

**CITY OF ONTARIO  
CITY COUNCIL/HOUSING AUTHORITY  
AGENDA  
NOVEMBER 17, 2020**

**Paul S. Leon**  
Mayor

**Debra Dorst-Porada**  
Mayor pro Tem

**Alan D. Wapner**  
Council Member

**Jim W. Bowman**  
Council Member

**Ruben Valencia**  
Council Member



**Scott Ochoa**  
City Manager

**Ruben Duran**  
City Attorney

**Sheila Mautz**  
City Clerk

**James R. Milhiser**  
Treasurer

**SPECIAL AND URGENT NOTICE**

In accordance with the Governor's Declarations of Emergency for the State of California (Executive Orders N-25-20 and N-29-20), the Ontario City Council Meetings are being conducted via teleconference to limit in-person attendance at the upcoming meeting of the City of Ontario City Council and Housing Authority.

Members of the public may utilize alternative measures established by the City of Ontario to view the City Council meetings and/or to address the Mayor and City Council Members.

The meeting will be live broadcast on local cable Channel 3 as well as live streamed at: [www.ontarioca.gov/Agendas/CityCouncil](http://www.ontarioca.gov/Agendas/CityCouncil), [YouTube.com/CityofOntario](https://www.youtube.com/CityofOntario); or Zoom.

**TO PROVIDE PUBLIC COMMENT:** Those wishing to speak during the "Public Comment" portion for any Closed Session item must call 909-395-2900 between 5:45 p.m. and 6:00 p.m. the day of the meeting. Those wishing to speak during the "Public Comment" portion of the meeting or any item on "Consent Calendar" must call 909-395-2900 between 6:00 p.m. and 6:30 p.m. the day of the meeting.

**TO COMMENT BY E-MAIL:** Submit your comments by email no later than 4:00 p.m. on the day of the meeting by emailing your name, agenda item you are commenting on and your comment to [publiccomments@ontarioca.gov](mailto:publiccomments@ontarioca.gov). All Comments received by the deadline will be forwarded to the City Council for consideration before action is taken on the matter.

**TO COMMENT BY MAIL:** To submit your comments by mail, provide your name, agenda item you are commenting on, and your comment by mailing to Records Management, Ontario City Hall, 303 East “B” Street, Ontario, CA 91764. Comments by mail must be received by the Records Management Department no later than 4:00 p.m. on the day of the meeting. Postmarks are not accepted. All comments received by the deadline will be provided to the City Council for consideration before action is taken on the matter.

We appreciate your understanding during this unprecedented time of social distancing under the Stay at Home Order. These procedures may be modified in the future as social and public gathering protocols change.

**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 provide public comment or to address the Council have been provided alternative measures including U.S. mail, email, a website comment form, and the ability to dial in and record a 3 minute voicemail. All public comments received by the established deadline for this meeting will be included as part of the official meeting record.
- 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.

**ORDER OF BUSINESS** The regular City Council and Housing Authority meeting begins with Closed Session and Closed Session Comment at 6:00 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.

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

***ROLL CALL***

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

***PLEDGE OF ALLEGIANCE***

Council Member Bowman

## INVOCATION

### **PUBLIC COMMENTS**

**6:30 p.m.**

Members of the Public who wish to provide a general comment or address a specific agenda item may do so by mailing comments to the City Clerk's Office, or by calling (909) 395-2900 between 6:00 - 6:30 p.m. or by emailing [PublicComments@ontarioca.gov](mailto:PublicComments@ontarioca.gov) no later than 5:00 p.m. on the day of the meeting. Under provisions of the Brown Act, Council is prohibited from taking action on oral requests.

### **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 October 20, 2020, approving same as on file in the Records Management Department.

#### **2. BILLS & PAYROLL**

Bills October 16, 2020 through October 29, 2020 and Payroll October 11, 2020 through October 24, 2020 when audited by the Finance Committee.

#### **3. PIPELINE AGREEMENTS WITH UNION PACIFIC RAILROAD COMPANY FOR PUBLIC UTILITIES WITHIN RAILROAD PROPERTY LOCATED WEST OF THE INTERSECTION OF MAITLAND STREET AND MONTEREY AVENUE**

That the City Council approve two pipeline agreements with Union Pacific Railroad Company (on

file in the Records Management Department) and authorize the City Manager to execute the agreements and all related amendments.

**4. AN AMENDMENT TO THE PROFESSIONAL SERVICES AGREEMENT FOR LABOR AND EMPLOYEE RELATIONS LEGAL CONSULTING**

That the City Council authorize the City Manager to execute Amendment No. 1 (on file in the Records Management Department) adding \$100,000 to the existing Professional Services Agreement with Jones & Mayer for labor and employee relations legal consulting, for a revised contract authority of \$200,000 and extend the contract term to June 30, 2022.

**5. AN ORDINANCE REGARDING THE ADOPTION OF CAMPAIGN FINANCE LIMITS, PURSUANT TO ASSEMBLY BILL 571**

That the City Council adopt an ordinance regarding the adoption of campaign finance limits, pursuant to Assembly Bill 571.

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF ONTARIO, CALIFORNIA, AMENDING CHAPTER 10 OF TITLE 2 OF THE ONTARIO MUNICIPAL CODE RELATING TO CAMPAIGN CONTRIBUTION LIMITS.

**6. AMENDMENT TO THE MAINTENANCE SERVICES AGREEMENT WITH GEYSER EQUIPMENT FOR ON-CALL MAINTENANCE AND REPAIR SERVICE TO THE FLEET VEHICLE PRESSURE WASHER EQUIPMENT**

That the City Council authorize the City Manager to execute Amendment No. 2 to the existing Maintenance Services Agreement with Geysler Equipment of Riverside, California (on file in the Records Management Department) for on-call maintenance and repair services to the City's fleet vehicle pressure washer equipment; and to exercise the four option years and extend the term of the agreement to June 30th, 2024.

**7. AN INTER-AGENCY BILLBOARD RELOCATION AGREEMENT (FILE NO. PSGN20-111) FOR THE REMOVAL, RELOCATION AND PLACEMENT OF BILLBOARDS**

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

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF ONTARIO, CALIFORNIA, APPROVING FILE NO. PSGN20-111, A BILLBOARD RELOCATION AGREEMENT BETWEEN THE CITY OF ONTARIO, SAN BERNARDINO COUNTY TRANSPORTATION AUTHORITY AND LAMAR CENTRAL OUTDOOR, LLC, AND MAKING FINDINGS IN SUPPORT THEREOF (APNS: 0110-181-19, 0110-134-19, 0209-331-35, 1010-552-13, AND 1010-552-14).

## **PUBLIC HEARINGS**

**Pursuant to Government Code Section 65009, if you challenge the City's zoning, planning or any other decision in court, you may be limited to raising only those issues you or someone else raised at the public hearing described in this notice, or in written correspondence delivered to the City Council at, or prior to the public hearing. Notice of public hearing, for each item below, has been duly given and affidavits of compliance are on file in the Records Management Department.**

**8. *A PUBLIC HEARING TO CONSIDER A MILLS ACT CONTRACT (PRESERVATION AGREEMENT) FOR A DESIGNATED HISTORIC PROPERTY, LOCATED AT 1458 NORTH EUCLID AVENUE (APN: 1047-352-14)***

That the City Council consider and adopt a resolution approving File No. PHP20-012 authorizing the City Manager to enter into a Mills Act contract (Preservation Agreement), for a designated historic property located at 1458 North Euclid Avenue.

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF ONTARIO, CALIFORNIA, APPROVING FILE NO. PHP20-012 AND AUTHORIZING THE CITY OF ONTARIO TO ENTER INTO A HISTORIC PROPERTY PRESERVATION AGREEMENT (MILLS ACT CONTRACT) WITH STEVEN AND SYLVIA ROMERO, FOR THE PROPERTY LOCATED AT 1458 NORTH EUCLID AVENUE (APN: 1047-352-14).

**9. *A PUBLIC HEARING TO CONSIDER: [1] A GENERAL PLAN AMENDMENT (FILE NO. PGPA19-008) MODIFYING POLICY PLAN EXHIBIT LU-01, LAND USE PLAN, CHANGING THE LAND USE DESIGNATION ON 10.49 ACRES OF LAND FROM PUBLIC SCHOOL TO LOW-MEDIUM DENSITY RESIDENTIAL (5.1-11 DU/AC), AND MODIFYING EXHIBIT LU-03, FUTURE BUILDOUT, TO BE CONSISTENT WITH THE PROPOSED LAND USE DESIGNATION CHANGE; AND [2] AN AMENDMENT TO THE AVENUE SPECIFIC PLAN (FILE NO. PSPA19-011), CHANGING THE LAND USE DESIGNATION ON THE PROJECT SITE FROM SCHOOL TO LOW-MEDIUM DENSITY RESIDENTIAL, INTRODUCE PRODUCT TYPE 1D (2,700 - 3,500 SQUARE-FOOT LOTS), AND REVISE APPLICABLE EXHIBITS, MAPS, DEVELOPMENT STANDARDS, AND OTHER TEXT THROUGHOUT THE SPECIFIC PLAN TO ACCOMMODATE THE PROPOSED LAND USE CHANGE, ON LAND GENERALLY LOCATED AT THE NORTHEAST CORNER OF LA AVENIDA DRIVE AND MANITOBA PLACE, WITHIN THE PA-6B LAND USE DISTRICT OF THE AVENUE SPECIFIC PLAN (APN: 0218-302-01)***

That the City Council consider and adopt:

- A. A resolution approving the use of an Addendum to The Ontario Plan Environmental Impact Report (State Clearinghouse No. 2008101140); A resolution approving the General Plan Amendment (File No. PGPA19-008), modifying the Policy Plan Exhibit LU-01, Land Use Plan, changing the land use designation on 10.49 acres of land, from Public School to Low-Medium Density Residential (5.1-11 dwelling units per acre), and modifying Exhibit LU-

- 03, Future Buildout, to be consistent with the proposed land use designation change; and
- B. A resolution approving a Specific Plan Amendment (File No. PSPA19-011), modifying The Avenue Specific Plan, changing the land use designation on the project site from School to Low-Medium Density Residential, introduce Product Type 1D (2,700 – 3,500 square-foot lots), and revise applicable exhibits, maps, development standards, and other text throughout the Specific Plan to accommodate the proposed land use change.

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF ONTARIO, CALIFORNIA, APPROVING AN ADDENDUM TO THE ONTARIO PLAN CERTIFIED ENVIRONMENTAL IMPACT REPORT (STATE CLEARINGHOUSE NO. 2008101140), PURSUANT TO THE REQUIREMENTS OF THE CALIFORNIA ENVIRONMENTAL QUALITY ACT, AS AMENDED, FOR FILE NO. PGPA06-001.

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF ONTARIO, CALIFORNIA, APPROVING FILE NO. PGPA19-008, A GENERAL PLAN AMENDMENT MODIFYING POLICY PLAN EXHIBIT LU-01, LAND USE PLAN, CHANGING THE LAND USE DESIGNATION ON 10.49 ACRES OF LAND FROM PUBLIC SCHOOL TO LOW-MEDIUM DENSITY RESIDENTIAL (5.1 – 11 DU/AC), AND MODIFYING EXHIBIT LU-03, FUTURE BUILDOUT, TO BE CONSISTENT WITH THE PROPOSED LAND USE DESIGNATION CHANGE, AND MAKING FINDINGS IN SUPPORT THEREOF - APN: 0218-652-27. (SEE EXHIBITS A AND B) (PART OF CYCLE 4 FOR THE 2020 CALENDAR YEAR).

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF ONTARIO, CALIFORNIA, APPROVING FILE NO. PSPA19-011, A SPECIFIC PLAN AMENDMENT CHANGING THE LAND USE DESIGNATION ON 10.49 ACRES OF LAND FROM SCHOOL TO LOW-MEDIUM DENSITY RESIDENTIAL, INTRODUCE PRODUCT TYPE 1D (2,700-3,500 SQUARE-FOOT LOTS), AND REVISE EXHIBITS, MAPS, DEVELOPMENT STANDARES, AND OTHER TEXT THROUGHOUT THE SPECIFIC PLAN TO ACCOMMODATE THE PROPOSED LAND USE CHANGE, AND MAKING FINDINGS IN SUPPORT THEREOF - APN: 0218-652-27.

- 10. A PUBLIC HEARING TO CONSIDER AN ORDINANCE APPROVING THE DEVELOPMENT AGREEMENT (FILE NO. PDA20-001) BETWEEN THE CITY OF ONTARIO AND ONTARIO SCHAEFER HOLDINGS, LLC., TO ESTABLISH THE TERMS AND CONDITIONS FOR THE DEVELOPMENT OF TENTATIVE TRACT MAP 20298 (FILE NO. PMTT19-015), A 10.49-ACRE PROPERTY LOCATED AT THE NORTHEAST CORNER OF LA AVENIDA DRIVE AND MANITOBA PLACE, WITHIN THE PROPOSED LOW-MEDIUM DENSITY RESIDENTIAL LAND USE DISTRICT OF THE AVENUE SPECIFIC PLAN (APN: 0218-652-27)**

That the City Council introduce and waive further reading of an ordinance approving the Development Agreement (File No. PDA20-001) between the City of Ontario and Ontario Schaefer Holdings, LLC., to establish the terms and conditions for the development of Tentative Tract Map

20298 (File No. PMTT19-015), a 10.49-acre property located at the northeast corner of La Avenida Drive and Manitoba Place, within the proposed Low-Medium Density Residential land use district of The Avenue Specific Plan (APN: 0218-652-27).

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF ONTARIO, CALIFORNIA, APPROVING FILE NO. PDA20-001, A DEVELOPMENT AGREEMENT BETWEEN THE CITY OF ONTARIO AND ONTARIO SCHAEFER HOLDINGS, LLC., TO ESTABLISH THE TERMS AND CONDITIONS FOR THE DEVELOPMENT OF TENTATIVE TRACT MAP 20298 (FILE NO. PMTT19-015), A 10.49 ACRE PROPERTY LOCATED AT THE NORTHEAST CORNER OF LA AVENIDA DRIVE AND MANITOBA PLACE, WITHIN THE PROPOSED LOW-MEDIUM DENSITY RESIDENTIAL LAND USE DISTRICT OF THE AVENUE SPECIFIC PLAN, AND MAKING FINDINGS IN SUPPORT THEREOF - APN: 0218-652-27.

- 11. A PUBLIC HEARING TO CONSIDER: [1] A GENERAL PLAN AMENDMENT (FILE NO. PGPA19-007) TO MODIFY THE POLICY PLAN EXHIBIT LU-01, LAND USE PLAN, CHANGING THE LAND USE DESIGNATION ON 41.35 ACRES OF LAND FROM MIXED USE (HAMNER/SR-60 MIXED USE DISTRICT) TO 7.6 ACRES OF GENERAL COMMERCIAL AND 33.75 ACRES OF INDUSTRIAL DESIGNATED LAND, AND MODIFY POLICY PLAN EXHIBIT LU-03, FUTURE BUILDOUT, TO BE CONSISTENT WITH THE PROPOSED LAND USE DESIGNATION CHANGES; [2] A SPECIFIC PLAN AMENDMENT (FILE NO. PSPA19-010) RESCINDING THE TUSCANA VILLAGE SPECIFIC PLAN; AND [3] A ZONE CHANGE (FILE NO. PZC19-002) ON 41.35 ACRES OF LAND, FROM LDR-5 (LOW DENSITY RESIDENTIAL (2.1 TO 5.0 DU/AC)), CC (COMMUNITY COMMERCIAL), AND SP (SPECIFIC PLAN), TO 33.75 ACRES OF IL (LIGHT INDUSTRIAL) AND 7.6 ACRES OF CC (COMMUNITY COMMERCIAL) ZONED LAND. THE PROJECT SITE IS LOCATED AT THE NORTHWEST CORNER OF RIVERSIDE DRIVE AND MILLIKEN AVENUE (APNS: 1083-361-01, 1083-361-04 AND 1083-361-07)**

That the City Council:

- A. Consider and adopt a resolution approving the use of an Addendum to The Ontario Plan Environmental Impact Report (State Clearinghouse No. 2008101140);
- B. Consider and adopt a resolution approving the General Plan Amendment (File No. PGPA19-007), modifying Policy Plan Exhibit LU-01, Land Use Plan, changing the land use designation on 41.35 acres of land from Mixed Use (Hamner/SR-60 Mixed Use District) to 7.6 acres of General Commercial designated land and 33.75 acres of Industrial designated land, and modify Policy Plan Exhibit LU-03, Future Buildout, to be consistent with the proposed land use designation changes; and
- C. Introduce and waive further reading of the ordinance approving a Zone Change (File No. PZC19-002) on 41.35 acres of land, from LDR-5 (Low Density Residential – 2.1 to 5.0 dwelling units per acre), CC (Community Commercial), and SP (Specific Plan), to 33.75 acres of IL (Light Industrial) and 7.6 acres of CC (Community Commercial) zoned land, and rescinding the Tuscana Village Specific Plan.

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF ONTARIO, CALIFORNIA, APPROVING AN ADDENDUM TO THE ONTARIO PLAN CERTIFIED ENVIRONMENTAL IMPACT REPORT (STATE CLEARINGHOUSE NO. 2008101140), PURSUANT TO THE REQUIREMENTS OF THE CALIFORNIA ENVIRONMENTAL QUALITY ACT, AS AMENDED, FOR FILE NO. PGPA06-001.

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF ONTARIO, CALIFORNIA, APPROVING FILE NO. PGPA19-007, AN AMENDMENT TO THE LAND USE ELEMENT OF THE POLICY PLAN (GENERAL PLAN), REVISING EXHIBIT LU-01, OFFICIAL LAND USE PLAN, AND EXHIBIT LU-03, FUTURE BUILDOUT, AFFECTING PROPERTY LOCATED AT THE NORTHWEST CORNER OF RIVERSIDE DRIVE AND MILLIKEN AVENUE, FROM 41.35 ACRES OF MIXED USE TO 7.6 ACRES OF GENERAL COMMERCIAL AND 33.75 ACRES OF INDUSTRIAL DESIGNATED LAND, AND MAKING FINDINGS IN SUPPORT THEREOF - APNS: 1083-361-01, 1083-361-04 & 1083-361-07. (SEE EXHIBITS A AND B) (PART OF CYCLE 4 FOR THE 2020 CALENDAR YEAR).

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF ONTARIO, CALIFORNIA, APPROVING FILE NOS. PZC19-002 AND PSPA19-010, A ZONE CHANGE REQUEST TO CHANGE THE ZONING DESIGNATION ON 41.35 ACRES OF LAND, FROM LDR-5 (LOW DENSITY RESIDENTIAL - 2.1 TO 5.0 DU/AC), CC (COMMUNITY COMMERCIAL), AND SP (SPECIFIC PLAN), TO 33.75 ACRES OF IL (LIGHT INDUSTRIAL) AND 7.6 ACRES OF CC (COMMUNITY COMMERCIAL) ZONED LAND, AND A SPECIFIC PLAN AMENDMENT RESCINDING THE TUSCANA VILLAGE SPECIFIC PLAN, LOCATED AT THE NORTHWEST CORNER OF RIVERSIDE DRIVE AND MILLIKEN AVENUE, AND MAKING FINDINGS IN SUPPORT THEREOF - APNS: 1083-361-01, 1083-361-04 AND 1083-361-07.

- 12. A PUBLIC HEARING TO CONSIDER: [1] A GENERAL PLAN AMENDMENT (FILE NO. PGPA18-002) TO MODIFY POLICY PLAN EXHIBIT LU-01, LAND USE PLAN, CHANGING THE LAND USE DESIGNATION ON APPROXIMATELY 46 ACRES OF LAND FROM GENERAL COMMERCIAL AND BUSINESS PARK TO 4.13 ACRES OF NEIGHBORHOOD COMMERCIAL, 3.51 ACRES OF BUSINESS PARK, AND 39 ACRES OF INDUSTRIAL; [2] MODIFY POLICY PLAN EXHIBIT LU-03, FUTURE BUILDOUT, TO BE CONSISTENT WITH THE LAND USE DESIGNATION CHANGES; AND [3] AN AMENDMENT (FILE NO. PSPA18 003) TO THE EDENGLLEN SPECIFIC PLAN, CHANGING THE LAND USE DESIGNATION FROM COMMUNITY COMMERCIAL, COMMERCIAL/ BUSINESS PARK FLEX ZONE, AND BUSINESS PARK/LIGHT INDUSTRIAL, TO 4.13 ACRES OF NEIGHBORHOOD COMMERCIAL, 3.51 ACRES OF BUSINESS PARK, AND 39 ACRES OF LIGHT INDUSTRIAL, INCLUDING UPDATES TO THE DEVELOPMENT STANDARDS, EXHIBITS, AND TEXT CHANGES TO REFLECT THE PROPOSED LAND USES. THE PROJECT SITE IS LOCATED AT THE SOUTHWEST CORNER OF RIVERSIDE DRIVE AND HAMNER AVENUE (APNS: 0218-171-21 AND 0218-171-27)**

That the City Council consider and adopt:



- A. A resolution approving the use of an Addendum to The Ontario Plan Environmental Impact Report (State Clearinghouse No. 2008101140);
- B. A resolution approving File No. PGPA18-002, a General Plan Amendment modifying Policy Plan Exhibit LU-01, Land Use Plan, changing the land use designation on approximately 46 acres of land located at the southwest corner of Riverside Drive and Hamner Avenue from General Commercial and Business Park, to 4.13 acres of Neighborhood Commercial, 3.51 acres of Business Park, and 39 acres of Industrial designated land, and modify the Policy Plan Exhibit LU-03, Future Buildout, to be consistent with the proposed land use designation changes; and
- C. A resolution approving File No. PSPA18-003, an Amendment to the Edenglen Specific Plan, changing the land use designation on approximately 46 acres of land located at the southwest corner of Riverside Drive and Hamner Avenue from Neighborhood Commercial, Commercial/Business Park Flex Zone, and Business Park/Light Industrial, to 4.13 acres of Neighborhood Commercial, 3.51 acres of Business Park, and 39 acres of Light Industrial designated land, including updates to development standards and exhibits, along with text changes to reflect the proposed land use changes.

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF ONTARIO, CALIFORNIA, APPROVING AN ADDENDUM TO THE ONTARIO PLAN CERTIFIED ENVIRONMENTAL IMPACT REPORT (STATE CLEARINGHOUSE NO. 2008101140), PURSUANT TO THE REQUIREMENTS OF THE CALIFORNIA ENVIRONMENTAL QUALITY ACT, AS AMENDED.

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF ONTARIO, CALIFORNIA, APPROVING FILE NO. PGPA18-002, AN AMENDMENT TO THE LAND USE ELEMENT OF THE POLICY PLAN (GENERAL PLAN), REVISING EXHIBIT LU-01 (OFFICIAL LAND USE PLAN) AND EXHIBIT LU-03 (FUTURE BUILDOUT), AFFECTING PROPERTY LOCATED AT THE SOUTHWEST CORNER OF RIVERSIDE DRIVE AND HAMNER AVENUE, FROM GENERAL COMMERCIAL (20 ACRES) AND BUSINESS PARK (26.64 ACRES), TO 4.13 ACRES OF NEIGHBORHOOD COMMERCIAL, 3.51 ACRES OF BUSINESS PARK, AND 39 ACRES OF INDUSTRIAL DESIGNATED LAND, AND MAKING FINDINGS IN SUPPORT THEREOF - APNS: 0218-171-21 AND 0218-171-27. (SEE EXHIBITS A AND B) (PART OF CYCLE 4 FOR THE 2020 CALENDAR YEAR).

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF ONTARIO, CALIFORNIA, APPROVING FILE NO. PSPA18-003, AN AMENDMENT TO THE EDENGLLEN SPECIFIC PLAN TO: (1) CHANGE THE LAND USE DESIGNATION ON 46.64 ACRES OF LAND FROM COMMUNITY COMMERCIAL, COMMERCIAL/BUSINESS PARK FLEX ZONE, AND BUSINESS PARK/LIGHT INDUSTRIAL, TO 4.13 ACRES OF NEIGHBORHOOD COMMERCIAL, 3.51 ACRES OF BUSINESS PARK, AND 39 ACRES OF LIGHT INDUSTRIAL DESIGNATED LAND, ON TWO PROPERTIES LOCATED AT THE SOUTHWEST CORNER OF RIVERSIDE DRIVE AND HAMNER AVENUE; AND (2) AMEND THE SPECIFIC PLAN TO UPDATE THE DEVELOPMENT STANDARDS, EXHIBITS, AND TEXT CHANGES TO REFLECT THE

- 13. A PUBLIC HEARING TO CONSIDER AN ORDINANCE APPROVING THE DEVELOPMENT AGREEMENT (FILE NO. PDA18-006) BETWEEN THE CITY OF ONTARIO AND ONTARIO CC, LLC., TO ESTABLISH THE TERMS AND CONDITIONS FOR THE DEVELOPMENT OF TENTATIVE PARCEL MAP 20027 (FILE NO. PMTT18-009), FOR A 46.64-ACRE PROPERTY LOCATED AT THE SOUTHWEST CORNER OF RIVERSIDE DRIVE AND HAMNER AVENUE, WITHIN THE PROPOSED NEIGHBORHOOD COMMERCIAL, BUSINESS PARK AND LIGHT INDUSTRIAL LAND USE DESIGNATIONS OF THE EDENGLLEN SPECIFIC PLAN (APNS:0218-171-21 AND 0218-171-27)**

That the City Council introduce and waive further reading of an ordinance approving the Development Agreement (File No. PDA18-006) between the City of Ontario and Ontario CC, LLC., to establish the terms and conditions for the development of Tentative Parcel Map 20027 (File No. PMTT18-009), for a 46.64-acre property located at the southwest corner of Riverside Drive and Hamner Avenue, within the proposed Neighborhood Commercial, Business Park and Light Industrial land use designations of the Edenglen Specific Plan (APNs: 0218-171-21 and 0218 171-27).

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF ONTARIO, CALIFORNIA, APPROVING FILE NO. PDA18-006, A DEVELOPMENT AGREEMENT BETWEEN THE CITY OF ONTARIO AND ONTARIO CC, LLC., TO ESTABLISH THE TERMS AND CONDITIONS FOR THE DEVELOPMENT OF TENTATIVE PARCEL MAP 20027 (FILE NO. PMTT18-009), FOR A 46.64 ACRE PROPERTY LOCATED AT THE SOUTHWEST CORNER OF RIVERSIDE DRIVE AND HAMNER AVENUE, WITHIN THE PROPOSED NEIGHBORHOOD COMMERCIAL, BUSINESS PARK AND LIGHT INDUSTRIAL LAND USE DESIGNATIONS OF THE EDENGLLEN SPECIFIC PLAN, AND MAKING FINDINGS IN SUPPORT THEREOF – APNS: 0218-171-21 AND 0218 171-27.

- 14. A PUBLIC HEARING TO CONSIDER AN ORDINANCE APPROVING THE DEVELOPMENT AGREEMENT (FILE NO. PDA19-001) BETWEEN THE CITY OF ONTARIO AND EUCLID LAND VENTURE, LLC., TO ESTABLISH THE TERMS AND CONDITIONS FOR THE DEVELOPMENT OF TENTATIVE PARCEL MAP 20016 (FILE NO. PMTT18-011), AN 85.6-ACRE PROPERTY LOCATED AT THE NORTHEAST CORNER OF MERRILL AVENUE AND EUCLID AVENUE, WITHIN THE INDUSTRIAL AND BUSINESS PARK LAND USE DISTRICTS OF THE ONTARIO RANCH BUSINESS PARK SPECIFIC PLAN (APNS: 1054-011-01, 1054-011-02, 1054-011-04, 1054-021-01, 1054-021-02, 1054-271-01, 1054-271-02, 1054-271-03, 1054-281-01, 1054-281-02 AND 1054-281-03)**

That the City Council introduce and waive further reading of an ordinance approving the Development Agreement (File No. PDA19-001) between the City of Ontario and Euclid Land Venture, LLC., to establish the terms and conditions for the development of Tentative Parcel Map

20016 (File No. PMTT18-011), an 85.6-acre property located at the northeast corner of Merrill Avenue and Euclid Avenue, within the Industrial and Business Park land use districts of the Ontario Ranch Business Park Specific Plan (APNs: 1054-011-01, 1054-011-02, 1054-011-04, 1054-021-01, 1054-021-02, 1054-271-01, 1054-271-02, 1054-271-03, 1054-281-01, 1054-281-02 and 1054-281-03.

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF ONTARIO, CALIFORNIA, APPROVING FILE NO. PDA19-001, A DEVELOPMENT AGREEMENT BETWEEN THE CITY OF ONTARIO AND EUCLID LAND VENTURE, LLC., TO ESTABLISH THE TERMS AND CONDITIONS FOR THE DEVELOPMENT OF TENTATIVE PARCEL MAP 20016 (FILE NO. PMTT18-011), A 85.6-ACRE PROPERTY LOCATED AT THE NORTHEAST CORNER OF MERRILL AVENUE AND EUCLID AVENUE, WITHIN THE INDUSTRIAL AND BUSINESS PARK LAND USE DISTRICTS OF THE ONTARIO RANCH BUSINESS PARK SPECIFIC PLAN AND MAKING FINDINGS IN SUPPORT THEREOF - APNS: 1054-011-01, 1054-011-02, 1054-011-04, 1054-021-01, 1054-021-02, 1054-271-01, 1054-271-02, 1054-271-03, 1054-281-01, 1054-281-02 AND 1054-281-03.

**15. A PUBLIC HEARING TO CONSIDER A RESOLUTION REGARDING THE FORMATION OF THE CITY OF ONTARIO COMMUNITY FACILITIES DISTRICT NO. 57 (NEUHOUSE); ADOPTION OF A RESOLUTION TO INCUR BONDED INDEBTEDNESS; AND INTRODUCTION OF AN ORDINANCE LEVYING SPECIAL TAXES**

That the City Council consider and:

- A. Adopt a resolution of formation of Community Facilities District No. 57 (Neuhouse), authorizing the levy of special taxes within the community facilities district, and establishing an appropriations limit for the community facilities district;
- B. Adopt a resolution deeming it necessary to incur bonded indebtedness within Community Facilities District No. 57 (Neuhouse);
- C. Adopt a resolution calling a special election for City of Ontario Community Facilities District No. 57 (Neuhouse);
- D. Adopt a resolution declaring the results of the special election and directing the recording of a Notice of Special Tax Lien;
- E. Introduce and waive further reading of an ordinance levying special taxes within City of Ontario Community Facilities District No. 57 (Neuhouse); and
- F. Adopt a resolution authorizing the execution and delivery of an acquisition and funding agreement with LS-Ontario II LLC, a Delaware corporation.

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF ONTARIO, CALIFORNIA, OF FORMATION OF THE CITY OF ONTARIO COMMUNITY FACILITIES DISTRICT NO. 57 (NEUHOUSE), AUTHORIZING THE LEVY OF A SPECIAL TAX.

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF ONTARIO,

CALIFORNIA, DEEMING IT NECESSARY TO INCUR BONDED INDEBTEDNESS WITHIN CITY OF ONTARIO COMMUNITY FACILITIES DISTRICT NO. 57 (NEUHOUSE).

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF ONTARIO, CALIFORNIA, CALLING SPECIAL ELECTION FOR CITY OF ONTARIO COMMUNITY FACILITIES DISTRICT NO. 57 (NEUHOUSE).

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF ONTARIO, CALIFORNIA, DECLARING RESULTS OF SPECIAL ELECTION AND DIRECTING RECORDING OF NOTICE OF SPECIAL TAX LIEN FOR CITY OF ONTARIO COMMUNITY FACILITIES DISTRICT NO. 57 (NEUHOUSE).

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF ONTARIO, CALIFORNIA, LEVYING SPECIAL TAXES WITHIN COMMUNITY FACILITY DISTRICT NO. 57 (NEUHOUSE).

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF ONTARIO, CALIFORNIA, AUTHORIZING THE EXECUTION AND DELIVERY OF AN ACQUISITION AND FUNDING AGREEMENT WITH LS-ONTARIO II, LLC.

- 16. A PUBLIC HEARING TO CONSIDER A DEVELOPMENT CODE AMENDMENT PROPOSING TO: [1] REVISE CURRENT PROVISIONS REGARDING THE REGULATION OF ACCESSORY DWELLING UNITS AND RESCIND AN URGENCY ORDINANCE PREVIOUSLY APPROVED BY THE CITY COUNCIL ON JANUARY 21, 2020; [2] REVISE CURRENT MU-1 (DOWNTOWN MIXED USE) ZONING DISTRICT PROVISIONS TO FACILITATE THE ESTABLISHMENT OF THE DOWNTOWN DISTRICT PLAN; [3] ESTABLISH PROVISIONS REGULATING THE DEVELOPMENT OF SMALL LOT INFILL SUBDIVISIONS; [4] REVISE PROVISIONS REGULATING MASSAGE SERVICES AND MASSAGE ESTABLISHMENTS, AND ESTABLISHING AN ADMINISTRATIVE APPROVAL PROCEDURE FOR MASSAGE ESTABLISHMENTS; AND [5] ADJUST AND CLARIFY CERTAIN DEVELOPMENT CODE PROVISIONS WITHIN CHAPTER 2.0 (ADMINISTRATION AND PROCEDURES), CHAPTER 3.0 (NONCONFORMING LOTS, LAND USES, STRUCTURES, AND SIGNS), CHAPTER 5.0 (ZONING AND LAND USE), CHAPTER 6.0 (DEVELOPMENT AND SUBDIVISION REGULATIONS), CHAPTER 7.0 (HISTORIC PRESERVATION), CHAPTER 8.0 (SIGN REGULATIONS), AND CHAPTER 9.0 (DEFINITIONS AND GLOSSARY)**

That the City Council introduce and waive further reading of the ordinance approving File No. PDCA18-003, a Development Code Amendment proposing to:

- A. Revise current provisions regarding the regulation of accessory dwelling units and rescind an urgency ordinance previously approved by the City Council on January 21, 2020;
- B. Revise current MU-1 (Downtown Mixed Use) zoning district provisions to facilitate the establishment of the Downtown District Plan;
- C. Establish provisions regulating the development of small lot infill subdivisions;
- D. Revise provisions regulating massage services and massage establishments, and establishing an administrative approval procedure for massage establishments; and
- E. Adjust and clarify certain Development Code provisions within Chapter 2.0 (Administration

and Procedures), Chapter 3.0 (Nonconforming Lots, Land Uses, Structures, and Signs), Chapter 5.0 (Zoning and Land Use), Chapter 6.0 (Development and Subdivision Regulations), Chapter 7.0 (Historic Preservation), Chapter 8.0 (Sign Regulations), and Chapter 9.0 (Definitions and Glossary).

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF ONTARIO, CALIFORNIA, APPROVING FILE NO. PDCA18-003, A DEVELOPMENT CODE AMENDMENT PROPOSING TO: [1] REVISE CURRENT PROVISIONS REGARDING THE REGULATION OF ACCESSORY DWELLING UNITS AND RESCIND AN URGENCY ORDINANCE PREVIOUSLY APPROVED BY THE CITY COUNCIL ON JANUARY 21, 2020; [2] REVISE CURRENT MU-1 (DOWNTOWN MIXED USE) ZONING DISTRICT PROVISIONS TO FACILITATE THE ESTABLISHMENT OF THE DOWNTOWN DISTRICT PLAN; [3] ESTABLISH PROVISIONS REGULATING THE DEVELOPMENT OF SMALL LOT INFILL SUBDIVISIONS; [4] REVISE PROVISIONS REGULATING MASSAGE SERVICES AND MASSAGE ESTABLISHMENTS, AND ESTABLISHING AN ADMINISTRATIVE APPROVAL PROCEDURE FOR MASSAGE ESTABLISHMENTS; AND [5] MODIFY, ADJUST, AND CLARIFY CERTAIN DEVELOPMENT CODE PROVISIONS WITHIN CHAPTER 2.0 (ADMINISTRATION AND PROCEDURES), CHAPTER 3.0 (NONCONFORMING LOTS, LAND USES, STRUCTURES, AND SIGNS), CHAPTER 5.0 (ZONING AND LAND USE), CHAPTER 6.0 (DEVELOPMENT AND SUBDIVISION REGULATIONS), CHAPTER 7.0 (HISTORIC PRESERVATION), CHAPTER 8.0 (SIGN REGULATIONS), AND CHAPTER 9.0 (DEFINITIONS AND GLOSSARY), AND MAKING FINDINGS IN SUPPORT THEREOF.

**17. A PUBLIC HEARING TO RECEIVE TESTIMONY AND ADOPT THE CONSOLIDATED ANNUAL PERFORMANCE AND EVALUATION REPORT (CAPER) FOR THE 2019-20 FISCAL YEAR**

That the City Council:

- A. Hold a public hearing to receive testimony on the draft Consolidated Annual Performance and Evaluation Report (CAPER) for the 2019-20 Fiscal Year (on file in the Records Management Department);
- B. Direct staff to prepare and transmit to the U.S. Department of Housing and Urban Development (HUD) the final CAPER, which will address all public comments received on the draft CAPER; and
- C. Authorize the City Manager to execute any and all documents necessary and/or desirable to transmit the CAPER to HUD.

**18. PUBLIC HEARING REGARDING ECONOMIC DEVELOPMENT SUBSIDY REPORT AND RETENTION AGREEMENT BETWEEN THE CITY OF ONTARIO AND KIENLE MOTOR**

***SPORTS, LLC, PURSUANT TO GOVERNMENT CODE SECTION 53083; AND CONSIDERATION OF A RESOLUTION ACCEPTING THE ECONOMIC DEVELOPMENT SUBSIDY REPORT, APPROVING THE OPERATING COVENANT AGREEMENT AND MAKING RELATED FINDINGS.***

That the City Council take the following actions:

- A. Hold the public hearing;
- B. Adopt a resolution accepting the Economic Development Subsidy Report prepared pursuant to Government Code Section 53083 regarding an Retention Agreement (on file with the Records Management Department) by and between the City of Ontario and Kienle Motorsports, LLC. hereinafter referred to as “Porsche”;
- C. Adopt a resolution approving the Retention Agreement for eight years, authorizing the City Manager to execute the Retention Agreement, and making related findings; and
- D. Direct City staff to file a Notice of Exemption based upon the City Council’s finding that the impacts for this existing facility is not a project and subject to environmental review and that there is no possibility that the activity in question may have a significant effect on the environment

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF ONTARIO, CALIFORNIA, ACCEPTING THE ECONOMIC DEVELOPMENT SUBSIDY REPORT PREPARED PURSUANT TO GOVERNMENT CODE SECTION 53083 REGARDING THE DEVELOPMENT OF A PORSCHE FACILITY BY KIENLE MOTOR SPORTS, LLC, IN THE CITY OF ONTARIO AND APPROVING AN OPERATING COVENANT AGREEMENT.

**ADMINISTRATIVE REPORTS/DISCUSSION/ACTION**

***19. GRANT OF TOWING CARRIER PERMITS AND AUTHORIZATION FOR CITY CONTRACT TOWING SERVICES AGREEMENTS***

That the City Council grant towing carrier permits and authorize the City Manager to execute City Contract Towing Services Agreements, for a period of five years, with any combination of the following companies: Certified Towing, Inc.; Dietz Towing, Inc.; Fleet Sales & Consulting, Inc. (DBA Bill & Wag’s Towing); James Foglesong Towing & Storage, Inc.; and Pepe’s Towing Service.

**STAFF MATTERS**

***CITY MANAGER OCHOA***

**COUNCIL MATTERS**

*MAYOR LEON*  
*MAYOR PRO TEM DORST-PORADA*  
*COUNCIL MEMBER WAPNER*  
*COUNCIL MEMBER BOWMAN*  
*COUNCIL MEMBER VALENCIA*

**ADJOURNMENT**

**ONTARIO CITY COUNCIL/  
ONTARIO HOUSING AUTHORITY  
MINUTES  
October 20, 2020  
(Not Official Until Approved)**

**JOINT MEETINGS**

Regular meetings of the Ontario City Council/Ontario Housing Authority were held on Tuesday, October 20, 2020, at the Ontario City Hall, 303 East B Street, Ontario, California.

**CLOSED SESSION**

Mayor Leon called the City Council/Ontario Housing Authority meetings to order at 5:33 p.m.

**SPECIAL AND URGENT ANNOUNCEMENT**

In accordance with the Governor's Declarations of Emergency for the State of California (Executive Orders N-25-20 and N-29-20), the Ontario City Council Meetings are being conducted via teleconference to limit in-person attendance at meetings of the City of Ontario City Council and Housing Authority.

Members of the public were advised to utilize alternative measures to view the City Council meetings and/or to address the Mayor and City Council Members.

The meeting was live broadcast on local cable Channel 3 as well as internet live streamed at [www.ontarioca.gov/Agendas/CityCouncil](http://www.ontarioca.gov/Agendas/CityCouncil).

**ROLL CALL**

<b>PRESENT:</b> Mayor/Chairman	Paul S. Leon
Mayor pro Tem/Vice Chair	Debra Dorst-Porada
Council/Authority Members:	Alan D. Wapner, Jim W. Bowman and Ruben Valencia (all participating via teleconference)

**ABSENT:** Council/Authority Members: None.

Also present were City Manager/Executive Director Scott Ochoa, City Attorney/Legal Counsel Ruben Duran and City Clerk/Secretary Sheila Mautz (all participating via teleconference).



## CLOSED SESSION

City Attorney Duran announced the matter for discussion, as listed on the agenda. Mayor Leon inquired whether persons were present who wished to speak to the Closed Session item.

Assistant City Clerk Isbell reported that there were no written comments presented, no web submission, and no callers. Hearing no one else, the City Council recessed to Closed Session at 5:34 p.m. for discussion of the following:

- GC 54956.8, CONFERENCE WITH REAL PROPERTY NEGOTIATOR  
Property: Regarding the properties located generally west of Archibald Avenue, south of Ontario Ranch Road, north of Eucalyptus Avenue, east of Walker Avenue, and; the properties located generally west of Cleveland Avenue, south of Ontario Ranch Road, north of Eucalyptus Avenue, east of Haven Avenue; City/Authority Negotiator: Scott Ochoa, City Manager; Negotiating Parties: Struikmans Family Partnership, Parente Real Estate Investment Mngmnt, Parente Real Estate Investment Mgmnt, SC Ontario Development Company LLC, Dunnigan Ranch LLC, Legacy Land Partners LLC, WSI Ontario Properties LLC, Loyola Properties LLP, Chino Basin Desalter Authority, City Of Ontario; Under Negotiation: Price and terms of payment.
- GC 54956.9(d)(1), CONFERENCE WITH LEGAL COUNSEL, EXISTING LITIGATION  
*Robles, et al. v. City of Ontario, et al.*, CIVDS 2007038

## CALL TO ORDER – OPEN SESSION

Mayor Leon called the City Council and Ontario Housing Authority meetings to order at 6:36 p.m.

<b>PRESENT:</b>	Mayor/Chairman	Paul S. Leon
	Mayor pro Tem/Vice Chair	Debra Dorst-Porada
	Council/Authority Members:	Alan D. Wapner, Jim W. Bowman and Ruben Valencia (all participating via teleconference)

<b>ABSENT:</b>	Council/Authority Members:	None
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Also present were City Manager/Executive Director Scott Ochoa, City Attorney/Legal Counsel Ruben Duran and City Clerk/Secretary Sheila Mautz (all participating via teleconference).

The Pledge of Allegiance was led by Council Member Bowman.

Mayor Leon led a moment of silent reflection in lieu of the Invocation.

## **REPORT ON CLOSED SESSION**

City Attorney Duran reported Council considered both items, provided staff with direction. There were no other reportable actions.

## **PUBLIC COMMENTS**

Assistant City Clerk Isbell reported that there were no written comments presented, however, there was one web submission as follows:

*Bob Livingston*, regarding cars parked for long periods of time on Oaks Avenue between Mission Boulevard and State Street.

Assistant City Clerk Isbell further reported that there were six callers wishing to address the City Council.

*Alma Magallanes*, in support of Celina Lopez.

City Attorney Duran clarified that public comment is specific to City related business, not electioneering.

Mayor Leon recessed due to technical difficulties at 6:44 p.m.

Mayor Leon reconvened the meetings at 7:21 p.m.

*Celina Lopez*, inquired when the tow truck request for proposals would return for Council approval.

*Diego*, concerns regarding hit mailers.

*Gabriela*, concerns regarding hit mailers and campaigning.

*Juana Gamez*, concerns regarding hit mailers.

*Sharon*, concerns regarding hit mailers.

*Jonathan*, concerns regarding Prop 21 and affordable housing.

*Mireya*, concerns regarding hit mailers.

*Irene Chisolm*, thanked staff for helping her with community issues.

## **AGENDA REVIEW/ANNOUNCEMENTS**

City Manager Ochoa presented updated exhibits to Item No. 03, which included payments from residents as of 9:00 a.m. Mr. Ochoa also announced salary schedules related to Item No. 09; Emergency Services Director base salary \$10,803 – \$13,130 per month, Fire and Police Administrative Services Director base salary \$10,803 – \$13,130 per month. It was further noted that for each of the positions the benefits package equates to approximately \$3,000 per month.

## **CONSENT CALENDAR**

**MOTION:** Moved by Council Member Bowman, seconded by Mayor pro Tem Dorst-Porada and carried by unanimous roll call vote of those present, to approve the Consent Calendar as presented.

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

City Council approved Minutes for the regular meeting of the City Council and Housing Authority of September 15, 2020, as on file in the Records Management Department.

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

City Council approved **Bills** for the period September 11, 2020 through October 1, 2020 in the amount of \$20,881,757.40 and **Payroll** for the period August 30, 2020 through September 26, 2020 in the amount of \$9,586,132.35 when audited by the Finance Committee.

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

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

**RESOLUTION NO. 2020-170** A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF ONTARIO, CALIFORNIA, ADOPTING A REPORT REQUESTING THE PLACEMENT OF SPECIAL ASSESSMENTS ON PROPERTY TAX BILLS FOR CIVIL PENALTIES OR RECOVERY OF COSTS INCURRED FOR ABATEMENT OF VIOLATIONS OF CITY CODES AND ORDINANCES.

**4. A DEVELOPMENT IMPACT FEE CREDIT AGREEMENT (FILE NO. PDIF20-010) BETWEEN THE CITY OF ONTARIO AND LENNAR HOMES OF CALIFORNIA, INC., FOR FACILITY CONSTRUCTION ASSOCIATED WITH TRACT MAPS 19907 (FILE NO. PMTT14-024) AND 19909 (FILE NO. PMTT14-025), LOCATED AT THE NORTHWEST CORNER OF HAVEN AVENUE AND MERRILL AVENUE WITHIN THE SUBAREA 29 SPECIFIC PLAN**

The City Council approved the Development Impact Fee Credit Agreement (File No. PDIF20-010) between the City of Ontario and Lennar Homes of California, Inc., for facility construction associated with Tract Maps 19907 (File No. PMTT14-024) and 19909 (File No. PMTT14-025), located at the northwest corner of Haven Avenue and Merrill Avenue within the Subarea 29 Specific Plan and authorized the City Manager to execute the agreement.

**5. THIRD AMENDMENT TO THE CONSOLIDATED PLAN ANNUAL ACTION PLAN FOR THE 2019-20 PROGRAM YEAR**

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

**6. RESOLUTIONS UPDATING AUTHORIZED DEPUTY CITY TREASURERS**

The City Council adopted resolutions rescinding Resolution Nos. 2020-128 and 2020-129; and amending the list of Deputy City Treasurers authorized to invest City funds in the Local Agency Investment Fund (LAIF) and other eligible investment securities.

**RESOLUTION NO. 2020-171** A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF ONTARIO, CALIFORNIA, PROVIDING FOR THE INVESTMENT OF INACTIVE FUNDS IN THE LOCAL AGENCY INVESTMENT FUND OF THE CALIFORNIA STATE TREASURY AND HEREBY RESCINDING RESOLUTION NO. 2020-128.

**RESOLUTION NO. 2020-172** A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF ONTARIO, CALIFORNIA, AUTHORIZING THE INVESTMENT OF CITY FUNDS AND HEREBY RESCINDING RESOLUTION NO. 2020-129.

**7. AUTHORIZE THE PURCHASE OF FLEET VEHICLES**

The City Council took the following actions:

- (A) Authorized the cooperative purchase and delivery of two CNG Rear Loading Refuse Trucks in the amount of \$611,208 for the Parks and Maintenance and Integrated Waste Departments, one CNG Front Loading Refuse Truck in the amount of \$315,984, and one CNG Roll Off Refuse Truck in the amount of \$253,059 for the Integrated Waste Department from Rush Truck Center of Pico Rivera, California consistent with the terms and conditions of the Sourcewell (formerly known as NJPA) Cooperative Contract 081-716-PMC.
- (B) Authorized the cooperative purchase and delivery of two Chevrolet Colorado pick-up trucks in the amount of \$53,923 for the Integrated Waste Department, one Chevrolet Van in the amount of \$35,051 for the Police Department, one Chevrolet Tahoe in the amount of \$56,991 for the Police Department, one Ford Explorer XLT in the amount of \$36,306 for the Fire Department, and one Ford Van in the amount of \$76,997 for the Community Life & Culture Department from National Auto Fleet Group of Watsonville, California, consistent with the terms and conditions of the Sourcewell (formerly known as NJPA) Cooperative Contract 120716-NAF.
- (C) Authorized the cooperative purchase and delivery of two Ford Bin Delivery Trucks in the amount of \$148,970 for the Integrated Waste Department from PB Loader Corporation of Fresno, California, consistent with the terms and conditions of the Sourcewell (formerly known as NJPA) Cooperative Contract 052417-PBL.

**8. A COMMUNITY GARDEN USE AGREEMENT FOR PROPERTY AT ANTHONY MUNOZ PARK WITH CAMEL CONNECTION FOUNDATION**

The City Council authorized the City Manager, or his designee, to execute a Use Agreement with Caramel Connection Foundation (“Caramel Connection”) for a portion of the unimproved real property located at Anthony Muñoz Park, generally located at 1240 W. Fourth Street (“the Property”), for agricultural purposes to enable community-supported healthy eating, active living, and education initiatives. The agreement also proposes the creation of a community garden through October 1, 2023, with three additional one-year terms.

**9. ESTABLISHMENT OF POSITION CLASSIFICATION FOR EMERGENCY MEDICAL SERVICES (EMS) DIRECTOR AND MODIFY AND APPROVE SALARY RANGE COMPENSATION FOR FIRE ADMINISTRATIVE DIRECTOR AND POLICE ADMINISTRATIVE DIRECTOR**

The City Council approved the establishment of the new department head position classification of EMS Director and associated salary range to reflect expansion of job scope and responsibilities; and approved a proposed base salary range modification for the department head position classifications of Fire Administrative Director and Police Administrative Director to minimize disparity with salary ranges as compared to similarly situated classifications, as well as maintain the City's competitiveness in attracting and retaining highly qualified individuals.

## **PUBLIC HEARINGS**

**10. A PUBLIC HEARING TO CONSIDER A RESOLUTION APPROVING A LOCAL HISTORIC DISTRICT DESIGNATION OF THE GRABER OLIVE HOUSE HISTORIC DISTRICT, LOCATED AT 301 EAST FOURTH STREET, 315 EAST FOURTH STREET, 405 EAST FOURTH STREET AND 406 EAST HARVARD PLACE, AS A LOCAL HISTORIC DISTRICT**

The City Council considered and adopted a resolution approving File No. PHP18-028 designating the Graber Olive House Historic District as Local Historic District No. 8.

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

There were no written communications.

Mayor Leon opened the public hearing asking those persons interested in this item to speak. Hearing no one, Mayor Leon closed the public hearing.

**RESOLUTION NO. 2020-173** A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF ONTARIO, CALIFORNIA, APPROVING FILE NO. PHP18-028, THE DESIGNATION OF THE GRABER OLIVE HOUSE HISTORIC DISTRICT, PROPERTIES LOCATED AT 301 EAST FOURTH STREET, 315 EAST FOURTH STREET, 405 EAST FOURTH STREET, AND 406 EAST HARVARD PLACE, AS A LOCAL HISTORIC DISTRICT AND MAKING FINDINGS IN SUPPORT THEREOF - APNS: 1047-543-01, 1047-543-31, 1047-543-30, AND 1047-543-20.

**MOTION:** Moved by Council Member Bowman, seconded by Mayor pro Tem Dorst-Porada and carried by unanimous roll call vote of those present to adopt Resolution No. 2020-173.

**11. A PUBLIC HEARING TO CONSIDER A RESOLUTION APPROVING THE DESIGNATION OF THE CLIFFORD C. GRABER HOUSE, LOCATED AT 301 EAST FOURTH STREET, AS A LOCAL LANDMARK (APN: 1047-543-01)**

The City Council considered and adopted a resolution approving File No. PHP18-029, designating 301 East Fourth Street as Local Landmark No. 99.

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

There were no written communications.

Mayor Leon opened the public hearing asking those persons interested in this item to speak. Hearing no one, Mayor Leon closed the public hearing.

**RESOLUTION NO. 2020-174** A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF ONTARIO, CALIFORNIA, APPROVING FILE NO. PHP18-029, THE DESIGNATION OF THE CLIFFORD C. GRABER HOUSE, LOCATED AT 301 EAST FOURTH STREET, AS A LOCAL HISTORIC LANDMARK AND MAKING FINDINGS IN SUPPORT THEREOF - APN: 1047-543-01.

**MOTION:** Moved by Mayor pro Tem Dorst-Porada, seconded by Council Member Bowman and carried by unanimous roll call vote of those present to adopt Resolution No. 2020-174.

12. **A PUBLIC HEARING TO CONSIDER: [1] A GENERAL PLAN AMENDMENT (FILE NO. PGPA19-003) TO MODIFY THE POLICY PLAN (GENERAL PLAN) LAND USE PLAN (EXHIBIT LU-01) COMPONENT OF THE ONTARIO PLAN, CHANGING THE LAND USE DESIGNATION ON 23.8 GROSS ACRES OF LAND FROM LOW DENSITY RESIDENTIAL (2.1 - 5.0 DU/AC) TO MEDIUM DENSITY RESIDENTIAL (11.1 - 25.1 DU/AC), IN CONJUNCTION WITH A MODIFICATION TO THE FUTURE BUILDOUT TABLE (EXHIBIT LU-03) CONSISTENT WITH THE PROPOSED LAND USE DESIGNATION CHANGE; AND [2] AN AMENDMENT TO THE ESPERANZA SPECIFIC PLAN (FILE NO. PSPA19-003) TO ESTABLISH ROW TOWNHOMES AS A PERMITTED LAND USE AND INCREASE THE MAXIMUM ALLOWED DENSITY WITHIN PLANNING AREA 4, FROM 6.26 TO 14.0 DWELLING UNITS PER ACRE AND UPDATES TO THE DEVELOPMENT STANDARDS, LAND USE MATRIX, AND VARIOUS EXHIBITS TO ACCOMMODATE THE TOWNHOME PRODUCT, FOR LAND GENERALLY LOCATED AT THE NORTHEAST CORNER OF CLIFTON AND EUCALYPTUS AVENUES, WITHIN THE PA-4 LAND USE DISTRICT OF THE ESPERANZA SPECIFIC PLAN (APN: 0218-302-01)**

The City Council considered and adopted the following:

- [1] A resolution approving a General Plan Amendment (File No. PGPA19-003) to modify the Land Use Element of The Ontario Plan (General Plan), changing the land use designation assigned to 23.8 gross acres of land, as shown on the Land Use Plan Map (Exhibit LU-01), from Low Density Residential (2.1 – 5.0 du/ac) to Medium Density Residential (11.1 – 25.0

du/ac) and modify the Future Buildout Table (Exhibit LU-03) to be consistent with the land use designation change; and

- [2] A resolution approving a Specific Plan Amendment (File No. PSPA19-003) to modify the Esperanza Specific Plan, establishing row townhomes as a permitted land use, increase the maximum allowed density within Planning Area 4 from 6.26 to 14.0 dwelling units per acre and updates to development standards, the land use matrix, and various exhibits to accommodate the townhome product.

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

There were no written communications.

Mayor Leon opened the public hearing asking those persons interested in this item to speak. Hearing no one, Mayor Leon closed the public hearing.

**RESOLUTION NO. 2020-175** A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF ONTARIO, CALIFORNIA, APPROVING FILE NO. PGPA19-003, A GENERAL PLAN AMENDMENT TO MODIFY THE POLICY PLAN (GENERAL PLAN) LAND USE PLAN (EXHIBIT LU-01) COMPONENT OF THE ONTARIO PLAN, CHANGING THE LAND USE DESIGNATION ON APPROXIMATELY 23.8 GROSS ACRES OF LAND, FROM LOW DENSITY RESIDENTIAL (2.1 – 5.0 DU/AC) TO MEDIUM DENSITY RESIDENTIAL (11.1 – 25.0 DU/AC), IN CONJUNCTION WITH A MODIFICATION TO THE FUTURE BUILDOUT TABLE (EXHIBIT LU-03) CONSISTENT WITH THE PROPOSED LAND USE DESIGNATION CHANGE, FOR LAND GENERALLY LOCATED AT THE NORTHEAST CORNER OF CLIFTON AND EUCALYPTUS AVENUES, WITHIN THE PA-4 LAND USE DISTRICT OF THE ESPERANZA SPECIFIC PLAN, AND MAKING FINDINGS IN SUPPORT THEREOF - APN: 0218-302-01. (PART OF CYCLE 3 FOR THE 2020 CALENDAR YEAR).

**RESOLUTION NO. 2020-176** A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF ONTARIO, CALIFORNIA, APPROVING FILE NO. PSPA19-003, AN AMENDMENT TO THE ESPERANZA SPECIFIC PLAN TO ESTABLISH ROW TOWNHOMES AS A PERMITTED LAND USE AND INCREASE THE MAXIMUM ALLOWED DENSITY WITHIN THE PLANNING AREA 4 LAND USE DISTRICT FROM 6.26 TO 14.0 DWELLING UNITS PER ACRE, AND UPDATES TO DEVELOPMENT STANDARDS, THE LAND USE MATRIX, AND VARIOUS EXHIBITS TO ACCOMMODATE THE TOWNHOME PRODUCT ON 23.8 ACRES OF LAND GENERALLY LOCATED AT THE NORTHEAST CORNER OF CLIFTON AND EUCALYPTUS AVENUES, AND MAKING FINDINGS IN SUPPORT THEREOF - APN: 0218-302-01.



**MOTION:** Moved by Mayor pro Tem Dorst-Porada, seconded by Council Member Bowman and carried by unanimous roll call vote of those present to adopt Resolution No. 2020-175 and 2020-176.

**13. A PUBLIC HEARING TO CONSIDER A GENERAL PLAN AMENDMENT (FILE NO. PGPA19-009) TO MODIFY THE POLICY PLAN (GENERAL PLAN) LAND USE PLAN (EXHIBIT LU-01) COMPONENT OF THE ONTARIO PLAN, CHANGING THE LAND USE DESIGNATION ON 0.21 ACRES OF LAND FROM RURAL RESIDENTIAL (0–2.0 DU/AC) TO LOW-MEDIUM DENSITY RESIDENTIAL (5.1-11 DU/AC), IN CONJUNCTION WITH A MODIFICATION TO THE FUTURE BUILDOUT TABLE (EXHIBIT LU-03) CONSISTENT WITH THE PROPOSED LAND USE DESIGNATION CHANGE, LOCATED ON A LAND LOCKED PARCEL WEST OF 1524 AND 1526 SOUTH EUCLID AVENUE—APN 1050-061-16**

That City Council considered and adopted the following:

- [1] A resolution approving an Addendum to The Ontario Plan Environmental Impact Report (SCH # 2008101140); and
- [2] A resolution approving a General Plan Amendment (File No. PGPA19-009) to modify the Land Use Element of The Ontario Plan (General Plan), changing the land use designation assigned to 0.21 acres of land, as shown on the Land Use Plan Map (Exhibit LU-01), from Rural Residential (0-2.0 du/ac) to Low-Medium Density Residential (5.1-11.0 du/ac), and modify the Future Buildout Table (Exhibit LU-03) to be consistent with the land use designation change.

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

There were no written communications.

Mayor Leon opened the public hearing asking those persons interested in this item to speak. Hearing no one, Mayor Leon closed the public hearing.

**RESOLUTION NO. 2020-177** A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF ONTARIO APPROVING AN ADDENDUM TO THE ONTARIO PLAN (TOP) CERTIFIED ENVIRONMENTAL IMPACT REPORT (SCH# 2008101140), FOR WHICH AN INITIAL STUDY WAS PREPARED, PURSUANT TO THE REQUIREMENTS OF THE CALIFORNIA ENVIRONMENTAL QUALITY ACT, AS AMENDED, FOR FILE NOS. PGPA19-009 AND PZC19-003 - APN: 1050-061-16.

**RESOLUTION NO. 2020-178** A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF ONTARIO, CALIFORNIA, APPROVING FILE NO. PGPA19-009, A GENERAL PLAN AMENDMENT TO MODIFY THE LAND USE ELEMENT OF THE ONTARIO PLAN (GENERAL PLAN) TO CHANGE THE LAND USE

DESIGNATION ON 0.21 ACRES OF LAND FROM RURAL RESIDENTIAL (0-2 DU/AC) TO LOW-MEDIUM DENSITY RESIDENTIAL (5.1-11 DU/AC), AFFECTING A LAND LOCKED PARCEL GENERALLY LOCATED WEST OF 1524 AND 1526 SOUTH EUCLID AVENUE; AND MODIFY THE FUTURE BUILDOUT TABLE (EXHIBIT LU-03) TO BE CONSISTENT WITH THE LAND USE DESIGNATION CHANGE; AND MAKING FINDINGS IN SUPPORT THEREOF - APN: 1050-061-16. (LAND USE ELEMENT CYCLE 3 FOR THE 2020 CALENDAR YEAR).

**MOTION:** Moved by Mayor pro Tem Dorst-Porada, seconded by Council Member Bowman and carried by unanimous roll call vote of those present to adopt Resolution No. 2020-177 and 2020-178.

**14. A PUBLIC HEARING TO CONSIDER A ZONE CHANGE (FILE NO. PZC19-003) TO CHANGE THE ZONING DESIGNATION ON 0.21-ACRE OF LAND FROM AR-2 (AGRICULTURAL RESIDENTIAL – 0 TO 2.0 DU/AC) TO MDR-11 (LOW-MEDIUM DENSITY RESIDENTIAL – 5.1 TO 11.0 DU/AC), LOCATED ON A LAND LOCKED PARCEL WEST OF 1524 AND 1526 SOUTH EUCLID AVENUE - APN 1050-061-16**

The City Council introduced and waived further reading of an ordinance approving a zone change (File No. PZC19-003) to change the zoning designation from AR-2 to MDR-11 for a 0.21-acre parcel west of 1524 and 1526 South Euclid Avenue to create consistency between the zoning and the proposed General Plan land use designation of the subject property.

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

There were no written communications.

Mayor Leon opened the public hearing asking those persons interested in this item to speak. Hearing no one, Mayor Leon closed the public hearing.

**ORDINANCE NO. 3169 (First Reading)** AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF ONTARIO, CALIFORNIA, APPROVING FILE NO. PZC19-003, A ZONE CHANGE REQUEST TO CHANGE THE ZONING DESIGNATION ON 0.21 ACRES OF LAND FROM AR-2, AGRICULTURAL RESIDENTIAL (0-2 DU/AC), TO MDR-11, LOW-MEDIUM DENSITY RESIDENTIAL (5.1-11 DU/AC), FOR A LAND LOCKED PARCEL LOCATED WEST OF 1524 AND 1526 SOUTH EUCLID AVENUE, AND MAKING FINDINGS IN SUPPORT THEREOF – APN: 1050-061-16.

**MOTION:** Moved by Mayor pro Tem Dorst-Porada, seconded by Council Member Bowman and carried by unanimous roll call vote of those present to introduce Ordinance No. 3169 for first reading.

**STAFF MATTERS**

City Manager Ochoa made no announcements.

**COUNCIL MATTERS**

Council Member Bowman made no comments.

Mayor pro Tem Dorst-Porada spoke about the new Stater Brothers Grand Opening.

Council Member Valencia spoke about October being National Bullying awareness month.

Mayor Leon noted most candidates have been recipients of “hit” mailers and negative campaigning.

Council Member Wapner stated most candidates are recipients of “hit” pieces and made other remarks.

**ADJOURNMENT**

Mayor Leon adjourned the meetings of the Joint Agencies at 8:07 p.m. to the next regular meetings to be held on Tuesday, November 3, 2020.

Respectfully submitted,

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SHEILA MAUTZ, CITY CLERK/SECRETARY

APPROVED:

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PAUL S. LEON, MAYOR/CHAIRMAN

**CITY OF ONTARIO**

*Agenda Report*  
November 17, 2020

**SECTION:  
CONSENT CALENDAR**

Department: Engineering  
Prepared By: Antonio Alejos  
Staff Member Presenting:  
Scott Murphy, AICP, Executive Director  
Development Agency  
Reviewed By: Raymond Lee  
Approved By:



Submitted To: Council/OHA  
Approved: \_\_\_\_\_  
Continued To: \_\_\_\_\_  
Denied: \_\_\_\_\_  
Item No: 3

**SUBJECT: PIPELINE AGREEMENTS WITH UNION PACIFIC RAILROAD COMPANY FOR PUBLIC UTILITIES WITHIN RAILROAD PROPERTY LOCATED WEST OF THE INTERSECTION OF MAITLAND STREET AND MONTEREY AVENUE**

**RECOMMENDATION:** That the City Council approve two pipeline agreements with Union Pacific Railroad Company (on file in the Records Management Department) and authorize the City Manager to execute the agreements and all related amendments.

**THE FOLLOWING COUNCIL GOALS ARE BEING ACHIEVED:**

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

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

**Focus Resources in Ontario's Commercial and Residential Neighborhoods**


**FISCAL IMPACT:** None. Each agreement has a one-time license fee that will be paid directly to the Licensor (Union Pacific Railroad Company) by the developer (Lake Creek Industrial LLC) for the benefit of the Licensee (City of Ontario).

**BACKGROUND & ANALYSIS:** As part of a development project (PDEV19-033), a portion of the required public storm drain and water improvements will be installed within the Union Pacific Railroad Company (UPRR) right-of-way, located west of the intersection of Maitland Street and Monterey Avenue. UPRR requires the City to enter into a Pipeline Crossing Agreement for the water line encroachment and a Longitudinal Pipeline Agreement for the storm drain encroachment. These two agreements will establish the terms and conditions for the future maintenance of the improvements. Both agreements have been reviewed and approved by the City Attorney and the City Engineer.

**CITY OF ONTARIO**

*Agenda Report*  
**November 17, 2020**

**SECTION:  
CONSENT CALENDAR**

Department: Human Resources  
Prepared By: Krystn Bradbury  
Staff Member Presenting:  
Angela Lopez, Executive Director Human  
Resources  
Approved By: 

Submitted To: Council/OHA  
Approved: \_\_\_\_\_  
Continued To: \_\_\_\_\_  
Denied: \_\_\_\_\_  
Item No: 4

**SUBJECT: AN AMENDMENT TO THE PROFESSIONAL SERVICES AGREEMENT FOR LABOR AND EMPLOYEE RELATIONS LEGAL CONSULTING**

**RECOMMENDATION:** That the City Council authorize the City Manager to execute Amendment No. 1 (on file in the Records Management Department) adding \$100,000 to the existing Professional Services Agreement with Jones & Mayer for labor and employee relations legal consulting, for a revised contract authority of \$200,000 and extend the contract term to June 30, 2022.

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

**FISCAL IMPACT:** The Fiscal Year 2020-21 Human Resources and Risk Management Agency budget includes appropriations of \$400,000 for Legal Services. This amendment increases the total authorized contract amount from \$100,000 to \$200,000 over the term of the contract. There is no additional budget allocation needed for this increase in contract amount, and it is already included in the legal services budget appropriations.


**BACKGROUND & ANALYSIS:** Jones & Mayer provides services to public entities and serves as City Attorney to various cities throughout Southern California. The firm Jones & Mayer was recommended by Liebert Cassidy Whitmore, the law firm that advises and represents the City in all aspects of employment and labor relations. Periodically, the City finds it necessary to retain counsel for third parties (e.g. separated employees/volunteers) in order to best protect the City's interest. In 2019, the City established a contract with Jones & Mayer to provide consulting, representational, and legal services pertaining to representation in litigation proceedings.

The current contract term is for June 30, 2021, with two (2) successive one (1) year extensions. This Amendment will increase the authorized contract amount from \$100,000 to \$200,000 and extend the contract term to June 30, 2022. The increase reflects the costs associated with counsel and representation needed for a pending litigation case.

**CITY OF ONTARIO**

*Agenda Report*  
November 17, 2020

**SECTION:  
CONSENT CALENDAR**

Department: Records Management  
Prepared By: Claudia Y Isbell  
Staff Member Presenting:  
Ruben Duran, City Attorney  
Approved By: 

Submitted To: Council/OHA  
Approved: \_\_\_\_\_  
Continued To: \_\_\_\_\_  
Denied: \_\_\_\_\_  
Item No: 5

**SUBJECT: AN ORDINANCE REGARDING THE ADOPTION OF CAMPAIGN FINANCE LIMITS, PURSUANT TO ASSEMBLY BILL 571**

**RECOMMENDATION:** That the City Council adopt an ordinance regarding the adoption of campaign finance limits, pursuant to Assembly Bill 571.

**THE FOLLOWING COUNCIL GOALS ARE BEING ACHIEVED:**

**Operate in a Businesslike Manner**

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

**FISCAL IMPACT:** Staff anticipates a minimal fiscal impact associated with the enforcement of this proposed Ordinance.

**BACKGROUND & ANALYSIS:** On November 3, 2020, Council introduced and waived further reading of an ordinance relating to campaign finance limits for all elective offices in the state, including city councils. The statute requires that cities must either adopt their own limits by December 31, 2020 or default to the state's limits. Of note, the statute does not speak to the limits that cities may adopt if they pass a local ordinance; but only that they have a stated amount. The state's default limits range from \$31,000 from an individual person for statewide offices down to \$4,700 from an individual person for local elections. The proposed Ordinance contemplates a \$4,700 annual limit from individual persons.

If a municipality adopts its own limits then it becomes responsible for enforcement, as opposed to the Fair Political Practices Commission. The proposed Ordinance establishes and defines violations as noncriminal infractions, punishable by administrative fines pursuant to the City's adopted administrative fine schedule. This schedule exists today in the City's Municipal Code to enforce penalties on civil code enforcement violations. The schedule features a fine structure that increases with the frequency of violations. The proposed Ordinance allows for a notice and cure procedure, prior to the assessment of a fine. Staff will present enforcement options to the Council in the coming month to determine the most effective means of assessing fines (for example, through the City Attorney's office, the City Manager, office of the City Clerk, a contracted third party outside of the City, etc.).

Lastly, given other changes to state law related to campaign finance disclosures that take effect on January 1, 2021 (for example, filing disclosure forms, mandated posting with 72 hours, etc.), staff believes that the cost to administer this proposed Ordinance will be minimal as violations will be self-evident and matters of public record.

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

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF ONTARIO,  
CALIFORNIA, AMENDING CHAPTER 10 OF TITLE 2 OF THE ONTARIO  
MUNICIPAL CODE RELATING TO CAMPAIGN CONTRIBUTION LIMITS.

WHEREAS, Assembly Bill (AB) 571, which will go into effect statewide beginning on January 1, 2021, authorizes the City to set its own local campaign contribution limits; and

WHEREAS, if the City does not set its own limits as authorized by AB 571, the Statewide default contribution limits for elective county and city offices will automatically go into effect in the City, and those limits would align with the contribution limits set for elected officers of the State Assembly and Senate (currently no more than \$4,700 from an individual person per election); and

WHEREAS, under AB 571, the Fair Political Practices Commission (FPPC) will have administration and enforcement authority regarding the default contribution limits for cities and counties without their own local contribution limits, and makes violations of default contribution limits within the FPPC's purview punishable as a misdemeanor; however, if the City adopts its own local limits, enforcement authority rests with the City; and

WHEREAS, the City Council of the City of Ontario wishes to preserve local control and set limits that are more precisely tailored to the needs of the Ontario community.

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

SECTION 1. The City Council hereby finds and determines that the recitals set forth above are true and correct and are hereby incorporated and adopted as findings and determinations by the City Council as if fully set forth herein.

SECTION 2. Chapter 10, of Title 2 the Municipal Code is hereby amended to add new Sections 2-10.06, 2-10.07 and 2-10.08, to read in their entirety as follows:

“Sec. 2-10.06 Local Campaign Contribution Limits.

A person shall not make to a candidate for elective city office, and a candidate for elective city office shall not accept from a person, a contribution totaling more than four thousand, seven hundred dollars (\$4,700) per calendar year, as that amount is increased by the Deputy City Clerk in January of every year to reflect any increase in the Consumer Price Index. The increase shall be rounded to the nearest one hundred dollars (\$100).

“Sec. 2-10.07. Duties of the Office of the City Clerk.

The Office of the City Clerk shall administer the provisions of this Chapter. In addition to other duties required of the Office of the City Clerk under the terms of this Chapter, the Office of the City Clerk shall:

- (a) Supply appropriate forms and manuals to all candidates and committees, and to other persons required to file reports.
- (b) Determine whether required documents have been filed and, if so, whether they conform on their face with the requirements of this Chapter and state law.
- (c) Notify promptly all persons and known committees who have failed to file a document in the form and at the time required by this Chapter, and promptly notify a person, candidate, campaign treasurer, political committee or broad-based political committee of any violations of this Chapter. The Office of the City Clerk shall inform the person, candidate, campaign treasurer, political committee or broad-based political committee that they shall have two (2) weeks to correct the violation.
- (d) Compile and maintain a current list of all statements or parts of statements filed with the City Clerk’s office pertaining to each candidate.
- (e) Monitor reports and statements filed by candidates and committees supporting or opposing candidates for city council, mayor, city clerk and city treasurer as required by this Chapter.

Sec. 2-10.08 Violation - Penalty.

- (a) Upon notification to the City Prosecutor by the Office of the City Clerk of a violation that has not been corrected pursuant to Section 2-10.07(c), the City Prosecutor shall issue a citation for the violation. Any person violating any of the provisions of this Chapter relating to campaign contributions and disclosure is guilty of an infraction, punishable in accordance with Chapter 5 of Title I of this Code”

**SECTION 3.** If any section, subsection, subdivision, sentence, clause, or phrase in this Ordinance or any part thereof is for any reason held to be unconstitutional, invalid or ineffective by any court of competent jurisdiction, such decision shall not affect the validity or effectiveness of the remaining portions of this ordinance or any part thereof. The City Council hereby declares that it would have adopted each section irrespective of the fact that any one or more subsections, subdivisions, sentences, clauses, or phrases be declared unconstitutional, invalid or ineffective.



SECTION 4. This Ordinance shall become effective thirty (30) days after its adoption by the City Council.

SECTION 5. The Mayor shall sign this Ordinance and the City Clerk shall certify as to the adoption and shall cause a summary thereof to be published at least once, in a newspaper of general circulation in the City of Ontario, California within fifteen (15) days of the adoption. The City Clerk shall post a certified copy of this ordinance, including the vote for and against the same, in the Office of the City Clerk, in accordance with Government Code Section 36933.

PASSED, APPROVED, AND ADOPTED this 17<sup>th</sup> day of November 2020.

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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. 3170 was duly introduced at a regular meeting of the City Council of the City of Ontario held November 3, 2020 and adopted at the regular meeting held November 17, 2020 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. 3170 duly passed and adopted by the Ontario City Council at their regular meeting held November 17, 2020 and that Summaries of the Ordinance were published on November 10, 2020 and November 24, 2020, in the Inland Valley Daily Bulletin newspaper.


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

(SEAL)

**CITY OF ONTARIO**

*Agenda Report*  
**November 17, 2020**

**SECTION:  
CONSENT CALENDAR**

Department: Public Works  
Prepared By: Fabiola Contreras  
Staff Member Presenting:  
Tito Haes, Executive Director Public Works  
Approved By: 

Submitted To: Council/OHA  
Approved: \_\_\_\_\_  
Continued To: \_\_\_\_\_  
Denied: \_\_\_\_\_  
Item No: 6

**SUBJECT: AMENDMENT TO THE MAINTENANCE SERVICES AGREEMENT WITH GEYSER EQUIPMENT FOR ON-CALL MAINTENANCE AND REPAIR SERVICE TO THE FLEET VEHICLE PRESSURE WASHER EQUIPMENT**

**RECOMMENDATION:** That the City Council authorize the City Manager to execute Amendment No. 2 to the existing Maintenance Services Agreement with Geysler Equipment of Riverside, California (on file in the Records Management Department) for on-call maintenance and repair services to the City’s fleet vehicle pressure washer equipment; and to exercise the four option years and extend the term of the agreement to June 30th, 2024.

**THE FOLLOWING COUNCIL GOALS ARE BEING ACHIEVED:**

- Maintain the Current High Level of Public Safety
- Operate in a Businesslike Manner


**FISCAL IMPACT:** This amendment increases the total authorized contract amount to \$150,000 over a 5-year term. The Fiscal Year 2020-21 Adopted Operating Budget includes appropriations of \$30,000 in the Equipment Services Fund for maintenance and repair services to the fleet vehicle pressure washer equipment. Appropriations for subsequent fiscal years will be incorporated into the annual budget process and future funding is contingent upon City Council approval and budget adoption.

**BACKGROUND & ANALYSIS:** In July 2018, the City awarded bid #957 to Geysler Equipment for the purchase and installation of four LANDA hot pressure washers. In October 2019, the City entered into a maintenance services agreement with Geysler Equipment for on-call maintenance and repair services to the City’s fleet vehicle pressure washer equipment as Geysler Equipment is the only authorized regional sales and service company for LANDA Pressure Washers. The agreement with Geysler Equipment will minimize equipment and vehicle down time, help keep fleet vehicles clean and acceptable in appearance, and extend the useful life of the pressure washing equipment.

# CITY OF ONTARIO

*Agenda Report*  
November 17, 2020

## SECTION: CONSENT CALENDAR

Department: Community Development  
Prepared By: Scott Murphy  
Staff Member Presenting:  
Scott Murphy, AICP, Executive Community  
Development Director  
Approved By: 

Submitted To: Council/OHA  
Approved: \_\_\_\_\_  
Continued To: \_\_\_\_\_  
Denied: \_\_\_\_\_  
Item No: 7

**SUBJECT: AN INTER-AGENCY BILLBOARD RELOCATION AGREEMENT (FILE NO. PSGN20-111) FOR THE REMOVAL, RELOCATION AND PLACEMENT OF BILLBOARDS**

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

**THE FOLLOWING COUNCIL GOALS ARE BEING ACHIEVED:**

**Operate in a Businesslike Manner**

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

**FISCAL IMPACT:** The cost to remove the existing billboards and construct the new billboard is the sole responsibility of the private developer and as part of the financial arrangement with the San Bernardino County Transportation Authority - no City funds are used for the billboard removals or construction.

**BACKGROUND & ANALYSIS:** In 2015, the San Bernardino County Transportation Authority ("SBCTA"), the regional transportation authority, approached the City about the relocation of a billboard to the City from a location outside City limits to facilitate needed regional freeway interchange improvements. While the City recognized that billboard acquisition and/or relocation can be very expensive for SBCTA, the City needed to ensure that there was sufficient benefits to the City to enter into such an agreement. The resulting discussions and negotiations produced Ordinance No. 3037, approved by the City Council on January 19, 2016, which provided for a billboard located outside the City to be relocated to a site within the City pursuant to an agreement, approved at the discretion of the City Council. The provisions included the removal of at least six billboards, five of which must be within the City, for each new relocated billboard.

As plans for the Interstate 10 express lanes project were being finalized late last year, it was noted that a billboard located on the north side of Interstate 10, between the Vineyard Avenue and Fourth Street interchanges, is within the future freeway right-of-way. As part of the freeway widening, SBCTA would be required to relocate the same billboard to the north, outside the future right of-way or purchase the billboard rights outright at a very high cost. Staff has had discussions with the billboard owner about the potential to relocate the billboard on the same site with a more pleasing design and obtain the removal of additional billboards within the City. The result of these discussion lead to City Council adoption of

Ordinance No. 3160, providing for the relocation of billboards from within the City that are impacted by freeway work and that include the removal of at least three additional billboards within the City.

With the billboard relocation, Lamar is proposing a digital billboard within the same commercial center as the existing billboard. The design is a V-shaped configuration, similar to the billboard at Interstate 10 and Mountain Avenue. The style will be slightly different and is depicted in Exhibit "B" of the agreement. In addition to the upgraded design, the following existing billboard signs will be removed:

- A. Billboard No. [1]. North Side of Interstate 10, south of Fourth Street. (APN: 110-181-19)
- B. Billboard No. [2]. Northeast corner of the intersection of Vineyard Avenue and 6th Street (APN: 209-331-35)
- C. Billboard No. [3]. Southeast corner of the intersection of Vineyard Avenue and Fourth Street. (APN: 110-334-19)
- D. Billboard No. [4]. North side of Holt Boulevard, west of Mountain Avenue (APN: 1010-522-13)
- E. Billboard No. [5]. Southwest corner of Mountain Avenue and Stoneridge Court (APN: 1010-522-14)

**ENVIRONMENTAL REVIEW:** The project is categorically exempt from the requirements of the California Environmental Quality Act (CEQA) pursuant to Section 15332 (Class 32 – In-Fill Development Projects) of the CEQA Guidelines, which consists of projects that are: (1) consistent with the General Plan; (2) on a site of no more than five acres; (3) has no habitat value for endangered, rare or sensitive species; (4) would not result in a significant impact to traffic, noise, air quality or water quality; and (5) is served by utilities. The proposed agreement and billboard placement comply with that criteria.

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

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF ONTARIO, CALIFORNIA APPROVING FILE NO. PSGN20-111, A BILLBOARD RELOCATION AGREEMENT BETWEEN THE CITY OF ONTARIO, SAN BERNARDINO COUNTY TRANSPORTATION AUTHORITY AND LAMAR CENTRAL OUTDOOR, LLC AND MAKING FINDINGS IN SUPPORT THEREOF (APNS: 0110-181-19, 0110-134-19, 0209-331-35, 1010-552-13, AND 1010-552-14).

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

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

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

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

WHEREAS, on May 5, 2020, the City Council of the City of Ontario adopted its Ordinance No. 3160, modifying the provisions relating to inter-agency billboard relocation agreements; and

WHEREAS, Lamar Central Outdoor, LLC ("Lamar") maintains an existing Billboard on the north side of Interstate 10 between the Vineyard Street and Fourth Street interchanges ("Billboard") that is in conflict with proposed freeway interchange improvements proposed by San Bernardino County Transportation Authority ("SBCTA"). If a suitable relocation site is not identified, SBCTA will be required to compensate Lamar for the loss of the Billboard, thereby increasing the cost of the interchange project; and

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

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

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

WHEREAS, on November 17, 2020, the City Council of the City of Ontario conducted a hearing to consider the Project and concluded said hearing on that date; and

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

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

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

a. The Project is categorically exempt from environmental review pursuant to Section 15332 (Class 32—In-fill development) of the CEQA Guidelines; and

b. The application of the categorical exemption is not barred by one of the exceptions set forth in CEQA Guidelines Section 15300.2; and

c. The determination of CEQA exemption reflects the independent judgment of the Historic Preservation Commission.

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

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

**SECTION 4. Concluding Facts and Reasons.** Based upon the substantial evidence presented to the City Council during the above-referenced hearing, and upon the

specific findings set forth in Section 1 through 3 above, the City Council hereby concludes as follows:

- (A) The proposed agreement is consistent with the goals, objectives, purposes and provisions of the Ontario General Plan, the Ontario Development Code, and any applicable specific plan;
- (B) The proposed relocation site is compatible with uses and structures on the site and in the surrounding area;
- (C) The proposed agreement contributes to the reduction of visual clutter in the City by reducing the net number of billboards within the City by four (4);
- (D) The proposed site complies with the relocation criteria listed in that the billboard's relocation is necessitated by work being performed on the same freeway (Interstate 10) as the planned new site for the billboard; and
- (E) The public health, safety, and welfare are not impaired by the relocation.

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

**SECTION 6.** ***Indemnification.*** The Applicant shall agree to defend, indemnify and hold harmless, the City of Ontario or its agents, officers, and employees from any claim, action or proceeding against the City of Ontario or its agents, officers or employees to attack, set aside, void, or annul this approval. The City of Ontario shall promptly notify the applicant of any such claim, action, or proceeding, and the City of Ontario shall cooperate fully in the defense.

**SECTION 7.** ***Custodian of Records.*** The documents and materials that constitute the record of proceedings on which these findings have been based are located at the City of Ontario City Hall, 303 East "B" Street, Ontario, California 91764. The custodian for these records is the City Clerk of the City of Ontario.

**SECTION 8.** ***Certification to Adoption.*** The City Clerk shall certify to the adoption of the Resolution.



PASSED, APPROVED, AND ADOPTED this 17<sup>th</sup> day of November 2020.

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PAUL S. LEON, MAYOR

ATTEST:

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SHEILA MAUTZ, CITY CLERK

APPROVED AS TO FORM:

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BEST BEST & KRIEGER LLP  
CITY ATTORNEY

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

I, SHEILA MAUTZ, City Clerk of the City of Ontario, DO HEREBY CERTIFY that foregoing Resolution No. 2020- was duly passed and adopted by the City Council of the City of Ontario at their regular meeting held November 17, 2020, 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. 2020- duly passed and adopted by the Ontario City Council at their regular meeting held November 17, 2020.

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

(SEAL)

ATTACHMENT "A"

BILLBOARD REMOVAL  
AND RELOCATION AGREEMENT

*(Agreement follows this page)*

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

**1. PARTIES.**

This Billboard Relocation Agreement (“Agreement”) is made this \_\_\_ day of \_\_\_\_\_ 2020, among the City of Ontario (“Ontario”), San Bernardino County Transportation Authority (“SBCTA”), and Lamar Central Outdoor, LLC, a Delaware Limited Liability Company (“Lamar”). Ontario, SBCTA, and Lamar are referred to collectively as “Parties.”

**2. RECITALS.**

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

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

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

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

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

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

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

**3. EFFECTIVE DATE AND TERM.**

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

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

**4. TERMS.**

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

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

A. Billboard No. [1]. North Side of Interstate 10, south of Fourth Street. (APN: 110-181-19)

B. Billboard No. [2]. Northeast corner of the intersection of Vineyard Avenue and 6<sup>th</sup> Street. (APN: 209-331-35)

C. Billboard No. [3]. Southeast corner of the intersection of Vineyard Avenue and Fourth Street. (APN: 110-334-19)

D. Billboard No. [4]. North side of Holt Boulevard, west of Mountain Avenue (APN: 1010-522-13)

E. Billboard No. [5]. Southwest corner of Mountain Avenue and Stoneridge Court (APN: 1010-522-14)

**4.3** Relocation of Ontario Billboard. In consideration for Lamar’s actions as described in Section 4.2 above, Lamar shall be permitted to relocate the Ontario Billboard to the area shown on the site plan (“Relocation Site”) attached hereto as Exhibit “A” to this Agreement. The Ontario

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

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

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

**4.6 Indemnification of Ontario.** Lamar shall defend, indemnify and hold Ontario, its officials, officers, and agents free and harmless from any and all claims, liabilities, losses, costs, expenses, damages, injuries to property or persons, including wrongful death, in any manner arising out of or incident to any negligent acts, omissions or willful misconduct of Lamar, its officers and employees, agents, consultants and contractors arising out of or in connection with this Agreement or the removal, past-removal, construction, relocation, and installation of the Preexisting Billboards and Ontario Billboard, including without limitation, the payment of all consequential damages, attorneys' fees and other related costs and expenses. At a minimum, this

indemnification provision shall apply to the fullest extent of any warranty or guarantee implied by law or fact, or otherwise given to Indemnifying Parties by their contractors for the removal, past-removal, construction, relocation, and installation of the Preexisting Billboards and Ontario Billboard. In addition, this indemnity provision and any such warranties or guarantees shall not limit any liability under law of such contractors. Without limiting the foregoing, this indemnity shall extend to any claims arising because Lamar has failed to properly secure any necessary contracts or permit approvals.

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

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

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

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

**4.11** Waiver of Civil Code Section 1542. It is the intention of the Parties that the releases entered into as part of this Agreement shall be effective as a bar to all actions, causes of action, obligations, costs, expenses, attorneys' fees, damages, losses, claims, liabilities and demands of any character, nature and kind, known or unknown, suspected or unsuspected, to be so barred; in

furtherance of which intention the Parties expressly waive any and all right and benefit conferred upon them by the provisions of section 1542 of the California Civil Code, which reads as follows:

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

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

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

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

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

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

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

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



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

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

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

**4.20** Entire Agreement. This Agreement contains the entire Agreement of the Parties with respect to the subject matter hereof, and supersedes all prior negotiations, understandings or agreements. This Agreement may only be modified by a writing signed by both Parties.

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

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

[SIGNATURES ON FOLLOWING PAGE]

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

**CITY OF ONTARIO**

**LAMAR CENTRAL OUTDOOR, LLC**

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

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

ATTEST:

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

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

APPROVED AS TO FORM:

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

**SAN BERNARDINO COUNTY TRANSPORTATION AUTHORITY**

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

ATTEST:

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

APPROVED AS TO FORM:

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

**EXHIBIT A  
RELOCATION SITE PLAN**



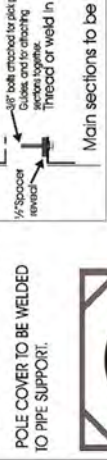
**EXHIBIT B**  
**CONCEPTUAL PLANS AND SPECIFICATIONS**  
**FOR RELOCATION OF ONTARIO BILLBOARD**

[on following pages]



FABRICATE TWO 6' WIDE X 6' DEEP X 45' TALL OVERALL POLE COVERS.  
 2" X 2" X 1/4" ALUMINUM ANGLE FRAME WITH .100 THICK ALUMINUM  
 OUTER SURFACE WELDED TO FRAME.  
 MONIEX TEXTURED FINISH PAINTED MEDIUM GRAY TO  
 MATCH DUNN EDWARDS DE6383 "Bank Vault"  
 POLE COVER TO BE BUILT WITH ONE SIDE REMOVABLE SO IT CAN  
 BE INSTALLED AROUND PIPE FROM SIDE AFTER BILLBOARD  
 AND ELECTRICAL IS INSTALLED.

TWO SETS OF 38" TALL, ILLUMINATED PAN CHANNEL LETTERS (ONTARIO)  
 ATTACHED TO FRONT AND BACK.  
 FACES TO BE WHITE ACRYLIC.  
 1" TRIMCAP PERIMETER TO BE WHITE.  
 5" DEEP RETURNS TO BE BLACK.  
 WHITE INTERNAL LED ILLUMINATION.



Steel angle irons (2" x 2" x 1/4")  
 bolted in place on frame at top and bottom.  
**INSTALLER NOTE:**  
 Remove the one on removable side  
 to fit pole cover around pipe.  
 Then bolt back in place prior to welding  
 pole cover in place so that removable  
 end panel fits properly.

**LAMAR**

ADDRESS: Ontario, CA  
 DATE: 02-19-20  
 DRAWING NUMBER: Linc 018-20

**RMG**  
 Outdoor Inc.



FABRICATE TWO 6' WIDE X 6' DEEP X 45' TALL OVERALL POLE COVERS.  
 2" X 2" X 1/4" ALUMINUM ANGLE FRAME WITH .100 THICK ALUMINUM  
 OUTER SURFACE WELDED TO FRAME.  
 MONIEX TEXTURED FINISH PAINTED MEDIUM GRAY TO  
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 5" DEEP RETURNS TO BE BLACK.  
 WHITE INTERNAL LED ILLUMINATION.



POLE COVER TO BE WELDED  
 TO PIPE SUPPORT.



Removable end  
 section of  
 this side only

Steel angle irons (2" x 2" x 1/4")  
 bolted in place on frame at top and bottom.  
**INSTALLER NOTE:**  
 Remove the one on removable side  
 to fit pole cover around pipe.  
 Then bolt back in place prior to welding  
 pole cover in place so that removable  
 end panel fits properly.

42" PIPE

48" PIPE

**LAMAR**

ADDRESS: Ontario, CA  
 DATE: 01-19-20  
 DRAWING NUMBER: Lmrs1820

**RMS**  
 Outdoor Inc.


B

EXAMPLE OF APPROXIMATE  
 FINISH

**CITY OF ONTARIO**

*Agenda Report*  
November 17, 2020

**SECTION:  
PUBLIC HEARINGS**

Department: Planning  
Prepared By: Elly Antuna  
Staff Member Presenting:  
Scott Murphy, AICP, Executive Community  
Development Director  
Approved By: 

Submitted To: Council/OHA  
Approved: \_\_\_\_\_  
Continued To: \_\_\_\_\_  
Denied: \_\_\_\_\_  
Item No: 8

**SUBJECT: A PUBLIC HEARING TO CONSIDER A MILLS ACT CONTRACT (PRESERVATION AGREEMENT) FOR A DESIGNATED HISTORIC PROPERTY, LOCATED AT 1458 NORTH EUCLID AVENUE (APN: 1047-352-14)**

**RECOMMENDATION:** That the City Council consider and adopt a resolution approving File No. PHP20-012 authorizing the City Manager to enter into a Mills Act contract (Preservation Agreement), for a designated historic property located at 1458 North Euclid Avenue.

**THE FOLLOWING COUNCIL GOALS ARE BEING ACHIEVED:**

**Invest in the Growth and Evolution of the City's Economy**

**Focus Resources in Ontario's Commercial and Residential Neighborhoods**

**FISCAL IMPACT:** The projected net impact of the proposed contract to the City is \$257 in the first year and approximately \$2,568 over the first ten years of the contract from a reduction in property tax revenue. This minimal reduction in property tax revenue will be accounted for in the revenue estimates as part of the annual budget process. In exchange for property tax reductions, \$41,900 in private property investments will be made over a ten-year period.

**BACKGROUND & ANALYSIS:** Steven and Sylvia Romero (property owners) have requested a Mills Act contract, which represents a total investment of \$41,900 of private funds into the City's neighborhoods over the next ten years. The contract calls for improvements to exterior finishes (window restoration, roof repair, repainting and tree trimming), interior finishes (hardwood floor refinishing, cabinet refinishing and fixture repairs) and systems (electrical and plumbing upgrades) to their home which was designated as a "Contributor to the Euclid Avenue Historic District in 2013".

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

Upon City Council approval, the City Clerk will inform the San Bernardino County Assessor that the

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

The City has 77 approved Mills Act contracts and one proposed, for a total of 78 Mills Act contracts. Of the 78 properties, six are commercial, one is multi-family residential, and 71 are single-family residential. Property tax impacts are summarized below.

	<b>Existing</b>	<b>Proposed</b>	<b>Total</b>
Number of Contracts	77	1	78
Estimated Annual Total Tax Savings to Owners	\$132,240	\$1,529	\$138,769
Estimated Annual Cost to City (first year)	\$23,056	\$257	\$23,313
Estimated Cost to City (over ten years)	\$230,560	\$2,570	\$233,130

The estimated cost to the City of the 78 Mills Act contracts over a ten-year period is \$233,130. In exchange for this decrease in property tax revenues, approximately \$3,204,875 will be reinvested into historic buildings in Ontario neighborhoods over a ten-year period – a ratio of \$13.75 in private funds spent for every dollar the City foregoes in property tax revenue.

The Mills Act contract is in compliance with the provisions of Article 12 (commencing with Section 50280), Chapter 1, Part 1, Division 1, Title 5 of the Government Code of the State of California, which establishes the Mills Act program. The property is a contributor to a locally designated historic district and is an owner occupied, single-family residence.

On October 27, 2020, the Historic Preservation Commission voted unanimously (5-0) to recommend City Council approval of the proposed Mills Act contract.

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



**HISTORIC PRESERVATION COMMISSION  
STAFF REPORT  
OCTOBER 27, 2020**



**FILE NO. :** PHP20-012

**SUBJECT:** Request for a Mills Act Contract (Preservation Agreement)

**LOCATION:** 1458 North Euclid Avenue (APN: 1047-352-14)


**PROPERTY OWNER:** Steven and Sylvia Romero

**RECOMMENDATION:** That the Historic Preservation Commission adopt the attached resolution recommending that the City Council approve File No. PHP20-012. The Historic Preservation Subcommittee reviewed this application on October 8, 2020 and is recommending approval.

**BACKGROUND:** Effective March 7, 1973, Chapter 1442 of the Statutes of 1972 (also known as the Mills Act) added sections 50280 through 50289 to the Government Code to allow an owner of a qualified historical property to enter into a preservation agreement with a local government. The City of Ontario established the Mills Act program in 1997 to provide an economic incentive for the preservation of designated historic landmarks and/or contributing structures within a designated historic district. Since inception of the City's program, 77 Mills Act Contracts have been approved and recorded. There is one contract proposed at this time, a single-family residence designated as a Contributor to the Euclid Avenue Historic District.

