

**CITY OF ONTARIO**  
**CITY COUNCIL/HOUSING AUTHORITY/SUCCESSOR**  
**AGENCY TO THE ONTARIO REDEVELOPMENT AGENCY**  
**AGENDA**  
**MARCH 21, 2017**

**Paul S. Leon**  
Mayor

**Debra Dorst-Porada**  
Mayor pro Tem

**Alan D. Wapner**  
Council Member

**Jim W. Bowman**  
Council Member

**Ruben Valencia**  
Council Member



**Al C. Boling**  
City Manager

**John E. Brown**  
City Attorney

**Sheila Mautz**  
City Clerk

**James R. Milhiser**  
Treasurer

**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 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.
- Comments will be limited to 3 minutes. Speakers will be alerted when they have 1 minute remaining and when their time is up. Speakers are then to return to their seats and no further comments will be permitted.
- In accordance with State Law, remarks during public comment are to be limited to subjects within Council's jurisdiction. Remarks on other agenda items will be limited to those items.
- Remarks from those seated or standing in the back of chambers will not be permitted. All those wishing to speak including Council and Staff need to be recognized by the Chair before speaking.

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

**(EQUIPMENT FOR THE HEARING IMPAIRED AVAILABLE IN THE RECORDS MANAGEMENT OFFICE)**

**CALL TO ORDER (*OPEN SESSION*)**

**6:30 p.m.**

***ROLL CALL***

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

***PLEDGE OF ALLEGIANCE***

Council Member Valencia

***INVOCATION***

Assistant Pastor Dan Gross, Montecito Baptist Church

**PUBLIC COMMENTS**

**6:30 p.m.**

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

As previously noted -- if you wish to address the Council, fill out one of the blue slips at the rear of the chambers and give it to the City Clerk.

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

## **CONSENT CALENDAR**

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

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

### **1. APPROVAL OF MINUTES**

Minutes for the regular meeting of the City Council/ Housing Authority/Successor Agency to the Ontario Redevelopment Agency of February 21, 2017, approving same as on file in the Records Management Department.

### **2. BILLS/PAYROLL**

**Bills** February 5, 2017 through February 18, 2017 and **Payroll** February 5, 2017 through February 18, 2017, when audited by the Finance Committee.

### **3. LICENSE AGREEMENT FOR USE OF A MULTI-PURPOSE TRAIL IN THE EDENGLLEN SPECIFIC PLAN AREA**

That the City Council approve a license agreement (on file in the Records Management Department) between the City and Southern California Edison (SCE) for use of the multi-purpose trail in SCE property within the Edenglen Specific Plan area; and authorize the City Manager to execute said agreement, related documents and future renewals.

### **4. CONSTRUCTION CONTRACT FOR THE REPLACEMENT AND INSTALLATION OF TREMCO ROOF SYSTEM AT ONTARIO POLICE DEPARTMENT ANNEX/STONE ROOFING COMPANY CORPORATION**

That the City Council award Contract No. MS 1617-3 to Stone Roofing Company Corporation, of Azusa, California, for the replacement and installation of a new Tremco Roof System at Ontario Police Department Annex in the amount of \$141,380 plus a 15% contingency (\$21,207) for a total amount of \$162,587; authorize the City Manager to execute said contract (on file in the Records Management Department), and authorize the filing of the notice of completion at the conclusion of all construction activities related to the project.

**5. PROFESSIONAL SERVICES AGREEMENTS FOR NETWORK OPERATIONS SUPPORT SERVICES AND ENGINEERING SUPPORT SERVICES FOR THE CITY'S FIBER OPTIC NETWORK/RON IVIE/IM SERVICES GROUP LLC**

That the City Council authorize the City Manager to execute three-year professional services agreements (on file in the Records Management Department) with:

- (A) Ron Ivie, consultant, of Boise, Idaho, for network operations support consulting services, in an amount estimated to be \$480,000 (Four Hundred Eighty Thousand Dollars) for the term of the agreement; and
- (B) IM Services Group, LLC of Boise, Idaho, for engineering support services, in an amount estimated to be \$450,000 (Four Hundred Fifty Thousand Dollars) for the term of the agreement; and
- (C) Authorize the City Manager to extend each agreement for up to two additional years in amounts consistent with the terms and conditions of the original term and at an annual average of \$160,000 and \$150,000 respectively, contingent on City Council approved budgets.

**6. AN ORDINANCE TO CHANGE THE ZONING DESIGNATIONS (FILE NO. PZC16-004) ON VARIOUS PROPERTIES GENERALLY LOCATED TO THE EAST OF EUCLID AVENUE BETWEEN STATE AND PHILADELPHIA STREETS AND NEAR FOURTH STREET AND GROVE AVENUE IN ORDER TO MAKE THE ZONING CONSISTENT WITH THE ONTARIO PLAN (TOP) LAND USE DESIGNATIONS OF THE PROPERTIES**

That City Council consider and adopt an ordinance approving a Zone Change (File No. PZC16-004) to create consistency between the zoning and the General Plan land use designations of the subject properties.

ORDINANCE NO. \_\_\_\_\_

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF ONTARIO, CALIFORNIA, APPROVING FILE NO. PZC16-004, A CITY INITIATED REQUEST TO CHANGE THE ZONING DESIGNATIONS ON VARIOUS PROPERTIES GENERALLY LOCATED TO THE EAST OF EUCLID AVENUE BETWEEN STATE AND PHILADELPHIA STREETS AND NEAR FOURTH STREET AND GROVE AVENUE IN ORDER TO MAKE THE ZONING CONSISTENT WITH THE ONTARIO PLAN (TOP) LAND USE DESIGNATIONS OF THE PROPERTIES, AND MAKING FINDINGS IN SUPPORT THEREOF - APN: AS SHOWN IN EXHIBIT A (ATTACHED).

**7. AN INTER-AGENCY BILLBOARD RELOCATION AGREEMENT (FILE NO. PSGN17-016) FOR THE REMOVAL, RELOCATION AND PLACEMENT OF BILLBOARDS/SAN BERNARDINO COUNTY TRANSPORTATION AUTHORITY/LAMAR CENTRAL OUTDOOR, LLC**

That the City Council adopt a resolution approving a Billboard Relocation Agreement between the City of Ontario, San Bernardino County Transportation Authority, and Lamar Central Outdoor, LLC, and authorizing the City Manager to execute the agreement and any other documents necessary to fulfill the terms of the agreement.



RESOLUTION NO. \_\_\_\_\_

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF ONTARIO, CALIFORNIA APPROVING FILE NO. PSGN17-016, A BILLBOARD RELOCATION AGREEMENT BETWEEN THE CITY OF ONTARIO, SAN BERNARDINO COUNTY TRANSPORTATION AUTHORITY AND LAMAR CENTRAL OUTDOOR, LLC AND MAKING FINDINGS IN SUPPORT THEREOF (APNS: 0110-022-12, 0110-131-19, 0210-212-60, 1008-261-45, 1011-111-10, AND 1011-182-10).

**8. CONSTRUCTION CONTRACT FOR WELL FACILITY BACKUP POWER UPGRADES AT WELL NOS. 24, 25, 30, 35, & 36 DESIGN-BUILD SERVICES/BAKER ELECTRIC, INC.**

That the City Council approve the plans and specifications and award Contract No. UT 1617-01 (on file with the Records Management Department) to Baker Electric, Inc. of Escondido, California for the design and construction of Well Facility Backup Power Upgrades at Well Nos. 24, 25, 30, 35, & 36 in the amount of \$332,747, plus a 15% contingency of \$49,912, for a total amount of \$382,659; and authorize the City Manager to execute said contract and file a notice of completion at the conclusion of all construction activities related to the project.

**9. A RESOLUTION APPROVING AN APPLICATION FOR FISCAL YEAR 2016-17 HOUSEHOLD HAZARDOUS WASTE GRANT (HD29) FROM THE DEPARTMENT OF RESOURCES RECYCLING AND RECOVERY (CALRECYCLE)**

That the City Council adopt a resolution approving the City's application for the Fiscal Year 2016-2017 Household Hazardous Waste Grant pursuant to Public Resources Code Sections 40000 et seq. and authorize the City Manager to execute said application.

RESOLUTION NO. \_\_\_\_\_

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF ONTARIO, CALIFORNIA, APPROVING A GRANT APPLICATION TO THE DEPARTMENT OF RESOURCES RECYCLING AND RECOVERY HOUSEHOLD HAZARDOUS WASTE (HHW) GRANT PROGRAM TO FUND PUBLIC EDUCATION AND OUTREACH AND MINOR IMPROVEMENTS TO THE HOUSEHOLD HAZARDOUS WASTE FACILITY.

## PUBLIC HEARINGS

Pursuant to Government Code Section 65009, if you challenge the City's zoning, planning or any other decision in court, you may be limited to raising only those issues you or someone else raised at the public hearing described in this notice, or in written correspondence delivered to the City Council at, or prior to the public hearing.

**10. A PUBLIC HEARING REGARDING THE ECONOMIC DEVELOPMENT SUBSIDY REPORT AND THIRD AMENDMENT TO OPERATING COVENANT AND TAX SHARING AGREEMENT BETWEEN THE CITY OF ONTARIO AND G.H.N., INC. (EXCLUSIVELY VOLVO) PURSUANT TO GOVERNMENT CODE SECTION 53083; CONSIDERATION OF RESOLUTIONS ACCEPTING THE ECONOMIC DEVELOPMENT SUBSIDY REPORT, APPROVING THE THIRD AMENDMENT TO OPERATING COVENANT AND TAX SHARING AGREEMENT, AND MAKING RELATED FINDINGS**

That the City Council take the following actions:

- (A) Hold the public hearing;
- (B) Adopt a resolution accepting the Economic Development Subsidy Report prepared pursuant to Government Code Section 53083 regarding a Third Amendment to Operating Covenant and Tax Sharing Agreement (on file with the Records Management Department) by and between the City of Ontario and G.H.N., Inc. a California Corporation (Exclusively Volvo);
- (C) Adopt a resolution approving the Third Amendment to Operating Covenant and Tax Sharing Agreement for no less than ten years, authorizing the City Manager to execute the Third Amendment to Operating Covenant and Tax Sharing Agreement, and making related findings; and
- (D) Direct City staff to file a categorical exemption based upon the City Council's finding that the impacts for this existing facility is not a project and subject to environmental review and that there is no possibility that the activity in question may have a significant effect on the environment.

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

Written communication.

Oral presentation.

Public hearing closed.

RESOLUTION NO. \_\_\_\_\_

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF ONTARIO, CALIFORNIA, ACCEPTING THE ECONOMIC DEVELOPMENT SUBSIDY REPORT PREPARED PURSUANT TO GOVERNMENT CODE SECTION 53083 REGARDING THE THIRD AMENDMENT TO OPERATING COVENANT AND TAX SHARING AGREEMENT BY AND BETWEEN THE CITY OF ONTARIO AND G.H.N., INC. (EXCLUSIVELY VOLVO).

RESOLUTION NO. \_\_\_\_\_

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF ONTARIO, CALIFORNIA, APPROVING THE THIRD AMENDMENT TO OPERATING COVENANT AND TAX SHARING AGREEMENT BETWEEN THE CITY OF ONTARIO AND G.H.N., INC. (EXCLUSIVELY VOLVO) AND MAKING RELATED FINDINGS.

**II. PUBLIC HEARING TO CONSIDER AN ORDINANCE APPROVING A DEVELOPMENT AGREEMENT (FILE NO. PDA16-003) BETWEEN THE CITY OF ONTARIO AND GDCI-RCCD2-L.P., TO ESTABLISH THE TERMS AND CONDITIONS FOR THE DEVELOPMENT OF TENTATIVE PARCEL MAPS 19725 (FILE NO. PMTT16-010) AND 19741 (FILE NO. PMTT16-011) WITHIN THE REGIONAL COMMERCIAL/MIXED USE DISTRICT (PLANNING AREA 8A) OF THE RICH-HAVEN SPECIFIC PLAN, LOCATED ON THE SOUTH SIDE OF ONTARIO RANCH ROAD, BETWEEN MILL CREEK AVENUE AND HAMNER AVENUE**

That the City Council introduce and waive further reading of an ordinance approving a Development Agreement (File No. PDA16-003, on file with the Records Management Department) between the City of Ontario and GDCI-RCCD2-L.P., for properties located on the south side of Ontario Ranch Road, between Mill Creek Avenue and Hamner Avenue (APNs: 0218-211-12 and 0218-211-25).

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

Written communication.

Oral presentation.

Public hearing closed.

ORDINANCE NO. \_\_\_\_\_

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF ONTARIO, CALIFORNIA, APPROVING A DEVELOPMENT AGREEMENT (FILE NO. PDA16-003) BETWEEN THE CITY OF ONTARIO AND GDCI-RCCD2-L.P. TO ESTABLISH THE TERMS AND CONDITIONS FOR THE DEVELOPMENT OF TENTATIVE PARCEL MAPS 19725 (FILE NO. PMTT16-010) AND 19741 (FILE NO. PMTT16-011) WITHIN THE REGIONAL COMMERCIAL/MIXED USE DISTRICT (PLANNING AREA 8A) OF THE RICH-HAVEN SPECIFIC PLAN, LOCATED ON THE SOUTH SIDE OF ONTARIO RANCH ROAD, BETWEEN MILL CREEK AVENUE AND HAMNER AVENUE, AND MAKING FINDINGS IN SUPPORT THEREOF (APNS:0218-211-12 AND 0218-211-25).

**12. A PUBLIC HEARING TO CONSIDER AN AMENDMENT TO THE AVENUE SPECIFIC PLAN (FILE NO. PSPA16-004) TO CHANGE THE LAND USE DESIGNATIONS FOR PLANNING AREA 7 FROM LOW DENSITY RESIDENTIAL (2.1 TO 5.0 DU/AC) TO LOW-MEDIUM DENSITY RESIDENTIAL (5.1 TO 11.0 DU/AC) AND TO CHANGE PLANNING AREA 11 FROM MEDIUM DENSITY RESIDENTIAL (11.1 TO 25 DU/AC) TO LOW MEDIUM-DENSITY RESIDENTIAL (5.1 TO 11.0 DU/AC) TO ALLOW FOR THE TRANSFER OF 155 UNITS FROM PLANNING AREA 11 (225 DU) TO PLANNING AREA 7 (287 DU). THE PROJECT SITES ARE LOCATED AT THE NORTHEAST CORNER OF ARCHIBALD AVENUE AND ONTARIO RANCH ROAD (PLANNING AREA 7) AND THE SOUTHWEST CORNER OF ONTARIO RANCH ROAD AND NEW HAVEN DRIVE**

That the City Council adopt a resolution approving an amendment to The Avenue Specific Plan (File No. PSPA16-004), pursuant to the facts and reasons contained in the staff report and attached resolution, and subject to the conditions of approval contained in the attached departmental reports.

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

Written communication.

Oral presentation.

Public hearing closed.

RESOLUTION NO. \_\_\_\_\_

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF ONTARIO, CALIFORNIA, APPROVING FILE NO. PSPA16-004, AN AMENDMENT TO THE AVENUE SPECIFIC PLAN TO CHANGE THE LAND USE DESIGNATIONS FOR PLANNING AREA 7 FROM LOW DENSITY RESIDENTIAL (2.1 TO 5.0 DU/AC) TO LOW-MEDIUM DENSITY RESIDENTIAL (5.1 TO 11.0 DU/AC) AND TO CHANGE PLANNING AREA 11 FROM MEDIUM DENSITY RESIDENTIAL (11.1 TO 25 DU/AC) TO LOW MEDIUM-DENSITY RESIDENTIAL (5.1 TO 11.0 DU/AC) TO ALLOW FOR THE TRANSFER OF 155 UNITS FROM PLANNING AREA 11 (225 DU) TO PLANNING AREA 7 (287 DU). THE PROJECT SITES ARE LOCATED AT THE NORTHEAST CORNER OF ARCHIBALD AVENUE AND ONTARIO RANCH ROAD (PLANNING AREA 7) AND THE SOUTHWEST CORNER OF ONTARIO RANCH ROAD AND NEW HAVEN DRIVE (PLANNING AREA 11), AND MAKING FINDINGS IN SUPPORT THEREOF - APNS: 0218-201-18; 0218-201-39; 0218-201-42 AND 0218-201-43.

**STAFF MATTERS**

City Manager Boling

**COUNCIL MATTERS**

***REPORT AND RECOMMENDATION FROM SUBCOMMITTEE AND ACTION ON CITIZEN APPOINTMENTS TO CITY COMMISSIONS***

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

**ADJOURNMENT**

# CITY OF ONTARIO

Agenda Report  
March 21, 2017

SECTION:  
CONSENT CALENDAR

**SUBJECT: LICENSE AGREEMENT FOR USE OF A MULTI-PURPOSE TRAIL IN THE EDENGLLEN SPECIFIC PLAN AREA**

**RECOMMENDATION:** That the City Council approve a license agreement (on file in the Records Management Department) between the City and Southern California Edison (SCE) for use of the multi-purpose trail in SCE property within the Edenglen Specific Plan area; and authorize the City Manager to execute said agreement, related documents and future renewals.

**COUNCIL GOALS:** Invest in the Growth and Evolution of the City's Economy  
Invest in the City's Infrastructure (Water, Streets, Sewers, Parks, Storm Drains and Public Facilities)  
Ensure the Development of a Well Planned, Balanced, and Self-Sustaining Community in the New Model Colony

**FISCAL IMPACT:** The City will pay SCE \$10,461 over a period of five (5) years for the use of a multi-purpose trail located within SCE property. The license fee is \$1,970 for the first year and will be increased by 3% annually through the fifth year.

The annual license fee and the ongoing maintenance and operational costs of the trail will be funded through special tax assessments for City services received from Community Facilities District No. 9 (Edenglen CFD). There is no General Fund expenditures required.

**BACKGROUND:** The Edenglen development was conditioned to construct a multi-purpose community trail in the SCE fee owned property (APN 218-171-14, 15 and 19) as part of the Edenglen Specific Plan requirements (see attached Exhibit "A"). The community trail is a portion of the City's Master Planned Regional trail system and is consistent with The Ontario Plan.

SCE requires the City to enter into a license agreement to use its property for the trail. The City originally entered into a previous five year license agreement on February 21, 2012. The initial term of the license agreement was five successive one year periods, which is the maximum term allowed by SCE for their licenses. The subject license agreement will allow for the continued use of the trail for an additional five years, through the year 2022. The City will be required to enter into subsequent five year license

**STAFF MEMBER PRESENTING:** Louis Abi-Younes, P.E., City Engineer

Prepared by: Khoi Do  
Department: Engineering Department

City Manager  
Approval: 

Submitted to Council/O.H.A. 03/21/2017

Approved: \_\_\_\_\_

Continued to: \_\_\_\_\_

Denied: \_\_\_\_\_

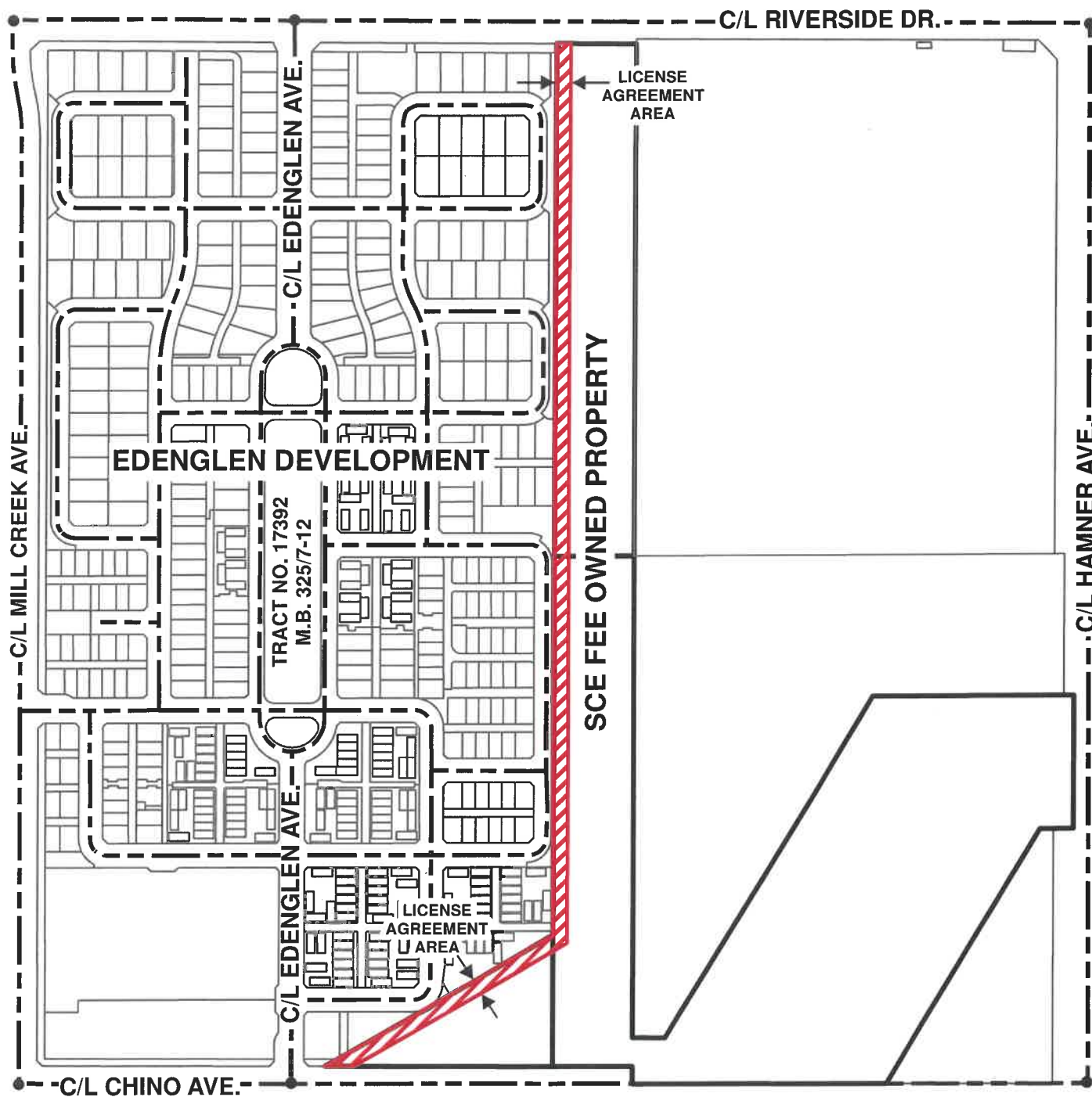
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agreements with SCE, subject to the availability of adequate funds in future year budgets to pay the SCE license fees, for the continued operation of the community trail.

The agreement has been reviewed and approved to form by the City Attorney.

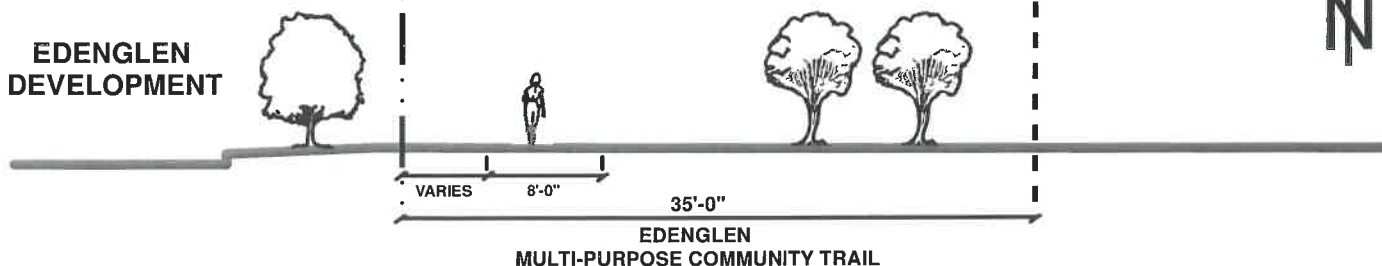
# EXHIBIT A



**EDENGLLEN MULTI-PURPOSE COMMUNITY TRAIL**

**SCE FEE OWNED PROPERTY**

**EDENGLLEN DEVELOPMENT**



**EDENGLLEN MULTI-PURPOSE COMMUNITY TRAIL**

# CITY OF ONTARIO

Agenda Report  
March 21, 2017

SECTION:  
CONSENT CALENDAR

**SUBJECT: CONSTRUCTION CONTRACT FOR THE REPLACEMENT AND INSTALLATION OF TREMCO ROOF SYSTEM AT ONTARIO POLICE DEPARTMENT ANNEX**

**RECOMMENDATION:** That the City Council award Contract No. MS 1617-3 to Stone Roofing Company Corporation, of Azusa, California, for the replacement and installation of a new Tremco Roof System at Ontario Police Department Annex in the amount of \$141,380 plus a 15% contingency (\$21,207) for a total amount of \$162,587; authorize the City Manager to execute said contract (on file in the Records Management Department), and authorize the filing of the notice of completion at the conclusion of all construction activities related to the project.

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

**FISCAL IMPACT:** The Fiscal Year 2016-17 Capital Improvement Projects fund includes appropriations in the amount of \$275,000 for the roof replacement and installation. The recommended contract authorization is \$141,380 plus a 15% contingency (\$21,207) for a total amount of \$162,587.

**BACKGROUND:** Approximately 8,100 square feet of the existing roof located over the Ontario Police Department Annex has recently required increased maintenance due to deterioration and is approximately 30 years old. The replacement roof is an energy-efficient "Cool Roof" that meets California Title 24 specifications. The new roof also has better drainage, lower roof-top and interior building temperatures, which increases both life expectancy and reduces energy costs.

**STAFF MEMBER PRESENTING:** Brent D. Schultz, Housing and Municipal Services Director

Prepared by: Pat Malloy  
Department: Municipal Services

City Manager  
Approval: 

Submitted to Council/O.H.A. 03/21/2017

Approved: \_\_\_\_\_

Continued to: \_\_\_\_\_

Denied: \_\_\_\_\_

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On February 16, 2017, eight bids were received for the replacement and installation of a Tremco Roof at Ontario Police Department Annex. The eight bids ranged from \$141,380 to \$317,000 and are summarized below.

<b>Vendor</b>	<b>Location</b>	<b>Bid Amount</b>
Stone Roofing Company	Azusa, CA	\$141,380
Letner Roofing Company	Orange, CA	\$149,990
Best Contracting Services	Gardena, CA	\$158,240
Rite-Way Roof Corporation	Fontana, CA	\$179,341
Chapman Coast Roof Company	Fullerton, CA	\$207,174
Bishop Inc.	Orange, CA	\$239,115
Commercial Waterproofing	San Clemente, CA	\$259,874
C.I. Services, Inc.	Mission Viejo, CA	\$317,000

Stone Roofing Company Corporation submitted the lowest responsive bid and has performed roof replacement and installation work at various locations in a timely manner.

Once the contract is approved, it is estimated roof construction will commence April 10, 2017, and will be completed by June 22, 2017.

# CITY OF ONTARIO

Agenda Report  
March 21, 2017

SECTION:  
CONSENT CALENDAR

**SUBJECT: PROFESSIONAL SERVICES AGREEMENTS FOR NETWORK OPERATIONS SUPPORT SERVICES AND ENGINEERING SUPPORT SERVICES FOR THE CITY'S FIBER OPTIC NETWORK**

**RECOMMENDATION:** That the City Council authorize the City Manager to execute three-year professional services agreements (on file in the Records Management Department) with:

- (A) Ron Ivie, consultant, of Boise, Idaho, for network operations support consulting services, in an amount estimated to be \$480,000 (Four Hundred Eighty Thousand Dollars) for the term of the agreement; and
- (B) IM Services Group, LLC of Boise, Idaho, for engineering support services, in an amount estimated to be \$450,000 (Four Hundred Fifty Thousand Dollars) for the term of the agreement; and
- (C) Authorize the City Manager to extend each agreement for up to two additional years in amounts consistent with the terms and conditions of the original term and at an annual average of \$160,000 and \$150,000 respectively, contingent on City Council approved budgets.

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

**FISCAL IMPACT:** The Adopted Fiscal Year 2016-17 Budget includes appropriations of \$750,692 from the Fiber DIF Fund for professional services which is sufficient to cover the work to be performed during the current fiscal year. Continued use of these professional services agreements is contingent upon City Council approval of appropriations in future years' budgets. Each consultant will be compensated based on the negotiated rates set forth in their respective agreements and the actual work performed as development occurs and fiber infrastructure is installed and brought on line.

**STAFF MEMBER PRESENTING:** Elliott Ellsworth, Information Technology Director

Prepared by: Jimmy Chang  
Department: Information Technology Agency

City Manager Approval: 

Submitted to Council/O.H.A. 03/21/2017

Approved: \_\_\_\_\_

Continued to: \_\_\_\_\_

Denied: \_\_\_\_\_

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**BACKGROUND:** Mr. Ron Ivie has been an advisor on the City's fiber optic network for many years and was the author of the City's fiber optic master plan adopted in 2013. IM Services Group, LLC has extensive experience with engineering the designs for the City's fiber backbone and several Ontario Ranch projects. Both of these entities are uniquely qualified to perform network design, engineering and construction support for the City's fiber optic network.



# CITY OF ONTARIO

Agenda Report  
March 21, 2017

SECTION:  
CONSENT CALENDAR

**SUBJECT: AN ORDINANCE TO CHANGE THE ZONING DESIGNATIONS (FILE NO. PZC16-004) ON VARIOUS PROPERTIES GENERALLY LOCATED TO THE EAST OF EUCLID AVENUE BETWEEN STATE AND PHILADELPHIA STREETS AND NEAR FOURTH STREET AND GROVE AVENUE IN ORDER TO MAKE THE ZONING CONSISTENT WITH THE ONTARIO PLAN (TOP) LAND USE DESIGNATIONS OF THE PROPERTIES**

**RECOMMENDATION:** That City Council consider and adopt an ordinance approving a Zone Change (File No. PZC16-004) to create consistency between the zoning and the General Plan land use designations of the subject properties.

**COUNCIL GOALS:** Operate in a Businesslike Manner  
Invest in the Growth and Evolution of the City's Economy

**FISCAL IMPACT:** The potential fiscal impacts of the project were analyzed as part of The Ontario Plan ("TOP") adopted in January 2010. The proposed Zone Change will not introduce any fiscal impacts that were not previously analyzed as part of TOP.

**BACKGROUND:** On March 7, 2017, the City Council introduced an Ordinance approving the Zone Change, subject to the removal of one property on Woodlawn Avenue and the AR-zoned properties generally bounded on the north by Locust Street (north side of street), on the south by Cedar Street, on the east by Monterey Avenue, and on the west by Euclid Avenue. In January 2010, the City Council approved TOP, which lays out the long term land use pattern for the City. Since that time, the City has undertaken an effort to ensure that the zoning and TOP land use designations are consistent for all properties in the City. In addition, a comprehensive update to the Ontario Development Code to implement TOP was adopted and went into effect on January 1, 2016 which established zones in alignment with TOP land use designations. This Zone Change, which proposes changes to 632 properties generally located to the east of Euclid Avenue between State and Philadelphia Streets and near Fourth Street and Grove Avenue, is part of the TOP-Zoning Consistency Project.

**STAFF MEMBER PRESENTING:** Scott Murphy, Planning Director

Prepared by: Clarice Burden  
Department: Planning

City Manager  
Approval: 

Submitted to Council/O.H.A. 03/21/2017

Approved: \_\_\_\_\_

Continued to: \_\_\_\_\_

Denied: \_\_\_\_\_

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The proposed changes are shown in Exhibit A of the ordinance and the area maps contain in the Planning Commission staff report. The changes are proposed in order to:

- Provide consistency with TOP land use designation of properties
- Eliminate split zoning of properties
- Limit additional density in certain areas per the requirements of the Airport Land Use Compatibility Plan
- Eliminate the potential impacts on water and sewer infrastructure that could occur if additional density were allowed within certain areas
- Reflect the existing residential density of the majority of the properties in certain areas
- Allow residential zoning that is suitable to the parcel size
- Provide residential zoning for properties that contain single family residential homes
- Help to stabilize the single family residential neighborhood north of Fourth Street as single family residential since Redevelopment Agency assistance is no longer available as a tool to help the area transition to medium density as originally envisioned
- Convert an enclave of AR-2 (Agricultural Residential) properties, which have no rural support facilities in the area (such as horse trails or Homer Briggs Park), to single family residential zoning like the surrounding area
- Change the zoning of commercial properties from CC (Community Commercial) to CN (Neighborhood Commercial) or CS (Corner Store), which is more in keeping with the location, size, and uses of the various sites
- Encourage the transition of marginal, mid-block commercial uses along the north side of Fourth Street, west of the flood control channel, to medium density residential uses and to concentrate commercial uses on more viable sites
- More accurately reflect the industrial uses of a property with conflicting zoning
- Place flood control channels in the UC, Utilities Corridor zone

Input was sought from subject property owners and surrounding property owners within 300 feet at community open houses held on November 29 and 30, 2016, regarding this Zone Change (File No. PZC16-004) and the associated General Plan Amendment (File No. PGPA16-006). About 70 people attended. The majority of attendees were seeking information about the proposed changes and did not voice any opposition to the project. Thirty-nine people provided written comments and 13 of these responses did not support the proposed changes. In addition, two letters which were not in support of the zone changes were received and transmitted to the Planning Commission. On January 24, 2017, the Planning Commission conducted a public hearing regarding the Zone Change and General Plan Amendment which was attended by about 40 people. Five people spoke regarding the proposed Zone Change. Concerns expressed included:

Large Animal Keeping: Requests were made to maintain the current agricultural residential zoning on properties located to the east of Euclid Avenue because they believe that “horse property” is more valuable than low density residential and would better protect their animal keeping rights. Staff explained that this area is surrounded by low density residential and the TOP land use designation is low density residential. The area does not have rural support facilities such as horse trails or Homer Briggs Park and any existing legal animal keeping on these properties would be allowed to continue as a nonconforming use, while allowing the neighborhood to transition over time to uses more in keeping with the location.

Industrial Zoning for a Single Family Residence: A representative of a property owner on Woodlawn requested that the zoning of the property remain industrial instead of being rezoned to low density residential. Staff explained that the property contains a single family home which makes residential zoning appropriate and residential zoning would conform to the TOP land use designation of low density residential with an industrial transitional overlay. The overlay would allow the property to transition to industrial zoning and land uses in the future if the single family residence were removed and the entire block were to go to industrial use.

Commercial Zoning for a Single Family Residence: A property owner of an auto repair shop and an adjacent single family residence on Euclid Avenue requested that the single family residence be rezoned to commercial so that the two sites together could accommodate a gas station with an AM/PM and that the zoning of both properties be CC (Community Commercial) so that he could have a tire shop, as an option. Staff explained that with no proposed development, it would not be appropriate to rezone a single family home to commercial at this time and that the location, immediately adjacent to single family homes, would not be appropriate for a tire shop due to potential noise impacts of pneumatic tools. However, if the property owner were to bring forward a proposal in the future to utilize both sites for a use appropriate to the location, then the zoning could be considered at that time.

The Planning Commission voted unanimously, 7 to 0, to recommend that City Council approve the Zone Change as presented.

**AIRPORT LAND USE COMPATIBILITY:** 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) Ontario.

**ENVIRONMENTAL REVIEW:** The application is a project pursuant to the California Environmental Quality Act (Public Resources Code Section 21000 et seq.) ("CEQA"). The environmental impacts of this project were previously reviewed in conjunction The Ontario Plan Environmental Impact Report (State Clearinghouse No. 2008101140) adopted by City Council on January 27, 2010 in conjunction with File No. PGPA06-001. This Application introduces no new significant environmental impacts not previously analyzed in the Environmental Impact Report. All previously adopted mitigation measures are a condition of project approval and are incorporated herein by reference. The environmental documentation for this project is available for review at the Planning Department public counter.

ORDINANCE NO. \_\_\_\_\_

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF ONTARIO, CALIFORNIA, APPROVING FILE NO. PZC16-004, A CITY INITIATED REQUEST TO CHANGE THE ZONING DESIGNATIONS ON VARIOUS PROPERTIES GENERALLY LOCATED TO THE EAST OF EUCLID AVENUE BETWEEN STATE AND PHILADELPHIA STREETS AND NEAR FOURTH STREET AND GROVE AVENUE IN ORDER TO MAKE THE ZONING CONSISTENT WITH THE ONTARIO PLAN (TOP) LAND USE DESIGNATIONS OF THE PROPERTIES, AND MAKING FINDINGS IN SUPPORT THEREOF - APN: AS SHOWN IN EXHIBIT A (ATTACHED).

WHEREAS, City of Ontario ("Applicant") has initiated an Application for the approval of a Zone Change, File No. PZC16-004, as described in the title of this Ordinance (hereinafter referred to as "Application" or "Project"); and

WHEREAS, the Application applies to 632 properties totaling about 161 acres mainly concentrated in the mostly residential area to the east of Euclid Avenue between State and Philadelphia Streets with additional areas including the commercial and residential area around Fourth Street and Grove Avenue; and

WHEREAS, the zoning of the properties is inconsistent with The Ontario Plan ("TOP") land use designations of the properties and the proposed zone changes will make the zoning consistent with the TOP land use designations of the properties as shown in Exhibit A; and

WHEREAS, the City of Ontario held community open houses on November 29, and November 30, 2016, to gain input from impacted property owners and property owners within a 300 foot radius; and

WHEREAS, Thirty-six written public responses were received regarding the proposed zone changes at the community open houses. Of the written comments 10 were in support of the changes, 13 were not in support, six provided written comments but did not indicate if they were in support or not, and seven provided no specific written comments; and

WHEREAS, two letters that were not in support were received and provided to Planning Commission; and

WHEREAS, the Application is a project pursuant to the California Environmental Quality Act (Public Resources Code Section 21000 et seq.) ("CEQA"); and

WHEREAS, the project is consistent with the Housing Element of the Policy Plan (General Plan) component of The Ontario Plan, as none of the project sites are properties in the Available Land Inventory contained in the Housing Element Technical Report.

WHEREAS, 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; and

WHEREAS, the environmental impacts of this project were previously reviewed in conjunction with The Ontario Plan (TOP) (File No. PGPA06-001), for which an Environmental Impact Report (SCH # 2008101140) was adopted by the City Council on January 27, 2010, and this Application introduces no new significant environmental impacts; and

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

WHEREAS, on January 24, 2017, the Planning Commission of the City of Ontario conducted a hearing to consider the Project, and concluded said hearing on that date. After receiving all public testimony, the Planning Commission voted unanimously to recommend approval of the Zone Change to the City Council; and

WHEREAS, on March 7, 2017, the City Council of the City of Ontario conducted a hearing to consider the Project, and concluded said hearing on that date; and

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

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

SECTION 1. As the decision-making body for the Project, the City Council has reviewed and considered the information contained in the previously adopted Environmental Impact Report (SCH # 2008101140) and supporting documentation. Based upon the facts and information contained in the Environmental Impact Report (SCH # 2008101140) and supporting documentation, the Planning Commission finds as follows:

a. The previous Environment Impact Report contains a complete and accurate reporting of the environmental impacts associated with the Project; and

b. The previous Environment Impact Report was completed in compliance with CEQA and the Guidelines promulgated thereunder; and

c. The previous Environment Impact Report reflects the independent judgement of the City Council; and

d. All previously adopted mitigation measures, which are applicable to the Project, shall be a condition of Project approval and are incorporated herein by reference.

SECTION 2. Based upon the substantial evidence presented to the City Council during the above-referenced hearing and upon the specific findings set forth in Section 1 above, the City Council hereby concludes as follows:

a. The proposed Zone Change is consistent with the goals, policies, plans and exhibits of the Vision, Policy Plan (General Plan), and City Council Priorities components of The Ontario Plan as follows:

**LU1-6 Complete Community.** We incorporate a variety of land uses and building types in our land use planning efforts that result in a complete community where residents at all stages of life, employers, workers and visitors have a wide spectrum of choices of where they can live, work, shop and recreate within Ontario.

Compliance: Undertaking the zone changes to provide consistency between the zoning and TOP land use designations will further the City's intent of becoming a complete community which will result in a land use pattern that provides residents, employers, workers and visitors a wide spectrum of choices to live, work, shop and recreate within Ontario.

**H1-2 Neighborhood Conditions.** We direct efforts to improve the long-term sustainability of neighborhoods through comprehensive planning, provisions of neighborhood amenities, rehabilitation and maintenance of housing, and community building efforts.

Compliance: Changing the zoning of certain existing residential properties, to comply with our Vision, will provide for long term stability of the neighborhoods. Eliminating rural residential uses (including large animal keeping) east of Euclid Avenue eliminates the conflict between the animal keeping activities and nearby suburban residential uses and allows for the concentration of animal keeping uses west of Euclid Avenue where support service (such as horse trails) exist.

**S4-6 Airport Noise Compatibility.** We utilize information from Airport Land Use Compatibility Plans to prevent the construction of new noise sensitive land uses within airport noise impact zones.

Compliance: The proposed zone changes are consistent with the adopted Airport Land Use Compatibility Plan for both Ontario Airport and Chino Airport and do not allow the addition of new units in noise sensitive locations near the airports.

b. The proposed Zone Change would not be detrimental to the public interest, health, safety, convenience, or general welfare of the City.

c. The proposed Zone Change will not adversely affect the harmonious relationship with adjacent properties and land uses.



d. The subject site is physically suitable, including, but not limited to, parcel size, shape, access, and availability of utilities, for the request and anticipated development.

SECTION 3. Based upon the findings and conclusions set forth in Sections 1 and 2 above, the City Council hereby APPROVES the Project.

SECTION 4. If any section, subsection, paragraph, sentence, clause or phrase of this ordinance is for any reason held to be invalid, unconstitutional or otherwise struck-down by a court of competent jurisdiction, such decision shall not affect the validity of the remaining portions of this Ordinance. The City Council hereby declares that it would have adopted this ordinance and each section, subsection, paragraph, sentence, clause or phrase thereof, irrespective of the fact that any one or more portions of this ordinance might be declared invalid.

SECTION 5. 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 6. Custodian of Records. The documents and materials that constitute the record of proceedings on which these findings have been based are located at the City of Ontario City Hall, 303 East B Street, Ontario, California 91764. The custodian for these records is the City Clerk of the City of Ontario.

SECTION 7. Severability. If any section, sentence, clause or phrase of this Ordinance or the application thereof to any entity, person or circumstance is held for any reason to be invalid or unconstitutional, such invalidity or unconstitutionality shall not affect other provisions or applications of this Ordinance which can be given effect without the invalid provision or application, and to this end the provisions of this Ordinance are severable. The People of the City of Ontario hereby declare that they would have adopted this Ordinance and each section, sentence, clause or phrase thereof, irrespective of the fact that any one or more section, subsections, sentences, clauses or phrases be declared invalid or unconstitutional.

SECTION 8. Effective Date. This Ordinance shall become effective 30 days following its adoption.

SECTION 9. 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 21<sup>st</sup> day of March 2017.

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PAUL S. LEON, MAYOR

ATTEST:

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SHEILA MAUTZ, CITY CLERK

APPROVED AS TO FORM:

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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. 3070 was duly introduced at a regular meeting of the City Council of the City of Ontario held March 7, 2017, and adopted at the regular meeting held March 21, 2017, 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. 3070 duly passed and adopted by the Ontario City Council at their regular meeting held March 7, 2017 and that Summaries of the Ordinance were published on March 14, 2017 and March 28, 2017, in the Inland Valley Daily Bulletin newspaper.

