axial Shear Strength	EA	$550.00
ASTM D2937 In-Place Density, Drive Cyl	EA	$75.00
ASTM D2216 Soil Moisture Content by Mass	EA	$55.00
ASTM D698 Maximum Density Std Effort	EA	$350.00
ASTM D1557 Max Density Optimum Moisture	EA	$395.00
ASTM D2974 Moisture, Ash, Organic Matter	EA	$120.00
ASTM D4972 pH of Soils	EA	$125.00
ASTM D2844 R-Value & Expansive Pressures	EA	$480.00
ASTM D2434 Const Head Permeability Test	EA	$470.00
ASTM D422 Sieve Analysis of Soil	EA	$260.00
ASTM D1140 Materials Finer than #200	EA	$160.00
ASTM D854 Specific Gravity of Soils	EA	$295.00

ASTM D4546 Swell Potential	EA	$260.00
ASTM D4943 Shrinkage Factor by Resin	EA	$290.00
ASTM D559 Soil Cement Sample Preparation	EA	$160.00
ASTM D558 Soil-Cement Maximum Density	EA	$395.00
ASTM D1633 Compression Test Soil Cement	EA	$130.00
AASHTO T100 Specific Gravity of Soils	EA	$295.00

Laboratory Tests - Masonry

Product Name	Units	Rate ($)
ASTM C140 Block Compressive Strength	SET	$100.00
ASTM C140 Block Moisture & Absorption	SET	$110.00
ASTM C426 Block Linear Shrinkage	SET	$375.00
ASTM C140 Block Unit Wt & Dimensions	SET	$265.00
ASTM C90 Masonry Block Conformance	SET	$740.00
ASTM C67 Brick Compressive Strength	SET	$125.00
ASTM C67 Brick Moisture & Absorption	SET	$110.00
ASTM C67 Brick 5 Hour Boil	EA	$135.00
ASTM C67 Brick Modulus of Rupture	EA	$135.00
ASTM C780 Mortar Cylinder Compression	EA	$50.00
ASTM C1019 Grout Prism Compression	EA	$55.00
ASTM C1314 Masonry Core Comp Str 8" Max	EA	$120.00
ASTM C1314 Masonry Core Shear Str 8" Max	EA	$130.00
ASTM E519 Assemblage Comp Str 8" Block	EA	$155.00
ASTM E519 Assemblage Comp Str 12" Block	EA	$140.00
ASTM E519 Assemblage Comp Str 16" Block	EA	$175.00
ASTM C109 Compressive Strength 2" Cube	EA	$75.00

Laboratory Tests - Concrete

Product Name	Units	Rate ($)
ASTM C39 Concrete Cyl Cured or Tested	EA	$55.00
ASTM C42 Compressive Strength, Core	EA	$120.00
ASTM C39 Cyl Tested out of Sequence	EA	$80.00
ASTM C495 Lightweight Concrete Strength	EA	$75.00
ASTM C78 Flexural Strength, Beam	EA	$135.00
ASTM C1140 Shotcrete Panel Test	SET	$450.00
ASTM C138 Unit Weight of Concrete	EA	$90.00
ASTM C649 Concrete Modulus of Elasticity	EA	$275.00
ASTM C157 Concrete Shrinkage (Set of 3)	SET	$650.00
ASTM C496 Splitting Tensile Test	EA	$125.00
ASTM C495 Density - Lightweight Concrete	EA	$240.00
T 336 Coefficient of Thermal Expansion	EA	$750.00

Laboratory Tests - Caltrans

Product Name	Units	Rate ($)
CT202 Sieve Analysis, Combined Agg	EA	$275.00
CT202 Sieve Analysis, Fine Agg	EA	$210.00
CT202 Sieve Analysis, Coarse Agg	EA	$195.00
CT235 Flat and Elongated Particles	EA	$400.00
CT205 Percentage Crushed Particles	EA	$275.00
CT206 Specific Gravity, Coarse Aggregate	EA	$195.00
CT207 Specific Gravity, Fine Aggregate	EA	$295.00
CT208 Apparent Specific Gravity of Fines	EA	$295.00

CT229 Durability Index	EA	$455.00
CT234 Angularity & Voids, Fine Agg	EA	$295.00
CT211 Abrasion, Los Angeles Rattler	EA	$375.00
CT227 Cleanness Value	EA	$420.00
CT213 Organic Impurities in Sand	EA	$155.00
CT214 Soundness by Sodium Sulfate	EA	$650.00
CT226 Moisture Content by Oven Drying	EA	$75.00
CT217 Sand Equivalent	EA	$190.00
CT308(A) Core Density Paraffin Coated	EA	$85.00
CT308(C) Core Density SSD	EA	$75.00
CT303 Approximate Bitumen Ratio	EA	$335.00
CT304/308(A) LTMD Kneading Compactor	EA	$480.00
CT305 Swell of Bituminous Mixtures	EA	$550.00
CT366 Stabilometer Value	EA	$395.00
CT308(A)/366 Stability and Density	EA	$490.00
CT308(C)/366 Stability and Density	EA	$470.00
CT309 Maximum Theoretical Density	EA	$350.00
CT370 Moisture Content by Microwave	EA	$110.00
CT379 Asphalt Content Nuclear Gauge	EA	$275.00
CT382 Ignition Oven Correction Factor	EA	$650.00
CT382 Asphalt Content by Ignition	EA	$295.00
CT371 Tensile Strength Ratio	EA	$1,470.00
CT302 Film Stripping	EA	$335.00
CT521 Concrete Cyl Compressive Strength	EA	$55.00
CT523 Concrete Flexural Strength, Beam	EA	$135.00
CT531 Length of Drilled Concrete Cores	EA	$75.00
CT550 Surface Abrasion of Concrete	EA	$535.00
CT534 Water Retention, Liq Curing Cmpnd	EA	$570.00
CT521 Compressive Strength LCB	EA	$50.00
CT524 RSC Flexural Strength, Beam	EA	$135.00
CT515 Relative Mortar Strength, PCC Sand	EA	$900.00
CT670 Tensile Strength up to #8	EA	$95.00
CT670 Tensile Strength #8 - #11	EA	$120.00
CT670 Tensile Strength #14	EA	$180.00
CT670 Tensile Strength #18	EA	$255.00
CT 52-1-08C Slip Test	EA	$275.00
CT670 Operator Qualification up to #8	LOT	$550.00
CT670 Operator Qualification #9 - #11	LOT	$655.00
CT670 Operator Qualification #14	LOT	$950.00
CT670 Operator Qualification #18	LOT	$1,235.00
CT670 Operator Qualification up to #8	EA	$550.00
CT670 Operator Qualification #9 - #11	EA	$675.00
CT670 Operator Qualification #14	EA	$950.00
CT670 Operator Qualification #18	EA	$1,235.00
CT670 Production Lot up to #8 (Service)	LOT	$355.00
CT670 Production Lot #9 to #11 (Service)	LOT	$475.00
CT670 Production Lot #14 (Service)	LOT	$635.00
CT670 Production Lot #18 (Service)	LOT	$825.00
CT670 Production Lot up to #8 (Ultimate)	LOT	$455.00
CT670 Production Lot #9 to #11(Ultimate)	LOT	$490.00
CT670 Production Lot #14 (Ultimate)	LOT	$790.00
CT670 Production Lot #18 (Ultimate)	LOT	$1,350.00

CT204 Plasticity Index, Atterberg	EA	$355.00
CT209 Specific Gravity of Soil	EA	$295.00
CT216 CA Impact Max Density	EA	$325.00
CT216 CA Impact, Rock Correction	EA	$95.00
CT301 Resistance R-Value Stabilometer	EA	$475.00
CT417 Soluble Sulfates	EA	$155.00
CT422 Chloride Content	EA	$135.00
CT643 Resistivity and pH	EA	$155.00

Laboratory Tests - Asphalt

Product Name	Units	Rate ($)
ASTM D2726 Core Density (SSD)	EA	$75.00
ASTM D1188 Core Density Parafilm Coated	EA	$85.00
ASTM D6926 Lab Max Density Marshall	EA	$395.00
ASTM D6927 Marshal Stability and Flow	EA	$480.00
ASTM D1561 LTMD Kneading Compactor	EA	$395.00
ASTM D1560 Hveem Stability and Density	EA	$490.00
ASTM D1560 Hveem Stability	EA	$375.00
ASTM D2041 Maximum Theoretical Density	EA	$350.00
ASTM D6307 Ignition Oven Calibration	EA	$650.00
ASTM D6307 Asphalt Content by Ignition	EA	$295.00
ASTM D2172 Asphalt Content by Solvents	EA	$475.00
ASTM D4125 Asphalt Content Nuclear Gauge	EA	$335.00
ASTM D5444 Gradation of Extracted Agg	EA	$335.00
ASTM D244 Emulsion Residue Evaporation	EA	$280.00
ASTM D244 Emulsion Sieve Analysis	EA	$185.00
ASTM D3910 Wet Track Abrasion	EA	$350.00
AASHTO T324 Hamburg Wheel Tracking Test	EA	$1,100.00
AASHTO T283 Tensile Strength Ratio	EA	$1,200.00
AASHTO T275 Core Denisty Paraffin Coated	EA	$85.00
AASHTO T312/T275 LTMD Gyratory Compactor	EA	$480.00
AASHTO T308 Asphalt Content by Ignition	EA	$285.00
AASHTO T209 Theoretical Maximum Density	EA	$350.00
AASHTO T308A AC Correction Factor	EA	$550.00
AASHTO T324 Hamburg Wheel Tracking - RHMA	EA	$1,100.00
AASHTO T283 Tensile Strength Ratio - RHMA	EA	$1,200.00
AASHTO T312/T275 LTMD Gyratory Comp.- RHMA	EA	$480.00

Laboratory Tests - Aggregates

Product Name	Units	Rate ($)
ASTM C131 Abrasion, Los Angeles Rattler	EA	$375.00
ASTM C40 Organic Impurities in Fine Agg	EA	$135.00
ASTM C127 Specific Gravity, Coarse Agg	EA	$255.00
ASTM C128 Specific Gravity, Fine Agg	EA	$290.00
ASTM C1252 Angularity & Voids, Fine Agg	EA	$280.00
ASTM C566 Moisture Content by Drying	EA	$35.00
ASTM C117 Materials Finer than No. 200	EA	$160.00
ASTM D2419 Sand Equivalent	EA	$190.00
ASTM C289 Alkali-Silica Reactivity	EA	$950.00
ASTM D4791 Flat & Elongated Particles	EA	$395.00
ASTM D5821 Percent Fractured Particles	EA	$275.00
ASTM C123 Percent Lightweight Particles	EA	$295.00

ASTM C88 Soundness by Sodium Sulfate	EA	$695.00
ASTM C136 Sieve Analysis, Combined Agg	EA	$290.00
ASTM C136 Sieve Analysis, Fine Agg	EA	$265.00
ASTM C136 Sieve Analysis, Coarse Agg	EA	$255.00
ASTM C142 Clay Lumps & Friable Particles	EA	$260.00
ASTM C535, Abrasion Large Aggregate	EA	$465.00
AASHTO T304 Angularity & Voids in Fines	EA	$255.00
AASHTO T84 Specific Gravity, Fine Agg	EA	$280.00
AASHTO T85 Specific Gravity, Coarse Agg	EA	$255.00
AASHTO T96 Abrasion, Los Angeles Rattler	EA	$375.00
AASHTO T27 Sieve Analysis, Combined Agg	EA	$290.00
AASHTO T27 Sieve Analysis, Fine Agg	EA	$285.00
AASHTO T27 Sieve Analysis, Coarse Agg	EA	$255.00
AASHTO T176 Sand Equivalent	EA	$190.00
AASHTO T335 Percent Fractured Particles	EA	$285.00

Equipment Charges

Product Name	Units	Rate ($)
Portable Drilling Equipment	HR	$750.00
Mobile Laboratory Trailer Mobilization	EA	$2,500.00
Mobile Laboratory Trailer & Testing Equipment	DAY	$700.00
Stationary Laboratory Trailer & Testing Equipment	MO	$1,500.00
Mileage	MILE	Quote
Diamond Bit Core Rig and Generator	DAY	$850.00
Nuclear Density Test Gauge	Unit	$50.00
Hand Held Turbidity Meter	DAY	$75.00
Ultrasonic Test Unit and Consumables	DAY	$100.00
Magnetic Particle Test Unit	DAY	$100.00
Skidmore	DAY	$80.00
Schmidt Hammer	DAY	$100.00
Torque Wrench	DAY	$100.00
Proof Load Testing Equipment	DAY	$180.00
Drilling Equip Mobilization / De-Mob	EA	$800.00
ASTM C1028 Coefficient of Friction	DAY	$1,000.00
Mini Environmental Quality Meter	DAY	$400.00
Inertial Profiler	DAY	$2,000.00
Holiday Tester	DAY	$250.00
VOC Meter	DAY	$200.00
Floor Flatness Testing	Day	$2,900.00
Dutch Cone Penetrometer with Operator	HR	$875.00
Hollow Stem Auger Drill Rig w/ Operator	HR	$775.00
Portable Drilling Equipment w/ Operator	HR	$750.00
Bucket Auger Drill Rig with Operator	HR	$875.00
Air Rotary Drill Rig with Operator	HR	$900.00
Rotary Wash Drill Rig with Operator	HR	$950.00
Per Diem	DAY	$150.00

GENERAL CHARGES

RMA Group requires twenty-four (24) hour prior notification for scheduling inspectors and/or technicians.

Inspection charges start at the scheduled show up time at the job site. All inspection hours will be billed in the following increments:

There will be a minimum two (2) hour charge for any RMA Group employee presence on site.

Any time less than four (4) hours of work will be billed as four (4) hours.

Four (4) to eight (8) hours will be billed as eight (8) hours.

When personnel are required to work more than 5 hours without an uninterrupted meal period of 30 minutes, due to project constraints, ½ hour will be charged at double time rates in addition to any applicable hours worked.

Rates are valid through June 30, 2025. Rates for personnel will increase by 5% per year on July 1st of each subsequent year.

Outside services will be billed at cost plus 15% unless billed directly to and paid for by Client.

Requests made by client for management attendance at meetings at the project site will be charged at standard rate.

OVERTIME CHARGES

Work performed more than 8 hours per day and / or up to eight (8) hours on Saturdays will be billed at 1.50 times the unit rate.

Work performed on Sunday, recognized holidays, or more than eight (8) hours on Saturdays will be billed at 2.00 times the unit rate.

A 20% surcharge will be applied for laboratory tests performed on a Saturday or Sunday.

PER DIEM AND TRAVEL CHARGES

The daily per diem charge listed in the fee schedule will be applied when our personnel are required to stay overnight at remote locations.

Time will be billed at the unit rate while traveling to a remote location or if a location requires an overnight stay

Mileage for travel outside a 50 mile radius from either the project site or the nearest RMA facility, whichever is closest, will be charged at a rate of $0.77 per mile.

NIGHT WORK

A $5.00 per hour surcharge will be added to all personnel rates for work performed during night shifts.

RMA Group
Every Project Matters

GENERAL CONDITIONS

AGREEMENT. This agreement is made by and between RMA Group ("RMA") and the party that accepted RMA's proposal or requested that RMA perform Services ("Client"). RMA shall include said company, its engineers, employees, insurers, or authorized representative. This "Agreement" includes RMA's proposal and any exhibits or attachments noted in the proposal or incorporated by reference including but not limited to these General Conditions. Requesting Services from RMA shall constitute acceptance of the terms of these General Conditions.

1. SCOPE OF SERVICES. Services means the service(s) performed by RMA for Client or at Client's direction. RMA's findings, opinions, and recommendations are based upon data and information obtained by and furnished to RMA at the time of the Services. RMA may rely upon information provided by the Client or third parties. Client may request additional work or changes beyond the scope of Services described in RMA's Proposal. If any alteration or addition of Services are requested by the Client, RMA may provide a written notification detailing the additional scope of work, time extension and associated fees for Client's review. Client shall provide written acceptance of such. If Client does not follow these procedures, but instead directs, authorizes, or permits RMA to perform the changed or additional work, the Services are changed accordingly and RMA will be paid for this work according to its written notification or current fee schedule.

2. DELAYS. RMA shall be entitled to an equitable adjustment to the project schedule and compensation to compensate RMA for any increase in time or costs necessary to perform the Services under this Agreement due to any cause beyond its reasonable control. All promises of services time are approximations by RMA and are subject to the Client and contractor's schedules, weather conditions, travel conditions, disputes with workmen or parties, accidents, strikes, natural disasters, health emergencies, discovery of hazardous materials, differing or unforeseeable site conditions or project conditions, acts of governmental agencies or authorities, or other causes. In no event shall RMA be responsible for any damage or expense due to delays from any cause, other than to the extent the damage or expense is directly caused by RMA's own proven negligence after having been warned in writing by the Client of the damage or expense which may result from the delay.

3. RMA RESPONSIBILITIES. Services performed by RMA under this Agreement will be conducted in a manner consistent with the level of care and skill ordinarily exercised by members of the same profession currently providing the same or similar services under similar circumstances in the same locality and in accordance with applicable standards in effect at the time the Services are performed. RMA MAKES NO OTHER REPRESENTATIONS OR WARRANTIES, EXPRESS OR IMPLIED. Testing or inspection services may require the destruction of a sample or sample location. Client understands that, in the normal course of performing the Services, some damage may occur, and understands that RMA is not responsible for the correction of any such damage or for replacing samples. Client acknowledges that opinions, data, interpretations and recommendations prepared by RMA are based on limited data and recognizes that subsurface conditions or other actual conditions may vary from those encountered at the location where inspections, tests, borings, surveys, or explorations are made by RMA and may vary from those depicted on logs of discrete borings, test pits, or other exploratory services. There is an inherent risk that samples or observations may not be representative of materials or locations not sampled or seen and that conditions may change over time. Variations between inspected or tested discrete locations may occur and the risk of such occurrence is understood and accepted by Client. Client is responsible for notifying the appropriate party or professional regarding the correction of any deviations or deficiencies noted by RMA and RMA accepts no liability in connection therewith. RMA shall not be responsible for the interpretation by others of information developed by RMA and makes no guarantee that RMA's recommendations are properly implemented by any party. RMA shall not be held liable for problems that may occur if RMA's recommendations are not followed.

4. SUBSURFACE EXPLORATIONS. Client understands RMA's layout of boring and test locations is approximate and that RMA may deviate a reasonable distance from those locations. Client acknowledges that it is impossible for RMA to know the exact composition of a site's subsurface, even after conducting a comprehensive exploratory program. There is a risk that drilling and sampling may result in contamination of certain subsurface areas. Client waives any claim against, and agrees to defend, indemnify and save RMA harmless from any claim or liability for injury or loss which may arise as a result of subsurface contamination caused by drilling, sampling, or monitoring well installation. Client also agrees to adequately compensate RMA for any time spent and expenses incurred in defense of any such claim.

5. CLIENT PARTICIPATION. Client will make available to RMA all information in its possession regarding existing and proposed conditions at the site. Such information shall include, but not be limited to engineering reports, plot plans, topographic surveys, hydrographic data, soil data including borings, field and laboratory tests and written reports. Client shall immediately transmit to RMA any new information concerning site condition which becomes available, and any change in plans or specifications concerning the project. RMA shall not be liable for any inaccurate or incorrect advice, judgment or decision which is based on any inaccurate information furnished by Client and Client shall indemnify RMA against claims, demands, or liability arising out of, or contributed to, by such inaccurate information. In the event Client, the project owner, or other party makes any changes in the plans and specifications, Client agrees to hold RMA harmless from any liability arising out of such changes, and Client assumes full responsibility unless Client has given RMA prior notice and has received RMA's written consent for such changes. RMA does not assume responsibility for any conditions at the Client's site(s) that may present a danger, either potential or real, to health, safety, or the environment. Client hereby agrees that it is the Client's responsibility to notify any and all appropriate federal, state, or local authorities, as required by law, of the existence of any such potential or real danger and otherwise to disclose to all appropriate or affected individuals or entities, in a timely manner, any information that may be necessary to prevent any danger to health, safety, or the environment. Client assumes sole responsibility for determining whether the quantity and the nature of services ordered by Client is adequate and sufficient for Client's intended purpose.

6. THIRD PARTIES To the fullest extent permitted by law and to the extent not resulting from RMA's proven negligence, Client agrees to defend, indemnify and hold RMA harmless from any claims, demands, suits, losses, charges, expense (including attorney fees and costs at trial and appeal), and/or allegations of responsibility by any and all third

parties including but not limited to, contractors, subcontractors, agents, employees, assignees transferees, successors, invitees, neighbors, and the public relating in any way to this Agreement, the services, or the project. It is expressly understood and agreed that the enforcement of these terms and conditions shall be reserved to the Client and RMA. Nothing contained in this Agreement shall give or allow any claim or right of action whatsoever by any third person. It is the express intent of the Client and RMA that any such person or entity, other than Client or RMA, receiving services or benefits under this Agreement shall be deemed an incidental beneficiary. Neither party may assign this Agreement or any right or obligation hereunder without the prior written consent of the other party, which shall not be unreasonably withheld or delayed; provided, however, that no consent shall be necessary in the event of an assignment to a successor entity resulting from a merger, acquisition or consolidation by or of RMA or an assignment to an affiliate or subsidiary of RMA.

7. SAMPLE DISPOSAL. Samples are consumed in testing or disposed of upon completion of tests or upon report completion (unless stated otherwise in the Services). Client acknowledges that contaminated drill cuttings, sample spoils, wash water, and other materials may be produced as a result of encountering hazardous materials at the site. In such event, Client shall be responsible for their proper transportation and disposal. RMA may be able to arrange for the transportation and disposal of hazardous materials at Client's request. In no event shall RMA be required to sign a hazardous waste manifest or take title to any hazardous materials. Contaminated samples delivered to or taken to RMA's laboratory for testing shall remain the property of Client and Client is responsible for ultimate disposal of any samples which are found to be contaminated. On request, Client shall retrieve contaminated samples from RMA's laboratory and dispose of them in an approved manner.

8. DISCOVERY OF UNANTICIPATED HAZARDOUS MATERIALS. Client shall furnish to RMA all documents and information known or available to Client that relate to the identity, location, quantity, nature, or characteristic of any hazardous waste, toxic, radioactive, or contaminated materials prior to commencement of the Services. Client warrants that it has made reasonable efforts to disclose known or suspected hazardous materials on or near the project site. Client agrees that the discovery of such unanticipated hazardous materials constitutes a changed condition which may require either a re-negotiation of the scope of RMA's Services or termination of such Services or this Agreement. Client recognizes that the discovery of hazardous materials may necessitate immediate protective measures to safeguard the public health and safety and agrees to compensate RMA for measures that in RMA's professional opinion are justified to preserve and protect the health and safety of site personnel and the public. Client agrees to compensate RMA for any equipment decontamination or other costs incident to the discovery of unanticipated hazardous materials. Client agrees that in the event of the discovery of hazardous materials at the site it will report such discovery to the proper authorities as required by federal, state, and local regulations. Client also agrees to inform the project site owner in the event that hazardous materials are encountered at the site. Notwithstanding any other provision of the agreement, Client waives any claim against RMA, and to the maximum extent permitted by law, agrees to defend, indemnify, and save RMA harmless from any claim, liability and/or defense costs for injury or loss arising from the presence of hazardous materials on the project site.

9. SITE CONDITIONS. Client shall secure all necessary approvals, notices, permits, licenses, and consents from all owners, lessees, contractors, and other possessors of the Project, necessary to commence and complete the Services, and will provide RMA access to the project site for all equipment and personnel necessary for the performance of the Services. RMA shall be allowed free access to the site. Client understands and agrees that RMA shall only be responsible for losses which directly result from RMA's negligence. Client is responsible for the accuracy of locations for all subterranean structures and utilities. Client waives any claim against RMA, and agrees to defend, indemnify, and hold RMA harmless from any claim or liability for injury or loss of any party, including costs of defense, arising from damage done to subterranean structures and utilities not identified or accurately located. In addition, Client agrees to compensate RMA for any time spent or expenses incurred by RMA in defense of any such claim.

10. ENVIRONMENTAL LIABILITY. Neither this Agreement nor the providing of services will operate to make RMA an owner, operator, generator, transporter, treater, storer, or arranger for disposal or treatment within the meaning of the Resource Conservation Recovery Act, Comprehensive Environmental Response Compensation and Liability Act, or within the meaning of any other law governing the handling, treatment, storage, or disposal of hazardous materials. Client will indemnify, defend and hold RMA harmless from and against any and all losses, damages, costs and expenses, including attorney's fees, from third party claims, demands and causes of action arising or claimed to arise from violations by Client of any and all environmental laws, rules and regulations relating to the existence, generation of, current or future ownership, storage, transport or disposal of pre-existing hazardous substances and wastes, but this indemnity shall not cover such loss, damage, cost or expense to the extent caused by RMA's proven negligence in performing the Services under this Agreement. For purposes of this Agreement, a pre-existing hazardous substance is any hazardous substance or hazardous waste having been generated by Client or existing on Client's premises prior to the date of this Agreement.

11. OWNERSHIP AND LEGAL USE OF DOCUMENTS. All notes, data, reports, original final reproducible drawings, plans, specifications, calculations, and studies memoranda assembled or prepared by RMA are instruments of service with respect to the subject project, and RMA shall retain an ownership and property interest therein, whether or not the project is completed. The Client may make and retain copies for information and reference in connection with the subject project; however, such documents are not intended or represented to be suitable for re-use by the Client or others. Any modification, changes, or reuse without written verification or adaptation by RMA for the specific purpose intended will be at the Client's sole risk and without liability or legal exposure to RMA, and the Client agrees to indemnify and hold harmless RMA against any and all costs, expenses, fees, losses, claims, demands, liabilities, suits, actions, and damages whatsoever arising out of or resulting therefrom.

12. ALLOCATION OF RISK AND LIMITATION OF LIABILITY. The parties have evaluated the respective risks and remedies under this Agreement and agree to allocate the risks and restrict the remedies to reflect that evaluation. Notwithstanding any other provision to the contrary in this Agreement and to the fullest extent permitted by law, Client agrees to restrict its remedies under this Agreement against RMA, its parents, affiliates and subsidiaries ("RMA Covered Parties"), so that the total

aggregate liability of RMA Covered Parties shall not exceed $50,000 or the actual paid compensation for the services performed by RMA under this Agreement, whichever is greater. This restriction of remedies shall apply to all suits, claims, actions, losses, costs (including attorney fees) and damages of any nature arising from or related to this Agreement without regard to the legal theory under which such liability is imposed. Claims must be brought within one calendar year from performance of the Services.

13. LIABILITY FOR OTHERS. RMA shall not be responsible for supervising or overseeing the Client's contractors or for their means and methods, procedures, performance, or site safety. RMA shall not be responsible for the acts or omissions of the Client, owner, architect, architect's other consultants, contractor, subcontractors, other third parties or their respective agents, employees, assigns, successors, or any other persons ("Others"). RMA shall have no authority to control Others regarding their work or their safety practices. RMA does not control or guarantee the work of Others. RMA has no duty to inspect or correct health and safety deficiencies of Others. RMA will not be responsible for the failure of Others to perform in accordance with their undertakings and the providing of RMA's services shall not relieve Others of their responsibilities to the Client or Others. RMA reserves the right to report to the Client any unsafe conditions observed at the Project without altering the foregoing.

14. CONSEQUENTIAL DAMAGES WAIVER. Notwithstanding anything to the contrary in this agreement and to the fullest extent permitted by law, Client and RMA waive against each other any and all claims for or entitlement to special, incidental, indirect, consequential, delay, punitive, or similar losses or damages arising out of, resulting from, or in any way related to the project or this Agreement.

15. INSURANCE. RMA will maintain the following insurance coverages and amounts: (1) Workers Compensation insurance as required by law, (2) Employer's Liability insurance with coverage of $1,000,000 per each accident/employee, (3) Commercial General Liability insurance with coverage of $1,000,000 per occurrence/aggregate, (4) Automobile Liability insurance with coverage of $1,000,000 combined single limit, and (5) If RMA is providing professional services, Professional Liability insurance with coverage of $1,000,000 per claim/aggregate. Client shall name RMA as additional insured on its Builder's Risk policy. Client shall require any general contractors working on the project site to include RMA in any indemnity that the Client requires such contractors to provide to the Client and as an additional insured under any such contractor's general liability insurance policy. Client shall provide RMA with a certificate of insurance evidencing the required insurance.

16. RESOLUTION OF DISPUTES. Client shall not be entitled to assert a Claim against RMA based on any theory of professional negligence unless and until Client has obtained the written opinion from an independent and reputable Professional Engineer (P.E.), licensed architect (A.I.A.), or Registered Geologist (R.G.) that RMA has violated the standard of care applicable to RMA's performance of the Services. Such party shall be currently practicing in the same discipline as RMA and be licensed in the state where the project is located. This written opinion shall specify the acts or omissions that the independent engineer, architect, or geologist contends are not in conformance with the standard of care for professional services performed by local consultants under similar circumstances; and state in detail the basis for their independent opinion that such acts or omissions do not conform to that standard of care. Client shall provide this opinion to RMA and the parties shall endeavor to resolve the dispute within 30 days. This Agreement shall be governed by and construed in accordance with the laws of the state where the RMA office originating the work or proposal is located. Exclusive of lien claims, any legal action or proceeding brought to enforce or otherwise arising out of or relating to this Agreement shall be brought in the county where the RMA office originating the work or proposal is located. Each party waives its right to a jury trial in any court action arising between the parties, whether under this Agreement or otherwise related to the work being performed under this Agreement.

17. COMPENSATION AND PAYMENT TERMS. Client agrees that an invoice amount is due when received unless otherwise agreed. A service charge of one and one-half percent (1-½%) per month (but not exceeding the maximum allowable by law) will be added to any account not paid within 30 days after the invoice date. In the event that any portion of the account remains unpaid 30 days after the invoice date, RMA may immediately discontinue Services on any and all projects for Client, or withhold any final report or instrument of service, or demand prepayment of fees at RMA's option. Client shall pay all costs incurred by RMA in collecting any delinquent amount, including staff time, court costs and attorney fees. Failure to make payment within sixty (60) days of invoice shall constitute a release of RMA from any and all claims which Client may have, either in tort or contract, and whether known or unknown at the time. Should Services based on a fee schedule be performed beyond the end of the calendar year, RMA's current fee schedule shall apply unless otherwise negotiated in advance.

18. TERMINATION. This Agreement may be terminated without cause by either party upon thirty (30) days written notice, and at any time by either party if the other party defaults in the performance of any material provision of this Agreement and such default continues for a period of seven (7) days after written notice thereof. In the event of termination, RMA will be paid for Services performed through the date of termination, plus reasonable termination expenses, including the cost of completing analyses, demobilization, records and reports necessary to document job status at the time of termination.

19. ENTIRE AGREEMENT. This Agreement constitutes the entire agreement between the parties and shall supersede other prior agreements and representations. No amendments to this Agreement shall be valid unless made in writing and signed by the parties. If Client uses its standard business forms all pre-printed terms and conditions contained in or on such forms shall be deemed stricken and null and void. If the terms and conditions of this Agreement conflict with the terms and conditions of any other agreement or document this Agreement shall govern and control over any such conflict. The invalidity or unenforceability of any portion(s) of this Agreement shall in no way affect the validity or enforceability of any other portion(s) hereof. Any invalid or unenforceable portion shall be severed from the Agreement and the balance of the Agreement shall be construed and enforced as if the Agreement did not contain a particular portion held to be invalid or unenforceable. This Agreement may be executed in several counterparts, each of which shall be deemed an original having identical legal effect. The titles, captions and headings of this Agreement are included for ease of reference only and will be disregarded in interpreting or construing this Agreement. RMA shall not be bound by any language incorporating by reference any contract or term of any contract unless the term or terms incorporated by reference are specifically furnished to RMA and are expressly agreed to in a writing signed by RMA.

RESOLUTION NO. _____

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF ONTARIO, CALIFORNIA, REGARDING ITS INTENTION TO ISSUE TAX-EXEMPT OBLIGATIONS FOR PUBLIC CAPITAL IMPROVEMENTS

WHEREAS, the City of Ontario (the "City") proposes to undertake the financing of the acquisition and construction of certain public capital improvements (as described in Exhibit A, collectively, the "Project");

WHEREAS, the City intends to finance the acquisition, construction and installation of the Project or portions of the Project with the proceeds of the sale of obligations the interest upon which is excluded from gross income for federal income tax purposes (the "Obligations"); and

WHEREAS, the City desires to pay certain costs with respect to the Project prior to the issuance of the Obligations from available moneys of the City and to reimburse itself for such costs from a portion of the proceeds of the sale of the Obligations;

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

SECTION 1. The City Council of the City of Ontario (the "City Council") does hereby find and declare that the above recitals are true and correct.

SECTION 2. The City reasonably expects, and hereby states its intention, to reimburse itself for Project costs incurred prior to the issuance of the Obligations with proceeds of the Obligations. Exhibit A describes either the general character, type, purpose, and function of the Project or the fund or account from which Project costs are to be paid and the general functional purpose of the fund or account.

SECTION 3. The reasonably expected maximum principal amount of the Obligations that is anticipated to be used for such reimbursement is $605,000,000.

SECTION 4. Except as described in Section 8 below, this resolution is being adopted not later than 60 days after the payment of the original expenditures (the "Expenditures Date or Dates").

SECTION 5. Except as described in Section 8 below, the expected date of issue of the Obligations will be within 18 months of the later of: (a) the Expenditure Date or Dates; or (b) the date that the Project is placed in service; provided that the reimbursement may not be made more than three years after the Expenditure Date or Dates.

SECTION 6. Proceeds of the Obligations to be used to reimburse the City for Project costs are not expected to be used, within one year of reimbursement, directly or

indirectly to pay debt service with respect to any obligation (other than to pay current debt service coming due within the next succeeding one year period on any tax-exempt obligation of the City (other than the Obligations)) or to be held as a reasonably required reserve or replacement fund with respect to an obligation of the City or any entity related in any manner to the City, or to reimburse any expenditure that was originally paid with the proceeds of any obligation, or to replace funds that are or will be used in such manner.

SECTION 7. This resolution is consistent with the budgetary and financial circumstances of the City as of the date hereof. No moneys from sources other than the Obligations are, or are reasonably expected to be, reserved, allocated on a long-term basis or otherwise set aside by the City (or any related party) pursuant to their budget or financial policies with respect to the Project costs. To the best of our knowledge, this City Council is not aware of the previous adoption of official intents by the City that have been made as a matter of course for the purpose of reimbursing expenditures and for which tax-exempt obligations have not been issued.

SECTION 8. The limitations described in Sections 4 and 5 above do not apply to: (a) costs of issuance of the Obligations; (b) an amount not in excess of the lesser of $100,000 or five percent (5%) of the proceeds of the Obligations; or (c) any preliminary expenditures, such as architectural, engineering, surveying, soil testing, and similar costs other than land acquisition, site preparation, and similar costs incident to commencement of construction, not in excess of twenty percent (20%) of the aggregate issue price of the Obligations that finances the Project for which the preliminary expenditures were incurred.

SECTION 9. This resolution is adopted as official action of the City in order to comply with Treasury Regulation § 1.150-2 and any other regulations of the Internal Revenue Service relating to the qualification for reimbursement of City expenditures incurred prior to the date of issue of the Obligations, is part of the City's official proceedings, and will be available for inspection by the general public at the main administrative office of the City.

SECTION 10. This resolution shall take effect immediately.

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

PASSED, APPROVED, AND ADOPTED this 15th day of October, 2024.

_____

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. 2024- was duly passed and adopted by the City Council of the City of Ontario at their regular meeting held October 15, 2024 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. 2024- duly passed and adopted by the Ontario City Council at their regular meeting held October 15, 2024.

_____
SHEILA MAUTZ, CITY CLERK

(SEAL)

EXHIBIT A

DESCRIPTION OF PROJECT

Project Description:

Regional Sports Complex Project & all associated on-site and offsite infrastructure and public art associated within vicinity of project. Project located South of Riverside Drive, East of Vineyard Avenue, West of Archibald Avenue, North of Chino Avenue.

Project Details:	**Estimated Costs**
Baseball Stadium	$ 150,000,000
Baseball Stadium Parking Structure	40,000,000
Sports Fields & Other City Related Parks Improvements	218,000,000
Offsite Improvements & Other City Related Facility Improvements	141,000,000
Land Acquistion	50,000,000
Public Art Projects	6,000,000
TOTAL	**$ 605,000,000**

CITY OF ONTARIO *Agenda Report* **October 15, 2024**	**SECTION:** **CONSENT CALENDAR**
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: 15

SUBJECT: A LEASE AGREEMENT BETWEEN THE CITY OF ONTARIO AND THE INTERNATIONAL AIRPORT AUTHORITY

RECOMMENDATION: That the City Council approve a Lease Agreement ("Agreement") between the City of Ontario ("City") and the Ontario International Airport Authority ("Authority") for the use of the City-owned property located at 1236 East Airport Drive ("Property") for a five-year term with the option to extend for up to two additional five-year terms.

THE FOLLOWING COUNCIL GOALS ARE BEING ACHIEVED:
Invest in the Growth and Evolution of the City's Economy
Operate in a Businesslike Manner

FISCAL IMPACT: The lease rate for the property is proposed at $148,695.83 per month for the initial five-year term with the option to extend for up to two additional five-year terms. On July 1st of each calendar year an Annual Consumer Price Index Adjustment will be performed, and such increase shall be applied to the based rent.

BACKGROUND & ANALYSIS: In May of 2021, the City acquired the Property to facilitate the construction of a new fueling facility and storage area to support the future expansion and long-term operational needs of the Ontario International Airport. The facility would increase operational efficiency at the Airport by serving non-aircraft related vehicles and equipment that support day-to-day operations.

The Property is currently improved with a 127,000 square foot industrial building (a location map is provided for reference as Exhibit “A”) . Authority staff is working on the long-term development plan for the Property. In the meantime, the Authority identified a need to utilize the Property for the receiving and clearance of international cargo and related activities and services to support such operations at the Airport.

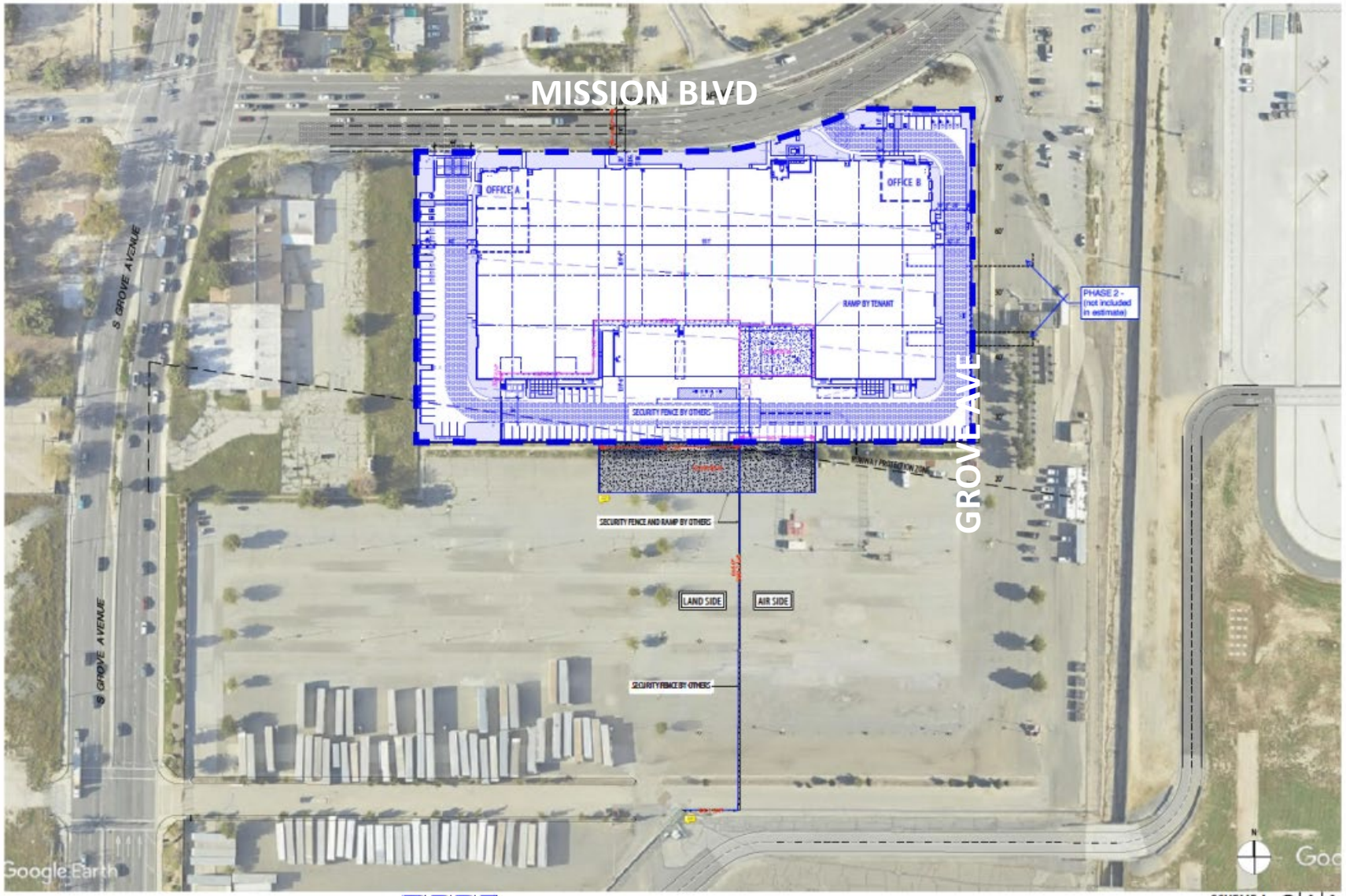
Under the terms of the Agreement, the Authority will be responsible for any required tenant improvements in addition to maintenance of the Property.

At any time during the term of the Agreement, but only after the City and Authority mutually agree on the purchase price based on the fair market value as determined by an independent MAI-certified appraiser, the Authority has the right to exercise the Right of First Option to acquire the Property.

Staff recommends that the City Council approve the Agreement with the Authority to use the City-owned property located at 1236 East Airport Drive for a five-year term, with the option to extend for up to two additional five-year terms.

EXHIBIT “A”

1236 East Airport Drive



1236 AIRPORT DRIVE WAREHOUSE - ONTARIO, CA LEASED PREMISES

SCHEME A
CONCEPTUAL SITE PLAN GAA ARCHITECTS

LEASE AGREEMENT

By and Between The Ontario International Airport Authority and The City of Ontario

ONTARIO INTERNATIONAL AIRPORT
LEASE AGREEMENT

1. **Lease Agreement**. The Ontario International Airport Authority ("**OIAA**") and The City of Ontario, a California municipal corporation ("**City**"), as identified in the Basic Information Schedule (Exhibit "A"), agree to be bound by all of the terms and conditions contained in this Lease Agreement ("**Agreement**") covering the specified location(s) and improvements at the Premises described in Exhibit "A" and shown on Exhibit "B." The City and the OIAA are sometimes referred to as "Party" and collectively as "Parties" in this Agreement.

1.1. **Term; Options to Extend**. The term for use of the Premises ("**Term**") shall be for the time period specified in the Basic Information Schedule (Exhibit "A"). OIAA shall be entitled to one (1) option to extend the Term for an additional five (5) years, however any such extension shall be in writing and be mutually agreed upon by City and OIAA as set forth in Exhibit "A".

1.2. **Holdover**. In the event that OIAA shall holdover the Premises after the expiration or termination of this Agreement, such holding over or use, in the absence of written agreement, shall be deemed to have created a tenancy with respect to the Premises from month to month, terminable on thirty (30) days' written notice by either Party. Such period of holdover and/or use shall be subject to the same provisions as contained in this Agreement.

1.3. **Permitted Uses**. OIAA may have, hold, and enjoy the Premises during the Term and any holdover period or extension period, as applicable, without hindrance or interruption by City. Notwithstanding the foregoing and any other provision set forth in this Agreement, OIAA shall use the Premises solely for the specific activities described in the Basic Information Schedule (Exhibit "A") ("**Activities**"). OIAA may request a change or amendment to the Activities, which City shall approve in writing, but granting of approval by City shall not be unreasonably withheld, conditioned, or delayed.

1.3.1. Use of Roadways. OIAA may create an access or roadway on Airport property to access the Premises. Such right shall be subject to all Laws (as defined in Section 9). OIAA further acknowledges that all of OIAA's vehicles on Airport property and the Premises shall have valid motor vehicle registration and comply with all applicable vehicle registration requirements.

2. **Rent**. OIAA agrees to pay City rent for use of the Premises as specified in the Basic Information Schedule (Exhibit "A") ("**Rent**"). Rent shall be payable in advance on the first day of each calendar month, without notice, demand, or setoff. If the Rent Commencement Date is not the first day of a calendar month, the Rent shall be prorated on a per diem basis. All payments due to City shall be paid in United States legal tender.

2.1. **Periodic Adjustment of Rent**. In addition to the Premises Rent Adjustments set forth in the Basic Information Schedule (Exhibit "A"), OIAA acknowledges that if this Agreement expires, terminates, or if OIAA holds over past the Term of this Agreement, the Rent after the initial five-year Term may be adjusted by good faith negotiation of the Parties to fair market value based upon the rental rates of comparable leased property within a reasonable area as determined by and agreed upon by both Parties, and upon providing OIAA with thirty (30) days prior written notice.

2.2. **No Counterclaims**. OIAA agrees to pay all monetary obligations without notice, demand, deduction, or offset. If the City is not in an uncured material breach or default of this Agreement, all payments to City shall be final, and OIAA shall not seek to recover any such payment or any part thereof for any reason.

2.3. **Payments**. All payments shall be paid to the following address:



City of Ontario
Account Receivable
303 East B Street
Ontario, California 91764

City may from time to time designate any other address to which the payments may be made. Electronic payments may be approved upon request. All payments shall include a reference to this Agreement. No endorsement or statement on any check or any letter accompanying a check shall be deemed an accord and satisfaction or binding upon OIAA.

2.4. **Rent Obligation of OIAA.** All monetary obligations of OIAA arising from this Agreement or the City/OIAA relationship between the Parties hereto or their successors in interest, shall be considered rent, including, without limitation, Rent (including Premises Rent Adjustments and periodic adjustments thereto), late charges, administration fees, and interest.

3. **Condition of Premises**.

3.1. **OIAA Improvements and Alterations.** The OIAA shall have the right or allow others to make additions, alterations, or improvements to the Premises with the approval of the City, which the City shall not unreasonably delay, condition, or deny. In addition to securing City's prior written consent, OIAA shall also be responsible for securing any necessary permits from the relevant government entities in order to make improvements. Interior, non-structural improvements or alterations, such as shelving and fixtures installations, trade fixtures not permanently affixed to the Premises, and other furniture, furnishings, and other non-fixture equipment constructed or placed on or within the Premises after City's delivery of the Premises to OIAA, shall not require City's approval and such improvements

and alterations shall remain the property of OIAA after the end of the Term. Such improvements or alterations shall, however, be subject to any building permit obligations of the City.

3.2. Acceptance of Premises.

3.2.1. Acceptance of "AS IS Parcels." Without limiting any of City's obligations under this Agreement, OIAA will accept all Parcels as listed in Exhibit "A" (and all improvements thereon as of the Commencement Date) of the Premises ("AS IS Parcels") in their "AS IS" condition; provided that the AS IS Parcels are free and clear of all occupants, equipment, and materials. The OIAA shall have the right to inspect the Premises, upon reasonable written notice to the City, before it accepts the Premises.

3.2.2. Acceptance of OIAA Improvements. Without limiting any of City's obligations under this Agreement, City will accept the OIAA Improvements, provided that: (a) the OIAA's Improvements are free and clear of all occupants, equipment and materials, and (b) the OIAA has constructed its improvements in compliance with the requirements of the applicable permitting jurisdiction (including a Certificate of Occupancy ("CO") from the applicable permitting jurisdiction) and, to OIAA's actual knowledge, in compliance with Laws.

3.2.3. Suitability. OIAA acknowledges that neither City nor City's employees or representatives have made any representation or warranty, express or implied, as to the suitability of the Premises for OIAA's use except as otherwise stated in this Agreement. Any agreements, warranties or representations not expressly contained herein shall in no way bind OIAA, and City expressly waives all claims for damages by reason of any statement, representation, warranty, promise or agreement, if any, not contained in this Agreement.

3.3. Condition During Use. OIAA acknowledges that it shall comply with all applicable Laws (as defined in Section 9). OIAA shall not engage, or permit its contractors, vendors, guests or invitees to engage, in any activities at the Premises which may create, cause, or permit any Nuisances, as determined by OIAA in its commercially reasonable discretion, including to neighboring properties, other Airport facility users, occupants, or users of the Premises. Further, OIAA shall not conduct its Activities in such a way that unreasonably interferes with the use of any facility at the Airport; provided, however, as between the Parties hereto, that aircraft operations of OIAA will not be deemed to constitute a factual or legal Nuisance.

3.4. Condition Upon End of Use. Upon expiration or termination of this Agreement, OIAA shall remove all personal property, and leave the Premises, including any OIAA-owned fixtures, in a neat and clean condition with no damage, excepting only reasonable wear and tear.

4. **Use Does Not Create Any Property Right**. Title to the Premises is held by the City. Except for rights granted through this Agreement, OIAA's use of the Premises creates no right to or interest in the real property being used, either by way of occupancy, possession, or otherwise.

5. **Option to Purchase.** During the Term of this Agreement, OIAA shall have the Right of First Option to purchase the Subject Premises owned by the City ("Purchase Option"). An intent to purchase the Subject Premises may be initiated by the OIAA at any time upon giving notice in writing to City ("Purchase Notice"). After the issuance of the Purchase Notice, but prior to the City recording the deed for the Premises, OIAA and City shall mutually agree on a purchase price based on the fair market value of the Premises as determined by an independent appraisal commissioned separately by each party or by mutually agreeing on an appraisal firm that shall undertake the appraisal report assignment. If OIAA and City agree on a purchase price, and OIAA exercises this Purchase Option, a Purchase and Sale Agreement ("Purchase Agreement") shall be taken to the City Council for approval. Upon the recordation of the Grant Deed, this Agreement shall terminate and end.

6.

7. **Reserved**.

8. **OIAA Maintenance Obligations**.

8.1. OIAA, at its sole cost and expense, shall keep and maintain all exterior and interior portions and areas of the Premises (including, without limitation, all fixtures, equipment or appurtenances) in good working order, condition and repair, in a clean, sanitary, safe, and working condition in accordance with all applicable Laws of all governmental agencies having jurisdiction over the Premises. All repairs and/or replacements shall be of a quality equal to or exceeding the original. OIAA shall permit no waste, damage, or injury to the Premises. If, following the later of (i) fifteen (15) days prior written notice to OIAA by City, or (ii) any applicable notice and cure period set forth in , OIAA fails to maintain the Premises as required, City shall have the right, but not the obligation, to make the repair and/or replacement and all sums expended by City shall be immediately payable to City upon demand, plus an administrative fee of 15% of City's cost to make such repair or replacement. For all obligations of OIAA in this, OIAA, except as otherwise set forth herein, waives the right to make repairs and/or replacements at City's expense under Sections 1941 and 1942 of the California Civil Code and all other similar Laws, now or hereafter in effect.

9. **No Liens or Encumbrances**. OIAA shall not allow any lien, deed of trust, mortgage or any other encumbrance to affect the Premises. OIAA shall not mortgage, pledge, hypothecate or encumber the Premises, whether voluntarily, involuntarily or by operation of law.

9.1. Mechanic's Liens. OIAA shall keep the Premises free and clear of all mechanics' liens resulting from any work performed, materials furnished, or obligations incurred by or for

OIAA or any person or entity claiming by, through or under OIAA. OIAA further agrees to defend, indemnify and hold the City harmless from the imposition of any mechanics', materialmen's or other similar liens imposed against the Premises or OIAA's interest therein as a result of any action or inaction by OIAA or OIAA's employees, agents, or contractors. If any lien is placed on the Premises as a result of work performed at OIAA's direction and/or control, OIAA shall have the right to contest the correctness or the validity of any such lien if, immediately on demand by City, OIAA procures and records a lien release bond issued by a corporation authorized to issue surety bonds in California in an amount equal to 125% of the amount of the claim of lien. The bond shall meet the requirements of Civil Code Section 8424 and shall provide for the payment of any sum that the claimant may recover on the claim (together with costs of suit, if the claimant recovers in the action).

9.2. Encumbrances. If the OIAA does not remove any encumbrance placed on the Premises as contemplated in Section 10.1 herein, City shall have, in addition to all other remedies provided by law, the right, but not the obligation, to cause the encumbrance to be released. All sums paid by City and all expenses incurred by City in connection with the release of the encumbrance, including attorneys' fees and costs, shall be paid by the OIAA to City immediately upon demand.

10. Compliance with All Laws, Rules, and Regulations. OIAA shall follow and comply with all applicable federal, state and local laws, statutes, orders, ordinances, codes, rules and regulations, including City Rules, in effect during the Term (collectively, "**Laws**"). OIAA shall not use or allow the Premises to be used, for any unlawful purpose. OIAA agrees to comply with the regulations, requirements and recommendations of any insurance underwriter, inspection bureau or similar agency, pertaining to the Premises. OIAA shall, upon written notice from City, discontinue any use or operation of the Premises, which is declared by any governmental authority, including the City, to be a violation of any Laws.

10.1. Civil/Criminal Penalties. OIAA shall be solely responsible for any and all civil and/or criminal penalties assessed as a result of its failure to comply with any applicable rules, regulations, restrictions, ordinances, statutes, Laws, orders, directives and/or conditions.

10.2. Rights Limited by Law. If any term or provision of this Agreement is invalid or rendered unenforceable, the remainder of this Agreement shall be unaffected.

11. <u>Inspection by Certified Access Specialist</u>. City discloses that the Premises have not undergone inspection by a Certified Access Specialist as referenced in California Civil Code Section 1938 subsection (e) which provides: "A Certified Access Specialist (CASp) can inspect the subject premises and determine whether the subject premises comply with all of the applicable construction-related accessibility standards under state law. Although state law does not require a CASp inspection of the subject premises, the commercial property owner or lessor may not prohibit the lessee or tenant from obtaining a CASp inspection of

the subject premises for the occupancy or potential occupancy of the lessee or tenant, if requested by the lessee or tenant. The parties shall mutually agree on the arrangements for the time and manner of the CASp inspection, the payment of the fee for the CASp inspection, and the cost of making any repairs necessary to correct violations of construction-related accessibility standards within the premises." Pursuant to the foregoing Section 1938(e), OIAA acknowledges and agrees that, if OIAA wishes to have the Premises inspected by a CASp: (i) OIAA must notify City on or before the date when OIAA executes this Lease pursuant to the election below; (ii) the inspection will be at OIAA's sole cost and expense; (iii) the inspection must be scheduled through City and in coordination with the Building's property manager; (iv) any repairs or modifications necessary to correct any violation of construction-related accessibility standards that is noted in the CASp report shall be OIAA's responsibility; and (v) OIAA must provide a copy of the CASp report to City on completion. By initialing below, OIAA represents that:

OIAA wishes to have a CASp inspection Initials: _____

OIAA hereby waives its right to have a CASp inspection Initials: _____

12. OIAA Indemnity and Hold Harmless. To the fullest extent permitted by law, OIAA shall indemnify, defend, keep, and hold City, the City Council, each member of the Council, the City's officers, directors, agents, servants, volunteers, employees, directors, successors and assigns ("**Indemnitees**"), harmless from any and all claims, demands, costs, liabilities, fines, damages, losses, penalties, actions, proceedings, costs, and expenses (including costs of suit and fees, consultant fees, expert fees, executive and administrative expenses, and reasonable fees and costs of legal services) claimed by anyone, in law or equity, arising out of or related to OIAA's activities at the Premises, including without limitation, by reason of injury to or death of persons, including OIAA, or damage to or destruction of property, including property of OIAA, sustained in, on, or about the Premises arising out of OIAA's use of the Premises, or arising out of the acts or omissions of OIAA, its agents, servants, or employees, acting within the scope of their agency or employment, even if such claims are without merit, false, or fraudulent.

12.1. It is the express intent of the Parties hereto that the defense and indemnity obligations imposed in this Agreement are binding and valid with one exception: OIAA shall not be obligated to defend, indemnify or hold the Indemnitees harmless under the terms of this provision for claims, damages, injury, loss liability and/or expense caused by the sole negligence or willful misconduct of the Indemnitees. OIAA's indemnity agreement shall be covered by its general liability insurance policies referred to herein; provided however, OIAA's obligation to defend and indemnify Indemnitees shall not be restricted to insurance proceeds, if any received by the Indemnitees. The provisions of this Section 11 shall survive the expiration and/or termination of this Agreement.

12.2. The duty to defend Indemnitees shall require OIAA to provide the Indemnitees with separate counsel reasonably acceptable to Indemnitees. If OIAA fails to timely perform its

obligations, the Indemnitees shall have the right to pursue a claim against OIAA for any resulting compensatory damages, as well as for interest on defense and indemnity costs, from the date incurred, and for the Indemnitees' reasonable attorneys' fees incurred to recover these amounts.

13. Insurance. OIAA shall procure at its sole cost and expense and maintain in effect at all times the types and amounts of insurance specified on Exhibit "C." The specified insurance shall also, either by provisions in the policies, by City's own endorsement form, or by other endorsement attached to such policies, include and insure City, the City Council, and the City's officers, directors, members, employees, volunteers, agents, successors and assigns, as additional insureds, against the areas of risk identified on Exhibit "C" with respect to OIAA's acts or omissions in its operations, the Premises, and other related functions performed by or on behalf of OIAA in, on or about the Premises.

13.1. Severability. Each specified insurance policy (other than workers' compensation and employers' liability and fire and extended coverages) shall contain a severability of interest (cross liability) clause which has language similar to: "It is agreed that the insurance afforded by this policy shall apply separately to each insured against whom claim is made or suit is brought except with respect to the limits of the company's liability," and provide that the insurance afforded by OIAA's policy applies to liability assumed by the insured under this Agreement.

13.2. Primary Insurance. All such insurance shall be primary and noncontributing with any other insurance held by OIAA or for the benefit of OIAA where liability arises out of or results from the acts or omissions of OIAA, its agents, employees, officers, assigns, or any person or entity acting for or on behalf of OIAA. Such policies may provide for reasonable deductibles and/or retentions acceptable to the City based upon the nature of OIAA operations and the type of insurance involved.

13.3. Premiums. OIAA shall have no liability for any premiums charged for such coverage(s). The inclusion of OIAA, OIAA's Commission, and all of OIAA's officers, directors, members, employees, volunteers, agents, successors and assigns, as additional insureds is not intended to, and shall not, make any of them a partner or joint venture with OIAA in OIAA's operations at the Premises. In the event the OIAA fails to furnish City evidence of insurance and maintain the insurance as required, City, upon ten (10) days' prior written notice to comply, may (but shall not be required to) procure such insurance at the sole cost and expense of OIAA, and OIAA agrees to promptly reimburse City for the cost thereof plus fifteen percent (15%) for administrative overhead. Payment shall be made within thirty (30) days of an invoice date.

13.4. Documentation. At least ten (10) days prior to the expiration date of the insurance policies, documentation showing that the insurance coverage has been renewed or extended shall be filed with the City. If such coverage is canceled or reduced below the coverage required

under this Agreement, OIAA shall, within fifteen (15) days of such cancellation of coverage, file with the City evidence that the required insurance has been reinstated or provided through another insurance company or companies.

13.5. Form and Content. OIAA shall provide proof of all specified insurance and related requirements to the City in both form and content acceptable to the City. The documents evidencing all specified coverages shall be filed with the City in duplicate. The documents shall contain the applicable policy number, the inclusive dates of policy coverages, and the insurance carrier's name, shall bear an original signature of an authorized representative of said carrier, and shall provide that such insurance shall not be subject to cancellation, reduction in coverage, or nonrenewal except after written notice by certified mail, return receipt requested, to the City at least thirty (30) days prior to the effective date thereof.

13.6. Policy Limits. OIAA and City agree that the insurance policy limits specified herein shall be reviewed for adequacy annually by the CEO who may, at his or her reasonable discretion, thereafter require OIAA, on thirty (30) days' prior written notice, to adjust the amounts of insurance coverage to whatever reasonable amount the CEO deems appropriate.

13.7. Self-Insurance upon Approval. Subject to review and written approval of the City and at City's sole and absolute discretion, the City may allow OIAA to elect to self-insure some or all of the risks covered by the insurance that it is otherwise obligated to maintain under the terms of this Agreement, and upon the City's written approval, OIAA will be excused from its obligation to obtain third-party insurance for the self-insured risks set forth above. If OIAA elects to self-insure, OIAA's obligations to indemnify, protect, defend and hold harmless the City and all other Indemnitees as defined from and against any and all risks as provided in this Agreement remain the same regardless of any self-insurance.

14. Damage or Destruction due to OIAA Use of Premises; Waiver of Subrogation

14.1. Damage or Destruction Of Improvements. OIAA shall be responsible for any damage, destruction by fire, or other cause of loss ("Loss") to the Premises, including where caused by OIAA or OIAA's aircraft, equipment, employees, agents, visitors or suppliers to the Premises and whether by OIAA's fault, neglect or otherwise. Should such damage require immediate repairs or replacement and OIAA is unable to respond immediately to complete said repairs or replacement, the City may cause to be made or make any necessary repairs or replacements and the cost thereof shall be paid by OIAA. Said cost shall include all labor, materials, equipment and an administrative fee equal to fifteen percent (15%) of the sum of those items. Said cost shall be paid by OIAA within fifteen (15) days of receipt of an invoice for costs from the City.

In the event of damage to or destruction of OIAA-owned or leased buildings, facilities, or improvements located within the Premises, or in the event OIAA-owned or leased

buildings, facilities, or improvements located within the Leased Premises are declared unsafe or unfit for use or occupancy by a public entity with the authority to make and enforce such declaration, OIAA shall, within thirty (30) days, commence and diligently pursue to completion of the repair, replacement, or reconstruction of improvements to the same size and floor area as they existed immediately prior to the event causing the damage or destruction, as necessary to permit full use and occupancy of the Premises for the purposes required by the Lease. Repair, replacement, or reconstruction or improvements within the Premises shall be accomplished in a manner and according to plans approved by City. Except as otherwise provided herein, termination of this Lease shall not reduce or nullify OIAA's obligation under this paragraph. With respect to damage or destruction to be repaired by OIAA or which OIAA elects to repair, the City waives and releases its rights under California Civil Code Sections 1932(2) and 1933(4).

In the event the Loss is covered by insurance carried by City under this Agreement, City shall timely reimburse OIAA for repair, replacement, or reconstruction of improvements from the proceeds received from those insurance policies. City shall not, however, be obligated to expend an amount which is more than the insurance proceeds received by City, nor shall City be obligated to repair, restore or replace any personal property or OIAA Improvements installed or contained in or on the Premises, including without limitation, inventory, fixtures, equipment, furnishings, or other personal property of OIAA or OIAA's employees, agents, servants, contractors, or invitees. If a Loss is due to the fault or neglect of City or City's agents, servants, or employees acting within the scope of their agency or employment, a proportionate abatement (based on square footage) of the Rent shall be applied from the date when the damage occurred until the date the repairs or restoration reasonably may be completed. If the Loss will not permit OIAA to repair, replace, or reconstruct the Premises (including fixtures, equipment or appurtenances) such that the Premises cannot reasonably be used for the Activities, OIAA or City may terminate this Agreement upon written notice. In such an event, OIAA will not be liable for payment of the Termination Payment but will remain liable for any other amounts due to City. OIAA and the City agree that their respective rights upon any damage or destruction of the Premises shall be those specifically set forth herein.

14.2. Waiver of Subrogation for Property Damage Casualty Only. OIAA agrees to waive rights of subrogation for property damages only which any insurer of OIAA may acquire from OIAA by virtue of the payment of any Loss suffered to the Premises. For clarity, OIAA's waiver of subrogation in this Section 13.2 does not extend to any bodily injury claims or losses. Notwithstanding the foregoing, if any Loss is caused by the fault or neglect of OIAA or anyone under OIAA's direction or control (a "**Tenant Caused Loss**"**),** then OIAA shall: (i) within thirty (30) days of written demand by OIAA, pay to OIAA an amount equal to any deductible(s) or self-insured retention(s) required to be paid by City for such Tenant Caused Loss, not to exceed $100,000; and, if applicable, (ii) pay to City for the remainder of OIAA's occupancy of the Premises, an amount equal to any resulting increase in insurance premium incurred by OIAA, to the extent such insurance premium is

for coverages required to be carried by OIAA under this Agreement, and such insurance premium increase was the direct result of a Tenant Caused Loss.

15. Assignment or Subletting. OIAA may sublet the Premises to any company or organization it deems necessary to operate on the Premises for or related to the Permitted Use as allowed under Exhibit "A" ("Transfer"). If any prohibited Transfer occurs, OIAA shall not be relieved of its obligation to perform all obligations under this Agreement and any purported transferee shall also be subject to the same terms and conditions of this Agreement. Further, the acceptance of payment by City from any other person shall not be deemed either a waiver by City of any provisions of this Agreement or consent of any Transfer.

Each permitted assignment or sublet of this Agreement shall be evidenced by a written instrument executed by OIAA and the assignee or sublessee ("**Transferee**"), under which the Transferee shall agree in writing to assume, to perform, and to abide by all of the terms, provisions, covenants and conditions of this Agreement to be done, kept and performed by OIAA, including the payment of all amounts due or to become due under this Agreement directly to City, the obligation to use the Premises only for Activities, the obligation to provide insurance, and to indemnify and hold the City harmless as set forth in this Agreement. OIAA and Transferee shall remain jointly and severally liable for all of the terms, provisions, covenants and conditions of this Agreement.

16. Utilities.

16.1. OIAA Responsible. OIAA shall pay for all costs associated with utilities supplied to the Premises (including for water, gas, electricity, heat, telephone, and all other utility services), including deposits, connection fees and meter installation and rentals required by the supplier of any utility service. The OIAA shall also be responsible for the payment of any and all taxes and assessments that may be levied or charged upon the Premises for providing utilities.

16.2. City Not Liable. City shall not be liable to the OIAA for any failure, defect, impairment or deficiency in the supply of any utility service supplied to the Premises or in any system supplying the service unless such failure, defect, impairment or deficiency is due solely to the negligence or willful misconduct of City, its employees, or contractors.

17. Access to Facilities.

17.1. City's Right to Access the Premises. Subject to agreeing to OIAA's reasonable security protocols, City, its officers, directors, employees, agents and contractors may enter the Premises upon forty-eight (48) hours' notice, to: (i) inspect the Premises and make repairs, restorations, or alterations; and/or (ii) enforce City's rights under this Agreement.

17.2. Emergency Access to Premises. City, its officers, directors, employees, agents and contractors, reserve the right to enter the Premises during any fire or other emergency

without liability to City , if reasonable care is given under the circumstances. City will notify the OIAA of any emergency entry as soon thereafter as practicable.

18. Environmental Matters.

18.1. **"Environmental Laws"** shall mean any federal, state or local law, statute, ordinance, code, judgment, order, rule, or regulation pertaining to the environment and/or human health, Hazardous Materials, Pollutants, occupational safety and health, industrial hygiene or the environmental conditions on, at, under or about the Premises, and includes, without limitation the following: (i) the CLEAN AIR ACT, 42 USC §§ 7401, et seq.; (ii) CLEAN WATER ACT, 33 USC §§ 1251, et seq.; (iii) the COMPREHENSIVE ENVIRONMENTAL RESPONSE, COMPENSATION AND LIABILITY ACT OF 1980, as amended by the SUPERFUND AMENDMENTS AND REAUTHORIZATION ACT OF 1986 ("**CERCLA**"), 42 U.S.C. §§9601 et seq.; (iv) 49 CFR Subchapter C (Transportation of Hazardous Materials); (v) the SOLID WASTE DISPOSAL ACT, as amended by the RESOURCE CONSERVATION AND RECOVERY ACT OF 1986 and HAZARDOUS and SOLID WASTE amendments of 1984 ("**RCRA**"), 42 U.S.C. §§6901, et seq.; (vi) the OIL POLLUTION ACT of 1990, 33 USC §§ 2701, et seq.; (vii) the FEDERAL WATER POLLUTION CONTROL ACT, 33 U.S.C. §§1317, et seq.; (viii) the SAFE DRINKING WATER AND TOXIC ENFORCEMENT ACT OF 1986, CALIFORNIA HEALTH AND SAFETY CODE §§25249.5 et seq.; (ix) the CALIFORNIA HEALTH AND SAFETY CODE §§25100, 25395.7, 25915, et seq.; (x) the PORTER-COLOGNE WATER QUALITY CONTROL ACT (CALIFORNIA WATER CODE) §§13000, et seq.; (xi) the CALIFORNIA CIVIL CODE §§3479, et seq.; (xii) Storm Water Discharge Rules, 40 C.F.R. §§ 122.26, 122.30-37; (xiii) the CARPENTER-PRESLEY-TANNER HAZARDOUS SUBSTANCES ACCOUNT ACT §§25300, et seq.; (xiv) TOXIC SUBSTANCES CONTROL ACT, 15 USC §§2601, et seq.; (xv) the SAFE DRINKING WATER ACT, 24 USC §§300f, et seq.; (xvi) the NATIONAL ENVIRONMENTAL POLICY ACT, 42 USC §§4321, et seq.; (xvii) the CALIFORNIA ENVIRONMENTAL QUALITY ACT (CEQA), CALIFORNIA PUBLIC RESOURCES CODE, §§21000, et seq., & CEQA GUIDELINES, CAL. CODE REGS., TIT. 14, §15000 et seq.; (xviii) compliance with the terms and conditions of any applicable National Pollutant Discharge Elimination System (NPDES) permits, General Stormwater permits, site-specific Stormwater Pollution Prevention Plans (SWPPP), site-specific Facility Response Plans (FRP), or Spill Prevention Control and Countermeasure (SPCC) Plans; Business Emergency Plans, and (xix) all other state Laws, rules, orders, directives, and codes, regulations, judgments, and orders relating to (a) emissions, discharges, releases, and/or threatened releases of Hazardous Materials into the environment (including, but not limited to, ambient air, surface water, groundwater, land surface, or subsurface strata); and (b) the manufacture, processing, distribution, use, generation, treatment, storage, disposal, transport or handling of Hazardous Materials, as such Laws are amended, and the regulations and administrative codes applicable thereto.

18.2. **"Hazardous Materials"** shall mean any Pollutant, contaminant, chemical, compound, substance, hazardous or toxic substance, material, waste, and/or any other matter which is or shall become regulated by any governmental entity, including, but not limited to City acting in its governmental capacity, the State of California, and/or the United States Government. The term "Hazardous Materials" includes, without limitation, any material or substance which is: (i) defined or listed as a "hazardous waste," "extremely hazardous waste," "restrictive hazardous waste" or "hazardous substance" or considered a waste, condition of pollution, nuisance, and/or is controlled or governed under any Environmental Law; (ii) petroleum or a petroleum product or fraction thereof; (iii) asbestos or asbestos-containing materials; (iv) flammable or explosive substances; (v) mold, mold spores or fractions thereof; and/or (vi) substances designated by any governmental entity to cause cancer and/or reproductive toxicity.

18.3. **"Pollutant"** means any chemical, compound, substance, liquid, solid or semi-solid substances, or combination thereof, including but not limited to: (a) artificial materials (such as floatable plastics, wood products or metal shavings); (b) household waste (such as trash, paper, and plastics; cleaning chemicals, yard wastes, animal fecal materials, used oil and fluids from vehicles, lawn mowers and other common household equipment); (c) metals and nonmetals, including compounds of metals and nonmetals (such as cadmium, lead, zinc, copper, silver, nickel, chromium, cyanide, phosphorus and arsenic) with characteristics which cause an adverse effect on living organisms; (d) petroleum and related hydrocarbons (such as fuels, lubricants, surfactants, waste oils, solvents, coolants and grease.); (e) substances having a pH less than 6.5 or greater than 8.6, or unusual coloration, turbidity or odor; (f) materials causing an increase in biochemical oxygen demand, chemical oxygen demand or total organic carbon; (g) materials which contain base/neutral or acid extractable organic compounds; (h) those pollutants defined in Section 1362(6) of the Federal Clean Water Act; (i) any other constituent or material, including but not limited to pesticides, herbicides, fertilizers, fecal coliform, fecal streptococcus, or enterococcus, or eroded soils, sediment and particulate materials, in quantities that will interfere with or adversely affect the beneficial use of the receiving waters, flora or fauna of the State; and (j) any substance listed under Health and Safety Code, §25316.

18.4. **Environmental Representation**. At all times OIAA shall comply with all Environmental Laws, which compliance includes, but is not limited to, the possession by OIAA of all permits and other governmental authorizations required under the Environmental Laws.

18.5. **Storm Water Pollution Prevention**. The OIAA shall abide by all regulations pertinent to storm water pollution prevention, including using Best Management Practices (BMPs) to protect storm water inlets from contaminated discharges, and promptly mitigating any discharges generated by OIAA to the satisfaction of the regulatory agencies and City.

18.6. **Air Quality Management**. The OIAA shall obtain and abide by all permit conditions related to the use of stationary or mobile equipment that require permitting pursuant to the California Air Resources Board, the South Coast Air Quality Management District, or other local, state and/or federal requirements.

18.7. **Environmental Indemnity**. Except for Hazardous Materials or conditions existing prior to OIAA's use of the Premises or placed on, in or beneath the Premises during the Term by OIAA or any party acting on behalf of or at the direction of OIAA, OIAA agrees to accept sole responsibility for full compliance with Environmental Laws. OIAA shall indemnify, defend (by counsel reasonably acceptable to City), protect, and hold City and Indemnitees (as defined above) free and harmless from and against any and all claims, liabilities, penalties, forfeitures, losses or expenses (including costs of suit and fees, consultant fees, expert fees, executive and administrative expenses, and reasonable fees and costs of legal services), or death of or injury to any person or damage to any property whatsoever, arising from or caused in whole or in part, directly or indirectly, by: (i) the presence in, on, under or about the Premises, or discharge in or from the Premises of any Hazardous Materials caused or generated by OIAA; or (ii) OIAA's use, analysis, storage, disposal, release, threatened release, discharge or generation of Hazardous Materials to, in, on, under, about or from the Premises; or (iii) OIAA's failure to comply with any Environmental Law. OIAA's obligations under this Agreement shall include, without limitation and whether foreseeable or unforeseeable, all costs of any required or necessary repair, cleanup or detoxification or decontamination of the Premises, or the preparation and implementation of any closure, remedial action or other required plans in connection therewith attributable to OIAA and shall survive the expiration or earlier termination of this Agreement. For purposes of the release and indemnity provisions of this Agreement, any acts or omissions of OIAA, or by employees, agents, assignees, subtenants, contractors or subcontractors of OIAA or others acting for or on behalf of OIAA (whether or not they are negligent, intentional, willful or unlawful) shall be strictly attributable to OIAA.

18.8. **Notice; Reporting**. OIAA shall notify City in writing within five (5) days after any of the following: (i) OIAA has knowledge, or has reasonable cause to believe, that any Hazardous Material has been released, discharged or is located on, under or about the Premises, in quantities that would be reportable to a public agency; (ii) OIAA receives any order of a governmental agency requiring any remedial work pursuant to any Environmental Laws; (iii) OIAA receives any warning, notice of violation or alleged violation, or OIAA receives written notice of any proceeding, investigation of enforcement action, pursuant to any Environmental Laws; or (iii) OIAA receives notice or knowledge of any claims made or threatened by any third party against OIAA or the Premises relating to any loss or injury resulting from Hazardous Materials. If the potential risk of any of the foregoing events is material, OIAA shall deliver immediate verbal notice to City, in addition to written notice as set forth above. Upon request, OIAA shall deliver to City copies of all test results, reports and business or management plans required to be filed with any governmental agency pursuant to any Environmental Laws.

18.9. Corrective Actions. In the case of any Hazardous Materials spill, leak, discharge, release or contamination by OIAA or its employees, servants, agents, contractors, or subcontractors on the Premises or as may be discharged or released by OIAA or its employees, servants, agents, contractors, or subcontractors in, on or under adjacent property which affects other property of City or its tenants, OIAA agrees to make or cause to be made any necessary corrective actions to clean up and remove any such spill, leakage, discharge, release or contamination. If OIAA fails to repair, clean up, properly dispose of, or take any other corrective actions as required herein, City may (but shall not be required to) take all steps it deems necessary to properly repair, clean up, or otherwise correct the conditions resulting from the spill, leak, discharge, release or contamination. Any such repair, cleanup, or corrective actions taken by City shall be at OIAA's sole cost and expense and OIAA shall indemnify and pay for and/or reimburse City for any and all costs (including any administrative costs) OIAA incurs as a result of any repair, cleanup, or corrective action it takes; provided that the foregoing OIAA obligations shall not apply to any Hazardous Materials on the Premises that pre-date OIAA's use of the Premises.

18.10. Environmental Documents. OIAA shall promptly provide City complete copies of all notices, reports, correspondence, and other documents sent to or received by OIAA from any governmental entity regarding any Hazardous Materials. Such written materials include, without limitation, all documents relating to any threatened or actual Hazardous Materials spill, leak, or discharge, or to any investigations into or cleanup of any actual or threatened Hazardous Materials spill, leak, or discharge including all test results.

18.11. Survival of Obligations. OIAA's environmental obligations herein shall survive the expiration or earlier termination of this Agreement.

19. Taxes, Permits, and Licenses. During OIAA's use, it shall keep and maintain (at its expense) all permits, licenses or other governmental authorizations required for its use at the Premises. The OIAA shall pay any and all taxes of whatever character, if any, that may be levied or charged upon the Premises, or upon the OIAA's improvements, fixtures, equipment, or other property thereon or upon the OIAA's use thereof.

19.1. Right to Contest Taxes. OIAA shall have the right to contest in its own name, or, to the extent reasonably necessary, in City's name, in good faith and by all appropriate proceedings, the amount, applicability, or validity of any tax assessment pertaining to the surface of the Premises and OIAA's operations thereon.

19.2. In the event OIAA initiates such contest, City shall reasonably cooperate with OIAA, provided that such contest will not subject any part of the Premises to forfeiture or loss; and provided, further, that if OIAA contests any assessment made by the San Bernardino County Tax Assessor of OIAA, such contest shall not be initiated in the name of OIAA, and OIAA shall not be obligated to cooperate therewith.

19.3. If, at any time, payment of any tax or assessment becomes necessary to prevent any

forfeiture or loss, OIAA shall timely pay such tax or assessment to prevent such forfeiture or loss.

20. Federal Nondiscrimination. OIAA shall comply with all nondiscrimination requirements as set forth in Exhibit "F," and as set forth in this Section 29.

20.1. 49 C.F.R. Part 21. OIAA for itself, its personal representatives, successors, and assigns, as a part of the consideration hereof, does hereby covenant and agree as a covenant running with the land that in the event facilities are constructed, maintained, or otherwise operated at the Premises described in this Agreement, for a purpose for which a Department of Transportation program or activity is extended or for another purpose involving the provision of similar services or benefits, OIAA shall maintain and operate such facilities and services in compliance with all other requirements imposed pursuant to 49 CFR Part 21, Nondiscrimination in Federally Assisted Programs of the Department of Transportation, and as said Regulations may be amended.

20.2. Covenants and Representations. OIAA for itself, its personal representatives, successors in interest, and assigns, as a part of the consideration hereof, does hereby covenant and agree that:

20.2.1. No person on the grounds of race, creed, color, national origin, sex, age, or disability shall be excluded from participation in, denied the benefits of, or be otherwise subjected to discrimination in the use of said facilities;

20.2.2. This Agreement is subject to the requirements of the U.S. Department of Transportation's ("**DOT**") regulations, 49 CFR Part 23, Subpart F, and 49 CFR Part 26. OIAA agrees that it will not discriminate against any business owner because of the owner's race, color, national origin or sex in connection with the award or performance of any agreement covered by 49 CFR Parts 23 and 26;

20.2.3. In the construction of any improvements on, over, or under such land and the furnishing of services thereon, no person on the grounds of race, creed, color, national origin, sex, age, or disability shall be excluded from participation in, denied the benefits of, or otherwise be subjected to discrimination;

20.2.4. In the event facilities are constructed, maintained or otherwise operated on the Premises for a purpose for which a DOT program or activity is extended or for another purpose involving the provision of similar services or benefits, OIAA shall maintain and operate such facilities and services in compliance with all other requirements imposed pursuant to 49 CFR, Part 21, Subtitle A, Nondiscrimination in Federally-Assisted Programs of the Department of Transportation-Effectuation of Title VI of the CIVIL RIGHTS ACT OF 1964, and as said Regulations may be amended.

20.3. Breach. In the event of breach of any of the nondiscrimination covenants herein, City shall have the right to terminate OIAA's right to use the Premises or impose other sanctions as it or the FAA may determine to be appropriate. This provision does not become effective until the procedures of 49 CFR, Part 21, are followed and completed, including expiration of appeal rights.

20.4. Accommodations. OIAA shall furnish its accommodations and/or services on a fair, equal and not unjustly discriminatory basis to all users thereof and it shall charge fair, reasonable and not unjustly discriminatory prices for each unit or service.

20.5. Noncompliance. Noncompliance with the nondiscrimination provisions shall constitute a material breach of the Agreement and in the event of such noncompliance which is not cured within ten (10) days following written notice of such noncompliance from City to OIAA, City shall have the right to terminate its right to use the Premises without liability therefor; or at the election of the City or the United States either or both said Governments shall have the right to judicially enforce the nondiscrimination provisions.

21. Other Government Agreements. This Agreement shall be and remain subordinate to the provisions of any existing or future agreements between OIAA and the United States Government or other governmental authority, or any lawful requirement of the United States relative to the operation or maintenance of the Premises.

22. Federal Government's Emergency Clause. All provisions of this Agreement shall be subordinate to the rights of the United States to operate the Airport or any portion thereof during time of war or declared national emergency in accordance with established lawful procedures. Such rights shall supersede any provision of this Agreement that is inconsistent with the operation of the Airport by the United States during a time of war or national emergency.

23. Disadvantaged Enterprises. OIAA acknowledges that the provisions of 49 CFR Part 23 ("**Airport Concessions Disadvantaged Business Enterprises**") and Part 26 ("**Participation by Disadvantaged Enterprises in Department of Transportation Financial Assistance Programs**") as said regulations may be amended, and such other similar regulations that may be enacted governing Disadvantaged Business Enterprises, may be applicable to the activities of OIAA under the terms of this Agreement, unless exempted by said regulations, and hereby agrees to comply with the applicable regulations. These requirements may include, without limitation, compliance with Disadvantaged Business Enterprise or Minority Business Enterprise, as such terms are defined in 49 U.S.C. §§ 47107, 47113 and 47123, 49 CFR Parts 23 and 26, or such other statutes or regulations as may be enacted governing minority or disadvantaged business enterprises, participation goals, the keeping of certain records of good faith compliance efforts, which would be subject to review by the various agencies, the submissions of various reports and, if so directed, the contracting of specified percentages of goods and services contracts to Minority and Disadvantaged Business Enterprises.

24. **Default Event**. If any one or more of the following events occur ("**Default Event**"), the OIAA shall be in violation of this Agreement and may be removed from the Premises (or any portion thereof):

24.1. Failure to pay any monetary obligation required under this Agreement on the date it is due and the failure continues for ten (10) days after written notice by City to OIAA;

24.2. Failure to perform or comply with any of OIAA's material maintenance obligations and the failure continues for more than the number of days specified in City's notice to cure; provided that no notice to cure shall be less than the later of: (a) thirty (30) days or (b) the commercially reasonable amount of time to remedy such maintenance default;

24.3. Failure to procure and maintain all required insurance coverages, provided such failure is not cured within fifteen (15) days after written notice by City to OIAA;

24.4. Failure to comply with any term or provision in this Agreement (except for the failures identified in Sections 34.1 through 34.3) and the failure continues for thirty (30) days; provided that where any such failure cannot reasonably be cured within a thirty (30) day period, a Default Event will not occur if OIAA commences to cure the failure within the thirty (30) day period, and thereafter diligently pursues the cure;

24.5. OIAA: (i) files a petition commencing a voluntary case under any chapter of the Bankruptcy Code, or is adjudicated an insolvent, or files a petition seeking for itself any reorganization, composition, readjustment, liquidation, dissolution or similar arrangement under the Bankruptcy Code or any other present or future similar law, or files an answer admitting the material allegations of a petition filed against it in any such proceeding, consent to the filing of such a petition or acquiesce in the appointment of a trustee, receiver, custodian or other similar official for it or of all or any substantial part of its assets or properties, or take any action looking to its dissolution or liquidation; (ii) makes an assignment for the benefit of its creditors, or admits in writing its inability to pay its debts when due; (iii) consents to the appointment of a custodian, receiver, trustee or other officer with similar powers of itself or of any material part of its properties; (iv) is adjudicated insolvent or be liquidated; or (v) takes corporate action for the purpose of any of the foregoing;

24.6. Abandonment or vacation of the Premises (failure to occupy and operate the Premises for sixty (60) consecutive days after written notice from City to OIAA shall be deemed an abandonment), whether or not OIAA pays Rent or other charges in a timely manner;

24.7. Any Transfer or attempted assignment without the prior written approval of City;

24.8. The material violation or breach by OIAA of any provision of City Rules, provided such breach is not timely cured upon thirty (30) days written notice to OIAA or such longer period as may be reasonably be necessary to cure such default considering the nature thereof, at the City Council's discretion;

24.9. The material violation by OIAA of any written directions of the City Council, provided such violation is not cured within thirty (30) days after written notice by City to OIAA or such longer period as may be reasonably be necessary to cure such violation considering the nature thereof, at the City Council's discretion;

24.10. A material breach by OIAA of the terms of any other tariff imposed by the City or any lease, license, permit, or contract to which OIAA is a party, provided such breach is not cured within fifteen (15) days after written notice by City to OIAA or such longer period as may be reasonably be necessary to cure such violation considering the nature thereof, at the City Council's discretion;

25. **City's Remedies**. Upon the occurrence of an Event of Default by OIAA, City, in addition to any other rights or remedies available to City at law or in equity, which shall be cumulative, the City shall have the right to terminate this Agreement ("Default Termination") and recover from the OIAA:

(i) The worth at the time of award of the unpaid Rent which had been earned at the time of the Default Termination;

(ii) The worth at the time of award of the amount by which (A) the unpaid Rent which would have been earned after the Default Termination until the time of award exceeds (B) the amount of such rental loss that the OIAA proves could have been reasonably avoided;

(iii) The worth at the time of award of the amount by which (A) the unpaid Rent for the balance of the term after the time of award exceeds (B) the amount of such rental loss that the OIAA proves could be reasonably avoided;

(iv) Subject the provisions of Section 28.8, any other amount reasonably necessary to compensate City for all the detriment proximately caused by the OIAA's failure to perform its obligations under the Agreement or which in the ordinary course of things, would be likely to result from OIAA's failure.

(v) All other amounts in addition to or in lieu of those previously set out as may be permitted from time to time by applicable California law.

(vi) As used in Subsections (i) through (ii) of this Section, the "worth at the time of award" is computed by allowing interest at the rate of ten percent (10%) per annum. As used in Subsection (iii) of this Section, the "worth at the time of award" is computed by discounting

that amount at the rate of the Federal Reserve Bank of San Francisco at the time of the award plus one percent (1%). As used in this Section, the term Rent shall mean as defined in this Agreement any and all other payments required by OIAA under this Agreement.

26. **Cumulative Remedies**. City shall also have the right to continue this Agreement, and from time to time, without terminating this Agreement, either:

(i) Recover all Rent and other amounts payable as they become due; or

(ii) Relet the Premises to any party on terms and at the Rent City, in its sole discretion, may deem advisable, all with the right to make necessary and commercially reasonable alterations and repairs to the Premises, at OIAA's sole cost, and apply the proceeds of reletting to the Facility Rent and other amounts payable by OIAA. To the extent that the Facility Rent and other amounts payable by OIAA under this Agreement exceed the amount of the proceeds from reletting, the City may recover the excess from OIAA as and when due.

27. **Waiver of Redemption**. In the event of the lawful exercise by of any one or more of its rights and remedies, City waives any and all rights of redemption or relief from forfeiture under California Civil Code 3275 or the California Code of Civil Procedure Section 1174 or 1179 or granted by or under any present or future Laws, and further releases OIAA, from any and all claims, demands and liabilities by reason of such exercise by the City.

28. **Notices**.

28.1. **Notice to OIAA**. Written notices to OIAA shall be sent to the following address:

Ontario International Airport
Attn: Revenue Management, Airline Affairs & Properties
1923 E. Avion Street
Ontario, CA 91761

with a copy to:

Ontario International Airport Authority
Attn: General Counsel
Gatzke Dillon & Ballance LLP
2762 Gateway Road
Carlsbad, CA 92009

with an electronic copy to: dobusinessatONT@flyontario.com

28.2. **Notice to the City.** Written notices to the City, at the following address:

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

28.3. Delivery of Notices. OIAA or the City may from time to time, by notice, designate a different or additional address within the United States for communications. All notices, except as otherwise provided, may either be delivered personally to CEO with a copy to the General Counsel of OIAA, in the one case, or to City in the other case, or may be deposited in the United States mail, properly addressed with prepaid postage by certified mail, return receipt requested, and shall be effective five (5) days after deposit in the mail. Such notice may also be delivered by a nationally recognized overnight commercial courier service that requires the recipient's signature for delivery and shall be effective one (1) business day after delivery or refusal of service. Any notice or other communication may be given on behalf of OIAA or the City by their respective attorneys, provided that the attorneys represent their capacity as such in the notice or other communication.

29. Miscellaneous.

29.1. Entire Agreement. This Agreement constitutes the entire agreement between the Parties. All prior or contemporaneous agreements, understandings, representations, and statements, whether oral or written, are integrated into this Agreement. No modification, waiver, amendment, or change of this Agreement shall be valid unless it is in writing and signed by the Parties. This Agreement applies only to the Premises and shall not modify the rights or obligations of OIAA or the City under any other contract between them. Except as expressly provided, no third-party is intended to be a beneficiary of the provisions of this Agreement.

29.2. Approvals. All approvals required of City under this Agreement shall not constitute a waiver of or otherwise affect the rights of City and shall not be binding on the City unless approved in writing.

29.3. Waiver of Trial by Jury. OIAA and the City each waive trial by jury in any action, proceeding or counterclaim against the other Party relating to any matters arising out of or in any way connected with this Agreement, the relationship of the City and the OIAA, the OIAA's use of the Premises, or any other claims or any other statutory remedy.

29.4. Survival of Obligations. Those provisions in this Agreement that by their nature are intended to survive expiration or earlier termination of this Agreement, shall so survive.

29.5. Governing Law and Venue. This Agreement shall be construed and enforced in accordance with the Laws of the State of California. The San Bernardino County Superior Court shall have jurisdiction, and shall be the primary venue; however, secondary venues

may also be Los Angeles, Riverside, and Orange Counties for the resolution of any disputes in connection with this Agreement.

29.6. Authority of City. The powers of City under this Agreement, including the power to interpret and implement the provisions of this Agreement, have been delegated to and may be exercised by the City Council, and any notice, election, approval or consent required by City in this Agreement may be given by the Council.

29.7. Authority of OIAA. If OIAA is a corporation, each individual executing this LEASE on behalf of said corporation represents and warrants that he or she is duly authorized to execute and deliver this LEASE on behalf of said corporation, in accordance with the by-laws of said corporation, and that this LEASE is binding upon said corporation.

29.8. Consequential Damages. Neither City or OIAA shall be liable to the other for any consequential damages, such as lost profits or interruption of either Party's business.

29.9. Confidentiality and Public Records. City will make no voluntary announcements or statements to third-parties regarding OIAA's proposed or actual occupancy of the Premises without OIAA's prior written consent, which OIAA may withhold in its sole discretion, and City and its agents and representatives will maintain the confidentiality of all non-public information, if any, that is learned by or disclosed to City with respect to OIAA's business. OIAA acknowledges that all or portions of this Agreement and the materials, communications, data and information related to this Agreement may constitute public records subject to disclosure under the applicable public records Laws, including California Government Code section 6250 *et seq.*, and agrees that City will disclose all or such portions of this Agreement and the materials, communications, data and information related to this Agreement as required by law, provided that City will use its reasonable efforts to (a) give OIAA prior written notice sufficient to allow OIAA to seek a protective order or other appropriate remedy (although City shall fully comply with its obligations under the law to disclose any public records in the absence of timely physical receipt of any valid protective order), (b) disclose only such information as is required under the applicable law as determined under City's sole judgment and discretion, (c) reasonably cooperate with OIAA in responding to any such records request, and (d) limit disclosure, refuse to disclose, and redact and/or omit portions of materials to the maximum extent permitted by applicable law as determined under City's sole judgment and discretion.

29.10. Relationship Of Parties. The relationship of the parties hereto is that of OIAA and City , and it is expressly understood and agreed that City does not in any way or for any purpose become a partner of the OIAA in the conduct of the OIAA's business or otherwise, or a joint venturer with the City; and the provisions of this Agreement and the agreements relating to rent payable hereunder are included solely for the purpose of providing a method by which rental payments are to be measured and ascertained. This Agreement is intended for the sole benefit of the parties hereto, and, unless otherwise provided herein, or by law,

no rights are created, or are intended to be created, for the benefit of, or enforceable by, any third parties.

[SIGNATURES FOLLOW ON NEXT PAGE]

ONTARIO INTERNATIONAL AIRPORT AUTHORITY, A CALIFORNIA JOINT POWERS AUTHORITY

By:_____
Atif Elkadi
Chief Executive Officer

Date:_____

CITY OF ONTARIO, A CALIFORNIA MUNICIPAL CORPORATION

By:_____

Print Name:_____

Title:_____

Date:_____

Exhibit "A"

Basic Information Schedule

Tenant:

Ontario International Airport Authority (OIAA), hereby representing as Tenant is an existing entity duly qualified to do business in the State of California.

Premises Location:

The Premises is comprised of an industrial building which is generally identified by the City of Ontario as the Oakmont Building, located at 1236 Airport Drive, Ontario, CA 91761, as shown on Exhibit B.

Location and Description	Square feet
Landside Cost Center	
Cargo Operations Building	127,000

Term:

The **Effective Date** of this Agreement is October 15, 2024.

The **Commencement Date** of the Term of this Agreement the Date the City issues the Certificate of Occupancy.

The **Rent Commencement Date** of this Agreement is the Date the City issues the Certificate of Occupancy

The **Ending Date** is Five (5) year from the Commencement Date.

The Agreement is a binding obligation of the parties hereto as of the Effective Date; however, the Term of this Agreement will commence on the Commencement Date and shall extend until the Ending Date unless sooner terminated as provided in the Agreement.

The Parties shall have the option to extend the Term with one, five-year extension options. Landlord may grant Tenant such extension option(s), however any such extension shall be in writing and be mutually agreed upon by Landlord and Tenant.

Tenant Improvements:

Tenant improvements to be approved prior with Landlord consent and paid by the Tenant for their intended use.

Premises Rent for Fiscal Year ending June 30th, 2025:

Tenant agrees to pay to Landlord Rent for use of the Premises during the Term, as set forth in the Rent tables below for the applicable agreement years. The Premises Rent shall be adjusted in accordance with the Premises Rent Adjustment as set forth below.

Location and Description	**Square Feet**	**Annual Rate**	**Annual Rent (US$)**	**Monthly Rent (US$)**
Landside Cost Center				
Cargo Operations Building	127,000	$14.05	$1,784,350.00	$148,695.83
Total Rent			$1,784,350.00	$148,695.83

Premises Rent Adjustments:

Consumer Price Index ("CPI") Adjustment. On July 1 of each calendar year during the Term of this Agreement ("Annual CPI Adjustment Date"), City may perform an adjustment calculation and adjust the Rent set forth herein based on the Consumer Price Index formula set forth below in this Exhibit A ("Annual CPI Adjustment"). Tenant agrees to pay such increased Rent based on such Annual CPI Adjustment as of July 1 of such calendar year ("New Rent").

Consumer Price Index Annual Adjustment Formula:

The Annual CPI Adjustment will be based on the percentage increase over the prior year, if any, in the Consumer Price Index, All Items in Riverside- San Bernardino-Ontatio, CA, 1982-84=100 – CUUR0000SA0(the "CPI-U"), as published by the U.S. Department of Labor, Bureau of Labor Statistics ("B.L.S."), or its successor as follows:

The Rent shall be multiplied by the CPI-U for the month of March immediately preceding the Annual CPI Adjustment Date (called the "Adjustment Index"), divided by the said CPI-U as it stood in that month of the prior year (called the "Base Index") and the result shall be the "Annual CPI Adjustment" to be applied effective on the Annual CPI Adjustment Date. The Annual CPI Adjustment shall not be less than the preceding year's Rent, but shall not exceed an increase of three percent (3%).

The formula for calculation of Annual CPI Adjustment commencing on each Annual CPI Adjustment Date shall be as follows:

$$\text{Adjusted Monthly Rent} = \text{Monthly Rent} \times \frac{\text{Adjustment Index}}{\text{Base Index}}$$

If the B.L.S. should discontinue the preparation or publication of the CPI-U, and if no transposition table is available, then OIAA shall adopt an alternative basis at its sole discretion for adjusting and revising the Rent each year to adjust the Rent according to any increase in commodity consumer prices over the prior year.

In the event adjustment of the Rent is not completed prior to an Annual CPI Adjustment Date, Tenant shall continue to pay the Rent set for the preceding period, at the intervals and in the manner fixed for

such preceding period, and if such Rent is thereafter fixed in a different amount, such New Rent shall take effect retroactively to the Annual CPI Adjustment Date. Tenant shall immediately pay to City that sum, if any, which has accrued as a result of such retroactive application.

Rent Obligation of Tenant:

All monetary obligations of Tenant arising from this Agreement or the City/OIAA relationship between the parties hereto or their successors in interest, shall be considered as Rent, including, without limitation, Premises Rent (including periodic adjustments thereto), taxes, insurance costs, maintenance costs, utilities, late charges, and interest.

Permitted Use ("Activities"):

The Activities include receiving and clearance of international cargo and related activities and services to support such operations at the Airport, or any other uses permitted under the zoning applicable for the Premises related to aviation/aeronautical, international cargo processing, and those activities necessary to support it.

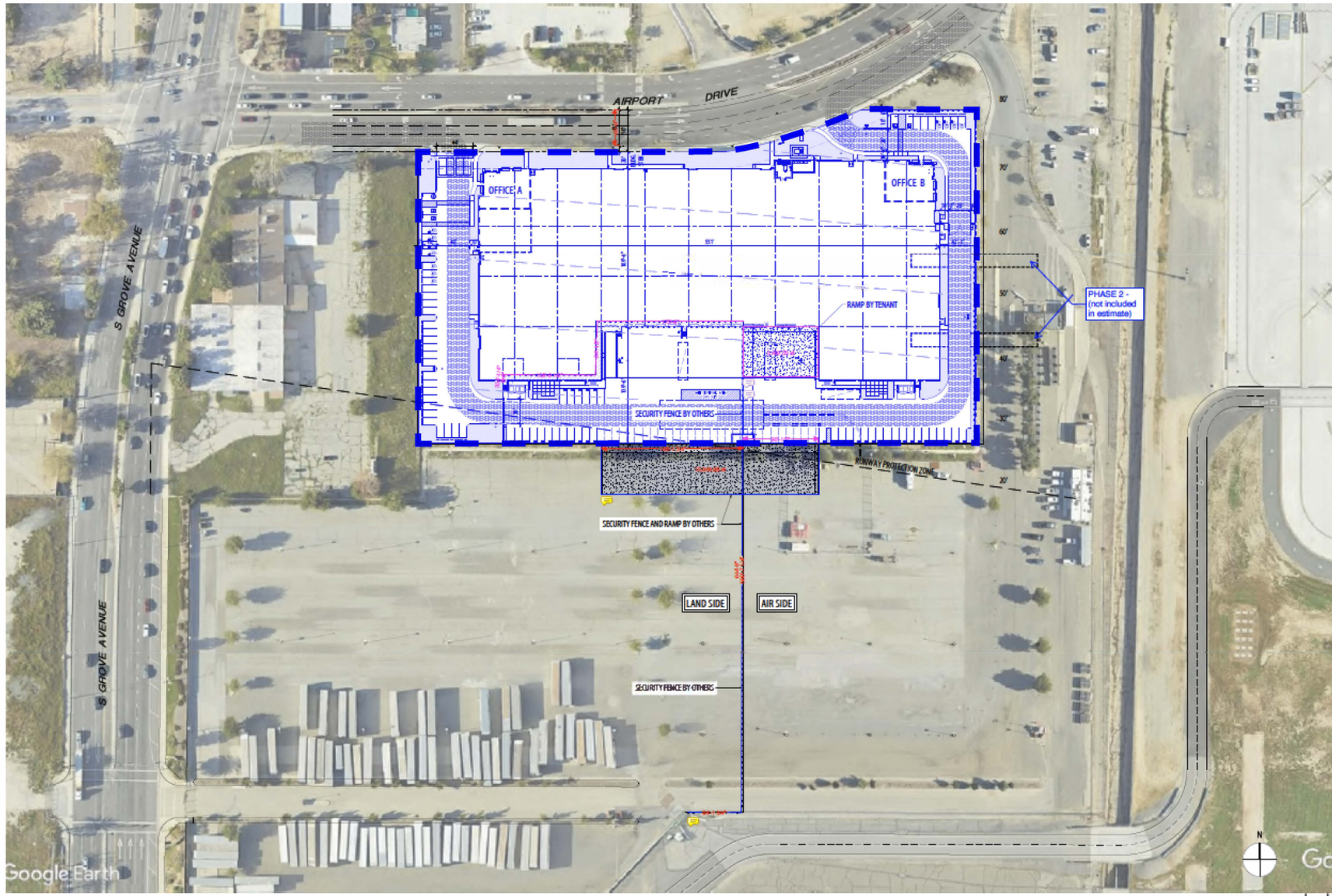
Tenant Address for Notices:

Ontario International Airport Authority
Attn: Airline Affairs & Properties
1923 E. Avion Street
Ontario, CA 91761

Email: dobusinessatONT@flyontario.com

Exhibit “B”

Layout on Following Page



1236 AIRPORT DRIVE WAREHOUSE - ONTARIO, CA

LEASED PREMISES

LONGO CUSTOMS SERVICES

SCHEME A

CONCEPTUAL SITE PLAN

GAA ARCHITECTS

8811 Research Drive, Suite 200, Irvine, CA 92618
T 949.474.1775
www.GAArchitects.com

Exhibit "C"

INSURANCE REQUIREMENTS

Tenant shall, at a minimum, provide, pay for at its sole cost and expense, and maintain in force at all times during the term of this Agreement (unless otherwise provided), at minimum, the insurance coverages set forth below. Such policy or policies shall be issued by companies authorized to do business in the State of California. The limits established herein are minimums and Tenant may carry higher limits at its option. The City does not warrant that the limits set herein will fully protect Tenant in all events and for all occurrences.

1. **Non-Airfield Coverage.**

1.1. **Commercial General Liability.** Commercial General Liability insurance policy with minimum limits of Two Million Dollars ($2,000,000.00) per occurrence combined single limit for Bodily Injury Liability and Property Damage Liability and Four Million Dollars ($4,000,000.00) aggregate with a carrier having an A.M. Best rating of no less than A-VII. Coverage must be afforded on a form no more restrictive than the latest edition of the Comprehensive General Liability policy, without restrictive endorsements, as filed by the Insurance Services Office and must include:

a. Premises and/or Operations.

b. Independent Contractors or Owners and Contractors Protective Liability coverage, which includes liability coverage for operations performed for the named insured by independent and/or subcontractors hired and acts or omissions of the named insured in connection with their general supervision of suchoperations.

c. Products and/or Completed Operations for Construction Projects. Tenant shall maintain in force until at least two (2) years after completion of all work required under the Contract, coverage for Products and Completed operations, including Broad Form Property Damage. Tenant shall provide such certificates of insurance or endorsements evidencing this insurance coverage to City for two (2) years after completion of all work required under a Contract.

d. Broad Form Property Damage.

e. Broad Form Contractual Coverage applicable to this specific contract, including any hold harmless and/or indemnification agreement.

f. Personal Injury Coverage with Employee and Contractual Exclusions removed with minimum limits of coverage equal to those required for Bodily Injury Liability and Property Damage Liability.

1.2. **Commercial Automobile Liability Insurance.** If applicable, shall be provided with minimum limits of One Million Dollars ($1,000,000.00) for non-airside circulation per occurrence, combined single limit for Bodily Injury Liability and Property Damage Liability. Coverage must be afforded on a form no more restrictive than the latest edition of

the Business Automobile Liability Policy, as filed by the Insurance Services Office and must include:

a. Owned vehicles.
b. Hired and Non-owned vehicles.
c. Employers' Non-ownership.

2. **Workers' Compensation Insurance.** Workers' Compensation Insurance shall be provided to apply for all employees in compliance with the "Workers' Compensation Law" of the State of California and all Applicable Laws and Regulations. In addition, the policy(ies) must include: Employers' Liability with a limit of Five Hundred Thousand Dollars ($1,000,000.00) each accident and if any operations are to be undertaken on or about navigable waters, coverage must be included for the U.S. Longshoremen & Harbor Workers Act and Jones Act. A waiver ofsubrogation in favor of City shall apply.

3. **All-Risk Property Insurance** shall be provided for physical damage to the property of Tenant and to the Assigned Areas and other improvements, with coverage for a minimum of one hundred percent (100%) of the replacement value of the property. For All Other Perils, the deductible may not exceed Ten Thousand Dollars ($10,000.00) per occurrence except Wind and Flood. For Wind and Flood, the deductible should not exceed five percent (5%) of property value. Any deviations from this will be reviewed and approved by the City. The City shall be a loss payee or an additional insured for this coverage and shall be provided with a thirty (30) days prior written notice of cancellation and/or expiration provision.

4. **All Coverages.**

4.1. The City is to be expressly included as an "Additional Insured" with respect to liability arising out of operations performed for City by or on behalf of Tenant or acts or omissions of Tenant in connection with general supervision of such operation.

Separate endorsements must be provided and state the following:

Additional Insured Clause. "It is further agreed such insurance as is afforded by this policy shall also apply to the City, its officers, directors, agents, employees, affiliates, partners, volunteers, representatives, and the Commission; as additional insureds but only with respect to legal liability or claims caused by, arising out of, or resulting directly, or indirectly from the operations of the named insured."

Primary Insurance Clause. "It is further agreed that such insurance as is afforded by this policy for the benefit of the City, its officers, directors, agents, employees, affiliates, partners, volunteers, representatives, and Commission, shall be primary insurance as respects any claim, loss or liability arising directly or indirectly from the named insured's operations, and any other insurance shall be excess and non-contributory with the insurance provided hereunder."

Exhibit "D"

If applicable, the provisions of this Exhibit shall apply to Tenant's performance hereunder.

D.1. <u>Nondiscrimination Requirements; Title VI List of Pertinent Nondiscrimination Acts and Authorities.</u>

During the performance of this contract, the Tenant, for itself, its assignees, and successors in interest agrees to comply with the following non-discrimination statutes and authorities; including but not limited to:

- Title VI of the Civil Rights Act of 1964 (42 USC § 2000d et seq., 78 stat. 252) (prohibits discrimination on the basis of race, color, national origin);
- 49 CFR part 21 (Non-discrimination in Federally-assisted programs of the Department of Transportation—Effectuation of Title VI of the Civil Rights Act of 1964);
- The Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, (42 USC § 4601) (prohibits unfair treatment of persons displaced or whose property has been acquired because of Federal or Federal-aid programs and projects);
- Section 504 of the Rehabilitation Act of 1973 (29 USC § 794 et seq.), as amended (prohibits discrimination on the basis of disability); and 49 CFR part 27;
- The Age Discrimination Act of 1975, as amended (42 USC § 6101 et seq.) (prohibits discrimination on the basis of age);
- Airport and Airway Improvement Act of 1982 (49 USC § 471, Section 47123), as amended (prohibits discrimination based on race, creed, color, national origin, or sex);
- The Civil Rights Restoration Act of 1987 (PL 100-209) (broadened the scope, coverage and applicability of Title VI of the Civil Rights Act of 1964, the Age Discrimination Act of 1975 and Section 504 of the Rehabilitation Act of 1973, by expanding the definition of the terms "programs or activities" to include all of the programs or activities of the Federal-aid recipients, subrecipients and contractors, whether such programs or activities are Federally funded or not);
- Titles II and III of the Americans with Disabilities Act of 1990, which prohibit discrimination on the basis of disability in the operation of public entities, public and private transportation systems, places of public accommodation, and certain testing entities (42 USC §§ 12131 – 12189) as implemented by U.S. Department of Transportation regulations at 49 CFR parts 37 and 38;
- The Federal Aviation Administration's Nondiscrimination statute (49 USC § 47123) (prohibits discrimination on the basis of race, color, national origin, and sex);
- Executive Order 12898, Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations, which ensures nondiscrimination against minority populations by discouraging programs, policies, and activities with disproportionately high and adverse human health or environmental effects on minority and low-income populations;
- Executive Order 13166, Improving Access to Services for Persons with Limited English Proficiency, and resulting agency guidance, national origin discrimination includes discrimination because of limited English proficiency (LEP). To ensure compliance with

Title VI, you must take reasonable steps to ensure that LEP persons have meaningful access to your programs (70 Fed. Reg. at 74087 to 74100);

- Title IX of the Education Amendments of 1972, as amended, which prohibits you from discriminating because of sex in education programs or activities (20 USC 1681 et seq).

D.2. General Civil Rights Provision. Tenant agrees to comply with pertinent statutes, Executive Orders and such rules as are promulgated to ensure that no person shall, on the grounds of race, creed, color, national origin, sex, age, or disability be excluded from participating in any activity conducted with or benefiting from Federal assistance. If the Tenant transfers its obligation to another, the transferee is obligated in the same manner as the Tenant. This provision obligates Tenant for the period during which the property is owned, used or possessed by Tenant and the airport remains obligated to the Federal Aviation Administration. This provision is in addition to that required by Title VI of the Civil Rights Act of 1964.

D.3. Compliance with Nondiscrimination Requirements.

During the performance of this contract, the Tenant, for itself, its assignees, and successors in interest, agrees as follows:

1. Compliance with Regulations: The Tenant (hereinafter includes consultants) will comply with the Title VI List of Pertinent Nondiscrimination Acts and Authorities, as they may be amended from time to time, which are herein incorporated by reference and made a part of this contract.

2. Nondiscrimination: The Tenant, with regard to the work performed by it during the contract, will not discriminate on the grounds of race, color, or national origin in the selection and retention of subcontractors, including procurements of materials and leases of equipment. The Tenant will not participate directly or indirectly in the discrimination prohibited by the Nondiscrimination Acts and Authorities, including employment practices when the contract covers any activity, project, or program set forth in Appendix B of 49 CFR part 21.

3. Solicitations for Subcontracts, including Procurements of Materials and Equipment: In all solicitations, either by competitive bidding or negotiation made by the Tenant for work to be performed under a subcontract, including procurements of materials, or leases of equipment, each potential subcontractor or supplier will be notified by the Tenant of the contractor's obligations regarding Nondiscrimination Acts and Authorities on the grounds of race, color, or national origin.

4. Information and Reports: The Tenant will provide all information and reports required by the Acts, the Regulations, and directives issued pursuant thereto and will permit access to its books, records, accounts, other sources of information, and its facilities as may be determined by the sponsor or the Federal Aviation Administration to be pertinent to ascertain compliance with such Nondiscrimination Acts and Authorities and instructions. Where any information required of a contractor is in the exclusive possession of another

who fails or refuses to furnish the information, the Tenant will so certify to the sponsor or the Federal Aviation Administration, as appropriate, and will set forth what efforts it has made to obtain the information.

5. Sanctions for Noncompliance: In the event of a Tenant's noncompliance with the non-discrimination provisions of this contract, the sponsor will impose such contract sanctions as it or the Federal Aviation Administration may determine to be appropriate, including, but not limited to:

a. Withholding payments to the Tenant under the contract until the it complies; and/or

b. Cancelling, terminating, or suspending the contract, in whole or in part.

6. Incorporation of Provisions: The Tenant will include the provisions of paragraphs one through six in every subcontract, including procurements of materials and leases of equipment, unless exempt by the Acts, the Regulations, and directives issued pursuant thereto. The Tenant will take action with respect to any subcontract or procurement as the sponsor or the Federal Aviation Administration may direct as a means of enforcing such provisions including sanctions for noncompliance. Provided, that if the Tenant becomes involved in, or is threatened with litigation by a subcontractor, or supplier because of such direction, the Tenant may request the sponsor to enter into any litigation to protect the interests of the sponsor. In addition, the Tenant may request the United States to enter into the litigation to protect the interests of the United States.

D.4. Title VI of the Civil Rights Act - Construction/Use/Access to Real Property.

Tenant for itself, its personal representatives, successors in interest, and assigns, as a part of the consideration hereof, does hereby covenant and agree as a covenant running with the land that (A) no person on the ground of race, color, or national origin, will be excluded from participation in, denied the benefits of, or be otherwise subjected to discrimination in the use of said facilities, (B) that in the construction of any improvements on, over, or under such land, and the furnishing of services thereon, no person on the ground of race, color, or national origin, will be excluded from participation in, denied the benefits of, or otherwise be subjected to discrimination, (C) that Tenant will use the premises in compliance with all other requirements imposed by or pursuant to the List of discrimination Acts And Authorities.

With respect to the Agreement, in the event of breach of any of the above nondiscrimination covenants, Authority will have the right to terminate the Agreement and to enter or re-enter and repossess said land and the facilities thereon, and hold the same as if said the Agreement had never been made or issued.

CITY OF ONTARIO *Agenda Report* **October 15, 2024**	**SECTION:** **CONSENT CALENDAR**
Department: Broadband Operations Prepared By: Judy Witrago Staff Member Presenting: Jimmy Chang, Broadband General Manager Approved By:	Submitted To: Council/OHA Approved: _____ Continued To: _____ Denied: _____ Item No: 16

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

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

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

FISCAL IMPACT: There is no direct fiscal impact with the approval of this vendor list. The designation of pre-authorized vendors to provide parts and equipment does not affect appropriations and does not commit the City to any specific level of future expenditures with these vendors. Expenditures for each vendor, and in total for each fiscal year, will not exceed the Broadband Department's appropriations limit established by the City Council.

BACKGROUND & ANALYSIS: The City Council adopted the Fiber Optics Master Plan in 2013 to develop a citywide fiber optics network. Construction began aggressively in 2015, resulting in the installation of over 250 miles of fiber optic cable throughout the Ontario Ranch Community and along key corridors within the City. OntarioNet, the City-owned internet service provider, now delivers fiber-optic internet services to more than 1,700 residential and commercial customers. Additionally, over 25 City facilities, 120 traffic signal cabinets, and a large segment of Real Time Information Center cameras are connected to the City's fiber-based broadband services, enabling connectivity across the City's advanced infrastructure.

The City has standardized the use of many directly sold specialized parts, materials, and equipment to support OntarioNet's 24x7 operations. The electronics and materials procured through Calix, Clearfield, Myers Power Products, Newbasis West LLC, and MSI Tec, Inc. provide compatibility and continuity for network architecture and maintenance. Without such uniformity in infrastructure equipment, OntarioNet is at risk of impacting the network health and performance and, ultimately, the reliability of services for its residential and business customers. Furthermore, purchasing equipment directly eliminates costly third-party markups and reduces shipping delivery schedules.

Since the inception of OntarioNet, specific vendors, such as Communication Supply Corporation, Power & Telephone Supply Company, Sidepath, Inc., and NTT America, Inc., have consistently provided competitive pricing and quality of service, prompt turnaround times, and responsive customer support. When direct procurement is not possible, the City's standard purchasing process is followed.

The maximum spending limit over five years coincides with the City of Ontario's purchasing policy, which requires Council approval for procurement from a single vendor over $150,000. The thresholds are not expected to be exceeded as various contingencies were factored into the calculation. Due to the specialized nature of these parts and equipment, as well as the lead time required to sustain OntarioNet's operations as the premier internet service provider in Ontario, it is recommended that the City establish a list of pre-authorized vendors.

Sole Source Vendor	**Pre-Approval Requested**
AFL	$100,000
Calix	$3,500,000
Clearfield	$100,000
Communication Supply Corporation	$3,000,000
Myers Power Products	$50,000
Newbasis West, LLC	$600,000
NTT America, Inc.	$500,000
Sidepath	$1,000,000
Essential Services Vendor	**Pre-Approval Requested**
Power & Telephone Supply Company	$100,000
MSI Tec, Inc.	$400,000

CITY OF ONTARIO *Agenda Report* **October 15, 2024**	**SECTION:** **CONSENT CALENDAR**
Department: Police Department Prepared By: Celeste Owens Staff Member Presenting: Mike Lorenz, Chief of Police Approved By:	Submitted To: Council/OHA Approved: _____ Continued To: _____ Denied: _____ Item No: 17

SUBJECT: **A SPECIAL SERVICES AGREEMENT WITH SAN BERNARDINO COUNTY FOR WIDE AREA NETWORK AND GENERAL INNOVATION AND TECHNOLOGY DEPARTMENT SERVICES.**

RECOMMENDATION: That the City Council authorize the City Manager or his designee to execute a Special Services Agreement with San Bernardino County, with its principal place of business in San Bernardino, California, for Wide Area Network and General Innovation and Technology Department Services for a total contract not-to-exceed amount of $9,969,488.

THE FOLLOWING COUNCIL GOALS ARE BEING ACHIEVED:
Maintain the Current High Level of Public Safety

FISCAL IMPACT: The contract has a not to exceed amount of $9,969,488 over five years. Appropriations of $1,339,697 are included in the fiscal year 2024-25 Adopted Budget in the Information Technology Fund for annual services with San Bernardino County for Wide Area Network and General Innovation and Technology Department Services. Appropriations for future fiscal years will be included in the respective fiscal years' budgets for City Council consideration and approval. The not-to-exceed threshold includes a yearly 2% increase to mitigate the need for a contract revision due to increased rates over the life of the agreement and the needs for services.

BACKGROUND & ANALYSIS: San Bernardino County provides online access to specific County managed computer systems it possesses through a Wide Area Network (WAN), an integrated electronic network that provides countywide data, voice, and video communications. WAN provides County departments the ability to communicate with each other and furnishes reliable access to data housed in County managed information systems. Services include WAN connection, as well as equipment and configuration of customer sites, overall circuit maintenance including routers, 24 hours per day, seven days per week, with a two-hour response time. WAN Services are a crucial element in Police telecommunications and Law Enforcement operations.

City Staff recommends entering into a new five-year agreement with San Bernardino County for Wide Area Network and General Innovation and Technology Department Services to maintain the current high level of Public Safety.

THE INFORMATION IN THIS BOX IS NOT A PART OF THE CONTRACT AND IS FOR COUNTY USE ONLY

Contract Number

ITD-24031

SAP Number

N/A

Innovation and Technology Department

Department Contract Representative	Jeremiah Thomas
Telephone Number	(909) 388-0641
Customer	City of Ontario Police Department (6000-00DY)
Customer Representative	Melissa Sowizdrzal-Morgan
Telephone Number	(909) 395-2000
Contract Term	8/1/2024 – 7/31/2029
Original Contract Amount	Based on Actual Usage
Amendment Amount	N/A
Total Contract Amount	Based on Actual Usage
Cost Center	Varies

INFORMATION TECHNOLOGY SERVICE REVENUE CONTRACT

This CONTRACT is entered into in the State of California by and between San Bernardino County, hereinafter called, “County”, **and** City of Ontario Police Department, hereinafter called “Customer”.

Name
City of Ontario Police Department

Address
2500 S. Archibald Avenue

Ontario, CA 91761

Telephone
(909) 395 -2000

Federal ID No. or Social Security No.

IT IS HEREBY AGREED AS FOLLOWS*:*

A. CONTRACTED SERVICES (Select all that apply):

☒ **General ITD Services (Attachment A)**
Defined as all services contained in Attachment A "ITD Rate Sheet – External Customers" with exception to Public Safety Communication Services.

☐ **Public Safety Communications Services (Attachment B)**
Defined under Public Safety Communication Services in Attachment B "ITD Rate Sheet – External Customers".

☒ **Wide Area Network (WAN) Services (Attachment C)**
Defined in Attachment C "Wide Area Network Services".

B. PROVISION OF SERVICES

This is the County standard revenue contract to provide information technology services, hereinafter, "Services," to Customer by the County Innovation and Technology Department, hereinafter, "ITD". Customer understands that County may elect to have other vendors provide similar professional services under other contracts.

All Services available under this Contract are listed in full in the Attachments and are detailed by Service name, Service description, rate, and charge measurement as applicable and as identified in the Attachments.

Services are initiated at Customer's request, subject to ITD's acceptance, and consist of the following types of charges, as further set forth in the Attachments:

B.1 Per item; one-time charge as requested.
B.2 Per month; per unit charge ongoing until Customer submits a request to cancel.
B.3 Per hour; per work order, project, or quote.

C. CUSTOMER RESPONSIBILITIES

Customer will:

C.1 Determine the Services needed, including any adjustments to ongoing Services.

C.2 Initiate or cancel any Services via submission of a Help Desk Ticket. Contact County Help Desk by calling: 909-884-4884 or isdhelpdesk@isd.sbcounty.gov (email for non-urgent requests only).

C.3 Promptly inform County, in writing, of any pending changes in programs/funding applicable to Services provided herein.

D. COUNTY RESPONSIBILITIES

County will:

D.1 Provide the Services requested by Customer, subject to ITD's approval, and in accordance with established work schedules and County Board of Supervisor (Board) approved service rates in effect at the time Service is provided.

D.2 Perform the Services in a workmanlike manner, but County assumes no liability for failure to provide or delay in providing Services under this Contract.

D.3 Furnish the necessary equipment and personnel to perform the Services, but County assumes no liability for equipment failure or adverse consequences cause by such failed equipment.

E. GENERAL CONTRACT REQUIREMENTS

E.1 Contract Amendments

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

E.2 Contract Assignability

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

E.3 Permits

Customer is responsible for obtaining and paying any costs of all permits, licenses or approvals by any regulatory bodies having jurisdiction over the uses authorized herein, as appropriate.

E.4 Attorney's Fees and Costs

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

E.5 Change of Address

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

E.6 Choice of Law

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

E.7 Confidentiality

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

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

For the purposes of this provision and consistent with California Civil Code Section 1798.29, PII, is any information that can be used to distinguish or trace an individual's identity, for example, any combination of name, social security number, date and place of birth, mother's maiden name, or biometric records; and any other information that is linked or linkable to an individual, such as medical, educational, financial, and employment information.

E.8 Primary Point of Contact

Customer will designate an individual to serve as the primary point of contact for the Contract. Customer shall not change the primary contact without prior written notice to the County. Customer will also designate a back-up point of contact in the event the primary contact is not available.

E.9 Contract Authorization

Customer warrants and represents that the individual signing this Contract is a properly authorized representative of the Customer and has the full power and authority to enter into this Contract on the Customer's behalf.

E.10 County Representative

The County Chief Information Officer or his/her designee shall represent the County in all matters pertaining to the Services to be rendered under this Contract, including termination and assignment of this Contract, and shall be the final authority in all matters pertaining to the Services/Scope of Work by County.

E.11 Duration of Terms

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

E.12 Legality and Severability

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

E.13 Mutual Covenants

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

E.14 Relationship of the Parties

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

E.15 Release of Information

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

E.16 Strict Performance

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

E.17 Subpoena

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

E.18 Termination for Convenience

The County and the Customer each reserve the right to terminate the Contract, for any reason, with a thirty (30) day written notice of termination. Such termination may include all or part of the Services provided hereunder. Upon such termination, payment will be made to the County for Services rendered and expenses reasonably incurred prior to the effective date of termination. Upon receipt of termination notice County shall promptly discontinue Services unless the notice directs otherwise.

E.19 Contract Exclusivity

This is not an exclusive Contract. Customer reserves the right to enter into a contract with other contractors for the same or similar services. The Customer does not guarantee or represent that

the County will be permitted to perform any minimum amount of work, or receive compensation other than on a per order basis, under the terms of this Contract.

E.20 Information Dispute Resolution

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

E.21 Venue

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

F. TERM OF CONTRACT

This Contract is effective as of August 1, 2024 (Effective Date) and remains in effect for a period of five (5) years (July 31, 2029), unless terminated earlier in accordance with provisions of this Contract.

G. TERMINATION OR SUSPENSION OF SERVICES

G.1 Immediate Suspension, Uncured Termination

The County may, in its sole discretion and upon reasonable notice, immediately suspend all or part of the Services for material breach of any of the conditions identified below. The County will provide Customer a written notice of material breach and allow the Customer 30 days to correct the condition giving rise to such material breach. If the Customer fails to remedy the breach within the 30-day cure period, the County may immediately terminate the Services upon reasonable notice.

G.1.1 Customer shall comply with all applicable laws, statutes, ordinances, administrative orders, rules or regulations relating to its duties, obligations and performance under the terms of the Contract. Customer shall ensure that it has all necessary licenses and permits required by the laws of the United States, State of California, County, and all other appropriate governmental agencies, and agrees to maintain these licenses and permits in effect for the duration of the Agreement. Customer shall notify County immediately of loss or suspension of any such required licenses and permits.

G.1.2 Customer represents and warrants to County that (i) the information Customer provides in connection with registration for the Services is accurate and complete; (ii) Customer's use of the System is not illegal, defamatory, malicious, harmful, or discriminatory based on race, sex, religion, nationality, disability, sexual orientation, or age; (iii) Customer's use of the Services complies with all applicable laws, rules and regulations; (iv) Customer has obtained all consents and licenses required to legally access and use the System; (v) the execution and delivery of this Agreement will not conflict with, or violate any provision of, Customer's charter, by-laws or other governing documents; and (vi) Customer has otherwise taken all necessary steps to legally execute this Agreement.

G.1.3 Customer agrees to abide by all existing and future security practices, policies and protocols established by the County, which the County has established to ensure the integrity of the System. Customer understands that the County closely monitors the System and may perform periodic security audits to provide insight into any potential abnormalities that may impact ensuring confidentiality, integrity, and availability.

G.1.4 Customer agrees to implement measures that are reasonable for Customer's use of the System to prevent interference with the operation of the System. **NEITHER COUNTY NOR ANY OF ITS EMPLOYEES, AGENTS, REPRESENTATIVES, SERVICE SUPPLIERS OR LICENSORS WILL BE LIABLE FOR UNAUTHORIZED ACCESS TO, MISUSE OF, CUSTOMER'S INABILITY TO ACCESS, OR DAMAGE TO THE SYSTEM OR CUSTOMER'S FIELD EQUIPMENT, EXCEPT TO THE EXTENT CAUSED BY COUNTY'S NEGLIGENCE OR INTENTIONAL MISCONDUCT, UNLESS AND ONLY TO THE EXTENT THAT THIS DISCLAIMER IS PROHIBITED BY APPLICABLE LAW.**

G.2 Immediate Termination

The County may, in its sole discretion and upon reasonable notice, immediately suspend or terminate all or part of the Services for any of the conditions identified below. The County will promptly provide Customer a written notice of termination or suspension of Services to Customer.

G.2.1 County discovers that Customer provided false registration information, or that Customer lacked the capacity to enter into this Agreement at the time of its consummation;

G.2.2 County determines, in its sole and reasonable discretion, that Customer's use of the Services poses a threat or an adverse effect to the security, privacy, or performance of the System or to any of County's other users or suppliers;

G.2.3 County determines, in its sole and reasonable discretion, that Customer's use of the Services is illegal;

G.2.4 County reasonably believes that Customer's use of the Services has or will subject County to civil or criminal liability;

G.2.5 Customer fails to make any payment when due and fails to make payment ten (10) days after being provided written notice thereof; or

G.2.6 Customer materially breaches any of the other material terms and conditions in this Agreement.

H. FISCAL PROVISIONS

H.1 There is no minimum or maximum amount of payment under this Contract.

H.2 Services are charged equitably to all customers in accordance with State Controller's Handbook of Cost Plan Procedures for California Counties.

H.3 Charges will be based on actual usage at the rates effective at the time Services are rendered (see Attachment A "ITD Rate Sheet – External Customers" and Attachment C "Wide Area Network Services", if applicable). Rates are reviewed and subject to change annually based on the cost to provide services to Customers and are effective July 1st of each year. Rates are also subject to change throughout the year via a mid-year rate change, if deemed appropriate based on the cost to provide services to Customers being significantly higher or lower than anticipated during the annual review. County will not amend this Contract due to rate changes or changes in usage amounts by Customer. Attachment A includes the list of County service rates effective at the time this Contract is entered into. County will attempt to provide at least thirty (30) days advance written notice of any rate change, which will be sent to Customer at the following address:

Melissa Sowizdrzal-Morgan
ATTN: Office Specialist
2500 S. Archibald Avenue, Ontario, CA 91761

H.4 Services will be billed on a monthly basis for actual expenses incurred and claimed by ITD for the preceding month.

H.4.1 For Customers that use the County's Enterprise Financial Management System:

Monthly charges will be handled by an automated transfer processed by ITD via the County's Enterprise Financial Management System. A copy of the billing statement can be accessed via the ITD Billing System by Customer, provided that Customer has the necessary permission on the County's network.

H.4.2 For Customers that do not use the County's Enterprise Finance Management System:

County will mail an invoice on a monthly basis starting on the Effective Date of this Contract, or starting on the installation or implementation date, if applicable. Payment shall be due sixty (60) days from date of invoice.

Payment can be made by check or electronic funds transfer (EFT). Checks shall be made payable to San Bernardino County. Customers requesting to make payments to County via electronic funds transfer (EFT) directly deposited into the County's designated bank account shall provide County with instructions to process EFT payments.

Payment address is:

Innovation and Technology Department
670 E. Gilbert Street, First Floor
San Bernardino, CA 92415-0915
Attn: Administration Services

I. DEFAULT

If the Customer does not make timely payment of amounts due under this Contract or materially breaches any term or condition of this Contract, County may declare immediately due and payable the entire unpaid amount, plus all other amounts due hereunder, less any unearned charges.

J. INDEMNIFICATION

The County agrees to defend and indemnify the Customer and its authorized officers, employees, agents and volunteers from any and all claims, actions, losses, damages, and/or liability arising solely out of the acts, errors or omissions of County in the performance of this Agreement, except where such indemnification is prohibited by law. At its sole discretion, Customer may participate at its own expense in the defense of any claim, action or proceeding, but such participation shall not relieve County of any obligation imposed by this Contract. Customer shall notify County promptly of any claim, action or proceeding and cooperate fully in the defense. Customer hereby agrees to defend and indemnify the County, its agents, officers and employees from any claim, action, or proceeding against County, arising solely out of the acts or omissions of Customer in the performance of this Agreement. At its sole discretion, County may participate at its own expense in the defense of any such claim, action or proceeding, but such participation shall not relieve Customer of any obligation imposed by this Contract. County shall notify Customer promptly of any claim, action or proceeding and cooperate fully in the defense. In the event that County and/or Customer are determined to be comparatively at fault for any claim, action, loss or damage that results from their respective obligations under this Agreement, County and/or Customer shall indemnify the other to the extent of its comparative fault.

K. INSURANCE

County is an authorized self-insured public entity for purposes of General Liability and warrants that through its program of self-insurance, it has adequate coverage or resources to protect against liabilities arising out of the performance of the terms, conditions or obligations of this Agreement.

L. NOTICES

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

San Bernardino County Innovation and Technology Department	City of Ontario Police Department
670 E. Gilbert Street, First Floor San Bernardino, CA 92415-0915	2500 S. Archibald Avenue Ontario, CA 91761

Attn: Administration Services	Attn: Melissa Sowizdrzal-Morgan, Office Specialist

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

M. FORCE MAJEURE

Except for payment obligations and as otherwise provided herein, when either party has knowledge that any actual or potential situation is delaying or threatens to delay the timely performance of this Contract, that party shall, within twenty-four (24) hours, give notice thereof, including all relevant information with respect thereto, to the other party. County shall not be held liable for any delay or failure in performance of any part of this Contract from any cause beyond its control and without its fault or negligence, such as acts of God, acts of civil or military authority, government regulations, strikes, labor disputes, embargoes, epidemics, war, terrorist acts, riots, insurrections, fire, explosions, earthquakes, nuclear accidents, floods, power blackouts, brownouts, or surges, volcanic action, other major environmental disturbances, unusually severe weather conditions, inability to secure product or services of other persons or transportation facilities, or acts or omissions of transportation common carriers.

N. ENTIRE AGREEMENT

This Contract, including all Attachments, which are attached hereto and incorporated by reference, and other documents incorporated herein, represents the final, complete and exclusive agreement between the parties hereto. Any prior agreement, promises, negotiations or representations relating to the subject matter of this Contract not expressly set forth herein are of no force or effect. This Contract is executed without reliance upon any promise, warranty or representation by any party or any representative of any party other than those expressly contained herein. Each party has carefully read this Contract and signs the same of its own free will. This Contract may be executed in any number of counterparts, each of which so executed shall be deemed to be an original, and such counterparts shall together constitute one and the same Contract. The parties shall be entitled to sign and transmit an electronic signature of this Contract (whether by facsimile, PDF or other email transmission), which signature shall be binding on the party whose name is contained therein. Each party providing an electronic signature agrees to promptly execute and deliver to the other party an original signed Contract upon request.

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

SAN BERNARDINO COUNTY

► _____

Lynn Fyhrlund, Chief Information Officer

Dated: _____

_____
(Print or type name of Customer)

By ► _____
(Authorized signature - sign in blue ink)

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

Title _____
(Print or Type)

Dated: _____

Address _____

_____

FOR COUNTY USE ONLY

Approved as to Legal Form
► County Counsel Date

ATTACHMENT A
ITD RATE SHEET – EXTERNAL CUSTOMERS
2023-24 Approved Rates

Service	Service Description
Business Solutions Development	
Business Solutions Labor Services	Hourly labor programming services for the development, enhancement and maintenance of business solutions on a variety of hardware and software platforms.
Computer Operations	
CPU Usage	Access to applications and processing of data on the enterprise server.
Network Labor Services	Hourly labor services for Local Area Network and Wi-Fi services. Includes labor services to connect a location to the Wide Area Network (WAN) via the Internet and to connect a site to the County's WAN. Customer is responsible for all costs related to circuit installation, ongoing circuit charges, and office cabling.
Payroll System Services (EMACS)	Maintenance, support, and enhancements of the EMACS system and infrastructure.
Virtual Private Network (VPN)	Access for a single user to remotely connect to the wide area network.
Geographic Information System	
Aerial Imagery	Augments and enhances GIS data visualization tools, applications and solutions developed for County departments and the public.
Telecommunication Services	
Public Safety Communications Services:	
Dispatch Console Access, Maintenance, and Replacement	Repair, maintenance, programming, and replacement of Motorola radio dispatch console equipment.
Pager Access	Access for a single pager to connect to the County's Digital Paging System.
Radio Access and Maintenance	Access for a single radio connected to the County's Public Safety Radio frequencies and repair and maintenance of that radio or radio's accessories, excluding batteries; covers normal wear and tear.
Radio Labor Services	Hourly labor services for installation and repair of radio and other related equipment in vehicles, not including materials; or escort of other government agencies to County communication sites to access their equipment.
Radio Mobile Data Access	Access and maintenance for radio modems in vehicles.
Telephone Services:	
Dial Tone	Single line telephone services. Includes voicemail, local, long distance, Telephone Service Specialist consulting services, and software changes.
Telecommunication Labor Services – Normal Hours	Hourly labor services for telephone, data, cabling, repair, and other specialized services – Normal Hours (Monday through Friday, 7:00 am – 5:00 pm, excluding weekends and holidays).
Telecommunication Labor Services – After Hours	Hourly labor services for telephone, data, cabling, repair, and other specialized services – After Hours (Monday through Friday, 5:00 pm – 7:00 am, and all weekends and holidays).
All Funds	
Parts and Materials	Parts and Materials provided per customer request.

Service	2023-24 Rate	Charge Measurement
Business Solutions Development		
Business Solutions Labor Services	$128.21	Per hour
Computer Operations		
CPU Usage	$99.63	Per CPU hour
Network Labor Services	$96.84	Per hour
Payroll System Services (EMACS)	$6.99	Per payroll warrant
Virtual Private Network (VPN)	$3.46	Per VPN/month
Geographic Information System		
Aerial Imagery	Cost Pass Through	Per customer
Telecommunication Services		
Public Safety Communications Services:		
Dispatch Console Access, Maintenance, and Replacement	$639.48	Per console/month
Pager Access	$16.22	Per pager/month
Radio Access and Maintenance	$53.58	Per radio/month
Radio Labor Services	$88.97	Per hour
Radio Mobile Data Access	$103.58	Per modem/month
Telephone Services:		
Dial Tone	$31.23	Per phone/month
Telecommunication Labor Services – Normal Hours	$95.56	Per hour
Telecommunication Labor Services – After Hours	$110.52	Per hour
All Funds		
Parts and Materials	Actual cost plus 15% processing and handling	Per order

ATTACHMENT C
WIDE AREA NETWORK SERVICES

I. SERVICES UNDER THIS ATTACHMENT

This Attachment C is applicable for Wide Area Network (WAN) services which consist of the following services as further defined in this Attachment C:

WAN Access
- Includes WAN monitoring and threat detection

WAN Setup
Circuit/s

II. SERVICES TO BE PROVIDED

The County agrees to provide Customer WAN connectivity to the County's telecommunication network for the purpose of accessing computer information systems managed by the County as authorized by the data owner department, including WAN connection, configuration, installation of a router at the Customer location and overall circuit and router maintenance including monitoring of network communication and cyber threat detection with a two-hour response time from the County if notified of a problem or incident affecting services. Specific charges are set forth in this Attachment C.

The connection will be located at:
2500 S. Archibald Avenue, Ontario CA 91761

III. SERVICE CONDITIONS

a) ITD reserves the right to subcontract for all or part of Services.

b) Authorized applications under this Contract are on file with ITD and are subject to change during the term of this Contract. ITD and the Customer will work together to ensure the Customer has access to authorized applications as needed.

c) ITD assumes no liability for failure to provide or delay in providing Services under this Contract.

d) ☐ Customer is responsible for the costs of the data circuit. County owns the data circuit. The County will order the circuit, monitor it, and will work with the vendor providing the circuit to resolve any problems. The costs for the circuit are included in this Attachment C and will be billed monthly by ITD.

☒ There is no billable data circuit associated with this/these connection(s). The location(s), identified in Section II above, has/have cabling (i.e., fiber or copper) that can be used for the connectivity eliminating the need for a data circuit.

e) ITD will provide coordination for data communications problems, including problem isolation and resolution from the County Central Computer or County's WAN to the last component of ITD-supplied equipment. Coordination includes working with all necessary vendors in an effort to restore normal data communications in a timely manner. Reporting, tracking, and diagnosing of problems related to Customer supplied equipment and software is the responsibility of the Customer.

f) Customer is responsible for the coordination of the isolation and resolution of all problems involving hardware and software not supplied by ITD.

g) ITD will coordinate a pre-installation site survey identifying all necessary pre-installation site requirements. This service will be limited to the definition of those requirements and the ordering of the data communications or WAN circuits, modems, and WAN equipment (e.g., routers). The Customer will be responsible for making all site preparations prior to the installation of data

communications or WAN service.

IV. RATES AND PAYMENT TERMS

The payment terms for WAN services are outlined in Section H "Fiscal Provisions" of the Contract. Additionally, the following rates apply to WAN services:

a) WAN Access, including WAN monitoring and threat detection, is provided to Customer at no monthly cost.

b) WAN Setup is a one-time cost to connect to the WAN and is provided to Customer at time and materials, at the current Network Services Labor rate (see Attachment A "ITD Rate Sheet – External Customers") and for the actual cost of the network equipment.

c) Circuits are provided to Customer, if applicable, at the monthly cost as identified by the telephone company at the time this Contract is executed. Section III.d. "Service Conditions" of this Attachment identifies if this service and cost is applicable.

If applicable, the cost for your Circuit/s are listed as follows:
Serial Number:[#] Cost:N/A

V. CUSTOMER RESPONSIBILITIES

a) Except to the extent caused by County's breach of the Contract, (a) Customer is responsible for all activities that occur through Customer's WAN access, regardless of whether the activities are authorized by Customer or undertaken by Customer, Customer's employees or a third party (including Customer's contractors, agents, or end users), and County is not responsible for unauthorized access to Customer's account.

b) Customer is responsible for taking appropriate action to secure, protect and backup Customer information and data.

c) Customer is responsible for its account information, passwords and other login credentials and must notify County immediately of any known unauthorized possession or use of Customer's credentials.

d) Customer shall not: (i) make WAN access available to any third party not authorized or as otherwise contemplated by the Contract; (ii) send or store code that can harm or result in damage to the WAN (including but not limited to malicious code and malware); (iii) willfully interfere with or disrupt the integrity of the WAN or the data contained therein; (iv) attempt to gain unauthorized access to the WAN or its related system or networks; (v) use the WAN to provide services to third parties except as expressly permitted by the Contract; (vi) use the WAN in order to cause harm such as overload or create multiple agents for the purpose of disrupting operations of a third party; or (vii) perform or disclose any security testing of the WAN.

CITY OF ONTARIO *Agenda Report* **October 15, 2024**	**SECTION:** **CONSENT CALENDAR**
Department: Records Management Prepared By: Peak Approver Staff Member Presenting: Claudia Y. Isbell, Assistant City Clerk Approved By:	Submitted To: Council/OHA Approved: _____ Continued To: _____ Denied: _____ Item No: 18

SUBJECT: **ADOPTION OF AN ORDINANCE AMENDING SECTION 2-1.203 OF THE ONTARIO MUNICIPAL CODE RELATING TO SALARY COMPENSATION FOR THE CITY COUNCIL**

RECOMMENDATION: That the City Council adopt an Ordinance amending Section 2-1.203 of the Ontario Municipal Code relating to Salary Compensation for the Mayor and the City Council.

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

FISCAL IMPACT: The compensation adjustments for the City Council members will be effective after the November 5, 2024 election, and will increase General Fund personnel appropriations by approximately $6,760 per Councilmember, for a total of $27,040 for the remainder of Fiscal Year 2024-25. Additional appropriations will be added to the General Fund at a future quarterly budget update, as necessary.

BACKGROUND & ANALYSIS: Senate Bill 329 amends Government Code Section 36516 and authorizes a City Council to enact an ordinance to provide each member of the City Council a salary based upon the population of the city, as specified. The bill allows for an increase up to $2,550 per month for cities with a population from 150,000 to 250,000.

The bill authorizes the salary of council members to be increased beyond the specified maximums to an amount not exceeding the greater of either 5% for each calendar year from the operative date of the last adjustment of the salary in effect when the Ordinance or amendment is enacted, or an amount equal to inflation since January 1, 2024, based upon the California Consumer Price Index, which shall not exceed 10% for each calendar year. The bill requires the City Council to consider the adoption of an ordinance to increase council member compensation in open session during at least two regular meetings of the City Council.

On October 1, 2024, the City Council introduced the Ordinance and waived further reading of the Ordinance to bring City Council compensation to the amount of $2,550 per month.

ORDINANCE NO. _____

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF ONTARIO, CALIFORNIA, AMENDING SECTION 2-1.203 OF THE ONTARIO MUNICIPAL CODE RELATING TO SALARY COMPENSATION FOR THE CITY COUNCIL.

WHEREAS, the California State Governor signed SB 329 into law on June 29, 2023, and

WHEREAS, the new law amends Government Code Section 36516, allowing general law cities to adjust council member salaries for inflation, and

WHEREAS, the new law allows for cities over 150,000 up to and including 250,000 in population, up to and including [a salary of] two thousand five hundred and fifty dollars ($2,550) per month, and

WHEREAS, the City Council's current salary is below the newly established salary, and

WHEREAS, the new salary for City Council would be effective on November 5, 2024, and

WHEREAS, the City Council desires to modify the salary compensation for all City Council Members.

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

SECTION 1. Findings. The above recitals are true and correct and are incorporated herein by this reference.

SECTION 2. Section 2-1.203 of Chapter 1 to Title 2 of the Ontario Municipal Code is hereby amended in its entirety to read as follows:

Sec. 2-1.203. Payment.

(a) Each member of the Council shall receive as salary the sum of Two-Thousand-Five-Hundred-Fifty and Dollars ($2,550) per month.

(b) Said salaries shall be payable from and after the operative date of this section at the same time and in the same manner as salaries are paid to other officers and employees of the City.

SECTION 3. Pursuant to Section 36516.5 of the California Government Code, the adjustments to City Council Member salary set forth herein shall become effective

upon the completion and installation of the new members of the City Council subsequent to November 5, 2024, pursuant to California Elections Code Section 10262.

SECTION 4. CEQA. The City Council hereby finds that adoption of this Ordinance is not a "project" under the California Environmental Quality Act because the Ordinance does not involve any commitment to a specific project which may result in a potentially significant physical impact on the environment, as contemplated by Title 14, California Code of Regulations, Section 15378(b)(4).

SECTION 5. Custodian of Records. The documents and materials that constitute the record of proceedings on which these findings and this Ordinance are based are located at the City Clerk's office located at 303 East "B" Street, Ontario, CA 91764. The custodian of these records is the City Clerk.

SECTION 6. Severability. If any section, sentence, clause or phrase of this Ordinance or the application thereof to any entity, person or circumstance is held for any reason to be invalid or unconstitutional, such invalidity or unconstitutionality shall not affect other provisions or applications of this Ordinance which can be given effect without the invalid provision or application, and to this end the provisions of this Ordinance are severable. The People of the City of Ontario hereby declare that they would have adopted this Ordinance and each section, sentence, clause or phrase thereof, irrespective of the fact that any one or more section, subsections, sentences, clauses or phrases be declared invalid or unconstitutional.

SECTION 7. Effective Date. This Ordinance shall become effective thirty (30) days following its adoption.

SECTION 8. The Mayor shall sign this Ordinance and the City Clerk shall certify as to the adoption and shall cause a summary thereof to be published at least once, in a newspaper of general circulation in the City of Ontario, California within fifteen (15) days of the adoption. The City Clerk shall post a certified copy of this ordinance, including the vote for and against the same, in the Office of the City Clerk, in accordance with Government Code Section 36933.

PASSED, APPROVED, AND ADOPTED this 15th day of October 2024.

_____
PAUL S. LEON, MAYOR

ATTEST:

_____
SHEILA MAUTZ, CITY CLERK

APPROVED AS TO FORM:

_____
BEST BEST & KRIEGER LLP
CITY ATTORNEY

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

I, SHEILA MAUTZ, City Clerk of the City of Ontario, DO HEREBY CERTIFY that foregoing Ordinance No. _____ was duly introduced at a regular meeting of the City Council of the City of Ontario held October 1, 2024 and adopted at the regular meeting held October 15, 2024 by the following roll call vote, to wit:

AYES: COUNCIL MEMBERS:

NOES: COUNCIL MEMBERS:

ABSENT: COUNCIL MEMBERS:

_____
SHEILA MAUTZ, CITY CLERK

(SEAL)

I hereby certify that the foregoing is the original of Ordinance No. _____ duly passed and adopted by the Ontario City Council at their regular meeting held October 15, 2024 and that Summaries of the Ordinance were published on _____ and _____, in the Inland Valley Daily Bulletin newspaper.

_____
SHEILA MAUTZ, CITY CLERK

(SEAL)

CITY OF ONTARIO *Agenda Report* **October 15, 2024**	**SECTION:** **PUBLIC HEARING**
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: 19

SUBJECT: **A PUBLIC HEARING TO CONSIDER THE SALE OF ONTARIO INDUSTRIAL DEVELOPMENT AUTHORITY OWNED PROPERTY IN ACCORDANCE WITH GOVERNMENT CODE SECTION 52201; MAKING CERTAIN FINDINGS; AND ADOPTION OF A RESOLUTION APPROVING A PURCHASE AND SALE AGREEMENT BETWEEN THE ONTARIO INDUSTRIAL DEVELOPMENT AUTHORITY AND RICHARD FERNANDO BARBA**

RECOMMENDATION: That the Ontario Industrial Development Authority conduct a public hearing to consider the sale of Authority-owned property; and adopt a resolution approving a Purchase and Sale Agreement ("Agreement") between the Ontario Industrial Development Authority ("Authority") and Richard Fernando Barba ("Developer") (on file in the Records Management Department); and authorize the Executive Director to execute the Agreement and all other documents required for implementation of 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: The Authority will convey the property for a purchase price of $1,689,690. The revenue from the land sale proceeds will be deposited into the Industrial Development Authority Fund.

BACKGROUND & ANALYSIS: From 1994-2014, the City of Ontario used Airport Improvement Program funds to acquire over 220 properties that were adversely impacted by noise from operations at Ontario International Airport. This program was known as the Federal Aviation Administration Part 150 – Quiet Home Program.

The property located at 928 East California Street, 960 East California Street, 1042 East California Street, 807 South Greenwood Avenue, 814 South Greenwood Avenue, and 815 South Greenwood Avenue and ("Property) was acquired as part of the Quiet Home Program.

In June of this year, the City sold the Property to the Ontario Industrial Development Authority (a location map is provided for reference as Exhibit “A”) for the purpose of improving the underutilized Property. In connection with the sale of the Property, a requirement was that the Grant Deed included Covenants, Conditions and Restrictions that ensured that future development of the Property is compatible with operations of the Ontario International Airport.

The sales price of $1,689,690 is supported by the current fair market valu e as determined by Beth Finestone, MAI, AI-GRS, FRICS, CRE, of CBRE Valuation and Advisory Services, Inc., an independent certified general appraiser.

The Developer is proposing to construct a business park building and office space ("Project"). The Developer will be required to build all associated on-site and off-site improvements, including but not limited to all hardscape, landscaping, and public street improvements.

The proposed Project will provide for the elimination of blighting conditions, redevelop 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 area. As a result, Staff recommends approval of the Agreement.

EXHIBIT "A"

928 East California Street, 960 East California Street, 1042 East California Street,

807 South Greenwood Avenue, 814 South Greenwood Avenue, and 815 South Greenwood Avenue



RESOLUTION NO. _____

A RESOLUTION OF THE ONTARIO INDUSTRIAL DEVELOPMENT AUTHORITY, OF THE CITY OF ONTARIO, CALIFORNIA, APPROVING A PURCHASE AND SALE AGREEMENT BETWEEN THE ONTARIO INDUSTRIAL DEVELOPMENT AUTHORITY AND RICHARD FERNANDO BARBA FOR THE PURCHASE AND SALE OF CERTAIN REAL PROPERTY LOCATED AT 928 EAST CALIFORNIA STREET, 960 EAST CALIFORNIA STREET, 1042 EAST CALIFORNIA STREET, 807 SOUTH GREENWOOD AVENUE, 814 SOUTH GREENWOOD AVENUE, AND 815 SOUTH GREENWOOD AVENUE, ONTARIO.

WHEREAS, the Ontario Industrial Development Authority ("Authority"), currently owns certain real property generally located at 928, 960, 1042 East California Street and 807, 814, 815 South Greenwood Avenue, Ontario (APN 1049-371,06, 1049-372-01, 1049-372-03, 1049-372-04, 1049-372,06, 1049-392-11) and more specifically described in Exhibit A attached to this Resolution and incorporated herein by this reference ("Property"); and

WHEREAS, the Authority opts to sell the Property to Richard Fernando Babra ("Purchaser") under the Economic Opportunity statutes (Government Code sections 52200 *et seq.*) (the "EO Statutes"); and

WHEREAS, the Authority and Purchaser have negotiated a Purchase and Sale Agreement (the "Agreement"). The Agreement provides for the sale of the Property at a fair market value price of $1,689,690; and

WHEREAS, on September 30, 2024, and October 7, 2024, the Authority published notice of the public hearing to consider the disposition of the Property pursuant to the Agreement; and

WHEREAS, Purchaser's proposed acquisition of the Property is in the best interest of the Authority and of the health, safety and welfare of its residents, and is in accordance with the public purposes set forth in applicable law. Approval of the Agreement will further the goals and objectives of the City's general plan and the goals and objectives of the Authority by selling land that is not being used by the Authority for potential development and economic opportunity by Purchaser.

NOW, THEREFORE, BE IT RESOLVED BY THE AUTHORITY BOARD OF THE ONTARIO INDUSTRIAL DEVELOPMENT AUTHORITY 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 Authority intends to sell the Property to Purchaser and, based on the Recitals and all other information and testimony provided, the Authority Board finds that the sale of the Property pursuant to the Agreement will further the goals and purposes of the Authority, by putting land that is not being used by the Authority into the

hands of Purchaser for potential future development and economic opportunity. The sale of the Property will create economic opportunity by assisting in the elimination of blighting conditions, encouraging private investment, increasing availability of housing stock, and expanding the community's tax base and economic vitality.

SECTION 3. Hearing. In accordance with Government Code Section 52201, a duly noticed public hearing was held by the Authority Board on October 15, 2024.

SECTION 4. CEQA. The Authority's approval of the Agreement does not constitute approval by the Authority of any development of the Property or of other activity on the Property that would have a direct or reasonably foreseeable indirect environmental impact pursuant to CEQA. (See 14 C.C.R. §§ 15060(c); 15378(b).) Moreover, the Agreement and Purchaser's future use or development of the Property is expressly conditioned on CEQA compliance.

SECTION 5. Approval of Agreement. The Authority Board hereby approves the Agreement in substantially the form presented, subject to any non-substantive revisions which do not increase the Authority 's liability and are approved by the Authority Counsel, and authorizes the Authority Executive Director to sign and enter into the Agreement and perform the obligations of the Authority under the Agreement.

SECTION 6. Severability. If any provision of this Resolution or the application of any such provision to any person or circumstance is held invalid, such invalidity shall not affect other provisions or applications of this Resolution that can be given effect without the invalid provision or application, and to this end the provisions of this Resolution are severable. The Authority declares that the Authority would have adopted this Resolution irrespective of the invalidity of any particular portion of this Resolution.

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

The Secretary of the Ontario Industrial Development Authority shall certify as to the adoption of this Resolution.

PASSED, APPROVED AND ADOPTED this 15th day of October, 2024

_____
PAUL S. LEON, PRESIDENT

ATTEST:

_____
SHEILA MAUTZ, SECRETARY

APPROVED AS TO FORM:

_____
BEST BEST & KRIEGER LLP
CITY ATTORNEY

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

I, SHEILA MAUTZ, Secretary of the Ontario Industrial Development Authority, DO HEREBY CERTIFY that foregoing Resolution No. 2024- was duly adopted by the Board of Directors of said Authority and was approved by the President of said Authority at a regular meeting of said Board held October 15, 2024 by the following roll call vote, to wit:

AYES: BOARD MEMBERS:

NOES: BOARD MEMBERS:

ABSENT: BOARD MEMBERS:

_____
SHEILA MAUTZ, SECRETARY

(SEAL)

The foregoing is the original of Resolution No. 2024- duly passed and adopted by the Ontario Industrial Development Authority at their regular board meeting held October 15, 2024.

_____
SHEILA MAUTZ, SECRETARY

(SEAL)

EXHIBIT “A”

Description of the Property

LOT 28, BLOCK "B", EVERGREEN TRACT, IN THE CITY OF ONTARIO, COUNTY OF SAN BERNARDINO, STATE OF CALIFORNIA, AS PER PLAT RECORDED IN BOOK 16, PAGE 57 OF MAPS, RECORDS OF SAID COUNTY.

APN: 1049-371-06

LOT 4, IN BLOCK C OF EVERGREEN TRACT, IN THE CITY OF ONTARIO, COUNTY OF SAN BERNARDINO, STATE OF CALIFORNIA, AS PER PLAT RECORDED IN BOOK 16, PAGE 57 OF MAPS, IN THE OFFICE OF THE COUNTY RECORDER OF SAID COUNTY.

APN: 1049-372-01

LOT 2, BLOCK “C” OF THE EVERGREEN TRACT, IN THE CITY OF ONTARIO, COUNTY OF SAN BERNARDINO, STATE OF CALIFORNIA, AS PER MAP RECORDED IN BOOK 16, PAGE 57 OF MAPS, IN THE OFFICE OF THE COUNTY RECORDER OF SAID COUNTY.

APN: 1049-372-03

LOT 1 IN BLOCK C OF EVERGREEN TRACT, IN THE CITY OF ONTARIO, COUNTY OF SAN BERNARDINO, STATE OF CALIFORNIA, AS SHOWN BY MAP ON FILE IN BOOK 16, PAGE 57 OF MAPS, RECORDS OF SAN BERNARDINO COUNTY, CALIFORNIA.

APN: 1049-372-04

THE EAST 100 FEET OF THE WEST 165 FEET OF LOT 203, OF VILLA PLOTS SOUTH SIDE TRACT, IN THE CITY OF ONTARIO, COUNTY OF SAN BERNARDINO, STATE OF CALIFORNIA, AS SHOWN BY MAP ON FILE IN BOOK 6, PAGE 11 OF MAPS, RECORDS OF SAN BERNARDINO COUNTY, CALIFORNIA, LYING NORTH OF THAT PORTION OF SAID LOT DEEDED OF STATE OF CALIFORNIA BY DEED RECORDED OCTOBER 14, 1944, IN BOOK 1713, PAGE 405 OF OFFICIAL RECORDS, FOR FREEWAY PURPOSES.

APN: 1049-372-06

THE EAST 113 FEET 4 INCHES OF THAT PORTION OF BLOCK 203, ACCORDING TO MAP OF VILLA PLOTS SOUTH SIDE TRACT, IN THE CITY OF ONTARIO, COUNTY OF SAN BERNARDINO, STATE OF CALIFORNIA, AS PER MAP RECODED IN BOOK 6, PAGE 11 OF MAPS, IN THE OFFICE OF THE COUNTY RECORDER OF SAID COUNTY, LYING NORTH OF THAT PARCEL OF LAND DEEDED TO THE STATE OF CALIFORNIA FOR HIGHWAY PURPOSES, BY DEED RECORDED OCTOBER 14, 1944, IN BOOK 1714, PAGE 285 OF OFFICIAL RECORDS. EXCEPTING THEREFROM THE WEST 58.17 FEET.

APN: 1049-372-11

CITY OF ONTARIO *Agenda Report* **October 15, 2024**	**SECTION:** **PUBLIC HEARING**
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: 20

SUBJECT: **A PUBLIC HEARING TO CONSIDER THE SALE OF ONTARIO INDUSTRIAL DEVELOPMENT AUTHORITY OWNED PROPERTY IN ACCORDANCE WITH GOVERNMENT CODE SECTION 52201; MAKING CERTAIN FINDINGS; AND ADOPTION OF A RESOLUTION APPROVING A PURCHASE AND SALE AGREEMENT BETWEEN THE ONTARIO INDUSTRIAL DEVELOPMENT AUTHORITY AND ANADALUSIA DEVELOPMENT COMPANY**

RECOMMENDATION: That the Ontario Industrial Development Authority conduct a public hearing to consider the sale of Authority-owned property; and adopt a resolution approving a Purchase and Sale Agreement ("Agreement") between the Ontario Industrial Development Authority ("Authority") and Anadalusia Development Company ("Developer") (on file in the Records Management Department); and authorize the Executive Director to execute the Agreement and all other documents required for implementation of 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
Focus Resources in Ontario's Commercial and Residential Neighborhoods

FISCAL IMPACT: The Authority will convey the Property for a purchase price of $670,000. The revenue from the land sale proceeds will be deposited into the Industrial Development Authority Fund.

BACKGROUND & ANALYSIS: From 1994-2014, the City of Ontario used Airport Improvement Program funds to acquire over 220 properties that were adversely impacted by noise from operations at Ontario International Airport also known as the Federal Aviation Administration Part 150 – Quiet Home Program. The property located at 936 South Grove Avenue ("Property) was acquired as part of the Quiet Home Program.

In June of this year, the City sold the Property to the Ontario Industrial Development Authority (a location map is provided for reference as Exhibit "A") for the purpose of redeveloping the vacant

and underutilized Property. In connection with the sale of the Property, a requirement was that the Grant Deed included Covenants, Conditions, Restrictions that ensured that future development of the Property is compatible with operations of the Ontario International Airport.

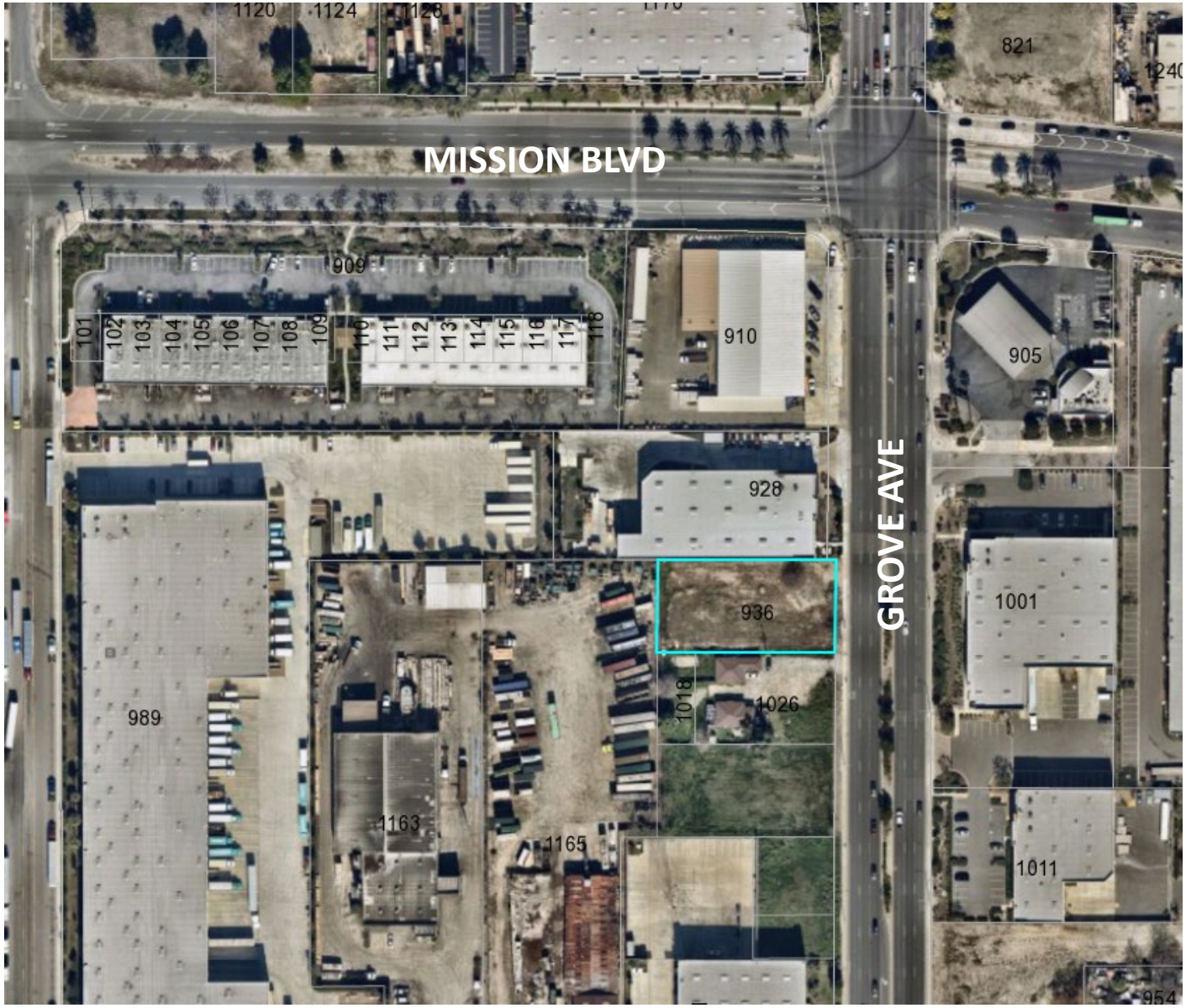
The sales price of $670,000 is supported by the current fair market valu e as determined by Beth Finestone, MAI, AI-GRS, FRICS, CRE, of CBRE Valuation and Advisory Services, Inc., an independent certified general appraiser.

The Developer is the fee owner of the parcels directly to the north and south of the Property and is proposing to construct a business park building estimated to be 33,000 square feet with 5,000 square feet of office space ("Project"). The Developer will be required to build all associated on-site and off-site improvements, including but not limited to all hardscape, landscaping, and public street improvements.

The proposed Project will provide for elimination of blighting conditions, redevelop 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 area. As a result, Staff recommends approval of the Agreement.

EXHIBIT “A”

936 SOUTH GROVE AVENUE



RESOLUTION NO. _____

A RESOLUTION OF THE ONTARIO INDUSTRIAL DEVELOPMENT AUTHORITY, OF THE CITY OF ONTARIO, CALIFORNIA, APPROVING A PURCHASE AND SALE AGREEMENT BETWEEN THE ONTARIO INDUSTRIAL DEVELOPMENT AUTHORITY AND ANADALUSIA DEVELOPMENT COMPANY FOR THE PURCHASE AND SALE OF CERTAIN REAL PROPERTY LOCATED AT 936 SOUTH GROVE AVENUE, ONTARIO.

WHEREAS, the Ontario Industrial Development Authority ("Authority"), currently owns certain real property generally located at 936 South Grove Avenue, Ontario (APN 1049-392-01) and more specifically described in Exhibit A attached to this Resolution and incorporated herein by this reference (“Property”); and

WHEREAS, the Authority opts to sell the Property to the Purchaser under the Economic Opportunity statutes (Government Code sections 52200 *et seq.*) (the “EO Statutes”); and

WHEREAS, the Authority and Purchaser have negotiated a Purchase and Sale Agreement (the “Agreement”). The Agreement provides for the sale of the Property at a fair market value price of $670,000; and

WHEREAS, on September 30, 2024, and October 7, 2024, the Authority published notice of the public hearing to consider the disposition of the Property pursuant to the Agreement; and

WHEREAS, Purchaser’s proposed acquisition of the Property is in the best interest of the Authority and of the health, safety and welfare of its residents, and is in accordance with the public purposes set forth in applicable law. Approval of the Agreement will further the goals and objectives of the Authority ’s general plan and the goals and objectives of the Authority by selling land that is not being used by the Authority for potential development and economic opportunity by Purchaser.

NOW, THEREFORE, BE IT RESOLVED BY THE AUTHORITY BOARD OF THE ONTARIO INDUSTRIAL DEVELOPMENT AUTHORITY 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 Authority intends to sell the Property to Purchaser and, based on the Recitals and all other information and testimony provided, the Authority Board finds that the sale of the Property pursuant to the Agreement will further the goals and purposes of the Authority, by putting land that is not being used by the Authority into the hands of Purchaser for potential future development and economic opportunity. The sale of the Property will create economic opportunity by assisting in the elimination of blighting conditions, encouraging private investment, increasing availability of housing stock, and expanding the community’s tax base and economic vitality.

SECTION 3. Hearing. In accordance with Government Code Section 52201, a duly noticed public hearing was held by the Authority Board on October 15, 2024.

SECTION 4. CEQA. The Authority's approval of the Agreement does not constitute approval by the Authority of any development of the Property or of other activity on the Property that would have a direct or reasonably foreseeable indirect environmental impact pursuant to CEQA. (See 14 C.C.R. §§ 15060(c); 15378(b).) Moreover, the Agreement and Purchaser's future use or development of the Property is expressly conditioned on CEQA compliance.

SECTION 5. Approval of Agreement. The Authority Board hereby approves the Agreement in substantially the form presented, subject to any non-substantive revisions which do not increase the Authority 's liability and are approved by the Authority Counsel, and authorizes the Authority Executive Director to sign and enter into the Agreement and perform the obligations of the Authority under the Agreement.

SECTION 6. Severability. If any provision of this Resolution or the application of any such provision to any person or circumstance is held invalid, such invalidity shall not affect other provisions or applications of this Resolution that can be given effect without the invalid provision or application, and to this end the provisions of this Resolution are severable. The Authority declares that the Authority would have adopted this Resolution irrespective of the invalidity of any particular portion of this Resolution.

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

The Secretary of the Ontario Industrial Development Authority shall certify as to the adoption of this Resolution.

PASSED, APPROVED AND ADOPTED this 15th day of October, 2024

_____
PAUL S. LEON, PRESIDENT

ATTEST:

_____
SHEILA MAUTZ, SECRETARY

APPROVED AS TO FORM:

_____
BEST BEST & KRIEGER LLP
CITY ATTORNEY

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

I, SHEILA MAUTZ, Secretary of the Ontario Industrial Development Authority, DO HEREBY CERTIFY that foregoing Resolution No. 2024- was duly adopted by the Board of Directors of said Authority and was approved by the President of said Authority at a regular meeting of said Board held October 15, 2024 by the following roll call vote, to wit:

AYES: BOARD MEMBERS:

NOES: BOARD MEMBERS:

ABSENT: BOARD MEMBERS:

_____
SHEILA MAUTZ, SECRETARY

(SEAL)

The foregoing is the original of Resolution No. 2024- duly passed and adopted by the Ontario Industrial Development Authority at their regular board meeting held October 15, 2024.

_____
SHEILA MAUTZ, SECRETARY

(SEAL)

EXHIBIT “A”

Description of the Property

936 South Grove Avenue

Assessor Parcel No: 1049-392-01

CITY OF ONTARIO *Agenda Report* **October 15, 2024**	**SECTION:** **PUBLIC HEARING**
Department: Planning Prepared By: Thomas Grahn Department: Prepared By: Thomas Grahn Staff Member Presenting: Scott Murphy, Executive Director Community Development Reviewed By: Kimberly Ruddins, Henry Noh, Rudy Zeledon Approved By:	Submitted To: Council/OHA Approved: _____ Continued To: _____ Denied: _____ Item No: 21

SUBJECT: **AN APPEAL OF THE PLANNING COMMISSION DECISION APPROVING FILE NOS. PMTT23-008 AND PDEV23-037**

RECOMMENDATION: That the City Council conduct a public hearing on the appeal and after receiving all public testimony, uphold the Planning Commission's decision to approve Tentative Tract Map No. 20659 (File No. PMTT23-008) and a Development Plan (File No. PDEV23-037) and deny the appeal.

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

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

BACKGROUND & ANALYSIS: On June 2, 2023, Warmington Residential, the Project applicant, submitted a Preliminary Review application under Senate Bill (SB) 330. On October 2, 2023, the applicant submitted Tentative Tract Map No. 20659 (File No. PMTT23-008) and Development Plan (File No. PDEV23-037), thereby vesting their Preliminary Application under SB330 and memorializing the ordinances, policies, and standards applicable to the Project site. The Project proposes the demolition of all buildings and improvements on-site and the development of 70 multiple-family units, including 7 moderate income affordable units, as well as all parking areas, landscaping, and improvements to support the proposed residential development.

On July 15, 2024, the Development Advisory Board (DAB) held a public hearing to consider the application, and recommended approval of the Project to the Planning Commission.

On July 17, 2024, the Planning Department held a community meeting at the Anthony Muñoz Community Center. The intent of the meeting was to review the Tentative Tract Map and Development Plan with the surrounding residents, answer any questions, and receive comments on the proposed Project. A total of

18 people attended the meeting representing 16 of the surrounding properties.

On August 27, 2024, the Planning Commission held a public hearing to consider the application and the Development Advisory Board's recommendation. Following a presentation of staff's findings and after receipt of all public testimony, the Planning Commission addressed the applications, and approved the project by a vote of 5-0, adopting Resolution Nos. PC24-042 and PC24-043 (see attached PC Back-up).

APPEAL:

On September 6, 2024, Greg Gomez ("Appellant") submitted an appeal of the Planning Commission's decision to approve File Nos. PMTT23-008 and PDEV23-037. A copy of the Appeal application and Appellant statement is included as Exhibit A to this report. The basis of the Appellant's appeal lies in their belief that the Project was not properly noticed, that traffic and health concerns will be impacted by the proposed Project, and that the Project is inconsistent with the General Plan and Zoning.

Staff has reviewed the appeal letter and provided a response for each issue raised by the Appellant:

Appellant Issue No. 1: "The notice was sent in English and the city sign outside the property with the Notice of Filing was only in English leaving the Spanish community without properly understanding what the notice of filing was about."

Staff response: Public notice for the Project was provided pursuant to Development Code Section 2.03.010 (A) and (C)(1)(3) & (4). These requirements pertain to the information to be provided, newspaper publication, and the minimum boundary for notification requirements, respectively. The Development Code does not require that public notices be provided in multiple languages. Additionally, the public notice for both the Community Meeting and the Planning Commission meeting extended beyond the minimum 300-foot boundary and provided notice to 193 property owners for both meetings. Notice of the Planning Commission meeting was also published in the Inland Valley Daily Bulletin newspaper.

Projects that are proposed to be developed at a higher density or intensity than the existing surrounding neighborhood require supplemental public notice through the placement of a large public notification sign consisting of a 6-foot-tall freestanding sign, having a sign face measuring 4 feet tall by 8 feet wide posted on the project site. This sign allows for the applicant to attach information regarding scheduled public hearings regarding the Project. This public notification sign was posted on the site prior to the Community Meeting and notice for the Planning Commission meeting was posted 10-days prior to the public hearing.

Appellant Issue No. 2: "Resident are concerned on several safety factors:

a. Traffic

Not only do the residents, school and churches from the immediate site project oppose this project, but also a Community Volunteer Group by the name of "Safety Routes Ontario-Montclair'' that has been advocating for this zone in Ontario since 2012. They had been a key on keeping the surrounded streets of the project that is surrounded by 4 schools as safe as possible working with the City of Ontario, Ontario Police, Schools and families of the importance of walking and biking to school. To prevent as much as possible more vehicles in the area. Please see attach document that was presented at the Planning Commission on August 27, 2024. The project has the potential for significant air pollution impacts.

5th St. in between Mountain Ave and Benson St. is a single lane both ways that is already impacted by Super Walmart, condominiums, apartment complex, Anthony Munoz Park, 3 Churches, Sunrise Park, El Camino School

and houses. Bringing this project will only bring more traffic, not enough street parking to all the people that live, work, attend local churches, play sports during the weekends with the AYSO 66 and Sunday Soccer League, these groups had practiced every day of the week at both of the parks. Also, the families that attend the school on that street will be very affected as there will be no parking to drop, pic and attend their children's school evening events. The safety of the locals is already at risk of accidents and speeding at any time of the day making it unsafe for the Ontario families that walk and bike to the 4 schools around."

Staff Response:

Traffic along West 5th Street is experiencing increases of traffic locally by vehicles from the community accessing local commercial, residential, educational, and public areas and regionally due to cut-through traffic and its proximity to the 10 freeway. A traffic volume analysis was prepared to evaluate the Project's impact on the local street system. The Trip Generation and Vehicle Miles Traveled (VMT) Screening analysis determined that the proposed 70 residential unit project is projected to generate 472 daily trips, with 28 AM and 36 PM peak hour trips. Per the City's Engineering Department Traffic Division, the projected number of trips generated by the Project site would not warrant conditioning the Project for any traffic related improvements. To address public safety concerns the City will be requiring the project to install a rectangular rapid flashing beacon (RRFB) at the intersection of 5th Street and Elderberry Avenue to enhance the existing crosswalk crossing at the intersection, to be consistent with other existing enhanced crosswalks on 5th Street between Benson Avenue and Mountain Avenue.

"b. Health

Residents are concerned with the air quality and pollution that more vehicles will bring to the area. There are many community residents who live within the 300/500 feet site radius who have adults and children who are asthmatic, with medical respiratory conditions.

Also, the residents whose houses are around the project will lose their backyards privacy. This will affect them enormously on their emotionally health as they will feel that they are being seen all the time by the people living on the 3rd floor condominiums right outside their back yard. Some have backyard pools that will limit them to use them freely as they will be observed all the time.

We the residents believe on our Healthy Ontario Initiative Mission which is to empower the community of Ontario to take ownership of its health and to make Ontario a model for healthy communities by improving physical, social, environmental, and economic health and well-being. We feel this housing project will be a hardship for the already residents with health issues. The project has the potential for significant air pollution impacts."

Staff Response:

An Air Quality and Greenhouse Gas (GHG) analysis was prepared for the project to evaluate both construction and operational Air Quality and GHG impacts. The analysis evaluated the project impacts using the South Coast Air Quality Management District (SCAQMD) thresholds for significance and found that operational and construction impacts for both Air Quality and GHG were below the SCAQMD thresholds of significance. Conditions of approval require the project to comply with SCAQMD emission requirements for construction equipment and fugitive dust to minimize impacts to the surrounding community.

Conditions of approval were added to provide additional privacy to the existing residences south of the project site. These conditions include the installation of frosted view obscuring glass to the south facing

windows of those units in the southwest and southeast corners of the project site. Additionally, additional tree plantings are required adjacent to the south property line, at a reduced spacing and increased tree size, so that as those trees mature additional privacy would be provided.

Appellant Issue No. 3. "Land Zoning -Residents know that 5th St. it is a Low-Density Residential Zone that has been changed according to the Ontario Plan 2050 several times from Low to medium back and forth. On November 21, 2023, at the City of Ontario City Council meeting the council approved unanimously to keep the zoning PGPA23-001 low density. We the community do not understand why a 2, 3 or 4 floor houses are being approved to be built on this low-density area. On the Planning Commission meeting on August 27, 2024 it was brought to us that one of the Consideration for denial Under SB330 of a housing development project: has to comply with the general plan and zoning ordinance, and 1 of the 5 reasons for denial it is that if there is an impact to objective public health & safety standards that cannot be mitigated it might not be approved."

Staff Response:

The applicant vested development rights under SB330 to develop the site utilizing development standards of the Medium Density Residential general plan designation. The project was designed to meet the development standards of the Medium Density Residential zoning district. The project proposes the construction of 3-story townhome units at a maximum height of 39 feet. Although higher than the surrounding neighborhood, the height of the proposed units is 4 feet higher than the 35-foot height limit allowed for the surrounding Low Density Residential (LDR-5) zoning.

Senate Bill 330, the Housing Crisis Act of 2019, and specifically The Housing Accountability Act ("HAA") prohibits a local agency from disapproving, or conditioning approval in a manner that renders infeasible, a housing development project for very low, low-, or moderate-income households unless the local agency makes specified written findings based on a preponderance of the evidence in the record that either: 1) the local government has already met its Regional Housing Needs Assessment (RHNA) requirement, 2) there is an impact to the public health and safety and this impact cannot be mitigated, 3) the property is agricultural land, 4) the approval of the project would violate State or federal law and this violation cannot be mitigated, or 5) the project is inconsistent with the zoning and land use designation and not identified in the general plan housing element RHNA inventory.

The applicant is correct that the project is not consistent with the General Plan land use designation of Low Density Residential (0 - 2du/ac); however, HAA states that in the event of an inconsistency between a general plan and zoning district land uses with submittal of the Preliminary SB 330 Application, and if a local agency has complied with certain timing requirements, it can still require a project to comply with the objective standards and criteria of another zoning district that would be consistent with the general plan.

The Project, which consists of residential units only, is a "housing development project" and entitled to protection under the HAA. The Applicant submitted a SB 330 Preliminary Application for the Project following the City Council action on April 18, 2023, resulting in inconsistency between TOP 2050 Land Use Plan designation of MDR (Medium Density Residential), and the Zoning Map designation of LDR-5 (Low Density Residential – 2.1 to 5.0 DU/Acre) zoning district until such time the City completes the subsequent General Plan Amendment. As a result of this inconsistency between the General Plan Land Use Designation and Zoning District, the City cannot find the Project inconsistent with the LDR-5 (Low Density Residential – 2.1 to 5.0 DU/Acre) zoning district standards and criteria and cannot require a rezoning, where the Project is consistent with applicable, objective General Plan standards and criteria. The TOP 2050 MDR land use designation that was vested on October 2, 2023 as part of the Applicant's SB 330

Preliminary Review Application allows the applicant to develop the project site utilizing the MDR-25 (Medium Density Residential 18.1 to 25.0 DU/Acre) zoning district at a proposed Project density of 22.6 dwelling units per acre.

None of the preceding five requirements could be established for denial, therefore the Planning Commission approved the project.

CITY OF ONTARIO PLANNING DEPARTMENT

PLANNING COMMISSION AGENDA REPORT

August 27, 2024

303 East B Street, Ontario, California 91764 / Phone: 909.395.2036 / Email: PlanningDirector@OntarioCA.gov

FILE NOS: PMTT23-008 (TTM 20659) and PDEV23-037

SUBJECT: A public hearing to consider Tentative Tract Map No. 20659 (File No. PMTT23-008), subdividing 3.1 acres of land into one parcel for condominium purposes, in conjunction with a Development Plan (File No. PDEV23-037) to construct 70 multiple-family residential condominium units on the project site, including 7 moderate affordable dwellings, located at 1355 West 5th Street, within the LDR-5 (Low Density Residential – 2.1 to 5.0 du/ac) zoning district. (APN: 1008-551-12); **submitted by Warmington Residential, LLC.**

PROPERTY OWNER: Sunrise Church

RECOMMENDED ACTION: That the Planning Commission consider and adopt Resolutions approving File Nos. PMTT23-008 and PDEV23-037, pursuant to the facts and reasons contained in the staff report and attached Resolutions, and subject to the conditions of approval appended to the attached Resolutions as "Attachment A."