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

Pursuant to State law, a Mills Act Contract is recorded on the property and is a perpetual 10-year contract that automatically renews annually, unless the property owner or the City request a notice of non-renewal. The Mills Act Contract and all benefits and responsibilities remain with the land, even after a change of ownership. If a contract is cancelled for any reason, including non-compliance with the conditions of the contract, or upon the request of the property owner or City, a cancellation fee of 12.5 percent of the market value (as of the time of cancellation) is assessed.

<p>Case Planner: <u>Elly Antuna, Associate Planner</u></p> <p>Planning Director Approval: <u></u></p> <p>Submittal Date: <u>09/04/2020</u></p>	<table border="1" style="width: 100%; border-collapse: collapse;"> <thead> <tr> <th style="text-align: left;">Hearing Body</th> <th style="text-align: left;">Date</th> <th style="text-align: left;">Decision</th> <th style="text-align: left;">Action</th> </tr> </thead> <tbody> <tr> <td>HPSC:</td> <td>10/08/2020</td> <td>Approval</td> <td>Recommend</td> </tr> <tr> <td>PC / HPC:</td> <td>10/27/2020</td> <td><i>Approval</i></td> <td>Recommend</td> </tr> <tr> <td>CC:</td> <td>11/17/2020</td> <td></td> <td>Final</td> </tr> </tbody> </table>	Hearing Body	Date	Decision	Action	HPSC:	10/08/2020	Approval	Recommend	PC / HPC:	10/27/2020	<i>Approval</i>	Recommend	CC:	11/17/2020		Final
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HPSC:	10/08/2020	Approval	Recommend														
PC / HPC:	10/27/2020	<i>Approval</i>	Recommend														
CC:	11/17/2020		Final														

**PROJECT ANALYSIS:** Staff provides estimates of potential tax savings for the property owner, but ultimately, only the San Bernardino County Assessor can determine the actual Mills Act adjusted value. The Mills Act assessment involves many variables that are typically determined by market forces such as interest rates, capitalization rates, and fair market rental rates. The average property tax savings for the proposed Mills Act Contracts roughly range between 30 and 55 percent in the initial year, with a tax savings decrease each passing year.

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

[1] Architectural Description – The one-story Spanish Colonial Revival Bungalow style single-family residence located at 1458 North Euclid Avenue was built in 1937 (est.) for Dr. Ben Henke. Spanish Colonial features on the home include a low-pitched red tile roof, exposed rafter tails, multi-paned metal framed windows, stucco siding and an ornate wood front entry door. Other character-defining features include a small roof overhang, recessed windows, and a small courtyard style porch at the rear of the residence. The Dr. Ben Henke House was designated by City Council as a Contributor to the Euclid Avenue Historic District on June 4, 2013.



[2] Work Program — The applicants are proposing both exterior and interior work as part of the contract that qualifies under the guidelines and standards set by the State of California. The exterior work includes roof repairs, tree trimming, re-glazing of windows and paint. The interior work includes plumbing repairs and replacements, updating electrical, and refinishing of hardwood floors, cabinets and original doorknobs. The improvements are valued at an estimated \$41,900.

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

Current Annual Taxes Paid:	\$4,176
Mills Act Annual Taxes Estimated:	\$2,647
Potential Total Annual Tax Savings:	\$1,529
Estimated Savings over 10 years:	\$15,290
Estimated Savings Percentage:	36.6%

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

Current Annual City Tax Revenue:	\$702
Mills Act Annual City Tax Revenue Estimated:	\$445
Estimated Total Annual Cost to the City:	\$257
Estimated Cost to the City over 10 years:	\$2,570

This contract provides for \$16.30 in private improvements for every \$1 in estimated property tax cost to the City.

**CUMULATIVE IMPACTS:** The City currently has 77 approved Mills Act Contracts and one proposed contract. The cumulative impacts are based on the initial projected assessment of each contract for the proposed year.

	Existing	Proposed
Number of contracts:	77	78
Average Estimated Annual Tax Saving to Property Owners:	\$1,782	\$1,779
Estimated Annual Cost to the City:	\$23,056	\$23,313
Estimated Cost to the City over 10 Years:	\$230,560	\$233,130
Estimated Total Value of Mills Act Improvements over 10 Years:	\$3,162,975	\$3,204,875
Estimated Loss of Revenue to Improvement Ratio:	\$1/13.72	\$1/13.75

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

[1] City Council Goals.

- Invest in the Growth and Evolution of the City’s Economy
- Operate in a Businesslike Manner
- Focus Resources in Ontario’s Commercial and Residential Neighborhoods
- Encourage, Provide or Support Enhanced Recreational, Educational, Cultural and Healthy City Programs, Policies and Activities

[2] Policy Plan (General Plan)

**Community Design Element – Historic Preservation**

- Goal CD4: Historic buildings, streets, landscapes and neighborhoods, as well as the story of Ontario's people, businesses, and social and community organizations, that have been preserved and serve as a focal point for civic pride and identity.
  - CD4-2 Collaboration with Property Owners and Developers. We educate and collaborate with property owners and developers to implement strategies and best practices that preserve the character of our historic buildings, streetscapes and unique neighborhoods.
  - CD4-4 Incentives. We use the Mills Act and other federal, state, regional and local programs to assist property owners with the preservation of select properties and structures.
  - CD4-6 Promotion of Public Involvement in Preservation. We engage in programs to publicize and promote the City's and the public's involvement in preservation efforts.

#### **Community Design Element – Protection of Investment**

- Goal CD5: A sustained level of maintenance and improvement of properties, buildings and infrastructure that protects the property values and encourages additional public and private investments.
  - CD5-1 Maintenance of Buildings and Property. We require all public and privately owned buildings and property (including trails and easements) to be properly and consistently maintained.
  - CD5-3 Improvements to Property & Infrastructure. We provide programs to improve property and infrastructure.
  - CD5-4 Neighborhood Involvement. We encourage active community involvement to implement programs aimed at the beautification and improvement of neighborhoods.

RESOLUTION NO. PC20-068

A RESOLUTION OF THE HISTORIC PRESERVATION COMMISSION OF THE CITY OF ONTARIO, CALIFORNIA, APPROVING FILE NO. PHP20-012, RECOMMENDING THAT THE CITY COUNCIL APPROVE THE MILLS ACT CONTRACT FOR THE DR. BEN HENKE HOUSE, LOCATED AT 1458 NORTH EUCLID AVENUE (APN: 1047-352-14).

WHEREAS, STEVEN AND SYLVIA ROMERO ("Applicant") has filed an Application for the approval of a Mills Act Contract, File No. PHP20-012, as described in the title of this Resolution (hereinafter referred to as "Application" or "Project"); and

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

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

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

WHEREAS, the Dr. Ben Henke House, a Spanish Colonial style single-family residence constructed in 1937 (est.), located at 1458 North Euclid Avenue (APN: 1047-352-14) is worthy of preservation and was designated by City Council on June 4, 2013 as a Contributor within the Euclid Avenue Historic District; and

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

WHEREAS, the Project is exempt from CEQA pursuant to a categorical exemption (listed in CEQA Guidelines Article 19, commencing with Section 15300) and the application of that categorical exemption is not barred by one of the exceptions set forth in CEQA Guidelines Section 15300.2; and

WHEREAS, Ontario Development Code Table 2.02-1 (Review Matrix) grants the Historic Preservation Commission the responsibility and authority to review and make recommendation to the City Council on the subject Application; and

WHEREAS, City of Ontario Development Code Division 2.03 (Public Hearings) prescribes the manner in which public notification shall be provided and hearing

procedures to be followed, and all such notifications and procedures have been completed; and

WHEREAS, on October 8, 2020, the Historic Preservation Subcommittee of the City of Ontario conducted a hearing to consider the Project, and concluded said hearing on that date, voting to issue Decision No. HPSC20-012, recommending the Historic Preservation Commission recommend to the City Council approval of the Application; and

WHEREAS, on October 27, 2020, the Historic Preservation Commission of the City of Ontario conducted a hearing to consider the Project, and concluded said hearing on that date; and

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

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

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

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

(1) The Mills Act Contract is not considered a project pursuant to Section 21065 of the CEQA Guidelines. The Mills Act Contract will not result in a direct physical change in the environment, or a reasonably foreseeable indirect physical change in the environment.

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

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

characteristics as a property of historical significance; and

(2) The Dr. Ben Henke House, located at 1458 North Euclid Avenue, was designated by City Council on June 4, 2013 as a Contributor within the Euclid Avenue Historic District; and

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

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

**SECTION 4. Indemnification.** The Applicant shall agree to defend, indemnify and hold harmless, the City of Ontario or its agents, officers, and employees from any claim, action or proceeding against the City of Ontario or its agents, officers or employees to attack, set aside, void or annul this approval. The City of Ontario shall promptly notify the applicant of any such claim, action or proceeding, and the City of Ontario shall cooperate fully in the defense.

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

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

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Historic Preservation Commission Resolution  
File No. PHP20-012  
October 27, 2020  
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The Secretary Pro Tempore for the Historic Preservation Commission of the City of Ontario shall certify as to the adoption of this Resolution.


I hereby certify that the foregoing Resolution was duly and regularly introduced, passed and adopted by the Historic Preservation Commission of the City of Ontario at a regular meeting thereof held on the 27<sup>th</sup> day of October, 2020, and the foregoing is a full, true and correct copy of said Resolution, and has not been amended or repealed.



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Jim Willoughby  
Historic Preservation Commission  
Chairman

ATTEST:



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Rudy Zeledon  
Planning Director and  
Secretary to the Historic Preservation  
Commission



Historic Preservation Commission Resolution  
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STATE OF CALIFORNIA                    )  
COUNTY OF SAN BERNARDINO        )  
CITY OF ONTARIO                        )

I, Gwen Berendsen, Secretary Pro Tempore of the Historic Preservation Commission of the City of Ontario, DO HEREBY CERTIFY that foregoing Resolution No. PC20-068, was duly passed and adopted by the Historic Preservation Commission of the City of Ontario at their regular meeting held on October 27, 2020, by the following roll call vote, to wit:

AYES:            DeDiemar, Gregorek, Reyes, Ricci, Willoughby

NOES:           None

ABSENT:        Gage

ABSTAIN:       None

  
\_\_\_\_\_  
Gwen Berendsen  
Secretary Pro Tempore

RECORDING REQUESTED BY  
And When  
RECORDED MAIL TO:

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

Exempt Recording Fees Pursuant to Government  
Code Section 6103 & 27383

**HISTORIC PROPERTY PRESERVATION AGREEMENT**

THIS AGREEMENT is made and entered into this 17th day of November 2020, by and between the City of Ontario, a municipal corporation (hereinafter referred to as the "City") and Steven and Sylvia Romero (hereinafter referred to as the "Owner").

**WITNESSETH:**

**A. Recitals.**

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

(ii) Owner possesses fee title in and to that certain real property, together with associated structures and improvements thereon, commonly known as the Dr. Ben Henke House, located at 1458 North Euclid Avenue, Ontario, CA 91762 (hereinafter such property shall be referred to as the "Historic Property"). A legal description of the Historic

Property is attached hereto, marked as Exhibit "A" and is incorporated herein by this reference;

(iii) On June 4, 2013, the City Council of the City of Ontario designated the Historic Property as a Contributor within the Euclid Avenue Historic District pursuant to the terms and provisions of Title 9, Chapter 1 Chapter 4 of the Ontario Municipal Code; and,

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

## **B. Agreement**

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

1. Effective Date and Term of Agreement. This Agreement shall be effective and commence on November 17, 2020 and shall remain in effect for a term of ten (10) years thereafter. Each year upon the anniversary of the effective date, such initial term will automatically be extended as provided in paragraph 2, below.

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

be added to the term of the Agreement provided herein. Owner may make a written protest of the notice. Upon receipt by the Owner of a notice from the City of non-renewal, the City may, at any time prior to the annual renewal date of the Agreement, withdraw its notice to Owner of non-renewal. If either City or Owner serves notice to the other of non-renewal in any year, the Agreement shall remain in effect for the balance of the term then remaining, either from its original execution or from the last renewal of the Agreement, whichever may apply.

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

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

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

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

C. Pursuant to Section 4.02.050 of the Ontario Development Code, Owner shall obtain a Certificate of Appropriateness for any alteration, addition, restoration,

rehabilitation, repainting, resurfacing, and for each and every item listed in Exhibit "C", prior to commencement of work. Failure to obtain all necessary permits, including building permits, and approvals may result in cancellation of this Agreement as set forth on Paragraph 6, Cancellation herein.

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

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

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

7. Enforcement of Agreement. In lieu of and/or in addition to any provision to cancel the Agreement as referenced herein, City may specifically enforce, or enjoin the breach of, the terms of this Agreement. In the event of a default, under the provisions of this Agreement by Owner, City shall give written notice to Owner by registered or certified mail addressed to the address stated in this Agreement, and if such a violation is not corrected to the reasonable satisfaction of the City within thirty (30) days thereafter, or if not corrected within such reasonable time as may be required to cure the breach or

default if said breach or default cannot be cured within thirty (30) days (provided that acts to cure the breach of default may be commenced within thirty (30) days and must be pursued to completion by Owner), then City may, without further notice, declare a default under the terms of this Agreement and may bring any action necessary to specifically enforce the obligations of Owner growing out of the terms of this Agreement, apply to any court, state or federal, for injunctive relief against any violation by Owner or apply for such other relief against any violation by Owner or apply for such other relief as may be appropriate.

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

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

City and Owner hereby declare their understanding and intent that the burden of the covenants, reservations and restrictions set forth herein touch and concern the land in that Owner's legal interest in the Historic Property is rendered less valuable

thereby. City and Owner hereby further declare their understanding and intent that the benefit of such covenants, reservations and restrictions touch and concern the land by enhancing and maintaining the historic characteristics and significance of the Historic Property for the benefit of the public and the Owner.

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

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

Attention: Planning Director

To Owner: Steven and Sylvia Romero  
1458 North Euclid Avenue  
Ontario, CA 91762

10. General Provisions.

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

B. Owner agrees to and shall hold City and its elected officials, officers, agents, and employees harmless from liability for damage or claims for damage for personal injuries, including death, and claims for property damage which may arise from the direct or indirect use or operations of Owner or those of his contractor, subcontractor, agent, employee or other person acting on his behalf which relates to the use, operation and maintenance of the Historic Property. Owner hereby agrees to and shall defend the City and its elected officials, officers, agents, and employees with respect to any and all actions for damages caused by, or alleged to have been caused by, reason of Owner's activities in connection with the Historic Property. This hold harmless provision applies

to all damages and claims for damages suffered, or alleged to have been suffered, by reason of the operations referred to in this Agreement regardless of whether or not the City prepared, supplied or approved the plans, specifications or other documents for the Historic Property.

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

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

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

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

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

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



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

CITY OF ONTARIO

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

By: \_\_\_\_\_  
City Manager

Attest

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

Approved as to Form

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

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

By: \_\_\_\_\_  
Steven Romero, Owner

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

By: \_\_\_\_\_  
Sylvia Romero, Owner

**Exhibit A Historic Property Preservation Agreement  
Legal Description**

**Address:** 1458 North Euclid Avenue      **APN:** 1047-352-14      **File No.:** PHP20-012  
Ontario, CA 91762

**The property located at:** 1458 North Euclid Avenue  
Ontario, CA 91762

**is legally described as:** ONTARIO COLONY LANDS N 80 FT W 150 FT LOT 732

**APN:** 1047-352-14-0-000

**Exhibit B: Historic Property Preservation Agreement  
Property Maintenance**

**Address:** 1458 North Euclid Avenue      **APN:** 1047-352-14      **File No.:** PHP20-012  
Ontario, CA 91762

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

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

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

**Exhibit C: Historic Property Preservation Agreement  
Proposed Improvements**

**Address:** 1458 North Euclid Avenue      **APN:** 1047-352-14      **File No.:** PHP20-012  
Ontario, CA 91762

<b>Contract Year</b>	<b>Description</b>
2021:	Paint interior of home.
2022:	Paint exterior of home.
2023:	Replace plumbing in bathroom. Re-glaze bathtub.
2024:	Replace and repair electrical as needed.
2025:	Reglaze windows and doors where glass is broken.
2026:	Tree trimming (4 trees) by certified arborist.
2027:	Repair cupboards in kitchen, bathroom and hall.
2028:	Refinish/replace wood floors throughout the home.
2029:	Replace broken tiles on roof.
2030:	Replace skeleton keys and refinish doorknobs. Repair garage roof.

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

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF ONTARIO, CALIFORNIA, APPROVING FILE NO. PHP20-012, AND AUTHORIZING THE CITY OF ONTARIO TO ENTER INTO A HISTORIC PROPERTY PRESERVATION AGREEMENT (MILLS ACT CONTRACT) WITH STEVEN AND SYLVIA ROMERO, FOR THE PROPERTY LOCATED AT 1458 NORTH EUCLID AVENUE (APN: 1047-352-14).

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

WHEREAS, Steven and Sylvia Romero possess fee title in and to that certain real property, together with associated structures and improvements thereon, located at the street address commonly known as 1458 North Euclid Avenue, Ontario, California (hereinafter referred to as the "Property"); and

WHEREAS, on June 4, 2013, the City Council of the City of Ontario designated the Property as a Contributor within the Euclid Avenue Historic District pursuant to the terms and provisions of Chapter 4, of the Ontario Development Code; and

WHEREAS, the City and Steven and Sylvia Romero, for their mutual benefit, now desire to enter into a Historic Property Preservation Agreement, a copy of which is attached hereto as Exhibit "A" and incorporated herein by reference (hereinafter referred to as the "Preservation Agreement"); and

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

WHEREAS, the Project is exempt from CEQA pursuant to a categorical exemption (listed in CEQA Guidelines Article 19, commencing with Section 15300) and the application of that categorical exemption is not barred by one of the exceptions set forth in CEQA Guidelines Section 15300.2; and

WHEREAS, Ontario Development Code Table 2.02-1 (Review Matrix) grants the City Council the responsibility and authority to review and act on the subject Application; and

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

WHEREAS, on October 8, 2020, the Historic Preservation Subcommittee conducted a hearing and issued Decision No. HPSC20-012, recommending the Historic Preservation Commission recommend the City Council approve the Application; and

WHEREAS, on October 27, 2020, the Historic Preservation Commission conducted a hearing and issued Resolution No. PC20-068, recommending the City Council approve the Application; and

WHEREAS, on November 17, 2020, the City Council of the City of Ontario conducted a hearing to consider the Project, and concluded said hearing on that date; and

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

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

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

(1) The Mills Act contract is not considered a project pursuant to Section 21065 of the CEQA Guidelines. The Mills Act contract will not result in a direct physical change in the environment, or a reasonably foreseeable indirect physical change in the environment.

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

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

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

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

(3) The Dr. Ben Henke House, a Spanish Colonial style single-family residence located at 1458 North Euclid Avenue, was designated as a Contributor within the Euclid Avenue Historic District; and

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

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

**SECTION 4.** ***Indemnification.*** The Applicant shall agree to defend, indemnify and hold harmless, the City of Ontario or its agents, officers, and employees from any claim, action or proceeding against the City of Ontario or its agents, officers or employees to attack, set aside, void or annul this approval. The City of Ontario shall promptly notify the applicant of any such claim, action or proceeding, and the City of Ontario shall cooperate fully in the defense.

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

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

**SECTION 7.** ***Certification to Adoption.*** The City Clerk of the City of Ontario shall certify as to the adoption of this Resolution.

PASSED, APPROVED, AND ADOPTED this 17<sup>th</sup> day of November 2020.

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PAUL S. LEON, MAYOR

ATTEST:

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SHEILA MAUTZ, CITY CLERK



APPROVED AS TO LEGAL FORM:

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BEST BEST AND KRIEGER LLP  
CITY ATTORNEY

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

I, SHEILA MAUTZ, City Clerk of the City of Ontario, DO HEREBY CERTIFY that foregoing Resolution No. 2020- was duly passed and adopted by the City Council of the City of Ontario at their regular meeting held November 17, 2020, 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. 2020- duly passed and adopted by the Ontario City Council at their regular meeting held November 17, 2020.

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

(SEAL)

Exhibit "A"  
Preservation Agreement

RECORDING REQUESTED BY  
And When  
RECORDED MAIL TO:

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

Exempt Recording Fees Pursuant to Government  
Code Section 6103 & 27383

### **HISTORIC PROPERTY PRESERVATION AGREEMENT**

THIS AGREEMENT is made and entered into this 17th day of November 2020, by and between the City of Ontario, a municipal corporation (hereinafter referred to as the "City") and Steven and Sylvia Romero (hereinafter referred to as the "Owner").

#### **WITNESSETH:**

##### **A. Recitals.**

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

(ii) Owner possesses fee title in and to that certain real property, together with associated structures and improvements thereon, commonly known as the Dr. Ben Henke House, located at 1458 North Euclid Avenue, Ontario, CA 91762 (hereinafter such property shall be referred to as the "Historic Property"). A legal description of the Historic Property is attached hereto, marked as Exhibit "A" and is incorporated herein by this reference;

(iii) On June 4, 2013, the City Council of the City of Ontario designated the Historic Property as a Contributor within the Euclid Avenue Historic District pursuant to the terms and provisions of Title 9, Chapter 1 Chapter 4 of the Ontario Municipal Code; and,

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

## **B. Agreement**

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

1. Effective Date and Term of Agreement. This Agreement shall be effective and commence on November 17, 2020 and shall remain in effect for a term of ten (10) years thereafter. Each year upon the anniversary of the effective date, such initial term will automatically be extended as provided in paragraph 2, below.

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

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

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

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

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

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

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

permits, and approvals may result in cancellation of this Agreement as set forth on Paragraph 6, Cancellation herein.

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

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

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

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

under the terms of this Agreement and may bring any action necessary to specifically enforce the obligations of Owner growing out of the terms of this Agreement, apply to any court, state or federal, for injunctive relief against any violation by Owner or apply for such other relief against any violation by Owner or apply for such other relief as may be appropriate.

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

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

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



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

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

Attention: Planning Director

To Owner: Steven and Sylvia Romero  
1458 North Euclid Avenue  
Ontario, CA 91762

10. General Provisions.

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

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

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

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

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

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

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

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

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

CITY OF ONTARIO

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

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

Attest

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

Approved as to Form

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

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

By: \_\_\_\_\_  
Steven Romero, Owner

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

By: \_\_\_\_\_  
Sylvia Romero, Owner

**Exhibit A**

**Historic Property Preservation Agreement  
Legal Description**

**Address:** 1458 North Euclid Avenue **APN:** 1047-352-14 **File** PHP20-012  
Ontario, CA 91762 **No.:**

**The property located at:** 1458 North Euclid Avenue  
Ontario, CA 91762

**is legally described as:** ONTARIO COLONY LANDS N 80 FT W 150 FT LOT 732

**APN:** 1047-352-14-0-000

## Exhibit B

### Historic Property Preservation Agreement Property Maintenance

**Address:** 1458 North Euclid Avenue **APN:** 1047-352-14 **File** PHP20-012  
Ontario, CA 91762 **No.:**

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

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

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

**Exhibit C**

**Historic Property Preservation Agreement  
Proposed Improvements**


**Address:** 1458 North Euclid Avenue    **APN:** 1047-352-14    **File** PHP20-012  
Ontario, CA 91762    **No.:**

<b>Contract Year</b>	<b>Description</b>
2021:	Paint interior of home.
2022:	Paint exterior of home.
2023:	Replace plumbing in bathroom. Re-glaze bathtub.
2024:	Replace and repair electrical as needed.
2025:	Reglaze windows and doors where glass is broken.
2026:	Tree trimming (4 trees) by certified arborist.
2027:	Repair cupboards in kitchen, bathroom and hall.
2028:	Refinish/replace wood floors throughout the home.
2029:	Replace broken tiles on roof.
2030:	Replace skeleton keys and refinish doorknobs. Repair garage roof.

# CITY OF ONTARIO

Agenda Report  
November 17, 2020

## SECTION: PUBLIC HEARINGS

Department: Planning  
Prepared By: Alexis Vaughn  
Staff Member Presenting:  
Scott Murphy, AICP, Executive Community  
Development Director  
Approved By: 

Submitted To: Council/OHA  
Approved: \_\_\_\_\_  
Continued To: \_\_\_\_\_  
Denied: \_\_\_\_\_  
Item No: 9

**SUBJECT: A PUBLIC HEARING TO CONSIDER: [1] A GENERAL PLAN AMENDMENT (FILE NO. PGPA19-008) MODIFYING POLICY PLAN EXHIBIT LU-01, LAND USE PLAN, CHANGING THE LAND USE DESIGNATION ON 10.49 ACRES OF LAND FROM PUBLIC SCHOOL TO LOW-MEDIUM DENSITY RESIDENTIAL (5.1-11 DU/AC), AND MODIFYING EXHIBIT LU-03, FUTURE BUILDOUT, TO BE CONSISTENT WITH THE PROPOSED LAND USE DESIGNATION CHANGE; AND [2] AN AMENDMENT TO THE AVENUE SPECIFIC PLAN (FILE NO. PSPA19-011), CHANGING THE LAND USE DESIGNATION ON THE PROJECT SITE FROM SCHOOL TO LOW-MEDIUM DENSITY RESIDENTIAL, INTRODUCE PRODUCT TYPE 1D (2,700 - 3,500 SQUARE-FOOT LOTS), AND REVISE APPLICABLE EXHIBITS, MAPS, DEVELOPMENT STANDARDS, AND OTHER TEXT THROUGHOUT THE SPECIFIC PLAN TO ACCOMMODATE THE PROPOSED LAND USE CHANGE, ON LAND GENERALLY LOCATED AT THE NORTHEAST CORNER OF LA AVENIDA DRIVE AND MANITOBA PLACE, WITHIN THE PA-6B LAND USE DISTRICT OF THE AVENUE SPECIFIC PLAN (APN: 0218-302-01)**

**RECOMMENDATION:** That the City Council consider and adopt:

- A. A resolution approving the use of an Addendum to The Ontario Plan Environmental Impact Report (State Clearinghouse No. 2008101140); A resolution approving the General Plan Amendment (File No. PGPA19-008), modifying the Policy Plan Exhibit LU-01, Land Use Plan, changing the land use designation on 10.49 acres of land, from Public School to Low-Medium Density Residential (5.1-11 dwelling units per acre), and modifying Exhibit LU-03, Future Buildout, to be consistent with the proposed land use designation change; and
- B. A resolution approving a Specific Plan Amendment (File No. PSPA19-011), modifying The Avenue Specific Plan, changing the land use designation on the project site from School to Low-Medium Density Residential, introduce Product Type 1D (2,700 – 3,500 square-foot lots), and revise applicable exhibits, maps, development standards, and other text throughout the Specific Plan to accommodate the proposed land use change.

**THE FOLLOWING COUNCIL GOALS ARE BEING ACHIEVED:**

**Operate in a Businesslike Manner**

**Focus Resources in Ontario's Commercial and Residential Neighborhoods**

**Ensure the Development of a Well Planned, Balanced, and Self-Sustaining Community in Ontario**



## **Ranch**

**FISCAL IMPACT:** No fiscal impacts are anticipated with the adoption of the proposed General Plan Amendment and proposed Amendment to The Avenue Specific Plan. The proposed General Plan Amendment would result in the increase of residential dwelling units within the Specific Plan area, from 2,875 to 2,981 units. The increase in residential units would increase ongoing operations and maintenance services (police, fire, maintenance, etc.) that are necessary to serve the future residential development. To offset the future increase in service expenditures, an operations and maintenance Community Facilities District (CFD) will be established through the tract map entitlement process for the project site, which will cover the additional costs of police and fire services, landscape maintenance of medians, neighborhood edges, and street light operations and maintenance along the public streets.

**BACKGROUND & ANALYSIS:** The Policy Plan (general plan) component of The Ontario Plan provides the basic framework for development within the 8,200-acre area commonly referred to as Ontario Ranch. The Policy Plan requires City Council approval of a Specific Plan for new developments within Ontario Ranch.

The Avenue Specific Plan (File No. PSP05-003) was approved, and the related Environmental Impact Report (State Clearinghouse No. 2005071109) was certified by the City Council on February 16, 2007. The Avenue Specific Plan established the land use designations, development standards, and design guidelines on 569 acres of land, which included the potential development of 2,875 dwelling units and approximately 30 acres of land dedicated to elementary and middle schools.

On October 3, 2019, the Applicant submitted three applications to facilitate the future construction of 106 single-family dwellings, which included a General Plan Amendment (File No. PGPA19-008), an amendment to The Avenue Specific Plan (File No. PSPA19-011), and a Tentative Tract Map (File No. PMTT19-015/TT 20298) to subdivide 10.49 acres of land into 106 numbered lots and 19 lettered lots.

**GENERAL PLAN AMENDMENT:** The proposed General Plan Amendment will revise Policy Plan Exhibit LU-01, Land Use Plan, changing the land use designation on 10.49 acres of land, from Public School to Low-Medium Density Residential. In addition, Policy Plan Figure LU-03, Future Buildout, will be updated to reflect the proposed land use designation changes, as shown in Exhibit B (Amended Future Buildout Table) attached. The Low-Medium Density Residential land use designation will allow for the development of single-family detached homes at a density between 5.1 and 11 dwelling units per acre.

As part of any development in Ontario Ranch, all residential developers are required, through Development Agreements, to obtain an agreement with the school district that outlines the mitigation and terms for the purchase of properties identified for a school site. As part of the NMC Builders, LLC, obligations, the Applicant, Ontario Schaefer Holdings, LLC, negotiated a School Mitigation agreement with Mountain View School District (MVSD) to meet this requirement. Within the mitigation agreement are certain terms under which the District is to acquire school parcels. When the terms were met, the Applicant reached out to the District and requested that they begin the acquisition process. Following that request, the District notified the Applicant that their new needs analysis determined that they did not need this middle school parcel. On July 23, 2019, the City received a letter from the MVSD Superintendent Douglass Moss, informing the City that they would not be pursuing or acquiring the future 20.49-acre school site located within Planning Areas 6B and 9B of The Avenue Specific Plan, identified as a middle school. Future residential projections and declining enrollment, coupled with insufficient funds, prompted the District's decision to move away from acquiring the middle school site. The remaining eastern ten acres (PA-9B) of the middle school site is owned by Brookcal Ontario, LLC.

Brookcal has acknowledged that they will offer patience and flexibility with the MVSD to pursue the possibility of a ten-acre elementary school on their property.

**THE AVENUE SPECIFIC PLAN AMENDMENT:** The proposed Amendment to The Avenue Specific Plan will change the land use designation for PA-6B, from School to Low-Medium Density Residential. In addition, the Applicant has introduced development standards for Product Type 1D, a conventional product type which has a typical 45-foot interior/50-foot corner lot width and a 60-foot interior/70-foot corner lot depth (2,700 – 3,500 square-foot lots). Also included are updates to development standards, the land use matrix, and various exhibits, along with text changes to reflect the proposed density increase and infrastructure requirements to accommodate the proposed Tentative Tract Map and future Development Plan applications (see Attachment A: The Avenue Specific Plan Amended Document to the Resolution for The Avenue Specific Plan Amendment). All changes and additions to the Specific Plan (exhibits, tables, and development standards) are contained within the revised Specific Plan document.

**PLANNING COMMISSION REVIEW:** On October 27, 2020, the Planning Commission conducted a duly noticed public hearing on the subject applications. Prior to the Planning Commission public hearing, Planning staff received ten public comments opposing the project, citing three primary underlying concerns: (1) that the proposed project would generate traffic; (2) that the community developers marketed the middle school to attract buyers, which made this location more attractive to purchase their homes; and (3) that they were paying Mello-Roos fees and taxes to fund a school which is now not being built.

At the public hearing, Planning staff and the applicant presented and addressed the public's concerns, as follows.

1. Traffic - A traffic study was completed as part of the Addendum process. The study found that the trip generation total for the proposed residential and potential future elementary school land uses (on the project site and adjacent parcel, respectively) was less than what would have resulted from the middle school land use and, therefore, would not have a significant effect on the neighborhood.
2. School Marketed as Selling Point for Homes - Staff explained that the residential developers did market the school to attract home buyers; however, it was always the intent of the Applicant to sell the property to the Mountain View School District for the construction of the middle school. In fact, the Applicant negotiated a School Mitigation agreement with the Mountain View School District for the sale of the property. Within the mitigation agreement are the terms under which the District is to acquire school parcels. When these terms were met for the Mountain View School District, the Applicant reached out to the District and requested that they begin the acquisition process. The Applicant completed their obligations per the Mitigation Agreement with the Mountain View School District. However, the Mountain View School District ultimately decided not to pursue development of the site for the middle school and not honor the Agreement.
3. Mello-Roos/Taxes Paid for Schools - Staff explained that within the neighborhoods of The Avenue Specific Plan, Community Facilities Districts have been formed for the purposes of funding public services (Police and Fire) and infrastructure maintenance. Community Facilities Districts do not fund school services. Local school districts are funded by local property taxes and by County, State, and Federal programs.

The Planning Commission concluded the public hearing and voted unanimously (4-0) to recommend that the City Council approve the proposed General Plan Amendment and The Avenue Specific Plan Amendment. Additionally, the Planning Commission approved the related Tentative Tract Map, subject

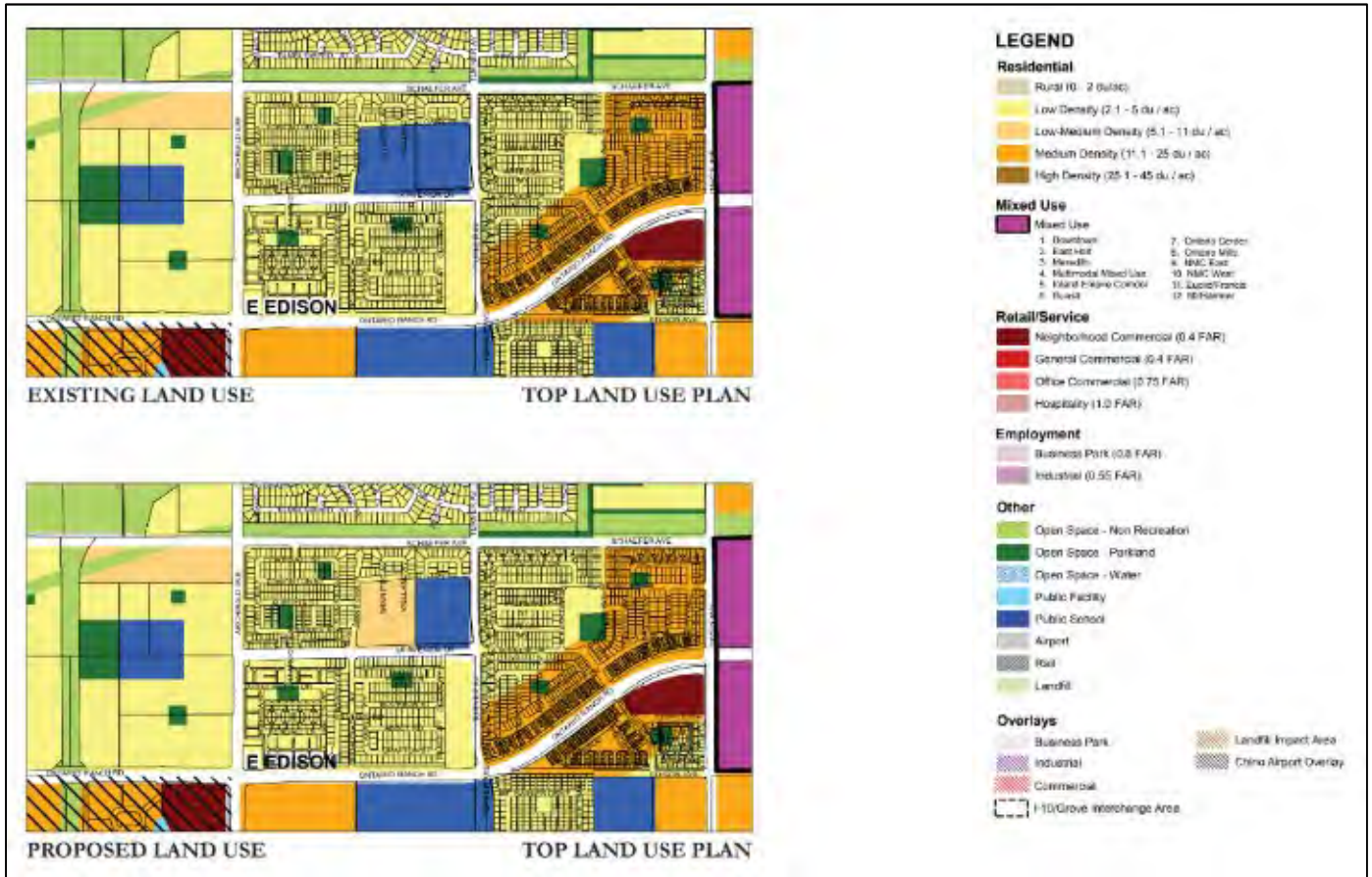
to City Council approval of the General Plan and Specific Plan Amendments.

**HOUSING ELEMENT COMPLIANCE:** The Project is consistent with the Housing Element of the Policy Plan (General Plan) component of The Ontario Plan. The Project site is one of the properties listed in the Available Land Inventory contained in Table A-3 (Available Land by Planning Area) of the Housing Element Technical Report Appendix, and the proposed Project is consistent with the number of dwelling units (2,875) and density (2 - 12 du/ac) specified in the Available Land Inventory.

**AIRPORT LAND USE COMPATABILITY PLAN 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, establishing the Airport Influence Area for Ontario International Airport, which encompasses lands within parts of San Bernardino, Riverside, and Los Angeles Counties, and limits future land uses and development within the Airport Influence Area, as they relate to noise, safety, airspace protection, and overflight impacts of current and future airport activity. The proposed Project is located within the Airport Influence Area of Ontario International Airport and was evaluated and found to be consistent with the policies and criteria of the Ontario International Airport Land Use Compatibility Plan. Any special conditions of approval associated with uses in close proximity to the airport are included in the conditions of approval provided with the attached Resolution.

**ENVIRONMENTAL REVIEW:** The environmental impacts of this project were previously reviewed in conjunction with an Addendum to The Ontario Plan (File No. PGPA06-001) EIR (SCH# 2008101140) adopted and certified by City Council on January 27, 2010. This Application introduces no new significant environmental impacts. All previously adopted mitigation measures are a condition of project approval and are incorporated herein by this reference.

**EXHIBIT A – GENERAL PLAN AMENDMENT MAP**



**EXHIBIT B – AMENDED FUTURE BUILDOUT TABLE**



**LU-03 Future Buildout<sup>1</sup>**

Land Use	Acres <sup>2</sup>	Assumed Density/Intensity <sup>3</sup>	Units	Population <sup>4</sup>	Non-Residential Square Feet	Jobs <sup>5</sup>
<b>Residential</b>						
Rural	529	2.0 du/ac	1,058	4,231		
Low Density <sup>6</sup>	7,231	4.0 du/ac (OMC) 4.5 du/ac (NMC)	30,477	121,816		
Low-Medium Density <sup>6</sup>	<del>982</del> 992	8.5 du/ac	<del>8,343</del> 8,432	<del>33,348</del> 33,704		
Medium Density	1,921	18.0 du/ac (OMC) 22.0 du/ac (NMC)	38,724	135,508		
High Density	183	35.0 du/ac	6,415	21,470		
<b>Subtotal</b>	<b>10,846</b>		<del>85,017</del> <b>85,107</b>	<del>316,372</del> <b>316,729</b>		
<b>Mixed Use</b>						
• Downtown	113	<ul style="list-style-type: none"> <li>60% of the area at 35 du/ac</li> <li>40% of the area at 0.80 FAR for office and retail</li> </ul>	2,365	4,729	1,569,554	2,808
• East Holt Boulevard	57	<ul style="list-style-type: none"> <li>25% of the area at 30 du/ac</li> <li>50% of the area at 1.0 FAR office</li> <li>25% of area at 0.80 FAR retail</li> </ul>	428	856	1,740,483	3,913
• Meredith	93	<ul style="list-style-type: none"> <li>47% of the area at 39.46 du/ac</li> <li>48% at 0.35 FAR for office and retail uses</li> <li>5% at 0.75 FAR for Lodging</li> </ul>	1,725	3,450	832,497	975
• Transit Center	76	<ul style="list-style-type: none"> <li>10% of the area at 60 du/ac</li> <li>90% of the area at 1.0 FAR office and retail</li> </ul>	457	913	2,983,424	5,337
• Inland Empire Corridor	37	<ul style="list-style-type: none"> <li>50% of the area at 20 du/ac</li> <li>30% of area at 0.50 FAR office</li> <li>20% of area at 0.35 FAR retail</li> </ul>	368	736	352,662	768
• Guasti	77	<ul style="list-style-type: none"> <li>20% of the area at 30 du/ac</li> <li>30% of area at 1.0 FAR retail</li> <li>50% of area at 0.70 FAR office</li> </ul>	465	929	2,192,636	4,103
• Ontario Center	345	<ul style="list-style-type: none"> <li>30% of area at 40 du/ac</li> <li>50% of area at 1.0 FAR office</li> <li>20% of area at 0.50 FAR retail</li> </ul>	4,139	8,278	9,014,306	22,563
• Ontario Mills	240	<ul style="list-style-type: none"> <li>5% of area at 40 du/ac</li> <li>20% of area at 0.75 FAR office</li> <li>75% of area at 0.50 FAR retail</li> </ul>	479	958	5,477,126	7,285
• NMC West/South	315	<ul style="list-style-type: none"> <li>30% of area at 35 du/ac</li> <li>70% of area at 0.70 FAR office and retail</li> </ul>	3,311	6,621	6,729,889	17,188
• NMC East	264	<ul style="list-style-type: none"> <li>30% of area at 25 du/ac</li> <li>30% of area at 0.35 FAR for office</li> <li>40% of area at 0.30 FAR for retail uses</li> </ul>	1,978	3,956	2,584,524	4,439
• Euclid/Francis	10	<ul style="list-style-type: none"> <li>50% of the area at 30 du/ac</li> <li>50% of area at 0.8 FAR retail</li> </ul>	156	312	181,210	419
• SR-60/Hammer Tuscana Village	41	<ul style="list-style-type: none"> <li>18% of the area at 25 du/ac</li> <li>57% of the area at 0.25 FAR retail</li> <li>25% of the area at 1.5 FAR office</li> </ul>	185	369	924,234	2,098
<b>Subtotal</b>	<b>1,668</b>		<b>16,054</b>	<b>32,107</b>	<b>34,582,545</b>	<b>71,896</b>

**EXHIBIT B – AMENDED FUTURE BUILDOUT TABLE (CONTINUED)**

<b>Land Use</b>	<b>Acres<sup>2</sup></b>	<b>Assumed Density/Intensity<sup>3</sup></b>	<b>Units</b>	<b>Population<sup>4</sup></b>	<b>Non-Residential Square Feet</b>	<b>Jobs<sup>5</sup></b>
<b>Retail/Service</b>						
Neighborhood Commercial <sup>6</sup>	281	0.30 FAR			3,671,585	8,884
General Commercial	477	0.30 FAR			6,229,385	5,787
Office/Commercial	479	0.75 FAR			15,650,564	34,707
Hospitality	142	1.00 FAR			6,177,679	7,082
<b>Subtotal</b>	<b>1,379</b>				<b>31,729,213</b>	<b>56,461</b>
<b>Employment</b>						
Business Park	1,531	0.40 FAR			26,676,301	46,803
Industrial	6,457	0.55 FAR			154,698,172	135,921
<b>Subtotal</b>	<b>7,988</b>				<b>181,374,472</b>	<b>182,724</b>
<b>Other</b>						
Open Space-Non-Recreation	1,232	Not applicable				
Open Space-Parkland <sup>6</sup>	950	Not applicable				
Open Space-Water	59	Not applicable				
Public Facility	97	Not applicable				
Public School	<del>632</del> 621	Not applicable				
LA/Ontario International Airport	1,677	Not applicable				
Landfill	137	Not applicable				
Railroad	251	Not applicable				
Roadways	4,871	Not applicable				
<b>Subtotal</b>	<del>9,906</del> <b>9,895</b>					
<b>Total</b>	<b>31,786</b>		<del>101,071</del> <b>101,160</b>	<del>348,479</del> <b>348,836</b>	<b>247,686,231</b>	<b>311,080</b>

Notes

- Historically, citywide buildout levels do not achieve the maximum allowable density/intensity on every parcel and are, on average, lower than allowed by the Policy Plan. Accordingly, the buildout projections in this Policy Plan do not assume buildout at the maximum density or intensity and instead are adjusted downward. To view the buildout assumptions, access the Methodology report.
- Acres are given as adjusted gross acreages, which do not include the right-of-way for roadways, flood control facilities, or railroads.
- Assumed Density/Intensity includes both residential density, expressed as units per acre, and non-residential intensity, expressed as floor area ratio (FAR), which is the amount of building square feet in relation to the size of the lot.
- Projections of population by residential designation are based on a persons-per-household factor that varies by housing type. For more information, access the Methodology report.
- To view the factors used to generate the number of employees by land use category, access the Methodology report.
- Acreages and corresponding buildout estimates for these designations do not reflect underlying land uses within the Business Park, Industrial and Commercial Overlays. Estimates for these areas are included within the corresponding Business Park, Industrial and General Commercial categories.

**EXHIBIT C – THE AVENUE SPECIFIC PLAN LAND USE PLAN**

**Existing**

**LEGEND**

- |  |  |
|--|--|
|  LOW DENSITY RESIDENTIAL        |  SCHOOL               |
|  LOW MEDIUM DENSITY RESIDENTIAL |  PARK                 |
|  MEDIUM DENSITY RESIDENTIAL     |  SCE EASEMENT         |
|  RETAIL/COMMERCIAL              |  STORM DRAIN EASEMENT |



**Proposed**



**EXHIBIT D – THE AVENUE SPECIFIC PLAN LAND USE SUMMARY TABLE**

Former Subarea	Planning Area	Gross Acres	Excluded from Gross	Net Res. Acres	Homes	Density <sup>(4)</sup>	Comm. SF	Use
17	1A	11.1	-	11.1	51	4.6		LDR
17	1B	33.5	5.4 <sup>(1)</sup>	28.1	127	4.5		LDR
17	1C	2.2	-	2.2	5	2.3		LDR
17	2A	32.0	-	32.0	147	4.6		LDR
17	2B	12.5	-	12.5	58	4.6		LDR
17	3A	21.7	2.6 <sup>(1)</sup>	19.1	86	4.5		LDR
17	3B	21.5	-	21.5	97	4.5		LDR
18	4	19.9	-	19.9	218	11		MDR
18	5	82.6	10.0 <sup>(3)</sup>	72.6	334	4.6		LDR/O.S./ Elem. School
18	6A	49.9	-	49.9	230	4.6		LDR
18	6B	10.0	-	10.0	106	10.6		LMDR
18	7	28.9	-	28.9	287	9.5		LMDR
18	8A	39.9	-	39.9	180	4.5		LDR
18	8B	9.7	-	9.7	44	4.5		LDR
18	9A	10.6	-	10.6	20	2.0		LDR
18	9B	10.0	10.0	n/a				School
12	10A	114.7	-	114.7	766	6.7		LDR/MDR
	10B	10.0 <sup>(2)</sup>	10.0 <sup>(2)</sup>	n/a			130,680	Retail
24	11	33.4	-	33.4	225	6.7		LDR/LMDR
Cucamonga Creek		12.8	12.8	n/a				
SCE	7	1.2	1.2	n/a				
<b>Total</b>		<b>568.1</b>	<b>52.0</b>	<b>516.1</b>	<b>2,981</b>		<b>130,680</b>	

- <sup>(1)</sup> SCE Easement
- <sup>(2)</sup> Retail Site
- <sup>(3)</sup> Elementary School
- <sup>(4)</sup> Density is measured to C/L of arterial streets per City standard for NMC entitlements

Notes:  
 All acreages approximate - exact acreages will be defined through tract map surveys. **Additional studies may be required to transfer these units. See Section 3.1.1 for additional information.**



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

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF ONTARIO, CALIFORNIA, APPROVING AN ADDENDUM TO THE ONTARIO PLAN CERTIFIED ENVIRONMENTAL IMPACT REPORT (STATE CLEARINGHOUSE NO. 2008101140), PURSUANT TO THE REQUIREMENTS OF THE CALIFORNIA ENVIRONMENTAL QUALITY ACT, AS AMENDED, FOR FILE NO. PGPA06-001

WHEREAS, ONTARIO SCHAEFER HOLDINGS, LLC. (hereinafter referred to as "Applicant") has filed an Application for the approval of a General Plan Amendment, Specific Plan Amendment, and a Tentative Tract Map, File Nos. PGPA19-008, PSPA19-011, and PMTT19-015, which consist of: [1] A General Plan Amendment (File No. PGPA19-008) to modify the Policy Plan (General Plan) Land Use Plan (Exhibit LU-01) component of The Ontario Plan, changing the land use designation on approximately 10.49 gross acres of land from Public School to Low-Medium Density Residential (5.1-11 du/ac), and modify the Future Buildout Table (Exhibit LU-03) to be consistent with the proposed land use designation change; [2] A Specific Plan Amendment (File No. PSPA19-011) changing the land use designation of the project site, PA-6B, from Public School to Low-Medium Density Residential; and [3] A Tentative Tract Map (File No. PMTT19-015/TPM 20298) to subdivide 10.49 acres of land into 106 numbered lots and 19 lettered lots. The Project site is located at the northeast corner of La Avenida Drive and Manitoba Place, in the City of Ontario, California (hereinafter referred to as "Application" or "Project"); and

WHEREAS, The Ontario Plan (File No. PGPA06-001) Environmental Impact Report (State Clearinghouse No. 2008101140) was certified on January 27, 2010 (hereinafter referred to as "Certified EIR"), in which development and use of the Project site was discussed; and

WHEREAS, the Planning Director of the City of Ontario has prepared and approved for attachment to the certified Environmental Impact Report, an Addendum to the Certified EIR (hereinafter referred to as "EIR Addendum") in accordance with the requirements of the California Environmental Quality Act of 1970, together with State and local guidelines implementing said Act, all as amended to date (collectively referred to as "CEQA"); and

WHEREAS, the EIR Addendum concluded that implementation of the Project could result in a number of significant effects on the environment that were previously analyzed in the Certified EIR, and that the Certified EIR identified mitigation measures that would reduce each of those significant effects to a less-than-significant level; and

WHEREAS, pursuant to State CEQA Guidelines Section 15164(a), a lead agency shall prepare an addendum to a previously certified EIR if some changes or additions are necessary to a project, but the preparation of a subsequent or supplemental EIR is not required; and

WHEREAS, the City determined that none of the conditions requiring preparation of a subsequent or supplemental EIR would occur from the Project, and that preparation of an Addendum to the Certified EIR was appropriate; and

WHEREAS, the City of Ontario is the lead agency on the Project, and the City Council is the approving authority for the requested approval to construct and otherwise undertake the Project; and

WHEREAS, on October 27, 2020, the Planning Commission conducted a public hearing and approved Resolution No. PC20-069, recommending the City Council approve a Resolution adopting an Addendum to The Ontario Plan Environmental Impact Report (State Clearinghouse No. 2008101140), certified by the City Council on January 27, 2010, in conjunction with File No. PGPA06-001. The Addendum finds that the proposed project introduces no new significant environmental impacts. Furthermore, all mitigation measures previously adopted with the Certified Environmental Impact Report are incorporated into the Project by reference; and

WHEREAS, the City Council has reviewed and considered the EIR Addendum for the Project, has concluded that none of the conditions requiring preparation of a subsequent or supplemental EIR have occurred, and intends to take actions on the Project in compliance with CEQA and state and local guidelines implementing CEQA; and

WHEREAS, the EIR Addendum for the Project are on file in the Planning Department, located at 303 East B Street, Ontario, CA 91764, are available for inspection by any interested person at that location and are, by this reference, incorporated into this Resolution as if fully set forth herein; and

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

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

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

(1) The environmental impacts of this project were reviewed in conjunction with an Addendum to The Ontario Plan Environmental Impact Report Environmental Impact Report (State Clearinghouse No. 2008101140), certified by the Ontario City Council on January 27, 2010, in conjunction with File No. PGPA06-001.

(2) The EIR Addendum and administrative record have been completed in compliance with CEQA, the State CEQA Guidelines, and the City of Ontario Local CEQA Guidelines; and

(3) The City's "Guidelines for the Implementation of the California Environmental Quality Act (CEQA)" provide for the use of a single environmental assessment in situations where the impacts of subsequent projects are adequately analyzed. This Application introduces no new significant environmental impacts.

(4) All previously adopted mitigation measures shall be a condition of project approval, as they are applicable to the Project, and are incorporated herein by this reference.

(5) The EIR Addendum contains a complete and accurate reporting of the environmental impacts associated with the Project, and reflects the independent judgment of the City Council; and

(6) There is no substantial evidence in the administrative record supporting a fair argument that the project may result in significant environmental impacts; and

**SECTION 2. *Additional Environmental Review Not Required.*** Based on the Addendum, all related 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 Environmental Impact Report is not required for the Project, as the Project:

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

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

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

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

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

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

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

**SECTION 3. City Council Action.** Based upon the findings and conclusions set forth in Sections 1 through 3, above, the City Council hereby APPROVES the herein described Addendum, attached hereto as “Attachment A,” and incorporated herein by this reference.

**SECTION 4. Indemnification.** The Applicant shall agree to defend, indemnify and hold harmless, the City of Ontario or its agents, officers, and employees from any claim, action or proceeding against the City of Ontario or its agents, officers or employees to attack, set aside, void, or annul this approval. The City of Ontario shall promptly notify the applicant of any such claim, action, or proceeding, and the City of Ontario shall cooperate fully in the defense.

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

PASSED, APPROVED, AND ADOPTED this 17<sup>th</sup> day of November 2020.

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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 & KREIGER LLP  
CITY ATTORNEY

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

I, SHEILA MAUTZ, City Clerk of the City of Ontario, DO HEREBY CERTIFY that foregoing Resolution No. 2020- was duly passed and adopted by the City Council of the City of Ontario at their regular meeting held November 17, 2020, 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. 2020- duly passed and adopted by the Ontario City Council at their regular meeting held November 17, 2020.

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SHEILA MAUTZ, CITY CLERK

(SEAL)

**ATTACHMENT A:**

**Addendum to The Ontario Plan EIR**

*(Document follows this page)*



March 12, 2020

Mr. Jason Lee  
Distinguished Homes  
8101 E. Kaiser Boulevard, Suite 140  
Anaheim Hills, CA 92808

**SUBJECT: THE AVENUE SPECIFIC PLAN AMENDMENT TRIP GENERATION ASSESSMENT**

Dear Mr. Jason Lee:

Urban Crossroads, Inc. is pleased to submit this Trip Generation Assessment for the proposed The Avenue Specific Plan Amendment (referred to as "Project"). The Project is located north of Edison Avenue between Carpenter Avenue and Haven Avenue in the City of Ontario.

The purpose of this letter is to evaluate the change in vehicle trips anticipated to be generated by the proposed conversion of the 20-acre middle school site to a 10-acre element school and 110 single-family detached dwelling units within the remaining 10-acres.

**PROJECT OVERVIEW**

The proposed land use changes are within Planning Areas (PA) 6B and 9B of The Avenue Specific Plan. As currently approved in The Avenue Specific Plan Amendment Traffic Impact Analysis, (August 27, 2008, Urban Crossroads, Inc.), PA-6B and PA-9B are together designated as a middle school site on 20-acres. The proposed Project consists of converting PA-6B into 110 single-family detached residential dwelling units on 10-acres and converting PA-9B into an elementary school site (10-acres). The Project site is located within the Mountain View School District.

**PROJECT TRIP GENERATION**

The trip generation rates used for this analysis are based upon information collected by the Institute of Transportation Engineers (ITE) as provided in their Trip Generation Manual, 10th Edition, 2017.

For purposes of this analysis, the following Land Use Codes have been utilized:

- ITE Land Use Code 210 (Single-Family Detached Housing)
- ITE Land Use Code 520 (Elementary School)
- ITE Land Use Code 522 (Middle School)

According to the Mountain View School District School Facilities Needs Analysis, dated August 8, 2018, the student capacity is 800 students for an elementary school (on a 10.60-acre site) and 1,200 students for a middle school (on a 21.30-acre site). The Mountain View School District has determined that future elementary school facilities will be designed to accommodate 800 students and future middle school facilities will be designed to accommodate 1,200 students. Trip generation for the currently approved middle school and the proposed elementary school have been based upon these student capacities.

**CURRENTLY APPROVED TRIP GENERATION**

A summary of the currently approved trip generation is shown in Table 1. As shown in Table 1, the proposed Project is anticipated to generate 2,556 weekday trip-ends per day, with 696 AM peak hour trips and 204 PM peak hour trips.

**TABLE 1: CURRENTLY APPROVED TRIP GENERATION SUMMARY**

Land Use	Units <sup>2</sup>	ITE LU Code	AM Peak Hour			PM Peak Hour			Daily
			In	Out	Total	In	Out	Total	
<b>Trip Generation Rates<sup>1</sup></b>									
Middle School	STU	522	0.31	0.27	0.58	0.08	0.09	0.17	2.13

Land Use	Quantity	Units <sup>2</sup>	AM Peak Hour			PM Peak Hour			Daily
			In	Out	Total	In	Out	Total	
<b>Trip Generation Summary</b>									
Middle School <sup>3</sup>	1,200	STU	376	320	696	100	104	204	2,556

<sup>1</sup> Trip Generation Source: Institute of Transportation Engineers (ITE), Trip Generation Manual, Tenth Edition (2017).

<sup>2</sup> STU = Students

<sup>3</sup> Student capacity obtained from Table 10 of the Mountain View School District School Facilities Needs Analysis.



**PROPOSED PROJECT TRIP GENERATION**

Table 2 provides a summary of the proposed Project trip generation. As shown in Table 2, the proposed Project is anticipated to generate 2,466 weekday trip-ends per day, with 610 AM peak hour trips and 236 PM peak hour trips.

**TABLE 2: PROPOSED PROJECT TRIP GENERATION SUMMARY**

Land Use	Units <sup>2</sup>	ITE LU Code	AM Peak Hour			PM Peak Hour			Daily
			In	Out	Total	In	Out	Total	
<b>Trip Generation Rates<sup>1</sup></b>									
Single-Family Detached Housing	DU	210	0.19	0.56	0.74	0.62	0.37	0.99	9.44
Elementary School	STU	520	0.36	0.31	0.67	0.08	0.09	0.17	1.89

Land Use	Quantity	Units <sup>2</sup>	AM Peak Hour			PM Peak Hour			Daily
			In	Out	Total	In	Out	Total	
<b>Trip Generation Summary</b>									
Single-Family Detached Housing	110	DU	20	61	81	69	40	109	1,038
Internal Capture (8%) <sup>3</sup>			-2	-5	-7	-6	-3	-9	-84
Elementary School <sup>4</sup>	800	STU	289	247	536	65	71	136	1,512
<b>Total</b>			<b>307</b>	<b>303</b>	<b>610</b>	<b>128</b>	<b>108</b>	<b>236</b>	<b>2,466</b>

<sup>1</sup> Trip Generation Source: Institute of Transportation Engineers (ITE), Trip Generation Manual, Tenth Edition (2017).

<sup>2</sup> DU = Dwelling Units; STU = Students

<sup>3</sup> Internal Capture percentage obtained from The Avenue Specific Plan Amendment Traffic Impact Analysis, dated August 27, 2008 prepared by Urban Crossroads, Inc.

<sup>4</sup> Student capacity obtained from Table 10 of the Mountain View School District School Facilities Needs Analysis.

**TRIP GENERATION COMPARISON**

As shown in Table 3, based on a comparison of the trip generation from the currently approved specific plan and the proposed Project, the proposed Project is anticipated to generate 90 fewer daily trips, with 86 fewer AM peak hour trips and an increase of 32 PM peak hour trips.

Mr. Jason Lee  
Distinguished Homes  
March 12, 2020  
Page 4 of 4

**TABLE 3: TRIP GENERATION COMPARISON**

Land Use	AM Peak Hour			PM Peak Hour			Daily
	In	Out	Total	In	Out	Total	
Total Currently Approved	376	320	696	100	104	204	2,556
Total Proposed Project	307	303	610	128	108	236	2,466
<b>NET DIFFERENCE</b>	<b>-69</b>	<b>-17</b>	<b>-86</b>	<b>28</b>	<b>4</b>	<b>32</b>	<b>-90</b>

If you have any questions, please do not hesitate to contact me at (714) 389-6635.

Sincerely,

URBAN CROSSROADS, INC.



Connor Paquin, PE  
Transportation Engineer

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

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF ONTARIO, CALIFORNIA, APPROVING FILE NO. PGPA19-008, A GENERAL PLAN AMENDMENT MODIFYING POLICY PLAN EXHIBIT LU-01, LAND USE PLAN, CHANGING THE LAND USE DESIGNATION ON 10.49 ACRES OF LAND FROM PUBLIC SCHOOL TO LOW-MEDIUM DENSITY RESIDENTIAL (5.1 – 11 DU/AC), AND MODIFYING EXHIBIT LU-03, FUTURE BUILDOUT, TO BE CONSISTENT WITH THE PROPOSED LAND USE DESIGNATION CHANGE, AND MAKING FINDINGS IN SUPPORT THEREOF - APN: 0218-652-27. (SEE EXHIBITS A AND B) (PART OF CYCLE 4 FOR THE 2020 CALENDAR YEAR).

WHEREAS, Ontario Schaefer Holdings, LLC., (hereinafter referred to as "Applicant") has filed an Application for the approval of a General Plan Amendment, File No. PGPA19-008, as described in the title of this Resolution (hereinafter referred to as "Application" or "Project"); and

WHEREAS, the Application applies to 10.49 acres of vacant land generally located at the northeast corner of La Avenida Drive and Manitoba Place, currently within the Public School land use district of The Avenue Specific Plan; and

WHEREAS, the property to the north of the Project site is within the proposed Low-Medium Density Residential land use district of The Avenue Specific Plan and is vacant. The properties to the north, west, and south are within the Low-Density Residential land use district of The Avenue Specific Plan and are under construction with single-family homes. The property to the east is within the School land use district of The Avenue Specific Plan and is vacant; and

WHEREAS, the City of Ontario adopted the Policy Plan (General Plan) as part of The Ontario Plan in January 2010. Since the adoption of The Ontario Plan, the City has evaluated Exhibits LU-01: Official Land Use Plan and LU-03: Future Buildout further and is proposing modifications; and

WHEREAS, on July 23, 2019, the City received a letter from the Mountain View School District Superintendent Douglass Moss, informing the City that they would not be pursuing or acquiring the future 20.49 acre school site located within Planning Areas 6B and 9B of The Avenue Specific Plan identified for a middle school. The western 10.49 acres of the school (PA-6B) is owned by Ontario Schafer Holdings Inc, LLC, and eastern 10 acres (PA-9B) is owned by Brookcal Ontario, LLC. Ontario Schafer Holdings is requesting to move forward with a General Plan Amendment to change the land use designation of 10.49 acres of land from Public School to Low-Medium Density Residential; and

WHEREAS, the proposed changes to Exhibit LU-01 Official Land Use Plan include changes to land use designations of certain properties shown on Exhibit A to make the land use designations of these properties, which will provide a buffer and transition from

the presumed 10-acre elementary school to the east of the project site to the low density residential to the west and be consistent with Low-Medium Density Residential land use within PA-7 of The Avenue Specific Plan, located at the southwest corner of La Avenida and Broadway Avenue; and

WHEREAS, the General Plan Amendment (File No. PGPA19-008) proposes to modify the Policy Plan (General Plan) Land Use Plan (Exhibit LU-01) component of The Ontario Plan, changing the land use designation on 10.49 acres of land from Public School to Low-Medium Density Residential (5.1-11 du/ac) as shown on Exhibit A, attached, to accommodate future residential development of the Project site; and

WHEREAS, Policy Plan Exhibit LU-03 (Future Buildout) specifies the expected buildout for the City of Ontario, incorporating the adopted land use designations. The proposed changes to Exhibit LU-01 (Official Land Use Plan) will require that Exhibit LU-03 (Future Buildout) is modified to be consistent with Exhibit LU-01 (Official Land Use Plan), as depicted on Exhibit A, attached; and

WHEREAS, a Specific Plan Amendment and Tentative Tract Map, File Nos. PSPA19-011 and PMTT19-015 respectively, were filed in conjunction with the proposed General Plan Amendment. The two applications consist of: 1) an amendment to The Avenue Specific Plan to change the land use designation for Planning Area 6B (PA-6B) from School to Low-Medium Density Residential, introduce Product Type 1D (2,700-3,500 square foot lots), and revise exhibits, maps, development standards, and other text throughout the Specific Plan to accommodate the proposed land use change; and 2) a Tentative Tract Map (File No. PMTT19-015/TPM 20298) to subdivide 10.49 acres of land into 106 numbered parcels and 19 lettered lots, to facilitate a future Development Plan application; and

WHEREAS, The Avenue Specific Plan Environmental Impact Report (State Clearinghouse No. 2005071109) was certified on February 16, 2007, in which development and use of the Project site was discussed; and

WHEREAS, The Ontario Plan Environmental Impact Report (State Clearinghouse No. 2008101140) was certified on January 27, 2010 (hereinafter referred to as "Certified EIR"), in which development and use of the Project site was discussed; and

WHEREAS, the Planning Director of the City of Ontario prepared and approved for attachment to the certified Environmental Impact Report, an Addendum to the Certified EIR (hereinafter referred to as "EIR Addendum") in accordance with the requirements of the California Environmental Quality Act of 1970, together with State and local guidelines implementing said Act, all as amended to date (collectively referred to as "CEQA"); and

WHEREAS, the environmental impacts of this Project were thoroughly analyzed in the EIR Addendum, which concluded that implementation of the Project could result in a number of significant effects on the environment that were previously analyzed in the Certified EIR, and that the Certified EIR identified mitigation measures that would reduce each of those significant effects to a less-than-significant level; and

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

WHEREAS, the Application is a project pursuant to the California Environmental Quality Act — Public Resources Code Section 21000 et seq. — (hereinafter referred to as "CEQA") and an EIR Addendum has been prepared to determine possible environmental impacts; and

WHEREAS, Ontario Development Code Table 2.02-1 (Review Matrix) grants the City Council the responsibility and authority to review and act on the subject Application; and

WHEREAS, the Project has been reviewed for consistency with the Housing Element of the Policy Plan component of The Ontario Plan, as State Housing Element law (as prescribed in Government Code Sections 65580 through 65589.8) requires that development projects must be consistent with the Housing Element, if upon consideration of all its aspects, it is found to further the purposes, principals, goals, and policies of the Housing Element; and

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

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

WHEREAS, on October 27, 2020, the Planning Commission of the City of Ontario conducted a hearing to consider the Addendum and the Project, and concluded said hearing on that date, voting to issue Resolution No. PC20-070, recommending the City Council approve the Application; and

WHEREAS, on November 17, 2020, the City Council approved a Resolution adopting an Addendum to the Environmental Impact Report (State Clearinghouse No. 2008101140) adopted by City Council on January 27, 2010 for File No. PGPA06-001. The Addendum finds that the proposed project introduces no new significant environmental impacts, and all previously adopted mitigation measures were incorporated into the Project by reference; and

WHEREAS, on November 17, 2020, the City Council of the City of Ontario conducted a hearing to consider the Project, and concluded said hearing on that date; and

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

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

**SECTION 1. *Environmental Determination and Findings.*** As the decision-making body for the Project, the City Council has reviewed and considered the information contained in the previous Certified EIR and supporting documentation. Based upon the facts and information contained in the previous Certified EIR and supporting documentation, the City Council finds as follows:

(1) The environmental impacts of this Project were reviewed in conjunction with an Addendum to The Ontario Plan Environmental Impact Report — State Clearinghouse No. 2008101140 (“Certified EIR”), which was certified by the Ontario City Council on January 27, 2010, in conjunction with File No. PGPA06-001; and

(2) The previous Certified EIR contains a complete and accurate reporting of the environmental impacts associated with the Project; and

(3) The previous Certified EIR was completed in compliance with CEQA and the Guidelines promulgated thereunder; and

(4) The previous Certified EIR reflects the independent judgment of the City Council; and

(5) The proposed Project will introduce no new significant environmental impacts beyond those previously analyzed in the previous Certified EIR, and all mitigation measures previously adopted with the Certified EIR, are incorporated herein by this reference.

**SECTION 2. *Subsequent or Supplemental Environmental Review Not Required.*** Based on the information presented to the City Council, and the specific findings set forth in Section 1, above, the City Council finds that the preparation of a subsequent or supplemental Certified EIR is not required for the Project, as the Project:

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

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

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

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

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

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

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

**SECTION 3. *Housing Element Compliance.*** Pursuant to the requirements of California Government Code Chapter 3, Article 10.6, commencing with Section 65580, as the 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 site is one of the properties listed in the Available Land Inventory contained in Table A-3 (Available Land by Planning Area) of the Housing Element Technical Report Appendix, and the proposed Project is consistent with the number of dwelling units (2,875) and density (2-12 du/ac) specified in the Available Land Inventory.

**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 decision-making body for the Project, the City Council has reviewed and considered the facts and information contained in the Application and supporting documentation against the 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.

**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:

(1) The proposed General Plan Amendment is consistent with the goals, policies, plans, and exhibits of the Vision, Policy Plan (General Plan), and City Council Priorities components of The Ontario Plan, as the Project will contribute to providing “a spectrum of housing types and price ranges that match the jobs in the City, and that make it possible for people to live and work in Ontario and maintain a quality of life” (Goal LU1). In addition, the Project will further “[d]iversity in types of quality housing that are affordable to a range of household income levels, accommodate changing demographics, and support and reinforce the economic sustainability of Ontario (Goal H2). Moreover, the Project will promote the City’s policy to “incorporate a variety of land uses and building types that contribute to 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” (Policy LU1-6 *Complete Community*); and

(2) The proposed General Plan Amendment would not be detrimental to the public interest, health, safety, convenience, or general welfare of the City; and

(3) The Land Use Element is a mandatory element allowed four general plan amendments per calendar year and this general plan amendment is the fourth amendment to the Land Use Element for the 2020 calendar year, consistent with Government Code Section 65358; and

(4) The Project is consistent with the Housing Element of the Policy Plan (General Plan) component of The Ontario Plan. The Project site is one of the properties listed in the Available Land Inventory contained in Table A-3 (Available Land by Planning Area) of the Housing Element Technical Report Appendix, and the proposed Project is consistent with the number of dwelling units (2,875) and density (2-12 du/ac) specified in the Available Land Inventory; and

During the amendment of the general plan, opportunities for the involvement of citizens, California Native American Indian tribes (Government Code Section 65352.3.), public agencies, public utility companies, and civic, education, and other community groups, through public hearings or other means were implemented consistent with Government Code Section 65351.

**SECTION 6. *City Council Action.*** Based upon the findings and conclusions set forth in Sections 1 through 5, above, the City Council hereby APPROVES the proposed General Plan Amendment, as depicted in Exhibit A (Policy Plan Land Use Plan (Exhibit LU-01) Revision) and Exhibit B (Future Buildout (Exhibit LU-03) Revision) of this Resolution.

**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.

PASSED, APPROVED, AND ADOPTED this 17<sup>th</sup> day of November 2020.

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PAUL S. LEON, MAYOR

ATTEST:

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SHEILA MAUTZ, CITY CLERK

APPROVED AS TO FORM:

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BEST BEST & KRIEGER, LLP  
CITY ATTORNEY

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

I, SHEILA MAUTZ, City Clerk of the City of Ontario, DO HEREBY CERTIFY that foregoing Resolution No. 2020- was duly passed and adopted by the City Council of the City of Ontario at their regular meeting held November 17, 2020, 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. 2020- duly passed and adopted by the Ontario City Council at their regular meeting held November 17, 2020.

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

(SEAL)

**Exhibit A: Policy Plan Land Use Plan (Exhibit LU-01) Revision**

Existing Policy Plan Land Use	Assessor Parcel Number(s) Involved	Proposed Policy Plan Land Use
 <p align="center">Public School</p>	<p align="center">0218-652-27</p>	 <p align="center">Low-Medium Density Residential (5.1-11 du/ac)</p>

## Exhibit B: Future Buildout (Exhibit LU-03) Revision

Land Use	Acres <sup>2</sup>	Assumed Density/Intensity <sup>3</sup>	Units	Population <sup>4</sup>	Non-Residential Square Feet	Jobs <sup>5</sup>
<b>Residential</b>						
Rural	529	2.0 du/ac	1,058	4,231		
Low Density <sup>6</sup>	7,231	4.0 du/ac (OMC) 4.5 du/ac (NMC)	30,477	121,816		
Low-Medium Density <sup>6</sup>	<del>982</del> 992	8.5 du/ac	<del>8,343</del> 8,432	<del>33,348</del> 33,704		
Medium Density	1,921	18.0 du/ac (OMC) 22.0 du/ac (NMC)	38,724	135,508		
High Density	183	35.0 du/ac	6,415	21,470		
<b>Subtotal</b>	<b>10,846</b>		<del>85,017</del> <b>85,107</b>	<del>316,372</del> <b>316,729</b>		
<b>Mixed Use</b>						
• Downtown	113	<ul style="list-style-type: none"> <li>60% of the area at 35 du/ac</li> <li>40% of the area at 0.80 FAR for office and retail</li> </ul>	2,365	4,729	1,569,554	2,808
• East Holt Boulevard	57	<ul style="list-style-type: none"> <li>25% of the area at 30 du/ac</li> <li>50% of the area at 1.0 FAR office</li> <li>25% of area at 0.80 FAR retail</li> </ul>	428	856	1,740,483	3,913
• Meredith	93	<ul style="list-style-type: none"> <li>47% of the area at 39.46 du/ac</li> <li>48% at 0.35 FAR for office and retail uses</li> <li>5% at 0.75 FAR for Lodging</li> </ul>	1,725	3,450	832,497	975
• Transit Center	76	<ul style="list-style-type: none"> <li>10% of the area at 60 du/ac</li> <li>90% of the area at 1.0 FAR office and retail</li> </ul>	457	913	2,983,424	5,337
• Inland Empire Corridor	37	<ul style="list-style-type: none"> <li>50% of the area at 20 du/ac</li> <li>30% of area at 0.50 FAR office</li> <li>20% of area t 0.35 FAR retail</li> </ul>	368	736	352,662	768
• Guasti	77	<ul style="list-style-type: none"> <li>20% of the area at 30 du/ac</li> <li>30% of area at 1.0 FAR retail</li> <li>50% of area at 0.70 FAR office</li> </ul>	465	929	2,192,636	4,103
• Ontario Center	345	<ul style="list-style-type: none"> <li>30% of area at 40 du/ac</li> <li>50% of area at 1.0 FAR office</li> <li>20% of area at 0.50 FAR retail</li> </ul>	4,139	8,278	9,014,306	22,563
• Ontario Mills	240	<ul style="list-style-type: none"> <li>5% of area at 40 du/ac</li> <li>20% of area at 0.75 FAR office</li> <li>75% of area at 0.50 FAR retail</li> </ul>	479	958	5,477,126	7,285
• NMC West/South	315	<ul style="list-style-type: none"> <li>30% of area at 35 du/ac</li> <li>70% of area at 0.70 FAR office and retail</li> </ul>	3,311	6,621	6,729,889	17,188
• NMC East	264	<ul style="list-style-type: none"> <li>30% of area at 25 du/ac</li> <li>30% of area at 0.35 FAR for office</li> <li>40% of area at 0.30 FAR for retail uses</li> </ul>	1,978	3,956	2,584,524	4,439
• Euclid/Francis	10	<ul style="list-style-type: none"> <li>50% of the area at 30 du/ac</li> <li>50% of area at 0.8 FAR retail</li> </ul>	156	312	181,210	419
• SR-60/ Hamner Tuscana Village	41	<ul style="list-style-type: none"> <li>18% of the area at 25 du/ac</li> <li>57% of the area at 0.25 FAR retail</li> <li>25% of the area at 1.5 FAR office</li> </ul>	185	369	924,234	2,098
<b>Subtotal</b>	<b>1,668</b>		<b>16,054</b>	<b>32,107</b>	<b>34,582,545</b>	<b>71,896</b>

## Exhibit B: Future Buildout (Exhibit LU-03) Revision Continued

Land Use	Acres <sup>2</sup>	Assumed Density/Intensity <sup>3</sup>	Units	Population <sup>4</sup>	Non-Residential Square Feet	Jobs <sup>5</sup>
<b>Retail/Service</b>						
Neighborhood Commercial <sup>6</sup>	281	0.30 FAR			3,671,585	8,884
General Commercial	477	0.30 FAR			6,229,385	5,787
Office/Commercial	479	0.75 FAR			15,650,564	34,707
Hospitality	142	1.00 FAR			6,177,679	7,082
<i>Subtotal</i>	<b>1,379</b>				<b>31,729,213</b>	<b>56,461</b>
<b>Employment</b>						
Business Park	1,531	0.40 FAR			26,676,301	46,803
Industrial	6,457	0.55 FAR			154,698,172	135,921
<i>Subtotal</i>	<b>7,988</b>				<b>181,374,472</b>	<b>182,724</b>
<b>Other</b>						
Open Space-Non-Recreation	1,232	Not applicable				
Open Space-Parkland <sup>6</sup>	950	Not applicable				
Open Space-Water	59	Not applicable				
Public Facility	97	Not applicable				
Public School	<del>632</del> 621	Not applicable				
LA/Ontario International Airport	1,677	Not applicable				
Landfill	137	Not applicable				
Railroad	251	Not applicable				
Roadways	4,871	Not applicable				
<i>Subtotal</i>	<del>9,906</del> <b>9,895</b>					
<b>Total</b>	<b>31,786</b>		<del>101,071</del> <b>101,160</b>	<del>348,479</del> <b>348,836</b>	<b>247,686,231</b>	<b>311,080</b>

**Notes**

- 1 Historically, citywide buildout levels do not achieve the maximum allowable density/intensity on every parcel and are, on average, lower than allowed by the Policy Plan. Accordingly, the buildout projections in this Policy Plan do not assume buildout at the maximum density or intensity and instead are adjusted downward. To view the buildout assumptions, access the Methodology report.
- 2 Acres are given as adjusted gross acreages, which do not include the right-of-way for roadways, flood control facilities, or railroads.
- 3 Assumed Density/Intensity includes both residential density, expressed as units per acre, and non-residential intensity, expressed as floor area ratio (FAR), which is the amount of building square feet in relation to the size of the lot.
- 4 Projections of population by residential designation are based on a persons-per-household factor that varies by housing type. For more information, access the Methodology report.
- 5 To view the factors used to generate the number of employees by land use category, access the Methodology report.
- 6 Acreages and corresponding buildout estimates for these designations do not reflect underlying land uses within the Business Park, Industrial and Commercial Overlays. Estimates for these areas are included within the corresponding Business Park, Industrial and General Commercial categories.

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

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF ONTARIO, CALIFORNIA, APPROVING FILE NO. PSPA19-011, A SPECIFIC PLAN AMENDMENT CHANGING THE LAND USE DESIGNATION ON 10.49 ACRES OF LAND FROM SCHOOL, TO LOW-MEDIUM DENSITY RESIDENTIAL, INTRODUCE PRODUCT TYPE 1D (2,700-3,500 SQUARE-FOOT LOTS), AND REVISE EXHIBITS, MAPS, DEVELOPMENT STANDARDS, AND OTHER TEXT THROUGHOUT THE SPECIFIC PLAN TO ACCOMMODATE THE PROPOSED LAND USE CHANGE, AND MAKING FINDINGS IN SUPPORT THEREOF - APN: 0218-652-27.

WHEREAS, Ontario Schaefer Holdings, LLC. (hereinafter referred to as "Applicant") has filed an Application for the approval of a Specific Plan Amendment, File No. PSPA19-011, as described in the title of this Resolution (hereinafter referred to as "Application" or "Project"); and

WHEREAS, the Application applies to 10.49 acres of vacant land generally located at the northeast corner of La Avenida Drive and Manitoba Place, currently within the Public School land use district of The Avenue Specific Plan; and

WHEREAS, the property to the north of the Project site is within the proposed Low-Medium Density Residential land use district of The Avenue Specific Plan and is vacant. The properties to the north, west, and south are within the Low-Density Residential land use district of The Avenue Specific Plan and are under construction with single-family homes. The property to the east is within the School land use district of The Avenue Specific Plan and is vacant; and

WHEREAS, Specific Plan Amendment includes changes to The Avenue Specific Plan Land Use Summary. The revisions to the Land Use Summary will reflect the proposed changes to the Project site's land use, from School to Low-Medium Density Residential; and

WHEREAS, the Specific Plan Amendment includes updates to the development standards, land use matrix, and various exhibits, along with text/map changes to reflect the proposed land use changes and infrastructure requirements to accommodate future residential development with a new conventional product type (Product Type 1D, 2,700-3,500 square-foot lots). The development regulations and land use matrix have been amended to include standards and the additional product type for Planning Area 6B (PA-6B); and

WHEREAS, a General Plan Amendment and Tentative Tract Map, File Nos. PGPA19-008 and PMTT19-015/TM20298 respectively, were filed in conjunction with the proposed Specific Plan Amendment. The two applications consist of: [1] A General Plan Amendment (File No. PGPA19-008) to modify the Policy Plan (General Plan) Land Use Plan (Exhibit LU-01) component of The Ontario Plan, changing the land use designation

on 10.49 acres of land from Public School to Low-Medium Density Residential, in conjunction with modification of the Future Buildout Table (Exhibit LU-03) to be consistent with the proposed land use designation change; and, [2] A Tentative Tract Map (File No. PMTT19-015/TM 20298) to subdivide 10.49 acres of land into 106 numbered lots and 19 lettered lots, to facilitate a future Development Plan application; and

WHEREAS, The Avenue Specific Plan Environmental Impact Report (State Clearinghouse No. 2005071109) was certified on February 16, 2007, in which development and use of the Project site was discussed; and

WHEREAS, The Ontario Plan Environmental Impact Report (State Clearinghouse No. 2008101140) was certified on January 27, 2010 (hereinafter referred to as "Certified EIR"), in which development and use of the Project site was discussed; and

WHEREAS, the Planning Director of the City of Ontario prepared and approved for attachment to the certified Environmental Impact Report, an Addendum to the Certified EIR (hereinafter referred to as "EIR Addendum") in accordance with the requirements of the California Environmental Quality Act of 1970, together with State and local guidelines implementing said Act, all as amended to date (collectively referred to as "CEQA"); and

WHEREAS, the environmental impacts of this project were thoroughly analyzed in the EIR Addendum, which concluded that implementation of the Project could result in a number of significant effects on the environment that were previously analyzed in the Certified EIR, and that the Certified EIR identified mitigation measures that would reduce each of those significant effects to a less-than-significant level; and

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

WHEREAS, the Application is a project pursuant to the California Environmental Quality Act — Public Resources Code Section 21000 et seq. — (hereinafter referred to as "CEQA") and an EIR Addendum has been prepared to determine possible environmental impacts; and

WHEREAS, Ontario Development Code Table 2.02-1 (Review Matrix) grants the City Council the responsibility and authority to review and act on the subject Application; and

WHEREAS, the Project has been reviewed for consistency with the Housing Element of the Policy Plan component of The Ontario Plan, as State Housing Element law (as prescribed in Government Code Sections 65580 through 65589.8) requires that development projects must be consistent with the Housing Element, if upon consideration of all its aspects, it is found to further the purposes, principals, goals, and policies of the Housing Element; and

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

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

WHEREAS, on October 27, 2020, the Planning Commission of the City of Ontario conducted a hearing to consider the Project, and concluded said hearing on that date, voting to issue Resolution No. PC20-071, recommending the City Council approve the Application; and

WHEREAS, on November 17, 2020, the City Council of the City of Ontario conducted a hearing to consider the Project, and concluded said hearing on that date; and

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

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

**SECTION 1.** ***Environmental Determination and Findings.*** As the decision-making body for the Project, the City Council has reviewed and considered the information contained in the previous Certified EIR and supporting documentation. Based upon the facts and information contained in the previous Certified EIR and supporting documentation, the City Council finds as follows:

(1) The environmental impacts of this Project were reviewed in conjunction with an Addendum to TOP Environmental Impact Report — State Clearinghouse No. 2008101140 (“Certified EIR”), which was certified by the Ontario City Council on January 27, 2010, in conjunction with File No. PGPA06-001; and

(2) The previous Certified EIR contains a complete and accurate reporting of the environmental impacts associated with the Project; and

(3) The previous Certified EIR was completed in compliance with CEQA and the Guidelines promulgated thereunder; and

(4) The previous Certified EIR reflects the independent judgment of the City Council; and



(5) The proposed Project will introduce no new significant environmental impacts beyond those previously analyzed in the previous Certified EIR, and all mitigation measures previously adopted with the Certified EIR, are incorporated herein by this reference.

**SECTION 2. Subsequent or Supplemental Environmental Review Not Required.** Based on the information presented to the City Council, and the specific findings set forth in Section 1, above, the City Council finds that the preparation of a subsequent or supplemental Certified EIR is not required for the Project, as the Project:

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

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

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

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

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

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

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

**SECTION 3. Housing Element Compliance.** Pursuant to the requirements of California Government Code Chapter 3, Article 10.6, commencing with Section 65580, as the 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 site is one of the properties listed in the Available Land Inventory contained in Table A-3 (Available Land by Planning Area) of the Housing Element Technical Report Appendix, and the proposed project is consistent with the number of dwelling units (2,875) and density (2-12 du/ac) specified in the Available Land Inventory.

**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 decision-making body for the Project, the City Council has reviewed and considered the facts and information contained in the Application and supporting documentation against the 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.

**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:

(1) *The proposed Specific Plan, or amendment thereto, is consistent with the goals, policies, plans and exhibits of the Vision, Policy Plan (General Plan), and City Council Priorities components of TOP.* The proposed The Avenue Specific Plan Amendment will provide land use consistency with the related proposed General Plan Amendment (File No. PGPA19-008) that will change the land use on 10.49 acres of land from School to Low-Medium Density Residential. The proposed amendments will accommodate a proposed residential development on the subject site that is consistent with goals, policies, plans and City Council priorities of The Ontario Plan.

(2) *The proposed Specific Plan, or amendment thereto, would not be detrimental to the public interest, health, safety, convenience, or general welfare of the City.* The proposed amendments to The Avenue Specific Plan will establish consistency with the related proposed General Plan Amendment (File No. PGPA19-008). The proposed Specific Plan Amendment will not be detrimental to the public interest, health, safety, convenience, or general welfare of the City. The land use changes will continue to provide residential land uses within The Avenue Specific Plan, which is consistent with the type and intensity of development specified in The Ontario Plan and evaluated by The Ontario Plan Environmental Impact Report.

(3) *In the case of an application affecting specific property(ies), the proposed Specific Plan, or amendment thereto, will not adversely affect the harmonious relationship with adjacent properties and land uses.* The Project site is currently zoned for a public school land use and is surrounded by other residentially designated properties to the

north, west, and south of the Project site. The proposed Specific Plan Amendment will not adversely affect the harmonious relationship with adjacent properties and land uses, because it will remain consistent with said properties and land uses. The proposed Specific Plan Amendment will facilitate a related Tentative Tract Map application (File No. PMTT19-015) and a future Development Plan application, which will provide additional housing and recreational facilities for the neighborhood, as well as tract improvements such as landscaping.

(4) *In the case of an application affecting specific property(ies), the subject site is physically suitable, including, but not limited to, parcel size, shape, access, and availability of utilities, for the request and anticipated development.* The subject site is physically suitable to accommodate the proposed residential land uses that are a result of the Specific Plan Amendment and related files. The Avenue Specific Plan amendment includes development standards to facilitate the proposed land uses, which will be developed with adequate lot sizes, access, and utilities to serve the Project site.

**SECTION 6. City Council Action.** Based upon the findings and conclusions set forth in Sections 1 through 5, above, the City Council hereby APPROVES the herein described Esperanza Specific Plan Amendment, attached hereto as “Attachment A,” and incorporated herein by this reference.

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

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

PASSED, APPROVED, AND ADOPTED this 17<sup>th</sup> day of November 2020.

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PAUL S. LEON, MAYOR

ATTEST:

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SHEILA MAUTZ, CITY CLERK

APPROVED AS TO FORM:

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BEST BEST & KRIEGER, LLP  
CITY ATTORNEY

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

I, SHEILA MAUTZ, City Clerk of the City of Ontario, DO HEREBY CERTIFY that foregoing Resolution No. 2020- was duly passed and adopted by the City Council of the City of Ontario at their regular meeting held November 17, 2020, 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. 2020- duly passed and adopted by the Ontario City Council at their regular meeting held November 17, 2020.

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

(SEAL)

**ATTACHMENT A:**


**File No. PSPA19-011;  
The Avenue Specific Plan Amended Document**

*(Document follows this page)*

# CITY OF ONTARIO

*Agenda Report*  
November 17, 2020

## SECTION: PUBLIC HEARINGS

Department: Development Administration  
Prepared By: Derrick E Womble  
Staff Member Presenting:  
Scott Murphy, AICP, Executive Director  
Development Agency  
Approved By: 

Submitted To: Council/OHA  
Approved: \_\_\_\_\_  
Continued To: \_\_\_\_\_  
Denied: \_\_\_\_\_  
Item No: 10

**SUBJECT: A PUBLIC HEARING TO CONSIDER AN ORDINANCE APPROVING THE DEVELOPMENT AGREEMENT (FILE NO. PDA20-001) BETWEEN THE CITY OF ONTARIO AND ONTARIO SCHAEFER HOLDINGS, LLC., TO ESTABLISH THE TERMS AND CONDITIONS FOR THE DEVELOPMENT OF TENTATIVE TRACT MAP 20298 (FILE NO. PMTT19-015), A 10.49-ACRE PROPERTY LOCATED AT THE NORTHEAST CORNER OF LA AVENIDA DRIVE AND MANITOBA PLACE, WITHIN THE PROPOSED LOW-MEDIUM DENSITY RESIDENTIAL LAND USE DISTRICT OF THE AVENUE SPECIFIC PLAN (APN: 0218-652-27)**

**RECOMMENDATION:** That the City Council introduce and waive further reading of an ordinance approving the Development Agreement (File No. PDA20-001) between the City of Ontario and Ontario Schaefer Holdings, LLC., to establish the terms and conditions for the development of Tentative Tract Map 20298 (File No. PMTT19-015), a 10.49-acre property located at the northeast corner of La Avenida Drive and Manitoba Place, within the proposed Low-Medium Density Residential land use district of The Avenue Specific Plan (APN: 0218-652-27).

**THE FOLLOWING COUNCIL GOALS ARE BEING ACHIEVED:**

**Invest in the Growth and Evolution of the City's Economy**

**Operate in a Businesslike Manner**

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

**Ensure the Development of a Well Planned, Balanced, and Self-Sustaining Community in Ontario Ranch**

**FISCAL IMPACT:** The proposed Development Agreement (File No. PDA20-001) will not have an immediate impact on the City's budget. The Development Agreement will provide funding from the formation of a Community Facilities District (CFD) for City services and facilities required to support The Avenue Specific Plan development, thereby mitigating the increased costs associated with such services. In addition, the City will receive public service funding fees plus development impact, compliance processing, licensing, and permitting fees.

**BACKGROUND & ANALYSIS:** On February 16, 2007, the City Council approved The Avenue Specific Plan (File No. PSP05-003), which addressed potential development of approximately 568 acres of land, including up to 2,875 residential units, 130,680 square feet of commercial space, pocket parks and public trails. On January 27, 2010, the City Council adopted a compressive update to The Ontario

Plan (File No. PGPA06-001).

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, Ontario Schaefer Holdings, LLC (“Owner”) has requested that the City enter into negotiations to create a Development Agreement (“Agreement”).

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

The proposed Agreement (File No. PDA20-001) 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.

Originally, the 10.49-acre property was part of a future middle school site, included with the adjacent property (approx. 10.22 acres) directly east, totaling 20.71 acres. The Mountain View School District (“School District”) recently conducted a school site analysis for Ontario Ranch and concluded the they did not need the site as a middle school to meet the educational needs for Ontario Ranch residents. Therefore, the Owner is proposing a General Plan Amendment (File No. PGPA19-008) to modify the Policy Plan (General Plan) Land Use Plan (Exhibit LU-01) component of The Ontario Plan, changing the land use designation on 10.49 acres of land from School to Low-Medium Density Residential, in conjunction with modification of the Future Buildout Table (Exhibit LU-03) to be consistent with the proposed land use designation change, and an Amendment to The Avenue Specific Plan (File No. PSPA19-011), changing the land use designation on the project site from School to Low-Medium Density Residential, generally located at the northeast corner of La Avenida Drive and Manitoba Place. Additionally, the Owner is proposing a Development Agreement to allow for the construction of necessary public infrastructure to serve the property and quantify fees associated with Project development.

The Agreement proposes to include 10.49 acres of land within the proposed Low-Medium Density Residential land use district of The Avenue Specific Plan, as shown on the attached Exhibit “A”. The Agreement grants the Owner a vested right to develop Tentative Tract Map 20298 (File No. PMTT19-015), provided the Owner complies with the terms and conditions of the Specific Plan and EIR.

The Tentative Tract Map 20298 (see Exhibit “B”) is located at the northeast corner of La Avenida Drive and Manitoba Place and proposes to subdivide approximately 10.49 acres of land into 106 numbered lots and 19 lettered lots for residential, public/private streets, landscaped neighborhood edges, and common open space purposes.



The term of the Agreement is for ten (10) years, with a five (5) year option to renew. The main points of the agreement address funding for all new City expenses created by the project, which includes: Development Impact Fees (DIF) for construction of public improvements (i.e. streets and bridges, sewer, water, storm drain and fiber); Public Service Funding to ensure adequate provisions of public services (police, fire and other public services); the creation of a Community Facilities District (CFD) for the maintenance of public facilities.

In considering the application at their meeting on October 27, 2020, the Planning Commission found that the Development Agreement was consistent with State law, The Ontario Plan, and the City's Development Agreement policies, previously approved for Ontario Ranch developments. As a result, the Planning Commission adopted Resolution No. PC20-073 recommending City Council approval of the Development Agreement with a 4-0 vote.

**HOUSING ELEMENT COMPLIANCE:** Pursuant to the requirements of California Government Code Chapter 3, Article 10.6, commencing with Section 65580, as the recommending body for the Project, the Planning Commission finds that based upon the facts and information contained in the Application and supporting documentation, at the time of Project implementation, the project is consistent with the Housing Element of the Policy Plan (General Plan) component of The Ontario Plan. The project site is one of the properties listed in the Available Land Inventory contained in Table A-3 (Available Land by Planning Area) of the Housing Element Technical Report Appendix, and the proposed project is consistent with the number of dwelling units (2,875) and density (2-12 du/ac) specified in the Available Land Inventory.

**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, which encompasses lands within parts of San Bernardino, Riverside, and Los Angeles Counties, and limits future land uses and development within the Airport Influence Area, as they relate to noise, safety, airspace protection, and overflight impacts of current and future airport activity. The proposed project is located within the Airport Influence Area of Ontario International Airport and was evaluated and found to be consistent with the policies and criteria of the ALUCP. Any special conditions of approval associated with uses in close proximity to the airport are included in the conditions of approval provided with the attached Resolution.

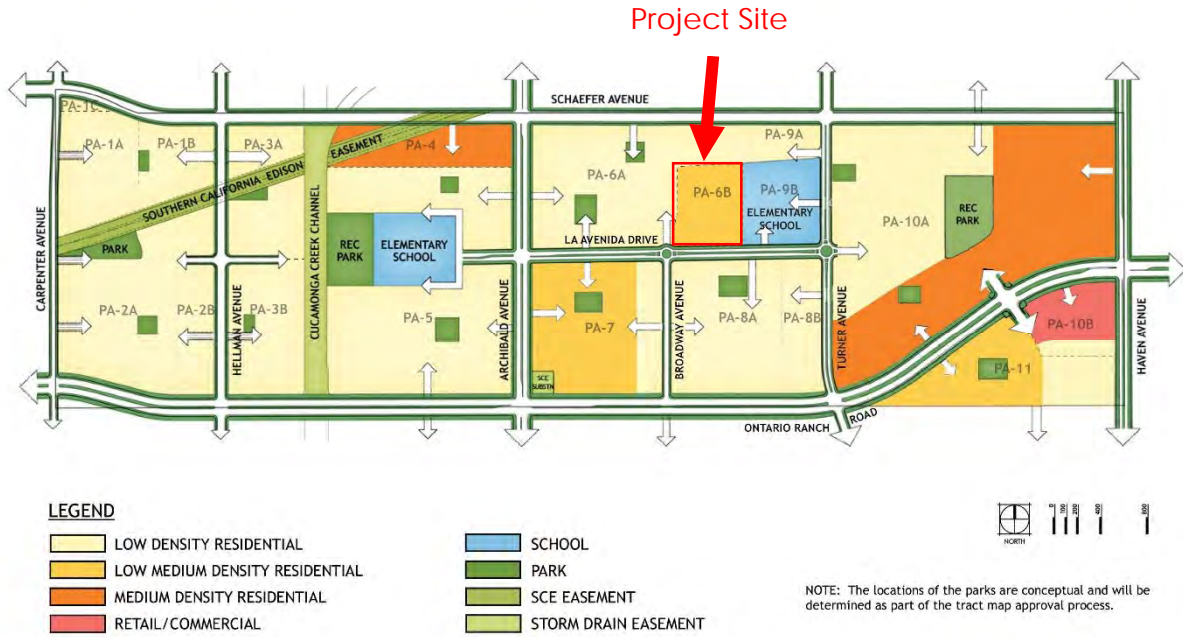
**ENVIRONMENTAL REVIEW:** The environmental impacts of this project were previously reviewed in conjunction with an Addendum to The Ontario Plan (File No. PGPA06-001) EIR (SCH# 2008101140) adopted and certified by City Council on January 27, 2010. This Application introduces no new significant environmental impacts. All previously adopted mitigation measures are a condition of project approval and are incorporated herein by this reference.

