

**CITY OF ONTARIO**  
**CITY COUNCIL/HOUSING AUTHORITY/SUCCESSOR**  
**AGENCY TO THE ONTARIO REDEVELOPMENT AGENCY**  
**AGENDA**  
**OCTOBER 3, 2017**

**Paul S. Leon**  
Mayor

**Alan D. Wapner**  
Mayor pro Tem

**Jim W. Bowman**  
Council Member

**Debra Dorst-Porada**  
Council Member

**Ruben Valencia**  
Council Member



**Al C. Boling**  
City Manager

**John E. Brown**  
City Attorney

**Sheila Mautz**  
City Clerk

**James R. Milhiser**  
Treasurer

**WELCOME to a meeting of the Ontario City Council.**

- All documents for public review are on file with the Records Management/City Clerk's Department located at 303 East B Street, Ontario, CA 91764.
- Anyone wishing to speak during public comment or on a particular item will be required to fill out a blue slip. Blue slips must be turned in prior to public comment beginning or before an agenda item is taken up. The Clerk will not accept blue slips after that time.
- Comments will be limited to 3 minutes. Speakers will be alerted when they have 1 minute remaining and when their time is up. Speakers are then to return to their seats and no further comments will be permitted.
- In accordance with State Law, remarks during public comment are to be limited to subjects within Council's jurisdiction. Remarks on other agenda items will be limited to those items.
- Remarks from those seated or standing in the back of chambers will not be permitted. All those wishing to speak including Council and Staff need to be recognized by the Chair before speaking.

**ORDER OF BUSINESS** The regular City Council 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.

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

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

**6:00 p.m.**

***ROLL CALL***

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

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

***CLOSED SESSION***

- GC 54957, PUBLIC EMPLOYEE APPOINTMENT: *City Manager*

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

***PLEDGE OF ALLEGIANCE***

Council Member Valencia

***INVOCATION***

Imam Said Seddouk, Al-Nur Islamic Center of Ontario

***REPORT ON CLOSED SESSION***

City Attorney

## PUBLIC COMMENTS

6:30 p.m.

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

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

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

## CONSENT CALENDAR

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

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

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

Minutes for the regular meeting of the City Council and Housing Authority of September 5, 2017, approving same as on file in the Records Management Department.

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

**Bills** August 13, 2017 through August 26, 2017 and **Payroll** August 13, 2017 through August 26, 2017, when audited by the Finance Committee.

### **3. A RESOLUTION APPROVING A RESTATED FIRST AMENDMENT TO THE 2007 OWNER PARTICIPATION AGREEMENT BETWEEN THE SUCCESSOR AGENCY TO THE ONTARIO REDEVELOPMENT AGENCY AND TNHYIF REIV INDIA, LLC (ONTARIO AIRPORT TOWERS - 2007 OWNER PARTICIPATION AGREEMENT)**

That the Successor Agency to the Ontario Redevelopment Agency adopt a resolution approving a Restated First Amendment to the 2007 Owner Participation Agreement by and between the Successor Agency to the Ontario Redevelopment Agency and TNH YIF REIV India, LLC (Ontario Airport Towers - 2007 Owner Participation Agreement)

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

A RESOLUTION OF THE SUCCESSOR AGENCY TO THE ONTARIO REDEVELOPMENT AGENCY OF THE CITY OF ONTARIO, CALIFORNIA, APPROVING A RESTATED FIRST AMENDMENT TO 2007 OWNER PARTICIPATION AGREEMENT (ONTARIO AIRPORT TOWERS).

**4. A RESOLUTION APPROVING THE 2017-2018 LIST OF PROJECTS FUNDED BY THE ROAD REPAIR AND ACCOUNTABILITY ACT**

That the City Council adopt a resolution approving the 2017-2018 Project List for The Road Repair and Accountability Act – Senate Bill SB1.

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

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF ONTARIO, CALIFORNIA, TO APPROVE THE LIST OF PROJECTS TO BE FUNDED BY SB 1 THE ROAD REPAIR AND ACCOUNTABILITY ACT.

**5. AN ORDINANCE LEVYING SPECIAL TAXES WITHIN CITY OF ONTARIO COMMUNITY FACILITIES DISTRICT NO. 39 (NEW HAVEN FACILITIES - AREA C)**

That the City Council adopt an ordinance levying special taxes within City of Ontario Community Facilities District No. 39 (New Haven Facilities - Area C).

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. 39 (NEW HAVEN FACILITIES - AREA C).

**6. THE PURCHASE OF FLEET VEHICLES**

That the City Council take the following actions:

- (A) Authorize the cooperative purchase and delivery of six Chevrolet Tahoes in the amount of \$239,904 for the Police Department, from National Auto Fleet Group of Watsonville, California, consistent with the terms and conditions of the National Joint Powers Alliance (NJPA) Cooperative Contract 120716-NAF;



- (B) Authorize the cooperative purchase and delivery of one Ford Escape in the amount of \$25,108 for the Fire Department, from National Auto Fleet Group of Watsonville, California, consistent with the terms and conditions of the National Joint Powers Alliance (NJPA) Cooperative Contract 120716-NAF;
- (C) Authorize the cooperative purchase and delivery of one Freightliner M2 CNG Patch Truck in the amount of \$262,712 for the Parks and Maintenance Department, from Nixon-Egli Equipment Company located in Ontario, California, consistent with the terms and conditions of the National Joint Powers Alliance (NJPA) Cooperative Contract 113012-PBL; and
- (D) Authorize the cooperative purchase and delivery of one John Deere TS Tractor in the amount of \$7,555 and one John Deere 4044M Tractor with a 485A back hoe attachment in the amount of \$40,909 for the Parks and Maintenance Department, from Deere & Company located in Cary, North Carolina, consistent with the terms and conditions of the National Joint Powers Alliance (NJPA) Cooperative Contract 062117-DAC.

**7. PURCHASE OF AUDIO VISUAL EQUIPMENT FOR THE POLICE HEADQUARTERS RENOVATION PROJECT/GOLDEN STAR TECHNOLOGY**

That the City Council authorize the purchase of audio visual equipment from Golden Star Technology, Inc. of Cerritos, California, for the Police Headquarters Renovation Project in the amount of \$226,961.

**8. RECOGNITION OF "NATIONAL WALK AND BIKE TO SCHOOL DAY" IN THE CITY OF ONTARIO**

That the City Council recognize October 4, 2017 as "National Walk and Bike to School Day" in the City of Ontario.

**9. AN ORDINANCE APPROVING A DEVELOPMENT AGREEMENT (FILE NO. PDA16-001) BETWEEN THE CITY OF ONTARIO AND CLDFI REMINGTON, LLC, TO ESTABLISH THE TERMS AND CONDITIONS FOR THE DEVELOPMENT OF TENTATIVE PARCEL MAP 19643 (FILE NO. PMTT16-001), LOCATED APPROXIMATELY 1,160 FEET SOUTH OF MERRILL AVENUE, NORTH OF REMINGTON AVENUE, EAST OF THE CUCAMONGA CREEK FLOOD CONTROL CHANNEL AND WEST OF CARPENTER AVENUE, WITHIN PLANNING AREA 2 OF THE COLONY COMMERCE CENTER WEST SPECIFIC PLAN (APNS: 0218-292-09, 0218-292-10, 0218-292-12, 0218-292-13, AND 0218-292-14)**

That the City Council consider and adopt an ordinance approving a Development Agreement (File No. PDA16-001, on file with the Records Management Department) between the City of Ontario and CLDFI Remington, LLC, to establish the terms and conditions for the development of Tentative Parcel Map 19643 (File No. PMTT16-001).

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

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF ONTARIO, CALIFORNIA, APPROVING A DEVELOPMENT AGREEMENT (FILE NO. PDA16-001) BETWEEN THE CITY OF ONTARIO AND CLDFI REMINGTON, LLC TO ESTABLISH THE TERMS AND CONDITIONS FOR THE DEVELOPMENT OF TENTATIVE PARCEL MAP 19643 (FILE NO. PMTT16-001) WITHIN PLANNING AREA 2 OF THE COLONY COMMERCE CENTER WEST SPECIFIC PLAN, LOCATED APPROXIMATELY 1,160 FEET SOUTH OF MERRILL AVENUE, NORTH OF REMINGTON AVENUE, EAST OF THE CUCAMONGA CREEK FLOOD CONTROL CHANNEL AND WEST OF CARPENTER AVENUE, AND MAKING FINDINGS IN SUPPORT THEREOF (APNS: 0218-292-09, 0218-292-10, 0218-292-12, 0218-292-13, AND 0218-292-14).

**10. AN ORDINANCE APPROVING A SPECIFIC PLAN (COLONY COMMERCE CENTER WEST) REQUEST (FILE NO. PSP15-001) TO ESTABLISH LAND USE DESIGNATIONS, DEVELOPMENT STANDARDS, DESIGN GUIDELINES AND INFRASTRUCTURE IMPROVEMENTS FOR APPROXIMATELY 123.17 ACRES OF LAND, WHICH INCLUDES THE POTENTIAL DEVELOPMENT OF 2,951,146 SQUARE FEET OF INDUSTRIAL DEVELOPMENT. THE PROJECT SITE IS BOUNDED BY MERRILL AVENUE TO THE NORTH, REMINGTON AVENUE TO THE SOUTH, CARPENTER AVENUE TO THE WEST AND THE CUCAMONGA CREEK FLOOD CONTROL CHANNEL TO THE EAST (APNS: 0218-261-24, 0218-292-05, 0218-292-09, 0218-292-10, 0218-292-12, 0218-292-13, 0218-292-14, and 0218-311-11)**

That the City Council consider and adopt an ordinance approving the Colony Commerce Center West Specific Plan (File No. PSP15-001).

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

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF ONTARIO, CALIFORNIA, APPROVING THE COLONY COMMERCE CENTER WEST SPECIFIC PLAN (FILE NO. PSP15-001), TO ESTABLISH LAND USE DESIGNATIONS, DEVELOPMENT STANDARDS, DESIGN GUIDELINES AND INFRASTRUCTURE IMPROVEMENTS FOR 123.17 ACRES OF LAND, WHICH INCLUDES THE POTENTIAL DEVELOPMENT OF 2,951,146 SQUARE FEET OF INDUSTRIAL DEVELOPMENT. THE PROJECT SITE IS BOUNDED BY MERRILL AVENUE TO THE NORTH, REMINGTON AVENUE TO THE SOUTH, CARPENTER AVENUE TO THE WEST AND THE CUCAMONGA CREEK FLOOD CONTROL CHANNEL TO THE EAST, AND MAKING FINDINGS IN SUPPORT THEREOF - APNS: 0218-292-05, 0218-292-09, 0218-292-10, 0218-311-11, 0218-292-12, 0218-292-13, 0218-292-14, 0218-261-24.

## 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.

### **II. A PUBLIC HEARING TO CONSIDER THE ISSUANCE OF QUALIFIED RESIDENTIAL RENTAL PROJECT BONDS FOR SEASONS AT ONTARIO SENIOR APARTMENTS, LOCATED AT 955 NORTH PALMETTO AVENUE**

That the following actions be taken by the respective bodies:

- (A) That the City Council hold a public hearing to consider approval of a resolution authorizing the issuance of qualified residential rental project bonds in one or more series (the "Bonds") in a principal amount not to exceed \$8,000,000 for the purpose of financing the acquisition and rehabilitation of Seasons at Ontario Senior Apartments (the "Project"), approving and authorizing the execution and delivery of any and all documents necessary to issue the bonds and implement the resolution, and ratifying and approving any action taken in connection with the bonds; and
- (B) That the Ontario Housing Authority Board ("Authority") approve the term sheet as shown in Exhibit A.

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

Written communication.  
Oral presentation.  
Public hearing closed.

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

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF ONTARIO, CALIFORNIA, APPROVING THE ISSUANCE OF REVENUE BONDS IN AN AGGREGATE PRINCIPAL AMOUNT NOT TO EXCEED \$8,000,000 TO FINANCE THE ACQUISITION, REHABILITATION, IMPROVEMENT AND EQUIPPING OF AN 80-UNIT MULTIFAMILY RENTAL HOUSING FACILITY FOR THE BENEFIT OF LINC HOUSING CORPORATION OR A LIMITED PARTNERSHIP TO BE ESTABLISHED BY LINC HOUSING OR AN AFFILIATE THEREOF, AND CERTAIN OTHER MATTERS RELATING THERETO.

**ADMINISTRATIVE REPORTS/DISCUSSION/ACTION**

**12. CITY MANAGER EMPLOYMENT AGREEMENT**

That the City Council and Housing Authority Board approve an employment agreement (on file in the Records Management Department) with Scott Ochoa to serve as City Manager and Executive Director of the Housing Authority, respectively; and adopt a resolution in accordance with California Government Code section 36506 setting the salary for the City Manager.

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

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF  
ONTARIO, CALIFORNIA, APPROVING A CITY MANAGER  
EMPLOYMENT AGREEMENT.

**STAFF MATTERS**

City Manager Boling

**COUNCIL MATTERS**

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

**ADJOURNMENT**

**CITY OF ONTARIO**  
**CLOSED SESSION REPORT**  
City Council // Housing Authority // Other // (GC 54957.1)  
**October 3, 2017**

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

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

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

- GC 54957, PUBLIC EMPLOYEE APPOINTMENT: City Manager

<b>No Reportable Action</b>	<b>Continue</b>	<b>Approved</b>
//	//	//

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

Reported by:

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

# CITY OF ONTARIO

Agenda Report  
October 3, 2017

SECTION:  
CONSENT CALENDAR

**SUBJECT: A RESOLUTION APPROVING A RESTATED FIRST AMENDMENT TO THE 2007 OWNER PARTICIPATION AGREEMENT BETWEEN THE SUCCESSOR AGENCY TO THE ONTARIO REDEVELOPMENT AGENCY AND TNHYIF REIV INDIA, LLC (ONTARIO AIRPORT TOWERS - 2007 OWNER PARTICIPATION AGREEMENT)**

**RECOMMENDATION:** That the Successor Agency to the Ontario Redevelopment Agency adopt a resolution approving a Restated First Amendment to the 2007 Owner Participation Agreement by and between the Successor Agency to the Ontario Redevelopment Agency and TNHYIF REIV India, LLC (Ontario Airport Towers - 2007 Owner Participation Agreement)

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

**FISCAL IMPACT:** None.

**BACKGROUND:** Pursuant to Health and Safety Code Section 34172, the Ontario Redevelopment Agency ("Redevelopment Agency") was dissolved as of February 1, 2012. The City of Ontario ("City") elected to serve as the Successor Agency to the Ontario Redevelopment Agency ("Successor Agency").

Prior to its dissolution, the Redevelopment Agency and Ontario Airport Center, LLC ("Prior Owner") entered into a 2007 Owner Participation Agreement (Ontario Airport Towers), dated September 4, 2007 (the "OPA") in which the Prior Owner agreed to develop and operate Private Works of Improvement ("PWI") in three (3) different phases of development on that certain real property located along the south side of Interstate-10 Freeway between Archibald and Turner Avenues, consisting of approximately 21.46 acres ("Property"), for the completion of public improvements necessary for the development of the PWI, and to provide for the then Redevelopment Agency to pay to Prior Owner an amount as further specified and defined in the OPA as the "Agency's Yearly Tax Increment Payment" ("TIF") as reimbursement for certain related costs.

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

Prepared by: Charity Hernandez  
Department: Economic Development

City Manager  
Approval: 

Submitted to Council/O.H.A. 10/03/2017

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

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

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

3

In 2012, TNHYIF REIV India, LLC (“Owner”) acquired the Property from the Prior Owner pursuant to a Deed in Lieu of Foreclosure and became the successor-in-interest under the OPA. Pursuant to Section 1.16(xx)(4) of the OPA, a transfer pursuant to a Deed in Lieu of Foreclosure is a permitted transfer and does not require approval by the Redevelopment Agency and/or Successor Agency.

Phase 1 development under the OPA was completed prior to the Redevelopment Agency’s dissolution. Construction on Phases 2 and 3 has not started and were delayed due to factors associated with the economic downturn. Upon completion of Phase 1, the owner is entitled to certain tax increment payments under the OPA. Contained in a letter dated December 17, 2014, the California Department of Finance (“DOF”) recognized Owner as the successor-in-interest to the OPA and approved tax increment payments under the OPA to owner as listed on Successor Agency’s Recognized Obligation Payment Schedule 2014-2015B.

Owner and Successor Agency previously negotiated a First Amendment to the OPA to amend the following provisions: (1) formally document Owner as the party to the OPA; (2) remove any requirements under the OPA for Owner to form a community facilities district (“CFD”); and (3) extend the schedule of performance for Phases 2 and 3 under the OPA. In a letter dated January 14, 2015, DOF rejected the First Amendment.

In June 2017, Owner requested the Successor Agency’s approval of assignment agreements to the OPA approving Owner’s transfer of the Property and assignment of the OPA to a prospective buyer. DOF rejected the Successor Agency’s approval of the assignment agreements on the basis that Owner is not a named party to the OPA. Staff asked DOF to reconsider its rejection. After meeting with DOF, DOF and Successor Agency staff agreed that the best option for resolving this issue is to adopt a Restated First Amendment formally documenting Owner as a party to the OPA. Owner has additionally requested that the Restated First Amendment to the OPA remove the CFD requirement and remove Phases 2 and 3. Both actions will facilitate the winding down of the former Redevelopment Agency.

Pursuant to Health and Safety Code Section 34179, the Oversight Board is responsible for approving the actions of the Successor Agency. If the Restated First Amendment to the OPA is approved by the Successor Agency, it will require approval by the Oversight Board and will then be submitted to the DOF for review and approval. DOF has conveyed to Agency staff that it will expedite its review of the Restated First Amendment to the OPA.

To facilitate the winding down of the former Redevelopment Agency, staff recommends that the Successor Agency approve the Restated First Amendment to the OPA.



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

A RESOLUTION OF THE SUCCESSOR AGENCY TO THE ONTARIO REDEVELOPMENT AGENCY OF THE CITY OF ONTARIO, CALIFORNIA, APPROVING A RESTATED FIRST AMENDMENT TO 2007 OWNER PARTICIPATION AGREEMENT (ONTARIO AIRPORT TOWERS).

WHEREAS, pursuant to Health and Safety Code Section 34173(d), the City of Ontario ("City") elected to serve as the successor agency ("Successor Agency") to the former Ontario Redevelopment Agency ("Redevelopment Agency"), following dissolution of the Redevelopment Agency; and

WHEREAS, prior to its dissolution, the Redevelopment Agency and Ontario Airport Center, LLC ("Prior Owner") entered into a 2007 Owner Participation Agreement (Ontario Airport Towers), dated September 4, 2007 ("OPA"), in which the Prior Owner agreed to develop and operate Private Works of Improvement, as further defined in the OPA ("PWI"), in three (3) different phases of development on that certain real property located in the City of Ontario, California and consisting of approximately 21.462 acres, as further described in the OPA ("Property"), for the completion of public improvements necessary for the development of the PWI, and to provide for the Redevelopment Agency to pay to Prior Owner an amount as further specified and defined in the OPA as the "Agency's Yearly Tax Increment Payment" as reimbursement for certain related costs; and

WHEREAS, in 2012, TNHYIF REIV India, LLC ("Owner") acquired the Property from the Prior Owner by Deed in Lieu of Foreclosure and, in accordance with Section 1.16(xx)(4) of the OPA, automatically became the successor-in interest to the OPA; and

WHEREAS, the Phase 1 development under the OPA was completed and a Certificate of Completion was recorded in the Official Records of the County of San Bernardino on April 17, 2009, as Document No. 2009-0163048, but Owner has not yet completed Phases 2 and 3; and

WHEREAS, Owner and Successor Agency have never formally documented the transfer and assignment of the OPA to Owner and, as such, Owner and Successor Agency have negotiated a Restated First Amendment to the OPA ("Restated First Amendment") to: (1) formally document Owner as the Owner under the OPA; (2) remove all requirements for the creation of a Community Facilities District; and (3) remove Phases 2 and 3; and

WHEREAS, the Successor Agency has determined that the Restated First Amendment is in the best interests of the Successor Agency, the community and the winding down of the Redevelopment Agency's businesses and desires to approve the Restated First Amendment.

NOW, THEREFORE, THE GOVERNING BOARD OF THE SUCCESSOR AGENCY TO THE ONTARIO REDEVELOPMENT AGENCY DOES HEREBY RESOLVE AS FOLLOWS:

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

SECTION 2. CEQA Compliance. Successor Agency staff has determined that the Successor Agency's approval of the Restated First Amendment is exempt from the California Environmental Quality Act ("CEQA"), pursuant to CEQA Guidelines Sections 15061(b)(3), because it can be seen with certainty that there is no possibility that the Restated First Amendment may have a significant effect on the environment. As a result, such action does not constitute a project subject to the requirements of CEQA. The City Clerk of the City of Ontario, acting on behalf of the Successor Agency Secretary, is authorized and directed to file a Notice of Exemption with the appropriate official of the County of San Bernardino, California, within five (5) days following the date of adoption of this Resolution.

SECTION 3. Approval of First Amendment. The Successor Agency hereby approves the Restated First Amendment.

SECTION 4. Implementation. The Executive Director or his or her designee is hereby authorized and directed to, on behalf of the Successor Agency, execute any and all documents, and take any and all action necessary to carry out the purposes of this Resolution in compliance with applicable law, including, authorizing non-substantive changes to the Restated First Amendment, executing the Restated First Amendment, and taking any actions necessary and in furtherance of this Resolution.

SECTION 5. Severability. If any provision of this Resolution or the application of any such provision to any person or circumstance is held invalid, such invalidity shall not affect other provisions or applications of this Resolution that can be given effect without the invalid provision or application, and to this end the provisions of this Resolution are severable. The Successor Agency declares that it would have adopted this Resolution irrespective of the invalidity of any particular portion of this Resolution.

SECTION 6. Certification. The City Clerk of the City of Ontario, acting on behalf of the Successor Agency as its Secretary, shall certify to the adoption of this Resolution.

SECTION 7. Effective Date. This Resolution shall become effective immediately upon its adoption.

PASSED, APPROVED, AND ADOPTED this 3<sup>rd</sup> day of October 2017.

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PAUL S. LEON, CHAIRMAN

ATTEST:

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SHEILA MAUTZ, AGENCY SECRETARY

APPROVED AS TO FORM:

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AGENCY COUNSEL

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

I, SHEILA MAUTZ, City Clerk of the City of Ontario, in my official capacity as assistant secretary to the Successor Agency to the Ontario Redevelopment Agency, DO HEREBY CERTIFY that Resolution No. SA-        was duly adopted by the Successor Agency to the Ontario Redevelopment Agency at a regular meeting held on October 3, 2017 by the following vote:

AYES:            AGENCY MEMBERS:

NOES:           AGENCY MEMBERS:

ABSENT:         AGENCY MEMBERS:

\_\_\_\_\_  
SHEILA MAUTZ, AGENCY SECRETARY

(SEAL)

The foregoing is the original of Resolution No. SA-        duly passed and adopted by the Successor Agency to the Ontario Redevelopment Agency at their regular meeting held October 3, 2017.

\_\_\_\_\_  
SHEILA MAUTZ, AGENCY SECRETARY

(SEAL)

# CITY OF ONTARIO

Agenda Report  
October 3, 2017

SECTION:  
CONSENT CALENDAR

**SUBJECT: A RESOLUTION APPROVING THE 2017-2018 LIST OF PROJECTS FUNDED BY THE ROAD REPAIR AND ACCOUNTABILITY ACT**

**RECOMMENDATION:** That the City Council adopt a resolution approving the 2017-2018 Project List for The Road Repair and Accountability Act – Senate Bill SB1.

**COUNCIL GOALS:** Focus Resources in Ontario's Commercial and Residential Neighborhoods Pursue City's Goals and Objectives by Working with Other Governmental Agencies Invest in the City's Infrastructure (Water, Streets, Sewer, Parks, Storm Drains and Public Facilities)

**FISCAL IMPACT:** This is an expenditure plan to spend the City's SB 1 Fiscal Year (FY) 2017-2018. The City's SB 1 fund projected revenue balance as of September 14, 2017 is \$959,776 and revenue of \$2,879,159 is anticipated for the FY 2018-2019.

**BACKGROUND:** On April 28, 2017, the Governor signed Senate Bill (SB) 1 (Beall, Chapter 5, Statutes of 2017), which is known as the Road Repair and Accountability Act of 2017. To address basic road maintenance, rehabilitation and critical safety needs on both the state highway and local streets and road system, SB 1: increases per gallon fuel excise taxes; increases diesel fuel sales taxes and vehicle registration fees; and provides for inflationary adjustments to tax rates in future years.

Beginning November 1, 2017, the State Controller will deposit various portions of this new funding into the newly created Road Maintenance and Rehabilitation Account (RMRA). A percentage of this new RMRA funding will be apportioned by formula to eligible cities and counties pursuant to Streets and Highways Code (SHC) Section 2032(h) for basic road maintenance, rehabilitation, and critical safety projects on the local streets and roads system.

The projects for FY 2017-2018 (Exhibit A of the resolution) are consistent with the City's Five Year Capital Improvement Program as adopted by the City Council.

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

Prepared by: Nabil Kassih, PE  
Department: Engineering

City Manager  
Approval: 

Submitted to Council/O.H.A. 10/03/2017

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

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

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

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

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF ONTARIO, CALIFORNIA, TO APPROVE THE LIST OF PROJECTS TO BE FUNDED BY SB 1 THE ROAD REPAIR AND ACCOUNTABILITY ACT.

WHEREAS, Senate Bill 1 (SB 1), the Road Repair and Accountability Act of 2017 (Chapter 5, Statutes of 2017) was passed by the Legislature and Signed into law by the Governor in April 2017 in order to address the significant multi-modal transportation funding shortfalls statewide; and

WHEREAS, SB 1 includes accountability and transparency provisions that will ensure the residents of our City are aware of the projects proposed for funding in our community and which projects have been completed each fiscal year; and

WHEREAS, the City must include a list of all projects proposed to receive funding from the Road Maintenance and Rehabilitation Account (RMRA), created by SB 1, in the City budget, which must include a description and the location of each proposed project, a proposed schedule for the project's completion, and the estimated useful life of the improvement; and

WHEREAS, the City, will receive and estimated \$959,779 in RMRA funding in Fiscal Year 2017-18 from SB 1; and

WHEREAS, the City has undergone a robust public process to ensure public input into our community's transportation priorities/the project list; and

WHEREAS, the City used a Pavement Management System to develop the SB 1 project list to ensure revenues are being used on the most high-priority and cost-effective projects that also meet the communities priorities for transportation investment; and

WHEREAS, the funding from SB 1 will help the City maintain and rehabilitate streets/roads, bridges, and add active transportation infrastructure throughout the City this year and many similar projects into the future; and

WHEREAS, the 2016 California Statewide Local Streets and Roads Needs Assessment found that the City's streets and roads are in a "good" condition and this revenue will help us increase the overall quality of our road system and over the next decade will bring our streets and roads into a "excellent" condition; and

WHEREAS, without revenue from SB 1, the City, would have otherwise been delaying projects throughout the community; and

WHEREAS, if the Legislature and Governor failed to act, city streets and county roads would have continued to deteriorate, having many and varied negative impacts on our community; and

WHEREAS, cities and counties own and operate more than 81 percent of streets and roads in California, and from the moment we open our front door to drive to work, bike to school, or walk to the bus station, people are dependent upon a safe, reliable local transportation network; and

WHEREAS, modernizing the local street and road system provides well-paying construction jobs and boosts local economies; and

WHEREAS, the local street and road system is also critical for farm to market needs, interconnectivity, multimodal needs, and commerce; and

WHEREAS, police, fire, and emergency medical services all need safe reliable roads to react quickly to emergency calls and a few minutes of delay can be a matter of life and death; and

WHEREAS, maintaining and preserving the local street and road system in good condition will reduce drive times and traffic congestion, improve bicycle safety, and make the pedestrian experience safer and more appealing, which leads to reduce vehicle emissions helping the State achieve its air quality and greenhouse gas emissions reductions goals; and

WHEREAS, restoring roads before they fail also reduces construction time which results in less air pollution from heavy equipment and less water pollution from site run-off; and

WHEREAS, the SB 1 project list and overall investment in our local streets and roads infrastructure with a focus on basic maintenance and safety, investing in complete streets infrastructure, and using cutting-edge technology, materials and practices, will have significant positive co-benefits statewide.

NOW, THEREFORE, BE IT RESOLVED that the City Council of the City of Ontario, State of California, as follows

The foregoing recitals are true and correct.

The City approves the 2017-18 following list of projects planned to be funded with Road Maintenance and Rehabilitation Account revenues:

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

PASSED, APPROVED, AND ADOPTED this 3<sup>rd</sup> day of October 2017.

---

PAUL S. LEON, MAYOR



ATTEST:

---

SHEILA MAUTZ, CITY CLERK

APPROVED AS TO LEGAL FORM:

---

BEST BEST & KRIEGER LLP  
CITY ATTORNEY

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

I, SHEILA MAUTZ, City Clerk of the City of Ontario, DO HEREBY CERTIFY that foregoing Resolution No. 2017-        was duly passed and adopted by the City Council of the City of Ontario at their regular meeting held October 3, 2017 by the following roll call vote, to wit:

AYES:            COUNCIL MEMBERS:

NOES:            COUNCIL MEMBERS:

ABSENT:         COUNCIL MEMBERS:

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

(SEAL)

The foregoing is the original of Resolution No. 2017-        duly passed and adopted by the Ontario City Council at their regular meeting held October 3, 2017.

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

(SEAL)

Part 2: Project Information

Local Streets and Roads Program

\* Required

Proposed Project (PP#)	LoCode	* Project Title	Project ID (if any)	Project Type ?		* Project Description ?	* Project Location ?	* Estimated Completion Date		* Estimated Useful Life (# of Yr)		Legislative District(s)				Additional Project Elements (Does the project include element(s) as described in SHC 2030 (c)-(f)? (Select Y/N from dropdown list) ?				
				Type (Select from dropdown list)	Explanation (if "Other" is selected, please explain) ?			Pre-Construction (min/yyyy)	Construction (min/yyyy)	Min.	Max.	State Senate		State Assembly		Sustainability ?	Technologies ?	Climate Change ?	Complete Streets Elements ?	Description of Elements
PP01	5092	Milliken Avenue		Road Maintenance & Rehabilitation		Grind & Asphalt Overlay, Repair failing areas	Jurupa Street to Airport Drive	06/2018	07/2018	15	20	20			53	Yes	Yes	Yes	Yes	Asphaly mix utilizes recycled tires in the mix design
PP02	5092	Philadelphia Street		Road Maintenance & Rehabilitation		Grind & Asphalt Overlay, Repair failing areas	Archibald Avenue to Turner Avenue	06/2018	07/2018	15	20	20			53	Yes	Yes	Yes	Yes	Asphaly mix utilizes recycled tires in the mix design
PP03	5092	Archibald Avenue		Road Maintenance & Rehabilitation		Grind & Asphalt Overlay, Repair failing areas	SR 60 to Riverside Drive	06/2018	07/2018	15	20	20			53	Yes	Yes	Yes	Yes	Asphaly mix utilizes recycled tires in the mix design
PP04	5092																			
PP05	5092																			
PP06	5092																			
PP07	5092																			
PP08	5092																			
PP09	5092																			
PP10	5092																			
PP11	5092																			
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PP46	5092																			
PP47	5092																			
PP48	5092																			
PP49	5092																			
PP50	5092																			

Exhibit A

# CITY OF ONTARIO

Agenda Report  
October 3, 2017

SECTION:  
CONSENT CALENDAR

**SUBJECT: AN ORDINANCE LEVYING SPECIAL TAXES WITHIN CITY OF ONTARIO COMMUNITY FACILITIES DISTRICT NO. 39 (NEW HAVEN FACILITIES - AREA C)**

**RECOMMENDATION:** That the City Council adopt an ordinance levying special taxes within City of Ontario Community Facilities District No. 39 (New Haven Facilities - Area C).

**COUNCIL GOALS:** 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 the New Model Colony

**FISCAL IMPACT:** The use of Mello-Roos financing for facilities in the residential development of the New Haven Facilities - Area C project is estimated to generate approximately \$4.5 million which will be used to help fund a portion of the public infrastructure improvements that will serve the project. Since 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, there is no General Fund impact from the issuance of Mello-Roos bonds.

**BACKGROUND:** At the public hearing conducted by the City Council on September 19, 2017, the City Council adopted the resolutions of formation for Community Facilities District No. 39 (New Haven Facilities - Area C) and introduced and waived further reading of an ordinance levying special taxes within City of Ontario Community Facilities District No. 39 (New Haven Facilities - Area C). Adoption of the ordinance will conclude the formation process for City of Ontario Community Facilities District No. 39 (New Haven Facilities - Area C).

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 fund governmental services and to finance various kinds of public infrastructure facilities. Under the Mello-Roos Act, the initial steps in the formation of a community

**STAFF MEMBER PRESENTING:** Grant D. Yee, Administrative Services/Finance Director

Prepared by: Bob Chandler  
Department: Management Services

City Manager Approval: 

Submitted to Council/O.H.A. 10/03/2017

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

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

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

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facilities district to finance public improvements are adopting resolutions declaring the City's intention to establish a community facilities district and levy special taxes, and to issue bonds. On July 18, 2017, the City Council approved Resolution No. 2017-081, a Resolution of Intention to establish City of Ontario Community Facilities District No. 39 (New Haven Facilities - Area C) and authorize the levy of special taxes; and adopted Resolution No. 2017-082, declaring its intention to issue bonds for the district. The Resolution of Intention set a public hearing date for the regularly scheduled City Council meeting on September 5, 2017 to consider formation matters. On September 5, 2017, the public hearing was opened and continued to September 19, 2017. At the continued public hearing conducted on September 19, 2017, the City Council adopted the Resolution of Formation and associated resolutions, establishing Community Facilities District No. 39 (New Haven Facilities - Area C).

The New Haven Facilities - Area C project addresses the development of approximately 10.52 taxable acres located generally east of Archibald Avenue, west of Haven Avenue, south of Ontario Ranch Road and north of Old Edison Avenue. At build out, the development is projected to include 225 units – 62 detached units and 163 attached units. The Community Facilities District was formed pursuant to the provisions of the Brookcal Development Agreement, and the First Amended and Restated Construction Agreement between the City and NMC Builders LLC.

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. 39 (NEW HAVEN FACILITIES - AREA C).

WHEREAS, on July 18, 2017, 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. 39 (New Haven Facilities - Area C), and to Authorize the Levy of Special Taxes" stating its intention to establish City of Ontario Community Facilities District No. 39 (New Haven Facilities - Area C) (the "Community Facilities District") and to finance certain public facilities (the "Facilities") and services (the "Services"); and

WHEREAS, on September 19, 2017, 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. 39 (New Haven Facilities - Area C), 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. 39 (New Haven Facilities - Area C)" and "A Resolution of the City Council of the City of Ontario, California, Calling Special Election for City of Ontario Community Facilities District No. 39 (New Haven Facilities - Area C)", 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 September 19, 2017, 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 2017-18 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.

PASSED, APPROVED, AND ADOPTED this 3<sup>rd</sup> day of October 2017.

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PAUL S. LEON, MAYOR



ATTEST:

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SHEILA MAUTZ, CITY CLERK

APPROVED AS TO FORM:

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BEST BEST & KRIEGER LLP  
CITY ATTORNEY

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

I, SHEILA MAUTZ, City Clerk of the City of Ontario, DO HEREBY CERTIFY that foregoing Ordinance No. 3079 was duly introduced at a regular meeting of the City Council of the City of Ontario held September 19, 2017 and adopted at the regular meeting held October 3, 2017 by the following roll call vote, to wit:

AYES:            COUNCIL MEMBERS:

NOES:           COUNCIL MEMBERS:

ABSENT:        COUNCIL MEMBERS:

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

(SEAL)

I hereby certify that the foregoing is the original of Ordinance No. 3079 duly passed and adopted by the Ontario City Council at their regular meeting held October 3, 2017 and that Summaries of the Ordinance were published on September 26, 2017 and October 10, 2017, in the Inland Valley Daily Bulletin newspaper.

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

(SEAL)

# CITY OF ONTARIO

Agenda Report  
October 3, 2017

SECTION:  
CONSENT CALENDAR

**SUBJECT: THE PURCHASE OF FLEET VEHICLES**

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

- (A) Authorize the cooperative purchase and delivery of six Chevrolet Tahoes in the amount of \$239,904 for the Police Department, from National Auto Fleet Group of Watsonville, California, consistent with the terms and conditions of the National Joint Powers Alliance (NJPA) Cooperative Contract 120716-NAF;
- (B) Authorize the cooperative purchase and delivery of one Ford Escape in the amount of \$25,108 for the Fire Department, from National Auto Fleet Group of Watsonville, California, consistent with the terms and conditions of the National Joint Powers Alliance (NJPA) Cooperative Contract 120716-NAF;
- (C) Authorize the cooperative purchase and delivery of one Freightliner M2 CNG Patch Truck in the amount of \$262,712 for the Parks and Maintenance Department, from Nixon-Egli Equipment Company located in Ontario, California, consistent with the terms and conditions of the National Joint Powers Alliance (NJPA) Cooperative Contract 113012-PBL; and
- (D) Authorize the cooperative purchase and delivery of one John Deere TS Tractor in the amount of \$7,555 and one John Deere 4044M Tractor with a 485A back hoe attachment in the amount of \$40,909 for the Parks and Maintenance Department, from Deere & Company located in Cary, North Carolina, consistent with the terms and conditions of the National Joint Powers Alliance (NJPA) Cooperative Contract 062117-DAC.

**COUNCIL GOALS: Maintain the Current High Level of Public Safety  
Operate in a Businesslike Manner**

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

Prepared by: Manuel Rebolledo  
Department: Fleet Services

City Manager  
Approval: 

Submitted to Council/O.H.A. 10/03/2017

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

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

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

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**FISCAL IMPACT:** The Fiscal Year 2016-17 Adopted Budget includes appropriations in the amount of \$345,000 for the purchase of the replacement vehicles. These funds will be carried over to the current fiscal year in the First Quarter Budget Report to the City Council, if approved.

The Fiscal Year 2017-18 Adopted Budget includes appropriations in the amount of \$248,500 for the purchase and replacement of all other vehicles listed. The total cost of all other vehicles recommended for purchase is \$576,188.

**BACKGROUND:** The vehicles recommended for replacement in this action have outlived their useful life and it is no longer cost effective to maintain them. They are scheduled for replacement pursuant to ongoing efforts to reduce expenses, maximize useful life expectancy and extend replacement cycles of fleet equipment while ensuring safe and reliable operation. In general conformance with the provisions of Government Code Section 54201 through 54204 and the Ontario Municipal Code, Section 2-6.11(b)(3), allows for the purchase of supplies and equipment through cooperative purchasing with another governmental agency. Cooperative purchasing allows the City to pool its procurement power with other public agencies to obtain pricing lower than might otherwise be possible.

**(A) Six Chevrolet Tahoes for the Police Department**

Staff recommends the cooperative purchase and delivery of six Chevrolet Tahoes in the amount of \$239,904 for the Police Department, from National Auto Fleet Group of Watsonville, California, consistent with the terms and conditions of the National Joint Powers Alliance (NJPA) Cooperative Contract 120716-NAF.

**(B) One Ford Escape for the Fire Department**

Staff recommends the cooperative purchase and delivery of one Ford Escape in the amount of \$25,108 for the Fire Department, from National Auto Fleet Group of Watsonville, California, consistent with the terms and conditions of the National Joint Powers Alliance (NJPA) Cooperative Contract 120716-NAF.

**(C) One Freightliner M2 CNG Patch Truck for the Parks and Maintenance Department**

Staff recommends the cooperative purchase and delivery of one Freightliner M2 CNG Patch Truck in the amount of \$262,712 for the Parks & Maintenance Department from Nixon-Egli Equipment Company located in Ontario, California, consistent with the terms and conditions of the National Joint Powers Alliance (NJPA) Cooperative Contract 113012-PBL.

**(D) One John Deere TS Tractor and one John Deere 4044M Tractor with a 485A back hoe attachment for the Parks and Maintenance Department**

Staff recommends the cooperative purchase and delivery of one John Deere TS Tractor in the amount of \$7,555 and one John Deere 4044M Tractor with a 485A back hoe attachment in the amount of \$40,909 for the Parks and Maintenance Department from Deere & Company located in Cary, North Carolina, consistent with the terms and conditions of the National Joint Powers Alliance (NJPA) Cooperative Contract 062117-DAC.

# CITY OF ONTARIO

Agenda Report  
October 3, 2017

SECTION:  
CONSENT CALENDAR

**SUBJECT: PURCHASE OF AUDIO VISUAL EQUIPMENT FOR THE POLICE HEADQUARTERS RENOVATION PROJECT**

**RECOMMENDATION:** That the City Council authorize the purchase of audio visual equipment from Golden Star Technology, Inc. of Cerritos, California, for the Police Headquarters Renovation Project in the amount of \$226,961.

**COUNCIL GOALS:** Operate in a Businesslike Manner  
Maintain the Current High Level of Public Safety

**FISCAL IMPACT:** The Police Headquarters Renovation Project was approved as part of the Third Quarter Fiscal Year 2015-16 Budget Report and carryover appropriations are available to cover the contract value of \$226,961 for the purchase of new audio visual equipment for renovated areas of the building.

**BACKGROUND:** The Police Headquarters Renovation Project involves significant renovations to approximately 11,000 square feet of the interior of the existing Police Headquarters Facility. The Project objectives include, relocation of the current Dispatch Center from a second floor location, co-located with the Watch Commander's Office, remodeling of the Watch Commander and Patrol Briefing areas to accommodate the relocation of the Dispatch Center. Additionally, the Sergeant's Offices, IT server room, and ancillary staff spaces including, break areas, rest quarters, restrooms, ready-rooms, equipment storage space and general office or open-space operating areas will be relocated or remodeled. When complete, this renovation will provide a state-of-the-art communications center with the most advanced 911 technology available.

The purchase requisition from Golden Star Technologies, Inc. will provide all audio visual equipment, and city provided cabling for all remodeled areas. The order includes televisions, projector systems, lighting controls, cable management supplies, and cables. Golden Star Technologies was determined to be the low bidder in bid invitation number 824, which posted on August 21, 2017, and closed on September 8, 2017. The bid results are shown below:

**STAFF MEMBER PRESENTING:** Brad Kaylor, Chief of Police

Prepared by: Christine Booker  
Department: Police Department

City Manager  
Approval: 

Submitted to Council/O.H.A. 10/03/2017

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

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

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

7

Golden Star Technologies, Inc.	Cerritos, CA	\$226,961
Western A/V	Orange, CA	\$235,588
SybaTek	Irvine, CA	\$289,463

# CITY OF ONTARIO

Agenda Report  
October 3, 2017

SECTION:  
CONSENT CALENDAR

**SUBJECT: RECOGNITION OF “NATIONAL WALK AND BIKE TO SCHOOL DAY” IN THE CITY OF ONTARIO**

**RECOMMENDATION:** That the City Council recognize October 4, 2017 as “National Walk and Bike to School Day” in the City of Ontario.

**COUNCIL GOALS:** Focus Resources in Ontario's Commercial and Residential Neighborhoods Encourage, Provide or Support Enhanced Recreational, Educational, Cultural and Healthy City Programs, Policies and Activities

**FISCAL IMPACT:** None.

**BACKGROUND:** National Walk and Bike to School Day events are aimed at increasing awareness for the need for safe, walkable and bikeable communities. Walk and Bike to School Day is intended to promote safer streets, healthier habits and cleaner air.

The City of Ontario supports safe routes to school through programs and infrastructure improvements. To date we have received over \$2.8 million in Caltrans Active Transportation funding for safe routes to school infrastructure improvements and programming around seven schools including Bon View, Corona, Euclid, Vineyard, El Camino, Sultana and De Anza. This funding represents 5,337 lineal feet of sidewalk, 161 ADA accessibility improvements, 8 enhanced safety crossings and two pedestrian and bicycle safety education fairs.

This year the community is celebrating National Walk and Bike to School Day with a walk and bike-to-school event with parents and students from El Camino Elementary School. Parents and students will be meeting at Anthony Munoz Park on Fifth Street and walking with their children to El Camino Elementary on the morning of October 4, 2017. They will take this opportunity to discuss pedestrian safety with their children.

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

Prepared by: Karen Thompson  
Department: Planning

City Manager  
Approval: 

Submitted to Council/O.H.A. 10/03/2017

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

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

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



# CITY OF ONTARIO

Agenda Report  
October 3, 2017

SECTION:  
CONSENT CALENDAR

**SUBJECT:** AN ORDINANCE APPROVING A DEVELOPMENT AGREEMENT (FILE NO. PDA16-001) BETWEEN THE CITY OF ONTARIO AND CLDFI REMINGTON, LLC, TO ESTABLISH THE TERMS AND CONDITIONS FOR THE DEVELOPMENT OF TENTATIVE PARCEL MAP 19643 (FILE NO. PMTT16-001), LOCATED APPROXIMATELY 1,160 FEET SOUTH OF MERRILL AVENUE, NORTH OF REMINGTON AVENUE, EAST OF THE CUCAMONGA CREEK FLOOD CONTROL CHANNEL AND WEST OF CARPENTER AVENUE, WITHIN PLANNING AREA 2 OF THE COLONY COMMERCE CENTER WEST SPECIFIC PLAN (APNS: 0218-292-09, 0218-292-10, 0218-292-12, 0218-292-13, AND 0218-292-14)

**RECOMMENDATION:** That the City Council consider and adopt an ordinance approving a Development Agreement (File No. PDA16-001, on file with the Records Management Department) between the City of Ontario and CLDFI Remington, LLC, to establish the terms and conditions for the development of Tentative Parcel Map 19643 (File No. PMTT16-001).

**COUNCIL GOALS:** 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 the New Model Colony

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

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

Prepared by: Rudy Zeledon  
Department: Planning

City Manager Approval: 

Submitted to Council/O.H.A. 10/03/2017

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

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

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

9

**BACKGROUND:** On September 19, 2017, the City Council introduced and waived further reading of an ordinance approving the Development Agreement. CLDFI Remington, LLC, and the City recognized that the financial commitment required for construction in Ontario Ranch is substantial. To adequately forecast these costs and gain assurance that the project may proceed under the existing policies, rules and regulations, CLDFI Remington, LLC, is entering into a Development Agreement with the City providing for the development of up to 1,289,292 square feet of industrial development. The Development Agreement provides funding for new City expenses created by the project, including operational costs related to the review, approval and administration of the CLDFI Remington, LLC, project, additional project related services, and infrastructure requirements.

The Development Agreement proposes to include 65.60 acres of land within Planning Area 2 of the Colony Commerce Center West Specific Plan as shown in Exhibit A (Colony Commerce Center West Specific Plan Map). The Agreement grants CLDFI Remington, LLC, a vested right to develop Tentative Parcel Map 19643 as long as the CLDFI Remington, LLC, complies with the terms and conditions of the Colony Commerce Center West Specific Plan and Environmental Impact Report.

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

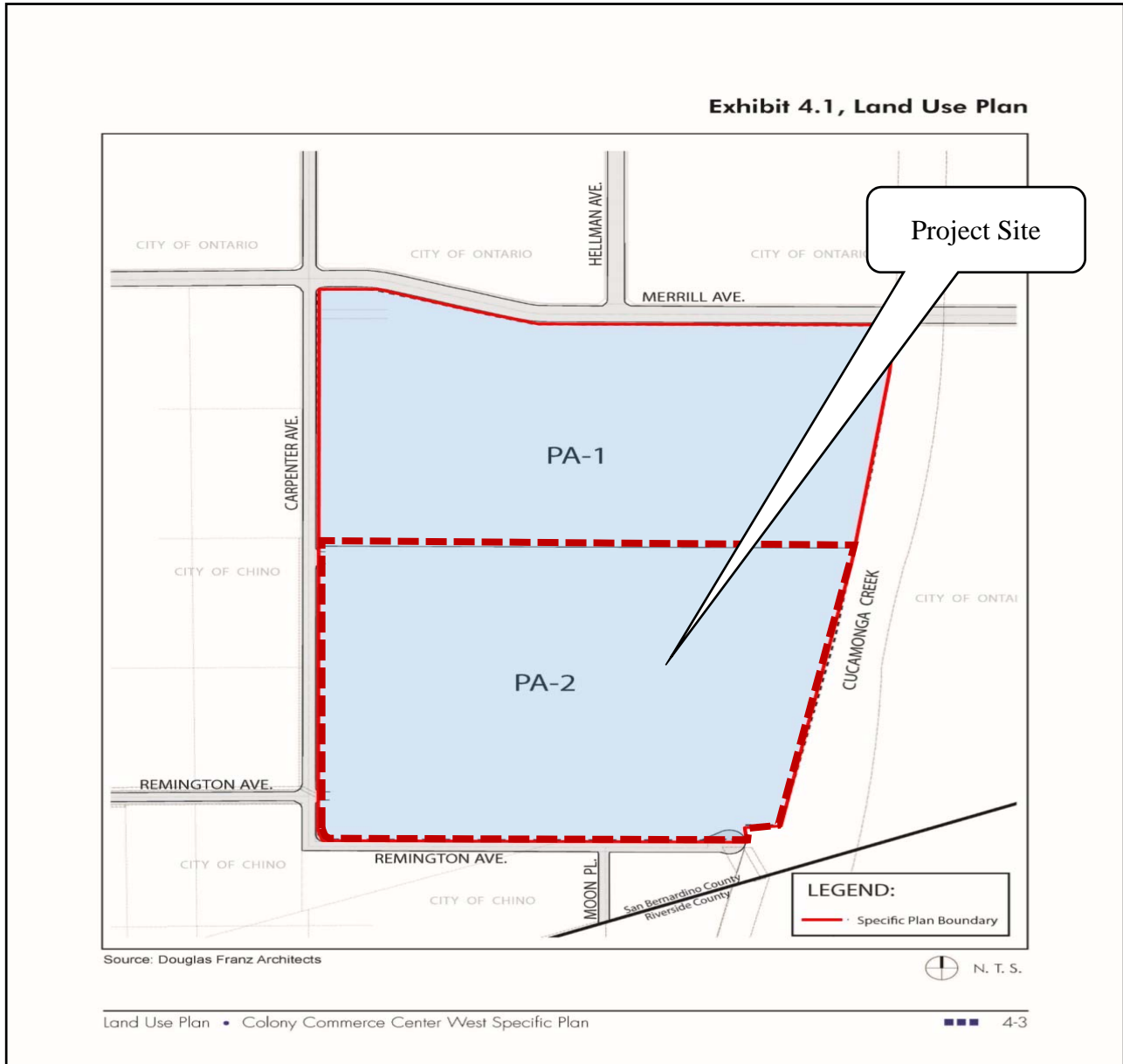
In considering the application at their meeting of August 22, 2017, the Planning Commission found that the Development Agreement was consistent with State law, The Ontario Plan, the City's Development Agreement policies, and other Development Agreements previously approved for Ontario Rancho developments and, with a 6 to 0 vote (Resolution No. PC17-058), recommended approval of the Development Agreement to the City Council.

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

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

**ENVIRONMENTAL REVIEW:** The environmental impacts of this project were analyzed in the Colony Commerce Center West Specific Plan EIR (SCH# 2015061023). This application is consistent with the EIR and introduces no new significant environmental impacts. All adopted mitigation measures shall be a condition of project approval and are incorporated herein by reference.

EXHIBIT "A"  
COLONY COMMERCE CENTER WEST SPECIFIC PLAN





# PLANNING COMMISSION STAFF REPORT

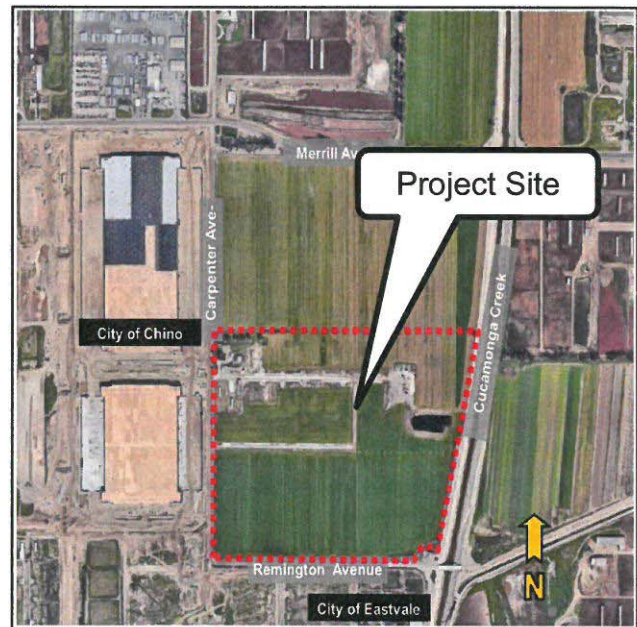
August 22, 2017

**SUBJECT:** A Development Agreement between the City of Ontario and CLDFI Remington, LLC., to establish the terms and conditions for the development of Tentative Parcel Map 19643 (File No. PMTT16-001), located approximately 1,160 feet south of Merrill Avenue, north of Remington Avenue, east of the Cucamonga Creek Flood Control Channel and west of Carpenter Avenue, within Planning Area 2 of the Colony Commerce Center West Specific Plan. (APNs: 0218-292-09, 0218-292-10, 0218-292-12, 0218-292-13, AND 0218-292-14); submitted by CLDFI Remington, LLC. City Council action is required.

**PROPERTY OWNER:** CLDFI Remington, LLC

**RECOMMENDED ACTION:** That the Planning Commission recommend to the City Council approval of File No. PDA16-001, a Development Agreement between CLDFI Remington, LLC, and the City of Ontario pursuant to the facts and reasons contained in the staff report and attached resolution.

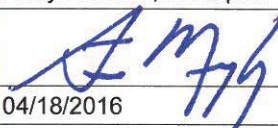
**PROJECT SETTING:** The project site is comprised of 65.60 acres of land located 1,160 feet south of Merrill Avenue, north of Remington Avenue, east of the Cucamonga Creek Flood Control Channel and west of Carpenter Avenue, within Planning Area 2 of the Colony Commerce Center West Specific Plan, and is depicted in **Figure 1: Project Location**, below. The project site gently slopes from north to south and is vacant and previously used for dairy/agriculture uses.



**Figure 1: Project Location**

## PROJECT ANALYSIS:

[1] Background — In conjunction with the Development Agreement application, the application has submitted a Specific Plan (Colony Commerce Center West) to facilitate the development of the property.

Case Planner:	Rudy Zeledon, Principal Planner	Hearing Body	Date	Decision	Action
Planning Director Approval:		DAB	N/A	N/A	
Submittal Date:	04/18/2016	ZA			
Hearing Deadline:	N/A	PC	08/22/2017	Approval	Recommend
		CC			Final



The Specific Plan (File No. PSP15-001) will establish the land use designations, development standards, design guidelines and infrastructure improvements for 123.17 acres of land, which includes the potential development of 2,951,146 square feet of industrial development.

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

In accordance with California Government Code Section 65865 that states, in part, that “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...” and California Government Code Section 65865.52 which states, in part, 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 that sets 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 creates 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 staff would recommend to the Planning Commission and City Council.

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

[2] Staff Analysis —The Development Agreement proposes to include 65.60 acres of land within Planning Area 2 of the Colony Commerce Center West Specific Plan as shown attached **Exhibit “A”**. The Agreement grants CLDFI Remington, LLC, a vested right to develop Tentative Parcel Map 19643 as long as CLDFI Remington, LLC, complies with the terms and conditions of the Colony Commerce Center West Specific Plan and Environmental Impact Report. Tentative Parcel Map 19643 (see **Exhibit “B”**) is located approximately 1,160 feet south of Merrill Avenue, north of Remington Avenue, east of the Cucamonga Creek Flood Control Channel and west of Carpenter Avenue and proposes to subdivide 65.60 acres of land into two parcels to facilitate a Development Plan (File No. PDEV16-002) to construct two industrial buildings totaling 1,289,292 square feet.