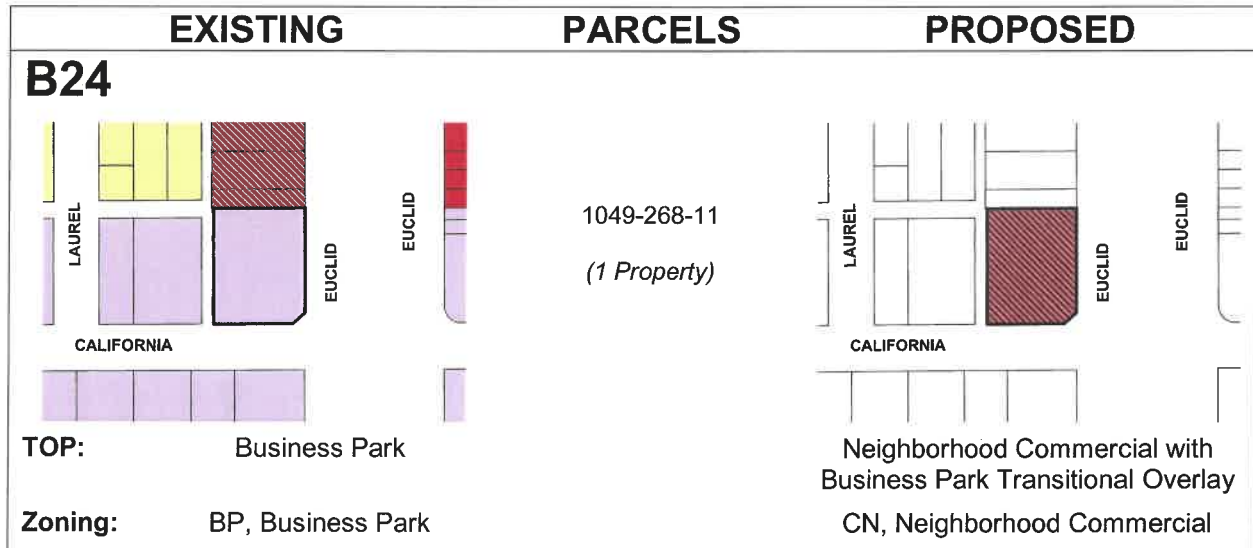
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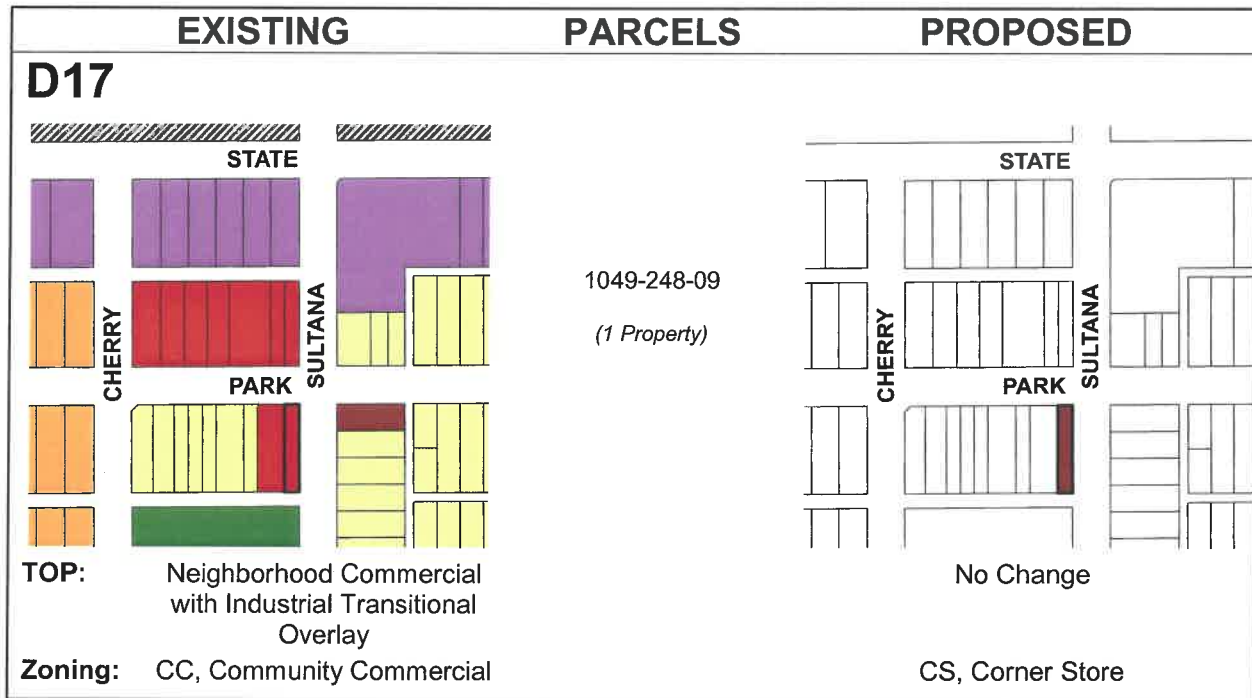
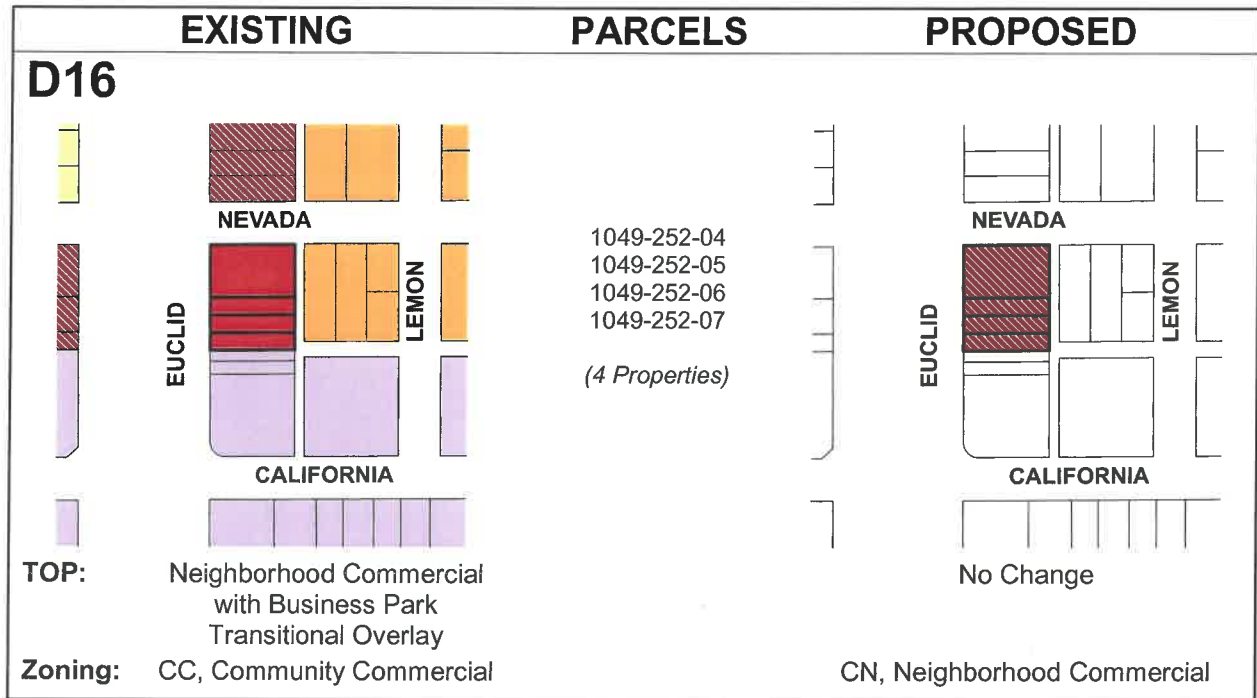
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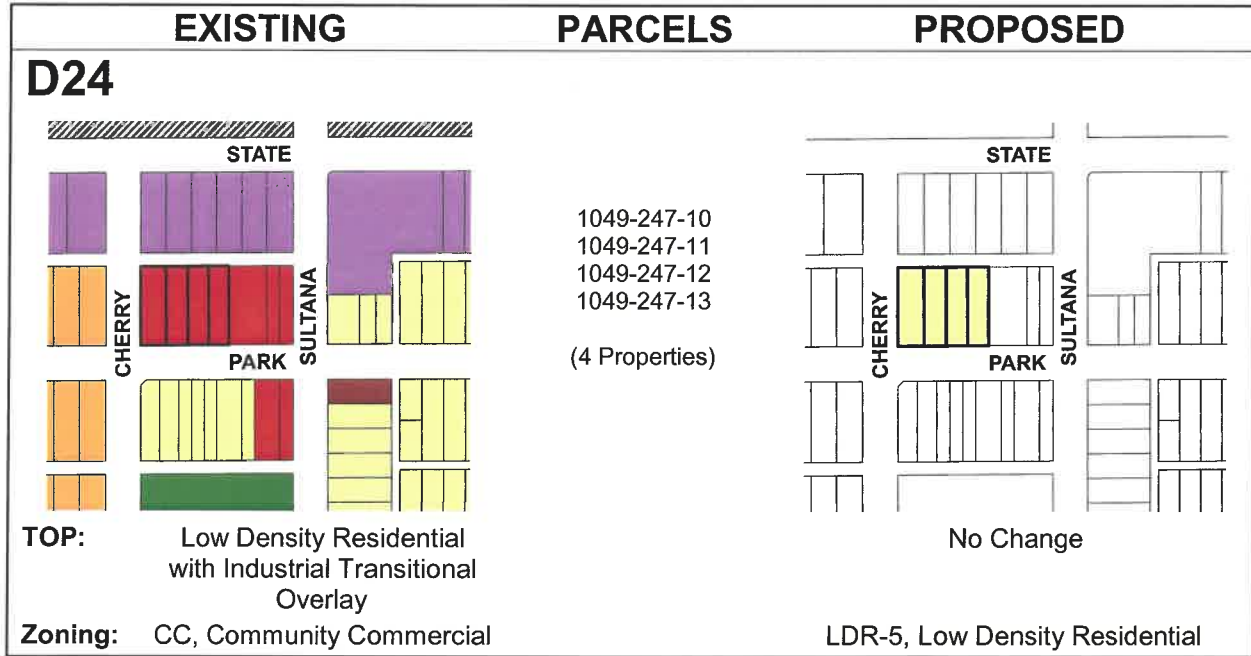
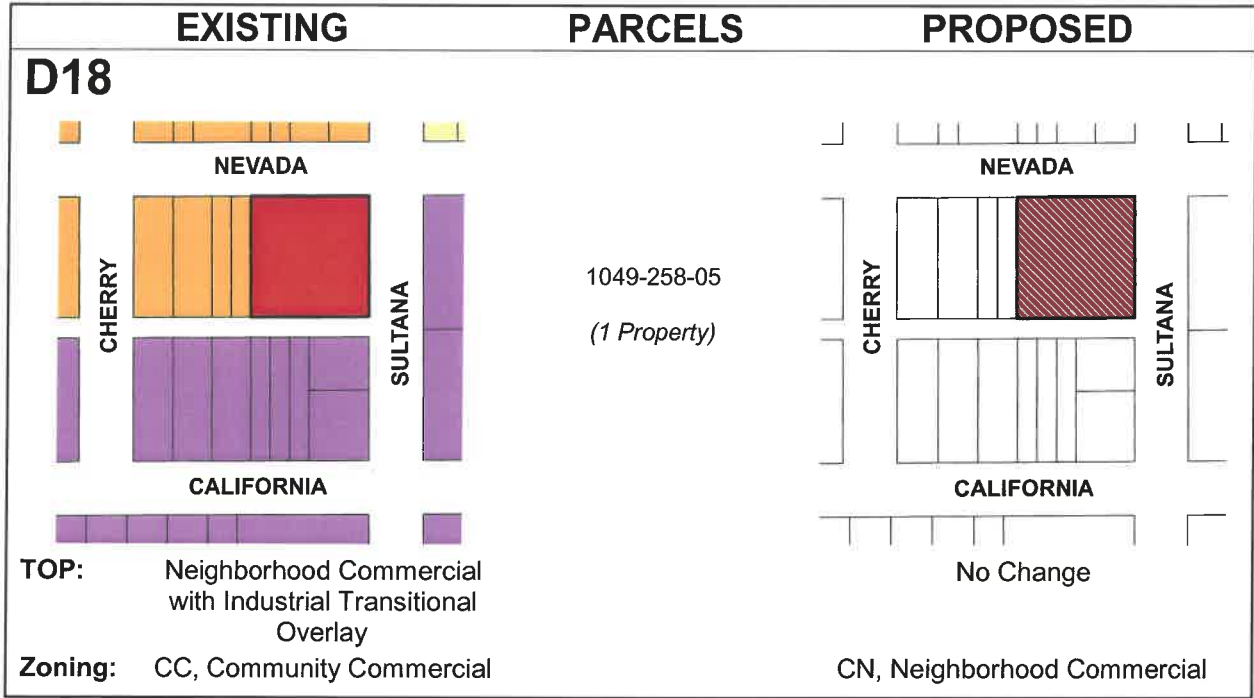
# Exhibit A PZC16-004

## ZONING Legend:

	AR-2, Residential-Agricultural		PUD, Planned Unit Development		BP, Business Park		OS-R, Open Space - Recreation
	RE-2, Rural Estate		MU, Mixed Use 1 - Downtown, 2-East Holt, 11-Francis&Euclid		IP, Industrial Park		OS-C, Open Space-Cemetery
	RE-4, Residential Estate		CS, Corner Store		IL, Light Industrial		UC, Utilities Corridor
	LDR-5, Low Density Residential		CN, Neighborhood Commercial		IG, General Industrial		SP, Specific Plan
	MDR-11, Low-Medium Density Residential		CC, Community Commercial		IH, Heavy Industrial		SP(AG), Specific Plan with Agricultural Overlay
	MDR-18, Medium Density Residential		CCS, Convention Center Support		ONT, Ontario Int'l Airport		ES, Emergency Shelter Overlay
	MDR-25, Medium-High Density Residential		OL, Low Intensity Office		CIV, Civic		MTC, Multimodal Transit Center Overlay
	HDR-45, High Density Residential		OH, High Intensity Office		RC, Rail Corridor		ICC, Interim Community Commercial Overlay
	MHP, Mobile Home Park						





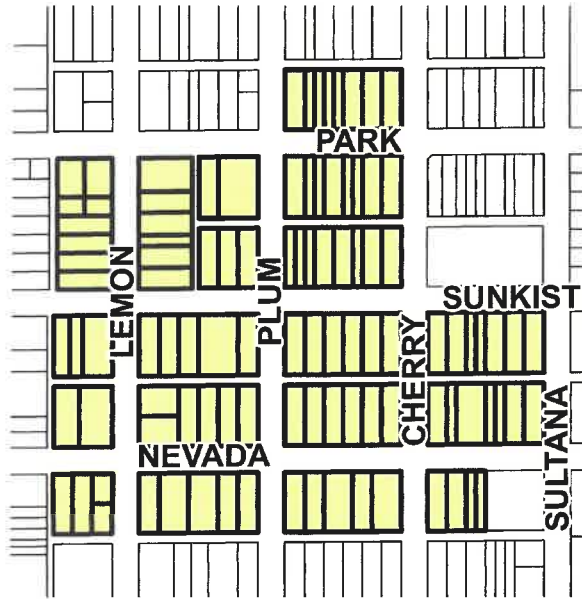
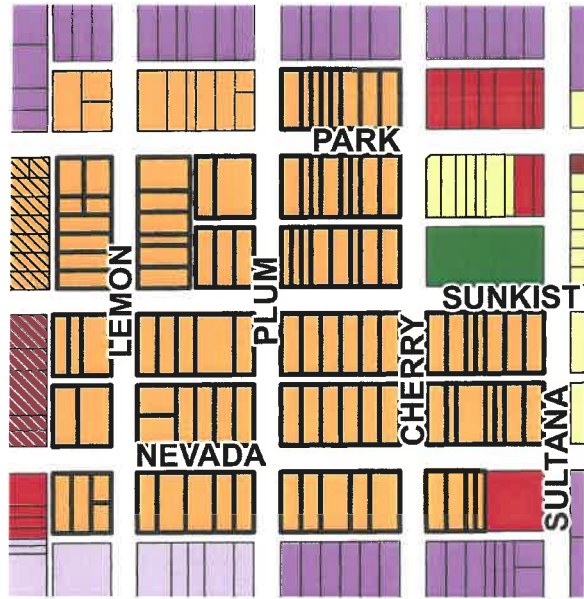




**EXISTING**

**PROPOSED**

**D25**



Parcels: (103 Properties)

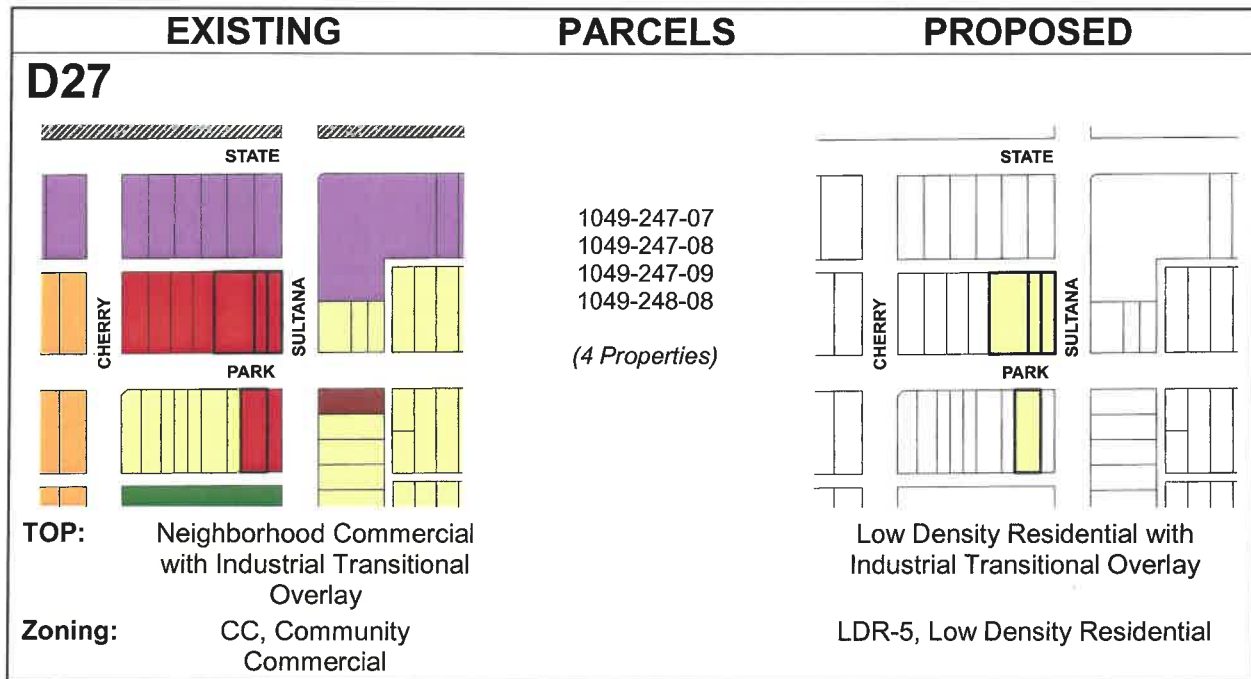
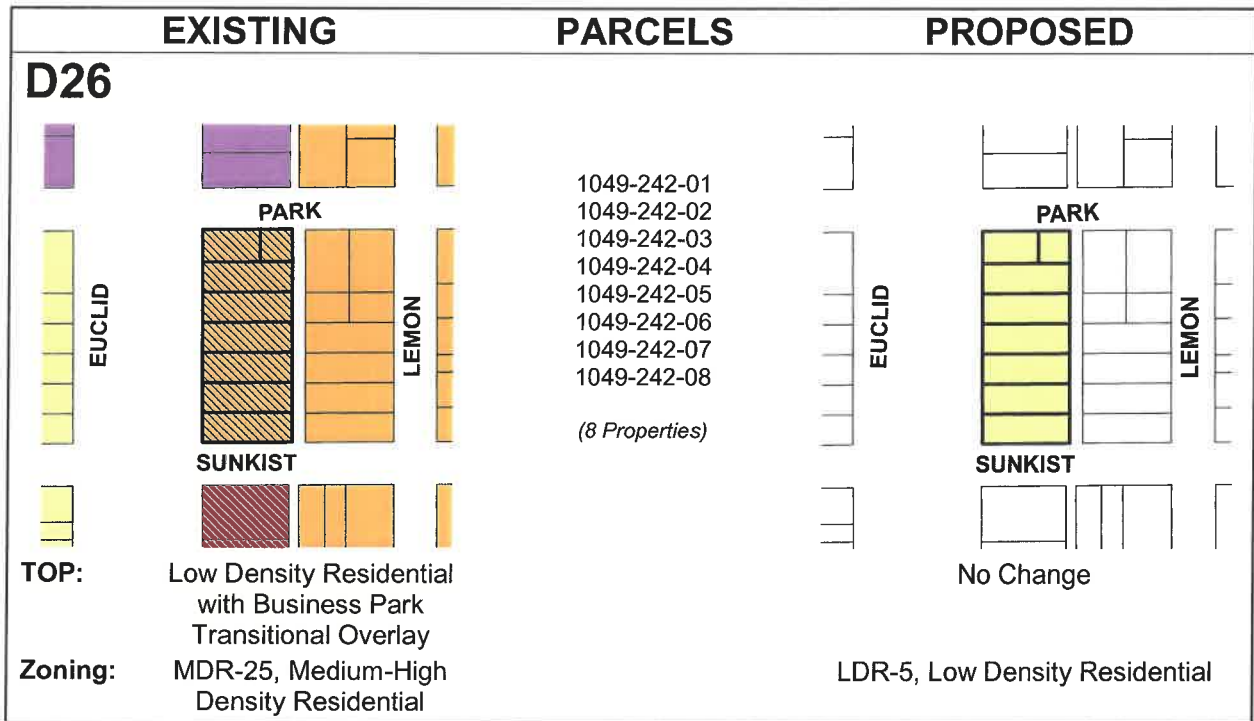
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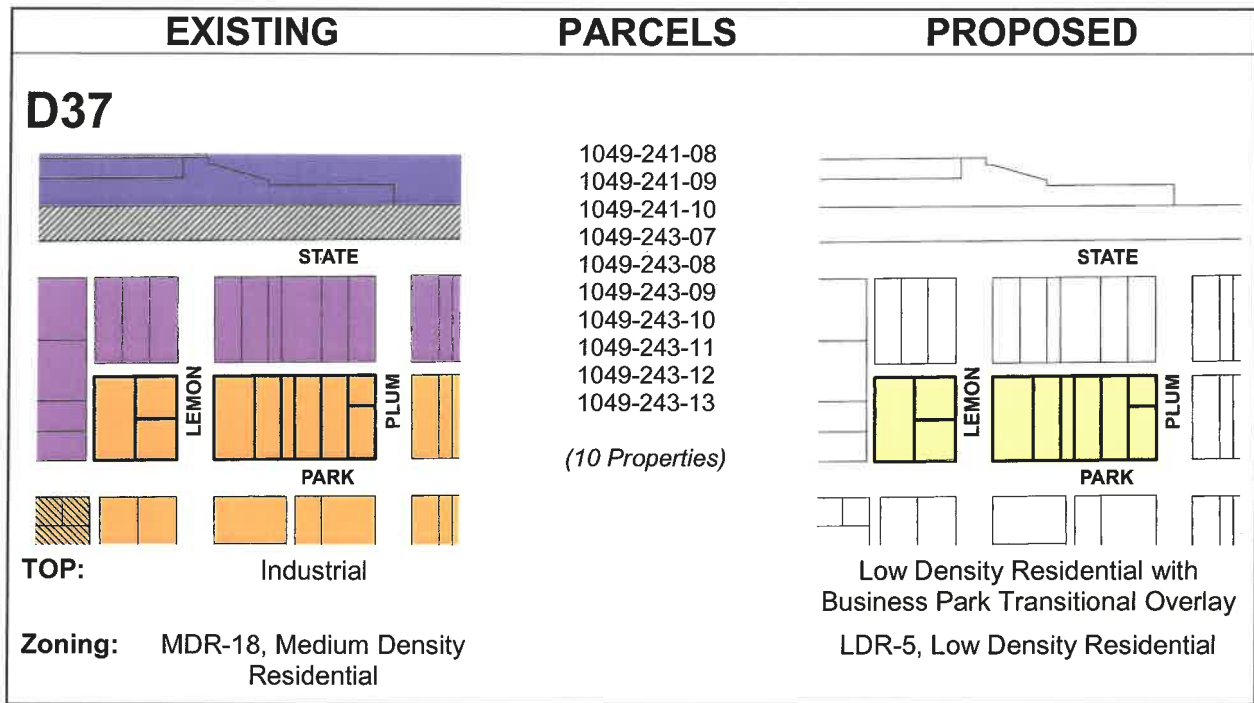
**TOP:** Low Density Residential with Business Park or Industrial Transitional Overlay

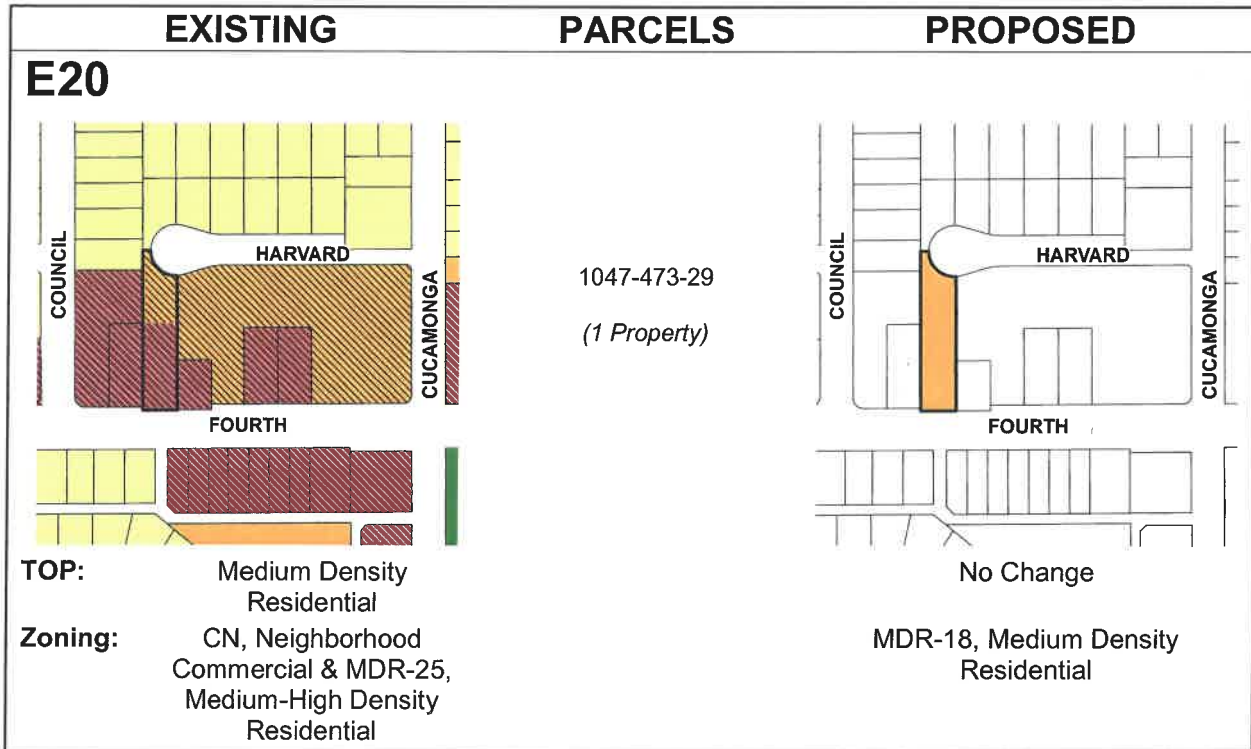
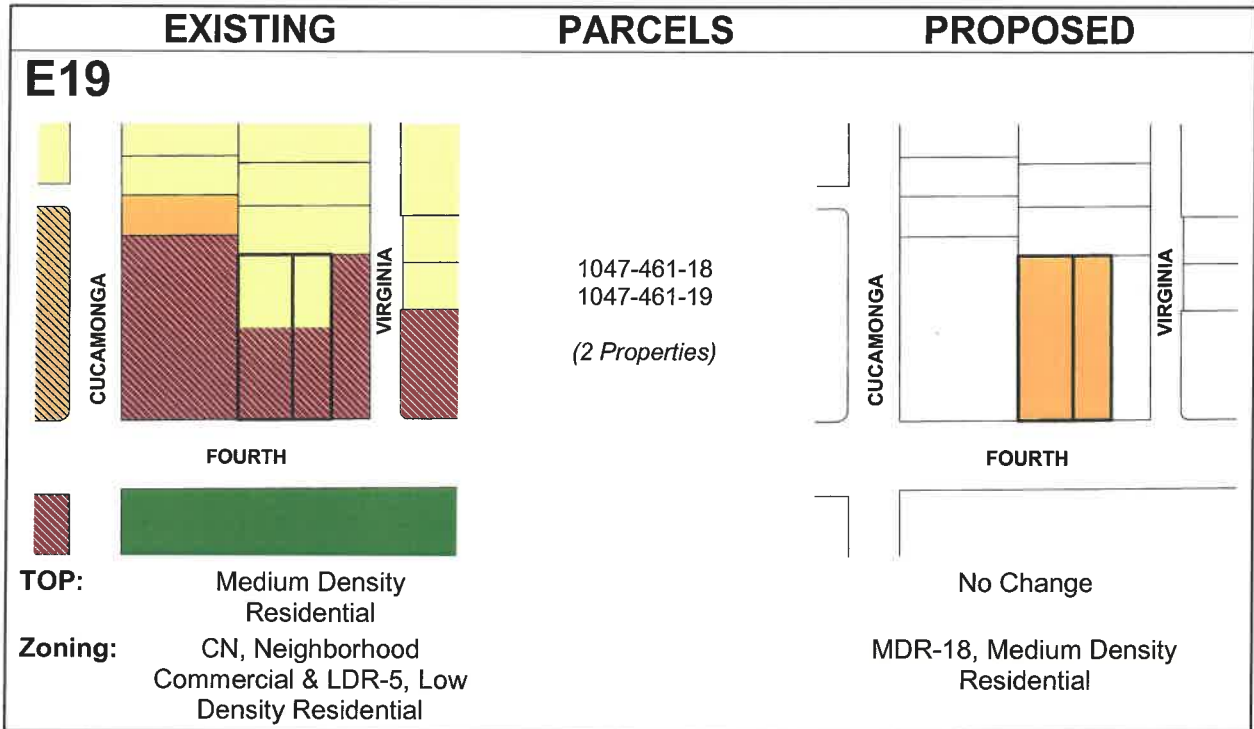
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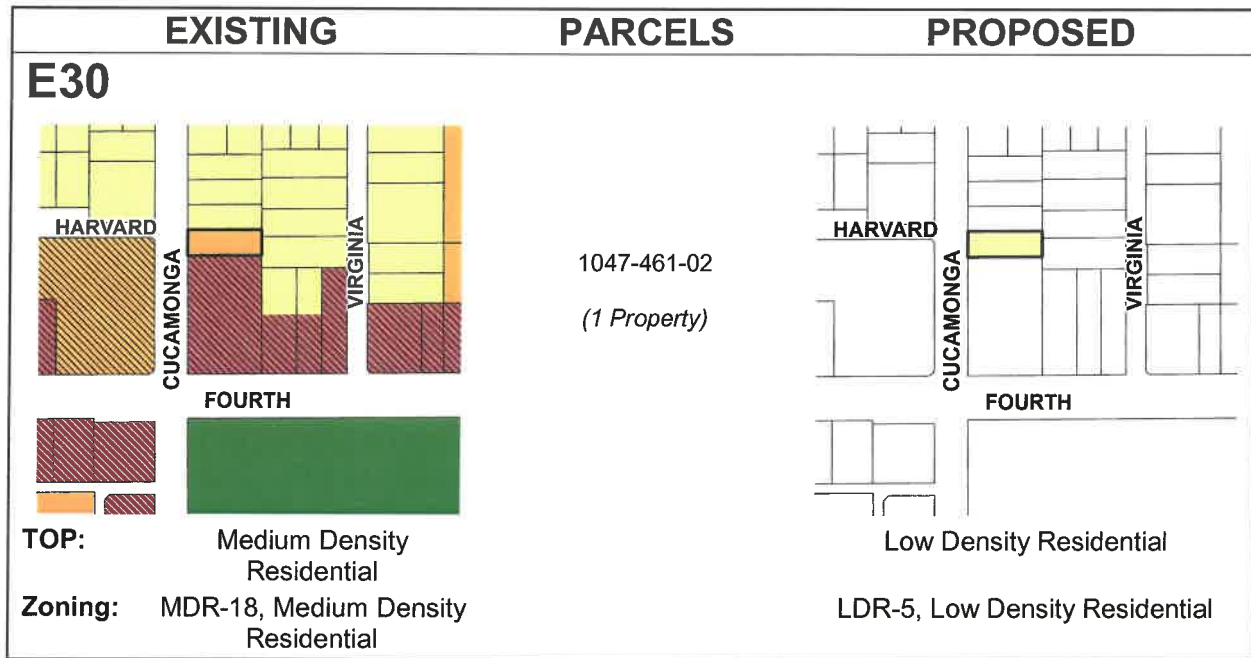
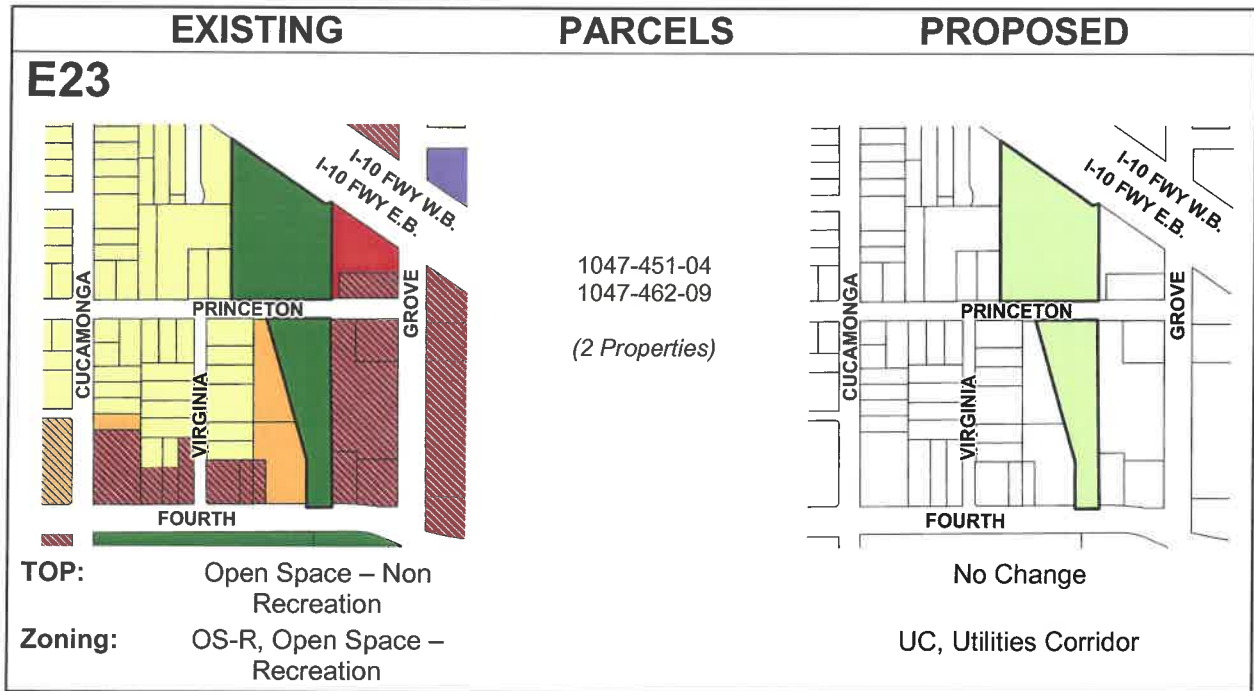
**Zoning:** MDR-18, Medium Density Residential

LDR-5, Low Density Residential

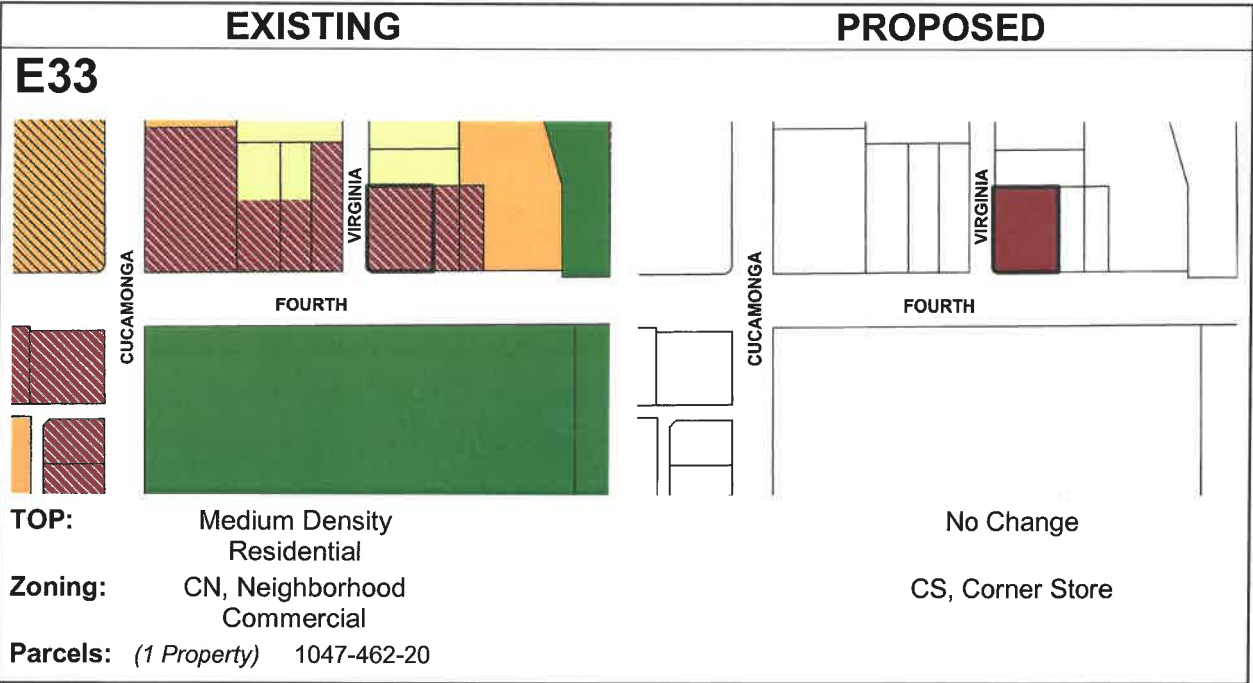
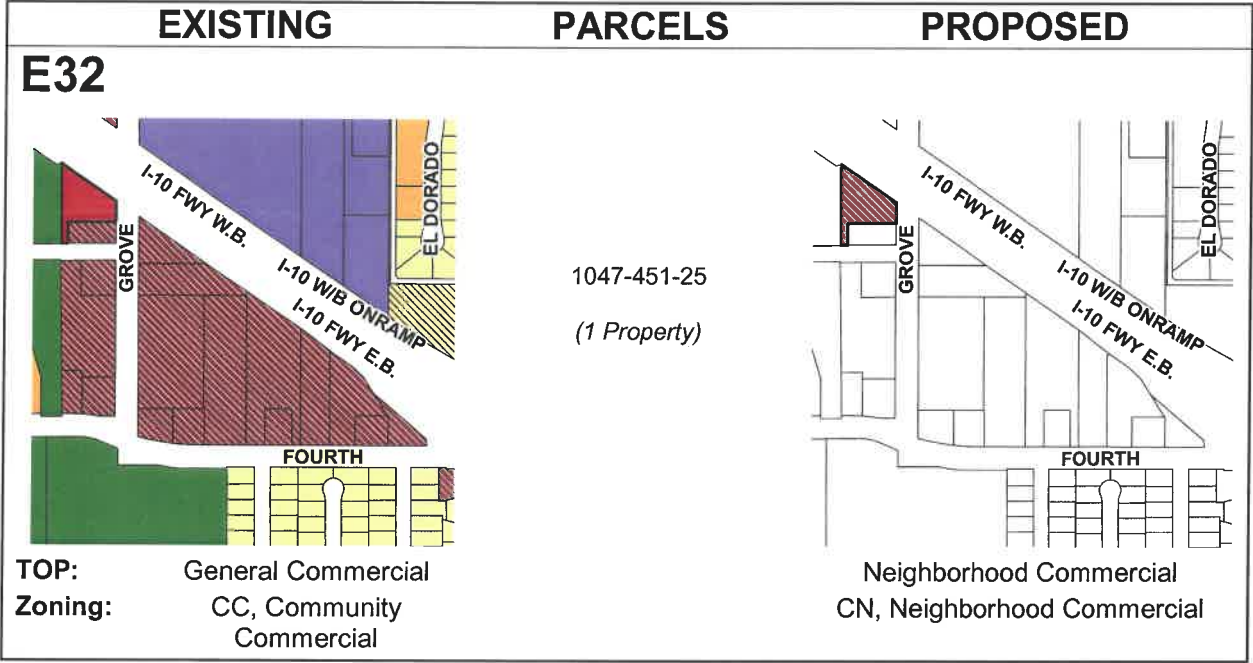


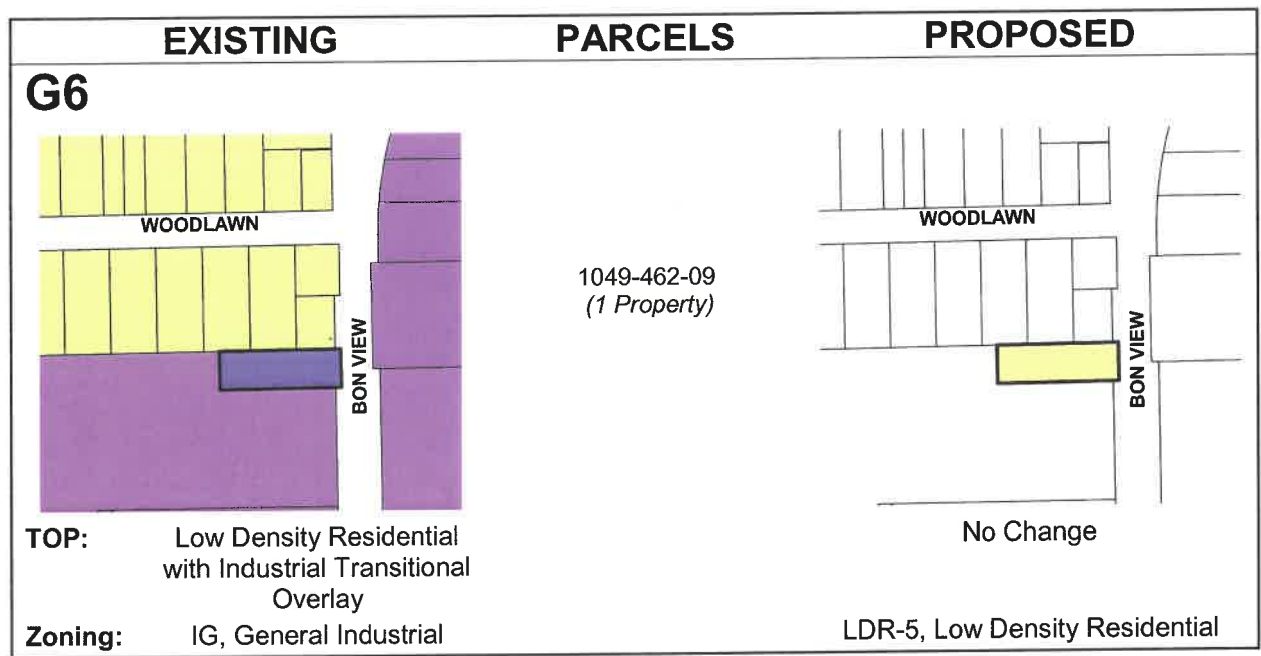
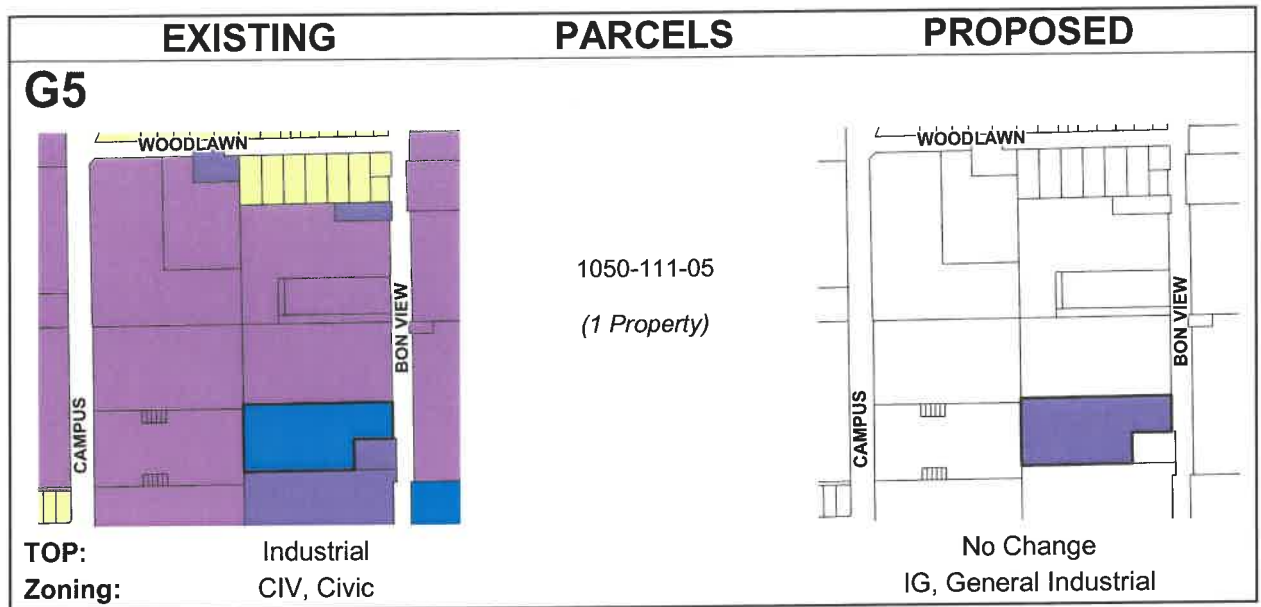


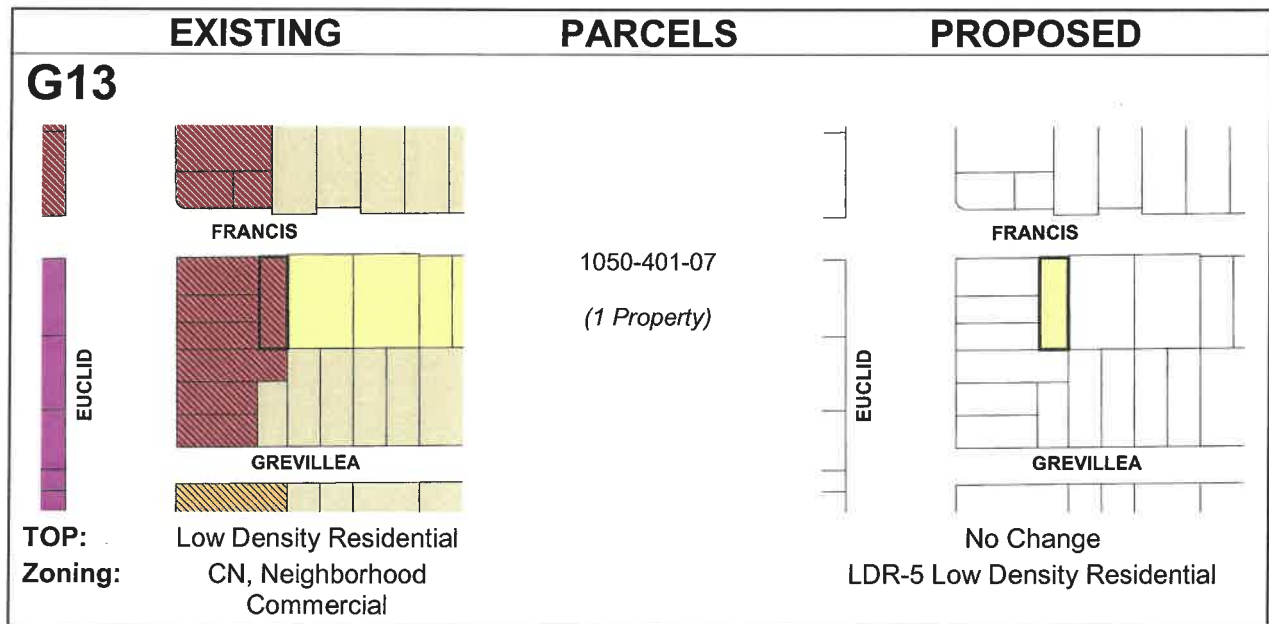
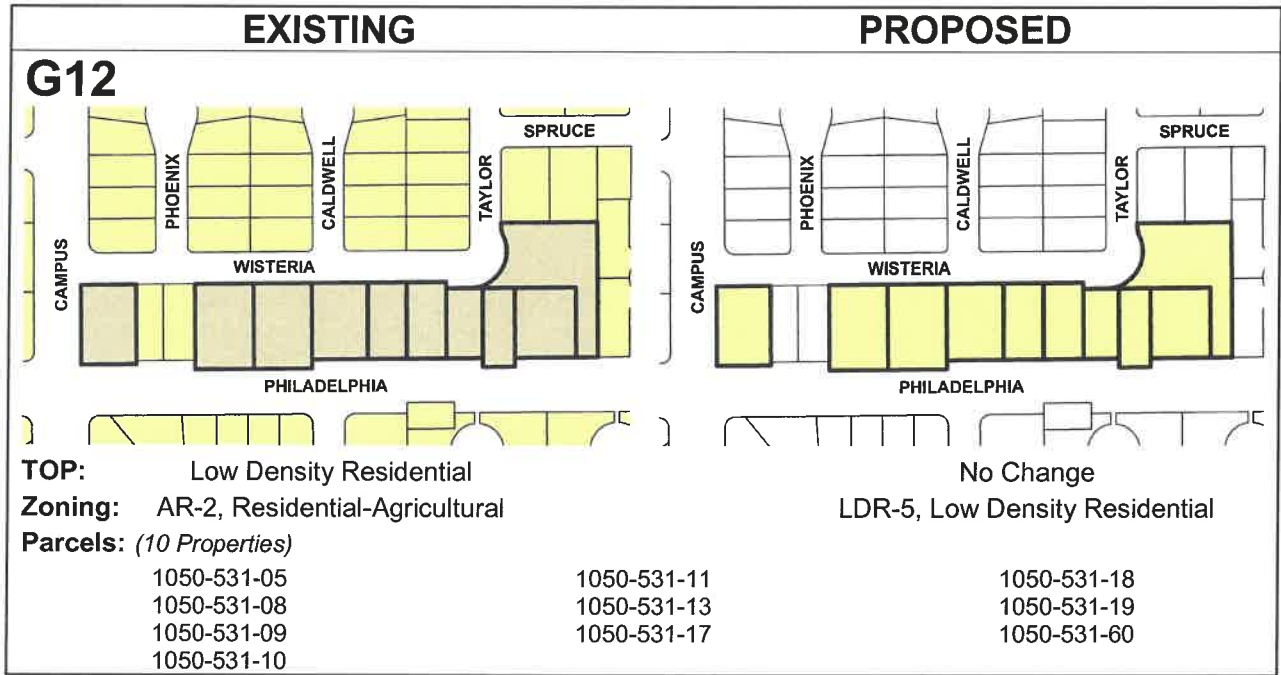