# Exhibit "A"

## Proposed - The Avenue Specific Plan Land Use Map

Land Use Plan

Exhibit 8 - Land Use Plan



**The Avenue**  
SPECIFIC PLAN

The New Model Colony Ontario, California

Land Use Plan

3-3

Exhibit "B" - Tentative Tract Map 20298  
Northern Portion

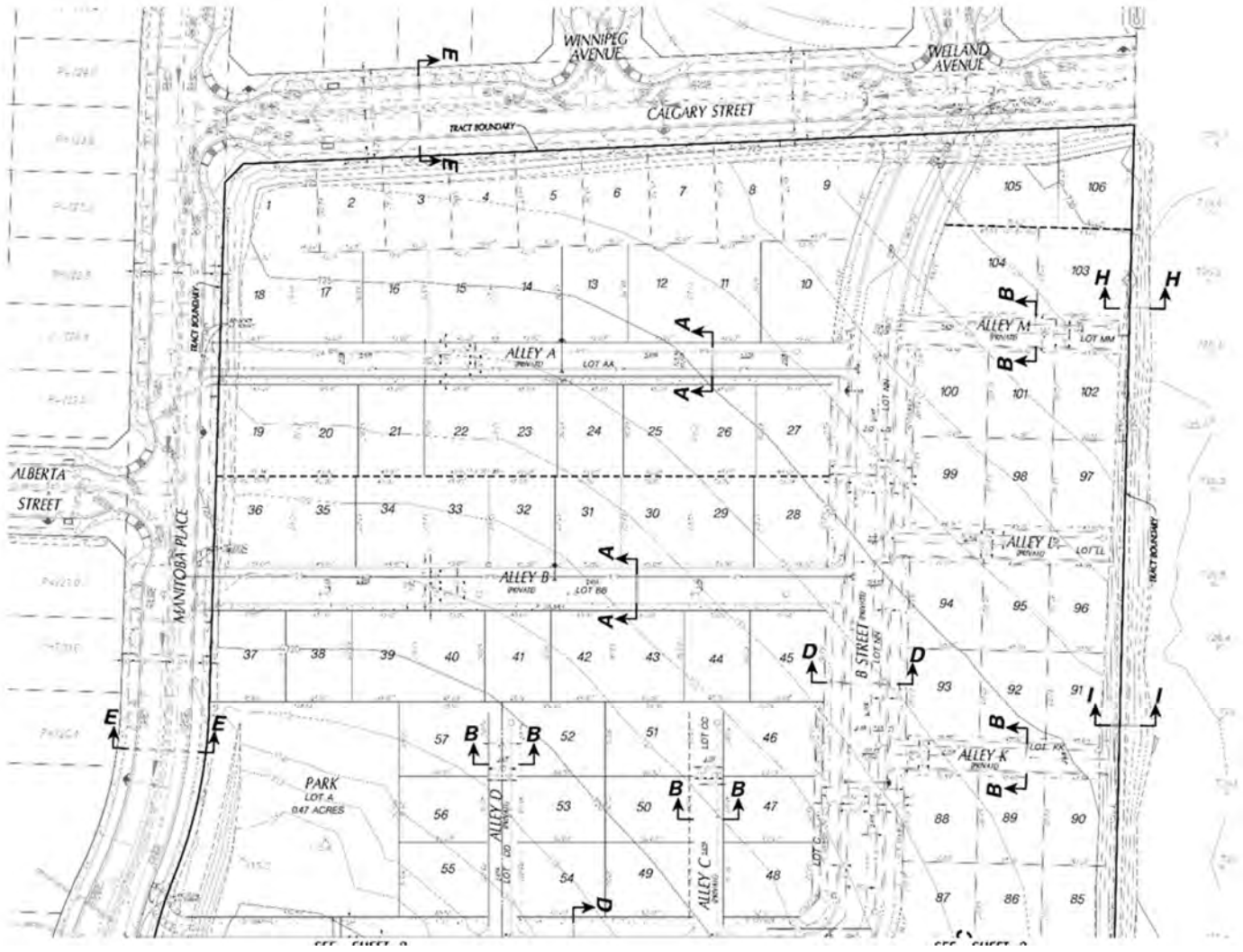
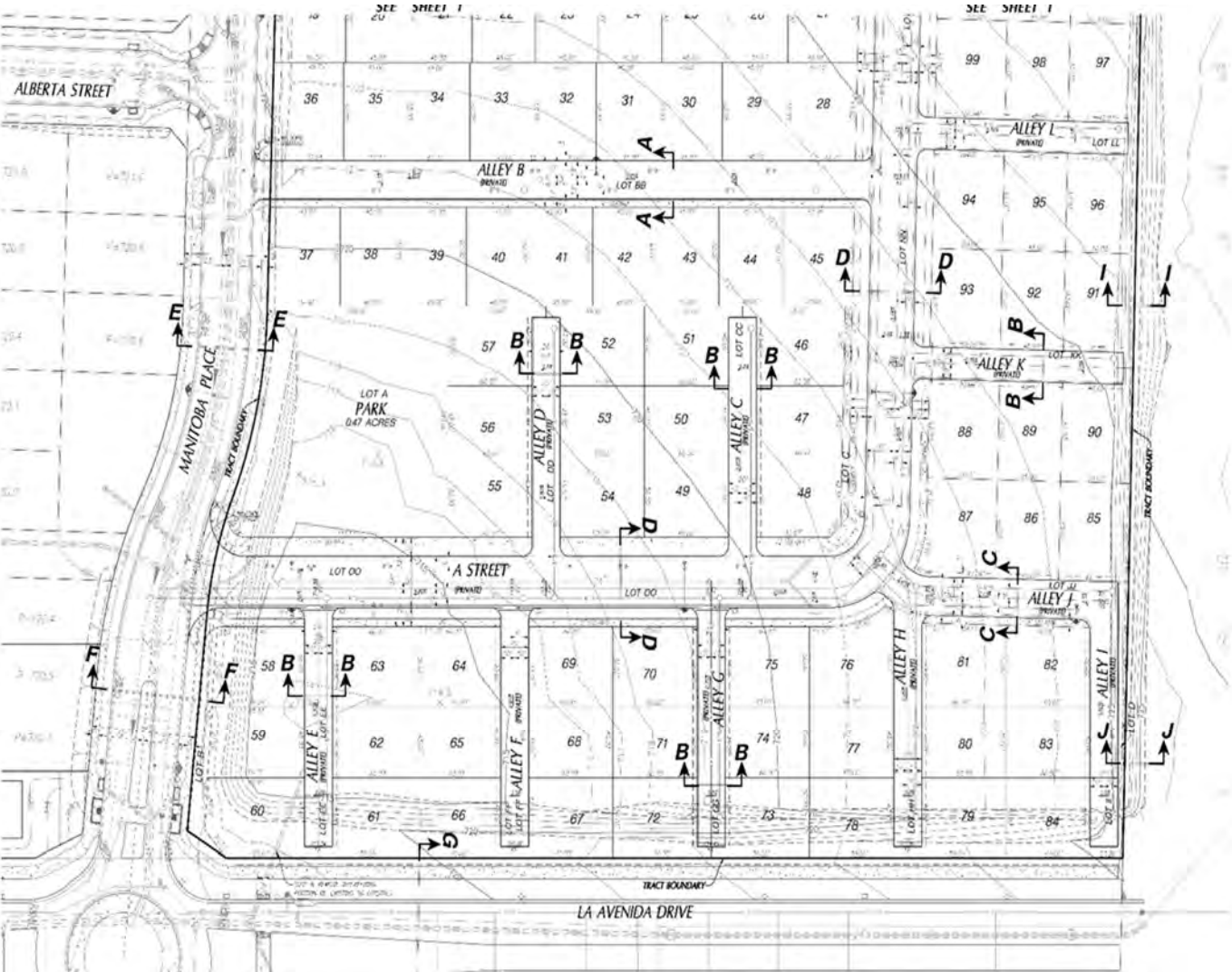


Exhibit "B" – Tentative Tract Map 20298 (continued)  
Southern Portion



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

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF ONTARIO, CALIFORNIA, APPROVING FILE NO. PDA20-001, A DEVELOPMENT AGREEMENT BETWEEN THE CITY OF ONTARIO AND ONTARIO SCHAEFER HOLDINGS, LLC., TO ESTABLISH THE TERMS AND CONDITIONS FOR THE DEVELOPMENT OF TENTATIVE TRACT MAP 20298 (FILE NO. PMTT19-015), A 10.49 ACRE PROPERTY LOCATED AT THE NORTHEAST CORNER OF LA AVENIDA DRIVE AND MANITOBA PLACE, WITHIN THE PROPOSED LOW-MEDIUM DENSITY RESIDENTIAL LAND USE DISTRICT OF THE AVENUE SPECIFIC PLAN, AND MAKING FINDINGS IN SUPPORT THEREOF—APN: 0218-652-27.

WHEREAS, Ontario Schaefer Holdings, LLC ("Applicant") has filed an Application for the approval of a Development Agreement, File No. PDA20-001, as described in the title of this Ordinance (hereinafter referred to as "Application" or "Project"); and

WHEREAS, the Application applies to approximately 10.49 acres of land generally located at the northeast corner of La Avenida and Manitoba Place within the proposed Low-Medium Density Residential land use district of The Avenue Specific Plan, and is presently vacant; and

WHEREAS, on February 16, 2007, the City Council adopted Ordinance No. 2851, approving The Avenue Specific Plan (File No. PSP05-003), which addressed potential development of approximately 568 acres of land, including up to 2,875 residential units, 130,680 square feet of commercial space, pocket parks and public trails; and

WHEREAS, on January 27, 2010, the City Council adopted Resolution Nos. 2010-003, 2010-004, 2010-005, 2010-006, approving a comprehensive update to The Ontario Plan (File No. PGPA06-001); and

WHEREAS, the Applicant is proposing a General Plan Amendment (File No. PGPA19-008) to modify the Policy Plan (General Plan) Land Use Plan (Exhibit LU-01) component of The Ontario Plan, changing the land use designation on 10.49 acres of land, from School to Low-Medium Density Residential, in conjunction with modification of the Future Buildout Table (Exhibit LU-03) to be consistent with the proposed land use designation change, and an Amendment to The Avenue Specific Plan (File No. PSPA19-011), changing the land use designation on the project site, from School to Low-Medium Density Residential, generally located at the northeast corner of La Avenida Drive and Manitoba Place; and

WHEREAS, the proposed entitlements require a Development Agreement to establish the terms and conditions of development for the Project; and

WHEREAS, a Tentative Tract Map 20298 (File No. PMTT19-015) to subdivide approximately 10.49 acres of land into 106 numbered lots and 19 lettered lots, located at the northeast corner of La Avenida Drive and Manitoba Place, within the proposed

Low-Medium Density Residential land use district of The Avenue Specific Plan, has been submitted in conjunction with the Development Agreement; and

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

WHEREAS, the environmental impacts of this project were previously reviewed in conjunction with File No. PGPA06-001, an Addendum to The Ontario Plan for which an Environmental Impact Report — State Clearinghouse No. 2008101140 — (hereinafter referred to as "Certified EIR") was adopted by the City Council on January 27, 2010, and this Application introduces no new significant environmental impacts; and

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

WHEREAS, the Application is a project pursuant to CEQA (Public Resources Code Section 21000 et seq.), and an initial study has been prepared to determine possible environmental impacts; and

WHEREAS, Ontario Development Code Table 2.02-1 (Review Matrix) grants the City Council the responsibility and authority to review and act on the subject Application; and

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

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

WHEREAS, on October 27, 2020, the Planning Commission of the City of Ontario conducted a hearing to consider the Project, and concluded said hearing on that date, voting to issue Resolution No. PC20-073 recommending the City Council approve the Application; and

WHEREAS, on November 17, 2020, the City Council of the City of Ontario conducted a hearing to consider the Project, and concluded said hearing on that date; and

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

NOW, THEREFORE, IT IS HEREBY FOUND, DETERMINED, AND 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 Certified EIR and supporting documentation. Based upon the facts and information contained in the previous Certified EIR and supporting documentation, the City Council finds as follows:

(1) The environmental impacts of this project were previously reviewed in conjunction with File No. PGPA06-001, an Addendum to The Ontario Plan for which a Certified EIR was adopted by the City Council on January 27, 2010; and

(2) The previous Certified EIR contains a complete and accurate reporting of the environmental impacts associated with the Project; and

(3) The previous Certified EIR was completed in compliance with CEQA and the Guidelines promulgated thereunder; and

(4) The previous Certified EIR reflects the independent judgment of the City Council; and

(5) The proposed project will introduce no new significant environmental impacts beyond those previously analyzed in the previous Certified EIR, and all mitigation measures previously adopted with the Certified EIR, are incorporated herein by this reference.

**SECTION 2. Subsequent or Supplemental Environmental Review Not Required.** Based on the information presented to the City Council, and the specific findings set forth in Section 1, above, the City Council finds that the preparation of a subsequent or supplemental Certified EIR is not required for the Project, as the Project:

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

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

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

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

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

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

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

**SECTION 3. *Housing Element Compliance.*** Pursuant to the requirements of California Government Code Chapter 3, Article 10.6, commencing with Section 65580, as the recommending body for the Project, the Planning Commission finds that based upon the facts and information contained in the Application and supporting documentation, at the time of Project implementation, the project is consistent with the Housing Element of the Policy Plan (General Plan) component of The Ontario Plan. The project site is one of the properties listed in the Available Land Inventory contained in Table A-3 (Available Land by Planning Area) of the Housing Element Technical Report Appendix, and the proposed project is consistent with the number of dwelling units (2,875) and density (2-12 du/ac) specified in the Available Land Inventory.

**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 decision-making body for the Project, the City Council has reviewed and considered the facts and information contained in the Application and supporting documentation against the 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.

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

a. The Development Agreement applies to approximately 10.49 acres of land located at the northeast corner of La Avenida Drive and Manitoba Place, within the proposed Low-Medium Density Residential land use district of The Avenue Specific Plan.



b. The Development Agreement establishes parameters for the development of the proposed Low-Medium Density Residential land use district of The Avenue Specific Plan. The Development Agreement also grants the Owner, 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 proposed amendment (File No. PSPA19-011) to The Avenue Specific Plan.

c. The Agreement grants the Owner a vested right to develop Tentative Tract Map 20298 as long as the Owner, complies with the terms and conditions of the Specific Plan and EIR. Tentative Tract Map 20298 is located at the northeast corner of La Avenida Drive and Manitoba Place, and proposes to subdivide approximately 10.49 acres of land into 106 numbered lots and 19 lettered lots.

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

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

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

g. This Development Agreement will not be materially injurious or detrimental to the adjacent properties and will have a significant impact on the environment or the surrounding properties. The environmental impacts of this project were previously analyzed in conjunction with File No. PGPA06-001, an Addendum to The Ontario Plan for which a Certified EIR was adopted by the City Council on January 27, 2010. 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 Sections 1 through 5, above, the City Council hereby APPROVES the herein described Development Agreement (File No. PDA20-001), attached hereto as "Attachment A," and incorporated herein by this reference.

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

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

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

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

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

PASSED, APPROVED, AND ADOPTED this 17<sup>th</sup> day of November 2020.

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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. \_\_\_\_\_ was duly introduced at a regular meeting of the City Council of the City of Ontario held November 17, 2020 and adopted at the regular meeting held \_\_\_\_\_, 2020 by the following roll call vote, to wit:

AYES: COUNCIL MEMBERS:

NOES: COUNCIL MEMBERS:

ABSENT: COUNCIL MEMBERS:

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

(SEAL)

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

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

(SEAL)

**ATTACHMENT A:**

**File No. PDA20-001**

**DEVELOPMENT AGREEMENT**

**By and Between**

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

**and**

**Ontario Schaefer Holdings, LLC  
a Delaware limited liability company**

*(Development Agreement to follow this page)*

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

CITY OF ONTARIO  
CITY CLERK / RECORDS MANAGEMENT  
303 EAST "B" STREET  
ONTARIO, CA 91764-4196

Exempt from Fees Per Gov. Code § 6103

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Space above this line for Recorder's Use Only

**FILE NO. PDA20-001**

**DEVELOPMENT AGREEMENT**

**By and Between**

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

**and**

**Ontario Schaefer Holdings, LLC,  
a Delaware limited liability company**

\_\_\_\_\_, **2020**

**San Bernardino County, California**

## DEVELOPMENT AGREEMENT FILE NO. PDA20-001

This Development Agreement (hereinafter "Agreement") is dated for reference purposes only as of the \_\_\_\_ day of \_\_\_\_\_, 2020 by and among the City of Ontario, a California municipal corporation (hereinafter "CITY"), and ONTARIO SCHAEFER HOLDINGS, LLC, a Delaware limited liability company (hereinafter "OWNER");

### RECITALS

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

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

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

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

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

WHEREAS, all of the procedures of the California Environmental Quality Act have been met with respect to the Project and The Avenue Specific Plan (State Clearinghouse No. 2005071109 (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 Avenue Specific Plan; and

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

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

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

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

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

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

## COVENANTS

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

### 1. DEFINITIONS AND EXHIBITS.

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

1.1.1 “Agreement” means this Development Agreement.

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

1.1.3 “Construction Agreement” means that certain Agreement for the Financing and Construction of Phases I and II Infrastructure Improvements to Serve an Easterly Portion of the New Model Colony, entered into between the CITY and NMC Builders as of the 4th day of October, 2005, and all amendments thereto and “Construction Agreement Amendment” means that First Amended and Restated Agreement for the Financing and Construction of Limited Infrastructure Improvements to Serve and

Easterly Portion of the New Model Colony entered into between the CITY and NMC Builders as of the 21<sup>st</sup> day of August 2012.

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

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

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

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



Code; or planning services under the authority of Chapter 3 (commencing with Section 65100) of Division 1 of Title 7 of the Government Code, fees and charges as described in Sections 51287, 56383, 57004, 65104, 65456, 65863.7, 65909.5, 66013, 66014, and 66451.2 of the Government Code, Sections 17951, 19132.3, and 19852 of the Health and Safety Code, Section 41901 of the Public Resources Code, and Section 21671.5 of the Public Utilities Code, as such codes may be amended or superceded, including by amendment or replacement.

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

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

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

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

1.1.12 “General Plan” means the General Plan adopted on January 27, 2010, by Resolution Nos. R2010-003, R2010-004, R2010-005 and R2010-006.

1.1.13 “Improvement” or “Improvements” means those public improvements required to support the development of the Project as described in the tract map conditions for Tract Map No. 20298 as further described in Exhibit “F”.

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

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

(e) the exercise of the power of eminent domain.

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

1.1.16 “Model Units” means a maximum of twelve (12) model units, private common recreation facilities and sales facilities constructed by OWNER prior to the construction of any Production Units and not offered for sale and occupancy for a period of time after the issuance of permits for Production Units.

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

1.1.18 “Production Unit(s)” means all units constructed for sale and occupancy by OWNER and excludes the specified number of Model Units constructed by OWNER for promotion of sales.

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

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

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

1.1.22 “Specific Plan” means that certain specific plan adopted by the City Council, and entitled, “The Avenue Specific Plan.”

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

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

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

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

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

Exhibit “A” — Legal Description of the Property.

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

Exhibit “C” — Existing Development Approvals.

Exhibit “D” — Existing Land Use Regulations.

Exhibit “E” — Description of Infrastructure Improvements

Exhibit “F” — Depiction of Infrastructure Improvements

Exhibit “G” - Form of Plume Disclosure Letter

## 2. GENERAL PROVISIONS.

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

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

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

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

(b) In non-mixed use and residential use only projects, the OWNER shall have obtained, as applicable, building permits for at least seventy percent (70%) of the actual number of residential units permitted under this Agreement; and

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

## 2.4 Assignment.

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

(a) No sale, transfer or assignment of any right or interest under this Agreement shall be made unless made together with the sale, transfer or assignment of all or a part of the Property. OWNER may be required to provide disclosure that the Property is within the South Archibald Trichloroethylene (TCE) Plume. OWNER may wish to provide the attached Disclosure Letter (Exhibit "G") as part of the Real Estate Transfer Disclosure requirements under California Civil Code Section 1102 et seq.(b) Concurrent with any such sale, transfer or assignment, or within fifteen (15) business days thereafter, OWNER shall notify CITY's City Manager, in writing, of such sale, transfer or assignment and shall provide CITY with: (1) an executed agreement, in a form reasonably acceptable to CITY, by the purchaser, transferee or assignee and providing therein that the purchaser, transferee or assignee expressly and unconditionally assumes all the duties and obligations of OWNER under this Agreement with respect to the portion of the Property so sold, transferred or assigned; and (2) the payment of the applicable processing charge to cover the CITY's review and consideration of such sale, transfer or assignment.

(b) 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 (a) of this Section 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's City Manager shall have the authority to review, consider and either approve, conditionally approve, or deny any proposed sale, transfer or assignment that is not made in compliance with this Section 2.4.

2.4.2 Release of Transferring Owner. Notwithstanding any sale, transfer or assignment, a transferring OWNER shall continue to be obligated under this Agreement unless such transferring owner is given a release in writing by CITY, which

release shall be provided by CITY upon the full satisfaction by such transferring owner of the following conditions:

(a) OWNER no longer has a legal or equitable interest in all or any part of the portion of the Property sold, transferred or assigned.

(b) OWNER is not then in default under this Agreement.

(c) OWNER has provided CITY with the notice and executed agreement required under Paragraph (b) of Section 2.4.1 above.

(d) The purchaser, transferee or assignee provides CITY with security equivalent to any security previously provided by OWNER to secure performance of its obligations hereunder.

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

(a) The assignee shall be liable for the performance of all obligations of OWNER with respect to transferred property, but shall have no obligations with respect to the portions of the Property, if any, not transferred (the "Retained Property").

(b) The owner of the Retained Property shall be liable for the performance of all obligations of OWNER with respect to Retained Property, but shall have no further obligations with respect to the transferred property.

(c) The assignee's exercise, use and enjoyment of the Property or portion thereof shall be subject to the terms of this Agreement to the same extent as if the assignee were the OWNER.

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

2.4.5 Termination of Agreement with Respect to Individual Lots Upon Sale to Public and Completion of Construction. The provisions of Section 2.4.1 shall not apply to the sale or lease (for a period longer than one year) of any lot which has been finally subdivided and is individually (and not in "bulk") sold or leased to a member of the public or other ultimate user. Notwithstanding any other provisions of this Agreement, this Agreement shall terminate with respect to any lot and such lot shall be released and no longer be subject to this Agreement without the execution or recordation of any further document upon satisfaction of both of the following conditions:

(a) The lot has been finally subdivided and individually (and not in "bulk") sold or leased (for a period longer than one year) to a member of the public or other ultimate user; and,

(b) A certificate of occupancy has been issued for a building on the lot, and the fees set forth under Section 4 of this Agreement have been paid.

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

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

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

(a) Expiration of the stated term of this Agreement as set forth in Section 2.3, subject to Section 11.11.

(b) Entry of a final judgment setting aside, voiding or annulling the adoption of the ordinance approving this Agreement.

(c) The adoption of a referendum measure overriding or repealing the ordinance approving this Agreement.

(d) Completion of the Project in accordance with the terms of this Agreement including issuance of all required occupancy permits and acceptance by CITY or applicable public agency of all required dedications.

Termination of this Agreement shall not constitute termination of any other land use entitlements approved for the Property. Upon the termination of this Agreement, no party shall have any further right or obligation hereunder except with respect to any obligation to have been performed prior to such termination or with respect to any default in the performance of the provisions of this Agreement which has occurred prior to such termination or with respect to any obligations which are specifically set forth as surviving this Agreement. Upon such termination, any public facilities and services mitigation fees paid pursuant to Section 4.2 of this Agreement by OWNER to CITY for residential units on which construction has not yet begun shall be refunded to OWNER by CITY.

## 2.7 Notices.

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

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

**If to CITY:**

Scott Ochoa, City Manager  
City of Ontario  
303 East “B” Street  
Ontario, CA 91764

**with a copy to:**

Ruben Duran, City Attorney  
Best Best & Krieger, LLP  
2855 East Guasti Road, Suite 400  
Ontario, CA 91761

**If to OWNER:**

Ontario Schaefer Holdings, LLC  
c/o RCCD, Inc.  
8101 E. Kaiser Blvd., Suite 140  
Anaheim Hills, CA 92808  
Attn: Richard Cisakowski  
Phone: (714) 637-4405  
Email:rc@distinguishedhomes.com

**with a copy to:**

Smiley Wang-Ekval, LLP  
3200 Park Center Drive, Suite 250  
Costa Mesa, CA 92626  
Attn: Kraig C. Kilger, Esq.  
Phone: (714) 445-1000  
Email: kkilger@swelawfirm.com

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

3. DEVELOPMENT OF THE PROPERTY.

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

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

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



at such times as OWNER deems appropriate within the exercise of its subjective business judgment.

3.4 Requirement for Public Infrastructure Improvements. Development of the Property is contingent in part on the phasing of area-wide infrastructure improvements over which the OWNER has control. The issuance of building permits by CITY for Model Units and Production Units is, in general, contingent on OWNER's completion of needed infrastructure improvements as described in the attached Exhibit "E" and depicted in the attached Exhibit "F", and the availability of improvements and services to serve the Property.

3.4.1 Attached hereto as Exhibit "F" is a depiction of the infrastructure improvements needed for the development of the Property.

3.4.2 Subject to the prior submittal by OWNER and approval by CITY of a plan to provide sufficient public infrastructure for the construction of a maximum number of Twelve(12) Model Units, private common recreation facilities and sales facilities. CITY may issue a maximum of Twelve (12) building permits for Model Units, private common recreation facilities and sales facilities. The plan to be submitted by OWNER for CITY approval shall describe the utilities and other infrastructure necessary to provide sufficient fire protection and other public health and safety requirements for the Model Units and other facilities.

3.5 Changes and Amendments. The parties acknowledge that refinement and further development of the Project will require Subsequent Development Approvals and may demonstrate that changes are appropriate and mutually desirable in the Existing Development Approvals. In the event OWNER finds that a change in the Existing Development Approvals is necessary or appropriate, OWNER shall apply for a Subsequent Development Approval to effectuate such change and CITY shall process and act on such application in accordance with the Existing Land Use Regulations, except as otherwise provided by this Agreement including the Reservations of Authority. If approved, any such change in the Existing Development Approvals shall be incorporated herein as an addendum to Exhibit "C", and may be further changed from time to time as provided in this Section. Unless otherwise required by law, as determined in CITY's reasonable discretion, a change to the Existing Development Approvals shall be deemed "minor" and not require an amendment to this Agreement provided such change does not:

- (a) Alter the permitted uses of the Property as a whole; or,
  - (b) Increase the density or intensity of use of the Property as a whole;
- or,
- (c) Increase the maximum height and size of permitted buildings; or,
  - (d) Delete a requirement for the reservation or dedication of land for public purposes within the Property as a whole; or,

(e) Constitute a project requiring a subsequent or supplemental environmental impact report pursuant to Section 21166 of the Public Resources Code.

### 3.6 Reservations of Authority.

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

- (a) Processing fees by CITY to cover costs of processing applications for development approvals or for monitoring compliance with any development approvals;
- (b) Procedural regulations relating to hearing bodies, petitions, applications, notices, findings, records and any other matter of procedure;
- (c) Regulations, policies and rules governing engineering and construction standards and specifications applicable to public and private improvements, including all uniform codes adopted by the CITY and any local amendments to those codes adopted by the CITY; provided however that, OWNER shall have a vested right to develop the Property in accordance with, and to the extent of, the standards and specifications that are expressly identified in the Specific Plan;
- (d) Regulations that may conflict with this Agreement and the Development Plan but that are reasonably necessary to protect the residents of the project and/or of the immediate community from a condition perilous to their health or safety;
- (e) Regulations that do not conflict with those rules, regulations and policies set forth in this Agreement or the Development Plan;
- (f) Regulations that may conflict but to which the OWNER consents.

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

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

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

3.7 Public Works; Utilities. If OWNER is required by this Agreement to construct any public works facilities which will be dedicated to CITY or any other public agency upon completion, and if required by applicable laws to do so, OWNER shall perform such work in the same manner and subject to the same requirements as would be applicable to CITY or such other public agency should it have undertaken such construction. As a condition of development approval, OWNER shall connect the Project to all utilities necessary to provide adequate water, recycled water, sewer, gas, electric, and other utility service to the Project. As a further condition of development approval, OWNER shall contract with the CITY for CITY-owned or operated utilities for this purpose, for such price and on such terms as may be available to similarly situated customers in the CITY.

3.7.1 OWNER agrees that development of the Project shall require the construction of street improvements as described in Exhibit "E" and depicted in Exhibit "F". OWNER agrees that no building permits shall be issued by CITY for Production Units prior to completion of the street improvements as described in Exhibit "E" and depicted in Exhibit "F".

3.7.2 OWNER agrees that development of the Property shall require the extension of permanent water and recycled water utility infrastructure as described in Exhibit "E" and depicted in Exhibit "F" consisting generally of the construction of the extension of permanent water and recycled water utility improvements to serve the Property. OWNER agrees that no building permits shall be issued by CITY for Production Units prior to completion of the water and

recycled water Improvements as described in Exhibit “E” and depicted in Exhibit “F”. OWNER also agrees that recycled water shall be available and utilized by OWNER for all construction-related water uses including prior to, and during, any grading of the Property.

3.7.3 OWNER agrees that the development of the Property shall require the extension of permanent storm drain improvements, as described in the attached Exhibit “E” and depicted in Exhibit “F” consisting generally of the construction of the extension of storm drain improvements to serve the Property. OWNER agrees that no building permits shall be issued by CITY for Production Units prior to completion of the storm drain Improvements as described in Exhibit “E” and depicted in Exhibit “F”.

3.7.4 OWNER agrees that development of the Property shall require the extension of permanent sewer improvements, at OWNER’s sole cost and expense, as described in the attached Exhibit “E” and depicted in Exhibit “F” consisting generally of the construction of the extension of sewer infrastructure to serve the Property. OWNER agrees that no building permits shall be issued by CITY for Production Units prior to completion of the sewer improvements as described in Exhibit “E” and depicted in Exhibit “F”.

3.7.5 OWNER agrees that development of the Property shall require the extension of permanent fiber optic communications infrastructure, at OWNER’s sole cost and expense, as described in the attached Exhibit “E” and depicted in Exhibit “F” consisting generally of the construction of the extension of fiber optic communications infrastructure to serve the Property. OWNER agrees that no building permits shall be issued by CITY for Production Units prior to completion of the fiber optic communications infrastructure as described in Exhibit “E” and depicted in Exhibit “F”.

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

3.8.1 CITY Acquisition of Non-Construction Agreement Offsite Property. In the event OWNER is required to construct any public improvements on land not owned by OWNER, but such requirement is not based upon the Construction Agreement, Sections 3.8.1 and 3.8.2 shall control the acquisition of the necessary property interest(s) (“Non-Construction Agreement Offsite Property”).

If the OWNER is unable to acquire such Non-Construction Agreement Offsite Property, and following the written request from the OWNER to CITY, CITY agrees to use reasonable and diligent good faith efforts to acquire the Non-Construction Agreement Offsite Property from the owner or owners of record by negotiation to the extent permitted by law and consistent with this Agreement. If CITY is unable to acquire the Non-Construction Agreement Offsite Property by negotiation within thirty (30) days after OWNER'S written request, CITY shall, initiate proceedings utilizing its power of eminent domain to acquire that Non-Construction Agreement Subject Property at a public hearing noticed and conducted in accordance with California Code of Civil Procedure Section 1245.235 for the purpose of considering the adoption of a resolution of necessity concerning the Non-Construction Agreement Offsite Property, subject to the conditions set forth in this Section 3.8. The CITY and OWNER acknowledge that the timelines set forth in this Section 3.8.1 represent the maximum time periods which CITY and OWNER reasonably believe will be necessary to complete the acquisition of any Non-Construction Agreement Offsite Property. CITY agrees to use reasonable good faith efforts to complete the actions described within lesser time periods, to the extent that it is reasonably able to do so, consistent with the legal constraints imposed upon CITY.

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

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

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

#### 4. PUBLIC BENEFITS.

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

#### 4.2 Development Impact Fees.

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

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

4.2.3 Parkland and Quimby Act Fees. Pursuant to the General Plan (Ontario Plan) Goal PR1, Policy PR1-5 (achievement of a park standard of 5 acres of

parkland per 1,000 residents) OWNER shall provide improved parks, developed in accordance with the City's park standards in an amount equal to two (2) acres per 1,000 of projected population without credit, reimbursement, offset or consideration from City. Such areas shall either be dedicated to the City or transferred to a homeowners' association. If approved by the CITY's City Manager, OWNER may satisfy this requirement through the development of non-public recreation facilities such as private recreational clubhouses or pool facilities. Credit for such private recreational facilities areas shall be limited to a maximum of 50% of the foregoing park development requirement. If OWNER's Project does not provide dedicated and developed park acreage equal to two (2) acres per 1,000 projected population, OWNER shall pay a fee in-lieu equal to the per acre estimated costs of acquisition and development of parkland in the City's Development Impact Fee for the calculated park acreage deficiency (e.g. Estimated Costs of Acquisition & Development multiplied by the Park Acreage deficiency). Such in-lieu fee shall be due and payable prior to issuance of the first building permit issued to OWNER and such in-lieu fee shall be based on the estimated costs of acquisition and development of parkland in the City's Development Impact Fee Program in effect at the time the payment becomes due and payable to the City. Any park dedication and/or improvements in excess of such two (2) acres per thousand standard, provided such park has been developed in accordance with the City's park standards and is open to the public generally, shall entitle OWNER to a credit toward its obligations under the Quimby Act (Gov. Code, § 64477) and the City's implementing ordinance and/or resolution (collectively "**Quimby Act Obligations**"), and to the extent OWNER's Quimby Act Obligations are satisfied, OWNER shall be entitled to have the City acquire such developed and publicly available parks as Non-Program Interests in accordance with Section 4.3.3 below.

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

4.3.1 Timely Construction of Public Infrastructure. The phasing of the areawide infrastructure construction within the New Model Colony will be as approved by the CITY. OWNER shall be responsible for the timely construction and completion of all public infrastructure required for the Project as shown on the attached Exhibit "F" and any and all tentative tract map conditions. Unless otherwise specified in the subdivision agreement/tract map conditions, all other required Improvements for each Tract Map, shall be completed and operational prior to, and as a condition precedent to, OWNER requesting and CITY's granting of the first building permit for production units for each such Tract Map. All Infrastructure and Improvements shall be completed as required by the Subdivision Agreement/Tract Map conditions for Tract Nos. 20298.

4.3.2 Construction of DIF Program Infrastructure (Construction Agreement). To the extent OWNER is required to construct and completes construction of public improvements that are included in CITY's Development Impact Fee Program and the Construction Agreement between CITY and NMC Builders LLC, CITY agrees that CITY shall issue DIF Credit in accordance with the provisions of the

Construction Agreement and any amendments thereto. Use of DIF Credit issued to OWNER as a member of NMC Builders LLC to offset OWNER's DIF payment obligations shall also be subject to the provisions of the Construction Agreement and any amendments thereto.

4.3.3 Construction of DIF Program Infrastructure (Non-Construction Agreement). To the extent OWNER is required to construct and completes construction of public improvements that are included in CITY's Development Impact Fee Program and such public improvements are not included the Construction Agreement between CITY and NMC Builders LLC, CITY agrees that CITY shall issue DIF Credit in accordance with the provisions of a separate Fee Credit Agreement between CITY and OWNER. Limitation on the use of DIF Credit issued to OWNER to offset OWNER's DIF payment obligations shall also be subject to the provisions of a separate Fee Credit Agreement. CITY and OWNER agree that the Fee Credit Agreement between CITY and OWNER shall comply with CITY's adopted policies applicable to such agreements.

#### 4.4 Affordable Housing Requirement.

4.4.1 Affordable Housing- Number of Units. OWNER shall provide a minimum number of affordable housing units, equivalent to 10% of the OWNER's total approved residential units within the Project, that are affordable to very low, low and moderate income households. Such requirement for affordable housing shall be met through one, or a combination of one or more, of the options provided in the following Sections 4.3.2.1 through 4.3.2.1. For the purposes of this Section, any term not defined in this Agreement shall be as defined by California Community Redevelopment Law (California Health and Safety Code Section 33000 et seq.).

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

4.4.2.1 New Construction. If OWNER elects to fully or partially satisfy the affordable housing requirement by the construction of new residential units, it shall construct and restrict the affordability of residential dwelling units within its Project or, at OWNER's option and with the approval of the City, within another project elsewhere within the City. The affordable units constructed shall be intermingled with other units as part of the Project, and shall be built to the same construction, design and aesthetic standards, as well as number of rooms, as other units constructed as part of that OWNER's Project. In addition, the percentage ratio of affordable units offered for sale versus those offered for rent shall equal the percentage ratio of other units offered for sale versus for rent within OWNER's Project. Such construction shall be completed no later than the date that is five (5)



years following the issuance of the first building permit for OWNER's Project; provided however that to the extent OWNER has not constructed the required percentage of units, based on the number of building permits for non-restricted units, OWNER shall, prior to the issuance of such building permits, provide security (in the form and substance approved by the City Manager and City Attorney) to City in order to ensure the faithful completion of such required percentage of construction of affordable units. If OWNER elects the option of constructing new affordable units, a detailed Affordable Housing Agreement specifying terms for the allowable monthly housing costs or rents (as applicable) and maintenance and occupancy standards shall be prepared, executed and recorded against such units as a condition to the issuance of a building permit. The Affordable Housing Agreement shall hold a recorded priority position senior to any other non-statutory lien or encumbrance affecting the unit.

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

4.4.2.3 In-Lieu Fee. If OWNER has not fully complied with the requirements of Section 4.3.1 by providing the minimum number of affordable units through the construction of new affordable units or by the substantial rehabilitation of existing units, shall pay an "**Affordability In-Lieu Fee**". If OWNER has not provided any affordable residential units by construction or rehabilitation, the Affordability In-Lieu fee shall be equal to

Two Dollars Sixty-Three Cents (\$2.63) per square foot of residential development within OWNER's Project or, if pre-paid as set forth below, Two Dollars Thirty Cents (\$2.30) per square foot of residential development within OWNER's Project. If OWNER has partially complied with the requirements of Section 4.4.1 by construction or rehabilitation of less than the minimum number of units, then the Affordability In-lieu Fee shall be recalculated and reduced in consideration of the number and type of affordable units provided. The Affordability In-Lieu Fee shall be paid by OWNER to City no later than prior to the issuance of each building permit within OWNER's Project based on the square footage of the residential unit for which such building permit is sought; provided however that OWNER may, at OWNER's election, pre-pay such Affordability In-Lieu Fee by paying such Affordability In-Lieu Fee within thirty (30) days following the earliest discretionary approval by the City for OWNER's Project, including, but not limited to, any general plan amendment, specific plan adoption, development agreement, tentative map approval, variance, conditional use permit, or resolution of intention to form any public financing mechanism. The Two Dollars, Sixty Three Cents (\$2.63) and the Two Dollars Thirty Centers (\$2.30) per square foot amounts shall automatically be increased annually, commencing on July 1, 2021, and automatically each July 1 thereafter. Such adjustment shall be based on the percentage increase (but no decrease) in the Consumer Price Index (Los Angeles-Anaheim-Riverside County), 1950-2001 (1982-84=100) over the preceding year. The pre-paid Affordability In-Lieu Fee shall be calculated based on the maximum floor area ratio (FAR) permitted within the General Plan and any applicable FAR contained within the Specific Plan, whichever is greater, and the Maximum Development Density. For purposes of this Agreement, "**Maximum Development Density**" shall be determined by multiplying the OWNER's Project's density for residential development potential as set forth in the General Plan or the Specific Plan, whichever is less, by the net acreage of land within OWNER's Project. All "Affordability In-Lieu Fees" collected by the City shall be used to promote the construction of affordable housing within the City.

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

4.4.2.5 Transfer of Affordable Project. No transfer of title to any affordable housing project shall occur without the prior written consent of the City. In

the event OWNER transfers title to any affordable housing project required to be constructed pursuant to this Agreement to a non-profit entity, or other entity, that receives an exemption from ad valorem real property taxes, the City shall be required to assure payment of an annual in lieu fee to the City on July 1 of each year equal to one-tenth of one percent (0.1%) of the assessed value of such project. The City may permit OWNER to satisfy this obligation by recorded covenants against the property and enforceable against said entity by the City. Any such covenants shall be approved by the Planning Director and the City Attorney.

#### 4.5 Schools Obligations.

##### 4.5.1 Written Evidence of Compliance with Schools Obligations.

OWNER shall, either through joint or individual agreements between OWNER and the applicable school district(s), satisfy its new school obligations. The new school obligations for the Mountain View School District in the Ontario Ranch area have been projected to include the acquisition or dedication of school sites for, and construction of, up to eight (8) schools. Of these eight (8) schools, six (6) are to be elementary (K-5) grade schools and two (2) are to be middle grade schools. The new school obligations for the Chaffey Joint Union High School District in the Ontario Ranch area have been projected to include the dedication of a school site for, and construction of, an additional high school. The new school obligations for the applicable school district shall be met by a combination of the following: (1) designating and dedicating school site(s) within the Property as set forth in the General Plan, and/or (2) paying school impact fees, (3) entering into a joint mitigation agreement or individual mitigation agreements, or (4) any combination of the foregoing. Written evidence of approval by the applicable school district that OWNER has met their school obligations may be required by the City as the condition to the issuance by the City of any entitlements for OWNER's Project. In the event OWNER is unable to provide such written evidence from the applicable school district(s), the City shall have the right to decline to honor any DIF Credit, Certificates of MDD Availability, Certificates of Storm Water Treatment Capacity Availability, or any combination thereof, presented by such OWNER, without liability to the City. To the extent that a joint mitigation agreement is approved by the applicable school district(s), and OWNER is a participant in good standing in such mitigation agreement, OWNER shall be deemed to have mitigated its new school obligations under this Section 4.5.

#### 4.6 Public Services Funding Fee.

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

4.6.2 Public Services Funding Fee Amount. OWNER shall pay a Public Services Funding fee in the total amount of Two Thousand One Hundred Twelve dollars (\$2,112.00) per residential dwelling unit. The Public Services Funding Fee shall be paid in one (1) installment within one hundred eighty (180) calendar days after the Effective Date or in two (2) installments, at OWNER's option, as follows:

4.6.2.1 First Installment (Residential uses). The First Installment of the Public Services Funding Fee shall be One Thousand Fifty-Six dollars (\$1,056) per residential dwelling unit. The First Installment shall be based upon the "**Maximum Development Density**" of the OWNER Project, as defined in Section 3.7.2.3 of the First Amended and Restated Construction Agreement. The First Installment shall be due and payable 30 days following the Effective Date.

If the First installment amount is not paid for all residential dwelling units within the Project (based on the Maximum Development Density, or the number of units described on "B Maps" if approved) by January 1, 2021, the amount of the First Installment shall be increased. Such increase shall be based on the percentage increase (but no decrease) in the Consumer Price Index (Los Angeles-Anaheim-Riverside County), 1950-2001 (1982-84=100) over the preceding year. Additionally, the amount shall be further increased automatically by the percentage increase in the Consumer Price Index (Los Angeles-Anaheim-Riverside) on each January 1 thereafter.

4.6.2.2 Second Installment (Residential Uses). The Second Installment of the Public Services Funding Fee shall be One Thousand Fifty-Six dollars (\$1,056) per residential unit. The Second Installment shall be paid at the time of the issuance of each building permit for the Project. The amount of the Second Installment shall increase automatically by percentage increase (but no decrease) in the Consumer Price Index (Los Angeles-Anaheim-Riverside County), 1950-2001 (1982-84=100) over the preceding year on January 1<sup>st</sup> of each year, beginning on January 1, 2021. OWNER may exercise the option to pay the Second Installment amount for all residential units, a portion of the residential units, or for the remainder of the residential units within OWNER's Project on or before each December 31st, before the Second Installment amount is automatically increased.

4.6.2.3 Single Installment (Non-residential Uses). A single installment payment of the Public Services Funding Fee shall be required in the amount of Sixty Three Cents (\$.63) per square foot of non-residential buildings. The single installment for non-residential uses shall be due and payable prior to the issuance of the building permit for a non-residential building. The amount of the Single Installment for non-residential uses shall automatically increase by percentage increase (but no decrease) in the Consumer Price Index (Los Angeles-Anaheim-Riverside County), 1950-2001 (1982-84=100) over the preceding year on January 1<sup>st</sup> of each year,

beginning on January 1, 2021. OWNER may exercise the option to pay any single installment amounts for the remainder of the non-residential square footage within the Project on or before December 31st, before the Single Installment amount is automatically increased.

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

4.7.1 NMC Builders LLC Membership. OWNER shall become a member of NMC Builders LLC, pursuant to the terms and conditions of the operating agreement of NMC Builders LLC. CITY acknowledges that the OWNER is a current "Member" of NMC Builders LLC. OWNER'S failure to maintain membership in NMC Builders LLC is and shall be a Default under this Agreement.

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

4.7.3 Use of Assigned Net MDD Water Availability. OWNER shall provide evidence of sufficient Net MDD Water Availability Equivalents (or portions thereof) prior to and as a condition precedent to, the CITY's approval of any and all tract maps for the Property. The amount of Net MDD Water Availability Equivalents required for CITY's approval of a tract map shall be based upon water demand factors and assumptions listed in Exhibit C-2R of the Construction Agreement Amendment as "Water Demand Equivalents by Land Use" for each land use category. CITY and OWNER agree that the Net MDD Water Availability has been determined to be 50.88 MDD.

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

#### 4.8 Storm Water Capacity Availability.

4.8.1 Requirement for Storm Water Treatment Capacity Availability. OWNER shall provide evidence of sufficient Storm Water Treatment Capacity Availability

as reserved in a Certificate of Storm Water Treatment Capacity Availability the same manner and subject to the same limitations as provided for the assignment of Certificates of Net MDD Availability in Section 4.7.3 of this Agreement.

4.8.2 Use of Storm Water Treatment Capacity Availability. The amount of Storm Water Treatment Capacity Availability required for the issuance of a grading permit to OWNER shall be based upon the net residential acreage of the area to be graded regardless of the corresponding use. CITY and OWNER agree that the evidence of Storm Water Treatment Capacity Availability for the Project shall be based on the net acreage of OWNER's Project as defined in the Construction Agreement Amendment and as of the Effective Date such net acreage has been determined to be 10.49 acres.

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

4.9 Maintenance of Open Space. OWNER shall provide for the ongoing maintenance of all park, common areas and open space areas within the Project as more particularly set forth in the Specific Plan, through a homeowners' association as approved by the CITY. Covenants, conditions and restrictions establishing any homeowners' association shall be approved by the Planning Director and City Attorney.

4.10 Compliance with Public Benefits Requirements.

4.10.1 Failure to Provide Public Benefits. In the event OWNER fails or refuses to comply with any condition referenced in Section 4.1 through 4.10, or challenges (whether administratively or through legal proceedings) the imposition of such conditions, OWNER shall be deemed in default of this Agreement pursuant to Section 8.4 hereof, thereby entitling the City to any and all remedies available to it, including, without limitation, the right of the City to withhold OWNER's Project-related building permits, certificates of occupancy, or discretionary approvals, without liability.

5. FINANCING OF PUBLIC IMPROVEMENTS.

5.1 Financing Mechanism(s). In accordance with the Memorandum of Agreement between the CITY and NMC Builders, CITY will cooperate with OWNER in the formation of a CFD, or CFDs, to include all of the Project, to provide a financing mechanism to reimburse the OWNER for funds paid to NMC Builders LLC for OWNER's share of the costs of public infrastructure pursuant to the Construction Agreement and to acquire other public facilities constructed by OWNER subject to the provisions of the Memorandum of Agreement between CITY and NMC Builders LLC.

Notwithstanding such reimbursements and acquisitions, OWNER shall remain entitled to DIF Credits as provided for in Article 3 of the Construction Agreement and/or as provided for in a separate Fee Credit Agreement between CITY and OWNER. OWNER agrees that, prior to the recordation of any tract map for the Property, the Property shall be included in a CFD to finance City services through annual special taxes that will initially be \$1,687.50 per Single Family Detached Dwelling Unit, \$1,462.41 per Multiple-Family Dwelling Unit, \$1,226.39 per Gated Apartment Community Dwelling Unit, and \$.32 per square foot for Non-Residential buildings. These amounts shall be subject to an automatic increase at a rate not to exceed four (4%) percent per year. CITY shall be the sole and exclusive lead agency in the formation of any CFD, assessment district or other public financing mechanism within the Property; provided however, that the proceeds of any such CFD, assessment district, or financing mechanism may be used, subject to restrictions that may be imposed by applicable law, for the purposes of acquiring, constructing or maintaining public facilities to be owned or operated by other public agencies, including, without limitation those facilities owned or operated by a school district. In addition to the rights of the CITY pursuant to section 5.1 hereof, CITY shall have the right, but not the obligation, to condition the formation of any CFD, assessment district or other public financing mechanism within the Property on the OWNER mitigating all Project-related impacts to the applicable school district(s) as required by such school district(s). Written evidence by such school district(s) may be required by the CITY as the condition to the formation of any CFD, assessment district or other public financing mechanism within the Property, or any steps preliminary thereto, including, without limitation, the adoption of any resolution of intention to form such CFD, assessment district or other public financing mechanism within the Property. It is not the intent of the parties hereto, by this provision, to prohibit or otherwise limit the City's ability to take any and all necessary steps requisite to the formation of the CFD to finance City services through annual special taxes as set forth in this Section 5.1. Formation of any CFD, assessment district or other public financing mechanism within the Property, shall be subject to CITY's ability to make all findings required by applicable law and complying with all applicable legal procedures and requirements including, without limitation, CITY's public financing district policies as such policies may be amended from time to time. Notwithstanding the foregoing, it is acknowledged and agreed by the parties that nothing contained in this Agreement shall be construed as requiring CITY or the CITY's City Council to form any such district or to issue and sell bonds.

## 6. REVIEW FOR COMPLIANCE.

### 6.1 Periodic and Special Reviews.

6.1.1 Time for and Initiation of Periodic Review. The CITY shall review this Agreement every twelve (12) months from the Effective Date in order to ascertain the good faith compliance by the OWNER with the terms of this Agreement. The OWNER shall submit an Annual Monitoring Report to CITY, in a form acceptable to the CITY's 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's City Manager or his designee.

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

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

6.1.3 Notice of Special Review. The CITY's 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 CITY's Planning Commission.

6.1.4 Public Hearing. The CITY's 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 CITY's 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 CITY's 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 CITY's 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 CITY's



Planning Commission may recommend to the CITY's City Council to modify or terminate this Agreement.

(c) The OWNER may appeal a determination pursuant to paragraph (b) to the CITY's 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's 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's City Council may terminate or modify this Agreement and impose those conditions to the action it takes as it considers necessary to protect the interests of the CITY. The decision of the CITY's 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 CITY's 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 CITY's Planning Director or City Council.

7. [RESERVED]

## 8. DEFAULT AND REMEDIES.

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

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

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

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

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

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

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

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

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

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

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

## 9. THIRD PARTY LITIGATION.

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

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

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

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

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

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

## 10. MORTGAGEE PROTECTION.

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

modification is consistent with the intent and purposes of this Agreement. Any Mortgagee of the Property shall be entitled to the following rights and privileges:

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

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

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

(d) Any Mortgagee who comes into possession of the Property, or any part thereof, pursuant to foreclosure of the mortgage or deed of trust, or deed in lieu of such foreclosure, shall take the Property, or part thereof, subject to the terms of this Agreement. Notwithstanding any other provision of this Agreement to the contrary, no Mortgagee shall have an obligation or duty under this Agreement to perform any of OWNER's obligations or other affirmative covenants of OWNER hereunder, or to guarantee such performance; provided, however, that to the extent that any covenant to be performed by OWNER is a condition precedent to the performance of a covenant by CITY, the performance thereof shall continue to be a condition precedent to CITY's performance hereunder, and further provided that any sale, transfer or assignment by any Mortgagee in possession shall be subject to the provisions of Section 2.4 of this Agreement.

## 11. MISCELLANEOUS PROVISIONS.

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

11.2 Entire Agreement. This Agreement sets forth and contains the entire understanding and agreement of the parties, and there are no oral or written

representations, understandings or ancillary covenants, undertakings or agreements which are not contained or expressly referred to herein. No testimony or evidence of any such representations, understandings or covenants shall be admissible in any proceeding of any kind or nature to interpret or determine the terms or conditions of this Agreement.

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

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

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

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

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

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

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

right to insist and demand strict compliance by the other party with the terms of this Agreement thereafter.

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

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

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

11.13 Successors in Interest. The burdens of this Agreement shall be binding upon, and the benefits of this Agreement shall inure to, all successors in interest to the parties to this Agreement. All provisions of this Agreement shall be enforceable as equitable servitudes and constitute covenants running with the land. Each covenant to do or refrain from doing some act hereunder with regard to development of the Property: (a) is for the benefit of and is a burden upon every portion of the Property; (b) runs with the Property and each portion thereof; and, (c) is binding upon each party and each successor in interest during ownership of the Property or any portion thereof.

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

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

11.16 Project as a Private Undertaking. It is specifically understood and agreed by and between the parties hereto that the development of the Project is a private development, that neither party is acting as the agent of the other in any respect hereunder, and that each party is an independent contracting entity with respect to the terms, covenants and conditions contained in this Agreement. No partnership, joint

venture or other association of any kind is formed by this Agreement. The only relationship between CITY and OWNER is that of a government entity regulating the development of private property and the owner of such property.

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

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

11.19 Agent for Service of Process. In the event OWNER is not a resident of the State of California or it is an association, partnership or joint venture without a member, partner or joint venturer resident of the State of California, or it is a foreign corporation, then in any such event, OWNER shall file with the Planning Director, upon its execution of this Agreement, a designation of a natural person residing in the State of California, giving his or her name, residence and business addresses, as its agent for the purpose of service of process in any court action arising out of or based upon this Agreement, and the delivery to such agent of a copy of any process in any such action shall constitute valid service upon OWNER. If for any reason service of such process upon such agent is not feasible, then in such event OWNER may be personally served with such process out of this County and such service shall constitute valid service upon OWNER. OWNER is amenable to the process so served, submits to the jurisdiction of the Court so obtained and waives any and all objections and protests thereto. OWNER for itself, assigns and successors hereby waives the provisions of the Hague Convention (Convention on the Service Abroad of Judicial and Extra Judicial Documents in Civil or Commercial Matters, 20 U.S.T. 361, T.I.A.S. No. 6638).

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



be represented by the requesting party. OWNER shall pay to CITY all costs incurred by CITY in connection with the issuance of estoppel certificates under this Section 11.20 prior to CITY's issuance of such certificates.

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

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

**[SIGNATURES CONTAINED ON FOLLOWING PAGE]**

**SIGNATURE PAGE  
TO DEVELOPMENT AGREEMENT FILE NO. PDA20-001**

**"OWNER"**

ONTARIO SCHAEFER HOLDINGS, LLC  
a Delaware limited liability company

By: Ontario Schaefer Associates, LLC, a  
Delaware limited liability company, its  
Managing Member

By: Avenue Associates Investments, LLC,  
a Delaware limited liability company, its  
Administrative member

By: RCCD Inc., a California corporation,  
its Manager

By: \_\_\_\_\_  
Name: Richard Cisakowski  
Its: President  
Date: \_\_\_\_\_

**"CITY"**

CITY OF ONTARIO

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

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

**ATTEST:**

**APPROVED AS TO FORM:  
BEST BEST & KRIEGER, LLP**

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

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

**ACKNOWLEDGEMENT**

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

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

On \_\_\_\_\_, 20\_\_\_\_, before me \_\_\_\_\_,  
*Date* *Insert Name and Title of the Officer*

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

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

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

WITNESS my hand and official seal.

Signature \_\_\_\_\_  
*Signature of Notary Public*

*Place Notary Seal Above*

**ACKNOWLEDGEMENT**

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

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

On \_\_\_\_\_, 20\_\_\_\_, before me \_\_\_\_\_,  
*Date* *Insert Name and Title of the Officer*

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

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

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

WITNESS my hand and official seal.

Signature \_\_\_\_\_  
*Signature of Notary Public*

*Place Notary Seal Above*

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

**Legal Description of Property**

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

LETTERED LOT "Z" OF TRACT NO. 18419 IN THE CITY OF ONTARIO, AS PER MAP RECORDED IN [BOOK 348, PAGES 79](#) THROUGH 91, INCLUSIVE, OF MAPS, IN THE OFFICE OF THE COUNTY RECORDER OF SAN BERNARDINO COUNTY, CALIFORNIA.

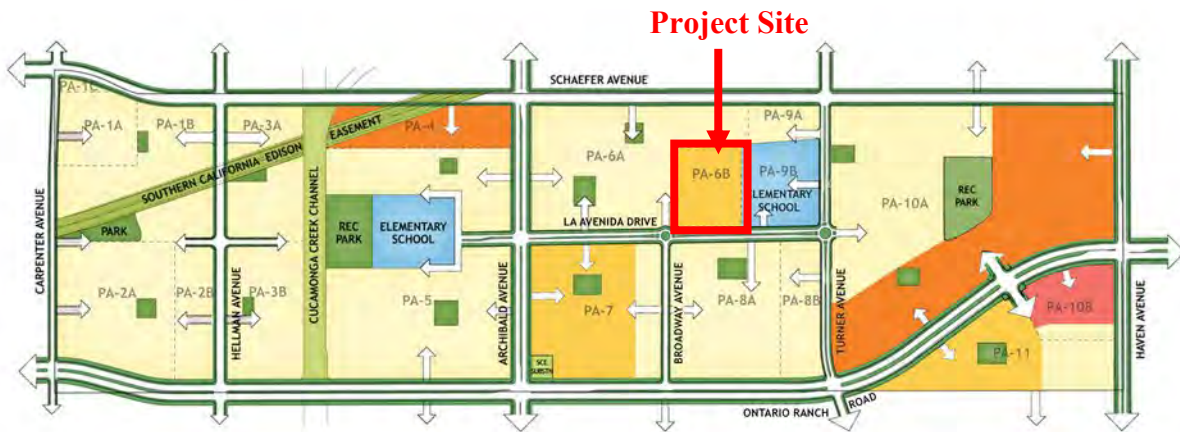
[APN: 0218-652-27-0-000](#)

# EXHIBIT "B" TO DEVELOPMENT AGREEMENT

## Map showing Property and its location

Land Use Plan

Exhibit 8 - Land Use Plan



**LEGEND**

- |  |  |
|--|--|
| <span style="display: inline-block; width: 15px; height: 10px; background-color: #ffffcc; border: 1px solid black;"></span> LOW DENSITY RESIDENTIAL        | <span style="display: inline-block; width: 15px; height: 10px; background-color: #90ee90; border: 1px solid black;"></span> SCHOOL               |
| <span style="display: inline-block; width: 15px; height: 10px; background-color: #fffacd; border: 1px solid black;"></span> LOW MEDIUM DENSITY RESIDENTIAL | <span style="display: inline-block; width: 15px; height: 10px; background-color: #90ee90; border: 1px solid black;"></span> PARK                 |
| <span style="display: inline-block; width: 15px; height: 10px; background-color: #ffa500; border: 1px solid black;"></span> MEDIUM DENSITY RESIDENTIAL     | <span style="display: inline-block; width: 15px; height: 10px; background-color: #90ee90; border: 1px solid black;"></span> SCE EASEMENT         |
| <span style="display: inline-block; width: 15px; height: 10px; background-color: #ff6347; border: 1px solid black;"></span> RETAIL/COMMERCIAL              | <span style="display: inline-block; width: 15px; height: 10px; background-color: #90ee90; border: 1px solid black;"></span> STORM DRAIN EASEMENT |



NOTE: The locations of the parks are conceptual and will be determined as part of the tract map approval process.

**The Avenue**  
SPECIFIC PLAN

The New Model Colony Ontario, California

Land Use Plan

3-3

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

**Existing Development Approvals**

On November 28, 2006, the Planning Commission:

- a) Issued Resolution No. PC06-141, recommending City Council adopt and certify The Avenue Specific Plan Environmental Impact Report.
- b) Issued Resolution PC06-142, recommending the City Council approve a General Plan Amendment (File No. PGPA06-006).
- c) Issued Resolution No. PC06-143, recommending City Council approval of The Avenue Specific Plan (PSP05-003).

On December 9, 2006, the City Council:

- a) Adopted Resolution No. 2006-131, certifying The Avenue Specific Plan Environmental Impact Report (SCH No. 2005071109).
- b) Adopted Resolution No. 2006-132, approving the General Plan Amendment (File No. PGPA06-006).

On January 16, 2007, the City Council:

- a) Adopted Ordinance No. 2851, approving The Avenue Specific Plan (PSP05-003).

On February 2, 2010, the City Council:

- a) Adopted Resolution No. 2010-010 certifying the Supplemental Environmental Impact Report for an Amendment to The Avenue Specific Plan (File No. PSPA07-004).
- b) Adopted Resolution No. 2010-011 approving an amendment to The Avenue Specific Plan (File No. PSPA07-004).

On May 27, 2014, the Planning Commission:

- a) Issued Resolution No. PC14-042 recommending City Council approval of an Addendum to The Avenue Specific Plan Environmental Impact Report (SCH #2005071109).
- b) Issued Resolution No. PC14-043 recommending City Council approval of an Amendment to The Avenue Specific Plan (File No. PSPA13-003).

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

On June 14, 2014, the City Council:

- a) Adopted Resolution No. 2017-068 approving an Addendum to The Avenue Specific Plan Environmental Impact Report (SCH #2005071109).
- b) Adopted Resolution No. 2017-069 approving an Amendment to The Avenue Specific Plan (File No. PSPA13-003).



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

**Existing Land Use Regulations**

These documents are listed for reference only:

1. The Avenue Specific Plan (File No. PSP05-003), Ordinance No. 2851.
2. The Avenue Specific Plan Environmental Impact Report (SCH#2005071109).
3. Supplemental Environmental Impact Report for an Amendment to The Avenue Specific Plan (File No. PSPA07-004).
4. Amendment to The Avenue Specific Plan (File No. PSPA13-003)
5. City of Ontario Municipal Code
  - a. Six – Sanitation & Health
  - b. Seven – Public Works
  - c. Eight – Building Regulations
  - d. Nine – Development Code
  - e. Ten – Parks & Recreation

**EXHIBIT "E"**  
**TO DEVELOPMENT AGREEMENT**

**Description of Infrastructure Improvements**

**RECYCLED WATER [RW]**

1. 8" RW main in Manitoba Place, from La Avenida, past "A" Street to southern boundary of Lot A to serve Lot A.

**SEWER [SW]**

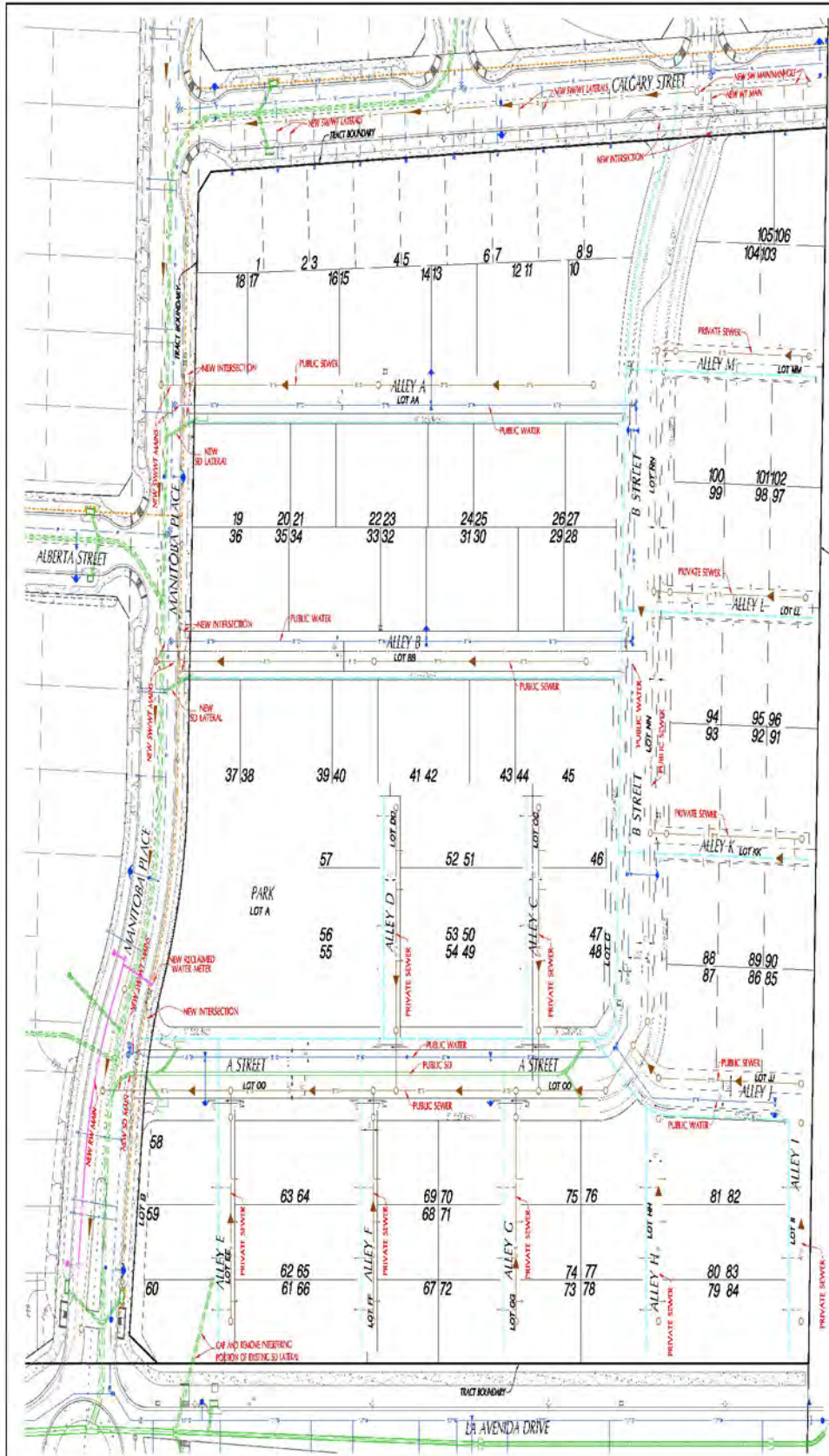
2. In order to accommodate the change in land use for The Avenue Specific Plan (Planning Area 6B), additional sewage flow capacity is required for the Project. OWNER shall pay the CITY within thirty (30) days of the Effective Date of this Agreement, in the amount of Eleven Thousand Two Hundred Fifty Two Dollars (\$11,252), and such payment shall be used by the CITY to purchase additional capacity from the Inland Empire Utilities Agency (IEUA) necessary to support Property development.

OWNER shall design, construct, and complete all in tract improvements including but not limited to, sewer, water, recycled water, storm drain, fiber, and street improvements necessary to serve the Property.

**EXHIBIT "F"**  
**TO DEVELOPMENT AGREEMENT**

**Depiction of Infrastructure Improvements**

[SEE ATTACHMENT]



- LEGEND**
- WATER
  - SEWER
  - STORM DRAIN
  - RECLAIMED WATER
  - EXISTING FIBER OPTICS
  - FIBER OPTICS
- NOTE**
- PROJECT HAS NEARBY OVERHEAD WIRING TO BE CONSIDERED FOR THE DESIGN AND PHASE IN THE STREET.

**OWNER**

ONTARIO SCHWEPP HOLDINGS, LLC  
300 EAST KASBER BOULEVARD  
SUITE 140  
ANN ARBOR, MI 48106  
CONTACT: JASON LEE



**EXHIBIT F  
INFRASTRUCTURE IMPROVEMENTS**

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

**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

ONTARIO MUNICIPAL UTILITIES COMPANY

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

# CITY OF ONTARIO

Agenda Report  
November 17, 2020

## SECTION: PUBLIC HEARINGS

Department: Planning  
Prepared By: Lorena Mejia  
Staff Member Presenting:  
Scott Murphy, AICP, Executive Community  
Development Director  
Approved By: 

Submitted To: Council/OHA  
Approved: \_\_\_\_\_  
Continued To: \_\_\_\_\_  
Denied: \_\_\_\_\_  
Item No: 11

**SUBJECT: A PUBLIC HEARING TO CONSIDER: [1] A GENERAL PLAN AMENDMENT (FILE NO. PGPA19-007) TO MODIFY THE POLICY PLAN EXHIBIT LU-01, LAND USE PLAN, CHANGING THE LAND USE DESIGNATION ON 41.35 ACRES OF LAND FROM MIXED USE (HAMNER/SR-60 MIXED USE DISTRICT) TO 7.6 ACRES OF GENERAL COMMERCIAL AND 33.75 ACRES OF INDUSTRIAL DESIGNATED LAND, AND MODIFY POLICY PLAN EXHIBIT LU-03, FUTURE BUILDOUT, TO BE CONSISTENT WITH THE PROPOSED LAND USE DESIGNATION CHANGES; [2] A SPECIFIC PLAN AMENDMENT (FILE NO. PSPA19-010) RESCINDING THE TUSCANA VILLAGE SPECIFIC PLAN; AND [3] A ZONE CHANGE (FILE NO. PZC19-002) ON 41.35 ACRES OF LAND, FROM LDR-5 (LOW DENSITY RESIDENTIAL (2.1 TO 5.0 DU/AC)), CC (COMMUNITY COMMERCIAL), AND SP (SPECIFIC PLAN), TO 33.75 ACRES OF IL (LIGHT INDUSTRIAL) AND 7.6 ACRES OF CC (COMMUNITY COMMERCIAL) ZONED LAND. THE PROJECT SITE IS LOCATED AT THE NORTHWEST CORNER OF RIVERSIDE DRIVE AND MILLIKEN AVENUE (APNS: 1083-361-01, 1083-361-04 AND 1083-361-07)**

**RECOMMENDATION:** That the City Council:

- A. Consider and adopt a resolution approving the use of an Addendum to The Ontario Plan Environmental Impact Report (State Clearinghouse No. 2008101140);
- B. Consider and adopt a resolution approving the General Plan Amendment (File No. PGPA19-007), modifying Policy Plan Exhibit LU-01, Land Use Plan, changing the land use designation on 41.35 acres of land from Mixed Use (Hamner/SR-60 Mixed Use District) to 7.6 acres of General Commercial designated land and 33.75 acres of Industrial designated land, and modify Policy Plan Exhibit LU-03, Future Buildout, to be consistent with the proposed land use designation changes; and
- C. Introduce and waive further reading of the ordinance approving a Zone Change (File No. PZC19-002) on 41.35 acres of land, from LDR-5 (Low Density Residential – 2.1 to 5.0 dwelling units per acre), CC (Community Commercial), and SP (Specific Plan), to 33.75 acres of IL (Light Industrial) and 7.6 acres of CC (Community Commercial) zoned land, and rescinding the Tuscana Village Specific Plan.

**THE FOLLOWING COUNCIL GOALS ARE BEING ACHIEVED:**  
**Invest in the Growth and Evolution of the City's Economy**

**Operate in a Businesslike Manner**

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

**Ensure the Development of a Well Planned, Balanced, and Self-Sustaining Community in Ontario Ranch**

**FISCAL IMPACT:** No fiscal impacts are anticipated with the adoption of the General Plan Amendment and Zone Change. The proposed land use designation changes, from Mixed Use to General Commercial and Industrial, provides for a mixture of commercial/retail and industrial uses. Any potential long-term fiscal impact and anticipated expenditures to the City would be offset by development impact fees and property tax revenues from the future development. The Ontario Plan envisioned the Hamner/SR-60 Mixed Use District to be developed with a mixture of residential, retail, and office uses, having a maximum floor area ratio of 1.0, which would be subject to Specific Plan approval to determine appropriate land uses and development standards based on market conditions.

However, for the purposes of evaluating land use impacts, the Environmental Impact Report assigned 41 gross acres to the Hamner/SR-60 Mixed Use District, which includes 33.62 acres of commercial/office designated land, allowing 924,234 square feet of potential commercial/office space (based on a 0.25 retail floor area ratio and 1.5 office floor area ratio) and 7.38 acres of residential designated land, allowing 185 residential units (based on 25 dwelling units per acre). The amendment includes 7.6 gross acres of General Commercial uses, allowing for 99,317 square feet of potential commercial space (based on a 0.30 floor area ratio). The overall potential net loss of 26.62 acres of commercial designated land and loss of 862,917 square feet of commercial space, represents a negligible 2.6 percent decrease in building area over the 32 million square feet of commercial (retail/office) space that is existing and/or planned throughout the City. The addition of 33.4 gross acres of industrial designated land that would result in the net gain of 800,197 square feet of potential industrial space (based on a 0.55 floor area ratio). The net gain of 800,197 square feet of industrial/business park space represents less than 0.4 percent increase of the over 181 million square feet of industrial/business park properties that are existing and planned throughout the City of Ontario.

**BACKGROUND & ANALYSIS:** The Tuscana Village Specific Plan (File No. PSP09-001) and related Mitigated Negative Declaration were approved by the City Council on June 5, 2012. The Tuscana Village Specific Plan established the land use designations, development standards, and design guidelines for the 20-acre Project site. The specific plan allowed for the potential development of 200 residential dwelling units and approximately 871,000 square feet of commercial development. The Applicant has requested that the City rescind the Tuscana Village Specific Plan, eliminate the existing residential land use designation, reduce the amount of commercial designated property, and incorporate an industrial land use designation to facilitate the construction of the proposed industrial and commercial developments, described below.

In 2010, The Ontario Plan was adopted, which set forth the land use pattern for the City to achieve its Vision. With the adoption of The Ontario Plan, a Mixed Use land use designation was assigned to the Project site. To date, the applicant has submitted eight applications to facilitate the construction of an industrial and commercial development project, which included a General Plan Amendment (File No. PGPA19-007), a Specific Plan Amendment (File No. PSPA19-010) to rescind of the Tuscana Village Specific Plan, a Zone Change (File No. PZC19-002), a Tentative Parcel Map (File No. PMTT19-018/TPM 20177) to subdivide 20 acres of land into 7 parcels, three Development Plans (File Nos. PDEV19-059, PDEV20-012, PDEV20-013) and a Conditional Use Permit (File No. PCUP20-009) to establish alcoholic beverage sales for off-premises consumption, limited to beer and wine (Type 20

ABC license) in conjunction with a convenience store (7-Eleven). The three development plans will facilitate the construction of (File No. PDEV19-059) 3 industrial buildings totaling 295,991 square feet on approximately 13 acres of land, (File No. PDEV20-012) a 3,062 square foot convenience store (7-Eleven) with fuel sales and an ancillary drive-thru car wash, and (File No. PDEV20-013) a 2,490 square foot commercial building for a fast food restaurant (Starbucks) with a drive-thru facility on 1.18 acres of land.

**GENERAL PLAN AMENDMENT:** The proposed General Plan Amendment will revise Policy Plan Exhibit LU-01, Land Use Plan, changing the land use designation on 41 acres of land from Mixed-Use to 7.6 acres of General Commercial and 33.4 acres of Industrial designated land, as shown in Exhibit A: General Plan Amendment Map, attached. The General Plan Amendment will also modify Policy Plan Exhibit LU-03, Future Buildout Table, to be consistent with the proposed land use designation changes.

- Commercial Land Uses – The proposed General Plan Amendment land use designation change would eliminate 41 acres of Mixed-Use designated land, including 924,234 square feet of potential commercial/office space (based on a 0.25 retail floor area ratio and 1.5 office floor area ratio). The amendment includes 7.6 gross acres of General Commercial designated land, allowing for 99,317 square feet of potential commercial space (based on a 0.30 floor area ratio). The overall potential net loss of 26.62 acres of commercial land and 862,917 square feet of commercial space, represents a negligible 2.6 percent decrease in building area over the 32 million square feet of commercial (retail\office) space that is existing and/or planned throughout the City.
- Industrial/Business Park Land Uses – The proposed General Plan Amendment includes the addition of 33.4 gross acres of Industrial designated land and 800,197 square feet of potential industrial space (based on a 0.55 floor area ratio). The net gain of industrial space represents a negligible 0.4 percent increase in building area over the 181 million square feet of industrial/business park space that is existing and/or planned throughout the City.
- Residential Land Uses – The proposed General Plan Amendment includes the elimination of approximately 7.3 acres of land allocated for 185 residential units at 25 dwelling units per acre. Senate Bill 330, the Housing Accountability Act (Government Code Section 65589.5 et seq.), was passed by the California Legislature, signed by the Governor, and became effective on January 1, 2020. The bill prohibits changing the general plan land use designation, specific plan land use designation, or zoning of residential parcels to a less intense residential land use or to a nonresidential land use unless the project proposing to eliminate any residential land uses can replace those units and demonstrate a “no net loss” of residential capacity. To address the removal of 185 low-moderate residential units, and demonstrate a “no net loss” and Project compliance with Senate Bill 330, on December 17, 2019, the City Council approved an Amendment to the Meredith International Centre Specific Plan (File No. PSPA19-002) to establish a Mixed Use Overlay district on 22.39 acres of land within a portion of the Planning Area 2 (Urban Commercial) land use district, located at the southeast corner of Vineyard Avenue and Inland Empire Boulevard. The Specific Plan Amendment provided for an additional 925 residential units at a density of 41 dwelling units per acre, which resulted in a surplus of residential units within the City. The loss of 185 units under the current Policy Plan designation will be directly offset by the addition of 925 units, resulting in a no net loss of residential units and compliance with Senate Bill 330.

**ZONE CHANGE/SPECIFIC PLAN AMENDMENT:** The proposed Zone Change (File No. PZC19-002) will modify the zoning designations on 41.35 net acres of land from LDR-5 (Low Density



Residential – 2.1 to 5.0 dwelling units per acre), CC (Community Commercial), and SP (Specific Plan), to 33.75 net acres of IL (Light Industrial) and 7.6 acres of CC (Community Commercial) zoned land. The 7.6 acres of CC (Community Commercial) zoned land will be located along Milliken Avenue, at the northeast corner of the Project site. The 33.75 net acres of IL (Light Industrial) zoned land occupies the majority of the project site to the north, south, and west, as shown in Exhibit B: Zone Change, attached. The proposed buildings are envisioned to allow for warehousing or light manufacturing uses. Heavy manufacturing uses will not be allowed.

The Tuscana Village Specific Plan (File No. PSP09-001) occupies the southern portion of the overall Project site, encompassing 20 acres of land. The proposed Specific Plan Amendment will rescind the existing Tuscana Village Specific Plan, which will result in the elimination of residential land uses, reduce the amount of commercially designated land from 12.1 acres to 5 acres (Community Commercial), and incorporate 15 acres of Light Industrial land uses.

**COMMUNITY MEETING:** The Planning Department conducted a virtual community meeting via Zoom on September 10, 2020, to discuss the proposed subject applications. Eleven members of the community logged into the Zoom meeting and 6 residents provided comments/questions during the meeting. Additionally, the Planning Department received two emails in opposition to the proposed Project. Concerns raised by the community are listed below.

- The lack of viable/substantial commercial shopping centers (grocery stores and full-service restaurants) in the immediate area. In addition, the reduction of commercial land areas will result in substandard commercial uses, such as gas stations, convenience stores and fast-food restaurants. *Residents commented that the retail viability studies focus on short term conditions instead of long-term neighborhood serving commercial. The applicant provided a retail market study (see Exhibit C: Retail Market Study, attached) prepared by The Concord Group (dated December 19, 2019). The Market Study focused on achievable rental rates based on current and historical retail trends. The study looked at land uses, number of households, traffic within a one, three, and five-mile radius from the Project site, which concluded that retail demand was not sufficient and could not be supported at the Project site, due to lack of demand and an oversupply of retail space. Supported uses included a gas station and fast-food restaurants, due to traffic counts associated with the 60 freeway on/off ramps located north of the Project site.*
- Opposition to the General Plan and Specific Plan Amendments that would allow the construction of large industrial buildings adjacent to the Creekside community. Residents want to preserve the existing General Plan land use designation of Mixed-use and the Tuscana Village Specific Plan to remain in place. *In response to community comments, the buildings have been designed to have an office-like appearance and the western building elevation has been enhanced to provide an attractive view from the adjacent residential development. Large plants/trees will be used along the western property line to create a more visually appealing view from the residential community. The landscape planter along the western property line is approximately 7 feet wide. Additional landscape planters are provided directly adjacent to Building 3, approximately 6 to 12 feet wide.*
- Overall issues related to noise, air quality, and truck traffic near existing residential neighborhoods and schools. *In response to community comments/concerns, the related Development Plan (File No, PDEV19-059) has been designed to minimize noise impacts on the residents. The truck yard for Building 3 has been oriented away from the western property line and faces east. This design feature, in conjunction with the 270-foot wide SCE utility corridor that separates the proposed Project from residential properties to the west, will substantially*

*diminish any noise impacts to the adjacent residential community. A noise study was completed by Urban Crossroads (October 2020) that analyzed operational noise impact increases along the eastern property line of the Creekside residential community. Urban Crossroads measured existing noise levels on October 10, 2019 and modeled the increased noise that will be generated by the proposed operations at the property. The study concluded that the operation of a typical warehouse distribution center would be up to 39 dBA less than the City Standards (65 dBA daytime and 45 dBA nighttime). Furthermore, the placement of the buildings will assist in the reduction of traffic noise that currently exist from Milliken Avenue and help reduce wind and dust impacts on the existing residential community, from seasonal Santa Ana winds.*

- *Inquiries were expressed regarding the proposed infrastructure, street improvements, bike lanes, and any proposed pedestrian connections to the San Antonio Winery and Juanchos restaurant. The street frontages along Riverside Drive and Milliken Avenue will be improved (curb, gutter, and sidewalk). The Project will also provide new public and private streets with full right-of-way improvements, including sidewalk/pedestrian paths to the nearby San Antonio Winery and Juanchos restaurant.*
- *Comments were expressed about vagrancy and illegal dumping in the immediate area, as well as existing truck traffic on Riverside Drive and overnight truck parking on Mill Creek Avenue. The street frontages along Riverside Drive and Milliken Avenue will be improved (curb, gutter, and sidewalk) and no parking will be allowed. The development of the Project site will create more eyes on the street and discourage illegal uses. Also, on-site security patrol will be provided for the property and assist in preventing any undesirable use of the property at night or weekends, alerting law enforcement of any illegal activity occurring off-site and within the immediate area.*

**HEALTH RISK ASSESSMENT:** The Applicant was required to prepare a Health Risk Assessment to determine whether the proposed Project would pose a health risk to the existing residential land uses. The Health Risk Assessment prepared by Urban Crossroads (dated October 5, 2020) analyzed the cancer burden estimates, as well as the Project operational toxic air contaminants impact from diesel particulate matter emissions. Both analyses concluded that these factors would be less than significant; therefore, no mitigation is required for the Project beyond that which was previously analyzed in The Ontario Plan Environmental Impact Report (State Clearinghouse No. 2008101140), as certified by the Ontario City Council on January 27, 2010. Furthermore, the Project was designed to minimize any potential impacts to existing residential development. Additionally, the Project has been conditioned to have trucks travel east, towards Milliken Avenue, when exiting the site. Trucks will not be allowed to utilize Riverside Drive west of the Project site to access or exit the Project site.

**PLANNING COMMISSION REVIEW:** On October 27, 2020, the Planning Commission conducted a duly noticed public hearing on the subject applications and voted unanimously (5-0) to recommend that the City Council approve the Addendum to The Ontario Plan Environmental Impact Report, in conjunction with the General Plan Amendment, Zone Change, and Specific Plan Amendment.

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

Senate Bill 330, the Housing Accountability Act (Government Code Section 65589.5 et seq.), was passed by the California Legislature, signed by the Governor and became effective on January 1, 2020. The bill is the result of the Legislature’s extensive findings regarding the California “housing supply crisis” with “housing demand far outstripping supply.” Senate Bill 330 amended Government Code Sections 65589.5, adding Government Code Sections 65940, 65943 and 65950, and repealed and readopted Sections 65906.5, 65913.10 and 65941.1. To summarize, no city may disapprove a residential housing development project for low- to moderate-income households (as defined therein) unless it makes a finding that the housing development project “would have a specific, adverse impact upon the public health or safety, and there is no feasible method to satisfactorily mitigate or avoid the specific adverse impact without rendering the development unaffordable to low- and moderate-income households...” such as where the housing development project is proposed on land “which does not have adequate water or wastewater facilities to serve the project.” (Government Code Section 65589.5(d)(2), (4)).

In addition, the legislation adds Chapter 12 to Division 1 of Title 7 of the Government Code (Section 66300 et seq.) that applies to “affected cities,” which are identified as cities in urbanized areas as determined by the most recent census. In accordance with Senate Bill 330, the Department of Community Development and Housing has prepared a list of affected cities and has determined that Ontario is an “affected city.” Therefore, pursuant to Government Code Section 66300(b)(1)(A) and (b):

*(b) (1) Notwithstanding any other law except as provided in subdivision (i), with respect to land where housing is an allowable use, an affected city shall not enact a development policy, standard, or condition that would have any of the following effects:*

*(A) Changing the general plan land use designation, specific plan land use designation, or zoning of a parcel or parcels of property to a less intensive use or reducing the intensity of land use within an existing general plan land use designation, specific plan land use designation, or zoning district below what was allowed under the land use designation and zoning ordinances of the affected county or affected city, as applicable, as in effect on January 1, 2018...*

except when approved by the Department of Housing and Community Development or when the following exception is set out in Government Code Section 66300(i)(1) applies:

*(i) (1) This section does not prohibit an affected county or an affected city from changing a land use designation or zoning ordinance to a less intensive use if the city or county concurrently changes the development standards, policies, and conditions applicable to other parcels within the jurisdiction to ensure that there is no net loss in residential capacity.*

As previously described, a General Plan Amendment is proposed to change the site’s land use designations from Mixed-Use to General Commercial and Industrial. The General Plan Amendment would eliminate the Mixed Use allowable housing, thereby theoretically eliminating 185 units (as allocated by Policy Plan Exhibit LU-03, Build-out Table, which had an assumed density of 25 dwelling units per acre).

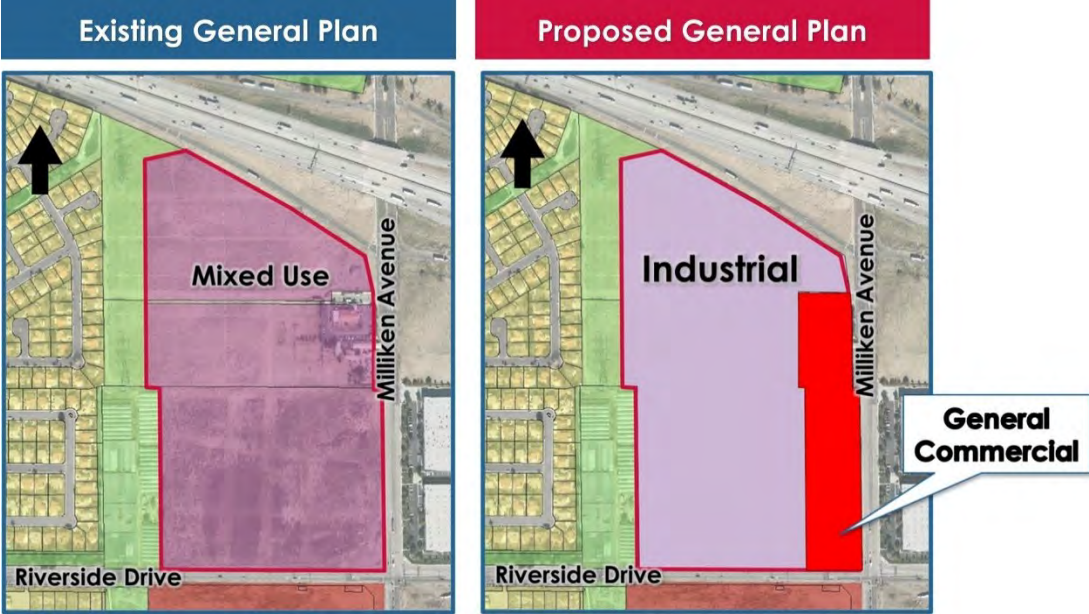
To address the removal of 185 low-moderate residential units at a density of 25 dwelling units per acre, and demonstrate a “no net loss” and Project compliance with the provisions of Government Code Section 66300(i)(1), on December 17, 2019, the City Council approved an Amendment to the Meredith International Centre Specific Plan (File No. PSPA19-002) to establish a Mixed-Use Overlay district on 22.39 acres of land within a portion of Planning Area 2 (Urban Commercial) land use district, located at

the southeast corner of Vineyard Avenue and Inland Empire Boulevard. The Meredith International Centre Specific Plan is listed in the Available Land Inventory contained in Table A-3 (Available Land by Planning Area) of the Housing Element Technical Report Appendix. The Specific Plan allowed 800 dwelling units at a density of 37 dwelling units per acre, which have all been constructed. The Specific Plan amendment approved in December 2019 provides for an additional 925 residential units at a density of 41 dwelling units per acre, which will add 925 units to the Available Land Inventory Table. The Addendum to the Meredith International Centre Specific Plan Amendment Environmental Impact Report (State Clearinghouse No. 2014051020), approved on December 17, 2019, supports that change in the Specific Plan, which results in a surplus of 925 residential units within the City. On March 30, 2020, the City Council approved a General Plan Amendment, modifying Policy Plan Exhibit LU-03, Future Buildout, to reflect the addition of 925 residential units, assumed density, and intensity for the Mixed-Use/Meredith section of the Future Buildout table. The loss of 185 units under the current Policy Plan designation will be directly offset by the addition of 925 units, resulting in a no net loss of residential units.

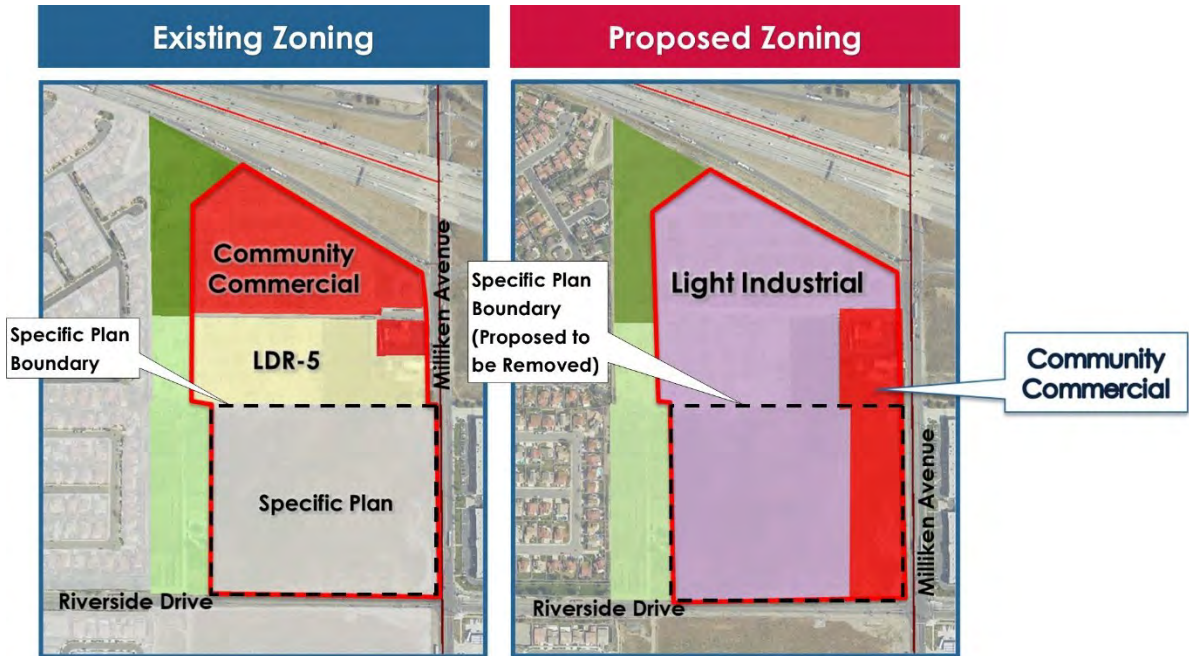
**AIRPORT LAND USE COMPATABILITY PLAN COMPLIANCE:** The California State Aeronautics Act (Public Utilities Code Section 21670 et seq.) requires that an Airport Land Use Compatibility Plan be prepared for all public use airports in the State; and requires that local land use plans and individual development 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, establishing the Airport Influence Area for Ontario International Airport, which encompasses lands within parts of San Bernardino, Riverside, and Los Angeles Counties, and limits future land uses and development within the Airport Influence Area, as they relate to noise, safety, airspace protection, and overflight impacts of current and future airport activity. The proposed project is located within the Airport Influence Area of Ontario International Airport and was evaluated and found to be consistent with the policies and criteria of the Ontario International Airport Land Use Compatibility Plan. Any special conditions of approval associated with uses in close proximity to the airport are included in the conditions of approval imposed on the related development applications.

**ENVIRONMENTAL REVIEW:** Staff has prepared an Addendum to The Ontario Plan Environmental Impact Report (State Clearinghouse No. 2008101140), which was certified by the City Council on January 27, 2010, in conjunction with File No. PGPA06-001. This application introduces no new significant environmental impacts and all previously adopted mitigation measures are a condition of project approval.

**EXHIBIT A – GENERAL PLAN AMENDMENT MAP**



**EXHIBIT B: ZONE CHANGE**





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**Memorandum**

**To:** Orbis Real Estate  
**From:** THE CONCORD GROUP  
**Re:** Retail Land Use Evaluation for a Mixed-Use Site in Ontario, California

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**Summary of Conclusions**

Orbis Real Estate. ("The Owner") has been evaluating their proposed mixed-use parcel at the southern portion of Ontario along Hamner Avenue and East Riverside Drive ("the Site", "the Property"). Currently the site hosts is vacant but is planned for industrial and retail uses. The Concord Group ("TCG") was approached to evaluate the retail portion of the parcel which accounts for about 4.5 acres. The following conclusion was derived from the statistical analysis of current and historical retail trends in a 1, 3, and 5 mile radius from the site.

Current households in the three mile radius total 14,940, which only accounts for 28.6% of total 5 Mile Radius Households (52,928). In both the 3 and 5 mile radius these households are spending less than half of total retail sales in the market. This retail inflow indicates a large portion of sales are from outside the traditional retail market areas and is most likely due to the highly traversed freeways (60 and 15 freeways). The total retail sales in the three mile radius totaled \$1.7 billion in 2017 with 570 million coming from existing households, a share of 34% (76% sales inflow). The inflow of retail sales is not projected to slow over the next 15 years and households in the three mile are expected to grow by 8.2% (1,437) annually over the next five years (Exhibit 2).

With the strong retail inflow and projected local retail increase over the next five years. TCG evaluated the historical retail square footage to identify any trends with sales and growth. Annual new retail developments have totaled approximately 100,000 square feet or retail in the 5 mile radius over the last five years, with 43% (42,700) captured within the 3 mile retail trade area ("RTA"). The higher share of retail development is along the same trend of the increased household share of the 3 mile relative to the 5 mile RTA. In addition, Occupancies have remained high with only 3-4% vacancy rates over the last five years as opposed to the 7-8% around prior cycle (2007-2009). This is partially due to the increase in retail expenditures and partially due to the lower retail lease rates. Lease rates were around \$28-29 annually in the 5 mile RTA from 2001-2009 and are currently \$21 (an average loss of 1.2% over the last ten years). Retail rates in the last five years, have increased in the 3 mile radius by 8.8% (\$1.31) in the 3 mile RTA. These factors indicate the great recession had a strong negative impact on rents and



lease-rates but that the market has remain stable for the last five years with growth projections remaining constant (Exhibit 3).