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

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

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

[1] City Council Goals.

- Invest in the Growth and Evolution of the City's Economy
- 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 the New Model Colony

[2] Vision.

**Distinctive Development:**

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

[3] Governance.

**Decision Making:**

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

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

[4] Policy Plan (General Plan)

**Land Use Element – Balance**

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

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

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

**Land Use Element — Phased Growth**

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

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

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

**Community Design Element — Protection of Investment**

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

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

**HOUSING ELEMENT COMPLIANCE:** The project is consistent with the Housing Element of the Policy Plan (General Plan) component of The Ontario Plan, as the project

site is not one of the properties in the Available Land Inventory contained in Table A-3 (Available Land by Planning Area) of the Housing Element Technical Report Appendix.

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

**ENVIRONMENTAL REVIEW:** The environmental impacts of this project were analyzed in the Colony Commerce Center West Specific Plan EIR (SCH# 2015061023). This application is consistent with the EIR and introduces no new significant environmental impacts. All adopted mitigation measures shall be a condition of project approval and are incorporated herein by reference.



### Exhibit "A" Colony Commerce Center West Specific Plan

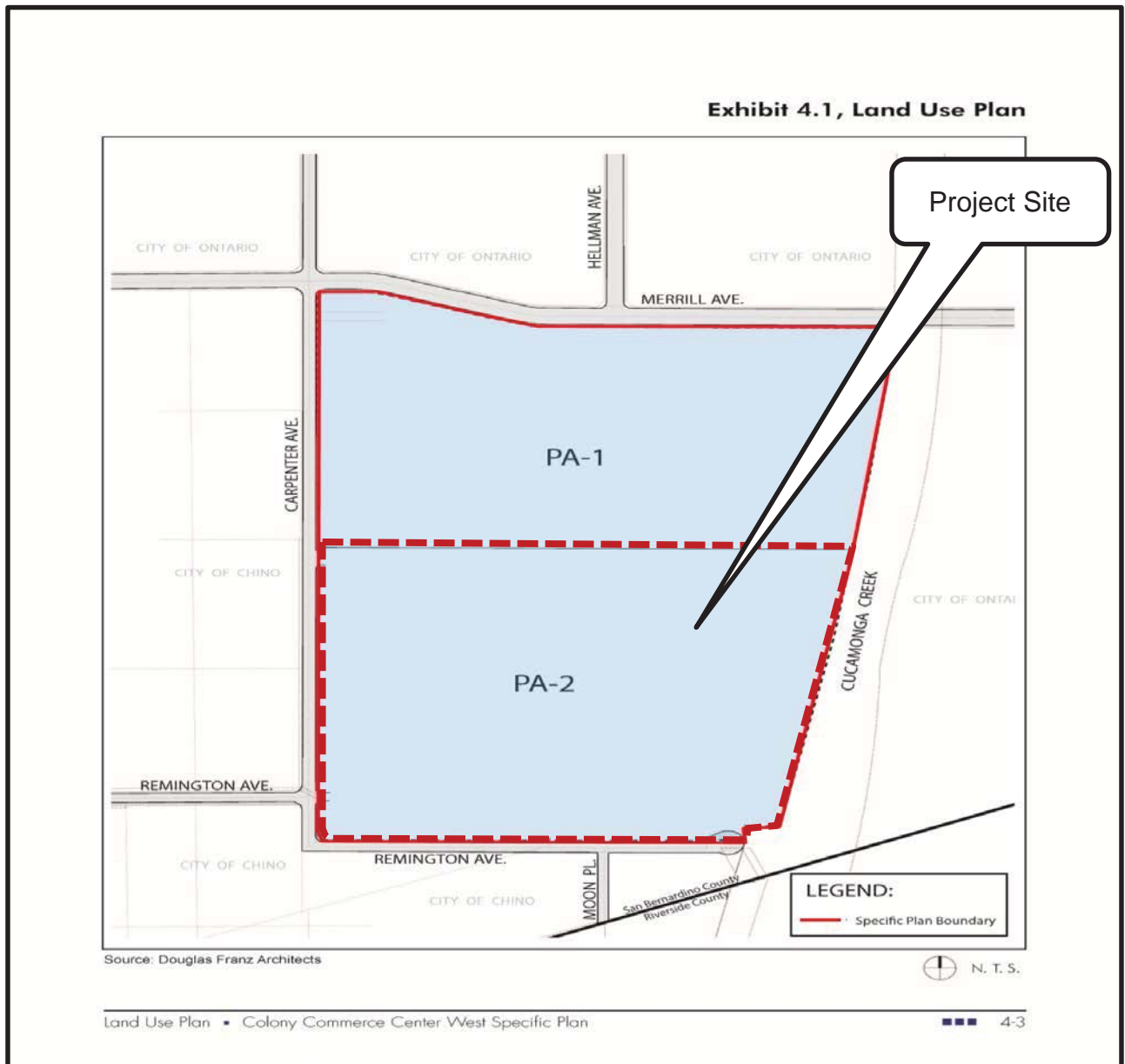


Exhibit "B"  
 Tentative Parcel Map 19643

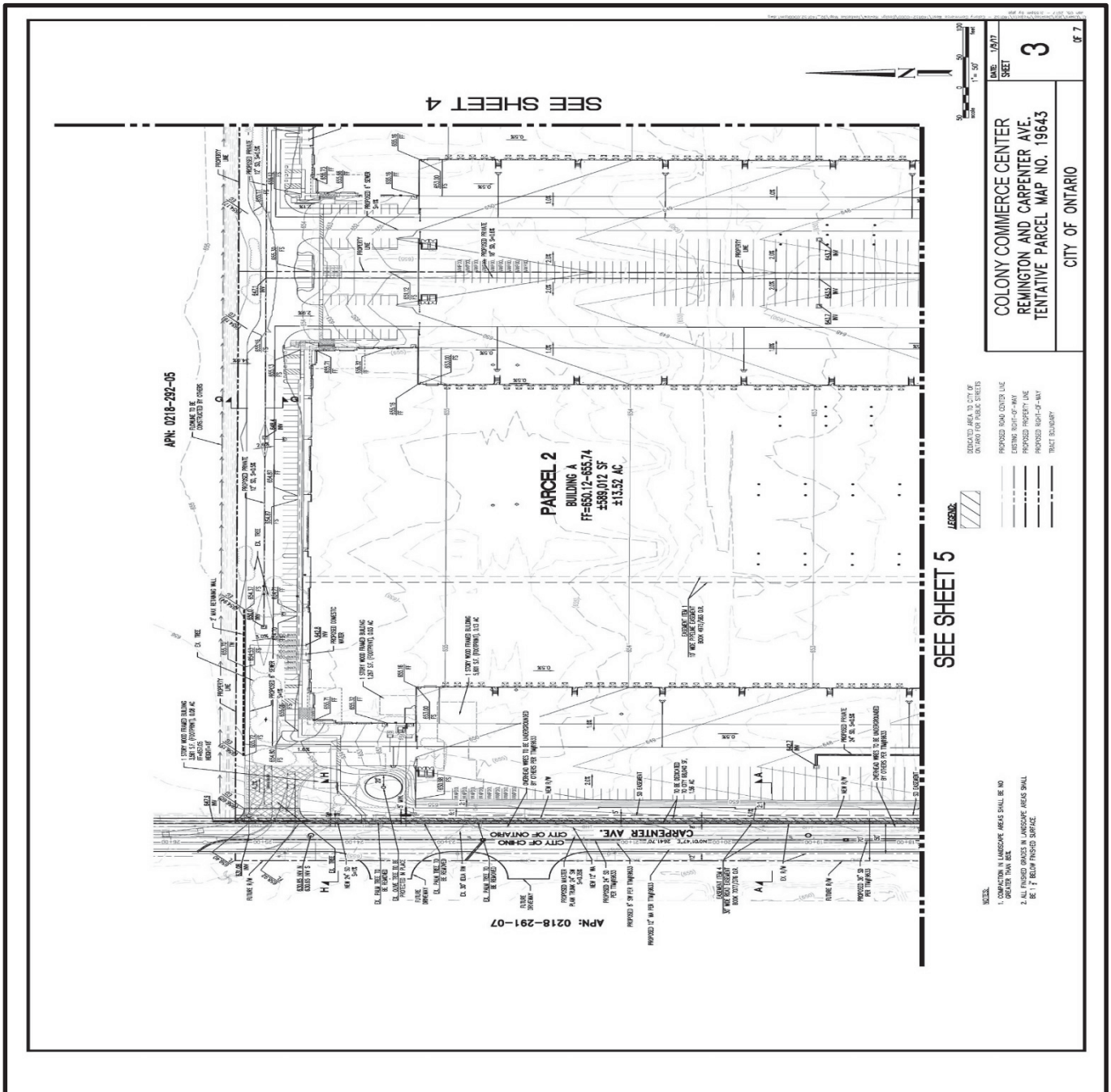


Exhibit "B"  
 Tentative Parcel Map 19643 (Continued)

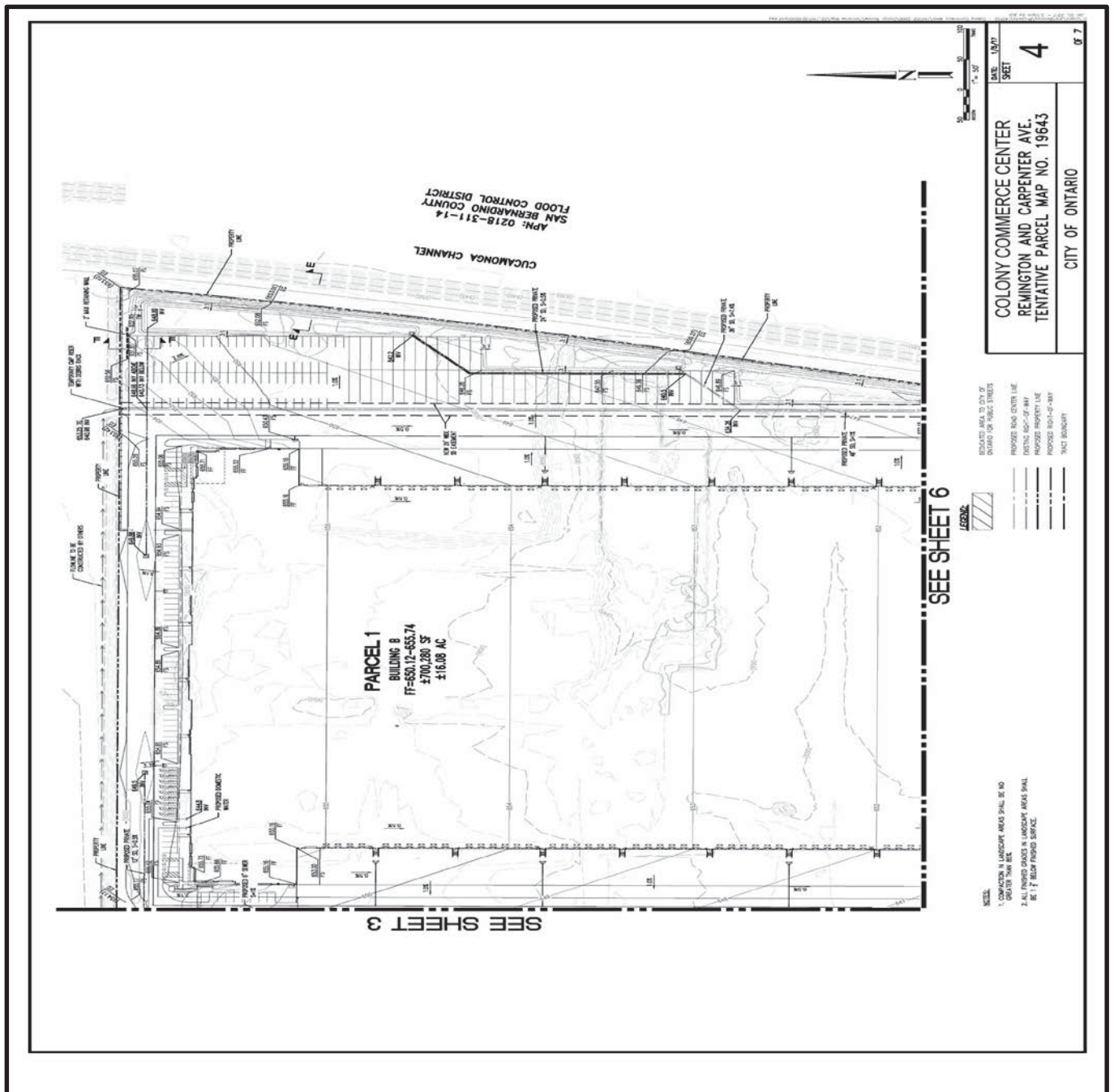


Exhibit "B"  
 Tentative Parcel Map 19643 (Continued)

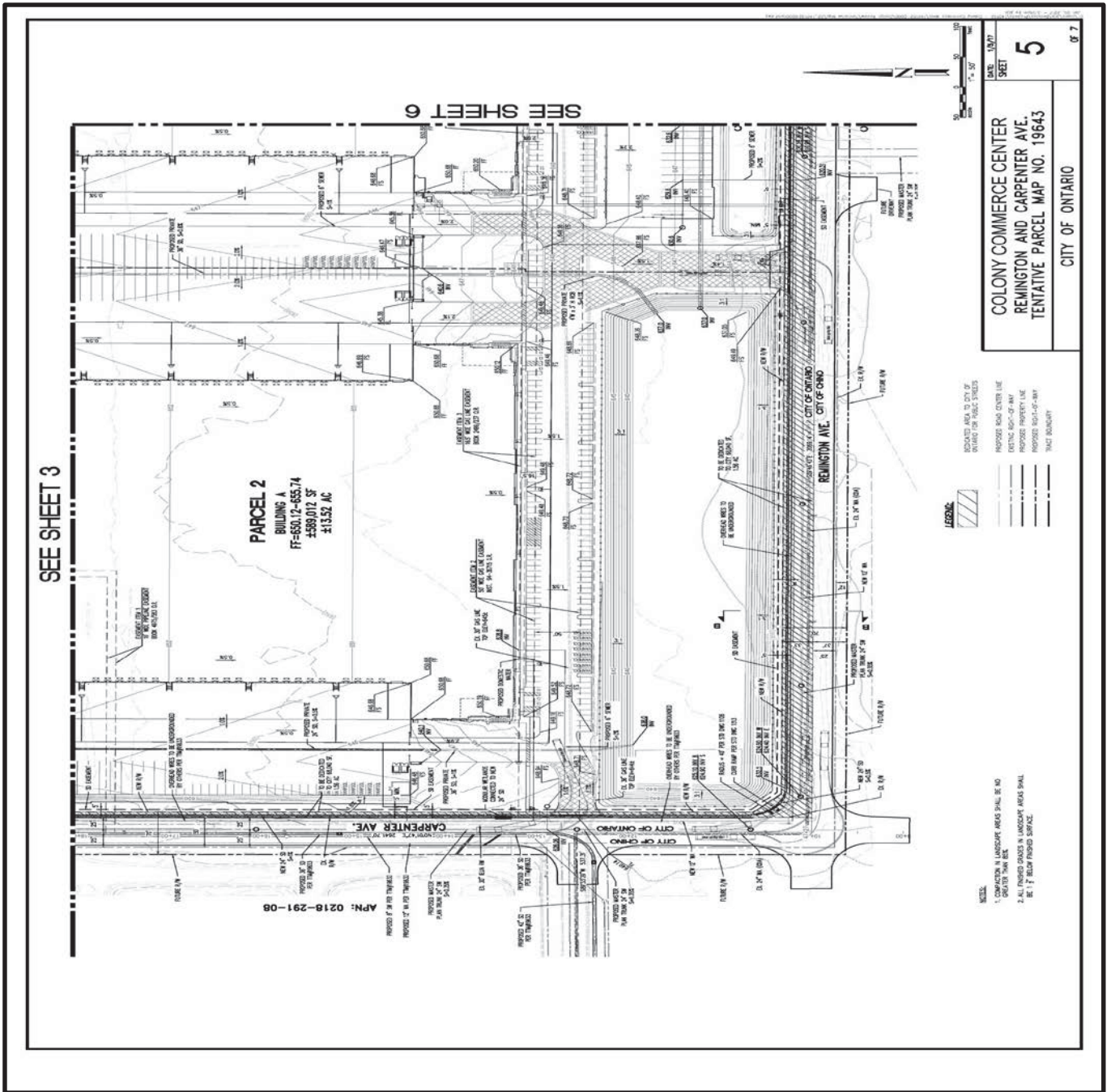
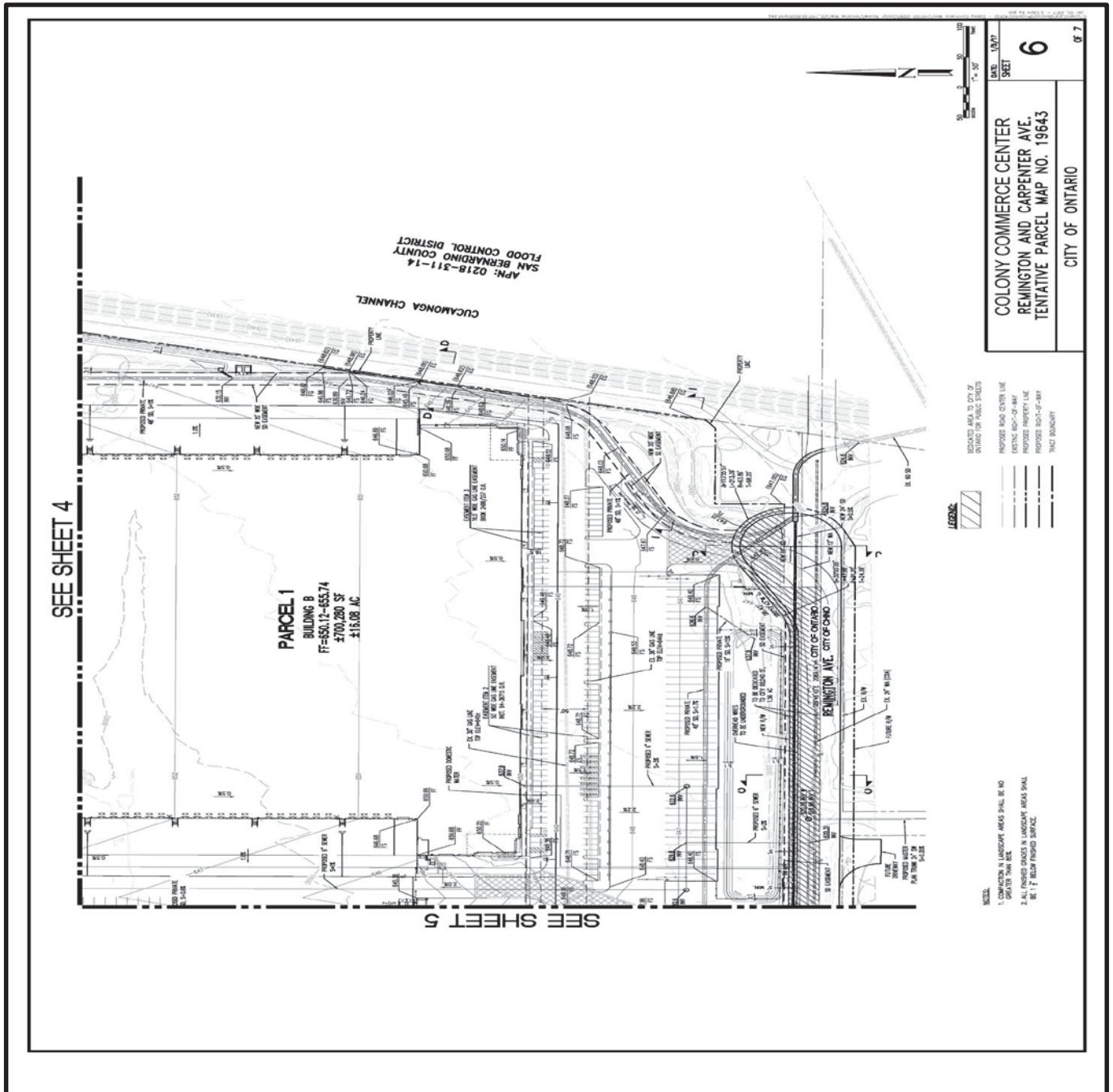




Exhibit "B"  
 Tentative Parcel Map 19643 (Continued)



RESOLUTION NO. PC17-058

A RESOLUTION OF THE PLANNING COMMISSION OF THE CITY OF ONTARIO, CALIFORNIA, RECOMMENDING THE CITY COUNCIL APPROVE A DEVELOPMENT AGREEMENT (FILE NO. PDA16-001) BETWEEN THE CITY OF ONTARIO AND CLDFI REMINGTON, LLC TO ESTABLISH THE TERMS AND CONDITIONS FOR THE DEVELOPMENT OF TENTATIVE PARCEL MAPS 19643 (FILE NO. PMTT16-001) WITHIN PLANNING AREA 2 OF THE COLONY COMMERCE CENTER WEST SPECIFIC PLAN, LOCATED APPROXIMATELY 1,160 FEET SOUTH OF MERRILL AVENUE, NORTH OF REMINGTON AVENUE, EAST OF THE CUCAMONGA CREEK FLOOD CONTROL CHANNEL AND WEST OF CARPENTER AVENUE, AND MAKING FINDINGS IN SUPPORT THEREOF (APNS: 0218-292-09, 0218-292-10, 0218-292-12, 0218-292-13, AND 0218-292-14).

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

“The Legislature finds and declares that:

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

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

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

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

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

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

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

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

WHEREAS, attached to this resolution, marked Exhibit “A” and incorporated herein by this reference, is the proposed Development Agreement between CLDFI Remington, LLC., and the City of Ontario, File No. PDA16-001, concerning those 65.60 acres of land (Tentative Parcel Map 19643), located approximately 1,160 feet south of Merrill Avenue, north of Remington Avenue, east of the Cucamonga Creek Flood Control Channel and west of Carpenter Avenue, within Planning Area 2 of the Colony Commerce Center West Specific Plan and as legally described in the attached Development Agreement. Hereinafter in this Resolution, the Development Agreement is referred to as the “Development Agreement”; and

WHEREAS, on August 22, 2017, the Planning Commission of the City of Ontario conducted a duly noticed public hearing and issued Resolution PC17-054 recommending City Council certification of the Colony Commerce Center West Specific Plan EIR (SCH# 2015061023) and Issued Resolution PC17-055 recommending to City Council approval of the Colony Commerce Center West Specific Plan (File No. PSP15-001); and

WHEREAS, the environmental impacts of this project were analyzed in the Colony Commerce Center West Specific Plan (File No. PSP15-001) EIR (SCH# 2015061023). This application is consistent with the EIR and introduces no new significant environmental impacts. All mitigation measures shall be a condition of project approval and are incorporated herein by reference; and

WHEREAS, the project is contingent upon City Council approval of the Colony Commerce Center West Specific Plan and certification and adoption of EIR (SCH# 2015061023); and

WHEREAS, on August 22, 2017, the Planning Commission of the City of Ontario conducted a hearing to consider the Agreement, and concluded said hearing on that date; and



WHEREAS, as the first action on the Project on August 22, 2017, the Planning Commission adopted a resolution recommending the City Council certify the EIR (SCH# 2015061023) and approve the Mitigation Monitoring and Reporting Program prepared pursuant to CEQA, the State CEQA Guidelines, and the City of Ontario Local CEQA Guidelines; and

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

NOW, THEREFORE, it is hereby found, determined, and resolved by the Planning Commission of the City of Ontario as follows:

**SECTION 1. Environmental Determination and Findings.** As the recommending body for the Project, the Planning Commission has reviewed and considered the information contained in the previously adopted Colony Commerce Center West Specific Plan EIR (SCH# 2015061023) and supporting documentation. Based upon the facts and information contained in the Colony Commerce Center West Specific Plan EIR (SCH# 2006051081) and supporting documentation, the Planning Commission finds as follows:

a. The previous Colony Commerce Center West Specific Plan EIR (SCH# 2015061023) contains a complete and accurate reporting of the environmental impacts associated with the Project; and

b. The previous Colony Commerce Center West Specific Plan EIR (SCH# 2015061023) was completed in compliance with CEQA and the Guidelines promulgated thereunder; and

c. The previous Colony Commerce Center West Specific Plan EIR (SCH# 2015061023) reflects the independent judgment of the Planning Commission; and

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

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

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

(2) Does not constitute substantial changes with respect to the circumstances under which the EIR was prepared, that will require major revisions to the EIR due to the



involvement of new significant environmental effects or a substantial increase in the severity of the previously identified significant effects; and.

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

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

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

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

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

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

**SECTION 4: *Ontario International Airport Land Use Compatibility Plan (“ALUCP”) Compliance.*** The California State Aeronautics Act (Public Utilities Code Section 21670 et seq.) requires that an Airport Land Use Compatibility Plan be prepared for all public use airports in the State; and requires that local land use plans and individual development proposals must be consistent with the policies set forth in the adopted Airport Land Use Compatibility Plan. On April 19, 2011, the City Council of the City of Ontario approved and adopted the Ontario International Airport Land use Compatibility Plan (“ALUCP”), establishing the Airport Influence Area for Ontario International Airport (“ONT”), which encompasses lands within parts of San Bernardino, Riverside, and Los Angeles Counties, and limits future land uses and development within the Airport Influence Area, as they relate to noise, safety, airspace protection, and overflight impacts of current and future airport activity. As the decision making body for the Project, the Planning Commission has reviewed and considered the facts and information contained in the Application and supporting documentation against the ALUCP compatibility factors, including [1] Safety Criteria (ALUCP Table 2-2) and Safety Zones (ALUCP Map 2-2), [2] Noise Criteria (ALUCP Table 2-3) and Noise Impact Zones (ALUCP Map 2-3), [3] Airspace protection Zones (ALUCP Map 2-4), and [4] Overflight Notification Zones



(ALUCP Map 2-5). ). The project site is also located within the Airport Influence of Chino Airport and is consistent with policies and criteria set forth within the 2011 California Airport Land Use Planning Handbook published by the California Department of Transportation, Division of Aeronautics. As a result, the Planning Commission, therefore, finds and determines that the Project, when implemented in conjunction with the conditions of approval, will be consistent with the policies and criteria set forth within the ALUCP.

**SECTION 5. *Concluding Facts and Reasons.*** Based upon substantial evidence presented to the Planning Commission during the above-referenced hearing on August 22, 2017, including written and oral staff reports, together with public testimony, the Planning Commission hereby specifically finds as follows:

a. The Development Agreement applies to 65.60 acres of land acres of land (Tentative Parcel Map 19643), located approximately 1,160 feet south of Merrill Avenue, north of Remington Avenue, east of the Cucamonga Creek Flood Control Channel and west of Carpenter Avenue, within Planning Area 2 of the Colony Commerce Center West Specific Plan, and is presently vacant and previously used for dairy and agricultural uses; and

b. The property to the north of the Project Site is within Planning Area 1 of the Colony Commerce Center West Specific Plan, and is presently used for agricultural purposes. The property to the east is developed with the Cucamonga Creek Flood Control Channel. The property to the south is within City of Eastvale and developed with residential uses. The property to the west is within the City of Chino and currently under construction with industrial buildings; and

c. The Development Agreement establishes parameters for the development of Tentative Parcel Map 19643 within Planning Area 2 of the Colony Commerce Center West Specific Plan for industrial development. The Development Agreement also grants CLDFI Remington, LLC., the right to develop, the ability to quantify the fees; and establish the terms and conditions that apply to those projects. These terms and conditions are consistent with The Ontario Plan Policy Plan (General Plan), design guidelines and development standards for the Colony Commerce Center West Specific Plan.

d. The Development Agreement focuses on Tentative Parcel Map 19643, which proposes to subdivide 65.60 acres of land into 2 parcels, located approximately 1,160 feet south of Merrill Avenue, north of Remington Avenue, east of the Cucamonga Creek Flood Control Channel and west of Carpenter Avenue, within Planning Area 2 of the Colony Commerce Center West Specific Plan; and

e. The Development Agreement will provide for the development of up to 1,289,292 square feet of industrial uses as established for Planning Area 2 of the Colony Commerce Center West Specific Plan; and

f. The Development Agreement has been prepared in conformance

with the goals and policies of The Ontario Plan Policy Plan (General Plan); and

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

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

i. This Development Agreement will not be materially injurious or detrimental to the adjacent properties and will have a significant impact on the environment or the surrounding properties. The environmental impacts of this project were analyzed in the EIR (SCH# 2015061023) prepared for the Colony Commerce Center West Specific Plan (File No. PSP15-001). All adopted mitigation measures of the related EIR shall be a condition of project approval and are incorporated herein by reference.

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

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

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

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

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

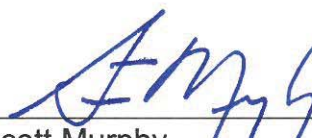
I hereby certify that the foregoing Resolution was duly and regularly introduced, passed and adopted by the Planning Commission of the City of Ontario at a regular meeting thereof held on the 22<sup>nd</sup> day of August, 2017, and the foregoing is a full, true and correct copy of said Resolution, and has not been amended or repealed.



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Richard D. Delman  
Planning Commission Chairman

ATTEST:



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Scott Murphy  
Planning Director/Secretary of Planning  
Commission

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

I, Gwen Berendsen, Secretary Pro Tempore of the Planning Commission of the City of Ontario, DO HEREBY CERTIFY that foregoing Resolution No. PC17-058 was duly passed and adopted by the Planning Commission of the City of Ontario at their regular meeting held on August 22, 2017, by the following roll call vote, to wit:

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

NOES:

ABSENT:       Downs

ABSTAIN:



---

Gwen Berendsen  
Secretary Pro Tempore

## **Exhibit “A” Development Agreement**

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

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

Exempt from Fees Per Gov. Code § 6301

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Space above this line for Recorder's Use Only

**DEVELOPMENT AGREEMENT  
(FILE NO. PDA16-001)**

**By and Between**

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

**and**

**CLDFI Remington, LLC**

**a Delaware Limited Liability Company**

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

**San Bernardino County, California**

**DEVELOPMENT AGREEMENT NO. \_\_\_**

This Development Agreement (hereinafter "Agreement") is entered into effective as of the \_\_\_\_ day of \_\_\_\_\_, 2017 by and among the City of Ontario, a California municipal corporation (hereinafter "CITY"), and CLDFI Remington, 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 Colony Commerce West Specific Plan Environmental Impact Report (State Clearinghouse No. 2015061023 (the "FEIR"). The City Council found and determined that the FEIR was prepared in accordance with the requirements of the California Environmental Quality Act and adequately describes the impacts of the project described in the FEIR, which included consideration of this Agreement; and

WHEREAS, this Agreement and the Project are consistent with the CITY's Comprehensive General Plan and the Colony Commerce 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 presently outside 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.

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

## **COVENANTS**

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

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

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

1.1.1 "Agreement" means this Development Agreement.

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

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

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 Tentative Parcel Map conditions for Parcel Map No. 19643 and as further described in Exhibit “F-1a”, “F-1b”, “F-1c”, “F-2”, “F-3”, “F-4”, and “F-5” (the “Infrastructure Improvements Exhibits”).

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, “Colony Commerce 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 19643 shall be based upon water demand factors and assumptions listed in the Construction Agreement.

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

Exhibit “A” — Legal Description of the Property.

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

Exhibit “C” — Existing Development Approvals.

Exhibit “D” — Existing Land Use Regulations.

Exhibit “E” — (Not Used)

Exhibit “F” — Infrastructure Improvements Exhibits, F-1a, F-1b, F-1c, F-2, F-3, F-4, F-5

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” - 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. OWNER may wish to provide the attached Disclosure Letter (Exhibit I) as part of the Real Estate Transfer Disclosure requirements under California Civil Code Section 1102 et seq.

(b) Concurrent with any such sale, transfer or assignment, or within fifteen (15) business days thereafter, OWNER shall notify CITY's City Manager, in writing, of such sale, transfer or assignment and shall provide CITY with: (1) an executed agreement, in a form reasonably acceptable to CITY, by the purchaser, transferee or assignee and providing therein that the purchaser, transferee or assignee expressly and unconditionally



assumes all the duties and obligations of OWNER under this Agreement with respect to the portion of the Property so sold, transferred or assigned.

(c) Any sale, transfer or assignment not made in strict compliance with the foregoing conditions shall constitute a default by OWNER under this Agreement. Notwithstanding the failure of any purchaser, transferee or assignee to execute the agreement required by Paragraph (b) of this Subsection 2.4.1, the burdens of this Agreement shall be binding upon such purchaser, transferee or assignee, but the benefits of this Agreement shall not inure to such purchaser, transferee or assignee until and unless such agreement is executed. The City Manager shall have the authority to review, consider and either approve, conditionally approve, or deny any proposed sale, transfer or assignment that is not made in compliance with this section 2.4.

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

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

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

(a) OWNER no longer has a legal or equitable interest in all or any part of the portion of the Property sold, transferred or assigned.

(b) OWNER is not then in default under this Agreement.

(c) OWNER has provided CITY with the notice and executed an agreement as required under Paragraph (b) of Subsection 2.4.1 above. .

(d) The purchaser, transferee or assignee provides CITY with security equivalent to any security previously provided by OWNER (if any) to secure performance of its obligations hereunder which are to be performed upon portion of the Property sold, transferred or assigned .

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

(a) The assignee shall be liable for the performance of all obligations of OWNER with respect to transferred property, but shall have no obligations with respect to the portions of the Property, if any, not transferred (the "Retained Property").

(b) The owner of the Retained Property shall be liable for the performance of all obligations of OWNER with respect to Retained Property, but shall have no further obligations with respect to the transferred property.

(c) The assignee's exercise, use and enjoyment of the Property or portion thereof shall be subject to the terms of this Agreement to the same extent as if the assignee were the OWNER.

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

2.4.5 Termination of Agreement With Respect to Individual Lots Upon Sale to Public and Completion of Construction. The provisions of Subsection 2.4.1 shall not apply to the sale or lease (for a period longer than one year) of any parcel which has been finally subdivided and is individually (and not in "bulk") sold or leased to a member of the public or other ultimate user of the parcel. Notwithstanding any other provisions of this Agreement, this Agreement shall terminate with respect to any lot and such lot shall be released and no longer be subject to this Agreement without the execution or recordation of any further document upon satisfaction of both of the following conditions:

(a) The lot has been finally subdivided and individually (and not in "bulk") sold or leased (for a period longer than one year) to a member of the public or other ultimate user; and,

(b) A certificate of occupancy has been issued for a building on the parcel, and the fees set forth under Section 4 of this Agreement have been paid.

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

2.5 Amendment or Cancellation of Agreement. This Agreement may be amended or cancelled in whole or in part only in the manner provided for in Government Code Section 65868.1. 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:

Al C. Boling, City Manager  
City of Ontario  
303 East "B" Street  
Ontario California, California 91764  
with a copy to:

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

CDLFI Remington, LLC  
c/o CapRock Partners  
2050 Main Street, Suite 240  
Irvine, CA 92614  
Attn: Patrick Daniels  
Email: pdaniels@caprock-partners.com  
Phone: (949) 342-8000

with a copy to:

Manatt Phelps and Phillips LLP  
695 Town Center Drive, 14th Floor  
Costa Mesa, CA 92626  
Attn: Roger A. Grable E  
Email: rgrable@manatt.com  
Phone: (714) 371-2537

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 Cal. 3d 465, that the failure of the parties therein to provide for the timing of development resulted in a later adopted initiative restricting the timing of development to prevail over such parties' agreement, it is the parties' intent to cure that deficiency by acknowledging and providing that OWNER shall have the right to develop the Property in such order and at such rate and at such times as OWNER deems appropriate within the exercise of its subjective business judgment.

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

### 3.4 Reservations of Authority.

3.4.1 Limitations, Reservations and Exceptions. Notwithstanding any other provision of this Agreement, the CITY shall not be prevented from applying new rules, regulations and policies upon the OWNER, nor shall a development agreement prevent the CITY from denying or conditionally approving any subsequent development project

application on the basis of such new rules, regulations and policies where the new rules, regulations and policies consist of the following:

(a) Processing fees by CITY to cover costs of processing applications for development approvals or for monitoring compliance with any development approvals;

(b) Procedural regulations relating to hearing bodies, petitions, applications, notices, findings, records and any other matter of procedure;

(c) Regulations, policies and rules governing engineering and construction standards and specifications applicable to public and private improvements, including all uniform codes adopted by the CITY and any local amendments to those codes adopted by the CITY; provided however that, OWNER shall have a vested right to develop the Property in accordance with, and to the extent of, the standards and specifications that are expressly identified in the Specific Plan and the building codes in effect as of the Effective Date;

(d) Regulations that may conflict with this Agreement and the Development Plan but that are reasonably necessary to protect the occupants of the Project and/or of the immediate community from a condition perilous to their health or safety;

(e) Regulations that do not conflict with those rules, regulations and policies set forth in this Agreement or the Development Plan and which do not impose additional obligations, costs, and expenses on Owner or the Project;

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

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

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

monetary liability for contesting such declaratory relief (or other similar non-monetary relief).

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

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

3.5.1 OWNER agrees that development of the Project shall require the construction of storm drain Improvements from the Property to the connection with the Cucamonga Creek Channel as described in Exhibit F.-3. OWNER shall be responsible for the construction of the necessary extension of storm drain facilities, as described in Exhibit F-3. OWNER and CITY agree that CITY may issue grading, building permits and other required permits for OWNER to initiate construction of structures on 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 F-3. CITY agrees that OWNER may request that CITY issue temporary certificates of occupancy prior to completion of the storm drain improvements.

3.5.2 OWNER agrees that development of the Project shall require the construction of street improvements as described in Exhibits F.-1a, F-1b and F-1c. OWNER and CITY agree that CITY may issue grading, building permits and other required permits for OWNER to initiate construction of structures on 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 F-1a, F-1b, and F-1c. 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 Substantial Completion of the street improvements. OWNER agrees that the street improvements shall be completed and subject to final



acceptance by CITY prior to the release any security for the construction of the street improvements.

3.5.2.1 CITY agrees that OWNER shall be required to construct four-way signalized intersection improvements at the intersection of Merrill and Carpenter Avenues as described in Exhibit F-1c. Such intersection is within both the City of Ontario and the City of Chino. If OWNER constructs such four-way intersection improvements and such improvements are constructed by OWNER at their ultimate locations to serve the full width of the master planned street improvements, OWNER shall be entitled to any reimbursements paid to, and received by, CITY from the City of Chino or from other benefitting properties within the City of Ontario, for the costs of the construction of the four-way signalized intersection of Merrill and Carpenter Avenues.

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 F-4 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 on 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 F-4 and Exhibit F-5. 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 as described in Exhibit F.-2. OWNER and CITY agree that CITY may issue grading, building permits and other required permits for OWNER to initiate construction of structures on 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 F-2. 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 F-2.

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 3.8.1 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 3.6.1 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 date that is five (5) years following the Effective Date of this Agreement. The CITY's City Council may, in its discretion, extend any such map for an additional period of up to five (5) years beyond its original term, so long as the subdivider files a written request for an extension with the City prior to the expiration of the initial five (5) year term.

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 applicant(s) who originally paid the cost of preparing the Specific Plan (in this case, the OWNER, who acquired the property from such applicant), including costs incurred pursuant to the California Environmental Quality Act (Pub. Resources Code, §§ 21000 et seq.) to the extent such applicant(s) paid more than its relative benefit from the Specific Plan. Such charges, if adopted, shall be imposed on persons seeking CITY approvals that are required to be consistent with the Specific Plan, to the extent such person(s) has/have not entered into a reimbursement agreement with, and satisfactory to, the person(s) originally responsible for the cost of preparing the Specific Plan, including costs incurred pursuant to CEQA.

#### 4. PUBLIC BENEFITS.

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

conferred on OWNER by providing more fully for the satisfaction of the public needs resulting from the Project.

#### 4.2 Development Impact Fees.

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

4.2.2 Time of Payment. The Development Impact Fees required pursuant to Subsection 4.2.1 shall be paid to CITY prior to the issuance of building permit for each applicable residential or other building (subject to the application/use of available fee deferrals or credits), except for the Open Space and Habitat Acquisition Development Impact fee, which shall be paid by OWNER to CITY prior to the issuance of a grading permit

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

4.3.1 Timely Construction of Public Infrastructure. The phasing of the area wide infrastructure construction within the 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 parcel map conditions. Unless otherwise specified in the Parcel Map conditions, and subject to the provisions of Section 3.6, all other required Improvements for each Parcel Map, shall be completed and operational prior to, and as a condition precedent to, OWNER requesting and CITY's granting of a final occupancy permit for any buildings to be constructed on the Property. All Infrastructure and Improvements shall be completed as required by the Subdivision Agreement/Parcel Map conditions for Parcel Map No.19643.

4.3.2 Availability and Use of Recycled Water. OWNER agrees that recycled water shall be available and utilized by OWNER for all construction-related water uses including prior to, and during, any grading of the Property

4.3.3 Construction of DIF Program Infrastructure To the extent OWNER is required to construct and completes construction of public improvements that are included in CITY's Development Impact Fee Program CITY agrees that CITY shall issue DIF Credit and DIF Reimbursement in accordance with the provisions of a separate Fee Credit Agreement between CITY and OWNER. Limitations on the use of DIF Credit issued to OWNER to offset OWNER's DIF payment obligations shall also be subject to the provisions of a separate Fee Credit Agreement. OWNER may also be eligible to

receive reimbursement from DIF collected by CITY and paid by other development that benefits from OWNER's construction of DIF Program Infrastructure. Any such DIF Reimbursement shall be subject to a Fee Credit Agreement between CITY and OWNER. CITY and OWNER agree that the Fee Credit Agreement between CITY and OWNER shall comply with CITY's adopted policies applicable to such agreements.

#### 4.4 Public Services Funding Fee.

4.4.1 Requirement for Payment of Public Services Funding Fee. In order to ensure that the adequate provision of public services, including without limitation, police, fire and other public safety services, are available to each Project in a timely manner, OWNER shall pay to CITY a "Public Services Funding Fee." The Public Services Funding Fee shall apply to 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 Fifty-Six Cents (\$.56) 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, 2017. 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

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

4.5.1 CITY issuance Water Availability Equivalents. Upon OWNER's payment to CITY of the amount of Three Million, Five Hundred, Thousand dollars (\$3,500,000.00) 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 five (5) business 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 Construction Agreement and 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. The amount of the DIF Credit issued by CITY shall be three million, five hundred thousand dollars (\$3,500,000.00). The form of the Certificate of DIF Credit shall be as described in Exhibit H, attached hereto and incorporated herein. CITY and OWNER agree that the amount of DIF Credit to be issued by CITY to OWNER is expected to exceed OWNER's DIF obligation in the regional water DIF Category and any

and all excess DIF Credit issued to OWNER shall be available to OWNER or OWNER's assignees for use as an offset against any DIF obligations in the regional water DIF Category related to the development of other property within the Ontario Ranch area. OWNER and CITY agree that OWNER's payment to CITY required by this Section 4.5.3 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.

4.5.2 Assignment of Regional Water DIF Credits. OWNER shall have the right to transfer or assign the regional water DIF Credit issued by CITY under Section 4.5.3 as provided for herein, to any person, partnership, limited liability company, joint venture, firm or corporation. All sale, transfer or assignment of any DIF Credit shall be conditioned upon OWNER providing CITY with notice concurrent with any such sale, transfer or assignment, or within fifteen (15) business days thereafter. OWNER shall notify the City Manager, in writing, of such sale, transfer or assignment and shall provide the City with 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 has accepted the assignment and that such purchaser, transferee or assignee understands and agrees that such DIF credit shall only be used as an offset against any DIF obligations in the regional water DIF Category and that such DIF Credit shall only be used as an offset the payment of DIF required for the issuance of building permits by CITY within the modified Exhibit A area of the Construction Agreement between the CITY and NMC Builders.

4.6 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.

4.7 Compliance with Public Benefits Requirements.

4.7.1 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). As further described in the Memorandum of Agreement between 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 for OWNER's share of the costs of public infrastructure pursuant to the Construction Agreement. Notwithstanding such reimbursements, OWNER shall remain entitled to DIF Credits as provided for in Article 3 of the Construction Agreement and/or as provided for in a separate Fee Credit Agreement between CITY and OWNER. OWNER agrees that, prior to the recordation of any 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 \$1,387.00 per Single Family Detached Dwelling Unit, \$1,202.00 per Multiple-Family Dwelling Unit, \$1,008.00 per Gated Apartment Community Dwelling Unit, and \$.27 per square foot for Non-Residential buildings. These amounts shall be subject to an automatic increase at a rate not to exceed four (4%) percent per year. CITY shall be the sole and exclusive lead agency in the formation of any CFD, assessment district or other public financing mechanism within the Property; provided however, that the proceeds of any such CFD, assessment district, or financing mechanism may be used, subject to restrictions that may be imposed by applicable law, for the purposes of acquiring, constructing or maintaining public facilities to be owned or operated by other public agencies, including, without limitation those facilities owned or operated by a school district. In addition to the rights of the CITY pursuant to section 5.2 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. 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 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”**

CLDFI Remington, LLC,  
a Delaware limited liability company

By: \_\_\_\_\_

Name:

Its: \_\_\_\_\_

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

**“CITY”**

CITY OF ONTARIO

By: \_\_\_\_\_

Al C. Boling  
City Manager

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

ATTEST:

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

APPROVED AS TO FORM:

BEST, BEST & KREIGER LLP

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

STATE OF CALIFORNIA

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

On \_\_\_\_\_, 2017, before \_\_\_\_\_ me,  
\_\_\_\_\_, Notary Public, personally appeared \_\_\_\_\_, who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

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

WITNESS my hand and official seal.

Signature: \_\_\_\_\_(Seal)



# EXHIBIT "A" TO DEVELOPMENT AGREEMENT

## Legal Description of Property

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

**PARCEL NO.1**

THAT PORTION OF THE SOUTH 112 OF SECTION 22, AND THOSE PORTIONS OF GOVERNMENT LOTS 3, 4, 5 AND 8, ALL IN THE SOUTH 112 OF SECTION 22, TOWNSHIP 2 SOUTH, RANGE 7 WEST, SAN BERNARDINO BASE AND MERIDIAN, ACCORDING TO THE OFFICIAL PLAT OF SAID LAND FILED IN THE DISTRICT LAND OFFICE, SEPTEMBER 16, 1893, DESCRIBED AS FOLLOWS: BEGINNING AT A POINT ON THE WEST LINE OF SAID LOT 3, SECTION 22, WHICH IS 129.75 FEET NORTH OF THE SOUTHWEST CORNER THEREOF; THENCE EAST 2069.11 FEET PARALLEL WITH THE SOUTH LINE OF SAID LOT 3, TO A POINT WHICH IS 663.29 FEET WEST OF THE EAST LINE OF THE NORTHWEST 114 OF THE SOUTHEAST 114 OF SAID SECTION 22; THENCE SOUTH 1449.75 FEET (RECORDED 1529.65 FEET IN BOOK 8, PAGE 71, RECORD OF SURVEY), TO THE SOUTH LINE OF SAID LOT 8, SECTION 22; THENCE WEST 2069.11 FEET ALONG THE SOUTH LINE OF SAID LOT 8 AND 4 TO THE SOUTHWEST CORNER OF SAID LOT 4; THENCE NORTH 1449.75 FEET (RECORDED 1529.65 FEET IN BOOK 8, PAGE 71, RECORDS OF SURVEY), ALONG THE WEST LINE OF SAID LOTS 4 AND 3, TO THE POINT OF BEGINNING.

EXCEPTING THEREFROM THAT PORTION CONVEYED TO THE SAN BERNARDINO COUNTY FLOOD CONTROL DISTRICT BY THE DEED RECORDED OCTOBER 28, 1944 IN BOOK 1720, PAGE 136 OFFICIAL RECORDS.

ALSO EXCEPTING THEREFROM THE INTEREST IN THE WEST 25 FEET OF SAID LAND AS CONVEYED TO THE COUNTY OF SAN BERNARDINO FOR HIGHWAY PURPOSES, BY DEED RECORDED IN BOOK 355, PAGE 287 OF DEEDS. ALSO EXCEPTING THEREFROM A 401100TH INTEREST IN AND TO A WELL SITE, AS CONVEYED TO HENRY BEKENDAM AND HOPE BEKENDAM, HUSBAND AND WIFE, AS JOINT TENANTS, BY DEED RECORDED MARCH 4, 1963 IN BOOK 5863 PAGE 192 OFFICIAL RECORDS, DESCRIBED AS FOLLOWS: THE NORTH 20.00 FEET OF THE SOUTH 74.75 FEET OF THE EAST 20.00 FEET OF THE WEST 437.00 FEET OF GOVERNMENT LOT 3 SECTION 22, TOWNSHIP 2 SOUTH, RANGE 7 WEST, SAN BERNARDINO BASE AND MERIDIAN, ACCORDING TO GOVERNMENT SURVEY.

ALSO EXCEPTING THEREFROM THAT PORTION CONVEYED TO THE SAN BERNARDINO COUNTY FLOOD CONTROL DISTRICT BY DEED RECORDED SEPTEMBER 12, 1977 IN BOOK 9260 PAGE 60 OFFICIAL RECORDS.

ALSO EXCEPTING THEREFROM THAT PORTION CONVEYED TO SANTA ANA WATERSHED PROJECT AUTHORITY, A PUBLIC AGENCY BY DEED RECORDED JUNE 16, 1999, INSTRUMENT NO. 99-256762, OFFICIAL RECORDS.

**PARCEL NO.2**

A 401100 INTEREST IN AND TO WELL SINE DESCRIBED AS FOLLOWS:

THE NORTH 20.00 FEET OF THE SOUTH 74.75 FEET OF THE EAST 20.00 FEET OF THE WEST 437.00 FEET OF GOVERNMENT LOT 3, SECTION 22, TOWNSHIP 2 SOUTH, RANGE 7 WEST, SAN BERNARDINO MERIDIAN, ACCORDING TO THE OFFICIAL PLAT OF SAID LAND APPROVED BY THE SURVEYOR GENERAL, DATED AUGUST 30, 1873.

TOGETHER WITH A NON-EXCLUSIVE EASEMENT OVER A STRIP OF LAND FOR THE CONVEYANCE OF WATER THROUGH AN EXISTING PIPE LINE WITH THE RIGHT TO ENTER UPON SAID STRIP OF LAND IN A PRUDENT AND CAREFUL MANNER WHEN NECESSARY TO REPLACE OR REPAIR SAID PIPE LINE AND ALSO FOR INGRESS TO AND EGRESS FROM THE ABOVE MENTIONED WELL SITE. SAID STRIP OF LAND IS DESCRIBED AS FOLLOWS:

BEGINNING AT A POINT 427.00 FEET EAST OF AND 54.75 FEET; NORTH OF THE NORTHWEST CORNER OF GOVERNMENT LOT 4, SECTION 22, TOWNSHIP 2 SOUTH, RANGE 7 WEST, SAN BERNARDINO MERIDIAN, ACCORDING TO GOVERNMENT SURVEY; THENCE SOUTH AND PARALLEL WITH THE WEST LINE OF SAID LOT 4 TO A POINT 635 FEET SOUTH OF THE NORTH LINE OF SAID LOT 4; THENCE WEST PARALLEL WITH THE NORTH LINE OF SAID LOT 4, 427.00 FEET TO THE WEST LINE OF SAID LOT 4.

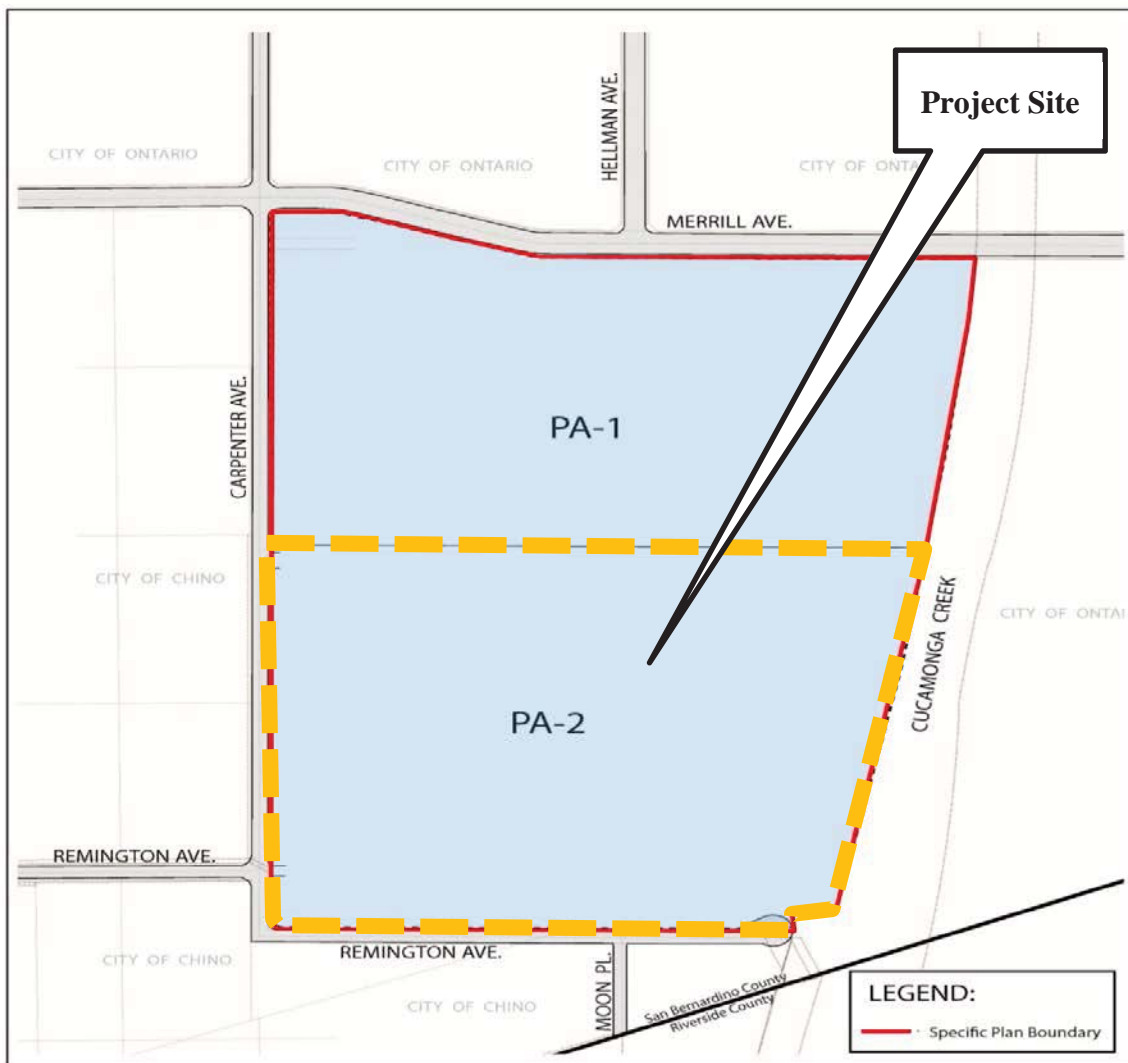
NOTE: THE AREA AND DISTANCES OF THE ABOVE DESCRIBED PROPERTY ARE COMPUTED TO THE CENTERS OF THE ADJOINING STREETS SHOWN ON SAID MAP.

APN(S): 0218-292-09-0-000, 0218-292-10-0-000,  
0218-292-13-0-000, 0218-292-14-0-000 AND  
0218-292-12-0-000

THE LAND SHOWN IN THIS SURVEY IS THE SAME AS THAT DESCRIBED IN FIRST AMERICAN TITLE INSURANCE COMPANY, COMMITMENT NO. NCS-626317-ONT1, DATED AUGUST 19, 2013.