BACKGROUND: The Applicant submitted Tentative Tract Map No. 20659 (File No. PMTT23-008) and a Development Plan (File No. PDEV23-037) on October 2, 2023, for the development of a 70 unit multiple-family residential condominium project consistent with The Ontario Plan ("TOP") 2050 (August 2022) MDR (Medium Density Residential) land use designation. Although the current TOP 2050 land use designation for the Project site is LDR (Low Density Residential), the Applicant designed the Project consistent with the MDR (Medium Density Residential) land use designation. The following summary provides an explanation of why the MDR designation is applicable to the Project site.

- As part of TOP 2050 Policy Plan (general plan) update the Land Use Plan (Exhibit LU-01) land use designation for the Project site and adjacent church properties were changed from LDR (Low Density Residential) to MDR (Medium Density Residential). The TOP 2050 land use designation change became effective upon adoption of TOP 2050 on August 22, 2022.

- Following the TOP 2050, the City initiated a City-wide zoning consistency program (File No. PZC22-001) to update the Zoning Map consistent with the land use designation changes of TOP 2050. On March 28, 2023, the Planning Commission recommended approval of the zoning consistency program to change the zoning

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Case Planner:	Tom Grahn
Planning Director Approval:	
Submittal Date:	October 2, 2023

Hearing Body	*Date*	*Decision*	*Action*
DAB	7/15/2024	Approval	Recommend
PC	8/27/2024	Approved	Final
CC			

designation on the Project site from LDR-5 (Low Density Residential - 2.1 to 5.0 DU/Acre) to MDR-18 (Medium Density Residential – 11.1 to 18.0 DU/Acre).

- On April 18, 2023, the City Council approved the zoning consistency program, but excluded the Project site and adjacent church properties, requiring a General Plan Amendment to change back the TOP 2050 land use designation for the Project site and adjacent church properties from MDR (Medium Density Residential) back to LDR (Low Density Residential).

- On June 2, 2023, Warmington Residential submitted a Preliminary Review application (File No. PPRE23-002) that included plans, a project description, and the State of California's Senate Bill (SB 330) Preliminary Application form for a proposed 70 unit multiple-family condominium development on the Project site. The City reviewed that submittal for consistency with Government Code Section 65941.1 and on June 30, 2023, communicated to Warmington Residential that information was missing from their submittal.

- On October 2, 2023, Warmington Residential submitted Tentative Tract Map No. 20659 (File No. PMTT23-008) and a Development Plan (File No. PDEV23-037), deeming the submittal complete, thereby vesting their Preliminary Application (File No. PPRE23-002) and memorializing the ordinances, policies, and standards of the Medium Density Residential land use designation and the MDR-25 (Medium Density Residential - 18.1 to 25.0 DU/Acre) zoning district.

- On October 23, 2023, the Planning Commission recommended approval of a General Plan Amendment (File No. PGPA23-001) to change the TOP 2050 land use designation for the Project site and adjacent church properties from MDR (Medium Density Residential) back to LDR (Low Density Residential). On November 21, 2023, the City Council approved PGPA23-001.

Senate Bill 330, the Housing Crisis Act of 2019, and specifically The Housing Accountability Act ("HAA") prohibits a local agency from disapproving, or conditioning approval in a manner that renders infeasible, a housing development project for very low, low-, or moderate-income households unless the local agency makes specified written findings based on a preponderance of the evidence in the record. The HAA protects housing development projects that are consistent with applicable, objective, general plan, zoning and subdivision standards and criteria from denial or being conditioned on a lower density. Further, under the HAA, in the event of an inconsistency between a general plan and zoning district land uses with submittal of the Preliminary Application, and if a local agency has complied with certain timing requirements, it can still require a project to comply with the objective standards and criteria of another zoning district that would be consistent with the general plan.

The Project, which consists of residential units only, is a "housing development project" and entitled to protection under the HAA. The Applicant submitted a SB 330 Preliminary Application for the Project following the City Council action on April 18, 2023, resulting in

inconsistency between TOP 2050 Land Use Plan designation of MDR (Medium Density Residential), and the Zoning Map designation of LDR-5 (Low Density Residential – 2.1 to 5.0 DU/Acre) zoning district until such time the City completes the subsequent General Plan Amendment. As a result of this inconsistency between the General Plan Land Use Designation and Zoning District, the City cannot find the Project inconsistent with the LDR-5 (Low Density Residential – 2.1 to 5.0 DU/Acre) zoning district standards and criteria and cannot require a rezoning, where the Project is consistent with applicable, objective General Plan standards and criteria. The TOP 2050 MDR land use designation that was vested on October 2, 2023 as part of the Applicant's SB 330 Preliminary Review Application allows the applicant to develop the project site utilizing the MDR-25 (Medium Density Residential 18.1 to 25.0 DU/Acre) zoning district at a proposed Project density of 22.6 dwelling units per acre.

On July 15, 2024, the Development Advisory Board ("DAB") conducted a hearing to consider the Tentative Tract Map and Development Plan applications, and recommended the Planning Commission approve the applications subject to conditions of approval, which are appended to the Resolutions as Attachment A.

PROJECT SETTING: The Project site is comprised of 3.1 acres of land located at 1355 West 5th Street, (see Exhibit A: Project Location Map). The Project site contains the existing Sunrise Church building, parking and landscape improvements. The site is one of 3 churches located on the south side of West 5th Street, which includes the First Church of the Nazarene to the east and The Church of God to the west. Existing land uses, Policy Plan (general plan) and zoning designations, and specific plan land designations on and surrounding the project site are provided in the Technical Appendix Table 1: Surrounding Zoning and Land Uses.

PROJECT ANALYSIS:

(1) Tentative Tract Map No. 20659 (File No. PMTT23-008) — The proposed Tentative Tract Map will subdivide the Project site into one numbered lot for condominium purposes, to facilitate the construction of 70 multiple-family dwellings, along with associated recreation, landscape, and common interest amenities and facilities. The Tentative Tract Map is consistent with the project area requirements of the MDR-25 (Medium Density Residential — 18.1 to 25.0 DUs/Acre) zoning district. (see Exhibit B: Tentative Tract Map).

Covenants, Conditions and Restrictions ("CC&Rs") are required for the proposed subdivision as a condition of project approval. The CC&Rs must be submitted, reviewed, and approved by the City and will be recorded with the final map to ensure ongoing maintenance of the driveway, reciprocal access, parking lot maintenance, common landscaping areas, amenities, and common drainage/easement areas.

(2) Development Plan (File No. PDEV23-037)

(a) Density Bonus — As part of the Development Plan application, the Applicant is requesting a density bonus for the Project. Pursuant to the Ontario Development Code Section 6.01.010 H (Residential Zoning Districts, Density Bonus and Other Incentives) and California Government Code Section 65915 (Density Bonuses and Other Incentives), applicants can request additional density beyond what the local General Plan and Development Code permits. The State Density Bonus Law ("SDBL") applies to multiple-family projects that provide on-site affordable housing and provides for: increased residential density over the maximum density that otherwise would be allowed under local law; incentives, concessions, and waivers; and certain specified maximum vehicular parking ratios.

The Project site is 3.1 acres and is currently developed with a church and ancillary buildings and improvements. The Applicant proposes to demolish these existing improvements and develop 70 residential units, together with associated parking and open space. Seven of the units (i.e., 10% of the total 70 units) are proposed to be offered for sale at levels affordable to moderate income households (i.e., households earning 80% to 120% of the area median family income). The Project's provision of 70 units, which results in a density of 22.6 dwelling units per acre, is consistent with the MDR (Medium Density Residential) Land use designation of TOP and is consistent with the MDR-25 (Medium Density Residential 18.1 to 25.0 DU/Acre) zoning district.

Although a density bonus is not needed, or proposed, to accommodate the proposed number of units, the Project's provision of 10% of the total units at levels affordable to moderate income households would entitle the project to one incentive or concession (Gov. Code Section 65915 (d)(2)(A)), an unlimited number of waivers (Gov. Code Section 65915(e)(1)), and a reduced parking ratios (Gov. Code Section 65915(p)).

An incentive or concession is a reduction in development standards or modifications of zoning or architectural requirements, or any other regulatory incentive or concession proposed by the applicant, that results in identifiable and actual cost reductions to provide for affordable housing costs. The Applicant has not identified or proposed any incentives or concessions, although they have reserved the right to do so during the development review process.

In addition to any incentives or concessions, an applicant may request a waiver of any development standard that would have the effect of physically precluding the construction of a development at the density, or with the incentives or concessions, permitted by the SDBL (Gov. Code Section 65915(e)(1)). A development standard includes any site or construction condition including, but not limited to, a height limitation, a setback requirement, a floor area ratio, an onsite open-space requirement, a minimum lot area per unit requirement, or a parking ratio that applies to a residential development pursuant to any ordinance, general plan element, specific plan, charter, or other local condition, law, policy, resolution, or regulation (Gov. Code Section 65915(o)(2)).

The City can deny a waiver only in certain limited circumstances. The only reasons to deny a waiver are: (i) the waiver would have a specific, adverse impact on health or

safety and there is no feasible way to mitigate or avoid the specific adverse impact; (ii) the waiver would have an adverse impact on any real property listed in the California Register of Historical Resources; or (iii) the waiver would be contrary to state or federal law (Gov Code Section 65915(e)(1)). Based on applicable State law, the Applicant is proposing the following waivers from the development standards of the MDR-25 (Medium Density Residential – 18.1 to 25.0 DU/Acre) zoning district:

- Reduce the minimum street setback from 20 feet to 10 feet.
    - Absent this waiver the Project unit count would be reduced by 8 units.
- Reduce the minimum front to front and minimum side to side building separation requirements from 30 feet and 15 feet to 19.5 and 10 feet, respectively.
    - Absent this waiver the Project unit count would be reduced by 12 units.
- Reduce the minimum private open space requirement from 150 square feet to 134 square feet per unit.
    - Absent this waiver the Project unit count would be reduced by 8 units.
- Reduce the minimum common open space requirement from 250 square feet to 170 square feet per unit.
    - Absent this waiver the Project unit count would be reduced by 8 units.
- Reduce the major recreation facility requirements for recreation buildings, swimming pools, water play fountains, tennis courts, and childcare facilities and instead provide a barbeque seating area and activity lawn.
    - Absent this waiver the Project unit count would be reduced by 16 units.
- Reduce the parking requirement from 192 to 131 parking spaces.
    - Absent this waiver the Project unit count would be reduced by 16 units.

Additionally, approval of the requested density bonus will require the Applicant to enter into an Affordable Housing Regulatory Agreement with the City. Conditions of Approval require the Applicant to enter into an Affordable Housing Agreement with the City for 7 Moderate Income Affordable Units prior to the issuance of building permits. The term of the Affordable Housing Agreement is 55 years.

(b) Site Design/Building Layout — The Project proposes the construction of 12 detached buildings consisting of: 4-, 5-, 6-, and 8-Plex buildings. Building B400 (Building Nos. 1, 5, 8, & 12) have 4 units each, Building B500 (Building Nos. 2 & 11) have 5 units each, Building B600 (Building Nos. 4 & 9) have 6 units each, Building B800 (Building Nos. 3 & 10) have 8 units each, and Building B810 (Building Nos. 6 & 7) have 8 units each for a total of 70 units at a density of 22.6 dwelling units per acre. The site design and building locations are depicted in Exhibit C: Site Plan. The proposed walk-up row town style buildings all have 3-story units with an overall height of 39 feet. The buildings are arranged with private garages oriented towards a 24-foot-wide drive aisle that circulates throughout the site. The buildings are oriented with front entries facing West 5th Street Avenue, a common walkway, or an amenity.

The buildings facing West 5th Street are set back 10 feet from the street right-of-way on either side of the central driveway to the Project site. All other buildings are oriented either north/south or east/west and are equally divided on the site by a 2-way 24-foot private

drive aisle. The centrally located recreation area is situated between 2 8-Plex buildings, with guest parking located at each end. Buildings that are adjacent to the side property lines are setback 10 to 13 feet from the property line. Buildings that are adjacent to the rear property line are setback approximately 15 feet from the property line. Building entries that front onto the recreation area are setback a minimum of 10 feet and building separation is a minimum of 15 feet. Where front-to-front building orientation is provided, units are set back approximately 20 feet, and where side-to-side building orientation is provided, units are setback approximately 10 feet.

The units will provide 3- and 4-bedroom units with 2.5, 3, and 4 bathrooms, as depicted in Exhibit F: Floorplans. All units will have private balconies, approximately 50 square feet in area and a main level private open space area that is approximately 60 square feet in size. Private garages are located at the rear of the units on the ground floor and will have direct access to the unit. The primary living space is located on the second floor and are equipped with kitchen, dining, and living areas. Bedrooms are located on the upper floors.

(c) Site Access/Circulation — Project vehicular access is provided by a 24-foot-wide driveway located off West 5th Street. The driveway access leads to a central 24-foot-wide two-way private drive aisle connecting to garages and off-street parking. Pedestrian access to the site is taken from West 5th Street via a 5-foot-wide sidewalk adjacent to the northwest corner of the Project boundary. Additionally, units fronting onto West 5 Street have direct sidewalk access to their individual units. The proposed on-site and public right-of-way improvements will assist towards creating walkable and safe areas for pedestrians to access the Project site.

(d) Parking — The Project has provided off-street parking pursuant to the parking standards specified in the State Density Bonus Law “SDBL” (Gov. Code Section 65915(p)(1)). The SDBL identifies that parking requirements cannot exceed 1.5 parking spaces for 2- and 3- bedroom units and 2.5 parking spaces for 4 and more bedroom units. The number of off-street parking spaces required for the Project is 131 parking spaces, and project proposes 163 parking spaces that exceeds the minimum parking requirement. Each unit will be provided with a 2-car garage (42 units with side-by-side parking and 28 units with tandem parking). The off-street parking calculations for the Project are summarized in the Technical Appendix, Table 3: SDBL Parking Requirement Summary.

(e) Architecture — The architectural style proposed is a contemporary design with gabled roofs. The three-story buildings feature a stucco exterior finish with a fiber cement accent material at select locations on the ground level. Two color schemes utilizing three colors are proposed to provide variety for both primary and accent finish colors. The Project illustrates the type of high-quality residential architecture promoted by the City's Development Code (see Exhibit C: Building Elevations). Project architecture is exemplified through the use of:

- Articulation in the building's roof line;

- Stucco with a light sand finish;
- Contrasting stucco color along the building base;
- Stucco foam trim;
- Accent fiber cement siding;
- Asphalt shingle roof;
- Metal and railings at all balconies along the second floor;
- Decorative exterior lighting;
- Vinyl ground level privacy fencing;
- Decorative trims around doors and windows; and
- Incorporation of a color pallet appropriate to the proposed architecture.

(f) Landscaping — Pursuant to Ontario Development Code Sections 6.01.010 and 6.05, all areas of a multiple-family development project not covered by structures, drive aisles, off-street parking facilities, or hardscape shall be fully landscaped and provided with a permanent automatic irrigation system prior to Certificate of Occupancy issuance. Landscaping is provided for these unpaved areas, including the full length of the Project street frontages, along pedestrian walkways and recreation areas, and throughout the parking lot, for a total of 18,880 square feet (14.0 percent) of landscape coverage for the Project site. A variety of accent and shade trees in 15-gallon, 24-inch, 36-inch, and 48-inch box sizes, as well as 1-gallon, 5-gallon and 15-gallon size shrubs, groundcovers, and vines, will be planted throughout the site. Decorative paving and lighting will be provided at entries, pedestrian walkways, and other key locations throughout the Project site (see Exhibit G: Landscape Plan).

(g) Open Space/Amenities — The Development Code requires a total of 17,500 square feet of common open space (250 square feet per unit) and 10,500 square feet of private open space (150 square feet per unit) for a total open space requirement of 28,000 square feet (400 square feet per unit). The Applicant is requesting a waiver to reduce the total common open space to 11,900 square feet (170 square feet per unit) and private open space to 9,380 square feet (134 square feet per unit) for a total of 21,280 square feet of open space (304 square feet per unit) and is being provided in the form of:

- Barbeque seating area centrally located;
- Activity lawn centrally located;
- Requested waiver of not providing any major amenity, as this will result in a loss of affordable housing units.

(h) Signage — All project signage is required to comply with sign regulations provided in Ontario Development Code Division 8.1. Prior to the issuance of a Building Permit for the installation of any new on-site signage, the Applicant is required to submit Sign Plans for Planning Department review and approval.

(i) Utilities (drainage, sewer) — Public utilities (water and sewer) are available to serve the Project. Furthermore, the Applicant has submitted a Preliminary Water Quality Management Plan ("PWQMP"), which establishes the Project's compliance with

storm water discharge/water quality requirements. The PWQMP includes site design measures that capture runoff and pollutant transport by minimizing impervious surfaces and maximizes low impact development ("LID") best management practices ("BMPs"), such as retention and infiltration, biotreatment, and evapotranspiration. The PWQMP proposes the use of underground storm water retention chambers to receive, retain, and treat storm water runoff. Any overflow drainage will be conveyed to the public street by way of parkway drains and culverts.

NEIGHBORHOOD MEETING: A neighborhood meeting regarding the proposed Project was held at the Anthony Muñoz Community Center on July 17, 2024. There were 18 persons in attendance, representing 16 of the surrounding properties. Questions from those in attendance focused on traffic and safety impacts along West 5th Street and how this project will add to congestion, SB 330 applicability and how it effects the project, clarification of the existing project zoning district, on-site parking – both how it's designed and managed, the number of bedrooms per unit, potential impact to schools, and the price of market and moderate-income units. City staff responded to all questions presented at the community meeting and indicated that this report would provide additional information as needed.

Most of the questions presented by the community (i.e., SB 330, existing zoning, parking, and the number of bedrooms per unit) are addressed in the report above, impacts to schools are addressed through the payment of impact fees to the applicable school districts, and questions regarding the price of units was answered by the applicant. The remaining question focused on traffic and safety impacts along West 5th Street. In response, Staff contacted the Ontario Police Department ("OPD") and reviewed the Trip Generation and VMT [Vehicle Miles Traveled] Screening analysis prepared for the project and summarized below:

- The OPD evaluated the number of calls for the general area north and south of West 5th Street between Benson Avenue and Mountain Avenue over the past year. Their analysis identified 712 calls for service received, with 303 related to traffic issues (i.e., illegal parking, abandoned vehicle, repossession, attempted grand theft, etc.). Additionally, during that same time the OPD issued 280 traffic/parking citations (i.e., parking in a fire lane, restricted area, expired registration, exceeding a 72-hour limit, etc.). OPD identified that there were 2 reported vehicle accidents along this section of West 5th Street during the past 12 months.
- The Trip Generation and VMT Screening analysis determined that the proposed project is projected to generate 472 daily trips, with 28 AM and 36 PM peak hour trips. Per the City's Engineering Department Traffic Division, the projected number of trips generated by the Project site would not warrant conditioning the Project for any traffic related improvements.

Under applicable State law, the City must approve a project that complies with the objective standards of the general plan and zoning ordinance, unless the City is able to make written findings based on the preponderance of the evidence that there is an

impact to the public health and safety and this impact cannot be mitigated. Government Code Section 65589.5(j) allows a City to disapprove a housing development project that would have a specific, adverse impact upon the public health or safety; and a "specific, adverse impact" means a significant quantifiable, direct, and unavoidable impact, based on objective, identified written public health or safety standards, policies, or conditions as they existed on the date the application was deemed complete. These standards would need to have been codified within the City's Development Code at the time the Preliminary Application was determined to have been submitted, and Staff is not aware of any identified specific, adverse impacts (i.e., active fault line setback requirements, flood zones, high fire hazard severity zones, etc.) as a result of the proposed Project that would allow the City to deny the Project based on the above described State definition of an adverse impact to the public health or safety.

PUBLIC NOTIFICATION: The subject application was advertised as a public hearing in at least one newspaper of general circulation in the City of Ontario (the Inland Valley Daily Bulletin newspaper). In addition, the Project site was posted with one large public notification sign and notices were mailed to all owners of real property located within a minimum of 300 feet of the exterior boundaries of the property that is the subject of the hearing, as shown on the records of the County Assessor.

CORRESPONDENCE: As of the preparation of this Agenda Report, Planning Department staff has not received any written or verbal communications from the owners or occupants of properties surrounding the Project site or from the public in general, regarding the subject application.

AGENCY/DEPARTMENT REVIEWS: Each City agency/department has been provided the opportunity to review and comment on the subject application and recommend conditions of approval to be imposed upon the application. At the time of the Resolution preparation, recommended conditions of approval were provided and are appended to the attached Resolutions as "Attachment A."

AIRPORT LAND USE COMPATIBILITY PLAN (ALUCP) COMPLIANCE: The California State Aeronautics Act (Public Utilities Code Section 21670 et seq.) requires that an Airport Land Use Compatibility Plan be prepared for all public use airports in the State; and requires that local land use plans and individual development proposals must be consistent with the policies set forth in the adopted Airport Land Use Compatibility Plan.

On April 19, 2011, the City Council of the City of Ontario approved and adopted the ONT ALUCP, establishing the Airport Influence Area for Ontario International Airport, which encompasses lands within parts of San Bernardino, Riverside, and Los Angeles Counties, and limits future land uses and development within the Airport Influence Area, as they relate to noise, safety, airspace protection, and overflight impacts of current and future airport activity. As the approving body for the Project, the Planning Commission Board has reviewed and considered the facts and information contained in the Application and supporting documentation against the ONT ALUCP compatibility factors, including [1] Safety Criteria (ONT ALUCP Table 2-2) and Safety Zones (ONT ALUCP Map 2-2),

[2] Noise Criteria (ONT ALUCP Table 2-3) and Noise Impact Zones (ONT ALUCP Map 2-3), [3] Airspace protection Zones (ONT ALUCP Map 2-4), and [4] Overflight Notification Zones (ONT ALUCP Map 2-5). As a result, the Planning Commission, therefore, finds and determines that the Project, when implemented in conjunction with the conditions of approval, will be consistent with the policies and criteria set forth within the ONT ALUCP.

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

(1) City Council Goals.

- Operate in a Businesslike Manner
- Focus Resources in Ontario's Commercial and Residential Neighborhoods
- Invest in the City's Infrastructure (Water, Streets, Sewers, Parks, Storm Drains and Public Facilities)

(2) Vision.

Distinctive Development:

- Commercial and Residential Development

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

(3) Governance.

Decision Making:

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

➢ G 1-2. Long-term Benefit. We require decisions to demonstrate and document how they add value to the community and support the Ontario Vision.

(4) Policy Plan (General Plan)

Land Use Element:

- Goal LU-1 Balance: A community that has a spectrum of housing types and price ranges that match the jobs in the City and that make it possible for people to live and work in Ontario and maintain a quality of life.

- LU-1.1 Strategic Growth. We concentrate growth in strategic locations that help create place and identity, maximize available and planned infrastructure, foster the development of transit, and support the expansion of the active and multimodal transportation networks throughout the City.

- LU-1.3 Adequate Capacity. We require adequate infrastructure and services for all development.

- LU-1.6 Complete Community. We incorporate a variety of land uses and building types in our land use planning efforts that result in a complete community where residents at all stages of life, employers, workers, and visitors have a wide spectrum of choices of where they can live, work, shop and recreate within Ontario.

- Goal LU-2 Compatibility: Compatibility between a wide range of uses and resultant urban patterns and forms.

- LU-2.6 Infrastructure Compatibility. We require infrastructure to be aesthetically pleasing and in context with the community character.

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.

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.

- Goal CE-2 Placemaking: A City of distinctive neighborhoods, districts, corridors, and centers where people choose to be.

- CE-2.1 Development Projects. We require new development and redevelopment to create unique, high-quality places that add value to the community.

➢ CE-2.2 Development Review. We require those proposing new development and redevelopment to demonstrate how their projects will create appropriately unique, functional, and sustainable places that will compete well with their competition within the region.

➢ CE-2.4 Protection of Investment. We require that new development and redevelopment protect existing investment by providing architecture and urban design of equal or greater quality.

➢ CE-2.5 Private Maintenance. We require adequate maintenance, upkeep, and investment in private property because proper maintenance on private property protects property values.

Safety Element:

▪ Goal S-1 Seismic & Geologic Hazards: Minimized risk of injury, loss of life, property damage, and economic and social disruption caused by earthquake-induced and other geologic hazards.

➢ S-1.1 Implementation of Regulations and Standards. We require that all new habitable structures be designed in accordance with the most recent California Building Code adopted by the City, including provisions regarding lateral forces and grading.

Community Design Element:

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

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

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

▪ Goal CD-2 Design Quality: A high level of design quality resulting in neighborhoods, public spaces, parks, and streetscapes that are attractive, safe, functional, human-scale, and distinct.

➢ 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.

➢ CD-2.8 Safe Design. We incorporate defensible space design into new and existing developments to ensure the maximum safe travel and visibility on pathways, corridors, and open space and at building entrances and parking areas by avoiding physically and visually isolated spaces, maintaining visibility and accessibility, and using lighting.

➢ CD-2.9 Landscape Design. We encourage durable, sustainable, and drought-tolerant landscaping materials and designs that enhance the aesthetics of structures, create and define public and private spaces, and provide shade and environmental benefits.

➢ CD-2.10 Parking Areas. We require all development, including single-family residential, to minimize the visual impact of surface, structured, and garage parking areas visible from the public realm in an aesthetically pleasing, safe and environmentally sensitive manner. Examples include:

- Surface parking: Shade trees, pervious surfaces, urban run-off capture and infiltration, and pedestrian paths to guide users through the parking field; and
- Garage parking: providing access to single-family residential garages through alley access, recessing garages from the frontage to emphasize front doors or active living spaces.

➢ CD-2.11 Entry Statements. We encourage the inclusion of amenities, signage, and landscaping at the entry to neighborhoods, commercial centers, mixed use areas, industrial developments, and public places that reinforce them as uniquely identifiable places.

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

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

➢ CD-5.2 Maintenance of Infrastructure. We require the continual maintenance of infrastructure.

HOUSING ELEMENT COMPLIANCE: The project is consistent with the Housing Element of the Policy Plan (general plan) component of The Ontario Plan, as the project site is not

one of the properties in the Housing Element Sites contained in Tables B-1 and B-2 (Housing Element Sites Inventory) of the Housing Element Technical Report.

ENVIRONMENTAL REVIEW: As the approving body for the Project, the Planning Commission has reviewed and considered the information contained in the administrative record for the Project, including all written and oral evidence provided during the comment period. Based upon the facts and information contained in the administrative record, including all written and oral evidence presented to the Planning Commission, the Planning Commission finds as follows:

(1) The Project is categorically exempt from the requirements of the California Environmental Quality Act (CEQA) pursuant to Section 15332 (Class 32, In-fill Development Projects) of the CEQA Guidelines, and meets all of the following conditions:

(a) *The proposed Project is consistent with the applicable general plan designation and all applicable general plan policies as well as with applicable zoning designation and regulations.* The proposed Project is located within the LDR (Low Density Residential) land use designation of the Policy Plan (general plan) Land Use Map; however, pursuant to SB 330 and Government Code Section 65941.1, the Project vested under the MDR-25 (Medium Density Residential—18.1 to 25.0 DUs/Acre) zoning district. The proposed Project is consistent with all applicable Policy Plan policies, as well as with the requirements of the MDR-25 (Medium Density Residential—18.1 to 25.0 DUs/Acre) zoning district.

(b) *The proposed development occurs within city limits on a project site of no more than five acres substantially surrounded by urban uses.* The Project is proposed within the established boundaries of the City of Ontario, on a project site totaling 3.1-acres of land, which is surrounded by established development on all sides and consists of a mix of multiple-family and single-family residential land uses.

(c) *The Project site has no value as habitat for endangered, rare, or threatened species.* The site is located in an urbanized area, is developed with an existing church, related parking, and ornamental landscaping. The entire Project site has been disturbed by previous development and does not contain any sensitive habitat, endangered, rare, or threatened species or habitat that could support sensitive species.

(d) *Approval of the Project would not result in any significant effects relating to traffic, noise, air quality, or water quality.* The residential development is similar to, and of no greater impact than other allowed uses and development projects within the MDR-25 (Medium Density Residential—18.1 to 25.0 DUs/Acre) zoning district. The Project would not result in any significant impacts through implementation of required state, regional, and local development and performance standards, and as demonstrated in the Air Quality, GHG, Noise, Trip Generation and vehicle miles traveled ("VMT") analysis, and the Preliminary Water Quality Management Plan ("PWQMP") prepared for the Project.

(e) *The site is adequately served by all required utilities and public services.* All necessary wet and dry utilities are within the public street and are readily available for connection.

(2) The application of the categorical exemption is not barred by one of the exceptions set forth in CEQA Guidelines Section 15300.2.

(3) The determination of CEQA exemption reflects the independent judgment of the Planning Commission.

TECHNICAL APPENDIX:

Table 1: Surrounding Zoning and Land Uses

	Existing Land Use	*Policy Plan Designation*	*Zoning Designation*
Site	Church	Low Density Residential	LDR-5 (Low Density Residential — 2.1 to 5.0 Dus/Acre)
North	Single Family Multiple Family Residential	Low Density Residential and Medium Density Residential	LDR-5 (Low Density Residential — 2.1 to 5.0 Dus/Acre and MDR-25 (Medium Density Residential — 18.1 to 25.0 DUs/Acre)
South	Single Family Residential	Low Density Residential	LDR-5 (Low Density Residential — 2.1 to 5.0 Dus/Acre)
East	Church	Low Density Residential	LDR-5 (Low Density Residential — 2.1 to 5.0 Dus/Acre)
West	Church	Low Density Residential	LDR-5 (Low Density Residential — 2.1 to 5.0 Dus/Acre)

Table 2: General Site & Building Statistics

Item	*Required Min./Max.*	*Provided (Ranges)*	*Meets Y/N*
Project area (in acres):	--	3.1	N/A
Open space – common and Private (in SF):	28,000 SF	21,280 SF	Y*
Project area (in acres):	1.0	3.1	N/A
Maximum project density (dwelling units/ac):	18.1 to 25.0 DU/AC	22.6 DU/AC	Y**
Maximum height (in FT):	60 FT	39 FT	Y
Open space – private:	150 sq ft	134 sq ft	Y*
Total no. of dwelling units:	57 to 78	70	Y
*	Identified waiver		
**	Based on SDBL		

Table 3: SDBL Parking Requirement Summary

Type of Use	*Units*	*Parking Ratio*	*SDBL Spaces Required*	*Spaces Provided*
2 to 3 Bedroom Units	44	1.5 spaces / dwelling	66	88
4 and more Bedroom Units	26	2.5 spaces / dwelling	65	52
Guest	N/A	N/A	0	23
TOTAL			**131**	**163**

Table 4: Dwelling Unit Statistics:

Unit Type	*Number of Units*	*Unit Size (in SF)*	*No. Bedrooms*	*No. Bathrooms*	*No. Stories*
Plan 1	8	1,378	3	2.5	3
Plan 2	8	1,390	3	2.5	3
Plan 3	28	1,465	3	3	3
Plan 4	26	1,617	4	4	3
Total	70				

Exhibit A: PROJECT LOCATION MAP



Exhibit B: TENTATIVE TRACT MAP

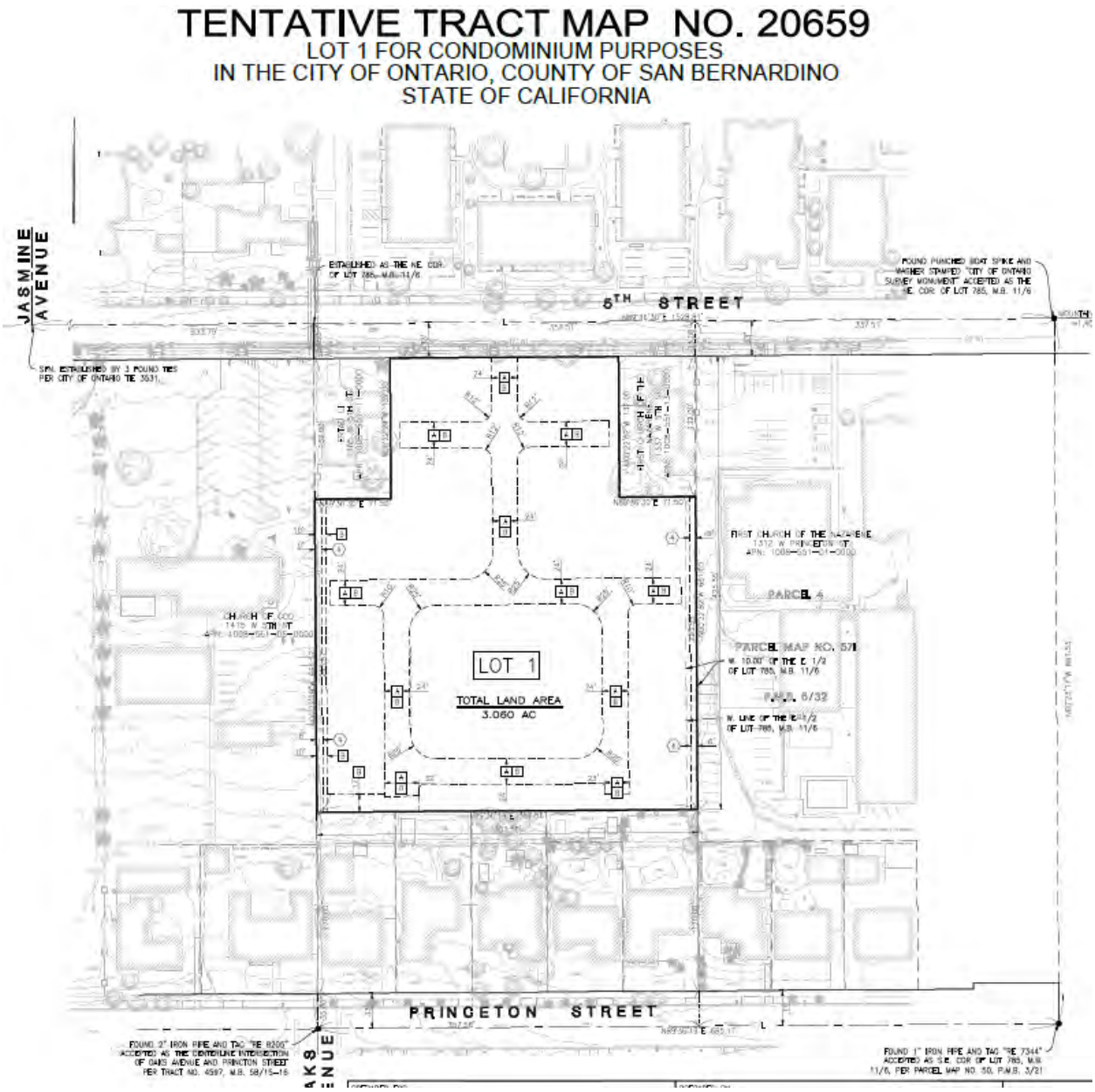


Exhibit C: SITE PLAN

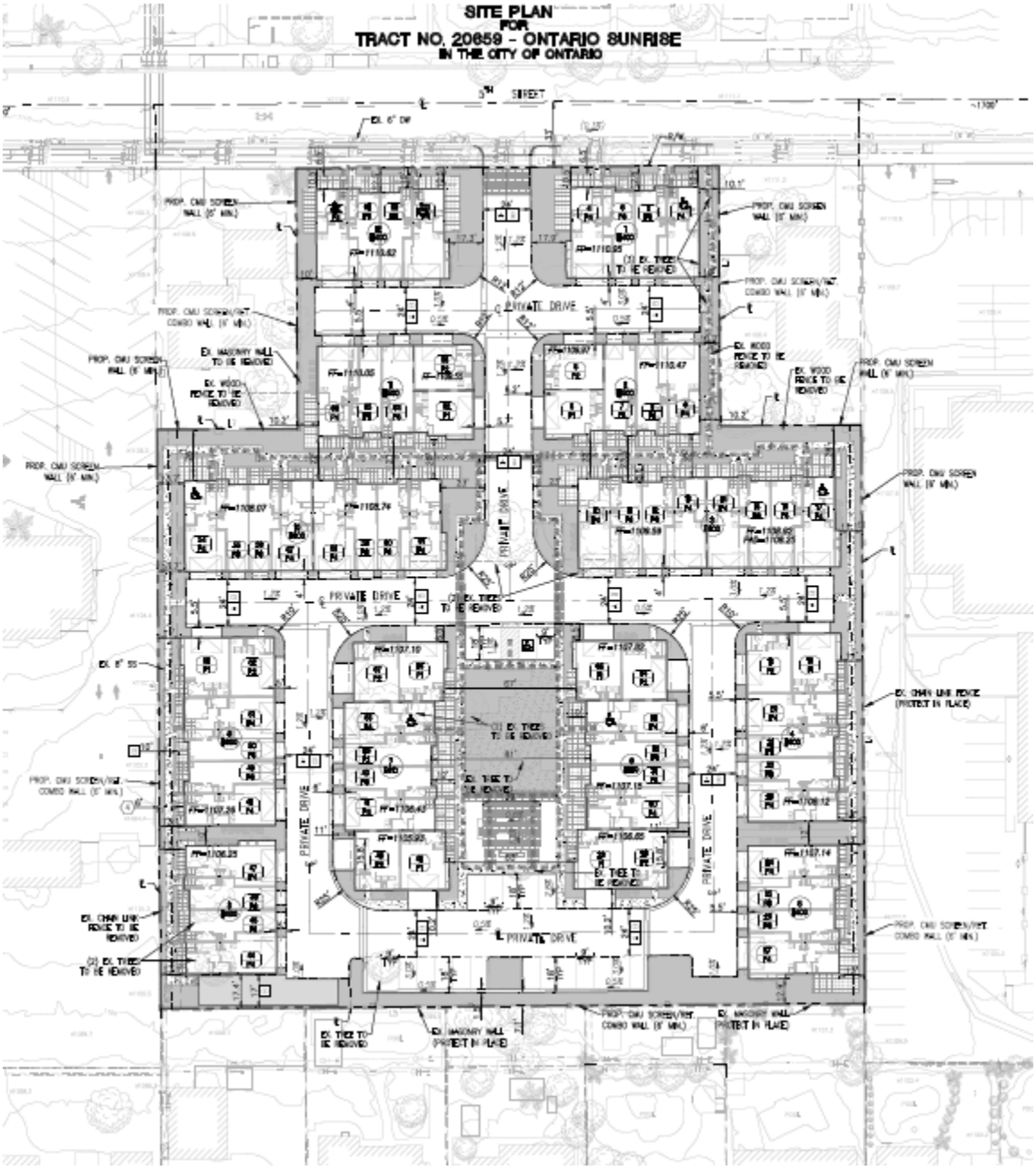


Exhibit D: ELEVATIONS

Building B400, 4-Plex









Exhibit D: ELEVATIONS

Building B400, 4-Plex



Exhibit D: ELEVATIONS

Building B400, 4-Plex



Exhibit D: ELEVATIONS
Building B500, 5-Plex



FRONT PERSPECTIVE BLDG 11



REAR PERSPECTIVE NOTE: COLOR SCHEME 2 SHOWN

Exhibit D: ELEVATIONS

Building B500, 5-Plex



Exhibit D: ELEVATIONS
Building B600, 6-Plex



FRONT PERSPECTIVE BLDG 9



REAR PERSPECTIVE NOTE: COLOR SCHEME 1 SHOWN

Exhibit D: ELEVATIONS

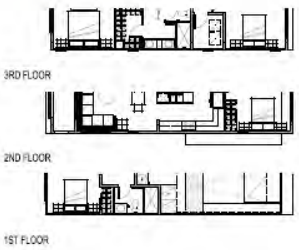
Building B600, 6-Plex

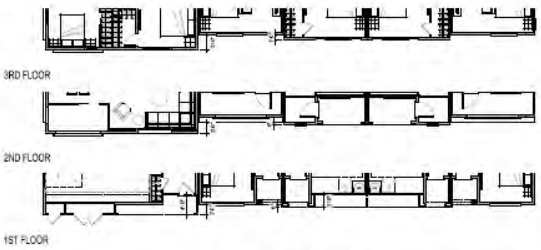


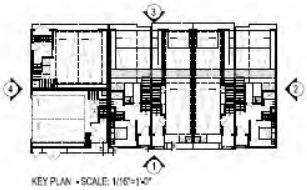
RIGHT • 2



FRONT • 1







KEY PLAN • SCALE: 1/16"=1'-0"

NOTE: COLOR SCHEME 1 SHOWN
NOTE: BUILDING 9 DEMONSTRATED IN ELEVATIONS ABOVE
NOTE: GUTTERS AND DOWNSPOUTS TO BE PAINTED TO MATCH ELEVATIONS

MATERIAL LEGEND

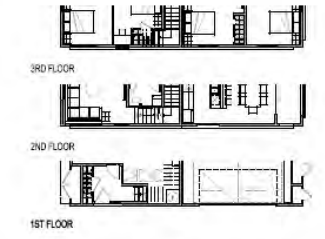
1. STUCCO, LIGHT SAND FINISH
2. FIBER CEMENT SIDING
3. ASPHALT SHINGLE ROOF
4. VINYL WINDOWS
5. STUCCO RECESS
6. STUCCO O/ FOAM TRIM
7. SCREED LINE
8. FIBERGLASS ENTRY DOOR
9. FIBER CEMENT TRIM
10. DECORATIVE EXT. LIGHTING & ADDRESS SIGN
11. METAL SECTIONAL GARAGE DOOR
12. HORIZONTAL WOOD RAILING
13. HORIZONTAL METAL RAILING
14. VINYL PRIVACY FENCE
15. UTILITY CLOSET
16. DOWNSPOUTS

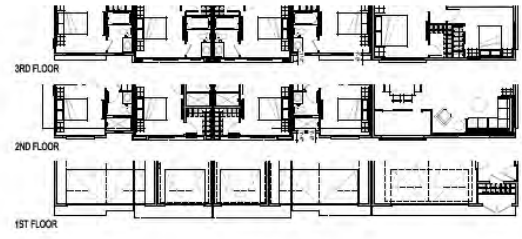


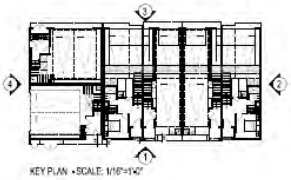
LEFT • 4



REAR • 3







KEY PLAN • SCALE: 1/16"=1'-0"

NOTE: COLOR SCHEME 1 SHOWN
NOTE: BUILDING 9 DEMONSTRATED IN ELEVATIONS ABOVE
NOTE: GUTTERS AND DOWNSPOUTS TO BE PAINTED TO MATCH ELEVATIONS

MATERIAL LEGEND

1. STUCCO, LIGHT SAND FINISH
2. FIBER CEMENT SIDING
3. ASPHALT SHINGLE ROOF
4. VINYL WINDOWS
5. STUCCO RECESS
6. STUCCO O/ FOAM TRIM
7. SCREED LINE
8. FIBERGLASS ENTRY DOOR
9. FIBER CEMENT TRIM
10. DECORATIVE EXT. LIGHTING & ADDRESS SIGN
11. METAL SECTIONAL GARAGE DOOR
12. HORIZONTAL WOOD RAILING
13. HORIZONTAL METAL RAILING
14. VINYL PRIVACY FENCE
15. UTILITY CLOSET
16. DOWNSPOUTS

Exhibit D: ELEVATIONS
Building B800, 8-Plex



FRONT PERSPECTIVE BLDG 10



REAR PERSPECTIVE NOTE: COLOR SCHEME 1 SHOWN

Exhibit D: ELEVATIONS

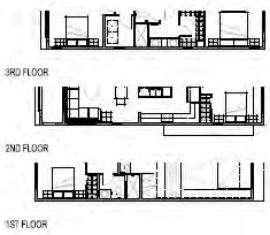
Building B800, 8-Plex

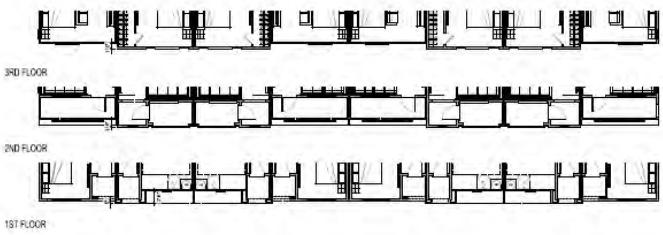


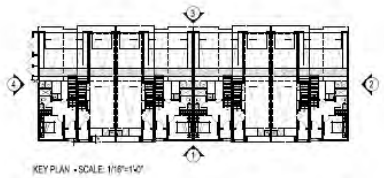
RIGHT - 2



FRONT - 1







KEY PLAN - SCALE: 1/16"=1'-0"

NOTE: COLOR SCHEME 1 SHOWN
NOTE: BUILDING 10 DEMONSTRATED IN ELEVATIONS ABOVE
NOTE: GUTTERS & DOWNSPOUTS TO BE PAINTED TO MATCH ELEVATION

MATERIAL LEGEND

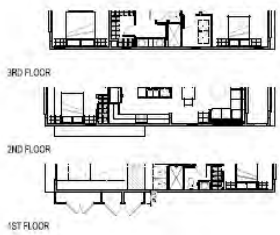
1. STUCCO, LIGHT SAND FINISH
2. FIBER CEMENT SIDING
3. ASPHALT SHINGLE ROOF
4. VINYL WINDOWS
5. STUCCO RECESS
6. STUCCO O/ FOAM TRIM
7. SCREED LINE
8. FIBERGLASS ENTRY DOOR
9. FIBER CEMENT TRIM
10. DECORATIVE EXT. LIGHTING & ADDRESS SIGN
11. METAL SECTIONAL GARAGE DOOR
12. HORIZONTAL WOOD RAILING
13. HORIZONTAL METAL RAILING
14. VINYL PRIVACY FENCE
15. UTILITY CLOSET
16. DOWNSPOUTS



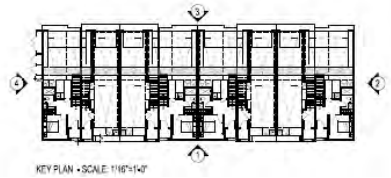
LEFT - 4



REAR - 3







KEY PLAN - SCALE: 1/16"=1'-0"

NOTE: COLOR SCHEME 1 SHOWN
NOTE: BUILDING 10 DEMONSTRATED IN ELEVATIONS ABOVE
NOTE: GUTTERS & DOWNSPOUTS TO BE PAINTED TO MATCH ELEVATION

MATERIAL LEGEND

1. STUCCO, LIGHT SAND FINISH
2. FIBER CEMENT SIDING
3. ASPHALT SHINGLE ROOF
4. VINYL WINDOWS
5. STUCCO RECESS
6. STUCCO O/ FOAM TRIM
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12. HORIZONTAL WOOD RAILING
13. HORIZONTAL METAL RAILING
14. VINYL PRIVACY FENCE
15. UTILITY CLOSET
16. DOWNSPOUTS

Exhibit D: ELEVATIONS
Building B810, 8-Plex



FRONT PERSPECTIVE BLDG 7



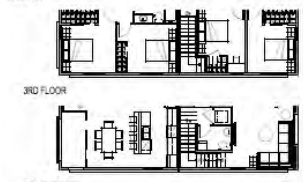
REAR PERSPECTIVE NOTE: COLOR SCHEME 2 SHOWN

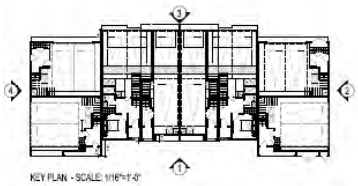
Exhibit D: ELEVATIONS

Building B810, 8-Plex



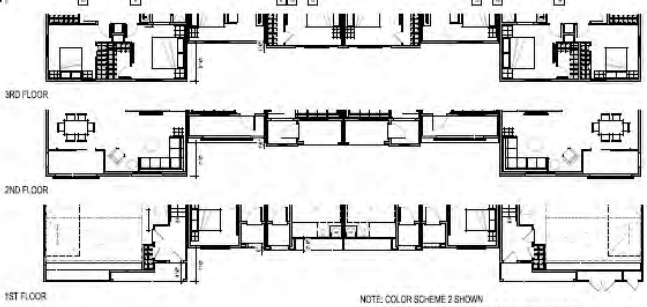
RIGHT - 2







FRONT - 1



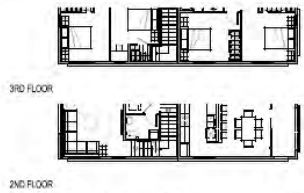
NOTE: COLOR SCHEME 2 SHOWN
NOTE: BUILDING 7 DEMONSTRATED IN ELEVATIONS ABOVE

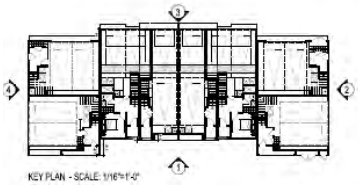
MATERIAL LEGEND

1. STUCCO, LIGHT SAND FINISH
2. FIBER CEMENT SIDING
3. ASPHALT SHINGLE ROOF
4. VINYL WINDOWS
5. STUCCO RECESS
6. STUCCO CI FOAM TRIM
7. SCREED LINE
8. FIBERGLASS ENTRY DOOR
9. FIBER CEMENT TRIM
10. DECORATIVE EXT. LIGHTING & ADDRESS SIGN
11. METAL SECTIONAL GARAGE DOOR
12. HORIZONTAL WOOD RAILING
13. HORIZONTAL METAL RAILING
14. VINYL PRIVACY FENCE
15. UTILITY CLOSET
16. DOWNSPOUTS



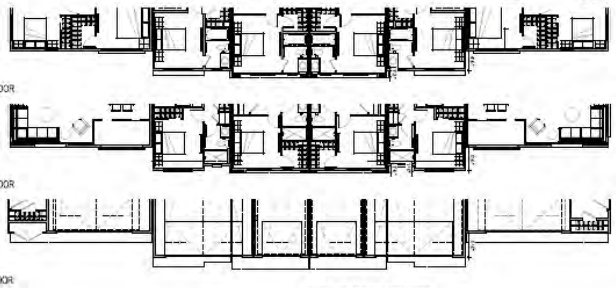
LEFT - 4







REAR - 3



NOTE: COLOR SCHEME 2 SHOWN
NOTE: BUILDING 7 DEMONSTRATED IN ELEVATIONS ABOVE
NOTE: GUTTERS AND DOWNSPOUTS TO BE PAINTED TO MATCH ELEVATIONS

MATERIAL LEGEND

1. STUCCO, LIGHT SAND FINISH
2. FIBER CEMENT SIDING
3. ASPHALT SHINGLE ROOF
4. VINYL WINDOWS
5. STUCCO RECESS
6. STUCCO CI FOAM TRIM
7. SCREED LINE
8. FIBERGLASS ENTRY DOOR
9. FIBER CEMENT TRIM
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12. HORIZONTAL WOOD RAILING
13. HORIZONTAL METAL RAILING
14. VINYL PRIVACY FENCE
15. UTILITY CLOSET
16. DOWNSPOUTS

Exhibit E: COLOR BOARD

COLOR SCHEME 1





COLOR SCHEME 1

COLOR SCHEME 2

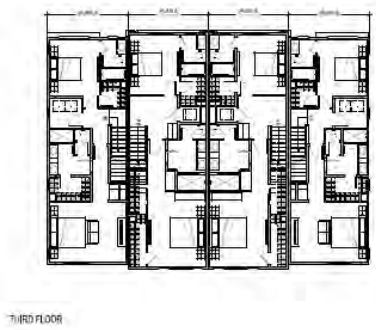


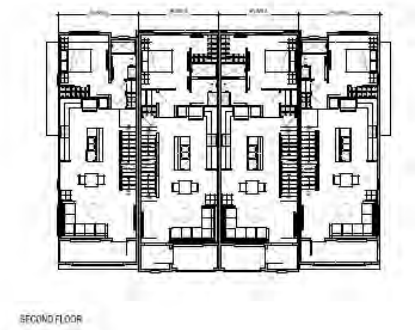


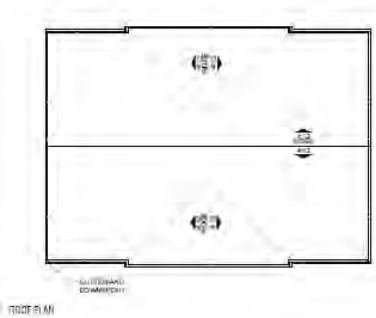
COLOR SCHEME 2

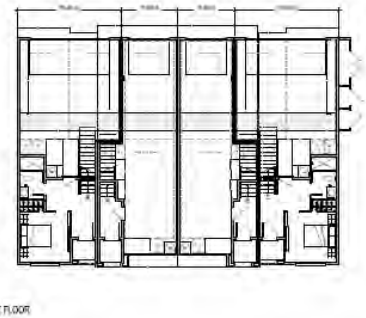
Exhibit F: FLOOR PLAN

Building B400, 4-Plex

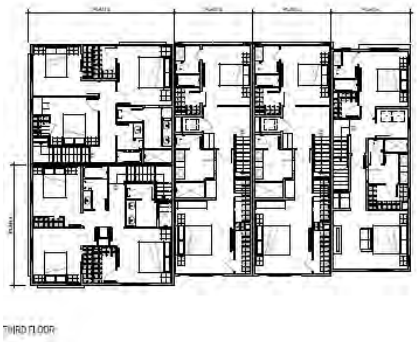




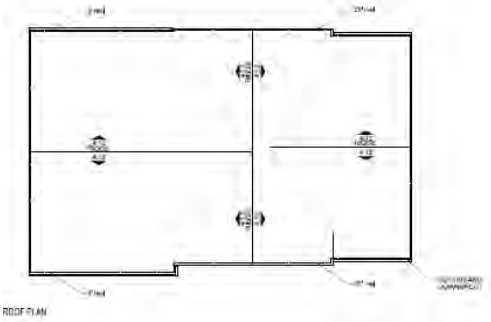




Building B500, 5-Plex







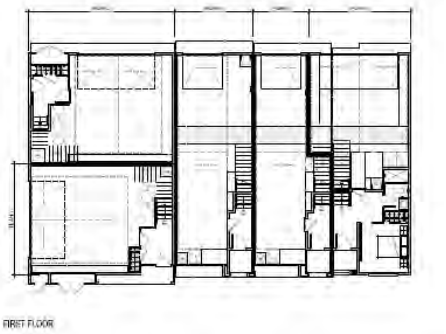
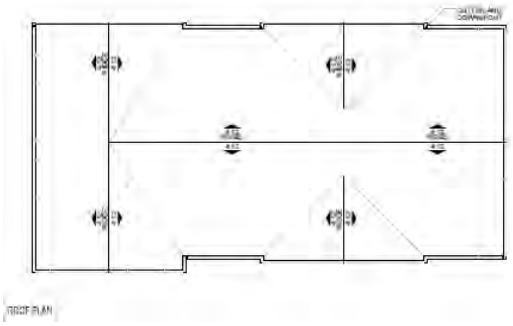


Exhibit F: FLOOR PLAN
Building B600, 6-Plex







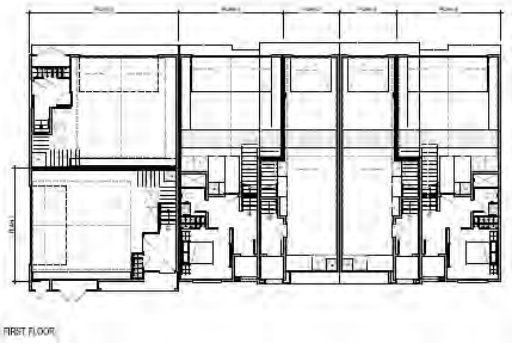
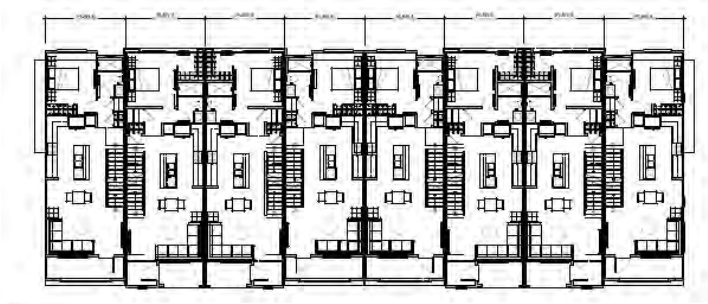
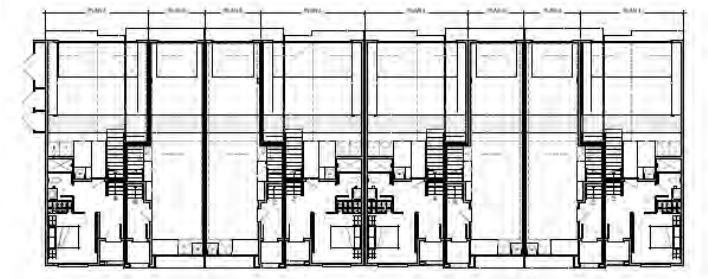


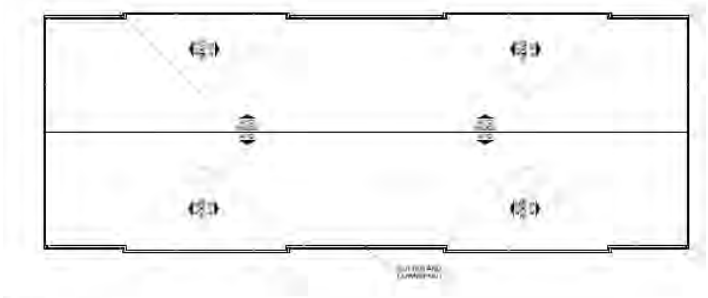
Exhibit F: FLOOR PLAN
Building B800, 8-Plex



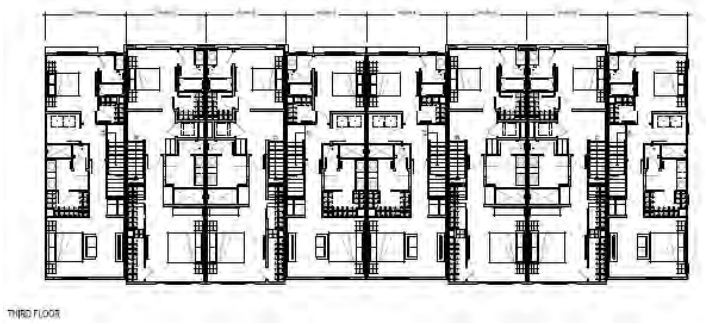
SECOND FLOOR



FIRST FLOOR

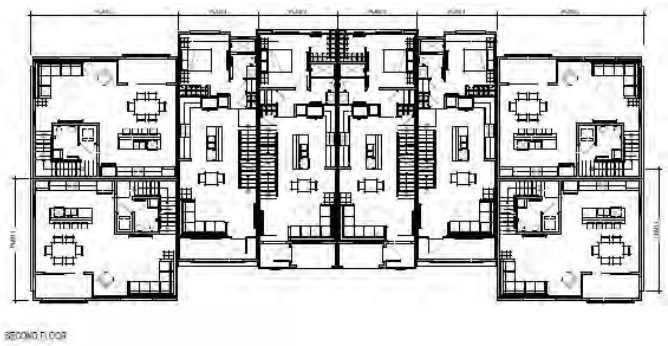


ROOF PLAN

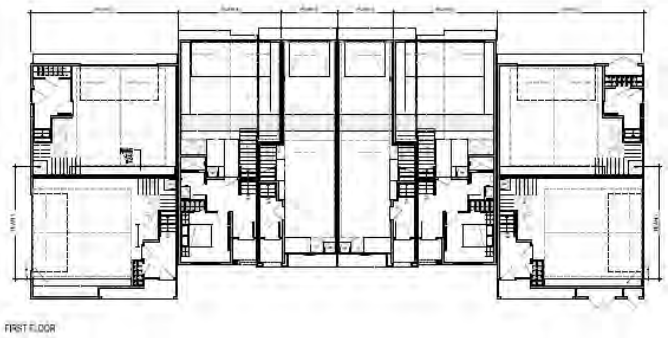


THIRD FLOOR

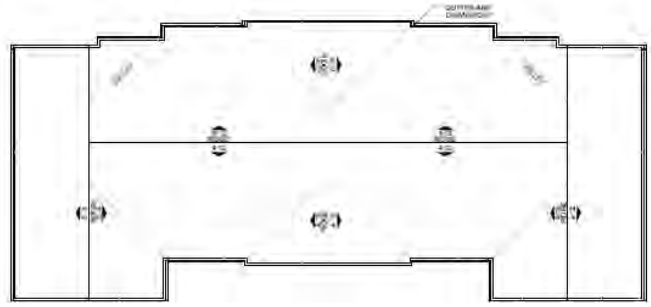
Exhibit F: FLOOR PLAN
Building B810, 8-Plex



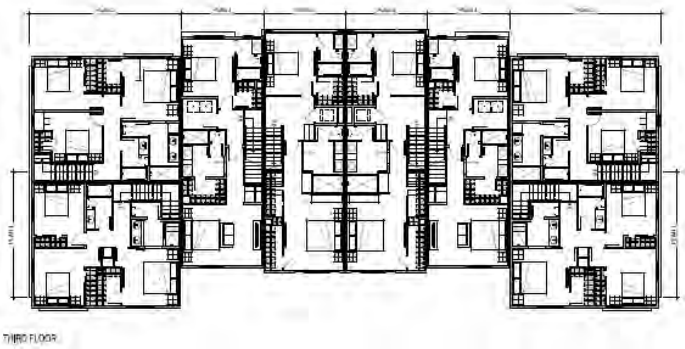
SECOND FLOOR



FIRST FLOOR



ROOF PLAN



THIRD FLOOR

Exhibit F: FLOOR PLAN



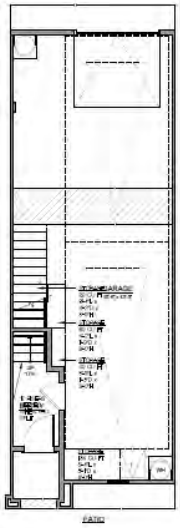
Exhibit F: FLOOR PLAN



PLAN 4 - FIRST FLOOR
ACCESSIBLE

4 BED / 4 BATHS

PLAN 4 ACCESSIBLE SQUARE FOOTAGE	NET
1ST FLOOR	314 SQ. FT.
2ND FLOOR	657 SQ. FT.
3RD FLOOR	982 SQ. FT.
TOTAL LIVING	1953 SQ. FT.
GARAGE	553 SQ. FT.
DECK	68 SQ. FT.
PATIO	REF. SITE PLAN



PLAN 3 - FIRST FLOOR
ALT

3 BED / 3 BATHS

PLAN 3 ACCESSIBLE SQUARE FOOTAGE	NET
1ST FLOOR	314 SQ. FT.
2ND FLOOR	657 SQ. FT.
3RD FLOOR	982 SQ. FT.
TOTAL LIVING	1953 SQ. FT.
GARAGE	638 SQ. FT.
DECK	68 SQ. FT.
PATIO	REF. SITE PLAN

Exhibit G: LANDSCAPE PLAN



Infill Development Project Exemption Report
Ontario Sunrise Project
Tentative Tract Map No. 20659

City of Ontario Planning Department
303 East B Street
Ontario, California 91764
Thomas Grahn, Senior Planner
tgrahn@ontarioca.gov

Project Proponent

Warmington Residential, LLC
3090 Pullman Street
Costa Mesa, California 92626

CEQA Consultant

11801 Pierce Street, Ste. 200
Riverside, CA 92505

June 25, 2024

1.0 INTRODUCTION

Statutory Requirements

This report documents that the Project is eligible for a Class 32 California Environmental Quality Act (CEQA) Categorical Exemption. Pursuant to CEQA Guidelines Section 15332, a Class 32 Categorical Exemption applies to projects characterized as in-fill development meeting the following conditions:

a. *The Project is consistent with the applicable general plan designation and all applicable general plan policies as well as with applicable zoning designation and regulations.*
b. *The proposed development occurs within city limits on a project site of no more than five acres, substantially surrounded by urban uses.*
c. *The project site has no value as habitat for endangered, rare, or threatened species.*
d. *Approval of the Project would not result in any significant effects relating to traffic, noise, air quality, or water quality.*
e. *The site can be adequately served by all required utilities and public services.*

Additionally, State CEQA Guidelines Section 15300.2 stipulates that a Categorical Exemption cannot be approved if any of the following conditions apply:

(a) Cumulative Impact. All exemptions for these classes are inapplicable when the cumulative impact of successive projects of the same type in the same place over time is significant.

(b) Significant Effect. A categorical exemption shall not be used for an activity where there is a reasonable possibility that the activity will have a significant effect on the environment due to unusual circumstances.

(c) Scenic Highways. A categorical exemption shall not be used for a project which may result in damage to scenic resources, including but not limited to, trees, historic buildings, rock outcroppings, or similar resources, within a highway officially designated as a state scenic highway. This does not apply to improvements which are required as mitigation by an adopted negative declaration or certified EIR.

(d) Hazardous Waste Sites. A categorical exemption shall not be used for a project located on a site which is included on any list compiled pursuant to Section 65962.5 of the Government Code.

(e) Historical Resources. A categorical exemption shall not be used for a project which may cause a substantial adverse change in the significance of a historical resource.

Substantial Evidence

CEQA requires that "substantial evidence" be provided to support the determination that the project qualifies for a Categorical Exemption. As defined by CEQA Guidelines Section 15300.1 (b): "*Substantial evidence shall include facts, reasonable assumptions predicated upon facts, and expert opinion supported by facts*."

This report relied in part on the following documents to support the determination that the Project qualifies for the Class 32 Infill Development Project exemption:

Appendix A Air Quality and GHG Technical Memorandum, KPC EHS Consultants, November 17, 2023
Appendix B Department of Parks And Recreation Primary Record, CRM Tech, November 17, 2023
Appendix C Preliminary Water Quality Management Plan
Appendix D Preliminary Hydrology Report, C& V Consulting, December 2023
Appendix E Noise Assessment, KPC EHS Consultants, December 15, 2023
Appendix F Trip Generation and VMT Memorandum, TJW Engineering Inc., August 29, 2023

Copies of these documents are available at the City of Ontario, Planning Department, and on the Planning Department's webpage at: https://www.ontarioca.gov/Planning

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2.0 PROJECT DESCRIPTION

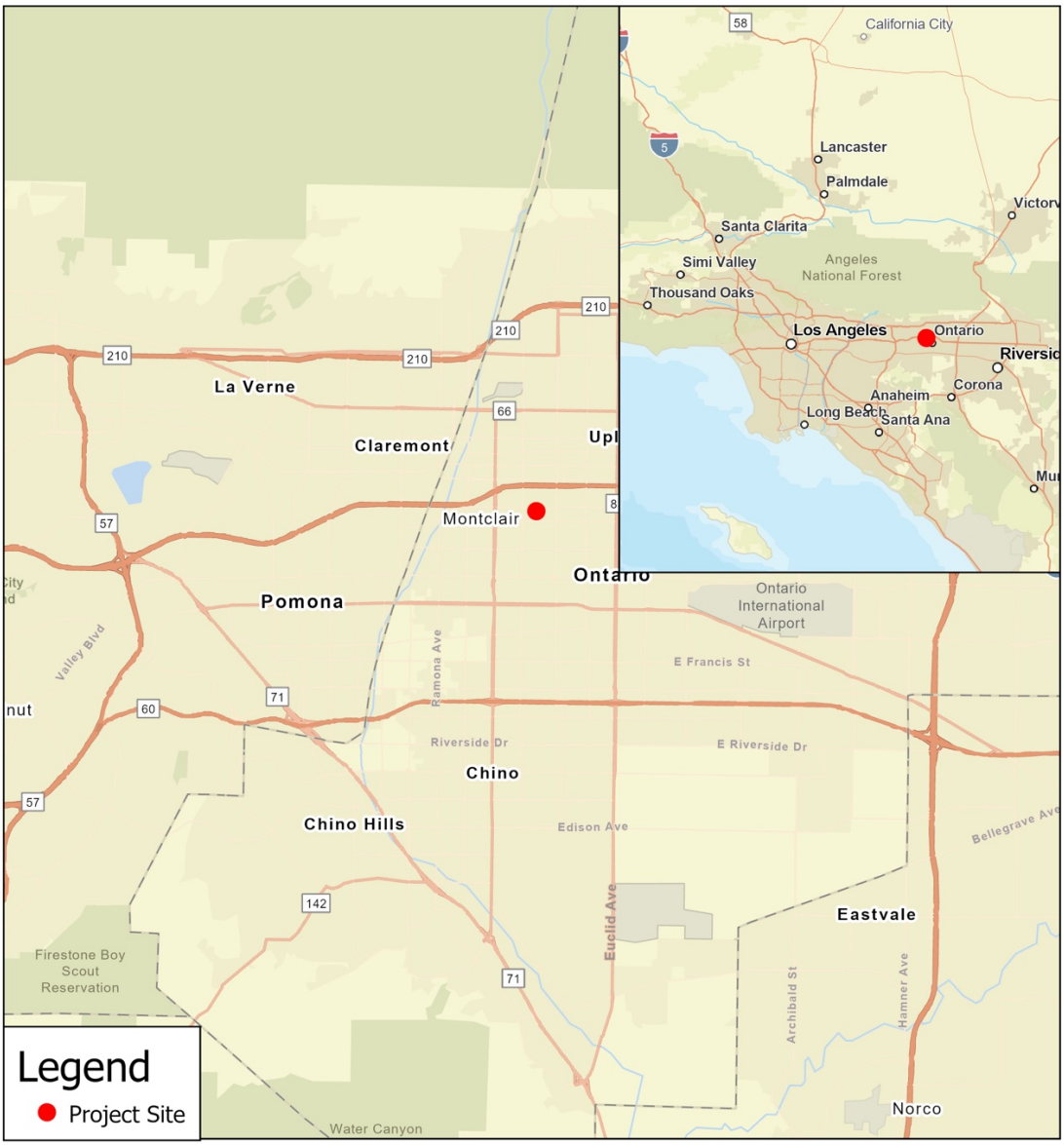
The Project Proponent, Warmington Residential, proposes redeveloping the Sunrise Church facility at 1355 W. 5th Street and constructing 70 townhomes. The Project proposes four floorplans of three- and four-bedroom townhomes ranging from 1,378 to 1,617 square feet. Private open space of 138 square feet per home and common open space of 140 square feet per home is proposed in private patios, a shared barbecue seating area, and an activity lawn. (Refer to Figure 1, *Site Plan*).

The Project proposes selling seven of the 70 homes at levels affordable to moderate-income households. Under the State Density Bonus Law (SDBL), the project's provision would entitle it to one incentive or concession (Gov. Code, § 65915(d)(2)(A)) and an unlimited number of waivers (*id.* § 65915(e)(1)).

The Project's provision of 70 units, which results in a density of about 22.6 dwelling units per acre, is consistent with the Medium Density Residential (MDR) land use designation of the General Plan and would be consistent with the base zoning MDR-25 with development standard waivers per the State Density Bonus Law.

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Figure 1. Site Location Map

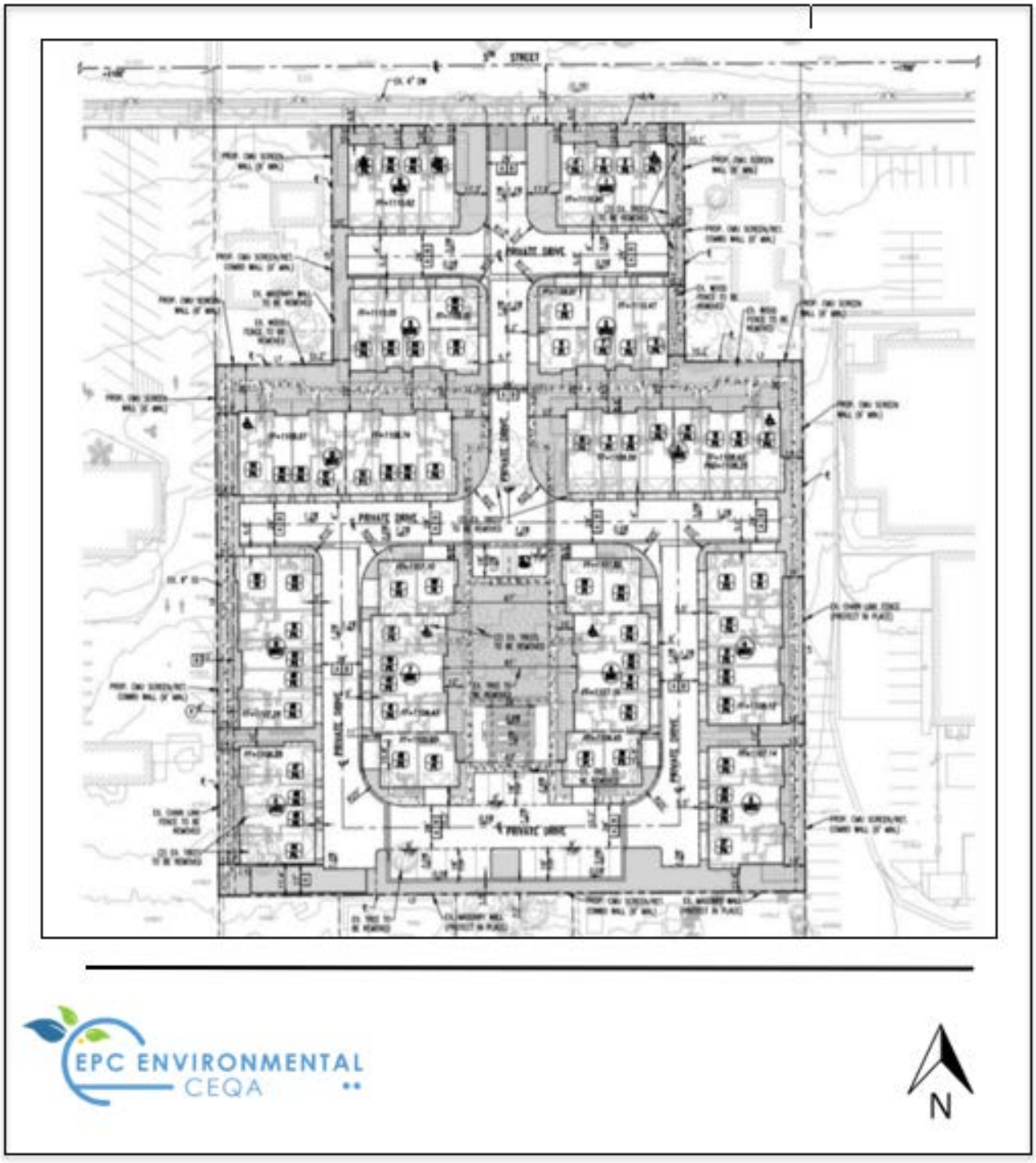


The project site is located at 1355 West 5th Street and has a total land area of 3.06 acres (APN:1008-551-12-0000).

Figure 2. Aerial View



Figure 3. Site Plan



3.0 ENVIRONMENTAL IMPACT ANALYSIS

As noted above, under CEQA Guidelines Section 15332, a Class 32 Categorical Exemption applies to projects characterized as in-fill development meeting the following criteria:

a. *The Project is consistent with the applicable general plan designation and all applicable general plan policies as well as with applicable zoning designation and regulations.*
b. *The proposed development occurs within city limits on a project site of no more than five acres, substantially surrounded by urban uses.*
c. *The project site has no value as habitat for endangered, rare, or threatened species.*
d. *Approval of the Project would not result in any significant effects relating to traffic, noise, air quality, or water quality.*
e. *The site can be adequately served by all required utilities and public services.*

The Project's consistency with each of these criteria is discussed below.

Criterion (a) The Project is consistent with the applicable general plan designation and all applicable general plan policies as well as with applicable zoning designation and regulations.

Consistency with General Plan Policies

The Medium Density Land Use Designation allows a density of 11.1 to 25 dwelling units per acre to accommodate single/multi-family attached and detached residences, including townhouses, stacked flats, courtyard homes, and small lot single-family subdivisions. Table 1, The Ontario Plan (TOP) Consistency Analysis, evaluates the Ontario Plan (General Plan) policies that are most relevant to the Project.

Tab Table 1: The Ontario Plan (TOP) Consistency Analysis

TOP Policies	Consistency Analysis
Land Use Element	
Policy LU-2.2 Buffers. We require new uses to provide mitigation or buffers between existing uses where potential adverse impacts could occur. Additional mitigation is required when new uses could negatively impact environmental justice areas.	**Consistent.** The Project has a comprehensive wall and fence plan plus a landscaping plan to provide adequate buffers from adjacent land uses.
Policy LU-4.3 Infrastructure Timing. We require that the necessary infrastructure and services be in place prior to or concurrently with development.	**Consistent.** The Project will connect to the existing infrastructure and services adjacent to the site prior to the issuance of occupancy permits
Housing Element	
Policy 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.	**Consistent.** As evidenced by the plans submitted to the City, the Project emphasizes high-quality design and best practices consistent with City design standards.
Policy 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.	**Consistent.** The Project site is currently a church and proposes constructing multi-family housing on an infill site.
Policy H-3.2 Flexible Standards. We allow flexibility in the application of residential and mixed-use development standards to gain benefits such as exceptional design quality, economic advantages, sustainability, or other benefits that would otherwise be unrealized.	**Consistent.** With the flexibility allowed by the density bonus, the Project can provide seven affordable homes of exceptional design quality to lower-income homeowners who might not otherwise have the opportunity to live in a quality community.
Environmental Resources Element	
Policy ER-1.6 Urban Run-off Quantity. We encourage the use of low impact development strategies, including green infrastructure, to intercept run-off, slow the discharge rate, increase infiltration, and ultimately reduce discharge volumes to traditional storm drain systems.	**Consistent.** The drainage system is designed to manage a 100-year storm event to 80% of the existing conditions. All tributary areas' collected run-off will continue downstream from the drainage system following the City's requirements.

TOP Policies	Consistency Analysis
Policy ER-1.7 Urban Run-off Quality. We require the control and management of urban run-off, consistent with Regional Water Quality Control Board regulations.	**Consistent.** The grading of the proposed development is designed to route all on-site runoff via street flow towards the modular wetland system inlets located at low points of the site. The proposed modular wetland systems are designed to treat low flows generated from the proposed site per the water quality management plan requirements.
Policy ER-1.8 Wastewater Management. We require the management of wastewater discharge and collection consistent with waste discharge requirements adopted by the Regional Water Quality Control Board.	**Consistent.** The Project will connect to the City's sewer system and be treated at the Regional Water Recycling Plant No. 1 (RP-1) located in the city of Ontario The plant has undergone several expansions to increase the design hydraulic domestic sewage (wastewater) treatment capacity to 44 million gallons per day.
Policy ER-3.3 Building and Site Design. We require new construction to incorporate energy efficient building and site design strategies, which could include appropriate solar orientation, maximum use of natural daylight, passive solar, and natural ventilation.	**Consistent.** The Project will implement the latest Green Building Code guidelines, which reduce energy use and related greenhouse gas emissions.
Community Economics Element	
Policy CE-2.1 Development Projects. We require new development and redevelopment to create unique, high-quality places that add value to the community.	**Consistent.** As evidenced by the plans submitted to the City, the Project emphasizes high-quality design and best practices consistent with City design standards.
Safety Element	
Policy S-4.1 Noise Mitigation. We utilize the City's Noise Ordinance, building, subdivision, and development codes to mitigate noise impacts.	**Consistent.** The City's development review process requires compliance with the CBC and City Noise Ordinance to minimize noise impacts along the Euclid Avenue corridor.
Policy S-5.1 Dust Control Measures. We require implementing Best Management Practices for dust control at all excavation and grading projects.	**Consistent.** The Project will implement TOP EIR Mitigation Measures AQ 3-1 through AQ 3-3,

TOP Policies	Consistency Analysis
	which includes dust control measures.
Community Design Element	
Policy CD-2.1 Quality Building Design and Architecture. We encourage all development projects to convey visual interest and character through: 1. Building volume, massing, and height to provide context-appropriate scale and proportion; 2. 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 3. Exterior building materials that are articulated, high quality, durable, and appropriate for the architectural style.	**Consistent**. The Project has an architectural design that conveys interest and character with various massing materials and colors.
Policy CD-2.9 Landscape Design. We encourage durable, sustainable, and drought-tolerant landscaping materials and designs that enhance the aesthetics of structures, create and define public and private spaces, and provide shade and environmental benefits.	**Consistent.** The Project has a comprehensive Landscaping Plan that will utilize native plants, minimize water use, and be attractive to project residents.
Policy CD-3.4 Context-Aware and Appropriate Design. We require appropriate building and site design that complements existing development, respects the intent and identity of the Place Type, and provides appropriate transitions and connections between adjacent uses to ensure compatibility of scale, maintain an appropriate level of privacy for each use, and minimize potential conflicts.	**Consistent.** The Project provides appropriate transitions and connections between adjacent uses. The south-facing property consists of single-family residential, while the north-facing property comprises higher-density apartments. The proposed Project consists of townhomes, creating an appropriate connection.

Consistency with Zoning Regulations

Per the State Density Bonus Law, the Project would apply the standards and criteria of the MDR-25 zoning district, which provides for a density of 18.1 to 25.0 dwelling units per acre and is intended to implement the Medium Density Residential land use designation. (Development Code, § 5.01.005(A)(7).) The Project's consistency with the Zoning Regulations is shown in Table 2, *Summary of MDR-25 Development Standards with Density Bonus Applied.*

Table 2: Summary of MDR-25 Development Standards with Density Bonus Applied

Development Standard	Code Requirement	Project
Density Range Minimum and Maximum	18.1-25	22.6 dwelling units per acre
Maximum Building Height by Number of Stories Four Stories Three Stories	60 ft. 50 ft.	41 ft
Building Setbacks – From Right-of-Way	20 ft. minimum	10 ft. minimum (1)
Setbacks Interior Property Line Buildings Adjacent to Residential Buildings Adjacent to Non-Residential	50 ft. minimum 5 ft. minimum 5 feet minimum	Side to side 10' Property line setback 10'
Building Separation Building to Building Building to Drive Aisle or Parking Areas Building to Carport Patio to Patio	10 to 20 feet 5 ft. minimum 25 ft. minimum 15 ft. minimum	Building to Building 10 ft to 20 ft
Minimum Number of Parking Spaces Ratio for Residential Uses (1.2 spaces/bedroom)	189 parking spaces per code 131 parking spaces per State Density Bonus Law	131 total parking spaces provided per State Density Bonus Law,
Residential Open Space and Common Amenities Combined Minimum Ratio Minimum Private Open Space Ratio Minimum Common Amenity Ratio	400 sf/du combined 250 sf/du common 150 sf/du private	148 sf/du for common 138 sf/du for private Allowed per State Density Bonus Law
Residential Storage Units	150 cubic feet/du minimum	Ranges from 240 to 258 cubic feet

Notes:

(1) Per density bonus allowed by state law.

Finding: Based on the analysis above, the Project **meets Criterion (a)** for consistency with the applicable general plan designation and all applicable general plan policies as well as with applicable zoning designation and regulations.

Criterion (b): The proposed development occurs within city limits on a five-acre project site that is substantially surrounded by urban uses.

The Project site is within the boundaries of the City of Ontario and consists of 3.06 acres. The Project site is surrounded by existing development as shown in Table 3, *Surrounding Land Uses.*

Table 3: Surrounding Land Uses

Location	Existing Land Uses
Project Site	Church
North	W. 5th Street followed by Multi-Family Residential
South	Single Family Residential
East	Single Family Residential and a Church
West	Single Family Residential followed by a Church

Source: Google Earth 2024

Finding: Based on the analysis above, the Project **meets Criterion (b)** because it occurs within city limits on a five-acre project site that is substantially surrounded by urban uses.

Criterion (c) The project site has no value as habitat for endangered, rare, or threatened species.

The Project site contains 3 buildings. The main building, the church, is located along the northwest section of the site and is surrounded by an asphalt parking lot. The school and pantry building structures are located in the middle of the property, closer to the site's western boundary. They are bounded by asphalt to the north, east, and west and by grassy/undeveloped areas to the south. The deteriorated asphalt parking lot covers the east-southeast area of the property. A detached structure is located along the east side of the property; it appears to be used as a storage shed. Approximately 75 % of the Project site is covered by buildings and pavement, and the remaining 25% is covered by a lawn area with trees, which appears to be used as an outdoor gathering place for church activities, given its highly disturbed condition.

Given the level of disturbance described above, no habitat supports endangered, rare, or threatened species. However, the Project contains several trees that could support nesting birds, particularly in the outdoor gathering area where several shade trees are located. The standard requirement to comply with the Migratory Bird Treaty Act to avoid disturbing nesting birds during construction will help ensure that there will be no impacts on migratory birds.

Finding: Based on the analysis above, the Project **meets Criterion (c)** because it has no value as habitat for endangered, rare, or threatened species.

Criterion (d) Approval of the Project would not result in any significant effects relating to traffic, noise, air, or water quality.

Traffic Impact Analysis

Changes to California Environmental Quality Act (CEQA) Guidelines were adopted in December 2018, which require all lead agencies to adopt Vehicle Miles Traveled (VMT) as a replacement for automobile delay-based level of service (LOS) as the new measure for identifying transportation impacts for land use projects. This statewide mandate took effect July 1, 2020. Under CEQA, the term "traffic" now means "VMT".

The City has developed its own "VMT Guidelines for CEQA Assessment of VMT Impacts" dated 2021. The City Guidelines state that certain projects that meet the following VMT screening criteria may be presumed to result in a less than significant transportation impact:

- Transit Priority Area Screening
- Low VMT Area Screening
- Project Type Screening

A land use project needs to meet only one of these screening criteria to have a less than significant impact as described below.

Transit Priority Screening. Projects located within a Transit Priority Area (i.e., within a half-mile of an existing "major transit stop."[1] or an existing stop along a "high-quality transit corridor."[2], may be presumed to have a less-than-significant VMT impact. The Project site is within a half-mile of a major transit stop or along a high-quality transit corridor (Euclid Avenue Bus Rapid Transit corridor). Therefore**, the Transit Priority Screening criterion is met.**

Low VMT Area Screening. The City Guidelines state that projects may be presumed to have a less than significant VMT impact if located in an already low VMT generating traffic analysis zones (TAZs) that produce a VMT per service population (SP) that is 15%

[1] Pub. Resources Code, § 21064.3 ("'Major transit stop' means a site containing an existing rail transit station, a ferry terminal served by either a bus or rail transit service, or the intersection of two or more major bus routes with a frequency of service interval of 15 minutes or less during the morning and afternoon peak commute periods.").

[2] Pub. Resources Code, § 21155 ("For purposes of this section, a high-quality transit corridor means a corridor with fixed route bus service with service intervals no longer than 15 minutes during peak commute hours.").

below the County of San Bernardino Baseline VMT per SP. The Project site is located within a low VMT generating zone. Therefore, **the low VMT area screening criterion is met.**

Project Type Screening. The City Guidelines indicate that local-serving retail less than 50,000 square feet or other local serving essential services (e.g., daycare centers, public schools, medical/dental office buildings, etc.) are presumed to have a less than significant impact absent substantial evidence to the contrary. The Project proposes residential uses. Therefore, **the Project does not meet that portion of this criterion.**

Finding: Based on the analysis above, the Project **meets Criterion (d)** for VMT because it is located within a Transit Priority Area and a Low VMT Area.

Noise Impact Analysis

Construction Noise

While the City establishes limits to the hours during which construction activity may occur, it does not identify specific noise level limits for construction noise levels. Therefore, to evaluate whether the Project will generate a substantial increase in the short-term noise levels at the offsite sensitive receptors (the nearby residences). Thus, this analysis relies upon the construction-related noise level threshold that limits noise exposure at 85 dBA, as an 8-hour time-weighted average (85 dBA – 8-hr TWA), recommended by the National Institute for Occupational Safety and Health (NIOSH).

During the construction phase, the noise levels will be the highest during site preparation and grading as heavy equipment passes along the Project site boundaries. Equipment will not be stationary during the site preparation and grading phases, which produce the highest noise levels. Instead, equipment will move throughout the site at varying speeds and power levels and will not operate at the maximum noise level for the entire workday. The potential noise impacts of the equipment operating simultaneously and in the same area at the center of the property to the closest residential uses the construction noise impacts would be 72.0 Leq dBA during site preparation and 72.5 Leq dBA during grading operations. These levels are all below the NIOSH REL of 85 dBA 8-hour TWA, as shown in Table 4, *Worse Case Construction Noise Levels - Site Preparation & Grading (Center of Site to Nearest Receptor),* and would be less than significant.

Table 4: Worse Case Construction Noise Levels - Site Preparation & Grading (Center of Site to Nearest Receptor)

Phase	Equipment Type	Number of Units	Leq dBA/unit	Leq dBA Total
Site Preparation	Tractor/Loader/Backhoe	4	61.3	67.3
Site Preparation	Rubber Tire Dozers	3	65.4	70.2
Site Preparation	**Total Noise Level**			**72.0**
Grading	Grader	1	68.8	68.8
Grading	Tractor/Loader/Backhoe	3	61.3	66.1
Grading	Rubber Tired Dozer	1	65.4	65.4
Grading	Excavator	1	64.5	64.5
Grading	**Total Noise Level**			**72.5**

Offsite Traffic Noise Impacts.

According to the Federal Highway Administration, *Highway Traffic Noise Analysis and Abatement Policy and Guidance,* the level of roadway traffic noise depends on three things: (1) the volume of the traffic, (2) the speed of the traffic, and (3) the number of trucks in the flow of the traffic. Generally, the loudness of traffic noise is increased by heavier traffic volumes, higher speeds, and more significant numbers of trucks.

According to Caltrans, the human ear can begin to detect sound level increases of 3 decibels(dB) in typical noisy environments[3]. A doubling of sound energy (e.g., doubling the volume of traffic on a highway) that would result in a 3-dBA increase in sound, would generally be barely detectable. Implementation of the Project will increase traffic volumes in the area, not to the extent that traffic volumes will be doubled, creating a +3dBAnoise increase or resulting in a perceivable noise increase. Therefore, the operational noise impacts would be less than significant. The roadway noise impacts from vehicular traffic were projected using a computer program that replicates the Federal Highway Administration (FHWA) Traffic Noise Prediction Model- FHWA- RD-77-108 (the "FHWA Model"). A vehicle's noise level combines the noise produced by the engine, exhaust, and tires. As shown in Table 5, *Noise Level Comparison Existing vs. Existing Plus Project,* the Project does not increase existing ambient noise levels by more than 3 dBA.

[3] Caltrans, Traffic Noise Analysis Protocol, April 2020, p.7-1. https://dot.ca.gov/-/media/dot-media/programs/environmental-analysis/documents/env/traffic-noise-protocol-april2020-a11y.pdf

Table 5. Noise Level Comparison Existing vs. Existing Plus Project

Receptor	Existing Traffic Noise Level (dBA)	Existing Plus Project Noise Level (dBA)	Noise Level Difference (dBA)	Increase of Exceeds 3 dBA?
Receptor 1 - Project Site (south side of W. 5th Street)	59.8	60.0	0.2	No
Receptor 2 - Anthony Munoz Park (east of site)	60.7	61.0	0.3	No
Receptor 3 – West Princeton Street Cul de Sac (south of the site)	47.5	47.7	0.2	No

Source: Federal Highway Administration (FHWA) Traffic Noise Prediction Model- FHWA-RD-77-108, Appendix C.

Residential Activity

Typical operational sound levels generated by multi-family residential activities include everyday outdoor conversations, air conditioner units, and lawn care equipment with levels as indicated below:

- Normal conversation, air conditioner - 60 dBA
- Gas-powered lawnmowers and leaf blowers – 80 to 85 dBA.5

Noise generated from air conditioners and lawn care equipment is at different and consistent levels throughout the day. Lawn care is performed during daylight hours for short durations, and although air conditioners are operating both day and night, they are cycling on/off with windows closed conditions.

The United States Environmental Protection Agency identifies noise levels affecting health and welfare as exposure levels over 70 dBA over 24 hours. Noise levels for various levels are determined according to the use of the area. Levels of 45 dbA are associated with indoor residential areas, hospitals, and schools, whereas 55 dBA is identified for outdoor areas where typical residential human activity occurs. According to the USEPA, 55 dbA outdoors and 45 dbA indoors are identified as noise levels that permit spoken conversation and other activities such as sleeping, working, and recreation, which are part of the daily human condition.6 Levels exceeding 55 dbA in a residential setting are generally short in duration and insignificant in affecting residents' health and welfare.

Finding: Based on the analysis above, the Project is **consistent with criterion (d)** relating to noise impacts because it does not increase the ambient noise levels above 3 dBA.

Air Quality Impact Analysis

Construction emissions were based on CalEEMOD Land Uses for a Residential Project consisting of 70 townhomes on 3.1 acres. Construction was estimated for a 20-day demolition period and a 279-day construction schedule, with default values used. Default values were used for each construction phase, including demolition, site preparation, grading, building construction, paving, architectural coating, and defaults for off-road construction equipment. Peak emissions represent the highest value from the summer and winter modeling. SCAQMD significance thresholds were used for determining the project's impacts. All construction emissions are below the SCAQMD thresholds.

Table 6: Summary of Peak Construction Emissions (No Mitigation)

Year/Season	Emissions (lbs/day)					
	ROG	NOX	CO	SOX	PM10	PM2.5
Construction 2024 (Winter)	3.73	36.1	34.0	0.05	9.49	5.47
Construction 2025 (Winter)	26.0	11.0	16.1	0.03	1.16	0.57
Construction 2024 (Summer)	1.47	11.7	17.5	0.03	1.22	0.63
Maximum Daily Emissions	**26.0**	**36.1**	**34.0**	**0.05**	**9.49**	**5.47**
SCAQMD Regional Threshold	**75**	**100**	**550**	**150**	**150**	**55**
Threshold Exceeded?	**NO**	**NO**	**NO**	**NO**	**NO**	**NO**

Source: CalEEMod 2022.1.1.20 Datasheets. (Appendix A).

Operational Emissions:

Operations emissions include stationary (residence emissions), mobile (transportation emissions), and area (ongoing architectural coatings, consumer product use, landscaping maintenance emissions); default values were used. SCAQMD significance thresholds were used to determine the Project's impacts. As shown in Table 7, *Summary of Peak Operational Summer Emissions,* and Table 8, *Summary of Peak Operational Winter Emissions*, all operations emissions are below the SCAQMD thresholds.

Table 7: Summary of Peak Operational Summer Emissions

Source	Emissions (lbs/day)					
	VOC/ROG	NOX	CO	SOX	PM10	PM2.5
Area Source	2.23	1.84	17.1	0.04	3.37	0.87
Energy Source	20.4	1.49	39.6	0.09	5.00	4.91
Mobile Source	0.02	0.33	0.14	<0.005	0.03	0.03
Total Maximum Daily Emissions	**22.6**	**3.66**	**56.8**	**0.13**	**8.40**	**5.81**
SCAQMD Regional Threshold	**55**	**55**	**550**	**150**	**150**	**55**
Threshold Exceeded?	**NO**	**NO**	**NO**	**NO**	**NO**	**NO**

Source: CalEEMod 2022.1.1.20 Datasheets. (Appendix A).

Table 8: Summary of Peak Operational Winter Emissions

Source	Emissions (lbs/day)					
	VOC/ROG	NOX	CO	SOX	PM10	PM2.5
Mobile Source	2.06	1.97	14.5	0.04	3.37	0.87
Area Source	20.0	1.45	35.6	0.09	5.00	4.91
Energy Source	0.02	0.33	0.14	<0.005	0.03	0.03
Total Maximum Daily Emissions	**22.1**	**3.76**	**50.3**	**0.13**	**8.40**	**5.81**
SCAQMD Regional Threshold	**55**	**55**	**550**	**150**	**150**	**55**
Threshold Exceeded?	**NO**	**NO**	**NO**	**NO**	**NO**	**NO**

Source: CalEEMod 2022.1.1.20 Datasheets. (Appendix A).

Finding: Based on the analysis above, the Project is **consistent with criterion (d)** for air quality impacts because it does not generate air pollutant emissions above SCAQMD thresholds.

Water Quality Impact Analysis

As required by Ontario Municipal Code Sec. 6-6.501. *Stormwater Quality Management Plan (SWQMP)* "*Prior to the issuance of any grading or building permit, all qualifying land development/redevelopment projects shall submit and have approved a Stormwater Quality Management Plan (SWQMP) to the City Engineer on a form provided by the City. The SWQMP shall identify all BMPs that will be incorporated into the project to control stormwater and non-stormwater pollutants during and after construction and shall be revised as necessary during the life of the project. The SWQMP submittal applies to construction projects covered by the NPDES General Construction Permit as well as construction projects of less than five (5) acres.*"

During construction, the Project Proponent would be required to prepare a Storm Water Pollution Prevention Plan (SWPPP) in compliance with the regional MS4 Permit and Statewide General Construction Permit and receive approval of these documents from the City before issuance of grading permits.

Post development, the grading of the proposed development is designed to route all on-site runoff via street flow towards the modular wetland system inlets located at low points of the site. The proposed modular wetland systems are designed to treat low flows generated from the proposed site per the Water Quality Management Plan requirements. as required by the Municipal Code section Sec. 6-6.501. *Stormwater Quality Management Plan (SWQMP).*

Finding: Based on the analysis above, the Project is **consistent with criterion (d)** relating to water quality.

Criterion (e) the site can adequately be served by all required utilities and public services.

Utility Impact Analysis

Adequate facilities exist to serve the Project site as described below:

- A 6-inch water line is located in W.th 5th Street adjacent to the Project site.
- An 8-inch sewer line is adjacent to the western property line, traversing southerly to W. Princeton Street.
- A storm drain is located southeast of the Project site at Princeton Street, and Benson Avenue serves the Project.
- Electricity and natural gas service are available to the site from W. 5th Street.
- Cable television facilities are available on W. 5th Street to serve the Project site.

Public Services Impact Analysis

Fire protection

The Project site is in a developed area currently served by the Ontario Fire Department. Ontario Fire Department #4 is the closest fire station, located at 1005 N Mountain Ave, 0.7 roadway miles from the Project site. Development of the Project would impact fire protection services by placing an additional demand on existing fire protection resources should its resources not be augmented. To offset the increased demand for fire protection services, the Project would be conditioned by the City to provide a minimum of fire safety and support fire suppression activities, including compliance with State and local fire codes, fire sprinklers, a fire hydrant system, paved access, and secondary access routes.

In addition, as required by the City's Inter-Agency Project Review Request process, the Project plans were routed to the Fire Department for review and comment on the impacts of providing fire protection services. The Fire Department did not indicate that the Project would result in the need for new or physically altered fire facilities to maintain acceptable service ratios, response times, or other performance objectives. Furthermore, the Municipal Code requires payment of the Development Impact Fee to assist the City in providing fire protection services. Payment of the Development Impact Fee would ensure that the Project provides fair share funds for the provision of additional public services, including fire protection services, which may be applied to fire facilities and equipment, to offset the incremental increase in the demand for fire protection services that would be created by the Project.

Police Protection

The site was previously developed and is in an area currently served by the Ontario Police Department, located 8.5 roadway miles away at 2500 S Archibald Avenue. The Project would increase the demand for police protection services. The Municipal Code requires payment of the Development Impact Fee to assist the City in providing public services, including police protection services44. Payment of the Development Impact Fee would ensure that the Project provides its fair share of funds for additional police protection services, which may be applied to 43 City of Jurupa Valley, Municipal Code Chapter 3.75, Development Impact Fee, June 10, 2020. Available at: https://www.jurupavalley.org/168/Municipal-Code 44 Ibid. Initial Study/Mitigated Negative Declaration MA21272 Las Palmas 72 sheriff facilities and equipment to offset the incremental increase in the demand that would be created by the Project. In addition, as required by the City's Inter-Agency Project Review Request process, the Project plans were routed to the Sheriff's Department for review and comment on the impacts of providing police protection services. The Sheriff's Department did not indicate that the

Project would result in the need for new or physically altered sheriff facilities to maintain acceptable service ratios, response times, or other performance objectives

Schools

The Project proposes residential uses that are expected to generate school-aged students who require educational facilities or services. The Project site is located within the Ontario-Montclair Elementary School District and Chaffey Joint Union High School District. The nearest school is El Camino Elementary School, located 0.2 miles west of the Project site. The Project would be required to contribute fees to the Jurupa Unified School District by the Leroy F. Greene School Facilities Act of 1998 (Senate Bill 50). Under Senate Bill 50, payment of school impact

Parks

The site is in a developed area currently served by the City regarding parks and recreational services. The Project will provide onsite recreational amenities in the form of an approximately 8,000 sq ft open space area in the middle of the site. The Project proposes seventy new housing units that may increase the City's overall population by 230 persons (based on 3.29 persons per household[4] and assuming that all residents will come from outside the city limits) and generate additional need for parkland. The payment of development impact fees will reduce any indirect Project impacts related to parks.

Other Public Facilities

The site is in a developed area**.** New public facilities are typically needed to serve the additional population new housing generates. The project will generate 70 new multi-family residential units, incrementally increasing the need for other public facilities in the future. Due to its size, it is unlikely this Project will require the construction of any new public facilities or alteration of existing facilities or cause a decline in service levels, which could cause the need to construct new facilities.

Exceptions to Exemptions

State CEQA Guidelines Section 15300.2 outlines exceptions to the applicability of a Categorical Exemption, including cumulative impacts, significant effects due to unusual circumstances, scenic highways, hazardous waste sites, and historical resources.

For the reasons stated below, none of the exceptions that would prohibit granting an exemption apply to the Project.

[4] California Department of Finance, Table 2: E-5 City/County Population and Housing Estimates, 1/1/2024.

Location: The Project site is located on a particularly environmentally sensitive property. The project site is developed with a church, and the adjacent properties are developed for residential and church use.

Cumulative Impact: The project's development is consistent with the general Plan and Zoning requirements. All impacts related to air quality, traffic, noise, water quality, and sensitive species either result in No Impact or a less than significant Impact with adherence to mandatory regulatory requirements. As such, the Project would not have cumulative impacts that are considerable.

Significant effect due to Unusual Circumstances: The Project is permitted use in the Medium-Density Land Use Designation zone. It is a residential use similar in character to the development in the area. No features distinguish it from others in the exempt class, such as its size or location.

Scenic Highways: The Project is not located within a highway officially designated as a state scenic highway

Hazardous Waste Sites: The Project is not located on a site included on any list compiled according to Section 65962.5 of the Government Code.

Historical Resources: According to the California Department of Parks and Recreation, the primary record was prepared for the property (Appendix B of this Addendum). The project site is developed with a church. The building site was constructed more than 50 years ago. However, there is no evidence that pastors identified in the history of the church or anyone else associated with the buildings have recognized historic significance. Additionally, the structure's architects, designers, or builders have yet to be identified as historically significant. The buildings are not known to represent important or notable examples of any style, type, period, region, or construction method. The buildings do not hold the potential for any critical data for studying local history. The existing church on the Project site is not eligible for the National Register of Historic Places or the California Register of Historic Places.

CONCLUSION

The Project meets all criteria to qualify for the Infill Development Project exemption according to CEQA Guidelines §15332.

KPC EHS Consultants, LLC

Technical Memorandum

Kevin P. Carr, MS.

Date: November 17, 2023

Re: EPC 23-33 Ontario Sunrise Residential Project – Air Quality and GHG Technical Memorandum

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Purpose

The purpose of this memorandum is to document the results of the air quality (AQ) and greenhouse gas (GHG) emissions assessment as it relates to the potential environmental impacts associated with the construction and operation of the proposed Residential Project on approximately 3.1 acres.

1.0 Project Location & Description

1.1 Project Location:

The proposed project site is located in the City of Ontario, San Bernardino County, California on the south side of West 5th Street west of the intersection with North Elderberry Avenue and east of the intersection with North Helen Avenue at 1355 West 5th Street also referred to as APN 1008-551-12.

1.2 Description:

The Applicant is proposing 70 townhome residential units, utility infrastructure, internal roadways and sidewalks, utilities, open space, and landscaping on an approximately 3.1-acres.

2.0 Air Quality & Greenhouse Gas (GHG) Assessment

2.1 Determination of Significance:

The criteria used to determine the significance related to potential Project related air quality and greenhouse gas emission impacts is based on the California Environmental Quality Act (CEQA) Environmental Checklist, Appendix G Thresholds:

2.1.1 Air Quality / GHG Impacts:

Would the Project: Conflict with or obstruct implementation of the applicable air quality plan?

Would the Project: Result in a cumulatively considerable net increase of any criteria pollutant for which the project region is non-attainment under an applicable federal or state ambient air quality standard?

Would the Project: Expose sensitive receptors to substantial pollutant concentrations?

Would the Project: Result in other emissions (such as those leading to odors) adversely affecting a substantial number of people?

Would the Project: Generate greenhouse gas emissions, either directly or indirectly, that may have a significant impact on the environment?

Would the Project: Conflict with an applicable plan, policy or regulation adopted for the purpose of reducing the emissions of greenhouse gases?

2.1.2 Air Quality Thresholds:

The City of Ontario uses the South Coast Air Quality Management District (SCAQMD) thresholds of significance. The SCAQMD was created by the state legislature to facilitate compliance with the federal Clean Air Act and to implement the state air quality program. Toward that end, SCAQMD develops regulations designed to achieve these public health standards by reducing emissions from business and industry. The Project site is located within the South Coast Air Basin (SCAB) which is under the jurisdiction of the SCAQMD. Table 2.1-1 describes the regional significance thresholds established by the SCAQMD to meet national and state air quality standards.

Table 2.1-1: South Coast Air Quality Management District Regional Significance Thresholds

Pollutant	Emissions (Construction) (pounds/day)	Emissions (Operational) (pounds/day)
NOx	100	55
VOC	75	55
PM10	150	150
PM2.5	55	55
SOx	150	150
CO	550	550

Source: South Coast Air Quality Management District CEQA Air Quality Significance Thresholds, March 2015.

2.1.3 GHG Thresholds:

The City of Ontario adopted a Climate Action Plan (CAP) in 2022 with development of a review process for determining the significance of a project's GHG emissions impacts for CEQA purposes and includes the following:

(1) Utilizing Screening Tables in the CAP or
(2) Analysis of development projects through emissions calculations.

The City's CAP requirements are covered in Section 3.3.

3.0 Environmental Impacts:

3.1 Construction Emissions:

Construction emissions for the Project were estimated by using the California Emissions Estimator Model (CalEEMod) version 2022.1.1.20, which is a statewide land use emissions computer model designed to provide a uniform platform for government agencies to quantify potential criteria pollutant emissions associated with both construction and operations emissions. CalEEMod is authorized for use to assess project emissions by the SCAQMD. Construction emissions are summarized in Table 3.1-1.

Construction emissions were based on CalEEMod Land Uses for a Residential Project consisting of 70 townhomes on 3.1 acres. Construction was estimated for a 20-day demolition period and 279-day construction schedule, with default values used for the schedule. Default values were used for each construction phase including demolition, site preparation, grading, building construction, paving, and architectural coating as well as defaults for off-road construction equipment. Peak emissions represent the highest value from the summer and winter modeling. SCAQMD significance thresholds were used for determining the project's impacts. All construction emissions are below the SCAQMD thresholds.

Table 3.1-1 - Summary of Peak Construction Emissions (No Mitigation)

Year/Season	Emissions (lbs/day)					
	ROG	NOX	CO	SOX	PM10	PM2.5
Construction 2024 (Winter)	3.73	36.1	34.0	0.05	9.49	5.47
Construction 2025 (Winter)	26.0	11.0	16.1	0.03	1.16	0.57
Construction 2024 (Summer)	1.47	11.7	17.5	0.03	1.22	0.63
Maximum Daily Emissions	**26.0**	**36.1**	**34.0**	**0.05**	**9.49**	**5.47**
SCAQMD Regional Threshold	**75**	**100**	**550**	**150**	**150**	**55**
Threshold Exceeded?	**NO**	**NO**	**NO**	**NO**	**NO**	**NO**

Source: CalEEMod 2022.1.1.20 Datasheets. (Appendix A).

3.2 Operational Emissions:

Operational emissions for the Project were estimated by using the California Emissions Estimator Model (CalEEMod) which is a statewide land use emissions computer model designed to provide a uniform platform for government agencies to quantify potential criteria pollutant emissions associated with both construction and operations emissions. CalEEMod is authorized for use to assess project emissions by the SCAQMD. Operations emissions include stationary (residence emissions), mobile (transportation emissions), and area (on-going architectural coatings, consumer product use, landscaping maintenance emissions), default values were used . SCAQMD significance thresholds were used for determining the project's impacts Operation emissions are

summarized in Table 2.3-1 for Summer Emissions and Table 2.3-2 for Winter Emissions. All operations emissions are below the SCAQMD thresholds.

3.2.1 Area Source Emissions

Architectural Coatings

Over a period of time the buildings that are part of this Project will be subject to emissions resulting from the evaporation of solvents contained in paints, varnishes, primers, and other surface coatings as part of Project maintenance. The emissions associated with architectural coatings were calculated using CalEEMod.

Consumer Products

Consumer products include, but are not limited to detergents, cleaning compounds, polishes, personal care products, and lawn and garden products. Many of these products contain organic compounds which when released in the atmosphere can react to form ozone and other photochemically reactive pollutants. The emissions associated with use of consumer products were calculated based on assumptions provided in CalEEMod. In the case of the commercial uses proposed by the Project, no substantive on-site use of consumer products is anticipated.

Landscape Maintenance Equipment

Landscape maintenance equipment would generate emissions from fuel combustion and evaporation of unburned fuel. Equipment in this category would include lawnmowers, shedders/grinders, blowers, trimmers, chain saws, and hedge trimmers used to maintain the landscaping of the Project. The emissions associated with landscape maintenance equipment were calculated based on assumptions provided in CalEEMod.

3.2.2 Energy Source Emissions

Combustion Emissions Associated with Natural Gas and Electricity

Electricity and natural gas are used by almost every project. Criteria pollutant emissions are emitted through the generation of electricity and consumption of natural gas. However, because electrical generating facilities for the Project area are located either outside the region (state) or offset through the use of pollution credits (RECLAIM) for generation within the air basin, criteria pollutant emissions from offsite generation of electricity is generally excluded from the evaluation of significance and only natural gas use is considered. The emissions associated with natural gas use were calculated using CalEEMod.

3.2.3 Mobile Source Emissions

Vehicles

Project-related operational air quality impacts derive primarily from vehicle trips generated by the Project. CalEEMod Version 2022.1.1.20 default values were used for the projects trip characteristics for operational truck and passenger vehicle totals.

Fugitive Dust Related to Vehicular Travel

Vehicles traveling on paved roads would be a source of fugitive emissions due to the generation of road dust inclusive of tire wear particulates. The emissions estimates for travel on paved roads were calculated using CalEEMod.

Table 3.2-1 - Summary of Peak Operational Summer Emissions

Source	Emissions (lbs/day)					
	VOC/ROG	NO_x	CO	SO_x	PM_{10}	$PM_{2.5}$
Area Source	2.23	1.84	17.1	0.04	3.37	0.87
Energy Source	20.4	1.49	39.6	0.09	5.00	4.91
Mobile Source	0.02	0.33	0.14	<0.005	0.03	0.03
Total Maximum Daily Emissions	**22.6**	**3.66**	**56.8**	**0.13**	**8.40**	**5.81**
SCAQMD Regional Threshold	**55**	**55**	**550**	**150**	**150**	**55**
Threshold Exceeded?	**NO**	**NO**	**NO**	**NO**	**NO**	**NO**

Source: CalEEMod 2022.1.1.20 Datasheets. (Appendix A).

Table 3.2-2 - Summary of Peak Operational Winter Emissions

Source	Emissions (lbs/day)					
	VOC/ROG	NO_x	CO	SO_x	PM_{10}	$PM_{2.5}$
Mobile Source	2.06	1.97	14.5	0.04	3.37	0.87
Area Source	20.0	1.45	35.6	0.09	5.00	4.91
Energy Source	0.02	0.33	0.14	<0.005	0.03	0.03
Total Maximum Daily Emissions	**22.1**	**3.76**	**50.3**	**0.13**	**8.40**	**5.81**
SCAQMD Regional Threshold	**55**	**55**	**550**	**150**	**150**	**55**
Threshold Exceeded?	**NO**	**NO**	**NO**	**NO**	**NO**	**NO**

Source: CalEEMod 2022.1.1.20 Datasheets. (Appendix A).

3.3 Greenhouse Gas Emissions (GHG):

City of Ontario Climate Action Plan

The City of Ontario has adopted a Community Climate Action Plan (CAP) to demonstrate how the City will reduce its greenhouse gas (GHG) emissions in compliance with AB32. To determine consistency with the CAP, the City of Ontario provided two (2) options either an analysis of the development project through emissions calculations using a model such as CalEEMod, or by using the CAP Screening Tables. Project's that do not use the screen tables must follow the guidance contained in the CAP to demonstrate consistency with the City's GHG reduction targets and reduction strategies adopted as part of the 2022 CAP.

The Screening Table are an aid in measuring the reduction of GHG emissions attributable to certain design and construction measures incorporated into development projects. The CAP establishes categories of GHG reduction measures to reduce GHG emissions generated by development projects. CAP GHG reduction measure categories for the Multi-Family Residential Development Screening Table include building electrification, green roofs, urban cooling, transit-oriented communities, increase transit ridership, vehicle electrification, active transportation, parking policy, electric construction equipment, waste, diversion, water conservation, and additional recommended measures. Within each category, individual sub-measures are assigned a point value under the city's GHG Measures Screening Table. The point values are adjusted according to the intensity of GHG reduction measure. Those Projects that garner 100 points using the Screening Tables have provided the "fair share" contribution of reductions and are considered consistent with the GHG Plan. Those Projects that do not garner 100 points using the screening tables will need to provide additional analysis to determine the significance of GHG emissions. The following table provides a menu of performance standards/options related to GHG mitigation measures and design features that can be used to demonstrate consistency with the reduction measures and GHG reduction quantities in the GHG Plan.

As shown in Table 3.3-1 below, in many cases the Screening Table relies upon specific information related to the actual construction and operation of a project. Because the Project involves the subdivision of approximately 3.1 acres into 70 townhomes (multi-family residential units), and the future builder of the homes is unknown, it is speculative at this time to determine the ultimate number of points that can be accrued absent building plans for the development. Although the construction of the Project is likely to achieve 100 points, it cannot be quantified at this time. Therefore, Mitigation Measure (MM) GHG-1 is required to ensure compliance with the 2022 CAP.

Table 3.3-1. Screening Table for Implementing GHG Performance Standards for Multi-family Residential Development 2030

Description	Feature	Project Points
Reduction Measure 1: Building Electrification		
Replacement of gas appliance with efficient electric appliance (select all that apply)	Electric space heater	6
	Electric water heater	8
	Electric stove	5
	Electric dryer	1
Additional electric appliance measures, if applicable (select all that apply)	Electric pool heater (if applicable)	1
	Electric spa heater (if applicable)	1
Lack of natural gas infrastructure	Project site does not have any natural gas infrastructure.	10
	Total for measure	*20*
Reduction Measure 2: Green Roofs		
Installation of a roof with a planted layer of vegetation over a waterproof surface for multi-family residential buildings	Medium Green Roof – Total vegetated area makes up 25% or more of combined multi-family residential unit area (in square feet).	3
	Total for measure	*3*
Reduction Measure 3: Urban Cooling		
On-site tree planting (select one option)[2]	1 tree per each required on-site vehicle parking space.	6
	2 trees per each required on-site vehicle parking space.	12
	3 trees per each required on-site vehicle parking space.	18
	Total for measure	*6*

[2] This strategy specifies the ratio of additional trees per required vehicle parking spaces. Based upon total on-site vehicle parking spaces required per the City of Ontario Development Code for the project, the Applicant will calculate the number of trees required to meet this measure and obtain points. The landscape plan will show onsite trees and the tree matrix shall identify all trees associated with the Urban Cooling Measure compliance. The City code requires trees onsite and within paved areas to reduce the associated heat build-up from development. The Landscape Planning Division will consider these trees in the calculation to be counted toward the Urban Cooling Measure.

Description	Feature	Project Points
Reduction Measure 4: Transit Oriented Communities (TOCs)		
New development is located in a transit-oriented community (TOC)	Development site is located within ½ mile radius of one or more of the following: a Bus Rapid Transit (BRT) stop, bus transit center, light rail station, the intersection of two or more major bus routes with a frequency of service interval of 15 minutes or less during the morning and afternoon peak commute periods, and/or High-Quality Transit Corridor defined as a corridor with fixed route bus service with service intervals no longer than 15 minutes during peak commute hours.[3]	10
	Total for measure	*10*
Reduction Measure 5: Increase Transit Ridership		
Provision of free transit passes for onsite residents or tenants for a period of 5 years after completion of construction[4] (select one option)	One 50% discounted annual transit pass for every two parking spaces, or one per residential unit, whichever is greater.	2
	One 100% discounted (free) annual transit pass for every two parking spaces or one per residential unit, whichever is greater.	6
	One 100% discounted (free) annual transit pass per parking space or one per residential bedroom, whichever is greater.	12
	Total for measure	*12*
Reduction Measure 6: Vehicle Electrification[5]		
Installation of EV charging stations for resident vehicle parking spaces (select one option)	Installation of Level 2 EV or higher charging stations at a rate of 5-10% of required vehicle parking spaces.	10
	Installation of Level 2 EV or higher charging stations at a rate of 11-29% of required vehicle parking spaces.	20
	Installation of Level 2 EV or higher charging stations at a rate of 30% or more of required vehicle parking spaces.	30
	Total for measure	***20***

[3] A project shall be considered to be within one-half mile of a major transit stop or high-quality transit corridor if all parcels within the project have no more than 25 percent of their area farther than one-half mile from the stop or corridor and if not more than 10 percent of the residential units or 100 units, whichever is less, in the project are farther than one-half mile from the stop or corridor.

[4] Provision for annual transit passes to be incorporated into CC&R's/HOA bylaws, as appropriate.

[5] EV charging station levels are defined in the California Green Building Standards or CALGreen Code, accessed at https://www.dgs.ca.gov/BSC/CALGreen. Charging stations also refer to charging ports.

Description	Feature	Project Points
Reduction Measure 7: Active Transportation		
Installation or improvement of bicycle facilities (select all that apply)	Bicycle parking facilities with 1:1 ratio of bicycle parking to guest vehicle parking space.	3
	Construct or improve a single bicycle lane facility (only Class I, II, or IV) that 1) connects to a larger existing bikeway network or 2) closes an existing bikeway network gap that is at least 0.5 miles long.	6
Installation or improvement of pedestrian facilities (select one option)	Two or three pedestrian infrastructure improvements to street design on private streets, including, but not limited to curb extensions, raised crosswalks, speed humps/bumps, street tree plantings in parkways or street medians, and elevated pavement markings.	3
	Four or more pedestrian infrastructure improvements to street design, including, but not limited to curb extensions, raised crosswalks, speed humps/bumps, street tree plantings in parkways or street medians, and elevated pavement markings.	6
	Total for measure	*15*
Reduction Measure 8: Parking Policy		
Require that some or all of resident vehicle parking spaces be purchased at an additional cost. This does not include guest vehicle parking spaces (select one option) [6]	Unbundle, or separate, half (50%) of parking costs of a residential project from property costs, requiring those who wish to purchase an additional parking space to do so at an additional cost.	1
	Unbundle, or separate, 100% of residential project's parking costs from property costs, requiring those who wish to purchase parking spaces to do so at an additional cost.	2
	Total for measure	*2*
Reduction Measure 9: Electric construction equipment[7]		
Use zero emission or electric construction equipment (select one option)	One-third (33%) of construction equipment used for construction (during building phase, not including grading phase), measured by number of hours of operation, is zero emission equipment.	4

[6] Provision for unbundled parking to be incorporated into CC&R's bylaws or separate parking agreement, as appropriate.

[7] Electric construction equipment includes electric compact excavators, electric motors, electric generators, and mobile charging equipment.

Description	Feature	Project Points
	Half (50%) of construction equipment used for construction (during the building phase, not including the grading phase), measured by the number of hours of operation, is zero emission equipment.	8
	Two-thirds (66%) or more of construction equipment used for construction (during the building phase, not including the grading phase), measured by number of hours of operation, is zero emission equipment.	12
	Total for measure	*12*
Reduction Measure 10: Waste diversion		
Design and plan multi-family housing developments to include onsite areas for municipal compost/green waste and recycling bins/containers	Site design allocates sufficient space for storage and collection of green waste, organic waste, and recyclables.	33
	Total for measure	*33*
Reduction Measure 11: Water conservation		
Implement indoor water efficiency measures (select all that apply)	Implement water efficient showerheads and faucets.	1
	Install on-demand water circulators on all showers/baths[8].	2
Incorporate outdoor water efficiency measures	Design and plan outdoor landscapes planted with drought-tolerant, low maintenance plants with a 1) drip irrigation system or 2) sprinkler irrigation system with a weather-based irrigation controller.	4
	Total for measure	*6*
	Multi-family Total for all measures	***174***
	Multi-family Project Points Subtotal	**92**
Additional Recommended Measures		
AR-1: Meet CalGreen	CalGreen Tier 1 compliance.	5
	CalGreen Tier 2 compliance.	10

[8] According to CALGreen, a hot water recirculation system is one which includes "a thermostat that will automatically shut off the recirculation pump when the water temperature reaches a preset level at the point of use."

Description	Feature	Project Points
voluntary tiers (select one option)		
AR-2: Generate energy from on-site solar PV (4 stories and higher buildings only, select one option)	Solar PV that generates 30%-49% of residential energy needs on multifamily residential buildings that are 4 stories in height or taller.	5
	Solar PV that generates 50%-79% of residential energy needs on multifamily residential buildings that are 4 stories in height or taller.	10
	Solar PV that generates 80% or more of residential energy needs on multifamily residential buildings that are 4 stories in height or taller.	15
AR-3: Energy Storage	If the building is 3 stories in height or less, install battery energy storage systems that meet the same performance standards as an energy storage system that would be required by the building code in a comparable building 4 stories in height or taller.	5
AR-4: Recycled Water	Use recycled water for at least 80% of outdoor water needs.	4
AR-5: Reflective Paving	Use high-reflectivity pavement for all hardscaped areas, including parking areas, walking paths, and patios.	4
AR-6: Building Orientation	Orient the building along a north-south alignment.	3
AR-7: Building Shading	Shade at least 90% of south-facing glazing by vegetation or overhangs at noon on June 21.	2
AR-8: Building Daylight	Provide daylighting in all rooms.	1
	Total additional recommended measures	***11***
	Multi-family Project Points Subtotal	
	Total Multi-family Points Possible	***218***
	MULTI-FAMILY PROJECT POINTS TOTAL	**103**

Mitigation Measures

GHG-1 **GHG Emissions Screening Table Review Measures**: *The project shall implement the Greenhouse Gas Emissions Screening Table Reduction Measures (GHG Screening Table) providing for a minimum 100 points per the City's Greenhouse Gas Emissions Screening Table Multi-family Residential Development 2030 form. The City shall verify incorporation of the identified GHG Screening Table Reduction Measures or equivalent replacement measures within the Project building plans and site design prior to the issuance of building permit(s) and/or site plans as applicable.*

3.4 Objectionable Odors:

According to the SCAQMD *CEQA Air Quality Handbook*, land uses associated with odor complaints typically include agricultural uses, wastewater treatment plants, food processing plants, chemical plants, composting, refineries, landfills, dairies, and fiberglass molding. The Project does not propose any of the above-described uses. Potential odor sources associated with the Project may result from construction equipment exhaust and the application of asphalt and architectural coatings during construction activities and the temporary storage of typical solid waste (refuse) associated with the proposed Project's long-term operational uses.

The construction odor emissions would be temporary, short-term, and intermittent in nature and would cease upon completion of the respective phase of construction and is thus considered less than significant. It is expected that Project-generated refuse would be stored in covered containers and removed at regular intervals in compliance with the City's solid waste regulations. Additionally, the Project is required to comply with the provisions of SCAQMD Rule 402 "Nuisance" which was established to reduce odorous emissions into the atmosphere. Therefore, odors associated with the proposed Project construction and operations would be less than significant and no mitigation is required.

3.5 Sensitive Receptors:

Some people, such as individuals with respiratory illnesses or impaired lung function because of other illnesses, persons over 65 years of age, and children under 14, are particularly sensitive to certain pollutants. Facilities and structures where these sensitive people live or spend considerable amounts of time are known as sensitive receptors. For the purposes of a CEQA analysis, the SCAQMD considers a sensitive receptor to be a receptor such as the following are land uses (sensitive sites) where sensitive receptors are typically located:

- Schools, playgrounds, and childcare centers
- Long-term health care facilities
- Rehabilitation centers
- Convalescent centers
- Hospitals
- Retirement homes
- Residences

Sensitive receptor locations are generally identified as facilities where it is possible that an individual could remain for 24 hours. Commercial and industrial facilities are not included in the definition of sensitive receptor because employees typically are present for shorter periods of time, such as eight hours.

The closest sensitive receptors to the Project site are include residential to the north, northeast, and south, as indicated in Table 3.5-1

Table 3.5-1 – Receptor Locations

Receptor	Distance from Project Site Boundary (feet)	Distance from Project Construction Center (feet)
Church of God (west adjacent property)	40	225
Church of the Nazarene (east adjacent property)	40	200
Residential (south closet structure)	70	280
5th Street followed by Multi-family Residential (north)	85	305

Source: Google Earth Pro, October 13, 2023

The properties adjacent to the Project site include 5th Street followed by multi-family residential to the north, Church of God to the west, Church of the Nazarene to the east, and single-family residential to the south. The Project would be compatible with surrounding land uses and would not adversely impact sensitive receptors during operations.

Whenever a project would require use of chemical compounds that have been identified in SCAQMD Rule 1401; placed on CARB's air toxics list pursuant to Assembly Bill 1807 (AB 1807), Air Contaminant Identification and Control Act (1983); or placed on the EPA's National Emissions Standards for Hazardous Air Pollutants, a health risk assessment (HRA) is required by the SCAQMD. Residential, commercial, and office uses do not use substantial quantities of TACs.

Guidance for conducting a Health risk Assessments (HRA), typically includes the following project types proposed for sites within the specified distance to an existing or planned (zoned) sensitive receptor land use must be evaluated:

- Any industrial project within 1,000 feet;
- A distribution center (40 or more trucks per day) within 1,000 feet;
- A major transportation project (50,000 or more vehicles per day) within 1,000 feet;
- A dry cleaner using perchloroethylene within 500 feet; and,
- A gasoline dispensing facility within 300 feet.

The Project is a residential development and does not produce toxic air emissions such as those generated by industrial manufacturing uses or uses that generate heavy-duty diesel truck emissions.

3.6 Localized Air Quality Impacts

The South Coast Air Quality Management District has established Localized Significance Thresholds (LST) which are used to determine whether a project may generate significant adverse localized air quality impacts for both construction and on-site operations. For the purposes of a CEQA analysis, the SCAQMD considers a sensitive receptor to be to be a receptor such as residential, hospital, convalescent facility where it is possible that an individual could remain for 24 hours If the calculated emissions for the proposed construction or operational activities are below the LST emission thresholds then the proposed construction or operation activity is not significant for air quality. (SCAQMD) The nearest property where sensitive receptors are regularly present are residential homes located approximately 70 feet from the Project southern site boundary, 280 feet from the center of the site and .

The Project site is located in Source Receptor Area (SRA) #33 – Southwest San Bernardino Valley. The Project site is approximately 3.1 acres, the LST for 5-acres was used as during grading multiple equipment passes will be required which would result in the daily acreage being disturbed greater than the 3.1 site acres. The closest receptor value available in the screening table of 25 meters (82 feet) was used for determining the maximum daily LSTs.

Table 3.6-1 identifies the maximum daily localized emissions thresholds that are applicable to the Project.

Table 3.6-1: Maximum Daily Localized Emissions Thresholds

Pollutant	Construction	Operations
Localized Thresholds (pounds per day)		
NO_X	270	270
CO	2193	2193
PM_{10}	16	4
$PM_{2.5}$	9	2

Source: Localized Thresholds presented in this table are based on the SCAQMD Final Localized Significance Threshold Methodology, July 2008.

Localized Construction Emissions

As shown in Table 3.6-2, using the CalEEMod Mitigated Construction Emissions which incorporates Rule 403 dust control measures, the localized construction emissions would not exceed the applicable SCAQMD LSTs for emissions for construction activities with Rule 403 measures applied to the Project, including watering site 2 times per day, reducing speed on site, and street sweeping. Thus, a less than significant impact would occur for Project-related construction-source localized emissions and no mitigation is required.

Table 3.6-2: Summary of Localized Significance Construction Emissions

Grading Emissions	Emissions (lbs/day)			
	NO_X	CO	PM_{10}	$PM_{2.5}$
Maximum Daily Emissions	36.1	34.0	9.49	5.47
SCAQMD Localized Threshold	**270**	**2193**	**16**	**9**
Threshold Exceeded?	**NO**	**NO**	**NO**	**NO**

Source: Air Quality Assessment, (Appendix A).

Localized On-Site Operational Emissions

According to the SCAQMD LST methodology, LSTs would apply to the operational phase of a project, if the project includes substantive stationary sources of emissions, or uses that attract mobile sources that may spend long periods queuing and idling at the site (e.g., industrial uses, transfer facilities, and warehouses). The Project does not propose or require uses that would constitute substantive stationary sources of emissions; or uses that attract mobile emissions sources that may spend long periods queuing and idling at the site. Accordingly, no operational-source emissions LST analysis is required.

3.7 CO "Hotspot" Analysis:

As discussed below, the Project would not result in potentially adverse CO concentrations or "hotspots." Further, detailed modeling of Project-specific carbon monoxide (CO) "hot spots" is not needed to reach this conclusion.

The SSAB is designated attainment under the CAAQS and NAAQS for CO. An adverse CO hotspot would occur if an exceedance of the state one-hour standard of 20 ppm or the eight-hour standard of 9 ppm were to occur.

It has long been recognized that CO hotspots are caused by vehicular emissions, primarily when idling at congested intersections. Due to changing regulations vehicle emissions standards have become increasingly stringent in the last twenty years. Currently, the allowable CO emissions standard in California is a maximum of 3.4 grams/mile for passenger cars (there are requirements for certain vehicles that are more stringent). With the turnover of older vehicles, introduction of cleaner fuels, and implementation of increasingly sophisticated and efficient emissions control technologies, CO concentration in Basin have steadily declined.

The SCAQMD, as part of their 2003 AQMP, conducted modeling for CO Hotspot Analysis at multiple congested intersections in their South Coast Air Basin, including the intersection of Wilshire Boulevard and Veteran Avenue, considered one of the most congested intersections in Southern California with an ADT of approximately 100,000 vehicles. The CO concentrations modeled by the SCAQMD's analysis identified all traffic induced CO levels below Federal and State thresholds. As the CO hotspots were not modeled at an intersection that accommodates over 100,000 vehicles per day, it can be reasonably deduced that CO hotspots would not be experienced at any intersections in the vicinity of the proposed project.

Given the extremely low level of CO concentrations in the project area and no project-traffic

related impacts at any intersections, project-related vehicle emissions are not expected to result in the CO concentrations exceeding the State or federal CO standards.

3.8 Cumulative Impacts:

The project area is designated as a non-attainment area for ozone and a non-attainment area for PM2.5 and PM10. The Project would comply with the mandatory requirements of SCAQMD's Rule 403 (fugitive dust control) during construction, as well as all other adopted AQMP emissions control measures. The project also is required to comply with California Code of Regulations Title 13, Division 3, and specifically its Chapter 1, Article 4.5, Section 2025, "Regulation to Reduce Emissions of Diesel Particulate Matter, Oxides of Nitrogen and Other Criteria Pollutants, from In-Use Heavy-Duty Diesel-Fueled Vehicles" and its Chapter 10, Article 1, Section 2485, "Airborne Toxic Control Measure to Limit Diesel-Fueled Commercial Motor Vehicle Idling." Per SCAQMD rules and mandates, and California Code of Regulation requirements, as well as the CEQA requirement that significant impacts be mitigated to the extent feasible, these same requirements are imposed on all projects in the South Coast Air Basin.

In determining whether the project would result in a cumulatively considerable net increase of any criteria pollutant for which the project region is non-attainment under an applicable federal or state ambient air quality standard (including releasing emissions, which exceed quantitative thresholds for ozone precursors), the non-attainment pollutants of concern for this impact are ozone and PM10. In developing the thresholds of significance for air pollutants disclosed above the SCAQMD considered the emission levels for which a project's individual emissions would be cumulatively considerable. If a project exceeds the identified significance thresholds, its emissions would be cumulatively considerable, resulting in significant adverse air quality impacts to the region's existing air quality conditions.

As shown in Tables 3.1-1, 3.2-1, 3.2-2, 3.3-1, and 3.6-2 above, the project does not exceed the identified significance thresholds, as such, emissions would not be cumulatively considerable.

3.9 Conformity and Consistency:

The following analysis is consistent with the preferred analysis approach recommended by the SCAQMD *CEQA Air Quality Handbook.*

3.9.1 Conformity with Air Quality Management Plans: The Project is located within the SCAB and under the jurisdiction of the SCAQMD. Under the Federal Clean Air Act, the SCAQMD has adopted a variety of attainment plans (i.e., "Air Quality Management Plans") for a variety of non-attainment pollutants. A complete list of the various air quality management plans is available from the SCAQMD on their website at: http://www.aqmd.gov/home/air-quality/clean-air-plans/air-quality-mgt-plan

The SCAQMD is responsible for maintaining and ensuring compliance with the various Air Quality Management Plans. Conformity is determined based on the following criteria:

- A project is non-conforming if it conflicts with or delays implementation of any applicable attainment or maintenance plan. A project may also be non-conforming

if it increases the gross number of dwelling units, increases the number of trips, and/or increases the overall vehicle miles traveled in an affected area (relative to the applicable land use plan).

- A project is conforming if it complies with all applicable SCAQMD rules and regulations, complies with all proposed control measures that are not yet adopted from the applicable plan(s), and is consistent with the growth forecasts in the applicable plan(s) (or is directly included in the applicable plan).

3.9.2 Consistency with Emission Thresholds*:* As shown in Tables 3.1-1, 3.2-1, 3.2-2, 3.3-1, and 3.6-2 the Project would not exceed SCAQMD significance thresholds for any criteria pollutant during construction or during long-term operation. Accordingly, the Project's air quality emissions are less than significant.

3.9.3 Consistency with Control Measures: The construction contractors are required to comply with rules, regulations, and control measures including but not limited to controlling Fugitive Dust (Rule 403), Supplemental Fugitive Dust Control Requirements for Coachella Valley Sources (Rule 403.1), and the application of architectural coatings during building construction (Rule 1113).

3.9.4 Consistency with Growth Forecasts: The Project site's land use per the Ontario Plan 2050 Land Use is designated as Medium Density Residential (MDR), with a minimum density of 11.1 du/ac to 25 du/ac. The Project is proposing 22.6 du/ac. therefore, the current residential and planned land use land use designation is consistent with the land use density used by the SCAQMD to generate the growth forecasts for the air quality plans referenced above and would be consistent with the growth assumptions used in the SCAQMD plans.

4.0 Conclusion

Based on the assessment in Section 3.0 all estimated Project emissions for construction and operations are below the SCAQMD significance threshold levels and with the implementation of MM-GHG-1 for compliance with the Ontario CAP impacts to the environment for Air Quality and Greenhouse Gases are less than significant. Additionally, the proposed Project will not conflict with any air quality or GHG plans.

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Ontario Sunrise Residential Custom Report

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1. Basic Project Information

1.1. Basic Project Information

Data Field	Value
Project Name	Ontario Sunrise Residential
Construction Start Date	1/2/2024
Operational Year	2025
Lead Agency	—
Land Use Scale	Project/site
Analysis Level for Defaults	County
Windspeed (m/s)	2.80
Precipitation (days)	2.40
Location	1355 W 5th St, Ontario, CA 91762, USA
County	San Bernardino-South Coast
City	Ontario
Air District	South Coast AQMD
Air Basin	South Coast
TAZ	5233
EDFZ	10
Electric Utility	Southern California Edison
Gas Utility	Southern California Gas
App Version	2022.1.1.20

1.2. Land Use Types

Land Use Subtype	Size	Unit	Lot Acreage	Building Area (sq ft)	Landscape Area (sq ft)	Special Landscape Area (sq ft)	Population	Description

948

Condo/Townhouse	70.0	Dwelling Unit	3.10	74,200	18,000	—	232	—

1.3. User-Selected Emission Reduction Measures by Emissions Sector

Sector	#	Measure Title
Construction	C-2*	Limit Heavy-Duty Diesel Vehicle Idling
Construction	C-11	Limit Vehicle Speeds on Unpaved Roads
Construction	C-12	Sweep Paved Roads

* Qualitative or supporting measure. Emission reductions not included in the mitigated emissions results.

2. Emissions Summary

2.1. Construction Emissions Compared Against Thresholds

Criteria Pollutants (lb/day for daily, ton/yr for annual) and GHGs (lb/day for daily, MT/yr for annual)

Un/Mit.	TOG	ROG	NOx	CO	SO2	PM10E	PM10D	PM10T	PM2.5E	PM2.5D	PM2.5T	BCO2	NBCO2	CO2T	CH4	N2O	R	CO2e
Daily, Summer (Max)	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—
Unmit.	1.75	1.47	11.7	17.5	0.03	0.50	0.72	1.22	0.46	0.17	0.63	—	3,358	3,358	0.15	0.08	3.56	3,389
Mit.	1.75	1.47	11.7	17.5	0.03	0.50	0.72	1.22	0.46	0.17	0.63	—	3,358	3,358	0.15	0.08	3.56	3,389
% Reduced	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—
Daily, Winter (Max)	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—
Unmit.	4.43	26.0	36.1	34.0	0.05	1.60	7.89	9.49	1.47	3.99	5.47	—	5,527	5,527	0.23	0.15	0.09	5,548
Mit.	4.43	26.0	36.1	34.0	0.05	1.60	7.89	9.49	1.47	3.99	5.47	—	5,527	5,527	0.23	0.15	0.09	5,548
% Reduced	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—

Average Daily (Max)	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—
Unmit.	1.36	1.34	9.61	12.5	0.02	0.41	0.67	1.08	0.38	0.20	0.58	—	2,428	2,428	0.11	0.06	1.02	2,450
Mit.	1.36	1.34	9.61	12.5	0.02	0.41	0.67	1.08	0.38	0.20	0.58	—	2,428	2,428	0.11	0.06	1.02	2,450
% Reduced	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—
Annual (Max)	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—
Unmit.	0.25	0.24	1.75	2.28	< 0.005	0.07	0.12	0.20	0.07	0.04	0.11	—	402	402	0.02	0.01	0.17	406
Mit.	0.25	0.24	1.75	2.28	< 0.005	0.07	0.12	0.20	0.07	0.04	0.11	—	402	402	0.02	0.01	0.17	406
% Reduced	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—
Exceeds (Daily Max)	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—
Threshold	—	75.0	100	550	150	—	—	150	—	—	55.0	—	—	—	—	—	—	—
Unmit.	—	No	No	No	No	—	—	No	—	—	No	—	—	—	—	—	—	Yes
Mit.	—	No	No	No	No	—	—	No	—	—	No	—	—	—	—	—	—	Yes
Exceeds (Average Daily)	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—
Threshold	—	75.0	100	550	150	—	—	150	—	—	55.0	—	—	—	—	—	—	—
Unmit.	—	No	No	No	No	—	—	No	—	—	No	—	—	—	—	—	—	Yes
Mit.	—	No	No	No	No	—	—	No	—	—	No	—	—	—	—	—	—	Yes
Exceeds (Annual)	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—
Threshold	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—	3,000
Unmit.	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—	No

Mit.	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—	No

2.2. Construction Emissions by Year, Unmitigated

Criteria Pollutants (lb/day for daily, ton/yr for annual) and GHGs (lb/day for daily, MT/yr for annual)

Year	TOG	ROG	NOx	CO	SO2	PM10E	PM10D	PM10T	PM2.5E	PM2.5D	PM2.5T	BCO2	NBCO2	CO2T	CH4	N2O	R	CO2e
Daily - Summer (Max)	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—
2024	1.75	1.47	11.7	17.5	0.03	0.50	0.72	1.22	0.46	0.17	0.63	—	3,358	3,358	0.15	0.08	3.56	3,389
Daily - Winter (Max)	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—
2024	4.43	3.73	36.1	34.0	0.05	1.60	7.89	9.49	1.47	3.99	5.47	—	5,527	5,527	0.23	0.15	0.09	5,548
2025	1.61	26.0	11.0	16.1	0.03	0.44	0.72	1.16	0.40	0.17	0.57	—	3,280	3,280	0.15	0.08	0.09	3,307
Average Daily	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—
2024	1.36	1.14	9.61	12.5	0.02	0.41	0.67	1.08	0.38	0.20	0.58	—	2,428	2,428	0.11	0.06	1.02	2,450
2025	0.08	1.34	0.52	0.81	< 0.005	0.02	0.03	0.05	0.02	0.01	0.03	—	138	138	0.01	< 0.005	0.05	139
Annual	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—
2024	0.25	0.21	1.75	2.28	< 0.005	0.07	0.12	0.20	0.07	0.04	0.11	—	402	402	0.02	0.01	0.17	406
2025	0.01	0.24	0.10	0.15	< 0.005	< 0.005	0.01	0.01	< 0.005	< 0.005	< 0.005	—	22.8	22.8	< 0.005	< 0.005	0.01	22.9

2.3. Construction Emissions by Year, Mitigated

Criteria Pollutants (lb/day for daily, ton/yr for annual) and GHGs (lb/day for daily, MT/yr for annual)

Year	TOG	ROG	NOx	CO	SO2	PM10E	PM10D	PM10T	PM2.5E	PM2.5D	PM2.5T	BCO2	NBCO2	CO2T	CH4	N2O	R	CO2e
Daily - Summer (Max)	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—
2024	1.75	1.47	11.7	17.5	0.03	0.50	0.72	1.22	0.46	0.17	0.63	—	3,358	3,358	0.15	0.08	3.56	3,389

Daily - Winter (Max)	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—
2024	4.43	3.73	36.1	34.0	0.05	1.60	7.89	9.49	1.47	3.99	5.47	—	5,527	5,527	0.23	0.15	0.09	5,548
2025	1.61	26.0	11.0	16.1	0.03	0.44	0.72	1.16	0.40	0.17	0.57	—	3,280	3,280	0.15	0.08	0.09	3,307
Average Daily	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—
2024	1.36	1.14	9.61	12.5	0.02	0.41	0.67	1.08	0.38	0.20	0.58	—	2,428	2,428	0.11	0.06	1.02	2,450
2025	0.08	1.34	0.52	0.81	< 0.005	0.02	0.03	0.05	0.02	0.01	0.03	—	138	138	0.01	< 0.005	0.05	139
Annual	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—
2024	0.25	0.21	1.75	2.28	< 0.005	0.07	0.12	0.20	0.07	0.04	0.11	—	402	402	0.02	0.01	0.17	406
2025	0.01	0.24	0.10	0.15	< 0.005	< 0.005	0.01	0.01	< 0.005	< 0.005	< 0.005	—	22.8	22.8	< 0.005	< 0.005	0.01	22.9

2.4. Operations Emissions Compared Against Thresholds

Criteria Pollutants (lb/day for daily, ton/yr for annual) and GHGs (lb/day for daily, MT/yr for annual)

Un/Mit.	TOG	ROG	NOx	CO	SO2	PM10E	PM10D	PM10T	PM2.5E	PM2.5D	PM2.5T	BCO2	NBCO2	CO2T	CH4	N2O	R	CO2e
Daily, Summer (Max)	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—
Unmit.	23.1	22.6	3.66	56.8	0.13	5.05	3.34	8.40	4.96	0.85	5.81	689	6,075	6,764	5.60	0.23	15.5	6,989
Daily, Winter (Max)	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—
Unmit.	22.6	22.1	3.76	50.3	0.13	5.05	3.34	8.39	4.96	0.85	5.81	689	5,812	6,501	5.60	0.24	0.92	6,713
Average Daily (Max)	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—
Unmit.	3.70	5.06	2.26	18.8	0.04	0.40	2.99	3.38	0.39	0.76	1.15	78.4	4,291	4,369	3.76	0.20	6.32	4,528
Annual (Max)	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—
Unmit.	0.67	0.92	0.41	3.42	0.01	0.07	0.55	0.62	0.07	0.14	0.21	13.0	710	723	0.62	0.03	1.05	75(

Exceeds (Daily Max)	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—
Threshold	—	55.0	55.0	550	150	—	—	150	—	—	55.0	—	—	—	—	—	—	—
Unmit.	—	No	No	No	No	—	—	No	—	—	No	—	—	—	—	—	—	—
Exceeds (Average Daily)	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—
Threshold	—	55.0	55.0	550	150	—	—	150	—	—	55.0	—	—	—	—	—	—	—
Unmit.	—	No	No	No	No	—	—	No	—	—	No	—	—	—	—	—	—	—
Exceeds (Annual)	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—
Threshold	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—	3,000
Unmit.	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—	No

2.5. Operations Emissions by Sector, Unmitigated

Criteria Pollutants (lb/day for daily, ton/yr for annual) and GHGs (lb/day for daily, MT/yr for annual)

Sector	TOG	ROG	NOx	CO	SO2	PM10E	PM10D	PM10T	PM2.5E	PM2.5D	PM2.5T	BCO2	NBCO2	CO2T	CH4	N2O	R	CO2e
Daily, Summer (Max)	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—
Mobile	2.43	2.23	1.84	17.1	0.04	0.03	3.34	3.37	0.03	0.85	0.87	—	4,044	4,044	0.21	0.19	15.0	4,120
Area	20.7	20.4	1.49	39.6	0.09	5.00	—	5.00	4.91	—	4.91	656	1,263	1,919	1.96	0.02	—	1,975
Energy	0.04	0.02	0.33	0.14	< 0.005	0.03	—	0.03	0.03	—	0.03	—	747	747	0.07	< 0.005	—	750
Water	—	—	—	—	—	—	—	—	—	—	—	5.59	20.8	26.4	0.58	0.01	—	44.9
Waste	—	—	—	—	—	—	—	—	—	—	—	27.9	0.00	27.9	2.79	0.00	—	97.7
Refrig.	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—	0.53	0.53
Total	23.1	22.6	3.66	56.8	0.13	5.05	3.34	8.40	4.96	0.85	5.81	689	6,075	6,764	5.60	0.23	15.5	6,9[illegible]

Daily, Winter (Max)	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—
Mobile	2.26	2.06	1.97	14.5	0.04	0.03	3.34	3.37	0.03	0.85	0.87	—	3,791	3,791	0.21	0.20	0.39	3,856
Area	20.3	20.0	1.45	35.6	0.09	5.00	—	5.00	4.91	—	4.91	656	1,253	1,909	1.95	0.02	—	1,964
Energy	0.04	0.02	0.33	0.14	< 0.005	0.03	—	0.03	0.03	—	0.03	—	747	747	0.07	< 0.005	—	750
Water	—	—	—	—	—	—	—	—	—	—	—	5.59	20.8	26.4	0.58	0.01	—	44.9
Waste	—	—	—	—	—	—	—	—	—	—	—	27.9	0.00	27.9	2.79	0.00	—	97.7
Refrig.	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—	0.53	0.53
Total	22.6	22.1	3.76	50.3	0.13	5.05	3.34	8.39	4.96	0.85	5.81	689	5,812	6,501	5.60	0.24	0.92	6,713
Average Daily	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—
Mobile	2.01	1.83	1.80	13.5	0.03	0.02	2.99	3.01	0.02	0.76	0.78	—	3,430	3,430	0.19	0.18	5.78	3,494
Area	1.65	3.21	0.13	5.15	0.01	0.34	—	0.34	0.34	—	0.34	44.9	93.1	138	0.13	< 0.005	—	142
Energy	0.04	0.02	0.33	0.14	< 0.005	0.03	—	0.03	0.03	—	0.03	—	747	747	0.07	< 0.005	—	750
Water	—	—	—	—	—	—	—	—	—	—	—	5.59	20.8	26.4	0.58	0.01	—	44.9
Waste	—	—	—	—	—	—	—	—	—	—	—	27.9	0.00	27.9	2.79	0.00	—	97.7
Refrig.	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—	0.53	0.53
Total	3.70	5.06	2.26	18.8	0.04	0.40	2.99	3.38	0.39	0.76	1.15	78.4	4,291	4,369	3.76	0.20	6.32	4,528
Annual	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—
Mobile	0.37	0.33	0.33	2.46	0.01	< 0.005	0.55	0.55	< 0.005	0.14	0.14	—	568	568	0.03	0.03	0.96	578
Area	0.30	0.59	0.02	0.94	< 0.005	0.06	—	0.06	0.06	—	0.06	7.44	15.4	22.8	0.02	< 0.005	—	23.5
Energy	0.01	< 0.005	0.06	0.03	< 0.005	< 0.005	—	< 0.005	< 0.005	—	< 0.005	—	124	124	0.01	< 0.005	—	124
Water	—	—	—	—	—	—	—	—	—	—	—	0.93	3.44	4.36	0.10	< 0.005	—	7.43
Waste	—	—	—	—	—	—	—	—	—	—	—	4.62	0.00	4.62	0.46	0.00	—	16.2
Refrig.	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—	0.09	0.09
Total	0.67	0.92	0.41	3.42	0.01	0.07	0.55	0.62	0.07	0.14	0.21	13.0	710	723	0.62	0.03	1.05	750

2.6. Operations Emissions by Sector, Mitigated

Criteria Pollutants (lb/day for daily, ton/yr for annual) and GHGs (lb/day for daily, MT/yr for annual)

Sector	TOG	ROG	NOx	CO	SO2	PM10E	PM10D	PM10T	PM2.5E	PM2.5D	PM2.5T	BCO2	NBCO2	CO2T	CH4	N2O	R	CO2e
Daily, Summer (Max)	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—
Mobile	2.43	2.23	1.84	17.1	0.04	0.03	3.34	3.37	0.03	0.85	0.87	—	4,044	4,044	0.21	0.19	15.0	4,120
Area	20.7	20.4	1.49	39.6	0.09	5.00	—	5.00	4.91	—	4.91	656	1,263	1,919	1.96	0.02	—	1,975
Energy	0.04	0.02	0.33	0.14	< 0.005	0.03	—	0.03	0.03	—	0.03	—	747	747	0.07	< 0.005	—	750
Water	—	—	—	—	—	—	—	—	—	—	—	5.59	20.8	26.4	0.58	0.01	—	44.9
Waste	—	—	—	—	—	—	—	—	—	—	—	27.9	0.00	27.9	2.79	0.00	—	97.7
Refrig.	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—	0.53	0.53
Total	23.1	22.6	3.66	56.8	0.13	5.05	3.34	8.40	4.96	0.85	5.81	689	6,075	6,764	5.60	0.23	15.5	6,989
Daily, Winter (Max)	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—
Mobile	2.26	2.06	1.97	14.5	0.04	0.03	3.34	3.37	0.03	0.85	0.87	—	3,791	3,791	0.21	0.20	0.39	3,856
Area	20.3	20.0	1.45	35.6	0.09	5.00	—	5.00	4.91	—	4.91	656	1,253	1,909	1.95	0.02	—	1,964
Energy	0.04	0.02	0.33	0.14	< 0.005	0.03	—	0.03	0.03	—	0.03	—	747	747	0.07	< 0.005	—	750
Water	—	—	—	—	—	—	—	—	—	—	—	5.59	20.8	26.4	0.58	0.01	—	44.9
Waste	—	—	—	—	—	—	—	—	—	—	—	27.9	0.00	27.9	2.79	0.00	—	97.7
Refrig.	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—	0.53	0.53
Total	22.6	22.1	3.76	50.3	0.13	5.05	3.34	8.39	4.96	0.85	5.81	689	5,812	6,501	5.60	0.24	0.92	6,713
Average Daily	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—
Mobile	2.01	1.83	1.80	13.5	0.03	0.02	2.99	3.01	0.02	0.76	0.78	—	3,430	3,430	0.19	0.18	5.78	3,494
Area	1.65	3.21	0.13	5.15	0.01	0.34	—	0.34	0.34	—	0.34	44.9	93.1	138	0.13	< 0.005	—	142
Energy	0.04	0.02	0.33	0.14	< 0.005	0.03	—	0.03	0.03	—	0.03	—	747	747	0.07	< 0.005	—	750
Water	—	—	—	—	—	—	—	—	—	—	—	5.59	20.8	26.4	0.58	0.01	—	44.

Waste	—	—	—	—	—	—	—	—	—	—	—	27.9	0.00	27.9	2.79	0.00	—	97.7
Refrig.	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—	0.53	0.53
Total	3.70	5.06	2.26	18.8	0.04	0.40	2.99	3.38	0.39	0.76	1.15	78.4	4,291	4,369	3.76	0.20	6.32	4,528
Annual	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—
Mobile	0.37	0.33	0.33	2.46	0.01	< 0.005	0.55	0.55	< 0.005	0.14	0.14	—	568	568	0.03	0.03	0.96	578
Area	0.30	0.59	0.02	0.94	< 0.005	0.06	—	0.06	0.06	—	0.06	7.44	15.4	22.8	0.02	< 0.005	—	23.5
Energy	0.01	< 0.005	0.06	0.03	< 0.005	< 0.005	—	< 0.005	< 0.005	—	< 0.005	—	124	124	0.01	< 0.005	—	124
Water	—	—	—	—	—	—	—	—	—	—	—	0.93	3.44	4.36	0.10	< 0.005	—	7.43
Waste	—	—	—	—	—	—	—	—	—	—	—	4.62	0.00	4.62	0.46	0.00	—	16.2
Refrig.	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—	0.09	0.09
Total	0.67	0.92	0.41	3.42	0.01	0.07	0.55	0.62	0.07	0.14	0.21	13.0	710	723	0.62	0.03	1.05	750

3. Construction Emissions Details

3.1. Demolition (2024) - Unmitigated

Criteria Pollutants (lb/day for daily, ton/yr for annual) and GHGs (lb/day for daily, MT/yr for annual)

Location	TOG	ROG	NOx	CO	SO2	PM10E	PM10D	PM10T	PM2.5E	PM2.5D	PM2.5T	BCO2	NBCO2	CO2T	CH4	N2O	R	CO2e
Onsite	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—
Daily, Summer (Max)	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—
Daily, Winter (Max)	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—
Off-Road Equipment	3.12	2.62	24.9	21.7	0.03	1.06	—	1.06	0.98	—	0.98	—	3,425	3,425	0.14	0.03	—	3,437
Demolition	—	—	—	—	—	—	0.58	0.58	—	0.09	0.09	—	—	—	—	—	—	—
Onsite truck	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	—	0.00	0.00	0.00	0.00	0.00	0.00

Average Daily	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—
Off-Road Equipment	0.17	0.14	1.36	1.19	< 0.005	0.06	—	0.06	0.05	—	0.05	—	188	188	0.01	< 0.005	—	188
Demolition	—	—	—	—	—	—	0.03	0.03	—	< 0.005	< 0.005	—	—	—	—	—	—	—
Onsite truck	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	—	0.00	0.00	0.00	0.00	0.00	0.00
Annual	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—
Off-Road Equipment	0.03	0.03	0.25	0.22	< 0.005	0.01	—	0.01	0.01	—	0.01	—	31.1	31.1	< 0.005	< 0.005	—	31.2
Demolition	—	—	—	—	—	—	0.01	0.01	—	< 0.005	< 0.005	—	—	—	—	—	—	—
Onsite truck	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	—	0.00	0.00	0.00	0.00	0.00	0.00
Offsite	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—
Daily, Summer (Max)	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—
Daily, Winter (Max)	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—
Worker	0.08	0.07	0.09	0.96	0.00	0.00	0.20	0.20	0.00	0.05	0.05	—	198	198	0.01	0.01	0.02	200
Vendor	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	—	0.00	0.00	0.00	0.00	0.00	0.00
Hauling	0.10	0.01	0.93	0.50	< 0.005	0.01	0.19	0.21	0.01	0.05	0.06	—	729	729	0.08	0.12	0.04	766
Average Daily	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—
Worker	< 0.005	< 0.005	< 0.005	0.06	0.00	0.00	0.01	0.01	0.00	< 0.005	< 0.005	—	11.0	11.0	< 0.005	< 0.005	0.02	11.2
Vendor	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	—	0.00	0.00	0.00	0.00	0.00	0.00
Hauling	0.01	< 0.005	0.05	0.03	< 0.005	< 0.005	0.01	0.01	< 0.005	< 0.005	< 0.005	—	39.9	39.9	< 0.005	0.01	0.04	42.0
Annual	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—
Worker	< 0.005	< 0.005	< 0.005	0.01	0.00	0.00	< 0.005	< 0.005	0.00	< 0.005	< 0.005	—	1.82	1.82	< 0.005	< 0.005	< 0.005	1.85

Vendor	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	—	0.00	0.00	0.00	0.00	0.00	0.00
Hauling	< 0.005	< 0.005	0.01	0.01	< 0.005	< 0.005	< 0.005	< 0.005	< 0.005	< 0.005	< 0.005	—	6.61	6.61	< 0.005	< 0.005	0.01	6.95

3.2. Demolition (2024) - Mitigated

Criteria Pollutants (lb/day for daily, ton/yr for annual) and GHGs (lb/day for daily, MT/yr for annual)

Location	TOG	ROG	NOx	CO	SO2	PM10E	PM10D	PM10T	PM2.5E	PM2.5D	PM2.5T	BCO2	NBCO2	CO2T	CH4	N2O	R	CO2e
Onsite	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—
Daily, Summer (Max)	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—
Daily, Winter (Max)	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—
Off-Road Equipment	3.12	2.62	24.9	21.7	0.03	1.06	—	1.06	0.98	—	0.98	—	3,425	3,425	0.14	0.03	—	3,437
Demolition	—	—	—	—	—	—	0.58	0.58	—	0.09	0.09	—	—	—	—	—	—	—
Onsite truck	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	—	0.00	0.00	0.00	0.00	0.00	0.00
Average Daily	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—
Off-Road Equipment	0.17	0.14	1.36	1.19	< 0.005	0.06	—	0.06	0.05	—	0.05	—	188	188	0.01	< 0.005	—	188
Demolition	—	—	—	—	—	—	0.03	0.03	—	< 0.005	< 0.005	—	—	—	—	—	—	—
Onsite truck	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	—	0.00	0.00	0.00	0.00	0.00	0.00
Annual	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—
Off-Road Equipment	0.03	0.03	0.25	0.22	< 0.005	0.01	—	0.01	0.01	—	0.01	—	31.1	31.1	< 0.005	< 0.005	—	31.2
Demolition	—	—	—	—	—	—	0.01	0.01	—	< 0.005	< 0.005	—	—	—	—	—	—	—

Onsite truck	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	—	0.00	0.00	0.00	0.00	0.00	0.00
Offsite	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—
Daily, Summer (Max)	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—
Daily, Winter (Max)	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—
Worker	0.08	0.07	0.09	0.96	0.00	0.00	0.20	0.20	0.00	0.05	0.05	—	198	198	0.01	0.01	0.02	200
Vendor	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	—	0.00	0.00	0.00	0.00	0.00	0.00
Hauling	0.10	0.01	0.93	0.50	< 0.005	0.01	0.19	0.21	0.01	0.05	0.06	—	729	729	0.08	0.12	0.04	766
Average Daily	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—
Worker	< 0.005	< 0.005	< 0.005	0.06	0.00	0.00	0.01	0.01	0.00	< 0.005	< 0.005	—	11.0	11.0	< 0.005	< 0.005	0.02	11.2
Vendor	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	—	0.00	0.00	0.00	0.00	0.00	0.00
Hauling	0.01	< 0.005	0.05	0.03	< 0.005	< 0.005	0.01	0.01	< 0.005	< 0.005	< 0.005	—	39.9	39.9	< 0.005	0.01	0.04	42.0
Annual	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—
Worker	< 0.005	< 0.005	< 0.005	0.01	0.00	0.00	< 0.005	< 0.005	0.00	< 0.005	< 0.005	—	1.82	1.82	< 0.005	< 0.005	< 0.005	1.85
Vendor	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	—	0.00	0.00	0.00	0.00	0.00	0.00
Hauling	< 0.005	< 0.005	0.01	0.01	< 0.005	< 0.005	< 0.005	< 0.005	< 0.005	< 0.005	< 0.005	—	6.61	6.61	< 0.005	< 0.005	0.01	6.95

3.3. Site Preparation (2024) - Unmitigated

Criteria Pollutants (lb/day for daily, ton/yr for annual) and GHGs (lb/day for daily, MT/yr for annual)

Location	TOG	ROG	NOx	CO	SO2	PM10E	PM10D	PM10T	PM2.5E	PM2.5D	PM2.5T	BCO2	NBCO2	CO2T	CH4	N2O	R	CO2e
Onsite	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—
Daily, Summer (Max)	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—

Daily, Winter (Max)	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—
Off-Road Equipment	4.34	3.65	36.0	32.9	0.05	1.60	—	1.60	1.47	—	1.47	—	5,296	5,296	0.21	0.04	—	5,314
Dust From Material Movement	—	—	—	—	—	—	7.67	7.67	—	3.94	3.94	—	—	—	—	—	—	—
Onsite truck	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	—	0.00	0.00	0.00	0.00	0.00	0.00
Average Daily	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—
Off-Road Equipment	0.06	0.05	0.49	0.45	< 0.005	0.02	—	0.02	0.02	—	0.02	—	72.5	72.5	< 0.005	< 0.005	—	72.8
Dust From Material Movement	—	—	—	—	—	—	0.11	0.11	—	0.05	0.05	—	—	—	—	—	—	—
Onsite truck	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	—	0.00	0.00	0.00	0.00	0.00	0.00
Annual	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—
Off-Road Equipment	0.01	0.01	0.09	0.08	< 0.005	< 0.005	—	< 0.005	< 0.005	—	< 0.005	—	12.0	12.0	< 0.005	< 0.005	—	12.1
Dust From Material Movement	—	—	—	—	—	—	0.02	0.02	—	0.01	0.01	—	—	—	—	—	—	—
Onsite truck	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	—	0.00	0.00	0.00	0.00	0.00	0.00
Offsite	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—
Daily, Summer (Max)	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—

Daily, Winter (Max)	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—
Worker	0.10	0.09	0.10	1.12	0.00	0.00	0.23	0.23	0.00	0.05	0.05	—	231	231	0.01	0.01	0.03	234
Vendor	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	—	0.00	0.00	0.00	0.00	0.00	0.00
Hauling	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	—	0.00	0.00	0.00	0.00	0.00	0.00
Average Daily	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—
Worker	< 0.005	< 0.005	< 0.005	0.02	0.00	0.00	< 0.005	< 0.005	0.00	< 0.005	< 0.005	—	3.21	3.21	< 0.005	< 0.005	0.01	3.25
Vendor	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	—	0.00	0.00	0.00	0.00	0.00	0.00
Hauling	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	—	0.00	0.00	0.00	0.00	0.00	0.00
Annual	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—
Worker	< 0.005	< 0.005	< 0.005	< 0.005	0.00	0.00	< 0.005	< 0.005	0.00	< 0.005	< 0.005	—	0.53	0.53	< 0.005	< 0.005	< 0.005	0.54
Vendor	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	—	0.00	0.00	0.00	0.00	0.00	0.00
Hauling	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	—	0.00	0.00	0.00	0.00	0.00	0.00

3.4. Site Preparation (2024) - Mitigated

Criteria Pollutants (lb/day for daily, ton/yr for annual) and GHGs (lb/day for daily, MT/yr for annual)

Location	TOG	ROG	NOx	CO	SO2	PM10E	PM10D	PM10T	PM2.5E	PM2.5D	PM2.5T	BCO2	NBCO2	CO2T	CH4	N2O	R	CO2e
Onsite	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—
Daily, Summer (Max)	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—
Daily, Winter (Max)	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—
Off-Road Equipment	4.34	3.65	36.0	32.9	0.05	1.60	—	1.60	1.47	—	1.47	—	5,296	5,296	0.21	0.04	—	5,314

Dust From Material Movement	—	—	—	—	—	—	7.67	7.67	—	3.94	3.94	—	—	—	—	—	—	—
Onsite truck	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	—	0.00	0.00	0.00	0.00	0.00	0.00
Average Daily	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—
Off-Road Equipment	0.06	0.05	0.49	0.45	< 0.005	0.02	—	0.02	0.02	—	0.02	—	72.5	72.5	< 0.005	< 0.005	—	72.8
Dust From Material Movement	—	—	—	—	—	—	0.11	0.11	—	0.05	0.05	—	—	—	—	—	—	—
Onsite truck	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	—	0.00	0.00	0.00	0.00	0.00	0.00
Annual	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—
Off-Road Equipment	0.01	0.01	0.09	0.08	< 0.005	< 0.005	—	< 0.005	< 0.005	—	< 0.005	—	12.0	12.0	< 0.005	< 0.005	—	12.1
Dust From Material Movement	—	—	—	—	—	—	0.02	0.02	—	0.01	0.01	—	—	—	—	—	—	—
Onsite truck	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	—	0.00	0.00	0.00	0.00	0.00	0.00
Offsite	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—
Daily, Summer (Max)	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—
Daily, Winter (Max)	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—
Worker	0.10	0.09	0.10	1.12	0.00	0.00	0.23	0.23	0.00	0.05	0.05	—	231	231	0.01	0.01	0.03	234
Vendor	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	—	0.00	0.00	0.00	0.00	0.00	0.00
Hauling	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	—	0.00	0.00	0.00	0.00	0.00	0.0

Average Daily	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—
Worker	< 0.005	< 0.005	< 0.005	0.02	0.00	0.00	< 0.005	< 0.005	0.00	< 0.005	< 0.005	—	3.21	3.21	< 0.005	< 0.005	0.01	3.25
Vendor	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	—	0.00	0.00	0.00	0.00	0.00	0.00
Hauling	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	—	0.00	0.00	0.00	0.00	0.00	0.00
Annual	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—
Worker	< 0.005	< 0.005	< 0.005	< 0.005	0.00	0.00	< 0.005	< 0.005	0.00	< 0.005	< 0.005	—	0.53	0.53	< 0.005	< 0.005	< 0.005	0.54
Vendor	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	—	0.00	0.00	0.00	0.00	0.00	0.00
Hauling	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	—	0.00	0.00	0.00	0.00	0.00	0.00

3.5. Grading (2024) - Unmitigated

Criteria Pollutants (lb/day for daily, ton/yr for annual) and GHGs (lb/day for daily, MT/yr for annual)

Location	TOG	ROG	NOx	CO	SO2	PM10E	PM10D	PM10T	PM2.5E	PM2.5D	PM2.5T	BCO2	NBCO2	CO2T	CH4	N2O	R	CO2e
Onsite	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—
Daily, Summer (Max)	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—
Daily, Winter (Max)	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—
Off-Road Equipment	2.26	1.90	18.2	18.8	0.03	0.84	—	0.84	0.77	—	0.77	—	2,958	2,958	0.12	0.02	—	2,969
Dust From Material Movement	—	—	—	—	—	—	2.76	2.76	—	1.34	1.34	—	—	—	—	—	—	—
Onsite truck	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	—	0.00	0.00	0.00	0.00	0.00	0.00
Average Daily	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—
Off-Road Equipment	0.05	0.04	0.40	0.41	< 0.005	0.02	—	0.02	0.02	—	0.02	—	64.8	64.8	< 0.005	< 0.005	—	65.1

Dust From Material Movement	—	—	—	—	—	—	0.06	0.06	—	0.03	0.03	—	—	—	—	—	—	—
Onsite truck	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	—	0.00	0.00	0.00	0.00	0.00	0.00
Annual	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—
Off-Road Equipment	0.01	0.01	0.07	0.08	< 0.005	< 0.005	—	< 0.005	< 0.005	—	< 0.005	—	10.7	10.7	< 0.005	< 0.005	—	10.8
Dust From Material Movement	—	—	—	—	—	—	0.01	0.01	—	0.01	0.01	—	—	—	—	—	—	—
Onsite truck	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	—	0.00	0.00	0.00	0.00	0.00	0.00
Offsite	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—
Daily, Summer (Max)	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—
Daily, Winter (Max)	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—
Worker	0.08	0.07	0.09	0.96	0.00	0.00	0.20	0.20	0.00	0.05	0.05	—	198	198	0.01	0.01	0.02	200
Vendor	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	—	0.00	0.00	0.00	0.00	0.00	0.00
Hauling	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	—	0.00	0.00	0.00	0.00	0.00	0.00
Average Daily	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—
Worker	< 0.005	< 0.005	< 0.005	0.02	0.00	0.00	< 0.005	< 0.005	0.00	< 0.005	< 0.005	—	4.40	4.40	< 0.005	< 0.005	0.01	4.46
Vendor	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	—	0.00	0.00	0.00	0.00	0.00	0.00
Hauling	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	—	0.00	0.00	0.00	0.00	0.00	0.00
Annual	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—
Worker	< 0.005	< 0.005	< 0.005	< 0.005	0.00	0.00	< 0.005	< 0.005	0.00	< 0.005	< 0.005	—	0.73	0.73	< 0.005	< 0.005	< 0.005	0.74
Vendor	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	—	0.00	0.00	0.00	0.00	0.00	0.0

Hauling	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	—	0.00	0.00	0.00	0.00	0.00	0.00

3.6. Grading (2024) - Mitigated

Criteria Pollutants (lb/day for daily, ton/yr for annual) and GHGs (lb/day for daily, MT/yr for annual)

Location	TOG	ROG	NOx	CO	SO2	PM10E	PM10D	PM10T	PM2.5E	PM2.5D	PM2.5T	BCO2	NBCO2	CO2T	CH4	N2O	R	CO2e
Onsite	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—
Daily, Summer (Max)	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—
Daily, Winter (Max)	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—
Off-Road Equipment	2.26	1.90	18.2	18.8	0.03	0.84	—	0.84	0.77	—	0.77	—	2,958	2,958	0.12	0.02	—	2,969
Dust From Material Movement	—	—	—	—	—	—	2.76	2.76	—	1.34	1.34	—	—	—	—	—	—	—
Onsite truck	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	—	0.00	0.00	0.00	0.00	0.00	0.00
Average Daily	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—
Off-Road Equipment	0.05	0.04	0.40	0.41	< 0.005	0.02	—	0.02	0.02	—	0.02	—	64.8	64.8	< 0.005	< 0.005	—	65.1
Dust From Material Movement	—	—	—	—	—	—	0.06	0.06	—	0.03	0.03	—	—	—	—	—	—	—
Onsite truck	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	—	0.00	0.00	0.00	0.00	0.00	0.00
Annual	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—
Off-Road Equipment	0.01	0.01	0.07	0.08	< 0.005	< 0.005	—	< 0.005	< 0.005	—	< 0.005	—	10.7	10.7	< 0.005	< 0.005	—	10.8

Dust From Material Movement	—	—	—	—	—	—	0.01	0.01	—	0.01	0.01	—	—	—	—	—	—	—
Onsite truck	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	—	0.00	0.00	0.00	0.00	0.00	0.00
Offsite	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—
Daily, Summer (Max)	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—
Daily, Winter (Max)	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—
Worker	0.08	0.07	0.09	0.96	0.00	0.00	0.20	0.20	0.00	0.05	0.05	—	198	198	0.01	0.01	0.02	200
Vendor	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	—	0.00	0.00	0.00	0.00	0.00	0.00
Hauling	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	—	0.00	0.00	0.00	0.00	0.00	0.00
Average Daily	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—
Worker	< 0.005	< 0.005	< 0.005	0.02	0.00	0.00	< 0.005	< 0.005	0.00	< 0.005	< 0.005	—	4.40	4.40	< 0.005	< 0.005	0.01	4.46
Vendor	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	—	0.00	0.00	0.00	0.00	0.00	0.00
Hauling	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	—	0.00	0.00	0.00	0.00	0.00	0.00
Annual	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—
Worker	< 0.005	< 0.005	< 0.005	< 0.005	0.00	0.00	< 0.005	< 0.005	0.00	< 0.005	< 0.005	—	0.73	0.73	< 0.005	< 0.005	< 0.005	0.74
Vendor	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	—	0.00	0.00	0.00	0.00	0.00	0.00
Hauling	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	—	0.00	0.00	0.00	0.00	0.00	0.00

3.7. Building Construction (2024) - Unmitigated

Criteria Pollutants (lb/day for daily, ton/yr for annual) and GHGs (lb/day for daily, MT/yr for annual)

Location	TOG	ROG	NOx	CO	SO2	PM10E	PM10D	PM10T	PM2.5E	PM2.5D	PM2.5T	BCO2	NBCO2	CO2T	CH4	N2O	R	CO2e
Onsite	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—

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Daily, Summer (Max)	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—
Off-Road Equipment	1.44	1.20	11.2	13.1	0.02	0.50	—	0.50	0.46	—	0.46	—	2,398	2,398	0.10	0.02	—	2,406
Onsite truck	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	—	0.00	0.00	0.00	0.00	0.00	0.00
Daily, Winter (Max)	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—
Off-Road Equipment	1.44	1.20	11.2	13.1	0.02	0.50	—	0.50	0.46	—	0.46	—	2,398	2,398	0.10	0.02	—	2,406
Onsite truck	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	—	0.00	0.00	0.00	0.00	0.00	0.00
Average Daily	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—
Off-Road Equipment	0.89	0.74	6.94	8.11	0.01	0.31	—	0.31	0.28	—	0.28	—	1,483	1,483	0.06	0.01	—	1,488
Onsite truck	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	—	0.00	0.00	0.00	0.00	0.00	0.00
Annual	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—
Off-Road Equipment	0.16	0.14	1.27	1.48	< 0.005	0.06	—	0.06	0.05	—	0.05	—	245	245	0.01	< 0.005	—	246
Onsite truck	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	—	0.00	0.00	0.00	0.00	0.00	0.00
Offsite	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—
Daily, Summer (Max)	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—
Worker	0.29	0.26	0.24	4.26	0.00	0.00	0.66	0.66	0.00	0.15	0.15	—	726	726	0.03	0.03	2.90	737
Vendor	0.02	0.01	0.27	0.14	< 0.005	< 0.005	0.06	0.07	< 0.005	0.02	0.02	—	235	235	0.02	0.03	0.65	246
Hauling	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	—	0.00	0.00	0.00	0.00	0.00	0.00

Daily, Winter (Max)	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—
Worker	0.27	0.25	0.29	3.22	0.00	0.00	0.66	0.66	0.00	0.15	0.15	—	665	665	0.03	0.03	0.08	673
Vendor	0.02	0.01	0.28	0.15	< 0.005	< 0.005	0.06	0.07	< 0.005	0.02	0.02	—	235	235	0.02	0.03	0.02	246
Hauling	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	—	0.00	0.00	0.00	0.00	0.00	0.00
Average Daily	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—
Worker	0.17	0.15	0.18	2.09	0.00	0.00	0.41	0.41	0.00	0.10	0.10	—	417	417	0.02	0.02	0.77	423
Vendor	0.02	< 0.005	0.17	0.09	< 0.005	< 0.005	0.04	0.04	< 0.005	0.01	0.01	—	145	145	0.01	0.02	0.17	152
Hauling	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	—	0.00	0.00	0.00	0.00	0.00	0.00
Annual	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—
Worker	0.03	0.03	0.03	0.38	0.00	0.00	0.07	0.07	0.00	0.02	0.02	—	69.1	69.1	< 0.005	< 0.005	0.13	70.0
Vendor	< 0.005	< 0.005	0.03	0.02	< 0.005	< 0.005	0.01	0.01	< 0.005	< 0.005	< 0.005	—	24.0	24.0	< 0.005	< 0.005	0.03	25.2
Hauling	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	—	0.00	0.00	0.00	0.00	0.00	0.00

3.8. Building Construction (2024) - Mitigated

Criteria Pollutants (lb/day for daily, ton/yr for annual) and GHGs (lb/day for daily, MT/yr for annual)

Location	TOG	ROG	NOx	CO	SO2	PM10E	PM10D	PM10T	PM2.5E	PM2.5D	PM2.5T	BCO2	NBCO2	CO2T	CH4	N2O	R	CO2e
Onsite	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—
Daily, Summer (Max)	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—
Off-Road Equipment	1.44	1.20	11.2	13.1	0.02	0.50	—	0.50	0.46	—	0.46	—	2,398	2,398	0.10	0.02	—	2,406
Onsite truck	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	—	0.00	0.00	0.00	0.00	0.00	0.00
Daily, Winter (Max)	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—

Off-Road Equipment	1.44	1.20	11.2	13.1	0.02	0.50	—	0.50	0.46	—	0.46	—	2,398	2,398	0.10	0.02	—	2,406
Onsite truck	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	—	0.00	0.00	0.00	0.00	0.00	0.00
Average Daily	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—
Off-Road Equipment	0.89	0.74	6.94	8.11	0.01	0.31	—	0.31	0.28	—	0.28	—	1,483	1,483	0.06	0.01	—	1,488
Onsite truck	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	—	0.00	0.00	0.00	0.00	0.00	0.00
Annual	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—
Off-Road Equipment	0.16	0.14	1.27	1.48	< 0.005	0.06	—	0.06	0.05	—	0.05	—	245	245	0.01	< 0.005	—	246
Onsite truck	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	—	0.00	0.00	0.00	0.00	0.00	0.00
Offsite	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—
Daily, Summer (Max)	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—
Worker	0.29	0.26	0.24	4.26	0.00	0.00	0.66	0.66	0.00	0.15	0.15	—	726	726	0.03	0.03	2.90	737
Vendor	0.02	0.01	0.27	0.14	< 0.005	< 0.005	0.06	0.07	< 0.005	0.02	0.02	—	235	235	0.02	0.03	0.65	246
Hauling	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	—	0.00	0.00	0.00	0.00	0.00	0.00
Daily, Winter (Max)	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—
Worker	0.27	0.25	0.29	3.22	0.00	0.00	0.66	0.66	0.00	0.15	0.15	—	665	665	0.03	0.03	0.08	673
Vendor	0.02	0.01	0.28	0.15	< 0.005	< 0.005	0.06	0.07	< 0.005	0.02	0.02	—	235	235	0.02	0.03	0.02	246
Hauling	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	—	0.00	0.00	0.00	0.00	0.00	0.00
Average Daily	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—
Worker	0.17	0.15	0.18	2.09	0.00	0.00	0.41	0.41	0.00	0.10	0.10	—	417	417	0.02	0.02	0.77	423
Vendor	0.02	< 0.005	0.17	0.09	< 0.005	< 0.005	0.04	0.04	< 0.005	0.01	0.01	—	145	145	0.01	0.02	0.17	152

Hauling	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	—	0.00	0.00	0.00	0.00	0.00	0.00
Annual	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—
Worker	0.03	0.03	0.03	0.38	0.00	0.00	0.07	0.07	0.00	0.02	0.02	—	69.1	69.1	< 0.005	< 0.005	0.13	70.0
Vendor	< 0.005	< 0.005	0.03	0.02	< 0.005	< 0.005	0.01	0.01	< 0.005	< 0.005	< 0.005	—	24.0	24.0	< 0.005	< 0.005	0.03	25.2
Hauling	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	—	0.00	0.00	0.00	0.00	0.00	0.00

3.9. Building Construction (2025) - Unmitigated

Criteria Pollutants (lb/day for daily, ton/yr for annual) and GHGs (lb/day for daily, MT/yr for annual)

Location	TOG	ROG	NOx	CO	SO2	PM10E	PM10D	PM10T	PM2.5E	PM2.5D	PM2.5T	BCO2	NBCO2	CO2T	CH4	N2O	R	CO2e
Onsite	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—
Daily, Summer (Max)	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—
Daily, Winter (Max)	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—
Off-Road Equipment	1.35	1.13	10.4	13.0	0.02	0.43	—	0.43	0.40	—	0.40	—	2,398	2,398	0.10	0.02	—	2,406
Onsite truck	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	—	0.00	0.00	0.00	0.00	0.00	0.00
Average Daily	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—
Off-Road Equipment	0.02	0.02	0.14	0.18	< 0.005	0.01	—	0.01	0.01	—	0.01	—	32.8	32.8	< 0.005	< 0.005	—	33.0
Onsite truck	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	—	0.00	0.00	0.00	0.00	0.00	0.00
Annual	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—
Off-Road Equipment	< 0.005	< 0.005	0.03	0.03	< 0.005	< 0.005	—	< 0.005	< 0.005	—	< 0.005	—	5.44	5.44	< 0.005	< 0.005	—	5.46
Onsite truck	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	—	0.00	0.00	0.00	0.00	0.00	0.00

Offsite	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—
Daily, Summer (Max)	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—
Daily, Winter (Max)	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—
Worker	0.24	0.22	0.24	2.96	0.00	0.00	0.66	0.66	0.00	0.15	0.15	—	651	651	0.03	0.03	0.07	659
Vendor	0.02	0.01	0.27	0.14	< 0.005	< 0.005	0.06	0.07	< 0.005	0.02	0.02	—	231	231	0.02	0.03	0.02	242
Hauling	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	—	0.00	0.00	0.00	0.00	0.00	0.00
Average Daily	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—
Worker	< 0.005	< 0.005	< 0.005	0.04	0.00	0.00	0.01	0.01	0.00	< 0.005	< 0.005	—	9.05	9.05	< 0.005	< 0.005	0.02	9.17
Vendor	< 0.005	< 0.005	< 0.005	< 0.005	< 0.005	< 0.005	< 0.005	< 0.005	< 0.005	< 0.005	< 0.005	—	3.16	3.16	< 0.005	< 0.005	< 0.005	3.32
Hauling	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	—	0.00	0.00	0.00	0.00	0.00	0.00
Annual	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—
Worker	< 0.005	< 0.005	< 0.005	0.01	0.00	0.00	< 0.005	< 0.005	0.00	< 0.005	< 0.005	—	1.50	1.50	< 0.005	< 0.005	< 0.005	1.52
Vendor	< 0.005	< 0.005	< 0.005	< 0.005	< 0.005	< 0.005	< 0.005	< 0.005	< 0.005	< 0.005	< 0.005	—	0.52	0.52	< 0.005	< 0.005	< 0.005	0.55
Hauling	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	—	0.00	0.00	0.00	0.00	0.00	0.00