More locally the 60 and 15 freeways average around 150,000 daily vehicle uses around the 60-15 intersection, which is proximate to the Subject Site. A sizeable portion of residual traffic emanates from these freeways along Hamner Avenue with an average of 14,000 daily vehicles. These traffic users are mostly attempting to bypass any traffic delays from the freeways that typically congest around peak pre- and post-work hours. Recently some new developments have been constructed to utilize the strong traffic counts with nearby gas station and convenience store (Extra mile) developed in the last year. Additionally, further south along Hamner Ave (outside of Ontario City limits) there is a small retail node planned including some strip retail and a Starbucks. Fast food and Gas station retail highly benefit from the high traffic counts, proximity to transit oriented freeways, and visibility.

All of the above mentioned supports the development of retail, but TCG also evaluated the likelihood of supportable rents for development. To achieve rent recommendations TCG identified 11 comparable with regards to their location, size, tenant, rents, and vintage. The annual average rents of the comparables was around \$19.88 per square foot (\$1.65 monthly). Rents indicated are of Triple Net Rents. Two key comparables were isolated that were similar in location and tenant type to the Subject Site. These comparable are Galaxy Hamburgers (fast food) and Shell (gas station). The two key comps are equidistant to a 60 freeway on/off ramp, leasable square footage, and daily traffic counts (14,657) but with older vintage being built in 1994 and 1992 respectfully. Galaxy Hamburgers achieves annual per square foot rents of \$23.50 (\$1.96 monthly) and the Shell gas station achieves rents of \$21.50 (\$1.79 monthly).

Utilizing the comparable rents, and historical trends TCG concluded the likelihood of fast food to achieve annual per square foot rents of \$24.60 (\$2.05) and \$22.80 (\$1.90 monthly) for a Gas Station. These recommendations are higher than most existing retail in the 3 mile RTA due to the vintage, and proximity to both 60/15 freeways (Exhibits 7 & 8). The land value portion of the parcel is valued at \$1.5 million in 2019 dollars and based off TCG recommended revenue and expected costs. The following pages include all the specifics of TCG's.

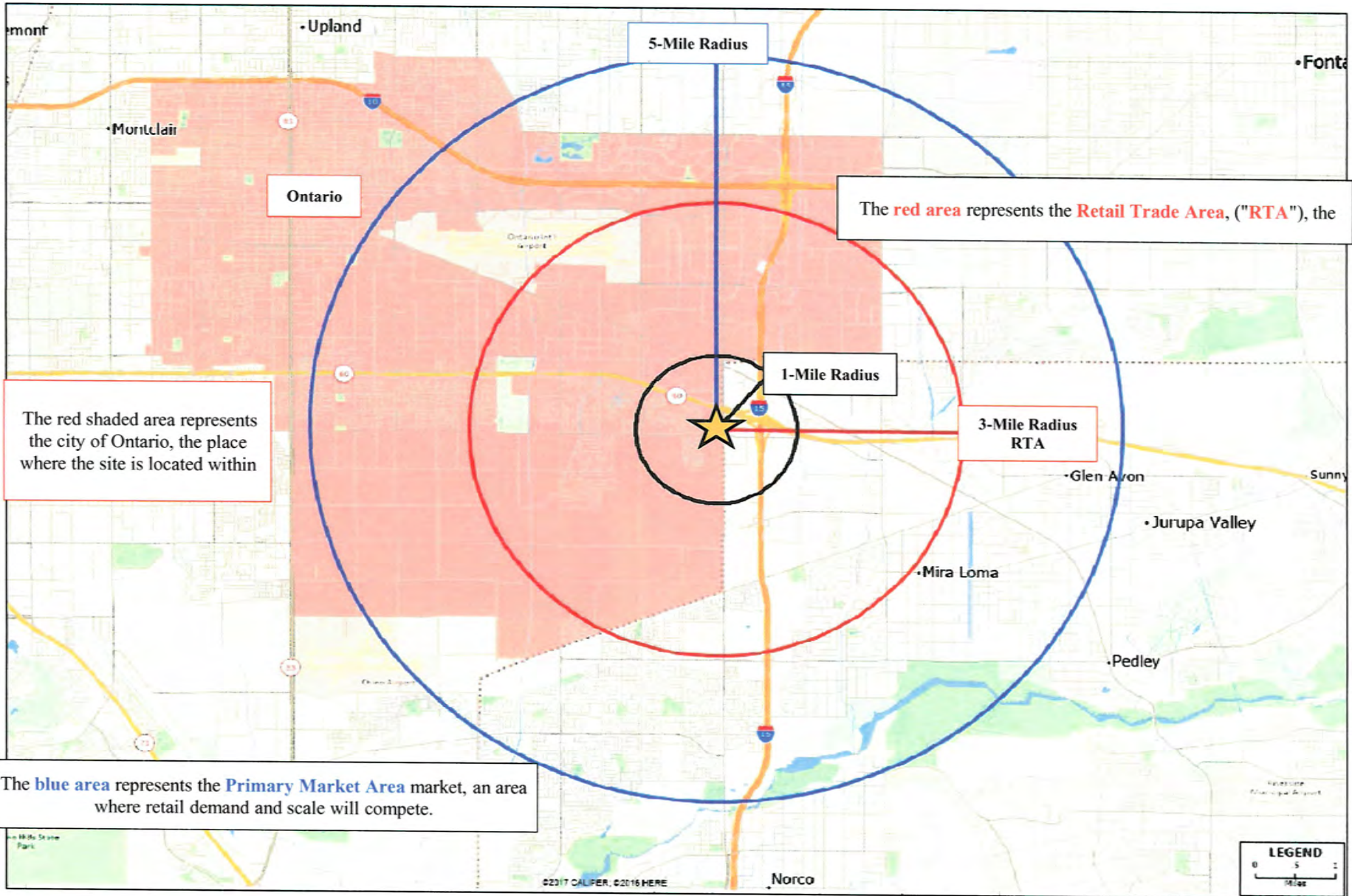
\* \* \*

The above assignment was completed by Zachary Melodia under the guidance of John Shumway, Principle. Should you have any questions regarding the data or conclusions generated by the analysis, feel free to contact us at (949) 717-6450.

## RETAIL OPPORTUNITY ANALYSIS

1. Retail Regional Location
2. Retail Submarket Performance
3. Retail Macroeconomic Trends
4. Traffic Counts
5. Selected Competitive Retail Inventory Space
6. Key Comps
7. Recommendations
8. Rent to Size
9. Land Residual

EXHIBIT 1  
 RETAIL REGIONAL LOCATION  
 RETAIL TRADE AREA  
 DECEMBER 2019



The red shaded area represents the city of Ontario, the place where the site is located within

The red area represents the Retail Trade Area, ("RTA"), the

The blue area represents the Primary Market Area market, an area where retail demand and scale will compete.

EXHIBIT 2

RETAIL MARKET PERFORMANCE  
PRIMARY MARKET AREA  
DECEMBER 2019

Geography	Retail Trade Area		Primary Market Area
	1-Mile Radius	3-Mile Radius	5-Mile Radius
<b>General Information</b>			
Population ('18)	5,496	50,282	192,815
Households ('18)	1,809	14,940	52,298
% PMA	3.5%	28.6%	100.0%
Ann. Growth (#, '18-'23)	150	1,437	3,775
% PMA	4.0%	38.1%	100.0%
2018 over 100	679	5,768	19,634
2023 over 100	885	7,503	24,789
Over \$100K HH Growth	206	1,735	5,155
Under \$100K HH Growth	(56)	(298)	(1,380)
Ann. Growth (% , '18-'23)	7.2%	8.2%	6.4%
Household Size ('18)	3.04	3.37	3.69
<b>Consumer Spending Patterns ('17)</b>			
Consumer Expenditures	\$66,882,518	\$570,083,973	\$2,147,734,321
Per Capita	\$12,169,308	\$11,337,735	\$11,138,834
Retail Sales	\$84,953,234	\$1,704,456,931	\$4,704,627,899
Per Occupied Square Foot	\$3,244,843	\$799,155	\$522,026
Spending Inflow/ (Leakage)	\$18,070,716	\$1,134,372,958	\$2,556,893,578
<b>Retail Market Performance (3Q19)</b>			
Rentable Building Area (SF)	28,381	2,211,913	9,320,509
Annual Deliveries (SF)			
Last Four Quarters	0	42,606	120,947
Five-Year Average	2,204	42,725	103,358
Ten-Year Average	1,102	21,693	65,887
Annual Net Absorption (SF)			
Last Four Quarters	2,800	24,123	34,655
Five-Year Average	1,864	39,299	120,089
Ten-Year Average	1,032	28,032	90,323
Vacancy Rate	7.8%	3.6%	3.3%
Vacant Stock (SF)	2,200	79,089	308,253
Asking Rent (NNN)	\$42.36	\$21.74	\$21.34
Rent Growth			
Last Four Quarters	(0.0%)	7.3%	(3.9%)
Five-Year Average	---	8.8%	2.5%
Ten-Year Average	---	0.6%	(1.2%)

Source: ESRI; US Census; CoStar

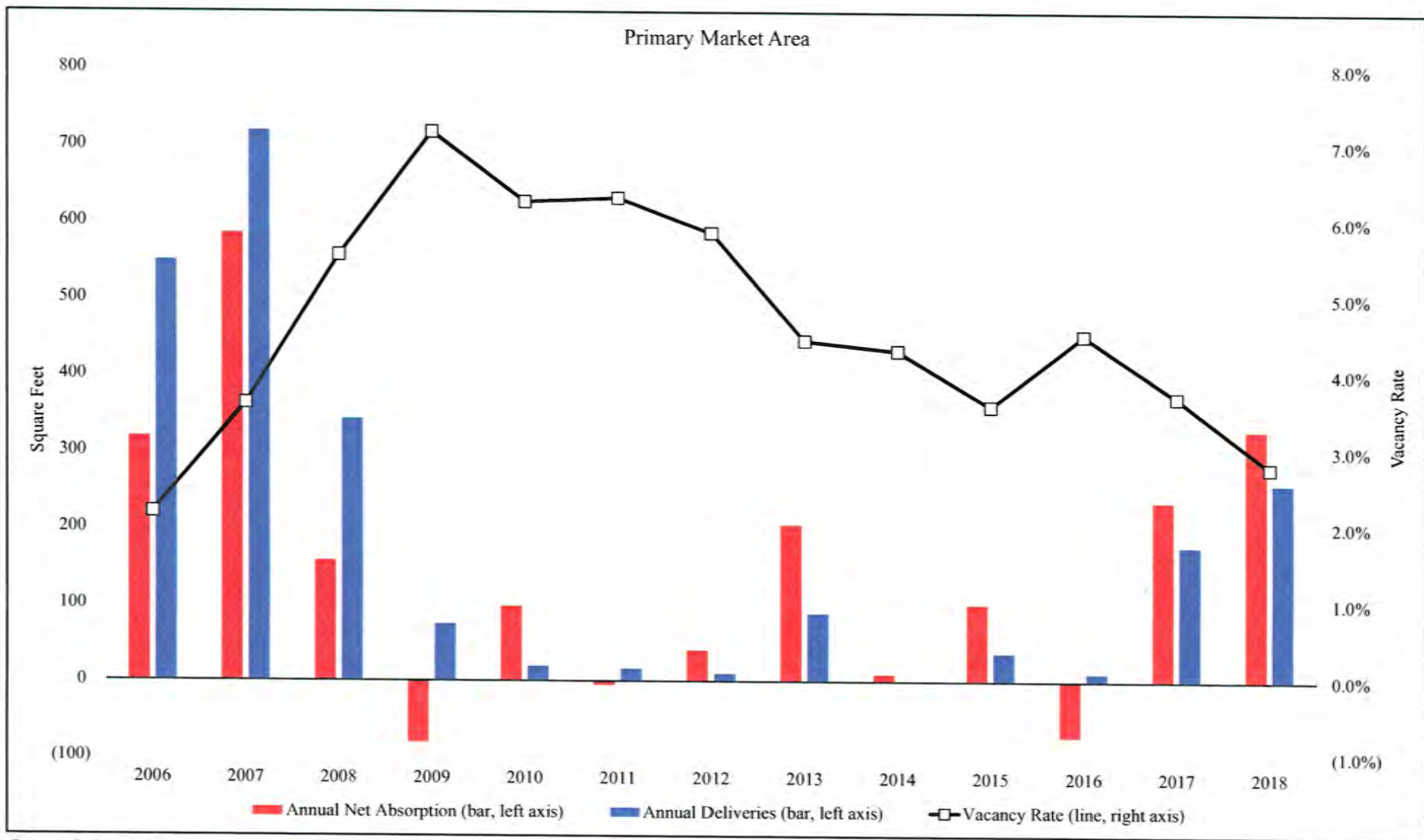
12/18/19

EXHIBIT 3

RETAIL MACROECONOMIC TRENDS  
PRIMARY MARKET AREA  
2006 THROUGH THIRD QUARTER 2019

The 5-Mile Radius ("PMA") has seen considerable growth over the last ten years with vacancies remaining around 3-4% over the last five years.

Market Factor	2006	2007	2008	2009	2010	2011	2012	2013	2014	2015	2016	2017	2018	3Q19	Annual Averages	
															5-Year	10-Year
<i>Primary Market Area</i>																
Rentable Building Area (000 SF)	7,601	8,320	8,657	8,720	8,739	8,739	8,740	8,825	8,823	8,860	8,871	9,040	9,293	9,321	9,007	8,885
Annual Deliveries (000 SF)	549.7	719.3	342.3	74.6	19.6	16.6	10.5	89.2	0.0	37.4	11.2	176.1	257.9	120.9	103.4	65.9
Annual Net Absorption (000 SF)	319.1	585.1	157.0	(81.3)	98.0	(5.1)	40.6	204.7	9.8	100.4	(72.6)	235.0	328.6	34.7	120.1	90.3
Vacancy Rate	2.2%	3.6%	5.6%	7.2%	6.3%	6.3%	5.9%	4.4%	4.3%	3.6%	4.5%	3.7%	2.8%	3.3%	3.6%	4.7%
Vacant Stock (000 SF)	168	302	482	626	547	552	512	392	381	318	401	335	259	308	327	416



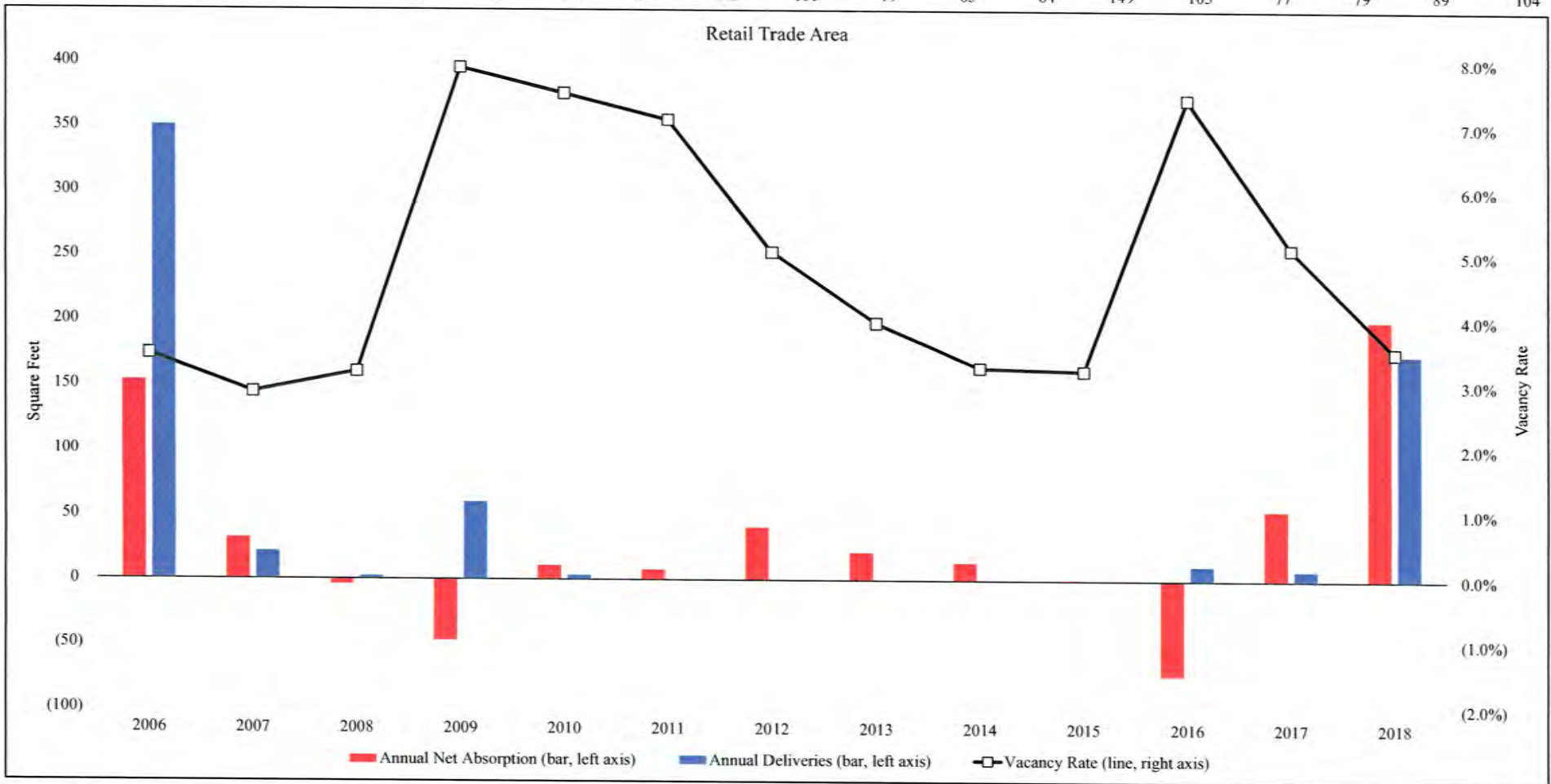
Source: CoStar; TCG

EXHIBIT 3

RETAIL MACROECONOMIC TRENDS  
RETAIL TRADE AREA  
2006 THROUGH THIRD QUARTER 2019

Within the 3-Mile Radius ("RTA") is where the majority of the 5 mile radius new retail has been added over the last five years representing 65% of the net absorption within the RTA.

Market Factor	2006	2007	2008	2009	2010	2011	2012	2013	2014	2015	2016	2017	2018	3Q19	Annual Averages	
															5-Year	10-Year
<i>Retail Trade Area</i>																
Rentable Building Area (000 SF)	1,923	1,945	1,947	1,995	1,998	1,998	1,998	1,998	1,998	1,998	2,010	2,017	2,192	2,212	2,061	2,030
Annual Deliveries (000 SF)	350.1	21.6	2.3	60.0	3.3	0.0	0.0	0.0	0.0	0.0	11.2	7.8	174.5	42.6	42.7	21.7
% PMA	63.7%	3.0%	0.7%	80.4%	16.9%	0.0%	0.0%	0.0%	---	0.0%	100.0%	4.4%	67.7%	35.2%	43.0%	30.5%
Annual Net Absorption (000 SF)	153.5	32.3	(4.0)	(47.7)	10.9	8.1	41.0	21.8	13.8	1.0	(73.7)	54.1	200.6	24.1	39.3	28.0
% PMA	48.1%	5.5%	-2.5%	58.7%	11.2%	-159.8%	101.0%	10.7%	141.4%	1.0%	101.5%	23.0%	61.1%	69.6%	65.6%	38.1%
Vacancy Rate	3.5%	2.9%	3.2%	7.9%	7.5%	7.1%	5.1%	4.0%	3.3%	3.2%	7.4%	5.1%	3.5%	3.6%	4.3%	5.1%
Vacant Stock (000 SF)	67	56	62	158	150	142	101	79	65	64	149	103	77	79	89	104



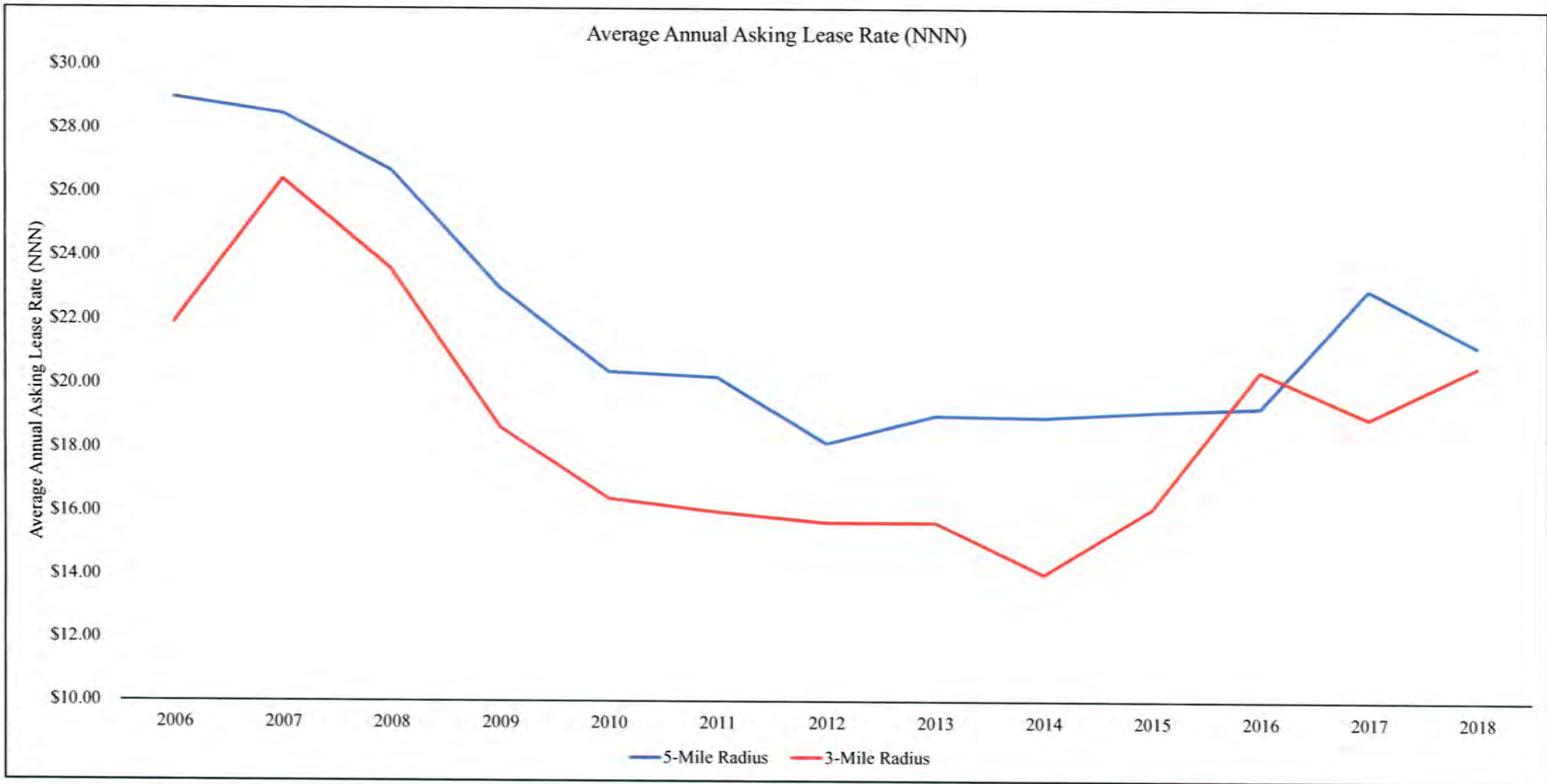
Source: CoStar, TCG  
12/18/19

EXHIBIT 3

RETAIL MACROECONOMIC TRENDS  
PRIMARY MARKET AREA  
2006 THROUGH THIRD QUARTER 2019

Average retail rents have increased by 8.8% over the last five years.

Market Factor	2006	2007	2008	2009	2010	2011	2012	2013	2014	2015	2016	2017	2018	Annual Averages	
														5-Year	10-Year
<i>Average Annual Asking Lease Rate (NNN)</i>															
Primary Market Area	\$28.99	\$28.48	\$26.69	\$22.99	\$20.39	\$20.21	\$18.13	\$19.01	\$18.96	\$19.14	\$19.27	\$22.98	\$21.22		
Annual Growth	---	(1.8%)	(6.3%)	(13.9%)	(11.3%)	(0.9%)	(10.3%)	4.9%	(0.3%)	0.9%	0.7%	19.3%	(7.7%)	2.5%	(1.2%)
Retail Trade Area	\$21.93	\$26.41	\$23.59	\$18.64	\$16.41	\$15.99	\$15.66	\$15.66	\$14.03	\$16.10	\$20.43	\$18.95	\$20.58		
Annual Growth	---	20.4%	(10.7%)	(21.0%)	(12.0%)	(2.6%)	(2.1%)	0.0%	(10.4%)	14.8%	26.9%	(7.2%)	8.6%	8.8%	0.6%



Source: CoStar; TCG

EXHIBIT 4

TRAFFIC COUNTS  
SURROUNDING AREAS  
DECEMBER 2019

Daily traffic counts along the nearby freeway entrances/exits exceed over 150,000 cars per day. Current road traffic counts peaking around 14,500 daily cars along the portion of Hamner Avenue adjacent to the Subject Site. With quick access to and from the 15/60 freeways along with high daily traffic counts. Retail targeted towards commuters would be desirable for this subject site location.



Source: TCG, Costar



EXHIBIT 5

SELECT RETAIL INVENTORY SPACE - AVAILABLE  
3-MILE RADIUS  
DECEMBER 2019

Available

Map Key	Building Name	Address	City	Year		Elev.	Subtype	Typical Floor/unit	RBA			Ann. Lease Rate	
				Built	Reno.				Total	Avail.	Occ.	Avg.	Type
<b>Retail Trade Area</b>													
1	Extra mile	3880 Hamner Ave	Eastvale	2017	---	1	Freestanding	3,233	3,233	0	100.0%	\$41.00	NNN
2	Pacific Plaza	2598 S Archibald Ave	Ontario	1989	---	1	Freestanding	5,911	18,094	5,911	67.3%	\$24.00	NNN
3	4030 Etiwanda Ave	4030 Etiwanda Ave	Jurupa Valley	2019	---	1	Freestanding	1,036	6,120	6,120	0.0%	\$24.00	NNN
4	Chevron Gas Station	3884 S Hamner Ave	Eastvale	2017	---	1	Freestanding	5,575	5,575	0	100.0%	\$20.50	NNN
5	Vineyard Village	2409 S Vineyard Ave	Ontario	1988	---	1	Storefront	4,810	45,120	11,670	74.1%	\$20.33	NNN
6	Vineyard Shopping Center	1919 E Riverside Dr	Ontario	1981	---	1	Restaurant	7,000	7,000	0	100.0%	\$13.77	NNN*
7	Archibald Ranch Town Center	3055 S Archibald Ave	Ontario	1991	---	1	Storefront	2,633	10,530	2,633	75.0%	\$13.80	NNN
8	Vineyard Shopping Center	1919 E Riverside Dr	Ontario	1981	---	1	Restaurant	7,000	7,000	0	100.0%	\$13.77	NNN*
9	Vineyard Shopping Center	1919 E Riverside Dr	Ontario	1981	---	1	Restaurant	7,000	7,000	0	100.0%	\$13.77	NNN*
<b>Totals/Averages:</b>								<b>4,911</b>	<b>109,672</b>	<b>26,334</b>	<b>76.0%</b>	<b>\$19.88</b>	<b>NNN</b>



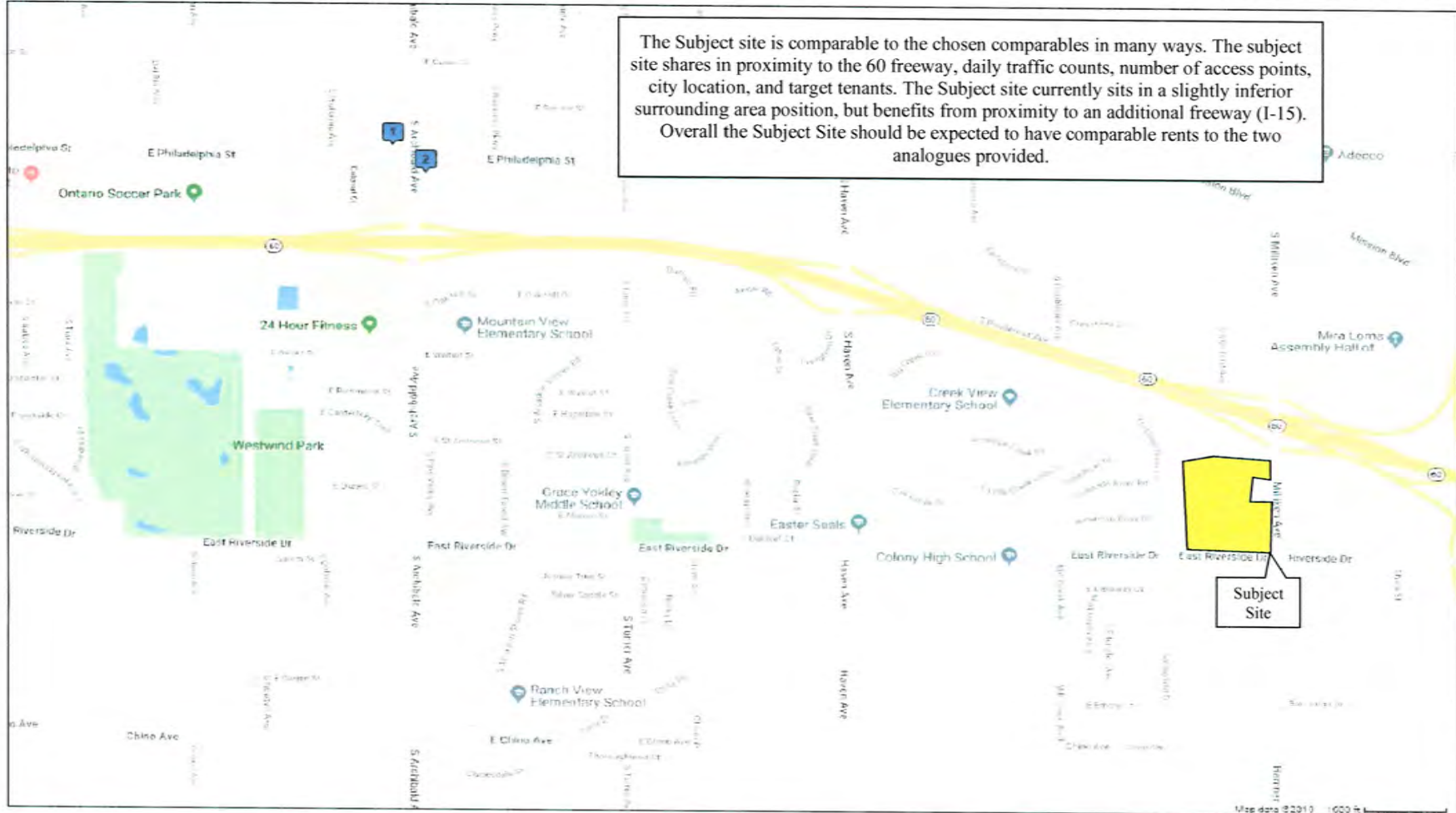
Source: CoStar; TCG  
12/18/19

\* Adjusted from Modified gross, Modified Gross considered approximately 85% of Triple Net rent

EXHIBIT 6

KEY COMPARABLES  
ONTARIO, CALIFORNIA  
DECEMBER 2019

Key	Tenant	Tenant Type	Address	Building Square Feet	Annual Rent (\$)	Rent Type	Year Built	Number of Access Points	Surrounding Daily Traffic Counts	Distance to Freeway	Surrounding Uses
1	Galaxy Hamburgers	Fast Food	2150 S Archibald Ave	3,823	\$23.50	NNN	1994	1	14,657	0.1 Miles (60 Freeway)	Retail & Residential
2	Shell	Gas Station	2215 S Archibald Ave	1,800	\$21.50	NNN	1992	2	14,657	0.1 Miles (60 Freeway)	Residential & Park



**EXHIBIT 7**

**RETAIL RECOMMENDATIONS  
TOSCANA SQUARE, ONTARIO CALIFORNIA  
DECEMBER 2019**

**Project Summary**

- Location:**
- Located proximate the southwestern connection of the 60 and 15 freeways
  - Alongside the northwestern Hamner Avenue and East Riverside Drive
- Description:**
- 4.5 Acres apart of a 33.57 acre parcel (predominately industrial w/ office)
  - Retail preliminarily planned for a gas station, potential space for a 7/11 type and a separate building targeting around 17,200 square feet with a drive through

**Market Opportunity**

- Marketability:**
- **Visibility** - Retail frontage benefits greatly from freeway visibility from the 15 and 60 freeways
  - **Proximity to Freeways** - High traffic counts warrant desirable location for gas and fast casual foods targeting commuters

**TCG Recommendations**

- Key Comparable**
- Key comparable Galaxy Hamburgers and Shell in Ontario (Exhibit 6), both are in comparable locations, tenants and proximity to freeways with a slightly better surroundings but older vintage and only close to one freeway (60)
- Target Tenants:**
- Target tenants include gas station, fast casual food, and a convenience store

Positioning Rationale:	Triple Net Rate (\$/SF)			
	TCG - Fast Food		TCG - Gas Station	
	/month	/year	/month	/year
	\$2.05	\$24.60	\$1.90	\$22.80

- Slight premium to key comparable due to additional freeway proximity
- Tenant improvement rates will vary depending on type of tenant, sales volume, and the nature of negotiation; however, based on broker interviews, TCG concluded that \$50-\$70/SF in tenant improvement is the average for top-of-market rates
- Tenant improvement rates provide an opportunity to raise tenant lease rates and vice-versa

**EXHIBIT 8**  
**RENT TO SIZE - RETAIL**  
**RETAIL TRADE AREA**  
**DECEMBER 2019**

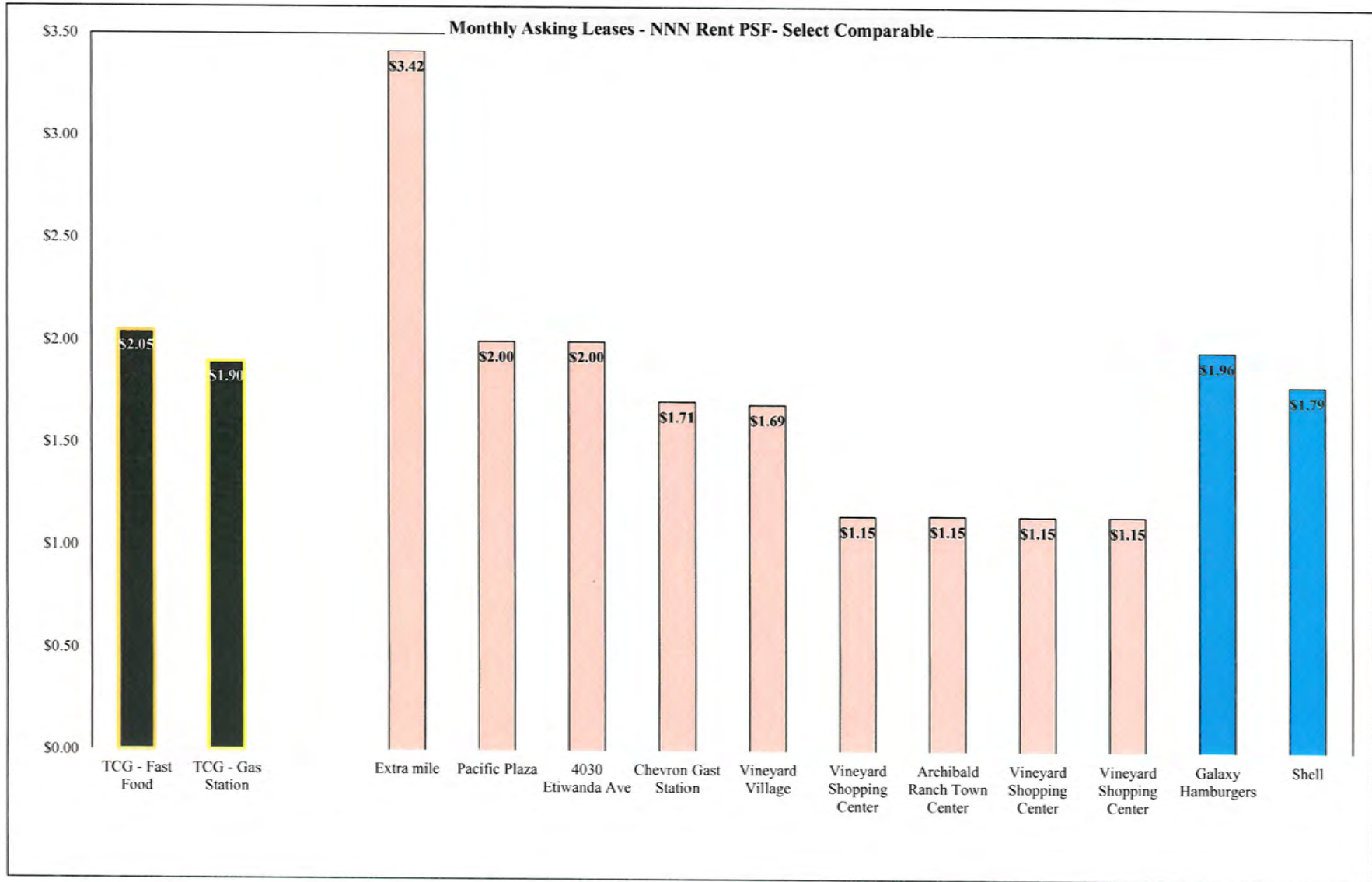


EXHIBIT 9

LAND RESIDUAL MODEL - RETAIL  
TOSCANA SQUARE, ONTARIO CALIFORNIA  
DECEMBER 2019

Product Types	Driver	Note	TCG - Gas Station	TCG - Fast Food
Estimated Square Footage			3,062	17,200
Lease Type:			NNN	NNN
<b>Capitalized Value</b>			<b>Per GLA SF</b>	<b>Per GLA SF</b>
Revenues				
Average Monthly Lease Rate			\$1.90	\$2.05
Average Annual Lease Rate			\$23	\$25
Vacancy Reserve	5.0%	of Average Annual Rent	\$1.14	\$1.23
Effective Annual Rent			\$22	\$23
Operating Expenses	5.0%	of Effective Annual Rent	\$1.08	\$1.17
Net Operating Income			\$21	\$22
Capitalized Value	6.00%	Cap Rate	\$343	\$370
<b>Construction Costs</b>				
Construction Costs				
Hard Costs		per Square Foot	\$100	\$100
Soft Costs	15.0%	of Hard Costs	\$15	\$15
Tenant Improvements			\$50	\$75
Total Construction Costs			\$165	\$190
Financing Costs				
Loan Draw (Excluding Land)	75.0%	of Construction Costs	\$124	\$143
Loan Fee	1.5%	of Loan Draw	\$2	\$2
Interest Rate	6.5%	Annual Interest Rate	\$8	\$9
Hold Period	2.0	Years (Average)		
Total Financing Costs			\$10	\$11
Development Budget				
Development Budget	8.00%	Return on Cost Target	\$257	\$278
<b>Residual Land Value</b>				
Land Value				
Per Net Square Foot			\$82	\$76
Estimated Total			\$252,040.88 +	\$1,309,243 = <b>\$1,561,283</b>

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

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF ONTARIO, CALIFORNIA, APPROVING AN ADDENDUM TO THE ONTARIO PLAN CERTIFIED ENVIRONMENTAL IMPACT REPORT (STATE CLEARINGHOUSE NO. 2008101140), PURSUANT TO THE REQUIREMENTS OF THE CALIFORNIA ENVIRONMENTAL QUALITY ACT, AS AMENDED, FOR FILE NO. PGPA06-001.

WHEREAS, TOSCANA SQUARE, LLC (hereinafter referred to as "Applicant") has filed an Application for the approval of a General Plan Amendment, Specific Plan Amendment, Zone Change, a Tentative Parcel Map, three Development Plans and a Conditional Use Permit, File Nos. PGPA19-007, PSPA19-010, PZC19-002, PMTT19-018, PDEV19-059, PDEV20-012, PDEV20-013 and PCUP20-009, which consists of: [1] A General Plan Amendment (File No. PGPA19-007) to modify the Policy Plan (General Plan) Land Use Plan (Exhibit LU-01) component of The Ontario Plan, changing the land use designation on 41.35 acres of land from Mixed Use (Hamner/SR-60 Area 12) to 7.6 acres of General Commercial and 33.75 acres of Industrial, and modify the Future Buildout Table (Exhibit LU-03) to be consistent with the proposed land use designation changes; [2] A Specific Plan Amendment (File No. PSPA19-010) rescinding the Tuscana Village Specific Plan; [3] A Zone Change (File No. PZC19-002) on 41.35 acres of land from LDR-5 (Low Density Residential – 2.1 to 5.0 du/ac), CC (Community Commercial), and SP (Specific Plan), to 33.75 acres of IL (Light Industrial) and 7.6 acres of CC (Community Commercial); [4] A Tentative Parcel Map (File No. PMTT19-018/TPM 20177) to subdivide approximately 20 acres of land into 7 parcels; [5] A Development Plan (File No. PDEV19-059) to construct 3 industrial buildings totaling 295,991 square feet on 13.19 acres of land; [6] A Development Plan (File No. PDEV20-012) to construct a 3,062 square foot convenience store (7-Eleven) with fuel sales and ancillary drive-thru car wash, in conjunction with a Conditional Use Permit (File No. PCUP20-009) to establish alcoholic beverage sales for off-premises consumption, limited to beer and wine (Type 20 ABC license), on 1.27 acres of land; [7] A Development Plan (File No. PDEV20-013) to construct a 2,490 square foot commercial building for a fast food restaurant (Starbucks) with a drive-thru facility on 1.18 acres of land. The Project site is located on the northwest corner of Riverside Drive and Milliken Avenue, in the City of Ontario, California (hereinafter referred to as "Application" or "Project")

WHEREAS, The Ontario Plan (File No. PGPA06-001) Environmental Impact Report (State Clearinghouse No. 2008101140) was certified on January 27, 2010 (hereinafter referred to as "Certified EIR"), in which development and use of the Project site was discussed; and

WHEREAS, the Planning Director of the City of Ontario has prepared and approved for attachment to the certified Environmental Impact Report, an Addendum to the Certified EIR (hereinafter referred to as "EIR Addendum") in accordance with the requirements of the California Environmental Quality Act of 1970, together with State and local guidelines implementing said Act, all as amended to date (collectively referred to as "CEQA"); and

WHEREAS, the EIR Addendum concluded that implementation of the Project could result in a number of significant effects on the environment that were previously analyzed in the Certified EIR, and that the Certified EIR identified mitigation measures that would reduce each of those significant effects to a less-than-significant level; and

WHEREAS, pursuant to State CEQA Guidelines Section 15164(a), a lead agency shall prepare an addendum to a previously certified EIR if some changes or additions are necessary to a project, but the preparation of a subsequent or supplemental EIR is not required; and

WHEREAS, the City determined that none of the conditions requiring preparation of a subsequent or supplemental EIR would occur from the Project, and that preparation of an Addendum to the Certified EIR was appropriate; and

WHEREAS, the City of Ontario is the lead agency on the Project, and the City Council is the decision-making authority for the requested approval to construct and otherwise undertake the Project; and

WHEREAS, on October 27, 2020, the Planning Commission conducted a public hearing and approved Resolution No. PC20-079, recommending the City Council approve a Resolution adopting an Addendum to The Ontario Plan Environmental Impact Report (State Clearinghouse No. 2008101140), certified by the City Council on January 27, 2010, in conjunction with File No. PGPA06-001. The Addendum finds that the proposed project introduces no new significant environmental impacts. Furthermore, all mitigation measures previously adopted with the Certified Environmental Impact Report are incorporated into the Project by reference; and

WHEREAS, the City Council has reviewed and considered the EIR Addendum for the Project, has concluded that none of the conditions requiring preparation of a subsequent or supplemental EIR have occurred, and intends to take actions on the Project in compliance with CEQA and state and local guidelines implementing CEQA; and

WHEREAS, the EIR Addendum for the Project are on file in the Planning Department, located at 303 East B Street, Ontario, CA 91764, are available for inspection by any interested person at that location and are, by this reference, incorporated into this Resolution as if fully set forth herein; and

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

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

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

(1) The environmental impacts of this project were reviewed in conjunction with an Addendum to The Ontario Plan Environmental Impact Report Environmental Impact Report (State Clearinghouse No. 2008101140), certified by the Ontario City Council on January 27, 2010, in conjunction with File No. PGPA06-001.

(2) The EIR Addendum and administrative record have been completed in compliance with CEQA, the State CEQA Guidelines, and the City of Ontario Local CEQA Guidelines; and

(3) The City's "Guidelines for the Implementation of the California Environmental Quality Act (CEQA)" provide for the use of a single environmental assessment in situations where the impacts of subsequent projects are adequately analyzed. This Application introduces no new significant environmental impacts.

(4) All previously adopted mitigation measures shall be a condition of project approval, as they are applicable to the Project, and are incorporated herein by this reference.

(5) The EIR Addendum contains a complete and accurate reporting of the environmental impacts associated with the Project, and reflects the independent judgment of the City Council; and

(6) There is no substantial evidence in the administrative record supporting a fair argument that the project may result in significant environmental impacts; and

**SECTION 2. *Additional Environmental Review Not Required.*** Based on the Addendum, all related 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 Environmental Impact Report is not required for the Project, as the Project:

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

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

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

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



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

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

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

**SECTION 3. City Council Action.** Based upon the findings and conclusions set forth in Sections 1 and 2, above, the City Council hereby finds that based upon the entire record of proceedings before it, and all information received, that there is no substantial evidence that the Project will constitute substantial changes to the Certified EIR, and does hereby approve the EIR Addendum, attached hereto as "Attachment A," and incorporated herein by this reference.

**SECTION 4. Indemnification.** The Applicant shall agree to defend, indemnify and hold harmless, the City of Ontario or its agents, officers, and employees from any claim, action or proceeding against the City of Ontario or its agents, officers or employees to attack, set aside, void, or annul this approval. The City of Ontario shall promptly notify the applicant of any such claim, action, or proceeding, and the City of Ontario shall cooperate fully in the defense.

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

PASSED, APPROVED, AND ADOPTED this 17<sup>th</sup> day of November 2020.

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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 AND KRIEGER LLP  
CITY ATTORNEY

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

I, SHEILA MAUTZ, City Clerk of the City of Ontario, DO HEREBY CERTIFY that foregoing Resolution No. 2020- was duly passed and adopted by the City Council of the City of Ontario at their regular meeting held November 17, 2020, 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. 2020- duly passed and adopted by the Ontario City Council at their regular meeting held November 17, 2020.

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

(SEAL)

**ATTACHMENT A:**

**Addendum to The Ontario Plan  
Environmental Impact Report**

*(Addendum to follow this page)*

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

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF ONTARIO, CALIFORNIA, APPROVING FILE NO. PGPA19-007, AN AMENDMENT TO THE LAND USE ELEMENT OF THE POLICY PLAN (GENERAL PLAN), REVISING EXHIBIT LU-01, OFFICIAL LAND USE PLAN, AND EXHIBIT LU-03, FUTURE BUILDOUT, AFFECTING PROPERTY LOCATED AT THE NORTHWEST CORNER OF RIVERSIDE DRIVE AND MILLIKEN AVENUE, FROM 41.35 ACRES OF MIXED USE TO 7.6 ACRES OF GENERAL COMMERCIAL AND 33.75 ACRES OF INDUSTRIAL DESIGNATED LAND, AND MAKING FINDINGS IN SUPPORT THEREOF - APN: 1083-361-01, 1083-361-04 & 1083-361-07. (SEE EXHIBITS A AND B) (PART OF CYCLE 4 FOR THE 2020 CALENDAR YEAR)

WHEREAS, TOSCANA SQUARE, LLC has filed an Application for the approval of a General Plan Amendment, File No. PGPA19-007, as described in the title of this Resolution (hereinafter referred to as "Application" or "Project"); and

WHEREAS, the City of Ontario adopted the Policy Plan (General Plan) as part of The Ontario Plan in January 2010. Since the adoption of The Ontario Plan, the City has evaluated Exhibits LU-01: Official Land Use Plan and LU-03: Future Buildout further and is proposing modifications; and

WHEREAS, the proposed changes to Exhibit LU-01 Official Land Use Plan include changes to land use designations of certain properties shown on Exhibit A to accommodate a combination of industrial and commercial Development Plans (File Nos. PDEV19-059, PDEV20-012, PDEV20-013) and a Tentative Parcel Map (File No. PMTT19-018); and

WHEREAS, Policy Plan Exhibit LU-03 (Future Buildout) specifies the expected buildout for the City of Ontario, incorporating the adopted land use designations. The proposed changes to Exhibit LU-01 (Official Land Use Plan) will require that Exhibit LU-03 (Future Buildout) is modified to be consistent with Exhibit LU-01 (Official Land Use Plan), as depicted on Exhibit B, attached; and

WHEREAS, the City of Ontario conducted a virtual community meeting via Zoom, on September 10, 2020 to discuss the proposed subject applications. Eleven members of community logged into the Zoom meeting and 6 residents provided comments/questions during the meeting; and

WHEREAS, on October 27, 2020, the Planning Commission conducted a public hearing and approved Resolution No. PC20-079, recommending the City Council approve a Resolution adopting an Addendum to The Ontario Plan Environmental Impact Report (State Clearinghouse No. 2008101140), certified by the City Council on January 27, 2010, in conjunction with File No. PGPA06-001. The Addendum finds that the proposed project introduces no new significant environmental impacts. Furthermore, all mitigation measures previously adopted with the Certified Environmental Impact Report are incorporated into the Project by reference; and

WHEREAS, the Application is a project pursuant to the California Environmental Quality Act (Public Resources Code Section 21000 et seq.) ("CEQA") and an initial study has been prepared to determine possible environmental impacts; and

WHEREAS, Ontario Development Code Table 2.02-1 (Review Matrix) grants the City Council the responsibility and authority to review and act on the subject Application; and

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

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

WHEREAS, on October 27, 2020, the Planning Commission of the City of Ontario conducted a hearing to consider the Initial Study/Addendum to The Ontario Plan Certified EIR and the Project, and concluded said hearing on that date, voting to issue Resolution No. PC20-080, recommending the City Council approve the Application; and

WHEREAS, as the first action on the Project, on November 17, 2020, the City Council approved a Resolution adopting an Initial Study/Addendum to The Ontario Plan Environmental Impact Report (State Clearinghouse No. 2008101140) adopted by City Council on January 27, 2010 for File No. PGPA06-001. The Addendum finds that the proposed project introduces no new significant environmental impacts, and all previously adopted mitigation measures were incorporated into the Project by reference; and

WHEREAS, on November 17, 2020 the City Council of the City of Ontario conducted a hearing to consider the Project, and concluded said hearing on that date; and

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

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

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

(1) The environmental impacts of this project were reviewed in conjunction with an Addendum to The Ontario Plan Environmental Impact Report — State Clearinghouse No. 2008101140 (“Certified EIR”), which was certified by the Ontario City Council on January 27, 2010, in conjunction with File No. PGPA06-001.

(2) The Addendum and administrative record have been completed in compliance with CEQA, the State CEQA Guidelines, and the City of Ontario Local CEQA Guidelines; and

(3) The City's "Guidelines for the Implementation of the California Environmental Quality Act (CEQA)" provide for the use of a single environmental assessment in situations where the impacts of subsequent projects are adequately analyzed. This Application introduces no new significant environmental impacts; and

(4) The Addendum contains a complete and accurate reporting of the environmental impacts associated with the Project, and reflects the independent judgment of the City Council; and

(5) There is no substantial evidence in the administrative record supporting a fair argument that the project may result in significant environmental impacts; and

(6) The proposed project will introduce no new significant environmental impacts beyond those previously analyzed in the “Certified EIR”, and all mitigation measures previously adopted by the “Certified EIR”, are incorporated herein by this reference.

**SECTION 2. *Additional Environmental Review Not Required.*** Based on the Addendum, all related 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 environmental impact report is not required for the Project, as the Project:

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

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

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

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

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

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

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

**SECTION 3. *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 decision-making body for the Project, the City Council has reviewed and considered the facts and information contained in the Application and supporting documentation against the 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.

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

(1) The proposed General Plan Amendment is consistent with the goals and policies of The Ontario Plan as follows:

- a. **CE1-1 - Jobs-Housing Balance.** We pursue improvement to the Inland Empire’s balance between jobs and housing by promoting job growth that reduces the regional economy’s reliance on out-commuting.

Compliance: The proposed land use designation changes from 41.35 acres of land from Mixed Use (Hamner/SR-60 Area 12) to 7.6 acres of General Commercial and 33.75 acres of Industrial, will facilitate the construction of



the proposed industrial and commercial development plans. The proposed industrial development will assist towards promoting local/regional job growth and furthering the goal of jobs and housing balance within the Inland Empire.

- b. **CE1-2 - Jobs and Workforce Skills.** We use our economic development resources to: 1) attract jobs suited for the skills and education of current and future City residents; 2) work with regional partners to provide opportunities for the labor force to improve its skills and education; and 3) attract businesses that increase Ontario's stake and participation in growing sectors of the regional and global economy.

Compliance: The proposed land use designation changes from 41.35 acres of land from Mixed Use (Hamner/SR-60 Area 12) to 7.6 acres of General Commercial and 33.75 acres of Industrial, will facilitate the construction of the proposed industrial and commercial development plans. The proposed industrial/commercial development will assist towards creating jobs suited for the skills and education of current and future City residents and provide jobs in growing sectors of the regional and global economy.

- c. **CE1-11 - Socioeconomic Trends.** We continuously monitor, plan for, and respond to changing socioeconomic trends.

Compliance: The proposed land use designation changes from 41.35 acres of land from Mixed Use (Hamner/SR-60 Area 12) to 7.6 acres of General Commercial and 33.75 acres of Industrial, will facilitate the construction of the proposed industrial and commercial development plans. The project site was initially intended to be developed with a combination of residential and commercial land uses. In responding to changing socioeconomic trends, larger industrial/business park complexes have grown in demand and commercial/retail space demand has declined. The proposed General Plan Amendment is in response to changing socioeconomic trends which has shifted to on-line shopping resulting in greater demands for warehouse industrial uses.

(2) The proposed General Plan Amendment would not be detrimental to the public interest, health, safety, convenience, or general welfare of the City;

(3) The Land Use Element is a mandatory element allowed four general plan amendments per calendar year and this general plan amendment is the fourth amendment to the Land Use Element of the 2020 calendar year consistent with Government Code Section 65358;

(4) 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 DAB finds that based on the facts and information contained in the Application and supporting documentation, at the time of Project implementation, the Project is consistent with the Housing Element of the Policy Plan (General Plan) component of The Ontario

Plan, as the Project site is not one of the properties in the Available Land Inventory contained in Table A-3 (Available Land by Planning Area) of the Housing Element Technical Report Appendix.

Senate Bill 330 – Housing Accountability Act (Government Code Section 65589.5 et seq.) was passed by the California Legislature, signed by the Governor and became effective on January 1, 2020. The bill is the result of the Legislature’s extensive findings regarding the California “housing supply crisis” with “housing demand far outstripping supply.”

Senate Bill 330 amends Government Code Sections 65589.5, adds Govt. Code Sections 65940, 65943 and 65950, and repeals and readopts Sections 65906.5, 65913.10 and 65941.1. To summarize, no city may disapprove a residential housing development project for low- to moderate-income households (as defined therein) unless it makes a finding that the housing development project “would have a specific, adverse impact upon the public health or safety, and there is no feasible method to satisfactorily mitigate or avoid the specific adverse impact without rendering the development unaffordable to low- and moderate-income households...” such as where the housing development project is proposed on land “which does not have adequate water or wastewater facilities to serve the project.” (Government Code Section 65589.5(d)(2), (4)).

In addition, the legislation adds Chapter 12 to Division 1 of Title 7 of the Government Code (Section 66300 et seq.) that applies to “affected cities,” which are identified as cities in urbanized areas as determined by the most recent census. In accordance with SB 330, the Department of Community Development and Housing (“HCD”) has prepared a list of affected cities and has determined that Ontario is an “affected city.” Therefore, pursuant to Government Code section 66300(b)(1)(A) and (b):

*(b) (1) Notwithstanding any other law except as provided in subdivision (i), with respect to land where housing is an allowable use, an affected city shall not enact a development policy, standard, or condition that would have any of the following effects:*

*(A) Changing the general plan land use designation, specific plan land use designation, or zoning of a parcel or parcels of property to a less intensive use or reducing the intensity of land use within an existing general plan land use designation, specific plan land use designation, or zoning district below what was allowed under the land use designation and zoning ordinances of the affected county or affected city, as applicable, as in effect on January 1, 2018...”*

except when approved by HCD or when the following exception is set out in Govt. Code § 66300(i)(1) applies:

*(i) (1) This section does not prohibit an affected county or an affected city from changing a land use designation or zoning ordinance to a less intensive use if the city or county concurrently changes the development standards, policies, and conditions applicable to other parcels within the jurisdiction to ensure that there is no net loss in residential capacity.*

As discussed in the Background section of the staff report, a General Plan Amendment (GPA) is proposed to change the site's land use designations from Mixed-Use to General Commercial and Industrial. The GPA would eliminate the Mixed-Use allowable housing, thereby theoretically eliminating 185 units (as allocated by TOP LU-03 Build-out Table, which had an assumed density of up to 25 dwelling units per acre).

To address the removal of 185 low-moderate residential units at a density of 25 dwelling units per acre and demonstrate a "no net loss," and demonstrate the Project is in compliance with provisions of Section 66300(i)(1) have been met and there is no net loss of residential capacity. On December 17, 2019, the City Council approved an Amendment to the Meredith International Centre Specific Plan (File No. PSPA19-002) to establish a Mixed-Use Overlay district on 22.39 acres of land within a portion of Planning Area 2 (Urban Commercial) land use district, located at the southeast corner of Vineyard Avenue and Inland Empire Boulevard. The Meredith International Centre Specific Plan is listed in the Available Land Inventory contained in Table A-3 (Available Land by Planning Area) of the Housing Element Technical Report Appendix. The Specific Plan allowed 800 dwelling units at a density of 37 dwelling units per acre, which have all been constructed. The Specific Plan amendment approved in December 2019 provides for an additional 925 residential units at a density of 41 dwelling units per acre, which will add 925 units to the Available Land Inventory Table. The Addendum to the Meredith International Centre Specific Plan Amendment Environmental Impact Report (SCH# 2014051020), approved on December 17, 2019, supports that change in the Specific Plan, which results in a surplus of 925 residential units within the City. On March 30, 2020, the City Council approved a General Plan Amendment to TOP Policy Plan Future Buildout Table (Exhibit LU-03) to reflect the addition of 925 residential units, assumed density and intensity for the Mixed-Use/Meredith section of the Buildout Table. The loss of 185 units under the current Policy Plan designation will be directly offset by the addition of 925 units, resulting in a no net loss of residential units.

(5) During the amendment of the general plan, opportunities for the involvement of citizens, California Native American Indian tribes (Government Code Section 65352.3.), public agencies, public utility companies, and civic, education, and other community groups, through public hearings or other means were implemented consistent with Government Code Section 65351.

**SECTION 5. *City Council Action.*** Based upon the findings and conclusions set forth in Sections 1 through 4, above, the City Council hereby APPROVES the proposed General Plan Amendment, as depicted in Exhibit 1 (Policy Plan Land Use Plan (Exhibit LU-01) Revision) and Exhibit 2 (Future Buildout (Exhibit LU-03) Revision) of this Resolution.

**SECTION 6. *Indemnification.*** The Applicant shall agree to defend, indemnify and hold harmless, the City of Ontario or its agents, officers, and employees from any claim, action or proceeding against the City of Ontario or its agents, officers or employees to attack, set aside, void, or annul this approval. The City of Ontario shall promptly notify the applicant of any such claim, action, or proceeding, and the City of Ontario shall cooperate fully in the defense.

**SECTION 7. Custodian of Records.** The documents and materials that constitute the record of proceedings on which these findings have been based are located at the City of Ontario City Hall, 303 East "B" Street, Ontario, California 91764. The custodian for these records is the City Clerk of the City of Ontario.

**SECTION 8. Certification to Adoption.** The City Clerk shall certify to the adoption of the Resolution.

PASSED, APPROVED, AND ADOPTED this 17<sup>th</sup> day of November 2020.

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PAUL S. LEON, MAYOR

ATTEST:

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SHEILA MAUTZ, CITY CLERK

APPROVED AS TO FORM:

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BEST BEST & KRIEGER LLP  
CITY ATTORNEY

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

I, SHEILA MAUTZ, City Clerk of the City of Ontario, DO HEREBY CERTIFY that foregoing Resolution No. 2020-\_\_\_\_\_ was duly passed and adopted by the City Council of the City of Ontario at their regular meeting held November 17, 2020, by the following roll call vote, to wit:

AYES: COUNCIL MEMBERS:

NOES: COUNCIL MEMBERS:

ABSENT: COUNCIL MEMBERS:

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


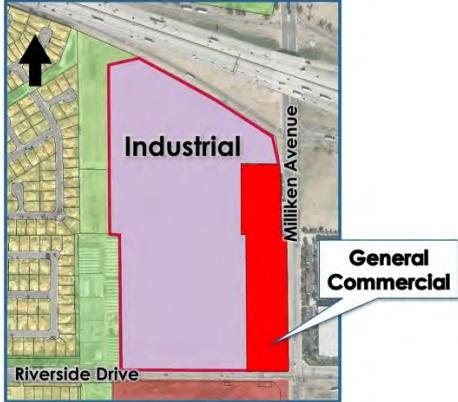
(SEAL)

The foregoing is the original of Resolution No. 2020-\_\_\_\_\_ duly passed and adopted by the Ontario City Council at their regular meeting held November 17, 2020.

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

(SEAL)

**Exhibit A: Policy Plan Land Use Plan (Exhibit LU-01) Revision**

Existing Policy Plan Land Use	Assessor Parcel Number(s) Involved	Proposed Policy Plan Land Use
 <p align="center">Mixed-Use (41.35 acres)</p>	<p align="center">1083-361-01, 1083-361-04 and 1083-361-07</p> <p align="center"><i>(1 of 3 properties)</i></p>	 <p align="center">General Commercial (7.6 acres) Industrial (33.75 acres)</p>

## EXHIBIT B: Future Buildout (Exhibit LU-03) Revision



### LU-03 Future Buildout<sup>1</sup>



Land Use	Acres <sup>2</sup>	Assumed Density/Intensity <sup>3</sup>	Units	Population <sup>4</sup>	Non-Residential Square Feet	Jobs <sup>5</sup>
<b>Residential</b>						
Rural	529	2.0 du/ac	1,058	4,231		
Low Density <sup>b</sup>	7,231	4.0 du/ac (OMC) 4.5 du/ac (NMC)	30,477	121,816		
Low-Medium Density <sup>c</sup>	992	8.5 du/ac	8,432	33,704		
Medium Density	1,921	18.0 du/ac (OMC) 22.0 du/ac (NMC)	38,724	135,508		
High Density	183	35.0 du/ac	6,415	21,470		
<i>Subtotal</i>	<b>10,857</b>		<b>85,107</b>	<b>316,729</b>		
<b>Mixed Use</b>						
• Downtown	113	<ul style="list-style-type: none"> <li>• 60% of the area at 35 du/ac</li> <li>• 40% of the area at 0.80 FAR for office and retail</li> </ul>	2,365	4,729	1,569,554	2,808
• East Holt Boulevard	57	<ul style="list-style-type: none"> <li>• 25% of the area at 30 du/ac</li> <li>• 50% of the area at 1.0 FAR office</li> <li>• 25% of area at 0.80 FAR retail</li> </ul>	428	856	1,740,483	3,913
• Meredith	93	<ul style="list-style-type: none"> <li>• 47% of the area at 39.46 du/ac</li> <li>• 48% at 0.35 FAR for office and retail uses</li> <li>• 5% at 0.75 FAR for Lodging</li> </ul>	1,725	3,450	832,497	975
• Transit Center	76	<ul style="list-style-type: none"> <li>• 10% of the area at 60 du/ac</li> <li>• 90% of the area at 1.0 FAR office and retail</li> </ul>	457	913	2,983,424	5,337
• Inland Empire Corridor	37	<ul style="list-style-type: none"> <li>• 50% of the area at 20 du/ac</li> <li>• 30% of area at 0.50 FAR office</li> <li>• 20% of area at 0.35 FAR retail</li> </ul>	368	736	352,662	768
• Guasti	77	<ul style="list-style-type: none"> <li>• 20% of the area at 30 du/ac</li> <li>• 30% of area at 1.0 FAR retail</li> <li>• 50% of area at 0.70 FAR office</li> </ul>	465	929	2,192,636	4,103
• Ontario Center	345	<ul style="list-style-type: none"> <li>• 30% of area at 40 du/ac</li> <li>• 50% of area at 1.0 FAR office</li> <li>• 20% of area at 0.50 FAR retail</li> </ul>	4,139	8,278	9,014,306	22,563
• Ontario Mills	240	<ul style="list-style-type: none"> <li>• 5% of area at 40 du/ac</li> <li>• 20% of area at 0.75 FAR office</li> <li>• 75% of area at 0.50 FAR retail</li> </ul>	479	958	5,477,126	7,285
• NMC West/South	315	<ul style="list-style-type: none"> <li>• 30% of area at 35 du/ac</li> <li>• 70% of area at 0.70 FAR office and retail</li> </ul>	3,311	6,621	6,729,889	17,188
• NMC East	264	<ul style="list-style-type: none"> <li>• 30% of area at 25 du/ac</li> <li>• 30% of area at 0.35 FAR for office</li> <li>• 40% of area at 0.30 FAR for retail uses</li> </ul>	1,978	3,956	2,584,524	4,439
• Euclid/Francis	10	<ul style="list-style-type: none"> <li>• 50% of the area at 30 du/ac</li> <li>• 50% of area at 0.8 FAR retail</li> </ul>	156	312	181,210	419
• SR-601 Norman Tuscano Village	41	<ul style="list-style-type: none"> <li>• 18% of the area at 25 du/ac</li> <li>• 57% of the area at 0.25 FAR retail</li> <li>• 25% of the area at 1.5 FAR office</li> </ul>	185	369	924,234	2,098
<i>Subtotal</i>	<del>1,668</del> 1,627		<del>16,954</del> 15,869	<del>32,187</del> 31,738	<del>34,582,545</del> 33,658,311	<del>71,096</del> 69,797

### LU-03 Future Buildout<sup>1</sup>

Land Use	Acres <sup>2</sup>	Assumed Density/Intensity <sup>3</sup>	Units	Population <sup>4</sup>	Non-Residential Square Feet	Jobs <sup>5</sup>
<b>Retail/Service</b>						
Neighborhood Commercial <sup>6</sup>	281	0.30 FAR			3,671,585	8,884
General Commercial	<del>477</del> 484	0.30 FAR			<del>6,229,385</del> 6,328,702	<del>5,787</del> 5,879
Office/Commercial	479	0.75 FAR			15,650,564	34,707
Hospitality	142	1.00 FAR			6,177,679	7,082
<i>Subtotal</i>	<del>1,379</del> 1,386				<del>31,729,213</del> 31,828,530	<del>56,461</del> 56,553
<b>Employment</b>						
Business Park	1,531	0.40 FAR			26,676,301	46,803
Industrial	<del>6,457</del> 6,490	0.55 FAR			<del>154,698,172</del> 155,498,369	<del>135,921</del> 136,624
<i>Subtotal</i>	<del>7,988</del> 8,021				<del>181,374,472</del> 182,174,670	<del>182,724</del> 183,427
<b>Other</b>						
Open Space–Non-Recreation	1,232	Not applicable				
Open Space–Parkland <sup>6</sup>	950	Not applicable				
Open Space–Water	59	Not applicable				
Public Facility	97	Not applicable				
Public School	621	Not applicable				
LA/Ontario International Airport	1,677	Not applicable				
Landfill	137	Not applicable				
Railroad	251	Not applicable				
Roadways	4,871	Not applicable				
<i>Subtotal</i>	<b>9,895</b>					
<i>Total</i>	<b>31,786</b>		<del>101,160</del> 100,976	<del>348,836</del> 348,467	<del>247,686,231</del> 247,661,510	<del>311,080</del> 309,777
<b>Notes</b>						
1 Historically, citywide buildout levels do not achieve the maximum allowable density/intensity on every parcel and are, on average, lower than allowed by the Policy Plan. Accordingly, the buildout projections in this Policy Plan do not assume buildout at the maximum density or intensity and instead are adjusted downward. To view the buildout assumptions, access the Methodology report.						
2 Acres are given as adjusted gross acreages, which do not include the right-of-way for roadways, flood control facilities, or railroads.						
3 Assumed Density/Intensity includes both residential <u>density</u> , expressed as units per acre, and non-residential intensity, expressed as floor area ratio (FAR), which is the amount of building square feet in relation to the size of the lot.						
4 Projections of population by residential designation are based on a <u>persons</u> -per-household factor that varies by housing type. For more information, access the Methodology report.						
5 To view the factors used to generate the number of employees by land use category, access the Methodology report.						
6 Acreages and corresponding buildout estimates for these designations do not reflect underlying land uses within the Business Park, Industrial and Commercial Overlays. Estimates for these areas are included within the corresponding Business Park, Industrial and General Commercial categories.						



ORDINANCE NO.

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF ONTARIO, APPROVING FILE NOS. PZC19-002 AND PSPA19-010, A ZONE CHANGE REQUEST TO CHANGE THE ZONING DESIGNATION ON 41.35 ACRES OF LAND, FROM LDR-5 (LOW DENSITY RESIDENTIAL - 2.1 TO 5.0 DU/AC), CC (COMMUNITY COMMERCIAL), AND SP (SPECIFIC PLAN), TO 33.75 ACRES OF IL (LIGHT INDUSTRIAL) AND 7.6 ACRES OF CC (COMMUNITY COMMERCIAL) ZONED LAND, AND A SPECIFIC PLAN AMENDMENT RESCINDING THE TUSCANA VILLAGE SPECIFIC PLAN, LOCATED AT THE NORTHWEST CORNER OF RIVERSIDE DRIVE AND MILLIKEN AVENUE, AND MAKING FINDINGS IN SUPPORT THEREOF - APNS: 1083-361-01, 1083-361-04 AND 1083-361-07

WHEREAS, TOSCANA SQUARE, LLC. ("Applicant") has filed an Application for the approval of a Zone Change and Specific Plan Amendment, File Nos. PZC19-002 and PSPA19-010, as described in the title of this Ordinance (hereinafter referred to as "Application" or "Project"); and

WHEREAS, the Application applies to 41.35 acres of land located on northwest corner of Riverside Drive and Milliken Avenue, within the proposed IL (Light Industrial) and CC (Community Commercial) zoning districts. The Project site is comprised of three lots, the northern parcel is undeveloped and has been historically used for agricultural purposes (vineyard). The center parcel is developed with a wine shop (San Antonio Winery), restaurant, church, small animal farm and vineyard. The southern parcel is presently vacant; and

WHEREAS, the property to the north of the Project site is the SR-60 Pomona Freeway. The properties to the east are within the City of Eastvale, Industrial Park zoning district, and is developed with Business Park/Industrial land uses. The property to the south is within the Community Commercial land use district of the Edenglen Specific Plan and is presently vacant. The property to the west is within the Utilities Corridor zoning district, and is developed with a nursery and SCE power lines and transmission towers; and

WHEREAS, a General Plan Amendment, Tentative Parcel Map, three Development Plans and a Conditional Use Permit, File Nos. PGPA19-007, PMTT19-018, PDEV19-059, PDEV20-012, PDEV20-013 and PCUP20-009, were filed in conjunction with the proposed Zone Change and Specific Plan Amendment. The six applications consist of: [1] A General Plan Amendment (File No. PGPA19-007) to modify the Policy Plan (General Plan) Land Use Plan (Exhibit LU-01) component of The Ontario Plan, changing the land use designation on 41.35 acres of land from Mixed Use (Hamner/SR-60 Area 12) to 7.6 acres of General Commercial and 33.75 acres of Industrial, and modify

the Future Buildout Table (Exhibit LU-03) to be consistent with the proposed land use designation changes; [2] A Tentative Parcel Map (File No. PMTT19-018/TPM 20177) to subdivide approximately 20 acres of land into 7 parcels; [3] A Development Plan (File No. PDEV19-059) to construct 3 industrial buildings totaling 295,991 square feet on 13.19 acres of land; [4] A Development Plan (File No. PDEV20-012) to construct a 3,062 square foot convenience store (7-Eleven) with fuel sales and ancillary drive-thru car wash, in conjunction with a Conditional Use Permit (File No. PCUP20-009) to establish alcoholic beverage sales for off-premises consumption, limited to beer and wine (Type 20 ABC license), on 1.27 acres of land; and [5] A Development Plan (File No. PDEV20-013) to construct a 2,490 square foot commercial building for a fast-food restaurant (Starbucks) with a drive-thru facility on 1.18 acres of land; and

WHEREAS, the applicant has requested to change the zone on 41.35 acres of land located on northwest corner of Riverside Drive and Milliken Avenue from LDR-5 (Low Density Residential – 2.1 to 5.0 du/ac), CC (Community Commercial), and SP (Specific Plan), to 33.75 acres of IL (Light Industrial) and 7.6 acres of CC (Community Commercial); and

WHEREAS, the proposed development will allow for warehousing/light manufacturing uses and heavy manufacturing uses will not be allowed; and

WHEREAS, the Tuscana Village Specific Plan (File No. PSP09-001) and related Mitigated Negative Declaration (“MND”) were approved by the City Council on June 5, 2012. The Tuscana Village Specific Plan established the land use designations, development standards, and design guidelines for the southern parcel of the project site (APN: 1083-361-01) that is comprised of 20-acres. The specific plan allowed for the potential development of 200 residential dwelling units and approximately 871,000 square feet of commercial development; and

WHEREAS, the applicant has requested that the City rescind the Tuscana Village Specific Plan, that would result in the elimination of residential land uses, reduce the amount of commercial designated land from 7.9 acres to 5 acres (Community Commercial), and incorporate 15 acres of Light Industrial land uses for the southern parcel of the project site (APN: 1083-361-01); and

WHEREAS, the City of Ontario conducted a virtual community meeting via Zoom, on September 10, 2020 to discuss the proposed subject applications. Eleven members of community logged into the Zoom meeting and 6 residents provided comments/questions during the meeting; and

WHEREAS, on October 27, 2020, the Planning Commission conducted a public hearing and approved Resolution No. PC20-079, recommending the City Council approve a Resolution adopting an Addendum to The Ontario Plan Environmental Impact Report (State Clearinghouse No. 2008101140), certified by the City Council on January 27, 2010, in conjunction with File No. PGPA06-001. The Addendum finds that the proposed project introduces no new significant environmental impacts. Furthermore, all mitigation

measures previously adopted with the Certified Environmental Impact Report are incorporated into the Project by reference; and

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

WHEREAS, the Application is a project pursuant to the California Environmental Quality Act (Public Resources Code Section 21000 et seq.) ("CEQA") and an initial study has been prepared to determine possible environmental impacts; and

WHEREAS, Ontario Development Code Table 2.02-1 (Review Matrix) grants the City Council the responsibility and authority to review and act on the subject Application; and

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

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

WHEREAS, on October 27, 2020, the Planning Commission of the City of Ontario conducted a hearing to consider the Initial Study/Addendum and the Project, and concluded said hearing on that date, voting to issue Resolution Nos. PC20-081 and PC20-082, recommending the City Council approve the Application; and

WHEREAS, on November 17, 2020, the City Council of the City of Ontario conducted a hearing to consider the Initial Study/Addendum and the Project, and concluded said hearing on that date; and

WHEREAS, as the first action on the Project, on November 17, 2020, the City Council approved a resolution adopting an Initial Study/Addendum to a previous "Certified EIR" prepared pursuant to CEQA, the State CEQA Guidelines and the City of Ontario Local CEQA Guidelines, which indicated that all potential environmental impacts from the Project were less than significant or could be mitigated to a level of significance; 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 "Certified EIR" and supporting documentation. Based upon the facts and information contained in the previous "Certified EIR" and supporting documentation, the City Council finds as follows:

(1) The environmental impacts of this project were reviewed in conjunction with an Addendum to The Ontario Plan Environmental Impact Report, certified by the City of Ontario City Council on January 27, 2010, in conjunction with File No. PGPA06-001.

(2) The Addendum and administrative record have been completed in compliance with CEQA, the State CEQA Guidelines, and the City of Ontario Local CEQA Guidelines; and

(3) The City's "Guidelines for the Implementation of the California Environmental Quality Act (CEQA)" provide for the use of a single environmental assessment in situations where the impacts of subsequent projects are adequately analyzed. This Application introduces no new significant environmental impacts.

(4) The Addendum contains a complete and accurate reporting of the environmental impacts associated with the Project, and reflects the independent judgment of the DAB; and

(5) There is no substantial evidence in the administrative record supporting a fair argument that the project may result in significant environmental impacts; and

(6) The proposed project will introduce no new significant environmental impacts beyond those previously analyzed in the "Certified EIR", and all mitigation measures previously adopted by the "Certified EIR", are incorporated herein by this reference.

**SECTION 2: *Additional Environmental Review Not Required.*** Based on the Addendum, all related 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 "Certified EIR" is not required for the Project, as the Project:

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

(2) Does not constitute substantial changes with respect to the circumstances under which the "Certified EIR" was prepared, that will require major revisions to the

“Certified EIR” due to the involvement of new significant environmental effects or a substantial increase in the severity of the previously identified significant effects; and.

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

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

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

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

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

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

Senate Bill 330 – Housing Accountability Act (Government Code Section 65589.5 et seq.) (“SB 330”) was passed by the California Legislature, signed by the Governor and became effective on January 1, 2020. The bill is the result of the Legislature’s extensive findings regarding the California “housing supply crisis” with “housing demand far outstripping supply.”

Senate Bill 330 amends Government Code Sections 65589.5, adds Govt. Code Sections 65940, 65943 and 65950, and repeals and readopts Sections 65906.5, 65913.10 and 65941.1. To summarize, no city may disapprove a residential housing development project for low- to moderate-income households (as defined therein) unless it makes a finding that the housing development project “would have a specific, adverse impact upon the public health or safety, and there is no feasible method to satisfactorily mitigate or avoid the specific adverse impact without rendering the development unaffordable to low- and moderate-income households...” such as where the housing development project is proposed on land “which does not have adequate water or wastewater facilities to serve the project.” (Government Code Section 65589.5(d)(2), (4)).

In addition, the legislation adds Chapter 12 to Division 1 of Title 7 of the Government Code (Section 66300 et seq.) that applies to “affected cities,” which are identified as cities in urbanized areas as determined by the most recent census. In accordance with SB 330, the Department of Community Development and Housing (“HCD”) has prepared a list of affected cities and has determined that Ontario is an “affected city.” Therefore, pursuant to Government Code section 66300(b)(1)(A) and (b):

*(b) (1) Notwithstanding any other law except as provided in subdivision (i), with respect to land where housing is an allowable use, an affected city shall not enact a development policy, standard, or condition that would have any of the following effects:*

*(A) Changing the general plan land use designation, specific plan land use designation, or zoning of a parcel or parcels of property to a less intensive use or reducing the intensity of land use within an existing general plan land use designation, specific plan land use designation, or zoning district below what was allowed under the land use designation and zoning ordinances of the affected county or affected city, as applicable, as in effect on January 1, 2018...*

except when approved by HCD or when the following exception is set out in Govt. Code § 66300(i)(1) applies:

*(i) (1) This section does not prohibit an affected county or an affected city from changing a land use designation or zoning ordinance to a less intensive use if the city or county concurrently changes the development standards, policies, and conditions applicable to other parcels within the jurisdiction to ensure that there is no net loss in residential capacity.*

As discussed in the Background section of the staff report, a General Plan Amendment (GPA) is proposed to change the site’s land use designations from Mixed-Use to General Commercial and Industrial. The GPA would eliminate the Mixed-Use allowable housing, thereby theoretically eliminating 185 units (as allocated by TOP LU-03 Build-out Table, which had an assumed density of up to 25 dwelling units per acre).

To address the removal of 185 low-moderate residential units at a density of 25 dwelling units per acre and demonstrate a “no net loss,” and demonstrate the Project is in compliance with provisions of Section 66300(i)(1) have been met and there is no net loss of residential capacity. On December 17, 2019, the City Council approved an Amendment to the Meredith International Centre Specific Plan (File No. PSPA19-002) to establish a Mixed-Use Overlay district on 22.39 acres of land within a portion of Planning Area 2 (Urban Commercial) land use district, located at the southeast corner of Vineyard Avenue and Inland Empire Boulevard. The Meredith International Centre Specific Plan is listed in the Available Land Inventory contained in Table A-3 (Available Land by Planning Area) of the Housing Element Technical Report Appendix. The Specific Plan allowed 800 dwelling units at a density of 37 dwelling units per acre, which have all been constructed.

The Specific Plan amendment approved in December 2019 provides for an additional 925 residential units at a density of 41 dwelling units per acre, which will add 925 units to the Available Land Inventory Table. The Addendum to the Meredith International Centre Specific Plan Amendment Environmental Impact Report (SCH# 2014051020), approved on December 17, 2019, supports that change in the Specific Plan, which results in a surplus of 925 residential units within the City. On March 30, 2020, the City Council approved a General Plan Amendment to TOP Policy Plan Future Buildout Table (Exhibit LU-03) to reflect the addition of 925 residential units, assumed density and intensity for the Mixed-Use/Meredith section of the Buildout Table. The loss of 185 units under the current Policy Plan designation will be directly offset by the addition of 925 units, resulting in a no net loss of residential units.

**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 decision-making body for the Project, the City Council has reviewed and considered the facts and information contained in the Application and supporting documentation against the 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.

**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 3, above, the City Council hereby concludes as follows:

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

(a) Land Use Element:

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

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

Compliance: The proposed General Plan Amendment and Zone Change reflect the existing uses of the properties or closely coordinates with land use designations in the surrounding area and provides opportunities for choice in living and working environments.

- Goal LU2: Compatibility between a wide range of uses.

- LU2-1: Land Use Decisions. We minimize adverse impacts on adjacent properties when considering land use and zoning requests.

Compliance: The proposed General Plan Amendment and Zone Change reflect the existing uses of the properties or closely coordinates with land use designations in the surrounding area and will not create adverse impacts on adjacent properties.

(2) ***The proposed Zone Change would not be detrimental to the public interest, health, safety, convenience, or general welfare of the City.*** The proposed Zone Change on 41.35 acres of land from LDR-5 (Low Density Residential – 2.1 to 5.0 du/ac), CC (Community Commercial), and SP (Specific Plan), to 33.75 acres of IL (Light Industrial) and 7.6 acres of CC (Community Commercial) are compatible with the zoning and land uses in the surrounding area. The proposed Zone Change would not be detrimental to the public interest, health, safety, convenience, or general welfare of the City. Milliken/Hamner Avenue is a designated truck route and the surrounding land uses to the north, east and south consist of a combination of commercial and light industrial land uses, similar to the Zone Change request.

(3) ***The proposed Zone Change will not adversely affect the harmonious relationship with adjacent properties and land uses.*** The proposed Zone Change on 41.35 acres of land from LDR-5 (Low Density Residential – 2.1 to 5.0 du/ac), CC (Community Commercial), and SP (Specific Plan), to 33.75 acres of IL (Light Industrial) and 7.6 acres of CC (Community Commercial) are compatible with the zoning and land uses in the surrounding area. The proposed zoning designations are compatible with the zoning and surrounding land uses. Milliken/Hamner Avenue is a designated truck route and the surrounding land uses to the north, east and south consist of a combination of commercial and light industrial land uses. The zoning district to the west of the project site is Utilities Corridor and is developed with a nursery and SCE Transmission towers



and powerlines which creates 200-foot to 300-foot varying buffer between the proposed light industrial uses and residential communities to the west.

(4) ***The subject site is physically suitable, including, but not limited to, parcel size, shape, access, and availability of utilities, for the request and anticipated development.*** The subject site is physically suitable, including, but not limited to, parcel sizes, shapes, access, and availability of utilities, for the requested Zone Change on 41.35 acres of land from LDR-5 (Low Density Residential – 2.1 to 5.0 du/ac), CC (Community Commercial), and SP (Specific Plan), to 33.75 acres of IL (Light Industrial) and 7.6 acres of CC (Community Commercial). The subject site is also physically suitable for the proposed and future development of commercial and industrial land uses.

**SECTION 6:** ***City Council Action.*** Based upon the findings and conclusions set forth in Sections 1 through 5, above, the City Council hereby APPROVES the herein described Zone Change, attached hereto as “Exhibit A,” and incorporated herein by this reference.

**SECTION 7:** ***Rescission of the approval of the Tuscana Village Specific Plan, File No. PSP09-001.*** Based upon the findings and conclusions set forth in Sections 1 through 6, above, the CITY COUNCIL APPROVES the rescission of the Tuscana Village Specific Plan File No. PSP09-001 for Assessor’s Parcel Number (APN) 1083-361-01 that is comprised of 20-acres.

**SECTION 8:** ***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 9:** ***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 10:** ***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 11: **Effective Date.** This Ordinance shall become effective 30 days following its adoption.

SECTION 12: **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 \_\_\_\_ day of \_\_\_\_\_ 2020.

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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 ) ss.  
CITY OF ONTARIO )

I, SHEILA MAUTZ, City Clerk of the City of Ontario, DO HEREBY CERTIFY that foregoing Ordinance No. \_\_\_\_\_ was duly introduced at a regular meeting of the City Council of the City of Ontario held \_\_\_\_\_ and adopted at the regular meeting held \_\_\_\_\_, 2020 by the following roll call vote, to wit:

AYES: COUNCIL MEMBERS:

NOES: COUNCIL MEMBERS:

ABSENT: COUNCIL MEMBERS:

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

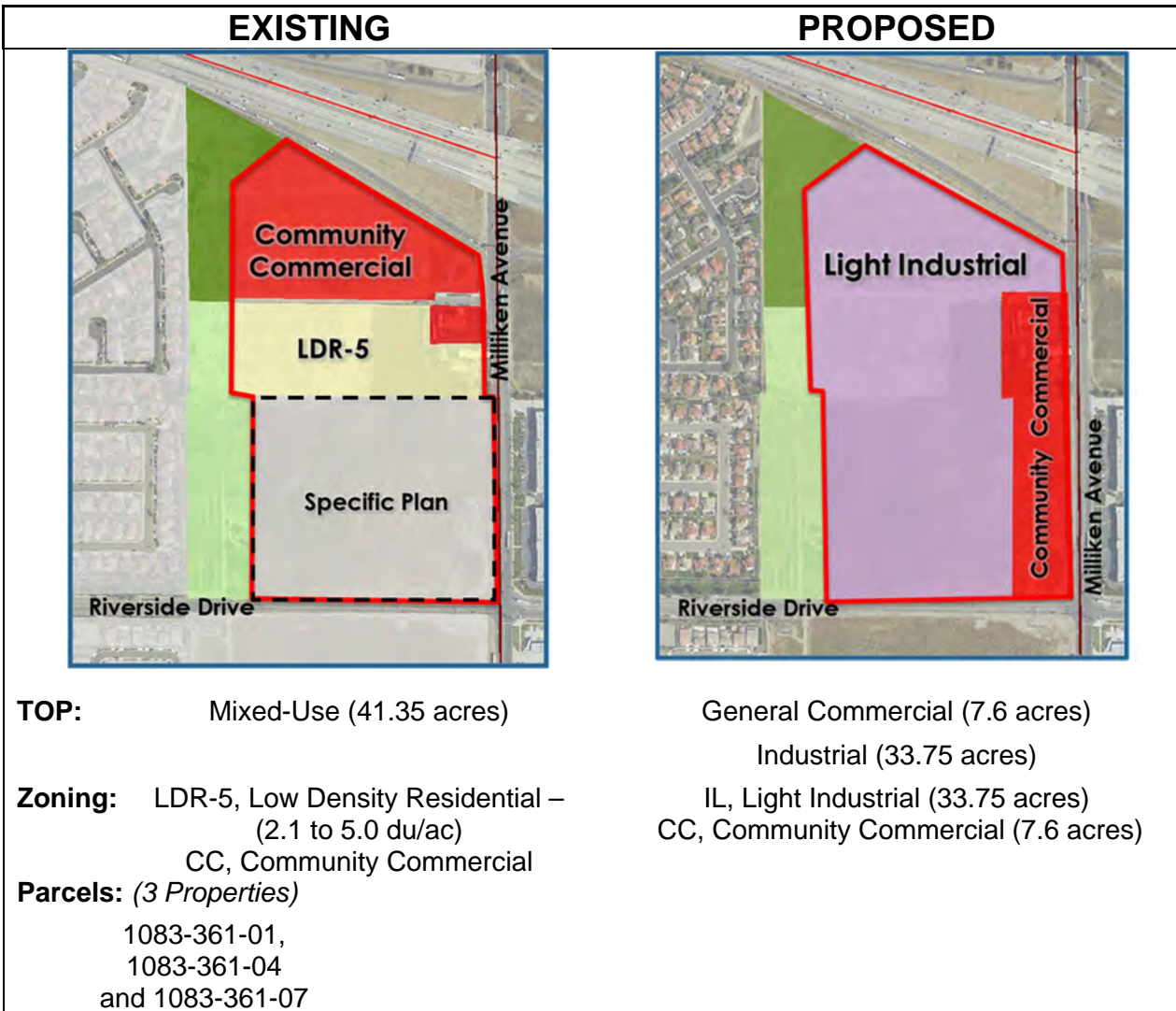
(SEAL)

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

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

(SEAL)


**Exhibit A: Zone Change (File No. PZC19-002)**



**CITY OF ONTARIO**

*Agenda Report*  
November 17, 2020

**SECTION:  
PUBLIC HEARINGS**

Department: Planning  
Prepared By: Lorena Mejia  
Staff Member Presenting:  
Scott Murphy, AICP, Executive Community  
Development Director  
Approved By: 

Submitted To: Council/OHA  
Approved: \_\_\_\_\_  
Continued To: \_\_\_\_\_  
Denied: \_\_\_\_\_  
Item No: 12

**SUBJECT: A PUBLIC HEARING TO CONSIDER: [1] A GENERAL PLAN AMENDMENT (FILE NO. PGPA18-002) TO MODIFY POLICY PLAN EXHIBIT LU-01, LAND USE PLAN, CHANGING THE LAND USE DESIGNATION ON APPROXIMATELY 46 ACRES OF LAND FROM GENERAL COMMERCIAL AND BUSINESS PARK TO 4.13 ACRES OF NEIGHBORHOOD COMMERCIAL, 3.51 ACRES OF BUSINESS PARK, AND 39 ACRES OF INDUSTRIAL; [2] MODIFY POLICY PLAN EXHIBIT LU-03, FUTURE BUILDOUT, TO BE CONSISTENT WITH THE LAND USE DESIGNATION CHANGES; AND [3] AN AMENDMENT (FILE NO. PSPA18 003) TO THE EDENGLLEN SPECIFIC PLAN, CHANGING THE LAND USE DESIGNATION FROM COMMUNITY COMMERCIAL, COMMERCIAL/ BUSINESS PARK FLEX ZONE, AND BUSINESS PARK/LIGHT INDUSTRIAL, TO 4.13 ACRES OF NEIGHBORHOOD COMMERCIAL, 3.51 ACRES OF BUSINESS PARK, AND 39 ACRES OF LIGHT INDUSTRIAL, INCLUDING UPDATES TO THE DEVELOPMENT STANDARDS, EXHIBITS, AND TEXT CHANGES TO REFLECT THE PROPOSED LAND USES. THE PROJECT SITE IS LOCATED AT THE SOUTHWEST CORNER OF RIVERSIDE DRIVE AND HAMNER AVENUE (APNS: 0218-171-21 AND 0218-171-27)**

**RECOMMENDATION:** That the City Council consider and adopt:

- A. A resolution approving the use of an Addendum to The Ontario Plan Environmental Impact Report (State Clearinghouse No. 2008101140);
- B. A resolution approving File No. PGPA18-002, a General Plan Amendment modifying Policy Plan Exhibit LU-01, Land Use Plan, changing the land use designation on approximately 46 acres of land located at the southwest corner of Riverside Drive and Hamner Avenue from General Commercial and Business Park, to 4.13 acres of Neighborhood Commercial, 3.51 acres of Business Park, and 39 acres of Industrial designated land, and modify the Policy Plan Exhibit LU-03, Future Buildout, to be consistent with the proposed land use designation changes; and
- C. A resolution approving File No. PSPA18-003, an Amendment to the Edenglen Specific Plan, changing the land use designation on approximately 46 acres of land located at the southwest corner of Riverside Drive and Hamner Avenue from Neighborhood Commercial, Commercial/Business Park Flex Zone, and Business Park/Light Industrial, to 4.13 acres of Neighborhood Commercial, 3.51 acres of Business Park, and 39 acres of Light Industrial designated land, including updates to development standards and exhibits, along with text changes to reflect the proposed land use changes.

**THE FOLLOWING COUNCIL GOALS ARE BEING ACHIEVED:**

**Invest in the Growth and Evolution of the City's Economy**

**Operate in a Businesslike Manner**

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

**Ensure the Development of a Well Planned, Balanced, and Self-Sustaining Community in Ontario Ranch**

**FISCAL IMPACT:** No fiscal impacts are anticipated with the adoption of the General Plan and Edenglen Specific Plan Amendment. The proposed land use designation changes from General Commercial and Business Park to Neighborhood Commercial, Business Park, and Industrial designated land provides for a mixture of similar commercial/retail and industrial uses. Any potential long-term fiscal impact and anticipated expenditures to the City would be offset by development impact fees and property tax revenues from the future development. Additionally, the project is conditioned to form/join a services Community Facilities District to offset increased costs associated with police and fire services.

The elimination of 15.8 acres of Commercial designated land would result in the net loss of 207,409 square feet of potential commercial space (based on a 0.30 floor area ratio). The loss of 207,409 square feet of commercial space represents less than 0.67 percent of the over 31 million square feet of commercial (retail/office) properties that are existing and planned throughout the City of Ontario. The addition of 15.87 acres of industrial/business park designated land would result in the net gain of 531,345 square feet of potential industrial/business park space (based on a 0.55 floor area ratio), which also allows for commercial and e-commerce uses. The net gain of 531,345 square feet of industrial/business park space represents less than 0.3 percent increase of the over 181 million square feet of industrial/business park properties that are existing and planned throughout the City of Ontario.

**BACKGROUND & ANALYSIS:** The Edenglen Specific Plan (File No. PSP03-005) and related Environmental Impact Reportas were approved and certified by the City Council on November 1, 2005. The Edenglen Specific Plan established the land use designations, development standards, and design guidelines on 158.7 acres of land, which included the potential development of 584 dwelling units, approximately 217,000 square feet of Commercial development, and 550,000 square feet of Business Park/Light Industrial development.

In 2010, The Ontario Plan was adopted, which set forth the land use pattern for the City to achieve its Vision. With the adoption of The Ontario Plan, a General Commercial and Business Park land use designation was assigned to the Project site.

On September 11, 2018, the applicant submitted five applications to facilitate the construction of an industrial development project, which included a General Plan Amendment (File No. PGPA18-002), an amendment to the Edenglen Specific Plan (File No. PSPA18-003), a Tentative Parcel Map (File No. PMTT18-009/TPM 20027) to subdivide 46.64 acres of land into 7 numbered lots and one lettered lot, and a Development Plan (File No. PDEV18-031) to construct five industrial buildings totaling 968,092 square feet.

**GENERAL PLAN AMENDMENT:** The proposed General Plan Amendment will revise Policy Plan Exhibit LU-01, Land Use Plan, changing the land use designation on 46.64 acres of land from General Commercial (20 acres) and Business Park (26.64 acres), to 4.13 acres of Neighborhood Commercial,

3.51 acres of Business Park, and 39 acres of Industrial designated land, as shown in Exhibit A: General Plan Amendment Map, attached.

- Commercial Land Uses – The General Plan Amendment includes changes to Policy Plan Figure LU-03, Future Buildout, to reflect the proposed land use designation changes. The proposed land use designation change would reduce the amount of General Commercial designated land from 20 acres and 261,360 square feet of potential commercial space (based on a 0.30 floor area ratio) to 4.13 acres of Neighborhood Commercial designated land and 53,971 square feet of potential commercial space (based on a 0.30 floor area ratio). The net loss of 206,389 square feet of commercial space represents less than a 0.67 percent decrease in building area over the 31 million square feet of commercial (retail\office) space that is existing and/or planned throughout the City.
- Industrial/Business Park Land Uses – The proposed General Plan Amendment includes the reduction of 23.13 acres (gross) of Business Park designated land and 403,017 square feet of potential business park space (based on a 0.40 floor area ratio) to 3.51 acres and 76,450 square feet. Additionally, the amendment would add 39 acres of Industrial designated land and 934,362 square feet of potential industrial space (based on a 0.55 floor area ratio). The net gain of 531,345 square feet of industrial/business park space represents less than 0.3 percent increase in building area over the 181 million square feet of industrial/business park space that is existing and/or planned throughout the City.