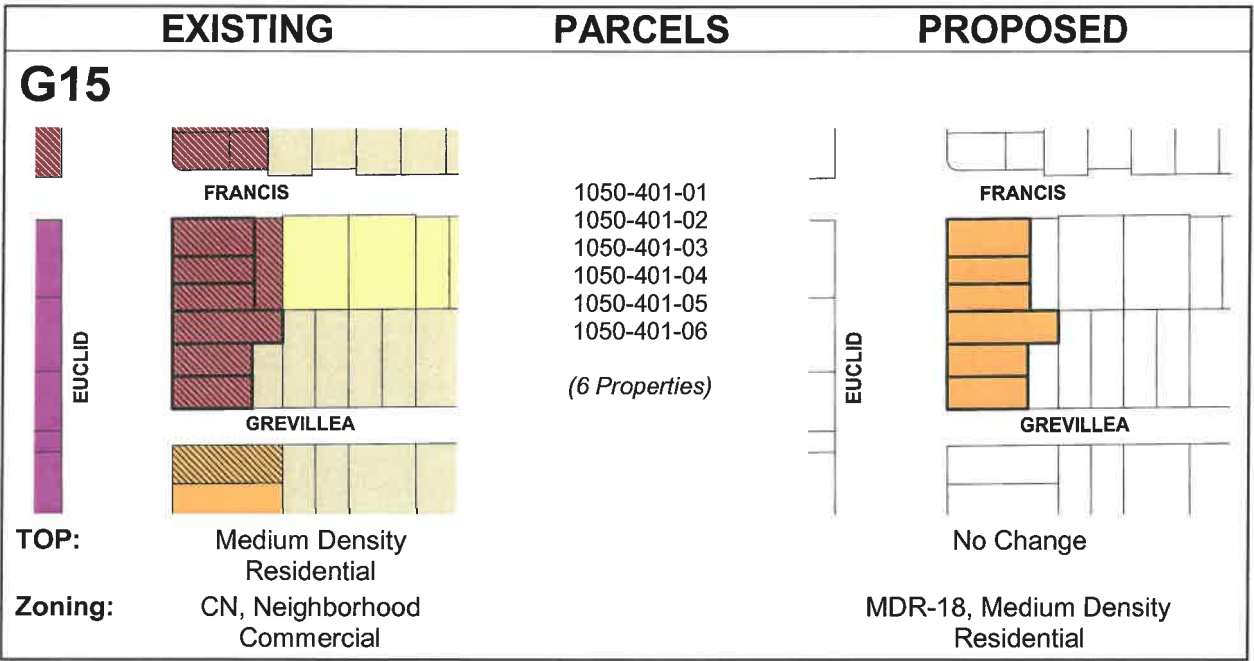
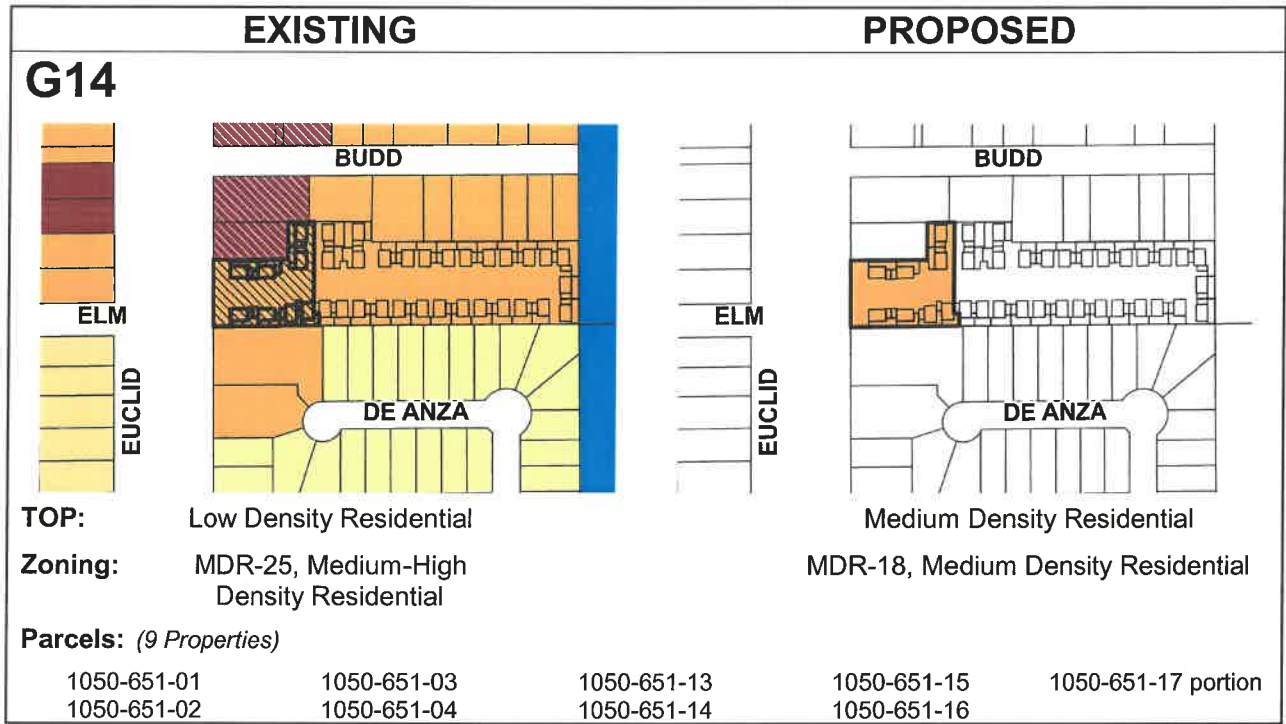


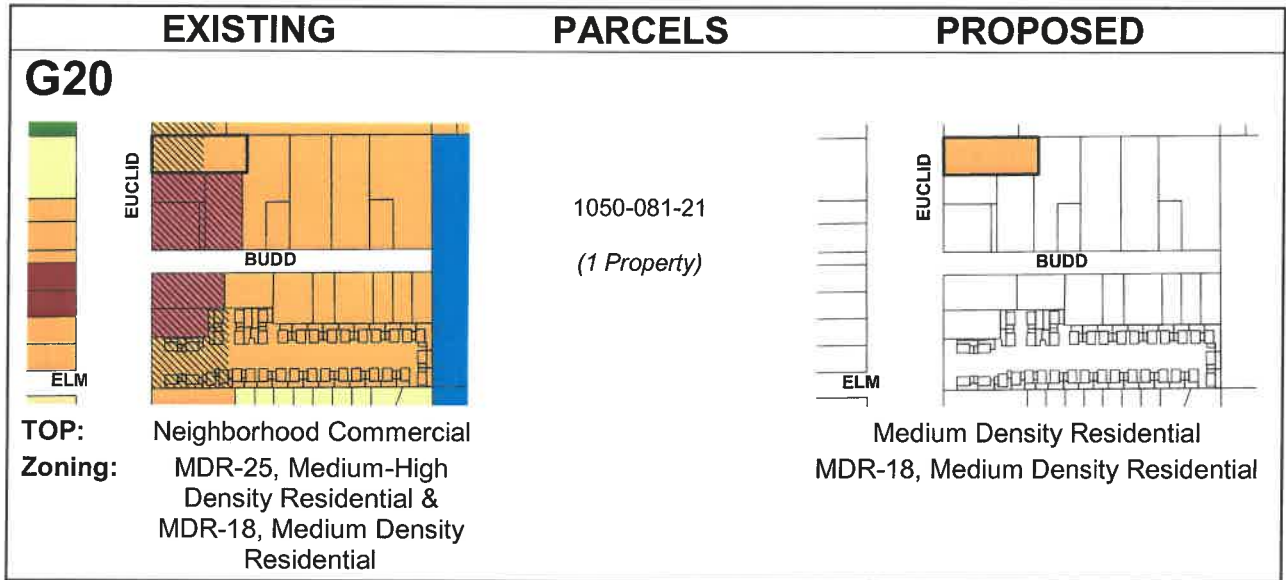
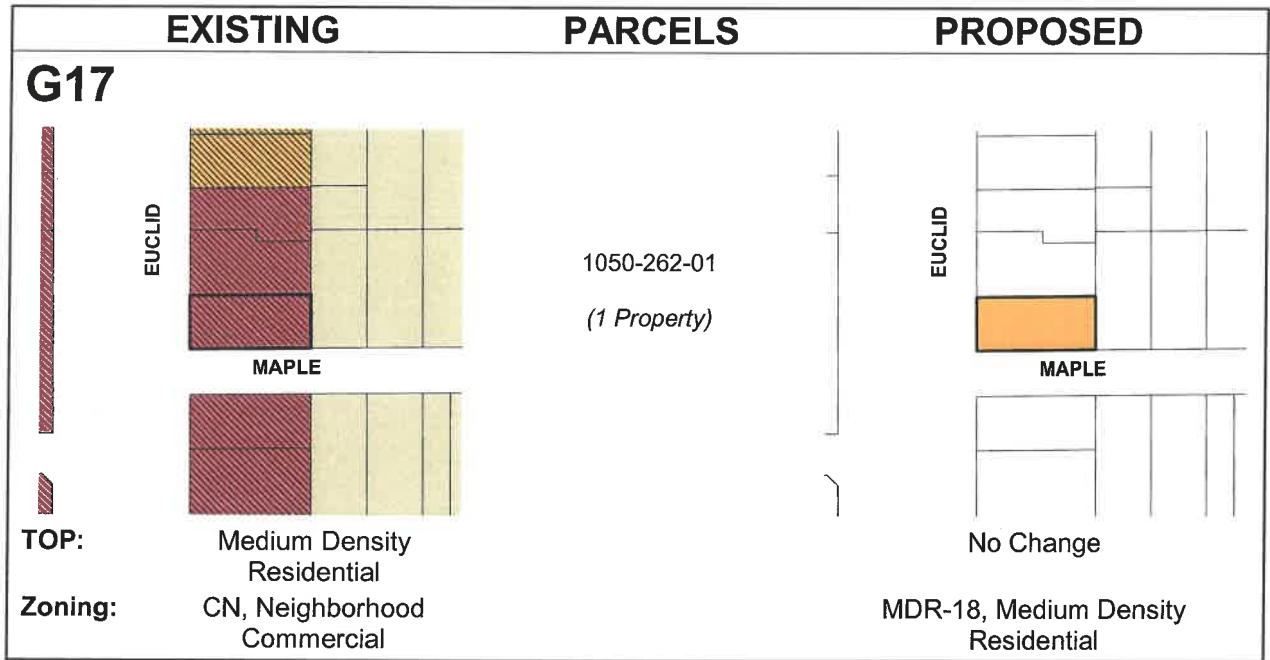


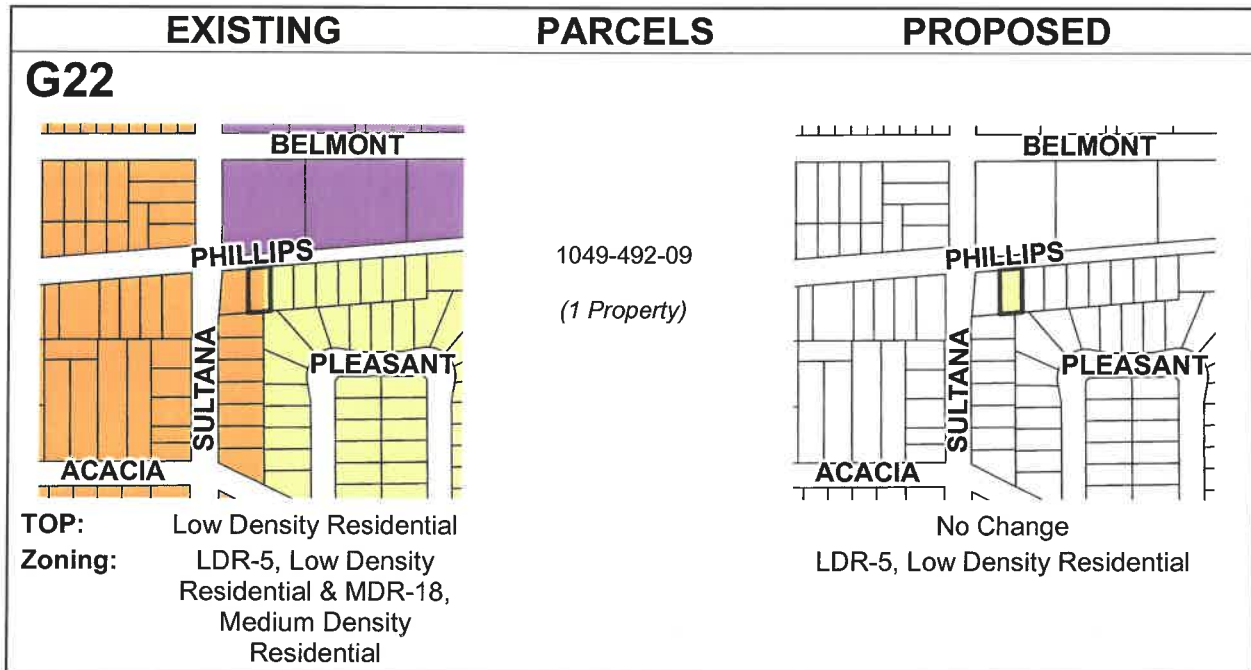
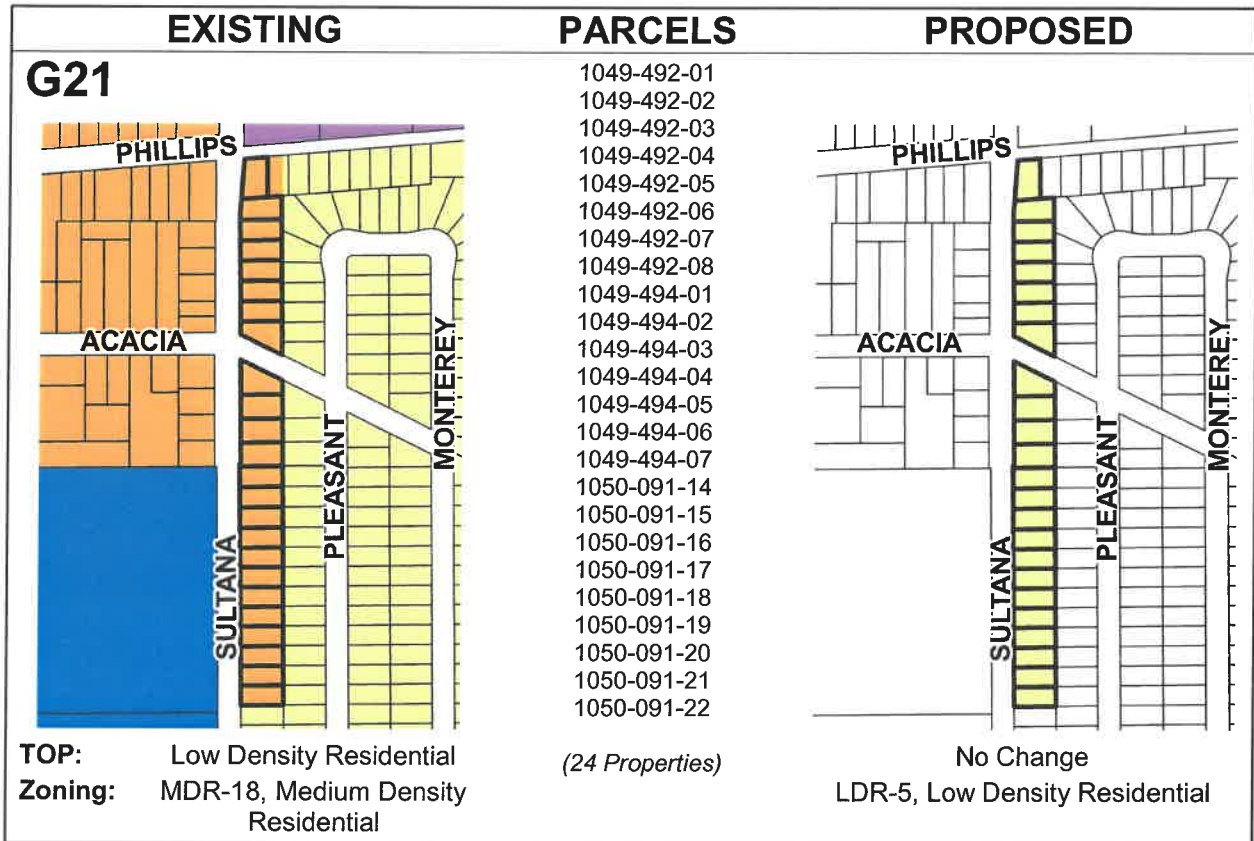












## EXISTING

## PROPOSED

### G23



**TOP:** Low Density Residential

**TOP:** Low-Medium Density Residential

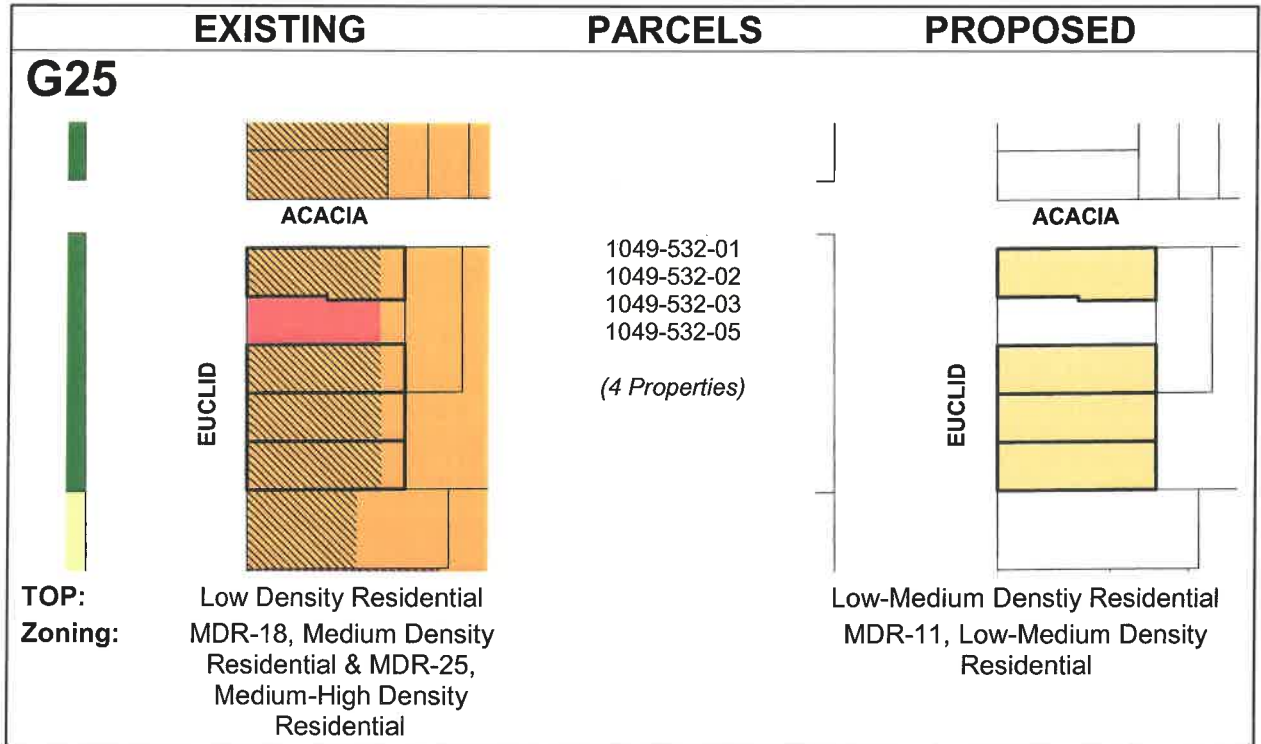
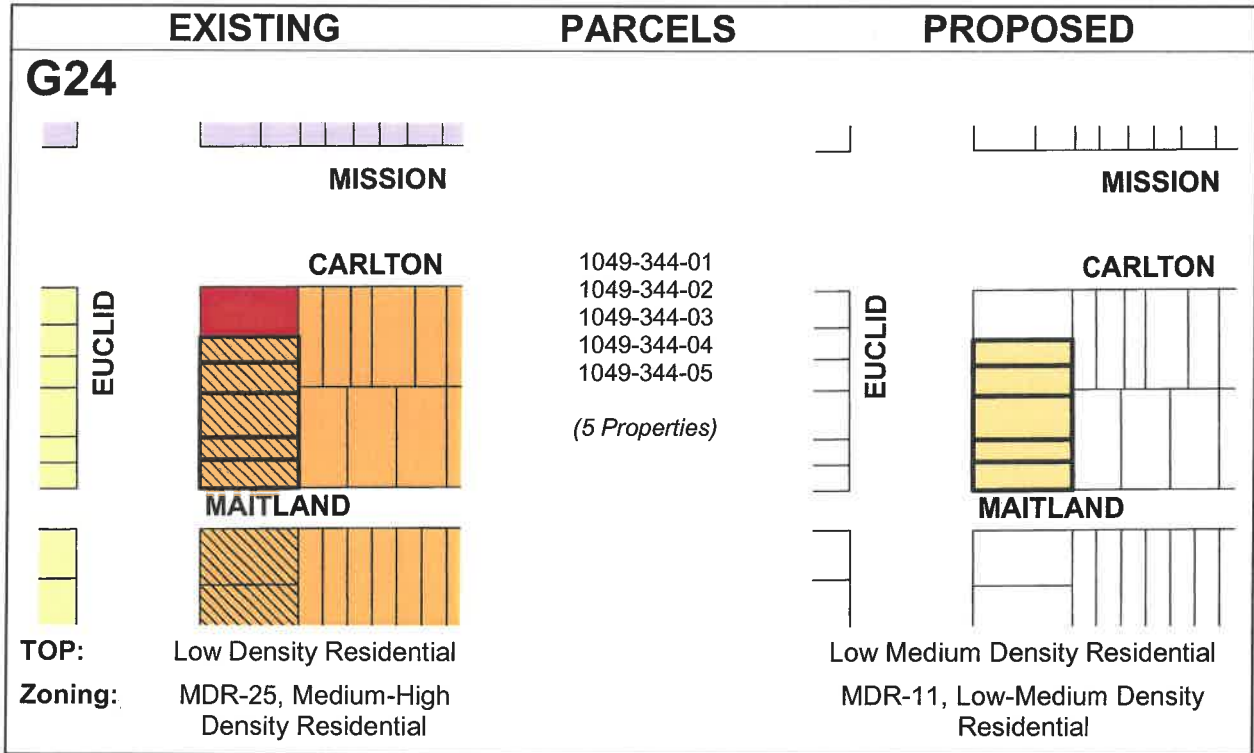
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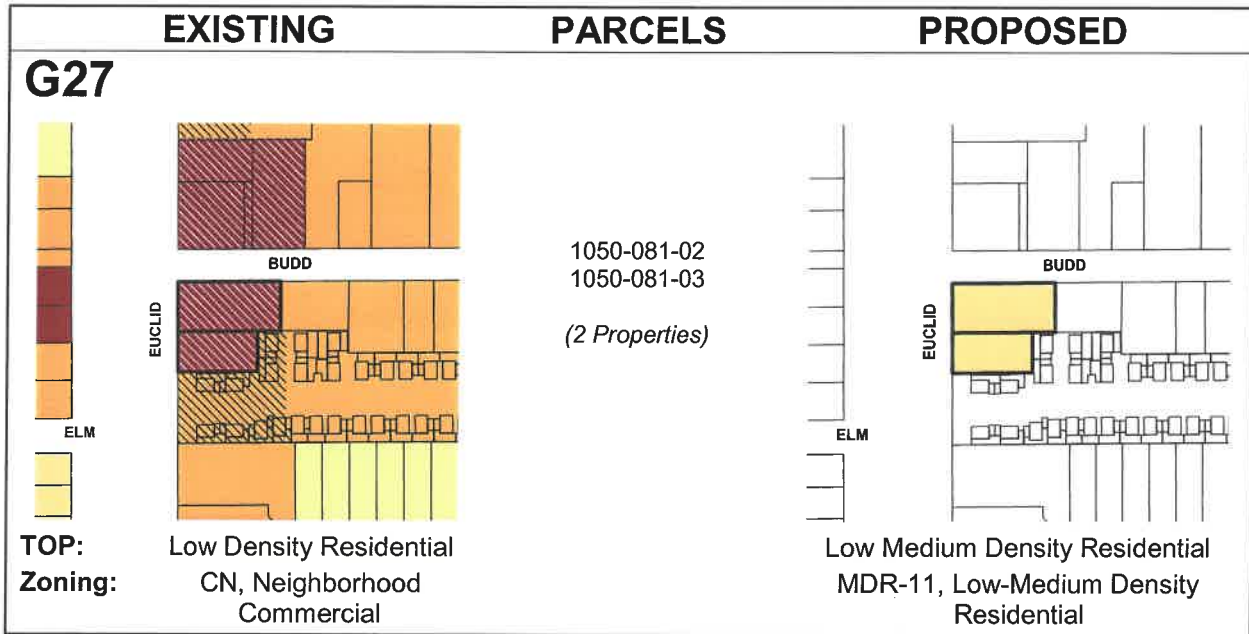
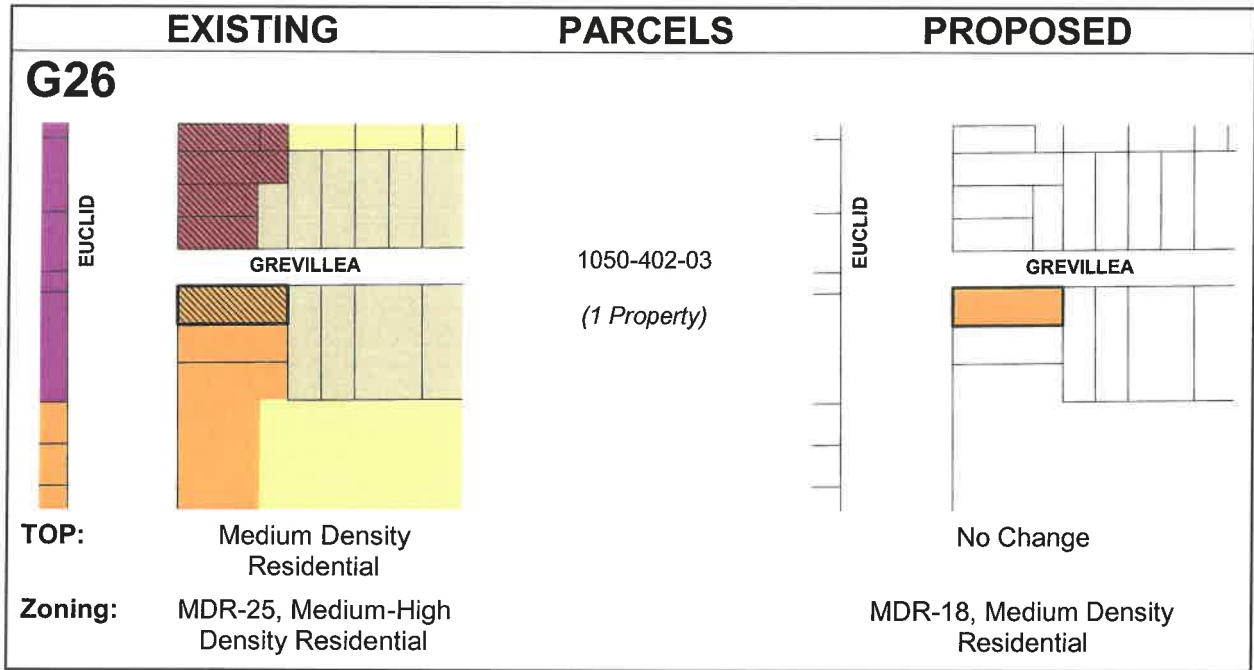
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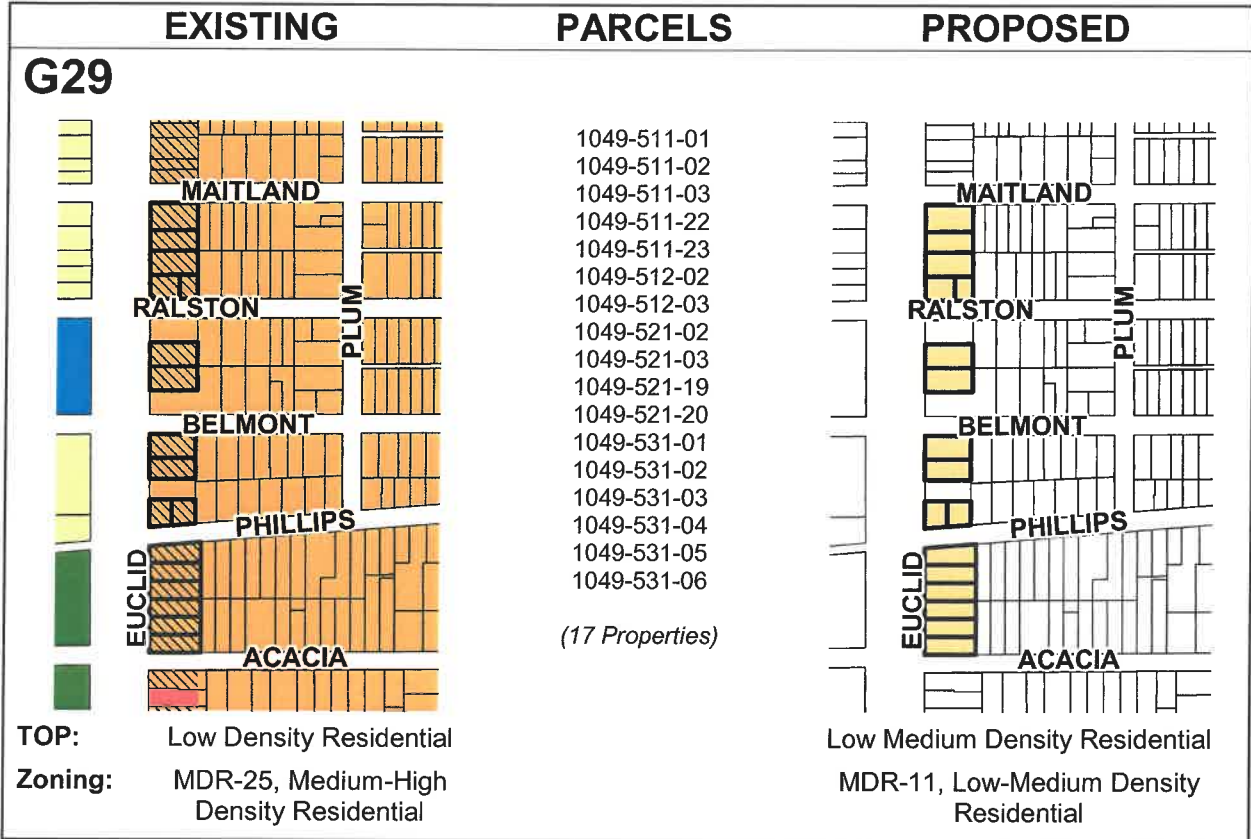
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1049-512-01	1049-513-17	1049-514-15	1049-521-16	1049-531-12	1049-531-45	1049-532-27
1049-512-04	1049-513-18	1049-514-16	1049-521-17	1049-531-13	1049-531-46	1049-532-28
1049-512-05	1049-513-19	1049-514-17	1049-521-18	1049-531-14	1049-531-47	1049-532-29
1049-512-06	1049-513-20	1049-514-18	1049-522-01	1049-531-15	1049-531-48	1049-532-30
1049-512-07	1049-513-21	1049-514-19	1049-522-02	1049-531-16	1049-531-49	1049-532-31
1049-512-08	1049-513-22	1049-514-20	1049-522-03	1049-531-17	1049-531-50	1050-081-04
1049-512-09	1049-513-23	1049-514-21	1049-522-04	1049-531-18	1049-531-51	1050-081-05
1049-512-11	1049-513-24	1049-514-23	1049-522-05	1049-531-19	1049-531-52	1050-081-06
1049-512-12	1049-513-25	1049-514-24	1049-522-06	1049-531-21	1049-531-53	1050-081-07
1049-512-13	1049-513-26	1049-514-25	1049-522-07	1049-531-22	1049-531-54	1050-081-08
1049-512-14	1049-513-27	1049-514-26	1049-522-08	1049-531-23	1049-531-55	1050-081-09
1049-512-15	1049-513-28	1049-514-27	1049-522-09	1049-531-24	1049-532-06	1050-081-10
1049-512-16	1049-513-29	1049-514-28	1049-522-10	1049-531-25		



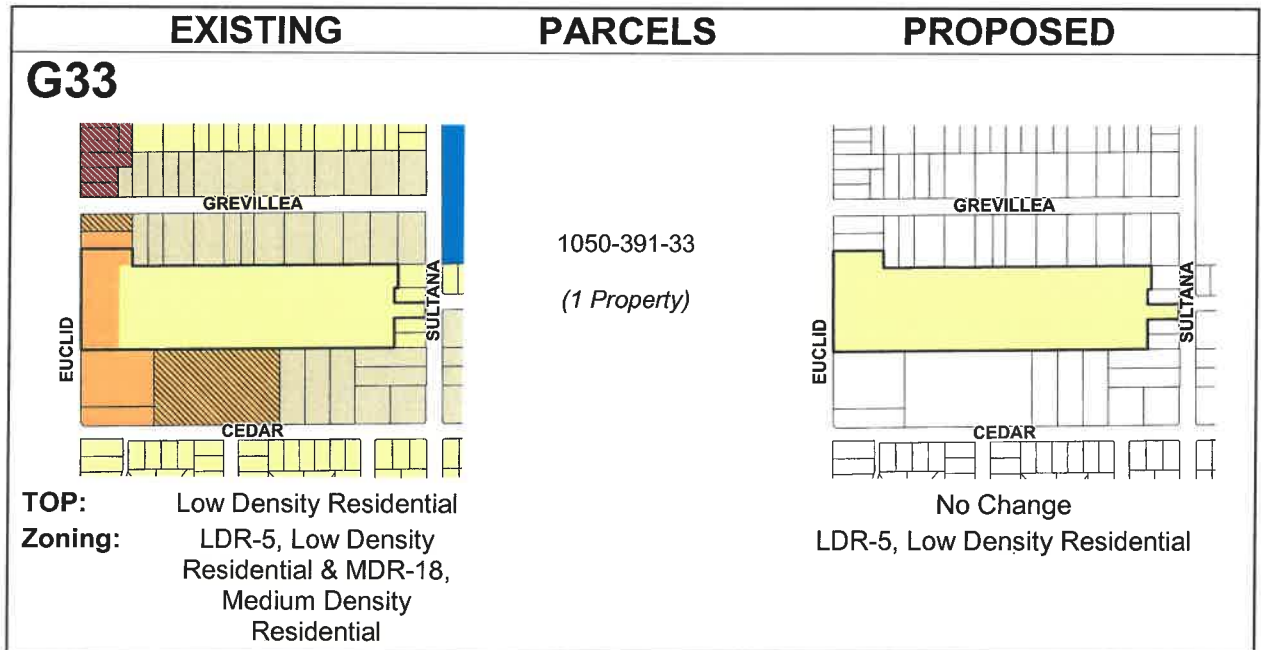
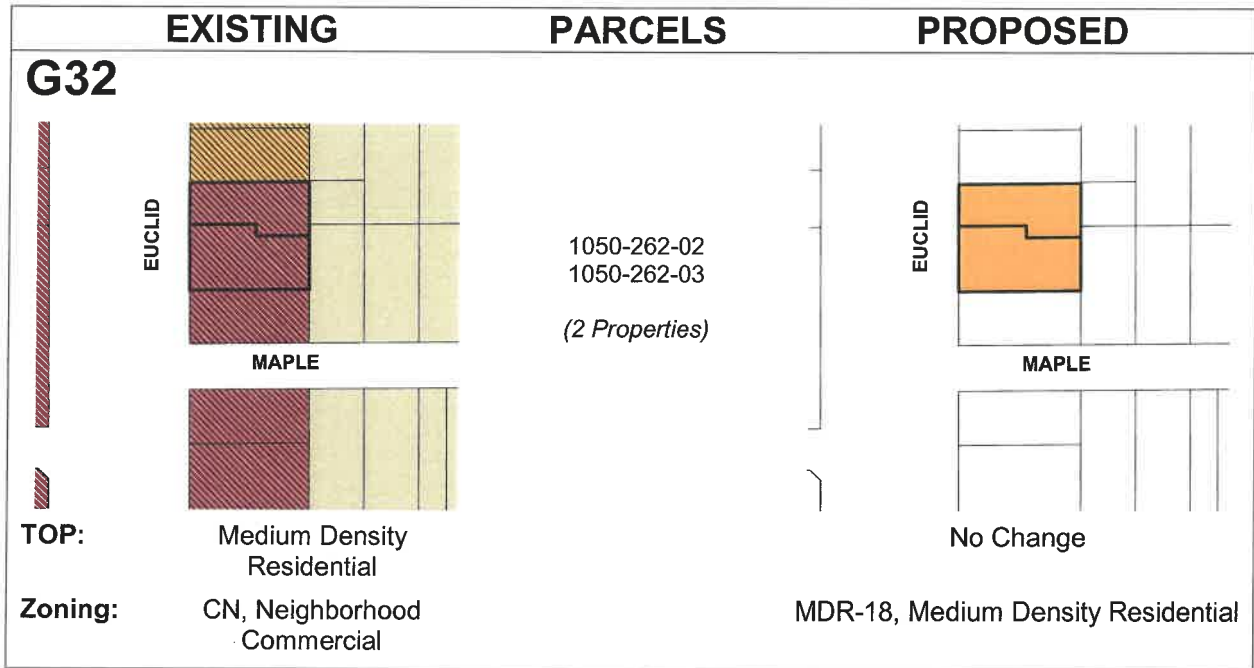


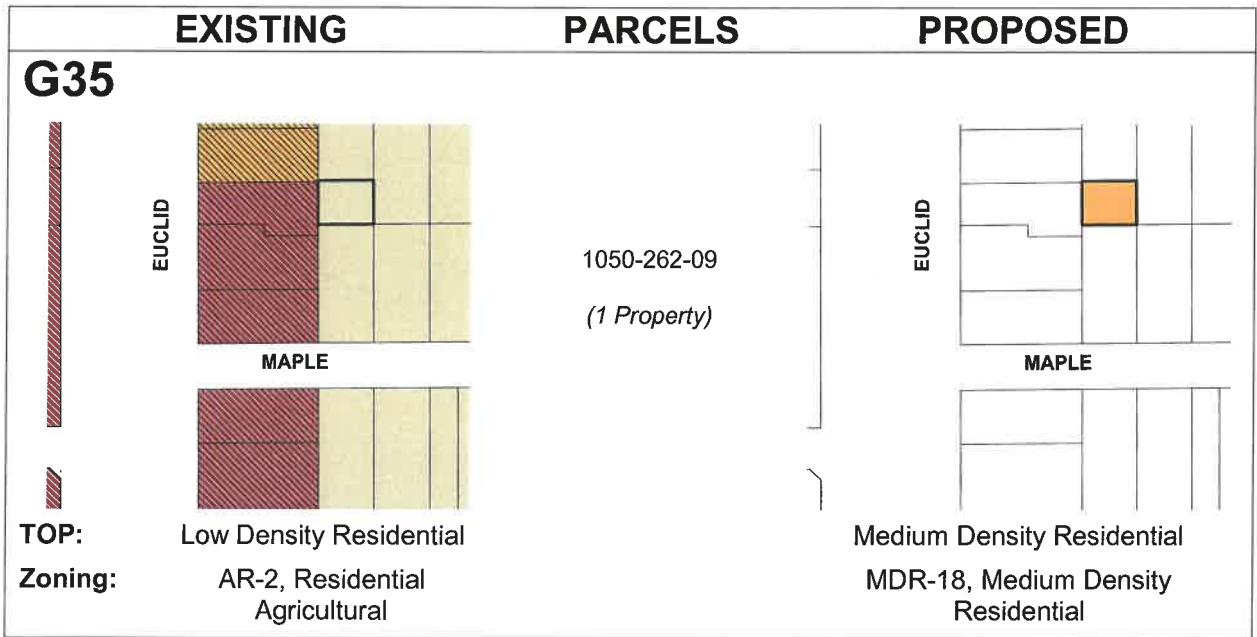
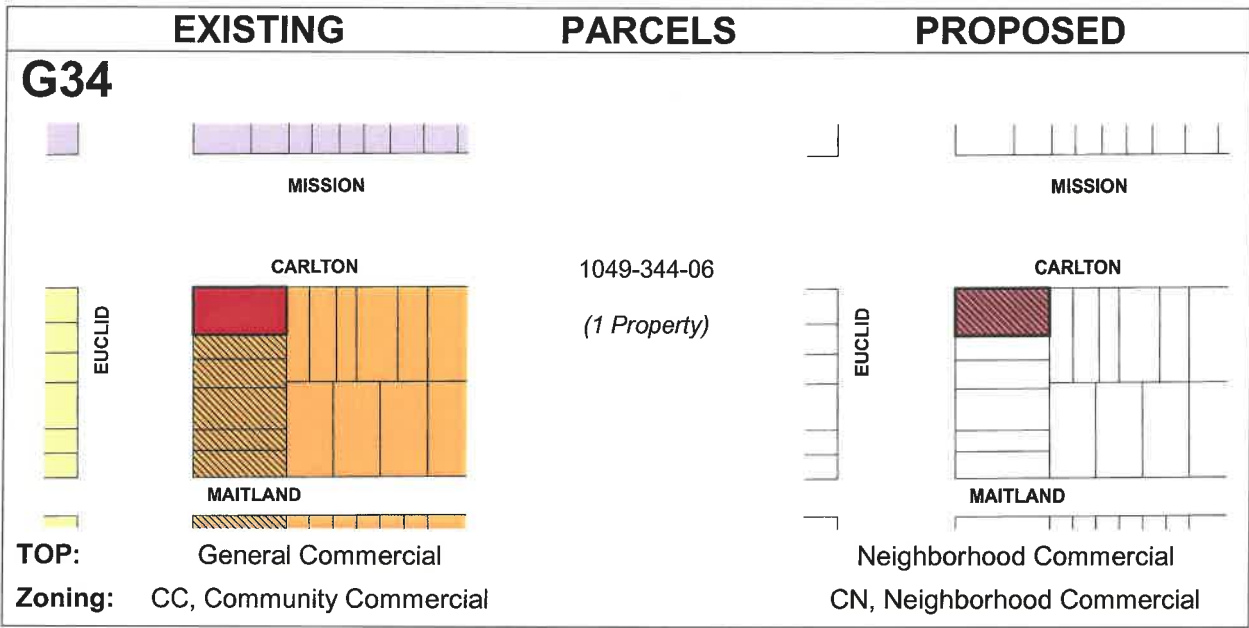










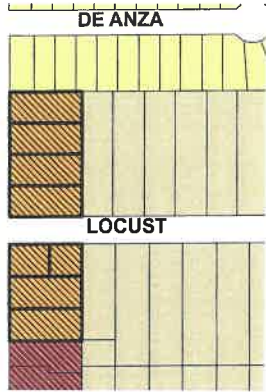
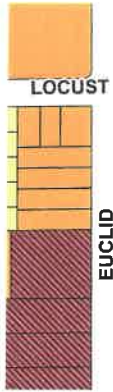


**EXISTING**

**PARCELS**

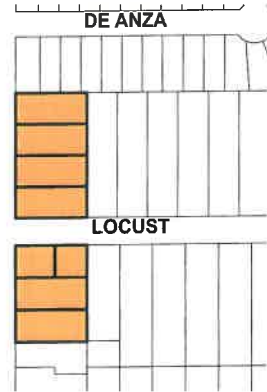
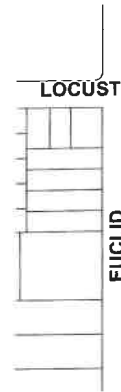
**PROPOSED**

**G36**



- 1050-261-18
- 1050-261-19
- 1050-261-20
- 1050-261-21
- 1050-262-04
- 1050-262-05
- 1050-262-06
- 1050-262-07

(8 Properties)



**TOP:**

Medium Density Residential

No Change

**Zoning:**

MDR-25, Medium-High Density Residential

MDR-18, Medium Density Residential

# CITY OF ONTARIO

Agenda Report  
March 21, 2017

SECTION:  
CONSENT CALENDAR

**SUBJECT: AN INTER-AGENCY BILLBOARD RELOCATION AGREEMENT (FILE NO. PSGN17-016) FOR THE REMOVAL, RELOCATION AND PLACEMENT OF BILLBOARDS**

**RECOMMENDATION:** That the City Council adopt a resolution approving a Billboard Relocation Agreement between the City of Ontario, San Bernardino County Transportation Authority, and Lamar Central Outdoor, LLC, and authorizing the City Manager to execute the agreement and any other documents necessary to fulfill the terms of the agreement.

**COUNCIL GOALS:** Operate in a Businesslike Manner  
Pursue City's Goals and Objectives by Working with Other Governmental Agencies

**FISCAL IMPACT:** None.

**BACKGROUND:** During 2015, the San Bernardino County Transportation Authority ("SBCTA"), the regional transportation authority, approached the City about the relocation of a billboard to the City from a location outside City limits to facilitate needed regional freeway interchange improvements. While the City recognized that billboard acquisition and/or relocation can be very expensive for SBCTA, the City needed to ensure that there was sufficient benefits to the City to enter into such an agreement. The resulting discussions and negotiations produced Ordinance No. 3037, approved by the City Council on January 19, 2016, which provided for a billboard located outside the City to be relocated to a site within the City pursuant to an agreement, approved at the discretion of the City Council, between the City and another public agency, so long as the following findings can be met:

- (1) The billboard's relocation is necessitated by work being performed along the same freeway as the planned new site for the billboard; and
- (2) A minimum of six (6) existing, legal nonconforming billboards shall be removed, at least five (5) of which must be currently located within the City; and

**STAFF MEMBER PRESENTING:** Scott Murphy, Planning Director

Prepared by: Scott Murphy  
Department: Planning

City Manager Approval: 

Submitted to Council/O.H.A. 03/21/2017

Approved: \_\_\_\_\_

Continued to: \_\_\_\_\_

Denied: \_\_\_\_\_

7

(3) The public health, safety, and welfare are not impaired by the relocation.

As part of improvements to the Interstate 10 (I-10) /Interstate 215 (I-215) interchange, SBCTA identified the need to remove/relocate two billboards. One of the billboards has already been addressed, but SBCTA found themselves in need of a solution to address the second billboard. Working with the billboard owner, Lamar Central Outdoor, LLC (“Lamar”), and the City, and through negotiations with the property owners, a site was identified on the south side of I-10, east of Mountain Avenue, at 1550 North Palmetto Avenue. The sign is proposed at the northwest corner of the site. The property is currently developed with a church, is surrounded by commercial and institutional uses, and is approximately 700 feet from the nearest residential uses.

In addition to the billboard sign at the I-10/I-215 interchange, the following billboards will be removed from the City:

- Billboard No. [2]. S/L Interstate 10 at Haven Avenue. (APN: 210-212-60)
- Billboard No. [3]. Southeast corner of the intersection of Holt Boulevard and Grove Avenue. (APN: 110-131-19)
- Billboard No. [4]. Mountain Avenue north of Mission Boulevard. (APN: 1011-182-10)
- Billboard No. [5]. Southeast corner of intersection of Holt Boulevard and Benson Avenue. (APN: 1011-111-10)
- Billboard No. [6]. Vineyard Avenue south of D Street. (APN: 110-022-12)

On February 28, 2017, the Planning Commission considered the application and determined that the agreement complied with the City’s Development Code and Policy Plan (General Plan) and voted unanimously to adopt its Resolution No. PC17-009, recommending approval of the agreement to the City Council.

**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, which consists of projects that are: (1) consistent with the General Plan; (2) on a site of no more than five acres; (3) has no habitat value for endangered, rare or sensitive species; (4) would not result in a significant impact to traffic, noise, air quality or water quality; and (5) is served by utilities. The proposed agreement and billboard placement comply with that criteria.

