

**CITY OF ONTARIO  
CITY COUNCIL AND HOUSING AUTHORITY  
AGENDA  
MARCH 5, 2019**

**Paul S. Leon**  
Mayor

**Ruben Valencia**  
Mayor pro Tem

**Alan D. Wapner**  
Council Member

**Jim W. Bowman**  
Council Member

**Debra Dorst-Porada**  
Council Member



**Scott Ochoa**  
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 and Housing Authority meeting begins with Closed Session and Closed Session Comment at 5:30 p.m., Public Comment at 6:30 p.m. immediately followed by the Regular Meeting and Public Hearings. No agenda item will be introduced for consideration after 10:00 p.m. except by majority vote of the City Council.

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

**CALL TO ORDER (OPEN SESSION)**

**5:30 p.m.**

**ROLL CALL**

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

**CLOSED SESSION PUBLIC COMMENT** The Closed Session Public Comment portion of the Council/Housing Authority meeting is limited to a maximum of 3 minutes for each speaker and comments will be limited to matters appearing on the Closed Session. Additional opportunities for further Public Comment will be given during and at the end of the meeting.

**CLOSED SESSION**

- GC 54956.9 (d)(1), CONFERENCE WITH LEGAL COUNSEL, EXISTING LITIGATION: *Vest v. City of Ontario, et al., U.S. District Court, Central District of California, Case No. 5:17-cv-2541DW (SHKx)*
- GC 54956.9 (d)(1), CONFERENCE WITH LEGAL COUNSEL, EXISTING LITIGATION: *Urfano v. City of Ontario, et al., Superior Court of California, County of San Bernardino, Case No. CIVDS1828483*
- GC 54957, PUBLIC EMPLOYEE PERFORMANCE EVALUATION: *City Attorney*

In attendance: Valencia, Wapner, Bowman, Dorst-Porada, Mayor/Chairman Leon

**PLEDGE OF ALLEGIANCE**

Mayor pro Tem Valencia

**INVOCATION**

Pastor Bob Arreola, Truth in Love Family Ministries

**REPORT ON CLOSED SESSION**

City Attorney

**PUBLIC COMMENTS**

**6:30 p.m.**

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

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 and Housing Authority of February 5, 2019, approving same as on file in the Records Management Department.

**2. BILLS/PAYROLL**

**Bills** January 13, 2019 through January 26, 2019, and **Payroll** January 13, 2019 through January 26, 2019, when audited by the Finance Committee.

**3. AN ORDINANCE APPROVING A DEVELOPMENT AGREEMENT (FILE NO. PDA18-002) BETWEEN THE CITY OF ONTARIO AND COLONY COMMERCE ONTARIO EAST LP, TO ESTABLISH THE TERMS FOR THE DEVELOPMENT OF TENTATIVE PARCEL MAP 19904 (FILE NO. PMTT18-006) TO SUBDIVIDE 85 ACRES OF LAND INTO NINE NUMBERED LOTS AND SIX LETTERED LOTS FOR PROPERTIES BOUNDED BY MERRILL AVENUE TO THE NORTH, SAN BERNARDINO/RIVERSIDE COUNTY LINE TO THE SOUTH, ARCHIBALD AVENUE TO THE EAST, AND THE CUCAMONGA CREEK FLOOD CONTROL CHANNEL TO THE WEST, AND LOCATED WITHIN THE BUSINESS PARK (PLANNING AREA 1) AND INDUSTRIAL (PLANNING AREA 2) LAND USE DESIGNATIONS OF THE COLONY COMMERCE CENTER EAST SPECIFIC PLAN (APNS: 0218-311-02, 0218-311-03, 0218-311-08, AND 0218-311-10)**

That the City Council consider and adopt an ordinance approving a Development Agreement (File No. PDA18-002 on file with the Records Management Department) between the City of Ontario and Colony Commerce Ontario East LP, to establish the terms and conditions for the development of Tentative Parcel Map 19904 (File No. PMTT18-006).

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

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF ONTARIO, CALIFORNIA, APPROVING A DEVELOPMENT AGREEMENT, FILE NO. PDA18-002, BETWEEN THE CITY OF ONTARIO AND COLONY COMMERCE ONTARIO EAST LP, TO ESTABLISH THE TERMS FOR THE DEVELOPMENT OF TENTATIVE PARCEL MAP 19904 (FILE NO. PMTT18-006) TO SUBDIVIDE 85 ACRES OF LAND INTO NINE NUMBERED LOTS AND SIX LETTER LOTS. THE PROPERTIES ARE BOUNDED BY MERRILL AVENUE TO THE NORTH, SAN BERNARDINO/RIVERSIDE COUNTY LINE TO THE SOUTH, ARCHIBALD AVENUE TO THE EAST, AND THE CUCAMONGA CREEK FLOOD CONTROL CHANNEL TO THE WEST, AND LOCATED WITHIN THE BUSINESS PARK (PLANNING AREA 1) AND INDUSTRIAL (PLANNING AREA 2) LAND USE DESIGNATIONS OF THE COLONY COMMERCE CENTER EAST SPECIFIC PLAN, AND MAKING FINDINGS IN SUPPORT THEREOF – APNS 0218-311-02, 0218-311-03, 0218-311-08, AND 0218-311-10.

**4. A RESOLUTION ORDERING THE SUMMARY VACATION OF AN EASEMENT GENERALLY LOCATED SOUTH OF CEDAR STREET AND APPROXIMATELY 450 FEET WEST OF BAKER AVENUE**

That the City Council adopt a resolution ordering the summary vacation of a 26-foot wide public easement for ingress, egress and vehicular access purposes, generally located south of Cedar Street and approximately 450 feet west of Baker Avenue.

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

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF ONTARIO, CALIFORNIA, ORDERING THE SUMMARY VACATION OF A PUBLIC ACCESS EASEMENT GENERALLY LOCATED SOUTH OF CEDAR STREET AND APPROXIMATELY 450 FEET WEST OF BAKER AVENUE.

**5. APPLICATION FOR GRANT FROM THE CALIFORNIA OFFICE OF TRAFFIC SAFETY (OTS) FY2020 SELECTIVE TRAFFIC ENFORCEMENT PROGRAM (STEP) GRANT PROGRAM**

That City Council authorize the City Manager or his designee to execute all documents necessary to apply for and accept a 12-month grant in the amount of \$849,700 from the California Office of Traffic Safety (OTS) for participation in the FY2020 Selective Traffic Enforcement Program (STEP) Grant Program.

**6. STATE OF CALIFORNIA DEPARTMENT OF PUBLIC HEALTH STOP TOBACCO ACCESS TO KIDS ENFORCEMENT (STAKE) GRANT**

That the City Council authorize the City Manager or designee to accept and execute grant documents to accept a 36-month grant for \$47,000 from the California Department of Public Health to fund overtime enforcement operations and retail education efforts to address the illegal sale of tobacco to minors.

**7. CONSTRUCTION CONTRACT FOR THE RELOCATION OF PUBLIC WORKS ADMINISTRATION/NEW DIMENSION GENERAL CONSTRUCTION**

That the City Council take the following actions:

- (A) Award Contract No. D&C18-005-PW-Admin Move to New Dimension General Construction, of Anaheim Hills, California, for the tenant improvements to be constructed at 1333 South Bon View Avenue for the relocation of Public Works Administration in the amount of \$159,600;
- (B) Authorize a project reserve in the amount of \$41,500 for additional construction services for alternate work, to include removal of the chain link fencing and sound damping ceiling system, and a 15% contingency of \$30,165; and
- (C) Authorize the City Manager to execute the contract and related documents, including the filing of a notice of completion at the conclusion of all construction related activities related to the project.

**8. AMENDMENT OF THE PURCHASE AGREEMENT FOR LIGHTING MATERIALS AND SUPPLIES/CONSOLIDATED ELECTRICAL DISTRIBUTORS**

That the City Council authorize the City Manager to amend the existing purchase agreement to procure additional lighting materials and supplies in the amount of \$71,708 under the terms and conditions of Purchase Order No. 43965 (Bid Invitation #1043) with Consolidated Electrical Distributors of Los Angeles, California, for an amended authorized amount of \$169,568.

**STAFF MATTERS**

City Manager Ochoa

**COUNCIL MATTERS**

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

**ADJOURNMENT**

**CITY OF ONTARIO  
CLOSED SESSION REPORT**  
City Council // Housing Authority // Other // (GC 54957.1)  
**March 5, 2019**

**ROLL CALL:** Valencia \_\_, Wapner \_\_, Bowman \_\_, Dorst-Porada\_\_, Mayor / Chairman Leon \_\_.

**STAFF:** City Manager / Executive Director \_\_, City Attorney \_\_

In attendance: Valencia \_\_, Wapner \_\_, Bowman \_\_, Dorst-Porada\_\_, Mayor / Chairman Leon \_\_.

- GC 54956.9 (d)(1), CONFERENCE WITH LEGAL COUNSEL, EXISTING LITIGATION  
Vest v. City of Ontario, et al., U.S. District Court, Central District of California,  
Case No. 5:17-cv-2541DW (SHKx)

**No Reportable Action      Continue      Approved**

/ /                                  / /                                  / /

Disposition: \_\_\_\_\_

In attendance: Valencia \_\_, Wapner \_\_, Bowman \_\_, Dorst-Porada\_\_, Mayor / Chairman Leon \_\_.

- GC 54956.9 (d)(1), CONFERENCE WITH LEGAL COUNSEL, EXISTING LITIGATION:  
Urfano v. City of Ontario, et al., Superior Court of California, County of San Bernardino,  
Case No. CIVDS1828483

**No Reportable Action      Continue      Approved**

/ /                                  / /                                  / /

Disposition: \_\_\_\_\_

**CITY OF ONTARIO  
CLOSED SESSION REPORT**  
City Council // Housing Authority // Other // (GC 54957.1)  
**March 5, 2019**  
**(continued)**

In attendance: Valencia \_\_, Wapner \_\_, Bowman \_\_, Dorst-Porada\_\_, Mayor / Chairman Leon \_\_.

- GC 54557, PUBLIC EMPLOYEE PERFORMANCE EVALUATION: City Attorney

No Reportable Action	Continue	Approved
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/ /	/ /	/ /
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Disposition: \_\_\_\_\_

Reported by:

\_\_\_\_\_  
City Attorney / City Manager / Executive Director



# CITY OF ONTARIO

Agenda Report  
March 5, 2019

SECTION:  
CONSENT CALENDAR

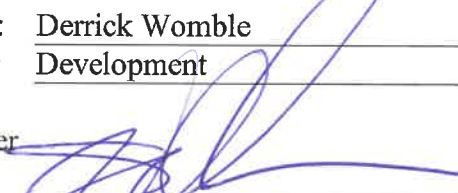
**SUBJECT:** AN ORDINANCE APPROVING A DEVELOPMENT AGREEMENT (FILE NO. PDA18-002) BETWEEN THE CITY OF ONTARIO AND COLONY COMMERCE ONTARIO EAST LP, TO ESTABLISH THE TERMS FOR THE DEVELOPMENT OF TENTATIVE PARCEL MAP 19904 (FILE NO. PMTT18-006) TO SUBDIVIDE 85 ACRES OF LAND INTO NINE NUMBERED LOTS AND SIX LETTERED LOTS FOR PROPERTIES BOUNDED BY MERRILL AVENUE TO THE NORTH, SAN BERNARDINO/RIVERSIDE COUNTY LINE TO THE SOUTH, ARCHIBALD AVENUE TO THE EAST, AND THE CUCAMONGA CREEK FLOOD CONTROL CHANNEL TO THE WEST, AND LOCATED WITHIN THE BUSINESS PARK (PLANNING AREA 1) AND INDUSTRIAL (PLANNING AREA 2) LAND USE DESIGNATIONS OF THE COLONY COMMERCE CENTER EAST SPECIFIC PLAN (APNS: 0218-311-02, 0218-311-03, 0218-311-08, AND 0218-311-10)

**RECOMMENDATION:** That the City Council consider and adopt an ordinance approving a Development Agreement (File No. PDA18-002 on file with the Records Management Department) between the City of Ontario and Colony Commerce Ontario East LP, to establish the terms and conditions for the development of Tentative Parcel Map 19904 (File No. PMTT18-006).

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

**FISCAL IMPACT:** The proposed Development Agreement will provide funding from a community facilities district for additional City services required to support the Colony Commerce Center East Specific Plan development, thereby mitigating the increased cost associated with such services. In addition, the City will receive public service funding fees plus development impact, compliance

**STAFF MEMBER PRESENTING:** Scott Murphy, AICP, Executive Director, Development Agency

Prepared by: Derrick Womble  
Department: Development  
City Manager Approval: 

Submitted to Council/O.H.A. 03/05/2019  
Approved: \_\_\_\_\_  
Continued to: \_\_\_\_\_  
Denied: \_\_\_\_\_

3

processing, licensing, and permitting fees. No Original Model Colony revenue will be used to support the Ontario Ranch development.

**BACKGROUND:** On February 19, 2019 the City Council introduced and waived further reading of an ordinance approving the Development Agreement. In May 2018, the City Council approved the Colony Commerce Center East Specific Plan “Specific Plan” (File No. PSP16-003) and the Environmental Impact Report (EIR). The Specific Plan establishes the land use designations, development standards, design guidelines and infrastructure improvements for 94.94 acres of land, which includes the potential development of 2,340,434 square feet of industrial development.

Colony Commerce Ontario East LP (“Applicant”), has submitted Tentative Parcel Map 19904 (File No. PMTT18-006) to subdivide 85 acres of land into nine numbered parcels and six letter lots to facilitate a Development Plan (File No. PDEV18-014) which proposes to construct nine industrial buildings totaling 1,685,420 square feet. The properties are bounded by Merrill Avenue to the north, San Bernardino/Riverside County line to the south, Archibald Avenue to the east, and the Cucamonga Flood Control Channel to the west, and located within the Business Park (Planning Area 1) and Industrial (Planning Area 2) land use designations of the Specific Plan.

The financial commitments required for construction of properties within the Specific Plan are substantial. To adequately forecast these costs and gain assurance that the project may proceed under the existing policies, rules and regulations, the Applicant has requested that staff enter into negotiations to create a Development Agreement (“Agreement”) with the City.

The Agreement proposes to include 85 acres of land within Planning Areas 1 and 2 of the Specific Plan as shown in Exhibit “A” (Land Use Map). The Agreement grants the Applicant a vested right to develop the Tentative Parcel Map 19904, so long as Applicant complies with the terms and conditions of the Specific Plan and EIR. The term of the Agreement is for ten years with a five-year option to extend. 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, bridges, police, fire, open space/parks, etc.);
- Public Service Funding to ensure adequate provisions of public services (police, fire, and other services);
- The creation of a Community Facilities District (CFD) for reimbursement of public improvements and maintenance of public facilities; and
- Public infrastructure improvements required to support the development of Tentative Parcel Map 19904.

In considering the application at their meeting on January 22, 2019, the Planning Commission found that the Agreement was consistent with State law, The Ontario Plan, the City’s Development Agreement policies, and other Development Agreements previously approved for Ontario Ranch developments and, with a 6 to 0 vote (Resolution No PC19-004), recommended approval of the Agreement to the City Council.

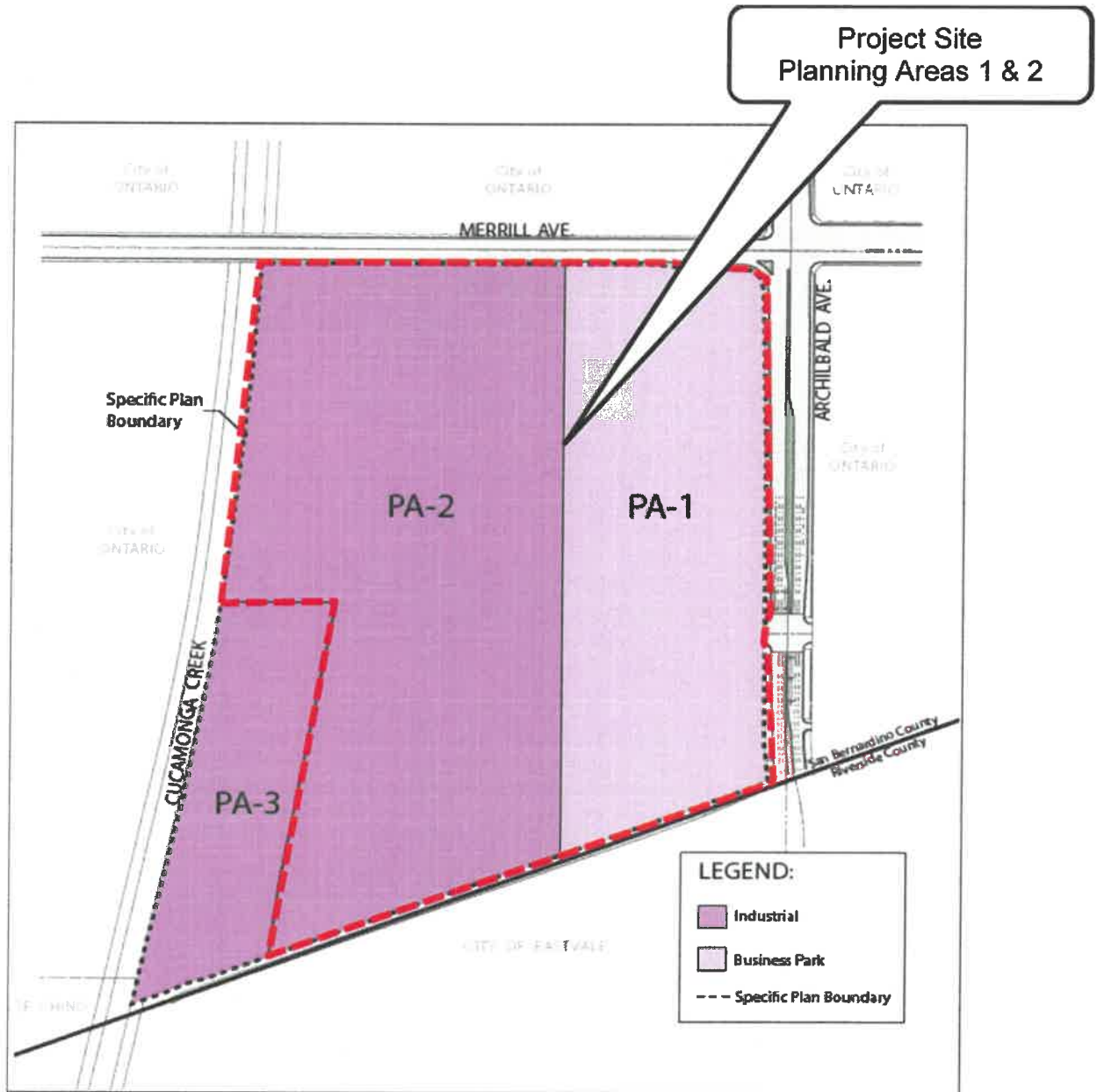
**HOUSING ELEMENT COMPLIANCE:** The project is consistent with the Housing Element of the Policy Plan (General Plan) component of The Ontario Plan, as the project site is not one of the properties in the Available Land Inventory contained in Table A-3 (Available Land by Planning Area) of the Housing Element Technical Report Appendix.

**AIRPORT LAND USE COMPATIBILITY PLAN (ALUCP) COMPLIANCE:** The project site is located within the Airport Influence Area of the Ontario International Airport (OIA) and has been found to be consistent with the policies and criteria set forth within the ALUCP for OIA. The project site is also located within the Airport Influence of Chino Airport and is consistent with policies and criteria set forth within the 2011 California Airport Land Use Planning Handbook published by the California Department of Transportation, Division of Aeronautics.

**ENVIRONMENTAL REVIEW:** The environmental impacts of this project were previously reviewed in conjunction with the Colony Commerce Center East Specific Plan (File No. PSP16-003), for which an Environmental Impact Report (SCH# 2017031048) was certified by City Council on May 1, 2018. This application is consistent with the EIR and introduces no new significant environmental impacts. The City's "Guidelines for the Implementation of the California Environmental Quality Act" (CEQA) provides for the use of a single environmental assessment in situations where the impacts of subsequent projects are adequately analyzed. All adopted mitigation measures of the related EIR shall be a condition of project approval and are incorporated herein by reference.

**EXHIBIT "A"**

**COLONY COMMERCE CENTER EAST SPECIFIC PLAN LAND USE MAP**





# PLANNING COMMISSION STAFF REPORT

January 22, 2019

**FILE NO.:** PDA18-002

**SUBJECT:** A Development Agreement between the City of Ontario and Colony Commerce Ontario East LP, a Delaware limited partnership, to establish the terms and conditions for the development of Tentative Parcel Map 19904 (File No. PMTT18-006), located at the southwest corner of Merrill Avenue and Archibald Avenue within the Business Park (Planning Area 1) and Industrial (Planning Area 2) land use designations of the Colony Commerce Center East Specific Plan (APNs: 0218-311-02, 0218-311-03, 0218-311-08, and 0218-311-10). **Submitted by Colony Commerce Ontario East LP. City Council action is required.**

**PROPERTY OWNER:** Colony Commerce Ontario East LP

**RECOMMENDED ACTION:** That the Planning Commission recommend City Council adoption of an ordinance approving the Development Agreement, File No. PDA 18-002, between Colony Commerce Ontario East LP, a Delaware limited partnership, and the City of Ontario.

**PROJECT SETTING:** The project site is comprised of approximately 85 acres of land located at the southwest corner of Merrill Avenue and Archibald Avenue, within the Business Park (Planning Area 1) and Industrial (Planning Area 2) land use designations of the Colony Commerce Center East Specific Plan, and is depicted in Figure 1: Project Location, left. The project site gently slopes from north to south and is vacant, and was previously used for diary/agriculture uses.



**Figure 1: Project Location**

**PROJECT ANALYSIS:**

[1] Background — On May 1, 2018, the City Council approved the Colony

Case Planner:	Derrick Womble
Planning Director Approval:	
Submittal Date:	3/26/2018

Hearing Body	Date	Decision	Action
DAB	N/A	N/A	N/A
PC	1/22/2019	APPROVAL	Recommend
CC	2/19/2019		Final

certified the Environmental Impact Report (EIR) for the Specific Plan. The Specific Plan establishes the land use designations, development standards, design guidelines and infrastructure improvements for 94.94 acres of land, which includes the potential development of 2,340,434 square feet of industrial development.

The Ontario Ranch financial commitments required for construction of properties within a specific plan are substantial. Therefore, in order to adequately forecast these costs and gain assurance that the project may proceed under the existing policies, rules and regulations, Colony Commerce Ontario East LP (“Owner”) has requested that the City enter into negotiations to create a Development Agreement (“Agreement”).

In accordance with California Government Code Section 65865, which in part states that that “[a]ny city... may enter into a Development Agreement with any person having a legal or equitable interest in real property for the development of such property...” and California Government Code Section 65865.52, which in part states that “a Development Agreement shall specify the duration of the Agreement, the permitted uses of the property... and may include conditions, terms, restrictions...,” the City of Ontario adopted Resolution No. 2002-100 setting forth the procedures and requirements for consideration of Development Agreements. Furthermore, the Financing and Construction Agreement with the NMC Builders, LLC (NMC Builders), requires those developments wishing to use the infrastructure it created to enter into Development Agreements with the City of Ontario. Pursuant to these procedures and requirements, staff entered into negotiations with the Owner to create a Development Agreement for consideration by the Planning Commission and City Council.

The proposed Development Agreement is based upon the model Development Agreement that was developed in coordination with the City Attorney and legal counsel for NMC Builders. This model Development Agreement is consistent with the provisions of the Construction Agreement. The terms of the agreement between NMC Builders’ members requires that members of the LLC enter into Development Agreements that are consistent with the provisions of the Construction Agreement.

[2] Staff Analysis — The Development Agreement proposes to include 85 acres of land within the Business Park (Planning Area 1) and Industrial (Planning Area 2) land use designations of the Colony Commerce Center East Specific Plan, as shown on the attached Exhibit “A”. The Agreement grants the Owner a vested right to develop Tentative Parcel Map 19904 as long as the Owner complies with the terms and conditions of the Colony Commerce Center East Specific Plan and Environmental Impact Report. Tentative Parcel Map 19904 (see Exhibit “B”) is located at the southwest corner of Merrill Avenue and Archibald Avenue and proposes to subdivide approximately 85 acres of land into nine numbered parcels and six letter lots to facilitate a Development Plan (File No. PDEV18-014) which proposes to construct nine industrial buildings totaling 1,685,420 square feet.

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, and fire, 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.

Staff finds that the Development Agreement is consistent with State law, The Ontario Plan, and the City's Development Agreement policies. As a result, staff is recommending approval of the application to the Planning Commission. If the Commission finds the Development Agreement is acceptable, a recommendation of approval to the City Council would be appropriate.

**COMPLIANCE WITH THE ONTARIO PLAN:** The proposed project is consistent with the principles, goals and policies contained within the Vision, Governance, Policy Plan (General Plan), and City Council Priorities components of The Ontario Plan (TOP). More specifically, the goals and policies of TOP that are furthered by the proposed project are as follows:

[1] City Council Goals.

- Invest in the Growth and Evolution of the City's Economy
- Maintain the Current High Level of Public Safety
- Operate in a Businesslike Manner
- Pursue City's Goals and Objectives by Working with Other Governmental Agencies
- Focus Resources in Ontario's Commercial and Residential Neighborhoods
- Invest in the City's Infrastructure (Water, Streets, Sewers, Parks, Storm Drains and Public Facilities)
- Ensure the Development of a Well Planned, Balanced, and Self-Sustaining Community in Ontario Ranch

[2] Vision.

**Distinctive Development:**

- Infrastructure
  - Infrastructure systems that are properly sized to support approved land uses and their occupancy and are maintained in a timely fashion through funding by user groups.

[3] Governance.

**Decision Making:**

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

- G1-2 Long-term Benefit. We require decisions to demonstrate and document how they add value to the community and support the Ontario Vision

[4] Policy Plan (General Plan)

**Land Use Element – Balance**

- Goal LU1: A community that has a spectrum of housing types and price ranges that match the jobs in the City and make it possible for people to live and work in Ontario and maintain a quality of life.

- LU1-3 Adequate Capacity. We require adequate infrastructure and services for all development.

- 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.

**Land Use Element — Phased Growth**

- Goal LU4: Development that provides short-term value only when the opportunity to achieve our Vision can be preserved.

- LU4-1 Commitment to Vision. We are committed to achieving our vision but realize that it may take time and several interim steps to get there.

- LU4-3 Infrastructure Timing. We require that the necessary infrastructure and services be in place prior to or concurrently with development.

**Community Design Element — Protection of Investment**

- Goal CD5: A sustained level of maintenance and improvement of properties, buildings and infrastructure that protects the property values and encourages additional public and private investments.



➤ CD5-2 Improvements to property and Infrastructure. We provide programs to improve property and Infrastructure

**HOUSING ELEMENT COMPLIANCE:** The project is consistent with the Housing Element of the Policy Plan (General Plan) component of The Ontario Plan, as the project site is not one of the properties in the Available Land Inventory contained in Table A-3 (Available Land by Planning Area) of the Housing Element Technical Report Appendix.

**AIRPORT LAND USE COMPATIBILITY PLAN (ALUCP) 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. The project site is also located within the Airport Influence of Chino Airport and is consistent with policies and criteria set forth within the 2011 California Airport Land Use Planning Handbook published by the California Department of Transportation, Division of Aeronautics.

**ENVIRONMENTAL REVIEW:** The environmental impacts of this project were previously reviewed in conjunction with the Colony Commerce Center East Specific Plan (File No. PSP16-003), for which an Environmental Impact Report (SCH# 2017031048) was certified by City Council on May 1, 2018. This application is consistent with the EIR and introduces no new significant environmental impacts. All adopted mitigation measures of the related EIR shall be a condition of project approval.