3.10. Building Construction (2025) - Mitigated

Criteria Pollutants (lb/day for daily, ton/yr for annual) and GHGs (lb/day for daily, MT/yr for annual)

Location	TOG	ROG	NOx	CO	SO2	PM10E	PM10D	PM10T	PM2.5E	PM2.5D	PM2.5T	BCO2	NBCO2	CO2T	CH4	N2O	R	CO2e
Onsite	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—
Daily, Summer (Max)	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—
Daily, Winter (Max)	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—

Off-Road Equipment	1.35	1.13	10.4	13.0	0.02	0.43	—	0.43	0.40	—	0.40	—	2,398	2,398	0.10	0.02	—	2,406
Onsite truck	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	—	0.00	0.00	0.00	0.00	0.00	0.00
Average Daily	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—
Off-Road Equipment	0.02	0.02	0.14	0.18	< 0.005	0.01	—	0.01	0.01	—	0.01	—	32.8	32.8	< 0.005	< 0.005	—	33.0
Onsite truck	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	—	0.00	0.00	0.00	0.00	0.00	0.00
Annual	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—
Off-Road Equipment	< 0.005	< 0.005	0.03	0.03	< 0.005	< 0.005	—	< 0.005	< 0.005	—	< 0.005	—	5.44	5.44	< 0.005	< 0.005	—	5.46
Onsite truck	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	—	0.00	0.00	0.00	0.00	0.00	0.00
Offsite	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—
Daily, Summer (Max)	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—
Daily, Winter (Max)	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—
Worker	0.24	0.22	0.24	2.96	0.00	0.00	0.66	0.66	0.00	0.15	0.15	—	651	651	0.03	0.03	0.07	659
Vendor	0.02	0.01	0.27	0.14	< 0.005	< 0.005	0.06	0.07	< 0.005	0.02	0.02	—	231	231	0.02	0.03	0.02	242
Hauling	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	—	0.00	0.00	0.00	0.00	0.00	0.00
Average Daily	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—
Worker	< 0.005	< 0.005	< 0.005	0.04	0.00	0.00	0.01	0.01	0.00	< 0.005	< 0.005	—	9.05	9.05	< 0.005	< 0.005	0.02	9.17
Vendor	< 0.005	< 0.005	< 0.005	< 0.005	< 0.005	< 0.005	< 0.005	< 0.005	< 0.005	< 0.005	< 0.005	—	3.16	3.16	< 0.005	< 0.005	< 0.005	3.32
Hauling	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	—	0.00	0.00	0.00	0.00	0.00	0.00
Annual	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—
Worker	< 0.005	< 0.005	< 0.005	0.01	0.00	0.00	< 0.005	< 0.005	0.00	< 0.005	< 0.005	—	1.50	1.50	< 0.005	< 0.005	< 0.005	1.52

Vendor	< 0.005	< 0.005	< 0.005	< 0.005	< 0.005	< 0.005	< 0.005	< 0.005	< 0.005	< 0.005	< 0.005	—	0.52	0.52	< 0.005	< 0.005	< 0.005	0.55
Hauling	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	—	0.00	0.00	0.00	0.00	0.00	0.00

3.11. Paving (2025) - Unmitigated

Criteria Pollutants (lb/day for daily, ton/yr for annual) and GHGs (lb/day for daily, MT/yr for annual)

Location	TOG	ROG	NOx	CO	SO2	PM10E	PM10D	PM10T	PM2.5E	PM2.5D	PM2.5T	BCO2	NBCO2	CO2T	CH4	N2O	R	CO2e
Onsite	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—
Daily, Summer (Max)	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—
Daily, Winter (Max)	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—
Off-Road Equipment	0.85	0.71	6.52	8.84	0.01	0.29	—	0.29	0.26	—	0.26	—	1,351	1,351	0.05	0.01	—	1,355
Paving	—	0.00	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—
Onsite truck	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	—	0.00	0.00	0.00	0.00	0.00	0.00
Average Daily	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—
Off-Road Equipment	0.04	0.04	0.32	0.44	< 0.005	0.01	—	0.01	0.01	—	0.01	—	66.6	66.6	< 0.005	< 0.005	—	66.8
Paving	—	0.00	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—
Onsite truck	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	—	0.00	0.00	0.00	0.00	0.00	0.00
Annual	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—
Off-Road Equipment	0.01	0.01	0.06	0.08	< 0.005	< 0.005	—	< 0.005	< 0.005	—	< 0.005	—	11.0	11.0	< 0.005	< 0.005	—	11.1
Paving	—	0.00	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—
Onsite truck	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	—	0.00	0.00	0.00	0.00	0.00	0.00

Offsite	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—
Daily, Summer (Max)	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—
Daily, Winter (Max)	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—
Worker	0.10	0.09	0.10	1.17	0.00	0.00	0.26	0.26	0.00	0.06	0.06	—	258	258	0.01	0.01	0.03	262
Vendor	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	—	0.00	0.00	0.00	0.00	0.00	0.00
Hauling	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	—	0.00	0.00	0.00	0.00	0.00	0.00
Average Daily	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—
Worker	< 0.005	< 0.005	0.01	0.06	0.00	0.00	0.01	0.01	0.00	< 0.005	< 0.005	—	12.9	12.9	< 0.005	< 0.005	0.02	13.1
Vendor	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	—	0.00	0.00	0.00	0.00	0.00	0.00
Hauling	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	—	0.00	0.00	0.00	0.00	0.00	0.00
Annual	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—
Worker	< 0.005	< 0.005	< 0.005	0.01	0.00	0.00	< 0.005	< 0.005	0.00	< 0.005	< 0.005	—	2.14	2.14	< 0.005	< 0.005	< 0.005	2.17
Vendor	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	—	0.00	0.00	0.00	0.00	0.00	0.00
Hauling	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	—	0.00	0.00	0.00	0.00	0.00	0.00

3.12. Paving (2025) - Mitigated

Criteria Pollutants (lb/day for daily, ton/yr for annual) and GHGs (lb/day for daily, MT/yr for annual)

Location	TOG	ROG	NOx	CO	SO2	PM10E	PM10D	PM10T	PM2.5E	PM2.5D	PM2.5T	BCO2	NBCO2	CO2T	CH4	N2O	R	CO2e
Onsite	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—
Daily, Summer (Max)	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—
Daily, Winter (Max)	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—

Off-Road Equipment	0.85	0.71	6.52	8.84	0.01	0.29	—	0.29	0.26	—	0.26	—	1,351	1,351	0.05	0.01	—	1,355
Paving	—	0.00	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—
Onsite truck	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	—	0.00	0.00	0.00	0.00	0.00	0.00
Average Daily	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—
Off-Road Equipment	0.04	0.04	0.32	0.44	< 0.005	0.01	—	0.01	0.01	—	0.01	—	66.6	66.6	< 0.005	< 0.005	—	66.8
Paving	—	0.00	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—
Onsite truck	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	—	0.00	0.00	0.00	0.00	0.00	0.00
Annual	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—
Off-Road Equipment	0.01	0.01	0.06	0.08	< 0.005	< 0.005	—	< 0.005	< 0.005	—	< 0.005	—	11.0	11.0	< 0.005	< 0.005	—	11.1
Paving	—	0.00	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—
Onsite truck	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	—	0.00	0.00	0.00	0.00	0.00	0.00
Offsite	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—
Daily, Summer (Max)	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—
Daily, Winter (Max)	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—
Worker	0.10	0.09	0.10	1.17	0.00	0.00	0.26	0.26	0.00	0.06	0.06	—	258	258	0.01	0.01	0.03	262
Vendor	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	—	0.00	0.00	0.00	0.00	0.00	0.00
Hauling	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	—	0.00	0.00	0.00	0.00	0.00	0.00
Average Daily	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—
Worker	< 0.005	< 0.005	0.01	0.06	0.00	0.00	0.01	0.01	0.00	< 0.005	< 0.005	—	12.9	12.9	< 0.005	< 0.005	0.02	13.1
Vendor	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	—	0.00	0.00	0.00	0.00	0.00	0.00

Hauling	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	—	0.00	0.00	0.00	0.00	0.00	0.00
Annual	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—
Worker	< 0.005	< 0.005	< 0.005	0.01	0.00	0.00	< 0.005	< 0.005	0.00	< 0.005	< 0.005	—	2.14	2.14	< 0.005	< 0.005	< 0.005	2.17
Vendor	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	—	0.00	0.00	0.00	0.00	0.00	0.00
Hauling	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	—	0.00	0.00	0.00	0.00	0.00	0.00

3.13. Architectural Coating (2025) - Unmitigated

Criteria Pollutants (lb/day for daily, ton/yr for annual) and GHGs (lb/day for daily, MT/yr for annual)

Location	TOG	ROG	NOx	CO	SO2	PM10E	PM10D	PM10T	PM2.5E	PM2.5D	PM2.5T	BCO2	NBCO2	CO2T	CH4	N2O	R	CO2e
Onsite	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—
Daily, Summer (Max)	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—
Daily, Winter (Max)	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—
Off-Road Equipment	0.15	0.13	0.88	1.14	< 0.005	0.03	—	0.03	0.03	—	0.03	—	134	134	0.01	< 0.005	—	134
Architectural Coatings	—	25.8	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—
Onsite truck	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	—	0.00	0.00	0.00	0.00	0.00	0.00
Average Daily	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—
Off-Road Equipment	0.01	0.01	0.04	0.06	< 0.005	< 0.005	—	< 0.005	< 0.005	—	< 0.005	—	6.58	6.58	< 0.005	< 0.005	—	6.61
Architectural Coatings	—	1.27	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—
Onsite truck	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	—	0.00	0.00	0.00	0.00	0.00	0.00

Annual	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—
Off-Road Equipment	< 0.005	< 0.005	0.01	0.01	< 0.005	< 0.005	—	< 0.005	< 0.005	—	< 0.005	—	1.09	1.09	< 0.005	< 0.005	—	1.09
Architectural Coatings	—	0.23	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—
Onsite truck	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	—	0.00	0.00	0.00	0.00	0.00	0.00
Offsite	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—
Daily, Summer (Max)	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—
Daily, Winter (Max)	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—
Worker	0.05	0.04	0.05	0.59	0.00	0.00	0.13	0.13	0.00	0.03	0.03	—	130	130	0.01	0.01	0.01	132
Vendor	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	—	0.00	0.00	0.00	0.00	0.00	0.00
Hauling	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	—	0.00	0.00	0.00	0.00	0.00	0.00
Average Daily	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—
Worker	< 0.005	< 0.005	< 0.005	0.03	0.00	0.00	0.01	0.01	0.00	< 0.005	< 0.005	—	6.51	6.51	< 0.005	< 0.005	0.01	6.60
Vendor	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	—	0.00	0.00	0.00	0.00	0.00	0.00
Hauling	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	—	0.00	0.00	0.00	0.00	0.00	0.00
Annual	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—
Worker	< 0.005	< 0.005	< 0.005	0.01	0.00	0.00	< 0.005	< 0.005	0.00	< 0.005	< 0.005	—	1.08	1.08	< 0.005	< 0.005	< 0.005	1.09
Vendor	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	—	0.00	0.00	0.00	0.00	0.00	0.00
Hauling	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	—	0.00	0.00	0.00	0.00	0.00	0.00

3.14. Architectural Coating (2025) - Mitigated

Criteria Pollutants (lb/day for daily, ton/yr for annual) and GHGs (lb/day for daily, MT/yr for annual)

977

Location	TOG	ROG	NOx	CO	SO2	PM10E	PM10D	PM10T	PM2.5E	PM2.5D	PM2.5T	BCO2	NBCO2	CO2T	CH4	N2O	R	CO2e
Onsite	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—
Daily, Summer (Max)	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—
Daily, Winter (Max)	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—
Off-Road Equipment	0.15	0.13	0.88	1.14	< 0.005	0.03	—	0.03	0.03	—	0.03	—	134	134	0.01	< 0.005	—	134
Architectural Coatings	—	25.8	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—
Onsite truck	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	—	0.00	0.00	0.00	0.00	0.00	0.00
Average Daily	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—
Off-Road Equipment	0.01	0.01	0.04	0.06	< 0.005	< 0.005	—	< 0.005	< 0.005	—	< 0.005	—	6.58	6.58	< 0.005	< 0.005	—	6.61
Architectural Coatings	—	1.27	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—
Onsite truck	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	—	0.00	0.00	0.00	0.00	0.00	0.00
Annual	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—
Off-Road Equipment	< 0.005	< 0.005	0.01	0.01	< 0.005	< 0.005	—	< 0.005	< 0.005	—	< 0.005	—	1.09	1.09	< 0.005	< 0.005	—	1.09
Architectural Coatings	—	0.23	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—
Onsite truck	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	—	0.00	0.00	0.00	0.00	0.00	0.00
Offsite	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—

Daily, Summer (Max)	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—
Daily, Winter (Max)	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—
Worker	0.05	0.04	0.05	0.59	0.00	0.00	0.13	0.13	0.00	0.03	0.03	—	130	130	0.01	0.01	0.01	132
Vendor	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	—	0.00	0.00	0.00	0.00	0.00	0.00
Hauling	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	—	0.00	0.00	0.00	0.00	0.00	0.00
Average Daily	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—
Worker	< 0.005	< 0.005	< 0.005	0.03	0.00	0.00	0.01	0.01	0.00	< 0.005	< 0.005	—	6.51	6.51	< 0.005	< 0.005	0.01	6.60
Vendor	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	—	0.00	0.00	0.00	0.00	0.00	0.00
Hauling	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	—	0.00	0.00	0.00	0.00	0.00	0.00
Annual	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—
Worker	< 0.005	< 0.005	< 0.005	0.01	0.00	0.00	< 0.005	< 0.005	0.00	< 0.005	< 0.005	—	1.08	1.08	< 0.005	< 0.005	< 0.005	1.09
Vendor	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	—	0.00	0.00	0.00	0.00	0.00	0.00
Hauling	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	—	0.00	0.00	0.00	0.00	0.00	0.00

4. Operations Emissions Details

4.1. Mobile Emissions by Land Use

4.1.1. Unmitigated

Criteria Pollutants (lb/day for daily, ton/yr for annual) and GHGs (lb/day for daily, MT/yr for annual)

Land Use	TOG	ROG	NOx	CO	SO2	PM10E	PM10D	PM10T	PM2.5E	PM2.5D	PM2.5T	BCO2	NBCO2	CO2T	CH4	N2O	R	CO2e
Daily, Summer (Max)	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—

Condo/T	2.43	2.23	1.84	17.1	0.04	0.03	3.34	3.37	0.03	0.85	0.87	—	4,044	4,044	0.21	0.19	15.0	4,120
Total	2.43	2.23	1.84	17.1	0.04	0.03	3.34	3.37	0.03	0.85	0.87	—	4,044	4,044	0.21	0.19	15.0	4,120
Daily, Winter (Max)	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—
Condo/T ownhouse	2.26	2.06	1.97	14.5	0.04	0.03	3.34	3.37	0.03	0.85	0.87	—	3,791	3,791	0.21	0.20	0.39	3,856
Total	2.26	2.06	1.97	14.5	0.04	0.03	3.34	3.37	0.03	0.85	0.87	—	3,791	3,791	0.21	0.20	0.39	3,856
Annual	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—
Condo/T ownhouse	0.37	0.33	0.33	2.46	0.01	< 0.005	0.55	0.55	< 0.005	0.14	0.14	—	568	568	0.03	0.03	0.96	578
Total	0.37	0.33	0.33	2.46	0.01	< 0.005	0.55	0.55	< 0.005	0.14	0.14	—	568	568	0.03	0.03	0.96	578

4.1.2. Mitigated

Criteria Pollutants (lb/day for daily, ton/yr for annual) and GHGs (lb/day for daily, MT/yr for annual)

Land Use	TOG	ROG	NOx	CO	SO2	PM10E	PM10D	PM10T	PM2.5E	PM2.5D	PM2.5T	BCO2	NBCO2	CO2T	CH4	N2O	R	CO2e
Daily, Summer (Max)	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—
Condo/T ownhouse	2.43	2.23	1.84	17.1	0.04	0.03	3.34	3.37	0.03	0.85	0.87	—	4,044	4,044	0.21	0.19	15.0	4,120
Total	2.43	2.23	1.84	17.1	0.04	0.03	3.34	3.37	0.03	0.85	0.87	—	4,044	4,044	0.21	0.19	15.0	4,120
Daily, Winter (Max)	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—
Condo/T ownhouse	2.26	2.06	1.97	14.5	0.04	0.03	3.34	3.37	0.03	0.85	0.87	—	3,791	3,791	0.21	0.20	0.39	3,856
Total	2.26	2.06	1.97	14.5	0.04	0.03	3.34	3.37	0.03	0.85	0.87	—	3,791	3,791	0.21	0.20	0.39	3,8[illegible]

Annual	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—
Condo/Townhouse	0.37	0.33	0.33	2.46	0.01	< 0.005	0.55	0.55	< 0.005	0.14	0.14	—	568	568	0.03	0.03	0.96	578
Total	0.37	0.33	0.33	2.46	0.01	< 0.005	0.55	0.55	< 0.005	0.14	0.14	—	568	568	0.03	0.03	0.96	578

4.2. Energy

4.2.1. Electricity Emissions By Land Use - Unmitigated

Criteria Pollutants (lb/day for daily, ton/yr for annual) and GHGs (lb/day for daily, MT/yr for annual)

Land Use	TOG	ROG	NOx	CO	SO2	PM10E	PM10D	PM10T	PM2.5E	PM2.5D	PM2.5T	BCO2	NBCO2	CO2T	CH4	N2O	R	CO2e
Daily, Summer (Max)	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—
Condo/Townhouse	—	—	—	—	—	—	—	—	—	—	—	—	324	324	0.03	< 0.005	—	326
Total	—	—	—	—	—	—	—	—	—	—	—	—	324	324	0.03	< 0.005	—	326
Daily, Winter (Max)	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—
Condo/Townhouse	—	—	—	—	—	—	—	—	—	—	—	—	324	324	0.03	< 0.005	—	326
Total	—	—	—	—	—	—	—	—	—	—	—	—	324	324	0.03	< 0.005	—	326
Annual	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—
Condo/Townhouse	—	—	—	—	—	—	—	—	—	—	—	—	53.7	53.7	0.01	< 0.005	—	54.0
Total	—	—	—	—	—	—	—	—	—	—	—	—	53.7	53.7	0.01	< 0.005	—	54.0

4.2.2. Electricity Emissions By Land Use - Mitigated

Criteria Pollutants (lb/day for daily, ton/yr for annual) and GHGs (lb/day for daily, MT/yr for annual)

Land Use	TOG	ROG	NOx	CO	SO2	PM10E	PM10D	PM10T	PM2.5E	PM2.5D	PM2.5T	BCO2	NBCO2	CO2T	CH4	N2O	R	CO2e
Daily, Summer (Max)	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—
Condo/Townhouse	—	—	—	—	—	—	—	—	—	—	—	—	324	324	0.03	< 0.005	—	326
Total	—	—	—	—	—	—	—	—	—	—	—	—	324	324	0.03	< 0.005	—	326
Daily, Winter (Max)	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—
Condo/Townhouse	—	—	—	—	—	—	—	—	—	—	—	—	324	324	0.03	< 0.005	—	326
Total	—	—	—	—	—	—	—	—	—	—	—	—	324	324	0.03	< 0.005	—	326
Annual	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—
Condo/Townhouse	—	—	—	—	—	—	—	—	—	—	—	—	53.7	53.7	0.01	< 0.005	—	54.0
Total	—	—	—	—	—	—	—	—	—	—	—	—	53.7	53.7	0.01	< 0.005	—	54.0

4.2.3. Natural Gas Emissions By Land Use - Unmitigated

Criteria Pollutants (lb/day for daily, ton/yr for annual) and GHGs (lb/day for daily, MT/yr for annual)

Land Use	TOG	ROG	NOx	CO	SO2	PM10E	PM10D	PM10T	PM2.5E	PM2.5D	PM2.5T	BCO2	NBCO2	CO2T	CH4	N2O	R	CO2e
Daily, Summer (Max)	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—

Condo/Townhous	0.04	0.02	0.33	0.14	< 0.005	0.03	—	0.03	0.03	—	0.03	—	423	423	0.04	< 0.005	—	424
Total	0.04	0.02	0.33	0.14	< 0.005	0.03	—	0.03	0.03	—	0.03	—	423	423	0.04	< 0.005	—	424
Daily, Winter (Max)	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—
Condo/Townhouse	0.04	0.02	0.33	0.14	< 0.005	0.03	—	0.03	0.03	—	0.03	—	423	423	0.04	< 0.005	—	424
Total	0.04	0.02	0.33	0.14	< 0.005	0.03	—	0.03	0.03	—	0.03	—	423	423	0.04	< 0.005	—	424
Annual	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—
Condo/Townhouse	0.01	< 0.005	0.06	0.03	< 0.005	< 0.005	—	< 0.005	< 0.005	—	< 0.005	—	70.0	70.0	0.01	< 0.005	—	70.2
Total	0.01	< 0.005	0.06	0.03	< 0.005	< 0.005	—	< 0.005	< 0.005	—	< 0.005	—	70.0	70.0	0.01	< 0.005	—	70.2

4.2.4. Natural Gas Emissions By Land Use - Mitigated

Criteria Pollutants (lb/day for daily, ton/yr for annual) and GHGs (lb/day for daily, MT/yr for annual)

Land Use	TOG	ROG	NOx	CO	SO2	PM10E	PM10D	PM10T	PM2.5E	PM2.5D	PM2.5T	BCO2	NBCO2	CO2T	CH4	N2O	R	CO2e
Daily, Summer (Max)	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—
Condo/Townhouse	0.04	0.02	0.33	0.14	< 0.005	0.03	—	0.03	0.03	—	0.03	—	423	423	0.04	< 0.005	—	424
Total	0.04	0.02	0.33	0.14	< 0.005	0.03	—	0.03	0.03	—	0.03	—	423	423	0.04	< 0.005	—	424
Daily, Winter (Max)	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—
Condo/Townhouse	0.04	0.02	0.33	0.14	< 0.005	0.03	—	0.03	0.03	—	0.03	—	423	423	0.04	< 0.005	—	424

Total	0.04	0.02	0.33	0.14	< 0.005	0.03	—	0.03	0.03	—	0.03	—	423	423	0.04	< 0.005	—	424
Annual	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—
Condo/Townhouse	0.01	< 0.005	0.06	0.03	< 0.005	< 0.005	—	< 0.005	< 0.005	—	< 0.005	—	70.0	70.0	0.01	< 0.005	—	70.2
Total	0.01	< 0.005	0.06	0.03	< 0.005	< 0.005	—	< 0.005	< 0.005	—	< 0.005	—	70.0	70.0	0.01	< 0.005	—	70.2

4.3. Area Emissions by Source

4.3.1. Unmitigated

Criteria Pollutants (lb/day for daily, ton/yr for annual) and GHGs (lb/day for daily, MT/yr for annual)

Source	TOG	ROG	NOx	CO	SO2	PM10E	PM10D	PM10T	PM2.5E	PM2.5D	PM2.5T	BCO2	NBCO2	CO2T	CH4	N2O	R	CO2e
Daily, Summer (Max)	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—
Hearths	20.3	18.3	1.45	35.6	0.09	5.00	—	5.00	4.91	—	4.91	656	1,253	1,909	1.95	0.02	—	1,964
Consumer Products	—	1.59	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—
Architectural Coatings	—	0.13	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—
Landscape Equipment	0.38	0.36	0.04	3.96	< 0.005	< 0.005	—	< 0.005	< 0.005	—	< 0.005	—	10.6	10.6	< 0.005	< 0.005	—	10.7
Total	20.7	20.4	1.49	39.6	0.09	5.00	—	5.00	4.91	—	4.91	656	1,263	1,919	1.96	0.02	—	1,975
Daily, Winter (Max)	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—
Hearths	20.3	18.3	1.45	35.6	0.09	5.00	—	5.00	4.91	—	4.91	656	1,253	1,909	1.95	0.02	—	1,964

Consumer Products	—	1.59	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—
Architectural Coatings	—	0.13	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—
Total	20.3	20.0	1.45	35.6	0.09	5.00	—	5.00	4.91	—	4.91	656	1,253	1,909	1.95	0.02	—	1,964
Annual	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—
Hearths	0.25	0.23	0.02	0.44	< 0.005	0.06	—	0.06	0.06	—	0.06	7.44	14.2	21.6	0.02	< 0.005	—	22.3
Consumer Products	—	0.29	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—
Architectural Coatings	—	0.02	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—
Landscape Equipment	0.05	0.04	< 0.005	0.50	< 0.005	< 0.005	—	< 0.005	< 0.005	—	< 0.005	—	1.20	1.20	< 0.005	< 0.005	—	1.21
Total	0.30	0.59	0.02	0.94	< 0.005	0.06	—	0.06	0.06	—	0.06	7.44	15.4	22.8	0.02	< 0.005	—	23.5

4.3.2. Mitigated

Criteria Pollutants (lb/day for daily, ton/yr for annual) and GHGs (lb/day for daily, MT/yr for annual)

Source	TOG	ROG	NOx	CO	SO2	PM10E	PM10D	PM10T	PM2.5E	PM2.5D	PM2.5T	BCO2	NBCO2	CO2T	CH4	N2O	R	CO2e
Daily, Summer (Max)	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—
Hearths	20.3	18.3	1.45	35.6	0.09	5.00	—	5.00	4.91	—	4.91	656	1,253	1,909	1.95	0.02	—	1,964
Consumer Products	—	1.59	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—
Architectural Coatings	—	0.13	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—

Landsca Equipment	0.38	0.36	0.04	3.96	< 0.005	< 0.005	—	< 0.005	< 0.005	—	< 0.005	—	10.6	10.6	< 0.005	< 0.005	—	10.7
Total	20.7	20.4	1.49	39.6	0.09	5.00	—	5.00	4.91	—	4.91	656	1,263	1,919	1.96	0.02	—	1,975
Daily, Winter (Max)	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—
Hearths	20.3	18.3	1.45	35.6	0.09	5.00	—	5.00	4.91	—	4.91	656	1,253	1,909	1.95	0.02	—	1,964
Consumer Products	—	1.59	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—
Architectural Coatings	—	0.13	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—
Total	20.3	20.0	1.45	35.6	0.09	5.00	—	5.00	4.91	—	4.91	656	1,253	1,909	1.95	0.02	—	1,964
Annual	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—
Hearths	0.25	0.23	0.02	0.44	< 0.005	0.06	—	0.06	0.06	—	0.06	7.44	14.2	21.6	0.02	< 0.005	—	22.3
Consumer Products	—	0.29	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—
Architectural Coatings	—	0.02	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—
Landscape Equipment	0.05	0.04	< 0.005	0.50	< 0.005	< 0.005	—	< 0.005	< 0.005	—	< 0.005	—	1.20	1.20	< 0.005	< 0.005	—	1.21
Total	0.30	0.59	0.02	0.94	< 0.005	0.06	—	0.06	0.06	—	0.06	7.44	15.4	22.8	0.02	< 0.005	—	23.5

4.4. Water Emissions by Land Use

4.4.1. Unmitigated

Criteria Pollutants (lb/day for daily, ton/yr for annual) and GHGs (lb/day for daily, MT/yr for annual)

Land Use	TOG	ROG	NOx	CO	SO2	PM10E	PM10D	PM10T	PM2.5E	PM2.5D	PM2.5T	BCO2	NBCO2	CO2T	CH4	N2O	R	CO2e
Daily, Summer (Max)	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—
Condo/Townhouse	—	—	—	—	—	—	—	—	—	—	—	5.59	20.8	26.4	0.58	0.01	—	44.9
Total	—	—	—	—	—	—	—	—	—	—	—	5.59	20.8	26.4	0.58	0.01	—	44.9
Daily, Winter (Max)	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—
Condo/Townhouse	—	—	—	—	—	—	—	—	—	—	—	5.59	20.8	26.4	0.58	0.01	—	44.9
Total	—	—	—	—	—	—	—	—	—	—	—	5.59	20.8	26.4	0.58	0.01	—	44.9
Annual	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—
Condo/Townhouse	—	—	—	—	—	—	—	—	—	—	—	0.93	3.44	4.36	0.10	< 0.005	—	7.43
Total	—	—	—	—	—	—	—	—	—	—	—	0.93	3.44	4.36	0.10	< 0.005	—	7.43

4.4.2. Mitigated

Criteria Pollutants (lb/day for daily, ton/yr for annual) and GHGs (lb/day for daily, MT/yr for annual)

Land Use	TOG	ROG	NOx	CO	SO2	PM10E	PM10D	PM10T	PM2.5E	PM2.5D	PM2.5T	BCO2	NBCO2	CO2T	CH4	N2O	R	CO2e
Daily, Summer (Max)	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—
Condo/Townhouse	—	—	—	—	—	—	—	—	—	—	—	5.59	20.8	26.4	0.58	0.01	—	44.9
Total	—	—	—	—	—	—	—	—	—	—	—	5.59	20.8	26.4	0.58	0.01	—	44.9

Daily, Winter (Max)	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—
Condo/Townhouse	—	—	—	—	—	—	—	—	—	—	—	5.59	20.8	26.4	0.58	0.01	—	44.9
Total	—	—	—	—	—	—	—	—	—	—	—	5.59	20.8	26.4	0.58	0.01	—	44.9
Annual	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—
Condo/Townhouse	—	—	—	—	—	—	—	—	—	—	—	0.93	3.44	4.36	0.10	< 0.005	—	7.43
Total	—	—	—	—	—	—	—	—	—	—	—	0.93	3.44	4.36	0.10	< 0.005	—	7.43

4.5. Waste Emissions by Land Use

4.5.1. Unmitigated

Criteria Pollutants (lb/day for daily, ton/yr for annual) and GHGs (lb/day for daily, MT/yr for annual)

Land Use	TOG	ROG	NOx	CO	SO2	PM10E	PM10D	PM10T	PM2.5E	PM2.5D	PM2.5T	BCO2	NBCO2	CO2T	CH4	N2O	R	CO2e
Daily, Summer (Max)	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—
Condo/Townhouse	—	—	—	—	—	—	—	—	—	—	—	27.9	0.00	27.9	2.79	0.00	—	97.7
Total	—	—	—	—	—	—	—	—	—	—	—	27.9	0.00	27.9	2.79	0.00	—	97.7
Daily, Winter (Max)	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—
Condo/Townhouse	—	—	—	—	—	—	—	—	—	—	—	27.9	0.00	27.9	2.79	0.00	—	97.7
Total	—	—	—	—	—	—	—	—	—	—	—	27.9	0.00	27.9	2.79	0.00	—	97.7

Annual	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—
Condo/Townhouse	—	—	—	—	—	—	—	—	—	—	—	4.62	0.00	4.62	0.46	0.00	—	16.2
Total	—	—	—	—	—	—	—	—	—	—	—	4.62	0.00	4.62	0.46	0.00	—	16.2

4.5.2. Mitigated

Criteria Pollutants (lb/day for daily, ton/yr for annual) and GHGs (lb/day for daily, MT/yr for annual)

Land Use	TOG	ROG	NOx	CO	SO2	PM10E	PM10D	PM10T	PM2.5E	PM2.5D	PM2.5T	BCO2	NBCO2	CO2T	CH4	N2O	R	CO2e
Daily, Summer (Max)	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—
Condo/Townhouse	—	—	—	—	—	—	—	—	—	—	—	27.9	0.00	27.9	2.79	0.00	—	97.7
Total	—	—	—	—	—	—	—	—	—	—	—	27.9	0.00	27.9	2.79	0.00	—	97.7
Daily, Winter (Max)	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—
Condo/Townhouse	—	—	—	—	—	—	—	—	—	—	—	27.9	0.00	27.9	2.79	0.00	—	97.7
Total	—	—	—	—	—	—	—	—	—	—	—	27.9	0.00	27.9	2.79	0.00	—	97.7
Annual	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—
Condo/Townhouse	—	—	—	—	—	—	—	—	—	—	—	4.62	0.00	4.62	0.46	0.00	—	16.2
Total	—	—	—	—	—	—	—	—	—	—	—	4.62	0.00	4.62	0.46	0.00	—	16.2

4.6. Refrigerant Emissions by Land Use

4.6.1. Unmitigated

Criteria Pollutants (lb/day for daily, ton/yr for annual) and GHGs (lb/day for daily, MT/yr for annual)

Land Use	TOG	ROG	NOx	CO	SO2	PM10E	PM10D	PM10T	PM2.5E	PM2.5D	PM2.5T	BCO2	NBCO2	CO2T	CH4	N2O	R	CO2e
Daily, Summer (Max)	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—
Condo/Townhouse	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—	0.53	0.53
Total	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—	0.53	0.53
Daily, Winter (Max)	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—
Condo/Townhouse	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—	0.53	0.53
Total	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—	0.53	0.53
Annual	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—
Condo/Townhouse	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—	0.09	0.09
Total	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—	0.09	0.09

4.6.2. Mitigated

Criteria Pollutants (lb/day for daily, ton/yr for annual) and GHGs (lb/day for daily, MT/yr for annual)

Land Use	TOG	ROG	NOx	CO	SO2	PM10E	PM10D	PM10T	PM2.5E	PM2.5D	PM2.5T	BCO2	NBCO2	CO2T	CH4	N2O	R	CO2e
Daily, Summer (Max)	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—

Condo/Townhous	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—	0.53	0.53
Total	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—	0.53	0.53
Daily, Winter (Max)	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—
Condo/Townhouse	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—	0.53	0.53
Total	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—	0.53	0.53
Annual	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—
Condo/Townhouse	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—	0.09	0.09
Total	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—	0.09	0.09

4.7. Offroad Emissions By Equipment Type

4.7.1. Unmitigated

Criteria Pollutants (lb/day for daily, ton/yr for annual) and GHGs (lb/day for daily, MT/yr for annual)

Equipment Type	TOG	ROG	NOx	CO	SO2	PM10E	PM10D	PM10T	PM2.5E	PM2.5D	PM2.5T	BCO2	NBCO2	CO2T	CH4	N2O	R	CO2e
Daily, Summer (Max)	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—
Total	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—
Daily, Winter (Max)	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—
Total	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—
Annual	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—

Total	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—

4.7.2. Mitigated

Criteria Pollutants (lb/day for daily, ton/yr for annual) and GHGs (lb/day for daily, MT/yr for annual)

Equipment Type	TOG	ROG	NOx	CO	SO2	PM10E	PM10D	PM10T	PM2.5E	PM2.5D	PM2.5T	BCO2	NBCO2	CO2T	CH4	N2O	R	CO2e
Daily, Summer (Max)	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—
Total	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—
Daily, Winter (Max)	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—
Total	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—
Annual	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—
Total	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—

5. Activity Data

5.1. Construction Schedule

Phase Name	Phase Type	Start Date	End Date	Days Per Week	Work Days per Phase	Phase Description
Demolition	Demolition	1/2/2024	1/30/2024	5.00	20.0	—
Site Preparation	Site Preparation	1/31/2024	2/7/2024	5.00	5.00	—
Grading	Grading	2/8/2024	2/19/2024	5.00	8.00	—
Building Construction	Building Construction	2/20/2024	1/7/2025	5.00	230	—
Paving	Paving	1/8/2025	2/2/2025	5.00	18.0	—
Architectural Coating	Architectural Coating	2/3/2025	2/28/2025	5.00	18.0	—

5.2. Off-Road Equipment

5.2.1. Unmitigated

Phase Name	Equipment Type	Fuel Type	Engine Tier	Number per Day	Hours Per Day	Horsepower	Load Factor
Demolition	Concrete/Industrial Saws	Diesel	Average	1.00	8.00	33.0	0.73
Demolition	Excavators	Diesel	Average	3.00	8.00	36.0	0.38
Demolition	Rubber Tired Dozers	Diesel	Average	2.00	8.00	367	0.40
Site Preparation	Rubber Tired Dozers	Diesel	Average	3.00	8.00	367	0.40
Site Preparation	Tractors/Loaders/Backhoes	Diesel	Average	4.00	8.00	84.0	0.37
Grading	Excavators	Diesel	Average	1.00	8.00	36.0	0.38
Grading	Graders	Diesel	Average	1.00	8.00	148	0.41
Grading	Rubber Tired Dozers	Diesel	Average	1.00	8.00	367	0.40
Grading	Tractors/Loaders/Backhoes	Diesel	Average	3.00	8.00	84.0	0.37
Building Construction	Cranes	Diesel	Average	1.00	7.00	367	0.29
Building Construction	Forklifts	Diesel	Average	3.00	8.00	82.0	0.20
Building Construction	Generator Sets	Diesel	Average	1.00	8.00	14.0	0.74
Building Construction	Tractors/Loaders/Backhoes	Diesel	Average	3.00	7.00	84.0	0.37
Building Construction	Welders	Diesel	Average	1.00	8.00	46.0	0.45
Paving	Cement and Mortar Mixers	Diesel	Average	2.00	6.00	10.0	0.56
Paving	Pavers	Diesel	Average	1.00	8.00	81.0	0.42
Paving	Paving Equipment	Diesel	Average	2.00	6.00	89.0	0.36
Paving	Rollers	Diesel	Average	2.00	6.00	36.0	0.38
Paving	Tractors/Loaders/Backhoes	Diesel	Average	1.00	8.00	84.0	0.37

Architectural Coating	Air Compressors	Diesel	Average	1.00	6.00	37.0	0.48

5.2.2. Mitigated

Phase Name	Equipment Type	Fuel Type	Engine Tier	Number per Day	Hours Per Day	Horsepower	Load Factor
Demolition	Concrete/Industrial Saws	Diesel	Average	1.00	8.00	33.0	0.73
Demolition	Excavators	Diesel	Average	3.00	8.00	36.0	0.38
Demolition	Rubber Tired Dozers	Diesel	Average	2.00	8.00	367	0.40
Site Preparation	Rubber Tired Dozers	Diesel	Average	3.00	8.00	367	0.40
Site Preparation	Tractors/Loaders/Backhoes	Diesel	Average	4.00	8.00	84.0	0.37
Grading	Excavators	Diesel	Average	1.00	8.00	36.0	0.38
Grading	Graders	Diesel	Average	1.00	8.00	148	0.41
Grading	Rubber Tired Dozers	Diesel	Average	1.00	8.00	367	0.40
Grading	Tractors/Loaders/Backhoes	Diesel	Average	3.00	8.00	84.0	0.37
Building Construction	Cranes	Diesel	Average	1.00	7.00	367	0.29
Building Construction	Forklifts	Diesel	Average	3.00	8.00	82.0	0.20
Building Construction	Generator Sets	Diesel	Average	1.00	8.00	14.0	0.74
Building Construction	Tractors/Loaders/Backhoes	Diesel	Average	3.00	7.00	84.0	0.37
Building Construction	Welders	Diesel	Average	1.00	8.00	46.0	0.45
Paving	Cement and Mortar Mixers	Diesel	Average	2.00	6.00	10.0	0.56
Paving	Pavers	Diesel	Average	1.00	8.00	81.0	0.42
Paving	Paving Equipment	Diesel	Average	2.00	6.00	89.0	0.36
Paving	Rollers	Diesel	Average	2.00	6.00	36.0	0.38
Paving	Tractors/Loaders/Backhoes	Diesel	Average	1.00	8.00	84.0	0.37

Architectural Coating	Air Compressors	Diesel	Average	1.00	6.00	37.0	0.48

5.3. Construction Vehicles

5.3.1. Unmitigated

Phase Name	Trip Type	One-Way Trips per Day	Miles per Trip	Vehicle Mix
Demolition	—	—	—	—
Demolition	Worker	15.0	18.5	LDA,LDT1,LDT2
Demolition	Vendor	—	10.2	HHDT,MHDT
Demolition	Hauling	10.3	20.0	HHDT
Demolition	Onsite truck	—	—	HHDT
Site Preparation	—	—	—	—
Site Preparation	Worker	17.5	18.5	LDA,LDT1,LDT2
Site Preparation	Vendor	—	10.2	HHDT,MHDT
Site Preparation	Hauling	0.00	20.0	HHDT
Site Preparation	Onsite truck	—	—	HHDT
Grading	—	—	—	—
Grading	Worker	15.0	18.5	LDA,LDT1,LDT2
Grading	Vendor	—	10.2	HHDT,MHDT
Grading	Hauling	0.00	20.0	HHDT
Grading	Onsite truck	—	—	HHDT
Building Construction	—	—	—	—
Building Construction	Worker	50.4	18.5	LDA,LDT1,LDT2
Building Construction	Vendor	7.48	10.2	HHDT,MHDT
Building Construction	Hauling	0.00	20.0	HHDT
Building Construction	Onsite truck	—	—	HHDT
Paving	—	—	—	—

Paving	Worker	20.0	18.5	LDA,LDT1,LDT2
Paving	Vendor	—	10.2	HHDT,MHDT
Paving	Hauling	0.00	20.0	HHDT
Paving	Onsite truck	—	—	HHDT
Architectural Coating	—	—	—	—
Architectural Coating	Worker	10.1	18.5	LDA,LDT1,LDT2
Architectural Coating	Vendor	—	10.2	HHDT,MHDT
Architectural Coating	Hauling	0.00	20.0	HHDT
Architectural Coating	Onsite truck	—	—	HHDT

5.3.2. Mitigated

Phase Name	Trip Type	One-Way Trips per Day	Miles per Trip	Vehicle Mix
Demolition	—	—	—	—
Demolition	Worker	15.0	18.5	LDA,LDT1,LDT2
Demolition	Vendor	—	10.2	HHDT,MHDT
Demolition	Hauling	10.3	20.0	HHDT
Demolition	Onsite truck	—	—	HHDT
Site Preparation	—	—	—	—
Site Preparation	Worker	17.5	18.5	LDA,LDT1,LDT2
Site Preparation	Vendor	—	10.2	HHDT,MHDT
Site Preparation	Hauling	0.00	20.0	HHDT
Site Preparation	Onsite truck	—	—	HHDT
Grading	—	—	—	—
Grading	Worker	15.0	18.5	LDA,LDT1,LDT2
Grading	Vendor	—	10.2	HHDT,MHDT
Grading	Hauling	0.00	20.0	HHDT
Grading	Onsite truck	—	—	HHDT

Building Construction	—	—	—	—
Building Construction	Worker	50.4	18.5	LDA,LDT1,LDT2
Building Construction	Vendor	7.48	10.2	HHDT,MHDT
Building Construction	Hauling	0.00	20.0	HHDT
Building Construction	Onsite truck	—	—	HHDT
Paving	—	—	—	—
Paving	Worker	20.0	18.5	LDA,LDT1,LDT2
Paving	Vendor	—	10.2	HHDT,MHDT
Paving	Hauling	0.00	20.0	HHDT
Paving	Onsite truck	—	—	HHDT
Architectural Coating	—	—	—	—
Architectural Coating	Worker	10.1	18.5	LDA,LDT1,LDT2
Architectural Coating	Vendor	—	10.2	HHDT,MHDT
Architectural Coating	Hauling	0.00	20.0	HHDT
Architectural Coating	Onsite truck	—	—	HHDT

5.4. Vehicles

5.4.1. Construction Vehicle Control Strategies

Non-applicable. No control strategies activated by user.

5.5. Architectural Coatings

Phase Name	Residential Interior Area Coated (sq ft)	Residential Exterior Area Coated (sq ft)	Non-Residential Interior Area Coated (sq ft)	Non-Residential Exterior Area Coated (sq ft)	Parking Area Coated (sq ft)
Architectural Coating	150,255	50,085	0.00	0.00	—

5.6. Dust Mitigation

5.6.1. Construction Earthmoving Activities

Phase Name	Material Imported (cy)	Material Exported (cy)	Acres Graded (acres)	Material Demolished (Building Square Footage)	Acres Paved (acres)
Demolition	0.00	0.00	0.00	18,000	—
Site Preparation	—	—	7.50	0.00	—
Grading	—	—	8.00	0.00	—
Paving	0.00	0.00	0.00	0.00	—

5.6.2. Construction Earthmoving Control Strategies

Control Strategies Applied	Frequency (per day)	PM10 Reduction	PM2.5 Reduction
Water Exposed Area	2	61%	61%
Water Demolished Area	2	36%	36%

5.7. Construction Paving

Land Use	Area Paved (acres)	% Asphalt
Condo/Townhouse	—	0%

5.8. Construction Electricity Consumption and Emissions Factors

kWh per Year and Emission Factor (lb/MWh)

Year	kWh per Year	CO2	CH4	N2O
2024	0.00	349	0.03	< 0.005
2025	0.00	349	0.03	< 0.005

5.9. Operational Mobile Sources

5.9.1. Unmitigated

Land Use Type	Trips/Weekday	Trips/Saturday	Trips/Sunday	Trips/Year	VMT/Weekday	VMT/Saturday	VMT/Sunday	VMT/Year
Condo/Townhouse	512	570	440	186,223	4,237	4,712	3,635	1,540,016

5.9.2. Mitigated

Land Use Type	Trips/Weekday	Trips/Saturday	Trips/Sunday	Trips/Year	VMT/Weekday	VMT/Saturday	VMT/Sunday	VMT/Year
Condo/Townhouse	512	570	440	186,223	4,237	4,712	3,635	1,540,016

5.10. Operational Area Sources

5.10.1. Hearths

5.10.1.1. Unmitigated

Hearth Type	Unmitigated (number)
Condo/Townhouse	—
Wood Fireplaces	4
Gas Fireplaces	60
Propane Fireplaces	0
Electric Fireplaces	0
No Fireplaces	7
Conventional Wood Stoves	0
Catalytic Wood Stoves	4
Non-Catalytic Wood Stoves	4
Pellet Wood Stoves	0

5.10.1.2. Mitigated

Hearth Type	Unmitigated (number)
Condo/Townhouse	—

Wood Fireplaces	4
Gas Fireplaces	60
Propane Fireplaces	0
Electric Fireplaces	0
No Fireplaces	7
Conventional Wood Stoves	0
Catalytic Wood Stoves	4
Non-Catalytic Wood Stoves	4
Pellet Wood Stoves	0

5.10.2. Architectural Coatings

Residential Interior Area Coated (sq ft)	Residential Exterior Area Coated (sq ft)	Non-Residential Interior Area Coated (sq ft)	Non-Residential Exterior Area Coated (sq ft)	Parking Area Coated (sq ft)
150255	50,085	0.00	0.00	—

5.10.3. Landscape Equipment

Season	Unit	Value
Snow Days	day/yr	0.00
Summer Days	day/yr	250

5.10.4. Landscape Equipment - Mitigated

Season	Unit	Value
Snow Days	day/yr	0.00
Summer Days	day/yr	250

5.11. Operational Energy Consumption

1000

5.11.1. Unmitigated

Electricity (kWh/yr) and CO2 and CH4 and N2O and Natural Gas (kBTU/yr)

Land Use	Electricity (kWh/yr)	CO2	CH4	N2O	Natural Gas (kBTU/yr)
Condo/Townhouse	339,400	349	0.0330	0.0040	1,318,961

5.11.2. Mitigated

Electricity (kWh/yr) and CO2 and CH4 and N2O and Natural Gas (kBTU/yr)

Land Use	Electricity (kWh/yr)	CO2	CH4	N2O	Natural Gas (kBTU/yr)
Condo/Townhouse	339,400	349	0.0330	0.0040	1,318,961

5.12. Operational Water and Wastewater Consumption

5.12.1. Unmitigated

Land Use	Indoor Water (gal/year)	Outdoor Water (gal/year)
Condo/Townhouse	2,917,682	353,301

5.12.2. Mitigated

Land Use	Indoor Water (gal/year)	Outdoor Water (gal/year)
Condo/Townhouse	2,917,682	353,301

5.13. Operational Waste Generation

5.13.1. Unmitigated

Land Use	Waste (ton/year)	Cogeneration (kWh/year)
Condo/Townhouse	51.8	—

5.13.2. Mitigated

Land Use	Waste (ton/year)	Cogeneration (kWh/year)
Condo/Townhouse	51.8	—

5.14. Operational Refrigeration and Air Conditioning Equipment

5.14.1. Unmitigated

Land Use Type	Equipment Type	Refrigerant	GWP	Quantity (kg)	Operations Leak Rate	Service Leak Rate	Times Serviced
Condo/Townhouse	Average room A/C & Other residential A/C and heat pumps	R-410A	2,088	< 0.005	2.50	2.50	10.0
Condo/Townhouse	Household refrigerators and/or freezers	R-134a	1,430	0.12	0.60	0.00	1.00

5.14.2. Mitigated

Land Use Type	Equipment Type	Refrigerant	GWP	Quantity (kg)	Operations Leak Rate	Service Leak Rate	Times Serviced
Condo/Townhouse	Average room A/C & Other residential A/C and heat pumps	R-410A	2,088	< 0.005	2.50	2.50	10.0
Condo/Townhouse	Household refrigerators and/or freezers	R-134a	1,430	0.12	0.60	0.00	1.00

8. User Changes to Default Data

Screen	Justification
Land Use	Acreage per site plan

State of California--The Resources Agency
DEPARTMENT OF PARKS AND RECREATION

PRIMARY RECORD

Primary #
HRI #
Trinomial
NRHP Status Code 6Z
Other Listings
Review Code Reviewer Date

*Resource Name or # (Assigned by recorder) CRM TECH 4077-1H

P1. Other Identifier: Sunrise Church

***P2.** Location: √ Not for Publication ___ Unrestricted *a. County San Bernardino
and (P2b and P2c or P2d. Attach a Location Map as necessary.)

*b. USGS 7.5' Quad Ontario, Calif. Date 1981
T1S; R8W; SW 1/4 of Section 13 ; S.B. B.M.

c. Address 1355 W. Fifth Street City Ontario Zip 91762

d. UTM: (Give more than one for large and/or linear resources) Zone 11; 437,566 mE/ 3,771,360 mN
UTM Derivation: ☐ USGS Quad ☒ Google Earth

e. Other Locational Data: (e.g., parcel #, directions to resource, etc., as appropriate) APN 1008-551-12; on the south side of Fifth Street, approximately 1,200 feet east of Benson Avenue

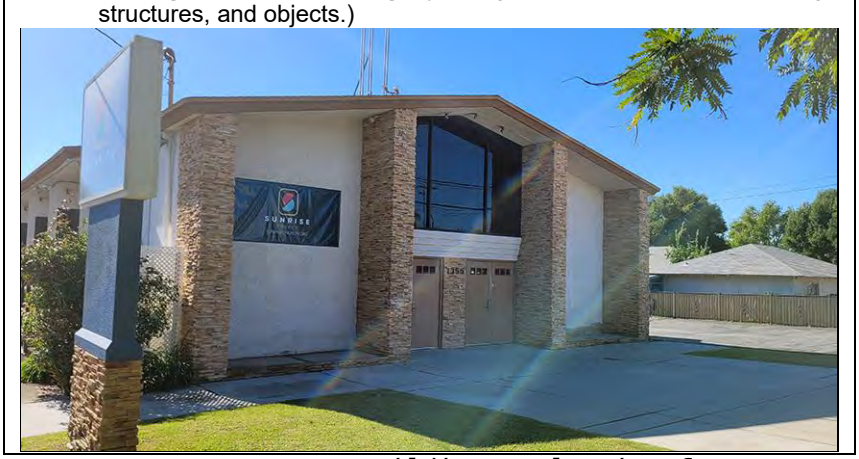
***P3a. Description:** (Describe resource and its major elements. Include design, materials, condition, alterations, size, setting, and boundaries): Buildings on the Sunrise Church property at 1355 W. 5th Street, in the northwestern portion of the City of Ontario, include a rectangular-shaped church that faces the street to the north and an irregularly shaped school complex that is oriented east-west and connected to the rear of the church by a covered breezeway supported by metal poles. Both buildings are wood-frame structures resting on concrete slab foundations, and both have tan stucco exterior coatings and light brown composition shingle roofs.

The church is a tall one-story building with touches of Modernist influence in the design. It is surmounted by a low-pitched front-gable roof with wide rake overhang in the front and narrow eaves on the front portions of the flanks. About 10 feet back, the eaves widen on both sides over "wedge" extensions, each sporting a tall smoked-glass window and an overhead light fixture. The primary façade features four massive cut-stone columns framing (*Continued on p. 4*)

***P3b. Resource Attributes:** (List attributes and codes) HP16: Religious building

***P4. Resources Present:** ☒ Building ☐ Structure ☐ Object ☐ Site ☐ District ☐ Element of District ☐ Other (isolates, etc.)

P5a. Photograph or Drawing (Photograph required for buildings, structures, and objects.)



P5b. Description of Photo (view, date, accession number): 11/17/2023; view to the southwest (also see p. 5)

***P6. Date Constructed/Age and Sources:**
☒ Historic ☐ Prehistoric ☐ Both
1958-1960

***P7. Owner and Address:** Sunrise Church, 1355 W. Fifth Street, Ontario, CA 91762

***P8.Recorded by** (Name, affiliation, & address): Terri Jacquemain, CRM TECH, 1016 East Cooley Drive, Suite A/B, Colton, CA 92324

***P9. Date Recorded:** 11/17/2023

***P10.Survey Type** (describe): Building evaluation for CEQA compliance

***P11. Report Citation:** (Cite survey report and other sources, or enter "none.") Bai "Tom" Tang and Terri Jacquemain (2023): Historic Building Evaluation: Sunrise Church, 1355 W. Fifth Street, City of Ontario, San Bernardino, California

***Attachments:** ☐None ☒Location Map ☐Sketch Map ☒Continuation Sheet ☒Building, Structure, and Object Record ☐Archaeological Record ☐District Record ☐Linear Resource Record ☐Milling Station Record ☐Rock Art Record ☐Artifact Record ☐Photograph Record ☐Other (List):

BUILDING, STRUCTURE, AND OBJECT RECORD

*NRHP Status Code 6Z

*Resource Name or # (Assigned by recorder) CRM TECH 4077-1H

B1. Historic Name: Community Baptist Church; Westpark Baptist Church

B2. Common Name: Sunrise Church

B3. Original Use: Church and school B4. Present Use: Same

***B5. Architectural Style:** Modern

***B6. Construction History:** (Construction date, alterations, and date of alterations) The church and the eastern portion of the school complex, originally used as a fellowship hall, Sunday School, and offices, were built in 1958 as the new home to Community Baptist Church. The western portion of the rear complex was added in 1960 as an elementary-level school. It became Westpark Baptist Church around 1987, with Pastor Bill Rice at the helm for many years. Around 2007, the church was merged with two other Sunrise Church congregations in Rialto and Montclair, led by Pastors David Gaunt and David King. Small improvements have been added to the buildings or replaced since the initial construction, such as the covered breezeways to connect the buildings. Building permit records on file included those issued for reroofs in 1998 and 2006 and for HVAV installation in 1999.

***B7. Moved?** √ No ___ Yes ___ Unknown **Date:** ___ **Original Location:**

***B8. Related Features:** See Item P3a.

B9a. Architect: Unknown b. Builder: Unknown

***B10. Significance: Theme** Post-WWII suburban development

Area Ontario **Period of Significance** 1945-1970

Property Type Church and school **Applicable Criteria** N/A

(Discuss importance in terms of historical or architectural context as defined by theme, period, and geographic scope. Also address integrity.) Since its creation in the 1880s as "the Model Colony," Ontario has gradually grown from a primarily agrarian settlement to a typical southern California suburban community predicated on residential and commercial development. The suburban transition and the subsequent rapid growth of the city was a part of the nationwide post-World War II boom in population and prosperity, at a time when regular church attendance was a vital part of community life. While this relatively modest church compound dates to that period and is relatable to the theme, it does not demonstrate a particularly (*Continued on p. 4*)

B11. Additional Resource Attributes: (List attributes and codes)

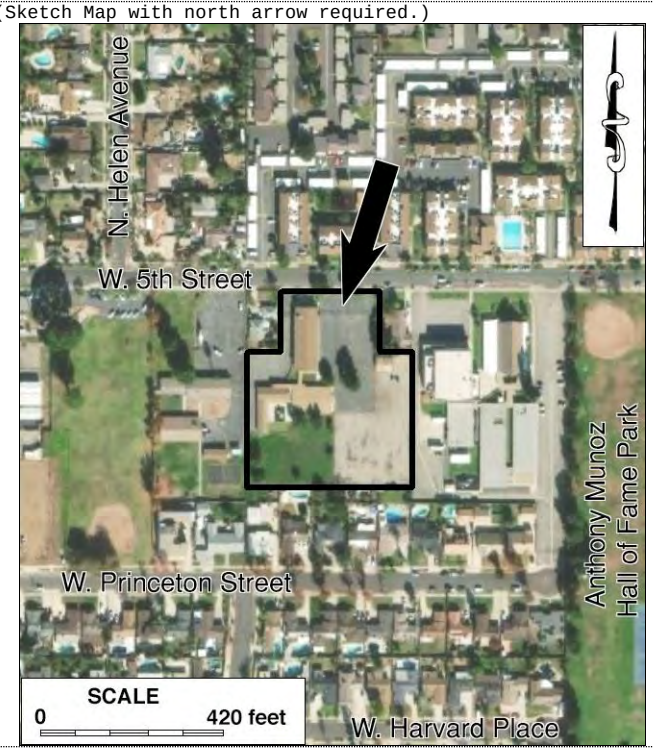
B12. References: See p. 4

B13. Remarks:

***B14. Evaluator:** Terri Jacquemain

***Date of Evaluation:** December 16, 2023

(Sketch Map with north arrow required.)



(This space reserved for official comments.)

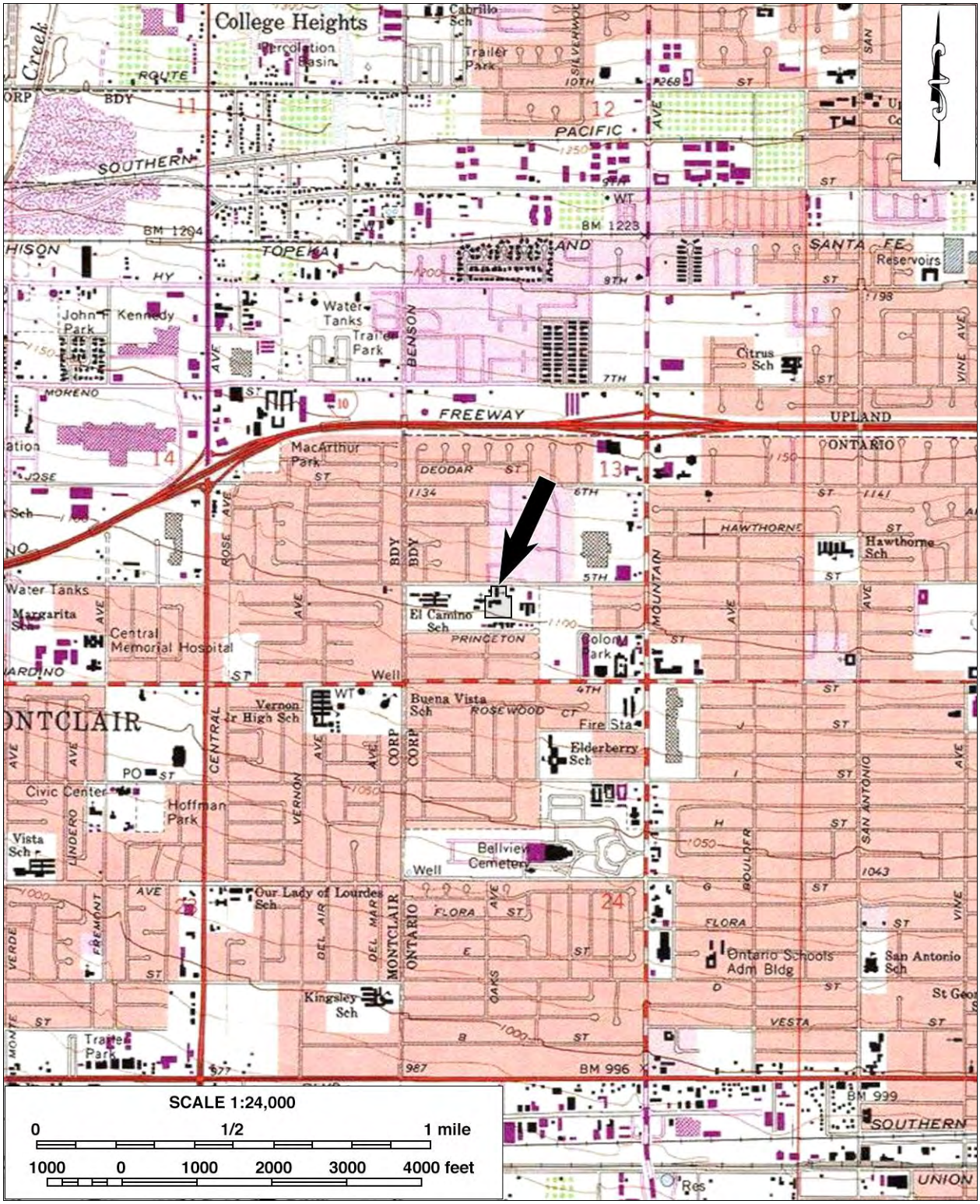
State of California--The Resources Agency
DEPARTMENT OF PARKS AND RECREATION

LOCATION MAP

Primary #
HRI #
Trinomial

Page 3 of 5 *Resource Name or # (Assigned by recorder) CRM TECH 4077-1H

*Map Name: Ontario, Calif. *Scale: 1:24,000 *Date of Map: 1981



DPR 523J (1/95) *Required information

Recorded by: Terri Jacquemain ***Date:** November 17, 2023 √ Continuation Update

***P3a. Description(continued):** two sets of plain metal double doors, each with a row of three small rectangular glazing near the top, and the doors are separated by a portion of the exterior wall built of similar stone blocks. Above the doors and separated by a stucco band molded in shiplap pattern, a large smoked-glass window fills the gable peak. The rest of the primary façade, between the pair of stone columns on each side, consists of blind stucco wall surface accompanied by low concrete stoops that are edged with matching stone blocks. The front entrance to the church is accessed by a wide concrete approach scored in a decorative pattern. Three slender metal crosses are arranged in a group on the eastern slope of the roof and near the front. A monument bearing a blue "Sunrise Church" sign stands on a stone pedestal near the northeastern corner of the building.

The school complex to the rear consists of two distinctive masses, one L-shaped and the other rectangular. Both masses have low-pitched gable roofs with broad overhangs extending over walkways where needed. Fenestration on the rectangular mass on the east side features untrimmed tripart windows, each with a fixed center sash flanked by ripple-glass casements. The L-shaped mass on the west side has mainly aluminum-framed sliding windows. Doors are mostly unglazed single doors, many of them on the western portion painted in bright colors. A set of wood-framed glass double doors are found at the eastern end of the rectangular mass, sheltered by a flat wood shade supported by four metal poles and bearing the weight of two large HVAC units. The buildings are situated in the front portion of a large lot, surrounded by paved driveways and parking spaces that are secured by wrought iron fences and gates. The southern one-third of the parcel is an open field with grass and trees.

***B10. Significance (continued):** close or important association in comparison to the numerous other church buildings of similar vintages.

Historical sources have yielded no evidence that the pastors identified in the history of the church or anyone else associated with the buildings have attained a high level of recognized historic significance, nor have any prominent architects, designers, or builders been identified in their construction. In terms of architectural or engineering qualities, the buildings are not known to represent important or notable examples of any style, type, period, region, or method of construction.

As late-historic-period buildings of common design and construction practice, the buildings do not hold the potential for any important data for the study of local history, which is well documented in both historical literature and contemporary publications. Based on these considerations, the Sunrise Church at 1355 W. Fifth Street does not appear eligible for listing in the National Register of Historic Places or the California Register of Historical Resources.

B12. References:

City of Ontario
1998-2006 Building permit records for 1355 W. Fifth Street. On file, City of Ontario Community Development Department.
n.d. Ontario's History. https://www.ontarioca.gov/Planning/HistoricPreservation.
Flexser, Debbie (local resident and longtime congregation member)
2023 Oral historical interview on site, November 17.
San Bernardino County Assessor
n.d. Property Information Management System database. https://www.sbcounty.gov/assessor/pims/PIMSINTERFACE.ASPX.

Recorded by: Terri Jacquemain
***Date:** November 17, 2023 √ Continuation Update

P5b. Additional Photos:



East side of the church, view to the southwest.



From top left: south (rear) and west sides of the church, view to the northeast; between the church and the school complex, view to the west; eastern portion of the school complex, view to the northwest; western portion of the school complex, view to the northwest.

Engineering Department

Preliminary Water Quality Management Plan (PWQMP)

For compliance with Santa Ana Regional Water Quality Control Board
Order Number R8-2010-0036 (NPDES Permit No. CAS618036)

Project Name:	Tentative Tract Map No. 20659
Ontario Project #:	PDEV23-037
Applicant Name:	Bret Llich
Applicant Address:	3090 Pullman Street, Costa Mesa, CA 92626
Project Address:	1355 West 5th Street Ontario, CA 91762
Project Size (acres):	3.06 acres
Project Description:	

Submittal Date: December 2023

Preliminary Water Quality Management Plan (PWQMP)

1. Introduction

The Preliminary Water Quality Management Plan (PWQMP) is a planning tool to improve integration of required water quality elements, stormwater management, water conservation, rainwater harvesting and re-use, and flood management in land use planning and the City's development process. The Preliminary WQMP will assist project applicants and planners in properly designing and laying out project sites so that water quality may be incorporated in the most effective manner and at the lowest cost for the developer.

The San Bernardino County Municipal Separate Storm Sewer System Permit (MS4 Permit) requires project-specific Water Quality Management plans (WQMP) to be prepared for all priority new development and significant redevelopment projects listed in Section 2 of this document. The MS4 Permit stipulates that the City of Ontario require priority project applicants to submit a Preliminary project-specific WQMP, as early as possible, during the environmental review or planning phase of a development project and that the Preliminary WQMP be approved prior to the issuance of land use entitlement.

2. Priority Projects (requiring a Preliminary WQMP)

Land Use entitlement shall not be issued for any of the listed projects, below, until a Preliminary WQMP has been approved by the City's Engineering Department. For construction projects not going through entitlement, a Preliminary and Final project specific WQMP shall be approved, prior to the issuance of construction permits:

Check the appropriate project category below, for this project:

Check below	**Project Categories**
	1. All significant re-development projects. Significant re-development is defined as the addition or replacement of 5,000 or more square feet of impervious surface on an already developed site subject to discretionary approval of the Permittee. Redevelopment does not include routine maintenance activities that are conducted to maintain original line and grade, hydraulic capacity, original purpose of the facility, or emergency redevelopment activity required to protect public health and safety. Where redevelopment results in an increase of less than fifty percent of the impervious surfaces of a previously existing developed site, and the existing development was not subject to WQMP requirements, the numeric sizing criteria discussed below applies only to the addition or replacement, and not to the entire developed site. Where redevelopment results in an increase of fifty percent or more of the impervious surfaces of a previously existing developed site, the numeric sizing criteria applies to the entire development (new and existing).
✔	2. New development projects that create 10,000 square feet or more of impervious surface (collectively over the entire project site) including commercial, industrial, residential housing subdivisions (i.e., detached single family home subdivisions, multi-family attached subdivisions or townhomes, condominiums, apartments, etc.), mixed-use, and public projects. This category includes development projects on public and private land, which fall under the planning and building authority of the permitting agency.

Check below	Project Categories
	3. Automotive repair shops (with SIC codes 5013, 5014, 5541, 7532- 7534, 7536-7539).
	4. Restaurants and Food Service Establishments where the land area of development is 5,000 square feet or more.
	5. Developments of 2,500 square feet of impervious surface or more adjacent to (within 200 feet) or discharging directly into environmentally sensitive areas (ESA's) such as areas designated in the Ocean Plan as areas of special biological significance or waterbodies listed on the CWA Section 303(d) list of impaired waters.
	6. Parking lots of 5,000 square feet or more exposed to storm water. Parking lot is defined as land area or facility for the temporary storage of motor vehicles.
	7. Retail Gasoline Outlets (RGOs) that are either 5,000 sq ft or more or have a projected average daily traffic of 100 or more vehicles per day.
	8. *This project is not covered under any of the categories listed above.

* If the development is not covered under any of the project categories listed in Section 2, the project is not required to design and install Site Design/LID BMPs or Treatment Control BMPs to treat the design storm event (Design Capture Volume) described in Section 4.

3. Preliminary WQMP Objectives

Through a combination of Site Design/LID BMPs (where feasible), Source Control, and/or Treatment Control BMPs, project-specific WQMPs shall address all identified pollutants and hydrologic conditions of concern from new development and significant re-development projects for the categories of projects (priority projects) listed in Section 2. Under each type of BMP, listed below, please indicate which BMPs are planned to be implemented and included in the Final WQMP for the project:

A. Site Design/LID (Low Impact Design) for Reducing Stormwater Runoff:

The MS4 Permit requires each priority development project to infiltrate, harvest and use, evapotranspire, or bio-treat the runoff from a 2-yr, 24-hour storm event (Design Capture Volume). If site conditions do not permit infiltration, harvest and use, evapotranspiration, and/or bio-treatment of the entire Design Capture Volume, at the project site, Site Design/LID techniques are required to be implemented to the Maximum Extent Practicable, at the project site, and the remainder of the DCV shall be infiltrated, harvested, bio-treated or treated by alternative measures. Project applicants shall submit a Preliminary WQMP that documents the LID/Site Design BMPs, proposed for the project. Please indicate, in the table below, which Site Design/LID BMPs will be utilized on this project to accomplish this requirement:

Site Design/LID Practice	Planned	Not Planned
Provide at least the minimum effective area required for LID BMPs, to comply with the WQMP (see Table 3-1 below).		✔
Grade parking lot areas/drive aisles/roof drains to sheet flow runoff into landscaped swales, via curb cuts or zero-face curbs or otherwise disconnect direct drainage from MS4.		✔
Design landscaped areas as swales and grade to accept runoff from building roofs, parking lots and project roadways.	✔	
Install surface retention basins or infiltration trenches to receive impervious area runoff.		✔
Install pervious pavement in parking stalls, alleys, driveways, gutters, walkways, trails or patios.		✔
Install underground stormwater retention chambers where downstream landscaped areas are limited.	✔	
Install approved Stormwater Drywells in detention areas.		✔
Construct streets, sidewalks, and parking lot stalls to the minimum widths necessary.	✔	
Install on-site Biotreatment basins/trenches with underdrains, where soil type is poorly draining.	✔	
Install “Engineered Soil” to increase uptake/soil storage capacity and/or evapotranspiration.		✔
Install Rainwater Harvesting/Use Equipment.		✔
Regional LID BMP facilities are installed, off-site, with the capacity and conveyances to accept post-development storm water runoff from this project and reserved capacity allocation credits have been assigned to the project, in a Certificate or other legally binding document, attached herein		✔

Table 3-1 Minimum Effective Area[1] Required for LID BMPs (surface + subsurface facilities) for Project WQMP to Demonstrate Infeasibility[2] (% of site)

Project Type	New Development	Re-Development
SF/MF Residential < 7 du/ac	10%	5%
SF/MF Residential < 7 - 18 du/ac	7%	3.5%
SF/MF Residential > 18 du/ac	5%	2.5%
Mixed Use, Commercial/Industrial w/FAR< 1.0	10%	5%
Mixed Use, Commercial/Industrial w/FAR 1.0-2.0	7%	3.5%
Mixed Use, Commercial/Industrial w/FAR> 2.0	5%	2.5%
Podium (parking under > 75% of project)	3%	1.5%
Zoning allowing development to property lines	2%	1%
Transit Oriented Development[3]	5%	2.5%
Parking	5%	2.5%

[1] "Effective area" is defined as land area which 1) is suitable for a retention/infiltration BMP (based on infeasibility criteria) and 2) is located down-gradient from building roof or paved areas, so that it may receive gravity flow runoff.
[2] Criteria only required if the project WQMP seeks to demonstrate that the full DCV cannot be feasibly managed on-site.
[3] Transit oriented development is defined as a project with development center within one half mile of a mass transit center.
Key: du/ac = dwelling units/acre, FAR = Floor Area Ratio = ratio of gross floor area of building to gross lot area, MF = Multi Family, SF = Single Family

B. Source Control BMPs – The following BMPs are designed to control stormwater pollutants and runoff water at the location where it is generated. Please indicate which of the listed BMPs are planned to be implemented for the project:

Source Control BMPs	Planned	Not Planned
Minimize non-stormwater site runoff through efficient irrigation system design and controllers.	✔	
Minimize trash and debris in storm runoff through a regular parking lot, storage yard and roadway sweeping program.	✔	
Provide proper covers/roofs and secondary containment for outside material storage & work areas.		✔
Provide solid roofs over all trash enclosures.		✔
Site Owner(s)/Property Manager/HOA or POA will be familiar with the project WQMP and stormwater BMPs.	✔	
Owner or HOA or POA to provide Education/Training of site occupants and employees on stormwater BMPs.	✔	
Install stormwater placards/stenciled messages with a "No Dumping" message on all on-site/off-site storm drain inlets.	✔	
Provide contained equipment/vehicle wash rack areas that discharge to sanitary sewer.		✔

C. Treatment Control BMPs – The following BMPs are designed to control stormwater pollutants where it is not feasible to install on-site or off-site Site Design/LID BMPs, with the requisite capacity to treat the Design Capture Volume for identified Pollutants of Concern or where pretreatment of stormwater runoff is required, ahead of infiltration BMPs. Please indicate which of the listed BMPs are planned to be implemented for the project:

Treatment Control BMP	Planned	Not Planned
Gravity Separator devices for pretreatment of sediment, trash/litter or Oil & Grease		✔
Proprietary Biofiltration vaults/devices	✔	
Media Cartridge Filtration Vaults		✔
Proprietary Filter Inserts for on-site storm drain inlets or retention basin/trench overflow drains		✔

4. Volume-based calculation (approximate) for sizing on-site or off-site Stormwater Retention/Infiltration, Harvest & Re-Use or Biotreatment facilities

1) After calculating the "Watershed Imperviousness Ratio", i, which is equal to the percent of impervious area in each Drainage Management Area, divided by 100, calculate the composite runoff coefficient C_{BMP} for the Drainage Area above using the following equation:

$$\mathbf{C_{BMP} = 0.858i^3 - 0.78i^2 + 0.774i + 0.04}$$

where: $\mathbf{C_{BMP}}$ = composite runoff coefficient; and,

i = watershed imperviousness ratio.

3) Determine the area-averaged "6-hour Mean Storm Rainfall", P_6, for the Drainage Area. This is calculated by multiplying the area averaged 2-year 1-hour value (0.5"-0.6") by the appropriate regression coefficient (1.4807). The 2-yr, 1-hr value for southern Ontario is approximately to 0.5" (P_6 = 0.5*1.4807 = 0.74 and northern Ontario is approximately 0.6" in/hr (P_6 = 0.6*1.4807 = 0.89).

4) Determine the appropriate drawdown time. Use the regression constant a = 1.582 for 24 hours and a = 1.963 for 48 hours. *Note: Regression constants are provided for both 24 hour and 48-hour drawdown times; however, 48-hour drawdown times should be used in most areas of California. Drawdown times in excess of 48 hours should be used with caution as vector breeding can be a problem after water has stood in excess of 72 hours. (Use of the 24-hour drawdown time should be limited to drainage areas with coarse soils (Class 'A' soils that readily drain.)*

5) Calculate the "Maximized Detention Volume", P_0, using the following equation:

$$\mathbf{P_0 = a \cdot C_{BMP} \cdot P_6}$$

where: $\mathbf{P_0}$ = Maximized Detention Volume, in inches

a = 1.582 for 24 hour and a = 1.963 for 48-hour drawdown,

$\mathbf{C_{BMP}}$ = composite runoff coefficient; and,

$\mathbf{P_6}$ = 6-hour Mean Storm Rainfall, in inches

6) Calculate the "Target Capture Volume", V_0, using the following equation:

$$\mathbf{V_0 = (P_0 \cdot A) / 12}$$

where: $\mathbf{V_0}$ = Target Capture Volume, in acre-feet

$\mathbf{P_0}$ = Maximized Detention Volume, in inches; and,

A = BMP Drainage Area, in acres

Project Volume-based calculation (approximate) for planned on-site or off-site Stormwater Retention/Infiltration, Harvest & Re-Use or Biotreatment facilities:

Variable	Factor/Formula	DA1, DMA A	DA1 DMA B	DA2 DMA A	DA2 DMA B
Impervious surface/total surface, ratio	(i)				
C_{BMP}= runoff coefficient	$0.858i^3 - 0.78i^2 + 0.774i + 0.04$				
P_6	**P_6 = 2-yr,1-hr depth*1.4807 =				
Detention Volume (acre inches)	$P_0 = a * C_{BMP} * P_6$ =				
Drawdown rate of basin/trench (a)	1.963 for 48-hr drawdown =				
Project Total Area (acre)	(A)				
Design Capture Volume in cu. ft.	$V_0 = [(P_0 * A)/12] *43560$ =				
Retention Volume provided in cubic feet.	Retention capacity of basins, trenches, underground storage or biotreatment basin				

**For P_6 value, use site coordinates and NOAA website to determine project's average 2-yr, 1-hr rainfall depth, at: http://hdsc.nws.noaa.gov/hdsc/pfds/sa/sca_pfds.html .

5. Flow-Based calculation (approximate) for sizing on-site or off-site Biotreatment facilities and proprietary treatment technology BMPs:

1) After calculating the "Watershed Imperviousness Ratio", i, which is equal to the percent of impervious area in each Drainage Management Area divided by 100, calculate the composite runoff coefficient C_{BMP} for the Drainage Area above using the following equation:

$$\mathbf{C_{BMP} = 0.858i^3 - 0.78i^2 + 0.774i + 0.04}$$

where: $\mathbf{C_{BMP}}$ = composite runoff coefficient; and,

i = watershed imperviousness ratio.

2) Determine BMP design rainfall intensity, **I_{BMP}**, using the project site geo-coordinates and the NOAA website to determine project's average 2-yr, 1-hr rainfall intensity, at: http://hdsc.nws.noaa.gov/hdsc/pfds/sa/sca_pfds.html .Multiply this value by 0.2787 (regression coefficient for Ontario) and a minimum safety factor of 2.

4) Calculate the target BMP flowrate, Q, using the following formula (for each DMA <50 acres*):

$$\mathbf{Q = C_{BMP} \cdot I_{BMP} \cdot A}$$

Where: **Q** = flow in cfs (Cubic feet per second)
I_{BMP} = BMP design rainfall intensity, in/hr
A = Drainage Area in acres

*For DMAs >50 acres, with C_{BMP} <0.5, the project applicant shall use the unit hydrograph method specified in the San Bernardino County Hydrology Manual, using the design storm pattern with rainfall return frequency such that the peak 1-hr rainfall intensity equals the 85th percentile 1-hr rainfall, multiplied by 2.

Project Flow-based calculation (approximate) for planned on-site or off-site flow-based Biotreatment facilities or Stormwater Treatment BMPs:

Variable	Factor/Formula	DA1 DMA A	DA1 DMA B	DA2 DMA A	DA2 DMA B
Impervious surface/ total surface, ratio	(i)	0.80	0.80		
C_{BMP}= composite runoff coefficient	$0.858i^3 + 0.78i^2 + 0.774i + 0.04$	0.599	0.599		
I_{BMP}	I_{BMP} = 2-yr,1-hr storm intensity*0.2787*safety factor	0.339	0.339		
Drainage area (ac)	A = DMA sq ft/43,560	0.68	2.38		
Target BMP flowrate	Q = C_{BPM}* I_{BMP} * A	0.138	0.483		

6. Hydrologic Conditions of Concern (HCOC) and use of the on-line San Bernardino County HCOC Map for determining necessary mitigation steps necessary if there are HCOCs downstream of a project:

Project applicants may access the on-line HCOC Map at: http://permitrack.sbcounty.gov/WAP/. The map will indicate any hydrology concerns with downstream waterways that are hydraulically connected to the project and will indicate if there are any approved regional projects downstream that could be utilized for off-site mitigation of HCOCs. Please indicate here if the project will or will not be able to retain/infilter, harvest and use or biotreat and detain the DCV, on-site, as calculated in Section 4 and if there are HCOCs identified downstream of the project:

Retain or Harvest/Use the DCV on site?	Yes		No	✔
Biotreat the DCV but not infilter the runoff?	Yes		No	✔
HCOCs identified downstream of site?	Yes		No	✔

If the entire DCV will not be retained on site, the DCV is biotreated but not infiltered or additional detention capacity is needed to address identified HCOCs, downstream of the site, please list here, what additional mitigation measures will be utilized (on-site or off-site) to address HCOCs (see Section 4.2.1-4.2.3 of the SB County WQMP Technical Guidance):

7. Site Plan and Conceptual Grading/Drainage Plan requirements for submission with the Preliminary WQMP:

Provide a Site Plan and Conceptual Grading/Drainage Plan along with this Preliminary WQMP, which conceptually shows the proposed locations of buildings, homes, parking lots, parks, new paved roadways, landscaped areas, drainage patterns and drainage sub-areas, methods of conveyance, proposed retention/infiltration, harvest & use or biotreatment facilities that are planned for installation. Where it is determined to be infeasible to capture and detain design storm runoff volumes, on-site, please include other design features, as described in Section 3, above. Include numbered or lettered notes on the Site Plan with a legend detailing other BMPs, as described in Section 3.

8. BMP Maintenance and Funding Mechanism & Description:

HOA

9. Acknowledgment:

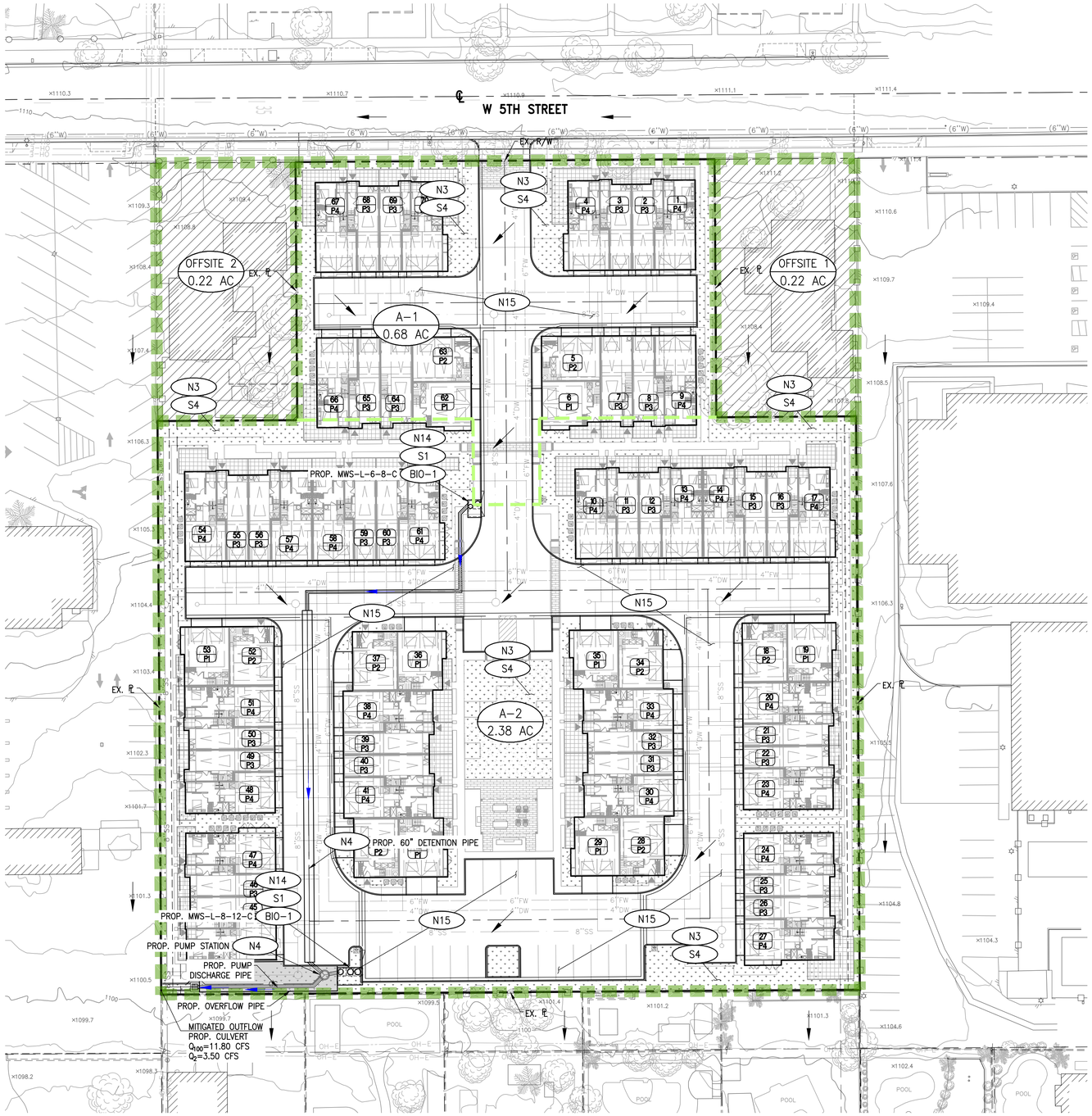
As the property owner or developer, I understand that this project is required to install and implement permanent LID Storm Water Best Management Practices pursuant to the requirements of the San Bernardino County MS4 Permit and to document those BMPs in the submittal of a Water Quality Management Plan, which is binding on any current or successive owners of this property.

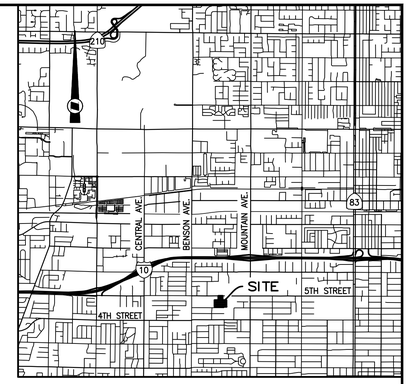
Yes	✔	No	

10. Exemption Signature:

As the property owner or developer, I understand that this project is not required by the San Bernardino County MS4 Permit to install and implement permanent LID Storm Water Best Management Practices and will not be required to submit a Water Quality Management Plan.

Signature of Owner or Developer Date





VICINITY MAP

N.T.S.

BEST MANAGEMENT PRACTICE (BMPs)	
IDENTIFIER	DESCIPTION
*N1	EDUCATION FOR PROPERTY OWNERS, TENANTS, & OCCUPANTS
*N2	ACTIVITY RESTRICTIONS
*N3	SITE DESIGN AND LANDSCAPE PLANNING
N4	BMP MAINTAINANCE
*N6	LOCAL WATER QUALITY ORDINANCES
*N11	COMMON AREA LITTER CONTROL
*N12	EMPLOYEE TRAINING
N14	CATCH BASIN INSPECTION
*N15	PRIVATE STREET/ PARKING LOT SWEEPING AND VACUUMING
*N17	COMPLY WITH NPDES PERMITS
S1	STORM DRAIN SYSTEM SIGNAGE
*S4	EFFICIENT IRRIGATION
BIO-1	BIO-FILTRATION SYSTEM

*NOTE: GENERALLY APPLICABLE THROUGHOUT THE SITE

LEGEND:

- DRAINAGE MANAGEMENT AREA (DMA) BOUNDARY
- DMA SUBAREA BOUNDARY
- SITE BOUNDARY
- EXISTING RIGHT OF WAY
- EXISTING LOT LINE
- EXISTING EASEMENT LINE
- SURFACE FLOW DIRECTION
- PIPE FLOW DIRECTION
- FLOW LINE
- OFFSITE AREA
- PERVIOUS AREA

PROPOSED CONDITIONS TREATMENT STORM EVENT RUNOFF			
DMA	AREA (AC)	DESIGN TREATMENT FLOW RATE (CFS)	PROVIDED TREATMENT CAPACITY (CFS)
A-1, OFFSITE	1.12	0.138	0.147
A-2	2.38	0.483	0.483
TOTAL OUTLET GENERATED RUNOFF	3.50	0.621	0.630

SCALE: 1" = 30'

0 15 30 60

REGISTERED PROFESSIONAL ENGINEER
DANIE P. MCDOUGALL
C 80705
CIVIL
STATE OF CALIFORNIA

PREPARED BY:

C&V CONSULTING, INC.
CIVIL ENGINEERING
LAND PLANNING & SURVEYING
9830 IRVINE CENTER DRIVE
IRVINE, CALIFORNIA 92618
(949) 916-3800
INFO@CVC-INC.NET
WWW.CVC-INC.NET

CITY OF ONTARIO

PRELIMINARY WQMP EXHIBIT

1355 WEST 5TH STREET
ONTARIO, CALIFORNIA

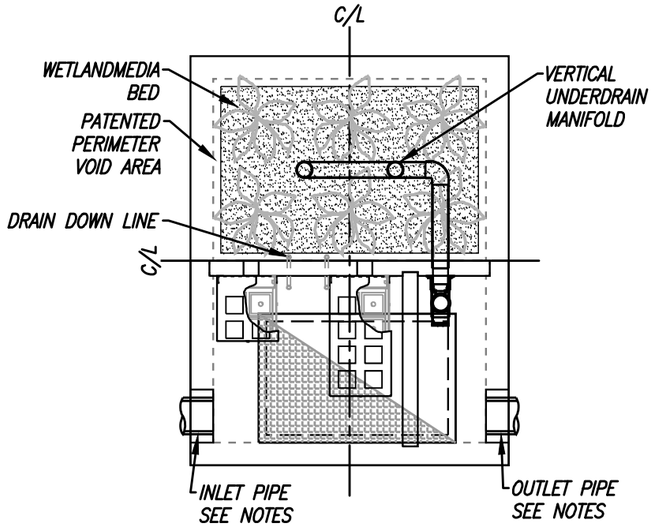
SHEET

1 OF 1

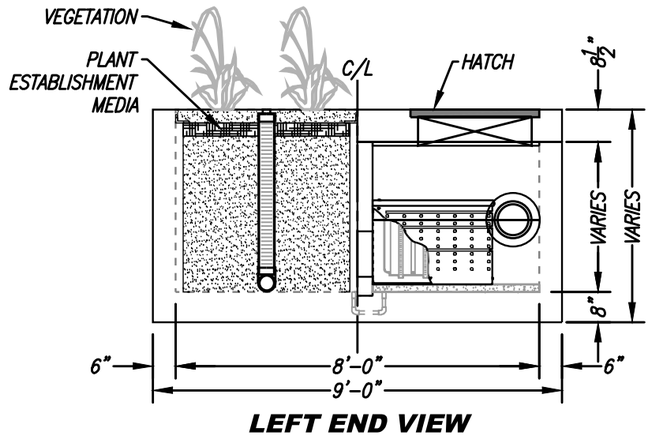
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SITE SPECIFIC DATA			
PROJECT NUMBER		TTM 20659	
PROJECT NAME			
PROJECT LOCATION		Ontario	
STRUCTURE ID			
TREATMENT REQUIRED			
FLOW BASED (CFS)			
0.147			
PEAK BYPASS REQUIRED (CFS) – IF APPLICABLE			OFFLINE
PIPE DATA	I.E.	MATERIAL	DIAMETER
INLET PIPE 1			
INLET PIPE 2	N/A	N/A	N/A
OUTLET PIPE			
	PRETREATMENT	BIOFILTRATION	DISCHARGE
RIM ELEVATION			
SURFACE LOAD	PEDESTRIAN		
NOTES: Vault to be curb inlet type.			

* PRELIMINARY NOT FOR CONSTRUCTION



PLAN VIEW



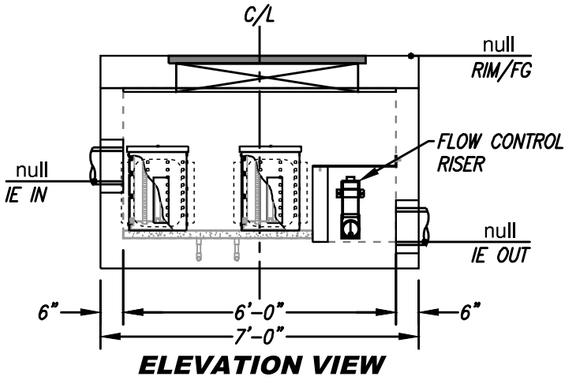
LEFT END VIEW

INSTALLATION NOTES

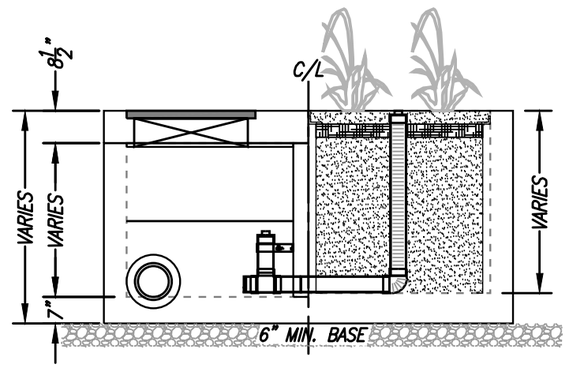
1. CONTRACTOR TO PROVIDE ALL LABOR, EQUIPMENT, MATERIALS AND INCIDENTALS REQUIRED TO OFFLOAD AND INSTALL THE SYSTEM AND APPURTENANCES IN ACCORDANCE WITH THIS DRAWING AND THE MANUFACTURERS' SPECIFICATIONS, UNLESS OTHERWISE STATED IN MANUFACTURER'S CONTRACT.
2. UNIT MUST BE INSTALLED ON LEVEL BASE. MANUFACTURER RECOMMENDS A MINIMUM 6" LEVEL ROCK BASE UNLESS SPECIFIED BY THE PROJECT ENGINEER. CONTRACTOR IS RESPONSIBLE FOR VERIFYING PROJECT ENGINEER'S RECOMMENDED BASE SPECIFICATIONS.
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7. CONTRACTOR RESPONSIBLE FOR CONTACTING CONTECH FOR ACTIVATION OF UNIT. MANUFACTURER'S WARRANTY IS VOID WITHOUT PROPER ACTIVATION BY A CONTECH REPRESENTATIVE.

GENERAL NOTES

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ELEVATION VIEW



RIGHT END VIEW

TREATMENT FLOW (CFS)	0.147
OPERATING HEAD (FT)	3.4
PRETREATMENT LOADING RATE (GPM/SF)	1.3
WETLAND MEDIA LOADING RATE (GPM/SF)	1.0

MODULAR WETLANDS
FOR PATENT INFORMATION, GO TO www.ContechES.com/IP

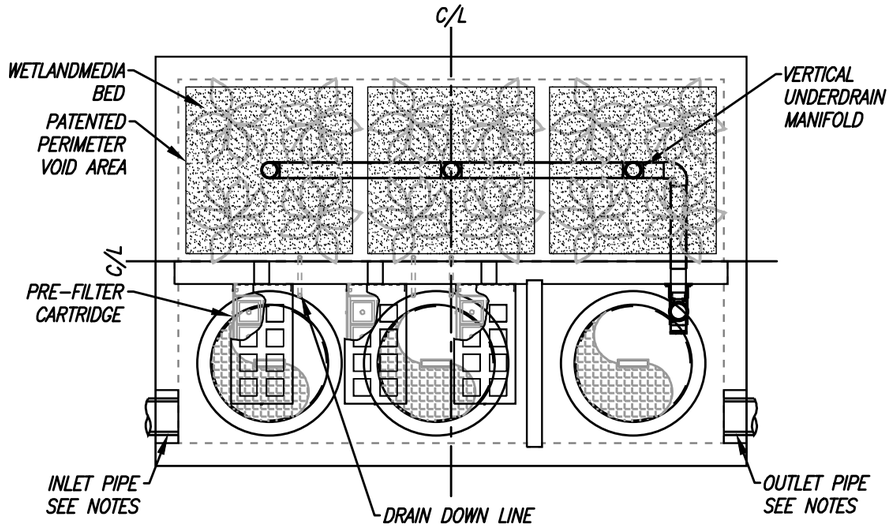
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MWS-L-6-8-V
STORMWATER BIOFILTRATION SYSTEM
STANDARD DETAIL

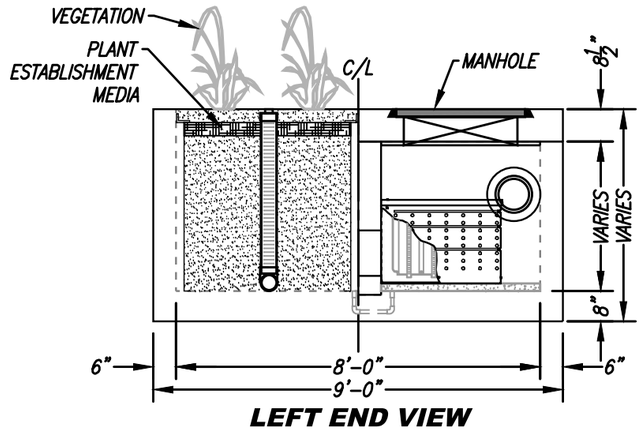
1018

SITE SPECIFIC DATA			
PROJECT NUMBER		TTM 20659	
PROJECT NAME			
PROJECT LOCATION		Ontario	
STRUCTURE ID			
TREATMENT REQUIRED			
FLOW BASED (CFS)			
0.483			
PEAK BYPASS REQUIRED (CFS) – IF APPLICABLE			OFFLINE
PIPE DATA	I.E.	MATERIAL	DIAMETER
INLET PIPE 1			
INLET PIPE 2	N/A	N/A	N/A
OUTLET PIPE			
	PRETREATMENT	BIOFILTRATION	DISCHARGE
RIM ELEVATION			
SURFACE LOAD	PEDESTRIAN		
NOTES: Vault to be curb inlet type.			

* PRELIMINARY NOT FOR CONSTRUCTION



PLAN VIEW



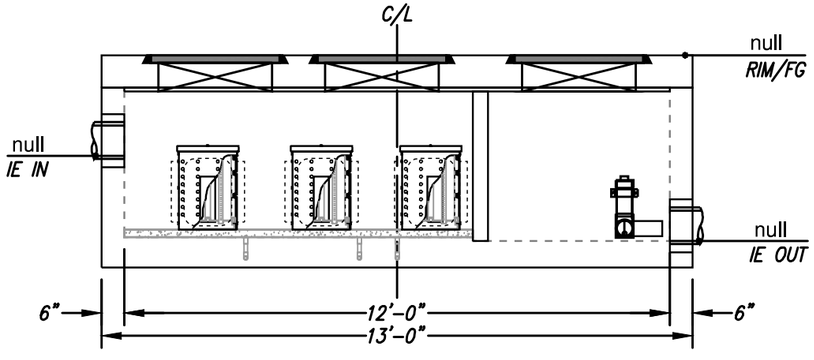
LEFT END VIEW

INSTALLATION NOTES

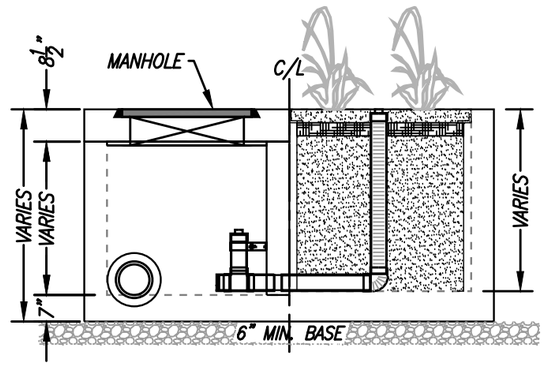
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ELEVATION VIEW



RIGHT END VIEW

TREATMENT FLOW (CFS)	0.483
OPERATING HEAD (FT)	4.7
PRETREATMENT LOADING RATE (GPM/SF)	2.8
WETLAND MEDIA LOADING RATE (GPM/SF)	1.0

MODULAR WETLANDS
FOR PATENT INFORMATION, GO TO www.ContechES.com/IP

CONTECH ENGINEERED SOLUTIONS LLC
www.ContechES.com

MWS-L-8-12-V
STORMWATER BIOFILTRATION SYSTEM STANDARD DETAIL

1019

PRELIMINARY HYDROLOGY STUDY

Tentative Tract No. 20659
City of Ontario, County of San Bernardino

Project Address:
1355 West 5th Street
Ontario, California 91762

Prepared For:

Warmington Residential California
3090 Pullman Street
Costa Mesa, CA 92626
Contact: Moses Kim
(877) 708-3454

Prepared By:

C&V Consulting, Inc.
9830 Irvine Center Drive
Irvine, CA 92618
Contact: Dane P. McDougall, P.E.
(949) 916-3800

Prepared: December 2023

Preliminary Hydrology Study
For
TTM No. 20659

Acknowledgement and Signature Page

This Preliminary Hydrology Study was prepared by C&V Consulting, Inc. under the supervision of Dane P. McDougall, P.E.

_____ _____

Dane P. McDougall P.E. 80705 Date
C&V Consulting, Inc.

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Pipe Sizing 6
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APPENDICES

APPENDIX A Maps and Exhibits

Existing Conditions Hydrology Map
City of Ontario Master Plan Drainage
Proposed Conditions Hydrology Map
NOAA Precipitation Data
USDA Soil Map
FEMA Flood Map

APPENDIX B Hydrology Analysis

Exiting Conditions AES Rational Method Output
Proposed Conditions AES Rational Method Output

APPENDIX C Detention Analysis

APPENDIX D Hydraulics Analysis

APPENDIX F Reference Documents

TTM No. 20659

I. Purpose

The purpose of this report is to provide quantitative information to verify the design of the storm drain infrastructure and hydrologic methodology of the project site. The values and statements within the confirm the subject site is designed and planned in accordance with the San Bernardino County Hydrology Manual and the City of Ontario drainage requirements.

II. Site Description

The project site is located at 1355 West 5th Street, in the City of Ontario with a total land area of 3.06 acres (APN: 1008-551-12-0000). The total drainage management boundary of 3.50 acres includes upstream drainage areas from two offsite adjacent lots. The project site is bounded by 5th Street to the north, First Church of the Nazarene to the east, Church of God to the west and single-family residential units to the south.

According to the federal Emergency Management Agency (FEMA) FIRM rate map number 06071C8608H, effective date August 28, 2008, the site is located within flood Zone X, area of minimal flood hazard.

The project site is a portion of a Master Drainage Plan in the City of Ontario. The project site is located within drainage area VI, subarea 'A5.3' of the City of Ontario Master Plan of Drainage.

Refer to Appendix A for additional information.

III. Existing Conditions

The existing site currently consists of a church building with a paved parking area. There are two offsite adjacent residential lots located north of the site drain along the project site downstream as upstream run-on drainage areas. The existing conditions drainage generally sheet flows from the northeast corner to the southwesterly boundary of the site. The southerly existing site boundary wall conditions of adjacent residential limits flow from continuing southerly into the residential lots and the onsite landscape areas appears to direct runoff westerly to exit the site near the southwesterly corner to the adjacent pervious landscape areas of the adjacent Church. The runoffs outlet then continues to follow the general southwesterly direction of the Master Plan Drainage and confluence downstream at a catch basin inlet at Princeton Street and Benson Avenue. The confluence flow continues through the public storm drain system which is routed through San Antonio Creek to enter the Prado Dam which ultimately enters the Santa Ana River to Pacific Ocean.

Per City of Ontario Master Plan of Drainage, the project site is located between the drainage node of 104 to 105. All tributary flow from subarea A5.3 was planned to be intercepted by drain inlets along Benson Avenue and enter the 42-inch public storm drain. Onsite drainage is intended to be collected within the same public storm drain system to continue downstream and confluence with collected runoffs at node 105.

Refer to Master Plan of Drainage in Appendix A for additional information.

IV. Proposed Conditions

The project proposes the construction of 12 condominium buildings with 70 dwelling units along with private garages, private drive aisles, sidewalks, and common landscaped areas. The project site will be accessible with a street entrance and exit on West 5th Street. The two offsite adjacent residential lots located upstream of the site drain confluence with the project site runoff, and it is routed downstream run-on drainage areas per historical drainage pattern. The site will be designed with drainage swales to capture the upstream flows and routes along the project site. All offsite drainage areas run-on is accounted for within the drainage analysis for mitigation measures.

Grading of the proposed development is designed to route all on-site generated runoff via street flow towards the modular wetland system inlets located at low points of the site. The proposed modular wetland systems are design the treat low flows generated from the proposed site per water quality management plan requirements. Treated stormwater is directed to the proposed pump station for outflow mitigation via culvert connection offsite. The modular wetland systems are equipped with an internal bypass for high flows to be routed offsite. Per City of Ontario review comment, the proposed development 100-year storm event mitigated peak flow should be limited to 80% of the existing conditions 100-year storm event peak flow. The pump station is designed to limit higher generated peak flow from proposed site, along with the proposed detention to provide storage meeting the mitigation requirement. All tributary areas' collected run-off will continue downstream from the drainage system following the planned master plan drainage pattern.

The proposed drainage condition of the site follows the general direction of the existing and master plan drainage conditions southwesterly towards the adjacent property's development. During a high storm event, the site is graded to sheet flow southwesterly which continues to outflow offsite in the direction of historical drainage conditions.

Refer to Hydrology Map in Appendix A for additional information.

V. Methodology

The project site's drainage was analyzed per the San Bernardino Hydrology Manual. The runoff tributary area through the proposed project site is separated to multiple subareas and analyzed with acreage, land-use, soil type, peak flow rate and time of concentration according to the Rational Method and Hydrograph Method as described in the Hydrology Manual. Advance Engineering Software (AES) was utilized for the Rational Method analysis to obtain the confluence runoff through the project site from the upstream tributary areas.

The existing and proposed conditions of the site were analyzed for peak flow rate and time of concentration for the 2-, 10-, 25- and 100-storm events to determine if detention and mitigation methods are required. As the proposed conditions were determined to generate a higher peak flow rate, proposed conditions hydrographs of the site were analyzed for peak flow rate mitigation for the 2- and 100-storm events to ensure proper drainage were provided.

VI. Design Assumption

1. The Advance Engineering Software (AES) Program was used to determine Peak run-off flow rate, time of concentration and run-off volume for subarea.
2. Precipitation Frequency Data was obtained through NOAA Atlas 14, Volume 6, Version 2 in Ontario, California referenced in Appendix A.
3. The site is in the soil classification of "A" per USDA Soil Map referenced in Appendix A.
4. Existing conditions onsite drainage areas are assumed as School/ Church and upstream offsite drainage area assumed as 3-4 dwellings per acres based existing conditions perviousness and San Bernardino Hydrology Manual.
5. Proposed conditions onsite drainage areas are assumed as Apartment based planning conditions perviousness and San Bernardino Hydrology Manual.
6. Proposed onsite inlets are design with a capacity of the 100-year storm per streetways flood protection requirement from San Bernardino Hydrology Manual.
7. Proposed storm drains will be designed to convey the 100-year storm per mitigated runoff conforming to the drainage requirement.
8. All habitable structures must demonstrate the 100-year storm flood protection requirement per San Bernardino Hydrology Manual.
9. Proposed peak flow mitigation will be governed by the existing conditions of the project site as historical drainage patterns are preserved.

VII. Hydrology Analysis

Per existing conditions, the project site drains to the adjacent church and routes through Princeton Street to enter the existing 42-inch public storm drain along Benson Avenue. Proposed grading is designed to maintain the outlet to preserve existing and master plan planning conditions. A summary of the project site's proposed conditions peak runoff values for the outlet is provided below:

Existing conditions drainage summary at outlet:

Existing Conditions Drainage Area	Area (ac)	Q_2 (cfs)	Q_{10} (cfs)	Q_{25} (cfs)	Q_{100} (cfs)
DMA-Offsite 1	0.22	0.32	0.63	0.80	1.09
DMA-Offsite 2	0.22	0.32	0.63	0.80	1.09
DMA-XA-1	0.65	0.93	1.86	2.36	3.23
DMA-XA-2	2.41	2.61	5.73	7.37	10.29
Total Onsite Flowrate	3.06	3.54	7.59	9.73	13.52
Total Confluence Peak Flowrate	3.50	3.79	8.32	10.70	14.94

Proposed conditions drainage summary at outlet:

Proposed Conditions Drainage Area	Area (ac)	Q_2 (cfs)	Q_{10} (cfs)	Q_{25} (cfs)	Q_{100} (cfs)
DMA-Offsite 1	0.22	0.32	0.63	0.80	1.09
DMA-Offsite 2	0.22	0.32	0.63	0.80	1.09
DMA-A-1	0.68	1.32	2.22	2.74	3.60
DMA-A-2	2.38	3.83	6.66	8.31	11.03
Total Onsite Flowrate	3.06	5.15	8.88	11.05	14.63
Total Confluence Peak Flowrate	3.50	5.42	9.64	12.06	16.11

Refer to Appendix B for additional information on AES analysis outputs.

Detention/ Routing Analysis

As the proposed conditions of the site generate a higher peak flowrate compared to existing conditions at the outlet of the site and the proposed development 100-year storm event mitigated peak flow should be limited to 80% of the existing conditions 100-year storm event peak flow per City of Ontario review comment; a detention system is proposed for hydrologic mitigation. The detention is designed with sufficient storage to retain the design storm event runoff volume while controlling outflow with a pump station and culvert to the design limits set per existing drainage conditions. Refer to summary of detention sizing below:

Detention summary of the project site:

Proposed Condition Drainage Area	Area (ac)	Proposed Detention Volume (cu-ft)
Total Drainage Management Area	3.50	180 lf of 60" pipe (3,684 cu-ft)

Drainage routing summary of the entire project site:

	Area (ac)	Q_2 (cfs)	Q_{100} (cfs)
Existing Conditions Confluence Peak Flowrate	3.50	3.79	14.94
Proposed Conditions Generated Runoff Peak Flowrate	3.50	5.15	16.11
Proposed Conditions Mitigated Outflow	3.50	3.50	11.80

Proposed routing conditions are designed to preserve the existing conditions as described within the report.

Refer to Appendix C for additional Storage Information and Detention Routing Calculations.

VIII. Hydraulics Analysis

Pipe Sizing

Pipe Sizing is analyzed using WSPG software to verify 100-year storm hydraulic grade line (HGL) based on the 100-year storm event peak flow rates provides 1 feet of freeboard below the buildings on the street water surface elevation. The onsite storm drain is established with the proposed routing depth elevation per routing analysis of the 100-year storm event to simulate the storm drain system detaining storm runoff during the 100-year storm event and outflowing.

WSPG analysis will be provided during final engineering.

Catch Basin Inlet Sizing

Catch Basin inlets are designed based on the 100-year storm event to conform with San Bernardino Hydrology Street travel ways and catch basin sump conditions capacity.

Additional inlet sizing analysis will be provided during final engineering.

100-Year Water Surface Elevation (WSE)

The elevations of the 100-year storm event water surface are analyzed at local low point to determine the proper flood protection of the buildings. Building finished floors near sump collection point are to be set above the 100-year storm event water surface elevation or proper overflow mitigation is provided that storm runoff continues downstream to ensure buildings are not susceptible to flooding as storm runoff are determined to be contained within the street.

WSE analysis will be provided during final engineering.

IX. Conclusion

The results from the hydrologic analysis demonstrate that the design proposed conditions of the site satisfies the City of Ontario design standards. Per existing and master plan drainage conditions, the project site drains to the public 42-inch storm drain along Benson Avenue downstream. Proposed grading is designed to maintain the outlet to preserve existing and master plan drainage conditions.

The proposed drainage condition of the site follows the general direction of the development planning southwesterly towards the adjacent property's development. During a high storm event, the site is graded to sheet flow which continues to outflow off-site in the direction of historical drainage conditions.

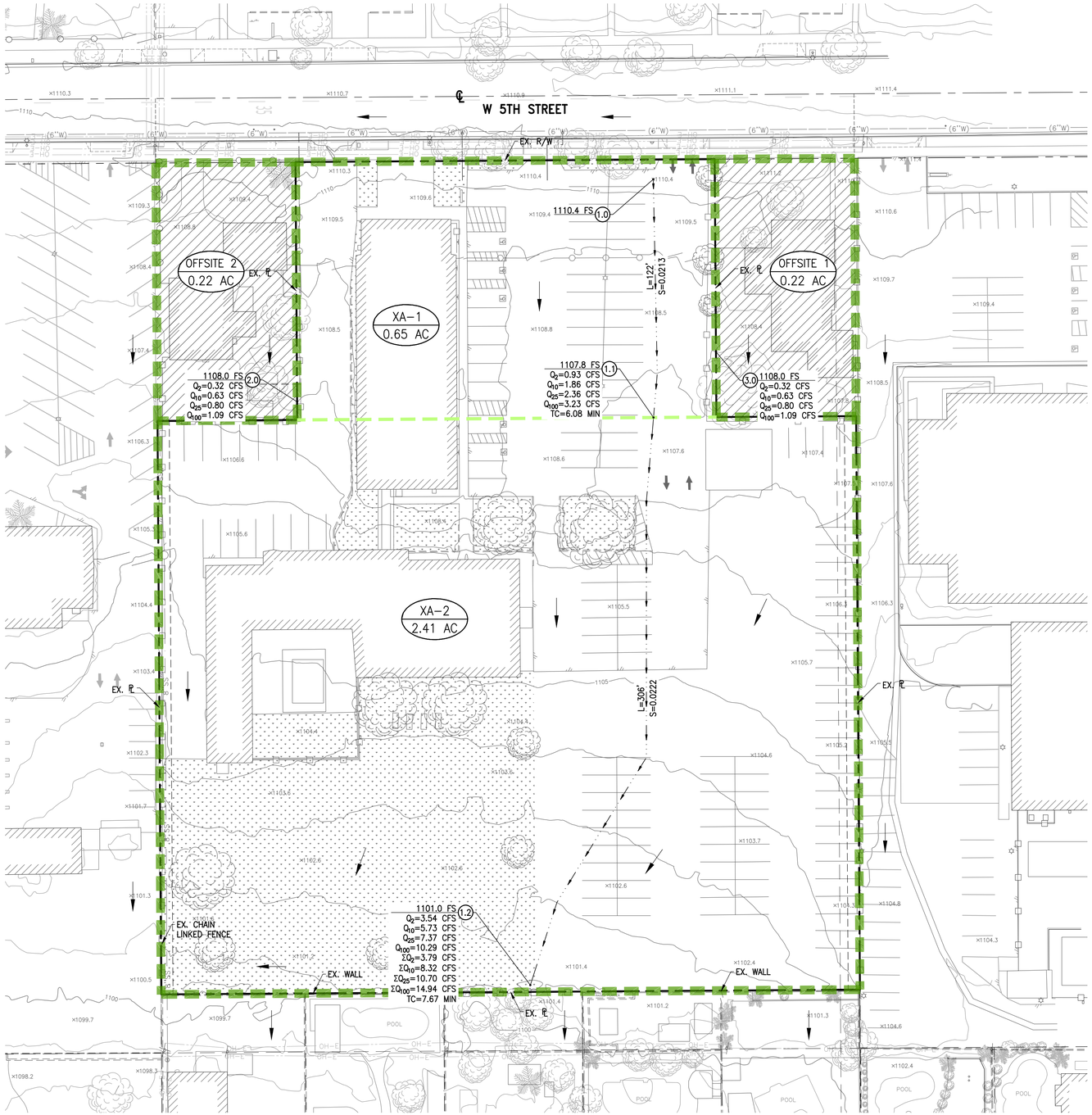
X. References

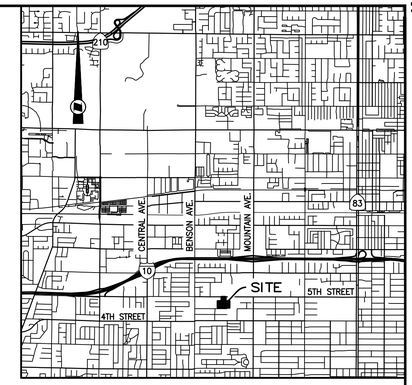
1. San Bernardino County Hydrology Manual, August 1986.
2. National Oceanic and Atmospheric Administration NOAA Precipitation Frequency Estimate, NOAA Atlas 14, Volume 6, Version 2.
3. United States Department of Agriculture. Natural Resources Conservation Service. Web Soil Survey. May 8, 2023.
4. National Flood Hazard Layer FIRMette. Federal Emergency Management Agency. Data refreshed October, 2020.
5. Advance Engineering Software (AES) Program 2014 was utilized to determine peak flow rates and time of concentrations.
6. Urban Drainage Design Manual. United States Department of Transportation. Revised August 2013.
7. Hydraulic Toolbox 5.0. Federal Highways Administration. Build: 21 Aug 2021
8. WSPGW - CIVILDesign Version 14.11, Water Surface Pressure Gradient for Pipe Analysis.
9. Master Plan of Drainage. City of Ontario. Prepared by Hunsaker & Associates. March 2012.

APPENDIX A

Maps and Exhibits

Existing Conditions Hydrology Map





VICINITY MAP

N.T.S.

LEGEND:

- DRAINAGE MANAGEMENT AREA (DMA) BOUNDARY
- DMA SUBAREA BOUNDARY
- SITE BOUNDARY
- EXISTING RIGHT OF WAY
- EXISTING LOT LINE
- EXISTING EASEMENT LINE
- SURFACE FLOW DIRECTION
- PIPE FLOW DIRECTION
- FLOW LINE
- OFFSITE AREA
- PERVIOUS AREA
- INITIAL SUBAREA NODE
- SPOT ELEVATION
- Q_{100}=X CFS — PEAK RUNOFF IN CUBIC FEET PER SECOND (CFS)
- ΣQ_{100}=X CFS — CONFLUENCE PEAK RUNOFF (CFS)
- TC=X MIN — TIME OF CONCENTRATION IN MINUTES (MIN) PROVIDED FOR 100–YR STORM EVENT

SCALE: 1" = 30'

0 15 30 60

REGISTERED PROFESSIONAL ENGINEER — DANE P. MCDOUALL — C 80705 — CIVIL — STATE OF CALIFORNIA

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CITY OF ONTARIO

PRELIMINARY EXISTING CONDITIONS HYDROLOGY MAP

1355 WEST 5TH STREET
ONTARIO, CALIFORNIA

SHEET
1 OF 1

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City of Ontario Master Plan Drainage

PROPOSED PROJECT SITE

I-10 SAN BERNARDINO FREEWAY

OFF-SITE FLOWS FROM CITY OF UPLAND
AREA = 223.3 AC
Q(100) = 394 CFS
Q(25) = 302 CFS
Q(10) = 239 CFS

OFF-SITE FLOWS FROM CITY OF UPLAND
AREA = 138.8 AC
Q(100) = 411 CFS
Q(24) = 324 CFS
Q(10) = 281 CFS

8th ST BASINS

CUCAMONGA CHANNEL

TO CITY OF MONTCLAIR SAN BERNARDINO AVE. STORM DRAIN

OFF-SITE Q100=4

WEST STATE STREET STORM DRAIN

EAST STATE ST STORM DRAIN

EAST 4TH STREET STORM DRAIN

EAST STATE ST. STORM DRAIN

WEST CUCAMONGA CHANNEL

FUTURE STORM DRAIN PER CITY OF CHINO MASTER PLAN (SYSTEM 28)

FRANCIS ST STORM DRAIN

ELY BASINS

EXISTING BASIN

EXISTING BASIN

CHINO STORM DRAIN

MAGNOLIA STORM DRAIN

SULTANA CYPRESS STORM DRAIN

CYPRESS CHANNEL

RIVERSIDE DR STORM DRAIN 1

GROVE AVE BASIN

RIVERSIDE DR STORM DRAIN 2

LOWER CUCAMONGA SPREADING GROUNDS

ONTARIO INTERNATIONAL

LEGEND

- COUNTY LIMITS
- CITY LIMITS
- X" / XXXX-X-X — PLANNED STORM DRAIN, SIZE AND LINE ID
- DRAINAGE AREA BOUNDARY
- DRAINAGE SYSTEM BOUNDARY
- MINOR DRAINAGE BOUNDARY
- (X) — EXISTING CITY STORM DRAIN AND SIZE (IN INCHES)
- EXISTING CITY OPEN CHANNEL
- EXISTING COUNTY OPEN CHANNEL
- (X) — EXISTING COUNTY STORM DRAIN AND SIZE (IN INCHES)
- EXISTING CALTRANS STORM DRAIN
- (X) / X" — EXISTING NEIGHBORING CITIES STORM DRAIN AND SIZE (IN INCHES)
- FUTURE NEIGHBORING CITIES STORM DRAIN AND SIZE
- EXISTING DETENTION BASIN
- X — DRAINAGE AREA #

DRAINAGE SYSTEM NAME — WLKR - XII - 3 — SYSTEM IDENTIFICATION
DRAINAGE AREA NUMBER — LINE NUMBER

X / X.X — AREA DESIGNATION / AREA ACREAGE (IN ACRES)

Q_{10} =861.0cfs
Q_{25} =981.1cfs
Q_{100}=1213.7cfs
833.9 AC — PEAK FLOW RATE / AREA (IN ACRES)
NODE 350 — NODE NO.

SCALE: 1" = 900'

900 450 0 900 2700
GRAPHIC SCALE 1"=900'

DATED: 7/10/2012 2:49 PM

MARCH 2012

REVISIONS

HUNSAKER & ASSOCIATES
IRVINE, INC.
PLANNING ▪ ENGINEERING ▪ SURVEYING
Three Hughes ▪ Irvine, CA 92618 ▪ PH: (949) 583-1010 ▪ FX: (949) 583-0759

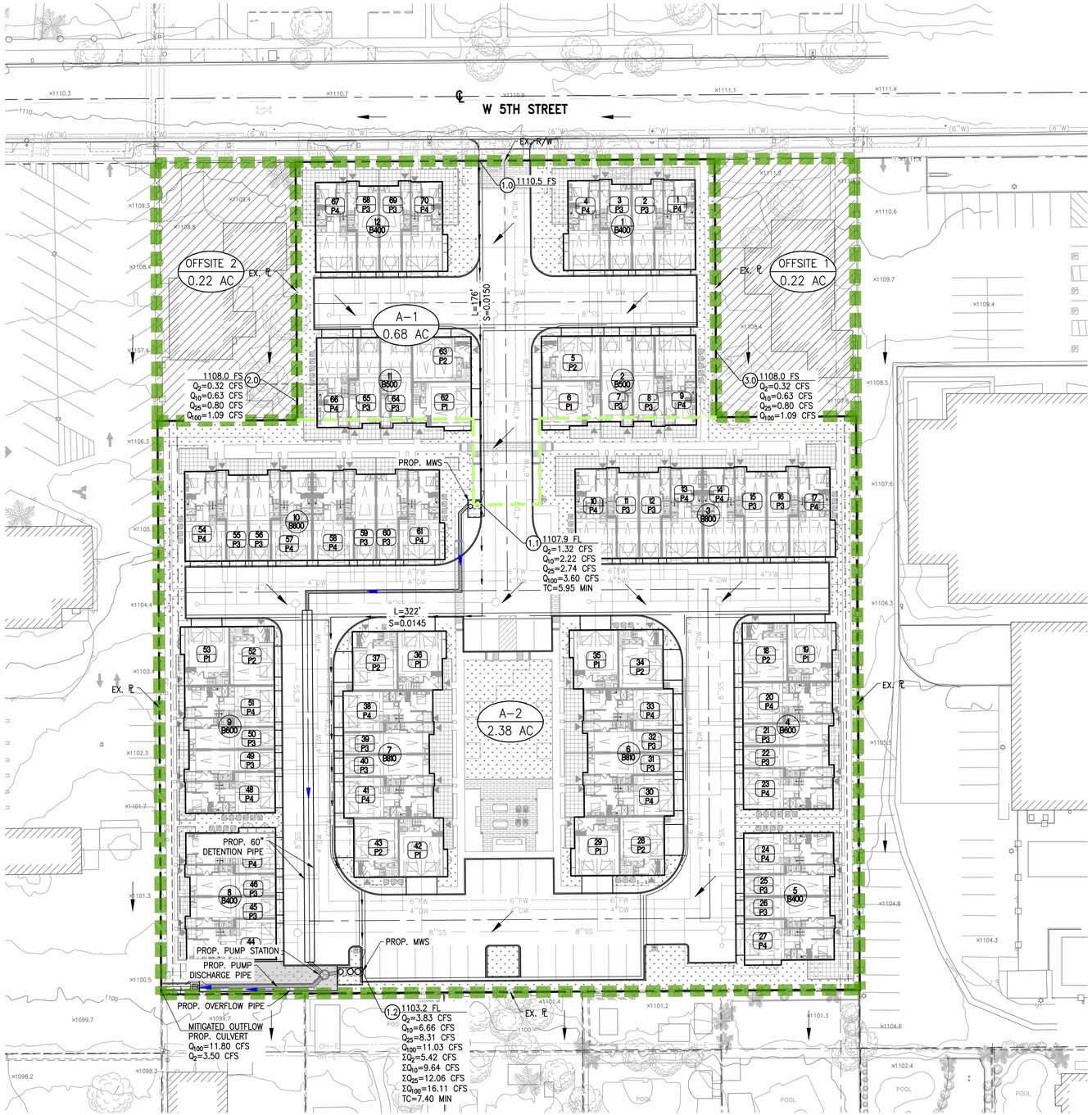
CITY OF ONTARIO
MASTER PLAN OF DRAINAGE

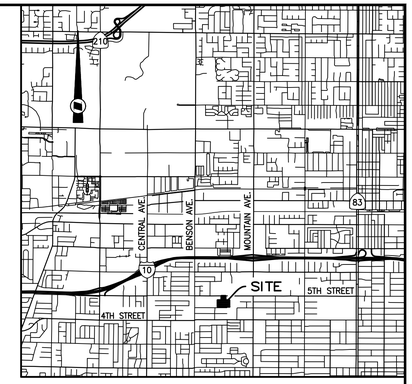
HYDROLOGY MAP
OLD MODEL COLONY-WEST

1 OF 3

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Proposed Conditions Hydrology Map





VICINITY MAP

N.T.S.

LEGEND:

- DRAINAGE MANAGEMENT AREA (DMA) BOUNDARY
- DMA SUBAREA BOUNDARY
- SITE BOUNDARY
- EXISTING RIGHT OF WAY
- EXISTING LOT LINE
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X FL
Q_{100}=X CFS
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TC=X MIN

SCALE: 1" = 30'

0 15 30 60

REGISTERED PROFESSIONAL ENGINEER
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CITY OF ONTARIO

PRELIMINARY PROPOSED CONDITIONS HYDROLOGY MAP

1355 WEST 5TH STREET
ONTARIO, CALIFORNIA

SHEET
1 OF 1

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XREFs: WRDM-0113-Arch.dwg

NOAA Precipitation Data

NOAA Atlas 14, Volume 6, Version 2
Location name: Ontario, California, USA*
Latitude: 34.0783°, Longitude: -117.6738°
Elevation: m/ft**
* source: ESRI Maps
** source: USGS

POINT PRECIPITATION FREQUENCY ESTIMATES

Sanja Perica, Sarah Dietz, Sarah Heim, Lillian Hiner, Kazungu Maitaria, Deborah Martin, Sandra Pavlovic, Ishani Roy, Carl Trypaluk, Dale Unruh, Fenglin Yan, Michael Yekta, Tan Zhao, Geoffrey Bonnin, Daniel Brewer, Li-Chuan Chen, Tye Parzybok, John Yarchoan

NOAA, National Weather Service, Silver Spring, Maryland

PF_tabular | PF_graphical | Maps_&_aerials

PF tabular

PDS-based point precipitation frequency estimates with 90% confidence intervals (in inches)[1]

Duration	Average recurrence interval (years)									
	1	2	5	10	25	50	100	200	500	1000
5-min	0.120 (0.100-0.146)	0.159 (0.132-0.192)	0.209 (0.174-0.254)	0.250 (0.206-0.307)	0.307 (0.244-0.389)	0.350 (0.273-0.455)	0.395 (0.300-0.527)	0.442 (0.326-0.606)	0.507 (0.358-0.726)	0.558 (0.380-0.828)
10-min	0.172 (0.144-0.209)	0.227 (0.189-0.276)	0.299 (0.249-0.364)	0.358 (0.295-0.440)	0.439 (0.350-0.558)	0.502 (0.391-0.652)	0.567 (0.430-0.755)	0.634 (0.467-0.869)	0.727 (0.513-1.04)	0.800 (0.544-1.19)
15-min	0.208 (0.174-0.252)	0.275 (0.229-0.333)	0.362 (0.301-0.440)	0.434 (0.357-0.532)	0.531 (0.423-0.675)	0.607 (0.473-0.788)	0.685 (0.520-0.913)	0.767 (0.565-1.05)	0.879 (0.620-1.26)	0.967 (0.658-1.44)
30-min	0.308 (0.257-0.373)	0.406 (0.338-0.492)	0.535 (0.445-0.651)	0.641 (0.528-0.786)	0.785 (0.625-0.997)	0.898 (0.699-1.17)	1.01 (0.769-1.35)	1.13 (0.835-1.55)	1.30 (0.916-1.86)	1.43 (0.973-2.12)
60-min	0.459 (0.383-0.556)	0.605 (0.504-0.734)	0.797 (0.662-0.969)	0.955 (0.786-1.17)	1.17 (0.931-1.49)	1.34 (1.04-1.74)	1.51 (1.15-2.01)	1.69 (1.24-2.32)	1.94 (1.37-2.77)	2.13 (1.45-3.16)
2-hr	0.693 (0.578-0.839)	0.906 (0.755-1.10)	1.18 (0.982-1.44)	1.41 (1.16-1.73)	1.71 (1.36-2.17)	1.94 (1.51-2.52)	2.18 (1.65-2.90)	2.42 (1.79-3.32)	2.76 (1.95-3.95)	3.02 (2.06-4.48)
3-hr	0.875 (0.730-1.06)	1.14 (0.950-1.38)	1.48 (1.23-1.80)	1.76 (1.45-2.16)	2.13 (1.70-2.71)	2.42 (1.88-3.14)	2.71 (2.06-3.61)	3.01 (2.22-4.12)	3.41 (2.41-4.88)	3.73 (2.54-5.53)
6-hr	1.25 (1.04-1.51)	1.62 (1.35-1.96)	2.10 (1.74-2.55)	2.49 (2.05-3.05)	3.01 (2.39-3.82)	3.40 (2.65-4.42)	3.81 (2.89-5.07)	4.22 (3.11-5.79)	4.78 (3.37-6.84)	5.22 (3.55-7.74)
12-hr	1.64 (1.37-1.99)	2.14 (1.78-2.59)	2.79 (2.32-3.39)	3.31 (2.73-4.06)	4.02 (3.20-5.10)	4.56 (3.55-5.92)	5.11 (3.88-6.81)	5.68 (4.19-7.79)	6.45 (4.55-9.24)	7.05 (4.80-10.5)
24-hr	2.22 (1.96-2.56)	2.92 (2.59-3.38)	3.85 (3.40-4.46)	4.61 (4.03-5.38)	5.64 (4.78-6.80)	6.44 (5.34-7.93)	7.26 (5.88-9.15)	8.11 (6.39-10.5)	9.26 (7.01-12.5)	10.2 (7.44-14.2)
2-day	2.73 (2.42-3.15)	3.67 (3.24-4.23)	4.91 (4.33-5.68)	5.94 (5.19-6.93)	7.36 (6.23-8.87)	8.47 (7.02-10.4)	9.62 (7.79-12.1)	10.8 (8.52-14.0)	12.5 (9.44-16.8)	13.8 (10.1-19.2)
3-day	2.97 (2.63-3.42)	4.04 (3.57-4.66)	5.47 (4.82-6.33)	6.66 (5.83-7.77)	8.32 (7.04-10.0)	9.62 (7.98-11.8)	11.0 (8.89-13.8)	12.4 (9.77-16.1)	14.4 (10.9-19.4)	16.0 (11.7-22.3)
4-day	3.20 (2.84-3.69)	4.40 (3.89-5.07)	6.00 (5.29-6.94)	7.33 (6.41-8.55)	9.19 (7.78-11.1)	10.7 (8.84-13.1)	12.2 (9.86-15.3)	13.8 (10.9-17.9)	16.0 (12.1-21.6)	17.8 (13.0-24.9)
7-day	3.66 (3.24-4.22)	5.09 (4.50-5.87)	7.00 (6.17-8.10)	8.60 (7.52-10.0)	10.8 (9.16-13.0)	12.6 (10.4-15.5)	14.4 (11.7-18.2)	16.3 (12.9-21.1)	19.0 (14.4-25.6)	21.1 (15.5-29.5)
10-day	3.97 (3.51-4.57)	5.55 (4.90-6.40)	7.67 (6.76-8.88)	9.44 (8.26-11.0)	11.9 (10.1-14.4)	13.9 (11.5-17.1)	15.9 (12.9-20.0)	18.0 (14.2-23.4)	21.0 (15.9-28.4)	23.4 (17.1-32.7)
20-day	4.76 (4.21-5.49)	6.72 (5.94-7.75)	9.37 (8.26-10.8)	11.6 (10.1-13.5)	14.7 (12.5-17.7)	17.2 (14.3-21.2)	19.8 (16.0-25.0)	22.6 (17.8-29.2)	26.4 (20.0-35.7)	29.5 (21.6-41.2)
30-day	5.60 (4.96-6.46)	7.89 (6.97-9.10)	11.0 (9.71-12.7)	13.7 (11.9-15.9)	17.4 (14.7-21.0)	20.4 (16.9-25.1)	23.5 (19.1-29.7)	26.9 (21.2-34.8)	31.6 (23.9-42.7)	35.5 (25.9-49.5)
45-day	6.71 (5.94-7.74)	9.35 (8.27-10.8)	13.0 (11.5-15.0)	16.1 (14.1-18.8)	20.6 (17.4-24.8)	24.2 (20.0-29.7)	28.0 (22.7-35.2)	32.1 (25.3-41.5)	37.9 (28.7-51.1)	42.7 (31.2-59.5)
60-day	7.82 (6.92-9.01)	10.7 (9.49-12.4)	14.8 (13.1-17.1)	18.3 (16.0-21.4)	23.4 (19.8-28.2)	27.5 (22.8-33.8)	31.9 (25.9-40.2)	36.7 (28.9-47.5)	43.6 (33.0-58.8)	49.2 (36.0-68.7)

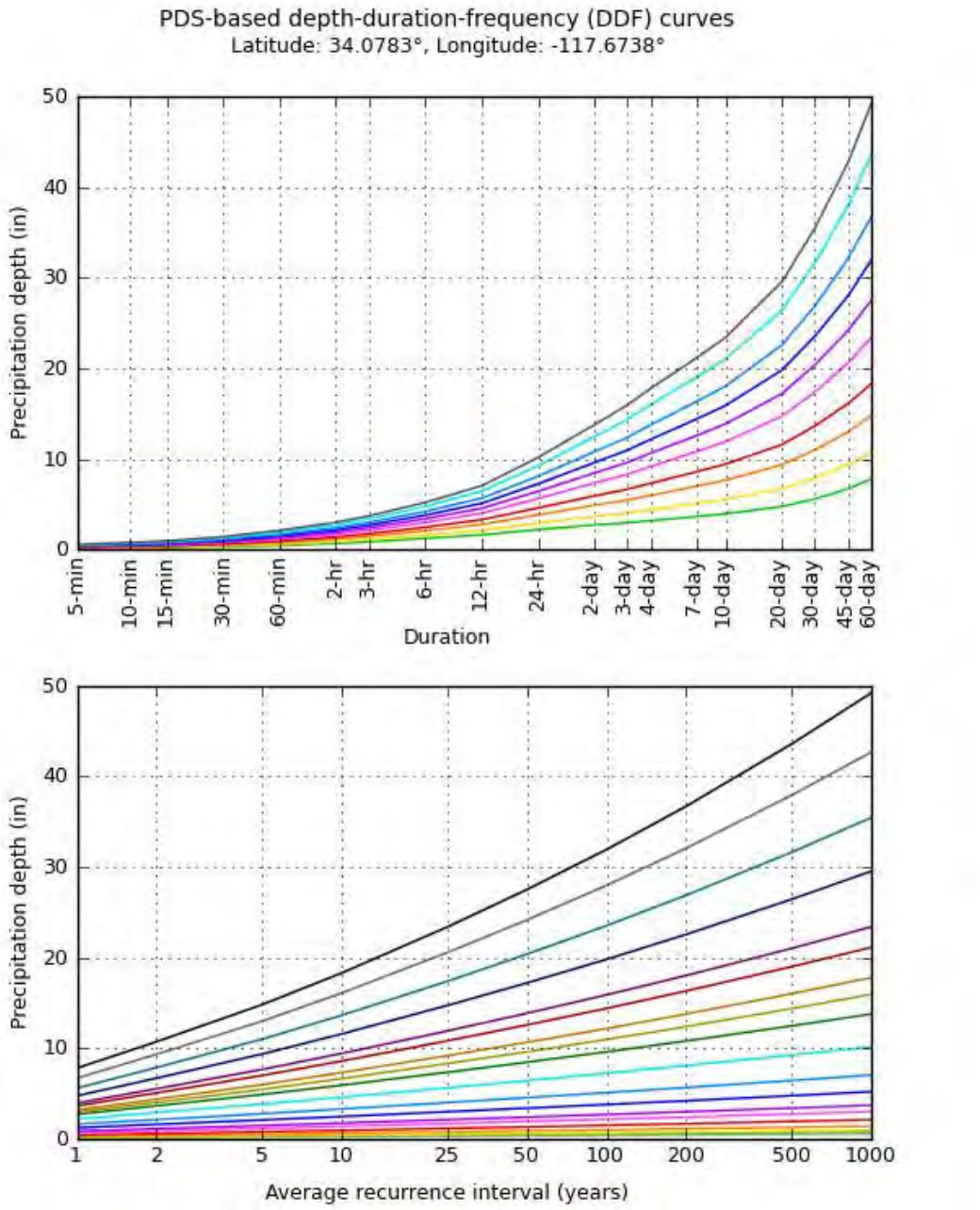
[1] Precipitation frequency (PF) estimates in this table are based on frequency analysis of partial duration series (PDS).

Numbers in parenthesis are PF estimates at lower and upper bounds of the 90% confidence interval. The probability that precipitation frequency estimates (for a given duration and average recurrence interval) will be greater than the upper bound (or less than the lower bound) is 5%. Estimates at upper bounds are not checked against probable maximum precipitation (PMP) estimates and may be higher than currently valid PMP values.

Please refer to NOAA Atlas 14 document for more information.

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PF graphical



NOAA Atlas 14, Volume 6, Version 2

Created (GMT): Mon May 1 22:50:10 2023

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Maps & aerials

Small scale terrain



Large scale terrain



Large scale map



Large scale aerial



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US Department of Commerce
National Oceanic and Atmospheric Administration
National Weather Service
National Water Center
1325 East West Highway
Silver Spring, MD 20910
Questions?: HDSC.Questions@noaa.gov

Disclaimer

USDA Soil Map



Map Scale: 1:998 if printed on A portrait (8.5" x 11") sheet.

N

Meters: 0 10 20 40 60

Feet: 0 45 90 180 270

Map projection: Web Mercator Corner coordinates: WGS84 Edge tics: UTM Zone 11N WGS84

MAP LEGEND

Area of Interest (AOI)
- Area of Interest (AOI)

Soils
- Soil Map Unit Polygons
- Soil Map Unit Lines
- Soil Map Unit Points

Special Point Features
- Blowout
- Borrow Pit
- Clay Spot
- Closed Depression
- Gravel Pit
- Gravelly Spot
- Landfill
- Lava Flow
- Marsh or swamp
- Mine or Quarry
- Miscellaneous Water
- Perennial Water
- Rock Outcrop
- Saline Spot
- Sandy Spot
- Severely Eroded Spot
- Sinkhole
- Slide or Slip
- Sodic Spot
- Spoil Area
- Stony Spot
- Very Stony Spot
- Wet Spot
- Other
- Special Line Features

Water Features
- Streams and Canals

Transportation
- Rails
- Interstate Highways
- US Routes
- Major Roads
- Local Roads

Background
- Aerial Photography

MAP INFORMATION

The soil surveys that comprise your AOI were mapped at 1:24,000.

Warning: Soil Map may not be valid at this scale.

Enlargement of maps beyond the scale of mapping can cause misunderstanding of the detail of mapping and accuracy of soil line placement. The maps do not show the small areas of contrasting soils that could have been shown at a more detailed scale.

Please rely on the bar scale on each map sheet for map measurements.

Source of Map: Natural Resources Conservation Service
Web Soil Survey URL:
Coordinate System: Web Mercator (EPSG:3857)

Maps from the Web Soil Survey are based on the Web Mercator projection, which preserves direction and shape but distorts distance and area. A projection that preserves area, such as the Albers equal-area conic projection, should be used if more accurate calculations of distance or area are required.

This product is generated from the USDA-NRCS certified data as of the version date(s) listed below.

Soil Survey Area: San Bernardino County Southwestern Part, California
Survey Area Data: Version 14, Sep 6, 2022

Soil map units are labeled (as space allows) for map scales 1:50,000 or larger.

Date(s) aerial images were photographed: Mar 17, 2022—Jun 12, 2022

The orthophoto or other base map on which the soil lines were compiled and digitized probably differs from the background imagery displayed on these maps. As a result, some minor shifting of map unit boundaries may be evident.

Map Unit Legend

Map Unit Symbol	Map Unit Name	Acres in AOI	Percent of AOI
TuB	Tujunga loamy sand, 0 to 5 percent slopes	5.0	100.0%
Totals for Area of Interest		**5.0**	**100.0%**

San Bernardino County Southwestern Part, California

TuB—Tujunga loamy sand, 0 to 5 percent slopes

Map Unit Setting

National map unit symbol: 2sx6y
Elevation: 650 to 3,110 feet
Mean annual precipitation: 10 to 25 inches
Mean annual air temperature: 62 to 65 degrees F
Frost-free period: 325 to 365 days
Farmland classification: Farmland of statewide importance

Map Unit Composition

Tujunga, loamy sand, and similar soils: 85 percent
Minor components: 15 percent
Estimates are based on observations, descriptions, and transects of the mapunit.

Description of Tujunga, Loamy Sand

Setting

Landform: Alluvial fans
Landform position (three-dimensional): Tread
Down-slope shape: Linear
Across-slope shape: Linear
Parent material: Alluvium derived from granite

Typical profile

A - 0 to 6 inches: loamy sand
C1 - 6 to 18 inches: loamy sand
C2 - 18 to 60 inches: loamy sand

Properties and qualities

Slope: 0 to 5 percent
Depth to restrictive feature: More than 80 inches
Drainage class: Somewhat excessively drained
Runoff class: Very low
Capacity of the most limiting layer to transmit water (Ksat): High to very high (5.95 to 19.98 in/hr)
Depth to water table: More than 80 inches
Frequency of flooding: Rare
Frequency of ponding: None
Available water supply, 0 to 60 inches: Low (about 4.2 inches)

Interpretive groups

Land capability classification (irrigated): None specified
Land capability classification (nonirrigated): 4e
Hydrologic Soil Group: A
Ecological site: R019XG912CA - Sandy Fan
Hydric soil rating: No

Minor Components

Tujunga, gravelly loamy sand
Percent of map unit: 10 percent
Landform: Alluvial fans
Landform position (three-dimensional): Tread
Down-slope shape: Linear
Across-slope shape: Linear
Hydric soil rating: No

Hanford, sandy loam
Percent of map unit: 5 percent
Landform: Alluvial fans
Landform position (three-dimensional): Tread
Down-slope shape: Linear
Across-slope shape: Linear
Hydric soil rating: No

Data Source Information

Soil Survey Area: San Bernardino County Southwestern Part, California
Survey Area Data: Version 14, Sep 6, 2022

FEMA Flood Map

National Flood Hazard Layer FIRMette

FEMA



Basemap: USGS National Map: Orthoimagery: Data refreshed October, 2020

Legend

SEE FIS REPORT FOR DETAILED LEGEND AND INDEX MAP FOR FIRM PANEL LAYOUT

SPECIAL FLOOD HAZARD AREAS
- Without Base Flood Elevation (BFE) *Zone A, V, A99*
- With BFE or Depth *Zone AE, AO, AH, VE, AR*
- Regulatory Floodway

OTHER AREAS OF FLOOD HAZARD
- 0.2% Annual Chance Flood Hazard, Areas of 1% annual chance flood with average depth less than one foot or with drainage areas of less than one square mile *Zone X*
- Future Conditions 1% Annual Chance Flood Hazard *Zone X*
- Area with Reduced Flood Risk due to Levee. See Notes. *Zone X*
- Area with Flood Risk due to Levee *Zone D*

OTHER AREAS
- NO SCREEN Area of Minimal Flood Hazard *Zone X*
- Effective LOMRs
- Area of Undetermined Flood Hazard *Zone D*

GENERAL STRUCTURES
- Channel, Culvert, or Storm Sewer
- Levee, Dike, or Floodwall

OTHER FEATURES
- 20.2 Cross Sections with 1% Annual Chance
- 17.5 Water Surface Elevation
- Coastal Transect
- Base Flood Elevation Line (BFE)
- Limit of Study
- Jurisdiction Boundary
- Coastal Transect Baseline
- Profile Baseline
- Hydrographic Feature

MAP PANELS
- Digital Data Available
- No Digital Data Available
- Unmapped

N

The pin displayed on the map is an approximate point selected by the user and does not represent an authoritative property location.

This map complies with FEMA's standards for the use of digital flood maps if it is not void as described below. The basemap shown complies with FEMA's basemap accuracy standards

The flood hazard information is derived directly from the authoritative NFHL web services provided by FEMA. This map was exported on 4/18/2023 at 4:30 PM and does not reflect changes or amendments subsequent to this date and time. The NFHL and effective information may change or become superseded by new data over time.

This map image is void if the one or more of the following map elements do not appear: basemap imagery, flood zone labels, legend, scale bar, map creation date, community identifiers, FIRM panel number, and FIRM effective date. Map images for unmapped and unmodernized areas cannot be used f regulatory purposes.

APPENDIX B

Hydrology Analysis

Exiting Conditions AES Rational Method Output

```
**************************************************************************
            RATIONAL METHOD HYDROLOGY COMPUTER PROGRAM PACKAGE
         (Reference: 1986 SAN BERNARDINO CO. HYDROLOGY CRITERION)
        (c) Copyright 1983-2014 Advanced Engineering Software (aes)
            Ver. 21.0  Release Date: 06/01/2014  License ID 1580

                          Analysis prepared by:
```

```
 ************************* DESCRIPTION OF STUDY *************************
* ONTARIO SUNRISE                                                      *
* 1355 WEST 5TH STREET                                                 *
* EXISTING Q2                                                          *
 ************************************************************************

  FILE NAME: WA13X2.DAT
  TIME/DATE OF STUDY: 18:21 09/26/2023
==========================================================================
  USER SPECIFIED HYDROLOGY AND HYDRAULIC MODEL INFORMATION:
==========================================================================
                    --*TIME-OF-CONCENTRATION MODEL*--

  USER SPECIFIED STORM EVENT(YEAR) =    2.00
  SPECIFIED MINIMUM PIPE SIZE(INCH) =  18.00
  SPECIFIED PERCENT OF GRADIENTS(DECIMAL) TO USE FOR FRICTION SLOPE = 0.95
  *USER-DEFINED LOGARITHMIC INTERPOLATION USED FOR RAINFALL*

  SLOPE OF INTENSITY DURATION CURVE(LOG(I;IN/HR) vs. LOG(Tc;MIN)) = 0.6000
  USER SPECIFIED 1-HOUR INTENSITY(INCH/HOUR) = 0.6050

  *ANTECEDENT MOISTURE CONDITION (AMC) I ASSUMED FOR RATIONAL METHOD*

  *USER-DEFINED STREET-SECTIONS FOR COUPLED PIPEFLOW AND STREETFLOW MODEL*
     HALF-  CROWN TO   STREET-CROSSFALL:   CURB  GUTTER-GEOMETRIES:  MANNING
     WIDTH  CROSSFALL  IN-  / OUT-/PARK-  HEIGHT  WIDTH  LIP   HIKE  FACTOR
NO.   (FT)     (FT)    SIDE / SIDE/ WAY    (FT)    (FT)  (FT)  (FT)    (n)
===  =====  =========  ================  ======  ===== ====== ===== =======
  1   30.0     20.0    0.018/0.018/0.020   0.67    2.00 0.0313 0.167 0.0150

  GLOBAL STREET FLOW-DEPTH CONSTRAINTS:
    1. Relative Flow-Depth =  0.00 FEET
       as (Maximum Allowable Street Flow Depth) - (Top-of-Curb)
    2. (Depth)*(Velocity) Constraint =  6.0 (FT*FT/S)
  *SIZE PIPE WITH A FLOW CAPACITY GREATER THAN
   OR EQUAL TO THE UPSTREAM TRIBUTARY PIPE.*
```

```
  *USER-SPECIFIED MINIMUM TOPOGRAPHIC SLOPE ADJUSTMENT NOT SELECTED

****************************************************************************
  FLOW PROCESS FROM NODE      1.00 TO NODE      1.10 IS CODE =  21
----------------------------------------------------------------------------
  >>>>>RATIONAL METHOD INITIAL SUBAREA ANALYSIS<<<<<
  >>USE TIME-OF-CONCENTRATION NOMOGRAPH FOR INITIAL SUBAREA<<
============================================================================
  INITIAL SUBAREA FLOW-LENGTH(FEET) =   122.00
  ELEVATION DATA: UPSTREAM(FEET) =   1110.40  DOWNSTREAM(FEET) =   1107.80

  Tc = K*[(LENGTH** 3.00)/(ELEVATION CHANGE)]**0.20
  SUBAREA ANALYSIS USED MINIMUM Tc(MIN.) =    6.077
  *   2 YEAR RAINFALL INTENSITY(INCH/HR) =  2.390
  SUBAREA Tc AND LOSS RATE DATA(AMC  I ):
   DEVELOPMENT TYPE/      SCS SOIL   AREA      Fp         Ap     SCS   Tc
       LAND USE            GROUP   (ACRES)  (INCH/HR)  (DECIMAL)  CN  (MIN.)
  SCHOOL                     A        0.65      1.33     0.600    17    6.08
  SUBAREA AVERAGE PERVIOUS LOSS RATE, Fp(INCH/HR) =  1.33
  SUBAREA AVERAGE PERVIOUS AREA FRACTION, Ap =  0.600
  SUBAREA RUNOFF(CFS) =      0.93
  TOTAL AREA(ACRES) =      0.65   PEAK FLOW RATE(CFS) =      0.93

****************************************************************************
  FLOW PROCESS FROM NODE      2.00 TO NODE      1.10 IS CODE =  81
----------------------------------------------------------------------------
  >>>>>ADDITION OF SUBAREA TO MAINLINE PEAK FLOW<<<<<
============================================================================
  MAINLINE Tc(MIN.) =    6.08
  *   2 YEAR RAINFALL INTENSITY(INCH/HR) =  2.390
  SUBAREA LOSS RATE DATA(AMC  I ):
   DEVELOPMENT TYPE/      SCS SOIL   AREA      Fp         Ap     SCS
       LAND USE            GROUP   (ACRES)  (INCH/HR)  (DECIMAL)  CN
  RESIDENTIAL
  "3-4 DWELLINGS/ACRE"       A        0.22      1.33     0.600    17
  SUBAREA AVERAGE PERVIOUS LOSS RATE, Fp(INCH/HR) =  1.33
  SUBAREA AVERAGE PERVIOUS AREA FRACTION, Ap =  0.600
  SUBAREA AREA(ACRES) =    0.22      SUBAREA RUNOFF(CFS) =    0.32
  EFFECTIVE AREA(ACRES) =      0.87   AREA-AVERAGED Fm(INCH/HR) =  0.80
  AREA-AVERAGED Fp(INCH/HR) =  1.33  AREA-AVERAGED Ap =  0.60
  TOTAL AREA(ACRES) =        0.9       PEAK FLOW RATE(CFS) =       1.25

****************************************************************************
  FLOW PROCESS FROM NODE      3.00 TO NODE      1.10 IS CODE =  81
----------------------------------------------------------------------------
  >>>>>ADDITION OF SUBAREA TO MAINLINE PEAK FLOW<<<<<
============================================================================
  MAINLINE Tc(MIN.) =    6.08
  *   2 YEAR RAINFALL INTENSITY(INCH/HR) =  2.390
  SUBAREA LOSS RATE DATA(AMC  I ):
```

```
   DEVELOPMENT TYPE/       SCS SOIL   AREA      Fp         Ap      SCS
       LAND USE             GROUP   (ACRES)  (INCH/HR)  (DECIMAL)  CN
  RESIDENTIAL
  "3-4 DWELLINGS/ACRE"       A        0.22      1.33     0.600    17
  SUBAREA AVERAGE PERVIOUS LOSS RATE, Fp(INCH/HR) =  1.33
  SUBAREA AVERAGE PERVIOUS AREA FRACTION, Ap =  0.600
  SUBAREA AREA(ACRES) =    0.22      SUBAREA RUNOFF(CFS) =    0.32
  EFFECTIVE AREA(ACRES) =      1.09   AREA-AVERAGED Fm(INCH/HR) =  0.80
  AREA-AVERAGED Fp(INCH/HR) =  1.33  AREA-AVERAGED Ap =  0.60
  TOTAL AREA(ACRES) =        1.1       PEAK FLOW RATE(CFS) =       1.56

****************************************************************************
  FLOW PROCESS FROM NODE      1.10 TO NODE      1.20 IS CODE =  52
----------------------------------------------------------------------------
  >>>>>COMPUTE NATURAL VALLEY CHANNEL FLOW<<<<<
  >>>>>TRAVELTIME THRU SUBAREA<<<<<
============================================================================
  ELEVATION DATA: UPSTREAM(FEET) =   1107.80  DOWNSTREAM(FEET) =   1101.00
  CHANNEL LENGTH THRU SUBAREA(FEET) =   306.00   CHANNEL SLOPE =  0.0222
  CHANNEL FLOW THRU SUBAREA(CFS) =       1.56
  FLOW VELOCITY(FEET/SEC) =   2.44 (PER LACFCD/RCFC&WCD HYDROLOGY MANUAL)
  TRAVEL TIME(MIN.) =   2.09   Tc(MIN.) =    8.17
  LONGEST FLOWPATH FROM NODE      1.00 TO NODE      1.20 =     428.00 FEET.

****************************************************************************
  FLOW PROCESS FROM NODE      1.20 TO NODE      1.20 IS CODE =  81
----------------------------------------------------------------------------
  >>>>>ADDITION OF SUBAREA TO MAINLINE PEAK FLOW<<<<<
============================================================================
  MAINLINE Tc(MIN.) =    8.17
  *   2 YEAR RAINFALL INTENSITY(INCH/HR) =  2.002
  SUBAREA LOSS RATE DATA(AMC  I ):
   DEVELOPMENT TYPE/       SCS SOIL   AREA      Fp         Ap      SCS
       LAND USE             GROUP   (ACRES)  (INCH/HR)  (DECIMAL)  CN
  SCHOOL                     A        2.41      1.33     0.600    17
  SUBAREA AVERAGE PERVIOUS LOSS RATE, Fp(INCH/HR) =  1.33
  SUBAREA AVERAGE PERVIOUS AREA FRACTION, Ap =  0.600
  SUBAREA AREA(ACRES) =    2.41      SUBAREA RUNOFF(CFS) =    2.61
  EFFECTIVE AREA(ACRES) =      3.50   AREA-AVERAGED Fm(INCH/HR) =  0.80
  AREA-AVERAGED Fp(INCH/HR) =  1.33  AREA-AVERAGED Ap =  0.60
  TOTAL AREA(ACRES) =        3.5       PEAK FLOW RATE(CFS) =       3.79
============================================================================
  END OF STUDY SUMMARY:
  TOTAL AREA(ACRES)     =        3.5  TC(MIN.) =      8.17
  EFFECTIVE AREA(ACRES) =      3.50  AREA-AVERAGED Fm(INCH/HR)=  0.80
  AREA-AVERAGED Fp(INCH/HR) =  1.33  AREA-AVERAGED Ap = 0.600
  PEAK FLOW RATE(CFS)   =       3.79
============================================================================
============================================================================
  END OF RATIONAL METHOD ANALYSIS
```

```
**************************************************************************
            RATIONAL METHOD HYDROLOGY COMPUTER PROGRAM PACKAGE
         (Reference: 1986 SAN BERNARDINO CO. HYDROLOGY CRITERION)
        (c) Copyright 1983-2014 Advanced Engineering Software (aes)
            Ver. 21.0  Release Date: 06/01/2014  License ID 1580

                          Analysis prepared by:
```

```
 ************************* DESCRIPTION OF STUDY *************************
* ONTARIO SUNRISE                                                      *
* 1355 WEST 5TH STREET                                                 *
* EXISTING Q10                                                         *
 ************************************************************************

  FILE NAME: WA13X10.DAT
  TIME/DATE OF STUDY: 16:06 09/01/2023
==========================================================================
  USER SPECIFIED HYDROLOGY AND HYDRAULIC MODEL INFORMATION:
==========================================================================
                    --*TIME-OF-CONCENTRATION MODEL*--

  USER SPECIFIED STORM EVENT(YEAR) =   10.00
  SPECIFIED MINIMUM PIPE SIZE(INCH) =  18.00
  SPECIFIED PERCENT OF GRADIENTS(DECIMAL) TO USE FOR FRICTION SLOPE = 0.95
  *USER-DEFINED LOGARITHMIC INTERPOLATION USED FOR RAINFALL*

  SLOPE OF INTENSITY DURATION CURVE(LOG(I;IN/HR) vs. LOG(Tc;MIN)) = 0.6000
  USER SPECIFIED 1-HOUR INTENSITY(INCH/HOUR) = 0.9550

  *ANTECEDENT MOISTURE CONDITION (AMC) II ASSUMED FOR RATIONAL METHOD*

  *USER-DEFINED STREET-SECTIONS FOR COUPLED PIPEFLOW AND STREETFLOW MODEL*
     HALF-  CROWN TO   STREET-CROSSFALL:   CURB  GUTTER-GEOMETRIES:  MANNING
     WIDTH  CROSSFALL  IN-  / OUT-/PARK-  HEIGHT  WIDTH  LIP   HIKE  FACTOR
NO.   (FT)     (FT)    SIDE / SIDE/ WAY    (FT)    (FT)  (FT)  (FT)    (n)
===  =====  =========  ================  ======  ===== ====== ===== =======
  1   30.0     20.0    0.018/0.018/0.020   0.67    2.00 0.0313 0.167 0.0150

  GLOBAL STREET FLOW-DEPTH CONSTRAINTS:
    1. Relative Flow-Depth =  0.00 FEET
       as (Maximum Allowable Street Flow Depth) - (Top-of-Curb)
    2. (Depth)*(Velocity) Constraint =  6.0 (FT*FT/S)
  *SIZE PIPE WITH A FLOW CAPACITY GREATER THAN
   OR EQUAL TO THE UPSTREAM TRIBUTARY PIPE.*
```

```
  *USER-SPECIFIED MINIMUM TOPOGRAPHIC SLOPE ADJUSTMENT NOT SELECTED

****************************************************************************
  FLOW PROCESS FROM NODE      1.00 TO NODE      1.10 IS CODE =  21
----------------------------------------------------------------------------
  >>>>>RATIONAL METHOD INITIAL SUBAREA ANALYSIS<<<<<
  >>USE TIME-OF-CONCENTRATION NOMOGRAPH FOR INITIAL SUBAREA<<
============================================================================
  INITIAL SUBAREA FLOW-LENGTH(FEET) =   122.00
  ELEVATION DATA: UPSTREAM(FEET) =   1110.40  DOWNSTREAM(FEET) =   1107.80

  Tc = K*[(LENGTH** 3.00)/(ELEVATION CHANGE)]**0.20
  SUBAREA ANALYSIS USED MINIMUM Tc(MIN.) =    6.077
  *  10 YEAR RAINFALL INTENSITY(INCH/HR) =  3.773
  SUBAREA Tc AND LOSS RATE DATA(AMC  II):
   DEVELOPMENT TYPE/      SCS SOIL   AREA      Fp         Ap     SCS   Tc
       LAND USE            GROUP   (ACRES)  (INCH/HR)  (DECIMAL)  CN  (MIN.)
  SCHOOL                     A        0.65      0.98     0.600    32    6.08
  SUBAREA AVERAGE PERVIOUS LOSS RATE, Fp(INCH/HR) =  0.97
  SUBAREA AVERAGE PERVIOUS AREA FRACTION, Ap =  0.600
  SUBAREA RUNOFF(CFS) =      1.86
  TOTAL AREA(ACRES) =      0.65   PEAK FLOW RATE(CFS) =      1.86

****************************************************************************
  FLOW PROCESS FROM NODE      2.00 TO NODE      1.10 IS CODE =  81
----------------------------------------------------------------------------
  >>>>>ADDITION OF SUBAREA TO MAINLINE PEAK FLOW<<<<<
============================================================================
  MAINLINE Tc(MIN.) =    6.08
  *  10 YEAR RAINFALL INTENSITY(INCH/HR) =  3.773
  SUBAREA LOSS RATE DATA(AMC  II):
   DEVELOPMENT TYPE/      SCS SOIL   AREA      Fp         Ap     SCS
       LAND USE            GROUP   (ACRES)  (INCH/HR)  (DECIMAL)  CN
  RESIDENTIAL
  "3-4 DWELLINGS/ACRE"       A        0.22      0.98     0.600    32
  SUBAREA AVERAGE PERVIOUS LOSS RATE, Fp(INCH/HR) =  0.98
  SUBAREA AVERAGE PERVIOUS AREA FRACTION, Ap =  0.600
  SUBAREA AREA(ACRES) =    0.22      SUBAREA RUNOFF(CFS) =    0.63
  EFFECTIVE AREA(ACRES) =      0.87   AREA-AVERAGED Fm(INCH/HR) =  0.58
  AREA-AVERAGED Fp(INCH/HR) =  0.97  AREA-AVERAGED Ap =  0.60
  TOTAL AREA(ACRES) =        0.9       PEAK FLOW RATE(CFS) =       2.50

****************************************************************************
  FLOW PROCESS FROM NODE      3.00 TO NODE      1.10 IS CODE =  81
----------------------------------------------------------------------------
  >>>>>ADDITION OF SUBAREA TO MAINLINE PEAK FLOW<<<<<
============================================================================
  MAINLINE Tc(MIN.) =    6.08
  *  10 YEAR RAINFALL INTENSITY(INCH/HR) =  3.773
  SUBAREA LOSS RATE DATA(AMC  II):
```

```
   DEVELOPMENT TYPE/       SCS SOIL   AREA      Fp         Ap      SCS
       LAND USE             GROUP   (ACRES)  (INCH/HR)  (DECIMAL)  CN
  RESIDENTIAL
  "3-4 DWELLINGS/ACRE"        A        0.22      0.98     0.600    32
  SUBAREA AVERAGE PERVIOUS LOSS RATE, Fp(INCH/HR) =  0.98
  SUBAREA AVERAGE PERVIOUS AREA FRACTION, Ap =  0.600
  SUBAREA AREA(ACRES) =    0.22      SUBAREA RUNOFF(CFS) =    0.63
  EFFECTIVE AREA(ACRES) =      1.09   AREA-AVERAGED Fm(INCH/HR) =  0.58
  AREA-AVERAGED Fp(INCH/HR) =  0.97  AREA-AVERAGED Ap =  0.60
  TOTAL AREA(ACRES) =        1.1       PEAK FLOW RATE(CFS) =       3.13

****************************************************************************
  FLOW PROCESS FROM NODE      1.10 TO NODE      1.20 IS CODE =  52
----------------------------------------------------------------------------
  >>>>>COMPUTE NATURAL VALLEY CHANNEL FLOW<<<<<
  >>>>>TRAVELTIME THRU SUBAREA<<<<<
============================================================================
  ELEVATION DATA: UPSTREAM(FEET) =   1107.80  DOWNSTREAM(FEET) =   1101.00
  CHANNEL LENGTH THRU SUBAREA(FEET) =   306.00   CHANNEL SLOPE =  0.0222
  CHANNEL FLOW THRU SUBAREA(CFS) =       3.13
  FLOW VELOCITY(FEET/SEC) =   2.82 (PER LACFCD/RCFC&WCD HYDROLOGY MANUAL)
  TRAVEL TIME(MIN.) =   1.81   Tc(MIN.) =    7.88
  LONGEST FLOWPATH FROM NODE      1.00 TO NODE      1.20 =     428.00 FEET.

****************************************************************************
  FLOW PROCESS FROM NODE      1.20 TO NODE      1.20 IS CODE =  81
----------------------------------------------------------------------------
  >>>>>ADDITION OF SUBAREA TO MAINLINE PEAK FLOW<<<<<
============================================================================
  MAINLINE Tc(MIN.) =    7.88
  *  10 YEAR RAINFALL INTENSITY(INCH/HR) =  3.228
  SUBAREA LOSS RATE DATA(AMC  II):
   DEVELOPMENT TYPE/       SCS SOIL   AREA      Fp         Ap      SCS
       LAND USE             GROUP   (ACRES)  (INCH/HR)  (DECIMAL)  CN
  SCHOOL                      A        2.41      0.98     0.600    32
  SUBAREA AVERAGE PERVIOUS LOSS RATE, Fp(INCH/HR) =  0.98
  SUBAREA AVERAGE PERVIOUS AREA FRACTION, Ap =  0.600
  SUBAREA AREA(ACRES) =    2.41      SUBAREA RUNOFF(CFS) =    5.73
  EFFECTIVE AREA(ACRES) =      3.50   AREA-AVERAGED Fm(INCH/HR) =  0.59
  AREA-AVERAGED Fp(INCH/HR) =  0.98  AREA-AVERAGED Ap =  0.60
  TOTAL AREA(ACRES) =        3.5       PEAK FLOW RATE(CFS) =       8.32
============================================================================
  END OF STUDY SUMMARY:
  TOTAL AREA(ACRES)     =        3.5  TC(MIN.) =      7.88
  EFFECTIVE AREA(ACRES) =      3.50  AREA-AVERAGED Fm(INCH/HR)=  0.59
  AREA-AVERAGED Fp(INCH/HR) =  0.98  AREA-AVERAGED Ap = 0.600
  PEAK FLOW RATE(CFS)   =       8.32
============================================================================
============================================================================
  END OF RATIONAL METHOD ANALYSIS
```

```
**************************************************************************
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                          Analysis prepared by:



 ************************* DESCRIPTION OF STUDY *************************
* ONTARIO SUNRISE                                                      *
* 1355 WEST 5TH STREET                                                 *
* EXISTING Q25                                                         *
 ************************************************************************

  FILE NAME: WA13X25.DAT
  TIME/DATE OF STUDY: 16:07 09/01/2023
==========================================================================
  USER SPECIFIED HYDROLOGY AND HYDRAULIC MODEL INFORMATION:
==========================================================================
                    --*TIME-OF-CONCENTRATION MODEL*--

  USER SPECIFIED STORM EVENT(YEAR) =   25.00
  SPECIFIED MINIMUM PIPE SIZE(INCH) =  18.00
  SPECIFIED PERCENT OF GRADIENTS(DECIMAL) TO USE FOR FRICTION SLOPE = 0.95
  *USER-DEFINED LOGARITHMIC INTERPOLATION USED FOR RAINFALL*

  SLOPE OF INTENSITY DURATION CURVE(LOG(I;IN/HR) vs. LOG(Tc;MIN)) = 0.6000
  USER SPECIFIED 1-HOUR INTENSITY(INCH/HOUR) = 1.1700

  *ANTECEDENT MOISTURE CONDITION (AMC) II ASSUMED FOR RATIONAL METHOD*

  *USER-DEFINED STREET-SECTIONS FOR COUPLED PIPEFLOW AND STREETFLOW MODEL*
     HALF-  CROWN TO   STREET-CROSSFALL:   CURB  GUTTER-GEOMETRIES:  MANNING
     WIDTH  CROSSFALL  IN-  / OUT-/PARK-  HEIGHT  WIDTH  LIP   HIKE  FACTOR
NO.   (FT)     (FT)    SIDE / SIDE/ WAY    (FT)    (FT)  (FT)  (FT)    (n)
===  =====  =========  =================  ======  ===== ====== ===== =======
  1   30.0     20.0    0.018/0.018/0.020   0.67    2.00 0.0313 0.167 0.0150

  GLOBAL STREET FLOW-DEPTH CONSTRAINTS:
    1. Relative Flow-Depth =  0.00 FEET
       as (Maximum Allowable Street Flow Depth) - (Top-of-Curb)
    2. (Depth)*(Velocity) Constraint =  6.0 (FT*FT/S)
  *SIZE PIPE WITH A FLOW CAPACITY GREATER THAN
   OR EQUAL TO THE UPSTREAM TRIBUTARY PIPE.*
```

```
  *USER-SPECIFIED MINIMUM TOPOGRAPHIC SLOPE ADJUSTMENT NOT SELECTED

****************************************************************************
  FLOW PROCESS FROM NODE      1.00 TO NODE      1.10 IS CODE =  21
----------------------------------------------------------------------------
  >>>>>RATIONAL METHOD INITIAL SUBAREA ANALYSIS<<<<<
  >>USE TIME-OF-CONCENTRATION NOMOGRAPH FOR INITIAL SUBAREA<<
============================================================================
  INITIAL SUBAREA FLOW-LENGTH(FEET) =   122.00
  ELEVATION DATA: UPSTREAM(FEET) =   1110.40  DOWNSTREAM(FEET) =   1107.80

  Tc = K*[(LENGTH** 3.00)/(ELEVATION CHANGE)]**0.20
  SUBAREA ANALYSIS USED MINIMUM Tc(MIN.) =    6.077
  *  25 YEAR RAINFALL INTENSITY(INCH/HR) =  4.622
  SUBAREA Tc AND LOSS RATE DATA(AMC  II):
   DEVELOPMENT TYPE/      SCS SOIL   AREA      Fp         Ap     SCS   Tc
       LAND USE            GROUP   (ACRES)  (INCH/HR)  (DECIMAL)  CN  (MIN.)
  SCHOOL                     A        0.65      0.98     0.600    32    6.08
  SUBAREA AVERAGE PERVIOUS LOSS RATE, Fp(INCH/HR) =  0.97
  SUBAREA AVERAGE PERVIOUS AREA FRACTION, Ap =  0.600
  SUBAREA RUNOFF(CFS) =      2.36
  TOTAL AREA(ACRES) =      0.65   PEAK FLOW RATE(CFS) =      2.36

****************************************************************************
  FLOW PROCESS FROM NODE      2.00 TO NODE      1.10 IS CODE =  81
----------------------------------------------------------------------------
  >>>>>ADDITION OF SUBAREA TO MAINLINE PEAK FLOW<<<<<
============================================================================
  MAINLINE Tc(MIN.) =    6.08
  *  25 YEAR RAINFALL INTENSITY(INCH/HR) =  4.622
  SUBAREA LOSS RATE DATA(AMC  II):
   DEVELOPMENT TYPE/      SCS SOIL   AREA      Fp         Ap     SCS
       LAND USE            GROUP   (ACRES)  (INCH/HR)  (DECIMAL)  CN
  RESIDENTIAL
  "3-4 DWELLINGS/ACRE"       A        0.22      0.98     0.600    32
  SUBAREA AVERAGE PERVIOUS LOSS RATE, Fp(INCH/HR) =  0.98
  SUBAREA AVERAGE PERVIOUS AREA FRACTION, Ap =  0.600
  SUBAREA AREA(ACRES) =    0.22      SUBAREA RUNOFF(CFS) =    0.80
  EFFECTIVE AREA(ACRES) =      0.87   AREA-AVERAGED Fm(INCH/HR) =  0.58
  AREA-AVERAGED Fp(INCH/HR) =  0.97  AREA-AVERAGED Ap =  0.60
  TOTAL AREA(ACRES) =        0.9       PEAK FLOW RATE(CFS) =       3.16

****************************************************************************
  FLOW PROCESS FROM NODE      3.00 TO NODE      1.10 IS CODE =  81
----------------------------------------------------------------------------
  >>>>>ADDITION OF SUBAREA TO MAINLINE PEAK FLOW<<<<<
============================================================================
  MAINLINE Tc(MIN.) =    6.08
  *  25 YEAR RAINFALL INTENSITY(INCH/HR) =  4.622
  SUBAREA LOSS RATE DATA(AMC  II):
```

```
   DEVELOPMENT TYPE/       SCS SOIL   AREA      Fp         Ap      SCS
       LAND USE             GROUP   (ACRES)  (INCH/HR)  (DECIMAL)  CN
  RESIDENTIAL
  "3-4 DWELLINGS/ACRE"       A        0.22      0.98     0.600    32
  SUBAREA AVERAGE PERVIOUS LOSS RATE, Fp(INCH/HR) =  0.98
  SUBAREA AVERAGE PERVIOUS AREA FRACTION, Ap =  0.600
  SUBAREA AREA(ACRES) =    0.22      SUBAREA RUNOFF(CFS) =    0.80
  EFFECTIVE AREA(ACRES) =      1.09   AREA-AVERAGED Fm(INCH/HR) =  0.58
  AREA-AVERAGED Fp(INCH/HR) =  0.97  AREA-AVERAGED Ap =  0.60
  TOTAL AREA(ACRES) =        1.1       PEAK FLOW RATE(CFS) =       3.96

****************************************************************************
  FLOW PROCESS FROM NODE      1.10 TO NODE      1.20 IS CODE =  52
----------------------------------------------------------------------------
  >>>>>COMPUTE NATURAL VALLEY CHANNEL FLOW<<<<<
  >>>>>TRAVELTIME THRU SUBAREA<<<<<
============================================================================
  ELEVATION DATA: UPSTREAM(FEET) =   1107.80  DOWNSTREAM(FEET) =   1101.00
  CHANNEL LENGTH THRU SUBAREA(FEET) =   306.00   CHANNEL SLOPE =  0.0222
  CHANNEL FLOW THRU SUBAREA(CFS) =       3.96
  FLOW VELOCITY(FEET/SEC) =   2.98 (PER LACFCD/RCFC&WCD HYDROLOGY MANUAL)
  TRAVEL TIME(MIN.) =   1.71   Tc(MIN.) =    7.79
  LONGEST FLOWPATH FROM NODE      1.00 TO NODE      1.20 =     428.00 FEET.

****************************************************************************
  FLOW PROCESS FROM NODE      1.20 TO NODE      1.20 IS CODE =  81
----------------------------------------------------------------------------
  >>>>>ADDITION OF SUBAREA TO MAINLINE PEAK FLOW<<<<<
============================================================================
  MAINLINE Tc(MIN.) =    7.79
  *  25 YEAR RAINFALL INTENSITY(INCH/HR) =  3.983
  SUBAREA LOSS RATE DATA(AMC  II):
   DEVELOPMENT TYPE/       SCS SOIL   AREA      Fp         Ap      SCS
       LAND USE             GROUP   (ACRES)  (INCH/HR)  (DECIMAL)  CN
  SCHOOL                     A        2.41      0.98     0.600    32
  SUBAREA AVERAGE PERVIOUS LOSS RATE, Fp(INCH/HR) =  0.98
  SUBAREA AVERAGE PERVIOUS AREA FRACTION, Ap =  0.600
  SUBAREA AREA(ACRES) =    2.41      SUBAREA RUNOFF(CFS) =    7.37
  EFFECTIVE AREA(ACRES) =      3.50   AREA-AVERAGED Fm(INCH/HR) =  0.59
  AREA-AVERAGED Fp(INCH/HR) =  0.98  AREA-AVERAGED Ap =  0.60
  TOTAL AREA(ACRES) =        3.5       PEAK FLOW RATE(CFS) =      10.70
============================================================================
  END OF STUDY SUMMARY:
  TOTAL AREA(ACRES)     =        3.5  TC(MIN.) =      7.79
  EFFECTIVE AREA(ACRES) =      3.50  AREA-AVERAGED Fm(INCH/HR)=  0.59
  AREA-AVERAGED Fp(INCH/HR) =  0.98  AREA-AVERAGED Ap = 0.600
  PEAK FLOW RATE(CFS)   =      10.70
============================================================================
============================================================================
  END OF RATIONAL METHOD ANALYSIS
```

```
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                          Analysis prepared by:
```

```
 ************************* DESCRIPTION OF STUDY *************************
* ONTARIO SUNRISE                                                      *
* 1355 WEST 5TH STREET                                                 *
* EXISTING Q100                                                        *
 ************************************************************************

  FILE NAME: WA13X100.DAT
  TIME/DATE OF STUDY: 16:04 09/01/2023
==========================================================================
  USER SPECIFIED HYDROLOGY AND HYDRAULIC MODEL INFORMATION:
==========================================================================
                    --*TIME-OF-CONCENTRATION MODEL*--

  USER SPECIFIED STORM EVENT(YEAR) =  100.00
  SPECIFIED MINIMUM PIPE SIZE(INCH) =  18.00
  SPECIFIED PERCENT OF GRADIENTS(DECIMAL) TO USE FOR FRICTION SLOPE = 0.95
  *USER-DEFINED LOGARITHMIC INTERPOLATION USED FOR RAINFALL*

  SLOPE OF INTENSITY DURATION CURVE(LOG(I;IN/HR) vs. LOG(Tc;MIN)) = 0.6000
  USER SPECIFIED 1-HOUR INTENSITY(INCH/HOUR) = 1.5100

  *ANTECEDENT MOISTURE CONDITION (AMC) III ASSUMED FOR RATIONAL METHOD*

  *USER-DEFINED STREET-SECTIONS FOR COUPLED PIPEFLOW AND STREETFLOW MODEL*
     HALF-  CROWN TO   STREET-CROSSFALL:   CURB  GUTTER-GEOMETRIES:  MANNING
     WIDTH  CROSSFALL  IN-  / OUT-/PARK-  HEIGHT  WIDTH  LIP   HIKE  FACTOR
NO.   (FT)     (FT)    SIDE / SIDE/ WAY    (FT)    (FT)  (FT)  (FT)    (n)
===  =====  =========  =================  ======  ===== ====== ===== =======
  1   30.0     20.0    0.018/0.018/0.020   0.67    2.00 0.0313 0.167 0.0150

  GLOBAL STREET FLOW-DEPTH CONSTRAINTS:
    1. Relative Flow-Depth =  0.00 FEET
       as (Maximum Allowable Street Flow Depth) - (Top-of-Curb)
    2. (Depth)*(Velocity) Constraint =  6.0 (FT*FT/S)
  *SIZE PIPE WITH A FLOW CAPACITY GREATER THAN
   OR EQUAL TO THE UPSTREAM TRIBUTARY PIPE.*
```

```
  *USER-SPECIFIED MINIMUM TOPOGRAPHIC SLOPE ADJUSTMENT NOT SELECTED

****************************************************************************
  FLOW PROCESS FROM NODE      1.00 TO NODE      1.10 IS CODE =  21
----------------------------------------------------------------------------
  >>>>>RATIONAL METHOD INITIAL SUBAREA ANALYSIS<<<<<
  >>USE TIME-OF-CONCENTRATION NOMOGRAPH FOR INITIAL SUBAREA<<
============================================================================
  INITIAL SUBAREA FLOW-LENGTH(FEET) =   122.00
  ELEVATION DATA: UPSTREAM(FEET) =   1110.40  DOWNSTREAM(FEET) =   1107.80

  Tc = K*[(LENGTH** 3.00)/(ELEVATION CHANGE)]**0.20
  SUBAREA ANALYSIS USED MINIMUM Tc(MIN.) =    6.077
  * 100 YEAR RAINFALL INTENSITY(INCH/HR) =  5.965
  SUBAREA Tc AND LOSS RATE DATA(AMC III):
   DEVELOPMENT TYPE/      SCS SOIL   AREA      Fp         Ap     SCS   Tc
       LAND USE            GROUP   (ACRES)  (INCH/HR)  (DECIMAL)  CN  (MIN.)
  SCHOOL                     A        0.65      0.74     0.600    52    6.08
  SUBAREA AVERAGE PERVIOUS LOSS RATE, Fp(INCH/HR) =  0.74
  SUBAREA AVERAGE PERVIOUS AREA FRACTION, Ap =  0.600
  SUBAREA RUNOFF(CFS) =      3.23
  TOTAL AREA(ACRES) =      0.65   PEAK FLOW RATE(CFS) =      3.23

****************************************************************************
  FLOW PROCESS FROM NODE      2.00 TO NODE      1.10 IS CODE =  81
----------------------------------------------------------------------------
  >>>>>ADDITION OF SUBAREA TO MAINLINE PEAK FLOW<<<<<
============================================================================
  MAINLINE Tc(MIN.) =    6.08
  * 100 YEAR RAINFALL INTENSITY(INCH/HR) =  5.965
  SUBAREA LOSS RATE DATA(AMC III):
   DEVELOPMENT TYPE/      SCS SOIL   AREA      Fp         Ap     SCS
       LAND USE            GROUP   (ACRES)  (INCH/HR)  (DECIMAL)  CN
  RESIDENTIAL
  "3-4 DWELLINGS/ACRE"       A        0.22      0.74     0.600    52
  SUBAREA AVERAGE PERVIOUS LOSS RATE, Fp(INCH/HR) =  0.74
  SUBAREA AVERAGE PERVIOUS AREA FRACTION, Ap =  0.600
  SUBAREA AREA(ACRES) =    0.22      SUBAREA RUNOFF(CFS) =    1.09
  EFFECTIVE AREA(ACRES) =      0.87   AREA-AVERAGED Fm(INCH/HR) =  0.45
  AREA-AVERAGED Fp(INCH/HR) =  0.74  AREA-AVERAGED Ap =  0.60
  TOTAL AREA(ACRES) =        0.9       PEAK FLOW RATE(CFS) =       4.32

****************************************************************************
  FLOW PROCESS FROM NODE      3.00 TO NODE      1.10 IS CODE =  81
----------------------------------------------------------------------------
  >>>>>ADDITION OF SUBAREA TO MAINLINE PEAK FLOW<<<<<
============================================================================
  MAINLINE Tc(MIN.) =    6.08
  * 100 YEAR RAINFALL INTENSITY(INCH/HR) =  5.965
  SUBAREA LOSS RATE DATA(AMC III):
```

```
   DEVELOPMENT TYPE/       SCS SOIL   AREA      Fp         Ap      SCS
       LAND USE             GROUP   (ACRES)  (INCH/HR)  (DECIMAL)  CN
  RESIDENTIAL
  "3-4 DWELLINGS/ACRE"        A        0.22      0.74     0.600    52
  SUBAREA AVERAGE PERVIOUS LOSS RATE, Fp(INCH/HR) =  0.74
  SUBAREA AVERAGE PERVIOUS AREA FRACTION, Ap =  0.600
  SUBAREA AREA(ACRES) =    0.22      SUBAREA RUNOFF(CFS) =    1.09
  EFFECTIVE AREA(ACRES) =      1.09   AREA-AVERAGED Fm(INCH/HR) =  0.45
  AREA-AVERAGED Fp(INCH/HR) =  0.74  AREA-AVERAGED Ap =  0.60
  TOTAL AREA(ACRES) =        1.1       PEAK FLOW RATE(CFS) =       5.42

****************************************************************************
  FLOW PROCESS FROM NODE      1.10 TO NODE      1.20 IS CODE =  52
----------------------------------------------------------------------------
  >>>>>COMPUTE NATURAL VALLEY CHANNEL FLOW<<<<<
  >>>>>TRAVELTIME THRU SUBAREA<<<<<
============================================================================
  ELEVATION DATA: UPSTREAM(FEET) =   1107.80  DOWNSTREAM(FEET) =   1101.00
  CHANNEL LENGTH THRU SUBAREA(FEET) =   306.00   CHANNEL SLOPE =  0.0222
  CHANNEL FLOW THRU SUBAREA(CFS) =       5.42
  FLOW VELOCITY(FEET/SEC) =   3.20 (PER LACFCD/RCFC&WCD HYDROLOGY MANUAL)
  TRAVEL TIME(MIN.) =   1.59   Tc(MIN.) =    7.67
  LONGEST FLOWPATH FROM NODE      1.00 TO NODE      1.20 =     428.00 FEET.

****************************************************************************
  FLOW PROCESS FROM NODE      1.20 TO NODE      1.20 IS CODE =  81
----------------------------------------------------------------------------
  >>>>>ADDITION OF SUBAREA TO MAINLINE PEAK FLOW<<<<<
============================================================================
  MAINLINE Tc(MIN.) =    7.67
  * 100 YEAR RAINFALL INTENSITY(INCH/HR) =  5.188
  SUBAREA LOSS RATE DATA(AMC III):
   DEVELOPMENT TYPE/       SCS SOIL   AREA      Fp         Ap      SCS
       LAND USE             GROUP   (ACRES)  (INCH/HR)  (DECIMAL)  CN
  SCHOOL                      A        2.41      0.74     0.600    52
  SUBAREA AVERAGE PERVIOUS LOSS RATE, Fp(INCH/HR) =  0.74
  SUBAREA AVERAGE PERVIOUS AREA FRACTION, Ap =  0.600
  SUBAREA AREA(ACRES) =    2.41      SUBAREA RUNOFF(CFS) =   10.29
  EFFECTIVE AREA(ACRES) =      3.50   AREA-AVERAGED Fm(INCH/HR) =  0.45
  AREA-AVERAGED Fp(INCH/HR) =  0.74  AREA-AVERAGED Ap =  0.60
  TOTAL AREA(ACRES) =        3.5       PEAK FLOW RATE(CFS) =      14.94
============================================================================
  END OF STUDY SUMMARY:
  TOTAL AREA(ACRES)     =        3.5  TC(MIN.) =      7.67
  EFFECTIVE AREA(ACRES) =      3.50  AREA-AVERAGED Fm(INCH/HR)=  0.45
  AREA-AVERAGED Fp(INCH/HR) =  0.74  AREA-AVERAGED Ap = 0.600
  PEAK FLOW RATE(CFS)   =      14.94
============================================================================
============================================================================
  END OF RATIONAL METHOD ANALYSIS
```