RESOLUTION NO. \_\_\_\_\_

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF ONTARIO, CALIFORNIA APPROVING FILE NO. PSGN17-016, A BILLBOARD RELOCATION AGREEMENT BETWEEN THE CITY OF ONTARIO, SAN BERNARDINO COUNTY TRANSPORTATION AUTHORITY AND LAMAR CENTRAL OUTDOOR, LLC AND MAKING FINDINGS IN SUPPORT THEREOF (APNS: 0110-022-12, 0110-131-19, 0210-212-60, 1008-261-45, 1011-111-10, AND 1011-182-10).

WHEREAS, Ontario has, consistent with the California Outdoor Advertising Act (California Business & Professions Code, '5200 et seq.), adopted certain regulations concerning outdoor advertising displays ("Billboards"), including a complete prohibition on new Billboards; and

WHEREAS, the California Outdoor Advertising Act generally provides that compensation must be paid to Billboard owners for the removal, abatement or limitation of the customary maintenance, use or repair of certain lawfully erected Billboards; and

WHEREAS, the California Outdoor Advertising Act also contains language providing that "[I]t is the policy of the State of California to encourage local entities to continue development in a planned manner without expenditure of public funds while allowing the continued maintenance or private investment and a medium of public communication." As a result, "...local entities are specifically empowered to enter into relocation agreements on whatever terms are agreeable to the display owner and the City ... and to adopt ordinances and resolutions providing for relocation of displays"; and

WHEREAS, on January 19, 2016, the City Council of the City of Ontario adopted its Ordinance No. 3037, establishing specific provisions relating to inter-agency billboard relocation agreements; and

WHEREAS, Lamar Central Outdoor, LLC ("Lamar") maintains an existing Billboard at the Interstate 10/215 interchange within the City of Colton ("Colton Billboard") that is in conflict with proposed freeway interchange improvements proposed by San Bernardino County Transportation Authority ("SBCTA"). If a suitable relocation site is not identified, SBCTA will be required to compensate Lamar for the loss of the billboard, thereby increasing the cost of the interchange project; and

WHEREAS, the Colton Billboard meets the criteria for relocation established under the provisions for inter-agency relocation agreements; and

WHEREAS, Lamar maintains several billboards within the City, some of which it is willing to permanently remove ("Pre-existing Billboards"); and

WHEREAS, Ontario is willing to accommodate the relocation of the Colton Billboard within the City in exchange for the removal of five Pre-existing Billboards as identified in the Billboard Relocation Agreement; and

WHEREAS, as the recommending body, the Planning Commission has reviewed this agreement and recommends approval, based on the following findings as contained in the City's Sign Ordinance and Ordinance 3037; and

WHEREAS, on February 28, 2017, the Planning Commission of the City of Ontario conducted a hearing to consider the Project, and concluded said hearing on that date. After considering the Project, the Planning Commission voted unanimously to issue its Resolution No. PC17-009, recommending approval of the Project to the City Council; and

WHEREAS, on March 21, 2017, the City Council of the City of Ontario conducted a hearing to consider the Project and concluded said hearing on that date; and

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

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

SECTION 1. *Environmental Determination and Findings.* As the decision-making body for the Project, the City Council has reviewed and considered the information contained in the administrative record for the Project. Based upon the facts and information contained in the administrative record, including all written and oral evidence presented to the City Council, the City Council finds as follows:

- a. The Project is categorically exempt from environmental review pursuant to Section 15332 (Class 32—In-fill development) of the CEQA Guidelines; and
- b. The application of the categorical exemption is not barred by one of the exceptions set forth in CEQA Guidelines Section 15300.2; and
- c. The determination of CEQA exemption reflects the independent judgment of the Historic Preservation Commission.

SECTION 2. *Housing Element Consistency.* Pursuant to the requirements of California Government Code Chapter 3, Article 10.6, commencing with Section 65580, as the decision-making body for the Project, the City Council finds that based upon the facts and information contained in the Application and supporting documentation, at the time of Project implementation, the Project will be consistent with the Housing Element of the Policy Plan (General Plan) component of The Ontario Plan, as the project does not specifically affect the properties in the Available Land Inventory contained in Table A-3 (Available Land by Planning Area) of the Housing Element Technical Report Appendix.

SECTION 3. *Airport Land Use Compatibility Plan (ALUCP) Consistency.* 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, and finds that, at the time of Project implementation, the Project will be consistent with the policies and criteria set forth within the ONT ALUCP.

SECTION 4. *Concluding Facts and Reasons.* Based upon the substantial evidence presented to the City Council during the above-referenced hearing, and upon the specific findings set forth in Section 1 through 3 above, the City Council hereby concludes as follows:

- (A) The proposed agreement is consistent with the goals, objectives, purposes and provisions of the Ontario General Plan, the Ontario Development Code, and any applicable specific plan;
- (B) The proposed relocation site is compatible with uses and structures on the site and in the surrounding area;
- (C) The proposed agreement contributes to the reduction of visual clutter in the City by reducing the net number of billboards within the City by five (5);
- (D) The proposed site complies with the relocation criteria listed in that the billboard's relocation is necessitated by work being performed on the same freeway (Interstate 10) as the planned new site for the billboard; and
- (E) The public health, safety, and welfare are not impaired by the relocation.

SECTION 5. *City Council Action.* Based upon the findings and conclusions set forth in Sections 1 through 4 above, the City Council hereby APPROVES the herein described Application, attached as Exhibit "A" and authorizes the City Manager to execute the agreement and other agreements, as may be necessary, to complete the Project.

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.

PASSED, APPROVED, AND ADOPTED this 21<sup>st</sup> day of March 2017.

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PAUL S. LEON, MAYOR



ATTEST:

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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. 2017-    was duly passed and adopted by the City Council of the City of Ontario at their regular meeting held March 21, 2017 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. 2017-    duly passed and adopted by the Ontario City Council at their regular meeting held March 21, 2017.

\_\_\_\_\_  
SHEILA MAUTZ, CITY CLERK

(SEAL)

**EXHIBIT "A"**

**BILLBOARD REMOVAL  
AND RELOCATION AGREEMENT**

**BILLBOARD REMOVAL AND RELOCATION AGREEMENT AMONG THE CITY OF  
ONTARIO, SAN BERNARDINO COUNTY TRANSPORTATION AUTHORITY, AND  
LAMAR CENTRAL OUTDOOR, LLC**

**1. PARTIES.**

This Billboard Relocation Agreement (“Agreement”) is made this \_\_\_ day of \_\_\_\_\_ 2017, among the City of Ontario (“Ontario”), San Bernardino County Transportation Authority (“SBCTA”), and Lamar Central Outdoor, LLC, a Delaware Limited Liability Company (“Lamar”). Ontario, SBCTA, and Lamar are referred to collectively as “Parties.”

**2. RECITALS.**

**2.1** WHEREAS, Ontario has, consistent with the California Outdoor Advertising Act (California Business & Professions Code, § 5200 et seq.), adopted certain regulations concerning outdoor advertising displays (“Billboards”) as part of the Ontario Development Code (“ODC”), including a prohibition on new Billboards (ODC, § 8.01.015), provisions governing the relocation of Billboards (ODC, § 44.02.010), and a specific provision relating to inter-agency relocation agreements (ODC, § 4.02.010(F)(2)(f)); and

**2.2** WHEREAS, the California Outdoor Advertising Act generally provides that compensation must be paid to Billboard owners for the removal, abatement or limitation of the customary maintenance, use or repair of certain lawfully erected Billboards; and

**2.3** WHEREAS, the California Outdoor Advertising Act also contains language providing that “it is the policy of the State of California to encourage local entities to continue development in a planned manner without expenditure of public funds while allowing the continued maintenance or private investment and a medium of public communication.” As a result, “. . . local entities are specifically empowered to enter into relocation agreements on whatever terms are agreeable to the display owner and the city . . . and adopt ordinances and resolutions providing for relocation of displays”; and

**2.4** WHEREAS, Lamar maintains five Billboards within Ontario which it is willing and able to permanently remove (“Preexisting Billboards”); and

**2.5** WHEREAS, Lamar maintains a Billboard within the City of Colton that meets the candidacy requirements for relocation to Ontario under Section 4.02.010(F)(2)(f) of the ODC because it is proposed to be removed as a result of work being performed by SBCTA on the I-10 freeway (“Colton Billboard”); and

**2.6** WHEREAS, Ontario is willing to accommodate the relocation of the Colton Billboard to Ontario in exchange for the removal of the Preexisting Billboards in accordance with Section 4.02.010(F)(2)(f) of the ODC.

NOW, THEREFORE, in consideration of the above recitals and the mutual covenants hereinafter contained and for good and valuable consideration, the receipt of which is hereby acknowledged, the Parties agree as follows:

**3. EFFECTIVE DATE AND TERM.**

**3.1** This Agreement shall be effective upon execution of this Agreement by all Parties (“Effective Date”).

**3.2** This Agreement shall be effective until all obligations hereunder are complete.

**4. TERMS.**

**4.1** Incorporation of Recitals and Exhibits. All recitals and the exhibits attached hereto are referred to in this Agreement are incorporated as though fully set forth in this Agreement.

**4.2** Removal of Preexisting Billboards. Within ninety (90) days following the issuance of all permits necessary for the relocation of the Colton Billboard to Ontario described in Section 4.3, Lamar shall secure the legal right to remove, at its sole cost and expense, the following billboards, herein defined as Preexisting Billboards, and their associated support structures and components:

- A. Billboard No. [1]. Interstate 10 / Interstate 215 Interchange (“Colton Billboard”).
- B. Billboard No. [2]. S/L Interstate 10 at Haven Boulevard. (APN: 210-212-60)
- C. Billboard No. [3]. Southeast corner of the intersection of Holt and Grove Avenue. (APN: 110-131-19)
- D. Billboard No. [4]. Mountain Avenue north of Mission. (APN: 1011-182-10)
- E. Billboard No. [5]. Southeast corner of intersection of Holt Boulevard and Benson Avenue. (APN: 1011-111-10)
- F. Billboard No. [6]. Vineyard Avenue south of D Street. (APN: 110-022-12)

**4.3 Relocation of Colton Billboard.** In consideration for Lamar's actions as described in Section 4.2 above, Lamar shall be permitted to relocate the Colton Billboard to the area shown on the site plan ("Relocation Site") attached hereto as Exhibit "A" to this Agreement. The Colton Billboard shall be relocated in compliance with the plans and specifications attached hereto as Exhibit "B" to this Agreement. Lamar agrees and understands that the relocation of the Colton Billboard may be subject to certain discretionary and environmental approvals issued by Ontario. Nothing contained herein shall be interpreted to require Ontario to approve the Colton Billboard. Ontario's obligations with respect to this section shall be to review and consider approval, in good faith and as expeditiously as possible, the relocation of the Colton Billboard. The failure of Ontario to approve the relocation of the Colton Billboard shall not subject Ontario to the payment of compensation or monetary payment for the removal of any Billboard. Lamar understands and agrees that it is not entitled to nor shall it seek compensation or monetary payment of any type or relocation benefits, as may be provided by state or federal law for the removal of any Preexisting Billboard, from either Ontario or SBCTA. Lamar assumes all risks in removing any Preexisting Billboard described in this Agreement prior to the receipt of any discretionary approval required for the relocation of the Colton Billboard.

**4.4 Advertising Limitation.** Lamar voluntarily covenants and agrees for itself, its successors and assigns, that any advertising displayed on the relocated Colton Billboard shall not contain any advertising for adult entertainment or nudity including, but not limited to, topless bars, nightclubs, establishments that feature nude dancing, mud wrestling, any adult business featuring retail sales of adult novelty items, books, magazines, videos and tapes, or any material that could be reasonably considered pornographic. Further, Lamar voluntarily covenants and agrees for itself, its successors and assigns, that any advertising displayed on the relocated Colton Billboard shall not contain any advertising for alcohol or tobacco products of any type, gambling or gambling services, or any political messages or advertising. Notwithstanding the foregoing, gambling establishments may advertise non-gaming/gambling services. Ontario further reserves the right to object to any other advertising that may be considered detrimental to the image of Ontario. In such cases, Ontario shall inform Lamar in writing of the offensive advertising and request that it be removed. Lamar shall not unreasonably deny the request.

**4.5 Maintenance and Operation of Colton Billboard.** Lamar shall at its sole cost and expense pay for all maintenance and operation costs associated with operating the Colton Billboard upon relocation. Should the Colton Billboard and the surrounding sites not be maintained in accordance with all laws, codes, and ordinances, Ontario shall provide Lamar with thirty (30) days' notice to comply with such laws, code, and ordinances before Lamar shall be required to remove the Colton Billboard at its sole cost and expense.

**4.6 Indemnification of Ontario.** Lamar shall defend, indemnify and hold Ontario, its officials, officers, and agents free and harmless from any and all claims, liabilities, losses, costs, expenses, damages, injuries to property or persons, including wrongful death, in any manner arising out of or incident to any negligent acts, omissions or willful misconduct of Lamar, its officers and employees, agents, consultants and contractors arising out of or in connection with

this Agreement or the removal, past-removal, construction, relocation, and installation of the Preexisting Billboards and Colton Billboard, including without limitation, the payment of all consequential damages, attorneys' fees and other related costs and expenses. At a minimum, this indemnification provision shall apply to the fullest extent of any warranty or guarantee implied by law or fact, or otherwise given to Indemnifying Parties by their contractors for the removal, past-removal, construction, relocation, and installation of the Preexisting Billboards and Colton Billboard. In addition, this indemnity provision and any such warranties or guarantees shall not limit any liability under law of such contractors. Without limiting the foregoing, this indemnity shall extend to any claims arising because Lamar has failed to properly secure any necessary contracts or permit approvals.

**4.7** Assignment Without Consent Prohibited. This Agreement may not be assigned by any Party without the express written consent of the other Parties, and consent shall not be unreasonably withheld. Any attempted assignment of this Agreement not in compliance with the terms of this Agreement shall be null and void and shall confer no rights or benefits upon the assignee.

**4.8** Permit Fees and Submittal of Plans. Lamar hereby agrees to pay any and all permit fees associated with the required removal of any Preexisting Billboard and the relocation of the Colton Billboard. Lamar also agrees to submit any plans, studies, specifications, engineering studies and calculations needed by Ontario as part of its review of the removal of any Preexisting Billboard and the relocation of the Colton Billboard. Ontario's obligations with respect to the processing of any application shall be contingent upon payment by Lamar of any such fees and the submittal of necessary plans.

**4.9** Attorneys' Fees. In the event of any action or proceeding, including arbitration, by any of the Parties to this Agreement against another Party for recovery of any sum due under this Agreement, or to enforce any of the terms, covenants or conditions contained herein, the prevailing Party in any such action or proceeding shall be entitled to reasonable attorneys' fees and costs of litigation, including, without limitation, filing fees, service fees, deposition costs and arbitration costs, in addition to all other legal and equitable remedies available to it. Each Party shall give prompt notice to the other Parties of any claim or suit instituted against it that may affect the other Parties.

**4.10** Waiver. The waiver of any Party of any breach of any term, covenant, or condition herein contained shall not be deemed to be a waiver of any other term, covenant, or condition, or of any subsequent breach of the same term, covenant, or condition. However, nothing contained in this Agreement shall be deemed to be an acknowledgment or acceptance by Ontario or SBCTA that compensation is owed as to any Billboard, either in whole or in part, to any Party having an interest in any of the Billboards herein.

**4.11** Waiver of Civil Code Section 1542. It is the intention of the Parties that the releases entered into as part of this Agreement shall be effective as a bar to all actions, causes of action,

obligations, costs, expenses, attorneys' fees, damages, losses, claims, liabilities and demands of any character, nature and kind, known or unknown, suspected or unsuspected, to be so barred; in furtherance of which intention the Parties expressly waive any and all right and benefit conferred upon them by the provisions of section 1542 of the California Civil Code, which reads as follows:

**A general release does not extend to claims which the creditor does not know or suspect to exist in his favor at the time of executing the release, which if known by him must have materially affected his settlement with the debtor.**

**4.12** Notices. All notices shall be in writing and addressed as follows:

- A. To Ontario: City Manager, City of Ontario, 303 East B Street, Ontario, CA 91764.
- B. To SBCTA: Director of Project Delivery, San Bernardino County Transportation Authority, 1170 W. 3rd Street, 2nd Floor, San Bernardino, CA 92410-1715.
- C. To LAMAR: Lamar Central Outdoor, LLC, Attn: Randy Straub, General Manager, 24541 Redlands Blvd., Loma Linda, CA 92354.

All notices shall be deemed made when personally delivered or when mailed forty-eight (48) hours after each deposit in the U.S. mail, first-class postage prepaid and addressed to Party as its applicable address.

**4.13** Authority to Enter Agreement. All Parties have all requisite power and authority to execute, deliver, and perform the Agreement. All Parties warrant that the individuals who have signed this Agreement have the legal power, right, and authority to make this Agreement and bind each respective Party.

**4.14** Construction; References; Captions. Since the Parties or their agents have participated fully in the preparation of this Agreement, the language 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 or calendar weeks, and not work days. All references to any Party shall include its respective directors, 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.

**4.15** Amendment/Modification. No supplement, modification, or amendment of this Agreement shall be binding unless executed in writing and signed by all Parties.



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

**4.17** 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.

**4.18** Governing Law and Venue. This Agreement shall be governed by the laws of the State of California. Venue shall be in San Bernardino County.

**4.19** Time is of the Essence. Time is of the essence in each and every provision of this Agreement.

**4.20** 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. This Agreement may only be modified by a writing signed by both Parties.

**4.21** Counterparts. This Agreement may be signed in counterparts, each of which shall constitute an original.

**4.22** Binding Agreement. Subject to any limitation on assignment elsewhere set forth herein, all terms of this Agreement shall be binding upon, inure to be benefit of, and be enforceable by the Parties hereto and their respective legal representatives, successors and assigns.

[SIGNATURES ON FOLLOWING PAGE]

**SIGNATURE PAGE TO  
BILLBOARD REMOVAL AND RELOCATION AGREEMENT AMONG THE CITY OF  
ONTARIO, SAN BERNARDINO COUNTY TRANSPORTATION AUTHORITY, AND  
LAMAR CENTRAL OUTDOOR, LLC**

**CITY OF ONTARIO**

**LAMAR CENTRAL OUTDOOR, LLC**

\_\_\_\_\_  
Al C. Boling, City Manager

\_\_\_\_\_  
[Name, Title]

ATTEST:

\_\_\_\_\_  
City Clerk

\_\_\_\_\_  
[Name, Title]

APPROVED AS TO FORM:

\_\_\_\_\_  
City Attorney

**SAN BERNARDINO COUNTY TRANSPORTATION AUTHORITY**

\_\_\_\_\_  
Raymond Wolfe, Executive Director

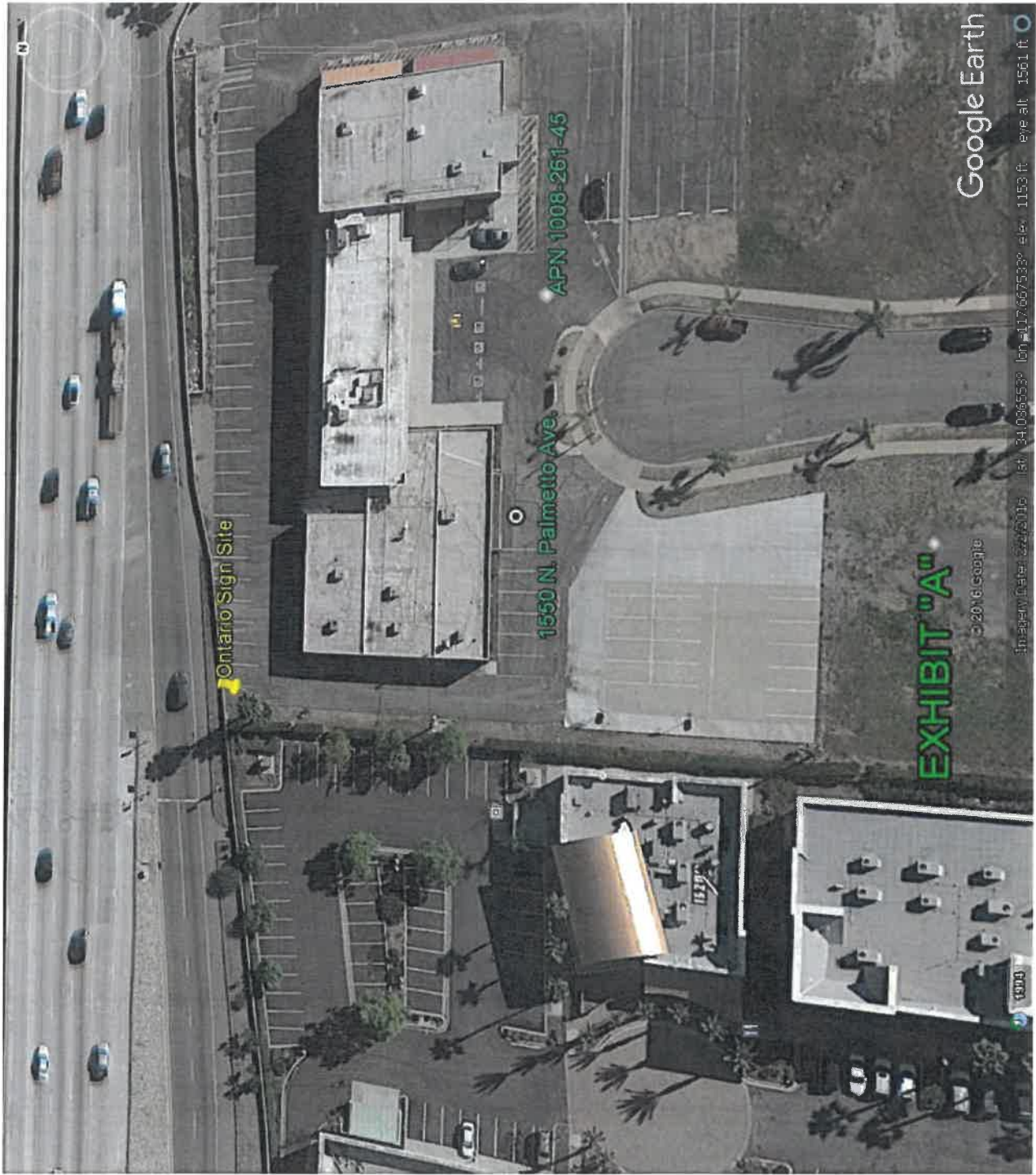
ATTEST:

\_\_\_\_\_  
Board Clerk

APPROVED AS TO FORM:

\_\_\_\_\_  
Craig G. Farrington/Alyson C. Suh

**EXHIBIT A  
RELOCATION SITE PLAN**



**EXHIBIT B**  
**CONCEPTUAL PLANS AND SPECIFICATIONS**  
**FOR RELOCATION OF COLTON BILLBOARD**

[on following pages]

5' x 5' x 35' tall, Aluminum pole cover column.

.090" thick aluminum panel construction with internal angle iron framing supports.

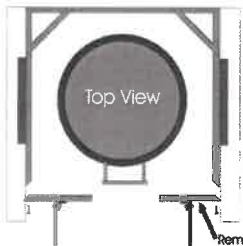
Primary 5' x 5' section to have textured finish painted brown.

Shorter accent blades to be 1/8" thick each x 17" wide x 33" tall. To have textured finish painted Rust Brown.

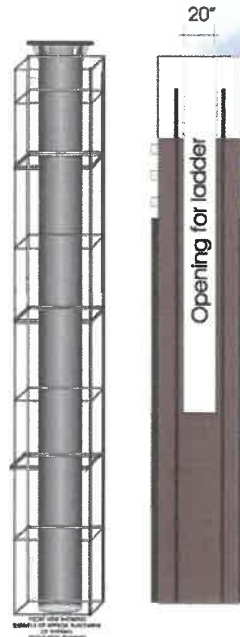
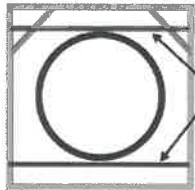
Vertical front accent to be 30" wide x 22' tall x 2" deep, textured & painted Deep Brown.

6" x 6" square horizontal aluminum accents to be painted white.

Pole cover welded to pipe.



Removable end sections on this side only.



**RMG**  
Outdoor Inc.

1-20-17

# CITY OF ONTARIO

Agenda Report  
March 21, 2017

SECTION:  
CONSENT CALENDAR

**SUBJECT: CONSTRUCTION CONTRACT FOR WELL FACILITY BACKUP POWER UPGRADES AT WELL NOS. 24, 25, 30, 35, & 36 DESIGN-BUILD SERVICES**

**RECOMMENDATION:** That the City Council approve the plans and specifications and award Contract No. UT 1617-01 (on file with the Records Management Department) to Baker Electric, Inc. of Escondido, California for the design and construction of Well Facility Backup Power Upgrades at Well Nos. 24, 25, 30, 35, & 36 in the amount of \$332,747, plus a 15% contingency of \$49,912, for a total amount of \$382,659; and authorize the City Manager to execute said contract and file a notice of completion at the conclusion of all construction activities related to the project.

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

**FISCAL IMPACT:** The Fiscal Year 2016-17 Capital Improvement Program includes appropriations from the Water Capital Fund for this project. The recommended contract award to Baker Electric, Inc. is \$332,747 plus a 15% contingency of \$49,912 for a total amount of \$382,659. There is no impact to the General Fund.

**BACKGROUND:** The Water Master Plan recommends equipping a sufficient number of wells with backup power (using either mobile or stationary generators) to ensure that the residents and businesses of the City of Ontario have a reliable water service in the event of a power outage. A sudden loss of power caused by an emergency, such as an earthquake, would limit the City's ability to pump water from its wells. Four of the City's twenty-two operating wells currently have stationary emergency backup generators. The City also has four mobile generators. In 2015, the City completed modifications to three wells for connecting mobile emergency generators. The award of this construction contract will provide the necessary electrical upgrades to the five well sites identified in order to allow the use of backup mobile generators. These well sites were selected based on several factors including age of the well, water production capacity, electrical requirements, and hydraulic pressure zone. A location map is provided for reference.

**STAFF MEMBER PRESENTING:** Scott Burton, Utilities General Manager

Prepared by: Ahmed Aly  
Department: MU/Engineering

City Manager Approval: 

Submitted to Council/O.H.A. 03/21/2017

Approved: \_\_\_\_\_

Continued to: \_\_\_\_\_

Denied: \_\_\_\_\_

8

On November 29, 2016 bids were received for the Well Facility Backup Power Upgrades at Well Nos. 24, 25, 30, 35, & 36, Design-Build Services. The bids ranged from \$332,747 to \$337,650. The bids are summarized below.

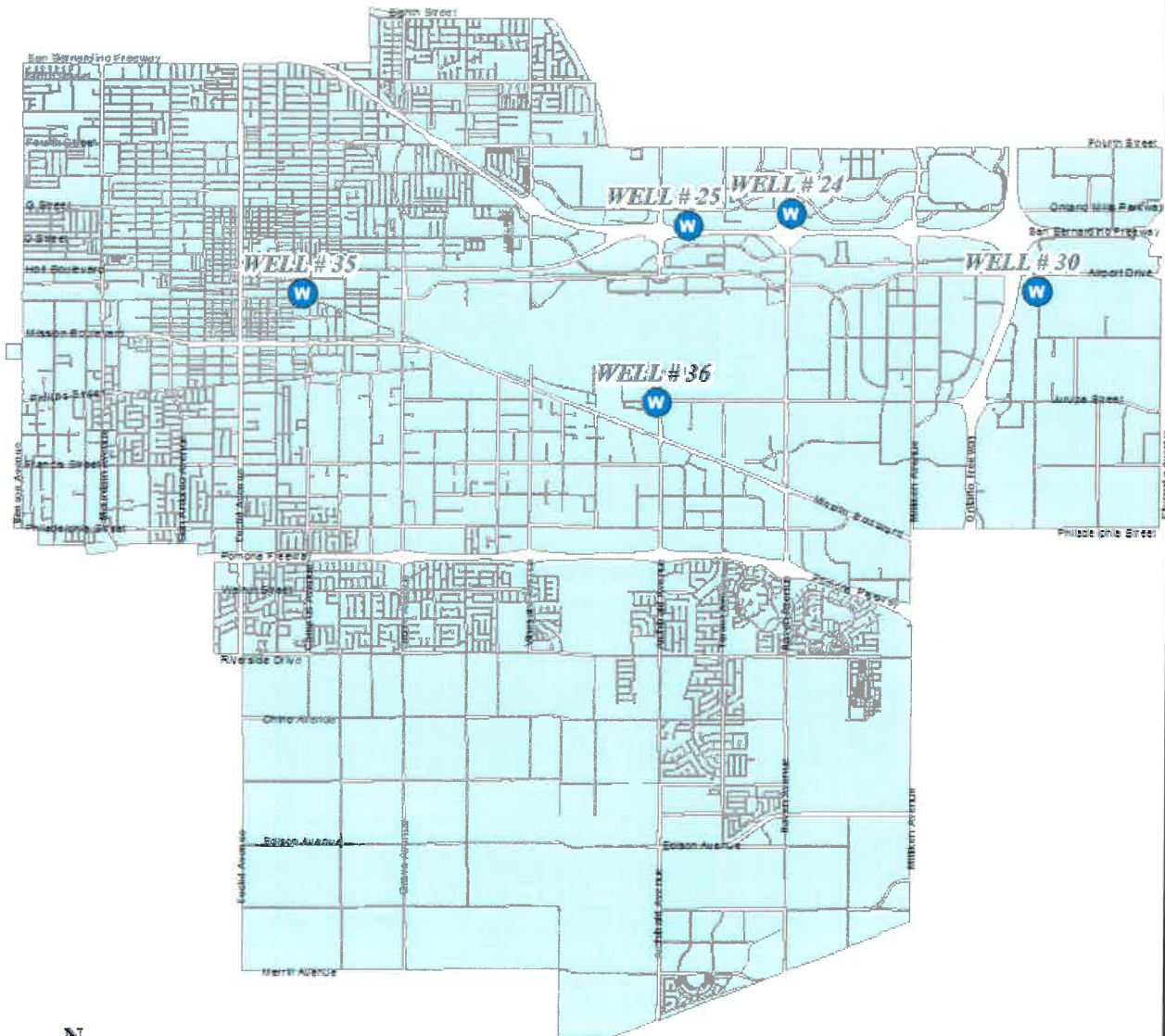
<u>Bidder</u>	<u>Location</u>	<u>Bid Amount</u>
Baker Electric, Inc.	Escondido, CA	\$ 332,747
CSI Electrical Contractors, Inc.	Santa Fe Springs, CA	\$ 337,650

Staff recommends award of the contract to Baker Electric, Inc. of Escondido, California, based on their expertise and ability to perform the work in a timely manner and successful completion of this type of work in the past.

The project is a component of the 2012 Infrastructure Master Plans approved by the City Council on December 4, 2012. A Mitigated Negative Declaration was prepared and approved for the 2012 Infrastructure Master Plans pursuant to the provisions of CEQA. An analysis of the project has determined that there is no significant deviation from the description of this component of the overall 2012 Infrastructure Master Plans. Thus, no further CEQA analysis is required.



OMUC Contract No. UT 1617-01  
WELL FACILITY BACKUP POWER FOR  
WELLS NOs. 24, 25, 30, 35, & 36





# CITY OF ONTARIO

Agenda Report  
March 21, 2017

SECTION:  
CONSENT CALENDAR

**SUBJECT: A RESOLUTION APPROVING AN APPLICATION FOR FISCAL YEAR 2016-17 HOUSEHOLD HAZARDOUS WASTE GRANT (HD29) FROM THE DEPARTMENT OF RESOURCES RECYCLING AND RECOVERY (CALRECYCLE)**

**RECOMMENDATION:** That the City Council adopt a resolution approving the City's application for the Fiscal Year 2016-2017 Household Hazardous Waste Grant pursuant to Public Resources Code Sections 40000 et seq. and authorize the City Manager to execute said application.

**COUNCIL GOALS:** Pursue City's Goals and Objectives by Working with Other Governmental Agencies

**FISCAL IMPACT:** The City may receive up to \$50,000 in grant reimbursement for the cost of Household Hazardous Waste (HHW) Education and Outreach provided to Ontario residents and minor improvements to the HHW Facility that enhance or improve the existing program for Fiscal Years 2016-17 through Fiscal Years 2019-20. No matching funds are required. There is no impact to the General Fund. If the City is successful in obtaining the grant award, future appropriations and revenue adjustments will be included in appropriate budget actions by the City Council.

**BACKGROUND:** The City is eligible to apply for Fiscal Year 2016-17 (HD29) Household Hazardous Waste Grant funds from the State of California, Department of Resources Recycling and Recovery (CalRecycle). These grants are designed to provide opportunities for local governments to implement safe HHW programs for collection, public education, source reduction, reuse, and/or recycling of household hazardous waste.

The program provides funding on a competitive basis to local governments to provide education and outreach and minor improvements to HHW facilities like Ontario's, which is located at 1430 South Cucamonga Avenue. Ontario's HHW facility is open to the public Friday and Saturday from 9:00 a.m. to 2:00 p.m., and the facility accepts household hazardous waste materials like used motor oil, paint, pesticides, fertilizer, medicine and electronic waste. The HHW facility also includes a free reuse center where residents can pick up partially used products dropped off by other residents.

**STAFF MEMBER PRESENTING:** Scott Burton, Utilities General Manager

Prepared by: Thomas Coates  
Department: MU/Solid Waste

City Manager  
Approval: 

Submitted to Council/O.H.A. 03/21/2017

Approved: \_\_\_\_\_

Continued to: \_\_\_\_\_

Denied: \_\_\_\_\_

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Outreach to residents regarding Ontario's HHW facility is intended to improve knowledge of household hazardous waste and increase use of the facility to reduce, recycle and reuse solid waste generated in Ontario, thereby preserving landfill capacity and protecting public health and safety and the environment.

RESOLUTION NO. \_\_\_\_\_

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF ONTARIO, CALIFORNIA, APPROVING A GRANT APPLICATION TO THE DEPARTMENT OF RESOURCES RECYCLING AND RECOVERY HOUSEHOLD HAZARDOUS WASTE (HHW) GRANT PROGRAM TO FUND PUBLIC EDUCATION AND OUTREACH AND MINOR IMPROVEMENTS TO THE HOUSEHOLD HAZARDOUS WASTE FACILITY.

WHEREAS, Public Resources Code Sections 40000 et seq authorize the Department of Resources Recycling and Recovery (CalRecycle), to administer various Grant Programs in furtherance of the State of California's efforts to reduce, recycle and reuse solid waste generated in the State thereby preserving landfill capacity and protecting public health and safety and the environment, and

WHEREAS, in furtherance of this authority CalRecycle is required to establish procedures governing the application, awarding, and management of the grants; and

WHEREAS, CalRecycle grant application procedures require, among other things, an applicant's governing body to declare by resolution certain authorizations related to the administration of CalRecycle grants; and

WHEREAS, if awarded, the applicant will enter into a Grant Agreement with CalRecycle to provide household hazardous waste education, outreach and complete minor improvements to the Household Hazardous Waste facility that enhance and improve the existing program during Fiscal Year 2016-2017.

NOW, THEREFORE, BE IT RESOLVED that the City Council of the City of Ontario authorizes the submittal of an application to CalRecycle for the Household Hazardous Waste Grant for Fiscal Year 2016-17 (HD29).

BE IT FURTHER RESOLVED that the City Manager or his designee is hereby authorized and empowered to execute in the name of the City of Ontario all grant documents, including but not limited to. Applications, agreements and requests for payment, necessary to secure grant funds and implement the approved grant project; and

BE IT FURTHER RESOLVED that these authorizations are effective for five (5) years from the date of adoption of this resolution.

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

PASSED, APPROVED, AND ADOPTED this 21<sup>st</sup> day of March 2017.

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PAUL S. LEON, MAYOR

ATTEST:

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SHEILA MAUTZ, CITY CLERK

APPROVED AS TO FORM:

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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. 2017-    was duly passed and adopted by the City Council of the City of Ontario at their regular meeting held March 21, 2017 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. 2017-    duly passed and adopted by the Ontario City Council at their regular meeting held March 21, 2017.

\_\_\_\_\_  
SHEILA MAUTZ, CITY CLERK

(SEAL)

# CITY OF ONTARIO

Agenda Report  
March 21, 2017

SECTION:  
PUBLIC HEARINGS

**SUBJECT: A PUBLIC HEARING REGARDING THE ECONOMIC DEVELOPMENT SUBSIDY REPORT AND THIRD AMENDMENT TO OPERATING COVENANT AND TAX SHARING AGREEMENT BETWEEN THE CITY OF ONTARIO AND G.H.N., INC. (EXCLUSIVELY VOLVO) PURSUANT TO GOVERNMENT CODE SECTION 53083; CONSIDERATION OF RESOLUTIONS ACCEPTING THE ECONOMIC DEVELOPMENT SUBSIDY REPORT, APPROVING THE THIRD AMENDMENT TO OPERATING COVENANT AND TAX SHARING AGREEMENT, AND MAKING RELATED FINDINGS**

**RECOMMENDATION:** That the City Council take the following actions:

- (A) Hold the public hearing;
- (B) Adopt a resolution accepting the Economic Development Subsidy Report prepared pursuant to Government Code Section 53083 regarding a Third Amendment to Operating Covenant and Tax Sharing Agreement (on file with the Records Management Department) by and between the City of Ontario and G.H.N., Inc. a California Corporation (Exclusively Volvo);
- (C) Adopt a resolution approving the Third Amendment to Operating Covenant and Tax Sharing Agreement for no less than ten years, authorizing the City Manager to execute the Third Amendment to Operating Covenant and Tax Sharing Agreement, and making related findings; and
- (D) Direct City staff to file a categorical exemption based upon the City Council's finding that the impacts for this existing facility is not a project and subject to environmental review and that there is no possibility that the activity in question may have a significant effect on the environment.

**COUNCIL GOALS: Invest in the Growth and Evolution of the City's Economy  
Operate in a Businesslike Manner**

**STAFF MEMBER PRESENTING:** John P. Andrews, Economic Development Director

Prepared by: Nicholas Gonzalez  
Department: Economic Development

City Manager  
Approval: 

Submitted to Council/O.H.A. 03/21/2017

Approved: \_\_\_\_\_

Continued to: \_\_\_\_\_

Denied: \_\_\_\_\_

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**FISCAL IMPACT:** Pursuant to the terms of the proposed Third Amendment to Operating Covenant and Tax Sharing Agreement, the operating covenant payment between the City and Exclusively Volvo is calculated based on Exclusively Volvo's sales tax revenue in an amount equal to the sum of fifty percent (50%) of Exclusively Volvo's sales tax revenues attributable to the location, not to exceed \$200,000 per year. For the first twenty-four computation periods, the aggregate amount during the entire eligibility period shall not exceed \$500,000. During the balance of the eligibility period, the aggregate amount shall not exceed \$950,000.

Entering into the Agreement ensures that local sales tax revenue generated by Exclusively Volvo, will continue to remain in the City until the date upon which the City stops receiving sales tax revenue from Exclusively Volvo.

**BACKGROUND:** The Volvo dealership referenced, is located in the Ontario Auto Center, which is a highly successful commercial development in the City and produces substantial sales tax revenues. The continued growth and prosperity of the Ontario Auto Center within the City is consistent with City Council goals to invest in the growth and evolution of the City's economy. Through the sales tax revenue received, the City is able to fund necessary public services and facilities, including but not limited to, public safety services and facilities, public improvements and recreation opportunities that otherwise may not be available to the community for many years.

The City and G.H.N., Inc. ("G.H.N.") entered into the "Agreement for Purchase of Operating Covenant and Operating Covenant (Exclusively Volvo/Volkswagen/Subaru)" dated as December 21, 2001, and was amended by that certain "First Amendment to Agreement for Purchase of Operating Covenant and Operating Covenant (Exclusively Volvo/Volkswagen/Subaru)" dated as December 12, 2002, and was amended by that certain Second Amendment to Agreement for Purchase of Operating Covenant and Operating Covenant (Exclusively Volvo/Volkswagen/Subaru) dated January 16, 2007, whereby the dealer agreed to develop and operate a facility and receive certain operating covenant payments.

The City and G.H.N. thereafter entered into an agreement for the Volvo dealership for an additional fifteen years. The City and G.H.N. thereafter entered into the First Amendment to Operating Covenant and Tax Sharing Agreement, dated May 24, 2010, extending the term of the dealership operating covenant. In 2012, the Second Amendment to Operating Covenant and Tax Sharing Agreement was entered for the purpose of extending the term of the dealership's Agreement for an additional five years.

In light of Exclusively Volvo's importance to the community, including job opportunities, staff recommends a Third Amendment to the Operating Covenant and Tax Sharing Agreement to incentivize Exclusively Volvo to remain in the City and continue their operations. If approved, the operating covenant payment to Exclusively Volvo by the City will be an amount equal to 50% of sales tax revenues, with a not to exceed amount of \$950,000, ending June 30, 2034.

Senate Bill 533 went into effect on January 1, 2016. This bill prohibits a local agency from entering into an agreement that would result in the payment of local tax revenues to an entity if the agreement will result in a reduction of Bradley Burns local tax revenues to another local agency and the entity is maintain a presence in the other local jurisdiction. As G.H.N., Inc. (Exclusively Volvo) does not pay sales tax to another local agency, nor do they maintain a physical presence in another jurisdiction, the prohibitions in SB 533 are not applicable to this proposed amendment to the Operating Covenant Agreement.

RESOLUTION NO. \_\_\_\_\_

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF ONTARIO, CALIFORNIA, ACCEPTING THE ECONOMIC DEVELOPMENT SUBSIDY REPORT PREPARED PURSUANT TO GOVERNMENT CODE SECTION 53083 REGARDING THE THIRD AMENDMENT TO OPERATING COVENANT AND TAX SHARING AGREEMENT BY AND BETWEEN THE CITY OF ONTARIO AND G.H.N., INC. (EXCLUSIVELY VOLVO).

WHEREAS, the City of Ontario ("City") and G.H.N., Inc. ("Exclusively Volvo") have negotiated a Third Amendment to Operating Covenant and Tax Sharing Agreement ("Agreement") for the retention of an auto dealership within the City; and

WHEREAS, pursuant to that Agreement Exclusively Volvo is committed to continue operating an auto dealership in the City for an additional ten year period; and

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

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

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

- Generating substantial revenue for the City through additional Local Sales Tax Revenue which may be used by the City for the funding of necessary public services and facilities, including but not limited to, public safety services and facilities, public improvements and recreational opportunities that otherwise may not be available to the community for many years; and
- Exclusively Volvo is a successful auto dealership who will be committed to maintaining the auto dealership in the City of Ontario which will ensure the retention and creation of jobs and provide opportunity for additional job growth throughout the term of this Agreement; and
- Entering into this Agreement and retaining the auto dealership may attract additional businesses and investment in the community due to increased services and economic activity in the area; and
- Retaining this business within the City will create jobs, maintain economic diversity in the community and stimulate the economic recovery of the Inland Empire by generating new opportunities for economic growth within the region; and



- Retaining Exclusively Volvo's operations within the City will generate substantial revenue for the City, allow for the retention of jobs, revitalize an area of the City which has suffered a loss of jobs and businesses during the economic downturn of the mid-2000's, and result in community and public improvements that might not otherwise be available to the community for many years; and

WHEREAS, in accordance with Government Code Section 53083, the City provided certain information in written form to the public and on its website, a copy of which is attached hereto as Exhibit A and incorporated herein by this reference, and held a noticed public hearing on March 21, 2017 to consider all written and oral comments on the Economic Development Subsidy Report; and

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

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

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

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

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

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

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

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

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

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

PASSED, APPROVED, AND ADOPTED this 21<sup>st</sup> day of March 2017.

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PAUL S. LEON, MAYOR

ATTEST:

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SHEILA MAUTZ, CITY CLERK

APPROVED AS TO LEGAL FORM:

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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. 2017- was duly passed and adopted by the City Council of the City of Ontario at their regular meeting held March 21, 2017 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. 2017- duly passed and adopted by the Ontario City Council at their regular meeting held March 21, 2017.

\_\_\_\_\_  
SHEILA MAUTZ, CITY CLERK

(SEAL)

EXHIBIT A  
ECONOMIC DEVELOPMENT SUBSIDY REPORT

[Attached behind this cover page]

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

**FOR AN OPERATING COVENANT AGREEMENT  
BY AND BETWEEN  
CITY OF ONTARIO  
AND  
G.H.N., INC. (EXCLUSIVELY VOLVO)**

Pursuant to Government Code Section 53083, the City Council of the City of Ontario must hold a noticed public hearing and, prior to the public hearing, provide all of the following information in written form and available to the public and through the City's website, regarding a proposed economic development subsidy to be provided by the City pursuant to an Operating Covenant Agreement by and between the City of Ontario and G.H.N., Inc. (Exclusively Volvo) ("Agreement"). Notice was published in the local newspaper for a public hearing to be held on March 21, 2017.

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

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

The Agreement is with G.H.N., Inc. (Exclusively Volvo), a California corporation. G.H.N., Inc. (Exclusively Volvo) is the sole beneficiary of the economic development subsidy.

G.H.N., Inc. (Exclusively Volvo)  
1300 Auto Center Drive  
Ontario, CA 91761

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

If the Agreement is approved by the City Council, the start date of the economic development subsidy for the Third Amendment to Operating Covenant and Tax Sharing Agreement will be for the period commencing April 1, 2017 and ending June 30, 2034, unless extended pursuant to the terms of the Agreement.

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

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

Pursuant to the terms of the proposed Third Amendment to Operating Covenant and Tax Sharing Agreement, the operating covenant payment (“economic subsidy”) between the City and Exclusively Volvo is calculated based on Exclusively Volvo’s sales tax revenue in an amount equal to the sum of fifty percent (50%) of Exclusively Volvo’s sales tax revenues attributable to the location in excess of the base, \$50,000 for the particular computation period, not to exceed \$200,000 per year, sales tax amount for each year during the eligibility period for the first twelve computation periods or \$500,000 in the aggregate during the entire eligibility period.

The following twelve computation periods are equal to the sum of fifty percent (50%) of Exclusively Volvo’s sales tax revenues attributable to the location in excess of the base, \$56,250 for the particular computation period, not to exceed \$200,000 per year or \$500,000 in the aggregate during the entire eligibility period. Immediately following, for another twelve computation periods are equal to the sum of fifty percent (50%) of Exclusively Volvo’s sales tax revenues attributable to the location in excess of the base, \$62,500 for the particular computation period, not to exceed \$200,000 per year or \$950,000 in the aggregate during the entire eligibility period. The last twelve computation periods are equal to the sum of fifty percent (50%) of Exclusively Volvo’s sales tax revenues attributable to the location in excess of the base, \$68,750 for the particular computation period, not to exceed \$200,000 per year or \$950,000 in the aggregate during the entire eligibility period.

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

G.H.N., Inc. (Exclusively Volvo) is a successful auto dealership, which generates substantial annual sales tax for the City. The continued growth and prosperity of the Ontario Auto Center is of most importance to the City. Through this additional revenue, the City is able to fund necessary public services and facilities, including but not limited to, public safety services and facilities, public improvements and recreation opportunities that otherwise may not be available to the community for many years. Through this Agreement, Exclusively Volvo will be committed to retaining and operating their auto dealership in the City for transacting auto sales.

The public purpose of the economic development subsidy includes, but is not limited to, maintaining and creating jobs and stimulating the economic recovery of the Inland Empire. Exclusively Volvo has agreed to retain the auto dealership within the City for a period of not less than 10 years. The City has determined that the retention of the auto dealership within the City will continue to generate substantial revenue for the City, retain jobs, revitalize an area of the City which has suffered a loss of jobs and businesses during the economic downturn of the mid-2000’s, and result in community and public improvements that might not otherwise be available to the community for many years. Additionally, by having a company like Exclusively Volvo remain in the City, the City will be adding diversity to and generating new opportunities for economic growth.