**Exhibit "A"**

**Colony Commerce Center East Specific Plan Land Use Map**

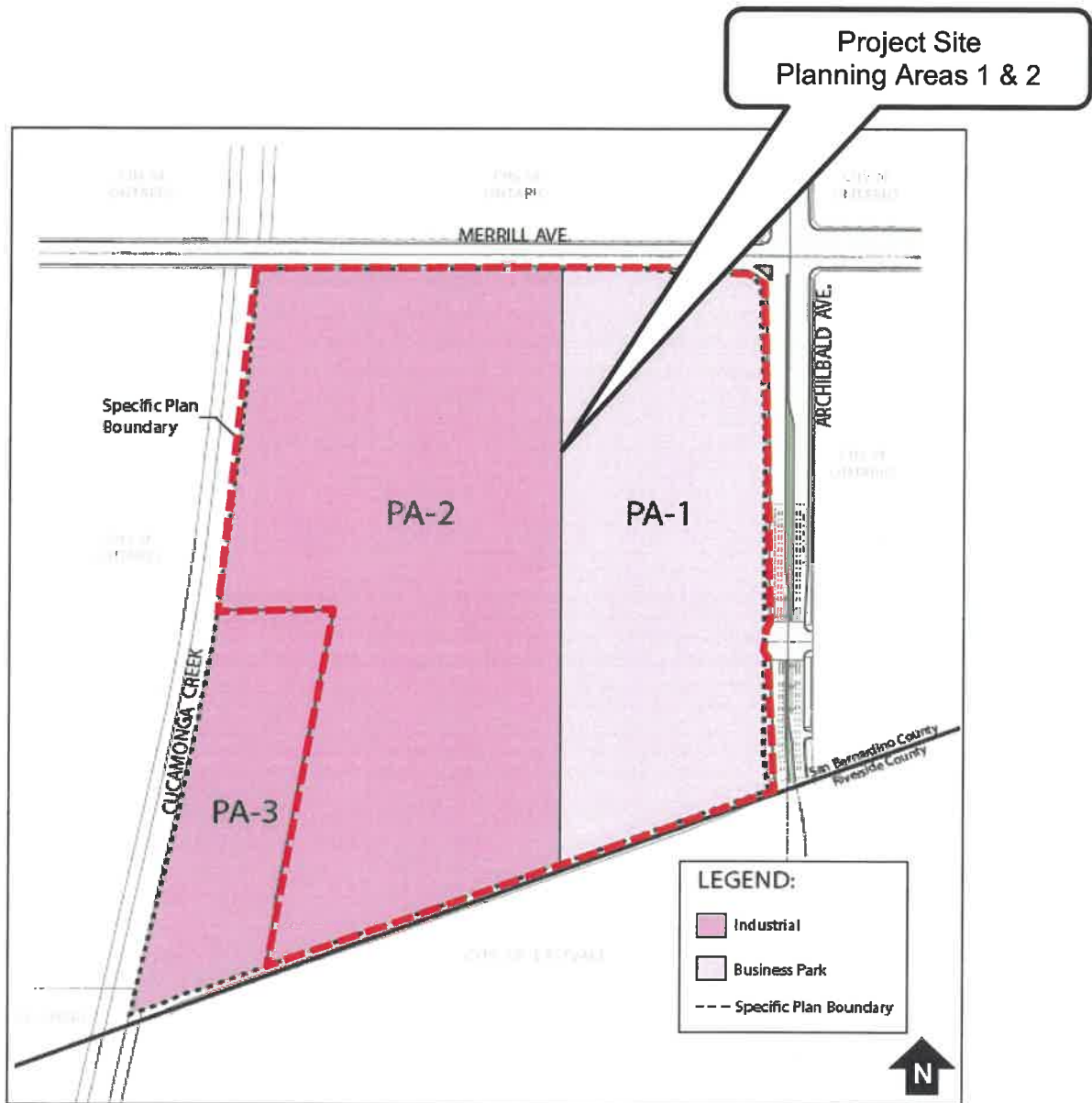
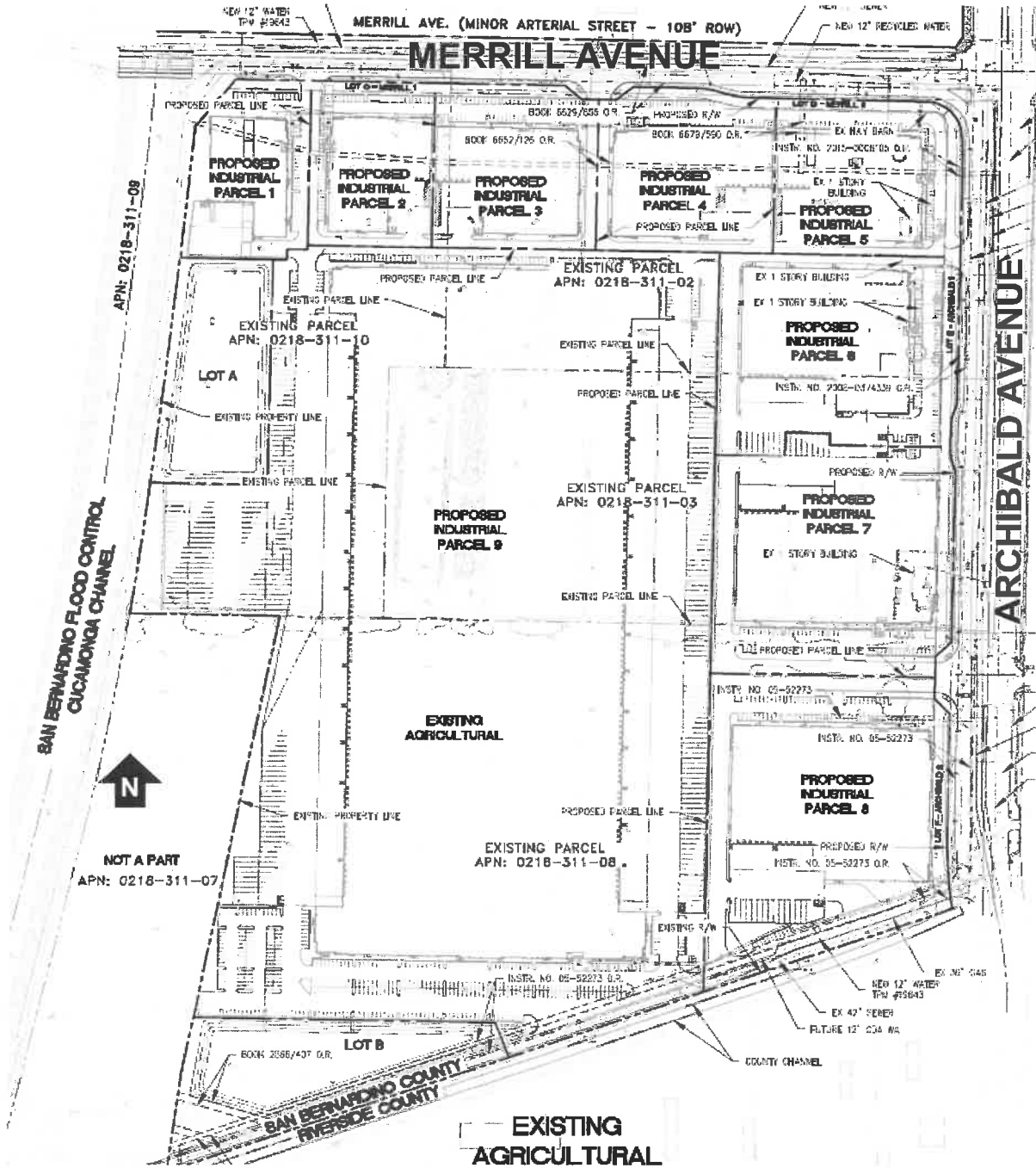


Exhibit "B"

Tentative Parcel Map No. 19904



RESOLUTION NO. PC19-004

A RESOLUTION OF THE PLANNING COMMISSION OF THE CITY OF ONTARIO, CALIFORNIA, RECOMMENDING THE CITY COUNCIL APPROVE A DEVELOPMENT AGREEMENT (FILE NO. PDA18-002) BETWEEN THE CITY OF ONTARIO AND COLONY COMMERCE ONTARIO EAST LP, A DELAWARE LIMITED PARTNERSHIP, TO ESTABLISH THE TERMS AND CONDITIONS FOR THE DEVELOPMENT OF TENTATIVE PARCEL MAP 19904 (FILE NO. PMTT18-006), LOCATED AT THE SOUTHWEST CORNER OF MERRILL AVENUE AND ARCHIBALD AVENUE WITHIN THE BUSINESS PARK (PLANNING AREA 1) AND INDUSTRIAL (PLANNING AREA 2) LAND USE DESIGNATIONS OF THE COLONY COMMERCE CENTER EAST SPECIFIC PLAN, AND MAKING FINDINGS IN SUPPORT THEREOF (APNS: 0218-311-02, 0218-311-03, 0218-311-08, and 0218-311-10)

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 Colony Commerce Ontario East LP, a Delaware limited partnership, and the City of Ontario, File No. PDA18-002, concerning approximately 85 acres of land located at the southwest corner of Merrill Avenue and Archibald Avenue within the Business Park (Planning Area 1) and Industrial (Planning Area 2) land use designations of the Colony Commerce Center East Specific Plan 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 March 27, 2018, the Planning Commission of the City of Ontario conducted a duly noticed public hearing and issued Resolution PC18-029 recommending City Council certification of the Colony Commerce Center East Specific Plan EIR (SCH#2017031048) and issued Resolution PC18-030 recommending to City Council approval of the Colony Commerce Center East Specific Plan (File No. PSP16-003); and

WHEREAS, on April 17, 2018, the City Council of the City of Ontario conducted a duly noticed public hearing and adopted Resolution 2018-034 certifying the Colony Commerce Center East Specific Plan EIR (SCH#2017031048) and on May 1, 2018, issued Ordinance 3097 approving the Colony Commerce Center East Specific Plan (File No. PSP16-003); and

WHEREAS, the environmental impacts of this project were analyzed in the Colony Commerce Center East Specific Plan (File No. PSP16-003) EIR (SCH#2017031048) that was adopted and certified by the City Council on April 17, 2018. This application is consistent with the EIR and introduces no new significant environmental impacts. All mitigation measures shall be a condition of project approval and are incorporated herein by reference; and

WHEREAS, a Tentative Parcel Map No. 19904 (File No. PMTT18-006) to subdivide approximately 85 acres of land into nine numbered lots and six lettered lots has been submitted in conjunction with the subject Development Agreement application; and

WHEREAS, a Development Plan (File No. PDEV18-014) to construct nine industrial buildings totaling 1,685,420 square feet on the project site has also been submitted in conjunction with the subject Development Agreement application; and

WHEREAS, on January 22, 2019 the Planning Commission of the City of Ontario conducted a 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 resolved by the Planning Commission of the City of Ontario as follows:

**SECTION 1. Environmental Determination and Findings.** As the recommending body for the Project, the Planning Commission has reviewed and considered the information contained in the previously adopted Colony Commerce Center East Specific Plan EIR (SCH#2017031048) and supporting documentation. Based upon the facts and information contained in the Colony Commerce Center East Specific Plan EIR (SCH#2017031048) and supporting documentation, the Planning Commission finds as follows:

- a. The environmental impacts of this project were reviewed in conjunction with File No. PSP16-003, the Colony Commerce Center East Specific Plan for which an Environmental Impact Report (SCH#2017031048) was certified by City Council on May 1, 2018. This application is consistent with the EIR and introduces no new significant environmental impacts; and
- b. The previous Colony Commerce Center East Specific Plan EIR contains a complete and accurate reporting of the environmental impacts associated with the Project; and
- c. The previous Colony Commerce Center East Specific Plan EIR was completed in compliance with CEQA and the Guidelines promulgated thereunder; and
- d. The previous Colony Commerce Center East Specific Plan EIR reflects the independent judgment of the Planning Commission; and
- e. 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: Subsequent or Supplemental Environmental Review Not Required.** Based on the information presented to the Planning Commission, and the

specific findings set forth in Section 1, above, the Planning Commission finds that the preparation of a subsequent or supplemental EIR is not required for the Project, as the Project:

(1) Does not constitute substantial changes to the EIR that will require major revisions to the EIR due to the involvement of new significant environmental effects or a substantial increase in the severity of previously identified significant effects; and

(2) Does not constitute substantial changes with respect to the circumstances under which the EIR was prepared, that will require major revisions to the EIR due to the involvement of new significant environmental effects or a substantial increase in the severity of the previously identified significant effects; and

(3) Does not contain new information of substantial importance that was not known and could not have been known with the exercise of reasonable diligence at the time the EIR was reviewed, that shows any of the following:

(a) The project will have one or more significant effects not discussed in the EIR; or

(b) Significant effects examined will be substantially more severe than shown in the EIR; or

(c) Mitigation measures or alternatives previously found not to be feasible would in fact be feasible and would substantially reduce one or more significant effects of the Project, but the City declined to adopt such measures; or

(d) Mitigation measures or alternatives considerably different from those analyzed in the EIR would substantially reduce one or more significant effects on the environment, but which the City declined to adopt.

**SECTION 3. *Housing Element Consistency.*** Pursuant to the requirements of California Government Code Chapter 3, Article 10.6, commencing with Section 65580, as the recommending body for the Project, the Planning Commission finds that based upon the facts and information contained in the Application and supporting documentation, the project is consistent with the Housing Element of the Policy Plan (General Plan) component of The Ontario Plan, as the project site is not one of the properties in the Available Land Inventory contained in Table A-3 (Available Land by Planning Area) of the Housing Element Technical Report Appendix.

**SECTION 4: *Ontario International Airport Land Use Compatibility Plan (“ALUCP”) Compliance.*** The California State Aeronautics Act (Public Utilities Code Section 21670 et seq.) requires that an Airport Land Use Compatibility Plan be prepared for all public use airports in the State; and requires that local land use plans and individual development proposals must be consistent with the policies set forth in the adopted Airport Land Use Compatibility Plan. On April 19, 2011, the City Council of the City of Ontario approved and adopted the Ontario International Airport Land use Compatibility

Plan ("ALUCP"), establishing the Airport Influence Area for Ontario International Airport ("ONT"), which encompasses lands within parts of San Bernardino, Riverside, and Los Angeles Counties, and limits future land uses and development within the Airport Influence Area, as they relate to noise, safety, airspace protection, and overflight impacts of current and future airport activity. As the recommending body for the Project, the Planning Commission has reviewed and considered the facts and information contained in the Application and supporting documentation against the ALUCP compatibility factors, including [1] Safety Criteria (ALUCP Table 2-2) and Safety Zones (ALUCP Map 2-2), [2] Noise Criteria (ALUCP Table 2-3) and Noise Impact Zones (ALUCP Map 2-3), [3] Airspace protection Zones (ALUCP Map 2-4), and [4] Overflight Notification Zones (ALUCP Map 2-5). ). The project site is also located within the Airport Influence of Chino Airport and is consistent with policies and criteria set forth within the 2011 California Airport Land Use Planning Handbook published by the California Department of Transportation, Division of Aeronautics. As a result, the Planning Commission, therefore, finds and determines that the Project, when implemented in conjunction with the conditions of approval, will be consistent with the policies and criteria set forth within the ALUCP.

**SECTION 5. Concluding Facts and Reasons.** Based upon substantial evidence presented to the Planning Commission during the above-referenced hearing on January 22, 2019, including written and oral staff reports, together with public testimony, the Planning Commission hereby specifically finds as follows:

a. The Development Agreement applies to approximately 85 acres of land located at the southwest corner of Merrill Avenue and Archibald Avenue, within the Business Park (Planning Area 1) and Industrial (Planning Area 2) land use designations of the Colony Commerce Center East Specific Plan. The project site gently slopes from north to south and is vacant and previously used for dairy/agriculture uses.

b. The majority of the site is currently in agricultural use, including two active dairy farms, row crops, and a hay and alfalfa wholesaler. The remainder of the site is vacant land that was previously used for agriculture; and

c. The property to the north of the Project site is within Planning Area 1 (Conventional Small Lot) of the Subarea 29 Specific Plan, and is presently improved with agriculture uses. The property to the east is within the Planning Areas 6 and 7 (Conventional Medium Lot and Conventional Large Lot, respectively) of the Subarea 29 Specific Plan, and are developed with single family homes. The property to the south is located within the City of Eastvale, and contains a dairy use. The property to the west is developed with the Cucamonga Creek Flood Control Channel; and

d. The Development Agreement establishes parameters for the development Planning Areas 1 and 2 of the Colony Commerce Center East Specific Plan for industrial development. The Development Agreement also grants Colony Commerce Ontario East LP., 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 West Ontario Commerce Center Specific Plan.

e. The Development Agreement proposes to include approximately 85 acres of land within Business Park (Planning Area 1) and Industrial (Planning Area 2) land use designation Colony Commerce Center East Specific Plan; and

f. The Agreement grants Colony Commerce Ontario East LP., a vested right to develop Tentative Parcel Map 19904 as long as Colony Commerce Ontario East LP., complies with the terms and conditions of the Colony Commerce Center East Specific Plan and EIR. Tentative Parcel Map 19904 is located at the southwest corner of Merrill Avenue and Archibald Avenue and proposes to subdivide approximately 85 acres of land into nine parcels and six letter lots to facilitate a Development Plan (File No. PDEV18-014) which proposes to construct nine (9) industrial buildings totaling 1,685,420 square feet; and

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

h. 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

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

j. 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 analyzed in the EIR (SCH#2017031048) prepared for the Colony Commerce Center East Specific Plan (File No. PSP16-003) and certified by the City Council on April 17, 2018. All adopted mitigation measures of the related EIR shall be a condition of project approval and are incorporated herein by reference.

**SECTION 6. Planning Commission Action.** Based upon the findings and conclusions set forth in paragraphs 1, 2, 3, 4 and 5 above, the Planning Commission hereby RECOMMENDS APPROVAL of the Development Agreement to the City Council subject to each and every condition set forth in the Colony Commerce Center East Specific Plan and EIR, incorporated by this reference.

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

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

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

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

I hereby certify that the foregoing Resolution was duly and regularly introduced, passed and adopted by the Planning Commission of the City of Ontario at a regular meeting thereof held on the 22<sup>nd</sup> day of January 2019, and the foregoing is a full, true and correct copy of said Resolution, and has not been amended or repealed.



Richard D. Delman  
Planning Commission Chairman

ATTEST:



Cathy Wahlstrom  
Planning Director  
Secretary of Planning Commission

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

I, Gwen Berendsen, Secretary Pro Tempore of the Planning Commission of the City of Ontario, DO HEREBY CERTIFY that foregoing Resolution No. PC19-004, was duly passed and adopted by the Planning Commission of the City of Ontario at their regular meeting held on January 22, 2019, by the following roll call vote, to wit:

AYES:            DeDiemar, Delman, Downs, Gage, Gregorek, Reyes

NOES:           None

ABSENT:        Willoughby

ABSTAIN:       None



Gwen Berendsen  
Gwen Berendsen  
Secretary Pro Tempore

**Exhibit "A"**  
**Development Agreement**  
**Between**  
**The City of Ontario and**  
**Colony Commerce Ontario East LP, a Delaware limited partnership,**  
**File No. PDA18-002**  
***(Document follows this page)***

**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**

**By and Between**

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

**and**

**Colony Commerce Ontario East LP**

**a Delaware Limited Partnership**

\_\_\_\_\_, 2019

**San Bernardino County, California**

## **DEVELOPMENT AGREEMENT NO. PDA18-002**

This Development Agreement (hereinafter "Agreement") is entered into effective as of the \_\_\_\_ day of \_\_\_\_\_, 2019 by and among the City of Ontario, a California municipal corporation (hereinafter "CITY"), and Colony Commerce Ontario East LP, a Delaware Limited Partnership (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 Section 4.01.015 of the Ontario Development 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 Colony Commerce Center East Specific Plan Environmental Impact Report (State Clearinghouse No. 2017031048 (the "FEIR")). The City Council found and determined that the FEIR was prepared in accordance with the requirements of the California Environmental Quality Act and adequately describes the impacts of the project described in the FEIR, which included consideration of this Agreement; and

WHEREAS, this Agreement and the Project are consistent with the CITY's Comprehensive General Plan and the Colony Commerce Center East 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; and

WHEREAS, the Property is located in an area of the City of Ontario that has been known as the "New Model Colony" area and the New Model Colony area has now been renamed as "Ontario Ranch; and

WHEREAS, Owner's Property is within the modified boundaries defined in Exhibit A of the Construction Agreement between the CITY and NMC Builders and the Property covered by this Agreement is what is known as a "Phase 2 Water Property" as such, shall be required to provide funding for CITY's future construction of the "Phase 2 Water Improvements" which will result in the availability of additional Net MDD Water Availability required for the development as shown on Exhibit "I-1";and

WHEREAS, the property developer/owner is made aware of the South Archibald Trichloroethylene (TCE) Plume "Disclosure Letter" (Exhibit "J"). Property owner may wish to provide the attached Letter as part of the Real Estate Transfer Disclosure requirements under California Civil Code Section 1102 et seq. This may include notifications in the Covenants, Conditions and Restrictions (CC&Rs) or other documents related to property transfer and disclosures. Additional information on the plume is available from the Santa Ana Regional Water Quality Control Board at [http://geotracker.waterboards.ca.gov/profile\\_report.asp?global\\_id=T10000004658](http://geotracker.waterboards.ca.gov/profile_report.asp?global_id=T10000004658).

## **COVENANTS**

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

### **1. DEFINITIONS AND EXHIBITS.**

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

1.1.1 "Agreement" means this Development Agreement.

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

1.1.3 "Construction Agreement" means that certain Agreement for the Financing and Construction of Phases I and II Infrastructure Improvements to Serve an Easterly Portion of the New Model Colony, entered into between the CITY and NMC Builders as of the 4th day of October, 2005, and all future amendments thereto and including the 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, and that certain Amendment to the First Amended and Restated Agreement for the Financing and Construction of Limited Infrastructure Improvements to Serve an Easterly Portion of the New Model Colony entered into between the CITY and NMC Builders, LLC as of the 19<sup>th</sup> day of September, 2017.

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) general plans, specific plans and specific plan amendments;
- (b) tentative and final subdivision, and parcel maps and Development Plans;
- (c) development plan review.

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, , 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 "Eucalyptus Avenue Water Loop" means the a.) Twenty-Four (24) inch water line Improvements along Eucalyptus Avenue from Archibald Avenue to Carpenter Avenue; b.) Twelve (12) inch water line Improvements along Carpenter Avenue from Eucalyptus Avenue to Merrill Avenue and; c.) Twelve (12) inch water line Improvements along Merrill Avenue from Carpenter Avenue to Archibald Avenue.

1.1.11 "Existing Development Approvals" means all Development Approvals approved or issued on or 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.

1.1.12 "Existing Land Use Regulations" means all Land Use Regulations in effect on the date of the first reading of the Ordinance adopting and approving this Agreement. 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 such date.

1.1.13 "General Plan" means The Ontario Plan adopted on January 26, 2010.

1.1.14 "Improvement" or "Improvements" means those public improvements required to support the development of the Project as described in the Tentative Parcel Map conditions for Parcel Map No. 19904 as further described in Exhibit "F-1", "F-1a", "F-1b", "F-2", "F-3", "F-4", "F-5" and "F-6" (the "Infrastructure Improvements Exhibits").

1.1.15 "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.

1.1.16 "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.

1.1.17 "Net MDD" means net maximum daily water demand

1.1.18 "NMC Builders" means the consortium of investors and developers responsible for the construction of infrastructure within the New Model Colony incorporated as NMC Builders, LLC.

1.1.19 "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.

1.1.20 "Phase 2 Water EDUs" means the number of equivalent dwelling units or non-residential square footage assigned to OWNER upon payment to CITY of the Phase 2 Water Participation Fee for the Project and evidenced by the issuance by CITY of a Certificate of Phase 2 Net MDD Availability in the form attached as Exhibit G.

1.1.21 "Phase 2 Water Improvements" means the future water infrastructure Improvements required for the issuance by CITY of the "Water Availability Equivalents" (WAE) for the Project.

1.1.22 "Phase 2 Water Participation Fee" means the fee paid to City upon City approval of the first Development Entitlement for the Project, to fund the Property's respective share of the projected costs of the design and construction of the Phase 2 Water Improvements by City. The Phase 2 Water Participation Fee shall be the calculated amount of the Regional Water DIF for the Project based upon the number of square feet or units, and land use category for residential units or the number of square feet, and land use category for non-residential square footage of the Project.

1.1.23 “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.

1.1.24 “Property” means the real property described on Exhibit “A” and shown on Exhibit “B” to this Agreement.

1.1.25 “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.

1.1.26 “Amendment to the Construction Agreement” means the amendment to the Construction Agreement modifying the boundaries of the property in Exhibit A of such Construction Agreement to include the Property covered by this Agreement and to provide for the additional funds required for CITY’s future construction of the “Phase 2 Water Improvements” described in a modification to Exhibit C-3 of the Construction Agreement.

1.1.27 “Specific Plan” means that certain specific plan adopted by the City Council, and entitled, “Colony Commerce Center East Specific Plan.”

1.1.28 “Subsequent Development Approvals” means all discretionary Development Approvals required subsequent to the Effective Date in connection with development of the Property.

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

1.1.30 “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 Parcel Map 19904 shall be based upon water demand factors and assumptions listed in the Construction Agreement.

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” — (Not Used)

Exhibit “F” — Infrastructure Improvements Exhibits

- Exhibit F-1 Required Street and Circulation Infrastructure Improvements
- Exhibit F-1a Streets and Circulation Improvements
- Exhibit F-1b Merrill Avenue Bridge Improvements
- Exhibit F-2 Water Improvements
- Exhibit F-3 Sewer Improvements
- Exhibit F-4 Recycled Water Improvements
- Exhibit F-5 Storm Drain Improvements
- Exhibit F-6 Fiber Optic Communications System Improvements

Exhibit "G" – Form of Certificate of Net MDD to be issued by CITY

Exhibit "H" – Form of Certificate of DIF Credit to be issued by CITY

Exhibit "I-1" – Ontario Ranch Water Supply Phasing Plan

Exhibit "I-2" – Water Demand Equivalents by Land Use

Exhibit "J" - Form of Disclosure letter

## 2. GENERAL PROVISIONS.

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

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

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

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

(b) 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 with respect to the portion of the Property sold and be made in strict compliance with the following:

(a) No sale, transfer or assignment of any right or interest under this Agreement shall be made unless made together with the sale, transfer or assignment of all or a part of the Property. OWNER may be required to provide disclosure that the Property is within the South Archibald Trichloroethylene (TCE) Plume (Exhibit "J"). OWNER may wish to provide the attached Disclosure Letter (Exhibit I) as part of the Real Estate Transfer Disclosure requirements under California Civil Code Section 1102 et seq.

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

(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.

(d) Notwithstanding the foregoing OWNER shall have the right to assign this Agreement to an Owner Affiliate subject to the notice requirements to CITY as described in Paragraph (b) of Section 2.4.1. above. The term Owner Affiliate shall mean any of the following:

- (1) any general or limited partnership in which OWNER is the managing general partner.
- (2) any limited liability company in which OWNER is the managing member.

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 an agreement as 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 (if any) to secure performance of its obligations hereunder which are to be performed upon portion of the Property sold, transferred or assigned .

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 parcel 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 of the parcel. 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 parcel, and the fees set forth under Section 4 of this Agreement have been paid.

2.4.6 Partial Assignment and Assumption. CITY and OWNER agree OWNER may partially assign obligations and rights under this Development Agreement, and all amendments hereto, to a purchaser, transferee or assignee of a lot, which has been subdivided subject to provisions of a partial assignment and assumption agreement in a form approved by CITY. Any such completed and executed Partial Assignment and Assumption of Development Agreement shall be submitted to CITY for approval pursuant to Section 2.4.1 of the Development Agreement. Within thirty (30) days following such submittal, CITY shall review, and if the above conditions are satisfied shall approve the partial assignment and release and notify the purchaser, transferee or assignee in writing thereof. No such release approved pursuant to this Subsection 2.4.6 shall cause, or otherwise affect, a release of OWNER from the duties and obligations under this Development Agreement that are retained by OWNER and excluded from the transfer or assignment.

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. 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. 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. 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.

2.6 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.

Upon the termination of this Agreement, no party shall have any further right or obligation hereunder except with respect to any obligation to have been performed prior to such termination or with respect to any default in the performance of the provisions of this Agreement which has occurred prior to such termination or with respect to any obligations which are specifically set forth as surviving this Agreement. Upon such termination, any Development Impact Fees, public facility funding fees paid pursuant to Sections 4.2 or 4.4 of this Agreement by OWNER to CITY on which construction has not yet begun shall be refunded to OWNER by CITY within thirty (30) days.

## 2.7 Notices.

(a) As used in this Agreement, "notice" includes, but is not limited to, the communication of notice, request, demand, approval, statement, report, acceptance, consent, waiver, appointment or other communication required or permitted hereunder.

(b) All notices shall be in writing and shall be considered given either: (i) when delivered in person, including, without limitation, by courier, to the recipient named below; or (ii) on the date of delivery shown on the return receipt, after deposit in the United States mail in a sealed envelope as either registered or certified mail with return receipt requested, and postage and postal charges prepaid, and addressed to the recipient named below. All notices shall be addressed as follows:

If to CITY:

Scott Ochoa, City Manager  
City of Ontario  
303 East "B" Street  
Ontario 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:

Colony Commerce Ontario East LP  
1001 Square Victoria, C-500.  
Montreal, Quebec H2Z 2B5  
Canada

Attn: Claude Lavigne, Senior Vice President, Investments, Industrial, North America  
Email: Claude.Lavigne@ivanhoecambridge.com



with a copy to:

Colony Commerce Ontario East LP  
1001 Square Victoria, C-500  
Montreal, Quebec, H2Z 2B5  
Canada  
Attn: Denis Boulianne, GC  
Email: denis.boulianne@ivanhoecambridge.com

with a copy to

Goodwin Proctor LLP  
601 S. Figueroa, 43<sup>rd</sup> Floor  
Los Angeles, CA  
Attn: Dean Pappas, Esq.  
Email: dpappas@goodwinlaw.com

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 in Section 3.4, 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 in Section 3.4, the rules, regulations and official policies governing permitted uses of the Property, the density and intensity of use of the Property, the maximum height and size of proposed buildings, and the design, improvement and construction standards and specifications applicable to development of the Property shall be the Existing Land Use Regulations. In connection with any Subsequent Development Approval, CITY shall exercise discretion in accordance with the same manner as it exercises its discretion under its police powers, including the Reservations of Authority set forth herein; provided however, that such discretion shall not prevent development of the Property for the uses and to the density or intensity of development set forth in this Agreement.

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

3.3.1 Infrastructure Improvement Exhibit. Attached hereto as Exhibits "F1, F-1a, F-1b, F-2, F-3, F-4, F-5 and F-6" collectively are a description of the Infrastructure Improvements needed for the development of the Property ("the Infrastructure Improvement Exhibits").

### 3.4 Reservations of Authority.

3.4.1 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 and the building codes in effect as of the Effective Date;

(d) Regulations that may conflict with this Agreement and the Development Plan but that are reasonably necessary to protect the occupants 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 and which do not impose additional obligations, costs, and expenses on Owner or the Project;

(f) Regulations that may conflict but to which the OWNER consents.

3.4.2 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 and/or the Existing Development Approvals, 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 and/or the Existing Development Approvals.

3.4.3 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).

3.4.4 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.

3.5 Public Works; Utilities. If OWNER is required by this Agreement or a condition of project approval to construct any public works facilities which will be dedicated to CITY or any other public agency upon completion, and if required by applicable laws to do so, OWNER shall perform such work in the same manner and subject to the same requirements as would be applicable to CITY or such other public agency should it have undertaken such construction. As a condition of development approval, OWNER shall connect the Project to all utilities necessary to provide adequate water, recycled water, sewer, gas, electric, and other utility service to the Project. As a further condition of development approval, OWNER shall to the extent possible 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.

3.5.1 OWNER agrees that development of the Project shall require the construction of street improvements as described in Exhibit F-1a, including design and construction of street improvements on Merrill Avenue from Archibald Avenue to the

Cucamonga Creek Channel; design and construction of modifications to an existing signalized intersection on Archibald Avenue and Merrill Avenue; and design and construction of full signalized intersection improvements at Merrill Avenue and the entrance to the Property to the extent not constructed by others; and design and construction of the full signalized intersection improvements at Archibald Avenue and the entrance to the Property. OWNER and CITY agree that CITY may issue grading, building permits and other required permits for OWNER to initiate construction of structures for the Property according to plans approved by CITY and OWNER agrees that OWNER shall not request and CITY shall not issue an occupancy permit for any buildings on the Property prior to substantial completion of the street Improvements as described in Exhibit F-1a. For purposes of the foregoing, street improvements shall be deemed Substantially Complete if the final lift of pavement has not been completed (i.e., Owner may install the final lift after completion of all other construction). CITY agrees that OWNER may request that CITY issue temporary certificates of occupancy on a building-by-building basis prior to Substantial Completion of the street improvements. OWNER agrees that the street improvements shall be completed and subject to final acceptance by CITY prior to the release of any security for the construction of the street improvements

3.5.2 OWNER agrees that development of the Project shall require the design and construction of the widening of the Merrill Avenue bridge over the Cucamonga Creek Channel as described in Exhibit F-1b to the extent not designed and/or constructed by others. OWNER and CITY agree that CITY may issue grading, building permits and other required permits for OWNER to initiate construction of structures for the Property according to plans approved by CITY and OWNER agrees that OWNER shall not request and CITY shall not issue an occupancy permit for any buildings prior to the completion of the designs and the commencement of construction of the widening of the existing Merrill Avenue Bridge Improvements (Merrill Bridge) as shown in Exhibit F-1b. The Merrill Bridge Improvements shall consist of widening the south side of the existing bridge to its ultimate width with all striping transitions to existing conditions occurring east of the west end of the bridge and utilities as described in Exhibit F-1b. If OWNER has not commenced construction on the Merrill Bridge Improvements prior to OWNER requesting an occupancy permit for any buildings on the Property, OWNER shall provide proof to the satisfaction of the CITY, that OWNER has exercised one of the following two options:

- a. OWNER has entered into a cost sharing agreement for the construction and completion of the Merrill Avenue Bridge Improvements by other developer(s) and OWNER has fully funded OWNER'S obligations under the subject cost sharing agreement; or
- b. OWNER has deposited an amount acceptable to CITY for future construction of the Merrill Avenue Bridge Improvements into an Escrow Account ("Escrow Account") in which CITY has sufficient authority necessary to use such funds deposited by OWNER to commence and complete the construction of the Merrill Avenue Bridge Improvements. OWNER to provide Escrow Instructions acceptable to the City Attorney for CITY.

To the extent that the Merrill Avenue Bridge Improvements are not constructed by others, OWNER agrees that, upon issuance of the required permits for the construction of the Merrill Avenue bridge Improvements by the County of San Bernardino and the Army Corp of Engineers, OWNER shall complete the design and construct to completion the Merrill Avenue bridge Improvements. OWNER agrees that OWNER shall complete the construction of the Merrill Avenue bridge Improvements prior to the expiration of any temporary certificate of occupancy issued by CITY for any structure on the Property.

3.5.3 OWNER agrees that development of the Property shall require either the extension of permanent master planned water utility Improvements as described in Exhibit F-2, including the construction of the Eucalyptus Avenue Water Loop consisting minimally of the construction of the extension of permanent master planned water utility Improvements from two (2) points of connection to serve the Property or an alternative on-site water storage tank system acceptable to CITY (the "Water Improvements). OWNER and CITY agree that CITY may issue grading, building and other required permits for OWNER to initiate construction of structures for the Property according to plans approved by CITY upon completion of sufficient water and recycled water improvements to serve the Property from at least one point of connection. Except as provided for below in Section 3.5.3.1, OWNER agrees that OWNER shall not request and CITY shall not issue any occupancy permits for any buildings on the Property until the completion of the design and construction of an on-site water storage system acceptable to CITY to meet fire flow demands for the entire Property or OWNER's agreement and determination, in writing, to CITY that OWNER shall be subject to CITY's determination that the Eucalyptus Avenue Water Improvements shall be constructed by OWNER as provided for below in Sections 3.5.3.1 through 3.5.3.5. CITY agrees that OWNER may request a temporary occupancy permit for a building and, if OWNER requests that a temporary certificate of occupancy be issued for a building prior to the completion of the Water Improvements, that CITY may consider such request and may issue temporary certificates of occupancy on a building-by-building basis prior to completion of the Water Improvements if there is available permanent water and recycled water service from a minimum of one point of connection and sufficient water is available for fire protection purposes for any buildings under construction. OWNER and CITY agree that all or a portion of the water utility Improvements described in Exhibit F-2 may be constructed by others. If such water utility Improvements are constructed by others and completed and accepted by CITY prior to OWNER's request to CITY of the required grading, building or other required permits for OWNER to initiate construction of structures for the Property, then OWNER shall not be required to construct those water utility Improvements constructed and completed by others and accepted by CITY.