**EDENGLLEN SPECIFIC PLAN AMENDMENT:** The proposed Edenglen Specific Plan Amendment includes changes to the Edenglen Land Use Plan (see Exhibit B - Edenglen Land Use Plan, attached) and Land Use Summary Table. The revisions to the Land Use Plan and Land Use Summary will reflect the proposed changes to the Project site land use designations from Community Commercial, Commercial/Business Park Flex Zone, and Business Park/Light Industrial, to 4.13 acres of Neighborhood Commercial, 3.51 acres of Business Park, and 39 acres of Light Industrial designated land.

The 4.13-acre Neighborhood Commercial land use is located at the southwest corner of Hamner Avenue and Riverside Drive and allows for up to 40,000 square feet of commercial land uses, which could accommodate a mid-size grocery store and in-line retail. The 3.51-acre Business Park land use site is located along Riverside Drive, at the northwest corner of the Project site. The Business Park land use designation allows commercial land uses to accommodate flexibility in land uses along Riverside Drive. The 39 acres of Light Industrial is located on the southern portion of the project site and allows for warehousing or light manufacturing land uses. Heavy manufacturing uses will not be allowed.

The Specific Plan Amendment includes updates to development standards, the land use matrix, and various exhibits, along with text/map changes to reflect the proposed changes in land use and infrastructure. The development regulations and land use matrix have been amended to include standards for the Neighborhood Commercial, Business Park, and Light Industrial land uses. All changes and additions to the Specific Plan (exhibits, tables, and development standards) are contained within the revised Specific Plan document, and are highlighted in red.

**COMMUNITY MEETINGS:** The Planning Department conducted two community meetings to discuss the proposed subject applications. The first community meeting was in-person and held on December 12, 2018, at the Colony High Branch Library. The second meeting was a virtual presentation and available on the City Website from June 1, 2020, thru July 21, 2020.



At the first community meeting, 12 people were in attendance and of those persons, 10 were residents in opposition to the proposed Project. A total of 42 comments in opposition to the proposed Project were received, including 4 comment cards, 6 phone calls, and 34 emails. Community concerns and comments included the following:

- The Edenglen Specific Plan was developed as a walkable residential community with pedestrian linkages to trails and a future commercial center to serve the community. Therefore, the surrounding residents were in opposition of the proposed elimination of the General Commercial land use designation of the Policy Plan (General Plan) and the Community Commercial district of the Edenglen Specific Plan in the initial proposal. *In response to community comments, the applicant performed a retail market study. The Market Study determined the amount of viable commercial acreage for the project site. A Retail Market Assessment was prepared by Streetsense (dated May 16, 2019) which concluded that retail demand was insufficient and could not be supported at the project site, due to lack of demand and an oversupply of retail space. The City's Economic Development Agency consultant, HdL ECON Solutions (dated July 2019), prepared a Peer Review of the Market Study and concluded that the Project site could support up to 8 acres of Neighborhood Commercial development (130,0000 square feet). Streetsense prepared a response letter to the Peer Review (dated January 30, 2020) and concluded that the methodology utilized by the HdL did not take into account new commercial under construction, located at the southwest corner of New Haven Avenue and Ontario Ranch Road (New Haven Marketplace), and as a result, the site could only support 8,400 to 28,400 square feet of retail development (see Attachment A: Retail Market Assessment, Peer Review of the Market Study and Peer Review response letter). As a result of the study, the proposed General Plan Amendment was revised to include: 4.13 acres of Neighborhood Commercial designated land located at the northeast corner of the Project site; 3.51 acres of Business Park designated land located at the northwest corner of the Project site; and 38.64 acres of Light Industrial designated land located within the southern portion of the site.*
- Concerns were raised regarding potential noise impacts from the proposed industrial uses and related Development Plan for the Project site. *In response to community comments/concerns, the related Development Plan (File No, PDEV18-031) has been designed to minimize noise impacts to the residents. The truck yards have all been oriented away from the western property line. Screen walls that are 12-feet high have been included around the truck courts and have been strategically located along the western property line to block noise emanating from the property. Trash bins have been moved to the interior of the property and will be enclosed to insulate noise. These design features, along with the 200-foot SCE utility corridor that separates the properties, will substantially diminish any noise impacts to the adjacent residential community. A noise study was completed by Urban Crossroads (July 2020) that analyzed operational noise impact increases along the eastern property line of the Edenglen residential community. Urban Crossroads measured existing noise levels on October 10, 2019, and modeled the increased noise that will be generated by proposed operations on the Project site. The study concluded that the operation of a typical warehouse distribution center would result in a noise increase of 0.3 dBA, which is generally indiscernible to the human ear. Furthermore, the placement of the buildings will assist in the reduction of traffic noise that is currently generated from Hamner Avenue, and will help reduce wind and dust impacts from seasonal Santa Ana winds to the existing residential community.*
- Concerns were raised regarding the related proposed Development Plan and increase in truck traffic on Riverside Drive. *In response to community concerns, the related Development Plan (File No, PDEV18-031) has been designed to have truck traffic enter and exit primarily onto*

*Hamner Avenue. Hamner Avenue is a designated Truck Route and truck traffic will primarily be coming onto the project site from the nearby SR 60 Freeway and I-15 Freeway interchanges. Building 2 and the future commercial development will take primary access from Riverside Drive. Buildings 3, 4, 5, and 6 will take primary access from Hamner Avenue. Furthermore, the project has been conditioned to require tractor-trailer trucks to travel east, towards Hamner Avenue, when exiting the site, and shall not utilize Riverside Drive, west of the project site, to access/exit the project site. As discussed above, the applicant revised their proposal to address concerns raised at the first Community Meeting.*

Due to the COVID-19 virus pandemic and the Governor's Executive Orders, and to ensure the health and safety of City residents by limiting contact that could spread the virus, a second in-person community meeting could not be held. In response, the Planning Department provided for a virtual community presentation and mailed a pamphlet to Edenglen and Creekside residents, containing a summary of the concerns raised at the first meeting and a brief overview of the revised Project. The pamphlet included information about the virtual presentation that was posted on the City Website from June 1, 2020, thru June 15, 2020, for residents' review and comment. The City received eight comments opposing the proposed Project and the previous issues and concerns were raised a second time by residents. One new issue raised was regarding the timing of the virtual presentation. Residents were concerned that the community would not engage due to the pandemic and protests that were occurring at the time. Due to this concern, the virtual presentation, Project information, and public comment link remained on the Planning Department website for an additional five weeks, and was removed on July 21, 2020. During the extended time period, no further comments or phone calls were received.

**HEALTH RISK ASSESSMENT:** The Applicant was required to prepare a Health Risk Assessment to determine whether the proposed Project would pose a health risk to the existing residential land uses. The Health Risk Assessment prepared by Urban Crossroads (dated July 9, 2020) analyzed the cancer burden estimates, as well as the Project operational toxic air contaminants impact from diesel particulate matter emissions. Both analyses concluded that these factors would be less than significant; therefore, no mitigation is required for the Project beyond that which was previously analyzed in The Ontario Plan Environmental Impact Report (State Clearinghouse No. 2008101140), as certified by the Ontario City Council on January 27, 2010. Furthermore, the project was designed to minimize any potential impacts to existing residential development. The tractor-trailer yard areas are oriented away from the existing residential uses and tractor-trailer main access to the site is required to be taken from Hamner Avenue (a designated truck route). Additionally, the project has been conditioned to require trucks to travel east, towards Hamner Avenue, when exiting the site. Trucks shall not be allowed to utilize Riverside Drive, west of the project site, to access or exit the project site.

**PLANNING COMMISSION REVIEW:** On August 25, 2020, the Planning Commission conducted a duly noticed public hearing on the subject applications and voted unanimously (5-0) to recommend that the City Council approve the use of the Addendum to The Ontario Plan Environmental Impact Report, the General Plan Amendment, and Edenglen Specific Plan Amendment. Additionally, the Planning Commission approved the related Tentative Parcel Map and Development Plan, subject to conditions of approval. Most notably, the Planning Commission required the redesign of Building 2, the Business Park building facing Riverside Drive. The Planning Commission suggested the design be more conducive to multiple tenants, identifying such things as elimination of dock high doors as a consideration. The final design of the building is subject to Planning Commission review and approval.

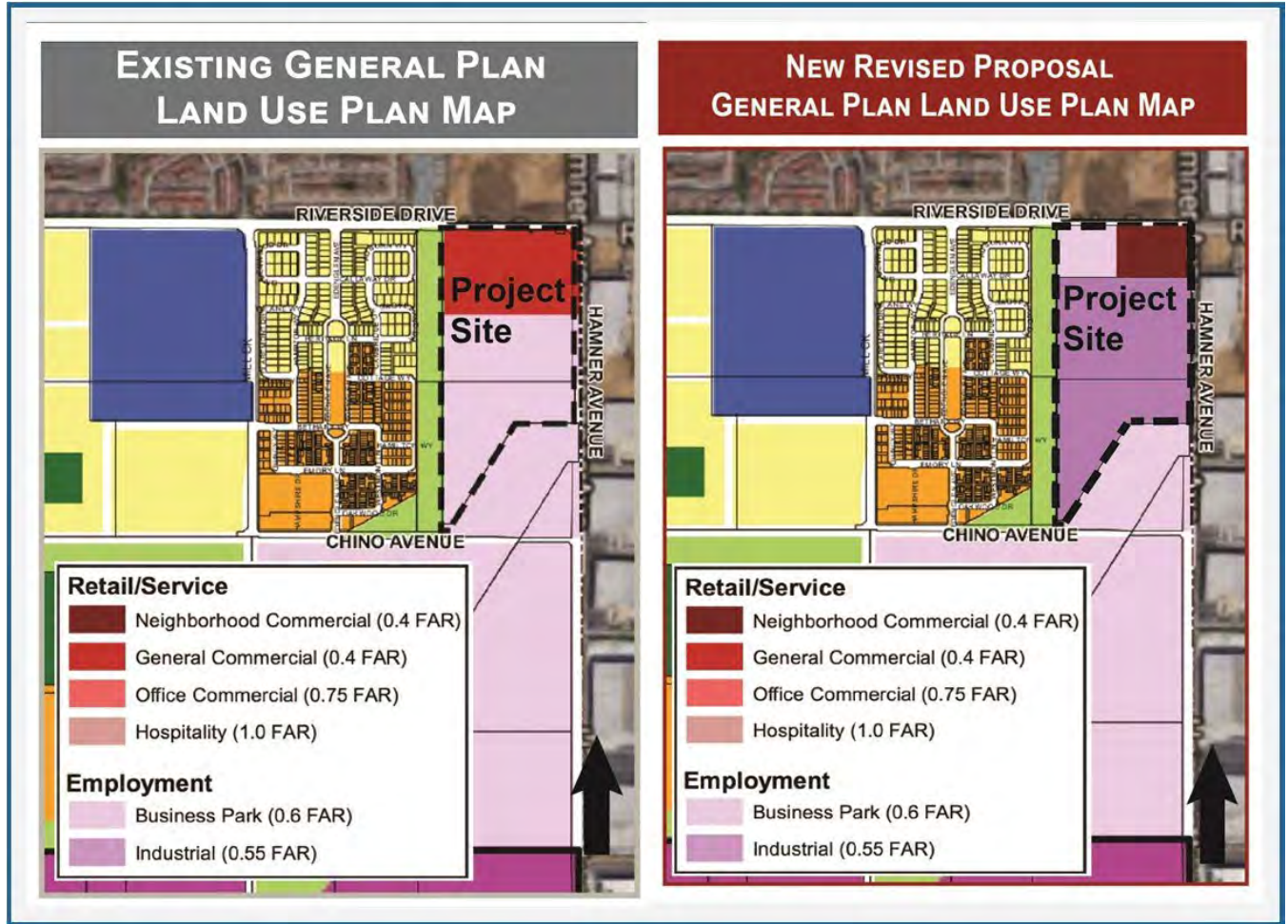
**HOUSING ELEMENT COMPLIANCE:** The project is consistent with the Housing Element of the Policy Plan (General Plan) component of The Ontario Plan. The project the Project is consistent with the Housing Element of the Policy Plan (General Plan) component of The Ontario Plan. The Edenglen

Specific Plan was listed in the Available Land Inventory contained in Table A-3 (Available Land by Planning Area) of the Housing Element Technical Report Appendix. However, the eastern half of the Edenglen Specific Plan (Project site) was not included as one of the properties in the Available Land Inventory since the eastern half of the Specific Plan did not include any residential land use designations.

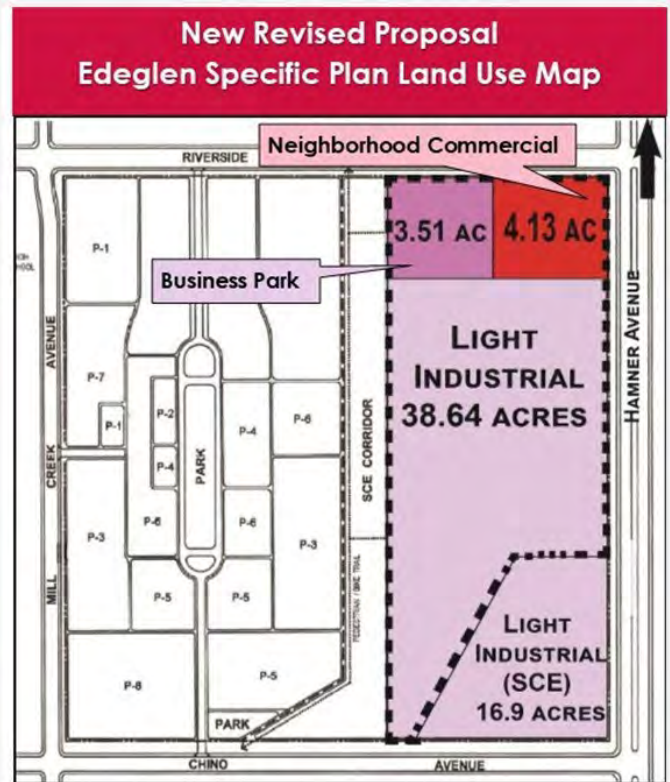
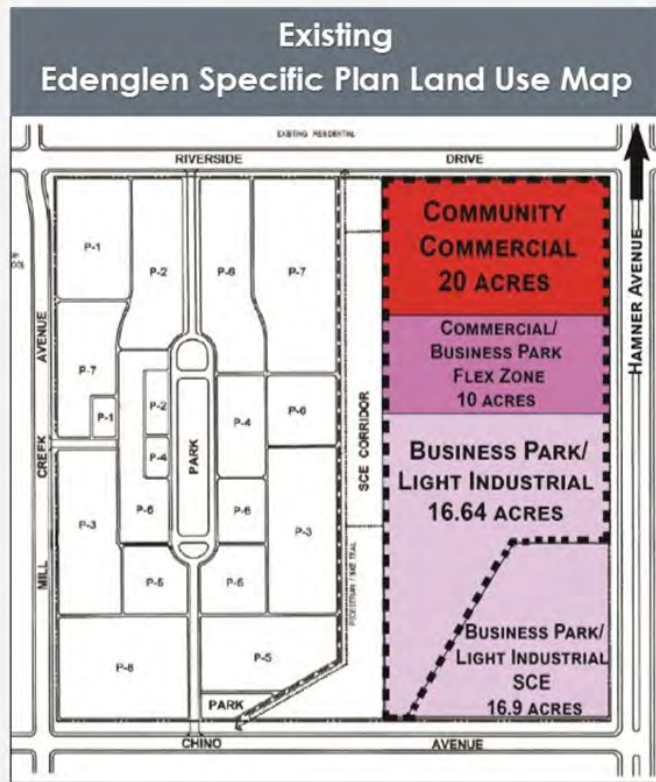
**AIRPORT LAND USE COMPATIBILITY PLAN COMPLIANCE:** The California State Aeronautics Act (Public Utilities Code Section 21670 et seq.) requires that an Airport Land Use Compatibility Plan be prepared for all public use airports in the State; and requires that local land use plans and individual development 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, establishing the Airport Influence Area for Ontario International Airport, which encompasses lands within parts of San Bernardino, Riverside, and Los Angeles Counties, and limits future land uses and development within the Airport Influence Area, as they relate to noise, safety, airspace protection, and overflight impacts of current and future airport activity. The proposed project is located within the Airport Influence Area of Ontario International Airport and was evaluated and found to be consistent with the policies and criteria of the Airport Land Use Compatibility Plan.

**ENVIRONMENTAL REVIEW:** Staff has prepared an Addendum to The Ontario Plan Environmental Impact Report (State Clearinghouse No. 2008101140), which was certified by City Council on January 27, 2010, in conjunction with File No. PGPA06-001. This application introduces no new significant environmental impacts, and all previously-adopted mitigation measures are a condition of project approval.

*Exhibit A – General Plan Amendment Map*



*Exhibit B - Edenglen Land Use Plan*



## Hamner Ave/ Riverside Drive Retail Market Assessment

*Prepared for Crow Holdings Industrial and the City of Ontario*

*May 16, 2019*

### KEY RECOMMENDATION:

- Retail is **not recommended** for the Hamner Ave/Riverside Drive.
- Resident's ability to drive (2.3 cars per household; 81% drive to work) to meet their retail needs presents the opportunity **to cluster retail demand** within the market at the **most appropriate auto oriented retail location** to promote high retail productivity and long-term sustainability. Tenants will not support walkable, pedestrian-oriented retail in this market because of a lack of density and they have the opportunity to drive to more options.

### KEY FINDINGS:

Retail demand calculated for the development site located at Hamner Ave/Riverside Drive was determined to be insufficient to support retail that will be leasable and sustainable, thus leading to vacant storefronts and retail oversupply:

- **The site cannot support an anchor tenant**, such as a grocery store or pharmacy (CVS/Walgreens). This factor, coupled with the site's low volume of retail demand, will likely lead to poor quality retail tenants, vacant storefronts, and depress the overall retail market, if retail is pursued at this site.
- The site is surrounded by developable land that is more appropriate for retail development. Exhibit A ranks the nearby sites for retail suitability and tenant demand. The approximate 40 acres located directly north of the site has the best site conditions at this intersection for retailers including visibility and accessibility from the Interstate. **Development of retail on one of the two properties will significantly impact the other property's ability to capture retail sales and support retail tenants, so retail should be developed only on the most suitable property.** Moreover, comparable retail already exists on the southeast corner of the intersection.

- **Retail performs at its highest productivity when *clustered*.** Pockets of disjointed retail in suboptimal locations create a highly competitive environment rather than a complementary market, where cross-shopping is encouraged and retailers benefit from co-tenanting. This results in high vacancy and poor tenant quality.

## INTRODUCTION

The site studied in this effort is in Ontario, California located at the southwest corner of the Hamner Avenue / Milliken Avenue and East Riverside Drive intersection. The purpose of this study is to examine the retail appropriateness of the development site and the ability of the site to realize any market supported demand, which will consider site conditions, leasing factors, retail market principles, and best practices. Finally, as this site is part of the larger redevelopment effort, this study will identify and discuss the implications of developing market-supported retail at the site. A competitive review of existing and upcoming retail clusters in the market area, trade area analysis, customer demographic analysis, and development risk assessments were undertaken to generate a comprehensive understanding of the site's retail potential.

## COMPETITION REVIEW

Given the urban-suburban typology of Ontario, competition for the site is measured on two levels - locally-serving neighborhood centers for convenience-based trips and regionally-serving destination hubs for experience-based trips. Retail customer behaviors are rooted in convenience, access, and visibility as well as tenant quality and variety of offerings. These factors are considered when assessing the market influence of each retail competitor.

Neighborhood-serving retail centers are characterized by a dominant mix of Neighborhood Goods & Services (NG&S) tenants, which include grocery stores, barber shops, hair/nail salons, pharmacies, dry cleaners, and similar uses. These retail centers primarily meet the need for convenience-based shopping trips. Thus, they compete on a geographically smaller scale, meaning customers frequenting retailers in this category will almost always patronize retail locations in close proximity to their work and home. As a result, customers are less likely to pass up the nearest shopping opportunity to fulfill their everyday needs. In this market, neighborhood-serving retail nodes are clustered along major commuter corridors, such as Route 60 (Pomona Freeway) and Interstate 15. Therefore, these auto-oriented retail developments cater to customers arriving by car, as they are highly visible and accessible from the roadway and provide ample surface parking. Households immediately surrounding the site are well-served by an existing neighborhood-serving retail node two miles - less than a five-minute drive - from the site. This retail node is comprised of the **Archibald Ranch Town Center** and **Archibald's Plaza** and includes a Ralph's grocery store, a Walgreens and Rite Aid pharmacies, dry cleaners, nail salons, and several fast-causal restaurants.

Regionally-serving retail nodes include power centers, shopping mall, and walkable lifestyle centers and are characterized by their dominate mix of retailers in the General Merchandise, Apparel, Furnishings, and Other (GAFO) category and typically include a cluster of full-services restaurants and an entertainment component, such as a movie theatre. These centers attract customers from a larger trade area in comparison to local, neighborhood-serving retail clusters. Fewer of these retail nodes can be supported in any given region as GAFO retailers demand a higher sales per square foot compared to NG&S retailers and the GAFO purchases account for approximately 20% of all retail purchases. Further amplifying the competitive landscape for sales in this category is the rise of e-commerce, which currently accounts for 9% of all retail sales and is growing at approximately 15% per year.

The region is well-served in this category. Competition includes the **Ontario Mills** – a traditional shopping enclosed shopping mall 10-minutes north of the site, **Eastvale Gateway** – a big-box power center anchored by a Target and movie theatre 10-minutes south of the site, and **Victoria Gardens** – an upscale, walkable lifestyle center with a number of full-service restaurant options.

#### TRADE AREA BOUNDARIES

Boundaries for trade areas are determined for primary and secondary levels of customers and are impacted by competition, drive times, sociological and geographical boundaries, shopping patterns by customer type, and other factors. The development site's trade areas are heavily impacted by the intense competition to the north and south and the neighborhood-serving retail scattered throughout the area as well as travel times throughout the region via the Interstate system.

Households and employees in the Primary Trade Area (PTA) are expected to patronize retail at higher frequency than other areas. Their shopping choices will be based on the convenience of the opportunity as well as the quality of the offering. The PTA is bound by Route 60 to the north, Edison Avenue to the south, Interstate 15 to the east, and canal to the west, as shown in Exhibit B.

Households within the Secondary Trade Area are expected to patronize retail at the site often, but with less frequency than the Primary Trade Area, as they have more convenient retail offerings closer to their residences. The STA is compromised of the neighborhoods and industrial areas to the north, east, and west, approximately half of a mile from the boundaries of the PTA.



## CUSTOMER DEMOGRAPHICS

Customer spending habits are influenced by household incomes and their ability and willingness to travel throughout the region to competitive retail offerings, indicated by household car ownership rates (2.28 cars per household), commute times to work (39 minutes), and percentage of adults who commute to work by car (81%). These attributes indicate consumers are heavily reliant on personal vehicles to complete their daily routines, which directly translates to their shopping behaviors and retail preferences to include drive-throughs, visible storefront from the roadways, signage, and ample parking with convenient access to a retailer's front door.

Household incomes and household sizes also influence consumer shopping habits and the retail potential in this market. The median household income in the PTA is \$85,300 while the STA is slightly lower at \$77,600. These incomes are higher than the national average (\$60,000), however average household size (3.3 people in the PTA, 3.5 people in the STA) is much larger than the national average (2.6 people), an indicator that households likely have limited discretionary spending on retail goods and services.

The Primary Trade Area workforce is a very diverse mix of blue-collar occupations to include employees in the Construction, Manufacturing, Wholesale Trade, and Transportation and Warehousing industries as well as in the Retail Trade industry. These workers are unlikely to patronize traditional retail, given long and inflexible hours and limited breaks. Spending is reflective of the insular jobs within a company's industrial/manufacturing complex.

## CONCLUSIONS

**LACKING CRITICAL MASS OF RETAIL DEMAND.** While demand for additional retail development may exist, this specific site does not demand retail that would make development and tenanting a feasible task, thus resulting in vacant retail storefronts that create an eyesore and stigmatizes the property. Without a grocery or pharmacy anchor, which is not market supported at the site, retail at this site in the volumes that it is demanded will struggle to capture the sales needed to survive in a competitive market where customers have a number of options within a short drive and customer decisions are rooted in convenience.

**SITE CONDITIONS AND LEASABILITY CONCERNS.** The site is out-positioned by more competitive developable land, specifically the undeveloped land north of the site, which is highly visible from the Interstate and more accessible from the Interstate exit.

Development on this land would position any shopping opportunities to be highly competitive with the subject site, leading to vacancy and deferred maintenance. As detailed in the customer demographics section, retail consumer behaviors are rooted in convenience,

access, and visibility. Retailers fully understand customer behaviors and patterns and will seek out sites with the utmost visibility and accessibility. Additionally, the site is located on the “edge” of the new residential neighborhood, as the site is bound by an industrial park to the east. While employees in the industrial park generate a small amount of retail demand, retailers in this market would prefer to be located at more significant residential intersections with larger residential populations nearby.

**IMPACTS OF RETAIL OVERSUPPLY.** A comprehensive study of Ontario’s retail supply is necessary to understanding the specific conditions of Ontario’s retail market; however, a brief review of the retail supply indicates that the market is currently oversupplied with retail space. One indicator of retail oversupply is a high rate of vacancy, which is observed at approximately 40% at Plaza Cardenas and 30-35% along Euclid Avenue in addition to the many vacancies on Grove Ave.

Oversupply occurs when the supply of retail space surpasses the demand for retail and it can have many adverse consequences for retailers, property owners, municipalities, and ultimately, the health and safety of the community.

The first indicator of retail oversupply is the underperformance of individual retailers, as retail sales in the market are spread too thin across too many retailers. Businesses located in an oversupplied retail market report low sales numbers as a result of their inability to capture a sufficient volume of sales. Retailers in this vulnerable position may be forced to close because low sales numbers are not financially justifiable.

When retailers close their doors, vacancy increases. Retail vacancy in markets that are oversupplied with retail space creates both a tough situation for landlords and negatively impacts retailers surrounding the recently closed business. Landlords risk long-term vacancy and decreasing rental rates in order to attract retailers, lowering the bar for the quality of retailer entering the market, as lower quality tenants seek lower rents. A secondary consequence for landlords decreasing rental rates at their properties, is the reduction of net operating income that may be reinvested in the property on items such as maintenance, repairs, façade improvements, and tenant improvements. High vacancy rates in retail clusters have adverse impacts on the health of the surrounding retailers, as vacant storefronts do not drive traffic to the center. Extreme vacancy issues can lead to disinvestment, blight, and abandonment. Not only does this decrease the property value of retail spaces due to visible blight caused by forgone repairs, it negatively impacts the productivity of neighboring retail spaces and the value of surrounding residential neighborhoods.

Retail oversupply is harmful to the commercial and residential real estate market, but this trend in the industry is not confined to landlords, real estate investors, property owners, and business owners. **Communities experience the lasting impacts of retail oversupply long after the property owners have sold their properties or left them to decay. Retail**

**oversupply that results in vacancy can create significant blight issues, impacting public health and safety.** The Center for Disease Control (CDC) has shown there is a connection between neighborhood conditions and the well-being of residents. Recognizing the need for healthy communities, the CDC has formed a special counsel and research department on Neighborhood and the Built Environment. The CDC reports that living near vacant or abandoned lots has serious impacts on an individual's quality of life, as these locations are commonly used for dumping litter and other waste materials. **Because vacant retail spaces are unoccupied and do not generate pedestrian activity, there is a lack of "eyes on the street" - an ideal situation for criminal activity and vandalism.** Living nearby to blighted properties can result in lower literacy scores for pre-K children, increased violence, higher rates of chronic illness, and breakdown of social networks and capital. **The oversupply of retail space is not just an economic market issue; it is a public health issue.**

Pursuing retail development in oversupplied markets does not in and of itself trigger the consequences of oversupply but will add to the overall condition of oversupply in the market.

#### RETAIL DEVELOPMENT RECOMMENDATIONS

The City of Ontario is uniquely positioned with the opportunity presented by a "blank slate" and massive residential development momentum in the southeast corner of the city. The addition of thousands of households is expected to add a considerable amount of retail demand to the area, which presents the rare opportunity for the City of Ontario to create a thoughtful and progressive retail strategy in that area. Retail performs best when clustered at the best locations, as this type of development allows retailers to function in a complementary fashion. When retail is disjointed, separated into smaller centers, and scattered throughout the region, retailers are forced to compete against each other, which naturally leads to winners and losers in the market.

In conclusion, the site does not justify the development of retail space. Any retail development at this intersection would be best served by limited convenience retail (gas, sundry, sandwich) on the northwest corner and the existing retail on the southeast corner as commuters make their way to and from work.

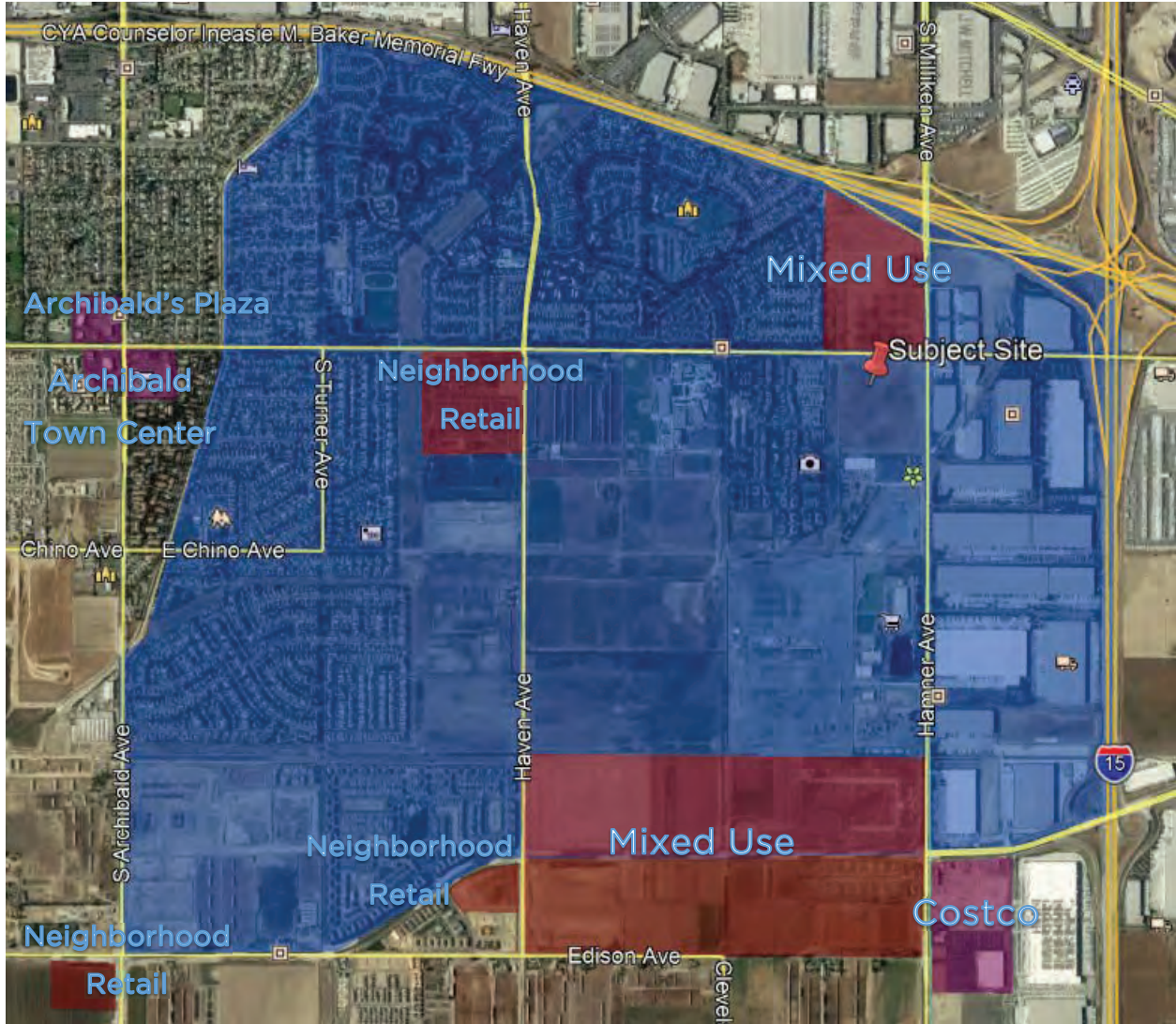
EXHIBIT A  
VICINITY RETAIL SITE RANKING



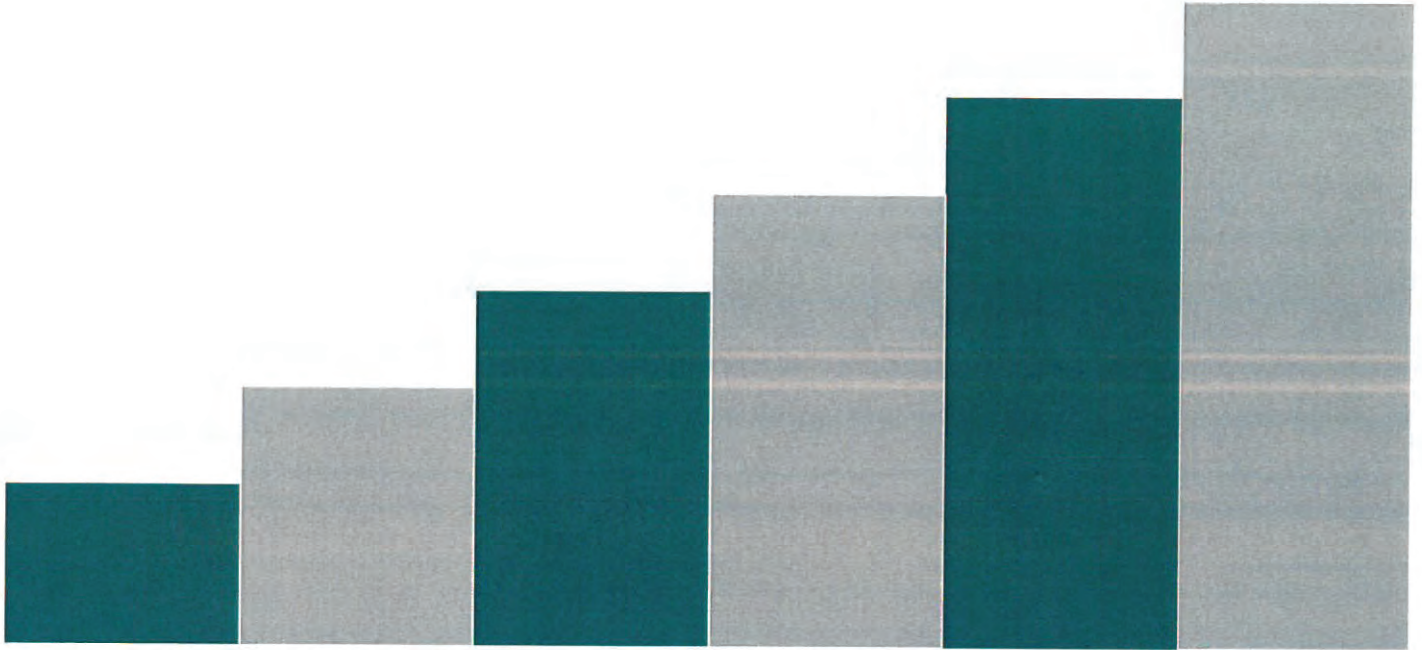
3 Bethesda Metro Center, Suite 140, Bethesda, MD 20814

301.652.9020 / [www.streetsense.com](http://www.streetsense.com)

**EXHIBIT B**  
PRIMARY TRADE AREA



- PRIMARY TRADE AREA
- EXISTING RETAIL
- FUTURE RETAIL ZONING



*Development Driven by Data*

City of Ontario  
Peer Review - Market Study - Crow Holdings Property  
at SWC of Hamner/Riverside

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## About Us

In 2014, HdL Companies created ECONSolutions to expand services in providing strategic planning and consulting services to assist local governments with economic development planning and execution. ECONSolutions offers a variety of products and services for customized solutions based on a client's budget needs and specific development requirements.

Whether you need to understand a trade area, fill a vacancy, or market a shopping center, ECONSolutions will collaborate with city staff, developers, and real estate professionals to bring increased economic activity to your community. We will work with city staff in formulating steps to capitalize on near-term opportunities, evaluate areas for redevelopment or repositioning of commercial shopping centers, future revenue projections and feasibility studies to ultimately devise a strategy to encourage commercial development in your city through an understanding of your marketplace.

Our ECONSolutions staff has more than 50 years of local economic development and community development experience in California. ECONSolutions offers up-to-date data capability, an online GIS platform with state-of-the-art software for market analytics and the ability to leverage HdL's extensive databases systems. ECONSolutions can engage in projects of every size ranging from data analysis to comprehensive studies to advisory support and to public/private collaboration.

## ECONSolutions Team



Nearly 50 Years of Economic Development and Community Development experience



Unique combination of public and private sector experience



Have worked for 75 local governments including 35 present city clients



Utilize cutting edge software, along with established and proven network of developers, shopping center owners, retailers and real estate professionals



## Objective

The City of Ontario has requested a peer review of the analysis conducted by StreetSense for a 46-acre property owned by Crow Holdings, for the Hamner Avenue/Riverside Avenue project area within the Edenglen Specific Plan. The review will incorporate the following considerations in providing insight as to the highest and best uses to include within the project area:

- Site Analysis/Trade Area Summary
- Consumer Demand & Market Supply Assessment/Void Analysis
- Market Analysis
- Next Steps and Recommendations

## Overview

The City of Ontario is located in the southwestern San Bernardino County, 35 miles east of downtown Los Angeles, with a population of nearly 177,000 and is San Bernardino County's fourth most populous city in the

County and the sixth largest in the Inland Empire. Ontario is strategically positioned in the Inland Empire along major transportation routes, providing easy access to its commercial and industrial areas via Interstate 10, Interstate 15, and State Route 60. Within a 10-minute drive time of

downtown Ontario, there are more than 335,000 people with solid income levels, low unemployment and a plethora of opportunities for business expansion opportunities.

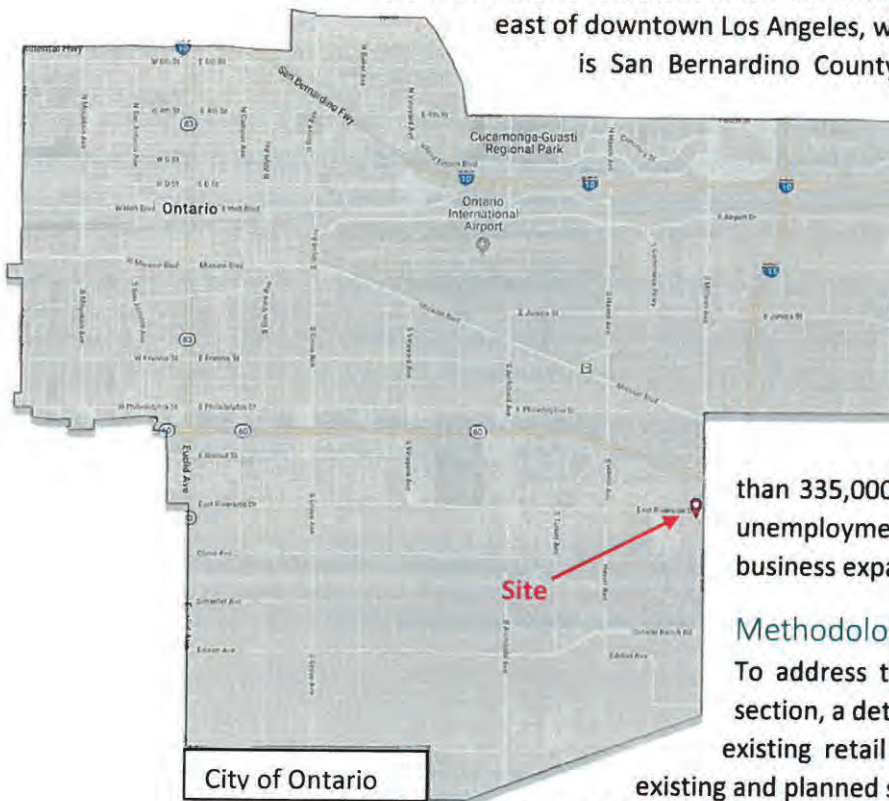
### Methodology

To address the issues presented in the objective section, a detailed evaluation was performed of the existing retail in the trade area, as well as major existing and planned shopping areas in and surrounding the

defined trade area. The trade area was defined using a 5-minute

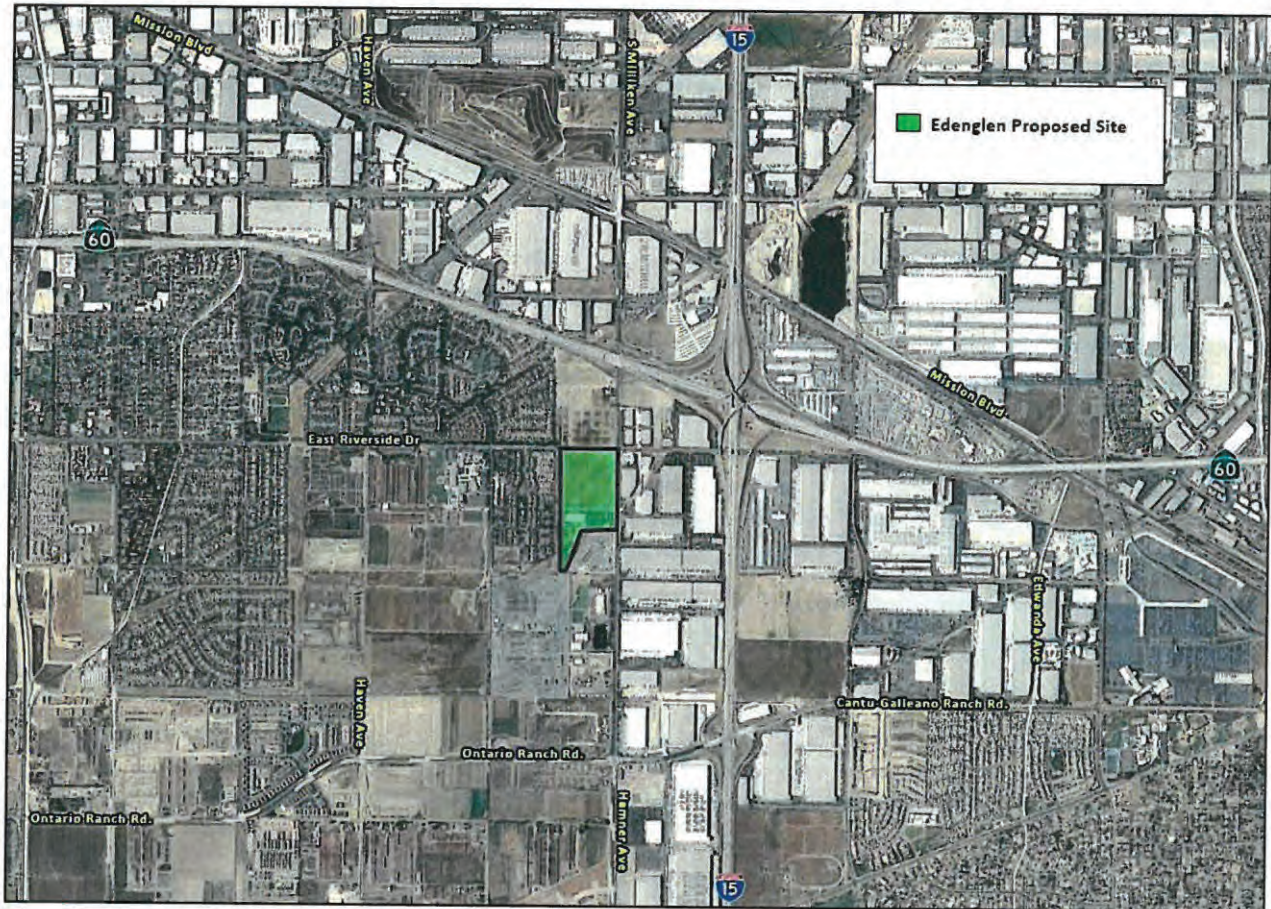
primary and a 10-minute secondary drive time from the project site of the proposed development at the southwest corners of Hamner and Riverside Avenues based on the evaluation of existing centers, driving patterns, and current and future population massing.

Additionally, a Consumer Demand & Market Supply Assessment, along with a Void Analysis of the primary trade area was conducted, which provides a glimpse into the overall retail potential of the trade area, evaluated in relation to per capita population; which produced a per capita opportunity ratio (per capita opportunity demand/surplus is the ratio of the demand/surplus to overall consumer demand aggregate to per capita levels).



## Site Analysis

The 46-acre site owned by Crow Holdings is situated within the Edenglen Specific plan within the City of Ontario and includes 160 acres in total. Approximately 77 acres has been designated for residential to include 584 single family and multifamily residences along with 15 acres designated for open space/park area. Cutting through the property running north and south in the middle of the specific plan, 12.8 acres consist of Southern California Edison easement/corridor which has been designated for a public trail. The remaining approximate 70 acres (including the 46-acre Crow Holdings property) with three major property owners is current designated for commercial and business park/light industrial uses.



The site is surrounded by industrial uses to the east, north and southeast, including some major e-commerce/logistics uses by major national retailers including Amazon, Walmart, and ProLogis (international 3PL). To the west and south, existing and planned residential uses as well as the adjacent Colony High School and other public schools including elementary and middle schools.

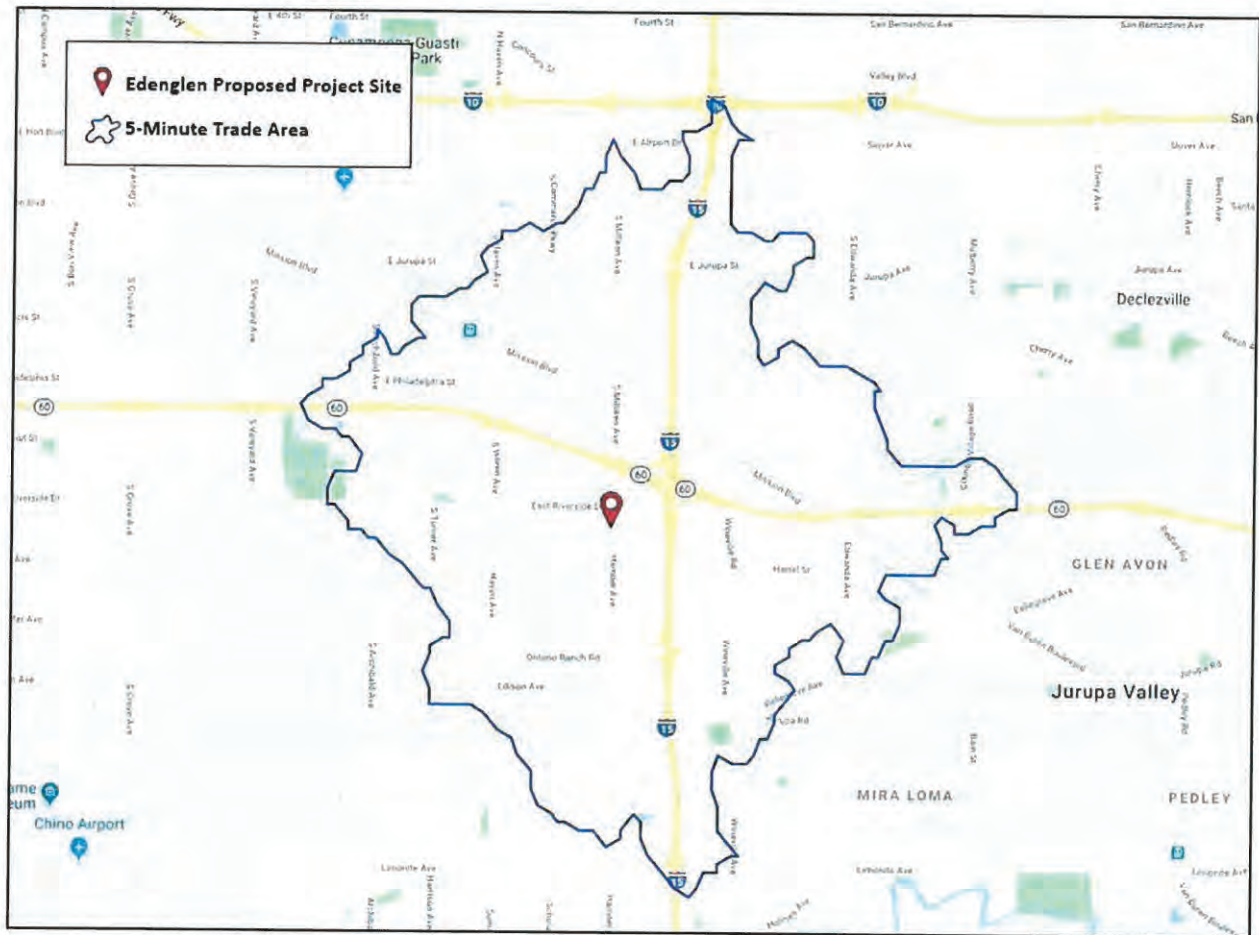
### Access

The site is less than half a mile west of the I-15 freeway, less than a quarter mile south of the 60 freeway, just over a mile north of Cantu Galleano Ranch Road and approximately a mile east of Haven Avenue. Ingress and egress to the site will be best accessed along Hamner Avenue, which is a major north/south arterial road. East Riverside Avenue will be best used for access from the residential communities to the west. With the development of uses that will potentially attract more truck traffic, Chino Avenue should

be improved to allow for at a minimum left in/out access to go south along Hamner Avenue to Cantu Galleano Ranch Road and the I-15 freeway.

### Trade Area Summary

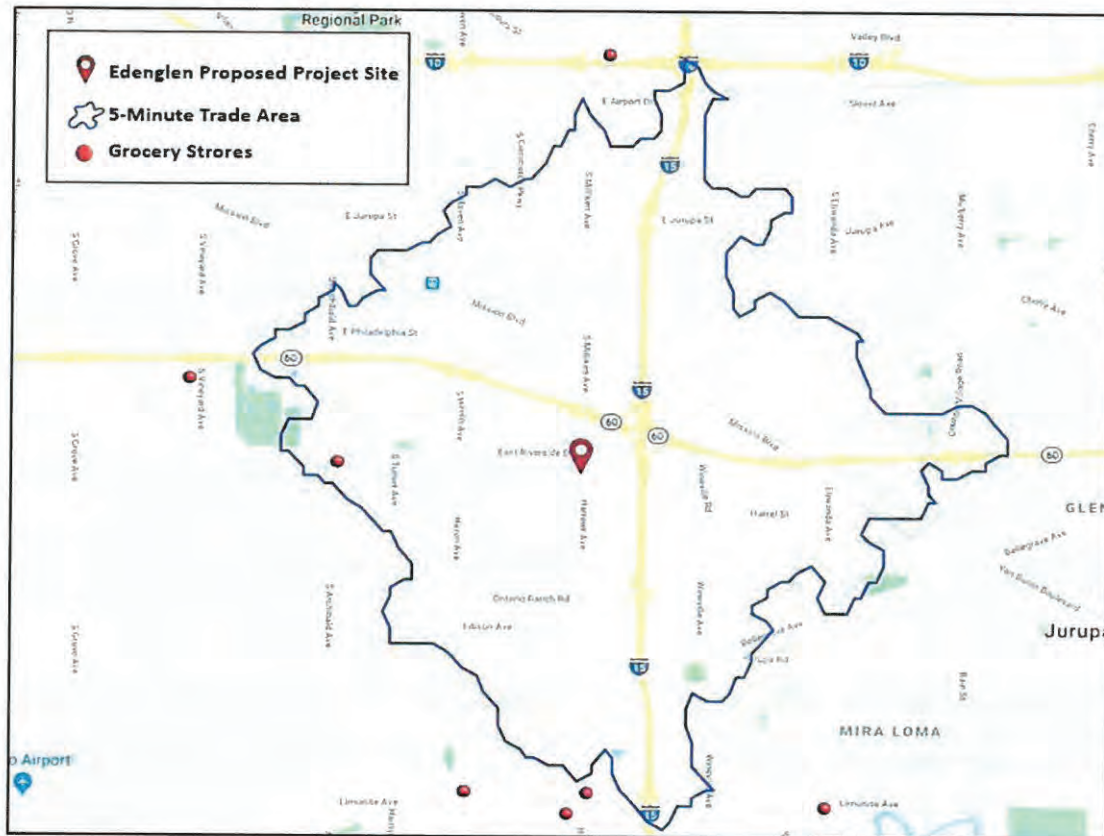
Based on analysis, it is determined that the proposed commercial uses of the site are limited to a local neighborhood shopping center due to community gravitational patterns and the existing adjacent commercial centers which is discussed in more detail in the following sections of this analysis. The retail uses servicing the trade area will appeal to customers from short distances with the uses primary servicing convenience and daily shopping needs. The following map illustrates the boundaries of the primary 5-minute drive time trade area:



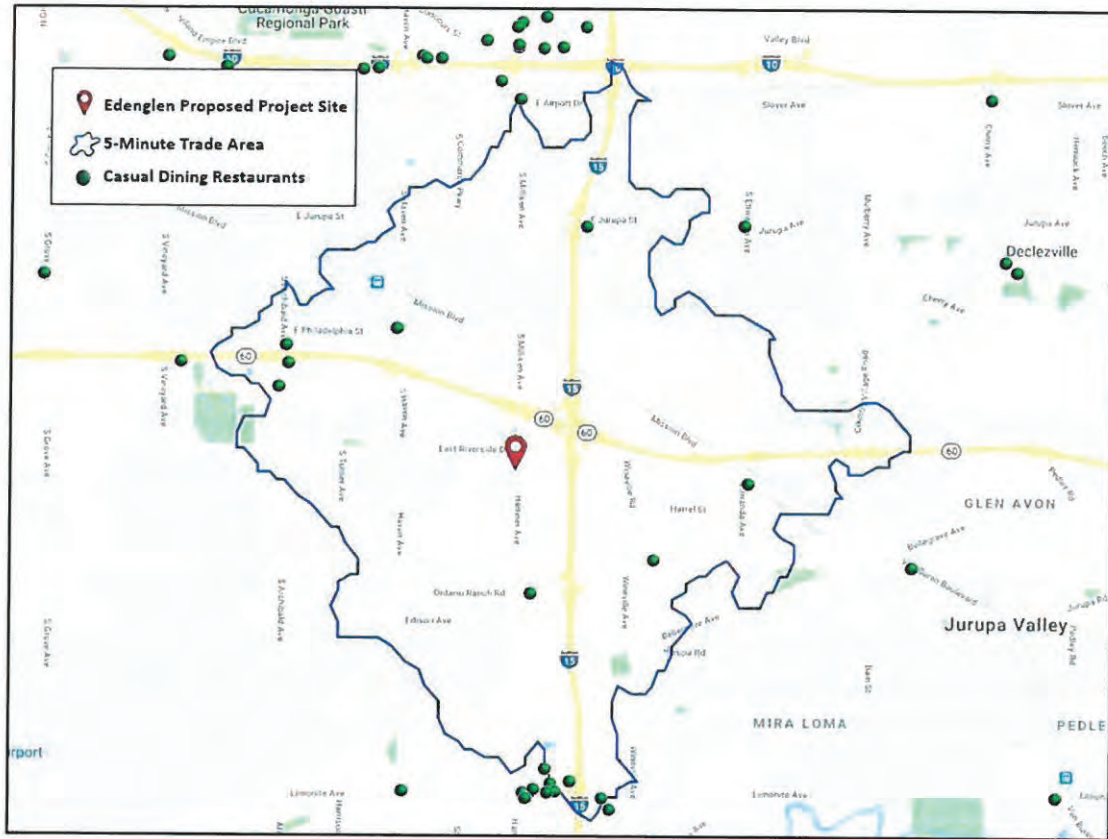
Please note, as a result of the retail trade area, the proposed project area will face some competition with existing retail centers. However, the employment with some of the uses operating 24/7 warrant consideration attracting additional neighborhood retail uses for the convenience of the workforce which is just under 30,000 people and a daytime population of nearly 45,000 people according to SiteSeer demographics as of July 2019. The 5-minute trade area nearly doubles in size during the day which has a trade area population of 25,381, as a result of a large inflow of employees coming from outside of the trade area and city working at the plethora of e-commerce/logistics businesses in the area. Additionally, more residential development is presently underway in the Ontario Ranch area of the City of Ontario that is just south and southwest of the site.

### Commercial Voids

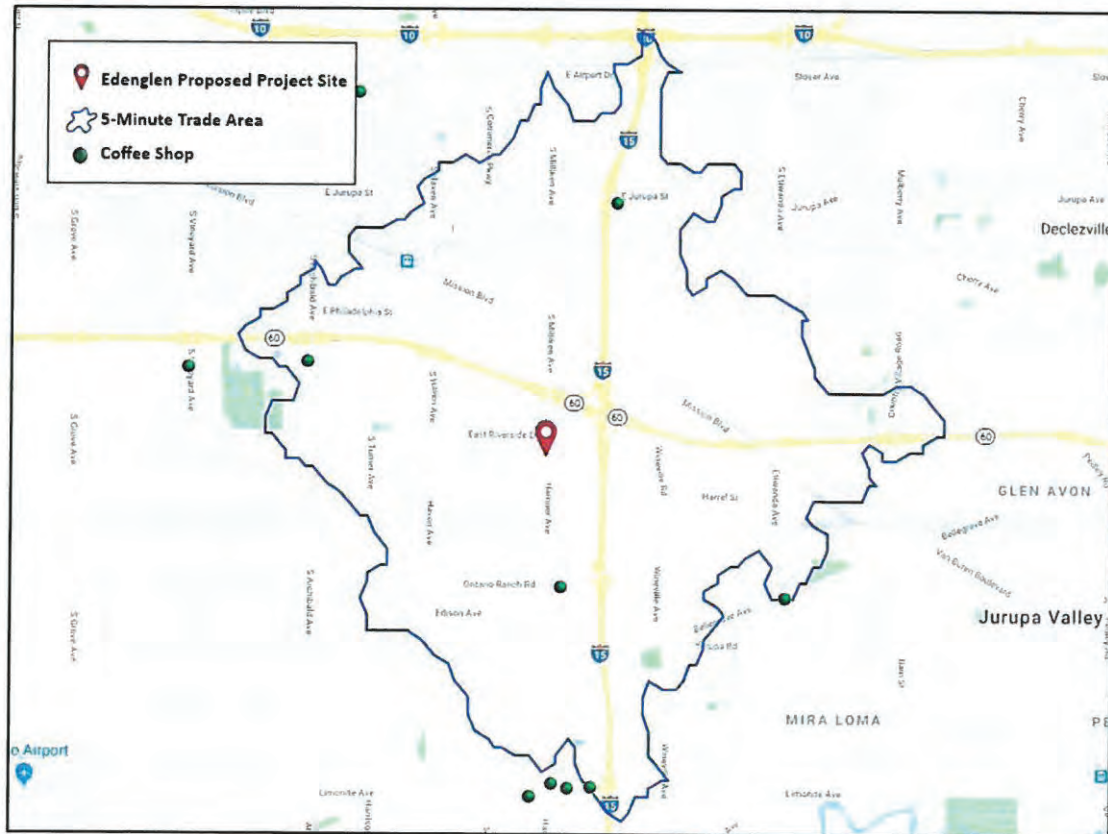
A visual void analysis was completed looking at various establishment types like grocer, restaurant, drug and other institutional uses (banks etc.). The void is more than simply finding retailers that are missing from the trade area but shows where opportunities exist to service a trade areas resident, businesses and the employees that commute in from outside the area. The process looks to not only consider the consumer demand & market supply assessment (Gap Analysis) but also to visually match opportunities with potential commercial development locations. Below are some potential commercial voids within a 5-minute drive time of the Edenglen site:



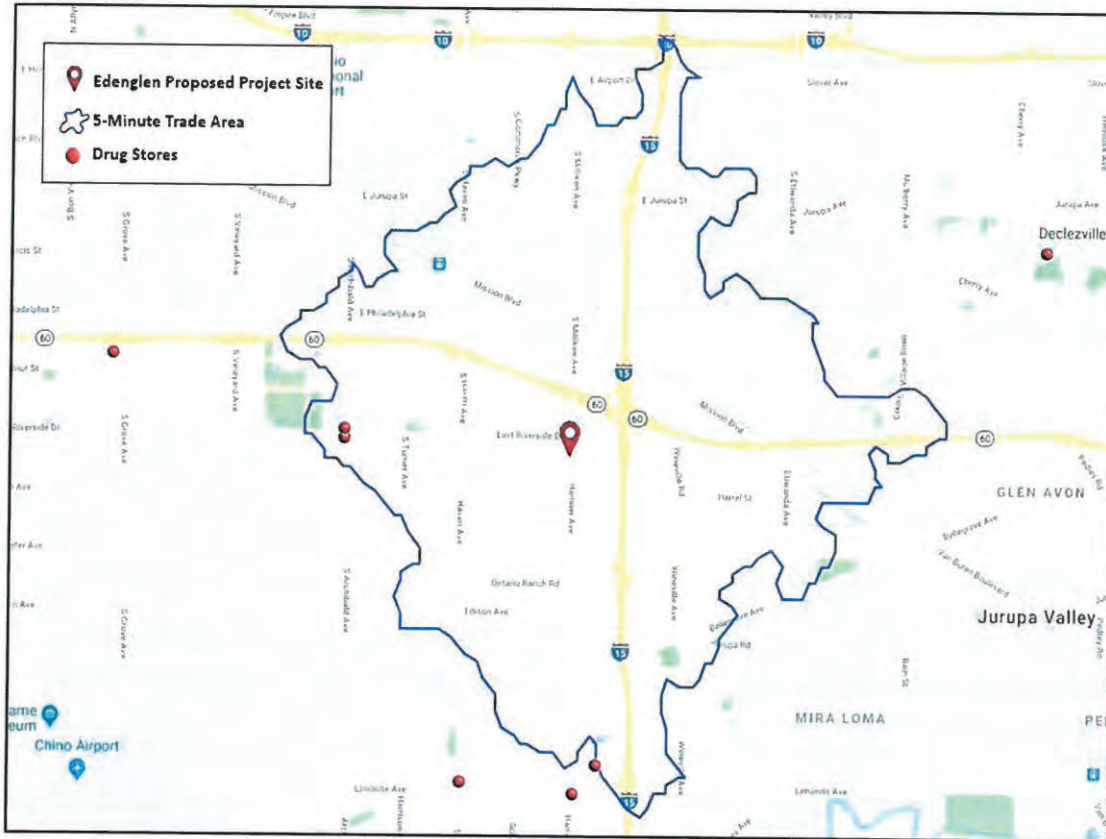
5-minute drive time showing the void in Grocery Store establishment types



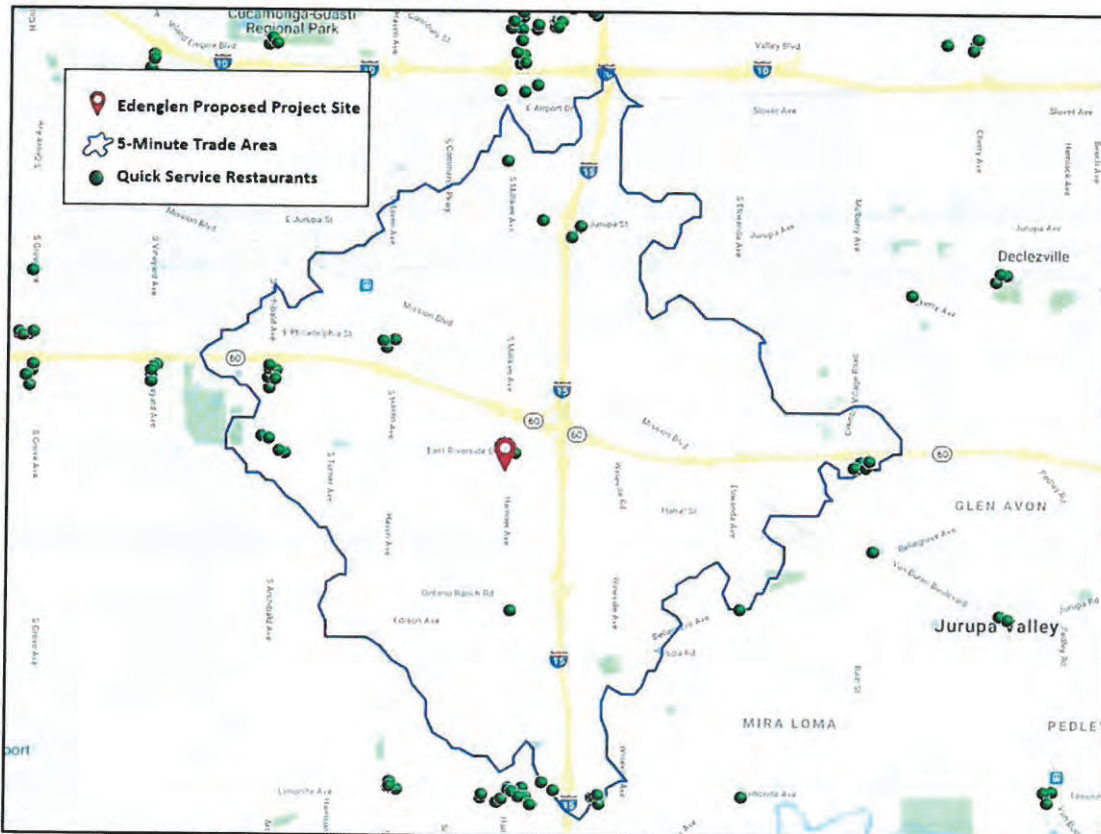
5-minute drive time showing the void in Casual Dining Restaurant establishment types



5-minute drive time showing the void in Coffee Shop establishment types



5-minute drive time showing the void in Drug Store establishment types



5-minute drive time showing the void in Quick Service Restaurant establishment types

## Consumer Demand & Market Supply Assessment

A Consumer Demand & Market Supply Assessment for the trade area identifies unfulfilled market supply for consumer demand. The trade area shows approximately \$26,695,559 being spent outside the primary and secondary trade areas as well as outside of the City of Ontario, much of this being spent to the south in shopping areas in the City of Eastvale. This represents approximately \$266,000 in potential sales tax revenue that could be realized by the City of Ontario. ECONSolutions used a methodology whereby the potential leakage is weighed against the potential sales that can be realized from a prototypical commercial shopping center. The potential leakage is then factored into sales per square foot based on potential sales resulting from a potential retail category. To that end, ECONSolutions is estimating approximately 100,000 to 120,000 square feet of retail can be realized and absorbed within the trade area. Additionally, the Ontario Ranch (New Model Colony) is a master-planned community of 13 square miles in Ontario with more than 46,000 new homes anticipated to be developed including many presently under development at this time. The consideration of absorbing 100,000 to 120,000 square feet of new retail shopping, in addition to new homes coming to the Ontario Ranch area presents the opportunity for the development of a 6 to 8-acre neighborhood shopping center at this site. The nearest neighborhood shopping center is situated at the southwest corner of Riverside Drive and Archibald Avenue, 3 miles to the west from the site. To the south of the site at the southeast corner of Hamner Avenue and Cantu Galleano Rancho Road is the Station at Goodman Commerce in the City of Eastvale, which is a 60-acre retail development with a 650,000-power center anchored by Costco and it is a regional draw has and I-15 freeway exposure.

## Void Analysis Summary

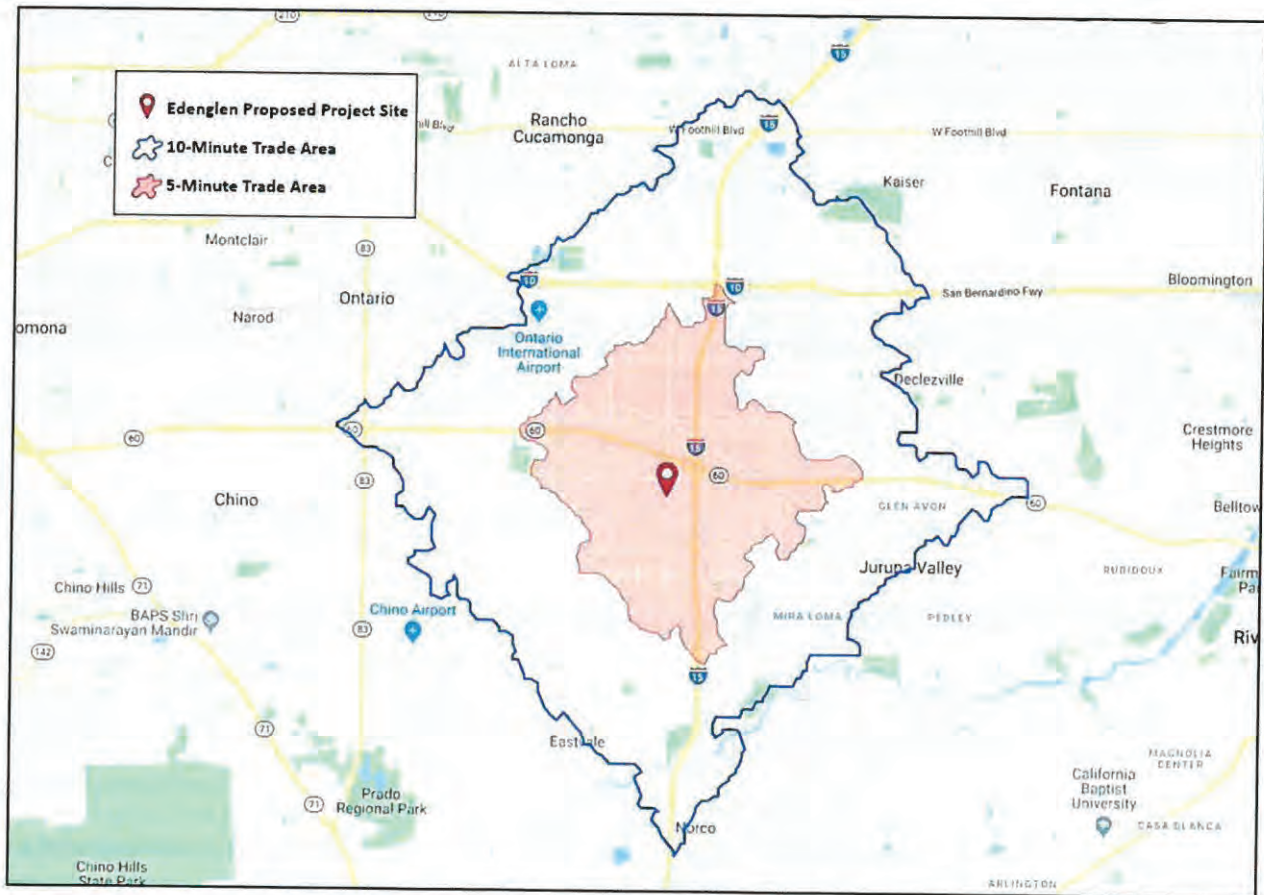
The following are possible national and regional targets from a Void Analysis on retailers and restaurants not in the trade area, as well as those active in trade areas similar in make-up to the project area.

Banks	Fitness	Fuel/ Convenience	Grocery/ Drug Store	Restaurants	Retail
Bank of California	UFC Gyms	Exxon/Mobil	H Mart	Coffee Bean & Tea Leaf	F21 Red
Bank of the West	Anytime Fitness	Texaco	99 Ranch Market	Peet's Coffee	WSS
Citibank	Chuze Fitness	Arco AM/PM	Aldi	Dutch Bros Coffee	Daiso Japan
		Shell	El Super	Pizza Studio	CosmoProf
			Grocery Outlet	Olive Garden	Bob's Discount Furniture
			Big Saver Foods	Pollo Campero	
			Good Neighbor Pharmacy	Norm's Restaurant	
			Mother's Market	L&L Hawaiian Barbecue	
				85 Degree Bakery & Café	
				Corner Bakery	
				Doghaus	

Current Market Conditions

As previously mentioned, the trade area for the Edenglen Specific Plan is defined in drivetimes with the primary trade area defined as a 5-minute drivetime and besides south Ontario, it also includes the most northern section of the City of Eastvale and the western most section of the City of Jurupa Valley. The secondary trade area is defined as a 10-minute drivetime and includes some of the surrounding cities including the cities listed previously, as well as portions of northern Norco, southeast portion of Rancho Cucamonga and the most southwestern area of the City of Fontana as well as portion of unincorporated San Bernardino County that is a part of the City of Fontana sphere of influence. Within the 5-minute drivetime, there are several retail options including neighborhood, strip/convenience centers, and a few community centers. However, within the immediate area the access to grocery, quick service/fast casual restaurants, banks and other convenience services is lacking – with only a small neighborhood shopping center anchored by Ralph’s at the southwest corner of Riverside Drive and Archibald Avenue, 3 miles away. Much of the residential areas in south Ontario are presently having to travel to the south to shopping centers on Limonite Avenue in the City of Eastvale.

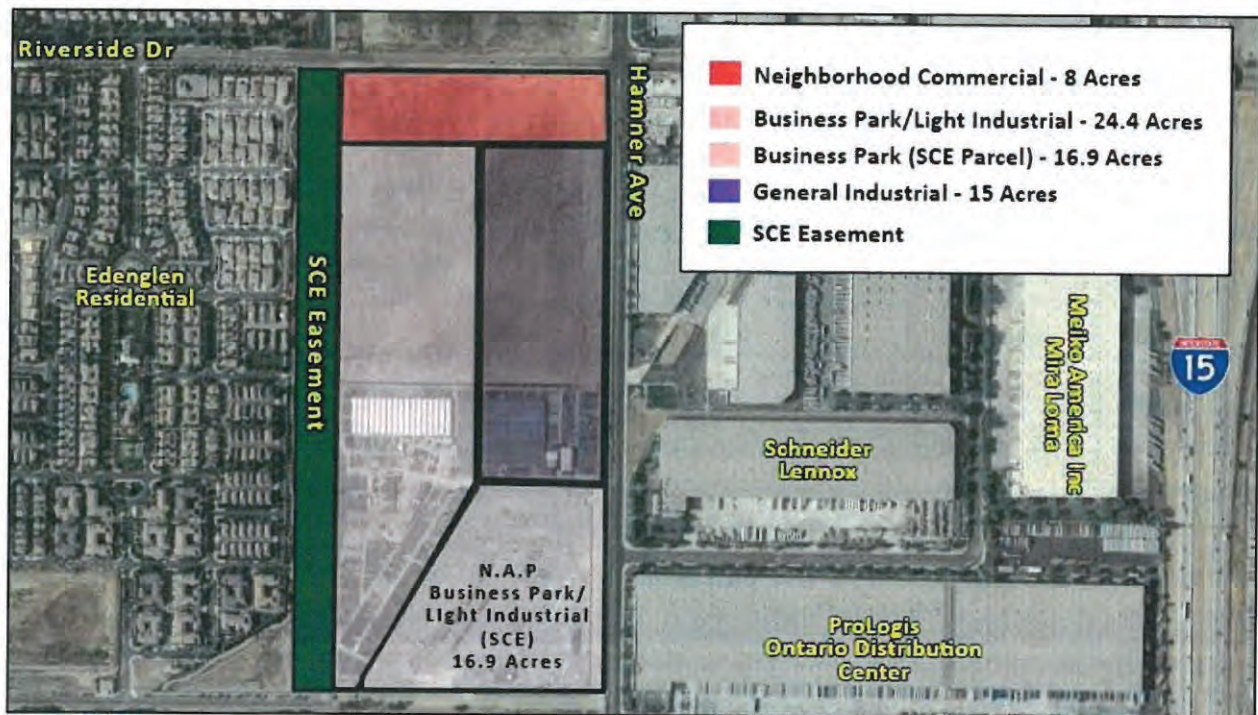
The 5-minute drivetime consist of approximately 25,381 people living in 7,913 households and hosts a daytime population of 44,817 along with a workforce of 29,440. The 5-minute drivetime makes up approximately 8% of the total population for the City of Ontario. The 10-minute drivetime consist of approximately 171,275 people living in 46,879 households and hosts a daytime population of 225,327 along with a workforce of 126,889. The 10-minute drivetime makes up approximately 31% of the total population of the City of Ontario.





## Market Analysis – Recommended Land Use

The proposed non-residential land uses within the Edenglen Specific Plan provides an opportunity for the City of Ontario to increase employment opportunities and provide for additional retail that specifically caters to the primary trade area workforce. However, the land uses within the specific plan need to consider the residential to the west of the site and as such should look to implement land uses that allow for a transition of use types that are more complementary than large industrial buildings that would negatively impact both major and minor arterial roads. The intent of the suggested uses should provide a natural transition from the intense e-commerce/logistics uses to the east and north of the site to the residential to the west. Additionally, the suggested land use will also provide opportunities for quick convenience retail/restaurants in the primary trade area catering to the area's workforce and daytime population.



The potential to create a campus type location that is physically appealing with comfortable outdoor settings that invite pedestrian links and casual meetings, and whose architecture reflects both enduring institutional qualities and cutting-edge features to attract potential tenants that will bring high wage job opportunities and also complement the surrounding area. The development of neighborhood scale shopping center here could serve the needs of residents, in the area, along with shopping and restaurant needs of the many employees working in the area.

The site could accommodate the following building square footage:

- Business Park/Office – 630,000 square feet (using existing FAR of 0.6)
  - Flex Space (R&D, Data Center, Showrooms)
- Office (SCE) – 440,000 square feet (using existing FAR of 0.55)
- Industrial – 350,000 square feet (using existing FAR of 0.6)
  - Distribution (e-commerce, Warehouse, Light Assembly) – single building
- Retail – 130,000 square feet (using existing FAR of 0.4)

Using data provided by the Bureau of Labor Statistics for average square foot per employee (based on use type), the total proposed approximate 1.5 million square feet of space could potentially employ nearly 2,300 employees.

## Recommendation

The Peer Review of the Retail Market Assessment provided by StreetSense indicates that the study was lacking in determining the market demand for more retail development in the area. The study did a very elementary evaluation of current market conditions and of site considerations in comparing other undeveloped properties in the area. The study really provided limited analysis on the market demand for new retail development in the area, including doing a Consumer Demand and Market Supply Assessment to ascertain the unfulfilled market supply for consumer demand in this area of Ontario. StreetSense purports that retail is not recommended here but provides no analysis or market demand data to support this finding. Additionally, the StreetSense report provided no mention of the addition of a significant amount of new residential units presently under development in the Ontario Ranch area, just south and southwest of the site. It also makes no correlation to the opportunity to better serve the retail and restaurant demand of the huge daytime population in this area of Ontario, Eastvale and Jurupa Valley.

The Market Study provided by ECONsolutions by HdL determines there is presently a market demand for 100,000 to 120,000 square feet of new retail in this area. The Consumer Demand & Market Supply Assessment demonstrates that nearly \$26.7 million in consumer spending is being done outside of the 5-minute drive time trade area, which equates to nearly \$267,000 in lost sales tax revenue for the City of Ontario. In fact, many of the residents and workers in this area are traveling outside of the trade area to shopping areas to the south in the City of Eastvale. Additionally, the need for more retail above 100,000 to 120,000 square feet will continue to grow as nearly 46,000 new homes are built in the Ontario Ranch area, just south and southwest of the site. Using the statistic provide by the census bureau of 3.46 persons per household in the City of Ontario (Census Bureau, 2019), at buildout this could increase the total population by approximately 159,000 people.

The recommendation for land uses for the site include:

- 8-acres of Neighborhood Commercial on the northerly part of the property (fronting on Riverside Drive, but also having visibility from Hamner Avenue). This zoning would allow for the development of an approximately 100,000 to 120,000 square foot neighborhood shopping center.
- 15-acres of General Industrial fronting on Hamner Avenue (and across the street from existing industrial development). This zoning would enable the development of an approximately 350,000 square foot industrial building for a logistics or distribution user.
- 24.4-acres of Business Park that serves as a transition to the existing residential to the west of the site, as well as to the General Industrial to the east. This zoning would enable the development of several buildings in a campus like setting with approximately 630,000 square feet of building space. Examples of this type of development is prevalent at many locations in Ontario, Chino and Eastvale and market demand should be high with new users generating new employment opportunities in the area and increase in retail demand as well.

## Hamner Ave/ Riverside Drive

Response: *Peer Review – Market Study – Crow Holdings Property at SWC of Hamner/Riverside*

*Prepared for Crow Holdings Industrial and the City of Ontario*

*January 30, 2020*

The purpose of this document is to evaluate the methodologies, findings, conclusions, and recommendations of the *Peer Review – Market Study – Crow Holdings Property at SWC of Hamner/Riverside* document prepared by ECONSolutions by HdL as commissioned by the City of Ontario. This document is to serve as a response to ECONSolutions peer review of Streetsense’s retail market study commissioned by Crow Holdings Industrial.

To calculate the market demand for retail at the site, HdL utilizes a retail leakage model to determine retail demand. Retail leakage models compare total retail business sales to total retail household expenditures within a given trade area. The result of this comparison is either a surplus of retail sales or a leakage of retail sales within the trade area. Retail leakage models are useful in understanding the baseline retail market conditions in a given submarket. The pitfall of utilizing a retail leakage model to determine retail potential is in the trade area delineation and the assumption that leakage can be recaptured at brick-and-mortar retailers within the trade areas, which doesn’t accurately reflect household retail spending occurring through ecommerce retailers. The conclusion that all of the retail leakage can be recaptured assumes that all household spending can and should occur within the trade area, which in this study, is a five-minute drivetime. This methodology and trade area delineation does not accurately reflect the reality of consumer behaviors in this market, as demographics indicate an ability and willingness to drive outside a five-minute area. Finally, this methodology does not consider the fundamental reality that retail markets are competitive, and sites are not evaluated equally by prospective tenants.

Almost all neighborhoods throughout the nation experience leakage. While retail leakage gap/opportunity reports are considered in Streetsense’s analyses, our approach to calculating market demand is more specific by utilizing a gravity model. By assigning a capture rate, or percentage likelihood for customers to patronize retail offerings within each submarket with respect to competition (both online and brick-and-mortar retailers), travel behaviors, and convenience, Streetsense is able to provide a more accurate estimation of how much additional square footage is supportable at the site. The gravity model used to determine the supportable retail square footage at this site considers the reality of the intense competition

to the north at Ontario Mills and south at Eastvale. Due to their tenant mix, quality, and quantity of retail offerings, these two retail developments will continue to be driving forces in the market and because of their retail momentum and established presence in the market, these developments and available development parcels surrounding these developments will continue to capture any latent demand for retail in the market.

Despite the differences in approach and methodology to estimating retail potential for a site, leakage models should consider new retail construction within the trade area, as new product within the trade area will absorb the amount of identified leakage. HdL reports a leakage of \$26.7 million in annual retail sales within the trade area, which equates to 100,000 to 120,000 square feet of retail potential. However, HdL does not include the construction of New Haven Marketplace, a 91,600 square foot grocery-anchored neighborhood retail center. New Haven Marketplace is under construction at the southwest corner of Ontario Road and New Haven Avenue, located one and a half miles southwest of the site within the site's trade area. Therefore, in a leakage study of the site, new retail construction will recapture 91,600 square feet of identified retail leakage, resulting in a remaining 8,400 to 28,400 square feet of retail leakage. Retail leakage absorption through new construction is not limited to current development projects, but also future development projects that may not be underway. Undeveloped land zoned for retail and commercial use within the trade area are potential retail opportunities to recapture identified retail leakage. The HdL study assumes that 100% of the leakage should be captured at the subject property and does not assign any portion of the leakage to any other sites, even though many are in better locations to capture the leakage.

In addition to new construction, leakage models should also consider potential redevelopment or retenanting of vacant or underutilized existing retail space. In a similar manner to new construction, redevelopment and retenanting replaces retail space that is not capturing retail sales, and thus contributing to leakage, and converts it into space that can capture retail sales, which will decrease the amount of reported leakage. Redevelopment can also include the addition of pad sites at existing retail centers. While no current redevelopments are planned, possible redevelopment or retenanting of retail centers in the trade area would further decrease the amount of leakage reported within the trade area. These opportunities include Pacific Plaza, Archibald Ranch Town Center, and Archibalds Plaza.

In summary, the retail leakage model is a useful tool to gaining a baseline understanding of retail market conditions and opportunities at a high level within a trade area, however there are limitations to this approach. Additionally, the leakage model utilized by HdL to estimate retail demand omits consideration of new retail developments. This is a significant omission

as HdL concludes that the entirety of retail leakage within the trade area (\$26.7 million) can be captured at the site in consideration. This conclusion does not consider absorption through new construction and potential redevelopment. Therefore, utilizing the leakage model approach to determine retail demand, the market appropriate, supportable retail program at the site is between 8,400 to 28,400 square feet.

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

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF ONTARIO, CALIFORNIA, APPROVING AN ADDENDUM TO THE ONTARIO PLAN CERTIFIED ENVIRONMENTAL IMPACT REPORT (STATE CLEARINGHOUSE NO. 2008101140), PURSUANT TO THE REQUIREMENTS OF THE CALIFORNIA ENVIRONMENTAL QUALITY ACT, AS AMENDED.

WHEREAS, Ontario CC, LLC (hereinafter referred to as "Applicant") has filed an Application for the approval of a has filed an Application for the approval of a General Plan Amendment, Specific Plan Amendment, Tentative Parcel Map, Development Agreement and Development Plan, File Nos. PGPA18-002, PSPA18-003, PMTT18-009, PDA18-006, and PDEV18-031, which consists of: 1) A General Plan Amendment (File No. PGPA18-002) to modify the Policy Plan (General Plan) Land Use Plan (Exhibit LU-01) component of The Ontario Plan, changing the land use designation of approximately 46 acres of land from General Commercial and Business Park, to 4.13 acres of Neighborhood Commercial, 3.51 acres of Business Park and 39 acres of Industrial; 2) Modify the Future Buildout Table (Exhibit LU-03) to be consistent with the land use designation changes; and 3) An amendment (File No. PSPA18-003) to the Edenglen Specific Plan to change the land use designation from Community Commercial, Commercial/Business Park Flex Zone, and Business Park/Light Industrial to 4.13 acres of Neighborhood Commercial, 3.51 acres of Business Park, and 39 acres of Light Industrial, including updates to the development standards, exhibits and text changes to reflect the proposed land uses; 4) A Tentative Parcel Map (File No. PMTT18-009/TPM 20027) to subdivide 46.64 acres of land into 7 numbered parcels and 1 lettered lot; 5) A Development Agreement (File No. PDA18-006) between the City of Ontario and Ontario CC, LLC, to establish the terms and conditions for the development of Tentative Parcel Map 20027; and 6) A Development Plan (File No. PDEV18-031) to construct 5 industrial buildings totaling 968,092 square feet. The Project site is located on the southwest corner of Riverside Drive and Hamner Avenue, in the City of Ontario, California (hereinafter referred to as "Application" or "Project"); and

WHEREAS, The Ontario Plan (File No. PGPA06-001) Environmental Impact Report (State Clearinghouse No. 2008101140) was certified on January 27, 2010 (hereinafter referred to as "Certified EIR"), in which development and use of the Project site was discussed; and

WHEREAS, the Planning Director of the City of Ontario has prepared and approved for attachment to the certified Environmental Impact Report, an Addendum to the Certified EIR (hereinafter referred to as "EIR Addendum") in accordance with the requirements of the California Environmental Quality Act of 1970, together with State and local guidelines implementing said Act, all as amended to date (collectively referred to as "CEQA"); and

WHEREAS, the EIR Addendum concluded that implementation of the Project could result in a number of significant effects on the environment that were previously analyzed in the Certified EIR, and that the Certified EIR identified mitigation measures that would reduce each of those significant effects to a less-than-significant level; and

WHEREAS, pursuant to State CEQA Guidelines Section 15164(a), a lead agency shall prepare an addendum to a previously certified EIR if some changes or additions are necessary to a project, but the preparation of a subsequent or supplemental EIR is not required; and

WHEREAS, the City determined that none of the conditions requiring preparation of a subsequent or supplemental EIR would occur from the Project, and that preparation of an Addendum to the Certified EIR was appropriate; and

WHEREAS, the City of Ontario is the lead agency on the Project, and the City Council is the decision-making authority for the requested approval to construct and otherwise undertake the Project; and

WHEREAS, on August 25, 2020, the Planning Commission of the City of Ontario conducted a hearing to consider the Addendum and concluded said hearing on that date, voting to issue Resolution No. PC20-052, recommending the City Council approve the Application; and

WHEREAS, the City Council has reviewed and considered the EIR Addendum for the Project, has concluded that none of the conditions requiring preparation of a subsequent of supplemental EIR have occurred, and intends to take actions on the Project in compliance with CEQA and state and local guidelines implementing CEQA; and

WHEREAS, the EIR Addendum for the Project are on file in the Planning Department, located at 303 East B Street, Ontario, CA 91764, are available for inspection by any interested person at that location and are, by this reference, incorporated into this Resolution as if fully set forth herein; and

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

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

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

(1) The environmental impacts of this project were reviewed in conjunction with an Addendum to The Ontario Plan Environmental Impact Report Environmental Impact Report (State Clearinghouse No. 2008101140), certified by the Ontario City Council on January 27, 2010, in conjunction with File No. PGPA06-001; and

(2) The EIR Addendum and administrative record have been completed in compliance with CEQA, the State CEQA Guidelines, and the City of Ontario Local CEQA Guidelines; and

(3) The City's "Guidelines for the Implementation of the California Environmental Quality Act (CEQA)" provide for the use of a single environmental assessment in situations where the impacts of subsequent projects are adequately analyzed. This Application introduces no new significant environmental impacts; and

(4) All previously adopted mitigation measures shall be a condition of project approval, as they are applicable to the Project, and are incorporated herein by this reference; and

(5) The EIR Addendum contains a complete and accurate reporting of the environmental impacts associated with the Project, and reflects the independent judgment of the City Council; and

(6) There is no substantial evidence in the administrative record supporting a fair argument that the project may result in significant environmental impacts.

**SECTION 2. Additional Environmental Review Not Required.** Based on the Addendum, all related 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 Environmental Impact Report is not required for the Project, as the Project:

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

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

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

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

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

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



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

**SECTION 3. City Council Action.** Based upon the findings and conclusions set forth in Sections 1 and 2, above, the City Council hereby finds that based upon the entire record of proceedings before it, and all information received, that there is no substantial evidence that the Project will constitute substantial changes to the Certified EIR, and does hereby approve the EIR Addendum, attached hereto as "Attachment A," and incorporated herein by this reference.

**SECTION 4. Indemnification.** The Applicant shall agree to defend, indemnify and hold harmless, the City of Ontario or its agents, officers, and employees from any claim, action or proceeding against the City of Ontario or its agents, officers or employees to attack, set aside, void, or annul this approval. The City of Ontario shall promptly notify the applicant of any such claim, action, or proceeding, and the City of Ontario shall cooperate fully in the defense.

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

PASSED, APPROVED, AND ADOPTED this 17<sup>th</sup> day of November 2020.

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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 AND KRIEGER LLP  
CITY ATTORNEY

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

I, SHEILA MAUTZ, City Clerk of the City of Ontario, DO HEREBY CERTIFY that foregoing Resolution No. 2020- was duly passed and adopted by the City Council of the City of Ontario at their regular meeting held November 17, 2020, 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. 2020- duly passed and adopted by the Ontario City Council at their regular meeting held November 17, 2020.

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

(SEAL)

**ATTACHMENT A:**

**Addendum to The Ontario Plan  
Environmental Impact Report**

*(Addendum to follow this page)*

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

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF ONTARIO, CALIFORNIA, APPROVING FILE NO. PGPA18-002, AN AMENDMENT TO THE LAND USE ELEMENT OF THE POLICY PLAN (GENERAL PLAN), REVISING EXHIBIT LU-01 (OFFICIAL LAND USE PLAN) AND EXHIBIT LU-03 (FUTURE BUILDOUT), AFFECTING PROPERTY LOCATED AT THE SOUTHWEST CORNER OF RIVERSIDE DRIVE AND HAMNER AVENUE, FROM GENERAL COMMERCIAL (20 ACRES) AND BUSINESS PARK (26.64 ACRES), TO 4.13 ACRES OF NEIGHBORHOOD COMMERCIAL, 3.51 ACRES OF BUSINESS PARK, AND 39 ACRES OF INDUSTRIAL DESIGNATED LAND, AND MAKING FINDINGS IN SUPPORT THEREOF—APNS: 0218-171-21 AND 0218-171-27. (SEE EXHIBITS A AND B) (PART OF CYCLE 4 FOR THE 2020 CALENDAR YEAR).

WHEREAS, Ontario CC, LLC ("Applicant") has filed an Application for the approval of a General Plan Amendment, File No. PGPA18-002, as described in the title of this Resolution (hereinafter referred to as "Application" or "Project"); and

WHEREAS, the City of Ontario adopted the Policy Plan (General Plan) as part of The Ontario Plan in January 2010. Since the adoption of The Ontario Plan, the City has evaluated Exhibits LU-01: Official Land Use Plan and LU-03: Future Buildout further and is proposing modifications; and

WHEREAS, the proposed changes to Exhibit LU-01 Official Land Use Plan include changes to land use designations of certain properties shown on Exhibit A to accommodate an industrial Development Plan (File No. PDEV18-031) and Tentative Parcel Map (File No. PMTT18-009); and

WHEREAS, Policy Plan Exhibit LU-03 (Future Buildout) specifies the expected buildout for the City of Ontario, incorporating the adopted land use designations. The proposed changes to Exhibit LU-01 (Official Land Use Plan) will require that Exhibit LU-03 (Future Buildout) is modified to be consistent with Exhibit LU-01 (Official Land Use Plan), as depicted on Exhibit B, attached; and

WHEREAS, the City of Ontario conducted two community meetings to discuss the proposed subject application. The first community meeting was in-person and held on December 12, 2018, at the Colony High Branch Library. The second meeting was a virtual presentation that was available on the on the City Website from June 1, 2020, through July 21, 2020; and

WHEREAS, the Application is a project pursuant to the California Environmental Quality Act (Public Resources Code Section 21000 et seq.) ("CEQA") and an initial study has been prepared to determine possible environmental impacts; and

WHEREAS, Ontario Development Code Table 2.02-1 (Review Matrix) grants the City Council the responsibility and authority to review and act on the subject Application; and

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

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

WHEREAS, on August 25, 2020, the Planning Commission of the City of Ontario conducted a hearing to consider the Addendum and the Project, and concluded said hearing on that date, voting to issue Resolution No. PC20-053, recommending the City Council approve the Application; and

WHEREAS, as the first action on the Project, on November 17, 2020, the City Council approved a Resolution to adopt an Addendum to The Ontario Plan Environmental Impact Report (State Clearinghouse No. 2008101140) adopted by City Council on January 27, 2010 for File No. PGPA06-001. The Addendum finds that the proposed project introduces no new significant environmental impacts, and all previously adopted mitigation measures are incorporated into the Project by reference; and

WHEREAS, on September 15, 2020 the City Council of the City of Ontario conducted a hearing to consider the Project, and continued the hearing to a future date; and

WHEREAS, on November 17, 2020 the City Council of the City of Ontario conducted a hearing to consider the Project, and concluded said hearing on that date; and

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

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

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

(1) The environmental impacts of this project were reviewed in conjunction with an Addendum to The Ontario Plan Environmental Impact Report — State Clearinghouse No. 2008101140 (“Certified EIR”), which was certified by the Ontario City Council on January 27, 2010, in conjunction with File No. PGPA06-001; and

(2) The Addendum and administrative record have been completed in compliance with CEQA, the State CEQA Guidelines, and the City of Ontario Local CEQA Guidelines; and

(3) The City's "Guidelines for the Implementation of the California Environmental Quality Act (CEQA)" provide for the use of a single environmental assessment in situations where the impacts of subsequent projects are adequately analyzed. This Application introduces no new significant environmental impacts; and

(4) All previously adopted mitigation measures shall be a condition of project approval, as they are applicable to the Project, and are incorporated herein by this reference; and

(5) The Addendum contains a complete and accurate reporting of the environmental impacts associated with the Project, and reflects the independent judgment of the City Council; and

(6) There is no substantial evidence in the administrative record supporting a fair argument that the project may result in significant environmental impacts; and

**SECTION 2. Additional Environmental Review Not Required.** Based on the Addendum, all related 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 environmental impact report is not required for the Project, as the Project:

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

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

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

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

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

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

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

**SECTION 3. 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 decision-making body for the Project, the City Council has reviewed and considered the facts and information contained in the Application and supporting documentation against the 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.