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

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

The City anticipates that the retention of the auto dealership within the City will result in an approximate increase of sales tax revenue by \$500,000 per year, minus the covenant payments to be paid to G.H.N., Inc. (Exclusively Volvo), as set forth in number 2 above.

There will also be an increase in other taxes including business license tax and real property taxes, in an approximate amount of \$25,000.

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

The retention of the auto dealership within the City is anticipated to result in the retention of approximately 150 jobs and the potential creation of new jobs over the term of the Agreement, as follows:

- 5 full-time jobs
- 5 part-time jobs

RESOLUTION NO. \_\_\_\_\_

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF ONTARIO, CALIFORNIA, APPROVING THE THIRD AMENDMENT TO OPERATING COVENANT AND TAX SHARING AGREEMENT BETWEEN THE CITY OF ONTARIO AND G.H.N., INC. (EXCLUSIVELY VOLVO) AND MAKING RELATED FINDINGS.

WHEREAS, G.H.N., Inc. (Exclusively Volvo/Volkswagen/Subaru), a California Corporation and an auto dealership with its only location in the City of Ontario ("City") are parties to that certain "Agreement for Purchase of Operating Covenant and Operating Covenant" ("Original Agreement") dated December 21, 2001 for reference purposes; and

WHEREAS, G.H.N., Inc. (Exclusively Volvo/Volkswagen/Subaru) and the City entered into that certain "First Amendment to Agreement for Purchase of Operating Covenant and Operating Covenant" dated December 12, 2002 for reference purposes; and

WHEREAS, G.H.N., Inc. (Exclusively Volvo/Volkswagen/Subaru) and the City entered into that certain "Second Amendment to Agreement for Purchase of Operating Covenant and Operating Covenant" dated January 16, 2007, for reference purposes where the auto dealership agreed to, among other things, develop and operate a facility and receive certain operating covenant payments; and

WHEREAS, the City and the auto dealership thereafter entered into the Agreement whereby auto dealership agreed to operate the Exclusively Volvo dealership in the City for an additional fifteen (15) years and Ontario agreed to provide covenant payments following auto dealership's receipt of the applicable payments under the original Agreement for Purchase of Operating Covenant and Operating Covenant, or expiration of the original sales tax eligibility period (July 2009), whichever was earlier; and

WHEREAS, to ensure that G.H.N., Inc. ("Exclusively Volvo") remains in the City and continues to do business in the City after the expiration of the Agreement, and the City have negotiated a Third Amendment to Operating Covenant and Tax Sharing Agreement ("Agreement") which provides incentives to ensure Exclusively Volvo maintains the existing auto dealership within the City; and

WHEREAS, the City has determined that the retention of the Exclusively Volvo auto dealership within the City will generate substantial revenue for the City, allow for the retention of and the creation of new jobs, revitalize an area of the City which has suffered a loss of jobs and businesses during the economic downturn of the mid-2000's, and result in community and public improvements that might not otherwise be available to the community for many years; and

WHEREAS, entering into this Agreement and ensuring the retention of the auto dealership may attract additional businesses and investment to the community due to increased services and economic activity in the area; and



WHEREAS, on March 21, 2017, the City Council of the City of Ontario conducted a public hearing to consider the Agreement and concluded said hearing on that date; and

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

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

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

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

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

(1) Exclusively Volvo is a successful auto dealership who will be committed to retaining the auto dealership in the City of Ontario.

(2) Retaining this business within the City will create jobs, maintain economic diversity in the community and stimulate the economic recovery of the Inland Empire by generating new opportunities for economic growth within the region.

(3) Retaining Exclusively Volvo's auto dealership within the City will generate substantial revenue for the City, allow for the retention of jobs, revitalize an area of the City which has suffered a loss of jobs and businesses during the economic downturn of the mid-2000's, and result in community and public improvements that might not otherwise be available to the community for many years.

(4) Entering into this Agreement and ensuring the retention of the auto dealership may attract additional businesses and investment in the community due to increased services and economic activity in the area.

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

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

SECTION 3. CEQA Compliance. The City Council hereby finds that pursuant to the California Environmental Quality Act ("CEQA") (Pub. Res. Code, § 21000 et seq.) and the State CEQA Guidelines (Cal. Code Regs, tit. 14 § 15000 et seq.), approval of the Agreement is not a "project" for purposes of CEQA and therefore is not subject to CEQA review. The Agreement is not a project pursuant to State CEQA Guidelines section 15378(b)(4), which states that government fiscal activities which do not involve any commitment to any specific project which may result in a potentially significant environmental impact are not subject to CEQA. Further, the Agreement is not a project

under State CEQA Guidelines section 15061(b)(3), which states that CEQA does not apply where it can be seen with certainty that there is no possibility that the activity in question may have a significant effect on the environment.

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

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

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

SECTION 6. Severability. If any provision of this Resolution or the application of any such provision to any person or circumstance is held invalid, such invalidity shall not affect other provisions or applications of this Resolution that can be given effect without the invalid provision or application, and to this end the provisions of this Resolution are severable. The City declares that it would have adopted this Resolution irrespective of the invalidity of any particular portion of this Resolution.

SECTION 7. Certification. The City Clerk shall certify to the adoption of this Resolution.

SECTION 8. Effective Date. This Resolution shall become effective immediately upon its adoption.

PASSED, APPROVED, AND ADOPTED this 21<sup>st</sup> day of March 2017.

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PAUL S. LEON, MAYOR

ATTEST:

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SHEILA MAUTZ, CITY CLERK

APPROVED AS TO LEGAL FORM:

---

BEST BEST & KRIEGER LLP  
CITY ATTORNEY

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

I, SHEILA MAUTZ, City Clerk of the City of Ontario, DO HEREBY CERTIFY that foregoing Resolution No. 2017- was duly passed and adopted by the City Council of the City of Ontario at their regular meeting held March 21, 2017 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. 2017- duly passed and adopted by the Ontario City Council at their regular meeting held March 21, 2017.

---

SHEILA MAUTZ, CITY CLERK

(SEAL)

EXHIBIT A  
OPERATING COVENANT AGREEMENT

[Attached behind this cover page]

RECORDING REQUESTED BY AND  
WHEN RECORDED MAIL TO:

The City of Ontario  
303 East "B" Street  
Ontario, California 91764  
Attn: City Manager

Exempt from Recording Fee per  
Government Code §27383  
(Space above for Recorder's Use)

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**THIRD AMENDMENT  
TO  
OPERATING COVENANT AND TAX SHARING AGREEMENT  
(EXCLUSIVELY VOLVO)**

**between**

**THE CITY OF ONTARIO,  
a California general law municipal corporation,**

**and**

**G.H.N., Inc.  
a California corporation**

[Effective \_\_\_\_\_, 2017]

## **1. PARTIES AND EFFECTIVE DATE.**

**1.1 Parties to this Third Amendment.** This Third Amendment to Operating Covenant and Tax Sharing Agreement (“Third Amendment”) is entered into between (i) the City of Ontario (“Ontario”), a California general law municipal corporation, and (ii) G.H.N., Inc. (“Dealer”), a California corporation, with regard to that certain Operating Covenant and Tax Sharing Agreement by and between Ontario and the Dealer, dated January 16, 2007, as previously amended by that certain First Amendment to Operating Covenant and Tax Sharing Agreement, dated May 24, 2010, and that certain Second Amendment to Operating Covenant and Tax Sharing Agreement, dated \_\_\_\_\_, 2012 (collectively, the “Agreement”).

**1.2 Effective Date.** The Effective Date of this Third Amendment is \_\_\_\_\_, 2017. All initially capitalized terms used, but not otherwise defined, in this Third Amendment shall have the meanings ascribed to them in the Agreement.

## **2. RECITALS AND REPRESENTATIONS.**

**2.1** Ontario and the Dealer entered into that certain “Agreement for Purchase of Operating Covenant and Operating Covenant (Exclusively Volvo/Volkswagen/Subaru)” (“2001 OCA”) dated as of December 21, 2001, as amended by that certain “First Amendment to Agreement for Purchase of Operating Covenant and Operating Covenant (Exclusively Volvo/Volkswagen/Subaru)” (“First Amendment to OCA”) dated December 12, 2002, and as amended by that certain Second Amendment to Agreement for Purchase of Operating Covenant and Operating Covenant (Exclusively Volvo/Volkswagen/Subaru) (“Second Amendment to OCA”) dated January 16, 2007 for reference purposes, whereby the Dealer agreed to, among other things, develop and operate a facility and receive certain operating covenant payments (2001 OCA, First Amendment to OCA and Second Amendment to OCA are collectively referred to herein as “Original OCA”).

**2.2** Ontario and the Dealer thereafter entered into the Agreement whereby Dealer agreed to operate the Volvo dealership in the City of Ontario for an additional fifteen (15) years

and Ontario agreed to provide covenant payments following Dealer's receipt of the applicable payments under the Original OCA, or expiration of the original sales tax eligibility period (July 2009), whichever was earlier.

**2.3** Ontario and the Dealer entered into that certain First Amendment to Operating Covenant and Tax Sharing Agreement, dated May 24, 2010, for the purpose of extending the term of Dealer's operating covenant under the Agreement by five (5) years in exchange for Ontario's agreement to extend by five (5) years the period during which the Dealer may receive financial incentive payments from Ontario.

**2.4** Ontario and the Dealer entered into that certain Second Amendment to Operating Covenant and Tax Sharing Agreement, dated \_\_\_\_\_, 2012, for the purpose of extending the term of Dealer's operating covenant under the Agreement for an additional five (5) years in exchange for a one-time payment by Ontario in the amount of Eighty Thousand Dollars (\$80,000).

**2.5** The Parties now desire to amend the Agreement to adjust the base amount in each Computation Period, extend the Eligibility Period for an additional 10 years, and increase the aggregate Covenant Payment amount to Nine Hundred Fifty Thousand Dollars.

### **3. TERMS.**

**3.1 Amended Section 6.11.** Section 6.11 of the Agreement is amended to read as follows:

**Eligibility Period**" means the period from July 1, 2009 until June 30, 2034."

**3.2 Amended Section 8.** Section 8 of the Agreement is amended to read as follows:

**"Covenant Payment.** In consideration for the Dealer's obligations set forth in this Agreement, and subject to satisfaction of all conditions precedent thereto, the City shall, with respect to any Computation Period



during the Eligibility Period, pay to the Dealer an amount (“Covenant Payment”) as follows:

8.1 Commencing with the first Computation Period in 2017, for twelve (12) consecutive Computation Periods an amount equal to fifty percent (50%) of the Local Sales Tax Revenues in excess of Fifty Thousand Dollars (\$50,000) for the particular Computation Period, not to exceed Two Hundred Thousand Dollars (\$200,000) for any Computation Year, or Five Hundred Thousand Dollars (\$500,000) in the aggregate during the entire Eligibility Period.

8.2 Commencing with the Computation Period immediately following the last Computation Period under Section 8.1, an amount equal to fifty percent (50%) of the Local Sales Tax Revenues in excess of Fifty Six Thousand Two Hundred Fifty Dollars (\$56,250) for the particular Computation Period, not to exceed Two Hundred Thousand Dollars (\$200,000) for any Computation Year, or Five Hundred Thousand Dollars (\$500,000) in the aggregate during the entire Eligibility Period.

8.3 Commencing with the Computation Period immediately following the Computation Period in which the Covenant Payments equal Five Hundred Thousand Dollars (\$500,000) in the aggregate during the entire Eligible Period is reached, and continuing for the twelve (12) consecutive Computation Periods, an amount equal to fifty percent (50%) of the Local Sales Tax Revenues in excess of Sixty Two Thousand Five Hundred Dollars (\$62,500) in each Computation Period not to exceed Two Hundred Thousand Dollars (\$200,000) for any Computation Year, or Nine Hundred Fifty Thousand Dollars (\$950,000) in the aggregate during the entire Eligibility Period.

8.4 For all remaining Computation Periods, an amount equal to fifty percent (50%) of the Local Sales Tax Revenues in excess of Sixty Eight Thousand Seven Hundred Fifty Dollars (\$68,750) in each Computation Period, not to exceed Two Hundred Thousand Dollars

(\$200,000) for any Computation Year, or Nine Hundred Fifty Thousand Dollars (\$950,000) in the aggregate during the entire Eligibility Period.”

**3.3 No Other Amendment.** Except as hereinabove set forth, the Agreement is unmodified and remains in full force and effect. From and after the effective date of this Third Amendment, whenever the term “Agreement” appears in the Agreement, such term or reference shall mean the Agreement as amended by this Third Amendment.

**3.4 Ratification; Warranty Regarding Absence of Defaults.** Ontario and the Dealer each ratify, reaffirm and reauthorize each and every one of their respective rights and obligations arising under the Agreement, as modified by this Third Amendment. Each Party represents and warrants to the other that there have been no written or oral modifications to the Agreement, other than those set forth in this Third Amendment. Each Party represents and warrants to the other that the Agreement is currently an effective, valid and binding obligation.

**3.5 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 Third Amendment.

**3.6 Counterparts.** This Third Amendment may be executed in duplicate originals, each of which is deemed to be an original, but when taken together shall constitute but one and the same instrument.

**[Signatures on the following page]**

**SIGNATURE PAGE  
TO  
THIRD AMENDMENT  
TO  
OPERATING COVENANT AND TAX SHARING AGREEMENT  
(Exclusively Volvo)**

**CITY:**

CITY OF ONTARIO,  
a California general law municipal corporation

By: \_\_\_\_\_  
Al C. Boling  
City Manager

ATTEST:

By: \_\_\_\_\_  
City Clerk

APPROVED AS TO FORM:

BEST BEST & KRIEGER LLP

By: \_\_\_\_\_  
City Attorney

**SIGNATURE PAGE  
TO  
THIRD AMENDMENT  
TO  
OPERATING COVENANT AND TAX SHARING AGREEMENT  
(Exclusively Volvo)**

**DEALER:**

G.H.N.,  
a California corporation

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Its: \_\_\_\_\_

APPROVED AS TO FORM:

\_\_\_\_\_  
Attorney for Dealer

STATE OF CALIFORNIA )  
COUNTY OF SAN BERNARDINO )

On \_\_\_\_\_, 2010 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: \_\_\_\_\_ (seal)

# CITY OF ONTARIO

Agenda Report  
March 21, 2017

SECTION:  
PUBLIC HEARINGS

**SUBJECT: A PUBLIC HEARING TO CONSIDER AN ORDINANCE APPROVING A DEVELOPMENT AGREEMENT (FILE NO. PDA16-003) BETWEEN THE CITY OF ONTARIO AND GDCI-RCCD2-L.P., TO ESTABLISH THE TERMS AND CONDITIONS FOR THE DEVELOPMENT OF TENTATIVE PARCEL MAPS 19725 (FILE NO. PMTT16-010) AND 19741 (FILE NO. PMTT16-011) WITHIN THE REGIONAL COMMERCIAL/MIXED USE DISTRICT (PLANNING AREA 8A) OF THE RICH-HAVEN SPECIFIC PLAN, LOCATED ON THE SOUTH SIDE OF ONTARIO RANCH ROAD, BETWEEN MILL CREEK AVENUE AND HAMNER AVENUE**

**RECOMMENDATION:** That the City Council introduce and waive further reading of an ordinance approving a Development Agreement (File No. PDA16-003, on file with the Records Management Department) between the City of Ontario and GDCI-RCCD2-L.P., for properties located on the south side of Ontario Ranch Road, between Mill Creek Avenue and Hamner Avenue (APNs: 0218-211-12 and 0218-211-25).

**COUNCIL GOALS:** Invest in the Growth and Evolution of the City's Economy  
Invest in the City's Infrastructure (Water, Streets, Sewers, Parks, Storm Drains and Public Facilities)  
Ensure the Development of a Well Planned, Balanced, and Self-Sustaining Community in the New Model Colony

**FISCAL IMPACT:** The proposed Development Agreement will provide funding from a community facilities district (CFD) for additional City services required to support the Rich-Haven Specific Plan development, thereby mitigating any increased cost associated with such services. In addition, the City will receive Public Service Funding fees plus development impact, compliance processing, licensing, and permitting fees. No Original Model Colony revenue will be used to support the Ontario Ranch development.

**BACKGROUND:** GDCI-RCCD2-L.P. and the City recognized that the financial commitment required for construction in Ontario Ranch is substantial. To adequately forecast these costs and gain assurance

**STAFF MEMBER PRESENTING:** Scott Murphy, Planning Director

Prepared by: Rudy Zeledon  
Department: Planning

City Manager Approval: 

Submitted to Council/O.H.A. 03/21/2017

Approved: \_\_\_\_\_

Continued to: \_\_\_\_\_

Denied: \_\_\_\_\_

11

that the project may proceed under the existing policies, rules and regulations, GDCI-RCCD2-L.P. is entering into a Development Agreement with the City to establish the terms and conditions for the development of Tentative Parcel Maps 19725 (File No. PMTT16-010) and 19741 (File No. PMTT16-011). The Development Agreement provides funding for new City expenses created by the project, including operational costs related to the review, approval and administration of the GDIC-RCCD2-L.P. project, additional project related services, infrastructure and affordable housing requirements.

The Development Agreement proposes to include Tentative Parcel Maps 19725 and 19741. Tentative Parcel Map 19725 is located on the southeast corner of Ontario Ranch Road and Mill Creek Avenue and proposes to subdivide 40.10 acres of land into four numbered lots and one lettered lot. Tentative Parcel Map 19741 is located on the southwest corner of Ontario Ranch Road and Hamner Avenue and proposes to subdivide 19.64 acres of land into four lots (See Exhibit A – Rich-Haven Specific Plan Map). The Development Agreement will provide for the development of up to 852 residential units and 325,000 square feet of commercial/office uses as established for Planning Area 8A of the Rich-Haven Specific Plan and grant GDCI-RCCD2-L.P. a vested right to develop as long as GDCI-RCCD2-L.P. complies with the terms and conditions of the Rich-Haven Specific Plan and Environmental Impact Report.

The term of the Development Agreement is for ten years with a five year option. The main points of the agreement address funding for all new City expenses created by the project, which includes; Development Impact Fees (DIF) for construction of public improvements (i.e. streets and bridges, police, fire, open space/parks etc.); Public Service Funding to ensure adequate provisions of public services (police, fire and other public services); the creation of a Community Facilities District (CFD) for reimbursement of public improvements and maintenance of public facilities; and the Park/Open Space Policy Plan requirement of five acres per 1,000 projected population through park dedication and/or the payment of in-lieu fees. Other points addressed by the Agreement include provisions for affordable housing, as required by the Policy Plan, through construction, rehabilitation, or by paying an in-lieu fee, and satisfaction of the Mountain View Elementary School District and Chaffey Joint Union High School District school facilities requirements.

In considering the application at their meeting of February 28, 2017, the Planning Commission found that the Development Agreement was consistent with State law, The Ontario Plan, the City's Development Agreement policies, and other Development Agreements previously approved for Ontario Ranch development and voted unanimously (6 to 0) to recommend approval of the Development Agreement to the City Council.

**COMPLIANCE WITH THE ONTARIO PLAN:** The proposed project is consistent with the principles, goals and policies contained within the Vision, Governance, and Policy Plan (General Plan) components of The Ontario Plan (TOP). More specifically, TOP goals and policies furthered by the proposed project are noted in the Planning Commission staff report (attached).

**HOUSING ELEMENT COMPLIANCE:** The project is consistent with the Housing Element of the Policy Plan (General Plan) component of The Ontario Plan. The project site is one of the properties listed in the Available Land Inventory contained in Table A-3 (Available Land by Planning Area) of the Housing Element Technical Report Appendix, and the proposed project is consistent with the number of dwelling units (852) and density (13.9 DU/AC) specified in the Available Land Inventory for the Rich-Haven Specific Plan.

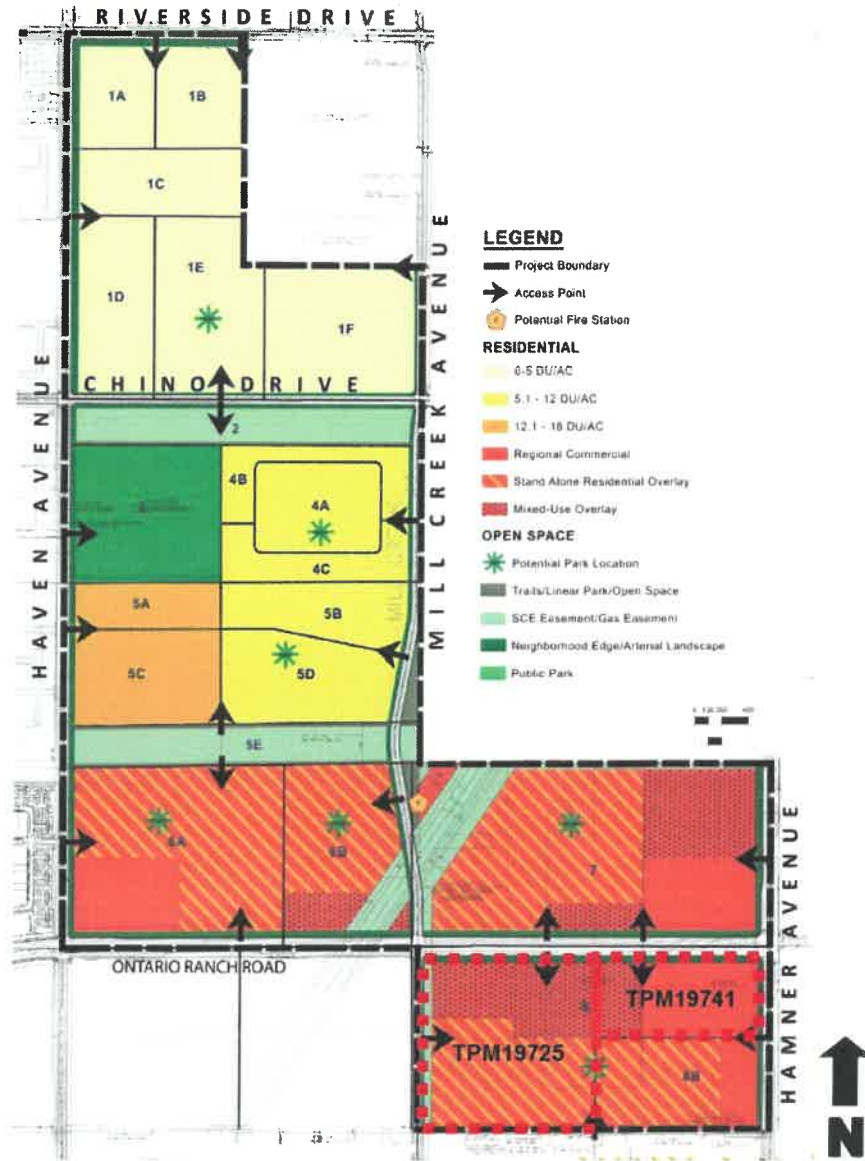
**AIRPORT LAND USE COMPATIBILITY PLAN COMPLIANCE:** The project site is located within the Airport Influence Area of the Ontario International Airport (ONT), and has been found to be consistent with the policies and criteria set forth within the ALUCP for ONT.

**ENVIRONMENTAL REVIEW:** The environmental impacts of this project were previously analyzed in an addendum to the Rich-Haven Specific Plan EIR (SCH# 2006051081) that was adopted by the City Council on March 15, 2016. This application is consistent with the previously adopted addendum and introduces no new significant environmental impacts. All previously adopted mitigation measures shall be a condition of project approval and are incorporated herein by reference



# EXHIBIT "A"

## Rich Haven Specific Plan



\*Circulation pattern for local streets within Specific Plan Area to be established at Tentative Tract Map submittal.

\*Residential development along the frontage of Haven Avenue within Planning Areas 5A, 5C and 6A and residential development along the frontage of Ontario Ranch Road within Planning Areas 6A and 7 shall average a density of 18 to 25 dwelling units per acre to support Bus Rapid Transit (BRT) along Haven Avenue.

RICH HAVEN SPECIFIC PLAN

ORDINANCE NO. \_\_\_\_\_

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF ONTARIO, CALIFORNIA, APPROVING A DEVELOPMENT AGREEMENT (FILE NO. PDA16-003) BETWEEN THE CITY OF ONTARIO AND GDCI-RCCD2-L.P. TO ESTABLISH THE TERMS AND CONDITIONS FOR THE DEVELOPMENT OF TENTATIVE PARCEL MAPS 19725 (FILE NO. PMTT16-010) AND 19741 (FILE NO. PMTT16-011) WITHIN THE REGIONAL COMMERCIAL/MIXED USE DISTRICT (PLANNING AREA 8A) OF THE RICH-HAVEN SPECIFIC PLAN, LOCATED ON THE SOUTH SIDE OF ONTARIO RANCH ROAD, BETWEEN MILL CREEK AVENUE AND HAMNER AVENUE, AND MAKING FINDINGS IN SUPPORT THEREOF (APNs:0218-211-12 and 0218-211-25).

WHEREAS, California Government Code Section 65864 now provides, in pertinent part, as follows:

“The Legislature finds and declares that:

(a) The lack of certainty in the approval process of development projects can result in a waste of resources, escalate the cost of housing and other developments to the consumer, and discourage investment in and commitment to comprehensive planning which would make maximum efficient utilization of resources at the least economic cost to the public.

(b) Assurance to the Applicant for a development project that upon approval of the project, the Applicant may proceed with the project in accordance with existing policies, rules and regulations, and subject to conditions of approval, will strengthen the public planning process, encourage private participation in comprehensive planning, and reduce the economic costs of development.”

WHEREAS, California Government Code Section 65865 provides, in pertinent part, as follows:

“Any city ... may enter into a Development Agreement with any person having a legal or equitable interest in real property for the development of such property as provided in this article ...”

WHEREAS, California Government Code Section 65865.2. provides, in part, as follows:

“A Development Agreement shall specify the duration of the Agreement, the permitted uses of the property, the density of intensity of use, the maximum height and size of proposed buildings, and provisions for reservation or dedication of land for public purposes. The Development Agreement may include conditions, terms, restrictions, and requirements for subsequent discretionary actions, provided that such conditions, terms, restrictions, and requirements for discretionary actions shall not prevent development of the land for the uses and to the density of intensity of development set forth in this Agreement ...”

WHEREAS, on April 4, 1995, the City Council of the City of Ontario adopted Resolution No. 95-22 establishing procedures and requirements whereby the City of Ontario may consider Development Agreements; and

WHEREAS, on September 10, 2002, the City Council of the City of Ontario adopted Resolution No. 2002-100, which revised the procedures and requirements whereby the City of Ontario may consider Development Agreements; and

WHEREAS, attached to this resolution, marked Exhibit "A" and incorporated herein by this reference, is the proposed Development Agreement between GDCI-RCCD2-L.P. and the City of Ontario, File No. PDA16-003, concerning those 59.74 acres of land (Tentative Parcel Maps 19725 and 19741) within Planning Area 8A of the Rich-Haven Specific Plan, located on the south side of Ontario Ranch Road, between Mill Creek Avenue and Hamner Avenue and as legally described in the attached Development Agreement. Hereinafter in this Resolution, the Development Agreement is referred to as the "Development Agreement"; and

WHEREAS, on October 23, 2007, the Planning Commission of the City of Ontario conducted a duly noticed public hearing and issued Resolution PC07-125 recommending City Council certification of the Rich-Haven EIR and Issued Resolution PC07-127 recommending to City Council approval of the Rich-Haven Specific Plan (File No. PSP05-004); and

WHEREAS, on December 4, 2007, the City Council of the City of Ontario conducted a duly noticed public hearing and issued Resolution 2007-145 to certified the Rich-Haven Specific Plan EIR (SCH# 2006051081); and

WHEREAS, on December 4, 2007, the City Council of the City of Ontario conducted a duly noticed public hearing and adopted Ordinance No. 2884 approving the Rich-Haven Specific Plan; and

WHEREAS, on February 23, 2016, the Planning Commission of the City of Ontario conducted a duly noticed public hearing and issued Resolution PC16-003 recommending City Council adoption of an Addendum to the Rich-Haven EIR and Issued Resolution PC16-004 recommending to City Council approval of the Rich-Haven Specific Plan Amendment (File No. PSPA16-001); and

WHEREAS, on March 15, 2016, the City Council of the City of Ontario conducted a duly noticed public hearing and issued Resolution No. 2016-024 for the adoption of an Addendum (File No. PSPA16-001) to the Rich-Haven Specific Plan EIR; and

WHEREAS, on March 15, 2016, the City Council of the City of Ontario conducted a duly noticed public hearing and issued Resolution No. 2016-025 approving an Amendment (File No. PSPA16-001) to the Rich-Haven Specific Plan; and

WHEREAS, the environmental impacts of this project were previously analyzed in an addendum to the Rich-Haven Specific Plan EIR (SCH# 2006051081) that was adopted by the City Council on March 15, 2016. This application is consistent with the previously

adopted addendum and introduces no new significant environmental impacts. All previously adopted mitigation measures shall be a condition of project approval and are incorporated herein by reference; and

WHEREAS, on February 28, 2017, the Planning Commission of the City of Ontario conducted a hearing to consider the Agreement and concluded said hearing on that date. After considering the public testimony, the Planning Commission voted unanimously (6 to 0) to adopt its Resolution No. PC17-012, recommending approval of the Development Agreement to the City Council; and

WHEREAS, on March 21, 2017, the City Council of the City of Ontario conducted a public hearing to consider the Agreement and concluded said hearing on that date; and

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

NOW, THEREFORE, it is hereby found, determined, and ordained by the City Council of the City of Ontario as follows:

SECTION 1. *Environmental Determination and Findings.* As the approving body for the Project, the City Council has reviewed and considered the information contained in the previously adopted Rich-Haven Specific Plan EIR (SCH# 2006051081) and supporting documentation. Based upon the facts and information contained in the Rich-Haven Specific Plan EIR (SCH# 2006051081) and supporting documentation, the City Council finds as follows:

a. The previous Rich-Haven Specific Plan EIR (SCH# 2006051081) contains a complete and accurate reporting of the environmental impacts associated with the Project; and

b. The previous Rich-Haven Specific Plan EIR (SCH# 2006051081) was completed in compliance with CEQA and the Guidelines promulgated thereunder; and

c. The previous Rich-Haven Specific Plan EIR (SCH# 2006051081) reflects the independent judgment of the Planning Commission; and

d. All previously adopted mitigation measures, which are applicable to the Project, shall be a condition of Project approval and are incorporated herein by reference.

SECTION 2. *Housing Element Consistency.* Pursuant to the requirements of California Government Code Chapter 3, Article 10.6, commencing with Section 65580, as the approving body for the Project, the City Council finds that based upon the facts and information contained in the Application and supporting documentation, at the time of Project implementation, the project is consistent with the Housing Element of the Policy Plan (General Plan) component of The Ontario Plan. The project site is one of the properties listed in the Available Land Inventory contained in Table A-3 (Available Land by Planning Area) of the Housing Element Technical Report Appendix, and the proposed project is consistent with the number of dwelling units (852) and density (13.9 DU/AC) specified in the Available Land Inventory.

SECTION 3. *Airport Land Use Compatibility Plan (ALUCP) Consistency.* As the approving body for the Project, the City Council has reviewed and considered the facts and information contained in the Application and supporting documentation, and finds that, at the time of Project implementation, the Project will be consistent with the policies and criteria set forth within the ONT ALUCP.

SECTION 4. *Concluding Facts and Reasons.* Based upon substantial evidence presented to the City Council during the above-referenced hearing on March 21, 2017, including written and oral staff reports, together with public testimony, the hereby specifically finds as follows:

a. The Development Agreement applies to 59.74 acres of land (Tentative Parcel Maps 19725 and 19741) within Planning Area 8A of the Rich-Haven Specific Plan, located on the south side of Ontario Ranch Road, between Mill Creek Avenue and Hamner Avenue, and is presently vacant and previously used for dairy and agricultural uses; and

b. The property to the north of the Project Site is within Planning Area 7 (Regional Commercial/Mixed Use) of the Rich-Haven Specific Plan, and is presently vacant and previously used for dairy and agricultural uses. The property to the east is within the City of Eastvale and is presently being developed with industrial uses. The property to the south is within Planning Areas 1 and 2 (Row Townhomes\SF Homes) of the Esperanza Specific Plan, and is presently vacant and previously used for dairy and agricultural uses. The property to the west is within the SCE Corridor/Easement of the Rich-Haven Specific Plan, and is developed as an electrical transmission facilities; and

c. The Development Agreement establishes parameters for the development of Tentative Parcel Maps 19725 and 19747 within Planning Area 8A of the Rich-Haven Specific Plan for residential development. The Development Agreement also grants GDCI-RCCD2-L.P. the right to develop, the ability to quantify the fees; and establish the terms and conditions that apply to those projects. These terms and conditions are consistent with The Ontario Plan Policy Plan (General Plan), design guidelines and development standards for the Rich-Haven Specific Plan.

d. The Development Agreement focuses on Tentative Tract Map 19725, which proposes to subdivide 40.10 acres of land into 4 numbered lots and 1 lettered lot, located on southeast corner of Ontario Ranch Road and Mill Creek Avenue within the Regional Commercial/Mixed Use district (Planning Area 8A) of the Rich-Haven Specific Plan and Tentative Parcel Map 19741 to subdivide 19.64 acres of land into 4 numbered lots, located at the southwest corner of Ontario Ranch Road and Hamner Avenue within the Regional Commercial/Mixed Use district (Planning Area 8A) of the Rich-Haven Specific Plan; and

e. The Development Agreement will provide for the development of up to 852 residential units and 325,000 square feet of commercial/office uses as established for Planning Area 8A of the Rich-Haven Specific Plan; and

f. The Development Agreement has been prepared in conformance with the goals and policies of The Ontario Plan Policy Plan (General Plan); and

g. The Development Agreement does not conflict with the Land Use Policies of The Ontario Plan Policy Plan (General Plan) and will provide for development, within the district, in a manner consistent with the Policy Plan and with related development; and

h. This Development Agreement will promote the goals and objectives of the Land Use Element of the Policy Plan; and

i. This Development Agreement will not be materially injurious or detrimental to the adjacent properties and will have a significant impact on the environment or the surrounding properties. The environmental impacts of this project were previously reviewed in conjunction with the Rich-Haven Specific Plan Amendment (PSPA16-001), for which an addendum to the Rich-Haven Specific Plan EIR (SCH# 2006051081) was adopted by the City Council on March 15, 2016. The application introduces no new significant environmental impacts. All previously adopted mitigation measures are a condition of project approval and are incorporated herein by reference.

SECTION 5. City Council Action. Based upon the findings and conclusions set forth in paragraphs 1, 2, 3 and 4 above, the City Council hereby APPROVES the Development Agreement (File No. PDA16-003) subject to each and every condition set forth in the Rich-Haven Specific Plan and EIR, incorporated 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 Ordinance.

SECTION 9. Publication and Posting. The Mayor shall sign this Ordinance and the City Clerk shall certify as to the adoption and shall cause a summary thereof to be published at least once, in a newspaper of general circulation in the City of Ontario, California within fifteen (15) days of the adoption. The City Clerk shall post a certified copy of this ordinance, including the vote for and against the same, in the Office of the City Clerk, in accordance with Government Code Section 36933.

PASSED, APPROVED, AND ADOPTED this \_\_\_\_\_ day of \_\_\_\_\_ 2017.

\_\_\_\_\_  
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 \_\_\_\_\_, 2017, and adopted at the regular meeting held \_\_\_\_\_, 2017, by the following roll call vote, to wit:

AYES:            COUNCIL MEMBERS:

NOES:           COUNCIL MEMBERS:

ABSENT:        COUNCIL MEMBERS:

\_\_\_\_\_  
SHEILA MAUTZ, CITY CLERK

(SEAL)

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

\_\_\_\_\_  
SHEILA MAUTZ, CITY CLERK

(SEAL)



**EXHIBIT A**

**DEVELOPMENT AGREEMENT  
BETWEEN THE CITY OF ONTARIO AND GDCI-RCCD2-L.P.**

**RECORDING REQUESTED BY AND  
WHEN RECORDED MAIL TO:**

City of Ontario  
303 East "B" Street  
Ontario California, California 91764  
Attn: City Clerk

Exempt from Fees Per Gov. Code § 6301

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Space above this line for Recorder's Use Only

**DEVELOPMENT AGREEMENT (File No. PDA16-003)**

**By and Between**

**City of Ontario, a California municipal corporation,**

**and**

**GDCI-RCCD 2, LP**

**a Delaware limited partnership**

\_\_\_\_\_, 2017

**San Bernardino County, California**

## **DEVELOPMENT AGREEMENT NO. PDA16-003**

This Development Agreement (hereinafter "Agreement") is entered into effective as of the \_\_\_\_ day of \_\_\_\_\_, 2017 by and among the City of Ontario, a California municipal corporation (hereinafter "CITY"), and GDCI-RCCD 2, LP, a Delaware limited partnership company (hereinafter "OWNER"):

### RECITALS

WHEREAS, CITY is authorized to enter into binding development agreements with persons having legal or equitable interests in real property for the development of such property, pursuant to Section 65864, et seq. of the Government Code; and

WHEREAS, OWNER has requested CITY to enter into a development agreement and proceedings have been taken in accordance with the rules and regulations of CITY; and

WHEREAS, by electing to enter into this Agreement, CITY shall bind future City Councils of CITY by the obligations specified herein and limit the future exercise of certain governmental and proprietary powers of CITY; and

WHEREAS, the terms and conditions of this Agreement have undergone extensive review by CITY and the City Council and have been found to be fair, just and reasonable; and

WHEREAS, the best interests of the citizens of the CITY and the public health, safety and welfare will be served by entering into this Agreement; and

WHEREAS, all of the procedures of the California Environmental Quality Act have been met with respect to the Project and the Agreement in that Rich Haven Specific Plan Environmental Impact Report and all addendums (the "EIR"). The City Council found and determined that the EIR was prepared in accordance with the requirements of the California Environmental Quality Act and adequately describes the impacts of the project described in the EIR, which included consideration of this Agreement; and

WHEREAS, this Agreement and the Project are consistent with the CITY's Comprehensive General Plan and the Rich Haven Specific Plan; and

WHEREAS, all actions taken and approvals given by CITY have been duly taken or approved in accordance with all applicable legal requirements for notice, public hearings, findings, votes, and other procedural matters; and

WHEREAS, development of the Property in accordance with this Agreement will provide substantial benefits to CITY and will further important policies and goals of CITY; and

WHEREAS, this Agreement will eliminate uncertainty in planning and provide for the orderly development of the Property, ensure progressive installation of necessary improvements, provide for public services appropriate to the development of the Project, and generally serve the purposes for which development agreements under Sections 65864 et seq. of the Government Code are intended; and

WHEREAS, OWNER has incurred and will in the future incur substantial costs in order to assure development of the Property in accordance with this Agreement; and

WHEREAS, OWNER has incurred and will in the future incur substantial costs in excess of the generally applicable requirements in order to assure vesting of legal rights to develop the Property in accordance with this Agreement.

### COVENANTS

NOW, THEREFORE, in consideration of the above recitals and of the mutual covenants hereinafter contained and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties agree as follows:

1. DEFINITIONS AND EXHIBITS.

1.1 Definitions. The following terms when used in this Agreement shall be defined as follows:

1.1.1 "Agreement" means this Development Agreement.

1.1.2 "CITY" means the City of Ontario, California, a California municipal corporation.

1.1.3 "Construction Agreement" means that certain Agreement for the Financing and Construction of Phases I and II Infrastructure Improvements to Serve an Easterly Portion of the New Model Colony, entered into between the CITY and NMC Builders as of the 4th day of October, 2005, and all amendments thereto and "Construction Agreement Amendment" means that First Amended and Restated Agreement for the Financing and Construction of Limited Infrastructure Improvements to Serve and Easterly Portion of the New Model Colony entered into between the CITY and NMC Builders as of the 21<sup>st</sup> day of August 2012.

1.1.4 "Development" means the improvement of the Property for the purposes of completing the structures, improvements and facilities comprising the Project including, but not limited to: grading; the construction of public infrastructure and public facilities related to the Project whether located within or outside the Property; the construction of buildings and structures; and the installation of landscaping. "Development" does not include the maintenance, repair, reconstruction or redevelopment of any building, structure, improvement or facility after the construction and completion thereof.

1.1.5 "Development Approvals" means all permits and other entitlements for use subject to approval or issuance by CITY in connection with development of the Property including, but not limited to:

- (a) specific plans and specific plan amendments;
- (b) tentative and final subdivision and parcel maps;
- (c) development plan review;
- (d) conditional use permits (including model home use permits), public use permits and plot plans;
- (e) zoning;
- (f) grading and building permits.

1.1.6 "Development Exaction" means any requirement of CITY in connection with or pursuant to any Land Use Regulation or Development Approval for the dedication of land, the construction of improvements or public facilities, or the payment of fees in order to lessen, offset, mitigate or compensate for the impacts of development on the environment or other public interests.

1.1.7 "Development Impact Fee" means a monetary exaction, other than a tax or special assessment, whether characterized as a fee or a tax and whether established for a broad class of projects by legislation of general applicability or imposed on a specific project on an ad hoc basis, that is charged by a local agency to the applicant in connection with approval of a development project for the purpose of defraying all or a portion of the cost of public facilities related to the development project, and, for purposes of this Agreement only, includes fees collected under development agreements adopted pursuant to Article 2.5 of the Government Code (commencing with Section 65864) of Chapter 4, For purposes of this Agreement only, "Development Impact Fee" shall not include processing fees and charges imposed by CITY to cover the estimated actual costs to CITY of processing applications for Development Approvals or for monitoring compliance with any Development Approvals granted or issued, including, without limitation, fees for zoning variances; zoning changes; use permits; building inspections; building permits; filing and processing applications and petitions filed with the local agency formation commission or conducting preliminary proceedings or proceedings under the Cortese-Knox-Hertzberg Local Government Reorganization Act of 2000, Division 3 (commencing with Section 56000) of Title 5 of the Government Code; the processing of maps under the provisions of the Subdivision Map Act, Division 2 (commencing with Section 66410) of Title 7 of the Government Code; or planning services under the authority of Chapter 3 (commencing with Section 65100) of Division 1 of Title 7 of the Government Code, fees and charges as described in Sections 51287, 56383, 57004, 65104, 65456, 65863.7, 65909.5, 66013, 66014, and 66451.2 of the

Government Code, Sections 17951, 19132.3, and 19852 of the Health and Safety Code, Section 41901 of the Public Resources Code, and Section 21671.5 of the Public Utilities Code, as such codes may be amended or superseded, including by amendment or replacement.

1.1.8 “Development Plan” means the Existing Development Approvals and the Existing Land Use Regulations applicable to development of the Property.

1.1.9 “Effective Date” means the date that the ordinance approving this Agreement goes into effect.

1.1.10 “Existing Development Approvals” means all development approvals approved or issued prior to the Effective Date. Existing Development Approvals includes the approvals incorporated herein as Exhibit “C” and all other approvals which are a matter of public record on the Effective Date.

1.1.11 “Existing Land Use Regulations” means all Land Use Regulations in effect on the Effective Date. Existing Land Use Regulations includes the regulations incorporated herein as Exhibit “D” and all other land use regulations that are in effect and a matter of public record on the Effective Date.

1.1.12 “Improvement” or “Improvements” means those public improvements required to support the development of the Project as described in the Parcel Map conditions for Parcel Map Nos. 19725 and 19741 and as further described in Exhibit “F” (the “Infrastructure Improvements Exhibit”).

1.1.13 “Land Use Regulations” means all ordinances, resolutions, codes, rules, regulations and official policies of CITY governing the development and use of land, including, without limitation, the permitted use of land, the density or intensity of use, subdivision requirements, timing and phasing of development, the maximum height and size of buildings, the provisions for reservation or dedication of land for public purposes, and the design, improvement and construction standards and specifications applicable to the development of the Property. “Land Use Regulations” does not include any CITY ordinance, resolution, code, rule, regulation or official policy, governing:

- (a) the conduct of businesses, professions, and occupations;
- (b) taxes and assessments;
- (c) the control and abatement of nuisances;
- (d) the granting of encroachment permits and the conveyance of similar rights and interests that provide for the use of or the entry upon public property;
- (e) the exercise of the power of eminent domain.

1.1.14 "Mortgagee" means a mortgagee of a mortgage, a beneficiary under a deed of trust or any other security-device lender, and their successors and assigns.

1.1.15 "General Plan" means the General Plan adopted on January 27, 2010.

1.1.16 "Model Units" means a maximum of Twenty-eight (28) residential units constructed by OWNER prior to the construction of any Production units and not offered for sale and occupancy for a period of time after the issuance of permits for Production Units.

1.1.17 "Non-Residential Units" means the non-residential buildings constructed by OWNER on the Property.

1.1.18 "OWNER" means the persons and entities listed as owner on page 1 of this Agreement and their permitted successors in interest to all or any part of the Property.

1.1.19 "Production Unit(s)" means all residential units constructed for sale and occupancy by OWNER and excludes a specified number of Model Units constructed by OWNER for promotion of sales.

1.1.20 "Project" means the development of the Property contemplated by the Development Plan, as such Plan may be further defined, enhanced or modified pursuant to the provisions of this Agreement.

1.1.21 "Property" means the real property described on Exhibit "A" and shown on Exhibit "B" to this Agreement.

1.1.22 "Reservations of Authority" means the rights and authority excepted from the assurances and rights provided to OWNER under this Agreement and reserved to CITY under Section 3.6 of this Agreement.

1.1.23 "Specific Plan" means that certain specific plan adopted by the City Council, and entitled, "Rich Haven Specific Plan."

1.1.24 "Storm Water Treatment Capacity Availability" means a designated portion of the total Storm Water Treatment Capacity Availability made available through the completion of construction of a Phase of regional storm water treatment facilities by the NMC Builders LLC as described in the Construction Agreement Amendment. The amount, in acres, of Storm Water Treatment Capacity Availability required for the issuance of a grading permit shall be based upon the factors and assumptions listed in the Construction Agreement Amendment.

1.1.25 "Subsequent Development Approvals" means all Development Approvals required subsequent to the Effective Date in connection with development of the Property.

1.1.25 “Subsequent Land Use Regulations” means any Land Use Regulations adopted and effective after the Effective Date of this Agreement.

1.1.26 “Water Availability Equivalent (WAE)” means a designated portion of the total Net MDD made available through the construction of each Phase described in the Water Phasing Plan of the Construction Agreement. The number of Water Availability Equivalents (of portions thereof) required for the approval of a final Parcel or Tract Map shall be based upon water demand factors and assumptions listed in the Construction Agreement and Construction Agreement Amendment as “Water Availability Equivalents by Land Use” for each land use category.

1.2 Exhibits. The following documents are attached to, and by this reference made a part of, this Agreement:

Exhibit “A” — Legal Description of the Property.

Exhibit “B” — Map showing Property and its location.

Exhibit “C” — Existing Development Approvals.

Exhibit “D” — Existing Land Use Regulations.

Exhibit “E” — Conceptual Phasing Plan

Exhibit “F-1” — Infrastructure Improvements Exhibit for Parcel Map No. 19725

Exhibit “F-2” - Infrastructure Improvement Exhibit for Parcel Map No. 19741

## 2. GENERAL PROVISIONS.

2.1 Binding Effect of Agreement. The Property is hereby made subject to this Agreement. Development of the Property is hereby authorized and shall be carried out only in accordance with the terms of this Agreement.

2.2 Ownership of Property. OWNER represents and covenants that it is the owner of the fee simple title to the Property or a portion thereof, or has the right to acquire fee simple title to the Property or a portion thereof from the current owner(s) thereof. To the extent OWNER does not own fee simple title to the Property, OWNER shall obtain written consent from the current fee owner of the Property agreeing to the terms of this Agreement and the recordation thereof.