3.5.3.1 OWNER agrees that either the extension of permanent master planned water utility Improvements or an alternative on-site water storage tank system acceptable to CITY, shall be required to provide sufficient fire flow to serve the Property. OWNER also agrees that the extension of such permanent master planned water utility Improvements may require OWNER to design and construct the Eucalyptus Avenue Water Loop or the alternative on-site water storage tank system. If the OWNER elects not to construct the alternative on-site water storage tank system, OWNER shall be required to design and initiate construction of the

Eucalyptus Avenue Water Loop, or any remaining portion of such Eucalyptus Avenue Water Loop, to the extent that construction of such remaining portion has not been initiated by others.

3.5.3.2 OWNER and CITY agree that a determination shall be made by CITY, that others have initiated construction of the Eucalyptus Avenue Water Loop to serve the Project. If CITY determines that others have not initiated construction of the Eucalyptus Avenue Water Loop to serve the Project and OWNER has not elected to construct the alternative on-site water storage tank system, CITY shall notify OWNER and OWNER shall be required to design, or complete any existing designs, and initiate construction of the Eucalyptus Avenue Water Loop to serve the Project. If CITY determines that others have initiated construction of, at a minimum, the portion of the Eucalyptus Avenue Water Loop required to provide additional fire flow to the Project, then CITY shall notify OWNER and OWNER shall be eligible to request and CITY may issue additional building permits and additional certificates of occupancy for buildings for the Project. CITY shall make such determination prior to:

a.) issuance of a building permit for any building or buildings where the total square footage of the buildings for the Project exceeds 1,100,000 Square Feet or;

b.) within two (2) years of the issuance of a building permit for the first structure for the Project, whichever occurs first.

3.5.3.3 CITY may also provide such determination prior to the above events if requested by OWNER and CITY concurs that the construction of the Eucalyptus Avenue Water Loop has been initiated by others. If CITY has issued a building permit for any buildings for the Project (less than 1,100,000 square feet) for the Project and others have not initiated construction of the Eucalyptus Avenue Water Loop prior to the expiration of the two (2) year period after the issuance of the first building permit, OWNER may request that such determination be deferred by CITY for a period of an additional six (6) months.

3.5.3.4 If OWNER does not elect to construct the alternative on-site water storage system, CITY and OWNER agrees if the CITY determines that the Eucalyptus Avenue Water Loop has not been initiated or constructed by others and OWNER requests that the CITY issue additional building permits for any building or buildings for the Project exceeds 1,100,000 square feet or a period of two (2) years since the issuance of the first building permit for the Project, or any extended period, has expired, then OWNER shall be required to design and construct the Eucalyptus Avenue Water Loop. If CITY determines that construction of the Eucalyptus Avenue Water Loop has not been initiated and OWNER completes the design and initiates construction of the Eucalyptus Avenue Water Loop, OWNER may request and CITY may issue a temporary occupancy permit for any buildings constructed on the Project and OWNER may request and CITY may issue additional building permits for buildings exceeding 1,100,000 for the Property, subject to

OWNER's deposit of funds to an Escrow Account mutually controlled by OWNER and CITY, in an amount determined by CITY to be sufficient to complete the construction of the Eucalyptus Avenue Water Loop, and subject to CITY's further determination that there is sufficient fire flow to serve the additional buildings. The Escrow Instructions shall be prepared by OWNER and accepted by CITY. CITY agrees that OWNER's deposit to the Escrow Account may be used by OWNER to compensate consultants and contractors for the design and construction of the Eucalyptus Avenue Water Loop.

3.5.3.5 CITY agrees that a portion of the Eucalyptus Avenue Water Loop consisting of the portion of the Eucalyptus Avenue Water Loop along Eucalyptus Avenue from the connection at Archibald Avenue to Carpenter Avenue is eligible for DIF reimbursement. If OWNER designs and constructs this portion of the Eucalyptus Avenue Water Loop, then CITY shall directly reimburse OWNER for the actual eligible costs for design and construction of this portion of the Eucalyptus Avenue Water Loop up to the amount in the CITY's DIF Program. Such reimbursement shall be subject to a separate DIF Credit and Reimbursement Agreement between OWNER and CITY and in the form acceptable to OWNER and CITY. CITY shall reimburse OWNER within 30 business days of completion and acceptance the portion of the Eucalyptus Avenue Water Loop.

3.5.4 OWNER agrees that development of the Property requires the construction of connections to permanent master planned sewer Improvements as described in Exhibit F-3 which have been completed and accepted by City. OWNER and CITY agree that the sewer Improvements described in Exhibit F-3 have been constructed by others. OWNER shall be required to construct the required connections to the permanent master planned sewer improvements constructed and completed by others and accepted by CITY, prior to and as a condition precedent to, issuance of a building permit for the Property.

3.5.5 OWNER agrees that development of the Property shall require the extension of permanent master planned recycled water utility Improvements as described in Exhibit F-4 consisting generally of the construction of the extension of permanent master planned recycled water utility Improvements to serve the Property. OWNER and CITY agree that CITY may issue grading, building and other required permits for OWNER to initiate construction of structures for the Property according to plans approved by CITY upon completion of sufficient water and recycled water improvements to serve the Property from at least one point of connection and OWNER agrees that OWNER shall not request and CITY shall not issue any occupancy permit for any buildings on the Property until the completion of the water improvements described in Exhibit F-4 CITY agrees that OWNER may request a temporary occupancy permit for a building and, if OWNER requests that a temporary certificate of occupancy be issued for a building prior to the completion of the extension of permanent master planned recycled water utility Improvements to serve the Property that CITY may consider such request and may issue temporary certificates of occupancy on a building-by-building basis prior to completion of

the recycled water improvements if there is available permanent recycled water service connection and sufficient recycled water is available. OWNER and CITY agree that all, or a portion of, the permanent master planned recycled water utility Improvements described in Exhibit F-4 may be constructed by others. If such recycled water utility Improvements are constructed by others and completed and accepted by CITY prior to OWNER's request to CITY of the required grading, building or other required permits for OWNER to initiate construction of structures for the Property, then OWNER shall not be required to construct those permanent master planned recycled water utility Improvements.

3.5.6 OWNER agrees that development of the Project shall require the construction of storm drain Improvements from the Property to the connection with the existing Storm Drain facilities in Archibald Avenue and in Merrill Avenue as described in Exhibit F-5. OWNER shall be responsible for the design and construction of the necessary extension of storm drain facilities, as described in Exhibit F-5 to the extent not constructed by others. To the extent not constructed by others OWNER shall construct and complete the storm drain improvements as described in Exhibit F-5 prior to, and as a condition precedent to, OWNER requesting a building permit for the construction of a structure on the Property.

3.5.7 OWNER agrees that development of the Project shall require the design and construction of Fiber Optic Communications Improvements in Merrill Avenue and Archibald Avenue as described in Exhibit F-6 to connect the Property to the Fiber Optic Communication System. OWNER shall be responsible for the design and construction of the necessary extension of Fiber Optic Communications conduit as described in Exhibit F-6, prior to and as a condition precedent to, OWNER requesting a building permit for the construction of a structure on the Property.

3.6 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 3.6 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.

3.6.1 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 3.6.1 and 3.6.2 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 3.6.1 The CITY and OWNER acknowledge that the timelines set forth in this Section 3.6.1 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.

3.6.2 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. If CITY is unable or unwilling to acquire Non-Construction Agreement Offsite Property, then OWNER is relieved of any condition of approval or requirements requiring the acquisition of such Non-Construction Agreement Offsite Property, and the CITY shall not refuse to issue building permits or occupancy permits based on the failure to acquire such Non-Construction Agreement Offsite Property.

3.7 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.

3.8 Tentative Parcel Maps; Extension. With respect to applications by OWNER for tentative parcel 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 expiration, cancellation, or termination of this Agreement.

3.9 Specific Plan Charge. Pursuant to Government Code section 65456, the City Council may consider adopting a specific plan charge upon persons seeking CITY approvals that are required to be consistent with the Specific Plan. Any such charges shall, in the aggregate, defray, but not exceed, the estimated cost of preparation, adoption, and administration of the Specific Plan, including costs incurred pursuant to the California Environmental Quality Act (Pub. Resources Code, §§ 21000 et seq.). As nearly as can be estimated, the charges shall be a prorated amount in accordance with the applicant's relative benefit derived from the Specific Plan. If such charges are adopted, the CITY shall use such charges to reimburse the OWNER who originally paid the cost of preparing the Specific Plan, including costs incurred pursuant to the California Environmental Quality Act (Pub. Resources Code, §§ 21000 et seq.) to the extent the OWNER paid more than its relative benefit from the Specific Plan. Such charges, if adopted, shall be imposed on persons seeking CITY approvals that are required to be consistent with the Specific Plan, to the extent such person(s) has/have not entered into a reimbursement agreement with, and satisfactory to, the person(s) originally responsible for the cost of preparing the Specific Plan, including costs incurred pursuant to CEQA.

#### 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 building (subject to the application/use of available fee deferrals or credits), 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

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

4.3.1 Timely Construction of Public Infrastructure. The phasing of the area wide infrastructure construction within the Ontario Ranch area shall be as approved by the CITY. OWNER shall be responsible for the timely construction and completion of all public infrastructure required for the Project as shown on the attached Exhibits "F-1" through "F-6" and any and all tentative parcel map conditions. Unless otherwise specified in the Parcel Map conditions, and subject to the provisions of Section 3.6, all other required Improvements for each Parcel Map, shall be completed and operational prior to, and as a condition precedent to, OWNER requesting and CITY's granting of a final occupancy permit for any buildings to be constructed on the Property. All Infrastructure and Improvements shall be completed as required by the Subdivision Agreement/Parcel Map conditions for Parcel Map No.19904.

4.3.2 Availability and Use of Recycled Water. OWNER 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.

4.3.3 Construction of DIF Program Infrastructure To the extent OWNER is required to construct and completes construction of public improvements that are included in CITY's Development Impact Fee Program CITY agrees that CITY shall issue DIF Credit and DIF Reimbursement in accordance with the provisions of a separate Fee Credit Agreement between CITY and OWNER. Limitations 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. OWNER may also be eligible to receive reimbursement from DIF collected by CITY and paid by other development that benefits from OWNER's construction of DIF Program Infrastructure. Any such DIF Reimbursement shall be subject to a Fee Credit Agreement between CITY and OWNER. 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 Public Services Funding Fee.

4.4.1 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 each Project in a timely manner,

OWNER shall pay to CITY a "Public Services Funding Fee." The Public Services Funding Fee shall apply to non-residential uses as set forth below.

4.4.2 Public Services Funding Fee Amount. OWNER shall pay a Public Services Funding fee in a single installment payment in the amount of Sixty One Cents (\$.61) per square foot of each non-residential building. The single installment for non-residential uses shall be due and payable on a building-by-building basis 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, 2020. 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 31<sup>st</sup>, before the Single Installment amount is automatically increased.

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

4.5.1 Effectiveness of Agreement. Notwithstanding anything else set forth in this Agreement, CITY and OWNER each acknowledge, confirm, and agree, that (i) the City approval of this Agreement and (ii) the effectiveness of this Agreement, in each case, is conditioned upon OWNER's admission to NMC Builders as a "Member" thereof pursuant to the terms and conditions of the operating agreement of NMC Builders. OWNER and CITY agree that OWNER shall become a Member of NMC Builders within 30 days of the effective date of this Agreement.

4.5.2 Assigned Net MDD/Water Availability Equivalents. OWNER acknowledges that the City has agreed with NMC Builders 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 and/or OWNER. OWNER acknowledges that the provisions of the Construction Agreement Amendment require that the City shall not 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, except to the bearer of a Certificate of Net MDD Water Availability.

4.5.3 Requirement for NMC Builders LLC Membership as a Phase 2 Water Member. OWNER and CITY agree that OWNER's payment to CITY required by Section 4.5.4 below represents OWNER's contribution to the funding required for the future construction of the Phase 2 Water Improvements and the availability of additional Net MDD Water Availability required for the development of the Property described in Exhibit A of this Agreement.

4.5.4 CITY issuance of Water Availability Equivalents. Within 30 days after the effectiveness of this Development Agreement OWNER shall pay or have paid to City the applicable Phase 2 Water Participation Fee. The Phase 2 Water Participation Fee shall be calculated based on the amount of the Regional Water DIF for the applicable land use category and the square footage of the applicable buildings. The applicable planning areas of the Colony Commerce Center East Specific Plan to be developed by OWNER

equals 1,685,420 Square Feet. The calculated amount of the Phase 2 Water Participation Fee shall be paid to City within 30 days after the effective date of this Agreement or, at OWNER's option, the Phase 2 Water Participation Fee may be paid to City in two (2) installments. The first installment shall be fifty percent (50%) of the total Phase 2 Water Participation Fee and such first installment shall be due and payable to City within 30 days after the effective date of this Development Agreement. The second installment shall be the remaining amount of the Phase 2 Water Participation Fee and such second installment shall be due and payable to City within one (1) year after the payment of the first installment, or prior to, and as a condition precedent to, the recording of any final Parcel Map for the Project, whichever occurs first. Upon OWNER's complete payment to CITY of the Phase 2 Water Participation Fee CITY shall issue a Certificate of Water Availability Equivalents in the form attached hereto as Exhibit G. Such Water Availability Equivalents Certificate shall be issued by CITY within thirty (30) days of the receipt of such required payment. CITY and OWNER agree that the amount of Water Availability Equivalents issued to OWNER shall be based on the maximum projected need for Water Availability Equivalents required for the Property based upon water demand factors and assumptions listed in Exhibit C-2R of the Phase 2 Water Amendment to the Construction Agreement "Water Demand Equivalents by Land Use" for each land use category. Additionally, within five (5) business days of CITY's receipt of OWNER's payment as required under this Section 4.5.2, CITY shall issue a certificate of DIF Credit against OWNER's DIF obligations in the Regional Water DIF Category.

4.5.4.1 The parties acknowledge that OWNER is expected to receive assignment of a DIF credit Certificate in the Regional Water DIF category from an affiliated entity that has been issued by CITY.

CITY and OWNER agree that OWNER may possess a Certificate of DIF Credit in the Regional Water DIF category previously issued by CITY to an affiliated entity. CITY agrees that OWNER may utilize such Certificate of DIF Credit in the Regional Water DIF category in-lieu of paying to CITY the full amount of OWNER's applicable Phase 2 Water Participation Fee for the Project. OWNER and CITY agree that the amount of such assigned Certificate of DIF Credit in the Regional Water category may not be sufficient for full payment of both installments of OWNER's projected Phase 2 Water Participation Fee and that OWNER shall pay the net remaining amount due to CITY as required by Section 4.5.3. OWNER shall be entitled to apply the amount of any assigned Certificate of DIF Credit to the First Installment and the Second Installment payments as applicable, until the amount of the Phase 2 Water Participation fee exceeds the amount of OWNER's Certificate of DIF Credit.

4.5.5 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.

#### 4.6 Compliance with Public Benefits Requirements.

4.6.1 Failure to Provide Public Benefits. In the event OWNER fails or refuses to comply with any condition referenced in Section 4.1 through 4.5, 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 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. Nothing herein shall waive Owner's right to assert a default (or failure to perform) by the City has excused Owner's performance under this Agreement.

#### 5. FINANCING OF PUBLIC IMPROVEMENTS.

5.1 Financing Mechanism(s). OWNER agrees that, prior to the recordation of any Parcel Map, the property subject to such Parcel Map shall be included in a CFD to finance City services through annual special taxes that will initially be \$.30 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. Depending on the fiscal year that the CFD is formed and the CFD tax is levied, the annual special taxes may be higher. 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. The parties hereto, by this provision, shall not 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.

#### 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:

- (a) Recommendation of the Planning staff;
- (b) Affirmative vote of at least four (4) members of the Planning Commission; or
- (c) 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 this Agreement 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 the OWNER or to any successor in interest of OWNER. 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 and OWNER 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, 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 Subsection 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 and Specific 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. CITY has also determined that this Agreement is consistent with the Specific Plan, as such Specific Plan exists as of the Effective Date, and that the Specific Plan meets all requirements of law. OWNER has reviewed the General Plan and the Specific 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,, the Specific 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, to the extent 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, to the extent 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 during OWNER'S period of ownership of the Property, including, but not limited to, soil and groundwater conditions caused by OWNER but not including any CITY liability related to South Archibald Trichloroethylene (TCE) Plume , 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. CITY agrees that it will not enter into a settlement of any matter described in Section 9.2, 9.3 and 9.4 without the consent of OWNER, which shall not be unreasonably withheld.

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

## 10. MORTGAGEE PROTECTION.

10.1 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

(e) In the event of a default by Owner, any Mortgagee shall have the right to remedy, or cause to be remedied, such default within sixty (60) days following the later to occur of (i) the date of Mortgagee's receipt of the notice referred to in Section 10.1(b) above, or (ii) the expiration of the period provided herein for Owner to remedy or cure such default, and City shall accept such performance by or at the insistence of the Mortgagee as if the same had been timely made by Owner; provided, however, that (i) if such default is not capable of being cured within the timeframes set forth in this Section and Mortgagee commences to cure the default within such timeframes, then Mortgagee shall have such additional time as is required to cure the default so long as Mortgagee diligently prosecutes the cure to completion and (ii) if possession of the Property (or portion thereof) is required to effectuate such cure or remedy, the Mortgagee shall be deemed to have timely cured or remedied if it commences the proceedings necessary to obtain possession thereof within sixty (60) days after receipt of the copy of the notice, diligently pursues such proceedings to completion, and, after obtaining possession, diligently completes such cure or remedy.

## 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 shall 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.

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 requested by Owner 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”**

Colony Commerce Ontario East LP,  
a Delaware Limited Partnership

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

**“CITY”**

CITY OF ONTARIO

By: \_\_\_\_\_  
Scott Ochoa  
City Manager

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

ATTEST:

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

APPROVED AS TO FORM:

BEST, BEST & KREIGER LLP

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

STATE OF CALIFORNIA

COUNTY OF \_\_\_\_\_ )

On \_\_\_\_\_, 2019, 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)

**EXHIBIT "A"**  
**TO DEVELOPMENT AGREEMENT**

**Legal Description of Property**

Real property in the City of Ontario, County of San Bernardino, State of California, described as follows:

TENTATIVE PARCEL MAP NO. 19904, BEING A DIVISION OF THE

FOLLOWING: PARCEL A:

THAT PORTION OF GOVERNMENT LOTS 5, 6, 7 AND 8, IN FRACTIONAL SECTION 22, 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 OFFICIAL GOVERNMENT SURVEY, DESCRIBED AS FOLLOWS:

BEGINNING AT A POINT 663.29 FEET WEST OF THE NORTHEAST CORNER OF SAID LOT 5; THENCE EAST TO THE EAST LINE OF SAID LOT 7; THENCE SOUTH ALONG THE EAST LINE OF SAID LOT 7 TO THE SOUTHEAST CORNER OF SAID LOT 7; THENCE SOUTHWESTERLY FOLLOWING THE SOUTHERLY LINE OF LOTS 7 AND 8, AND THE NORTHERLY LINE OF JURUPA RANCHO TO A POINT 118.79 FEET EAST OF A POINT DUE SOUTH OF THE POINT OF BEGINNING; THENCE WEST 118.79 FEET TO THE POINT DUE SOUTH OF THE POINT OF BEGINNING; THENCE NORTH TO THE POINT OF BEGINNING.

EXCEPT THEREFROM AN UNDIVIDED 1/2 INTEREST IN THE OIL AND MINERAL RIGHTS ON, IN OR UNDER SAID LAND AS PROVIDED IN AGREEMENT BETWEEN HELEN CURRIE MORGAN, ET AL., AND OSCAR IMBACH AND RUTH M. IMBACH, HUSBAND AND WIFE DATED MAY 8, 1944 AND RECORDED IN THE OFFICE OF THE COUNTY RECORDER OF SAN BERNARDINO COUNTY ON JUNE 10, 1944.

NOTE: A CONVEYANCE BY THOMAS M. MORGAN TO A TRUST WAS RECORDED NOVEMBER 18, 1992, INSTRUMENT NO. [92-477796](#), OFFICIAL RECORDS:

ALSO EXCEPT A PORTION OF GOVERNMENT LOTS 5 AND 8 IN SECTION 22, TOWNSHIP 2 SOUTH, RANGE 7 WEST, SAN BERNARDINO MERIDIAN, AND MORE PARTICULARLY DESCRIBED AS FOLLOWS:

BEGINNING AT A POINT ON THE NORTH LINE OF LOT 5, DISTANT 1878.69 FEET NORTH 89° 36' WEST FROM THE INTERSECTION OF THE EAST LINE OF SAID SECTION 22 AND SAID NORTH LINE OF LOT 5 PRODUCED EASTERLY; SAID POINT BEING 558.69 FEET WEST OF THE NORTHEAST CORNER OF SAID LOT 5; THENCE NORTH 89° 36' WEST ALONG SAID NORTH LINE OF LOT 5 A DISTANCE OF 104.60 FEET; THENCE SOUTH 0° 06' WEST, A DISTANCE OF 651.22 FEET; THENCE ALONG A 16,100 FOOT RADIUS CURVE TO THE LEFT FROM A TANGENT WHICH BEARS NORTH 10° 23' 20" EAST A DISTANCE OF 659.10 FEET TO THE POINT BEGINNING.

ALSO EXCEPT THAT PORTION OF LAND LYING WESTERLY OF THE EAST LINE OF THAT PROPERTY CONVEYED TO SOUTHERN CALIFORNIA EDISON COMPANY BY

**EXHIBIT "A" CONTINUED  
TO DEVELOPMENT AGREEMENT**

**Legal Description of Property**

DEED RECORDED DECEMBER 20, 1974, IN [BOOK 8581, PAGE 201](#), OFFICIAL RECORDS.

EXCEPTING THEREFROM THAT PORTION CONVEYED TO THE CITY OF ONTARIO, A MUNICIPAL CORPORATION AS MORE FULLY DESCRIBED IN GRANT DEED RECORDED APRIL 22, 2008 AS INSTRUMENT NO. [08-178326](#), OF OFFICIAL RECORDS.

PARCEL B:

PARCEL ONE:

ALL THAT PORTION OF LOT 6, SECTION 22, TOWNSHIP 2 SOUTH, RANGE 7 WEST, SAN BERNARDINO BASE AND MERIDIAN, IN THE COUNTY OF SAN BERNARDINO, STATE OF CALIFORNIA, ACCORDING TO THE OFFICIAL PLAT THEREOF, DESCRIBED AS FOLLOWS:

COMMENCING 120 FEET EAST OF THE NORTHWEST CORNER OF SAID LOT 6, IN THE NORTHEAST 1/4 OF THE SOUTHEAST 1/4 OF SAID SECTION; THENCE SOUTH 726 FEET; THENCE EAST 1,200 FEET TO EAST BOUNDARY LINE OF SAID LOT; THENCE NORTH 726 FEET; THENCE WEST 1,200 FEET TO THE POINT OF BEGINNING.

EXCEPTING THAT PORTION CONVEYED TO THE COUNTY OF SAN BERNARDINO FOR ROAD PURPOSES BY DEED RECORDED FEBRUARY 20, 1908, IN [BOOK 404, PAGE 398](#), OF DEEDS.

PARCEL TWO:

ALL THAT PORTION OF LOTS 6 AND 7, SECTION 22, TOWNSHIP 2 SOUTH, RANGE 7 WEST, SAN BERNARDINO BASE AND MERIDIAN, IN THE COUNTY OF SAN BERNARDINO, STATE OF CALIFORNIA, ACCORDING TO THE OFFICIAL PLAT THEREOF, DESCRIBED AS FOLLOWS:

BEGINNING AT THE SOUTHEAST CORNER OF THE NORTHWEST 1/4 OF THE SOUTHEAST 1/4 OF SAID SECTION; THENCE EAST TO THE EAST LINE OF SAID LOTS; THENCE NORTH ALONG THE EAST LINE OF SAID LOTS 6 AND 7 TO A POINT 726 FEET SOUTH OF THE NORTHEAST CORNER OF SAID LOT; THENCE AT RIGHT ANGLES WEST TO A POINT IN THE WEST LINE OF SAID LOT 6, 726 FEET SOUTH OF THE NORTHWEST CORNER OF SAID LOT; THENCE SOUTH THE POINT OF BEGINNING.

PARCEL THREE:

THAT PORTION OF GOVERNMENT LOT 6 AND THE NORTHWEST 1/4 OF THE SOUTHEAST 1/4, BOTH OF SECTION 22, TOWNSHIP 2 SOUTH, RANGE 7 WEST, SAN BERNARDINO BASE AND MERIDIAN, IN THE COUNTY OF SAN BERNARDINO, STATE OF CALIFORNIA, ACCORDING TO THE OFFICIAL PLAT THEREOF, DESCRIBED AS FOLLOWS:

**EXHIBIT "A" CONTINUED  
TO DEVELOPMENT AGREEMENT**

**Legal Description of Property**

BEGINNING AT A POINT ON THE NORTH LINE OF THE SOUTHEAST 1/4 OF SAID SECTION 22, WHICH IS NORTH 89 DEG. 36' 00" WEST, 1,849.01 FEET, FROM THE NORTHEAST CORNER OF SAID SOUTHEAST 1/4, SAID POINT BEING THE MOST NORTHERLY POINT ON THE CENTER LINE OF THE 200 FOOT STRIP OF LAND DESCRIBED IN THE DEED TO SAN BERNARDINO COUNTY FLOOD CONTROL DISTRICT, RECORDED OCTOBER 28, 1944, IN [BOOK 1716, PAGE 328](#), OFFICIAL RECORDS, SAID POINT ALSO BEING THE BEGINNING OF A NON-TANGENT CURVE CONCAVE WESTERLY HAVING A RADIUS OF 15,500.00 FEET, A RADIAL LINE THROUGH SAID POINT BEARS SOUTH 86 DEG. 52' 41" EAST; THENCE SOUTHERLY 1,312.06 FEET, ALONG THE ARC OF SAID CURVE; THENCE SOUTH 07 DEG. 58' 19" WEST, 12.60 FEET TO A POINT IN THE SOUTH LINE OF THE NORTHWEST 1/4 OF THE SOUTHEAST 1/4 OF SAID SECTION 22, WHICH IS NORTH 89 DEG. 36' 00" WEST, 1,979.60 FEET FROM THE SOUTHEAST CORNER OF THE NORTH 1/2 OF SAID SOUTHEAST 1/4; THENCE SOUTH 89 DEG. 36' 00" EAST, 663.29 FEET, ALONG SAID SOUTH LINE, TO THE SOUTHEAST CORNER OF SAID NORTHWEST 1/4; THENCE NORTH 594.00 FEET ALONG THE EAST LINE OF SAID NORTHWEST 1/4; THENCE EAST 120.00 FEET TO A POINT WHICH IS 1,200 FEET WEST OF THE EAST LINE OF SAID SOUTHEAST 1/4; THENCE NORTH 726.00 FEET, PARALLEL WITH THE EAST LINE OF SAID SOUTHEAST 1/4 TO THE NORTH LINE THEREOF; THENCE WEST 649.01 FEET, ALONG SAID NORTH LINE, TO THE POINT OF BEGINNING.

EXCEPTING THEREFROM ANY PORTION OF SAID PROPERTY LYING WITHIN THAT CERTAIN PROPERTY CONVEYED TO THE SAN BERNARDINO COUNTY FLOOD CONTROL DISTRICT, BY

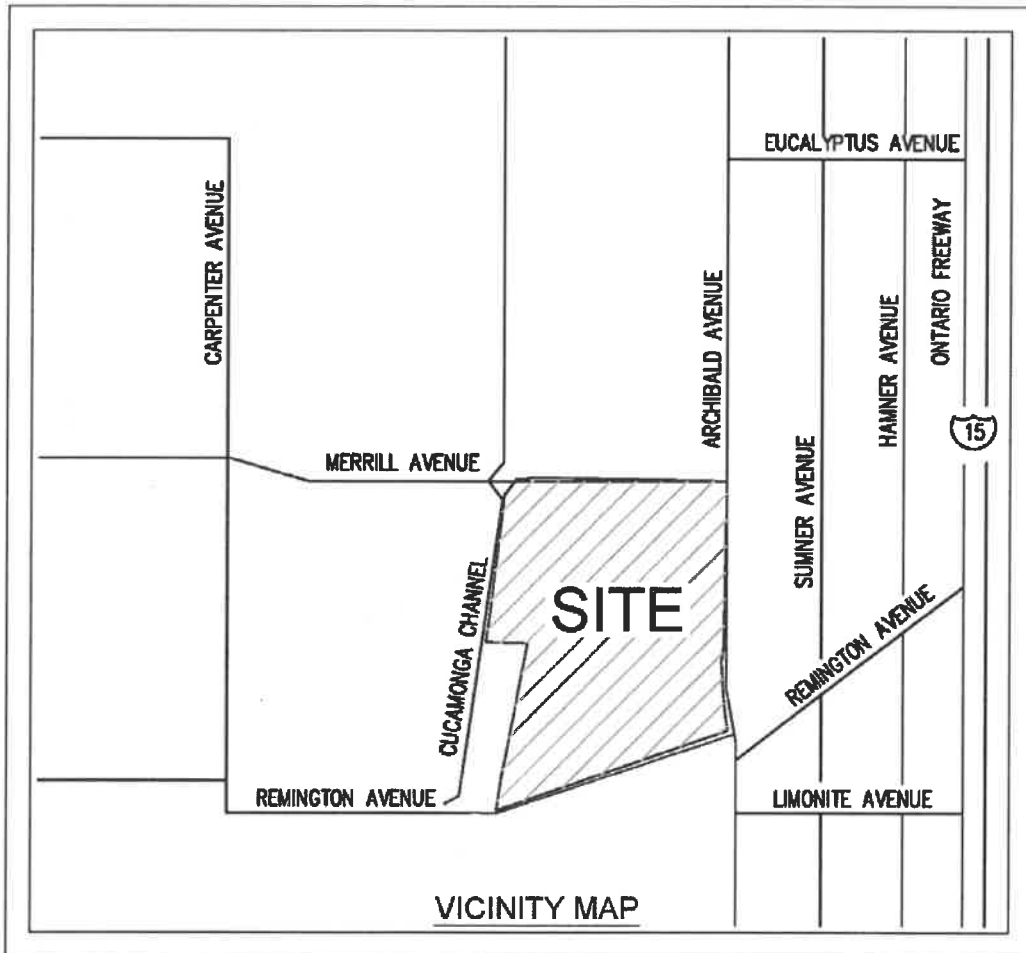
DEED RECORDED OCTOBER 28, 1944, IN [BOOK 1716, PAGE 328](#), OFFICIAL RECORDS.

ALSO EXCEPTING THEREFROM ANY PORTION THEREOF LYING WITHIN THAT CERTAIN PROPERTY CONVEYED TO THE SAN BERNARDINO COUNTY FLOOD CONTROL DISTRICT, BY DEED RECORDED SEPTEMBER 27, 1977, IN [BOOK 9271, PAGE 394](#), OFFICIAL RECORDS.

APN: 0218-311-02-0-000, 0218-311-03-0-000, 0218-311-08-0-000 and 0218-311-10-0-000

**EXHIBIT "B"**  
**TO DEVELOPMENT AGREEMENT**

**Map showing Property and its location**



**EXHIBIT "C"  
TO DEVELOPMENT AGREEMENT**

**Existing Development Approvals**

On March 27, 2018 the Planning Commission:

- a) Issued Resolution No. issued Resolution PC18-029 recommending City Council certification of the Colony Commerce Center East Specific Plan EIR (SCH#2017031048).
- b) Issued Resolution PC18-030 recommending to City Council approval of the Colony Commerce Center East Specific Plan (File No. PSP16-003).

On April 17, 2018, the City Council:

- a) Issued Resolution 2018-034 for the certification of the Colony Commerce Center East Specific Plan EIR (SCH#2017031048).

On May 1, 2018, the City Council:

- a) Adopted Ordinance 3097 approving the Colony Commerce Center East Specific Plan (File No. PSP16-003).

On January 22, 2019, the Planning Commission:

- a) Issued Resolution No. 2019-XXX for the approval of Tentative Parcel Map 19904 (File No. PMTT18-006).
- b) Issued Resolution No. 2019-XXX for the approval of Development Plan (File No. PDEV18-014).
- c) Issued Resolution No. 2019-XXX recommending City Council approval of the Development Agreement (File No. PDA18-002).