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

(1) The proposed General Plan Amendment is consistent with the goals and policies of The Ontario Plan as follows:

(a) **CE1-1 - Jobs-Housing Balance.** We pursue improvement to the Inland Empire’s balance between jobs and housing by promoting job growth that reduces the regional economy’s reliance on out-commuting.

Compliance: The proposed land use designation changes from 20 acres of General Commercial and 26.64 acres of Business Park to 4.13 acres of Neighborhood Commercial, 3.51 acres of Business Park, and 39 acres of Industrial will facilitate the construction of a proposed industrial development. The proposed industrial development will assist towards promoting local/regional job growth and furthering the goal of jobs and housing balance within the Inland Empire.

(b) **CE1-2 - Jobs and Workforce Skills.** We use our economic development resources to: 1) attract jobs suited for the skills and education of current and future City residents; 2) work with regional partners to provide opportunities for the labor force to improve its skills and education; and 3) attract businesses that increase Ontario's stake and participation in growing sectors of the regional and global economy.

Compliance: The proposed land use designation changes from 20 acres of General Commercial and 26.64 acres of Business Park, to 4.13 acres of Neighborhood Commercial, 3.51 acres of Business Park, and 39 acres of Industrial will facilitate the construction of a proposed industrial development. The proposed industrial development will assist towards creating jobs suited for the skills and education of current and future City residents and provide jobs in growing sectors of the regional and global economy.

(c) **CE1-11 - Socioeconomic Trends.** We continuously monitor, plan for, and respond to changing socioeconomic trends.

Compliance: The proposed land use designation changes from 20 acres of General Commercial and 26.64 acres of Business Park, to 4.13 acres of Neighborhood Commercial, 3.51 acres of Business Park, and 39 acres of Industrial will facilitate the construction of a proposed industrial development. The project site was initially intended to be developed with small industrial buildings and a larger commercial center. In responding to changing socioeconomic trends, larger industrial/business park complexes have grown in demand and commercial/retail space demand has declined. The proposed General Plan Amendment is in response to changing socioeconomic trends which has shifted to on-line shopping resulting in greater demands for warehouse industrial uses.

(2) The proposed General Plan Amendment would not be detrimental to the public interest, health, safety, convenience, or general welfare of the City;

(3) The Land Use Element is a mandatory element allowed four general plan amendments per calendar year and this general plan amendment is the second amendment to the Land Use Element of the 2020 calendar year consistent with Government Code Section 65358;

(4) The project is consistent with the Housing Element of the Policy Plan (General Plan) component of The Ontario Plan. The project the Project is consistent with the Housing Element of the Policy Plan (General Plan) component of The Ontario Plan. The Edenglen Specific Plan was listed in the Available Land Inventory contained in Table A-3 (Available Land by Planning Area) of the Housing Element Technical Report Appendix. However, the eastern half of the Edenglen Specific Plan (Project site) was not included as one of the properties in the Available Land Inventory since the eastern half of the Specific Plan did not include any residential land use designations.

(5) During the amendment of the General Plan, opportunities for the involvement of citizens, California Native American Indian tribes (Government Code Section 65352.3.), public agencies, public utility companies, and civic, education, and other community groups, through public hearings or other means were implemented consistent with Government Code Section 65351.



**SECTION 5. City Council Action.** Based upon the findings and conclusions set forth in Sections 1 through 4, above, the City Council hereby APPROVES the proposed General Plan Amendment, as depicted in Exhibit A (Policy Plan Land Use Plan (Exhibit LU-01) Revision) and Exhibit B (Future Buildout (Exhibit LU-03) Revision) of this Resolution.

**SECTION 6. Indemnification.** The Applicant shall agree to defend, indemnify and hold harmless, the City of Ontario or its agents, officers, and employees from any claim, action or proceeding against the City of Ontario or its agents, officers or employees to attack, set aside, void, or annul this approval. The City of Ontario shall promptly notify the applicant of any such claim, action, or proceeding, and the City of Ontario shall cooperate fully in the defense.

**SECTION 7. Custodian of Records.** The documents and materials that constitute the record of proceedings on which these findings have been based are located at the City of Ontario City Hall, 303 East "B" Street, Ontario, California 91764. The custodian for these records is the City Clerk of the City of Ontario.

**SECTION 8. Certification to Adoption.** The City Clerk shall certify to the adoption of the Resolution.

PASSED, APPROVED, AND ADOPTED this 17<sup>th</sup> day of November 2020.

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PAUL S. LEON, MAYOR

ATTEST:

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SHEILA MAUTZ, CITY CLERK

APPROVED AS TO FORM:

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BEST BEST & KRIEGER LLP  
CITY ATTORNEY

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

I, SHEILA MAUTZ, City Clerk of the City of Ontario, DO HEREBY CERTIFY that foregoing Resolution No. 2020- was duly passed and adopted by the City Council of the City of Ontario at their regular meeting held November 17, 2020, by the following roll call vote, to wit:

AYES: COUNCIL MEMBERS:

NOES: COUNCIL MEMBERS:

ABSENT: COUNCIL MEMBERS:

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

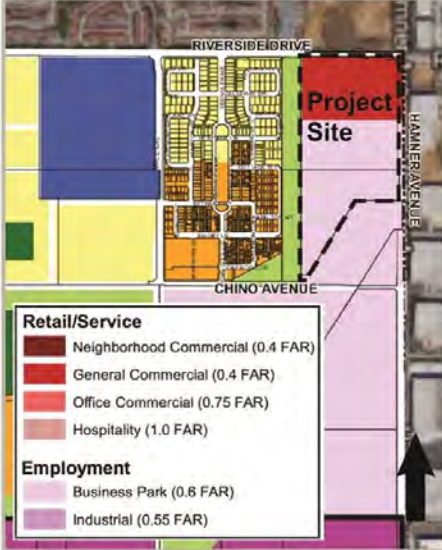

(SEAL)

The foregoing is the original of Resolution No. 2020- duly passed and adopted by the Ontario City Council at their regular meeting held November 17, 2020.

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

(SEAL)

### EXHIBIT A: Policy Plan Land Use Plan (Exhibit LU-01) Revision

Existing Policy Plan Land Use	Assessor Parcel Number(s) Involved	Proposed Policy Plan Land Use
 <p style="text-align: center;"><i>0218-171-21 and 0218-171-27</i></p> <p style="text-align: center;"><i>(1 of 2 properties)</i></p>		<p>General Commercial (20 acres) Business Park (26.64 acres)</p>
	<p><i>0218-171-21 and 0218-171-27</i></p> <p><i>(1 of 2 properties)</i></p>	<p>Neighborhood Commercial (4.13 acres) Business Park (3.51 acres) Industrial (39 acres)</p>

## EXHIBIT B: Future Buildout (Exhibit LU-03) Revision



### LU-03 Future Buildout<sup>1</sup>

Land Use	Acres <sup>2</sup>	Assumed Density/Intensity <sup>3</sup>	Units	Population <sup>4</sup>	Non-Residential Square Feet	Jobs <sup>5</sup>
<b>Retail/Service</b>						
Neighborhood Commercial <sup>6</sup>	<del>281</del> 285	0.30 FAR			<del>3,671,585</del> 3,725,556	<del>8,884</del> 9,015
General Commercial	<del>477</del> 457	0.30 FAR			<del>6,229,385</del> 5,968,025	<del>5,787</del> 5,544
Office/Commercial	490	0.75 FAR			16,018,428	35,523
Hospitality	142	1.00 FAR			6,177,679	7,082
<b>Subtotal</b>	<del>1,390</del> <b>1,374</b>				<del>32,097,077</del> <b>31,889,668</b>	<del>57,276</del> <b>57,164</b>
<b>Employment</b>						
Business Park	<del>1,531</del> 1,508	0.40 FAR			<del>26,676,201</del> 26,273,284	<del>46,803</del> 46,096
Industrial	<del>6,446</del> 6,485	0.55 FAR			<del>154,428,405</del> 155,362,767	<del>135,684</del> 136,505
<b>Subtotal</b>	<del>7,977</del> <b>7,993</b>				<del>181,104,705</del> <b>181,636,050</b>	<del>182,487</del> <b>182,601</b>
<b>Other</b>						
Open Space-Non-Recreation	1,232	Not applicable				
Open Space-Parkland <sup>6</sup>	950	Not applicable				
Open Space-Water	59	Not applicable				
Public Facility	97	Not applicable				
Public School	632	Not applicable				
LA/Ontario International Airport	1,677	Not applicable				
Landfill	137	Not applicable				
Railroad	251	Not applicable				
Roadways	4,871	Not applicable				
<b>Subtotal</b>	<b>9,906</b>					
<b>Total</b>	<b>31,786</b>		<b>100,654</b>	<b>347,190</b>	<del>247,784,328</del> <b>248,108,284</b>	<del>311,659</del> <b>311,661</b>

**Notes**

- 1 Historically, citywide buildout levels do not achieve the maximum allowable density/intensity on every parcel and are, on average, lower than allowed by the Policy Plan. Accordingly, the buildout projections in this Policy Plan do not assume buildout at the maximum density or intensity and instead are adjusted downward. To view the buildout assumptions, access the Methodology report.
- 2 Acres are given as adjusted gross acreages, which do not include the right-of-way for roadways, flood control facilities, or railroads.
- 3 Assumed Density/Intensity includes both residential density, expressed as units per acre, and non-residential intensity, expressed as floor area ratio (FAR), which is the amount of building square feet in relation to the size of the lot.
- 4 Projections of population by residential designation are based on a persons-per-household factor that varies by housing type. For more information, access the Methodology report.
- 5 To view the factors used to generate the number of employees by land use category, access the Methodology report.
- 6 Acreages and corresponding buildout estimates for these designations do not reflect underlying land uses within the Business Park, Industrial and Commercial Overlays. Estimates for these areas are included within the corresponding Business Park, Industrial and General Commercial categories.

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

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF ONTARIO, CALIFORNIA, APPROVING FILE NO. PSPA18-003, AN AMENDMENT TO THE EDENGLLEN SPECIFIC PLAN TO: (1) CHANGE THE LAND USE DESIGNATION ON 46.64 ACRES OF LAND FROM COMMUNITY COMMERCIAL, COMMERCIAL/BUSINESS PARK FLEX ZONE, AND BUSINESS PARK/LIGHT INDUSTRIAL, TO 4.13 ACRES OF NEIGHBORHOOD COMMERCIAL, 3.51 ACRES OF BUSINESS PARK, AND 39 ACRES OF LIGHT INDUSTRIAL DESIGNATED LAND, ON TWO PROPERTIES LOCATED AT THE SOUTHWEST CORNER OF RIVERSIDE DRIVE AND HAMNER AVENUE; AND (2) AMEND THE SPECIFIC PLAN TO UPDATE THE DEVELOPMENT STANDARDS, EXHIBITS, AND TEXT CHANGES TO REFLECT THE PROPOSED LAND USES, AND MAKING FINDINGS IN SUPPORT THEREOF - APNS: 0218-171-21 AND 0218-171-27.

WHEREAS, Ontario CC, LLC, (hereinafter referred to as "Applicant") has filed an Application for the approval of a Specific Plan Amendment, File No. PSPA18-003, as described in the title of this Resolution (hereinafter referred to as "Application" or "Project"); and

WHEREAS, the Application applies to 46.64 acres of land generally located at the southwest corner of Riverside Drive and Hamner Avenue, within the proposed Neighborhood Commercial, Business Park, and Light Industrial land use districts of the Edenglen Specific Plan, and is presently vacant to the north and to the south the property is improved with several shade structures, concrete block material bays, and greenhouses that were utilized by a commercial nursery (Sunshine Growers) formerly on the Project site; and

WHEREAS, the property to the north of the Project site is within the Commercial and Residential district of the Tuscana Village Specific Plan and is vacant. The property to the east is within the C-1/C-P (General Commercial) and IP (Industrial Park) zoning district of the City of Eastvale and is developed with a gas station and Industrial uses. The property to the south is within the Light Industrial district of the Edenglen Specific Plan and is developed with an SCE Substation. The property to the west is within the SCE Corridor district of the Edenglen Specific Plan and is developed with power lines and transmission towers; and

WHEREAS, the Edenglen Specific Plan Amendment includes changes to the Edenglen Land Use Plan and Land Use Summary Table. The amendment proposes a land use designation change, from Community Commercial, Commercial/Business Park Flex Zone, and Business Park/Light Industrial to 4.13 acres of Neighborhood Commercial, 3.51 acres of Business Park, and 39 acres of Light Industrial; and

WHEREAS, the proposed 4.13-acre Neighborhood Commercial land use district is located at the southwest corner of Hamner Avenue and Riverside Drive, and allows for up to 40,000 square feet of commercial land uses; and

WHEREAS, the proposed 3.51-acre Business Park land use district is located along Riverside Drive, at the northwest corner of the Project site. The Business Park land use designation allows commercial land uses to accommodate flexibility in land uses along Riverside Drive; and

WHEREAS, the proposed 39-acre Light Industrial land use district is located on the southern portion of the project site. The proposed buildings are envisioned for warehouse, distribution, and light manufacturing uses. Heavy manufacturing uses will not be allowed; and

WHEREAS, the Edenglen Specific Plan Amendment includes updates to development standards, the land use matrix, and various exhibits, along with text/map changes to reflect the proposed land use changes and infrastructure requirements (see Attachment A: Edenglen Specific Plan Amendment Document). The development regulations and land use matrix have been amended to include standards for the Neighborhood Commercial, Business Park, and Light Industrial land use districts; and

WHEREAS, a General Plan Amendment, Tentative Parcel Map, Development Agreement and Development Plan, File Nos. PGPA18-002, PMTT18-009, PDA18-006, and PDEV18-031, respectively, were filed in conjunction with the proposed Edenglen Specific Plan Amendment. The four applications consist of: 1) a General Plan Amendment (File No. PGPA18-002) to modify the Policy Plan (General Plan) Land Use Plan (Exhibit LU-01) component of The Ontario Plan, changing the land use designation of approximately 46 acres of land from General Commercial and Business Park, to 4.13 acres of Neighborhood Commercial, 3.51 acres of Business Park, and 39 acres of Industrial; 2) modify the Future Buildout Table (Exhibit LU-03) to be consistent with the land use designation changes; 3) a Tentative Parcel Map (File No. PMTT18-009/TPM 20027) to subdivide 46.64 acres of land into 7 numbered parcels and one lettered lot; 4) a Development Agreement (File No. PDA18-006) between the City of Ontario and Ontario CC, LLC, to establish the terms and conditions for the development of Tentative Parcel Map No. 20027; and 5) a Development Plan (File No. PDEV18-031) to construct 5 industrial buildings totaling 968,092 square feet; and

WHEREAS, The Ontario Plan (File No. PGPA06-001) Environmental Impact Report (State Clearinghouse No. SCH# 2008101140) was certified on January 27, 2010 (hereinafter referred to as "Certified EIR"), in which development and use of the Project site was discussed; and

WHEREAS, the Planning Director of the City of Ontario prepared and approved for attachment to the certified Environmental Impact Report, an Addendum to the Certified EIR (hereinafter referred to as "EIR Addendum") in accordance with the requirements of the California Environmental Quality Act of 1970, together with State and local guidelines implementing said Act, all as amended to date (collectively referred to as "CEQA"); and

WHEREAS, the environmental impacts of this project were thoroughly analyzed in the EIR Addendum, which concluded that implementation of the Project could result in a number of significant effects on the environment that were previously analyzed in the Certified EIR, and that the Certified EIR identified mitigation measures that would reduce each of those significant effects to a less-than-significant level; and

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

WHEREAS, the Application is a project pursuant to the California Environmental Quality Act — Public Resources Code Section 21000 et seq. — (hereinafter referred to as "CEQA") and an EIR Addendum has been prepared to determine possible environmental impacts; and

WHEREAS, Ontario Development Code Table 2.02-1 (Review Matrix) grants the City Council the responsibility and authority to review and act on the subject Application; and

WHEREAS, the Project has been reviewed for consistency with the Housing Element of the Policy Plan component of The Ontario Plan, as State Housing Element law (as prescribed in Government Code Sections 65580 through 65589.8) requires that development projects must be consistent with the Housing Element, if upon consideration of all its aspects, it is found to further the purposes, principals, goals, and policies of the Housing Element; and

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

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

WHEREAS, on August 17, 2020, the Development Advisory Board of the City of Ontario conducted a hearing to consider the Addendum and the Project and concluded said hearing on that date, voting to issue Decision Nos. DAB20-045, DAB20-046 and DAB20-047, respectively, recommending that the Planning Commission recommend the City Council approve the Application; and

WHEREAS, on August 25, 2020, the Planning Commission of the City of Ontario conducted a hearing to consider the EIR Addendum and the Project and concluded said hearing on that date, voting to issue Resolution No. PC20-052, recommending the City Council adopt the EIR Addendum, and voting to issue Resolution No. PC20-054, recommending the City Council approve the Application; and

WHEREAS, as the first action on the Project, on November 17, 2020, the City Council issued a Resolution adopting the EIR Addendum, finding that the proposed Project introduces no new significant environmental impacts and applying all previously adopted mitigation measures to the Project, which were incorporated by reference; and

WHEREAS, on September 15, 2020 the City Council of the City of Ontario conducted a hearing to consider the Project, and continued the hearing to a future date; and

WHEREAS, on November 17, 2020 the City Council of the City of Ontario conducted a hearing to consider the Project, and concluded said hearing on that date; and

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

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

**SECTION 1. Housing Element Compliance.** Pursuant to the requirements of California Government Code Chapter 3, Article 10.6, commencing with Section 65580, as the decision-making body for the Project, the City Council finds that based upon the facts and information contained in the Application and supporting documentation, at the time of Project implementation, the Project is consistent with the Housing Element of the Policy Plan (General Plan) component of The Ontario Plan. The Edenglen Specific Plan was listed in the Available Land Inventory contained in Table A-3 (Available Land by Planning Area) of the Housing Element Technical Report Appendix. However, the eastern half of the Edenglen Specific Plan (Project site) was not included as one of the properties in the Available Land Inventory since the eastern half of the Specific Plan did not include any residential land use designations.

**SECTION 2. 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 decision-making body for the Project, the City Council has reviewed and considered the facts and information contained in the Application and supporting documentation against the 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.



**SECTION 3. Concluding Facts and Reasons.** Based upon the substantial evidence presented to the City Council during the above-referenced hearing, and upon the specific findings set forth in Sections 1 and 2, above, the City Council hereby concludes as follows:

(1) ***The proposed Specific Plan, or amendment thereto, is consistent with the goals, policies, plans and exhibits of the Vision, Policy Plan (General Plan), and City Council Priorities components of The Ontario Plan.*** The proposed Edenglen Specific Plan amendment will provide land use consistency with the related proposed General Plan Amendment (File No. PGPA18-002) that will change the land use on 46.64 acres of land from General Commercial and Business Park, to 4.13 acres of Neighborhood Commercial, 3.51 acres of Business Park, and 39 acres of Industrial. The proposed amendments will accommodate a proposed industrial development on the subject site that are consistent with goals, policies, plans and City Council priorities of The Ontario Plan.

(2) ***The proposed Specific Plan, or amendment thereto, would not be detrimental to the public interest, health, safety, convenience, or general welfare of the City.*** The proposed amendments to the Edenglen Specific Plan will establish consistency with the related proposed General Plan Amendment (File No. PGPA18-002). The proposed Specific Plan Amendment will not be detrimental to the public interest, health, safety, convenience, or general welfare of the City. The land use changes will continue to provide commercial, business park and industrial uses within the Edenglen Specific Plan, which is consistent with the type and intensity of development specified in The Ontario Plan and evaluated by The Ontario Plan Environmental Impact Report.

(3) ***In the case of an application affecting specific property(ies), the proposed Specific Plan, or amendment thereto, will not adversely affect the harmonious relationship with adjacent properties and land uses.*** The Project site is located near sensitive land uses to the west. The associated Development Plan application (File No. PDEV18-031) incorporates design features within the site plan, including, but not limited to, building orientation and landscape buffers, to mitigate any impacts to a less than significant level, providing a project that is complimentary to and harmonious with the surrounding area.

(4) ***In the case of an application affecting specific property(ies), the subject site is physically suitable, including, but not limited to, parcel size, shape, access, and availability of utilities, for the request and anticipated development.*** The subject site is physically suitable to accommodate the proposed industrial, business park and future commercial land uses. The Edenglen Specific Plan amendment includes development standards to facilitate the proposed land uses, which will be developed with adequate lot sizes, access, and utilities to serve the project site.

**SECTION 4. City Council Action.** Based upon the findings and conclusions set forth in Sections 1 through 3, above, the City Council hereby APPROVES the herein described Edenglen Specific Plan Amendment, attached hereto as Attachment A and incorporated herein by this reference.

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

PASSED, APPROVED, AND ADOPTED this 17<sup>th</sup> day of November 2020.

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PAUL S. LEON, MAYOR

ATTEST:

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SHEILA MAUTZ, CITY CLERK

APPROVED AS TO FORM:

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BEST BEST & KRIEGER LLP  
CITY ATTORNEY

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

I, SHEILA MAUTZ, City Clerk of the City of Ontario, DO HEREBY CERTIFY that foregoing Resolution No. 2020- was duly passed and adopted by the City Council of the City of Ontario at their regular meeting held November 17, 2020, 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. 2020- duly passed and adopted by the Ontario City Council at their regular meeting held November 17, 2020.

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

(SEAL)

**ATTACHMENT A:**


**File No. PSPA18-003;  
Edenglen Specific Plan Amendment Document**

*(Document follows this page)*

**CITY OF ONTARIO**

*Agenda Report*  
**November 17, 2020**

**SECTION:  
PUBLIC HEARINGS**

Department: Development Administration  
Prepared By: Derrick E Womble  
Staff Member Presenting:  
Scott Murphy, AICP, Executive Director  
Development Agency  
Approved By: 

Submitted To: Council/OHA  
Approved: \_\_\_\_\_  
Continued To: \_\_\_\_\_  
Denied: \_\_\_\_\_  
Item No: 13

**SUBJECT: A PUBLIC HEARING TO CONSIDER AN ORDINANCE APPROVING THE DEVELOPMENT AGREEMENT (FILE NO. PDA18-006) BETWEEN THE CITY OF ONTARIO AND ONTARIO CC, LLC., TO ESTABLISH THE TERMS AND CONDITIONS FOR THE DEVELOPMENT OF TENTATIVE PARCEL MAP 20027 (FILE NO. PMTT18-009), FOR A 46.64-ACRE PROPERTY LOCATED AT THE SOUTHWEST CORNER OF RIVERSIDE DRIVE AND HAMNER AVENUE, WITHIN THE PROPOSED NEIGHBORHOOD COMMERCIAL, BUSINESS PARK AND LIGHT INDUSTRIAL LAND USE DESIGNATIONS OF THE EDENGLLEN SPECIFIC PLAN (APNS:0218-171-21 AND 0218-171-27)**

**RECOMMENDATION:** That the City Council introduce and waive further reading of an ordinance approving the Development Agreement (File No. PDA18-006) between the City of Ontario and Ontario CC, LLC., to establish the terms and conditions for the development of Tentative Parcel Map 20027 (File No. PMTT18-009), for a 46.64-acre property located at the southwest corner of Riverside Drive and Hamner Avenue, within the proposed Neighborhood Commercial, Business Park and Light Industrial land use designations of the Edenglen Specific Plan (APNs: 0218-171-21 and 0218 171-27).

**THE FOLLOWING COUNCIL GOALS ARE BEING ACHIEVED:**

**Invest in the Growth and Evolution of the City's Economy**

**Operate in a Businesslike Manner**

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

**Ensure the Development of a Well Planned, Balanced, and Self-Sustaining Community in Ontario Ranch**

**FISCAL IMPACT:** The proposed Development Agreement will not have an immediate impact on the City's budget. The Development Agreement will provide funding from the formation of a Community Facilities District (CFD) for City services and facilities required to support the Edenglen Specific Plan development, thereby mitigating the increased costs associated with such services. In addition, the City will receive public service funding fees plus development impact, compliance processing, licensing, and permitting fees. No General City revenue will be used to support the Ontario Ranch development.

**BACKGROUND & ANALYSIS:** On November 1, 2005, the City Council approved the Environmental Impact Report (EIR) and Edenglen Specific Plan, File No. PSP03-005 ("Specific Plan") which addressed the development of approximately 160 acres for residential, pocket parks, public trails, commercial and business park/light industrial uses. On January 27, 2010, the City Council adopted a

comprehensive update to The Ontario Plan (File No. PGPA06-001).

Subsequently, the Applicant has applied to develop the easterly 46 acres of the Edenglen Specific Plan. The entitlements include the following: 1) a General Plan Amendment (File No. PGPA18-002) to modify the Policy Plan (General Plan) Land Use Plan (Exhibit LU-01) component of The Ontario Plan, changing the land use designation of approximately 46 acres of land from General Commercial and Business Park to 4.13 acres of Community Commercial, 3.51 acres of Business Park and 39 acres of Industrial; 2) modify the Future Buildout Table (Exhibit LU-03) to be consistent with the land use designation changes; and 3) An amendment (File No. PSPA18-003) to the Edenglen Specific Plan to change the land use designation from Community Commercial, Commercial/Business Park Flex Zone and Business Park/Light Industrial to 4.13 acres of Neighborhood Commercial, 3.51 acres of Business Park and 39 acres of Light Industrial including updates to the development standards, exhibits and text changes to reflect the proposed land uses.

The Ontario Ranch financial commitments required for construction of properties within a specific plan are substantial. Therefore, in order to adequately forecast these costs and gain assurance that the project may proceed under the existing policies, rules and regulations, Ontario CC, LLC (“Owner”) has requested that the City enter into negotiations to create a Development Agreement (“Agreement”). In accordance with California Government Code Section 65865, which in part states that 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 (File No. PDA18-006) 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.

The Development Agreement proposes to include approximately 46 acres of land within the proposed Neighborhood Commercial, Business Park and Light Industrial land use designations of the Specific Plan. The Development Agreement grants the Owner a vested right to develop Tentative Parcel Map 20027 (File No. PMTT18-009), provided the Owner complies with the terms and conditions of the Specific Plan and EIR. The Tentative Parcel Map 20027 is located at the southwest corner of Riverside Drive and Hamner Avenue and proposes to subdivide the property into seven (7) numbered parcels and one (1) lettered lot in conjunction with a Development Plan (File No. PDEV18-031).

The term of the Development Agreement is for ten (10) years, with a five (5) year option to renew. The main points of the agreement address funding for all new City expenses created by the project, which includes: Development Impact Fees (DIF) for construction of public improvements (i.e. streets and bridges, sewer, water, storm drain and fiber); Public Service Funding to ensure adequate provisions of public services (police, fire and other public services); the creation of a Community Facilities District

(CFD) for the maintenance of public facilities.

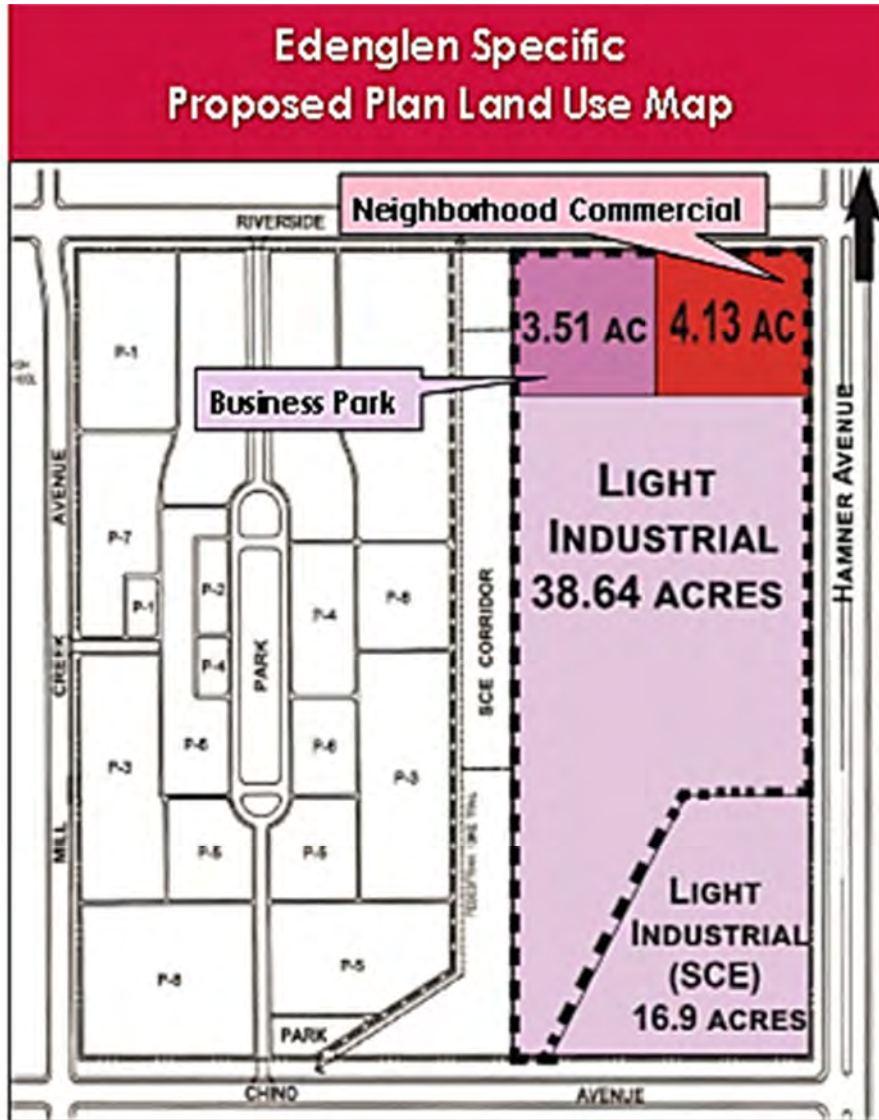
In considering the application at their meeting on August 25, 2020, the Planning Commission found that the Development Agreement was consistent with State law, The Ontario Plan, and the City's Development Agreement policies, previously approved for Ontario Ranch developments. As a result, the Planning Commission adopted Resolution No. PC20-055 recommending City Council approval of the Development Agreement with a 6-0 vote.

**HOUSING ELEMENT COMPLIANCE:** The project is consistent with the Housing Element of the Policy Plan (General Plan) component of The Ontario Plan. The Edenglen Specific Plan was listed in the Available Land Inventory contained in Table A-3 (Available Land by Planning Area) of the Housing Element Technical Report Appendix. However, the eastern half of the Edenglen Specific Plan (project site) was not included as one of the properties in the Available Land Inventory since the eastern half of the Specific Plan did not include any residential land use designations.

**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, which encompasses lands within parts of San Bernardino, Riverside, and Los Angeles Counties, and limits future land uses and development within the Airport Influence Area, as they relate to noise, safety, airspace protection, and overflight impacts of current and future airport activity. The proposed project is located within the Airport Influence Area of Ontario International Airport and was evaluated and found to be consistent with the policies and criteria of the ALUCP.

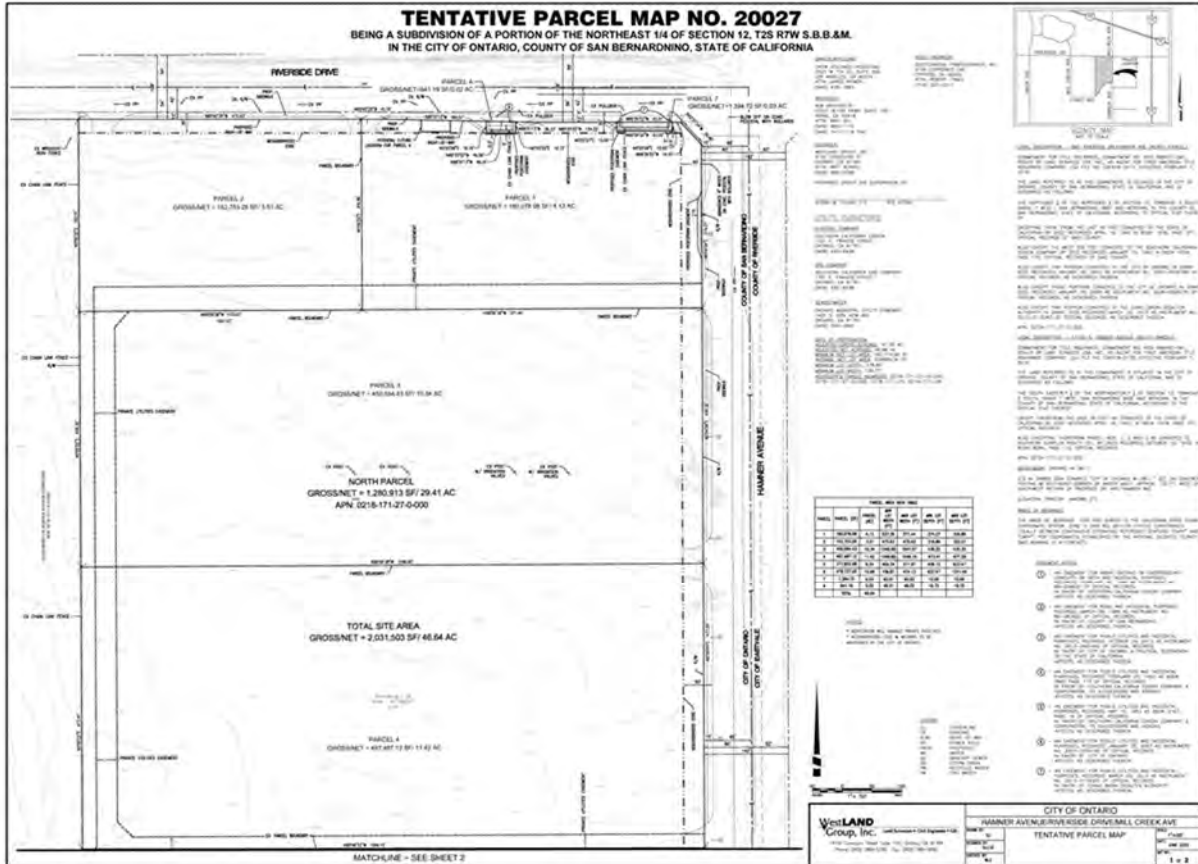
**ENVIRONMENTAL REVIEW:** The environmental impacts of this Project were reviewed in conjunction with an Addendum to The Ontario Plan Environmental Impact Report (SCH# 2008101140) that was certified by City Council on January 27, 2010. This Application introduces no new significant environmental impacts and all previously adopted mitigation measures are a condition of project approval.

Exhibit A  
Proposed Edenglen Specific Plan Land Use Map





# Exhibit B Tentative Parcel Map 20027



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

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF ONTARIO, CALIFORNIA, APPROVING FILE NO. PDA18-006, A DEVELOPMENT AGREEMENT BETWEEN THE CITY OF ONTARIO AND ONTARIO CC, LLC., TO ESTABLISH THE TERMS AND CONDITIONS FOR THE DEVELOPMENT OF TENTATIVE PARCEL MAP 20027 (FILE NO. PMTT18-009), FOR A 46.64 ACRE PROPERTY LOCATED AT THE SOUTHWEST CORNER OF RIVERSIDE DRIVE AND HAMNER AVENUE, WITHIN THE PROPOSED NEIGHBORHOOD COMMERCIAL, BUSINESS PARK AND LIGHT INDUSTRIAL LAND USE DESIGNATIONS OF THE EDENGLLEN SPECIFIC PLAN, AND MAKING FINDINGS IN SUPPORT THEREOF – APNS: 0218-171-21 AND 0218-171-27.

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 (File No. PDA18-006) between the City of Ontario and Ontario CC, LLC., to establish the terms and conditions for the development of Tentative Parcel Map 20027 (File No. PMTT18-009) located at the southwest corner of Riverside Drive and Hamner Avenue, 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 November 1, 2005, the City Council adopted Ordinance No. 2817, approving the Edenglen Specific Plan (File No. PSP03-005), which addressed the development of approximately 160.6 acres for residential, pocket parks, public trails, commercial and business/park light industrial uses; and

WHEREAS, on January 27, 2010, the City Council adopted Resolution Nos. 2010-003, 2010-004, 2010-005, 2010-006, approving a comprehensive update to The Ontario Plan (File No. PGPA06-001); and

WHEREAS, a Tentative Parcel Map 20027 (File No. PMTT18-009) to subdivide approximately 46.64 acres of land into seven (7) numbered parcels and one (1) lettered lot within the proposed Neighborhood Commercial, Business Park and Light Industrial land use designations of the Edenglen Specific Plan, has been submitted in conjunction with the Development Agreement; and

WHEREAS, the Application is a project pursuant to the California Environmental Quality Act (Public Resources Code Section 21000 et seq.) ("CEQA"), and an initial study has been prepared to determine possible environmental impacts; and

WHEREAS, the environmental impacts of this project were previously reviewed in conjunction with File No. PGPA06-001, an Addendum to The Ontario Plan for which an Environmental Impact Report — State Clearinghouse No. 2008101140 — (hereinafter referred to as "Certified EIR") was adopted by the City Council on January 27, 2010, and this Application introduces no new significant environmental impacts; and

WHEREAS, 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, Ontario Development Code Table 2.02-1 (Review Matrix) grants the City Council the responsibility and authority to review and act on the subject Application; and

WHEREAS, the Project has been reviewed for consistency with the Housing Element of the Policy Plan component of The Ontario Plan, as State Housing Element law (as prescribed in Government Code Sections 65580 through 65589.8) requires that development projects must be consistent with the Housing Element, if upon consideration of all its aspects, it is found to further the purposes, principals, goals, and policies of the Housing Element; and

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

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

WHEREAS, on August 25, 2020, the Planning Commission of the City of Ontario conducted a hearing to consider the Project, and concluded said hearing on that date, voting 6-0 to issue Resolution No. PC20-055 recommending the City Council approve the Application; and

WHEREAS, on September 15, 2020, the City Council of the City of Ontario conducted a hearing to consider the Project and concluded said hearing on that date; and

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

NOW, THEREFORE, IT IS HEREBY FOUND, DETERMINED, AND 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 Certified EIR and supporting documentation. Based upon the facts and information contained in the previous Certified EIR and supporting documentation, the City Council finds as follows:

(1) The environmental impacts of this project were previously reviewed in conjunction with File No. PGPA06-001, an Addendum to The Ontario Plan for which a Certified EIR was adopted by the City Council on January 27, 2010.

(2) The previous Certified EIR contains a complete and accurate reporting of the environmental impacts associated with the Project; and

(3) The previous Certified EIR was completed in compliance with CEQA and the Guidelines promulgated thereunder; and

(4) The previous Certified EIR reflects the independent judgment of the City Council; and

(5) The proposed project will introduce no new significant environmental impacts beyond those previously analyzed in the previous Certified EIR, and all mitigation measures previously adopted with the Certified EIR, are incorporated herein by this reference.

**SECTION 2. Subsequent or Supplemental Environmental Review Not Required.** Based on the information presented to the City Council, and the specific findings set forth in Section 1, above, the City Council finds that the preparation of a subsequent or supplemental Certified EIR is not required for the Project, as the Project:

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

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

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

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

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

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

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

**SECTION 3. *Housing Element 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. The Edenglen Specific Plan was listed in the Available Land Inventory contained in Table A-3 (Available Land by Planning Area) of the Housing Element Technical Report Appendix. However, the eastern half of the Edenglen Specific Plan (project site) was not included as one of the properties in the Available Land Inventory since the eastern half of the Specific Plan did not include any residential land use designations.

**SECTION 4. *Ontario International Airport Land Use Compatibility Plan (“ALUCP”) Compliance.*** The California State Aeronautics Act (Public Utilities Code Section 21670 et seq.) requires that an Airport Land Use Compatibility Plan be prepared for all public use airports in the State; and requires that local land use plans and individual development proposals must be consistent with the policies set forth in the adopted Airport Land Use Compatibility Plan. On April 19, 2011, the City Council of the City of Ontario approved and adopted the ALUCP, establishing the Airport Influence Area for Ontario International Airport (hereinafter referred to as “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 authority for the Project, the Planning Commission has reviewed and considered the facts and information contained in the Application and supporting documentation against the ALUCP compatibility factors, including [1] Safety Criteria (ALUCP Table 2-2) and Safety Zones (ALUCP Map 2-2), [2] Noise Criteria (ALUCP Table 2-3) and Noise Impact Zones (ALUCP Map 2-3), [3] Airspace protection Zones (ALUCP Map 2-4), and [4] Overflight Notification Zones (ALUCP Map 2-5). As a result, the 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.

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

a. The Development Agreement applies to approximately 46.64 acres of land located at the southwest corner of Riverside Drive and Hamner Avenue, within the proposed Neighborhood Commercial, Business Park and Light Industrial land use designations of the Edenglen Specific Plan; and

b. The Development Agreement establishes parameters for the development of the proposed Neighborhood Commercial, Business Park and Light Industrial land use designations of the Edenglen Specific Plan. The Development Agreement also grants the Owner, 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 proposed General Plan Amendment (File No. PGPA18-002) to The Ontario Plan Policy Plan (General Plan), design guidelines and development standards for the proposed amendment (File No. PSPA18-003) to the Edenglen Specific Plan; and

c. The Development Agreement grants the Owner a vested right to develop Tentative Parcel Map 20027 as long as the Owner, complies with the terms and conditions of the Specific Plan and EIR. Tentative Parcel Map 20027 is located at the southwest corner of Riverside Drive and Hamner Avenue and proposes to subdivide approximately 46.64 acres of land into seven (7) numbered parcels and one (1) lettered lot in conjunction with a Development Plan (File No. PDEV18-031); and

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

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

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

g. This Development Agreement will not be materially injurious or detrimental to the adjacent properties and will have a significant impact on the environment or the surrounding properties. The environmental impacts of this project were previously analyzed in conjunction with File No. PGPA06-001, an Addendum to The Ontario Plan for which a Certified EIR was adopted by the City Council on January 27, 2010. 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 Sections 1 through 5, above, the City Council hereby APPROVES the herein described Development Agreement, attached hereto as "Attachment A," and incorporated herein by this reference.

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

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

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

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

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

PASSED, APPROVED, AND ADOPTED this \_\_\_\_ day of \_\_\_\_\_ 2020.

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

ATTEST:

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

APPROVED AS TO FORM:

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

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



I, SHEILA MAUTZ, City Clerk of the City of Ontario, DO HEREBY CERTIFY that foregoing Ordinance No. \_\_\_\_\_ was duly introduced at a regular meeting of the City Council of the City of Ontario held November 17, 2020 and adopted at the regular meeting held \_\_\_\_\_, 2020 by the following roll call vote, to wit:

AYES: COUNCIL MEMBERS:

NOES: COUNCIL MEMBERS:

ABSENT: COUNCIL MEMBERS:

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

(SEAL)

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

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

(SEAL)

**ATTACHMENT A:**

**File No. PDA18-006**

**Development Agreement**

**By and Between**

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

**and**

**Ontario CC, LLC.,  
a Delaware limited liability company**

*(Document follows this page)*

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

CITY OF ONTARIO  
CITY CLERK / RECORDS MANAGEMENT  
303 EAST "B" STREET  
ONTARIO, CA 91764-4196

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Space above this line for Recorder's Use Only

Exempt from Fees Per Gov. Code § 6103

**File No. PDA18-006**

**DEVELOPMENT AGREEMENT**

**By and Between**

**City of Ontario  
a California municipal corporation**

**and**

**Ontario CC, LLC.,  
a Delaware limited liability company**

\_\_\_\_\_, 2020

**San Bernardino County, California**

**DEVELOPMENT AGREEMENT NO. PDA18-006**

This Development Agreement (hereinafter "Agreement") is entered into effective as of the \_\_\_\_ day of \_\_\_\_\_, 2020 by and among the City of Ontario, a California municipal corporation (hereinafter "CITY"), and Ontario CC, LLC., a Delaware limited liability company (hereinafter "OWNER"):

**RECITALS**

WHEREAS, CITY is authorized to enter into binding development agreements with persons having legal or equitable interests in real property for the development of such property, pursuant to Section 65864, et seq. of the Government Code and 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 Edenglen Specific Plan Environmental Impact Report (State Clearinghouse No. 2004051108 (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 Endenglen 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.

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

WHEREAS, Owner’s Property is within the 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”..

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 an 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 the Amendment to 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 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) specific plans and specific plan amendments;
- (b) tentative and final subdivision and parcel maps;
- (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, 57004, 65104, 65456, 65863.7, 65909.5, 66013, 66014, and 66451.2 of the Government Code, Sections 17951, 19132.3, and 19852 of the Health and Safety Code, Section 41901 of the Public Resources Code, and Section 21671.5 of the Public Utilities Code, as such codes may be amended or superseded, including by amendment or replacement.

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

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

1.1.10 “Existing Development Approvals” means all Development Approvals approved or issued 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.

1.1.11 “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.

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

1.1.13 “Improvement” or “Improvements” means those public improvements required to support the development of the Project as described in the Parcel Map conditions for Parcel Map No. 20027 as further described in Exhibit “F” (the “Infrastructure Improvements Exhibit”).

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

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

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

1.1.16 “Net MDD” means net maximum daily water demand.

1.1.17 “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.

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

1.1.19 “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.

1.1.20 “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.

1.1.21 “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 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.

1.1.22 “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.

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



1.1.24 “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.

1.1.25 “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.

1.1.26 “Specific Plan” means that certain specific plan adopted by the City Council, and entitled, “Edenglen Specific Plan.”

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

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

1.1.29 “Water Availability Equivalent (WAE)” means a designated portion of the total Net MDD made available through the construction of each Phase described in the Water Phasing Plan of the Construction Agreement. The number of Water Availability Equivalents (of portions thereof) required for the approval of a Tract or Subdivision Map 20027 shall be based upon water demand factors and assumptions listed in the Construction Agreement and shown in Exhibit “I-2”.

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

Exhibit “A” — Legal Description of the Property.

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

Exhibit “C” — Existing Development Approvals.

Exhibit “D” — Existing Land Use Regulations.

Exhibit “E” — Description of Required Infrastructure Improvements

Exhibit “F” — Depiction of Infrastructure Improvements Exhibit

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.

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.

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

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

- (a) Expiration of the stated term of this Agreement as set forth in Section 2.3.
- (b) Entry of a final judgment setting aside, voiding or annulling the adoption of the ordinance approving this Agreement.
- (c) The adoption of a referendum measure overriding or repealing the ordinance approving this Agreement.
- (d) Completion of the Project in accordance with the terms of this Agreement including issuance of all required occupancy permits and acceptance by CITY or applicable public agency of all required dedications.

Termination of this Agreement shall not constitute termination of any other land use entitlements approved for the Property. Upon the termination of this Agreement, no party shall have any further right or obligation hereunder except with respect to any obligation to have been performed prior to such termination or with respect to any default in the performance of the provisions of this Agreement which has occurred prior to such termination or with respect to any obligations which are specifically set forth as surviving this Agreement. Upon such termination, any public facilities and services mitigation fees paid pursuant to Section 4.2 of this Agreement by OWNER to CITY on which construction has not yet begun shall be refunded to OWNER by CITY within ten (10) business 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, CA 91764

**with a copy to:**

Scott Huber, City Attorney  
Cole Huber, LLP  
2261 Lava Ride Court  
Roseville, CA 95661  
Email: [shuber@colehuber.com](mailto:shuber@colehuber.com)  
Phone: (916) 787-7511

**If to OWNER:**

Ontario CC, LLC  
527 West 7<sup>th</sup> Street, Suite 200  
Los Angeles, CA 90014  
Attn: Jared Riemer  
Email: jriemer@chindustrial.com  
Phone: (949) 478-1883

**With a copy to:**

Rutan & Tucker, LLP  
611 Anton Boulevard, 14<sup>th</sup> Floor  
Costa Mesa, CA 92626  
Attn: John A. Ramirez  
Email: jramirez@rutan.com  
Phone: 714-654-2177

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

3. DEVELOPMENT OF THE PROPERTY.

3.1 Rights to Develop. Subject to the terms of this Agreement including the Reservations of Authority 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 Exhibit "F" 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 storm drain Improvements from the Property to the connection with the San Bernardino County Line Channel as described in Exhibit E and depicted in Exhibit F. 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 a final occupancy permit for any buildings prior to completion of



the storm drain Improvements described in Exhibit E and depicted in Exhibit F. CITY agrees that OWNER may request that CITY issue temporary certificates of occupancy on a building-by-building basis prior to completion of the storm drain improvements.

3.5.2 OWNER agrees that development of the Project shall require the design and construction of street improvements along the Property as described in Exhibit E and depicted in Exhibit F. 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 a final occupancy permit for any buildings on the Property prior to Substantial Completion of the street Improvements as described in Exhibits E and F. For purposes of the foregoing, street improvements shall be deemed Substantially Complete even 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 completion and subject to final acceptance by CITY 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.

3.5.3 OWNER agrees that development of the Property shall require the extension of permanent master planned water utility Improvements as described in Exhibit E and depicted in Exhibit F consisting generally of the construction of the extension of permanent master planned water utility Improvements from two (2) points of connection 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 a final occupancy permit for any buildings on the Property until the completion of the water and recycled water improvements described in Exhibit E and depicted in Exhibit F. City agrees that OWNER may request that CITY issue temporary certificates of occupancy on a building-by-building basis prior to completion of the water and recycled 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 while under construction.

3.5.4 OWNER agrees that development of the Property shall require the construction of permanent master planned sewer Improvements to serve the Property as described in Exhibit E and depicted in Exhibit F. 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 a final occupancy permit for any buildings prior to completion of the sewer improvements described in Exhibit E and depicted in Exhibit F. CITY agrees that OWNER may request that CITY issue temporary certificates of occupancy on a building-by-building basis prior to the completion of the sewer improvements described in Exhibit E and depicted in Exhibit F.

3.5.5 OWNER agrees that development of the Property shall require the extension of permanent master planned recycled water utility improvements to serve the Property as described in Exhibit E and depicted in Exhibit F. OWNER and CITY agree that the 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 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 E and depicted in Exhibit F. 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 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 E and depicted in Exhibit F 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 Property shall require the extension of permanent master planned fiber optic communications infrastructure, at OWNER's sole cost and expense, as described in the attached Exhibit E and depicted in Exhibit F consisting generally of the construction of the extension of fiber optic communications infrastructure to serve 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 a final occupancy permit for any buildings prior to completion of the fiber optic communications infrastructure, as described in Exhibit E and depicted in Exhibit F. CITY agrees that OWNER may request that CITY issue temporary certificates of occupancy on a building-by-building basis prior to the completion of the fiber optic communications infrastructure, as described in Exhibit E and depicted in Exhibit F.

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.

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 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 Exhibit "F" and any and all parcel map conditions. Unless otherwise specified in the Parcel Map conditions, and subject to the provisions of Section 3.5 and 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 20027.

4.3.2 Construction of Public Infrastructure by Third Parties. CITY and OWNER acknowledge that a portion of the Improvements described in Exhibit E and depicted in Exhibit F are necessary for the development of surrounding properties within the Ontario Ranch and the other property owners are also obligated to construct the Improvements or portions thereof. As such, CITY agrees that OWNER's obligation to construct the Improvements may be satisfied by third party owners pursuant to separate written agreements between OWNER and said third party undertaking the construction of the Improvements. Nothing in this Agreement shall be construed to prohibit the coordination of the construction of the Improvements between private parties, including the allocation of costs for the construction of the Improvements. Notwithstanding anything to the contrary herein, any applicable DIF Credits may be transferred and assigned from one (1) party to another with respect to the construction of the Improvements and such transfer or assignment shall not require the conveyance of any real property.

4.3.3 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.

4.3.4 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 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 DIF Credit from OWNER's construction of DIF Program Infrastructure. Any such DIF Credit 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 residential and 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-Three Cents (\$.63) 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, 2021. 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 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.

4.5.5 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 4.6, 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 thirty-one cents (\$.31) 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. In addition to the rights of the CITY pursuant to section 5.1 hereof, CITY shall have the right, but not the obligation, to condition the formation of any CFD, assessment district or other public financing mechanism within the Property on the OWNER mitigating all Project-related impacts to the applicable school district(s) as required by such school district(s). Written evidence by such school district(s) may be required by the CITY as the condition to the formation of any CFD, assessment district or other public financing mechanism within the Property, or any steps preliminary thereto, including, without limitation, the adoption of any resolution of intention to form such CFD, assessment district or other public financing mechanism within the Property. It is not the intent of the parties hereto, by this provision, to prohibit or otherwise limit the City's ability to take any and all necessary steps requisite to the formation of the CFD to finance City services through annual special taxes as set forth in this Section 5.1. Formation of any CFD, assessment district or other public financing mechanism within the Property, shall be subject to CITY's ability to make all findings required by applicable law and complying with all applicable legal procedures and requirements including, without limitation, CITY's public financing district policies as such policies may be amended from time to time. Notwithstanding the foregoing, it is acknowledged and agreed by the parties that nothing contained in this Agreement shall be construed as requiring CITY or the City Council to form any such district.

## 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 OWNER, or to any

successor in interest of OWNER, or to any other person, and OWNER covenants not to sue for damages or claim any damages:

- (a) For any breach of this Agreement or for any cause of action which arises out of this Agreement; or
- (b) For the taking, impairment or restriction of any right or interest conveyed or provided under or pursuant to this Agreement; or
- (c) Arising out of or connected with any dispute, controversy or issue regarding the application or interpretation or effect of the provisions of this Agreement.

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

- (a) Money damages are unavailable against CITY as provided in Section 8.1 above.
- (b) Due to the size, nature and scope of the project, it may not be practical or possible to restore the Property to its natural condition once implementation of this Agreement has begun. After such implementation, OWNER may be foreclosed from other choices it may have had to utilize the Property or portions thereof. OWNER has invested significant time and resources and performed extensive planning and processing of the Project in agreeing to the terms of this Agreement and will be investing even more significant time and resources in implementing the Project in reliance upon the terms of this Agreement, and it is not possible to determine the sum of money which would adequately compensate OWNER for such efforts.

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

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

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

9.3 Indemnity. In addition to the provisions of 9.2 above, OWNER shall indemnify and hold CITY, its officers, agents, employees and independent contractors free and harmless from any liability whatsoever, based or asserted upon any act or omission of OWNER, its officers, agents, employees, subcontractors and independent contractors, for property damage, bodily injury, or death (OWNER's employees included) or any other element of damage of any kind or nature, 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, and OWNER shall defend, at its expense, including attorneys' fees, CITY, its officers, agents and employees in any action based or asserted upon any such alleged act or omission. CITY may in its discretion participate in the defense of any such action.

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

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

## 10. MORTGAGEE PROTECTION.

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 may be extended by the written agreement of the parties for the period of time that such events prevented such performance, provided that the term of this Agreement shall not be extended under any circumstances for more than five (5) years.

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

11.13 Successors in Interest. The burdens of this Agreement shall be binding upon, and the benefits of this Agreement shall inure to, all successors in interest to the parties to this Agreement. All provisions of this Agreement shall be enforceable as equitable servitudes and constitute covenants running with the land. Each covenant to do or refrain from doing some act hereunder with regard to development of the Property: (a) is for the benefit of and is a burden upon every portion of the Property; (b) runs with the Property and each portion thereof; and, (c) is binding upon each party and each successor in interest during ownership of the Property or any portion thereof.

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

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

11.16 Project as a Private Undertaking. It is specifically understood and agreed by and between the parties hereto that the development of the Project is a private development, that neither party is acting as the agent of the other in any respect hereunder, and that



each party is an independent contracting entity with respect to the terms, covenants and conditions contained in this Agreement. No partnership, joint venture or other association of any kind is formed by this Agreement. The only relationship between CITY and OWNER is that of a government entity regulating the development of private property and the owner of such property.

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

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

11.19 Agent for Service of Process. In the event OWNER is not a resident of the State of California or it is an association, partnership or joint venture without a member, partner or joint venturer resident of the State of California, or it is a foreign corporation, then in any such event, OWNER shall file with the Planning Director, upon its execution of this Agreement, a designation of a natural person residing in the State of California, giving his or her name, residence and business addresses, as its agent for the purpose of service of process in any court action arising out of or based upon this Agreement, and the delivery to such agent of a copy of any process in any such action shall constitute valid service upon OWNER. If for any reason service of such process upon such agent is not feasible, then in such event OWNER may be personally served with such process out of this County and such service shall constitute valid service upon OWNER. OWNER is amenable to the process so served, submits to the jurisdiction of the Court so obtained and waives any and all objections and protests thereto.

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”**

Ontario CC, LLC.  
a Delaware limited liability company

By: CHI West 111 Ontario CC, L.P.,  
a Delaware limited partnership,  
its managing member

By: CHI Development GP, L.L.C.,  
a Delaware limited liability company,  
its general partner

By: \_\_\_\_\_  
Name: Philip J. Prassas  
Title: Vice President  
Date: \_\_\_\_\_

**“CITY”**

CITY OF ONTARIO

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

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

**ATTEST:**

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

**APPROVED AS TO FORM:**

COLE HUBER, LLP

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

ACKNOWLEDGEMENT

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

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

On \_\_\_\_\_, 20\_\_\_\_, before me, \_\_\_\_\_,  
Date Insert Name and Title of the Officer

personally appeared \_\_\_\_\_  
Name(s) of Signer(s)

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

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

WITNESS my hand and official seal.

Signature \_\_\_\_\_  
Signature of Notary Public

Place Notary Seal Above

ACKNOWLEDGEMENT

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

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

On \_\_\_\_\_, 20\_\_\_\_, before me, \_\_\_\_\_,  
Date Insert Name and Title of the Officer

personally appeared \_\_\_\_\_  
Name(s) of Signer(s)

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

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

WITNESS my hand and official seal.

Signature \_\_\_\_\_  
Signature of Notary Public

Place Notary Seal Above

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

**Legal Description of Property**

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

THE SOUTHEASTERLY 1/4 OF THE NORTHEASTERLY 1/4 OF SECTION 12, 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.

EXCEPT THEREFROM THE EAST 30 FEET AS CONVEYED TO THE STATE OF CALIFORNIA BY DEED RECORDED APRIL 16, 1943, IN BOOK 1578, PAGE 371, OFFICIAL RECORDS.

ALSO EXCEPTING THEREFROM PARCEL NOS. 1, 2 AND 3 AS CONVEYED TO SOUTHERN SURPLUS REALTY CO., BY DEED RECORDED OCTOBER 10, 1973, IN BOOK 8284, PAGE 113, OFFICIAL RECORDS.

APN: 0218-171-21-0-000

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

THE NORTHEAST 1/4 OF THE NORTHEAST 1/4 OF SECTION 12, 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.

EXCEPT THEREFROM THE EAST 30 FEET CONVEYED TO THE STATE OF CALIFORNIA BY DEED RECORDED APRIL 16, 1943 IN BOOK 1578, PAGE 371, OFFICIAL RECORDS OF SAID COUNTY.

ALSO EXCEPT THE WEST 200 FEET CONVEYED TO THE SOUTHERN CALIFORNIA EDISON COMPANY BY DEED RECORDED JANUARY 19, 1967 IN BOOK 6759, PAGE 770, OFFICIAL RECORDS OF SAID COUNTY.

ALSO EXCEPT THAT PORTION CONVEYED TO THE CITY OF ONTARIO IN GRANT DEED RECORDED JANUARY 30, 2007 AS INSTRUMENT NO. 2007-0059195 OF OFFICIAL RECORDS, AS DESCRIBED THEREIN.

ALSO EXCEPT THOSE PORTIONS CONVEYED TO THE CITY OF ONTARIO IN GRANT DEED RECORDED JANUARY 18, 2008 AS INSTRUMENT NO. 2008-0026278 OF OFFICIAL RECORDS, AS DESCRIBED THEREIN.

ALSO EXCEPT THAT PORTION CONVEYED TO CHINO BASIN DESALTER AUTHORITY IN GRANT DEED RECORDED MARCH 22, 2013 AS INSTRUMENT NO. 2013-0119363 OF OFFICIAL RECORDS, AS DESCRIBED THEREIN.

APN: 0218-171-27-0-000

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

**Map showing Property and its location**





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

**Existing Development Approvals**

On September 13, 2005, the Planning Commission:

- a) Issued Resolution No. 2005-081, recommending City Council adopt and certify the Edenglen Environmental Impact Report (SCH#2004051108); and
- b) Issued Resolution No. 2005-082, recommending City Council approval of the General Plan Amendment (PGPA03-005); and
- c) Issued Resolution No. 2005-083, recommending City Council approval of the Edenglen Specific Plan (PSP03-005).

On October 4, 2005, the City Council:

- a) Approved the General Plan Amendment and issued Resolution No. 2005-100; and
- b) Adopted and certified the Edenglen Environmental Impact Report and issued Resolution No. 2005-101; and
- c) Approved the Edenglen Specific Plan and held it over for a second reading on November 1, 2005.

On November 1, 2005, the City Council:

- a) Approved the Edenglen Specific Plan and issued Ordinance No. 2817.

On July 14, 2009, the Planning Commission:

- a) Issued Resolution No. PC09-020, recommending the City Council certify the Program EIR for The Ontario Plan (SCH#2008101140).
- b) Issued Resolution No. PC09-021, recommending the City Council approve the Component Framework for The Ontario Plan (File No. PGPA06-001).
- c) Issued Resolution No. PC09-22, recommending City Council approval of a comprehensive update to The Ontario General Plan (File No. PGPA06-001).

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

On January 27, 2010, the City Council:

- a) Issued Resolution Nos. 2010-003, 2010-004, 2010-005, 2010-006, certifying the EIR (SCH#2008101140) for The Ontario Plan and adoption of an addendum to The Ontario Plan (File No. PGPA06-001).

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

**Existing Land Use Regulations**

These documents are listed for reference only:

1. 2005 General Plan Amendment No. 4, Resolution No. 2005-100
2. Edenglen Specific Plan (File No. PSP03-005)
3. Edenglen EIR (SCH#2004051108), Resolution No. 2005-101
4. Addendum to The Ontario Plan (File No. PGPA06-001)
5. The Ontario Plan EIR (SCH#2008101140)
6. City of Ontario Municipal Code
  - a. Six – Sanitation & Health
  - b. Seven – Public Works
  - c. Eight – Building Regulations
  - d. Nine – Development Code
  - e. Ten – Parks & Recreation

**EXHIBIT “E”  
TO THE DEVELOPMENT AGREEMENT**

**Description of Required Infrastructure Improvements**

**STORM DRAIN (SD)**

1. SD along Mill Creek Avenue from Chino Avenue to connect to the San Bernardino County Line Channel in Bellegrave Avenue.
2. SD along Hamner Avenue between Riverside Drive and Chino Avenue.

**STREETS (ST)**

1. Full half-width street improvements on the south side and circulation lane improvements on the north side of Riverside Drive along the Property frontage.
2. Full half-width street improvements on Hamner Avenue between Riverside Drive and Chino Avenue.
  - a. Parkway improvements are not required along the frontage of the SCE substation at the NWC of Hamner and Chino.
3. Modifications to an existing traffic signal at Riverside Drive and Hamner Avenue
4. Traffic Signal at Riverside Drive and Project Driveway.
5. Traffic Signal at Hamner Avenue and Project Driveway.

**WATER (Potable [PW] & Recycled [RW])**

1. 12-inch 1010PZ PW on Hamner Ave between Riverside Drive and Chino Avenue.
2. 12-inch 1010PZ PW on Chino Ave between Hamner Ave and westerly project boundary.
3. 8-inch 1050PZ RW on Riverside Drive between westerly Project limit and Hamner Avenue.
4. 8-inch 1050PZ RW on Hamner Ave between Riverside Drive and Chino Avenue.

**EXHIBIT “E” Continued  
TO THE DEVELOPMENT AGREEMENT**

5. 8-inch 1050PZ RW on Chino Ave between Hamner Avenue and Edenglen Avenue with stubs north to connect to existing RW in Edenglen Avenue north of Chino Ave.
6. Relocate portions or all of the City of Ontario pressure reducing station on Riverside Drive as needed to accommodate required street improvements. Redundant or replacement facilities may need to be constructed in order to keep the facility operational during relocation. Any and/or all the improvements, shall be designed, constructed, and completed to the satisfaction of the City Engineer.
7. Relocate portions or all of the Chino Desalter Authority desalination station on Riverside Drive as needed to accommodate required street improvements. Redundant or replacement facilities may need to be constructed in order to keep the facility operational during relocation, if required by the Chino Desalter Authority. Any and/or all the improvements, shall be designed, constructed, and completed to the satisfaction of the City Engineer and Chino Desalter Authority.

**SEWER (SW)**

1. SW off-site improvements in Mill Creek Avenue and Chino Avenue, as identified in the Sewer Master Plan and the Edenglen Specific Plan.

**FIBER OPTIC COMMUNICATIONS (FO)**

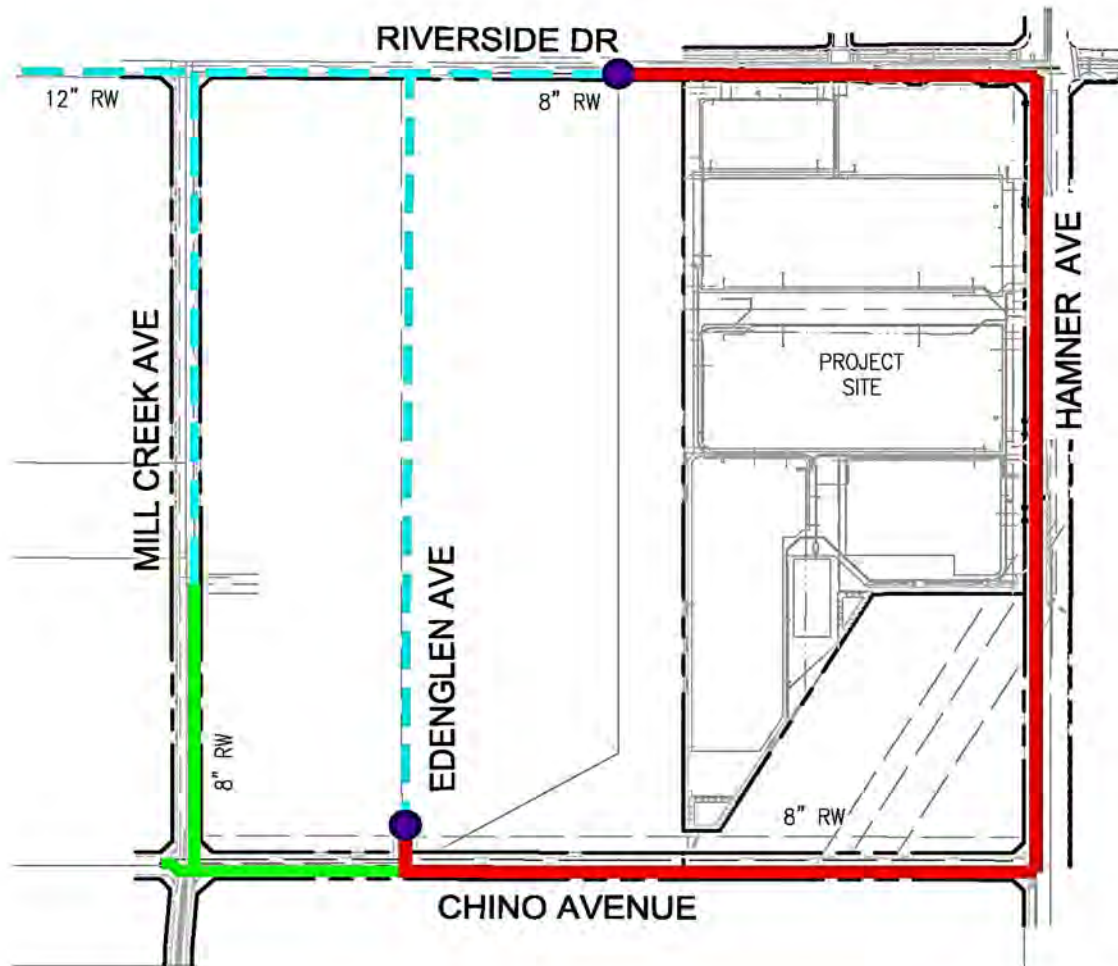
1. FO in Riverside Drive between along the Property frontage.
2. FO on Hamner between Riverside Drive and Chino Avenue.

**EXHIBIT “F”**

**Depiction of required Infrastructure Improvements**

**[SEE ATTACHMENTS]**

EXHIBIT F-1  
RECYCLED WATER IMPROVEMENTS



**LEGEND:**

- EXISTING RECYCLED WATER (CITY OF ONTARIO)
- NEW RECYCLED WATER (REQUIRED AND TO BE CONSTRUCTED BY PROJECT)
- FUTURE RECYCLED WATER (CITY OF ONTARIO)
- POINT OF CONNECTION

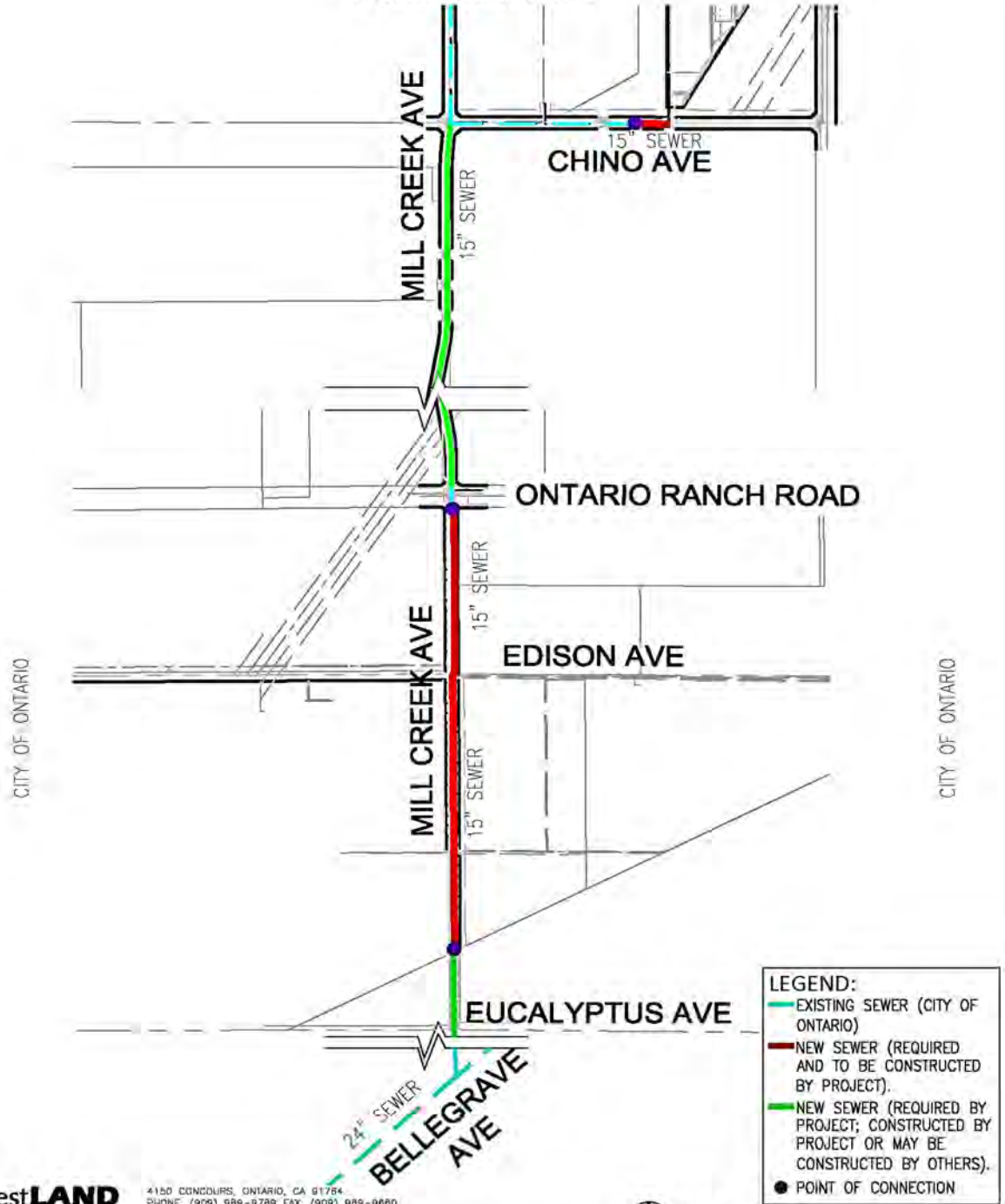
**WestLAND Group, Inc.**  
 4150 CONCOURS, ONTARIO, CA 91764  
 PHONE: (309) 989-9789 FAX: (309) 989-9600  
 Land Surveyors • Civil Engineers • GIS

N.T.S.

• Development Agreement • Parcel 20027

DATE: 07/08/2020

EXHIBIT F-2  
SEWER IMPROVEMENTS



**WestLAND**  
Group, Inc.

4150 CONDORS, ONTARIO, CA 91764  
PHONE: (909) 989-9789 FAX: (909) 989-9660  
Land Surveyors • Civil Engineers • GIS

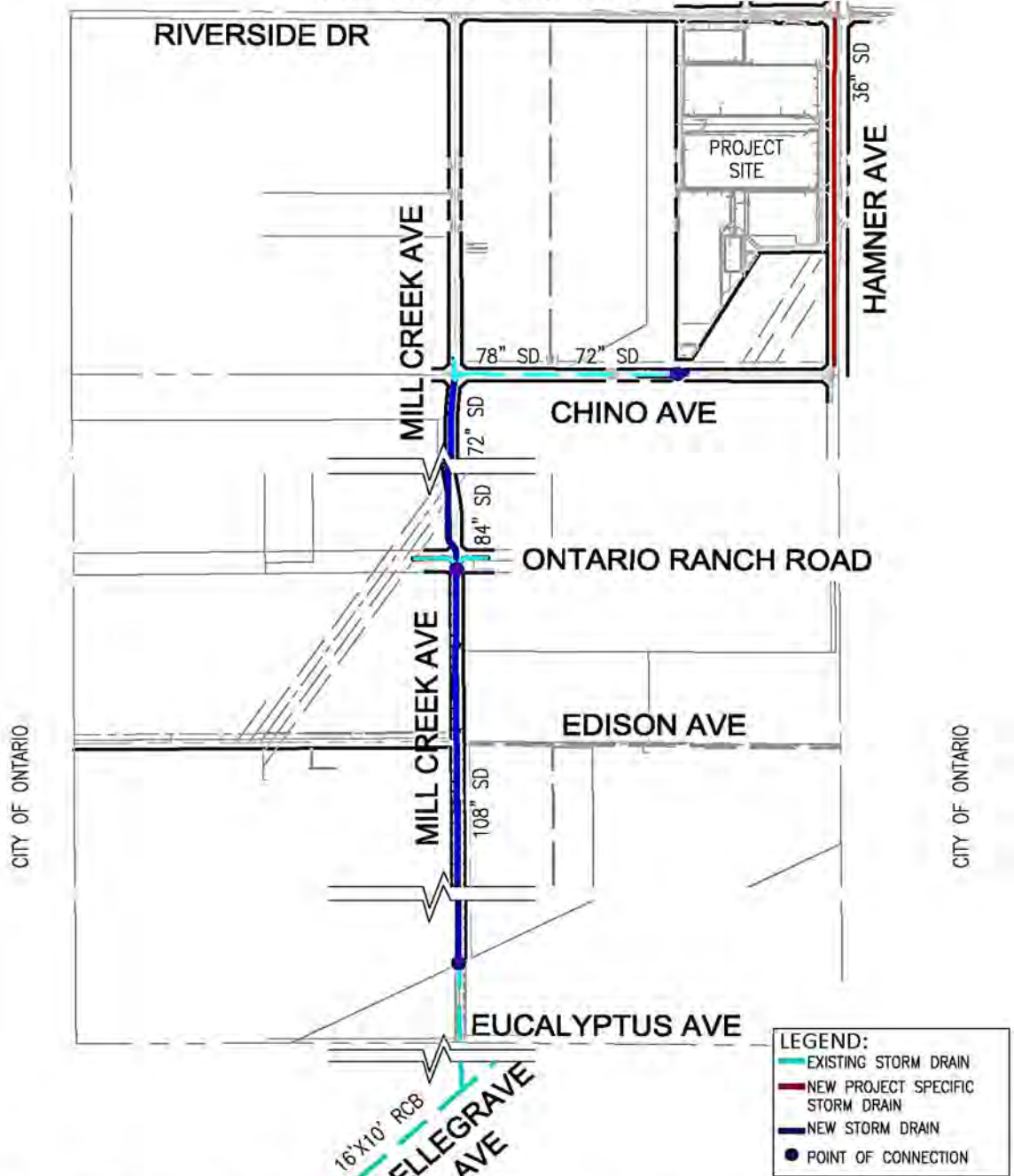
N.T.S.

• Development Agreement • Parcel 20027

DATE: 07/08/2020



EXHIBIT F-3  
STORM DRAIN IMPROVEMENTS



**LEGEND:**

- EXISTING STORM DRAIN
- NEW PROJECT SPECIFIC STORM DRAIN
- NEW STORM DRAIN
- POINT OF CONNECTION

**WestLAND**  
Group, Inc.

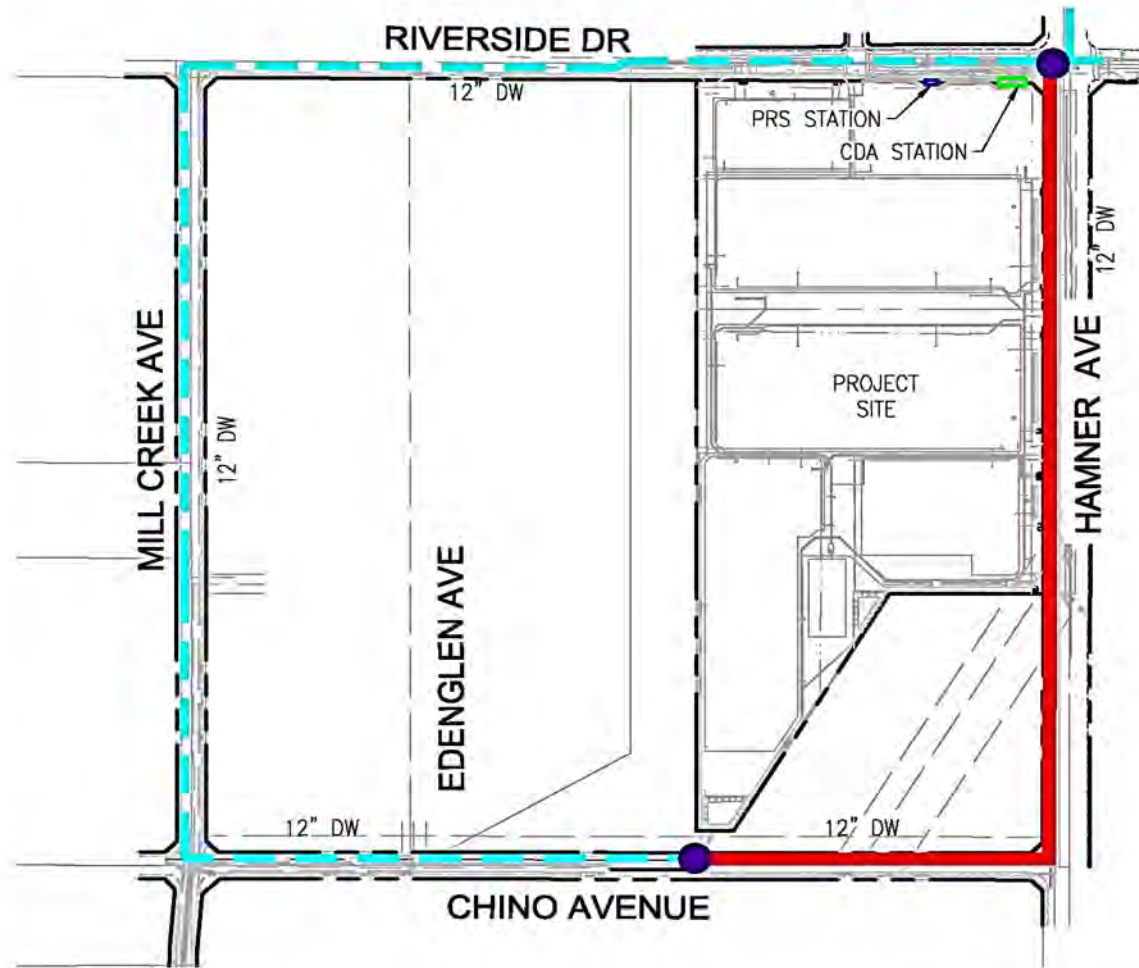
4150 CONCORDS, ONTARIO, CA 91764  
PHONE: (909) 389-9789 FAX: (909) 389-9660  
Land Surveyors • Civil Engineers • GIS

⊕ N.T.S.

• Development Agreement • Parcel 20027

DATE: 06/30/2020

EXHIBIT F-4  
POTABLE WATER IMPROVEMENTS



**LEGEND:**

- EXISTING DOMESTIC WATER (CITY OF ONTARIO)
- NEW PROJECT SPECIFIC DOMESTIC WATER (CITY OF ONTARIO)
- POINT OF CONNECTION
- RELOCATE PRESSURE REDUCING STATION AS NECESSARY (CITY OF ONTARIO)
- RELOCATE DESALTER AS NECESSARY (CHINO BASIN DESALTER AUTHORITY)

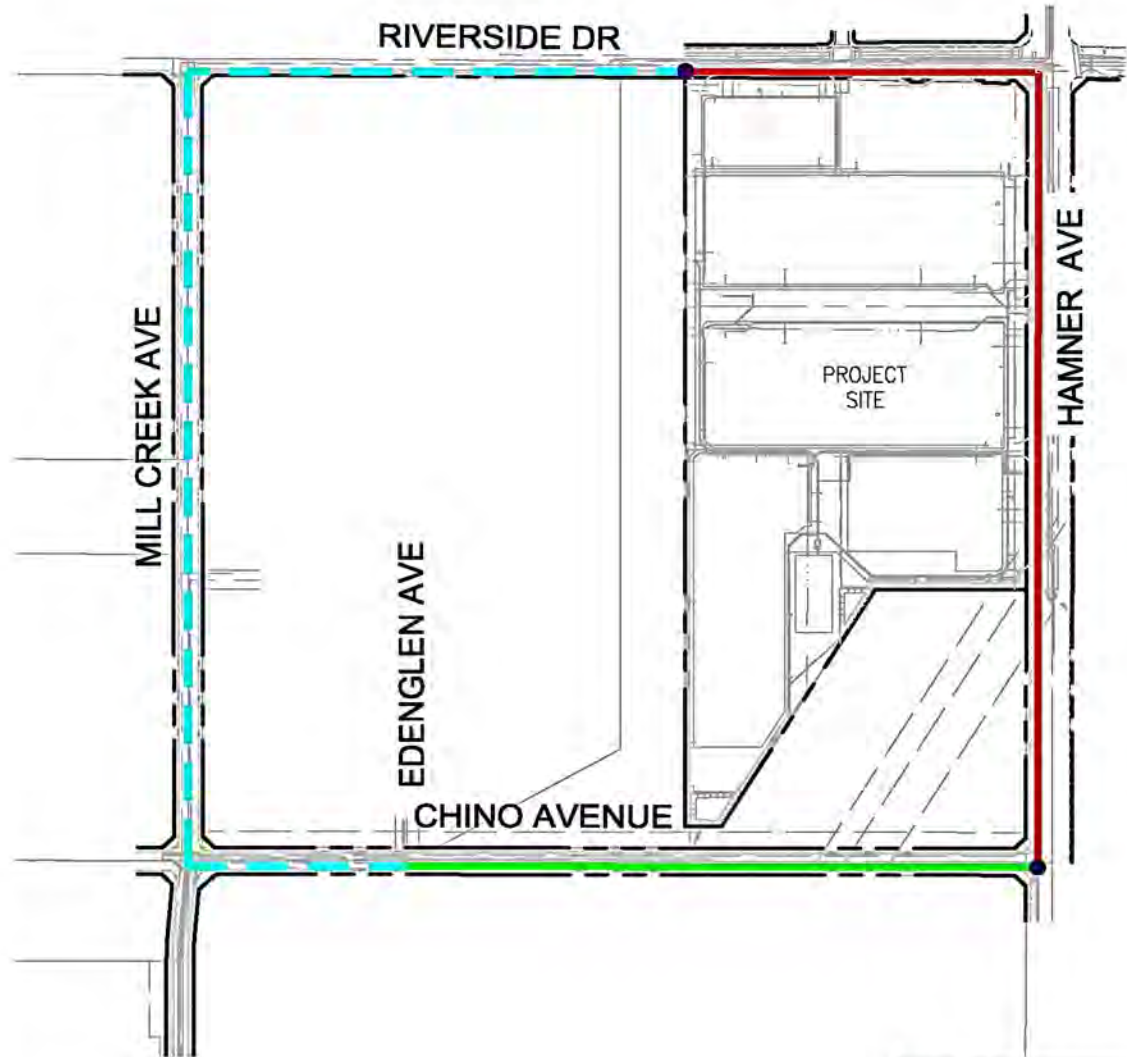
**WestLAND Group, Inc.**  
 4150 DUNDAS, ONTARIO, CA 31754  
 PHONE: (905) 889-8789 FAX: (905) 889-8660  
 Land Surveyors • Civil Engineers • GIS

⊕ N.T.S.

• Development Agreement • Parcel 20027

DATE: 07/22/2020

EXHIBIT F-5  
FIBER OPTIC COMMUNICATIONS



**LEGEND:**

- NEW PRIMARY RING FIBER OPTIC (CITY OF ONTARIO)
- POINT OF CONNECTION
- FUTURE FIBER OPTIC (CITY OF ONTARIO)
- EXISTING FIBER OPTIC (CITY OF ONTARIO)

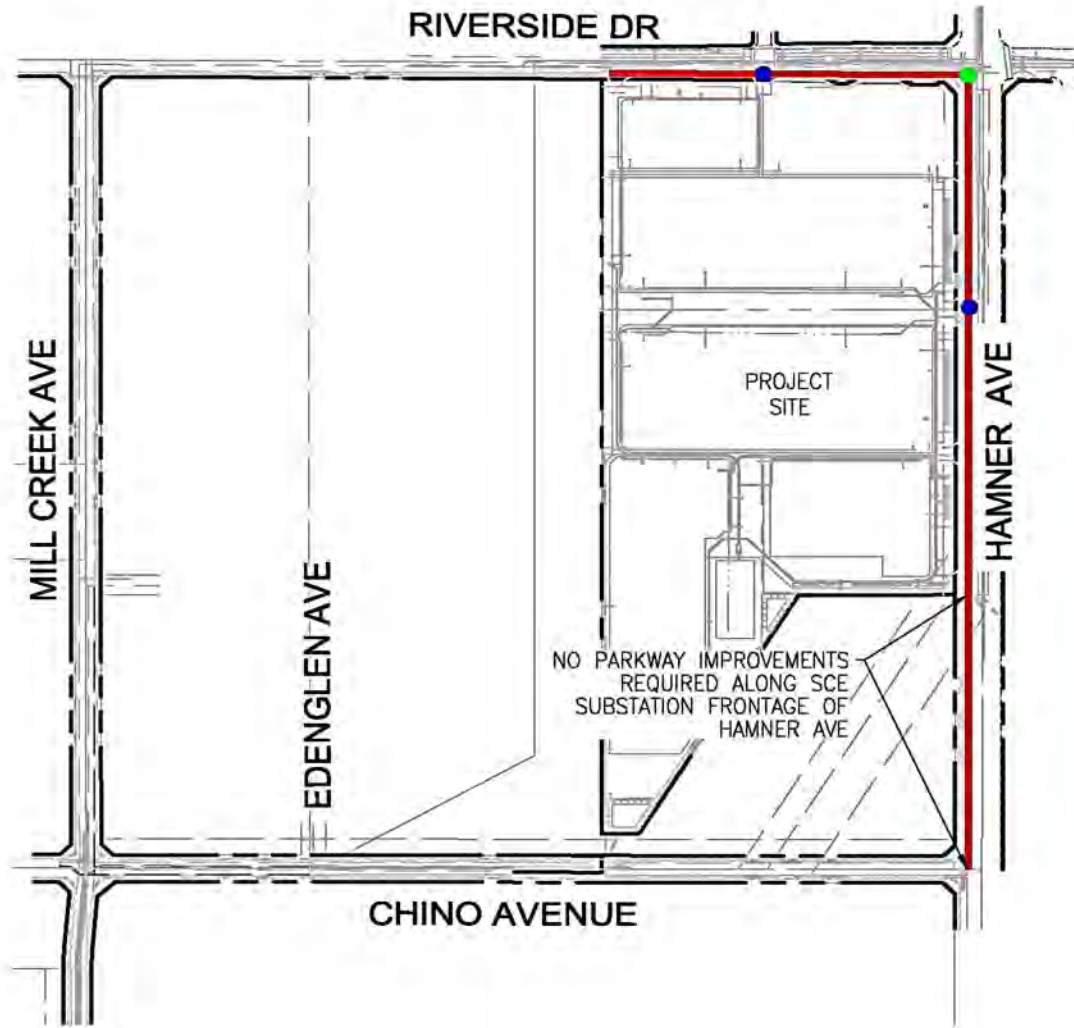
**WestLAND Group, Inc.**  
 4150 CONCOURS, ONTARIO, CA 91754  
 PHONE: (909) 989-8789 FAX: (909) 989-0660  
 Land Surveyors • Civil Engineers • GIS

N.T.S.

• Development Agreement • Parcel 20027

DATE: 07/02/2020

EXHIBIT F-6  
STREET IMPROVEMENTS



**LEGEND:**

- NEW STREET WIDENING (CITY OF ONTARIO)
- PROPOSED TRAFFIC SIGNAL
- EXISTING TRAFFIC SIGNAL TO BE MODIFIED

**WestLAND**  
Group, Inc.

4150 CONDOURS, ONTARIO, CA 91784  
PHONE: (909) 959-3789 FAX: (909) 959-2660  
Land Surveyors • Civil Engineers • GIS

N.T.S.

• Development Agreement • Parcel 20027

DATE: 07/10/2020

**EXHIBIT "G"**

**FORM OF CERTIFICATE OF NET MDD AVAILABILITY**

Pursuant to Section 4.5 of this Agreement between the City of Ontario, a California municipal corporation, and Ontario CC, LLC, a limited liability company, 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 DIF CREDIT**

Pursuant to Section 4.5.2 of this Agreement by and between the City of Ontario and Ontario CC, LLC, dated \_\_\_\_\_, 20\_\_, 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><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**

**C I T Y O F**



**O N T A R I O**

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

**CITY OF ONTARIO**

*Agenda Report*  
November 17, 2020

**SECTION:  
PUBLIC HEARINGS**

Department: Development Administration  
Prepared By: Derrick E Womble  
Staff Member Presenting:  
Scott Murphy, AICP, Executive Director  
Development Agency  
Approved By: 

Submitted To: Council/OHA  
Approved: \_\_\_\_\_  
Continued To: \_\_\_\_\_  
Denied: \_\_\_\_\_  
Item No: 14

**SUBJECT: A PUBLIC HEARING TO CONSIDER AN ORDINANCE APPROVING THE DEVELOPMENT AGREEMENT (FILE NO. PDA19-001) BETWEEN THE CITY OF ONTARIO AND EUCLID LAND VENTURE, LLC., TO ESTABLISH THE TERMS AND CONDITIONS FOR THE DEVELOPMENT OF TENTATIVE PARCEL MAP 20016 (FILE NO. PMTT18-011), AN 85.6-ACRE PROPERTY LOCATED AT THE NORTHEAST CORNER OF MERRILL AVENUE AND EUCLID AVENUE, WITHIN THE INDUSTRIAL AND BUSINESS PARK LAND USE DISTRICTS OF THE ONTARIO RANCH BUSINESS PARK SPECIFIC PLAN (APNS: 1054-011-01, 1054-011-02, 1054-011-04, 1054-021-01, 1054-021-02, 1054-271-01, 1054-271-02, 1054-271-03, 1054-281-01, 1054-281-02 AND 1054-281-03**

**RECOMMENDATION:** That the City Council introduce and waive further reading of an ordinance approving the Development Agreement (File No. PDA19-001) between the City of Ontario and Euclid Land Venture, LLC., to establish the terms and conditions for the development of Tentative Parcel Map 20016 (File No. PMTT18-011), an 85.6-acre property located at the northeast corner of Merrill Avenue and Euclid Avenue, within the Industrial and Business Park land use districts of the Ontario Ranch Business Park Specific Plan (APNs: 1054-011-01, 1054-011-02, 1054-011-04, 1054-021-01, 1054-021-02, 1054-271-01, 1054-271-02, 1054-271-03, 1054-281-01, 1054-281-02 and 1054-281-03.

**THE FOLLOWING COUNCIL GOALS ARE BEING ACHIEVED:**

**Invest in the Growth and Evolution of the City's Economy**

**Operate in a Businesslike Manner**

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

**Ensure the Development of a Well Planned, Balanced, and Self-Sustaining Community in Ontario Ranch**

**FISCAL IMPACT:** The proposed Development Agreement (File No. PDA19-001) will not have an immediate impact on the City's budget. The Development Agreement will provide funding from the formation of a Community Facilities District (CFD) for City services and facilities required to support the Ontario Ranch Business Park Specific Plan development, thereby mitigating the increased costs associated with such services. In addition, the City will receive public service funding fees plus development impact, compliance processing, licensing, and permitting fees. No General City revenue will be used to support the Ontario Ranch development.

**BACKGROUND & ANALYSIS:** On September 15, 2020, the City Council approved the Environmental Impact Report (EIR) SCH#2019050018 and Ontario Ranch Business Park Specific Plan, File No. PSP18-002 (“Specific Plan”) which addressed the proposed development of approximately 1,905,027 square feet of Industrial and Business Park uses.

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

In accordance with California Government Code Section 65865, which in part states that 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. 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 Agreement (File No. PDA19-001) is the first development agreement to be proposed outside of the NMC Builders’ Construction Agreement development area and was established in coordination between the City Attorney and the Owner’s legal counsel. The provisions of the Agreement are consistent with the commitments to assure adequate public infrastructure improvements are constructed or funded by the Owner.

The Agreement proposes to include 85.6 acres of land within the Industrial and Business Park land use districts of the Specific Plan, as shown on the attached Exhibit “A”. The Agreement grants the Owner a vested right to develop Tentative Parcel Map 20016 (File No. PMTT18-011), provided the Owner complies with the terms and conditions of the Specific Plan and EIR.

The Tentative Parcel Map 20016 (see Exhibit “B”) is located at the northeast corner of Merrill Avenue and Euclid Avenue and proposes to subdivide the property into eight (8) parcels to facilitate a Development Plan (File No. PDEV18-036) to construct three (3) Industrial buildings totaling 1,447,123 square feet and five (5) Business Park buildings totaling 105,624 square feet.

The term of the Agreement is for ten (10) years, with a five (5) year option to renew. The main points of the agreement address funding for all new City expenses created by the project, which includes: Development Impact Fees (DIF) for construction of public improvements (i.e. streets and bridges, sewer, water, storm drain and fiber); funding a portion of Phase 2 Water Improvements; 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 the maintenance of public facilities.

In considering the application at their meeting on October 27, 2020, the Planning Commission found that the Development Agreement was consistent with State law, The Ontario Plan, and the City’s Development Agreement policies, previously approved for Ontario Ranch developments. As a result, the Planning Commission adopted Resolution No. PC20-074 recommending City Council approval of the Development Agreement with a 5-0 vote.