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

**Map showing Property and its location**



Source: Douglas Franz Architects

N. T. S.

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

**Existing Development Approvals**

On August 22, 2017, the Planning Commission:

- a) Issued Resolution No. issued Resolution PC17-XX recommending City Council certification of the Colony Commerce Center West Specific Plan EIR.
- b) Issued Resolution PC17-XX recommending City Council approval of the Colony Commerce Center West Specific Plan (File No. PSP15-001).
- c) Issued Resolution No. PC17-XX recommending City Council approval of the Development Agreement (File No. PDA16-001).
- d) Issued Resolution No. PC17-XX approving Tentative Parcel Map 19643 (File No. PMTT16-001).
- e) Issued Resolution No. PC17-XX approving Development Plan (File No. PDEV16-002).

On September 19, 2017, the City Council:

- f) Issued Resolution 2017-XX to certifying the Colony Commerce Center West Specific Plan EIR (SCH #2015061023).
- g) Adopted Ordinance No. XXXX approving the Colony Commerce Center West Specific Plan EIR.

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

**Existing Land Use Regulations**

These documents are listed for reference only:

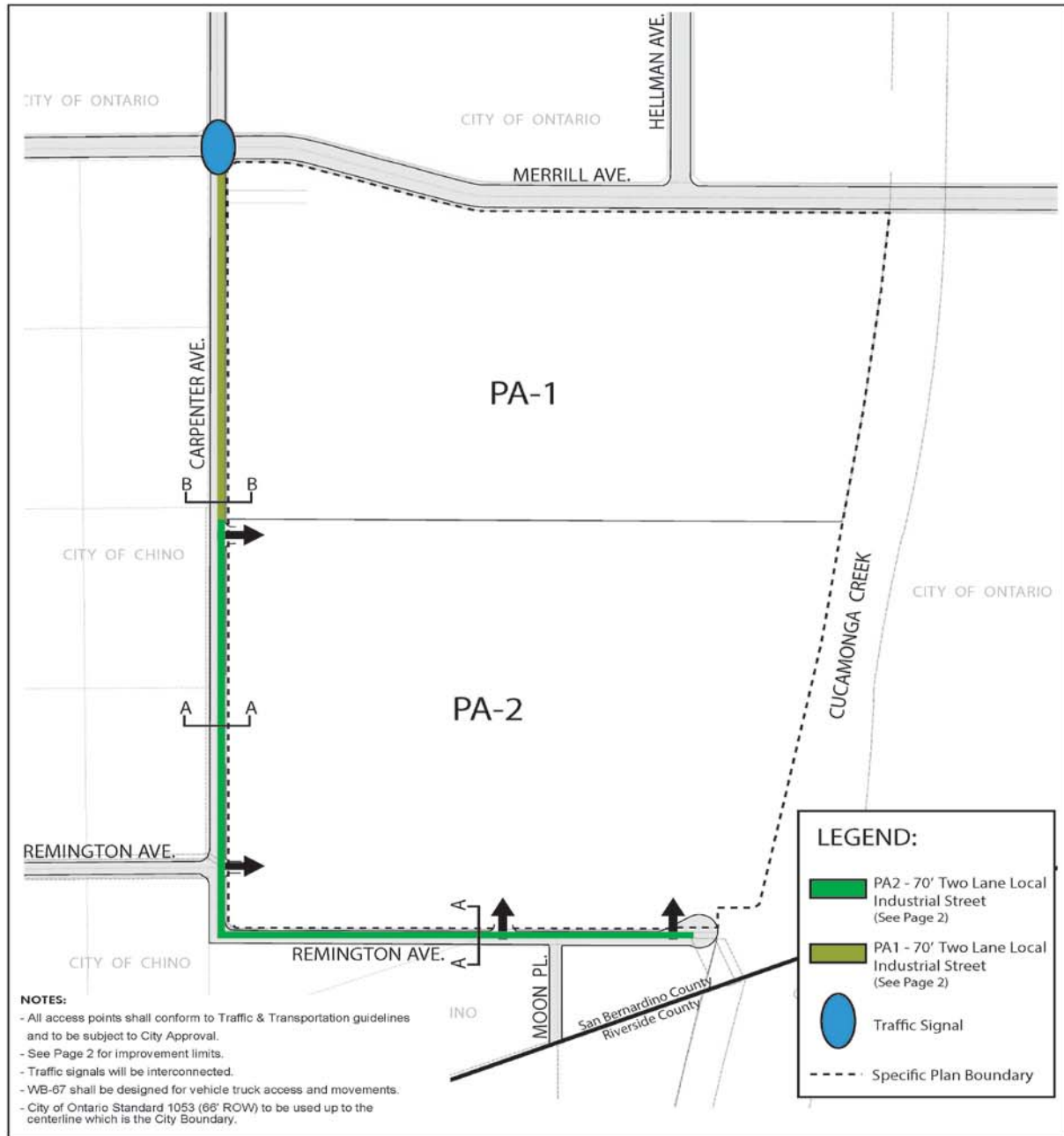
1. The Colony Commerce Center West Specific Plan (File No. PSP15-001) Environmental Impact Report, Resolution No. 2017-XX.
2. The Colony Commerce Center West Specific Plan (File No. PSP15-001), Ordinance No. XXXX.
3. Tentative Parcel Map 19643 (File No. PMTT16-001), Resolution No. PC17-XXX.
4. Development Plan (File No. PDEV16-002), Resolution No. PC17-XXX.
5. City of Ontario Municipal Code
  - a. Six – Sanitation & Health
  - b. Seven – Public Works
  - c. Eight – Building Regulations
  - d. Nine – Development Code

# EXHIBIT "F-1a"

## Required Infrastructure Improvements

**Parcel 19643**  
**Street Improvements**

**Development Agreement**  
**Exhibit F-1a**



- NOTES:**
- All access points shall conform to Traffic & Transportation guidelines and to be subject to City Approval.
  - See Page 2 for improvement limits.
  - Traffic signals will be interconnected.
  - WB-67 shall be designed for vehicle truck access and movements.
  - City of Ontario Standard 1053 (66' ROW) to be used up to the centerline which is the City Boundary.

Source: KTG Group

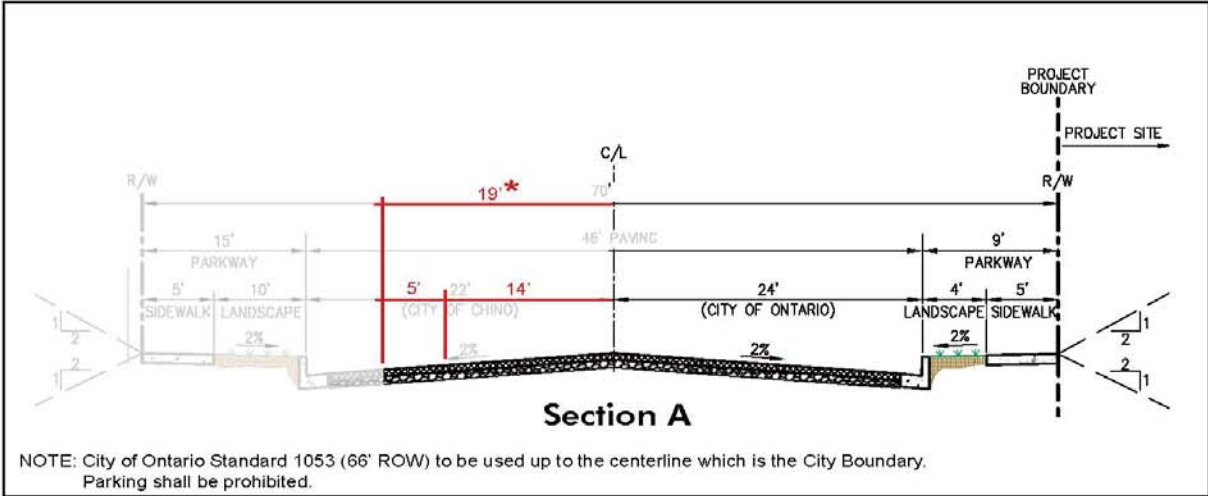
N. T. S.

# EXHIBIT "F-1b"

## Required Infrastructure Improvements

### Parcel 19643 Street Improvements - Carpenter Avenue & Remington Avenue (70' ROW)

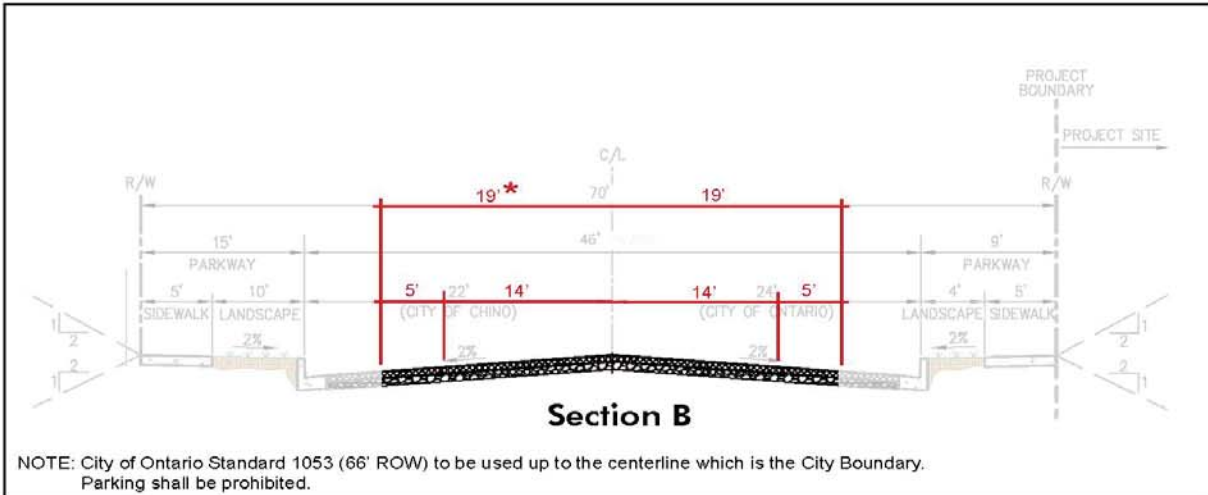
### Development Agreement Exhibit F-1b



Source: David Evans & Associates

\* Depending on development timing, project will construct 19' (14' Circulation Lane + 5' Shoulder) of ultimate paving beyond centerline.

### Street Improvements - Carpenter Avenue (70' ROW)



Source: David Evans & Associates

\* Depending on development timing, project will construct 19' (14' Circulation Lane + 5' Shoulder) of ultimate paving beyond centerline.

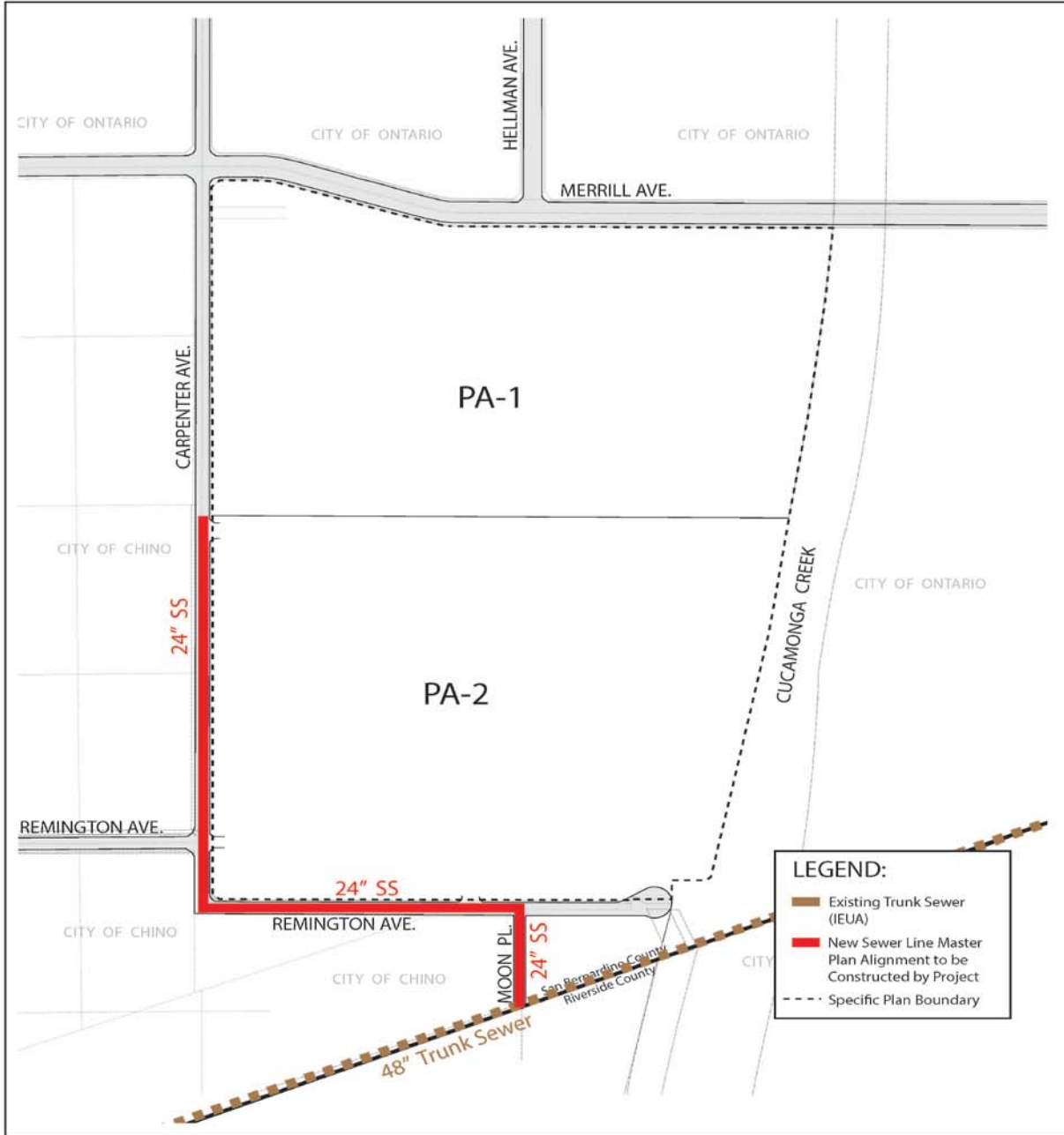


# EXHIBIT "F-2"

## Required Infrastructure Improvements

**Parcel 19643**  
**Sewer Improvements**

**Development Agreement**  
**Exhibit F-2**



Source: David Evans & Associates

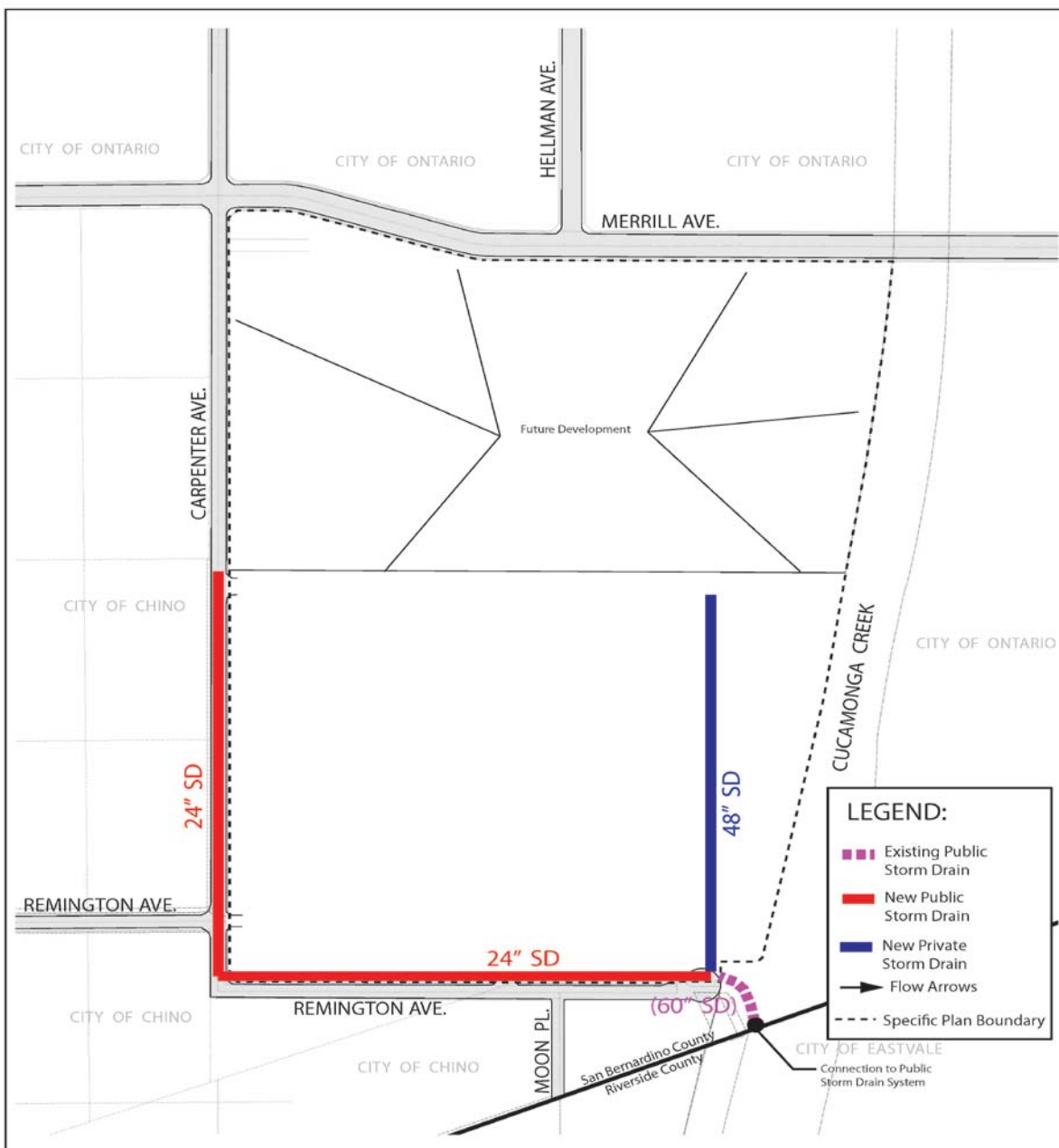
N. T. S.

# EXHIBIT "F-3"

## Required Infrastructure Improvements

**Parcel 19643**  
**Storm Drain Improvements**

**Development Agreement**  
**Exhibit F-3**



Source: David Evans & Associates

N. T. S.

# EXHIBIT "F-4"

## Required Infrastructure Improvements

**Parcel 19643**  
**Water Improvements**

**Development Agreement**  
**Exhibit F-4**



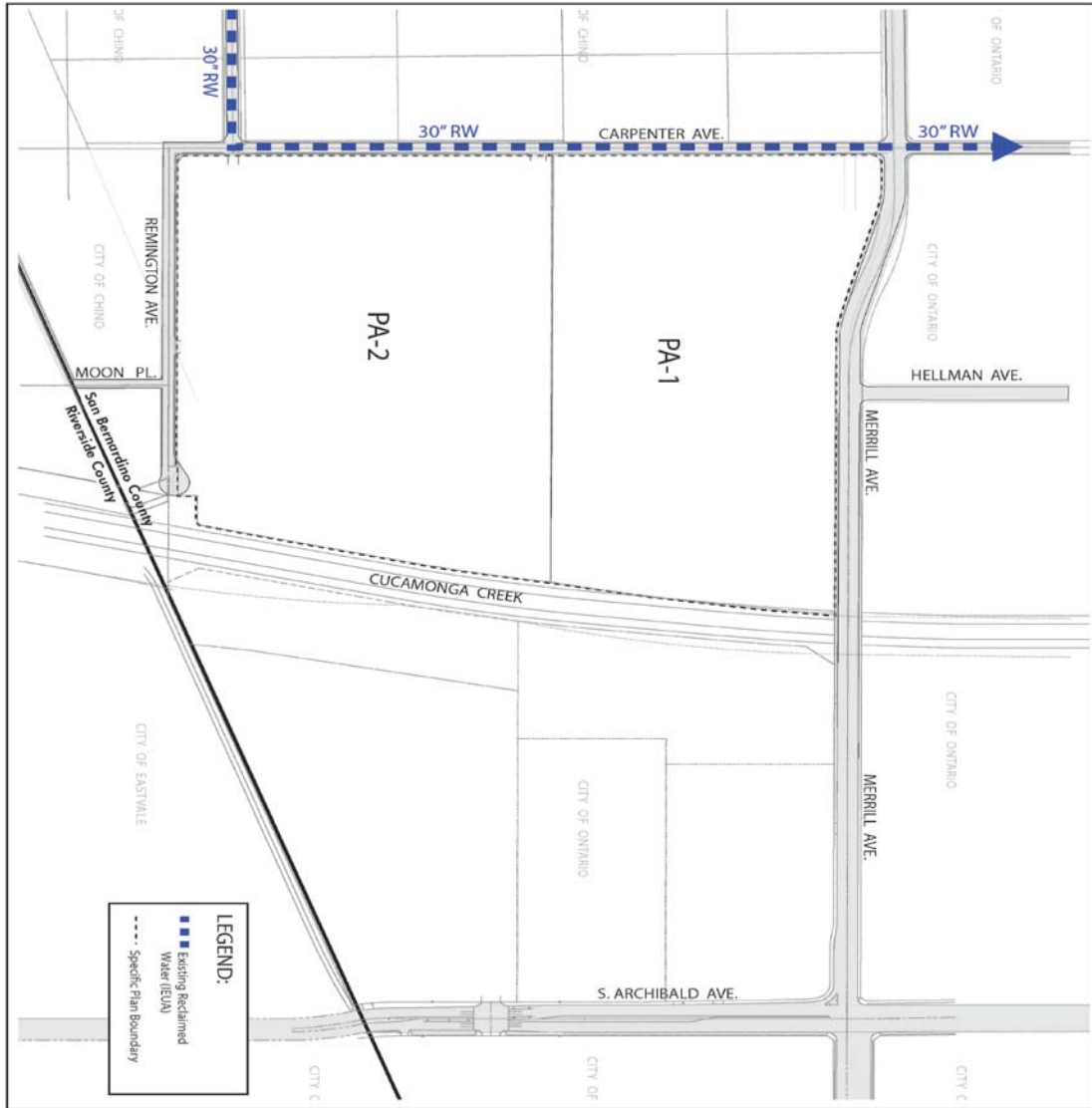
Source: David Evans & Associates

N. T. S.

## EXHIBIT "F-5" Required Infrastructure Improvements

**Parcel 19643  
Reclaimed Water Improvements**

**Development Agreement  
Exhibit F-5**



Source: David Evans & Associates

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

FORM OF CERTIFICATE OF NET MDD AVAILABILITY

Pursuant to Section \_\_\_\_ of this Agreement between the City of Ontario, a California municipal corporation, and CLDFI Remington, LLC, a Delaware 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

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

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

**Exhibit "H"**

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

Pursuant to Section 4.5.3 of this Agreement by and between the City of Ontario and CLDFI Remington, LLC, dated \_\_\_\_\_, 2016, 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: \$ \_\_\_\_\_

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

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



Exhibit "I"

**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

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

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF ONTARIO, CALIFORNIA, APPROVING A DEVELOPMENT AGREEMENT (FILE NO. PDA16-001) BETWEEN THE CITY OF ONTARIO AND CLDFI REMINGTON, LLC TO ESTABLISH THE TERMS AND CONDITIONS FOR THE DEVELOPMENT OF TENTATIVE PARCEL MAP 19643 (FILE NO. PMTT16-001) WITHIN PLANNING AREA 2 OF THE COLONY COMMERCE CENTER WEST SPECIFIC PLAN, LOCATED APPROXIMATELY 1,160 FEET SOUTH OF MERRILL AVENUE, NORTH OF REMINGTON AVENUE, EAST OF THE CUCAMONGA CREEK FLOOD CONTROL CHANNEL AND WEST OF CARPENTER AVENUE, AND MAKING FINDINGS IN SUPPORT THEREOF (APNS: 0218-292-09, 0218-292-10, 0218-292-12, 0218-292-13, AND 0218-292-14).

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 Exhibit “A” and incorporated herein by this reference, is the proposed Development Agreement between CLDFI Remington, LLC, and the City of Ontario, File No. PDA16-001, concerning those 65.60 acres of land (Tentative Parcel Map 19643), located approximately 1,160 feet south of Merrill Avenue, north of Remington Avenue, east of the Cucamonga Creek Flood Control Channel and west of Carpenter Avenue, within Planning Area 2 of the Colony Commerce Center West Specific Plan and as legally described in the attached Development Agreement. Hereinafter in this Resolution, the Development Agreement is referred to as the “Development Agreement”; and

WHEREAS, on the 22<sup>nd</sup> day of August 2017, the Planning Commission of the City of Ontario conducted a hearing to consider the Agreement and concluded said hearing on that date. After considering the public testimony, the Planning Commission voted 6 to 0 to recommend approval (Resolution No. 17-058) of the Development Agreement to the City Council; and

WHEREAS, the environmental impacts of this project were analyzed in the Colony Commerce Center West Specific Plan (File No. PSP15-001) EIR (SCH# 2015061023). This application is consistent with the EIR and introduces no new significant environmental impacts. All mitigation measures shall be a condition of project approval and are incorporated herein by reference; and

WHEREAS, on September 19, 2017, the City Council of the City of Ontario conducted a public hearing to consider the Agreement and concluded said hearing on that date; and

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

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

**SECTION 1. Environmental Determination and Findings.** As the decision-making body for the Project, the City Council has reviewed and considered the information contained in the previously adopted Colony Commerce Center West Specific Plan EIR (SCH# 2015061023) and supporting documentation. Based upon the facts and information contained in the Rich-Haven Specific Plan EIR (SCH# 2015061023) and supporting documentation, the City Council finds as follows:

a. The previous Colony Commerce Center West Specific Plan EIR (SCH# 2015061023) contains a complete and accurate reporting of the environmental impacts associated with the Project; and

b. The previous Colony Commerce Center West Specific Plan EIR (SCH# 2015061023) was completed in compliance with CEQA and the Guidelines promulgated thereunder; and

c. The previous Colony Commerce Center West Specific Plan EIR (SCH# 2015061023) reflects the independent judgment of the City Council; and

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

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

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

**SECTION 4. Concluding Facts and Reasons.** Based upon substantial evidence presented to the City Council during the above-referenced hearing on September 19, 2017, including written and oral staff reports, together with public testimony, the City Council hereby specifically finds as follows:

a. The Development Agreement applies to 65.60 acres of land acres of land (Tentative Parcel Map 19643), located approximately 1,160 feet south of Merrill Avenue, north of Remington Avenue, east of the Cucamonga Creek Flood Control Channel and west of Carpenter Avenue, within Planning Area 2 of the Colony Commerce Center West Specific Plan, and is presently vacant and previously used for dairy and agricultural uses; and

b. The property to the north of the Project Site is within Planning Area 1 of the Colony Commerce Center West Specific Plan, and is presently used for agricultural purposes. The property to the east is developed with the Cucamonga Creek Flood Control

Channel. The property to the south is within City of Eastvale and developed with residential uses. The property to the west is within the City of Chino and currently under construction with industrial buildings; and

c. The Development Agreement establishes parameters for the development of Tentative Parcel Map 19643 within Planning Area 2 of the Colony Commerce Center West Specific Plan for industrial development. The Development Agreement also grants CLDFI Remington, LLC, the right to develop, the ability to quantify the fees; and establish the terms and conditions that apply to those projects. These terms and conditions are consistent with The Ontario Plan Policy Plan (General Plan), design guidelines and development standards for the Colony Commerce Center West Specific Plan.

d. The Development Agreement focuses on Tentative Parcel Map 19643, which proposes to subdivide 65.60 acres of land into 2 parcels, located approximately 1,160 feet south of Merrill Avenue, north of Remington Avenue, east of the Cucamonga Creek Flood Control Channel and west of Carpenter Avenue, within Planning Area 2 of the Colony Commerce Center West Specific Plan; and

e. The Development Agreement will provide for the development of up to 1,289,292 square feet of industrial uses as established for Planning Area 2 of the Colony Commerce Center West Specific Plan; and

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

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

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

i. This Development Agreement will not be materially injurious or detrimental to the adjacent properties and will have a significant impact on the environment or the surrounding properties. The environmental impacts of this project were analyzed in the EIR (SCH# 2015061023) prepared for the Colony Commerce Center West Specific Plan (File No. PSP15-001). All adopted mitigation measures of the related EIR shall be a condition of project approval and are incorporated herein by reference.

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

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

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

**SECTION 8. *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 9. *Effective Date.*** This Ordinance shall become effective 30 days following its adoption.

**SECTION 10. *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 \_\_\_\_\_ 2017.

---

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 )  
CITY OF ONTARIO )

I, SHEILA MAUTZ, City Clerk of the City of Ontario, DO HEREBY CERTIFY that foregoing Ordinance No. 3081 was duly introduced at a regular meeting of the City Council of the City of Ontario held September 19, 2017 and adopted at the regular meeting held October 3, 2017 by the following roll call vote, to wit:

AYES: COUNCIL MEMBERS:

NOES: COUNCIL MEMBERS:

ABSENT: COUNCIL MEMBERS:

---

SHEILA MAUTZ, CITY CLERK

(SEAL)

I hereby certify that the foregoing is the original of Ordinance No. 3081 duly passed and adopted by the Ontario City Council at their regular meeting held October 3, 2017 and that Summaries of the Ordinance were published on September 26, 2017 and October 10, 2017, in the Inland Valley Daily Bulletin newspaper.

---

SHEILA MAUTZ, CITY CLERK

(SEAL)

**ATTACHMENT A:**

**Development Agreement**

*(Document to follow this page)*

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

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

Exempt from Fees Per Gov. Code § 6301

---

Space above this line for Recorder's Use Only

**DEVELOPMENT AGREEMENT  
(FILE NO. PDA16-001)**

**By and Between**

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

**and**

**CLDFI Remington, LLC**

**a Delaware Limited Liability Company**

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

**San Bernardino County, California**

**DEVELOPMENT AGREEMENT NO. \_\_\_**

This Development Agreement (hereinafter "Agreement") is entered into effective as of the \_\_\_\_\_ day of \_\_\_\_\_, 2017 by and among the City of Ontario, a California municipal corporation (hereinafter "CITY"), and CLDFI Remington, 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 Colony Commerce West Specific Plan Environmental Impact Report (State Clearinghouse No. 2015061023 (the "FEIR"). The City Council found and determined that the FEIR was prepared in accordance with the requirements of the California Environmental Quality Act and adequately describes the impacts of the project described in the FEIR, which included consideration of this Agreement; and

WHEREAS, this Agreement and the Project are consistent with the CITY's Comprehensive General Plan and the Colony Commerce 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 presently outside 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.

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

## **COVENANTS**

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

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

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

1.1.1 "Agreement" means this Development Agreement.

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



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

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 Tentative Parcel Map conditions for Parcel Map No. 19643 and as further described in Exhibit “F-1a”, “F-1b”, “F-1c”, “F-2”, “F-3”, “F-4”, and “F-5” (the “Infrastructure Improvements Exhibits”).

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, “Colony Commerce 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 19643 shall be based upon water demand factors and assumptions listed in the Construction Agreement.

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

Exhibit “A” — Legal Description of the Property.

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

Exhibit “C” — Existing Development Approvals.

Exhibit “D” — Existing Land Use Regulations.

Exhibit “E” — (Not Used)

Exhibit “F” — Infrastructure Improvements Exhibits, F-1a, F-1b, F-1c, F-2, F-3, F-4, F-5

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” - 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. OWNER may wish to provide the attached Disclosure Letter (Exhibit I) as part of the Real Estate Transfer Disclosure requirements under California Civil Code Section 1102 et seq.

(b) Concurrent with any such sale, transfer or assignment, or within fifteen (15) business days thereafter, OWNER shall notify CITY's City Manager, in writing, of such sale, transfer or assignment and shall provide CITY with: (1) an executed agreement, in a form reasonably acceptable to CITY, by the purchaser, transferee or assignee and providing therein that the purchaser, transferee or assignee expressly and unconditionally

assumes all the duties and obligations of OWNER under this Agreement with respect to the portion of the Property so sold, transferred or assigned.

(c) Any sale, transfer or assignment not made in strict compliance with the foregoing conditions shall constitute a default by OWNER under this Agreement. Notwithstanding the failure of any purchaser, transferee or assignee to execute the agreement required by Paragraph (b) of this Subsection 2.4.1, the burdens of this Agreement shall be binding upon such purchaser, transferee or assignee, but the benefits of this Agreement shall not inure to such purchaser, transferee or assignee until and unless such agreement is executed. The City Manager shall have the authority to review, consider and either approve, conditionally approve, or deny any proposed sale, transfer or assignment that is not made in compliance with this section 2.4.

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

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

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

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

(a) OWNER no longer has a legal or equitable interest in all or any part of the portion of the Property sold, transferred or assigned.

(b) OWNER is not then in default under this Agreement.

(c) OWNER has provided CITY with the notice and executed an agreement as required under Paragraph (b) of Subsection 2.4.1 above. .

(d) The purchaser, transferee or assignee provides CITY with security equivalent to any security previously provided by OWNER (if any) to secure performance of its obligations hereunder which are to be performed upon portion of the Property sold, transferred or assigned .

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

(a) The assignee shall be liable for the performance of all obligations of OWNER with respect to transferred property, but shall have no obligations with respect to the portions of the Property, if any, not transferred (the "Retained Property").



(b) The owner of the Retained Property shall be liable for the performance of all obligations of OWNER with respect to Retained Property, but shall have no further obligations with respect to the transferred property.

(c) The assignee's exercise, use and enjoyment of the Property or portion thereof shall be subject to the terms of this Agreement to the same extent as if the assignee were the OWNER.

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

2.4.5 Termination of Agreement With Respect to Individual Lots Upon Sale to Public and Completion of Construction. The provisions of Subsection 2.4.1 shall not apply to the sale or lease (for a period longer than one year) of any parcel which has been finally subdivided and is individually (and not in "bulk") sold or leased to a member of the public or other ultimate user of the parcel. Notwithstanding any other provisions of this Agreement, this Agreement shall terminate with respect to any lot and such lot shall be released and no longer be subject to this Agreement without the execution or recordation of any further document upon satisfaction of both of the following conditions:

(a) The lot has been finally subdivided and individually (and not in "bulk") sold or leased (for a period longer than one year) to a member of the public or other ultimate user; and,

(b) A certificate of occupancy has been issued for a building on the parcel, and the fees set forth under Section 4 of this Agreement have been paid.

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

2.5 Amendment or Cancellation of Agreement. This Agreement may be amended or cancelled in whole or in part only in the manner provided for in Government Code Section 65868.1. 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:

Al C. Boling, City Manager  
City of Ontario  
303 East "B" Street  
Ontario California, California 91764  
with a copy to:

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

CDLFI Remington, LLC  
c/o CapRock Partners  
2050 Main Street, Suite 240  
Irvine, CA 92614  
Attn: Patrick Daniels  
Email: pdaniels@caprock-partners.com  
Phone: (949) 342-8000

with a copy to:

Manatt Phelps and Phillips LLP  
695 Town Center Drive, 14th Floor  
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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 Cal. 3d 465, that the failure of the parties therein to provide for the timing of development resulted in a later adopted initiative restricting the timing of development to prevail over such parties' agreement, it is the parties' intent to cure that deficiency by acknowledging and providing that OWNER shall have the right to develop the Property in such order and at such rate and at such times as OWNER deems appropriate within the exercise of its subjective business judgment.

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

### 3.4 Reservations of Authority.

3.4.1 Limitations, Reservations and Exceptions. Notwithstanding any other provision of this Agreement, the CITY shall not be prevented from applying new rules, regulations and policies upon the OWNER, nor shall a development agreement prevent the CITY from denying or conditionally approving any subsequent development project

application on the basis of such new rules, regulations and policies where the new rules, regulations and policies consist of the following:

(a) Processing fees by CITY to cover costs of processing applications for development approvals or for monitoring compliance with any development approvals;

(b) Procedural regulations relating to hearing bodies, petitions, applications, notices, findings, records and any other matter of procedure;

(c) Regulations, policies and rules governing engineering and construction standards and specifications applicable to public and private improvements, including all uniform codes adopted by the CITY and any local amendments to those codes adopted by the CITY; provided however that, OWNER shall have a vested right to develop the Property in accordance with, and to the extent of, the standards and specifications that are expressly identified in the Specific Plan and the building codes in effect as of the Effective Date;

(d) Regulations that may conflict with this Agreement and the Development Plan but that are reasonably necessary to protect the occupants of the Project and/or of the immediate community from a condition perilous to their health or safety;

(e) Regulations that do not conflict with those rules, regulations and policies set forth in this Agreement or the Development Plan and which do not impose additional obligations, costs, and expenses on Owner or the Project;

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

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

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

monetary liability for contesting such declaratory relief (or other similar non-monetary relief).

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

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

3.5.1 OWNER agrees that development of the Project shall require the construction of storm drain Improvements from the Property to the connection with the Cucamonga Creek Channel as described in Exhibit F.-3. OWNER shall be responsible for the construction of the necessary extension of storm drain facilities, as described in Exhibit F-3. OWNER and CITY agree that CITY may issue grading, building permits and other required permits for OWNER to initiate construction of structures on 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 F-3. CITY agrees that OWNER may request that CITY issue temporary certificates of occupancy prior to completion of the storm drain improvements.

3.5.2 OWNER agrees that development of the Project shall require the construction of street improvements as described in Exhibits F.-1a, F-1b and F-1c. OWNER and CITY agree that CITY may issue grading, building permits and other required permits for OWNER to initiate construction of structures on 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 F-1a, F-1b, and F-1c. 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 Substantial Completion of the street improvements. OWNER agrees that the street improvements shall be completed and subject to final



acceptance by CITY prior to the release any security for the construction of the street improvements.

3.5.2.1 CITY agrees that OWNER shall be required to construct four-way signalized intersection improvements at the intersection of Merrill and Carpenter Avenues as described in Exhibit F-1c. Such intersection is within both the City of Ontario and the City of Chino. If OWNER constructs such four-way intersection improvements and such improvements are constructed by OWNER at their ultimate locations to serve the full width of the master planned street improvements, OWNER shall be entitled to any reimbursements paid to, and received by, CITY from the City of Chino or from other benefitting properties within the City of Ontario, for the costs of the construction of the four-way signalized intersection of Merrill and Carpenter Avenues.

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 F-4 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 on 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 F-4 and Exhibit F-5. 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 as described in Exhibit F.-2. OWNER and CITY agree that CITY may issue grading, building permits and other required permits for OWNER to initiate construction of structures on 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 F-2. 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 F-2.

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 3.8.1 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 3.6.1 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 date that is five (5) years following the Effective Date of this Agreement. The CITY's City Council may, in its discretion, extend any such map for an additional period of up to five (5) years beyond its original term, so long as the subdivider files a written request for an extension with the City prior to the expiration of the initial five (5) year term.

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 applicant(s) who originally paid the cost of preparing the Specific Plan (in this case, the OWNER, who acquired the property from such applicant), including costs incurred pursuant to the California Environmental Quality Act (Pub. Resources Code, §§ 21000 et seq.) to the extent such applicant(s) paid more than its relative benefit from the Specific Plan. Such charges, if adopted, shall be imposed on persons seeking CITY approvals that are required to be consistent with the Specific Plan, to the extent such person(s) has/have not entered into a reimbursement agreement with, and satisfactory to, the person(s) originally responsible for the cost of preparing the Specific Plan, including costs incurred pursuant to CEQA.

#### 4. PUBLIC BENEFITS.

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

conferred on OWNER by providing more fully for the satisfaction of the public needs resulting from the Project.

#### 4.2 Development Impact Fees.

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

4.2.2 Time of Payment. The Development Impact Fees required pursuant to Subsection 4.2.1 shall be paid to CITY prior to the issuance of building permit for each applicable residential or other building (subject to the application/use of available fee deferrals or credits), except for the Open Space and Habitat Acquisition Development Impact fee, which shall be paid by OWNER to CITY prior to the issuance of a grading permit

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

4.3.1 Timely Construction of Public Infrastructure. The phasing of the area wide infrastructure construction within the 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 parcel map conditions. Unless otherwise specified in the Parcel Map conditions, and subject to the provisions of Section 3.6, all other required Improvements for each Parcel Map, shall be completed and operational prior to, and as a condition precedent to, OWNER requesting and CITY's granting of a final occupancy permit for any buildings to be constructed on the Property. All Infrastructure and Improvements shall be completed as required by the Subdivision Agreement/Parcel Map conditions for Parcel Map No.19643.

4.3.2 Availability and Use of Recycled Water. OWNER agrees that recycled water shall be available and utilized by OWNER for all construction-related water uses including prior to, and during, any grading of the Property

4.3.3 Construction of DIF Program Infrastructure To the extent OWNER is required to construct and completes construction of public improvements that are included in CITY's Development Impact Fee Program CITY agrees that CITY shall issue DIF Credit and DIF Reimbursement in accordance with the provisions of a separate Fee Credit Agreement between CITY and OWNER. Limitations on the use of DIF Credit issued to OWNER to offset OWNER's DIF payment obligations shall also be subject to the provisions of a separate Fee Credit Agreement. OWNER may also be eligible to

receive reimbursement from DIF collected by CITY and paid by other development that benefits from OWNER's construction of DIF Program Infrastructure. Any such DIF Reimbursement shall be subject to a Fee Credit Agreement between CITY and OWNER. CITY and OWNER agree that the Fee Credit Agreement between CITY and OWNER shall comply with CITY's adopted policies applicable to such agreements.

#### Public Services Funding Fee.

4.3.4 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.

4.3.5 Public Services Funding Fee Amount. OWNER shall pay a Public Services Funding fee in a single installment payment in the amount of Fifty-Six Cents (\$.56) 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, 2017. 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

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

4.4.1 CITY issuance Water Availability Equivalents. Upon OWNER's payment to CITY of the amount of Three Million, Five Hundred, Thousand dollars (\$3,500,000.00) 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 five (5) business 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 Construction Agreement and 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. The amount of the DIF Credit issued by CITY shall be three million, five hundred thousand dollars (\$3,500,000.00). The form of the Certificate of DIF Credit shall be as described in Exhibit H, attached hereto and incorporated herein. CITY and OWNER agree that the amount of DIF Credit to be issued by CITY to OWNER is expected to exceed OWNER's DIF obligation in the regional water DIF Category and any and all excess DIF Credit issued to OWNER shall be available to OWNER or OWNER's assignees for use as an offset against any DIF obligations in the regional water DIF

Category related to the development of other property within the Ontario Ranch area OWNER and CITY agree that OWNER's payment to CITY required by this Section 4.5.3 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.

4.4.2 Assignment of Regional Water DIF Credits. OWNER shall have the right to transfer or assign the regional water DIF Credit issued by CITY under Section 4.5.3 as provided for herein, to any person, partnership, limited liability company, joint venture, firm or corporation. All sale, transfer or assignment of any DIF Credit shall be conditioned upon OWNER providing CITY with notice concurrent with any such sale, transfer or assignment, or within fifteen (15) business days thereafter. OWNER shall notify the City Manager, in writing, of such sale, transfer or assignment and shall provide the City with 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 has accepted the assignment and that such purchaser, transferee or assignee understands and agrees that such DIF credit shall only be used as an offset against any DIF obligations in the regional water DIF Category and that such DIF Credit shall only be used as an offset the payment of DIF required for the issuance of building permits by CITY within the modified Exhibit A area of the Construction Agreement between the CITY and NMC Builders.

4.5 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). As further described in the Memorandum of Agreement between 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 for OWNER's share of the costs of public infrastructure pursuant to the Construction Agreement. Notwithstanding such reimbursements, OWNER shall remain entitled to DIF Credits as provided for in Article 3 of the Construction Agreement and/or as provided for in a separate Fee Credit Agreement between CITY and OWNER. OWNER agrees that, prior to the recordation of any 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 \$1,387.00 per Single Family Detached Dwelling Unit, \$1,202.00 per Multiple-Family Dwelling Unit, \$1,008.00 per Gated Apartment Community Dwelling Unit, and \$.27 per square foot for Non-Residential buildings. These amounts shall be subject to an automatic increase at a rate not to exceed four (4%) percent per year. CITY shall be the sole and exclusive lead agency in the formation of any CFD, assessment district or other public financing mechanism within the Property; provided however, that the proceeds of any such CFD, assessment district, or financing mechanism may be used, subject to restrictions that may be imposed by applicable law, for the purposes of acquiring, constructing or maintaining public facilities to be owned or operated by other public agencies, including, without limitation those facilities owned or operated by a school district. In addition to the rights of the CITY pursuant to section 5.2 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. 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 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”**

CLDFI Remington, LLC,  
a Delaware limited liability company

By: \_\_\_\_\_

Name:

Its: \_\_\_\_\_

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

**“CITY”**

CITY OF ONTARIO

By: \_\_\_\_\_

Al C. Boling  
City Manager

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

ATTEST:

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

APPROVED AS TO FORM:

BEST, BEST & KREIGER LLP

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

STATE OF CALIFORNIA

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

On \_\_\_\_\_, 2017, before \_\_\_\_\_ me,  
\_\_\_\_\_, Notary Public, personally appeared \_\_\_\_\_, who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

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

WITNESS my hand and official seal.

Signature: \_\_\_\_\_(Seal)

# EXHIBIT "A" TO DEVELOPMENT AGREEMENT

## Legal Description of Property

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

PARCEL NO.1

THAT PORTION OF THE SOUTH 112 OF SECTION 22, AND THOSE PORTIONS OF GOVERNMENT LOTS 3, 4, 5 AND 8, ALL IN THE SOUTH 112 OF SECTION 22, TOWNSHIP 2 SOUTH, RANGE 7 WEST, SAN BERNARDINO BASE AND MERIDIAN, ACCORDING TO THE OFFICIAL PLAT OF SAID LAND FILED IN THE DISTRICT LAND OFFICE, SEPTEMBER 16, 1893, DESCRIBED AS FOLLOWS: BEGINNING AT A POINT ON THE WEST LINE OF SAID LOT 3, SECTION 22, WHICH IS 129.75 FEET NORTH OF THE SOUTHWEST CORNER THEREOF; THENCE EAST 2069.11 FEET PARALLEL WITH THE SOUTH LINE OF SAID LOT 3, TO A POINT WHICH IS 663.29 FEET WEST OF THE EAST LINE OF THE NORTHWEST 114 OF THE SOUTHEAST 114 OF SAID SECTION 22; THENCE SOUTH 1449.75 FEET (RECORDED 1529.65 FEET IN BOOK 8, PAGE 71, RECORD OF SURVEY), TO THE SOUTH LINE OF SAID LOT 8, SECTION 22; THENCE WEST 2069.11 FEET ALONG THE SOUTH LINE OF SAID LOT 8 AND 4 TO THE SOUTHWEST CORNER OF SAID LOT 4; THENCE NORTH 1449.75 FEET (RECORDED 1529.65 FEET IN BOOK 8, PAGE 71, RECORDS OF SURVEY), ALONG THE WEST LINE OF SAID LOTS 4 AND 3, TO THE POINT OF BEGINNING.

EXCEPTING THEREFROM THAT PORTION CONVEYED TO THE SAN BERNARDINO COUNTY FLOOD CONTROL DISTRICT BY THE DEED RECORDED OCTOBER 28, 1944 IN BOOK 1720, PAGE 136 OFFICIAL RECORDS.

ALSO EXCEPTING THEREFROM THE INTEREST IN THE WEST 25 FEET OF SAID LAND AS CONVEYED TO THE COUNTY OF SAN BERNARDINO FOR HIGHWAY PURPOSES, BY DEED RECORDED IN BOOK 355, PAGE 287 OF DEEDS. ALSO EXCEPTING THEREFROM A 401100TH INTEREST IN AND TO A WELL SITE, AS CONVEYED TO HENRY BEKENDAM AND HOPE BEKENDAM, HUSBAND AND WIFE, AS JOINT TENANTS, BY DEED RECORDED MARCH 4, 1963 IN BOOK 5863 PAGE 192 OFFICIAL RECORDS, DESCRIBED AS FOLLOWS: THE NORTH 20.00 FEET OF THE SOUTH 74.75 FEET OF THE EAST 20.00 FEET OF THE WEST 437.00 FEET OF GOVERNMENT LOT 3 SECTION 22, TOWNSHIP 2 SOUTH, RANGE 7 WEST, SAN BERNARDINO BASE AND MERIDIAN, ACCORDING TO GOVERNMENT SURVEY.

ALSO EXCEPTING THEREFROM THAT PORTION CONVEYED TO THE SAN BERNARDINO COUNTY FLOOD CONTROL DISTRICT BY DEED RECORDED SEPTEMBER 12, 1977 IN BOOK 9260 PAGE 60 OFFICIAL RECORDS.

ALSO EXCEPTING THEREFROM THAT PORTION CONVEYED TO SANTA ANA WATERSHED PROJECT AUTHORITY, A PUBLIC AGENCY BY DEED RECORDED JUNE 16, 1999, INSTRUMENT NO. 99-256762, OFFICIAL RECORDS.

PARCEL NO.2

A 401100 INTEREST IN AND TO WELL SINE DESCRIBED AS FOLLOWS:

THE NORTH 20.00 FEET OF THE SOUTH 74.75 FEET OF THE EAST 20.00 FEET OF THE WEST 437.00 FEET OF GOVERNMENT LOT 3, SECTION 22, TOWNSHIP 2 SOUTH, RANGE 7 WEST, SAN BERNARDINO MERIDIAN, ACCORDING TO THE OFFICIAL PLAT OF SAID LAND APPROVED BY THE SURVEYOR GENERAL, DATED AUGUST 30, 1873.

TOGETHER WITH A NON-EXCLUSIVE EASEMENT OVER A STRIP OF LAND FOR THE CONVEYANCE OF WATER THROUGH AN EXISTING PIPE LINE WITH THE RIGHT TO ENTER UPON SAID STRIP OF LAND IN A PRUDENT AND CAREFUL MANNER WHEN NECESSARY TO REPLACE OR REPAIR SAID PIPE LINE AND ALSO FOR INGRESS TO AND EGRESS FROM THE ABOVE MENTIONED WELL SITE. SAID STRIP OF LAND IS DESCRIBED AS FOLLOWS:

BEGINNING AT A POINT 427.00 FEET EAST OF AND 54.75 FEET; NORTH OF THE NORTHWEST CORNER OF GOVERNMENT LOT 4, SECTION 22, TOWNSHIP 2 SOUTH, RANGE 7 WEST, SAN BERNARDINO MERIDIAN, ACCORDING TO GOVERNMENT SURVEY; THENCE SOUTH AND PARALLEL WITH THE WEST LINE OF SAID LOT 4 TO A POINT 635 FEET SOUTH OF THE NORTH LINE OF SAID LOT 4; THENCE WEST PARALLEL WITH THE NORTH LINE OF SAID LOT 4, 427.00 FEET TO THE WEST LINE OF SAID LOT 4.

NOTE: THE AREA AND DISTANCES OF THE ABOVE DESCRIBED PROPERTY ARE COMPUTED TO THE CENTERS OF THE ADJOINING STREETS SHOWN ON SAID MAP.

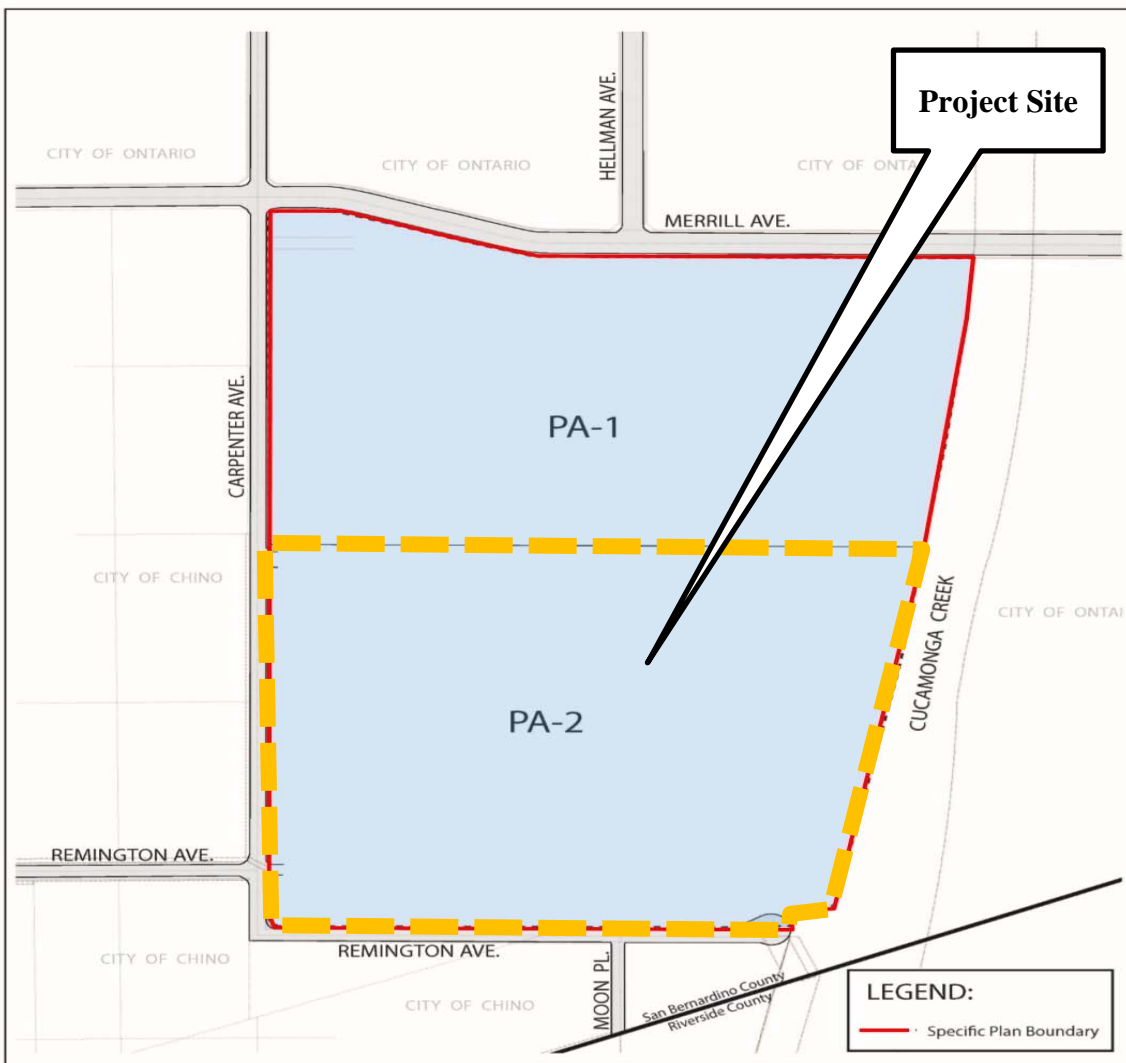
APN(S): 0218-292-09-0-000, 0218-292-10-0-000,  
0218-292-13-0-000, 0218-292-14-0-000 AND  
0218-292-12-0-000

THE LAND SHOWN IN THIS SURVEY IS THE SAME AS THAT DESCRIBED IN FIRST AMERICAN TITLE INSURANCE COMPANY, COMMITMENT NO. NCS-626317-ONT1, DATED AUGUST 19, 2013.



# EXHIBIT "B" TO DEVELOPMENT AGREEMENT

## Map showing Property and its location



Source: Douglas Franz Architects

N. T. S.

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

**Existing Development Approvals**

On August 22, 2017, the Planning Commission:

- a) Issued Resolution No. issued Resolution PC17-054 recommending City Council certification of the Colony Commerce Center West Specific Plan EIR.
- b) Issued Resolution PC17-055 recommending City Council approval of the Colony Commerce Center West Specific Plan (File No. PSP15-001).
- c) Issued Resolution No. PC17-058 recommending City Council approval of the Development Agreement (File No. PDA16-001).
- d) Issued Resolution No. PC17-056 approving Tentative Parcel Map 19643 (File No. PMTT16-001).
- e) Issued Resolution No. PC17-057 approving Development Plan (File No. PDEV16-002).