Proposed Conditions AES Rational Method Output

```
**************************************************************************
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                          Analysis prepared by:
```

```
 ************************* DESCRIPTION OF STUDY *************************
* ONTARIO SUNRISE                                                      *
* 1355 WEST 5TH STREET                                                 *
* PROPOSED Q2                                                          *
 ************************************************************************

  FILE NAME: WA13P2.DAT
  TIME/DATE OF STUDY: 18:22 09/26/2023
==========================================================================
  USER SPECIFIED HYDROLOGY AND HYDRAULIC MODEL INFORMATION:
==========================================================================
                    --*TIME-OF-CONCENTRATION MODEL*--

  USER SPECIFIED STORM EVENT(YEAR) =    2.00
  SPECIFIED MINIMUM PIPE SIZE(INCH) =  18.00
  SPECIFIED PERCENT OF GRADIENTS(DECIMAL) TO USE FOR FRICTION SLOPE = 0.95
  *USER-DEFINED LOGARITHMIC INTERPOLATION USED FOR RAINFALL*

  SLOPE OF INTENSITY DURATION CURVE(LOG(I;IN/HR) vs. LOG(Tc;MIN)) = 0.6000
  USER SPECIFIED 1-HOUR INTENSITY(INCH/HOUR) = 0.6050

  *ANTECEDENT MOISTURE CONDITION (AMC) I ASSUMED FOR RATIONAL METHOD*

  *USER-DEFINED STREET-SECTIONS FOR COUPLED PIPEFLOW AND STREETFLOW MODEL*
     HALF-  CROWN TO   STREET-CROSSFALL:   CURB  GUTTER-GEOMETRIES:  MANNING
     WIDTH  CROSSFALL  IN-  / OUT-/PARK-  HEIGHT  WIDTH  LIP   HIKE  FACTOR
NO.   (FT)     (FT)    SIDE / SIDE/ WAY    (FT)    (FT)  (FT)  (FT)    (n)
===  =====  =========  ================  ======  ===== ====== ===== =======
  1   30.0     20.0    0.018/0.018/0.020   0.67    2.00 0.0313 0.167 0.0150

  GLOBAL STREET FLOW-DEPTH CONSTRAINTS:
    1. Relative Flow-Depth =  0.00 FEET
       as (Maximum Allowable Street Flow Depth) - (Top-of-Curb)
    2. (Depth)*(Velocity) Constraint =  6.0 (FT*FT/S)
  *SIZE PIPE WITH A FLOW CAPACITY GREATER THAN
   OR EQUAL TO THE UPSTREAM TRIBUTARY PIPE.*
```

```
  *USER-SPECIFIED MINIMUM TOPOGRAPHIC SLOPE ADJUSTMENT NOT SELECTED

****************************************************************************
  FLOW PROCESS FROM NODE      1.00 TO NODE      1.10 IS CODE =  21
----------------------------------------------------------------------------
  >>>>>RATIONAL METHOD INITIAL SUBAREA ANALYSIS<<<<<
  >>USE TIME-OF-CONCENTRATION NOMOGRAPH FOR INITIAL SUBAREA<<
============================================================================
  INITIAL SUBAREA FLOW-LENGTH(FEET) =   176.00
  ELEVATION DATA: UPSTREAM(FEET) =   1110.50  DOWNSTREAM(FEET) =   1107.90

  Tc = K*[(LENGTH** 3.00)/(ELEVATION CHANGE)]**0.20
  SUBAREA ANALYSIS USED MINIMUM Tc(MIN.) =    5.955
  *   2 YEAR RAINFALL INTENSITY(INCH/HR) =  2.420
  SUBAREA Tc AND LOSS RATE DATA(AMC  I ):
   DEVELOPMENT TYPE/      SCS SOIL   AREA      Fp         Ap     SCS   Tc
       LAND USE            GROUP   (ACRES)  (INCH/HR)  (DECIMAL)  CN  (MIN.)
  APARTMENTS                 A        0.68      1.33     0.200    17    5.95
  SUBAREA AVERAGE PERVIOUS LOSS RATE, Fp(INCH/HR) =  1.33
  SUBAREA AVERAGE PERVIOUS AREA FRACTION, Ap =  0.200
  SUBAREA RUNOFF(CFS) =      1.32
  TOTAL AREA(ACRES) =      0.68   PEAK FLOW RATE(CFS) =      1.32

****************************************************************************
  FLOW PROCESS FROM NODE      2.00 TO NODE      1.10 IS CODE =  81
----------------------------------------------------------------------------
  >>>>>ADDITION OF SUBAREA TO MAINLINE PEAK FLOW<<<<<
============================================================================
  MAINLINE Tc(MIN.) =    5.95
  *   2 YEAR RAINFALL INTENSITY(INCH/HR) =  2.420
  SUBAREA LOSS RATE DATA(AMC  I ):
   DEVELOPMENT TYPE/      SCS SOIL   AREA      Fp         Ap     SCS
       LAND USE            GROUP   (ACRES)  (INCH/HR)  (DECIMAL)  CN
  RESIDENTIAL
  "3-4 DWELLINGS/ACRE"       A        0.22      1.33     0.600    17
  SUBAREA AVERAGE PERVIOUS LOSS RATE, Fp(INCH/HR) =  1.33
  SUBAREA AVERAGE PERVIOUS AREA FRACTION, Ap =  0.600
  SUBAREA AREA(ACRES) =    0.22      SUBAREA RUNOFF(CFS) =    0.32
  EFFECTIVE AREA(ACRES) =      0.90   AREA-AVERAGED Fm(INCH/HR) =  0.40
  AREA-AVERAGED Fp(INCH/HR) =  1.33  AREA-AVERAGED Ap =  0.30
  TOTAL AREA(ACRES) =        0.9       PEAK FLOW RATE(CFS) =       1.64

****************************************************************************
  FLOW PROCESS FROM NODE      3.00 TO NODE      1.10 IS CODE =  81
----------------------------------------------------------------------------
  >>>>>ADDITION OF SUBAREA TO MAINLINE PEAK FLOW<<<<<
============================================================================
  MAINLINE Tc(MIN.) =    5.95
  *   2 YEAR RAINFALL INTENSITY(INCH/HR) =  2.420
  SUBAREA LOSS RATE DATA(AMC  I ):
```

```
 DEVELOPMENT TYPE/       SCS SOIL   AREA      Fp         Ap      SCS
     LAND USE             GROUP   (ACRES)  (INCH/HR)  (DECIMAL)  CN
RESIDENTIAL
"3-4 DWELLINGS/ACRE"        A        0.22      1.33     0.600    17
SUBAREA AVERAGE PERVIOUS LOSS RATE, Fp(INCH/HR) =  1.33
SUBAREA AVERAGE PERVIOUS AREA FRACTION, Ap =  0.600
SUBAREA AREA(ACRES) =    0.22      SUBAREA RUNOFF(CFS) =    0.32
EFFECTIVE AREA(ACRES) =      1.12   AREA-AVERAGED Fm(INCH/HR) =  0.47
AREA-AVERAGED Fp(INCH/HR) =  1.33  AREA-AVERAGED Ap =  0.36
TOTAL AREA(ACRES) =        1.1       PEAK FLOW RATE(CFS) =       1.96

****************************************************************************
FLOW PROCESS FROM NODE      1.10 TO NODE      1.20 IS CODE =  61
----------------------------------------------------------------------------
>>>>>COMPUTE STREET FLOW TRAVEL TIME THRU SUBAREA<<<<<
>>>>>(STANDARD CURB SECTION USED)<<<<<
============================================================================
UPSTREAM ELEVATION(FEET) = 1107.90  DOWNSTREAM ELEVATION(FEET) = 1103.20
STREET LENGTH(FEET) =   322.00   CURB HEIGHT(INCHES) =  6.0
STREET HALFWIDTH(FEET) = 23.00

DISTANCE FROM CROWN TO CROSSFALL GRADEBREAK(FEET) =  18.00
INSIDE STREET CROSSFALL(DECIMAL) =  0.020
OUTSIDE STREET CROSSFALL(DECIMAL)  =  0.020

SPECIFIED NUMBER OF HALFSTREETS CARRYING RUNOFF =  1
Manning's FRICTION FACTOR for Streetflow Section(curb-to-curb) =   0.0150

  **TRAVEL TIME COMPUTED USING ESTIMATED FLOW(CFS) =       3.88
  STREETFLOW MODEL RESULTS USING ESTIMATED FLOW:
  STREET FLOW DEPTH(FEET) =  0.35
  HALFSTREET FLOOD WIDTH(FEET) =   11.12
  AVERAGE FLOW VELOCITY(FEET/SEC.) =    2.87
  PRODUCT OF DEPTH&VELOCITY(FT*FT/SEC.) =    1.00
STREET FLOW TRAVEL TIME(MIN.) =   1.87   Tc(MIN.) =    7.83
*   2 YEAR RAINFALL INTENSITY(INCH/HR) =  2.053
SUBAREA LOSS RATE DATA(AMC  I ):
 DEVELOPMENT TYPE/       SCS SOIL   AREA      Fp         Ap      SCS
     LAND USE             GROUP   (ACRES)  (INCH/HR)  (DECIMAL)  CN
APARTMENTS                  A        2.38      1.33     0.200    17
SUBAREA AVERAGE PERVIOUS LOSS RATE, Fp(INCH/HR) =  1.33
SUBAREA AVERAGE PERVIOUS AREA FRACTION, Ap =  0.200
SUBAREA AREA(ACRES) =    2.38      SUBAREA RUNOFF(CFS) =    3.83
EFFECTIVE AREA(ACRES) =      3.50    AREA-AVERAGED Fm(INCH/HR) =  0.33
AREA-AVERAGED Fp(INCH/HR) =  1.33  AREA-AVERAGED Ap =  0.25
TOTAL AREA(ACRES) =        3.5        PEAK FLOW RATE(CFS) =       5.42

END OF SUBAREA STREET FLOW HYDRAULICS:
DEPTH(FEET) = 0.38   HALFSTREET FLOOD WIDTH(FEET) =  12.71
FLOW VELOCITY(FEET/SEC.) =  3.13   DEPTH*VELOCITY(FT*FT/SEC.) =   1.19
```

```
  LONGEST FLOWPATH FROM NODE      1.00 TO NODE      1.20 =     498.00 FEET.
============================================================================
  END OF STUDY SUMMARY:
  TOTAL AREA(ACRES)     =        3.5  TC(MIN.) =      7.83
  EFFECTIVE AREA(ACRES) =      3.50  AREA-AVERAGED Fm(INCH/HR)=  0.33
  AREA-AVERAGED Fp(INCH/HR) =  1.33  AREA-AVERAGED Ap = 0.250
  PEAK FLOW RATE(CFS)   =       5.42
============================================================================
============================================================================
  END OF RATIONAL METHOD ANALYSIS
```

```
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                          Analysis prepared by:
```

```
 ************************* DESCRIPTION OF STUDY *************************
* ONTARIO SUNRISE                                                      *
* 1355 WEST 5TH STREET                                                 *
* PROPOSED Q10                                                         *
 ************************************************************************

  FILE NAME: WA13P10.DAT
  TIME/DATE OF STUDY: 18:28 09/25/2023
==========================================================================
  USER SPECIFIED HYDROLOGY AND HYDRAULIC MODEL INFORMATION:
==========================================================================
                    --*TIME-OF-CONCENTRATION MODEL*--

  USER SPECIFIED STORM EVENT(YEAR) =   10.00
  SPECIFIED MINIMUM PIPE SIZE(INCH) =  18.00
  SPECIFIED PERCENT OF GRADIENTS(DECIMAL) TO USE FOR FRICTION SLOPE = 0.95
  *USER-DEFINED LOGARITHMIC INTERPOLATION USED FOR RAINFALL*

  SLOPE OF INTENSITY DURATION CURVE(LOG(I;IN/HR) vs. LOG(Tc;MIN)) = 0.6000
  USER SPECIFIED 1-HOUR INTENSITY(INCH/HOUR) = 0.9550

  *ANTECEDENT MOISTURE CONDITION (AMC) II ASSUMED FOR RATIONAL METHOD*

  *USER-DEFINED STREET-SECTIONS FOR COUPLED PIPEFLOW AND STREETFLOW MODEL*
     HALF-  CROWN TO   STREET-CROSSFALL:   CURB  GUTTER-GEOMETRIES:  MANNING
     WIDTH  CROSSFALL  IN-  / OUT-/PARK-  HEIGHT  WIDTH  LIP   HIKE  FACTOR
NO.   (FT)     (FT)    SIDE / SIDE/ WAY    (FT)    (FT)  (FT)  (FT)    (n)
===  =====  =========  =================  ======  ===== ====== ===== =======
  1   30.0     20.0    0.018/0.018/0.020   0.67    2.00 0.0313 0.167 0.0150

  GLOBAL STREET FLOW-DEPTH CONSTRAINTS:
    1. Relative Flow-Depth =  0.00 FEET
       as (Maximum Allowable Street Flow Depth) - (Top-of-Curb)
    2. (Depth)*(Velocity) Constraint =  6.0 (FT*FT/S)
  *SIZE PIPE WITH A FLOW CAPACITY GREATER THAN
   OR EQUAL TO THE UPSTREAM TRIBUTARY PIPE.*
```

```
  *USER-SPECIFIED MINIMUM TOPOGRAPHIC SLOPE ADJUSTMENT NOT SELECTED

****************************************************************************
  FLOW PROCESS FROM NODE      1.00 TO NODE      1.10 IS CODE =  21
----------------------------------------------------------------------------
  >>>>>RATIONAL METHOD INITIAL SUBAREA ANALYSIS<<<<<
  >>USE TIME-OF-CONCENTRATION NOMOGRAPH FOR INITIAL SUBAREA<<
============================================================================
  INITIAL SUBAREA FLOW-LENGTH(FEET) =   176.00
  ELEVATION DATA: UPSTREAM(FEET) =   1110.50  DOWNSTREAM(FEET) =   1107.90

  Tc = K*[(LENGTH** 3.00)/(ELEVATION CHANGE)]**0.20
  SUBAREA ANALYSIS USED MINIMUM Tc(MIN.) =    5.955
  *  10 YEAR RAINFALL INTENSITY(INCH/HR) =  3.819
  SUBAREA Tc AND LOSS RATE DATA(AMC  II):
   DEVELOPMENT TYPE/      SCS SOIL   AREA      Fp         Ap     SCS   Tc
       LAND USE            GROUP   (ACRES)  (INCH/HR)  (DECIMAL)  CN  (MIN.)
  APARTMENTS                 A        0.68      0.98     0.200    32    5.95
  SUBAREA AVERAGE PERVIOUS LOSS RATE, Fp(INCH/HR) =  0.98
  SUBAREA AVERAGE PERVIOUS AREA FRACTION, Ap =  0.200
  SUBAREA RUNOFF(CFS) =      2.22
  TOTAL AREA(ACRES) =      0.68   PEAK FLOW RATE(CFS) =      2.22

****************************************************************************
  FLOW PROCESS FROM NODE      2.00 TO NODE      1.10 IS CODE =  81
----------------------------------------------------------------------------
  >>>>>ADDITION OF SUBAREA TO MAINLINE PEAK FLOW<<<<<
============================================================================
  MAINLINE Tc(MIN.) =    5.95
  *  10 YEAR RAINFALL INTENSITY(INCH/HR) =  3.819
  SUBAREA LOSS RATE DATA(AMC  II):
   DEVELOPMENT TYPE/      SCS SOIL   AREA      Fp         Ap     SCS
       LAND USE            GROUP   (ACRES)  (INCH/HR)  (DECIMAL)  CN
  RESIDENTIAL
  "3-4 DWELLINGS/ACRE"       A        0.22      0.98     0.600    32
  SUBAREA AVERAGE PERVIOUS LOSS RATE, Fp(INCH/HR) =  0.98
  SUBAREA AVERAGE PERVIOUS AREA FRACTION, Ap =  0.600
  SUBAREA AREA(ACRES) =    0.22      SUBAREA RUNOFF(CFS) =    0.64
  EFFECTIVE AREA(ACRES) =      0.90   AREA-AVERAGED Fm(INCH/HR) =  0.29
  AREA-AVERAGED Fp(INCH/HR) =  0.98  AREA-AVERAGED Ap =  0.30
  TOTAL AREA(ACRES) =        0.9       PEAK FLOW RATE(CFS) =       2.86

****************************************************************************
  FLOW PROCESS FROM NODE      3.00 TO NODE      1.10 IS CODE =  81
----------------------------------------------------------------------------
  >>>>>ADDITION OF SUBAREA TO MAINLINE PEAK FLOW<<<<<
============================================================================
  MAINLINE Tc(MIN.) =    5.95
  *  10 YEAR RAINFALL INTENSITY(INCH/HR) =  3.819
  SUBAREA LOSS RATE DATA(AMC  II):
```

```
 DEVELOPMENT TYPE/      SCS SOIL   AREA      Fp         Ap      SCS
     LAND USE            GROUP   (ACRES)  (INCH/HR)  (DECIMAL)  CN
RESIDENTIAL
"3-4 DWELLINGS/ACRE"       A        0.22      0.98     0.600    32
SUBAREA AVERAGE PERVIOUS LOSS RATE, Fp(INCH/HR) =  0.98
SUBAREA AVERAGE PERVIOUS AREA FRACTION, Ap =  0.600
SUBAREA AREA(ACRES) =    0.22      SUBAREA RUNOFF(CFS) =    0.64
EFFECTIVE AREA(ACRES) =      1.12   AREA-AVERAGED Fm(INCH/HR) =  0.35
AREA-AVERAGED Fp(INCH/HR) =  0.98  AREA-AVERAGED Ap =  0.36
TOTAL AREA(ACRES) =        1.1       PEAK FLOW RATE(CFS) =       3.50

****************************************************************************
FLOW PROCESS FROM NODE      1.10 TO NODE      1.20 IS CODE =  61
----------------------------------------------------------------------------
>>>>>COMPUTE STREET FLOW TRAVEL TIME THRU SUBAREA<<<<<
>>>>>(STANDARD CURB SECTION USED)<<<<<
============================================================================
UPSTREAM ELEVATION(FEET) = 1107.90  DOWNSTREAM ELEVATION(FEET) = 1103.20
STREET LENGTH(FEET) =   322.00   CURB HEIGHT(INCHES) =  6.0
STREET HALFWIDTH(FEET) = 23.00

DISTANCE FROM CROWN TO CROSSFALL GRADEBREAK(FEET) =  18.00
INSIDE STREET CROSSFALL(DECIMAL) =  0.020
OUTSIDE STREET CROSSFALL(DECIMAL)  =  0.020

SPECIFIED NUMBER OF HALFSTREETS CARRYING RUNOFF =  1
Manning's FRICTION FACTOR for Streetflow Section(curb-to-curb) =   0.0150

  **TRAVEL TIME COMPUTED USING ESTIMATED FLOW(CFS) =       6.83
  STREETFLOW MODEL RESULTS USING ESTIMATED FLOW:
  STREET FLOW DEPTH(FEET) =  0.41
  HALFSTREET FLOOD WIDTH(FEET) =   13.97
  AVERAGE FLOW VELOCITY(FEET/SEC.) =    3.30
  PRODUCT OF DEPTH&VELOCITY(FT*FT/SEC.) =    1.34
STREET FLOW TRAVEL TIME(MIN.) =   1.63   Tc(MIN.) =    7.58
*  10 YEAR RAINFALL INTENSITY(INCH/HR) =  3.304
SUBAREA LOSS RATE DATA(AMC  II):
 DEVELOPMENT TYPE/      SCS SOIL   AREA      Fp         Ap      SCS
     LAND USE            GROUP   (ACRES)  (INCH/HR)  (DECIMAL)  CN
APARTMENTS                 A        2.38      0.98     0.200    32
SUBAREA AVERAGE PERVIOUS LOSS RATE, Fp(INCH/HR) =  0.97
SUBAREA AVERAGE PERVIOUS AREA FRACTION, Ap =  0.200
SUBAREA AREA(ACRES) =    2.38      SUBAREA RUNOFF(CFS) =    6.66
EFFECTIVE AREA(ACRES) =      3.50    AREA-AVERAGED Fm(INCH/HR) =  0.24
AREA-AVERAGED Fp(INCH/HR) =  0.98  AREA-AVERAGED Ap =  0.25
TOTAL AREA(ACRES) =        3.5        PEAK FLOW RATE(CFS) =       9.64

END OF SUBAREA STREET FLOW HYDRAULICS:
DEPTH(FEET) = 0.45   HALFSTREET FLOOD WIDTH(FEET) =  16.07
FLOW VELOCITY(FEET/SEC.) =  3.57   DEPTH*VELOCITY(FT*FT/SEC.) =   1.60
```

```
  LONGEST FLOWPATH FROM NODE      1.00 TO NODE      1.20 =     498.00 FEET.
============================================================================
  END OF STUDY SUMMARY:
  TOTAL AREA(ACRES)     =        3.5  TC(MIN.) =      7.58
  EFFECTIVE AREA(ACRES) =      3.50  AREA-AVERAGED Fm(INCH/HR)=  0.24
  AREA-AVERAGED Fp(INCH/HR) =  0.98  AREA-AVERAGED Ap = 0.250
  PEAK FLOW RATE(CFS)   =       9.64
============================================================================
============================================================================
  END OF RATIONAL METHOD ANALYSIS
```

```
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                          Analysis prepared by:
```

```
 ************************* DESCRIPTION OF STUDY *************************
* ONTARIO SUNRISE                                                      *
* 1355 WEST 5TH STREET                                                 *
* PROPOSED Q25                                                         *
 ************************************************************************

  FILE NAME: WA13P25.DAT
  TIME/DATE OF STUDY: 18:31 09/25/2023
==========================================================================
  USER SPECIFIED HYDROLOGY AND HYDRAULIC MODEL INFORMATION:
==========================================================================
                    --*TIME-OF-CONCENTRATION MODEL*--

  USER SPECIFIED STORM EVENT(YEAR) =   25.00
  SPECIFIED MINIMUM PIPE SIZE(INCH) =  18.00
  SPECIFIED PERCENT OF GRADIENTS(DECIMAL) TO USE FOR FRICTION SLOPE = 0.95
  *USER-DEFINED LOGARITHMIC INTERPOLATION USED FOR RAINFALL*

  SLOPE OF INTENSITY DURATION CURVE(LOG(I;IN/HR) vs. LOG(Tc;MIN)) = 0.6000
  USER SPECIFIED 1-HOUR INTENSITY(INCH/HOUR) = 1.1700

  *ANTECEDENT MOISTURE CONDITION (AMC) II ASSUMED FOR RATIONAL METHOD*

  *USER-DEFINED STREET-SECTIONS FOR COUPLED PIPEFLOW AND STREETFLOW MODEL*
     HALF-  CROWN TO   STREET-CROSSFALL:   CURB  GUTTER-GEOMETRIES:  MANNING
     WIDTH  CROSSFALL  IN-  / OUT-/PARK-  HEIGHT  WIDTH  LIP   HIKE  FACTOR
NO.   (FT)     (FT)    SIDE / SIDE/ WAY    (FT)    (FT)  (FT)  (FT)    (n)
===  =====  =========  ================  ======  ===== ====== ===== =======
  1   30.0     20.0    0.018/0.018/0.020   0.67    2.00 0.0313 0.167 0.0150

  GLOBAL STREET FLOW-DEPTH CONSTRAINTS:
    1. Relative Flow-Depth =  0.00 FEET
       as (Maximum Allowable Street Flow Depth) - (Top-of-Curb)
    2. (Depth)*(Velocity) Constraint =  6.0 (FT*FT/S)
  *SIZE PIPE WITH A FLOW CAPACITY GREATER THAN
   OR EQUAL TO THE UPSTREAM TRIBUTARY PIPE.*
```

```
  *USER-SPECIFIED MINIMUM TOPOGRAPHIC SLOPE ADJUSTMENT NOT SELECTED

****************************************************************************
  FLOW PROCESS FROM NODE      1.00 TO NODE      1.10 IS CODE =  21
----------------------------------------------------------------------------
  >>>>>RATIONAL METHOD INITIAL SUBAREA ANALYSIS<<<<<
  >>USE TIME-OF-CONCENTRATION NOMOGRAPH FOR INITIAL SUBAREA<<
============================================================================
  INITIAL SUBAREA FLOW-LENGTH(FEET) =   176.00
  ELEVATION DATA: UPSTREAM(FEET) =   1110.50  DOWNSTREAM(FEET) =   1107.90

  Tc = K*[(LENGTH** 3.00)/(ELEVATION CHANGE)]**0.20
  SUBAREA ANALYSIS USED MINIMUM Tc(MIN.) =    5.955
  *  25 YEAR RAINFALL INTENSITY(INCH/HR) =  4.679
  SUBAREA Tc AND LOSS RATE DATA(AMC  II):
   DEVELOPMENT TYPE/      SCS SOIL   AREA      Fp         Ap     SCS   Tc
       LAND USE            GROUP   (ACRES)  (INCH/HR)  (DECIMAL)  CN  (MIN.)
  APARTMENTS                 A        0.68      0.98     0.200    32    5.95
  SUBAREA AVERAGE PERVIOUS LOSS RATE, Fp(INCH/HR) =  0.98
  SUBAREA AVERAGE PERVIOUS AREA FRACTION, Ap =  0.200
  SUBAREA RUNOFF(CFS) =      2.74
  TOTAL AREA(ACRES) =      0.68   PEAK FLOW RATE(CFS) =      2.74

****************************************************************************
  FLOW PROCESS FROM NODE      2.00 TO NODE      1.10 IS CODE =  81
----------------------------------------------------------------------------
  >>>>>ADDITION OF SUBAREA TO MAINLINE PEAK FLOW<<<<<
============================================================================
  MAINLINE Tc(MIN.) =    5.95
  *  25 YEAR RAINFALL INTENSITY(INCH/HR) =  4.679
  SUBAREA LOSS RATE DATA(AMC  II):
   DEVELOPMENT TYPE/      SCS SOIL   AREA      Fp         Ap     SCS
       LAND USE            GROUP   (ACRES)  (INCH/HR)  (DECIMAL)  CN
  RESIDENTIAL
  "3-4 DWELLINGS/ACRE"       A        0.22      0.98     0.600    32
  SUBAREA AVERAGE PERVIOUS LOSS RATE, Fp(INCH/HR) =  0.98
  SUBAREA AVERAGE PERVIOUS AREA FRACTION, Ap =  0.600
  SUBAREA AREA(ACRES) =    0.22      SUBAREA RUNOFF(CFS) =    0.81
  EFFECTIVE AREA(ACRES) =      0.90   AREA-AVERAGED Fm(INCH/HR) =  0.29
  AREA-AVERAGED Fp(INCH/HR) =  0.98  AREA-AVERAGED Ap =  0.30
  TOTAL AREA(ACRES) =        0.9       PEAK FLOW RATE(CFS) =       3.55

****************************************************************************
  FLOW PROCESS FROM NODE      3.00 TO NODE      1.10 IS CODE =  81
----------------------------------------------------------------------------
  >>>>>ADDITION OF SUBAREA TO MAINLINE PEAK FLOW<<<<<
============================================================================
  MAINLINE Tc(MIN.) =    5.95
  *  25 YEAR RAINFALL INTENSITY(INCH/HR) =  4.679
  SUBAREA LOSS RATE DATA(AMC  II):
```

```
 DEVELOPMENT TYPE/       SCS SOIL   AREA      Fp         Ap      SCS
     LAND USE             GROUP   (ACRES)  (INCH/HR)  (DECIMAL)  CN
RESIDENTIAL
"3-4 DWELLINGS/ACRE"        A        0.22      0.98     0.600    32
SUBAREA AVERAGE PERVIOUS LOSS RATE, Fp(INCH/HR) =  0.98
SUBAREA AVERAGE PERVIOUS AREA FRACTION, Ap =  0.600
SUBAREA AREA(ACRES) =    0.22      SUBAREA RUNOFF(CFS) =    0.81
EFFECTIVE AREA(ACRES) =      1.12   AREA-AVERAGED Fm(INCH/HR) =  0.35
AREA-AVERAGED Fp(INCH/HR) =  0.98  AREA-AVERAGED Ap =  0.36
TOTAL AREA(ACRES) =        1.1       PEAK FLOW RATE(CFS) =       4.37

****************************************************************************
FLOW PROCESS FROM NODE      1.10 TO NODE      1.20 IS CODE =  61
----------------------------------------------------------------------------
>>>>>COMPUTE STREET FLOW TRAVEL TIME THRU SUBAREA<<<<<
>>>>>(STANDARD CURB SECTION USED)<<<<<
============================================================================
UPSTREAM ELEVATION(FEET) = 1107.90  DOWNSTREAM ELEVATION(FEET) = 1103.20
STREET LENGTH(FEET) =   322.00   CURB HEIGHT(INCHES) =  6.0
STREET HALFWIDTH(FEET) = 23.00

DISTANCE FROM CROWN TO CROSSFALL GRADEBREAK(FEET) =  18.00
INSIDE STREET CROSSFALL(DECIMAL) =  0.020
OUTSIDE STREET CROSSFALL(DECIMAL)  =  0.020

SPECIFIED NUMBER OF HALFSTREETS CARRYING RUNOFF =  1
Manning's FRICTION FACTOR for Streetflow Section(curb-to-curb) =   0.0150

  **TRAVEL TIME COMPUTED USING ESTIMATED FLOW(CFS) =       8.53
  STREETFLOW MODEL RESULTS USING ESTIMATED FLOW:
  STREET FLOW DEPTH(FEET) =  0.43
  HALFSTREET FLOOD WIDTH(FEET) =   15.32
  AVERAGE FLOW VELOCITY(FEET/SEC.) =    3.46
  PRODUCT OF DEPTH&VELOCITY(FT*FT/SEC.) =    1.50
STREET FLOW TRAVEL TIME(MIN.) =   1.55   Tc(MIN.) =    7.51
*  25 YEAR RAINFALL INTENSITY(INCH/HR) =  4.072
SUBAREA LOSS RATE DATA(AMC  II):
 DEVELOPMENT TYPE/       SCS SOIL   AREA      Fp         Ap      SCS
     LAND USE             GROUP   (ACRES)  (INCH/HR)  (DECIMAL)  CN
APARTMENTS                 A        2.38      0.98     0.200    32
SUBAREA AVERAGE PERVIOUS LOSS RATE, Fp(INCH/HR) =  0.97
SUBAREA AVERAGE PERVIOUS AREA FRACTION, Ap =  0.200
SUBAREA AREA(ACRES) =    2.38      SUBAREA RUNOFF(CFS) =    8.31
EFFECTIVE AREA(ACRES) =      3.50    AREA-AVERAGED Fm(INCH/HR) =  0.24
AREA-AVERAGED Fp(INCH/HR) =  0.98  AREA-AVERAGED Ap =  0.25
TOTAL AREA(ACRES) =        3.5        PEAK FLOW RATE(CFS) =      12.06

END OF SUBAREA STREET FLOW HYDRAULICS:
DEPTH(FEET) = 0.48   HALFSTREET FLOOD WIDTH(FEET) =  17.58
FLOW VELOCITY(FEET/SEC.) =  3.76   DEPTH*VELOCITY(FT*FT/SEC.) =   1.80
```

```
  LONGEST FLOWPATH FROM NODE      1.00 TO NODE      1.20 =     498.00 FEET.
============================================================================
  END OF STUDY SUMMARY:
  TOTAL AREA(ACRES)     =        3.5  TC(MIN.) =      7.51
  EFFECTIVE AREA(ACRES) =      3.50  AREA-AVERAGED Fm(INCH/HR)=  0.24
  AREA-AVERAGED Fp(INCH/HR) =  0.98  AREA-AVERAGED Ap = 0.250
  PEAK FLOW RATE(CFS)   =      12.06
============================================================================
============================================================================
  END OF RATIONAL METHOD ANALYSIS
```

```
**************************************************************************
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            Ver. 21.0  Release Date: 06/01/2014  License ID 1580

                          Analysis prepared by:
```

```
 ************************* DESCRIPTION OF STUDY *************************
* ONTARIO SUNRISE                                                      *
* 1355 WEST 5TH STREET                                                 *
* PROPOSED Q100                                                        *
 ************************************************************************

  FILE NAME: WA13P100.DAT
  TIME/DATE OF STUDY: 18:32 09/25/2023
==========================================================================
  USER SPECIFIED HYDROLOGY AND HYDRAULIC MODEL INFORMATION:
==========================================================================
                    --*TIME-OF-CONCENTRATION MODEL*--

  USER SPECIFIED STORM EVENT(YEAR) =  100.00
  SPECIFIED MINIMUM PIPE SIZE(INCH) =  18.00
  SPECIFIED PERCENT OF GRADIENTS(DECIMAL) TO USE FOR FRICTION SLOPE = 0.95
  *USER-DEFINED LOGARITHMIC INTERPOLATION USED FOR RAINFALL*

  SLOPE OF INTENSITY DURATION CURVE(LOG(I;IN/HR) vs. LOG(Tc;MIN)) = 0.6000
  USER SPECIFIED 1-HOUR INTENSITY(INCH/HOUR) = 1.5100

  *ANTECEDENT MOISTURE CONDITION (AMC) III ASSUMED FOR RATIONAL METHOD*

  *USER-DEFINED STREET-SECTIONS FOR COUPLED PIPEFLOW AND STREETFLOW MODEL*
     HALF-  CROWN TO   STREET-CROSSFALL:   CURB  GUTTER-GEOMETRIES:  MANNING
     WIDTH  CROSSFALL  IN-  / OUT-/PARK-  HEIGHT  WIDTH  LIP   HIKE  FACTOR
NO.   (FT)     (FT)    SIDE / SIDE/ WAY    (FT)    (FT)  (FT)  (FT)    (n)
===  =====  =========  ================  ======  ===== ====== ===== =======
  1   30.0     20.0    0.018/0.018/0.020   0.67    2.00 0.0313 0.167 0.0150

  GLOBAL STREET FLOW-DEPTH CONSTRAINTS:
    1. Relative Flow-Depth =  0.00 FEET
       as (Maximum Allowable Street Flow Depth) - (Top-of-Curb)
    2. (Depth)*(Velocity) Constraint =  6.0 (FT*FT/S)
  *SIZE PIPE WITH A FLOW CAPACITY GREATER THAN
   OR EQUAL TO THE UPSTREAM TRIBUTARY PIPE.*
```

```
  *USER-SPECIFIED MINIMUM TOPOGRAPHIC SLOPE ADJUSTMENT NOT SELECTED

****************************************************************************
  FLOW PROCESS FROM NODE      1.00 TO NODE      1.10 IS CODE =  21
----------------------------------------------------------------------------
  >>>>>RATIONAL METHOD INITIAL SUBAREA ANALYSIS<<<<<
  >>USE TIME-OF-CONCENTRATION NOMOGRAPH FOR INITIAL SUBAREA<<
============================================================================
  INITIAL SUBAREA FLOW-LENGTH(FEET) =   176.00
  ELEVATION DATA: UPSTREAM(FEET) =   1110.50  DOWNSTREAM(FEET) =   1107.90

  Tc = K*[(LENGTH** 3.00)/(ELEVATION CHANGE)]**0.20
  SUBAREA ANALYSIS USED MINIMUM Tc(MIN.) =    5.955
  * 100 YEAR RAINFALL INTENSITY(INCH/HR) =  6.039
  SUBAREA Tc AND LOSS RATE DATA(AMC III):
   DEVELOPMENT TYPE/      SCS SOIL   AREA      Fp         Ap     SCS   Tc
       LAND USE            GROUP   (ACRES)  (INCH/HR)  (DECIMAL)  CN  (MIN.)
  APARTMENTS                 A        0.68      0.74     0.200    52    5.95
  SUBAREA AVERAGE PERVIOUS LOSS RATE, Fp(INCH/HR) =  0.74
  SUBAREA AVERAGE PERVIOUS AREA FRACTION, Ap =  0.200
  SUBAREA RUNOFF(CFS) =      3.60
  TOTAL AREA(ACRES) =      0.68   PEAK FLOW RATE(CFS) =      3.60

****************************************************************************
  FLOW PROCESS FROM NODE      2.00 TO NODE      1.10 IS CODE =  81
----------------------------------------------------------------------------
  >>>>>ADDITION OF SUBAREA TO MAINLINE PEAK FLOW<<<<<
============================================================================
  MAINLINE Tc(MIN.) =    5.95
  * 100 YEAR RAINFALL INTENSITY(INCH/HR) =  6.039
  SUBAREA LOSS RATE DATA(AMC III):
   DEVELOPMENT TYPE/      SCS SOIL   AREA      Fp         Ap     SCS
       LAND USE            GROUP   (ACRES)  (INCH/HR)  (DECIMAL)  CN
  RESIDENTIAL
  "3-4 DWELLINGS/ACRE"       A        0.22      0.74     0.600    52
  SUBAREA AVERAGE PERVIOUS LOSS RATE, Fp(INCH/HR) =  0.74
  SUBAREA AVERAGE PERVIOUS AREA FRACTION, Ap =  0.600
  SUBAREA AREA(ACRES) =    0.22      SUBAREA RUNOFF(CFS) =    1.11
  EFFECTIVE AREA(ACRES) =      0.90   AREA-AVERAGED Fm(INCH/HR) =  0.22
  AREA-AVERAGED Fp(INCH/HR) =  0.74  AREA-AVERAGED Ap =  0.30
  TOTAL AREA(ACRES) =        0.9       PEAK FLOW RATE(CFS) =       4.71

****************************************************************************
  FLOW PROCESS FROM NODE      3.00 TO NODE      1.10 IS CODE =  81
----------------------------------------------------------------------------
  >>>>>ADDITION OF SUBAREA TO MAINLINE PEAK FLOW<<<<<
============================================================================
  MAINLINE Tc(MIN.) =    5.95
  * 100 YEAR RAINFALL INTENSITY(INCH/HR) =  6.039
  SUBAREA LOSS RATE DATA(AMC III):
```

```
 DEVELOPMENT TYPE/       SCS SOIL   AREA      Fp         Ap      SCS
     LAND USE             GROUP   (ACRES)  (INCH/HR)  (DECIMAL)  CN
RESIDENTIAL
"3-4 DWELLINGS/ACRE"        A        0.22      0.74     0.600    52
SUBAREA AVERAGE PERVIOUS LOSS RATE, Fp(INCH/HR) =  0.74
SUBAREA AVERAGE PERVIOUS AREA FRACTION, Ap =  0.600
SUBAREA AREA(ACRES) =    0.22      SUBAREA RUNOFF(CFS) =    1.11
EFFECTIVE AREA(ACRES) =      1.12   AREA-AVERAGED Fm(INCH/HR) =  0.26
AREA-AVERAGED Fp(INCH/HR) =  0.74  AREA-AVERAGED Ap =  0.36
TOTAL AREA(ACRES) =        1.1       PEAK FLOW RATE(CFS) =       5.82

****************************************************************************
FLOW PROCESS FROM NODE      1.10 TO NODE      1.20 IS CODE =  61
----------------------------------------------------------------------------
>>>>>COMPUTE STREET FLOW TRAVEL TIME THRU SUBAREA<<<<<
>>>>>(STANDARD CURB SECTION USED)<<<<<
============================================================================
UPSTREAM ELEVATION(FEET) = 1107.90  DOWNSTREAM ELEVATION(FEET) = 1103.20
STREET LENGTH(FEET) =   322.00   CURB HEIGHT(INCHES) =  6.0
STREET HALFWIDTH(FEET) = 23.00

DISTANCE FROM CROWN TO CROSSFALL GRADEBREAK(FEET) =  18.00
INSIDE STREET CROSSFALL(DECIMAL) =  0.020
OUTSIDE STREET CROSSFALL(DECIMAL)  =  0.020

SPECIFIED NUMBER OF HALFSTREETS CARRYING RUNOFF =  1
Manning's FRICTION FACTOR for Streetflow Section(curb-to-curb) =   0.0150

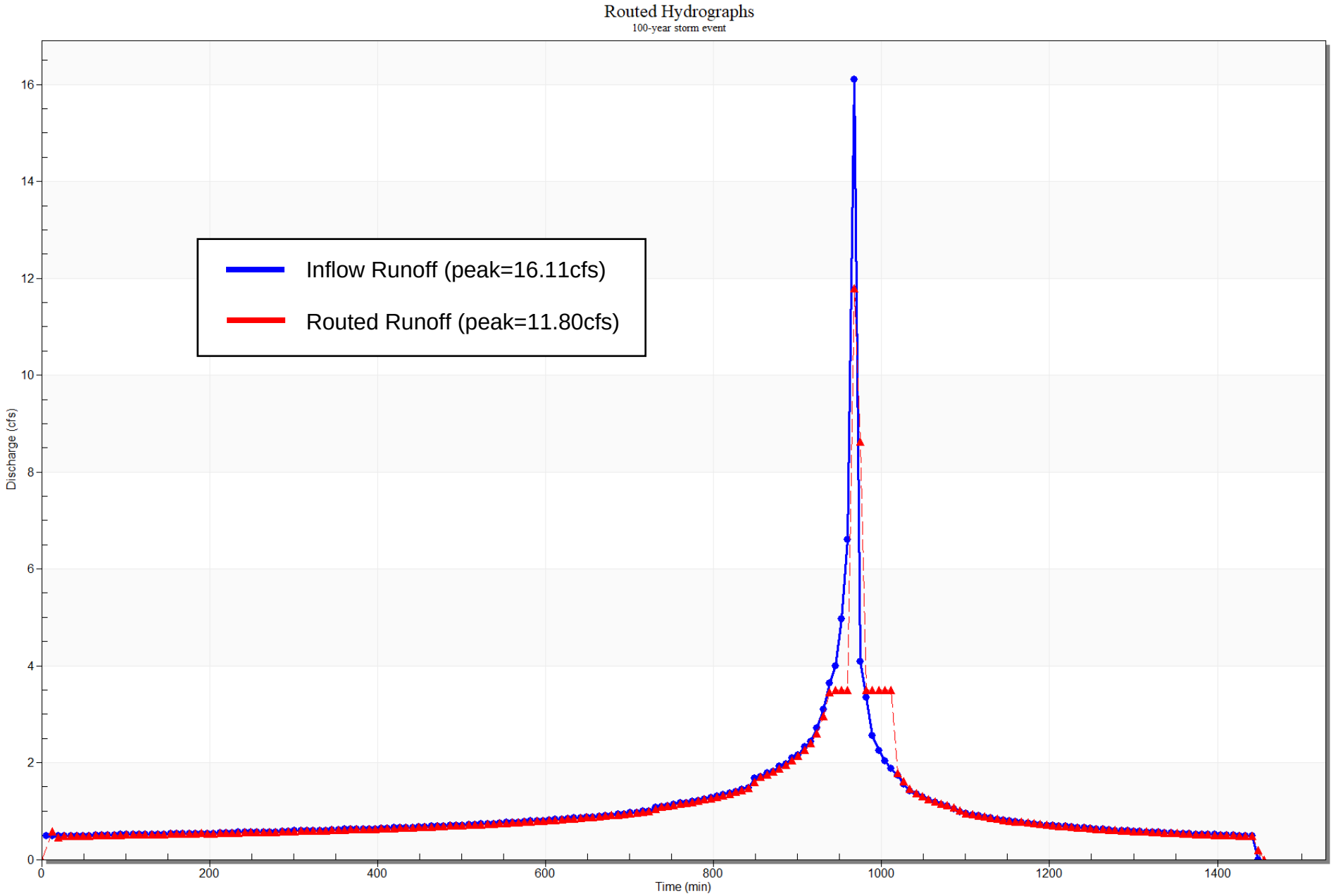
  **TRAVEL TIME COMPUTED USING ESTIMATED FLOW(CFS) =      11.35
  STREETFLOW MODEL RESULTS USING ESTIMATED FLOW:
  STREET FLOW DEPTH(FEET) =  0.47
  HALFSTREET FLOOD WIDTH(FEET) =   17.16
  AVERAGE FLOW VELOCITY(FEET/SEC.) =    3.70
  PRODUCT OF DEPTH&VELOCITY(FT*FT/SEC.) =    1.74
STREET FLOW TRAVEL TIME(MIN.) =   1.45   Tc(MIN.) =    7.40
* 100 YEAR RAINFALL INTENSITY(INCH/HR) =  5.299
SUBAREA LOSS RATE DATA(AMC III):
 DEVELOPMENT TYPE/       SCS SOIL   AREA      Fp         Ap      SCS
     LAND USE             GROUP   (ACRES)  (INCH/HR)  (DECIMAL)  CN
APARTMENTS                 A        2.38      0.74     0.200    52
SUBAREA AVERAGE PERVIOUS LOSS RATE, Fp(INCH/HR) =  0.74
SUBAREA AVERAGE PERVIOUS AREA FRACTION, Ap =  0.200
SUBAREA AREA(ACRES) =    2.38      SUBAREA RUNOFF(CFS) =   11.03
EFFECTIVE AREA(ACRES) =      3.50    AREA-AVERAGED Fm(INCH/HR) =  0.19
AREA-AVERAGED Fp(INCH/HR) =  0.74  AREA-AVERAGED Ap =  0.25
TOTAL AREA(ACRES) =        3.5        PEAK FLOW RATE(CFS) =      16.11

END OF SUBAREA STREET FLOW HYDRAULICS:
DEPTH(FEET) = 0.52   HALFSTREET FLOOD WIDTH(FEET) =  19.60
FLOW VELOCITY(FEET/SEC.) =  4.07   DEPTH*VELOCITY(FT*FT/SEC.) =   2.11
```

```
  LONGEST FLOWPATH FROM NODE      1.00 TO NODE      1.20 =     498.00 FEET.
============================================================================
  END OF STUDY SUMMARY:
  TOTAL AREA(ACRES)     =        3.5  TC(MIN.) =      7.40
  EFFECTIVE AREA(ACRES) =      3.50  AREA-AVERAGED Fm(INCH/HR)=  0.19
  AREA-AVERAGED Fp(INCH/HR) =  0.74  AREA-AVERAGED Ap = 0.250
  PEAK FLOW RATE(CFS)   =      16.11
============================================================================
============================================================================
  END OF RATIONAL METHOD ANALYSIS
```

APPENDIX C

Detention Analysis


Routed Hydrographs
100-year storm event
Inflow Runoff (peak=16.11cfs)
Routed Runoff (peak=11.80cfs)
Discharge (cfs)
Time (min)
0
2
4
6
8
10
12
14
16
0
200
400
600
800
1000
1200
1400

Hydraulic Analysis Report

Project Data

Project Title: WARM-013 Detention Sizing

Designer: C&V Consulting, Inc.

Project Date: Friday, December 22, 2023

Project Units: U.S. Customary Units

Notes:

Detention Basin Analysis: Q100 Hydrograph Routing

Notes:

Storage Input Parameters

Storage Capacity: Known volume

Elevation ft	Volume acre-ft
0.00	0.00
1.00	0.01
2.00	0.03
3.00	0.05
4.00	0.07
5.00	0.08
6.00	0.08

Discharge Input Parameters

Known Discharge: Pump Outflow

Discharge cfs

0.00	0.00
1.00	3.50
2.00	3.50
3.00	3.50
4.00	3.50
5.00	3.50
6.00	0.00

Riser: Culvert

Rectangular Opening

Opening Width: 4.0000 ft

Opening Height: 1.0000 ft

Weir Coefficient: 3.3300

Orifice Coefficient: 0.6000

Height above Base Elev to Bottom of Opening: 5.0000 ft

Base Elevation: 0.0000 ft

Storage & Discharge Input Parameters

Elevation - Storage - Discharge

Elevation ft	Storage acre-ft	Discharge cfs
0.00	0.00	0.00
1.00	0.01	3.50
2.00	0.03	3.50
3.00	0.05	3.50
4.00	0.07	3.50
5.00	0.08	3.50
6.00	0.08	13.32

Detention Basin Input Parameters

Inflow Hydrograph

Peak Inflow Discharge: 16.110 cfs, Time to Peak: 967.20 (min), Total Inflow Volume: 91211.94 ft^3

Time (min)	Discharge cfs
5.40	0.48
12.60	0.48
20.40	0.48
27.60	0.49
34.80	0.49
42.60	0.49
49.80	0.49
57.00	0.49
64.80	0.50
72.00	0.50
79.20	0.50
87.00	0.50
94.20	0.51
101.40	0.51
109.20	0.51
116.40	0.51
123.60	0.52
131.40	0.52
138.60	0.52
145.80	0.52

153.60	0.53
160.80	0.53
168.00	0.53
175.80	0.53
183.00	0.54
190.20	0.54
198.00	0.54
205.20	0.54
212.40	0.55
220.20	0.55
227.40	0.55
234.60	0.56
242.40	0.56
249.60	0.56
256.80	0.57
264.60	0.57
271.80	0.57
279.00	0.57
286.80	0.58
294.00	0.58
301.20	0.59
309.00	0.59
316.20	0.59
323.40	0.59
331.20	0.60
338.40	0.60
345.60	0.61
353.40	0.61
360.60	0.62
367.80	0.62
375.60	0.62
382.80	0.63
390.00	0.63
397.80	0.63
405.00	0.64
412.20	0.64
420.00	0.65
427.20	0.65
434.40	0.66
442.20	0.66
449.40	0.67
456.60	0.67
464.40	0.68
471.60	0.68
478.80	0.69
486.60	0.70
493.80	0.70
501.00	0.71
508.80	0.72
516.00	0.72

523.20	0.73
531.00	0.73
538.20	0.74
545.40	0.75
553.20	0.76
560.40	0.76
567.60	0.77
575.40	0.78
582.60	0.79
589.80	0.79
597.60	0.80
604.80	0.81
612.00	0.82
619.80	0.83
627.00	0.84
634.20	0.85
642.00	0.86
649.20	0.87
656.40	0.88
664.20	0.89
671.40	0.91
678.60	0.91
686.40	0.93
693.60	0.94
700.80	0.96
708.60	0.97
715.80	0.99
723.00	1.00
730.80	1.08
738.00	1.09
745.20	1.11
753.00	1.13
760.20	1.16
767.40	1.17
775.20	1.20
782.40	1.22
789.60	1.25
797.40	1.27
804.60	1.31
811.80	1.33
819.60	1.37
826.80	1.40
834.00	1.45
841.80	1.48
849.00	1.67
856.20	1.70
864.00	1.78
871.20	1.82
878.40	1.92
886.20	1.97

893.40	2.09
900.60	2.16
908.40	2.33
915.60	2.43
922.80	2.71
930.60	3.09
937.80	3.64
945.00	4.00
952.80	4.96
960.00	6.61
967.20	16.11
975.00	4.09
982.20	3.34
989.40	2.55
997.20	2.24
1004.40	2.03
1011.60	1.87
1019.40	1.74
1026.60	1.55
1033.80	1.42
1041.60	1.35
1048.80	1.29
1056.00	1.23
1063.80	1.18
1071.00	1.14
1078.20	1.10
1086.00	1.05
1093.20	0.98
1100.40	0.95
1108.20	0.92
1115.40	0.90
1122.60	0.87
1130.40	0.85
1137.60	0.83
1144.80	0.81
1152.60	0.80
1159.80	0.78
1167.00	0.77
1174.80	0.75
1182.00	0.74
1189.20	0.72
1197.00	0.71
1204.20	0.70
1211.40	0.69
1219.20	0.68
1226.40	0.67
1233.60	0.66
1241.40	0.65
1248.60	0.64
1255.80	0.63

1263.60	0.62
1270.80	0.61
1278.00	0.60
1285.80	0.60
1293.00	0.59
1300.20	0.58
1308.00	0.58
1315.20	0.57
1322.40	0.56
1330.20	0.56
1337.40	0.55
1344.60	0.55
1352.40	0.54
1359.60	0.53
1366.80	0.53
1374.60	0.52
1381.80	0.52
1389.00	0.51
1396.80	0.51
1404.00	0.50
1411.20	0.50
1419.00	0.50
1426.20	0.49
1433.40	0.49
1441.20	0.48
1448.40	0.00

Initial Storage = 0.0000 acre-ft

Detention Basin Result Parameters

Routed Hydrograph

Peak Outflow Discharge: 11.796 cfs, Time to Peak: 967.20 (min), Total Outflow Volume: 91351.62 ft^3

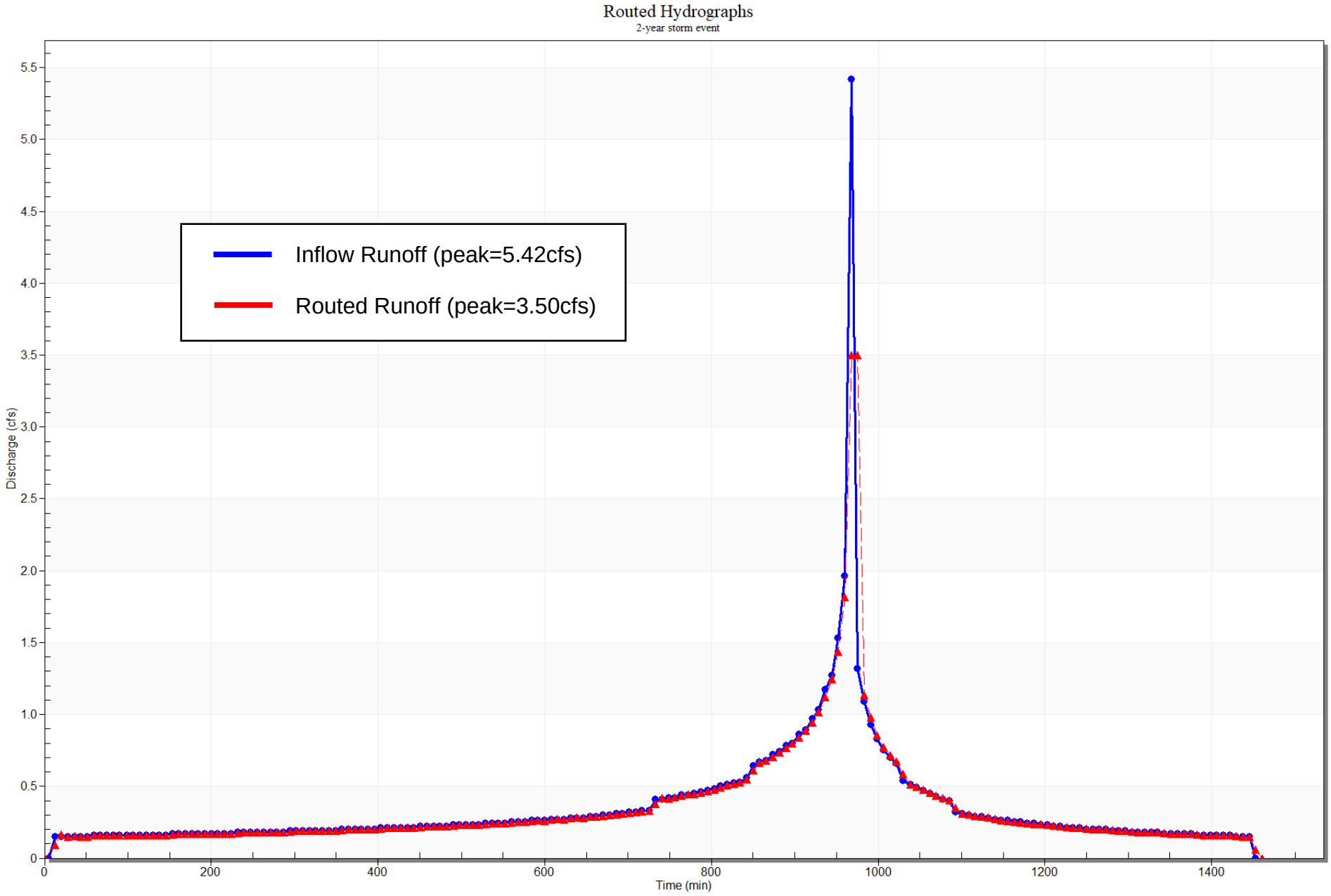
Time min	Discharge cfs	Storage acre-ft
0.00	0.00	0.000000
12.60	0.58	0.001907
20.40	0.46	0.002095
27.60	0.49	0.002097
34.80	0.49	0.002097
42.60	0.49	0.002097
49.80	0.49	0.002097
57.00	0.49	0.002097
64.80	0.50	0.002137
72.00	0.50	0.002129
79.20	0.50	0.002130
87.00	0.50	0.002130
94.20	0.51	0.002170
101.40	0.51	0.002162

109.20	0.51	0.002164
116.40	0.51	0.002163
123.60	0.52	0.002203
131.40	0.52	0.002195
138.60	0.52	0.002197
145.80	0.52	0.002196
153.60	0.53	0.002236
160.80	0.53	0.002228
168.00	0.53	0.002230
175.80	0.53	0.002230
183.00	0.54	0.002269
190.20	0.54	0.002261
198.00	0.54	0.002263
205.20	0.54	0.002263
212.40	0.55	0.002303
220.20	0.55	0.002295
227.40	0.55	0.002296
234.60	0.56	0.002336
242.40	0.56	0.002328
249.60	0.56	0.002329
256.80	0.57	0.002369
264.60	0.57	0.002361
271.80	0.57	0.002362
279.00	0.57	0.002362
286.80	0.58	0.002402
294.00	0.58	0.002394
301.20	0.59	0.002435
309.00	0.59	0.002427
316.20	0.59	0.002429
323.40	0.59	0.002428
331.20	0.60	0.002468
338.40	0.60	0.002460
345.60	0.61	0.002502
353.40	0.61	0.002493
360.60	0.62	0.002535
367.80	0.62	0.002527
375.60	0.62	0.002528
382.80	0.63	0.002568
390.00	0.63	0.002560
397.80	0.63	0.002561
405.00	0.64	0.002601
412.20	0.64	0.002593
420.00	0.65	0.002634
427.20	0.65	0.002626
434.40	0.66	0.002667
442.20	0.66	0.002659
449.40	0.67	0.002701
456.60	0.67	0.002692
464.40	0.68	0.002734
471.60	0.68	0.002725

478.80	0.69	0.002767
486.60	0.70	0.002798
493.80	0.70	0.002792
501.00	0.71	0.002833
508.80	0.72	0.002865
516.00	0.72	0.002858
523.20	0.73	0.002899
531.00	0.73	0.002891
538.20	0.74	0.002933
545.40	0.75	0.002964
553.20	0.76	0.002997
560.40	0.76	0.002991
567.60	0.77	0.003032
575.40	0.78	0.003063
582.60	0.79	0.003097
589.80	0.79	0.003090
597.60	0.80	0.003131
604.80	0.81	0.003163
612.00	0.82	0.003196
619.80	0.83	0.003229
627.00	0.84	0.003263
634.20	0.85	0.003296
642.00	0.86	0.003329
649.20	0.87	0.003362
656.40	0.88	0.003395
664.20	0.89	0.003428
671.40	0.90	0.003501
678.60	0.91	0.003487
686.40	0.92	0.003569
693.60	0.94	0.003592
700.80	0.95	0.003667
708.60	0.97	0.003692
715.80	0.98	0.003767
723.00	1.00	0.003792
730.80	1.05	0.004104
738.00	1.09	0.004082
745.20	1.10	0.004166
753.00	1.12	0.004229
760.20	1.15	0.004335
767.40	1.17	0.004354
775.20	1.19	0.004469
782.40	1.21	0.004526
789.60	1.24	0.004634
797.40	1.26	0.004692
804.60	1.30	0.004839
811.80	1.32	0.004889
819.60	1.35	0.005038
826.80	1.39	0.005128
834.00	1.43	0.005309
841.80	1.47	0.005392

849.00	1.60	0.006130
856.20	1.70	0.006103
864.00	1.75	0.006426
871.20	1.81	0.006521
878.40	1.88	0.006899
886.20	1.96	0.007023
893.40	2.04	0.007475
900.60	2.14	0.007663
908.40	2.27	0.008301
915.60	2.40	0.008572
922.80	2.60	0.009630
930.60	2.96	0.010930
937.80	3.45	0.012857
945.00	3.50	0.017815
952.80	3.50	0.032295
960.00	3.50	0.063137
967.20	11.80	0.105922
975.00	8.63	0.082929
982.20	3.50	0.081342
989.40	3.50	0.071921
997.20	3.50	0.059425
1004.40	3.50	0.044846
1011.60	3.50	0.028681
1019.40	1.79	0.028209
1026.60	1.62	0.027548
1033.80	1.46	0.027163
1041.60	1.37	0.026961
1048.80	1.31	0.026763
1056.00	1.25	0.026564
1063.80	1.20	0.026405
1071.00	1.15	0.026277
1078.20	1.11	0.026144
1086.00	1.07	0.025972
1093.20	1.00	0.025728
1100.40	0.96	0.025657
1108.20	0.93	0.025552
1115.40	0.91	0.025493
1122.60	0.88	0.025386
1130.40	0.86	0.025328
1137.60	0.84	0.025260
1144.80	0.82	0.025194
1152.60	0.80	0.025167
1159.80	0.79	0.025093
1167.00	0.77	0.025068
1174.80	0.76	0.024994
1182.00	0.74	0.024969
1189.20	0.73	0.024894
1197.00	0.71	0.024869
1204.20	0.70	0.024834
1211.40	0.69	0.024802

1219.20	0.68	0.024768
1226.40	0.67	0.024735
1233.60	0.66	0.024702
1241.40	0.65	0.024669
1248.60	0.64	0.024636
1255.80	0.63	0.024603
1263.60	0.62	0.024570
1270.80	0.61	0.024536
1278.00	0.60	0.024503
1285.80	0.60	0.024510
1293.00	0.59	0.024469
1300.20	0.58	0.024437
1308.00	0.58	0.024444
1315.20	0.57	0.024403
1322.40	0.56	0.024371
1330.20	0.56	0.024377
1337.40	0.55	0.024336
1344.60	0.55	0.024344
1352.40	0.54	0.024303
1359.60	0.53	0.024272
1366.80	0.53	0.024278
1374.60	0.52	0.024237
1381.80	0.52	0.024245
1389.00	0.51	0.024204
1396.80	0.51	0.024212
1404.00	0.50	0.024171
1411.20	0.50	0.024179
1419.00	0.50	0.024177
1426.20	0.49	0.024138
1433.40	0.49	0.024146
1441.20	0.48	0.024104
1448.40	0.19	0.022205
1455.60	0.00	0.022205


Routed Hydrographs
2-year storm event
Inflow Runoff (peak=5.42cfs)
Routed Runoff (peak=3.50cfs)
Discharge (cfs)
Time (min)
0
0.5
1.0
1.5
2.0
2.5
3.0
3.5
4.0
4.5
5.0
5.5
0
200
400
600
800
1000
1200
1400

Detention Basin Analysis: Q2 Hydrograph Routing

Notes:

Storage Input Parameters

Storage Capacity: Known volume

Elevation ft	Volume acre-ft
0.00	0.00
1.00	0.01
2.00	0.03
3.00	0.05
4.00	0.07
5.00	0.08
6.00	0.08

Discharge Input Parameters

Known Discharge: Pump Outflow

Discharge cfs

0.00	0.00
1.00	3.50
2.00	3.50
3.00	3.50
4.00	3.50
5.00	3.50
6.00	0.00

Riser: Culvert

Rectangular Opening

Opening Width: 4.0000 ft

Opening Height: 1.0000 ft

Weir Coefficient: 3.3300

Orifice Coefficient: 0.6000

Height above Base Elev to Bottom of Opening: 5.0000 ft

Base Elevation: 0.0000 ft

Storage & Discharge Input Parameters

Elevation - Storage - Discharge

Elevation ft	Storage acre-ft	Discharge cfs

0.00	0.00	0.00
1.00	0.01	3.50
2.00	0.03	3.50
3.00	0.05	3.50
4.00	0.07	3.50
5.00	0.08	3.50
6.00	0.08	13.32

Detention Basin Input Parameters

Inflow Hydrograph

Peak Inflow Discharge: 5.420 cfs, Time to Peak: 967.80 (min), Total Inflow Volume: 31072.68 ft^3

Time (min)	Discharge cfs
4.80	0.00
12.60	0.15
20.40	0.15
28.20	0.15
36.00	0.15
43.80	0.15
51.60	0.15
59.40	0.16
67.20	0.16
75.00	0.16
82.80	0.16
90.60	0.16
99.00	0.16
106.80	0.16
114.60	0.16
122.40	0.16
130.20	0.16
138.00	0.16
145.80	0.16
153.60	0.17
161.40	0.17
169.20	0.17
177.00	0.17
184.80	0.17
192.60	0.17
200.40	0.17
208.20	0.17
216.00	0.17
223.80	0.17
231.60	0.18
239.40	0.18
247.20	0.18
255.60	0.18
263.40	0.18

271.20	0.18
279.00	0.18
286.80	0.18
294.60	0.19
302.40	0.19
310.20	0.19
318.00	0.19
325.80	0.19
333.60	0.19
341.40	0.19
349.20	0.19
357.00	0.20
364.80	0.20
372.60	0.20
380.40	0.20
388.20	0.20
396.00	0.20
403.80	0.21
411.60	0.21
420.00	0.21
427.80	0.21
435.60	0.21
443.40	0.21
451.20	0.22
459.00	0.22
466.80	0.22
474.60	0.22
482.40	0.22
490.20	0.23
498.00	0.23
505.80	0.23
513.60	0.23
521.40	0.23
529.20	0.24
537.00	0.24
544.80	0.24
552.60	0.24
560.40	0.25
568.80	0.25
576.60	0.25
584.40	0.26
592.20	0.26
600.00	0.26
607.80	0.27
615.60	0.27
623.40	0.27
631.20	0.28
639.00	0.28
646.80	0.28
654.60	0.29

662.40	0.29
670.20	0.30
678.00	0.30
685.80	0.31
693.60	0.31
701.40	0.32
709.20	0.32
717.00	0.33
725.40	0.33
733.20	0.41
741.00	0.41
748.80	0.42
756.60	0.42
764.40	0.44
772.20	0.44
780.00	0.45
787.80	0.46
795.60	0.47
803.40	0.48
811.20	0.50
819.00	0.51
826.80	0.52
834.60	0.53
842.40	0.56
850.20	0.64
858.00	0.67
865.80	0.68
873.60	0.72
882.00	0.74
889.80	0.78
897.60	0.80
905.40	0.86
913.20	0.89
921.00	0.97
928.80	1.03
936.60	1.17
944.40	1.27
952.20	1.53
960.00	1.96
967.80	5.42
975.60	1.32
983.40	1.09
991.20	0.93
999.00	0.83
1006.80	0.75
1014.60	0.70
1022.40	0.66
1030.20	0.54
1038.60	0.51
1046.40	0.49

1054.20	0.47
1062.00	0.45
1069.80	0.43
1077.60	0.41
1085.40	0.40
1093.20	0.32
1101.00	0.31
1108.80	0.30
1116.60	0.29
1124.40	0.29
1132.20	0.28
1140.00	0.27
1147.80	0.26
1155.60	0.26
1163.40	0.25
1171.20	0.25
1179.00	0.24
1186.80	0.24
1195.20	0.23
1203.00	0.23
1210.80	0.22
1218.60	0.22
1226.40	0.21
1234.20	0.21
1242.00	0.21
1249.80	0.20
1257.60	0.20
1265.40	0.20
1273.20	0.20
1281.00	0.19
1288.80	0.19
1296.60	0.19
1304.40	0.18
1312.20	0.18
1320.00	0.18
1327.80	0.18
1335.60	0.18
1343.40	0.17
1351.20	0.17
1359.60	0.17
1367.40	0.17
1375.20	0.17
1383.00	0.16
1390.80	0.16
1398.60	0.16
1406.40	0.16
1414.20	0.16
1422.00	0.16
1429.80	0.15
1437.60	0.15

1445.40	0.15
1453.20	0.00

Initial Storage = 0.0000 acre-ft

Detention Basin Result Parameters

Routed Hydrograph

Peak Outflow Discharge: 3.500 cfs, Time to Peak: 967.80 (min), Total Outflow Volume: 31091.57 ft^3

Time min	Discharge cfs	Storage acre-ft
0.00	0.00	0.000000
12.60	0.09	0.000615
20.40	0.16	0.000542
28.20	0.15	0.000577
36.00	0.15	0.000568
43.80	0.15	0.000570
51.60	0.15	0.000570
59.40	0.16	0.000611
67.20	0.16	0.000601
75.00	0.16	0.000604
82.80	0.16	0.000603
90.60	0.16	0.000603
99.00	0.16	0.000603
106.80	0.16	0.000603
114.60	0.16	0.000603
122.40	0.16	0.000603
130.20	0.16	0.000603
138.00	0.16	0.000603
145.80	0.16	0.000603
153.60	0.17	0.000644
161.40	0.17	0.000634
169.20	0.17	0.000637
177.00	0.17	0.000636
184.80	0.17	0.000636
192.60	0.17	0.000636
200.40	0.17	0.000636
208.20	0.17	0.000636
216.00	0.17	0.000636
223.80	0.17	0.000636
231.60	0.18	0.000677
239.40	0.18	0.000668
247.20	0.18	0.000670
255.60	0.18	0.000669
263.40	0.18	0.000669
271.20	0.18	0.000669
279.00	0.18	0.000669
286.80	0.18	0.000669
294.60	0.19	0.000710

302.40	0.19	0.000701
310.20	0.19	0.000703
318.00	0.19	0.000702
325.80	0.19	0.000703
333.60	0.19	0.000703
341.40	0.19	0.000703
349.20	0.19	0.000703
357.00	0.20	0.000744
364.80	0.20	0.000734
372.60	0.20	0.000736
380.40	0.20	0.000736
388.20	0.20	0.000736
396.00	0.20	0.000736
403.80	0.21	0.000777
411.60	0.21	0.000767
420.00	0.21	0.000769
427.80	0.21	0.000769
435.60	0.21	0.000769
443.40	0.21	0.000769
451.20	0.22	0.000810
459.00	0.22	0.000800
466.80	0.22	0.000802
474.60	0.22	0.000802
482.40	0.22	0.000802
490.20	0.23	0.000843
498.00	0.23	0.000833
505.80	0.23	0.000836
513.60	0.23	0.000835
521.40	0.23	0.000835
529.20	0.24	0.000876
537.00	0.24	0.000866
544.80	0.24	0.000869
552.60	0.24	0.000868
560.40	0.25	0.000909
568.80	0.25	0.000900
576.60	0.25	0.000902
584.40	0.26	0.000942
592.20	0.26	0.000933
600.00	0.26	0.000935
607.80	0.27	0.000975
615.60	0.27	0.000966
623.40	0.27	0.000968
631.20	0.28	0.001009
639.00	0.28	0.000999
646.80	0.28	0.001001
654.60	0.29	0.001042
662.40	0.29	0.001032
670.20	0.30	0.001075
678.00	0.30	0.001065
685.80	0.31	0.001109

693.60	0.31	0.001098
701.40	0.32	0.001142
709.20	0.32	0.001131
717.00	0.33	0.001175
725.40	0.33	0.001165
733.20	0.38	0.001495
741.00	0.42	0.001417
748.80	0.41	0.001476
756.60	0.42	0.001462
764.40	0.43	0.001547
772.20	0.44	0.001527
780.00	0.45	0.001573
787.80	0.46	0.001603
795.60	0.47	0.001637
803.40	0.48	0.001670
811.20	0.49	0.001744
819.00	0.51	0.001768
826.80	0.52	0.001803
834.60	0.53	0.001836
842.40	0.55	0.001951
850.20	0.61	0.002252
858.00	0.67	0.002303
865.80	0.68	0.002332
873.60	0.71	0.002489
882.00	0.74	0.002534
889.80	0.77	0.002687
897.60	0.80	0.002733
905.40	0.84	0.002968
913.20	0.88	0.003035
921.00	0.94	0.003347
928.80	1.01	0.003519
936.60	1.12	0.004053
944.40	1.24	0.004336
952.20	1.44	0.005335
960.00	1.82	0.006861
967.80	3.50	0.027489
975.60	3.50	0.011600
983.40	1.13	0.011127
991.20	0.98	0.010583
999.00	0.86	0.010302
1006.80	0.77	0.010041
1014.60	0.71	0.009898
1022.40	0.67	0.009768
1030.20	0.58	0.009306
1038.60	0.51	0.009293
1046.40	0.50	0.009214
1054.20	0.48	0.009151
1062.00	0.46	0.009084
1069.80	0.44	0.009018
1077.60	0.42	0.008951

1085.40	0.40	0.008926
1093.20	0.35	0.008604
1101.00	0.31	0.008639
1108.80	0.30	0.008590
1116.60	0.29	0.008561
1124.40	0.29	0.008568
1132.20	0.28	0.008525
1140.00	0.27	0.008494
1147.80	0.26	0.008460
1155.60	0.26	0.008468
1163.40	0.25	0.008425
1171.20	0.25	0.008436
1179.00	0.24	0.008392
1186.80	0.24	0.008402
1195.20	0.23	0.008359
1203.00	0.23	0.008369
1210.80	0.22	0.008326
1218.60	0.22	0.008336
1226.40	0.21	0.008293
1234.20	0.21	0.008303
1242.00	0.21	0.008301
1249.80	0.20	0.008260
1257.60	0.20	0.008270
1265.40	0.20	0.008268
1273.20	0.20	0.008268
1281.00	0.19	0.008227
1288.80	0.19	0.008237
1296.60	0.19	0.008234
1304.40	0.18	0.008194
1312.20	0.18	0.008203
1320.00	0.18	0.008201
1327.80	0.18	0.008202
1335.60	0.18	0.008202
1343.40	0.17	0.008161
1351.20	0.17	0.008170
1359.60	0.17	0.008168
1367.40	0.17	0.008169
1375.20	0.17	0.008168
1383.00	0.16	0.008128
1390.80	0.16	0.008137
1398.60	0.16	0.008135
1406.40	0.16	0.008135
1414.20	0.16	0.008135
1422.00	0.16	0.008135
1429.80	0.15	0.008094
1437.60	0.15	0.008104
1445.40	0.15	0.008102
1453.20	0.06	0.007487
1461.00	0.00	0.007487

APPENDIX D

Hydraulics Analysis

(To be provided during Final Engineering)

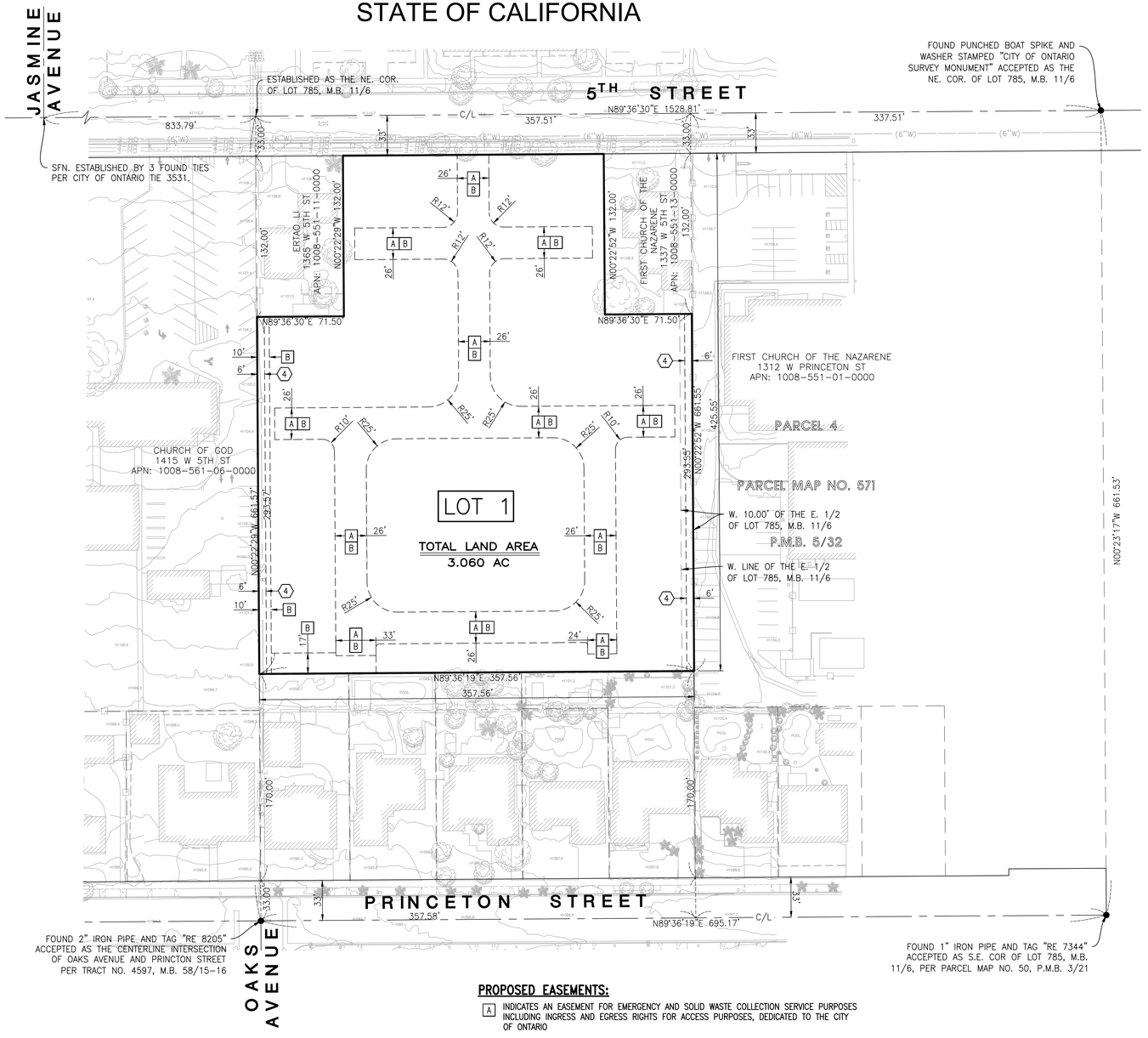
APPENDIX F

Reference Documents

TTM No. 20659

TENTATIVE TRACT MAP NO. 20659

LOT 1 FOR CONDOMINIUM PURPOSES
IN THE CITY OF ONTARIO, COUNTY OF SAN BERNARDINO
STATE OF CALIFORNIA



PROPOSED EASEMENTS:

[A] INDICATES AN EASEMENT FOR EMERGENCY AND SOLID WASTE COLLECTION SERVICE PURPOSES INCLUDING INGRESS AND EGRESS RIGHTS FOR ACCESS PURPOSES, DEDICATED TO THE CITY OF ONTARIO

[B] INDICATES AN EASEMENT FOR PUBLIC UTILITY PURPOSES, DEDICATED TO THE CITY OF ONTARIO

TITLE INFORMATION:

THE FOLLOWING TITLE INFORMATION WAS DERIVED FROM A PRELIMINARY REPORT ISSUED BY FIRST AMERICAN TITLE COMPANY, ORDER NO.: NHSC-6654551 DATED APRIL 5, 2023 AT 7:30 A.M.

(#) DENOTES PLOTTED ITEM.

3 A RIGHT OF WAY OF UNDISCLOSED ROUTE AND WIDTH, OVER AND THROUGH SAID LAND FOR WATER PIPES AND OTHER CONDUITS USED IN THE DISTRIBUTION OF WATER, BY THE SAID SAN ANTONIO WATER COMPANY OR THE FIRST PARTIES HEREIN, FREE OF COST, AS CONTAINED IN THE DEED FROM J. E. PLATER, ET AL., TO JOHN E. PLATER, RECORDED JUNE 15, 1887, IN BOOK 56, PAGE 558 OF DEEDS.
(THE LOCATION OF SAID EASEMENT IS INDETERMINATE FROM RECORD INFORMATION)

(4) AN EASEMENT FOR PUBLIC UTILITY, SEWER AND INCIDENTAL PURPOSES, RECORDED OCTOBER 10, 1957 AS BOOK 4344, PAGE 68 OF OFFICIAL RECORDS.
IN FAVOR OF: CITY OF ONTARIO, A MUNICIPAL CORPORATION

VESTED OWNER:

SUNRISE CHURCH OF CALIFORNIA

LEGAL DESCRIPTION:

REAL PROPERTY IN THE CITY OF ONTARIO, COUNTY OF SAN BERNARDINO, STATE OF CALIFORNIA, DESCRIBED AS FOLLOWS:

THE WEST 10 FEET OF THE EAST 1/2 OF LOT 785, AND ALL OF THE WEST 1/2 OF LOT 785, IN THE CITY OF ONTARIO, ACCORDING TO THE MAP OF ONTARIO, AS PER PLAT RECORDED IN BOOK 11 OF MAPS, PAGE 6, RECORDS OF SAID COUNTY.

EXCEPTING THEREFROM THE NORTH 132 FEET OF THE WEST 71.5 FEET OF THE WEST 1/2 OF LOT 785.

ALSO EXCEPTING THEREFROM THE NORTH 132 FEET OF THE WEST 10 FEET OF THE EAST 1/2 OF LOT 785.

ALSO EXCEPTING THEREFROM THE NORTH 132 FEET OF THE EAST 61.5 FEET OF THE WEST 1/2 OF LOT 785.

ALSO EXCEPTING THEREFROM THE SOUTH 203 FEET OF THE WEST 10 FEET OF THE EAST 1/2 OF LOT 785.

ALSO EXCEPTING THEREFROM THE SOUTH 203 FEET OF THE WEST 1/2 OF LOT 785.

DATUM STATEMENT:

ALL COORDINATES SHOWN HEREON ARE GRID VALUES BASED ON THE CALIFORNIA COORDINATE SYSTEM OF 1983, CCS83, ZONE 5, (2017.50 EPOCH), IN ACCORDANCE WITH THE CALIFORNIA PUBLIC RESOURCES CODE SECTIONS 8801-8819. ALL DISTANCES SHOWN HEREON ARE GROUND VALUES IN U.S. SURVEY FEET UNLESS OTHERWISE NOTED. A COMBINATION SCALE FACTOR OF 0.999942434 WAS USED FOR THIS PROJECT AT NORTHING 1851912.524, EASTING 1851912.524. TO OBTAIN GRID DISTANCES, MULTIPLY GROUND DISTANCES BY THE COMBINATION SCALE FACTOR.

BASIS OF BEARINGS:

THE BEARINGS SHOWN HEREON ARE BASED ON THE BEARING NORTH 81°29'26.2" WEST BETWEEN CALIFORNIA SPATIAL REFERENCE CENTER, CSRC, CONTINUOUSLY OPERATING REFERENCE STATIONS, CORS, "EWPP" AND "LORS".

	NORTHING	EASTING
EWPP:	1860640.159	6705286.443
LORS:	1870992.789	6636093.050

BENCHMARK STATEMENT:

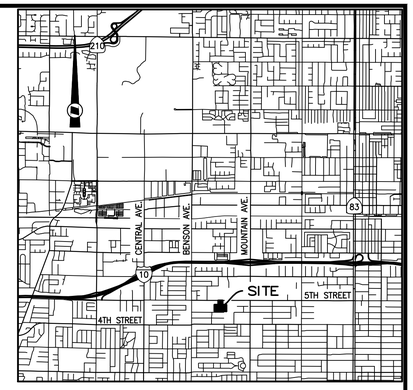
CITY OF ONTARIO BENCHMARK NO. USGS 51-Y
ELEV: 1088.983 (NAVD88, LEVELED 2018)
DESCRIBED AS: 3 IN. BRASS DISK STAMPED "U.S. COAST & GEODETIC SURVEY 51-Y." SET ON TOP OF CURB. 1 FT. NORTH OF ECR @ NORTHWEST RETURN OF MOUNTIAN AVE. AND FOURTH ST.

FLOOD NOTE:

THE SUBJECT PROPERTY FALLS WITHIN "ZONE X - AREA OF MINIMAL FLOOD HAZARD" PER FEMA MAP NO. 06071C8608H, A PRINTED PANEL, EFFECTIVE AUGUST 28, 2008 .

TOPOGRAPHY NOTE:

TOPOGRAPHY AND CONTOURS SHOWN HEREON ARE BASED ON 1' CONTOUR INTERVALS FROM AERIAL PHOTOGRAMETRY FLOWN BY C&V CONSULTING INC. ON MARCH 28, 2023. THE RELATIVE POSITIONAL ACCURACY OF CALLED OUT IMPROVEMENTS SHOWN ON THE SURVEY IS WITHIN 0.1' +/- OF THEIR ACTUAL LOCATIONS.



VICINITY MAP
N.T.S.

OWNER:

SUNRISE CHURCH OF CALIFORNIA
1355 WEST 5TH ST
ONTARIO, CA 91762
(909) 984-4419

DEVELOPER/SUBDIVIDER

WARMINGTON RESIDENTIAL CALIFORNIA, INC.
3090 PULLMAN STREET
COSTA MESA, CA 92626
T (877) 708-3454
BRET LLICH

ARCHITECT:

KTGY ARCHITECTURE
17911 VON KARMAN, SUITE #200
IRVINE, CA 92614
(949) 850-2133
BRYAN, SEVY

CIVIL ENGINEER:

C&V CONSULTING, INC.
9830 IRVINE CENTER DRIVE
IRVINE, CA 92618
T (949) 916-3800
DANE MCDOUGALL, P.E., PRINCIPAL
CONTACT: MARCO MIDENCE, PROJECT MANAGER

UTILITY PURVEYORS & SERVICES:

WATER
CITY OF ONTARIO PUBLIC UTILITIES
(909) 395-2600

SEWER
CITY OF ONTARIO PUBLIC UTILITIES
(909) 395-2600

ELECTRICITY
SOUTHERN CALIFORNIA EDISON
(800) 655-4555

GAS
SOUTHERN CALIFORNIA GAS COMPANY
(800) 427-2000

PHONE/INTERNET
SPECTRUM
(877) 687-8922

LAND USE SUMMARY	
GROSS AND NET AREA	3.1 ACRES
PROPOSED DENSITY	± 22.6 DU/AC
TOTAL PROPOSED LOTS	1 (NUMBERED)
ASSESSOR'S PARCEL NUMBER	1008-551-12-0000
TOTAL PROPOSED DWELLINGS	70 RESIDENTIAL CONDOMINIUMS

LEGEND:

- CENTERLINE
- EX. BOUNDARY
- PROP. BOUNDARY
- EASEMENT
- EX. LOT LINE
- EX. LOT LINE TO MAP OVER

SHEET INDEX

1 TENTATIVE TRACT MAP
2 CONCEPTUAL GRADING PLAN
3 DETAILS
4 UTILITY SYSTEMS MAP
5 EXISTING SITE PLAN

50' 0' 25' 50'
SCALE: 1" = 50'

ENGINEER'S STATEMENT:

THIS VESTING TENTATIVE MAP WAS PREPARED BY ME, OR UNDER MY DIRECTION ON DECEMBER 22, 2023.

DANE P . MCDOUGALL, R.C.E. 80705

SURVEYOR'S STATEMENT:

THE SURVEY ON WHICH THIS VESTING TENTATIVE MAP IS BASED WAS DONE BY ME, OR UNDER MY DIRECTION. FIELDWORK WAS COMPLETED ON [SURVEY DATE].

DANE P. MCDOUGALL, L.S. 9297

PROFESSIONAL LAND SURVEYOR · DANE P. MCDOUGALL · L.S. 9297 · STATE OF CALIFORNIA

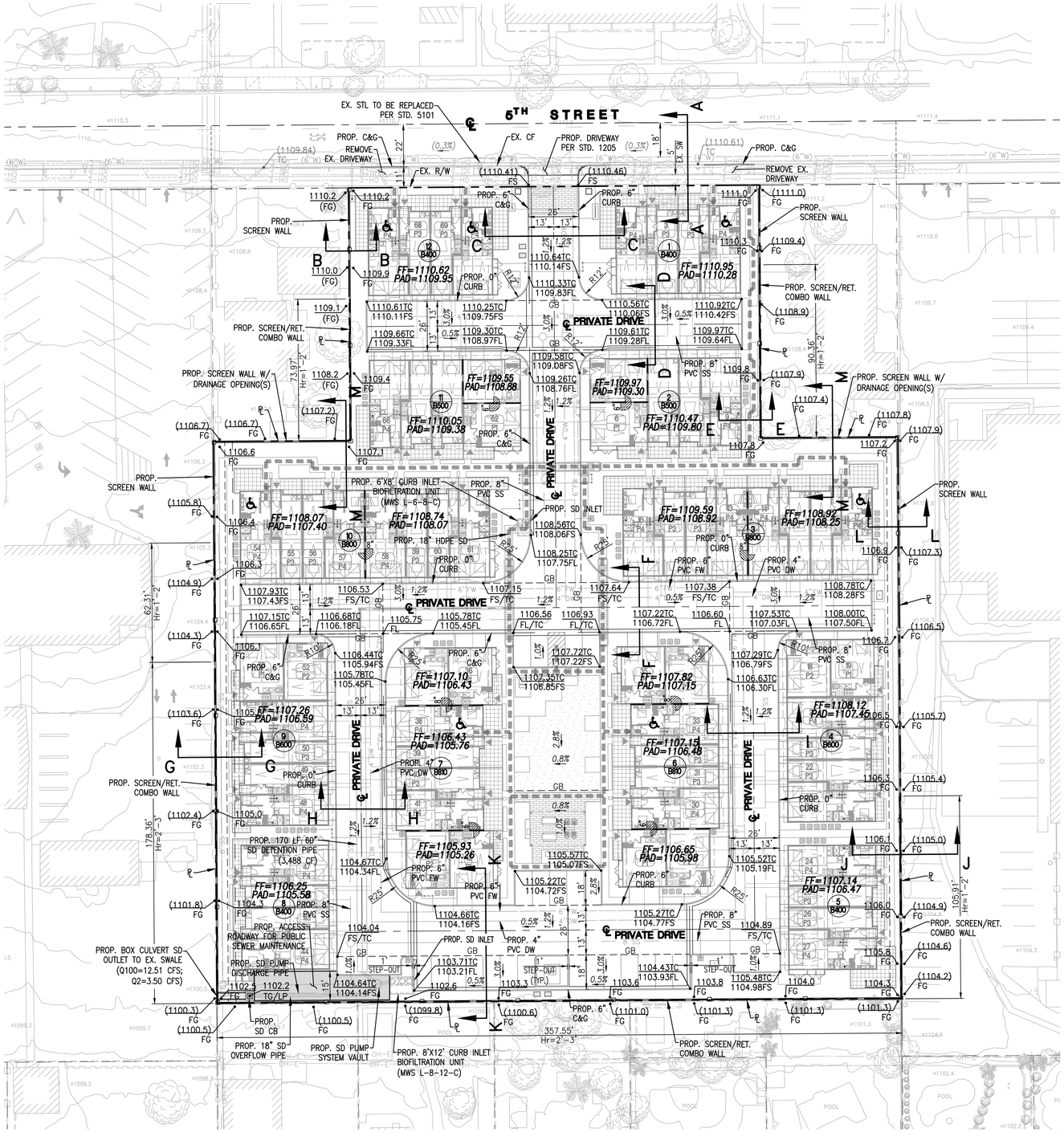
PREPARED FOR:	PREPARED BY:		PROJECT NO.
WARMINGTON RESIDENTIAL 3090 PULLMAN STREET COSTA MESA, CA 92626 (877) 708-3454	C&V CONSULTING, INC. CIVIL ENGINEERING LAND PLANNING & SURVEYING 9830 IRVINE CENTER DRIVE IRVINE, CALIFORNIA 92618 (949) 916-3800 INFO@CVC-INC.NET WWW.CVC-INC.NET	REGISTERED PROFESSIONAL ENGINEER · DANE P. MCDOUGALL · C 80705 · CIVIL · STATE OF CALIFORNIA	CITY OF ONTARIO COMMUNITY DEVELOPMENT DEPARTMENT **TENTATIVE TRACT NO. 20659** TENTATIVE TRACT MAP 1355 WEST 5TH STREET ONTARIO

WARM-013

SHEET 1 OF 5

PLAN SET: PSD2
DATE: 12/22/23

P:\WARM-013\DWG\SHEETS\TM\TM-01-TT.DWG
BY: DAVID ACOSTA



LEGEND:

- PROPERTY LINE
- RIGHT OF WAY
- PROPOSED CURB & GUTTER
- ADA PATH OF TRAVEL
- SCREEN WALL (6' MIN.)
- SCREEN/RETAINING COMBO WALL (6' MIN.)

ABBREVIATIONS:

ADD	AVERAGE DAILY DEMAND
CB	CATCH BASIN
CF	CURB FACE/CUBIC FEET
CONC.	CONCRETE
C&G	CURB AND GUTTER
DCDA	DOUBLE CHECK DETECTOR ASSEMBLY
DW	DOMESTIC WATER
EX.	EXISTING
FDC	FIRE DEPARTMENT CONNECTION
FF	FINISH FLOOR
FG	FINISH GRADE
FL	FLOWLINE
FS	FINISH SURFACE
FW	FIRE WATER
HP	HIGH POINT
LF	LINEAR FEET
LP	LOW POINT
MDD	MAXIMUM DAILY DEMAND
MH	MANHOLE
MIN.	MINIMUM
MWS	MODULAR WETLAND SYSTEM
OH	OVERHEAD
PIV	POST INDICATOR VALVE
POC	POINT OF CONNECTION
PROP.	PROPOSED
PVT	PRIVATE
PUB.	PUBLIC
PVC	POLYVINYL CHLORIDE PIPE
PZ	PRESSURE ZONE
R	RADIUS
RW	RECYCLED WATER
R/W	RIGHT OF WAY
RCP	REINFORCED CONCRETE PIPE
RET.	RETAINING
RP	REDUCED PRESSURE
RW	RECYCLED WATER
SD	STORM DRAIN
SS	SANITARY SEWER
STD.	STANDARD
STL	STREET LIGHT
SW	SIDEWALK
TC	TOP OF CURB
VCP	VITRIFIED CLAY PIPE
WM	WATER METER

NOTES:

1. PARKING SHALL BE RESTRICTED AT PROPOSED DRIVEWAY FOR VISIBILITY ALONG PROJECT FRONTAGE ON 5TH STREET
2. WHERE A DRIVEWAY CLOSURE IS BEING PROPOSED, APPLICANT/DEVELOPER SHALL BACKFILL THE EXISTING DRIVEWAY CURB-CUTS WITH FULL-HEIGHT CURB AND GUTTER, SIDEWALK, AND LANDSCAPED PARKWAY IN ACCORDANCE WITH ALL CITY STANDARDS AND TO THE SATISFACTION OF THE CITY ENGINEER.
3. COMPACTION TO BE NO GREATER THAN 85% IN LANDSCAPE AREAS. ALL FINISHED GRADES AT 1½" BELOW FINISHED SURFACES. SLOPES TO BE MAXIMUM 3:1.
4. LANDSCAPE AREAS WHERE COMPACTION HAS OCCURRED DUE TO GRADING ACTIVITIES AND WHERE TREES OR STORMWATER INFILTRATION AREAS ARE LOCATED SHALL BE LOOSENED BY SOIL FRACTURING. FOR TREES, A 12'x12'x18" DEEP AREA; FOR STORMWATER INFILTRATION, THE ENTIRE AREA SHALL BE LOOSENED.

PREPARED FOR:

WARMINGTON RESIDENTIAL
3090 PULLMAN STREET
COSTA MESA, CA 92626
(877) 708-3454

PREPARED BY:

C&V CONSULTING, INC.
CIVIL ENGINEERING
LAND PLANNING & SURVEYING
9830 IRVINE CENTER DRIVE
IRVINE, CALIFORNIA 92618
(949) 916-3800
INFO@CVC-INC.NET
WWW.CVC-INC.NET

REGISTERED PROFESSIONAL ENGINEER
DANIEL P. MCDOUGALL
C 80705
CIVIL
STATE OF CALIFORNIA

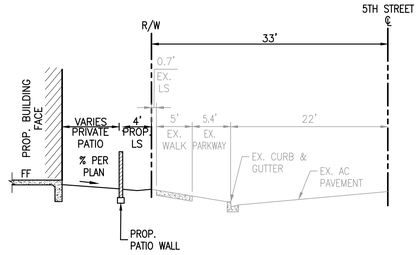
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COMMUNITY DEVELOPMENT DEPARTMENT

TENTATIVE TRACT NO. 20659
CONCEPTUAL GRADING PLAN
1355 WEST 5TH STREET
ONTARIO

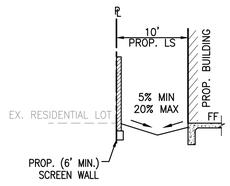
PROJECT NO. WARM-013

SHEET 2 OF 5

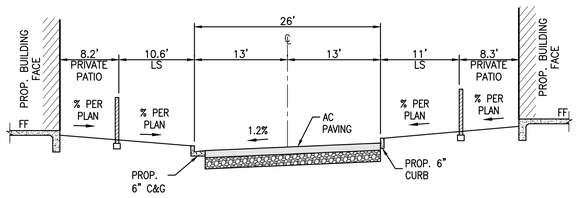
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BY: DAVID ACOSTA



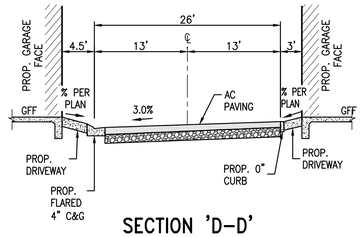
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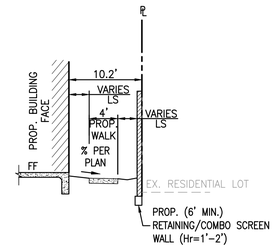
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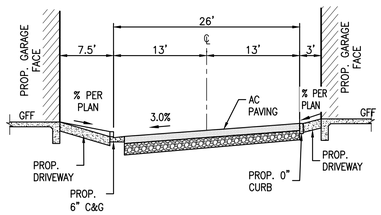
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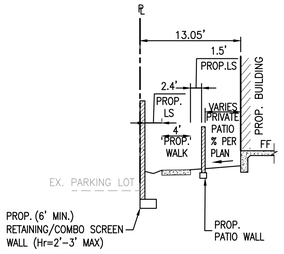
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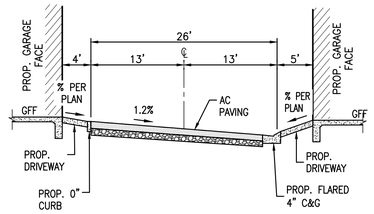
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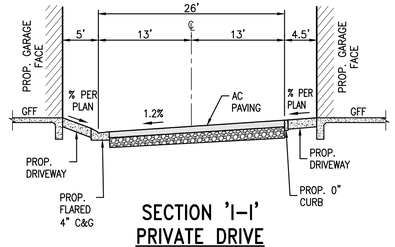
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PRIVATE DRIVE
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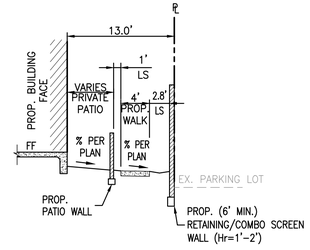
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WESTERN PROPERTY LINE
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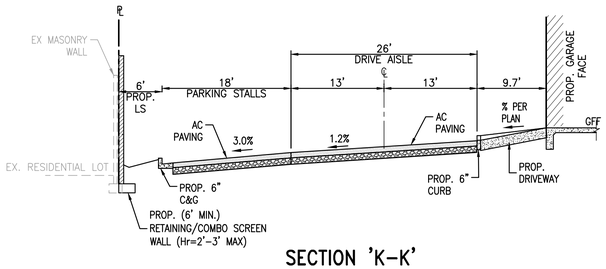
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PRIVATE DRIVE
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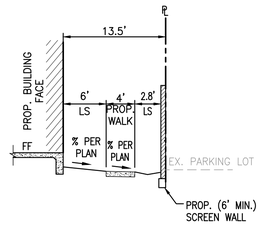
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PRIVATE DRIVE
N.T.S.



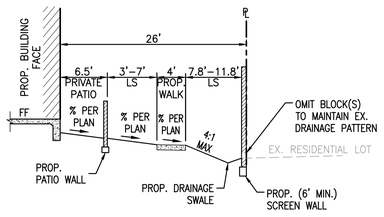
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EASTERN PROPERTY LINE
N.T.S.



SECTION 'K–K'
SOUTHERN PROPERTY LINE W/ PARKING
N.T.S.



SECTION 'L–L'
EASTERN PROPERTY LINE
N.T.S.



SECTION 'M–M'
NORTHERN PROPERTY LINE
N.T.S.

PREPARED FOR:

WARMINGTON RESIDENTIAL
3090 PULLMAN STREET
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(877) 708–3454

PREPARED BY:

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CITY OF ONTARIO
COMMUNITY DEVELOPMENT DEPARTMENT

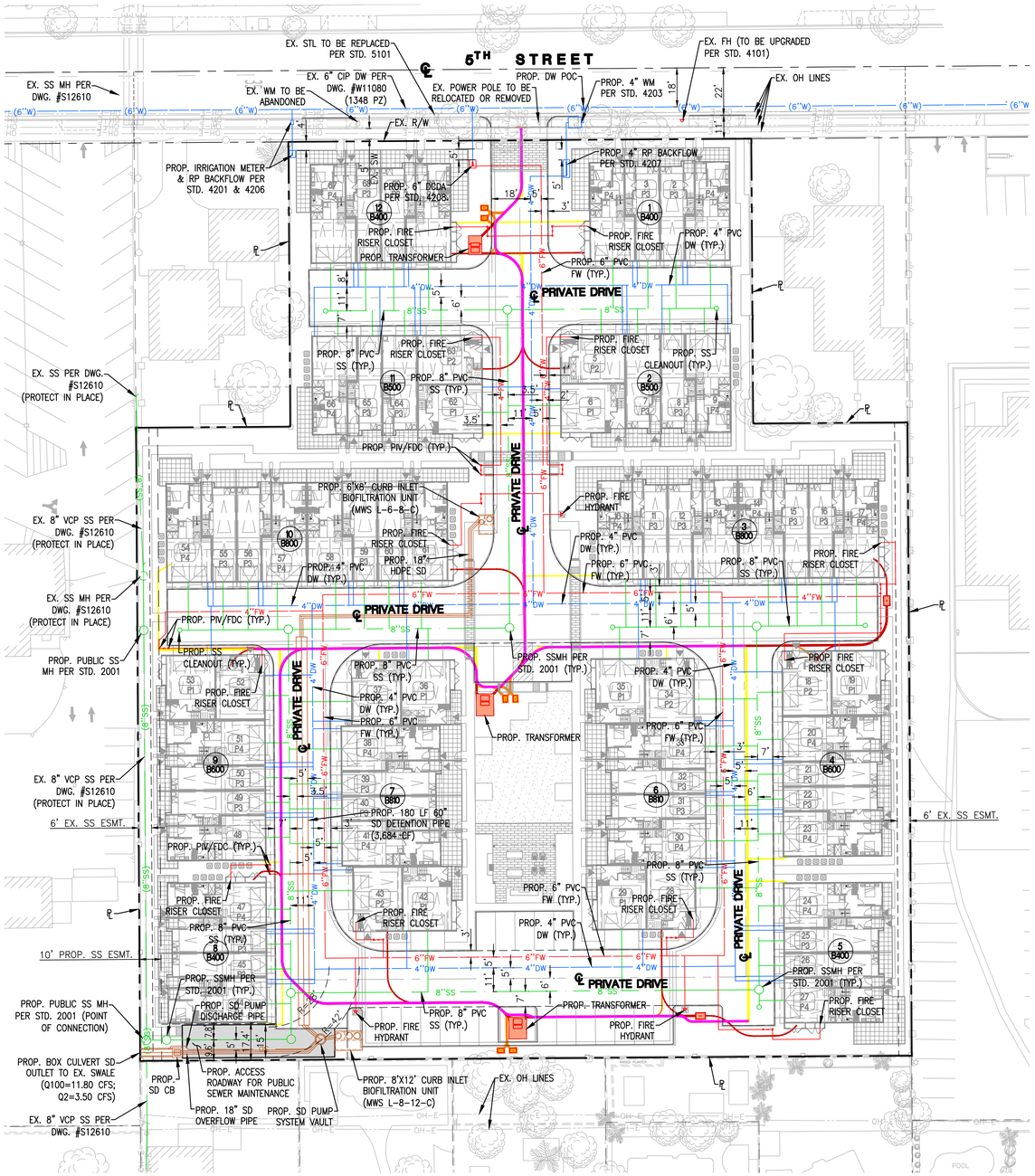
TENTATIVE TRACT NO. 20659
DETAILS
1355 WEST 5TH STREET
ONTARIO

PROJECT NO.
WARM-013

SHEET
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OF
5

PLAN SET: PDSD
DATE: 12/22/23

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BY: DAVID ACOSTA



LEGEND:

- PROPERTY LINE
- RIGHT OF WAY
- PUBLIC UTILITY EASEMENT
- PROPOSED CURB & GUTTER
- 4"DW — PROPOSED PRIVATE DOMESTIC WATER LINE
- 6"FW — PROPOSED PRIVATE FIRE WATER LINE
- PROPOSED PRIVATE STORM DRAIN
- 8"SS — PROPOSED PRIVATE SEWER
- (6"DW) — EXIST. PUBLIC DOMESTIC WATER LINE
- (8"SS) — EXIST. PUBLIC SEWER
- PROPOSED SEWER LATERAL
- PROPOSED DOMESTIC WATER SERVICE
- PROPOSED FIRE HYDRANT
- PROPOSED FDC/PIV
- PROPOSED FIRE SYSTEM DCDA W/ CONC. PAD
- PROPOSED DW BACKFLOW PREVENTION ASSEMBLY W/ CONC. PAD
- PROPOSED DOMESTIC WATER MASTER METER
- PROPOSED IRRIGATION METER & BACKFLOW PREVENTION ASSEMBLY W/ CONC. PAD
- ELECTRIC PULL BOX (2.6'x4')
- ELECTRIC SLAB BOX (6'x8')
- ELECTRIC SLAB BOX (8'x10')
- TELCO PULL BOX
- CATV PULL BOX
- JOINT TRENCH
- ELECTRIC CONDUIT
- COMMUNICATIONS CONDUIT
- GAS MAINLINE

ABBREVIATIONS:

ADD	AVERAGE DAILY DEMAND
CB	CATCH BASIN
CF	CURB FACE/CUBIC FEET
CONC.	CONCRETE
C&G	CURB AND GUTTER
DCDA	DOUBLE CHECK DETECTOR ASSEMBLY
DW	DOMESTIC WATER
EX.	EXISTING
FDC	FIRE DEPARTMENT CONNECTION
FF	FINISH FLOOR
FW	FIRE WATER
LF	LINEAR FEET
MDD	MAXIMUM DAILY DEMAND
MH	MANHOLE
MIN.	MINIMUM
MWS	MODULAR WETLAND SYSTEM
OH	OVERHEAD
PIV	POST INDICATOR VALVE
POC	POINT OF CONNECTION
PROP.	PROPOSED
PVT	PRIVATE
PUB.	PUBLIC
PVC	POLYVINYL CHLORIDE PIPE
PZ	PRESSURE ZONE
R	RADIUS
RW	RECYCLED WATER
R/W	RIGHT OF WAY
RCP	REINFORCED CONCRETE PIPE
RET.	RETAINING
RP	REDUCED PRESSURE
RW	RECYCLED WATER
SD	STORM DRAIN
SS	SANITARY SEWER
STD.	STANDARD
STL	STREET LIGHT
VCP	VITRIFIED CLAY PIPE
WM	WATER METER

NOTES:

1. APPLICANT/DEVELOPER SHALL BE RESPONSIBLE TO DESIGN AND CONSTRUCT IN-FILL PUBLIC STREET LIGHTS AND A POTENTIAL NEW SERVICE ALONG ITS PROJECT FRONTAGE ON 5TH STREET. STREET LIGHTING SHALL BE LED-TYPE AND IN ACCORDANCE WITH CITY'S APPROVED MATERIAL LIST LED LUMINARIES. THE APPLICANT/DEVELOPER SHALL ALSO INSTALL SMART NODES ON ALL NEW STREET LIGHT FIXTURES
2. APPLICANT/DEVELOPER SHALL REPLACE THE EXISTING STREET LIGHT LOCATED ALONG THE PROJECT FRONTAGE WITH THE CURRENT STANDARD POLE HEIGHT IN ACCORDANCE WITH CITY OF ONTARIO STANDARD DRAWING NO. 5101.
3. ABANDON ALL EXISTING UNUSED WATER SERVICES.
4. ABANDON ALL EXISTING UNUSED SEWER LATERALS TO THE MAIN CONNECTION.
5. CITY OF ONTARIO PUBLIC UTILITIES THAT WILL NOT BE INSTALLED WITHIN THE PUBLIC RIGHT-OF-WAY (ROW) SHALL BE INSTALLED WITHIN A PUBLIC UTILITY EASEMENT (PUE) AND SHALL COMPLY WITH CITY REQUIREMENTS.
6. THE UTILITIES SYSTEMS MAP IS NOT CONSIDERED FINAL OR FOR CONSTRUCTION AND MAY RESULT IN CHANGES DURING THE DESIGN PHASE.

30' 0' 15' 30' 60'
SCALE: 1" = 30'

PREPARED FOR:

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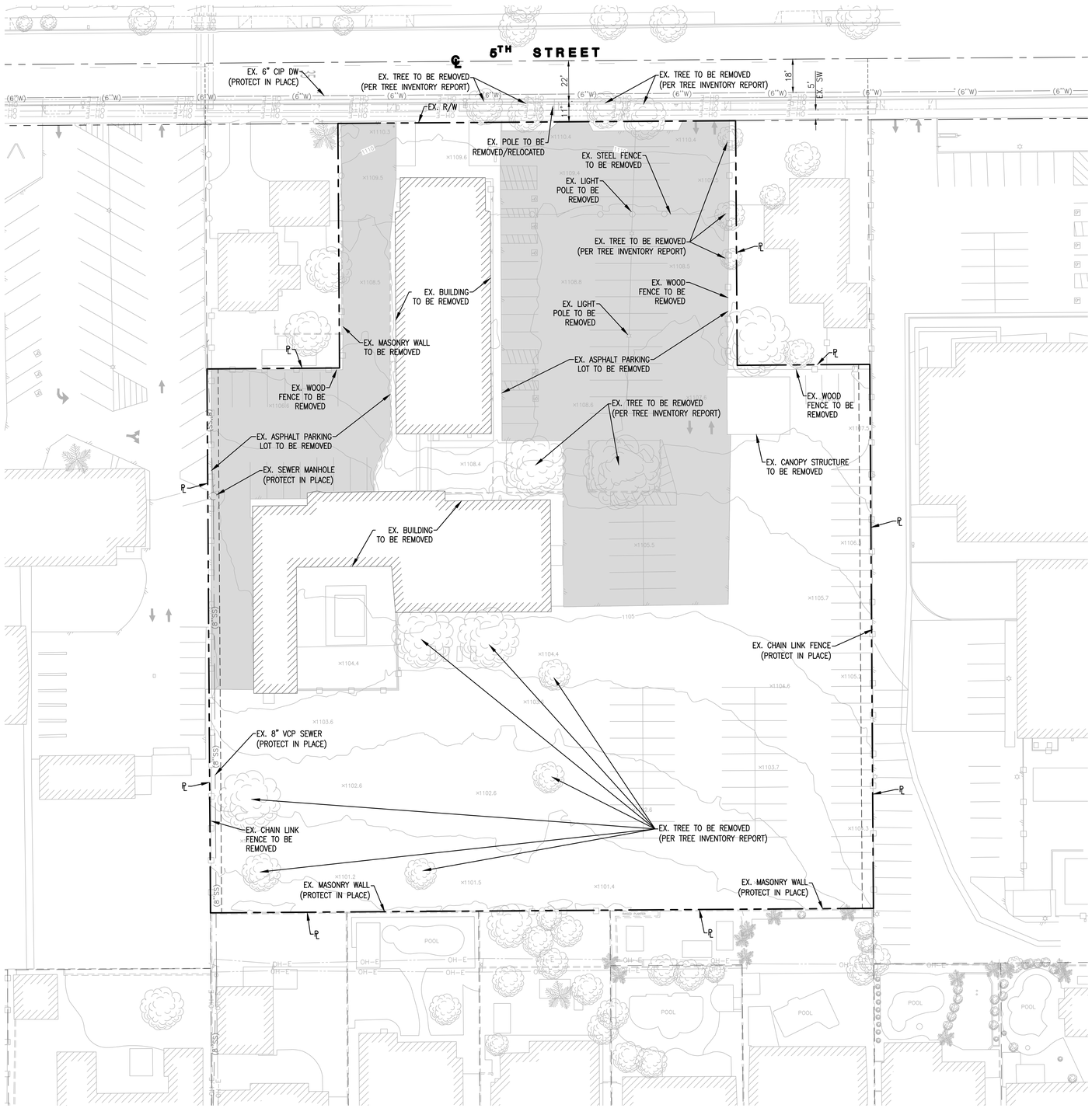
CITY OF ONTARIO
COMMUNITY DEVELOPMENT DEPARTMENT

TENTATIVE TRACT NO. 20659
CONCEPTUAL UTILITY SYSTEMS MAP
1355 WEST 5TH STREET
ONTARIO

PROJECT NO. WARM-013

SHEET 4 OF 5

PLAN SET: PSD2
DATE: 12/27/23
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BY: DAVID ACOSTA



NOTES:

1. REFER TO TREE INVENTORY REPORT PREPARED BY CERTIFIED ARBORIST FOR FULL LIST OF TREES TO BE PRESERVED/REMOVED AND MITIGATION MEASURES FOR REMOVED TREES.

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TENTATIVE TRACT NO. 20659
EXISTING SITE PLAN
1355 WEST 5TH STREET
ONTARIO

PROJECT NO. WARM-013

SHEET 5 OF 5

PLAN SET: PSD2
DATE: 12/22/23

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BY: DAVID ACOSTA

KPC EHS Consultants, LLC

Technical Memorandum

To: EPC Environmental, Inc. Ernest Perea

From: Kevin P. Carr, MS., KPC EHS Consultants

Date: December 15, 2023

Re: EPC 23-33 Ontario Sunrise Residential Project – Noise Assessment

---

1.0 Purpose

The purpose of this memorandum is to document the impacts of construction, mobile, operational noise, and vibration as it relates to the potential environmental impacts associated with the construction and operation of the proposed Residential Project on approximately 3.1 acres.

2.0 Project Location & Description

2.1 Project Location:

The proposed project site is located in the City of Ontario, San Bernardino County, California on the south side of West 5th Street west of the intersection with North Elderberry Avenue and east of the intersection with North Helen Avenue at 1355 West 5th Street also referred to as APN 1008-551-12.

2.2 Description:

The Applicant is proposing 70 townhome residential units, utility infrastructure, internal roadways and sidewalks, utilities, open space, and landscaping on an approximately 3.1-acres.

3.0 Noise Impacts

3.1 Ambient Noise:

The primary sources for existing ambient noise in the Project area is from traffic generated primarily from West 5th Street, north boundary of the project site, Benson Avenue ¼ mile to the west, and North Mountain Avenue 0.4 miles east, as well as residential noises from surrounding properties.

3.1.1 Existing Ambient Noise Level Measurements: To assess the existing noise level environment short-term noise measurements were obtained from 4 locations in the Project study area. Exhibit 3-A Noise Monitoring Map, provides the locations of the noise level measurements. Table 3.1.1 Ambient Noise Level Measurements provides the noise measurements. Ambient noise datasheets are included in Appendix A.

Exhibit 3-A Noise Monitoring Map



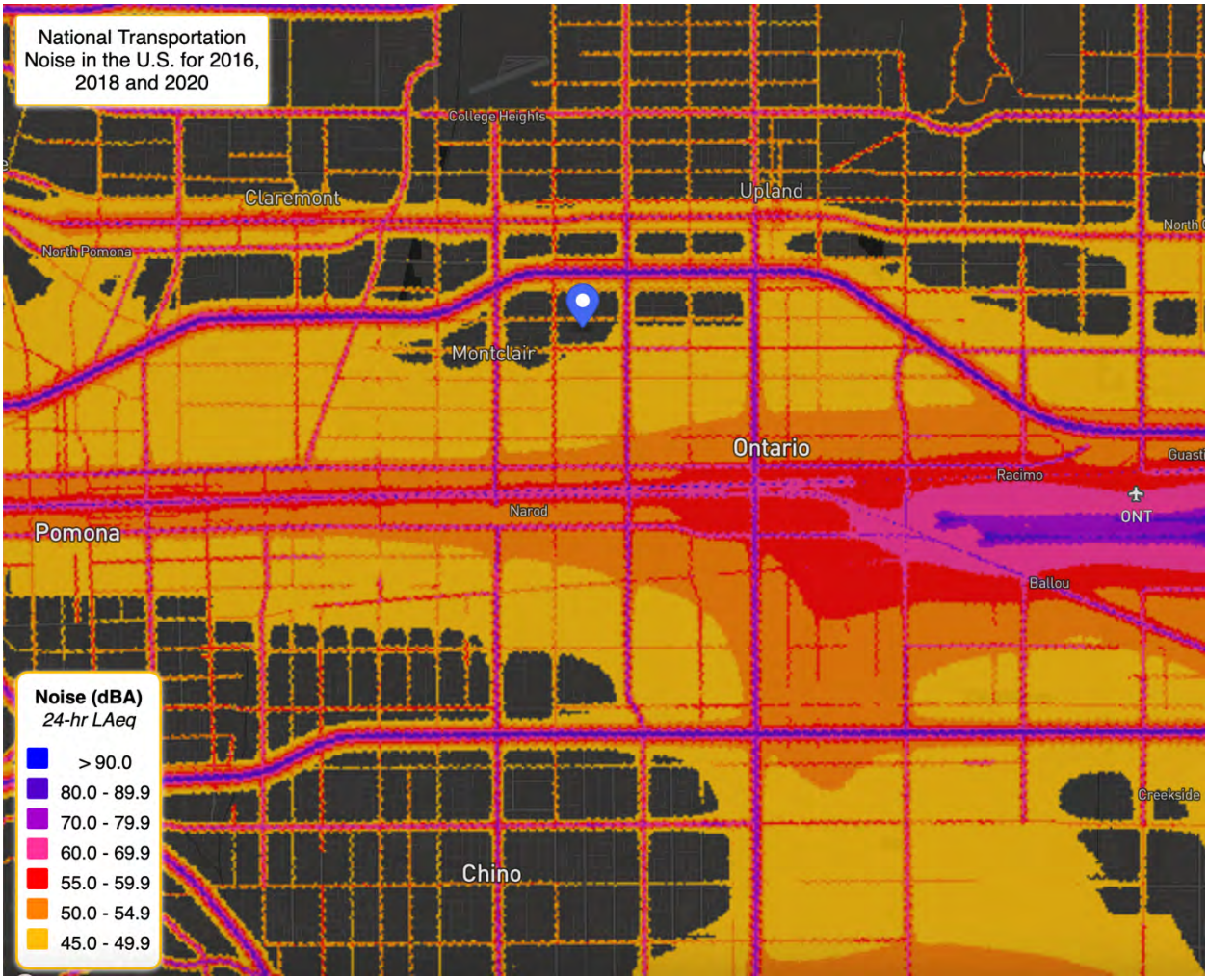
Table 3-1 Ambient Noise Level Measurements

Location	Distance to Project Center	Description	Average Noise Level dBA (Leq)	Maimum Noise Level (Lmax)
#1	320 ft.	Northwest Corner of Site	61.0	69.0
#2	925 ft	El Camino Elementary School	57.8	66.8
#3	460 ft	Southwest Corner of W. Princeton & N. Oaks Avenue	58.6	65.8
#4	770 ft	Northwest Corner of W. 5th & N. Elderberry Avenue	61.8	70.6

Source: Ambient Noise Measurement Datasheets, Appendix A.

The Bureau of Transportation Statistics provides the National Transportation Noise Map as a basis for understanding what-if scenarios and helping policy makers and planners to prioritize noise-related transportation investments.[1] The data on the noise map allows for viewing the potential exposure to aviation, highway, and rail noise. The current data for the roadways in the project area as well as Interstate 15 and State Route 91 near the Project site from the 2016 – 2018 noise map and is presented in Exhibit 3-B. The Noise Map contours are representative of the measured ambient noise measurements as presented in Table 3-1.

Exhibit 3-B National Transportation Noise Map: Project Area



[1] Bureau of Transportation Statistics, National Transportation Noise Map: https://www.bts.gov/geospatial/national-transportation-noise-map accessed October 27, 2023.

3.1.2 Sensitive Receptors (Noise Sensitive Land Uses): Noise-sensitive land uses are locations where people reside or where the presence of unwanted sound could adversely affect the use of the land. Sensitive receptor locations are generally identified as facilities where it is possible that an individual could remain for 24 hours. Commercial and industrial facilities are not included in the definition of sensitive receptor because employees typically are present for shorter periods of time, such as eight hours.

Residences, schools, hospitals, guest lodging, libraries, nursing homes, auditoriums, concert halls, amphitheaters, playgrounds, and parks are considered noise sensitive. The closest sensitive receptors to the Project site are include residential to the north, northeast, and south, as indicated in Table 3-2.

The properties adjacent to the north across 5th Street are residential (single family residential, multi-family residential) and commercial, the Gibbs Park and El Camino Elementary School to the west, to the south are existing residential, and to the east is the Ontario First Nazarene Church and Anthony Munoz Park, followed by residential. The nearest school is the El Camino Elementary School approximately 725 feet west of the site boundary.

Table 3-2 Sensitive Receptors Locations

Receptor	Distance from Project Site Boundary (feet)	Distance from Project Construction Center (feet)
El Camino Elementary School (West)	535	725
Residence – (closest adjacent south)	62	205
Residential (North across W 5th St)	82	345
Anthony Munoz Park (East)	345	510
Gibbs Park (West)	205	390

Source: Google Earth Pro, November 24, 2023

3.2 Construction Noise:

Construction activities that would create noise include site preparation, grading, building construction, paving, and architectural coating. Noise levels associated with the construction will vary with the different types of construction equipment, the duration of the activity, and distance from the source. Construction noise will have a temporary or periodic increase in the ambient noise level above the existing levels within the Project vicinity. The nearest sensitive receptors to the Project site are the residential uses to the south, multi-family residences located across 5th Street to the north, the El Camino Elementary School and Gibbs Park to the west, and Anthony Munoz Park to the east of the Project site. The closet southern adjacent residence is approximately 205 feet south of the property center and approximately 62 feet from the project site boundary and represents the closest receptors to the site. To estimate the potential impact of construction noise at the nearest sensitive receptors, equipment that is expected to be used during construction was input into the Federal Highway Administration Roadway Construction Noise Model (RCNM) version 1.1 to generate anticipated noise levels and included as Appendix B. The RCNM generates the maximum noise levels (Lmax) and the

equivalent continuous sound level (Leq). The Leq is a calculation of the anticipated steady sound pressure level which, over a given time period (day, evening, night) has the same total energy as the actual fluctuating noise. The RCNM also uses an acoustical use factor in the noise calculations. The acoustical use factor is the percentage of time each piece of construction equipment is assumed to be operating at the full power level and is used to estimate the Leq values from the Lmax values. For example, typical operating cycles for these types of construction equipment may involve one or two minutes of full power operation followed by three to four minutes at lower power settings. Noise levels will be loudest during the site preparation and grading phases. Table 3-3, Construction Equipment Noise Levels at the Nearest Receptor, identifies the level of noise generated by construction equipment.

Table 3-3 Construction Equipment Noise Levels at the Nearest Sensitive Receptor (Property line if Project Site to Northwest Residence)

Source	Approximate Distance to Nearest Receptor [1] (Property Line of Construction Site to Residence) (feet)	Sound Level at Nearest Receptor		
		Lmax	Acoustical Use Factor (%)	Leq
Backhoe	62	75.7	40	71.7
Concrete Mixer Truck	62	76.9	40	73.0
Compressor (air)	62	75.8	40	71.8
Concrete Pump Truck	62	79.5	20	72.5
Crane	62	78.7	16	70.7
Dozer	62	79.8	40	75.8
Dump Truck	62	74.6	40	70.6
Excavator	62	78.8	40	74.9
Flat Bed Truck	62	72.4	40	68.4
Front End Loader	62	77.2	40	73.3
Generator	62	78.8	50	75.8
Grader	62	83.1	40	79.2
Man Lift	62	72.8	20	65.8
Paver	62	75.4	50	72.3
Pickup Truck	62	73.1	40	69.2
Pneumatic Tools	62	83.3	50	80.3
Roller	62	78.1	20	71.1
Scraper	62	81.7	40	77.7
Tractor	62	82.1	40	78.2
Welder / Torch	62	72.1	40	68.2

Source: FHWA – RCNM Version 1.1, Appendix B.

Table 3-4 Construction Equipment Noise Levels at the Nearest Sensitive Receptor (Center of Project Site to Northwest Residence)

Source	Approximate Distance to Nearest Receptor [1] (Center of Site to Residence) (feet)	Sound Level at Nearest Receptor		
		Lmax	Acoustical Use Factor (%)	Leq
Backhoe	205	65.3	40	61.3
Concrete Mixer Truck	205	66.5	40	62.6
Compressor (air)	205	65.4	40	61.4
Concrete Pump Truck	205	69.1	20	62.2
Crane	205	68.3	16	60.3
Dozer	205	69.4	40	65.4
Dump Truck	205	64.2	40	60.2
Excavator	205	68.5	40	64.5
Flat Bed Truck	205	62.0	40	58.0
Front End Loader	205	66.9	40	62.9
Generator	205	68.4	50	65.4
Grader	205	72.7	40	68.8
Man Lift	205	62.4	20	55.5
Paver	205	65.0	50	62.0
Pickup Truck	205	62.7	40	58.8
Pneumatic Tools	205	72.9	50	69.9
Roller	205	67.7.	20	60.8
Scraper	205	71.3	40	67.3
Tractor	205	71.7	40	67.8
Welder / Torch	205	61.7	40	57.8

Source: FHWA – RCNM Version 1.1, Appendix B.

The highest anticipated construction noise levels would be from the use of pneumatic tools with a level of 83.3 dBA Lmax and 80.3 dBA Leq at 62 feet from the source to the receptor and 72.9 Lmax and 69.9 Leq at 205 feet from the source to the receptor.

The City of Ontario has set restrictions to control noise impacts from construction activities. The Corona Municipal Code 5-29.09 Construction Activity Noise Regulations prohibits construction noise except between the hours of 7:00 a.m. and 6:00 p.m. weekdays and between 9:00 a.m. and 6:00 p.m. on Saturdays and Sundays.

While the City establishes limits to the hours during which construction activity may take place, it does not identify specific noise level limits for construction noise levels. Therefore, to evaluate whether the Project will generate a substantial increase in the short-term noise levels at the

offsite sensitive receptors (residences), the construction-related noise level threshold is based on the National Institute for Occupational Safety and Health (NIOSH) recommended exposure limit (REL) for occupation noise exposure at 85 dBA, as an 8-hour time-weighted average (85 dBA – 8-hr TWA). Using the equipment from the Air Quality GHG Technical Memorandum CalEEMod data for the Site Preparation and Grading Phases, each piece of equipment operating at the same time in the same location for a full 8-hour period was calculated with results provided in Table 3-5, Worse Case Construction Noise Levels (Site Preparation & Grading).

Table 3-5 Worse Case Construction Noise Levels - Site Preparation & Grading (Center of Site to Nearest Receptor)

Phase	Equipment Type	Number of Units	Leq dBA/unit	Leq dBA Total
Site Preparation	Tractor/Loader/Backhoe	4	61.3	67.3
Site Preparation	Rubber Tire Dozers	3	65.4	70.2
Site Preparation	**Total Noise Level**			**72.0**
Grading	Grader	1	68.8	68.8
Grading	Tractor/Loader/Backhoe	3	61.3	66.1
Grading	Rubber Tired Dozer	1	65.4	65.4
Grading	Excavator	1	64.5	64.5
Grading	**Total Noise Level**			**72.5**

During the construction phase the noise levels will be the highest during site preparation and grading as heavy equipment pass along the Project site boundaries. During the site preparation and grading phases, which produce the highest noise levels, equipment will not be stationary, rather equipment will be moving throughout the site at varying speeds and power levels and as a result not operating at the maximum noise level for the entire workday. Using the default equipment type and number for the site preparation and grading phases from the CalEEMod AQ report the potential noise impacts of the equipment operating simultaneously and in the same area at the center of the property to the closest residential uses the construction noise impacts would be 72.0 Leq dBA during site preparation and 72.5 Leq dBA during grading operations.

As the equipment will be moving during the site preparation and grading phases the levels of noise at the nearest sensitive receptor are best represented by the levels from the center of the site as indicated in Table 3-4, and 3-5 are all below the NIOSH REL of 85 dBA 8-hour TWA and would be less than significant. Construction noise is of short-term duration and will not present any long-term impacts on the project site or the surrounding area.

In order to assure that the residences located within 62 feet of the property boundary are not significantly impacted by noise or vibration levels the following mitigation measure is recommended:

Mitigation Measure (MM) NOI-1 : Construction Noise Mitigation Plan

Prior to issuance of grading and/or building permits, a note shall be provided on grading and building plans indicating that, during grading and construction, the property owner/developer

shall be responsible for requiring contractors to implement the following measures to limit construction-related noise:

- The construction contractor shall ensure that all internal combustion engine-driven equipment is equipped with mufflers that are in good condition and appropriate for the equipment.
- The construction contractor shall locate stationary noise-generating equipment as far as possible from sensitive receptors when sensitive receptors adjoin or are near a construction project area. In addition, the Project contractor shall place such stationary construction equipment so that emitted noise is directed away from sensitive receptors nearest the Project site.
- The construction contractor shall prohibit unnecessary idling (no more than 5 minutes) of internal combustion engines.
- The construction contractor shall, to the maximum extent practical, locate on-site equipment staging areas to maximize the distance between construction-related noise sources and noise-sensitive receptors nearest the Project site during all project construction.
- The construction contractor shall designate a "disturbance coordinator" who would be responsible for responding to any complaints about construction noise. The disturbance coordinator shall determine the cause of the noise complaint (e.g., a bad muffler) and shall require that measures be implemented to correct the problem.
- These measures may only be granted an exception if an application for construction-related exception is made to and considered by the Building Official of the City

With implementation of the City's mandatory restrictions on construction noise hours and MM-NOI-1 construction noise impacts would be less than significant.

3.3 Operational Noise:

3.3.1 Offsite Traffic Noise Impacts.

Vehicle noise is a combination of the noises produced by the engine, exhaust, and tires. The primary source of noise generated by the Project will be from the vehicle traffic generated by the vehicle ingress and egress to the Project site. Under existing conditions, the site does not generate any traffic noise that impacts the surrounding area.

According to the Federal Highway Administration*, Highway Traffic Noise Analysis and Abatement Policy and Guidance,* the level of roadway traffic noise depends on three things: (1) the volume of the traffic, (2) the speed of the traffic, and (3) the number of trucks in the flow of the traffic. Generally, the loudness of traffic noise is increased by heavier traffic volumes, higher speeds, and greater numbers of trucks. These factors are discussed below.

- *The Volume of the Traffic*

Upon buildout, the proposed Project is expected to generate approximately 472 average daily vehicle trips (ADT) during the weekdays.

According to the City's Traffic Division Traffic Management Center Traffic Counts the current average daily vehicle trips along West 5th Street east of Benson Avenue in the Project area are approximately 6,381 ADT. [2]

According to Caltrans, the human ear can begin to detect sound level increases of 3 decibels (dB) in typical noisy environments.[3] A doubling of sound energy (e.g., doubling the volume of traffic on a highway) that would result in a 3-dBA increase in sound, would generally be barely detectable. Implementation of the Project will increase traffic volumes in the area occurring along 5th Street but not to the extent that traffic volumes will be doubled creating a +3dBA noise increase or result in a perceivable noise increase. Therefore, operational noise impacts would be less than significant.

- *The Speed of Traffic*

West 5th Street is a 2-lane road with parking on both sides and has a posted speed limit of 35 mph.

- *The Number of Trucks in the Flow of the Traffic*

The Project is a residential development in a residential area. The residential land use will not routinely generate noise from large trucks.

Future Traffic Noise Levels along Existing Roadways Segments

The roadway noise impacts from vehicular traffic were projected using a computer program that replicates the Federal Highway Administration (FHWA) Traffic Noise Prediction Model- FHWA-RD-77-108 (the "FHWA Model"). The FHWA Model arrives at a predicted noise level through a series of adjustments to the Reference Energy Mean Emission Level (REMEL). Adjustments are then made to the REMEL to account for: the roadway classification (e.g., collector, secondary, major or arterial), the roadway active width (i.e., the distance between the center of the outermost travel lanes on each side of the roadway), the total average daily traffic (ADT), the travel speed, the percentages of automobiles, medium trucks, and heavy trucks in the traffic volume, the roadway grade, the angle of view (e.g., whether the roadway view is blocked), the site conditions ("hard" or "soft" relates to the absorption of the ground, pavement, or landscaping), and the percentage of total ADT which flows each hour throughout a 24-hour period.

The Community Noise Equivalent Level (CNEL) is the 24-hour A-weighted average for sound, with corrections for evening and nighttime hours. The corrections require an addition of 5 decibels to sound levels in the evening hours between 7:00 p.m. and 10:00 p.m. and an addition of 10

[2] https://www.ontarioca.gov/TrafficEngineering Accessed: December 12, 2023

[3] Caltrans, Traffic Noise Analysis Protocol, April 2020, p.7-1.

decibels to sound levels at nighttime hours between 10:00 p.m. and 7:00 a.m. These additions are made to account for the increased sensitivity during the evening and nighttime hours when sound appears louder.

A vehicle's noise level is a combination of the noise produced by the engine, exhaust, and tires. The cumulative traffic noise levels along a roadway segment are based on three primary factors: the amount of traffic, the travel speed of the traffic, and the vehicle mix ratio or number of medium and heavy trucks. The intensity of traffic noise is increased by higher traffic volumes, greater speeds, and increased number of trucks.

Future construction of the proposed Project would increase the ADT by approximately 472 trips on weekdays.

Figure 3.3-1 is the noise contour map generated from the Federal Highway Administration (FHWA) Traffic Noise Model 3.5 showing the estimated traffic noise that will be generated with the current traffic along 5th Street and with the Project. To determine the noise impacts traffic data from the City of Ontario Traffic Counts [4] were used which indicated a daily traffic volume of 6,381 vehicles per day. Average Daily Traffic counts were converted to peak hour estimates at a rate of 0.075 ADT or 479 peak hour trips. Traffic vehicle mix was estimated at 97 percent automobile, 2 percent light truck, and 1 percent heavy trucks at the posted 35 miles per hour roadway speed limit. Additionally, the highest number of peak hour trips generated by the proposed project at 36 PM Peak hour trips were included to provide for a worse case estimate the Project traffic noise impacts.

As indicated in Exhibit 3-C and 3-D the noise contours for West 5th Street shows the proposed Project's impacts increase the noise levels less than 3 dBA. As indicated in the noise contour exhibits and Table 3-6 impacts along 5th Street in the Project Area will not result in new significant noise impacts.

[4] https://www.ontarioca.gov/TrafficEngineering Accessed: December 12, 2023

Exhibit 3-C Existing Traffic Noise Contours

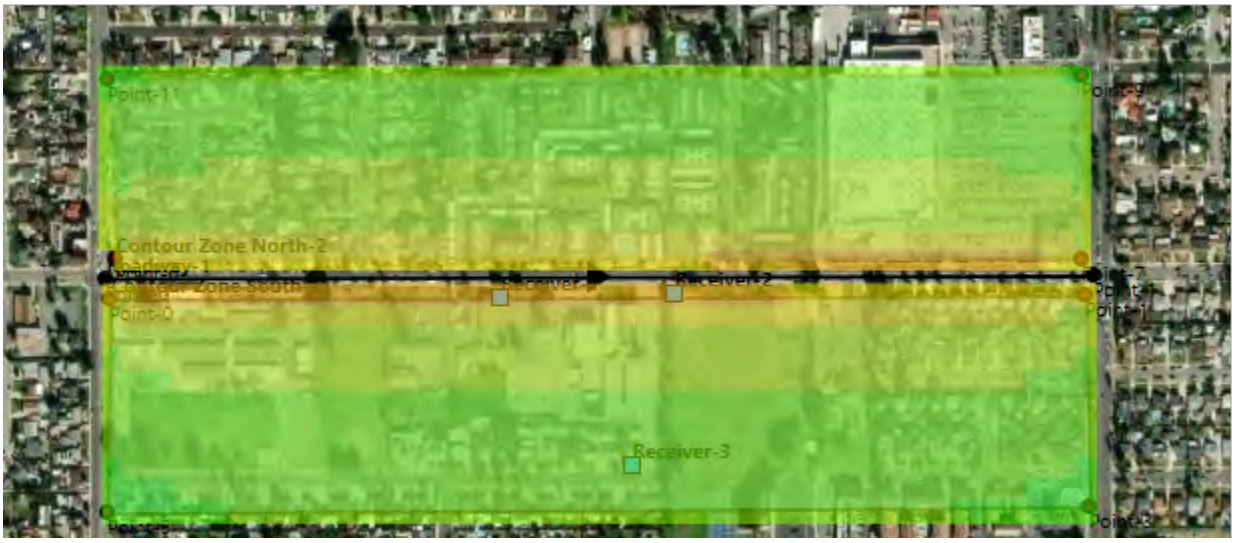


Exhibit 3-D Existing Plus Project Traffic Noise Contours

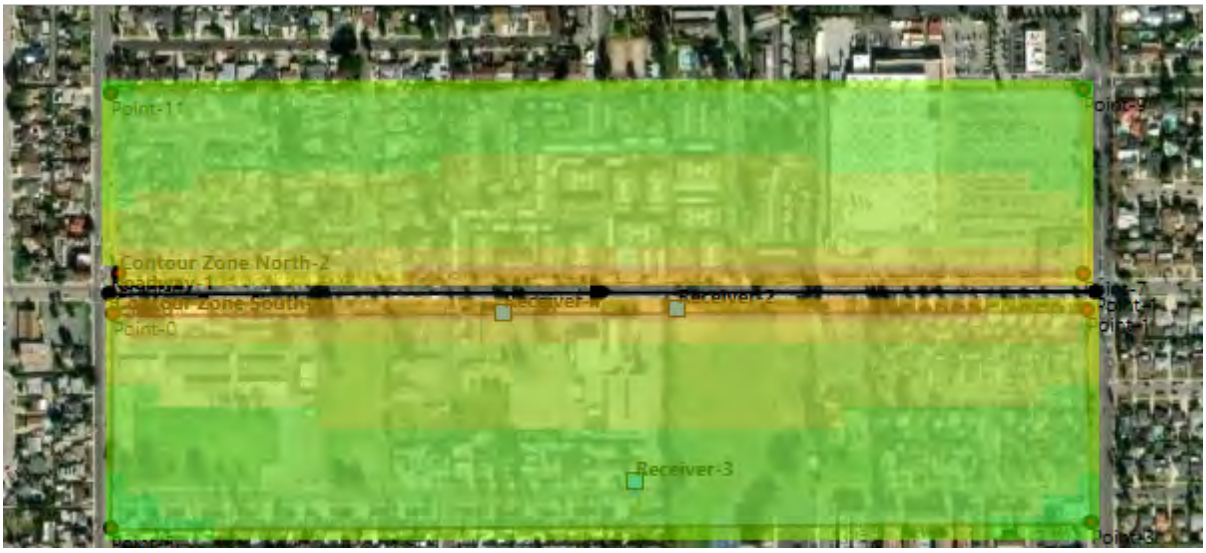


Table 3-6 Noise Level Comparison Existing vs. Existing Plus Project

Receptor	Existing Traffic Noise Level (dBA)	Existing Plus Project Noise Level (dBA)	Noise Level Difference (dBA)
Receptor 1 - Project Site (south side 5th Street)	59.8	60.0	0.2
Receptor 2 - Anthony Munoz Park (east of site)	60.7	61.0	0.3
Receptor 3 – West Princeton Street Cul de Sac (south of site)	47.5	47.7	0.2

Source: Federal Highway Administration (FHWA) Traffic Noise Prediction Model- FHWA-RD-77-108, Appendix C.

3.3.2 Operations (Residential Activity).

Typical operational sound levels generated by multi-family residential activities include normal outdoor conversations, air conditioner units, and lawn care equipment with levels as indicated below:

- Normal conversation, air conditioner - 60 dBA
- Gas-powered lawnmowers and leaf blowers – 80 to 85 dBA.[5]

Noise generated from air conditioners and lawn care equipment are not at constant and consistent levels throughout the day. Lawn care is performed during daylight hours for short durations and although air conditioners are operating both day and night they are cycling on/off with windows closed conditions. Stationary noise levels would be attenuated as with mobile noise sources with standard building construction and windows closed by approximately 25 dBA.

The USEPA identifies noise levels affecting health and welfare as exposure levels over 70 dBA over a 24-hour period. Noise levels for various levels are identified according to the use of the area. Levels of 45 dbA are associated with indoor residential areas, hospitals, and schools, whereas 55 dBA is identified for outdoor areas where typical residential human activity takes place. According to the USEPA levels of 55 dbA outdoors and 45 dbA indoors are identified as levels of noise considered to permit spoken conversation and other activities such as sleeping, working, and recreation, which are part of the daily human condition.[6] Levels exceeding 55 dbA in a residential setting are normally short in duration and not significant in affecting health and welfare of residents.

[5] Center for Disease Control, "*Loud Noised Can Cause Hearing Loss*". ,https://www.cdc.gov/nceh/hearing_loss/default.html, accessed on December 12, 2023.

[6] USEPA "EPA Identifies Noise Levels Affecting Health and Welfare" https://archive.epa.gov/epa/aboutepa/epa-identifies-noise-levels-affecting-health-and-welfare.html accessed December 12, 2023.

3.4 Vibration

During construction the operation and movement of heavy equipment create seismic waves that radiate along the ground-surface in all directions. These waves are felt as ground vibrations. Vibrations from construction can result in effects ranging from annoyance to people to structure damage. Vibration levels are impacted by geology, distance, and frequencies. According to the Federal Transit Administration, *Transit Noise and Vibration Impact Assessment Manual*, September 2018[7], while ground vibrations from construction activities do not often reach the levels that can damage structures, construction vibration may result in building damage or prolonged annoyance from activities such as blasting, piledriving, vibratory compaction, demolition, and drilling or excavation near sensitive structures. The Project does not require these types of construction activities.

Vibration amplitude and impact decreases with distance and perceptible ground-borne vibration is generally limited to areas within one to two hundred feet of the construction activity.

The vibration standard used for to evaluate the Project's vibration impacts is taken from the Caltrans *Transportation and Construction Vibration Guidance Manual* (2020). Based on the Caltrans guidance construction vibration impacts would be considered significant if vibration levels exceed 0.2 in/sec. PPV, which is the limit at which vibration becomes distinctly perceptible.

Table 3-8 Vibration Source Levels for Construction Equipment at 25 feet

Equipment	PPV (in/sec) at 25 feet	RMS (in/sec) at 25 feet
Small bulldozer	0.003	0.002
Jackhammer	0.035	0.025
Loaded Trucks	0.076	0.054
Large bulldozer	0.089	0.063

Source: Federal Transit Administration, Transit Noise and Vibration Impact Assessment, September 2018.

The closest sensitive receptor to the Project property line is minimally 25 feet from the property line. The estimated construction vibration level from a large bulldozer (worst case scenario) measured at 25-feet would create a vibration level of 0.089 in/sec PPV which does not exceed the 0.2 in/sec threshold and is below the Caltrans Guideline Vibration Annoyance Potential Criteria Strongly perceptible human response of 0.10 PPV in/sec continuous/frequent intermittent sources.[8] Therefore, the vibrations at the nearest sensitive receptor will remain well below the strongly perceptible annoyance criteria and potential residential vibration damage criteria thresholds listed in the Caltrans Transportation and Construction Induced Vibration Guidance Manual at or beyond the lot line. With the implementation of MM-NOI-1 the proposed Project therefore is not considered to result in exposure of people to excessive ground vibration.

[7] https://www.transit.dot.gov/research-innovation/transit-noise-and-vibration-impact-assessment-manual-report-0123
[8] CalTrans Transportation and Construction Vibration Guidance Manual, April 2020.

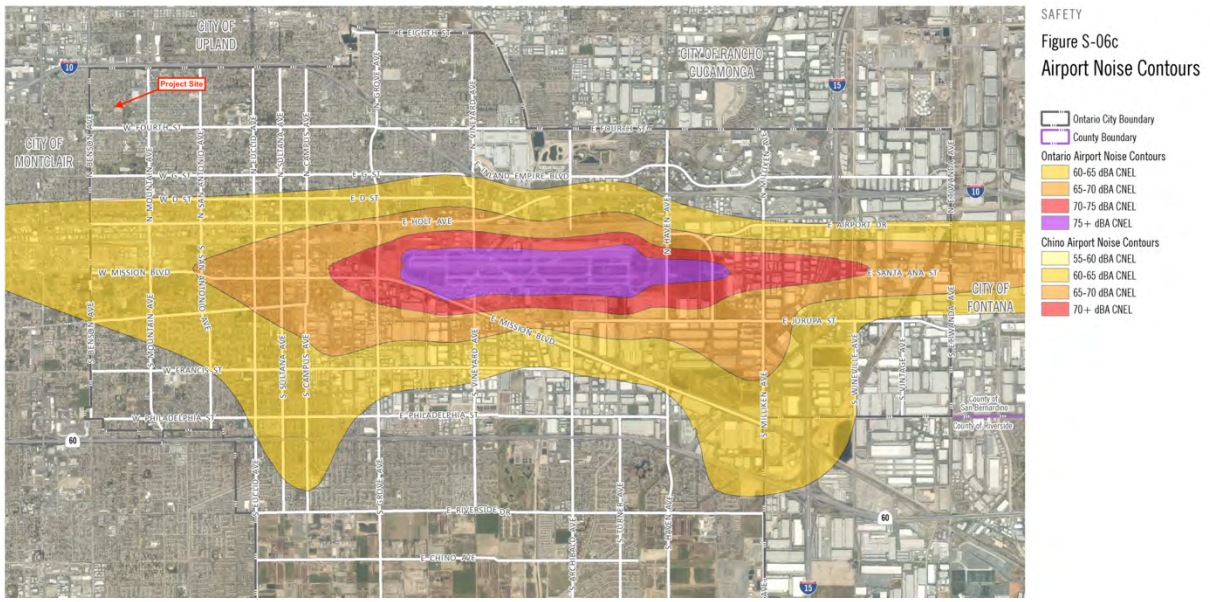
During operations of the Project following construction the primary source of vibration would be from vehicle traffic. Traffic vibration levels are dependent on vehicle characteristics, load, speed, and pavement conditions. Typical vibration levels from heavy truck activity at normal traffic speeds are in the order of 0.004 in/sec PPV at 25 feet based on the FTA's Transit Noise Impact and Vibration Assessment (2018). As the proposed Project is a Worship Center truck traffic which would create the largest vibration impact will be limited. Traffic once on site will be travelling at very low speeds and it is expected that traffic and any truck vibration impacts off site would not exceed the 0.2 in/sec PPV threshold.

Ground-borne vibration levels from automobile traffic are generally overshadowed by vibration generated by heavy trucks that roll over the same uneven roadway surfaces. However, due to the rapid drop-off rate of ground-borne vibration and the short duration of the associated events, vehicular traffic-induced ground-borne vibration is rarely perceptible beyond the roadway right-of-way, and rarely results in vibration levels that would cause annoyance to people or damage to buildings in the vicinity.

3.5 Airport Noise

The closest airport to the Project site is the Ontario International Airport approximately 3.45 miles southeast. As shown in Exhibit 3-E the Project site is located outside the Ontario Airport noise contour 60-65 dBA CNEL boundary and as such there will be less than significant airport noise impacts.

Exhibit 3-E



4.0 Conclusion

Based on the assessment in Section 3.0 through compliance with mandatory City requirements and ordinances and MM-NOI-1 to reduce noise during construction, the Project's construction noise impacts will not result in the generation of a substantial temporary or permanent increase in ambient noise levels in the vicinity of the project. In addition, the Project's construction and operations vibration impacts as well as operational noise for mobile and operational noise impacts to the environment are less than significant.

APPENDIX A

Ambient Noise Datasheets

Session Report

Location #1

Information Panel

Name	S082_BIJ050019_02112023_183630
Start Time	11/1/2023 1:12:56 PM
Stop Time	11/1/2023 1:27:56 PM
Device Name	BIJ050019
Model Type	SoundPro DL
Device Firmware Rev	R.13H
Comments	

Summary Data Panel

Description	Meter	Value	Description	Meter	Value
Leq	1	61 dB			
Exchange Rate	1	3 dB	Weighting	1	A
Response	1	SLOW	Bandwidth	1	OFF
Exchange Rate	2	5 dB	Weighting	2	A
Response	2	FAST			

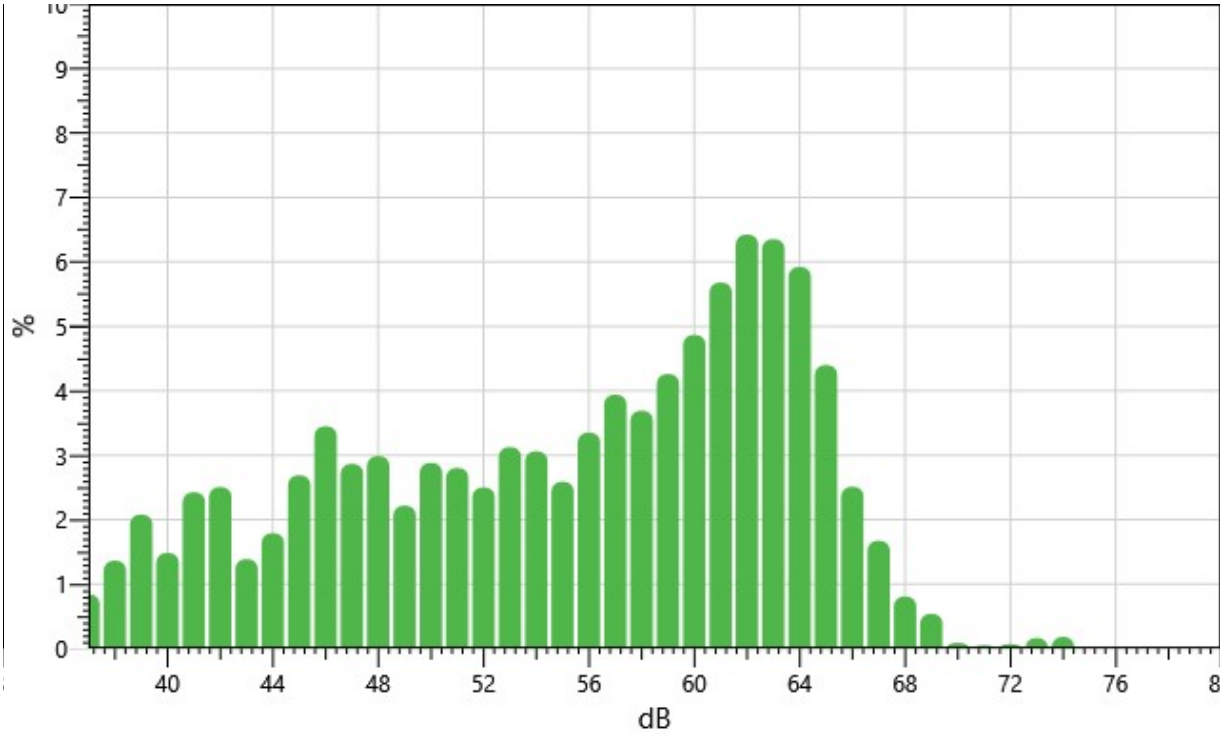
Statistics Table

dB:	0.0	0.1	0.2	0.3	0.4	0.5	0.6	0.7	0.8	0.9	%
37:	0.00	0.00	0.00	0.00	0.03	0.07	0.08	0.16	0.14	0.35	0.84
38:	0.42	0.19	0.15	0.15	0.10	0.09	0.06	0.06	0.05	0.09	1.36
39:	0.23	0.11	0.23	0.27	0.27	0.20	0.22	0.13	0.19	0.23	2.08
40:	0.27	0.15	0.14	0.16	0.14	0.14	0.10	0.13	0.13	0.14	1.48
41:	0.17	0.20	0.31	0.22	0.19	0.23	0.17	0.30	0.30	0.34	2.42
42:	0.22	0.15	0.21	0.30	0.34	0.31	0.25	0.22	0.28	0.22	2.51
43:	0.13	0.10	0.11	0.13	0.13	0.14	0.17	0.16	0.15	0.15	1.39
44:	0.13	0.18	0.16	0.14	0.15	0.16	0.15	0.18	0.26	0.29	1.79
45:	0.24	0.23	0.21	0.23	0.30	0.30	0.25	0.27	0.33	0.32	2.69
46:	0.32	0.32	0.36	0.28	0.31	0.41	0.34	0.38	0.35	0.39	3.45
47:	0.33	0.40	0.37	0.23	0.26	0.28	0.27	0.27	0.22	0.24	2.87
48:	0.31	0.48	0.25	0.30	0.24	0.34	0.29	0.30	0.22	0.25	2.99
49:	0.21	0.22	0.23	0.22	0.18	0.21	0.22	0.22	0.29	0.22	2.22
50:	0.22	0.24	0.25	0.26	0.22	0.30	0.39	0.38	0.31	0.32	2.88

51:	0.31	0.36	0.23	0.32	0.33	0.26	0.25	0.26	0.27	0.22	2.80
52:	0.23	0.23	0.29	0.26	0.34	0.24	0.20	0.21	0.26	0.25	2.50
53:	0.24	0.32	0.41	0.34	0.30	0.31	0.33	0.31	0.28	0.28	3.13
54:	0.30	0.34	0.19	0.26	0.29	0.27	0.30	0.38	0.44	0.29	3.06
55:	0.28	0.24	0.26	0.23	0.26	0.26	0.25	0.25	0.28	0.28	2.59
56:	0.27	0.25	0.31	0.32	0.37	0.32	0.34	0.43	0.36	0.38	3.35
57:	0.39	0.43	0.25	0.43	0.47	0.43	0.41	0.37	0.40	0.36	3.94
58:	0.37	0.36	0.34	0.37	0.37	0.38	0.39	0.41	0.36	0.35	3.69
59:	0.34	0.41	0.40	0.43	0.45	0.40	0.42	0.45	0.47	0.50	4.26
60:	0.51	0.53	0.35	0.53	0.59	0.50	0.46	0.51	0.46	0.45	4.87
61:	0.58	0.57	0.51	0.60	0.62	0.63	0.54	0.61	0.51	0.52	5.68
62:	0.55	0.60	0.64	0.65	0.77	0.59	0.66	0.58	0.63	0.75	6.42
63:	0.74	0.73	0.44	0.57	0.51	0.63	0.66	0.67	0.68	0.73	6.35
64:	0.62	0.59	0.57	0.63	0.60	0.53	0.53	0.62	0.59	0.64	5.92
65:	0.54	0.55	0.62	0.40	0.31	0.35	0.34	0.37	0.44	0.50	4.40
66:	0.39	0.38	0.21	0.19	0.16	0.17	0.26	0.25	0.28	0.22	2.51
67:	0.17	0.15	0.17	0.21	0.17	0.18	0.23	0.12	0.16	0.12	1.67
68:	0.10	0.11	0.06	0.07	0.07	0.07	0.06	0.09	0.13	0.07	0.81
69:	0.05	0.05	0.04	0.05	0.06	0.06	0.06	0.06	0.07	0.04	0.54
70:	0.02	0.02	0.01	0.01	0.01	0.01	0.01	0.01	0.00	0.00	0.09
71:	0.01	0.01	0.01	0.01	0.00	0.01	0.01	0.01	0.01	0.01	0.05
72:	0.00	0.01	0.01	0.00	0.01	0.01	0.01	0.01	0.01	0.01	0.07
73:	0.01	0.02	0.02	0.02	0.01	0.02	0.01	0.02	0.01	0.03	0.16
74:	0.05	0.02	0.01	0.01	0.01	0.00	0.01	0.01	0.01	0.06	0.18

Statistics Chart

S082_BIJ050019_02112023_183630: Statistics Chart

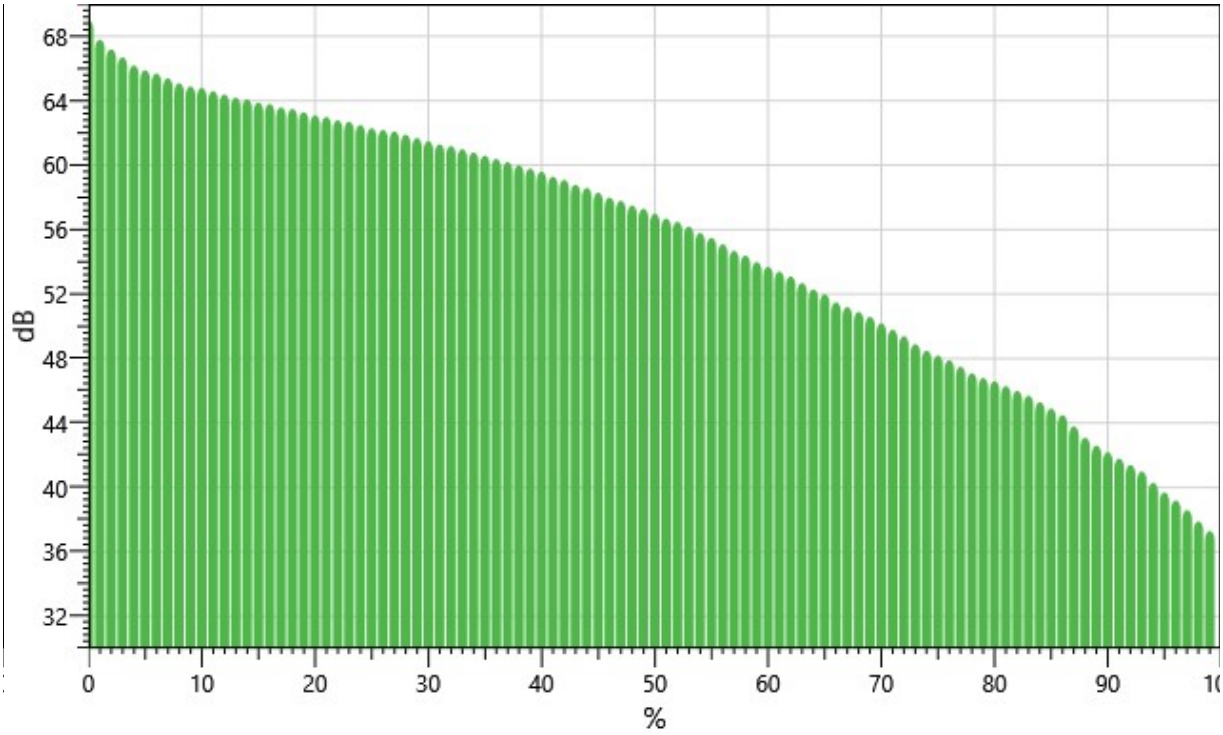


Exceedance Table

.	0%	1%	2%	3%	4%	5%	6%	%7	%8	%9
0%:		69.0	67.8	67.2	66.7	66.2	65.9	65.7	65.4	65.1
10%:	64.9	64.8	64.6	64.4	64.2	64.1	63.9	63.8	63.6	63.5
20%:	63.3	63.1	63.0	62.8	62.7	62.5	62.3	62.2	62.1	61.9
30%:	61.7	61.5	61.3	61.2	61.0	60.8	60.6	60.4	60.2	60.0
40%:	59.8	59.6	59.3	59.1	58.8	58.6	58.3	58.0	57.8	57.5
50%:	57.3	57.0	56.7	56.5	56.2	55.8	55.5	55.1	54.7	54.4
60%:	54.0	53.7	53.4	53.1	52.7	52.3	52.0	51.5	51.2	50.9
70%:	50.6	50.2	49.8	49.4	48.9	48.5	48.2	47.9	47.5	47.1
80%:	46.8	46.6	46.3	46.0	45.7	45.3	44.9	44.5	43.8	43.1
90%:	42.6	42.2	41.8	41.4	41.0	40.3	39.7	39.2	38.6	37.9
100%:	37.3									

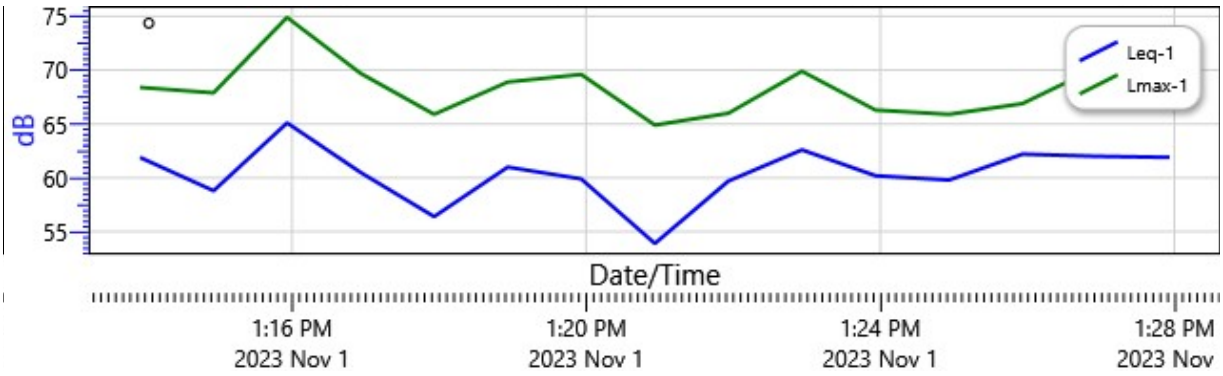
Exceedance Chart

S082_BIJ050019_02112023_183630: Exceedance Chart



Logged Data Chart

S082_BIJ050019_02112023_183630: Logged Data Chart



Session Report

Location #2

Information Panel

Name	S085_BIJ050019_02112023_183636
Start Time	11/1/2023 2:12:07 PM
Stop Time	11/1/2023 2:27:07 PM
Device Name	BIJ050019
Model Type	SoundPro DL
Device Firmware Rev	R.13H
Comments	

Summary Data Panel

Description	Meter	Value	Description	Meter	Value
Leq	1	57.8 dB			
Exchange Rate	1	3 dB	Weighting	1	A
Response	1	SLOW	Bandwidth	1	OFF
Exchange Rate	2	5 dB	Weighting	2	A
Response	2	FAST			

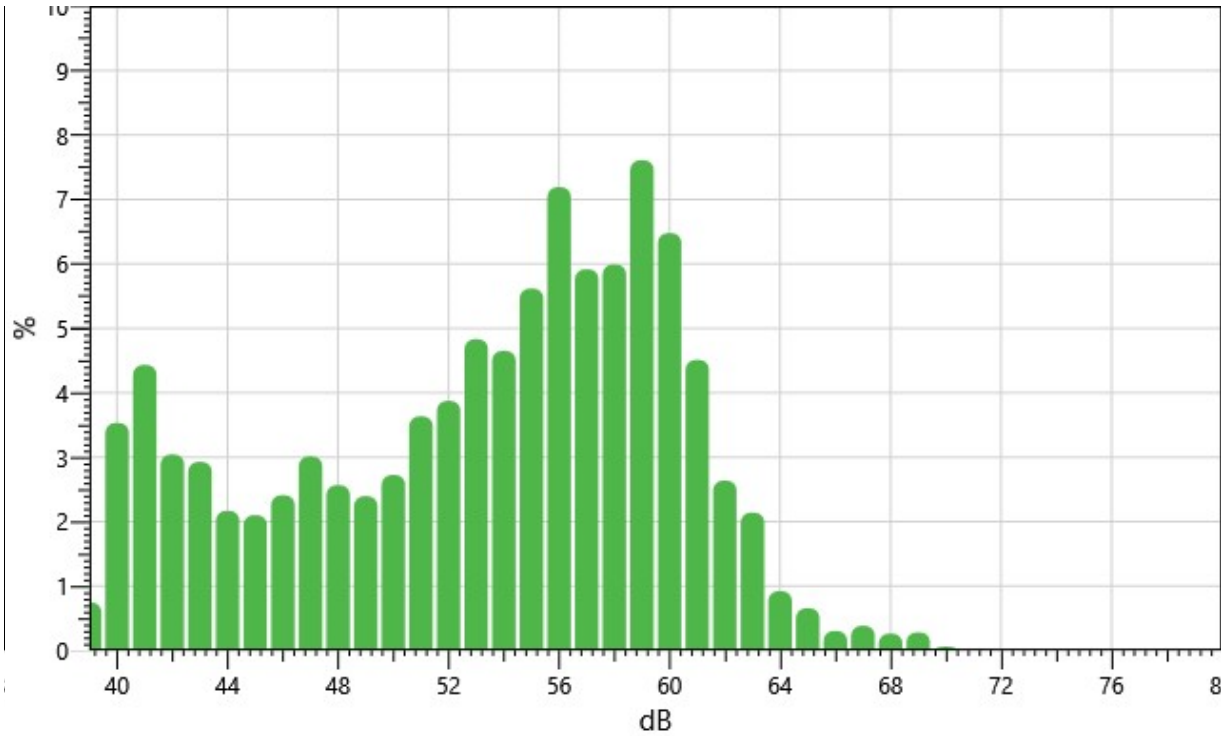
Statistics Table

dB:	0.0	0.1	0.2	0.3	0.4	0.5	0.6	0.7	0.8	0.9	%
39:	0.00	0.00	0.01	0.14	0.06	0.06	0.03	0.05	0.20	0.21	0.75
40:	0.28	0.28	0.39	0.37	0.30	0.36	0.41	0.41	0.32	0.41	3.53
41:	0.44	0.49	0.38	0.33	0.38	0.43	0.49	0.46	0.53	0.49	4.43
42:	0.40	0.31	0.32	0.35	0.28	0.28	0.28	0.24	0.32	0.28	3.04
43:	0.37	0.36	0.24	0.27	0.32	0.28	0.34	0.30	0.24	0.22	2.93
44:	0.22	0.27	0.21	0.22	0.18	0.22	0.21	0.19	0.23	0.22	2.17
45:	0.22	0.24	0.21	0.22	0.16	0.24	0.22	0.17	0.19	0.22	2.10
46:	0.19	0.21	0.19	0.23	0.23	0.30	0.32	0.28	0.22	0.24	2.41
47:	0.24	0.30	0.29	0.31	0.35	0.34	0.27	0.30	0.29	0.33	3.01
48:	0.27	0.26	0.16	0.26	0.23	0.24	0.29	0.31	0.30	0.25	2.57
49:	0.23	0.24	0.19	0.20	0.21	0.21	0.26	0.24	0.25	0.34	2.39
50:	0.28	0.25	0.25	0.28	0.28	0.27	0.26	0.26	0.30	0.30	2.72
51:	0.33	0.44	0.27	0.37	0.31	0.45	0.40	0.41	0.30	0.35	3.63
52:	0.33	0.35	0.35	0.40	0.32	0.30	0.35	0.45	0.55	0.47	3.87

53:	0.41	0.54	0.47	0.44	0.43	0.55	0.46	0.55	0.50	0.50	4.83
54:	0.51	0.48	0.30	0.43	0.39	0.47	0.47	0.54	0.62	0.45	4.65
55:	0.48	0.55	0.51	0.52	0.68	0.59	0.56	0.55	0.57	0.60	5.62
56:	0.76	0.73	0.75	0.70	0.70	0.75	0.58	0.65	0.78	0.79	7.19
57:	0.64	0.60	0.42	0.54	0.55	0.60	0.70	0.71	0.59	0.57	5.92
58:	0.59	0.61	0.67	0.52	0.54	0.69	0.61	0.58	0.56	0.61	5.99
59:	0.62	0.57	0.68	0.73	0.84	0.79	0.91	0.73	0.81	0.94	7.61
60:	0.83	0.88	0.63	0.74	0.64	0.66	0.59	0.57	0.44	0.48	6.48
61:	0.51	0.43	0.43	0.44	0.43	0.49	0.57	0.46	0.42	0.34	4.51
62:	0.36	0.33	0.34	0.23	0.21	0.22	0.21	0.23	0.26	0.25	2.64
63:	0.23	0.22	0.17	0.21	0.20	0.25	0.25	0.23	0.20	0.18	2.14
64:	0.16	0.12	0.08	0.10	0.07	0.06	0.07	0.07	0.10	0.09	0.92
65:	0.09	0.07	0.07	0.04	0.08	0.07	0.05	0.05	0.07	0.07	0.66
66:	0.04	0.04	0.02	0.02	0.03	0.03	0.03	0.04	0.03	0.03	0.30
67:	0.03	0.04	0.04	0.03	0.03	0.03	0.03	0.06	0.06	0.03	0.38
68:	0.04	0.03	0.03	0.03	0.03	0.02	0.03	0.02	0.02	0.02	0.26
69:	0.02	0.02	0.01	0.02	0.03	0.03	0.04	0.05	0.05	0.02	0.28
70:	0.02	0.02	0.03	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.06

Statistics Chart

S085_BIJ050019_02112023_183636: Statistics Chart

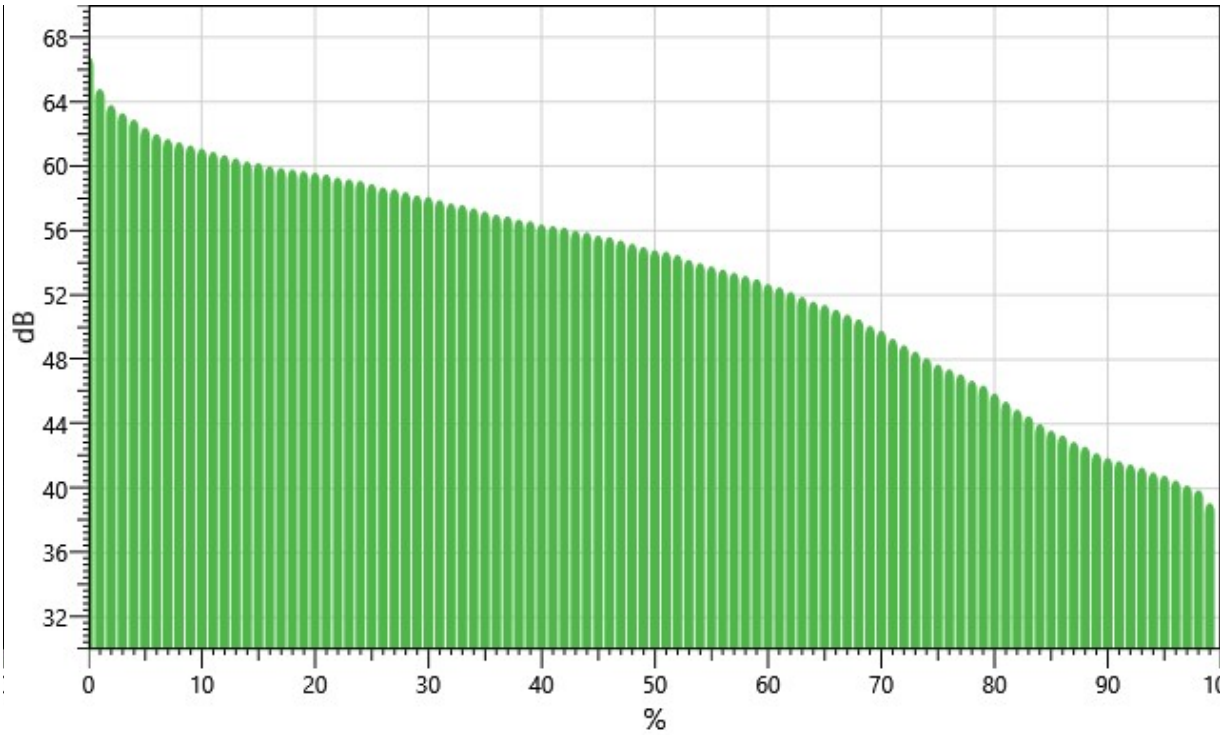


Exceedance Table

.	0%	1%	2%	3%	4%	5%	6%	%7	%8	%9
0%:		66.8	64.8	63.8	63.3	62.9	62.4	62.0	61.7	61.5
10%:	61.3	61.1	60.9	60.7	60.5	60.3	60.2	60.0	59.9	59.8
20%:	59.7	59.6	59.5	59.3	59.2	59.1	58.9	58.7	58.6	58.4
30%:	58.2	58.1	57.9	57.7	57.6	57.4	57.2	57.0	56.9	56.7
40%:	56.6	56.4	56.3	56.2	56.0	55.9	55.7	55.6	55.4	55.2
50%:	55.0	54.8	54.7	54.5	54.2	54.0	53.8	53.6	53.4	53.2
60%:	53.0	52.7	52.5	52.2	51.9	51.6	51.4	51.1	50.8	50.5
70%:	50.1	49.8	49.3	48.9	48.5	48.1	47.7	47.4	47.1	46.7
80%:	46.4	45.9	45.4	44.9	44.5	44.0	43.6	43.3	42.9	42.6
90%:	42.2	41.9	41.7	41.5	41.3	41.0	40.8	40.5	40.2	39.9
100%:	39.1									

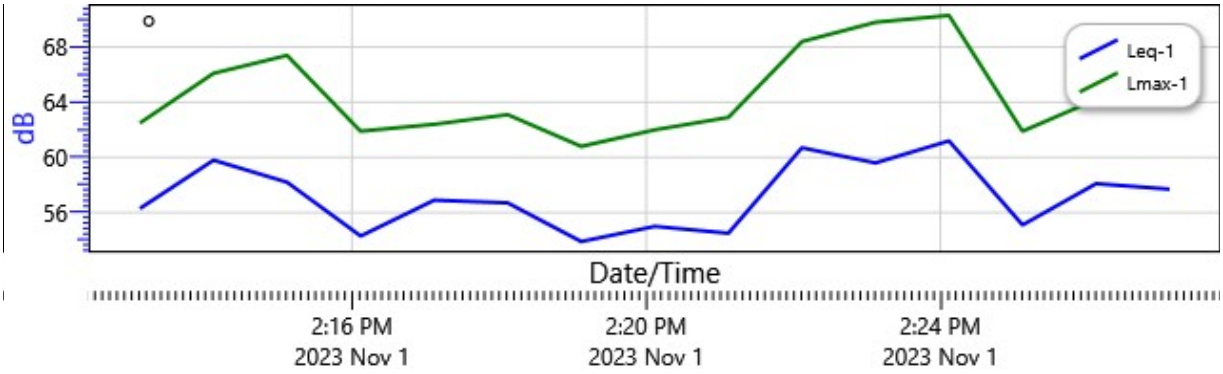
Exceedance Chart

S085_BIJ050019_02112023_183636: Exceedance Chart



Logged Data Chart

S085_BIJ050019_02112023_183636: Logged Data Chart



Session Report

Location #3

Information Panel

Name	S083_BIJ050019_02112023_183633
Start Time	11/1/2023 1:35:27 PM
Stop Time	11/1/2023 1:50:27 PM
Device Name	BIJ050019
Model Type	SoundPro DL
Device Firmware Rev	R.13H
Comments	

Summary Data Panel

Description	Meter	Value	Description	Meter	Value
Leq	1	58.6 dB			
Exchange Rate	1	3 dB	Weighting	1	A
Response	1	SLOW	Bandwidth	1	OFF
Exchange Rate	2	5 dB	Weighting	2	A
Response	2	FAST			