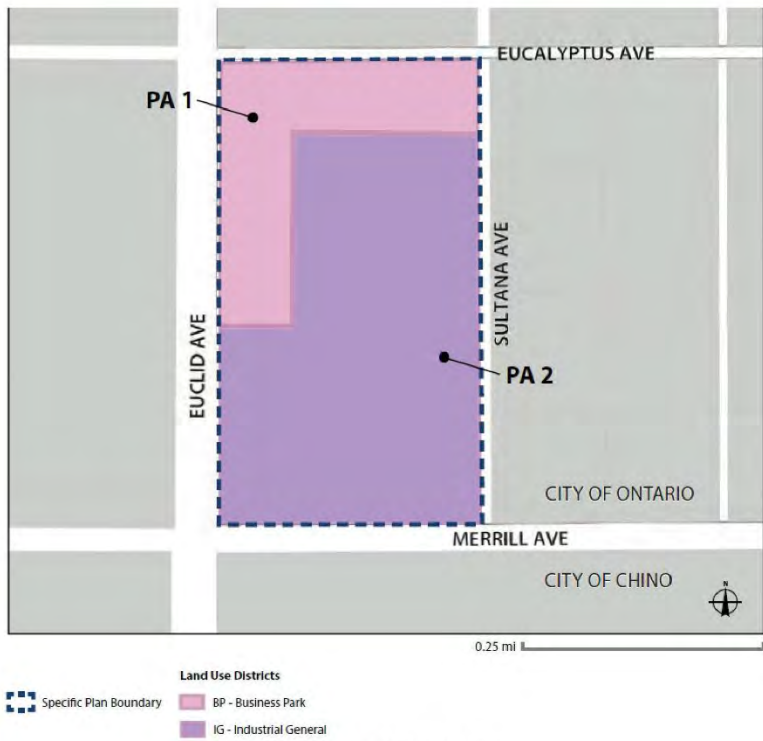
**HOUSING ELEMENT COMPLIANCE:** Pursuant to the requirements of California Government

Code Chapter 3, Article 10.6, commencing with Section 65580, as the recommending authority for the Project, the Planning Commission finds that based on the facts and information contained in the Application and supporting documentation, at the time of Project implementation, the project is consistent with the Housing Element of the Policy Plan (General Plan) component of The Ontario Plan, 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 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, which encompasses lands within parts of San Bernardino, Riverside, and Los Angeles Counties, and limits future land uses and development within the Airport Influence Area, as they relate to noise, safety, airspace protection, and overflight impacts of current and future airport activity. The proposed project is located within the Airport Influence Area of Ontario International Airport and was evaluated and found to be consistent with the policies and criteria of the ALUCP. Any special conditions of approval associated with uses in close proximity to the airport are included in the conditions of approval provided with the attached Resolution. 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.

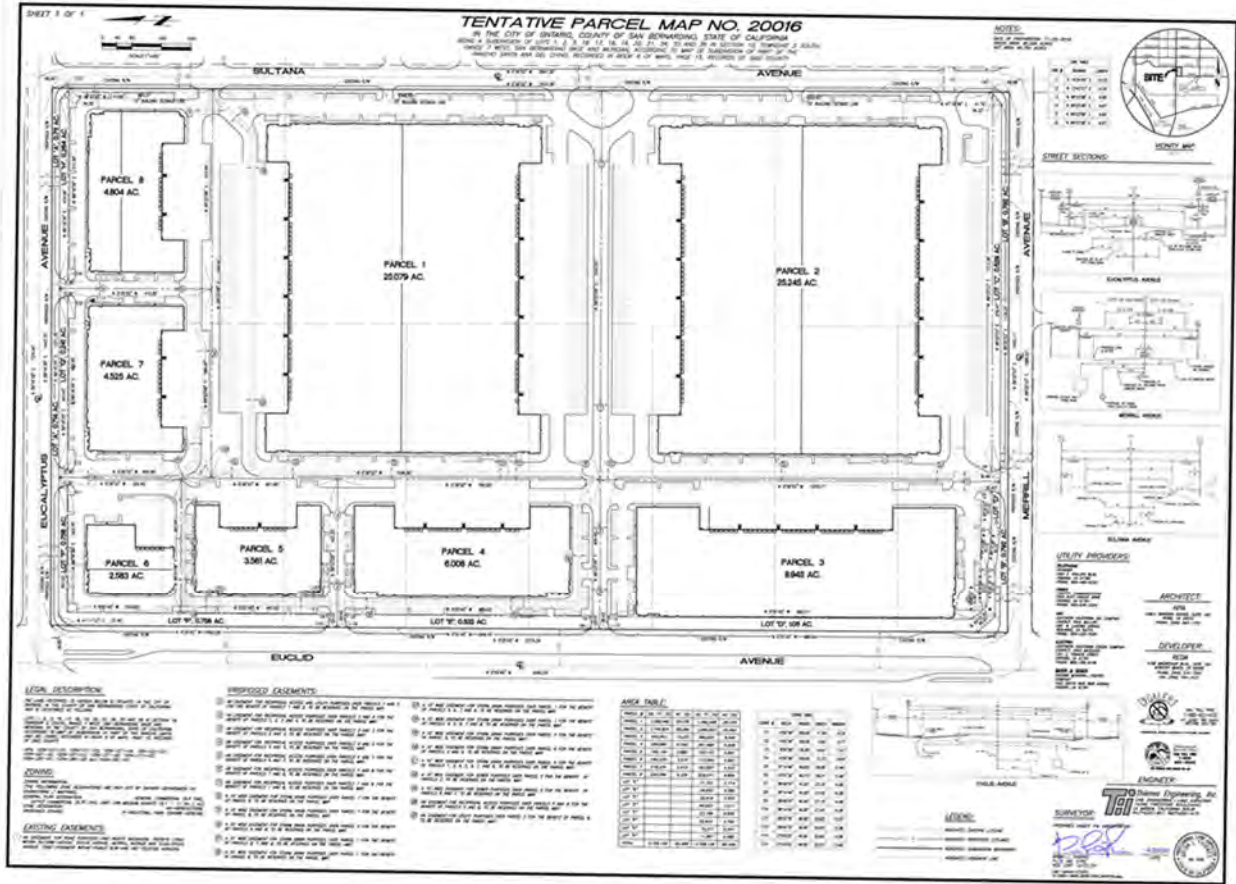
**ENVIRONMENTAL REVIEW:** The environmental impacts of this project were previously reviewed in conjunction with the Ontario Ranch Business Park Specific Plan, for which a(n) EIR (SCH#2019050018) was adopted by the City Council on September 15, 2020. This Application introduces no new significant environmental impacts. All previously adopted mitigation measures are a condition of project approval and are incorporated herein by this reference.

Exhibit "A"  
Ontario Ranch Business Park Specific Plan Land Use Map



**Figure 3: Land Use Plan**

Exhibit "B"  
Tentative Parcel Map 20016



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

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF ONTARIO, CALIFORNIA, APPROVING FILE NO. PDA19-001, A DEVELOPMENT AGREEMENT BETWEEN THE CITY OF ONTARIO AND EUCLID LAND VENTURE, LLC., TO ESTABLISH THE TERMS AND CONDITIONS FOR THE DEVELOPMENT OF TENTATIVE PARCEL MAP 20016 (FILE NO. PMTT18-011), A 85.6-ACRE PROPERTY LOCATED AT THE NORTHEAST CORNER OF MERRILL AVENUE AND EUCLID AVENUE, WITHIN THE INDUSTRIAL AND BUSINESS PARK LAND USE DISTRICTS OF THE ONTARIO RANCH BUSINESS PARK SPECIFIC PLAN AND MAKING FINDINGS IN SUPPORT THEREOF - APNS: 1054-011-01, 1054-011-02, 1054-011-04, 1054-021-01, 1054-021-02, 1054-271-01, 1054-271-02, 1054-271-03, 1054-281-01, 1054-281-02 AND 1054-281-03.

WHEREAS, Euclid Land Venture, LLC., ("Applicant") has filed an Application for the approval of a Development Agreement, File No. PDA19-001, as described in the title of this Ordinance (hereinafter referred to as "Application" or "Project"); and

WHEREAS, the Application applies to 85.6 acres of land generally located at the northeast corner of Merrill Avenue and Euclid Avenue, within the Industrial and Business Park land use districts of the Ontario Ranch Business Park Specific Plan, and is presently vacant; and

WHEREAS, on September 15, 2020, the City Council adopted Ordinance No. 3168, approving the Environmental Impact Report (SCH#2019050018) and Ontario Ranch Business Park Specific Plan ("Specific Plan"), which addressed the development of up to 1,905,027 square feet of Industrial and Business Park uses; and

WHEREAS, a Tentative Parcel Map 20016 (File No. PMTT18-011) to subdivide approximately 85.6 acres of land into eight (8) parcels to facilitate a Development Plan (File No. PDEV18-036) to construct three (3) Industrial buildings totaling 1,447,123 square feet, and five (5) Business Park buildings totaling 105,624 square feet; 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 Ontario Ranch Business Park Specific Plan (File No. PSP18-002), for which an Environmental Impact Report — State Clearinghouse No. 2019050018 — (hereinafter referred to as "Certified EIR") was adopted by the City Council on September 15, 2020, and this Application introduces no new significant environmental impacts; and

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

WHEREAS, the Application is a project pursuant to CEQA (Public Resources Code Section 21000 et seq.), and an initial study has been prepared to determine possible environmental impacts; and

WHEREAS, Ontario Development Code Table 2.02-1 (Review Matrix) grants the City Council the responsibility and authority to review and act on the subject Application; and

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

WHEREAS, the 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 October 27, 2020, the Planning Commission of the City of Ontario conducted a hearing to consider the Project and concluded said hearing on that date, voting to issue Resolution No. PC20-074, recommending the City Council approve the Application; and

WHEREAS, on November 17, 2020, the City Council of the City of Ontario conducted a hearing to consider the Project, and concluded said hearing on that date; and

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

NOW, THEREFORE, IT IS HEREBY FOUND, DETERMINED, AND 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 Certified EIR and supporting documentation. Based upon the facts and information contained in the previous Certified EIR and supporting documentation, the City Council finds as follows:

(1) The environmental impacts of this project were previously reviewed in conjunction with Ontario Ranch Business Park Specific Plan (File No. PSP18-002), for which a Certified EIR was adopted by the City Council on September 15, 2020; and



(2) The previous Certified EIR contains a complete and accurate reporting of the environmental impacts associated with the Project; and

(3) The previous Certified EIR was completed in compliance with CEQA and the Guidelines promulgated thereunder; and

(4) The previous Certified EIR reflects the independent judgment of the City Council; and

(5) The proposed project will introduce no new significant environmental impacts beyond those previously analyzed in the previous Certified EIR, and all mitigation measures previously adopted with the Certified EIR, are incorporated herein by this reference.

**SECTION 2. Subsequent or Supplemental Environmental Review Not Required.** Based on the information presented to the City Council, and the specific findings set forth in Section 1, above, the City Council finds that the preparation of a subsequent or supplemental Certified EIR is not required for the Project, as the Project:

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

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

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

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

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

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

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

**SECTION 3. *Housing Element Compliance.*** Pursuant to the requirements of California Government Code Chapter 3, Article 10.6, commencing with Section 65580, as the recommending authority for the Project, the Planning Commission finds that based on the facts and information contained in the Application and supporting documentation, at the time of Project implementation, the project is consistent with the Housing Element of the Policy Plan (General Plan) component of The Ontario Plan, 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 decision-making body for the Project, the City Council has reviewed and considered the facts and information contained in the Application and supporting documentation against the 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 3, above, the City Council hereby concludes as follows:

**a.** The Development Agreement applies to approximately 85.6 acres of land located at the northeast corner of Merrill Avenue and Euclid Avenue, within the Industrial and Business Park land use districts of the Ontario Ranch Business Park Specific Plan; and

**b.** The Development Agreement establishes parameters for the development of the proposed Industrial and Business Park land use districts of the Ontario Ranch Business Park Specific Plan. The Development Agreement also grants the Owner, 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 Ontario Ranch Business Park Specific Plan; and

c. The Agreement grants the Owner a vested right to develop Tentative Parcel Map 20016 (File No. PMTT18-011) as long as the Owner, complies with the terms and conditions of the Specific Plan and EIR. Tentative Parcel Map 20016 is located at the northeast corner of Merrill Avenue and Euclid Avenue, and proposes to subdivide approximately 85.6 acres of land into eight (8) parcels to facilitate a Development Plan (File No. PDEV18-036) to construct three (3) Industrial buildings totaling 1,447,123 square feet, and five (5) Business Park buildings totaling 105,624 square feet; and

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

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

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

g. This Development Agreement will not be materially injurious or detrimental to the adjacent properties and will have a significant impact on the environment or the surrounding properties. The environmental impacts of this project were previously reviewed in conjunction with the Ontario Ranch Business Park Specific Plan, for which an EIR (SCH#2019050018) was adopted by the City Council on September 15, 2020. This Application introduces no new significant environmental impacts. All previously adopted mitigation measures are a condition of project approval and are incorporated herein by this reference.

**SECTION 6. City Council Action.** Based upon the findings and conclusions set forth in Sections 1 through 5, above, the City Council hereby APPROVES the herein described Development Agreement (File No. PDA19-001), attached hereto as "Attachment A," and incorporated herein by this reference.

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

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

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

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

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

PASSED, APPROVED, AND ADOPTED this \_\_\_\_ day of \_\_\_\_\_ 2020.

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

ATTEST:

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

APPROVED AS TO FORM:

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

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

I, SHEILA MAUTZ, City Clerk of the City of Ontario, DO HEREBY CERTIFY that foregoing Ordinance No. \_\_\_\_\_ was duly introduced at a regular meeting of the City Council of the City of Ontario held November 17, 2020 and adopted at the regular meeting held \_\_\_\_\_, 2020 by the following roll call vote, to wit:

AYES: COUNCIL MEMBERS:

NOES: COUNCIL MEMBERS:

ABSENT: COUNCIL MEMBERS:

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

(SEAL)

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

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

(SEAL)

**ATTACHMENT A:**

**File No. PDA19-001**

**DEVELOPMENT AGREEMENT**

**By and Between**

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

**and**

**Euclid Land Venture, LLC,  
a Delaware limited liability company**

*(Development Agreement to follow this page)*

**CITY OF ONTARIO**

*Agenda Report*  
November 17, 2020

**SECTION:  
PUBLIC HEARINGS**

Department: Investments & Revenue Resources  
Prepared By: Jason M Jacobsen  
Staff Member Presenting:  
Armen Harkalyan, Executive Director of Finance  
Reviewed By: Jason M Jacobsen, Armen  
Harkalyan  
Approved By:



Submitted To: Council/OHA  
Approved: \_\_\_\_\_  
Continued To: \_\_\_\_\_  
Denied: \_\_\_\_\_  
Item No: 15

**SUBJECT: A PUBLIC HEARING TO CONSIDER A RESOLUTION REGARDING THE FORMATION OF THE CITY OF ONTARIO COMMUNITY FACILITIES DISTRICT NO. 57 (NEUHOUSE); ADOPTION OF A RESOLUTION TO INCUR BONDED INDEBTEDNESS; AND INTRODUCTION OF AN ORDINANCE LEVYING SPECIAL TAXES**

**RECOMMENDATION:** That the City Council consider and:

- A. Adopt a resolution of formation of Community Facilities District No. 57 (Neuhouse), authorizing the levy of special taxes within the community facilities district, and establishing an appropriations limit for the community facilities district;
- B. Adopt a resolution deeming it necessary to incur bonded indebtedness within Community Facilities District No. 57 (Neuhouse);
- C. Adopt a resolution calling a special election for City of Ontario Community Facilities District No. 57 (Neuhouse);
- D. Adopt a resolution declaring the results of the special election and directing the recording of a Notice of Special Tax Lien;
- E. Introduce and waive further reading of an ordinance levying special taxes within City of Ontario Community Facilities District No. 57 (Neuhouse); and
- F. Adopt a resolution authorizing the execution and delivery of an acquisition and funding agreement with LS-Ontario II LLC, a Delaware corporation.

**THE FOLLOWING COUNCIL GOALS ARE BEING ACHIEVED:**

**Operate in a Businesslike Manner**

**Focus Resources in Ontario's Commercial and Residential Neighborhoods**

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

**Ensure the Development of a Well Planned, Balanced, and Self-Sustaining Community in Ontario Ranch**

**FISCAL IMPACT:** The use of Mello-Roos financing for facilities in the residential development of the Neuhouse project is estimated to generate approximately \$7,800,000 in bond proceeds to be used to fund a portion of the public infrastructure improvements and approximately \$552,688 per year, at build-out, to fund City services that will serve the project. Mello-Roos bonds are not a direct obligation of the City and are paid from special taxes levied on each taxable parcel in the district; therefore, there is no

General Fund impact from the issuance of Mello Roos bonds. City Council approval will be required in future years to process annual special tax levies.

**BACKGROUND & ANALYSIS:** The Mello-Roos Community Facilities Act of 1982 provides local government, with the consent from a majority of the property owners, the authority to establish community facilities districts for the purpose of levying special taxes to finance various kinds of public infrastructure facilities and City services. Under the Mello-Roos Act the initial steps in the formation of a community facilities district to finance public improvements and City Services are to adopt resolutions declaring the intention to establish a community facilities, authorize the levy of special taxes, and to issue bonds. Accordingly, on October 6, 2020, the City Council approved Resolution No. 2020-167, a Resolution of Intention to establish City of Ontario Community Facilities District No. 57 (Neuhouse) and authorize the levy of special taxes; and Resolution No. 2020-168 declaring the City Council's intention to issue bonds for the district. The Resolution of Intention set the public hearing date for the regularly scheduled City Council meeting on November 17, 2020, to consider formation matters.

In the First Amended and Restated Agreement for the Financing and Construction of Limited Infrastructure Improvements to Serve an Easterly Portion of the New Model Colony ("First Amended and Restated Construction Agreement") between the City and NMC Builders, LLC, the City agreed to cooperate with the members of NMC Builders, LLC in the formation of community facilities districts to assist in the financing of the public improvements included in the agreement. LS-Ontario II, LLC have provided a written petition to the City requesting formation of a community facilities district for the Neuhouse project in Ontario Ranch. The Neuhouse project addresses the development of approximately 30 gross acres located west of Mill Creek Avenue, east of Haven Avenue, north of Schaefer Avenue and south of Chino Avenue. At build out the development is projected to include 334 residential units, of which 100 are detached units and 234 are attached units.

Included as part of the resolution of formation is the proposed Rate and Method of Apportionment of Special Tax for the District. Under the proposed Rate and Method of Apportionment, the portion of the maximum annual special tax rates which will be used to fund debt service payments on the bonds is fixed and will not increase over time. As proposed, the amount of bonds authorized for the district (\$33 million) is set intentionally higher than the current estimated bond amount (approximately \$7.8 million) in order to allow future City Councils the option, without increasing the amount of the annual special taxes, to issue additional bonds to replace and/or construct new public infrastructure improvements in the future, or to fund City services. The term and structure of the Rate and Method of Apportionment of Special Tax for the Neuhouse project is consistent with those of previously adopted Rates and Methods of Apportionment for Ontario Ranch community facilities districts. This ensures that the special tax rates levied on all residential property owners in community facilities districts in Ontario Ranch are developed in a consistent and equivalent manner. In addition, under the provisions of the Mello-Roos Act, to ensure that home buyers are making an informed decision, all residential builders in the Ontario Ranch districts will be required to disclose the maximum annual special tax amount to each homeowner before entering into a sales contract.

Attached are five resolutions and an ordinance. The first attached resolution establishes the community facilities district, with the rate and method of apportionment of special taxes, and authorizes the levy of special taxes within the district. The second attached resolution deems the necessity of incurring bonded indebtedness for the district. The third attached resolution calls for a special landowner election to be held on November 17, 2020. The fourth attached resolution declares the results of the election, including a statement from the City Clerk as to the canvass of ballots, and directs the recording of the Notice of Special Tax Lien. The attached ordinance authorizes the levying of special taxes, and the



final attached resolution authorizes the execution and delivery of an acquisition and funding agreement with LS-Ontario II, LLC.

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

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF ONTARIO, CALIFORNIA, OF FORMATION OF THE CITY OF ONTARIO COMMUNITY FACILITIES DISTRICT NO. 57 (NEUHOUSE), AUTHORIZING THE LEVY OF A SPECIAL TAX WITHIN THE COMMUNITY FACILITIES DISTRICT AND ESTABLISHING AN APPROPRIATIONS LIMIT FOR THE COMMUNITY FACILITIES DISTRICT.

WHEREAS, on October 6, 2020, the City Council (the "City Council") of the City of Ontario (the "City"), pursuant to the Mello-Roos Community Facilities Act of 1982 (the "Act"), adopted a resolution entitled "A Resolution of the City Council of the City of Ontario, California, of Intention to Establish a Community Facilities District, Proposed to be Named City of Ontario Community Facilities District No. 57 (Neuhouse), and to Authorize the Levy of Special Taxes" (the "Resolution of Intention"), stating its intention to establish a community facilities district (the "Community Facilities District") proposed to be named City of Ontario Community Facilities District No. 57 (Neuhouse), to authorize the levy of special taxes within the Community Facilities District to finance certain public facilities and services and setting the date for a public hearing to be held on the establishment of the Community Facilities District; and

WHEREAS, pursuant to the Resolution of Intention, notice of said public hearing was published in the *Inland Valley Daily Bulletin*, a newspaper of general circulation published in the area of the Community Facilities District, in accordance with the Act; and

WHEREAS, on this date, the City Council opened, conducted and closed said public hearing; and

WHEREAS, pursuant to the Resolution of Intention, each officer of the City who is or will be responsible for providing one or more of the proposed types of public facilities or services was directed to study, or cause to be studied, the proposed Community Facilities District and, at or before said public hearing, file a report with the City Council containing a brief description of the public facilities and services by type that will in his or her opinion be required to adequately meet the needs of the Community Facilities District, and his or her estimate of the cost of providing such public facilities and services; such officers were also directed to estimate the fair and reasonable cost of the public facilities proposed to be purchased as completed public facilities and of the incidental expenses proposed to be paid; and

WHEREAS, said report was so filed with the City Council and made a part of the record of said public hearing; and

WHEREAS, at the hearing, the testimony of all persons for or against the establishment of the Community Facilities District, the extent of the Community Facilities District and the furnishing of the specified types of public facilities and services was heard; and

WHEREAS, written protests against the establishment of the Community Facilities District, the furnishing of any specified type or types of facilities and services within the Community Facilities District or the levying of any specified special tax were not made or filed at or before said hearing by 50% or more of the registered voters, or six registered voters, whichever is more, residing within the territory proposed to be included in the Community Facilities District, or the owners of one-half or more of the area of land in the territory proposed to be included in the Community Facilities District and not exempt from the special tax; and

WHEREAS, there has been filed with the City Clerk of the City a letter from the Registrar of Voters of the County of San Bernardino indicating that no persons were registered to vote within the territory of the proposed Community Facilities District as of October 15, 2020, and, accordingly, that 12 or more persons have not been registered to vote within the territory of the proposed Community Facilities District for each of the 90 days preceding the close of said public hearing; and

WHEREAS, Section 53314.9 of the Act provides that, at any time either before or after the formation of a community facilities district, the legislative body may accept advances of funds from any source, including, but not limited to, private persons or private entities and may provide, by resolution, for the use of those funds for any authorized purpose, including, but not limited to, paying any cost incurred by the local agency in creating a community facilities district; and

WHEREAS, Section 53314.9 of the Act further provides that the legislative body may enter into an agreement, by resolution, with the person or entity advancing the funds, to repay all or a portion of the funds advanced, as determined by the legislative body, with or without interest, under all the following conditions: (a) the proposal to repay the funds is included in both the resolution of intention to establish a community facilities district adopted pursuant to Section 53521 of the Act and in the resolution of formation to establish a community facilities district pursuant to Section 53325.1 of the Act, (b) any proposed special tax is approved by the qualified electors of the community facilities district pursuant to the Act, and (c) any agreement shall specify that if the qualified electors of the community facilities district do not approve the proposed special tax, the local agency shall return any funds which have not been committed for any authorized purpose by the time of the election to the person or entity advancing the funds; and

WHEREAS, the City and LS-ONTARIO II LLC ("LS-ONTARIO II") entered into a Deposit and Reimbursement Agreement, dated as of October 1, 2020 (the "Deposit Agreement"), that provides for the advancement of funds by LS-ONTARIO II to be used to pay costs incurred in connection with the establishment of the Community Facilities District and the issuance of special tax bonds thereby, and provides for the reimbursement to LS-ONTARIO II of such funds advanced, without interest, from the proceeds of any such bonds issued by the Community Facilities District; and

WHEREAS, in accordance with Section 53314.9 of the Act, the City desires to accept such advances and to reimburse LS-ONTARIO II therefor, without interest, from the proceeds of special tax bonds issued by the Community Facilities District.

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

SECTION 1. The foregoing recitals are true and correct.

SECTION 2. The Community Facilities District is hereby established pursuant to the Act.

SECTION 3. The Community Facilities District is hereby named "City of Ontario Community Facilities District No. 57 (Neuhouse)."

SECTION 4. The public facilities (the "Facilities") proposed to be financed by the Community Facilities District pursuant to the Act are described under the caption "Facilities" on Exhibit A hereto, which is by this reference incorporated herein. Those Facilities proposed to be purchased as completed public facilities are described under the caption "Facilities to be Purchased" on Exhibit A hereto. The services (the "Services") proposed to be financed by the Community Facilities District pursuant to the Act are described under the caption "Services" on Exhibit A hereto. The incidental expenses proposed to be incurred are identified under the caption "Incidental Expenses" on Exhibit A hereto. All or any portion of the Facilities may be financed through a financing plan, including, but not limited to, a lease, lease-purchase or installment-purchase arrangement.

SECTION 5. The proposed special tax to be levied within the Community Facilities District has not been precluded by majority protest pursuant to Section 53324 of the Act.

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

SECTION 7. The special tax may only finance the Services to the extent that they are in addition to those provided in the territory of the Community Facilities District before the Community Facilities District is created. The Services may not supplant services already available within that territory when the Community Facilities District is created.

SECTION 8. The tax year after which no further special tax to pay for Facilities will be levied against any parcel used for private residential purposes is specified in the Rate and Method. Under no circumstances shall the special tax to pay for Facilities in any

fiscal year against any parcel used for private residential purposes be increased as a consequence of delinquency or default by the owner or owners of any other parcel or parcels within the Community Facilities District by more than 10% above the amount that would have been levied in that fiscal year had there never been any such delinquencies or defaults. For purposes of this paragraph, a parcel shall be considered “used for private residential purposes” not later than the date on which an occupancy permit for private residential use is issued.

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

SECTION 10. The name, address and telephone number of the office that will be responsible for preparing annually a current roll of special tax levy obligations by assessor’s parcel number and that will be responsible for estimating further special tax levies pursuant to Section 53340.2 of the Act are as follows: Management Analyst, Financial Services, City of Ontario, 303 East B Street, Ontario, California 91764, (909) 395-2341.

SECTION 11. Upon recordation of a notice of special tax lien pursuant to Section 3114.5 of the California Streets and Highways Code, a continuing lien to secure each levy of the special tax shall attach to all nonexempt real property in the Community Facilities District and this lien shall continue in force and effect until the special tax obligation is prepaid and permanently satisfied and the lien canceled in accordance with law or until collection of the tax by the City Council ceases.

SECTION 12. The boundary map of the Community Facilities District has been recorded in San Bernardino County in Book 89 at Page 35 of Maps of Assessments and Community Facilities Districts in the San Bernardino County Recorder’s Office (Document No. 2020-0390238).

SECTION 13. The annual appropriations limit, as defined by subdivision (h) of Section 8 of Article XIII B of the California Constitution, of the Community Facilities District is hereby established at \$33,000,000.

SECTION 14. Pursuant to the provisions of the Act, the levy of the special tax and a proposition to establish the appropriations limit specified above shall be subject to the approval of the qualified electors of the Community Facilities District at a special election. The City Council hereby finds and determines that no persons were registered to vote within the territory of the proposed Community Facilities District as of October 15, 2020, and that 12 or more persons have not been registered to vote within the territory of the Community Facilities District for each of the 90 days preceding the close of the public

hearing held by the City Council on the establishment of the Community Facilities District. Accordingly, pursuant to Section 53326 of the Act, the vote shall be by the landowners of the Community Facilities District and each person who is the owner of land as of the close of said public hearings, or the authorized representative thereof, shall have one vote for each acre or portion of an acre that he or she owns within the Community Facilities District not exempt from the special tax. The voting procedure shall be by mailed or hand-delivered ballot.

SECTION 15. LS-ONTARIO II has heretofore advanced certain funds, and may advance additional funds, which have been or may be used to pay costs incurred in connection with the creation of the Community Facilities District and the issuance of special tax bonds thereby. The City Council has previously approved the acceptance of such funds for the purpose of paying costs incurred in connection with the creation of the Community Facilities District and the issuance of special tax bonds thereby. The City Council proposes to repay all or a portion of such funds expended for such purpose, solely from the proceeds of such bonds, pursuant to the Deposit Agreement. The Deposit Agreement is hereby incorporated herein as though set forth in full herein.

SECTION 16. The City Council hereby finds and determines that all proceedings up to and including the adoption of this Resolution were valid and in conformity with the requirements of the Act. In accordance with Section 53325.1 of the Act, such finding shall be final and conclusive.

SECTION 17. The officers, employees and agents of the City are hereby authorized and directed to take all actions and do all things which they, or any of them, may deem necessary or desirable to accomplish the purposes of this Resolution and not inconsistent with the provisions hereof.

SECTION 18. This Resolution shall take effect immediately upon its adoption.

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

PASSED, APPROVED and ADOPTED this 17<sup>th</sup> day of November 2020.

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PAUL S. LEON, MAYOR

ATTEST:

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SHEILA MAUTZ, CITY CLERK

APPROVED AS TO LEGAL FORM:

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BEST BEST & KRIEGER LLP  
CITY ATTORNEY

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

I, SHEILA MAUTZ, City Clerk of the City of Ontario, DO HEREBY CERTIFY that foregoing Resolution No. 2020-     was duly passed and adopted by the City Council of the City of Ontario at their regular meeting held November 17, 2020 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. 2020-     duly passed and adopted by the Ontario City Council at their regular meeting held November 17, 2020.

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

(SEAL)



## EXHIBIT A

### FACILITIES, SERVICES AND INCIDENTAL EXPENSES

#### Facilities

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

#### Facilities to be Purchased

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

#### Services

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

#### Incidental Expenses

The incidental expenses proposed to be incurred include the following:

- (a) the cost of planning and designing public facilities to be financed, including the cost of environmental evaluations of those facilities;
- (b) the costs associated with the creation of the Community Facilities District, issuance of bonds, determination of the amount of taxes, collection of taxes, payment of taxes, or costs otherwise incurred in order to carry out the authorized purposes of the Community Facilities District; and
- (c) any other expenses incidental to the construction, completion, and inspection of the authorized work.

## EXHIBIT B

### CITY OF ONTARIO COMMUNITY FACILITIES DISTRICT No. 57 (NEUHOUSE)

#### RATE AND METHOD OF APPORTIONMENT OF SPECIAL TAX

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Special Taxes shall be levied on all Assessor's Parcels in the City of Ontario Community Facilities District No. 57 (Neuhouse) ("CFD No. 57") and collected each Fiscal Year, commencing in Fiscal Year 2021-22, in an amount determined by the City Council of the City of Ontario through the application of the Rate and Method of Apportionment, as described below. All of the real property in CFD No. 57, unless exempted by law or by the provisions hereof, shall be taxed for the purposes, to the extent, and in the manner herein provided.

#### A. DEFINITIONS

The terms hereinafter set forth have the following meanings:

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

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

**"Administrative Expenses"** means the following actual or reasonably estimated costs directly related to the administration of CFD No. 57: the costs of computing the Special Taxes and preparing the annual Special Tax collection schedules (whether by the City or CFD No. 57 or both); the costs of collecting the Special Taxes (whether by the County or otherwise); the costs of remitting the Special Taxes to the Trustee; the costs of the Trustee (including its legal counsel) in the discharge of the duties required of it under the Indenture; the costs to the City or CFD No. 57 of complying with arbitrage rebate requirements; the costs to the City or CFD No. 57 of complying with City, CFD No. 57, or obligated persons disclosure requirements associated with applicable federal and state securities laws and of the Act; the costs associated with preparing Special Tax disclosure statements and responding to public inquiries regarding the Special Taxes; the costs of the City or CFD No. 57 related to the analysis and reduction, if any, of the Special Tax A on Single Family Property in accordance with Section C.1 herein; the costs of the City or CFD No. 57 related to an appeal of the Special Tax; the costs associated with the release of funds from any escrow account; the City's administration fees and third party expenses; the costs of City staff time and reasonable overhead relating to CFD No. 57; and amounts estimated or advanced by the City or CFD No. 57 for any other

administrative purposes of the CFD, including attorney's fees and other costs related to commencing and pursuing to completion any foreclosure of delinquent Special Taxes.

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

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

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

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

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

**"Bonds"** means any bonds or other debt (as defined in Section 53317(d) of the Act) issued by CFD No. 57 under the Act and payable from Special Tax A.

**"Buildable Lot"** means an individual lot, within a Final Subdivision Map or an area expected by CFD No. 57 to become Final Mapped Property, such as the area within a Tentative Tract Map, for which a building permit may be issued without further subdivision of such lot.

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

**"CFD No. 57"** means City of Ontario Community Facilities District No. 57 (Neuhouse).

**"City"** means the City of Ontario, California.

**"City Council"** means the City Council of the City, acting as the legislative body of CFD No. 57.

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

“**County**” means the County of San Bernardino.

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

“**Developed Property**” means for each Fiscal Year, all Taxable Property, exclusive of Final Mapped Property, Taxable Property Owner Association Property, and Taxable Public Property, for which a building permit or other applicable permit for new construction was issued after January 1, 2020, and before May 1 of the prior Fiscal Year.

“**Expected Residential Lot Count**” means 334 Buildable Lots of Single Family Property or, as determined by the CFD Administrator, the number of Buildable Lots of Single Family Property based on the most recent Tentative Tract Map(s) or most recently recorded Final Subdivision Map(s) or modified Final Subdivision Map(s).

“**Facilities**” means the public facilities authorized to be financed, in whole or in part, by CFD No. 57.

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

“**Final Subdivision Map**” means a final tract map, parcel map, or lot line adjustment approved by the City pursuant to the Subdivision Map Act (California Government Code Section 66410 et seq.) or a condominium plan recorded pursuant to California Civil Code 1352 that, in either case, creates individual lots for which building permits may be issued without further subdivision.

“**Fiscal Year**” means the period starting July 1 and ending on the following June 30.

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

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

“**Land Use Class**” means any of the classes listed in Table 1 and Table 2 below.

“**Lower Income Household Welfare Exemption Property**” means, for each Fiscal Year, an Assessor’s Parcel within the boundaries of CFD No. 57 that is subject to a

welfare exemption under subdivision (g) of Section 214 of the California Revenue and Taxation Code (or any successor statute), as indicated in the most recent County assessor's roll finalized prior to such Fiscal Year.

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

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

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

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

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

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

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

**“Price Point Consultant”** means any consultant or firm of such consultants selected by CFD No. 57 that (a) has substantial experience in performing price point studies for residential units within community facilities districts established under the Act or otherwise estimating or confirming pricing for residential units in such community facilities districts, (b) has recognized expertise in analyzing economic and real estate data that relates to the pricing of residential units in such community facilities districts, (c) is in fact independent and not under the control of CFD No. 57 or the City, (d) does not have any substantial interest, direct or indirect, with or in (i) CFD No. 57, (ii) the City, (iii) any owner of real property in CFD No. 57, or (iv) any real property in CFD No. 57, and (e) is not connected with CFD No. 57 or the City as an officer or employee thereof, but who may be regularly retained to make reports to CFD No. 57 or the City.

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

**“Property Owner Association Property”** means, for each Fiscal Year, any property within the boundaries of CFD No. 57 that was owned by a property owner association, including any master or sub-association, as of January 1 of the prior Fiscal Year.

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

**“Public Property”** means, for each Fiscal Year, property within the boundaries of CFD No. 57 that is (a) owned by, irrevocably offered to, or dedicated to the federal government, the State, the County, the City, or any local government or other public agency or (b) encumbered by an easement for purposes of public or utility right-of-way that makes impractical its use for any purpose other than that set forth in such easement; provided that any property leased by a public agency to a private entity and subject to taxation under Section 53340.1 of the Act shall be taxed and classified according to its use.

**“Rate and Method of Apportionment”** means this Rate and Method of Apportionment of Special Tax.

**“Residential Floor Area”** means all of the Square Footage of living area within the perimeter of a Unit, not including any carport, walkway, garage, overhang, patio, enclosed patio, or similar area. The determination of Residential Floor Area shall be as set forth in the building permit(s) issued for such Assessor’s Parcel, or as set forth in other official records maintained by the City’s Building Department or other appropriate means selected by CFD No. 57. The actual Square Footage shall be rounded up to the next whole square foot. Once such determination has been made for an Assessor’s Parcel, it shall remain fixed in all future Fiscal Years unless an appeal pursuant to Section F below is approved that results in a change in the actual Square Footage.

**“Residential Property”** means, for each Fiscal Year, an Assessor’s Parcel for which a building permit for new construction of one or more Units was issued after January 1, 2020, and before May 1 of the prior Fiscal Year.

**“Services”** means the services authorized to be financed, in whole or in part, by CFD No. 57.

**“Single Family Attached Property”** means all Assessor’s Parcels of Developed Property for which a building permit or use permit was issued for construction of a residential structure consisting of two or more Units that share common walls, have separate Assessor’s Parcel Numbers assigned to them (except for a duplex unit, which may share an Assessor’s Parcel with another duplex unit), and may be purchased by individual homebuyers (which shall still be the case even if the Units are purchased and subsequently offered for rent by the owner of the Unit), including such residential structures that meet the statutory definition of a condominium contained in Civil Code Section 1351.

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

**“Single Family Property”** means all Assessor’s Parcels of Single Family Attached Property and Single Family Detached Property.

**“Special Taxes”** means, collectively, Special Tax A and Special Tax B.

**“Special Tax A”** means the special tax authorized by the qualified electors of CFD No. 57 to be levied within the boundaries of CFD No. 57 to pay for Facilities and Services.

**“Special Tax A Requirement”** means for any Fiscal Year that amount required, after taking into account available amounts held in the funds and accounts established under the Indenture, for CFD No. 57 to: (i) pay debt service on all Outstanding Bonds which is due in the calendar year that commences in such Fiscal Year; (ii) pay periodic costs on the Bonds, including, but not limited to, credit enhancement and rebate payments on the Bonds; (iii) pay a pro rata share of Administrative Expenses; (iv) provide any amounts required to establish or replenish any reserve fund for the Bonds; (v) pay directly for acquisition or construction of Facilities, or the cost of Services, to the extent that the inclusion of such amounts does not increase the Special Tax A levy on Final Mapped Property or Undeveloped Property; and (vi) provide an amount equal to Special Tax A delinquencies based on the historical delinquency rate for Special Tax A as determined by the CFD Administrator.

**“Special Tax B”** means the special tax authorized by the qualified electors of CFD No. 57 to be levied within the boundaries of CFD No. 57 to pay for Services.

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

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

**“Square Footage”** or **“Sq. Ft.”** means the floor area square footage reflected on the original construction building permit, or as set forth in other official records maintained by the City’s Building Department or other appropriate means selected by CFD No. 57, issued for construction of Residential Property or Non-Residential Property, plus any square footage subsequently added to a building of Non-Residential Property after issuance of a building permit for expansion or renovation of such building.

**“State”** means the State of California.

**“Taxable Property”** means, for each Fiscal Year, all of the Assessor’s Parcels within the boundaries of CFD No. 57 that are not exempt from the Special Taxes pursuant to law or Section E below.

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

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

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

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

**“Trustee”** means the trustee or fiscal agent under the Indenture.

**“TTM 20135”** means Tentative Tract Map No. 20135, the area of which is located within CFD No. 57.

**“TTM 20136”** means Tentative Tract Map No. 20136, the area of which is located within CFD No. 57.



“TTM 20137” means Tentative Tract Map No. 20137, the area of which is located within CFD No. 57.

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

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

**B. ASSIGNMENT TO LAND USE CATEGORIES**

Each Fiscal Year, beginning with Fiscal Year 2021-22, all Taxable Property within CFD No. 57 shall be classified as Developed Property, Final Mapped Property, Taxable Public Property, Taxable Property Owner Association Property, or Undeveloped Property and shall be subject to Special Taxes in accordance with the Rate and Method of Apportionment as determined pursuant to Sections C and D below. Assessor’s Parcels of Developed Property shall be further classified as Single Family Detached Property or Single Family Attached Property, Other Residential Property (for Special Tax A), Multiple Family Residential Unit or Gated Community Attached Dwelling Unit (for Special Tax B), or Non-Residential Property. For Special Tax A, Assessor’s Parcels of Single Family Detached Property shall be assigned to Land Use Classes 1 through 5 and Assessor’s Parcels of Single Family Attached Property shall be assigned to Land Use Classes 6 through 12, as listed in Table 1 below based on the Residential Floor Area of the Units on such Assessor’s Parcels. Also for Special Tax A, Other Residential Property shall be assigned to Land Use Class 13, and Non-Residential Property shall be assigned to Land Use Class 14.

**C. MAXIMUM SPECIAL TAX**

**1. Special Tax A**

At least 30 days prior to the issuance of Bonds, the Assigned Special Tax A on Developed Property (set forth in Table 1 below) shall be analyzed in accordance with and subject to the conditions set forth in this Section C. At such time, CFD No. 57 shall select and engage a Price Point Consultant and the CFD Administrator shall request the Price Point Consultant to prepare a Price Point Study setting forth the Minimum Sale Price of Units within each Land Use Class. If based upon such Price Point Study the CFD Administrator calculates that the Total Tax Burden applicable to Units within one or more Land Use Classes of Single Family Property to be constructed within CFD No. 57 exceeds 1.95% of the Minimum Sale Price of such Units, the Assigned Special Tax A shall be reduced to the extent necessary to cause the Total Tax Burden that shall apply to Units within such Land Use Class(es) not to exceed 1.95% of the Minimum Sale Price of such Units.

Each Assigned Special Tax A reduction for a Land Use Class shall be calculated by the CFD Administrator separately, and it shall not be required that such reduction be proportionate among Land Use Classes. In connection with any reduction in the Assigned Special Tax A, the Backup Special Tax A shall also be reduced by the CFD Administrator based on the percentage reduction in Maximum Special Tax A revenues within the Tentative Tract Map area(s) where the Assigned Special Tax A reductions occurred. Upon determining the reductions, if any, in the Assigned Special Tax A and Backup Special Tax A required pursuant to this Section C, the CFD Administrator shall complete the Certificate of Modification of Special Tax substantially in the form attached hereto as Exhibit A (the “Certificate of Modification”), shall execute such completed Certificate of Modification, and shall deliver such executed Certificate of Modification to CFD No. 57. Upon receipt thereof, if in satisfactory form, CFD No. 57 shall execute such Certificate of Modification. The reduced Assigned Special Tax A and Backup Special Tax A specified in such Certificate of Modification shall become effective upon the execution of such Certificate of Modification by CFD No. 57.

The Special Tax A reductions required pursuant to this section shall be reflected in an amended notice of Special Tax lien, which CFD No. 57 shall cause to be recorded with the County Recorder as soon as practicable after execution of the Certificate of Modification by CFD No. 57. The reductions in this section apply to Single Family Property, but not to Other Residential Property or Non-Residential Property.

**a. *Developed Property***

1) *Maximum Special Tax A*

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

2) *Assigned Special Tax A*

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

**TABLE 1**  
**ASSIGNED SPECIAL TAX A – DEVELOPED PROPERTY**

Land Use Class	Description	Residential Floor Area (Square Footage)	Assigned Special Tax A
1	Single Family Detached Property	< 1,701	\$2,426 per Unit
2	Single Family Detached Property	1,701 – 1,900	\$2,508 per Unit
3	Single Family Detached Property	1,901 – 2,100	\$2,621 per Unit
4	Single Family Detached Property	2,101 – 2,300	\$2,732 per Unit
5	Single Family Detached Property	> 2,300	\$2,829 per Unit
6	Single Family Attached Property	< 801	\$968 per Unit
7	Single Family Attached Property	801 – 1,000	\$1,181 per Unit
8	Single Family Attached Property	1,001 – 1,200	\$1,444 per Unit
9	Single Family Attached Property	1,201 – 1,400	\$1,700 per Unit
10	Single Family Attached Property	1,401 – 1,600	\$1,900 per Unit
11	Single Family Attached Property	1,601 – 1,800	\$2,048 per Unit
12	Single Family Attached Property	> 1,800	\$2,275 per Unit
13	Other Residential Property		\$43,849 per Acre
14	Non-Residential Property		\$43,849 per Acre

3) *Backup Special Tax A*

The Backup Special Tax A shall be \$2,648 per Unit for Single Family Detached Property and \$1,752 for Single Family Attached Property. However, if the Expected Residential Lot Count does not equal 100 for Single Family Detached Property or 234 for Single Family Attached Property, and the City has not issued Bonds, then the Backup Special Tax A for Designated Buildable Lots of Single Family Property shall be calculated separately for Single Family Detached Property and Single Family Attached Property according to the following formula:

$$\text{Backup Special Tax A} = \$264,825 \div \text{Expected Residential Lot Count for Single Detached Family Property}$$

or  $\$410,004 \div \text{Expected Residential Lot Count for Single Attached Family Property}$

If any portion of a Final Subdivision Map, or any area expected by CFD No. 57 to become Final Mapped Property, such as the area within TTM 20135, TTM 20136, TTM 20137, or any other Tentative Tract Map, changes any time after the City has issued Bonds, causing an adjustment to the number of Designated Buildable Lots, then the Backup Special Tax A for all Designated Buildable Lots of Single Family Detached Property and Single Family Attached Property subject to the change shall be calculated according to the following steps:

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

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

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

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

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

The Maximum Special Tax A for Final Mapped Property, Taxable Public Property, Taxable Property Owner Association Property, and Undeveloped Property shall be \$43,849 per Acre, and shall not be subject to increase or reduction and, therefore, shall remain the same in every Fiscal Year.

**2. Special Tax B**

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

**TABLE 2**  
**MAXIMUM SPECIAL TAX B – DEVELOPED PROPERTY**

Land Use Class	Maximum Special Tax B Fiscal Year 2021-22
<b>Residential Property</b>	
Single Family Property	\$1,825 per Unit
Multiple Family Residential Unit	\$1,582 per Unit
Gated Community Attached Dwelling Unit	\$1,326 per Unit
<b>Non-Residential Property</b>	\$0.34 per Sq. Ft.

On January 1 of each Fiscal Year, commencing January 1, 2022, the Maximum Special Tax B to be applied in the next Fiscal Year shall be subject to an automatic increase at a rate equal to 4.0% of the amount in effect for the prior Fiscal Year.

**3. Multiple Land Use Classes on an Assessor’s Parcel**

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

**D. METHOD OF APPORTIONMENT OF THE SPECIAL TAX**

**1. Special Tax A**

Each Fiscal Year, beginning with Fiscal Year 2021-22, the CFD Administrator shall determine the Special Tax A Requirement for such Fiscal Year. The Special Tax A shall then be levied as follows:

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

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

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

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

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

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

Notwithstanding the above, under no circumstances shall Special Tax A levied in any Fiscal Year on any Assessor's Parcel of Single Family Property or Other Residential Property for which an occupancy permit for private residential use has been issued be increased as a result of delinquency or default by the owner or owners of any other Assessor's Parcel or Assessor's Parcels within CFD No. 57 by more than ten percent above the amount that would have been levied in that Fiscal Year had there never been any such delinquencies or defaults.

## **2. Special Tax B**

Each Fiscal Year, beginning with Fiscal Year 2021-22, the CFD Administrator shall determine the Special Tax B Requirement. The Special Tax B shall then be levied Proportionately on each Assessor's Parcel of Developed Property up to 100% of the applicable Maximum Special Tax B for such Assessor's Parcel, until the Special Tax B Requirement is satisfied. However, the Special Tax B levied in any Fiscal Year shall not increase by more than 4.0% of the amount of the Special Tax B levied in the prior Fiscal Year.

**E. EXEMPTIONS**

No Special Tax shall be levied on up to 5.87 Acres of Public Property and up to 6.64 Acres of Property Owner Association Property. Tax-exempt status will be assigned by the CFD Administrator in the chronological order in which property becomes Public Property or Property Owner Association Property.

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

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

**F. APPEALS**

Any property owner may file a written appeal of the Special Tax with CFD No. 57 claiming that the amount or application of the Special Tax is not correct. The appeal must be filed not later than one calendar year after having paid the Special Tax that is disputed, and the appellant must be current in all payments of Special Taxes. In addition, during the term of the appeal process, all Special Taxes levied must be paid on or before the payment date established when the levy was made.

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

If the property owner disagrees with the CFD Administrator's decision relative to the appeal, the owner may then file a written appeal with the City Council whose subsequent decision shall be final and binding on all interested parties. If the decision of the CFD Administrator or subsequent decision by the City Council requires the Special Tax to be modified or changed in favor of the property owner, then the CFD Administrator shall determine if sufficient Special Tax revenue is available to make a cash refund. If a cash refund cannot be made, then an adjustment shall be made to credit future Special Tax levy(ies).

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

**G. MANNER OF COLLECTION**

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

**H. PREPAYMENT OF SPECIAL TAX A**

The following definitions apply to this Section H:

**“CFD Public Facilities”** means \$8,701,000 for each Prepayment Period, or such lower number as determined by the City Council to be sufficient to fund the Facilities and Services to be provided by CFD No. 57.

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

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

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

**“Prepayment Period 1”** means July 1, 2021, through June 30, 2055.

**“Prepayment Period 2”** means July 1, 2055, through June 30, 2088.

**“Prepayment Period 3”** means July 1, 2088, through June 30, 2122.

*Only Special Tax A may be prepaid; Special Tax B shall continue to be levied on an annual basis on all Developed Property in CFD No. 57.*

**1. Prepayment in Full**

The obligation of an Assessor's Parcel to pay the Special Tax A may be prepaid as described herein, provided that a prepayment may be made only for Assessor's Parcels for which a building permit for new construction was issued after January 1, 2020, and only if there are no delinquent Special Taxes with respect to such Assessor's Parcel at the time of prepayment. An owner of an Assessor's Parcel intending to prepay the Special Tax A obligation shall provide the CFD Administrator with written notice of intent to prepay. Within 30 days of receipt



of such written notice, the CFD Administrator shall notify such owner of the prepayment amount for such Assessor's Parcel. The CFD Administrator may charge a fee for providing this service. Prepayment in any six month period must be made not less than 45 days prior to the next occurring date that notice of redemption of Bonds from the proceeds of such prepayment may be given to the Trustee pursuant to the Indenture.

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

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

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

**Paragraph No.**

1. Confirm that no Special Tax delinquencies apply to such Assessor's Parcel, and determine the Prepayment Period for the proposed prepayment.
2. Compute the Assigned Special Tax A and Backup Special Tax A for the Assessor's Parcel to be prepaid based on the Developed Property Special Tax A which is, or could be, charged in the current Fiscal Year. For Assessor's Parcels of Final Mapped Property (for which a building permit has been issued but which is not yet classified as Developed Property) to be prepaid, compute the Assigned Special Tax A and Backup Special Tax A for that Assessor's Parcel as though it was already designated as Developed Property, based upon the building permit which has already been issued for that Assessor's Parcel.
3. (a) Divide the Assigned Special Tax A computed pursuant to Paragraph 2 by the total estimated Assigned Special Tax A for CFD No. 57 based on the Developed Property Special Tax A which could be charged in the current Fiscal Year on all expected development through buildout of CFD No. 57, excluding any Assessor's Parcels which have been prepaid, and  
  
(b) Divide the Backup Special Tax A computed pursuant to Paragraph 2 by the estimated total Backup Special Tax A at buildout of CFD No. 57, excluding any Assessor's Parcels which have been prepaid.
4. Multiply the larger quotient computed pursuant to Paragraph 3(a) or 3(b) by the Outstanding Bonds to compute the amount of Outstanding Bonds to be retired and prepaid (the "Bond Redemption Amount").

5. Multiply the Bond Redemption Amount computed pursuant to Paragraph 4 by the applicable redemption premium (e.g., the redemption price minus 100%), if any, on the Outstanding Bonds to be redeemed (the “Redemption Premium”).
6. Compute the Future Facilities Costs for the applicable Prepayment Period.
7. Multiply the larger quotient computed pursuant to Paragraph 3(a) or 3(b) by the amount determined pursuant to Paragraph 6 to compute the amount of Future Facilities Costs to be prepaid (the “Future Facilities Amount”).
8. Compute the amount needed to pay interest on the Bond Redemption Amount from the first bond interest and/or principal payment date following the current Fiscal Year until the earliest redemption date for the Outstanding Bonds.
9. Determine the Special Tax A levied on the Assessor’s Parcel in the current Fiscal Year which has not yet been paid.
10. Add the amounts computed pursuant to Paragraphs 8 and 9 to determine the “Defeasance Amount”.
11. Verify the administrative fees and expenses of CFD No. 57, including the costs to compute the prepayment, the costs to invest the prepayment proceeds, the costs to redeem Bonds, and the costs to record any notices to evidence the prepayment and the redemption (the “Administrative Fees and Expenses”).
12. If reserve funds for the Outstanding Bonds, if any, are at or above 100% of the reserve requirement (as defined in the Indenture) on the prepayment date, a reserve fund credit shall be calculated as a reduction in the applicable reserve fund for the Outstanding Bonds to be redeemed pursuant to the prepayment (the “Reserve Fund Credit”). No Reserve Fund Credit shall be granted if reserve funds are below 100% of the reserve requirement on the prepayment date or the redemption date.
13. The Special Tax A prepayment is equal to the sum of the amounts computed pursuant to Paragraphs 4, 5, 7, 10, and 11, less the amount computed pursuant to Paragraph 12 (the “Prepayment Amount”).
14. From the Prepayment Amount, the amounts computed pursuant to Paragraphs 4, 5, 10, and 12 shall be deposited into the appropriate fund as established under the Indenture and be used to retire Outstanding Bonds or make debt service payments. The amount computed pursuant to Paragraph 7 shall be deposited into the Expenditures Fund. The amount computed pursuant to Paragraph 11 shall be retained by CFD No. 57.

The Special Tax A Prepayment Amount may be sufficient to redeem other than a \$5,000 increment of Bonds. In such cases, the increment above \$5,000, or integral multiple

thereof, will be retained in the appropriate fund established under the Indenture to be used with the next prepayment of Bonds or to make debt service payments.

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

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

Notwithstanding the foregoing, no Special Tax A prepayment shall be allowed unless the amount of Maximum Special Tax A that may be levied on Taxable Property within CFD No. 57 (after excluding 5.87 Acres of Public Property and 6.64 acres of Property Owner Association Property) both prior to and after the proposed prepayment is at least 1.1 times the maximum annual debt service on all Outstanding Bonds.

## **2. Prepayment in Part**

The Special Tax A on an Assessor's Parcel for which a building permit for new construction was issued after January 1, 2020, may be partially prepaid. The amount of the prepayment shall be calculated as in Section H.1, except that a partial prepayment shall be calculated by the CFD Administrator according to the following formula:

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

The terms above have the following meaning:

PP = the partial prepayment

PF = the Prepayment Amount (full prepayment) for Special Tax A calculated according to Section H.1

AE = the Administrative Fees and Expenses determined pursuant to paragraph 11 above

% = the percentage by which the owner of the Assessor's Parcel(s) is partially prepaying Special Tax A

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

The owner of any Assessor's Parcel who desires such prepayment shall notify the CFD Administrator of such owner's intent to partially prepay Special Tax A and the percentage by which Special Tax A shall be prepaid. The CFD Administrator shall provide the owner with a statement of the amount required for the partial prepayment of Special Tax A for an Assessor's Parcel within thirty (30) days of the request and may charge a fee for providing this service. With respect to any Assessor's Parcel that is partially prepaid, the CFD Administrator shall (i) distribute the remitted prepayment funds according to Section H.1, and (ii) indicate in the records of CFD No. 57 that there has been a partial prepayment of Special Tax A and that a portion of Special Tax A with respect to such Assessor's Parcel, equal to the outstanding percentage (100% - "%", as defined above) of the Maximum Special Tax A, shall continue to be levied on such Assessor's Parcel pursuant to Section D during the Prepayment Period in which the partial prepayment is made.

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

**I. TERM OF SPECIAL TAX**

The Fiscal Year after which no further Special Tax A shall be levied or collected is Fiscal Year 2121-2122, except that Special Tax A that was lawfully levied in or before such Fiscal Year and that remains delinquent may be collected in subsequent years. Special Tax B shall continue to be levied indefinitely on an annual basis on all Developed Property in CFD No. 57.

**EXHIBIT A**

**CERTIFICATE OF MODIFICATION OF SPECIAL TAX A  
(PAGE 1 OF 2)**

**CITY OF ONTARIO AND CFD No. 57 CERTIFICATE**

1. Pursuant to Section C.1 of the Rate and Method of Apportionment of Special Tax (the “Rate and Method”) for City of Ontario Community Facilities District No. 57 (Neuhouse) (“CFD No. 57”), the Assigned Special Tax A and the Backup Special Tax A for Developed Property within CFD No. 57 has been modified.
  - a. The information in Table 1 relating to Assigned Special Tax A for Developed Property within CFD No. 57, as stated in Section C.1.a.2 of the Rate and Method of Apportionment, has been modified as follows:

**TABLE 1  
ASSIGNED SPECIAL TAX A – DEVELOPED PROPERTY**

<b>Land Use Class</b>	<b>Description</b>	<b>Residential Floor Area (Square Footage)</b>	<b>Assigned Special Tax A</b>
1	Single Family Detached Property	< 1,701	\$[ ] per Unit
2	Single Family Detached Property	1,701 – 1,900	\$[ ] per Unit
3	Single Family Detached Property	1,901 – 2,100	\$[ ] per Unit
4	Single Family Detached Property	2,101 – 2,300	\$[ ] per Unit
5	Single Family Detached Property	> 2,300	\$[ ] per Unit
6	Single Family Attached Property	< 801	\$[ ] per Unit
7	Single Family Attached Property	801 – 1,000	\$[ ] per Unit
8	Single Family Attached Property	1,001 – 1,200	\$[ ] per Unit
9	Single Family Attached Property	1,201 – 1,400	\$[ ] per Unit
10	Single Family Attached Property	1,401 – 1,600	\$[ ] per Unit
11	Single Family Attached Property	1,601 – 1,800	\$[ ] per Unit
12	Single Family Attached Property	> 1,800	\$[ ] per Unit
13	Other Residential Property		\$[ ] per Acre
14	Non-Residential Property		\$[ ] per Acre

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

**EXHIBIT A**

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

The Backup Special Tax A shall be \$[\_\_\_\_\_] per Unit for Single Family Detached Property and \$[\_\_\_\_\_] per Unit for Single Family Attached Property. However, if the Expected Residential Lot Count does not equal 100 for Single Family Detached Property or 234 for Single Family Attached Property, and the City has not issued Bonds, then the Backup Special Tax A for Designated Buildable Lots of Single Family Property shall be calculated separately for Single Family Detached Property and Single Family Attached Property according to the following formula:

$$\text{Backup Special Tax A} = \$[\text{_____}] \div \text{Expected Residential Lot Count for Single Family Detached Property}$$

$$\text{or } \$[\text{_____}] \div \text{Expected Residential Lot Count for Single Family Attached Property}$$

2. The Special Tax A for Developed Property may only be modified prior to the first issuance of CFD No. 57 Bonds.
3. Upon execution of this certificate by CFD No. 57, CFD No. 57 shall cause an amended notice of Special Tax lien for CFD No. 57 to be recorded reflecting the modifications set forth herein.

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

GOODWIN CONSULTING GROUP, INC.  
CFD ADMINISTRATOR

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

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

CITY OF ONTARIO  
COMMUNITY FACILITIES DISTRICT NO. 57  
(NEUHOUSE)

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

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

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF ONTARIO, CALIFORNIA, CALLING SPECIAL ELECTION FOR CITY OF ONTARIO COMMUNITY FACILITIES DISTRICT NO. 57 (NEUHOUSE)**

**WHEREAS**, on this date, the City Council (the “City Council”) of the City of Ontario (the “City”), pursuant to the Mello-Roos Community Facilities Act of 1982 (the “Act”), adopted a resolution entitled “A Resolution of the City Council of the City of Ontario, California, of Formation of the City of Ontario Community Facilities District No. 57 (Neuhouse), Authorizing the Levy of a Special Tax within the Community Facilities District and Establishing an Appropriations Limit for the Community Facilities District” (the “Resolution of Formation”), establishing City of Ontario Community Facilities District No. 57 (Neuhouse) (the “Community Facilities District”), authorizing the levy of a special tax within the Community Facilities District and establishing an appropriations limit for the Community Facilities District; and

**WHEREAS**, on this date, the City Council also adopted a resolution entitled “A Resolution of the City Council of the City of Ontario, California, Deeming it Necessary to Incur Bonded Indebtedness within the City of Ontario Community Facilities District No. 57 (Neuhouse)” (the “Resolution Deeming it Necessary to Incur”), deeming it necessary to incur bonded indebtedness in the maximum amount of \$33,000,000; and

**WHEREAS**, pursuant to the provisions of said resolutions, the propositions to incur bonded indebtedness, to levy a special tax within the Community Facilities District and to establish an appropriations limit for the Community Facilities District are to be submitted to the qualified electors of the Community Facilities District as required by the Act; and

**WHEREAS**, the City Council desires to designate the City Clerk of the City (the “City Clerk”) as the election official for the special election provided for herein; and

**WHEREAS**, there has been filed with the City Clerk a letter from the Registrar of Voters of the County of San Bernardino indicating that no persons were registered to vote within the territory of the proposed Community Facilities District as of October 15, 2020, and, accordingly, that 12 or more persons have not been registered to vote within the territory of the Community Facilities District for each of the 90 days preceding the close of the public hearings on the establishment of the Community Facilities District and the proposed debt issue for the Community Facilities District; and

**WHEREAS**, there has been filed with the City Clerk consents and waivers of all of the landowners of record in the Community Facilities District waiving any time limit specified by Section 53326 of the Act and any requirement pertaining to the conduct of said special election, including any time limit or requirement applicable to an election pursuant to Article 5 of the Act (commencing with Section 53345 of the Act), consenting to the holding of said special election on November 17, 2020 and waiving any impartial analysis, arguments or rebuttals, as set forth in Sections 53326 and 53327 of the Act; and

**WHEREAS**, the City Clerk has concurred in said waivers and has concurred in holding said special election on November 17, 2020;

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

**Section 1.** Pursuant to Sections 53351, 53326 and 53325.7 of the Act, the propositions to incur bonded indebtedness, to levy a special tax within the Community Facilities District and to establish an appropriations limit for the Community Facilities District shall be submitted to the qualified electors of the Community Facilities District at an election called therefor as provided below.

**Section 2.** The City Clerk is hereby designated as the official to conduct said election.

**Section 3.** As authorized by Section 53353.5 of the Act, the propositions to incur bonded indebtedness, to levy a special tax within the Community Facilities District and to establish an appropriations limit for the Community Facilities District shall be combined into one ballot proposition.

**Section 4.** The City Council hereby finds and determines that no persons were registered to vote within the territory of the proposed Community Facilities District as of October 15, 2020, and that 12 or more persons have not been registered to vote within the territory of the Community Facilities District for each of the 90 days preceding the close of the public hearings heretofore held by the City Council on the establishment of the Community Facilities District and the proposed debt issue for the Community Facilities District. Accordingly, pursuant to Section 53326 of the Act, the vote shall be by the landowners of the Community Facilities District and each person who is the owner of land as of the close of said public hearings, or the authorized representative thereof, shall have one vote for each acre or portion of an acre that he or she owns within the Community Facilities District not exempt from the special tax.

**Section 5.** The City Council hereby finds and determines that the qualified electors of the Community Facilities District have unanimously consented (a) to the waiver of any time limit specified by Section 53326 of the Act and any requirement pertaining to the conduct of said election, including any time limit or requirement applicable to an election pursuant to Article 5 of the Act (commencing with Section 53345 of the Act), (b) to the holding of said election on November 17, 2020, and (c) to the waiver of any impartial analysis, arguments or rebuttals, as set forth in Sections 53326 and 53327 of the Act. The City Council hereby finds and determines that the City Clerk has concurred in said waivers and has concurred in holding said election on November 17, 2020.

**Section 6.** The City Council hereby calls a special election to submit to the qualified electors of the Community Facilities District the combined proposition to incur bonded indebtedness, to levy a special tax within the Community Facilities District and to establish an appropriations limit for the Community Facilities District, which election shall be held at 303 East B Street, Ontario, California, on November 17, 2020. The City Council has caused to be provided to the City Clerk, as the official to conduct said election, the Resolution of Formation, the Resolution of Deeming it Necessary to Incur, a certified map of sufficient scale and clarity to



show the boundaries of the Community Facilities District, and a sufficient description to allow the City Clerk to determine the boundaries of the Community Facilities District.

The voted ballots shall be returned to the City Clerk not later than 7:30 p.m. on November 17, 2020; provided, however, that if all of the qualified electors have voted prior to such time, the election may be closed with the concurrence of the City Clerk.

**Section 7.** Pursuant to Section 53326 of the Act, the election shall be conducted by mail or hand-delivered ballot pursuant to Section 4000 *et. seq.* of the California Elections Code. Except as otherwise provided in the Act, the provisions of law regulating elections of the City, insofar as they may be applicable, will govern the election.

**Section 8.** The form of the ballot for said election is attached hereto as Exhibit A and by this reference incorporated herein, and such form of ballot is hereby approved. The City Clerk shall cause to be delivered to each of the qualified electors of the Community Facilities District a ballot in said form. Each ballot shall indicate the number of votes to be voted by the respective landowner to which it pertains.

Each ballot shall be accompanied by all supplies and written instructions necessary for the use and return of the ballot. The identification envelope for return of the ballot shall be enclosed with the ballot, shall have the return postage prepaid, and shall contain: (a) the name and address of the landowner, (b) a declaration, under penalty of perjury, stating that the voter is the owner of record or the authorized representative of the landowner entitled to vote and is the person whose name appears on the identification envelope, (c) the printed name, signature and address of the voter, (d) the date of signing and place of execution of the declaration described in clause (b) above, and (e) a notice that the envelope contains an official ballot and is to be opened only by the canvassing board.

Analysis and arguments with respect to the ballot proposition are hereby waived, as provided in Section 53327 of the Act.

**Section 9.** The City Clerk shall accept the ballots of the qualified electors in the office of the City Clerk at 303 East B Street, Ontario, California, to and including 7:30 p.m. on November 17, 2020, whether said ballots be personally delivered or received by mail. The City Clerk shall have available ballots which may be marked at said location on the election day by said qualified electors.

**Section 10.** The City Council hereby determines that the facilities and services financed by the Community Facilities District are necessary to meet increased demands placed upon local agencies as a result of development occurring in the Community Facilities District.

**Section 11.** The specific purposes of the bonded indebtedness proposed to be incurred is the financing of the Facilities (as defined in the Resolution of Formation), including all costs and estimated costs incidental to, or connected with, the accomplishment of such purpose, and the proceeds of such bonded indebtedness shall be applied only to such specific purposes.

Upon approval of the proposition to incur bonded indebtedness, and the sale of any bonds evidencing such indebtedness, the City Council shall take such action as may be necessary to

cause to be established an account for deposit of the proceeds of sale of the bonds. For so long as any proceeds of the bonds remain unexpended, the Management Analyst, Financial Services of the City shall cause to be filed with the City Council, no later than January 1 of each year, a report stating (a) the amount of bond proceeds received and expended during the preceding year, and (b) the status of any project funded or to be funded from bond proceeds. Said report may relate to the calendar year, fiscal year, or other appropriate annual period, as the Management Analyst, Financial Services of the City shall determine, and may be incorporated into the annual budget, audit, or other appropriate routine report to the City Council.

**Section 12.** The officers, employees and agents of the City are hereby authorized and directed to take all actions and do all things which they, or any of them, may deem necessary or desirable to accomplish the purposes of this Resolution and not inconsistent with the provisions hereof.

**Section 13.** This Resolution shall take effect immediately upon its adoption.

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

**PASSED, APPROVED and ADOPTED** this 17th day of November, 2020.

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PAUL S. LEON, MAYOR

ATTEST:

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SHEILA MAUTZ, CITY CLERK

APPROVED AS TO LEGAL FORM:

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BEST BEST & KRIEGER LLP  
CITY ATTORNEY

EXHIBIT A

# OFFICIAL BALLOT

## CITY OF ONTARIO

November 17, 2020

### SPECIAL ELECTION

This ballot is for a special, landowner election. The number of votes to be voted pursuant to this ballot is \_\_\_\_.

### INSTRUCTIONS TO VOTERS:

To vote on the measure, mark a cross (+ or X) in the voting square after the word “YES” or after the word “NO”. All distinguishing marks or erasures are forbidden and make the ballot void. If you wrongly mark, tear, or deface this ballot, return it to the City Clerk of the City of Ontario and obtain another.

**CITY OF ONTARIO  
COMMUNITY FACILITIES DISTRICT NO. 57  
(NEUHOUSE)**

MEASURE SUBMITTED TO VOTE OF VOTERS: Shall the City of Ontario Community Facilities District No. 57 (Neuhouse) (the “Community Facilities District”) be authorized to incur bonded indebtedness in a maximum aggregate amount of not to exceed \$33,000,000 and levy a special tax in order to finance certain facilities and services and shall the annual appropriations limit of the Community Facilities District be established in the amount of \$33,000,000, all as specified in the Resolution entitled “A Resolution of the City Council of the City of Ontario, California, of Formation of the City of Ontario Community Facilities District No. 57 (Neuhouse), Authorizing the Levy of a Special Tax within the Community Facilities District and Establishing an Appropriations Limit for the Community Facilities District” and the Resolution entitled “A Resolution of the City Council of the City of Ontario, California, Deeming it Necessary to Incur Bonded Indebtedness within the City of Ontario Community Facilities District No. 57 (Neuhouse),” each adopted by the City Council of the City of Ontario on November 17, 2020?

Yes:

No:

**CLERK’S CERTIFICATE**

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

I, SHEILA MAUTZ, City Clerk of the City of Ontario, California, DO HEREBY CERTIFY that the foregoing Resolution No. \_\_\_\_\_ was duly passed and adopted by the City Council of the City of Ontario at their regular meeting held November 17, 2020 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. \_\_\_\_\_ duly passed and adopted by the City Council of the City of Ontario, California, at their regular meeting held on November 17, 2020.

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

(SEAL)

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

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF ONTARIO, CALIFORNIA, DECLARING RESULTS OF SPECIAL ELECTION AND DIRECTING RECORDING OF NOTICE OF SPECIAL TAX LIEN FOR CITY OF ONTARIO COMMUNITY FACILITY DISTRICT NO. 57 (NEUHOUSE).

WHEREAS, on November 17, 2020, the City Council (the "City Council") of the City of Ontario (the "City"), pursuant to the Mello-Roos Community Facilities Act of 1982 (the "Act"), adopted a resolution entitled "A Resolution of the City Council of the City of Ontario, California, Calling Special Election for City of Ontario Community Facilities District No. 57 (Neuhouse)" (the "Resolution Calling Election"), calling for a special election of the qualified electors within City of Ontario Community Facilities District No. 57 (Neuhouse) (the "Community Facilities District"); and

WHEREAS, pursuant to the terms of the Resolution Calling Election and the provisions of the Act, the special election was held on November 17, 2020; and

WHEREAS, the City Clerk of the City (the "City Clerk") has certified the canvass of the returns of the election and has filed a Canvass and Statement of Results of Election (the "Canvass"), a copy of which is attached hereto as Exhibit A.

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

SECTION 1. The City Council has received, reviewed and hereby accepts the Canvass.

SECTION 2. The City Council hereby finds and declares that the ballot proposition submitted to the qualified electors of the Community Facilities District pursuant to the Resolution Calling Election has been passed and approved by such electors in accordance with Section 53328, Section 53355 and Section 53325.7 of the Act.

SECTION 3. The City Clerk is hereby directed to execute and cause to be recorded in the office of the County Recorder of the County of San Bernardino a notice of special tax lien in the form required by the Act, said recording to occur no later than fifteen days following adoption by the City Council of this Resolution.

SECTION 4. The officers, employees and agents of the City are hereby authorized and directed to take all actions and do all things which they, or any of them, may deem necessary or desirable to accomplish the purposes of this Resolution and not inconsistent with the provisions hereof.

SECTION 5. This Resolution shall take effect immediately upon its adoption.

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

PASSED, APPROVED and ADOPTED this 17<sup>th</sup> day of November 2020.

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PAUL S. LEON, MAYOR

ATTEST:

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SHEILA MAUTZ, CITY CLERK

APPROVED AS TO FORM:

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BEST BEST & KRIEGER, LLP  
CITY ATTORNEY

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

I, SHEILA MAUTZ, City Clerk of the City of Ontario, DO HEREBY CERTIFY that foregoing Resolution No. 2020- was duly passed and adopted by the City Council of the City of Ontario at their regular meeting held November 17, 2020 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. 2020- duly passed and adopted by the Ontario City Council at their regular meeting held November 17, 2020.

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

(SEAL)

EXHIBIT A

CITY OF ONTARIO  
COMMUNITY FACILITIES DISTRICT NO. 57  
(NEUHOUSE)

CANVASS AND STATEMENT OF RESULTS OF ELECTION

I hereby certify that on November 17, 2020, I canvassed the returns of the special election held on November 17, 2020, for the City of Ontario Community Facilities District No. 57 (Neuhouse), that the total number of ballots cast in said Community Facilities District and the total number of votes cast for and against the proposition are as follows and that the totals as shown for and against the proposition are true and correct:

	Qualified Landowner <u>Votes</u>	Votes <u>Cast</u>	<u>YES</u>	<u>NO</u>
City of Ontario Community Facilities District No. 57 (Neuhouse) Special Election, November 17, 2020	31	—	—	—

MEASURE SUBMITTED TO VOTE OF VOTERS: Shall the City of Ontario Community Facilities District No. 57 (Neuhouse) (the "Community Facilities District") be authorized to incur bonded indebtedness in a maximum aggregate amount of not to exceed \$33,000,000 and levy a special tax in order to finance certain facilities and services and shall the annual appropriations limit of the Community Facilities District be established in the amount of \$33,000,000, all as specified in the Resolution entitled "A Resolution of the City Council of the City of Ontario, California, of Formation of the City of Ontario Community Facilities District No. 57 (Neuhouse), Authorizing the Levy of a Special Tax within the Community Facilities District and Establishing an Appropriations Limit for the Community Facilities District" and the Resolution entitled "A Resolution of the City Council of the City of Ontario, California, Deeming it Necessary to Incur Bonded Indebtedness within the City of Ontario Community Facilities District No. 57 (Neuhouse)," each adopted by the City Council of the City of Ontario on November 17, 2020?

IN WITNESS WHEREOF, I HAVE HEREUNTO SET MY HAND this 17<sup>th</sup> day of November 2020.

BY: \_\_\_\_\_  
SHEILA MAUTZ, CITY CLERK



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

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF ONTARIO, CALIFORNIA, LEVYING SPECIAL TAXES WITHIN THE CITY OF ONTARIO COMMUNITY FACILITIES DISTRICT NO. 57 (NEUHOUSE).

WHEREAS, on October 6, 2020, the City Council (the "City Council") of the City of Ontario (the "City"), pursuant to the Mello-Roos Community Facilities Act of 1982 (the "Act"), adopted a resolution entitled "A Resolution of the City Council of the City of Ontario, California, of Intention to Establish a Community Facilities District, Proposed to be Named City of Ontario Community Facilities District No. 57 (Neuhouse), and to Authorize the Levy of Special Taxes" stating its intention to establish City of Ontario Community Facilities District No. 57 (Neuhouse) (the "Community Facilities District") and to finance certain public facilities (the "Facilities") and services (the "Services"); and

WHEREAS, on November 17, 2020, the City Council held a noticed public hearing on the establishment of the Community Facilities District, as required by the Act; and

WHEREAS, subsequent to the close of said hearing, the City Council adopted resolutions entitled "A Resolution of the City Council of the City of Ontario, California, of Formation of the City of Ontario Community Facilities District No. 57 (Neuhouse), Authorizing the Levy of a Special Tax within the Community Facilities District and Establishing an Appropriations Limit for the Community Facilities District" (the "Resolution of Formation"), "A Resolution of the City Council of the City of Ontario, California, Deeming it Necessary to Incur Bonded Indebtedness within the City of Ontario Community Facilities District No. 57 (Neuhouse)" and "A Resolution of the City Council of the City of Ontario, California, Calling Special Election for City of Ontario Community Facilities District No. 57 (Neuhouse)", which resolutions established the Community Facilities District, authorized the levy of a special tax within the Community Facilities District and called an election within the Community Facilities District on the proposition of incurring indebtedness, levying a special tax within the Community Facilities District and establishing an appropriations limit for the Community Facilities District, respectively; and

WHEREAS, on November 17, 2020, an election was held in which the qualified electors of the Community Facilities District approved said proposition by more than the two-thirds vote required by the Act.

THE CITY COUNCIL OF THE CITY OF ONTARIO DOES ORDAIN AS FOLLOWS:

SECTION 1. The City Council hereby authorizes and levies special taxes within the Community Facilities District pursuant to Sections 53328 and 53340 of the Act, at the rate and in accordance with the method of apportionment set forth in Exhibit B to the Resolution of Formation (the "Rate and Method of Apportionment"). The special taxes are hereby levied commencing in fiscal year 2021-22 and in each fiscal year thereafter until the last fiscal year in which such special taxes are authorized to be levied pursuant to the Rate and Method of Apportionment.

SECTION 2. The City Council may, in accordance with subdivision (b) of Section 53340 of the Act, provide, by resolution, for the levy of the special tax in future tax years at the same rate or at a lower rate than the rate provided by this Ordinance. In no event shall the special tax be levied on any parcel within the Community Facilities District in excess of the maximum tax specified therefor in the Rate and Method of Apportionment.

SECTION 3. The special tax shall be levied on all of the parcels in the Community Facilities District, unless exempted by law or by the Rate and Method of Apportionment.

SECTION 4. The proceeds of the special tax shall only be used to pay, in whole or in part, the cost of providing the Facilities and Services and incidental expenses pursuant to the Act.

SECTION 5. The special tax shall be collected in the same manner as ordinary *ad valorem* property taxes are collected and shall be subject to the same penalties and the same procedure, sale and lien priority in the case of delinquency as is provided for *ad valorem* taxes, unless another procedure is adopted by the City Council.

SECTION 6. If for any reason any portion of this Ordinance is found to be invalid, or if the special tax is found inapplicable to any particular parcel within the Community Facilities District, by a court of competent jurisdiction, the balance of this Ordinance and the application of the special tax to the remaining parcels within the Community Facilities District shall not be affected.

SECTION 7. The Mayor shall sign this Ordinance and the City Clerk shall certify as to the adoption and shall cause a summary thereof to be published at least once, in a newspaper of general circulation in the City of Ontario, California within fifteen (15) days of the adoption. The City Clerk shall post a certified copy of this ordinance, including the vote for and against the same, in the Office of the City Clerk, in accordance with Government Code Section 36933.

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

PASSED, APPROVED, AND ADOPTED this \_\_\_\_\_ day of \_\_\_\_\_ 2020.

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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. \_\_\_\_\_ was duly introduced at a regular meeting of the City Council of the City of Ontario held November 17, 2020 and adopted at the regular meeting held \_\_\_\_\_, 2020 by the following roll call vote, to wit:

AYES: COUNCIL MEMBERS:

NOES: COUNCIL MEMBERS:

ABSENT: COUNCIL MEMBERS:

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

(SEAL)

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

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

(SEAL)

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

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF ONTARIO, CALIFORNIA, AUTHORIZING THE EXECUTION AND DELIVERY OF AN ACQUISITION AND FUNDING AGREEMENT WITH LS-ONTARIO II, LLC.

WHEREAS, certain real property within the boundaries of the City located generally south of State Route 60 is commonly known as the New Model Colony; and

WHEREAS, the City has approved a General Plan Amendment for the New Model Colony, which has been supplemented by certain water, recycled water and sewer master plans (as so supplemented, the "General Plan Amendment") and has certified an Environmental Impact Report and adopted a Mitigated Negative Declaration in connection with the General Plan Amendment (together, the "Environmental Impact Report"); and

WHEREAS, the City has specified in the General Plan Amendment and the Environmental Impact Report the major backbone transportation, water, sewer, storm drainage, parks, public safety infrastructure and fiber optic systems required to serve the New Model Colony; and

WHEREAS, the New Model Colony is now commonly referred to as the Ontario Ranch; and

WHEREAS, LS-ONTARIO II LLC, a Delaware limited liability company ("LS-ONTARIO II"), is developing certain of the property within the Ontario Ranch (the "Property"); and

WHEREAS, certain of such major backbone infrastructure is required to serve the Property; and

WHEREAS, the City and LS-ONTARIO II desire to provide a mechanism to fund, in a timely manner, the costs of certain of such major backbone infrastructure required to serve the Ontario Ranch (the "Facilities") so that such development may occur; and

WHEREAS, in order to provide such a mechanism, the City has, pursuant to the provisions of the Mello-Roos Community Facilities Act of 1982 (the "Act"), established City of Ontario Community Facilities District No. 57 (Neuhouse) (the "Community Facilities District"), the boundaries of which include a portion of the Property; and

WHEREAS, the Community Facilities District is authorized to levy special taxes within the Community Facilities District (the "Special Taxes") and issue special tax bonds (the "Bonds") secured by the Special Taxes in order to finance certain of the Facilities; and

WHEREAS, it is anticipated that Special Taxes will be levied by the Community Facilities District and that, from time to time, Bonds will be issued by the Community Facilities District; and

WHEREAS, LS-ONTARIO II proposes to construct, or cause to be constructed, certain of the Facilities proposed to be financed by the Community Facilities District pursuant to the Act, and the City proposes to purchase such Facilities from LS-ONTARIO II pursuant to an Acquisition and Funding Agreement by and between the City and LS-ONTARIO II (such Acquisition and Funding Agreement, in the form presented to this meeting, with such changes, insertions and omissions as are made pursuant to this Resolution, being referred to herein as the “Acquisition Agreement”); and

WHEREAS, the City Council is the legislative body of the Community Facilities District.

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

SECTION 1. The Acquisition Agreement, in substantially the form submitted to this meeting and made a part hereof as though set forth herein, be and the same is hereby approved. Each of the Mayor of the City, and such other member of the City Council as the Mayor may designate, the City Manager of the City and the Executive Director of Finance of the City, and such other officer or employee of the City as the City Manager may designate (the “Authorized Officers”) is hereby authorized, and any one of the Authorized Officers is hereby directed, for and in the name of the City, to execute and deliver the Acquisition Agreement in the form submitted to this meeting, with such changes, insertions and omissions as the Authorized Officer executing the same may require or approve, such requirement or approval to be conclusively evidenced by the execution of the Acquisition Agreement by such Authorized Officer.

SECTION 2. The officers, employees and agents of the City are hereby authorized and directed to take all actions and do all things which they, or any of them, may deem necessary or desirable to accomplish the purposes of this Resolution and not inconsistent with the provisions hereof.

SECTION 3. This Resolution shall take effect immediately upon its adoption.

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

PASSED, APPROVED, AND ADOPTED this 17<sup>th</sup> day of November 2020.

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PAUL S. LEON, MAYOR

ATTEST:

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SHEILA MAUTZ, CITY CLERK

APPROVED AS TO FORM:

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BEST BEST & KRIEGER, LLP  
CITY ATTORNEY

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

I, SHEILA MAUTZ, City Clerk of the City of Ontario, DO HEREBY CERTIFY that foregoing Resolution No. 2020- was duly passed and adopted by the City Council of the City of Ontario at their regular meeting held November 17, 2020 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. 2020- duly passed and adopted by the Ontario City Council at their regular meeting held November 17, 2020.

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SHEILA MAUTZ, CITY CLERK

(SEAL)



**CITY OF ONTARIO  
COMMUNITY FACILITIES DISTRICT NO. 57  
(NEUHOUSE)**

**CONCURRENCE OF ELECTION OFFICIAL**

I, Sheila Mautz, City Clerk of the City of Ontario (the “City”), hereby certify as follows:

(a) that I am the election official responsible for conducting special elections in the City; and

(b) that, pursuant to Section 53326(a) of the Mello-Roos Community Facilities Act of 1982 (the “Act”), I do hereby concur to (i) the holding of a special election on November 17, 2020, for the purpose of submitting to the qualified electors of City of Ontario Community Facilities District No. 57 (Neuhouse) (the “Community Facilities District”) the propositions to incur bonded indebtedness, to levy a special tax within the Community Facilities District and to establish an appropriations limit for the Community Facilities District, as provided in the resolution proposed to be adopted by the City Council of the City on November 17, 2020, entitled “A Resolution of the City Council of the City of Ontario, California, Calling Special Election for City of Ontario Community Facilities District No. 57 (Neuhouse),” and (ii) with respect to such special election, the waiving by the qualified electors of the Community Facilities District of any time limit specified by Section 53326 of the Act, including any time limit or requirement applicable to an election pursuant to Article 5 of the Act (commencing with Section 53345 of the Act).

Dated: November 17, 2020

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Sheila Mautz, City Clerk

RECORDING REQUESTED BY AND  
AFTER RECORDATION RETURN TO:  
City Clerk  
City of Ontario  
303 East B Street  
Ontario, California 91764

**NOTICE OF SPECIAL TAX LIEN**

**CITY OF ONTARIO  
COMMUNITY FACILITIES DISTRICT NO. 57  
(NEUHOUSE)**

Pursuant to the requirements of Section 3114.5 of the California Streets and Highways Code and Section 53328.3 of the Mello-Roos Community Facilities Act of 1982 (the "Act"), the undersigned City Clerk of the City of Ontario (the "City"), State of California, hereby gives notice that a lien to secure payment of a special tax is hereby imposed by the City Council of the City, State of California. The special tax secured by this lien is authorized to be levied for the purpose of (a) paying the principal of and interest on bonds, the proceeds of which are being used to finance the facilities described on Exhibit A attached hereto and hereby made a part hereof, (b) providing such facilities, and (c) providing the services described on Exhibit A.

The special tax is authorized to be levied within the City of Ontario Community Facilities District No. 57 (Neuhouse) (the "Community Facilities District") that has now been officially formed and the lien of the special tax is a continuing lien that shall secure each annual levy of the special tax and which shall continue in force and effect until the special tax obligation is prepaid, permanently satisfied and canceled in accordance with law or until the special tax ceases to be levied and a notice of cessation of special tax is recorded in accordance with Section 53330.5 of the Act.

The rate, method of apportionment, and manner of collection of the authorized special tax is as set forth in Exhibit B attached hereto and hereby made a part hereof. Conditions under which the obligation to pay the special tax for facilities may be prepaid and permanently satisfied and the lien of such special tax canceled are as set forth in Exhibit B hereto. No provision has been made for the prepayment of the special tax for services.

Notice is further given that upon the recording of this notice in the office of the County Recorder of the County of San Bernardino, the obligation to pay the special tax levy shall become a lien upon all nonexempt real property within the Community Facilities District in accordance with Section 3115.5 of the California Streets and Highways Code.

The names of the owners and the assessor's tax parcel numbers of the real property included within the Community Facilities District and not exempt from the special tax are as set forth in Exhibit C attached hereto and hereby made a part hereof.

Reference is made to the boundary map of the Community Facilities District recorded at Book 89 of Maps of Assessment and Community Facilities Districts at Page 35, in the office of

the County Recorder for the County of San Bernardino, State of California (Document No. 2020-0390238), which map is now the final boundary map of the District.

For further information concerning the current and estimated future tax liability of owners or purchasers of real property subject to this special tax lien, interested persons should contact the Management Analyst, Financial Services, City of Ontario, 303 East B Street, Ontario, California 91764, (909) 395-2341.

Dated: November \_\_\_, 2020

By: \_\_\_\_\_  
Sheila Mautz, City Clerk

## **EXHIBIT A**

### **FACILITIES AND SERVICES TO BE FINANCED**

#### **Facilities**

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

#### **Services**

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

**EXHIBIT B**

**RATE AND METHOD OF APPORTIONMENT OF SPECIAL TAX**

**EXHIBIT C**

**PROPERTY OWNER AND ASSESSOR'S PARCEL NUMBERS**

<b>Name of Property Owner</b>	<b>San Bernardino County Assessor's Parcel No.</b>
LS-ONTARIO II LLC	0218-161-15

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

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF ONTARIO, CALIFORNIA, DEEMING IT NECESSARY TO INCUR BONDED INDEBTEDNESS WITHIN THE CITY OF ONTARIO COMMUNITY FACILITIES DISTRICT NO. 57 (NEUHOUSE).

WHEREAS, on October 6, 2020, the City Council (the "City Council") of the City of Ontario (the "City"), pursuant to the Mello-Roos Community Facilities Act of 1982 (the "Act"), adopted a resolution entitled "A Resolution of the City Council of the City of Ontario, California, of Intention to Establish a Community Facilities District, Proposed to be Named City of Ontario Community Facilities District No. 57 (Neuhouse), and to Authorize the Levy of Special Taxes" stating its intention to establish City of Ontario Community Facilities District No. 57 (Neuhouse) (the "Community Facilities District") and to authorize the levy of special taxes within the Community Facilities District to finance certain public facilities and services; and

WHEREAS, on October 6, 2020, the City Council also adopted a resolution entitled "A Resolution of the City Council of the City of Ontario, California, to Incur Bonded Indebtedness of the Proposed City of Ontario Community Facilities District No. 57 (Neuhouse)" (the "Resolution to Incur Bonded Indebtedness") declaring the necessity for incurring bonded indebtedness and setting the date for a public hearing to be held on the proposed debt issue; and

WHEREAS, pursuant to the Resolution to Incur Bonded Indebtedness, notice of said public hearing was published in the *Inland Valley Daily Bulletin*, a newspaper of general circulation published in the area of the Community Facilities District, in accordance with the Act; and

WHEREAS, on this date, the City Council opened, conducted and closed said public hearing; and

WHEREAS, at said public hearing, any person interested, including persons owning property within the area and desiring to appear and present any matters material to the questions set forth in the Resolution to Incur Bonded Indebtedness appeared and presented such matters; and

WHEREAS, oral or written protests against the proposed debt issue were not made or filed at or before said public hearing by 50% or more of the registered voters, or six registered voters, whichever is more, residing within the territory proposed to be included in the Community Facilities District, or the owners of one-half or more of the area of land in the territory proposed to be included in the Community Facilities District and not exempt from the special tax; and

WHEREAS, on this date, the City Council adopted a resolution entitled "A Resolution of the City Council of the City of Ontario, California, of Formation of the City of Ontario Community Facilities District No. 57 (Neuhouse), Authorizing the Levy of a

Special Tax within the Community Facilities District and Establishing an Appropriations Limit for the Community Facilities District” (the “Resolution of Formation”); and

WHEREAS, the City Clerk of the City (the “City Clerk”) is the election official that will conduct the special election on the proposition to incur bonded indebtedness for the Community Facilities District; and

WHEREAS, there has been filed with the City Clerk a letter from the Registrar of Voters of the County of San Bernardino indicating that no persons were registered to vote within the territory of the proposed Community Facilities District as of October 15, 2020, and, accordingly, that 12 or more persons have not been registered to vote within the territory of the Community Facilities District for each of the 90 days preceding the close of said public hearing; and

WHEREAS, there has been filed with the City Clerk consents and waivers of all of the landowners of record in the Community Facilities District waiving any time limit specified by Section 53326 of the Act and any requirement pertaining to the conduct of said special election, including any time limit or requirement applicable to an election pursuant to Article 5 of the Act (commencing with Section 53345 of the Act), consenting to the holding of said special election on November 17, 2020, and waiving any impartial analysis, arguments or rebuttals, as set forth in Sections 53326 and 53327 of the Act; and

WHEREAS, the City Clerk has concurred in said waivers and has concurred in holding said special election on November 17, 2020.

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

SECTION 1. The foregoing recitals are true and correct.

SECTION 2. The City Council deems it necessary to incur the bonded indebtedness.

SECTION 3. The bonded indebtedness will be incurred for the purpose of financing the costs of the Facilities (as defined in the Resolution of Formation), including all costs and estimated costs incidental to, or connected with, the accomplishment of such purpose.

SECTION 4. In accordance with the previous determination of the City Council, the whole of the Community Facilities District will pay for the bonded indebtedness.

SECTION 5. The maximum aggregate amount of debt to be incurred is \$33,000,000.

SECTION 6. The maximum term the bonds to be issued shall run before maturity is 40 years.

SECTION 7. The maximum annual rate of interest to be paid shall not exceed the maximum interest rate permitted by applicable law at the time of sale of the bonds,



payable semiannually or at such times as the City Council or its designee shall determine, the actual rate or rates and times of payment of such interest to be determined by the City Council or its designee at the time or times of sale of the bonds.

SECTION 8. The proposition to incur the bonded indebtedness will be submitted to the voters.

SECTION 9. The City Council hereby finds and determines that no persons were registered to vote within the territory of the proposed Community Facilities District as of October 15, 2020, and that 12 or more persons have not been registered to vote within the territory of the Community Facilities District for each of the 90 days preceding the close of the public hearings held by the City Council on the proposed debt issue for the Community Facilities District. Accordingly, pursuant to Section 53326 of the Act, the vote shall be by the landowners of the Community Facilities District and each person who is the owner of land as of the close of said public hearings, or the authorized representative thereof, shall have one vote for each acre or portion of an acre that he or she owns within the Community Facilities District not exempt from the special tax.

SECTION 10. The City Council hereby finds and determines that the qualified electors of the Community Facilities District have unanimously consented (a) to the waiver of any time limit specified by Section 53326 of the Act and any requirement pertaining to the conduct of said election, including any time limit or requirement applicable to an election pursuant to Article 5 of the Act (commencing with Section 53345 of the Act), and (b) to the holding of said election on November 17, 2020. The City Council hereby finds and determines that the City Clerk has concurred in said waivers and has concurred in holding said election on November 17, 2020.

SECTION 11. The date of the special community facilities district election (which shall be consolidated with the special district election to levy a special tax within the Community Facilities District) at which time the proposition shall be submitted to the voters is November 17, 2020.

SECTION 12. The election is to be conducted by mail ballot. The mailed ballots are required to be received in the office of the City Clerk no later than 7:30 p.m. on November 17, 2020; provided, however, that if all of the qualified electors have voted prior to such time, the election may be closed with the concurrence of the City Clerk.

SECTION 13. The officers, employees and agents of the City are hereby authorized and directed to take all actions and do all things which they, or any of them, may deem necessary or desirable to accomplish the purposes of this Resolution and not inconsistent with the provisions hereof.

SECTION 14. This Resolution shall take effect immediately upon its adoption.

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

PASSED, APPROVED, AND ADOPTED this 17<sup>th</sup> day of November 2020.

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PAUL S. LEON, MAYOR

ATTEST:

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SHEILA MAUTZ, CITY CLERK

APPROVED AS TO FORM:

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BEST BEST & KRIEGER, LLP  
CITY ATTORNEY

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

I, SHEILA MAUTZ, City Clerk of the City of Ontario, DO HEREBY CERTIFY that foregoing Resolution No. 2020- was duly passed and adopted by the City Council of the City of Ontario at their regular meeting held November 17, 2020 by the following roll call vote, to wit:

AYES: COUNCIL MEMBERS:

NOES: COUNCIL MEMBERS:

ABSENT: COUNCIL MEMBERS:

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SHEILA MAUTZ, CITY CLERK

(SEAL)

The foregoing is the original of Resolution No. 2020- duly passed and adopted by the Ontario City Council at their regular meeting held November 17, 2020.

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SHEILA MAUTZ, CITY CLERK

(SEAL)

# CITY OF ONTARIO

Agenda Report  
November 17, 2020

## SECTION: PUBLIC HEARINGS

Department: Planning  
Prepared By: Charles Mercier  
Staff Member Presenting:  
Scott Murphy, AICP, Executive Community  
Development Director  
Approved By: 

Submitted To: Council/OHA  
Approved: \_\_\_\_\_  
Continued To: \_\_\_\_\_  
Denied: \_\_\_\_\_  
Item No: 16

**SUBJECT: A PUBLIC HEARING TO CONSIDER A DEVELOPMENT CODE AMENDMENT PROPOSING TO: [1] REVISE CURRENT PROVISIONS REGARDING THE REGULATION OF ACCESSORY DWELLING UNITS AND RESCIND AN URGENCY ORDINANCE PREVIOUSLY APPROVED BY THE CITY COUNCIL ON JANUARY 21, 2020; [2] REVISE CURRENT MU-1 (DOWNTOWN MIXED USE) ZONING DISTRICT PROVISIONS TO FACILITATE THE ESTABLISHMENT OF THE DOWNTOWN DISTRICT PLAN; [3] ESTABLISH PROVISIONS REGULATING THE DEVELOPMENT OF SMALL LOT INFILL SUBDIVISIONS; [4] REVISE PROVISIONS REGULATING MASSAGE SERVICES AND MASSAGE ESTABLISHMENTS, AND ESTABLISHING AN ADMINISTRATIVE APPROVAL PROCEDURE FOR MASSAGE ESTABLISHMENTS; AND [5] ADJUST AND CLARIFY CERTAIN DEVELOPMENT CODE PROVISIONS WITHIN CHAPTER 2.0 (ADMINISTRATION AND PROCEDURES), CHAPTER 3.0 (NONCONFORMING LOTS, LAND USES, STRUCTURES, AND SIGNS), CHAPTER 5.0 (ZONING AND LAND USE), CHAPTER 6.0 (DEVELOPMENT AND SUBDIVISION REGULATIONS), CHAPTER 7.0 (HISTORIC PRESERVATION), CHAPTER 8.0 (SIGN REGULATIONS), AND CHAPTER 9.0 (DEFINITIONS AND GLOSSARY)**

**RECOMMENDATION:** That the City Council introduce and waive further reading of the ordinance approving File No. PDCA18-003, a Development Code Amendment proposing to:

- A. Revise current provisions regarding the regulation of accessory dwelling units and rescind an urgency ordinance previously approved by the City Council on January 21, 2020;
- B. Revise current MU-1 (Downtown Mixed Use) zoning district provisions to facilitate the establishment of the Downtown District Plan;
- C. Establish provisions regulating the development of small lot infill subdivisions;
- D. Revise provisions regulating massage services and massage establishments, and establishing an administrative approval procedure for massage establishments; and
- E. Adjust and clarify certain Development Code provisions within Chapter 2.0 (Administration and Procedures), Chapter 3.0 (Nonconforming Lots, Land Uses, Structures, and Signs), Chapter 5.0 (Zoning and Land Use), Chapter 6.0 (Development and Subdivision Regulations), Chapter 7.0 (Historic Preservation), Chapter 8.0 (Sign Regulations), and Chapter 9.0 (Definitions and Glossary).