**EXHIBIT "D"**  
**TO DEVELOPMENT AGREEMENT**

**Existing Land Use Regulations**

These documents are listed for reference only:

1. Colony Commerce Center East Specific Plan EIR, Resolution No. 2018-034
2. Colony Commerce Center East Specific Plan (File No. PSP16-003, Ordinance No. 3097)
3. 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"**

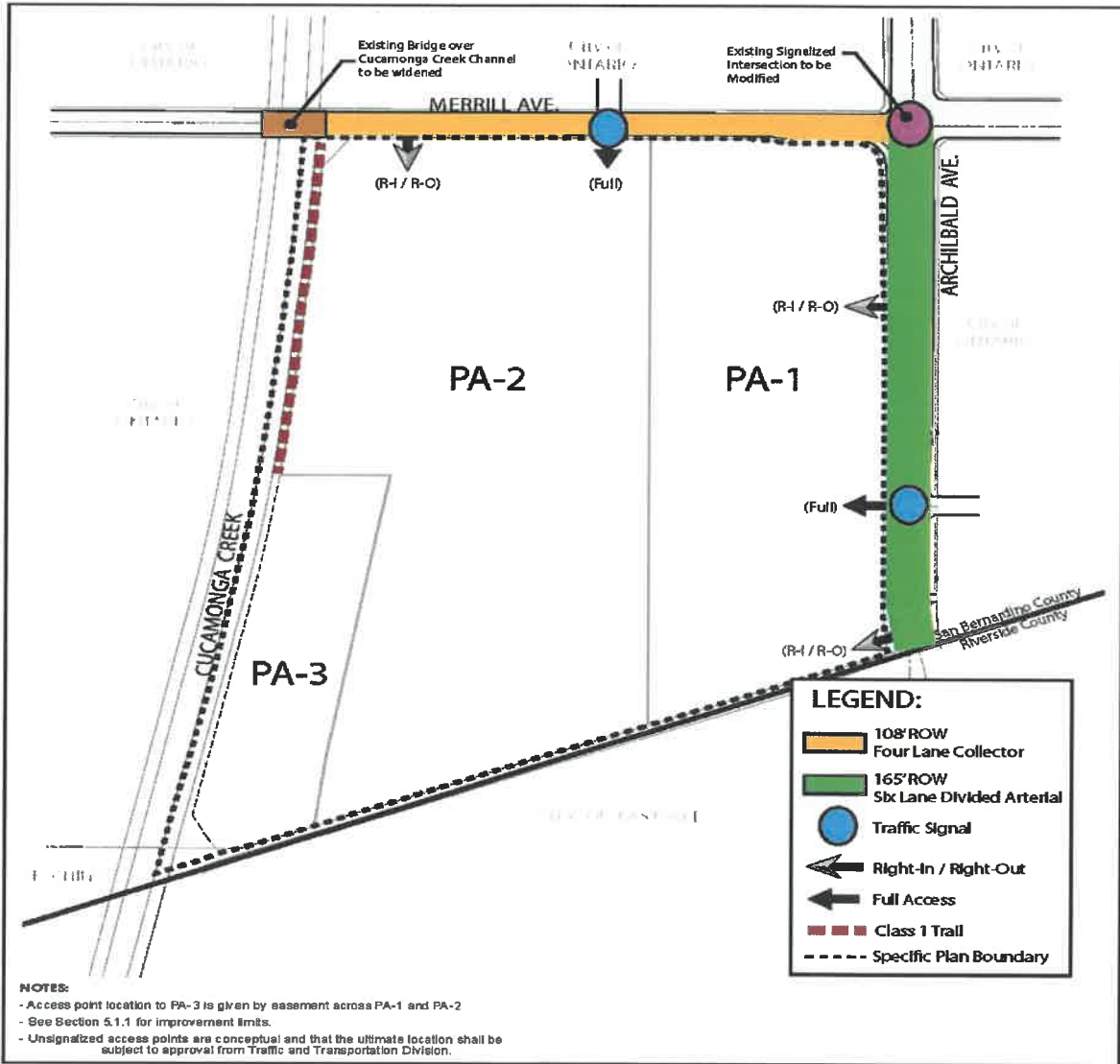
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# EXHIBIT "F-1"

## Required Street and Circulation System Infrastructure Improvements

### Exhibit "F-1"

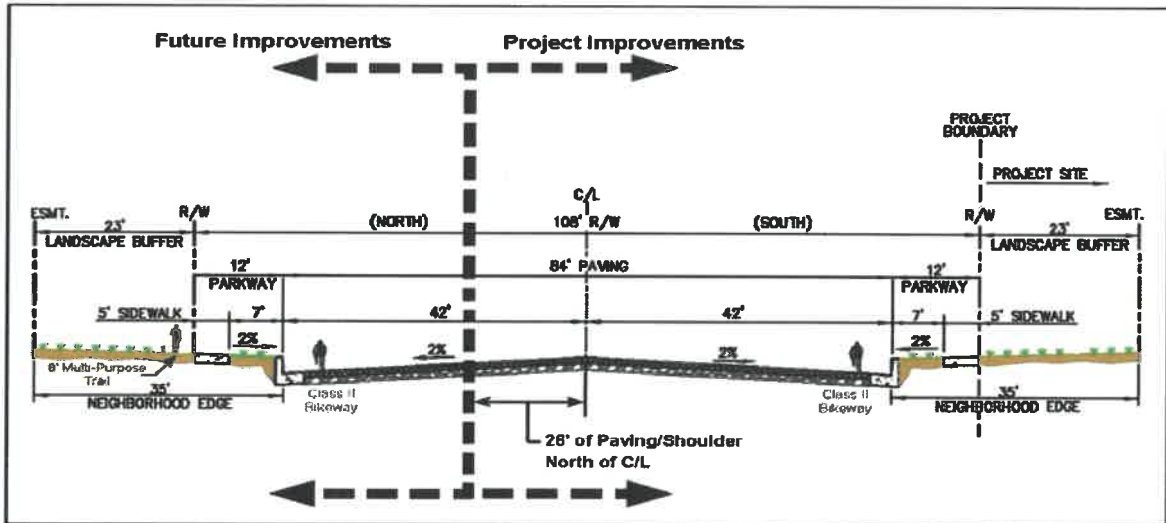
### Required Street Circulation System Infrastructure Improvements



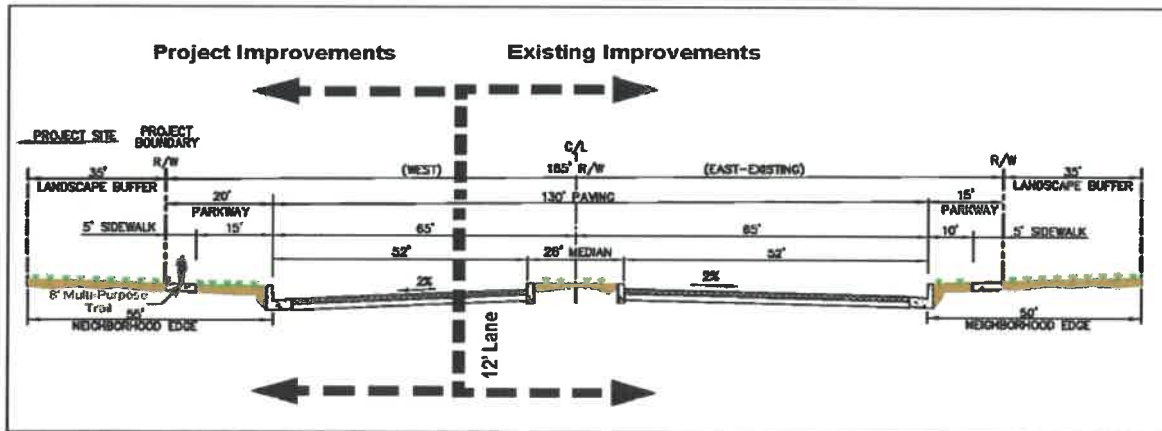
## EXHIBIT "F-1a"

### Streets and Circulation Improvements

**Exhibit "F-1a"**



**Typical Street Cross Section - Merrill Avenue (108' ROW)**



**Typical Street Cross Section - Archibald Avenue (165' ROW)**

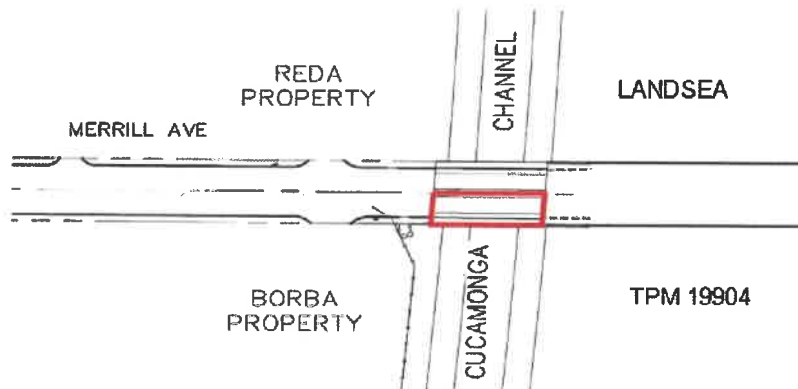
**EXHIBIT "F-1b"**

**Merrill Avenue Bridge Improvements**

**Exhibit "F-1b"**

DEVELOPMENT AGREEMENT

**BRIDGE EXPANSION**

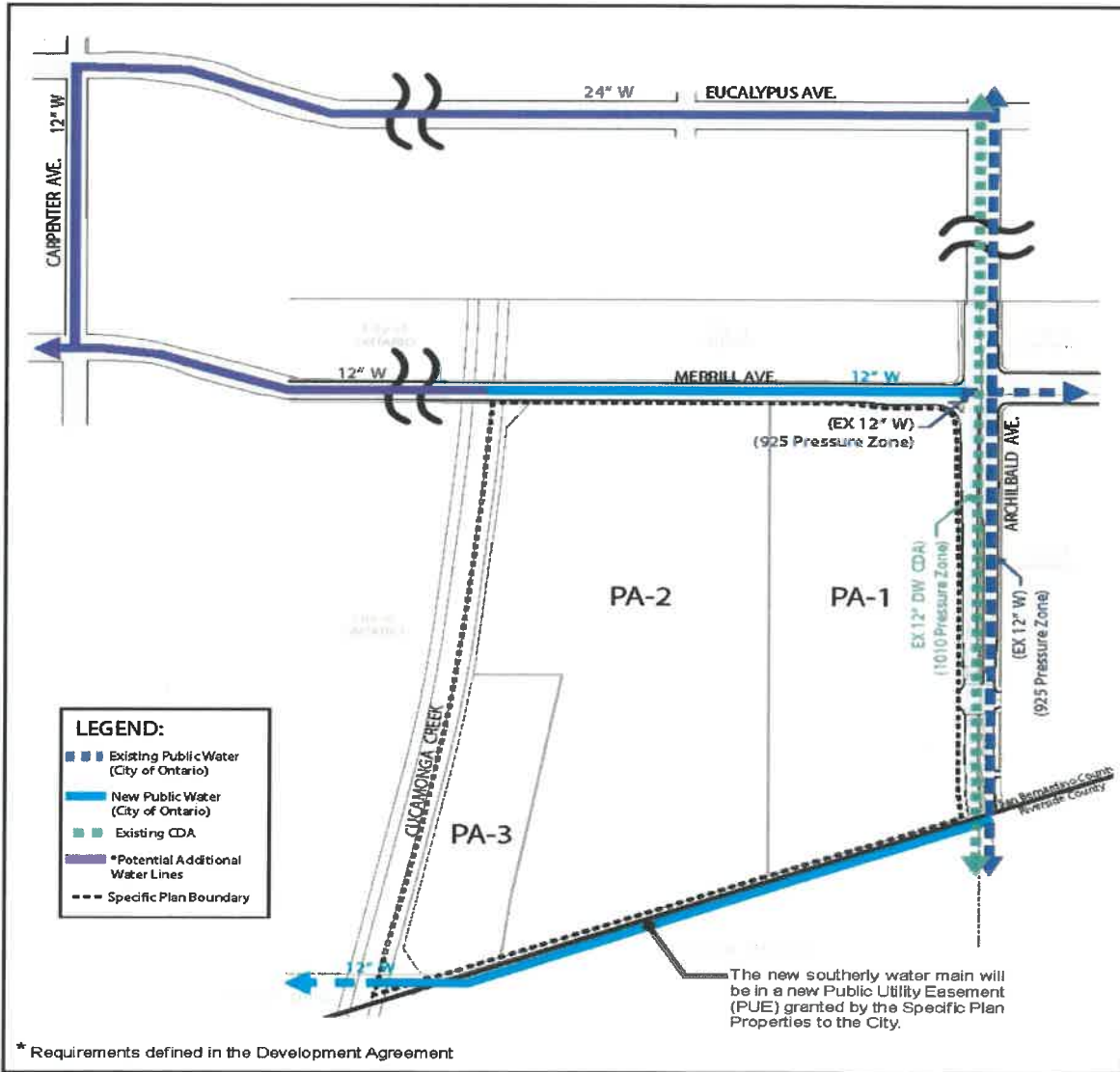


## EXHIBIT "F-2"

### Required Water Infrastructure Improvements

#### Exhibit "F-2"

#### Required Water Infrastructure Improvements



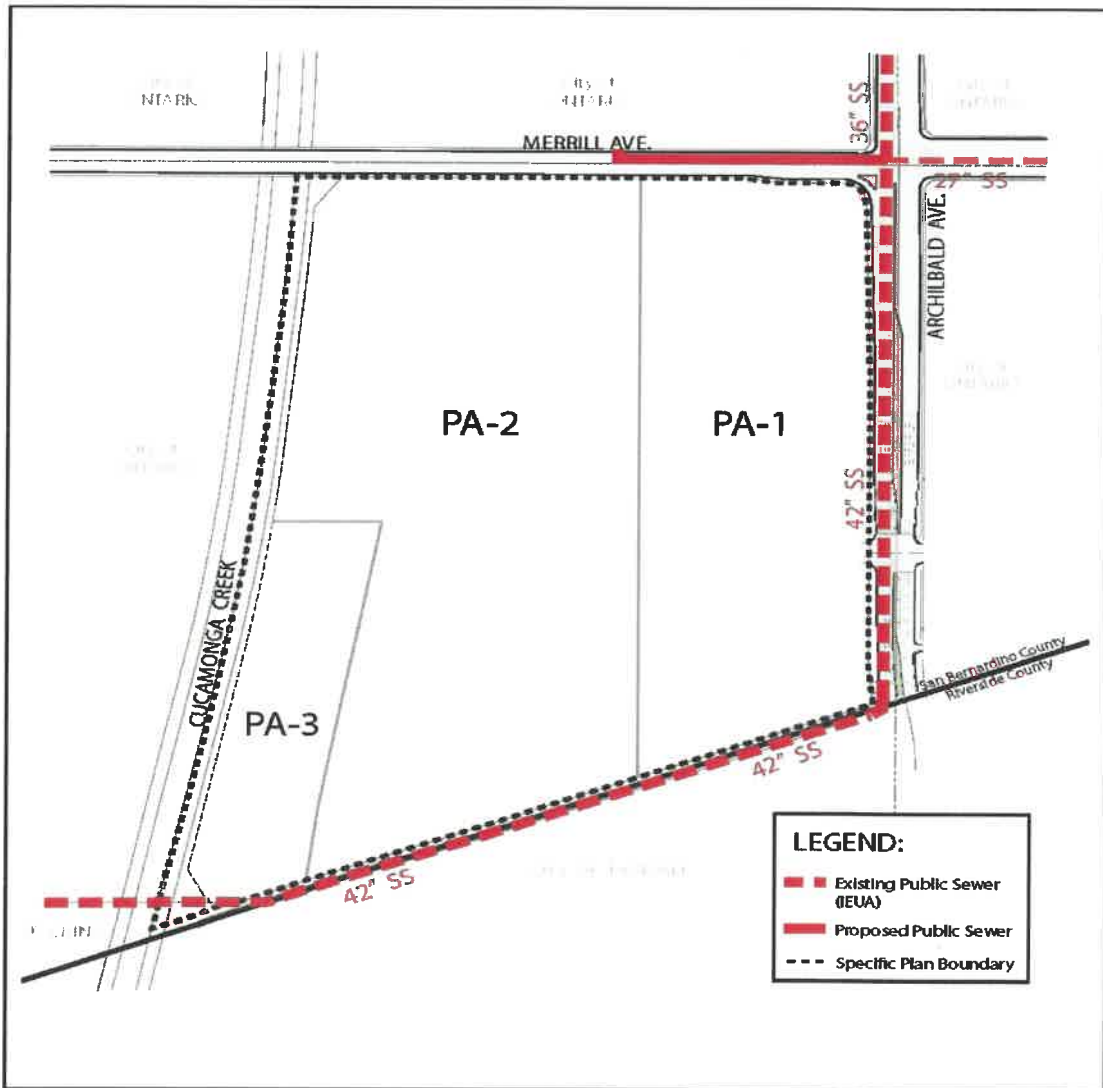
Source: David Evans & Associates  
 NOTE: Reference the City's most current Master Plan for sizing/alignment.

N. T. S.

# EXHIBIT "F-3 "

## Required Sewer Infrastructure Improvements

**Exhibit "F-3"**  
**Required Sewer Infrastructure Improvements**



Source: David Evans & Associates

NOTE: Reference the City's most current Master Plan for sizing/alignment.

PA-1 and PA-2 will be served by an onsite private sewer system. The Onsite private sewer system and PA-1 and PA-2 will be designed in such to minimize the number of new connection points to the 42-inch IEUA Eastern Trunk Sewer to as few as possible.

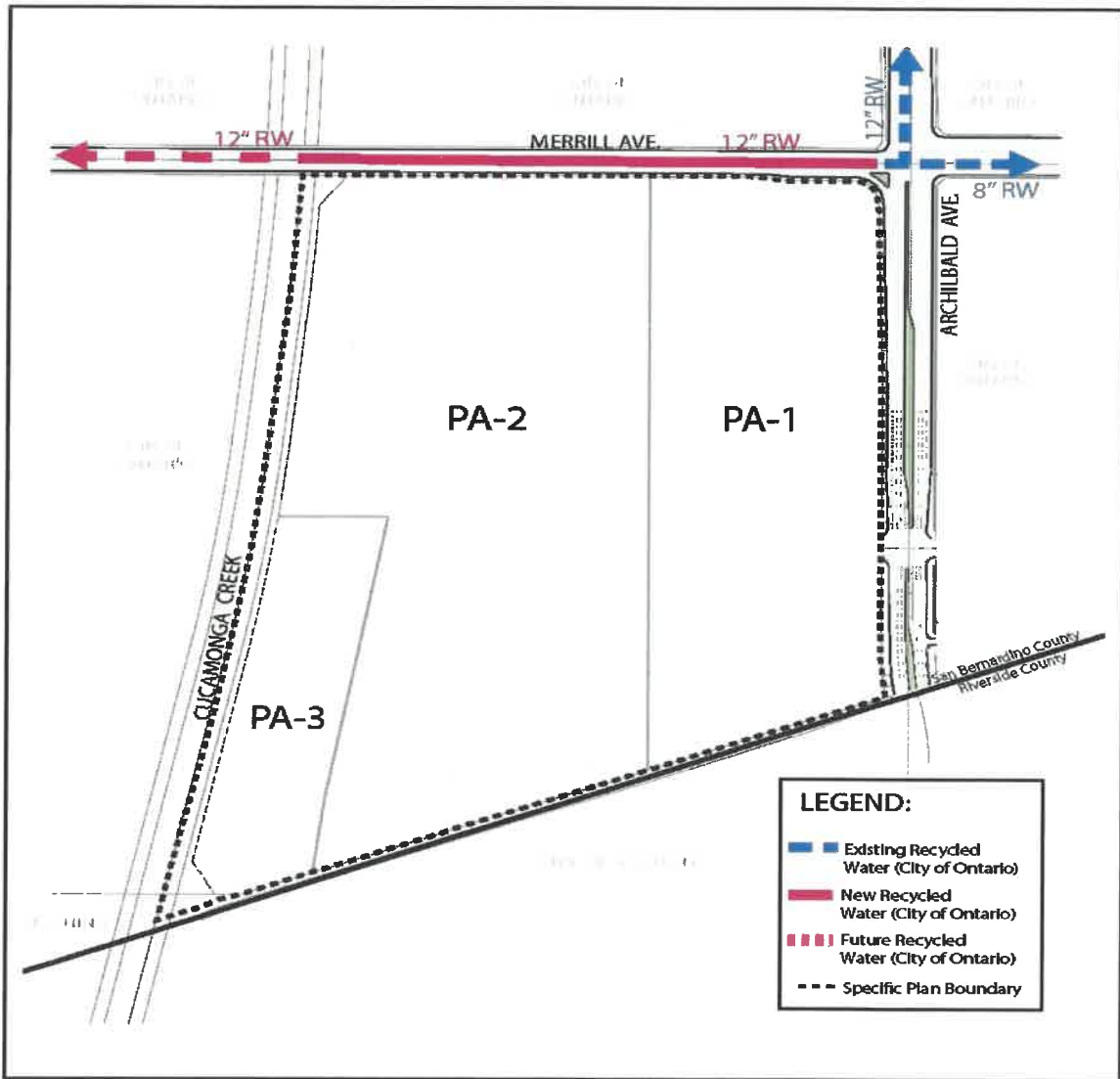
N. T. S.

# EXHIBIT "F-4"

## Required Recycled Water Infrastructure Improvements

### Exhibit "F-4"

### Required Recycled Water Infrastructure Improvements



Source: David Evans & Associates

NOTE: Reference the City's most current Master Plan for sizing/alignment.  
Access for Recycled Water service to PA-3 is given by easement across PA-1 and PA-2

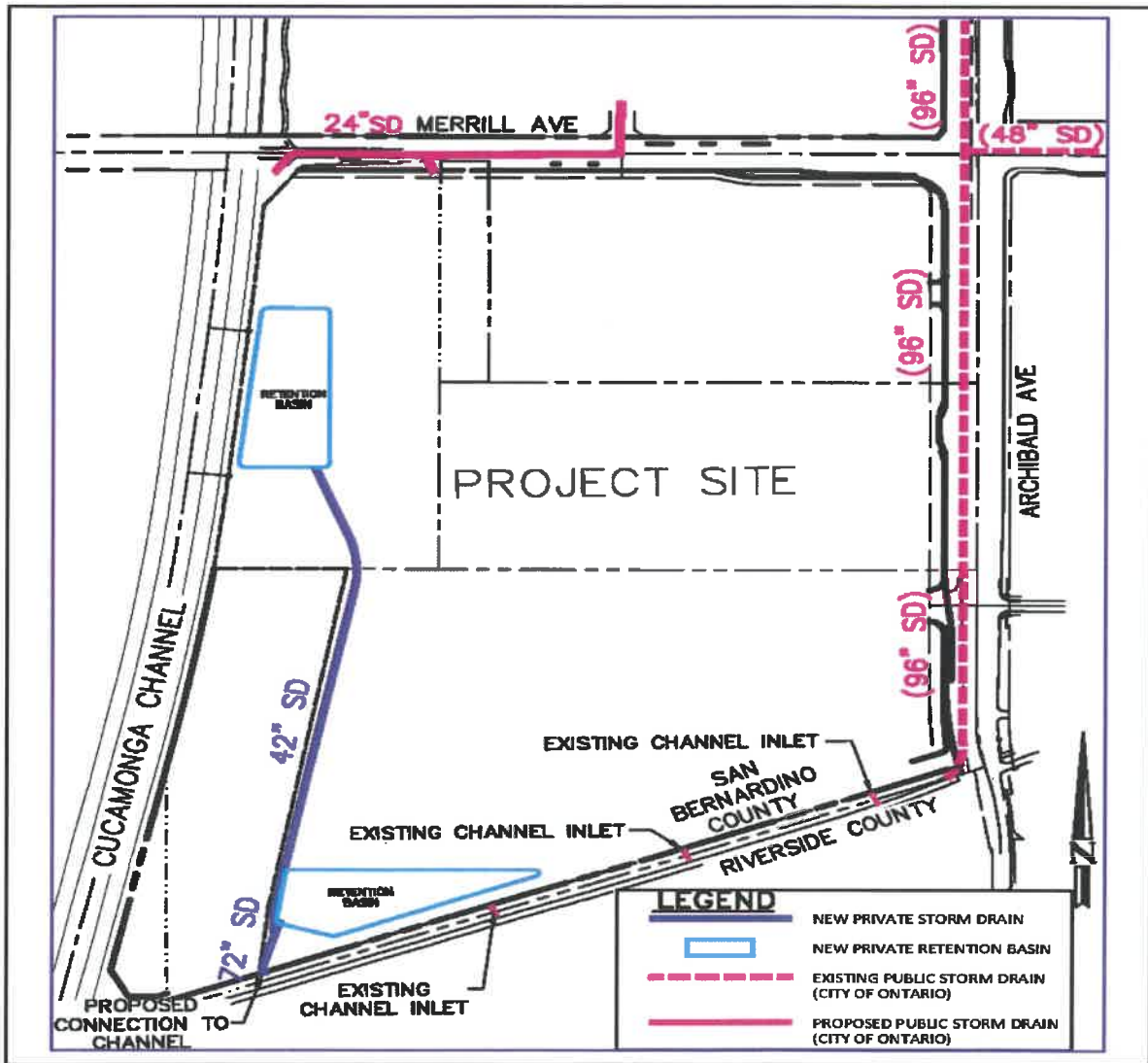
N. T. S.

## EXHIBIT "F-5"

### Required Storm Water Drainage Infrastructure Improvements

#### Exhibit "F-5"

#### Required Storm Drainage Infrastructure Improvements



Source: David Evans & Associates  
 NOTE: Reference the City's most current Master Plan for sizing/alignment.

N. T. S.

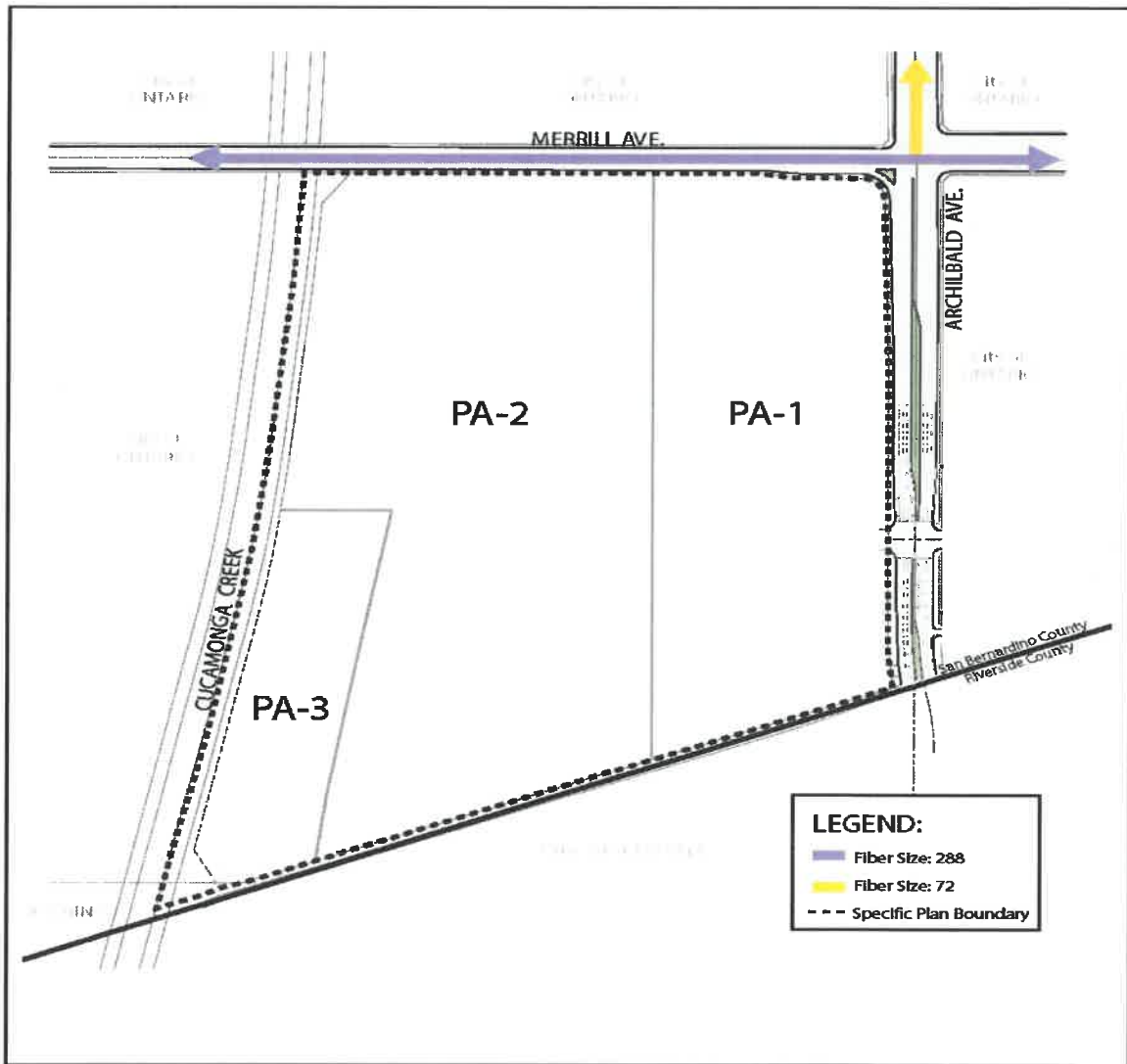


# EXHIBIT "F-6"

## Required Fiber Optic Communications System Infrastructure Improvements

### Exhibit "F-6"

### Required Fiber Optic Communications System Infrastructure Improvements



Source: City of Ontario, Figure 7 (Fiber Size and Footages)  
NOTE: Reference the most current Master Plan for sizing/alignment.

N. T. S.

**EXHIBIT "G"**  
**TO DEVELOPMENT AGREEMENT**

FORM OF CERTIFICATE OF NET MDD AVAILABILITY

Pursuant to Section \_\_\_\_ of this Agreement between the City of Ontario, a California municipal corporation, and Colony Commerce Ontario East, a Delaware Limited Partnership, hereinafter called "OWNER", the terms and definitions of which are hereby incorporated herein by this reference and hereinafter called "Agreement", the City of Ontario hereby certifies based on CITY receipt of payment of OWNER's share of the funding for the Phase 2 Water Improvements, that OWNER is entitled to the following Net MDD Water Availability.

Amount of Net MDD \_\_\_\_\_ gpm

\_\_\_\_\_  
Scott Ochoa, City Manager

Dated: \_\_\_\_\_

**Exhibit "H"**

**FORM OF CERTIFICATE OF REGIONAL OR LOCAL ADJACENT DIF CREDIT**

Pursuant to Section 4.5.3 of this Agreement by and between the City of Ontario and Colony Commerce Ontario East LP, dated \_\_\_\_\_, 2019, the terms and definitions of which are hereby incorporated herein by this reference and hereinafter called the "Development Agreement", the City of Ontario hereby certifies that OWNER is entitled to the following amount and nature of DIF Credits in the Regional Water DIF Infrastructure Category:

Amount of Credit: \$ \_\_\_\_\_

\_\_\_\_\_  
Scott Ochoa, City Manager

Dated: \_\_\_\_\_

**Exhibit "I-1"**

**ONTARIO RANCH  
WATER SUPPLY PHASING PLAN**

<b><u>Phase 2</u></b>	<b><u>Water Availability Equivalency</u></b>	<b><u>Estimated Net MDD Available<sup>1</sup></u></b>
<b><u>Phase 2 A</u></b>		
<b><u>Supply &amp; Storage</u></b>		
1. 1 - Additional Ground Water Well and Collection lines - Design and Construction	8,250 gpm <sup>2</sup>	<b>7,750 gpm<sup>2</sup></b>
<b><u>Pipelines (Transmission &amp; Distribution)<sup>2</sup></u></b>		
2. 925 Zone Transmission lines – Design and Construction		
3. Temporary Pressure Reducing Station <sup>3</sup> – Design and Construction		
<b><u>Phase 2B</u></b>		
<b><u>Supply &amp; Storage</u></b>		
4. 1 – Additional Ground Water Well and Collection lines – Design and Construction	10,500 gpm <sup>2</sup>	<b>9,860 gpm<sup>2</sup></b>
5. 1 – 6 million gallon Reservoir – 925 Zone – Design and Construction		

(1) Upon Completion of the construction of all of the improvements described for each Phase a Certificate of Net MDD Availability shall be issued to Developer for the corresponding amount of Net MDD. Net MDD means the maximum daily demand on the potable water supply, net of the water requirements for public schools and parks. The Water Availability Equivalency includes the estimated requirements for public schools and parks. The amount of Net MDD specified is the cumulative amount for which building permits may be issued upon funding of the corresponding and all preceding Phases of improvements.

(2) The ability of a particular development to utilize Net MDD assigned to it by the Developer will require the completion of design and construction of Master-planned potable and recycled water transmission and distribution pipelines for the respective pressure zone. Other factors may include its location, the particular land use and Water Availability Equivalents assigned to it as specified in Exhibit C-2.