On September 19, 2017, the City Council:

- a) Issued Resolution 2017-XX to certifying the Colony Commerce Center West Specific Plan EIR (SCH #2015061023).
- b) Adopted Ordinance No. XXXX approving the Colony Commerce Center West Specific Plan EIR.

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

**Existing Land Use Regulations**

These documents are listed for reference only:

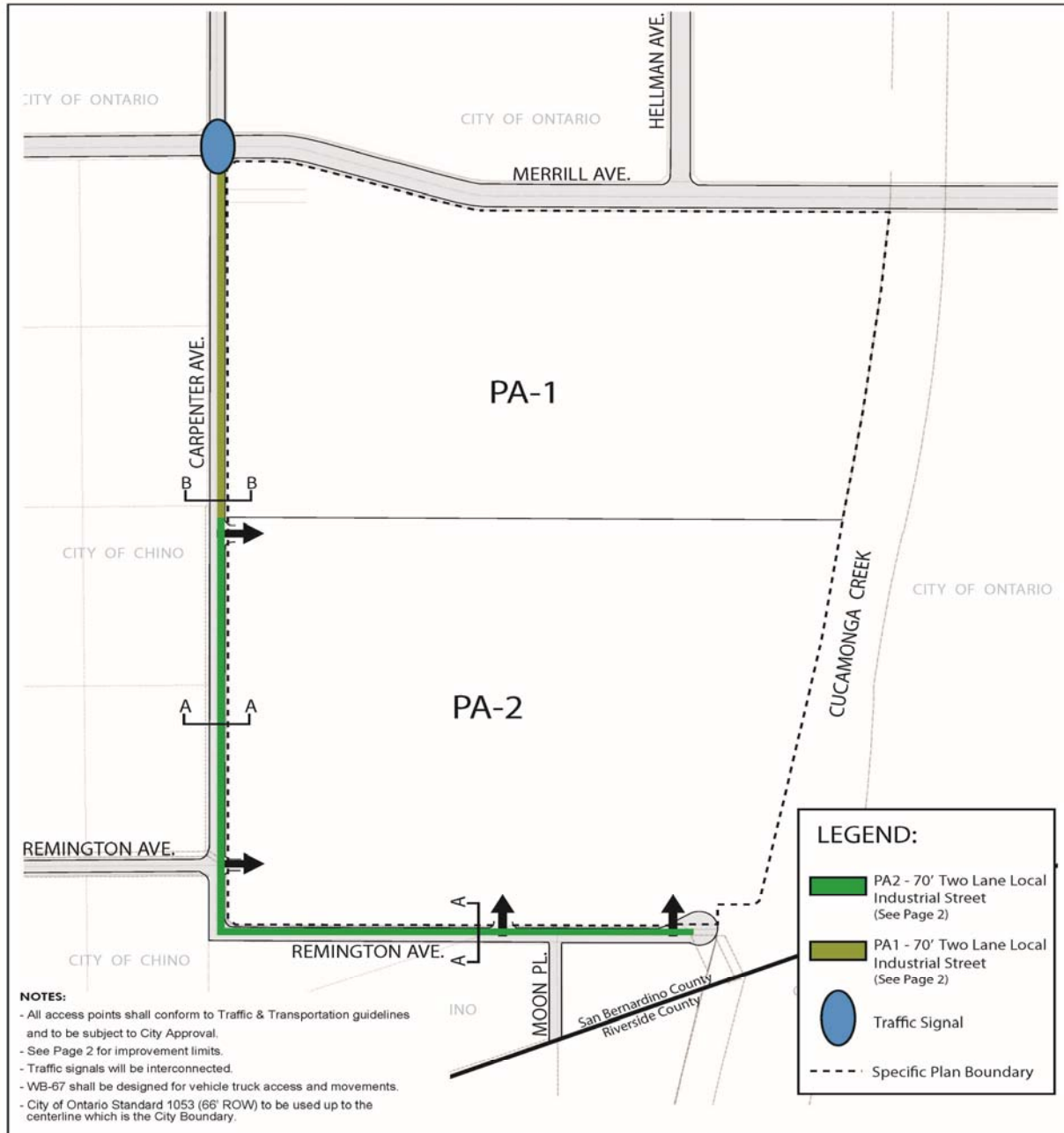
1. The Colony Commerce Center West Specific Plan (File No. PSP15-001) Environmental Impact Report, Resolution No. 2017-XX.
2. The Colony Commerce Center West Specific Plan (File No. PSP15-001), Ordinance No. XXXX.
3. Tentative Parcel Map 19643 (File No. PMTT16-001), Resolution No. PC17-056.
4. Development Plan (File No. PDEV16-002), Resolution No. PC17-057.
5. City of Ontario Municipal Code
  - a. Six – Sanitation & Health
  - b. Seven – Public Works
  - c. Eight – Building Regulations
  - d. Nine – Development Code

# EXHIBIT "F-1a"

## Required Infrastructure Improvements

**Parcel 19643**  
**Street Improvements**

**Development Agreement**  
**Exhibit F-1a**



Source: KTG Y Group

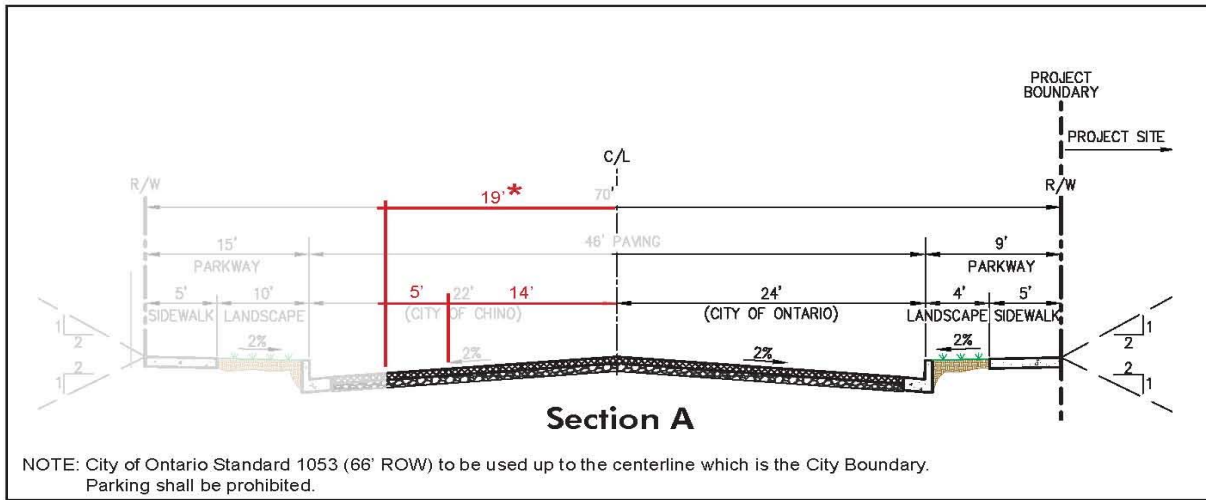


# EXHIBIT "F-1b"

## Required Infrastructure Improvements

### Parcel 19643 Street Improvements - Carpenter Avenue & Remington Avenue (70' ROW)

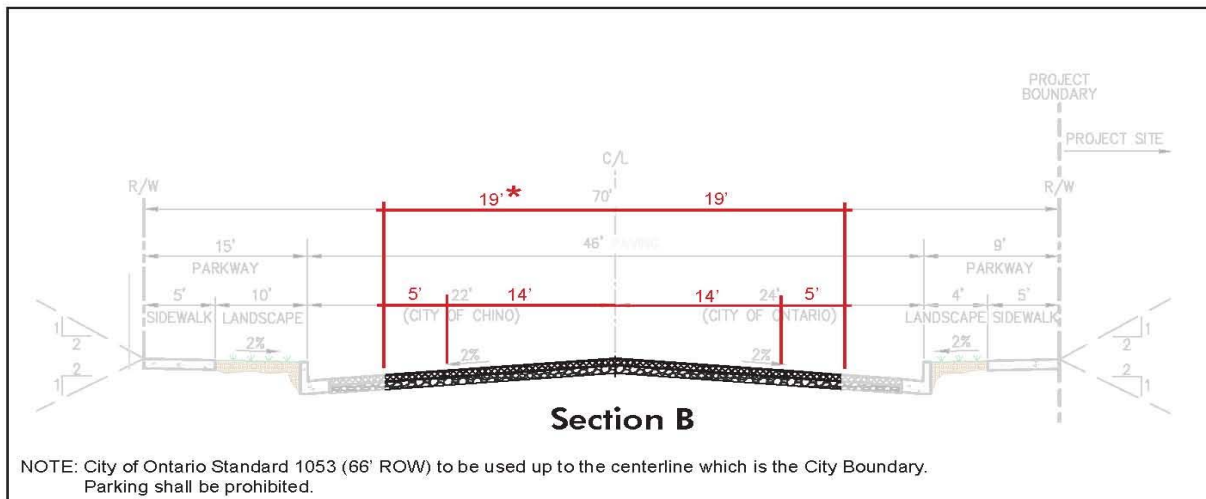
### Development Agreement Exhibit F-1b



Source: David Evans & Associates

\* Depending on development timing, project will construct 19' (14' Circulation Lane + 5' Shoulder) of ultimate paving beyond centerline.

### Street Improvements - Carpenter Avenue (70' ROW)



Source: David Evans & Associates

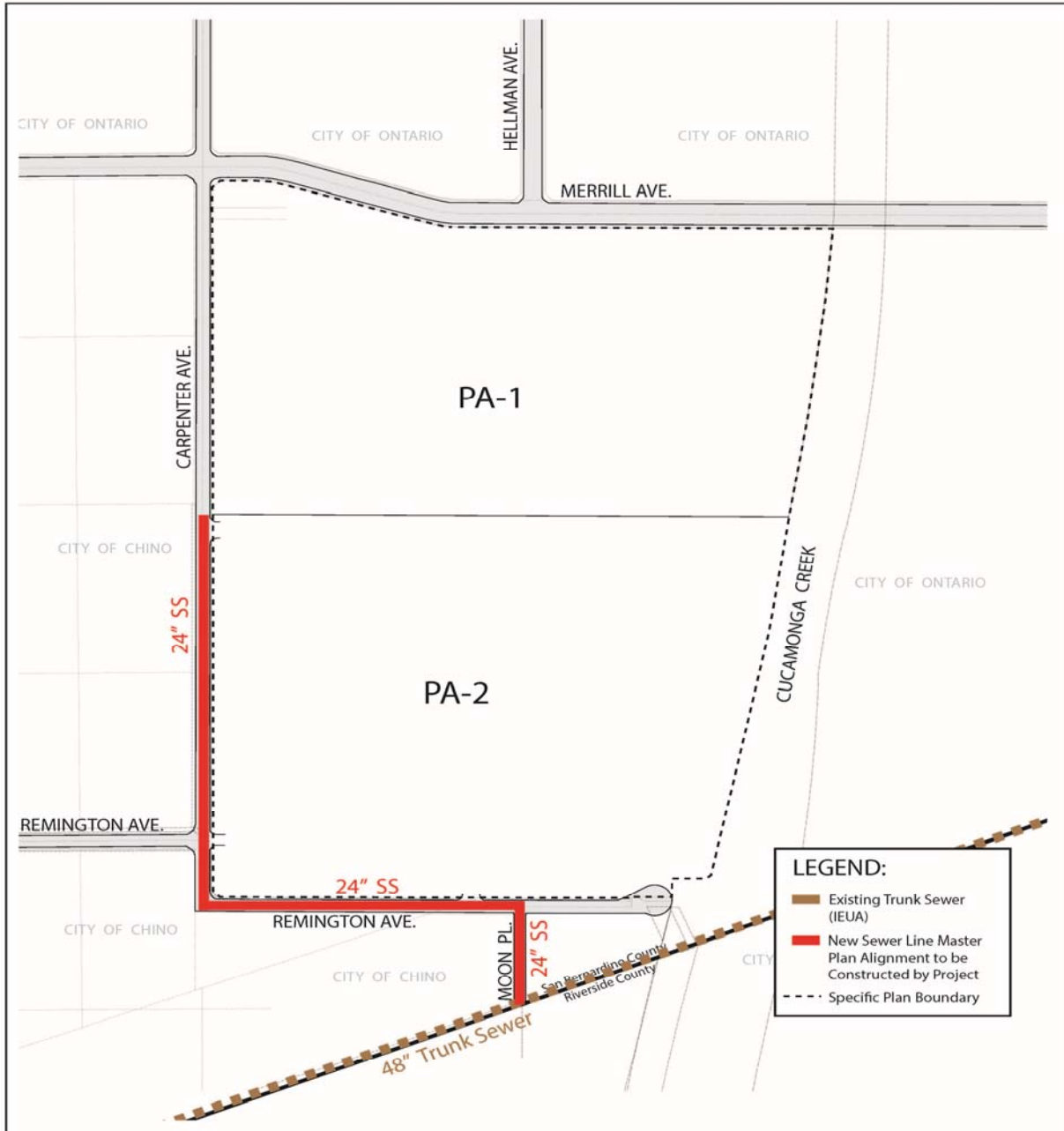
\* Depending on development timing, project will construct 19' (14' Circulation Lane + 5' Shoulder) of ultimate paving beyond centerline.

# EXHIBIT "F-2"

## Required Infrastructure Improvements

**Parcel 19643**  
**Sewer Improvements**

**Development Agreement**  
**Exhibit F-2**



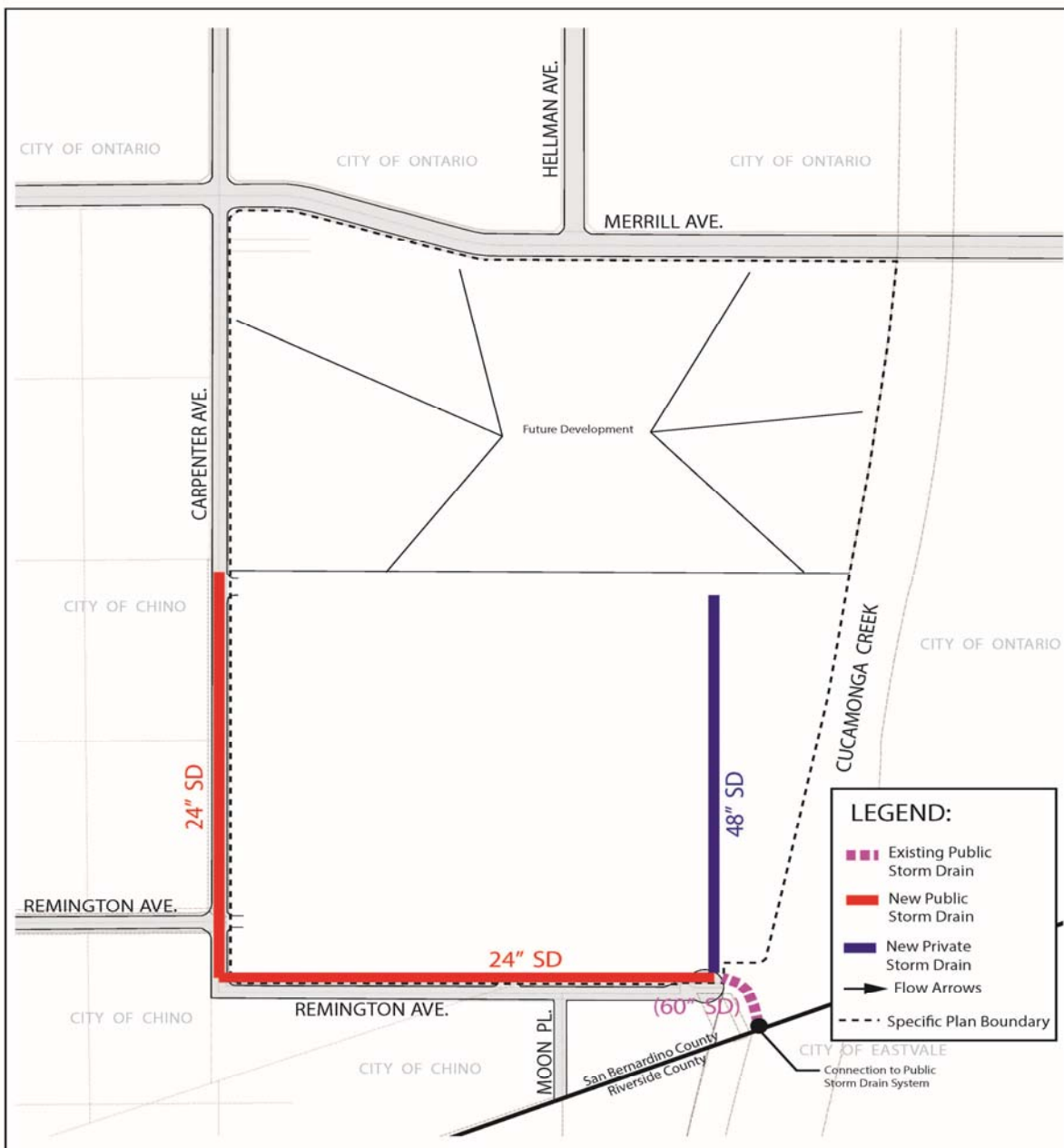
Source: David Evans & Associates



# EXHIBIT "F-3" Required Infrastructure Improvements

**Parcel 19643  
Storm Drain Improvements**

**Development Agreement  
Exhibit F-3**



Source: David Evans & Associates

N. T. S.



# EXHIBIT "F-4"

## Required Infrastructure Improvements

**Parcel 19643**  
**Water Improvements**

**Development Agreement**  
**Exhibit F-4**



Source: David Evans & Associates



## EXHIBIT "F-5" Required Infrastructure Improvements

**Parcel 19643  
Reclaimed Water Improvements**

**Development Agreement  
Exhibit F-5**



Source: David Evans & Associates



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

FORM OF CERTIFICATE OF NET MDD AVAILABILITY

Pursuant to Section \_\_\_\_ of this Agreement between the City of Ontario, a California municipal corporation, and CLDFI Remington, LLC, a Delaware 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

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

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

**Exhibit "H"**

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

Pursuant to Section 4.5.3 of this Agreement by and between the City of Ontario and CLDFI Remington, LLC, dated \_\_\_\_\_, 2016, 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: \$ \_\_\_\_\_

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

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

Exhibit "I"

**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  
October 3, 2017

SECTION:  
CONSENT CALENDAR

**SUBJECT:** AN ORDINANCE APPROVING A SPECIFIC PLAN (COLONY COMMERCE CENTER WEST) REQUEST (FILE NO. PSP15-001) TO ESTABLISH LAND USE DESIGNATIONS, DEVELOPMENT STANDARDS, DESIGN GUIDELINES AND INFRASTRUCTURE IMPROVEMENTS FOR APPROXIMATELY 123.17 ACRES OF LAND, WHICH INCLUDES THE POTENTIAL DEVELOPMENT OF 2,951,146 SQUARE FEET OF INDUSTRIAL DEVELOPMENT. THE PROJECT SITE IS BOUNDED BY MERRILL AVENUE TO THE NORTH, REMINGTON AVENUE TO THE SOUTH, CARPENTER AVENUE TO THE WEST AND THE CUCAMONGA CREEK FLOOD CONTROL CHANNEL TO THE EAST (APNS: 0218-261-24, 0218-292-05, 0218-292-09, 0218-292-10, 0218-292-12, 0218-292-13, 0218-292-14, and 0218-311-11)

**RECOMMENDATION:** That the City Council consider and adopt an ordinance approving the Colony Commerce Center West Specific Plan (File No. PSP15-001).

**COUNCIL GOALS:** 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 the New Model Colony

**FISCAL IMPACT:** Adoption of the Colony Commerce Center West Specific Plan would result in both short and long term fiscal impacts to the City. Short term impacts include infrastructure improvements to serve the new industrial development. The cost of these improvements is included in the Nexus Study and Development Impact Fees previously adopted by the City Council. The developer will be required to install improvements or pay the Development Impact Fee ("DIF") associated with the various improvements. Long term fiscal impacts include the ongoing operations and maintenance services (police, fire, maintenance, etc.) necessary to serve the new development. While the development will result in increased property tax revenue, the increase is not sufficient to cover the cost of services associated with the project. To address this shortfall, the development will be required to

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

Prepared by: Luis Batres  
Department: Planning

City Manager  
Approval: 

Submitted to Council/O.H.A. 10/03/2017

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

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

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

10

form and/or join a Community Facilities District (“CFD”) to cover the additional public service costs. No Original Model Colony dollars will be used to fund the Ontario Ranch development.

**BACKGROUND:** On September 19, 2017, the City Council introduced an ordinance approving the Colony Commerce Center West Specific Plan. The Ontario Plan (TOP) Policy Plan (General 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. Specific Plans are required to ensure that sufficient land area is included to achieve cohesive, unified districts and neighborhoods. Specific Plans are required to incorporate a development framework for detailed land use, circulation, infrastructure (including drainage, sewer, and water facilities), provision for public services (including parks and schools), and urban design and landscape plans.

**COLONY COMMERCE CENTER WEST SPECIFIC PLAN:** The Colony Commerce Center West Specific Plan (File No. PSP15-001) serves to implement the City’s Policy Plan for the project site and provides zoning regulations for development of the project site by establishing permitted land use, development standards, infrastructure requirements, and implementation requirements for the development of 123.17 acres within the Specific Plan boundaries. The Specific Plan establishes a comprehensive set of development regulations and design guidelines to regulate site planning, landscaping, and architectural character, and ensuring that excellence in community design is achieved during project development. The Colony Commerce Center West Specific Plan establishes the procedures and requirements to approve new development within the project site to ensure TOP goals and policies are achieved.

The overall land use concept for the Colony Commerce Center West Specific Plan takes advantage of the site’s proximity to airports and regional freeway access. The land use concept provides for a range of industrial uses, while offering a variety of development and employment opportunities and the ability to accommodate an ever-changing business and industrial environment.

The Specific Plan identifies the land use intensity anticipated in the two planning areas (see *Exhibit “A”: Colony Commerce Center West Specific Plan Land Use Plan*). The maximum floor area ratio (FAR) permitted in each Planning Area conforms to the maximum 0.55 FAR permitted in the Policy Plan (General Plan) Land Use Plan for industrial designations. Planning Area 1, located along the northern portion of the Specific Plan area, is 57.58 acres in size and can potentially be developed with 1,379,501 square feet of industrial development. Planning Area 2, located along the southern portion of the Specific Plan, is 65.60 acres in size and can potentially be developed with 1,571,645 square feet of industrial development (see *Exhibit “B”: Land Use Summary Table*).

Specific Plan Design Concept— The design theme and site design of the Colony Commerce Center West Specific Plan was created to ensure that the Specific Plan reflects the vision embodied by TOP in the following concepts:

- Develop a quality, cohesive design concept and identity for the Colony Commerce Center West area;
- Establish development standards that ensure lasting value for the industrial developments;



- The architectural image of the Specific Plan will be perceived primarily from the public realm. Therefore, building massing, scale and roof forms, as the primary design components require articulation in their architectural expression as they relate to the public view;
- A theme wall/entry monument may be installed at the major project entries at the discretion of the builder or project developer;
- Site design should facilitate the intended functions of developed and open space areas and provide for appropriate interactions between buildings and activity areas, good movement, vehicular access and parking, and pedestrian and bicycle travel;
- Buildings should be oriented to define the streetscene and provide for an aesthetically pleasing streetscape; and
- Major vehicular and pedestrian entries to the site from the public street system should be readily visible.

Architectural Style — The Colony Commerce Center West Specific Plan Design Guidelines have been established to promote high-quality architecture as required by the Ontario Development Code and TOP. Since it is envisioned that the site will be developed with industrial development, the architecture style will be similar to what has been developed within the Meredith Specific Plan at the southeast corner of Fourth Street and Vineyard Avenue (utilizing a tilt-up contemporary style. All buildings will be required to provide a recognizable base, body, roofline and entry.

Landscape Plan — The landscape palette for the Specific Plan (Table 7.1 of the Specific Plan) identifies the plant material and trees to be used within parking lots, along street parkways, within sign monument areas, and adjacent to buildings. Additionally, the Specific Plan establishes the overall landscape coverage for the project and the landscape setbacks along the perimeter streets and interior property lines.

Circulation Concept — The Specific Plan establishes the hierarchy and general location of roadways bounding the project. Merrill Avenue will be designed to be widened to a four (4) lane, 108-foot wide collector street. Carpenter and Remington Avenues will be designed and widened to two-lane local industrial streets (70-foot right-of-way). The easterly end of Remington Avenue will be designed to terminate with a cul-de-sac.

Planning Area 1 has been designed to provide two points of access along Carpenter Avenue and one along Merrill Avenue. Planning Area 2 has been designed to provide two access points along Carpenter Avenue and two along Remington Avenue. Signalized intersections will be provided at the Merrill Avenue/Carpenter Avenue intersection and the Merrill Avenue/Hellman Avenue intersection.

Infrastructure and Services — Backbone infrastructure to serve all areas of Specific Plan will be installed by the developer(s) in accordance with the Ontario Ranch (New Model Colony) Master Plans for streets, water (including recycled water), sewer, storm drain, and fiber optic facilities. Natural gas will be provided by The Gas Company and electricity by Southern California Edison. Development of the project requires the installation by the developer of all infrastructure necessary to serve the project as a standalone development.

**COMPLIANCE WITH THE ONTARIO PLAN:** The Colony Commerce Center West Specific Plan 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).

California Government Code (Title 7, Division 1, Chapter 3, Article 8, Section 65450-65457) permits the adoption and administration of specific plans as an implementation tool for elements contained in the local general plan. Specific plans must demonstrate consistency in regulations, guidelines, and programs with the goals and policies set forth in the general plan. The Colony Commerce West Specific Plan has been prepared in conformance with the goals and policies of the City of Ontario Policy Plan (General Plan). The policy analysis in *Appendix "Policy Plan (General Plan) Consistency,"* of the Specific Plan describes the manner in which the Colony Commerce Center West Specific Plan complies with the Policy Plan goals.

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

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

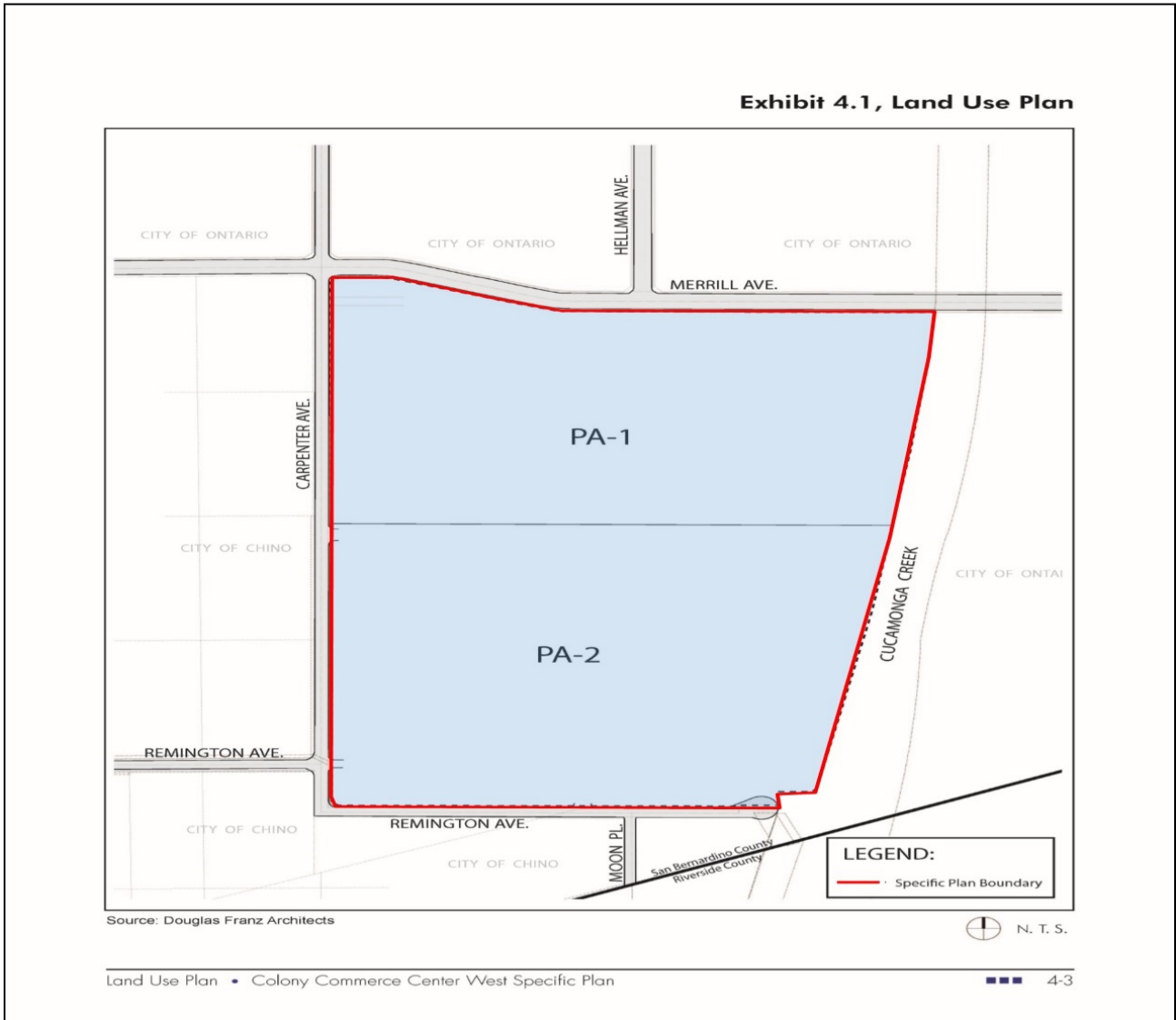
**ENVIRONMENTAL REVIEW:** On January 27, 2010, the City adopted The Ontario Plan (TOP) and certified the accompanying EIR. TOP serves as the City's new General Plan for the entire City, including the NMC (now referred to Ontario Ranch). TOP identified many areas that might have a potentially significant impact on the environment. These areas included: 1) Aesthetics; 2) Biological Resources; 3) Geology and Soils; 4) Hazards and Hazardous Materials; 5) Hydrology and Water Quality; 6) Land Use and Planning; 7) Mineral Resources; 8) Population and Housing; 9) Public Services; 10) Recreation; and 11) Utilities and Service Systems. Through the EIR process these potential impacts were analyzed, revisions were incorporated into the plan and/or mitigation measures were identified that reduced the potential environmental impacts to a level that was less than significant.

Even though an EIR was prepared for TOP, the analyses focused on the program or "big picture" impacts associated with development. With the submittal of the Colony Commerce Center West Specific Plan, staff is charged with evaluating the potential impacts of development at the project level. Staff completed an Initial Study for the project and determined that an EIR should be prepared for the Colony Commerce Center West Specific Plan. As noted in the Planning Commission staff report, dated August 22, 2017, an EIR was prepared addressing 14 key areas. The Colony Commerce Center West Specific Plan EIR (SCH# 2015061023) evaluates each of these areas and identifies mitigation measures and/or revisions to the plan to lessen the impacts of the project. Of the 14 areas considered by the EIR, all but three of the impact areas were mitigated a level of less than significant. Even with the mitigation measures, the impacts to air quality, agriculture resources and transportation and traffic) could not be reduced to less than significant, resulting in some impacts remaining potentially significant and unavoidable. While mitigation of all potential impacts to a level of less than significant is desirable, the

fact that three areas will remain significant and unavoidable is not unexpected. The identification of these areas as significant and unavoidable validates the work previously completed for TOP. Staff continues to believe that the benefits of the proposed development outweigh the potential impacts associated with it. Therefore, staff recommends the City Council certify the EIR, including the adoption of the Statement of Overriding Considerations and Mitigation Monitoring Program for the project.

**PLANNING COMMISSION REVIEW:** On August 22, 2017, the Planning Commission conducted a public hearing and voted unanimously (6-0) to recommend City Council certification of the Colony Commerce Center West Specific Plan Environmental Impact Report (SCH#2015061023) including the adoption of a Statement of Overriding Considerations and Mitigation Monitoring Program and approval of the Colony Commerce Center West Specific Plan (File No. PSP15-001).

**Exhibit "A"**  
**Colony Commerce Center West Specific Plan Land Use Map**



**Exhibit “B”:  
Land Use Summary Table**

**Table 4.1, Land Use Summary**

Planning Area (PA)	Land Use	Acres	Maximum Potential Intensity (Gross Floor Area)	Max.Floor Area Ratio
PA-1	Industrial	57.58 ac	1,379,501 SF	0.55
PA-2	Industrial	65.60 ac	1,571,645 SF	0.55
	<b>Total</b>	<b>123.17 ac</b>	<b>2,951,146 SF</b>	<b>0.55</b>

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

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF ONTARIO, CALIFORNIA, APPROVING THE COLONY COMMERCE CENTER WEST SPECIFIC PLAN (FILE NO. PSP15-001), TO ESTABLISH LAND USE DESIGNATIONS, DEVELOPMENT STANDARDS, DESIGN GUIDELINES AND INFRASTRUCTURE IMPROVEMENTS FOR 123.17 ACRES OF LAND, WHICH INCLUDES THE POTENTIAL DEVELOPMENT OF 2,951,146 SQUARE FEET OF INDUSTRIAL DEVELOPMENT. THE PROJECT SITE IS BOUNDED BY MERRILL AVENUE TO THE NORTH, REMINGTON AVENUE TO THE SOUTH, CARPENTER AVENUE TO THE WEST AND THE CUCAMONGA CREEK FLOOD CONTROL CHANNEL TO THE EAST, AND MAKING FINDINGS IN SUPPORT THEREOF - APNS: 0218-292-05, 0218-292-09, 0218-292-10, 0218-311-11, 0218-292-12, 0218-292-13, 0218-292-14, 0218-261-24.

WHEREAS, CAP ROCK PARTNERS ("Applicant") has filed an Application for the approval of a Specific Plan, File No. PSP15-001, as described in the title of this Ordinance (hereinafter referred to as "Application" or "Project"); and

WHEREAS, the Application applies to approximately 123.17 acres of land, bounded by Merrill Avenue to the north, Remington Avenue to the south, Carpenter Avenue to the west and the Cucamonga Creek Flood Control Channel to the east, within the SP (AG) land use designation, and is presently improved with agriculture and farm related uses; and

WHEREAS, the property to the north of the Project site is within the SP (AG) zoning district and is developed with agriculture and dairy land uses. The property to the east is within the SP (AG) zoning district and is developed with the agriculture and vacant land. The property to the south is within the agriculture and light industrial zoning district located within the City of Chino and is developed with agriculture and industrial land uses. The property to the west is within the industrial zoning district located within the City of Chino and is developed with industrial land uses and contains vacant land; and

WHEREAS, the Colony Commerce Center West Specific Plan establishes a comprehensive set of design guidelines and development regulations to guide and regulate site planning, landscaping, architectural character, and ensure that excellence in community design is achieved during project development. In addition, the Specific Plan will establish the procedures and requirements to approve new development within the project site to ensure TOP goals and policies are achieved; and

WHEREAS, the Colony Commerce Center West Specific Plan consists of 123.17 acres of land, which includes the potential development of up to 2,951,146 square feet of industrial development; and

WHEREAS, the land use intensity of the Colony Commerce Center West Specific Plan anticipated in the two planning areas is consistent with The Ontario Plan (TOP). The

maximum Floor Area Ratio (FAR) permitted in each Planning Area conforms to the maximum 0.55 FAR permitted in the Policy Plan (General Plan) Land Use Plan for industrial development. Planning Area 1, located along the northern portion of the Specific Plan area, is 57.58 acres in size and can potentially be developed with 1,379,501 square feet of industrial development. Planning Area 2, located along the southern portion of the Specific Plan, is 65.60 acres in size and can potentially be developed with 1,571,645 square feet of industrial development; and

WHEREAS, the Colony Commerce Center West Specific Plan has been prepared in conformance with the goals and policies of the City of Ontario Policy Plan (General Plan). The policy (General Plan) analysis in the *Appendix "Policy Plan (General Plan) Consistency,"* of the Specific Plan describes the manner in which the Colony Commerce Center West Specific Plan complies with the Policy Plan goals and policies applicable to the Colony Commerce Center West Specific Plan; and

WHEREAS, the Specific Plan does not conflict with the Land Use Policies of the General Plan (TOP) and will provide for development, in a manner consistent with the General Plan. The policy (General Plan) analysis in the *Appendix "Policy Plan (General Plan) Consistency,"* of the Specific Plan describes the manner in which the Colony Commerce Center West Specific Plan complies with the Policy Plan goals and policies applicable to the Colony Commerce Center West Specific Plan; and

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

WHEREAS, an Environmental Impact Report (EIR) (SCH#2015061023) has been prepared in accord with the California Environmental Quality (CEQA), the State CEQA Guidelines and the City of Ontario Guidelines to address the environmental effects of the Specific Plan (Colony Commerce Center West); and

WHEREAS, Ontario Development Code Table 2.02-1 (Review Matrix) grants the City Council the responsibility and authority to review and approve 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, the project site is also located within the Airport Influence of Chino Airport and must be 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, which 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 22, 2017, the Planning Commission of the City of Ontario conducted a duly noticed public hearing to consider the Project and concluded said hearing on that date; and

WHEREAS, as the first action on the Project on August 22, 2017, the Planning Commission adopted a resolution recommending the City Council certify the EIR (SCH# 2015061023) and approve the Mitigation Monitoring and Reporting Program prepared pursuant to CEQA, the State CEQA Guidelines, and the City of Ontario Local CEQA Guidelines; and

WHEREAS, on August 22, 2017, after considering all public testimony on the application, the Planning Commission voted 6 to 0 to issue its Resolution No. PC17-055 recommending the City Council approval of the Application; and

WHEREAS, on September 19, 2017, the City Council of the City of Ontario conducted a duly noticed public 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 approving body for the Project, the City Council has reviewed and considered the information contained in the Environmental Impact Report (EIR) prepared for the project and supporting documentation. Based upon the facts and information contained in the EIR (SCH# 2015061023) and supporting documentation, the City Council finds as follows:

(1) The Colony Commerce Center West Specific Plan EIR contains a complete and accurate reporting of the environmental impacts associated with the Project; and

(2) The Colony Commerce Center West Specific Plan EIR was completed in compliance with CEQA and the Guidelines promulgated thereunder; and

(3) The Colony Commerce Center West Specific Plan EIR reflects the independent judgment of the City Council; and

**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 recommending body for the Project, the Planning Commission has reviewed and considered the facts and information contained in the Application and supporting documentation against the ALUCP compatibility factors, including [1] Safety Criteria (ALUCP Table 2-2) and Safety Zones (ALUCP Map 2-2), [2] Noise Criteria (ALUCP Table 2-3) and Noise Impact Zones (ALUCP Map 2-3), [3] Airspace protection Zones (ALUCP Map 2-4), and [4] Overflight Notification Zones (ALUCP Map 2-5). The project site is also located within the Airport Influence of Chino Airport and is consistent with policies and criteria set forth within the 2011 California Airport Land Use Planning Handbook published by the California Department of Transportation, Division of Aeronautics. As a result, the Planning Commission, therefore, finds and determines that the Project, when implemented in conjunction with the conditions of approval, will be consistent with the policies and criteria set forth within the ALUCP.

**SECTION 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 and 2, above, the City Council hereby concludes as follows:

(1) The 123.17-acre Colony Commerce Center West Specific Plan is suitable for industrial development, uses permitted in the proposed district in terms of access, size, and compatibility with existing land use in the surrounding area; and

(2) The proposed Colony Commerce Center West Specific Plan is in conformance with the Land Use Policies and Goals of the Policy Plan and will provide for development, within the district, in a manner consistent with the Policy Plan and with related development; and

(3) During the Colony Commerce Center West Specific Plan review, 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 California Government Code Section 65351; and

(4) The proposed project is consistent with the adopted Housing Element. The Project site is not one of the properties (areas) listed in the Available Land Inventory in the Housing Element; and

(5) An Environmental Impact Report (EIR) (SCH#2015061023) has been prepared in accord with the California Environmental Quality (CEQA), the State CEQA Guidelines and the City of Ontario Guidelines to address the environmental effects of the Specific Plan (Colony Commerce Center West).

**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 Application.

**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 3<sup>rd</sup> day of October 2017.

---

PAUL S. LEON, MAYOR

ATTEST:

---

SHEILA MAUTZ, CITY CLERK

APPROVED AS TO FORM:

---

BEST BEST & KRIEGER LLP  
CITY ATTORNEY

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

I, SHEILA MAUTZ, City Clerk of the City of Ontario, DO HEREBY CERTIFY that foregoing Ordinance No. 3080 was duly introduced at a regular meeting of the City Council of the City of Ontario held September 19, 2017 and adopted at the regular meeting held October 3, 2017 by the following roll call vote, to wit:

AYES:            COUNCIL MEMBERS:

NOES:           COUNCIL MEMBERS:

ABSENT:         COUNCIL MEMBERS:

---

SHEILA MAUTZ, CITY CLERK

(SEAL)

I hereby certify that the foregoing is the original of Ordinance No. 3080 duly passed and adopted by the Ontario City Council at their regular meeting held October 3, 2017 and that Summaries of the Ordinance were published on September 26, 2017 and October 10, 2017, in the Inland Valley Daily Bulletin newspaper.

---

SHEILA MAUTZ, CITY CLERK

(SEAL)

# Attachment “A”

File No. PSP15-001

Department Conditions of Approval  
(to follow this page)



City of Ontario  
Planning Department  
303 East B Street  
Ontario, California 91764  
Phone: 909.395.2036  
Fax: 909.395.2420

## ***Planning Department Land Development Division Conditions of Approval***

**Meeting Date:** August 22, 2017

**File No:** PSP15-001

**Related Files:** N/A

**Project Description:** A Specific Plan (Colony Commerce Center West) request (File No. PSP15-001) to establish land use designations, development standards, design guidelines and infrastructure improvements for approximately 123.17 acres of land, which includes the potential development of 2,951,146 square feet of industrial development. The project site is bounded by Merrill Avenue to the north, Remington Avenue to the south, Carpenter Avenue to the west and the Cucamonga Creek Flood Control Channel to the east; **submitted by Cap Rock-Partners.** (APN(s): 0218-292-05, 0218-292-09, 0218-292-10, 0218-311-11, 0218-292-12, 0218-292-13, 0218-292-14, 0218-261-24).

**Prepared By:** Luis E. Batres, Senior Planner  
Phone: 909.395.2431 (direct)  
Email: Lbatres@ontarioca.gov

The Planning Department, Land Development Section, conditions of approval applicable to the above-described Project, are listed below. The Project shall comply with each condition of approval listed below:

**1.0 Standard Conditions of Approval.** The project shall comply with the *Standard Conditions for New Development*, adopted by City Council Resolution No. 2017-027 on April 18, 2010. A copy of the *Standard Conditions for New Development* may be obtained from the Planning Department or City Clerk/Records Management Department.

**2.0 Special Conditions of Approval.** In addition to the *Standard Conditions for New Development* identified in condition no. 1.0, above, the project shall comply with the following special conditions of approval:

**2.1 Specific Plan/Specific Plan Amendment.** The following shall be submitted to the Planning Department within 30 days following City Council approval of the Specific Plan/Specific Plan Amendment:

- (a) Fifteen copies of the final Specific Plan document;
- (b) One complete, unbound copy of the final Specific Plan document;
- (c) One CD containing a complete Microsoft Word copy of the final Specific Plan document, including all required revisions;
- (d) Five CDs, each containing a complete PDF copy of the final Specific Plan document, including all required revisions; and
- (e) One CD containing a complete electronic website version of the final Specific Plan document, including all required revisions.



**2.2** Indemnification. The applicant shall agree to defend, indemnify and hold harmless, the City of Ontario or its agents, officers, and employees from any claim, action or proceeding against the City of Ontario or its agents, officers or employees to attack, set aside, void or annul any approval of the City of Ontario, whether by its City Council, Planning Commission or other authorized board or officer. The City of Ontario shall promptly notify the applicant of any such claim, action or proceeding, and the City of Ontario shall cooperate fully in the defense.

**2.3** Additional Fees.

(a) Within 5 days following final application approval, the Notice of Determination (NOD) filing fee shall be provided to the Planning Department. The fee shall be paid by check, made payable to the "Clerk of the Board of Supervisors", which shall be forwarded to the San Bernardino County Clerk of the Board of Supervisors, along with all applicable environmental forms/notices, pursuant to the requirements of the California Environmental Quality Act (CEQA). Failure to provide said fee within the time specified may result in a 180-day extension to the statute of limitations for the filing of a CEQA lawsuit.

# Attachment “B”

File No. PSP15-001  
Colony Commerce Center West  
Specific Plan  
(to follow this page)





# Colony Commerce Center West Specific Plan

Draft | March 2017

# **COLONY COMMERCE CENTER WEST SPECIFIC PLAN**

**City of Ontario  
303 East 'B' Street  
Ontario, California 91764**



**CapRock Partners  
2050 Main Street, Suite #240  
Irvine, California 92614**

**March 2017**

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# COLONY COMMERCE CENTER WEST SPECIFIC PLAN

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# 1

## EXECUTIVE SUMMARY

### 1.1 Summary

The Colony Commerce Center West Specific Plan includes approximately 123.17 gross acres located in the southern portion of the City, near to the San Bernardino/Riverside County boundary. The master plan for project will provide for development of industrial buildings offering a variety of uses.

The project site is generally located north of Remington Avenue, south of Merrill Avenue, east of Carpenter Avenue and west of the Cucamonga Creek flood control channel in the City of Ontario, San Bernardino County, California.

The site is also located within Ontario Ranch area which comprises a portion of the former San Bernardino County Agricultural Preserve annexed by the City in 1999. The recently incorporated City of Eastvale (October 2010) is located southeast of Ontario in the County of Riverside, while the City of Chino is located to the west in San Bernardino County.

The relationship of the project site to the surrounding region is depicted in Exhibit 1.1, Regional Context Map. Exhibit 1.2, Vicinity Map, shows the relationship of the site to adjacent land uses. Exhibit 1.3 depicts the development plan for the site.

The City of Ontario Sphere of Influence area, commonly referred to as the “Ag Preserve” was the last significant underdeveloped area in the San Bernardino Valley. In 1993, the San Bernardino Board of Supervisors voted to consider dissolving the Ag Preserve status,

thus paving the way for the transition of agricultural uses to other locations and the ultimate development of the area within an urban setting.

In 1998, the City of Ontario prepared and adopted the Sphere of Influence General Plan Amendment, an amendment to the General Plan of the City of Ontario. Planning for the 8,069 acre Ontario Ranch area is the single most important development issue facing the City of Ontario today. The General Plan for the Ontario Ranch intends to provide the long term vision to create a high quality environment where residents can live, work, and play with a sense of individual neighborhoods rather than engulfed in the Ontario Ranch.

The Sphere of Influence annexation, dedicated as Ontario Ranch was annexed by the City of Ontario on November 30, 1999. The Colony Commerce Center West Specific Plan area is situated within the boundaries of the Ontario Ranch area.

On January 26th, 2010, the City of Ontario adopted The Ontario Plan (TOP) which serves as the City’s new business plan and includes a long term Vision and a principle based Policy Plan (General Plan). The city’s Policy Plan, which acts as the City’s General Plan, designates (Policy Plan Exhibit LU-1-Land Use Plan) the project site for development of industrial uses at a maximum 0.55 floor area ratio (FAR) as illustrated in Exhibit 2.2 Policy Plan (General Plan) Land Use Plan.

## 1.2 Governing Documents

Development of Colony Commerce Center West will be governed by the following:

- » The City of Ontario General Plan (January 1998), as amended, which establishes policies governing land use, circulation, housing, conservation and open space, noise, safety, and public facilities within the Colony Commerce Center West Specific Plan area.
- » The Colony Commerce Center West Specific Plan which includes a Land Use Plan, Infrastructure Plan, Design Guidelines, and Development Regulations. Where the Colony Commerce Center West Specific Plan is silent, the City of Ontario Development Code shall govern.
- » The Airport Land Use Compatibility Plan for Ontario International Airport Land Use Planning Handbook published by Caltrans Division of Aeronautics.
- » A development agreement to include methods for financing, acquisition, and construction of infrastructure.

## 1.3 Specific Plan Components

The Colony Commerce Center West Specific Plan is organized into the following sections in addition to Section 1, Executive Summary.

### 1.3.1 (Section 2) Introduction

The Introduction serves to acquaint the reader with:

- » Community vision and objectives,
- » The project setting,
- » A general description of the project proposal,
- » The goals and policies of the Colony Commerce Center West Specific Plan,

- » The entitlements to accompany the Colony Commerce Center West Specific Plan; and
- » The relationship of the Colony Commerce Center West Specific Plan to the City of Ontario General Plan, and the City of Ontario Development Code.

### 1.3.2 (Section 3) Existing Conditions

The physical setting for Colony Commerce Center West is described in this section outlining the existing physical conditions on and around the Specific Plan area.

### 1.3.3 (Section 4) Land Use Plan

The Land Use Section describes industrial planning areas and allocations of industrial building sizes per planning area.

### 1.3.4 (Section 5) Infrastructure and Public Services

This section provides information on circulation improvements, planned backbone water, sewer, and storm drain systems, the grading concept for the development of the project, and a discussion of public utilities and services to serve the Specific Plan.

### 1.3.5 (Section 6) Development Regulations

Development Regulations established in this section will govern the permitted uses and the standards regulating the development of various industrial uses within the Colony Commerce Center West Specific Plan area. The relationship of the Colony Commerce Center West Specific Plan development regulations to the City of Ontario Development Code is also provided. The policies and procedures for the City's review and approval of specific development proposals within Colony Commerce Center West are presented in this section as well as the methods and procedures for interpreting and amending the Colony Commerce Center West Specific Plan as necessary.

### **1.3.6 (Section 7)**

#### **Implementation and Administration**

The policies and procedures for the City's review and approval of specific development proposals, within Colony Commerce Center West, are presented in this section. This section provides the methods and procedures for interpreting and amending the Colony Commerce Center West Specific Plan as necessary. A summary of project financing and project maintenance responsibilities for new development within the Specific Plan area is provided in this section.

### **1.3.7 (Section 8)**

#### **Design Guidelines**

The Colony Commerce Center West Design Guidelines are intended to direct the site planning, landscaping, and architectural quality of the development. Streetscapes, entries, edge treatments, walls and fencing, lighting, signage, and architectural design are some of the features to be addressed in the Design Guidelines.

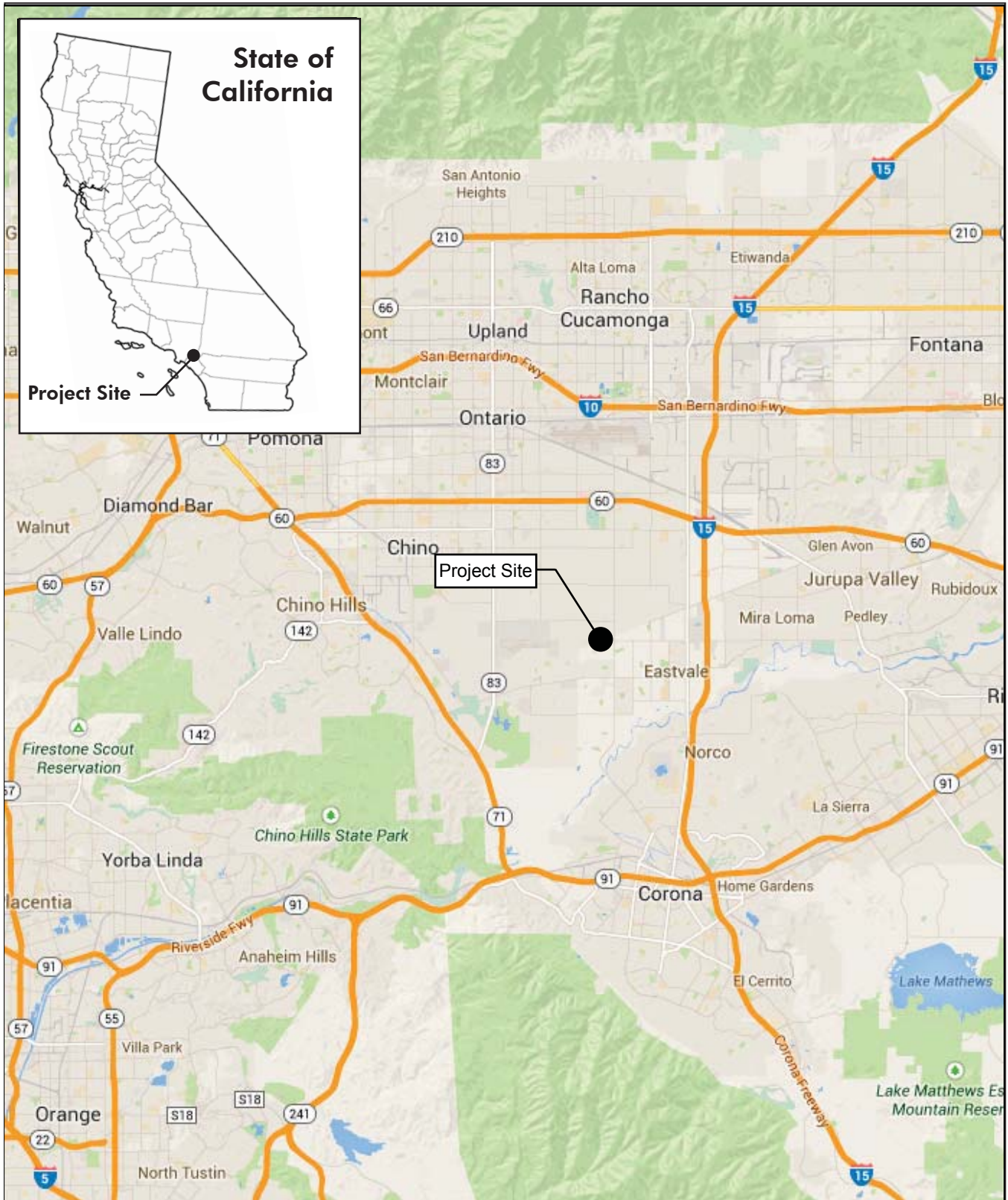
### **1.3.8 (Section 9)**

#### **General Plan Consistency**

This section includes the City of Ontario General Plan consistency matrix describing the relationship of the Colony Commerce Center West Specific Plan to each policy of the NMC General Plan.