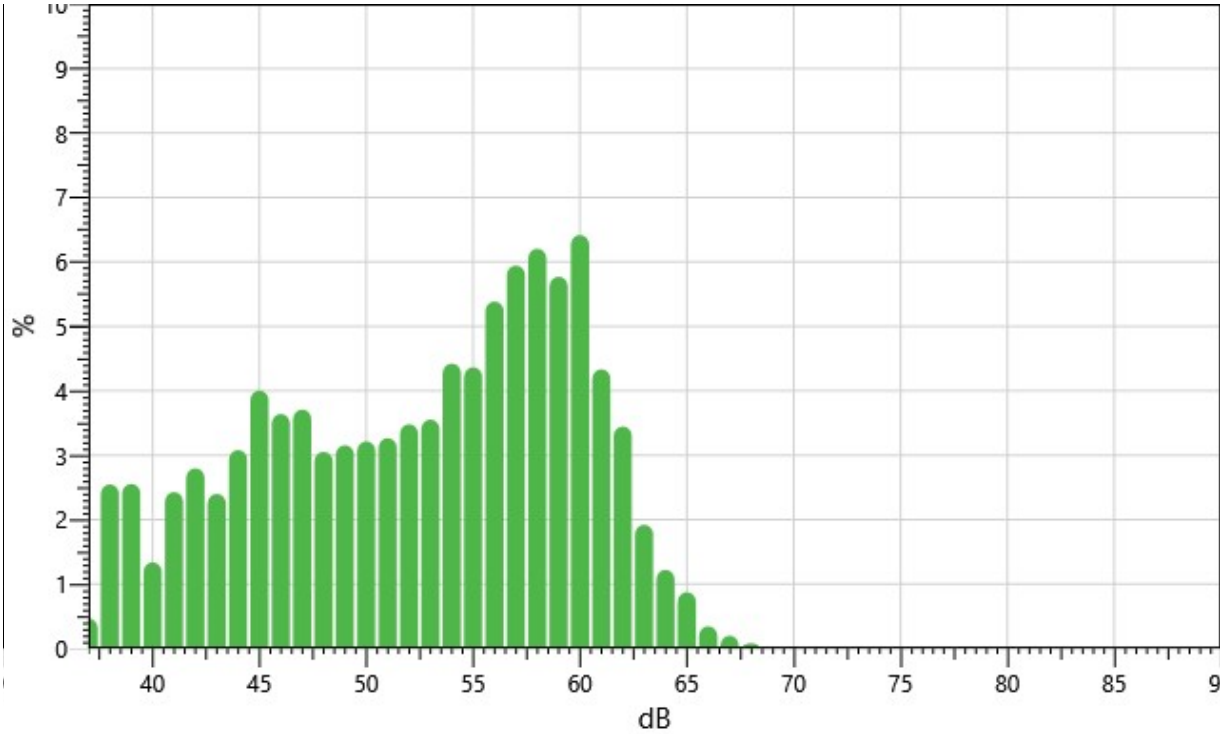
Statistics Table

dB:	0.0	0.1	0.2	0.3	0.4	0.5	0.6	0.7	0.8	0.9	%
37:	0.00	0.00	0.00	0.01	0.03	0.03	0.11	0.10	0.11	0.07	0.47
38:	0.06	0.16	0.29	0.31	0.31	0.27	0.25	0.35	0.26	0.30	2.55
39:	0.52	0.38	0.28	0.18	0.14	0.19	0.22	0.28	0.18	0.19	2.56
40:	0.16	0.14	0.12	0.15	0.20	0.15	0.11	0.10	0.10	0.09	1.34
41:	0.12	0.18	0.28	0.23	0.25	0.23	0.30	0.32	0.27	0.24	2.43
42:	0.28	0.28	0.20	0.17	0.23	0.40	0.33	0.26	0.31	0.34	2.80
43:	0.35	0.28	0.29	0.24	0.24	0.24	0.19	0.19	0.18	0.20	2.40
44:	0.18	0.16	0.20	0.30	0.28	0.30	0.35	0.38	0.40	0.52	3.08
45:	0.49	0.51	0.39	0.39	0.48	0.46	0.40	0.32	0.29	0.27	4.00
46:	0.25	0.27	0.30	0.40	0.43	0.47	0.42	0.45	0.32	0.34	3.64
47:	0.33	0.33	0.44	0.34	0.42	0.39	0.36	0.33	0.40	0.37	3.71
48:	0.43	0.36	0.23	0.31	0.28	0.26	0.28	0.33	0.28	0.29	3.05
49:	0.30	0.31	0.30	0.30	0.27	0.27	0.32	0.40	0.37	0.31	3.16
50:	0.36	0.31	0.28	0.26	0.37	0.35	0.32	0.34	0.31	0.32	3.22

51:	0.34	0.36	0.23	0.32	0.35	0.36	0.32	0.33	0.32	0.32	3.27
52:	0.36	0.34	0.29	0.31	0.43	0.38	0.35	0.34	0.35	0.35	3.48
53:	0.33	0.34	0.34	0.33	0.34	0.35	0.34	0.37	0.36	0.45	3.55
54:	0.60	0.55	0.35	0.46	0.44	0.43	0.39	0.38	0.44	0.38	4.42
55:	0.38	0.41	0.39	0.44	0.45	0.54	0.43	0.41	0.43	0.48	4.36
56:	0.43	0.48	0.44	0.45	0.44	0.55	0.69	0.55	0.65	0.72	5.39
57:	0.73	0.74	0.52	0.68	0.55	0.52	0.55	0.55	0.57	0.53	5.94
58:	0.52	0.44	0.57	0.53	0.66	0.70	0.68	0.76	0.65	0.69	6.20
59:	0.71	0.68	0.60	0.55	0.51	0.58	0.48	0.46	0.56	0.64	5.77
60:	0.65	0.74	0.52	0.65	0.64	0.67	0.65	0.63	0.67	0.59	6.42
61:	0.56	0.56	0.53	0.53	0.39	0.38	0.33	0.35	0.30	0.41	4.33
62:	0.40	0.41	0.34	0.40	0.38	0.35	0.36	0.32	0.24	0.26	3.45
63:	0.26	0.17	0.11	0.22	0.24	0.24	0.20	0.20	0.14	0.15	1.92
64:	0.12	0.17	0.11	0.16	0.19	0.13	0.08	0.10	0.08	0.08	1.22
65:	0.09	0.09	0.12	0.08	0.12	0.07	0.11	0.10	0.05	0.04	0.88
66:	0.07	0.07	0.04	0.03	0.02	0.02	0.02	0.02	0.03	0.02	0.35
67:	0.04	0.01	0.01	0.01	0.01	0.01	0.02	0.02	0.05	0.03	0.20
68:	0.01	0.01	0.03	0.01	0.00	0.00	0.00	0.00	0.00	0.00	0.08
69:	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.03
70:	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.03
71:	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.03
72:	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.03
73:	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.03
74:	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.03
75:	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.03
76:	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.03
77:	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.03
78:	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.03
79:	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.03
80:	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.03
81:	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.03
82:	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.01

Statistics Chart

S083_BIJ050019_02112023_183633: Statistics Chart

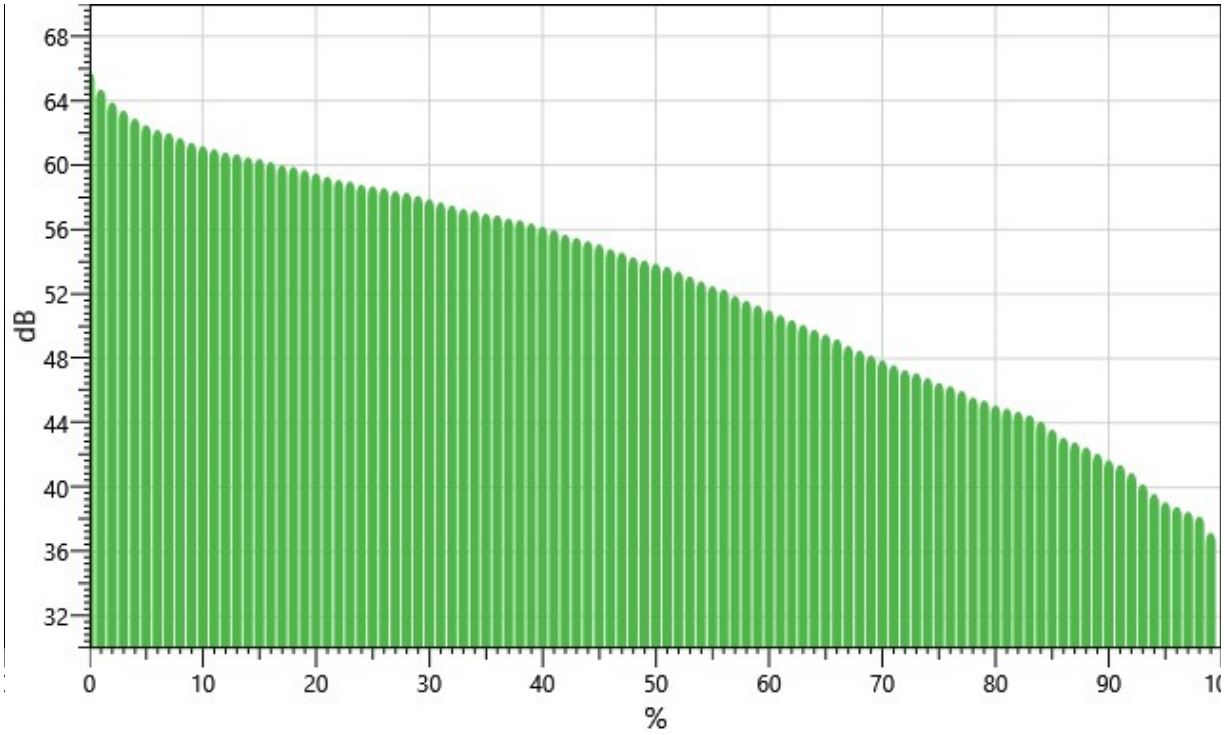


Exceedance Table

.	0%	1%	2%	3%	4%	5%	6%	%7	%8	%9
0%:		65.8	64.7	63.9	63.4	62.9	62.5	62.2	62.0	61.7
10%:	61.4	61.2	61.0	60.8	60.7	60.5	60.4	60.2	60.0	59.9
20%:	59.7	59.5	59.3	59.1	59.0	58.8	58.7	58.6	58.4	58.3
30%:	58.1	57.9	57.7	57.5	57.3	57.2	57.0	56.9	56.7	56.6
40%:	56.4	56.2	56.0	55.7	55.5	55.3	55.1	54.8	54.6	54.3
50%:	54.1	53.9	53.7	53.4	53.1	52.8	52.5	52.3	51.9	51.6
60%:	51.3	51.0	50.7	50.4	50.1	49.8	49.5	49.2	48.8	48.5
70%:	48.2	47.9	47.6	47.3	47.1	46.8	46.5	46.3	46.0	45.6
80%:	45.4	45.1	44.9	44.7	44.5	44.1	43.6	43.1	42.8	42.5
90%:	42.1	41.7	41.4	40.9	40.2	39.6	39.1	38.8	38.5	38.2
100%:	37.2									

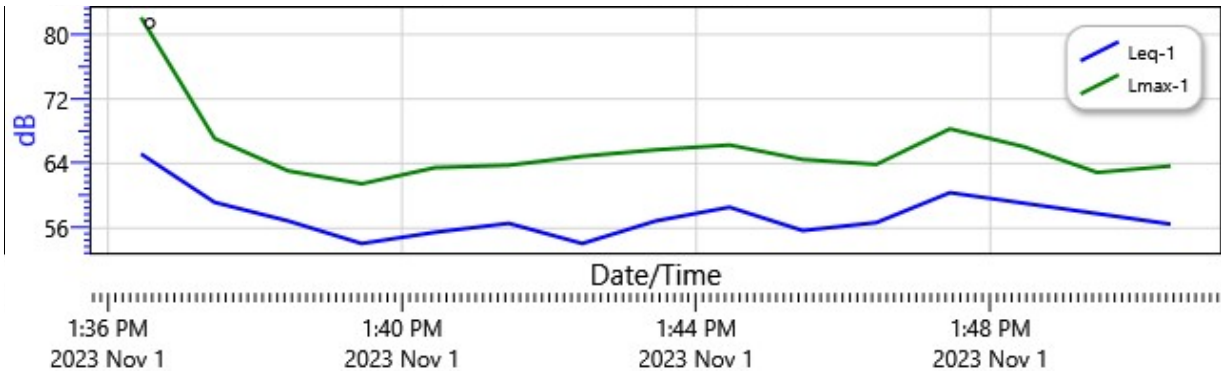
Exceedance Chart

S083_BIJ050019_02112023_183633: Exceedance Chart



Logged Data Chart

S083_BIJ050019_02112023_183633: Logged Data Chart



Session Report

Location #4

Information Panel

Name	S084_BIJ050019_02112023_183635
Start Time	11/1/2023 1:56:36 PM
Stop Time	11/1/2023 2:11:36 PM
Device Name	BIJ050019
Model Type	SoundPro DL
Device Firmware Rev	R.13H
Comments	

Summary Data Panel

Description	Meter	Value	Description	Meter	Value
Leq	1	61.8 dB			
Exchange Rate	1	3 dB	Weighting	1	A
Response	1	SLOW	Bandwidth	1	OFF
Exchange Rate	2	5 dB	Weighting	2	A
Response	2	FAST			

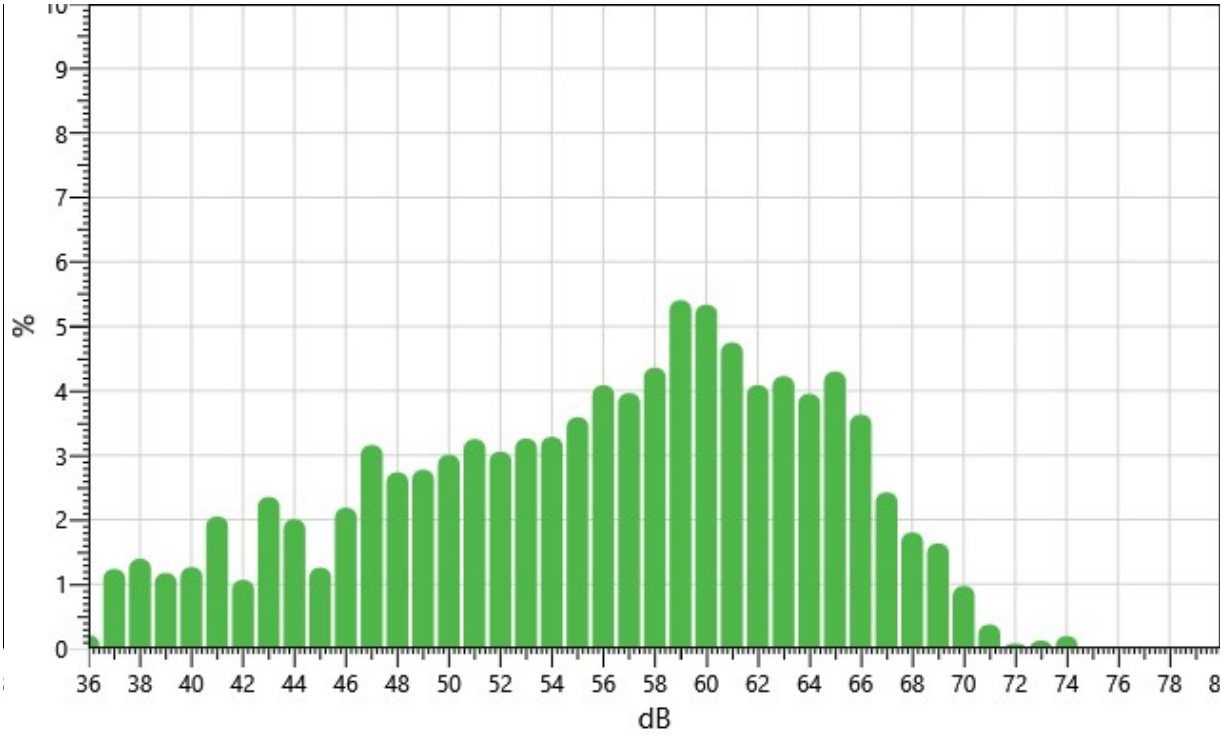
Statistics Table

dB:	0.0	0.1	0.2	0.3	0.4	0.5	0.6	0.7	0.8	0.9	%
36:	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.08	0.13	0.21
37:	0.21	0.17	0.26	0.13	0.07	0.07	0.06	0.08	0.05	0.14	1.23
38:	0.23	0.12	0.08	0.19	0.22	0.16	0.08	0.08	0.16	0.07	1.39
39:	0.09	0.05	0.11	0.06	0.09	0.14	0.19	0.10	0.17	0.18	1.17
40:	0.05	0.06	0.09	0.08	0.09	0.13	0.15	0.20	0.25	0.17	1.26
41:	0.22	0.20	0.27	0.26	0.28	0.28	0.18	0.14	0.09	0.12	2.05
42:	0.11	0.07	0.10	0.13	0.11	0.12	0.12	0.09	0.09	0.13	1.07
43:	0.20	0.29	0.17	0.22	0.17	0.22	0.17	0.25	0.32	0.34	2.35
44:	0.24	0.28	0.21	0.20	0.19	0.23	0.19	0.14	0.17	0.15	2.01
45:	0.10	0.23	0.10	0.13	0.13	0.13	0.10	0.10	0.12	0.13	1.26
46:	0.17	0.15	0.12	0.22	0.22	0.24	0.28	0.25	0.34	0.20	2.19
47:	0.27	0.28	0.36	0.33	0.28	0.34	0.25	0.40	0.33	0.31	3.16
48:	0.26	0.32	0.28	0.30	0.21	0.24	0.23	0.31	0.27	0.31	2.73
49:	0.23	0.23	0.23	0.20	0.26	0.26	0.32	0.36	0.34	0.35	2.78

50:	0.38	0.30	0.31	0.30	0.31	0.23	0.22	0.27	0.31	0.37	3.01
51:	0.37	0.45	0.26	0.33	0.37	0.26	0.26	0.27	0.32	0.35	3.25
52:	0.36	0.34	0.26	0.27	0.30	0.32	0.35	0.31	0.26	0.29	3.05
53:	0.25	0.32	0.34	0.29	0.36	0.33	0.35	0.33	0.34	0.35	3.26
54:	0.33	0.39	0.23	0.34	0.32	0.36	0.36	0.32	0.32	0.33	3.28
55:	0.32	0.35	0.30	0.31	0.44	0.41	0.45	0.35	0.35	0.31	3.59
56:	0.33	0.50	0.41	0.39	0.35	0.41	0.40	0.40	0.44	0.46	4.09
57:	0.45	0.45	0.28	0.46	0.42	0.42	0.43	0.36	0.33	0.36	3.96
58:	0.37	0.40	0.48	0.45	0.45	0.51	0.47	0.46	0.38	0.39	4.36
59:	0.50	0.49	0.45	0.49	0.51	0.51	0.58	0.58	0.73	0.55	5.41
60:	0.63	0.59	0.38	0.68	0.56	0.51	0.48	0.53	0.47	0.51	5.34
61:	0.50	0.43	0.51	0.57	0.52	0.48	0.49	0.45	0.40	0.39	4.75
62:	0.44	0.41	0.39	0.43	0.39	0.48	0.40	0.41	0.36	0.39	4.09
63:	0.41	0.51	0.30	0.37	0.42	0.41	0.44	0.45	0.46	0.45	4.23
64:	0.43	0.44	0.39	0.41	0.39	0.41	0.39	0.33	0.40	0.36	3.95
65:	0.41	0.45	0.42	0.39	0.39	0.39	0.43	0.41	0.44	0.56	4.30
66:	0.44	0.46	0.39	0.41	0.32	0.32	0.32	0.37	0.30	0.28	3.63
67:	0.37	0.25	0.25	0.31	0.27	0.28	0.21	0.18	0.16	0.15	2.42
68:	0.19	0.21	0.18	0.15	0.14	0.16	0.14	0.17	0.27	0.19	1.80
69:	0.18	0.18	0.14	0.17	0.20	0.16	0.11	0.24	0.14	0.10	1.63
70:	0.11	0.12	0.12	0.11	0.07	0.10	0.09	0.11	0.06	0.08	0.97
71:	0.05	0.05	0.02	0.03	0.02	0.02	0.06	0.07	0.02	0.03	0.38
72:	0.03	0.01	0.01	0.00	0.01	0.00	0.01	0.01	0.01	0.00	0.08
73:	0.01	0.01	0.01	0.00	0.01	0.02	0.04	0.01	0.01	0.01	0.13
74:	0.02	0.01	0.02	0.04	0.04	0.01	0.01	0.01	0.02	0.01	0.19

Statistics Chart

S084_BIJ050019_02112023_183635: Statistics Chart

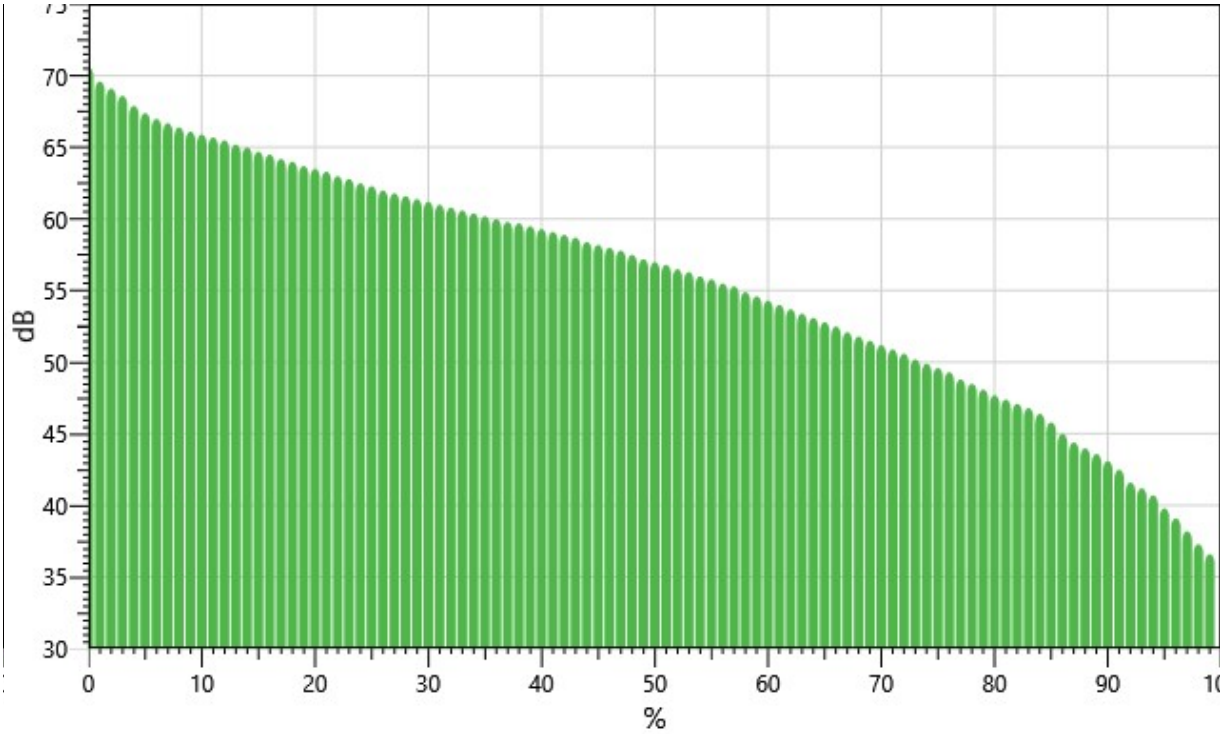


Exceedance Table

.	0%	1%	2%	3%	4%	5%	6%	%7	%8	%9
0%:		70.6	69.6	69.1	68.6	67.9	67.4	67.0	66.7	66.4
10%:	66.1	65.9	65.7	65.5	65.2	65.0	64.7	64.5	64.2	64.0
20%:	63.7	63.5	63.3	63.0	62.8	62.5	62.3	62.0	61.8	61.6
30%:	61.4	61.2	61.0	60.8	60.6	60.4	60.2	60.0	59.8	59.7
40%:	59.5	59.3	59.1	58.9	58.7	58.4	58.2	58.0	57.8	57.5
50%:	57.2	57.0	56.8	56.5	56.3	56.0	55.8	55.5	55.3	54.9
60%:	54.6	54.3	54.0	53.7	53.4	53.1	52.8	52.5	52.1	51.8
70%:	51.5	51.2	50.9	50.6	50.2	49.9	49.6	49.3	48.8	48.5
80%:	48.1	47.7	47.4	47.1	46.8	46.4	45.8	45.0	44.4	44.0
90%:	43.6	43.1	42.5	41.6	41.2	40.7	39.8	39.1	38.2	37.3
100%:	36.6									

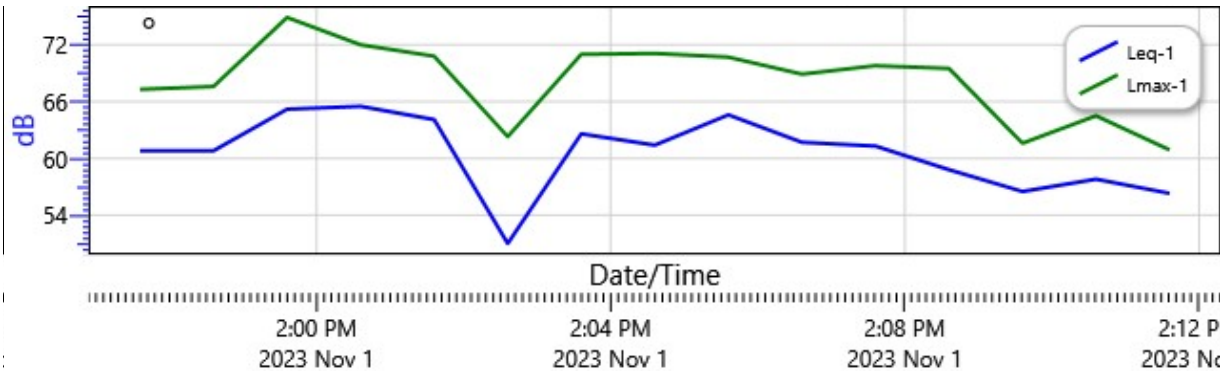
Exceedance Chart

S084_BIJ050019_02112023_183635: Exceedance Chart



Logged Data Chart

S084_BIJ050019_02112023_183635: Logged Data Chart



APPENDIX B
FHWA - RCNM Datasheets

Roadway Construction Noise Model (RCNM),Version 1.1

Report date: 12/13/2023
Case Description: Sunrise Ontario Residential Project

**** Receptor #1 ****

Description	Land Use	Baselines (dBA) Daytime	Evening	Night
Residential - South - 62 Feet	Residential	65.0	65.0	45.0

Equipment

Description	Impact Device	Usage (%)	Spec Lmax (dBA)	Actual Lmax (dBA)	Receptor Distance (feet)	Estimated Shielding (dBA)
Backhoe	No	40		77.6	62.0	0.0
Concrete Mixer Truck	No	40		78.8	62.0	0.0
Compressor (air)	No	40		77.7	62.0	0.0
Concrete Pump Truck	No	20		81.4	62.0	0.0
Crane	No	16		80.6	62.0	0.0
Dozer	No	40		81.7	62.0	0.0
Dump Truck	No	40		76.5	62.0	0.0
Excavator	No	40		80.7	62.0	0.0
Flat Bed Truck	No	40		74.3	62.0	0.0
Front End Loader	No	40		79.1	62.0	0.0
Generator	No	50		80.6	62.0	0.0
Grader	No	40	85.0		62.0	0.0
Man Lift	No	20		74.7	62.0	0.0
Paver	No	50		77.2	62.0	0.0
Pickup Truck	No	40		75.0	62.0	0.0
Pneumatic Tools	No	50		85.2	62.0	0.0
Roller	No	20		80.0	62.0	0.0
Scraper	No	40		83.6	62.0	0.0
Tractor	No	40	84.0		62.0	0.0
Welder / Torch	No	40		74.0	62.0	0.0

Results

Equipment	Calculated (dBA) Lmax	Leq	Noise Limits (dBA) Day Lmax	Leq	Evening Lmax	Leq	Night Lmax	Leq	Noise Limit Exceedance (dBA) Day Lmax	Leq	Evening Lmax	Night Leq	Lmax
Backhoe	75.7	71.7	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A
Concrete Mixer Truck	76.9	73.0	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A
Compressor (air)	75.8	71.8	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A
Concrete Pump Truck	79.5	72.5	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A
Crane	78.7	70.7	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A
Dozer	79.8	75.8	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A
Dump Truck	74.6	70.6	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A
Excavator	78.8	74.9	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A
Flat Bed Truck	72.4	68.4	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A
Front End Loader	77.2	73.3	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A
Generator	78.8	75.8	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A
Grader	83.1	79.2	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A
Man Lift	72.8	65.8	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A
Paver	75.4	72.3	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A
Pickup Truck	73.1	69.2	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A
Pneumatic Tools	83.3	80.3	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A
Roller	78.1	71.1	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A

Scraper	81.7	77.7	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A
N/A	N/A	N/A									
Tractor	82.1	78.2	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A
N/A	N/A	N/A									
Welder / Torch	72.1	68.2	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A
N/A	N/A	N/A									
Total	83.3	87.7	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A
N/A	N/A	N/A									

**** Receptor #2 ****

Description	Baselines (dBA) Land Use	Daytime	Evening	Night
Residential - South - 205 Feet	Residential	65.0	65.0	45.0

Equipment

Description	Impact Device	Usage (%)	Spec Lmax (dBA)	Actual Lmax (dBA)	Receptor Distance (feet)	Estimated Shielding (dBA)
Backhoe	No	40		77.6	205.0	0.0
Concrete Mixer Truck	No	40		78.8	205.0	0.0
Compressor (air)	No	40		77.7	205.0	0.0
Concrete Pump Truck	No	20		81.4	205.0	0.0
Crane	No	16		80.6	205.0	0.0
Dozer	No	40		81.7	205.0	0.0
Dump Truck	No	40		76.5	205.0	0.0
Excavator	No	40		80.7	205.0	0.0
Flat Bed Truck	No	40		74.3	205.0	0.0
Front End Loader	No	40		79.1	205.0	0.0
Generator	No	50		80.6	205.0	0.0
Grader	No	40	85.0		205.0	0.0
Man Lift	No	20		74.7	205.0	0.0
Paver	No	50		77.2	205.0	0.0
Pickup Truck	No	40		75.0	205.0	0.0
Pneumatic Tools	No	50		85.2	205.0	0.0
Roller	No	20		80.0	205.0	0.0
Scraper	No	40		83.6	205.0	0.0
Tractor	No	40	84.0		205.0	0.0
Welder / Torch	No	40		74.0	205.0	0.0

Results

Exceedance (dBA)	Calculated (dBA)		Noise Limits (dBA) Day		Evening		Night		Noise Limit Day		Evening		Night
Equipment	Lmax	Leq	Lmax	Leq	Lmax	Leq	Lmax	Leq	Lmax	Leq	Lmax	Leq	Lmax	Leq
Backhoe	65.3	61.3	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A
Concrete Mixer Truck	66.5	62.6	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A
Compressor (air)	65.4	61.4	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A
Concrete Pump Truck	69.1	62.2	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A
Crane	68.3	60.3	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A
Dozer	69.4	65.4	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A
Dump Truck	64.2	60.2	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A
Excavator	68.5	64.5	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A
Flat Bed Truck	62.0	58.0	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A
Front End Loader	66.9	62.9	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A
Generator	68.4	65.4	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A
Grader	72.7	68.8	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A
Man Lift	62.4	55.5	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A
Paver	65.0	62.0	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A
Pickup Truck	62.7	58.8	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A

Pneumatic Tools			72.9	69.9	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A
Roller			67.7	60.8	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A
Scraper			71.3	67.3	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A
Tractor			71.7	67.8	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A
Welder / Torch			61.7	57.8	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A
		Total	72.9	77.3	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A

APPENDIX C

FHWA Traffic Noise Prediction Model- FHWA-RD-77-108,

REPORT:	**Results: Sound Levels - No Barrier Objects**
TNM VERSION	3.1.7970.37608
CALCULATED WITH:	3.1.7970.37608
CASE:	Ontario Sunrise
UNITS:	English
DEFAULT GROUND TYPE:	HardSoil
ATMOSPHERICS:	68°F, 50%Average
PAVEMENT TYPE(S) USED:	

REPORT DATE:	15 December 2023
CALCULATION DATE:	12/15/2023 6:06:32 PM
ORGANIZATION:	EPC Environmental
ANALYSIS BY:	kpcarr
PROJECT/CONTRACT	

Average pavement type shall be used unless a state highway agency substantiates the use of a different type with approval FHWA.

Receiver				Modeled Traffic Noise Levels				
				LAeq		Increase over Existing		
Name	No.	Nb. R.R.	Existing LAeq	Calc.	Absolute Criterion	Calc.	Relative Criterion	Type of Impact
			dBA	dBA	dBA	dBA	dBA	
Receiver-1	1	1	---	59.8	0.0	---	---	Sound Level
Receiver-2	2	1	---	60.7	0.0	---	---	Sound Level
Receiver-3	3	1	---	47.5	0.0	---	---	Sound Level

REPORT:	**Results: Sound Levels - No Barrier Objects**		
TNM VERSION	3.1.7970.37608	REPORT DATE:	15 December 2023
CALCULATED WITH:	3.1.7970.37608 Sikh	CALCULATION DATE:	12/15/2023 6:14:46 PM
CASE:	Ontario Sunrise	ORGANIZATION:	EPC Environmental
UNITS:	English	ANALYSIS BY:	kpcarr
DEFAULT GROUND TYPE:	HardSoil	PROJECT/CONTRACT	
ATMOSPHERICS:	68°F, 50%Average	Average pavement type shall be used unless a state	
PAVEMENT TYPE(S) USED:		highway agency substantiates the use of a different	
		type with approval FHWA.	

Receiver				Modeled Traffic Noise Levels				
				LAeq		Increase over Existing		
Name	No.	Nb. R.R.	Existing LAeq	Calc.	Absolute Criterion	Calc.	Relative Criterion	Type of Impact
			dBA	dBA	dBA	dBA	dBA	
Receiver-1	1	1	---	60.0	0.0	---	---	Sound Level
Receiver-2	2	1	---	61.0	0.0	---	---	Sound Level
Receiver-3	3	1	---	47.7	0.0	---	---	Sound Level

August 29, 2023

TJW ENGINEERING, INC.
TRAFFIC ENGINEERING &
TRANSPORTATION PLANNING
CONSULTANTS

Mr. Moses Kim
WARMINGTON RESIDENTIAL
3090 Pullman Street
Costa Mesa, CA 92626

SUBJECT: Ontario Sunrise Trip Generation Analysis and VMT Screening, City of Ontario

Dear Mr. Kim,

*TJW Engineering, Inc. (*TJW*)* is pleased to submit this Trip Generation Analysis and VMT Screening for the proposed project located at 1355 West 5th Street in the City of Ontario. The proposed project includes 70 multi-family units. A site plan is attached for reference. The purpose of this memorandum is to summarize the project Trip Generation Analysis and VMT Screening.

Proposed Project

The proposed site is located at 1355 West 5th Street in the City of Ontario. The proposed project includes 70 multi-family units. Site access will be provided via a driveway on West 5th Street.

Trip Generation Analysis

Projected trip generation for the proposed project was developed based on the San Bernardino County Transportation Authority (SBCTA) Recommended Traffic Impact Analysis Guidelines for Vehicle Miles Traveled and Level of Service Assessment (February 2020). The guidelines state land uses that generate less than 50 peak hour trips will not require a TIA that includes LOS analysis.

The trip generation for the proposed project was determined using the Institute of Transportation Engineers Trip Generation Manual (11th Edition). Based on the proposed project's intended use, the projected trip generation was determined using the Multifamily Housing (Low-Rise) Land Use Code 220. The proposed project is projected to generate 28 AM peak hour trips, 36 PM peak hour trips, and 472 daily trips. A trip generation table is attached for reference.

Trip Distribution

The projected trip distribution for the proposed project is based on anticipated travel patterns to and from the project site. An exhibit showing the project trip distribution is attached.

Existing Traffic Counts

AM and PM peak period traffic counts at Elderberry Avenue and 5th Street were conducted on Wednesday August 23, 2023. Detailed traffic count data is attached.

Opening Year With Project Volumes

Since the proposed project is expected to be built and generating trips in 2025, *Opening Year With Project* volumes include a growth rate of 2% for two years applied to *Existing* volumes. *Opening Year With Project* AM and PM peak hour volumes at the study intersections are attached for reference.

Opening Year With Project Volumes = (Existing (2023) Counts * 1.02^2) + Project Volumes

Traffic Signal Warrant

To determine if a traffic signal is warranted at the intersection of Elderberry Avenue and 5th Street, Figure 4C-3 (Urban) contained in the California Manual on Uniform Traffic Control Devices (CA MUTCD) has been utilized. Based on *Opening Year With Project* volumes, a traffic signal is not warranted. Traffic signal warrant analysis worksheets are attached for reference.

Vehicle Miles Traveled (VMT) Screening

Senate Bill (SB) 743 was adopted in 2013 requiring the Governor's Office of Planning and Research (OPR) to identify new metrics for identifying and mitigating transportation impacts within the California Environmental Quality Act (CEQA). For land use projects, OPR has identified Vehicle Miles Traveled (VMT) as the new metric for transportation analysis under CEQA. The regulatory changes to the CEQA guidelines that implement SB 743 were approved on December 28th, 2018 with an implementation date of July 1st, 2020 as the new metric.

The San Bernardino County Transportation Authority (SBCTA) Recommended Traffic Impact Analysis Guidelines for Vehicle Miles Traveled and Level of Service Assessment (February 2020) outlines guidelines for CEQA analysis including screening criteria and requirements for VMT assessment of land use projects. The VMT guidelines provide several screening criteria for projects including Transit Priority Area (TPA) Screening, Low VMT Area Screening, and Project Type Screening.

The SBCTA Guidelines indicate projects located within a low VMT generating area are not required to complete a VMT assessment. Based on the San Bernardino County Transportation Authority (SBCTA) Screening Tool, the project is located within a low VMT generating TAZ; the screening for the project is attached to this memorandum for reference. Therefore, based on the SBCTA Guidelines the project is screened from a complete VMT assessment.

Summary

This memorandum provides an overview of the trip generation analysis for the proposed project. Based on the County of San Bernardino Transportation Impact Analysis Guidelines, the proposed project generates fewer than 50 peak hour trips and is exempt from a Traffic Impact Analysis. Based on Opening Year With Project volumes and Figure 4C-3 contained in the CA MUTCD, a traffic signal is not warranted at the intersection of Elderberry Avenue and 5th Street. In addition, per County of San Bernardino guidance and regulations, the proposed project would screen out from a Vehicle Miles Traveled Analysis as it is located within a low VMT generating area.

Please contact us at (949) 878-3509 if you have any questions regarding this analysis.

Sincerely,

Gene Kim, PE, TE
Principal Engineer

Registered Civil Engineer *#83175*
Registered Traffic Engineer *#2684*





David Chew, PTP
Transportation Planner

Brandon Alvarado, PTP
Transportation Planner



MDR 25
Density: 18.1-25 du/ac
Max Project Coverage: 60%
Setbacks:
- Arterial: 30'
- Collector: 20'
- PL: 10'
- Private Streets: 27'

Building Separations (3-story):
- Front to Front: 30'
- Front to Side: 30'
- Side to Side: 15'

Private OS: 150sf
Common OS: 250sf
Required Parking per Code:
- 1bd: 1.75 sp/unit
- 2bd: 2 sp/unit
- 3bd: 2.5 sp/unit
- Guest: 0.25 sp/unit

State Density Bonus Parking Standards
- 1 bd: 1 sp/unit
- 2 bd: 1.5 sp/unit
- 3 bd: 1.5 sp/unit
- 4 bd: 2.5 sp/unit

SITE SUMMARY
Area: ±3.1 acres

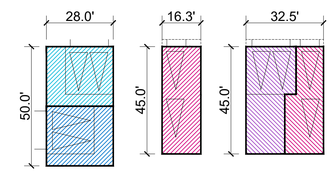
Units:
- 8 units - P1 (3bd)
- 8 units - P2 (3bd)
- 28 units - P3 (3bd)
- 26 units - P4 (4bd)
- 70 units - Total

Density: ±22.6 du/ac

Parking Required per State Density Bonus:
- 3bd: 44 units x 1.5 sp/unit = 66 spaces
- 4bd: 26 units x 2.5 sp/unit = 65 spaces
- Total Parking Required = 131 spaces

Parking Provided:
- 140 spaces - Garages
- 24 spaces - Guest
- 164 spaces - Total

Open Space Provided: ±18,000sf (±257sf/unit)



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ONTARIO, CA # 2021-0772

OPTION 12a
CONCEPTUAL DENSITY STUDY
APRIL 12, 2023

0 15 30 60

Table 1

Project Trip Generation

Proposed Land Use[1]	ITE Code[2]	Qty	Unit[3]	Daily		AM Peak Hour					PM Peak Hour				
				Rate	Volume	Rate	In:Out Split	Volume			Rate	In:Out Split	Volume		
								In	Out	Total			In	Out	Total
Multifamily Housing (Low-Rise), Not Close to Rail Transit	220(1)	70	DU	6.74	472	0.4	24:76	7	21	28	0.51	63:37	23	13	36

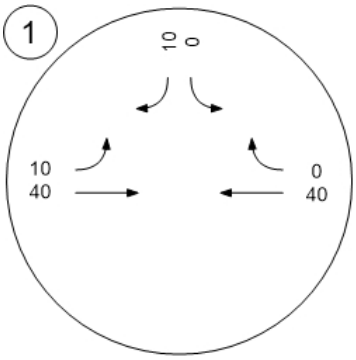
1: Trip generation and pass-by rates from ITE Trip Generation (11th Edition, 2021).

2: Parentheses reflect subcategory of land use code. For example, 220(1) is only multifamily housing developments that are not half a mile walking distance or less away from a transit station.

3: DU = Dwelling Units.

Traffic Volume - Net New Site Trips





Counts Unlimited, Inc.
PO Box 1178
Corona, CA 92878
(951) 268-6268

City of Ontario
N/S: Elderberry Avenue
E/W: W 5th Street
Weather: Clear

File Name : ONT_Eld_5th AM
Site Code : 23623756
Start Date : 8/23/2023
Page No : 1

Groups Printed- Total Volume

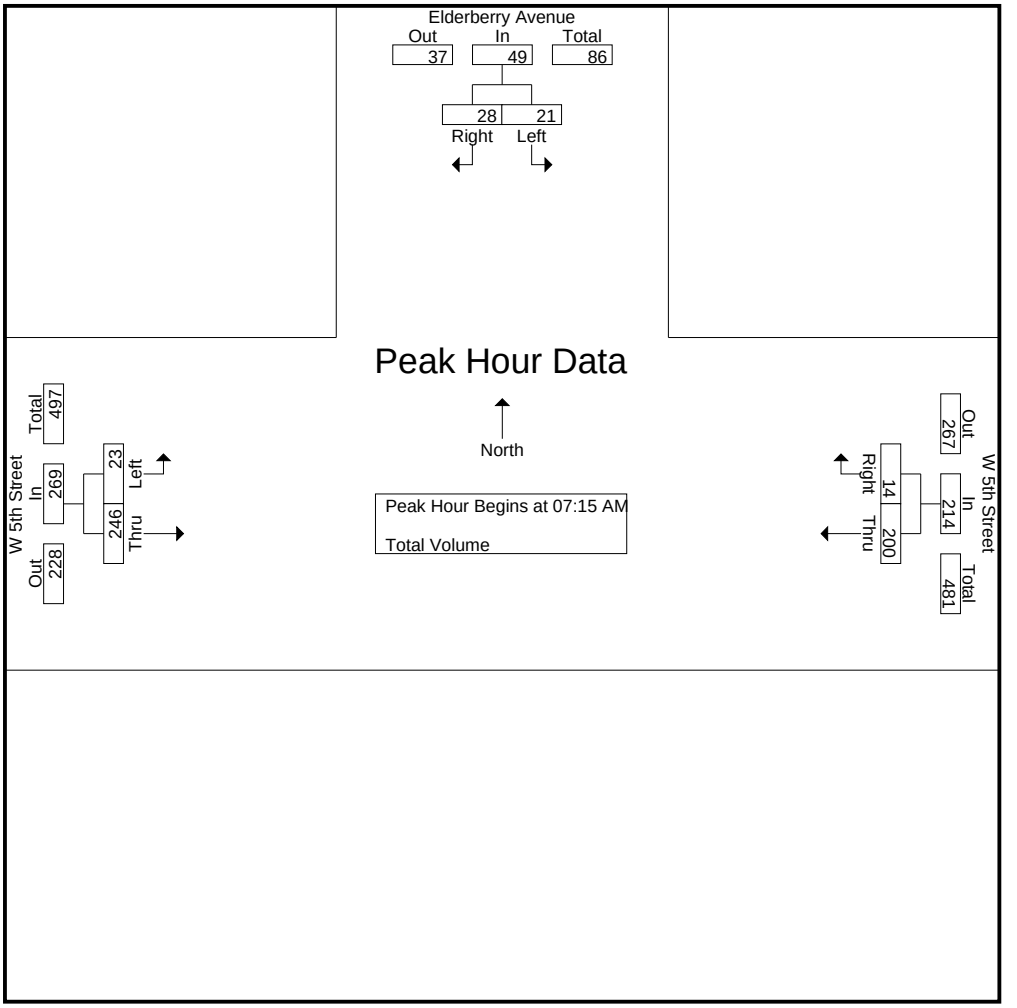
	Elderberry Avenue Southbound			W 5th Street Westbound			W 5th Street Eastbound			
Start Time	Left	Right	App. Total	Thru	Right	App. Total	Left	Thru	App. Total	Int. Total
07:00 AM	4	3	7	51	3	54	0	18	18	79
07:15 AM	0	10	10	49	4	53	4	44	48	111
07:30 AM	5	8	13	73	4	77	10	67	77	167
07:45 AM	9	8	17	28	3	31	3	77	80	128
Total	18	29	47	201	14	215	17	206	223	485
08:00 AM	7	2	9	50	3	53	6	58	64	126
08:15 AM	5	3	8	43	2	45	0	37	37	90
08:30 AM	5	2	7	55	7	62	3	33	36	105
08:45 AM	1	3	4	35	6	41	2	32	34	79
Total	18	10	28	183	18	201	11	160	171	400
Grand Total	36	39	75	384	32	416	28	366	394	885
Apprch %	48	52		92.3	7.7		7.1	92.9		
Total %	4.1	4.4	8.5	43.4	3.6	47	3.2	41.4	44.5	

	Elderberry Avenue Southbound			W 5th Street Westbound			W 5th Street Eastbound			
Start Time	Left	Right	App. Total	Thru	Right	App. Total	Left	Thru	App. Total	Int. Total
Peak Hour Analysis From 07:00 AM to 08:45 AM - Peak 1 of 1										
Peak Hour for Entire Intersection Begins at 07:15 AM										
07:15 AM	0	**10**	10	49	**4**	53	4	44	48	111
07:30 AM	5	8	13	**73**	4	**77**	**10**	67	77	**167**
07:45 AM	**9**	8	**17**	28	3	31	3	**77**	**80**	128
08:00 AM	7	2	9	50	3	53	6	58	64	126
Total Volume	21	28	49	200	14	214	23	246	269	532
% App. Total	42.9	57.1		93.5	6.5		8.6	91.4		
PHF	.583	.700	.721	.685	.875	.695	.575	.799	.841	.796

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City of Ontario
N/S: Elderberry Avenue
E/W: W 5th Street
Weather: Clear

File Name : ONT_Eld_5th AM
Site Code : 23623756
Start Date : 8/23/2023
Page No : 2



Peak Hour Analysis From 07:00 AM to 08:45 AM - Peak 1 of 1
Peak Hour for Each Approach Begins at:

	07:15 AM			07:00 AM			07:15 AM		
+0 mins.	0	**10**	10	51	3	54	4	44	48
+15 mins.	5	8	13	49	**4**	53	**10**	67	77
+30 mins.	**9**	8	**17**	**73**	4	**77**	3	**77**	**80**
+45 mins.	7	2	9	28	3	31	6	58	64
Total Volume	21	28	49	201	14	215	23	246	269
% App. Total	42.9	57.1		93.5	6.5		8.6	91.4	
PHF	.583	.700	.721	.688	.875	.698	.575	.799	.841

Counts Unlimited, Inc.
PO Box 1178
Corona, CA 92878
(951) 268-6268

City of Ontario
N/S: Elderberry Avenue
E/W: W 5th Street
Weather: Clear

File Name : ONT_Eld_5th PM
Site Code : 23623756
Start Date : 8/23/2023
Page No : 1

Groups Printed- Total Volume

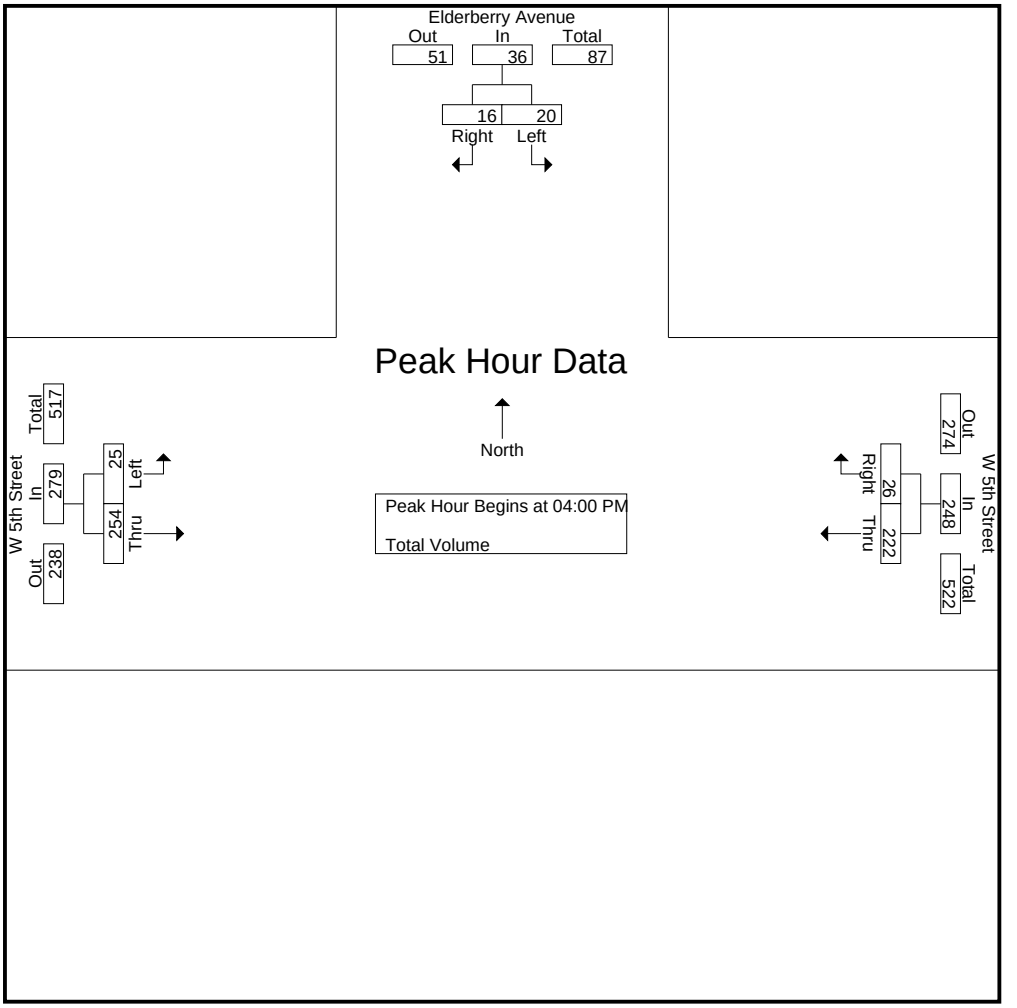
	Elderberry Avenue Southbound			W 5th Street Westbound			W 5th Street Eastbound			
Start Time	Left	Right	App. Total	Thru	Right	App. Total	Left	Thru	App. Total	Int. Total
04:00 PM	7	4	11	67	9	76	6	67	73	160
04:15 PM	7	2	9	44	6	50	7	62	69	128
04:30 PM	3	6	9	60	6	66	6	61	67	142
04:45 PM	3	4	7	51	5	56	6	64	70	133
Total	20	16	36	222	26	248	25	254	279	563
05:00 PM	7	2	9	48	8	56	4	68	72	137
05:15 PM	6	5	11	48	6	54	5	69	74	139
05:30 PM	5	5	10	60	5	65	3	61	64	139
05:45 PM	4	3	7	54	5	59	3	68	71	137
Total	22	15	37	210	24	234	15	266	281	552
Grand Total	42	31	73	432	50	482	40	520	560	1115
Apprch %	57.5	42.5		89.6	10.4		7.1	92.9		
Total %	3.8	2.8	6.5	38.7	4.5	43.2	3.6	46.6	50.2	

	Elderberry Avenue Southbound			W 5th Street Westbound			W 5th Street Eastbound			
Start Time	Left	Right	App. Total	Thru	Right	App. Total	Left	Thru	App. Total	Int. Total
Peak Hour Analysis From 04:00 PM to 05:45 PM - Peak 1 of 1										
Peak Hour for Entire Intersection Begins at 04:00 PM										
04:00 PM	**7**	4	**11**	**67**	**9**	**76**	6	**67**	**73**	**160**
04:15 PM	7	2	9	44	6	50	**7**	62	69	128
04:30 PM	3	**6**	9	60	6	66	6	61	67	142
04:45 PM	3	4	7	51	5	56	6	64	70	133
Total Volume	20	16	36	222	26	248	25	254	279	563
% App. Total	55.6	44.4		89.5	10.5		9	91		
PHF	.714	.667	.818	.828	.722	.816	.893	.948	.955	.880

Counts Unlimited, Inc.
PO Box 1178
Corona, CA 92878
(951) 268-6268

City of Ontario
N/S: Elderberry Avenue
E/W: W 5th Street
Weather: Clear

File Name : ONT_Eld_5th PM
Site Code : 23623756
Start Date : 8/23/2023
Page No : 2

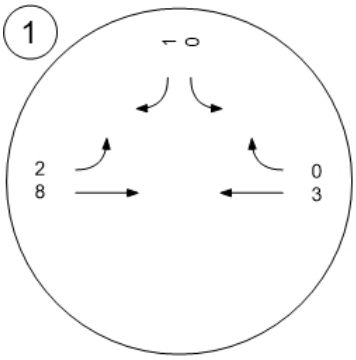


Peak Hour Analysis From 04:00 PM to 05:45 PM - Peak 1 of 1
Peak Hour for Each Approach Begins at:

	04:45 PM			04:00 PM			04:30 PM		
+0 mins.	3	4	7	**67**	**9**	**76**	**6**	61	67
+15 mins.	**7**	2	9	44	6	50	6	64	70
+30 mins.	6	**5**	**11**	60	6	66	4	68	72
+45 mins.	5	5	10	51	5	56	5	**69**	**74**
Total Volume	21	16	37	222	26	248	21	262	283
% App. Total	56.8	43.2		89.5	10.5		7.4	92.6	
PHF	.750	.800	.841	.828	.722	.816	.875	.949	.956

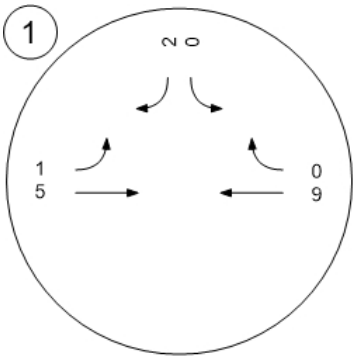
Traffic Volume - Net New Site Trips





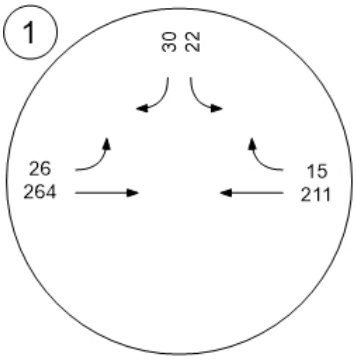
Traffic Volume - Net New Site Trips





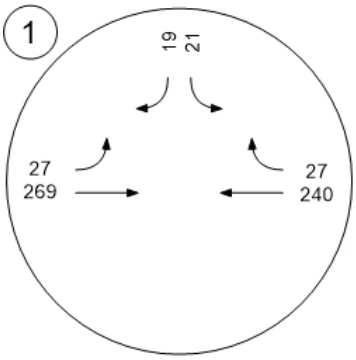
Traffic Volume - Future Total Volume





Traffic Volume - Future Total Volume





PEAK HOUR VOLUME WARRANT
URBAN CONDITIONS

Peak Hour: AM **Scenario:** OYP

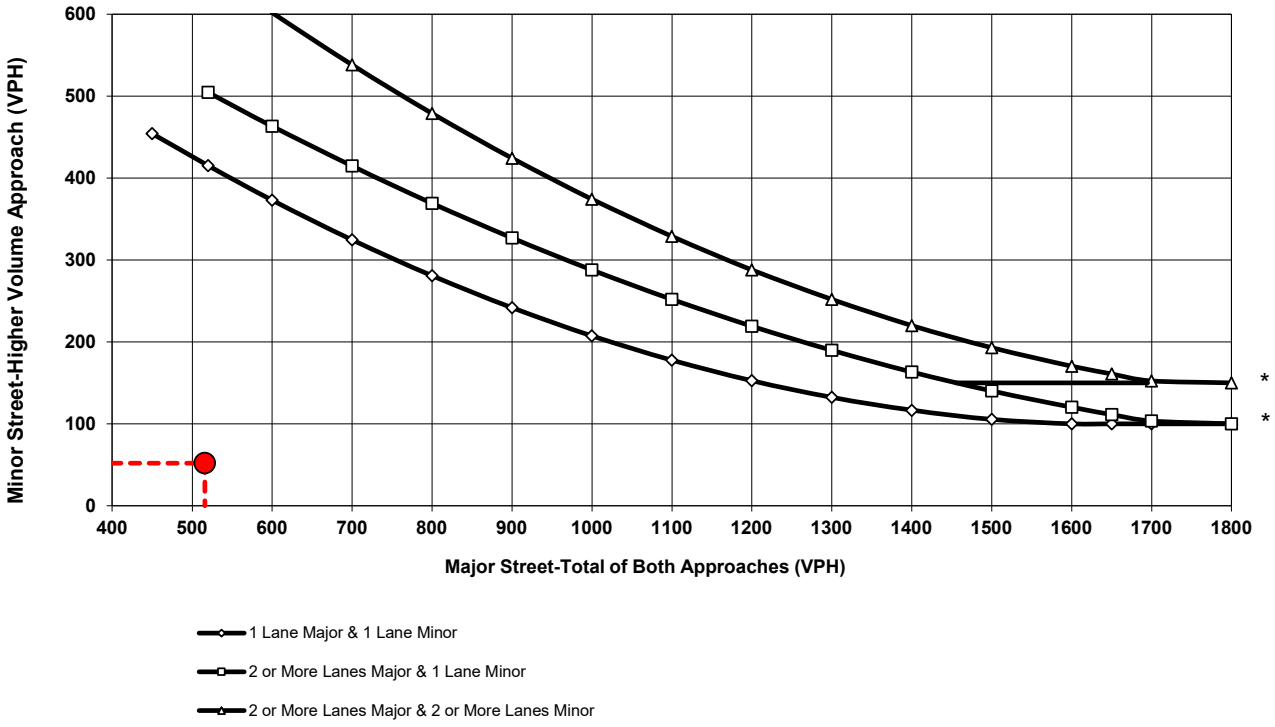
Major Street: 5th Street **Minor Street:** Elderberry Avenue

Total of Both Approaches (VPH): 516
Number of Approach Lanes: 1

Higher Volume Approach (VPH): 52
Number of Approach Lanes: 1

SIGNAL WARRANT NOT SATISFIED

Figure 4C-3. Peak Hour Warrant (Urban)



* Note:
150 vph Applies as the Lower Threshold Volume for a Minor Street Approach with Two or More Lanes and 100 vph Applies as the Lower Threshold Volume for a Minor Street Approach with One Lane.

Source: MUTCD 2014 California Supplement Including Revision 3 (March 9, 2018)

OYP Conditions
AM Peak Hour Volume Warrant
5th Street / Elderberry Avenue

PEAK HOUR VOLUME WARRANT
URBAN CONDITIONS

Peak Hour: PM

Scenario: OYP

Major Street: 5th Street

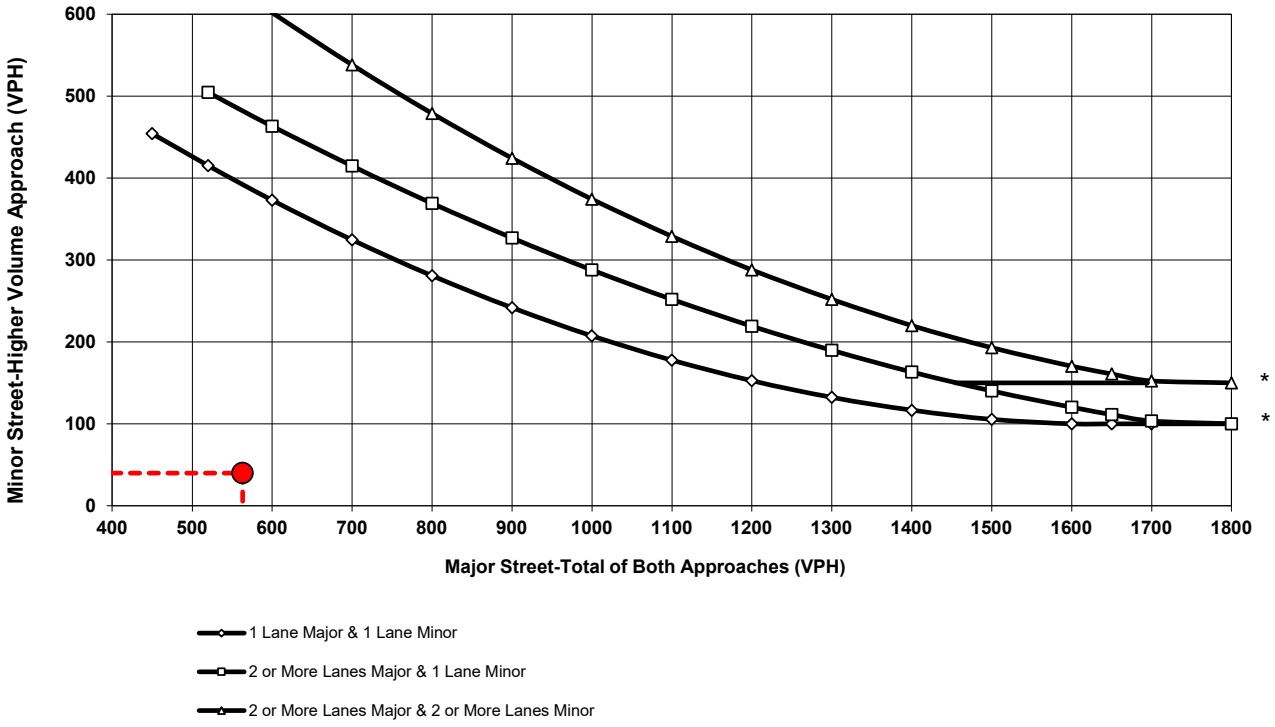
Minor Street: Elderberry Avenue

Total of Both Approaches (VPH): 563
Number of Approach Lanes: 1

Higher Volume Approach (VPH): 40
Number of Approach Lanes: 1

SIGNAL WARRANT NOT SATISFIED

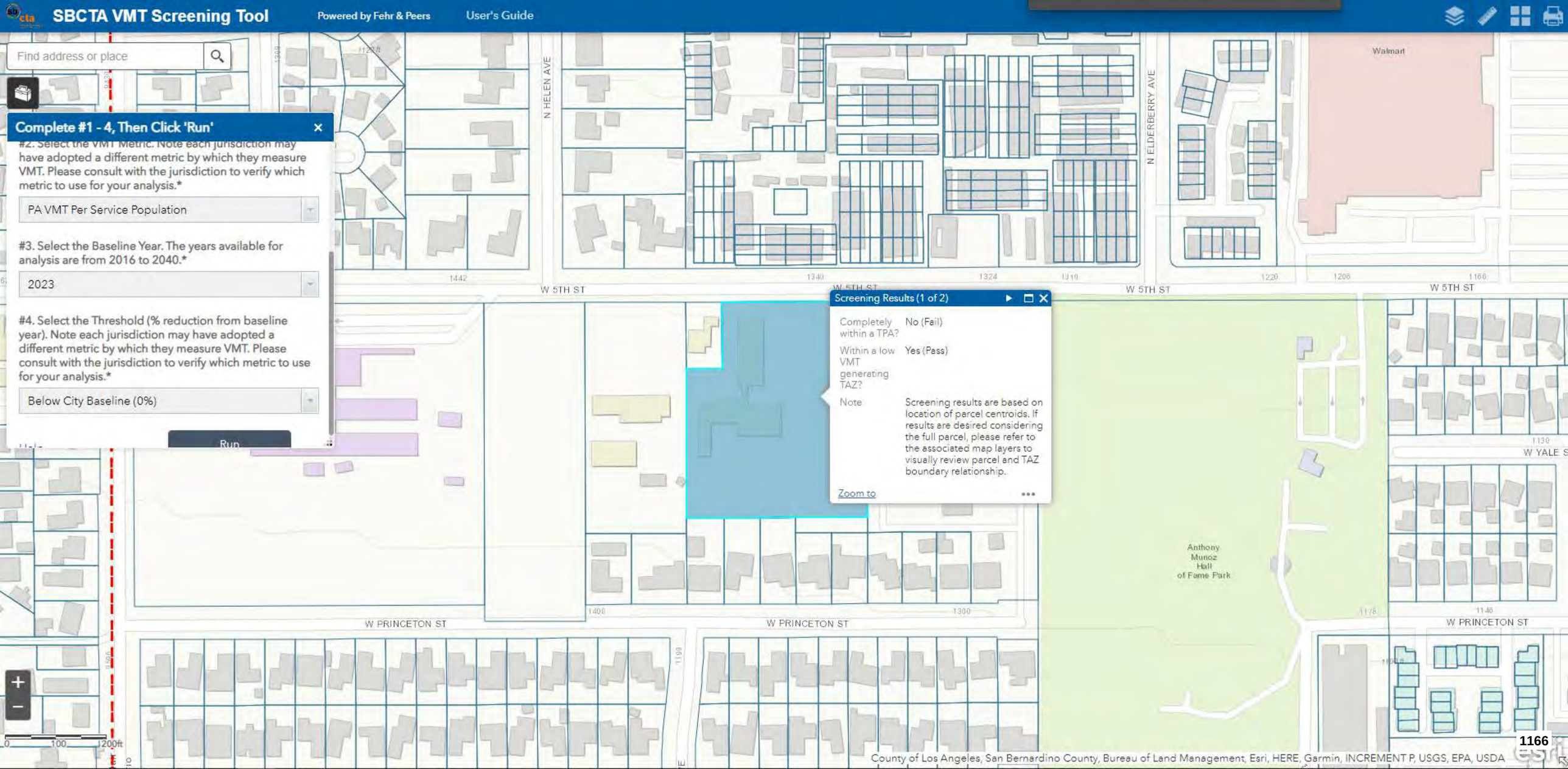
Figure 4C-3. Peak Hour Warrant (Urban)



* Note:
150 vph Applies as the Lower Threshold Volume for a Minor Street Approach with Two or More Lanes and 100 vph Applies as the Lower Threshold Volume for a Minor Street Approach with One Lane.

Source: MUTCD 2014 California Supplement Including Revision 3 (March 9, 2018)

OYP Conditions
PM Peak Hour Volume Warrant
5th Street / Elderberry Avenue


SBCTA VMT Screening Tool
Powered by Fehr & Peers
User's Guide
Find address or place
Complete #1 - 4, Then Click 'Run'
#2. Select the VMT Metric. Note each jurisdiction may have adopted a different metric by which they measure VMT. Please consult with the jurisdiction to verify which metric to use for your analysis.*
PA VMT Per Service Population
#3. Select the Baseline Year. The years available for analysis are from 2016 to 2040.*
2023
#4. Select the Threshold (% reduction from baseline year). Note each jurisdiction may have adopted a different metric by which they measure VMT. Please consult with the jurisdiction to verify which metric to use for your analysis.*
Below City Baseline (0%)
Run
Screening Results (1 of 2)
Completely within a TPA? No (Fail)
Within a low VMT generating TAZ? Yes (Pass)
Note Screening results are based on location of parcel centroids. If results are desired considering the full parcel, please refer to the associated map layers to visually review parcel and TAZ boundary relationship.
Zoom to
N HELEN AVE
N ELDERBERRY AVE
W 5TH ST
W PRINCETON ST
W YALE S
Walmart
Anthony Munoz Hall of Fame Park
County of Los Angeles, San Bernardino County, Bureau of Land Management, Esri, HERE, Garmin, INCREMENT P, USGS, EPA, USDA
1166

RESOLUTION NO. PC24-042

A RESOLUTION OF THE PLANNING COMMISSION OF THE CITY OF ONTARIO, CALIFORNIA, APPROVING FILE NO. PMTT23-008, FOR TENTATIVE TRACT MAP NO. 20659, SUBDIVIDING 3.1 ACRES OF LAND INTO ONE PARCEL FOR CONDOMINIUM PURPOSES LOCATED AT 1355 WEST 5TH STREET, WITHIN THE LDR-5 (LOW DENSITY RESIDENTIAL – 2.1 TO 5.0 DU/AC) ZONING DISTRICT, AND MAKING FINDINGS IN SUPPORT THEREOF—APN: 1008-551-12.

WHEREAS, WARMINGTON RESIDENTIAL, LLC (hereinafter referred to "Applicant") filed an Application to requesting approval of Tentative Tract Map No. 20659 (File No. PMTT23-008), as described in the Subject of this Resolution is (herein after referred to as "Application" or "Project"); and

WHEREAS, the Application applies to 3.1 acres of land located at 1355 West 5th Street, that is presently occupied by existing Sunrise Ontario Church and is located within the LDR-5 (Low Density Residential — 2.1 to 5.0 DU/Acre) zoning district; and

WHEREAS, the properties to the north of the Project site are within the LDR-5 (Low Density Residential — 2.1 to 5.0 DU/Acre) and MDR-25 (Medium Density Residential — 18.1 to 25.0 DU/Acre) zoning districts and contain existing multiple-family and single- family land uses. The properties to the east and west are within the LDR-5 (Low Density Residential — 2.1 to 5.0 DU/Acre) and contain existing churches land uses. The properties to the south are within the LDR-5 (Low Density Residential — 2.1 to 5.0 DU/Acre) and contain existing single-family land uses; and

WHEREAS, on June 2, 2023, the Applicant submitted a Preliminary Review application (File No. PPRE23-002) that included plans, a project description, and the State of California's Senate Bill (SB 330) Preliminary Application form for a proposed 70 unit multiple-family condominium development on the Project site. The City reviewed that submittal for consistency with Government Code Section 65941.1 and on June 30, 2023, communicated to the Applicant information that was missing from their submittal. On October 2, 2023, the Applicant submitted Tentative Tract Map No. 20659 (File No. PMTT23-008) and a Development Plan (File No. PDEV23-037), completing their submittal requirements, thereby vesting their Preliminary Application and the ordinances, policies, and standards that apply to the Project; and

WHEREAS, the Project proposes the development of 70 multiple-family condominium units, including 7 moderate income affordable units, and associated site improvements including parking, landscape, infrastructure, among others, on approximately 3.1 acres of land within the Project site; and

WHEREAS, Tentative Tract Map No. 20659 (File No. PMTT23-008) will subdivide the 3.1-acre Project site into one parcel for condominium purposes; and

WHEREAS, the Application is a project pursuant to the California Environmental Quality Act, commencing with Public Resources Code Section 21000 (hereinafter referred to as "CEQA"); and

WHEREAS, the Project is exempt from CEQA pursuant to a categorical exemption (listed in CEQA Guidelines Article 19, commencing with Section 15300) and the application of that categorical exemption is not barred by one of the exceptions set forth in CEQA Guidelines Section 15300.2; and

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

WHEREAS, the Project has been reviewed for consistency with the Housing Element of the Policy Plan component of The Ontario Plan 2050, as State Housing Element law (as prescribed in Government Code Sections 65580 through 65589.8) requires that development projects must be consistent with the Housing Element, if upon consideration of all its aspects, it is found to further the purposes, principals, goals, and policies of the Housing Element; and

WHEREAS, the Project is located within the Airport Influence Area of Ontario International Airport, which encompasses lands within parts of San Bernardino, Riverside, and Los Angeles Counties, and is subject to, and must be consistent with, the policies and criteria set forth in the Ontario International Airport Land Use Compatibility Plan (hereinafter referred to as "ALUCP"), which applies only to jurisdictions within San Bernardino County, and addresses the noise, safety, airspace protection, and overflight impacts of current and future airport activity; and

WHEREAS, City of Ontario Development Code Division 2.03 (Public Hearings) prescribes the manner in which public notification shall be provided and hearing procedures to be followed, and all such notifications and procedures have been completed; and

WHEREAS, on July 15, 2024, the Development Advisory Board of the City of Ontario conducted a hearing to consider the Project, and concluded said hearing on that date, voting to issue Decision No. DAB24-026 recommending that the Planning Commission approve the Application; and

WHEREAS, on August 27, 2024, the Planning Commission of the City of Ontario conducted a hearing to consider the Project, and concluded said hearing on that date; and

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

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

SECTION 1: ***Environmental Determination and Findings.*** As the decision-making authority for the Project, the Planning Commission has reviewed and considered the information contained in the administrative record for the Project. Based upon the facts and information contained in the administrative record, including all written and oral evidence presented to the Planning Commission, the Planning Commission finds as follows:

(1) The administrative record has been completed in compliance with CEQA, the State CEQA Guidelines, and the City of Ontario Local CEQA Guidelines; and

(2) The Project is categorically exempt from environmental review pursuant to Section 15332 (Class 32, In-fill Development Projects) of the CEQA Guidelines, which consists of the following conditions:

(a) *The proposed Project is consistent with the applicable general plan designation and all applicable general plan policies as well as with applicable zoning designation and regulations.* The proposed Project is located within the LDR (Low Density Residential) land use designation of the Policy Plan (general plan) Land Use Map; however, pursuant to SB 330 and Government Code Section 65941.1, the Project vested under the MDR-25 (Medium Density Residential—18.1 to 25.0 DUs/Acre) zoning district. The proposed Project is consistent with all applicable Policy Plan policies, as well as with the requirements of the MDR-25 (Medium Density Residential—18.1 to 25.0 DUs/Acre) zoning district; and

(b) *The proposed development occurs within city limits on a project site of no more than five acres substantially surrounded by urban uses.* The Project is proposed within the established boundaries of the City of Ontario, on a project site totaling 3.1- acres of land, which is surrounded by established development on all sides and consists of a mix of multiple-family, single-family, and church land uses; and

(c) *The Project site has no value as habitat for endangered, rare, or threatened species.* The site is located in an urbanized area, is developed with an existing church, related parking, and ornamental landscaping. The entire Project site has been disturbed by previous development and does not contain any sensitive habitat,

endangered, rare, or threatened species or habitat that could support sensitive species; and

(d) *Approval of the Project would not result in any significant effects relating to traffic, noise, air quality, or water quality.* The residential development is similar to, and of no greater impact than other allowed uses and development projects within the MDR- 25 (Medium Density Residential—18.1 to 25.0 DUs/Acre) zoning district. The Project would not result in any significant impacts through implementation of required state, regional, and local development and performance standards, and as demonstrated in the Air Quality, GHG, Noise, Trip Generation and vehicle miles traveled ("VMT") analysis, and the Preliminary Water Quality Management Plan ("PWQMP") prepared for the Project; and

(e) *The site is adequately served by all required utilities and public services.* All necessary wet and dry utilities are within the public street and are readily available for connection; and

(3) The application of the categorical exemption is not barred by one of the exceptions set forth in CEQA Guidelines Section 15300.2; and

(4) The determination of CEQA exemption reflects the independent judgment of the Planning Commission.

SECTION 2: ***Housing Element Compliance.*** Pursuant to the requirements of California Government Code Chapter 3, Article 10.6, commencing with Section 65580, as the decision-making authority for the Project, the Planning Commission finds that based on the facts and information contained in the Application and supporting documentation, at the time of Project implementation, the Project is consistent with the Housing Element of the Policy Plan (General Plan) component of The Ontario Plan 2050, as the Project site is not one of the properties in the Housing Element Sites Inventory contained in Tables B-1 and B-2 of the Housing Element Technical Report.

SECTION 3: ***Airport Land Use Compatibility Plan ("ALUCP") Compliance.*** The California State Aeronautics Act (Public Utilities Code Section 21670 et seq.) requires that an Airport Land Use Compatibility Plan be prepared for all public use airports in the State; and requires that local land use plans and individual development proposals must be consistent with the policies set forth in the adopted Airport Land Use Compatibility Plan.

(1) On April 19, 2011, the City Council of the City of Ontario approved and adopted the Ontario International Airport Land use Compatibility Plan, establishing the Airport Influence Area for Ontario International Airport, which encompasses lands within parts of San Bernardino, Riverside, and Los Angeles Counties, and limits future land uses

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

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

(1) ***The proposed Tentative Tract Map is consistent with the goals, policies, plans, and exhibits of the Vision, Policy Plan (General Plan), and City Council Priorities components of The Ontario Plan 2050, and applicable area and specific plans, and planned unit developments.*** The proposed Project is located within the LDR (Low Density Residential) land use designation of the Policy Plan (general plan) Land Use Map; however, pursuant to SB 330 and Government Code Section 65941.1, the Project vested under the MDR (Medium Density Residential) land use designation and proposes to utilize development standards applicable to the MDR-25 (Medium Density Residential—18.1 to 25.0 DUs/Acre) zoning district. The proposed Project is consistent with all applicable Policy Plan policies, as well as with the requirements of the MDR-25 (Medium Density Residential—18.1 to 25.0 DUs/Acre) zoning district. The development standards and conditions under which the proposed Project will be constructed and maintained, is consistent with the goals, policies, plans, and exhibits of the Vision, Policy Plan (General Plan), and City Council Priorities components of The Ontario Plan; and

(2) ***The design or improvement of the proposed Tentative Tract Map is consistent with the goals, policies, plans and exhibits of the Vision, Policy Plan (General Plan), and City Council Priorities components of The Ontario Plan 2050, and applicable specific plans and planned unit developments.*** The proposed Tentative Tract Map is located within the LDR (Low Density Residential) land use district of the Policy Plan Land Use Map, and the LDR-5 (Low Density Residential – 2.1 to 5.0 DU/Acre) zoning district; however, pursuant to SB 330 and Government Code Section 65941.1, the Project vested under the MDR (Medium Density Residential) land use designation and proposes to utilize development standards applicable to the MDR-25 (Medium Density Residential—18.1 to 25.0 DUs/Acre) zoning district. The proposed

design or improvement of the subdivision is consistent with the goals, policies, plans, and exhibits of the Vision, Policy Plan (General Plan), and City Council Priorities components of The Ontario Plan 2050, as the Project will contribute to providing "[a] high level of design quality resulting in neighborhoods, commercial areas, public spaces, parks, and streetscapes that are attractive, safe, functional, human-scale, and distinct" (Goal CD-2). Furthermore, the Project will promote the City's policy to "create distinct residential neighborhoods that promote a sense of community and identity by emphasizing access, connectivity, livability, and social interaction through such elements as:

- A pattern of smaller, walkable blocks that promote activity, safety, and access to nearby amenities and services;
- Varied parcel sizes and lot configurations to accommodate a diversity of housing types;
- Traffic calming measures to slow traffic and promote walkability while maintaining acceptable traffic flows and emergency evacuation access;
- Floor plans that encourage views onto the street and de-emphasize the visual and physical dominance of garages (introducing the front porch as the "outdoor living room"), as appropriate; and
- Landscaped parkways, with sidewalks separated from the curb and designed to maximize safety, comfort, and aesthetics for all users." (Policy CD-2.2 Neighborhood Design).

(3) ***The site is physically suitable for the type of development proposed.*** The proposed Project is located within the LDR (Low Density Residential) land use designation of the Policy Plan (general plan) Land Use Map; however, pursuant to SB 330 and Government Code Section 65941.1, the Project vested under the MDR-25 (Medium Density Residential—18.1 to 25.0 DUs/Acre) zoning district. The Project site meets the minimum lot area and dimensions of the MDR-25 (Medium Density Residential—18.1 to 25.0 DUs/Acre) zoning district and is physically suitable for the type of residential development proposed in terms of zoning, land use and development activity proposed, and existing and proposed site conditions.

(4) ***The site is physically suitable for the density/intensity of development proposed.*** The proposed Project is located within the LDR (Low Density Residential) land use designation of the Policy Plan (general plan) Land Use Map; however, pursuant to SB 330 and Government Code Section 65941.1, the Project vested under the MDR-25 (Medium Density Residential—18.1 to 25.0 DUs/Acre) zoning district. The Project site is proposed for residential development at a density of 22.6 DUs/acre. The Project site meets the minimum lot area and dimensions of the MDR-25 (Medium Density Residential—18.1 to 25.0 DUs/Acre) zoning district and is physically suitable for this proposed density / intensity of development.

(5) ***The design of the subdivision or the proposed improvements thereon, are not likely to cause substantial environmental damage, or substantially and avoidably injure fish or wildlife, or their habitat.*** The Project site is not located in an area that has been identified as containing species identified as a candidate, sensitive, or special status species in local or regional plans, policies or regulations or by the California Department of Fish and Wildlife or the U.S. Fish and Wildlife Service, nor does the site contain any riparian habitat or other sensitive natural community, and no wetland habitat is present on site; therefore, the design of the subdivision, or improvements proposed thereon, are not likely to cause substantial environmental damage, or substantially and avoidably injure fish or wildlife, or their habitat.

(6) ***The design of the subdivision, or the type of improvements thereon, are not likely to cause serious public health problems.*** The design of the proposed subdivision, and the multiple-family residential buildings, landscaping, and parking improvements existing or proposed on the Project site, are not likely to cause serious public health problems, as the Project is not anticipated to involve the transport, use, or disposal of hazardous materials during either construction or Project implementation, include the use of hazardous materials or volatile fuels, nor are there any known stationary commercial or industrial land uses within close proximity to the subject site that use/store hazardous materials to the extent that they would pose a significant hazard to visitors or occupants to the Project site.

(7) ***The design of the subdivision, or the type of improvements thereon, will not conflict with easements acquired by the public at large for access through, or use of property within, the proposed subdivision.*** The proposed subdivision has provided for all necessary public easements and dedications for access through, or use of property within, the proposed subdivision. Furthermore, all such public easements and dedications have been designed pursuant to: (a) the requirements of the Policy Plan component of The Ontario Plan 2050 and applicable area plans; (b) applicable specific plans or planned unit developments; (c) applicable provisions of the City of Ontario Development Code; (d) applicable master plans and design guidelines of the City; and (e) applicable Standard Drawings of the City.

SECTION 5: ***Planning Commission Action.*** Based upon the findings and conclusions set forth in the Sections above, the Planning Commission hereby APPROVES the herein described Application, subject to each and every condition set forth in the Department reports attached hereto as "Attachment A," and incorporated herein by this reference.

SECTION 6: ***Indemnification.*** The Applicant shall agree to defend, indemnify and hold harmless, the City of Ontario or its agents, officers, and employees from any claim, action or proceeding against the City of Ontario or its agents, officers or employees to attack, set aside, void, or annul this approval. The City of Ontario shall promptly notify

the applicant of any such claim, action, or proceeding, and the City of Ontario shall cooperate fully in the defense.

SECTION 7: ***Custodian of Records.*** The documents and materials that constitute the record of proceedings on which these findings have been based are located at the City of Ontario City Hall, 303 East "B" Street, Ontario, California 91764. The custodian for these records is the City Clerk of the City of Ontario.

SECTION 8: ***Certification to Adoption.*** The Secretary shall certify to the adoption of the Resolution.

- - - - - - - - - - - - - -

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

I hereby certify that the foregoing Resolution was duly and regularly introduced, passed and adopted by the Planning Commission of the City of Ontario at a regular meeting thereof held on the 27th day of August 2024, and the foregoing is a full, true and correct copy of said Resolution, and has not been amended or repealed.

Nicola Ricci
Planning Commission Chairman

ATTEST:

Henry K. Noh
Planning Director and
Secretary to the Planning Commission

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

I, Gwen Berendsen, Secretary Pro Tempore of the Planning Commission of the City of Ontario, DO HEREBY CERTIFY that foregoing Resolution No. PC24-042 was duly passed and adopted by the Planning Commission of the City of Ontario at their regular meeting held on August 27, 2024, by the following roll call vote, to wit:

AYES: Dean, DeDiemar, Gage, Lampkin, Ricci

NOES: None

ABSENT: Anderson, Del Turco

ABSTAIN: None

Gwen Berendsen
Secretary Pro Tempore

ATTACHMENT A:

File No. PMTT23-008
Departmental Conditions of Approval

(Departmental conditions of approval to follow this page)

LAND DEVELOPMENT DIVISION CONDITIONS OF APPROVAL

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

Date Prepared: 7/15/2024

File No: PMTT23-008 & PDEV23-037

Project Description: A public hearing to consider Tentative Tract Map No. 20659 (File No. PMTT23-008), subdividing 3.1 acres of land into one parcel for condominium purposes, in conjunction with a Development Plan (File No. PDEV23-037) to construct 70 multiple-family residential condominium units on the project site, including 7 moderate affordable dwellings, located at 1355 West 5th Street, within the LDR-5 (Low Density Residential – 2.1 to 5.0 du/ac) zoning district**;** (APN(s): 1008-551-12); **submitted by Warmington Residential, LLC.**

Prepared By: Thomas Grahn, Senior Planner
Phone: 909.395.2413 (direct)
Email: tgrahn@ontarioca.gov

The Planning Department, Land Development Section, conditions of approval applicable to the above-described Project, are listed below. The Project shall comply with each condition of approval listed below:

1.0 Standard Conditions of Approval. The project shall comply with the *Standard Conditions for New Development*, adopted by City Council Resolution No. 2017-027 on April 18, 2017. A copy of the *Standard Conditions for New Development* may be obtained from the Planning Department or City Clerk/Records Management Department.

2.0 Special Conditions of Approval. In addition to the *Standard Conditions for New Development* identified in condition no. 1.0, above, the project shall comply with the following special conditions of approval:

2.1 Time Limits.

(a) Tentative Tract Map approval shall become null and void 2 years following the effective date of application approval, unless the final tract map has been recorded, or a time extension has been approved by the Planning Commission pursuant to Development Code Section 2.02.025 (Time Limits and Extensions). This Permit does not supersede any individual time limits specified herein for performance of specific conditions or improvements.

(b) Development Plan approval shall become null and void 2 years following the effective date of application approval, unless a building permit is issued and construction is commenced, and diligently pursued toward completion, or a time extension has been approved by the Planning Director. This condition does not supersede any individual time limits specified herein, or any other departmental conditions of approval applicable to the Project, for the performance of specific conditions or improvements.

2.2 Subdivision Map.

(a) The Final Tract Map shall be in conformance with the approved Tentative Tract Map on file with the City. Variations rom the approved Tentative Tract Map may be reviewed and approved by the Planning Department. A substantial variation from the approved Tentative Tract Map may require review and approval by the Planning Commission, as determined by the Planning Director.

(b) Tentative Tract Map approval shall be subject to all conditions, requirements and recommendations from all other departments/agencies provided on the attached reports/memorandums.

(c) The subject Tentative Tract Map for condominium purposes shall require the recordation of a condominium plan concurrent with the recordation of the Final Tract Map and CC&Rs.

(d) Pursuant to California Government Section 66474.9, the subdivider agrees that it will defend, indemnify, and hold harmless the City of Ontario or its agents, officers and employees from any claim, action or proceeding against the City of Ontario or its agents, officers or employees to attack, set aside, void or annul any approval of the City of Ontario, whether by its City Council, Planning Commission or other authorized board or officer of this subdivision, which action is brought within the time period provided for in Government Code Section 66499.37. The City of Ontario shall promptly notify the subdivider of any such claim, action or proceeding and the City of Ontario shall cooperate fully in the defense.

2.3 General Requirements. The Project shall comply with the following general requirements:

(a) All construction documentation shall be coordinated for consistency, including, but not limited to, architectural, structural, mechanical, electrical, plumbing, landscape and irrigation, grading, utility and street improvement plans. All such plans shall be consistent with the approved entitlement plans on file with the Planning Department.

(b) The project site shall be developed in conformance with the approved plans on file with the City. Any variation from the approved plans must be reviewed and approved by the Planning Department prior to building permit issuance.

(c) The herein-listed conditions of approval from all City departments shall be included in the construction plan set for project, which shall be maintained on site during project construction.

2.4 Landscaping.

(a) The Project shall provide and continuously maintain landscaping and irrigation systems in compliance with the provisions of Ontario Development Code Division 6.05 (Landscaping).

(b) Comply with the conditions of approval of the Planning Department; Landscape Planning Division.

(c) Landscaping shall not be installed until the Landscape and Irrigation Construction Documentation Plans required by Ontario Development Code Division 6.05 (Landscaping) have been approved by the Landscape Planning Division.

(d) Changes to approved Landscape and Irrigation Construction Documentation Plans, which affect the character or quantity of the plant material or irrigation system design, shall be resubmitted for approval of the revision by the Landscape Planning Division, prior to the commencement of the changes.

2.5 Walls and Fences. All Project walls and fences shall comply with the requirements of Ontario Development Code Division 6.02 (Walls, Fences and Obstructions).

2.6 Parking, Circulation and Access.

(a) The Project shall comply with the applicable off-street parking, loading and lighting requirements of City of Ontario Development Code Division 6.03 (Off-Street Parking and Loading).

(b) All drive approaches shall be provided with an enhanced pavement treatment. The enhanced paving shall extend from the back of the approach apron, into the site, to the first intersecting drive aisle or parking space.

(c) Areas provided to meet the City's parking requirements, including off-street parking and loading spaces, access drives, and maneuvering areas, shall not be used for the outdoor storage of materials and equipment, nor shall it be used for any other purpose than parking.

(d) The required number of off-street parking spaces and/or loading spaces shall be provided at the time of site and/or building occupancy. All parking and loading spaces shall be maintained in good condition for the duration of the building or use.

(e) Parking spaces specifically designated and conveniently located for use by the physically disabled shall be provided pursuant to current accessibility regulations contained in State law (CCR Title 24, Part 2, Chapters 2B71, and CVC Section 22507.8).

(f) Bicycle parking facilities, including bicycle racks, lockers, and other secure facilities, shall be provided in conjunction with development projects pursuant to current regulations contained in CALGreen (CAC Title 24, Part 11). Final design and placement of bicycle parking facilities shall be subject to Planning Department review and approval.

2.7 Outdoor Loading and Storage Areas.

(a) Areas designated for off-street parking, loading, and vehicular circulation and maneuvering, shall not be used for the outdoor storage of materials or equipment.

(b) The minimum gate height for screen wall openings shall be established based upon the corresponding wall height, as follows:

Screen Wall Height	*Minimum Gate Height*
14 feet:	10 feet
12 feet:	9 feet
10 feet:	8 feet
8 feet:	8 feet
6 feet:	6 feet

2.8 Site Lighting.

(a) All off-street parking facilities shall be provided with nighttime security lighting pursuant to Ontario Municipal Code Section 4-11.08 (Special Residential Building Provisions) and Section 4-11.09 (Special Commercial/Industrial Building Provisions), designed to confine emitted light to the parking areas. Parking facilities shall be lighted from sunset until sunrise, daily, and shall be operated by a photocell switch.

(b) Unless intended as part of a master lighting program, no operation, activity, or lighting fixture shall create illumination on any adjacent property.

2.9 Mechanical and Rooftop Equipment.

(a) All exterior roof-mounted mechanical, heating and air conditioning equipment, and all appurtenances thereto, shall be completely screened from public view by parapet walls or roof screens that are architecturally treated so as to be consistent with the building architecture.

(b) All ground-mounted utility equipment and structures, such as tanks, transformers, HVAC equipment, and backflow prevention devices, shall be located out of view from a public street, or adequately screened through the use of landscaping and/or decorative low garden walls.

2.10 Security Standards. The Project shall comply with all applicable requirements of Ontario Municipal Code Title 4 (Public Safety), Chapter 11 (Security Standards for Buildings).

2.11 Signs.

(a) All Project signage shall comply with the requirements of Ontario Development Code Division 8.1 (Sign Regulations).

(b) On-site posting of public noticing shall be provided pursuant to Code Section 2.03.010.C.4, which consists of one, 6-foot-tall, freestanding public notification signs. The sign face shall measure 4 feet tall by 8 feet wide, in a format approved by the Planning Director. The sign shall be posted no later than ten calendar days prior to the Planning Commission hearing date and removed no later than fourteen calendar days following the Planning Commission hearing date, unless otherwise required by the Planning Director. The format is available on the City's website.

2.12 Sound Attenuation. The Project shall be constructed and operated in a manner so as not to exceed the maximum interior and exterior noise levels set forth in Ontario Municipal Code Title 5 (Public Welfare, Morals, and Conduct), Chapter 29 (Noise).

2.13 Covenants, Conditions and Restrictions (CC&Rs)/Mutual Access and Maintenance Agreements.

(a) CC&Rs shall be prepared for the Project and shall be recorded prior to the issuance of a building permit.

(b) The CC&Rs shall be in a form and contain provisions satisfactory to the City. The articles of incorporation for the property owners association and the CC&Rs shall be reviewed and approved by the City.

(c) CC&Rs shall ensure reciprocal parking and access between parcels, and common maintenance of:

(i) Landscaping and irrigation systems within common areas;
(ii) Landscaping and irrigation systems within parkways adjacent to the project site, including that portion of any public highway right-of-way between the property line or right-of-way boundary line and the curb line and also the area enclosed within the curb lines of a median divider (Ontario Municipal Code Section 7-3.03), pursuant to Ontario Municipal Code Section 5-22-02;
(iii) Shared parking facilities and access drives; and
(iv) Utility and drainage easements.

(d) CC&Rs shall include authorization for the City's local law enforcement officers to enforce City and State traffic and penal codes within the project area.

(e) The CC&Rs shall grant the City of Ontario the right of enforcement of the CC&R provisions.

(f) A specific methodology/procedure shall be established within the CC&Rs for enforcement of its provisions by the City of Ontario, if adequate maintenance of the development does not occur, such as, but not limited to, provisions that would grant the City the right of access to correct maintenance issues and assess the property owners association for all costs incurred.

2.14 Disclosure Statements.

(a) A copy of the Public Report from the Department of Real Estate, prepared for the subdivision pursuant to Business and Professions Code Section 11000, et seq., shall be provided to each prospective buyer of the residential units and shall include a statement to the effect that:

(i) This tract is subject to noise from the Ontario International Airport and may be more severely impacted in the future.
(ii) This tract is part of a Landscape Maintenance District. The homeowners will be assessed through their property taxes for the continuing maintenance of the district.

2.15 Environmental Requirements.

(a) If human remains are found during project grading/excavation/construction activities, the area shall not be disturbed until any required investigation is completed by the County Coroner and Native American consultation has been completed (if deemed applicable).

(b) If any archeological or paleontological resources are found during project grading/excavation/construction, the area shall not be disturbed until the significance of the resource is determined. If determined to be significant, the resource shall be recovered by a qualified archeologist or paleontologist consistent with current standards and guidelines, or other appropriate measures implemented.

2.16 Indemnification. The applicant shall agree to defend, indemnify and hold harmless, the City of Ontario or its agents, officers, and employees from any claim, action or proceeding against the City of Ontario or its agents, officers or employees to attack, set aside, void or annul any approval of the City of Ontario, whether by its City Council, Planning Commission or other authorized board or officer. The City of Ontario shall promptly notify the applicant of any such claim, action or proceeding, and the City of Ontario shall cooperate fully in the defense.

2.17 Additional Fees.

(a) Within 5 days following final application approval, the Notice of Exemption ("NOE") filing fee shall be provided to the Planning Department. The fee shall be paid by check, made payable to the "Clerk of the Board of Supervisors", which shall be forwarded to the San Bernardino County Clerk of the Board of Supervisors, along with all applicable environmental forms/notices, pursuant to the requirements of the California Environmental Quality Act ("CEQA"). The filing of a NOE is voluntary; however, failure to provide said fee within the time specified will result in the extension of the statute of limitations for the filing of a CEQA lawsuit from 30 days to 180 days.

(b) After the Project's entitlement approval, and prior to issuance of final building permits, the Planning Department's Plan Check and Inspection fees shall be paid at the rate established by resolution of the City Council.

2.18 Final Occupancy. The Project Architect of record will certify that construction of each building site and the exterior elevations of each structure shall be completed in compliance with the approved plans. Any deviation to approved plans shall require a resubmittal to the Planning Department for review and approval prior to construction. The Occupancy Release Request Form/Architect Certificate of Compliance shall be provided prior to final occupancy. After the receipt of this Certification, the Planning Department will conduct a final site and exterior elevations inspection. The Owner's Representative and Contractor shall be present.

2.19 Additional Requirements.

(a) The Applicant shall enter into an Affordable Housing Agreement with the City for 7 Moderate Affordable Units prior to the issuance of building permits.

(b) All guest parking shall be clearly labeled as "guest parking" spaces.

(c) All downspouts shall be strategically located to minimize their look along the side of the structures. They shall also be painted to match the adjacent wall color(s) in which they are located. Construction plans shall include such a note.

(d) All new walls shall be constructed of split face block, slump stone, or plastered, textured, and painted to match the main structures.

(e) Prior to occupancy, a Parking Management Plan shall be submitted and approved by the Planning Department. The Plan shall illustrate what parking space (excluding enclosed garages) are assigned to each unit, if applicable.

(f) Once the construction plans have been approved by the City and permits have been issued, the Applicant/Developer shall submit two reduced copies (11" x 17") of the approved plans to the Planning Department.

(g) All windows on the south side of the end units in Buildings 5 and 8, adjacent to the southwest and southeast corners of the project site, shall be frosted and view obscuring from those units, to provide privacy and screening to the existing single-family residences to the south. The screen windows shall be provided on the building plans and subject to Planning Department review and approval prior to issuance of building permits.

(h) Along the south property line, and where site conditions allow, additional trees shall be planted to screen the Project from the existing single-family residences to the south. The Applicant/Developer shall plant tall, narrow screening trees spaced 28 to 30 feet on-center from 36" box trees; consider the following options: Trsitania conferta (3" a year, mature height 30'-50'), Podocarpus gracilior (3" a year, mature height of 50'-70'), and Quercus ilex (2" a year, mature height 40'-60'). The additional trees shall be shown on the Landscape Plan and subject to Planning Department review and approval prior to permit issuance.

(i) The Applicant/Developer shall work with staff during the building plan check process to enhance the Project architecture as feasible.

AIRPORT LAND USE COMPATIBILITY PLANNING
CONSISTENCY DETERMINATION REPORT

ONTARIO AIRPORT PLANNING

Project File No.: PMTT23-008 and PDEV23-037

Address: Northeast corner of Guasti Road and Haven Avenue

APN: 0210-212-60

Existing Land Use: Religious Assembly

Proposed Land Use: Subdivide 3.1 acres of land into one parcel for condominium purposes and construct 70 multiple-family units

Site Acreage: 3.1 Proposed Structure Height: 41 FT

ONT-IAC Project Review: n/a

Airport Influence Area: ONT

Reviewed By: Lorena Mejia

Contact Info: 909-395-2276

Project Planner: Thomas Grahn

Date: 7/9/2024

CD No.: 2023-019

PALU No.: n/a

The project is impacted by the following ONT ALUCP Compatibility Zones:

Safety	Noise Impact	Airspace Protection	Overflight Notification
○ Zone 1	○ 75+ dB CNEL	☐ High Terrain Zone	☐ Avigation Easement Dedication
○ Zone 1A	○ 70 - 75 dB CNEL	☑ FAA Notification Surfaces	☐ Recorded Overflight Notification
○ Zone 2	☐ 65 - 70 dB CNEL	☐ Airspace Obstruction Surfaces	☑ Real Estate Transaction Disclosure
☐ Zone 3	☐ 60 - 65 dB CNEL	☐ Airspace Avigation Easement Area	
○ Zone 4		Allowable Height: 200 FT +	
○ Zone 5			

The project is impacted by the following Chino ALUCP Safety Zones:

☐ Zone 1 ☐ Zone 2 ☐ Zone 3 ☐ Zone 4 ○ Zone 5 ☐ Zone 6

Allowable Height: _____

CONSISTENCY DETERMINATION

This proposed Project is: ○ Exempt from the ALUCP ◉ Consistent ○ Consistent with Conditions ○ Inconsistent

The proposed project is located within the Airport Influence Area of Ontario International Airport (ONT) and was evaluated and found to be consistent with the policies and criteria of the Airport Land Use Compatibility Plan (ALUCP) for ONT.

Real Estate Transaction Disclosure Required for Airport in Vicinity

Airport Planner Signature: Lorena Mejia

CITY OF ONTARIO
MEMORANDUM

TO: **Thomas Grahn, Senior Planner**
Planning Department

FROM: **Paul Ehrman, Sr. Deputy Fire Chief/Fire Marshal**
Fire Department

DATE: **October 17, 2023**

SUBJECT: **PDEV23-037 - A Development Plan to construct 70 multiple-family dwellings, including 7 moderate income affordable dwellings, on approximately 3.1 acres of land located at 1355 West 5th Street, within the LDR-5 (Low Density Residential) zoning district (APN: 1008-551-12). Related File(s): PMTT23-008.**

☒ The plan **does** adequately address Fire Department requirements at this time.

☒ Standard Conditions of Approval apply, as stated below.

SITE AND BUILDING FEATURES:

A. 2022 CBC Type of Construction: V-B

B. Type of Roof Materials: Ordinary

C. Ground Floor Area(s): Varies, 12 Buildings

D. Number of Stories: 3

E. Total Square Footage: Largest is 12,236 Sq. Ft.

F. 2022 CBC Occupancy Classification(s): R2

CONDITIONS OF APPROVAL:

1.0 GENERAL

☒ 1.1 The following are the Ontario Fire Department ("Fire Department") requirements for this development project, based on the current edition of the California Fire Code (CFC), and the current versions of the Fire Prevention Standards ("Standards.") It is recommended that the applicant or developer transmit a copy of these requirements to the on-site contractor(s) and that all questions or concerns be directed to the Bureau of Fire Prevention, at (909) 395-2029. For copies of Ontario Fire Department Standards please access the City of Ontario web site at www.ontarioca.gov/Fire/Prevention.

☒ 1.2 These Fire Department conditions of approval are to be included on any and all construction drawings.

2.0 FIRE DEPARTMENT ACCESS

☒ 2.1 Fire Department vehicle access roadways shall be provided to within one hundred and fifty feet (150') of all portions of the exterior walls of the first story of any building, unless specifically approved. Roadways shall be paved with an all-weather surface and shall be a minimum of twenty-four (24) ft. wide. See Standard #B-004.

☒ 2.2 In order to allow for adequate turning radius for emergency fire apparatus, all turns shall be designed to meet the minimum twenty-five feet (25') inside and forty-five feet (45') outside turning radius per Standard #B-005.

☒ 2.3 Fire Department access roadways that exceed one hundred and fifty feet (150') in length shall have an approved turn-around per Standard #B-002.

☒ 2.4 Access drive aisles which cross property lines shall be provided with CC&Rs, access easements, or reciprocating agreements, and shall be recorded on the titles of affected properties, and copies of same shall be provided at the time of building plan check.

☒ 2.5 "No Parking-Fire Lane" signs and /or red painted curbs with lettering are required to be installed in interior access roadways, in locations where vehicle parking would obstruct the minimum clear width requirement. Installation shall be per Standard #B-001.

☒ 2.6 Security gates or other barriers on fire access roadways shall be provided with a Knox brand key switch or padlock to allow Fire Department access. See Standards #B-003, B-004 and H-001.

☒ 2.7 Any time PRIOR to on-site combustible construction and/or storage, a minimum twenty-four feet (24') wide circulating all weather access roads shall be provided to within one hundred and fifty feet (150') of all portions of the exterior walls of the first story of any building, unless specifically approved by fire department and other emergency services.

3.0 WATER SUPPLY

☒ 3.1 The required fire flow per Fire Department standards, based on the 2019 California Fire Code, Appendix B, is 1500 gallons per minute (g.p.m.) for 2 hours at a minimum of 20 pounds per square inch (p.s.i.) residual operating pressure.

☒ 3.2 Off-site (public) fire hydrants are required to be installed on all frontage streets, at a maximum spacing of three hundred feet (300') apart, on alternating sides of the street. Streets with a center median shall require public hydrants spaced five hundred feet (500') apart, on the same side of the street.

☒ 3.4 The water supply, including water mains and fire hydrants, shall be tested and approved by the Engineering Department and Fire Department prior to combustible construction to assure availability and reliability for firefighting purposes.

4.0 FIRE PROTECTION SYSTEMS

☒ 4.1 On-site private fire hydrants are required per Standard #D-005, and identified in accordance with Standard #D-002. Installation and locations(s) are subject to the approval of the Fire Department. An application with detailed plans shall be submitted, and a construction permit shall be issued by the Fire Department, prior to any work being done.

☒ 4.2 Underground fire mains which cross property lines shall be provided with CC & R, easements, or reciprocating agreements, and shall be recorded on the titles of affected properties, and copies of same shall be provided at the time of fire department plan check. The shared use of private fire mains or fire pumps is allowable only between immediately adjacent properties and shall not cross any public street.

☒ 4.3 An automatic fire sprinkler system is required. The system design shall be in accordance with National Fire Protection Association (NFPA) Standard 13. All new fire sprinkler systems, except those in single family dwellings, which contain twenty (20) sprinkler heads or more shall be monitored by an approved listed supervising station. An application along with detailed plans shall be submitted, and a construction permit shall be issued by the Fire Department, prior to any work being done.

☒ 4.4 Wood frame buildings that are to be sprinkled shall have these systems in service (but not necessarily finaled) before the building is enclosed.

5.0 BUILDING CONSTRUCTION FEATURES

☒ 5.1 The developer/general contractor is to be responsible for reasonable periodic cleanup of the development during construction to avoid hazardous accumulations of combustible trash and debris both on and off the site.

☒ 5.2 Approved numbers or addresses shall be placed on all new and existing buildings in such a position as to be plainly visible and legible from the street or road fronting the property. Multi-tenant or building projects shall have addresses and/or suite numbers provided on the rear of

the building. Address numbers shall contrast with their background. See Section 9-1 6.06 of the Ontario Municipal Code and Standards #H-003 and #H-002.

☒ 5.3 Single station smoke alarms and carbon monoxide alarms are required to be installed per the California Building Code and the California Fire Code.

☒ 5.4 Multiple unit building complexes shall have building directories provided at the main entrances. The directories shall be designed to the requirements of the Fire Department, see Section 9-1 6.06 of the Ontario Municipal Code and Standard #H-003.

☒ 5.5 All residential chimneys shall be equipped with an approved spark arrester meeting the requirements of the California Building Code.

☒ 5.6 Knox ® brand key-box(es) shall be installed in location(s) acceptable to the Fire Department. All Knox boxes shall be monitored for tamper by the building fire alarm system. See Standard #H-001 for specific requirements.

CITY OF ONTARIO
LANDSCAPE PLANNING DIVISION
303 East "B" Street, Ontario, CA 91764

CONDITIONS OF APPROVAL	
Sign Off	
	3/27/2024
Jamie Richardson, Sr. Landscape Architect	Date

Reviewer's Name:	Phone:
Jamie Richardson, Sr. Landscape Architect	**(909) 395-2615**

D.A.B. File No.:	Case Planner:
PDEV23-037 & PMTT23-008	Thomas Grahn

Project Name and Location:
Ontario Sunrise – 70 Multiple-Family Dwellings
1355 W 5th Street

Applicant/Representative:
Warmington Residential – moses.kim@warmingtongroup.com
3090 Pullman Street
Costa Mesa, CA 92326

☒	**Preliminary Plans (dated 3/11/2024) meet the Standard Conditions for New Development and have been approved considering that the following conditions below be met upon submittal of the landscape construction documents.**
☐	**Preliminary Plans (dated) have not been approved. Corrections noted below are required before Preliminary Landscape Plan approval.**

A RESPONSE SHEET IS REQUIRED WITH RESUBMITTAL OR PLANS WILL BE RETURNED AS INCOMPLETE.

Civil/Site Plans

1. Replacement and mitigation for removed trees shall equal the trunk diameter of heritage trees removed per the Development Code Tree Preservation Policy and Protection Measures, section 6.05.020. A total of 200 inches of trunk replacement is required; see #2 for mitigation options.
2. Show on demo plans and landscape construction plans trees to be preserved, removed or mitigation measures for trees removed, such as:
   a. New 15 gallon trees min 1" diameter trunk, in addition to trees required. *200 trees in addition to required trees.*
   b. New 24" box trees min 1.5" diameter trunk, in addition to trees required. *133 trees in addition to required trees.*
   c. Upsizing trees on the plan one size larger such as 15 gallon to 24" box, or 24" to 36" box size. *Provide a matrix with upsizing information.*
   d. Monetary value of the trees removed as identified in the "Guide for Plant Appraisal," approved certified arborist plant appraiser, may be equal to the value of the installation cost of planting, fertilizing, staking, and irrigating 15-gallon trees (100$ each) to the City of Ontario Historic Preservation Fund for city tree planting or city approved combination of the above items. *Monetary value is $20,000.*
3. Locate modular wetlands/biofiltration unit out of the landscape areas; these systems are not maintained properly when located within the open/common landscape spaces.
4. Reduce drive aisles to 24'. All planters must have a minimum 5' wide inside dimension to be counted towards the overall landscape open/common space percentage. Landscape planters shall have a minimum width of 3' otherwise.
5. Show transformers set back 5' from paving all sides. Coordinate with landscape plans.
6. Show all backflow devices set back 4' from paving on all sides. Locate on level grade.
7. Dimension, show and call out for step-outs at parking spaces adjacent to planters; a 12" wide

monolithic concrete curb, DG paving or pavers with edging.

Landscape Plans

8. Show backflow devices with 36” high strappy leaf shrub screening and trash enclosures and transformers, a 4’-5’ high evergreen hedge screening. Do not encircle utility; show as masses and duplicate masses in other locations at regular intervals.
9. Locate light standards, fire hydrants, water, and sewer lines to not conflict with required tree locations. Coordinate civil plans with landscape plans..
10. Show all utilities on the landscape plans. Coordinate so utilities are clear of tree locations.
11. Show parkway landscape max 18” high: such as Baccharis, Lonicera, Kurapia, etc., and street trees spaced 30’ apart.
12. Show 6’ diameter of mulch only at new trees. Detail irrigation dripline outside of mulched root zone.
13. Designer or developer to provide agronomical soil testing and include a report on landscape construction plans.
14. Show minimum on-site tree sizes per the Landscape Development standards; see the Landscape Planning website. 5% 48” box, 10% 36 box, 30% 24” box, 55% 15 gallon.
15. Show 25% of trees as California native (Platanus racemosa, Quercus agrifolia, Quercus wislizenii, Quercus douglasii, Cercis occidentalis, etc.) in appropriate locations.
16. Landscape construction plans shall meet the requirements of the Landscape Development Guidelines. See http://www.ontarioca.gov/landscape-planning/standards
17. After a project’s entitlement approval, the applicant shall pay all applicable fees for landscape plan check and inspections at a rate established by resolution of the City Council.

CITY OF ONTARIO
MEMORANDUM

TO: **Thomas Grahn, Senior Planner**

FROM: **Heather Lugo, MA, Police Department**

DATE: **October 16, 2023 – REVISED 7/23/24**

SUBJECT: **PDEV23-037 - A Development Plan approval to construct 70 multiple-family dwellings, including 7 moderate affordable dwellings, on approximately 3.1 acres of land located at 1355 West 5th Street, within the LDR-5 (Low Density Residential) zoning district (APN: 1008-551-12). Related File(s): PMTT23-008.**

The "Standard Conditions of Approval" contained in Resolution No. 2017-027 apply. The applicant shall read and be thoroughly familiar with these conditions, including, but not limited to, the requirements below.

- Required lighting for all walkways, driveways, doorways, parking lots, hallways and other areas used by the public shall be provided. Lights shall operate via photosensor. Photometrics shall be provided to the Police Department and include the types of fixtures proposed and demonstrate that such fixtures meet the vandal-resistant requirement. Planned landscaping shall not obstruct lighting.
- Rooftop addresses shall be installed on the buildings as stated in the Standard Conditions. The numbers shall be at a minimum 6 feet tall and 2 foot wide, in reflective white paint on a flat black background, and oriented with the bottom of the numbers towards the addressed street. Associated letters shall also be included.
- The Applicant shall comply with construction site security requirements as stated in the Standard Conditions.
- All exterior electrical outlets shall be secured and locked.
- All exterior water spigots / water supply sources shall be secured and locked.

The Applicant is invited to contact Heather Lugo at (909) 408-1074 with any questions or concerns regarding these conditions.

CITY OF ONTARIO

ENGINEERING DEPARTMENT CONDITIONS OF APPROVAL

(Land Development Division, Environmental Section, Traffic & Transportation Division, Ontario Municipal Utilities Company, and Broadband Operations & Investment and Revenue Resources Department Conditions incorporated)

☒ **DEVELOPMENT PLAN** ☐ OTHER	☐ PARCEL MAP ☒ **TRACT MAP** ☒ **FOR CONDOMINIUM PURPOSES**
PROJECT FILE NO. TM-20659 **RELATED FILE NO(S). PDEV23-037; PMTT23-008**	
☒ **ORIGINAL** ☐ REVISED: __/__/__	

CITY PROJECT ENGINEER & PHONE NO:	**Henry Pham (909) 395-2141**
CITY PROJECT PLANNER & PHONE NO:	**Thomas Grahn (909) 395-2413**
DAB MEETING DATE:	**July 15th, 2024**
PROJECT NAME / DESCRIPTION:	**A tentative tract map for condominium purposes and a development plan to construct 70 multiple-family dwellings on approximately 3.1 acres of land.**
LOCATION:	**1355 West 5th Street**
APPLICANT:	**Warmington Residential California, Inc.** **Bret Llich – (877) 708-3454**
REVIEWED BY:	**Raymond Lee, P.E.** **Assistant City Engineer** **7/2/24 Date**
APPROVED BY:	**Khoi Do, P.E.** **City Engineer** **7-3-24 Date**

THIS PROJECT SHALL COMPLY WITH THE REQUIREMENTS SET FORTH IN THE GENERAL STANDARD CONDITIONS OF APPROVAL ADOPTED BY THE CITY COUNCIL (RESOLUTION NO. 2017-027) AND THE PROJECT SPECIFIC CONDITIONS OF APPROVAL SPECIFIED HEREIN. ONLY APPLICABLE CONDITIONS OF APPROVAL ARE CHECKED. THE APPLICANT SHALL BE RESPONSIBLE FOR THE COMPLETION OF ALL APPLICABLE CONDITIONS OF APPROVAL PRIOR TO PARCEL MAP APPROVAL, ISSUANCE OF PERMITS AND/OR OCCUPANCY CLEARANCE, AS SPECIFIED IN THIS REPORT.

1. PRIOR TO TRACT MAP APPROVAL, APPLICANT SHALL:

			Check When Complete
☐	1.01	Dedicate to the City of Ontario, the right-of-way, described below: Property line corner 'cut-back' required at the intersection of:	☐
☒	**1.02**	**Dedicate to the City of Ontario, the following easement(s):** **a. For public sewer purposes along the west property line: 10-foot-wide easement** **b. For public utility, emergency vehicle, and solid waste collection access purposes within the private drive: 26-foot-wide easement**	☐
☐	1.03	Restrict vehicular access to the site as follows:	☐
☐	1.04	Vacate the following street(s) and/or easement(s):	☐
☒	**1.05**	**Submit a copy of a recorded private reciprocal use agreement or easement. The agreement or easement shall ensure, at a minimum, common ingress and egress and joint maintenance of all common access areas and drive aisles.**	☐
☒	**1.06**	**Provide (original document) Covenants, Conditions and Restrictions (CC&Rs) as applicable to the project and as approved by the City Attorney and the Engineering and Planning Departments, ready for recordation with the County of San Bernardino. The CC&Rs shall provide for, but not be limited to, common ingress and egress, joint maintenance responsibility for all common access improvements, common facilities, parking areas, utilities, median and landscaping improvements and drive approaches, in addition to maintenance requirements established in the Water Quality Management Plan (WQMP), as applicable to the project. The CC&Rs shall also address the maintenance and repair responsibility for public improvements/utilities (sewer, water, storm drain, recycled water, etc.) located within open space/easements. In the event of any maintenance or repair of these facilities, the City shall only restore disturbed areas to current City Standards.**	☐
☐	1.07	For all development occurring south of the Pomona Freeway (60-Freeway) and within the specified boundary limits (per Boundary Map found at *http://tceplumecleanup.com/*), the property developer/owner is made aware of the South Archibald Trichloroethylene (TCE) Plume "Disclosure Letter". Property owner may wish to provide this Letter as part of the Real Estate Transfer Disclosure requirements under California Civil Code Section 1102 et seq. This may include notifications in the Covenants, Conditions and Restrictions (CC&Rs) or other documents related to property transfer and disclosures. Additional information on the plume is available from the Santa Ana Regional Water Quality Control Board at *http://geotracker.waterboards.ca.gov/profile_report?global_id=T10000004658.*	☐
☐	1.08	File an application for Reapportionment of Assessment, together with payment of a reapportionment processing fee, for each existing assessment district listed below. Contact the Financial Services Department at (909) 395-2124 regarding this requirement. (1) _____ (2) _____	☐
☒	**1.09**	**Prepare a fully executed Subdivision Agreement (on City approved format and forms) with accompanying security as required, or complete all public improvements.**	☐
☒	**1.10**	**Provide a monument bond (i.e. cash deposit) in an amount calculated by the City's approved cost estimate spreadsheet (available for download on the City's website: www.ontarioca.gov) or as specified in writing by the applicant's Registered Engineer or Licensed Land Surveyor of Record and approved by the City Engineer, whichever is greater.**	☐

☒ **1.11 Provide a preliminary title report current to within 30 days.** ☐

☐ 1.12 File an application, together with an initial deposit (if required), to establish a Community Facilities District (CFD) pursuant to the Mello-Roos Community Facilities District Act of 1982. The application and fee shall be submitted a minimum of four (4) months prior to final subdivision map approval, and the CFD shall be established prior to final subdivision map approval or issuance of building permits, whichever occurs first. The CFD shall be established upon the subject property to provide funding for various City services. An annual special tax shall be levied upon each parcel or lot in an amount to be determined. The special tax will be collected along with annual property taxes. The City shall be the sole lead agency in the formation of any CFD. Contact Investment and Revenue Resources at (909) 395-2341 to initiate the CFD application process. ☐

☐ 1.13 Ontario Ranch Developments: ☐

☐ 1) Provide evidence of final cancellation of Williamson Act contracts associated with this tract, prior to approval of any final subdivision map. Cancellation of contracts shall have been approved by the City Council.

☐ 2) Provide evidence of sufficient storm water capacity availability equivalents (Certificate of Storm Water Treatment Equivalents).

☐ 3) Provide evidence of sufficient water availability equivalents (Certificate of Net MDD Availability).

☐ 1.14 Other conditions: ☐

2. PRIOR TO ISSUANCE OF ANY PERMITS, APPLICANT SHALL:

A. GENERAL
(Permits includes Grading, Building, Demolition and Encroachment)

☒ **2.01 Record Tract Map No. 20659 pursuant to the Subdivision Map Act and in accordance with the City of Ontario Municipal Code.** ☐

☒ **2.02 Submit a PDF of the recorded map to the City Engineer's office.** ☐

☐ 2.03 Note that the subject parcel is a recognized parcel in the City of Ontario per _____ ☐

☐ 2.04 Note that the subject parcel is an 'unrecognized' parcel in the City of Ontario and shall require a Certificate of Compliance to be processed unless a deed is provided confirming the existence of the parcel prior to the date of March 4, 1972. ☐

☐ 2.05 Apply for a: ☐

☐ Certificate of Compliance with a Record of Survey;

☐ Lot Line Adjustment (Record a Conforming Deed with the County of San Bernardino within six months of the recordation of the Lot Line Adjustment to conform the new LLA legal description. Submit a copy of the recorded Conforming Deed to the Engineering Department.);

☐ Make a Dedication of Easement.

☐ 2.06 Provide (original document) Covenants, Conditions and Restrictions (CC&R's), as applicable to the project, and as approved by the City Attorney and the Engineering and Planning Departments, ready for recordation with the County of San Bernardino. The CC&R's shall provide for, but not be limited to, common ingress and egress, joint maintenance of all common access improvements, common facilities, parking areas, utilities and drive approaches in addition to maintenance requirements established in the Water Quality Management Plan (WQMP), as applicable to the project. ☐

☐ 2.07 For all development occurring south of the Pomona Freeway (60-Freeway) and within the specified boundary limits (per Boundary Map found at *http://tceplumecleanup.com/*), the property developer/owner ☐

is made aware of the South Archibald Trichloroethylene (TCE) Plume "Disclosure Letter". Property owner may wish to provide this Letter as part of the Real Estate Transfer Disclosure requirements under California Civil Code Section 1102 et seq. This may include notifications in the Covenants, Conditions and Restrictions (CC&Rs) or other documents related to property transfer and disclosures. Additional information on the plume is available from the Santa Ana Regional Water Quality Control Board at *http://geotracker.waterboards.ca.gov/profile_report?global_id=T10000004658.*

☒ **2.08 Submit a soils/geology report.** ☐

☐ 2.09 Other Agency Permit/Approval: Submit a copy of the approved permit and/or other form of approval of the project from the following agency or agencies: ☐

- ☐ State of California Department of Transportation (Caltrans)
- ☐ San Bernardino County Road Department (SBCRD)
- ☐ San Bernardino County Flood Control District (SBCFCD)
- ☐ Federal Emergency Management Agency (FEMA)
- ☐ Cucamonga Valley Water District (CVWD) for sewer/water service
- ☐ United States Army Corps of Engineers (USACE)
- ☐ California Department of Fish & Game
- ☐ Inland Empire Utilities Agency (IEUA)
- ☐ Other: _____

☐ 2.10 Dedicate to the City of Ontario the right-of-way described below: ☐

☐ 2.11 Dedicate to the City of Ontario the following easement(s): ☐

☐ 2.12 Vacate the following street(s) and/or easement(s): ☐

☐ 2.13 Ontario Ranch Developments: ☐

☐ 1) Submit a copy of the permit from the San Bernardino County Health Department to the Engineering Department and the Ontario Municipal Utilities Company (OMUC) for the destruction/abandonment of the on-site water well. The well shall be destroyed/abandoned in accordance with the San Bernardino County Health Department guidelines.

☐ 2) Make a formal request to the City of Ontario Engineering Department for the proposed temporary use of an existing agricultural water well for purposes other than agriculture, such as grading, dust control, etc. Upon approval, the Applicant shall enter into an agreement with the City of Ontario and pay any applicable fees as set forth by said agreement.

☐ 3) Design proposed retaining walls to retain up to a maximum of three (3) feet of earth. In no case shall a wall exceed an overall height of nine (9) feet (i.e. maximum 6-foot high wall on top of a maximum 3-foot high retaining wall.

☐ 2.14 Submit a security deposit to the Engineering Department to guarantee construction of the public improvements required herein valued at _____% of the approved construction cost estimate. Security deposit shall be in accordance with the City of Ontario Municipal Code. Security deposit will be eligible for release, in accordance with City procedure, upon completion and acceptance of said public improvements. ☐

☒ **2.15 The applicant/developer shall submit all necessary survey documents prepared by a Licensed Surveyor registered in the State of California detailing all existing survey monuments in and around the project site. These documents are to be reviewed and approved by the City Survey Office.** ☐

☒ **2.16 Pay all Development Impact Fees (DIF) to the Building Department. Storm Drain Development Impact Fee shall be paid to the Building Department. Final fee shall be determined based on the approved site plan and the DIF rate at the time of payment.** ☐

☐ 2.17 Other conditions: ☐

B. PUBLIC IMPROVEMENTS
(See attached Exhibit 'A' for plan check submittal requirements.)

☒ 2.18 **Design and construct full public improvements in accordance with the City of Ontario Municipal Code, current City standards and specifications, master plans and the adopted specific plan for the area, if any. These public improvements shall include, but not be limited to, the following (checked boxes):**

Improvement	5th St.	Private Drive		
Curb and Gutter[1]	☐ New; ___ ft. from C/L ☒ **Replacement** ☐ Remove and replace	☐ New; ___ ft. from C/L ☐ Replace damaged ☐ Remove and replace	☐ New; ___ ft. from C/L ☐ Replace damaged ☐ Remove and replace	☐ New; ___ ft. from C/L ☐ Replace damaged ☐ Remove and replace
AC Pavement (see Sec. 2.19)	☒ **Replacement** ☐ Widen ____ additional feet along frontage, including pavm't transitions	☐ Replacement ☐ Widen ____ additional feet along frontage, including pavm't transitions	☐ Replacement ☐ Widen ____ additional feet along frontage, including pavm't transitions	☐ Replacement ☐ Widen ____ additional feet along frontage, including pavm't transitions
PCC Pavement (Truck Route Only)	☐ New ☐ Modify existing	☐ New ☐ Modify existing	☐ New ☐ Modify existing	☐ New ☐ Modify existing
Drive Approach	☒ **New** ☐ Remove and replace	☐ New ☐ Remove and replace	☐ New ☐ Remove and replace	☐ New ☐ Remove and replace
Sidewalk[1]	☒ **New** ☒ **Replace damaged**	☐ New ☐ Remove and replace	☐ New ☐ Remove and replace	☐ New ☐ Remove and replace
ADA Access Ramp	☐ New ☐ Remove and replace	☐ New ☐ Remove and replace	☐ New ☐ Remove and replace	☐ New ☐ Remove and replace
Parkway[1]	☐ Trees ☒ **Landscaping (w/irrigation)**	☐ Trees ☐ Landscaping (w/irrigation)	☐ Trees ☐ Landscaping (w/irrigation)	☐ Trees ☐ Landscaping (w/irrigation)
Raised Landscaped Median	☐ New ☐ Remove and replace	☐ New ☐ Remove and replace	☐ New ☐ Remove and replace	☐ New ☐ Remove and replace
Fire Hydrant	☒ **Upgrade[2]** ☐ Relocation	☒ **New** ☐ Relocation	☐ New / Upgrade ☐ Relocation	☐ New / Upgrade ☐ Relocation

Sewer (see Sec. 2.C)	☐ Main ☐ Lateral	☐ Main ☒ **Lateral**	☐ Main ☐ Lateral	☐ Main ☐ Lateral
Water (see Sec. 2.D)	☐ Main ☒ **Service**	☐ Main ☐ Service	☐ Main ☐ Service	☐ Main ☐ Service
Recycled Water (see Sec. 2.E)	☐ Main ☐ Service	☐ Main ☐ Service	☐ Main ☐ Service	☐ Main ☐ Service
Traffic Signal System (see Sec. 2.F)	☐ New ☐ Modify existing	☐ New ☐ Modify existing	☐ New ☐ Modify existing	☐ New ☐ Modify existing
Traffic Signing and Striping (see Sec. 2.F)	☐ New ☐ Modify existing	☐ New ☐ Modify existing	☐ New ☐ Modify existing	☐ New ☐ Modify existing
Street Light (see Sec. 2.F)	☒ **New** ☐ Relocation	☐ New / Upgrade ☐ Relocation	☐ New / Upgrade ☐ Relocation	☐ New / Upgrade ☐ Relocation
Bus Stop Pad or Turn-out (see Sec. 2.F)	☐ New ☐ Modify existing	☐ New ☐ Modify existing	☐ New ☐ Modify existing	☐ New ☐ Modify existing
Storm Drain (see Sec. 2G)	☐ Main ☐ Lateral	☐ Main ☐ Lateral	☐ Main ☐ Lateral	☐ Main ☐ Lateral
Fiber Optics (see Sec. 2K)	☒ **Conduit / Appurtenances**	☒ **Conduit / Appurtenances**	☐ Conduit / Appurtenances	☐ Conduit / Appurtenances
Overhead Utilities	☐ Underground ☐ Relocate	☐ Underground ☐ Relocate	☐ Underground ☐ Relocate	☐ Underground ☐ Relocate
Removal of Improvements	_____ _____ _____	_____ _____ _____	_____ _____ _____	_____ _____ _____
Other Improvements	**Construct RRFB at 5th Street and Elderberry Avenue crosswalk. (See attached Traffic Conditions)**	_____ _____ _____	_____ _____ _____	_____ _____ _____

Specific notes for improvements listed in item no. 2.18, above:
[1]**Remove existing driveway approaches and replace with curb, gutter, sidewalk, and parkway landscape.**
[2]**Upgrade existing fire hydrant along 5th Street.**

☒ 2.19 **Construct a 2" asphalt concrete (AC) grind and overlay on the following street(s):** ☐
a. **5th Street along project frontage from the edge of gutter to centerline of street.**

☐ 2.20 Reconstruction of the full pavement structural section, per City of Ontario Standard Drawing number 1011, may be required based on the existing pavement condition and final street design. Minimum limits of reconstruction shall be along property frontage, from street centerline to curb/gutter. ☐

☐ 2.21 Make arrangements with the Cucamonga Valley Water District (CVWD) to provide ☐ water service to the site. ☐ sewer service to the site. This property is within the area served by the CVWD and Applicant shall provide documentation to the City verifying that all required CVWD fees have been paid. ☐

☐ 2.22 Overhead utilities shall be under-grounded, in accordance with Title 7 of the City's Municipal Code (Ordinance No. 2804 and 2892). Developer may pay in-lieu fee, approximately _____, for undergrounding of utilities in accordance with Section 7-7.302.e of the City's Municipal Code. ☐

☐ 2.23 Other conditions: ☐

C. SEWER

☒ **2.24 An 8-inch sewer main is available for connection by this project along the westerly property line. (Ref: Sewer facility id number: S12610)** ☐

☐ 2.25 Design and construct a sewer main extension. A sewer main is not available for direct connection. The closest main is approximately _____ feet away. ☐

☐ 2.26 Submit documentation that shows expected peak loading values for modeling the impact of the subject project to the existing sewer system. The project site is within a deficient public sewer system area. Applicant shall be responsible for all costs associated with the preparation of the model. Based on the results of the analysis, Applicant may be required to mitigate the project impact to the deficient public sewer system, including, but not limited to, upgrading of existing sewer main(s), construction of new sewer main(s) or diversion of sewer discharge to another sewer. ☐

☒ **2.27 Other conditions: See attached OMUC Utilities Engineering Development conditions of approval.** ☐

D. WATER

☒ **2.28 A 6-inch water main is available for connection by this project in 5th Street. (Ref: Water facility id number: W11080)** ☐

☐ 2.29 Design and construct a water main extension. A water main is not available for direct connection. The closest main is approximately _____ feet away. ☐

☒ **2.30 Other conditions: See attached OMUC Utilities Engineering Development conditions of approval.** ☐

E. RECYCLED WATER

☐ 2.31 A _____-inch recycled water main is available for connection by this project in _____. (Ref: Recycled Water plan bar code:_____) ☐

☐ 2.32 Design and construct an on-site recycled water system for this project. A recycled water main does exist in the vicinity of this project. ☐

☐ 2.33 Design and construct an on-site recycled water ready system for this project. A recycled water main does not currently exist in the vicinity of this project, but is planned for the near future in Sultana Avenue. If Applicant would like to connect to this recycled water main when it becomes available, the cost for the connection shall be borne solely by the Applicant. ☐

☐ 2.34 Submit one (1) electronic copy, in PDF format, of the Engineering Report (ER), for the use of recycled water, to OMUC's Water Quality Programs at OMUCWQPlanCheck@ontarioca.gov for review and subsequent submittal to the California State Water Board (Division of Drinking Water) for final approval. ☐

Note: Review and approval process may take up to three (3) months. Contact the OMUC's Water Quality Programs at (909) 395-2678 or email OMUCWQPlanCheck@ontarioca.gov regarding this requirement.

☐ 2.35 Submit one (1) electronic copy, in PDF format, of the Landscape Plans (on-site & off-site) to OMUC's Water Quality Programs at (OMUCWQPlanCheck@ontarioca.gov for review and approval.

☐ 2.36 Other conditions: ☐

F. TRAFFIC / TRANSPORTATION

☐ 2.37 Submit a focused traffic impact study, prepared and signed by a Traffic/Civil Engineer registered in the State of California. The study shall address, but not be limited to, the following issues as required by the City Engineer: ☐
1. On-site and off-site circulation
2. Traffic level of service (LOS) at 'build-out' and future years
3. Impact at specific intersections as selected by the City Engineer

☐ 2.38 New traffic signal installations shall be added to Southern California Edison (SCE) customer account number # 2-20-044-3877. ☐

☒ **2.39 Other conditions: See attached Traffic Engineering conditions of approval.** ☐

G. DRAINAGE / HYDROLOGY

☐ 2.40 A ____ storm drain main is available to accept flows from this project in ____. ☐

☒ **2.40 Submit a hydrology study and drainage analysis, prepared and signed by a Civil Engineer registered in the State of California. The study shall be prepared in accordance with the San Bernardino County Hydrology Manual and City of Ontario standards and guidelines. Additional drainage facilities, including, but not limited to, improvements beyond the project frontage, may be required to be designed and constructed, by Applicant, as a result of the findings of this study.** ☐

☒ **2.41 An adequate drainage facility to accept additional runoff from the site does not currently exist downstream of the project. Design and construct a storm water detention facility on the project site. 100 year post-development peak flow shall be attenuated such that it does not exceed 80% of pre-development peak flows, in accordance with the approved hydrology study and improvement plans.** ☐

☐ 2.42 Submit a copy of a recorded private drainage easement or drainage acceptance agreement to the Engineering Department for the acceptance of any increase to volume and/or concentration of historical drainage flows onto adjacent property, prior to approval of the grading plan for the project. ☐

☐ 2.43 Comply with the City of Ontario Flood Damage Prevention Ordinance (Ordinance No. 2409). The project site or a portion of the project site is within the Special Flood Hazard Area (SFHA) as indicated on the Flood Insurance Rate Map (FIRM) and is subject to flooding during a 100 year frequency storm. The site plan shall be subject to the provisions of the National Flood Insurance Program. ☐

☐ 2.44 Other conditions: ☐

H. STORM WATER QUALITY / NATIONAL POLLUTANT DISCHARGE AND ELIMINATION SYSTEM (NPDES)

☐ 2.46 401 Water Quality Certification/404 Permit – Submit a copy of any applicable 401 Certification or 404 Permit for the subject project to the City project engineer. Development that will affect any body of surface water (i.e. lake, creek, open drainage channel, etc.) may require a 401 Water Quality Certification from the California Regional Water Quality Control Board, Santa Ana Region (RWQCB) and a 404 Permit from the United States Army Corps of Engineers (USACE). The groups of water bodies classified in these requirements are perennial (flow year round) and ephemeral (flow during rain conditions, only) and include, but are not limited to, direct connections into San Bernardino County Flood Control District (SBCFCD) channels. ☐
If a 401 Certification and/or a 404 Permit are not required, a letter confirming this from Applicant's engineer shall be submitted.
Contact information: USACE (Los Angeles District) (213) 452-3414; RWQCB (951) 782-4130.

☒ **2.47 Submit a Water Quality Management Plan (WQMP). This plan shall be approved by the Engineering Department prior to approval of any grading plan. The WQMP shall be submitted, utilizing the current San Bernardino County Stormwater Program template, available at: http://www.sbcounty.gov/dpw/land/npdes.asp.** ☐

☐ 2.48 Design and construct a Connector Pipe Trash Screen or equivalent Trash Treatment Control Device, per catch basin located within or accepting flows tributary of a Priority Land Use (PLU) area that meets ☐

the Full Capture System definition and specifications, and is on the Certified List of the State Water Resources Control Board. The device shall be adequately sized per catch basin and include a deflector screen with vector control access for abatement application, vertical support bars, and removable component to facilitate maintenance and cleaning.

☐ 2.49 Other conditions: ☐

J. SPECIAL DISTRICTS

☐ 2.50 File an application, together with an initial deposit (if required), to establish a Community Facilities District (CFD) pursuant to the Mello-Roos Community Facilities District Act of 1982. The application and fee shall be submitted a minimum of four (4) months prior to final subdivision map approval, and the CFD shall be established prior to final subdivision map approval or issuance of building permits, whichever occurs first. The CFD shall be established upon the subject property to provide funding for various City services. An annual special tax shall be levied upon each parcel or lot in an amount to be determined. The special tax will be collected along with annual property taxes. The City shall be the sole lead agency in the formation of any CFD. Contact Investment and Revenue Resources at (909) 395-2341 to initiate the CFD application process. ☐

☐ 2.51 Other conditions: ☐

K. FIBER OPTIC

☐ 2.52 A _____ fiber optic line is available for connection by this project in _____. (Ref: Fiber Optic Drawing Number: _____) ☐

☒ **2.53 Design and construct fiber optic system to provide access to the City's conduit and fiber optic system per the City's Fiber Optic Master Plan. Building entrance conduits shall start from the closest OntarioNet hand hole constructed along the project frontage in the ROW and shall terminate in the main telecommunications room for each building.** ☐

☒ **2.53 Refer to the City's Fiber Optic Master Plan for design and layout guidelines. Contact the Broadband Operations Department at (909) 395-2000, regarding this requirement.** ☐

☒ **2.54 Other conditions: See attached Broadband Operations conditions of approval.** ☐

3. PRIOR TO ISSUANCE OF A CERTIFICATE OF OCCUPANCY, APPLICANT SHALL:

☒ **3.01 Set new monuments in place of any monuments that have been damaged or destroyed as a result of construction of the subject project. Monuments shall be set in accordance with City of Ontario standards and to the satisfaction of the City Engineer.** ☐

☐ 3.02 Complete all requirements for recycled water usage. ☐

☐ 1) Procure from OMUC a copy of the letter of confirmation from the California State Water Board (Division of Drinking Water) that the Engineering Report (ER) has been reviewed and the subject site is approved for the use of recycled water.

☐ 2) Obtain clearance from OMUC confirming completion of recycled water improvements and passing of shutdown tests and cross connection inspection, upon availability/usage of recycled water.

☐ 3) Complete Site Supervisor training of on-site personnel in the use of recycled water, in accordance with the ER, upon availability/usage of recycled water.

☒ **3.03 The applicant/developer shall submit all final survey documents prepared by a Licensed Surveyor registered in the State of California detailing all survey monuments that have been preserved, revised, adjusted or set along with any maps, corner records or Records of Survey needed to comply with these Conditions of Approvals and the latest edition of the California Professional Land Survey Act. These documents are to be reviewed and approved by the City Survey Office.** ☐

☐ 3.04 Ontario Ranch Projects: For developments located at an intersection of any two collector or arterial streets, the applicant/developer shall set a monument if one does not already exist at that intersection. Contact the City Survey office for information on reference benchmarks, acceptable methodology and required submittals. ☐

☒ **3.05 Confirm payment of all Development Impact Fees (DIF) to the Building Department.** ☐

☒ **3.06 Submit electronic copies (PDF and Auto CAD format) of all approved improvement plans, studies and reports (i.e. hydrology, traffic, WQMP, etc.).** ☐

4. PRIOR TO FINAL ACCEPTANCE, APPLICANT SHALL:

☒ **4.01 Complete all Conditions of Approval listed under Sections 1-3 above.** ☐

☒ **4.02 Pay all outstanding fees pursuant to the City of Ontario Municipal Code, including but not limited to, plan check fees, inspection fees and Development Impact Fees.** ☐

☒ **4.03 The applicant/developer shall submit a written request for the City's final acceptance of the project addressed to the City Project Engineer. The request shall include a completed Acceptance and Bond Release Checklist, state that all Conditions of Approval have been completed and shall be signed by the applicant/developer. Upon receipt of the request, review of the request shall be a minimum of 10 business days. Conditions of Approval that are deemed incomplete by the City will cause delays in the acceptance process.** ☐

☒ **4.04 Submit record drawings (PDF) for all public improvements identified within Section 2 of these Conditions of Approval.** ☐

EXHIBIT 'A'

ENGINEERING DEPARTMENT
First Plan Check Submittal Checklist

Project Number: PDEV23-037, PMTT23-008, and Tract Map No. 20659

The following items are required to be included with the first plan check submittal:

1. ☒ **A copy of this check list**
2. ☒ **Payment of fee for Plan Checking**
3. ☒ **Digital copy of Engineering Cost Estimate (on City form) with engineer's wet signature and stamp.**
4. ☒ **Digital copy of project Conditions of Approval**
5. ☒ **Include a PDF (electronic submittal) of each required improvement plan at every submittal.**
6. ☒ **Digital copy of Potable Water demand calculations (include water demand calculations showing low, average and peak water demand in GPM for the proposed development and proposed water meter size).**
7. ☐ Digital copy of Public Street improvement plan with street cross-sections.
8. ☐ Digital copy of Public Water improvement plan. (include water demand calculations showing low, average and peak water demand in GPM for the proposed development and proposed water meter size)
9. ☐ Digital copy of Recycled Water improvement plan (include recycled water demand calculations showing low, average and peak water demand in GPM for the proposed development and proposed water meter size and an exhibit showing the limits of areas being irrigated by each recycled water meter)
10. ☐ Digital copy of Public Sewer improvement plan
11. ☐ Digital copy of Public Storm Drain improvement plan
12. ☒ **Digital copy of Public Street Light improvement plan**
13. ☐ Digital copy of Signing and Striping improvement plan
14. ☒ **Digital copy of Fiber Optic plan (include Auto CAD electronic submittal)**
15. ☒ **Digital copy of HOA Landscape improvement plans. Show corner sight line distance per engineering standard drawing 1309.**
16. ☐ Digital copy of CFD Landscape improvement plans. Show corner sight line distance per engineering standard drawing 1309.
17. ☒ **Digital copy of Dry Utility plans within public right-of-way (at a minimum the plans must show existing and ultimate right-of-way, curb and gutter, proposed utility location including centerline dimensions, wall to wall clearances between proposed utility and adjacent public line, street work repaired per Standard Drawing No. 1306. Include Auto CAD electronic submittal)**
18. ☒ **Digital copy of Rectangular Rapid Flashing Beacon (RRFB) improvement plan. Please contact the Traffic Division at (909) 395-2154 to obtain Traffic Signal Specifications.**
19. ☒ **Digital copy of Water Quality Management Plan (WQMP)**
20. ☒ **Digital copy of Hydrology/Drainage study**
21. ☒ **Digital copy of Soils/Geology report**

21. ☒ **Digital copy of Soils/Geology report**
22. ☒ **Payment for Final Map/Parcel Map processing fee**
23. ☒ **Digital copy of Final Map/Parcel Map**
24. ☒ **Digital copy of approved Tentative Map**
25. ☒ **Digital copy of Preliminary Title Report (current within 30 days)**
26. ☒ **Digital copy of Traverse Closure Calculations**
27. ☒ **Digital copy of One (1) set of supporting documents and maps (legible copies): referenced improvement plans (full size), referenced record final maps/parcel maps (full size, 18"x26"), Assessor's Parcel map (full size, 11"x17"), recorded documents such as deeds, lot line adjustments, easements, etc.**
28. ☐ Digital copy of Engineering Report for recycled water use
29. ☐ Other:

CITY OF ONTARIO
MEMORANDUM

Development Plan Review
Engineering Department:
Transportation Section

Project: PDEV23-037/PMTT23-008
(70-Multi Family Dwellings)

Date: April 9, 2024

Location: 1355 West 5th Street

By: Diego Tapia
Nathan Kuan

The Transportation Division recommends the following to be incorporated into the Project's Conditions-of-Approval:

Conditions:

1. The Applicant/Developer shall be responsible to install a rectangular rapid flashing beacon (RRFB) at Fifth Street and Elderberry Avenue crosswalk per the California MUTCD guidelines and to the satisfaction of the City Engineer. These, and all other street improvements herein required for the installation of the RRFB, shall include, but not be limited to, intersection lighting, signing and striping, and ADA improvements.

2. The Applicant/Developer shall be responsible to design and construct in-fill public street lights and a potential new service along its project frontage on 5th Street. Street lighting shall be LED-type and in accordance with City's Approved Material List LED Luminaires. The Applicant/Developer shall also install smart nodes on all new street light fixtures.

3. The Applicant/Developer shall replace the existing street light located along the project frontage with the current standard pole height in accordance with City of Ontario Standard Drawing No. 5101.

4. Where a driveway closure is being proposed, the Applicant/Developer shall backfill the existing driveway curb-cuts with full-height curb and gutter, sidewalk, and landscaped parkway in accordance with all City standards and to the satisfaction of the City Engineer.

5. Design and construct proposed driveway in accordance with City of Ontario Standard Drawing No. 1205 for Residential Driveway Approach II.

6. Parking shall be restricted at proposed driveway for visibility along project frontage on 5th Street.

7. All landscaping, block walls, and other obstructions shall be compatible with the stopping sight distance requirements per City of Ontario Standard Drawing No. 1309.

8. The Applicant/Developer's engineer-of-record shall meet with City Engineering staff prior to designing and submitting for plan check the street lighting design plans to define limits of improvements.

dt, nk;

CITY OF ONTARIO
MEMORANDUM

DEVELOPMENT PLAN REVIEW CONDITIONS OF APPROVAL
Broadband Operations Section

DATE: 06-25-24

PROJECT: PDEV23-037

LOCATION: 5th st and Mountain

PROJECT ENGINEER: Henry Pham

BROADBAND PLAN CHECKER: Cameron Chadwick - CChadwick@ontarioca.gov

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The following Conditions of Approval requirements must be incorporated prior to the Development Advisory Board and/or Zoning Administrator Hearing.

1. Project shall be designed and constructed to provide access to the City's conduit and fiber optic system per the City's Fiber Optic Master Plan. Building entrance conduits shall start from the closest OntarioNet hand hole in the Right-of-Way (ROW) and shall terminate in the main telecommunications room for each building. Conduit infrastructure shall interconnect with the primary and/or secondary backbone fiber optic conduit system at the nearest OntarioNet hand hole.
2. Contractor is responsible for locating and connecting conduit to existing OntarioNet hand holes on adjacent properties within a reasonable distance. There should be no "Gaps" in conduit between the contractor's development and the adjacent property. OntarioNet hand holes are typically located in the ROW at the extreme edge of a property.
3. Where a joint telecom or street light street crossing is required, include (2) 2" HDPE SDR-11 conduits or (1) 4" schedule 80 conduit sleeve. Terminate the street crossing conduit(s) in a new HH-3/22 OntarioNet hand hole in the right of way
4. The City requires a public utility easement for fiber optics on all private aisles/alley ways.
5. Hand holes - Design and install OntarioNet fiber optic hand hole HH-FP (10x00x10), HH-1 (13x24x18), HH-2 (17x30x24), HH-2A (24x36x30), HH-3 (30x48x36) and/or HH-4 (36x60x36) as needed. Respectively, Newbasis Part # PLA100010T-00002, PCA132418-00006, PCA-173024-90116, PCA-243630-90064, PCA-304836-90244 and PCA-366036-90146 or equivalent as specified per City Standard 1316. Conduits sweeping into hand holes shall enter in flush with the cut-out mouse holes aligned parallel to the bottom of the box and come in perpendicular to the wall of the box. Conduits shall not enter at any angle other than parallel. Provide 5-foot minimum clearance from existing/proposed utilities. All hand holes will have ¼-inch galvanized wire between the hand holes and the gravel it is placed on.
6. ROW Conduit – Design and install fiber optic conduit at a minimum depth of 36-inch. Trenching shall be per City Standard 1306. Install (1) 2-inch HDPE SDR-11 (Smoothwall) roll pipe (Orange) duct and (1) 2-inch HDPE SDR-11 (Smoothwall) roll pipe (Orange with Black Stripe) duct. Conduit(s) between ROW hand holes and hand holes on private property shall be 2-inch HDPE SDR-11 (Smoothwall) roll pipe (Orange) duct.
7. Building Entrance (Single Family) – Design and install 0.75-inch HDPE SDR-11 (Smoothwall) roll pipe (Orange) duct from hand holes on property or hand holes in the ROW. Consult City's Fiber Team for design assistance.
8. Building Entrance (Multi-family and Commercial) - From the nearest handhole to the building entrance, design and install fiber optic conduit at a minimum depth of 36-inches. Trenching shall be per City Standard for Commercial Buildings. (1) 2-inch HDPE SDR-11 (Smoothwall) roll pipe (Orange) duct. Install

locate/tracer wires minimum 12AWG within conduit bank and fiber warning tape 18-inch above the uppermost duct

9. Multi-family and commercial properties shall terminate conduit in an electrical room adjacent to the wall no less than five inches above the finished floor. A 20" width X length 36" space shall be reserved on the plywood wall for OntarioNet equipment. This space shall be labeled "OntarioNet Only". Ontario Conduit shall be labeled "OntarioNet"
10. A minimum 13/16 millimeter microduct joint use telecommunications conduit with pull-rope from the single-family, multi-family or commercial building communal telecom/electrical room/closet to each multi-family or commercial building unit shall be installed. See Structured Wiring Checklist on City's website for additional details.
11. Warning Tape - Contractor shall supply and install an approved non-detectable warning tape 18-inch above the uppermost conduit when backfilling trenches, pits or excavations greater than 10' in length. Warning Tape shall be non-detectable, Orange in color, 4-inch minimum width, 4 mil, 500% minimum elongation, with bold printed black letters "CAUTION - BURIED FIBER OPTIC CABLE BELOW" printed in bold black lettering no less than 2-inch high.
12. All hand holes, conduits, conduit banks, materials and installations are per the City's Fiber Optic Master Plan and City Fiber Optic Cable and Duct Standards. All hand holes, conduits and ducts shall be placed in the public right of way.
13. All unused conduits/ducts/microducts shall be protected with duct plugs that provide a positive seal. Ducts that are occupied shall be protected with industry accepted duct seal compound.
14. Locate/Tracer Wire - Conduit bank requires (1) 12AWG high strength (minimum break load 452#) copper-clad steel with 30mil HDPE orange insulation for locate/tracer wire. Contact City's Fiber Team for tracer wire specifications and see note 8.
15. Multi-family dwellings are considered commercial property.
16. Refer to the In-tract Fiber Network Design guideline on the City's website for additional in-tract conduit guidelines.

CITY OF ONTARIO
MEMORANDUM

ONTARIO MUNICIPAL UTILITIES COMPANY

DATE: June 27, 2024
TO: Henry Pham, Engineering Department
CC: Tom Grahn, Planning Department
FROM: Eric Woosley, Utilities Engineering (QC: JFK)

SUBJECT: DPR #3 - Utilties Engineering Condtions of Approval (**#10044 & #10045**)
PROJECT NO.: TM-20659 (PMTT23-008)/PDEV23-037

BRIEF DESCRIPTION

A Tentative Tract Map for Condominium purposes, and a Development Plan to construct 70 multiple-family dwellings, including 7 moderate affordable dwellings on approximately 3.1 acres of land located at 1355 West 5th Street, within the LDR-5 (Low Density Residential) zoning district. (APNs: 1088-551-12).

UTILITIES ENGINEERING CONDITIONS OF APPROVAL

CONDITIONS OF APPROVAL: *The Ontario Municipal Utilities Company (OMUC) recommends this application for approval subject to the conditions outlined below and compliance with the City's Design Development Guidelines, Specifications Design Criteria, and City Standards.*

1. Standard Conditions of Approval: Project shall comply with the requirements as set forth in the Amendment to the Standard Conditions of Approval for New Development Projects adopted by the City Council (Resolution No. 2017-027) on April 18, 2017; as well as project-specific conditions/requirements as outlined below.

Prior to Issuance of Any Permits (Grading, Building, Demolition and Encroachment), unless other timeline milestones are specified by individual conditions below, the Applicant Shall:

General Conditions (Section 2.A, Other conditions): The Applicant shall comply with the following:

2. Final Utilities Systems Map (USM): Submit a Final Utilities Systems Map (USM) as part of the precise grading plan submittal that meets all the City's USM requirements. These requirements include showing and labeling all existing and proposed utilities (including all appurtenances such as backflow devices, DCDAs, etc.), sizes, points of connection, and any easements. The final utility design shall comply with all Division of Drinking Water (CCR §64572) Separation Requirements. See *Utility Systems Map (USM) Requirements document* for details.
    a. The proposed utilities, utility alignments, and Public Rights-of-Way (ROW)/Public Utility Easements (PUE) shown on the Conceptual Utilities Systems Map (CUSM) and other Entitlement documents are not considered final and shall be revised during Final Design to meet all City Design Guidelines, Standards, City Requirements, and all the Conditions of Approval contained in this document.
3. Note the following definitions and concepts for Public Utility Improvements and Private Utility Improvements: Public Improvements shall be designed per City Public Design Guidelines and City Standards and constructed through a City Encroachment Permit; and Private Onsite Improvements shall be designed per Building Code and Plumbing Code and constructed through a City Building Permit.
    a. Public Utility Improvements include the following: water main pipelines and sewer main pipelines; sewer laterals connecting to a Public Sewer Main up to the Cleanout (or Manhole) at PL/ROW; water services and connected appurtenances (Meters/Meter Boxes, Fire Hydrants, Airvacs, Blowoffs, etc.) connecting to a Public Water Main per City Standards; and Fire Services connecting to a Public Water Main from the Main up to the DCDA. Public Water Improvements and Public Sewer Improvements are required to be designed and constructed through Public Improvement Plans with Plan View and Profile View per City Standards, Guidelines, and Requirements.
    b. Private Utility Improvements include the following: onsite water plumbing lines after a Public Meter, or after the Fire DCDA and including the DCDA; Backflow Devices and other Cross-Connection Prevention; onsite sewer upstream of the Public Sewer Lateral, including the Cleanout (or Manhole) at PL/ROW/PUE Edge; Monitoring Manholes and other Wastewater Pretreatment Facilities. Private Onsite Utility Improvements are

required to be designed and constructed per Building and Plumbing Plans with: the Backflows, DCDAs, Cleanout (or Manhole) at PL/ROW/PUE Edge, and Monitoring Manholes being designed and constructed through a Precise Grading Plan; and, the other Pretreatment Devices (Grease Interceptor, Sand, Oil Interceptors, etc.) and the connections to the buildings and structures through a building Plumbing Plan.

4. Public Utilities and Public Right-of-Way including Public Utility Easements (PUE): All City of Ontario Public Utilities shall be installed within a Public Right-of-Way (ROW), or within a Public Utility Easements (PUE), or within a combination of ROW and PUE. In this case, Public Utilities is referring to the mains and connected appurtenances of the following City of Ontario/OMUC Utilities: Public Potable Water; Public Recycled Water; and Public Sanitary Sewer. Public Utilities shall be subject to the Minimum ROW/PUE Area Requirements and PUE Restrictions:
    a. Minimum ROW Area Requirements: Public Utilities shall be installed within in existing ROW/PUE in alignments/locations that meet the following minimum ROW/PUE areas surrounding the Public Utilities, and/or additional ROW/PUE shall be dedicated/granted to the City to provide the following minimum ROW/PUE areas surrounding the Public Utilities:
        i. For each main, the ROW/PUE Area shall be a minimum of 20 feet wide, centered on the utility main with a minimum of 10 feet of ROW/PUE on each side of the main and this minimum area shall extend a minimum for 10 feet past the end of a main, except for the existing sewer within the existing 6-foot wide easement;
        ii. For each Service/Lateral, the ROW/PUE Area shall be a minimum of 10 feet wide, centered on the service/lateral with a minimum of 5 feet of ROW on each side of each service/lateral;
        iii. For each water meter box, the ROW/PUE Area shall be a minimum of 5 feet behind and 5 feet on each side of a water meter box;
        iv. For each water appurtenances (fire hydrants, blowoffs, airvacs, etc.), the ROW/PUE Area shall be a minimum of 5 feet on each side surrounding the water appurtenances (fire hydrants, blowoffs, airvacs, etc.);
        v. The ROW/PUE minimum areas for separate Public Utilities may overlap, provide that all minimum separations and PUE Restrictions are met.
    b. PUE Restrictions: The Minimum PUE Area required surrounding Public Utilities shall be subject to the following restrictions:
        i. The Minimum PUE Area required surrounding Public Utilities shall not contain:
            A. Any storm water quality improvements (infiltration, detention, retention, bioswale, etc.);
            B. Landscaping with thick or intrusive root structures,
            C. Any trees;
            D. Any private utilities, plumbing lines, private fire system, or irrigation lines; or,
            E. Any permanent structures or overhangs of permanent structures.
        ii. The PUE surface shall be designed to allow vehicle access over and along the full length of the utility main by any City maintenance vehicle.
        iii. Minimum Separations: Within a PUE, all Department of Drinking Water (DDW) Water Main Separations per California Code of Regulations (CCR) §64572 shall be met for all Public Potable Water Mains and Services between: all Public City Utilities; Non-City Utilities; and Private Utilities. Additionally, the following Minimum Separations shall be met:
            A. At minimum there shall be a 4 feet horizontal separation between each utility as measured between the outside walls of the utility pipelines, or in the case of a Joint Utility Trench, between the outside edge of the Joint Utility Trench and the outside wall of the Utility Pipeline.
            B. Public Utility mains shall not be located behind curb or under curb & gutter and shall be located a minimum of 5 feet from curbface.

Sewer Conditions (Section 2.C): The Applicant shall comply with the following:

5. Public Sewer Improvements: Design and construct the following required public sewer mains in accordance with City of Ontario Standards and Design Guidelines and Specifications:
    a. Per City of Ontario Standard Drawing No. 2001:
        i. Install a public sewer manhole approximately 25-feet south of the existing sewer manhole, measured on-center, within the existing PUE along the westerly property limit. The location of the proposed sewer manhole shall be inline with the proposed private drive aisle to provide maintenance vehicle access.
        ii. Install a public sewer manhole at the most downstream point of the existing public sewer main within the existing PUE along the westerly property limit. The location of the proposed sewer manhole shall

have a direct path of travel to provide maintenance vehicle access. The access path shall be drivable and have a 14-foot minimum width with 28-foot and 42-foot inner and outer turning radii, respectively.

iii. Submit calculations by a licensed professional engineer to demonstrate the structural integrity of the public sewer main is not compromised at the location(s) the proposed perimeter wall and pilaster(s) are proposed over the sewer main.

6. Sewer Laterals: Per City of Ontario Standard Drawing No. 2003:
    a. Install a sewer lateral connected to the existing public sewer main (S12610) in the existing PUE along the westerly property limit.
    b. No storm water quality improvements (infiltration, detention, retention, bioswale, etc.) shall be installed above or within 5 feet of any Public Sewer Lateral.
7. Existing Sewer Laterals:
    a. Abandon all existing unused sewer lateral connections to the sewer main.
8. Private Onsite Sewer System and Plumbing: The Onsite Sewer System shall be privately maintained by the property owner.
    a. No storm water quality improvements (infiltration, detention, retention, bioswale, etc.) shall be installed above or within 5 feet of any Private Onsite Sewer pipes.

Potable Water Conditions (Section 2.D): The Applicant shall comply with the following:

9. Public Water Improvements: Design and construct the following required public water mains in accordance with City of Ontario Standards and Design Guidelines and Specifications:
    a. N/A
10. Fire Hydrants: Per City of Ontario Standard Drawing No. 4101. Fire hydrants connected to potable water mains shall be spaced a maximum of 300 feet apart or per Fire Department Standards/Requirements:
    a. Install one (1) fire hydrant along the frontage of Fifth Street to replace the existing fire hydrant to be abandoned.
11. Existing Fire Hydrants: Abandon the fire hydrant located along the frontage of Fifth Street to the connection of the water main (W11080).
12. Fire Service with Fire System Double Check Detector Assembly (DCDA): Per City of Ontario Standard Drawing No. 4208:
    a. If an onsite private fire system is required, then a separate Fire Service equipped with a DCDA connected to the Public Potable Water System is required, to serve the onsite private fire system. The onsite fire system shall be separate from the onsite domestic water plumbing system and the onsite landscape irrigation system.
13. Water Service with Master Meter and Backflow Prevention Assembly Reduced Pressure Device:
    a. Install a water service and master meter connected to the existing potable water main (W11080) in Fifth Street per City of Ontario Standards. The water service shall be equipped with a backflow prevention device. The water master meter shall be located within the ROW.
14. Irrigation Water Service with Meter and Backflow Prevention Assembly Reduced Pressure Device:
    a. Install a water service and meter for irrigation purposes connected to the existing potable water main (W11080) in Fifth Street per City of Ontario Standards. The irrigation water service shall be equipped with a backflow prevention device. The irrigation water meter shall be located within the ROW.
15. Existing Water Services:
    a. Abandon all existing unused water service connections to the water main.

Recycled Water Conditions (Section 2.E): The Applicant shall comply with the following:

16. N/A

RESOLUTION NO. PC24-043

A RESOLUTION OF THE PLANNING COMMISSION OF THE CITY OF ONTARIO, CALIFORNIA, APPROVING FILE NO. PDEV23-037, A DEVELOPMENT PLAN TO CONSTRUCT 70 MULTIPLE-FAMILY RESIDENTIAL CONDOMINIUM UNITS, INCLUDING 7 MODERATE INCOME AFFORDABLE UNITS ON 3.1 ACRES OF LAND LOCATED AT 1355 WEST 5TH STREET, WITHIN THE LDR-5 (LOW DENSITY RESIDENTIAL – 2.1 TO 5.0 DU/AC) ZONING DISTRICT, AND MAKING FINDINGS IN SUPPORT THEREOF—APN: 1008-551-12.

WHEREAS, WARMINGTON RESIDENTIAL, LLC (hereinafter referred to "Applicant") filed an Application to requesting approval of a Development Plan (File No. PDEV23-037), as described in the Subject of this Resolution (herein after referred to as "Application" or "Project"); and

WHEREAS, the Application applies to 3.1 acres of land located at 1355 West 5th Street, that is presently occupied by existing Sunrise Ontario Church and is located within the LDR-5 (Low Density Residential — 2.1 to 5.0 DU/Acre) zoning district; and

WHEREAS, the properties to the north of the Project site are within the LDR-5 (Low Density Residential — 2.1 to 5.0 DU/Acre) and MDR-25 (Medium Density Residential — 18.1 to 25.0 DU/Acre) zoning districts and contain existing multiple-family and single- family land uses. The properties to the east and west are within the LDR-5 (Low Density Residential — 2.1 to 5.0 DU/Acre) and contain existing churches land uses. The properties to the south are within the LDR-5 (Low Density Residential — 2.1 to 5.0 DU/Acre) and contain existing single-family land uses; and

WHEREAS, on June 2, 2023, the Applicant submitted a Preliminary Review application (File No. PPRE23-002) that included plans, a project description, and the State of California's Senate Bill (SB 330) Preliminary Application form for a proposed 70 unit multiple-family condominium development on the Project site. The City reviewed that submittal for consistency with Government Code Section 65941.1 and on June 30, 2023, communicated to the Applicant information that was missing from their submittal. On October 2, 2023, the Applicant submitted Tentative Tract Map No. 20659 (File No. PMTT23-008) and a Development Plan (File No. PDEV23-037), completing the submittal requirements, thereby vesting their Preliminary Application and the ordinances, policies, and standards that apply to the Project; and

WHEREAS, the Project proposes the development of 70 multiple-family condominium units, including 7 moderate income affordable units, and associated site improvements including parking, landscape, infrastructure, among others, on approximately 3.1 acres of land within the Project site; and

WHEREAS, the Application is a project pursuant to the California Environmental Quality Act, commencing with Public Resources Code Section 21000 (hereinafter referred to as "CEQA"); and

WHEREAS, the Project is categorically exempt from the requirements of the California Environmental Quality Act (CEQA) pursuant to Section 15332 (Class 32, In-fill Development Projects) and the application of that categorical exemption is not barred by one of the exceptions set forth in CEQA Guidelines Section 15300.2; and

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

WHEREAS, the Project has been reviewed for consistency with the Housing Element of the Policy Plan component of The Ontario Plan 2050, as State Housing Element law (as prescribed in Government Code Sections 65580 through 65589.8) requires that development projects must be consistent with the Housing Element, if upon consideration of all its aspects, it is found to further the purposes, principals, goals, and policies of the Housing Element; and

WHEREAS, the Project is located within the Airport Influence Area of Ontario International Airport, which encompasses lands within parts of San Bernardino, Riverside, and Los Angeles Counties, and is subject to, and must be consistent with, the policies and criteria set forth in the Ontario International Airport Land Use Compatibility Plan (hereinafter referred to as "ALUCP"), which applies only to jurisdictions within San Bernardino County, and addresses the noise, safety, airspace protection, and overflight impacts of current and future airport activity; and

WHEREAS, City of Ontario Development Code Division 2.03 (Public Hearings) prescribes the manner in which public notification shall be provided and hearing procedures to be followed, and all such notifications and procedures have been completed; and

WHEREAS, on July 15, 2024, the Development Advisory Board of the City of Ontario conducted a hearing to consider the Project, and concluded said hearing on that date, voting to issue Decision No. DAB24-027 recommending that the Planning Commission approve the Application; and

WHEREAS, on August 27, 2024, the Planning Commission of the City of Ontario conducted a hearing to consider the Project, and concluded said hearing on that date; and

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

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

SECTION 1: ***Environmental Determination and Findings.*** As the decision-making authority for the Project, the Planning Commission has reviewed and considered the information contained in the administrative record for the Project. Based upon the facts and information contained in the administrative record, including all written and oral evidence presented to the Planning Commission, the Planning Commission finds as follows:

(1) The administrative record has been completed in compliance with CEQA, the State CEQA Guidelines, and the City of Ontario Local CEQA Guidelines; and

(2) The Project is categorically exempt from environmental review pursuant to Section 15332 (Class 32, In-fill Development Projects) of the CEQA Guidelines, which consists of the following conditions:

(a) *The proposed Project is consistent with the applicable general plan designation and all applicable general plan policies as well as with applicable zoning designation and regulations.* The proposed Project is located within the LDR (Low Density Residential) land use designation of the Policy Plan (general plan) Land Use Map; however, pursuant to SB 330 and Government Code Section 65941.1, the Project vested under the MDR-25 (Medium Density Residential—18.1 to 25.0 DUs/Acre) zoning district. The proposed Project is consistent with all applicable Policy Plan policies, as well as with the requirements of the MDR-25 (Medium Density Residential—18.1 to 25.0 DUs/Acre) zoning district; and

(b) *The proposed development occurs within city limits on a project site of no more than five acres substantially surrounded by urban uses.* The Project is proposed within the established boundaries of the City of Ontario, on a project site totaling 3.1- acres of land, which is surrounded by established development on all sides and consists of a mix of multiple-family, single-family, and church land uses; and

(c) *The Project site has no value as habitat for endangered, rare, or threatened species.* The site is located in an urbanized area, is developed with an existing church, related parking, and ornamental landscaping. The entire Project site has been disturbed by previous development and does not contain any sensitive habitat, endangered, rare, or threatened species or habitat that could support sensitive species; and

(d) *Approval of the Project would not result in any significant effects relating to traffic, noise, air quality, or water quality.* The residential development is similar to, and of no greater impact than other allowed uses and development projects

within the MDR- 25 (Medium Density Residential—18.1 to 25.0 DUs/Acre) zoning district. The Project would not result in any significant impacts through implementation of required state, regional, and local development and performance standards, and as demonstrated in the Air Quality, GHG, Noise, Trip Generation and vehicle miles traveled ("VMT") analysis, and the Preliminary Water Quality Management Plan ("PWQMP") prepared for the Project; and

(e) *The site is adequately served by all required utilities and public services.* All necessary wet and dry utilities are within the public street and are readily available for connection; and

(3) The application of the categorical exemption is not barred by one of the exceptions set forth in CEQA Guidelines Section 15300.2; and

(4) The determination of CEQA exemption reflects the independent judgment of the Planning Commission.

SECTION 2: ***Housing Element Compliance.*** Pursuant to the requirements of California Government Code Chapter 3, Article 10.6, commencing with Section 65580, as the decision-making authority for the Project, the Planning Commission finds that based on the facts and information contained in the Application and supporting documentation, at the time of Project implementation, the Project is consistent with the Housing Element of the Policy Plan (General Plan) component of The Ontario Plan 2050, as the Project site is not one of the properties in the Housing Element Sites Inventory contained in Tables B-1 and B-2 of the Housing Element Technical Report.

SECTION 3: ***Airport Land Use Compatibility Plan ("ALUCP") Compliance.*** The California State Aeronautics Act (Public Utilities Code Section 21670, et seq.) requires that an Airport Land Use Compatibility Plan be prepared for all public use airports in the State; and requires that local land use plans and individual development proposals must be consistent with the policies set forth in the adopted Airport Land Use Compatibility Plan.

(1) On April 19, 2011, the City Council of the City of Ontario approved and adopted the Ontario International Airport Land use Compatibility Plan, establishing the Airport Influence Area for Ontario International Airport, which encompasses lands within parts of San Bernardino, Riverside, and Los Angeles Counties, and limits future land uses and development within the Airport Influence Area, as they relate to noise, safety, airspace protection, and overflight impacts of current and future airport activity. As the decision-making body for the Project, the Planning Commission has reviewed and considered the facts and information contained in the Application and supporting documentation against the ONT ALUCP compatibility factors, including [1] Safety Criteria (ONT ALUCP Table 2-2) and Safety Zones (ONT ALUCP Map 2-2), [2] Noise Criteria

(ONT ALUCP Table 2-3) and Noise Impact Zones (ONT ALUCP Map 2-3), [3] Airspace protection Zones (ONT ALUCP Map 2-4), and [4] Overflight Notification Zones (ONT ALUCP Map 2-5). As a result, the Planning Commission therefore finds and determines that the Project, when implemented in conjunction with the conditions of approval, will be consistent with the policies and criteria set forth within the ONT ALUCP; and

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

(1) ***The proposed development at the proposed location is consistent with the goals, policies, plans and exhibits of the Vision, Policy Plan (General Plan), and City Council Priorities components of The Ontario Plan 2050.*** The proposed Project is located within the LDR (Low Density Residential) land use designation of the Policy Plan (general plan) Land Use Map; however, pursuant to SB 330 and Government Code Section 65941.1, the Project vested under the MDR (Medium Density Residential) land use designation and proposes to utilize development standards applicable to the MDR-25 (Medium Density Residential—18.1 to 25.0 DUs/Acre) zoning district. The proposed Project is consistent with all applicable Policy Plan policies, as well as with the requirements of the MDR-25 (Medium Density Residential—18.1 to 25.0 DUs/Acre) zoning district. The development standards and conditions under which the proposed Project will be constructed and maintained, is consistent with the goals, policies, plans, and exhibits of the Vision, Policy Plan (General Plan), and City Council Priorities components of The Ontario Plan 2050.

(2) ***The proposed development is compatible with those on adjoining sites in relation to location of buildings, with particular attention to privacy, views, any physical constraint identified on the site and the characteristics of the area in which the site is located.*** The Project has been designed consistent with the requirements of the City of Ontario Development Code, including standards relative to the particular land use proposed, building and parking setbacks, building height, number of off-street parking spaces, on- site and off-site landscaping, and fences and walls, among others.

(3) ***The proposed development will complement and/or improve upon the quality of existing development in the vicinity of the Project and the minimum safeguards necessary to protect the public health, safety and general welfare have been required of the proposed Project.*** The Planning Commission has required certain safeguards, and impose certain conditions of approval, which have been established to ensure that: [i] the purposes of the Development Code are maintained; [ii] the Project will not endanger the public health, safety or general welfare; [iii] the Project will not result in any significant environmental impacts; [iv] the Project will be in harmony with the area in

which it is located; and [v] the Project will be in full conformity with the Vision, City Council Priorities and Policy Plan components of The Ontario Plan 2050, and the Development Code.

(4) ***The proposed development is consistent with the development standards and design guidelines set forth in the Development Code, or applicable specific plan or planned unit development.*** The proposed Project has been reviewed for consistency with the general development standards and guidelines of the Development Code that are applicable to the proposed Project, including building intensity, building and parking setbacks, building height, amount of off-street parking and loading spaces, parking lot dimensions, design and landscaping, bicycle parking, on-site landscaping, and fences and walls, as-well-as those development standards and guidelines specifically related to the particular land use being proposed (Medium Density Residential). As a result of this review, the Planning Commission has determined that the Project, when implemented in conjunction with the conditions of approval, will be consistent with the development standards and guidelines described in the Development Code.

SECTION 5: ***Planning Commission Action.*** Based upon the findings and conclusions set forth in the Sections above, the Planning Commission hereby APPROVES the herein described Application, subject to each and every condition set forth in the Department reports attached hereto as "Attachment A," and incorporated herein by this reference.

SECTION 6: ***Indemnification.*** The Applicant shall agree to defend, indemnify and hold harmless, the City of Ontario or its agents, officers, and employees from any claim, action or proceeding against the City of Ontario or its agents, officers or employees to attack, set aside, void, or annul this approval. The City of Ontario shall promptly notify the applicant of any such claim, action, or proceeding, and the City of Ontario shall cooperate fully in the defense.

SECTION 7: ***Custodian of Records.*** The documents and materials that constitute the record of proceedings on which these findings have been based are located at the City of Ontario City Hall, 303 East "B" Street, Ontario, California 91764. The custodian for these records is the City Clerk of the City of Ontario.

SECTION 8: ***Certification to Adoption.*** The Secretary shall certify to the adoption of the Resolution.

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

I hereby certify that the foregoing Resolution was duly and regularly introduced, passed and adopted by the Planning Commission of the City of Ontario at a regular meeting thereof held on the 27th day of August 2024, and the foregoing is a full, true and correct copy of said Resolution, and has not been amended or repealed.

Nicola Ricci
Planning Commission Chairman

ATTEST:

Henry K. Noh
Planning Director and
Secretary to the Planning Commission

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

I, Gwen Berendsen, Secretary Pro Tempore of the Planning Commission of the City of Ontario, DO HEREBY CERTIFY that foregoing Resolution No. PC24-043 was duly passed and adopted by the Planning Commission of the City of Ontario at their regular meeting held on August 27, 2024, by the following roll call vote, to wit:

AYES: Dean, DeDiemar, Gage, Lampkin, Ricci

NOES: None

ABSENT: Anderson, Del Turco

ABSTAIN: None

Gwen Berendsen
Secretary Pro Tempore

ATTACHMENT A:

File No. PDEV23-037
Departmental Conditions of Approval

(Departmental conditions of approval to follow this page)

LAND DEVELOPMENT DIVISION CONDITIONS OF APPROVAL

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

Date Prepared: 7/15/2024

File No: PMTT23-008 & PDEV23-037

Project Description: A public hearing to consider Tentative Tract Map No. 20659 (File No. PMTT23-008), subdividing 3.1 acres of land into one parcel for condominium purposes, in conjunction with a Development Plan (File No. PDEV23-037) to construct 70 multiple-family residential condominium units on the project site, including 7 moderate affordable dwellings, located at 1355 West 5th Street, within the LDR-5 (Low Density Residential – 2.1 to 5.0 du/ac) zoning district**;** (APN(s): 1008-551-12); **submitted by Warmington Residential, LLC.**

Prepared By: Thomas Grahn, Senior Planner
Phone: 909.395.2413 (direct)
Email: tgrahn@ontarioca.gov

The Planning Department, Land Development Section, conditions of approval applicable to the above-described Project, are listed below. The Project shall comply with each condition of approval listed below:

1.0 Standard Conditions of Approval. The project shall comply with the *Standard Conditions for New Development*, adopted by City Council Resolution No. 2017-027 on April 18, 2017. A copy of the *Standard Conditions for New Development* may be obtained from the Planning Department or City Clerk/Records Management Department.

2.0 Special Conditions of Approval. In addition to the *Standard Conditions for New Development* identified in condition no. 1.0, above, the project shall comply with the following special conditions of approval:

2.1 Time Limits.

(a) Tentative Tract Map approval shall become null and void 2 years following the effective date of application approval, unless the final tract map has been recorded, or a time extension has been approved by the Planning Commission pursuant to Development Code Section 2.02.025 (Time Limits and Extensions). This Permit does not supersede any individual time limits specified herein for performance of specific conditions or improvements.

(b) Development Plan approval shall become null and void 2 years following the effective date of application approval, unless a building permit is issued and construction is commenced, and diligently pursued toward completion, or a time extension has been approved by the Planning Director. This condition does not supersede any individual time limits specified herein, or any other departmental conditions of approval applicable to the Project, for the performance of specific conditions or improvements.

2.2 Subdivision Map.

(a) The Final Tract Map shall be in conformance with the approved Tentative Tract Map on file with the City. Variations rom the approved Tentative Tract Map may be reviewed and approved by the Planning Department. A substantial variation from the approved Tentative Tract Map may require review and approval by the Planning Commission, as determined by the Planning Director.

(b) Tentative Tract Map approval shall be subject to all conditions, requirements and recommendations from all other departments/agencies provided on the attached reports/memorandums.

(c) The subject Tentative Tract Map for condominium purposes shall require the recordation of a condominium plan concurrent with the recordation of the Final Tract Map and CC&Rs.

(d) Pursuant to California Government Section 66474.9, the subdivider agrees that it will defend, indemnify, and hold harmless the City of Ontario or its agents, officers and employees from any claim, action or proceeding against the City of Ontario or its agents, officers or employees to attack, set aside, void or annul any approval of the City of Ontario, whether by its City Council, Planning Commission or other authorized board or officer of this subdivision, which action is brought within the time period provided for in Government Code Section 66499.37. The City of Ontario shall promptly notify the subdivider of any such claim, action or proceeding and the City of Ontario shall cooperate fully in the defense.

2.3 General Requirements. The Project shall comply with the following general requirements:

(a) All construction documentation shall be coordinated for consistency, including, but not limited to, architectural, structural, mechanical, electrical, plumbing, landscape and irrigation, grading, utility and street improvement plans. All such plans shall be consistent with the approved entitlement plans on file with the Planning Department.

(b) The project site shall be developed in conformance with the approved plans on file with the City. Any variation from the approved plans must be reviewed and approved by the Planning Department prior to building permit issuance.

(c) The herein-listed conditions of approval from all City departments shall be included in the construction plan set for project, which shall be maintained on site during project construction.

2.4 Landscaping.

(a) The Project shall provide and continuously maintain landscaping and irrigation systems in compliance with the provisions of Ontario Development Code Division 6.05 (Landscaping).

(b) Comply with the conditions of approval of the Planning Department; Landscape Planning Division.

(c) Landscaping shall not be installed until the Landscape and Irrigation Construction Documentation Plans required by Ontario Development Code Division 6.05 (Landscaping) have been approved by the Landscape Planning Division.

(d) Changes to approved Landscape and Irrigation Construction Documentation Plans, which affect the character or quantity of the plant material or irrigation system design, shall be resubmitted for approval of the revision by the Landscape Planning Division, prior to the commencement of the changes.

2.5 Walls and Fences. All Project walls and fences shall comply with the requirements of Ontario Development Code Division 6.02 (Walls, Fences and Obstructions).

2.6 Parking, Circulation and Access.

(a) The Project shall comply with the applicable off-street parking, loading and lighting requirements of City of Ontario Development Code Division 6.03 (Off-Street Parking and Loading).

(b) All drive approaches shall be provided with an enhanced pavement treatment. The enhanced paving shall extend from the back of the approach apron, into the site, to the first intersecting drive aisle or parking space.

(c) Areas provided to meet the City's parking requirements, including off-street parking and loading spaces, access drives, and maneuvering areas, shall not be used for the outdoor storage of materials and equipment, nor shall it be used for any other purpose than parking.

(d) The required number of off-street parking spaces and/or loading spaces shall be provided at the time of site and/or building occupancy. All parking and loading spaces shall be maintained in good condition for the duration of the building or use.

(e) Parking spaces specifically designated and conveniently located for use by the physically disabled shall be provided pursuant to current accessibility regulations contained in State law (CCR Title 24, Part 2, Chapters 2B71, and CVC Section 22507.8).

(f) Bicycle parking facilities, including bicycle racks, lockers, and other secure facilities, shall be provided in conjunction with development projects pursuant to current regulations contained in CALGreen (CAC Title 24, Part 11). Final design and placement of bicycle parking facilities shall be subject to Planning Department review and approval.

2.7 Outdoor Loading and Storage Areas.

(a) Areas designated for off-street parking, loading, and vehicular circulation and maneuvering, shall not be used for the outdoor storage of materials or equipment.

(b) The minimum gate height for screen wall openings shall be established based upon the corresponding wall height, as follows:

Screen Wall Height	*Minimum Gate Height*
14 feet:	10 feet
12 feet:	9 feet
10 feet:	8 feet
8 feet:	8 feet
6 feet:	6 feet

2.8 Site Lighting.

(a) All off-street parking facilities shall be provided with nighttime security lighting pursuant to Ontario Municipal Code Section 4-11.08 (Special Residential Building Provisions) and Section 4-11.09 (Special Commercial/Industrial Building Provisions), designed to confine emitted light to the parking areas. Parking facilities shall be lighted from sunset until sunrise, daily, and shall be operated by a photocell switch.

(b) Unless intended as part of a master lighting program, no operation, activity, or lighting fixture shall create illumination on any adjacent property.

2.9 Mechanical and Rooftop Equipment.

(a) All exterior roof-mounted mechanical, heating and air conditioning equipment, and all appurtenances thereto, shall be completely screened from public view by parapet walls or roof screens that are architecturally treated so as to be consistent with the building architecture.

(b) All ground-mounted utility equipment and structures, such as tanks, transformers, HVAC equipment, and backflow prevention devices, shall be located out of view from a public street, or adequately screened through the use of landscaping and/or decorative low garden walls.

2.10 Security Standards. The Project shall comply with all applicable requirements of Ontario Municipal Code Title 4 (Public Safety), Chapter 11 (Security Standards for Buildings).

2.11 Signs.

(a) All Project signage shall comply with the requirements of Ontario Development Code Division 8.1 (Sign Regulations).