(3) Pressure reducing stations are a component of the pipeline transmission and distribution system.

## Exhibit I-2”

**Available Water Supply - See Exhibit C-1R for Net MDD Available**

**Table A - Water Demand Equivalents By Land Use**

The Ontario Plan  Land Use	Potable Water			Recycled Water	
	Water Demand Factor (ADD)		Water Demand Equivalents (WDE) <sup>2</sup>	Recycled Water Demand Factor <sup>1</sup> (ADD)	Recycled Water Demand Of Total Water Demand
	(gpd/du)	(gpd/ac)	(gpm/unit)	(gpd/ac)	(%)
Detached Dwellings (less than 5 units per acre)	544		0.57	900	28%
Detached or Attached Dwellings (between 5 and 11 units per acre)	464		0.48	1,000	21%
Attached Dwellings (between 11 and 25 units per acre)	323		0.34	1,500	18%
High Density Dwellings (25+ units per acre)	152		0.16	1,500	27%
Commercial Lodging	150		0.16	1,700	50%
Retail/Services Uses		2,200	2.29	2,300	51%
Office Uses		3,400	3.54	2,300	40%
Business Park Uses		2,200	2.29	2,200	50%
Industrial Uses		2,000	2.08	2,200	52%
Institutional Use		2,200	2.29	1,600	42%
Parks		1,000	1.04	1,400	58%
Schools		3,500	3.65	1,600	31%

<sup>1</sup> Recycled Water Demands include irrigation for right-of-way (medians and parkways), neighborhood edge, pocket parks, and common areas.

<sup>2</sup> The WDE is based on the Maximum Day Demand (MDD) with a peaking factor of 1.5 in the NMC for all land use categories.

**Table B - Example Water Supply Calculation**

Land Use	Acres <sup>1</sup> (gross)	Residential Units	WDE Factor (gpm)	Potable MDD (gpm)	Recycled Water ADD (gpm)
<b>Development</b>					
Detached Dwellings (less than 5 units per acre)	1,284	5,061	0.57	2,868	803
Detached or Attached Dwellings (between 5 and 11 units per acre)	369	2,530	0.48	1,223	256
Attached Dwellings (between 11 and 25 units per acre)	194	3,410	0.34	1,147	202
Retail/Services Uses (per acre) <sup>2</sup>	104		2.29	239	166
<b>TOTAL</b>	<b>1,950</b>	<b>11,001</b>		<b>5,477</b>	<b>1,428</b>

Three (3) Wells Are required to Support this example, assuming each well produces 2,000 gpm and connection to the Recycled Water System maximizing Recycled Water Use.

<sup>1</sup> Residential Acres are estimated based on the weighted average derived from the average number of units per land use category.

<sup>2</sup> Commercial acreage is calculated from a total square footage of 1,361,000 SF with an average Floor to Area Ratio (FAR) of 0.30 for commercial services in The Ontario Plan.

Exhibit "J"

**FORM OF PLUME DISCLOSURE LETTER**



PAUL S. LEON  
MAYOR

DEBRA DORST-PORADA  
MAYOR PRO TEM

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

March 2017

AL C. BOLING  
CITY MANAGER

SHEILA MAUTZ  
CITY CLERK

JAMES R. MILHISER  
TREASURER

SCOTT BURTON  
UTILITIES GENERAL MANAGER

**DISCLOSURE NOTICE  
SOUTH ARCHIBALD TRICHLOROETHYLENE PLUME**

Dear Property Owner/Developer/Applicant:

The City of Ontario ("City") has approved or will be approving development in the Ontario Ranch area in the next few years, subject to the appropriate and required statutory process. This letter is intended to serve as notice to all potential property owners of the existence of a groundwater plume, known as the South Archibald Trichloroethylene (TCE) Plume which may exist in, under or near owner's property.

The groundwater plume is in an area in the central Chino Basin south of the Pomona Freeway, west of Turner Avenue, east of Grove Avenue, and north of Kimball Avenue. The plume primarily consists of TCE, a discontinued industrial solvent, and is subject to a clean-up under the oversight and direction of the Santa Ana Regional Water Quality Control Board ("Regional Board").

The Regional Board's approved clean-up procedure involves the removal and treatment of groundwater containing TCE via groundwater wells to reduce the plume concentrations and control its migration. In addition, the City is providing potable water supplies for domestic purposes to residences with private domestic wells affected by the plume. Finally, the Regional Board will continue to monitor all impacted areas and private domestic wells to ensure that residents' health and the environment are properly safeguarded. These remedial actions are documented in a Remedial Action Plan approved by the Regional Board in September 2016.

Further and current information may be found on the Regional Board's Geotracker website at [https://geotracker.waterboards.ca.gov/profile\\_report?global\\_id=T10000004658](https://geotracker.waterboards.ca.gov/profile_report?global_id=T10000004658).

Property owners may wish to include this letter as a part of a Real Estate Transfer Disclosure under California Civil Code Section 1102 et seq.

1425 SOUTH BON VIEW - ONTARIO, CALIFORNIA 91761-4406 - (909) 395-2605 - FAX (909) 395-2601

320513097.3

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

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF ONTARIO, CALIFORNIA, APPROVING A DEVELOPMENT AGREEMENT, FILE NO. PDA18-002, BETWEEN THE CITY OF ONTARIO AND COLONY COMMERCE ONTARIO EAST LP, TO ESTABLISH THE TERMS FOR THE DEVELOPMENT OF TENTATIVE PARCEL MAP 19904 (FILE NO. PMTT18-006) TO SUBDIVIDE 85 ACRES OF LAND INTO NINE NUMBERED LOTS AND SIX LETTER LOTS. THE PROPERTIES ARE BOUNDED BY MERRILL AVENUE TO THE NORTH, SAN BERNARDINO/RIVERSIDE COUNTY LINE TO THE SOUTH, ARCHIBALD AVENUE TO THE EAST, AND THE CUCAMONGA CREEK FLOOD CONTROL CHANNEL TO THE WEST, AND LOCATED WITHIN THE BUSINESS PARK (PLANNING AREA 1) AND INDUSTRIAL (PLANNING AREA 2) LAND USE DESIGNATIONS OF THE COLONY COMMERCE CENTER EAST SPECIFIC PLAN, AND MAKING FINDINGS IN SUPPORT THEREOF – APNS 0218-311-02, 0218-311-03, 0218-311-08, AND 0218-311-10.

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 Ordinance marked Attachment “A” and incorporated herein by this reference, is the proposed Development Agreement between the City of Ontario and Colony Commerce Ontario East LP, to establish the terms for the development of Tentative Parcel Map 19904 (File No. PMTT18-006) to subdivide 85 acres of land into nine numbered lots and six letter lots. The properties are bounded by Merrill Avenue to the north, the San Bernardino/Riverside County line to the south, Archibald Avenue to the east, and the Cucamonga Flood Control Channel to the west, and located within the Business Park (Planning Area 1) and Industrial (Planning Area 2), of the Colony Commerce East Specific Plan and as legally described in the attached Development Agreement. Hereinafter in this Ordinance, the Development Agreement is referred to as the “Development Agreement”; and

WHEREAS, on March 27, 2018, the Planning Commission of the City of Ontario conducted a duly noticed public hearing and issued Resolution PC18-029 recommending City Council certification of Colony Commerce Center East Specific Plan EIR (SCH# 2017031048) and Issued Resolution PC18-030 recommending approval of Colony Commerce Center East Specific Plan (File No. PSP16-003); and

WHEREAS, on April 17, 2018, the City Council of the City of Ontario issued Resolution No. 2018-034 certifying the Colony Commerce Center East Specific Plan EIR (SCH# 2017031048); and

WHEREAS, on May 1, 2018, the City Council of the City of Ontario adopted Ordinance No. 3097 approving the Colony Commerce Center East Specific Plan; 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 Colony Commerce Center East Specific Plan EIR (SCH# 2017031048) certified by the City Council on April 17, 2018. This application is



consistent with the previously adopted EIR and 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. All previously adopted mitigation measures shall be a condition of project approval and are incorporated herein by reference; and

WHEREAS, the project site is located within the Airport Influence Area of the Ontario International Airport (OIA), and has been found to be consistent with the policies and criteria set forth within the ALUCP for ONT. The project site is also located within the Airport Influence area of Chino Airport and is consistent with policies and criteria set forth within the 2011 California Airport Land Use Planning Handbook published by the California Department of Transportation, Division of Aeronautics; and

WHEREAS, City of Ontario Development Code Division 2.03 (Public Hearings) prescribes the manner in which public notification shall be provided and hearing procedures to be followed, and all such notifications and procedures have been completed; and

WHEREAS, on January 22, 2019, 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 6 to 0 to recommend approval (Resolution No. PC19-004) of the Development Agreement to the City Council; and

WHEREAS, on February 19, 2019, 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 Ordinance have occurred.

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

**SECTION 1. Environmental Determination and Findings.** As the decision-making body for the Project, the City Council has reviewed and considered the information contained in the previous Colony Commerce Center East Specific Plan EIR (SCH#2017031048) and supporting documentation. Based upon the facts and information contained in the previous Colony Commerce Center East Specific Plan EIR (SCH#2017031048) and supporting documentation, the City Council finds as follows:

(1) The environmental impacts of this project were reviewed in conjunction with the Colony Commerce Center East Specific Plan EIR (SCH# 2017031048), certified by the City of Ontario City Council on April 17, 2018, in conjunction with File No. PSP16-003; and

(2) The previous the Colony Commerce Center East Specific Plan EIR (SCH#2017031048) contains a complete and accurate reporting of the environmental impacts associated with the Project; and

(3) The previous the Colony Commerce Center East Specific Plan EIR (SCH#2017031048), was completed in compliance with CEQA and the Guidelines promulgated thereunder; and

(4) The previous the Colony Commerce Center East Specific Plan EIR (SCH#2017031048) reflects the independent judgment of the City Council; and

(5) The proposed project will introduce no new significant environmental impacts beyond those previously analyzed in the previous Colony Commerce Center East Specific Plan EIR (SCH#2017031048), and all mitigation measures previously adopted with the Colony Commerce Center East Specific Plan EIR (SCH#2017031048), are incorporated herein by this reference.

**SECTION 2. *Subsequent or Supplemental Environmental Review Not Required.*** Based on the information presented to the City Council, and the specific findings set forth in Section 1, above, the City Council finds that the preparation of a subsequent or supplemental to the Colony Commerce Center East Specific Plan EIR (SCH#2017031048) is not required for the Project, as the Project:

(1) Does not constitute substantial changes to the Colony Commerce Center East Specific Plan EIR (SCH#2017031048) that will require major revisions to the Colony Commerce Center East Specific Plan EIR (SCH#2017031048) due to the involvement of new significant environmental effects or a substantial increase in the severity of previously identified significant effects; and

(2) Does not constitute substantial changes with respect to the circumstances under which the Colony Commerce Center East Specific Plan EIR (SCH#2017031048) was prepared, that will require major revisions to the Colony Commerce Center East Specific Plan EIR (SCH#2017031048) due to the involvement of new significant environmental effects or a substantial increase in the severity of the previously identified significant effects; and

(3) Does not contain new information of substantial importance that was not known and could not have been known with the exercise of reasonable diligence at the time the Colony Commerce Center East Specific Plan EIR (SCH#2017031048) was certified/adopted, that shows any of the following:

(a) The project will have one or more significant effects not discussed in the Colony Commerce Center East Specific Plan EIR (SCH#2017031048); or

(b) Significant effects previously examined will be substantially more severe than shown in the Colony Commerce Center East Specific Plan EIR (SCH#2017031048); or

(c) Mitigation measures or alternatives previously found not to be feasible would in fact be feasible and would substantially reduce one or more significant effects of the Project, but the City declined to adopt such measures; or

(d) Mitigation measures or alternatives considerably different from those analyzed in the Colony Commerce Center East Specific Plan EIR (SCH#2017031048) would substantially reduce one or more significant effects on the environment, but which the City declined to adopt.

**SECTION 3. *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 on the facts and information contained in the Application and supporting documentation, at the time of project implementation, the project is consistent with the Housing Element of the Policy Plan (General Plan) component of The Ontario Plan. The project is consistent with the Housing Element of the Policy Plan (General Plan) component of The Ontario Plan, as the project site is not one of the properties in the Available Land Inventory contained in Table A-3 (Available Land by Planning Area) of the Housing Element Technical Report Appendix.

**SECTION 4. *Ontario International Airport and Chino Airport Land Use Compatibility Plan ("ALUCP") Compliance.*** The California State Aeronautics Act (Public Utilities Code Section 21670 et seq.) requires that an Airport Land Use Compatibility Plan be prepared for all public use airports in the State; and requires that local land use plans and individual development proposals must be consistent with the policies set forth in the adopted Airport Land Use Compatibility Plan. On April 19, 2011, the City Council of the City of Ontario approved and adopted the Ontario International Airport Land use Compatibility Plan ("ALUCP"), establishing the Airport Influence Area for Ontario International Airport ("OIA"), which encompasses lands within parts of San Bernardino, Riverside, and Los Angeles Counties, and limits future land uses and development within the Airport Influence Area, as they relate to noise, safety, airspace protection, and overflight impacts of current and future airport activity. As the approving body for the Project, the City Council has reviewed and considered the facts and information contained in the Application and supporting documentation against the ALUCP compatibility factors, including [1] Safety Criteria (ALUCP Table 2-2) and Safety Zones (ALUCP Map 2-2), [2] Noise Criteria (ALUCP Table 2-3) and Noise Impact Zones (ALUCP Map 2-3), [3] Airspace protection Zones (ALUCP Map 2-4), and [4] Overflight Notification Zones (ALUCP Map 2-5). As a result, the City Council, therefore, finds and determines that the Project, when implemented in conjunction with the conditions of approval, will be consistent with the policies and criteria set forth within the ALUCP. The project site is also located within the Airport Influence area of Chino Airport and is consistent with policies and criteria set forth within the 2011 California Airport Land Use Planning Handbook published by the California Department of Transportation, Division of Aeronautics.

**SECTION 5. *Concluding Facts and Reasons.*** Based upon the substantial evidence presented to the City Council during the above-referenced hearing, and upon the specific findings set forth in Section 1 through 4, above, the City Council hereby concludes as follows:

- a. The Development Agreement applies to 85 acres of land, for property bounded by Merrill Avenue to the north, San Bernardino/Riverside County line to the south, Archibald Avenue to the east and the Cucamonga Flood Control Channel to the west, and located within the Business Park (Planning Area 1) and Industrial (Planning Area 2), of the Colony Commerce East Specific Plan, and is presently vacant and was previously used for agriculture and dairy uses; and
- b. The properties to the north of the Project site are within Planning Area 1 (Conventional Small Lot) of the Subarea 29 Specific Plan and is presently vacant land with agriculture uses. The property to the south is within the San Bernardino/Riverside County line. The properties to the east are located within Planning Areas 6 and 7 (Single Family Conventional) of the Subarea 29 Specific Plan and are developed with residential homes. The property to the west is zoned Non-Recreational Open Space and developed with the Cucamonga Creek Flood Control Channel; and
- c. The Development Agreement establishes parameters for the development of Tentative Parcel Map 19904 for the potential development of 2,340,434 square feet of industrial development within the Colony Commerce Center East Specific Plan. The Development Agreement also grants Colony Commerce Ontario East LP, 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 Colony Commerce Center East Specific Plan; and
- d. The Development Agreement focuses on Tentative Parcel Map 19904 (File No. PMTT18-006) that will subdivide 85 acres of land into nine numbered lots and six letter lots to facilitate a Development Plan (File No. PDEV18-014); and
- e. The Development Agreement will provide for the development of up to 919,725 square feet in Planning Area 1 and 1,189,514 square feet in Planning Area 2; 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 not have a significant impact on the environment or the surrounding properties. The environmental impacts of this project were previously reviewed in conjunction with the Colony Commerce Center East Specific Plan EIR (SCH# 2017031048) certified by the City Council on April 17, 2008. This Application introduces no new significant environmental impacts. This application introduces no new significant environmental impacts; and

j. All adopted mitigation measures of the related EIR shall be a condition of project approval and are incorporated herein by reference.

**SECTION 6. *City Council Action.*** Based upon the findings and conclusions set forth in paragraphs 1, 2, 3, 4 and 5 above, the City Council hereby APPROVES the Development Agreement subject to each and every condition set forth in Colony commerce Center East Specific Plan and EIR, incorporated by this reference.

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

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

**SECTION 9. *Severability.*** If any section, sentence, clause or phrase of this Ordinance or the application thereof to any entity, person or circumstance is held for any reason to be invalid or unconstitutional, such invalidity or unconstitutionality shall not affect other provisions or applications of this Ordinance which can be given effect without the invalid provision or application, and to this end the provisions of this Ordinance are severable. The People of the City of Ontario hereby declare that they would have adopted this Ordinance and each section, sentence, clause or phrase thereof, irrespective of the fact that any one or more section, subsections, sentences, clauses or phrases be declared invalid or unconstitutional.

**SECTION 10. *Effective Date.*** This Ordinance shall become effective 30 days following its adoption.

**SECTION 11. *Publication and Posting.*** The Mayor shall sign this Ordinance and the City Clerk shall certify as to the adoption and shall cause a summary thereof to be published at least once, in a newspaper of general circulation in the City of Ontario, California, within 15 days following the adoption. The City Clerk shall post a certified copy of this Ordinance, including the vote for and against the same, in the Office of the City Clerk, in accordance with Government Code Section 36933.

PASSED, APPROVED, AND ADOPTED this 5<sup>th</sup> day of March 2019.

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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. 3126 was duly introduced at a regular meeting of the City Council of the City of Ontario held February 19, 2019 and adopted at the regular meeting held March 5, 2019 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. 3126 duly passed and adopted by the Ontario City Council at their regular meeting held March 5, 2019 and that Summaries of the Ordinance were published on February 26, 2019 and March 12, 2019 in the Inland Valley Daily Bulletin newspaper.

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

(SEAL)

**ATTACHMENT A:**

**File No. PDA18-002**

**Development Agreement**

**Between**

**The City of Ontario and Colony Commerce Ontario East LP**

*(Development Agreement to follow this page)*



**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

---

Space above this line for Recorder's Use Only

**DEVELOPMENT AGREEMENT**

**By and Between**

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

**and**

**Colony Commerce Ontario East LP**

**a Delaware Limited Partnership**

\_\_\_\_\_, 2019

**San Bernardino County, California**

## **DEVELOPMENT AGREEMENT NO. PDA18-002**

This Development Agreement (hereinafter "Agreement") is entered into effective as of the \_\_\_\_ day of \_\_\_\_\_, 2019 by and among the City of Ontario, a California municipal corporation (hereinafter "CITY"), and Colony Commerce Ontario East LP, a Delaware Limited Partnership (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 Section 4.01.015 of the Ontario Development 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 Colony Commerce Center East Specific Plan Environmental Impact Report (State Clearinghouse No. 2017031048 (the "FEIR")). The City Council found and determined that the FEIR was prepared in accordance with the requirements of the California Environmental Quality Act and adequately describes the impacts of the project described in the FEIR, which included consideration of this Agreement; and

WHEREAS, this Agreement and the Project are consistent with the CITY's Comprehensive General Plan and the Colony Commerce Center East 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; and

WHEREAS, the Property is located in an area of the City of Ontario that has been known as the "New Model Colony" area and the New Model Colony area has now been renamed as "Ontario Ranch; and

WHEREAS, Owner's Property is within the modified boundaries defined in Exhibit A of the Construction Agreement between the CITY and NMC Builders and the Property covered by this Agreement is what is known as a "Phase 2 Water Property" as such, shall be required to provide funding for CITY's future construction of the "Phase 2 Water Improvements" which will result in the availability of additional Net MDD Water Availability required for the development as shown on Exhibit "I-1";and

WHEREAS, the property developer/owner is made aware of the South Archibald Trichloroethylene (TCE) Plume "Disclosure Letter" (Exhibit "J"). Property owner may wish to provide the attached Letter as part of the Real Estate Transfer Disclosure requirements under California Civil Code Section 1102 et seq. This may include notifications in the Covenants, Conditions and Restrictions (CC&Rs) or other documents related to property transfer and disclosures. Additional information on the plume is available from the Santa Ana Regional Water Quality Control Board at [http://geotracker.waterboards.ca.gov/profile\\_report.asp?global\\_id=T10000004658](http://geotracker.waterboards.ca.gov/profile_report.asp?global_id=T10000004658).

## **COVENANTS**

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

### **1. DEFINITIONS AND EXHIBITS.**

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

1.1.1 "Agreement" means this Development Agreement.

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

1.1.3 "Construction Agreement" means that certain Agreement for the Financing and Construction of Phases I and II Infrastructure Improvements to Serve an Easterly Portion of the New Model Colony, entered into between the CITY and NMC Builders as of the 4th day of October, 2005, and all future amendments thereto and including the 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, and that certain Amendment to the First Amended and Restated Agreement for the Financing and Construction of Limited Infrastructure Improvements to Serve an Easterly Portion of the New Model Colony entered into between the CITY and NMC Builders, LLC as of the 19<sup>th</sup> day of September, 2017.

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) general plans, specific plans and specific plan amendments;
- (b) tentative and final subdivision, and parcel maps and Development Plans;
- (c) development plan review.

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, 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 “Eucalyptus Avenue Water Loop” means the a.) Twenty-Four (24) inch water line Improvements along Eucalyptus Avenue from Archibald Avenue to Carpenter Avenue; b.) Twelve (12) inch water line Improvements along Carpenter Avenue from Eucalyptus Avenue to Merrill Avenue and; c.) Twelve (12) inch water line Improvements along Merrill Avenue from Carpenter Avenue to Archibald Avenue.

1.1.11 “Existing Development Approvals” means all Development Approvals approved or issued on or 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.

1.1.12 “Existing Land Use Regulations” means all Land Use Regulations in effect on the date of the first reading of the Ordinance adopting and approving this Agreement. 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 such date.

1.1.13 “General Plan” means The Ontario Plan adopted on January 26, 2010.

1.1.14 “Improvement” or “Improvements” means those public improvements required to support the development of the Project as described in the Tentative Parcel Map conditions for Parcel Map No. 19904 as further described in Exhibit “F-1”, “F-1a”, “F-1b”, “F-2”, “F-3”, “F-4”, “F-5” and “F-6” (the “Infrastructure Improvements Exhibits”).

1.1.15 “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.

1.1.16 "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.

1.1.17 "Net MDD" means net maximum daily water demand

1.1.18 "NMC Builders" means the consortium of investors and developers responsible for the construction of infrastructure within the New Model Colony incorporated as NMC Builders, LLC.

1.1.19 "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.

1.1.20 "Phase 2 Water EDUs" means the number of equivalent dwelling units or non-residential square footage assigned to OWNER upon payment to CITY of the Phase 2 Water Participation Fee for the Project and evidenced by the issuance by CITY of a Certificate of Phase 2 Net MDD Availability in the form attached as Exhibit G.

1.1.21 "Phase 2 Water Improvements" means the future water infrastructure Improvements required for the issuance by CITY of the "Water Availability Equivalents" (WAE) for the Project.

1.1.22 "Phase 2 Water Participation Fee" means the fee paid to City upon City approval of the first Development Entitlement for the Project, to fund the Property's respective share of the projected costs of the design and construction of the Phase 2 Water Improvements by City. The Phase 2 Water Participation Fee shall be the calculated amount of the Regional Water DIF for the Project based upon the number of square feet or units, and land use category for residential units or the number of square feet, and land use category for non-residential square footage of the Project.

1.1.23 "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.

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

1.1.25 "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.

1.1.26 "Amendment to the Construction Agreement" means the amendment to the Construction Agreement modifying the boundaries of the property in Exhibit A of such Construction Agreement to include the Property covered by this Agreement and to provide for the additional funds required for CITY's future construction of the "Phase 2 Water Improvements" described in a modification to Exhibit C-3 of the Construction Agreement.

1.1.27 "Specific Plan" means that certain specific plan adopted by the City Council, and entitled, "Colony Commerce Center East Specific Plan."

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

1.1.29 "Subsequent Land Use Regulations" means any discretionary Land Use Regulations adopted and effective after the Effective Date of this Agreement.

1.1.30 "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 Parcel Map 19904 shall be based upon water demand factors and assumptions listed in the Construction Agreement.

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" — (Not Used)

Exhibit "F" — Infrastructure Improvements Exhibits

- Exhibit F-1 Required Street and Circulation Infrastructure Improvements
- Exhibit F-1a Streets and Circulation Improvements
- Exhibit F-1b Merrill Avenue Bridge Improvements
- Exhibit F-2 Water Improvements
- Exhibit F-3 Sewer Improvements
- Exhibit F-4 Recycled Water Improvements
- Exhibit F-5 Storm Drain Improvements
- Exhibit F-6 Fiber Optic Communications System Improvements

Exhibit "G" – Form of Certificate of Net MDD to be issued by CITY

Exhibit "H" – Form of Certificate of DIF Credit to be issued by CITY

Exhibit "I-1" – Ontario Ranch Water Supply Phasing Plan

Exhibit "I-2" – Water Demand Equivalents by Land Use

Exhibit "J" - Form of Disclosure letter

## 2. GENERAL PROVISIONS.

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

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

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

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

(b) 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 with respect to the portion of the Property sold and be made in strict compliance with the following:

(a) No sale, transfer or assignment of any right or interest under this Agreement shall be made unless made together with the sale, transfer or assignment of all or a part of the Property. OWNER may be required to provide disclosure that the Property is within the South Archibald Trichloroethylene (TCE) Plume (Exhibit "J"). OWNER may wish to provide the attached Disclosure Letter (Exhibit I) as part of the Real Estate Transfer Disclosure requirements under California Civil Code Section 1102 et seq.

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

(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.

(d) Notwithstanding the foregoing OWNER shall have the right to assign this Agreement to an Owner Affiliate subject to the notice requirements to CITY as described in Paragraph (b) of Section 2.4.1. above. The term Owner Affiliate shall mean any of the following:

(1) any general or limited partnership in which OWNER is the managing general partner.

(2) any limited liability company in which OWNER is the managing member.

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 an agreement as 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 (if any) to secure performance of its obligations hereunder which are to be performed upon portion of the Property sold, transferred or assigned .

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 parcel 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 of the parcel. 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 parcel, and the fees set forth under Section 4 of this Agreement have been paid.

2.4.6 Partial Assignment and Assumption. CITY and OWNER agree OWNER may partially assign obligations and rights under this Development Agreement, and all amendments hereto, to a purchaser, transferee or assignee of a lot, which has been subdivided subject to provisions of a partial assignment and assumption agreement in a form approved by CITY. Any such completed and executed Partial Assignment and Assumption of Development Agreement shall be submitted to CITY for approval pursuant to Section 2.4.1 of the Development Agreement. Within thirty (30) days following such submittal, CITY shall review, and if the above conditions are satisfied shall approve the partial assignment and release and notify the purchaser, transferee or assignee in writing thereof. No such release approved pursuant to this Subsection 2.4.6 shall cause, or otherwise affect, a release of OWNER from the duties and obligations under this Development Agreement that are retained by OWNER and excluded from the transfer or assignment.

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. 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. 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. 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.

2.6 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.

Upon the termination of this Agreement, no party shall have any further right or obligation hereunder except with respect to any obligation to have been performed prior to such termination or with respect to any default in the performance of the provisions of this Agreement which has occurred prior to such termination or with respect to any obligations which are specifically set forth as surviving this Agreement. Upon such termination, any Development Impact Fees, public facility funding fees paid pursuant to Sections 4.2 or 4.4 of this Agreement by OWNER to CITY on which construction has not yet begun shall be refunded to OWNER by CITY within thirty (30) days.

## 2.7 Notices.

(a) As used in this Agreement, "notice" includes, but is not limited to, the communication of notice, request, demand, approval, statement, report, acceptance, consent, waiver, appointment or other communication required or permitted hereunder.

(b) All notices shall be in writing and shall be considered given either: (i) when delivered in person, including, without limitation, by courier, to the recipient named below; or (ii) on the date of delivery shown on the return receipt, after deposit in the United States mail in a sealed envelope as either registered or certified mail with return receipt requested, and postage and postal charges prepaid, and addressed to the recipient named below. All notices shall be addressed as follows:

If to CITY:

Scott Ochoa, City Manager  
City of Ontario  
303 East "B" Street  
Ontario 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:

Colony Commerce Ontario East LP  
1001 Square Victoria, C-500.  
Montreal, Quebec H2Z 2B5  
Canada

Attn: Claude Lavigne, Senior Vice President, Investments, Industrial, North America  
Email: Claude.Lavigne@ivanhoecambridge.com

with a copy to:

Colony Commerce Ontario East LP  
1001 Square Victoria, C-500  
Montreal, Quebec, H2Z 2B5  
Canada  
Attn: Denis Boulianne, GC  
Email: denis.boulianne@ivanhoecambridge.com

with a copy to

Goodwin Proctor LLP  
601 S. Figueroa, 43<sup>rd</sup> Floor  
Los Angeles, CA  
Attn: Dean Pappas, Esq.  
Email: dpappas@goodwinlaw.com

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 in Section 3.4, 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 in Section 3.4, the rules, regulations and official policies governing permitted uses of the Property, the density and intensity of use of the Property, the maximum height and size of proposed buildings, and the design, improvement and construction standards and specifications applicable to development of the Property shall be the Existing Land Use Regulations. In connection with any Subsequent Development Approval, CITY shall exercise discretion in accordance with the same manner as it exercises its discretion under its police powers, including the Reservations of Authority set forth herein; provided however, that such discretion shall not prevent development of the Property for the uses and to the density or intensity of development set forth in this Agreement.

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

3.3.1 Infrastructure Improvement Exhibit. Attached hereto as Exhibits "F1, F-1a, F-1b, F-2, F-3, F-4, F-5 and F-6" collectively are a description of the Infrastructure Improvements needed for the development of the Property ("the Infrastructure Improvement Exhibits").

### 3.4 Reservations of Authority.

3.4.1 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 and the building codes in effect as of the Effective Date;

(d) Regulations that may conflict with this Agreement and the Development Plan but that are reasonably necessary to protect the occupants 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 and which do not impose additional obligations, costs, and expenses on Owner or the Project;

(f) Regulations that may conflict but to which the OWNER consents.

3.4.2 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 and/or the Existing Development Approvals, 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 and/or the Existing Development Approvals.

3.4.3 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).

3.4.4 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.

3.5 Public Works; Utilities. If OWNER is required by this Agreement or a condition of project approval to construct any public works facilities which will be dedicated to CITY or any other public agency upon completion, and if required by applicable laws to do so, OWNER shall perform such work in the same manner and subject to the same requirements as would be applicable to CITY or such other public agency should it have undertaken such construction. As a condition of development approval, OWNER shall connect the Project to all utilities necessary to provide adequate water, recycled water, sewer, gas, electric, and other utility service to the Project. As a further condition of development approval, OWNER shall to the extent possible 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.

3.5.1 OWNER agrees that development of the Project shall require the construction of street improvements as described in Exhibit F-1a, including design and construction of street improvements on Merrill Avenue from Archibald Avenue to the

Cucamonga Creek Channel; design and construction of modifications to an existing signalized intersection on Archibald Avenue and Merrill Avenue; and design and construction of full signalized intersection improvements at Merrill Avenue and the entrance to the Property to the extent not constructed by others; and design and construction of the full signalized intersection improvements at Archibald Avenue and the entrance to the Property. OWNER and CITY agree that CITY may issue grading, building permits and other required permits for OWNER to initiate construction of structures for the Property according to plans approved by CITY and OWNER agrees that OWNER shall not request and CITY shall not issue an occupancy permit for any buildings on the Property prior to substantial completion of the street Improvements as described in Exhibit F-1a. For purposes of the foregoing, street improvements shall be deemed Substantially Complete if the final lift of pavement has not been completed (i.e., Owner may install the final lift after completion of all other construction). CITY agrees that OWNER may request that CITY issue temporary certificates of occupancy on a building-by-building basis prior to Substantial Completion of the street improvements. OWNER agrees that the street improvements shall be completed and subject to final acceptance by CITY prior to the release of any security for the construction of the street improvements

3.5.2 OWNER agrees that development of the Project shall require the design and construction of the widening of the Merrill Avenue bridge over the Cucamonga Creek Channel as described in Exhibit F-1b to the extent not designed and/or constructed by others. OWNER and CITY agree that CITY may issue grading, building permits and other required permits for OWNER to initiate construction of structures for the Property according to plans approved by CITY and OWNER agrees that OWNER shall not request and CITY shall not issue an occupancy permit for any buildings prior to the completion of the designs and the commencement of construction of the widening of the existing Merrill Avenue Bridge Improvements (Merrill Bridge) as shown in Exhibit F-1b. The Merrill Bridge Improvements shall consist of widening the south side of the existing bridge to its ultimate width with all striping transitions to existing conditions occurring east of the west end of the bridge and utilities as described in Exhibit F-1b. If OWNER has not commenced construction on the Merrill Bridge Improvements prior to OWNER requesting an occupancy permit for any buildings on the Property, OWNER shall provide proof to the satisfaction of the CITY, that OWNER has exercised one of the following two options:

- a. OWNER has entered into a cost sharing agreement for the construction and completion of the Merrill Avenue Bridge Improvements by other developer(s) and OWNER has fully funded OWNER'S obligations under the subject cost sharing agreement; or
- b. OWNER has deposited an amount acceptable to CITY for future construction of the Merrill Avenue Bridge Improvements into an Escrow Account ("Escrow Account") in which CITY has sufficient authority necessary to use such funds deposited by OWNER to commence and complete the construction of the Merrill Avenue Bridge Improvements. OWNER to provide Escrow Instructions acceptable to the City Attorney for CITY.