# Exhibit 1.1, Regional Context Map

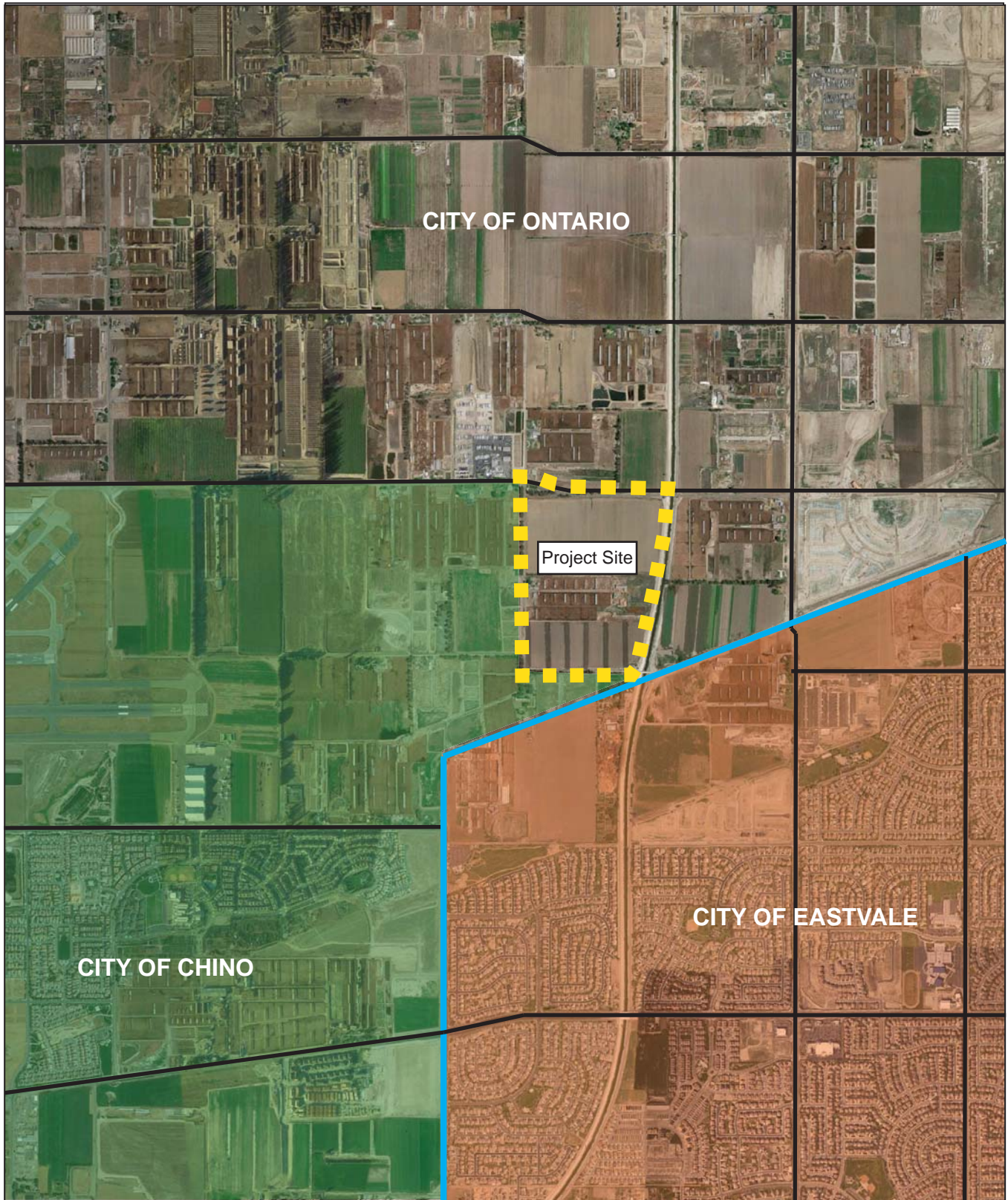


Source: Google Maps

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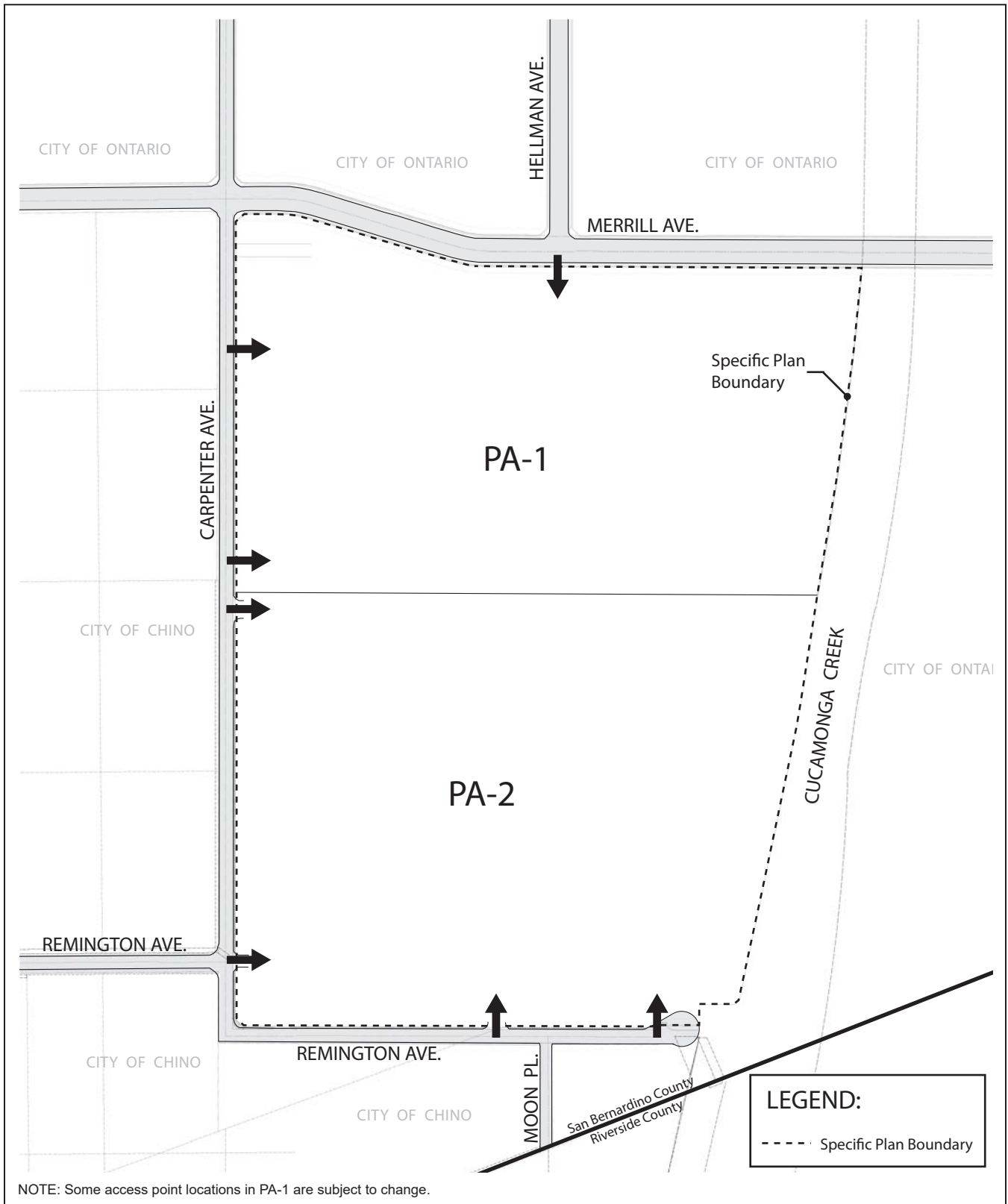
## Exhibit 1.2, Vicinity Map



Source: Google Maps



# Exhibit 1.3, Specific Plan Area



Source: KTG Group



**Table 1.1, Land Use Summary**

Planning Area (PA)	Land Use	Acres	Maximum Potential Intensity (Gross Floor Area)	Max.Floor Area Ratio
PA-1	Industrial	57.58 ac	1,379,501 SF	0.55
PA-2	Industrial	65.60 ac	1,571,645 SF	0.55
	<b>Total</b>	<b>123.17 ac</b>	<b>2,951,146 SF</b>	<b>0.55</b>

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# 2

## INTRODUCTION

### 2.1 Specific Plan Purpose

The Ontario Plan (TOP) Policy Plan includes requirements for subsequent approval by the City of a Specific Plan and an Area Plan for development within the area of the City known as the Ontario Ranch.

Specific Plans are required to ensure that sufficient land area is included to achieve unified districts and neighborhoods. Specific Plans shall incorporate a development framework for detailed land use, circulation, infrastructure including drainage, sewer, and water facilities, provision for public services including parks and schools, and urban design and landscape plans. The Area Plan shall provide additional policy-level guidance and is considered part of the Policy Plan.

The Area Plan for the Ontario Ranch will be initiated by the City of Ontario at a future time. However, until the Area Plan for the Ontario Ranch is adopted, the Policy Plan provides that new specific plans may proceed consistent with the Goals and Policies of the Policy Plan.

The Colony Commerce Center West Specific Plan serves to implement the City's Policy Plan for the project site and provides zoning regulations for development of the project site by establishing permitted land use, development standards, infrastructure-requirements, and implementation requirements for development.

A comprehensive set of design guidelines and development regulations are included to guide and regulate site planning, landscape,

and architectural character within the community ensuring that excellence in community design is achieved during project development. The Colony Commerce Center West Specific Plan establishes the procedures and requirements to approve new development within the project site.

### 2.2 Authority

California Government Code, Title 7, Division 1, Chapter 3, Article 8, Sections 65450 through 65457 et seq grants local planning agencies the authority to prepare Specific Plans for any area covered by a General Plan for the purpose of establishing systematic methods of implementation of the General Plan.

A Specific Plan is designed to address site specific issues such as existing on-site conditions relative to topography and existing environmental concerns, site design and layout, including setbacks and visual appearance, as well as circulation, utility provisions and infrastructure financing alternatives.

The California Government Code establishes the authority and procedures to adopt a specific plan; identifies the required contents of a specific plan; mandates consistency with the General Plan; and also mandates consistency of any future projects or zoning ordinance amendments with a specific plan. Section 9-1.200 of Title 9 of the City of Ontario's Municipal Code states the purpose and intent of specific plans.



The City's Municipal Code will act as a supplement for those areas and issues not covered by this Specific Plan regulations for administration review procedures, environmental review, and others.

## 2.3 State Requirements

Section 65451 of the Government Code mandates what a Specific Plan shall contain. A Specific Plan shall include a text and diagram or diagrams which specify all the following in detail:

- » The distribution, location, and text of the uses of land, including open space, within the area covered by the plan.
- » The proposed distribution, location and extent and intensity of major components of public and private transportation, sewage, water, drainage, solid waste disposal, energy, and other facilities proposed to be located within the area covered by the plan and needed to support the land uses describe in the plan.
- » Standards and criteria by which development will proceed, and standards for the conservation, development, and utilization of natural resources, where applicable.
- » A program of implementation measures including regulations, programs, and financing measures necessary to carry out the Colony Commerce Center West West project.
- » The Specific Plan shall include a statement of its relationship to the General Plan.

## 2.4 Severability

If any section, subsection, sentence, clause, phrase, or portion of the Specific Plan, or any future amendment(s) or addition(s) hereto, is for any reason held to be invalid or unconstitutional by the decision of any court of competent jurisdiction, such decision shall not affect the validity of the remaining portions of the Specific

Plan, or any future amendments or additions hereto. The City hereby declares that it would have adopted these requirements and each sentence, subsection, clause, phrase, or portion or any future amendments or additions thereto, irrespective of the fact that any one or more sections, subsections, clauses, phrases, portions or any future amendments or additions thereto may be declared invalid or unconstitutional.

## 2.5 Project Objectives

The Colony Commerce Center West Specific Plan is designed to implement a series of project-specific objectives that have been carefully crafted to ensure the project develops with a quality industrial development. The project objectives have been refined throughout the planning and design process for the project. They are identified below:

- » To provide for the development of industrial facilities which utilize the site's prime location in proximity to Ontario Airport.
- » To create a high quality industrial development that attracts an array of industrial businesses and provides employment opportunities to area residents.
- » To provide industrial uses within the project boundaries which are compatible with surrounding uses.
- » To develop a flexible plan that meets the needs of an ever-changing business market, while assuring compliance with high development standards.
- » To provide a plan for roadways, infrastructure, and utilities to support on-site land uses as the project evolves.
- » Promote opportunities for water efficiency in the project architecture and project landscaping to promote water conservation.



## 2.6 Specific Plan Summary

The Colony Commerce Center West Specific Plan creates a master-plan comprised of industrial development. The project consists of two planning areas:

- » PA-1, Approximately 57.58 gross acres of industrial development on the north portion of the site allowing for a total development up to 1,379,501 SF at a Floor Area Ratio (FAR) of .55.
- » PA-2, Approximately 65.60 gross acres of industrial development on the south portion of the site allowing for a total development up to 1,571,645 SF at a .55 FAR.

Assessor's parcel numbers within the Colony Commerce Center West Specific Plan are:

- » 0218-261-24
- » 0218-292-05
- » 0218-311-11
- » 0218-292-09
- » 0218-292-13
- » 0218-292-10
- » 0218-292-14
- » 0218-292-12

Exhibit 2.1 shows the assessor's parcel numbers within the Specific Plan area.

## 2.7 Discretionary Actions and Approvals

### 2.7.1 The Ontario Plan

The Ontario Plan (TOP) establishes the direction and vision for the City of Ontario providing a single guidance system that will shape the Ontario community for the future. The Plan provides for policies to accommodate change over a 30 year period commencing in 2010, the beginning of the planning period. The Ontario Plan consists of a six part Component Framework: 1) Vision, 2) Governance Manual, 3) Policy Plan, 4) City Council

Priorities, 5) Implementation, and 6) Tracking and Feedback.

### 2.7.2 Specific Plan

The Policy Plan requires the approval of a Specific Plan for development of the project site to ensure that sufficient land area is included to achieve unified districts and neighborhoods. The City of Ontario has zoned the project site as AG-Specific Plan as illustrated in Exhibit 2.3 Ontario Zoning Map.

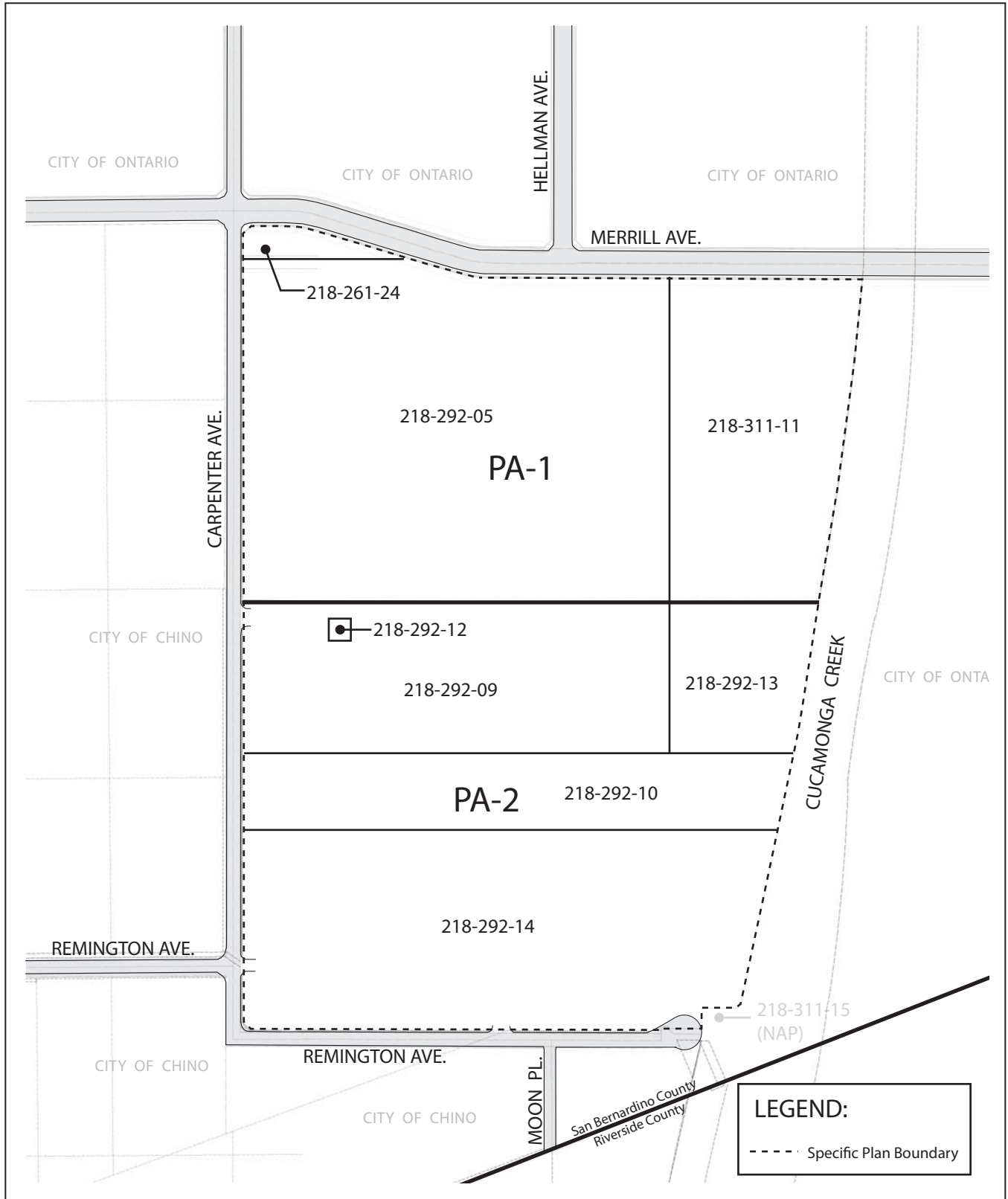
The zoning designation of AG-Specific Plan requires that a Specific Plan be approved to guide development of the project site and to implement the goals and policies of the Policy Plan. Pursuant to adoption by the City of Ontario of the Colony Commerce Center West Specific Plan by the ordinance, the Specific Plan shall take precedence over the City of Ontario Development Code. In instances where the Specific Plan is silent, the City of Ontario Development Code shall prevail.

### 2.7.3 Development Agreement

Unless developed in a coordinated manner and with adequate fiscal planning, development projects within the City are likely to present a challenge in their implementation because of the lack of existing public facilities including streets, sewerage, transportation, drinking water, schools, and utility facilities. California law establishes a mechanism for ensuring the adequate provision of such facilities while providing assurances to applicants that, upon project approval, applicants can proceed with their projects.

Approval of the Colony Commerce Center West Specific Plan is accompanied by an application for approval of a development agreement to encourage investment in and commitment to comprehensive planning as envisioned by the City, which seeks to take maximum efficient utilization of resources at the least economic cost to the public. A statutory development agreement, authorized pursuant to California Government Code Sections 65864 et seq., shall be required as part of the approval of the Colony Commerce Center West Specific Plan.

# Exhibit 2.1, Assessor's Parcels



The development agreement shall include, but not be limited to, methods for financing acquisition and construction of infrastructure, acquisition and development of adequate levels of parkland and schools, as well as the provision of adequate housing opportunities for various segments of the community consistent with the City's regional housing needs assessments. The Colony Commerce Center West development agreement shall be fully approved before the issuance of the first building permits for the project.

### **2.7.4 Subdivison Maps**

Tentative tract maps will be approved by the City of Ontario for the project indicating the approximate boundaries and dimensions of lots and streets and the proposed grading for the project site. Following approval by the City of tentative tract maps, final maps will be prepared for City approval. Following recordation, final maps become the legal documents defining parcels that can be developed.

### **2.7.5 Development Plan Review**

All development proposals for individual Planning Areas within the Colony Commerce Center West Specific Plan shall be subject to Development Plan Review pursuant Division 4.02 Discretionary Permits and Action of the City's Development Code.

### **2.7.6 CEQA Compliance**

A Project Level Environmental Impact Report (EIR) prepared by the City of Ontario for the Colony Commerce Center West Specific Plan in accordance with the California Environmental Quality Act (CEQA), analyzes impacts associated with the implementation of the Specific Plan and subdivision maps.

The EIR is prepared as a basis for the environmental review of all subsequent discretionary and ministerial actions within the Colony Commerce Center West Specific Plan.

## **2.8 Subsequent Actions and Approvals**

Following adoption of the Colony Commerce Center West Specific Plan, subsequent actions and approvals will be required, which are identified below:

- » Approval of Subsequent Tentative Maps: Implementing Tentative Maps will be prepared and processed through the City of Ontario in accordance with the requirements of Title 9, Article 4, Tentative Maps, of the Ontario Municipal Code and in accordance with the Subdivision Map Act.
- » Approval of Grading and Improvement Plans: After approval of the Tentative Map, the City of Ontario will process the corresponding Grading and Improvement Plans (e.g., water plans, wastewater plans, drainage plans, grading plans, street improvement plans, final maps, etc.).

## **2.9 Airport Land Use Compatibility Planning Consistency**

All development proposals of Specific Plan Amendments are required to be consistent with the Airport Land Uses Compatibility Plans of Chino Airport and Ontario International Airport.

## **2.10 General Plan and Zoning Designations**

The Colony Commerce Center West Specific Plan area is designated as Industrial as shown on the City of Ontario General Plan Land Use Map (see Exhibit 2.2, Existing General Plan Land Use Designation). No changes in land use categories proposed.

The project site is currently zoned as Agriculture Specific Plan (see Exhibit 2.3, Existing Zoning Designation). Upon adoption of the Colony Commerce Center West Specific Plan, the zoning designation for the site will not need to change; it will remain as Specific Plan.

The City of Ontario Zoning Code states that specific plans are created to enable land to be planned and developed as coordinated, comprehensive projects providing for the systematic implementation of the Ontario General Plan. The Colony Commerce Center West Specific Plan will implement the Ontario General Plan as it relates to the Specific Plan area.

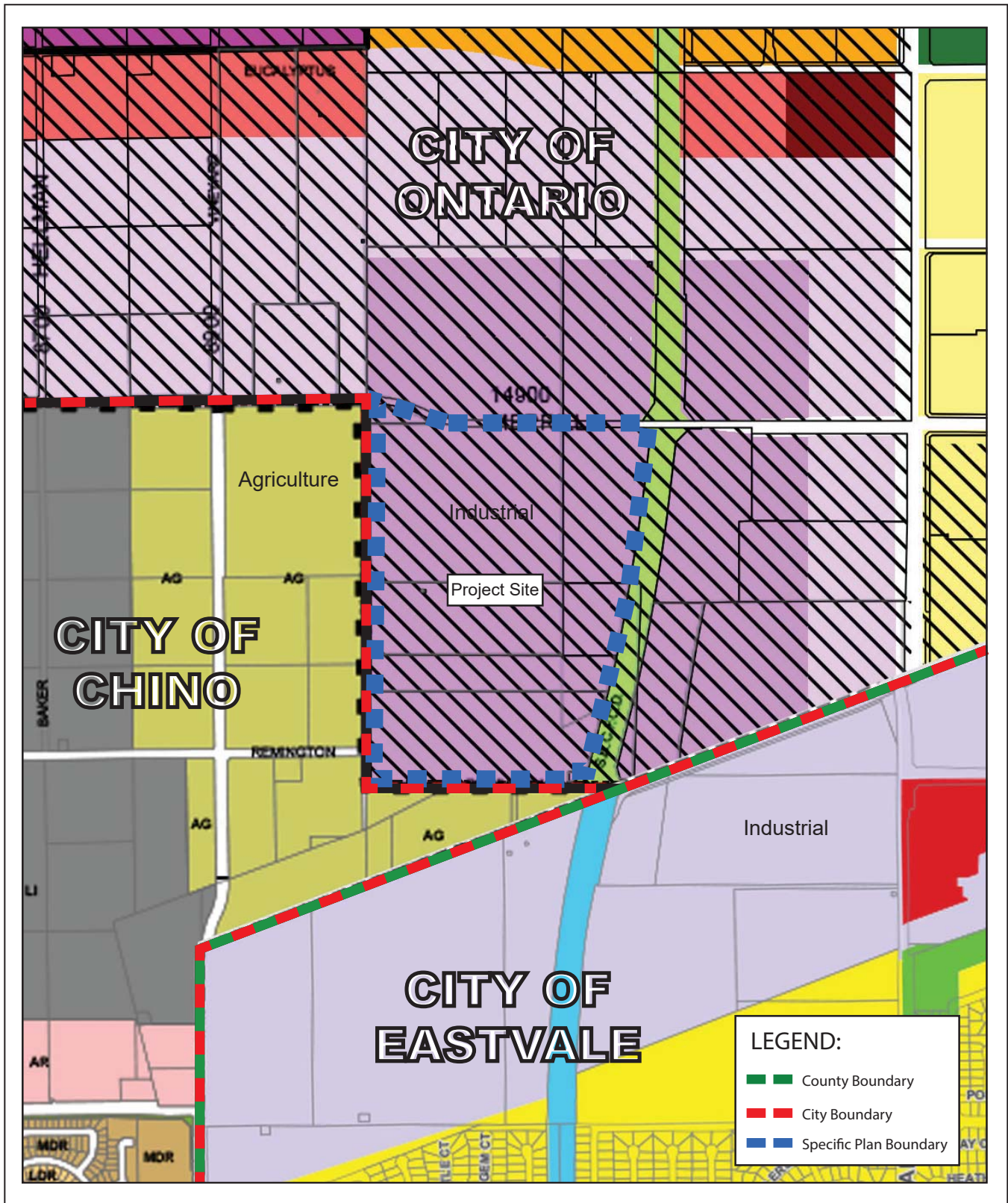
## **2.11 General Plan Consistency**

California Government Code (Title 7, Division 1, Chapter 3, Article 8, Section 65450-65457) permits the adoption and administration of specific plans as an implementation tool for elements contained in the local general plan. Policy plans must demonstrate consistency in regulations, guidelines, and programs with the goals and policies set forth in the general plan.

The Colony Commerce Center West Specific Plan has been prepared in conformance with the goals and policies of the City of Ontario Policy Plan. The policy analysis listed in Appendix A1 describes the manner in which the Colony Commerce Center West Specific Plan complies with the Policy Plan policies applicable to the project.



## Exhibit 2.2, Existing General Plan Land Use Designation

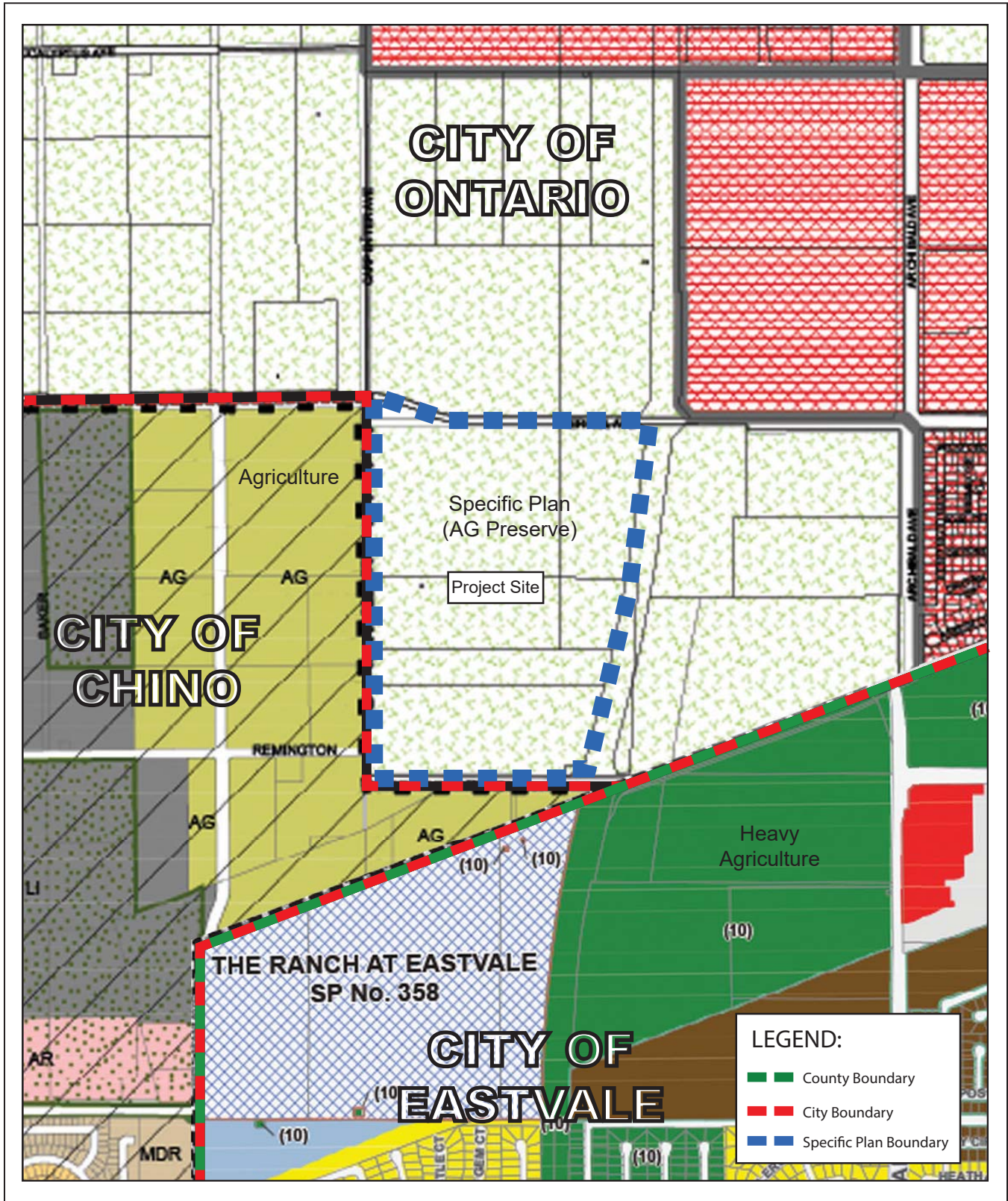


Source: Exhibit LU-01 (Land Use Plan) 2010





Exhibit 2.3, Existing Zoning Designation



Source: City of Ontario Zoning Map



# 3

## EXISTING CONDITIONS

### 3.1 Existing Land Use

The project site has historically been used for agricultural purposes, primarily for dairy and field crop farming. The project site is mostly undeveloped with existing agricultural operations scattered throughout the area. Rural residential housing, farm buildings, and other ancillary facilities occupy those areas not in active agricultural production. Exhibit 2.1, depicts the current aerial photography of the specific plan area.

### 3.2 Surrounding Land Uses

Current agriculture uses such as dairy and field crop farms are located directly adjacent to the Colony Commerce Center West Specific Plan area. In the City of Ontario General Plan, these areas are designated for Industrial and Business Park uses.

Directly south of the project, in the City of Chino, agricultural uses exist that are incorporated within an airport overlay. The Chino Airport Overlay also covers the Colony Commerce Center West Specific Plan area. See Exhibit 2.2, Surrounding Land Uses, for the various land uses that surround the Colony Commerce Center West Specific Plan Area.

### 3.3 Policy Plan and Zoning

The City's General Plan designates the project site for the following land use:

- » Industrial (0.55 FAR) - Approximately 123.17 gross acres of industrial uses on the site allowing for a total development up to 2.95 million square feet at a Floor Area Ratio (FAR) of 0.55.

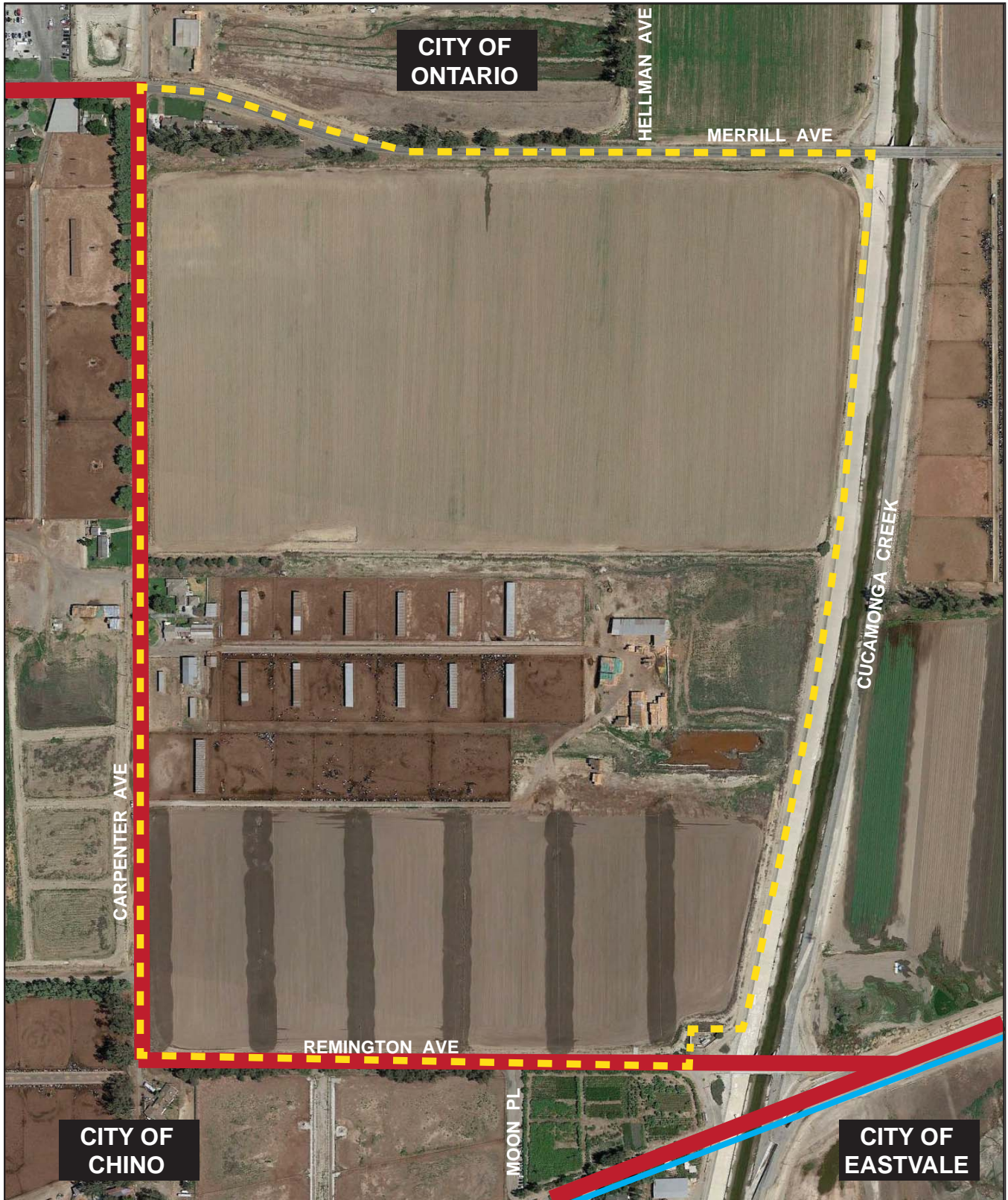
The project site is zoned AG-Specific Plan. A specific plan is required by the City in order to comprehensively plan for development of industrial uses within the project site.

### 3.4 Airport Land Use Compatibility Plan (ALUCP) Consistency

The Project Site is located within the Airport Influence Areas of Chino Airport and Ontario International Airport (ONT). The EIR prepared for the Colony Commerce Center West Specific Plan identifies potential impacts from Chino Airport and ONT and includes criteria for addressing any potential impacts.



# Exhibit 3.1, Aerial Photograph

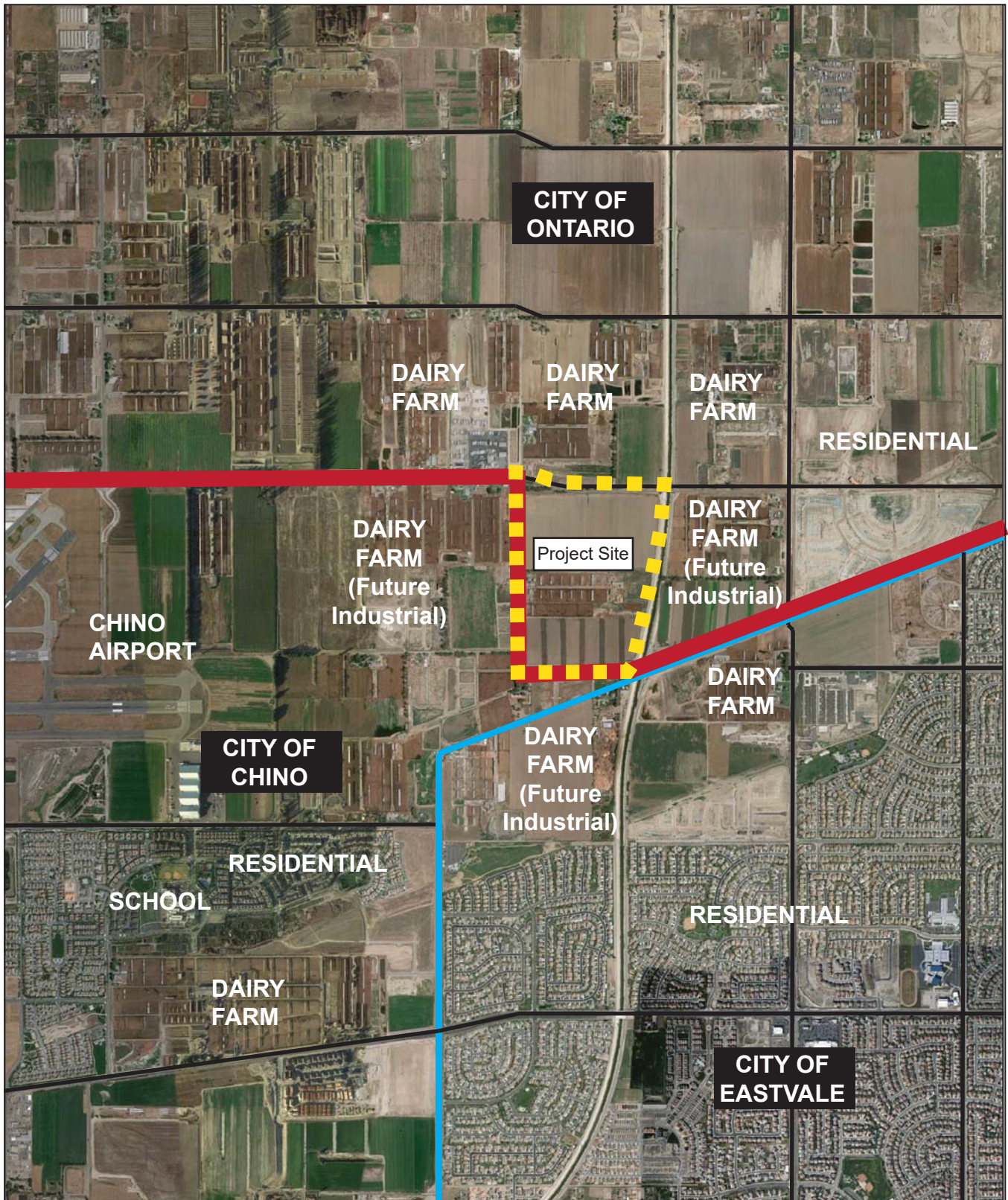


Source: Google Maps





### Exhibit 3.2, Surrounding Land Uses

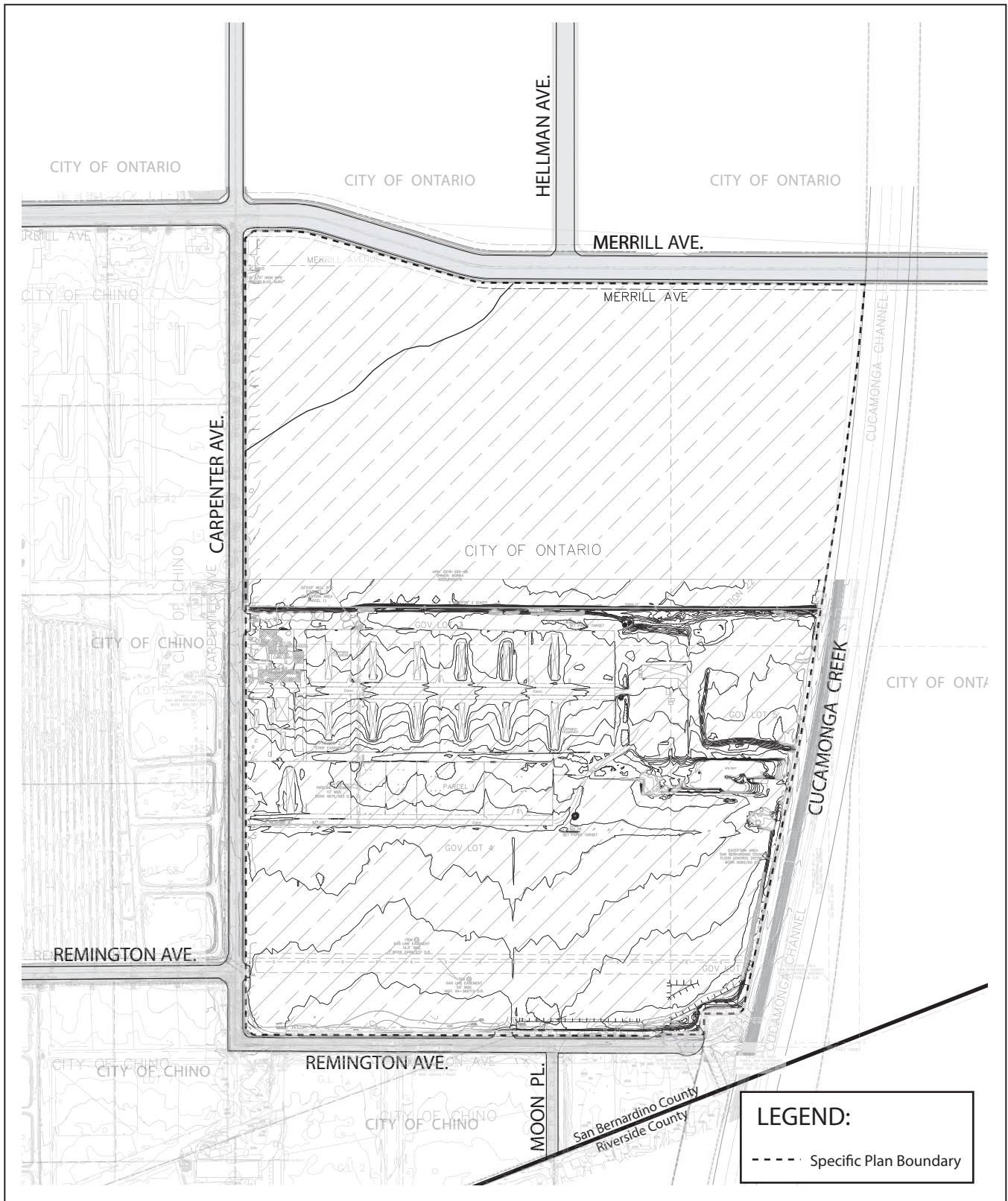


Source: Google Maps





# Exhibit 3.3, Existing Site Topography



Source: David Evans & Associates



### 3.5 Topography

The project site is relatively flat and gently falls to the south at an average gradient of approximately 1.0% to 2.0%. The existing topographic conditions for the Specific Plan area are illustrated on Exhibit 3.3, Existing Site Topography.

### 3.6 Hydrology

Since most of the project site has been in agricultural use, only a limited portion of the site is now covered with impervious surfaces. Normal rainfall to the area is able to percolate through on-site soils and does not result in high volumes of surface runoff, as is typically associated with urban use.

During periods of heavy rainfall, when ground surfaces are saturated, surface runoff is collected in the existing storm drains, culverts, and retention basins located within the project site.

The existing storm drain system throughout the project site is generally unimproved and consists primarily of open earthen swales along area roadways or curbed roadway surfaces. The EIR prepared for the Colony Commerce Center West Plan includes additional hydrology information for the project site.

### 3.7 Biology

The project site has been extensively used for agricultural operations including dairy and field crop uses. Those limited areas not in active agricultural production are occupied by rural residential housing or are vacant. The natural vegetation and the project site as a whole have been significantly altered through agricultural use, leaving little to no native vegetation. The EIR prepared for the Colony Commerce Center West Specific Plan

includes an evaluation of vegetation and biological resources.

## 3.8 Existing Circulation and Access

### 3.8.1 Regional Circulation

Interstate 15 (I-15) is located approximately 3.25 miles east of the project site. Access from the project site to the I-15 exists at Limonite Avenue within Riverside County. State Route 60 (SR-60) is located approximately 3.25 miles north of the project site.

Access to the project site from SR-60 exists from Archibald Avenue, which connects to Merrill Avenue abutting the project site on the north. State Route 83 (SR-83/Euclid Avenue) is located approximately 2.5 miles west of the project site. Access from the project site to SR-83 exists from Merrill Avenue which abuts the project site on the north.

### 3.8.2 Local Circulation

Local access to the project site is provided from Carpenter Avenue, Merrill Avenue, and Remington Avenue. Merrill Avenue abuts the project site on the north and provides two paved travel lanes. The General Plan designates Merrill Avenue as a 4-lane Collector Street. Carpenter Avenue abuts the project site on the west with two travel lanes. Remington Avenue abuts the project site on the south with two travel lanes.

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# 4

## LAND USE PLAN

### 4.1 Introduction

The overall land use concept for the Colony Commerce Center West Specific Plan takes advantage of the site's proximity to airports and regional freeway access.

The land use concept provides for a range of industrial uses, while offering a variety of development and employment opportunities. The land use in this area also provides opportunities for a broad range of industries to accommodate an ever-changing business and industrial environment.

### 4.2 Land Use Plan

The circulation patterns, utility systems and overall design of the plan can meet these changes in demand. This is an important concept in a region that is experiencing rapid growth (see Exhibit 4.1, Land Use Plan).

The planned industrial area will include wholesale and distribution, light manufacturing and businesses with high-value, time-sensitive merchandise that would benefit from proximity to an airport.

The land use regulations for the Colony Commerce Center West Specific Plan will allow some flexibility in the location, mix and intensity of industrial uses so that as market demands change and as businesses expand or contract over time, the Specific Plan can respond and adapt to meet those needs. An illustrative site plan is shown on Exhibit 4.1, Land Use Plan.

The land use intensity anticipated in the two planning areas is shown on Table 4.1, Land

Use Summary. The maximum Floor Area Ratio (FAR) permitted in each Planning Area conforms to the maximum FAR permitted in the Ontario General Plan.

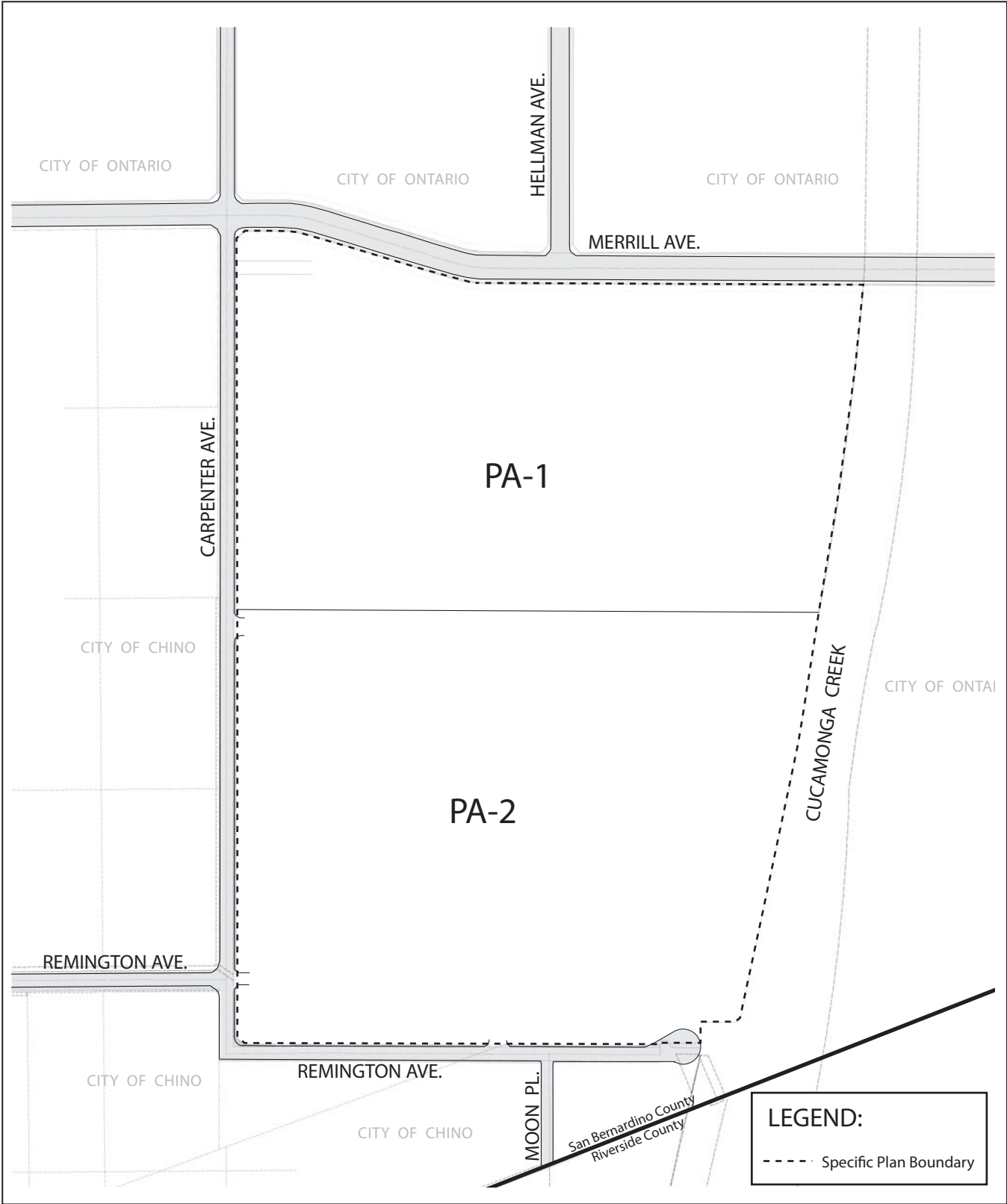
Table 4.1 identifies the anticipated build out of the Specific Plan area. Specific uses may be developed as identified as permitted in Table 6.3, Permitted Uses.

**Table 4.1, Land Use Summary**

Planning Area (PA)	Land Use	Acres	Maximum Potential Intensity (Gross Floor Area)	Max.Floor Area Ratio
PA-1	Industrial	57.58 ac	1,379,501 SF	0.55
PA-2	Industrial	65.60 ac	1,571,645 SF	0.55
	<b>Total</b>	<b>123.17 ac</b>	<b>2,951,146 SF</b>	<b>0.55</b>



Exhibit 4.1, Land Use Plan



Source: Douglas Franz Architects



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# 5

## CIRCULATION, INFRASTRUCTURE AND PUBLIC SERVICES

The infrastructure, utilities, and public services to be provided as part of the development of the Colony Commerce Center West Specific Plan are discussed in this section.

### 5.1 Circulation

The circulation plan for Colony Commerce Center reinforces the objective of moving vehicles, pedestrians, cyclists, and public transit safely and efficiently through and around the project. Exhibit 5.1, Circulation Plan establishes the hierarchy and general location of roadways within Colony Commerce Center West.

The minimum design speeds to be used for center line curve radii, super elevation, corner and approach site distances, vertical and horizontal alignment, and sight distances for the Master Plan of Streets will comply with City Standards below:

- » Merrill Avenue: 45 mph
- » Carpenter Avenue: 40 mph
- » Remington Avenue: 40 mph

#### 5.1.1 Master Plan Roadways

The project site is bounded on the north by Merrill Avenue, a City of Ontario Collector Roadway as identified in Exhibit 5.2, Functional Roadway Classification Plan, providing access to and from the site.

Carpenter Avenue bounds the project site on the west; Remington Avenue bounds the project site on the south.

The Cucamonga Creek Channel, a non-vehicle open space area bounds the project site to the east.

A traffic study prepared as part of the project's EIR may identify the need for additional rights-of-way at critical intersections to accommodate lanes for left and right turn movements.

The developer shall be responsible for those improvements as determined by the City Engineer and pursuant to the mitigation measures identified in the EIR and/or Conditions of Approval established on the approved tentative maps for the project.

Phasing and construction of the improvements shall be implemented as required by the City Engineer and pursuant to the mitigation measures identified in the EIR and the conditions of approval adopted with the approval of tentative maps for the project. The locations and construction of bus turnouts may be required within the project to the satisfaction of the City of Ontario and Omnitrans.

#### 5.1.2 Merrill Avenue

The Mobility Element of the Policy Plan (Figure M-2 Functional Roadway Classification Plan) designates Merrill Avenue as a 4-Lane Collector Street with a Class II bikeways and multipurpose trails. Merrill Avenue will provide east/west access to Colony Commerce Center West at the northern boundary of the project site. The proposed improvement to Merrill Avenue

are illustrated in Exhibit 5.3a, Merrill Avenue. Parking is prohibited along Merrill Avenue.

The southern half of the existing Merrill Avenue bridge crossing over Cucamonga Creek will be designed and constructed in accordance to the Ontario Master Plan of Streets and Highways.

### **5.1.3 Carpenter Avenue**

Carpenter Avenue bounds the project site to the west and will provide north/south access to and from the Colony Commerce Center West Specific Plan area. Carpenter Avenue is designated as a 2-Lane Local Industrial Street. Exhibit 5.3b, Carpenter Avenue illustrates the ultimate improvements to Carpenter Avenue.

On-street parking is not allowed on Carpenter Avenue. Intersections and driveways shall be shown/designed in accordance to the Ontario Master Plan of Streets and Highways and coordinated with the City of Chino if necessary.

### **5.1.4 Remington Avenue**

Remington Avenue bounds the project site to the south and will provide east/west access to and from the Colony Commerce Center West Specific Plan area. Remington Avenue is designated as a 2-Lane Local Industrial Street. Exhibit 5.3b, Remington Avenue illustrates the ultimate improvements to Remington Avenue by this project. No on-street parking shall be permitted on Remington Avenue.

Intersections and driveways shall be shown/designed in accordance to the Ontario Master Plan of Streets and Highways and coordinated with the City of Chino if necessary.

### **5.1.5 Pedestrian Circulation**

In addition to vehicular circulation, a pedestrian circulation system utilizing the sidewalks will be provided within the Colony Commerce Center West Specific Plan.

Sidewalks will be provided along all streets abutting the Specific Plan area, and will be a minimum of five (5') feet in width. Sidewalks shall be constructed of concrete as part of the adjacent roadway improvements.

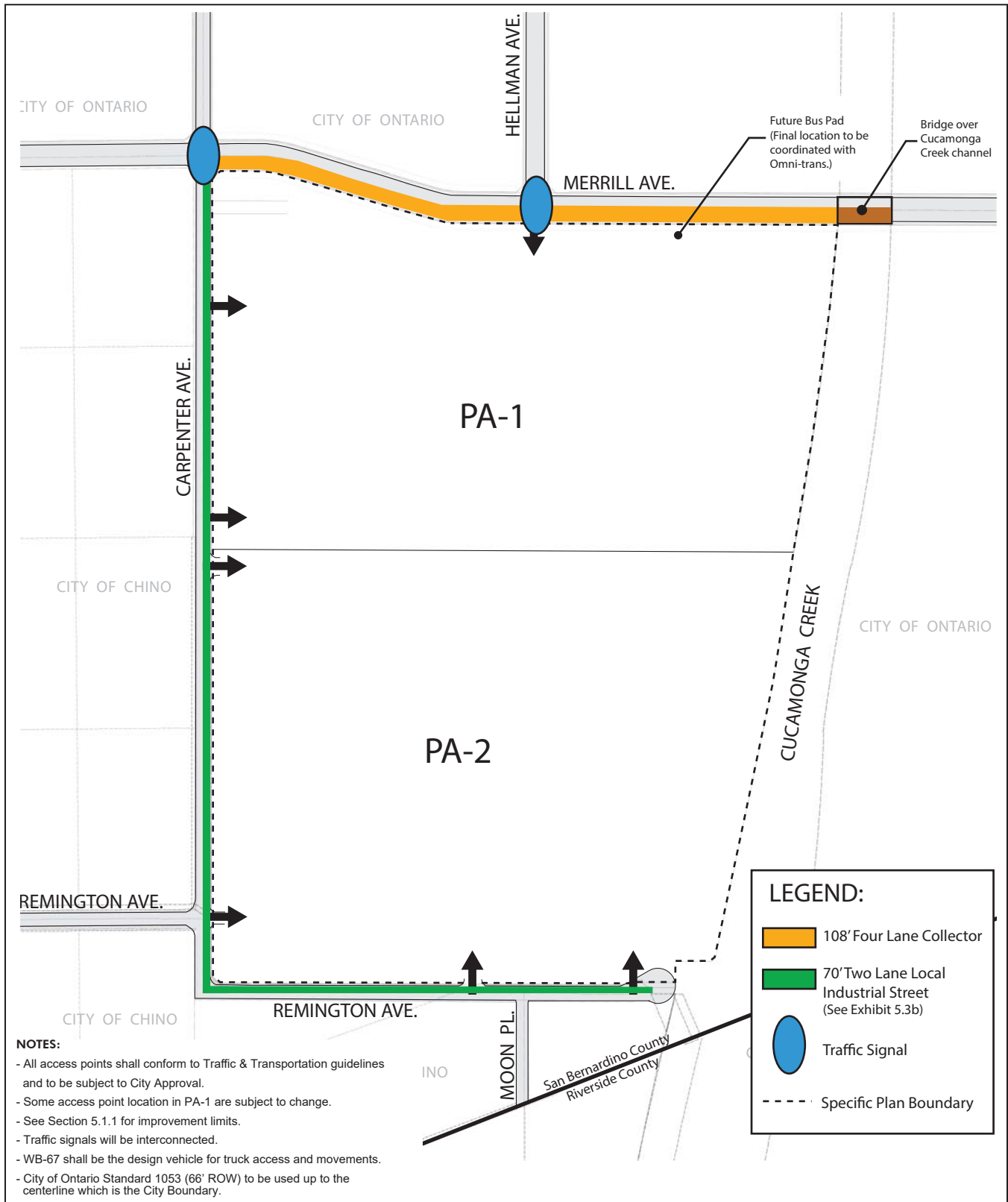
### **5.1.6 Bicycle Circulation**

Bicycle trails are an integral element in creating accessibility and mobility within the Specific Plan. A Class I bikeway will be provided within the Cucamonga Creek Channel as illustrated in Exhibit 5.3c. The Specific Plan will construct trail connections to link the bikeway along Cucamonga Creek Channel with the on-street bicycle system.