2.3 Term. The term of this Agreement shall commence on the Effective Date and shall continue for an initial term of ten (10) years thereafter unless this term is modified or extended pursuant to the provisions of this Agreement. The term of this Agreement may be extended for an additional five (5) years following expiration of the initial ten (10) year term, provided the following have occurred:



(a) OWNER provides at least 180 days written notice to CITY prior to expiration of the initial term; and

(b) In non-mixed use projects, the OWNER shall have obtained, as applicable, building permits for at least forty percent (40%) of the actual number of residential units permitted under this Agreement; and in mixed use areas of projects, the OWNER shall have obtained, as applicable, building permits for at least forty (40%) percent of the non-residential floor area permitted under this Agreement and at least forty (40%) percent of the actual number of residential units permitted under this Agreement; and

(c) OWNER is not then in uncured default of this Agreement.

## 2.4 Assignment.

2.4.1 Right to Assign. OWNER shall have the right to sell, transfer or assign the Property in whole or in part (provided that no such partial transfer shall violate the Subdivision Map Act, Government Code Section 66410, et seq.), to any person, partnership, limited liability company, joint venture, firm or corporation at any time during the term of this Agreement; provided, however, that any such sale, transfer or assignment shall include the assignment and assumption of the rights, duties and obligations arising under or from this Agreement and be made in strict compliance with the following:

(a) No sale, transfer or assignment of any right or interest under this Agreement shall be made unless made together with the sale, transfer or assignment of all or a part of the Property.

(b) Concurrent with any such sale, transfer or assignment, or within fifteen (15) business days thereafter, OWNER shall notify CITY's City Manager, in writing, of such sale, transfer or assignment and shall provide CITY with: (1) an executed agreement, in a form reasonably acceptable to CITY, by the purchaser, transferee or assignee and providing therein that the purchaser, transferee or assignee expressly and unconditionally assumes all the duties and obligations of OWNER under this Agreement with respect to the portion of the Property so sold, transferred or assigned; and (2) the payment of the applicable processing charge to cover the CITY's review and consideration of such sale, transfer or assignment.

(c) Any sale, transfer or assignment not made in strict compliance with the foregoing conditions shall constitute a default by OWNER under this Agreement. Notwithstanding the failure of any purchaser, transferee or assignee to execute the agreement required by Paragraph (b) of this Subsection 2.4.1, the burdens of this Agreement shall be binding upon such purchaser, transferee or assignee, but the benefits of this Agreement shall not inure to such purchaser, transferee or assignee until and unless such agreement is executed. The City Manager shall have the authority to

review, consider and either approve, conditionally approve, or deny any proposed sale, transfer or assignment that is not made in compliance with this section 2.4.

**2.4.2 Release of Transferring Owner.** Notwithstanding any sale, transfer or assignment, a transferring OWNER shall continue to be obligated under this Agreement unless such transferring owner is given a release in writing by CITY, which release shall be provided by CITY upon the full satisfaction by such transferring owner of the following conditions:

- (a) OWNER no longer has a legal or equitable interest in all or any part of the portion of the Property sold, transferred or assigned.
- (b) OWNER is not then in default under this Agreement.
- (c) OWNER has provided CITY with the notice and executed agreement required under Paragraph (b) of Subsection 2.4.1 above.
- (d) The purchaser, transferee or assignee provides CITY with security equivalent to any security previously provided by OWNER to secure performance of its obligations hereunder.

**2.4.3 Effect of Assignment and Release of Obligations.** In the event of a sale, transfer or assignment pursuant to the provisions of Section 2.4.2 above:

- (a) The assignee shall be liable for the performance of all obligations of OWNER with respect to transferred property, but shall have no obligations with respect to the portions of the Property, if any, not transferred (the "Retained Property").
- (b) The owner of the Retained Property shall be liable for the performance of all obligations of OWNER with respect to Retained Property, but shall have no further obligations with respect to the transferred property.
- (c) The assignee's exercise, use and enjoyment of the Property or portion thereof shall be subject to the terms of this Agreement to the same extent as if the assignee were the OWNER.

**2.4.4 Subsequent Assignment.** Any subsequent sale, transfer or assignment after an initial sale, transfer or assignment shall be made only in accordance with and subject to the terms and conditions of this Section 2.4.

**2.4.5 Termination of Agreement With Respect to Individual Lots Upon Sale to Public and Completion of Construction.** The provisions of Subsection 2.4.1 shall not apply to the sale or lease (for a period longer than one year) of any lot which has been finally subdivided and is individually (and not in "bulk") sold or leased to

a member of the public or other ultimate user. Notwithstanding any other provisions of this Agreement, this Agreement shall terminate with respect to any lot and such lot shall be released and no longer be subject to this Agreement without the execution or recordation of any further document upon satisfaction of both of the following conditions:

- (a) The lot has been finally subdivided and individually (and not in “bulk”) sold or leased (for a period longer than one year) to a member of the public or other ultimate user; and,
- (b) A certificate of occupancy has been issued for a building on the lot, and the fees set forth under Section 4 of this Agreement have been paid.

2.5 Amendment or Cancellation of Agreement. This Agreement may be amended or cancelled in whole or in part only in the manner provided for in Government Code Section 65868.1. Any amendment of this Agreement, which amendment has been requested by OWNER, shall be considered by the CITY only upon the payment of the applicable processing charge. This provision shall not limit any remedy of CITY or OWNER as provided by this Agreement. Either Party or successor in interest, may propose an amendment to or cancellation, in whole or in part, of this Agreement. Any amendment or cancellation shall be by mutual consent of the parties or their successors in interest except as provided otherwise in this Agreement or in Government Code Section 65865.1. For purposes of this section, the term “successor in interest” shall mean any person having a legal or equitable interest in the whole of the Property, or any portion thereof as to which such person wishes to amend or cancel this Agreement. The procedure for proposing and adopting an amendment to, or cancellation of, in whole or in part, this Agreement shall be the same as the procedure for adopting and entering into this Agreement in the first instance. Notwithstanding the foregoing sentence, if the CITY initiates the proposed amendment to, or cancellation of, in whole or in part, this Agreement, CITY shall first give notice to the OWNER of its intention to initiate such proceedings at least sixty (60) days in advance of the giving the public notice of intention to consider the amendment or cancellation.

2.5.1 Amendment To Reflect Consistency With Future Amendments to the Construction Agreement. To the extent any future amendment to the Construction Agreement provides for modifications to rights or obligations that differ from or alter the same or similar rights or obligations contained in this Development Agreement, OWNER reserves the right to request an amendment to the Development Agreement to reflect any or all of such modifications.

2.6 Termination. This Agreement shall be deemed terminated and of no further effect upon the occurrence of any of the following events:

- (a) Expiration of the stated term of this Agreement as set forth in Section 2.3.

- (b) Entry of a final judgment setting aside, voiding or annulling the adoption of the ordinance approving this Agreement.
- (c) The adoption of a referendum measure overriding or repealing the ordinance approving this Agreement.
- (d) Completion of the Project in accordance with the terms of this Agreement including issuance of all required occupancy permits and acceptance by CITY or applicable public agency of all required dedications.

Termination of this Agreement shall not constitute termination of any other land use entitlements approved for the Property. Upon the termination of this Agreement, no party shall have any further right or obligation hereunder except with respect to any obligation to have been performed prior to such termination or with respect to any default in the performance of the provisions of this Agreement which has occurred prior to such termination or with respect to any obligations which are specifically set forth as surviving this Agreement.

## 2.7 Notices.

- (a) As used in this Agreement, “notice” includes, but is not limited to, the communication of notice, request, demand, approval, statement, report, acceptance, consent, waiver, appointment or other communication required or permitted hereunder.
- (b) All notices shall be in writing and shall be considered given either: (i) when delivered in person, including, without limitation, by courier, to the recipient named below; or (ii) on the date of delivery shown on the return receipt, after deposit in the United States mail in a sealed envelope as either registered or certified mail with return receipt requested, and postage and postal charges prepaid, and addressed to the recipient named below. All notices shall be addressed as follows:

If to CITY:

Al Boling, City Manager  
City of Ontario  
303 East “B” Street  
Ontario California, California 91764

with a copy to:

John Brown, City Attorney  
Best Best & Krieger  
2855 East Guasti Road, Suite 400  
Ontario CA 91761

If to OWNER:

GDCI-RCCD 2, LP  
a Delaware limited partnership  
11943 El Camino Real, Suite 210  
San Diego CA 92130

Attn: Gina Papandrea

and:

RCCD Inc.  
8101 East Kaiser Blvd. Suite 140  
Anaheim Hills, CA 92808

Attn: Richard Cisakowski  
Phone: (714) 637-4405

- (c) Either party may, by notice given at any time, require subsequent notices to be given to another person or entity, whether a party or an officer or representative of a party, or to a different address, or both. Notices given before actual receipt of notice of change shall not be invalidated by the change.

### 3. DEVELOPMENT OF THE PROPERTY.

3.1 Rights to Develop. Subject to the terms of this Agreement including the Reservations of Authority, OWNER shall have a vested right to develop the Property in accordance with, and to the extent of, the Development Plan. The Project shall remain subject to all Subsequent Development Approvals required to complete the Project as contemplated by the Development Plan. Except as otherwise provided in this Agreement, the permitted uses of the Property, the density and intensity of use, the maximum height and size of proposed buildings, and provisions for reservation and dedication of land for public purposes shall be those set forth in the Development Plan.

3.2 Effect of Agreement on Land Use Regulations. Except as otherwise provided under the terms of this Agreement including the Reservations of Authority, the rules, regulations and official policies governing permitted uses of the Property, the density and intensity of use of the Property, the maximum height and size of proposed buildings, and the design, improvement and construction standards and specifications applicable to development of the Property shall be the Existing Land Use Regulations.

In connection with any Subsequent Development Approval, CITY shall exercise discretion in accordance with the same manner as it exercises its discretion under its police powers, including the Reservations of Authority set forth herein; provided however, that such discretion shall not prevent development of the Property for the uses and to the density or intensity of development set forth in this Agreement.

3.3 Timing of Development. The parties acknowledge that OWNER cannot at this time predict when or the rate at which portions of the Property will be developed. Such decisions depend upon numerous factors which are not within the control of OWNER, such as market orientation and demand, interest rates, absorption, completion and other similar factors. Since the California Supreme Court held in Pardee Construction Co. v. City of Camarillo (1984) 37 Ca1. 3d 465, that the failure of the parties therein to provide for the timing of development resulted in a later adopted initiative restricting the timing of development to prevail over such parties' agreement, it is the parties' intent to cure that deficiency by acknowledging and providing that OWNER shall have the right to develop the Property, or portions of the Property, in such order and at such rate and at such times as OWNER deems appropriate within the exercise of its subjective business judgment.

3.4 Conceptual Phasing Plan. Development of the Property is contingent in part on the phasing of infrastructure improvements over which the OWNER has control. Attached hereto as Exhibit "E" is a conceptual phasing plan which is based on the OWNER's best estimate of the timing of the completion of needed infrastructure improvements. The conceptual phasing plan is an estimate only and is subject to the same timing constraints and the exercise of OWNER's business judgment as set forth in Section 3.3 above. OWNER and CITY agree that the development of any one of the Parcels in Parcel Map 19725 may be developed prior to, concurrent with, or after the development of any one of the Parcels in Parcel Map 19741, subject to completion of the infrastructure improvements required for the respective Parcel Map as described in Section 3.7, and in Exhibit F-1 for Parcels within the boundaries of Tract No. 19725 or Exhibit F-2 for Parcels within the boundaries of Tract 19741.

3.4.1 Attached hereto as Exhibit "F-1" is a description of the Infrastructure Improvements required for the development of the portion of the Property included in Parcel Map No. 19725. Also, attached hereto as Exhibit "F-2" is a description of the Infrastructure Improvements required for the development of the portion of the Property included in Parcel Map No. 19741 ("collectively the Infrastructure Improvement Exhibits").

3.5 Changes and Amendments. The parties acknowledge that refinement and further development of the Project will require Subsequent Development Approvals and may demonstrate that changes are appropriate and mutually desirable in the Existing Development Approvals. In the event OWNER finds that a change in the Existing Development Approvals is necessary or appropriate, OWNER shall apply for a Subsequent Development Approval to effectuate such change and CITY shall process and act on such application in accordance with the Existing Land Use Regulations, except as otherwise provided by this Agreement including the Reservations of Authority.

If approved, any such change in the Existing Development Approvals shall be incorporated herein as an addendum to Exhibit "C", and may be further changed from time to time as provided in this Section. Unless otherwise required by law, as determined in CITY's reasonable discretion, a change to the Existing Development Approvals shall be deemed "minor" and not require an amendment to this Agreement provided such change does not:

- (a) Alter the permitted uses of the Property as a whole; or,
- (b) Increase the density or intensity of use of the Property as a whole; or,
- (c) Increase the maximum height and size of permitted buildings; or,
- (d) Delete a requirement for the reservation or dedication of land for public purposes within the Property as a whole; or,
- (e) Constitute a project requiring a subsequent or supplemental environmental impact report pursuant to Section 21166 of the Public Resources Code.

### 3.6 Reservations of Authority.

3.6.1 Limitations, Reservations and Exceptions. Notwithstanding any other provision of this Agreement, the CITY shall not be prevented from applying new rules, regulations and policies upon the OWNER, nor shall a development agreement prevent the CITY from denying or conditionally approving any subsequent development project application on the basis of such new rules, regulations and policies where the new rules, regulations and policies consist of the following:

- (a) Processing fees by CITY to cover costs of processing applications for development approvals or for monitoring compliance with any development approvals;
- (b) Procedural regulations relating to hearing bodies, petitions, applications, notices, findings, records and any other matter of procedure;
- (c) Regulations, policies and rules governing engineering and construction standards and specifications applicable to public and private improvements, including all uniform codes adopted by the CITY and any local amendments to those codes adopted by the CITY; provided however that, OWNER shall have a vested right to develop the Property in accordance with, and to the extent of, the standards and specifications that are expressly identified in the Specific Plan;

- (d) Regulations that may conflict with this Agreement and the Development Plan but that are reasonably necessary to protect the residents of the project and/or of the immediate community from a condition perilous to their health or safety;
- (e) Regulations that do not conflict with those rules, regulations and policies set forth in this Agreement or the Development Plan;
- (f) Regulations that may conflict but to which the OWNER consents.

3.6.2 Subsequent Development Approvals. This Agreement shall not prevent CITY, in acting on Subsequent Development Approvals, from applying Subsequent Land Use Regulations that do not conflict with the Development Plan, nor shall this Agreement prevent CITY from denying or conditionally approving any Subsequent Development Approval on the basis of the Existing Land Use Regulations or any Subsequent Land Use Regulation not in conflict with the Development Plan.

3.6.3 Modification or Suspension by State or Federal Law. In the event that State or Federal laws or regulations, enacted after the Effective Date of this Agreement, prevent or preclude compliance with one or more of the provisions of this Agreement, such provisions of this Agreement shall be modified or suspended as may be necessary to comply with such State or Federal laws or regulations, provided, however, that this Agreement shall remain in full force and effect to the extent it is not inconsistent with such laws or regulations and to the extent such laws or regulations do not render such remaining provisions impractical to enforce. In the event OWNER alleges that such State or Federal laws or regulations preclude or prevent compliance with one or more provisions of this Agreement, and the CITY does not agree, the OWNER may, at its sole cost and expense, seek declaratory relief (or other similar non-monetary remedies); provided however, that nothing contained in this Section 3.6.3 shall impose on CITY any monetary liability for contesting such declaratory relief (or other similar non-monetary relief).

3.6.4 Intent. The parties acknowledge and agree that CITY is restricted in its authority to limit its police power by contract and that the foregoing limitations, reservations and exceptions are intended to reserve to CITY all of its police power which cannot be so limited. This Agreement shall be construed, contrary to its stated terms if necessary, to reserve to CITY all such power and authority which cannot be restricted by contract.

3.7 Public Infrastructure and Utilities. OWNER is required by this Agreement to construct any public works facilities which will be dedicated to CITY or any other public agency upon completion, and if required by applicable laws to do so, OWNER shall perform such work in the same manner and subject to the same requirements as would be applicable to CITY or such other public agency should it have undertaken such construction. As a condition of development approval of the portion of the Property



covered by Parcel Map No. 19725, OWNER shall connect the portion of the Project covered by Parcel Map No. 19725 to all utilities necessary to provide adequate water, recycled water, sewer, storm drain, fiber optic communications, gas, electric, and other utility service to the portion of the Project covered by Parcel Map No. 19725. Also, as a condition of development approval OWNER shall connect the portion of the Project covered by Parcel Map No. 19741 to all utilities, necessary to provide adequate water, recycled water, sewer, storm drain, fiber optic communications, gas, electric, and other utility service to the portion of the Project covered by Parcel Map No. 19741. OWNER and CITY agree that the development of any one of the Parcels in Parcel Map 19725 may be developed prior to, concurrent with, or after the development of any one of the Parcels in Parcel Map 19741, subject to completion of the infrastructure improvements required for the respective Parcel Map as described in the attached Exhibit F-1 for Parcels within the boundaries of Tract No. 19725 or the attached Exhibit F-2 for Parcels within the boundaries of Tract 19741.

As a further condition of development approval for the Project, OWNER shall contract with the CITY for CITY-owned or operated utilities for this purpose, for such price and on such terms as may be available to similarly situated customers in the CITY.

- 3.7.1 OWNER agrees that development of the portion of the Project within the boundaries of Parcel Map No. 19725 shall require the construction, at OWNER's sole cost and expense or as a participating member of a cooperative construction agreement, of Storm Drain facilities in Ontario Ranch Road and Mill Creek Avenues from the Property to the connection with the County Line Channel as described in the attached Exhibit F-1.
- 3.7.2 OWNER agrees that development of the portion of the Project within the boundaries of Parcel Map No. 19741 shall require the construction, at OWNER's sole cost and expense, of Storm Drain facilities in Hamner Avenue from the Property to the connection with existing Storm Drain facilities constructed by others in Hamner Avenue as described in the attached Exhibit F-2.
- 3.7.3 OWNER agrees that development of the portion of the Project within the boundaries of Parcel Map No. 19725 shall require the construction, at OWNER's sole cost and expense, of street improvements on Ontario Ranch Road including two signalized intersections on Ontario Ranch Road and as further described in the attached Exhibit F-1.
- 3.7.4. OWNER agrees that development of the portion of the Project within the boundaries of Parcel Map No. 19741 shall require the construction, at OWNER's sole cost and expense, of street improvements on Ontario Ranch Road and Hamner Avenue including one signalized intersection on Ontario Ranch Road and Hamner Avenue and as further described in the attached Exhibit F-2.
- 3.7.5 OWNER agrees that development of the portion of the Property within the boundaries of Parcel Map No. 19725 shall require the extension of permanent master planned water and recycled water utility infrastructure, at OWNER's sole

cost and expense, as described in Exhibit F-1 consisting generally of the construction of the extension of permanent master planned water and recycled water utility infrastructure to serve the portion of the Property within the boundaries of Parcel Map No. 19725. OWNER agrees that no building permits shall be issued by CITY for Non-Residential Buildings or Production Units within the boundaries of Tract 19725 prior to completion of the water and recycled water Improvements as described in Exhibit F-1. OWNER also agrees that recycled water shall be available and utilized by OWNER for all construction-related water uses including prior to, and during, any grading of the Property.

3.7.6 OWNER agrees that development of the portion of the Property within the boundaries of Parcel Map No. 19741 shall require the extension of permanent master planned water and recycled water utility infrastructure, at OWNER's sole cost and expense, as described in Exhibit F-2 consisting generally of the construction of the extension of permanent master planned water and recycled water utility infrastructure to serve the portion of the Property within the boundaries of Parcel Map No. 19741. OWNER agrees that no building permits shall be issued by CITY for Non-Residential Buildings or Production Units within the boundaries of Tract 19741 prior to completion of the water and recycled water Improvements as described in Exhibit F-2. OWNER also agrees that recycled water shall be available and utilized by OWNER for all construction-related water uses including prior to, and during, any grading of the Property.

3.7.7 OWNER agrees that NMC Builders shall be responsible for funding a portion of the design and construction of an additional extension of master planned recycled water infrastructure in Riverside and Haven Avenues to be constructed by CITY. These master planned recycled water Improvements shall also serve the Project. OWNER shall deposit, or shall have deposited, with NMC Builders an amount equal to the OWNER's capital contribution for the design and construction of the NMC Builders portion of the recycled water improvements in Riverside and Haven Avenues known as the "Phase 2 Recycled Water Improvements" within 30 days after CITY requests such funds from NMC Builders. If OWNER has not deposited such amount, with NMC Builders within 30 days after CITY requests such funds from NMC Builders then CITY shall be entitled to withhold issuance of any further permits for the Project (whether discretionary or ministerial) unless and until OWNER deposits the amount of OWNER's capital contribution with NMC Builders for the design and construction of the NMC Builders portion of the Phase 2 Recycled Water System Improvements.

3.7.8 OWNER agrees that development of the Property shall require the extension of permanent master planned sewer infrastructure, at OWNER's sole cost and expense or as a participating member in a cooperative construction agreement, as described in the attached Exhibit F-1 and F-2 consisting generally of the construction of the extension of sewer infrastructure in Mill Creek Avenue and Bellegrave Avenue to serve the Property and as further described in the attached Exhibits F-1 and F-2.

3.7.9 OWNER agrees that development of the portion of the Property within the boundaries of Parcel Map 19725 shall require the extension of permanent master planned fiber optic communications infrastructure, at OWNER's sole cost and expense, as described in the attached Exhibit F-1 consisting generally of the construction of the extension of fiber optic communications infrastructure to serve the portion of the Property within the boundaries of Parcel Map 19725.

3.7.10 OWNER agrees that development of the portion of the Property within the boundaries of Parcel Map 19741 shall require the extension of permanent master planned fiber optic communications infrastructure, at OWNER's sole cost and expense, as described in the attached Exhibit F-2 consisting generally of the construction of the extension of fiber optic communications infrastructure to serve the portion of the Property within the boundaries of Parcel Map 19741.

3.8 Acquisition of Offsite Provision of Real Property Interests. In any instance where OWNER is required by any Development Approval or Land Use Regulation and the Construction Agreement to construct any public improvement on land not owned by OWNER ("Offsite Improvements"), the CITY and OWNER shall cooperate in acquiring the necessary legal interest ("Offsite Property") in accordance with the procedures set forth in Section 2.4 of the Construction Agreement. This section 3.8 is not intended by the parties to impose upon the OWNER an enforceable duty to acquire land or construct any public improvements on land not owned by OWNER, except to the extent that the OWNER elects to proceed with the development of the Project, and then only in accordance with valid conditions imposed by the CITY upon the development of the Project under the Subdivision Map Act or other legal authority.

3.8.1 CITY Acquisition of Non-Construction Agreement Offsite Property. In the event OWNER is required to construct any public improvements on land not owned by OWNER, but such requirement is not based upon the Construction Agreement, Sections 3.8.1 and 3.8.2 shall control the acquisition of the necessary property interest(s) ("Non-Construction Agreement Offsite Property"). If the OWNER is unable to acquire such Non-Construction Agreement Offsite Property, and following the written request from the OWNER to CITY, CITY agrees to use reasonable and diligent good faith efforts to acquire the Non-Construction Agreement Offsite Property from the owner or owners of record by negotiation to the extent permitted by law and consistent with this Agreement. If CITY is unable to acquire the Non-Construction Agreement Offsite Property by negotiation within thirty (30) days after OWNER'S written request, CITY shall, initiate proceedings utilizing its power of eminent domain to acquire that Non-Construction Agreement Subject Property at a public hearing noticed and conducted in accordance with California Code of Civil Procedure Section 1245.235 for the purpose of considering the adoption of a resolution of necessity concerning the Non-Construction Agreement Offsite Property, subject to the conditions set forth in this Section 3.8. The CITY and OWNER acknowledge that the timelines set forth in this Section 3.8.1 represent the maximum time periods which CITY and OWNER reasonably believe will be necessary to complete the acquisition of any Non-Construction Agreement Offsite Property. CITY agrees to use reasonable

good faith efforts to complete the actions described within lesser time periods, to the extent that it is reasonably able to do so, consistent with the legal constraints imposed upon CITY.

3.8.2 Owner's Option to Terminate Proceedings. CITY shall provide written notice to OWNER no later than fifteen (15) days prior to making an offer to the owner of the Non-Construction Agreement Offsite Property. At any time within that fifteen (15) day period, OWNER may, at its option, notify CITY that it wants CITY to cease all acquisition proceedings with respect to that Non-Construction Agreement Offsite Property, whereupon CITY shall cease such proceedings. CITY shall provide written notice to OWNER no later than fifteen (15) days prior to the date of the hearing on CITY'S intent to consider the adoption of a resolution of necessity as to any Non-Construction Agreement Offsite Property. At any time within that fifteen (15) day period, OWNER may, at its option, notify CITY that it wants CITY to cease condemnation proceedings, whereupon CITY shall cease such proceedings. If OWNER does not notify CITY to cease condemnation proceedings within said fifteen (15) day period, then the CITY may proceed to consider and act upon the Non-Construction Agreement Offsite Property resolution of necessity. If CITY adopts such resolution of necessity, then CITY shall diligently institute condemnation proceedings and file a complaint in condemnation and seek an order of immediate possession with respect to the Non-Construction Agreement Offsite Property.

3.9 Regulation by Other Public Agencies. It is acknowledged by the parties that other public agencies not within the control of CITY possess authority to regulate aspects of the development of the Property separately from or jointly with CITY and this Agreement does not limit the authority of such other public agencies. CITY agrees to cooperate fully, at no cost to CITY, with OWNER in obtaining any required permits or compliance with the regulations of other public agencies provided such cooperation is not in conflict with any laws, regulations or policies of the CITY.

3.10 Tentative Parcel Maps; Extension. With respect to applications by OWNER for tentative subdivision maps for portions of the Property, CITY agrees that OWNER may file and process tentative maps in accordance with Chapter 4.5 (commencing with Section 66498.1) of Division 2 of Title 7 of the California Government Code and the applicable provisions of CITY's subdivision ordinance, as the same may be amended from time to time. In accordance with the provisions of Section 66452.6 of the Government Code, each tentative subdivision map or tentative parcel map, heretofore or hereafter approved in connection with development of the Property, shall be deemed to have been granted an extension of time to and until the date that is five (5) years following the Effective Date of this Agreement.; The CITY's City Council may, in its discretion, extend any such map for an additional period of up to five (5) years beyond its original term, so long as the subdivider files a written request for an extension with the City prior to the expiration of the initial five (5) year term.

#### 4. PUBLIC BENEFITS.

4.1 Intent. The parties acknowledge and agree that development of the Property will result in substantial public needs that will not be fully met by the Development Plan and further acknowledge and agree that this Agreement confers substantial private benefits on OWNER that should be balanced by commensurate public benefits. Accordingly, the parties intend to provide consideration to the public to balance the private benefits conferred on OWNER by providing more fully for the satisfaction of the public needs resulting from the Project.

4.2 Development Impact Fees.

4.2.1 Amount of Development Impact Fee. Development Impact Fees (DIF) shall be paid by OWNER. The Development Impact Fee amounts to be paid by OWNER shall be the amounts that are in effect at the time such amounts are due. Nothing contained in this Agreement shall affect the ability of the CITY to impose new Development Impact Fees or amend the amounts of existing Development Impact Fees. Additionally, nothing contained in this Agreement shall affect the ability of other public agencies that are not controlled by CITY to impose and amend, from time to time, Development Impact Fees established or imposed by such other public agencies, even though such Development Impact Fees may be collected by CITY.

4.2.2 Time of Payment. The Development Impact Fees required pursuant to Subsection 4.2.1 shall be paid to CITY prior to the issuance of building permit for each applicable residential or other unit, except for the Open Space and Habitat Acquisition Development Impact fee, which shall be paid by OWNER to CITY prior to the issuance of a grading permit. Deferral of the payment of Development Impact Fees may be granted pursuant to a separate agreement approved by City pursuant to City policy.

4.2.3 Parkland and Quimby Act Fees. Pursuant to the General Plan (OntarioPlan) Goal PR1, Policy PR1-5 (achievement of a park standard of 5 acres of parkland per 1,000 residents) OWNER shall provide improved parks, developed in accordance with the City's park standards in an amount equal to two (2) acres per 1,000 of projected population without credit, reimbursement, offset or consideration from City. Such areas shall either be dedicated to the City or transferred to a homeowner's association. If approved by the City Manager, OWNER may satisfy this requirement through the development of non-public recreation facilities such as private recreational clubhouses or pool facilities. Credit for such private recreational facilities areas shall be limited to a maximum of 50% of the foregoing park development requirement. If OWNER's Project does not provide dedicated and developed park acreage equal to two (2) acres per 1,000 projected population, OWNER shall pay a fee in-lieu equal to the per acre estimated costs of acquisition and development of parkland in the City's Development Impact Fee for the calculated park acreage deficiency. Such in-lieu fee shall be due and payable within 10 days following the issuance of the first building permit for a Production Unit issued to OWNER.

#### 4.3 Responsibility for Construction of Public Improvements.

- 4.3.1 Timely Construction of Public Infrastructure. The phasing of the areawide infrastructure construction within the Ontario Ranch area will be as approved by the CITY. OWNER shall be responsible for the timely construction and completion of all public infrastructure required for the portion of the Project within the boundaries of Parcel Map 19725 as shown on the attached Exhibit "F-1" and OWNER shall be responsible for the timely construction and completion of all public infrastructure required for the portion of the Project within the boundaries of Parcel Map 19741 as shown on the attached Exhibit "F-2". OWNER shall also be responsible for the construction and completion of any and all tentative parcel map conditions. Unless otherwise specified in the Subdivision Agreement/Parcel Map conditions, all other required Improvements for each Parcel Map, and all subsequent Parcel or Tract Maps for the Property shall be completed and operational prior to, and as a condition precedent to, OWNER requesting and CITY's granting of the first building permit for a Non-Residential Unit or for Production Units for any such Parcel Map or future Tract Map. All Infrastructure and Improvements shall be completed as required by the Subdivision Agreement/Parcel Map conditions for Parcel Map Nos. 19725 and 19741 and as required by any future Tract Maps for the Property. Notwithstanding the above, OWNER and CITY agree that the development of any one of the Parcels in Parcel Map 19725 may be developed prior to, concurrent with, or after the development of any one of the Parcels in Parcel Map 19741, subject to completion of the conditions of approval for the respective Parcel Map.
- 4.3.2 Construction of DIF Program Infrastructure (Construction Agreement). To the extent OWNER is required to construct and completes construction of public improvements that are included in CITY's Development Impact Fee Program and the Construction Agreement between CITY and NMC Builders LLC, CITY agrees that CITY shall issue DIF Credit in accordance with the provisions of the Construction Agreement. Use of DIF Credit issued to OWNER as a member of NMC Builders LLC to offset OWNER's DIF payment obligations shall also be subject to the provisions of the Construction Agreement and any amendments thereto.
- 4.3.3 Construction of DIF Program Infrastructure (Non-Construction Agreement). To the extent OWNER is required to construct and completes construction of public improvements that are included in CITY's Development Impact Fee Program and such public improvements are not included the Construction Agreement between CITY and NMC Builders LLC, CITY agrees that CITY shall issue DIF Credit in accordance with the provisions of a separate Fee Credit Agreement between CITY and OWNER. Limitation on the use of DIF Credit issued to OWNER to offset OWNER's DIF payment obligations shall also be subject to the provisions of a separate Fee Credit Agreement. CITY and OWNER agree that the Fee Credit Agreement between CITY and OWNER shall comply with CITY's adopted policies applicable to such agreements.

#### 4.4 Affordable Housing Requirement.

4.4.1 Affordable Housing- Number of Units. OWNER shall provide a minimum number of affordable housing units, equivalent to 10% of the OWNER's total approved residential units within the Project, that are affordable to very low, low and moderate income households. Such requirement for affordable housing shall be met through one, or a combination of one or more, of the options provided in the following Sections 4.4.2.1 through 4.4.2.5. For the purposes of this Section, any term not defined in this Agreement shall be as defined by California Community Redevelopment Law (California Health and Safety Code Section 33000 et seq.).

4.4.2 Affordability Spread. Of the total number of residential dwelling units specified in Section 4.4.1, to be constructed or rehabilitated pursuant to Sections 4.4.2.1 or 4.4.2.2 respectively, thirty percent (30%) shall be available to very low income, thirty percent (30%) shall be available to low income and forty percent (40%) shall be available to moderate income households. "**Households**" shall be as defined by California Health and Safety Code Section 50053.

4.4.2.1 New Construction. If OWNER elects to fully or partially satisfy the affordable housing requirement by the construction of new residential units, it shall construct and restrict the affordability of residential dwelling units within its Project or, at OWNER's option and with the approval of the City, within another project elsewhere within the City. The affordable units constructed shall be intermingled with other units as part of the Project, and shall be built to the same construction, design and aesthetic standards, as well as number of rooms, as other units constructed as part of that OWNER's Project. In addition, the percentage ratio of affordable units offered for sale versus those offered for rent shall equal the percentage ratio of other units offered for sale versus for rent within OWNER's Project. Such construction shall be completed no later than the date that is five (5) years following the issuance of the first building permit for OWNER's Project; provided however that to the extent OWNER has not constructed the required percentage of units, based on the number of building permits for non-restricted units, OWNER shall, prior to the issuance of such building permits, provide security (in the form and substance approved by the City Manager and City Attorney) to City in order to ensure the faithful completion of such required percentage of construction of affordable units. If OWNER elects the option of constructing new affordable units, a detailed Affordable Housing Agreement specifying terms for the allowable monthly housing costs or rents (as applicable) and maintenance and occupancy standards shall be prepared, executed and recorded against such units as a condition to the issuance of a building permit. The Affordable Housing Agreement shall hold a recorded priority position senior to any other non-statutory lien or encumbrance affecting the unit.

4.4.2.2 Rehabilitation. If OWNER elects to fully or partially satisfy the affordable housing requirement by the substantial rehabilitation of existing residential units in the City, it shall substantially rehabilitate and restrict the affordability of, the

number of residential units specified in Section 4.4.1, provided that such units shall be provided elsewhere within the City. The rehabilitation work shall be substantial and of high quality and shall also address any deferred property maintenance issues on the property. “**Substantial rehabilitation**” shall mean rehabilitated multi-family rented dwelling units with three or more units and the value of the rehabilitation constitutes 25 percent of the after rehabilitation value of the dwelling, inclusive of land value pursuant to Health and Safety Code Section 33413(b)(2)(A)(iii-iv) as such section exists as of the Effective Date of this Agreement. If OWNER chooses the option of rehabilitation of existing housing units within the City, a detailed Affordable Housing Agreement specifying the terms for the allowable month housing costs or rents (as applicable) and maintenance and occupancy standards shall be prepared, executed and recorded against such units as a condition to the issuance of a building permit. Such rehabilitation shall be completed no later than the date that is five (5) years following the issuance of the first building permit for OWNER’s Project; provided however that to the extent OWNER has not rehabilitated the required percentage of units, based on the number of building permits, OWNER shall, prior to the issuance of such building permits, provide security (in the form and substance approved by the City Manager and City Attorney) to the City in order to ensure the faithful completion of such required percentage of rehabilitation.

4.4.2.3 In-Lieu Fee. If OWNER has not fully complied with the requirements of Section 4.4.1 by providing the minimum number of affordable units through the construction of new affordable units or by the substantial rehabilitation of existing units, shall pay an “**Affordability In-Lieu Fee**”. If OWNER has not provided any affordable residential units by construction or rehabilitation, the Affordability In-Lieu fee shall be equal to Two Dollars Thirty-Seven Cents (\$2.37) per square foot of residential development within OWNER’s Project or, if pre-paid as set forth below, Two Dollars Seven Cents (\$2.07) per square foot of residential development within OWNER’s Project. If OWNER has partially complied with the requirements of Section 4.4.1 by construction or rehabilitation of less than the minimum number of units, then the Affordability In-lieu Fee shall be recalculated and reduced in consideration of the number and type of affordable units provided. The Affordability In-Lieu Fee shall be paid by OWNER to City no later than prior to the issuance of each building permit within OWNER’s Project based on the square footage of the residential unit for which such building permit is sought; provided however that OWNER may, at OWNER’s election, pre-pay such Affordability In-Lieu Fee by paying such Affordability In-Lieu Fee within thirty (30) days following the earliest discretionary approval by the City for OWNER’s Project, including, but not limited to, any general plan amendment, specific plan adoption, development agreement, tentative map approval, variance, conditional use permit, or resolution of intention to form any public financing mechanism. The Two Dollars, Thirty-Seven Cents (\$2.37) and the Two Dollars Seven Cents (\$2.07) per square foot amounts shall automatically be increased annually, commencing on July 1, 2017, and automatically each July 1 thereafter. Such adjustment shall be based on the percentage increase (but no decrease) in the



Consumer Price Index (Los Angeles-Anaheim-Riverside County), 1950-2001 (1982-84=100) over the preceding year. The pre-paid Affordability In-Lieu Fee shall be calculated based on the maximum floor area ratio (FAR) permitted within the General Plan and any applicable FAR contained within the applicable specific plan, whichever is greater, and the Maximum Development Density. For purposes of this Agreement, “**Maximum Development Density**” shall be determined by multiplying the OWNER’s Project’s density for residential development potential as set forth in the General Plan or the applicable Specific Plan, whichever is less, by the net acreage of land within OWNER’s Project. All “Affordability In-Lieu Fees” collected by the City shall be used to promote the construction of affordable housing within the City.

4.4.2.4 Affordability Covenants. Prior to the issuance of the first building permit for any affordable unit, the City and OWNER shall enter into an Affordable Housing Agreement. Affordability shall be assured for a period of forty-five (45) years for for-sale units and fifty-five (55) years for rentals. For rental units, base rents shall be established by the City and rental adjustments required by the City shall be performed on an annual basis. In addition, the Affordable Housing Agreement shall impose maximum occupancy limits of 2 occupants per bedroom plus 1 additional occupant per dwelling unit, and a requirement for the owner or tenant to properly maintain each dwelling unit.

4.4.2.5 Transfer of Affordable Project. No transfer of title to any affordable housing project shall occur without the prior written consent of the City. In the event OWNER transfers title to any affordable housing project required to be constructed pursuant to this Agreement to a non-profit entity, or other entity, that receives an exemption from ad valorem real property taxes, the City shall be required to assure payment of an annual in lieu fee to the City on July 1 of each year equal to one-tenth of one percent (0.1%) of the assessed value of such project. The City may permit OWNER to satisfy this obligation by recorded covenants against the property and enforceable against said entity by the City. Any such covenants shall be approved by the Planning Director and the City Attorney.

#### 4.5 Schools Obligations.

4.5.1 Written Evidence of Compliance with Schools Obligations. OWNER shall, either through joint or individual agreements between OWNER and the applicable school district(s), shall satisfy its new school obligations. The new school obligations for the Mountain View School District in the New Model Colony area have been projected to include the acquisition or dedication of school sites for, and construction of, up to eight (8) schools. Of these eight (8) schools, six (6) are to be elementary (K-5) grade schools and two (2) are to be middle grade schools. The new school obligations for the Chaffey Joint Union High School District in the New Model Colony area have been projected to include the dedication of a school site for, and construction of, an additional high school. The new school obligations for the applicable school district shall be met by a

combination of the following: (1) designating and dedicating school site(s) within the Property as set forth in the General Plan, and/or (2) paying school impact fees, (3) entering into a joint mitigation agreement or individual mitigation agreements, or (4) any combination of the foregoing. Written evidence of approval by the applicable school district that OWNER has met their school obligations may be required by the City as the condition to the issuance by the City of any entitlements for OWNER's Project. In the event OWNER is unable to provide such written evidence from the applicable school district(s), the City shall have the right to decline to honor any DIF Credit, Certificates of MDD Availability, Certificates of Storm Water Treatment Capacity Availability, or any combination thereof, presented by such OWNER, without liability to the City. To the extent that a joint mitigation agreement is approved by the applicable school district(s), and OWNER is a participant in good standing in such mitigation agreement, OWNER shall be deemed to have mitigated its new school obligations under this Section 4.5.1.

#### 4.6 Public Services Funding Fee.

4.6.1 Requirement for Payment of Public Services Funding Fee. In order to ensure that the adequate provision of public services, including without limitation, police, fire and other public safety services, are available to the residents of each Project in a timely manner, OWNER shall pay to CITY a "**Public Services Funding Fee.**" The Public Services Funding Fee shall apply to residential and non-residential uses as set forth below.

4.6.2 Public Services Funding Fee Amount. OWNER shall pay a Public Services Funding fee in the total amount of One Thousand Nine Hundred Seven dollars (\$1,907.00) per residential dwelling unit. The Public Services Funding Fee shall be paid in one (1) installment within one hundred eighty (180) calendar days after the effective date of the Development Agreement or in two (2) installments, at OWNER's option, as follows:

4.6.2.1 First Installment (Residential uses). The First Installment of the Public Services Funding Fee shall be Nine Hundred Fifty-Three dollars and fifty cents (\$953.50) per residential dwelling unit. The First Installment shall be based upon the "**Maximum Development Density**" of the OWNER Project, as defined in Section 3.7.2.3 of the First Amended and Restated Construction Agreement. The First Installment shall be due and payable 30 days following City's start of construction of Fire Station No. 9 or paid at the time of the issuance of each building permit for the Project, whichever comes first.

If the First installment amount is not paid for all residential dwelling units within the Project (based on the Maximum Development Density, or the number of units described on "B Maps" if approved) by January 1, 2018, the amount of the First Installment shall be increased. Such increase shall be based on the percentage increase (but no decrease) in the Consumer Price Index (Los Angeles-Anaheim-Riverside County), 1950-2001 (1982-84=100) over the preceding year.

Additionally, the amount shall be further increased automatically by the percentage increase in the Consumer Price Index (Los Angeles-Anaheim-Riverside) on each January 1 thereafter.

4.6.2.2 Second Installment (Residential Uses). The Second Installment of the Public Services Funding Fee shall be Nine Hundred Fifty-Three dollars and fifty cents (\$953.50) per residential unit. The Second Installment shall be paid at the time of the issuance of each building permit for the Project. The amount of the Second Installment shall increase automatically by percentage increase (but no decrease) in the Consumer Price Index (Los Angeles-Anaheim-Riverside County), 1950-2001 (1982-84=100) over the preceding year on January 1<sup>st</sup> of each year, beginning on January 1, 2018. OWNER may exercise the option to pay the Second Installment amount for all residential units, a portion of the residential units, or for the remainder of the residential units within OWNER's Project on or before each December 31st, before the Second Installment amount is automatically increased.

4.6.2.3 Single Installment (Non-residential Uses). A single installment payment of the Public Services Funding Fee shall be required in the amount of Fifty-Seven Cents (\$.57) per square foot of non-residential buildings. The single installment for non-residential uses shall be due and payable prior to the issuance of the building permit for a non-residential building. The amount of the Single Installment for non-residential uses shall automatically increase by percentage increase (but no decrease) in the Consumer Price Index (Los Angeles-Anaheim-Riverside County), 1950-2001 (1982-84=100) over the preceding year on January 1<sup>st</sup> of each year, beginning on January 1, 2018. OWNER may exercise the option to pay any single installment amounts for the remainder of the non-residential square footage within the Project on or before December 31st, before the Single Installment amount is automatically increased.

#### 4.7 Net MDD/Water Availability Equivalents.

4.7.1 Assigned Net MDD/Water Availability Equivalents. The City has agreed with NMC Builders LLC to reserve exclusively for Members of NMC Builders, including OWNER, Net MDD made available through the construction of water system improvements funded by NMC Builders LLC. NMC Builders has assigned to OWNER its allocable share of the Net MDD issued by City. The provisions of the Construction Agreement Amendment requires that the City shall not approve a final parcel map or subdivision map, or issue building permits or certificates of occupancy for the area of development within the New Model Colony served by the water system improvements funded by NMC Builders LLC, except to the bearer of an Assignment of Net MDD Water Availability.

4.7.2 Use of Assigned Net MDD Water Availability. OWNER shall provide evidence of sufficient Net MDD Water Availability Equivalents (or portions thereof) prior to and as a condition precedent to, the City's approval of any and all parcel maps for the Property. The amount of Net MDD Water Availability Equivalents

required for City's approval of a parcel map shall be based upon water demand factors and assumptions listed in Exhibit C-2R of the Construction Agreement Amendment as "Water Demand Equivalents by Land Use" for each land use category.

4.7.3 Requirement for other Water System Improvements. A Certificate of Net MDD Availability is evidence only of available water capacity and does not satisfy any other conditions applicable to OWNER's Project, including those relating to design and construction of master-planned potable water and recycled water transmission and distribution system for the respective pressure zone and other public infrastructure requirements.

4.8 Storm Water Capacity Availability.

4.8.1 Requirement for Storm Water Treatment Capacity Availability. OWNER shall provide evidence of sufficient Storm Water Treatment Capacity Availability as reserved in a Certificate of Storm Water Treatment Capacity Availability for all acreage of residential uses in the same manner and subject to the same limitations as provided for the assignment of Certificates of Net MDD Availability in Section 4.6 of this Agreement.

4.8.2 Use of Storm Water Treatment Capacity Availability. The amount of Storm Water Treatment Capacity Availability required for the issuance of a grading permit to OWNER shall be based upon the Net Residential Acreage of the area to be graded regardless of the corresponding residential use.

4.8.3 Requirement for other Storm Water Improvements. The Certificate of Storm Water Treatment Capacity Availability is evidence only of available storm water treatment capacity and does not satisfy any other conditions applicable to a particular development project, including those relating to on-site water treatment, water quality, connection to the storm water collection system, or other public infrastructure requirements.

4.9 Maintenance of Common Areas or Open Space. OWNER shall provide for the ongoing maintenance of all park and common or open space areas within the Project as more particularly set forth in the Specific Plan, through a homeowners' association or public financing mechanism, as approved by the CITY. Covenants, conditions and restrictions establishing any homeowners' association shall be approved by the Planning Director and City Attorney. If requested by OWNER, the CITY shall use good faith efforts to require other developments within the Specific Plan to join such homeowners' association or public financing mechanism for the purpose of maintaining such parks and open spaces that are open to the public.

4.10 Edison Easement Improvements. OWNER shall develop as park or open space purposes that area within the Project areas owned in fee by Southern California Edison or in which Southern California Edison has an easement or license, as more particularly set forth in the Specific Plan. Said park or open space development shall be consistent

with the New Model Colony Park Master Plan standards for park and open space development. Notwithstanding OWNER's development of park or open space areas as required by this Section 4.8. OWNER shall not be entitled to any credit, offset or reimbursement from the CITY for such park or open space development.

#### 4.11 Compliance with Public Benefits Requirements.

4.11.1 Failure to Provide Public Benefits. In the event OWNER fails or refuses to comply with any condition referenced in Section 4.1 through 4.9, or challenges (whether administratively or through legal proceedings) the imposition of such conditions, OWNER shall be deemed in default of this Agreement pursuant to Section 8.4 hereof, thereby entitling the City to any and all remedies available to it, including, without limitation, the right of the City to withhold OWNER's Project-related building permits, certificates of occupancy, or discretionary approvals, without liability.