To the extent that the Merrill Avenue Bridge Improvements are not constructed by others, OWNER agrees that, upon issuance of the required permits for the construction of the Merrill Avenue bridge Improvements by the County of San Bernardino and the Army Corp of Engineers, OWNER shall complete the design and construct to completion the Merrill Avenue bridge Improvements. OWNER agrees that OWNER shall complete the construction of the Merrill Avenue bridge Improvements prior to the expiration of any temporary certificate of occupancy issued by CITY for any structure on the Property.

3.5.3 OWNER agrees that development of the Property shall require either the extension of permanent master planned water utility Improvements as described in Exhibit F-2, including the construction of the Eucalyptus Avenue Water Loop consisting minimally of the construction of the extension of permanent master planned water utility Improvements from two (2) points of connection to serve the Property or an alternative on-site water storage tank system acceptable to CITY (the "Water Improvements). OWNER and CITY agree that CITY may issue grading, building and other required permits for OWNER to initiate construction of structures for the Property according to plans approved by CITY upon completion of sufficient water and recycled water improvements to serve the Property from at least one point of connection. Except as provided for below in Section 3.5.3.1, OWNER agrees that OWNER shall not request and CITY shall not issue any occupancy permits for any buildings on the Property until the completion of the design and construction of an on-site water storage system acceptable to CITY to meet fire flow demands for the entire Property or OWNER's agreement and determination, in writing, to CITY that OWNER shall be subject to CITY's determination that the Eucalyptus Avenue Water Improvements shall be constructed by OWNER as provided for below in Sections 3.5.3.1 through 3.5.3.5. CITY agrees that OWNER may request a temporary occupancy permit for a building and, if OWNER requests that a temporary certificate of occupancy be issued for a building prior to the completion of the Water Improvements, that CITY may consider such request and may issue temporary certificates of occupancy on a building-by-building basis prior to completion of the Water Improvements if there is available permanent water and recycled water service from a minimum of one point of connection and sufficient water is available for fire protection purposes for any buildings under construction. OWNER and CITY agree that all or a portion of the water utility Improvements described in Exhibit F-2 may be constructed by others. If such water utility Improvements are constructed by others and completed and accepted by CITY prior to OWNER's request to CITY of the required grading, building or other required permits for OWNER to initiate construction of structures for the Property, then OWNER shall not be required to construct those water utility Improvements constructed and completed by others and accepted by CITY.

3.5.3.1 OWNER agrees that either the extension of permanent master planned water utility Improvements or an alternative on-site water storage tank system acceptable to CITY, shall be required to provide sufficient fire flow to serve the Property. OWNER also agrees that the extension of such permanent master planned water utility Improvements may require OWNER to design and construct the Eucalyptus Avenue Water Loop or the alternative on-site water storage tank system. If the OWNER elects not to construct the alternative on-site water storage tank system, OWNER shall be required to design and initiate construction of the

Eucalyptus Avenue Water Loop, or any remaining portion of such Eucalyptus Avenue Water Loop, to the extent that construction of such remaining portion has not been initiated by others.

3.5.3.2 OWNER and CITY agree that a determination shall be made by CITY, that others have initiated construction of the Eucalyptus Avenue Water Loop to serve the Project. If CITY determines that others have not initiated construction of the Eucalyptus Avenue Water Loop to serve the Project and OWNER has not elected to construct the alternative on-site water storage tank system, CITY shall notify OWNER and OWNER shall be required to design, or complete any existing designs, and initiate construction of the Eucalyptus Avenue Water Loop to serve the Project. If CITY determines that others have initiated construction of, at a minimum, the portion of the Eucalyptus Avenue Water Loop required to provide additional fire flow to the Project, then CITY shall notify OWNER and OWNER shall be eligible to request and CITY may issue additional building permits and additional certificates of occupancy for buildings for the Project. CITY shall make such determination prior to:

- a.) issuance of a building permit for any building or buildings where the total square footage of the buildings for the Project exceeds 1,100,000 Square Feet or;
- b.) within two (2) years of the issuance of a building permit for the first structure for the Project, whichever occurs first.

3.5.3.3 CITY may also provide such determination prior to the above events if requested by OWNER and CITY concurs that the construction of the Eucalyptus Avenue Water Loop has been initiated by others. If CITY has issued a building permit for any buildings for the Project (less than 1,100,000 square feet) for the Project and others have not initiated construction of the Eucalyptus Avenue Water Loop prior to the expiration of the two (2) year period after the issuance of the first building permit, OWNER may request that such determination be deferred by CITY for a period of an additional six (6) months.

3.5.3.4 If OWNER does not elect to construct the alternative on-site water storage system, CITY and OWNER agrees if the CITY determines that the Eucalyptus Avenue Water Loop has not been initiated or constructed by others and OWNER requests that the CITY issue additional building permits for any building or buildings for the Project exceeds 1,100,000 square feet or a period of two (2) years since the issuance of the first building permit for the Project, or any extended period, has expired, then OWNER shall be required to design and construct the Eucalyptus Avenue Water Loop. If CITY determines that construction of the Eucalyptus Avenue Water Loop has not been initiated and OWNER completes the design and initiates construction of the Eucalyptus Avenue Water Loop, OWNER may request and CITY may issue a temporary occupancy permit for any buildings constructed on the Project and OWNER may request and CITY may issue additional building permits for buildings exceeding 1,100,000 for the Property, subject to

OWNER's deposit of funds to an Escrow Account mutually controlled by OWNER and CITY, in an amount determined by CITY to be sufficient to complete the construction of the Eucalyptus Avenue Water Loop, and subject to CITY's further determination that there is sufficient fire flow to serve the additional buildings. The Escrow Instructions shall be prepared by OWNER and accepted by CITY. CITY agrees that OWNER's deposit to the Escrow Account may be used by OWNER to compensate consultants and contractors for the design and construction of the Eucalyptus Avenue Water Loop.

3.5.3.5 CITY agrees that a portion of the Eucalyptus Avenue Water Loop consisting of the portion of the Eucalyptus Avenue Water Loop along Eucalyptus Avenue from the connection at Archibald Avenue to Carpenter Avenue is eligible for DIF reimbursement. If OWNER designs and constructs this portion of the Eucalyptus Avenue Water Loop, then CITY shall directly reimburse OWNER for the actual eligible costs for design and construction of this portion of the Eucalyptus Avenue Water Loop up to the amount in the CITY's DIF Program. Such reimbursement shall be subject to a separate DIF Credit and Reimbursement Agreement between OWNER and CITY and in the form acceptable to OWNER and CITY. CITY shall reimburse OWNER within 30 business days of completion and acceptance the portion of the Eucalyptus Avenue Water Loop.

3.5.4 OWNER agrees that development of the Property requires the construction of connections to permanent master planned sewer Improvements as described in Exhibit F-3 which have been completed and accepted by City. OWNER and CITY agree that the sewer Improvements described in Exhibit F-3 have been constructed by others. OWNER shall be required to construct the required connections to the permanent master planned sewer improvements constructed and completed by others and accepted by CITY, prior to and as a condition precedent to, issuance of a building permit for the Property.

3.5.5 OWNER agrees that development of the Property shall require the extension of permanent master planned recycled water utility Improvements as described in Exhibit F-4 consisting generally of the construction of the extension of permanent master planned recycled water utility Improvements to serve the Property. OWNER and CITY agree that CITY may issue grading, building and other required permits for OWNER to initiate construction of structures for the Property according to plans approved by CITY upon completion of sufficient water and recycled water improvements to serve the Property from at least one point of connection and OWNER agrees that OWNER shall not request and CITY shall not issue any occupancy permit for any buildings on the Property until the completion of the water improvements described in Exhibit F-4 CITY agrees that OWNER may request a temporary occupancy permit for a building and, if OWNER requests that a temporary certificate of occupancy be issued for a building prior to the completion of the extension of permanent master planned recycled water utility Improvements to serve the Property that CITY may consider such request and may issue temporary certificates of occupancy on a building-by-building basis prior to completion of

the recycled water improvements if there is available permanent recycled water service connection and sufficient recycled water is available. OWNER and CITY agree that all, or a portion of, the permanent master planned recycled water utility Improvements described in Exhibit F-4 may be constructed by others. If such recycled water utility Improvements are constructed by others and completed and accepted by CITY prior to OWNER's request to CITY of the required grading, building or other required permits for OWNER to initiate construction of structures for the Property, then OWNER shall not be required to construct those permanent master planned recycled water utility Improvements.

3.5.6 OWNER agrees that development of the Project shall require the construction of storm drain Improvements from the Property to the connection with the existing Storm Drain facilities in Archibald Avenue and in Merrill Avenue as described in Exhibit F-5. OWNER shall be responsible for the design and construction of the necessary extension of storm drain facilities, as described in Exhibit F-5 to the extent not constructed by others. To the extent not constructed by others OWNER shall construct and complete the storm drain improvements as described in Exhibit F-5 prior to, and as a condition precedent to, OWNER requesting a building permit for the construction of a structure on the Property.

3.5.7 OWNER agrees that development of the Project shall require the design and construction of Fiber Optic Communications Improvements in Merrill Avenue and Archibald Avenue as described in Exhibit F-6 to connect the Property to the Fiber Optic Communication System. OWNER shall be responsible for the design and construction of the necessary extension of Fiber Optic Communications conduit as described in Exhibit F-6, prior to and as a condition precedent to, OWNER requesting a building permit for the construction of a structure on the Property.

3.6 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 3.6 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.

3.6.1 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 3.6.1 and 3.6.2 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 3.6.1 The CITY and OWNER acknowledge that the timelines set forth in this Section 3.6.1 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.

3.6.2 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. If CITY is unable or unwilling to acquire Non-Construction Agreement Offsite Property, then OWNER is relieved of any condition of approval or requirements requiring the acquisition of such Non-Construction Agreement Offsite Property, and the CITY shall not refuse to issue building permits or occupancy permits based on the failure to acquire such Non-Construction Agreement Offsite Property.

3.7 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.

3.8 Tentative Parcel Maps; Extension. With respect to applications by OWNER for tentative parcel 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 expiration, cancellation, or termination of this Agreement.

3.9 Specific Plan Charge. Pursuant to Government Code section 65456, the City Council may consider adopting a specific plan charge upon persons seeking CITY approvals that are required to be consistent with the Specific Plan. Any such charges shall, in the aggregate, defray, but not exceed, the estimated cost of preparation, adoption, and administration of the Specific Plan, including costs incurred pursuant to the California Environmental Quality Act (Pub. Resources Code, §§ 21000 et seq.). As nearly as can be estimated, the charges shall be a prorated amount in accordance with the applicant's relative benefit derived from the Specific Plan. If such charges are adopted, the CITY shall use such charges to reimburse the OWNER who originally paid the cost of preparing the Specific Plan, including costs incurred pursuant to the California Environmental Quality Act (Pub. Resources Code, §§ 21000 et seq.) to the extent the OWNER paid more than its relative benefit from the Specific Plan. Such charges, if adopted, shall be imposed on persons seeking CITY approvals that are required to be consistent with the Specific Plan, to the extent such person(s) has/have not entered into a reimbursement agreement with, and satisfactory to, the person(s) originally responsible for the cost of preparing the Specific Plan, including costs incurred pursuant to CEQA.

#### 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 building (subject to the application/use of available fee deferrals or credits), 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

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

4.3.1 Timely Construction of Public Infrastructure. The phasing of the area wide infrastructure construction within the Ontario Ranch area shall be as approved by the CITY. OWNER shall be responsible for the timely construction and completion of all public infrastructure required for the Project as shown on the attached Exhibits "F-1" through "F-6" and any and all tentative parcel map conditions. Unless otherwise specified in the Parcel Map conditions, and subject to the provisions of Section 3.6, all other required Improvements for each Parcel Map, shall be completed and operational prior to, and as a condition precedent to, OWNER requesting and CITY's granting of a final occupancy permit for any buildings to be constructed on the Property. All Infrastructure and Improvements shall be completed as required by the Subdivision Agreement/Parcel Map conditions for Parcel Map No.19904.

4.3.2 Availability and Use of Recycled Water. OWNER 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.

4.3.3 Construction of DIF Program Infrastructure To the extent OWNER is required to construct and completes construction of public improvements that are included in CITY's Development Impact Fee Program CITY agrees that CITY shall issue DIF Credit and DIF Reimbursement in accordance with the provisions of a separate Fee Credit Agreement between CITY and OWNER. Limitations 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. OWNER may also be eligible to receive reimbursement from DIF collected by CITY and paid by other development that benefits from OWNER's construction of DIF Program Infrastructure. Any such DIF Reimbursement shall be subject to a Fee Credit Agreement between CITY and OWNER. 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 Public Services Funding Fee.

4.4.1 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 each Project in a timely manner,

OWNER shall pay to CITY a "Public Services Funding Fee." The Public Services Funding Fee shall apply to non-residential uses as set forth below.

4.4.2 Public Services Funding Fee Amount. OWNER shall pay a Public Services Funding fee in a single installment payment in the amount of Sixty One Cents (\$.61) per square foot of each non-residential building. The single installment for non-residential uses shall be due and payable on a building-by-building basis 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, 2020. 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 31<sup>st</sup>, before the Single Installment amount is automatically increased.

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

4.5.1 Effectiveness of Agreement. Notwithstanding anything else set forth in this Agreement, CITY and OWNER each acknowledge, confirm, and agree, that (i) the City approval of this Agreement and (ii) the effectiveness of this Agreement, in each case, is conditioned upon OWNER's admission to NMC Builders as a "Member" thereof pursuant to the terms and conditions of the operating agreement of NMC Builders. OWNER and CITY agree that OWNER shall become a Member of NMC Builders within 30 days of the effective date of this Agreement.

4.5.2 Assigned Net MDD/Water Availability Equivalents. OWNER acknowledges that the City has agreed with NMC Builders 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 and/or OWNER. OWNER acknowledges that the provisions of the Construction Agreement Amendment require that the City shall not 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, except to the bearer of a Certificate of Net MDD Water Availability.

4.5.3 Requirement for NMC Builders LLC Membership as a Phase 2 Water Member. OWNER and CITY agree that OWNER's' payment to CITY required by Section 4.5.4 below represents OWNER's contribution to the funding required for the future construction of the Phase 2 Water Improvements and the availability of additional Net MDD Water Availability required for the development of the Property described in Exhibit A of this Agreement.

4.5.4 CITY issuance of Water Availability Equivalents. Within 30 days after the effectiveness of this Development Agreement OWNER shall pay or have paid to City the applicable Phase 2 Water Participation Fee. The Phase 2 Water Participation Fee shall be the calculated based on the amount of the Regional Water DIF for the applicable land use category and the square footage of the applicable buildings. The applicable planning areas of the Colony Commerce Center East Specific Plan to be developed by OWNER



equals 1,685,420 Square Feet. The calculated amount of the Phase 2 Water Participation Fee shall be paid to City within 30 days after the effective date of this Agreement or, at OWNER's option, the Phase 2 Water Participation Fee may be paid to City in two (2) installments. The first installment shall be fifty percent (50%) of the total Phase 2 Water Participation Fee and such first installment shall be due and payable to City within 30 days after the effective date of this Development Agreement. The second installment shall be the remaining amount of the Phase 2 Water Participation Fee and such second installment shall be due and payable to City within one (1) year after the payment of the first installment, or prior to, and as a condition precedent to, the recording of any final Parcel Map for the Project, whichever occurs first. Upon OWNER's complete payment to CITY of the Phase 2 Water Participation Fee CITY shall issue a Certificate of Water Availability Equivalents in the form attached hereto as Exhibit G. Such Water Availability Equivalents Certificate shall be issued by CITY within thirty (30) days of the receipt of such required payment. CITY and OWNER agree that the amount of Water Availability Equivalents issued to OWNER shall be based on the maximum projected need for Water Availability Equivalents required for the Property based upon water demand factors and assumptions listed in Exhibit C-2R of the Phase 2 Water Amendment to the Construction Agreement "Water Demand Equivalents by Land Use" for each land use category. Additionally, within five (5) business days of CITY's receipt of OWNER's payment as required under this Section 4.5.2, CITY shall issue a certificate of DIF Credit against OWNER's DIF obligations in the Regional Water DIF Category.

4.5.4.1 The parties acknowledge that OWNER is expected to receive assignment of a DIF credit Certificate in the Regional Water DIF category from an affiliated entity that has been issued by CITY.

CITY and OWNER agree that OWNER may possess a Certificate of DIF Credit in the Regional Water DIF category previously issued by CITY to an affiliated entity. CITY agrees that OWNER may utilize such Certificate of DIF Credit in the Regional Water DIF category in-lieu of paying to CITY the full amount of OWNER's applicable Phase 2 Water Participation Fee for the Project. OWNER and CITY agree that the amount of such assigned Certificate of DIF Credit in the Regional Water category may not be sufficient for full payment of both installments of OWNER's projected Phase 2 Water Participation Fee and that OWNER shall pay the net remaining amount due to CITY as required by Section 4.5.3. OWNER shall be entitled to apply the amount of any assigned Certificate of DIF Credit to the First Installment and the Second Installment payments as applicable, until the amount of the Phase 2 Water Participation fee exceeds the amount of OWNER's Certificate of DIF Credit.

4.5.5 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.

#### 4.6 Compliance with Public Benefits Requirements.

4.6.1 Failure to Provide Public Benefits. In the event OWNER fails or refuses to comply with any condition referenced in Section 4.1 through 4.5, 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 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. Nothing herein shall waive Owner's right to assert a default (or failure to perform) by the City has excused Owner's performance under this Agreement.

#### 5. FINANCING OF PUBLIC IMPROVEMENTS.

5.1 Financing Mechanism(s). OWNER agrees that, prior to the recordation of any Parcel Map, the property subject to such Parcel Map shall be included in a CFD to finance City services through annual special taxes that will initially be \$.30 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. Depending on the fiscal year that the CFD is formed and the CFD tax is levied, the annual special taxes may be higher. 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. The parties hereto, by this provision, shall not 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.

#### 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:

- (a) Recommendation of the Planning staff;
- (b) Affirmative vote of at least four (4) members of the Planning Commission; or
- (c) 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 this Agreement 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 the OWNER or to any successor in interest of OWNER. 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 and OWNER 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, 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 Subsection 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 and Specific 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. CITY has also determined that this Agreement is consistent with the Specific Plan, as such Specific Plan exists as of the Effective Date, and that the Specific Plan meets all requirements of law. OWNER has reviewed the General Plan and the Specific 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,, the Specific 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, to the extent 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, to the extent 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 during OWNER'S period of ownership of the Property, including, but not limited to, soil and groundwater conditions caused by OWNER but not including any CITY liability related to South Archibald Trichloroethylene (TCE) Plume , 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. CITY agrees that it will not enter into a settlement of any matter described in Section 9.2, 9.3 and 9.4 without the consent of OWNER, which shall not be unreasonably withheld.

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

## 10. MORTGAGEE PROTECTION.

10.1 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

(e) In the event of a default by Owner, any Mortgagee shall have the right to remedy, or cause to be remedied, such default within sixty (60) days following the later to occur of (i) the date of Mortgagee's receipt of the notice referred to in Section 10.1(b) above, or (ii) the expiration of the period provided herein for Owner to remedy or cure such default, and City shall accept such performance by or at the insistence of the Mortgagee as if the same had been timely made by Owner; provided, however, that (i) if such default is not capable of being cured within the timeframes set forth in this Section and Mortgagee commences to cure the default within such timeframes, then Mortgagee shall have such additional time as is required to cure the default so long as Mortgagee diligently prosecutes the cure to completion and (ii) if possession of the Property (or portion thereof) is required to effectuate such cure or remedy, the Mortgagee shall be deemed to have timely cured or remedied if it commences the proceedings necessary to obtain possession thereof within sixty (60) days after receipt of the copy of the notice, diligently pursues such proceedings to completion, and, after obtaining possession, diligently completes such cure or remedy.

## 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 shall 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.

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 requested by Owner 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”**

Colony Commerce Ontario East LP,  
a Delaware Limited Partnership

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

**“CITY”**

CITY OF ONTARIO

By: \_\_\_\_\_  
Scott Ochoa  
City Manager

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

ATTEST:

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

APPROVED AS TO FORM:

BEST, BEST & KREIGER LLP

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

**ACKNOWLEDGEMENT**

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

STATE OF CALIFORNIA )  
COUNTY OF \_\_\_\_\_ )

On \_\_\_\_\_, 20\_\_\_\_, before me,  
\_\_\_\_\_ )  
*Date*

*Insert Name and Title of the Officer*

personally appeared -

\_\_\_\_\_ )  
*Name(s) of Signer(s)*

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

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

WITNESS my hand and official seal.

Signature \_\_\_\_\_ )

*Signature of Notary Public*

*Place Notary Seal Above*

**EXHIBIT "A"**  
**TO DEVELOPMENT AGREEMENT**

**Legal Description of Property**

Real property in the City of Ontario, County of San Bernardino, State of California, described as follows:

TENTATIVE PARCEL MAP NO. 19904, BEING A DIVISION OF THE

FOLLOWING: PARCEL A:

THAT PORTION OF GOVERNMENT LOTS 5, 6, 7 AND 8, IN FRACTIONAL SECTION 22, 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 OFFICIAL GOVERNMENT SURVEY, DESCRIBED AS FOLLOWS:

BEGINNING AT A POINT 663.29 FEET WEST OF THE NORTHEAST CORNER OF SAID LOT 5; THENCE EAST TO THE EAST LINE OF SAID LOT 7; THENCE SOUTH ALONG THE EAST LINE OF SAID LOT 7 TO THE SOUTHEAST CORNER OF SAID LOT 7; THENCE SOUTHWESTERLY FOLLOWING THE SOUTHERLY LINE OF LOTS 7 AND 8, AND THE NORTHERLY LINE OF JURUPA RANCHO TO A POINT 118.79 FEET EAST OF A POINT DUE SOUTH OF THE POINT OF BEGINNING; THENCE WEST 118.79 FEET TO THE POINT DUE SOUTH OF THE POINT OF BEGINNING; THENCE NORTH TO THE POINT OF BEGINNING.

EXCEPT THEREFROM AN UNDIVIDED 1/2 INTEREST IN THE OIL AND MINERAL RIGHTS ON, IN OR UNDER SAID LAND AS PROVIDED IN AGREEMENT BETWEEN HELEN CURRIE MORGAN, ET AL., AND OSCAR IMBACH AND RUTH M. IMBACH, HUSBAND AND WIFE DATED MAY 8, 1944 AND RECORDED IN THE OFFICE OF THE COUNTY RECORDER OF SAN BERNARDINO COUNTY ON JUNE 10, 1944.

NOTE: A CONVEYANCE BY THOMAS M. MORGAN TO A TRUST WAS RECORDED NOVEMBER 18, 1992, INSTRUMENT NO. [92-477796](#), OFFICIAL RECORDS:

ALSO EXCEPT A PORTION OF GOVERNMENT LOTS 5 AND 8 IN SECTION 22, TOWNSHIP 2 SOUTH, RANGE 7 WEST, SAN BERNARDINO MERIDIAN, AND MORE PARTICULARLY DESCRIBED AS FOLLOWS:

BEGINNING AT A POINT ON THE NORTH LINE OF LOT 5, DISTANT 1878.69 FEET NORTH 89° 36' WEST FROM THE INTERSECTION OF THE EAST LINE OF SAID SECTION 22 AND SAID NORTH LINE OF LOT 5 PRODUCED EASTERLY; SAID POINT BEING 558.69 FEET WEST OF THE NORTHEAST CORNER OF SAID LOT 5; THENCE NORTH 89° 36' WEST ALONG SAID NORTH LINE OF LOT 5 A DISTANCE OF 104.60 FEET; THENCE SOUTH 0° 06' WEST, A DISTANCE OF 651.22 FEET; THENCE ALONG A 16,100 FOOT RADIUS CURVE TO THE LEFT FROM A TANGENT WHICH BEARS NORTH 10° 23' 20" EAST A DISTANCE OF 659.10 FEET TO THE POINT BEGINNING.

ALSO EXCEPT THAT PORTION OF LAND LYING WESTERLY OF THE EAST LINE OF THAT PROPERTY CONVEYED TO SOUTHERN CALIFORNIA EDISON COMPANY BY

**EXHIBIT "A" CONTINUED  
TO DEVELOPMENT AGREEMENT**

**Legal Description of Property**

DEED RECORDED DECEMBER 20, 1974, IN [BOOK 8581, PAGE 201](#), OFFICIAL RECORDS.

EXCEPTING THEREFROM THAT PORTION CONVEYED TO THE CITY OF ONTARIO, A MUNICIPAL CORPORATION AS MORE FULLY DESCRIBED IN GRANT DEED RECORDED APRIL 22, 2008 AS INSTRUMENT NO. [08-178326](#), OF OFFICIAL RECORDS.

PARCEL B:

PARCEL ONE:

ALL THAT PORTION OF LOT 6, SECTION 22, TOWNSHIP 2 SOUTH, RANGE 7 WEST, SAN BERNARDINO BASE AND MERIDIAN, IN THE COUNTY OF SAN BERNARDINO, STATE OF CALIFORNIA, ACCORDING TO THE OFFICIAL PLAT THEREOF, DESCRIBED AS FOLLOWS:

COMMENCING 120 FEET EAST OF THE NORTHWEST CORNER OF SAID LOT 6, IN THE NORTHEAST 1/4 OF THE SOUTHEAST 1/4 OF SAID SECTION; THENCE SOUTH 726 FEET; THENCE EAST 1,200 FEET TO EAST BOUNDARY LINE OF SAID LOT; THENCE NORTH 726 FEET; THENCE WEST 1,200 FEET TO THE POINT OF BEGINNING.

EXCEPTING THAT PORTION CONVEYED TO THE COUNTY OF SAN BERNARDINO FOR ROAD PURPOSES BY DEED RECORDED FEBRUARY 20, 1908, IN [BOOK 404, PAGE 398](#), OF DEEDS.

PARCEL TWO:

ALL THAT PORTION OF LOTS 6 AND 7, SECTION 22, TOWNSHIP 2 SOUTH, RANGE 7 WEST, SAN BERNARDINO BASE AND MERIDIAN, IN THE COUNTY OF SAN BERNARDINO, STATE OF CALIFORNIA, ACCORDING TO THE OFFICIAL PLAT THEREOF, DESCRIBED AS FOLLOWS:

BEGINNING AT THE SOUTHEAST CORNER OF THE NORTHWEST 1/4 OF THE SOUTHEAST 1/4 OF SAID SECTION; THENCE EAST TO THE EAST LINE OF SAID LOTS; THENCE NORTH ALONG THE EAST LINE OF SAID LOTS 6 AND 7 TO A POINT 726 FEET SOUTH OF THE NORTHEAST CORNER OF SAID LOT; THENCE AT RIGHT ANGLES WEST TO A POINT IN THE WEST LINE OF SAID LOT 6, 726 FEET SOUTH OF THE NORTHWEST CORNER OF SAID LOT; THENCE SOUTH THE POINT OF BEGINNING.

PARCEL THREE:

THAT PORTION OF GOVERNMENT LOT 6 AND THE NORTHWEST 1/4 OF THE SOUTHEAST 1/4, BOTH OF SECTION 22, TOWNSHIP 2 SOUTH, RANGE 7 WEST, SAN BERNARDINO BASE AND MERIDIAN, IN THE COUNTY OF SAN BERNARDINO, STATE OF CALIFORNIA, ACCORDING TO THE OFFICIAL PLAT THEREOF, DESCRIBED AS FOLLOWS:



**EXHIBIT "A" CONTINUED  
TO DEVELOPMENT AGREEMENT**

**Legal Description of Property**

BEGINNING AT A POINT ON THE NORTH LINE OF THE SOUTHEAST 1/4 OF SAID SECTION 22, WHICH IS NORTH 89 DEG. 36' 00" WEST, 1,849.01 FEET, FROM THE NORTHEAST CORNER OF SAID SOUTHEAST 1/4, SAID POINT BEING THE MOST NORTHERLY POINT ON THE CENTER LINE OF THE 200 FOOT STRIP OF LAND DESCRIBED IN THE DEED TO SAN BERNARDINO COUNTY FLOOD CONTROL DISTRICT, RECORDED OCTOBER 28, 1944, IN [BOOK 1716, PAGE 328](#), OFFICIAL RECORDS, SAID POINT ALSO BEING THE BEGINNING OF A NON-TANGENT CURVE CONCAVE WESTERLY HAVING A RADIUS OF 15,500.00 FEET, A RADIAL LINE THROUGH SAID POINT BEARS SOUTH 86 DEG. 52' 41" EAST; THENCE SOUTHERLY 1,312.06 FEET, ALONG THE ARC OF SAID CURVE; THENCE SOUTH 07 DEG. 58' 19" WEST, 12.60 FEET TO A POINT IN THE SOUTH LINE OF THE NORTHWEST 1/4 OF THE SOUTHEAST 1/4 OF SAID SECTION 22, WHICH IS NORTH 89 DEG. 36' 00" WEST, 1,979.60 FEET FROM THE SOUTHEAST CORNER OF THE NORTH 1/2 OF SAID SOUTHEAST 1/4; THENCE SOUTH 89 DEG. 36' 00" EAST, 663.29 FEET, ALONG SAID SOUTH LINE, TO THE SOUTHEAST CORNER OF SAID NORTHWEST 1/4; THENCE NORTH 594.00 FEET ALONG THE EAST LINE OF SAID NORTHWEST 1/4; THENCE EAST 120.00 FEET TO A POINT WHICH IS 1,200 FEET WEST OF THE EAST LINE OF SAID SOUTHEAST 1/4; THENCE NORTH 726.00 FEET, PARALLEL WITH THE EAST LINE OF SAID SOUTHEAST 1/4 TO THE NORTH LINE THEREOF; THENCE WEST 649.01 FEET, ALONG SAID NORTH LINE, TO THE POINT OF BEGINNING.