The Mobility Element of the Policy Plan (Figure M-1 Mobility Element System) designates a Class II Bikeway & Multi-purpose Trail along Merrill Avenue. These bike paths will provide linkages to the City's master planned bike paths system. General timing and responsibility will be discussed in the Development Agreement.

Refer to Exhibit 5.4, Pedestrian and Bicycle Circulation Plan, for locations of these paths and trails. Refer to Exhibit 5.5, City of Ontario Trails & Bikeway Plan to see how the Specific Plan connects to the larger network.

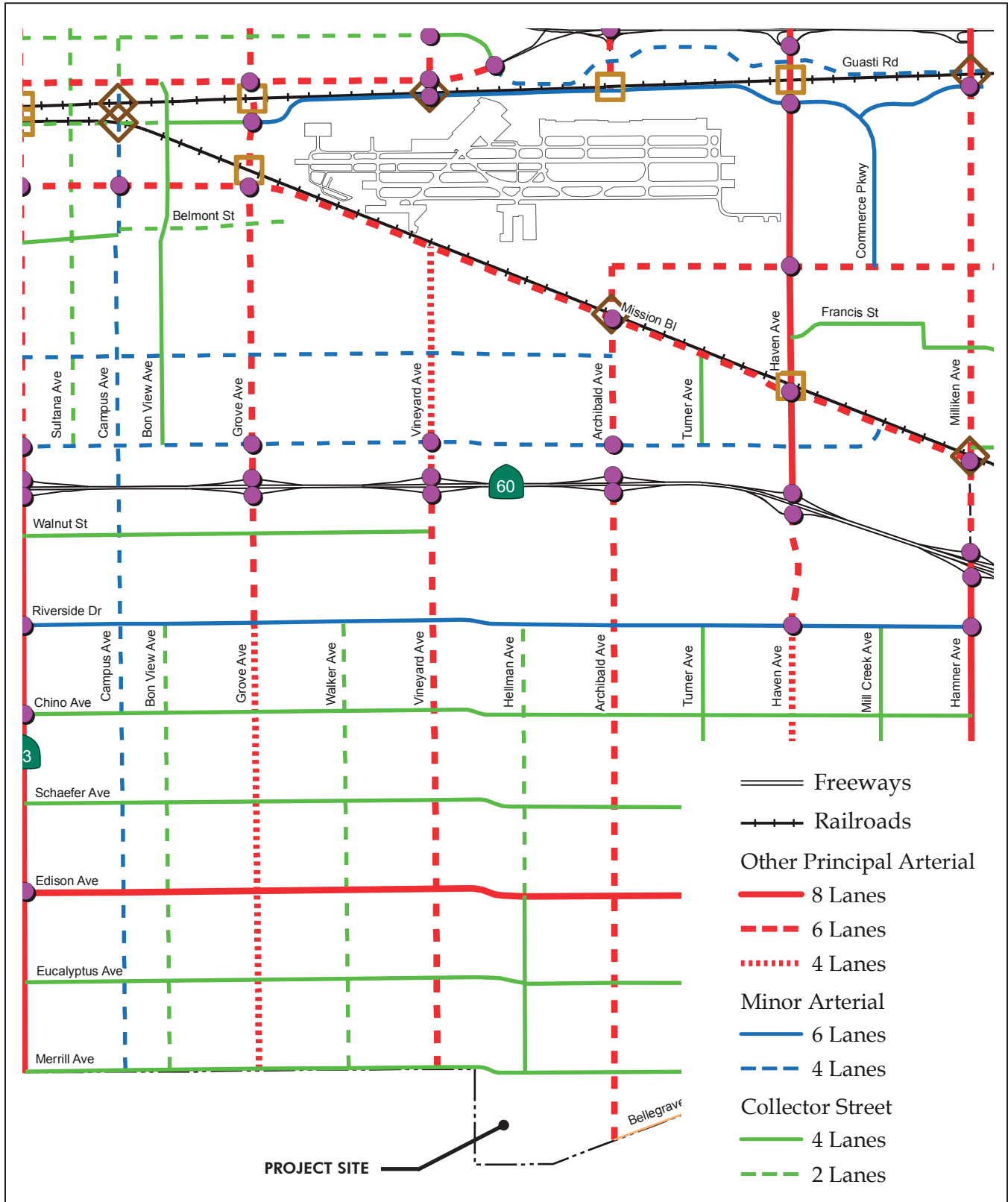
# Exhibit 5.1, Circulation Plan



Source: KTG Group



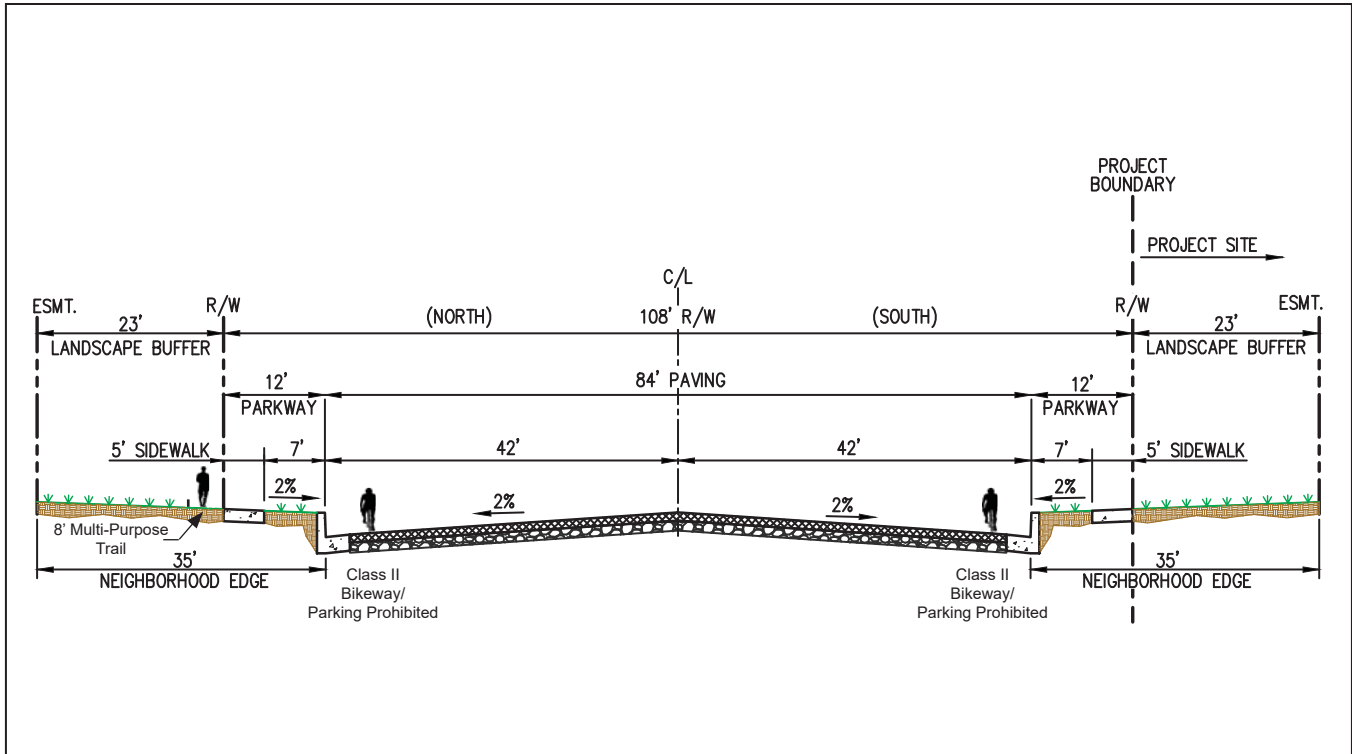
# Exhibit 5.2, City of Ontario Roadway Classification Plan



Source: City of Ontario, Figure M-2 Functional Roadway Classification Plan, August 19, 2014  
 NOTE: Reference the City's most current Master Plan for the latest designations.

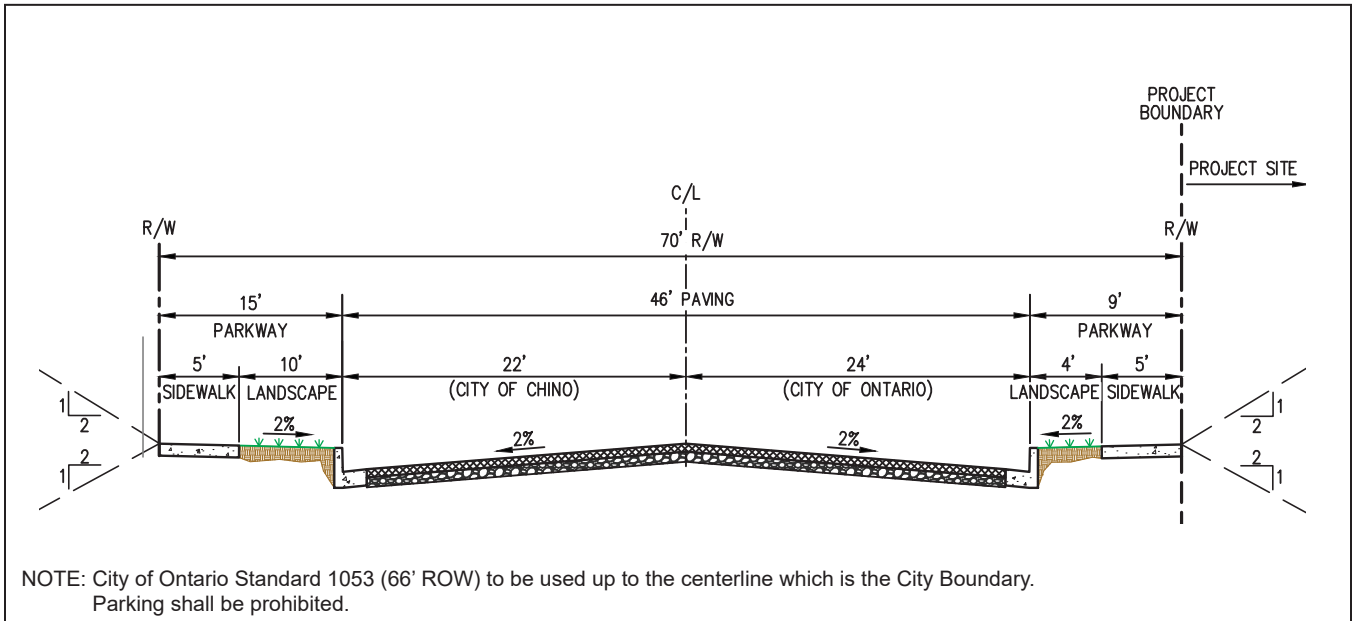


### Exhibit 5.3a, Typical Street Cross Section - Merrill Avenue (108' ROW)



Source: David Evans & Associates

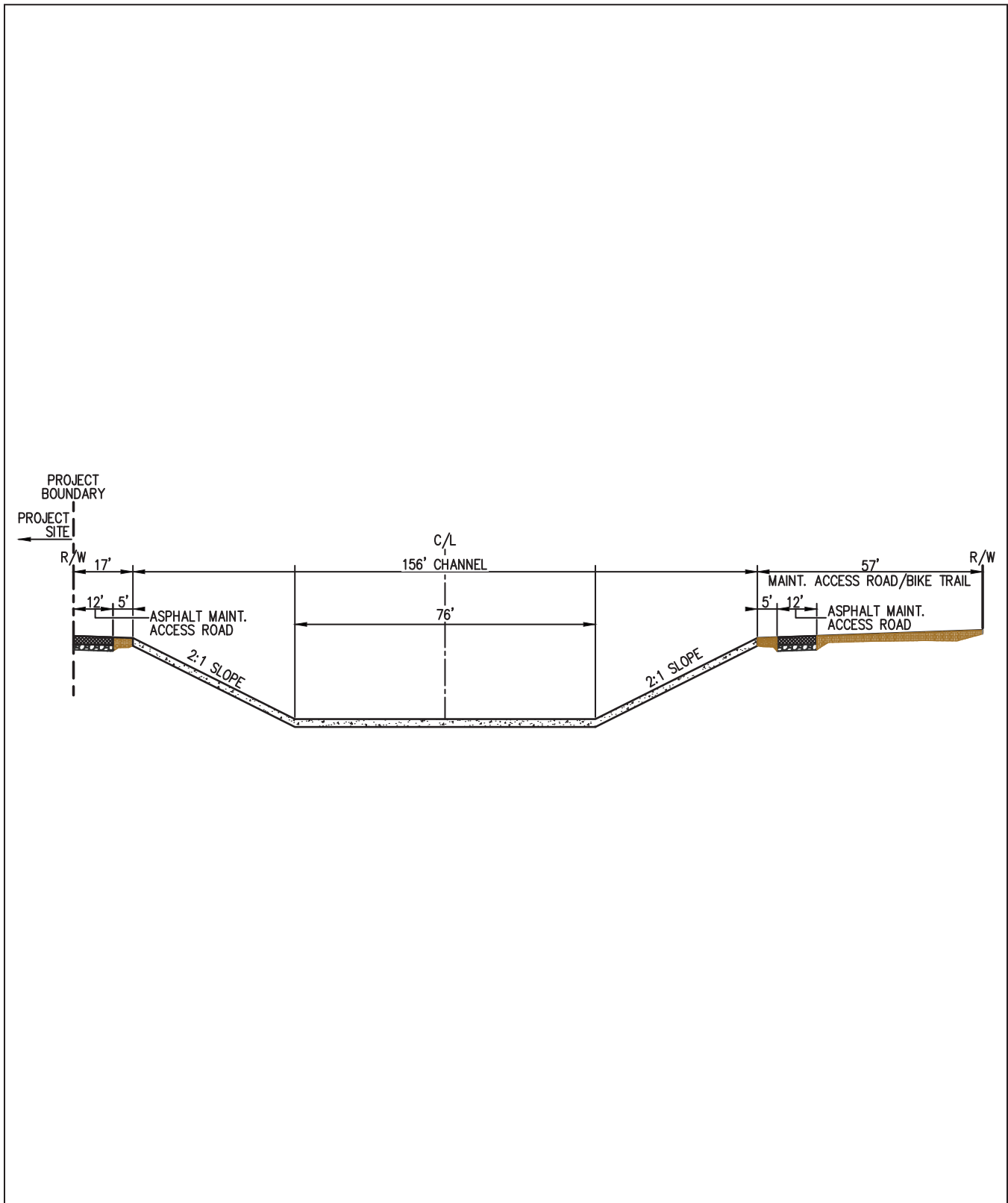
### Exhibit 5.3b, Typical Street Cross Section - Carpenter Avenue & Remington Avenue (70' ROW)



Source: David Evans & Associates



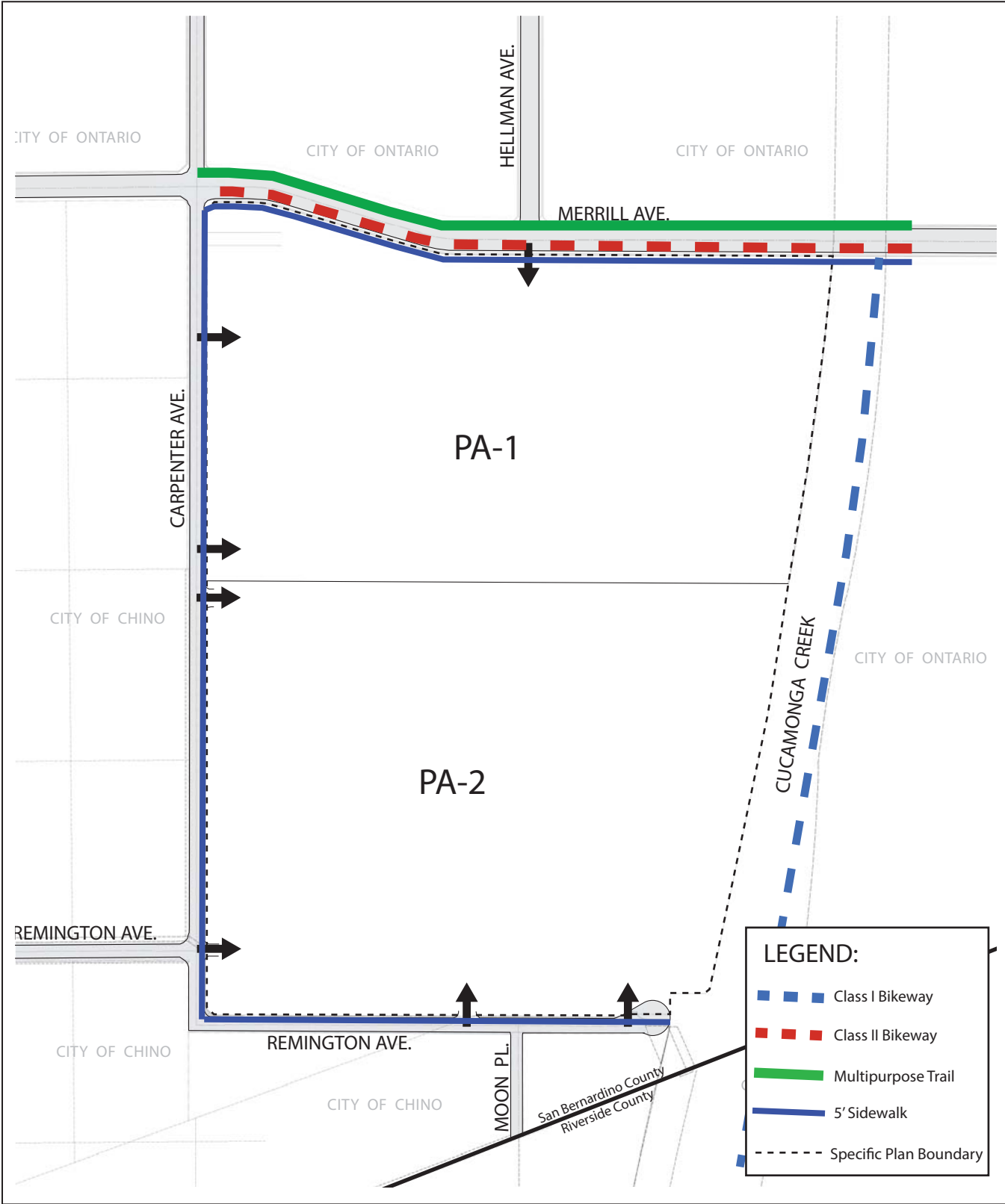
# Exhibit 5.3c, Cucamonga Creek Channel



Source: David Evans & Associates

N. T. S.

### Exhibit 5.4, Pedestrian and Bicycle Circulation



Source: KTG Group



# Exhibit 5.5, City of Ontario Trails & Bikeway Plan

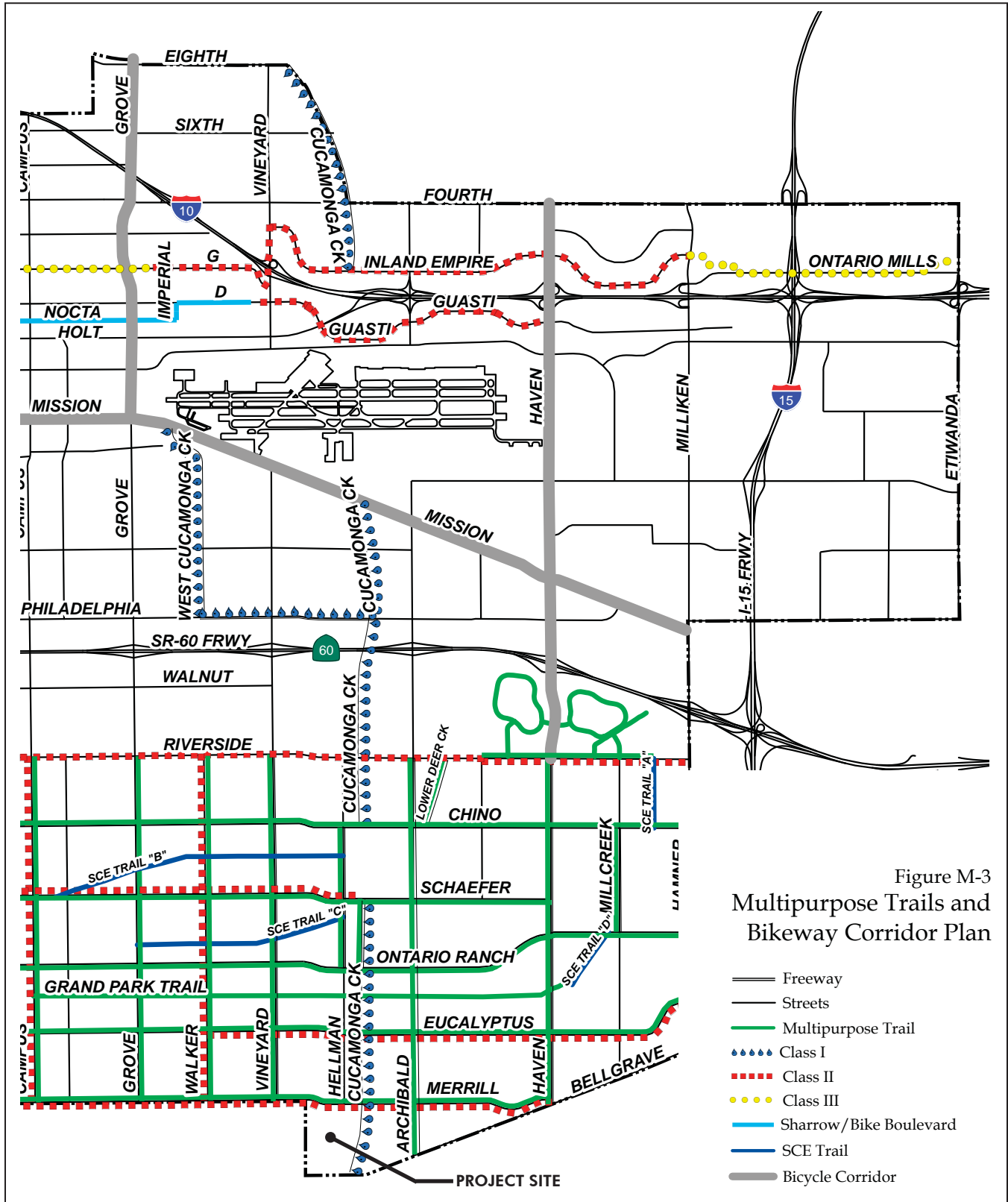


Figure M-3  
Multipurpose Trails and  
Bikeway Corridor Plan

- Freeway
- Streets
- Multipurpose Trail
- Class I
- Class II
- Class III
- Sharrow/Bike Boulevard
- SCE Trail
- Bicycle Corridor

Source: City of Ontario, Figure M-3 Multipurpose Trails and Bikeway Corridor Plan (Sept. 2016)  
NOTE: Reference the City's most current Master Plan for the latest route.



## 5.2 Water Master Plan

Domestic water will be provided by the City of Ontario. The City's Water Master Plan identifies new water facilities to serve the Ontario Ranch area, which will need to be constructed prior to or concurrent with on-site water improvements.

All private agricultural wells located within each Tract shall be destroyed per Cal Department of Water Resources prior to the issuance of a certificate of occupancy for any construction activity. Well destruction requires a permit from County Health Department. A copy of such permit shall be provided to Engineering and OMUC prior to issuance of certificate of occupancy.

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

### 5.2.1 Master Planned Domestic Water System

The project site lies within the 925' Pressure Zone as depicted on Exhibit 5.6, City of Ontario Ultimate Water System. The ultimate improvements for domestic water will include a 12" Master Plan water main in Merrill Avenue, from Archibald Avenue to Carpenter Avenue, and a 12" water main in Carpenter Avenue, from Merrill Avenue to Remington Avenue. The water main continues east on Remington Avenue, crosses the Cucamonga Creek Channel and connects to the existing 12" water main in Archibald Avenue as depicted on Exhibit 5.7, Domestic Water System.

Within the project site, a network of 8" and 10" water lines will be installed for the private fire system. The on-site water system includes connections to the main in Carpenter Avenue or the main in Merrill Avenue. The proposed on-site water system sizing is subject to the recommendations of the City Building Department.

Existing Phase 1 water supply infrastructure for the 925' Zone has been recently constructed and are generally located within the eastern portion of Ontario Ranch. Water supply infrastructure (production, storage,

transmission) required for this Specific Plan will also need to incorporate the following:

- a) The future Phase 2 backbone water infrastructure for the 925' Zone generally consisting of transmission mains, wells, and reservoir as depicted in Exhibit 5.6.
- b) A minimum of two points of connection to the backbone transmission main(s) (Phase 1 and/or Phase 2) to provide for looped water service.

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

### 5.2.2 Master Planned Recycled Water System

The City of Ontario will ultimately provide recycled water from IEUA's RP-1 and RP-1 outfall parallel located in Carpenter Avenue and via City of Ontario recycled water improvements as presented in the City's Recycled Water Master Plan (see Exhibit 5.8).

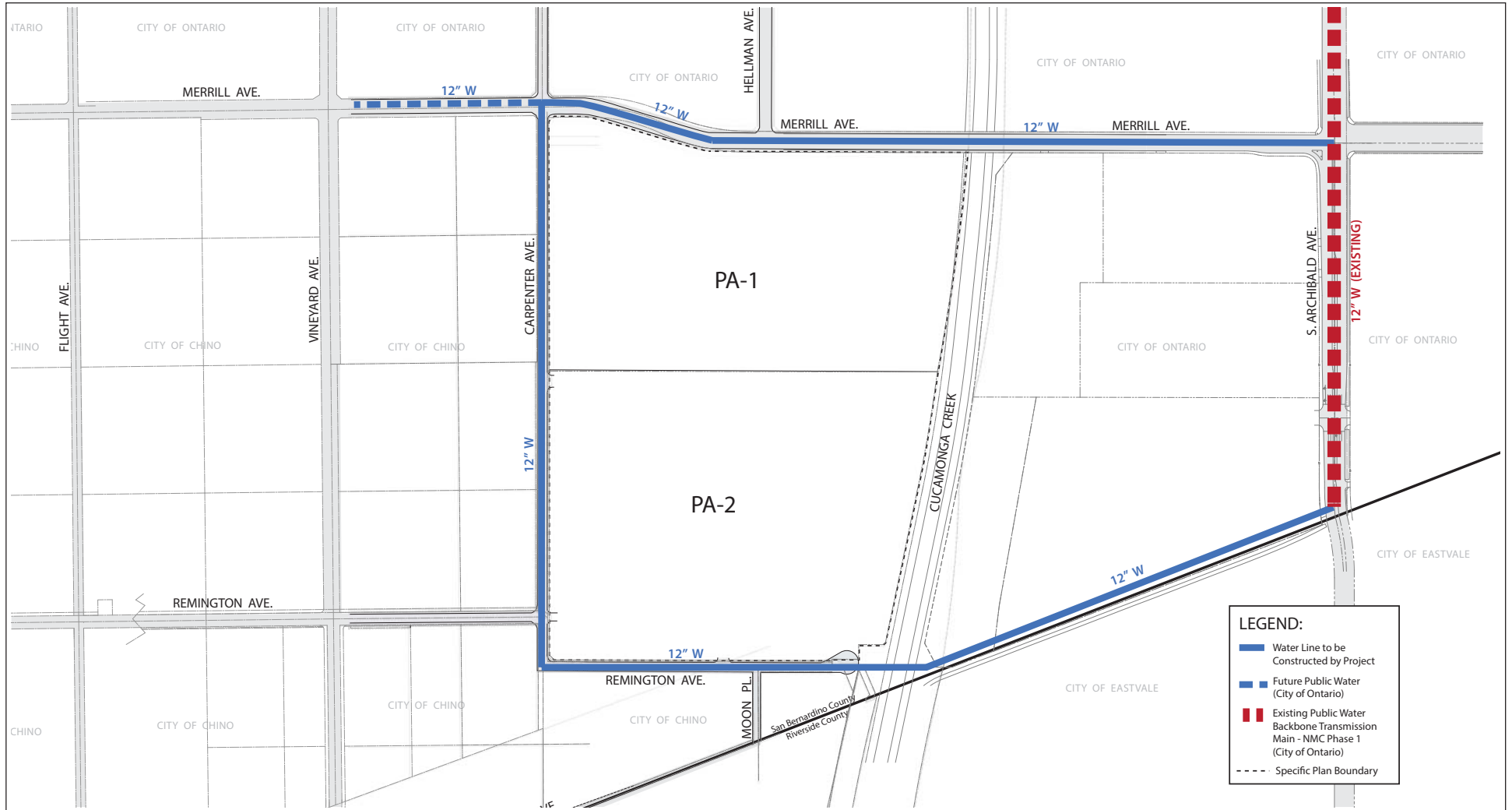
The 930' Pressure Zone recycled water system has an existing Inland Empire Utilities Agency (IEUA) 30" line in Carpenter Avenue that runs along the project frontage from Remington Avenue to Merrill Avenue. This project will construct a 12" City of Ontario line along Merrill Avenue from Carpenter Avenue to Archibald Avenue that will serve Colony Commerce Center West as illustrated on Exhibit 5.9, Recycled Water System.

The developer of Colony Commerce Center West will utilize the existing recycled water laterals that stub into both Planning Areas and enhance where required to serve the project. The Colony Commerce Center West Specific Plan shall comply with City Ordinance 2689 and make use of recycled water for all approved uses, including but not limited to the irrigation of street landscaping, and common areas.

The developer shall prepare and secure approval of an Engineering Report from the City of Ontario and State Water Resources Control Board (SWRCB) prior to the use of recycled water. Sizing of the on-site system



**Exhibit 5.7, Domestic Water System**



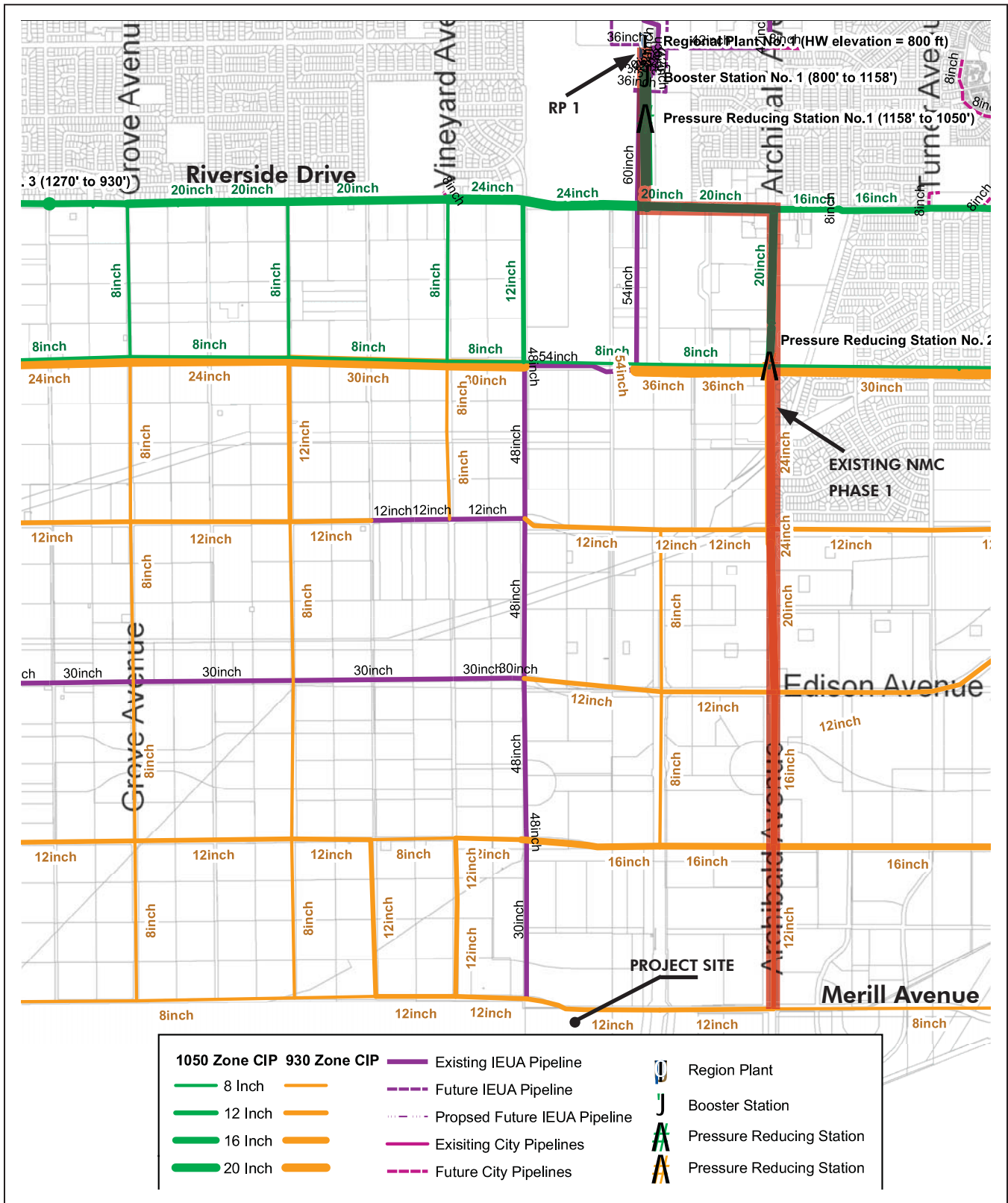
Source: David Evans & Associates  
 NOTE: Reference the City's most current Master Plan for sizing/alignment.

N. T. S.

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# Exhibit 5.8, (Partial) Ontario Ranch Recycled Water Master Plan

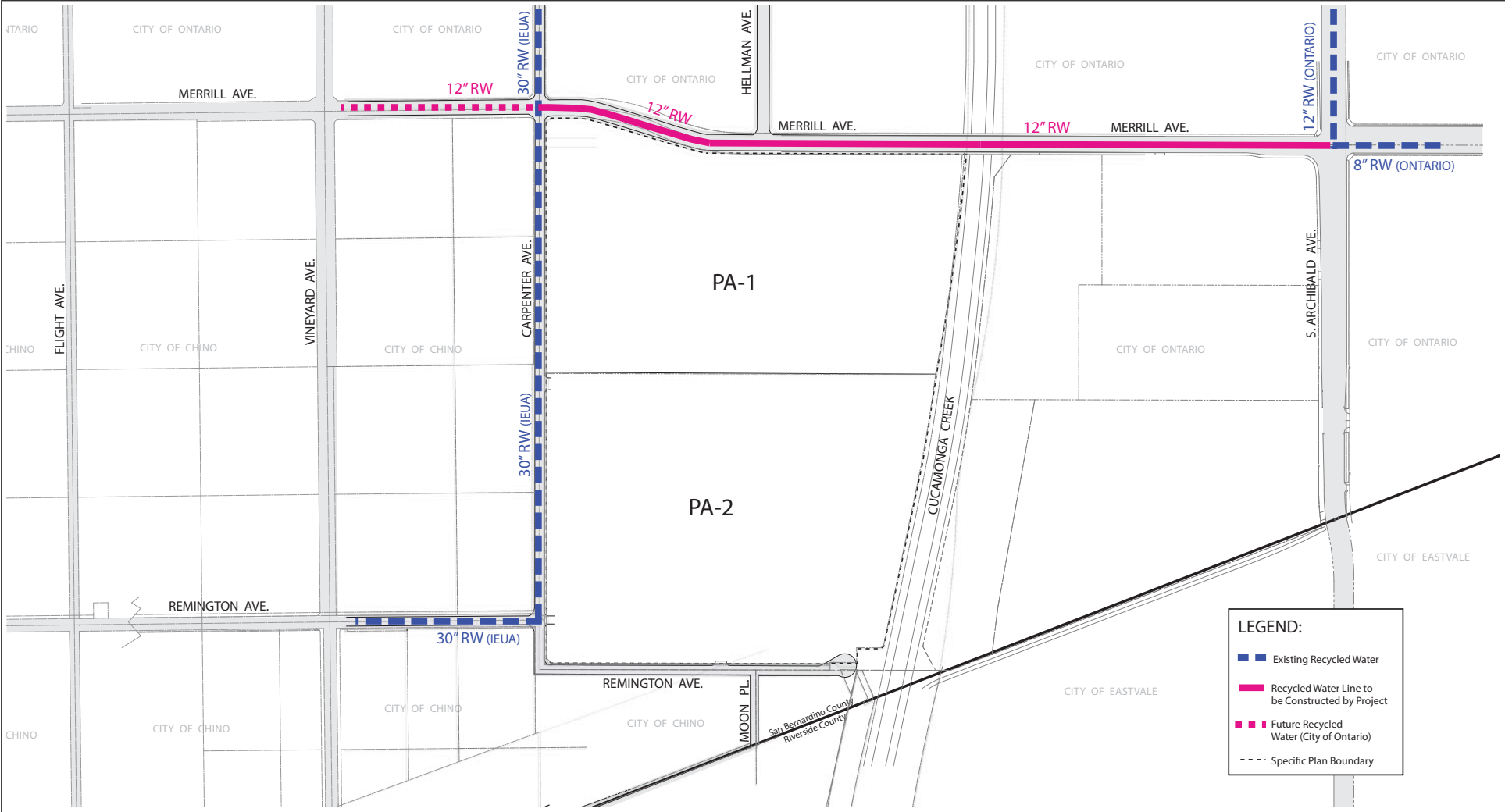


Source: City of Ontario, Recycled Water Master Plan, Figure 6-2 (October 2011)  
 NOTE: Reference the City's most current Master Plan for sizing/alignment.



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**Exhibit 5.9, Recycled Water System**



**LEGEND:**

- Existing Recycled Water
- Recycled Water Line to be Constructed by Project
- - - Future Recycled Water (City of Ontario)
- - - Specific Plan Boundary

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

N. T. S.

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is subject to the City approved hydraulic analysis and minimum requirements of the City. Interim connection to potable water is not allowed.

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

### 5.3 Sewer Master Plan

Sewer service for Colony Commerce Center West will be provided by the City of Ontario. The City of Ontario Master Plan of Sewer as depicted on Exhibit 5.10, proposes an 18" Sewer Trunk Line in Carpenter Avenue from the Eastern Trunk Sewer north to Merrill Avenue. The latest design of this master planned trunk sewer line, performed by MDS Consulting, requires the upsizing of this 18" line to a 24" line between the Eastern Trunk Sewer and Merrill Avenue.

The Colony Commerce Center West Specific Plan proposes a revised alignment for this 24" Sewer Trunk Line. The new alignment will run eastwardly in Remington Avenue from the southerly extension of Carpenter Avenue and southwardly on Moon Place where it will connect to the Eastern Trunk Sewer approximately 1,000 feet northeast of the original connection point. The reason for this proposed revision to the connection point (See Exhibit 5.11, Sewer Master Plan) is the lack of right-of-way or easement availability from the landowner south of Remington Avenue.

The revised alignment will allow the 24" Sewer Trunk Line to be constructed within Moon Place, which is a publicly dedicated street. It should be noted that this alternative alignment will require the City to amend its Sewer Master Plan.

The size and location of the on-site private sewer system required to service the buildings will be engineered during preparation of the final on-site construction documents, per Building Department requirements..

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

### 5.4 Drainage

The City of Ontario Storm Drain Master Plan identifies storm drain improvements to serve the project site. Completion of these Master Plan improvements will provide storm water drainage for the properties within this specific plan.

The runoff that leaves the site drains to the lower reach of Cucamonga Creek a tributary of the Santa Ana River at Prado Reservoir. The site is a part of the 74 square mile drainage area that is tributary to the Creek. The total drainage area is bounded by the San Gabriel Mountains on the north, San Antonio Creek drainage area on the west, Day Canyon drainage area on the east and Prado Reservoir on the south. The channel has an approximate gradient of 40 feet per mile and is designed to carry 45,000 cfs at the Confluence with the County Line Channel just downstream of the project site.

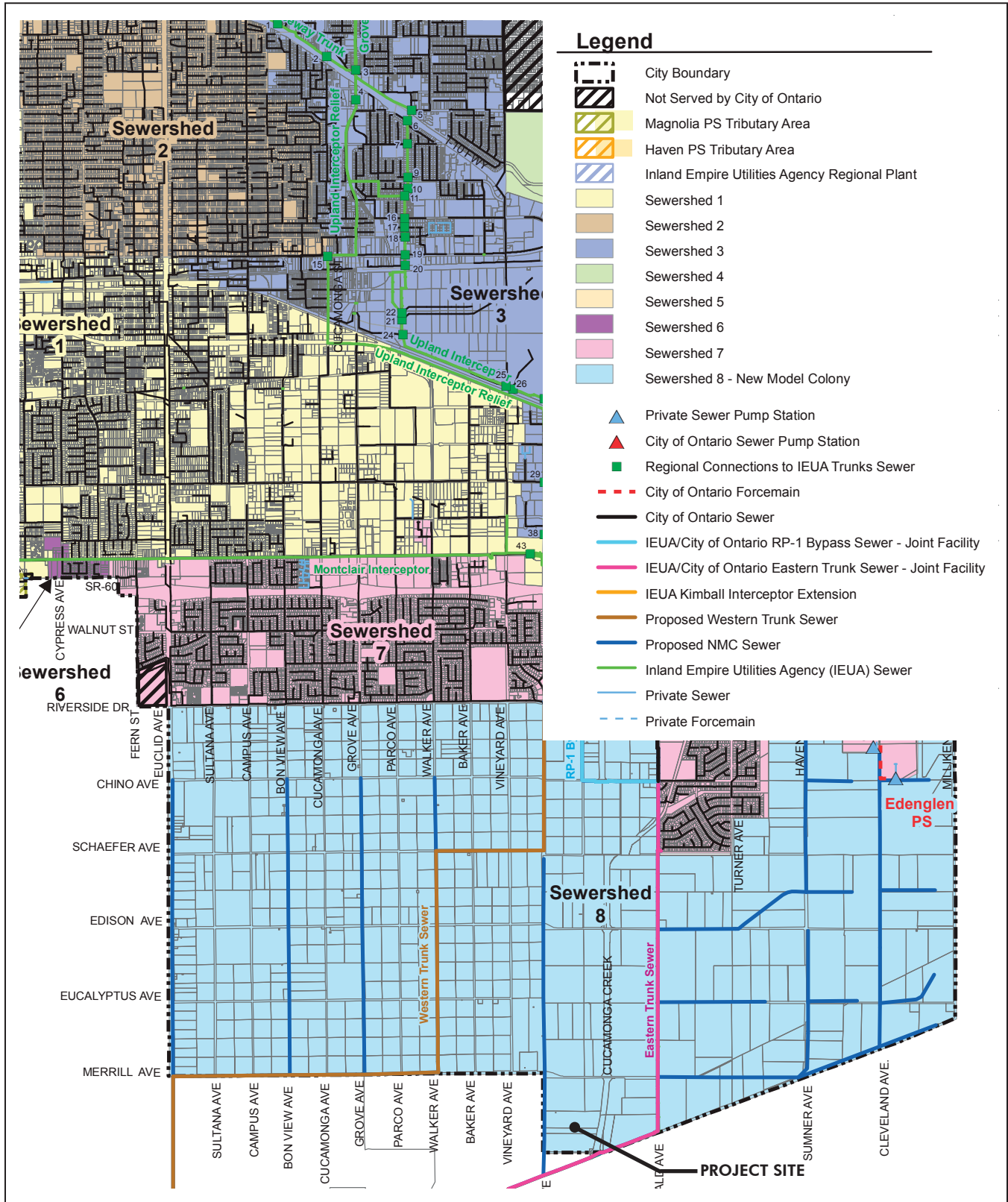
The existing Storm Drain Master Plan indicates the properties within this specific plan as tributary to the Walker Storm Drain System and calls out a double 10-foot by 10-foot box culvert (Double 10x10 Box) serving Area XII as depicted on the City of Ontario's Drainage Area Map, see Exhibit 5.12. That alignment depicts the 10x10 Box beginning northerly on Walker Avenue and continuing south past Merrill Avenue to Remington Avenue, then east along Remington Avenue, connecting into Cucamonga Creek.

The property owner south of Merrill Avenue and West of Carpenter Avenue, in City of Chino, does not need to connect to this Double 10x10 Box and does not want it constructed within their property.

Planning Areas 1 & 2 will drain to the existing 60" storm drain connection into Cucamonga Channel at Remington Avenue that will provide proper drainage capacity to serve the properties within this specific plan.

This specific plan proposes modifying the ultimate alignment of the Double 10x10 Box to turn east at Merrill Avenue and connect into the Cucamonga Channel at the intersection of Merrill Avenue. Due

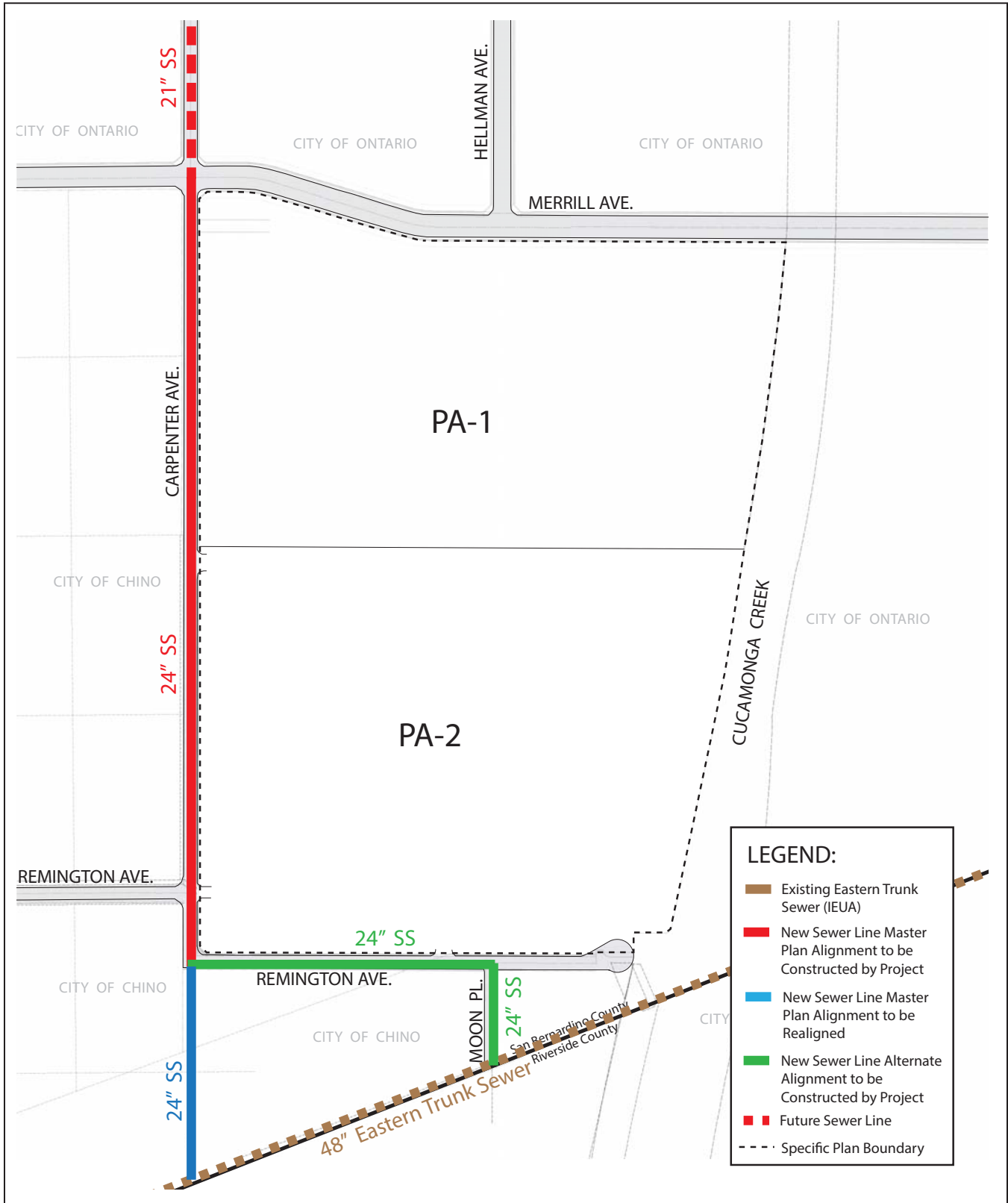
# Exhibit 5.10, City of Ontario Ultimate Sewer System



Source: City of Ontario, Ultimate Sewer System (Figure 6-1) October 2011  
 NOTE: Reference the City's most current Master Plan for sizing/alignment.



# Exhibit 5.11, Sewer Master Plan

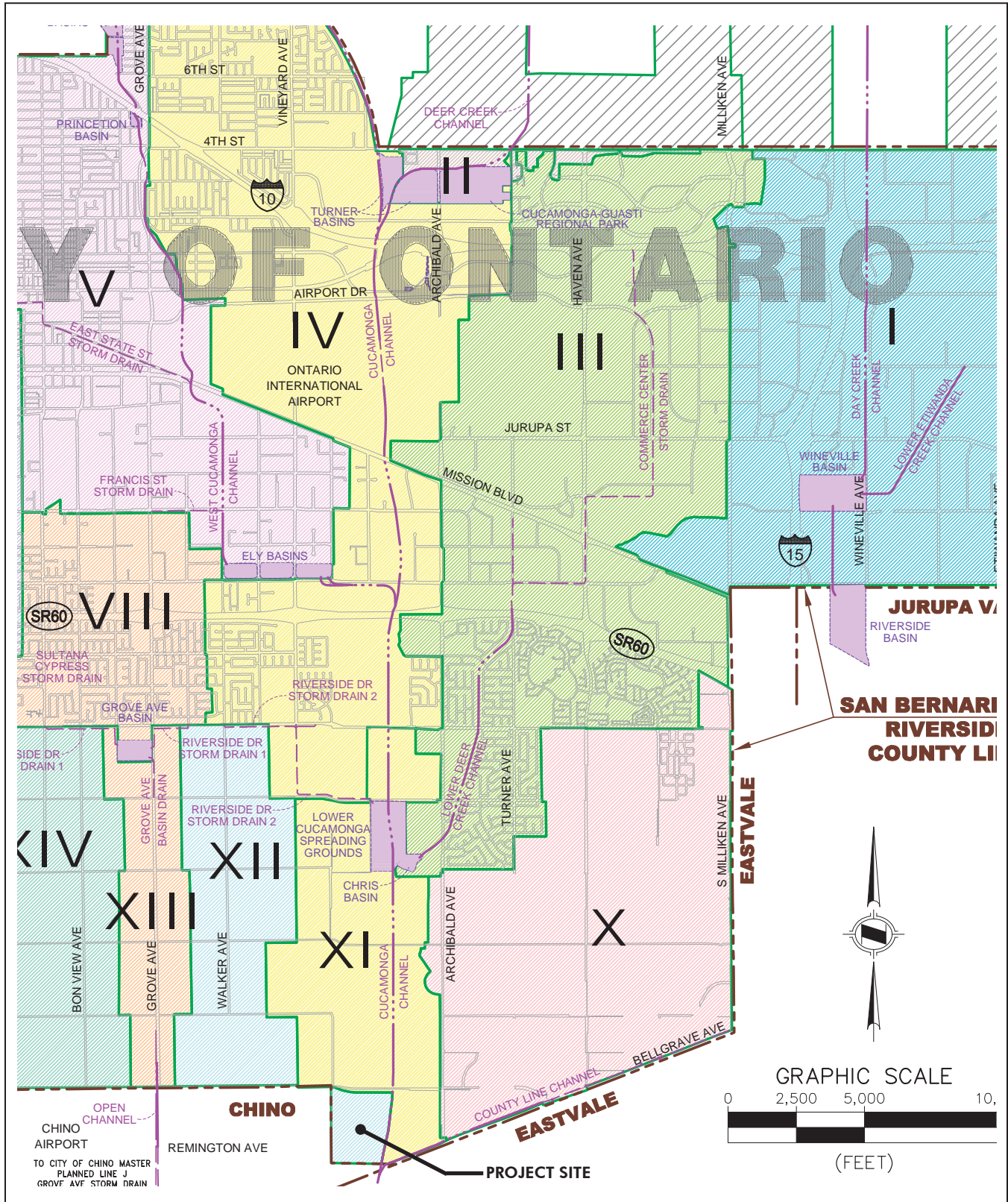


Source: David Evans & Associates  
 NOTE: Reference the City's most current Master Plan for sizing/alignment.