### 5. FINANCING OF PUBLIC IMPROVEMENTS.

5.1 Financing Mechanism(s). In accordance with the Memorandum of Agreement between the CITY and NMC Builders, CITY will cooperate with OWNER in the formation of a CFD, or CFDs, to include all of the Project, to provide a financing mechanism to reimburse the OWNER for funds paid to NMC Builders LLC for OWNER's share of the costs of public infrastructure pursuant to the Construction Agreement. Notwithstanding such reimbursements, OWNER shall remain entitled to DIF Credits as provided for in Article 3 of the Construction Agreement and/or as provided for in a separate Fee Credit Agreement between CITY and OWNER. OWNER agrees that, prior to the recordation of any B Map, the property subject to such B Map shall be included in a CFD to finance City services through annual special taxes that will initially be \$1,442.00 per Single Family Detached Dwelling Unit, \$1,250.00 per Multiple-Family Dwelling Unit, \$1,048.00 per Gated Apartment Community Dwelling Unit, and \$.27 per square foot for Non-Residential buildings. These amounts shall be subject to an automatic increase at a rate not to exceed four (4%) percent per year. CITY shall be the sole and exclusive lead agency in the formation of any CFD, assessment district or other public financing mechanism within the Property; provided however, that the proceeds of any such CFD, assessment district, or financing mechanism may be used, subject to restrictions that may be imposed by applicable law, for the purposes of acquiring, constructing or maintaining public facilities to be owned or operated by other public agencies, including, without limitation those facilities owned or operated by a school district. CITY shall have the right, but not the obligation, to condition the formation of any CFD, assessment district or other public financing mechanism within the Property on the OWNER mitigating all Project-related impacts to the applicable school district(s) as required by such school district(s). Written evidence by such school district(s) may be required by the CITY as the condition to the formation of any CFD, assessment district or other public financing mechanism within the Property, or any steps preliminary thereto, including, without limitation, the adoption of any resolution of intention to form such CFD, assessment district or other public financing mechanism within the Property. It is not the intent of the parties hereto, by this provision, to prohibit or otherwise limit the

City's ability to take any and all necessary steps requisite to the formation of the CFD to finance City services through annual special taxes as set forth in this Section 5.1. Formation of any CFD, assessment district or other public financing mechanism within the Property, shall be subject to CITY's ability to make all findings required by applicable law and complying with all applicable legal procedures and requirements including, without limitation, CITY's public financing district policies as such policies may be amended from time to time. Notwithstanding the foregoing, it is acknowledged and agreed by the parties that nothing contained in this Agreement shall be construed as requiring CITY or the City Council to form any such district or to issue and sell bonds.

## 6. REVIEW FOR COMPLIANCE.

### 6.1 Periodic and Special Reviews.

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

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

- (1) Recommendation of the Planning staff;
- (2) Affirmative vote of at least four (4) members of the Planning Commission; or
- (3) Affirmative vote of at least three (3) members of the City Council.

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

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

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

6.1.6 Procedure Upon Findings.

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

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

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

6.2 Proceedings Upon Modification or Termination. If, upon a finding under Section 6.1.6(b), the CITY determines to proceed with modification or termination of this Agreement, the CITY shall give notice to the property OWNER of its intention so to do. The notice shall contain:

(a) The time and place of the hearing;

(b) A statement as to whether or not the CITY proposes to terminate or to modify this Agreement; and

(c) Other information that the CITY considers necessary to inform the OWNER of the nature of the proceeding.

6.3 Hearing on Modification or Termination. At the time and place set for the hearing on modification or termination, the OWNER shall be given an opportunity to be heard. The OWNER shall be required to demonstrate good faith compliance with the terms and conditions of this Agreement. The burden of proof on this issue shall be on the OWNER. If the City Council finds, based upon substantial evidence in the administrative record, that the OWNER has not complied in good faith with the terms and conditions of the agreement, the City Council may terminate or modify this

Agreement and impose those conditions to the action it takes as it considers necessary to protect the interests of the CITY. The decision of the City Council shall be final, subject only to judicial review pursuant to Section 1094.5 of the Code of Civil Procedure.

6.4 Certificate of Agreement Compliance. If, at the conclusion of a Periodic or Special Review, OWNER is found to be in compliance with this Agreement, CITY shall, upon written request by OWNER, issue a Certificate of Agreement Compliance ("Certificate") to OWNER stating that after the most recent Periodic or Special Review and based upon the information known or made known to the Planning Director and City Council that (1) this Agreement remains in effect and (2) OWNER is not in default. The Certificate shall be in recordable form, shall contain information necessary to communicate constructive record notice of the finding of compliance, shall state whether the Certificate is issued after a Periodic or Special Review and shall state the anticipated date of commencement of the next Periodic Review. OWNER may record the Certificate with the County Recorder. Whether or not the Certificate is relied upon by assignees or other transferees or OWNER, CITY shall not be bound by a Certificate if a default existed at the time of the Periodic or Special Review, but was concealed from or otherwise not known to the Planning Director or City Council.

7. [RESERVED]

8. DEFAULT AND REMEDIES.

8.1 Remedies in General. It is acknowledged by the parties that CITY would not have entered into this Agreement if it were to be liable in damages under this Agreement, or with respect to this Agreement or the application thereof.

In general, each of the parties hereto may pursue any remedy at law or equity available for the breach of any provision of this Agreement, except that CITY shall not be liable in damages to OWNER, or to any successor in interest of OWNER, or to any other person, and OWNER covenants not to sue for damages or claim any damages:

(a) For any breach of this Agreement or for any cause of action which arises out of this Agreement; or

(b) For the taking, impairment or restriction of any right or interest conveyed or provided under or pursuant to this Agreement; or

(c) Arising out of or connected with any dispute, controversy or issue regarding the application or interpretation or effect of the provisions of this Agreement.

8.2 Specific Performance. The parties acknowledge that money damages and remedies at law generally are inadequate and specific performance and other non-monetary relief are particularly appropriate remedies for the enforcement of this Agreement and should be available to all parties for the following reasons:



(a) Money damages are unavailable against CITY as provided in Section 8.1 above.

(b) Due to the size, nature and scope of the project, it may not be practical or possible to restore the Property to its natural condition once implementation of this Agreement has begun. After such implementation, OWNER may be foreclosed from other choices it may have had to utilize the Property or portions thereof. OWNER has invested significant time and resources and performed extensive planning and processing of the Project in agreeing to the terms of this Agreement and will be investing even more significant time and resources in implementing the Project in reliance upon the terms of this Agreement, and it is not possible to determine the sum of money which would adequately compensate OWNER for such efforts.

8.3 Release. Except for nondamage remedies, including the remedy of specific performance and judicial review as provided for in Section 6.5, OWNER, for itself, its successors and assignees, hereby releases the CITY, its officers, agents and employees from any and all claims, demands, actions, or suits of any kind or nature arising out of any liability, known or unknown, present or future, including, but not limited to, any claim or liability, based or asserted, pursuant to Article I, Section 19 of the California Constitution, the Fifth Amendment of the United States Constitution, or any other law or ordinance which seeks to impose any other liability or damage, whatsoever, upon the CITY because it entered into this Agreement or because of the terms of this Agreement.

8.4 Termination or Modification of Agreement for Default of OWNER. Subject to the provisions contained in Subsections 6.2 and 6.3 herein, CITY may terminate or modify this Agreement for any failure of OWNER to perform any material duty or obligation of OWNER under this Agreement, or to comply in good faith with the terms of this Agreement (hereinafter referred to as "default"); provided, however, CITY may terminate or modify this Agreement pursuant to this Section only after providing written notice to OWNER of default setting forth the nature of the default and the actions, if any, required by OWNER to cure such default and, where the default can be cured, OWNER has failed to take such actions and cure such default within 60 days after the effective date of such notice or, in the event that such default cannot be cured within such 60 day period but can be cured within a longer time, has failed to commence the actions necessary to cure such default within such 60 day period and to diligently proceed to complete such actions and cure such default.

8.5 Termination of Agreement for Default of CITY. OWNER may terminate this Agreement only in the event of a default by CITY in the performance of a material term of this Agreement and only after providing written notice to CITY of default setting forth the nature of the default and the actions, if any, required by CITY to cure such default and, where the default can be cured, CITY has failed to take such actions and cure such default within 60 days after the effective date of such notice or, in the event that such default cannot be cured within such 60 day period but can be cured within a longer time, has failed to commence the actions necessary to cure such default within such 60 day period and to diligently proceed to complete such actions and cure such default.

## 9. THIRD PARTY LITIGATION.

9.1 General Plan Litigation. CITY has determined that this Agreement is consistent with its Comprehensive General Plan, as such General Plan exists as of the Effective Date ("General Plan"), and that the General Plan meets all requirements of law. OWNER has reviewed the General Plan and concurs with CITY's determination. CITY shall have no liability in damages under this Agreement for any failure of CITY to perform under this Agreement or the inability of OWNER to develop the Property as contemplated by the Development Plan of this Agreement as the result of a judicial determination that on the Effective Date, or at any time thereafter, the General Plan, or portions thereof, are invalid or inadequate or not in compliance with law.

9.2 Third Party Litigation Concerning Agreement. OWNER shall defend, at its expense, including attorneys' fees, indemnify, and hold harmless CITY, its agents, officers and employees from any claim, action or proceeding against CITY, its agents, officers, or employees to attack, set aside, void, or annul the approval of this Agreement or the approval of any permit granted pursuant to this Agreement. CITY shall promptly notify OWNER of any such claim, action or proceeding, and CITY shall cooperate in the defense. If CITY fails to promptly notify OWNER of any such claim, action or proceeding, or if CITY fails to cooperate in the defense, OWNER shall not thereafter be responsible to defend, indemnify, or hold harmless CITY. CITY may in its discretion participate in the defense of any such claim, action or proceeding.

9.3 Indemnity. In addition to the provisions of 9.2 above, OWNER shall indemnify and hold CITY, its officers, agents, employees and independent contractors free and harmless from any liability whatsoever, based or asserted upon any act or omission of OWNER, its officers, agents, employees, subcontractors and independent contractors, for property damage, bodily injury, or death (OWNER's employees included) or any other element of damage of any kind or nature, relating to or in any way connected with or arising from the activities contemplated hereunder, including, but not limited to, the study, design, engineering, construction, completion, failure and conveyance of the public improvements, save and except claims for damages arising through the sole active negligence or sole willful misconduct of CITY. OWNER shall defend, at its expense, including attorneys' fees, CITY, its officers, agents, employees and independent contractors in any legal action based upon such alleged acts or omissions. CITY may in its discretion participate in the defense of any such legal action.

9.4 Environment Assurances. OWNER shall indemnify and hold CITY, its officers, agents, and employees free and harmless from any liability, based or asserted, upon any act or omission of OWNER, its officers, agents, employees, subcontractors, predecessors in interest, successors, assigns and independent contractors for any violation of any federal, state or local law, ordinance or regulation relating to industrial hygiene or to environmental conditions on, under or about the Property, including, but not limited to, soil and groundwater conditions, and OWNER shall defend, at its expense, including attorneys' fees, CITY, its officers, agents and employees in any action based or asserted upon any such alleged act or omission. CITY may in its discretion participate in the defense of any such action.

9.5 Reservation of Rights. With respect to Sections 9.2, 9.3 and 9.4 herein, CITY reserves the right to either (1) approve the attorney(s) which OWNER selects, hires or otherwise engages to defend CITY hereunder, which approval shall not be unreasonably withheld, or (2) conduct its own defense, provided, however, that OWNER shall reimburse CITY forthwith for any and all reasonable expenses incurred for such defense, including attorneys' fees, upon billing and accounting therefor.

9.6 Survival. The provisions of this Sections 9.1 through 9.6, inclusive, shall survive the termination of this Agreement.

## 10. MORTGAGEE PROTECTION.

The parties hereto agree that this Agreement shall not prevent or limit OWNER, in any manner, at OWNER's sole discretion, from encumbering the Property or any portion thereof or any improvement thereon by any mortgage, deed of trust or other security device securing financing with respect to the Property. CITY acknowledges that the lenders providing such financing may require certain Agreement interpretations and modifications and agrees upon request, from time to time, to meet with OWNER and representatives of such lenders to negotiate in good faith any such request for interpretation or modification. CITY will not unreasonably withhold its consent to any such requested interpretation or modification provided such interpretation or modification is consistent with the intent and purposes of this Agreement. Any Mortgagee of the Property shall be entitled to the following rights and privileges:

(a) Neither entering into this Agreement nor a breach of this Agreement shall defeat, render invalid, diminish or impair the lien of any mortgage on the Property made in good faith and for value, unless otherwise required by law.

(b) The Mortgagee of any mortgage or deed of trust encumbering the Property, or any part thereof, which Mortgagee, has submitted a request in writing to the CITY in the manner specified herein for giving notices, shall be entitled to receive written notification from CITY of any default by OWNER in the performance of OWNER's obligations under this Agreement.

(c) If CITY timely receives a request from a Mortgagee requesting a copy of any notice of default given to OWNER under the terms of this Agreement, CITY shall provide a copy of that notice to the Mortgagee within ten (10) days of sending the notice of default to OWNER. The Mortgagee shall have the right, but not the obligation, to cure the default during the remaining cure period allowed such party under this Agreement.

(d) Any Mortgagee who comes into possession of the Property, or any part thereof, pursuant to foreclosure of the mortgage or deed of trust, or deed in lieu of such foreclosure, shall take the Property, or part thereof, subject to the terms of this Agreement. Notwithstanding any other provision of this Agreement to the contrary, no Mortgagee shall have an obligation or duty under this Agreement to perform any of OWNER's obligations or other affirmative covenants of OWNER hereunder, or to guarantee such performance; provided, however, that to the extent that any covenant to

be performed by OWNER is a condition precedent to the performance of a covenant by CITY, the performance thereof shall continue to be a condition precedent to CITY's performance hereunder, and further provided that any sale, transfer or assignment by any Mortgagee in possession shall be subject to the provisions of Section 2.4 of this Agreement.

## 11. MISCELLANEOUS PROVISIONS.

11.1 Recordation of Agreement. This Agreement and any amendment or cancellation thereof shall be recorded with the San Bernardino County Recorder by the City Clerk within the ten (10) days after the CITY executes this Agreement, as required by Section 65868.5 of the Government Code. If the parties to this Agreement or their successors in interest amend or cancel this Agreement as provided for herein and in Government Code Section 65868, or if the CITY terminates or modifies the agreement as provided for herein and in Government Code Section 65865.1 for failure of the applicant to comply in good faith with the terms or conditions of this Agreement, the City Clerk shall have notice of such action recorded with the San Bernardino County Recorder.

11.2 Entire Agreement. This Agreement sets forth and contains the entire understanding and agreement of the parties, and there are no oral or written representations, understandings or ancillary covenants, undertakings or agreements which are not contained or expressly referred to herein. No testimony or evidence of any such representations, understandings or covenants shall be admissible in any proceeding of any kind or nature to interpret or determine the terms or conditions of this Agreement.

11.3 Severability. If any term, provision, covenant or condition of this Agreement shall be determined invalid, void or unenforceable, the remainder of this Agreement shall not be affected thereby to the extent such remaining provisions are not rendered impractical to perform taking into consideration the purposes of this Agreement. Notwithstanding the foregoing, the provision of the Public Benefits set forth in Section 4 of this Agreement, including the payment of the fees set forth therein, are essential elements of this Agreement and CITY would not have entered into this Agreement but for such provisions, and therefore in the event such provisions are determined to be invalid, void or unenforceable, this entire Agreement shall be null and void and of no force and effect whatsoever.

11.4 Interpretation and Governing Law. This Agreement and any dispute arising hereunder shall be governed and interpreted in accordance with the laws of the State of California. This Agreement shall be construed as a whole according to its fair language and common meaning to achieve the objectives and purposes of the parties hereto, and the rule of construction to the effect that ambiguities are to be resolved against the drafting party shall not be employed in interpreting this Agreement, all parties having been represented by counsel in the negotiation and preparation hereof.

11.5 Section Headings. All section headings and subheadings are inserted for convenience only and shall not affect any construction or interpretation of this Agreement.

11.6 Singular and Plural. As used herein, the singular of any word includes the plural.

11.7 Joint and Several Obligations. Subject to section 2.4, if at any time during the term of this Agreement the Property is owned, in whole or in part, by more than one owner, all obligations of such owners under this Agreement shall be joint and several, and the default of any such owner shall be the default of all such owners. Notwithstanding the foregoing, no owner of a single lot which has been finally subdivided and sold to such owner as a member of the general public or otherwise as an ultimate user shall have any obligation under this Agreement except as provided under Section 4 hereof.

11.8 Time of Essence. Time is of the essence in the performance of the provisions of this Agreement as to which time is an element.

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

11.10 No Third Party Beneficiaries. This Agreement is made and entered into for the sole protection and benefit of the parties and their successors and assigns. No other person shall have any right of action based upon any provision of this Agreement.

11.11 Force Majeure. Neither party shall be deemed to be in default where failure or delay in performance of any of its obligations under this Agreement is caused by floods, earthquakes, other Acts of God, fires, wars, riots or similar hostilities, strikes and other labor difficulties beyond the party's control, (including the party's employment force), government regulations, court actions (such as restraining orders or injunctions), or other causes beyond the party's control. If any such events shall occur, the term of this Agreement and the time for performance by either party of any of its obligations hereunder may be extended by the written agreement of the parties for the period of time that such events prevented such performance, provided that the term of this Agreement shall not be extended under any circumstances for more than five (5) years.

11.12 Mutual Covenants. The covenants contained herein are mutual covenants and also constitute conditions to the concurrent or subsequent performance by the party benefited thereby of the covenants to be performed hereunder by such benefited party.

11.13 Successors in Interest. The burdens of this Agreement shall be binding upon, and the benefits of this Agreement shall inure to, all successors in interest to the parties to this Agreement. All provisions of this Agreement shall be enforceable as equitable servitudes and constitute covenants running with the land. Each covenant to do or

refrain from doing some act hereunder with regard to development of the Property: (a) is for the benefit of and is a burden upon every portion of the Property; (b) runs with the Property and each portion thereof; and, (c) is binding upon each party and each successor in interest during ownership of the Property or any portion thereof.

11.14 Counterparts. This Agreement may be executed by the parties in counterparts, which counterparts shall be construed together and have the same effect as if all of the parties had executed the same instrument.

11.15 Jurisdiction and Venue. Any action at law or in equity arising under this Agreement or brought by a party hereto for the purpose of enforcing, construing or determining the validity of any provision of this Agreement shall be filed and tried in the Superior Court of the County of San Bernardino, State of California, and the parties hereto waive all provisions of law providing for the filing, removal or change of venue to any other court.

11.16 Project as a Private Undertaking. It is specifically understood and agreed by and between the parties hereto that the development of the Project is a private development, that neither party is acting as the agent of the other in any respect hereunder, and that each party is an independent contracting entity with respect to the terms, covenants and conditions contained in this Agreement. No partnership, joint venture or other association of any kind is formed by this Agreement. The only relationship between CITY and OWNER is that of a government entity regulating the development of private property and the owner of such property.

11.17 Further Actions and Instruments. Each of the parties shall cooperate with and provide reasonable assistance to the other to the extent contemplated hereunder in the performance of all obligations under this Agreement and the satisfaction of the conditions of this Agreement. Upon the request of either party at any time, the other party shall promptly execute, with acknowledgment or affidavit if reasonably required, and file or record such required instruments and writings and take any actions as may be reasonably necessary under the terms of this Agreement to carry out the intent and to fulfill the provisions of this Agreement or to evidence or consummate the transactions contemplated by this Agreement. The City Manager may delegate his powers and duties under this Agreement to an Assistant City Manager or other management level employee of the CITY.

11.18 Eminent Domain. No provision of this Agreement shall be construed to limit or restrict the exercise by CITY of its power of eminent domain.

11.19 Agent for Service of Process. In the event OWNER is not a resident of the State of California or it is an association, partnership or joint venture without a member, partner or joint venturer resident of the State of California, or it is a foreign corporation, then in any such event, OWNER shall file with the Planning Director, upon its execution of this Agreement, a designation of a natural person residing in the State of California, giving his or her name, residence and business addresses, as its agent for the purpose of service of process in any court action arising out of or based upon this Agreement,

and the delivery to such agent of a copy of any process in any such action shall constitute valid service upon OWNER. If for any reason service of such process upon such agent is not feasible, then in such event OWNER may be personally served with such process out of this County and such service shall constitute valid service upon OWNER. OWNER is amenable to the process so served, submits to the jurisdiction of the Court so obtained and waives any and all objections and protests thereto. OWNER for itself, assigns and successors hereby waives the provisions of the Hague Convention (Convention on the Service Abroad of Judicial and Extra Judicial Documents in Civil or Commercial Matters, 20 U.S.T. 361, T.I.A.S. No. 6638).

11.20 Estoppel Certificate. Within thirty (30) business days following a written request by any of the parties, the other party shall execute and deliver to the requesting party a statement certifying that (i) either this Agreement is unmodified and in full force and effect or there have been specified (date and nature) modifications to the Agreement, but it remains in full force and effect as modified; and (ii) either there are no known current uncured defaults under this Agreement or that the responding party alleges that specified (date and nature) defaults exist. The statement shall also provide any other reasonable information requested. The failure to timely deliver this statement shall constitute a conclusive presumption that this Agreement is in full force and effect without modification except as may be represented by the requesting party and that there are no uncured defaults in the performance of the requesting party, except as may be represented by the requesting party. OWNER shall pay to CITY all costs incurred by CITY in connection with the issuance of estoppel certificates under this Section 11.20 prior to CITY's issuance of such certificates.

11.21 Authority to Execute. The person or persons executing this Agreement on behalf of OWNER warrants and represents that he or she/they have the authority to execute this Agreement on behalf of his or her/their corporation, partnership or business entity and warrants and represents that he or she/they has/have the authority to bind OWNER to the performance of its obligations hereunder.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement on the day and year set forth below.

**[SIGNATURES CONTAINED ON FOLLOWING PAGE]**

**SIGNATURE PAGE  
TO DEVELOPMENT AGREEMENT**

**"OWNER"**

GDCI-RCCD 2 LP  
a Delaware limited partnership company

By: GDC Holdings, LLC, a California  
limited liability company  
Its: General Partner

By: \_\_\_\_\_  
Frank Thomas  
President

Date: \_\_\_\_\_

**"CITY"**

CITY OF ONTARIO

By: \_\_\_\_\_  
Al C. Boling  
City Manager

Date: \_\_\_\_\_

ATTEST:

\_\_\_\_\_  
City Clerk, Ontario

APPROVED AS TO FORM:

BEST, BEST & KREIGER LLP

\_\_\_\_\_  
City Attorney



**EXHIBIT "A"**  
**TO DEVELOPMENT AGREEMENT**  
**Legal Description**

THE LAND REFERRED TO HEREIN BELOW IS SITUATED IN THE CITY OF ONTARIO, IN THE COUNTY OF SAN BERNARDINO, STATE OF CALIFORNIA, AND IS DESCRIBED AS FOLLOWS:

TENTATIVE MAP NO. T/F IS A SUBDIVISION OF THE LAND DESCRIBED AS FOLLOWS:

PARCEL NO. 1:

THE NORTH ONE-HALF OF THE SOUTH ONE-HALF OF THE NORTHEAST ONE-QUARTER OF SECTION 13, TOWNSHIP 2 SOUTH, RANGE 7 WEST, SAN BERNARDINO BASE AND MERIDIAN, IN THE CITY OF ONTARIO, COUNTY OF SAN BERNARDINO, STATE OF CALIFORNIA, ACCORDING TO THE UNITED STATES GOVERNMENT STREET PLAT THEREOF, APPROVED BY THE SURVEYOR GENERAL, DATED DECEMBER 30, 1881.

EXCEPT THE EAST 30 FEET, AS CONVEYED TO THE STATE OF CALIFORNIA, BY DEED RECORDED OCTOBER 14, 1942 IN BOOK 1557, PAGE 210 OFFICIAL RECORDS.

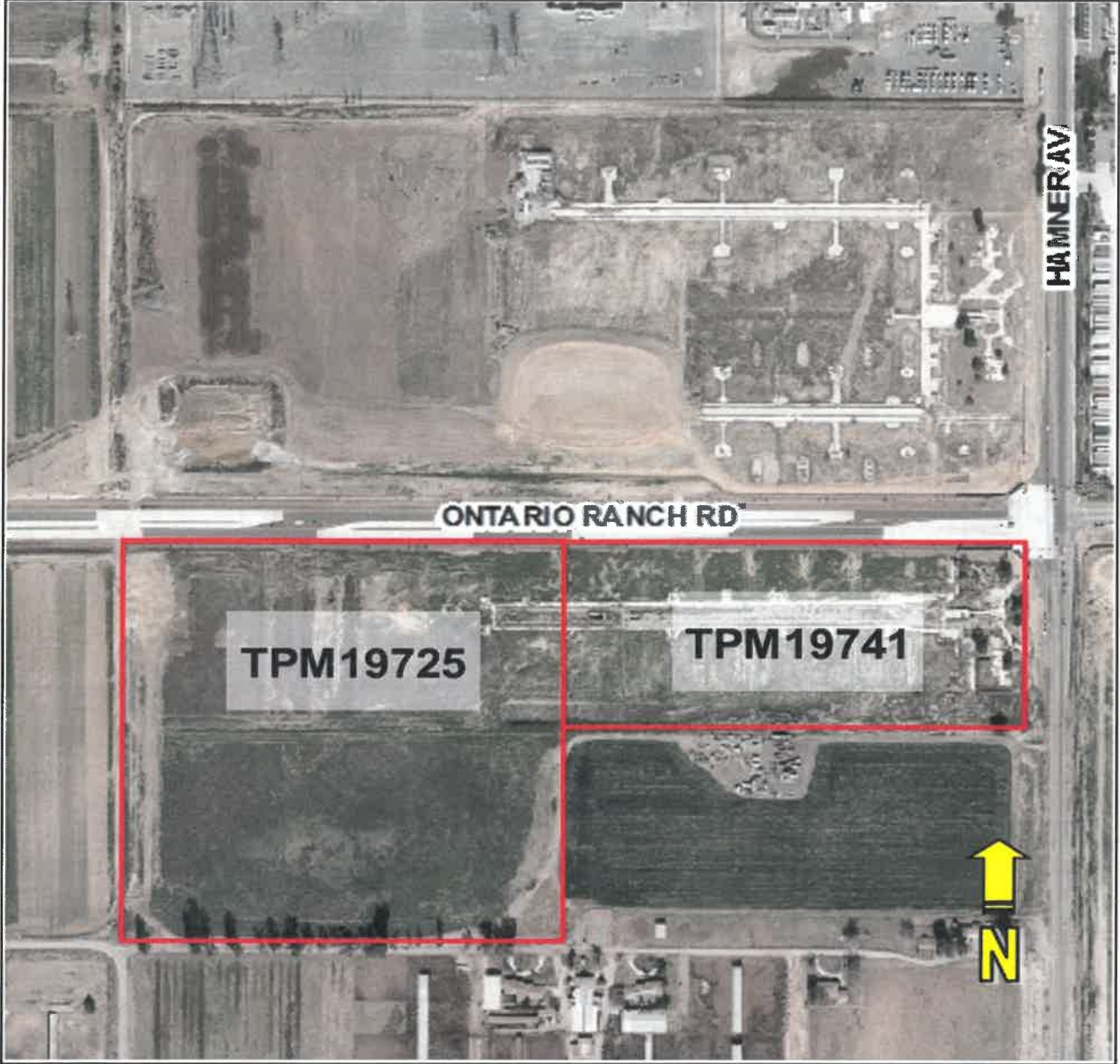
ALSO EXCEPT THEREFROM THAT PORTION THEREOF CONVEYED TO THE CITY OF ONTARIO, A POLITICAL SUBDIVISION OF THE STATE OF CALIFORNIA BY DOCUMENT RECORDED NOVEMBER 4, 2013 AS INSTRUMENT NO. 2013-0474297 OFFICIAL RECORDS OF SAN BERNARDINO COUNTY, CALIFORNIA.

PARCEL NO. 2:

THE SOUTH ONE-HALF OF THE SOUTHWEST ONE-QUARTER OF THE NORTHEAST ONE-QUARTER OF SECTION 13, TOWNSHIP 2 SOUTH, RANGE 7 WEST, SAN BERNARDINO BASE AND MERIDIAN, ACCORDING TO THE UNITED STATES GOVERNMENT TOWNSHIP PLAT THEREOF, APPROVED BY THE SURVEYOR GENERAL, DATED DECEMBER 30, 1881.

APN: 0218-211-12-0-000, 0218-211-25-0-000

**EXHIBIT "B"**  
**TO DEVELOPMENT AGREEMENT**  
**Map Showing Property and its Location**



**EXHIBIT "C"**  
**TO DEVELOPMENT AGREEMENT**  
**Existing Development Approvals**

On October 23, 2007, the Planning Commission:

- a) Issued Resolution No. issued Resolution PC07-125 recommending City Council certification of the Rich-Haven EIR.
- b) Issued Resolution PC07-127 recommending City Council approval of the Rich-Haven Specific Plan (File No. PSP05-004).

On December 4, 2007, the City Council:

- a) Issued Resolution 2007-145 to certifying the Rich-Haven Specific Plan EIR (SCH #2006051081).
- b) Adopted Ordinance No. 2884 approving the Rich-Haven Specific Plan.

On February 23, 2016, the Planning Commission:

- a) Issued Resolution PC16-003 recommending City Council adoption of an Addendum to the Rich-Haven EIR.
- b) Issued Resolution PC16-004 recommending approval of the Rich-Haven Specific Plan Amendment (File No. PSPA16-001).

On March 15, 2016, the City Council:

- a) Issued Resolution No. 2016-024 for the adoption of an Addendum (File No. PSPA16-001) to the Rich-Haven Specific Plan EIR.
- b) Issued Resolution No. 2016-025 approving an Amendment (File No. PSPA16-001) to the Rich-Haven Specific Plan.

On February 28, 2017, the Planning Commission:

- a) Issued Resolution No. PC17-012 recommending City Council approval of the Development Agreement (File No. PDA16-003).
- b) Issued Resolution No. PC17- 010 approving Tentative Parcel Map 19725 (File No. PMTT16-010).
- c) Issued Resolution No. PC17-011 approving Tentative Parcel Map 19741 (File No. PMTT16-011).

**EXHIBIT “D”  
TO DEVELOPMENT AGREEMENT  
Existing Land Use Regulations**

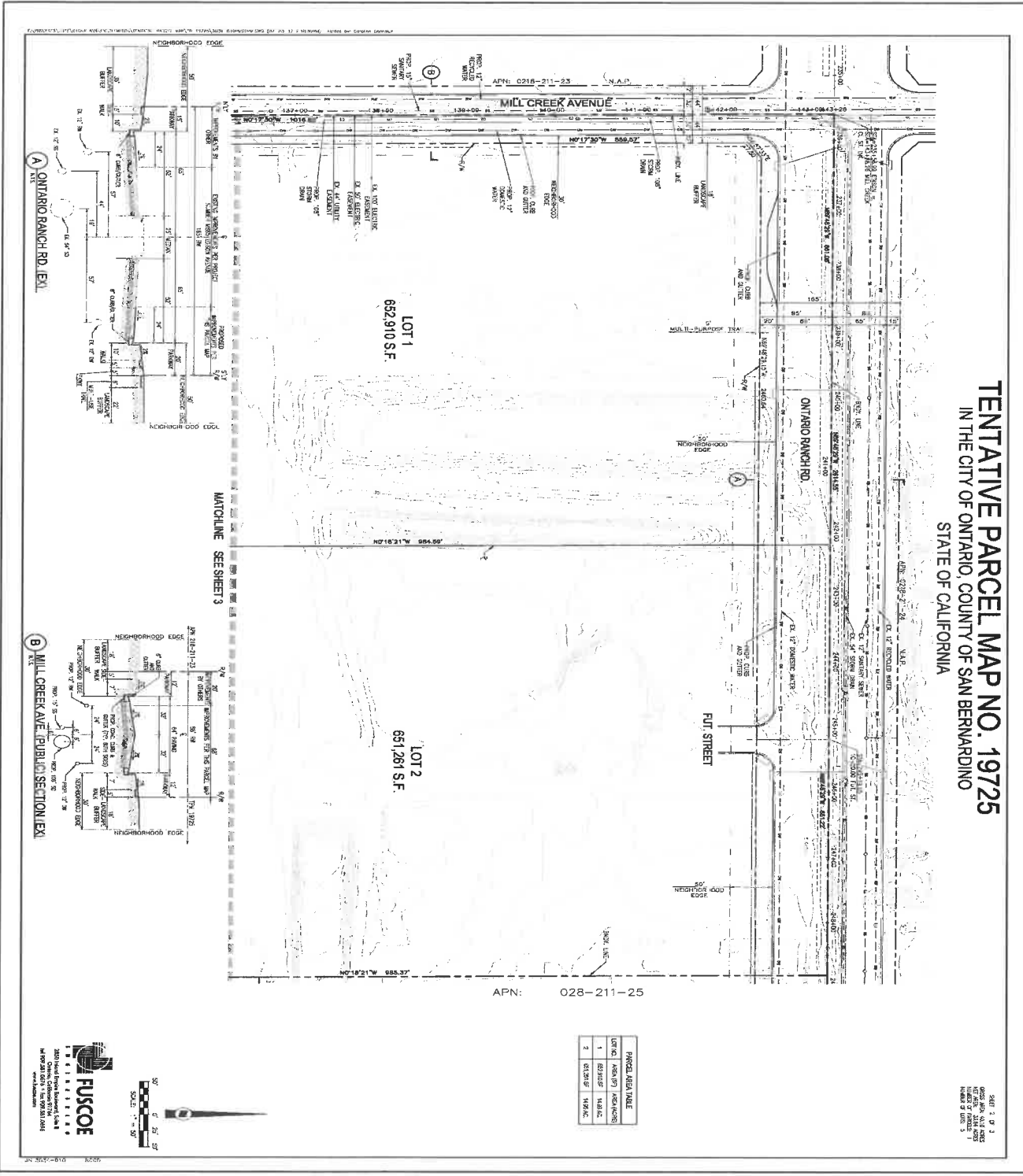
These documents are listed for reference only:

1. The Rich-Haven Specific Plan (File No. PSP05-004) Environmental Impact Report, Resolution No. 2007-145.
2. The Rich-Haven Specific Plan (File No. PSP05-004), Ordinance N. 2884.
3. Addendum to the Rich-Haven Specific Plan (File No. PSPA16-001) Environmental Impact Report, Resolution No. 2016-024.
4. Amendment to the Rich-Haven Specific Plan (File No. PSPA16-001), Resolution No. 2016-025.
5. Tentative Parcel Map 19725 (File No. PMTT16-010), Resolution No. PC17-010
6. Tentative Parcel Map 19741 (File No. PMTT16-011), Resolution No. PC17-011
7. City of Ontario Municipal Code
  - a. Six – Sanitation & Health
  - b. Seven – Public Works
  - c. Eight – Building Regulations
  - d. Nine – Development Code
  - e. Ten – Parks & Recreation



# EXHIBIT "E" TO DEVELOPMENT AGREEMENT Tentative Parcel 19725 (Continued)

**TENTATIVE PARCEL MAP NO. 19725**  
IN THE CITY OF ONTARIO, COUNTY OF SAN BERNARDINO  
STATE OF CALIFORNIA



PARCEL AREA TABLE	
LOT#	AREA (S.F.)
1	652,910 S.F.
2	651,287 S.F.

Sheet 1 of 2  
652,910 S.F. LOT 1  
651,287 S.F. LOT 2  
Total of 1,304,197 S.F.



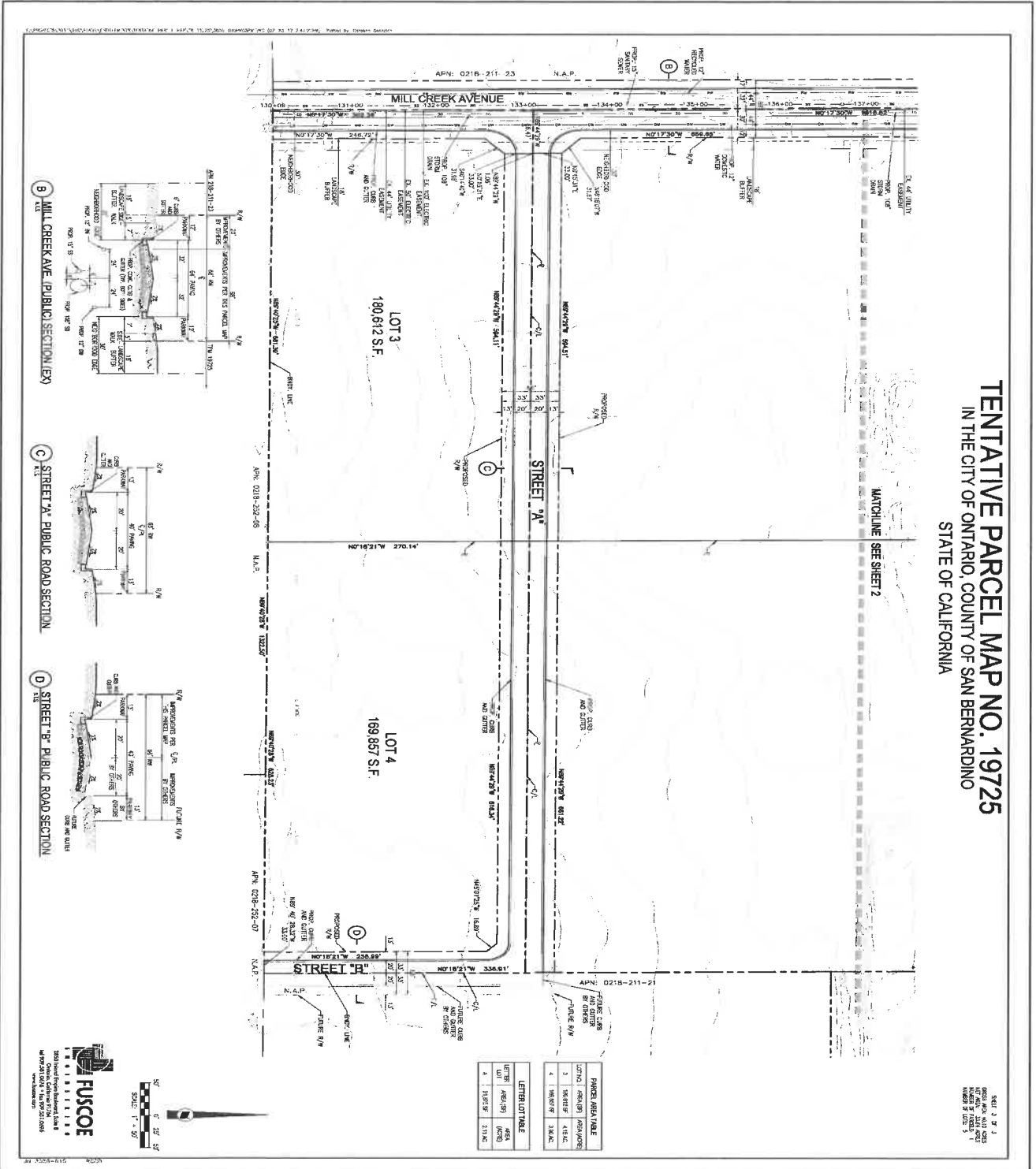
**A** ONTARIO RANCH RD. EXH. 1

**B** MILL CREEK AVE. (PUBLIC SECTION) EXH. 1

MATCHLINE SEE SHEET 3

# EXHIBIT "E" TO DEVELOPMENT AGREEMENT Tentative Parcel 19725 (Continued)

## TENTATIVE PARCEL MAP NO. 19725 IN THE CITY OF ONTARIO, COUNTY OF SAN BERNARDINO STATE OF CALIFORNIA



**B** MILL CREEK AVE. PUBLIC SECTION (EN)

**C** STREET "A" PUBLIC ROAD SECTION

**D** STREET "B" PUBLIC ROAD SECTION

LETTER	AREA	AREA
LOT 3	180,612	180,612
LOT 4	169,857	169,857
TOTAL	350,469	350,469



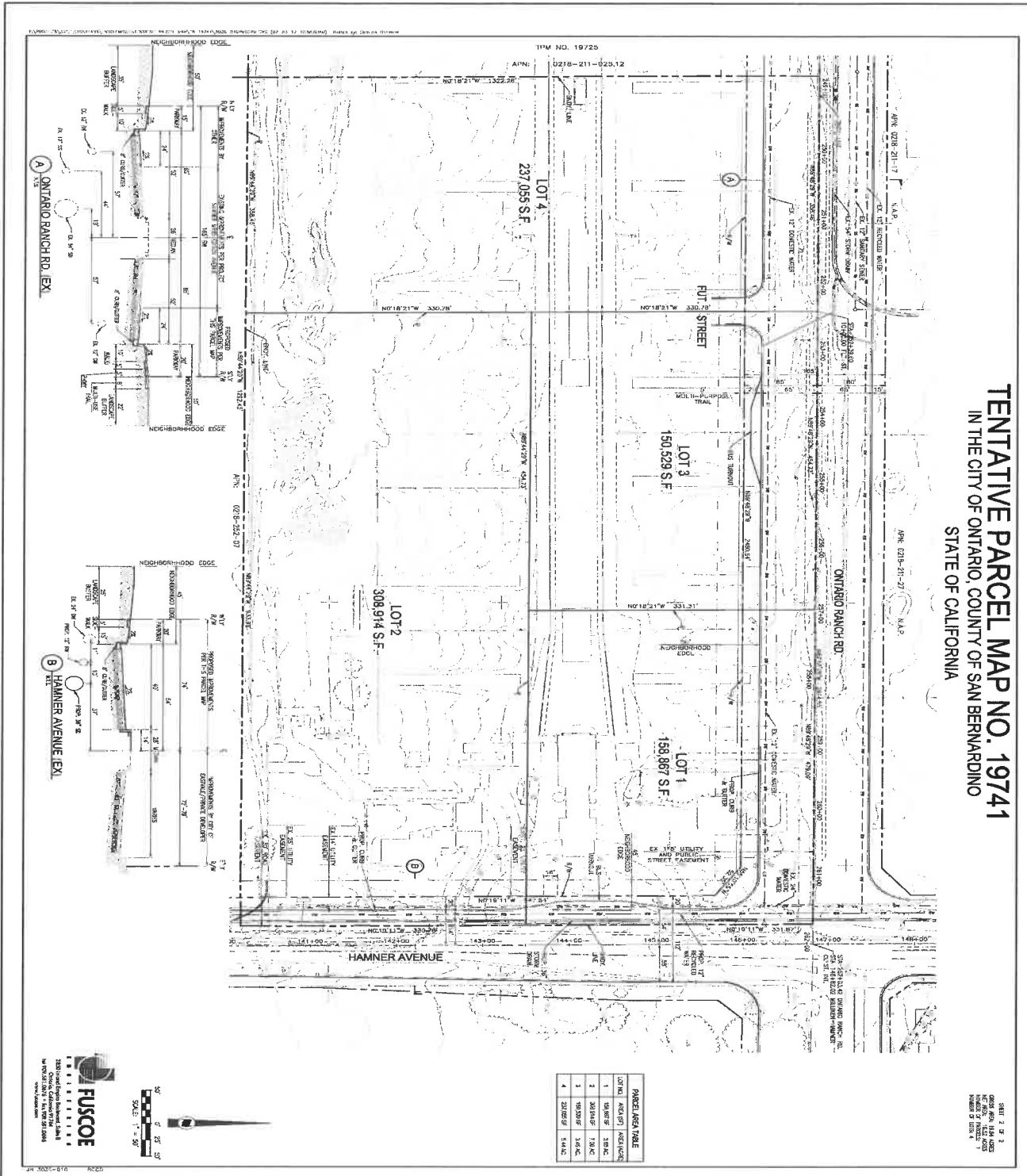
SCALE: 1" = 50'  
DATE: 10/15/03  
DRAWN BY: J. L. GIBSON  
CHECKED BY: J. L. GIBSON  
APPROVED BY: J. L. GIBSON





# EXHIBIT "E" TO DEVELOPMENT AGREEMENT Tentative Parcel 19741 (Continued)

## TENTATIVE PARCEL MAP NO. 19741 IN THE CITY OF ONTARIO, COUNTY OF SAN BERNARDINO STATE OF CALIFORNIA



PARCEL AREA TABLE
LOT NO. ACRES
1 3.645
2 7.045
3 3.445
4 7.045

**FUSCOE**  
 1000 N. GARDEN ST. SUITE 100  
 ANAHEIM, CALIFORNIA 92816  
 TEL: 714/771-1111  
 FAX: 714/771-1112

SCALE: 1" = 50'

SHEET 2 OF 2  
 02/28/2011 10:54 AM  
 PARCEL MAP NO. 19741  
 SHEET 2 OF 2

# EXHIBIT "F-1"

## TO DEVELOPMENT AGREEMENT

### Required Infrastructure Improvements

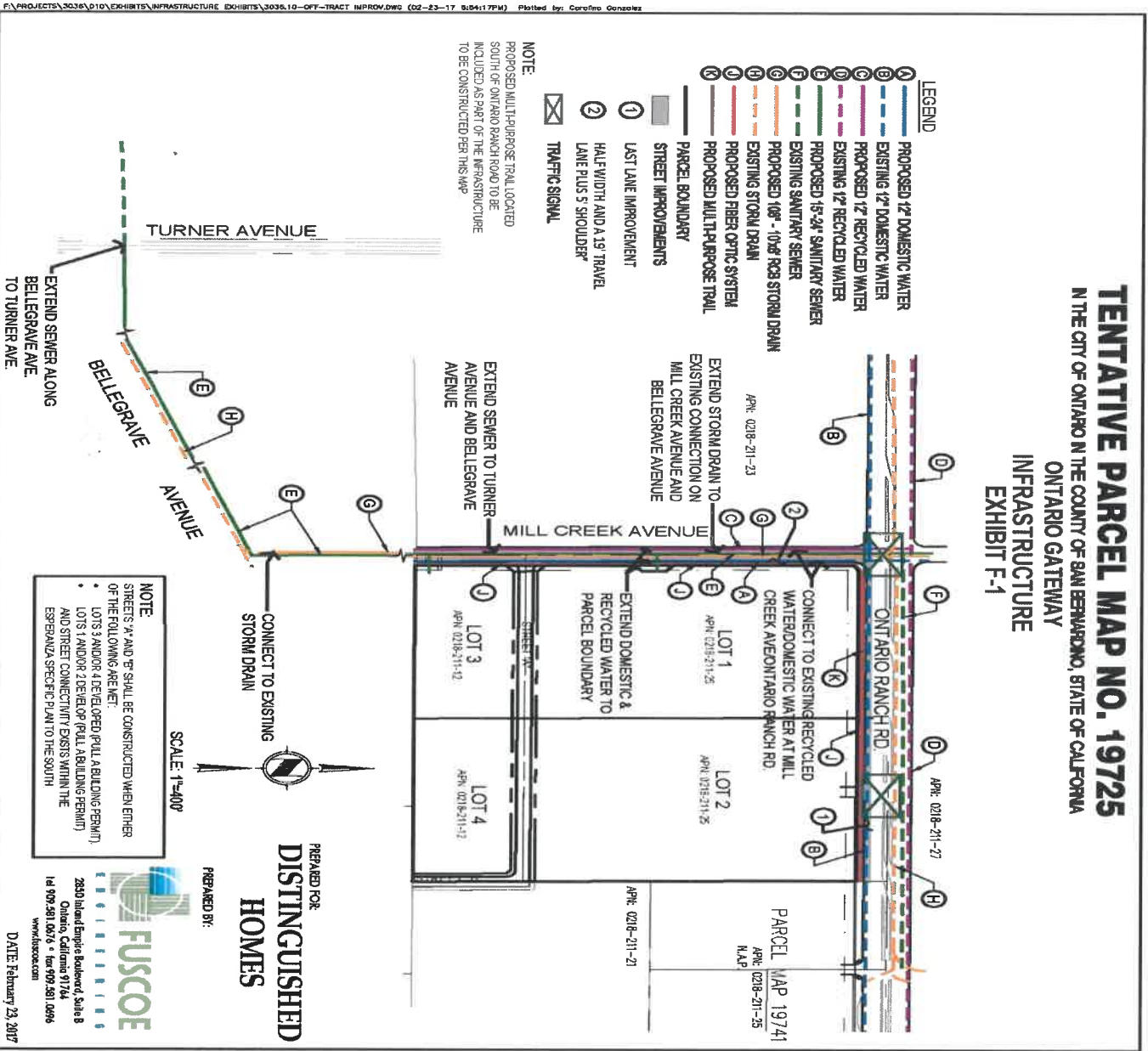
## TENTATIVE PARCEL MAP NO. 19725

IN THE CITY OF ONTARIO IN THE COUNTY OF SAN BERNARDINO, STATE OF CALIFORNIA

### ONTARIO GATEWAY INFRASTRUCTURE EXHIBIT F-1

- LEGEND**
- (A) PROPOSED 12" DOMESTIC WATER
  - (B) EXISTING 12" DOMESTIC WATER
  - (C) PROPOSED 12" RECYCLED WATER
  - (D) EXISTING 12" RECYCLED WATER
  - (E) PROPOSED 15" 24" SANITARY SEWER
  - (F) EXISTING SANITARY SEWER
  - (G) PROPOSED 108" - (0)8' RCB STORM DRAIN
  - (H) EXISTING STORM DRAIN
  - (I) PROPOSED FIBER OPTIC SYSTEM
  - (J) PROPOSED MULTIPURPOSE TRAIL
  - (K) PARCEL BOUNDARY
  - (L) STREET IMPROVEMENTS
  - (1) LAST LANE IMPROVEMENT
  - (2) HALF WIDTH AND A 15' TRAVEL LANE PLUS 5' SHOULDER
  - (X) TRAFFIC SIGNAL