EXCEPTING THEREFROM ANY PORTION OF SAID PROPERTY LYING WITHIN THAT CERTAIN PROPERTY CONVEYED TO THE SAN BERNARDINO COUNTY FLOOD CONTROL DISTRICT, BY

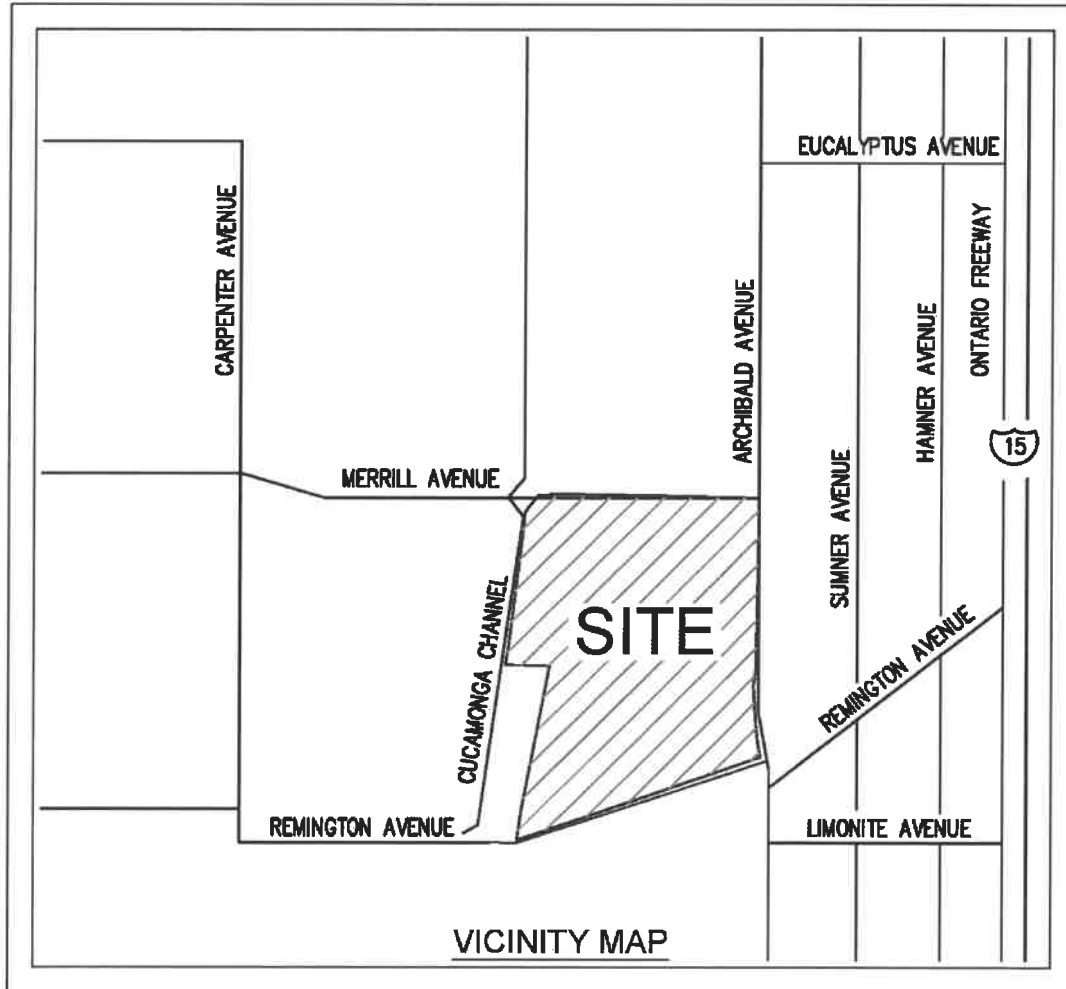
DEED RECORDED OCTOBER 28, 1944, IN [BOOK 1716, PAGE 328](#), OFFICIAL RECORDS.

ALSO EXCEPTING THEREFROM ANY PORTION THEREOF LYING WITHIN THAT CERTAIN PROPERTY CONVEYED TO THE SAN BERNARDINO COUNTY FLOOD CONTROL DISTRICT, BY DEED RECORDED SEPTEMBER 27, 1977, IN [BOOK 9271, PAGE 394](#), OFFICIAL RECORDS.

APN: 0218-311-02-0-000, 0218-311-03-0-000, 0218-311-08-0-000 and 0218-311-10-0-000

**EXHIBIT "B"  
TO DEVELOPMENT AGREEMENT**

**Map showing Property and its location**



**EXHIBIT "C"**  
**TO DEVELOPMENT AGREEMENT**

**Existing Development Approvals**

On March 27, 2018 the Planning Commission:

- a) Issued Resolution No. issued Resolution PC18-029 recommending City Council certification of the Colony Commerce Center East Specific Plan EIR (SCH#2017031048).
- b) Issued Resolution PC18-030 recommending to City Council approval of the Colony Commerce Center East Specific Plan (File No. PSP16-003).

On April 17, 2018, the City Council:

- a) Issued Resolution 2018-034 for the certification of the Colony Commerce Center East Specific Plan EIR (SCH#2017031048).

On May 1, 2018, the City Council:

- a) Adopted Ordinance 3097 approving the Colony Commerce Center East Specific Plan (File No. PSP16-003).

On January 22, 2019, the Planning Commission:

- a) Issued Resolution No. PC19-002 for the approval of Tentative Parcel Map 19904 (File No. PMTT18-006).
- b) Issued Resolution No. PC19-003 for the approval of Development Plan (File No. PDEV18-014).
- c) Issued Resolution No. PC19-004 recommending City Council approval of the Development Agreement (File No. PDA18-002).

**EXHIBIT "D"**  
**TO DEVELOPMENT AGREEMENT**

**Existing Land Use Regulations**

These documents are listed for reference only:

1. Colony Commerce Center East Specific Plan EIR, Resolution No. 2018-034
2. Colony Commerce Center East Specific Plan (File No. PSP16-003, Ordinance No. 3097)
3. 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"**

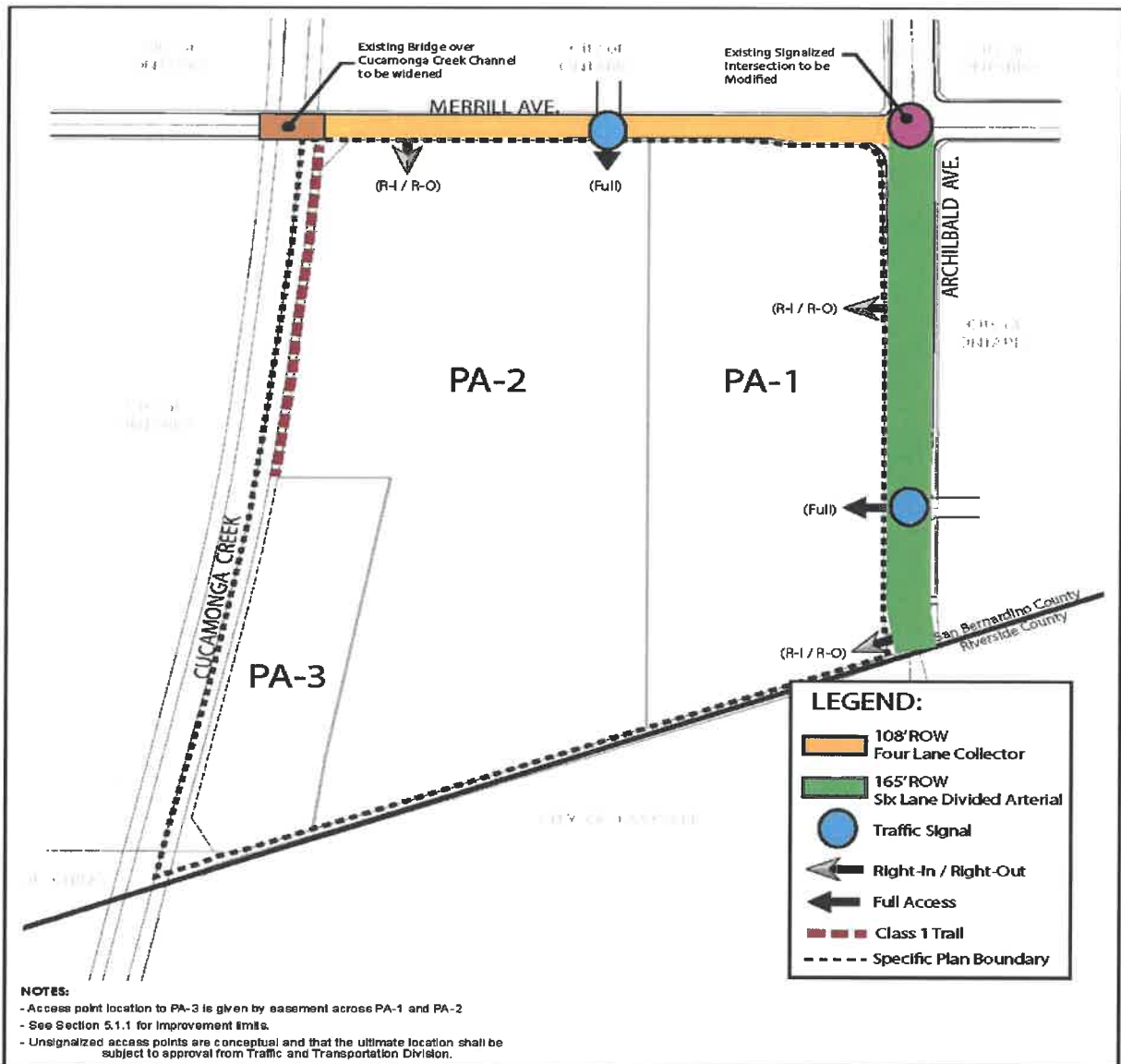
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# EXHIBIT "F-1"

## Required Street and Circulation System Infrastructure Improvements

### Exhibit "F-1"

### Required Street Circulation System Infrastructure Improvements



Source: KTG Group

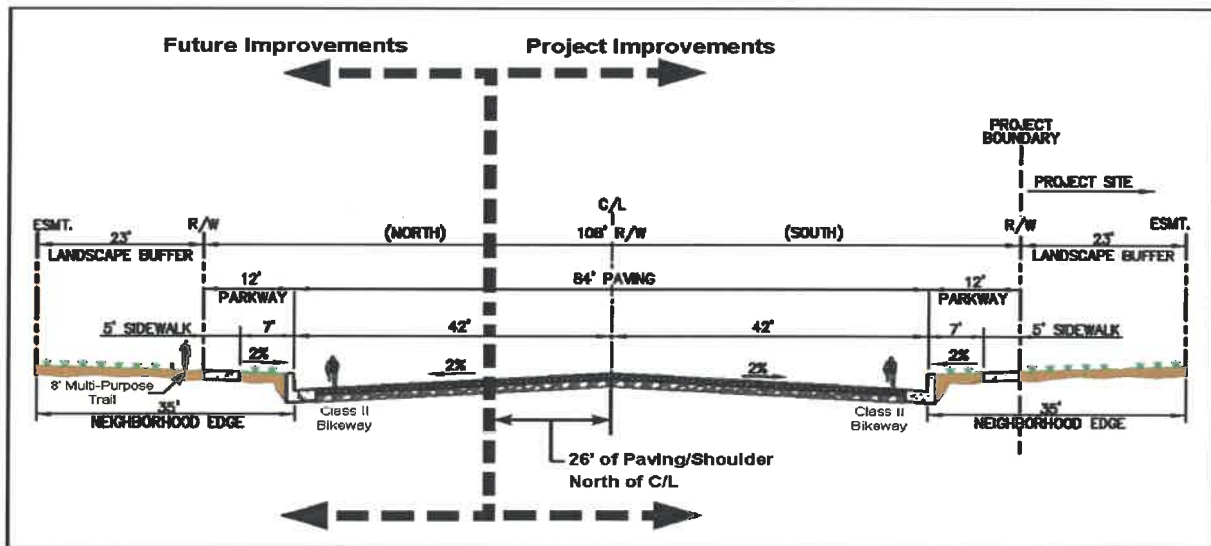
NOTE: Reference the City's most current Master Plan for sizing/alignment.

N. T. S.

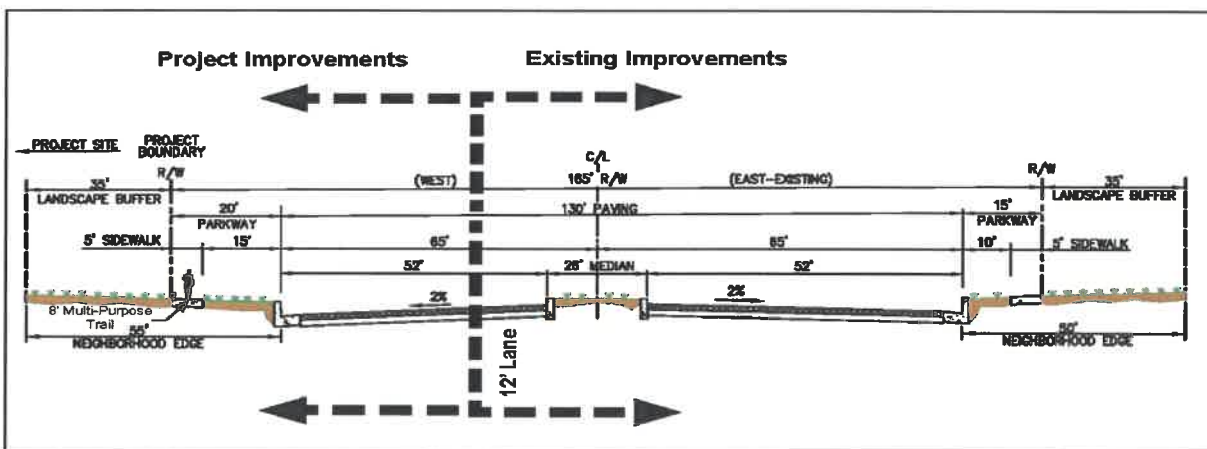
# EXHIBIT "F-1a"

## Streets and Circulation Improvements

### Exhibit "F-1a"



Typical Street Cross Section - Merrill Avenue (108' ROW)



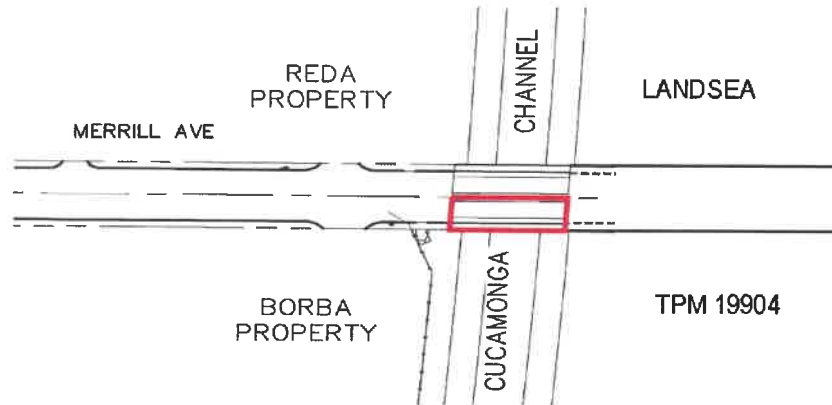
Typical Street Cross Section - Archibald Avenue (165' ROW)

**EXHIBIT "F-1b"**

**Merrill Avenue Bridge Improvements**

**Exhibit "F-1b"**

DEVELOPMENT AGREEMENT  
BRIDGE EXPANSION



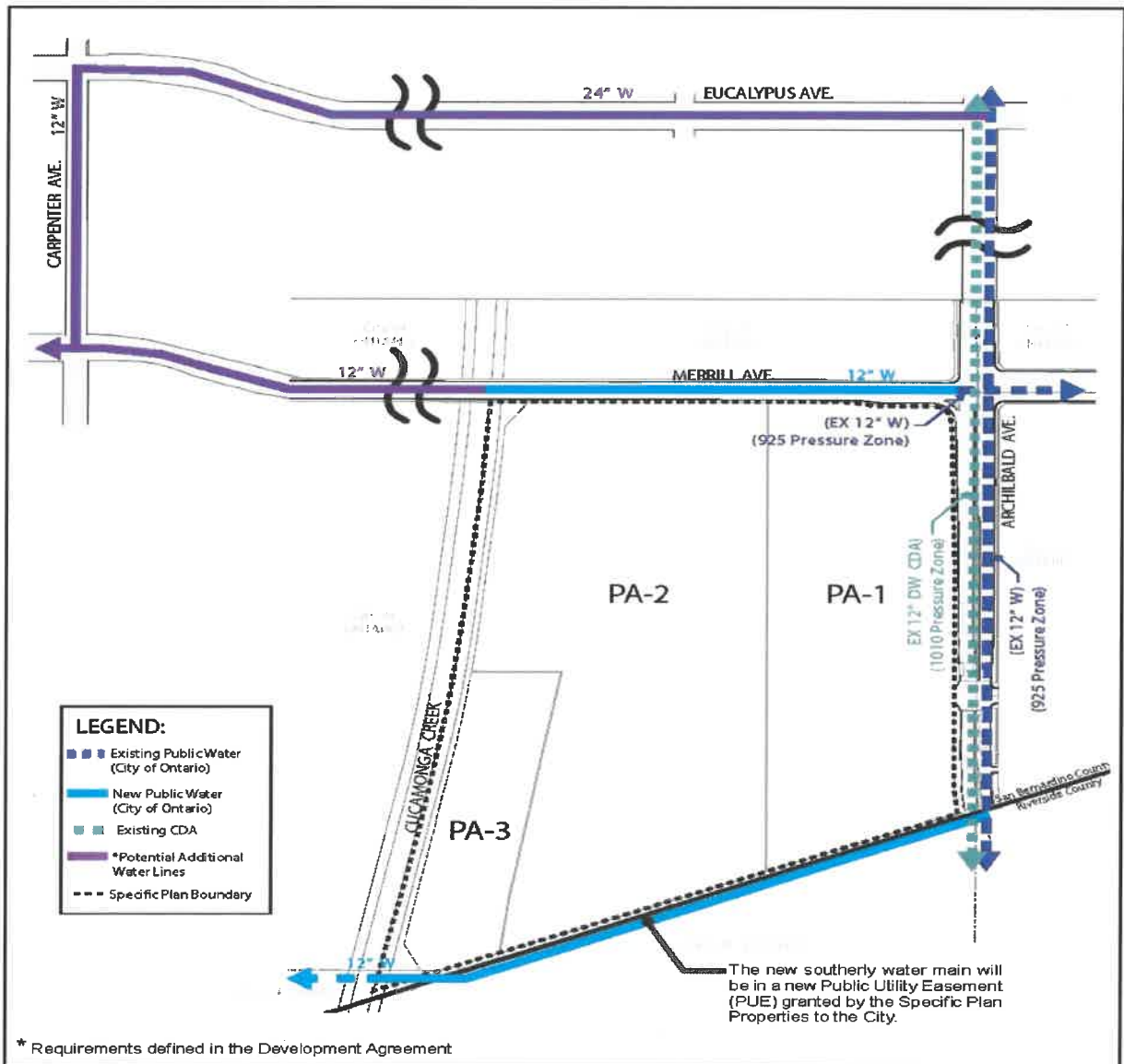


## EXHIBIT "F-2"

### Required Water Infrastructure Improvements

#### Exhibit "F-2"

#### Required Water Infrastructure Improvements



Source: David Evans & Associates

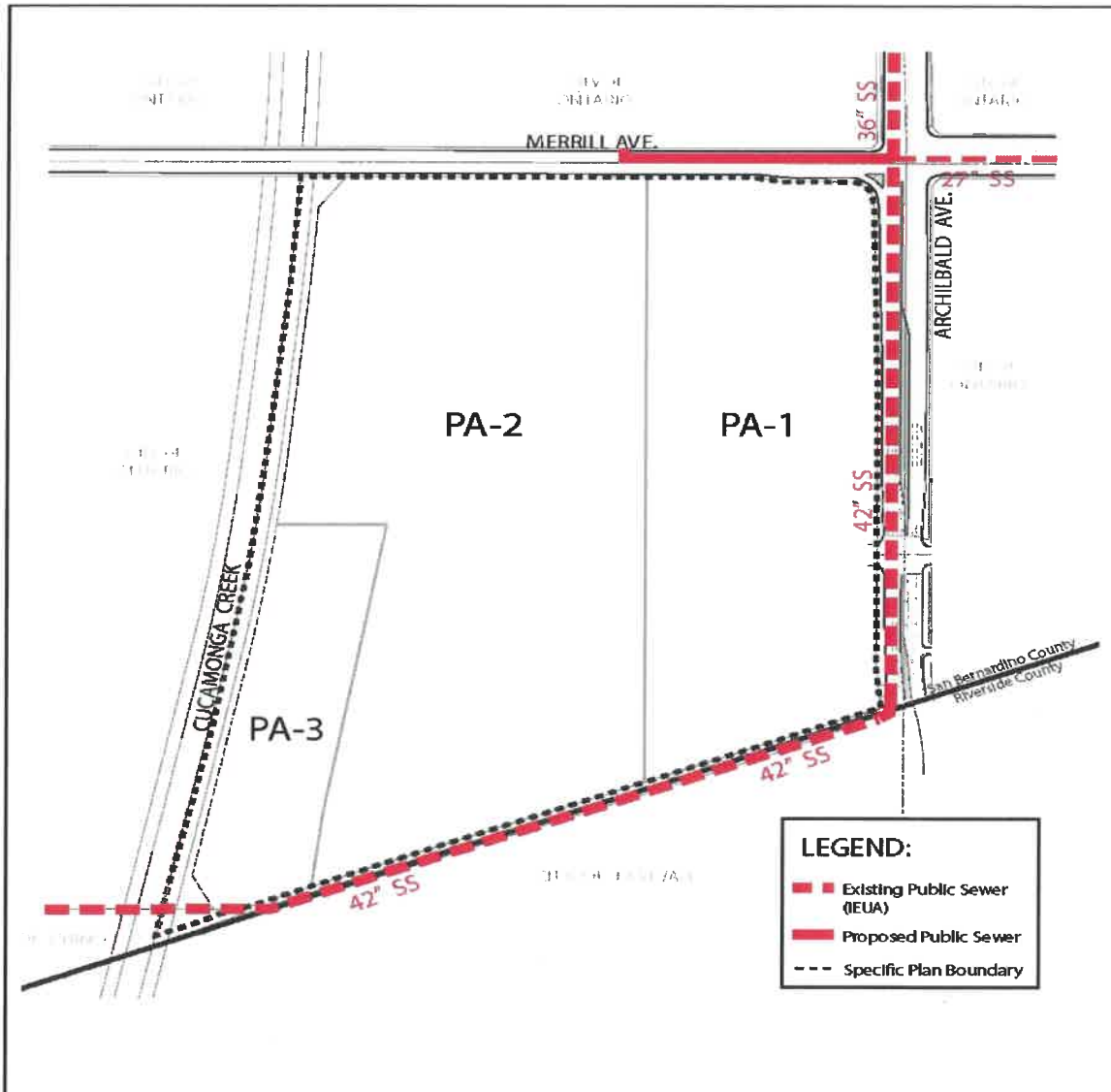
NOTE: Reference the City's most current Master Plan for sizing/alignment.

N. T. S.

# EXHIBIT "F-3 "

## Required Sewer Infrastructure Improvements

### Exhibit "F-3" Required Sewer Infrastructure Improvements



Source: David Evans & Associates

NOTE: Reference the City's most current Master Plan for sizing/alignment.

PA-1 and PA-2 will be served by an onsite private sewer system. The Onsite private sewer system and PA-1 and PA-2 will be designed in such to minimize the number of new connection points to the 42-inch IEUA Eastern Trunk Sewer to as few as possible.

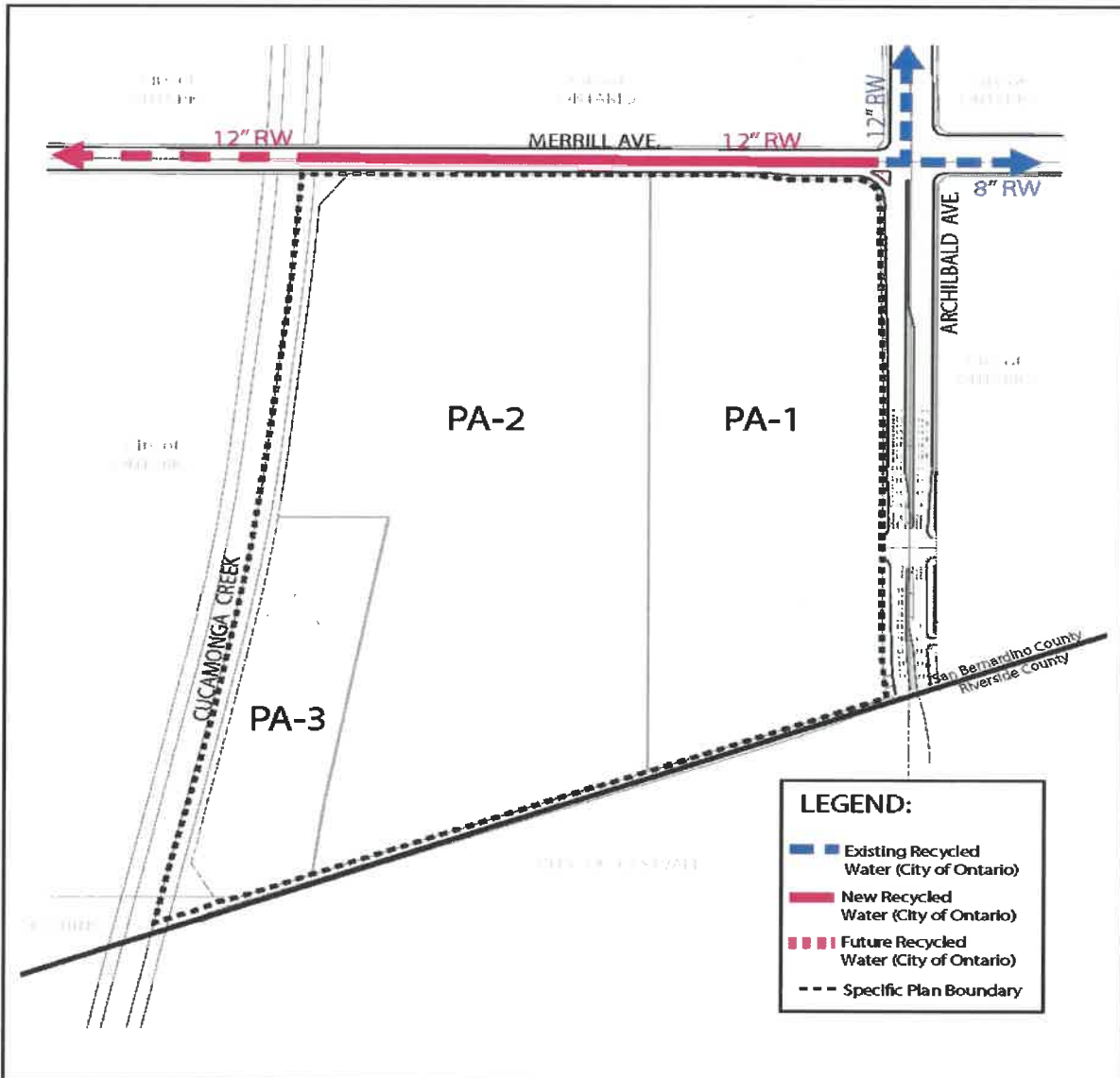
N. T. S.

# EXHIBIT "F-4"

## Required Recycled Water Infrastructure Improvements

### Exhibit "F-4"

### Required Recycled Water Infrastructure Improvements



Source: David Evans & Associates  
NOTE: Reference the City's most current Master Plan for sizing/alignment.  
Access for Recycled Water service to PA-3 is given by easement across PA-1 and PA-2

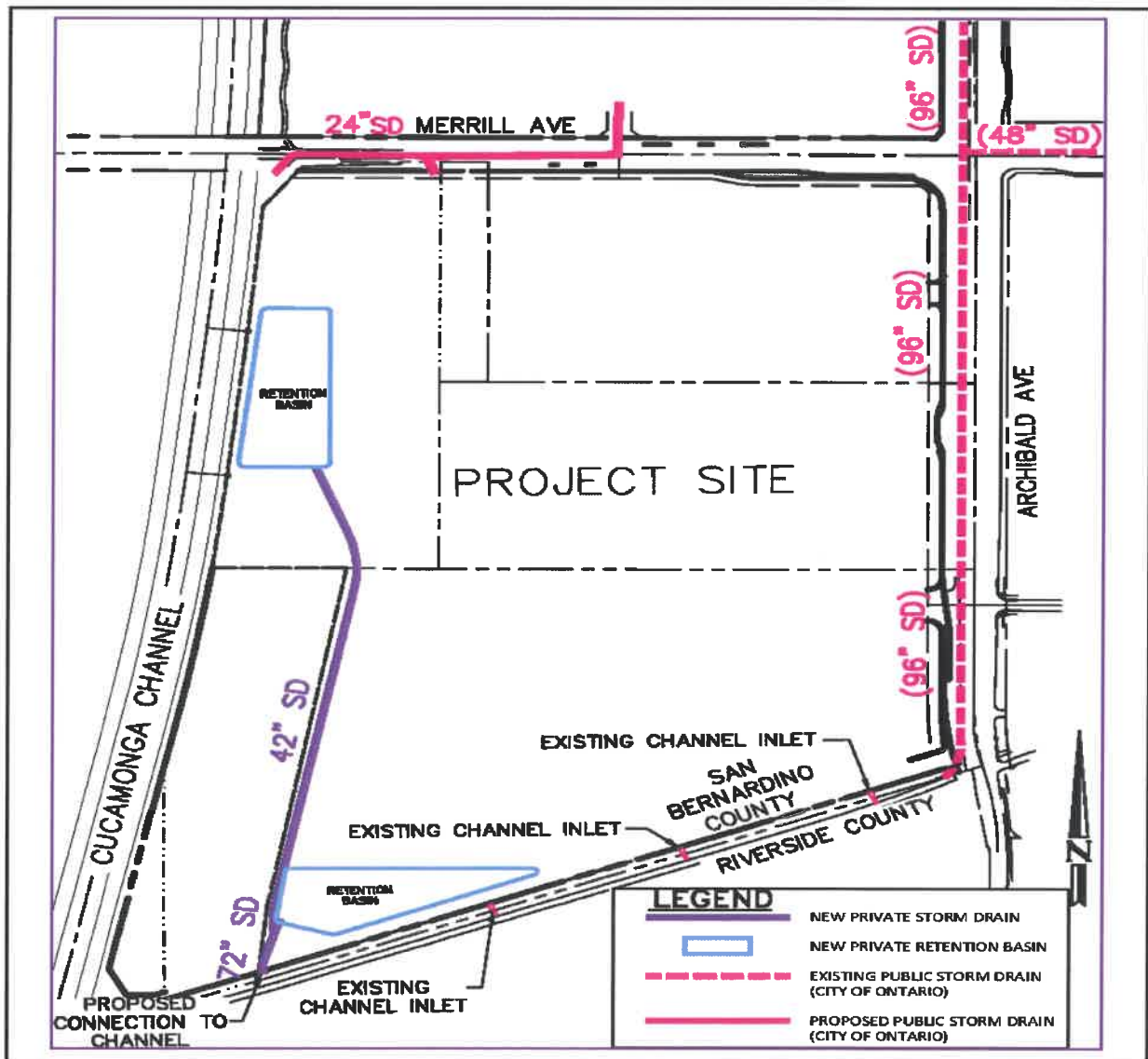
N. T. S.

# EXHIBIT "F-5"

## Required Storm Water Drainage Infrastructure Improvements

### Exhibit "F-5"

### Required Storm Drainage Infrastructure Improvements



Source: David Evans & Associates  
NOTE: Reference the City's most current Master Plan for sizing/alignment.

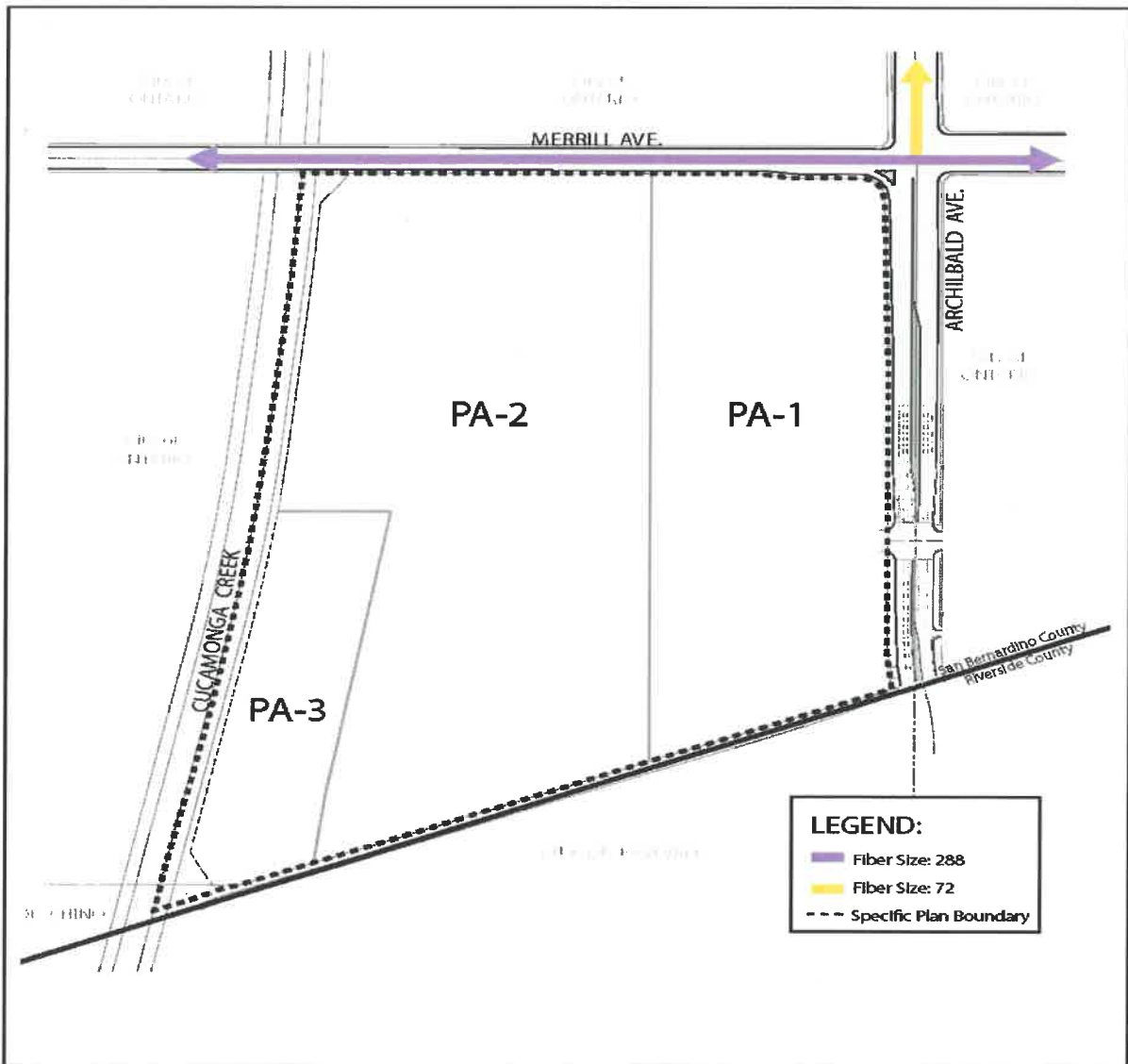
N. T. S.