(b) On-site posting of public noticing shall be provided pursuant to Code Section 2.03.010.C.4, which consists of one, 6-foot-tall, freestanding public notification signs. The sign face shall measure 4 feet tall by 8 feet wide, in a format approved by the Planning Director. The sign shall be posted no later than ten calendar days prior to the Planning Commission hearing date and removed no later than fourteen calendar days following the Planning Commission hearing date, unless otherwise required by the Planning Director. The format is available on the City's website.

2.12 Sound Attenuation. The Project shall be constructed and operated in a manner so as not to exceed the maximum interior and exterior noise levels set forth in Ontario Municipal Code Title 5 (Public Welfare, Morals, and Conduct), Chapter 29 (Noise).

2.13 Covenants, Conditions and Restrictions (CC&Rs)/Mutual Access and Maintenance Agreements.

(a) CC&Rs shall be prepared for the Project and shall be recorded prior to the issuance of a building permit.

(b) The CC&Rs shall be in a form and contain provisions satisfactory to the City. The articles of incorporation for the property owners association and the CC&Rs shall be reviewed and approved by the City.

(c) CC&Rs shall ensure reciprocal parking and access between parcels, and common maintenance of:

(i) Landscaping and irrigation systems within common areas;
(ii) Landscaping and irrigation systems within parkways adjacent to the project site, including that portion of any public highway right-of-way between the property line or right-of-way boundary line and the curb line and also the area enclosed within the curb lines of a median divider (Ontario Municipal Code Section 7-3.03), pursuant to Ontario Municipal Code Section 5-22-02;
(iii) Shared parking facilities and access drives; and
(iv) Utility and drainage easements.

(d) CC&Rs shall include authorization for the City's local law enforcement officers to enforce City and State traffic and penal codes within the project area.

(e) The CC&Rs shall grant the City of Ontario the right of enforcement of the CC&R provisions.

(f) A specific methodology/procedure shall be established within the CC&Rs for enforcement of its provisions by the City of Ontario, if adequate maintenance of the development does not occur, such as, but not limited to, provisions that would grant the City the right of access to correct maintenance issues and assess the property owners association for all costs incurred.

2.14 Disclosure Statements.

(a) A copy of the Public Report from the Department of Real Estate, prepared for the subdivision pursuant to Business and Professions Code Section 11000, et seq., shall be provided to each prospective buyer of the residential units and shall include a statement to the effect that:

(i) This tract is subject to noise from the Ontario International Airport and may be more severely impacted in the future.
(ii) This tract is part of a Landscape Maintenance District. The homeowners will be assessed through their property taxes for the continuing maintenance of the district.

2.15 Environmental Requirements.

(a) If human remains are found during project grading/excavation/construction activities, the area shall not be disturbed until any required investigation is completed by the County Coroner and Native American consultation has been completed (if deemed applicable).

(b) If any archeological or paleontological resources are found during project grading/excavation/construction, the area shall not be disturbed until the significance of the resource is determined. If determined to be significant, the resource shall be recovered by a qualified archeologist or paleontologist consistent with current standards and guidelines, or other appropriate measures implemented.

2.16 Indemnification. The applicant shall agree to defend, indemnify and hold harmless, the City of Ontario or its agents, officers, and employees from any claim, action or proceeding against the City of Ontario or its agents, officers or employees to attack, set aside, void or annul any approval of the City of Ontario, whether by its City Council, Planning Commission or other authorized board or officer. The City of Ontario shall promptly notify the applicant of any such claim, action or proceeding, and the City of Ontario shall cooperate fully in the defense.

2.17 Additional Fees.

(a) Within 5 days following final application approval, the Notice of Exemption ("NOE") filing fee shall be provided to the Planning Department. The fee shall be paid by check, made payable to the "Clerk of the Board of Supervisors", which shall be forwarded to the San Bernardino County Clerk of the Board of Supervisors, along with all applicable environmental forms/notices, pursuant to the requirements of the California Environmental Quality Act ("CEQA"). The filing of a NOE is voluntary; however, failure to provide said fee within the time specified will result in the extension of the statute of limitations for the filing of a CEQA lawsuit from 30 days to 180 days.

(b) After the Project's entitlement approval, and prior to issuance of final building permits, the Planning Department's Plan Check and Inspection fees shall be paid at the rate established by resolution of the City Council.

2.18 Final Occupancy. The Project Architect of record will certify that construction of each building site and the exterior elevations of each structure shall be completed in compliance with the approved plans. Any deviation to approved plans shall require a resubmittal to the Planning Department for review and approval prior to construction. The Occupancy Release Request Form/Architect Certificate of Compliance shall be provided prior to final occupancy. After the receipt of this Certification, the Planning Department will conduct a final site and exterior elevations inspection. The Owner's Representative and Contractor shall be present.

2.19 Additional Requirements.

(a) The Applicant shall enter into an Affordable Housing Agreement with the City for 7 Moderate Affordable Units prior to the issuance of building permits.

(b) All guest parking shall be clearly labeled as "guest parking" spaces.

(c) All downspouts shall be strategically located to minimize their look along the side of the structures. They shall also be painted to match the adjacent wall color(s) in which they are located. Construction plans shall include such a note.

(d) All new walls shall be constructed of split face block, slump stone, or plastered, textured, and painted to match the main structures.

(e) Prior to occupancy, a Parking Management Plan shall be submitted and approved by the Planning Department. The Plan shall illustrate what parking space (excluding enclosed garages) are assigned to each unit, if applicable.

(f) Once the construction plans have been approved by the City and permits have been issued, the Applicant/Developer shall submit two reduced copies (11" x 17") of the approved plans to the Planning Department.

(g) All windows on the south side of the end units in Buildings 5 and 8, adjacent to the southwest and southeast corners of the project site, shall be frosted and view obscuring from those units, to provide privacy and screening to the existing single-family residences to the south. The screen windows shall be provided on the building plans and subject to Planning Department review and approval prior to issuance of building permits.

(h) Along the south property line, and where site conditions allow, additional trees shall be planted to screen the Project from the existing single-family residences to the south. The Applicant/Developer shall plant tall, narrow screening trees spaced 28 to 30 feet on-center from 36" box trees; consider the following options: Trsitania conferta (3" a year, mature height 30'-50'), Podocarpus gracilior (3" a year, mature height of 50'-70'), and Quercus ilex (2" a year, mature height 40'-60'). The additional trees shall be shown on the Landscape Plan and subject to Planning Department review and approval prior to permit issuance.

(i) The Applicant/Developer shall work with staff during the building plan check process to enhance the Project architecture as feasible.

AIRPORT LAND USE COMPATIBILITY PLANNING
CONSISTENCY DETERMINATION REPORT

ONTARIO AIRPORT PLANNING

Project File No.: PMTT23-008 and PDEV23-037

Address: Northeast corner of Guasti Road and Haven Avenue

APN: 0210-212-60

Existing Land Use: Religious Assembly

Proposed Land Use: Subdivide 3.1 acres of land into one parcel for condominium purposes and construct 70 multiple-family units

Site Acreage: 3.1 Proposed Structure Height: 41 FT

ONT-IAC Project Review: n/a

Airport Influence Area: ONT

Reviewed By: Lorena Mejia

Contact Info: 909-395-2276

Project Planner: Thomas Grahn

Date: 7/9/2024

CD No.: 2023-019

PALU No.: n/a

The project is impacted by the following ONT ALUCP Compatibility Zones:

Safety	Noise Impact	Airspace Protection	Overflight Notification
○ Zone 1	○ 75+ dB CNEL	☐ High Terrain Zone	☐ Avigation Easement Dedication
○ Zone 1A	○ 70 - 75 dB CNEL	☑ FAA Notification Surfaces	☐ Recorded Overflight Notification
○ Zone 2	☐ 65 - 70 dB CNEL	☐ Airspace Obstruction Surfaces	☑ Real Estate Transaction Disclosure
☐ Zone 3	☐ 60 - 65 dB CNEL	☐ Airspace Avigation Easement Area	
○ Zone 4		Allowable Height: 200 FT +	
○ Zone 5			

The project is impacted by the following Chino ALUCP Safety Zones:

☐ Zone 1 ☐ Zone 2 ☐ Zone 3 ☐ Zone 4 ○ Zone 5 ☐ Zone 6

Allowable Height: _____

CONSISTENCY DETERMINATION

This proposed Project is: ○ Exempt from the ALUCP ◉ Consistent ○ Consistent with Conditions ○ Inconsistent

The proposed project is located within the Airport Influence Area of Ontario International Airport (ONT) and was evaluated and found to be consistent with the policies and criteria of the Airport Land Use Compatibility Plan (ALUCP) for ONT.

Real Estate Transaction Disclosure Required for Airport in Vicinity

Airport Planner Signature: Lorena Mejia

CITY OF ONTARIO
MEMORANDUM

TO: **Thomas Grahn, Senior Planner**
Planning Department

FROM: **Paul Ehrman, Sr. Deputy Fire Chief/Fire Marshal**
Fire Department

DATE: **October 17, 2023**

SUBJECT: **PDEV23-037 - A Development Plan to construct 70 multiple-family dwellings, including 7 moderate income affordable dwellings, on approximately 3.1 acres of land located at 1355 West 5th Street, within the LDR-5 (Low Density Residential) zoning district (APN: 1008-551-12). Related File(s): PMTT23-008.**

☒ The plan **does** adequately address Fire Department requirements at this time.

☒ Standard Conditions of Approval apply, as stated below.

SITE AND BUILDING FEATURES:

A. 2022 CBC Type of Construction: V-B

B. Type of Roof Materials: Ordinary

C. Ground Floor Area(s): Varies, 12 Buildings

D. Number of Stories: 3

E. Total Square Footage: Largest is 12,236 Sq. Ft.

F. 2022 CBC Occupancy Classification(s): R2

CONDITIONS OF APPROVAL:

1.0 GENERAL

☒ 1.1 The following are the Ontario Fire Department ("Fire Department") requirements for this development project, based on the current edition of the California Fire Code (CFC), and the current versions of the Fire Prevention Standards ("Standards.") It is recommended that the applicant or developer transmit a copy of these requirements to the on-site contractor(s) and that all questions or concerns be directed to the Bureau of Fire Prevention, at (909) 395-2029. For copies of Ontario Fire Department Standards please access the City of Ontario web site at www.ontarioca.gov/Fire/Prevention.

☒ 1.2 These Fire Department conditions of approval are to be included on any and all construction drawings.

2.0 FIRE DEPARTMENT ACCESS

☒ 2.1 Fire Department vehicle access roadways shall be provided to within one hundred and fifty feet (150') of all portions of the exterior walls of the first story of any building, unless specifically approved. Roadways shall be paved with an all-weather surface and shall be a minimum of twenty-four (24) ft. wide. See Standard #B-004.

☒ 2.2 In order to allow for adequate turning radius for emergency fire apparatus, all turns shall be designed to meet the minimum twenty-five feet (25') inside and forty-five feet (45') outside turning radius per Standard #B-005.

☒ 2.3 Fire Department access roadways that exceed one hundred and fifty feet (150') in length shall have an approved turn-around per Standard #B-002.

☒ 2.4 Access drive aisles which cross property lines shall be provided with CC&Rs, access easements, or reciprocating agreements, and shall be recorded on the titles of affected properties, and copies of same shall be provided at the time of building plan check.

☒ 2.5 "No Parking-Fire Lane" signs and /or red painted curbs with lettering are required to be installed in interior access roadways, in locations where vehicle parking would obstruct the minimum clear width requirement. Installation shall be per Standard #B-001.

☒ 2.6 Security gates or other barriers on fire access roadways shall be provided with a Knox brand key switch or padlock to allow Fire Department access. See Standards #B-003, B-004 and H-001.

☒ 2.7 Any time PRIOR to on-site combustible construction and/or storage, a minimum twenty-four feet (24') wide circulating all weather access roads shall be provided to within one hundred and fifty feet (150') of all portions of the exterior walls of the first story of any building, unless specifically approved by fire department and other emergency services.

3.0 WATER SUPPLY

☒ 3.1 The required fire flow per Fire Department standards, based on the 2019 California Fire Code, Appendix B, is 1500 gallons per minute (g.p.m.) for 2 hours at a minimum of 20 pounds per square inch (p.s.i.) residual operating pressure.

☒ 3.2 Off-site (public) fire hydrants are required to be installed on all frontage streets, at a maximum spacing of three hundred feet (300') apart, on alternating sides of the street. Streets with a center median shall require public hydrants spaced five hundred feet (500') apart, on the same side of the street.

☒ 3.4 The water supply, including water mains and fire hydrants, shall be tested and approved by the Engineering Department and Fire Department prior to combustible construction to assure availability and reliability for firefighting purposes.

4.0 FIRE PROTECTION SYSTEMS

☒ 4.1 On-site private fire hydrants are required per Standard #D-005, and identified in accordance with Standard #D-002. Installation and locations(s) are subject to the approval of the Fire Department. An application with detailed plans shall be submitted, and a construction permit shall be issued by the Fire Department, prior to any work being done.

☒ 4.2 Underground fire mains which cross property lines shall be provided with CC & R, easements, or reciprocating agreements, and shall be recorded on the titles of affected properties, and copies of same shall be provided at the time of fire department plan check. The shared use of private fire mains or fire pumps is allowable only between immediately adjacent properties and shall not cross any public street.

☒ 4.3 An automatic fire sprinkler system is required. The system design shall be in accordance with National Fire Protection Association (NFPA) Standard 13. All new fire sprinkler systems, except those in single family dwellings, which contain twenty (20) sprinkler heads or more shall be monitored by an approved listed supervising station. An application along with detailed plans shall be submitted, and a construction permit shall be issued by the Fire Department, prior to any work being done.

☒ 4.4 Wood frame buildings that are to be sprinkled shall have these systems in service (but not necessarily finaled) before the building is enclosed.

5.0 BUILDING CONSTRUCTION FEATURES

☒ 5.1 The developer/general contractor is to be responsible for reasonable periodic cleanup of the development during construction to avoid hazardous accumulations of combustible trash and debris both on and off the site.

☒ 5.2 Approved numbers or addresses shall be placed on all new and existing buildings in such a position as to be plainly visible and legible from the street or road fronting the property. Multi-tenant or building projects shall have addresses and/or suite numbers provided on the rear of

the building. Address numbers shall contrast with their background. See Section 9-1 6.06 of the Ontario Municipal Code and Standards #H-003 and #H-002.

☒ 5.3 Single station smoke alarms and carbon monoxide alarms are required to be installed per the California Building Code and the California Fire Code.

☒ 5.4 Multiple unit building complexes shall have building directories provided at the main entrances. The directories shall be designed to the requirements of the Fire Department, see Section 9-1 6.06 of the Ontario Municipal Code and Standard #H-003.

☒ 5.5 All residential chimneys shall be equipped with an approved spark arrester meeting the requirements of the California Building Code.

☒ 5.6 Knox ® brand key-box(es) shall be installed in location(s) acceptable to the Fire Department. All Knox boxes shall be monitored for tamper by the building fire alarm system. See Standard #H-001 for specific requirements.

CITY OF ONTARIO
LANDSCAPE PLANNING DIVISION
303 East "B" Street, Ontario, CA 91764

CONDITIONS OF APPROVAL

Sign Off

Jamie Richardson, Sr. Landscape Architect	3/27/2024 Date

Reviewer's Name: **Jamie Richardson, Sr. Landscape Architect**	Phone: **(909) 395-2615**
D.A.B. File No.: PDEV23-037 & PMTT23-008	Case Planner: Thomas Grahn
Project Name and Location: Ontario Sunrise – 70 Multiple-Family Dwellings 1355 W 5th Street	
Applicant/Representative: Warmington Residential – moses.kim@warmingtongroup.com 3090 Pullman Street Costa Mesa, CA 92326	

☒	**Preliminary Plans (dated 3/11/2024) meet the Standard Conditions for New Development and have been approved considering that the following conditions below be met upon submittal of the landscape construction documents.**
☐	**Preliminary Plans (dated) have not been approved. Corrections noted below are required before Preliminary Landscape Plan approval.**

A RESPONSE SHEET IS REQUIRED WITH RESUBMITTAL OR PLANS WILL BE RETURNED AS INCOMPLETE.

Civil/Site Plans

1. Replacement and mitigation for removed trees shall equal the trunk diameter of heritage trees removed per the Development Code Tree Preservation Policy and Protection Measures, section 6.05.020. A total of 200 inches of trunk replacement is required; see #2 for mitigation options.
2. Show on demo plans and landscape construction plans trees to be preserved, removed or mitigation measures for trees removed, such as:
   a. New 15 gallon trees min 1" diameter trunk, in addition to trees required. *200 trees in addition to required trees.*
   b. New 24" box trees min 1.5" diameter trunk, in addition to trees required. *133 trees in addition to required trees.*
   c. Upsizing trees on the plan one size larger such as 15 gallon to 24" box, or 24" to 36" box size. *Provide a matrix with upsizing information.*
   d. Monetary value of the trees removed as identified in the "Guide for Plant Appraisal," approved certified arborist plant appraiser, may be equal to the value of the installation cost of planting, fertilizing, staking, and irrigating 15-gallon trees (100$ each) to the City of Ontario Historic Preservation Fund for city tree planting or city approved combination of the above items. *Monetary value is $20,000.*
3. Locate modular wetlands/biofiltration unit out of the landscape areas; these systems are not maintained properly when located within the open/common landscape spaces.
4. Reduce drive aisles to 24'. All planters must have a minimum 5' wide inside dimension to be counted towards the overall landscape open/common space percentage. Landscape planters shall have a minimum width of 3' otherwise.
5. Show transformers set back 5' from paving all sides. Coordinate with landscape plans.
6. Show all backflow devices set back 4' from paving on all sides. Locate on level grade.
7. Dimension, show and call out for step-outs at parking spaces adjacent to planters; a 12" wide

monolithic concrete curb, DG paving or pavers with edging.

Landscape Plans

8. Show backflow devices with 36” high strappy leaf shrub screening and trash enclosures and transformers, a 4’-5’ high evergreen hedge screening. Do not encircle utility; show as masses and duplicate masses in other locations at regular intervals.
9. Locate light standards, fire hydrants, water, and sewer lines to not conflict with required tree locations. Coordinate civil plans with landscape plans..
10. Show all utilities on the landscape plans. Coordinate so utilities are clear of tree locations.
11. Show parkway landscape max 18” high: such as Baccharis, Lonicera, Kurapia, etc., and street trees spaced 30’ apart.
12. Show 6’ diameter of mulch only at new trees. Detail irrigation dripline outside of mulched root zone.
13. Designer or developer to provide agronomical soil testing and include a report on landscape construction plans.
14. Show minimum on-site tree sizes per the Landscape Development standards; see the Landscape Planning website. 5% 48” box, 10% 36 box, 30% 24” box, 55% 15 gallon.
15. Show 25% of trees as California native (Platanus racemosa, Quercus agrifolia, Quercus wislizenii, Quercus douglasii, Cercis occidentalis, etc.) in appropriate locations.
16. Landscape construction plans shall meet the requirements of the Landscape Development Guidelines. See http://www.ontarioca.gov/landscape-planning/standards
17. After a project’s entitlement approval, the applicant shall pay all applicable fees for landscape plan check and inspections at a rate established by resolution of the City Council.

CITY OF ONTARIO
MEMORANDUM

TO: **Thomas Grahn, Senior Planner**

FROM: **Heather Lugo, MA, Police Department**

DATE: **October 16, 2023 – REVISED 7/23/24**

SUBJECT: **PDEV23-037 - A Development Plan approval to construct 70 multiple-family dwellings, including 7 moderate affordable dwellings, on approximately 3.1 acres of land located at 1355 West 5th Street, within the LDR-5 (Low Density Residential) zoning district (APN: 1008-551-12). Related File(s): PMTT23-008.**

The "Standard Conditions of Approval" contained in Resolution No. 2017-027 apply. The applicant shall read and be thoroughly familiar with these conditions, including, but not limited to, the requirements below.

- Required lighting for all walkways, driveways, doorways, parking lots, hallways and other areas used by the public shall be provided. Lights shall operate via photosensor. Photometrics shall be provided to the Police Department and include the types of fixtures proposed and demonstrate that such fixtures meet the vandal-resistant requirement. Planned landscaping shall not obstruct lighting.
- Rooftop addresses shall be installed on the buildings as stated in the Standard Conditions. The numbers shall be at a minimum 6 feet tall and 2 foot wide, in reflective white paint on a flat black background, and oriented with the bottom of the numbers towards the addressed street. Associated letters shall also be included.
- The Applicant shall comply with construction site security requirements as stated in the Standard Conditions.
- All exterior electrical outlets shall be secured and locked.
- All exterior water spigots / water supply sources shall be secured and locked.

The Applicant is invited to contact Heather Lugo at (909) 408-1074 with any questions or concerns regarding these conditions.

CITY OF ONTARIO

ENGINEERING DEPARTMENT CONDITIONS OF APPROVAL

(Land Development Division, Environmental Section, Traffic & Transportation Division, Ontario Municipal Utilities Company, and Broadband Operations & Investment and Revenue Resources Department Conditions incorporated)

☒ **DEVELOPMENT PLAN** ☐ OTHER	☐ PARCEL MAP ☒ **TRACT MAP** ☒ **FOR CONDOMINIUM PURPOSES**
PROJECT FILE NO. TM-20659 **RELATED FILE NO(S). PDEV23-037; PMTT23-008**	
☒ **ORIGINAL** ☐ REVISED: __/__/__	

CITY PROJECT ENGINEER & PHONE NO:	**Henry Pham (909) 395-2141**
CITY PROJECT PLANNER & PHONE NO:	**Thomas Grahn (909) 395-2413**
DAB MEETING DATE:	**July 15th, 2024**
PROJECT NAME / DESCRIPTION:	**A tentative tract map for condominium purposes and a development plan to construct 70 multiple-family dwellings on approximately 3.1 acres of land.**
LOCATION:	**1355 West 5th Street**
APPLICANT:	**Warmington Residential California, Inc.** **Bret Llich – (877) 708-3454**
REVIEWED BY:	7/2/24 **Raymond Lee, P.E.** **Date** **Assistant City Engineer**
APPROVED BY:	7-3-24 **Khoi Do, P.E.** **Date** **City Engineer**

THIS PROJECT SHALL COMPLY WITH THE REQUIREMENTS SET FORTH IN THE GENERAL STANDARD CONDITIONS OF APPROVAL ADOPTED BY THE CITY COUNCIL (RESOLUTION NO. 2017-027) AND THE PROJECT SPECIFIC CONDITIONS OF APPROVAL SPECIFIED HEREIN. ONLY APPLICABLE CONDITIONS OF APPROVAL ARE CHECKED. THE APPLICANT SHALL BE RESPONSIBLE FOR THE COMPLETION OF ALL APPLICABLE CONDITIONS OF APPROVAL PRIOR TO PARCEL MAP APPROVAL, ISSUANCE OF PERMITS AND/OR OCCUPANCY CLEARANCE, AS SPECIFIED IN THIS REPORT.

1. PRIOR TO TRACT MAP APPROVAL, APPLICANT SHALL:

			Check When Complete
☐	1.01	Dedicate to the City of Ontario, the right-of-way, described below: Property line corner 'cut-back' required at the intersection of:	☐
☒	**1.02**	**Dedicate to the City of Ontario, the following easement(s):** **a. For public sewer purposes along the west property line: 10-foot-wide easement** **b. For public utility, emergency vehicle, and solid waste collection access purposes within the private drive: 26-foot-wide easement**	☐
☐	1.03	Restrict vehicular access to the site as follows:	☐
☐	1.04	Vacate the following street(s) and/or easement(s):	☐
☒	**1.05**	**Submit a copy of a recorded private reciprocal use agreement or easement. The agreement or easement shall ensure, at a minimum, common ingress and egress and joint maintenance of all common access areas and drive aisles.**	☐
☒	**1.06**	**Provide (original document) Covenants, Conditions and Restrictions (CC&Rs) as applicable to the project and as approved by the City Attorney and the Engineering and Planning Departments, ready for recordation with the County of San Bernardino. The CC&Rs shall provide for, but not be limited to, common ingress and egress, joint maintenance responsibility for all common access improvements, common facilities, parking areas, utilities, median and landscaping improvements and drive approaches, in addition to maintenance requirements established in the Water Quality Management Plan (WQMP), as applicable to the project. The CC&Rs shall also address the maintenance and repair responsibility for public improvements/utilities (sewer, water, storm drain, recycled water, etc.) located within open space/easements. In the event of any maintenance or repair of these facilities, the City shall only restore disturbed areas to current City Standards.**	☐
☐	1.07	For all development occurring south of the Pomona Freeway (60-Freeway) and within the specified boundary limits (per Boundary Map found at *http://tceplumecleanup.com/*), the property developer/owner is made aware of the South Archibald Trichloroethylene (TCE) Plume "Disclosure Letter". Property owner may wish to provide this Letter as part of the Real Estate Transfer Disclosure requirements under California Civil Code Section 1102 et seq. This may include notifications in the Covenants, Conditions and Restrictions (CC&Rs) or other documents related to property transfer and disclosures. Additional information on the plume is available from the Santa Ana Regional Water Quality Control Board at *http://geotracker.waterboards.ca.gov/profile_report?global_id=T10000004658.*	☐
☐	1.08	File an application for Reapportionment of Assessment, together with payment of a reapportionment processing fee, for each existing assessment district listed below. Contact the Financial Services Department at (909) 395-2124 regarding this requirement. (1) _____ (2) _____	☐
☒	**1.09**	**Prepare a fully executed Subdivision Agreement (on City approved format and forms) with accompanying security as required, or complete all public improvements.**	☐
☒	**1.10**	**Provide a monument bond (i.e. cash deposit) in an amount calculated by the City's approved cost estimate spreadsheet (available for download on the City's website: www.ontarioca.gov) or as specified in writing by the applicant's Registered Engineer or Licensed Land Surveyor of Record and approved by the City Engineer, whichever is greater.**	☐

☒ **1.11 Provide a preliminary title report current to within 30 days.** ☐

☐ 1.12 File an application, together with an initial deposit (if required), to establish a Community Facilities District (CFD) pursuant to the Mello-Roos Community Facilities District Act of 1982. The application and fee shall be submitted a minimum of four (4) months prior to final subdivision map approval, and the CFD shall be established prior to final subdivision map approval or issuance of building permits, whichever occurs first. The CFD shall be established upon the subject property to provide funding for various City services. An annual special tax shall be levied upon each parcel or lot in an amount to be determined. The special tax will be collected along with annual property taxes. The City shall be the sole lead agency in the formation of any CFD. Contact Investment and Revenue Resources at (909) 395-2341 to initiate the CFD application process. ☐

☐ 1.13 Ontario Ranch Developments: ☐

☐ 1) Provide evidence of final cancellation of Williamson Act contracts associated with this tract, prior to approval of any final subdivision map. Cancellation of contracts shall have been approved by the City Council.

☐ 2) Provide evidence of sufficient storm water capacity availability equivalents (Certificate of Storm Water Treatment Equivalents).

☐ 3) Provide evidence of sufficient water availability equivalents (Certificate of Net MDD Availability).

☐ 1.14 Other conditions: ☐

2. PRIOR TO ISSUANCE OF ANY PERMITS, APPLICANT SHALL:

A. GENERAL
(Permits includes Grading, Building, Demolition and Encroachment)

☒ **2.01 Record Tract Map No. 20659 pursuant to the Subdivision Map Act and in accordance with the City of Ontario Municipal Code.** ☐

☒ **2.02 Submit a PDF of the recorded map to the City Engineer's office.** ☐

☐ 2.03 Note that the subject parcel is a recognized parcel in the City of Ontario per _____ ☐

☐ 2.04 Note that the subject parcel is an 'unrecognized' parcel in the City of Ontario and shall require a Certificate of Compliance to be processed unless a deed is provided confirming the existence of the parcel prior to the date of March 4, 1972. ☐

☐ 2.05 Apply for a: ☐

☐ Certificate of Compliance with a Record of Survey;

☐ Lot Line Adjustment (Record a Conforming Deed with the County of San Bernardino within six months of the recordation of the Lot Line Adjustment to conform the new LLA legal description. Submit a copy of the recorded Conforming Deed to the Engineering Department.);

☐ Make a Dedication of Easement.

☐ 2.06 Provide (original document) Covenants, Conditions and Restrictions (CC&R's), as applicable to the project, and as approved by the City Attorney and the Engineering and Planning Departments, ready for recordation with the County of San Bernardino. The CC&R's shall provide for, but not be limited to, common ingress and egress, joint maintenance of all common access improvements, common facilities, parking areas, utilities and drive approaches in addition to maintenance requirements established in the Water Quality Management Plan (WQMP), as applicable to the project. ☐

☐ 2.07 For all development occurring south of the Pomona Freeway (60-Freeway) and within the specified boundary limits (per Boundary Map found at *http://tceplumecleanup.com/*), the property developer/owner ☐

is made aware of the South Archibald Trichloroethylene (TCE) Plume "Disclosure Letter". Property owner may wish to provide this Letter as part of the Real Estate Transfer Disclosure requirements under California Civil Code Section 1102 et seq. This may include notifications in the Covenants, Conditions and Restrictions (CC&Rs) or other documents related to property transfer and disclosures. Additional information on the plume is available from the Santa Ana Regional Water Quality Control Board at *http://geotracker.waterboards.ca.gov/profile_report?global_id=T10000004658.*

☒ **2.08 Submit a soils/geology report.** ☐

☐ 2.09 Other Agency Permit/Approval: Submit a copy of the approved permit and/or other form of approval of the project from the following agency or agencies: ☐

- ☐ State of California Department of Transportation (Caltrans)
- ☐ San Bernardino County Road Department (SBCRD)
- ☐ San Bernardino County Flood Control District (SBCFCD)
- ☐ Federal Emergency Management Agency (FEMA)
- ☐ Cucamonga Valley Water District (CVWD) for sewer/water service
- ☐ United States Army Corps of Engineers (USACE)
- ☐ California Department of Fish & Game
- ☐ Inland Empire Utilities Agency (IEUA)
- ☐ Other: _____

☐ 2.10 Dedicate to the City of Ontario the right-of-way described below: ☐

☐ 2.11 Dedicate to the City of Ontario the following easement(s): ☐

☐ 2.12 Vacate the following street(s) and/or easement(s): ☐

☐ 2.13 Ontario Ranch Developments: ☐

☐ 1) Submit a copy of the permit from the San Bernardino County Health Department to the Engineering Department and the Ontario Municipal Utilities Company (OMUC) for the destruction/abandonment of the on-site water well. The well shall be destroyed/abandoned in accordance with the San Bernardino County Health Department guidelines.

☐ 2) Make a formal request to the City of Ontario Engineering Department for the proposed temporary use of an existing agricultural water well for purposes other than agriculture, such as grading, dust control, etc. Upon approval, the Applicant shall enter into an agreement with the City of Ontario and pay any applicable fees as set forth by said agreement.

☐ 3) Design proposed retaining walls to retain up to a maximum of three (3) feet of earth. In no case shall a wall exceed an overall height of nine (9) feet (i.e. maximum 6-foot high wall on top of a maximum 3-foot high retaining wall.

☐ 2.14 Submit a security deposit to the Engineering Department to guarantee construction of the public improvements required herein valued at _____% of the approved construction cost estimate. Security deposit shall be in accordance with the City of Ontario Municipal Code. Security deposit will be eligible for release, in accordance with City procedure, upon completion and acceptance of said public improvements. ☐

☒ **2.15 The applicant/developer shall submit all necessary survey documents prepared by a Licensed Surveyor registered in the State of California detailing all existing survey monuments in and around the project site. These documents are to be reviewed and approved by the City Survey Office.** ☐

☒ **2.16 Pay all Development Impact Fees (DIF) to the Building Department. Storm Drain Development Impact Fee shall be paid to the Building Department. Final fee shall be determined based on the approved site plan and the DIF rate at the time of payment.** ☐

☐ 2.17 Other conditions: ☐

B. PUBLIC IMPROVEMENTS
(See attached Exhibit 'A' for plan check submittal requirements.)

☒ 2.18 **Design and construct full public improvements in accordance with the City of Ontario Municipal Code, current City standards and specifications, master plans and the adopted specific plan for the area, if any. These public improvements shall include, but not be limited to, the following (checked boxes):**

Improvement	5th St.	Private Drive		
Curb and Gutter[1]	☐ New; ___ ft. from C/L ☒ **Replacement** ☐ Remove and replace	☐ New; ___ ft. from C/L ☐ Replace damaged ☐ Remove and replace	☐ New; ___ ft. from C/L ☐ Replace damaged ☐ Remove and replace	☐ New; ___ ft. from C/L ☐ Replace damaged ☐ Remove and replace
AC Pavement (see Sec. 2.19)	☒ **Replacement** ☐ Widen ____ additional feet along frontage, including pavm't transitions	☐ Replacement ☐ Widen ____ additional feet along frontage, including pavm't transitions	☐ Replacement ☐ Widen ____ additional feet along frontage, including pavm't transitions	☐ Replacement ☐ Widen ____ additional feet along frontage, including pavm't transitions
PCC Pavement (Truck Route Only)	☐ New ☐ Modify existing	☐ New ☐ Modify existing	☐ New ☐ Modify existing	☐ New ☐ Modify existing
Drive Approach	☒ **New** ☐ Remove and replace	☐ New ☐ Remove and replace	☐ New ☐ Remove and replace	☐ New ☐ Remove and replace
Sidewalk[1]	☒ **New** ☒ **Replace damaged**	☐ New ☐ Remove and replace	☐ New ☐ Remove and replace	☐ New ☐ Remove and replace
ADA Access Ramp	☐ New ☐ Remove and replace	☐ New ☐ Remove and replace	☐ New ☐ Remove and replace	☐ New ☐ Remove and replace
Parkway[1]	☐ Trees ☒ **Landscaping (w/irrigation)**	☐ Trees ☐ Landscaping (w/irrigation)	☐ Trees ☐ Landscaping (w/irrigation)	☐ Trees ☐ Landscaping (w/irrigation)
Raised Landscaped Median	☐ New ☐ Remove and replace	☐ New ☐ Remove and replace	☐ New ☐ Remove and replace	☐ New ☐ Remove and replace
Fire Hydrant	☒ **Upgrade[2]** ☐ Relocation	☒ **New** ☐ Relocation	☐ New / Upgrade ☐ Relocation	☐ New / Upgrade ☐ Relocation

Sewer (see Sec. 2.C)	☐ Main ☐ Lateral	☐ Main ☒ **Lateral**	☐ Main ☐ Lateral	☐ Main ☐ Lateral
Water (see Sec. 2.D)	☐ Main ☒ **Service**	☐ Main ☐ Service	☐ Main ☐ Service	☐ Main ☐ Service
Recycled Water (see Sec. 2.E)	☐ Main ☐ Service	☐ Main ☐ Service	☐ Main ☐ Service	☐ Main ☐ Service
Traffic Signal System (see Sec. 2.F)	☐ New ☐ Modify existing	☐ New ☐ Modify existing	☐ New ☐ Modify existing	☐ New ☐ Modify existing
Traffic Signing and Striping (see Sec. 2.F)	☐ New ☐ Modify existing	☐ New ☐ Modify existing	☐ New ☐ Modify existing	☐ New ☐ Modify existing
Street Light (see Sec. 2.F)	☒ **New** ☐ Relocation	☐ New / Upgrade ☐ Relocation	☐ New / Upgrade ☐ Relocation	☐ New / Upgrade ☐ Relocation
Bus Stop Pad or Turn-out (see Sec. 2.F)	☐ New ☐ Modify existing	☐ New ☐ Modify existing	☐ New ☐ Modify existing	☐ New ☐ Modify existing
Storm Drain (see Sec. 2G)	☐ Main ☐ Lateral	☐ Main ☐ Lateral	☐ Main ☐ Lateral	☐ Main ☐ Lateral
Fiber Optics (see Sec. 2K)	☒ **Conduit / Appurtenances**	☒ **Conduit / Appurtenances**	☐ Conduit / Appurtenances	☐ Conduit / Appurtenances
Overhead Utilities	☐ Underground ☐ Relocate	☐ Underground ☐ Relocate	☐ Underground ☐ Relocate	☐ Underground ☐ Relocate
Removal of Improvements	_____ _____ _____	_____ _____ _____	_____ _____ _____	_____ _____ _____
Other Improvements	**Construct RRFB at 5th Street and Elderberry Avenue crosswalk. (See attached Traffic Conditions)**	_____ _____ _____	_____ _____ _____	_____ _____ _____

Specific notes for improvements listed in item no. 2.18, above:
[1]**Remove existing driveway approaches and replace with curb, gutter, sidewalk, and parkway landscape.**
[2]**Upgrade existing fire hydrant along 5th Street.**

☒ 2.19 **Construct a 2" asphalt concrete (AC) grind and overlay on the following street(s):** ☐
a. **5th Street along project frontage from the edge of gutter to centerline of street.**

☐ 2.20 Reconstruction of the full pavement structural section, per City of Ontario Standard Drawing number 1011, may be required based on the existing pavement condition and final street design. Minimum limits of reconstruction shall be along property frontage, from street centerline to curb/gutter. ☐

☐ 2.21 Make arrangements with the Cucamonga Valley Water District (CVWD) to provide ☐ water service to the site. ☐ sewer service to the site. This property is within the area served by the CVWD and Applicant shall provide documentation to the City verifying that all required CVWD fees have been paid. ☐

☐ 2.22 Overhead utilities shall be under-grounded, in accordance with Title 7 of the City's Municipal Code (Ordinance No. 2804 and 2892). Developer may pay in-lieu fee, approximately _____, for undergrounding of utilities in accordance with Section 7-7.302.e of the City's Municipal Code. ☐

☐ 2.23 Other conditions: ☐

C. SEWER

☒ **2.24 An 8-inch sewer main is available for connection by this project along the westerly property line. (Ref: Sewer facility id number: S12610)** ☐

☐ 2.25 Design and construct a sewer main extension. A sewer main is not available for direct connection. The closest main is approximately _____ feet away. ☐

☐ 2.26 Submit documentation that shows expected peak loading values for modeling the impact of the subject project to the existing sewer system. The project site is within a deficient public sewer system area. Applicant shall be responsible for all costs associated with the preparation of the model. Based on the results of the analysis, Applicant may be required to mitigate the project impact to the deficient public sewer system, including, but not limited to, upgrading of existing sewer main(s), construction of new sewer main(s) or diversion of sewer discharge to another sewer. ☐

☒ **2.27 Other conditions: See attached OMUC Utilities Engineering Development conditions of approval.** ☐

D. WATER

☒ **2.28 A 6-inch water main is available for connection by this project in 5th Street. (Ref: Water facility id number: W11080)** ☐

☐ 2.29 Design and construct a water main extension. A water main is not available for direct connection. The closest main is approximately _____ feet away. ☐

☒ **2.30 Other conditions: See attached OMUC Utilities Engineering Development conditions of approval.** ☐

E. RECYCLED WATER

☐ 2.31 A _____-inch recycled water main is available for connection by this project in _____. (Ref: Recycled Water plan bar code:_____) ☐

☐ 2.32 Design and construct an on-site recycled water system for this project. A recycled water main does exist in the vicinity of this project. ☐

☐ 2.33 Design and construct an on-site recycled water ready system for this project. A recycled water main does not currently exist in the vicinity of this project, but is planned for the near future in Sultana Avenue. If Applicant would like to connect to this recycled water main when it becomes available, the cost for the connection shall be borne solely by the Applicant. ☐

☐ 2.34 Submit one (1) electronic copy, in PDF format, of the Engineering Report (ER), for the use of recycled water, to OMUC's Water Quality Programs at OMUCWQPlanCheck@ontarioca.gov for review and subsequent submittal to the California State Water Board (Division of Drinking Water) for final approval. ☐

Note: Review and approval process may take up to three (3) months. Contact the OMUC's Water Quality Programs at (909) 395-2678 or email OMUCWQPlanCheck@ontarioca.gov regarding this requirement.

☐ 2.35 Submit one (1) electronic copy, in PDF format, of the Landscape Plans (on-site & off-site) to OMUC's Water Quality Programs at (OMUCWQPlanCheck@ontarioca.gov for review and approval.

☐ 2.36 Other conditions: ☐

F. TRAFFIC / TRANSPORTATION

☐ 2.37 Submit a focused traffic impact study, prepared and signed by a Traffic/Civil Engineer registered in the State of California. The study shall address, but not be limited to, the following issues as required by the City Engineer: ☐
1. On-site and off-site circulation
2. Traffic level of service (LOS) at 'build-out' and future years
3. Impact at specific intersections as selected by the City Engineer

☐ 2.38 New traffic signal installations shall be added to Southern California Edison (SCE) customer account number # 2-20-044-3877. ☐

☒ **2.39 Other conditions: See attached Traffic Engineering conditions of approval.** ☐

G. DRAINAGE / HYDROLOGY

☐ 2.40 A ____ storm drain main is available to accept flows from this project in ____. ☐

☒ **2.40 Submit a hydrology study and drainage analysis, prepared and signed by a Civil Engineer registered in the State of California. The study shall be prepared in accordance with the San Bernardino County Hydrology Manual and City of Ontario standards and guidelines. Additional drainage facilities, including, but not limited to, improvements beyond the project frontage, may be required to be designed and constructed, by Applicant, as a result of the findings of this study.** ☐

☒ **2.41 An adequate drainage facility to accept additional runoff from the site does not currently exist downstream of the project. Design and construct a storm water detention facility on the project site. 100 year post-development peak flow shall be attenuated such that it does not exceed 80% of pre-development peak flows, in accordance with the approved hydrology study and improvement plans.** ☐

☐ 2.42 Submit a copy of a recorded private drainage easement or drainage acceptance agreement to the Engineering Department for the acceptance of any increase to volume and/or concentration of historical drainage flows onto adjacent property, prior to approval of the grading plan for the project. ☐

☐ 2.43 Comply with the City of Ontario Flood Damage Prevention Ordinance (Ordinance No. 2409). The project site or a portion of the project site is within the Special Flood Hazard Area (SFHA) as indicated on the Flood Insurance Rate Map (FIRM) and is subject to flooding during a 100 year frequency storm. The site plan shall be subject to the provisions of the National Flood Insurance Program. ☐

☐ 2.44 Other conditions: ☐

H. STORM WATER QUALITY / NATIONAL POLLUTANT DISCHARGE AND ELIMINATION SYSTEM (NPDES)

☐ 2.46 401 Water Quality Certification/404 Permit – Submit a copy of any applicable 401 Certification or 404 Permit for the subject project to the City project engineer. Development that will affect any body of surface water (i.e. lake, creek, open drainage channel, etc.) may require a 401 Water Quality Certification from the California Regional Water Quality Control Board, Santa Ana Region (RWQCB) and a 404 Permit from the United States Army Corps of Engineers (USACE). The groups of water bodies classified in these requirements are perennial (flow year round) and ephemeral (flow during rain conditions, only) and include, but are not limited to, direct connections into San Bernardino County Flood Control District (SBCFCD) channels. ☐
If a 401 Certification and/or a 404 Permit are not required, a letter confirming this from Applicant's engineer shall be submitted.
Contact information: USACE (Los Angeles District) (213) 452-3414; RWQCB (951) 782-4130.

☒ **2.47 Submit a Water Quality Management Plan (WQMP). This plan shall be approved by the Engineering Department prior to approval of any grading plan. The WQMP shall be submitted, utilizing the current San Bernardino County Stormwater Program template, available at: http://www.sbcounty.gov/dpw/land/npdes.asp.** ☐

☐ 2.48 Design and construct a Connector Pipe Trash Screen or equivalent Trash Treatment Control Device, per catch basin located within or accepting flows tributary of a Priority Land Use (PLU) area that meets ☐

the Full Capture System definition and specifications, and is on the Certified List of the State Water Resources Control Board. The device shall be adequately sized per catch basin and include a deflector screen with vector control access for abatement application, vertical support bars, and removable component to facilitate maintenance and cleaning.

☐ 2.49 Other conditions: ☐

J. SPECIAL DISTRICTS

☐ 2.50 File an application, together with an initial deposit (if required), to establish a Community Facilities District (CFD) pursuant to the Mello-Roos Community Facilities District Act of 1982. The application and fee shall be submitted a minimum of four (4) months prior to final subdivision map approval, and the CFD shall be established prior to final subdivision map approval or issuance of building permits, whichever occurs first. The CFD shall be established upon the subject property to provide funding for various City services. An annual special tax shall be levied upon each parcel or lot in an amount to be determined. The special tax will be collected along with annual property taxes. The City shall be the sole lead agency in the formation of any CFD. Contact Investment and Revenue Resources at (909) 395-2341 to initiate the CFD application process. ☐

☐ 2.51 Other conditions: ☐

K. FIBER OPTIC

☐ 2.52 A _____ fiber optic line is available for connection by this project in _____. (Ref: Fiber Optic Drawing Number: _____) ☐

☒ **2.53 Design and construct fiber optic system to provide access to the City's conduit and fiber optic system per the City's Fiber Optic Master Plan. Building entrance conduits shall start from the closest OntarioNet hand hole constructed along the project frontage in the ROW and shall terminate in the main telecommunications room for each building.** ☐

☒ **2.53 Refer to the City's Fiber Optic Master Plan for design and layout guidelines. Contact the Broadband Operations Department at (909) 395-2000, regarding this requirement.** ☐

☒ **2.54 Other conditions: See attached Broadband Operations conditions of approval.** ☐

3. PRIOR TO ISSUANCE OF A CERTIFICATE OF OCCUPANCY, APPLICANT SHALL:

☒ **3.01 Set new monuments in place of any monuments that have been damaged or destroyed as a result of construction of the subject project. Monuments shall be set in accordance with City of Ontario standards and to the satisfaction of the City Engineer.** ☐

☐ 3.02 Complete all requirements for recycled water usage. ☐

☐ 1) Procure from OMUC a copy of the letter of confirmation from the California State Water Board (Division of Drinking Water) that the Engineering Report (ER) has been reviewed and the subject site is approved for the use of recycled water.

☐ 2) Obtain clearance from OMUC confirming completion of recycled water improvements and passing of shutdown tests and cross connection inspection, upon availability/usage of recycled water.

☐ 3) Complete Site Supervisor training of on-site personnel in the use of recycled water, in accordance with the ER, upon availability/usage of recycled water.

☒ **3.03 The applicant/developer shall submit all final survey documents prepared by a Licensed Surveyor registered in the State of California detailing all survey monuments that have been preserved, revised, adjusted or set along with any maps, corner records or Records of Survey needed to comply with these Conditions of Approvals and the latest edition of the California Professional Land Survey Act. These documents are to be reviewed and approved by the City Survey Office.** ☐

☐ 3.04 Ontario Ranch Projects: For developments located at an intersection of any two collector or arterial streets, the applicant/developer shall set a monument if one does not already exist at that intersection. Contact the City Survey office for information on reference benchmarks, acceptable methodology and required submittals. ☐

☒ **3.05 Confirm payment of all Development Impact Fees (DIF) to the Building Department.** ☐

☒ **3.06 Submit electronic copies (PDF and Auto CAD format) of all approved improvement plans, studies and reports (i.e. hydrology, traffic, WQMP, etc.).** ☐

4. PRIOR TO FINAL ACCEPTANCE, APPLICANT SHALL:

☒ **4.01 Complete all Conditions of Approval listed under Sections 1-3 above.** ☐

☒ **4.02 Pay all outstanding fees pursuant to the City of Ontario Municipal Code, including but not limited to, plan check fees, inspection fees and Development Impact Fees.** ☐

☒ **4.03 The applicant/developer shall submit a written request for the City's final acceptance of the project addressed to the City Project Engineer. The request shall include a completed Acceptance and Bond Release Checklist, state that all Conditions of Approval have been completed and shall be signed by the applicant/developer. Upon receipt of the request, review of the request shall be a minimum of 10 business days. Conditions of Approval that are deemed incomplete by the City will cause delays in the acceptance process.** ☐

☒ **4.04 Submit record drawings (PDF) for all public improvements identified within Section 2 of these Conditions of Approval.** ☐

EXHIBIT 'A'

ENGINEERING DEPARTMENT
First Plan Check Submittal Checklist

Project Number: PDEV23-037, PMTT23-008, and Tract Map No. 20659

The following items are required to be included with the first plan check submittal:

1. ☒ **A copy of this check list**
2. ☒ **Payment of fee for Plan Checking**
3. ☒ **Digital copy of Engineering Cost Estimate (on City form) with engineer's wet signature and stamp.**
4. ☒ **Digital copy of project Conditions of Approval**
5. ☒ **Include a PDF (electronic submittal) of each required improvement plan at every submittal.**
6. ☒ **Digital copy of Potable Water demand calculations (include water demand calculations showing low, average and peak water demand in GPM for the proposed development and proposed water meter size).**
7. ☐ Digital copy of Public Street improvement plan with street cross-sections.
8. ☐ Digital copy of Public Water improvement plan. (include water demand calculations showing low, average and peak water demand in GPM for the proposed development and proposed water meter size)
9. ☐ Digital copy of Recycled Water improvement plan (include recycled water demand calculations showing low, average and peak water demand in GPM for the proposed development and proposed water meter size and an exhibit showing the limits of areas being irrigated by each recycled water meter)
10. ☐ Digital copy of Public Sewer improvement plan
11. ☐ Digital copy of Public Storm Drain improvement plan
12. ☒ **Digital copy of Public Street Light improvement plan**
13. ☐ Digital copy of Signing and Striping improvement plan
14. ☒ **Digital copy of Fiber Optic plan (include Auto CAD electronic submittal)**
15. ☒ **Digital copy of HOA Landscape improvement plans. Show corner sight line distance per engineering standard drawing 1309.**
16. ☐ Digital copy of CFD Landscape improvement plans. Show corner sight line distance per engineering standard drawing 1309.
17. ☒ **Digital copy of Dry Utility plans within public right-of-way (at a minimum the plans must show existing and ultimate right-of-way, curb and gutter, proposed utility location including centerline dimensions, wall to wall clearances between proposed utility and adjacent public line, street work repaired per Standard Drawing No. 1306. Include Auto CAD electronic submittal)**
18. ☒ **Digital copy of Rectangular Rapid Flashing Beacon (RRFB) improvement plan. Please contact the Traffic Division at (909) 395-2154 to obtain Traffic Signal Specifications.**
19. ☒ **Digital copy of Water Quality Management Plan (WQMP)**
20. ☒ **Digital copy of Hydrology/Drainage study**
21. ☒ **Digital copy of Soils/Geology report**

21. ☒ **Digital copy of Soils/Geology report**
22. ☒ **Payment for Final Map/Parcel Map processing fee**
23. ☒ **Digital copy of Final Map/Parcel Map**
24. ☒ **Digital copy of approved Tentative Map**
25. ☒ **Digital copy of Preliminary Title Report (current within 30 days)**
26. ☒ **Digital copy of Traverse Closure Calculations**
27. ☒ **Digital copy of One (1) set of supporting documents and maps (legible copies): referenced improvement plans (full size), referenced record final maps/parcel maps (full size, 18"x26"), Assessor's Parcel map (full size, 11"x17"), recorded documents such as deeds, lot line adjustments, easements, etc.**
28. ☐ Digital copy of Engineering Report for recycled water use
29. ☐ Other:

CITY OF ONTARIO
MEMORANDUM

Development Plan Review
Engineering Department:
Transportation Section

Project: PDEV23-037/PMTT23-008
(70-Multi Family Dwellings)

Date: April 9, 2024

Location: 1355 West 5th Street

By: Diego Tapia
Nathan Kuan

The Transportation Division recommends the following to be incorporated into the Project's Conditions-of-Approval:

Conditions:

1. The Applicant/Developer shall be responsible to install a rectangular rapid flashing beacon (RRFB) at Fifth Street and Elderberry Avenue crosswalk per the California MUTCD guidelines and to the satisfaction of the City Engineer. These, and all other street improvements herein required for the installation of the RRFB, shall include, but not be limited to, intersection lighting, signing and striping, and ADA improvements.

2. The Applicant/Developer shall be responsible to design and construct in-fill public street lights and a potential new service along its project frontage on 5th Street. Street lighting shall be LED-type and in accordance with City's Approved Material List LED Luminaires. The Applicant/Developer shall also install smart nodes on all new street light fixtures.

3. The Applicant/Developer shall replace the existing street light located along the project frontage with the current standard pole height in accordance with City of Ontario Standard Drawing No. 5101.

4. Where a driveway closure is being proposed, the Applicant/Developer shall backfill the existing driveway curb-cuts with full-height curb and gutter, sidewalk, and landscaped parkway in accordance with all City standards and to the satisfaction of the City Engineer.

5. Design and construct proposed driveway in accordance with City of Ontario Standard Drawing No. 1205 for Residential Driveway Approach II.

6. Parking shall be restricted at proposed driveway for visibility along project frontage on 5th Street.

7. All landscaping, block walls, and other obstructions shall be compatible with the stopping sight distance requirements per City of Ontario Standard Drawing No. 1309.

8. The Applicant/Developer's engineer-of-record shall meet with City Engineering staff prior to designing and submitting for plan check the street lighting design plans to define limits of improvements.

dt, nk;

CITY OF ONTARIO
MEMORANDUM

DEVELOPMENT PLAN REVIEW CONDITIONS OF APPROVAL
Broadband Operations Section

DATE: 06-25-24

PROJECT: PDEV23-037

LOCATION: 5th st and Mountain

PROJECT ENGINEER: Henry Pham

BROADBAND PLAN CHECKER: Cameron Chadwick - CChadwick@ontarioca.gov

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The following Conditions of Approval requirements must be incorporated prior to the Development Advisory Board and/or Zoning Administrator Hearing.

1. Project shall be designed and constructed to provide access to the City's conduit and fiber optic system per the City's Fiber Optic Master Plan. Building entrance conduits shall start from the closest OntarioNet hand hole in the Right-of-Way (ROW) and shall terminate in the main telecommunications room for each building. Conduit infrastructure shall interconnect with the primary and/or secondary backbone fiber optic conduit system at the nearest OntarioNet hand hole.
2. Contractor is responsible for locating and connecting conduit to existing OntarioNet hand holes on adjacent properties within a reasonable distance. There should be no "Gaps" in conduit between the contractor's development and the adjacent property. OntarioNet hand holes are typically located in the ROW at the extreme edge of a property.
3. Where a joint telecom or street light street crossing is required, include (2) 2" HDPE SDR-11 conduits or (1) 4" schedule 80 conduit sleeve. Terminate the street crossing conduit(s) in a new HH-3/22 OntarioNet hand hole in the right of way
4. The City requires a public utility easement for fiber optics on all private aisles/alley ways.
5. Hand holes - Design and install OntarioNet fiber optic hand hole HH-FP (10x00x10), HH-1 (13x24x18), HH-2 (17x30x24), HH-2A (24x36x30), HH-3 (30x48x36) and/or HH-4 (36x60x36) as needed. Respectively, Newbasis Part # PLA100010T-00002, PCA132418-00006, PCA-173024-90116, PCA-243630-90064, PCA-304836-90244 and PCA-366036-90146 or equivalent as specified per City Standard 1316. Conduits sweeping into hand holes shall enter in flush with the cut-out mouse holes aligned parallel to the bottom of the box and come in perpendicular to the wall of the box. Conduits shall not enter at any angle other than parallel. Provide 5-foot minimum clearance from existing/proposed utilities. All hand holes will have ¼-inch galvanized wire between the hand holes and the gravel it is placed on.
6. ROW Conduit – Design and install fiber optic conduit at a minimum depth of 36-inch. Trenching shall be per City Standard 1306. Install (1) 2-inch HDPE SDR-11 (Smoothwall) roll pipe (Orange) duct and (1) 2-inch HDPE SDR-11 (Smoothwall) roll pipe (Orange with Black Stripe) duct. Conduit(s) between ROW hand holes and hand holes on private property shall be 2-inch HDPE SDR-11 (Smoothwall) roll pipe (Orange) duct.
7. Building Entrance (Single Family) – Design and install 0.75-inch HDPE SDR-11 (Smoothwall) roll pipe (Orange) duct from hand holes on property or hand holes in the ROW. Consult City's Fiber Team for design assistance.
8. Building Entrance (Multi-family and Commercial) - From the nearest handhole to the building entrance, design and install fiber optic conduit at a minimum depth of 36-inches. Trenching shall be per City Standard for Commercial Buildings. (1) 2-inch HDPE SDR-11 (Smoothwall) roll pipe (Orange) duct. Install

locate/tracer wires minimum 12AWG within conduit bank and fiber warning tape 18-inch above the uppermost duct

9. Multi-family and commercial properties shall terminate conduit in an electrical room adjacent to the wall no less than five inches above the finished floor. A 20" width X length 36" space shall be reserved on the plywood wall for OntarioNet equipment. This space shall be labeled "OntarioNet Only". Ontario Conduit shall be labeled "OntarioNet"
10. A minimum 13/16 millimeter microduct joint use telecommunications conduit with pull-rope from the single-family, multi-family or commercial building communal telecom/electrical room/closet to each multi-family or commercial building unit shall be installed. See Structured Wiring Checklist on City's website for additional details.
11. Warning Tape - Contractor shall supply and install an approved non-detectable warning tape 18-inch above the uppermost conduit when backfilling trenches, pits or excavations greater than 10' in length. Warning Tape shall be non-detectable, Orange in color, 4-inch minimum width, 4 mil, 500% minimum elongation, with bold printed black letters "CAUTION - BURIED FIBER OPTIC CABLE BELOW" printed in bold black lettering no less than 2-inch high.
12. All hand holes, conduits, conduit banks, materials and installations are per the City's Fiber Optic Master Plan and City Fiber Optic Cable and Duct Standards. All hand holes, conduits and ducts shall be placed in the public right of way.
13. All unused conduits/ducts/microducts shall be protected with duct plugs that provide a positive seal. Ducts that are occupied shall be protected with industry accepted duct seal compound.
14. Locate/Tracer Wire - Conduit bank requires (1) 12AWG high strength (minimum break load 452#) copper-clad steel with 30mil HDPE orange insulation for locate/tracer wire. Contact City's Fiber Team for tracer wire specifications and see note 8.
15. Multi-family dwellings are considered commercial property.
16. Refer to the In-tract Fiber Network Design guideline on the City's website for additional in-tract conduit guidelines.

CITY OF ONTARIO
MEMORANDUM

ONTARIO MUNICIPAL UTILITIES COMPANY

DATE: June 27, 2024
TO: Henry Pham, Engineering Department
CC: Tom Grahn, Planning Department
FROM: Eric Woosley, Utilities Engineering (QC: JFK)

SUBJECT: DPR #3 - Utilties Engineering Condtions of Approval (**#10044 & #10045**)
PROJECT NO.: TM-20659 (PMTT23-008)/PDEV23-037

BRIEF DESCRIPTION

A Tentative Tract Map for Condominium purposes, and a Development Plan to construct 70 multiple-family dwellings, including 7 moderate affordable dwellings on approximately 3.1 acres of land located at 1355 West 5th Street, within the LDR-5 (Low Density Residential) zoning district. (APNs: 1088-551-12).

UTILITIES ENGINEERING CONDITIONS OF APPROVAL

CONDITIONS OF APPROVAL: *The Ontario Municipal Utilities Company (OMUC) recommends this application for approval subject to the conditions outlined below and compliance with the City's Design Development Guidelines, Specifications Design Criteria, and City Standards.*

1. Standard Conditions of Approval: Project shall comply with the requirements as set forth in the Amendment to the Standard Conditions of Approval for New Development Projects adopted by the City Council (Resolution No. 2017-027) on April 18, 2017; as well as project-specific conditions/requirements as outlined below.

Prior to Issuance of Any Permits (Grading, Building, Demolition and Encroachment), unless other timeline milestones are specified by individual conditions below, the Applicant Shall:

General Conditions (Section 2.A, Other conditions): The Applicant shall comply with the following:

2. Final Utilities Systems Map (USM): Submit a Final Utilities Systems Map (USM) as part of the precise grading plan submittal that meets all the City's USM requirements. These requirements include showing and labeling all existing and proposed utilities (including all appurtenances such as backflow devices, DCDAs, etc.), sizes, points of connection, and any easements. The final utility design shall comply with all Division of Drinking Water (CCR §64572) Separation Requirements. See *Utility Systems Map (USM) Requirements document* for details.
    a. The proposed utilities, utility alignments, and Public Rights-of-Way (ROW)/Public Utility Easements (PUE) shown on the Conceptual Utilities Systems Map (CUSM) and other Entitlement documents are not considered final and shall be revised during Final Design to meet all City Design Guidelines, Standards, City Requirements, and all the Conditions of Approval contained in this document.
3. Note the following definitions and concepts for Public Utility Improvements and Private Utility Improvements: Public Improvements shall be designed per City Public Design Guidelines and City Standards and constructed through a City Encroachment Permit; and Private Onsite Improvements shall be designed per Building Code and Plumbing Code and constructed through a City Building Permit.
    a. Public Utility Improvements include the following: water main pipelines and sewer main pipelines; sewer laterals connecting to a Public Sewer Main up to the Cleanout (or Manhole) at PL/ROW; water services and connected appurtenances (Meters/Meter Boxes, Fire Hydrants, Airvacs, Blowoffs, etc.) connecting to a Public Water Main per City Standards; and Fire Services connecting to a Public Water Main from the Main up to the DCDA. Public Water Improvements and Public Sewer Improvements are required to be designed and constructed through Public Improvement Plans with Plan View and Profile View per City Standards, Guidelines, and Requirements.
    b. Private Utility Improvements include the following: onsite water plumbing lines after a Public Meter, or after the Fire DCDA and including the DCDA; Backflow Devices and other Cross-Connection Prevention; onsite sewer upstream of the Public Sewer Lateral, including the Cleanout (or Manhole) at PL/ROW/PUE Edge; Monitoring Manholes and other Wastewater Pretreatment Facilities. Private Onsite Utility Improvements are

required to be designed and constructed per Building and Plumbing Plans with: the Backflows, DCDAs, Cleanout (or Manhole) at PL/ROW/PUE Edge, and Monitoring Manholes being designed and constructed through a Precise Grading Plan; and, the other Pretreatment Devices (Grease Interceptor, Sand, Oil Interceptors, etc.) and the connections to the buildings and structures through a building Plumbing Plan.

4. Public Utilities and Public Right-of-Way including Public Utility Easements (PUE): All City of Ontario Public Utilities shall be installed within a Public Right-of-Way (ROW), or within a Public Utility Easements (PUE), or within a combination of ROW and PUE. In this case, Public Utilities is referring to the mains and connected appurtenances of the following City of Ontario/OMUC Utilities: Public Potable Water; Public Recycled Water; and Public Sanitary Sewer. Public Utilities shall be subject to the Minimum ROW/PUE Area Requirements and PUE Restrictions:
    a. Minimum ROW Area Requirements: Public Utilities shall be installed within in existing ROW/PUE in alignments/locations that meet the following minimum ROW/PUE areas surrounding the Public Utilities, and/or additional ROW/PUE shall be dedicated/granted to the City to provide the following minimum ROW/PUE areas surrounding the Public Utilities:
        i. For each main, the ROW/PUE Area shall be a minimum of 20 feet wide, centered on the utility main with a minimum of 10 feet of ROW/PUE on each side of the main and this minimum area shall extend a minimum for 10 feet past the end of a main, except for the existing sewer within the existing 6-foot wide easement;
        ii. For each Service/Lateral, the ROW/PUE Area shall be a minimum of 10 feet wide, centered on the service/lateral with a minimum of 5 feet of ROW on each side of each service/lateral;
        iii. For each water meter box, the ROW/PUE Area shall be a minimum of 5 feet behind and 5 feet on each side of a water meter box;
        iv. For each water appurtenances (fire hydrants, blowoffs, airvacs, etc.), the ROW/PUE Area shall be a minimum of 5 feet on each side surrounding the water appurtenances (fire hydrants, blowoffs, airvacs, etc.);
        v. The ROW/PUE minimum areas for separate Public Utilities may overlap, provide that all minimum separations and PUE Restrictions are met.
    b. PUE Restrictions: The Minimum PUE Area required surrounding Public Utilities shall be subject to the following restrictions:
        i. The Minimum PUE Area required surrounding Public Utilities shall not contain:
            A. Any storm water quality improvements (infiltration, detention, retention, bioswale, etc.);
            B. Landscaping with thick or intrusive root structures,
            C. Any trees;
            D. Any private utilities, plumbing lines, private fire system, or irrigation lines; or,
            E. Any permanent structures or overhangs of permanent structures.
        ii. The PUE surface shall be designed to allow vehicle access over and along the full length of the utility main by any City maintenance vehicle.
        iii. Minimum Separations: Within a PUE, all Department of Drinking Water (DDW) Water Main Separations per California Code of Regulations (CCR) §64572 shall be met for all Public Potable Water Mains and Services between: all Public City Utilities; Non-City Utilities; and Private Utilities. Additionally, the following Minimum Separations shall be met:
            A. At minimum there shall be a 4 feet horizontal separation between each utility as measured between the outside walls of the utility pipelines, or in the case of a Joint Utility Trench, between the outside edge of the Joint Utility Trench and the outside wall of the Utility Pipeline.
            B. Public Utility mains shall not be located behind curb or under curb & gutter and shall be located a minimum of 5 feet from curbface.

Sewer Conditions (Section 2.C): The Applicant shall comply with the following:

5. Public Sewer Improvements: Design and construct the following required public sewer mains in accordance with City of Ontario Standards and Design Guidelines and Specifications:
    a. Per City of Ontario Standard Drawing No. 2001:
        i. Install a public sewer manhole approximately 25-feet south of the existing sewer manhole, measured on-center, within the existing PUE along the westerly property limit. The location of the proposed sewer manhole shall be inline with the proposed private drive aisle to provide maintenance vehicle access.
        ii. Install a public sewer manhole at the most downstream point of the existing public sewer main within the existing PUE along the westerly property limit. The location of the proposed sewer manhole shall

have a direct path of travel to provide maintenance vehicle access. The access path shall be drivable and have a 14-foot minimum width with 28-foot and 42-foot inner and outer turning radii, respectively.

iii. Submit calculations by a licensed professional engineer to demonstrate the structural integrity of the public sewer main is not compromised at the location(s) the proposed perimeter wall and pilaster(s) are proposed over the sewer main.

6. Sewer Laterals: Per City of Ontario Standard Drawing No. 2003:
    a. Install a sewer lateral connected to the existing public sewer main (S12610) in the existing PUE along the westerly property limit.
    b. No storm water quality improvements (infiltration, detention, retention, bioswale, etc.) shall be installed above or within 5 feet of any Public Sewer Lateral.
7. Existing Sewer Laterals:
    a. Abandon all existing unused sewer lateral connections to the sewer main.
8. Private Onsite Sewer System and Plumbing: The Onsite Sewer System shall be privately maintained by the property owner.
    a. No storm water quality improvements (infiltration, detention, retention, bioswale, etc.) shall be installed above or within 5 feet of any Private Onsite Sewer pipes.

Potable Water Conditions (Section 2.D): The Applicant shall comply with the following:

9. Public Water Improvements: Design and construct the following required public water mains in accordance with City of Ontario Standards and Design Guidelines and Specifications:
    a. N/A
10. Fire Hydrants: Per City of Ontario Standard Drawing No. 4101. Fire hydrants connected to potable water mains shall be spaced a maximum of 300 feet apart or per Fire Department Standards/Requirements:
    a. Install one (1) fire hydrant along the frontage of Fifth Street to replace the existing fire hydrant to be abandoned.
11. Existing Fire Hydrants: Abandon the fire hydrant located along the frontage of Fifth Street to the connection of the water main (W11080).
12. Fire Service with Fire System Double Check Detector Assembly (DCDA): Per City of Ontario Standard Drawing No. 4208:
    a. If an onsite private fire system is required, then a separate Fire Service equipped with a DCDA connected to the Public Potable Water System is required, to serve the onsite private fire system. The onsite fire system shall be separate from the onsite domestic water plumbing system and the onsite landscape irrigation system.
13. Water Service with Master Meter and Backflow Prevention Assembly Reduced Pressure Device:
    a. Install a water service and master meter connected to the existing potable water main (W11080) in Fifth Street per City of Ontario Standards. The water service shall be equipped with a backflow prevention device. The water master meter shall be located within the ROW.
14. Irrigation Water Service with Meter and Backflow Prevention Assembly Reduced Pressure Device:
    a. Install a water service and meter for irrigation purposes connected to the existing potable water main (W11080) in Fifth Street per City of Ontario Standards. The irrigation water service shall be equipped with a backflow prevention device. The irrigation water meter shall be located within the ROW.
15. Existing Water Services:
    a. Abandon all existing unused water service connections to the water main.

Recycled Water Conditions (Section 2.E): The Applicant shall comply with the following:

16. N/A

September 6, 2024

City of Ontario Planning Department

303 East B St

Ontario, CA 91764

To whom it might concern,

1355 W 5th St Ontario, CA 91762

This letter accompanies the appeal application against the approval project located at 1355 W 5th St Ontario, CA 91762. File NOS PMTT23-008 and PDEV23-037 approved by Planning Commission on August 27, 2024.

Specifically, the letter sets out the grounds of the community appeal.

Grounds of appeal by category

Notices

1. The notice was sent in English and the city sign outside the property with the Notice of Filing was only on English leaving the Spanish community without properly understanding what the notice of filling was about it.

Safety

1. Resident are concern on several safety factors:

a. Traffic

Not only do the residents, school and churches from the immediate site project oppose this project, but also a Community Volunteer Group by the name of "Safety Routes Ontario-Montclair" that has been advocating for this zone in Ontario since 2012. They had been a key on keeping the surrounded streets of the project that is surrounded by 4 schools as safe as possible working with the City of Ontario, Ontario Police, Schools and families of the importance of walking and biking to school. To prevent as much as possible more vehicles in the area. Please see attach document that was presented at the Planning Commission on August 27, 2024.

5Th St in between Mountain Ave and Benson St, is a single line both ways that it is already impacted by Super Waltmart, condominiums, apartment complex, Anthony Munoz Park, 3 Churches, Sunrise Park, El Camino School and houses. Bringing this project will only bring more traffic, not enough street parking to all the people that live, work, attend local churches, play sports during the weekends with the AYSO 66 and Sunday Soccer League, These groups had practice everyday of the week at both of the parks. Also the families that attend the school on that street will be very affected as there will be no parking to

drop, pick and attend their children's school evening events. The safety of the locals is already at risk of accidents and speeding at anytime of the day making it unsafe for the Ontario families that walk and bike to the 4 schools around.

b. Health

Residents are concern of the air quality and pollution that more vehicles will bring to the area. There are many community residents who live within the 300/500 feet site radius who have adults and children who are asthmatic, with medical respiratory conditions.

Also the residents whose houses are around the project will lose their backyards privacy. This will affect them enormously on their emotionally heath as they will feel that are being seen all the time by the people living on the 3 floors condominiums right outside their back yard. Some have backyard pools that will limit them to use them freely as they will be observe all the time.

We the residents believe on our Healthy Ontario Initiative Mission which is to empower the community of Ontario to take ownership of its health and to make Ontario a model for healthy communities by improving physical, social, environmental, and economic health and well-being. We feel this housing project will be a hardship for the already residents with health issues.

Land Zoning

1.- Residents knows that 5th St it is a Low Density Residential Zone that has been change according to the Ontario Plan 2050 several times from Low to medium back and forth. On November 21st, 2013 at the City of Ontario City Council meeting the council approved unanimously to keep the zoning PGPA23-001 low density. We the community do not understand why a 2, 3 or 4 floors houses are being approved to be built on this low density area.

On the Planning Commission meeting on August 27, 2024 it was brought to us that one of the Consideration for denial Under SB330 of a housing development project: has to complies with the general plan and zoning ordinance, and 1 of the 5 reasons for denial it is that if there is an impact to objective public health & safety standards that cannot be mitigated it might not be approved.

The community is ready and prepared to provide additional comments at the City Council meeting. We want to express our feelings, concerns and how personally we will be affected by this housing development project in our families and neighborhood.

Should you have any questions, you can address you concerns with Greg Gomez working along with the concern residents to Preserve 5th St. Email: bloodhounds2004@yahoo.com or phone: (909) 437-1934.

Regards, The Concern Community of 5th St and streets around the project PMTT23-008 – PDEV23-037

File no. PMTT23-008 and PDEV23-037

The Safe Routes to School Community of Ontario & Montclair (SRTS-COM) joins the growing concern of the residents of 5th Street and the surrounding streets, N Elderberry and Helen St, over the construction project of 70 condos and 7 houses located at 1355 W 5th St. This project will greatly impact road and pedestrian safety as well as the physical and psychological well-being of the community.

In 2010, SRTS-COM began as a safety initiative organized by the El Camino School Parents in response to the deaths of two children in the years 2008 and 2010 as a result of traffic accidents nearby the school. In 2012 we managed to arrange a meeting with the Engineering Department where we delivered more than 1000 signatures from the community to make changes in infrastructure that would help make 5th Street safer. We hoped to be heard due to the experience that the community had years ago when we had opposed the construction of the Walmart store (due to the concern of the increase in traffic). We were not heard and the store was built, leading to the arrival of heavy trucks to travel on 5th Street and adjacent streets (this is a cause of concern due to the streets only having one lane in both directions). In 2016, a few months after the opening of Walmart, tragedy struck once again after two traffic accidents occurred, leading to the death of one person and another person seriously being injured nearby the store.

In 2017, the construction of sidewalks and flashing lights began on the crosswalks nearby El Camino School (with the SRTS grant). However, our community is not limited to the school area. We have two parks nearby, so we had also expressed our concerns over the intersection of 5th Street and Elderberry Ave, which has a marked crosswalk that is used to get to Anthony Munoz Park. It is also used by many children to go to Elderberry School despite it being a great risk to cross. We had been told during the park project in question that work would be done to make this crossing safer. However, when the project was completed, no work was done (minor accidents have been reported at this crossing).

SRTS-COM has worked hard to make the area where our families and community live in a safe place. That is why we recognize the factors that make this work difficult and they are the following:

In the area of this project there is a school, two parks, two churches, a Walmart, residences, and the West Fifth apartment complex (190 units). The West Fifth Apartment complex in particular offers its tenants parking for one car and another optional space, which is NOT enough due to the large number of residents who live there. Because of this, many end up parking on the surrounding streets, even invading the restricted area and posing great risks to pedestrians.

The project that is intended to be approved in this area will have an even greater impact on 5th Street and the surrounding streets, not only in terms of traffic, but also environmentally. Due to the problem we mentioned earlier, many vehicles from the tenants in the apartment complex remained parked in the surrounding streets, causing the street sweeper to be unable to clean the street. This accumulation of garbage can pose serious problems for the sewer system during seasons where it rains.

The City of Ontario is working on a vision of the future of the growth and development of a City that values its community. However, this value and care for its community must also be consistent with its mission of creating and sustaining a safe environment.

With that in mind, we must ask the following question:

Why would a city who claims to value its community work on a project that will only increase an existing problem?

We hope that a decision is made for the benefit of the community and not out of economic interests.

Thank you.



Warmington RESIDENTIAL

September 9, 2024

Moses Kim
Warmington Residential
3090 Pullman Street
Costa Mesa, CA 92626

Thomas Grahn
Planning Department
303 East B Street
Ontario, CA 91764

RE: 1355 West Fifth Street - Ontario Sunrise Project (File: PDEV23-037 and PMTT23-008) Responses to Appeal Application Filed by Greg Gomez, Dated 9/6/2024

Dear Mr. Grahn:

As you know on August 27, 2024, Planning Commission approved PDEV23-037 and PMTT23-008, certified under resolution numbers PC24-042 and PC24-043. In Section 4 of the resolutions, the project has been determined the following concluding facts and reasons:

- *The proposed Tentative Tract Map is consistent with the goals, policies, plans, and exhibits of the Vision, Policy Plan (General Plan), and City Council Priorities components of The Ontario Plan 2050, and applicable area and specific plans, and planned unit developments.*
- *The design or improvement of the proposed Tentative Tract Map is consistent with the goals, policies, plans and exhibits of the Vision, Policy Plan (General Plan), and City Council Priorities components of The Ontario Plan 2050, and applicable specific plans and planned unit developments.*
- *The site is physically suitable for the type of development proposed.*
- *The site is physically suitable for the density/intensity of development proposed.*
- *The design of the subdivision or the proposed improvements thereon, are not likely to cause substantial environmental damage, or substantially and avoidably injure fish or wildlife, or their habitat.*
- *The design of the subdivision, or the type of improvements thereon, are not likely to cause serious public health problems.*

- *The design of the subdivision, or the type of improvements thereon, will not conflict with easements acquired by the public at large for access through, or use of property within, the proposed subdivision.*
- *The proposed development at the proposed location is consistent with the goals, policies, plans and exhibits of the Vision, Policy Plan (General Plan), and City Council Priorities components of The Ontario Plan 2050.*
- *The proposed development is compatible with those on adjoining sites in relation to location of buildings, with particular attention to privacy, views, any physical constraint identified on the site and the characteristics of the area in which the site is located.*
- *The proposed development will complement and/or improve upon the quality of existing development in the vicinity of the Project and the minimum safeguards necessary to protect the public health, safety and general welfare have been required of the proposed Project.*
- *The proposed development is consistent with the development standards and design guidelines set forth in the Development Code, or applicable specific plan or planned unit development.*

The Appeal Application filed by Greg Gomez dated September 6, 2024 states the following concerns. Warmington has provided responses in red below.

Grounds of appeal by category

Notices

1. The notice was sent in English and the city sign outside the property with the Notice of Filing was only on English leaving the Spanish community without properly understanding what the notice of filling was about it.

Response by Warmington: The notice sign located at the church property was approved and permitted by the City on June 25, 2024 per City requirements.

Resident are concern on several safety factors:

Traffic

Not only do the residents, school and churches from the immediate site project oppose this project, but also a Community Volunteer Group by the name of "Safety Routes Ontario-Montclair" that has been advocating for this zone in Ontario since 2012. They had been a key on keeping the surrounded streets of the project that is surrounded by 4 schools as safe as possible working with the City of Ontario, Ontario Police, Schools and

families of the importance of walking and biking to school. To prevent as much as possible more vehicles in the area. Please see attach document that was presented at the Planning Commission on August 27, 2024.

5th St in between Mountain Ave and Benson St, is a single line both ways that it is already impacted by Super Waltmart, condominiums, apartment complex, Anthony Munoz Park, 3 Churches, Sunrise Park, El Camino School and houses. Bringing this project will only bring more traffic, not enough street parking to all the people that live, work, attend local churches, play sports during the weekends with the AYSO 66 and Sunday Soccer League, These groups had practice everyday of the week at both of the parks. Also the families that attend the school on that street will be very affected as there will be no parking to drop, pick and attend their children's school evening events. The safety of the locals is already at risk of accidents and speeding at anytime of the day making it unsafe for the Ontario families that walk and bike to the 4 schools around.

Response by Warmington: An analysis of daily traffic volume and crash data along Fifth Street between Benson Ave and Mountain Ave was conducted in coordination with City staff and per City guidelines. Based on TJW Engineering's Ontario Sunrise Trip Generation Analysis and VMT Screening memorandum dated August 21, 2024, a trip generation analysis determined that (San Bernardino County Transportation Authority (SBCTA) Recommended Traffic Impact Analysis Guidelines for Vehicle Miles Traveled and Level of Service Assessment February 2020) the proposed project:

- Generates fewer than 50 peak hour trips and is exempt from further traffic analysis.
- Based on Opening Year with Project volumes and Figure 4C-3 contained in the CA MUTCD, a traffic signal is not warranted at the intersection of Elderberry Avenue and Fifth Street.
- Per SBCTA guidance and regulations, the proposed project would screen out from a Vehicle Miles Traveled Analysis as it is located within a low generating area.
- On its own, without taking any credit for existing church use trips, generates fewer than 100 new peak hour trips.

Based on TJW Engineering's Ontario Sunrise Daily Volume and Crash Accident Data memorandum dated August 23, 2024, the historical data from the California Highway Patrol Statewide Integrated Traffic Records System, between 2019 and 2023 along the segment of West Fifth Street identified:

- That only two correctable accidents during this period.

- An existing roadway segment analysis was conducted for Fifth Street between Benson Avenue and Mountain Avenue taking into consideration existing and proposed project daily traffic volumes. It was concluded that (per the City of Ontario General Plan thresholds/standards) the roadway will operate at acceptable level of service (capacity) with the proposed project traffic volumes.

At the City's direction, an All-Way-Stop Warrant Analysis by TJW Engineering dated January 26, 2023 was conducted for the intersection of Fifth Street and Elderberry Ave, and it was determined that an all-way stop was not warranted. The information was presented to City staff and these analyses are resulted in "less than significant" impacts.

The City has required the project to install a rectangular rapid flashing beacon (RRFB) at the intersection to enhance the existing crosswalk crossing at the intersection to be consistent with other existing enhanced crosswalks on Fifth Street between Benson Avenue and Mountain Avenue.

Health

Residents are concern of the air quality and pollution that more vehicles will bring to the area. There are many community residents who live within the 300/500 feet site radius who have adults and children who are asthmatic, with medical respiratory conditions.

Response by Warmington: The redevelopment of this property will follow all City and regional air quality standards.

Also the residents whose houses are around the project will lose their backyards privacy. This will affect them enormously on their emotionally heath as they will feel that are being seen all the time by the people living on the 3 floors condominiums right outside their back yard. Some have backyard pools that will limit them to use them freely as they will be observe all the time.

We the residents believe on our Healthy Ontario Initiative Mission which is to empower the community of Ontario to take ownership of its health and to make Ontario a model for healthy communities by improving physical, social, environmental, and economic health and well-being. We feel this housing project will be a hardship for the already residents with health issues.

Response by Warmington: In efforts to maintain privacy for neighboring residents, the project will abide to the following conditions of approval:

(g) All windows on the south side of the end units in Buildings 5 and 8, adjacent to the southwest and southeast corners of the project site, shall be frosted and view obscuring from those units, to provide privacy and screening to the existing single-family residences to the south. The screen windows shall be provided on the building plans and subject to Planning Department review and approval prior to issuance of building permits.

(h) Along the south property line, and where site conditions allow, additional trees shall be planted to screen the Project from the existing single-family residences to the south. The Applicant/Developer shall plant tall, narrow screening trees spaced 28 to 30 feet on-center from 36" box trees; consider the following options: Trsitania conferta (3" a year, mature height 30'- 50'), Podocarpus gracilior (3" a year, mature height of 50'-70'), and Quercus ilex (2" a year, mature height 40'-60'). The additional trees shall be shown on the Landscape Plan and subject to Planning Department review and approval prior to permit issuance.

Land Zoning

1.- Residents knows that 5th St it is a Low Density Residential Zone that has been change according to the Ontario Plan 2050 several times from Low to medium back and forth. On November 21 2013 at the City of Ontario City Council meeting the council approved unanimously to keep the zoning PGPA23-001 low density. We the community do not understand why a 2, 3 or 4 floors houses are being approved to be built on this low density area.

Response by Warmington: Fifth Street between Mountain and Benson has land uses of Low Density Residential, General Commercial, Open Space, Public Schools, Low Medium Density Residential and Medium Density Residential.

The City of Ontario approved the TOP 2050 Plan that included changing the subject parcel to Medium Density Land Use. At that time Warmington and the Sunrise Church moved forward with plans to develop the site for medium density. The City brought forward zone changes to be consistent with the approved General Plan and the Planning Commission approved them. When the zone changes came before the City Council they were met with community opposition. At that hearing the City Council decided to deny the zone changes and directed staff to then bring back a General Plan Amendment to remove the Medium Density land use designation. During this process, Warmington and the Sunrise Church made significant commitments to the redevelopment of the property. Soon thereafter an SB330 application was submitted to protect the development rights of the property in which significant resources were spent. This application locks in the development rights of a property to prevent jurisdictions from changing the rules of a housing development on an applicant during the review process.

On the Planning Commission meeting on August 27, 2024 it was brought to us that one of the Consideration for denial Under SB330 of a housing development project: has to complies with the general plan and zoning ordinance, and 1 of the 5 reasons for denial it is that if there is an impact to objective public health & safety standards that cannot be mitigated it might not be approved.

Response by Warmington: The project application was submitted under SB330 on June 2, 2023 and confirmed completion of the submittal requirements on October 2, 2023 which vested the project applications to the General Plan density allowance of 18.1 to 25.0 dwelling units at that time. By law, the vesting locks the project under the designation despite general plan and zoning changes that may occur thereafter. There are no objective public health & safety standards that have been identified as a result of this proposed development.

Please accept this letter as responses to addressing the Appealing Applicant's comments related to PDEV23-037 & PMTT23-008.

Sincerely,

Moses Kim

Moses Kim
Warmington Residential

RESOLUTION NO. _____

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF ONTARIO, CALIFORNIA, DENYING AN APPEAL AND UPHOLDING THE PLANNING COMMISSION'S DECISION TO APPROVE FILE NO. PMTT23-008, FOR TENTATIVE TRACT MAP NO. 20659, SUBDIVIDING 3.1 ACRES OF LAND INTO ONE PARCEL FOR CONDOMINIUM PURPOSES LOCATED AT 1355 WEST 5TH STREET, WITHIN THE LDR-5 (LOW DENSITY RESIDENTIAL – 2.1 TO 5.0 DU/AC) ZONING DISTRICT, AND MAKING FINDINGS IN SUPPORT THEREOF—APN: 1008-551-12.

WHEREAS, WARMINGTON RESIDENTIAL, LLC (hereinafter referred to "Applicant") filed an Application to requesting approval of Tentative Tract Map No. 20659 (File No. PMTT23-008), as described in the Subject of this Resolution is (herein after referred to as "Application" or "Project"); and

WHEREAS, the Application applies to 3.1 acres of land located at 1355 West 5th Street, that is presently occupied by existing Sunrise Ontario Church and is located within the LDR-5 (Low Density Residential — 2.1 to 5.0 DU/Acre) zoning district; and

WHEREAS, the properties to the north of the Project site are within the LDR-5 (Low Density Residential — 2.1 to 5.0 DU/Acre) and MDR-25 (Medium Density Residential — 18.1 to 25.0 DU/Acre) zoning districts and contain existing multiple-family and single- family land uses. The properties to the east and west are within the LDR-5 (Low Density Residential — 2.1 to 5.0 DU/Acre) and contain existing churches land uses. The properties to the south are within the LDR-5 (Low Density Residential — 2.1 to 5.0 DU/Acre) and contain existing single-family land uses; and

WHEREAS, on June 2, 2023, the Applicant submitted a Preliminary Review application (File No. PPRE23-002) that included plans, a project description, and the State of California's Senate Bill (SB 330) Preliminary Application form for a proposed 70 unit multiple-family condominium development on the Project site. The City reviewed that submittal for consistency with Government Code Section 65941.1 and on June 30, 2023, communicated to the Applicant information that was missing from their submittal. On October 2, 2023, the Applicant submitted Tentative Tract Map No. 20659 (File No. PMTT23-008) and a Development Plan (File No. PDEV23-037), completing their submittal requirements, thereby vesting their Preliminary Application and the ordinances, policies, and standards that apply to the Project; and

WHEREAS, the Project proposes the development of 70 multiple-family condominium units, including 7 moderate income affordable units, and associated site improvements including parking, landscape, infrastructure, among others, on approximately 3.1 acres of land within the Project site; and

WHEREAS, Tentative Tract Map No. 20659 (File No. PMTT23-008) will subdivide the 3.1-acre Project site into one parcel for condominium purposes; and

WHEREAS, Ontario Development Code Table 2.01-1 (Review Matrix) establishes that the Planning Commission has the responsibility and authority to review and act upon Interpretations and Land Use Determinations; and

WHEREAS, in response to the Appellants basis for the appeal staff has prepared a response to each of the items. Below is the Appellants statement and staff's response:

Appellants' Issue No. 1: "The notice was sent in English and the city sign outside the property with the Notice of Filing was only in English leaving the Spanish community without properly understanding what the notice of filing was about."

Staff Response: Public notice for the Project was provided pursuant to Development Code Section 2.03.010 (A) and (C)(1)(3) & (4). These requirements pertain to the information to be provided, newspaper publication, and the minimum boundary for notification requirements, respectively. The Development Code does not require that public notices be provided in multiple languages. Additionally, the public notice for both the Community Meeting and the Planning Commission meeting extended beyond the minimum 300-foot boundary and provided notice to 193 property owners for both meetings. Notice of the Planning Commission meeting was also published in the Inland Valley Daily Bulletin newspaper.

Projects that are proposed to be developed at a higher density or intensity than the existing surrounding neighborhood require supplemental public notice through the placement of a large public notification sign consisting of a 6-foot-tall freestanding sign, having a sign face measuring 4 feet tall by 8 feet wide posted on the project site. This sign allows for the applicant to attach information regarding scheduled public hearings regarding the Project. This public notification sign was posted on the site prior to the Community Meeting and notice for the Planning Commission meeting was posted 10-days prior to the public hearing.

Appellants' Issue No. 2: Resident are concerned on several safety factors:

a. Traffic
"Not only do the residents, school and churches from the immediate site project oppose this project, but also a Community Volunteer Group by the name of "Safety Routes Ontario-Montclair" that has been advocating for this zone in Ontario since 2012. They had been a key on keeping the surrounded streets of the project that is surrounded by 4 schools as safe as possible working with the City of Ontario, Ontario Police, Schools and families of the importance of walking and biking to school. To prevent as much as possible more vehicles in the area. The project has the potential for significant air pollution impacts.

5th St. in between Mountain Ave and Benson St. is a single lane both ways that is already impacted by Super Walmart, condominiums, apartment complex, Anthony Munoz Park, 3 Churches, Sunrise Park, El Camino School and houses. Bringing this project will only bring more traffic, not enough street parking to all the people that live, work, attend local churches, play sports during the weekends with the

AYSO 66 and Sunday Soccer League, these groups had practiced every day of the week at both of the parks. Also, the families that attend the school on that street will be very affected as there will be no parking to drop, pic and attend their children's school evening events. The safety of the locals is already at risk of accidents and speeding at any time of the day making it unsafe for the Ontario families that walk and bike to the 4 schools around.

Staff Response: Traffic along West 5th Street is experiencing increases of traffic locally by vehicles from the community accessing local commercial, residential, educational, and public areas and regionally due to cut-through traffic and its proximity to the 10 freeway. A traffic volume analysis was prepared to evaluate the Project's impact on the local street system. The Trip Generation and Vehicle Miles Traveled (VMT) Screening analysis determined that the proposed 70 residential unit project is projected to generate 472 daily trips, with 28 AM and 36 PM peak hour trips. Per the City's Engineering Department Traffic Division, the projected number of trips generated by the Project would not warrant conditioning the Project for any traffic related improvements. To address public safety concerns the City will be requiring the project to install a rectangular rapid flashing beacon (RRFB) at the intersection of 5th Street and Elderberry Avenue to enhance the existing crosswalk crossing at the intersection, to be consistent with other existing enhanced crosswalks on 5th Street between Benson Avenue and Mountain Avenue.

b. Health
Residents are concerned with the air quality and pollution that more vehicles will bring to the area. There are many community residents who live within the 300/500 feet site radius who have adults and children who are asthmatic, with medical respiratory conditions.

Also, the residents whose houses are around the project will lose their backyards privacy. This will affect them enormously on their emotionally health as they will feel that they are being seen all the time by the people living on the 3rd floor condominiums right outside their back yard. Some have backyard pools that will limit them to use them freely as they will be observed all the time.

We the residents believe on our Healthy Ontario Initiative Mission which is to empower the community of Ontario to take ownership of its health and to make Ontario a model for healthy communities by improving physical, social, environmental, and economic health and well-being. We feel this housing project will be a hardship for the already residents with health issues. The project has the potential for significant air pollution impacts.

Staff Response: An Air Quality and Greenhouse Gas (GHG) analysis was prepared for the project to evaluate both construction and operational Air Quality and GHG impacts. The analysis evaluated the project impacts using the South Coast Air Quality Management District (SCAQMD) thresholds for significance and found that operational and construction impacts for both Air Quality and GHG were below the SCAQMD thresholds of significance. Conditions of approval require the

project to comply with SCAQMD emission requirements for construction equipment and fugitive dust to minimize impacts to the surrounding community.

Conditions of approval were added to provide additional privacy to the existing residences south of the project site. These conditions include the installation of frosted view obscuring glass to the south facing windows of those units in the southwest and southeast corners of the project site. Additionally, additional tree plantings are required adjacent to the south property line, at a reduced spacing and increased tree size, so that as those trees mature additional privacy would be provided.

Appellants' Issue No. 3: "Land Zoning -Residents know that 5th St. it is a Low-Density Residential Zone that has been changed according to the Ontario Plan 2050 several times from Low to medium back and forth. On November 21, 2023, at the City of Ontario City Council meeting the council approved unanimously to keep the zoning PGPA23-001 low density. We the community do not understand why a 2, 3 or 4 floor houses are being approved to be built on this low-density area. On the Planning Commission meeting on August 27, 2024 it was brought to us that one of the Consideration for denial Under SB330 of a housing development project: has to comply with the general plan and zoning ordinance, and 1 of the 5 reasons for denial it is that if there is an impact to objective public health & safety standards that cannot be mitigated it might not be approved."

Staff Response: The applicant vested development rights under SB330 to develop the site utilizing development standards of the Medium Density Residential general plan designation. The project was designed to meet the development standards of the Medium Density Residential zoning district. The project proposes the construction of 3-story townhome units at a maximum height of 39 feet. Although higher than the surrounding neighborhood, the height of the proposed units is 4 feet higher than the 35-foot height limit allowed for the surrounding Low Density Residential (LDR-5) zoning.

Senate Bill 330, the Housing Crisis Act of 2019, and specifically The Housing Accountability Act ("HAA") prohibits a local agency from disapproving, or conditioning approval in a manner that renders infeasible, a housing development project for very low, low-, or moderate-income households unless the local agency makes specified written findings based on a preponderance of the evidence in the record that either: 1) the local government has already met its Regional Housing Needs Assessment (RHNA) requirement, 2) there is an impact to the public health and safety and this impact cannot be mitigated, 3) the property is agricultural land, 4) the approval of the project would violate State or federal law and this violation cannot be mitigated, or 5) the project is inconsistent with the zoning and land use designation and not identified in the general plan housing element RHNA inventory.

The applicant is correct that the project is not consistent with the General Plan land use designation of Low Density Residential (0 - 2du/ac); however, HAA states that in the event of an inconsistency between a general plan and zoning district land

uses with submittal of the Preliminary SB 330 Application, and if a local agency has complied with certain timing requirements, it can still require a project to comply with the objective standards and criteria of another zoning district that would be consistent with the general plan.

The Project, which consists of residential units only, is a "housing development project" and entitled to protection under the HAA. The Applicant submitted a SB 330 Preliminary Application for the Project following the City Council action on April 18, 2023, resulting in inconsistency between TOP 2050 Land Use Plan designation of MDR (Medium Density Residential), and the Zoning Map designation of LDR-5 (Low Density Residential – 2.1 to 5.0 DU/Acre) zoning district until such time the City completes the subsequent General Plan Amendment. As a result of this inconsistency between the General Plan Land Use Designation and Zoning District, the City cannot find the Project inconsistent with the LDR-5 (Low Density Residential – 2.1 to 5.0 DU/Acre) zoning district standards and criteria and cannot require a rezoning, where the Project is consistent with applicable, objective General Plan standards and criteria. The TOP 2050 MDR land use designation that was vested on October 2, 2023 as part of the Applicant's SB 330 Preliminary Review Application allows the applicant to develop the project site utilizing the MDR-25 (Medium Density Residential 18.1 to 25.0 DU/Acre) zoning district at a proposed Project density of 22.6 dwelling units per acre.

None of the preceding five requirements could be established for denial, therefore the Planning Commission approved the project.

WHEREAS, the Application is a project pursuant to the California Environmental Quality Act, commencing with Public Resources Code Section 21000 (hereinafter referred to as "CEQA"); and

WHEREAS, the Project is exempt from CEQA pursuant to a categorical exemption (listed in CEQA Guidelines Article 19, commencing with Section 15300) and the application of that categorical exemption is not barred by one of the exceptions set forth in CEQA Guidelines Section 15300.2; and

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

WHEREAS, the Project has been reviewed for consistency with the Housing Element of the Policy Plan component of The Ontario Plan 2050, as State Housing Element law (as prescribed in Government Code Sections 65580 through 65589.8) requires that development projects must be consistent with the Housing Element, if upon consideration of all its aspects, it is found to further the purposes, principals, goals, and policies of the Housing Element; and

WHEREAS, the Project is located within the Airport Influence Area of Ontario International Airport, which encompasses lands within parts of San Bernardino, Riverside, and Los Angeles Counties, and is subject to, and must be consistent with, the policies

and criteria set forth in the Ontario International Airport Land Use Compatibility Plan (hereinafter referred to as "ALUCP"), which applies only to jurisdictions within San Bernardino County, and addresses the noise, safety, airspace protection, and overflight impacts of current and future airport activity; and

WHEREAS, City of Ontario Development Code Division 2.03 (Public Hearings) prescribes the manner in which public notification shall be provided and hearing procedures to be followed, and all such notifications and procedures have been completed; and

WHEREAS, on July 15, 2024, the Development Advisory Board of the City of Ontario conducted a hearing to consider the Project, and concluded said hearing on that date, voting to issue Decision No. DAB24-026 recommending that the Planning Commission approve the Application; and

WHEREAS, on August 27, 2024, the Planning Commission of the City of Ontario conducted a hearing to consider the Project, and concluded said hearing on that date, voting to issue Resolution No. PC23-042, to approve the Application by a vote of 5-0; and

WHEREAS, on September 6, 2024, Greg Gomez submitted an appeal of the Planning Commission's decision to approve File Nos. PMTT23-008 and PDEV23-037. The basis for the appeal lies in his belief that the project was not properly noticed, that traffic and health impacts of the project will negatively impact surrounding properties, and that the project is inconsistent with development on surrounding properties; and

WHEREAS, on October 15, 2024, the City Council of the City of Ontario conducted a public hearing to consider an appeal of the Planning Commission's decision to approve the project, and concluded said hearing on that date; and

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

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

SECTION 1: ***Environmental Determination and Findings.*** As the decision-making authority for the Project, the City Council has reviewed and considered the information contained in the administrative record for the Project. Based upon the facts and information contained in the administrative record, including all written and oral evidence presented to the City Council, the City Council finds as follows:

(1) The administrative record has been completed in compliance with CEQA, the State CEQA Guidelines, and the City of Ontario Local CEQA Guidelines; and

(2) The Project is categorically exempt from environmental review pursuant to Section 15332 (Class 32, In-fill Development Projects) of the CEQA Guidelines, which consists of the following conditions:

(a) *The proposed Project is consistent with the applicable general plan designation and all applicable general plan policies as well as with applicable zoning designation and regulations.* The proposed Project is located within the LDR (Low Density Residential) land use designation of the Policy Plan (general plan) Land Use Map; however, pursuant to SB 330 and Government Code Section 65941.1, the Project vested under the MDR-25 (Medium Density Residential—18.1 to 25.0 DUs/Acre) zoning district. The proposed Project is consistent with all applicable Policy Plan policies, as well as with the requirements of the MDR-25 (Medium Density Residential—18.1 to 25.0 DUs/Acre) zoning district; and

(b) *The proposed development occurs within city limits on a project site of no more than five acres substantially surrounded by urban uses.* The Project is proposed within the established boundaries of the City of Ontario, on a project site totaling 3.1- acres of land, which is surrounded by established development on all sides and consists of a mix of multiple-family, single-family, and church land uses; and

(c) *The Project site has no value as habitat for endangered, rare, or threatened species.* The site is located in an urbanized area, is developed with an existing church, related parking, and ornamental landscaping. The entire Project site has been disturbed by previous development and does not contain any sensitive habitat, endangered, rare, or threatened species or habitat that could support sensitive species; and

(d) *Approval of the Project would not result in any significant effects relating to traffic, noise, air quality, or water quality.* The residential development is similar to, and of no greater impact than other allowed uses and development projects within the MDR- 25 (Medium Density Residential—18.1 to 25.0 DUs/Acre) zoning district. The Project would not result in any significant impacts through implementation of required state, regional, and local development and performance standards, and as demonstrated in the Air Quality, GHG, Noise, Trip Generation and vehicle miles traveled ("VMT") analysis, and the Preliminary Water Quality Management Plan ("PWQMP") prepared for the Project; and

(e) *The site is adequately served by all required utilities and public services.* All necessary wet and dry utilities are within the public street and are readily available for connection; and

(3) The application of the categorical exemption is not barred by one of the exceptions set forth in CEQA Guidelines Section 15300.2; and

(4) The determination of CEQA exemption reflects the independent judgment of the City Council.

SECTION 2: ***Housing Element Compliance.*** Pursuant to the requirements of California Government Code Chapter 3, Article 10.6, commencing with Section 65580, as the decision-making authority for the Project, the City Council finds that based on the facts and information contained in the Application and supporting documentation, at the time of Project implementation, the Project is consistent with the Housing Element of the Policy Plan (General Plan) component of The Ontario Plan 2050, as the Project site is not one of the properties in the Housing Element Sites Inventory contained in Tables B-1 and B-2 of the Housing Element Technical Report.

SECTION 3: ***Airport Land Use Compatibility Plan ("ALUCP") Compliance.*** The California State Aeronautics Act (Public Utilities Code Section 21670 et seq.) requires that an Airport Land Use Compatibility Plan be prepared for all public use airports in the State; and requires that local land use plans and individual development proposals must be consistent with the policies set forth in the adopted Airport Land Use Compatibility Plan.

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

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

(1) ***The proposed Tentative Tract Map is consistent with the goals, policies, plans, and exhibits of the Vision, Policy Plan (General Plan), and City Council Priorities components of The Ontario Plan 2050, and applicable area and specific plans, and planned unit developments.*** The proposed Project is located within the LDR (Low Density Residential) land use designation of the Policy Plan (general plan) Land Use Map; however, pursuant to SB 330 and Government Code Section 65941.1, the

Project vested under the MDR (Medium Density Residential) land use designation and proposes to utilize development standards applicable to the MDR-25 (Medium Density Residential—18.1 to 25.0 DUs/Acre) zoning district. The proposed Project is consistent with all applicable Policy Plan policies, as well as with the requirements of the MDR-25 (Medium Density Residential—18.1 to 25.0 DUs/Acre) zoning district. The development standards and conditions under which the proposed Project will be constructed and maintained, is consistent with the goals, policies, plans, and exhibits of the Vision, Policy Plan (General Plan), and City Council Priorities components of The Ontario Plan; and

(2) ***The design or improvement of the proposed Tentative Tract Map is consistent with the goals, policies, plans and exhibits of the Vision, Policy Plan (General Plan), and City Council Priorities components of The Ontario Plan 2050, and applicable specific plans and planned unit developments.*** The proposed Tentative Tract Map is located within the LDR (Low Density Residential) land use district of the Policy Plan Land Use Map, and the LDR-5 (Low Density Residential – 2.1 to 5.0 DU/Acre) zoning district; however, pursuant to SB 330 and Government Code Section 65941.1, the Project vested under the MDR (Medium Density Residential) land use designation and proposes to utilize development standards applicable to the MDR-25 (Medium Density Residential—18.1 to 25.0 DUs/Acre) zoning district. The proposed design or improvement of the subdivision is consistent with the goals, policies, plans, and exhibits of the Vision, Policy Plan (General Plan), and City Council Priorities components of The Ontario Plan 2050, as the Project will contribute to providing "[a] high level of design quality resulting in neighborhoods, commercial areas, public spaces, parks, and streetscapes that are attractive, safe, functional, human-scale, and distinct" (Goal CD-2). Furthermore, the Project will promote the City's policy to "create distinct residential neighborhoods that promote a sense of community and identity by emphasizing access, connectivity, livability, and social interaction through such elements as:

- A pattern of smaller, walkable blocks that promote activity, safety, and access to nearby amenities and services;
- Varied parcel sizes and lot configurations to accommodate a diversity of housing types;
- Traffic calming measures to slow traffic and promote walkability while maintaining acceptable traffic flows and emergency evacuation access;
- Floor plans that encourage views onto the street and de-emphasize the visual and physical dominance of garages (introducing the front porch as the "outdoor living room"), as appropriate; and

- Landscaped parkways, with sidewalks separated from the curb and designed to maximize safety, comfort, and aesthetics for all users." (Policy CD-2.2 Neighborhood Design).

(3) ***The site is physically suitable for the type of development proposed.*** The proposed Project is located within the LDR (Low Density Residential) land use designation of the Policy Plan (general plan) Land Use Map; however, pursuant to SB 330 and Government Code Section 65941.1, the Project vested under the MDR-25 (Medium Density Residential—18.1 to 25.0 DUs/Acre) zoning district. The Project site meets the minimum lot area and dimensions of the MDR-25 (Medium Density Residential—18.1 to 25.0 DUs/Acre) zoning district and is physically suitable for the type of residential development proposed in terms of zoning, land use and development activity proposed, and existing and proposed site conditions.

(4) ***The site is physically suitable for the density/intensity of development proposed.*** The proposed Project is located within the LDR (Low Density Residential) land use designation of the Policy Plan (general plan) Land Use Map; however, pursuant to SB 330 and Government Code Section 65941.1, the Project vested under the MDR-25 (Medium Density Residential—18.1 to 25.0 DUs/Acre) zoning district. The Project site is proposed for residential development at a density of 22.6 DUs/acre. The Project site meets the minimum lot area and dimensions of the MDR-25 (Medium Density Residential—18.1 to 25.0 DUs/Acre) zoning district and is physically suitable for this proposed density / intensity of development.

(5) ***The design of the subdivision or the proposed improvements thereon, are not likely to cause substantial environmental damage, or substantially and avoidably injure fish or wildlife, or their habitat.*** The Project site is not located in an area that has been identified as containing species identified as a candidate, sensitive, or special status species in local or regional plans, policies or regulations or by the California Department of Fish and Wildlife or the U.S. Fish and Wildlife Service, nor does the site contain any riparian habitat or other sensitive natural community, and no wetland habitat is present on site; therefore, the design of the subdivision, or improvements proposed thereon, are not likely to cause substantial environmental damage, or substantially and avoidably injure fish or wildlife, or their habitat.

(6) ***The design of the subdivision, or the type of improvements thereon, are not likely to cause serious public health problems.*** The design of the proposed subdivision, and the multiple-family residential buildings, landscaping, and parking improvements existing or proposed on the Project site, are not likely to cause serious public health problems, as the Project is not anticipated to involve the transport, use, or disposal of hazardous materials during either construction or Project implementation, include the use of hazardous materials or volatile fuels, nor are there any known stationary commercial or industrial land uses within close proximity to the

subject site that use/store hazardous materials to the extent that they would pose a significant hazard to visitors or occupants to the Project site.

(7) ***The design of the subdivision, or the type of improvements thereon, will not conflict with easements acquired by the public at large for access through, or use of property within, the proposed subdivision.*** The proposed subdivision has provided for all necessary public easements and dedications for access through, or use of property within, the proposed subdivision. Furthermore, all such public easements and dedications have been designed pursuant to: (a) the requirements of the Policy Plan component of The Ontario Plan 2050 and applicable area plans; (b) applicable specific plans or planned unit developments; (c) applicable provisions of the City of Ontario Development Code; (d) applicable master plans and design guidelines of the City; and (e) applicable Standard Drawings of the City.

SECTION 5: ***City Council Action.*** Based upon the findings and conclusions set forth in the Sections above, the City Council hereby UPHOLDS the Planning Commission's decision to approve the herein described Applications (File Nos. PMTT23-008 and PDEV23-037).

SECTION 6: ***Indemnification.*** The Applicant shall agree to defend, indemnify and hold harmless, the City of Ontario or its agents, officers, and employees from any claim, action or proceeding against the City of Ontario or its agents, officers or employees to attack, set aside, void, or annul this approval. The City of Ontario shall promptly notify the applicant of any such claim, action, or proceeding, and the City of Ontario shall cooperate fully in the defense.

SECTION 7: ***Custodian of Records.*** The documents and materials that constitute the record of proceedings on which these findings have been based are located at the City of Ontario City Hall, 303 East "B" Street, Ontario, California 91764. The custodian for these records is the City Clerk of the City of Ontario.

SECTION 8: ***Certification to Adoption.*** The City Clerk shall certify to the adoption of the Resolution.

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

PASSED, APPROVED, AND ADOPTED this 15th day of October, 2024.

_____

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. 2024- was duly passed and adopted by the City Council of the City of Ontario at their regular meeting held October 15, 2024 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. 2024- duly passed and adopted by the Ontario City Council at their regular meeting held October 15, 2024.

_____
SHEILA MAUTZ, CITY CLERK

(SEAL)

RESOLUTION NO. _____

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF ONTARIO, CALIFORNIA, DENYING AN APPEAL AND UPHOLDING THE PLANNING COMMISSION'S DECISION TO APPROVE FILE NO. PDEV23-037, A DEVELOPMENT PLAN TO CONSTRUCT 70 MULTIPLE-FAMILY RESIDENTIAL CONDOMINIUM UNITS, INCLUDING 7 MODERATE INCOME AFFORDABLE UNITS ON 3.1 ACRES OF LAND LOCATED AT 1355 WEST 5TH STREET, WITHIN THE LDR-5 (LOW DENSITY RESIDENTIAL – 2.1 TO 5.0 DU/AC) ZONING DISTRICT, AND MAKING FINDINGS IN SUPPORT THEREOF—APN: 1008-551-12.

WHEREAS, WARMINGTON RESIDENTIAL, LLC (hereinafter referred to "Applicant") filed an Application to requesting approval of a Development Plan (File No. PDEV23-037), as described in the Subject of this Resolution (herein after referred to as "Application" or "Project"); and

WHEREAS, the Application applies to 3.1 acres of land located at 1355 West 5th Street, that is presently occupied by existing Sunrise Ontario Church and is located within the LDR-5 (Low Density Residential — 2.1 to 5.0 DU/Acre) zoning district; and

WHEREAS, the properties to the north of the Project site are within the LDR-5 (Low Density Residential — 2.1 to 5.0 DU/Acre) and MDR-25 (Medium Density Residential — 18.1 to 25.0 DU/Acre) zoning districts and contain existing multiple-family and single- family land uses. The properties to the east and west are within the LDR-5 (Low Density Residential — 2.1 to 5.0 DU/Acre) and contain existing churches land uses. The properties to the south are within the LDR-5 (Low Density Residential — 2.1 to 5.0 DU/Acre) and contain existing single-family land uses; and

WHEREAS, on June 2, 2023, the Applicant submitted a Preliminary Review application (File No. PPRE23-002) that included plans, a project description, and the State of California's Senate Bill (SB 330) Preliminary Application form for a proposed 70 unit multiple-family condominium development on the Project site. The City reviewed that submittal for consistency with Government Code Section 65941.1 and on June 30, 2023, communicated to the Applicant information that was missing from their submittal. On October 2, 2023, the Applicant submitted Tentative Tract Map No. 20659 (File No. PMTT23-008) and a Development Plan (File No. PDEV23-037), completing the submittal requirements, thereby vesting their Preliminary Application and the ordinances, policies, and standards that apply to the Project; and

WHEREAS, the Project proposes the development of 70 multiple-family condominium units, including 7 moderate income affordable units, and associated site improvements including parking, landscape, infrastructure, among others, on approximately 3.1 acres of land within the Project site; and

WHEREAS, Ontario Development Code Table 2.01-1 (Review Matrix) establishes that the Planning Commission has the responsibility and authority to review and act upon Interpretations and Land Use Determinations; and

WHEREAS, in response to the Appellants basis for the appeal staff has prepared a response to each of the items. Below is the Appellants statement and staff's response:

Appellants' Issue No. 1: "The notice was sent in English and the city sign outside the property with the Notice of Filing was only in English leaving the Spanish community without properly understanding what the notice of filing was about."

Staff Response: Public notice for the Project was provided pursuant to Development Code Section 2.03.010 (A) and (C)(1)(3) & (4). These requirements pertain to the information to be provided, newspaper publication, and the minimum boundary for notification requirements, respectively. The Development Code does not require that public notices be provided in multiple languages. Additionally, the public notice for both the Community Meeting and the Planning Commission meeting extended beyond the minimum 300-foot boundary and provided notice to 193 property owners for both meetings. Notice of the Planning Commission meeting was also published in the Inland Valley Daily Bulletin newspaper.

Projects that are proposed to be developed at a higher density or intensity than the existing surrounding neighborhood require supplemental public notice through the placement of a large public notification sign consisting of a 6-foot-tall freestanding sign, having a sign face measuring 4 feet tall by 8 feet wide posted on the project site. This sign allows for the applicant to attach information regarding scheduled public hearings regarding the Project. This public notification sign was posted on the site prior to the Community Meeting and notice for the Planning Commission meeting was posted 10-days prior to the public hearing.

Appellants' Issue No. 2: Resident are concerned on several safety factors:

a. Traffic
"Not only do the residents, school and churches from the immediate site project oppose this project, but also a Community Volunteer Group by the name of "Safety Routes Ontario-Montclair" that has been advocating for this zone in Ontario since 2012. They had been a key on keeping the surrounded streets of the project that is surrounded by 4 schools as safe as possible working with the City of Ontario, Ontario Police, Schools and families of the importance of walking and biking to school. To prevent as much as possible more vehicles in the area. The project has the potential for significant air pollution impacts.

5th St. in between Mountain Ave and Benson St. is a single lane both ways that is already impacted by Super Walmart, condominiums, apartment complex, Anthony Munoz Park, 3 Churches, Sunrise Park, El Camino School and houses. Bringing this project will only bring more traffic, not enough street parking to all the people that live, work, attend local churches, play sports during the weekends with the AYSO 66 and Sunday Soccer League, these groups had practiced every day of

the week at both of the parks. Also, the families that attend the school on that street will be very affected as there will be no parking to drop, pic and attend their children's school evening events. The safety of the locals is already at risk of accidents and speeding at any time of the day making it unsafe for the Ontario families that walk and bike to the 4 schools around.

Staff Response: Traffic along West 5th Street is experiencing increases of traffic locally by vehicles from the community accessing local commercial, residential, educational, and public areas and regionally due to cut-through traffic and its proximity to the 10 freeway. A traffic volume analysis was prepared to evaluate the Project's impact on the local street system. The Trip Generation and Vehicle Miles Traveled (VMT) Screening analysis determined that the proposed 70 residential unit project is projected to generate 472 daily trips, with 28 AM and 36 PM peak hour trips. Per the City's Engineering Department Traffic Division, the projected number of trips generated by the Project site would not warrant conditioning the Project for any traffic related improvements. To address public safety concerns the City will be requiring the project to install a rectangular rapid flashing beacon (RRFB) at the intersection of 5th Street and Elderberry Avenue to enhance the existing crosswalk crossing at the intersection, to be consistent with other existing enhanced crosswalks on 5th Street between Benson Avenue and Mountain Avenue.

b. Health
Residents are concerned with the air quality and pollution that more vehicles will bring to the area. There are many community residents who live within the 300/500 feet site radius who have adults and children who are asthmatic, with medical respiratory conditions.

Also, the residents whose houses are around the project will lose their backyards privacy. This will affect them enormously on their emotionally health as they will feel that they are being seen all the time by the people living on the 3rd floor condominiums right outside their back yard. Some have backyard pools that will limit them to use them freely as they will be observed all the time.

We the residents believe on our Healthy Ontario Initiative Mission which is to empower the community of Ontario to take ownership of its health and to make Ontario a model for healthy communities by improving physical, social, environmental, and economic health and well-being. We feel this housing project will be a hardship for the already residents with health issues. The project has the potential for significant air pollution impacts.

Staff Response: An Air Quality and Greenhouse Gas (GHG) analysis was prepared for the project to evaluate both construction and operational Air Quality and GHG impacts. The analysis evaluated the project impacts using the South Coast Air Quality Management District (SCAQMD) thresholds for significance and found that operational and construction impacts for both Air Quality and GHG were below the SCAQMD thresholds of significance. Conditions of approval require the

project to comply with SCAQMD emission requirements for construction equipment and fugitive dust to minimize impacts to the surrounding community.

Conditions of approval were added to provide additional privacy to the existing residences south of the project site. These conditions include the installation of frosted view obscuring glass to the south facing windows of those units in the southwest and southeast corners of the project site. Additionally, additional tree plantings are required adjacent to the south property line, at a reduced spacing and increased tree size, so that as those trees mature additional privacy would be provided.

Appellants' Issue No. 3: "Land Zoning -Residents know that 5th St. it is a Low-Density Residential Zone that has been changed according to the Ontario Plan 2050 several times from Low to medium back and forth. On November 21, 2023, at the City of Ontario City Council meeting the council approved unanimously to keep the zoning PGPA23-001 low density. We the community do not understand why a 2, 3 or 4 floor houses are being approved to be built on this low-density area. On the Planning Commission meeting on August 27, 2024 it was brought to us that one of the Consideration for denial Under SB330 of a housing development project: has to comply with the general plan and zoning ordinance, and 1 of the 5 reasons for denial it is that if there is an impact to objective public health & safety standards that cannot be mitigated it might not be approved."

Staff Response: The applicant vested development rights under SB330 to develop the site utilizing development standards of the Medium Density Residential general plan designation. The project was designed to meet the development standards of the Medium Density Residential zoning district. The project proposes the construction of 3-story townhome units at a maximum height of 39 feet. Although higher than the surrounding neighborhood, the height of the proposed units is 4 feet higher than the 35-foot height limit allowed for the surrounding Low Density Residential (LDR-5) zoning.

Senate Bill 330, the Housing Crisis Act of 2019, and specifically The Housing Accountability Act ("HAA") prohibits a local agency from disapproving, or conditioning approval in a manner that renders infeasible, a housing development project for very low, low-, or moderate-income households unless the local agency makes specified written findings based on a preponderance of the evidence in the record that either: 1) the local government has already met its Regional Housing Needs Assessment (RHNA) requirement, 2) there is an impact to the public health and safety and this impact cannot be mitigated, 3) the property is agricultural land, 4) the approval of the project would violate State or federal law and this violation cannot be mitigated, or 5) the project is inconsistent with the zoning and land use designation and not identified in the general plan housing element RHNA inventory.

The applicant is correct that the project is not consistent with the General Plan land use designation of Low Density Residential (0 - 2du/ac); however, HAA states that in the event of an inconsistency between a general plan and zoning district land

uses with submittal of the Preliminary SB 330 Application, and if a local agency has complied with certain timing requirements, it can still require a project to comply with the objective standards and criteria of another zoning district that would be consistent with the general plan.

The Project, which consists of residential units only, is a "housing development project" and entitled to protection under the HAA. The Applicant submitted a SB 330 Preliminary Application for the Project following the City Council action on April 18, 2023, resulting in inconsistency between TOP 2050 Land Use Plan designation of MDR (Medium Density Residential), and the Zoning Map designation of LDR-5 (Low Density Residential – 2.1 to 5.0 DU/Acre) zoning district until such time the City completes the subsequent General Plan Amendment. As a result of this inconsistency between the General Plan Land Use Designation and Zoning District, the City cannot find the Project inconsistent with the LDR-5 (Low Density Residential – 2.1 to 5.0 DU/Acre) zoning district standards and criteria and cannot require a rezoning, where the Project is consistent with applicable, objective General Plan standards and criteria. The TOP 2050 MDR land use designation that was vested on October 2, 2023 as part of the Applicant's SB 330 Preliminary Review Application allows the applicant to develop the project site utilizing the MDR-25 (Medium Density Residential 18.1 to 25.0 DU/Acre) zoning district at a proposed Project density of 22.6 dwelling units per acre.

None of the preceding five requirements could be established for denial, therefore the Planning Commission approved the project.

WHEREAS, the Application is a project pursuant to the California Environmental Quality Act, commencing with Public Resources Code Section 21000 (hereinafter referred to as "CEQA"); and

WHEREAS, the Project is categorically exempt from the requirements of the California Environmental Quality Act (CEQA) pursuant to Section 15332 (Class 32, In-fill Development Projects) and the application of that categorical exemption is not barred by one of the exceptions set forth in CEQA Guidelines Section 15300.2; and

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

WHEREAS, the Project has been reviewed for consistency with the Housing Element of the Policy Plan component of The Ontario Plan 2050, as State Housing Element law (as prescribed in Government Code Sections 65580 through 65589.8) requires that development projects must be consistent with the Housing Element, if upon consideration of all its aspects, it is found to further the purposes, principals, goals, and policies of the Housing Element; and

WHEREAS, the Project is located within the Airport Influence Area of Ontario International Airport, which encompasses lands within parts of San Bernardino, Riverside, and Los Angeles Counties, and is subject to, and must be consistent with, the policies

and criteria set forth in the Ontario International Airport Land Use Compatibility Plan (hereinafter referred to as "ALUCP"), which applies only to jurisdictions within San Bernardino County, and addresses the noise, safety, airspace protection, and overflight impacts of current and future airport activity; and

WHEREAS, City of Ontario Development Code Division 2.03 (Public Hearings) prescribes the manner in which public notification shall be provided and hearing procedures to be followed, and all such notifications and procedures have been completed; and

WHEREAS, on July 15, 2024, the Development Advisory Board of the City of Ontario conducted a hearing to consider the Project, and concluded said hearing on that date, voting to issue Decision No. DAB24-027 recommending that the Planning Commission approve the Application; and

WHEREAS, on August 27, 2024, the Planning Commission of the City of Ontario conducted a hearing to consider the Project, and concluded said hearing on that date, voting to issue Resolution No. PC23-043, to approve the Application by a vote of 5-0; and

WHEREAS, on September 6, 2024, Greg Gomez submitted an appeal of the Planning Commission's decision to approve File Nos. PMTT23-008 and PDEV23-037. The basis for the appeal lies in his belief that the project was not properly noticed, that traffic and health impacts of the project will negatively impact surrounding properties, and that the project is inconsistent with development on surrounding properties; and

WHEREAS, on October 15, 2024, the City Council of the City of Ontario conducted a public hearing to consider an appeal of the Planning Commission's decision to approve the project, and concluded said hearing on that date; and

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

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

SECTION 1: ***Environmental Determination and Findings.*** As the decision-making authority for the Project, the City Council has reviewed and considered the information contained in the administrative record for the Project. Based upon the facts and information contained in the administrative record, including all written and oral evidence presented to the City Council, the City Council finds as follows:

(1) The administrative record has been completed in compliance with CEQA, the State CEQA Guidelines, and the City of Ontario Local CEQA Guidelines; and

(2) The Project is categorically exempt from environmental review pursuant to Section 15332 (Class 32, In-fill Development Projects) of the CEQA Guidelines, which consists of the following conditions:

(a) *The proposed Project is consistent with the applicable general plan designation and all applicable general plan policies as well as with applicable zoning designation and regulations.* The proposed Project is located within the LDR (Low Density Residential) land use designation of the Policy Plan (general plan) Land Use Map; however, pursuant to SB 330 and Government Code Section 65941.1, the Project vested under the MDR-25 (Medium Density Residential—18.1 to 25.0 DUs/Acre) zoning district. The proposed Project is consistent with all applicable Policy Plan policies, as well as with the requirements of the MDR-25 (Medium Density Residential—18.1 to 25.0 DUs/Acre) zoning district; and

(b) *The proposed development occurs within city limits on a project site of no more than five acres substantially surrounded by urban uses.* The Project is proposed within the established boundaries of the City of Ontario, on a project site totaling 3.1- acres of land, which is surrounded by established development on all sides and consists of a mix of multiple-family, single-family, and church land uses; and

(c) *The Project site has no value as habitat for endangered, rare, or threatened species.* The site is located in an urbanized area, is developed with an existing church, related parking, and ornamental landscaping. The entire Project site has been disturbed by previous development and does not contain any sensitive habitat, endangered, rare, or threatened species or habitat that could support sensitive species; and

(d) *Approval of the Project would not result in any significant effects relating to traffic, noise, air quality, or water quality.* The residential development is similar to, and of no greater impact than other allowed uses and development projects within the MDR- 25 (Medium Density Residential—18.1 to 25.0 DUs/Acre) zoning district. The Project would not result in any significant impacts through implementation of required state, regional, and local development and performance standards, and as demonstrated in the Air Quality, GHG, Noise, Trip Generation and vehicle miles traveled ("VMT") analysis, and the Preliminary Water Quality Management Plan ("PWQMP") prepared for the Project; and

(e) *The site is adequately served by all required utilities and public services.* All necessary wet and dry utilities are within the public street and are readily available for connection; and

(3) The application of the categorical exemption is not barred by one of the exceptions set forth in CEQA Guidelines Section 15300.2; and

(4) The determination of CEQA exemption reflects the independent judgment of the City Council.

SECTION 2: ***Housing Element Compliance.*** Pursuant to the requirements of California Government Code Chapter 3, Article 10.6, commencing with Section 65580, as the decision-making authority for the Project, the City Council finds that based on the facts and information contained in the Application and supporting documentation, at the time of Project implementation, the Project is consistent with the Housing Element of the Policy Plan (General Plan) component of The Ontario Plan 2050, as the Project site is not one of the properties in the Housing Element Sites Inventory contained in Tables B-1 and B-2 of the Housing Element Technical Report.

SECTION 3: ***Airport Land Use Compatibility Plan ("ALUCP") Compliance.*** The California State Aeronautics Act (Public Utilities Code Section 21670, et seq.) requires that an Airport Land Use Compatibility Plan be prepared for all public use airports in the State; and requires that local land use plans and individual development proposals must be consistent with the policies set forth in the adopted Airport Land Use Compatibility Plan.

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

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

(1) ***The proposed development at the proposed location is consistent with the goals, policies, plans and exhibits of the Vision, Policy Plan (General Plan), and City Council Priorities components of The Ontario Plan 2050.*** The proposed Project is located within the LDR (Low Density Residential) land use designation of the Policy Plan (general plan) Land Use Map; however, pursuant to SB 330 and Government Code Section 65941.1, the Project vested under the MDR (Medium Density Residential) land use

designation and proposes to utilize development standards applicable to the MDR-25 (Medium Density Residential—18.1 to 25.0 DUs/Acre) zoning district. The proposed Project is consistent with all applicable Policy Plan policies, as well as with the requirements of the MDR-25 (Medium Density Residential—18.1 to 25.0 DUs/Acre) zoning district. The development standards and conditions under which the proposed Project will be constructed and maintained, is consistent with the goals, policies, plans, and exhibits of the Vision, Policy Plan (General Plan), and City Council Priorities components of The Ontario Plan 2050.

(2) ***The proposed development is compatible with those on adjoining sites in relation to location of buildings, with particular attention to privacy, views, any physical constraint identified on the site and the characteristics of the area in which the site is located.*** The Project has been designed consistent with the requirements of the City of Ontario Development Code, including standards relative to the particular land use proposed, building and parking setbacks, building height, number of off-street parking spaces, on- site and off-site landscaping, and fences and walls, among others.

(3) ***The proposed development will complement and/or improve upon the quality of existing development in the vicinity of the Project and the minimum safeguards necessary to protect the public health, safety and general welfare have been required of the proposed Project.*** The City Council has required certain safeguards, and impose certain conditions of approval, which have been established to ensure that: [i] the purposes of the Development Code are maintained; [ii] the Project will not endanger the public health, safety or general welfare; [iii] the Project will not result in any significant environmental impacts; [iv] the Project will be in harmony with the area in which it is located; and [v] the Project will be in full conformity with the Vision, City Council Priorities and Policy Plan components of The Ontario Plan 2050, and the Development Code.

(4) ***The proposed development is consistent with the development standards and design guidelines set forth in the Development Code, or applicable specific plan or planned unit development*****.** The proposed Project has been reviewed for consistency with the general development standards and guidelines of the Development Code that are applicable to the proposed Project, including building intensity, building and parking setbacks, building height, amount of off-street parking and loading spaces, parking lot dimensions, design and landscaping, bicycle parking, on-site landscaping, and fences and walls, as-well-as those development standards and guidelines specifically related to the particular land use being proposed (Medium Density Residential). As a result of this review, the City Council has determined that the Project, when implemented in conjunction with the conditions of approval, will be consistent with the development standards and guidelines described in the Development Code.

SECTION 5: ***City Council Action.*** Based upon the findings and conclusions set forth in the Sections above, the City Council hereby UPHOLDS the Planning Commission's decision to approve the herein described Applications (File Nos. PMTT23-008 and PDEV23-037).

SECTION 6: ***Indemnification.*** The Applicant shall agree to defend, indemnify and hold harmless, the City of Ontario or its agents, officers, and employees from any claim, action or proceeding against the City of Ontario or its agents, officers or employees to attack, set aside, void, or annul this approval. The City of Ontario shall promptly notify the applicant of any such claim, action, or proceeding, and the City of Ontario shall cooperate fully in the defense.

SECTION 7: ***Custodian of Records.*** The documents and materials that constitute the record of proceedings on which these findings have been based are located at the City of Ontario City Hall, 303 East "B" Street, Ontario, California 91764. The custodian for these records is the City Clerk of the City of Ontario.

SECTION 8: ***Certification to Adoption.*** The City Clerk shall certify to the adoption of the Resolution.

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

PASSED, APPROVED, AND ADOPTED this 15th day of October, 2024.

_____
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. 2024- was duly passed and adopted by the City Council of the City of Ontario at their regular meeting held October 15, 2024 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. 2024- duly passed and adopted by the Ontario City Council at their regular meeting held October 15, 2024.

_____
SHEILA MAUTZ, CITY CLERK

(SEAL)

CITY OF ONTARIO *Agenda Report* **October 15, 2024**	**SECTION:** **PUBLIC HEARING**
Department: Broadband Operations Prepared By: Jimmy Chang Department: Prepared By: Jimmy Chang Staff Member Presenting: Jimmy Chang, Broadband General Manager Approved By:	Submitted To: Council/OHA Approved: _____ Continued To: _____ Denied: _____ Item No: 22

SUBJECT: A RESOLUTION TO ESTABLISH BROADBAND FEES FOR ONTARIONET

RECOMMENDATION: That the City Council adopt a Resolution to adopt a schedule of fees, as well as charges for late or declined payments, including the maximum and minimum rates that OntarioNet may charge customers to access and use OntarioNet's fiber optic network to connect to the Internet and to obtain communications services, upon the recommendation of the City Manager, and to delegate authority to the City Manager to establish rate plans for residential and small business customers, and negotiate contract rates with large commercial customers within those established ranges, and to set all the other terms, conditions and policies applicable to customer access and use of OntarioNet's fiber optic network and related services.

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

FISCAL IMPACT:

If approved, the City expects to receive revenues in excess of $1 million annually from these fees.

BACKGROUND & ANALYSIS:

Since 2015, the City has had a revenue stream from the operation of the OntarioNet's fiber optic network through an agreement with Inyo Networks (Onward) that allowed Onward to operate and use a portion of OntarioNet's fiber optic network to market and deliver Internet, voice and video services to residents and businesses in Ontario Ranch and other commercial areas of the City near the network backbone, establish the rates for those services, and share the service revenues with

the City. In April 2024, the City notified Onward of its intent to exercise its contractual right to terminate that agreement. The City is preparing to become a local service provider directly contracting with residents and businesses to allow them to access and use OntarioNet's fiber optic network and obtain a variety of communications services. Cal. Const. art. XI, §9(a) authorizes the City to establish and operate public works to provide "means of communication" to their residents. While article XI, section 9 provides authority to provide means of communication, it does not otherwise regulate the applicable rates, terms, conditions and policies or the manner in which agencies may collect revenues. Numerous state and federal laws and regulations apply to the provision of communications services.

Customers may choose to connect and use OntarioNet's fiber optic network or subscribe to one of a number of other options available in the competitive marketplace. The fees are for the use of the OntarioNet fiber optic network, including associated customer equipment and other local government property. The fees were established to be in line with market comparisons, including costs associated with other provider networks based on analysis by City staff. Should a customer choose to subscribe to OntarioNet and then later determine to connect to a different service provider's network, the customer will have the authority to do so. Adopting the Resolution will also authorize certain charges relating to late or declined payments. Further, the resolution will authorize the City Manager, or his or her designee, to set all the other terms, conditions and policies applicable to customer access and use of OntarioNet's fiber optic network.

RESOLUTION NO. _____

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF ONTARIO, CALIFORNIA ADOPTING FEES FOR USE OF THE ONTARIONET FIBER OPTIC NETWORK AND OTHER ASSOCIATED LOCAL GOVERNMENT PROPERTY

WHEREAS, the City of Ontario ("City") establish a schedule of fees and charges for use of its OntarioNet fiber optic network, and related fines for late or declined payments; and

WHEREAS, except as specifically provided herein, the Fees are for the use of local government property, including without limitation the fiber optic network and associated customer equipment; and

WHEREAS, in determining the rates for the Fees, City staff considered rates charged in the competitive marketplace by other providers, and further considered that access to the OntarioNet fiber optic network is optional insofar as customers can connect through other providers; and

WHEREAS, the data supporting the Fees is on file with the City Clerk and available for inspection by the public; and

WHEREAS**,** the proposed action has been properly noticed as required by Government Code Section 66018 following publication requirements set forth in Government Code Section 6062a;

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF ONTARIO AS FOLLOWS:

SECTION 1. Incorporation of Recitals. The City Council finds and determines that the foregoing Recitals are true and correct and incorporates the Recitals herein.

SECTION 2. Adoption of Rates for the Fees. The City Council hereby adopts the rates for the Fees, to be effective on the dates, in the amounts, and at the rates set forth in Exhibit "A", attached hereto and incorporated herein by this reference. The rates set forth in Exhibit "A" reflect the minimum and maximum rates applicable to the respective broadband activity, and the City Manager, or his or her designee, is authorized to establish rate plans for residential and small business customers within the ranges set forth in Exhibit "A", to negotiate contract rates with large commercial customers within the ranges set forth in Exhibit "A".

SECTION 3. Findings. The City Council finds and determines that Fees are not "imposed" for purposes of article XIII C, section 1(e) of the California Constitution.

However, even if they are found to be "imposed," they are exempt from the definition of a tax for the following reasons:

(a) Fee Nos. 1 through 6 listed in Exhibit "A" of this Resolution are for the use of local government property, including the fiber optic network and associated customer equipment, and do not exceed the reasonable value of the local government property; and

(b) Fee No. 7 is for a service provided by the City and does not exceed the cost of providing such service; and

(c) Fee Nos. 8 through 12 are fines for late or declined payments.

SECTION 4. Terms, Conditions and Policies. Further, the City Manager, or his or her designee, is authorized to set all the other terms, conditions and policies applicable to customer access and use of OntarioNet's fiber optic network.

SECTION 5. Severability. If any section, subsection, clause or phrase in this Resolution or the application thereof to any person or circumstances is for any reason held invalid, the validity of the remainder of this Resolution or the application of such provisions to other persons or circumstances shall not be affected thereby. The City Council hereby declares that it would have passed this Resolution and each section, subsection, sentence, clause, or phrase thereof, irrespective of the fact that one or more sections, subsections, sentences, clauses or phrases or the application thereof to any person or circumstance be held invalid.

SECTION 6. Conflicts. All prior actions of the City Council, including resolutions, ordinances, or parts thereof, that are inconsistent with any provision of this Resolution are hereby superseded by this resolution to the extent of such inconsistency.

SECTION 7. Effective Date. This Resolution shall take effect and be in full force and effect upon its adoption.

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

PASSED, APPROVED, AND ADOPTED this 15th day of October, 2024.

_____
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. 2024- was duly passed and adopted by the City Council of the City of Ontario at their regular meeting held October 15, 2024 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. 2024- duly passed and adopted by the Ontario City Council at their regular meeting held October 15, 2024.

_____
SHEILA MAUTZ, CITY CLERK

(SEAL)

EXHIBIT “A”

SCHEDULE OF BROADBAND ONTARIONET FEES

Fee #	Fee Description	Unit/Notes	Current Fee	Effective Date
1	Residential/Small Business Broadband Services	Monthly	$10.00 - $200.00	10/15/2024
2	Residential/Small Business Broadband Installation	One-time	up to $200.00	10/15/2024
3	Commercial/Enterprise Broadband Services	Monthly	$30.00 - $1500.00	10/15/2024
4	Small Business/Commercial/Enterprise Broadband Building Construction Charge	One-time or Monthly	At Cost	10/15/2024
5	Customer Premise Equipment	Monthly	$5.00-$100.00	10/15/2024
6	Smart Home Management Software	Monthly	$5.00-$20.00	10/15/2024
7	Paper Bill Fee	Monthly	$2.00-$4.00	10/15/2024
8	Payment Late Fee	First Month	$5.00 or 10%*	10/15/2024
9	Payment Late Fee (after 1st month)	Monthly	1.50%	10/15/2024
10	Check returned unpaid (NSF)	Each	$25.00	10/15/2024
11	Declined credit card payment	Each	$25.00	10/15/2024
12	Declined ACH payment	Each	$25.00	10/15/2024
	*whichever is greater			

CITY OF ONTARIO *Agenda Report* **October 15, 2024**	**SECTION:** **PUBLIC HEARING**
Department: Planning Prepared By: Rudy Zeledon Staff Member Presenting: Scott Murphy, Executive Director Community Development Approved By:	Submitted To: Council/OHA Approved: _____ Continued To: _____ Denied: _____ Item No: 23

SUBJECT: **AN APPEAL OF THE PLANNING COMMISSION'S DECISION TO UPHOLD THE ZONING ADMINISTRATOR'S INTERPRETATION AND DETERMINATION DECISION FOR FILE NOS. PDET23-005, PDET23-007, PDET23-008, PDET23-009, PDET23-010, PDET23-015 AND PDET23-016**

RECOMMENDATION: That the City Council conduct a public hearing on the Appeals and after receiving all public testimony, uphold the Planning Commission's decision to uphold Zoning Administrator Decision No's. ZA23-024 (File No. PDET23-005), ZA23-030 (File No. PDET23-007), ZA23-031 (File No. PDET23-008), ZA23-032 (File No. PDET23-009), ZA23-033 (File No. PDET23-010), ZA23-038 (File No. PDET23-015) and ZA23-039 (File No. PDET23-016) and deny the Appeals.

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

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

BACKGROUND & ANALYSIS: On September 3, 2024, the City Council introduced and conducted a hearing to consider the Appeal of the Planning Commission's denial of the Application and continued the item to the October 1, 2024, City Council meeting. On October 1, 2024, the City Council introduced and conducted a hearing to consider the Appeal of the Planning Commission's denial of the Application and continued the item to the October 15, 2024, City Council meeting.

In 2020, the Executive Director of Finance ("License Official") sent out a Notice of Assessment for Transient Occupancy Tax (TOT) ("Notice of Assessment"), which found that the following business operators (hereinafter referred to as "Hotels") were delinquent with unpaid Transient Occupancy Taxes (Attachment "A" on each Planning Commission Resolution).

- Hotel Hacienda (File No PDET23-005), located at 2425 South Archibald Avenue;
- Bright Star Motel (File No. PDET23-007), located 1530 West Mission Boulevard;
- Days Inn Ontario Motel (File No. PDET23-008), located at 1405 East 4th Street;
- Economy Inn (File No. PDET23-009), located at 2301 South Euclid Avenue;
- Mayfair Inn (File No. PDET23-010), located 1120 East Holt Boulevard;

- Sands Motel (File No. PDET23-015), located at 1240 West Mission Boulevard; and
- West Coast Inn (File No. PDET23-016) located at 1211 North Grove Avenue.

In 2021, the License Official, sitting as the Transient Occupancy Tax License Official under Chapter 6 of Title 3 of the Ontario Municipal Code, held hearings for the Hotels listed above. The purpose of the hearing was to allow the operators the opportunity to rebut the amount of tax assessed by the License Official and offer evidence why the specified tax, interest, and penalties are incorrect.

The Hotels were represented by Attorney Frank A. Weiser. Mr. Weiser argued that under Section 3-6.03 of the TOT Ordinance, the transient occupancy tax is imposed only on transients and argued that transients are defined in Section 3-6.02(g) as any person who exercises occupancy or is entitled to occupancy, for a period of 30 calendar days or less. The operators provided evidence that the Hotels rent rooms to guests for longer than 30 days and argued that these guests, having stayed longer than 30 days at the Hotels, are exempt from taxation as they no longer meet the definition of transient. Under Ontario Development Code section 5.03.250(E)(1), no hotel can rent to a guest for longer than 30 days.

The License Official's jurisdiction is to determine the proper tax to be remitted and give such determination and the amount of such tax, interest, and penalties (O.M.C. § 3-6.09). The License Official does not have the jurisdiction to interpret or make a determination regarding the applicability of the Ontario Development Code (ODC), that the Hotels where a guest exceeds 30-day occupancy are exempt from the definition of transient as described in ODC Section 5.03.250(E)(l). The Zoning Administrator, under Section l.02.015(A)(l) of the ODC, has jurisdiction of, and is responsible for, the administration and application of the regulations and provisions of the Development Code. After the testimony was completed, the License Official issued a Stay of Decision and referred the matter to the Zoning Administrator to provide an interpretation or determination regarding the applicability and enforceability of Section 5.03.250(E)(1) to the Hotels.

In November and December of 2023, the Zoning Administrator issued Determination of Use Decisions for each of the Hotels and made the findings that the ODC Division 5.03, Section 5.03.250(E)(l) is applicable and enforceable to the operation of the Hotels (Attachment "A" on each Resolution). ODC Section 5.03.250(E)(1) states that no guestroom, for Motel or Hotel, shall be rented for a period exceeding 30 consecutive calendar days, counting portions of calendar days as full days. The intent of a Hotel or Motel is to provide transient accommodations at a daily rate. Section 3-6.029(g) of the Ontario Municipal Code (OMC) clearly states that "Transient" shall mean any person who exercises occupancy or is entitled to occupancy by reason of concession, permit, right of access, license, or other agreement for a period of thirty (30) consecutive calendar days or less, counting portions of calendar days as full days. A Hotel or Motel permitting guests occupancy longer than 30 days are in violation and not exempt from ODC Section 5.03.250(E)(1). Therefore, the Transient Occupancy Tax shall be imposed on "transients" as defined the OMC Section 3-6.029(g).

On May 28, 2024, the Planning Commission conducted a public hearing to consider the appeal of the Zoning Administrator denial. Following the staff's presentation and after receipt of all public correspondence and testimony, the Planning Commission noted agreement with the Zoning Administrator. The Zoning Administrator acted within his limited authority to interpret the Ontario Development Code (ODC). The Zoning Administrator, under Section l.02.015(A)(l) of the ODC, has

jurisdiction of, and is responsible for, the administration and application of the regulations and provisions of the Development Code. The Zoning Administrator's power is limited to interpretation of the Code as applied to a particular case. Further, the Planning Commission found that the appellant introduced irrelevant legal arguments which did not challenge the underlying factual findings and analysis of each of the decisions by the Zoning Administrator. The Appellant takes issue with the implementation of legislation of the Ontario Development Code. For example, Ordinance No. 1569, which imposed the TOT, was passed in 1965 – fifty-nine years ago. To address these constitutional arguments for a legislative action that occurred in 1965 goes beyond the scope of the Zoning Administrator's role. Thus, the Zoning Administrator's power is limited to interpretation of the code and its application to a particular set of facts.

As a result, the Planning Commission voted 7-0 to adopt Resolution No's PC24-018 (File No. PDET23-005), PC24-019 (File No. PDET23-007), PC24-020 (File No. PDET23-008), PC24-021 (File No. PDET23-009), PC24-022 (File No. PDET23-010), PC24-023 (File PDET23-015) and PC24-024 (File No. PDET23-016) upholding the Zoning Administrator's decision and denying the appeals.

APPEAL TO COUNCIL: On June 6, 2024, the Appellant submitted an Appeal to the City Council, appealing the Planning Commission's decision to uphold the Zoning Administrator's decision. The Appellant raises the argument that the Planning Commission's decision is not supported by the information, findings, and recommendations presented in the Background and Analysis Section of the Zoning Administrator's Decision report.

The Appellant argues that the Planning Commission was required to adopt an Environmental Impact Report as part of their decision, and that the Zoning Administrator's decision violated the First Amendment Petition Clause, Fourth Amendment Search and Seizure Clause, the Fifth Amendment Takings Clause, the Fourteenth Amendment Due Process Clause (Substantive and Procedural) and Equal Protection of the United States Constitution.

A copy of the Appeal applications and Appellant's statement is included as Appendix A of this report. Staff has reviewed the appeals and provides a response for each issue raised by the Appellant's:

Appellants' Issue No. 1: *The Planning Commission was required under California Environmental Quality Act to provide an Environmental Impact Report as the issue of the applicability of the Development Code may have a negative impact on the environment.*

Staff Response: Appellants' argument is flawed because the TOT ordinance was not a "project" under CEQA requiring an Environmental Impact Report.

The California Environmental Quality Act (CEQA) provides a process through which public agencies, the public, and project developers can evaluate a project, understand its environmental impacts, and develop measures to reduce these impacts. CEQA applies to projects that may result in a change in the environment; a full environmental review is only required where the project could result in a significant adverse impact.

As part of the Planning Commission's decision to uphold the Zoning Administrator's decision, the Planning Commission reviewed and considered the information contained in the administrative

record for the Project. Based upon the facts and information contained in the administrative record, including all written and oral evidence presented to the Planning Commission, the Planning Commission found that:

- The administrative record has been completed in compliance with CEQA, the State CEQA Guidelines, and the City of Ontario Local CEQA Guidelines; and
- The Resolutions were reviewed with respect to the applicability of the California Environmental Quality Act of 1970 ("CEQA"), and the State CEQA Guidelines, and the Planning Commission determined that the Resolutions did not constitute a "project" within the meaning of CEQA Guidelines Section 15060(c)(2) because there is no potential that it will result in a direct or reasonably foreseeable indirect physical change in the environment and CEQA Guidelines Section 15378 because it has no potential for either a direct physical change to the environment, or a reasonably foreseeable indirect physical change in the environment.

Moreover, if the Planning Commission's decision to uphold the Zoning Administrator's decision comprises a project for CEQA analysis, it falls within the "common sense" CEQA exemption set forth in CEQA Guidelines Section 15061(b)(3), excluding projects where "it can be seen with certainty that there is no possibility that the activity in question (interpretation or determination regarding the applicability and enforceability of the Development Code) may have a significant effect on the environment."

Additionally, the "creation of government funding mechanisms or other fiscal activities, which do not involve any commitment to any specific project. . ." are not considered a "project" under CEQA Guidelines Section15378(B)(4).

Here, there is no physical project undertaken and the TOT's effect is fiscal. Thus, the TOT Ordinance is a funding mechanism not a "project" and an EIR is not required under CEQA.

Appellant's Issue #2: *The Zoning Administrator's decision violated the First Amendment Petition Clause, Fourth Amendment Search and Seizure Clause, the Fifth Amendment Takings Clause, the Fourteenth Amendment Due Process Clause (Substantive and Procedural) and Equal Protection of the United States Constitution*

Staff Response: Appellant's arguments introduce irrelevant legal arguments that go beyond the limited scope of the Zoning Administrator's decisions.

The Zoning Administrator has acted within his limited authority to interpret the Ontario Development Code ("ODC"). The Zoning Administrator, under Section l.02.015(A)(l) of the ODC, has jurisdiction of, and is responsible for, the administration and application of the regulations and provisions of the Development Code. The Zoning Administrator's power is limited to interpretation of the Code as applied to a particular case, ODC § 1.02.010(B)(1). Thus, the Zoning Administrator's power is limited to interpretation of the code and its application to a particular set of facts.

Appellants' arguments introduce irrelevant legal arguments that do not challenge the underlying factual findings and analysis of each of the decisions by the Zoning Administrator. The Appellant takes issue with the implementation of legislation of the ODC. Ordinance No. 1569, which imposed the TOT, was passed in 1965 – fifty-nine years ago. For the Zoning Administrator to consider these legal issues would exceed the power granted by the Development Code.

The Zoning Administrator acted within his limited authority to interpret the Development Code as to Appellants' claims and found that their hotels are subject to ODC chapter 5.03.250(E)(1). Appellants do

not challenge the factual findings made by the Zoning Administrator. Thus, the appeal should be denied, and the Zoning Administrator's decisions upheld.

CITY OF ONTARIO PLANNING DEPARTMENT

PLANNING COMMISSION AGENDA REPORT

May 28, 2024

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

FILE NOS: PDET23-005, PDET23-007, PDET23-008, PDET23-009, PDET23-010, PDET23-015, and PDET23-016 (APPEAL)

SUBJECT: An appeal of Zoning Administrator's interpretation and determination decision that the Ontario Development Code Division 5.03, Section 5.03.250(E)(l) is applicable and enforceable to the operation of the following hotels and motels: 1) Hotel Hacienda (File No. PDET23-005), located at 2423 South Archibald Avenue; 2) Bright Star Motel (File No. PDET23-007), located at 1530 West Mission Boulevard; 3) Days Inn Ontario Motel (File No.PDET23-008, located at 1405 East 4th Street; 4) Economy Inn (File No. PDET23-009), located at 2301 South Euclid Avenue; 5) Mayfair Inn (File No. PDET23-010), located 1120 East Holt Boulevard; 6) Sands Motel (File No. PDET23-015), located at 1240 West Mission Boulevard; and 7) West Coast Inn (File No. PDET23-016), located at 1211 North Grove Avenue; (APNS: 1083-071-26, 1011-221-15, 0108-381-32, 1051-071-04, 1049-141-25, 1101-211-03 and 1047-451-25)**. Submitted by Frank A. Weiser – Attorney at Law**

PROPERTY OWNER: See attached Exhibit A.

RECOMMENDED ACTION: That the Planning Commission consider and deny the appeals and uphold Zoning Administrators Decision No's. ZA23-024 (File No. PDET23-005), ZA23-030 (File No. PDET23-007), ZA23-031 (File No. PDET23-008), ZA23-032 (File No. PDET23-009), ZA23-033 (File No. PDET23-010), ZA23-038 (File No. PDET23-015) and ZA23-039 (File No. PDET23-016), pursuant to the facts and reasons contained in the staff report and attached Resolutions.

PROJECT ANALYSIS:

Background — In 2020, the Executive Director of Finance Arman Harkalyan ("License Official"), sent out a Notice of Assessment for Transient Occupancy Tax ("Notice of Assessment"), which found that the following business operators (hereinafter referred to as "Hotels') were delinquent with unpaid Transient Occupancy Taxes (Attachment "A" on each Resolution).

- Hotel Hacienda (File No PDET23-005), located at 2423 South Archibald Avenue;
- Bright Star Motel (File No. PDET23-007), located 1530 West Mission Boulevard;
- Days Inn Ontario Motel (File No. PDET23-008), located at 1405 East 4th Street;
- Economy Inn (File No. PDET23-009), located at 2301 South Euclid Avenue;
- Mayfair Inn (File No. PDET23-010), located 1120 East Holt Boulevard;

Case Planner:	Rudy Zeledon CDA Assistant Director
Planning Director Approval:	
Submittal Date:	11/16/2023 and 01/11/2024

Hearing Body	*Date*	*Decision*	*Action*
DAB	N/A	N/A	N/A
PC	05/28/2024	Denied	Final
CC			

- Sands Motel (File No. PDET23-015), located at 1240 West Mission Boulevard; and
- West Coast Inn (File No. PDET23-016) located at 1211 North Grove Avenue.

Chapter 6: *Transient Occupancy Taxes* of the City of Ontario Municipal Code ("OMC"), allows the City of Ontario to impose a Transient Occupancy Tax (TOT) of eleven and three-quarters percent (11¾%) of the rent, charged by operator, to transient guest for the privilege of occupancy of any hotel or motel. The Ontario Municipal Code (Section 3.6.02 Definitions) defines "Transient" as any person who exercises occupancy or is entitled to occupancy by reason of concession, permit, right of access, license, or other agreement for a period of thirty (30) consecutive calendar days or less, counting portions of calendar days as full days.

All hotel or motel operators are required to collect and hold in trust for the account and benefit of the City the tax imposed at the same time as the rent is collected from every transient. The amount of tax shall be separately stated from the amount of the rent charged. In addition, hotel and motel operators are required to report and remit TOT imposed on or before the last day of the month following the close of each calendar month, make a return to the Tax Administrator, on forms provided by him or her, of the total rents charged and received and the amount of tax collected for transient occupancies. Any hotel/motel operator who fails to report and remit TOT are subject to penalties and become delinquent.

In 2021, Executive Director of Finance Armen Harkalyan ("License Official") sitting as the Transient Occupancy Tax License Official under Chapter 6 of Title 3 of the Ontario Municipal Code, held hearings for the hotels/motels as stated above. The purpose of the hearing was to allow the operators the opportunity to rebut the amount of tax assessed by the License Official and offer evidence why the specified tax, interest, and penalties are incorrect.

The Hotels were represented by attorney Frank A. Weiser who offered legal arguments orally at the hearings. Under the representation of Mr. Weiser, the Hotels argued that under the Section 3-6.03 of the TOT Ordinance, the transient occupancy tax is imposed only on transients and argued that transients are defined in Section 3-6.02(g) as any person who exercises occupancy or is entitled to occupancy, for a period of 30 calendar days or less. The operators provided evidence that the Hotels rent rooms to guests for longer than 30 days and argued that these guests, having stayed longer than 30 days at the Hotels, are exempt from taxation as they no longer meet the definition of transient. The License Official's jurisdiction is to determine the proper tax to be remitted and give such determination and the amount of such tax, interest, and penalties (" O.M.C. § 3-6.09). The License Official does not have the jurisdiction to interpret or make a determination regarding the applicability of the Ontario Development Code that the Hotels where a guest exceeds 30-day occupancy is exempt from the definition of transient as described in Ontario Development Code (ODC) Section 5.03.250(E)(l). The Zoning Administrator, under Section l.02.015(A)(l) of the ODC, has jurisdiction of, and is

responsible for, the administration and application of the regulations and provisions of this Development Code. After the testimony was completed, the License Official issued a Stay of Decision and referred the matter to the Zoning Administrator to provide an interpretation or determination regarding the applicability and enforceability of Section 5.03.250(E)(l) as to the hotels/motels.

In November and December of 2023, the Zoning Administrator issued Determination of Use Decisions for each of the Hotels and made the findings that the Ontario Development Code Division 5.03, Section 5.03.250(E)(l) is applicable and enforceable to the operation of the Hotels (Attachment "A" on each Resolution). The ODC Division 5.03, Section 5.03.250(E)(1) states that no guestroom, for Motel or Hotel, shall be rented for a period exceeding 30 consecutive calendar days, counting portions of calendar days as full days. The intent of a Hotel or Motel is to provide transient accommodations at a daily rate. Section 3-6.029(g) of the Ontario Municipal Code (OMC) clearly states that "Transient" shall mean any person who exercises occupancy or is entitled to occupancy by reason of concession, permit, right of access, license, or other agreement for a period of thirty (30) consecutive calendar days or less, counting portions of calendar days as full days. A Hotel or motel permitting guests occupancy longer than 30 days are in violation and not exempt from the ODC Division 5.03, Section 5.03.250(E)(1). Therefore, the Transient Occupancy Tax shall be imposed on "transients" as defined the OMC Section 3-6.029(g).

Appeal — On November 16, 2023 and January 11, 2024, Frank A. Weiser, Attorney at Law (Appellant representative), submitted appeals to the Zoning Administrators interpretation and determination decisions that the Ontario Development Code Division 5.03, Section 5.03.250(E)(l) is applicable and enforceable to the operation of the following hotels and motels:

- Hotel Hacienda (File No PDET23-005), Appellant: Naman Patel;
- Bright Star Motel (File No. PDET23-007), Appellant: Purushottam Patel/Esha Smah;
- Days Inn Ontario Motel (File No. PDET23-008, Appellant: Kisham Patel;
- Economy Inn (File No. PDET23-009), Appellant: Mehesh Patel;
- Mayfair Inn (File No. PDET23-010), Appellant: Dilip Payaran;
- Sands Motel (File No. PDET23-015), Appellant: Purushottam Patel; and
- West Coast Inn (File No. PDET23-016) Appellant: Anil Patel.

A copy of the Appeal applications and Appellant's statement is included as Appendix A of this report. Staff has reviewed the appeals and provides a response for each issue raised by the Appellant's:

1. *Appellants' Issue No. 1: Subject hotels never received notice of the zoning change and adoption of Ontario Development Code ("ODC") Division 5.03 Section 5.03.250(E)(1) and were entitled to an individualized hearing under the First Amendment Petition Clause, Fourth Amendment Search and Seizure Clause, the Fifth*

Amendment Takings Clause, the Fourteenth Amendment Due Process Clause (Substantive and Procedural) and Equal Protection of the United States Constitution.

Staff Response: Appellant's arguments introduce irrelevant issues that go beyond the limited scope of the Zoning Administrator's decisions.

The Zoning Administrator has acted within his limited authority to interpret the Ontario Development Code ("ODC"). The Zoning Administrator, under Section l.02.015(A)(l) of the ODC, has jurisdiction of, and is responsible for, the administration and application of the regulations and provisions of the Development Code. The Zoning Administrator's power is limited to interpretation of the Code as applied to a particular case. ODC § 1.02.010(B)(1). Thus, the Zoning Administrator's power is limited to interpretation of the code and its application to a particular set of facts.

Appellants' arguments introduce irrelevant legal arguments that do not challenge the underlying factual findings and analysis of each of the decisions by the Zoning Administrator. Issues like the adoption and amendment of zoning ordinances are legislative acts rather than administrative or quasi-judicial acts. Arnel Dev. Co. v City of Costa Mesa (1980) 28 C3d 511, 514. Appellants take issue with the implementation of legislation of the Ontario Development Code. For reference, Ordinance No. 1569, which imposed the TOT was passed in 1965 – fifty-nine years ago. These issues are beyond the scope of the Zoning Administrator's role. For the Zoning Administrator to consider these legal issues would exceed the power granted by the Development Code.

The Zoning Administrator has acted within his limited authority to interpret the Development Code as to Appellants' claims and found that their hotels are subject to ODC chapter 5.03.250(E)(1). Appellants do not challenge the factual findings made by the Zoning Administrator. Thus, the appeal should be denied, and the Zoning Administrator's decisions upheld.

2. Appellants' Issue No. 2: *Ontario Development Code chapter 5.03.250(E)(1) which prohibits hotels from having a guestroom rented for longer than 30 days is inapplicable because Ontario Municipal Code chapter 3-06.02(g) states than an occupant can have an occupancy for longer than 30 days (with a written agreement).*

Staff Response: The Zoning Administrator's application of ODC § 5.03.250(E)(1) as to Appellants' hotels was proper. Where the Development Code imposes a greater restriction than is imposed or required by an existing law, the provisions of the Development Code shall prevail. ODC § 1.02.005. To the extent that there is an external inconsistency between the provisions of the Ontario Development Code and the provisions of the Ontario Municipal Code, the more restrictive provisions shall apply. ODC § 1.01.015(D). Thus, if there is a conflict between the Ontario Municipal

Code and the Ontario Development Code, the Zoning Administrator must make a decision pursuant to the Development Code.

Here, Appellants argue that because OMC § 3-06.02(g) states that a person can have an occupancy of longer than 30 days (with an agreement in writing), that Appellants can rent their hotels to occupants for longer than 30 days and be exempt from the TOT. However, under the Development Code, "no guestroom shall be rented for a period exceeding 30 consecutive calendar days for a hotel or motel. ODC § 5.03.250(E)(1). This is an explicit restriction on hotels. To the extent that there exists any conflict by inference with OMC section 3-602(g), the ODC's restriction on hotels applies, ODC § 1.01.015(D). The Zoning Administrator's application of the ODC's more restrictive provision prohibiting Appellants' hotels from renting to a person for longer than 30 days was proper.

Thus, the appeals should be denied, and the Zoning Administrator's decisions should be upheld.

CORRESPONDENCE: As of the preparation of this Agenda Report, Planning Department staff has not received any written or verbal communications from the owners or occupants of properties surrounding the Project site or from the public in general, regarding the subject application.

Exhibit A – Property Owners

1. PATEL & JOSHI HOSPITALITY CORP (Hotel Hacienda (File No PDET23-005), located at 2423 South Archibald Avenue).

2. PATEL, RAMANBHAI G & MANJULABEN R RV (Bright Star Motel (File No. PDET23-007), located 1530 West Mission Boulevard).

3. BRIGHT MORNING STAR LLC (Days Inn Ontario Motel (File No. PDET23-008, located at 1405 East 4th Street).

4. DESAI, JAY P & SMITA ET AL (Economy Inn (File No. PDET23-009), located at 2301 South Euclid Avenue).

5. SHIVASMT, INC (Mayfair Inn (File No. PDET23-010), located 1120 East Holt Boulevard).

6. SANDS LIMITED PARTNERSHIP (Sands Motel (File No. PDET23-015), located at 1240 West Mission Boulevard).

7. PATEL, NARAYAN AMBALA (West Coast Inn (File No. PDET23-016) located at 1211 North Grove Avenue).

Appendix A

(Appeal Applications to follow this page)

Rev. 10.01.2020

CITY OF ONTARIO PLANNING DEPARTMENT

Hotel HACIENDA

Appeal Application Form

ZA 23-024

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

Instructions:

1. *Pursuant to Ontario Development Code Division 2.04 (Appeals), any person having legal standing may appeal and action or decision to the Appeal Authority, including but not limited to an applicant, resident, business owner, or any person owning real property within the City, that is aggrieved by an interpretation, action, or decision made by any City agency or department, or by an Approving Authority.*

2. *Within 10 days following the action or decision being appealed, an appeal request must be filed with the Planning Department on an Appeal Application Form, along with the required filing fees. The appeal request must include a statement identifying the specific action or decision that is being appealed, the specific grounds for the appeal, and the relief requested from the Appeal Authority.*

3. *An appeal of an action or decision made by an Approving Authority following a hearing, is limited to those matters raised during the hearing and contained in an appeal statement. The Appeal Authority cannot consider any matter that was not raised during the hearing before the Approving Authority and contained in the appeal statement.*

4. *The Appeal Authority that will hear the appeal request is limited to taking testimony and making its decision based solely on the specific grounds specified by the appellant in the Appeal Application Form, insofar as they make an adequate claim pursuant to Ontario Development Code Section 2.04.010. When the decision of an Approving Authority*

GENERAL INFORMATION (PRINT OR TYPE)

Appellant: NAMAN PATEL DOA HOTEL HACIENDA
Address: 2423 SOUTH ARCHIBALD AVENUE
ONTARIO, CA 91751
Phone: (909) 215-6366
Email: NAMAN@haciendaont.com

Appellant's Representative: FRANK A. WEBER - ATTORNEY AT LAW
Address: 3460 Wilshire BLVD, STE. 1212,
LOS ANGELES, CA 90010
Phone: (213) 384-6964 (Voice) · (213) 399-7806 (Cell)
Email: Maimonr@aol.com

(For staff use only)
File No(s): PDET23-005
Date: 11/16/2023
Rec'd by: DB
Fees Paid: $902.00
☐ Cash ☐ Check (#)
☒ Credit Card
Receipt No.: 347815

SUBJECT OF APPEAL

This application is hereby filed pursuant to Ontario Development Code Division 2.04 (Appeals), appealing a decision or action of the following Authority:

☐ Department/Agency Head ☐ Development Advisory Board ☒ Zoning Administrator

☐ Historic Preservation Subcommittee ☐ Historic Preservation Commission Planning Commission

Hearing 4/30/24

Appeal Application Form

Project File No(s).: PDET23-005 Date of Action/Decision:

The application being appealed requests the following *(attach additional sheets as necessary)*:

Reverse Zoning Administrator Decision dated November 7, 2023 that Ontario Development Code (OMC) Division 5.03, Section 5.03.250 CE1C(1) is applicable to Hacienda + Enforceable Motel

List the specific action(s) or decision(s) that is/are being appealed (attach additional sheets as necessary):

Reverse Zoning Administrator Decision dated November 7, 2023 that OMC, Division 5.03 Section 5.03.250(E)(1) is Applicable and enforceable to Hacienda Motel, and therefore OMC Section 3-6.02(C)(g) defining "transient" for purposes of transient occupancy tax shall be imposed on the Hacienda Motel

APPEAL STATEMENT

Please check the box that best describes your reason(s) for the appeal:

- ☐ Abuse of discretion.
- ☐ Decision was not supported by the record.
- ☒ Abuse of discretion and decision was not supported by the record.

State the specific grounds for the appeal and the relief requested (please be specific and attach additional sheets if necessary):

The Decision violates the First Amendment of the U.S. Constitution Petition and Grievance Clause, the Fourth Amendment of the U.S. Constitution Search & Seizure clause, the Fifth Amendment Takings Clause of the U.S. Constitution, the procedural & substantive components of the U.S. Constitution and the Equal Protection Clause of the U.S. Constitution and the Contracts Clause of the U.S. Constitution the Privileges & Immunities clause of the U.S. Constitution. Further, the Appellant has a pre-existing entitlement to rent beyond 30 days at the Motel and has owned and operated the Motel prior to the City's adoption of OMC 5.03.250(E)(1) and thus the Applicability of the section violates the Takings Clause of the Fifth Amendment of the U.S. Constitution and the Due Process Clause and Equal Protection Clause of Fourteenth Amendment of the U.S. Constitution. Appellant was never given a hearing on the Applicability of OMC 5.03.250(E)(1) to his hotel which violates Due process. The decision was not supported by the record.

APPELLANT ACKNOWLEDGEMENT

I, the undersigned, hereby certify that the statements and information provided in this **Appeal Application Form,** and in any attached exhibits, present the data and information required for this application to the best of my ability, and that the facts, statements and information presented are true and correct to the best of my knowledge and belief.

Date: 11-16-23 Signature: Frank A. Weiser - Attorney For Appellants

Name (print or type): Frank A. Weiser

RECEIPT

CITY OF ONTARIO
REVENUE DEPARTMENT
303 E. B STREET
(909) 395-2050
ONTARIO, CA 91764

Application: PDET23-005
Application Type: Planning/PLANNING/PLANNING/DETERMINATION OF USE
Address: 2425 S ARCHIBALD AV, ONTARIO, CA 91761

Receipt No. 347815

Payment Method	Ref Number	Amount Paid	Payment Date	Cash Drawer ID	Received	Comments
Credit	AB-20231116-6.1	$902.00	11/16/2023			

Owner Info.: PATEL & JOSHI HOSPITALITY CORP
2425 S ARCHIBALD AVE
ONTARIO, CA 917616502

Work Description: Referral to Zoning Administrator and Stay of Decision for the Hotel Hacienda (Formally America's Best Value Inn), located at 2425 South Archibald Avenue, within the Community Commercial zoning district, to provide an interpretation or determination regarding the applicability and enforceability of Section 5.03.250(E)(I) as to the Hotel (APN: 1083-071-26); submitted by Transient Occupancy Tax License Official for the City of Ontario.

Invoice Detail

Permit ID #: PDET23-005
Invoice #: 405579
Invoice Date: 11/16/2023 15:23:31

Period	Fee Item	Qty	Fee
FINAL	Appeal Other	902	$902.00

Total Fee: $902.00

Rev. 10.01.2020

CITY OF ONTARIO PLANNING DEPARTMENT

Appeal Application Form

ZA23-030

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

BRIGHT STAR MOTEL

Instructions:

1. *Pursuant to Ontario Development Code Division 2.04 (Appeals), any person having legal standing may appeal and action or decision to the Appeal Authority, including but not limited to an applicant, resident, business owner, or any person owning real property within the City, that is aggrieved by an interpretation, action, or decision made by any City agency or department, or by an Approving Authority.*

2. *Within 10 days following the action or decision being appealed, an appeal request must be filed with the Planning Department on an Appeal Application Form, along with the required filing fees. The appeal request must include a statement identifying the specific action or decision that is being appealed, the specific grounds for the appeal, and the relief requested from the Appeal Authority.*

3. *An appeal of an action or decision made by an Approving Authority following a hearing, is limited to those matters raised during the hearing and contained in an appeal statement. The Appeal Authority cannot consider any matter that was not raised during the hearing before the Approving Authority and contained in the appeal statement.*

4. *The Appeal Authority that will hear the appeal request is limited to taking testimony and making its decision based solely on the specific grounds specified by the appellant in the Appeal Application Form, insofar as they make an adequate claim pursuant to Ontario Development Code Section 2.04.010. When the decision of an Approving Authority*

GENERAL INFORMATION (PRINT OR TYPE)

Appellant: Purshottam Patel / ESHA SHAH / Bright Star Motel
Address: 1530 West Mission Blvd; Ontario, CA 91762

Phone: (909) 241-2157 or (909) 568-8100
Email: pbpupland@yahoo.com

Appellant's Representative: Frank A. Weiser - Attorney at Law
Address: 3460 Wilshire Blvd. Ste. 1212
L.A., CA 90010
Phone: (213) 384-6464 (voice) (213) 383-7368
Email: Maimony@aol.com

(For staff use only)

File No(s): PDEV23-007
Date: 1/11/24
Rec'd by: AA
Fees Paid: 902.00
☐ Cash ☐ Check (#)
☒ Credit Card
Receipt No.: 349485

SUBJECT OF APPEAL

This application is hereby filed pursuant to Ontario Development Code Division 2.04 (Appeals), appealing a decision or action of the following Authority:

☐ Department/Agency Head ☐ Development Advisory Board ☒ Zoning Administrator

☐ Historic Preservation Subcommittee ☐ Historic Preservation Commission ☐ Planning Commission

Hearing 1/22/24

Appeal Application Form

Project File No(s).: PDET 23-007 Date of Action/Decision: 12/21/2023

The application being appealed requests the following *(attach additional sheets as necessary)*: Reversal of Decision dby the Zoning Administrator dated December 21, 2023 As to the applicability and enforceability of Ontario Development Code 5.03.25-CE)(1)

List the specific action(s) or decision(s) that is/are being appealed (attach additional sheets as necessary): Zoning Administrator received a referral From City of Ontario Transient Occupancy TAX License Official Arman Hartoloyan requesting interpretation and applicability of Section 5.03.250CE)(1) as to subject motel and Zoning Administrator found that section is applicable and enforceable as to subject motel and motel cannot rent for a period exceeding 30 consecutive days And that guests are thus subject to OMC 3-6.02(a) for transient occupancy tax for all occupants as "transients"

APPEAL STATEMENT

Please check the box that best describes your reason(s) for the appeal:

- ☒ Abuse of discretion.
- ☐ Decision was not supported by the record.
- ☒ Abuse of discretion and decision was not supported by the record.

State the specific grounds for the appeal and the relief requested (please be specific and attach additional sheets if necessary):

The subject motel never received notice of the zoning change and adoption of OMC 5.03 and OMC 5.03.250(E)(1) and is grandfathered in as to the allowance stays of 30 days or more consecutively. The City's decision is not supported by the record and the subject motel was entitled to an individualized hearing as to his Motel. The Ordinance, OMC 5.03.250(E)(1), both on its face, and as applied to the Appellant violates his constitutional rights under the First Amendment Petition Clause, Fourth Amendment Search & Seizure Clause, the Fifth Amendment Takings Clause, the Fourteenth Amendment Due Process Clause (Substantive and Procedural) and Equal Protection Clause of the U.S. Constitution and parallel provisions of California Constitution. The decision and OMC 5.03.250(E)(1) is also void for vagueness on its face and as applied to subject motel under Due Process Clause of Fourteenth Amendment of U.S. Constitution. The Zoning Administrator's Decision is requested to be reversed and that a decision be granted on appeal and finding that OMC 5.03.250 CE)(1) is not applicable to subject motel and that Motel can rent to guests for 30 consecutive days or more and such guests are permanent occupants not subject to OMC 3-6.02(a) and not subject to Transient occupancy Tax

APPELLANT ACKNOWLEDGEMENT

I, the undersigned, hereby certify that the statements and information provided in this **Appeal Application Form**, and in any attached exhibits, present the data and information required for this application to the best of my ability, and that the facts, statements and information presented are true and correct to the best of my knowledge and belief.

Date: 1-11-24 Signature: Frank A. Weiser - Attorney at Law

Name (print or type): Frank A. Weiser - Attorney at Law

Invoice Detail

Permit ID #: PDET23-007
Invoice #: 407389
Invoice Date: 01/11/2024 16:20:37

Period	Fee Item	Qty	Fee
FINAL	Appeal Other	902	$902.00

Total Fee: $902.00

RECEIPT

CITY OF ONTARIO
REVENUE DEPARTMENT
303 E. B STREET
(909) 395-2050
ONTARIO, CA 91764

Application: PDET23-007
Application Type: Planning/PLANNING/PLANNING/DETERMINATION OF USE
Address: 1530 W MISSION BL, BLDG# 1 ONTARIO, CA 91762

Receipt No. 349485

Payment Method	Ref Number	Amount Paid	Payment Date	Cash Drawer ID	Received	Comments
Credit	JV-20240111-9.1	$902.00	01/11/2024			

Owner Info.: BRIGHT STAR LIMITED PARTNERSHIP
P O BOX 1858
ONTARIO, CA 91762

Work Description: Referral to Zoning Administrator and Stay of Decision for the Bright Star Motel ("Hotel"), located at 1530 West Mission Boulevard, within the Light Industrial zoning district, to provide an interpretation or determination regarding the applicability and enforceability of Section 5.03.250(E)(l) as to the Hotel (APN: 1011-221-15); submitted by the City of Ontario Transient Occupancy Tax License Official.

Rev. 10.01.2020

ZA 23-031

CITY OF ONTARIO PLANNING DEPARTMENT

Appeal Application Form

DAYS INN ONTARIO motel

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

Instructions:

1. *Pursuant to Ontario Development Code Division 2.04 (Appeals), any person having legal standing may appeal and action or decision to the Appeal Authority, including but not limited to an applicant, resident, business owner, or any person owning real property within the City, that is aggrieved by an interpretation, action, or decision made by any City agency or department, or by an Approving Authority.*

2. *Within 10 days following the action or decision being appealed, an appeal request must be filed with the Planning Department on an Appeal Application Form, along with the required filing fees. The appeal request must include a statement identifying the specific action or decision that is being appealed, the specific grounds for the appeal, and the relief requested from the Appeal Authority.*

3. *An appeal of an action or decision made by an Approving Authority following a hearing, is limited to those matters raised during the hearing and contained in an appeal statement. The Appeal Authority cannot consider any matter that was not raised during the hearing before the Approving Authority and contained in the appeal statement.*

4. *The Appeal Authority that will hear the appeal request is limited to taking testimony and making its decision based solely on the specific grounds specified by the appellant in the Appeal Application Form, insofar as they make an adequate claim pursuant to Ontario Development Code Section 2.04.010. When the decision of an Approving Authority*

GENERAL INFORMATION (PRINT OR TYPE)

Appellant: Krishna Patel / DAYS INN ONTARIO

Address: 1401 East 4th ST. ONTARIO, CA

Personal Mailing Address - 2176 S. Harbor Blvd, Anaheim, CA 91764 92802

Phone: (562) 858-9398

Email: aksmhospitality1@gmail.com

Appellant's Representative: FRANK A. WEISER - ATTORNEY AT LAW

Address: 3460 Wilshire BLVD. Ste. 1212

L.A. CA 90010

Phone: (213) 384-6964 (Voice) (213) 383-7368

Email: Mimani@aol.com

(For staff use only)

File No(s): PDEV23-009

Date: 1/11/24

Rec'd by: AR

Fees Paid: 902.00

☐ Cash ☐ Check (#)

☒ Credit Card

Receipt No.: 349496

SUBJECT OF APPEAL

This application is hereby filed pursuant to Ontario Development Code Division 2.04 (Appeals), appealing a decision or action of the following Authority:

☐ Department/Agency Head ☐ Development Advisory Board ☒ Zoning Administrator

☐ Historic Preservation Subcommittee ☐ Historic Preservation Commission ☐ Planning Commission

Hearing 4/2/24

Appeal Application Form

Project File No(s).: PDET23-008 Date of Action/Decision: 12/21/2023

The application being appealed requests the following *(attach additional sheets as necessary)*: Reversal of Decision dby the Zoning Administrator dated December 21, 2023 As to the applicability and enforceability of Ontario Development Code 5.03.25o-CE)(1)

List the specific action(s) or decision(s) that is/are being appealed (attach additional sheets as necessary): Zoning Administrator received a referral From City of Ontario Transient Occupancy TAX License Official Arman Hamlalyan requesting interpretation and applicability of Section 5.03.250CE)(1) as to subject motel and Zoning Administrator found that section is applicable and enforceable as to subject motel and motel cannot rent for a period exceeding 30 consecutive days And that guests are thus subject to OMC 3-6.02a(g) for transient occupancy tax for all occupants as "transients"

APPEAL STATEMENT

Please check the box that best describes your reason(s) for the appeal:

- ☒ Abuse of discretion.
- ☐ Decision was not supported by the record.
- ☒ Abuse of discretion and decision was not supported by the record.

FAUL

State the specific grounds for the appeal and the relief requested (please be specific and attach additional sheets if necessary):

The subject motel never received notice of the zoning change and adoption of OMC 5.03 and OMC 5.03.250(E)(1) and is guaranteed in arc to the allowance stays of 30 days or more consecutively. The City's decision is not supported by the record and the subject motel was entitled to an individualized hearing as to his Motel. The Ordinance, OMC 5.03.250 (E)(1), both on its face, and as applied to the Appellant violates his constitutional rights under the First Amendment Petition Clause, Fourth Amendment SEARCH & SEIZURE clause, the Fifth Amendment Takings clause, the Fourteenth Amendment Due Process clause (substantive and procedural) and EQUAL Protection Clause of the U.S. Constitution and parallel provisions of California Constitution. The decision and OMC 5.03.250(E)(1) is also void for vagueness on its face and as applied to subject motel under Due Process Clause of Fourteenth Amendment of U.S. Constitution. The Zoning Administrator's decision is requested to be reversed and that a decision be granted on appeal and finding that OMC 5.03.250 CE)(1) is not applicable to subject motel and that Motel can rent to guests for 30 consecutive days or more and such guests are permanent occupants not subject to OMC 3-6.02a(g) and not subject to Transient occupancy TAX

APPELLANT ACKNOWLEDGEMENT

I, the undersigned, hereby certify that the statements and information provided in this **Appeal Application Form**, and in any attached exhibits, present the data and information required for this application to the best of my ability, and that the facts, statements and information presented are true and correct to the best of my knowledge and belief.

Date: 1-11-24 Signature: [signature] - ATTORNEY AT LAW

Name (print or type): FRANK A. WEISER - ATTORNEY AT LAW

Invoice Detail

Permit ID #: PDET23-008
Invoice #: 407388
Invoice Date: 01/11/2024 16:18:24

Period	Fee Item	Qty	Fee
FINAL	Appeal Other	902	$902.00

Total Fee: $902.00

RECEIPT

CITY OF ONTARIO
REVENUE DEPARTMENT
303 E. B STREET
(909) 395-2050
ONTARIO, CA 91764

Application: PDET23-008
Application Type: Planning/PLANNING/PLANNING/DETERMINATION OF USE
Address: 3560 E SHADOW CREEK WY, ONTARIO, CA 91761

Receipt No. 349486

Payment Method	Ref Number	Amount Paid	Payment Date	Cash Drawer ID	Received	Comments
Credit	JV-20240111-9.2	$902.00	01/11/2024			

Owner Info.: SANDRA M BERNSTEIN
3560 SHADOW CREEK WAY
ONTARIO, CA 91761

Work Description: Referral to Zoning Administrator and Stay of Decision for the Days Inn Ontario ("Hotel"), located at 1405 East 4th Street, within the Light Industrial zoning district, to provide an interpretation or determination regarding the applicability and enforceability of Section 5.03.250(E)(I) as to the Hotel (APN: 108338132); submitted by the City of Ontario Transient Occupancy Tax License Official.

Rev. 10.01.2020

CITY OF ONTARIO PLANNING DEPARTMENT

Appeal Application Form

ZA23-032

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

ECONOMY INN

Instructions:

1. *Pursuant to Ontario Development Code Division 2.04 (Appeals), any person having legal standing may appeal and action or decision to the Appeal Authority, including but not limited to an applicant, resident, business owner, or any person owning real property within the City, that is aggrieved by an interpretation, action, or decision made by any City agency or department, or by an Approving Authority.*

2. *Within 10 days following the action or decision being appealed, an appeal request must be filed with the Planning Department on an Appeal Application Form, along with the required filing fees. The appeal request must include a statement identifying the specific action or decision that is being appealed, the specific grounds for the appeal, and the relief requested from the Appeal Authority.*

3. *An appeal of an action or decision made by an Approving Authority following a hearing, is limited to those matters raised during the hearing and contained in an appeal statement. The Appeal Authority cannot consider any matter that was not raised during the hearing before the Approving Authority and contained in the appeal statement.*

4. *The Appeal Authority that will hear the appeal request is limited to taking testimony and making its decision based solely on the specific grounds specified by the appellant in the Appeal Application Form, insofar as they make an adequate claim pursuant to Ontario Development Code Section 2.04.010. When the decision of an Approving Authority*

GENERAL INFORMATION (PRINT OR TYPE)

Appellant: Mehesh (Mike) Patel/ECONOMY INN

Address: 2301 South Euclid Avenue, ONTARIO, CA 91762

Phone: (909) 957-1714

Email: Nddamp@aol.com

Appellant's Representative: FRANK A. WEISER - ATTORNEY AT LAW

Address: 3460 Wilshire BLVD. Ste. 1212 L.A. CA 90010

Phone: (213) 384-6464 (Voice) (213) 383-7368

Email: Mimony@aol.com

(For staff use only)

File No(s): PDET23-009

Date: 1/11/24

Rec'd by: AM

Fees Paid: 902.00

☐ Cash ☐ Check (#)

☑ Credit Card

Receipt No.: 344487

SUBJECT OF APPEAL

This application is hereby filed pursuant to Ontario Development Code Division 2.04 (Appeals), appealing a decision or action of the following Authority:

☐ Department/Agency Head ☐ Development Advisory Board ☑ Zoning Administrator

☐ Historic Preservation Subcommittee ☐ Historic Preservation Commission ☐ Planning Commission

Hearing 2/8/24

Appeal Application Form

Project File No(s).: PDET 23-009 Date of Action/Decision: 12/21/2023

The application being appealed requests the following *(attach additional sheets as necessary)*: Reversal of Decision by the Zoning Administrator dated December 21, 2023 As to the applicability and enforceability of Ontario Development Code 5.03.250-CE)(1)

List the specific action(s) or decision(s) that is/are being appealed (attach additional sheets as necessary): Zoning Administrator received a referral From City of Ontario Transient Occupancy TAX License Official Arman Hartoloyan requesting interpretation and applicability of Section 5.03.250CE)(1) as to subject motel and Zoning Administrator found that section is applicable and enforceable as to subject Motel and motel cannot rent for a period exceeding 30 consecutive days And that guests are thus subject to OMC 3-6.02(g) for transient occupancy tax for all occupants as "transients"

APPEAL STATEMENT

Please check the box that best describes your reason(s) for the appeal:

- ☒ Abuse of discretion.
- ☐ Decision was not supported by the record.
- ☒ Abuse of discretion and decision was not supported by the record.