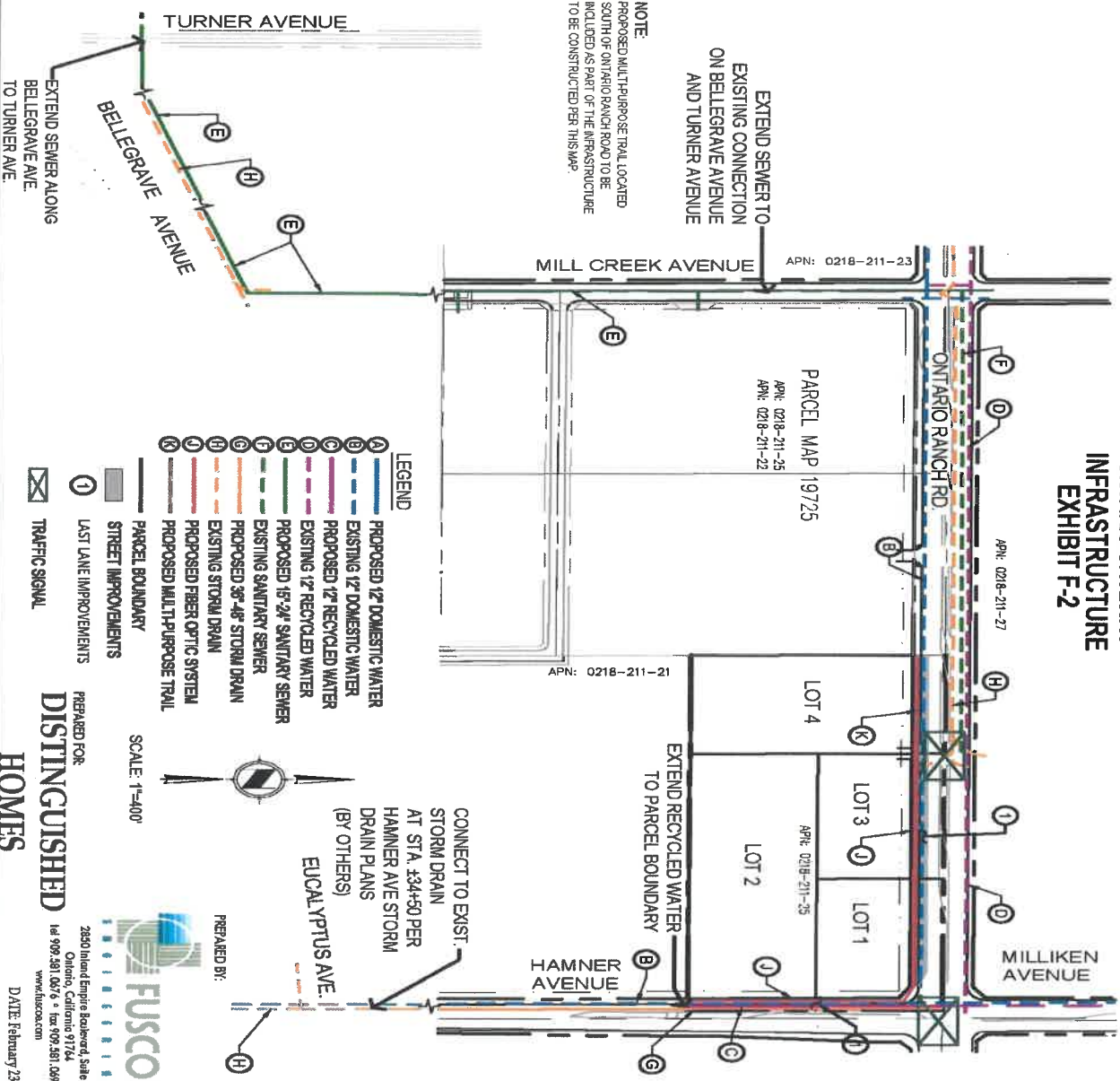
**NOTE:**  
PROPOSED MULTIPURPOSE TRAIL LOCATED SOUTH OF ONTARIO RANCH ROAD TO BE INCLUDED AS PART OF THE INFRASTRUCTURE TO BE CONSTRUCTED PER THIS MAP



**EXHIBIT "F-2"**  
**TO DEVELOPMENT AGREEMENT**  
**Required Infrastructure Improvements (Continued)**

**TENTATIVE PARCEL MAP NO. 19741**  
 IN THE CITY OF ONTARIO IN THE COUNTY OF SAN BERNARDINO, STATE OF CALIFORNIA  
**ONTARIO GATEWAY**  
**INFRASTRUCTURE**  
**EXHIBIT F-2**

F:\PROJECTS\3036\010\EXHIBITS\INFRASTRUCTURE EXHIBITS\3036.10-OFF-TRACT IMPROV.DWG (02-23-17 3:23:44PM) Plotted by: Caroline Conroy



**FUSCOE**  
 2880 Inland Empire Boulevard, Suite 8  
 Ontario, California 91764  
 909.381.0676 • Fax 909.381.0696  
 www.fuscoe.com

**DATE:** February 23, 2017

# CITY OF ONTARIO

Agenda Report  
March 21, 2017

SECTION:  
PUBLIC HEARINGS

**SUBJECT:** A PUBLIC HEARING TO CONSIDER AN AMENDMENT TO THE AVENUE SPECIFIC PLAN (FILE NO. PSPA16-004) TO CHANGE THE LAND USE DESIGNATIONS FOR PLANNING AREA 7 FROM LOW DENSITY RESIDENTIAL (2.1 TO 5.0 DU/AC) TO LOW-MEDIUM DENSITY RESIDENTIAL (5.1 TO 11.0 DU/AC) AND TO CHANGE PLANNING AREA 11 FROM MEDIUM DENSITY RESIDENTIAL (11.1 TO 25 DU/AC) TO LOW MEDIUM-DENSITY RESIDENTIAL (5.1 TO 11.0 DU/AC) TO ALLOW FOR THE TRANSFER OF 155 UNITS FROM PLANNING AREA 11 (225 DU) TO PLANNING AREA 7 (287 DU). THE PROJECT SITES ARE LOCATED AT THE NORTHEAST CORNER OF ARCHIBALD AVENUE AND ONTARIO RANCH ROAD (PLANNING AREA 7) AND THE SOUTHWEST CORNER OF ONTARIO RANCH ROAD AND NEW HAVEN DRIVE

**RECOMMENDATION:** That the City Council adopt a resolution approving an amendment to The Avenue Specific Plan (File No. PSPA16-004), pursuant to the facts and reasons contained in the staff report and attached resolution, and subject to the conditions of approval contained in the attached departmental reports.

**COUNCIL GOALS:** Invest in the Growth and Evolution of the City's Economy  
Operate in a Businesslike Manner  
Focus Resources in Ontario's Commercial and Residential Neighborhoods  
Encourage the Development of a Well Planned, Balanced, and Self-Sustaining Community in the New Model Colony

**FISCAL IMPACT:** Adoption of the amendment to The Avenue Specific Plan will not result in a fiscal impact to the City. The amendment is not proposing to increase the maximum overall dwelling unit count of 2,875 allowed within The Avenue Specific Plan. However, to offset potential service expenditures, an operations and maintenance Community Facilities District (CFD) will be established through the various tract map entitlements to cover the additional costs of Police and Fire services,

**STAFF MEMBER PRESENTING:** Scott Murphy, Planning Director

Prepared by: Henry K. Noh  
Department: Planning

City Manager  
Approval: 

Submitted to Council/O.H.A. 03/21/2016

Approved: \_\_\_\_\_

Continued to: \_\_\_\_\_

Denied: \_\_\_\_\_

12

landscape maintenance of medians and neighborhood edges, and street light operations and maintenance along the public streets.

**BACKGROUND:** The Avenue Specific Plan and Environmental Impact Report (EIR) were approved by the City Council on December 19, 2006. The Avenue Specific Plan establishes the land use designations, development standards, and design guidelines for 568 acres, which includes the potential development of 2,326 dwelling units and approximately 174,000 square feet of commercial.

On June 17, 2014, the City Council approved an amendment (File No. PSPA13-003) to The Avenue Specific Plan to bring the land use designations of Planning Areas 4, 10A, 10B and 11 into compliance with The Ontario Plan (TOP) Policy Plan (General Plan) Land Use Map. In addition, the amendment increased the number of residential units to 2,875 and decreased the commercial square footage to 130,000 square feet to be consistent with the Policy Plan.

The Applicant, Brookcal Ontario, LLC, is currently in the process of developing Planning Area 11 of The Avenue Specific Plan with 163 multi-family townhome/rowtown units (File Nos. PDEV16-052 and PMTT16-020) and 62 single-family cluster units (File No. PMTT17-001) for a total of 225 dwelling units. The Avenue Specific Plan allows a total of 380 dwelling units within Planning Area 11, resulting in an excess of 155 dwelling units. Brookcal Ontario, LLC, is proposing to transfer the 155 dwelling units to their property within Planning Area 7. The Avenue Specific Plan allows for the administrative transfer of up to 15% of total units between Planning Areas. The proposed transfer of 155 dwelling units from Planning Area 11 to Planning Area 7 results in a transfer of 40%, therefore requiring an amendment to The Avenue Specific Plan. To accommodate the transfer of units from Planning Area 11 to Planning Area 7, the land use designations within these two Planning Areas are proposed to be changed to Low-Medium Residential (5.1 to 11.0 DU/AC) to accommodate the appropriate density and zoning requirements for each Planning Area.

The Avenue Specific Plan Amendment — The Avenue Specific Plan Amendment (File No. PSPA16-004) proposes the following:

1. Transfer 155 dwelling units from Planning Area 11 (225 DU) to Planning Area 7 (287 DU). The overall residential dwelling units within The Avenue Specific Plan of 2,875 will not be increased.
2. Change the land use designation for Planning Area 7 from Low Density Residential (2.1 to 5.0 DU/AC) to Low-Medium Density Residential (5.1 to 11.0 DU/AC). The Low-Medium Density Residential land use designation would allow for the transfer of the 155 dwelling units and provide the appropriate density and zoning requirements for Planning Area 7. In keeping with the current multi-family development along the north and south side of Ontario Ranch Road (between Turner Avenue and Haven Avenue), the land use change would continue this development pattern and allow for higher density multi-family units along the north side of Ontario Ranch Road. In addition, the higher density residential provides a buffer between Ontario Ranch Road and the existing SCE substation, located at the northeast corner of Ontario Ranch Road and Archibald Avenue, and a transition to the lower density residential neighborhoods to the north.
3. Change Planning Area 11 from Medium Density Residential (11.1 to 25 DU/AC) to Low-Medium Density Residential (5.1 to 11.0 DU/AC). With the transfer of 155 dwelling units to Planning Area 7, the total maximum dwelling units allowed within Planning Area 11 would be

225, with an overall density of 6.7 dwelling units per acre. The overall density of 6.7 dwelling units per acre will make Planning Area 11 consistent with the Low-Medium Density Residential density range of 5.1 to 11.0 dwelling units per acre.

The changes to The Avenue Specific Plan Land Use Map and Land Use Development Table are illustrated on Exhibits "A" and "B". All deletions are identified with a strikethrough and all additions have been heightened in red.

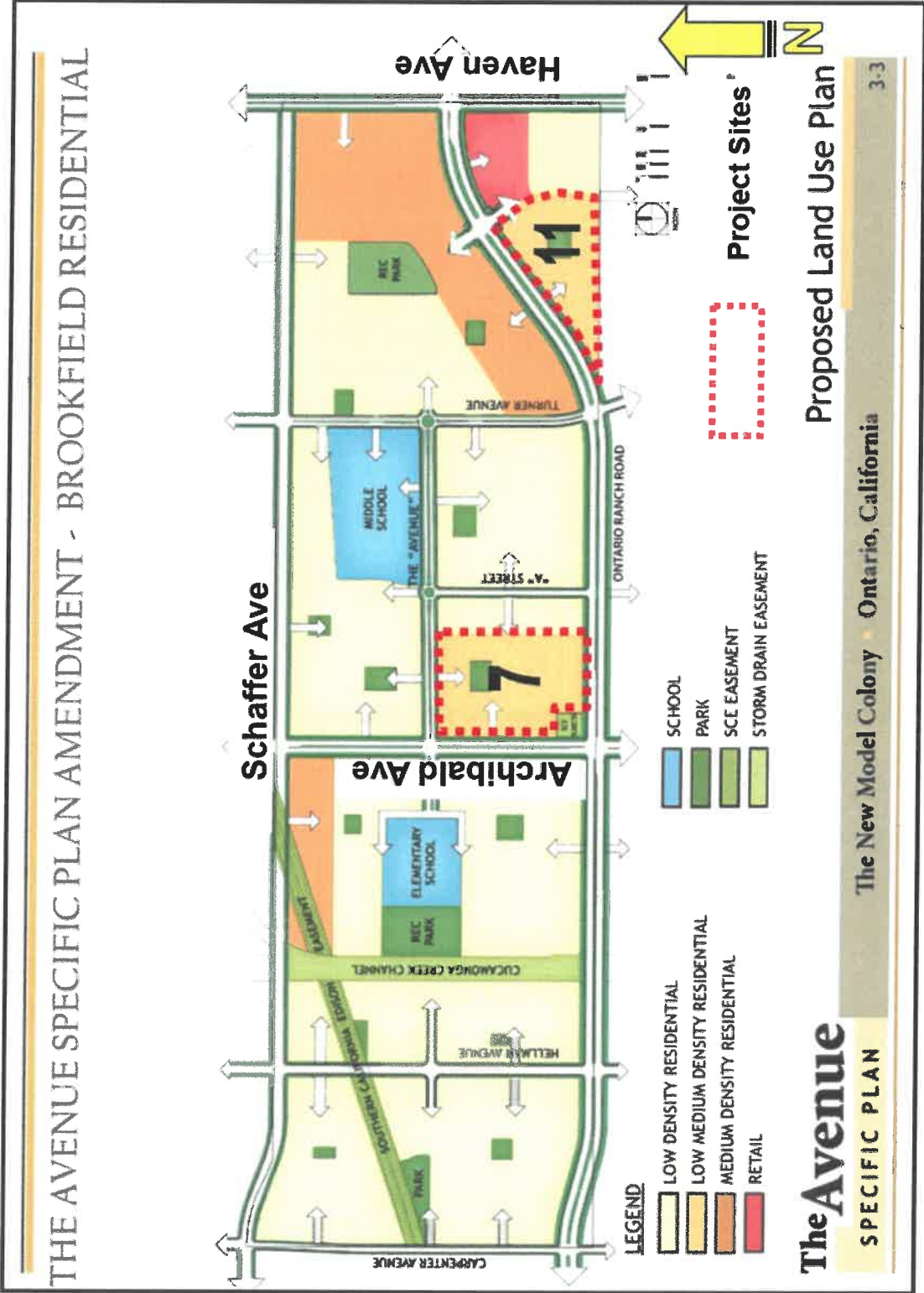
On February 28, 2017, the Planning Commission conducted a public hearing and voted unanimously (6 to 0) to recommend City Council approval of the proposed specific plan amendment.

**AIRPORT LAND USE COMPATIBILITY:** 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) Ontario.

**ENVIRONMENTAL REVIEW:** The environmental impacts of this project were previously reviewed in conjunction with The Avenue Specific Plan Amendment (PSPA13-003), for which an addendum to The Avenue Specific Plan EIR (SCH# 2005071109) was adopted by the City Council on June 17, 2014. This Application introduces no new significant environmental impacts. All previously adopted mitigation measures are a condition of project approval and are incorporated herein by reference. The environmental documentation for this project is available for review at the Planning Department public counter.



**Exhibit "A"**  
**The Avenue Specific Plan**  
**Proposed Land Use Map**



**Exhibit “B”**  
**The Avenue Specific Plan**  
**Proposed Land Use Table**

THE AVENUE SPECIFIC PLAN AMENDMENT / BROOKFIELD RESIDENTIAL

**Proposed**

**Table 2 - Statistical Analysis**

Former Subarea	Planning Area	Gross Acres	Excluded from Gross	Net Res. Acres	Homes	Density (5)	Comm. SF	Use
17	1A	11.1	-	11.1	51	4.6		LDR
17	1B	33.5	5.4 (1)	28.1	127	4.5		LDR
17	1C	2.2	-	2.2	5	2.3		LDR
17	2A	32	-	32	147	4.6		LDR
17	2B	12.5	-	12.5	58	4.6		LDR
17	3A	21.7	2.6 (1)	19.1	86	4.5		LDR
17	3B	21.5	-	21.5	97	4.5		LDR
18	4	19.9	-	19.9	218	11		MDR
18	.5	82.6	10 (3)	72.6	334	4.6		LDR/ O.S./ Elem. School
18	6A	49.9		49.9	230	4.6		LDR
18	6B	10	10 (4)	n/a				Middle School (4)
18	7	28.9		28.9	<del>132</del> 287	<del>4.6</del> 9.5		<del>LDR</del> LMDR
18	8A	39.9		39.9	180	4.5		LDR
18	8B	9.7		9.7	44	4.5		LDR
18	9A	10.6		10.6	20	2.0		LDR
18	9B	10.0	10.0 (4)	n/a				School (4)
12	10A	114.7		114.7	766	6.7		LDR/MDR
	10B	10(2)	10(2)	n/a			130,680	Retail
24	11	33.4		33.4	<del>380</del> 225	<del>11.4</del> 6.7		<del>MDR</del> LMDR
Cucamonga Creek		12.8	12.8	n/a				
SCE	7	1.2	1.2	n/a				
<b>TOTAL</b>		568.1	62	506.1	2,875		130,680	

- (1) SCE Easement
- (2) Retail Site
- (3) Elementary School
- (4) Half of 20-acre Middle School
- (5) Density is measured to c/1 of arterial streets per City standard for NMC entitlements

Note: All acreages approximate - exact acreages will be defined through tract map surveys.



RESOLUTION NO. \_\_\_\_\_

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF ONTARIO, CALIFORNIA, APPROVING FILE NO. PSPA16-004, AN AMENDMENT TO THE AVENUE SPECIFIC PLAN TO CHANGE THE LAND USE DESIGNATIONS FOR PLANNING AREA 7 FROM LOW DENSITY RESIDENTIAL (2.1 TO 5.0 DU/AC) TO LOW-MEDIUM DENSITY RESIDENTIAL (5.1 TO 11.0 DU/AC) AND TO CHANGE PLANNING AREA 11 FROM MEDIUM DENSITY RESIDENTIAL (11.1 TO 25 DU/AC) TO LOW MEDIUM-DENSITY RESIDENTIAL (5.1 TO 11.0 DU/AC) TO ALLOW FOR THE TRANSFER OF 155 UNITS FROM PLANNING AREA 11 (225 DU) TO PLANNING AREA 7 (287 DU). THE PROJECT SITES ARE LOCATED AT THE NORTHEAST CORNER OF ARCHIBALD AVENUE AND ONTARIO RANCH ROAD (PLANNING AREA 7) AND THE SOUTHWEST CORNER OF ONTARIO RANCH ROAD AND NEW HAVEN DRIVE (PLANNING AREA 11), AND MAKING FINDINGS IN SUPPORT THEREOF – APNS: 0218-201-18; 0218-201-39; 0218-201-42 AND 0218-201-43.

WHEREAS, Brookcal Ontario, LLC ("Applicant") has filed an Application for the approval of an amendment to The Avenue Specific Plan, File No. PSPA16-004, as described in the title of this Resolution (hereinafter referred to as "Application" or "Project"); and

WHEREAS, the Application applies to 62.3 acres of land generally located at the northeast corner of Archibald Avenue and Ontario Ranch Road (Planning Area 7) and the southwest corner of Ontario Ranch Road and New Haven Drive (Planning Area 11), within the Low Density Residential (Planning Area 7) and Medium Density Residential (Planning Area 11) districts of The Avenue Specific Plan, and are presently vacant; and

WHEREAS, on December 19, 2006, the City Council certified an EIR (SCH#2005071109) and a related Mitigation Monitoring and Reporting Program for The Avenue Specific Plan (File No. PSP05-003); and

WHEREAS, on June 17, 2014, the City Council approved an amendment to The Avenue Specific Plan (File No. PSPA13-003) and approved an addendum to The Avenue Specific Plan EIR (SCH#2005071109); and

WHEREAS, the Specific Plan Amendment was submitted in conjunction with a Tentative Parcel Maps (File No. PMTT16-020 and PMTT17-001) and Development Plan (File No. PDEV16-052), which are necessary to facilitate the proposed Project; and

WHEREAS, the Avenue Specific Plan Amendment is required to amend the Land Use Designations of Planning Area 7 and Planning Area 11 to Low-Medium Density Residential and will transfer 155 dwelling units from Planning Area 11 to Planning Area 7, which will accommodate the appropriate density and zoning requirements for both Planning Areas, which are necessary to facilitate the proposed Project; and

WHEREAS, the Project is located within the Airport Influence Area of Ontario International Airport (ONT), which encompasses lands within parts of San Bernardino, Riverside, and Los Angeles Counties, and is subject to, and must be consistent with, the policies and criteria set forth in the ONT Airport Land Use Compatibility Plan (ALUCP), which applies only to jurisdictions within San Bernardino County, and addresses the noise, safety, airspace protection, and overflight impacts of current and future airport activity; and

WHEREAS, the Application is a project pursuant to the California Environmental Quality Act (Public Resources Code Section 21000 et seq.) ("CEQA"); and

WHEREAS, the environmental impacts of this project were previously reviewed in conjunction with The Avenue Specific Plan Amendment (PSPA13-003), for which an addendum to The Avenue Specific Plan EIR (SCH# 2005071109) was adopted by the City Council on June 17, 2014, and this Application introduces no new significant environmental impacts; and

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

WHEREAS, on February 28, 2017, the Planning Commission of the City of Ontario conducted a duly noticed public hearing and concluded said hearing on that date. After receiving all public testimony, the Planning Commission issued Resolution No. PC17-013, recommending the City Council approve the application; and

WHEREAS, on March 21, 2017, the City Council of the City of Ontario conducted a hearing to consider the Project, and concluded said hearing on that date; and

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

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

SECTION 1. *Environmental Determination and Findings.* As the decision-making body for the Project, the City Council has reviewed and considered the information contained in the administrative record for the Project. Based upon the facts and information contained in the administrative record, including all written and oral evidence presented to the, the City Council finds as follows:

a. The environmental impacts of this project were previously reviewed in conjunction with The Avenue Specific Plan Amendment (PSPA13-003), for which a(n) addendum to The Avenue Specific Plan EIR (SCH# 2005071109) was adopted by the City Council on June 17, 2014; and

b. The previous addendum to The Avenue Specific Plan EIR (SCH# 2005071109) contains a complete and accurate reporting of the environmental impacts associated with the Project; and

c. The City's "Guidelines for the Implementation of the California Environmental Quality Act (CEQA)" provide for the use of a single environmental assessment in situations where the impacts of subsequent projects are adequately analyzed. This Application introduces no new significant environmental impacts; and

d. All previously adopted mitigation measures shall be a condition of project approval, as they are applicable to the Project, and are incorporated herein by this reference; and

e. The previous addendum to The Avenue Specific Plan EIR (SCH# 2005071109) contains a complete and accurate reporting of the environmental impacts associated with the Project, and reflects the independent judgment of the City Council; and

f. There is no substantial evidence in the administrative record supporting a fair argument that the project may result in significant environmental impacts; and

SECTION 2. *Housing Element Consistency.* Pursuant to the requirements of California Government Code Chapter 3, Article 10.6, commencing with Section 65580, as the decision-making body for the Project, the City Council finds that based upon the facts and information contained in the Application and supporting documentation, at the time of Project implementation, the project is consistent with the Housing Element of the Policy Plan (General Plan) component of The Ontario Plan. The project site is one of the properties listed in the Available Land Inventory contained in Table A-3 (Available Land by Planning Area) of the Housing Element Technical Report Appendix, and the proposed project is consistent with the number of dwelling units (512) and density (8.22 DU/AC) specified in the Available Land Inventory.

SECTION 3. *Airport Land Use Compatibility Plan (ALUCP) Consistency.* 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, and finds that, at the time of Project implementation, the Project will be consistent with the policies and criteria set forth within the ONT ALUCP.

SECTION 4. *Concluding Facts and Reasons.* Based upon the substantial evidence presented to the City Council during the above-referenced hearing and upon the specific findings set forth in Sections 1 through 3 above, the City Council hereby concludes as follows:

a. The proposed Specific Plan, or amendment thereto, is consistent with the goals, policies, plans and exhibits of the Vision, Policy Plan (General Plan), and City Council Priorities components of The Ontario Plan. The proposed Amendment to The Avenue Specific Plan will amend the Land Use Designations of Planning Area 7 and

Planning Area 11 to Low-Medium Density Residential and will transfer 155 dwelling units from Planning Area 11 to Planning Area 7, which will accommodate the appropriate density and zoning requirements for both Planning Areas (see Exhibit “A” and proposed Land Use Plan and Exhibit “B” proposed Land Use Development Table). With the proposed amendments to The Avenue Specific Plan, the Planning Areas will be in conformance with The Ontario Plan (TOP) Policy Plan Land Use Plan and will comply with the Policy Plan goals and policies applicable to the Specific Plan.

b. The proposed Specific Plan, or amendment thereto, would not be detrimental to the public interest, health, safety, convenience, or general welfare of the City. The proposed Amendment to The Avenue Specific Plan will not be detrimental to the public interest, health, safety, convenience, or general welfare of the City because it will accommodate the appropriate density and zoning requirements for both Planning Areas 7 and 11 that will facilitate the development of both areas. In addition, the high density residential provides a buffer and transitions from high density residential uses to low density residential neighborhoods along Ontario Ranch Road and the existing SCE substation that is located at the northeast corner of Ontario Ranch Road and Archibald Avenue. The proposed amendment will be consistent with The Ontario Plan (TOP) Policy Plan Land Use Plan and will comply with the Policy Plan goals and policies. The proposed amendment will be consistent with the following Policy Plan (General Plan) goals and policies:

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

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

- Goal CE2: A City of distinctive neighborhoods, districts, and corridors, where people choose to be.

- Goal CD1: A dynamic, progressive city containing distinct neighborhoods and commercial districts that foster a positive sense of identity and belonging among residents, visitors, and businesses.

- CD1-2 Growth Areas. We require development in growth areas to be distinctive and unique places within which there are cohesive design themes.

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

c. In the case of an application affecting specific properties, the proposed Specific Plan, or amendment thereto, will not adversely affect the harmonious relationship with adjacent properties and land uses. The project sites are located in an area that will be developed with residential land uses that will be complimentary to the surrounding area. In keeping with the current multi-family development along the north and south side of Ontario Ranch Road (Between Turner Avenue and Haven Avenue),

the land use change would continue this development pattern and allow for higher density multi-family units along the north side of Ontario Ranch Road. In addition, the high density residential provides a buffer along Ontario Ranch Road that transitions from high density residential uses to low density residential neighborhoods.

d. In the case of an application affecting specific properties, the subject site is physically suitable, including, but not limited to, parcel size, shape, access, and availability of utilities, for the request and anticipated development. The proposed amendment to The Avenue Specific Plan will amend the Land Use Designations of Planning Area 7 and Planning Area 11 to Low-Medium Density and will transfer 155 dwelling units for Planning Area 11 to Planning Area 7, which will accommodate the appropriate density and zoning requirements for both Planning Areas. With the approval of the proposed amendment, the proposed project areas will be developed with adequate lot size, access and utilities to serve the project.

SECTION 5. *City Council Action.* Based upon the findings and conclusions set forth in Sections 1 through 4 above, the City Council hereby APPROVES the Project subject to each and every condition set forth in the Department reports, attached hereto 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 City Clerk shall certify to the adoption of the Resolution.

PASSED, APPROVED AND ADOPTED this 21<sup>st</sup> day of March 2017.

---

PAUL S. LEON, MAYOR

ATTEST:

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SHEILA MAUTZ, CITY CLERK

APPROVED AS TO LEGAL FORM:

---

BEST BEST & KRIEGER LLP  
CITY ATTORNEY

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

I, SHEILA MAUTZ, City Clerk of the City of Ontario, DO HEREBY CERTIFY that foregoing Resolution No. 2017- was duly passed and adopted by the City Council of the City of Ontario at their regular meeting held March 21, 2017 by the following roll call vote, to wit:

AYES: COUNCIL MEMBERS:

NOES: COUNCIL MEMBERS:

ABSENT: COUNCIL MEMBERS:

---

SHEILA MAUTZ, CITY CLERK

(SEAL)

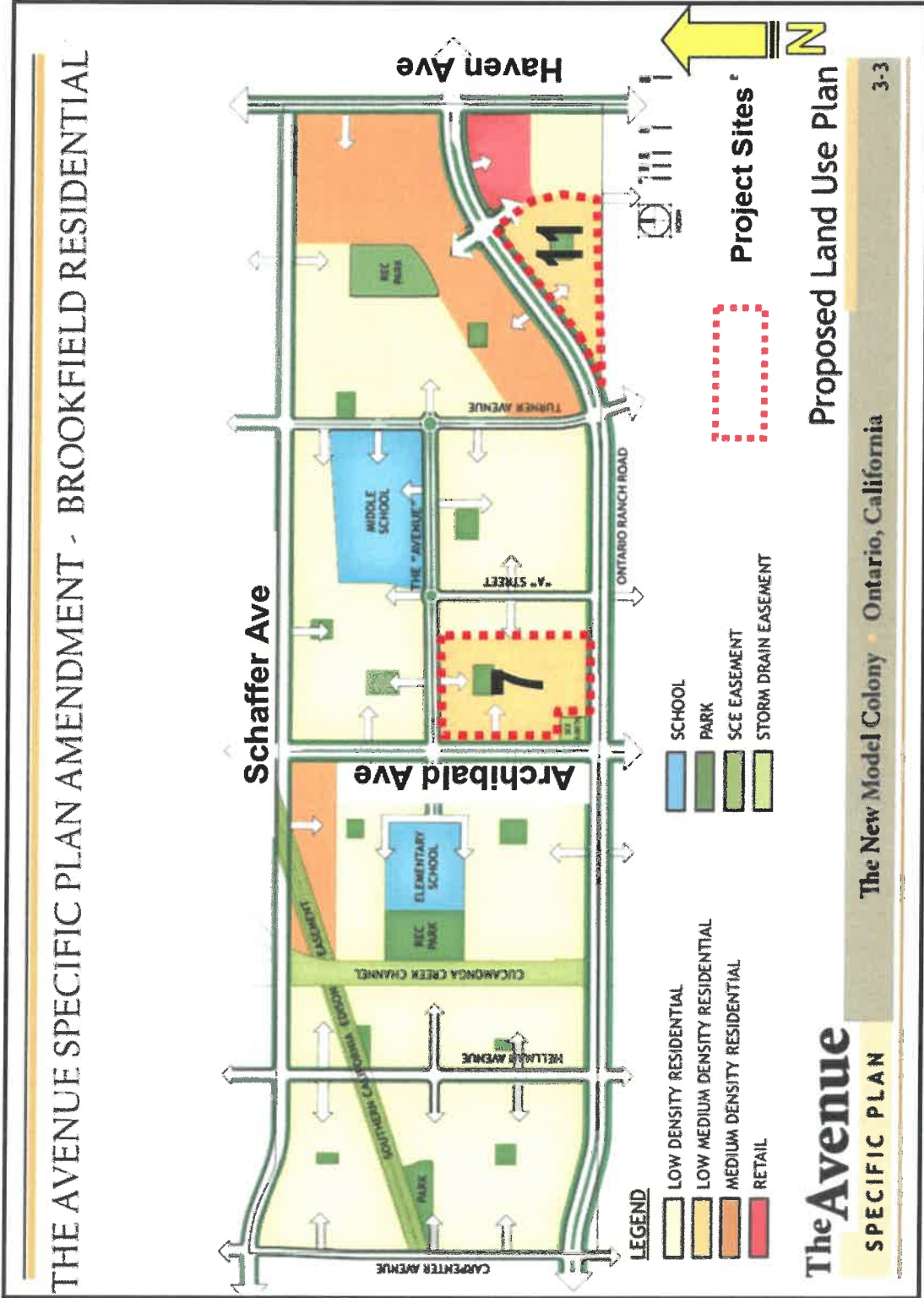
The foregoing is the original of Resolution No. 2017- duly passed and adopted by the Ontario City Council at their regular meeting held March 21, 2017.

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SHEILA MAUTZ, CITY CLERK

(SEAL)

Exhibit A:  
The Avenue Specific Plan  
Proposed Land Use Map





**Exhibit B:  
The Avenue Specific Plan  
Proposed Land Use Table**

**THE AVENUE SPECIFIC PLAN AMENDMENT / BROOKFIELD RESIDENTIAL**

**Proposed**

**Table 2 - Statistical Analysis**

Former Subarea	Planning Area	Gross Acres	Excluded from Gross	Net Res. Acres	Homes	Density (5)	Comm. SF	Use
17	1A	11.1	-	11.1	51	4.6		LDR
17	1B	33.5	5.4 (1)	28.1	127	4.5		LDR
17	1C	2.2	-	2.2	5	2.3		LDR
17	2A	32	-	32	147	4.6		LDR
17	2B	12.5	-	12.5	58	4.6		LDR
17	3A	21.7	2.6 (1)	19.1	86	4.5		LDR
17	3B	21.5	-	21.5	97	4.5		LDR
18	4	19.9	-	19.9	218	11		MDR
18	5	82.6	10 (3)	72.6	334	4.6		LDR/ O.S./ Elem. School
18	6A	49.9		49.9	230	4.6		LDR
18	6B	10	10 (4)	n/a				Middle School (4)
18	7	28.9		28.9	<del>287</del> 132	<del>9.5</del> 4.6		<del>LMDR</del> LDR
18	8A	39.9		39.9	180	4.5		LDR
18	8B	9.7		9.7	44	4.5		LDR
18	9A	10.6		10.6	20	2.0		LDR
18	9B	10.0	10.0 (4)	n/a				School (4)
12	10A	114.7		114.7	766	6.7		LDR/MDR
	10B	10(2)	10(2)	n/a			130,680	Retail
24	11	33.4		33.4	<del>225</del> 380	<del>6.7</del> 11.4		<del>LMDR</del> MDR
Cucamonga Creek		12.8	12.8	n/a				
SCE	7	1.2	1.2	n/a				
<b>TOTAL</b>		<b>568.1</b>	<b>62</b>	<b>506.1</b>	<b>2,875</b>		<b>130,680</b>	

- (1) SCE Easement
- (2) Retail Site
- (3) Elementary School
- (4) Half of 20-acre Middle School
- (5) Density is measured to c/1 of arterial streets per City standard for NMC entitlements

Note: All acreages approximate - exact acreages will be defined through tract map surveys.



City of Ontario  
Planning Department  
303 East B Street  
Ontario, California 91764  
Phone: 909.395.2036  
Fax: 909.395.2420

**Planning Department**  
**Land Development Division**  
**Conditions of Approval**

**Meeting Date:** February 28, 2017

**File No:** PSPA16-004

**Related Files:** N/A

**Project Description:** An Amendment to The Avenue Specific Plan (File No. PSPA16-004) to change the Land Use Designations for Planning Area 7 from Low Density Residential (2.1 to 5.0 DU/AC) to Low-Medium Density Residential (5.1 to 11.0 DU/AC) and to change Planning Area 11 from Medium Density Residential (11.1 to 25 DU/AC) to Low Medium-Density Residential (5.1 to 11.0 DU/AC) to allow for the transfer of 155 units from Planning Area 11 (225 DU) to Planning Area 7 (287 DU). The project sites are located at the northeast corner of Archibald Avenue and Ontario Ranch Road (Planning Area 7) and the southwest corner of Ontario Ranch Road and New Haven Drive (Planning Area 11). APNs: 0218-201-18; 0218-201-39; 0218-201-42 and 0218-201-43; **submitted by Brookcal Ontario, LLC.**

**Prepared By:** Henry K. Noh, Senior Planner  
Phone: 909.395.2429 (direct)  
Email: hnoh@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. 2010-021 on March 16, 2010. 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 Specific Plan Amendment.** The following shall be submitted to the Planning Department within 30 days following City Council approval of the Specific Plan Amendment:

- (a) Fifteen copies of the final Specific Plan document;
- (b) One complete, unbound copy of the final Specific Plan document;
- (c) One CD containing a complete Microsoft Word copy of the final Specific Plan document, including all required revisions;
- (d) Five CDs, each containing a complete PDF copy of the final Specific Plan document, including all required revisions; and
- (e) One CD containing a complete electronic website version of the final Specific Plan document, including all required revisions.

**2.2**     Environmental Review.

(a)       The environmental impacts of this project were previously reviewed in conjunction with The Avenue Specific Plan Amendment (PSPA13-003), for which an addendum to The Avenue Specific Plan EIR (SCH# 2005071109) was adopted by the City Council on June 17, 2014. This Application introduces no new significant environmental impacts. The City's "Guidelines for the Implementation of the California Environmental Quality Act (CEQA)" provide for the use of a single environmental assessment in situations where the impacts of subsequent projects are adequately analyzed. The previously adopted mitigation measures shall be a condition of project approval, and are incorporated herein by this reference.

**2.3**     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.

**2.4**     Additional Fees.

(a)       Within 5 days following final application approval, the Notice of Determination (NOD) 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). Failure to provide said fee within the time specified may result in a 180-day extension to the statute of limitations for the filing of a CEQA lawsuit.



# CITY OF ONTARIO MEMORANDUM

TO: "Vacant", Development Director  
 Scott Murphy, Planning Director ( Copy of memo only)  
 Cathy Wahlstrom, Principal Planner (Copy of memo only)  
 Charity Hernandez, Economic Development  
 Kevin Shear, Building Official  
 Khoi Do, Assistant City Engineer  
 Carolyn Bell, Landscape Planning Division  
 Sheldon Yu, Municipal Utility Company  
 Doug Sorel, Police Department  
 Art Andres, Deputy Fire Chief/Fire Marshal  
 Tom Danna, T. E., Traffic/Transportation Manager  
 Lorena Mejia, Associate Planner, Airport Planning  
 Steve Wilson, Engineering/NPDES  
 Bob Gluck, Code Enforcement Director  
 Jimmy Chang , IT Department  
 David Simpson, Development/IT (Copy of memo only)

FROM: Henry Noh, Senior Planner

DATE: December 23, 2016

SUBJECT: FILE #: PSPA16-004 Finance Acct#: SA163

The following project has been submitted for review. Please send one (1) copy and email one (1) copy of your DAB report to the Planning Department by Friday, January 6, 2017.

- Note:
- Only DAB action is required
  - Both DAB and Planning Commission actions are required
  - Only Planning Commission action is required
  - DAB, Planning Commission and City Council actions are required
  - Only Zoning Administrator action is required

**PROJECT DESCRIPTION:** An Amendment to The Avenue Specific to change the Specific Plan Land Use Designation for Planning Area 7 from Low Density Residential (2.1 to 5.0 du/ac) to Low Medium Density Residential (5.1 to 11.0 du/ac) and allow for the transfer of 155 units from Planning Area 11 to Planning Area 7. Planning Area 7 consist of 28.9 acres and located on the northeast corner of Archibald Avenue and Ontario Ranch Road (APN: 0218-201-18).

- The plan does adequately address the departmental concerns at this time.
  - No comments
  - Report attached (1 copy and email 1 copy)
  - Standard Conditions of Approval apply
- The plan does not adequately address the departmental concerns.
  - The conditions contained in the attached report must be met prior to scheduling for Development Advisory Board.

*Airport Planning*  
 Department
 

*Lorena Mejia*  
 Signature
 

*Senior Planner*  
 Title
 

*2/3/17*  
 Date

# AIRPORT LAND USE COMPATIBILITY PLANNING CONSISTENCY DETERMINATION REPORT



Project File No.: PSPA16-004  
 Address: The Avenue Specific Plan  
 APN: 218-201-18  
 Existing Land Use: Vacant/Dairy Land  
 Proposed Land Use: PA7 land use change from low density(2.1-5du/ac) to low-medium density (5.1-11du/ac) and allow transfer of 155 units from PA11 to PA7  
 Site Acreage: 28.9 Proposed Structure Height: n/a  
 ONT-IAC Project Review: N/A  
 Airport Influence Area: ONT

Reviewed By: Lorena Mejia  
 Contact Info: 909-395-2276  
 Project Planner: Henry Noh  
 Date: 2/3/2016  
 CD No.: 2016-081  
 PALU No.: n/a

## The project is impacted by the following ONT ALUCP Compatibility Zones:

Safety	Noise Impact	Airspace Protection	Overflight Notification
<input type="radio"/> Zone 1	<input type="radio"/> 75+ dB CNEL	<input type="radio"/> High Terrain Zone	<input type="radio"/> Avigation Easement Dedication
<input type="radio"/> Zone 1A	<input type="radio"/> 70 - 75 dB CNEL	<input checked="" type="checkbox"/> FAA Notification Surfaces	<input type="radio"/> Recorded Overflight Notification
<input type="radio"/> Zone 2	<input type="radio"/> 65 - 70 dB CNEL	<input type="radio"/> Airspace Obstruction Surfaces	<input checked="" type="checkbox"/> Real Estate Transaction Disclosure
<input type="radio"/> Zone 3	<input type="radio"/> 60 - 65 dB CNEL	<input type="radio"/> Airspace Avigation Easement Area	
<input type="radio"/> Zone 4		Allowable Height: 200 ft +	
<input type="radio"/> 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.

1. Remove Airport Influence Area map from page 2-13.

Airport Planner Signature: \_\_\_\_\_



CITY OF ONTARIO  
MEMORANDUM

TO: "Vacant", Development Director  
Scott Murphy, Planning Director ( Copy of memo only)  
Cathy Wahlstrom, Principal Planner (Copy of memo only)  
Charity Hernandez, Economic Development  
Kevin Shear, Building Official  
Khoi Do, Assistant City Engineer  
Carolyn Bell, Landscape Planning Division  
Sheldon Yu, Municipal Utility Company  
Doug Sorel, Police Department  
Art Andres, Deputy Fire Chief/Fire Marshal  
Tom Danna, T. E., Traffic/Transportation Manager  
Lorena Mejia, Associate Planner, Airport Planning  
Steve Wilson, Engineering/NPDES  
Bob Gluck, Code Enforcement Director  
Jimmy Chang , IT Department  
David Simpson, Development/IT (Copy of memo only)

FROM: Henry Noh, Senior Planner

DATE: December 23, 2016

SUBJECT: FILE #: PSPA16-004 Finance Acct#: SA163

The following project has been submitted for review. Please send one (1) copy and email one (1) copy of your DAB report to the Planning Department by **Friday, January 6, 2017**.

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The plan does adequately address the departmental concerns at this time.

- No comments
- Report attached (1 copy and email 1 copy)
- Standard Conditions of Approval apply

The plan does not adequately address the departmental concerns.

- The conditions contained in the attached report must be met prior to scheduling for Development Advisory Board.

POLICE  
Department

DOUGLAS SOREL  
Signature

MANAGEMENT ANALYST  
Title

1/5/17  
Date

# CITY OF ONTARIO MEMORANDUM

**TO:** PLANNING DEPARTMENT, Henry Noh  
**FROM:** BUILDING DEPARTMENT, Kevin Shear  
**DATE:** January 9, 2017  
**SUBJECT:** PSPA16-004

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1. The plan **does** adequately address the departmental concerns at this time.  
No comments.

KS:lm





# CITY OF ONTARIO

## MEMORANDUM

TO: "Vacant", Development Director  
Scott Murphy, Planning Director ( Copy of memo only)  
Cathy Wahlstrom, Principal Planner (Copy of memo only)  
Charity Hernandez, Economic Development  
Kevin Shear, Building Official  
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Steve Wilson, Engineering/NPDES  
Bob Gluck, Code Enforcement Director  
Jimmy Chang , IT Department  
David Simpson, Development/IT (Copy of memo only)

FROM: Henry Noh, Senior Planner

DATE: December 23, 2016

SUBJECT: FILE #: PSPA16-004 Finance Acct#: SA163

The following project has been submitted for review. Please send one (1) copy and email one (1) copy of your DAB report to the Planning Department by **Friday, January 6, 2017**.

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  - Only Planning Commission action is required
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**PROJECT DESCRIPTION:** An Amendment to The Avenue Specific to change the Specific Plan Land Use Designation for Planning Area 7 from Low Density Residential (2.1 to 5.0 du/ac) to Low Medium Density Residential (5.1 to 11.0 du/ac) and allow for the transfer of 155 units from Planning Area 11 to Planning Area 7. Planning Area 7 consist of 28.9 acres and located on the northeast corner of Archibald Avenue and Ontario Ranch Road (APN: 0218-201-18).

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  - No comments
  - Report attached (1 copy and email 1 copy)
  - Standard Conditions of Approval apply
- The plan does not adequately address the departmental concerns.
  - The conditions contained in the attached report must be met prior to scheduling for Development Advisory Board.

Landscape Planning Carolyn Bell, Landscape Planner  
Department | Signature | Title | Date 1/3/17





# CITY OF ONTARIO MEMORANDUM

## ENGINEERING DEPARTMENT CONDITIONS OF APPROVAL

**DATE:** February 1, 2017

**PC MEETING DATE:** February 28, 2017

**PROJECT ENGINEER:** Naiim Khoury, Associate Engineer  
909.395.2152

**PROJECT PLANNER:** Henry Noh, Senior Planner  
909.395.2429

**PROJECT:** PSPA16-004; An Amendment to The Avenue Specific Plan to change the land use designation for Planning Area 7 (to a higher density) and Planning Area 11 (to a lower density) and allow the transfer of 155 units from Planning Area 11 to Planning Area 7. No increase in the overall specific plan unit count

**APPLICANT:** BrookCal Ontario, LLC – Brookfield Residential  
**LOCATION:** Northeast corner of Archibald Avenue and Ontario Ranch Road

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Prior to the Planning Commission Hearing, the Land Use Exhibit (Page 3-3) and all applicable Exhibits/figures in The Avenue Specific Plan shall be modified to depict the following: a right-in/right-out (RIRO) access point connecting Haven Avenue to the future commercial development, south of Ontario Ranch Road.

 2-1-17  
Naiim Khoury Date  
Associate Engineer

 2-1-17  
Khoi Do, P. E. Date  
Assistant City Engineer

c: Khoi Do, P.E., Engineering/Land Development  
Stephen Wilson, Engineering/Environmental  
Larry Tay, Engineering/Traffic  
Sheldon Yu, Ontario Municipal Utility Company