# EXHIBIT "F-6"

## Required Fiber Optic Communications System Infrastructure Improvements

### Exhibit "F-6"

### Required Fiber Optic Communications System Infrastructure Improvements



Source: City of Ontario, Figure 7 (Fiber Size and Footages)  
NOTE: Reference the most current Master Plan for sizing/alignment.

N. T. S.

**EXHIBIT "G"**  
**TO DEVELOPMENT AGREEMENT**

FORM OF CERTIFICATE OF NET MDD AVAILABILITY

Pursuant to Section \_\_\_\_ of this Agreement between the City of Ontario, a California municipal corporation, and Colony Commerce Ontario East, a Delaware Limited Partnership, hereinafter called "OWNER", the terms and definitions of which are hereby incorporated herein by this reference and hereinafter called "Agreement", the City of Ontario hereby certifies based on CITY receipt of payment of OWNER's share of the funding for the Phase 2 Water Improvements, that OWNER is entitled to the following Net MDD Water Availability.

Amount of Net MDD \_\_\_\_\_ gpm

\_\_\_\_\_  
Scott Ochoa, City Manager

Dated: \_\_\_\_\_

**Exhibit "H"**

**FORM OF CERTIFICATE OF REGIONAL OR LOCAL ADJACENT DIF CREDIT**

Pursuant to Section 4.5.3 of this Agreement by and between the City of Ontario and Colony Commerce Ontario East LP, dated \_\_\_\_\_, 2019, the terms and definitions of which are hereby incorporated herein by this reference and hereinafter called the "Development Agreement", the City of Ontario hereby certifies that OWNER is entitled to the following amount and nature of DIF Credits in the Regional Water DIF Infrastructure Category:

Amount of Credit: \$ \_\_\_\_\_

\_\_\_\_\_  
Scott Ochoa, City Manager

Dated: \_\_\_\_\_

## Exhibit "I-1"

### ONTARIO RANCH WATER SUPPLY PHASING PLAN

<u>Phase 2</u>	<u>Water Availability Equivalency</u>	<u>Estimated Net MDD Available<sup>1</sup></u>
<b>Phase 2 A</b>		
<b><u>Supply &amp; Storage</u></b>		
1. 1 - Additional Ground Water Well and Collection lines - Design and Construction	8,250 gpm <sup>2</sup>	<b>7,750 gpm<sup>2</sup></b>
<b><u>Pipelines (Transmission &amp; Distribution)<sup>2</sup></u></b>		
2. 925 Zone Transmission lines – Design and Construction		
3. Temporary Pressure Reducing Station <sup>3</sup> – Design and Construction		
<b>Phase 2B</b>		
<b><u>Supply &amp; Storage</u></b>		
4. 1 – Additional Ground Water Well and Collection lines – Design and Construction	10,500 gpm <sup>2</sup>	<b>9,860 gpm<sup>2</sup></b>
5. 1 – 6 million gallon Reservoir – 925 Zone – Design and Construction		

(1) Upon Completion of the construction of all of the improvements described for each Phase a Certificate of Net MDD Availability shall be issued to Developer for the corresponding amount of Net MDD. Net MDD means the maximum daily demand on the potable water supply, net of the water requirements for public schools and parks. The Water Availability Equivalency includes the estimated requirements for public schools and parks. The amount of Net MDD specified is the cumulative amount for which building permits may be issued upon funding of the corresponding and all preceding Phases of improvements.

(2) The ability of a particular development to utilize Net MDD assigned to it by the Developer will require the completion of design and construction of Master-planned potable and recycled water transmission and distribution pipelines for the respective pressure zone. Other factors may include its location, the particular land use and Water Availability Equivalents assigned to it as specified in Exhibit C-2.

(3) Pressure reducing stations are a component of the pipeline transmission and distribution system.



## Exhibit I-2''

Available Water Supply - See Exhibit C-1R for Net MDD Available

**Table A - Water Demand Equivalents By Land Use**

The Ontario Plan  Land Use	Potable Water			Recycled Water	
	Water Demand Factor (ADD)		Water Demand Equivalents (WDE) <sup>2</sup>	Recycled Water Demand Factor <sup>1</sup> (ADD)	Recycled Water Demand Of Total Water Demand
	(gpd/du)	(gpd/ac)	(gpm/unit)	(gpd/ac)	(%)
Detached Dwellings (less than 5 units per acre)	544		0.57	900	28%
Detached or Attached Dwellings (between 5 and 11 units per acre)	464		0.48	1,000	21%
Attached Dwellings (between 11 and 25 units per acre)	323		0.34	1,500	18%
High Density Dwellings (25+ units per acre)	152		0.16	1,500	27%
Commercial Lodging	150		0.16	1,700	50%
Retail/Services Uses		2,200	2.29	2,300	51%
Office Uses		3,400	3.54	2,300	40%
Business Park Uses		2,200	2.29	2,200	50%
Industrial Uses		2,000	2.08	2,200	52%
Institutional Use		2,200	2.29	1,600	42%
Parks		1,000	1.04	1,400	58%
Schools		3,500	3.65	1,600	31%

<sup>1</sup>Recycled Water Demands include irrigation for right-of-way (medians and park ways), neighborhood edge, pocket parks, and common areas.

<sup>2</sup> The WDE is based on the Maximum Day Demand (MDD) with a peaking factor of 1.5 in the NMC for all land use categories.

**Table B - Example Water Supply Calculation**

Land Use	Acres <sup>1</sup> (gross)	Residential Units	WDE Factor (gpm)	Potable MDD (gpm)	Recycled Water ADD (gpm)
<b>Development</b>					
Detached Dwellings (less than 5 units per acre)	1,284	5,061	0.57	2,868	803
Detached or Attached Dwellings (between 5 and 11 units per acre)	369	2,530	0.48	1,223	256
Attached Dwellings (between 11 and 25 units per acre)	194	3,410	0.34	1,147	202
Retail/Services Uses (per acre) <sup>2</sup>	104		2.29	239	166
<b>TOTAL</b>	<b>1,950</b>	<b>11,001</b>		<b>5,477</b>	<b>1,428</b>

Three (3) Wells Are required to Support this example, assuming each well produces 2,000 gpm and connection to the Recycled Water System maximizing Recycled Water Use.

<sup>1</sup> Residential Acres are estimated based on the weighted average derived from the average number of units per land use category.

<sup>2</sup> Commercial acreage is calculated from a total square footage of 1,361,000 SF with an average Floor to Area Ratio (FAR) of 0.30 for commercial services in The Ontario Plan.

**Exhibit "J"**

**FORM OF PLUME DISCLOSURE LETTER**

**CITY OF**



**ONTARIO**

**ONTARIO MUNICIPAL UTILITIES COMPANY**

**PAUL S. LEON  
MAYOR**

**DEBRA DORST-PORADA  
MAYOR PRO TEM**

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

**March 2017**

**AL C. BOLING  
CITY MANAGER**

**SHEILA MAUTZ  
CITY CLERK**

**JAMES R. MILHISER  
TREASURER**

**SCOTT BURTON  
UTILITIES GENERAL MANAGER**

**DISCLOSURE NOTICE  
SOUTH ARCHIBALD TRICHLOROETHYLENE PLUME**

**Dear Property Owner/Developer/Applicant:**

The City of Ontario ("City") has approved or will be approving development in the Ontario Ranch area in the next few years, subject to the appropriate and required statutory process. This letter is intended to serve as notice to all potential property owners of the existence of a groundwater plume, known as the South Archibald Trichloroethylene (TCE) Plume which may exist in, under or near owner's property.

The groundwater plume is in an area in the central Chino Basin south of the Pomona Freeway, west of Turner Avenue, east of Grove Avenue, and north of Kimball Avenue. The plume primarily consists of TCE, a discontinued industrial solvent, and is subject to a clean-up under the oversight and direction of the Santa Ana Regional Water Quality Control Board ("Regional Board").

The Regional Board's approved clean-up procedure involves the removal and treatment of groundwater containing TCE via groundwater wells to reduce the plume concentrations and control its migration. In addition, the City is providing potable water supplies for domestic purposes to residences with private domestic wells affected by the plume. Finally, the Regional Board will continue to monitor all impacted areas and private domestic wells to ensure that residents' health and the environment are properly safeguarded. These remedial actions are documented in a Remedial Action Plan approved by the Regional Board in September 2016.

Further and current information may be found on the Regional Board's Geotracker website at [https://geotracker.waterboards.ca.gov/profile\\_report?global\\_id=T10000004658](https://geotracker.waterboards.ca.gov/profile_report?global_id=T10000004658).

Property owners may wish to include this letter as a part of a Real Estate Transfer Disclosure under California Civil Code Section 1102 *et seq.*

**1425 SOUTH BON VIEW · ONTARIO, CALIFORNIA 91761-4406 · (909) 395-2605 · FAX (909) 395-2601**

320513097.3

# CITY OF ONTARIO

Agenda Report  
March 5, 2019

SECTION:  
CONSENT CALENDAR

**SUBJECT: A RESOLUTION ORDERING THE SUMMARY VACATION OF AN EASEMENT GENERALLY LOCATED SOUTH OF CEDAR STREET AND APPROXIMATELY 450 FEET WEST OF BAKER AVENUE**

**RECOMMENDATION:** That the City Council adopt a resolution ordering the summary vacation of a 26-foot wide public easement for ingress, egress and vehicular access purposes, generally located south of Cedar Street and approximately 450 feet west of Baker Avenue.


**COUNCIL GOALS:** Invest in the Growth and Evolution of the City's Economy  
Focus Resources in Ontario's Commercial and Residential Neighborhoods  
Invest in the City's Infrastructure (Water, Streets, Sewers, Parks, Storm Drains and Public Facilities)

**FISCAL IMPACT:** None. The City did not pay for acquiring the subject easement and will not incur any cost by vacating it. The applicant has paid the applicable processing fees to defray the City's cost to process this request.

**BACKGROUND:** The owners of the property (Martinez Revocable Trust) located at 2006 S. Baker Avenue have requested that the City vacate an existing 26-foot wide public easement for ingress, egress and vehicular access purposes as shown on Exhibit A. The easement is not needed for any present or future ingress, egress and vehicular access purposes. The subject easement has no public utilities and is determined to be excess.

Section 8333(c) of the California Streets and Highways Code authorizes the City to summarily vacate (by resolution without a public hearing) a public service easement that has been superseded by relocation or determined to be excess and there are no other public facilities located within the easement.

**STAFF MEMBER PRESENTING:** Scott Murphy, AICP, Executive Director, Development Agency

Prepared by: Arij Baddour  
Department: Engineering  
City Manager  
Approval: 

Submitted to Council/O.H.A. 03/05/2019  
Approved: \_\_\_\_\_  
Continued to: \_\_\_\_\_  
Denied: \_\_\_\_\_

# EXHIBIT A EASEMENT VACATION



**VICINITY MAP**  
NOT TO SCALE

**LEGEND**  
 EASEMENT FOR INGRESS, EGRESS AND VEHICULAR ACCESS PURPOSES FOR PUBLIC SERVICES DEDICATED TO THE CITY OF ONTARIO PER PARCEL MAP NO. 10541, BOOK 123, PAGES 38 & 39 OF PARCELS MAPS TO BE VACATED.

(XXX) DATA PER PM 10541, BOOK 123, PAGE 38 & 39 OF PARCEL MAPS.



Cornerstone Land Surveying Inc.  
 Civil • Surveying • Planning  
 20730 Knob Place  
 PERRIS, CA 92570  
 PH 951-736-0200

APPLICANT:

*Stefan Lanthier*

STEFAN C. LANTHIER, PLS 7259

PROJECT: 2006 S. BAKER AVENUE, ONTARIO, CA

02-07-19

DATE

SHEET 1  
OF 1

DATE: 02-07-19

JN 17-260-9

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

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF ONTARIO, CALIFORNIA, ORDERING THE SUMMARY VACATION OF A PUBLIC ACCESS EASEMENT GENERALLY LOCATED SOUTH OF CEDAR STREET AND APPROXIMATELY 450 FEET WEST OF BAKER AVENUE.

WHEREAS, the City Council of the City of Ontario, California, pursuant to Division 9, Part 3, Chapter 4, of the Streets and Highways Code, may summarily vacate an easement under certain conditions specified therein; and

WHEREAS, the public easement for ingress, egress and vehicular access purposes located south of Cedar Street and approximately 450 feet west of Baker Avenue, over portions of Parcel 1 and Parcel 3 of Parcel Map No. 10541, filed in Book 123, Pages 38 and 39 of Parcel Maps, also being a portion of Lot 1 of Certificate Approving a Lot Line Adjustment Owner's Certificate No. 97-01 of official records, in the City of Ontario, County of San Bernardino, State of California, in the County Recorder's Office of said County, is not needed for any present or future ingress, egress and vehicular access purposes and is determined to be excess; and

WHEREAS, Section 8333(c) of the California Streets and Highways Code authorizes the City to summarily vacate (by resolution with no public hearing) a public service easement that has been superseded by relocation or determined to be excess; and

WHEREAS, the property owners, Martinez Revocable Trust, have requested vacation of said easement.

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

1. That the above recitals are true and correct.
2. That title to the above-described said easement, more specifically described in Exhibit "A" and depicted on Exhibit "B" attached hereto, shall be vacated.
3. That the City Clerk of the City of Ontario, California, shall cause a copy of this Resolution to be recorded in the office of the County Recorder of San Bernardino County, California.

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

PASSED, APPROVED, AND ADOPTED this 5<sup>th</sup> day of March 2019.

\_\_\_\_\_  
PAUL S. LEON, MAYOR

ATTEST:

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

APPROVED AS TO LEGAL FORM:

\_\_\_\_\_  
BEST BEST & KRIEGER LLP  
CITY ATTORNEY

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

I, SHEILA MAUTZ, City Clerk of the City of Ontario, DO HEREBY CERTIFY that foregoing Resolution No. 2019-        was duly passed and adopted by the City Council of the City of Ontario at their regular meeting held March 5, 2019 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. 2019-        duly passed and adopted by the Ontario City Council at their regular meeting held March 5, 2019.

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

(SEAL)

**EXHIBIT "A"**  
**V-283**  
**EASEMENT VACATION**

BEING A PORTION OF PARCELS 1 AND 3 OF PARCEL MAP NO. 10541, FILED IN BOOK 123, PAGES 38 AND 39 OF PARCEL MAPS, IN THE CITY OF ONTARIO, COUNTY OF SAN BERNARDINO, STATE OF CALIFORNIA, ALSO BEING A PORTION OF LOT 1 OF CERTIFICATE APPROVING A LOT LINE ADJUSTMENT OWNER'S CERTIFICATE NO. 97-01, PER DOCUMENT RECORDED FEBRUARY 4, 1997 AS INSTRUMENT NO. 19970039895 OF OFFICIAL RECORDS OF SAID COUNTY, MORE PARTICULARLY DESCRIBED AS FOLLOWS:

THAT PORTION OF THAT CERTAIN 26.00 FOOT WIDE EASEMENT FOR INGRESS, EGRESS AND VEHICULAR ACCESS PURPOSES FOR PUBLIC SERVICES PER SAID PARCEL MAP NO. 10541 LYING 13.00 FEET ON EACH SIDE OF THE FOLLOWING DESCRIBED CENTERLINE:

BEGINNING AT THE NORTHWESTERLY CORNER OF SAID PARCEL 1;

THENCE SOUTH 0°03'32" EAST ALONG THE WESTERLY LINE THEREOF, A DISTANCE OF 165.54 FEET TO A LINE PARALLEL WITH AND 8.00 FEET NORTHERLY OF THE SOUTHERLY LINE OF SAID PARCEL 1 AND THE POINT OF ENDING.

CONTAINING 4,304 SQUARE FEET, MORE OR LESS.

SEE EXHIBIT "B", ATTACHED HERETO AND BY THIS REFERENCE, MADE A PART HEREOF.

PERPARED BY ME OR UNDER MY DIRECTION

  
STEFAN C. LANTHIER, PLS 7259

02-07-19  
DATE



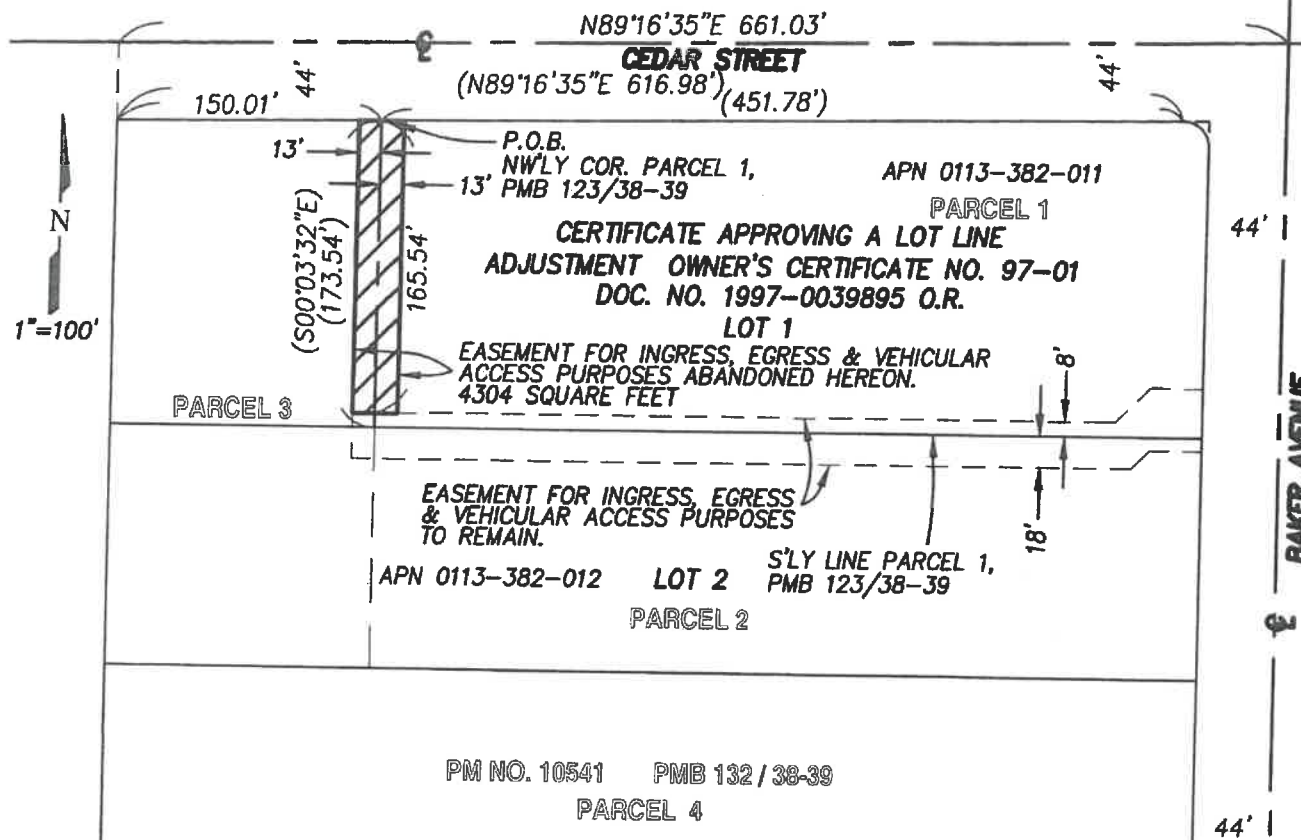
2006 BAKER AVENUE  
ONTARIO, CA 91761  
REVISED 02-07-2019



# EXHIBIT "B"

V-283

## EASEMENT VACATION



### LEGEND



**EASEMENT FOR INGRESS, EGRESS AND  
 VEHICULAR ACCESS PURPOSES FOR PUBLIC  
 SERVICES DEDICATED TO THE CITY OF  
 ONTARIO PER PARCEL MAP NO. 10541,  
 BOOK 123, PAGES 38 & 39 OF PARCELS  
 MAPS TO BE VACATED.**

**DATA PER PM 10541, BOOK 123, PAGE 38  
 & 39 OF PARCEL MAPS.**



**VICINITY MAP**  
 NOT TO SCALE



REVISED 10-24-2018



Cornerstone Land Surveying Inc.  
 Civil • Surveying • Planning  
 20730 Knob Place  
 PERRIS, CA 92570  
 PH 951-736-0200

*Stefan Lanthier*  
 STEFAN C. LANTHIER, PLS 7259

02-07-19  
 DATE

SHEET 1  
 OF 1 SHEETS  
 DATE: 02-07-19  
 JN 17-260-9

# CITY OF ONTARIO

Agenda Report  
March 5, 2019

SECTION:  
CONSENT CALENDAR

**SUBJECT: APPLICATION FOR GRANT FROM THE CALIFORNIA OFFICE OF TRAFFIC SAFETY (OTS) FY2020 SELECTIVE TRAFFIC ENFORCEMENT PROGRAM (STEP) GRANT PROGRAM**


**RECOMMENDATION:** That City Council authorize the City Manager or his designee to execute all documents necessary to apply for and accept a 12-month grant in the amount of \$849,700 from the California Office of Traffic Safety (OTS) for participation in the FY2020 Selective Traffic Enforcement Program (STEP) Grant Program.

**COUNCIL GOALS:** Maintain the Current High Level of Public Safety  
Pursue City's Goals and Objectives by Working with Other Governmental Agencies

**FISCAL IMPACT:** Grant awards will be announced in July 2019 and the grant period is October 1, 2019 - September 30, 2020. These grants are reimbursable on a quarterly basis and fund police overtime, education, equipment, supplies, and training to conduct DUI saturation patrols, special traffic enforcements, field enforcements and education, and sobriety checkpoints. The approximate grant funding reimbursement is \$849,700. The City is not required to provide matching funds for the grant. If awarded, the revenue and associated expenditure adjustments will be included in the next quarterly budget report to the City Council.

**BACKGROUND:** The California Office of Traffic Safety (OTS), through the National Highway Traffic Safety Administration (NHTSA), offers local law enforcement agencies overtime grants to migrate traffic safety program deficiencies, expand ongoing activities, develop new programs, and conduct sobriety checkpoints. The grant period includes two "National Impaired Driving Campaign" mobilization periods: the Winter Mobilization is scheduled for December 13, 2019 - January 1, 2020 and the Summer Mobilization occurs around Labor Day. Sobriety checkpoints, DUI saturation patrols and special traffic enforcements will be scheduled during each of the highly publicized mobilization periods, and additional operations will continue to be conducted outside the mobilization periods. Each overtime enforcement operation and checkpoint will be conducted according to each operation's specific needs, which may require supervisors, officers, technicians, and/or clerical/other staff members.

**STAFF MEMBER PRESENTING:** Derek Williams, Chief of Police

Prepared by: Douglas Sorel  
Department: Police  
City Manager Approval: 

Submitted to Council/O.H.A. 03/05/2019  
Approved: \_\_\_\_\_  
Continued to: \_\_\_\_\_  
Denied: \_\_\_\_\_

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The goals of the grant program include reducing the number of people killed in traffic collisions through the combined efforts of local law enforcement agencies, California Highway Patrol, and OTS; reducing the total number of traffic collisions that occur in the city; informing drivers about increased enforcement periods and warn drivers that the only way to “Avoid arrest and/or injury or death is to drive sober”; and network law enforcement agencies regionally and conduct multiple joint operations to decrease alcohol-related issues such as DUI’s and underage drinking.

# CITY OF ONTARIO

Agenda Report  
March 5, 2019

SECTION:  
CONSENT CALENDAR

**SUBJECT: STATE OF CALIFORNIA DEPARTMENT OF PUBLIC HEALTH STOP TOBACCO ACCESS TO KIDS ENFORCEMENT (STAKE) GRANT**


**RECOMMENDATION:** That the City Council authorize the City Manager or designee to accept and execute grant documents to accept a 36-month grant for \$47,000 from the California Department of Public Health to fund overtime enforcement operations and retail education efforts to address the illegal sale of tobacco to minors.

**COUNCIL GOALS:** Maintain the Current High Level of Public Safety  
Pursue City's Goals and Objectives by Working with Other Governmental Agencies  
Focus Resources in Ontario's Commercial and Residential Neighborhoods  
Encourage, Provide or Support Enhanced Recreational, Educational, Cultural and Healthy City Programs, Policies and Activities

**FISCAL IMPACT:** The Ontario Police Department has been awarded \$47,000 from the California Department of Public Health in response to a Request for Proposals for activities of Local Law Enforcement Agencies to be funded under the California Healthcare, Research and Prevention Tobacco Tax Act of 2016. The Stop Tobacco Access to Kids Enforcement (STAKE) grant will reimburse the City for overtime costs incurred while conducting field enforcement and retail education operations. The grant period is February 1, 2019 – January 31, 2022. The fiscal impact for FY 2018-19 is \$5,200. The associated grant revenue and expenditure appropriations adjustments will be presented in the next quarterly budget report to the City Council. The City is not required to provide matching funds for the grant award.

**BACKGROUND:** Funding for the STAKE grant program is awarded to local law enforcement agencies in response to the CDPH's Request for Proposals for activities of Local Law Enforcement Agencies funded under the California Healthcare, Research and Prevention Tobacco Tax Act of 2016, approved by the voters as Proposition 56. The grant runs concurrently with two separate Proposition 56 Tobacco Enforcement grants from the California Department of Justice. These grant funds are distributed to expand law enforcement efforts to prevent and curtail the illegal sale and marketing of

**STAFF MEMBER PRESENTING:** Derek Williams, Chief of Police

Prepared by: Douglas Sorel  
Department: Police  
City Manager Approval: 

Submitted to Council/O.H.A. 03/05/2019  
Approved: \_\_\_\_\_  
Continued to: \_\_\_\_\_  
Denied: \_\_\_\_\_

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tobacco productions to minors to improve the overall health of the community. The grant requires a sworn officer to be appointed to the program to coordinate enforcement action and training. This is the first year of the program and it is expected the program will result in a higher rates of compliance with tobacco-retailing laws and ordinances.

The proposed spending plan for the tobacco enforcement grant is as follows:

• Personnel Overtime	
(FY 2018-19)	\$5,100
(FY 2019-20)	15,500
(FY 2020-21)	15,500
(FY 2021-22)	10,500
• Operating Expenses	
Buy money	
(FY 2018-19)	\$100
(FY 2019-20)	\$100
(FY 2020-21)	\$100
(FY 2021-22)	<u>\$100</u>
<b>TOTAL</b>	<b><u>\$47,000</u></b>

# CITY OF ONTARIO

Agenda Report  
March 5, 2019

SECTION:  
CONSENT CALENDAR

**SUBJECT: CONSTRUCTION CONTRACT FOR THE RELOCATION OF PUBLIC WORKS ADMINISTRATION**

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

- (A) Award Contract No. D&C18-005-PW-Admin Move to New Dimension General Construction, of Anaheim Hills, California, for the tenant improvements to be constructed at 1333 South Bon View Avenue for the relocation of Public Works Administration in the amount of \$159,600;
- (B) Authorize a project reserve in the amount of \$41,500 for additional construction services for alternate work, to include removal of the chain link fencing and sound damping ceiling system, and a 15% contingency of \$30,165; and
- (C) Authorize the City Manager to execute the contract and related documents, including the filing of a notice of completion at the conclusion of all construction related 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 2018-19 Adopted Capital Improvement Project Budget includes appropriations in the amount of \$571,682 remaining for the construction phase of this project. The appropriations will cover costs for construction, furniture purchase and installation, and moving services.

The total recommended contract authorization is \$231,265. The amount consists of the construction contract base cost of \$159,600, the alternate construction services of \$41,500, and a 15% contingency of \$30,651.

**BACKGROUND:** The Public Works Administrative Office Relocation project improvements include the demolition of the south side of the 1333 South Bon View Avenue facility, removal of the outside

**STAFF MEMBER PRESENTING:** Tito Haes, Executive Director, Public Works

Prepared by: David Simpson  
Department: Design and Construction

City Manager Approval: 

Submitted to Council/O.H.A. 03/05/2019  
Approved: \_\_\_\_\_  
Continued to: \_\_\_\_\_  
Denied: \_\_\_\_\_

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fenced area, the reconfiguration of the existing space into offices and a conference room, renovation of flooring, lighting, and the heating/ventilation and air conditioning systems.

On February 19, 2019, nine bids were received, ranging from \$159,600 to \$337,419 as summarized below:

<u>Vendor</u>	<u>Location</u>	<u>Amount</u>
New Dimension General Construction	Anaheim Hills, CA	\$159,600
RS Construction & Development, Inc.	Upland, CA	\$186,490
Corner Keystone Construction Corp	Walnut, CA	\$187,708
California Custom Builders	Ventura, CA	\$209,800
R Dependable Construction, Inc.	San Bernardino, CA	\$215,000
Leonida Builders	Santa Clarita, CA	\$265,000
Broughton Construction	Rancho Cucamonga, CA	\$265,321
New Millennium Construction Services	Chino Hills, CA	\$300,890
Cal K-12 Construction	Redlands, CA	\$337,419

New Dimension General Construction, located in Anaheim Hills, California, submitted a bid that met all the required specifications with base cost of \$159,600. Based on their bid, credentials, pricing and favorable reference checks, staff recommends award of a Construction Contract to New Dimension General Construction.

Once the contract is awarded, it is anticipated that construction will commence during March 2019 and the installation of furniture will take place in May 2019 with staff relocating to the facility in June 2019.

# CITY OF ONTARIO

Agenda Report  
March 5, 2019

SECTION:  
CONSENT CALENDAR

**SUBJECT: AMENDMENT OF THE PURCHASE AGREEMENT FOR LIGHTING MATERIALS AND SUPPLIES**

**RECOMMENDATION:** That the City Council authorize the City Manager to amend the existing purchase agreement to procure additional lighting materials and supplies in the amount of \$71,708 under the terms and conditions of Purchase Order No. 43965 (Bid Invitation #1043) with Consolidated Electrical Distributors of Los Angeles, California, for an amended authorized amount of \$169,568.

**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 2018-19 Adopted Operating Budget includes General Fund appropriations of \$479,010 for the routine annual purchase and installation of lighting materials and supplies. Actual expenditures are based on the fixed unit prices and quantities needed for materials purchased to meet annual installation and replacement requirements. Specifically, the City has an existing open purchase order for such materials, and staff is recommending to amend this purchase order in consideration of the increased volume of lighting replacement work experienced this year. The revised total purchase order amount will be \$169,568.

**BACKGROUND:** In November 2018, the City solicited bids for lighting materials and supplies and subsequently issued a purchase order to Consolidated Electrical Distributors under the City Manager's signature authority. The purchase agreement was issued for \$97,860 based on estimates of need for materials and supplies. Now, with additional installation needs identified for this year, staff recommends increasing the existing purchase order. Consolidated Electrical Distributors met all contractual requirements in successfully providing lighting materials and supplies in a timely manner; and staff recommends continuation of the procurement agreement to meet the City's additional needs for the Streetlight Maintenance program.

**STAFF MEMBER PRESENTING:** Tito Haes, Executive Director, Public Works

Prepared by: Pat Malloy  
Department: Municipal Services  
City Manager Approval: 

Submitted to Council/O.H.A. 03/05/2019  
Approved: \_\_\_\_\_  
Continued to: \_\_\_\_\_  
Denied: \_\_\_\_\_