FAIL

State the specific grounds for the appeal and the relief requested (please be specific and attach additional sheets if necessary):

The subject motel never received notice of the zoning change and adoption of OMC 5.03 and OMC 5.03.250(E)(1) and is grandfathered in as to the allowance stays of 30 days or more consecutively. The City's decision is not supported by the record and thus subject motel was entitled to an individualized hearing as to his Motel. The Ordinance, OMC 5.03.250(E)(1), both on its face, and as applied to the Appellant violates his constitutional rights under the First, ~~Fourth~~ Amendment Petition Clause, Fourth Amendment Search & Seizure Clause, the Fifth Amendment Takings clause, the Fourteenth Amendment Due Process Clause (Substantive and Procedural) and Equal Protection Clause of the U.S. Constitution and parallel provisions of California Constitution. The decision and OMC 5.03.250(E)(1) is also void for vagueness on its face and as applied to subject motel under Due Process Clause of Fourteenth Amendment of U.S. Constitution. The Zoning Administrator's Decision is requested to be reversed and that a decision be granting the appeal and finding that OMC 5.03.250 CE)(1) is not applicable to subject motel and that Motel can rent to guests for 30 consecutive days or more and such guests are permanent occupants not subject to OMC 3-6.02(g) and not subject to Transient occupancy TAX

APPELLANT ACKNOWLEDGEMENT

I, the undersigned, hereby certify that the statements and information provided in this **Appeal Application Form**, and in any attached exhibits, present the data and information required for this application to the best of my ability, and that the facts, statements and information presented are true and correct to the best of my knowledge and belief.

Date: 1-11-24 Signature: Frank A. Wenger - Attorney at Law

Name (print or type): Frank A. Wenger - Attorney at Law

Invoice Detail

Permit ID #: PDET23-009
Invoice #: 407390
Invoice Date: 01/11/2024 16:23:30

Period	Fee Item	Qty	Fee
FINAL	Appeal Other	902	$902.00

Total Fee: $902.00

RECEIPT

CITY OF ONTARIO
REVENUE DEPARTMENT
303 E. B STREET
(909) 395-2050
ONTARIO, CA 91764

Application: PDET23-009
Application Type: Planning/PLANNING/PLANNING/DETERMINATION OF USE
Address: 2301 S EUCLID AV, ONTARIO, CA 91761

Receipt No. 349487

Payment Method	Ref Number	Amount Paid	Payment Date	Cash Drawer ID	Received	Comments
Credit	JV-20240111-9.3	$902.00	01/11/2024			

Owner Info.: JAYANTI P DESAI
2817 E EDMONTON ST
ONTARIO, CA 91761

Work Description: Referral to Zoning Administrator and Stay of Decision for the Economy Inn ("Hotel"), located at 2301 South Euclid Avenue, within the Community Commercial zoning district, to provide an interpretation or determination regarding the applicability and enforceability of Section 5.03.250(E)(I) as to the Hotel (APN:1051-071-04); submitted by the City of Ontario Transient Occupancy Tax License Official.

CITY OF ONTARIO PLANNING DEPARTMENT

Appeal Application Form

ZA23-033

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

MAYFAIR INN

Instructions:

1. *Pursuant to Ontario Development Code Division 2.04 (Appeals), any person having legal standing may appeal and action or decision to the Appeal Authority, including but not limited to an applicant, resident, business owner, or any person owning real property within the City, that is aggrieved by an interpretation, action, or decision made by any City agency or department, or by an Approving Authority.*

2. *Within 10 days following the action or decision being appealed, an appeal request must be filed with the Planning Department on an Appeal Application Form, along with the required filing fees. The appeal request must include a statement identifying the specific action or decision that is being appealed, the specific grounds for the appeal, and the relief requested from the Appeal Authority.*

3. *An appeal of an action or decision made by an Approving Authority following a hearing, is limited to those matters raised during the hearing and contained in an appeal statement. The Appeal Authority cannot consider any matter that was not raised during the hearing before the Approving Authority and contained in the appeal statement.*

4. *The Appeal Authority that will hear the appeal request is limited to taking testimony and making its decision based solely on the specific grounds specified by the appellant in the Appeal Application Form, insofar as they make an adequate claim pursuant to Ontario Development Code Section 2.04.010. When the decision of an Approving Authority*

GENERAL INFORMATION (PRINT OR TYPE)

Appellant: D.V.P PAYARAM, KNIGHTS INN/MAYFAIR INN
Address: 1120 EAST HOLT BLVD., ONTARIO, CA 91761
Phone: (213) 440-0329
Email: MayFairOnt@gmail.com

Appellant's Representative: FRANK A. WEISER - ATTORNEY AT LAW
Address: 3460 WILSHIRE BLVD. STE. 1212 L.A. CA 90010
Phone: (213) 384-6464 (Voice) (213) 383-7368
Email: Mlimony@aol.com

(For staff use only)

File No(s): PDET23-010
Date: 1/11/24
Rec'd by: AR
Fees Paid: 902.00
☐ Cash ☐ Check (# _____)
☑ Credit Card
Receipt No.: 3494993

SUBJECT OF APPEAL

This application is hereby filed pursuant to Ontario Development Code Division 2.04 (Appeals), appealing a decision or action of the following Authority:

☐ Department/Agency Head ☐ Development Advisory Board ☑ Zoning Administrator
☐ Historic Preservation Subcommittee ☐ Historic Preservation Commission ☐ Planning Commission

HEARING 4/16/24

Appeal Application Form

Project File No(s).: PDET 23-010 Date of Action/Decision: 12/21/2023

The application being appealed requests the following *(attach additional sheets as necessary)*: Reversal of Decision of the Zoning Administrator dated December 21, 2023 As to the applicability and enforceability of Ontario Development Code 5.03.250-CE)(1)

List the specific action(s) or decision(s) that is/are being appealed (attach additional sheets as necessary): Zoning Administrator received a referral from City of Ontario Transient Occupancy TAX License Official Arman Hamlalyan requesting interpretation and applicability of Section 5.03.250CE)(1) as to subject motel and Zoning Administrator found that section is applicable and enforceable as to subject motel and motel cannot rent for a period exceeding 30 consecutive days. And that guests are thus subject to OMC 3-6.02a(g) for transient occupancy tax for all occupants as "transients"

APPEAL STATEMENT

Please check the box that best describes your reason(s) for the appeal:

- [X] Abuse of discretion.
- [ ] Decision was not supported by the record.
- [X] Abuse of discretion and decision was not supported by the record.

State the specific grounds for the appeal and the relief requested (please be specific and attach additional sheets if necessary):

The subject motel never received notice of the zoning change and adoption of OMC 5.03 and OMC 5.03.250(E)(1) and is guaranteed in arc to the allowance stayer of 30 days or more consecutively. The City's decision is not supported by the record and thus subject motel was entitled to an individualized hearing as to his Motel. The Ordinance, OMC 5.03.250 (E)(1), both on its face, and as applied to the Appellant violates his constitutional rights under the First Amendment Petition Clause, Fourth Amendment Search & Seizure Clause, the Fifth Amendment Takings clause, the Fourteenth Amendment Due Process Clause (substantive and procedural) and Equal Protection Clause of the U.S. Constitution and parallel provisions of California Constitution. The decision and OMC 5.03.250(E)(1) is also void for vagueness on its face and as applied to subject motel under Due Process Clause of Fourteenth Amendment of U.S. Constitution. The Zoning Administrator's decision is requested to be reversed and that a decision be granting the appeal and finding that OMC 5.03.250 (E)(1) is not applicable to subject motel and that Motel can rent to guests for 30 consecutive days or more and such guests are permanent occupants not subject to OMC 3-6.02a(g) and not subject to Transient occupancy TAX

APPELLANT ACKNOWLEDGEMENT

I, the undersigned, hereby certify that the statements and information provided in this **Appeal Application Form**, and in any attached exhibits, present the data and information required for this application to the best of my ability, and that the facts, statements and information presented are true and correct to the best of my knowledge and belief.

Date: 1-11-24 Signature: Frank A. Wiese - Attorney at Law

Name (print or type): Frank A. Wiese - Attorney at Law

Invoice Detail

Permit ID #: PDET23-010
Invoice #: 407387
Invoice Date: 01/11/2024 16:14:11

Period	Fee Item	Qty	Fee
FINAL	Appeal Other	902	$902.00

Total Fee: $902.00

RECEIPT

CITY OF ONTARIO
REVENUE DEPARTMENT
303 E. B STREET
(909) 395-2050
ONTARIO, CA 91764

Application: PDET23-010
Application Type: Planning/PLANNING/PLANNING/DETERMINATION OF USE
Address: 1120 E HOLT BL, ONTARIO, CA 91761

Receipt No. 349488

Payment Method	Ref Number	Amount Paid	Payment Date	Cash Drawer ID	Received	Comments
Credit	JV-20240111-10.1	$902.00	01/11/2024			

Owner Info.: INC SHIVASMT
1120 E HOLT BLVD
ONTARIO, CA 91761

Work Description: Referral to Zoning Administrator and Stay of Decision for the Knights Inn ("Hotel"), located at 1120 Eas Holt Blvd. , within the industrial park zoning district, to provide an interpretation or determination regarding the applicability and enforceability of Section 5.03.250(E)(l) as to the Hotel (APN: 1049141-25); submitted by the City of Ontario Transient Occupancy Tax License Official.

Rev. 10.01.2020

CITY OF ONTARIO PLANNING DEPARTMENT

Appeal Application Form

ZA23-038 SANOS motel

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

Instructions:

1. *Pursuant to Ontario Development Code Division 2.04 (Appeals), any person having legal standing may appeal and action or decision to the Appeal Authority, including but not limited to an applicant, resident, business owner, or any person owning real property within the City, that is aggrieved by an interpretation, action, or decision made by any City agency or department, or by an Approving Authority.*

2. *Within 10 days following the action or decision being appealed, an appeal request must be filed with the Planning Department on an Appeal Application Form, along with the required filing fees. The appeal request must include a statement identifying the specific action or decision that is being appealed, the specific grounds for the appeal, and the relief requested from the Appeal Authority.*

3. *An appeal of an action or decision made by an Approving Authority following a hearing, is limited to those matters raised during the hearing and contained in an appeal statement. The Appeal Authority cannot consider any matter that was not raised during the hearing before the Approving Authority and contained in the appeal statement.*

4. *The Appeal Authority that will hear the appeal request is limited to taking testimony and making its decision based solely on the specific grounds specified by the appellant in the Appeal Application Form, insofar as they make an adequate claim pursuant to Ontario Development Code Section 2.04.010. When the decision of an Approving Authority*

GENERAL INFORMATION (PRINT OR TYPE)

Appellant: Purshtam Patel/Andy Patel/Sanos Motel

Address: 1210 West 1st Mission Blvd, Ontario, CA 91762

Phone: (909) 241-2157 or (909) 568-8100

Email: pbpupland@yahoo.com

Appellant's Representative: Frank A. Weiser - Attorney at Law

Address: 3460 Wilshire Blvd. Ste. 1212 L.A. CA 90010

Phone: (213) 384-6464 (voice) (213) 383-7368

Email: Mximony@aol.com

(For staff use only)

File No(s): PDEV23-015

Date: 1/11/24

Rec'd by: AA

Fees Paid: 902.00

☐ Cash ☐ Check (#)

☒ Credit Card

Receipt No.: 3494089

SUBJECT OF APPEAL

This application is hereby filed pursuant to Ontario Development Code Division 2.04 (Appeals), appealing a decision or action of the following Authority:

☐ Department/Agency Head ☐ Development Advisory Board ☒ Zoning Administrator

☐ Historic Preservation Subcommittee ☐ Historic Preservation Commission ☐ Planning Commission

Hearing 1/8/24

Appeal Application Form

Project File No(s).: PDET23-015 Date of Action/Decision: 12/21/2023

The application being appealed requests the following *(attach additional sheets as necessary)*: Reversal of Decision by the Zoning Administrator dated December 21, 2023 As to the applicability and enforceability of Ontario Development Code 5.03.250 CE)C.1

List the specific action(s) or decision(s) that is/are being appealed (attach additional sheets as necessary): Zoning Administrator received a referral From City of Ontario Transient Occupancy TAX License Official Arman Hartoloyan requesting interpretation and applicability of Section 5.03.250CE)(1) as to subject motel and Zoning Administrator found that section is applicable and enforceable as to subject motel and motel cannot rent for a period exceeding 30 consecutive days And that guests are thus subject to OMC 3-6.02a(g) For transient occupancy tax for all occupants as "transients"

APPEAL STATEMENT

Please check the box that best describes your reason(s) for the appeal:

- ☒ Abuse of discretion.
- ☐ Decision was not supported by the record.
- ☒ Abuse of discretion and decision was not supported by the record.

FILED

State the specific grounds for the appeal and the relief requested (please be specific and attach additional sheets if necessary):

The subject motel never received notice of the zoning change and adoption of OMC 5.03 and OMC 5.03.250(E)(1) and is grandfathered in as to the allowance stays of 30 days or more consecutively. The City's decision is not supported by the record and the subject motel was entitled to an individualized hearing as to his Motel. The Ordinance, OMC 5.03.250(E)(1), both on its face, and as applied to the Appellant violated his constitutional rights under the First, ~~Four~~ Amendment Petition Clause, Fourth Amendment Search and Seizure Clause, the Fifth Amendment Takings clause, the Fourteenth Amendment Due Process Clause (substantive and procedural) and Equal Protection Clause of the U.S. Constitution and parallel provisions of California Constitution. The decision and OMC 5.03.250(E)(1) is also void for vagueness/ on its face and as applied to subject motel under Due Process Clause of Fourteenth Amendment of U.S. Constitution. The Zoning Administrator's Decision is requested to be reversed and that a decision be granted this appeal and finding that OMC 5.03.250 CE)(1) is not applicable to subject motel and that Motel can rent to guests for 30 consecutive days or more and such guests are permanent occupants not subject to OMC 3-6.02a(g) and not subject to Transient occupancy TAX

APPELLANT ACKNOWLEDGEMENT

I, the undersigned, hereby certify that the statements and information provided in this **Appeal Application Form**, and in any attached exhibits, present the data and information required for this application to the best of my ability, and that the facts, statements and information presented are true and correct to the best of my knowledge and belief.

Date: 1-11-24 Signature: Frank A. Wacker - Attorney at Law

Name (print or type): Frank A. Wacker - Attorney at Law

Invoice Detail

Permit ID #: PDET23-015
Invoice #: 407391
Invoice Date: 01/11/2024 16:28:35

Period	Fee Item	Qty	Fee
FINAL	Appeal Other	902	$902.00

Total Fee: $902.00

RECEIPT

CITY OF ONTARIO
REVENUE DEPARTMENT
303 E. B STREET
(909) 395-2050
ONTARIO, CA 91764

Application: PDET23-015
Application Type: Planning/PLANNING/PLANNING/DETERMINATION OF USE
Address: 630 S OAKS AV, ONTARIO, CA 91762

Receipt No. 349489

Payment Method	Ref Number	Amount Paid	Payment Date	Cash Drawer ID	Received	Comments
Credit	JV-20240111-10.2	$902.00	01/11/2024			

Owner Info.: MARILEE RUTH TRUST 2016 VAN
630 S OAKS AVE
ONTARIO, CA 91762

Work Description: Referral to Zoning Administrator and Stay of Decision for the Sands Motel ("Hotel"), located at 1240 West Mission Blvd. , within the Light Industrial zoning district, to provide an interpretation or determination regarding the applicability and enforceability of Section 5.03.250(E)(l) as to the Hotel (APN: 1011-211-03); submitted by the City of Ontario Transient Occupancy Tax License Official.

CITY OF ONTARIO PLANNING DEPARTMENT

Appeal Application Form

ZA23-039 West Coast Inn

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

Instructions:

1. *Pursuant to Ontario Development Code Division 2.04 (Appeals), any person having legal standing may appeal and action or decision to the Appeal Authority, including but not limited to an applicant, resident, business owner, or any person owning real property within the City, that is aggrieved by an interpretation, action, or decision made by any City agency or department, or by an Approving Authority.*

2. *Within 10 days following the action or decision being appealed, an appeal request must be filed with the Planning Department on an Appeal Application Form, along with the required filing fees. The appeal request must include a statement identifying the specific action or decision that is being appealed, the specific grounds for the appeal, and the relief requested from the Appeal Authority.*

3. *An appeal of an action or decision made by an Approving Authority following a hearing, is limited to those matters raised during the hearing and contained in an appeal statement. The Appeal Authority cannot consider any matter that was not raised during the hearing before the Approving Authority and contained in the appeal statement.*

4. *The Appeal Authority that will hear the appeal request is limited to taking testimony and making its decision based solely on the specific grounds specified by the appellant in the Appeal Application Form, insofar as they make an adequate claim pursuant to Ontario Development Code Section 2.04.010. When the decision of an Approving Authority*

GENERAL INFORMATION (PRINT OR TYPE)

Appellant: Anil Patel / West Coast Inn
Address: 1211 North Grove Avenue, Ontario, CA 91764
Phone: (323) 215-5120
Email: apatel815@gmail.com

Appellant's Representative: Frank A. Weiser - Attorney at Law
Address: 3460 Wilshire Blvd. Ste. 1212 L.A. CA 90010
Phone: (213) 384-6464 (voice) (213) 383-7368
Email: Mmimony@aol.com

(For staff use only)

File No(s): PDEV23-016
Date: 1/11/24
Rec'd by: AA
Fees Paid: 902.00
☐ Cash ☐ Check (#)
☒ Credit Card
Receipt No.: 349490

SUBJECT OF APPEAL

This application is hereby filed pursuant to Ontario Development Code Division 2.04 (Appeals), appealing a decision or action of the following Authority:

☐ Department/Agency Head ☐ Development Advisory Board ☒ Zoning Administrator
☐ Historic Preservation Subcommittee ☐ Historic Preservation Commission ☐ Planning Commission

Hearing 1/8/24

Appeal Application Form

Project File No(s).: PDET 23-016 Date of Action/Decision: 12/21/2023

The application being appealed requests the following *(attach additional sheets as necessary)*: Reversal of Decision of the Zoning Administrator dated December 21, 2023 As to the applicability and enforceability of Ontario Development Code 5.03.250-CE)(1)

List the specific action(s) or decision(s) that is/are being appealed (attach additional sheets as necessary): Zoning Administrator received a referral from City of Ontario Transient Occupancy TAX License Official Arman Hartoloyan requesting interpretation and applicability of Section 5.03.250CE)(1) as to subject motel and Zoning Administrator found that section is applicable and enforceable as to subject motel and motel cannot rent for a period exceeding 30 consecutive days And that guests are thus subject to OMC 3-6.02a(g) for transient occupancy tax for all occupants as "transients"

APPEAL STATEMENT

Please check the box that best describes your reason(s) for the appeal:

- ☒ Abuse of discretion.
- ☐ Decision was not supported by the record.
- ☒ Abuse of discretion and decision was not supported by the record.

State the specific grounds for the appeal and the relief requested (please be specific and attach additional sheets if necessary):

The subject motel never received notice of the zoning change and adoption of OMC 5.03 and OMC 5.03.250(CE)(1) and is grandfathered in as to the allowable stays of 30 days or more consecutively. The City's decision is not supported by the record and the subject motel was entitled to an individualized hearing as to his Motel. The Ordinance, OMC 5.03.250 (CE)(1), both on its face, and as applied to the Appellant violates his constitutional rights under the First Amendment Petition Clause, Fourth Amendment Search & Seizure Clause, the Fifth Amendment Takings Clause, the Fourteenth Amendment Due Process Clause (substantive and procedural) and Equal Protection Clause of the U.S. Constitution and parallel provisions of California Constitution. The decision and OMC 5.03.250(CE)(1) is also void for vagueness on its face and as applied to subject motel under Due Process Clause of Fourteenth Amendment of U.S. Constitution. The Zoning Administrator's decision is requested to be reversed and that a decision be granted on appeal and finding that OMC 5.03.250 CE)(1) is not applicable to subject motel and that Motel can rent to guests for 30 consecutive days or more and such guests are permanent occupants not subject to OMC 3-6.02a(g) and not subject to transient occupancy TAX

APPELLANT ACKNOWLEDGEMENT

I, the undersigned, hereby certify that the statements and information provided in this **Appeal Application Form**, and in any attached exhibits, present the data and information required for this application to the best of my ability, and that the facts, statements and information presented are true and correct to the best of my knowledge and belief.

Date: 1-11-24 Signature: [signature] - ATTORNEY AT LAW

Name (print or type): FRANK A. WERNER - ATTORNEY AT LAW

Invoice Detail

Permit ID #: PDET23-016
Invoice #: 407392
Invoice Date: 01/11/2024 16:30:40

Period	Fee Item	Qty	Fee
FINAL	Appeal Other	902	$902.00

Total Fee: $902.00

RECEIPT

CITY OF ONTARIO
REVENUE DEPARTMENT
303 E. B STREET
(909) 395-2050
ONTARIO, CA 91764

Application: PDET23-016
Application Type: Planning/PLANNING/PLANNING/DETERMINATION OF USE
Address: 1205 N GROVE AV, BLDG# 1 ONTARIO, CA 91764

Receipt No. 349490

Payment Method	Ref Number	Amount Paid	Payment Date	Cash Drawer ID	Received	Comments
Credit	JV-20240111-10.3	$902.00	01/11/2024			

Owner Info.: NARAYAN AMBALAL PATEL
5321 ROCKY MOUNTAIN CT
RANCHO CUCAMONGA, CA 91737

Work Description: Referral to Zoning Administrator and Stay of Decision for the Pepper Tree Motel ("Hotel"), located at 1211 North Grove Avenue, within the Neighborhood Commercial zoning district, to provide an interpretation or determination regarding the applicability and enforceability of Section 5.03.250(E)(l) as to the Hotel (APN: 1047-451-25); submitted by the City of Ontario Transient Occupancy Tax License Official.

RESOLUTION NO. PC24-018

A RESOLUTION OF THE PLANNING COMMISSION OF THE CITY OF ONTARIO, CALIFORNIA, UPHOLDING THE ZONING ADMINSTRATOR'S INTERPRETATION AND DETERMINATION DECISION (FILE NO. PDET 23-005) THAT THE ONTARIO DEVELOPMENT CODE DIVISION 5.03, SECTION 5.03.250(E)(L) IS APPLICABLE AND ENFORCEABLE TO THE OPERATION TO THE HOTEL HACIENDA, LOCATED AT 2425 SOUTH ARCHIBALD AVENUE, WITHIN THE COMMUNITY COMMERCIAL ZONING DISTRICT, AND MAKING FINDINGS IN SUPPORT THEREOF— APN: 1083-071-26.

WHEREAS, Noman Patel ("Applicant") operator of the Hotel Hacienda has filed an Appeal of Application of the Zoning Administrators interpretation and determination decision that the Ontario Development Code Division 5.03, Section 5.03.250(E)(l) is applicable and enforceable to the operation Hotel Hacienda, File No. PDET23-005, as described in the title of this Resolution (hereinafter referred to as "Application" or "Project"); and

WHEREAS, the Application applies to the Hotel Hacienda (Formally America's Best Value Inn) ("Hotel"), located at 2425 South Archibald Avenue, within the Community Commercial zoning district; and

WHEREAS, on April 30, 2021, Executive Director of Finance Armen Harkalyan ("License Official") sitting as the Transient Occupancy Tax License Official under Chapter 6 of Title 3 of the Ontario Municipal Code, held a hearing for the operator of the Hotel Hacienda. The purpose of the hearing was to allow the operators the opportunity to rebut the amount of tax assessed by the License Official and offer evidence why the specified tax, interest, and penalties are incorrect; and

WHEREAS, on April 30, 2021, the License Official issued a Stay of Decision and referred the matter to the Zoning Administrator to provide an interpretation or determination regarding the applicability and enforceability of Section 5.03.250(E)(l) as to Hotel Hacienda; and

WHEREAS, the Hotel Hacienda was approved (File No. 3472-S) by the City of Ontario in 1986 as a 55-unit Motel (known in 1986 as the Knice Inn); and

WHEREAS, on November 6, 1987, the Building Department approved the construction plans for a the 55-unit motel, located at 2425 South Archibald Avenue; and

WHEREAS, in 1988, the Motel was constructed; and

WHEREAS, Division 9.01 (Definitions) of the Ontario Development Code (ODC) defines a Motel as a lodging facility that offers transient accommodations at a daily rate, to the general public, which are predominantly accessed from parking lots or exterior walkways consistent with the City approval and design layout for the Hotel Hacienda; and

WHEREAS, ODC Division 5.03, Section 5.03.250(E)(1) states that no guestroom, for Motel or Hotel, shall be rented for a period exceeding 30 consecutive calendar days, counting portions of calendar days as full days; and

WHEREAS, guestrooms that are being rented longer than 30 days is in violation of ODC Division 5.03, Section 5.03.250(E)(1) and not consistent with the intent of Motel or Hotel to provide transient accommodations at a daily rate; and

WHEREAS, Section 3-6.029(g) of the Ontario Municipal Code (OMC) clearly states that "Transient" shall mean any person who exercises occupancy or is entitled to occupancy by reason of concession, permit, right of access, license, or other agreement for a period of thirty (30) consecutive calendar days or less, counting portions of calendar days as full days; and

WHEREAS, the Transient Occupancy Tax shall be imposed on "transients" as defined the OMC Section 3-6.029(g); and

WHEREAS, Ontario Development Code Table 2.01-1 (Review Matrix) establishes that the Zoning Administrator has the responsibility and authority to review and act upon Interpretations and Land Use Determinations; and

WHEREAS, in response to the Appellants basis for the appeal staff has prepared a response to each of the items. Below is the Appellants statement and staff's response:

1. *Appellants' Issue No. 1: Subject hotels never received notice of the zoning change and adoption of Ontario Development Code ("ODC") Division 5.03 Section 5.03.250(E)(1) and were entitled to an individualized hearing under the First Amendment Petition Clause, Fourth Amendment Search and Seizure Clause, the Fifth Amendment Takings Clause, the Fourteenth Amendment Due Process Clause (Substantive and Procedural) and Equal Protection of the United States Constitution.*

Staff Response: Appellant's arguments introduce irrelevant issues that go beyond the limited scope of the Zoning Administrator's decisions.

The Zoning Administrator has acted within his limited authority to interpret the Ontario Development Code ("ODC"). The Zoning Administrator, under Section l.02.015(A)(l) of the ODC, has jurisdiction of, and is responsible for, the administration and application of the regulations and provisions of the Development Code. The Zoning

Administrator's power is limited to interpretation of the Code as applied to a particular case. ODC § 1.02.010(B)(1). Thus, the Zoning Administrator's power is limited to interpretation of the code and its application to a particular set of facts.

Appellants' arguments introduce irrelevant legal arguments that do not challenge the underlying factual findings and analysis of each of the decisions by the Zoning Administrator. Issues like the adoption and amendment of zoning ordinances are legislative acts rather than administrative or quasi-judicial acts. Arnel Dev. Co. v City of Costa Mesa (1980) 28 C3d 511, 514. Appellants take issue with the implementation of legislation of the Ontario Development Code. For reference, Ordinance No. 1569, which imposed the TOT was passed in 1965 – fifty-nine years ago. These issues are beyond the scope of the Zoning Administrator's role. For the Zoning Administrator to consider these legal issues would exceed the power granted by the Development Code.

The Zoning Administrator has acted within his limited authority to interpret the Development Code as to Appellants' claims and found that their hotels are subject to ODC chapter 5.03.250(E)(1). Appellants do not challenge the factual findings made by the Zoning Administrator. Thus, the appeal should be denied, and the Zoning Administrator's decisions upheld.

2. Appellants' Issue No. 2: *Ontario Development Code chapter 5.03.250(E)(1) which prohibits hotels from having a guestroom rented for longer than 30 days is inapplicable because Ontario Municipal Code chapter 3-06.02(g) states than an occupant can have an occupancy for longer than 30 days (with a written agreement).*

Staff Response: The Zoning Administrator's application of ODC § 5.03.250(E)(1) as to Appellants' hotels was proper. Where the Development Code imposes a greater restriction than is imposed or required by an existing law, the provisions of the Development Code shall prevail. ODC § 1.02.005. To the extent that there is an external inconsistency between the provisions of the Ontario Development Code and the provisions of the Ontario Municipal Code, the more restrictive provisions shall apply. ODC § 1.01.015(D). Thus, if there is a conflict between the Ontario Municipal Code and the Ontario Development Code, the Zoning Administrator must make a decision pursuant to the Development Code.

Here, Appellants argue that because OMC § 3-06.02(g) states than a person can have an occupancy of longer than 30 days (with an agreement in writing), that Appellants can rent their hotels to occupants for longer than 30 days and be exempt from the TOT. However, under the Development Code, "no guestroom shall be rented for a period exceeding 30 consecutive calendar days for a hotel or motel. ODC § 5.03.250(E)(1). This is an explicit restriction on hotels. To the extent that there exists any conflict by inference with OMC section 3-602(g), the ODC's restriction on hotels applies. ODC § 1.01.015(D).

The Zoning Administrator's application of the ODC's more restrictive provision prohibiting Appellants' hotels from renting to a person for longer than 30 days was proper.

Thus, the appeals should be denied, and the Zoning Administrator's decisions should be upheld; and

WHEREAS, the Application is a project pursuant to the California Environmental Quality Act, commencing with Public Resources Code Section 21000 (hereinafter referred to as "CEQA"); and

WHEREAS, the Project is not subject to the California Environmental Quality Act of 1970, as amended, and the Guidelines promulgated thereunder, pursuant to Section 15060(c)(2) of the State CEQA Guidelines, as the activity will not result in a direct or reasonably foreseeable indirect physical change in the environment; and

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

WHEREAS, City of Ontario Development Code Division 2.03 (Public Hearings) prescribes the manner in which public notification shall be provided and hearing procedures to be followed, and all such notifications and procedures have been completed; and

WHEREAS, on May 28, 2024, the Planning Commission of the City of Ontario conducted a hearing to consider the Project, and concluded said hearing on that date; and

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

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

SECTION 1: ***Environmental Determination and Findings.*** As the decision-making authority for the Project, the Planning Commission has reviewed and considered the information contained in the administrative record for the Project. Based upon the facts and information contained in the administrative record, including all written and oral evidence presented to the Planning Commission, the Planning Commission finds as follows:

(1) The administrative record has been completed in compliance with CEQA, the State CEQA Guidelines, and the City of Ontario Local CEQA Guidelines; and

(2) This Resolution has been reviewed with respect to the applicability of the California Environmental Quality Act of 1970 ("CEQA "), and the State CEQA Guidelines, and the Planning Commission has determined that this Resolution does not constitute a " project" within the meaning of CEQA Guidelines Section 15060(c)(2) because there is no potential that it will result in a direct or reasonably foreseeable indirect physical change in the environment and CEQA Guidelines Section 15378 because it has no potential for either a direct physical change to the environment, or a reasonably foreseeable indirect physical change in the environment; and

(3) The determination of CEQA exemption reflects the independent judgment of the Planning Commission.

SECTION 4: ***Concluding Facts and Reasons.*** Based upon the substantial evidence presented to the Planning Commission during the above-referenced hearing, and upon the specific findings set forth in Sections 1 through 3, above, the Planning Commission hereby concludes as follows:

(1) That the ODC Division 5.03, Section 5.03.250(E)(l) is applicable and enforceable to the operation of the Hotel Hacienda. ODC Division 5.03, Section 5.03.250(E)(1) states that no guestroom, for Motel or Hotel, shall be rented for a period exceeding 30 consecutive calendar days, counting portions of calendar days as full days. The intent of a Motel or Hotel to provide transient accommodations at a daily rate. Section 3-6.029(g) of the Ontario Municipal Code (OMC) clearly states that “Transient” shall mean any person who exercises occupancy or is entitled to occupancy by reason of concession, permit, right of access, license, or other agreement for a period of thirty (30) consecutive calendar days or less, counting portions of calendar days as full days. Therefore, the Transient Occupancy Tax shall be imposed on “transients” as defined the OMC Section 3-6.029(g).

(2) That Hotel has not applied for an exemption pursuant to Section 3-6.04 of the OMC and therefore no such exemption would be applicable to the Hotel.

(3) That Hotel’s operations, as stipulated in the April 30, 2021 hearing, allowing guests to stay longer than 30 days is in violation of ODC Division 5.03, Section 5.03.250(E)(1) and in violation of all applicable zoning and use permits.

SECTION 5: ***Planning Commission Action.*** Based upon the findings and conclusions set forth in Sections 1 through 4, above, the Planning Commission hereby Approves to uphold the Zoning Administrator Decision herein described Application.

SECTION 6: ***Indemnification.*** The Applicant shall agree to defend, indemnify and hold harmless, the City of Ontario or its agents, officers, and employees from any claim, action or proceeding against the City of Ontario or its agents, officers or employees

to attack, set aside, void, or annul this approval. The City of Ontario shall promptly notify the applicant of any such claim, action, or proceeding, and the City of Ontario shall cooperate fully in the defense.

SECTION 7: ***Custodian of Records.*** The documents and materials that constitute the record of proceedings on which these findings have been based are located at the City of Ontario City Hall, 303 East "B" Street, Ontario, California 91764. The custodian for these records is the City Clerk of the City of Ontario.

SECTION 8: ***Certification to Adoption.*** The Secretary shall certify to the adoption of the Resolution.

- - - - - - - - - - - - - -

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

I hereby certify that the foregoing Resolution was duly and regularly introduced, passed and adopted by the Planning Commission of the City of Ontario at a regular meeting thereof held on the 28th day of May 2024, and the foregoing is a full, true and correct copy of said Resolution, and has not been amended or repealed.

Nicola Ricci
Planning Commission Chairperson

ATTEST:

Henry K. Noh
Planning Director and
Secretary to the Planning Commission

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

I, Gwen Berendsen, Secretary Pro Tempore of the Planning Commission of the City of Ontario, DO HEREBY CERTIFY that foregoing Resolution No. PC24-018, was duly passed and adopted by the Planning Commission of the City of Ontario at their regular meeting held on May 28, 2024, by the following roll call vote, to wit:

AYES: Anderson, DeDiemar, Del Turco, Lampkin, Ricci

NOES: None

ABSENT: Dean, Gage

ABSTAIN: None

Gwen Berendsen
Secretary Pro Tempore

ATTACHMENT A:

Notice of Assessment for Transient Occupancy Tax ("Notice of Assessment")

(Notice of Assessment to follow this page)

(BEFORE THE

TRANSIENT OCCUPANCY TAX LICENSE OFFICIAL

FOR THE

CITY OF ONTARIO, CALIFORNIA

IN RE America's Best Value Inn 2425 S. Archibald Ave. Ontario, CA 91751	**REFERRAL TO ZONING ADMINISTRATOR AND STAY OF DECISION** License Official: Armen Harkalyan Date: 4/30/2021 Time: 1:00 P.M.

INTRODUCTION

1. This matter involves the application of the City of Ontario's Transient Occupancy Tax to the revenues of a hotel in the City of Ontario. Executive Director of Finance Armen Harkalyan ("License Official"), sitting as the Transient Occupancy Tax License Official under Chapter 6 of Title 3 of the Ontario Municipal Code, heard this matter via remote teleconference on the date and time noted above (the "Hearing"). The License Official was advised by attorney Steven P. Graham, special counsel to the City of Ontario.
2. City of Ontario ("City") is a municipal corporation existing under the laws of the State of California.
3. America's Best Value Inn ("Hotel") is a hotel located at 2425 S. Archibald Ave. in the City of Ontario. The Hotel is operated by Naman Patel ("Operator") and represented by attorney Frank A. Weiser, both were present at the hearing.
4. The following Referral to Zoning Administrator and Stay of Decision is based on the evidence presented during the Hearing for this matter. Pursuant to oral stipulation at the Hearing, the Hearing was held open for two weeks to give Mr. Weiser an opportunity to file additional evidence or legal argument in support the appeal. Nothing was filed within the two-week period and the Hearing was closed.

5. Chapter 6 of Title 3 of the Ontario Municipal Code related to Transient Occupancy Tax is attached hereto as **ATTACHMENT A**. Section 5.03.250 of the Ontario Development Code ("ODC"), which governs the operations of hotels, motels, residence inns, and other similar traveler accommodations, is attached hereto as **ATTACHMENT B**.

6. The License Official considered the testimony of all witnesses at the Hearing and all attachments received into evidence. The mere fact that particular witness testimony or attachments may not be specifically referred to below does not and shall not be construed to mean that said testimony or attachment was not considered.

7. The hearing was recorded and a copy of the recording is available upon request.

ISSUES

8. Pursuant to Ontario Municipal Code Section 3-6.09, the issue to be determined by the License Official on the application of Hotel is whether the amount of Transient Occupancy Tax, along with any interest and penalties, specified within the Notice of Assessment issued by the License Official on 11/18/2020 should be upheld.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

A. Jurisdictional Matters

9. This matter is before the License Official following the City's 11/18/2020 Notice of Assessment for Transient Occupancy Tax ("Notice of Assessment") which found that Hotel had unpaid Transient Occupancy Taxes. The Notice of Assessment is attached hereto as **ATTACHMENT C**. Specifically, the Notice of Assessment finds the following amounts are unpaid:

TOT UNCOLLECTED:	**($1,197.79)**
PENALTIES:	**$35.16**
INTEREST:	**$162.56**
TOTAL:	**$28,151.47**

The basis for this finding is $220,124.56 in exemptions claimed for non-transient guests of the Hotel, which the City alleges violate the provisions of Section 5.03.250 of the ODC.

10. Hotel filed an Application for Hearing on 12/2/2020 challenging the Notice of Assessment. The Application for Hearing is attached hereto as **ATTACHMENT D**.

11. The Hotel filed a Letter Brief into its Application for Hearing. The Letter Brief is attached hereto as **ATTACHMENT E**.

12. Pursuant to Ontario Municipal Code Section 3-6.09, a hearing before Executive Director of Finance Armen Harkalyan sitting as the Transient Occupancy Tax License Official was set where the Hotel could appear and offer evidence why the specified tax, interest, and penalties within the Notice of Assessment should not be so fixed. A copy of the Notice of Hearing is attached hereto as **ATTACHMENT F**.

B. Procedural Background

11. The Hearing for this matter was held on the date and time noted above in Ontario, California.

12. The Hotel called the Operator to offer testimony and evidence at the hearing. Attorney Frank A. Weiser offered legal argument at the hearing.

13. The matter was taken under submission by the Hearing Officer at the conclusion of the hearing, pending receipt of the letter brief from the Hotel.

14. Per oral stipulation at the hearing, the Hotel was given the opportunity to file a letter brief with evidentiary attachments within two weeks of the date and time noted above. No letter brief was filed and the Hearing was closed.

C. The Transient Occupancy Tax Ordinance

15. The City of Ontario imposes a Transient Occupancy Tax of eleven and three-quarters percent (11¾%) of rent on the privilege of occupancy of space in a hotel within its jurisdiction. O.M.C. § 3-6.03.

16. Rent is defined by the Ontario Municipal Code as "the consideration charged, whether or not received, for the occupancy of space in a hotel valued in money, whether to be received in money, goods, labor, or otherwise, including all receipts, cash, credits, property, and services of any kind or nature, without any deduction therefrom whatsoever." O.M.C. § 3-6.02(e).

17. Hotel is defined by the Ontario Municipal Code as "any structure, or any portion of any structure, which is occupied, or intended or designed for occupancy, by transients for dwelling, lodging,

or sleeping purposes and shall include any hotel, inn, tourist home or house, motel, studio hotel, bachelor hotel, lodging house, rooming house, apartment house, dormitory, public or private club, mobile home or house trailer at a fixed location, or other similar structure, or portion thereof." O.M.C. § 3-6.02(a).

18. The Ontario Municipal Code requires that "[e]ach operator shall collect and hold in trust for the account and benefit of the City the tax imposed by the provisions of this chapter to the same extent and at the same time as the rent is collected from every transient." O.M.C. § 3-6.05.

19. Operator is defined by the Ontario Municipal Code as "…the person who is the proprietor of the hotel whether in the capacity of owner, lessee, sublessee, mortgagee in possession, licensee, or any other capacity. Where the operator performs his or her functions through a managing agent of any type or character, other than an employee, the managing agent shall also be deemed an operator for the purposes of this chapter and shall have the same duties and liabilities as his or her principal." O.M.C. § 3-6.02(c).

20. The City of Ontario requires all operators of hotels to register such hotel with the License Official and obtain a "Transient Occupancy Registration Certificate" which shall be posted in a conspicuous place on the hotel premises. O.M.C. § 3-6.06. Such certificate shall include the name and address of the operator, the address of the hotel, the date the certificate was issued, and a statement required by the code. O.M.C. § 3-6.06.

21. The City of Ontario requires all operators to report and remit Transient Occupancy Taxes to the License Official. O.M.C. § 3-6.07. "Each operator shall, on or before the last day of the month following the close of each calendar quarter, or at the close of any shorter reporting period which may be established by the License Official, make a return to the License Official, on forms provided by him or her, of the total rents charged and received and the amount of tax collected for transient occupancies. At the time the return is filed, the full amount of the tax collected shall be remitted to the License Official." O.M.C. § 3-6.07.

22. Transient is defined by the Ontario Municipal Code as "any person who exercises occupancy or is entitled to occupancy by reason of concession, permit, right of access, license, or other agreement for a period of thirty (30) consecutive calendar days or less, counting portions of

calendar days as full days. Any such person so occupying space in a hotel shall be deemed to be a transient until the period of thirty (30) consecutive calendar days has expired unless there is an agreement in writing between the operator and the occupant providing for a longer period of occupancy. Any individual person who exercises or is entitled to occupancy for a period of thirty (30) consecutive calendar days or less shall be deemed to be a transient, regardless of whether the reservation and/or payment for occupancy is made directly by the person exercising occupancy or another person, or entity. The intent is to tax the individual person occupying, or having the right or entitlement to occupancy, the hotel room. 'Transient' includes any employee or officer of the State government or of the government of a political subdivision of the State. 'Transient' does not mean or include any Federal officer or employee when on official Federal government business, or any officer or employee of a foreign government who is exempt by reason of express provision of Federal law or international treaty, who exercises occupancy or is entitled to occupancy by reason of concession, permit, right of access, license, or other agreement for a period of thirty (30) consecutive calendar days or less, counting portions of calendar days as full days." O.M.C. § 3-6.02(g).

23. Under Section 5.03.250 of the Ontario Development Code, "No guestroom shall be rented for a period exceeding 30 consecutive calendar days, counting portions of calendar days as full days." O.D.C. § 5.03.250 (E)(1).

24. Operators who fail to report and remit any Transient Occupancy Tax are subject to penalties and interest. O.M.C. § 3-6.08.

25. When an operator fails or refuses to report or remit Transient Occupancy Tax in the manner required by the Ontario Municipal Code, the License Official "shall proceed in such manner as he may deem best to obtain the facts and information on which to base his estimate of the tax due." O.M.C. § 3-6.09. Once the License Official has obtained such facts and information, the License Official "shall proceed to determine and assess against such operator the tax, interest, and penalties" and "give notice of the amount so assessed by serving it personally or depositing it in the United States mail, postage prepaid, addressed to the operator so assessed at his last known place of address." O.M.C. § 3-6.09.

26. The Ontario Municipal Code creates a rebuttable presumption that the amount of Transient Occupancy Tax, along with any penalties and interest, determined by the License Official is correct. O.M.C. § 3-6.09. If not challenged, the determination of the License Official is "final and conclusive and immediately due and payable." O.M.C. § 3-6.09.

27. Any operator receiving a notice of assessment "may, within ten (10) days after the service or mailing of such notice, make an application in writing to the License Official for a hearing on the amount assessed." O.M.C. § 3-6.09. At the hearing "the operator may appear and offer evidence why such specified tax, interest, and penalties should not be so fixed." O.M.C. § 3-6.09.

28. After the hearing, the License Official "shall determine the proper tax to be remitted and shall thereafter give written notice to the person in the manner prescribed in this section of such determination and the amount of such tax, interest, and penalties." O.M.C. § 3-6.09.

D. The Hearing

29. Except as discussed below, the facts of this matter are essentially undisputed.

30. Under the Ontario Municipal Code, a rebuttable presumption exists at the hearing that the amount of tax assessed by the License Official is correct and operator has the opportunity to appear and offer evidence why the specified tax, interest, and penalties are incorrect.

31. The Hotel appeared by attorney Frank A. Weiser who offered legal arguments orally at the hearing. The Hotel called the Operator to offer testimony.

32. Hotel argues that the exemptions claimed are consistent with Title 3 Chapter 6 of the Ontario Municipal Code (the "TOT Ordinance"). Specifically, Hotel argues that under Section 3-6.03 of the TOT Ordinance, the transient occupancy tax is imposed only on transients. Transients are defined in Section 3-6.02(g) as any person who exercises occupancy or is entitled to occupancy, for a period of 30 calendar days or less. Here, the Hotel provided evidence that it rents rooms to guests for longer than 30 days. The Hotel argues that these guests, having stayed longer than 30 days at the Hotel, are exempt from taxation as they no longer meet the definition of transient.

33. The City, in response, called Tony Lai who made the findings on appeal before the License Official. Mr. Lai argues that under Section 5.03.250(E)(1) of Ontario Development Code, the

exemption is impermissible as "[n]o guestroom shall be rented for a period exceeding 30 consecutive calendar days, counting portions of calendar days as follow days." In particular, in the Audit Findings (Attachment C) for the Hotel, Mr. Lai claims "the hotel is claiming long-term occupants in error as it is zoned in a non-confirming [sic] area, per the Ontario Development Code Section 5.03.250. All long-term exemptions claimed are considered invalid and as a result TOT is understated." Furthermore, Mr. Lai stated that his findings were purely based on whether the exemption was permissible for the Hotel in light of the ODC prohibition.

REFERRAL TO ZONING ADMINISTRATOR

34. The Hotel has presented credible evidence and testimony that a significant portion of the guests of the Hotel stay in excess of 30 days.

35. The License Official's jurisdiction is to 'determine the proper tax to be remitted and [...] thereafter give written notice to the person in the manner prescribed in this section of such determination and the amount of such tax, interest, and penalties." O.M.C. § 3-6.09.

36. Under Section 1.02.015(A)(1) of the ODC "The Zoning Administrator shall have jurisdiction of, and be responsible for, the administration and application of the regulations and provisions of this Development Code."

37. Therefore, pursuant to Section 1.02.010(C) of the ODC, the License Official hereby requests that the Zoning Administrator provide an interpretation or determination regarding the applicability and enforceability of Section 5.03.250(E)(1) as to the Hotel.

38. Pending an interpretation or determination of the Zoning Administrator, the assessment of transient occupancy taxes, penalties, and interest assessed against the Hotel is hereby STAYED. Once an interpretation or determination is made, this stay will be lifted and a Decision and Order will issue that will UPHOLD, DISMISS, or MODIFY the assessment.

Dated: 10-5-21

License Official

CITY OF ONTARIO PLANNING DEPARTMENT

ZONING ADMINISTRATOR DECISION: LAND USE DETERMINATION

November 6, 2023

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

DECISION NO.: **ZA23-024**

FILE NO.: PDET23-005

DESCRIPTION: Referral to Zoning Administrator and Stay of Decision for the Hotel Hacienda (Formally America's Best Value Inn) ("Hotel"), located at 2425 South Archibald Avenue, within the Community Commercial zoning district, to provide an interpretation or determination regarding the applicability and enforceability of Section 5.03.250(E)(l) as to the Hotel (APN: 1083-071-26); **submitted by the City of Ontario Transient Occupancy Tax License Official.**

PART 1: BACKGROUND & ANALYSIS

THE CITY OF ONTARIO TRANSIENT OCCUPANCY TAX LICENSE OFFICIAL, (herein after referred to as "Applicant") has filed a request that Zoning Administrator provide an interpretation or determination regarding the applicability and enforceability of Section 5.03.250(E)(l) as to the Hotel. Land Use Interpretation or Determination, File No. PDET23-005, as described in the subject of this Decision (herein after referred to as "Application" or "Project").

DESCRIPTION: Referral to Zoning Administrator and Stay of Decision for the Hotel Hacienda, located at 2425 South Archibald Avenue, within the Commercial Zoning District, to provide an interpretation or determination regarding the applicability and enforceability of Ontario Development Code (ODC) Section 5.03.250(E)(l) as to the Hotel.

ANALYSIS: Under the ODC Section 1.02.015(A), the Zoning Administrator shall have jurisdiction of, and be responsible for, the administration and application of the regulations and provisions of this Development Code. Subsequently, the ODC Table 2.01-1 (Review Matrix) establishes that the Zoning Administrator has the responsibility and authority to review and act upon Interpretations and Land Use Determinations

The Hotel Hacienda (known in 1986 as the Knice Inn) was approved (File No. 3472-S) by the City of Ontario in 1986 as a 55-unit Motel. On November 6, 1987, the Building Department approved the construction plans for the 55-unit motel and construction for the Motel concluded in 1988. Division 9.01 (Definitions) of the ODC, defines a Motel as a lodging facility that offers transient accommodations at a daily rate, to the general public, which are predominantly accessed from parking lots or exterior walkways consistent with the City approval and design layout for the Hotel Hacienda. Hotels are defined as lodging facilities, which offers transient accommodations at a daily rate, to the general public, and which may provide additional services, such as restaurants, meeting rooms and recreational facilities. The definitions for a Motel and Hotel both clearly state the intent for transient accommodations at a daily rate.

ODC Division 5.03, Section 5.03.250(E)(1) states that no guestroom, for Motel or Hotel, shall be rented for a period exceeding 30 consecutive calendar days, counting portions of calendar days as full days. Rooms that are being rented longer than 30 days are in violation of ODC Division 5.03,

Section 5.03.250(E)(1) and not consistent with the intent of Motel or Hotel to provide transient accommodations at a daily rate. Section 3-6.02(g) of the Ontario Municipal Code (OMC) states that "Transient" shall mean any person who exercises occupancy or is entitled to occupancy by reason of concession, permit, right of access, license, or other agreement for a period of thirty (30) consecutive calendar days or less, counting portions of calendar days as full days.

PART 2: RECITALS

WHEREAS, the City of Ontario has received a request for an interpretation or determination, as described in Part I, above; and

WHEREAS, Ontario Development Code Table 2.01-1 (Review Matrix) establishes that the Zoning Administrator has the responsibility and authority to review and act upon Interpretations and Land Use Determinations; and

WHEREAS, it has been recognized that every conceivable use cannot be identified by the City of Ontario Development Code, and anticipating that new uses will evolve over time, Ontario Development Code Section 1.02.101 (Interpretations and Land Use Determinations) establishes the Zoning Administrator's authority to review and act upon a Determination of Use, comparing and measuring a proposed use against those listed in the Development Code, which have similar impacts, functions and characteristics; and

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

PART 3: THE DECISION

NOW, THEREFORE, it is hereby found, determined, and resolved by the Zoning Administrator of the City of Ontario as follows:

(1) All facts set forth in the preceding sections of this Interpretation and Determination of Use are true and correct and are incorporated by this reference.

(2) Based upon the evidence presented, the Zoning Administrator hereby concludes as follows:

(a) The Hotel Hacienda is located at 2425 South Archibald Avenue, within the Community Commercial zoning district. Hotels or Motels are not permitted within the Community Commercial zoning district. The existing Hotel Hacienda is a legal nonconforming use;

(b) The Hotel Hacienda was approved (File No. 3472-S) by the City of Ontario in 1986 as a 55-unit Motel (known in 1986 as the Knice Inn);

(c) On November 6, 1987, the Building Department approved the construction plans for a the 55-unit motel, located at 2425 South Archibald Avenue; and

(d) In 1988, the Motel was constructed; and

(e) Division 9.01 (Definitions) of the Ontario Development Code (ODC) defines a Motel as a lodging facility that offers transient accommodations at a daily rate, to the general public, which are predominantly accessed from parking lots or exterior walkways consistent with the City approval and design layout for the Hotel Hacienda; and

(f) ODC Division 5.03, Section 5.03.250(E)(1) states that no guestroom, for Motel or Hotel, shall be rented for a period exceeding 30 consecutive calendar days, counting portions of calendar days as full days; and

(g) Rooms that are being rented longer than 30 days is in violation of ODC Division 5.03, Section 5.03.250(E)(1) and not consistent with the intent of Motel or Hotel to provide transient accommodations at a daily rate; and

(h) Section 3-6.029(g) of the Ontario Municipal Code (OMC) clearly states that "Transient" shall mean any person who exercises occupancy or is entitled to occupancy by reason of concession, permit, right of access, license, or other agreement for a period of thirty (30) consecutive calendar days or less, counting portions of calendar days as full days; and

(i) The Transient Occupancy Tax shall be imposed on "transients" as defined the OMC Section 3-6.029(g); and

(j) Section 3-6.04 of the OMC provides for exemptions from the TOT under limited circumstances and pursuant to Section 3-6.04(b) no such exemption shall be granted except upon a claim made at the time the rent is collected and made under penalty of perjury upon a form approved by the Tax Administrator.

(3) The Zoning Administrator hereby finds and determines that the project identified in this Determination of Use is not subject to the California Environmental Quality Act of 1970, as amended, and the Guidelines promulgated thereunder, pursuant to Section 15060(c)(2) of the State CEQA Guidelines, as the activity will not result in a direct or reasonably foreseeable indirect physical change in the environment.

(4) Based upon the findings and conclusions set forth in Parts 1, 2 and 3 above, the Zoning Administrator hereby finds and determines, File No. PDET23-005, the following:

(a) That the ODC Division 5.03, Section 5.03.250(E)(l) is applicable and enforceable to the operation of the Hotel Hacienda. ODC Division 5.03, Section 5.03.250(E)(1) states that no guestroom, for Motel or Hotel, shall be rented for a period exceeding 30 consecutive calendar days, counting portions of calendar days as full days. The intent of a Motel or Hotel to provide transient accommodations at a daily rate. Section 3-6.029(g) of the Ontario Municipal Code (OMC) clearly states that "Transient" shall mean any person who exercises occupancy or is entitled to occupancy by reason of concession, permit, right of access, license, or other agreement for a period of thirty (30) consecutive calendar days or less, counting portions of calendar days as full days. Therefore, the Transient Occupancy Tax shall be imposed on "transients" as defined the OMC Section 3-6.029(g).

(b) That Hotel has not applied for an exemption pursuant to Section 3-6.04 of the OMC and therefore no such exemption would be applicable to the Hotel.

(c) That Hotel's operations, as stipulated in the April 30, 2021 hearing, allowing guests to stay longer than 30 days is in violation of ODC Division 5.03, Section 5.03.250(E)(1) and in violation of all applicable zoning and use permits.

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

APPROVED AND ADOPTED this 6th day of November 2023.

Rudy Zeledon
Zoning Administrator

RESOLUTION NO. PC24-019

A RESOLUTION OF THE PLANNING COMMISSION OF THE CITY OF ONTARIO, CALIFORNIA, UPHOLDING THE ZONING ADMINSTRATOR'S INTERPRETATION AND DETERMINATION DECISION (FILE NO. PDET 23-007) THAT THE ONTARIO DEVELOPMENT CODE DIVISION 5.03, SECTION 5.03.250(E)(L) IS APPLICABLE AND ENFORCEABLE TO THE OPERATION TO THE BRIGHT STAR MOTEL, LOCATED AT 1530 WEST MISSION BOULEVARD SOUTH ARCHIBALD AVENUE, WITHIN THE LIGHT INDUSTRIAL ZONING DISTRICT, AND MAKING FINDINGS IN SUPPORT THEREOF—APN: 1011-221-15.

WHEREAS, Purushottam Patel and Esha Smah ("Applicant") operator of the Bright Star Motel ("Hotel") has filed an appeal of Application of the Zoning Administrators interpretation and determination decision that the Ontario Development Code Division 5.03, Section 5.03.250(E)(l) is applicable and enforceable to the operation Bright Star Motel, File No. PDET23-007, as described in the title of this Resolution (hereinafter referred to as "Application" or "Project"); and

WHEREAS, the Application applies to the Bright Star Motel, located at 1530 West Mission Boulevard, within the Light Industrial zoning district. The existing Bright Star Motel is a legal nonconforming use; and

WHEREAS, on January 22, 2021, Executive Director of Finance Armen Harkalyan ("License Official") sitting as the Transient Occupancy Tax License Official under Chapter 6 of Title 3 of the Ontario Municipal Code, held a hearing for the operator of the Bright Star Motel. The purpose of the hearing was to allow the operators the opportunity to rebut the amount of tax assessed by the License Official and offer evidence why the specified tax, interest, and penalties are incorrect; and

WHEREAS, on January 22, 2021, the License Official issued a Stay of Decision and referred the matter to the Zoning Administrator to provide an interpretation or determination regarding the applicability and enforceability of Section 5.03.250(E)(l) as to Bright Star Motel; and

WHEREAS, the City of Ontario Building Department issued building permits, between 1956 and 1962, for the construction of Motel; and

WHEREAS, on November 6, 1987, the Building Department approved the construction plans for a the 55-unit motel, located at 2425 South Archibald Avenue; and

WHEREAS, Division 9.01 (Definitions) of the Ontario Development Code (ODC) defines a Motel as a lodging facility that offers transient accommodations at a daily rate, to the general public, which are predominantly accessed from parking lots or exterior

walkways consistent with the City approval and design layout for the Bright Star Motel; and

WHEREAS, ODC Division 5.03, Section 5.03.250(E)(1) states that no guestroom, for Motel or Hotel, shall be rented for a period exceeding 30 consecutive calendar days, counting portions of calendar days as full days; and

WHEREAS, guestrooms that are being rented longer than 30 days is in violation of ODC Division 5.03, Section 5.03.250(E)(1) and not consistent with the intent of Motel or Hotel to provide transient accommodations at a daily rate; and

WHEREAS, Section 3-6.029(g) of the Ontario Municipal Code (OMC) clearly states that "Transient" shall mean any person who exercises occupancy or is entitled to occupancy by reason of concession, permit, right of access, license, or other agreement for a period of thirty (30) consecutive calendar days or less, counting portions of calendar days as full days; and

WHEREAS, the Transient Occupancy Tax shall be imposed on "transients" as defined the OMC Section 3-6.029(g); and

WHEREAS, in response to the Appellants basis for the appeal staff has prepared a response to each of the items. Below is the Appellants statement and staff's response:

1. *Appellants' Issue No. 1: Subject hotels never received notice of the zoning change and adoption of Ontario Development Code ("ODC") Division 5.03 Section 5.03.250(E)(1) and were entitled to an individualized hearing under the First Amendment Petition Clause, Fourth Amendment Search and Seizure Clause, the Fifth Amendment Takings Clause, the Fourteenth Amendment Due Process Clause (Substantive and Procedural) and Equal Protection of the United States Constitution.*

Staff Response: Appellant's arguments introduce irrelevant issues that go beyond the limited scope of the Zoning Administrator's decisions.

The Zoning Administrator has acted within his limited authority to interpret the Ontario Development Code ("ODC"). The Zoning Administrator, under Section l.02.015(A)(l) of the ODC, has jurisdiction of, and is responsible for, the administration and application of the regulations and provisions of the Development Code. The Zoning Administrator's power is limited to interpretation of the Code as applied to a particular case. ODC § 1.02.010(B)(1). Thus, the Zoning Administrator's power is limited to interpretation of the code and its application to a particular set of facts.

Appellants' arguments introduce irrelevant legal arguments that do not challenge the underlying factual findings and analysis of each of the decisions by the Zoning

Administrator. Issues like the adoption and amendment of zoning ordinances are legislative acts rather than administrative or quasi-judicial acts. Arnel Dev. Co. v City of Costa Mesa (1980) 28 C3d 511, 514. Appellants take issue with the implementation of legislation of the Ontario Development Code. For reference, Ordinance No. 1569, which imposed the TOT was passed in 1965 – fifty-nine years ago. These issues are beyond the scope of the Zoning Administrator's role. For the Zoning Administrator to consider these legal issues would exceed the power granted by the Development Code.

The Zoning Administrator has acted within his limited authority to interpret the Development Code as to Appellants' claims and found that their hotels are subject to ODC chapter 5.03.250(E)(1). Appellants do not challenge the factual findings made by the Zoning Administrator. Thus, the appeal should be denied, and the Zoning Administrator's decisions upheld.

2. Appellants' Issue No. 2: *Ontario Development Code chapter 5.03.250(E)(1) which prohibits hotels from having a guestroom rented for longer than 30 days is inapplicable because Ontario Municipal Code chapter 3-06.02(g) states than an occupant can have an occupancy for longer than 30 days (with a written agreement).*

Staff Response: The Zoning Administrator's application of ODC § 5.03.250(E)(1) as to Appellants' hotels was proper. Where the Development Code imposes a greater restriction than is imposed or required by an existing law, the provisions of the Development Code shall prevail. ODC § 1.02.005. To the extent that there is an external inconsistency between the provisions of the Ontario Development Code and the provisions of the Ontario Municipal Code, the more restrictive provisions shall apply. ODC § 1.01.015(D). Thus, if there is a conflict between the Ontario Municipal Code and the Ontario Development Code, the Zoning Administrator must make a decision pursuant to the Development Code.

Here, Appellants argue that because OMC § 3-06.02(g) states than a person can have an occupancy of longer than 30 days (with an agreement in writing), that Appellants can rent their hotels to occupants for longer than 30 days and be exempt from the TOT. However, under the Development Code, "no guestroom shall be rented for a period exceeding 30 consecutive calendar days for a hotel or motel. ODC § 5.03.250(E)(1). This is an explicit restriction on hotels. To the extent that there exists any conflict by inference with OMC section 3-602(g), the ODC's restriction on hotels applies. ODC § 1.01.015(D). The Zoning Administrator's application of the ODC's more restrictive provision prohibiting Appellants' hotels from renting to a person for longer than 30 days was proper.

Thus, the appeals should be denied, and the Zoning Administrator's decisions should be upheld; and

WHEREAS, Ontario Development Code Table 2.01-1 (Review Matrix) establishes that the Zoning Administrator has the responsibility and authority to review and act upon Interpretations and Land Use Determinations; and

WHEREAS, the Application is a project pursuant to the California Environmental Quality Act, commencing with Public Resources Code Section 21000 (hereinafter referred to as "CEQA"); and

WHEREAS, the Project is not subject to the California Environmental Quality Act of 1970, as amended, and the Guidelines promulgated thereunder, pursuant to Section 15060(c)(2) of the State CEQA Guidelines, as the activity will not result in a direct or reasonably foreseeable indirect physical change in the environment; and

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

WHEREAS, City of Ontario Development Code Division 2.03 (Public Hearings) prescribes the manner in which public notification shall be provided and hearing procedures to be followed, and all such notifications and procedures have been completed; and

WHEREAS, on May 28, 2024, the Planning Commission of the City of Ontario conducted a hearing to consider the Project, and concluded said hearing on that date; and

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

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

SECTION 1: ***Environmental Determination and Findings.*** As the decision-making authority for the Project, the Planning Commission has reviewed and considered the information contained in the administrative record for the Project. Based upon the facts and information contained in the administrative record, including all written and oral evidence presented to the Planning Commission, the Planning Commission finds as follows:

(1) The administrative record has been completed in compliance with CEQA, the State CEQA Guidelines, and the City of Ontario Local CEQA Guidelines; and

(2) This Resolution has been reviewed with respect to the applicability of the California Environmental Quality Act of 1970 ("CEQA "), and the State CEQA Guidelines,

and the Planning Commission has determined that this Resolution does not constitute a " project" within the meaning of CEQA Guidelines Section 15060(c)(2) because there is no potential that it will result in a direct or reasonably foreseeable indirect physical change in the environment and CEQA Guidelines Section 15378 because it has no potential for either a direct physical change to the environment, or a reasonably foreseeable indirect physical change in the environment; and

(3) The determination of CEQA exemption reflects the independent judgment of the Planning Commission.

SECTION 4: ***Concluding Facts and Reasons.*** Based upon the substantial evidence presented to the Planning Commission during the above-referenced hearing, and upon the specific findings set forth in Sections 1 through 3, above, the Planning Commission hereby concludes as follows:

(1) That the ODC Division 5.03, Section 5.03.250(E)(l) is applicable and enforceable to the operation of the Bright Star Motel. ODC Division 5.03, Section 5.03.250(E)(1) states that no guestroom, for Motel or Hotel, shall be rented for a period exceeding 30 consecutive calendar days, counting portions of calendar days as full days. The intent of a Motel or Hotel to provide transient accommodations at a daily rate. Section 3-6.029(g) of the Ontario Municipal Code (OMC) clearly states that “Transient” shall mean any person who exercises occupancy or is entitled to occupancy by reason of concession, permit, right of access, license, or other agreement for a period of thirty (30) consecutive calendar days or less, counting portions of calendar days as full days. Therefore, the Transient Occupancy Tax shall be imposed on “transients” as defined the OMC Section 3-6.029(g).

(2) That Hotel has not applied for an exemption pursuant to Section 3-6.04 of the OMC and therefore no such exemption would be applicable to the Hotel.

(3) That Hotel’s operations, as stipulated in the January 22, 2021 hearing, allowing guests to stay longer than 30 days is in violation of ODC Division 5.03, Section 5.03.250(E)(1) and in violation of all applicable zoning and use permits.

SECTION 5: ***Planning Commission Action.*** Based upon the findings and conclusions set forth in Sections 1 through 4, above, the Planning Commission hereby Approves to uphold the Zoning Administrator Decision herein described Application.

SECTION 6: ***Indemnification.*** The Applicant shall agree to defend, indemnify and hold harmless, the City of Ontario or its agents, officers, and employees from any claim, action or proceeding against the City of Ontario or its agents, officers or employees to attack, set aside, void, or annul this approval. The City of Ontario shall promptly notify

the applicant of any such claim, action, or proceeding, and the City of Ontario shall cooperate fully in the defense.

SECTION 7: ***Custodian of Records.*** The documents and materials that constitute the record of proceedings on which these findings have been based are located at the City of Ontario City Hall, 303 East "B" Street, Ontario, California 91764. The custodian for these records is the City Clerk of the City of Ontario.

SECTION 8: ***Certification to Adoption.*** The Secretary shall certify to the adoption of the Resolution.

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

I hereby certify that the foregoing Resolution was duly and regularly introduced, passed and adopted by the Planning Commission of the City of Ontario at a regular meeting thereof held on the 28th day of May 2024, and the foregoing is a full, true and correct copy of said Resolution, and has not been amended or repealed.

Nicola Ricci
Planning Commission Chairperson

ATTEST:

Henry K. Noh
Planning Director and
Secretary to the Planning Commission

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

I, Gwen Berendsen, Secretary Pro Tempore of the Planning Commission of the City of Ontario, DO HEREBY CERTIFY that foregoing Resolution No. PC24-019, was duly passed and adopted by the Planning Commission of the City of Ontario at their regular meeting held on May 28, 2024, by the following roll call vote, to wit:

AYES: Anderson, DeDiemar, Del Turco, Lampkin, Ricci

NOES: None

ABSENT: Dean, Gage

ABSTAIN: None

Gwen Berendsen
Secretary Pro Tempore

ATTACHMENT A:

Notice of Assessment for Transient Occupancy Tax ("Notice of Assessment")

(Notice of Assessment to follow this page)

(BEFORE THE

TRANSIENT OCCUPANCY TAX LICENSE OFFICIAL

FOR THE

CITY OF ONTARIO, CALIFORNIA

IN RE

Bright Star Motel
1530 W. Mission Blvd.
Ontario, CA 91762

REFERRAL TO ZONING ADMINISTRATOR AND STAY OF DECISION _____

License Official: Armen Harkalyan
Date: 1/22/2021
Time: 1:00 P.M.

INTRODUCTION

1. This matter involves the application of the City of Ontario's Transient Occupancy Tax to the revenues of a hotel in the City of Ontario. Executive Director of Finance Armen Harkalyan ("License Official"), sitting as the Transient Occupancy Tax License Official under Chapter 6 of Title 3 of the Ontario Municipal Code, heard this matter via remote teleconference on the date and time noted above (the "Hearing"). The License Official was advised by attorney Steven P. Graham, special counsel to the City of Ontario.
2. City of Ontario ("City") is a municipal corporation existing under the laws of the State of California.
3. Bright Star Motel ("Hotel") is a hotel located at 1530 W. Mission Blvd. in the City of Ontario. The Hotel is operated by Esha Shah ("Operator") and represented by attorney Frank A. Weiser, both were present at the hearing.
4. The following Referral to Zoning Administrator and Stay of Decision is based on the evidence presented during the Hearing for this matter. Pursuant to oral stipulation at the Hearing, the Hearing was held open for two weeks to give Mr. Weiser an opportunity to file additional evidence or legal argument in support the appeal. Nothing was filed within the two-week period and the Hearing was closed.

5. Chapter 6 of Title 3 of the Ontario Municipal Code related to Transient Occupancy Tax is attached hereto as **ATTACHMENT A**. Section 5.03.250 of the Ontario Development Code ("ODC"), which governs the operations of hotels, motels, residence inns, and other similar traveler accommodations, is attached hereto as **ATTACHMENT B**.

6. The License Official considered the testimony of all witnesses at the Hearing and all attachments received into evidence. The mere fact that particular witness testimony or attachments may not be specifically referred to below does not and shall not be construed to mean that said testimony or attachment was not considered.

7. The hearing was recorded and a copy of the recording is available upon request.

ISSUES

8. Pursuant to Ontario Municipal Code Section 3-6.09, the issue to be determined by the License Official on the application of Hotel is whether the amount of Transient Occupancy Tax, along with any interest and penalties, specified within the Notice of Assessment issued by the License Official on 11/18/2020 should be upheld.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

A. Jurisdictional Matters

9. This matter is before the License Official following the City's 11/18/2020 Notice of Assessment for Transient Occupancy Tax ("Notice of Assessment") which found that Hotel had unpaid Transient Occupancy Taxes. The Notice of Assessment is attached hereto as **ATTACHMENT C**. Specifically, the Notice of Assessment finds the following amounts are unpaid:

TOT UNCOLLECTED:	**$47,514.30**
PENALTIES:	**$950.29**
INTEREST:	**$4,829.73**
TOTAL:	**$53,294.31**

The basis for this finding is $404,377.00 in exemptions claimed for non-transient guests of the Hotel, which the City alleges violate the provisions of Section 5.03.250 of the ODC.

10. Hotel filed an Application for Hearing on 12/2/2020 challenging the Notice of Assessment. The Application for Hearing is attached hereto as **ATTACHMENT D.**

11. The Hotel filed a Letter Brief into its Application for Hearing. The Letter Brief is attached hereto as **ATTACHMENT E.**

12. Pursuant to Ontario Municipal Code Section 3-6.09, a hearing before Executive Director of Finance Armen Harkalyan sitting as the Transient Occupancy Tax License Official was set where the Hotel could appear and offer evidence why the specified tax, interest, and penalties within the Notice of Assessment should not be so fixed. A copy of the Notice of Hearing is attached hereto as **ATTACHMENT F.**

B. Procedural Background

11. The Hearing for this matter was held on the date and time noted above in Ontario, California.

12. The Hotel called the Operator to offer testimony and evidence at the hearing. Attorney Frank A. Weiser offered legal argument at the hearing.

13. The matter was taken under submission by the Hearing Officer at the conclusion of the hearing, pending receipt of the letter brief from the Hotel.

14. Per oral stipulation at the hearing, the Hotel was given the opportunity to file a letter brief with evidentiary attachments within two weeks of the date and time noted above. No letter brief was filed and the Hearing was closed.

C. The Transient Occupancy Tax Ordinance

15. The City of Ontario imposes a Transient Occupancy Tax of eleven and three-quarters percent (11¾%) of rent on the privilege of occupancy of space in a hotel within its jurisdiction. O.M.C. § 3-6.03.

16. Rent is defined by the Ontario Municipal Code as "the consideration charged, whether or not received, for the occupancy of space in a hotel valued in money, whether to be received in money, goods, labor, or otherwise, including all receipts, cash, credits, property, and services of any kind or nature, without any deduction therefrom whatsoever." O.M.C. § 3-6.02(e).

17. Hotel is defined by the Ontario Municipal Code as "any structure, or any portion of any structure, which is occupied, or intended or designed for occupancy, by transients for dwelling, lodging,

or sleeping purposes and shall include any hotel, inn, tourist home or house, motel, studio hotel, bachelor hotel, lodging house, rooming house, apartment house, dormitory, public or private club, mobile home or house trailer at a fixed location, or other similar structure, or portion thereof." O.M.C. § 3-6.02(a).

18. The Ontario Municipal Code requires that "[e]ach operator shall collect and hold in trust for the account and benefit of the City the tax imposed by the provisions of this chapter to the same extent and at the same time as the rent is collected from every transient." O.M.C. § 3-6.05.

19. Operator is defined by the Ontario Municipal Code as "...the person who is the proprietor of the hotel whether in the capacity of owner, lessee, sublessee, mortgagee in possession, licensee, or any other capacity. Where the operator performs his or her functions through a managing agent of any type or character, other than an employee, the managing agent shall also be deemed an operator for the purposes of this chapter and shall have the same duties and liabilities as his or her principal." O.M.C. § 3-6.02(c).

20. The City of Ontario requires all operators of hotels to register such hotel with the License Official and obtain a "Transient Occupancy Registration Certificate" which shall be posted in a conspicuous place on the hotel premises. O.M.C. § 3-6.06. Such certificate shall include the name and address of the operator, the address of the hotel, the date the certificate was issued, and a statement required by the code. O.M.C. § 3-6.06.

21. The City of Ontario requires all operators to report and remit Transient Occupancy Taxes to the License Official. O.M.C. § 3-6.07. "Each operator shall, on or before the last day of the month following the close of each calendar quarter, or at the close of any shorter reporting period which may be established by the License Official, make a return to the License Official, on forms provided by him or her, of the total rents charged and received and the amount of tax collected for transient occupancies. At the time the return is filed, the full amount of the tax collected shall be remitted to the License Official." O.M.C. § 3-6.07.

22. Transient is defined by the Ontario Municipal Code as "any person who exercises occupancy or is entitled to occupancy by reason of concession, permit, right of access, license, or other agreement for a period of thirty (30) consecutive calendar days or less, counting portions of

calendar days as full days. Any such person so occupying space in a hotel shall be deemed to be a transient until the period of thirty (30) consecutive calendar days has expired unless there is an agreement in writing between the operator and the occupant providing for a longer period of occupancy. Any individual person who exercises or is entitled to occupancy for a period of thirty (30) consecutive calendar days or less shall be deemed to be a transient, regardless of whether the reservation and/or payment for occupancy is made directly by the person exercising occupancy or another person, or entity. The intent is to tax the individual person occupying, or having the right or entitlement to occupancy, the hotel room. 'Transient' includes any employee or officer of the State government or of the government of a political subdivision of the State. 'Transient' does not mean or include any Federal officer or employee when on official Federal government business, or any officer or employee of a foreign government who is exempt by reason of express provision of Federal law or international treaty, who exercises occupancy or is entitled to occupancy by reason of concession, permit, right of access, license, or other agreement for a period of thirty (30) consecutive calendar days or less, counting portions of calendar days as full days." O.M.C. § 3-6.02(g).

23. Under Section 5.03.250 of the Ontario Development Code, "No guestroom shall be rented for a period exceeding 30 consecutive calendar days, counting portions of calendar days as full days." O.D.C. § 5.03.250 (E)(1).

24. Operators who fail to report and remit any Transient Occupancy Tax are subject to penalties and interest. O.M.C. § 3-6.08.

25. When an operator fails or refuses to report or remit Transient Occupancy Tax in the manner required by the Ontario Municipal Code, the License Official "shall proceed in such manner as he may deem best to obtain the facts and information on which to base his estimate of the tax due." O.M.C. § 3-6.09. Once the License Official has obtained such facts and information, the License Official "shall proceed to determine and assess against such operator the tax, interest, and penalties" and "give notice of the amount so assessed by serving it personally or depositing it in the United States mail, postage prepaid, addressed to the operator so assessed at his last known place of address." O.M.C. § 3-6.09.

26. The Ontario Municipal Code creates a rebuttable presumption that the amount of Transient Occupancy Tax, along with any penalties and interest, determined by the License Official is correct. O.M.C. § 3-6.09. If not challenged, the determination of the License Official is "final and conclusive and immediately due and payable." O.M.C. § 3-6.09.

27. Any operator receiving a notice of assessment "may, within ten (10) days after the service or mailing of such notice, make an application in writing to the License Official for a hearing on the amount assessed." O.M.C. § 3-6.09. At the hearing "the operator may appear and offer evidence why such specified tax, interest, and penalties should not be so fixed." O.M.C. § 3-6.09.

28. After the hearing, the License Official "shall determine the proper tax to be remitted and shall thereafter give written notice to the person in the manner prescribed in this section of such determination and the amount of such tax, interest, and penalties." O.M.C. § 3-6.09.

D. The Hearing

29. Except as discussed below, the facts of this matter are essentially undisputed.

30. Under the Ontario Municipal Code, a rebuttable presumption exists at the hearing that the amount of tax assessed by the License Official is correct and operator has the opportunity to appear and offer evidence why the specified tax, interest, and penalties are incorrect.

31. The Hotel appeared by attorney Frank A. Weiser who offered legal arguments orally at the hearing. The Hotel called the Operator to offer testimony and provide documents that were taken into evidence. A copy of the evidence submitted by the Operator is attached hereto as **ATTACHMENT G**.

32. Hotel argues that the exemptions claimed are consistent with Title 3 Chapter 6 of the Ontario Municipal Code (the "TOT Ordinance"). Specifically, Hotel argues that under Section 3-6.03 of the TOT Ordinance, the transient occupancy tax is imposed only on transients. Transients are defined in Section 3-6.02(g) as any person who exercises occupancy or is entitled to occupancy, for a period of 30 calendar days or less. Here, the Hotel provided evidence that it rents rooms to guests for longer than 30 days. The Hotel argues that these guests, having stayed longer than 30 days at the Hotel, are exempt from taxation as they no longer meet the definition of transient.

33. The City, in response, called Tony Lai who made the findings on appeal before the License Official. Mr. Lai argues that under Section 5.03.250(E)(1) of Ontario Development Code, the exemption is impermissible as "[n]o guestroom shall be rented for a period exceeding 30 consecutive calendar days, counting portions of calendar days as follow days." In particular, in the Audit Findings (Attachment C) for the Hotel, Mr. Lai claims "the hotel is claiming long-term occupants in error as it is zoned in a non-confirming [sic] area, per the Ontario Development Code Section 5.03.250. All long-term exemptions claimed are considered invalid and as a result TOT is understated." Furthermore, Mr. Lai stated that his findings were purely based on whether the exemption was permissible for the Hotel in light of the ODC prohibition.

REFERRAL TO ZONING ADMINISTRATOR

34. The Hotel has presented credible evidence and testimony that a significant portion of the guests of the Hotel stay in excess of 30 days.

35. The License Official's jurisdiction is to "determine the proper tax to be remitted and [...] thereafter give written notice to the person in the manner prescribed in this section of such determination and the amount of such tax, interest, and penalties." O.M.C. § 3-6.09.

36. Under Section 1.02.015(A)(1) of the ODC "The Zoning Administrator shall have jurisdiction of, and be responsible for, the administration and application of the regulations and provisions of this Development Code."

37. Therefore, pursuant to Section 1.02.010(C) of the ODC, the License Official hereby requests that the Zoning Administrator provide an interpretation or determination regarding the applicability and enforceability of Section 5.03.250(E)(1) as to the Hotel.

38. Pending an interpretation or determination of the Zoning Administrator, the assessment of transient occupancy taxes, penalties, and interest assessed against the Hotel is hereby STAYED. Once an interpretation or determination is made, this stay will be lifted and a Decision and Order will issue that will UPHOLD, DISMISS, or MODIFY the assessment.

Dated: 10-5-21

License Official

ZONING ADMINISTRATOR DECISION: LAND USE DETERMINATION

December 21, 2023

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

DECISION NO.: **ZA23-030**

FILE NO.: PDET23-007

DESCRIPTION: Referral to Zoning Administrator and Stay of Decision for the Bright Star Motel ("Hotel"), located at 1530 West Mission Boulevard, within the Light Industrial zoning district, to provide an interpretation or determination regarding the applicability and enforceability of Section 5.03.250(E)(l) as to the Hotel (APN: 1011-221-15); **submitted by the City of Ontario Transient Occupancy Tax License Official.**

PART 1: BACKGROUND & ANALYSIS

THE CITY OF ONTARIO TRANSIENT OCCUPANCY TAX LICENSE OFFICIAL, (herein after referred to as "Applicant") has filed a request that Zoning Administrator provide an interpretation or determination regarding the applicability and enforceability of Section 5.03.250(E)(l) as to the Hotel. Land Use Interpretation or Determination, File No. PDET23-007, as described in the subject of this Decision (herein after referred to as "Application" or "Project").

DESCRIPTION: Referral to Zoning Administrator and Stay of Decision for the Bright Star Motel, located at 1530 West Million Boulevard, within the Light Industrial zoning district, to provide an interpretation or determination regarding the applicability and enforceability of Ontario Development Code (ODC) Section 5.03.250(E)(l) as to the Hotel.

ANALYSIS: Under the ODC Section 1.02.015(A), the Zoning Administrator shall have jurisdiction of, and be responsible for, the administration and application of the regulations and provisions of this Development Code. Subsequently, the ODC Table 2.01-1 (Review Matrix) establishes that the Zoning Administrator has the responsibility and authority to review and act upon Interpretations and Land Use Determinations

The Bright Star Motel property is zoned Light Industrial. Between 1956 and 1962 the City of Ontario Building Department issued permits for the construction of Motel. The permitted Motel was constructed in conformance with all regulations of the Municipal Code at the time of development; however, at present, it is not in compliance with the current Light Industrial zoning district. Consequently, the existing Motel use is deemed "legal nonconforming". Division 3.01 (Nonconforming Lots, Uses and Structures), Section 3.01.015: Nonconforming Land Uses, outlines the regulations for the continuance of a nonconforming use.

The Ontario Development Code, Division 9.01 (Definitions), defines a Motel as a lodging facility that offers transient accommodations at a daily rate, to the general public, which are predominantly accessed from parking lots or exterior walkways consistent with the City approval and design layout for the Bright Star Motel. Hotels are defined as lodging facilities, which offers transient accommodations at a daily rate, to the general public, and which may provide

additional services, such as restaurants, meeting rooms and recreational facilities. The definitions for a Motel and Hotel both clearly state the intent for transient accommodations at a daily rate.

ODC Division 5.03, Section 5.03.250(E)(1) states that no guestroom, for Motel or Hotel, shall be rented for a period exceeding 30 consecutive calendar days, counting portions of calendar days as full days. Rooms that are being rented longer than 30 days are in violation of ODC Division 5.03, Section 5.03.250(E)(1) and not consistent with the intent of Motel or Hotel to provide transient accommodations at a daily rate. Section 3-6.02(g) of the Ontario Municipal Code (OMC) states that "Transient" shall mean any person who exercises occupancy or is entitled to occupancy by reason of concession, permit, right of access, license, or other agreement for a period of thirty (30) consecutive calendar days or less, counting portions of calendar days as full days.

PART 2: RECITALS

WHEREAS, the City of Ontario has received a request for an interpretation or determination, as described in Part I, above; and

WHEREAS, Ontario Development Code Table 2.01-1 (Review Matrix) establishes that the Zoning Administrator has the responsibility and authority to review and act upon Interpretations and Land Use Determinations; and

WHEREAS, it has been recognized that every conceivable use cannot be identified by the City of Ontario Development Code, and anticipating that new uses will evolve over time, Ontario Development Code Section 1.02.101 (Interpretations and Land Use Determinations) establishes the Zoning Administrator's authority to review and act upon a Determination of Use, comparing and measuring a proposed use against those listed in the Development Code, which have similar impacts, functions and characteristics; and

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

PART 3: THE DECISION

NOW, THEREFORE, it is hereby found, determined, and resolved by the Zoning Administrator of the City of Ontario as follows:

(1) All facts set forth in the preceding sections of this Interpretation and Determination of Use are true and correct and are incorporated by this reference.

(2) Based upon the evidence presented, the Zoning Administrator hereby concludes as follows:

(a) The Bright Star Motel is located at 1530 West Mission Boulevard, within the Light Industrial zoning district. Hotels or Motels are not permitted within the light industrial zoning district. The existing Bright Star Motel is a legal nonconforming use;

(b) The City of Ontario Building Department issued building permits, between 1956 and 1962, for the construction of Motel; and

(c) Division 9.01 (Definitions) of the Ontario Development Code (ODC) defines a Motel as a lodging facility that offers transient accommodations at a daily rate, to the general public, which are predominantly accessed from parking lots or exterior walkways consistent with the City approval and design layout for the Bright Star Motel; and

(d) ODC Division 5.03, Section 5.03.250(E)(1) states that no guestroom, for Motel or Hotel, shall be rented for a period exceeding 30 consecutive calendar days, counting portions of calendar days as full days; and

(e) Rooms that are being rented longer than 30 days is in violation of ODC Division 5.03, Section 5.03.250(E)(1) and not consistent with the intent of Motel or Hotel to provide transient accommodations at a daily rate; and

(f) Section 3-6.029(g) of the Ontario Municipal Code (OMC) clearly states that "Transient" shall mean any person who exercises occupancy or is entitled to occupancy by reason of concession, permit, right of access, license, or other agreement for a period of thirty (30) consecutive calendar days or less, counting portions of calendar days as full days; and

(g) The Transient Occupancy Tax shall be imposed on "transients" as defined the OMC Section 3-6.029(g); and

(h) Section 3-6.04 of the OMC provides for exemptions from the TOT under limited circumstances and pursuant to Section 3-6.04(b) no such exemption shall be granted except upon a claim made at the time the rent is collected and made under penalty of perjury upon a form approved by the Tax Administrator.

(3) The Zoning Administrator hereby finds and determines that the project identified in this Determination of Use is not subject to the California Environmental Quality Act of 1970, as amended, and the Guidelines promulgated thereunder, pursuant to Section 15060(c)(2) of the State CEQA Guidelines, as the activity will not result in a direct or reasonably foreseeable indirect physical change in the environment.

(4) Based upon the findings and conclusions set forth in Parts 1, 2 and 3 above, the Zoning Administrator hereby finds and determines, File No. PDET23-007, the following:

(a) That the ODC Division 5.03, Section 5.03.250(E)(l) is applicable and enforceable to the operation of the Bright Star Motel. ODC Division 5.03, Section 5.03.250(E)(1) states that no guestroom, for Motel or Hotel, shall be rented for a period exceeding 30 consecutive calendar days, counting portions of calendar days as full days. The intent of a Motel or Hotel to provide transient accommodations at a daily rate. Section 3-6.029(g) of the Ontario Municipal Code (OMC) clearly states that "Transient" shall mean any person who exercises occupancy or is entitled to occupancy by reason of concession, permit, right of access, license, or other agreement for a period of thirty (30) consecutive calendar days or less, counting portions of calendar days as full days. Therefore, the Transient Occupancy Tax shall be imposed on "transients" as defined the OMC Section 3-6.029(g).

(b) That Hotel has not applied for an exemption pursuant to Section 3-6.04 of the OMC and therefore no such exemption would be applicable to the Hotel.

(c) That Hotel's operations, as stipulated in the January 1, 2021 hearing, allowing guests to stay longer than 30 days is in violation of ODC Division 5.03, Section 5.03.250(E)(1) and in violation of all applicable zoning and use permits.

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

APPROVED AND ADOPTED this 21st day of December 2023.

Rudy Zeledon
Zoning Administrator

RESOLUTION NO. PC24-020

A RESOLUTION OF THE PLANNING COMMISSION OF THE CITY OF ONTARIO, CALIFORNIA, UPHOLDING THE ZONING ADMINSTRATOR'S INTERPRETATION AND DETERMINATION DECISION (FILE NO. PDET 23-008) THAT THE ONTARIO DEVELOPMENT CODE DIVISION 5.03, SECTION 5.03.250(E)(L) IS APPLICABLE AND ENFORCEABLE TO THE OPERATION TO THE DAYS INN ONTARIO MOTEL, LOCATED AT 1405 EAST 4TH STREET, WITHIN THE NEIGHBORHOOD COMMERCIAL ZONING DISTRICT, AND MAKING FINDINGS IN SUPPORT THEREOF—APN: 0108-381-32.

WHEREAS, Kisham Patel ("Applicant") operator of the Days Inn Ontario Motel ("Hotel") has filed an appeal of Application of the Zoning Administrators interpretation and determination decision that the Ontario Development Code Division 5.03, Section 5.03.250(E)(l) is applicable and enforceable to the operation Days Inn Ontario Motel, File No. PDET23-008, as described in the title of this Resolution (hereinafter referred to as "Application" or "Project"); and

WHEREAS, the Days Inn Ontario is located at 1405 East 4th Street, within the Neighborhood Commercial zoning district. Hotels or Motels are permitted within the Neighborhood Commercial zoning district subject to approval of a Conditional Use Permit; and

WHEREAS, on April 2, 2021, Executive Director of Finance Armen Harkalyan ("License Official") sitting as the Transient Occupancy Tax License Official under Chapter 6 of Title 3 of the Ontario Municipal Code, held a hearing for the operator of the Days Inn Ontario. The purpose of the hearing was to allow the operators the opportunity to rebut the amount of tax assessed by the License Official and offer evidence why the specified tax, interest, and penalties are incorrect; and

WHEREAS, on April 2, 2021, the License Official issued a Stay of Decision and referred the matter to the Zoning Administrator to provide an interpretation or determination regarding the applicability and enforceability of Section 5.03.250(E)(l) as to Days Inn Ontario Motel; and

WHEREAS, in 1985, The Planning Commission approved a Conditional Use Permit (File No. 3225-CUP) to establish 53-unit Days Inn Ontario Motel (known as Youngs Motel); and

WHEREAS, in 1987, the City of Ontario Building Department issued building permits for the construction of Days Inn Ontario Motel (Known as "Youngs Motel"); and

WHEREAS, Division 9.01 (Definitions) of the Ontario Development Code (ODC) defines a Motel as a lodging facility that offers transient accommodations at a daily rate, to the general public, which are predominantly accessed from parking lots or exterior walkways consistent with the City approval and design layout for the Days Inn Ontario; and

WHEREAS, ODC Division 5.03, Section 5.03.250(E)(1) states that no guestroom, for Motel or Hotel, shall be rented for a period exceeding 30 consecutive calendar days, counting portions of calendar days as full days; and

WHEREAS, guestrooms that are being rented longer than 30 days is in violation of ODC Division 5.03, Section 5.03.250(E)(1) and not consistent with the intent of Motel or Hotel to provide transient accommodations at a daily rate; and

WHEREAS, Section 3-6.029(g) of the Ontario Municipal Code (OMC) clearly states that "Transient" shall mean any person who exercises occupancy or is entitled to occupancy by reason of concession, permit, right of access, license, or other agreement for a period of thirty (30) consecutive calendar days or less, counting portions of calendar days as full days; and

WHEREAS, the Transient Occupancy Tax shall be imposed on "transients" as defined the OMC Section 3-6.029(g); and

WHEREAS, in response to the Appellants basis for the appeal staff has prepared a response to each of the items. Below is the Appellants statement and staff's response:

1. *Appellants' Issue No. 1: Subject hotels never received notice of the zoning change and adoption of Ontario Development Code ("ODC") Division 5.03 Section 5.03.250(E)(1) and were entitled to an individualized hearing under the First Amendment Petition Clause, Fourth Amendment Search and Seizure Clause, the Fifth Amendment Takings Clause, the Fourteenth Amendment Due Process Clause (Substantive and Procedural) and Equal Protection of the United States Constitution.*

Staff Response: Appellant's arguments introduce irrelevant issues that go beyond the limited scope of the Zoning Administrator's decisions.

The Zoning Administrator has acted within his limited authority to interpret the Ontario Development Code ("ODC"). The Zoning Administrator, under Section l.02.015(A)(l) of the ODC, has jurisdiction of, and is responsible for, the administration and application of the regulations and provisions of the Development Code. The Zoning Administrator's power is limited to interpretation of the Code as applied to a particular case. ODC § 1.02.010(B)(1). Thus, the Zoning Administrator's power is limited to interpretation of the code and its application to a particular set of facts.

Appellants' arguments introduce irrelevant legal arguments that do not challenge the underlying factual findings and analysis of each of the decisions by the Zoning Administrator. Issues like the adoption and amendment of zoning ordinances are legislative acts rather than administrative or quasi-judicial acts. Arnel Dev. Co. v City of Costa Mesa (1980) 28 C3d 511, 514. Appellants take issue with the implementation of legislation of the Ontario Development Code. For reference, Ordinance No. 1569, which imposed the TOT was passed in 1965 – fifty-nine years ago. These issues are beyond the scope of the Zoning Administrator's role. For the Zoning Administrator to consider these legal issues would exceed the power granted by the Development Code.

The Zoning Administrator has acted within his limited authority to interpret the Development Code as to Appellants' claims and found that their hotels are subject to ODC chapter 5.03.250(E)(1). Appellants do not challenge the factual findings made by the Zoning Administrator. Thus, the appeal should be denied, and the Zoning Administrator's decisions upheld.

2. Appellants' Issue No. 2: *Ontario Development Code chapter 5.03.250(E)(1) which prohibits hotels from having a guestroom rented for longer than 30 days is inapplicable because Ontario Municipal Code chapter 3-06.02(g) states than an occupant can have an occupancy for longer than 30 days (with a written agreement).*

Staff Response: The Zoning Administrator's application of ODC § 5.03.250(E)(1) as to Appellants' hotels was proper. Where the Development Code imposes a greater restriction than is imposed or required by an existing law, the provisions of the Development Code shall prevail. ODC § 1.02.005. To the extent that there is an external inconsistency between the provisions of the Ontario Development Code and the provisions of the Ontario Municipal Code, the more restrictive provisions shall apply. ODC § 1.01.015(D). Thus, if there is a conflict between the Ontario Municipal Code and the Ontario Development Code, the Zoning Administrator must make a decision pursuant to the Development Code.

Here, Appellants argue that because OMC § 3-06.02(g) states than a person can have an occupancy of longer than 30 days (with an agreement in writing), that Appellants can rent their hotels to occupants for longer than 30 days and be exempt from the TOT. However, under the Development Code, "no guestroom shall be rented for a period exceeding 30 consecutive calendar days for a hotel or motel. ODC § 5.03.250(E)(1). This is an explicit restriction on hotels. To the extent that there exists any conflict by inference with OMC section 3-602(g), the ODC's restriction on hotels applies. ODC § 1.01.015(D). The Zoning Administrator's application of the ODC's more restrictive provision prohibiting Appellants' hotels from renting to a person for longer than 30 days was proper.

Thus, the appeals should be denied, and the Zoning Administrator's decisions should be upheld; and

WHEREAS, Ontario Development Code Table 2.01-1 (Review Matrix) establishes that the Zoning Administrator has the responsibility and authority to review and act upon Interpretations and Land Use Determinations; and

WHEREAS, the Application is a project pursuant to the California Environmental Quality Act, commencing with Public Resources Code Section 21000 (hereinafter referred to as "CEQA"); and

WHEREAS, the Project is not subject to the California Environmental Quality Act of 1970, as amended, and the Guidelines promulgated thereunder, pursuant to Section 15060(c)(2) of the State CEQA Guidelines, as the activity will not result in a direct or reasonably foreseeable indirect physical change in the environment; and

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

WHEREAS, City of Ontario Development Code Division 2.03 (Public Hearings) prescribes the manner in which public notification shall be provided and hearing procedures to be followed, and all such notifications and procedures have been completed; and

WHEREAS, on May 28, 2024, the Planning Commission of the City of Ontario conducted a hearing to consider the Project, and concluded said hearing on that date; and

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

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

SECTION 1: ***Environmental Determination and Findings.*** As the decision-making authority for the Project, the Planning Commission has reviewed and considered the information contained in the administrative record for the Project. Based upon the facts and information contained in the administrative record, including all written and oral evidence presented to the Planning Commission, the Planning Commission finds as follows:

(1) The administrative record has been completed in compliance with CEQA, the State CEQA Guidelines, and the City of Ontario Local CEQA Guidelines; and

(2) This Resolution has been reviewed with respect to the applicability of the California Environmental Quality Act of 1970 ("CEQA "), and the State CEQA Guidelines,

and the Planning Commission has determined that this Resolution does not constitute a " project" within the meaning of CEQA Guidelines Section 15060(c)(2) because there is no potential that it will result in a direct or reasonably foreseeable indirect physical change in the environment and CEQA Guidelines Section 15378 because it has no potential for either a direct physical change to the environment, or a reasonably foreseeable indirect physical change in the environment; and

(3) The determination of CEQA exemption reflects the independent judgment of the Planning Commission.

SECTION 4: ***Concluding Facts and Reasons.*** Based upon the substantial evidence presented to the Planning Commission during the above-referenced hearing, and upon the specific findings set forth in Sections 1 through 3, above, the Planning Commission hereby concludes as follows:

(1) That the ODC Division 5.03, Section 5.03.250(E)(l) is applicable and enforceable to the operation of the Days Inn Ontario. ODC Division 5.03, Section 5.03.250(E)(1) states that no guestroom, for Motel or Hotel, shall be rented for a period exceeding 30 consecutive calendar days, counting portions of calendar days as full days. The intent of a Motel or Hotel to provide transient accommodations at a daily rate. Section 3-6.029(g) of the Ontario Municipal Code (OMC) clearly states that “Transient” shall mean any person who exercises occupancy or is entitled to occupancy by reason of concession, permit, right of access, license, or other agreement for a period of thirty (30) consecutive calendar days or less, counting portions of calendar days as full days. Therefore, the Transient Occupancy Tax shall be imposed on “transients” as defined the OMC Section 3-6.029(g).

(2) That Hotel has not applied for an exemption pursuant to Section 3-6.04 of the OMC and therefore no such exemption would be applicable to the Hotel.

(3) That Hotel’s operations, as stipulated in the April 2, 2021 hearing, allowing guests to stay longer than 30 days is in violation of ODC Division 5.03, Section 5.03.250(E)(1) and in violation of all applicable zoning and use permits.

SECTION 5: ***Planning Commission Action.*** Based upon the findings and conclusions set forth in Sections 1 through 4, above, the Planning Commission hereby Approves to uphold the Zoning Administrator Decision herein described Application.

SECTION 6: ***Indemnification.*** The Applicant shall agree to defend, indemnify and hold harmless, the City of Ontario or its agents, officers, and employees from any claim, action or proceeding against the City of Ontario or its agents, officers or employees to attack, set aside, void, or annul this approval. The City of Ontario shall promptly notify

the applicant of any such claim, action, or proceeding, and the City of Ontario shall cooperate fully in the defense.

SECTION 7: ***Custodian of Records.*** The documents and materials that constitute the record of proceedings on which these findings have been based are located at the City of Ontario City Hall, 303 East "B" Street, Ontario, California 91764. The custodian for these records is the City Clerk of the City of Ontario.

SECTION 8: ***Certification to Adoption.*** The Secretary shall certify to the adoption of the Resolution.

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

I hereby certify that the foregoing Resolution was duly and regularly introduced, passed and adopted by the Planning Commission of the City of Ontario at a regular meeting thereof held on the 28th day of May 2024, and the foregoing is a full, true and correct copy of said Resolution, and has not been amended or repealed.

Nicola Ricci
Planning Commission Chairperson

ATTEST:

Henry K. Noh
Planning Director and
Secretary to the Planning Commission

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

I, Gwen Berendsen, Secretary Pro Tempore of the Planning Commission of the City of Ontario, DO HEREBY CERTIFY that foregoing Resolution No. PC24-020, was duly passed and adopted by the Planning Commission of the City of Ontario at their regular meeting held on May 28, 2024, by the following roll call vote, to wit:

AYES: Anderson, DeDiemar, Del Turco, Lampkin, Ricci

NOES: None

ABSENT: Dean, Gage

ABSTAIN: None

Gwen Berendsen
Secretary Pro Tempore

ATTACHMENT A:

Notice of Assessment for Transient Occupancy Tax ("Notice of Assessment")

(Notice of Assessment to follow this page)

(BEFORE THE

TRANSIENT OCCUPANCY TAX LICENSE OFFICIAL

FOR THE

CITY OF ONTARIO, CALIFORNIA

IN RE Days Inn Ontario 1405 E 4th Street Ontario, CA 91764	**REFERRAL TO ZONING ADMINISTRATOR AND STAY OF DECISION** _____ License Official: Armen Harkalyan Date: 4/2/2021 Time: 2:00 P.M.

INTRODUCTION

1. This matter involves the application of the City of Ontario's Transient Occupancy Tax to the revenues of a hotel in the City of Ontario. Executive Director of Finance Armen Harkalyan ("License Official"), sitting as the Transient Occupancy Tax License Official under Chapter 6 of Title 3 of the Ontario Municipal Code, heard this matter via remote teleconference on the date and time noted above (the "Hearing"). The License Official was advised by attorney Steven P. Graham, special counsel to the City of Ontario.
2. City of Ontario ("City") is a municipal corporation existing under the laws of the State of California.
3. Days Inn Ontario ("Hotel") is a hotel located at 1405 E 4th Street in the City of Ontario. The Hotel is operated by Kisham Patel ("Operator") and represented by attorney Frank A. Weiser, both were present at the hearing.
4. The following Referral to Zoning Administrator and Stay of Decision is based on the evidence presented during the Hearing for this matter. Pursuant to oral stipulation at the Hearing, the Hearing was held open for two weeks to give Mr. Weiser an opportunity to file additional evidence or legal argument in support the appeal. Nothing was filed within the two-week period and the Hearing was closed.

5. Chapter 6 of Title 3 of the Ontario Municipal Code related to Transient Occupancy Tax is attached hereto as **ATTACHMENT A**. Section 5.03.250 of the Ontario Development Code ("ODC"), which governs the operations of hotels, motels, residence inns, and other similar traveler accommodations, is attached hereto as **ATTACHMENT B**.

6. The License Official considered the testimony of all witnesses at the Hearing and all attachments received into evidence. The mere fact that particular witness testimony or attachments may not be specifically referred to below does not and shall not be construed to mean that said testimony or attachment was not considered.

7. The hearing was recorded and a copy of the recording is available upon request.

ISSUES

8. Pursuant to Ontario Municipal Code Section 3-6.09, the issue to be determined by the License Official on the application of Hotel is whether the amount of Transient Occupancy Tax, along with any interest and penalties, specified within the Notice of Assessment issued by the License Official on 11/18/2020 should be upheld.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

A. Jurisdictional Matters

9. This matter is before the License Official following the City's 11/18/2020 Notice of Assessment for Transient Occupancy Tax ("Notice of Assessment") which found that Hotel had unpaid Transient Occupancy Taxes. The Notice of Assessment is attached hereto as **ATTACHMENT C**. Specifically, the Notice of Assessment finds the following amounts are unpaid:

TOT UNCOLLECTED:	**$23,619.98**
PENALTIES:	**$472.40**
INTEREST:	**$2,276.79**
TOTAL:	**$26,369.17**

The basis for this finding is $201,021.08 in exemptions claimed for non-transient guests of the Hotel, which the City alleges violate the provisions of Section 5.03.250 of the ODC.

10. Hotel filed an Application for Hearing on 12/2/2020 challenging the Notice of Assessment. The Application for Hearing is attached hereto as **ATTACHMENT D**.

11. The Hotel filed a Letter Brief into its Application for Hearing. The Letter Brief is attached hereto as **ATTACHMENT E**.

12. Pursuant to Ontario Municipal Code Section 3-6.09, a hearing before Executive Director of Finance Armen Harkalyan sitting as the Transient Occupancy Tax License Official was set where the Hotel could appear and offer evidence why the specified tax, interest, and penalties within the Notice of Assessment should not be so fixed. A copy of the Notice of Hearing is attached hereto as **ATTACHMENT F**.

B. Procedural Background

11. The Hearing for this matter was held on the date and time noted above in Ontario, California.

12. The Hotel called the Operator to offer testimony and evidence at the hearing. Attorney Frank A. Weiser offered legal argument at the hearing.

13. The matter was taken under submission by the Hearing Officer at the conclusion of the hearing, pending receipt of the letter brief from the Hotel.

14. Per oral stipulation at the hearing, the Hotel was given the opportunity to file a letter brief with evidentiary attachments within two weeks of the date and time noted above. No letter brief was filed and the Hearing was closed.

C. The Transient Occupancy Tax Ordinance

15. The City of Ontario imposes a Transient Occupancy Tax of eleven and three-quarters percent (11¾%) of rent on the privilege of occupancy of space in a hotel within its jurisdiction. O.M.C. § 3-6.03.

16. Rent is defined by the Ontario Municipal Code as "the consideration charged, whether or not received, for the occupancy of space in a hotel valued in money, whether to be received in money, goods, labor, or otherwise, including all receipts, cash, credits, property, and services of any kind or nature, without any deduction therefrom whatsoever." O.M.C. § 3-6.02(e).

17. Hotel is defined by the Ontario Municipal Code as "any structure, or any portion of any structure, which is occupied, or intended or designed for occupancy, by transients for dwelling, lodging,

or sleeping purposes and shall include any hotel, inn, tourist home or house, motel, studio hotel, bachelor hotel, lodging house, rooming house, apartment house, dormitory, public or private club, mobile home or house trailer at a fixed location, or other similar structure, or portion thereof." O.M.C. § 3-6.02(a).

18. The Ontario Municipal Code requires that "[e]ach operator shall collect and hold in trust for the account and benefit of the City the tax imposed by the provisions of this chapter to the same extent and at the same time as the rent is collected from every transient." O.M.C. § 3-6.05.

19. Operator is defined by the Ontario Municipal Code as "...the person who is the proprietor of the hotel whether in the capacity of owner, lessee, sublessee, mortgagee in possession, licensee, or any other capacity. Where the operator performs his or her functions through a managing agent of any type or character, other than an employee, the managing agent shall also be deemed an operator for the purposes of this chapter and shall have the same duties and liabilities as his or her principal." O.M.C. § 3-6.02(c).

20. The City of Ontario requires all operators of hotels to register such hotel with the License Official and obtain a "Transient Occupancy Registration Certificate" which shall be posted in a conspicuous place on the hotel premises. O.M.C. § 3-6.06. Such certificate shall include the name and address of the operator, the address of the hotel, the date the certificate was issued, and a statement required by the code. O.M.C. § 3-6.06.

21. The City of Ontario requires all operators to report and remit Transient Occupancy Taxes to the License Official. O.M.C. § 3-6.07. "Each operator shall, on or before the last day of the month following the close of each calendar quarter, or at the close of any shorter reporting period which may be established by the License Official, make a return to the License Official, on forms provided by him or her, of the total rents charged and received and the amount of tax collected for transient occupancies. At the time the return is filed, the full amount of the tax collected shall be remitted to the License Official." O.M.C. § 3-6.07.

22. Transient is defined by the Ontario Municipal Code as "any person who exercises occupancy or is entitled to occupancy by reason of concession, permit, right of access, license, or other agreement for a period of thirty (30) consecutive calendar days or less, counting portions of

calendar days as full days. Any such person so occupying space in a hotel shall be deemed to be a transient until the period of thirty (30) consecutive calendar days has expired unless there is an agreement in writing between the operator and the occupant providing for a longer period of occupancy. Any individual person who exercises or is entitled to occupancy for a period of thirty (30) consecutive calendar days or less shall be deemed to be a transient, regardless of whether the reservation and/or payment for occupancy is made directly by the person exercising occupancy or another person, or entity. The intent is to tax the individual person occupying, or having the right or entitlement to occupancy, the hotel room. 'Transient' includes any employee or officer of the State government or of the government of a political subdivision of the State. 'Transient' does not mean or include any Federal officer or employee when on official Federal government business, or any officer or employee of a foreign government who is exempt by reason of express provision of Federal law or international treaty, who exercises occupancy or is entitled to occupancy by reason of concession, permit, right of access, license, or other agreement for a period of thirty (30) consecutive calendar days or less, counting portions of calendar days as full days." O.M.C. § 3-6.02(g).

23. Under Section 5.03.250 of the Ontario Development Code, "No guestroom shall be rented for a period exceeding 30 consecutive calendar days, counting portions of calendar days as full days." O.D.C. § 5.03.250 (E)(1).

24. Operators who fail to report and remit any Transient Occupancy Tax are subject to penalties and interest. O.M.C. § 3-6.08.

25. When an operator fails or refuses to report or remit Transient Occupancy Tax in the manner required by the Ontario Municipal Code, the License Official "shall proceed in such manner as he may deem best to obtain the facts and information on which to base his estimate of the tax due." O.M.C. § 3-6.09. Once the License Official has obtained such facts and information, the License Official "shall proceed to determine and assess against such operator the tax, interest, and penalties" and "give notice of the amount so assessed by serving it personally or depositing it in the United States mail, postage prepaid, addressed to the operator so assessed at his last known place of address." O.M.C. § 3-6.09.

26. The Ontario Municipal Code creates a rebuttable presumption that the amount of Transient Occupancy Tax, along with any penalties and interest, determined by the License Official is correct. O.M.C. § 3-6.09. If not challenged, the determination of the License Official is "final and conclusive and immediately due and payable." O.M.C. § 3-6.09.

27. Any operator receiving a notice of assessment "may, within ten (10) days after the service or mailing of such notice, make an application in writing to the License Official for a hearing on the amount assessed." O.M.C. § 3-6.09. At the hearing "the operator may appear and offer evidence why such specified tax, interest, and penalties should not be so fixed." O.M.C. § 3-6.09.

28. After the hearing, the License Official "shall determine the proper tax to be remitted and shall thereafter give written notice to the person in the manner prescribed in this section of such determination and the amount of such tax, interest, and penalties." O.M.C. § 3-6.09.

D. The Hearing

29. Except as discussed below, the facts of this matter are essentially undisputed.

30. Under the Ontario Municipal Code, a rebuttable presumption exists at the hearing that the amount of tax assessed by the License Official is correct and operator has the opportunity to appear and offer evidence why the specified tax, interest, and penalties are incorrect.

31. The Hotel appeared by attorney Frank A. Weiser who offered legal arguments orally at the hearing. The Hotel called the Operator to offer testimony and provide documents that were taken into evidence. A copy of the evidence submitted by the Operator is attached hereto as **ATTACHMENT G.**

32. Hotel argues that the exemptions claimed are consistent with Title 3 Chapter 6 of the Ontario Municipal Code (the "TOT Ordinance"). Specifically, Hotel argues that under Section 3-6.03 of the TOT Ordinance, the transient occupancy tax is imposed only on transients. Transients are defined in Section 3-6.02(g) as any person who exercises occupancy or is entitled to occupancy, for a period of 30 calendar days or less. Here, the Hotel provided evidence that it rents rooms to guests for longer than 30 days. The Hotel argues that these guests, having stayed longer than 30 days at the Hotel, are exempt from taxation as they no longer meet the definition of transient.

33. The City, in response, called Tony Lai who made the findings on appeal before the License Official. Mr. Lai argues that under Section 5.03.250(E)(1) of Ontario Development Code, the exemption is impermissible as "[n]o guestroom shall be rented for a period exceeding 30 consecutive calendar days, counting portions of calendar days as follow days." In particular, in the Audit Findings (Attachment C) for the Hotel, Mr. Lai claims "the hotel is claiming long-term occupants in error as it is zoned in a non-confirming [sic] area, per the Ontario Development Code Section 5.03.250. All long-term exemptions claimed are considered invalid and as a result TOT is understated." Furthermore, Mr. Lai stated that his findings were purely based on whether the exemption was permissible for the Hotel in light of the ODC prohibition.

REFERRAL TO ZONING ADMINISTRATOR

34. The Hotel has presented credible evidence and testimony that a significant portion of the guests of the Hotel stay in excess of 30 days.

35. The License Official's jurisdiction is to "determine the proper tax to be remitted and [...] thereafter give written notice to the person in the manner prescribed in this section of such determination and the amount of such tax, interest, and penalties." O.M.C. § 3-6.09.

36. Under Section 1.02.015(A)(1) of the ODC "The Zoning Administrator shall have jurisdiction of, and be responsible for, the administration and application of the regulations and provisions of this Development Code."

37. Therefore, pursuant to Section 1.02.010(C) of the ODC, the License Official hereby requests that the Zoning Administrator provide an interpretation or determination regarding the applicability and enforceability of Section 5.03.250(E)(1) as to the Hotel.

38. Pending an interpretation or determination of the Zoning Administrator, the assessment of transient occupancy taxes, penalties, and interest assessed against the Hotel is hereby STAYED. Once an interpretation or determination is made, this stay will be lifted and a Decision and Order will issue that will UPHOLD, DISMISS, or MODIFY the assessment.

Dated: 10-5-21

License Official

ZONING ADMINISTRATOR DECISION: LAND USE DETERMINATION

December 21, 2023

CITY OF ONTARIO PLANNING DEPARTMENT
303 East B Street, Ontario, California 91764 Phone: 909.395.2036 / Fax: 909.395.2420

DECISION NO.: **ZA23-031**

FILE NO.: PDET23-008

DESCRIPTION: Referral to Zoning Administrator and Stay of Decision for the Days Inn Ontario("Hotel"), located at 1405 East 4th Street, within the Neighborhood Commercial zoning district, to provide an interpretation or determination regarding the applicability and enforceability of Section 5.03.250(E)(l) as to the Hotel (APN: 0108-381-32); **submitted by the City of Ontario Transient Occupancy Tax License Official.**

PART 1: BACKGROUND & ANALYSIS

THE CITY OF ONTARIO TRANSIENT OCCUPANCY TAX LICENSE OFFICIAL, (herein after referred to as "Applicant") has filed a request that Zoning Administrator provide an interpretation or determination regarding the applicability and enforceability of Section 5.03.250(E)(l) as to the Hotel. Land Use Interpretation or Determination, File No. PDET23-008, as described in the subject of this Decision (herein after referred to as "Application" or "Project").

DESCRIPTION: Referral to Zoning Administrator and Stay of Decision for the Days Inn Ontario, located at 1405 East 4th Street, within the Community Commercial zoning district, to provide an interpretation or determination regarding the applicability and enforceability of Ontario Development Code (ODC) Section 5.03.250(E)(l) as to the Hotel.

ANALYSIS: Under the ODC Section 1.02.015(A), the Zoning Administrator shall have jurisdiction of, and be responsible for, the administration and application of the regulations and provisions of this Development Code. Subsequently, the ODC Table 2.01-1 (Review Matrix) establishes that the Zoning Administrator has the responsibility and authority to review and act upon Interpretations and Land Use Determinations

The Days Inn Ontario is 1405 East 4th Street and zoned Neighborhood Commercial. In 1985, the Planning Commission approved a Conditional Use Permit (File No. 3225-CUP - Youngs Motel) to establish a 53-unit motel at 1405 East 4th Street. In 1987, the City of Ontario Building Department issued building permits for the construction of Motel (Known as "Youngs Motel").

The Ontario Development Code, Division 9.01 (Definitions), defines a Motel as a lodging facility that offers transient accommodations at a daily rate, to the general public, which are predominantly accessed from parking lots or exterior walkways consistent with the City approval and design layout for the Days Inn Ontario. Hotels are defined as lodging facilities, which offers transient accommodations at a daily rate, to the general public, and which may provide additional services, such as restaurants, meeting rooms and recreational facilities. The definitions for a Motel and Hotel both clearly state the intent for transient accommodations at a daily rate.

ODC Division 5.03, Section 5.03.250(E)(1) states that no guestroom, for Motel or Hotel, shall be rented for a period exceeding 30 consecutive calendar days, counting portions of calendar days as full days. Rooms that are being rented longer than 30 days are in violation of ODC Division 5.03, Section 5.03.250(E)(1) and not consistent with the intent of Motel or Hotel to provide transient accommodations at a daily rate. Section 3-6.02(g) of the Ontario Municipal Code (OMC) states that "Transient" shall mean any person who exercises occupancy or is entitled to occupancy by reason of concession, permit, right of access, license, or other agreement for a period of thirty (30) consecutive calendar days or less, counting portions of calendar days as full days.

PART 2: RECITALS

WHEREAS, the City of Ontario has received a request for an interpretation or determination, as described in Part I, above; and

WHEREAS, Ontario Development Code Table 2.01-1 (Review Matrix) establishes that the Zoning Administrator has the responsibility and authority to review and act upon Interpretations and Land Use Determinations; and

WHEREAS, it has been recognized that every conceivable use cannot be identified by the City of Ontario Development Code, and anticipating that new uses will evolve over time, Ontario Development Code Section 1.02.101 (Interpretations and Land Use Determinations) establishes the Zoning Administrator's authority to review and act upon a Determination of Use, comparing and measuring a proposed use against those listed in the Development Code, which have similar impacts, functions and characteristics; and

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

PART 3: THE DECISION

NOW, THEREFORE, it is hereby found, determined, and resolved by the Zoning Administrator of the City of Ontario as follows:

(1) All facts set forth in the preceding sections of this Interpretation and Determination of Use are true and correct and are incorporated by this reference.

(2) Based upon the evidence presented, the Zoning Administrator hereby concludes as follows:

(a) The Days Inn Ontario is located at 1405 East 4th Street, within the Neighborhood Commercial zoning district. Hotels or Motels are permitted within the Neighborhood Commercial zoning district subject to approval of a Conditional Use Permit; and

(b) In 1985, The Planning Commission approved a Conditional Use Permit (File No. 3225-CUP) to establish 53-unit motel; and

(c) In 1987, the City of Ontario Building Department issued building permits for the construction of Motel (Known as "Youngs Motel"); and

(d) Division 9.01 (Definitions) of the Ontario Development Code (ODC) defines a Motel as a lodging facility that offers transient accommodations at a daily rate, to the general public, which are predominantly accessed from parking lots or exterior walkways consistent with the City approval and design layout for the Days Inn Ontario; and

(e) ODC Division 5.03, Section 5.03.250(E)(1) states that no guestroom, for Motel or Hotel, shall be rented for a period exceeding 30 consecutive calendar days, counting portions of calendar days as full days; and

(f) Rooms that are being rented longer than 30 days is in violation of ODC Division 5.03, Section 5.03.250(E)(1) and not consistent with the intent of Motel or Hotel to provide transient accommodations at a daily rate; and

(g) Section 3-6.029(g) of the Ontario Municipal Code (OMC) clearly states that "Transient" shall mean any person who exercises occupancy or is entitled to occupancy by reason of concession, permit, right of access, license, or other agreement for a period of thirty (30) consecutive calendar days or less, counting portions of calendar days as full days; and

(h) The Transient Occupancy Tax shall be imposed on "transients" as defined the OMC Section 3-6.029(g); and

(i) Section 3-6.04 of the OMC provides for exemptions from the TOT under limited circumstances and pursuant to Section 3-6.04(b) no such exemption shall be granted except upon a claim made at the time the rent is collected and made under penalty of perjury upon a form approved by the Tax Administrator.

(3) The Zoning Administrator hereby finds and determines that the project identified in this Determination of Use is not subject to the California Environmental Quality Act of 1970, as amended, and the Guidelines promulgated thereunder, pursuant to Section 15060(c)(2) of the State CEQA Guidelines, as the activity will not result in a direct or reasonably foreseeable indirect physical change in the environment.

(4) Based upon the findings and conclusions set forth in Parts 1, 2 and 3 above, the Zoning Administrator hereby finds and determines, File No. PDET23-008, the following:

(a) That the ODC Division 5.03, Section 5.03.250(E)(l) is applicable and enforceable to the operation of the Days Inn Ontario. ODC Division 5.03, Section 5.03.250(E)(1) states that no guestroom, for Motel or Hotel, shall be rented for a period exceeding 30 consecutive calendar days, counting portions of calendar days as full days. The intent of a Motel or Hotel to provide transient accommodations at a daily rate. Section 3-6.029(g) of the Ontario Municipal Code (OMC) clearly states that "Transient" shall mean any person who exercises occupancy or is entitled to occupancy by reason of concession, permit, right of access, license, or other agreement for a period of thirty (30) consecutive calendar days or less, counting portions of calendar days as full days. Therefore, the Transient Occupancy Tax shall be imposed on "transients" as defined the OMC Section 3-6.029(g).

(b) That Hotel has not applied for an exemption pursuant to Section 3-6.04 of the OMC and therefore no such exemption would be applicable to the Hotel.

(c) That Hotel's operations, as stipulated in the April 2, 2021 hearing, allowing guests to stay longer than 30 days is in violation of ODC Division 5.03, Section 5.03.250(E)(1) and in violation of all applicable zoning and use permits.

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

APPROVED AND ADOPTED this 21st day of December 2023.

Rudy Zeledon
Zoning Administrator

RESOLUTION NO. PC24-021

A RESOLUTION OF THE PLANNING COMMISSION OF THE CITY OF ONTARIO, CALIFORNIA, UPHOLDING THE ZONING ADMINSTRATOR'S INTERPRETATION AND DETERMINATION DECISION (FILE NO. PDET 23-009) THAT THE ONTARIO DEVELOPMENT CODE DIVISION 5.03, SECTION 5.03.250(E)(L) IS APPLICABLE AND ENFORCEABLE TO THE OPERATION TO THE ECONOMY INN, LOCATED AT 2301 SOUTH EUCLID AVENUE, WITHIN THE COMMUNITY COMMERCIAL ZONING DISTRICT, AND MAKING FINDINGS IN SUPPORT THEREOF—APN: 1051-071-04.

WHEREAS, Mehesh Patel ("Applicant") operator of the Economy Inn ("Hotel") has filed an Appeal of Application of the Zoning Administrators interpretation and determination decision that the Ontario Development Code Division 5.03, Section 5.03.250(E)(l) is applicable and enforceable to the operation Economy Inn, File No. PDET23-009, as described in the title of this Resolution (hereinafter referred to as "Application" or "Project"); and

WHEREAS, the Economy Inn is located at 2301 South Euclid Avenue, within the Community Commercial zoning district. Hotels or Motels are permitted within the Community Commercial zoning district subject to approval of a Conditional Use Permit; and

WHEREAS, on February 5, 2021, Executive Director of Finance Armen Harkalyan ("License Official") sitting as the Transient Occupancy Tax License Official under Chapter 6 of Title 3 of the Ontario Municipal Code, held a hearing for the operator of the Economy Inn. The purpose of the hearing was to allow the operators the opportunity to rebut the amount of tax assessed by the License Official and offer evidence why the specified tax, interest, and penalties are incorrect; and

WHEREAS, on February 5, 2021, the License Official issued a Stay of Decision and referred the matter to the Zoning Administrator to provide an interpretation or determination regarding the applicability and enforceability of Section 5.03.250(E)(l) as to Economy Inn; and

WHEREAS, in 1984, The Planning Commission approved a Conditional Use Permit (File No. 3051-CUP) to establish 47-unit Economy Inn Motel; and

WHEREAS, in 1985, the City of Ontario Building Department issued building permits for the construction of the Economy Inn Motel; and

WHEREAS Division 9.01 (Definitions) of the Ontario Development Code (ODC) defines a Motel as a lodging facility that offers transient accommodations at a daily rate,

to the general public, which are predominantly accessed from parking lots or exterior walkways consistent with the City approval and design layout for the Economy Inn; and

WHEREAS, ODC Division 5.03, Section 5.03.250(E)(1) states that no guestroom, for Motel or Hotel, shall be rented for a period exceeding 30 consecutive calendar days, counting portions of calendar days as full days; and

WHEREAS, guestrooms that are being rented longer than 30 days is in violation of ODC Division 5.03, Section 5.03.250(E)(1) and not consistent with the intent of Motel or Hotel to provide transient accommodations at a daily rate; and

WHEREAS, Section 3-6.029(g) of the Ontario Municipal Code (OMC) clearly states that "Transient" shall mean any person who exercises occupancy or is entitled to occupancy by reason of concession, permit, right of access, license, or other agreement for a period of thirty (30) consecutive calendar days or less, counting portions of calendar days as full days; and

WHEREAS, the Transient Occupancy Tax shall be imposed on "transients" as defined the OMC Section 3-6.029(g); and

WHEREAS, in response to the Appellants basis for the appeal staff has prepared a response to each of the items. Below is the Appellants statement and staff's response:

1. *Appellants' Issue No. 1: Subject hotels never received notice of the zoning change and adoption of Ontario Development Code ("ODC") Division 5.03 Section 5.03.250(E)(1) and were entitled to an individualized hearing under the First Amendment Petition Clause, Fourth Amendment Search and Seizure Clause, the Fifth Amendment Takings Clause, the Fourteenth Amendment Due Process Clause (Substantive and Procedural) and Equal Protection of the United States Constitution.*

Staff Response: Appellant's arguments introduce irrelevant issues that go beyond the limited scope of the Zoning Administrator's decisions.

The Zoning Administrator has acted within his limited authority to interpret the Ontario Development Code ("ODC"). The Zoning Administrator, under Section l.02.015(A)(l) of the ODC, has jurisdiction of, and is responsible for, the administration and application of the regulations and provisions of the Development Code. The Zoning Administrator's power is limited to interpretation of the Code as applied to a particular case. ODC § 1.02.010(B)(1). Thus, the Zoning Administrator's power is limited to interpretation of the code and its application to a particular set of facts.

Appellants' arguments introduce irrelevant legal arguments that do not challenge the underlying factual findings and analysis of each of the decisions by the Zoning

Administrator. Issues like the adoption and amendment of zoning ordinances are legislative acts rather than administrative or quasi-judicial acts. Arnel Dev. Co. v City of Costa Mesa (1980) 28 C3d 511, 514. Appellants take issue with the implementation of legislation of the Ontario Development Code. For reference, Ordinance No. 1569, which imposed the TOT was passed in 1965 – fifty-nine years ago. These issues are beyond the scope of the Zoning Administrator's role. For the Zoning Administrator to consider these legal issues would exceed the power granted by the Development Code.

The Zoning Administrator has acted within his limited authority to interpret the Development Code as to Appellants' claims and found that their hotels are subject to ODC chapter 5.03.250(E)(1). Appellants do not challenge the factual findings made by the Zoning Administrator. Thus, the appeal should be denied, and the Zoning Administrator's decisions upheld.

2. Appellants' Issue No. 2: *Ontario Development Code chapter 5.03.250(E)(1) which prohibits hotels from having a guestroom rented for longer than 30 days is inapplicable because Ontario Municipal Code chapter 3-06.02(g) states than an occupant can have an occupancy for longer than 30 days (with a written agreement).*

Staff Response: The Zoning Administrator's application of ODC § 5.03.250(E)(1) as to Appellants' hotels was proper. Where the Development Code imposes a greater restriction than is imposed or required by an existing law, the provisions of the Development Code shall prevail. ODC § 1.02.005. To the extent that there is an external inconsistency between the provisions of the Ontario Development Code and the provisions of the Ontario Municipal Code, the more restrictive provisions shall apply. ODC § 1.01.015(D). Thus, if there is a conflict between the Ontario Municipal Code and the Ontario Development Code, the Zoning Administrator must make a decision pursuant to the Development Code.

Here, Appellants argue that because OMC § 3-06.02(g) states than a person can have an occupancy of longer than 30 days (with an agreement in writing), that Appellants can rent their hotels to occupants for longer than 30 days and be exempt from the TOT. However, under the Development Code, "no guestroom shall be rented for a period exceeding 30 consecutive calendar days for a hotel or motel. ODC § 5.03.250(E)(1). This is an explicit restriction on hotels. To the extent that there exists any conflict by inference with OMC section 3-602(g), the ODC's restriction on hotels applies. ODC § 1.01.015(D). The Zoning Administrator's application of the ODC's more restrictive provision prohibiting Appellants' hotels from renting to a person for longer than 30 days was proper.

Thus, the appeals should be denied, and the Zoning Administrator's decisions should be upheld; and

WHEREAS, Ontario Development Code Table 2.01-1 (Review Matrix) establishes that the Zoning Administrator has the responsibility and authority to review and act upon Interpretations and Land Use Determinations; and

WHEREAS, the Application is a project pursuant to the California Environmental Quality Act, commencing with Public Resources Code Section 21000 (hereinafter referred to as "CEQA"); and

WHEREAS, the Project is not subject to the California Environmental Quality Act of 1970, as amended, and the Guidelines promulgated thereunder, pursuant to Section 15060(c)(2) of the State CEQA Guidelines, as the activity will not result in a direct or reasonably foreseeable indirect physical change in the environment; and

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

WHEREAS, City of Ontario Development Code Division 2.03 (Public Hearings) prescribes the manner in which public notification shall be provided and hearing procedures to be followed, and all such notifications and procedures have been completed; and

WHEREAS, on May 28, 2024, the Planning Commission of the City of Ontario conducted a hearing to consider the Project, and concluded said hearing on that date; and

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

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

SECTION 1: ***Environmental Determination and Findings.*** As the decision-making authority for the Project, the Planning Commission has reviewed and considered the information contained in the administrative record for the Project. Based upon the facts and information contained in the administrative record, including all written and oral evidence presented to the Planning Commission, the Planning Commission finds as follows:

(1) The administrative record has been completed in compliance with CEQA, the State CEQA Guidelines, and the City of Ontario Local CEQA Guidelines; and

(2) This Resolution has been reviewed with respect to the applicability of the California Environmental Quality Act of 1970 ("CEQA "), and the State CEQA Guidelines,

and the Planning Commission has determined that this Resolution does not constitute a " project" within the meaning of CEQA Guidelines Section 15060(c)(2) because there is no potential that it will result in a direct or reasonably foreseeable indirect physical change in the environment and CEQA Guidelines Section 15378 because it has no potential for either a direct physical change to the environment, or a reasonably foreseeable indirect physical change in the environment; and

(3) The determination of CEQA exemption reflects the independent judgment of the Planning Commission.

SECTION 4: ***Concluding Facts and Reasons.*** Based upon the substantial evidence presented to the Planning Commission during the above-referenced hearing, and upon the specific findings set forth in Sections 1 through 3, above, the Planning Commission hereby concludes as follows:

(1) That the ODC Division 5.03, Section 5.03.250(E)(l) is applicable and enforceable to the operation of the Economy Inn. ODC Division 5.03, Section 5.03.250(E)(1) states that no guestroom, for Motel or Hotel, shall be rented for a period exceeding 30 consecutive calendar days, counting portions of calendar days as full days. The intent of a Motel or Hotel to provide transient accommodations at a daily rate. Section 3-6.029(g) of the Ontario Municipal Code (OMC) clearly states that “Transient” shall mean any person who exercises occupancy or is entitled to occupancy by reason of concession, permit, right of access, license, or other agreement for a period of thirty (30) consecutive calendar days or less, counting portions of calendar days as full days. Therefore, the Transient Occupancy Tax shall be imposed on “transients” as defined the OMC Section 3-6.029(g).

(2) That Hotel has not applied for an exemption pursuant to Section 3-6.04 of the OMC and therefore no such exemption would be applicable to the Hotel.

(3) That Hotel’s operations, as stipulated in the February 5, 2021 hearing, allowing guests to stay longer than 30 days is in violation of ODC Division 5.03, Section 5.03.250(E)(1) and in violation of all applicable zoning and use permits.

SECTION 5: ***Planning Commission Action.*** Based upon the findings and conclusions set forth in Sections 1 through 4, above, the Planning Commission hereby Approves to uphold the Zoning Administrator Decision herein described Application.

SECTION 6: ***Indemnification.*** The Applicant shall agree to defend, indemnify and hold harmless, the City of Ontario or its agents, officers, and employees from any claim, action or proceeding against the City of Ontario or its agents, officers or employees to attack, set aside, void, or annul this approval. The City of Ontario shall promptly notify

the applicant of any such claim, action, or proceeding, and the City of Ontario shall cooperate fully in the defense.

SECTION 7: ***Custodian of Records.*** The documents and materials that constitute the record of proceedings on which these findings have been based are located at the City of Ontario City Hall, 303 East "B" Street, Ontario, California 91764. The custodian for these records is the City Clerk of the City of Ontario.

SECTION 8: ***Certification to Adoption.*** The Secretary shall certify to the adoption of the Resolution.

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

I hereby certify that the foregoing Resolution was duly and regularly introduced, passed and adopted by the Planning Commission of the City of Ontario at a regular meeting thereof held on the 28th day of May 2024, and the foregoing is a full, true and correct copy of said Resolution, and has not been amended or repealed.

Nicola Ricci
Planning Commission Chairperson

ATTEST:

Henry K. Noh
Planning Director and
Secretary to the Planning Commission

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

I, Gwen Berendsen, Secretary Pro Tempore of the Planning Commission of the City of Ontario, DO HEREBY CERTIFY that foregoing Resolution No. PC24-021, was duly passed and adopted by the Planning Commission of the City of Ontario at their regular meeting held on May 28, 2024, by the following roll call vote, to wit:

AYES: Anderson, DeDiemar, Del Turco, Lampkin, Ricci

NOES: None

ABSENT: Dean, Gage

ABSTAIN: None

Gwen Berendsen
Secretary Pro Tempore

ATTACHMENT A:

Notice of Assessment for Transient Occupancy Tax ("Notice of Assessment")

(Notice of Assessment to follow this page)

(BEFORE THE

TRANSIENT OCCUPANCY TAX LICENSE OFFICIAL

FOR THE

CITY OF ONTARIO, CALIFORNIA

IN RE Economy Inn 2301 S. Euclid Ave. Ontario, CA 91762	**REFERRAL TO ZONING ADMINISTRATOR AND STAY OF DECISION** _____ License Official: Armen Harkalyan Date: 2/5/2021 Time: 1:00 P.M.

INTRODUCTION

1. This matter involves the application of the City of Ontario's Transient Occupancy Tax to the revenues of a hotel in the City of Ontario. Executive Director of Finance Armen Harkalyan ("License Official"), sitting as the Transient Occupancy Tax License Official under Chapter 6 of Title 3 of the Ontario Municipal Code, heard this matter via remote teleconference on the date and time noted above (the "Hearing"). The License Official was advised by attorney Steven P. Graham, special counsel to the City of Ontario.
2. City of Ontario ("City") is a municipal corporation existing under the laws of the State of California.
3. Economy Inn ("Hotel") is a hotel located at 2301 S. Euclid Ave. in the City of Ontario. The Hotel is operated by Mahesh Patel ("Operator") and represented by attorney Frank A. Weiser, both were present at the hearing.
4. The following Referral to Zoning Administrator and Stay of Decision is based on the evidence presented during the Hearing for this matter. Pursuant to oral stipulation at the Hearing, the Hearing was held open for two weeks to give Mr. Weiser an opportunity to file additional evidence or legal argument in support the appeal. Nothing was filed within the two-week period and the Hearing was closed.

5. Chapter 6 of Title 3 of the Ontario Municipal Code related to Transient Occupancy Tax is attached hereto as **ATTACHMENT A**. Section 5.03.250 of the Ontario Development Code ("ODC"), which governs the operations of hotels, motels, residence inns, and other similar traveler accommodations, is attached hereto as **ATTACHMENT B**.

6. The License Official considered the testimony of all witnesses at the Hearing and all attachments received into evidence. The mere fact that particular witness testimony or attachments may not be specifically referred to below does not and shall not be construed to mean that said testimony or attachment was not considered.

7. The hearing was recorded and a copy of the recording is available upon request.

ISSUES

8. Pursuant to Ontario Municipal Code Section 3-6.09, the issue to be determined by the License Official on the application of Hotel is whether the amount of Transient Occupancy Tax, along with any interest and penalties, specified within the Notice of Assessment issued by the License Official on 11/18/2020 should be upheld.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

A. Jurisdictional Matters

9. This matter is before the License Official following the City's 11/18/2020 Notice of Assessment for Transient Occupancy Tax ("Notice of Assessment") which found that Hotel had unpaid Transient Occupancy Taxes. The Notice of Assessment is attached hereto as **ATTACHMENT C**. Specifically, the Notice of Assessment finds the following amounts are unpaid:

TOT UNCOLLECTED:	**$18,580.28**
PENALTIES:	**$371.61**
INTEREST:	**$1,873.64**
TOTAL:	**$20,825.52**

The basis for this finding is $158,130.00 in exemptions claimed for non-transient guests of the Hotel, which the City alleges violate the provisions of Section 5.03.250 of the ODC.

10. Hotel filed an Application for Hearing on 12/2/2020 challenging the Notice of Assessment. The Application for Hearing is attached hereto as **ATTACHMENT D.**

11. The Hotel filed a Letter Brief into its Application for Hearing. The Letter Brief is attached hereto as **ATTACHMENT E.**

12. Pursuant to Ontario Municipal Code Section 3-6.09, a hearing before Executive Director of Finance Armen Harkalyan sitting as the Transient Occupancy Tax License Official was set where the Hotel could appear and offer evidence why the specified tax, interest, and penalties within the Notice of Assessment should not be so fixed. A copy of the Notice of Hearing is attached hereto as **ATTACHMENT F.**

B. Procedural Background

11. The Hearing for this matter was held on the date and time noted above in Ontario, California.

12. The Hotel called the Operator to offer testimony and evidence at the hearing. Attorney Frank A. Weiser offered legal argument at the hearing.

13. The matter was taken under submission by the Hearing Officer at the conclusion of the hearing, pending receipt of the letter brief from the Hotel.

14. Per oral stipulation at the hearing, the Hotel was given the opportunity to file a letter brief with evidentiary attachments within two weeks of the date and time noted above. No letter brief was filed and the Hearing was closed.

C. The Transient Occupancy Tax Ordinance

15. The City of Ontario imposes a Transient Occupancy Tax of eleven and three-quarters percent (11¾%) of rent on the privilege of occupancy of space in a hotel within its jurisdiction. O.M.C. § 3-6.03.

16. Rent is defined by the Ontario Municipal Code as "the consideration charged, whether or not received, for the occupancy of space in a hotel valued in money, whether to be received in money, goods, labor, or otherwise, including all receipts, cash, credits, property, and services of any kind or nature, without any deduction therefrom whatsoever." O.M.C. § 3-6.02(e).

17. Hotel is defined by the Ontario Municipal Code as "any structure, or any portion of any structure, which is occupied, or intended or designed for occupancy, by transients for dwelling, lodging,

or sleeping purposes and shall include any hotel, inn, tourist home or house, motel, studio hotel, bachelor hotel, lodging house, rooming house, apartment house, dormitory, public or private club, mobile home or house trailer at a fixed location, or other similar structure, or portion thereof." O.M.C. § 3-6.02(a).

18. The Ontario Municipal Code requires that "[e]ach operator shall collect and hold in trust for the account and benefit of the City the tax imposed by the provisions of this chapter to the same extent and at the same time as the rent is collected from every transient." O.M.C. § 3-6.05.

19. Operator is defined by the Ontario Municipal Code as "…the person who is the proprietor of the hotel whether in the capacity of owner, lessee, sublessee, mortgagee in possession, licensee, or any other capacity. Where the operator performs his or her functions through a managing agent of any type or character, other than an employee, the managing agent shall also be deemed an operator for the purposes of this chapter and shall have the same duties and liabilities as his or her principal." O.M.C. § 3-6.02(c).

20. The City of Ontario requires all operators of hotels to register such hotel with the License Official and obtain a "Transient Occupancy Registration Certificate" which shall be posted in a conspicuous place on the hotel premises. O.M.C. § 3-6.06. Such certificate shall include the name and address of the operator, the address of the hotel, the date the certificate was issued, and a statement required by the code. O.M.C. § 3-6.06.

21. The City of Ontario requires all operators to report and remit Transient Occupancy Taxes to the License Official. O.M.C. § 3-6.07. "Each operator shall, on or before the last day of the month following the close of each calendar quarter, or at the close of any shorter reporting period which may be established by the License Official, make a return to the License Official, on forms provided by him or her, of the total rents charged and received and the amount of tax collected for transient occupancies. At the time the return is filed, the full amount of the tax collected shall be remitted to the License Official." O.M.C. § 3-6.07.

22. Transient is defined by the Ontario Municipal Code as "any person who exercises occupancy or is entitled to occupancy by reason of concession, permit, right of access, license, or other agreement for a period of thirty (30) consecutive calendar days or less, counting portions of

calendar days as full days. Any such person so occupying space in a hotel shall be deemed to be a transient until the period of thirty (30) consecutive calendar days has expired unless there is an agreement in writing between the operator and the occupant providing for a longer period of occupancy. Any individual person who exercises or is entitled to occupancy for a period of thirty (30) consecutive calendar days or less shall be deemed to be a transient, regardless of whether the reservation and/or payment for occupancy is made directly by the person exercising occupancy or another person, or entity. The intent is to tax the individual person occupying, or having the right or entitlement to occupancy, the hotel room. 'Transient' includes any employee or officer of the State government or of the government of a political subdivision of the State. 'Transient' does not mean or include any Federal officer or employee when on official Federal government business, or any officer or employee of a foreign government who is exempt by reason of express provision of Federal law or international treaty, who exercises occupancy or is entitled to occupancy by reason of concession, permit, right of access, license, or other agreement for a period of thirty (30) consecutive calendar days or less, counting portions of calendar days as full days." O.M.C. § 3-6.02(g).

23. Under Section 5.03.250 of the Ontario Development Code, "No guestroom shall be rented for a period exceeding 30 consecutive calendar days, counting portions of calendar days as full days." O.D.C. § 5.03.250 (E)(1).

24. Operators who fail to report and remit any Transient Occupancy Tax are subject to penalties and interest. O.M.C. § 3-6.08.

25. When an operator fails or refuses to report or remit Transient Occupancy Tax in the manner required by the Ontario Municipal Code, the License Official "shall proceed in such manner as he may deem best to obtain the facts and information on which to base his estimate of the tax due." O.M.C. § 3-6.09. Once the License Official has obtained such facts and information, the License Official "shall proceed to determine and assess against such operator the tax, interest, and penalties" and "give notice of the amount so assessed by serving it personally or depositing it in the United States mail, postage prepaid, addressed to the operator so assessed at his last known place of address." O.M.C. § 3-6.09.

26. The Ontario Municipal Code creates a rebuttable presumption that the amount of Transient Occupancy Tax, along with any penalties and interest, determined by the License Official is correct. O.M.C. § 3-6.09. If not challenged, the determination of the License Official is "final and conclusive and immediately due and payable." O.M.C. § 3-6.09.

27. Any operator receiving a notice of assessment "may, within ten (10) days after the service or mailing of such notice, make an application in writing to the License Official for a hearing on the amount assessed." O.M.C. § 3-6.09. At the hearing "the operator may appear and offer evidence why such specified tax, interest, and penalties should not be so fixed." O.M.C. § 3-6.09.

28. After the hearing, the License Official "shall determine the proper tax to be remitted and shall thereafter give written notice to the person in the manner prescribed in this section of such determination and the amount of such tax, interest, and penalties." O.M.C. § 3-6.09.

D. The Hearing

29. Except as discussed below, the facts of this matter are essentially undisputed.

30. Under the Ontario Municipal Code, a rebuttable presumption exists at the hearing that the amount of tax assessed by the License Official is correct and operator has the opportunity to appear and offer evidence why the specified tax, interest, and penalties are incorrect.

31. The Hotel appeared by attorney Frank A. Weiser who offered legal arguments orally at the hearing. The Hotel called the Operator to offer testimony and provide documents that were taken into evidence. A copy of the evidence submitted by the Operator is attached hereto as **ATTACHMENT G.**

32. Hotel argues that the exemptions claimed are consistent with Title 3 Chapter 6 of the Ontario Municipal Code (the "TOT Ordinance"). Specifically, Hotel argues that under Section 3-6.03 of the TOT Ordinance, the transient occupancy tax is imposed only on transients. Transients are defined in Section 3-6.02(g) as any person who exercises occupancy or is entitled to occupancy, for a period of 30 calendar days or less. Here, the Hotel provided evidence that it rents rooms to guests for longer than 30 days. The Hotel argues that these guests, having stayed longer than 30 days at the Hotel, are exempt from taxation as they no longer meet the definition of transient.

33. The City, in response, called Tony Lai who made the findings on appeal before the License Official. Mr. Lai argues that under Section 5.03.250(E)(1) of Ontario Development Code, the exemption is impermissible as "[n]o guestroom shall be rented for a period exceeding 30 consecutive calendar days, counting portions of calendar days as follow days." In particular, in the Audit Findings (Attachment C) for the Hotel, Mr. Lai claims "the hotel is claiming long-term occupants in error as it is zoned in a non-confirming [sic] area, per the Ontario Development Code Section 5.03.250. All long-term exemptions claimed are considered invalid and as a result TOT is understated." Furthermore, Mr. Lai stated that his findings were purely based on whether the exemption was permissible for the Hotel in light of the ODC prohibition.

REFERRAL TO ZONING ADMINISTRATOR

34. The Hotel has presented credible evidence and testimony that a significant portion of the guests of the Hotel stay in excess of 30 days.

35. The License Official's jurisdiction is to "determine the proper tax to be remitted and [...] thereafter give written notice to the person in the manner prescribed in this section of such determination and the amount of such tax, interest, and penalties." O.M.C. § 3-6.09.

36. Under Section 1.02.015(A)(1) of the ODC "The Zoning Administrator shall have jurisdiction of, and be responsible for, the administration and application of the regulations and provisions of this Development Code."

37. Therefore, pursuant to Section 1.02.010(C) of the ODC, the License Official hereby requests that the Zoning Administrator provide an interpretation or determination regarding the applicability and enforceability of Section 5.03.250(E)(1) as to the Hotel.

38. Pending an interpretation or determination of the Zoning Administrator, the assessment of transient occupancy taxes, penalties, and interest assessed against the Hotel is hereby STAYED. Once an interpretation or determination is made, this stay will be lifted and a Decision and Order will issue that will UPHOLD, DISMISS, or MODIFY the assessment.

Dated: 10-5-21

License Official

ZONING ADMINISTRATOR DECISION: LAND USE DETERMINATION

December 21, 2023

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

DECISION NO.: **ZA23-032**

FILE NO.: PDET23-009

DESCRIPTION: Referral to Zoning Administrator and Stay of Decision for the Economy Inn ("Hotel"), located at 2301 South Euclid Avenue, within the Community Commercial zoning district, to provide an interpretation or determination regarding the applicability and enforceability of Section 5.03.250(E)(l) as to the Hotel (APN: 1051-071-04); **submitted by the City of Ontario Transient Occupancy Tax License Official.**

PART 1: BACKGROUND & ANALYSIS

THE CITY OF ONTARIO TRANSIENT OCCUPANCY TAX LICENSE OFFICIAL, (herein after referred to as "Applicant") has filed a request that Zoning Administrator provide an interpretation or determination regarding the applicability and enforceability of Section 5.03.250(E)(l) as to the Hotel. Land Use Interpretation or Determination, File No. PDET23-009, as described in the subject of this Decision (herein after referred to as "Application" or "Project").

DESCRIPTION: Referral to Zoning Administrator and Stay of Decision for the Economy Inn, located at 2301 South Euclid Avenue, within the Community Commercial zoning district, to provide an interpretation or determination regarding the applicability and enforceability of Ontario Development Code (ODC) Section 5.03.250(E)(l) as to the Hotel.

ANALYSIS: Under the ODC Section 1.02.015(A), the Zoning Administrator shall have jurisdiction of, and be responsible for, the administration and application of the regulations and provisions of this Development Code. Subsequently, the ODC Table 2.01-1 (Review Matrix) establishes that the Zoning Administrator has the responsibility and authority to review and act upon Interpretations and Land Use Determinations

The Economy Inn is located at 2301 South Euclid Avenue and zoned Community Commercial. In 1984, The Planning Commission approved a Conditional Use Permit (File No. 3051-CUP) to establish a 47-unit motel at 2301 South Euclid Avenue. In 1985, the City of Ontario Building Department issued building permits for the construction of Motel.

The Ontario Development Code, Division 9.01 (Definitions), defines a Motel as a lodging facility that offers transient accommodations at a daily rate, to the general public, which are predominantly accessed from parking lots or exterior walkways consistent with the City approval and design layout for the Economy Inn. Hotels are defined as lodging facilities, which offers transient accommodations at a daily rate, to the general public, and which may provide additional services, such as restaurants, meeting rooms and recreational facilities. The definitions for a Motel and Hotel both clearly state the intent for transient accommodations at a daily rate.

ODC Division 5.03, Section 5.03.250(E)(1) states that no guestroom, for Motel or Hotel, shall be rented for a period exceeding 30 consecutive calendar days, counting portions of calendar days as full days. Rooms that are being rented longer than 30 days are in violation of ODC Division 5.03, Section 5.03.250(E)(1) and not consistent with the intent of Motel or Hotel to provide transient accommodations at a daily rate. Section 3-6.02(g) of the Ontario Municipal Code (OMC) states that "Transient" shall mean any person who exercises occupancy or is entitled to occupancy by reason of concession, permit, right of access, license, or other agreement for a period of thirty (30) consecutive calendar days or less, counting portions of calendar days as full days.

PART 2: RECITALS

WHEREAS, the City of Ontario has received a request for an interpretation or determination, as described in Part I, above; and

WHEREAS, Ontario Development Code Table 2.01-1 (Review Matrix) establishes that the Zoning Administrator has the responsibility and authority to review and act upon Interpretations and Land Use Determinations; and

WHEREAS, it has been recognized that every conceivable use cannot be identified by the City of Ontario Development Code, and anticipating that new uses will evolve over time, Ontario Development Code Section 1.02.101 (Interpretations and Land Use Determinations) establishes the Zoning Administrator's authority to review and act upon a Determination of Use, comparing and measuring a proposed use against those listed in the Development Code, which have similar impacts, functions and characteristics; and

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

PART 3: THE DECISION

NOW, THEREFORE, it is hereby found, determined, and resolved by the Zoning Administrator of the City of Ontario as follows:

(1) All facts set forth in the preceding sections of this Interpretation and Determination of Use are true and correct and are incorporated by this reference.

(2) Based upon the evidence presented, the Zoning Administrator hereby concludes as follows:

(a) The Economy Inn is located at 2301 South Euclid Avenue, within the Community Commercial zoning district. Hotels or Motels are permitted within the Community Commercial zoning district subject to approval of a Conditional Use Permit; and

(b) In 1984, The Planning Commission approved a Conditional Use Permit (File No. 3051-CUP) to establish 47-unit motel; and

(c) In 1985, the City of Ontario Building Department issued building permits for the construction of Motel; and

(d) Division 9.01 (Definitions) of the Ontario Development Code (ODC) defines a Motel as a lodging facility that offers transient accommodations at a daily rate, to the general public, which are predominantly accessed from parking lots or exterior walkways consistent with the City approval and design layout for the Economy Inn; and

(e) ODC Division 5.03, Section 5.03.250(E)(1) states that no guestroom, for Motel or Hotel, shall be rented for a period exceeding 30 consecutive calendar days, counting portions of calendar days as full days; and

(f) Rooms that are being rented longer than 30 days is in violation of ODC Division 5.03, Section 5.03.250(E)(1) and not consistent with the intent of Motel or Hotel to provide transient accommodations at a daily rate; and

(g) Section 3-6.029(g) of the Ontario Municipal Code (OMC) clearly states that "Transient" shall mean any person who exercises occupancy or is entitled to occupancy by reason of concession, permit, right of access, license, or other agreement for a period of thirty (30) consecutive calendar days or less, counting portions of calendar days as full days; and

(h) The Transient Occupancy Tax shall be imposed on "transients" as defined the OMC Section 3-6.029(g); and

(i) Section 3-6.04 of the OMC provides for exemptions from the TOT under limited circumstances and pursuant to Section 3-6.04(b) no such exemption shall be granted except upon a claim made at the time the rent is collected and made under penalty of perjury upon a form approved by the Tax Administrator.

(3) The Zoning Administrator hereby finds and determines that the project identified in this Determination of Use is not subject to the California Environmental Quality Act of 1970, as amended, and the Guidelines promulgated thereunder, pursuant to Section 15060(c)(2) of the State CEQA Guidelines, as the activity will not result in a direct or reasonably foreseeable indirect physical change in the environment.

(4) Based upon the findings and conclusions set forth in Parts 1, 2 and 3 above, the Zoning Administrator hereby finds and determines, File No. PDET23-009, the following:

(a) That the ODC Division 5.03, Section 5.03.250(E)(l) is applicable and enforceable to the operation of the Economy Inn. ODC Division 5.03, Section 5.03.250(E)(1) states that no guestroom, for Motel or Hotel, shall be rented for a period exceeding 30 consecutive calendar days, counting portions of calendar days as full days. The intent of a Motel or Hotel to provide transient accommodations at a daily rate. Section 3-6.029(g) of the Ontario Municipal Code (OMC) clearly states that "Transient" shall mean any person who exercises occupancy or is entitled to occupancy by reason of concession, permit, right of access, license, or other agreement for a period of thirty (30) consecutive calendar days or less, counting portions of calendar days as full days. Therefore, the Transient Occupancy Tax shall be imposed on "transients" as defined the OMC Section 3-6.029(g).

(b) That Hotel has not applied for an exemption pursuant to Section 3-6.04 of the OMC and therefore no such exemption would be applicable to the Hotel.

(c) That Hotel's operations, as stipulated in the February 5, 2021 hearing, allowing guests to stay longer than 30 days is in violation of ODC Division 5.03, Section 5.03.250(E)(1) and in violation of all applicable zoning and use permits.

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

APPROVED AND ADOPTED this 21st day of December 2023.

Rudy Zeledon
Zoning Administrator

RESOLUTION NO. PC24-022

A RESOLUTION OF THE PLANNING COMMISSION OF THE CITY OF ONTARIO, CALIFORNIA, UPHOLDING THE ZONING ADMINSTRATOR'S INTERPRETATION AND DETERMINATION DECISION (FILE NO. PDET 23-010) THAT THE ONTARIO DEVELOPMENT CODE DIVISION 5.03, SECTION 5.03.250(E)(L) IS APPLICABLE AND ENFORCEABLE TO THE OPERATION TO THE MAYFAIR INN, LOCATED AT 1120 EAST HOLT BOULEVARD, WITHIN THE INDUSTRIAL PARK ZONING DISTRICT, AND MAKING FINDINGS IN SUPPORT THEREOF—APN: 1049-141-25.

WHEREAS, Dilip Payaram ("Applicant") operator of the Mayfair Inn ("Hotel") has filed an appeal of Application of the Zoning Administrators interpretation and determination decision that the Ontario Development Code Division 5.03, Section 5.03.250(E)(l) is applicable and enforceable to the operation Mayfair Inn, File No. PDET23-010, as described in the title of this Resolution (hereinafter referred to as "Application" or "Project"); and

WHEREAS, the Mayfair Inn (formally known as the Knights Inn) is located at 1120 East Holt Boulevard, within the Industrial Park zoning district. Hotels or Motels are not permitted within the Industrial Park zoning district. The existing Mayfair Inn is a legal nonconforming use; and

WHEREAS, on April 16, 2021, Executive Director of Finance Armen Harkalyan ("License Official") sitting as the Transient Occupancy Tax License Official under Chapter 6 of Title 3 of the Ontario Municipal Code, held a hearing for the operator of the Mayfiar Inn. The purpose of the hearing was to allow the operators the opportunity to rebut the amount of tax assessed by the License Official and offer evidence why the specified tax, interest, and penalties are incorrect; and

WHEREAS, on April 16, 2021, the License Official issued a Stay of Decision and referred the matter to the Zoning Administrator to provide an interpretation or determination regarding the applicability and enforceability of Section 5.03.250(E)(l) as to Mayfair Inn; and

WHEREAS, in 1985, the Planning Commission approved a Development Plan (File No. 3294-S) for the construction of 37-unit Mayfair Inn motel; and

WHEREAS, in 1987, City of Ontario Building Department issued permits for the construction of Mayfair Motel; and

WHEREAS, Division 9.01 (Definitions) of the Ontario Development Code (ODC) defines a Motel as a lodging facility that offers transient accommodations at a daily rate,

to the general public, which are predominantly accessed from parking lots or exterior walkways consistent with the City approval and design layout for the Mayfair Inn; and

WHEREAS, ODC Division 5.03, Section 5.03.250(E)(1) states that no guestroom, for Motel or Hotel, shall be rented for a period exceeding 30 consecutive calendar days, counting portions of calendar days as full days; and

WHEREAS, guestrooms that are being rented longer than 30 days is in violation of ODC Division 5.03, Section 5.03.250(E)(1) and not consistent with the intent of Motel or Hotel to provide transient accommodations at a daily rate; and

WHEREAS, Section 3-6.029(g) of the Ontario Municipal Code (OMC) clearly states that "Transient" shall mean any person who exercises occupancy or is entitled to occupancy by reason of concession, permit, right of access, license, or other agreement for a period of thirty (30) consecutive calendar days or less, counting portions of calendar days as full days; and

WHEREAS, the Transient Occupancy Tax shall be imposed on "transients" as defined the OMC Section 3-6.029(g); and

WHEREAS, in response to the Appellants basis for the appeal staff has prepared a response to each of the items. Below is the Appellants statement and staff's response:

1. *Appellants' Issue No. 1: Subject hotels never received notice of the zoning change and adoption of Ontario Development Code ("ODC") Division 5.03 Section 5.03.250(E)(1) and were entitled to an individualized hearing under the First Amendment Petition Clause, Fourth Amendment Search and Seizure Clause, the Fifth Amendment Takings Clause, the Fourteenth Amendment Due Process Clause (Substantive and Procedural) and Equal Protection of the United States Constitution.*

Staff Response: Appellant's arguments introduce irrelevant issues that go beyond the limited scope of the Zoning Administrator's decisions.

The Zoning Administrator has acted within his limited authority to interpret the Ontario Development Code ("ODC"). The Zoning Administrator, under Section l.02.015(A)(l) of the ODC, has jurisdiction of, and is responsible for, the administration and application of the regulations and provisions of the Development Code. The Zoning Administrator's power is limited to interpretation of the Code as applied to a particular case. ODC § 1.02.010(B)(1). Thus, the Zoning Administrator's power is limited to interpretation of the code and its application to a particular set of facts.

Appellants' arguments introduce irrelevant legal arguments that do not challenge the underlying factual findings and analysis of each of the decisions by the Zoning

Administrator. Issues like the adoption and amendment of zoning ordinances are legislative acts rather than administrative or quasi-judicial acts. Arnel Dev. Co. v City of Costa Mesa (1980) 28 C3d 511, 514. Appellants take issue with the implementation of legislation of the Ontario Development Code. For reference, Ordinance No. 1569, which imposed the TOT was passed in 1965 – fifty-nine years ago. These issues are beyond the scope of the Zoning Administrator's role. For the Zoning Administrator to consider these legal issues would exceed the power granted by the Development Code.

The Zoning Administrator has acted within his limited authority to interpret the Development Code as to Appellants' claims and found that their hotels are subject to ODC chapter 5.03.250(E)(1). Appellants do not challenge the factual findings made by the Zoning Administrator. Thus, the appeal should be denied, and the Zoning Administrator's decisions upheld.

2. Appellants' Issue No. 2: *Ontario Development Code chapter 5.03.250(E)(1) which prohibits hotels from having a guestroom rented for longer than 30 days is inapplicable because Ontario Municipal Code chapter 3-06.02(g) states than an occupant can have an occupancy for longer than 30 days (with a written agreement).*

Staff Response: The Zoning Administrator's application of ODC § 5.03.250(E)(1) as to Appellants' hotels was proper. Where the Development Code imposes a greater restriction than is imposed or required by an existing law, the provisions of the Development Code shall prevail. ODC § 1.02.005. To the extent that there is an external inconsistency between the provisions of the Ontario Development Code and the provisions of the Ontario Municipal Code, the more restrictive provisions shall apply. ODC § 1.01.015(D). Thus, if there is a conflict between the Ontario Municipal Code and the Ontario Development Code, the Zoning Administrator must make a decision pursuant to the Development Code.

Here, Appellants argue that because OMC § 3-06.02(g) states than a person can have an occupancy of longer than 30 days (with an agreement in writing), that Appellants can rent their hotels to occupants for longer than 30 days and be exempt from the TOT. However, under the Development Code, "no guestroom shall be rented for a period exceeding 30 consecutive calendar days for a hotel or motel. ODC § 5.03.250(E)(1). This is an explicit restriction on hotels. To the extent that there exists any conflict by inference with OMC section 3-602(g), the ODC's restriction on hotels applies. ODC § 1.01.015(D). The Zoning Administrator's application of the ODC's more restrictive provision prohibiting Appellants' hotels from renting to a person for longer than 30 days was proper.

Thus, the appeals should be denied, and the Zoning Administrator's decisions should be upheld; and

WHEREAS, Ontario Development Code Table 2.01-1 (Review Matrix) establishes that the Zoning Administrator has the responsibility and authority to review and act upon Interpretations and Land Use Determinations; and

WHEREAS, the Application is a project pursuant to the California Environmental Quality Act, commencing with Public Resources Code Section 21000 (hereinafter referred to as "CEQA"); and

WHEREAS, the Project is not subject to the California Environmental Quality Act of 1970, as amended, and the Guidelines promulgated thereunder, pursuant to Section 15060(c)(2) of the State CEQA Guidelines, as the activity will not result in a direct or reasonably foreseeable indirect physical change in the environment; and

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

WHEREAS, City of Ontario Development Code Division 2.03 (Public Hearings) prescribes the manner in which public notification shall be provided and hearing procedures to be followed, and all such notifications and procedures have been completed; and

WHEREAS, on May 28, 2024, the Planning Commission of the City of Ontario conducted a hearing to consider the Project, and concluded said hearing on that date; and

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

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

SECTION 1: ***Environmental Determination and Findings.*** As the decision-making authority for the Project, the Planning Commission has reviewed and considered the information contained in the administrative record for the Project. Based upon the facts and information contained in the administrative record, including all written and oral evidence presented to the Planning Commission, the Planning Commission finds as follows:

(1) The administrative record has been completed in compliance with CEQA, the State CEQA Guidelines, and the City of Ontario Local CEQA Guidelines; and

(2) This Resolution has been reviewed with respect to the applicability of the California Environmental Quality Act of 1970 ("CEQA "), and the State CEQA Guidelines,

and the Planning Commission has determined that this Resolution does not constitute a " project" within the meaning of CEQA Guidelines Section 15060(c)(2) because there is no potential that it will result in a direct or reasonably foreseeable indirect physical change in the environment and CEQA Guidelines Section 15378 because it has no potential for either a direct physical change to the environment, or a reasonably foreseeable indirect physical change in the environment; and

(3) The determination of CEQA exemption reflects the independent judgment of the Planning Commission.

SECTION 4: ***Concluding Facts and Reasons.*** Based upon the substantial evidence presented to the Planning Commission during the above-referenced hearing, and upon the specific findings set forth in Sections 1 through 3, above, the Planning Commission hereby concludes as follows:

(1) That the ODC Division 5.03, Section 5.03.250(E)(l) is applicable and enforceable to the operation of the Mayfair Inn. ODC Division 5.03, Section 5.03.250(E)(1) states that no guestroom, for Motel or Hotel, shall be rented for a period exceeding 30 consecutive calendar days, counting portions of calendar days as full days. The intent of a Motel or Hotel to provide transient accommodations at a daily rate. Section 3-6.029(g) of the Ontario Municipal Code (OMC) clearly states that “Transient” shall mean any person who exercises occupancy or is entitled to occupancy by reason of concession, permit, right of access, license, or other agreement for a period of thirty (30) consecutive calendar days or less, counting portions of calendar days as full days. Therefore, the Transient Occupancy Tax shall be imposed on “transients” as defined the OMC Section 3-6.029(g).

(2) That Hotel has not applied for an exemption pursuant to Section 3-6.04 of the OMC and therefore no such exemption would be applicable to the Hotel.

(3) That Hotel’s operations, as stipulated in the April 16, 2021 hearing, allowing guests to stay longer than 30 days is in violation of ODC Division 5.03, Section 5.03.250(E)(1) and in violation of all applicable zoning and use permits.

SECTION 5: ***Planning Commission Action.*** Based upon the findings and conclusions set forth in Sections 1 through 4, above, the Planning Commission hereby Approves to uphold the Zoning Administrator Decision herein described Application.

SECTION 6: ***Indemnification.*** The Applicant shall agree to defend, indemnify and hold harmless, the City of Ontario or its agents, officers, and employees from any claim, action or proceeding against the City of Ontario or its agents, officers or employees to attack, set aside, void, or annul this approval. The City of Ontario shall promptly notify

the applicant of any such claim, action, or proceeding, and the City of Ontario shall cooperate fully in the defense.

SECTION 7: ***Custodian of Records.*** The documents and materials that constitute the record of proceedings on which these findings have been based are located at the City of Ontario City Hall, 303 East "B" Street, Ontario, California 91764. The custodian for these records is the City Clerk of the City of Ontario.

SECTION 8: ***Certification to Adoption.*** The Secretary shall certify to the adoption of the Resolution.

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

I hereby certify that the foregoing Resolution was duly and regularly introduced, passed and adopted by the Planning Commission of the City of Ontario at a regular meeting thereof held on the 28th day of May 2024, and the foregoing is a full, true and correct copy of said Resolution, and has not been amended or repealed.

Nicola Ricci
Planning Commission Chairperson

ATTEST:

Henry K. Noh
Planning Director and
Secretary to the Planning Commission

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

I, Gwen Berendsen, Secretary Pro Tempore of the Planning Commission of the City of Ontario, DO HEREBY CERTIFY that foregoing Resolution No. PC24-022, was duly passed and adopted by the Planning Commission of the City of Ontario at their regular meeting held on May 28, 2024, by the following roll call vote, to wit:

AYES: Anderson, DeDiemar, Del Turco, Lampkin, Ricci

NOES: None

ABSENT: Dean, Gage

ABSTAIN: None

Gwen Berendsen
Secretary Pro Tempore

ATTACHMENT A:

Notice of Assessment for Transient Occupancy Tax ("Notice of Assessment")

(Notice of Assessment to follow this page)

(BEFORE THE

TRANSIENT OCCUPANCY TAX LICENSE OFFICIAL

FOR THE

CITY OF ONTARIO, CALIFORNIA

IN RE Knights Inn 1120 E. Holt Blvd. Ontario, CA 91761	**REFERRAL TO ZONING ADMINISTRATOR AND STAY OF DECISION** _____ License Official: Armen Harkalyan Date: 4/16/2021 Time: 1:00 P.M.

INTRODUCTION

1. This matter involves the application of the City of Ontario's Transient Occupancy Tax to the revenues of a hotel in the City of Ontario. Executive Director of Finance Armen Harkalyan ("License Official"), sitting as the Transient Occupancy Tax License Official under Chapter 6 of Title 3 of the Ontario Municipal Code, heard this matter via remote teleconference on the date and time noted above (the "Hearing"). The License Official was advised by attorney Steven P. Graham, special counsel to the City of Ontario.
2. City of Ontario ("City") is a municipal corporation existing under the laws of the State of California.
3. Knights Inn ("Hotel") is a hotel located at 1120 E. Holt Blvd. in the City of Ontario. The Hotel is operated by Dilip Payaram ("Operator") and represented by attorney Frank A. Weiser, both were present at the hearing.
4. The following Referral to Zoning Administrator and Stay of Decision is based on the evidence presented during the Hearing for this matter. Pursuant to oral stipulation at the Hearing, the Hearing was held open for two weeks to give Mr. Weiser an opportunity to file additional evidence or legal argument in support the appeal. Nothing was filed within the two-week period and the Hearing was closed.

5. Chapter 6 of Title 3 of the Ontario Municipal Code related to Transient Occupancy Tax is attached hereto as **ATTACHMENT A**. Section 5.03.250 of the Ontario Development Code ("ODC"), which governs the operations of hotels, motels, residence inns, and other similar traveler accommodations, is attached hereto as **ATTACHMENT B**.

6. The License Official considered the testimony of all witnesses at the Hearing and all attachments received into evidence. The mere fact that particular witness testimony or attachments may not be specifically referred to below does not and shall not be construed to mean that said testimony or attachment was not considered.

7. The hearing was recorded and a copy of the recording is available upon request.

ISSUES

8. Pursuant to Ontario Municipal Code Section 3-6.09, the issue to be determined by the License Official on the application of Hotel is whether the amount of Transient Occupancy Tax, along with any interest and penalties, specified within the Notice of Assessment issued by the License Official on 11/18/2020 should be upheld.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

A. Jurisdictional Matters

9. This matter is before the License Official following the City's 11/18/2020 Notice of Assessment for Transient Occupancy Tax ("Notice of Assessment") which found that Hotel had unpaid Transient Occupancy Taxes. The Notice of Assessment is attached hereto as **ATTACHMENT C**. Specifically, the Notice of Assessment finds the following amounts are unpaid:

TOT UNCOLLECTED:	**$103,487.11**
PENALTIES:	**$2,069.74**
INTEREST:	**$8,721.73**
TOTAL:	**$114,278.58**

The basis for this finding is $880,741.37 in exemptions claimed for non-transient guests of the Hotel, which the City alleges violate the provisions of Section 5.03.250 of the ODC.

10. Hotel filed an Application for Hearing on 12/2/2020 challenging the Notice of Assessment. The Application for Hearing is attached hereto as **ATTACHMENT D**.

11. The Hotel filed a Letter Brief into its Application for Hearing. The Letter Brief is attached hereto as **ATTACHMENT E**.

12. Pursuant to Ontario Municipal Code Section 3-6.09, a hearing before Executive Director of Finance Armen Harkalyan sitting as the Transient Occupancy Tax License Official was set where the Hotel could appear and offer evidence why the specified tax, interest, and penalties within the Notice of Assessment should not be so fixed. A copy of the Notice of Hearing is attached hereto as **ATTACHMENT F**.

B. Procedural Background

11. The Hearing for this matter was held on the date and time noted above in Ontario, California.

12. The Hotel called the Operator to offer testimony and evidence at the hearing. Attorney Frank A. Weiser offered legal argument at the hearing.

13. The matter was taken under submission by the Hearing Officer at the conclusion of the hearing, pending receipt of the letter brief from the Hotel.

14. Per oral stipulation at the hearing, the Hotel was given the opportunity to file a letter brief with evidentiary attachments within two weeks of the date and time noted above. No letter brief was filed and the Hearing was closed.

C. The Transient Occupancy Tax Ordinance

15. The City of Ontario imposes a Transient Occupancy Tax of eleven and three-quarters percent (11¾%) of rent on the privilege of occupancy of space in a hotel within its jurisdiction. O.M.C. § 3-6.03.

16. Rent is defined by the Ontario Municipal Code as "the consideration charged, whether or not received, for the occupancy of space in a hotel valued in money, whether to be received in money, goods, labor, or otherwise, including all receipts, cash, credits, property, and services of any kind or nature, without any deduction therefrom whatsoever." O.M.C. § 3-6.02(e).

17. Hotel is defined by the Ontario Municipal Code as "any structure, or any portion of any structure, which is occupied, or intended or designed for occupancy, by transients for dwelling, lodging,

or sleeping purposes and shall include any hotel, inn, tourist home or house, motel, studio hotel, bachelor hotel, lodging house, rooming house, apartment house, dormitory, public or private club, mobile home or house trailer at a fixed location, or other similar structure, or portion thereof." O.M.C. § 3-6.02(a).

18. The Ontario Municipal Code requires that "[e]ach operator shall collect and hold in trust for the account and benefit of the City the tax imposed by the provisions of this chapter to the same extent and at the same time as the rent is collected from every transient." O.M.C. § 3-6.05.

19. Operator is defined by the Ontario Municipal Code as "...the person who is the proprietor of the hotel whether in the capacity of owner, lessee, sublessee, mortgagee in possession, licensee, or any other capacity. Where the operator performs his or her functions through a managing agent of any type or character, other than an employee, the managing agent shall also be deemed an operator for the purposes of this chapter and shall have the same duties and liabilities as his or her principal." O.M.C. § 3-6.02(c).

20. The City of Ontario requires all operators of hotels to register such hotel with the License Official and obtain a "Transient Occupancy Registration Certificate" which shall be posted in a conspicuous place on the hotel premises. O.M.C. § 3-6.06. Such certificate shall include the name and address of the operator, the address of the hotel, the date the certificate was issued, and a statement required by the code. O.M.C. § 3-6.06.

21. The City of Ontario requires all operators to report and remit Transient Occupancy Taxes to the License Official. O.M.C. § 3-6.07. "Each operator shall, on or before the last day of the month following the close of each calendar quarter, or at the close of any shorter reporting period which may be established by the License Official, make a return to the License Official, on forms provided by him or her, of the total rents charged and received and the amount of tax collected for transient occupancies. At the time the return is filed, the full amount of the tax collected shall be remitted to the License Official." O.M.C. § 3-6.07.

22. Transient is defined by the Ontario Municipal Code as "any person who exercises occupancy or is entitled to occupancy by reason of concession, permit, right of access, license, or other agreement for a period of thirty (30) consecutive calendar days or less, counting portions of

calendar days as full days. Any such person so occupying space in a hotel shall be deemed to be a transient until the period of thirty (30) consecutive calendar days has expired unless there is an agreement in writing between the operator and the occupant providing for a longer period of occupancy. Any individual person who exercises or is entitled to occupancy for a period of thirty (30) consecutive calendar days or less shall be deemed to be a transient, regardless of whether the reservation and/or payment for occupancy is made directly by the person exercising occupancy or another person, or entity. The intent is to tax the individual person occupying, or having the right or entitlement to occupancy, the hotel room. 'Transient' includes any employee or officer of the State government or of the government of a political subdivision of the State. 'Transient' does not mean or include any Federal officer or employee when on official Federal government business, or any officer or employee of a foreign government who is exempt by reason of express provision of Federal law or international treaty, who exercises occupancy or is entitled to occupancy by reason of concession, permit, right of access, license, or other agreement for a period of thirty (30) consecutive calendar days or less, counting portions of calendar days as full days." O.M.C. § 3-6.02(g).

23. Under Section 5.03.250 of the Ontario Development Code, "No guestroom shall be rented for a period exceeding 30 consecutive calendar days, counting portions of calendar days as full days." O.D.C. § 5.03.250 (E)(1).

24. Operators who fail to report and remit any Transient Occupancy Tax are subject to penalties and interest. O.M.C. § 3-6.08.

25. When an operator fails or refuses to report or remit Transient Occupancy Tax in the manner required by the Ontario Municipal Code, the License Official "shall proceed in such manner as he may deem best to obtain the facts and information on which to base his estimate of the tax due." O.M.C. § 3-6.09. Once the License Official has obtained such facts and information, the License Official "shall proceed to determine and assess against such operator the tax, interest, and penalties" and "give notice of the amount so assessed by serving it personally or depositing it in the United States mail, postage prepaid, addressed to the operator so assessed at his last known place of address." O.M.C. § 3-6.09.

26. The Ontario Municipal Code creates a rebuttable presumption that the amount of Transient Occupancy Tax, along with any penalties and interest, determined by the License Official is correct. O.M.C. § 3-6.09. If not challenged, the determination of the License Official is "final and conclusive and immediately due and payable." O.M.C. § 3-6.09.

27. Any operator receiving a notice of assessment "may, within ten (10) days after the service or mailing of such notice, make an application in writing to the License Official for a hearing on the amount assessed." O.M.C. § 3-6.09. At the hearing "the operator may appear and offer evidence why such specified tax, interest, and penalties should not be so fixed." O.M.C. § 3-6.09.

28. After the hearing, the License Official "shall determine the proper tax to be remitted and shall thereafter give written notice to the person in the manner prescribed in this section of such determination and the amount of such tax, interest, and penalties." O.M.C. § 3-6.09.

D. The Hearing

29. Except as discussed below, the facts of this matter are essentially undisputed.

30. Under the Ontario Municipal Code, a rebuttable presumption exists at the hearing that the amount of tax assessed by the License Official is correct and operator has the opportunity to appear and offer evidence why the specified tax, interest, and penalties are incorrect.

31. The Hotel appeared by attorney Frank A. Weiser who offered legal arguments orally at the hearing. The Hotel called the Operator to offer testimony and provide documents that were taken into evidence. A copy of the evidence submitted by the Operator is attached hereto as **ATTACHMENT G.**

32. Hotel argues that the exemptions claimed are consistent with Title 3 Chapter 6 of the Ontario Municipal Code (the "TOT Ordinance"). Specifically, Hotel argues that under Section 3-6.03 of the TOT Ordinance, the transient occupancy tax is imposed only on transients. Transients are defined in Section 3-6.02(g) as any person who exercises occupancy or is entitled to occupancy, for a period of 30 calendar days or less. Here, the Hotel provided evidence that it rents rooms to guests for longer than 30 days. The Hotel argues that these guests, having stayed longer than 30 days at the Hotel, are exempt from taxation as they no longer meet the definition of transient.

33. The City, in response, called Tony Lai who made the findings on appeal before the License Official. Mr. Lai argues that under Section 5.03.250(E)(1) of Ontario Development Code, the exemption is impermissible as "[n]o guestroom shall be rented for a period exceeding 30 consecutive calendar days, counting portions of calendar days as follow days." In particular, in the Audit Findings (Attachment C) for the Hotel, Mr. Lai claims "the hotel is claiming long-term occupants in error as it is zoned in a non-confirming [sic] area, per the Ontario Development Code Section 5.03.250. All long-term exemptions claimed are considered invalid and as a result TOT is understated." Furthermore, Mr. Lai stated that his findings were purely based on whether the exemption was permissible for the Hotel in light of the ODC prohibition.

REFERRAL TO ZONING ADMINISTRATOR

34. The Hotel has presented credible evidence and testimony that a significant portion of the guests of the Hotel stay in excess of 30 days.

35. The License Official's jurisdiction is to "determine the proper tax to be remitted and [...] thereafter give written notice to the person in the manner prescribed in this section of such determination and the amount of such tax, interest, and penalties." O.M.C. § 3-6.09.

36. Under Section 1.02.015(A)(1) of the ODC "The Zoning Administrator shall have jurisdiction of, and be responsible for, the administration and application of the regulations and provisions of this Development Code."

37. Therefore, pursuant to Section 1.02.010(C) of the ODC, the License Official hereby requests that the Zoning Administrator provide an interpretation or determination regarding the applicability and enforceability of Section 5.03.250(E)(1) as to the Hotel.

38. Pending an interpretation or determination of the Zoning Administrator, the assessment of transient occupancy taxes, penalties, and interest assessed against the Hotel is hereby STAYED. Once an interpretation or determination is made, this stay will be lifted and a Decision and Order will issue that will UPHOLD, DISMISS, or MODIFY the assessment.

Dated: 10-5-21

License Official

ZONING ADMINISTRATOR DECISION: LAND USE DETERMINATION

December 21, 2023

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

DECISION NO.: **ZA23-033**

FILE NO.: PDET23-010

DESCRIPTION: Referral to Zoning Administrator and Stay of Decision for the Mayfair Inn ("Hotel"), located at 1120 East Holt Boulevard, within the Industrial Park zoning district, to provide an interpretation or determination regarding the applicability and enforceability of Section 5.03.250(E)(l) as to the Hotel (APN: 1049-141-25); **submitted by the City of Ontario Transient Occupancy Tax License Official.**

PART 1: BACKGROUND & ANALYSIS

THE CITY OF ONTARIO TRANSIENT OCCUPANCY TAX LICENSE OFFICIAL, (herein after referred to as "Applicant") has filed a request that Zoning Administrator provide an interpretation or determination regarding the applicability and enforceability of Section 5.03.250(E)(l) as to the Hotel. Land Use Interpretation or Determination, File No. PDET23-010, as described in the subject of this Decision (herein after referred to as "Application" or "Project").

DESCRIPTION: Referral to Zoning Administrator and Stay of Decision for the Mayfair Inn (Formally known as "Knights Inn"), located at 1120 East Holt Boulevard, within the Industrial Park zoning district, to provide an interpretation or determination regarding the applicability and enforceability of Ontario Development Code (ODC) Section 5.03.250(E)(l) as to the Hotel.

ANALYSIS: Under the ODC Section 1.02.015(A), the Zoning Administrator shall have jurisdiction of, and be responsible for, the administration and application of the regulations and provisions of this Development Code. Subsequently, the ODC Table 2.01-1 (Review Matrix) establishes that the Zoning Administrator has the responsibility and authority to review and act upon Interpretations and Land Use Determinations

The Mayfair Inn is located at 1120 East Holt Boulevard and zoned Industrial Park. In 1985, the Planning Commission approved a Development Plan (File No. 3294-S) for the construction of 37-unit motel. In 1987, City of Ontario Building Department issued permits for the construction of Motel. The permitted Motel was constructed in conformance with all regulations of the Municipal Code at the time of development; however, at present, it is not in compliance with the current Industrial Park zoning district. Consequently, the existing Motel use is deemed "legal nonconforming". Division 3.01 (Nonconforming Lots, Uses and Structures), Section 3.01.015: Nonconforming Land Uses, outlines the regulations for the continuance of a nonconforming use.