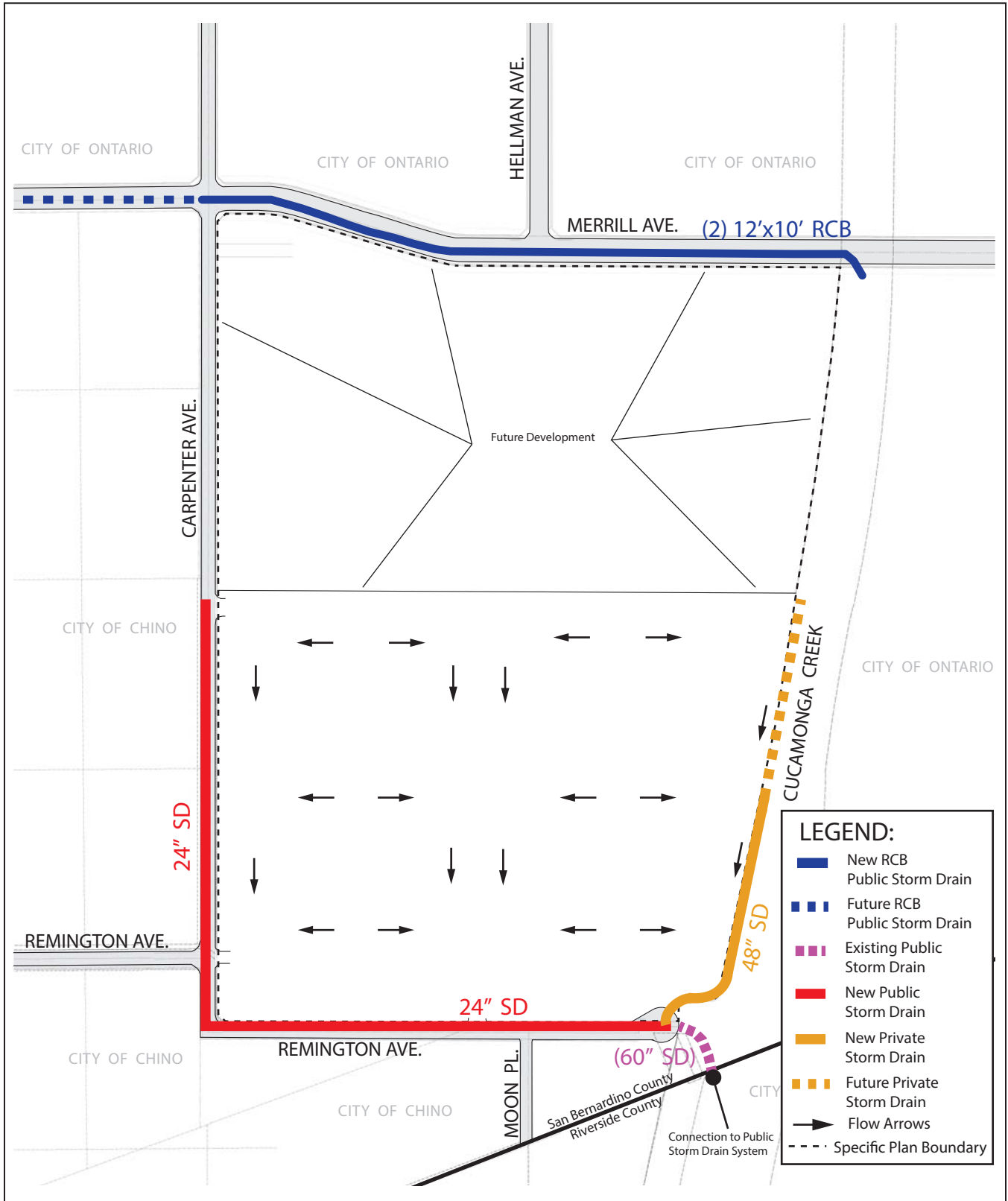
# Exhibit 5.12, City of Ontario Drainage Area Map



Source: City of Ontario's Drainage Area Map (Exhibit 7), March 10, 2012  
 NOTE: Reference the City's most current Master Plan for sizing/alignment.

N. T. S.

# Exhibit 5.13, Drainage Plan / Hydrology



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



to the new alignment and hydraulic grade line (HGL), the 10x10 box needs to be upsized to a 12x10. This alignment will reduce the total linear footage of the Double 12x10 Box , provide a straighter alignment & single point of connection, while providing the same storm water drainage capacity for the properties to the north and west that drain to it.

The proposed modification to the Master Plan of drainage for Colony Commerce Center West is illustrated in Exhibit 5.13 Drainage / Hydrology.

### 5.4.1 NPDES Compliance

The grading and drainage of the Specific Plan Area shall be designed to detain, filter, and treat surface runoff in a manner and combination which is practical, to comply with the requirements of the San Bernardino County NPDES Storm Water Program's current Water Quality Management Plan (WQMP) for new development projects.

The objective of the WQMP for the project is to minimize the detrimental effects of urbanization on the beneficial uses of receiving waters, including effects caused by increased pollutants and changes in hydrology. These effects shall be minimized through the implementation of on-site and off-site Low Impact Development (LID) Site Design Best Management Practices (BMP's) that retain/infiltrate or biotreat 85th percentile storm event runoff from the project.

In addition, non structural and structural Source Control BMP's shall also be implemented and documented in the projects approved Water Quality Management Plan(s) to reduce pollutant generation and transport from the project site.

Participation in an alternative regional or watershed-based Treatment Control BMP , such as, the Mill Creek Wetlands Project, is regulated by the requirements of the San Bernardino County Stormwater SB County MS4 Permit and the Water Quality Management Plan Technical Guidance Document.

Prior to the issuance of grading or construction permits for any parcel map or area that disturbs 1 acre or more of land, within the Colony Commerce Center West Specific Plan area shall be required to obtain coverage, Erosion/Sediment Control Plans and Storm Water Pollution Prevention Plans (SWPPP) shall be prepared. The SWPPP shall be prepared to comply with California State Water Resources Control Board's (State Water Board) current "General Permit to Discharge Storm Water Associated with Construction Activity" and current "Area Wide Urban Storm Water Runoff (Regional NPDES) Permit."

The SWPPP shall identify and detail all appropriate Best Management Practices (BMP's) to be implemented or installed during construction of the project.

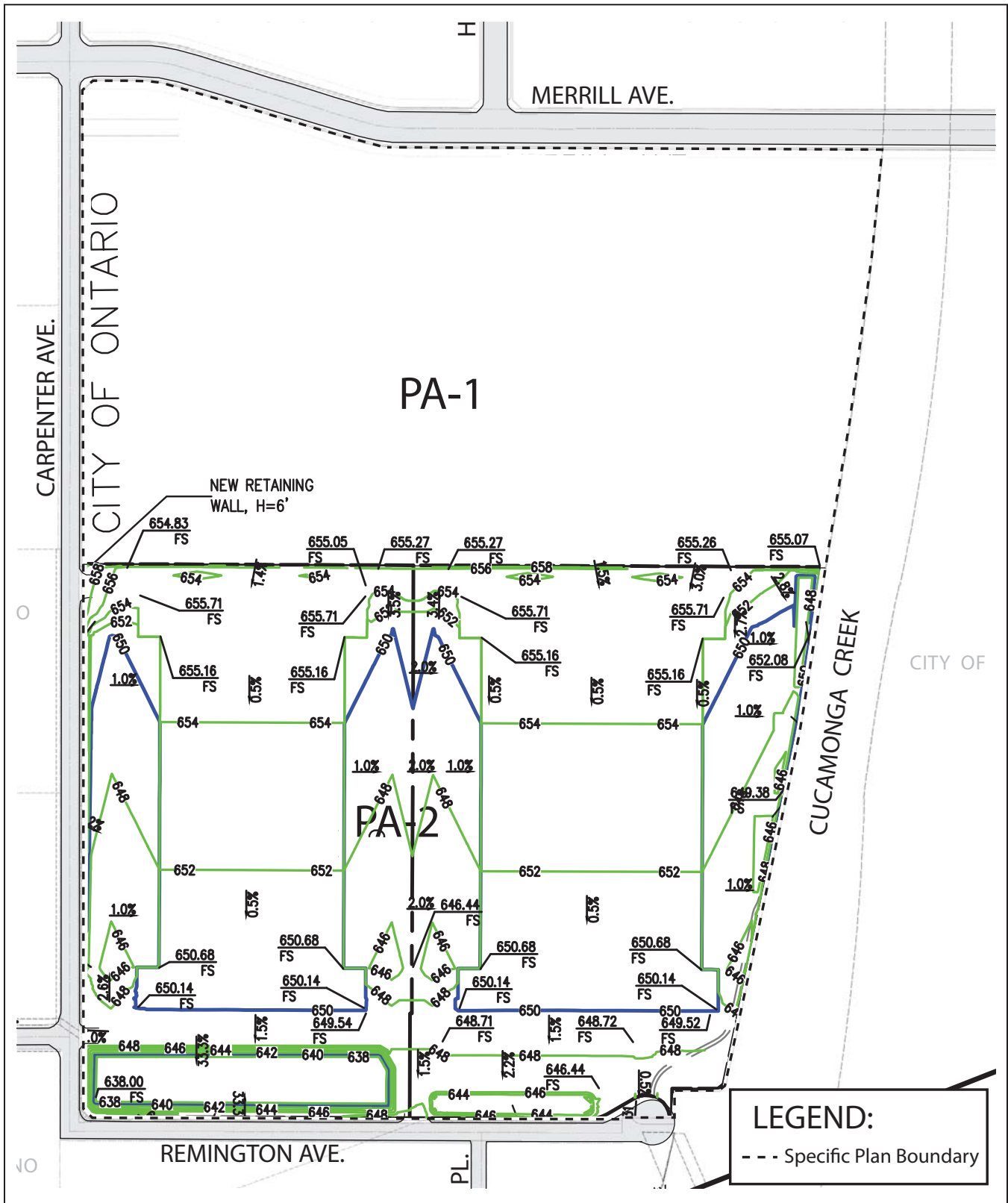
## 5.5 Grading Concept

The project site generally slopes to the south at approximately 1.0% to 2.0%. The grading activities for Colony Commerce Center West will generally consist of clearing and grubbing, demolition of existing structures, and moving surface soils to construct building pads and streets. Where slope conditions are present, the project lot line shall be located at the top of a slope.

The Conceptual Grading Plan, as illustrated in Exhibit 5.14, Conceptual Grading Plan, provides a balance of cut/fills for the project. Grading plans for each tract within the project shall be reviewed and approved by the City of Ontario Building, Planning, and Engineering Departments prior to the issuance of grading permits. All grading plans and activities shall conform to the City's grading ordinance and dust and erosion control requirements.

All landscape areas, adjacent to streets, including medians, parkways and neighborhood edges, in the Specific Plan Area, shall be finish graded, at a minimum of 1 ½" below top-of-curb or sidewalk finish surface, for conservation of irrigation water and increased retention of rainwater runoff.

## Exhibit 5.14, Conceptual Grading Plan



Source: David Evans & Associates



Wherever practicable, landscaped areas within the project shall be graded as swales and designed to accept runoff water from impervious surfaces. Where necessary, a 5' wide level pad area shall be provided for utilities adjacent to slopes, at each side of detention basins or swales adjacent to paving for pedestrian safety and for screening shrubs.

## **5.6 Dry Utilities**

Utility services provided to the site consist of natural gas, electricity, and communications systems. Utility lines will be installed underground in accordance with City of Ontario guidelines.

### **5.6.1 Communication Systems**

The proposed backbone street fiber optics (conduits, hand holes, tracer wire, and fiber) will be placed underground within a duct and structure system to be installed by the Master Developer in a joint trench, as Illustrated in Exhibit 5.15. In-tract fiber and conduit shall be installed by the Developers per the in-tract fiber optic design guidelines. Maintenance of the installed system will be the responsibility of the City/Special District. Development of the Project requires the installation by the Developers of all fiber optic infrastructure and peripheral equipment necessary to service the Project as a stand-alone development.

### **5.6.2 Natural Gas**

The Gas Company will provide natural gas to the Specific Plan area. The Gas Company will install gas mains to the Specific Plan area as necessary.

### **5.6.3 Electricity**

Southern California Edison Company (SCE) currently provides electrical service in the area. All new lines and all existing lines within the Specific Plan area shall be installed according to City of Ontario requirements.

There are existing power poles that run along the west side of Carpenter Avenue from Merrill Avenue in the north to west extension of Remington Avenue in the

south. From the west extension of Remington Avenue, the power poles diagonally cross Carpenter Avenue and run south until the east extension of Remington Avenue. From there the power poles run east along the north side of Remington Avenue and cross the Cucamonga Creek bridge. The existing overhead lines along the project frontage will be relocated underground per the City's Municipal Code.

## **5.7 Public Facilities and Services**

Public services and facilities play an essential role in providing support services to create viable, sustainable, healthy and cohesive communities.

### **5.7.1 Police**

The Ontario Police Department will provide law enforcement to the Colony Commerce Center West area. The Ontario Police Department's mission statement is as follows: "The mission of the Ontario Police Department is to protect life and property, solve neighborhood problems, and enhance the quality of life in our community. We do this by providing superior police services while fostering successful community partnerships."

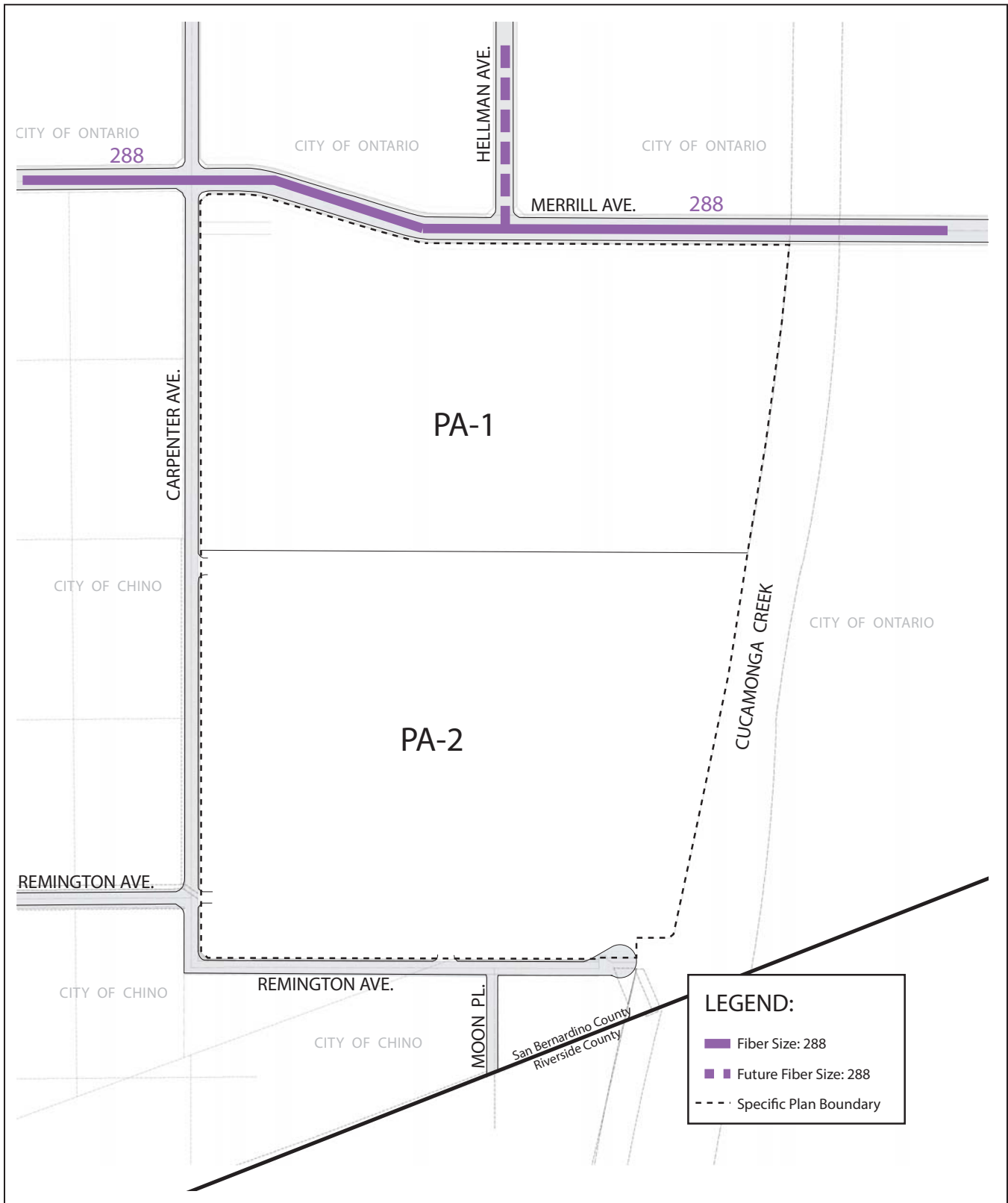
### **5.7.2 Fire**

The Ontario Fire Department will provide fire protection, paramedic, and emergency response services to the Specific Plan Area. The closest operational fire station is Station 6 located at 2931 E. Philadelphia Avenue. The Ontario Fire Department currently has eight stations, which are comprised of eight 4-man paramedic engine companies and two 4-man truck companies.

The City is in the process of developing 13 square miles in the Ontario Ranch where the Ontario Fire Department will shortly begin construction of Fire Station Number Nine located at 2661 E. Park Vista Drive.



## Exhibit 5.15, Fiber Optic Master Plan



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



### 5.7.3 Solid Waste Disposal

The Ontario Municipal Utilities Company is committed to providing reliable, timely, safe, and affordable refuse collection services to the residents and businesses in the city limits. Solid waste requirements shall follow the approved “Solid Waste Department Refuse and Recycling Planning Manual.”

## 5.8 Infrastructure Phasing Plan

The primary intent of the phasing of the project is to ensure that complete and adequate public facilities and services are in place and available to the Specific Plan area as needed.

The phasing program for Colony Commerce Center West will be executed to provide the services and infrastructure required for each of the development planning areas. The phasing set forth in this Specific Plan shall be conditioned on the approval of tentative tract maps. It should be noted that the ultimate pace and phasing of the development is dependent on a number of internal and external factors and is subject to change. See Exhibit 5.16, Conceptual Phasing Plan.

Not all planned development within a given phase may be completed prior to the initiation of the next phase. In cases where development within a new phase is to begin prior to the completion of a phase in progress, all infrastructure improvements shall be funded and designed for the phase in progress before any new phase may begin.

### 5.8.1 Planning Areas and Streets

The project will be developed in three or more phases. These phases may occur sequentially or concurrently with one another. Build out of the project is undetermined at this time.

Public streets within and abutting the Specific Plan area shall be improved in accordance with approved development agreement. Traffic Impact Analysis may recommend additional improvements, including those

potentially outside the limits of the Specific Plan Area, prior to or concurrent with specific development milestones.

### 5.8.2 Water, Sewer and Recycled Water

Water and sewer services will be provided for each of the planning areas.

**Domestic Water:** Phases 1A and 1B require the construction of the 12” Master Plan water line in Merrill Avenue from Archibald Avenue to Carpenter Avenue, in Carpenter Avenue from Merrill Avenue to Remington Avenue, and eastward in Remington Avenue to Archibald Avenue. Due to the location of Phase 1A and 1B, the 12” water line will also be able to serve Phase 2.

**Recycled Water:** The developer of Colony Commerce Center West will utilize the existing recycled water laterals that stub into both Planning Areas and enhance where required to serve the project. This project will also construct a 12” City of Ontario line along Merrill Avenue from Carpenter Avenue to Archibald Avenue. The recycled water improvements will not be phased and connection to the system is required prior to occupancy.

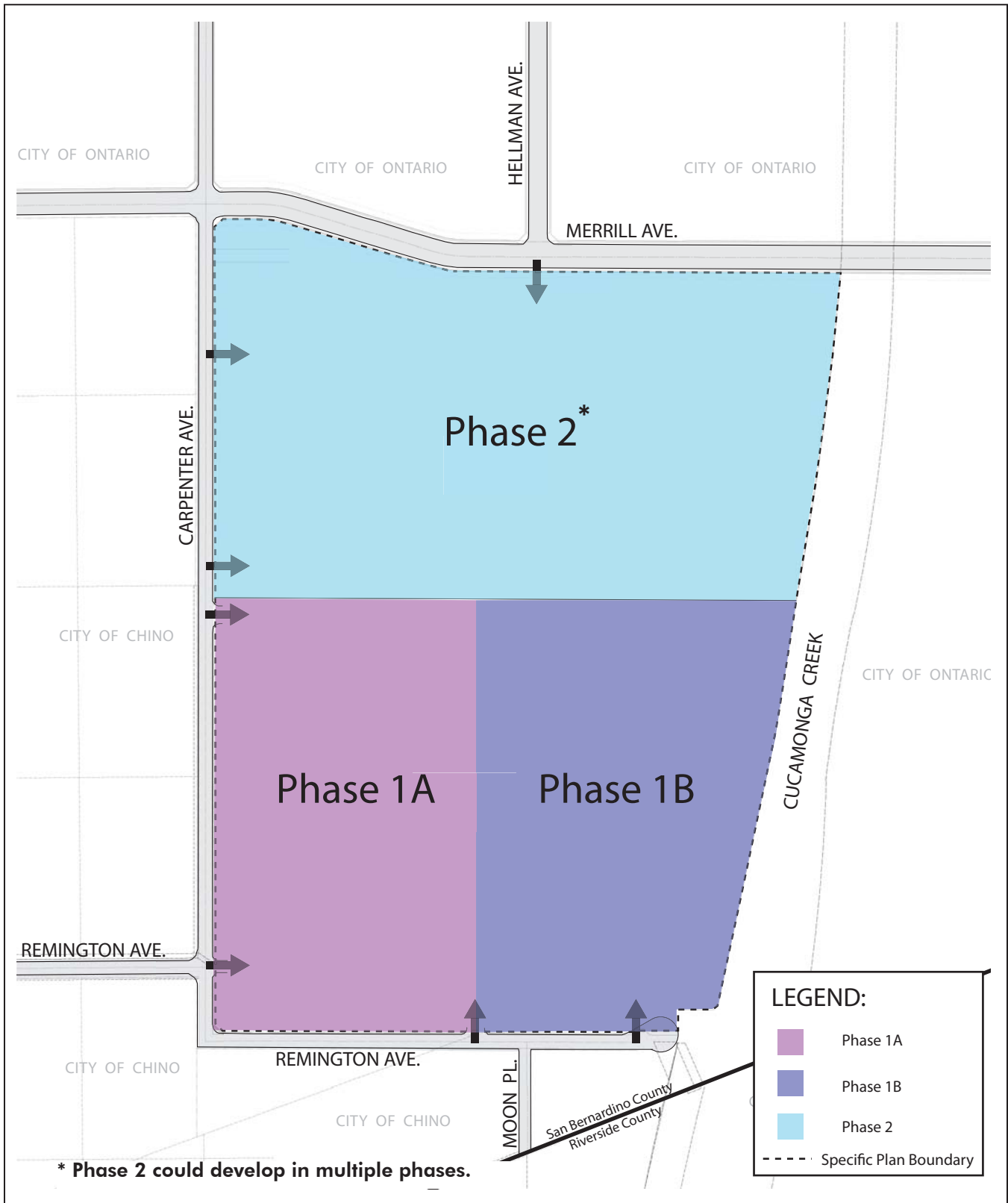
**Sewer:** The City of Ontario Master Plan of Sewer proposes an 18” Sewer Trunk Line in Carpenter Avenue from the Eastern Trunk Sewer north to Merrill Avenue. The latest design of this master planned trunk sewer line, performed by MDS Consulting, requires the upsizing of this 18” line to a 24” line between the Eastern Trunk Sewer and Merrill Avenue.

To provide sewer for all phases of development, this project proposes a realignment of this 24” line. The new alignment will run eastwardly in Remington Avenue from the southerly extension of Carpenter Avenue and southwardly on Moon Place where it will connect to the Eastern Trunk Sewer approximately 1,000 feet northeast of the original connection point.

### 5.8.3 Drainage



# Exhibit 5.16, Conceptual Phasing Plan



Source: KTG Group



Phase 1a & 1b improvements include the construction of a 60” storm drain line from the NWC of Phase 1a & 1b in Carpenter Avenue, down Carpenter Avenue to Remington Avenue (East), where it heads east and ties into the existing 60” storm drain outlet at Cucamonga Channel.

It should be noted that the ultimate phasing of the development is dependent on a number of internal and external factors. Not all planned development within a given phase may be completed prior to the initiation of the next phase.

## **5.9 Infrastructure Plan and Phasing Adjustments**

The Board of Zoning Adjustment shall have the authority to hear and decide applications for modifications to the infrastructure phasing plans. The Board shall be required to make the following findings:

- » That modification is consistent with the General Plan;
- » That the proposed changes will not adversely affect the implementation of the Specific Plan;
- » That it will not be detrimental to the public health, safety, and general welfare; and
- » That the proposed modification will not delay the construction of the master plan improvements necessary to serve the development.

# 6

## DEVELOPMENT REGULATIONS

### 6.1 Introduction

The provisions contained herein shall regulate design and development within the Colony Commerce Center West Specific Plan. The regulations contained herein establish the minimum standards and requirements for development.

### 6.2 Definition of Terms

The meaning and construction of words, phrases, titles, and terms shall be the same as provided in the City of Ontario Development Code Article 2, “Definitions,” unless otherwise specifically provided for herein.

The definition of architectural and design terms shall be the same as those provided in the City of Ontario Glossary of Design Terms which follows the City of Ontario Development Code, as amended through June 2003.

### 6.3 Applicability

The development regulations contained herein provide specific land use development standards for the project. Regulations address industrial development and provide for general landscaping regulations. Application of the following regulations is intended to encourage the most appropriate use of the land, ensure the highest quality of development, and protect the public health, safety, and general welfare.

Whenever the provisions and development standards contained herein conflict with those contained in the City of Ontario

Development Code, the provisions of the Colony Commerce Center West Specific Plan shall take precedence. Where the Colony Commerce Center West Specific Plan is silent, City codes shall apply. These regulations shall reinforce specific site planning, architectural design, and landscape design guidelines contained in Chapter 7, “Design Guidelines” of the Colony Commerce Center West Specific Plan.

All architectural and landscape improvements shall be consistent with the Design Guidelines contained in Chapter 7, of the Colony Commerce Center West Specific Plan, “Design Guidelines.” All architectural and landscape plans shall be submitted to the City of Ontario for approval.

### 6.4 Administration

The Colony Commerce Center West Specific Plan is adopted by ordinance and serves to implement the Policy Plan Land Use Plan (Policy Plan Exhibit LU-01) as well as the zoning for the Specific Plan Area. The Colony Commerce Center West Specific Plan addresses general provisions, permitted uses, development standards, and design guidelines.

The Colony Commerce Center West Specific Plan Development Regulations address general provisions, permitted uses, and development standards for the community. The Specific Plan has been prepared in conformance with the Goals and Policies of the Policy Plan as outlined Chapter 3 “Plan Conformance”.

## 6.5 General Site Development Criteria

The following general site development criteria shall apply to all development projects within Colony Commerce Center West.

- » Gross Acres – Except as otherwise indicated, gross acres for all development areas are measured to the center line of streets.
- » Grading – Development within the project site shall utilize grading techniques as approved by the City of Ontario. Grading concepts shall respond to the design guidelines included in the Colony Commerce Center West Specific Plan.
- » Building Modification – Building additions and/or alterations permitted by the Colony Commerce Center West Specific Plan shall match the architectural style of the primary unit and shall be constructed of the same materials, details, and colors as the primary unit.
- » Utilities – All new and existing public utility distribution lines of 34.5 kV or less shall be subsurface throughout the project.
- » Technology – All businesses shall accommodate modern telecommunications as defined by the Fiber Optic Master Plan and in accordance with the City of Ontario Structured Wiring Standards (Ontario Municipal Code, Title 8, Chapter 16).
- » Solid Waste/Recycling – Development within the project shall comply with City of Ontario requirements for the provision and placement of solid waste and recycling receptacles.
- » Traffic – All traffic-controlled signs, whether on public or private property, shall conform to the California MUTCD.

## 6.6 Industrial Development Standards

This section includes the development of industrial uses. The development standards for industrial uses establish the minimum criteria for the development of land use types on individual lots within the Planning Areas specified within the Colony Commerce Center West Specific Plan. Specific standards for the industrial land uses are described on Table 6.1. Refer to the Colony Commerce Center West Specific Plan EIR and ONT ALUCP for additional development criteria and policies that may affect but not be limited to the restriction of allowable land uses, the allowable Floor Area Ratio (FAR), overall site design, building heights and so on.

## 6.7 Permitted Uses

Table 6.2 establishes the uses which are permitted within the two planning areas of Colony Commerce Center West Specific Plan. The following symbols used in the table represent the following:

P	Permitted Use
C	Conditional Use Permit required
A	Ancillary Use (allowed in conjunction with another permitted use)

Accessory uses will be reviewed concurrently with each land use proposal.

**Table 6.1, Development Standards**

SITE REQUIREMENTS	
Minimum Site Area:	1 Acre (43,560 SF)
Floor Area Ratio:	0.55 (Max. Allowed)
Minimum Landscape Coverage:	10%
BUILDING REQUIREMENTS	
<b>Minimum Building Setbacks: (1,2)</b>	
• From Merrill Avenue	23'
• From Carpenter Avenue	10'
• From Remington Avenue	10'
• Interior\Rear Property Lines	10'
• From Cucamonga Creek Channel	10'
<b>Parking &amp; Drive Aisle Setbacks:</b>	
• From Merrill Avenue	23'
• From Carpenter Avenue	10'
• From Remington Avenue	10'
• From Cucamonga Creek Channel	5'
• Interior\Rear Property Lines	5'
• Adjacent to Building Office Elements	10'
• Adjacent to Solid Building Wall	5'
• Private Street and/or Drive Aisle to Building	5'
<b>Maximum Building Height:</b>	
• Main Structure	55'
• Architectural Projections and Focal Elements Such As Towers, Cupolas, and other Appurtenances. (3)	65'
<b>Walls, Fences, and Hedges</b>	Please see Ontario Development Code.

(1) - All setback areas shall be landscaped.

(2) - All setbacks are measured to habitable area not architectural appurtenance or projection. An architectural projection is defined as an element that articulates the building elevation such as eaves, window and door popout surrounds, bay windows, pot shelves, chimneys, enhanced window sills, shutter details, window trim, balconies, pedestrian colonnades and other similar elements. Such elements may project a maximum of 3 feet into required setback areas.

(3) - Architectural element only not to be used for signage, subject to Planning Director approval.

(4) - General Note, refer to the Colony Commerce Center West Specific Plan EIR and ONT ALUCP for additional development criteria and policies that may affect building heights, allowable FAR, and allowable land uses.

**Table 6.2, Permitted Uses**

Land Use Types	Industrial Area
<b>AGRICULTURAL USES</b>	
Commercial Growing Establishment - Activities typically include, but are not limited to the commercial growing of produce by row, field, tree, and crop production. Also included is agricultural research.	P
Wholesale and Retail Plant Nurseries - Activities typically include, but are not limited to, sales of indoor and outdoor plants, including, but not limited to, trees, shrubs, groundcovers, and grass sod, as well as seeds, pots and potting supplies, and growing supplies.	P
<b>RESIDENTIAL USES</b>	
Caretaker's Unit - Area devoted to use not to exceed 1,000 square feet.	A/C
<b>COMMERCIAL USES</b>	
Alcohol Beverage Sales - Activities typically include the sale, subject to required license for the sale of alcoholic beverages.	C
Auto Repair (Minor) - Activities include, but are not limited to automotive and light truck repair; retail sales of goods and services for automobiles and light trucks; and the cleaning and washing of automobiles and light trucks. Uses typically include, but are not limited to, repair of brakes, tires, electrical, etc. and car washes.	P
Auto Repair (Major) - In addition to the types of repair operations included as part of Automobile and Light Truck Repair - Major, activities typically include, but are not limited to, automotive body work, painting, and installation of major accessories; automobile customizing; engine and transmission repair/rebuild and towing facilities.	C
Car Wash - Full service activities typically include the washing and polishing of automobiles. Uses typically include automobile laundries; car washes, excluding self-service washes.	A
<b>COMMUNICATION USES</b>	
Radio and Television Broadcasting Studios. Activities typically include, but are not limited to, broadcasting and other information relay services accomplished primarily through the use of electronic and telephonic mechanisms. Uses typically include, but are not limited to, television and radio studios.	P
<b>EATING AND DRINKING PLACES &amp; FOOD SERVICES</b>	
Eating Establishments - Activities typically include, but are not limited to, the retail sale from the premises of food or beverages prepared for on-premises consumption. Uses typically include, but are not limited to:	
<ul style="list-style-type: none"> <li>• Full-service restaurants, serving ready-to-eat food and beverages for on-site consumption.</li> </ul>	P
<ul style="list-style-type: none"> <li>• Fast-food restaurants, serving ready-to-eat food and beverages for on-site or off-site consumption, without drive-through facilities.</li> </ul>	P

Land Use Types	Industrial Area
<b>MANUFACTURING</b>	
Light Manufacturing - Activities typically include, but are not limited to, the mechanical or chemical transformation of raw or semi-finished materials or substances into new products, including manufacture of products, assembly of component parts (including required packaging for retail sale), and treatment and fabrication operation. Light manufacturing activities do not produce odors, noise, vibration, or particulates which would adversely affect uses within the same structure or on the same site. Activities include the following:	
• Apparel Manufacturing	P
• Computer and Home Electronic Manufacturing	P
• Bakery (Industrial)	P
• Electrical Components	P
• Furniture and Related Products Manufacturing	P
• Home Appliance and Equipment Manufacturing	P
• Instrument Manufacturing (Navigational, Measuring, etc.)	P
• Leather Product Manufacturing (excluding tanning and finishing)	P
<b>MACHINERY MANUFACTURING</b>	
Machinery Manufacturing - Activities typically include, but are not limited to, the mechanical or chemical transformation of raw or semi-finished materials or substances into new products, including manufacture of products; assembly of component parts (including required packaging for retail sale); blending of materials such as lubricating oils, plastics, and resins; and treatment and fabrication operations. Examples of activities include the following:	
• Miscellaneous Manufacturing (jewelry, office supplies, sporting goods, toys, etc.)	P
• Printing and Related Activities	P
<b>WAREHOUSE/STORAGE &amp; TRANSPORTATION</b>	
Warehouse/Distribution Facility - Activities typically include, but are not limited to, warehousing, storage, freight handling, shipping, trucking services; storage	P
<b>OTHER</b>	
Trailers for the use of construction	P
Any use deemed similar by the Planning Director	P

General Note, refer to the Colony Commerce Center West Specific Plan EIR and ONT ALUCP for additional development criteria and policies that may affect building heights, allowable FAR, and allowable land uses.



## 6.8 Signage

All signage within the boundaries of the Colony Commerce Center West Specific Plan shall conform to the Article 31, *Signs*, of Chapter 1 of the City’s Development Code.

## 6.9 Lighting

The design of lighting fixtures shall be approved by the City as part of the City’s Development Plan Review.

## 6.10 Required Number of Parking and Loading Spaces

Off-street parking facilities are to be provided for each use on Table 6.3 Parking and Loading Requirements in this Specific Plan.

**Table 6.3, Parking and Loading Requirements**

REQUIREMENTS	
<b>Manufacturing:</b>	
<ul style="list-style-type: none"> <li>Manufacturing (assumes 10% max. GFA for office)</li> </ul>	1.85 space per 1,000 SF of GFA; plus 1 tractor trailer space per 4 dock high doors
<b>Warehousing/Storage &amp; Transportation Services:</b>	
<ul style="list-style-type: none"> <li>Warehouse / Distribution Facility (assumes 10% max. GFA for office)</li> </ul>	1 space per 1,000 SF of GFA for the first 20,000 SF; 1 space per 2,000 SF of GFA for that portion over 20,001 SF; plus 1 tractor-trailer space per 4 dock-high doors
<b>General Industrial:</b>	
<ul style="list-style-type: none"> <li>Speculative buildings (assumes 10% max. GFA for office)</li> </ul>	1.85 space per 1,000 SF of GFA for the first 50,000 SF; 1 space per 1,000 SF of GFA for that portion between 50,001 SF and 100,000 SF; 0.5 space per 1,000 SF of GFA for that portion over 100,000 SF; plus 1 tractor-trailer space per 4 dock-high doors
<b>Office:</b>	
Office Area	1 space per 250 SF of GFA

# 7

## DESIGN GUIDELINES

### 7.1 Purpose and Intent

The following Design Guidelines have been developed to ensure a quality, cohesive design structure for the Colony Commerce Center West development. Objectives of these design guidelines are:

- » To provide the City with the necessary assurances that the Specific Plan area will develop in accordance with the design quality and character proposed herein;
- » To serve as design criteria for developers, builders, engineers, architects, landscape architects and other professionals in preparing plans for construction; and

- » To lend guidance to City staff, Planning Commission and City Council in the review and evaluation of future development projects in the Specific Plan area.

Certain key design elements will contribute significantly to the visual order and consistency of the entire Specific Plan area and provide a quality development. The fundamental elements of these common features; site planning, architecture, landscape, and architecture design details are established by these Design Guidelines.

The design guidelines are intended to be flexible and illustrative in nature, with the capability of responding to unanticipated conditions, changes in buyer preferences, the market and design trends.



Photo 7.1 - Example of Industrial building with corner office area

Creativity and innovation, as well as consistent, and quality, are encouraged in the implementation of these guidelines.

## 7.2 Industrial Theme and Character

These Design Guidelines will ensure that the Specific Plan community is an environment that reflects the vision embodied in the following concepts:

- » Develop a quality, cohesive design concept and identity for the Colony Commerce Center West area.
- » Establish development standards that ensure lasting value for the industrial developments.
- » The architectural image of the Specific Plan will be perceived primarily from the public realm. Therefore, building massing, scale and roof forms, as the primary design components, require articulation in their architectural expression as they relate to the public realm.

- » A theme wall/entry monument may be installed at the major project entries at the discretion of the builder or project developer.

## 7.3 Site Design

The following concepts are intended to facilitate design quality and compatibility between industrial uses within the Colony Commerce Center West Specific Plan.

- » Site design should facilitate the intended functions of developed and open space areas, and provide for appropriate interactions between buildings and activity areas, good movement, vehicular access and parking, and pedestrian and bicycle travel.
- » Buildings should be oriented to define the streetscene and provide for an aesthetically pleasing streetscape.
- » Major vehicular and pedestrian entries to the site from the public street system should be readily visible. Major entries to planning areas, other than



Photo 7.2 - Example of Industrial building



Photo 7.3 - Example of Industrial building

truck entries should be marked by accent pavement with accent trees and other landscape features.

- » Typical ground-mounted equipment (such as transformers and heating units) should be screened by landscaping where they would otherwise be within public view.
- » Where long, linear walls or fences are needed, a combination of wall/fence with dense landscaping is encouraged.
- » The mass of new structures, as visible from public views, should be softened by landscaping or lessened by small-scale elements such as windows, panels, entrances, and other detail features to avoid monotony in design.
- » Parking spaces adjacent to planters shall have a 12" wide curb for ease in stepping out from vehicles.
- » Provide parking lot trees in planter islands at the ratio of one tree for every 10 parking spaces.

## 7.4 Parking/Loading Facilities

The following concepts are intended to facilitate design quality and compatibility between industrial uses within the Colony Commerce Center West Specific Plan.

- » Site entries shall compliment the architectural development by utilizing enhanced pavement treatment in vehicular areas, accent trees, and color planting. Enhanced paving shall extend from the back of the approach apron, into the site, to the first intersecting drive aisle or parking space.
- » No required parking or loading facilities shall be located in any required landscape setback.
- » All outdoor refuse collection areas shall be decorative and should be visually screened.
- » All loading areas shall be screened from public view by buildings or by eight foot high wall (minimum). A line of sight study will determine the final height of the wall. Landscaping should be incorporated to visually soften the appearance of walls.



- » Driveways and parking areas should be separated from adjacent sidewalks or landscaped areas by a curb not less than six inches high.
- » Development shall provide trees within the vehicular use areas at a ratio of one tree for every 10 parking stalls. The trees shall consist of 24” and 36” box sized trees. See Section 7.7.1 for percentages of tree sizes.

## 7.5 Walls and Fences

- » Walls at loading areas shall be at least six feet in height, or as approved by the City in response to screening loading activities from off-site views from the adjacent public right-of-way.
- » Chain link fencing shall be permitted for use in interior truck courts, in non-public viewing areas. Chain link fencing may not be used along public views.
- » Walls fronting on streets may be constructed of concrete tilt up or masonry materials such as split face or slump stone.

- » Tubular Steel fencing shall be permitted along the Cucamonga Creek Channel if areas are not required to be screened from public views.

## 7.6 Site Lighting

The following section addresses illumination of on-site areas for purposes of safety, security, and nighttime ambience, including lighting for parking areas, pedestrian walkways, graphics and signage, architectural and landscape features, shipping and loading areas, and any additional exterior areas.

Streetlights shall conform, both in type and location, to the Standards of the City of Ontario at the time of installation.

- » A comprehensive lighting plan shall be prepared and approved in conjunction with the site plans submitted for approval to the DAB. In addition, all plans shall be reviewed and approved by the Ontario Police Department.



Photo 7.4 - Example of typical screen wall with landscaping

- » Exterior lighting should be located and designed to minimize direct glare beyond the parking lot.
- » The design of lighting fixtures shall be consistent throughout individual planning areas, and shall be compatible with the architectural style of the building within each development.
- » Lighting sources shall be shielded, or diffused in order to avoid glare to pedestrians and motorists. Lighting fixtures should be selected and located to confine the area of illumination to within the site boundaries.
- » Architectural lighting of building facades is encouraged to enhance and emphasize the buildings identity.

## 7.7 Landscape

This section describes the minimum landscape requirements that shall be followed in the design of all public and private improvements within the Specific Plan. Landscaping shall promote the aesthetic character

and value of the Colony Commerce Center West Specific Plan area.

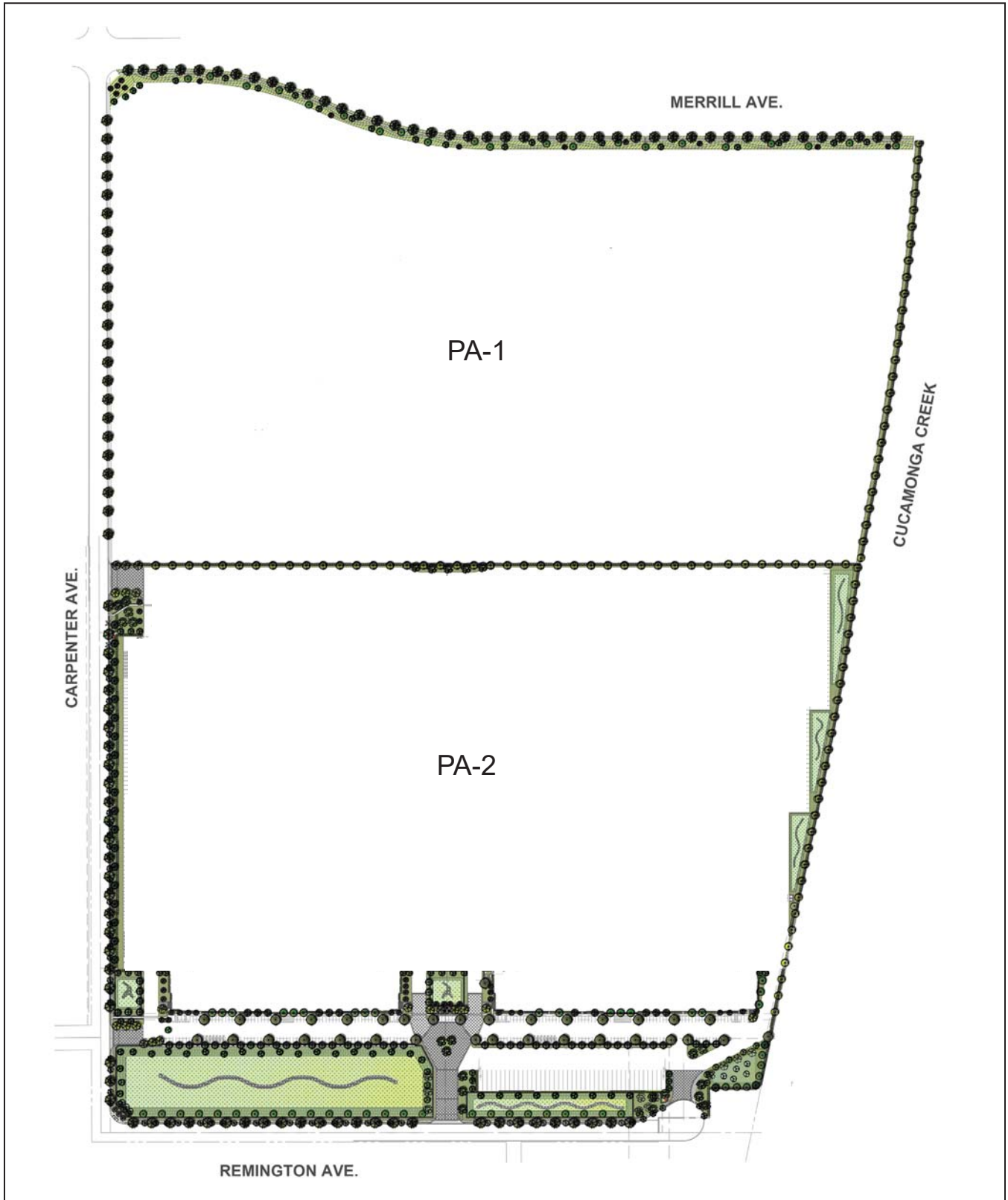
### 7.7.1 General Provisions

- » The landscape design shall meet the requirements of the City of Ontario Landscape Development Standards.
- » The landscape design shall incorporate a mix of container size trees and shall comply with the following minimum percentages: 5% of trees shall be 48” box size. 10% shall be 36” box size. 30% of trees shall be 24” box size.
- » The use of drought tolerant plants is strongly encouraged.
- » Plants shall be grouped into designated ‘hydrozones’ with similar irrigation requirements.
- » All detention basins shall receive container plants and a hydroseed application of low water using plants that can also tolerate seasonal water inundation.



Photo 7.5 - Example of Industrial lighting at office entry

# Exhibit 7.1, Conceptual Landscape Master Plan



Source: Scott Peterson Landscape Architect

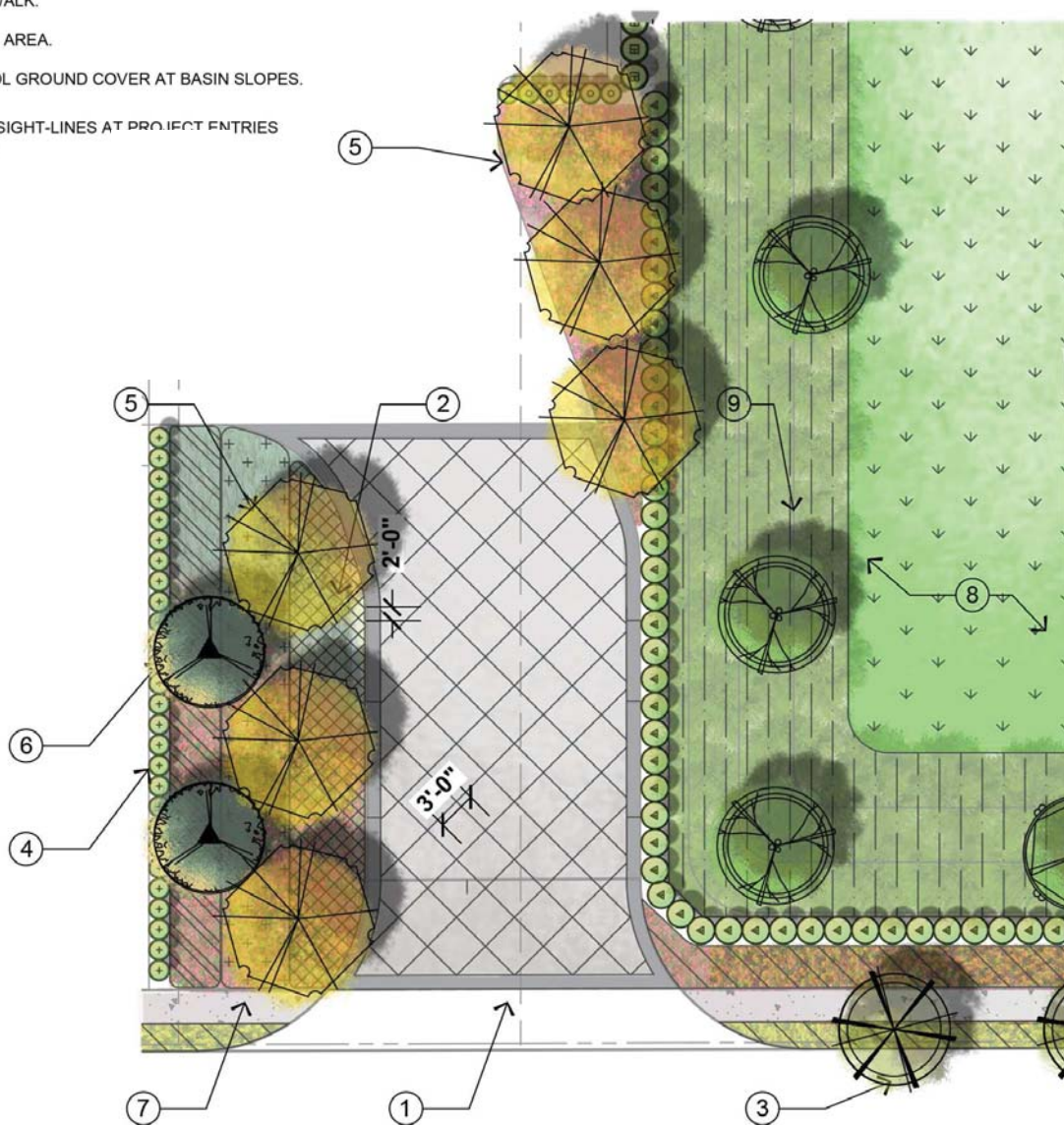




## Exhibit 7.2, Example Project Entry Drives

- ① ENHANCED VEHICULAR PAVING AT PROJECT ENTRY DRIVES CONSISTING OF 24" WD. PERIMETER BAND (NATURAL GRAY COLOR) WITH COLORED CONC. INFIELD (36" SQ. GRID PATTERN AT 45° ANGLE).
- ② LOW WATER USE LANDSCAPE AREA ADJACENT TO DRIVEWAY ENTRIES. TIER/LAYER DROUGHT TOLERANT GROUND COVER AND SHRUB MATERIAL.
- ③ NEW STREET TREE.
- ④ PROPOSED DROUGHT TOLERANT SHRUBS.
- ⑤ LARGE FLOWERING ACCENT TREES AT PROJECT ENTRIES.
- ⑥ EVERGREEN BACKDROP TREES.
- ⑦ TYP. CONC. SIDEWALK.
- ⑧ DETENTION BASIN AREA.
- ⑨ EROSION CONTROL GROUND COVER AT BASIN SLOPES.

NOTE: ALL REQUIRED SIGHT-LINES AT PROJECT ENTRIES SHALL BE OBSERVED.



Source: Scott Peterson Landscape Architect

- » Rock riprap material shall be installed where stormwater drain lines connect to infiltration areas or wherever paved area drainage surface flows directly into depressed landscape areas, via curb cuts or other surface conveyances.
- » Trees and landscape design for Master Planned streets such as Merrill Avenue shall meet the requirements of the Ontario Ranch Streetscape Master Plan.
- » All utility equipment such as backflow units, electrical transformers, fire detector checks, and fire check valves shall be screened with evergreen shrubs and should be painted a dark green color.
- » Compacted decomposed granite (DG) material may be incorporated at accent areas such as project entry drives and other focal areas, but limited to a max of 5% of the landscape area. Large accent boulders may be incorporated into DG areas.
- » Low water type of plants including California natives and succulents that thrive in the area's micro-climate shall be incorporated.
- » Project entry drives and corner intersection areas shall receive an "intensified" landscape treatment consisting of, but not limited to colorful ground cover and shrubs, and flowering accent trees.
- » Parking stalls facing public streets shall include a 36" high hedge adjacent to parking area.
- » Landscape shall be irrigated with automatic irrigation systems.
- » Irrigation systems shall incorporate smart weather-based or moisture sensor irrigation controller(s) for water conservation.
- » Design of low flow drip irrigation systems, where appropriate.
- » Irrigation backflow units shall be specified in a theft proof lockable protective steel cage enclosures.



Photo 7.6 - Example of various landscape treatments



» Irrigation controllers shall be in a theft proof enclosure or inside the buildings electrical room.

### 7.7.2 Landscape Standards

» All landscape areas shall have a minimum inside dimension of 5' feet wide.

» All 2:1 slopes and greater shall be installed with permanent rolled erosion control product (RECP netting), typical.

» A layer of mulch top dressing within all landscaped areas shall be provided to retain soil moisture and mitigate soil erosion. Compacted decomposed granite material is an acceptable alternative if Southern California native plants (Coastal Sage Scrub or Chaparral plant communities) are used to a maximum of 5% of the landscape area. Planting plans shall show plant spacing no greater than the maximum mature width.

» All slopes 3:1 or greater shall be stabilized with spreading erosion control ground cover.

» Foundation shrubs shall be incorporated at base of building to minimize scale of building (min. 5 gal. size at 36" max. spacing).

» Project entry drives shall incorporate enhanced vehicular paving, which may consist of colored concrete with a stamped pattern or scoreline grid pattern at 45 degree angle or similar.

» A 24" clearance from back of parking lot curb to parking lot screen hedge shall be provided for car bumper overhang. Mulch over weed abatement filter fabric shall be provided within this area.

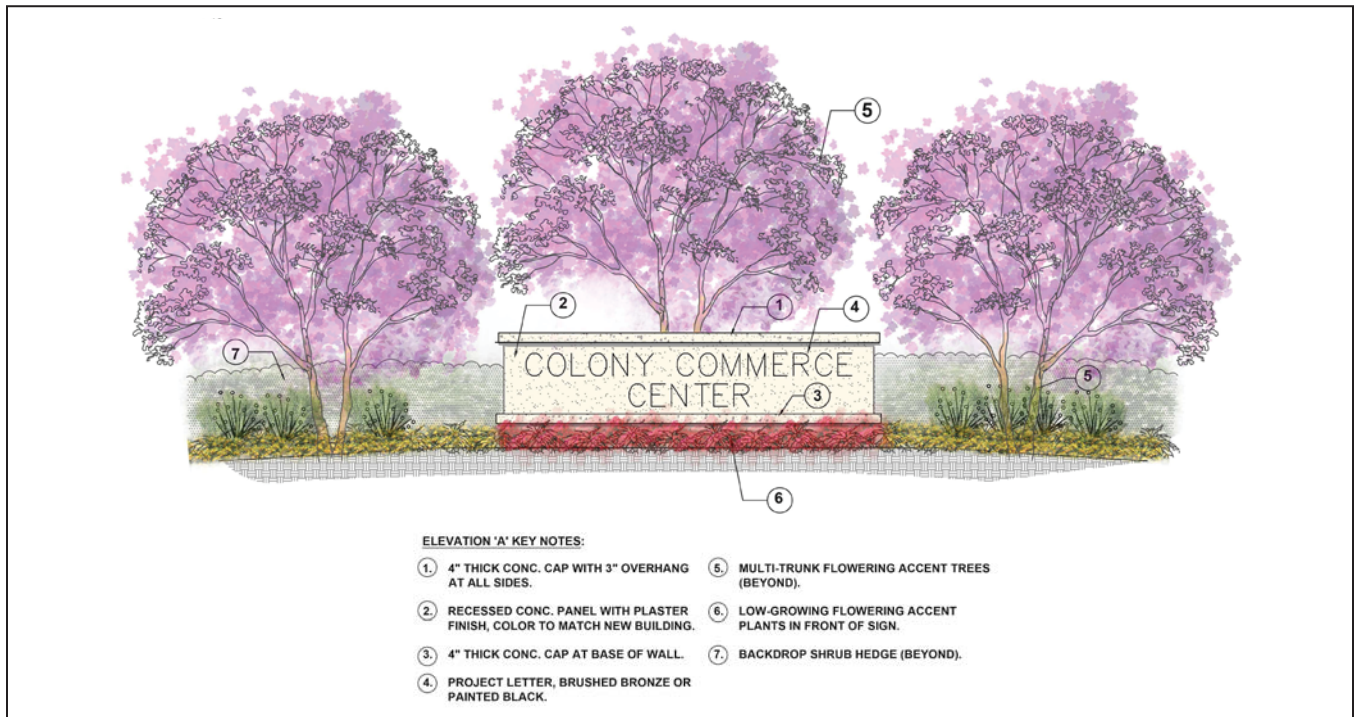
» Chain link fencing shall be permitted for use in interior truck courts, in non-public viewing areas.

» Provide durable perimeter screening trees for shade and windbreaks.



Photo 7.7 - Example of fully landscaped drainage area

## Exhibit 7.3, Example Project Entry Monument



Source: Scott Peterson Landscape Architect

- » Provide 36" high strappy leaf shrubs to screen utilities such as backflow devices. Use taller evergreen shrubs to screen the sides of transformer units and include maximum 12" high groundcovers in areas to access utilities.
- » Landscape shall define and accent entries, pedestrian walkways and architectural features. Landscape shall be attractive and appropriate to define and complement the space and use.
- » Entry monuments shall be designed in accordance with City of Ontario Traffic and Transportation Guidelines for monument placement.
- » The Landscaping Plan shall comply with City Standard drawings and Traffic and Transportation Guidelines for sight-distance.