**THE FOLLOWING COUNCIL GOALS ARE BEING ACHIEVED:**

**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**

**FISCAL IMPACT:** Proposed code amendment changes would not have an immediate fiscal impact on the city.

**BACKGROUND & ANALYSIS:** The Development Code (Ontario Municipal Code Title 9) provides the legislative framework for the implementation of The Ontario Plan, which establishes long-term principles, goals, and policies for guiding the growth and development of the City in a manner that achieves Ontario's vision, and promotes and protects the public health, safety, comfort, convenience, prosperity, and welfare of its citizens. The Planning Department has initiated numerous modifications to the Development Code, including those required in compliance with changes in State law, as well as those changes deemed necessary to: implement the Downtown District Plan, update massage establishment and services regulations, establish new small lot fill subdivision regulations, and other certain adjustments and clarification to various provisions of the Development Code. All proposed changes are described in Exhibit A: Development Code Amendment, attached.

On October 27, 2020, the Planning Commission conducted a public hearing to consider the subject Development Code Amendment, and concluded the hearing on that date, voting unanimously (5-0) to adopt a resolution recommending the City Council approve the Development Code Amendment.

**HOUSING ELEMENT COMPLIANCE:** The Project will be consistent with the Housing Element of the Policy Plan (General Plan) component of The Ontario Plan, as the project furthers the purposes, principals, goals, and policies of the Housing Element, in that it will expand upon the types of housing that may be constructed throughout residential and mixed use zoning districts of the City and will allow for alternate forms of home rental and fee-simple homeownership.

**AIRPORT LAND USE COMPATIBILITY PLAN 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, establishing the Airport Influence Area for Ontario International Airport, which encompasses lands within parts of San Bernardino, Riverside, and Los Angeles Counties, and limits future land uses and development within the Airport Influence Area, as they relate to noise, safety, airspace protection, and overflight impacts of current and future airport activity. The proposed project is located within the Airport Influence Area of Ontario International Airport and was evaluated and found to be consistent with the policies and criteria of the Ontario International Airport Land use Compatibility Plan. Any special conditions of approval associated with uses in close proximity to the airport are included in the conditions of approval provided with the attached Resolution.

**ENVIRONMENTAL REVIEW:** The proposed Development Code Amendment is exempt from the requirements of the California Environmental Quality Act and the guidelines promulgated thereunder, pursuant to Section 15061(b)(3) of the California Environmental Quality Act Guidelines, in that the activity is covered by the common sense exemption (general rule) that CEQA applies only to projects

that have the potential for causing a significant effect on the environment. Where it can be seen with certainty that there is no possibility that the activity in question may have a significant effect on the environment, the activity is not subject to the California Environmental Quality Act.

## ***EXHIBIT A: DEVELOPMENT CODE AMENDMENT***

### **1. Changes Mandated by State Law —**

- a. Accessory Dwelling Units (“ADUs”). Staff has revised current Development Code provisions regarding the regulation of Accessory Dwelling Units (“ADUs”), which will replace an Urgency Ordinance approved by the City Council on January 21, 2020, in order to bring the City’s current ADU provisions into compliance with changes in State law that became effective on January 1, 2020, (Senate Bill 13, Assembly Bill 68 and Assembly Bill 881) and Government Code Sections 65852.2 and 65852.22. The proposed revisions are shown in Attachment A of the attached Ordinance, pages 5.03-3 through 5.03-15).
- b. Family Daycare Homes. The Development Code currently stipulates that small-family daycare homes (up to 8 children) are a permitted land use (as required by State law) and large-family daycare homes (up to 14 children) are subject to Administrative Use Permit approval and notification of surrounding property owners. A change in State law (SB-234, effective January 1, 2020) requires that large-family daycare homes must be treated as a permitted residential use of property, the same as small-family daycare homes. Consequently, Staff has revised the Development Code, combining the small-family and large-family daycare homes land use categories into a single “Family Daycare Homes” land use, which is an ancillary residential use of property that is permitted by right. Refer to Attachment A of the attached ordinance, pages 5.02-26, 5.03-60, and 5.03-61, for revisions.
- c. Employee (Farmworker) Housing. Section 5.03.177 (Employee (Farmworker) Housing) has been added to the Development Code as required by the City’s Housing Element of The Ontario Plan Policy Plan (general plan) and as mandated by the State’s Employee Housing Act (Health and Safety Code Section 17000 et seq.), and allows for: [1] farmworker dwellings providing accommodations for 6 or fewer employees, or for one employee and their respective household, is deemed to be a single-family residential structure, which is permitted by right in the AG (Agriculture) Overlay zoning district and within all residential and mixed use zoning districts that allow single-family dwellings; and a farmworker housing complex, with up to 36 beds in group quarters or up to 12 units designed for use by single families or households, is permitted by right in the AG (Agriculture) Overlay zoning district. Moreover, the Employee (Farmworker) Housing regulations control the verification of farmworker status, housing location, maximum unit size, removal of housing units, State reporting requirements, maximum number of allowed units, and facilities to accommodate recreational vehicles, tents, or other mobile camping equipment (maximum 30 days within any 180-day period). Refer to Attachment A of the attached ordinance, pages 5.02-5 and 5.03-68 through 5.03-72, for revisions.

2. **Downtown District Plan** — Staff is proposing modifications to the current MU-1 (Downtown Mixed Use) zoning district provisions to facilitate the launch of the Downtown District Plan, which is intended to establish and recognize Ontario’s historic downtown as the arts and entertainment mecca for the surrounding region, and include a wide range of allowed uses, such as shopping, restaurants, outdoor dining, cultural offerings, street fairs, artist festivals,

galleries, work/live lofts, breweries, and artisan co-ops. Additionally, Holt Boulevard is recognized, as a vital east-west link to Ontario's historic downtown, offering opportunities for vertical and horizontal mixed use developments consisting of market rate and below market rate housing, retail and offices, and work/live uses, and Ontario's civic center is recognized for its significant outdoor spaces, amenities, and services, which enhance the historic downtown's shopping, dining, and living experiences.

To implement the Downtown District Plan, the MU-1 (Downtown Mixed Use) zoning district is proposed to be divided into four land use areas, as follows:

- a. LUA-1 (Euclid Avenue Entertainment) District. The Euclid Avenue Entertainment District is a central urban location intended to provide the vitality, amenities, and a range of entertainment, shopping, restaurant, outdoor dining, and cultural offerings, as well as promote a variety of dense housing options; enhanced public and private rights-of-way to improve pedestrian and vehicular connectivity, and grow employment opportunities.
- b. LUA-2 (Arts) District. The Arts District is intended as a dynamic destination for locals and tourists, while creating a fulfilling urban experience energized by artistic, educational, and commercial participants. The focus of the Area is to increase the number of collaborated events and programs within the Area, with the intent to attract visitors, promote economic vitality, and boost revenue.

The Arts District is proposed to be divided into two subareas: Arts District North and Arts District South. Arts District North is intended to accommodate a mix of work/live lofts, artisan co-ops, restaurants, galleries, breweries, and other commercial uses intended to strengthen the economic base of the area. Arts District South is situated between the Union Pacific and Southern Pacific Rail Lines, within an area not particularly suited to uses having a residential component.

Arts District South is envisioned to accommodate a mix of commercial, business park, and light industrial activities, which like Arts District North, will serve to stimulate the economic vitality of the area. Arts District South is currently located outside of the Downtown Mixed Use District and Downtown District Plan area. Expansion of the Downtown Mixed Use District to include Arts District South is planned to occur in conjunction with The Ontario Plan update, which is planned for completion in October 2021.

- c. LUA-3 (Holt Boulevard) District. Holt Boulevard is a vital east-west link to the downtown, particularly from Ontario International Airport, the Ontario Convention Center, and the nearby hospitality center. The Holt Boulevard District offers the greatest opportunity for development of market-rate and attainable housing. Mixed-use may be vertical or horizontal, with retail or live/work on the ground floor. Residents will have access to many downtown amenities, including shopping, public services, open space, and public transportation (Bus Rapid Transit or "BRT"). The District will be designed as a signature gateway to the City's historic downtown.



- d. LUA-4 (Civic Center) District. The Civic Center District’s proximity to the Euclid Avenue Entertainment District will contribute to the community character and commercial vitality of Ontario’s historic downtown area. People in need of services at City Hall, the Public Library, or the Community Center, are potential shoppers and diners at downtown stores and restaurants. Furthermore, the Civic Center’s significant outdoor spaces provide a link to downtown shopping, dining, streetscapes, and friendly pedestrian experiences.

The proposed revisions to the MU-1 (Downtown Mixed Use) zoning district provisions are shown in Attachment A of the attached ordinance, pages 5.01-4 through 5.01-7.

3. **Massage Establishments and Massage Services** — Massage Establishments currently require Conditional Use Permit approval prior to the establishment of the business. Staff is proposing revision to Table 5.02-1 (Land Use Matrix), to allow massage establishments subject to Administrative Use Permit (“AUP”) approval. AUP approval would be granted by the Planning Director, subject to appropriate conditions issued by reviewing City departments. Following AUP issuance, any violations of Federal, State, or local laws or regulations, and/or AUP conditions of approval, would be subject to administrative fines and/or AUP suspension or revocation by the Police Chief or Community Improvement Manager.

In addition, the Development Code currently establishes a path for massage therapists to obtain a business license without obtaining certification by the California Massage Therapy Council (“CAMTC”) pursuant to the State of California Business and Professions Code. Staff is proposing that Development Code Section 5.03.270 (Massage Establishments and Services) will be revised to eliminate that pathway and require that all massage therapists provide proof of current CAMTC certification as a requirement of business license issuance. The proposed revisions are shown in Attachment A of the attached ordinance, page 5.02-32 and pages 5.03-86 through 5.03-92.

4. **Small Lot Infill Subdivisions** — Staff is proposing the addition of new regulations addressing the subdivision and development of small lot infill subdivisions. The new regulations are intended to control the development and subdivision of existing infill lots within Mixed Use zoning districts and the MDR-11 (Low-Medium Density Residential – 5.1 to 11.0 du/ac), MDR-18 (Medium Density Residential – 11.1 to 18.0 du/ac), MDR-25 (Medium-High Density Residential – 18.1 to 25.0 du/ac), and HDR-45 (High Density Residential – 25.1 to 45.0 du/ac) zoning districts, with infill small lots allowed as an alternate form of fee-simple homeownership. The new regulations address subdivision design, unit plotting and building design, pedestrian connectivity and access, open space, landscaping, and small lot subdivisions with existing dwellings. The proposed revisions are shown in Attachment A of the attached ordinance, pages 6.01-41 through 6.01-47.

**5. Other Changes of Special Note** —

- a. Banquet Facilities on Historic Properties. Development Code Section 5.03.067 (Banquet Facilities–Historic Properties) has been added, establishing standards for the establishment and operation of banquet facilities located on historically designated properties that are outside of zoning districts that would otherwise allow the activity. Such uses would be

subject to AUP approval. The proposed revision is shown in Attachment A of the attached ordinance, pages 5.03-54 and 5.03-55.

- b. Restaurants with Drive-Thru Facilities. Development Code Section 5.03.150 (Drive-Thru Facilities) has been modified to eliminate provisions prohibiting drive-thru facilities within the MU-1 (Downtown Mixed-Use) zoning district and stipulates that drive-thru facilities cannot be visible from Euclid Avenue. Furthermore, the required minimum total floor area (includes outdoor seating) has been reduced from 3,000 square feet to 2,000 square feet, and the required minimum interior floor area has been reduced from 2,500 square feet to 1,500 square feet. The reductions in floor area will allow for smaller specialty food restaurants, such as Starbucks. The proposed revision is shown in Attachment A of the attached ordinance, pages 5.03-63 through 5.03-67.
  - c. Fertilizer Manufacturing from Manure Operations. Development Code Section 5.03.187 (Fertilizer Manufacturing from Manure Operations) has been added, establishing standards for the establishment and operation of Fertilizer Manufacturing from Manure Operations. The proposed standards are derived from the San Bernardino County development standards for commercial fertilizer operations. The proposed revision is shown in Attachment A of the attached ordinance, pages 5.03-73 through 5.03-74.
  - d. Hookah Establishments, Smoking/Vaping Lounges, and Smoking/Vaping Retailers. Development Code Section 5.03.245 (Hookah Establishments, Smoking/Vaping Lounges, and Smoking/Vaping Retailers) has been expanded, specifying that smoking and vaping lounges are prohibited, excepting hookah establishments. Additionally, smoking/vaping retail shops must be spaced at least 1,320 feet apart and 1,320 feet from sensitive land uses (residential, schools, parks, etc.). The proposed revision is shown in Attachment A of the attached ordinance, page 5.03-83.
  - e. Self-Storage Facilities. Development Code Section 5.03.355 has been added to allow self-storage facilities to exceed the maximum FAR of a zoning district, subject to the submittal of an Equivalent Use Impact Study, which determines the project's maximum allowed gross floor area based upon the comparable traffic generation of other existing permitted land uses in the same general vicinity and the same zoning district, constructed at the maximum allowed FAR of the zoning district. The proposed revision is shown in Attachment A of the attached ordinance, page 5.03-108.
6. **Other Various Modifications, Adjustments and Clarifications** — Staff is proposing modifications, adjustments and clarifications to various Development Code provisions within Chapter 2.0 (Administration and Procedures), Chapter 3.0 (Nonconforming Lots, Land Uses, Structures, and Signs), Chapter 5.0 (Zoning and Land Use), Chapter 6.0 (Development and Subdivision Regulations), Chapter 7.0 (Historic Preservation, Chapter 8.0 (Sign Regulations), and Chapter 9.0 (Definitions and Glossary). The proposed revisions are summarized in the Table A: Development Code Adjustments and Clarifications, below.

**Table A: Development Code Adjustments and Clarifications**

<b>Proposed Changes</b>	<b>Corrected Pages**</b>
<b>Division 2.02—Application Filing and Processing</b>	
<p>1) Modifies Table 2.02-1 (Review Matrix), as follows:</p> <ul style="list-style-type: none"> <li>a) Clarifies that ministerial actions are exempt from CEQA review pursuant to Section 15268 of the CEQA Guidelines and identifies which actions are deemed ministerial.</li> <li>b) Clarifies that the environmental review of any project within the ONT (Ontario International Airport) zoning district is under the purview of the Ontario International Airport Authority.</li> <li>c) Clarifies that an application that does not require a public hearing is to be reviewed and acted upon under the Consent Calendar portion of the Reviewing Authority’s meeting agenda.</li> </ul>	2.02-6 and 2.02-7
<p>2) Adds clarification that the submittal of a time extension request includes an automatic 90-day time extension to provide adequate time for the processing of the time extension by the City.</p>	2.02-18
<b>Division 3.01—Nonconforming Lots, Land Uses, and Structures</b>	
<p>3) Adds text pointing to provisions that allow for alteration/expansion of nonconforming multiple-family residential developments (Subchapter I) and nonconforming nonresidential structures (Subchapter J).</p>	3.01-6
<p>4) Deletes current provisions that specify the conditions in which residential developments may be altered/expanded, allowing a one-time maximum 25% increase in density for multiple-family residential developments that are nonconforming as to base residential density, subject to Conditional Use Permit approval by the Zoning Administrator (projects totaling up to 4 DUs with expansion) or Planning Commission (projects totaling 5 or more DUs after expansion).</p>	3.01-8
<b>Division 5.01—Zoning Districts and Boundaries</b>	
<p>5) Additions and deletions intended to clarify the purpose of the ICC (Interim Community Commercial) Overlay zoning district and Clarifies that the City’s official zoning map may be amended pursuant to the requirements of Section 4.01.040 (Zone Changes).</p>	5.01-12

**Table A: Development Code Adjustments and Clarifications**

Proposed Changes	Corrected Pages**
<b>Division 5.02-1 General Land Use Provisions</b>	
<p>6) Revises Table 5.02-1 (Land Use Matrix), as follows:</p> <ul style="list-style-type: none"> <li>a) Various corrections and expansions to NAICS Code references have been made. (throughout)</li> <li>b) The suitability of land uses has been established within each Land Use Area (LUA) of the MU-1 zoning district. (throughout)</li> <li>c) Residential land uses have been reorganized and various changes have been made to further expand upon and clarify certain single-family residential uses. (Pgs. 5.02-6 and 7)</li> <li>d) Aquaculture has been added a conditionally permitted land use in the IL, IH, and AG zoning districts. (pg. 5.02-7)</li> <li>e) Clarification of the Boutique Manufacturing Facilities land use has been added to include Artisan Small-Scale and Micro Manufacturing Facilities. (pg. 5.02-8)</li> <li>f) Prohibits Alcoholic Beverage Manufacturing in the LUA-4 (Civic Center) district of the MU-1 (Downtown Mixed Use) zoning district. (Pg. 5.02-9)</li> <li>g) Fertilizer Manufacturing from Manure Operations (FMMO) has been added as a conditionally permitted land use in the AG zoning district. (Pg. 5.02-10)</li> <li>h) Expands upon the Other Chemical Product and Preparation Manufacturing land use to provide clarification on the types of land uses included within the classification. (Pg. 5.02-10)</li> <li>i) Provides clarification on the types of land uses included within the All Other Miscellaneous Metal Product Manufacturing classification. (Pg. 5.02-12)</li> <li>j) Provides clarification on the types of land uses included within the Other Miscellaneous Durable Goods wholesale trade classification. (Pg. 5.02-13)</li> <li>k) Petroleum Brokers (office only) has been added to the list of allowed Wholesale Trade Agents and Brokers, as a permitted land use in the OL, OH, BP, and IP zoning districts. (Pg. 5.02-13)</li> <li>l) Motorcycles, Personal Watercraft, All Terrain Vehicles, and Other Similar Vehicles has been added to the list of allowed Other Motor Vehicle</li> </ul>	<p>5.02-5 thru 5.02-34</p>

**Table A: Development Code Adjustments and Clarifications**

Proposed Changes	Corrected Pages**
<p>Dealers, as a conditionally permitted use in the CC, CR, CCS, and IP zoning districts. (Pg. 5.02-13)</p> <p>m) Provides Clarification on the types of land uses included within the Air Transportation classification. (Pg. 5.02-16 and 17)</p> <p>n) Adds to the list of allowed Motion Picture and Video Industries to include Teleproduction and Other Postproduction Services as permitted uses in the BP, IP, IL, IG, and IH zoning districts, and Other Motion Picture and Video Industries (such as: booking agencies, film libraries, film laboratories and film restoration) as a permitted land use in the OL, OH, BP, and IP zoning districts. (Pg. 5.02-18)</p> <p>o) Professional, Scientific, and Technical Services has been added as a permitted land use in the CCS zoning district. (Pg. 5.02-20)</p> <p>p) Educational Support Services has been added as a permitted land use in the CCS zoning district. (Pg. 5.02-24)</p> <p>q) The description of Nursing and Care Facilities and pursuant to State law has been expanded, clarifying that facilities of 6 or fewer persons are permitted only in conjunction with an existing single-family residence. (Pg. 5.02-25 and 26)</p> <p>r) Pursuant to changes in State law, the large-family daycare home and small-family daycare home land use categories have been combined into a single Family Child Daycare Homes (up to 14 children) land use category, which is permitted in zoning districts allowing residential uses, only in conjunction with an existing residence, including a single-family dwelling, a townhouse dwelling, a dwelling unit within a single-family dwelling, a multiple-family dwelling, or a dwelling unit within a multiple-family dwelling. (Pg. 5.02-26)</p> <p>s) Expands on the list of Performing Arts, Spectator Sports, and Related Industries, to include:</p> <ul style="list-style-type: none"> <li>▪ Promoters of Performing Arts, Sports, and Similar Events (offices only);</li> <li>▪ Agents and Managers for Artists, Athletes, Entertainers and Other Public Figures (offices only); and</li> <li>▪ Independent Artists, Writers, and Performers (offices only). (Pg. 5.02-27)</li> </ul> <p>t) The Dancing, Dance Clubs, Dance Halls, Ballrooms, and Discotheques land use has been divided into subcategories of facilities having a gross</p>	

**Table A: Development Code Adjustments and Clarifications**

Proposed Changes	Corrected Pages**
<p>floor area less than 5,000 square feet and facilities having a gross floor area of 5,000 square feet or more. Furthermore, within LUA-1 (Euclid Avenue Entertainment) of the MU-1 zoning district, facilities having a gross floor area less than 5,000 square feet are subject to Administrative Use Permit approval and would be allowed only in conjunction with a bona fide full-service restaurant or alcoholic beverage manufacturer’s tasting room. Within all other zones that dancing, dance clubs, dance halls, ballrooms, and discotheques are allowed, they are subject to Conditional Use Permit approval. (Pg. 5.02-27)</p> <p>u) The Live Entertainment land use subcategories will be reduced to facilities having a gross floor area less than 5,000 square feet (from 10,000 square feet) and facilities having a gross floor area of 5,000 square feet or more. Furthermore, within residential zoning districts, live entertainment (less than 5,000 square feet) will be allowed in conjunction with a banquet facility established in association with a historic property. Additionally, within the MU-1 (Downtown Mixed Use) zoning district, LUA-1 thru 4, standalone live entertainment facilities will be subject to Conditional Use Permit approval and will be prohibited on property located along the Euclid Avenue corridor. (Pg. 5.02-28)</p> <p>v) Alcoholic beverage sales for on-premises consumption has been added as an allowed use in residential zoning districts, subject to the approval of an Administrative Use Permit, only in conjunction with a banquet facility less than 10,000 square feet in area that is established in association with a historic property or a not for profit homeowners association that maintains/operates a clubhouse or similar place of assembly for exclusive use by association members and their guests. (Pg. 5.02-29)</p> <p>w) Adds a provision prohibiting standalone bars, taverns, and other similar facilities within the MU-1 (Downtown Mixed Use) zoning district, LUA-1, 2N, and 2S, on property located along the Euclid Avenue corridor. (Pg. 5.02-30)</p> <p>x) The list of All Other Automotive Repair and Maintenance facilities has been expanded to include Tire Sales, Installation, and Repair (except retreading) Services as a permitted use in the CC, CR, BP, IP, IL, and IG zoning districts. (Pg. 5.02-31)</p> <p>y) The list of allowed Parking Lots and Parking Garages has been expanded to clarify that commercial parking facilities means “pay to park” and adds Publicly-Owned Facilities and Facilities Required in Conjunction with Allowed Uses as permitted land uses. (Pg. 5.02-33)</p>	

**Table A: Development Code Adjustments and Clarifications**

Proposed Changes	Corrected Pages**
<b>Division 5.03—Supplemental Land Use Regulations</b>	
7) The title for Division 5.03 has been changed from “Standards for Certain Land Uses, Activities, and Facilities” to “Supplemental Land Use Regulations.”	5.03-1
8) Development Code Section 5.03.010.B (Accessory Residential Structures (excepting Accessory Dwelling Units)) has been moved to Section 5.03.011 and is revised as follows: <ul style="list-style-type: none"> <li>a) Restricts the size of an Accessory Residential Structure added to an existing residence to no more than 50% of the floor area of the existing residence.</li> <li>b) The maximum height of an Accessory Residential Structure permitted by right has been increased from 14 feet to 16 feet, consistent with Accessory Dwelling Units.</li> <li>c) Various additions and deletions to the Table 5.03-2 (Development Standards for Detached Accessory Residential Structures) Notes, for the purposes of clarification.</li> <li>d) Adds a prohibition to the use of shipping containers to accommodate on-site storage but does not prohibit the conversion of shipping containers into legally established buildings.</li> </ul>	5.03-15 thru 5.03-19
9) Development Code Section 5.03.037 (Boutique/Artisan Small-Scale and Micro Manufacturing Facilities) has been added, establishing minimum standards for use establishment and operation.	5.03-52
10) Development Code Section 5.03.067 (Banquet Facilities – Historic Properties) has been added, establishing standards for the establishment and operation of banquet facilities located on historically designated properties that are outside of zoning districts that would otherwise allow the activity.	5.03-55
11) In compliance with recent changes in State law, the large-family daycare home and small-family daycare home use categories have been combined into a single “Family Child Daycare Homes” (up to 14 children) land use category (see Section 5.03.100.B). The associated land use standards have been revised accordingly.	5.03-60 and 5.03-61
12) Development Code Section 5.03.150 (Drive-Thru Facilities) has been modified as follows: <ul style="list-style-type: none"> <li>a) Makes certain wording changes for the purposes of clarification;</li> </ul>	5.03-63 and 5.03-67

**Table A: Development Code Adjustments and Clarifications**

Proposed Changes	Corrected Pages**
<p>b) Deletes provision prohibiting drive-thru facilities within the MU-1(Downtown Mixed-Use) zoning district and stipulates that drive-thru facilities cannot be visible from Euclid Avenue;</p> <p>c) Reduces the minimum floor area from 3,000 square feet to 2,000 square feet and reduces the minimum interior floor area from 2,500 square feet to 1,500 square feet; and</p> <p>d) Adds a stipulation that the Planning Director may require an increased drive-thru stacking length to accommodate businesses known to generate a higher drive-thru demand.</p>	
<p>13) Section 5.03.177 (Employee (Farmworker) Housing) has been added as mandated by the Employee Housing Act (commencing with HSC Section 17000).</p>	<p>5.03-68 thru 5.03-72</p>
<p>14) Section 5.03.187 (Fertilizer Manufacturing from Manure Operations) has been added, establishing standards for the establishment and operation of Fertilizer Manufacturing from Manure Operations. The proposed standards are derived from the San Bernardino County development standards for commercial fertilizer operations.</p>	<p>5.03-73 and 5.03-74</p>
<p>15) Section 5.03.200 (Freight Transportation Arrangement) has been expanded, specifying that within the BP and IP zoning districts, freight transportation arrangement is limited to offices only and within the IG and IH zoning districts, the use is only allowed when ancillary to a truck transportation use.</p>	<p>5.03-75</p>
<p>16) Section 5.03.245 (Hookah Establishments, Smoking/Vaping Lounges, and Smoking/Vaping Retailers) has been expanded, specifying that smoking and vaping lounges are prohibited, excepting hookah establishments. Additionally, standards governing smoking and vaping retail shops have been established.</p>	<p>5.03-81 and 5.03-83</p>
<p>17) Section 5.03.250 (Hotels, Motels, Residence Inns, and Other Similar Traveler Accommodation) has been modified, adding Subsection F to clarify that hotels, motels, residence inns, and other similar traveler accommodations that are located in the SP zoning district are subject to Conditional Use Permit approval.</p>	<p>5.03-83 thru 5.03-85</p>
<p>18) Section 5.03.257 (Live Entertainment) has been added, establishing standards for the establishment and operation of live entertainment facilities.</p>	<p>5.03-86</p>



**Table A: Development Code Adjustments and Clarifications**

Proposed Changes	Corrected Pages**
<p>19) Section 5.03.270 (Massage Services and Establishments) has been modified, eliminating provisions that allow a massage therapist without obtaining certification by the California Massage Therapy Council (CAMTC). The revision requires that a Massage Therapist to obtain certification by CAMTC and eliminates performance standards for allowing a massage therapist without CAMTC certification.</p>	<p>5.03-86 thru 5.03-92</p>
<p>20) Section 5.03.285 (Mixed-Use Developments) has been revised to differentiate Residential Mixed Use projects (a mix of residential and commercial uses) from Nonresidential Mixed Use projects (a mix of commercial and business park or light industrial uses) and establish standards for the development of nonresidential mixed use projects.</p>	<p>5.03-97 thru 5.03-98</p>
<p>21) Amends Section 5.03.300 (Mobile Washing and Detailing Services) to allow mobile washing and detailing services as a home occupation, provided no washing or detailing of vehicles is performed on the premises.</p>	<p>5.03-100</p>
<p>22) Section 5.03.355 (a previously reserved section) has been amended to address self-storage facilities, establishing a procedure by which a self-storage facility may be allowed to exceed the maximum FAR of the zoning district in which it is located, subject to the submittal of an Equivalent Impact Study, which determines the project's maximum allowed gross floor area based upon the comparable traffic generation of other existing permitted land uses in the same general vicinity and the same zoning district, constructed at the maximum allowed FAR of the zoning district.</p>	<p>5.03-108</p>
<p>23) Section 5.03.395.J (Temporary Wireless Telecommunications Facilities) has been revised, eliminating provisions addressing Temporary Test-Only Wireless Telecommunications Facilities. The current provisions are a holdover from the days of an analog wireless system and their interference with the City's public safety radio channels. The wireless industry's switch to a digital system many years ago has eliminated the need for temporary test-only wireless telecommunications facilities.</p> <p>Furthermore, clarifications have been added which specify that:</p> <ul style="list-style-type: none"> <li>▪ The Planning Director may administratively approve temporary wireless telecommunications facilities to fulfill short-term wireless capacity and/or coverage needs; and</li> </ul>	<p>5.03-118 and 5.03-120</p>

**Table A: Development Code Adjustments and Clarifications**

Proposed Changes	Corrected Pages**
<ul style="list-style-type: none"> <li>▪ If a generator is needed to operate or provide backup power to a temporary wireless telecommunications facility, the City’s noise provisions must be fully complied with.</li> </ul>	
<p>24) Section 5.03.410.C.2 (Commercial Animal Production) has been revised to include clarifications that specify:</p> <ul style="list-style-type: none"> <li>▪ Within the AR-2 zoning district, kennels and catteries having fewer than 8 animals are be permitted as a Home Occupation;</li> <li>▪ Within the CC and CR zoning districts kennels and catteries for the purpose of boarding only, are allowed in conjunction with veterinary and/or animal hospital services;</li> <li>▪ Kennels and catteries are allowed within the IL and IH zoning districts; and</li> <li>▪ Kennels and catteries in conjunction with veterinary or animal hospital services are not subject to a 2-acre minimum lot size.</li> </ul>	5.03-125 and 5.03-126
<p>25) Section 5.03.410.C.3 (Aquaculture Production) has been added, establishing that aquaculture production is for the commercial sale of freshwater and saltwater fish, crustaceans, mollusks, aquatic plants, algae, and other organisms, which are under controlled conditions for food. Additionally, in the IG and IH zoning districts, aquaculture production must incorporate an integrated and holistic design, which is wholly contained within a building.</p>	5.03-128
<p>26) Section 5.03.410.D (Commercial Crop Production and Farming) has been amended to in clarification that commercial crop production and farming does not include community gardens and urban farms allowed pursuant to the Land Use Matrix (Table 5.02-1).</p>	5.03-129
<p>27) Section 5.03.410.E (Community Gardens) has been amended to include a provision allowing aquaculture as an incidental activity to a Community Garden.</p>	5.03-132
<p>28) Section 5.03.410.F (Urban Farms) has been amended to include a provision allowing aquaculture as an incidental activity to an Urban Farm.</p>	5.03-135
<p>29) Section 5.03.420 (Wireless Telecommunications Facilities) has been amended to include various minor wording changes and the addition of cross references to other Development Code sections, for purposes of clarification.</p>	5.03-138 thru 5.03-145

**Table A: Development Code Adjustments and Clarifications**

Proposed Changes	Corrected Pages**
<b>Division 6.01—District Standards and Guidelines</b>	
<p>30) Deletes the current reference to Small Lot and Cluster Single-Family Residential Development Standards and expands upon the type and description of allowed residential development types, including:</p> <ul style="list-style-type: none"> <li>▪ Traditional single-family residential developments;</li> <li>▪ Small lot traditional single-family residential developments;</li> <li>▪ Small lot alley-loaded single-family residential developments;</li> <li>▪ Cluster single-family residential developments; and</li> <li>▪ Multiple-family residential developments.</li> </ul>	6.01-3 and 6.01-4
<p>31) Various revisions have been made to Table 6.01-1 (Traditional Single-Family Residential Development Standards), including:</p> <ul style="list-style-type: none"> <li>▪ Adds the MDR-18, MDR-25, and HDR-45 zoning districts to the table;</li> <li>▪ Adds setback requirements for rear and side alley conditions;</li> <li>▪ For clarification purposes, adds a rear setback for patio covers that matches the setback for all single-story structures (10 feet);</li> <li>▪ Clarifies that the required 6-foot minimum separation between buildings only applies to buildings on the same lot;</li> <li>▪ Addition of Note 7 clarifying that lots having a street abutting the rear property line must setback the rear wall 5 feet behind the street property line to allow for landscaping beyond the required parkway landscaping;</li> <li>▪ Addition of Note 8 clarifying that a useable rear yard area having minimum horizontal dimension of 20 FT in any direction and a clear vertical dimension of 8 FT is required to be provided; and</li> <li>▪ Addition of Note 9 clarifying that the minimum setbacks from private streets are to be measured from a point 12 feet behind the face of curb.</li> </ul>	6.01-5 thru 6.01-7
<p>32) Adds Figure 6.01-1A, which exemplifies a typical traditional single-family residential development with vehicular access from the street, and Figure 6.01-1B, exemplifying a typical traditional single-family residential development with public alley access.</p>	6.01-8 and 6.01-9
<p>33) Various revisions have been made to Table 6.01-2A (Small Lot Traditional Single-Family Residential Development Standards), including:</p>	6.01-10 thru 6.01-12

**Table A: Development Code Adjustments and Clarifications**

Proposed Changes	Corrected Pages**
<ul style="list-style-type: none"> <li>▪ Adds the MDR-18, MDR-25, and HDR-45 zoning districts to the table;</li> <li>▪ Increases the maximum lot coverage and decreases the minimum lot depth to establish consistency with similar development in Ontario Ranch;</li> <li>▪ Adds and amends certain setback requirements to establish consistency with similar development in Ontario Ranch;</li> <li>▪ Clarifies that the required 6-foot minimum separation between buildings only applies to buildings on the same lot;</li> <li>▪ Adds Note 6 clarifying that lots having a street abutting the side or rear property line must setback the rear wall 5 feet behind the street property line to allow for landscaping beyond the required parkway landscaping;</li> <li>▪ Adds Note 7 clarifying that the minimum setbacks from private streets are to be measured from a point 12 feet behind the face of curb; and</li> <li>▪ Adds Note 8 allowing the interior side property line setback to be reduced to 4 feet if the setback area is combined with the side setback area of the adjacent property to create a single minimum 8-FT wide outdoor use area clear of walls.</li> </ul>	
<p>34) Adds Figure 6.01-2A, an example of a typical small lot traditional single-family residential development with vehicular access from the street.</p>	<p>6.01-13</p>
<p>35) Various revisions have been made to Table 6.01-2B (Small Lot Alley-Loaded Single-Family Residential Development Standards), including:</p> <ul style="list-style-type: none"> <li>▪ Adds the MDR-18, MDR-25, and HDR-45 zoning districts to the table;</li> <li>▪ Adds minimum lot width, lot depth, and lot coverage requirements to establish consistency with similar development in Ontario Ranch;</li> <li>▪ Adds and amends certain setback requirements to establish consistency with similar development in Ontario Ranch;</li> <li>▪ Adds Note 5 clarifying that lots having a street abutting the side or rear property line must setback the rear wall 5 feet behind the street property line to allow for landscaping beyond the required parkway landscaping;</li> <li>▪ Adds Note 6 allowing the interior side property line setback to be reduced to 4 feet if the setback area is combined with the side setback area of the adjacent property to create a single minimum 8-FT wide outdoor use area clear of walls; and</li> <li>▪ Adds Note 8 clarifying that the minimum setbacks from private streets are to be measured from a point 12 feet behind the face of curb.</li> </ul>	<p>6.01-14 thru 6.01-16</p>

**Table A: Development Code Adjustments and Clarifications**

<b>Proposed Changes</b>	<b>Corrected Pages**</b>
36) Adds Figure 6.01-2B, exemplifying a typical small lot alley-loaded single-family residential development.	6.01-17
37) Various revisions have been made to Table 6.01-2C (Cluster Single-Family Residential Development Standards), including: <ul style="list-style-type: none"> <li>▪ Adds the MDR-18, MDR-25, and HDR-45 zoning districts to the table;</li> <li>▪ Adds and amends certain setback requirements to establish consistency with similar development in Ontario Ranch;</li> <li>▪ Adds Note 5 clarifying that lots having a street abutting the side or rear property line must setback the rear wall 5 feet behind the street property line to allow for landscaping beyond the required parkway landscaping;</li> <li>▪ Adds Note 6 allowing the interior side property line setback to be reduced to 4 feet if the setback area is combined with the side setback area of the adjacent property to create a single minimum 8-FT wide outdoor use area clear of walls; and</li> <li>▪ Adds Note 8 clarifying that the minimum setbacks from private streets are to be measured from a point 12 feet behind the face of curb.</li> </ul>	6.01-18 thru 6.01-20
38) Adds Figure 6.01-2B, exemplifying a typical cluster single-family residential development.	6.01-21
39) Various revisions have been made to Table 6.01-3 (Multiple-Family Residential Development Standards), including: <ul style="list-style-type: none"> <li>▪ Various word insertions have been made for purposes of clarification;</li> <li>▪ The minimum project area for the HRD-45 zoning district has been reduced, from 2.5 acres to one-acre;</li> <li>▪ The minimum lot width for the HRD-45 zoning district has been reduced, from 330 feet to 180 feet;</li> <li>▪ The minimum lot depth for the HRD-45 zoning district has been reduced, from 330 feet to 200 feet;</li> <li>▪ The minimum arterial street setback for the HRD-45 zoning district has been reduced, from 20 feet to 10 feet;</li> <li>▪ The minimum setback for a primary entry facing onto an interior property line has been reduced from 15 feet to 10 feet (Note 4);</li> </ul>	6.01-22 thru 6.01-24

**Table A: Development Code Adjustments and Clarifications**

Proposed Changes	Corrected Pages**
<ul style="list-style-type: none"> <li>▪ Clarifies that a residential lot must be developed at no less than the minimum density range of the applicable zoning district (Note 7); and</li> <li>▪ Adds Note 9 clarifying that the minimum setbacks from private streets are to be measured from a point 12 feet behind the face of curb.</li> </ul>	
<p>40) Adds Figures 6.01-3A, 6.01-3B, 6.01-3C, and 6.01-3D, providing examples of various multiple-family densities.</p>	<p>6.01-25 thru 6.01-28</p>
<p>41) Revises the exceptions to residential development standards as follows:</p> <ul style="list-style-type: none"> <li>▪ Adds parapet walls to the list of building elements that may exceed the maximum building height by up to 25 percent;</li> <li>▪ Porte cocheres attached to a main dwelling will be allowed to extend a maximum of 30 percent into the required setback depth (same as porches, patios, and decks);</li> <li>▪ A side setback that is encroached upon by a porte cochere, can be reduced to less than 3 feet, matching allowed encroachments by fireplaces and chimneys. This is an increase from the current 2.5-foot allowed encroachment;</li> <li>▪ Adds utility and storage closets to the list of building elements that may encroach 2 feet into a side setback; however, like fireplaces and chimneys, the setback cannot be reduced to less than 3 feet.</li> </ul>	<p>6.01-29 and 6.01-30</p>
<p>42) Revises the residential open space requirements as follows:</p> <ul style="list-style-type: none"> <li>▪ Various word insertions and deletions have been made for purposes of clarification;</li> <li>▪ Open space requirements will apply only to projects consisting of 4 or more dwellings;</li> <li>▪ Adds splash pads to the description of major recreation facilities; and</li> <li>▪ Adds tot lots for ages 2 to 5, play areas/equipment for ages 5 to 12, and cabanas and shade structures to the description of minor recreation facilities.</li> </ul>	<p>6.01-30 thru 6.01-32</p>
<p>43) Various word insertions and deletions have been made to the infill single-family housing provisions to clarify that the provisions are intended to apply to only infill traditional single-family dwellings.</p>	<p>6.01-39</p>
<p>44) Deletes swimming pool, hot tub, spa, and pond fencing requirements that are duplicated in Development Code Section 6.02.020.A.3 (Ponds and Swimming</p>	<p>6.01-40</p>

**Table A: Development Code Adjustments and Clarifications**

<b>Proposed Changes</b>	<b>Corrected Pages**</b>
Pools) and adds section reference. Additionally, reduces the side and rear setback for swimming pools, hot tubs, spas, and ponds from 5 feet to 3 feet.	
45) Revises the exceptions to commercial development standards, adding parapet walls to the list of building elements that may exceed the maximum building height by up to 25 percent.	6.01-55
46) Adds clarification that the use of transparent glazing on commercial developments provides the City’s public safety personnel the ability to view inside a building without having to first enter the structure.	6.01-49
47) Revises the exceptions to industrial development standards, adding parapet walls to the list of building elements that may exceed the maximum building height by up to 25 percent.	6.01-65
<p>48) Development standards for the EA (Euclid Avenue) Overlay District have been revised to:</p> <ul style="list-style-type: none"> <li>▪ Specify that land development within the overlay district is subject to the requirements of the Downtown Ontario Design Guidelines (see Reference C—Downtown Ontario Design Guidelines); and</li> <li>▪ Eliminate the prohibition of medical offices and clinics on the first floor of buildings that have street frontage on Euclid Avenue.</li> </ul>	6.01-80
49) Development standards for the ICC (Interim Community Commercial) Overlay District have been revised to eliminate certain provisions restricting the overlay to properties within the HDR-45 zoning district.	6.01-82
<b>Division 6.03—Off-Street Parking and Loading</b>	
50) Adds exception to off-street parking requirements, specifying that within the MU-1 (Downtown Mixed Use) zoning district, off-street parking is not required for existing buildings having a floor area of less than 10,000 square feet.	6.03-3
<p>51) Table 6.03-1 (Off-Street Parking Requirements) has been revised as follows:</p> <ul style="list-style-type: none"> <li>▪ Change in the method of calculation for residential guest/visitor parking. The change in method will not result in a change in the number of parking spaces that would otherwise be required; and</li> <li>▪ The number of parking spaces required for accessory dwelling unit (ADUs) has been changed to conform to State law.</li> </ul>	6.03-5

**Table A: Development Code Adjustments and Clarifications**

<b>Proposed Changes</b>	<b>Corrected Pages**</b>
52) Eliminates discussion of tandem parking for second units, as the term “second unit” is no longer used in the Development Code.	6.03-12
53) Revises Table 6.03-2 (Standards for Parking Spaces, Drive Aisles, and Driveways), eliminating the maximum gradients permitted at driveway entrances, as the current requirements are inconsistent with the City’s Building Code.	6.03-14
54) Eliminates Sections 6.03.060 (Prohibition of Parking on Undeveloped or Unpaved Lots) and 6.03.065 (Prohibition of Parking on Landscaped or Unpaved Areas of a Lot), which were previously added to the City’s Municipal Code.	6.03-20 and 6.03-21
<b>Division 6.05—Landscaping</b>	
55) Adds reference to Executive Order No. B-29-15 (updated 2015), Model Water Efficient Ordinance (MWEL0)	6.05-1
56) Amends the tree staking, ground cover spacing, and grading design and stormwater management requirements to be consistent with the City’s current landscape standards and specifications.	6.05-19 and 6.05-20
<b>Division 6.06—Street Naming and Street Address Numbering</b>	
57) Eliminates the use of “Via” as an allowed private street name prefix at the request of the Post Office.	6.06-3
<b>Division 6.08—Development Projects and Subdivisions</b>	
58) Certain additions and deletions have been made throughout Division 6.08 for the purpose of clarifying that the Development Code’s dedication and public improvement requirements apply to development plans and projects, and not only to subdivisions.	6.08-1 thru 6.08-32
<b>Division 6.10—Property Appearance and Maintenance</b>	
59) Eliminates the Property Appearance and Maintenance provisions, which were previously added to the City’s Municipal Code.	6.10-1 thru 6.10-7



**Table A: Development Code Adjustments and Clarifications**

Proposed Changes	Corrected Pages**
<b>Division 7.01—Historic Preservation</b>	
60) Revises the Mitigation Fee structure based on the most current International Code Council (ICC) Building Valuation Data. Fees can range from 10 to 30 percent of the square foot cost to construct the building or structure that is being demolished.	7.01-6 and 7.01-7
<b>Division 8.01—Sign Regulations</b>	
61) Adds topical headings to the listing of exempt signs.	8.01-2 and 8.01-3
62) In commercial and industrial zoning districts, all existing standards addressing wall signs with multiple lines of copy have been eliminated. Signs with multiple lines of copy will now be treated like all other signs in the zoning district.	8.01-17, 8.01-21, 8.01-22, 8.01-24, and 8.01-25
<b>Division 9.01—Definitions</b>	
63) Adds various new definitions and makes certain changes to existing definitions for the purposes of clarification.	Throughout
<b>Division 9.02—Glossary</b>	
64) Makes certain changes to existing definitions for the purposes of clarification.	Throughout
<i>Note: ** Refer to Attachment A of the attached City Council ordinance to view all proposed Development Code additions and deletions.</i>	

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

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF ONTARIO, CALIFORNIA, APPROVING FILE NO. PDCA18-003, A DEVELOPMENT CODE AMENDMENT PROPOSING TO: [1] REVISE CURRENT PROVISIONS REGARDING THE REGULATION OF ACCESSORY DWELLING UNITS AND RESCIND AN URGENCY ORDINANCE PREVIOUSLY APPROVED BY THE CITY COUNCIL ON JANUARY 21, 2020; [2] REVISE CURRENT MU-1 (DOWNTOWN MIXED USE) ZONING DISTRICT PROVISIONS TO FACILITATE THE ESTABLISHMENT OF THE DOWNTOWN DISTRICT PLAN; [3] ESTABLISH PROVISIONS REGULATING THE DEVELOPMENT OF SMALL LOT INFILL SUBDIVISIONS; [4] REVISE PROVISIONS REGULATING MASSAGE SERVICES AND MASSAGE ESTABLISHMENTS, AND ESTABLISHING AN ADMINISTRATIVE APPROVAL PROCEDURE FOR MASSAGE ESTABLISHMENTS; AND [5] MODIFY, ADJUST, AND CLARIFY CERTAIN DEVELOPMENT CODE PROVISIONS WITHIN CHAPTER 2.0 (ADMINISTRATION AND PROCEDURES), CHAPTER 3.0 (NONCONFORMING LOTS, LAND USES, STRUCTURES, AND SIGNS), CHAPTER 5.0 (ZONING AND LAND USE), CHAPTER 6.0 (DEVELOPMENT AND SUBDIVISION REGULATIONS), CHAPTER 7.0 (HISTORIC PRESERVATION), CHAPTER 8.0 (SIGN REGULATIONS), AND CHAPTER 9.0 (DEFINITIONS AND GLOSSARY), AND MAKING FINDINGS IN SUPPORT THEREOF.

WHEREAS, the City of Ontario has initiated an Application for the approval of a Development Code Amendment, File No. PDCA18-003, as described in the title of this Ordinance (hereinafter referred to as "Application" or "Project"); and

WHEREAS, the Development Code Ontario Municipal Code Title 9) provides the legislative framework for the implementation of The Ontario Plan, which establishes long term principals, goals, and policies for guiding the growth and development of the City in a manner that achieves Ontario's vision, and promotes and protects the public health, safety, comfort, convenience, prosperity, and welfare of its citizens; and

WHEREAS, the City has initiated numerous modifications to the Development Code, including those required in compliance with changes in State law, as well as those changes deemed necessary to: implement the Downtown District Plan, update massage establishment and services regulations, establish new small lot infill subdivision regulations, and other certain adjustments and clarifications to various provisions of the Development Code; and

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

WHEREAS, the Project is exempt from CEQA pursuant to a categorical exemption (listed in CEQA Guidelines Article 19, commencing with Section 15300) and the application of that categorical exemption is not barred by one of the exceptions set forth in CEQA Guidelines Section 15300.2; and

WHEREAS, Ontario Development Code Table 2.02-1 (Review Matrix) grants the City Council the responsibility and authority to review and act on the subject Application; and

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

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

WHEREAS, on October 27, 2020, the Planning Commission of the City of Ontario conducted a public hearing to consider the Project, and concluded said hearing on that date, voting to issue Resolution No. PC20-087, recommending the City Council approve the Application; and

WHEREAS, on November 17, 2020, the City Council of the City of Ontario conducted a hearing to consider the Project, and concluded said hearing on that date; and

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

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

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

(1) The administrative record has been completed in compliance with CEQA, the State CEQA Guidelines, and the City of Ontario Local CEQA Guidelines; and

(2) The Project is exempt from the requirements of the California Environmental Quality Act (CEQA) and the guidelines promulgated thereunder, pursuant to Section 15061(b)(3) of the CEQA Guidelines, in that the activity is covered by the common sense exemption (general rule) that CEQA applies only to projects that have the potential for

causing a significant effect on the environment. Where it can be seen with certainty that there is no possibility that the activity in question may have a significant effect on the environment, the activity is not subject to CEQA; and

(3) The determination of CEQA exemption reflects the independent judgment of the City Council.

**SECTION 2. *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 development regulations, 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 decision-making body for the Project, the City Council has reviewed and considered the facts and information contained in the Application and supporting documentation against the 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.

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

(1) The proposed Development Code Amendment is consistent with the goals, policies, plans and exhibits of the Vision, Policy Plan (General Plan), and City Council Priorities components of The Ontario Plan.

(2) The proposed Development Code Amendment would not be detrimental to the public interest, health, safety, convenience, or general welfare of the City.

**SECTION 4. *City Council Action.*** Based upon the findings and conclusions set forth in Sections 1 through 5, above, the City Council hereby APPROVES the herein described Development Code Amendment (File No. PDCA18-003), attached hereto as “Attachment A,” and incorporated herein by this reference.

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

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

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

**SECTION 9. 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 \_\_\_\_ day of \_\_\_\_\_ 2020.

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

ATTEST:

\_\_\_\_\_  
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    ) ss.  
CITY OF ONTARIO                )

I, SHEILA MAUTZ, City Clerk of the City of Ontario, DO HEREBY CERTIFY that foregoing Ordinance No. \_\_\_\_\_ was duly introduced at a regular meeting of the City Council of the City of Ontario held November 17, 2020 and adopted at the regular meeting held \_\_\_\_\_, 2020 by the following roll call vote, to wit:

AYES:            COUNCIL MEMBERS:

NOES:           COUNCIL MEMBERS:

ABSENT:        COUNCIL MEMBERS:

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

(SEAL)

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

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

(SEAL)

## **ATTACHMENT A:**

### **File No. PDCA18-003; Development Code Update 2020**

*(Document follows this page. Please note that all proposed deletions are shown in red ~~strikeout~~ text and all proposed additions are shown in yellow highlighted text)*



# CITY OF ONTARIO

*Agenda Report*  
November 17, 2020

## SECTION: PUBLIC HEARINGS

Department: Housing  
Prepared By: Hannah K Mac Kenzie  
Department: Housing  
Prepared By: Katryna Gonzalez  
Staff Member Presenting:  
Scott Murphy, AICP, Executive Director  
Development Agency  
Approved By:



Submitted To: Council/OHA  
Approved: \_\_\_\_\_  
Continued To: \_\_\_\_\_  
Denied: \_\_\_\_\_  
Item No: 17

**SUBJECT: A PUBLIC HEARING TO RECEIVE TESTIMONY AND ADOPT THE CONSOLIDATED ANNUAL PERFORMANCE AND EVALUATION REPORT (CAPER) FOR THE 2019-20 FISCAL YEAR**

**RECOMMENDATION:** That the City Council:

- A. Hold a public hearing to receive testimony on the draft Consolidated Annual Performance and Evaluation Report (CAPER) for the 2019-20 Fiscal Year (on file in the Records Management Department);
- B. Direct staff to prepare and transmit to the U.S. Department of Housing and Urban Development (HUD) the final CAPER, which will address all public comments received on the draft CAPER; and
- C. Authorize the City Manager to execute any and all documents necessary and/or desirable to transmit the CAPER to HUD.

**THE FOLLOWING COUNCIL GOALS ARE BEING ACHIEVED:**

**Operate in a Businesslike Manner**

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

**FISCAL IMPACT:** There is no fiscal impact associated with adopting this report.

**BACKGROUND & ANALYSIS:** The CAPER is a (Housing and Urban Development ("HUD")) required report providing annual information about the City's utilization of HUD funds for local community development and housing projects. During Fiscal Year 2019-20, a combined total of over \$44.7 million of federal, state, and local funds were expended to implement approximately 50 housing and community development programs and projects. These activities were contained in the City's Fiscal Year 2019-20 One-Year Action Plan, approved on June 6, 2019. Federal funding sources in the CAPER include the following HUD programs: Community Development Block Grant (CDBG), HOME Investment Partnership Program (HOME), Emergency Solutions Grant (ESG), Community Development Block Grant – CARES Act (CDBG-CV), and Emergency Solutions Grant – CARES Act (ESG-CV). Local funding sources include Ontario Housing Authority and Housing Asset funds. The City receives approximately \$2.7 million annually from HUD for the CDBG, HOME, and ESG programs.

Listed below are key housing and community development projects discussed in the CAPER:

- The City expended approximately \$3.7 million to implement ten infrastructure and community facility activities, two economic development activities, and two public service activities under the Community Development Strategy. The major projects within this strategy include, but are not limited to the following: Alley Pavement Management Rehabilitation, Pavement Management Rehabilitation, Wheelchair Ramp Installation, Nugent Park Shelter Renovation, LED Street Light Conversion, Veterans Memorial Park Shade and Fitness Rig Installation, Downtown Storefront Façade Renovation, Child Care, Youth, and Family Subsidies, Dorothy Quesada Community Center Front Counter Renovation, Neighborhood Preservation Program, and COVID-19 Response Small Business Loans.
- More than \$30 million was expended to implement 20 housing programs within Ontario as part of the Housing Strategy. The major projects within this strategy include, but are not limited to the following: Emporia Place, Vista Verde Apartments, Ontario Townhouses, County of San Bernardino Mortgage Revenue Bond Program, School Teacher and Employee Assistance Program, MyHome Loan Program, Tenant Based Rental Assistance, Ontario Shines Single Family Solar, Community Improvement Team, Sites for Future Affordable Housing Development, Police Residence Assistance Program, COVID-19 Short-Term Rental Assistance Program, and COVID-19 Homeowner Utility Assistance Program.
- Over \$294,400 was expended as part of the Homeless Strategy to implement 11 activities. The major projects within this strategy include, but are not limited to the following: Project Gateway (Supportive Housing Program), Mercy House Ontario Access Center, Assisi House and Aftercare Services, Family Stabilization at Sova Program Center, Services for Victims of Domestic Violence and Their Children, ESG COVID-19 Homeless Prevention and Rapid Re-Housing Program, and ESG COVID-19 Motel Voucher Program.

Attached is the Executive Summary of the CAPER for FY 2019-20. The Executive Summary provides a summary of expenditures and accomplishments for all CDBG, HOME, and ESG funded activities undertaken to address strategies identified within the Five-Year Consolidated Plan adopted by City Council on May 3, 2016 and the One-Year Action Plan, adopted by City Council on June 6, 2019.

On March 31, 2020, HUD published a memorandum of available waivers of Community Planning and Development (CPD) Grant Program and Consolidated Plan Requirements to Prevent the Spread of COVID-19 and Mitigate Economic Impacts caused by COVID-19. Among the waivers authorized was a 90-day extension of the requirement to submit the CAPER 90 days after the end of fiscal year. The deadline to submit the CAPER to HUD is December, 27 2020. Subsequent to City Council approval of the CAPER, staff will submit the final report to HUD.

The CAPER for FY 2019-20 has been available for public review from November 2, 2020 through November 17, 2020.

# CITY OF ONTARIO

## Consolidated Annual Performance and Evaluation Report

### For the period of July 1, 2019 - June 30, 2020

#### EXECUTIVE SUMMARY

The Consolidated Annual Performance and Evaluation Report (CAPER) provides information to Ontario residents, elected officials, City staff, and the U.S. Department of Housing and Urban Development (HUD) about housing and community development needs, projects, and accomplishments. This report covers activities conducted during Fiscal Year 2019-20 which began July 1, 2019 and ended June 30, 2020. During this period, federal and local funds were used to implement a myriad of housing and community development programs and projects, including projects that were developed and carried out in response to the COVID-19 pandemic. Each activity supported one or more of the priorities originally presented in the City's Five-Year Consolidated Plan.

The following list highlights key housing and community development activities implemented during FY 2019-20:

- The City of Ontario and its partners expended more than \$44.7 million in federal, state, and local funds to administer housing and community development programs.
- The City expended approximately \$3.7 million to implement ten infrastructure and community facility activities, two economic development activities, and two public service activities under the Community Development Strategy. The major projects within this strategy include, but are not limited to the following: Alley Pavement Management Rehabilitation, Pavement Management Rehabilitation, Wheelchair Ramp Installation, Nugent Park Shelter Renovation, LED Street Light Conversion, Veterans Memorial Park Shade and Fitness Rig Installation, Downtown Storefront Facade Renovation, Child Care, Youth, and Family Subsidies, Dorothy Quesada Community Center Front Counter Renovation, Neighborhood Preservation Program, and COVID-19 Response Small Business Loans.
- More than \$30 million was expended to implement 20 housing programs within Ontario as part of the Housing Strategy. The major projects within this strategy include, but are not limited to, the following: Emporia Place, Vista Verde Apartments, Ontario Townhouses, County of San Bernardino Mortgage Revenue Bond Program, School Teacher and Employee Assistance Program, MyHome Loan Program, Tenant Based Rental Assistance, Ontario Shines Single Family Solar, Community Improvement Team, Sites for Future Affordable Housing Development, Police Residence Assistance Program, COVID-19 Short-Term Rental Assistance Program, and COVID-19 Homeowner Utility Assistance Program.
- Over \$294,406 was expended as part of the Homeless Strategy to implement 11 activities. The major projects within this strategy include, but are not limited to, the following: Project Gateway (Supportive Housing Program), Mercy House Ontario Access Center, Assisi

House and Aftercare Services, Family Stabilization at Sova Program Center, Services for Victims of Domestic Violence and Their Children, ESG COVID-19 Homeless Prevention and Rapid Re-Housing Program, and ESG COVID-19 Motel Voucher Program.

The tables below and on the following pages demonstrate the breakdown of funds received and expended within each identified strategy: Community Development, Housing, Homeless, Special Needs, Fair Housing, and Public Housing.

<b>FUNDING SOURCES</b>		
<b>FUNDING SOURCE</b>	<b>ACTIVITIES FUNDED</b>	<b>ACTUAL AMOUNT AWARDED/RECEIVED/ ON HAND FOR FY 2019-20</b>
Community Development Block Grant (CDBG)	Infrastructure improvements, code enforcement, housing rehabilitation, and social services.	\$1,824,218 <sup>1</sup>
CDBG Program Income	Infrastructure improvements, code enforcement, housing rehabilitation, and social services.	\$0
CDBG Rollover from prior years and reallocated funds	Infrastructure improvements, code enforcement, housing rehabilitation, and social services.	\$863,012 <sup>2</sup>
CDBG-CARES (CDBG-CV)	Infrastructure improvements, code enforcement, housing rehabilitation, and social services in response to COVID-19.	\$1,096,879 <sup>1</sup>
HOME Investment Partnership (HOME)	Tenant Based Rental Assistance	\$659,631 <sup>1</sup>
HOME Program Income	Tenant Based Rental Assistance	\$0
HOME Rollover from prior years and reallocated funds	Tenant Based Rental Assistance	\$0
Emergency Solutions Grant (ESG)	Essential support services and operating expenses for homeless facilities and programs.	\$156,918 <sup>1</sup>
ESG-CARES (ESG-CV)	Essential support services and operating expenses for homeless facilities and programs in response to COVID-19	\$2,137,252 <sup>1</sup>
Housing Asset Fund (HAF)	Home ownership assistance, housing acquisition and rehabilitation, and homeless services.	\$1,024,236 <sup>2</sup>
Ontario Housing Authority (OHA)	Housing acquisition, property rehabilitation and maintenance.	\$7,370,666 <sup>2</sup>

<sup>1</sup> This amount represents the total funds awarded during FY 2019-20

<sup>2</sup> This amount represents funds on hand during FY 2019-20

<b>FUNDING SOURCE</b>	<b>ACTIVITIES FUNDED</b>	<b>ACTUAL AMOUNT AWARDED/RECEIVED/ ON HAND FOR FY 2019-20</b>
Transformative Climate Communities Grant (TCC)	California Climate Investment programs, including affordable housing, active transportation programs, low income weatherization programs, and urban greening	\$33,343,800 <sup>1</sup>
BEGIN Program Reuse Account	Program provides deferred-payment second mortgage loans to qualified buyers of new homes.	\$51,650 <sup>2</sup>
Permanent Local Housing Allocation	Housing construction, rehabilitation activities, homebuyer activities, and homeless prevention.	\$920,018 <sup>1</sup>
<b>TOTAL</b>		<b>\$49,448,280</b>

DRAFT

## HOUSING STRATEGY

Program/Project	Funding Source	Expenses	Annual Accomplishment
<i>Priority 1: Preserve existing rental and owner-occupied housing resources.</i>			
Community Improvement Team	CDBG	\$92,168	A total of 641 inspections were completed during the reporting period. 37 citations were given, 242 notices issued, and 202 violations abated.
Low-Mod Assisted Housing Developments	Ontario Townhouses	\$5,029,191	Continued ongoing monitoring efforts of affordable housing developments consisting of 1,910 units throughout Ontario. During FY 2018-19, the City issued Multi-Family Housing Revenue Bonds to complete the acquisition and rehabilitation of the Ontario Townhouses Project located at 1360 East D Street. Additional funding for the project was received from 4% Low Income Housing Tax Credits. The total development cost for the project is \$40,796,913. An additional 20 years of affordability was achieved through HUD's project-based voucher program along with an agreement with the City for a total of 55 years of affordability. The rehabilitation work for this project was completed in FY 2019-20
Guadalupe Residence (411 North Parkside Avenue)	CDBG	\$0	The acquisition was completed in February 2018. Rehabilitation work is expected to be complete in early 2021.
	HOME	\$0	
	<b>Subtotal</b>	<b>\$0</b>	
Ontario Shines: Single Family Solar PV	CDBG	\$19,323	During FY 19-20 six homeowners were assisted with no-cost solar installations.
Ontario Shines: Multi-Family PV	CDBG	\$135,800	During FY 19-20 funds were expended to purchase equipment for two multi-family solar projects. Both projects are under construction and expected to be during FY 2020-21.
Assisi House Renovation	CDBG	\$114,921	A scope of work was developed and bids were released in spring 2019. The work was begun in Fall 2019 and is expected to be fully complete by December 2020.
Conservation Home Improvement Program	CDBG	\$0	During FY 2019-20 Housing staff developed program guidelines and prepared an RFP to establish a list of eligible contractors to be used for program work.

<b>Program/Project</b>	<b>Funding Source</b>	<b>Expenses</b>	<b>Annual Accomplishment</b>
CDBG COVID-19 Homeowner Utility Assistance Program	CDBG-CV	\$0	During FY 2019-20 the program began to process applications for approval.
CDBG COVID-19 Short-Term Rental and Utility Assistance Program	CDBG-CV	\$20,572	During FY 2019-20 the program began to process applications for approval. A total of six households were assisted.
<b>TOTAL HOUSING PRIORITY #1</b>		<b>\$5,411,975</b>	
<b><i>Priority 2: Expand affordable rental housing opportunities, particularly for low-income persons.</i></b>			
Tenant Based Rental Assistance Program	HOME	\$283,670	A total of thirty-three (34) households were assisted through this program during FY 2019-20. Sixteen (16) households had their TBRA certificates renewed and eighteen (18) households were new clients.
520-526 West Vesta Street	CDBG OHA	\$29,770 \$0	Demolition and lead-based paint remediation work was completed during FY 2017-18 to address conditions from a fire that occurred on July 5, 2017. Bids were solicited for painting and minor repair work during FY 2018-19 and the work was completed in July 2019.
	<b>Subtotal</b>	<b>\$29,770</b>	
Sites for Future Affordable Housing Development	HAF	\$11,708	The Ontario Housing Authority acting as the successor agency to the Ontario Redevelopment Agency and the City of Ontario acting as the successor agency to the Ontario Redevelopment Agency is currently maintaining approximately seven sites for future development of affordable housing.
Vista Verde Apartments	Project Draws	\$10,162,563	This new construction project was begun during FY 2018-19. Escrow was closed transferring the land to National CORE for development. The City issued \$21 million in Multi-Family Housing Revenue Bonds and has loaned \$14.7 million of TCC funds and \$4.4 of local funds to support this project. The developer also obtained 4% Low Income Housing Tax Credit funds to assist with the development. The project will contain 101 housing units with a mix of two- and three-bedroom units. Affordability will range from 30% AMI to 60% AMI. Total development cost is approximately \$36.7 million. During FY 2019-20 project construction was continued.

Program/Project	Funding Source	Expenses	Annual Accomplishment
Emporia Place	OHA	\$11,992,187	This new construction project was begun during FY 2018-19 and construction was completed in June 2020. The City provided a loan of \$15.7 million to support the acquisition and construction of the project. In addition, the developer secured 9% Low Income Housing Tax Credits for this project. The project contains 75 units with a mix of one-, two-, three-, and four-bedroom units. Affordability will range from 30% AMI to 60% AMI. Total development cost is approximately \$31.7 million.
<b>TOTAL HOUSING PRIORITY #2</b>		<b>\$22,479,898</b>	

***Priority 3: Increase affordable homeownership opportunities, particularly for low- and moderate-income persons.***

Community Housing Development Organizations (CHDOs)	HOME	\$0	During FY 2019-20, no units were proposed to be completed pending the submission of a proposed project from a qualified CHDO.
School Teacher and Employee Loan Program (School Program) (CalHFA)	Bond	\$453,718	One (1) homebuyer was assisted in Ontario during FY 2019-20.
MyHome Assistance Program	Bond Financing	\$425,058	One (1) homebuyer was assisted in Ontario during FY 2019-20.
Home Buyer Assistance (County of San Bernardino Mortgage Revenue Bond Program)	Bond Financing	\$1,305,605	Five (5) Mortgage Credit Certificates (MCC) were issued for homes in Ontario during FY 2019-20.
Neighborhood Partnership Housing Services (NPHS) Programs	Private Financing	N/A	During FY 2019-20, NPHS provided homeownership services to 142 Ontario residents. Foreclosure prevention assistance was provided to 14 homeowners, no first-time Ontario homebuyers received downpayment assistance grants through the WISH program, 102 residents were provided pre-purchase/financial wellness education, and 26 residents received reverse mortgage counseling. This fiscal year, NPHS was not able to provide any senior home repair grants due to a lack of funding.
Good Neighbor Next Door Program	HUD & FHA	\$0	No homebuyers were assisted in Ontario during FY 2019-20.



Program/Project	Funding Source	Expenses	Annual Accomplishment
Police Residence Assistance Program	Ontario General Fund	\$10,000	One (1) new loan and one (1) payoff were processed during FY 2019-20.
<b>TOTAL HOUSING PRIORITY #3</b>		<b>\$2,194,381</b>	
<b>GRAND TOTAL – HOUSING STRATEGY</b>		<b>\$30,086,264</b>	

### **HOMELESS STRATEGY**

Program/Agency	Funding Source	Expenses	Accomplishments
<i>Priority 1: Preserve and improve the supply of supportive housing and public services for the homeless.</i>			
Assisi House and Aftercare Services Program	CDBG	\$26,739	A total of 50 unduplicated homeless persons were served.
Mercy House Living Centers - Ontario Access Center	ESG	\$68,706	A total of 744 unduplicated homeless persons were served at the Ontario Access Center.
House of Ruth – Services for Victims of Domestic Violence and Their Children	ESG	\$10,397	A total of 86 unduplicated battered women and children were provided with services.
Inland Valley Hope Partners – Family Stabilization Program at Sova Program Center	ESG	\$18,410	A total of 2,776 unduplicated persons were served.
Project Gateway (Supportive Housing Program)	HUD	\$144,545	Thirteen (13) households were housed using Supportive Housing Program (SHP) vouchers.
ESG COVID-19 Homeless Prevention and Rapid Re-Housing Program	ESG-CV	\$0	Two households were assisted during FY 2019-20.
ESG COVID-19 Motel Voucher Program	ESG-CV	\$0	While there were no expenditures for this program during FY 2019-20, a total of 57 unsheltered households were provided with motel rooms to meet California shelter-at-home orders in response to COVID-19.

<b>Program/Agency</b>	<b>Funding Source</b>	<b>Expenses</b>	<b>Accomplishments</b>
LMIHAF Street Outreach	LMIHAF	<b>\$23,054</b>	This program allowed street outreach hours to be increased from 10 hours per month to 40 hours per month.
LMIHAF Motel Voucher	LMIHAF	<b>\$2,555</b>	Fourteen (14) household were provided with motel vouchers to shelter from rainy, cold, or hot weather. This program was adapted to begin the COVID-19 motel voucher program in March 2020.
LMIHAF Utility Assistance	LMIHAF	<b>\$0</b>	No households were assisted through this program. Funds for this program were reallocated to support the COVID-19 motel voucher program.
General Fund Access Center Expanded Hours	LMIHAF	<b>\$0</b>	This program allowed hours at the Ontario Access Center to be expanded from 16 hours a week to over 40 hours per week, including hours on Saturday.
<b>GRAND TOTAL – HOMELESS STRATEGY</b>		<b>\$294,406</b>	

**SPECIAL NEEDS STRATEGY**

<b>Program/Agency</b>	<b>Funding Source</b>	<b>Expenses</b>	<b>Accomplishments</b>
<i>Priority 1: Provide supportive services for special needs populations.</i>			
Inland Fair Housing and Mediation Board – Senior Services	CDBG	<b>\$9,455</b>	A total of 157 seniors were served.
<b>GRAND TOTAL – SPECIAL NEEDS STRATEGY</b>		<b>\$9,455</b>	

**FAIR HOUSING STRATEGY**

<b>Program/Agency</b>	<b>Funding Source</b>	<b>Expenses</b>	<b>Accomplishments</b>
<i>Priority 1: Continue to implement the Fair Housing Laws by providing funding to further fair housing.</i>			
Inland Fair Housing and Mediation Board – Fair Housing (AFFH) Program	CDBG	<b>\$22,000</b>	A total of 126 persons were provided with fair housing services.
Inland Fair Housing and Mediation Board – Landlord/Tenant Mediation Services	CDBG	<b>\$10,200</b>	A total of 892 persons were provided with landlord/tenant mediation services.
<b>GRAND TOTAL – FAIR HOUSING STRATEGY</b>		<b>\$32,200</b>	

**PUBLIC HOUSING STRATEGY**

<b>Program/Agency</b>	<b>Funding Source</b>	<b>Expenses</b>	<b>Accomplishments</b>
<i>Priority 1: Continue to support ongoing efforts of the Housing Authority of the County of San Bernardino to maximize the use of Section 8 subsidies and other resources in the City.</i>			
Housing Authority of the County of San Bernardino (Housing Choice Voucher Program)	HUD	<b>\$10,272,312</b>	747 households assisted in Ontario.
Housing Authority of the County of San Bernardino (Family Self-Sufficiency)	HUD	<b>N/A</b>	Ten (10) Ontario residents served.
<b>GRAND TOTAL – PUBLIC HOUSING STRATEGY</b>		<b>\$10,272,312</b>	

**COMMUNITY DEVELOPMENT STRATEGY**

<b>Program/Project</b>	<b>Funding Source</b>	<b>Expenses</b>	<b>Accomplishments</b>
<i>Priority 1: Provide for needed infrastructure improvements in lower and moderate-income neighborhoods.</i>			
Community Block Wall Along Mountain Ave	CDBG	\$0	During FY 2019-20 the City surveyed property owners who would be impacted by the construction of the Community Block Wall to determine universal participation. The project will require all affected property owners to sign an easement to allow for the required Planning and Building provisions for the wall and associated landscaping. This project will reduce blight on a main thoroughfare in a target neighborhood.
FY 2019-20 Pavement Management Rehabilitation Program	CDBG	\$298,915	During FY 2019-20, the project was bid and a contract was awarded to Onyx Paving Company, Inc. in July 2019. Construction began on August 12, 2019 and was completed in January 2020.
	Gas Tax Measure I	\$395,499	
		\$295,787	
	<b>Subtotal</b>	<b>\$990,201</b>	
FY 2019-20 Alley Pavement Management Program	CDBG	\$204,348	During FY 2019-20, the project was bid and awarded to All American Asphalt in April 2020. The project was completed in July 2020.
	Gas Tax	\$1,218,984	
	Administration	\$762,540	
	<b>Subtotal</b>	<b>\$2,185,872</b>	
FY 2018-19 and FY 2019-20 LED Light Conversion Project	CDBG	<b>\$85,310</b>	For the FY 2018-19 Street Light Conversion project, Engineering awarded an initial construction contract of \$85,310 on April 20, 2019 to Sierra Pacific Electrical Contracting to convert 179 conventional cobra head and 32 decorative post top streetlight fixtures to LED. In total, 211 streetlight fixtures were retrofitted as part of this contract. The project was completed in November 2019.  For the FY 2019-2020, Engineering is completing the construction bid package and it will be awarded before the end of the calendar year with construction completion anticipated in early 2021.

<b>Program/Project</b>	<b>Funding Source</b>	<b>Expenses</b>	<b>Accomplishments</b>
Wheelchair Ramp Installation	CDBG	<b>\$158,558</b>	The Parks and Maintenance Department installed a total of 57 wheelchair ramps and adjoining sidewalks.
<b>TOTAL COMMUNITY DEVELOPMENT PRIORITY #1</b>		<b>\$3,419,941</b>	
<i>Priority 2: Provide for new community facilities, neighborhood enhancement activities, and improve the quality of existing community facilities to serve lower- and moderate-income neighborhoods.</i>			
Bon View Park Community Garden Parking Lot	CDBG	<b>\$0</b>	This project was re-evaluated and a new design was proposed. The project is expected to be complete in FY 2020-21.
Dorothy Quesada Front Counter Renovation	CDBG	<b>\$13,300</b>	During FY 2019-20, Parks and Maintenance awarded the project to Corner Keystone Construction Corp. The project includes the design and construction of the front lobby area at the Dorothy A. Quesada Community Center. The project is estimated to be completed in October 2020.
Veterans Shade Structure and Fitness Rig	CDBG	<b>\$50,476</b>	In FY 2019-20 plans were submitted and approved by the City's Building Department, and the metal structure is under fabrication. The metal structure will be ready for installation in September 2020.
Nugent Park Shelter Renovation	CDBG	<b>\$147,427</b>	During FY 2018-19, designs were completed for the shelter renovation. The project was completed during FY 2019-20.
Anthony Munoz Community Garden Fence	CDBG	<b>\$0</b>	During FY 2019-20, a design was created for the project and the project was put out to bid. The project is expected to be completed during FY 2020-21.
<b>TOTAL COMMUNITY DEVELOPMENT PRIORITY #2</b>		<b>\$211,203</b>	

<b>Program/Project</b>	<b>Funding Source</b>	<b>Expenses</b>	<b>Accomplishments</b>
<b><i>Priority 3: Provide needed community services to serve lower- and moderate-income residents.</i></b>			
Neighborhood Preservation Program	CDBG	<b>\$0</b>	This program will source a mobile recreation vehicle in order to bring City programming to low-income and underserved areas. In FY 2019-20, staff worked with the City's fleet department to develop a plan to acquire and repurpose a vehicle to suit the program's needs.
Ontario-Montclair YMCA - Child Care Subsidies Program	CDBG	<b>\$22,000</b>	Fifty-six (56) unduplicated youths were served.
<b>TOTAL COMMUNITY DEVELOPMENT PRIORITY #3</b>		<b>\$22,000</b>	
<b><i>Priority 4: Expand the City's economic base and promote greater employment opportunities.</i></b>			
Downtown Storefront Revitalization Project	CDBG	<b>\$48,650</b>	During FY 2019-20 three qualified applicants participated in the program: Vida Drug Store and Pharmacy, Inc., Unicare Community Health Center, Inc., and Harvey Yamamoto Optometry, LLC. Vida Drug Store and Pharmacy, Inc. completed the installation of a new lighted sign, new exterior painting, and aluminum doors. Unicare Community Health Center, Inc. a new lighted sign, new exterior painting, and aluminum doors. Harvey Yamamoto Optometry, LLC completed new signage and lights.
CDBG COVID-19 Response Small Business Support and Workforce Development Loans	CDBG	<b>\$0</b>	During FY 2019-20, Economic Development and Housing staff developed program guidelines.
<b>TOTAL COMMUNITY DEVELOPMENT PRIORITY #4</b>		<b>\$48,650</b>	
<b>GRAND TOTAL – COMMUNITY DEVELOPMENT STRATEGY</b>		<b>\$3,701,795</b>	


**ADMINISTRATIVE COSTS**

<b>Program/Project</b>	<b>Funding Source</b>	<b>Expenses</b>	<b>Accomplishments</b>
CDBG Administration	CDBG	<b>\$322,962</b>	Administration of the CDBG Program.
HOME Administration	HOME	<b>\$66,329</b>	Administration of HOME Program.
ESG Administration	ESG	<b>\$5,859</b>	Administration of ESG Program.
<b>GRAND TOTAL – Administrative Costs</b>		<b>\$395,150</b>	
<b>GRAND TOTAL – All Projects &amp; Administration</b>		<b>\$44,791,572</b>	

# CITY OF ONTARIO

Agenda Report  
November 17, 2020

## SECTION: PUBLIC HEARINGS

Department: Economic Development  
Prepared By: Karla Tavera  
Staff Member Presenting:  
John P. Andrews, Executive Director Economic  
Development  
Approved By: 

Submitted To: Council/OHA  
Approved: \_\_\_\_\_  
Continued To: \_\_\_\_\_  
Denied: \_\_\_\_\_  
Item No: 18

**SUBJECT: PUBLIC HEARING REGARDING ECONOMIC DEVELOPMENT SUBSIDY REPORT AND RETENTION AGREEMENT BETWEEN THE CITY OF ONTARIO AND KIENLE MOTOR SPORTS, LLC, PURSUANT TO GOVERNMENT CODE SECTION 53083; AND CONSIDERATION OF A RESOLUTION ACCEPTING THE ECONOMIC DEVELOPMENT SUBSIDY REPORT, APPROVING THE OPERATING COVENANT AGREEMENT AND MAKING RELATED FINDINGS.**

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

- A. Hold the public hearing;
- B. Adopt a resolution accepting the Economic Development Subsidy Report prepared pursuant to Government Code Section 53083 regarding an Retention Agreement (on file with the Records Management Department) by and between the City of Ontario and Kienle Motorsports, LLC. hereinafter referred to as "Porsche";
- C. Adopt a resolution approving the Retention Agreement for eight years, authorizing the City Manager to execute the Retention Agreement, and making related findings; and
- D. Direct City staff to file a Notice of Exemption based upon the City Council's finding that the impacts for this existing facility is not a project and subject to environmental review and that there is no possibility that the activity in question may have a significant effect on the environment

**THE FOLLOWING COUNCIL GOALS ARE BEING ACHIEVED:**

**Invest in the Growth and Evolution of the City's Economy**

**Operate in a Businesslike Manner**

**FISCAL IMPACT:** Pursuant to the terms of the proposed Operating Covenant Agreement, the operating covenant payment between the City and Porsche is calculated based on Porsche's sales tax revenue during a computation quarter in an amount equal to the sum of fifty percent (50%) of the local sales tax revenue received above one hundred thousand dollars (\$100,000) annually for years 1-4 and \$125,000 annually for years 5-8 that is generated by the Dealership for a period of up to eight (8) years or a maximum amount of eight hundred thousand dollars (\$800,000), subject to the limitations set forth in this Agreement. The revenue adjustment will be included in mid-year budget adjustment.

Entering into the Operating Covenant Agreement ensures that local sales tax revenue generated by Porsche will remain in the city for the eight (8) year contract term.



**BACKGROUND & ANALYSIS:** The Bradley-Burns Uniform Local Sales and Use Tax Law authorizes counties and cities to impose local sales and use taxes in conformity with the Sales and Use Tax Law. The City of Ontario receives one percent (1%) of all taxable sales generated within the city under this law. Sales and Use Tax revenues are an important source of revenue for the city, which are used to provide essential city services, such as police, fire, and infrastructure maintenance and community facilities.

Porsche is an automotive retailer who recently relocated to the City of Ontario. Porsche established a new state-of-the-art, 72,433-square foot automobile sales and service center in the City, located at 2262 East Inland Empire Blvd. The company desired to construct its Dealership in the City of Ontario because they were able to obtain a site that was adequate in size for its operations. The City has further determined that the covenanted operation of the Dealership serves the additional public purpose of fostering a business and civic environment that may attract additional businesses and investment in the community due to the availability of the increased public and private services and economic activity resulting therefrom. Accordingly, the City has also determined that its entry into this Agreement serves a significant public purpose, while providing only incidental benefits to a private party.

Senate Bill 533 went into effect on January 1, 2016. This bill prohibits a local agency from entering into an agreement that would result in the payment of local tax revenues to an entity if the agreement will result in a reduction of Bradley-Burns local tax revenues to another local agency and the entity is maintaining a presence in the other local jurisdiction. This automobile dealership does not currently have a business location outside of the City of Ontario, therefore, the prohibitions in SB533 are not applicable to this proposed Operating Covenant Agreement.

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

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF ONTARIO, CALIFORNIA, ACCEPTING THE ECONOMIC DEVELOPMENT SUBSIDY REPORT PREPARED PURSUANT TO GOVERNMENT CODE SECTION 53083 REGARDING THE DEVELOPMENT AND RETENTION OF A PORSCHE DEALERSHIP FACILITY BY KIENLE MOTOR SPORTS, LLC, IN THE CITY OF ONTARIO AND APPROVING AN OPERATING COVENANT AGREEMENT.

WHEREAS, the City of Ontario (“City”) and Kienle Motor Sports, LLC (“Owner”) have negotiated an Operating Covenant Agreement (“Agreement”) with respect to the establishment and retention of a Porsche Dealership Facility (“Facility”) within the City; and

WHEREAS, pursuant to that Agreement, Owner is committed to operating the Facility in the City for at least 8 years following the Agreement’s effective date; and

WHEREAS, Owner is also covenanted to, among other things, designate the City as the point of sale for Porsche sales transactions out of that Facility; and

WHEREAS, the City has agreed to purchase those covenants through quarterly payments equal to:

- Fifty percent (50%) of the all sales tax revenue above \$100,000 annually for years 1-4 and \$125,000 annually for years 5-8; and

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

- Generating substantial revenue for the City through additional Local Sales Tax Revenue which may be used by the City for the funding of necessary public services and facilities, including but not limited to, public safety services and facilities, public improvements and recreational opportunities that otherwise may not be available to the community for many years; and
- The creation of high paying/management jobs and provide the opportunity for additional job growth throughout the term of this Agreement.
- Helping the City achieve the building blocks set forth in the Ontario Plan (adopted by the City Council in 2010) including taking actions that help to achieve a “Dynamic Balance” that enables the community to confront the continued dynamic growth of the region and technological change with confidence and a sense of opportunity and a “Prosperous Economy” that sustains prosperity across our entire community; and

- Entering into this Agreement and ensuring the retention of the Facility may attract additional businesses and investment in the community due to increased services and economic activity in the area.

WHEREAS, in accordance with Government Code Section 53083, the City provided certain information in written form to the public and on its website, a copy of which is attached hereto as Exhibit A and incorporated herein by this reference, and held a continued public hearing on November 17, 2020 to consider all written and oral comments on the Economic Development Subsidy Report; and

WHEREAS, Owner is a duly formed limited liability company and the establishment and retention of the Facility serves Owner's business purposes in that the advantageous location of the City and its business conducive environment will permit Owner to operate more efficiently and effectively, will better serve its customers, and may provide an avenue for business expansion in the future; and

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

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF ONTARIO, CALIFORNIA, AS FOLLOWS:

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

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

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

(1) Through this Agreement, Owner, will be committed to operating a Porsche Dealership Facility in the City for transacting automobile sales and services.

(2) The establishment and retention of the Facility within the City will generate substantial revenue for the City, create new jobs, revitalize an area of the City which has suffered a loss of jobs and businesses during the economic downturn of the mid-2000's, and result in community and public improvements that might not otherwise be available to the community for many years.

(3) By having a company like Porsche establish and retain a physical presence in the City, the City will be adding diversity to and generating new opportunities for economic growth.

(4) Further, the establishment of the new Facility serves the public purpose of fostering a business and civic environment that may attract additional businesses and investment in the community due to the availability of the increased public and private services and economic activity resulting therefrom, thereby assisting the City in its goal of furthering the development of the community. The increased economic activity resulting from the Facility and Owner's presence in the City will improve the economic and social viability and vitality of the local community.

(5) Entering into this Covenant Agreement will also further the City's efforts to achieve certain goals set forth in the 2010 Ontario Plan. The Ontario Plan included certain building blocks for the economic growth and improvement of the community. The Plan called upon the City to take actions that help to achieve a "Dynamic Balance" that enables the community to confront the continued dynamic growth of the region and technological change with confidence and a sense of opportunity and a "Prosperous Economy" that sustains prosperity across our entire community. The establishment of the Facility is another step in achieving those goals.

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

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

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

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

SECTION 5. Approve Agreement. The City Council hereby approves the Operating Covenant Agreement in substantially final form as attached to this Resolution as Exhibit B. The City Council hereby authorizes the City Manager, with the concurrence of the City Attorney, to make any non-financially substantive changes determined to be appropriate and in the City's interest and execute said Agreement. City Manager is hereby authorized to take any additional steps necessary to facilitate the intent of this action.

SECTION 6. Severability. If any provision of this Resolution is held invalid, the remainder of this Resolution shall not be affected by such invalidity, and the provisions of this Resolution are severable.

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

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

PASSED, APPROVED, AND ADOPTED this 17<sup>th</sup> day of November 2020.

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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 AND KRIEGER LLP  
CITY ATTORNEY

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

I, SHEILA MAUTZ, City Clerk of the City of Ontario, DO HEREBY CERTIFY that foregoing Resolution No. 2020- was duly passed and adopted by the City Council of the City of Ontario at their regular meeting held November 17, 2020 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. 2020- duly passed and adopted by the Ontario City Council at their regular meeting held November 17, 2020.

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

(SEAL)

**ECONOMIC DEVELOPMENT SUBSIDY REPORT  
PURSUANT TO GOVERNMENT CODE SECTION 53083  
FOR OPERATING COVENANT AGREEMENT  
BY AND BETWEEN  
CITY OF ONTARIO  
AND KIENLE MOTOR SPORTS LLC**

Pursuant to Government Code Section 53083, the City Council of the City of Ontario must hold a noticed public hearing and, prior to the public hearing, provide all of the following information in written form and available to the public and through the City’s website, regarding a proposed economic development subsidy to be provided by the City pursuant to an Operating Covenant Agreement (“Agreement”) by and between the City of Ontario (“City”) and Kienle Motor Sports LLC (“Company”). Notice was published in the local newspaper for a public hearing originally to be held on November 3, 2020, to be continued to November 17, 2020 .

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

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

The Agreement is with Kienle Motor Sports LLC(“Company”).

Kienle Motor Sports, LLC  
3213 Adams St  
Riverside, CA 92504

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

The start date of this subsidy will occur only if the Operating Covenant Agreement is approved by the Ontario City Council, and will remain active for no more than 8 years after the effective date of the Operating Covenant Agreement.

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

Company has requested from the City assistance for development and operation costs associated with the a permanent full-service new Porsche automobile sales dealership and service center and parking in Ontario (“Dealership”) in an amount equal to fifty percent (50%) of all sales tax revenue above \$100,000 annually for years 1-4 and \$125,000 annually for years 5-8 that is generated by the Dealership for a period of up to eight (8) years, or a maximum amount of eight hundred thousand dollars (\$800,000), subject to the limitations set forth in the Operating Covenant Agreement.

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

The City has determined that the economic development subsidy serves the public purpose of fostering a business and civic environment that may attract additional businesses and investment in the community due to the availability of the increased public and private services and economic activity resulting from operation of the Dealership in the City. Additionally, the economic development subsidy will assist in new and additional local sales tax revenues, property taxes and employment benefits resulting from the Dealership.

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

The projected tax revenue to the City as a result of the economic subsidy totals approximately \$1,620,000 million dollars over the 8-year term.

The Dealership is also estimated to generate \$185,000 each year of the 8-year term in property taxes, and between \$12,000 and \$17,000 each year of the 8-year term in business license taxes.

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

**28** full-time employees; and


**14** part-time employees.



**CITY OF ONTARIO**

*Agenda Report*  
November 17, 2020

**SECTION:  
ADMINISTRATIVE  
REPORTS/DISCUSSION/ACTION**

Department: Police Department  
Prepared By: Nicole Alvarez  
Staff Member Presenting:  
Mike Lorenz, Chief of Police  
Approved By: 

Submitted To: Council/OHA  
Approved: \_\_\_\_\_  
Continued To: \_\_\_\_\_  
Denied: \_\_\_\_\_  
Item No: 19

**SUBJECT: GRANT OF TOWING CARRIER PERMITS AND AUTHORIZATION FOR CITY CONTRACT TOWING SERVICES AGREEMENTS**

**RECOMMENDATION:** That the City Council grant towing carrier permits and authorize the City Manager to execute City Contract Towing Services Agreements, for a period of five years, with any combination of the following companies: Certified Towing, Inc.; Dietz Towing, Inc.; Fleet Sales & Consulting, Inc. (DBA Bill & Wag’s Towing); James Foglesong Towing & Storage, Inc.; and Pepe’s Towing Service.

**THE FOLLOWING COUNCIL GOALS ARE BEING ACHIEVED:**

**Maintain the Current High Level of Public Safety**

**Operate in a Businesslike Manner**

**FISCAL IMPACT:** Staff does not anticipate that the results of this Request for Proposals (RFP) process will have a significant financial impact to the City. While Ontario Police Department (OPD) expends a substantial amount of time facilitating and regulating tow services in the City (including time at the scene of the incident, report writing and processing, release process time, complaint mitigations, tow hearings and appeals), this commitment of resources does not vary a great deal based on the number of tow carriers operating within the City.

The City’s cost for administering the towing program is recovered through the administrative fees collected for nonconsensual vehicle tows as allowed under Ontario Municipal Code (OMC) Section 4-19.14. These fees, may be adjusted annually by a fee resolution approved by the City Council to reflect the City and OPD's costs for operating the towing program. The budget is included as part of the annual budget process.

**BACKGROUND & ANALYSIS:** The regulation of towing services ensures that tow carriers are selected fairly and objectively from among qualified firms through a public procurement process, and that the delivery of services is provided to the City, and the public, in a prompt and safe manner. OMC Title 4, Chapter 19 establishes the towing regulations and selection criteria for nonconsensual towing services provided to the City and includes objective requirements for tow company facilities, equipment, and personnel. The terms of the current agreements also require the towing companies to comply with all applicable provisions of local, state and federal law.

The term of the current, five-year City Contract Towing Services Agreements, initially expired on June 30, 2020. On July 21, 2020, the City Council approved an extension of the agreements until December

31, 2020, or until new towing services agreements were awarded whichever came first. In August 2020, six towing carriers responded to the City's Request for Proposals (RFP No. 1360) for City Initiated Contract Towing Services. The RFP reflected the objective requirements of the Municipal Code for rotational towing services.

### Evaluation Committee and Chief of Police Recommendation

As provided for in the RFP document, a Proposal Evaluation Committee comprised of personnel from Ontario Police Department, Community Improvement Department, and Purchasing Department conducted site inspections of each towing carrier that submitted a proposal. Additionally, the Proposal Evaluation Committee evaluated each towing carrier's capacity to meet the needs of OPD by examining the criteria listed in the Ontario Municipal Code and the requirements presented in the RFP Document (EXHIBIT A). It was a thorough review that, included:

- An initial review of the proposal to determine if minimum qualifications have been met.
- A background investigation that included a criminal background check (including review of suspensions or debarments), review of driving records, reference checks, review of financial stability, and a verification of information contained in the proposal.
- An onsite review of the facility, as well as inspection of vehicles and equipment.

Based on the review, five of the six respondents were determined to have met the minimum bid qualifications as required by OMC Title 4, Section 19 and the specifications of the RFP (RFP and scoring sheets are on file in the Records Management Department). Such qualifications included, but not limited to: the requirement that all qualified companies have tow yard facilities within the City; have storage yards with paved or gravel surfaces that can hold 150 vehicles; possess and meet the requirements of their current City issued conditional use permits (CUP); and can provide adequate parking for customers, including van-accessible handicapped spaces. The five respondents with current City Contract Towing Services Agreements were found to be in compliance with the terms and conditions set out in their current towing services agreements.

Each company was assigned a point value based upon the 100-point scale featured in the RFP, with the possibility of 12 bonus points to eligible tow carriers (also set forth in the RFP document). The respondents were then placed into tiers reflecting the overall quality of their proposals. The Evaluation Committee has determined the following five respondents met the minimum bid qualifications and met or exceed the criteria set forth in the RFP:

#### **Tier 1**

Certified Towing, Inc.

With a score of 109 points, Certified Towing offered the most complete proposal. No clarifications were required. The tow yard facility and equipment were clean and in very good condition, and the tow storage yard is fully paved. Certified towing owns all the required equipment classes.

#### **Tier 2**

James Fogelsong Towing & Storage, Inc.

With a score of 105 points, Fogelsong's proposal was well put together, but clarifications were required. The tow yard facility was clean and possessed enough paved surface to store the required 150 vehicles. They did not receive any complaints during the past five-year contract term.

#### **Tier 3**

Fleet Sales & Consulting, Inc. (dba Bill & Wags' Towing)

Scoring 104 points, Bill & Wags' proposal was well written and followed the format, but clarification was required regarding a complaint and the background check revealed several instances of suspensions and reprimands. The tow yard facility is an existing non-conforming use, but was clean, and the yard was mostly paved.

### **Tier 3**

#### Pepe's Towing Service

With 103 points, Pepe's Towing's proposal was not well-ordered, and clarifications were required. Pepe's has considerable experience with law enforcement agencies and features all the required equipment. Though cluttered, their yard is all paved. The facility is deemed an existing non-conforming land use and operates under a three-year lease, although the property is in escrow and likely to be redeveloped. The background check process yielded instances of problem employees with warrants.

### **Tier 3**

#### Dietz Towing , Inc.

At 101 points, Dietz's proposal mostly followed the RFP format, but clarifications were required. They are currently leasing the property, but are in the process of purchasing the location. The tow yard facility is not particularly well laid out and is all gravel. Though Dietz has considerable experience with OPD, they are under new management.

As described above, the Proposal Evaluation Committee determined that there was a clear differentiation in the quality, completeness and qualifications of the RFPs received. The Tier 1 and Tier 2 carriers stand out most notably. The Tier 3 tow carriers, though qualified to operate, were more equal in their respective qualifications, experiences and limitations. This RFP process was designed to evaluate and qualify tow carriers so that – once assessed by staff – the City Council would be free to select or pass over any of the proponents, considering that the ideal number of tow carriers operating with OPD would be no more than four (4) carriers.

It should be noted that a sixth proposer, Airport Mobil, was disqualified because they failed to meet the requirements of OMC Title 4, Section 19. They failed to sign the Non-Collusion Declaration, and do not have the required handicap parking at their office. Their proposal was not put together correctly, and they had to submit several clarifications regarding their proposal. They also missed their scheduled appointment times for Livescan of employees, and they had to be called to be rescheduled.

Based on the results of the objective evaluation process outlined herein, staff is comfortable in certifying for the Council any or all of the five respondents listed above. The towing carrier permits may be awarded to any of the five qualified respondents, contingent upon the respondents' execution of the City's form of agreement for rotational towing services, a copy of which is on file with the City Clerk.

The Proposal Evaluation Committee briefed The Chief of Police on its recommendations; and after a review of the assessment, he concurs with the Proposal Evaluation Committee's recommendations. Given that the tow service providers' operations are a matter of public safety, the thorough review, based on the RFP criteria provided assurance to the Proposal Evaluation Committee that the five qualified proposers can operate their business in a manner that could provide tow services to the public and the City.

The Chief's recommendation recognizes the fairness, objectivity, and integrity of the RFP selection process and criteria and upholds the Evaluation Committee's assessment.