The Ontario Development Code, Division 9.01 (Definitions), defines a Motel as a lodging facility that offers transient accommodations at a daily rate, to the general public, which are predominantly accessed from parking lots or exterior walkways consistent with the City approval and design layout for the Mayfair Inn. Hotels are defined as lodging facilities, which offers transient accommodations at a daily rate, to the general public, and which may provide additional

services, such as restaurants, meeting rooms and recreational facilities. The definitions for a Motel and Hotel both clearly state the intent for transient accommodations at a daily rate.

ODC Division 5.03, Section 5.03.250(E)(1) states that no guestroom, for Motel or Hotel, shall be rented for a period exceeding 30 consecutive calendar days, counting portions of calendar days as full days. Rooms that are being rented longer than 30 days are in violation of ODC Division 5.03, Section 5.03.250(E)(1) and not consistent with the intent of Motel or Hotel to provide transient accommodations at a daily rate. Section 3-6.02(g) of the Ontario Municipal Code (OMC) states that "Transient" shall mean any person who exercises occupancy or is entitled to occupancy by reason of concession, permit, right of access, license, or other agreement for a period of thirty (30) consecutive calendar days or less, counting portions of calendar days as full days.

PART 2: RECITALS

WHEREAS, the City of Ontario has received a request for an interpretation or determination, as described in Part I, above; and

WHEREAS, Ontario Development Code Table 2.01-1 (Review Matrix) establishes that the Zoning Administrator has the responsibility and authority to review and act upon Interpretations and Land Use Determinations; and

WHEREAS, it has been recognized that every conceivable use cannot be identified by the City of Ontario Development Code, and anticipating that new uses will evolve over time, Ontario Development Code Section 1.02.101 (Interpretations and Land Use Determinations) establishes the Zoning Administrator's authority to review and act upon a Determination of Use, comparing and measuring a proposed use against those listed in the Development Code, which have similar impacts, functions and characteristics; and

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

PART 3: THE DECISION

NOW, THEREFORE, it is hereby found, determined, and resolved by the Zoning Administrator of the City of Ontario as follows:

(1) All facts set forth in the preceding sections of this Interpretation and Determination of Use are true and correct and are incorporated by this reference.

(2) Based upon the evidence presented, the Zoning Administrator hereby concludes as follows:

(a) The Mayfair Inn is located at 1120 East Holt Boulevard, within the Industrial Park zoning district. Hotels or Motels are not permitted within the Industrial Park zoning district. The existing Mayfair Inn is a legal nonconforming use;

(b) The Planning Commission approved a Development Plan (File No. 3294-S) for the construction of 37-unit motel; and

(c) In 1987, City of Ontario Building Department issued permits for the construction of Motel; and

(d) Division 9.01 (Definitions) of the Ontario Development Code (ODC) defines a Motel as a lodging facility that offers transient accommodations at a daily rate, to the general public, which are predominantly accessed from parking lots or exterior walkways consistent with the City approval and design layout for the Mayfair Inn; and

(e) ODC Division 5.03, Section 5.03.250(E)(1) states that no guestroom, for Motel or Hotel, shall be rented for a period exceeding 30 consecutive calendar days, counting portions of calendar days as full days; and

(f) Rooms that are being rented longer than 30 days is in violation of ODC Division 5.03, Section 5.03.250(E)(1) and not consistent with the intent of Motel or Hotel to provide transient accommodations at a daily rate; and

(g) Section 3-6.029(g) of the Ontario Municipal Code (OMC) clearly states that "Transient" shall mean any person who exercises occupancy or is entitled to occupancy by reason of concession, permit, right of access, license, or other agreement for a period of thirty (30) consecutive calendar days or less, counting portions of calendar days as full days; and

(h) The Transient Occupancy Tax shall be imposed on "transients" as defined the OMC Section 3-6.029(g); and

(i) Section 3-6.04 of the OMC provides for exemptions from the TOT under limited circumstances and pursuant to Section 3-6.04(b) no such exemption shall be granted except upon a claim made at the time the rent is collected and made under penalty of perjury upon a form approved by the Tax Administrator.

(3) The Zoning Administrator hereby finds and determines that the project identified in this Determination of Use is not subject to the California Environmental Quality Act of 1970, as amended, and the Guidelines promulgated thereunder, pursuant to Section 15060(c)(2) of the State CEQA Guidelines, as the activity will not result in a direct or reasonably foreseeable indirect physical change in the environment.

(4) Based upon the findings and conclusions set forth in Parts 1, 2 and 3 above, the Zoning Administrator hereby finds and determines, File No. PDET23-010, the following:

(a) That the ODC Division 5.03, Section 5.03.250(E)(l) is applicable and enforceable to the operation of the Mayfair Inn. ODC Division 5.03, Section 5.03.250(E)(1) states that no guestroom, for Motel or Hotel, shall be rented for a period exceeding 30 consecutive calendar days, counting portions of calendar days as full days. The intent of a Motel or Hotel to provide transient accommodations at a daily rate. Section 3-6.029(g) of the Ontario Municipal Code (OMC) clearly states that "Transient" shall mean any person who exercises occupancy or is entitled to occupancy by reason of concession, permit, right of access, license, or other agreement for a period of thirty (30) consecutive calendar days or less, counting portions of calendar days as full days. Therefore, the Transient Occupancy Tax shall be imposed on "transients" as defined the OMC Section 3-6.029(g).

(b) That Hotel has not applied for an exemption pursuant to Section 3-6.04 of the OMC and therefore no such exemption would be applicable to the Hotel.

(c) That Hotel's operations, as stipulated in the April 16, 2021 hearing, allowing guests to stay longer than 30 days is in violation of ODC Division 5.03, Section 5.03.250(E)(1) and in violation of all applicable zoning and use permits.

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

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APPROVED AND ADOPTED this 21st day of December 2023.

Rudy Zeledon
Zoning Administrator

RESOLUTION NO. PC24-023

A RESOLUTION OF THE PLANNING COMMISSION OF THE CITY OF ONTARIO, CALIFORNIA, UPHOLDING THE ZONING ADMINSTRATOR'S INTERPRETATION AND DETERMINATION DECISION (FILE NO. PDET 23-015) THAT THE ONTARIO DEVELOPMENT CODE DIVISION 5.03, SECTION 5.03.250(E)(L) IS APPLICABLE AND ENFORCEABLE TO THE OPERATION TO THE SANDS MOTEL, LOCATED AT 1240 WEST MISSION BOULEVARD, WITHIN THE LIGHT INDUSTRIAL ZONING DISTRICT, AND MAKING FINDINGS IN SUPPORT THEREOF—APN: 1101-211-03.

WHEREAS, Purushottam Patel and Andy Patel ("Applicant") operator of the Sands Motel ("Hotel") has filed an Appeal of Application of the Zoning Administrators interpretation and determination decision that the Ontario Development Code Division 5.03, Section 5.03.250(E)(l) is applicable and enforceable to the operation Sands Motel, File No. PDET23-015, as described in the title of this Resolution (hereinafter referred to as "Application" or "Project"); and

WHEREAS, the Sands Motel is located at 1240 West Mission Boulevard, within the Light Industrial zoning district. Hotels or Motels are not permitted within the Light Industrial zoning district. The existing Sands Motel is a legal nonconforming use; and

WHEREAS, on January 1, 2021, Executive Director of Finance Armen Harkalyan ("License Official") sitting as the Transient Occupancy Tax License Official under Chapter 6 of Title 3 of the Ontario Municipal Code, held a hearing for the operator of the Sands Motel. The purpose of the hearing was to allow the operators the opportunity to rebut the amount of tax assessed by the License Official and offer evidence why the specified tax, interest, and penalties are incorrect; and

WHEREAS, on January 1, 2021, the License Official issued a Stay of Decision and referred the matter to the Zoning Administrator to provide an interpretation or determination regarding the applicability and enforceability of Section 5.03.250(E)(l) as to Sands Motel; and

WHEREAS The City of Ontario Building Department issued permits for the construction of Sands Motel in the 1956; and

WHEREAS, Division 9.01 (Definitions) of the Ontario Development Code (ODC) defines a Motel as a lodging facility that offers transient accommodations at a daily rate, to the general public, which are predominantly accessed from parking lots or exterior walkways consistent with the City approval and design layout for the Sands Mote; and

WHEREAS, ODC Division 5.03, Section 5.03.250(E)(1) states that no guestroom, for Motel or Hotel, shall be rented for a period exceeding 30 consecutive calendar days, counting portions of calendar days as full days; and

WHEREAS, guestrooms that are being rented longer than 30 days is in violation of ODC Division 5.03, Section 5.03.250(E)(1) and not consistent with the intent of Motel or Hotel to provide transient accommodations at a daily rate; and

WHEREAS, Section 3-6.029(g) of the Ontario Municipal Code (OMC) clearly states that "Transient" shall mean any person who exercises occupancy or is entitled to occupancy by reason of concession, permit, right of access, license, or other agreement for a period of thirty (30) consecutive calendar days or less, counting portions of calendar days as full days; and

WHEREAS, the Transient Occupancy Tax shall be imposed on "transients" as defined the OMC Section 3-6.029(g); and

WHEREAS, in response to the Appellants basis for the appeal staff has prepared a response to each of the items. Below is the Appellants statement and staff's response:

1. *Appellants' Issue No. 1: Subject hotels never received notice of the zoning change and adoption of Ontario Development Code ("ODC") Division 5.03 Section 5.03.250(E)(1) and were entitled to an individualized hearing under the First Amendment Petition Clause, Fourth Amendment Search and Seizure Clause, the Fifth Amendment Takings Clause, the Fourteenth Amendment Due Process Clause (Substantive and Procedural) and Equal Protection of the United States Constitution.*

Staff Response: Appellant's arguments introduce irrelevant issues that go beyond the limited scope of the Zoning Administrator's decisions.

The Zoning Administrator has acted within his limited authority to interpret the Ontario Development Code ("ODC"). The Zoning Administrator, under Section l.02.015(A)(l) of the ODC, has jurisdiction of, and is responsible for, the administration and application of the regulations and provisions of the Development Code. The Zoning Administrator's power is limited to interpretation of the Code as applied to a particular case. ODC § 1.02.010(B)(1). Thus, the Zoning Administrator's power is limited to interpretation of the code and its application to a particular set of facts.

Appellants' arguments introduce irrelevant legal arguments that do not challenge the underlying factual findings and analysis of each of the decisions by the Zoning Administrator. Issues like the adoption and amendment of zoning ordinances are legislative acts rather than administrative or quasi-judicial acts. Arnel Dev. Co. v City of Costa Mesa (1980) 28 C3d 511, 514. Appellants take issue with the implementation of

legislation of the Ontario Development Code. For reference, Ordinance No. 1569, which imposed the TOT was passed in 1965 – fifty-nine years ago. These issues are beyond the scope of the Zoning Administrator's role. For the Zoning Administrator to consider these legal issues would exceed the power granted by the Development Code.

The Zoning Administrator has acted within his limited authority to interpret the Development Code as to Appellants' claims and found that their hotels are subject to ODC chapter 5.03.250(E)(1). Appellants do not challenge the factual findings made by the Zoning Administrator. Thus, the appeal should be denied, and the Zoning Administrator's decisions upheld.

2. Appellants' Issue No. 2: *Ontario Development Code chapter 5.03.250(E)(1) which prohibits hotels from having a guestroom rented for longer than 30 days is inapplicable because Ontario Municipal Code chapter 3-06.02(g) states than an occupant can have an occupancy for longer than 30 days (with a written agreement).*

Staff Response: The Zoning Administrator's application of ODC § 5.03.250(E)(1) as to Appellants' hotels was proper. Where the Development Code imposes a greater restriction than is imposed or required by an existing law, the provisions of the Development Code shall prevail. ODC § 1.02.005. To the extent that there is an external inconsistency between the provisions of the Ontario Development Code and the provisions of the Ontario Municipal Code, the more restrictive provisions shall apply. ODC § 1.01.015(D). Thus, if there is a conflict between the Ontario Municipal Code and the Ontario Development Code, the Zoning Administrator must make a decision pursuant to the Development Code.

Here, Appellants argue that because OMC § 3-06.02(g) states than a person can have an occupancy of longer than 30 days (with an agreement in writing), that Appellants can rent their hotels to occupants for longer than 30 days and be exempt from the TOT. However, under the Development Code, "no guestroom shall be rented for a period exceeding 30 consecutive calendar days for a hotel or motel. ODC § 5.03.250(E)(1). This is an explicit restriction on hotels. To the extent that there exists any conflict by inference with OMC section 3-602(g), the ODC's restriction on hotels applies. ODC § 1.01.015(D). The Zoning Administrator's application of the ODC's more restrictive provision prohibiting Appellants' hotels from renting to a person for longer than 30 days was proper.

Thus, the appeals should be denied, and the Zoning Administrator's decisions should be upheld; and

WHEREAS, Ontario Development Code Table 2.01-1 (Review Matrix) establishes that the Zoning Administrator has the responsibility and authority to review and act upon Interpretations and Land Use Determinations; and

WHEREAS, the Application is a project pursuant to the California Environmental Quality Act, commencing with Public Resources Code Section 21000 (hereinafter referred to as "CEQA"); and

WHEREAS, the Project is not subject to the California Environmental Quality Act of 1970, as amended, and the Guidelines promulgated thereunder, pursuant to Section 15060(c)(2) of the State CEQA Guidelines, as the activity will not result in a direct or reasonably foreseeable indirect physical change in the environment; and

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

WHEREAS, City of Ontario Development Code Division 2.03 (Public Hearings) prescribes the manner in which public notification shall be provided and hearing procedures to be followed, and all such notifications and procedures have been completed; and

WHEREAS, on May 28, 2024, the Planning Commission of the City of Ontario conducted a hearing to consider the Project, and concluded said hearing on that date; and

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

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

SECTION 1: ***Environmental Determination and Findings.*** As the decision-making authority for the Project, the Planning Commission has reviewed and considered the information contained in the administrative record for the Project. Based upon the facts and information contained in the administrative record, including all written and oral evidence presented to the Planning Commission, the Planning Commission finds as follows:

(1) The administrative record has been completed in compliance with CEQA, the State CEQA Guidelines, and the City of Ontario Local CEQA Guidelines; and

(2) This Resolution has been reviewed with respect to the applicability of the California Environmental Quality Act of 1970 ("CEQA "), and the State CEQA Guidelines,

and the Planning Commission has determined that this Resolution does not constitute a " project" within the meaning of CEQA Guidelines Section 15060(c)(2) because there is no potential that it will result in a direct or reasonably foreseeable indirect physical change in the environment and CEQA Guidelines Section 15378 because it has no potential for either a direct physical change to the environment, or a reasonably foreseeable indirect physical change in the environment; and

(3) The determination of CEQA exemption reflects the independent judgment of the Planning Commission.

SECTION 4: ***Concluding Facts and Reasons.*** Based upon the substantial evidence presented to the Planning Commission during the above-referenced hearing, and upon the specific findings set forth in Sections 1 through 3, above, the Planning Commission hereby concludes as follows:

(1) That the ODC Division 5.03, Section 5.03.250(E)(l) is applicable and enforceable to the operation of the Sands Motel. ODC Division 5.03, Section 5.03.250(E)(1) states that no guestroom, for Motel or Hotel, shall be rented for a period exceeding 30 consecutive calendar days, counting portions of calendar days as full days. The intent of a Motel or Hotel to provide transient accommodations at a daily rate. Section 3-6.029(g) of the Ontario Municipal Code (OMC) clearly states that “Transient” shall mean any person who exercises occupancy or is entitled to occupancy by reason of concession, permit, right of access, license, or other agreement for a period of thirty (30) consecutive calendar days or less, counting portions of calendar days as full days. Therefore, the Transient Occupancy Tax shall be imposed on “transients” as defined the OMC Section 3-6.029(g).

(2) That Hotel has not applied for an exemption pursuant to Section 3-6.04 of the OMC and therefore no such exemption would be applicable to the Hotel.

(3) That Hotel’s operations, as stipulated in the January 1, 2021 hearing, allowing guests to stay longer than 30 days is in violation of ODC Division 5.03, Section 5.03.250(E)(1) and in violation of all applicable zoning and use permits.

SECTION 5: ***Planning Commission Action.*** Based upon the findings and conclusions set forth in Sections 1 through 4, above, the Planning Commission hereby Approves to uphold the Zoning Administrator Decision herein described Application.

SECTION 6: ***Indemnification.*** The Applicant shall agree to defend, indemnify and hold harmless, the City of Ontario or its agents, officers, and employees from any claim, action or proceeding against the City of Ontario or its agents, officers or employees to attack, set aside, void, or annul this approval. The City of Ontario shall promptly notify

the applicant of any such claim, action, or proceeding, and the City of Ontario shall cooperate fully in the defense.

SECTION 7: ***Custodian of Records.*** The documents and materials that constitute the record of proceedings on which these findings have been based are located at the City of Ontario City Hall, 303 East "B" Street, Ontario, California 91764. The custodian for these records is the City Clerk of the City of Ontario.

SECTION 8: ***Certification to Adoption.*** The Secretary shall certify to the adoption of the Resolution.

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

I hereby certify that the foregoing Resolution was duly and regularly introduced, passed and adopted by the Planning Commission of the City of Ontario at a regular meeting thereof held on the 28th day of May 2024, and the foregoing is a full, true and correct copy of said Resolution, and has not been amended or repealed.

Nicola Ricci
Planning Commission Chairperson

ATTEST:

Henry K. Noh
Planning Director and
Secretary to the Planning Commission

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

I, Gwen Berendsen, Secretary Pro Tempore of the Planning Commission of the City of Ontario, DO HEREBY CERTIFY that foregoing Resolution No. PC24-023, was duly passed and adopted by the Planning Commission of the City of Ontario at their regular meeting held on May 28, 2024, by the following roll call vote, to wit:

AYES: Anderson, DeDiemar, Del Turco, Lampkin, Ricci

NOES: None

ABSENT: Dean, Gage

ABSTAIN: None

Gwen Berendsen
Secretary Pro Tempore

ATTACHMENT A:

Notice of Assessment for Transient Occupancy Tax ("Notice of Assessment")

(Notice of Assessment to follow this page)

(BEFORE THE

TRANSIENT OCCUPANCY TAX LICENSE OFFICIAL

FOR THE

CITY OF ONTARIO, CALIFORNIA

IN RE

Sands Motel
1240 W. Mission Blvd.
Ontario, CA 91762

REFERRAL TO ZONING ADMINISTRATOR AND STAY OF DECISION _____

License Official: Armen Harkalyan
Date: 1/8/2021
Time: 2:00 P.M.

INTRODUCTION

1. This matter involves the application of the City of Ontario's Transient Occupancy Tax to the revenues of a hotel in the City of Ontario. Executive Director of Finance Armen Harkalyan ("License Official"), sitting as the Transient Occupancy Tax License Official under Chapter 6 of Title 3 of the Ontario Municipal Code, heard this matter via remote teleconference on the date and time noted above (the "Hearing"). The License Official was advised by attorney Steven P. Graham, special counsel to the City of Ontario.
2. City of Ontario ("City") is a municipal corporation existing under the laws of the State of California.
3. Sands Motel ("Hotel") is a hotel located at 1240 W. Mission Boulevard in the City of Ontario. The Hotel is operated by Andy Patel ("Operator") and represented by attorney Frank A. Weiser, both were present at the hearing.
4. The following Referral to Zoning Administrator and Stay of Decision is based on the evidence presented during the Hearing for this matter. Pursuant to oral stipulation at the Hearing, the Hearing was held open for two weeks to give Mr. Weiser an opportunity to file additional evidence or legal argument in support the appeal. Nothing was filed within the two-week period and the Hearing was closed.

5. Chapter 6 of Title 3 of the Ontario Municipal Code related to Transient Occupancy Tax is attached hereto as **ATTACHMENT A**. Section 5.03.250 of the Ontario Development Code ("ODC"), which governs the operations of hotels, motels, residence inns, and other similar traveler accommodations, is attached hereto as **ATTACHMENT B**.

6. The License Official considered the testimony of all witnesses at the Hearing and all attachments received into evidence. The mere fact that particular witness testimony or attachments may not be specifically referred to below does not and shall not be construed to mean that said testimony or attachment was not considered.

7. The hearing was recorded and a copy of the recording is available upon request.

ISSUES

8. Pursuant to Ontario Municipal Code Section 3-6.09, the issue to be determined by the License Official on the application of Hotel is whether the amount of Transient Occupancy Tax, along with any interest and penalties, specified within the Notice of Assessment issued by the License Official on 11/18/2020 should be upheld.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

A. Jurisdictional Matters

9. This matter is before the License Official following the City's 11/18/2020 Notice of Assessment for Transient Occupancy Tax ("Notice of Assessment") which found that Hotel had unpaid Transient Occupancy Taxes. The Notice of Assessment is attached hereto as **ATTACHMENT C**. Specifically, the Notice of Assessment finds the following amounts are unpaid:

TOT UNCOLLECTED:	**$36,399.14**
PENALTIES:	**$727.98**
INTEREST:	**$3,012.29**
TOTAL:	**$40,139.42**

The basis for this finding is $309,779.94 in exemptions claimed for non-transient guests of the Hotel, which the City alleges violate the provisions of Section 5.03.250 of the ODC.

10. Hotel filed an Application for Hearing on 12/2/2020 challenging the Notice of Assessment. The Application for Hearing is attached hereto as **ATTACHMENT D**.

11. The Hotel filed a Letter Brief into its Application for Hearing. The Letter Brief is attached hereto as **ATTACHMENT E**.

12. Pursuant to Ontario Municipal Code Section 3-6.09, a hearing before Executive Director of Finance Armen Harkalyan sitting as the Transient Occupancy Tax License Official was set where the Hotel could appear and offer evidence why the specified tax, interest, and penalties within the Notice of Assessment should not be so fixed. A copy of the Notice of Hearing is attached hereto as **ATTACHMENT F**.

B. Procedural Background

11. The Hearing for this matter was held on the date and time noted above in Ontario, California.

12. The Hotel called the Operator to offer testimony and evidence at the hearing. Attorney Frank A. Weiser offered legal argument at the hearing.

13. The matter was taken under submission by the Hearing Officer at the conclusion of the hearing, pending receipt of the letter brief from the Hotel.

14. Per oral stipulation at the hearing, the Hotel was given the opportunity to file a letter brief with evidentiary attachments within two weeks of the date and time noted above. No letter brief was filed and the Hearing was closed.

C. The Transient Occupancy Tax Ordinance

15. The City of Ontario imposes a Transient Occupancy Tax of eleven and three-quarters percent (11¾%) of rent on the privilege of occupancy of space in a hotel within its jurisdiction. O.M.C. § 3-6.03.

16. Rent is defined by the Ontario Municipal Code as "the consideration charged, whether or not received, for the occupancy of space in a hotel valued in money, whether to be received in money, goods, labor, or otherwise, including all receipts, cash, credits, property, and services of any kind or nature, without any deduction therefrom whatsoever." O.M.C. § 3-6.02(e).

17. Hotel is defined by the Ontario Municipal Code as "any structure, or any portion of any structure, which is occupied, or intended or designed for occupancy, by transients for dwelling, lodging,

or sleeping purposes and shall include any hotel, inn, tourist home or house, motel, studio hotel, bachelor hotel, lodging house, rooming house, apartment house, dormitory, public or private club, mobile home or house trailer at a fixed location, or other similar structure, or portion thereof." O.M.C. § 3-6.02(a).

18. The Ontario Municipal Code requires that "[e]ach operator shall collect and hold in trust for the account and benefit of the City the tax imposed by the provisions of this chapter to the same extent and at the same time as the rent is collected from every transient." O.M.C. § 3-6.05.

19. Operator is defined by the Ontario Municipal Code as "…the person who is the proprietor of the hotel whether in the capacity of owner, lessee, sublessee, mortgagee in possession, licensee, or any other capacity. Where the operator performs his or her functions through a managing agent of any type or character, other than an employee, the managing agent shall also be deemed an operator for the purposes of this chapter and shall have the same duties and liabilities as his or her principal." O.M.C. § 3-6.02(c).

20. The City of Ontario requires all operators of hotels to register such hotel with the License Official and obtain a "Transient Occupancy Registration Certificate" which shall be posted in a conspicuous place on the hotel premises. O.M.C. § 3-6.06. Such certificate shall include the name and address of the operator, the address of the hotel, the date the certificate was issued, and a statement required by the code. O.M.C. § 3-6.06.

21. The City of Ontario requires all operators to report and remit Transient Occupancy Taxes to the License Official. O.M.C. § 3-6.07. "Each operator shall, on or before the last day of the month following the close of each calendar quarter, or at the close of any shorter reporting period which may be established by the License Official, make a return to the License Official, on forms provided by him or her, of the total rents charged and received and the amount of tax collected for transient occupancies. At the time the return is filed, the full amount of the tax collected shall be remitted to the License Official." O.M.C. § 3-6.07.

22. Transient is defined by the Ontario Municipal Code as "any person who exercises occupancy or is entitled to occupancy by reason of concession, permit, right of access, license, or other agreement for a period of thirty (30) consecutive calendar days or less, counting portions of

calendar days as full days. Any such person so occupying space in a hotel shall be deemed to be a transient until the period of thirty (30) consecutive calendar days has expired unless there is an agreement in writing between the operator and the occupant providing for a longer period of occupancy. Any individual person who exercises or is entitled to occupancy for a period of thirty (30) consecutive calendar days or less shall be deemed to be a transient, regardless of whether the reservation and/or payment for occupancy is made directly by the person exercising occupancy or another person, or entity. The intent is to tax the individual person occupying, or having the right or entitlement to occupancy, the hotel room. 'Transient' includes any employee or officer of the State government or of the government of a political subdivision of the State. 'Transient' does not mean or include any Federal officer or employee when on official Federal government business, or any officer or employee of a foreign government who is exempt by reason of express provision of Federal law or international treaty, who exercises occupancy or is entitled to occupancy by reason of concession, permit, right of access, license, or other agreement for a period of thirty (30) consecutive calendar days or less, counting portions of calendar days as full days." O.M.C. § 3-6.02(g).

23. Under Section 5.03.250 of the Ontario Development Code, "No guestroom shall be rented for a period exceeding 30 consecutive calendar days, counting portions of calendar days as full days." O.D.C. § 5.03.250 (E)(1).

24. Operators who fail to report and remit any Transient Occupancy Tax are subject to penalties and interest. O.M.C. § 3-6.08.

25. When an operator fails or refuses to report or remit Transient Occupancy Tax in the manner required by the Ontario Municipal Code, the License Official "shall proceed in such manner as he may deem best to obtain the facts and information on which to base his estimate of the tax due." O.M.C. § 3-6.09. Once the License Official has obtained such facts and information, the License Official "shall proceed to determine and assess against such operator the tax, interest, and penalties" and "give notice of the amount so assessed by serving it personally or depositing it in the United States mail, postage prepaid, addressed to the operator so assessed at his last known place of address." O.M.C. § 3-6.09.

26. The Ontario Municipal Code creates a rebuttable presumption that the amount of Transient Occupancy Tax, along with any penalties and interest, determined by the License Official is correct. O.M.C. § 3-6.09. If not challenged, the determination of the License Official is "final and conclusive and immediately due and payable." O.M.C. § 3-6.09.

27. Any operator receiving a notice of assessment "may, within ten (10) days after the service or mailing of such notice, make an application in writing to the License Official for a hearing on the amount assessed." O.M.C. § 3-6.09. At the hearing "the operator may appear and offer evidence why such specified tax, interest, and penalties should not be so fixed." O.M.C. § 3-6.09.

28. After the hearing, the License Official "shall determine the proper tax to be remitted and shall thereafter give written notice to the person in the manner prescribed in this section of such determination and the amount of such tax, interest, and penalties." O.M.C. § 3-6.09.

D. The Hearing

29. Except as discussed below, the facts of this matter are essentially undisputed.

30. Under the Ontario Municipal Code, a rebuttable presumption exists at the hearing that the amount of tax assessed by the License Official is correct and operator has the opportunity to appear and offer evidence why the specified tax, interest, and penalties are incorrect.

31. The Hotel appeared by attorney Frank A. Weiser who offered legal arguments orally at the hearing. The Hotel called the Operator to offer testimony and provide documents that were taken into evidence. A copy of the evidence submitted by the Operator is attached hereto as **ATTACHMENT G**.

32. Hotel argues that the exemptions claimed are consistent with Title 3 Chapter 6 of the Ontario Municipal Code (the "TOT Ordinance"). Specifically, Hotel argues that under Section 3-6.03 of the TOT Ordinance, the transient occupancy tax is imposed only on transients. Transients are defined in Section 3-6.02(g) as any person who exercises occupancy or is entitled to occupancy, for a period of 30 calendar days or less. Here, the Hotel provided evidence that it rents rooms to guests for longer than 30 days. The Hotel argues that these guests, having stayed longer than 30 days at the Hotel, are exempt from taxation as they no longer meet the definition of transient.

33. The City, in response, called Tony Lai who made the findings on appeal before the License Official. Mr. Lai argues that under Section 5.03.250(E)(1) of Ontario Development Code, the exemption is impermissible as "[n]o guestroom shall be rented for a period exceeding 30 consecutive calendar days, counting portions of calendar days as follow days." In particular, in the Audit Findings (Attachment C) for the Hotel, Mr. Lai claims "the hotel is claiming long-term occupants in error as it is zoned in a non-confirming [sic] area, per the Ontario Development Code Section 5.03.250. All long-term exemptions claimed are considered invalid and as a result TOT is understated." Furthermore, Mr. Lai stated that his findings were purely based on whether the exemption was permissible for the Hotel in light of the ODC prohibition.

REFERRAL TO ZONING ADMINISTRATOR

34. The Hotel has presented credible evidence and testimony that a significant portion of the guests of the Hotel stay in excess of 30 days.

35. The License Official's jurisdiction is to "determine the proper tax to be remitted and [...] thereafter give written notice to the person in the manner prescribed in this section of such determination and the amount of such tax, interest, and penalties." O.M.C. § 3-6.09.

36. Under Section 1.02.015(A)(1) of the ODC "The Zoning Administrator shall have jurisdiction of, and be responsible for, the administration and application of the regulations and provisions of this Development Code."

37. Therefore, pursuant to Section 1.02.010(C) of the ODC, the License Official hereby requests that the Zoning Administrator provide an interpretation or determination regarding the applicability and enforceability of Section 5.03.250(E)(1) as to the Hotel.

38. Pending an interpretation or determination of the Zoning Administrator, the assessment of transient occupancy taxes, penalties, and interest assessed against the Hotel is hereby STAYED. Once an interpretation or determination is made, this stay will be lifted and a Decision and Order will issue that will UPHOLD, DISMISS, or MODIFY the assessment.

Dated: 10-5-21

License Official

ZONING ADMINISTRATOR DECISION: LAND USE DETERMINATION

December 21, 2023

CITY OF ONTARIO PLANNING DEPARTMENT
303 East B Street, Ontario, California 91764 Phone: 909.395.2036 / Fax: 909.395.2420

DECISION NO.: **ZA23-038**

FILE NO.: PDET23-015

DESCRIPTION: Referral to Zoning Administrator and Stay of Decision for the Sands Motel ("Hotel"), located at 1240 West Mission Boulevard, within the Light Industrial zoning district, to provide an interpretation or determination regarding the applicability and enforceability of Section 5.03.250(E)(l) as to the Hotel (APN: 1101-211-03); **submitted by the City of Ontario Transient Occupancy Tax License Official.**

PART 1: BACKGROUND & ANALYSIS

THE CITY OF ONTARIO TRANSIENT OCCUPANCY TAX LICENSE OFFICIAL, (herein after referred to as "Applicant") has filed a request that Zoning Administrator provide an interpretation or determination regarding the applicability and enforceability of Section 5.03.250(E)(l) as to the Hotel. Land Use Interpretation or Determination, File No. PDET23-015, as described in the subject of this Decision (herein after referred to as "Application" or "Project").

DESCRIPTION: Referral to Zoning Administrator and Stay of Decision for the Sands Motel, located at 1240 West Mission Boulevard, within the Light Industrial zoning district, to provide an interpretation or determination regarding the applicability and enforceability of Ontario Development Code (ODC) Section 5.03.250(E)(l) as to the Hotel.

ANALYSIS: Under the ODC Section 1.02.015(A), the Zoning Administrator shall have jurisdiction of, and be responsible for, the administration and application of the regulations and provisions of this Development Code. Subsequently, the ODC Table 2.01-1 (Review Matrix) establishes that the Zoning Administrator has the responsibility and authority to review and act upon Interpretations and Land Use Determinations

The Sands Motel is located at 1240 West Mission Boulevard and zoned Light Industrial. The City of Ontario Building Department issued permits for the construction of the Motel in the early 1956. The permitted Motel was constructed in conformance with all regulations of the Municipal Code at the time of development; however, at present, it is not in compliance with the current Light Industrial zoning district. Consequently, the existing Motel use is deemed "legal nonconforming". Division 3.01 (Nonconforming Lots, Uses and Structures), Section 3.01.015: Nonconforming Land Uses, outlines the regulations for the continuance of a nonconforming use.

The Ontario Development Code, Division 9.01 (Definitions), defines a Motel as a lodging facility that offers transient accommodations at a daily rate, to the general public, which are predominantly accessed from parking lots or exterior walkways consistent with the City approval and design layout for the Sands Motel. Hotels are defined as lodging facilities, which offers transient accommodations at a daily rate, to the general public, and which may provide

additional services, such as restaurants, meeting rooms and recreational facilities. The definitions for a Motel and Hotel both clearly state the intent for transient accommodations at a daily rate.

ODC Division 5.03, Section 5.03.250(E)(1) states that no guestroom, for Motel or Hotel, shall be rented for a period exceeding 30 consecutive calendar days, counting portions of calendar days as full days. Rooms that are being rented longer than 30 days are in violation of ODC Division 5.03, Section 5.03.250(E)(1) and not consistent with the intent of Motel or Hotel to provide transient accommodations at a daily rate. Section 3-6.02(g) of the Ontario Municipal Code (OMC) states that "Transient" shall mean any person who exercises occupancy or is entitled to occupancy by reason of concession, permit, right of access, license, or other agreement for a period of thirty (30) consecutive calendar days or less, counting portions of calendar days as full days.

PART 2: RECITALS

WHEREAS, the City of Ontario has received a request for an interpretation or determination, as described in Part I, above; and

WHEREAS, Ontario Development Code Table 2.01-1 (Review Matrix) establishes that the Zoning Administrator has the responsibility and authority to review and act upon Interpretations and Land Use Determinations; and

WHEREAS, it has been recognized that every conceivable use cannot be identified by the City of Ontario Development Code, and anticipating that new uses will evolve over time, Ontario Development Code Section 1.02.101 (Interpretations and Land Use Determinations) establishes the Zoning Administrator's authority to review and act upon a Determination of Use, comparing and measuring a proposed use against those listed in the Development Code, which have similar impacts, functions and characteristics; and

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

PART 3: THE DECISION

NOW, THEREFORE, it is hereby found, determined, and resolved by the Zoning Administrator of the City of Ontario as follows:

(1) All facts set forth in the preceding sections of this Interpretation and Determination of Use are true and correct and are incorporated by this reference.

(2) Based upon the evidence presented, the Zoning Administrator hereby concludes as follows:

(a) The Sands Motel is located at 1240 West Mission Boulevard, within the Light Industrial zoning district. Hotels or Motels are not permitted within the Light Industrial zoning district. The existing Sands Motel is a legal nonconforming use;

(b) The City of Ontario Building Department issued permits for the construction of a Motel in the 1956; and

(c) Division 9.01 (Definitions) of the Ontario Development Code (ODC) defines a Motel as a lodging facility that offers transient accommodations at a daily rate, to the general public, which are predominantly accessed from parking lots or exterior walkways consistent with the City approval and design layout for the Sands Motel ; and

(d) ODC Division 5.03, Section 5.03.250(E)(1) states that no guestroom, for Motel or Hotel, shall be rented for a period exceeding 30 consecutive calendar days, counting portions of calendar days as full days; and

(e) Rooms that are being rented longer than 30 days is in violation of ODC Division 5.03, Section 5.03.250(E)(1) and not consistent with the intent of Motel or Hotel to provide transient accommodations at a daily rate; and

(f) Section 3-6.029(g) of the Ontario Municipal Code (OMC) clearly states that "Transient" shall mean any person who exercises occupancy or is entitled to occupancy by reason of concession, permit, right of access, license, or other agreement for a period of thirty (30) consecutive calendar days or less, counting portions of calendar days as full days; and

(g) The Transient Occupancy Tax shall be imposed on "transients" as defined the OMC Section 3-6.029(g); and

(h) Section 3-6.04 of the OMC provides for exemptions from the TOT under limited circumstances and pursuant to Section 3-6.04(b) no such exemption shall be granted except upon a claim made at the time the rent is collected and made under penalty of perjury upon a form approved by the Tax Administrator.

(3) The Zoning Administrator hereby finds and determines that the project identified in this Determination of Use is not subject to the California Environmental Quality Act of 1970, as amended, and the Guidelines promulgated thereunder, pursuant to Section 15060(c)(2) of the State CEQA Guidelines, as the activity will not result in a direct or reasonably foreseeable indirect physical change in the environment.

(4) Based upon the findings and conclusions set forth in Parts 1, 2 and 3 above, the Zoning Administrator hereby finds and determines, File No. PDET23-015, the following:

(a) That the ODC Division 5.03, Section 5.03.250(E)(l) is applicable and enforceable to the operation of the Sands Motel. ODC Division 5.03, Section 5.03.250(E)(1) states that no guestroom, for Motel or Hotel, shall be rented for a period exceeding 30 consecutive calendar days, counting portions of calendar days as full days. The intent of a Motel or Hotel to provide transient accommodations at a daily rate. Section 3-6.029(g) of the Ontario Municipal Code (OMC) clearly states that "Transient" shall mean any person who exercises occupancy or is entitled to occupancy by reason of concession, permit, right of access, license, or other agreement for a period of thirty (30) consecutive calendar days or less, counting portions of calendar days as full days. Therefore, the Transient Occupancy Tax shall be imposed on "transients" as defined the OMC Section 3-6.029(g).

(b) That Hotel has not applied for an exemption pursuant to Section 3-6.04 of the OMC and therefore no such exemption would be applicable to the Hotel.

(c) That Hotel's operations, as stipulated in the January 8, 2021 hearing, allowing guests to stay longer than 30 days is in violation of ODC Division 5.03, Section 5.03.250(E)(1) and in violation of all applicable zoning and use permits.

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

APPROVED AND ADOPTED this 21st day of December 2023.

Rudy Zeledon
Zoning Administrator

RESOLUTION NO. PC24-024

A RESOLUTION OF THE PLANNING COMMISSION OF THE CITY OF ONTARIO, CALIFORNIA, UPHOLDING THE ZONING ADMINSTRATOR'S INTERPRETATION AND DETERMINATION DECISION (FILE NO. PDET 23-016) THAT THE ONTARIO DEVELOPMENT CODE DIVISION 5.03, SECTION 5.03.250(E)(L) IS APPLICABLE AND ENFORCEABLE TO THE OPERATION TO THE WEST COAST INN, LOCATED AT 1211 NORTH GROVE AVENUE, WITHIN THE NEIGHBORHOOD COMMERCIAL ZONING DISTRICT, AND MAKING FINDINGS IN SUPPORT THEREOF—APN: 1047-451-25.

WHEREAS, Anil Patel ("Applicant") operator of the West Coast Inn ("Hotel") has filed an Appeal of Application of the Zoning Administrators interpretation and determination decision that the Ontario Development Code Division 5.03, Section 5.03.250(E)(l) is applicable and enforceable to the operation West Coast Inn, File No. PDET23-016, as described in the title of this Resolution (hereinafter referred to as "Application" or "Project"); and

WHEREAS, the West Coast Inn is located at 1211 North Grove Avenue, within the Neighborhood Commercial zoning district. Hotels or Motels are permitted within the Neighborhood Commercial zoning district subject to approval of a Conditional Use Permit; and

WHEREAS, on January 8, 2021, Executive Director of Finance Armen Harkalyan ("License Official") sitting as the Transient Occupancy Tax License Official under Chapter 6 of Title 3 of the Ontario Municipal Code, held a hearing for the operator of the West Coast Inn. The purpose of the hearing was to allow the operators the opportunity to rebut the amount of tax assessed by the License Official and offer evidence why the specified tax, interest, and penalties are incorrect; and

WHEREAS, on January 8, 2021, the License Official issued a Stay of Decision and referred the matter to the Zoning Administrator to provide an interpretation or determination regarding the applicability and enforceability of Section 5.03.250(E)(l) as to West Coast Inn; and

WHEREAS in 1987, the City of Ontario Building Department issued building permits for the construction of West Coast Inn Motel (known as "Grove Avenue Motel"); and

WHEREAS, Division 9.01 (Definitions) of the Ontario Development Code (ODC) defines a Motel as a lodging facility that offers transient accommodations at a daily rate, to the general public, which are predominantly accessed from parking lots or exterior walkways consistent with the City approval and design layout for the West Coast Inn; and

WHEREAS, ODC Division 5.03, Section 5.03.250(E)(1) states that no guestroom, for Motel or Hotel, shall be rented for a period exceeding 30 consecutive calendar days, counting portions of calendar days as full days; and

WHEREAS, guestrooms that are being rented longer than 30 days is in violation of ODC Division 5.03, Section 5.03.250(E)(1) and not consistent with the intent of Motel or Hotel to provide transient accommodations at a daily rate; and

WHEREAS, Section 3-6.029(g) of the Ontario Municipal Code (OMC) clearly states that "Transient" shall mean any person who exercises occupancy or is entitled to occupancy by reason of concession, permit, right of access, license, or other agreement for a period of thirty (30) consecutive calendar days or less, counting portions of calendar days as full days; and

WHEREAS, the Transient Occupancy Tax shall be imposed on "transients" as defined the OMC Section 3-6.029(g); and

WHEREAS, in response to the Appellants basis for the appeal staff has prepared a response to each of the items. Below is the Appellants statement and staff's response:

1. *Appellants' Issue No. 1: Subject hotels never received notice of the zoning change and adoption of Ontario Development Code ("ODC") Division 5.03 Section 5.03.250(E)(1) and were entitled to an individualized hearing under the First Amendment Petition Clause, Fourth Amendment Search and Seizure Clause, the Fifth Amendment Takings Clause, the Fourteenth Amendment Due Process Clause (Substantive and Procedural) and Equal Protection of the United States Constitution.*

Staff Response: Appellant's arguments introduce irrelevant issues that go beyond the limited scope of the Zoning Administrator's decisions.

The Zoning Administrator has acted within his limited authority to interpret the Ontario Development Code ("ODC"). The Zoning Administrator, under Section l.02.015(A)(l) of the ODC, has jurisdiction of, and is responsible for, the administration and application of the regulations and provisions of the Development Code. The Zoning Administrator's power is limited to interpretation of the Code as applied to a particular case. ODC § 1.02.010(B)(1). Thus, the Zoning Administrator's power is limited to interpretation of the code and its application to a particular set of facts.

Appellants' arguments introduce irrelevant legal arguments that do not challenge the underlying factual findings and analysis of each of the decisions by the Zoning Administrator. Issues like the adoption and amendment of zoning ordinances are legislative acts rather than administrative or quasi-judicial acts. Arnel Dev. Co. v City of Costa Mesa (1980) 28 C3d 511, 514. Appellants take issue with the implementation of

legislation of the Ontario Development Code. For reference, Ordinance No. 1569, which imposed the TOT was passed in 1965 – fifty-nine years ago. These issues are beyond the scope of the Zoning Administrator's role. For the Zoning Administrator to consider these legal issues would exceed the power granted by the Development Code.

The Zoning Administrator has acted within his limited authority to interpret the Development Code as to Appellants' claims and found that their hotels are subject to ODC chapter 5.03.250(E)(1). Appellants do not challenge the factual findings made by the Zoning Administrator. Thus, the appeal should be denied, and the Zoning Administrator's decisions upheld.

2. Appellants' Issue No. 2: *Ontario Development Code chapter 5.03.250(E)(1) which prohibits hotels from having a guestroom rented for longer than 30 days is inapplicable because Ontario Municipal Code chapter 3-06.02(g) states than an occupant can have an occupancy for longer than 30 days (with a written agreement).*

Staff Response: The Zoning Administrator's application of ODC § 5.03.250(E)(1) as to Appellants' hotels was proper. Where the Development Code imposes a greater restriction than is imposed or required by an existing law, the provisions of the Development Code shall prevail. ODC § 1.02.005. To the extent that there is an external inconsistency between the provisions of the Ontario Development Code and the provisions of the Ontario Municipal Code, the more restrictive provisions shall apply. ODC § 1.01.015(D). Thus, if there is a conflict between the Ontario Municipal Code and the Ontario Development Code, the Zoning Administrator must make a decision pursuant to the Development Code.

Here, Appellants argue that because OMC § 3-06.02(g) states than a person can have an occupancy of longer than 30 days (with an agreement in writing), that Appellants can rent their hotels to occupants for longer than 30 days and be exempt from the TOT. However, under the Development Code, "no guestroom shall be rented for a period exceeding 30 consecutive calendar days for a hotel or motel. ODC § 5.03.250(E)(1). This is an explicit restriction on hotels. To the extent that there exists any conflict by inference with OMC section 3-602(g), the ODC's restriction on hotels applies. ODC § 1.01.015(D). The Zoning Administrator's application of the ODC's more restrictive provision prohibiting Appellants' hotels from renting to a person for longer than 30 days was proper.

Thus, the appeals should be denied, and the Zoning Administrator's decisions should be upheld; and

WHEREAS, Ontario Development Code Table 2.01-1 (Review Matrix) establishes that the Zoning Administrator has the responsibility and authority to review and act upon Interpretations and Land Use Determinations; and

WHEREAS, the Application is a project pursuant to the California Environmental Quality Act, commencing with Public Resources Code Section 21000 (hereinafter referred to as "CEQA"); and

WHEREAS, the Project is not subject to the California Environmental Quality Act of 1970, as amended, and the Guidelines promulgated thereunder, pursuant to Section 15060(c)(2) of the State CEQA Guidelines, as the activity will not result in a direct or reasonably foreseeable indirect physical change in the environment; and

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

WHEREAS, City of Ontario Development Code Division 2.03 (Public Hearings) prescribes the manner in which public notification shall be provided and hearing procedures to be followed, and all such notifications and procedures have been completed; and

WHEREAS, on May 28, 2024, the Planning Commission of the City of Ontario conducted a hearing to consider the Project, and concluded said hearing on that date; and

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

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

SECTION 1: ***Environmental Determination and Findings.*** As the decision-making authority for the Project, the Planning Commission has reviewed and considered the information contained in the administrative record for the Project. Based upon the facts and information contained in the administrative record, including all written and oral evidence presented to the Planning Commission, the Planning Commission finds as follows:

(1) The administrative record has been completed in compliance with CEQA, the State CEQA Guidelines, and the City of Ontario Local CEQA Guidelines; and

(2) This Resolution has been reviewed with respect to the applicability of the California Environmental Quality Act of 1970 ("CEQA "), and the State CEQA Guidelines,

and the Planning Commission has determined that this Resolution does not constitute a " project" within the meaning of CEQA Guidelines Section 15060(c)(2) because there is no potential that it will result in a direct or reasonably foreseeable indirect physical change in the environment and CEQA Guidelines Section 15378 because it has no potential for either a direct physical change to the environment, or a reasonably foreseeable indirect physical change in the environment; and

(3) The determination of CEQA exemption reflects the independent judgment of the Planning Commission.

SECTION 4: ***Concluding Facts and Reasons.*** Based upon the substantial evidence presented to the Planning Commission during the above-referenced hearing, and upon the specific findings set forth in Sections 1 through 3, above, the Planning Commission hereby concludes as follows:

(1) That the ODC Division 5.03, Section 5.03.250(E)(l) is applicable and enforceable to the operation of the West Coast Inn. ODC Division 5.03, Section 5.03.250(E)(1) states that no guestroom, for Motel or Hotel, shall be rented for a period exceeding 30 consecutive calendar days, counting portions of calendar days as full days. The intent of a Motel or Hotel to provide transient accommodations at a daily rate. Section 3-6.029(g) of the Ontario Municipal Code (OMC) clearly states that “Transient” shall mean any person who exercises occupancy or is entitled to occupancy by reason of concession, permit, right of access, license, or other agreement for a period of thirty (30) consecutive calendar days or less, counting portions of calendar days as full days. Therefore, the Transient Occupancy Tax shall be imposed on “transients” as defined the OMC Section 3-6.029(g).

(2) That Hotel has not applied for an exemption pursuant to Section 3-6.04 of the OMC and therefore no such exemption would be applicable to the Hotel.

(3) That Hotel’s operations, as stipulated in the January 8, 2021 hearing, allowing guests to stay longer than 30 days is in violation of ODC Division 5.03, Section 5.03.250(E)(1) and in violation of all applicable zoning and use permits.

SECTION 5: ***Planning Commission Action.*** Based upon the findings and conclusions set forth in Sections 1 through 4, above, the Planning Commission hereby Approves to uphold the Zoning Administrator Decision herein described Application.

SECTION 6: ***Indemnification.*** The Applicant shall agree to defend, indemnify and hold harmless, the City of Ontario or its agents, officers, and employees from any claim, action or proceeding against the City of Ontario or its agents, officers or employees to attack, set aside, void, or annul this approval. The City of Ontario shall promptly notify

the applicant of any such claim, action, or proceeding, and the City of Ontario shall cooperate fully in the defense.

SECTION 7: ***Custodian of Records.*** The documents and materials that constitute the record of proceedings on which these findings have been based are located at the City of Ontario City Hall, 303 East "B" Street, Ontario, California 91764. The custodian for these records is the City Clerk of the City of Ontario.

SECTION 8: ***Certification to Adoption.*** The Secretary shall certify to the adoption of the Resolution.

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

I hereby certify that the foregoing Resolution was duly and regularly introduced, passed and adopted by the Planning Commission of the City of Ontario at a regular meeting thereof held on the 28th day of May 2024, and the foregoing is a full, true and correct copy of said Resolution, and has not been amended or repealed.

Nicola Ricci
Planning Commission Chairperson

ATTEST:

Henry K. Noh
Planning Director and
Secretary to the Planning Commission

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

I, Gwen Berendsen, Secretary Pro Tempore of the Planning Commission of the City of Ontario, DO HEREBY CERTIFY that foregoing Resolution No. PC24-024, was duly passed and adopted by the Planning Commission of the City of Ontario at their regular meeting held on May 28, 2024, by the following roll call vote, to wit:

AYES: Anderson, DeDiemar, Del Turco, Lampkin, Ricci

NOES: None

ABSENT: Dean, Gage

ABSTAIN: None

Gwen Berendsen
Secretary Pro Tempore

ATTACHMENT A:

Notice of Assessment for Transient Occupancy Tax ("Notice of Assessment")

(Notice of Assessment to follow this page)

(BEFORE THE

TRANSIENT OCCUPANCY TAX LICENSE OFFICIAL

FOR THE

CITY OF ONTARIO, CALIFORNIA

IN RE

West Coast Inn
1211 N. Grove Ave.
Ontario, CA 91764

REFERRAL TO ZONING ADMINISTRATOR AND STAY OF DECISION

License Official: Armen Harkalyan
Date: 1/8/2021
Time: 1:00 P.M.

INTRODUCTION

1. This matter involves the application of the City of Ontario's Transient Occupancy Tax to the revenues of a hotel in the City of Ontario. Executive Director of Finance Armen Harkalyan ("License Official"), sitting as the Transient Occupancy Tax License Official under Chapter 6 of Title 3 of the Ontario Municipal Code, heard this matter via remote teleconference on the date and time noted above (the "Hearing"). The License Official was advised by attorney Steven P. Graham, special counsel to the City of Ontario.
2. City of Ontario ("City") is a municipal corporation existing under the laws of the State of California.
3. West Coast Inn ("Hotel") is a hotel located at 1211 N. Grove Ave. in the City of Ontario. The Hotel is operated by Anil Patel ("Operator") and represented by attorney Frank A. Weiser, both were present at the hearing.
4. The following Referral to Zoning Administrator and Stay of Decision is based on the evidence presented during the Hearing for this matter. Pursuant to oral stipulation at the Hearing, the Hearing was held open for two weeks to give Mr. Weiser an opportunity to file additional evidence or legal argument in support the appeal. Nothing was filed within the two-week period and the Hearing was closed.

5. Chapter 6 of Title 3 of the Ontario Municipal Code related to Transient Occupancy Tax is attached hereto as **ATTACHMENT A**. Section 5.03.250 of the Ontario Development Code ("ODC"), which governs the operations of hotels, motels, residence inns, and other similar traveler accommodations, is attached hereto as **ATTACHMENT B**.

6. The License Official considered the testimony of all witnesses at the Hearing and all attachments received into evidence. The mere fact that particular witness testimony or attachments may not be specifically referred to below does not and shall not be construed to mean that said testimony or attachment was not considered.

7. The hearing was recorded and a copy of the recording is available upon request.

ISSUES

8. Pursuant to Ontario Municipal Code Section 3-6.09, the issue to be determined by the License Official on the application of Hotel is whether the amount of Transient Occupancy Tax, along with any interest and penalties, specified within the Notice of Assessment issued by the License Official on 11/18/2020 should be upheld.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

A. Jurisdictional Matters

9. This matter is before the License Official following the City's 11/18/2020 Notice of Assessment for Transient Occupancy Tax ("Notice of Assessment") which found that Hotel had unpaid Transient Occupancy Taxes. The Notice of Assessment is attached hereto as **ATTACHMENT C**. Specifically, the Notice of Assessment finds the following amounts are unpaid:

TOT UNCOLLECTED:	**$57,236.84**
PENALTIES:	**$1,144.74**
INTEREST:	**$5,994.89**
TOTAL:	**$64,376.46**

The basis for this finding is $487,122.00 in exemptions claimed for non-transient guests of the Hotel, which the City alleges violate the provisions of Section 5.03.250 of the ODC.

10. Hotel filed an Application for Hearing on 12/2/2020 challenging the Notice of Assessment. The Application for Hearing is attached hereto as **ATTACHMENT D**.

11. The Hotel filed a Letter Brief into its Application for Hearing. The Letter Brief is attached hereto as **ATTACHMENT E**.

12. Pursuant to Ontario Municipal Code Section 3-6.09, a hearing before Executive Director of Finance Armen Harkalyan sitting as the Transient Occupancy Tax License Official was set where the Hotel could appear and offer evidence why the specified tax, interest, and penalties within the Notice of Assessment should not be so fixed. A copy of the Notice of Hearing is attached hereto as **ATTACHMENT F**.

B. Procedural Background

11. The Hearing for this matter was held on the date and time noted above in Ontario, California.

12. The Hotel called the Operator to offer testimony and evidence at the hearing. Attorney Frank A. Weiser offered legal argument at the hearing.

13. The matter was taken under submission by the Hearing Officer at the conclusion of the hearing, pending receipt of the letter brief from the Hotel.

14. Per oral stipulation at the hearing, the Hotel was given the opportunity to file a letter brief with evidentiary attachments within two weeks of the date and time noted above. No letter brief was filed and the Hearing was closed.

C. The Transient Occupancy Tax Ordinance

15. The City of Ontario imposes a Transient Occupancy Tax of eleven and three-quarters percent (11¾%) of rent on the privilege of occupancy of space in a hotel within its jurisdiction. O.M.C. § 3-6.03.

16. Rent is defined by the Ontario Municipal Code as "the consideration charged, whether or not received, for the occupancy of space in a hotel valued in money, whether to be received in money, goods, labor, or otherwise, including all receipts, cash, credits, property, and services of any kind or nature, without any deduction therefrom whatsoever." O.M.C. § 3-6.02(e).

17. Hotel is defined by the Ontario Municipal Code as "any structure, or any portion of any structure, which is occupied, or intended or designed for occupancy, by transients for dwelling, lodging,

or sleeping purposes and shall include any hotel, inn, tourist home or house, motel, studio hotel, bachelor hotel, lodging house, rooming house, apartment house, dormitory, public or private club, mobile home or house trailer at a fixed location, or other similar structure, or portion thereof." O.M.C. § 3-6.02(a).

18. The Ontario Municipal Code requires that "[e]ach operator shall collect and hold in trust for the account and benefit of the City the tax imposed by the provisions of this chapter to the same extent and at the same time as the rent is collected from every transient." O.M.C. § 3-6.05.

19. Operator is defined by the Ontario Municipal Code as "...the person who is the proprietor of the hotel whether in the capacity of owner, lessee, sublessee, mortgagee in possession, licensee, or any other capacity. Where the operator performs his or her functions through a managing agent of any type or character, other than an employee, the managing agent shall also be deemed an operator for the purposes of this chapter and shall have the same duties and liabilities as his or her principal." O.M.C. § 3-6.02(c).

20. The City of Ontario requires all operators of hotels to register such hotel with the License Official and obtain a "Transient Occupancy Registration Certificate" which shall be posted in a conspicuous place on the hotel premises. O.M.C. § 3-6.06. Such certificate shall include the name and address of the operator, the address of the hotel, the date the certificate was issued, and a statement required by the code. O.M.C. § 3-6.06.

21. The City of Ontario requires all operators to report and remit Transient Occupancy Taxes to the License Official. O.M.C. § 3-6.07. "Each operator shall, on or before the last day of the month following the close of each calendar quarter, or at the close of any shorter reporting period which may be established by the License Official, make a return to the License Official, on forms provided by him or her, of the total rents charged and received and the amount of tax collected for transient occupancies. At the time the return is filed, the full amount of the tax collected shall be remitted to the License Official." O.M.C. § 3-6.07.

22. Transient is defined by the Ontario Municipal Code as "any person who exercises occupancy or is entitled to occupancy by reason of concession, permit, right of access, license, or other agreement for a period of thirty (30) consecutive calendar days or less, counting portions of

calendar days as full days. Any such person so occupying space in a hotel shall be deemed to be a transient until the period of thirty (30) consecutive calendar days has expired unless there is an agreement in writing between the operator and the occupant providing for a longer period of occupancy. Any individual person who exercises or is entitled to occupancy for a period of thirty (30) consecutive calendar days or less shall be deemed to be a transient, regardless of whether the reservation and/or payment for occupancy is made directly by the person exercising occupancy or another person, or entity. The intent is to tax the individual person occupying, or having the right or entitlement to occupancy, the hotel room. 'Transient' includes any employee or officer of the State government or of the government of a political subdivision of the State. 'Transient' does not mean or include any Federal officer or employee when on official Federal government business, or any officer or employee of a foreign government who is exempt by reason of express provision of Federal law or international treaty, who exercises occupancy or is entitled to occupancy by reason of concession, permit, right of access, license, or other agreement for a period of thirty (30) consecutive calendar days or less, counting portions of calendar days as full days." O.M.C. § 3-6.02(g).

23. Under Section 5.03.250 of the Ontario Development Code, "No guestroom shall be rented for a period exceeding 30 consecutive calendar days, counting portions of calendar days as full days." O.D.C. § 5.03.250 (E)(1).

24. Operators who fail to report and remit any Transient Occupancy Tax are subject to penalties and interest. O.M.C. § 3-6.08.

25. When an operator fails or refuses to report or remit Transient Occupancy Tax in the manner required by the Ontario Municipal Code, the License Official "shall proceed in such manner as he may deem best to obtain the facts and information on which to base his estimate of the tax due." O.M.C. § 3-6.09. Once the License Official has obtained such facts and information, the License Official "shall proceed to determine and assess against such operator the tax, interest, and penalties" and "give notice of the amount so assessed by serving it personally or depositing it in the United States mail, postage prepaid, addressed to the operator so assessed at his last known place of address." O.M.C. § 3-6.09.

26. The Ontario Municipal Code creates a rebuttable presumption that the amount of Transient Occupancy Tax, along with any penalties and interest, determined by the License Official is correct. O.M.C. § 3-6.09. If not challenged, the determination of the License Official is "final and conclusive and immediately due and payable." O.M.C. § 3-6.09.

27. Any operator receiving a notice of assessment "may, within ten (10) days after the service or mailing of such notice, make an application in writing to the License Official for a hearing on the amount assessed." O.M.C. § 3-6.09. At the hearing "the operator may appear and offer evidence why such specified tax, interest, and penalties should not be so fixed." O.M.C. § 3-6.09.

28. After the hearing, the License Official "shall determine the proper tax to be remitted and shall thereafter give written notice to the person in the manner prescribed in this section of such determination and the amount of such tax, interest, and penalties." O.M.C. § 3-6.09.

D. The Hearing

29. Except as discussed below, the facts of this matter are essentially undisputed.

30. Under the Ontario Municipal Code, a rebuttable presumption exists at the hearing that the amount of tax assessed by the License Official is correct and operator has the opportunity to appear and offer evidence why the specified tax, interest, and penalties are incorrect.

31. The Hotel appeared by attorney Frank A. Weiser who offered legal arguments orally at the hearing. The Hotel called the Operator to offer testimony and provide documents that were taken into evidence. A copy of the evidence submitted by the Operator is attached hereto as **ATTACHMENT G**.

32. Hotel argues that the exemptions claimed are consistent with Title 3 Chapter 6 of the Ontario Municipal Code (the "TOT Ordinance"). Specifically, Hotel argues that under Section 3-6.03 of the TOT Ordinance, the transient occupancy tax is imposed only on transients. Transients are defined in Section 3-6.02(g) as any person who exercises occupancy or is entitled to occupancy, for a period of 30 calendar days or less. Here, the Hotel provided evidence that it rents rooms to guests for longer than 30 days. The Hotel argues that these guests, having stayed longer than 30 days at the Hotel, are exempt from taxation as they no longer meet the definition of transient.

33. The City, in response, called Tony Lai who made the findings on appeal before the License Official. Mr. Lai argues that under Section 5.03.250(E)(1) of Ontario Development Code, the exemption is impermissible as "[n]o guestroom shall be rented for a period exceeding 30 consecutive calendar days, counting portions of calendar days as follow days." In particular, in the Audit Findings (Attachment C) for the Hotel, Mr. Lai claims "the hotel is claiming long-term occupants in error as it is zoned in a non-confirming [sic] area, per the Ontario Development Code Section 5.03.250. All long-term exemptions claimed are considered invalid and as a result TOT is understated." Furthermore, Mr. Lai stated that his findings were purely based on whether the exemption was permissible for the Hotel in light of the ODC prohibition.

REFERRAL TO ZONING ADMINISTRATOR

34. The Hotel has presented credible evidence and testimony that a significant portion of the guests of the Hotel stay in excess of 30 days.

35. The License Official's jurisdiction is to "determine the proper tax to be remitted and [...] thereafter give written notice to the person in the manner prescribed in this section of such determination and the amount of such tax, interest, and penalties." O.M.C. § 3-6.09.

36. Under Section 1.02.015(A)(1) of the ODC "The Zoning Administrator shall have jurisdiction of, and be responsible for, the administration and application of the regulations and provisions of this Development Code."

37. Therefore, pursuant to Section 1.02.010(C) of the ODC, the License Official hereby requests that the Zoning Administrator provide an interpretation or determination regarding the applicability and enforceability of Section 5.03.250(E)(1) as to the Hotel.

38. Pending an interpretation or determination of the Zoning Administrator, the assessment of transient occupancy taxes, penalties, and interest assessed against the Hotel is hereby STAYED. Once an interpretation or determination is made, this stay will be lifted and a Decision and Order will issue that will UPHOLD, DISMISS, or MODIFY the assessment.

Dated: 10-5-21

License Official

ZONING ADMINISTRATOR DECISION: LAND USE DETERMINATION

December 21, 2023

CITY OF ONTARIO PLANNING DEPARTMENT
303 East B Street, Ontario, California 91764 Phone: 909.395.2036 / Fax: 909.395.2420

DECISION NO.: **ZA23-039**

FILE NO.: PDET23-016

DESCRIPTION: Referral to Zoning Administrator and Stay of Decision for the West Coast Inn ("Hotel"), located at 1211 North Grove Avenue, within the Neighborhood Commercial zoning district, to provide an interpretation or determination regarding the applicability and enforceability of Section 5.03.250(E)(l) as to the Hotel (APN: 1047-451-25); **submitted by the City of Ontario Transient Occupancy Tax License Official.**

PART 1: BACKGROUND & ANALYSIS

THE CITY OF ONTARIO TRANSIENT OCCUPANCY TAX LICENSE OFFICIAL, (herein after referred to as "Applicant") has filed a request that Zoning Administrator provide an interpretation or determination regarding the applicability and enforceability of Section 5.03.250(E)(l) as to the Hotel. Land Use Interpretation or Determination, File No. PDET23-016, as described in the subject of this Decision (herein after referred to as "Application" or "Project").

DESCRIPTION: Referral to Zoning Administrator and Stay of Decision for the West Coast Inn, located at 1211 North Grove Avenue, within the Community Commercial zoning district, to provide an interpretation or determination regarding the applicability and enforceability of Ontario Development Code (ODC) Section 5.03.250(E)(l) as to the Hotel.

ANALYSIS: Under the ODC Section 1.02.015(A), the Zoning Administrator shall have jurisdiction of, and be responsible for, the administration and application of the regulations and provisions of this Development Code. Subsequently, the ODC Table 2.01-1 (Review Matrix) establishes that the Zoning Administrator has the responsibility and authority to review and act upon Interpretations and Land Use Determinations.

The West Coast Inn (Formally known as the Grove Avenue Motel) is located at 1211 North Grove Avenue and zoned Neighborhood Commercial. In 1987, the City of Ontario Building Department issued building permits for the construction of Motel (Known as "Grove Avenue Motel").

The Ontario Development Code, Division 9.01 (Definitions), defines a Motel as a lodging facility that offers transient accommodations at a daily rate, to the general public, which are predominantly accessed from parking lots or exterior walkways consistent with the City approval and design layout for the West Coast Inn. Hotels are defined as lodging facilities, which offers transient accommodations at a daily rate, to the general public, and which may provide additional services, such as restaurants, meeting rooms and recreational facilities. The definitions for a Motel and Hotel both clearly state the intent for transient accommodations at a daily rate.

ODC Division 5.03, Section 5.03.250(E)(1) states that no guestroom, for Motel or Hotel, shall be rented for a period exceeding 30 consecutive calendar days, counting portions of calendar days

as full days. Rooms that are being rented longer than 30 days are in violation of ODC Division 5.03, Section 5.03.250(E)(1) and not consistent with the intent of Motel or Hotel to provide transient accommodations at a daily rate. Section 3-6.02(g) of the Ontario Municipal Code (OMC) states that "Transient" shall mean any person who exercises occupancy or is entitled to occupancy by reason of concession, permit, right of access, license, or other agreement for a period of thirty (30) consecutive calendar days or less, counting portions of calendar days as full days.

PART 2: RECITALS

WHEREAS, the City of Ontario has received a request for an interpretation or determination, as described in Part I, above; and

WHEREAS, Ontario Development Code Table 2.01-1 (Review Matrix) establishes that the Zoning Administrator has the responsibility and authority to review and act upon Interpretations and Land Use Determinations; and

WHEREAS, it has been recognized that every conceivable use cannot be identified by the City of Ontario Development Code, and anticipating that new uses will evolve over time, Ontario Development Code Section 1.02.101 (Interpretations and Land Use Determinations) establishes the Zoning Administrator's authority to review and act upon a Determination of Use, comparing and measuring a proposed use against those listed in the Development Code, which have similar impacts, functions and characteristics; and

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

PART 3: THE DECISION

NOW, THEREFORE, it is hereby found, determined, and resolved by the Zoning Administrator of the City of Ontario as follows:

(1) All facts set forth in the preceding sections of this Interpretation and Determination of Use are true and correct and are incorporated by this reference.

(2) Based upon the evidence presented, the Zoning Administrator hereby concludes as follows:

(a) The West Coast Inn is located at 1211 North Grove Avenue, within the Neighborhood Commercial zoning district. Hotels or Motels are permitted within the Neighborhood Commercial zoning district subject to approval of a Conditional Use Permit; and

(b) In 1987, the City of Ontario Building Department issued building permits for the construction of Motel (Known as "Grove Avenue Motel"); and

(c) Division 9.01 (Definitions) of the Ontario Development Code (ODC) defines a Motel as a lodging facility that offers transient accommodations at a daily rate, to the general public, which are predominantly accessed from parking lots or exterior walkways consistent with the City approval and design layout for the West Coast Inn; and

(d) ODC Division 5.03, Section 5.03.250(E)(1) states that no guestroom, for Motel or Hotel, shall be rented for a period exceeding 30 consecutive calendar days, counting portions of calendar days as full days; and

(e) Rooms that are being rented longer than 30 days is in violation of ODC Division 5.03, Section 5.03.250(E)(1) and not consistent with the intent of Motel or Hotel to provide transient accommodations at a daily rate; and

(f) Section 3-6.029(g) of the Ontario Municipal Code (OMC) clearly states that "Transient" shall mean any person who exercises occupancy or is entitled to occupancy by reason of concession, permit, right of access, license, or other agreement for a period of thirty (30) consecutive calendar days or less, counting portions of calendar days as full days; and

(g) The Transient Occupancy Tax shall be imposed on "transients" as defined the OMC Section 3-6.029(g); and

(h) Section 3-6.04 of the OMC provides for exemptions from the TOT under limited circumstances and pursuant to Section 3-6.04(b) no such exemption shall be granted except upon a claim made at the time the rent is collected and made under penalty of perjury upon a form approved by the Tax Administrator.

(3) The Zoning Administrator hereby finds and determines that the project identified in this Determination of Use is not subject to the California Environmental Quality Act of 1970, as amended, and the Guidelines promulgated thereunder, pursuant to Section 15060(c)(2) of the State CEQA Guidelines, as the activity will not result in a direct or reasonably foreseeable indirect physical change in the environment.

(4) Based upon the findings and conclusions set forth in Parts 1, 2 and 3 above, the Zoning Administrator hereby finds and determines, File No. PDET23-016, the following:

(a) That the ODC Division 5.03, Section 5.03.250(E)(l) is applicable and enforceable to the operation of the West Coast Inn. ODC Division 5.03, Section 5.03.250(E)(1) states that no guestroom, for Motel or Hotel, shall be rented for a period exceeding 30 consecutive calendar days, counting portions of calendar days as full days. The intent of a Motel or Hotel to provide transient accommodations at a daily rate. Section 3-6.029(g) of the Ontario Municipal Code (OMC) clearly states that "Transient" shall mean any person who exercises occupancy or is entitled to occupancy by reason of concession, permit, right of access, license, or other agreement for a period of thirty (30) consecutive calendar days or less, counting portions of calendar days as full days. Therefore, the Transient Occupancy Tax shall be imposed on "transients" as defined the OMC Section 3-6.029(g).

(b) That Hotel has not applied for an exemption pursuant to Section 3-6.04 of the OMC and therefore no such exemption would be applicable to the Hotel.

(c) That Hotel's operations, as stipulated in the January 8, 2021 hearing, allowing guests to stay longer than 30 days is in violation of ODC Division 5.03, Section 5.03.250(E)(1) and in violation of all applicable zoning and use permits.

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

- - - - - - - - - - - - -

APPROVED AND ADOPTED this 21st day of December 2023.

Rudy Zeledon
Zoning Administrator

CITY OF ONTARIO PLANNING COMMISSION/ HISTORIC PRESERVATION MEETING

MINUTES

May 28, 2024

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CITY OF ONTARIO PLANNING COMMISSION/ HISTORIC PRESERVATION MEETING

MINUTES

May 28, 2024

REGULAR MEETING: City Hall, 303 East B Street
Called to order by Chairperson Ricci at 6:30 PM

COMMISSIONERS Present: Chairperson Ricci**,** Vice-Chairman DeDiemar, Anderson, Del Turco, Gage, Lampkin

Absent: Dean

OTHERS PRESENT: Community Development Assistant Director Zeledon, City Attorney Guiboa, Planning Director Noh, Sustainability Manager Ruddins, Principal Planner Eoff IV, Senior Planner Ayala, Senior Planner Grahn, Associate Planner Aguilo, Associate Planner Torres, Assistant City Engineer Lee, and Planning Secretary Berendsen

PLEDGE OF ALLEGIANCE TO THE FLAG

The Pledge of Allegiance was led by Commissioner Del Turco.

ANNOUNCEMENTS

Mr. Noh stated there were no changes to the agenda.

PUBLIC COMMENTS

No person from the public wished to speak at this time.

CONSENT CALENDAR ITEMS

A-01. MINUTES APPROVAL

Planning/Historic Preservation Commission Minutes of April 23, 2024.

PLANNING COMMISSION ACTION

It was moved by DeDiemar, seconded by Lampkin, to approve the Consent Calendar as written. Roll call vote: AYES, Anderson, DeDiemar, Del Turco, Lampkin, Ricci; NOES, none; RECUSE, none; ABSENT, Dean, Gage. The motion was carried 5-0.

PLANNING/HISTORIC COMMISSION PUBLIC HEARING ITEMS

B. ENVIRONMENTAL ASSESSMENT AND DEVELOPMENT AGREEMENT REVIEW FOR FILE NO. PDA21-010: A public hearing to consider a Development Agreement (File No. PDA21-010) between the City of Ontario and SL Ontario Development Company, LLC to

Mr. McDonald stated they either stay in the lobby area or go to the area businesses.

Ms. DeDiemar wanted to clarify that they give economic output.

Mr. McDonald stated yes.

Mr. Del Turco wanted to know if the facility would be used for Ontario residents or from other cities.

Mr. Wong stated for participants within surrounding cities.

Mr. Del Turco wanted to clarify they have vendors contracts to supply food.

Mr. Wong stated that is correct.

Mr. Del Turco wanted to clarify that they won't be using the surrounding restaurants in the area.

Mr. Wong stated they would use the restaurants in the area.

Ms. Anderson wanted to know if the clients that attend the facility aloud to go out of the building.

Mr. Wong, during business hours they use their transportation and have supervised outings.

Ms. Anderson wanted to know what kind of food vendors they buy food from.

Mr. Wong stated they use bakeries and Chinese food and food for events is kind of a mix.

Ms. Anderson wanted to know the percentage of various ethnicities that attend.

Mr. Wong stated that the majority are Asian but will take anyone who would like to join the program.

As there was no one else wishing to speak, Chairperson Ricci closed the public testimony.

Mr. Lampkin spoke regarding the need for senior facilities and spoke regarding concerns and the characteristics of the building for the use.

PLANNING COMMISSION ACTION

It was moved by Lampkin, seconded by Anderson; to deny the Appeal of the Zoning Administrator's decision for File No. PCUP23-018, subject to conditions of approval. Roll call vote: AYES, Anderson, Del Turco, Lampkin; NOES, DeDiemar, Ricci; RECUSE, none; ABSENT, Dean, Gage. The motion was carried 3-2.

H. **APPEAL OF ZONING ADMINISTRATOR DECISION FOR FILE NOS. PDET23-005, PDET23-007, PDET23-008, PDET23-009, PDET23-010, PDET23-015, AND PDET23-016:** An appeal of Zoning Administrators interpretation and determination decision that the Ontario Development Code Division 5.03, Section 5.03.250(E)(l) is applicable and enforceable to the operation of the following hotels and motels; 1) Hotel Hacienda (File No PDET23-005), located at 2423 South Archibald Avenue; 2) Bright Star Motel (File No. PDET23-005), located at 1530 West Mission Boulevard; 3) Days Inn Ontario Motel (File No.PDET23-008, located at 1405 East 4th Street; 4) Economy Inn (File No. PDET23-009), located at 2301 South Euclid Avenue; 5) Mayfair Inn (File No. PDET23-010), located 1120 East Holt Boulevard; 6) Sands Motel (File No. PDET23-015), located at 1240 West Mission Boulevard and 7) and the West Coast Inn (File No. PDET23-016), located at 1211 North Grove Avenue. The appeal is not subject to the California

Environmental Quality Act of 1970, as amended, and the Guidelines promulgated thereunder, pursuant to Section 15060(c)(2) of the State CEQA Guidelines, as the activity will not result in a direct or reasonably foreseeable indirect physical change in the environment. (APNS: 1083-071-26, 1011-221-15, 0108-381-32, 1051-071-04, 1049-141-25, 1101-211-03 and 1047-451-25). **Submitted by Frank A. Weiser – Attorney at Law**

Mr. Zeledon introduced Andrew Lopez, the attorney representing the City for this item.

Assistant Community Development Director Zeledon presented the staff report. Mr. Lopez explained the appellant's issues and city's response to them. He stated that staff is recommending the Planning Commission deny the appeal of the Zoning Administrator's decision for, File Nos. PDET23-005, PDET23-007, PDET23-008, PDET23-009, PDET23-010, PDET23-015 AND PDET23-016, pursuant to the facts and reasons contained in the staff report and the attached Resolutions.

PUBLIC TESTIMONY

Frank Weiser explained his procedural objections regarding CEQA applying, and that this issue relates to housing and the due process clause with the TOT audit and that they were due a hearing before the Zoning Administrator. He stated the motels are grandfathered in and there are constitutional issues, and that there can't be contradictory ordinances. He requested they either deny the Zoning Administrator hearing or have an EIR be produced and there should be a hearing.

Mr. Lampkin wanted to clarify that Mr. Weiser believes that staff believes that CEQA doesn't apply.

Mr. Weiser stated he believes CEQA does apply because it is a housing issue and an EIR should be done.

Mr. Lampkin asked the deputy city attorney how CEQA applies to this appeal.

Mr. Zeledon responded and stated CEQA doesn't apply as there are no physical changes to the environment. He clarified the TOT, and 30-day limitation was approved in 1965 and amendments have been made since then.

Mr. Weiser stated the Development Code was amended in 2017 or 2018 and his clients did not receive notification and that there cannot be contradictory applications of an ordinance.

Mr. Lampkin asked the Zoning Administrator if it is his opinion that CEQA does not apply in this situation because it is not a new development.

Mr. Zeledon stated that is correct, it is not a project defined under CEQA.

Mr. Lampkin clarified that's why Mr. Zeledon didn't abdicate that they comply with CEQA as it didn't apply.

Mr. Zeledon stated that is correct and the CEQA exemption is sited in the Zoning Administrator decision and in the Planning Commission agenda report.

Mr. Weiser stated he respectively disagreed.

Mr. Lampkin asked the attorney what his opinion is regarding the Toronto Open Space Committee vs. Marion Counties decision in regard to property not developed.

Attorney Lopez diverted to the specifics of the case as he hasn't been briefed on the case.

Ms. DeDiemar wanted clarification on the definition of transient.

Mr. Weiser stated under the TOT it is defined as 30 days or less and these people were given a permanent exemption beyond that.

Attorney Lopez explained that Ontario Development Code does have the transient definition as written, which states hotels can't rent longer than 30 days.

Ms. DeDiemar asked if this would be considered a lease or rent after 30 days.

Attorney Lopez stated the Zoning Administrator based the decision on the Development Code, which says longer than 30 days is not permitted.

Mr. Zeledon responded with the definition of transient within the Development Code which states a 30-day max., which is what he needed to apply for this decision.

Mr. Weiser rebutted, disagreed with Attorney Lopez.

Mr. Zeledon responded.

As there was no one else wishing to speak, Chairperson Ricci closed the public testimony.

Mr. Lampkin spoke regarding the staff addressing the issue succinctly and the issues from the appellant that didn't apply.

Mr. Del Turco asked Mr. Zeledon if the hotels were aware of the standard.

Mr. Zeledon stated yes.

PLANNING COMMISSION ACTION

It was moved by Lampkin, seconded by Del Turco, to deny the Appeal of the Zoning Administrator's decision for File Nos. PDET23-005, PDET23-007, PDET23-008, PDET23-009, PDET23-010, PDET23-015 AND PDET23-016. Roll call vote: AYES, Anderson, DeDiemar, Del Turco, Lampkin, Ricci; NOES, none; RECUSE, none; ABSENT, Dean, Gage. The motion was carried 5-0.

Mr. Ricci stated that this decision can be appealed within 10 days.

Attorney Guiboa stated that there was confusion regarding the voting for Item D and that some Commissioners did not intend to deny the EIR and asked the Commission if they would like to reconsider that vote and make a motion to continue that item to the next Planning Commission meeting.

It was moved by Lampkin, seconded by Anderson, to reconsider the Item D decision and to continue that Item to the next Planning Commission meeting. Roll call vote: AYES, Anderson, DeDiemar, Del Turco, Lampkin, Ricci; NOES, none; RECUSE, none; ABSENT, Dean, Gage. The motion was carried 5-0.

MATTERS FROM THE PLANNING COMMISSION

Old Business Reports From Subcommittees

Historic Preservation (Standing): Did not meet this month.

New Business

Nominations for Special Recognition

None at this time.

DIRECTOR'S REPORT

Mr. Noh stated the Monthly Activity Reports were available, reminded the Commissioners about the Model Colony Award presentation and talked about Ms. Nancy DeDiemar receiving the Prism Award from the Soroptimist International of Montclair/Inland Valley Chapter.

ADJOURNMENT

Ricci adjourned the meeting at 9:52 PM, to the next meeting on June 25, 2024.

Secretary Pro Tempore

Chairman, Planning Commission

RESOLUTION NO. _____

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF ONTARIO, CALIFORNIA, TO UPHOLD THE PLANNING COMMISSION'S DECISION TO UPHOLD THE ZONING ADMINISTRATOR'S INTERPRETATION AND DETERMINATION DECISION (FILE NO. PDET23-005) THAT THE ONTARIO DEVELOPMENT CODE DIVISION 5.03, SECTION 5.03.250(E)(1) IS APPLICABLE AND ENFORCEABLE TO THE OPERATION TO THE HOTEL HACIENDA, LOCATED AT 2425 SOUTH ARCHIBALD AVENUE, WITHIN THE COMMUNITY COMMERCIAL ZONING DISTRICT, AND MAKING FINDINGS IN SUPPORT THEREOF—APN: 1083-071-26.

WHEREAS, Noman Patel ("Applicant") operator of the Hotel Hacienda has filed an Appeal of Application of the Zoning Administrators interpretation and determination decision that the Ontario Development Code Division 5.03, Section 5.03.250(E)(1) is applicable and enforceable to the operation Hotel Hacienda, File No. PDET23-005, as described in the title of this Resolution (hereinafter referred to as "Application" or "Project"); and

WHEREAS, the Application applies to the Hotel Hacienda (Formally America's Best Value Inn) ("Hotel"), located at 2425 South Archibald Avenue, within the Community Commercial zoning district; and

WHEREAS, on April 30, 2021, Executive Director of Finance Armen Harkalyan ("License Official") sitting as the Transient Occupancy Tax License Official under Chapter 6 of Title 3 of the Ontario Municipal Code, held a hearing for the operator of the Hotel Hacienda. The purpose of the hearing was to allow the operators the opportunity to rebut the amount of tax assessed by the License Official and offer evidence why the specified tax, interest, and penalties are incorrect; and

WHEREAS, on April 30, 2021, the License Official issued a Stay of Decision and referred the matter to the Zoning Administrator to provide an interpretation or determination regarding the applicability and enforceability of Section 5.03.250(E)(1) as to Hotel Hacienda; and

WHEREAS, the Hotel Hacienda was approved (File No. 3472-S) by the City of Ontario in 1986 as a 55-unit Motel (known in 1986 as the Knice Inn); and

WHEREAS, on November 6, 1987, the Building Department approved the construction plans for a the 55-unit motel, located at 2425 South Archibald Avenue; and

WHEREAS, in 1988, the Motel was constructed; and

WHEREAS, Division 9.01 (Definitions) of the Ontario Development Code (ODC) defines a Motel as a lodging facility that offers transient accommodations at a daily rate,

to the general public, which are predominantly accessed from parking lots or exterior walkways consistent with the City approval and design layout for the Hotel Hacienda; and

WHEREAS, ODC Division 5.03, Section 5.03.250(E)(1) states that no guestroom, for Motel or Hotel, shall be rented for a period exceeding 30 consecutive calendar days, counting portions of calendar days as full days; and

WHEREAS, guestrooms that are being rented longer than 30 days is in violation of ODC Division 5.03, Section 5.03.250(E)(1) and not consistent with the intent of Motel or Hotel to provide transient accommodations at a daily rate; and

WHEREAS, Section 3-6.029(g) of the Ontario Municipal Code (OMC) clearly states that "Transient" shall mean any person who exercises occupancy or is entitled to occupancy by reason of concession, permit, right of access, license, or other agreement for a period of thirty (30) consecutive calendar days or less, counting portions of calendar days as full days; and

WHEREAS, the Transient Occupancy Tax shall be imposed on "transients" as defined the OMC Section 3-6.029(g); and

WHEREAS, Ontario Development Code Table 2.01-1 (Review Matrix) establishes that the Zoning Administrator has the responsibility and authority to review and act upon Interpretations and Land Use Determinations; and

WHEREAS, in response to the Appellants basis for the appeal staff has prepared a response to each of the items. Below is the Appellants statement and staff's response:

1. *Appellants' Issue No. 1: The Planning Commission was required under California Environmental Quality Act to provide an Environmental Impact Report as the issue of the applicability of the Development Code may have a negative impact on the environment.*

   Staff Response: Appellants' argument is flawed because the TOT ordinance was not a "project" under CEQA requiring an Environmental Impact Report.

   The California Environmental Quality Act (CEQA) provides a process through which public agencies, the public, and project developers can evaluate a project, understand its environmental impacts, and develop measures to reduce these impacts. CEQA applies to projects that may result in a change in the environment; a full environmental review is only required where the project could result in a significant adverse impact.

   As part of the Planning Commission's decision to uphold the Zoning Administrator's decision, the Planning Commission reviewed and considered the information contained in the administrative record for the Project. Based upon the facts and information contained in the administrative record, including all written and oral evidence presented to the Planning Commission, the Planning Commission found that:

(1) The administrative record has been completed in compliance with CEQA, the State CEQA Guidelines, and the City of Ontario Local CEQA Guidelines; and

(2) This Resolutions were reviewed with respect to the applicability of the California Environmental Quality Act of 1970 ("CEQA "), and the State CEQA Guidelines, and the Planning Commission determined that the Resolutions did not constitute a " project" within the meaning of CEQA Guidelines Section 15060(c)(2) because there is no potential that it will result in a direct or reasonably foreseeable indirect physical change in the environment and CEQA Guidelines Section 15378 because it has no potential for either a direct physical change to the environment, or a reasonably foreseeable indirect physical change in the environment.

Moreover, if the Planning Commission's decision to uphold the Zoning Administrator's decision comprises a project for CEQA analysis, it falls within the " common sense" CEQA exemption set forth in CEQA Guidelines Section 15061(b)(3), excluding projects where "it can be seen with certainty that there is no possibility that the activity in question (interpretation or determination regarding the applicability and enforceability of the Development Code) may have a significant effect on the environment."

Additionally, the "creation of government funding mechanisms or other fiscal activities, which do not involve any commitment to any specific project. . ." are not considered a "project" under CEQA. CEQA Guidelines section 15378(B)(4).

Here, there is no physical project undertaken. The TOT's effect is fiscal. Thus, the TOT ordinance is a funding mechanism is not a "project" and an EIR is not required under CEQA.

2. *Appellants' Issue No. 2: Subject hotels never received notice of the zoning change and adoption of Ontario Development Code ("ODC") Division 5.03 Section 5.03.250(E)(1) and were entitled to an individualized hearing under the First Amendment Petition Clause, Fourth Amendment Search and Seizure Clause, the Fifth Amendment Takings Clause, the Fourteenth Amendment Due Process Clause (Substantive and Procedural) and Equal Protection of the United States Constitution.*

Staff Response: Appellant's arguments introduce irrelevant legal arguments that go beyond the limited scope of the Zoning Administrator's decisions.

The Zoning Administrator has acted within his limited authority to interpret the Ontario Development Code ("ODC"). The Zoning Administrator, under Section l.02.015(A)(l) of the ODC, has jurisdiction of, and is responsible for, the administration and application of the regulations and provisions of the Development Code. The Zoning Administrator's power is limited to interpretation of the Code as applied to a particular case. ODC § 1.02.010(B)(1). Thus, the

Zoning Administrator's power is limited to interpretation of the code and its application to a particular set of facts.

Appellants' arguments introduce irrelevant legal arguments that do not challenge the underlying factual findings and analysis of each of the decisions by the Zoning Administrator. The Appellants take issue with the implementation of legislation of the Ontario Development Code. For reference, Ordinance No. 1569, which imposed the TOT was passed in 1965 – fifty-nine years ago. These issues are beyond the scope of the Zoning Administrator's role. For the Zoning Administrator to consider these legal issues would exceed the power granted by the Development Code.

The Zoning Administrator has acted within his limited authority to interpret the Development Code as to Appellants' claims and found that their hotels are subject to ODC chapter 5.03.250(E)(1). Appellants do not challenge the factual findings made by the Zoning Administrator. Thus, the appeal should be denied, and the Zoning Administrator's decisions upheld; and

WHEREAS, the Application is a project pursuant to the California Environmental Quality Act, commencing with Public Resources Code Section 21000 (hereinafter referred to as "CEQA"); and

WHEREAS, the Project is not subject to the California Environmental Quality Act of 1970, as amended, and the Guidelines promulgated thereunder, pursuant to Section 15060(c)(2) of the State CEQA Guidelines, as the activity will not result in a direct or reasonably foreseeable indirect physical change in the environment; and

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

WHEREAS, City of Ontario Development Code Division 2.03 (Public Hearings) prescribes the manner in which public notification shall be provided and hearing procedures to be followed, and all such notifications and procedures have been completed; and

WHEREAS, on May 28, 2024, the Planning Commission of the City of Ontario conducted a hearing to consider the Appeal and concluded said hearing on that date, voting to issue Resolution No. PC24-018 upholding the Zoning Administrator's decision to deny the Appeal; and

WHEREAS, on June 6, 2024, Frank A. Weiser ("Appellant Representative"), submitted an Appeal of the Planning Commission's decision to uphold the Zoning Administrator's decision and deny the Appeal of the Land Use Determination, File No. PDET23-005; and

WHEREAS, on September 3, 2024, the City Council of the City of Ontario conducted a hearing to consider the Appeal of the Planning Commission's denial of the

Application, and concluded said hearing on that date and continued the item to the October 1, 2024 City Council meeting; and

WHEREAS, on October 1, 2024, the City Council of the City of Ontario conducted a hearing to consider the Appeal of the Planning Commission's denial of the Application, and concluded said hearing on that date and continued the item to the October 15, 2024 City Council meeting; and

WHEREAS, on October 15, 2024, the City Council of the City of Ontario conducted a hearing to consider the Appeal of the Planning Commission's denial of the Application, and concluded said hearing on that date; and

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

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

SECTION 1: ***Environmental Determination and Findings.*** As the decision-making authority for the Project, the City Council has reviewed and considered the information contained in the administrative record for the Project. Based upon the facts and information contained in the administrative record, including all written and oral evidence presented to the City Council, the City Council finds as follows:

(1) The administrative record has been completed in compliance with CEQA, the State CEQA Guidelines, and the City of Ontario Local CEQA Guidelines; and

(2) This Resolution has been reviewed with respect to the applicability of the California Environmental Quality Act of 1970 ("CEQA "), and the State CEQA Guidelines, and the City Council has determined that this Resolution does not constitute a " project" within the meaning of CEQA Guidelines Section 15060(c)(2) because there is no potential that it will result in a direct or reasonably foreseeable indirect physical change in the environment and CEQA Guidelines Section 15378 because it has no potential for either a direct physical change to the environment, or a reasonably foreseeable indirect physical change in the environment; and

(3) The determination of CEQA exemption reflects the independent judgment of the Planning Commission.

SECTION 2: ***Concluding Facts and Reasons.*** Based on the substantial evidence presented to the City Council during the above-referenced hearing, the specific findings set forth in Section 1, above, and for all the reasons stated in the staff report, the City Council hereby concludes as follows:

(1) That the ODC Division 5.03, Section 5.03.250(E)(1) is applicable and enforceable to the operation of the Hotel Hacienda. ODC Division 5.03, Section 5.03.250(E)(1) states that no guestroom, for Motel or Hotel, shall

be rented for a period exceeding 30 consecutive calendar days, counting portions of calendar days as full days. The intent of a Motel or Hotel to provide transient accommodations at a daily rate. Section 3-6.029(g) of the Ontario Municipal Code (OMC) clearly states that "Transient" shall mean any person who exercises occupancy or is entitled to occupancy by reason of concession, permit, right of access, license, or other agreement for a period of thirty (30) consecutive calendar days or less, counting portions of calendar days as full days. Therefore, the Transient Occupancy Tax shall be imposed on "transients" as defined the OMC Section 3-6.029(g).

(2) That Hotel has not applied for an exemption pursuant to Section 3-6.04 of the OMC and therefore no such exemption would be applicable to the Hotel.

(3) That Hotel's operations, as stipulated in the April 30, 2021 hearing, allowing guests to stay longer than 30 days is in violation of ODC Division 5.03, Section 5.03.250(E)(1) and in violation of all applicable zoning and use permits.

SECTION 3: ***City Council Action.*** Based upon the findings and conclusions set forth in Sections 1 and 2, above, the City Council hereby Approves to uphold the Planning Commission's Decision to uphold the Zoning Administrator Decision herein described Application.

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

SECTION 5: ***Certification to Adoption.*** The City Clerk shall certify to the adoption of the Resolution.

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

PASSED, APPROVED, AND ADOPTED this 15th day of October, 2024.

_____
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. 2024- was duly passed and adopted by the City Council of the City of Ontario at their regular meeting held October 15, 2024 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. 2024- duly passed and adopted by the Ontario City Council at their regular meeting held October 15, 2024.

_____
SHEILA MAUTZ, CITY CLERK

(SEAL)

RESOLUTION NO. _____

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF ONTARIO, CALIFORNIA, TO UPHOLD THE PLANNING COMMISSION'S DECISION TO UPHOLD THE ZONING ADMINISTRATOR'S INTERPRETATION AND DETERMINATION DECISION (FILE NO. PDET23-007) THAT THE ONTARIO DEVELOPMENT CODE DIVISION 5.03, SECTION 5.03.250(E)(1) IS APPLICABLE AND ENFORCEABLE TO THE OPERATION TO THE BRIGHT STAR MOTEL, LOCATED AT 1530 WEST MISSION BOULEVARD, WITHIN THE LIGHT INDUSTRIAL ZONING DISTRICT, AND MAKING FINDINGS IN SUPPORT THEREOF—APN: 1011-221-15.

WHEREAS, Purushottam Patel and Esha Smah ("Applicant") operator of the Bright Star Motel ("Hotel") has filed an appeal of Application of the Zoning Administrators interpretation and determination decision that the Ontario Development Code Division 5.03, Section 5.03.250(E)(1) is applicable and enforceable to the operation Bright Star Motel, File No. PDET23-007, as described in the title of this Resolution (hereinafter referred to as "Application" or "Project"); and

WHEREAS, the Application applies to the Bright Star Motel, located at 1530 West Mission Boulevard, within the Light Industrial zoning district. The existing Bright Star Motel is a legal nonconforming use; and

WHEREAS, on January 22, 2021, Executive Director of Finance Armen Harkalyan ("License Official") sitting as the Transient Occupancy Tax License Official under Chapter 6 of Title 3 of the Ontario Municipal Code, held a hearing for the operator of the Bright Star Motel. The purpose of the hearing was to allow the operators the opportunity to rebut the amount of tax assessed by the License Official and offer evidence why the specified tax, interest, and penalties are incorrect; and

WHEREAS, on January 22, 2021, the License Official issued a Stay of Decision and referred the matter to the Zoning Administrator to provide an interpretation or determination regarding the applicability and enforceability of Section 5.03.250(E)(1) as to Bright Star Motel; and

WHEREAS, the City of Ontario Building Department issued building permits, between 1956 and 1962, for the construction of Motel; and

WHEREAS, on November 6, 1987, the Building Department approved the construction plans for a the 55-unit motel, located at 2425 South Archibald Avenue; and

WHEREAS, Division 9.01 (Definitions) of the Ontario Development Code (ODC) defines a Motel as a lodging facility that offers transient accommodations at a daily rate, to the general public, which are predominantly accessed from parking lots or exterior walkways consistent with the City approval and design layout for the Bright Star Motel; and

WHEREAS, ODC Division 5.03, Section 5.03.250(E)(1) states that no guestroom, for Motel or Hotel, shall be rented for a period exceeding 30 consecutive calendar days, counting portions of calendar days as full days; and

WHEREAS, guestrooms that are being rented longer than 30 days is in violation of ODC Division 5.03, Section 5.03.250(E)(1) and not consistent with the intent of Motel or Hotel to provide transient accommodations at a daily rate; and

WHEREAS, Section 3-6.029(g) of the Ontario Municipal Code (OMC) clearly states that "Transient" shall mean any person who exercises occupancy or is entitled to occupancy by reason of concession, permit, right of access, license, or other agreement for a period of thirty (30) consecutive calendar days or less, counting portions of calendar days as full days; and

WHEREAS, the Transient Occupancy Tax shall be imposed on "transients" as defined the OMC Section 3-6.029(g); and

WHEREAS, in response to the Appellants basis for the appeal staff has prepared a response to each of the items. Below is the Appellants statement and staff's response:

1. *Appellants' Issue No. 1: The Planning Commission was required under California Environmental Quality Act to provide an Environmental Impact Report as the issue of the applicability of the Development Code may have a negative impact on the environment.*

   Staff Response: Appellants' argument is flawed because the TOT ordinance was not a "project" under CEQA requiring an Environmental Impact Report.

   The California Environmental Quality Act (CEQA) provides a process through which public agencies, the public, and project developers can evaluate a project, understand its environmental impacts, and develop measures to reduce these impacts. CEQA applies to projects that may result in a change in the environment; a full environmental review is only required where the project could result in a significant adverse impact.

   As part of the Planning Commission's decision to uphold the Zoning Administrator's decision, the Planning Commission reviewed and considered the information contained in the administrative record for the Project. Based upon the facts and information contained in the administrative record, including all written and oral evidence presented to the Planning Commission, the Planning Commission found that:

   (1) The administrative record has been completed in compliance with CEQA, the State CEQA Guidelines, and the City of Ontario Local CEQA Guidelines; and

(2) This Resolutions were reviewed with respect to the applicability of the California Environmental Quality Act of 1970 ("CEQA "), and the State CEQA Guidelines, and the Planning Commission determined that the Resolutions did not constitute a " project" within the meaning of CEQA Guidelines Section 15060(c)(2) because there is no potential that it will result in a direct or reasonably foreseeable indirect physical change in the environment and CEQA Guidelines Section 15378 because it has no potential for either a direct physical change to the environment, or a reasonably foreseeable indirect physical change in the environment.

Moreover, if the Planning Commission's decision to uphold the Zoning Administrator's decision comprises a project for CEQA analysis, it falls within the " common sense" CEQA exemption set forth in CEQA Guidelines Section 15061(b)(3), excluding projects where "it can be seen with certainty that there is no possibility that the activity in question (interpretation or determination regarding the applicability and enforceability of the Development Code) may have a significant effect on the environment."

Additionally, the "creation of government funding mechanisms or other fiscal activities, which do not involve any commitment to any specific project. . ." are not considered a "project" under CEQA. CEQA Guidelines section15378(B)(4).

Here, there is no physical project undertaken. The TOT's effect is fiscal. Thus, the TOT ordinance is a funding mechanism is not a "project" and an EIR is not required under CEQA.

2. *Appellants' Issue No. 2: Subject hotels never received notice of the zoning change and adoption of Ontario Development Code ("ODC") Division 5.03 Section 5.03.250(E)(1) and were entitled to an individualized hearing under the First Amendment Petition Clause, Fourth Amendment Search and Seizure Clause, the Fifth Amendment Takings Clause, the Fourteenth Amendment Due Process Clause (Substantive and Procedural) and Equal Protection of the United States Constitution.*

Staff Response: Appellant's arguments introduce irrelevant legal arguments that go beyond the limited scope of the Zoning Administrator's decisions.

The Zoning Administrator has acted within his limited authority to interpret the Ontario Development Code ("ODC"). The Zoning Administrator, under Section l.02.015(A)(l) of the ODC, has jurisdiction of, and is responsible for, the administration and application of the regulations and provisions of the Development Code. The Zoning Administrator's power is limited to interpretation of the Code as applied to a particular case. ODC § 1.02.010(B)(1). Thus, the Zoning Administrator's power is limited to interpretation of the code and its application to a particular set of facts.

Appellants' arguments introduce irrelevant legal arguments that do not challenge the underlying factual findings and analysis of each of the decisions by the Zoning Administrator. The Appellants take issue with the implementation of legislation of

the Ontario Development Code. For reference, Ordinance No. 1569, which imposed the TOT was passed in 1965 – fifty-nine years ago. These issues are beyond the scope of the Zoning Administrator's role. For the Zoning Administrator to consider these legal issues would exceed the power granted by the Development Code.

The Zoning Administrator has acted within his limited authority to interpret the Development Code as to Appellants' claims and found that their hotels are subject to ODC chapter 5.03.250(E)(1). Appellants do not challenge the factual findings made by the Zoning Administrator. Thus, the appeal should be denied, and the Zoning Administrator's decisions upheld; and

WHEREAS, Ontario Development Code Table 2.01-1 (Review Matrix) establishes that the Zoning Administrator has the responsibility and authority to review and act upon Interpretations and Land Use Determinations; and

WHEREAS, the Application is a project pursuant to the California Environmental Quality Act, commencing with Public Resources Code Section 21000 (hereinafter referred to as "CEQA"); and

WHEREAS, the Project is not subject to the California Environmental Quality Act of 1970, as amended, and the Guidelines promulgated thereunder, pursuant to Section 15060(c)(2) of the State CEQA Guidelines, as the activity will not result in a direct or reasonably foreseeable indirect physical change in the environment; and

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

WHEREAS, City of Ontario Development Code Division 2.03 (Public Hearings) prescribes the manner in which public notification shall be provided and hearing procedures to be followed, and all such notifications and procedures have been completed; and

WHEREAS, on May 28, 2024, the Planning Commission of the City of Ontario conducted a hearing to consider the Appeal and concluded said hearing on that date, voting to issue Resolution No. PC24-019 upholding the Zoning Administrator's decision to deny the Appeal; and

WHEREAS, on June 6, 2024, Frank A. Weiser ("Appellant Representative"), submitted an Appeal of the Planning Commission's decision to uphold the Zoning Administrator's decision and deny the Appeal of the Land Use Determination, File No. PDET23-007; and

WHEREAS, on September 3, 2024, the City Council of the City of Ontario conducted a hearing to consider the Appeal of the Planning Commission's denial of the Application, and concluded said hearing on that date and continued the item to the October 1, 2024 City Council meeting; and

WHEREAS, on October 1, 2024, the City Council of the City of Ontario conducted a hearing to consider the Appeal of the Planning Commission's denial of the Application, and concluded said hearing on that date and continued the item to the October 15, 2024 City Council meeting; and

WHEREAS, on October 15, 2024, the City Council of the City of Ontario conducted a hearing to consider the Appeal of the Planning Commission's denial of the Application, and concluded said hearing on that date; and

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

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

SECTION 1: ***Environmental Determination and Findings.*** As the decision-making authority for the Project, the City Council has reviewed and considered the information contained in the administrative record for the Project. Based upon the facts and information contained in the administrative record, including all written and oral evidence presented to the City Council, the City Council finds as follows:

(1) The administrative record has been completed in compliance with CEQA, the State CEQA Guidelines, and the City of Ontario Local CEQA Guidelines; and

(2) This Resolution has been reviewed with respect to the applicability of the California Environmental Quality Act of 1970 ("CEQA "), and the State CEQA Guidelines, and the City Council has determined that this Resolution does not constitute a " project" within the meaning of CEQA Guidelines Section 15060(c)(2) because there is no potential that it will result in a direct or reasonably foreseeable indirect physical change in the environment and CEQA Guidelines Section 15378 because it has no potential for either a direct physical change to the environment, or a reasonably foreseeable indirect physical change in the environment; and

(3) The determination of CEQA exemption reflects the independent judgment of the Planning Commission.

SECTION 2: ***Concluding Facts and Reasons.*** Based on the substantial evidence presented to the City Council during the above-referenced hearing, the specific findings set forth in Section 1, above, and for all the reasons stated in the staff report, the City Council hereby concludes as follows:

(1) That the ODC Division 5.03, Section 5.03.250(E)(1) is applicable and enforceable to the operation of the Bright Star Motel. ODC Division 5.03, Section 5.03.250(E)(1) states that no guestroom, for Motel or Hotel, shall be rented for a period exceeding 30 consecutive calendar days, counting portions of calendar days as full days. The intent of a Motel or Hotel to provide transient accommodations at a daily rate. Section 3-6.029(g) of the

Ontario Municipal Code (OMC) clearly states that "Transient" shall mean any person who exercises occupancy or is entitled to occupancy by reason of concession, permit, right of access, license, or other agreement for a period of thirty (30) consecutive calendar days or less, counting portions of calendar days as full days. Therefore, the Transient Occupancy Tax shall be imposed on "transients" as defined the OMC Section 3-6.029(g).

(2) That Hotel has not applied for an exemption pursuant to Section 3-6.04 of the OMC and therefore no such exemption would be applicable to the Hotel.

(3) That Hotel's operations, as stipulated in the January 22, 2021 hearing, allowing guests to stay longer than 30 days is in violation of ODC Division 5.03, Section 5.03.250(E)(1) and in violation of all applicable zoning and use permits.

SECTION 3: ***City Council Action.*** Based upon the findings and conclusions set forth in Sections 1 and 2, above, the City Council hereby Approves to uphold the Planning Commission's Decision to uphold the Zoning Administrator Decision herein described Application.

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

SECTION 5: ***Certification to Adoption.*** The City Clerk shall certify to the adoption of the Resolution.

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

PASSED, APPROVED, AND ADOPTED this 15th day of October, 2024.

_____
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. 2024- was duly passed and adopted by the City Council of the City of Ontario at their regular meeting held October 15, 2024 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. 2024- duly passed and adopted by the Ontario City Council at their regular meeting held October 15, 2024.

_____
SHEILA MAUTZ, CITY CLERK

(SEAL)

RESOLUTION NO. _____

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF ONTARIO, CALIFORNIA, TO UPHOLD THE PLANNING COMMISSION'S DECISION TO UPHOLD THE ZONING ADMINISTRATOR'S INTERPRETATION AND DETERMINATION DECISION (FILE NO. PDET23-008) THAT THE ONTARIO DEVELOPMENT CODE DIVISION 5.03, SECTION 5.03.250(E)(1) IS APPLICABLE AND ENFORCEABLE TO THE OPERATION TO THE DAYS INN ONTARIO MOTEL, LOCATED AT 1405 EAST 4TH STREET, WITHIN THE NEIGHBORHOOD COMMERCIAL ZONING DISTRICT, AND MAKING FINDINGS IN SUPPORT THEREOF—APN: 0108-381-32.

WHEREAS, Kisham Patel ("Applicant") operator of the Days Inn Ontario Motel ("Hotel") has filed an appeal of Application of the Zoning Administrators interpretation and determination decision that the Ontario Development Code Division 5.03, Section 5.03.250(E)(1) is applicable and enforceable to the operation Days Inn Ontario Motel, File No. PDET23-008, as described in the title of this Resolution (hereinafter referred to as "Application" or "Project"); and

WHEREAS, the Days Inn Ontario is located at 1405 East 4th Street, within the Neighborhood Commercial zoning district. Hotels or Motels are permitted within the Neighborhood Commercial zoning district subject to approval of a Conditional Use Permit; and

WHEREAS, on April 2, 2021, Executive Director of Finance Armen Harkalyan ("License Official") sitting as the Transient Occupancy Tax License Official under Chapter 6 of Title 3 of the Ontario Municipal Code, held a hearing for the operator of the Days Inn Ontario. The purpose of the hearing was to allow the operators the opportunity to rebut the amount of tax assessed by the License Official and offer evidence why the specified tax, interest, and penalties are incorrect; and

WHEREAS, on April 2, 2021, the License Official issued a Stay of Decision and referred the matter to the Zoning Administrator to provide an interpretation or determination regarding the applicability and enforceability of Section 5.03.250(E)(1) as to Days Inn Ontario Motel; and

WHEREAS, in 1985, The Planning Commission approved a Conditional Use Permit (File No. 3225-CUP) to establish 53-unit Days Inn Ontario Motel (known as Youngs Motel); and

WHEREAS, in 1987, the City of Ontario Building Department issued building permits for the construction of Days Inn Ontario Motel (Known as "Youngs Motel"); and

WHEREAS, Division 9.01 (Definitions) of the Ontario Development Code (ODC) defines a Motel as a lodging facility that offers transient accommodations at a daily rate, to the general public, which are predominantly accessed from parking lots or exterior

walkways consistent with the City approval and design layout for the Days Inn Ontario; and

WHEREAS, ODC Division 5.03, Section 5.03.250(E)(1) states that no guestroom, for Motel or Hotel, shall be rented for a period exceeding 30 consecutive calendar days, counting portions of calendar days as full days; and

WHEREAS, guestrooms that are being rented longer than 30 days is in violation of ODC Division 5.03, Section 5.03.250(E)(1) and not consistent with the intent of Motel or Hotel to provide transient accommodations at a daily rate; and

WHEREAS, Section 3-6.029(g) of the Ontario Municipal Code (OMC) clearly states that "Transient" shall mean any person who exercises occupancy or is entitled to occupancy by reason of concession, permit, right of access, license, or other agreement for a period of thirty (30) consecutive calendar days or less, counting portions of calendar days as full days; and

WHEREAS, the Transient Occupancy Tax shall be imposed on "transients" as defined the OMC Section 3-6.029(g); and

WHEREAS, in response to the Appellants basis for the appeal staff has prepared a response to each of the items. Below is the Appellants statement and staff's response:

1. *Appellants' Issue No. 1: The Planning Commission was required under California Environmental Quality Act to provide an Environmental Impact Report as the issue of the applicability of the Development Code may have a negative impact on the environment.*

   Staff Response: Appellants' argument is flawed because the TOT ordinance was not a "project" under CEQA requiring an Environmental Impact Report.

   The California Environmental Quality Act (CEQA) provides a process through which public agencies, the public, and project developers can evaluate a project, understand its environmental impacts, and develop measures to reduce these impacts. CEQA applies to projects that may result in a change in the environment; a full environmental review is only required where the project could result in a significant adverse impact.

   As part of the Planning Commission's decision to uphold the Zoning Administrator's decision, the Planning Commission reviewed and considered the information contained in the administrative record for the Project. Based upon the facts and information contained in the administrative record, including all written and oral evidence presented to the Planning Commission, the Planning Commission found that:

   (1) The administrative record has been completed in compliance with CEQA, the State CEQA Guidelines, and the City of Ontario Local CEQA Guidelines; and

(2) This Resolutions were reviewed with respect to the applicability of the California Environmental Quality Act of 1970 ("CEQA "), and the State CEQA Guidelines, and the Planning Commission determined that the Resolutions did not constitute a " project" within the meaning of CEQA Guidelines Section 15060(c)(2) because there is no potential that it will result in a direct or reasonably foreseeable indirect physical change in the environment and CEQA Guidelines Section 15378 because it has no potential for either a direct physical change to the environment, or a reasonably foreseeable indirect physical change in the environment.

Moreover, if the Planning Commission's decision to uphold the Zoning Administrator's decision comprises a project for CEQA analysis, it falls within the " common sense" CEQA exemption set forth in CEQA Guidelines Section 15061(b)(3), excluding projects where "it can be seen with certainty that there is no possibility that the activity in question (interpretation or determination regarding the applicability and enforceability of the Development Code) may have a significant effect on the environment."

Additionally, the "creation of government funding mechanisms or other fiscal activities, which do not involve any commitment to any specific project. . ." are not considered a "project" under CEQA. CEQA Guidelines section15378(B)(4).

Here, there is no physical project undertaken. The TOT's effect is fiscal. Thus, the TOT ordinance is a funding mechanism is not a "project" and an EIR is not required under CEQA.

2. *Appellants' Issue No. 2: Subject hotels never received notice of the zoning change and adoption of Ontario Development Code ("ODC") Division 5.03 Section 5.03.250(E)(1) and were entitled to an individualized hearing under the First Amendment Petition Clause, Fourth Amendment Search and Seizure Clause, the Fifth Amendment Takings Clause, the Fourteenth Amendment Due Process Clause (Substantive and Procedural) and Equal Protection of the United States Constitution.*

Staff Response: Appellant's arguments introduce irrelevant legal arguments that go beyond the limited scope of the Zoning Administrator's decisions.

The Zoning Administrator has acted within his limited authority to interpret the Ontario Development Code ("ODC"). The Zoning Administrator, under Section l.02.015(A)(l) of the ODC, has jurisdiction of, and is responsible for, the administration and application of the regulations and provisions of the Development Code. The Zoning Administrator's power is limited to interpretation of the Code as applied to a particular case. ODC § 1.02.010(B)(1). Thus, the Zoning Administrator's power is limited to interpretation of the code and its application to a particular set of facts.

Appellants' arguments introduce irrelevant legal arguments that do not challenge the underlying factual findings and analysis of each of the decisions by the Zoning Administrator. The Appellants take issue with the implementation of legislation of the Ontario Development Code. For reference, Ordinance No. 1569, which imposed the TOT was passed in 1965 – fifty-nine years ago. These issues are beyond the scope of the Zoning Administrator's role. For the Zoning Administrator to consider these legal issues would exceed the power granted by the Development Code.

The Zoning Administrator has acted within his limited authority to interpret the Development Code as to Appellants' claims and found that their hotels are subject to ODC chapter 5.03.250(E)(1). Appellants do not challenge the factual findings made by the Zoning Administrator. Thus, the appeal should be denied, and the Zoning Administrator's decisions upheld; and

WHEREAS, Ontario Development Code Table 2.01-1 (Review Matrix) establishes that the Zoning Administrator has the responsibility and authority to review and act upon Interpretations and Land Use Determinations; and

WHEREAS, the Application is a project pursuant to the California Environmental Quality Act, commencing with Public Resources Code Section 21000 (hereinafter referred to as "CEQA"); and

WHEREAS, the Project is not subject to the California Environmental Quality Act of 1970, as amended, and the Guidelines promulgated thereunder, pursuant to Section 15060(c)(2) of the State CEQA Guidelines, as the activity will not result in a direct or reasonably foreseeable indirect physical change in the environment; and

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

WHEREAS, City of Ontario Development Code Division 2.03 (Public Hearings) prescribes the manner in which public notification shall be provided and hearing procedures to be followed, and all such notifications and procedures have been completed; and

WHEREAS, on May 28, 2024, the Planning Commission of the City of Ontario conducted a hearing to consider the Appeal and concluded said hearing on that date, voting to issue Resolution No. PC24-020 upholding the Zoning Administrator's decision to deny the Appeal; and

WHEREAS, on June 6, 2024, Frank A. Weiser ("Appellant Representative"), submitted an Appeal of the Planning Commission's decision to uphold the Zoning Administrator's decision and deny the Appeal of the Land Use Determination, File No. PDET23-008; and

WHEREAS, on September 3, 2024, the City Council of the City of Ontario conducted a hearing to consider the Appeal of the Planning Commission's denial of the Application, and concluded said hearing on that date and continued the item to the October 1, 2024 City Council meeting; and

WHEREAS, on October 1, 2024, the City Council of the City of Ontario conducted a hearing to consider the Appeal of the Planning Commission's denial of the Application, and concluded said hearing on that date and continued the item to the October 15, 2024 City Council meeting; and

WHEREAS, on October 15, 2024, the City Council of the City of Ontario conducted a hearing to consider the Appeal of the Planning Commission's denial of the Application, and concluded said hearing on that date; and

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

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

SECTION 1: ***Environmental Determination and Findings.*** As the decision-making authority for the Project, the City Council has reviewed and considered the information contained in the administrative record for the Project. Based upon the facts and information contained in the administrative record, including all written and oral evidence presented to the City Council, the City Council finds as follows:

(1) The administrative record has been completed in compliance with CEQA, the State CEQA Guidelines, and the City of Ontario Local CEQA Guidelines; and

(2) This Resolution has been reviewed with respect to the applicability of the California Environmental Quality Act of 1970 ("CEQA "), and the State CEQA Guidelines, and the City Council has determined that this Resolution does not constitute a " project" within the meaning of CEQA Guidelines Section 15060(c)(2) because there is no potential that it will result in a direct or reasonably foreseeable indirect physical change in the environment and CEQA Guidelines Section 15378 because it has no potential for either a direct physical change to the environment, or a reasonably foreseeable indirect physical change in the environment; and

(3) The determination of CEQA exemption reflects the independent judgment of the City Council.

SECTION 2: ***Concluding Facts and Reasons.*** Based on the substantial evidence presented to the City Council during the above-referenced hearing, the specific findings set forth in Section 1, above, and for all the reasons stated in the staff report, the City Council hereby concludes as follows:

(1) That the ODC Division 5.03, Section 5.03.250(E)(1) is applicable and enforceable to the operation of the Days Inn Ontario. ODC Division 5.03, Section 5.03.250(E)(1) states that no guestroom, for Motel or Hotel, shall be rented for a period exceeding 30 consecutive calendar days, counting portions of calendar days as full days. The intent of a Motel or Hotel to provide transient accommodations at a daily rate. Section 3-6.029(g) of the Ontario Municipal Code (OMC) clearly states that "Transient" shall mean any person who exercises occupancy or is entitled to occupancy by reason of concession, permit, right of access, license, or other agreement for a period of thirty (30) consecutive calendar days or less, counting portions of calendar days as full days. Therefore, the Transient Occupancy Tax shall be imposed on "transients" as defined the OMC Section 3-6.029(g).

(2) That Hotel has not applied for an exemption pursuant to Section 3-6.04 of the OMC and therefore no such exemption would be applicable to the Hotel.

(3) That Hotel's operations, as stipulated in the April 2, 2021 hearing, allowing guests to stay longer than 30 days is in violation of ODC Division 5.03, Section 5.03.250(E)(1) and in violation of all applicable zoning and use permits.

SECTION 3: ***City Council Action.*** Based upon the findings and conclusions set forth in Sections 1 and 2, above, the City Council hereby Approves to uphold the Planning Commission's Decision to uphold the Zoning Administrator Decision herein described Application.

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

SECTION 5: ***Certification to Adoption.*** The City Clerk shall certify to the adoption of the Resolution.

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

PASSED, APPROVED, AND ADOPTED this 15th day of October, 2024.

_____

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. 2024- was duly passed and adopted by the City Council of the City of Ontario at their regular meeting held October 15, 2024 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. 2024- duly passed and adopted by the Ontario City Council at their regular meeting held October 15, 2024.

_____
SHEILA MAUTZ, CITY CLERK

(SEAL)

RESOLUTION NO. _____

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF ONTARIO, CALIFORNIA, TO UPHOLD THE PLANNING COMMISSION'S DECISION TO UPHOLD THE ZONING ADMINISTRATOR'S INTERPRETATION AND DETERMINATION DECISION (FILE NO. PDET23-009) THAT THE ONTARIO DEVELOPMENT CODE DIVISION 5.03, SECTION 5.03.250(E)(1) IS APPLICABLE AND ENFORCEABLE TO THE OPERATION TO THE ECONOMY INN, LOCATED AT 2301 SOUTH EUCLID AVENUE, WITHIN THE COMMUNITY COMMERCIAL ZONING DISTRICT, AND MAKING FINDINGS IN SUPPORT THEREOF—APN: 1051-071-04.

WHEREAS, Mehesh Patel ("Applicant") operator of the Economy Inn ("Hotel") has filed an Appeal of Application of the Zoning Administrators interpretation and determination decision that the Ontario Development Code Division 5.03, Section 5.03.250(E)(1) is applicable and enforceable to the operation Economy Inn, File No. PDET23-009, as described in the title of this Resolution (hereinafter referred to as "Application" or "Project"); and

WHEREAS, the Economy Inn is located at 2301 South Euclid Avenue, within the Community Commercial zoning district. Hotels or Motels are permitted within the Community Commercial zoning district subject to approval of a Conditional Use Permit; and

WHEREAS, on February 5, 2021, Executive Director of Finance Armen Harkalyan ("License Official") sitting as the Transient Occupancy Tax License Official under Chapter 6 of Title 3 of the Ontario Municipal Code, held a hearing for the operator of the Economy Inn. The purpose of the hearing was to allow the operators the opportunity to rebut the amount of tax assessed by the License Official and offer evidence why the specified tax, interest, and penalties are incorrect; and

WHEREAS, on February 5, 2021, the License Official issued a Stay of Decision and referred the matter to the Zoning Administrator to provide an interpretation or determination regarding the applicability and enforceability of Section 5.03.250(E)(1) as to Economy Inn; and

WHEREAS, in 1984, The Planning Commission approved a Conditional Use Permit (File No. 3051-CUP) to establish 47-unit Economy Inn Motel; and

WHEREAS, in 1985, the City of Ontario Building Department issued building permits for the construction of the Economy Inn Motel; and

WHEREAS Division 9.01 (Definitions) of the Ontario Development Code (ODC) defines a Motel as a lodging facility that offers transient accommodations at a daily rate, to the general public, which are predominantly accessed from parking lots or exterior walkways consistent with the City approval and design layout for the Economy Inn; and

WHEREAS, ODC Division 5.03, Section 5.03.250(E)(1) states that no guestroom, for Motel or Hotel, shall be rented for a period exceeding 30 consecutive calendar days, counting portions of calendar days as full days; and

WHEREAS, guestrooms that are being rented longer than 30 days is in violation of ODC Division 5.03, Section 5.03.250(E)(1) and not consistent with the intent of Motel or Hotel to provide transient accommodations at a daily rate; and

WHEREAS, Section 3-6.029(g) of the Ontario Municipal Code (OMC) clearly states that "Transient" shall mean any person who exercises occupancy or is entitled to occupancy by reason of concession, permit, right of access, license, or other agreement for a period of thirty (30) consecutive calendar days or less, counting portions of calendar days as full days; and

WHEREAS, the Transient Occupancy Tax shall be imposed on "transients" as defined the OMC Section 3-6.029(g); and

WHEREAS, in response to the Appellants basis for the appeal staff has prepared a response to each of the items. Below is the Appellants statement and staff's response:

1. *Appellants' Issue No. 1: The Planning Commission was required under California Environmental Quality Act to provide an Environmental Impact Report as the issue of the applicability of the Development Code may have a negative impact on the environment.*

   Staff Response: Appellants' argument is flawed because the TOT ordinance was not a "project" under CEQA requiring an Environmental Impact Report.

   The California Environmental Quality Act (CEQA) provides a process through which public agencies, the public, and project developers can evaluate a project, understand its environmental impacts, and develop measures to reduce these impacts. CEQA applies to projects that may result in a change in the environment; a full environmental review is only required where the project could result in a significant adverse impact.

   As part of the Planning Commission's decision to uphold the Zoning Administrator's decision, the Planning Commission reviewed and considered the information contained in the administrative record for the Project. Based upon the facts and information contained in the administrative record, including all written and oral evidence presented to the Planning Commission, the Planning Commission found that:

   (1) The administrative record has been completed in compliance with CEQA, the State CEQA Guidelines, and the City of Ontario Local CEQA Guidelines; and

(2) This Resolutions were reviewed with respect to the applicability of the California Environmental Quality Act of 1970 ("CEQA "), and the State CEQA Guidelines, and the Planning Commission determined that the Resolutions did not constitute a " project" within the meaning of CEQA Guidelines Section 15060(c)(2) because there is no potential that it will result in a direct or reasonably foreseeable indirect physical change in the environment and CEQA Guidelines Section 15378 because it has no potential for either a direct physical change to the environment, or a reasonably foreseeable indirect physical change in the environment.

Moreover, if the Planning Commission's decision to uphold the Zoning Administrator's decision comprises a project for CEQA analysis, it falls within the " common sense" CEQA exemption set forth in CEQA Guidelines Section 15061(b)(3), excluding projects where "it can be seen with certainty that there is no possibility that the activity in question (interpretation or determination regarding the applicability and enforceability of the Development Code) may have a significant effect on the environment."

Additionally, the "creation of government funding mechanisms or other fiscal activities, which do not involve any commitment to any specific project. . ." are not considered a "project" under CEQA. CEQA Guidelines section15378(B)(4).

Here, there is no physical project undertaken. The TOT's effect is fiscal. Thus, the TOT ordinance is a funding mechanism is not a "project" and an EIR is not required under CEQA.

2. *Appellants' Issue No. 2: Subject hotels never received notice of the zoning change and adoption of Ontario Development Code ("ODC") Division 5.03 Section 5.03.250(E)(1) and were entitled to an individualized hearing under the First Amendment Petition Clause, Fourth Amendment Search and Seizure Clause, the Fifth Amendment Takings Clause, the Fourteenth Amendment Due Process Clause (Substantive and Procedural) and Equal Protection of the United States Constitution.*

Staff Response: Appellant's arguments introduce irrelevant legal arguments that go beyond the limited scope of the Zoning Administrator's decisions.

The Zoning Administrator has acted within his limited authority to interpret the Ontario Development Code ("ODC"). The Zoning Administrator, under Section l.02.015(A)(l) of the ODC, has jurisdiction of, and is responsible for, the administration and application of the regulations and provisions of the Development Code. The Zoning Administrator's power is limited to interpretation of the Code as applied to a particular case. ODC § 1.02.010(B)(1). Thus, the Zoning Administrator's power is limited to interpretation of the code and its application to a particular set of facts.

Appellants' arguments introduce irrelevant legal arguments that do not challenge the underlying factual findings and analysis of each of the decisions by the Zoning

Administrator. The Appellants take issue with the implementation of legislation of the Ontario Development Code. For reference, Ordinance No. 1569, which imposed the TOT was passed in 1965 – fifty-nine years ago. These issues are beyond the scope of the Zoning Administrator's role. For the Zoning Administrator to consider these legal issues would exceed the power granted by the Development Code.

The Zoning Administrator has acted within his limited authority to interpret the Development Code as to Appellants' claims and found that their hotels are subject to ODC chapter 5.03.250(E)(1). Appellants do not challenge the factual findings made by the Zoning Administrator. Thus, the appeal should be denied, and the Zoning Administrator's decisions upheld; and

WHEREAS, Ontario Development Code Table 2.01-1 (Review Matrix) establishes that the Zoning Administrator has the responsibility and authority to review and act upon Interpretations and Land Use Determinations; and

WHEREAS, the Application is a project pursuant to the California Environmental Quality Act, commencing with Public Resources Code Section 21000 (hereinafter referred to as "CEQA"); and

WHEREAS, the Project is not subject to the California Environmental Quality Act of 1970, as amended, and the Guidelines promulgated thereunder, pursuant to Section 15060(c)(2) of the State CEQA Guidelines, as the activity will not result in a direct or reasonably foreseeable indirect physical change in the environment; and

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

WHEREAS, City of Ontario Development Code Division 2.03 (Public Hearings) prescribes the manner in which public notification shall be provided and hearing procedures to be followed, and all such notifications and procedures have been completed; and

WHEREAS, on May 28, 2024, the Planning Commission of the City of Ontario conducted a hearing to consider the Appeal and concluded said hearing on that date, voting to issue Resolution No. PC24-021 upholding the Zoning Administrator's decision to deny the Appeal; and

WHEREAS, on June 6, 2024, Frank A. Weiser ("Appellant Representative"), submitted an Appeal of the Planning Commission's decision to uphold the Zoning Administrator's decision and deny the Appeal of the Land Use Determination, File No. PDET23-009; and

WHEREAS, on September 3, 2024, the City Council of the City of Ontario conducted a hearing to consider the Appeal of the Planning Commission's denial of the

Application, and concluded said hearing on that date and continued the item to the October 1, 2024 City Council meeting; and

WHEREAS, on October 1, 2024, the City Council of the City of Ontario conducted a hearing to consider the Appeal of the Planning Commission's denial of the Application, and concluded said hearing on that date and continued the item to the October 15, 2024 City Council meeting; and

WHEREAS, on October 15, 2024, the City Council of the City of Ontario conducted a hearing to consider the Appeal of the Planning Commission's denial of the Application, and concluded said hearing on that date; and

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

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

SECTION 1: ***Environmental Determination and Findings.*** As the decision-making authority for the Project, the City Council has reviewed and considered the information contained in the administrative record for the Project. Based upon the facts and information contained in the administrative record, including all written and oral evidence presented to the City Council, the City Council finds as follows:

(1) The administrative record has been completed in compliance with CEQA, the State CEQA Guidelines, and the City of Ontario Local CEQA Guidelines; and

(2) This Resolution has been reviewed with respect to the applicability of the California Environmental Quality Act of 1970 ("CEQA "), and the State CEQA Guidelines, and the City Council has determined that this Resolution does not constitute a " project" within the meaning of CEQA Guidelines Section 15060(c)(2) because there is no potential that it will result in a direct or reasonably foreseeable indirect physical change in the environment and CEQA Guidelines Section 15378 because it has no potential for either a direct physical change to the environment, or a reasonably foreseeable indirect physical change in the environment; and

(3) The determination of CEQA exemption reflects the independent judgment of the Planning Commission.

SECTION 2: ***Concluding Facts and Reasons.*** Based on the substantial evidence presented to the City Council during the above-referenced hearing, the specific findings set forth in Section 1, above, and for all the reasons stated in the staff report, the City Council hereby concludes as follows:

(1) That the ODC Division 5.03, Section 5.03.250(E)(1) is applicable and enforceable to the operation of the Economy Inn. ODC Division 5.03, Section 5.03.250(E)(1) states that no guestroom, for Motel or Hotel, shall

be rented for a period exceeding 30 consecutive calendar days, counting portions of calendar days as full days. The intent of a Motel or Hotel to provide transient accommodations at a daily rate. Section 3-6.029(g) of the Ontario Municipal Code (OMC) clearly states that "Transient" shall mean any person who exercises occupancy or is entitled to occupancy by reason of concession, permit, right of access, license, or other agreement for a period of thirty (30) consecutive calendar days or less, counting portions of calendar days as full days. Therefore, the Transient Occupancy Tax shall be imposed on "transients" as defined the OMC Section 3-6.029(g).

(2) That Hotel has not applied for an exemption pursuant to Section 3-6.04 of the OMC and therefore no such exemption would be applicable to the Hotel.

(3) That Hotel's operations, as stipulated in the February 5, 2021 hearing, allowing guests to stay longer than 30 days is in violation of ODC Division 5.03, Section 5.03.250(E)(1) and in violation of all applicable zoning and use permits.

SECTION 3: ***City Council Action.*** Based upon the findings and conclusions set forth in Sections 1 and 2, above, the City Council hereby Approves to uphold the Planning Commission's Decision to uphold the Zoning Administrator Decision herein described Application.

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

SECTION 5: ***Certification to Adoption.*** The Secretary shall certify to the adoption of the Resolution.

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

PASSED, APPROVED, AND ADOPTED this 15th day of October, 2024.

_____
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. 2024- was duly passed and adopted by the City Council of the City of Ontario at their regular meeting held October 15, 2024 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. 2024- duly passed and adopted by the Ontario City Council at their regular meeting held October 15, 2024.

_____
SHEILA MAUTZ, CITY CLERK

(SEAL)

RESOLUTION NO. _____

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF ONTARIO, CALIFORNIA, TO UPHOLD THE PLANNING COMMISSION'S DECISION TO UPHOLD THE ZONING ADMINISTRATOR'S INTERPRETATION AND DETERMINATION DECISION (FILE NO. PDET23-010) THAT THE ONTARIO DEVELOPMENT CODE DIVISION 5.03, SECTION 5.03.250(E)(1) IS APPLICABLE AND ENFORCEABLE TO THE OPERATION TO THE MAYFAIR INN, LOCATED AT 1120 EAST HOLT BOULEVARD, WITHIN THE INDUSTRIAL PARK ZONING DISTRICT, AND MAKING FINDINGS IN SUPPORT THEREOF—APN: 1049-141-25.

WHEREAS, Dilip Payaram ("Applicant") operator of the Mayfair Inn ("Hotel") has filed an appeal of Application of the Zoning Administrators interpretation and determination decision that the Ontario Development Code Division 5.03, Section 5.03.250(E)(1) is applicable and enforceable to the operation Mayfair Inn, File No. PDET23-010, as described in the title of this Resolution (hereinafter referred to as "Application" or "Project"); and

WHEREAS, the Mayfair Inn (formally known as the Knights Inn) is located at 1120 East Holt Boulevard, within the Industrial Park zoning district. Hotels or Motels are not permitted within the Industrial Park zoning district. The existing Mayfair Inn is a legal nonconforming use; and

WHEREAS, on April 16, 2021, Executive Director of Finance Armen Harkalyan ("License Official") sitting as the Transient Occupancy Tax License Official under Chapter 6 of Title 3 of the Ontario Municipal Code, held a hearing for the operator of the Mayfiar Inn. The purpose of the hearing was to allow the operators the opportunity to rebut the amount of tax assessed by the License Official and offer evidence why the specified tax, interest, and penalties are incorrect; and

WHEREAS, on April 16, 2021, the License Official issued a Stay of Decision and referred the matter to the Zoning Administrator to provide an interpretation or determination regarding the applicability and enforceability of Section 5.03.250(E)(1) as to Mayfair Inn; and

WHEREAS, in 1985, the Planning Commission approved a Development Plan (File No. 3294-S) for the construction of 37-unit Mayfair Inn motel; and

WHEREAS, in 1987, City of Ontario Building Department issued permits for the construction of Mayfair Motel; and

WHEREAS, Division 9.01 (Definitions) of the Ontario Development Code (ODC) defines a Motel as a lodging facility that offers transient accommodations at a daily rate, to the general public, which are predominantly accessed from parking lots or exterior walkways consistent with the City approval and design layout for the Mayfair Inn; and

WHEREAS, ODC Division 5.03, Section 5.03.250(E)(1) states that no guestroom, for Motel or Hotel, shall be rented for a period exceeding 30 consecutive calendar days, counting portions of calendar days as full days; and

WHEREAS, guestrooms that are being rented longer than 30 days is in violation of ODC Division 5.03, Section 5.03.250(E)(1) and not consistent with the intent of Motel or Hotel to provide transient accommodations at a daily rate; and

WHEREAS, Section 3-6.029(g) of the Ontario Municipal Code (OMC) clearly states that "Transient" shall mean any person who exercises occupancy or is entitled to occupancy by reason of concession, permit, right of access, license, or other agreement for a period of thirty (30) consecutive calendar days or less, counting portions of calendar days as full days; and

WHEREAS, the Transient Occupancy Tax shall be imposed on "transients" as defined the OMC Section 3-6.029(g); and

WHEREAS, in response to the Appellants basis for the appeal staff has prepared a response to each of the items. Below is the Appellants statement and staff's response:

1. *Appellants' Issue No. 1: The Planning Commission was required under California Environmental Quality Act to provide an Environmental Impact Report as the issue of the applicability of the Development Code may have a negative impact on the environment.*

   Staff Response: Appellants' argument is flawed because the TOT ordinance was not a "project" under CEQA requiring an Environmental Impact Report.

   The California Environmental Quality Act (CEQA) provides a process through which public agencies, the public, and project developers can evaluate a project, understand its environmental impacts, and develop measures to reduce these impacts. CEQA applies to projects that may result in a change in the environment; a full environmental review is only required where the project could result in a significant adverse impact.

   As part of the Planning Commission's decision to uphold the Zoning Administrator's decision, the Planning Commission reviewed and considered the information contained in the administrative record for the Project. Based upon the facts and information contained in the administrative record, including all written and oral evidence presented to the Planning Commission, the Planning Commission found that:

   (1) The administrative record has been completed in compliance with CEQA, the State CEQA Guidelines, and the City of Ontario Local CEQA Guidelines; and

   (2) This Resolutions were reviewed with respect to the applicability of the California Environmental Quality Act of 1970 ("CEQA "), and the State

CEQA Guidelines, and the Planning Commission determined that the Resolutions did not constitute a " project" within the meaning of CEQA Guidelines Section 15060(c)(2) because there is no potential that it will result in a direct or reasonably foreseeable indirect physical change in the environment and CEQA Guidelines Section 15378 because it has no potential for either a direct physical change to the environment, or a reasonably foreseeable indirect physical change in the environment.

Moreover, if the Planning Commission's decision to uphold the Zoning Administrator's decision comprises a project for CEQA analysis, it falls within the " common sense" CEQA exemption set forth in CEQA Guidelines Section 15061(b)(3), excluding projects where "it can be seen with certainty that there is no possibility that the activity in question (interpretation or determination regarding the applicability and enforceability of the Development Code) may have a significant effect on the environment."

Additionally, the "creation of government funding mechanisms or other fiscal activities, which do not involve any commitment to any specific project. . ." are not considered a "project" under CEQA. CEQA Guidelines section15378(B)(4).

Here, there is no physical project undertaken. The TOT's effect is fiscal. Thus, the TOT ordinance is a funding mechanism is not a "project" and an EIR is not required under CEQA.

2. *Appellants' Issue No. 2: Subject hotels never received notice of the zoning change and adoption of Ontario Development Code ("ODC") Division 5.03 Section 5.03.250(E)(1) and were entitled to an individualized hearing under the First Amendment Petition Clause, Fourth Amendment Search and Seizure Clause, the Fifth Amendment Takings Clause, the Fourteenth Amendment Due Process Clause (Substantive and Procedural) and Equal Protection of the United States Constitution.*

Staff Response: Appellant's arguments introduce irrelevant legal arguments that go beyond the limited scope of the Zoning Administrator's decisions.

The Zoning Administrator has acted within his limited authority to interpret the Ontario Development Code ("ODC"). The Zoning Administrator, under Section l.02.015(A)(l) of the ODC, has jurisdiction of, and is responsible for, the administration and application of the regulations and provisions of the Development Code. The Zoning Administrator's power is limited to interpretation of the Code as applied to a particular case. ODC § 1.02.010(B)(1). Thus, the Zoning Administrator's power is limited to interpretation of the code and its application to a particular set of facts.

Appellants' arguments introduce irrelevant legal arguments that do not challenge the underlying factual findings and analysis of each of the decisions by the Zoning Administrator. The Appellants take issue with the implementation of legislation of the Ontario Development Code. For reference, Ordinance No. 1569, which

imposed the TOT was passed in 1965 – fifty-nine years ago. These issues are beyond the scope of the Zoning Administrator's role. For the Zoning Administrator to consider these legal issues would exceed the power granted by the Development Code.

The Zoning Administrator has acted within his limited authority to interpret the Development Code as to Appellants' claims and found that their hotels are subject to ODC chapter 5.03.250(E)(1). Appellants do not challenge the factual findings made by the Zoning Administrator. Thus, the appeal should be denied, and the Zoning Administrator's decisions upheld; and

WHEREAS, Ontario Development Code Table 2.01-1 (Review Matrix) establishes that the Zoning Administrator has the responsibility and authority to review and act upon Interpretations and Land Use Determinations; and

WHEREAS, the Application is a project pursuant to the California Environmental Quality Act, commencing with Public Resources Code Section 21000 (hereinafter referred to as "CEQA"); and

WHEREAS, the Project is not subject to the California Environmental Quality Act of 1970, as amended, and the Guidelines promulgated thereunder, pursuant to Section 15060(c)(2) of the State CEQA Guidelines, as the activity will not result in a direct or reasonably foreseeable indirect physical change in the environment; and

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

WHEREAS, City of Ontario Development Code Division 2.03 (Public Hearings) prescribes the manner in which public notification shall be provided and hearing procedures to be followed, and all such notifications and procedures have been completed; and

WHEREAS, on May 28, 2024, the Planning Commission of the City of Ontario conducted a hearing to consider the Appeal and concluded said hearing on that date, voting to issue Resolution No. PC24-022 upholding the Zoning Administrator's decision to deny the Appeal; and

WHEREAS, on June 6, 2024, Frank A. Weiser ("Appellant Representative"), submitted an Appeal of the Planning Commission's decision to uphold the Zoning Administrator's decision and deny the Appeal of the Land Use Determination, File No. PDET23-010; and

WHEREAS, on September 3, 2024, the City Council of the City of Ontario conducted a hearing to consider the Appeal of the Planning Commission's denial of the Application, and concluded said hearing on that date and continued the item to the October 1, 2024 City Council meeting; and

WHEREAS, on October 1, 2024, the City Council of the City of Ontario conducted a hearing to consider the Appeal of the Planning Commission's denial of the Application, and concluded said hearing on that date and continued the item to the October 15, 2024 City Council meeting; and

WHEREAS, on October 15, 2024, the City Council of the City of Ontario conducted a hearing to consider the Appeal of the Planning Commission's denial of the Application, and concluded said hearing on that date; and

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

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

SECTION 1: ***Environmental Determination and Findings.*** As the decision-making authority for the Project, the City Council has reviewed and considered the information contained in the administrative record for the Project. Based upon the facts and information contained in the administrative record, including all written and oral evidence presented to the City Council, the City Council finds as follows:

(1) The administrative record has been completed in compliance with CEQA, the State CEQA Guidelines, and the City of Ontario Local CEQA Guidelines; and

(2) This Resolution has been reviewed with respect to the applicability of the California Environmental Quality Act of 1970 ("CEQA "), and the State CEQA Guidelines, and the City Council has determined that this Resolution does not constitute a " project" within the meaning of CEQA Guidelines Section 15060(c)(2) because there is no potential that it will result in a direct or reasonably foreseeable indirect physical change in the environment and CEQA Guidelines Section 15378 because it has no potential for either a direct physical change to the environment, or a reasonably foreseeable indirect physical change in the environment; and

(3) The determination of CEQA exemption reflects the independent judgment of the City Council.

SECTION 2: ***Concluding Facts and Reasons.*** Based on the substantial evidence presented to the City Council during the above-referenced hearing, the specific findings set forth in Section 1, above, and for all the reasons stated in the staff report, the City Council hereby concludes as follows:

(1) That the ODC Division 5.03, Section 5.03.250(E)(1) is applicable and enforceable to the operation of the Mayfair Inn. ODC Division 5.03, Section 5.03.250(E)(1) states that no guestroom, for Motel or Hotel, shall be rented for a period exceeding 30 consecutive calendar days, counting portions of calendar days as full days. The intent of a Motel or Hotel to provide transient accommodations at a daily rate. Section 3-6.029(g) of the Ontario Municipal

Code (OMC) clearly states that “Transient” shall mean any person who exercises occupancy or is entitled to occupancy by reason of concession, permit, right of access, license, or other agreement for a period of thirty (30) consecutive calendar days or less, counting portions of calendar days as full days. Therefore, the Transient Occupancy Tax shall be imposed on “transients” as defined the OMC Section 3-6.029(g).

(2) That Hotel has not applied for an exemption pursuant to Section 3-6.04 of the OMC and therefore no such exemption would be applicable to the Hotel.

(3) That Hotel’s operations, as stipulated in the April 16, 2021 hearing, allowing guests to stay longer than 30 days is in violation of ODC Division 5.03, Section 5.03.250(E)(1) and in violation of all applicable zoning and use permits.

SECTION 3: ***City Council Action.*** Based upon the findings and conclusions set forth in Sections 1 and 2, above, the City Council hereby Approves to uphold the Planning Commission’s Decision to uphold the Zoning Administrator Decision herein described Application.

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

SECTION 5: ***Certification to Adoption.*** The City Clerk shall certify to the adoption of the Resolution.

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

PASSED, APPROVED, AND ADOPTED this 15th day of October, 2024.

_____
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. 2024- was duly passed and adopted by the City Council of the City of Ontario at their regular meeting held October 15, 2024 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. 2024- duly passed and adopted by the Ontario City Council at their regular meeting held October 15, 2024.

_____
SHEILA MAUTZ, CITY CLERK

(SEAL)

RESOLUTION NO. _____

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF ONTARIO, CALIFORNIA, TO UPHOLD THE PLANNING COMMISSION'S DECISION TO UPHOLD THE ZONING ADMINISTRATOR'S INTERPRETATION AND DETERMINATION DECISION (FILE NO. PDET23-015) THAT THE ONTARIO DEVELOPMENT CODE DIVISION 5.03, SECTION 5.03.250(E)(1) IS APPLICABLE AND ENFORCEABLE TO THE OPERATION TO THE SANDS MOTEL, LOCATED AT 1240 WEST MISSION BOULEVARD, WITHIN THE LIGHT INDUSTRIAL ZONING DISTRICT, AND MAKING FINDINGS IN SUPPORT THEREOF—APN: 1101-211-03.

WHEREAS, Purushottam Patel and Andy Patel ("Applicant") operator of the Sands Motel ("Hotel") has filed an Appeal of Application of the Zoning Administrators interpretation and determination decision that the Ontario Development Code Division 5.03, Section 5.03.250(E)(1) is applicable and enforceable to the operation Sands Motel, File No. PDET23-015, as described in the title of this Resolution (hereinafter referred to as "Application" or "Project"); and

WHEREAS, the Sands Motel is located at 1240 West Mission Boulevard, within the Light Industrial zoning district. Hotels or Motels are not permitted within the Light Industrial zoning district. The existing Sands Motel is a legal nonconforming use; and

WHEREAS, on January 1, 2021, Executive Director of Finance Armen Harkalyan ("License Official") sitting as the Transient Occupancy Tax License Official under Chapter 6 of Title 3 of the Ontario Municipal Code, held a hearing for the operator of the Sands Motel. The purpose of the hearing was to allow the operators the opportunity to rebut the amount of tax assessed by the License Official and offer evidence why the specified tax, interest, and penalties are incorrect; and

WHEREAS, on January 1, 2021, the License Official issued a Stay of Decision and referred the matter to the Zoning Administrator to provide an interpretation or determination regarding the applicability and enforceability of Section 5.03.250(E)(1) as to Sands Motel; and

WHEREAS The City of Ontario Building Department issued permits for the construction of Sands Motel in the 1956; and

WHEREAS, Division 9.01 (Definitions) of the Ontario Development Code (ODC) defines a Motel as a lodging facility that offers transient accommodations at a daily rate, to the general public, which are predominantly accessed from parking lots or exterior walkways consistent with the City approval and design layout for the Sands Mote; and

WHEREAS, ODC Division 5.03, Section 5.03.250(E)(1) states that no guestroom, for Motel or Hotel, shall be rented for a period exceeding 30 consecutive calendar days, counting portions of calendar days as full days; and

WHEREAS, guestrooms that are being rented longer than 30 days is in violation of ODC Division 5.03, Section 5.03.250(E)(1) and not consistent with the intent of Motel or Hotel to provide transient accommodations at a daily rate; and

WHEREAS, Section 3-6.029(g) of the Ontario Municipal Code (OMC) clearly states that “Transient” shall mean any person who exercises occupancy or is entitled to occupancy by reason of concession, permit, right of access, license, or other agreement for a period of thirty (30) consecutive calendar days or less, counting portions of calendar days as full days; and

WHEREAS, the Transient Occupancy Tax shall be imposed on “transients” as defined the OMC Section 3-6.029(g); and

WHEREAS, in response to the Appellants basis for the appeal staff has prepared a response to each of the items. Below is the Appellants statement and staff’s response:

1. *Appellants’ Issue No. 1: The Planning Commission was required under California Environmental Quality Act to provide an Environmental Impact Report as the issue of the applicability of the Development Code may have a negative impact on the environment.*

   Staff Response: Appellants’ argument is flawed because the TOT ordinance was not a “project” under CEQA requiring an Environmental Impact Report.

   The California Environmental Quality Act (CEQA) provides a process through which public agencies, the public, and project developers can evaluate a project, understand its environmental impacts, and develop measures to reduce these impacts. CEQA applies to projects that may result in a change in the environment; a full environmental review is only required where the project could result in a significant adverse impact.

   As part of the Planning Commission’s decision to uphold the Zoning Administrator’s decision, the Planning Commission reviewed and considered the information contained in the administrative record for the Project. Based upon the facts and information contained in the administrative record, including all written and oral evidence presented to the Planning Commission, the Planning Commission found that:

   (1) The administrative record has been completed in compliance with CEQA, the State CEQA Guidelines, and the City of Ontario Local CEQA Guidelines; and

   (2) This Resolutions were reviewed with respect to the applicability of the California Environmental Quality Act of 1970 ("CEQA "), and the State CEQA Guidelines, and the Planning Commission determined that the Resolutions did not constitute a " project" within the meaning of CEQA Guidelines Section 15060(c)(2) because there is no potential that it will result in a direct or reasonably foreseeable indirect physical change in

the environment and CEQA Guidelines Section 15378 because it has no potential for either a direct physical change to the environment, or a reasonably foreseeable indirect physical change in the environment.

Moreover, if the Planning Commission's decision to uphold the Zoning Administrator's decision comprises a project for CEQA analysis, it falls within the " common sense" CEQA exemption set forth in CEQA Guidelines Section 15061(b)(3), excluding projects where "it can be seen with certainty that there is no possibility that the activity in question (interpretation or determination regarding the applicability and enforceability of the Development Code) may have a significant effect on the environment."

Additionally, the "creation of government funding mechanisms or other fiscal activities, which do not involve any commitment to any specific project. . ." are not considered a "project" under CEQA. CEQA Guidelines section15378(B)(4).

Here, there is no physical project undertaken. The TOT's effect is fiscal. Thus, the TOT ordinance is a funding mechanism is not a "project" and an EIR is not required under CEQA.

2. *Appellants' Issue No. 2: Subject hotels never received notice of the zoning change and adoption of Ontario Development Code ("ODC") Division 5.03 Section 5.03.250(E)(1) and were entitled to an individualized hearing under the First Amendment Petition Clause, Fourth Amendment Search and Seizure Clause, the Fifth Amendment Takings Clause, the Fourteenth Amendment Due Process Clause (Substantive and Procedural) and Equal Protection of the United States Constitution.*

Staff Response: Appellant's arguments introduce irrelevant legal arguments that go beyond the limited scope of the Zoning Administrator's decisions.

The Zoning Administrator has acted within his limited authority to interpret the Ontario Development Code ("ODC"). The Zoning Administrator, under Section l.02.015(A)(l) of the ODC, has jurisdiction of, and is responsible for, the administration and application of the regulations and provisions of the Development Code. The Zoning Administrator's power is limited to interpretation of the Code as applied to a particular case. ODC § 1.02.010(B)(1). Thus, the Zoning Administrator's power is limited to interpretation of the code and its application to a particular set of facts.

Appellants' arguments introduce irrelevant legal arguments that do not challenge the underlying factual findings and analysis of each of the decisions by the Zoning Administrator. The Appellants take issue with the implementation of legislation of the Ontario Development Code. For reference, Ordinance No. 1569, which imposed the TOT was passed in 1965 – fifty-nine years ago. These issues are beyond the scope of the Zoning Administrator's role. For the Zoning Administrator to consider these legal issues would exceed the power granted by the Development Code.

The Zoning Administrator has acted within his limited authority to interpret the Development Code as to Appellants' claims and found that their hotels are subject to ODC chapter 5.03.250(E)(1). Appellants do not challenge the factual findings made by the Zoning Administrator. Thus, the appeal should be denied, and the Zoning Administrator's decisions upheld; and

WHEREAS, Ontario Development Code Table 2.01-1 (Review Matrix) establishes that the Zoning Administrator has the responsibility and authority to review and act upon Interpretations and Land Use Determinations; and

WHEREAS, the Application is a project pursuant to the California Environmental Quality Act, commencing with Public Resources Code Section 21000 (hereinafter referred to as "CEQA"); and

WHEREAS, the Project is not subject to the California Environmental Quality Act of 1970, as amended, and the Guidelines promulgated thereunder, pursuant to Section 15060(c)(2) of the State CEQA Guidelines, as the activity will not result in a direct or reasonably foreseeable indirect physical change in the environment; and

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

WHEREAS, City of Ontario Development Code Division 2.03 (Public Hearings) prescribes the manner in which public notification shall be provided and hearing procedures to be followed, and all such notifications and procedures have been completed; and

WHEREAS, on May 28, 2024, the Planning Commission of the City of Ontario conducted a hearing to consider the Appeal and concluded said hearing on that date, voting to issue Resolution No. PC24-023 upholding the Zoning Administrator's decision to deny the Appeal; and

WHEREAS, on June 6, 2024, Frank A. Weiser ("Appellant Representative"), submitted an Appeal of the Planning Commission's decision to uphold the Zoning Administrator's decision and deny the Appeal of the Land Use Determination, File No. PDET23-015; and

WHEREAS, on September 3, 2024, the City Council of the City of Ontario conducted a hearing to consider the Appeal of the Planning Commission's denial of the Application, and concluded said hearing on that date and continued the item to the October 1, 2024 City Council meeting; and

WHEREAS, on October 1, 2024, the City Council of the City of Ontario conducted a hearing to consider the Appeal of the Planning Commission's denial of the Application, and concluded said hearing on that date and continued the item to the October 15, 2024 City Council meeting; and

WHEREAS, on October 15, 2024, the City Council of the City of Ontario conducted a hearing to consider the Appeal of the Planning Commission's denial of the Application, and concluded said hearing on that date; and

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

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

SECTION 1: ***Environmental Determination and Findings.*** As the decision-making authority for the Project, the City Council has reviewed and considered the information contained in the administrative record for the Project. Based upon the facts and information contained in the administrative record, including all written and oral evidence presented to the City Council, the City Council finds as follows:

(1) The administrative record has been completed in compliance with CEQA, the State CEQA Guidelines, and the City of Ontario Local CEQA Guidelines; and

(2) This Resolution has been reviewed with respect to the applicability of the California Environmental Quality Act of 1970 ("CEQA "), and the State CEQA Guidelines, and the City Council has determined that this Resolution does not constitute a " project" within the meaning of CEQA Guidelines Section 15060(c)(2) because there is no potential that it will result in a direct or reasonably foreseeable indirect physical change in the environment and CEQA Guidelines Section 15378 because it has no potential for either a direct physical change to the environment, or a reasonably foreseeable indirect physical change in the environment; and

(3) The determination of CEQA exemption reflects the independent judgment of the City Council.

SECTION 2: ***Concluding Facts and Reasons.*** Based on the substantial evidence presented to the City Council during the above-referenced hearing, the specific findings set forth in Section 1, above, and for all the reasons stated in the staff report, the City Council hereby concludes as follows:

(1) That the ODC Division 5.03, Section 5.03.250(E)(1) is applicable and enforceable to the operation of the Sands Motel. ODC Division 5.03, Section 5.03.250(E)(1) states that no guestroom, for Motel or Hotel, shall be rented for a period exceeding 30 consecutive calendar days, counting portions of calendar days as full days. The intent of a Motel or Hotel to provide transient accommodations at a daily rate. Section 3-6.029(g) of the Ontario Municipal Code (OMC) clearly states that "Transient" shall mean any person who exercises occupancy or is entitled to occupancy by reason of concession, permit, right of access, license, or other agreement for a period of thirty (30) consecutive calendar days or less, counting portions of calendar days as

full days. Therefore, the Transient Occupancy Tax shall be imposed on "transients" as defined the OMC Section 3-6.029(g).

(2) That Hotel has not applied for an exemption pursuant to Section 3-6.04 of the OMC and therefore no such exemption would be applicable to the Hotel.

(3) That Hotel's operations, as stipulated in the January 1, 2021 hearing, allowing guests to stay longer than 30 days is in violation of ODC Division 5.03, Section 5.03.250(E)(1) and in violation of all applicable zoning and use permits.

SECTION 3: ***City Council Action.*** Based upon the findings and conclusions set forth in Sections 1 and 2, above, the City Council hereby Approves to uphold the Planning Commission's Decision to uphold the Zoning Administrator Decision herein described Application.

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

SECTION 5: ***Certification to Adoption.*** The City Clerk shall certify to the adoption of the Resolution.

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

PASSED, APPROVED, AND ADOPTED this 15th day of October, 2024.

_____
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. 2024- was duly passed and adopted by the City Council of the City of Ontario at their regular meeting held October 15, 2024 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. 2024- duly passed and adopted by the Ontario City Council at their regular meeting held October 15, 2024.

_____
SHEILA MAUTZ, CITY CLERK

(SEAL)

RESOLUTION NO. _____

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF ONTARIO, CALIFORNIA, TO UPHOLD THE PLANNING COMMISSION'S DECISION TO UPHOLD THE ZONING ADMINISTRATOR'S INTERPRETATION AND DETERMINATION DECISION (FILE NO. PDET23-016) THAT THE ONTARIO DEVELOPMENT CODE DIVISION 5.03, SECTION 5.03.250(E)(1) IS APPLICABLE AND ENFORCEABLE TO THE OPERATION TO THE WEST COAST INN, LOCATED AT 1211 NORTH GROVE AVENUE, WITHIN THE NEIGHBORHOOD COMMERCIAL ZONING DISTRICT, AND MAKING FINDINGS IN SUPPORT THEREOF—APN: 1047-451-25.

WHEREAS, Anil Patel ("Applicant") operator of the West Coast Inn ("Hotel") has filed an Appeal of Application of the Zoning Administrators interpretation and determination decision that the Ontario Development Code Division 5.03, Section 5.03.250(E)(1) is applicable and enforceable to the operation West Coast Inn, File No. PDET23-016, as described in the title of this Resolution (hereinafter referred to as "Application" or "Project"); and

WHEREAS, the West Coast Inn is located at 1211 North Grove Avenue, within the Neighborhood Commercial zoning district. Hotels or Motels are permitted within the Neighborhood Commercial zoning district subject to approval of a Conditional Use Permit; and

WHEREAS, on January 8, 2021, Executive Director of Finance Armen Harkalyan ("License Official") sitting as the Transient Occupancy Tax License Official under Chapter 6 of Title 3 of the Ontario Municipal Code, held a hearing for the operator of the West Coast Inn. The purpose of the hearing was to allow the operators the opportunity to rebut the amount of tax assessed by the License Official and offer evidence why the specified tax, interest, and penalties are incorrect; and

WHEREAS, on January 8, 2021, the License Official issued a Stay of Decision and referred the matter to the Zoning Administrator to provide an interpretation or determination regarding the applicability and enforceability of Section 5.03.250(E)(1) as to West Coast Inn; and

WHEREAS in 1987, the City of Ontario Building Department issued building permits for the construction of West Coast Inn Motel (known as "Grove Avenue Motel"); and

WHEREAS, Division 9.01 (Definitions) of the Ontario Development Code (ODC) defines a Motel as a lodging facility that offers transient accommodations at a daily rate, to the general public, which are predominantly accessed from parking lots or exterior walkways consistent with the City approval and design layout for the West Coast Inn; and

WHEREAS, ODC Division 5.03, Section 5.03.250(E)(1) states that no guestroom, for Motel or Hotel, shall be rented for a period exceeding 30 consecutive calendar days, counting portions of calendar days as full days; and

WHEREAS, guestrooms that are being rented longer than 30 days is in violation of ODC Division 5.03, Section 5.03.250(E)(1) and not consistent with the intent of Motel or Hotel to provide transient accommodations at a daily rate; and

WHEREAS, Section 3-6.029(g) of the Ontario Municipal Code (OMC) clearly states that "Transient" shall mean any person who exercises occupancy or is entitled to occupancy by reason of concession, permit, right of access, license, or other agreement for a period of thirty (30) consecutive calendar days or less, counting portions of calendar days as full days; and

WHEREAS, the Transient Occupancy Tax shall be imposed on "transients" as defined the OMC Section 3-6.029(g); and

WHEREAS, in response to the Appellants basis for the appeal staff has prepared a response to each of the items. Below is the Appellants statement and staff's response:

1. *Appellants' Issue No. 1: The Planning Commission was required under California Environmental Quality Act to provide an Environmental Impact Report as the issue of the applicability of the Development Code may have a negative impact on the environment.*

   Staff Response: Appellants' argument is flawed because the TOT ordinance was not a "project" under CEQA requiring an Environmental Impact Report.

   The California Environmental Quality Act (CEQA) provides a process through which public agencies, the public, and project developers can evaluate a project, understand its environmental impacts, and develop measures to reduce these impacts. CEQA applies to projects that may result in a change in the environment; a full environmental review is only required where the project could result in a significant adverse impact.

   As part of the Planning Commission's decision to uphold the Zoning Administrator's decision, the Planning Commission reviewed and considered the information contained in the administrative record for the Project. Based upon the facts and information contained in the administrative record, including all written and oral evidence presented to the Planning Commission, the Planning Commission found that:

   (1) The administrative record has been completed in compliance with CEQA, the State CEQA Guidelines, and the City of Ontario Local CEQA Guidelines; and

   (2) This Resolutions were reviewed with respect to the applicability of the California Environmental Quality Act of 1970 ("CEQA "), and the State

CEQA Guidelines, and the Planning Commission determined that the Resolutions did not constitute a " project" within the meaning of CEQA Guidelines Section 15060(c)(2) because there is no potential that it will result in a direct or reasonably foreseeable indirect physical change in the environment and CEQA Guidelines Section 15378 because it has no potential for either a direct physical change to the environment, or a reasonably foreseeable indirect physical change in the environment.

Moreover, if the Planning Commission's decision to uphold the Zoning Administrator's decision comprises a project for CEQA analysis, it falls within the " common sense" CEQA exemption set forth in CEQA Guidelines Section 15061(b)(3), excluding projects where "it can be seen with certainty that there is no possibility that the activity in question (interpretation or determination regarding the applicability and enforceability of the Development Code) may have a significant effect on the environment."

Additionally, the "creation of government funding mechanisms or other fiscal activities, which do not involve any commitment to any specific project. . ." are not considered a "project" under CEQA. CEQA Guidelines section 15378(B)(4).

Here, there is no physical project undertaken. The TOT's effect is fiscal. Thus, the TOT ordinance is a funding mechanism is not a "project" and an EIR is not required under CEQA.

2. *Appellants' Issue No. 2: Subject hotels never received notice of the zoning change and adoption of Ontario Development Code ("ODC") Division 5.03 Section 5.03.250(E)(1) and were entitled to an individualized hearing under the First Amendment Petition Clause, Fourth Amendment Search and Seizure Clause, the Fifth Amendment Takings Clause, the Fourteenth Amendment Due Process Clause (Substantive and Procedural) and Equal Protection of the United States Constitution.*

Staff Response: Appellant's arguments introduce irrelevant legal arguments that go beyond the limited scope of the Zoning Administrator's decisions.

The Zoning Administrator has acted within his limited authority to interpret the Ontario Development Code ("ODC"). The Zoning Administrator, under Section l.02.015(A)(l) of the ODC, has jurisdiction of, and is responsible for, the administration and application of the regulations and provisions of the Development Code. The Zoning Administrator's power is limited to interpretation of the Code as applied to a particular case. ODC § 1.02.010(B)(1). Thus, the Zoning Administrator's power is limited to interpretation of the code and its application to a particular set of facts.

Appellants' arguments introduce irrelevant legal arguments that do not challenge the underlying factual findings and analysis of each of the decisions by the Zoning Administrator. The Appellants take issue with the implementation of legislation of the Ontario Development Code. For reference, Ordinance No. 1569, which

imposed the TOT was passed in 1965 – fifty-nine years ago. These issues are beyond the scope of the Zoning Administrator's role. For the Zoning Administrator to consider these legal issues would exceed the power granted by the Development Code.

The Zoning Administrator has acted within his limited authority to interpret the Development Code as to Appellants' claims and found that their hotels are subject to ODC chapter 5.03.250(E)(1). Appellants do not challenge the factual findings made by the Zoning Administrator. Thus, the appeal should be denied, and the Zoning Administrator's decisions upheld; and

WHEREAS, Ontario Development Code Table 2.01-1 (Review Matrix) establishes that the Zoning Administrator has the responsibility and authority to review and act upon Interpretations and Land Use Determinations; and

WHEREAS, the Application is a project pursuant to the California Environmental Quality Act, commencing with Public Resources Code Section 21000 (hereinafter referred to as "CEQA"); and

WHEREAS, the Project is not subject to the California Environmental Quality Act of 1970, as amended, and the Guidelines promulgated thereunder, pursuant to Section 15060(c)(2) of the State CEQA Guidelines, as the activity will not result in a direct or reasonably foreseeable indirect physical change in the environment; and

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

WHEREAS, City of Ontario Development Code Division 2.03 (Public Hearings) prescribes the manner in which public notification shall be provided and hearing procedures to be followed, and all such notifications and procedures have been completed; and

WHEREAS, on May 28, 2024, the Planning Commission of the City of Ontario conducted a hearing to consider the Appeal and concluded said hearing on that date, voting to issue Resolution No. PC24-024 upholding the Zoning Administrator's decision to deny the Appeal; and

WHEREAS, on June 6, 2024, Frank A. Weiser ("Appellant Representative"), submitted an Appeal of the Planning Commission's decision to uphold the Zoning Administrator's decision and deny the Appeal of the Land Use Determination, File No. PDET23-016; and

WHEREAS, on September 3, 2024, the City Council of the City of Ontario conducted a hearing to consider the Appeal of the Planning Commission's denial of the Application, and concluded said hearing on that date and continued the item to the October 1, 2024 City Council meeting; and

WHEREAS, on October 1 2024, the City Council of the City of Ontario conducted a hearing to consider the Appeal of the Planning Commission's denial of the Application, and concluded said hearing on that date and continued the item to the October 15, 2024 City Council meeting; and

WHEREAS, on October 15, 2024, the City Council of the City of Ontario conducted a hearing to consider the Appeal of the Planning Commission's denial of the Application, and concluded said hearing on that date; and

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

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

SECTION 1: ***Environmental Determination and Findings.*** As the decision-making authority for the Project, the City Council has reviewed and considered the information contained in the administrative record for the Project. Based upon the facts and information contained in the administrative record, including all written and oral evidence presented to the City Council, the City Council finds as follows:

(1) The administrative record has been completed in compliance with CEQA, the State CEQA Guidelines, and the City of Ontario Local CEQA Guidelines; and

(2) This Resolution has been reviewed with respect to the applicability of the California Environmental Quality Act of 1970 ("CEQA "), and the State CEQA Guidelines, and the City Council has determined that this Resolution does not constitute a " project" within the meaning of CEQA Guidelines Section 15060(c)(2) because there is no potential that it will result in a direct or reasonably foreseeable indirect physical change in the environment and CEQA Guidelines Section 15378 because it has no potential for either a direct physical change to the environment, or a reasonably foreseeable indirect physical change in the environment; and

(3) The determination of CEQA exemption reflects the independent judgment of the City Council.

SECTION 2: ***Concluding Facts and Reasons.*** Based on the substantial evidence presented to the City Council during the above-referenced hearing, the specific findings set forth in Section 1, above, and for all the reasons stated in the staff report, the City Council hereby concludes as follows:

(1) That the ODC Division 5.03, Section 5.03.250(E)(1) is applicable and enforceable to the operation of the West Coast Inn. ODC Division 5.03, Section 5.03.250(E)(1) states that no guestroom, for Motel or Hotel, shall be rented for a period exceeding 30 consecutive calendar days, counting portions of calendar days as full days. The intent of a Motel or Hotel to provide transient accommodations at a daily rate. Section 3-6.029(g) of the

Ontario Municipal Code (OMC) clearly states that "Transient" shall mean any person who exercises occupancy or is entitled to occupancy by reason of concession, permit, right of access, license, or other agreement for a period of thirty (30) consecutive calendar days or less, counting portions of calendar days as full days. Therefore, the Transient Occupancy Tax shall be imposed on "transients" as defined the OMC Section 3-6.029(g).

(2) That Hotel has not applied for an exemption pursuant to Section 3-6.04 of the OMC and therefore no such exemption would be applicable to the Hotel.

(3) That Hotel's operations, as stipulated in the January 8, 2021 hearing, allowing guests to stay longer than 30 days is in violation of ODC Division 5.03, Section 5.03.250(E)(1) and in violation of all applicable zoning and use permits.

SECTION 3: ***City Council Action.*** Based upon the findings and conclusions set forth in Sections 1 and 2, above, the City Council hereby Approves to uphold the Planning Commission's Decision to uphold the Zoning Administrator Decision herein described Application.

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

SECTION 5: ***Certification to Adoption.*** The City Clerk shall certify to the adoption of the Resolution.

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

PASSED, APPROVED, AND ADOPTED this 15th day of October, 2024.

_____
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. 2024- was duly passed and adopted by the City Council of the City of Ontario at their regular meeting held October 15, 2024 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. 2024- duly passed and adopted by the Ontario City Council at their regular meeting held October 15, 2024.

_____
SHEILA MAUTZ, CITY CLERK

(SEAL)

CITY OF ONTARIO *Agenda Report* **October 15, 2024**	**SECTION:** **ADMINISTRATIVE REPORTS/DISCUSSION/ACTION**
Department: Utilities Prepared By: Courtney Jones Staff Member Presenting: Scott Burton, Utilities General Manager Reviewed By: Dennice Raygoza, Albert G Gastelum, Michael Sigsbee Approved By:	Submitted To: Council/OHA Approved: _____ Continued To: _____ Denied: _____ Item No: 24

SUBJECT: **A RESOLUTION AUTHORIZING THE DISSOLUTION OF THE CHINO BASIN WATER BANK PLANNING AUTHORITY AND APPROVING AN AMENDMENT TERMINATING THE AUTHORITY'S JOINT POWERS AGREEMENT BY AND AMONG THE CITY OF ONTARIO, INLAND EMPIRE UTILITIES AGENCY, CUCAMONGA VALLEY WATER DISTRICT, AND MONTE VISTA WATER DISTRICT**

RECOMMENDATION: That the City Council adopt a Resolution authorizing the City Manager, or his designee, to dissolve the Chino Basin Water Bank Planning Authority and approve an Amendment terminating the Joint Powers Agreement by and among the City of Ontario, Inland Empire Utilities Agency, Cucamonga Valley Water District, and Monte Vista Water District.

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: The Adopted Fiscal Year 2024-25 Operating Budget includes appropriations from the Water and Sewer Fund for the remaining program and dissolution services under this Agreement. There is no impact to the General Fund.

BACKGROUND & ANALYSIS: The efforts of the Chino Basin Water Bank Planning Authority (Planning JPA) established by the City of Ontario, Cucamonga Valley Water District, Inland Empire Utilities Agency, and Monte Vista Water District (collectively, Partners) were completed as envisioned. On July 31, 2024, the Planning JPA Board of Directors provided direction to proceed with the termination of the Planning JPA, requesting that the Partners' staff seek approval of the Resolutions and Amendment from their respective governing bodies. Subsequently, the Partners' staff will complete the post-termination steps in accordance with the California Government Code.

The Chino Groundwater Basin (Basin) is one of Southern California's largest groundwater basins, storing approximately five million acre-feet of water. Groundwater is an important local water source, accounting for approximately 40% of the area's water supply, and supports the nearly $1.5

billion economy of the region's agriculture, industries, and businesses. Recognizing the growing importance of groundwater and surface water use to meet water demands, the opportunity to leverage storage in the Basin for local, regional, and state benefits emerged.

The Planning JPA was established in December 2017 through the execution of a Joint Exercise of Powers Agreement by the Partners. The purpose of the Planning JPA was to develop the concept and related planning documents for a storage and recovery program that builds the necessary infrastructure to sustainably maximize available water supplies for broad mutual benefit in the Basin. This includes drought resilience, land subsidence management, reduced pumping costs, improved water quality, and meeting replenishment obligations while protecting existing water rights. The overall goals of a water bank include coordinating funding, designing and operating the program, pursuing grants, facilitating water trading, and procuring water.

Since its formation, the Planning JPA has successfully completed a plan to develop a storage and recovery program to store up to 100,000 acre-feet of water within the Basin. The Partners brought on consultants to develop several planning documents and tools needed to explore the feasibility of a groundwater bank, including a Framework White Paper (2018), a Preliminary Banking Scenario & Facilities Evaluation (2019), a Financial Analysis and Financial/Pricing Model (2019), an Operations Plan (2022), and a Water Marketing Strategy (2022). This work was partially funded through a U.S. Bureau of Reclamation WaterSMART grant, which reimbursed the Partners 46% of the total cost for the planning efforts.

The objectives of the Chino Basin Water Bank Planning Authority were completed as intended, and the Planning JPA is not required for any future implementation of the envisioned storage and recovery program.

RESOLUTION NO. _____

A RESOLUTION OF THE CITY COUNCIL OF ONTARIO, CALIFORNIA, AGREEING TO DISSOLVE THE CHINO BASIN WATER BANK PLANNING AUTHORITY AND APPROVE AN AMENDMENT TERMINATING THE AUTHORITY'S JOINT POWERS AGREEMENT

WHEREAS, the Chino Basin Water Bank Planning Authority (the "Authority") was created in 2017 by a Joint Exercise of Powers Agreement ("JPA Agreement") by and among the Cucamonga Valley Water District, Monte Vista Water District, City of Ontario, and Inland Empire Utilities Agency ("Parties") for the purposes of, among other things, engaging in planning activities for potential coordinated water storage and recovery programs within the Chino Groundwater Basin for local, regional and statewide benefits; and

WHEREAS, under the JPA Agreement, the Parties agreed that subsequent implementation of any coordinated storage and recovery programs that might result from the planning activities under the JPA Agreement would be the subject of a new joint exercise of powers agreement or an amendment to the JPA Agreement; and

WHEREAS, Section 10.1(b) of the JPA Agreement provides:

(b) The Parties may all jointly agree by written consent to terminate the Agreement, as expressed by resolution of the governing boards of all Parties (passed by vote of the membership of the governing body of each Party). Such termination shall provide for adequate time to wind-up the affairs of the Authority and distribute any assets pursuant to this Agreement. The Parties shall be obligated to pay their contributions agreed upon in Section 7.2 of this Agreement until the effective date of termination.; and

WHEREAS, the Parties agree that the Authority has now completed the planning activities envisioned in the JPA Agreement and desire to jointly consent in writing to the termination of the JPA Agreement and dissolution of the Authority; and

WHEREAS, a proposed amendment terminating the JPA Agreement and winding down the affairs of the Authority is attached as Attachment A.

NOW, THEREFORE, THE CITY OF ONTARIO DOES HEREBY RESOLVE, ORDER, AND DETERMINE AS FOLLOWS:

SECTION 1. The City Council does hereby find and declare that the above recitals are true and correct.

SECTION 2. The purpose of the Authority has been completed and the Authority has no assets which have not already been distributed to the Parties to the Agreement.

SECTION 3. Approval of Dissolution of Authority and Termination of JPA Agreement. The City Council consents to the joint termination of the JPA Agreement and dissolution of the Authority pursuant to the amendment terminating the JPA Agreement attached hereto as Attachment A. The City Council authorizes and directs the Mayor, the City Clerk, or the City Manager, or the designee, to execute the amendment, and further directs the City Manager, or the designee to take such other actions as are necessary to fulfill the intent of this Resolution.

SECTION 4. This Resolution shall become effective upon its adoption.

SECTION 5. The City Clerk shall certify as to the adoption of this Resolution.

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

PASSED, APPROVED, AND ADOPTED this 15th day of October, 2024.

_____
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. 2024- was duly passed and adopted by the City Council of the City of Ontario at their regular meeting held October 15, 2024 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. 2024- duly passed and adopted by the Ontario City Council at their regular meeting held October 15, 2024.

_____
SHEILA MAUTZ, CITY CLERK

(SEAL)

EXHIBIT A

AMENDMENT TERMINATING THE CHINO BASIN WATER BANK PLANNING AUTHORITY JOINT EXERCISE OF POWERS AGREEMENT AND DISSOLVING THE AUTHORITY

AMENDMENT TERMINATING THE CHINO BASIN WATER BANK PLANNING AUTHORITY JOINT EXERCISE OF POWERS AGREEMENT AND DISSOLVING THE AUTHORITY

This Amendment (this "Amendment") to the JPA Agreement (as defined below) is dated this ____ day of _____ 2024, for reference purposes only, and is entered into by and between the Cucamonga Valley Water District, Monte Vista Water District, City of Ontario, and the Inland Empire Utilities Agency (each individually a "Party" and collectively the "Parties").

RECITALS

A. The Chino Basin Water Bank Planning Authority (the "Authority") was created by the Parties pursuant to a Joint Exercise of Powers Agreement dated as of December 13, 2017 ("JPA Agreement") for the purposes of, among other things, engaging in planning activities for potential coordinated water storage and recovery programs within the Chino Groundwater Basin for local, regional and statewide benefits.

B. Under the JPA Agreement, the Parties agreed that subsequent implementation of any coordinated storage and recovery programs that might result from the planning activities under the JPA Agreement would be the subject of a new joint exercise of powers agreement or an amendment to the JPA Agreement.

C. Section 10.1, subsection (b) of the JPA Agreement provides:

> (b) The Parties may all jointly agree by written consent to terminate the Agreement, as expressed by resolution of the governing boards of all Parties (passed by vote of the membership of the governing body of each Party). Such termination shall provide for adequate time to wind-up the affairs of the Authority and distribute any assets pursuant to this Agreement. The Parties shall be obligated to pay their contributions agreed upon in Section 7.2 of this Agreement until the effective date of termination.

D. The Parties agree that the Authority has now completed the planning activities envisioned in the JPA Agreement, and each of the Parties has therefore adopted a resolution approving this Amendment to jointly terminate the JPA Agreement and dissolve the Authority.

AGREEMENT

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

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

2. **Termination.** The Parties hereby agree to terminate the JPA Agreement and thereby dissolve the Authority pursuant to Section 10.1, subsection (b) of the JPA Agreement. The termination shall be effective immediately upon full execution of this Amendment by all of the Parties. Notwithstanding the termination of the JPA Agreement, the Parties agree to comply with

the terms and conditions set forth in this Amendment with regard to post-termination activities as set forth below.

3. **Survival of Pre-Termination Defense and Indemnification Obligations.** The Parties hereby acknowledge and agree that, notwithstanding the termination of the JPA Agreement, certain defense, indemnification and hold harmless obligations shall survive pursuant to Section 9.2 of the JPA Agreement.

4. **Assets**. The Parties acknowledge and agree that there are no assets requiring distribution upon termination of the JPA Agreement. The Parties agree that they have each received copies of planning documents and other materials prepared by the Authority and its consultants, and that any records or personal property currently in the possession of the Parties related to the administration or work of the Authority shall remain in their respective possession and become their property upon termination.

5. **Audits.**

The Parties hereby agree to waive the preparation of annual audit reports for Fiscal Years 2023–2024 and 2024–2025, including a certified audit of all receipts and disbursements, and each Party hereby releases each and every other Party from any and all claims or whatsoever nature by which such Party may have against another Party arising out of or by virtue of the Authority or the JPA Agreement.

6. **Dissolving Party**. Cucamonga Valley Water District hereby agrees to be the "Dissolving Party" of the Authority and to undertake all actions necessary to memorialize and effectuate dissolution of the Authority, including but not limited to: (1) preparation and filing of the appropriate filings with State and local agencies, including, but not limited to forms, notices, or copies of this Amendment pursuant to Government Code section 6503.5 and 6503.6 and 53051; (2) making final payment for any amounts payable by the Authority under the JPA Agreement and its approved budget through the date of termination; and (3) whatever other final actions are required to memorialize or perfect the dissolution of the Authority. Upon completion of all actions necessary to memorialize and effectuate dissolution of the Authority, as described above, Cucamonga Valley Water District will prepare a tabulation of the final costs, with each Party responsible for 25%. Cucamonga Valley Water District will then invoice each Party 25% of the final costs which the other Parties shall pay within 30 days of receipt.

Each Party shall defend, indemnify and hold harmless Cucamonga Valley Water District and its respective elected officials, officers, employees, attorneys, agents and volunteers, from and against any and all claims, demands, causes of action, costs, expenses, liability, loss, damage, or injury, in law or equity, to property or persons, including wrongful death, in any manner arising out of or in connection with Cucamonga Valley Water District's performance under this section ("Claims"), unless caused by the negligence, recklessness, or willful misconduct of the Dissolving Party or its officials, officers, employees, attorneys, agents and volunteers. For the clarity of the Parties, obligations arising under this paragraph shall be limited exclusively to Claims arising out of or in connection with the performance of the Dissolving Party's obligations under this section. This paragraph is not intended to amend or otherwise affect Section 8.1 of the Agreement, which

provides that the debts, liabilities, or obligations of the Authority will not constitute the debts, liabilities or obligations of the Parties.

7. **Default and Delinquency**. Any Party failing to pay an amount due under this Amendment shall bear interest on the unpaid amount at the rate of ten percent (10%) per annum, or the maximum rate allowed by law if it is less than ten percent (10%) per annum, until the overdue amount is paid in full.

8. **Adequate Consideration**. The Parties hereto irrevocably acknowledge and agree that they have each received adequate and independent consideration for the performance of the obligations they have undertaken pursuant to this Amendment.

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

10. **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.

11. **Counterparts**. This Amendment may be executed by the Parties in separate counterparts, each of which when so executed and delivered shall be an original, but all such counterparts shall together constitute but one and the same instrument.

[signature page follows]

IN WITNESS WHEREOF, the Parties hereto have executed this Amendment Terminating the Chino Basin Water Bank Planning Authority Joint Exercise of Powers Agreement as of the date last set forth below.

CUCAMONGA VALLEY WATER DISTRICT

By_____

Title_____

Dated _____

MONTE VISTA WATER DISTRICT

By_____

Title_____

Dated _____

CITY OF ONTARIO

By_____

Title_____

Dated _____

INLAND EMPIRE UTILITIES AGENCY

By_____

Title_____

Dated _____