- » All proposed entry gates shall be reviewed by the Traffic and Transportation Division, and permitted only if approved.

### 7.7.3 Plant Palette

The Plant Palette on Table 7.1, was selected to complement and enhance the thematic setting for the Ontario community, appropriateness to climatic and soil conditions, ease of maintenance and water conservation.

**Table 7.1, Plant Palette**

Use	Botanical Name	Common Name
<b>Parking Lot Trees</b>	<i>Koelreuteria Bipinnata</i>	Chinese Flame Tree
	<i>Koelreuteria Paniculata</i>	Golden Rain Tree
	<i>Magnolia Grandiflora</i>	Southern Magnolia
	<i>Pistachia Chinensis</i>	Chinese Pistache
	<i>Platanus Acerifolia</i>	London Plane Tree
	<i>Platanus Racemosa</i>	California Sycamore
	<i>Podocarpus Gracilior</i>	Fern Pine
	<i>Quercus Agrifolia</i>	Coast Live Oak
	<i>Quercus Ilex</i>	Holly Oak
	<i>Quercus Engelmannii</i>	Mesa Oak
	<i>Tipuana Tipu</i>	Tipu Tree
	<i>Tristania Conferta</i>	Brisbane Box
<i>Ulmus Parvifolia</i>	Evergreen Elm	
<b>Street Trees</b> (min. 24" box size)	<i>Quercus Agrifolia</i>	Coast Live Oak
	<i>Quercus Ilex</i>	Holly Oak
<b>Evergreen Screen Trees</b>	<i>Eucalyptus species</i>	Eucalyptus
	<i>Pinus Eldarica</i>	Mondell Pine
	<i>Quercus Agrifolia</i>	Coast Live Oak
	<i>Quercus Ilex</i>	Holly Oak
	<i>Tristania Conferta</i>	Brisbane Box
<b>Trees Adjacent to Buildings</b>	<i>Callistemon Viminalis</i>	Weeping Bottlebrush
	<i>Cercis Occidentalis</i>	Western Redbud
	<i>Cupressus Sempervirens</i>	Italian Cypress
	<i>Geijera Parviflora</i>	Australian Willow
	<i>Koelreuteria Bipinnata</i>	Chinese Flame Tree
	<i>Koelreuteria Paniculata</i>	Golden Rain Tree
	<i>Lagerstroemia Indica</i>	Crape Myrtle
	<i>Laurus Nobilis</i>	Sweet Bay Tree
	<i>Melaleuca Quinquinervia</i>	Cajeput tree
	<i>Olea Europaea 'Swan Hill'</i>	Small Fruitless Olive

Use	Botanical Name	Common Name
	<i>Pinus Canariensis</i>	Canary Island Pine
	<i>Pinus Eldarica</i>	Mondell Pine
	<i>Podocarpus Gracilior</i>	Fern Pine
	<i>Podocarpus Macrophyllus</i>	Yew Pine
	<i>Tristania Conferta</i>	Brisbane Box
<b>Tall Shrubs</b>	<i>Callistemon Viminalis 'Little John'</i>	Dwarf Bottle Brush
	<i>Cistus Spp.</i>	Rockrose
	<i>Dodonaea Viscosa</i>	Hopseed Bush
	<i>Heteromeles Arbutifolia</i>	Toyon
	<i>Juniperus Chinensis x Pfitzeriana</i>	Pfitzer Juniper
	<i>Lantana Camara</i>	Bush Lantana
	<i>Leptospermum Laevigatum</i>	Australian Tea Tree
	<i>Leucophyllum Candidum</i>	Violet Silverleaf
	<i>Leucophyllum Frutescens</i>	Texas Ranger
	<i>Leucophyllum Laevigatum</i>	Chihahuan Rain Sage
	<i>Leucophyllum Pruinosum</i>	Sierra Bouquet
	<i>Ligustrum Texanum</i>	Texas Privet
	<i>Pittosporum Tobira Variegata</i>	Mock Orange
	<i>Prunus Caroliniana 'Compacta'</i>	Dwarf Cherry Laurel
	<i>Rhamnus Californica</i>	Coffeeberry
	<i>Rhaphiolepis Springtime</i>	Indian Hawthorn
	<i>Rhaphiolepis 'Pink Lady'</i>	Indian hawthorn
	<i>Rosa Sp. 'Iceberg Rose'</i>	White Rose
	<i>Rosmarinus O. 'Tuscan Blue'</i>	Bush Rosemary
	<i>Salvia Clevelandii</i>	Chaparral Sage
<i>Salvia Greggii,</i>	Autumn Sage	
<i>Tecoma Stans</i>	Yellow Trumpet Flower	
<i>Viburnum Japonicum</i>	Viburum	
<i>Westingia Fruticosa</i>	Coast Rosemary	
<i>Xylosma Congestum</i>	Shiny Leaf Xylosma	
<b>Low Shrubs / Groundcover</b>	<i>Acacia Redolens 'Prostrata'</i>	Prostrate Acacia
	<i>Baccharis x 'Centennial'</i>	Prostrate Desert Broom
	<i>Baccharis Pilularis 'Twin Peaks'</i>	Dwarf Coyote Bush



Use	Botanical Name	Common Name
	<i>Carex Divulsa</i>	Berkley Sedge
	<i>Carex Pansa</i>	California Meadow Sedge
	<i>Carex Praegracilis</i>	Clustered Field Sedge
	<i>Carissa 'Green Carpet'</i>	Prostrate Natal Plum
	<i>Ceanothus Griseus Horizontalis</i>	Caramel Creeper
	<i>Cotoneaster Horizontalis</i>	Rock Contoneaster
	<i>Dalea Gregii</i>	Trailing Indigo Bush
	<i>Dietes Bicolor</i>	Fortnight Lily
	<i>Juniper Horizontalis 'Varieties'</i>	Trailing Juniper Varieties
	<i>Lantana Montevidensis</i>	Trailing Lantana
	<i>Leymus Arenarius</i>	Lyme Grass
	<i>Lomandra Longifolia</i>	Nyalla
	<i>Lonicera Japonica</i>	Hall's Honeysuckle
	<i>Mahonia Repens</i>	Creeping Mahonia
	<i>Muhlenbergia Capllaris</i>	Pink Muhly
	<i>Muhlenbergia Rigens</i>	Deer Grass
	<i>Myoporum Pacificum</i>	Creeping Myoporum
	<i>Pittosporum Tobira 'Wheelers Dwarf'</i>	Wheelers Dwarf Pittosporum
	<i>Rosmarinus Officinalis</i>	Rosemary
	<i>Rosa Floribunda 'Carpet Rose'</i>	Carpet Rose
	<i>Salvia Apiana</i>	White Sage
	<i>Salvia Mellifera</i>	Black Sage
	<i>Senecio Mandralisca</i>	Senecio
	<i>Trachelospermum Jasminioides</i>	Star Jasmine
	<i>Yucca Aloifolia</i>	Spanish Bayonet
	<i>Yucca Baccata</i>	Banana Yucca
	<i>Yucca Elata</i>	Soaptree Yucca
	<i>Yucca Gloriosa</i>	Spanish Dagger
	<i>Yucca Rigida</i>	Blue Yucca
	<i>Yucca Whipplei</i>	Our Lord's Candle
<b>Palm Trees</b>	<i>Phoenix Canariensis</i>	Canary Island Palm
	<i>Phoenix Dactylifera,</i>	Senegal Date Palm
	<i>Washingtonia Filifera</i>	California Fan Palm

## 7.8 Perimeter Streetscape Design

Streetscape design guidelines establish a hierarchy for the landscape development along the surrounding roadways, as well as establish a framework for consistency of design. Three roadways surround the project site as follows:

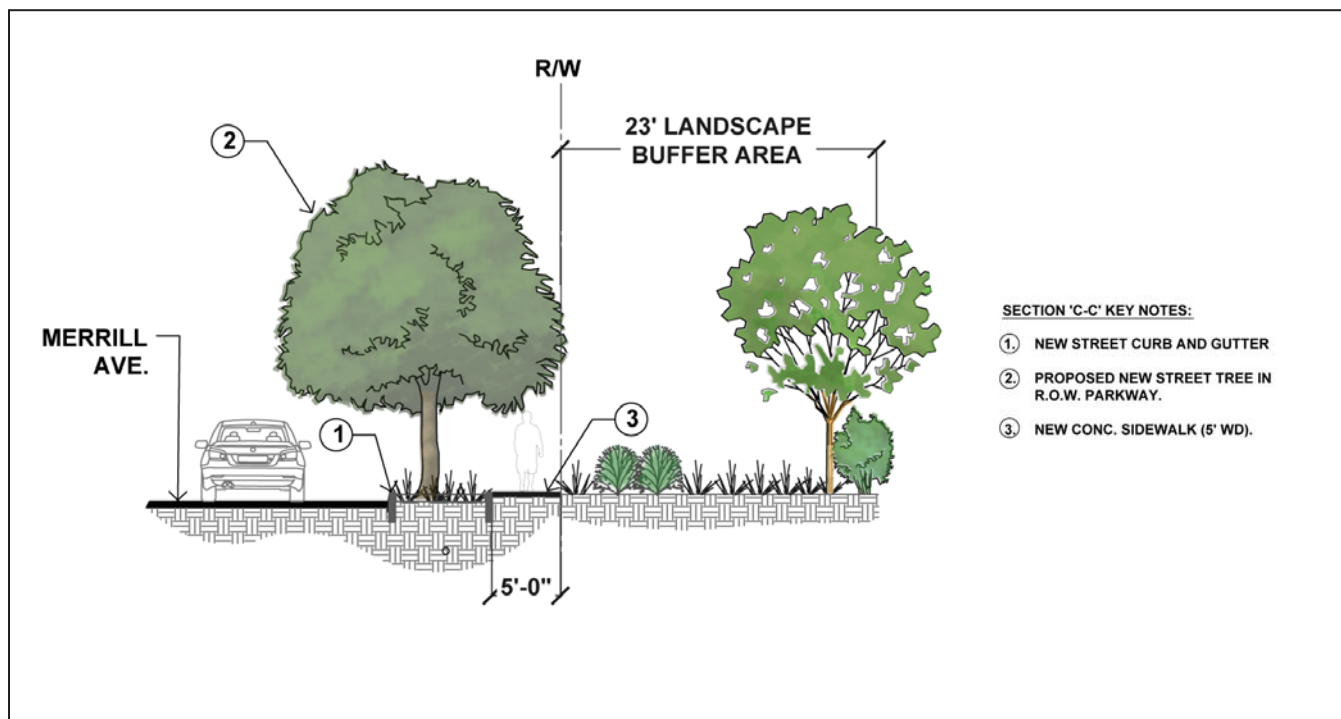
- » Merrill Avenue to the North
- » Remington Avenue to the South
- » Carpenter Avenue to the West

Merrill Avenue, Carpenter Avenue, and Remington Avenue shall be designed with Low Impact Development Site Design BMP's to retain/infiltrate or biotreat 85th percentile storm event runoff from newly-widened

portions of these streets, per the requirements of the current San Bernardino County Water Quality Management Plan.

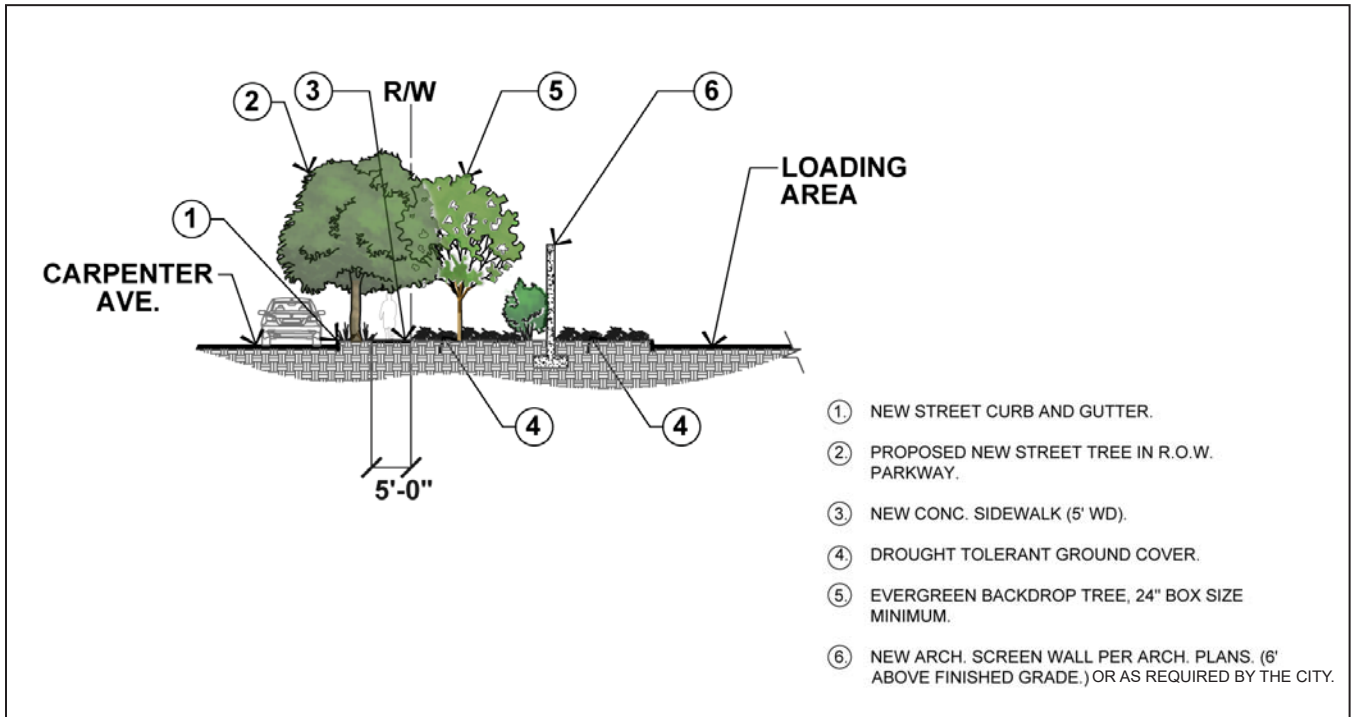
Landscape development surrounding this project will help to set the character, while maintaining consistency with the City of Ontario's pedestrian pathway system as illustrated in the "Trails and Open Space System" section of the Ontario Ranch Streetscape Master Plan. Streetscape sections described below are located on Exhibit 7.4a, 7.4b, and 7.4c, "Typical Landscape Cross Sections."

### Exhibit 7.4a, Typical Landscape Cross Section - Merrill Avenue



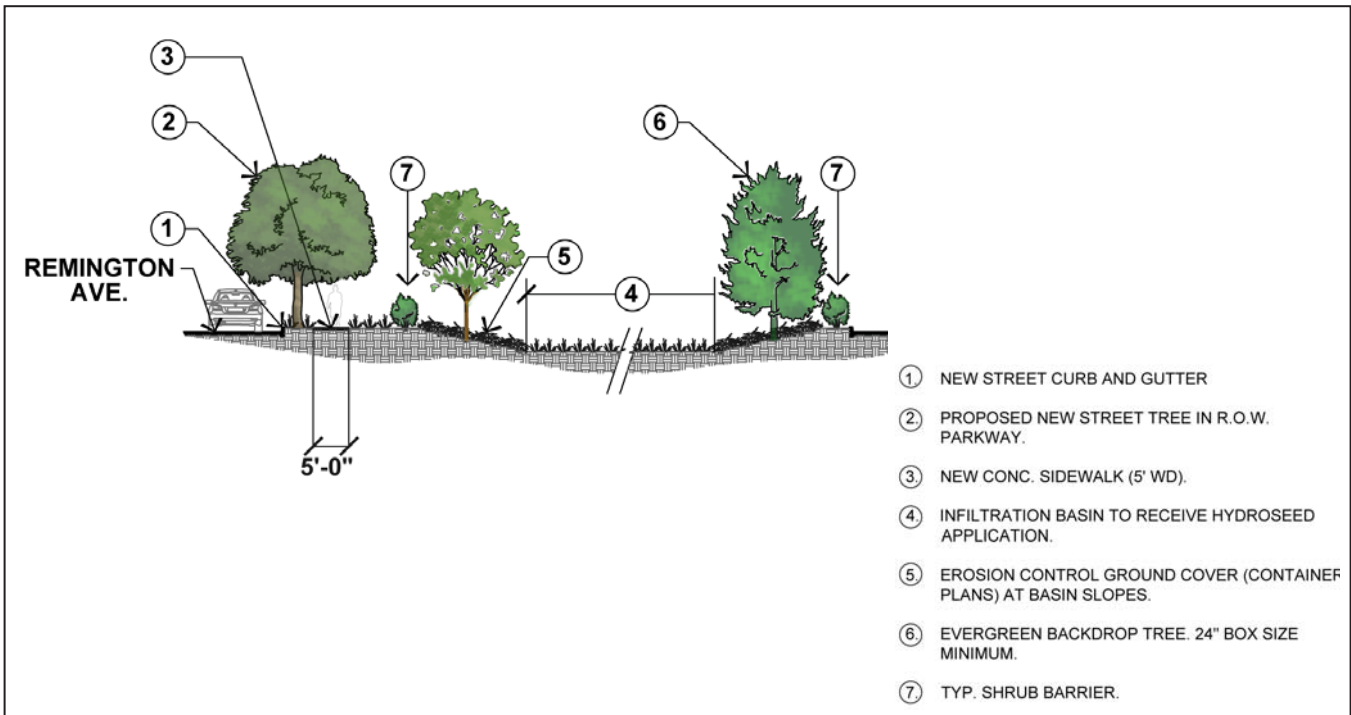
Source: Scott Peterson Landscape Architect

## Exhibit 7.4b, Typical Landscape Cross Section - Carpenter Avenue



Source: Scott Peterson Landscape Architect

## Exhibit 7.4c, Typical Landscape Cross Section - Remington Avenue



Source: Scott Peterson Landscape Architect

## 7.9 Sustainable Design Strategies

Sustainable practices can lessen the environmental impacts of development in many ways through the use of certain design techniques. These techniques can include reduced pervious surfaces, improved water detention and conservation, preservation of habitat areas, water-efficient irrigation, and improved pedestrian and bicycle amenities which reduce reliance on smog-generating vehicles. This Specific Plan encourages the implementation of sustainable design strategies referenced below and in Appendix B1, with the goal to reduce Greenhouse Gas Emissions.

### 7.9.1 Site Planning

- » Incorporate “green” practices in developing buildings and infrastructure.
- » Wherever possible, design and grade the project to direct 2-year storm event runoff from building roofs and paved areas, into swaled landscape areas for capture and retention/infiltration. In particular, open space, parks, landscaped setback areas and trails are to be used for this purpose. Include deciduous trees to shade paved areas and building walls on south and west.
- » Stabilize slopes to limit erosion as part of the Stormwater Management Plan and erosion control plan.

### 7.9.2 Energy Efficiency

Where feasible and appropriate, the following energy conservation strategies are encouraged:

- » Passive design strategies can dramatically affect building energy performance. These measures include building shape and orientation, passive solar design, and the use of natural lighting.
- » Develop strategies to provide natural lighting to reduce reliance on artificial lighting.

- » Install high-efficiency lighting systems with advanced lighting controls.
- » Use a properly sized and energy-efficient heat/cooling system in conjunction with a thermally efficient building shell.
- » Promote the use of light colored roofing with a high solar reflectance in order to reduce the heat island effect from roofs.
- » Include deciduous trees to shade paved areas and building walls on the south and west sides.

### 7.9.3 Materials Efficiency

- » Sustainable construction materials and products are encouraged to have characteristics such as reused and recycled content, zero or low off gassing of harmful air emissions, zero or low toxicity, sustainably harvested materials, high recyclability, durability, longevity, and local production. Such products promote resource conservation and efficiency. Using recycled-content products also helps develop markets for recycled materials that are being diverted from California’s landfills, as mandated by the Integrated Waste Management Act.
- » Encourage the use of low VOC paints and wallpapers.
- » Encourage the use of low VOC Green Label carpet.
- » Encourage the use of dimensional planning and other material efficiency strategies. These strategies reduce the amount of building materials needed and cut construction costs. Consider designing rooms on four foot multiples to conform to standard-sized wallboard and plywood sheets.
- » Consider using recycle base, crushed concrete base, recycle content asphalt, shredded tires in base and asphalt in roads, parking areas and drive aisles, if feasible and economically viable.

- » Design with adequate space to facilitate recycling collection and to incorporate a solid waste management program that prevents waste generation.
- » Encourage the use of building materials or products that have been extracted, harvested or recovered, as well as manufactured, within 500 miles of the project.
- » Encourage the use of rapidly renewable building materials and products (made from plants that are typically harvested within a ten-year cycle or shorter). Examples of materials that could achieve this goal include, but are not limited to, bamboo, wool, cotton insulation, agrifiber, linoleum, wheatboard, strawboard and cork.

### 7.9.4 Water Efficiency

- » Strive to minimize wastewater by using ultra low-flush toilets, low-flow shower heads and other water conserving fixtures.
- » Encourage the use of recirculating systems for centralized hot water distribution.
- » Smart irrigation controller which automatically adjusts the frequency and/or duration of irrigation events in response to changing weather conditions for all landscaped areas are required.
- » Drip irrigation, bubblers, micro-irrigation or other low precipitation irrigation or water conserving technology shall supply water for irrigation.
- » Encourage the use of recycled water to irrigate landscape areas throughout the project. The non-potable irrigation system shall be designed to meet all applicable standards of the California Regional Water Quality Control Board, California Department of Health, San Bernardino County Health Department, City of Ontario Department of Water and Power, and Ontario Municipal Code.

### 7.9.5 Occupant Health and Safety

- » Choose construction materials and interior finish products with zero or low emissions to improve indoor air quality as feasible.
- » Provide adequate ventilation and a high-efficiency, in-duct filtration system. Heating and cooling systems that ensure adequate ventilation and proper filtration can have a dramatic and positive impact on indoor air quality.
- » Provide effective drainage from the roof and surrounding landscape.
- » Encourage building systems to control humidity.
- » Provide one outdoor employee break area per building with shade structure or shade trees on the west and south sides as feasible.

### 7.9.6 Landscape Design

- » Use low or medium water use and native plant materials where appropriate. Minimize turf areas in order to promote water conservation. Limit the use of turf to areas which experience high functional use and are needed to accommodate outdoor activities. Only use warm-season turf varieties which are suited to the climate.
- » Provide plant materials that are well suited to the solar orientation and shading of buildings.
- » Group plants according to water use, slope aspect and sun/shade requirements. Irrigate each hydrozone on a separate valve using high-efficiency irrigation techniques.
- » Use organic wood or shredded bark mulch and soil amendments to retain soil moisture.
- » Incorporate native vegetation into the plant palette for Colony Commerce Center West.

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# 8

## IMPLEMENTATION

The Colony Commerce Center West Specific Plan serves to implement the City's Policy Plan policies applicable to the project site and provide for orderly development of the project site. Tentative tract maps and parcel maps, once approved, shall establish the legal lots, public dedications, and easements within for the project.

### 8.1 Methods and Interpretation

Development within the Colony Commerce Center West Specific Plan shall be implemented through the City approval of tentative and final tract maps and parcel maps and through the Development Plan Review process as established in the City of Ontario Development Code.

The implementation process described herein provides the mechanisms for review and approval of development projects within the Colony Commerce Center West.

### 8.2 Applicability

All development proposals within the project shall be subject to the implementation procedures established herein. Whenever the provisions and development standards contained herein conflict with those contained in the City of Ontario Development Code, the provisions of the Specific Plan shall take precedence.

In instances where the Specific Plan is silent, the City of Ontario Development Code shall prevail.

### 8.3 Interpretation

Unless otherwise provided, any ambiguity concerning the content or application of the Specific Plan shall be resolved by the City of Ontario Planning Director, or his/her designee, in a manner consistent with the goals, policies, purpose and intent established in this Specific Plan.

### 8.4 Implementation of Design Guidelines

Adoption of the Specific Plan by the City includes adoption of the design guidelines contained herein, which shall be the design criteria by which development within the project shall be reviewed during Development Plan Review. The design guidelines are intended to be flexible in nature while establishing basic evaluation criteria for the review of development projects as part of Development Plan Review.

### 8.5 Development Review Process

#### 8.5.1 Subdivision Maps

Approval of tentative subdivision maps may occur concurrently with the adoption of the Specific Plan. All tentative and final subdivision maps shall be reviewed and approved pursuant to applicable provisions of the City of Ontario Subdivision Ordinance and consistent with the applicable provisions of the Land Use, Infrastructure, Design Guidelines, and Development Regulations adopted as part of this Specific Plan.

## 8.5.2 Development Plan

All development projects within the confines of the Colony Commerce Center West Specific Plan shall be subject to the Development Plan Review process as established in Article 8 of the City's Development Code. Pursuant to these provisions, Development Plan Review constitutes a design review of project architecture, site plans, and landscape plans.

Adoption of the Specific Plan by the City includes adoption of the design guidelines contained within the Specific Plan which provide direction for the design of development projects within Colony Commerce Center West. Where the Specific Plan development regulations and design guidelines are silent, the applicable development regulations and design guidelines contained within the City's Development Code shall apply.

The design guidelines are intended to be flexible in nature while establishing basic evaluation criteria for the review of development projects by the City.

## 8.5.3 Development Agreement

Approval of statutory Development Agreements, per individual property owner, authorized pursuant to California Government Code Sections 65864 et seq., is required as part of the approval of the Specific Plan and prior to approval of the first Final Map.

The Development Agreements shall include, but not be limited to, methods for financing, acquisition, and construction of infrastructure. The Colony Commerce Center West Development Agreement shall be fully executed prior to the issuance of the first building permits for the project.

## 8.6 Specific Plan Modifications and Amendments

### 8.6.1 Minor Modifications

The following constitute minor modifications to the Specific Plan, and do not require a Specific Plan Amendment and are subject to review and approval by

the Planning Director. The Planning Director shall have the discretion to refer any such request for modification to the Planning Commission or the City Council.

- » Change in utility and/or public service provider.
- » Collector roadway alignment when the change results in a center line shift of less than 250 feet.
- » An increase of up to ten percent (10%) in square footage of floor area subject to approval of the Planning Director and agreement of the property owner, provided the total square footage of floor area number for the entire Specific Plan area does not exceed that established by this Specific Plan.
- » Adjustment of a Planning Area boundary or acreage designated for a Planning Area provided the total acreage of the affected planning area does not increase by more than ten percent (10%).
- » Minor changes to landscape materials, wall materials, wall alignment, entry design, and streetscape design which are consistent with the conceptual design set forth in the design guidelines contained within the Specific Plan.
- » Minor changes to the design guidelines, which are intended to be conceptual in nature, and are intended to be flexible in implementation.
- » Minor changes of up to ten percent (10%) of any quantifiable development standard or design guideline subject to approval of the Planning Director.
- » Other modifications of a similar nature to those listed above, which are deemed minor by the Planning Director, which are in keeping with the purpose and intent of the approved Specific Plan and which are in conformance with the Policy Plan.

### **8.6.2 Specific Plan Amendments**

Amendments to the Specific Plan may be requested by the applicant or the City pursuant to Section 65453(a) of the Government Code. Amendments shall be processed pursuant to the provisions of the Government Code for Specific Plan Amendments.

In the event that the proposed amendment requires supplemental environmental analysis pursuant to the California Environmental Quality Act (CEQA), the applicant(s) is/are responsible for preparing the necessary CEQA documentation.

### **8.7 Variances**

Variances and Administrative Exceptions to the development regulations contained in the Specific Plan with respect to landscaping, screening, site area, site dimensions, yards and projects into yards, heights of structures, distances between buildings, open space and off-street parking and loading shall be reviewed pursuant to Article 10, “Variances and Administrative Exceptions” of the City of Ontario Development Code.

### **8.8 Conditional Use Permits**

Uses specified as conditionally permitted uses within Table 6.3 of Chapter 6, “Development Regulations,” of the Specific Plan shall be reviewed and approved by the City pursuant to the requirements of Article 9, “Conditional Use Permits” of the Ontario Development Code.

### **8.9 Compliance with Mitigation Monitoring Plan**

Certification of an Environmental Impact Report (EIR) shall be required prior to approval of the Specific Plan. Development within the project site shall comply with all approved mitigation measures as described in the Mitigation Monitoring Program included as part of the EIR.

### **8.10 Project Phasing**

Phasing of development within the Specific Plan shall meet the following objectives:

- » Orderly build-out of the project based upon market and economic conditions.
- » Provision of adequate infrastructure and public facilities as determined and deemed necessary by the City concurrent with development of each phase.
- » Protection of public health, safety and welfare.

### **8.11 Infrastructure Phasing**

Backbone infrastructure within the Colony Commerce Center West shall be installed by the project developer in accordance with this Specific Plan and the approved project Development Agreement or approved by the City.

Grading and installation of infrastructure to serve the Colony Commerce Center West is anticipated to be completed in two phases – Planning Area 2 (Phase 1) and Planning Area 1 (Phase 2). These phases may be developed as subphases (e.g., Phases 1A and 1B) and may occur either sequentially or concurrently with one another.

### **8.12 Appeals**

Appeals from any determination of the City Planning Director, Zoning Administrator or the Planning Commission, may be made by the applicant or any other aggrieved party by filing an application on forms provided by the City of Ontario and accompanied by the appropriate filing fee within ten (10) days following the final date of action for which an appeal is made. Appeals shall be processed consistent with the provisions of Article 5, “Appeals” of the City of Ontario Development Code.

## 8.13 Project Financing

The financing of construction, operation, and maintenance of public improvements and facilities (the “facilities”), and public services shall include funding through a combination of financing mechanisms. Final determination as to the facilities to be constructed and as to maintenance responsibilities, whether publicly or privately maintained, shall be made prior to recordation of final maps.

In order to implement the project, financing options including, but not limited to, the following shall be considered:

### 8.13.1 Facilities and Services

- » Private capital investment for the construction of facilities.
- » Community Facilities District (CFD) established pursuant to the Mello-Roos Community Facilities District Act of 1982, or other special district, to provide funding for the construction of a variety of public facilities and the provision of public services.

### 8.13.2 Operation and Maintenance

- » By individual private property owner.
- » By private Property Owners Association.
- » By Community Facilities District (CFD) established pursuant to the Mello-Roos Community Facilities District Act of 1982, or other special district. City Council approval is a prerequisite for the implementation of any and all special district-financing mechanisms. The use of the Mello-Roos Community Facilities District Act of 1982 (the “Act”) to finance public facilities and services shall be at the City’s sole discretion. Moreover, the use of the Act shall be consistent with the City’s adopted goals and policies concerning the use of the Act.

## 8.14 Maintenance Plan

The public and private improvements constructed within the Colony Commerce Center West shall be maintained through a combination of public and private entities as described below and in Table 8.1, “Maintenance Responsibilities.”

### 8.14.1 Public Maintenance

- » All Master Plan streets, and sidewalks serving the industrial Planning Areas shall be dedicated as public streets to the City of Ontario.
- » Landscape improvements within the public right-of-way of Master Plan streets and public street lights within the Colony Commerce Center West shall be maintained through a landscape and lighting district or other community financed district established by the City.
- » All on-site water, sewer, and storm drains within the public streets or easements dedicated to the City shall be constructed by the developer and, upon acceptance, shall be maintained by the City.
- » Off-site infrastructure improvements such as water, sewer and storm drain facilities shall be maintained by the City. Permanent on-site water quality basins, trenches, swales and biotreatment filters required by San Bernardino County MS4 Permit and Water Quality Management Plan and constructed within Colony Commerce Center West shall be maintained by the Property Owner’s Association in accordance with Table 8.1.

### 8.14.2 Property Owners Association

A Property Owners Association (POA) shall be established for the maintenance of common area landscape improvements and private roadways within areas of Colony Commerce Center West. Improvements to be maintained by the POA include:

- » Designated private drives, alleys, and adjacent landscaping.
- » Designated private streets and landscaping. During the course of maintenance of public utilities within public streets, private streets, private drive aisles, or alleys, the City will restore the streets to City standards for trench backfill, pavement repair, and hardscape or landscape, as applicable and to the original quality. Restoration of any enhancements above and beyond City standards, including but not limited to architectural paving, hardscape and landscape enhancements shall be the responsibility of the POA or other entity maintaining those enhancements.
- » Courts, parkways and landscaping within the industrial areas.
- » Parkways of Interior Local Streets including sidewalks, landscaping and street lights.
- » Maintenance of interior local street landscaping and associated architectural monument elements required to restore these areas to their condition as originally installed.
- » Internal slopes fronting streets and slope areas.
- » All internal open spaces, and common areas.
- » NPDES facilities within private streets and/or common areas.

**Table 8.1 Maintenance Responsibilities**

	City and/ or CFD	Private Owners Association	Utility Entity
Street Lights and Traffic Signals	●		
Master plan roadways (Merrill Avenue)	●		
Interior (collector) public streets - curb-to-curb (primary entry streets, secondary entry streets)	●		
Interior public streets - Behind the curb improvements (sidewalk, parkway, and monument Signs)(3)		●	
Parkways and neighborhood edges of master plan roadways		●	
Off-site and on-site public water, sewer, and storm drain improvements (excluding laterals)(1)	●		
Community Trail (Cucamonga Creek)	●		
Front yard and all on-site landscaping and irrigation		●	
Private interior yard walls		●	
Project theme wall or fence (outside face for graffiti removal and paint)		●	
Interior project graffiti removal		●	
Neighborhood edge on all non-master plan roadways(3)		●	
Parkways of all interior project streets (including landscaping, medians, and sidewalks)(2)(3)		●	
Monument signs within tract entry		●	
Electricity and natural gas			●
Communications systems			●
Police and Fire	●		
Fiber optic conduit (in streets)	●		
Fiber optic conduit (in-tract streets)	●		
NPDES facilities on private property		●	

(1) Only those facilities in public roads or easements

(2) Only those facilities on private property

(3) Outside public right-of-way



# A1

## APPENDIX GENERAL PLAN CONSISTENCY

### A1.1 General Plan Consistency

California Government Code (Title 7, Division 1, Chapter 3, Article 8, Section 65450-65457) permits the adoption and administration of specific plans as an implementation tool for elements contained in the local general plan. Policy plans must demonstrate consistency in regulations, guidelines, and programs with the goals and policies set forth in the general plan.

The Colony Commerce Center West Specific Plan has been prepared in conformance with the goals and policies of the City of Ontario Policy Plan. The policy analysis listed in this Appendix describes the manner in which the Colony Commerce Center West Specific Plan complies with the Policy Plan policies applicable to the project.

Plan Policy	Specific Plan Consistency
<b>Land Use (LU) Element</b>	
<b>Goal LU1:</b> 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.	
<p><b>Policy LU1-1:</b> Strategic Growth. We concentrate growth in strategic locations that help create place and identity, maximize available and planned infrastructure, and foster the development of transit.</p>	<p><i>Consistent. The Colony Commerce Center West site location falls within planned infrastructure improvements designated by the City of Ontario.</i></p>
<p><b>Policy LU1-2:</b> Sustainable Community Strategy. We integrate state, regional and local Sustainable Community/ Smart Growth principles into the development and entitlement process.</p>	<p><i>Consistent. The Colony Commerce Center West design guidelines encourages all new construction to utilize design features, fixtures, appliances, and heating and cooling controls to conserve energy and water. The landscape concept for Colony Commerce Center West incorporates a plant palette of drought tolerant materials and includes requirements that the development implement planting and irrigation systems designed to conserve water.</i></p>
<p><b>Policy LU1-3:</b> Adequate Capacity. We require adequate infrastructure and services for all development.</p>	<p><i>Consistent. The Colony Commerce Center West Specific Plan establishes an infrastructure and public facilities plan to ensure that adequate roadways and public utilities including sewer, water, and drainage facilities, along with other public facilities, are provided to serve the project.</i></p>
<p><b>Policy LU1-4:</b> Mobility. We require development and urban design, where appropriate, that reduces reliance on the automobile and capitalizes on multi-modal transportation opportunities.</p>	<p><i>Not Applicable.</i></p>
<p><b>Policy LU1-5:</b> Jobs-Housing Balance. We coordinate land use, infrastructure, and transportation planning and analysis with regional, county and other local agencies to further regional and subregional goals for jobs-housing balance.</p>	<p><i>Consistent. The industrial uses planned for on the Colony Commerce Center West will have the ability to generate jobs for City of Ontario residents.</i></p>
<p><b>Policy LU1-6:</b> 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.</p>	<p><i>Consistent. The industrial uses planned for on the Colony Commerce Center West will have the ability to generate jobs for City of Ontario residents.</i></p>

Plan Policy	Specific Plan Consistency
<p><b>Policy LU1-7:</b> Revenues and Costs. We require future amendments to our Land Use Plan to be accompanied by analyses of fiscal impacts.</p>	<p><i>Not Applicable.</i></p>
<p><b>Goal LU2:</b> Compatibility between a wide range of uses.</p>	
<p><b>Policy LU2-1:</b> Land Use Decisions. We minimize adverse impacts on adjacent properties when considering land use and zoning requests.</p>	<p><i>Consistent. Many of the adjacent properties to the Colony Commerce Center West have transitioned to more industrial uses.</i></p>
<p><b>Policy LU2-2:</b> Buffers. We require new uses to provide mitigation or buffers between existing uses where potential adverse impacts could occur.</p>	<p><i>Not Applicable.</i></p>
<p><b>Policy LU2-3:</b> Hazardous Uses. We regulate the development of industrial and similar uses that use, store, produce or transport toxic substances, air emissions, other pollutants or hazardous materials.</p>	<p><i>Consistent. The project will comply with all local and state requirements for using, storing, producing, or transporting toxic substances, air emissions, other pollutants, or hazardous materials.</i></p>
<p><b>Policy LU2-4:</b> Regulation of Nuisances. We regulate the location, concentration and operations of potential nuisances.</p>	<p><i>Not Applicable.</i></p>
<p><b>Policy LU2-5:</b> Regulation of Uses. We regulate the location, concentration and operations of uses that have impacts on surrounding land uses.</p>	<p><i>Consistent. Many of the adjacent properties to the Colony Commerce Center West have transitioned to more industrial uses.</i></p>
<p><b>Policy LU2-6:</b> Infrastructure Compatibility. We require infrastructure to be aesthetically pleasing and in context with the community character.</p>	<p><i>Consistent. Streets within and adjacent to the Specific Plan area will be landscaped in an aesthetically pleasing manner with 4-7 foot wide landscaped parkways on each side of the street. Decorative project monuments will be constructed at key project entries providing project identification and establishing a sense of arrival.</i></p>
<p><b>Policy LU2-7:</b> Inter-jurisdictional Coordination. We maintain an ongoing liaison with IEUA, LAWA, Caltrans, Public Utilities Commission, the railroads and other agencies to help minimize impacts and improve the operations and aesthetics of their facilities.</p>	<p><i>Not Applicable.</i></p>
<p><b>Policy LU2-8:</b> Transitional Areas. We require development in transitional areas to protect the quality of life of current residents.</p>	<p><i>Not Applicable.</i></p>

Plan Policy	Specific Plan Consistency
<p><b>Policy LU2-9:</b> Methane Gas Sites. We require sensitive land uses and new uses on former dairy farms or other methane-producing sites be designed to minimize health risks.</p>	<p><i><b>Consistent.</b> If necessary, the project will comply with appropriate mitigation measures identified in the project EIR for soil remediation and proper venting to address the potential existence of methane gases within the project.</i></p>
<p><b>Goal LU3:</b> Staff, regulations and processes that support and allow flexible response to conditions and circumstances in order to achieve the Vision.</p>	
<p><b>Policy LU3-1:</b> Development Standards. We maintain clear development standards which allow flexibility to achieve our Vision.</p>	<p><i><b>Consistent.</b> This Specific Plan includes development standards that allow for flexibility to achieve the City's vision.</i></p>
<p><b>Policy LU3-2:</b> Design Incentives. We offer design incentives to help projects achieve the Vision.</p>	<p><i><b>Not Applicable.</b></i></p>
<p><b>Policy LU3-3:</b> Land Use Flexibility. We consider uses not typically permitted within a land use category if doing so improves livability, reduces vehicular trips, creates community gathering places and activity nodes, and helps create identity.</p>	<p><i><b>Not Applicable.</b></i></p>
<p><b>Goal LU4:</b> Development that provides short-term value only when the opportunity to achieve our Vision can be preserved.</p>	
<p><b>Policy LU4-1:</b> Commitment to Vision. We are committed to achieving our Vision but realize that it may take time and several interim steps to get there.</p>	<p><i><b>Not Applicable.</b></i></p>
<p><b>Policy LU4-2:</b> Interim Development. We allow development in growth areas that is not immediately reflective of our ultimate Vision provided it can be modified or replaced when circumstances are right. We will not allow development that impedes, precludes or compromises our ability to achieve our Vision.</p>	<p><i><b>Not Applicable.</b></i></p>
<p><b>Policy LU4-3:</b> Infrastructure Timing. We require that the necessary infrastructure and services be in place prior to or concurrently with development.</p>	<p><i><b>Consistent.</b> Approval of the Colony Commerce Center West Specific Plan is accompanied by an application for approval of a development agreement. The development agreement shall include, but not be limited to, methods for financing, acquisition, and construction of infrastructure.</i></p>

Plan Policy	Specific Plan Consistency
<p><b>Goal LU5:</b> Integrated airport systems and facilities that minimize negative impacts to the community and maximize economic benefits.</p>	
<p><b>Policy LU5-1:</b> Coordination with Airport Authorities. We collaborate with FAA, Caltrans Division of Aeronautics, airport owners, neighboring jurisdictions, and other shareholders in the preparation, update and maintenance of airport-related plans.</p>	<p><i>Not Applicable.</i></p>
<p><b>Policy LU5-2:</b> Airport Planning Consistency. We coordinate with airport authorities to ensure The Ontario Plan is consistent with state law, federal regulations and/or adopted master plans and land use compatibility plans for the ONT and Chino Airport.</p>	<p><i>Consistent. The Specific Plan will comply with the ALUCP requirements for Ontario Airport (ONT) and Chino Airport as outlined in Colony Commerce CenterWest Specific Plan Section 3.4.</i></p>
<p><b>Policy LU5-3:</b> Airport Impacts. We work with agencies to maximize resources to mitigate the impacts and hazards related to airport operations.</p>	<p><i>Not Applicable.</i></p>
<p><b>Policy LU5-4:</b> ONT Growth Forecast. We support and promote an ONT that accomodates 30 million annual passengers and 1.6 million tons of cargo per year, as long as the impacts associated with that level of operations are planned for and mitigated.</p>	<p><i>Not Applicable.</i></p>
<p><b>Policy LU5-5:</b> Airport Compatibility Planning for ONT. We create and maintain the Airport Land Use Compatibility Plan for ONT.</p>	<p><i>Not Applicable.</i></p>
<p><b>Policy LU5-6:</b> Alternative Process. We fulfill our responsibilities and comply with state law with regard to the Alternative Process for proper airport land use compatibility planning.</p>	<p><i>Not Applicable.</i></p>
<p><b>Policy LU5-7:</b> ALUCP Consistency and Land Use Regulations. We comply with state law that requires general plans, specific plans and all new development be consistent with the policies and criteria set forth within an Airport Land Use Compatibility Plan for any public use airport.</p>	<p><i>Consistent. The Specific Plan will comply with the ALUCP requirements for Ontario Airport (ONT) and Chino Airport as outlined in Colony Commerce CenterWest Specific Plan Section 3.4.</i></p>

Plan Policy	Specific Plan Consistency
<p><b>Policy LU5-8:</b> Chino Airport. We will support the creation and implementation of the Airport Land Use Compatibility Plan for Chino Airport.</p>	<p><i>Consistent.</i> The Specific Plan will comply with the ALUCP requirements for Ontario Airport (ONT) and Chino Airport as outlined in Colony Commerce Center West Specific Plan Section 3.4.</p>

## Community Design (CD) Element

### Goal CD1:

A dynamic, progressive city containing distinct neighborhoods and commercial districts that foster a positive sense of identity and belonging among residents, visitors, and businesses.

<p><b>Policy CD1-1:</b> City Identity. We take actions that are consistent with the City being a leading urban center in Southern California while recognizing the diverse character of our existing viable neighborhoods.</p>	<p><i>Not Applicable.</i></p>
<p><b>Policy CD1-2:</b> Growth Areas. We require development in growth areas to be distinctive and unique places within which there are cohesive design themes.</p>	<p><i>Consistent.</i> The Specific Plan includes design guidelines to guide the physical character of all future industrial development and all project related features, including the overall landscape treatment within the project.</p>
<p><b>Policy CD1-3:</b> Neighborhood Improvement. We require viable existing residential and non-residential neighborhoods to be preserved, protected, and enhanced in accordance with our land use policies.</p>	<p><i>Not Applicable.</i></p>
<p><b>Policy CD1-4:</b> Transportation Corridors. We will enhance our major transportation corridors within the City through landscape, hardscape, signage and lighting.</p>	<p><i>Not Applicable.</i></p>
<p><b>Policy CD1-5:</b> View Corridors. We require all major north-south streets be designed and redeveloped to feature views of the San Gabriel Mountains, which are part of the City's visual identity and a key to geographic orientation. Such views should be free of visual clutter, including billboards and may be enhanced by framing with trees.</p>	<p><i>Consistent.</i> The Specific Plan includes improvements to Carpenter Avenue which is a north-south street and will be designed in accordance to the Master Plan of Streets and Highways.</p>

### Goal CD2:

A high level of design quality resulting in public spaces, streetscapes, and developments that are attractive, safe, functional and distinct.



Plan Policy	Specific Plan Consistency
<p><b>Policy CD2-1:</b> Quality Architecture. We encourage all development projects to convey visual interest and character through:</p> <ul style="list-style-type: none"> <li>» Building volume, massing, and height to provide appropriate scale and proportion;</li> <li>» A true industrial style which is carried out in plan, section and elevation through all aspects of the building and site design and appropriate for its setting; and</li> <li>» Exterior building materials that are visually interesting, high quality, durable, and appropriate for the industrial style.</li> </ul>	<p><i>Consistent.</i> The Specific Plan includes design guidelines to guide the construction of the project so that it is implemented in a comprehensive manner.</p>
<p><b>Policy CD2-2:</b> Neighborhood Design. We create distinct residential neighborhoods that are functional, have a sense of community, emphasize livability and social interaction, and are uniquely identifiable places through such elements as:</p> <ul style="list-style-type: none"> <li>» a pattern of smaller, walkable blocks that promote access, activity and safety;</li> <li>» variable setbacks and parcel sizes to accommodate a diversity of housing types;</li> <li>» traffic calming measures to slow traffic and promote walkability while maintaining acceptable fire protection and traffic flows;</li> <li>» floor plans that encourage views onto the street and de-emphasize the visual and physical dominance of garages (introducing the front porch as the “outdoor living room”), as appropriate; and</li> <li>» landscaped parkways, with sidewalks separated from the curb.</li> </ul>	<p><i>Not Applicable.</i></p>
<p><b>Policy CD2-3:</b> Commercial Centers. We desire commercial centers to be distinctive, pedestrian friendly, functional and vibrant with a range of businesses, places to gather, and connectivity to the neighborhoods they serve.</p>	<p><i>Not Applicable.</i></p>
<p><b>Policy CD2-4:</b> Mixed Use, Urban Office and Transit Serving Areas. We require mixed use, urban office and transit serving areas to be designed and developed as pedestrian oriented “villages” that promote a vibrant, comfortable and functional environment.</p>	<p><i>Not Applicable.</i></p>

Plan Policy	Specific Plan Consistency
<p><b>Policy CD2-5:</b> Streetscapes. We design new and, when necessary, retrofit existing streets to improve walkability, bicycling and transit integration, strengthen connectivity, and enhance community identity through improvements to the public right of way such as sidewalks, street trees, parkways, curbs, street lighting and street furniture.</p>	<p><i><b>Consistent.</b> The Specific Plan is designed with comprehensive street improvements to accommodate the safe and efficient movement of automobiles as well as bicycle and pedestrian mobility and connectivity along the property frontage. The Colony Commerce CenterWest project will construct the half-width of the appropriate frontage roads as identified in this Specific Plan and the project Development Agreement.</i></p>
<p><b>Policy CD2-6:</b> Connectivity. We promote development of local street patterns and pedestrian networks that create and unify neighborhoods, rather than divide them, and create cohesive and continuous corridors, rather than independent “islands” through the following means (Link to Mobility):</p> <ul style="list-style-type: none"> <li>» local street patterns that provide access between subdivisions and within neighborhoods and discourage through traffic;</li> <li>» a local street system that is logical and understandable for the user. A grid system is preferred to avoid circuitous and confusing travel paths between internal neighborhood areas and adjacent arterials; and</li> <li>» neighborhoods, centers, public schools, and parks that are linked by pedestrian greenways/open space networks. These may also be used to establish clear boundaries between distinct neighborhoods and/or centers.</li> </ul>	<p><i><b>Not Applicable.</b></i></p>

Plan Policy	Specific Plan Consistency
<p><b>Policy CD2-7:</b> Sustainability. We collaborate with the development community to design and build neighborhoods, streetscapes, sites, outdoor spaces, landscaping and buildings to reduce energy demand through solar orientation, maximum use of natural daylight, passive solar and natural ventilation, building form, mechanical and structural systems, building materials and construction techniques.</p>	<p><b>Consistent.</b> Sustainable Community/Smart Growth principles are incorporated into the Colony Commerce Center West Land Use Plan. The sustainable goals for the project as stated in the Specific Plan include the following:</p> <ul style="list-style-type: none"> <li>» 1. Encourage walking and other non-vehicular modes of travel.</li> <li>» 2. Provide pedestrian connectivity through the project perimeter.</li> <li>» 3. Provide shaded outdoor areas for employee break areas.</li> <li>» 4. Encourage the use of architectural elements designed to reduce interior heat gain.</li> <li>» 5. Encourage the use of recycled, recyclable, and environmentally friendly building materials.</li> <li>» 6. Require the use of low energy glass and low water plumbing features.</li> <li>» 7. Encourage the use of drought tolerant landscaping and water efficient irrigation methods.</li> </ul> <p>The Colony Commerce Center West design guidelines encourages all new construction to utilize design features, fixtures, and heating and cooling controls to conserve energy and water. The landscape concept for Colony Commerce Center West incorporates a plant palette of drought tolerant materials and requirements that the development implement planting and irrigation systems designed to conserve water.</p>
<p><b>Policy CD2-8:</b> Safe Design. We incorporate defensible space design into new and existing developments to ensure the maximum safe travel and visibility on pathways, corridors, and open space and at building entrances and parking areas by avoiding physically and visually isolated spaces, maintenance of visibility and accessibility, and use of lighting.</p>	<p><b>Not Applicable.</b></p>
<p><b>Policy CD2-9:</b> Landscape Design. We encourage durable landscaping materials and designs that enhance the aesthetics of structures, create and define public and private spaces, and provide shade and environmental benefits.</p>	<p><b>Consistent.</b> The landscape concept for Colony Commerce Center West incorporates the use of durable landscaping materials, a drought tolerant plant palette, and a planting and irrigation system designed to conserve water. Open space areas will include shaded areas, bicycle racks, and other amenity features to encourage pedestrian and other non-vehicular activities. All materials utilized in private and public common areas will be durable landscaping materials.</p>

Plan Policy	Specific Plan Consistency
<p><b>Policy CD2-10:</b> Surface Parking Areas. We require parking areas visible to or used by the public to be landscaped in an aesthetically pleasing, safe and environmentally sensitive manner. Examples include shade trees, pervious surfaces, urban run-off capture and infiltration, and pedestrian paths to guide users through the parking field.</p>	<p><i>Not Applicable.</i></p>
<p><b>Policy CD2-11:</b> Entry Statements. We encourage the inclusion of amenities, signage and landscaping at the entry to neighborhoods, commercial centers, mixed use areas, industrial developments, and public places that reinforce them as uniquely identifiable places.</p>	<p><i>Consistent. Landscaping will be provided at entries within the Colony Commerce Center West. At key entries, a monumentation program may be utilized to help identify the project, as well as convey a sense of arrival and a welcoming feel for both vehicular and pedestrian traffic. These monuments and entries will be designed with durable, lasting materials approved by the City of Ontario.</i></p>
<p><b>Policy CD2-12:</b> Site and Building Signage. We encourage the use of sign programs that utilize complementary materials, colors, and themes. Project signage should be designed to effectively communicate and direct users to various aspects of the development and complement the character of the structures.</p>	<p><i>Consistent. The Specific Plan requires the developer of Colony Commerce Center West to obtain approval by the City of a Sign Program to address project monumentation, building identification and wayfinding/signage within the project.</i></p>
<p><b>Policy CD2-13:</b> Entitlement Process. We work collaboratively with all stakeholders to ensure a high degree of certainty in the efficient review and timely processing of all development plans and permits.</p>	<p><i>Not Applicable.</i></p>
<p><b>Policy CD2-14:</b> Availability of Information. We provide easy access to information for developers, builders and the public about design quality, construction quality, and sustainable building practices.</p>	<p><i>Not Applicable.</i></p>
<p><b>Policy CD2-15:</b> Leverage Professional and Trade Organizations. We support excellence in design and construction quality through collaboration with trade and professional organizations that provide expertise, resources and programs for developers, builders and the public.</p>	<p><i>Not Applicable.</i></p>

**Goal CD3:**

Vibrant urban environments that are organized around intense buildings, pedestrian and transit areas, public plazas, and linkages between and within developments that are conveniently located, visually appealing and safe during all hours.

Plan Policy	Specific Plan Consistency
<p><b>Policy CD3-1:</b> Design. We require that pedestrian, vehicular, bicycle and equestrian circulation on both public and private property be coordinated and designed to maximize safety, comfort and aesthetics.</p>	<p><i>Not Applicable.</i></p>
<p><b>Policy CD3-2:</b> Connectivity Between Streets, Sidewalks, Walkways and Plazas. We require landscaping and paving be used to optimize visual connectivity between streets, sidewalks, walkways and plazas for pedestrians.</p>	<p><i>Not Applicable.</i></p>
<p><b>Policy CD3-3:</b> Building Entrances. We require all building entrances to be accessible and visible from adjacent streets, sidewalks or public open spaces.</p>	<p><i>Not Applicable.</i></p>
<p><b>Policy CD3-4:</b> Ground Floor Usage of Commercial Buildings. We create lively pedestrian streetscapes by requiring the location of uses, such as shopping, galleries, restaurants, etc., on ground floors adjacent to sidewalks.</p>	<p><i>Not Applicable.</i></p>
<p><b>Policy CD3-5:</b> Paving. We require sidewalks and road surfaces to be of a type and quality that contributes to the appearance and utility of streets and public spaces.</p>	<p><i>Consistent. The Specific Plan requires that the design and materials used for all road surfaces and sidewalks within the project be subject to approval by the Engineering Department.</i></p>
<p style="text-align: center;"><b>Goal CD4:</b></p> <p style="text-align: center;">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.</p>	
<p><b>Policy CD4-1:</b> Cultural Resource Management. We update and maintain an inventory of historic sites and buildings, professional collections, artifacts, manuscripts, photographs, documents, maps and other archives.</p>	<p><i>Not Applicable.</i></p>
<p><b>Policy CD4-2:</b> 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.</p>	<p><i>Not Applicable.</i></p>

Plan Policy	Specific Plan Consistency
<p><b>Policy CD4-3:</b> Collaboration with Outside Agencies. We pursue opportunities to team with other agencies, local organizations and non-profits in order to preserve and promote Ontario’s heritage.</p>	<p><i>Not Applicable.</i></p>
<p><b>Policy CD4-4:</b> 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.</p>	<p><i>Not Applicable.</i></p>
<p><b>Policy CD4-5:</b> Adaptive Reuse. We actively promote and support the adaptive reuse of historic sites and buildings to preserve and maintain their viability.</p>	<p><i>Not Applicable.</i></p>
<p><b>Policy CD4-6:</b> 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.</p>	<p><i>Not Applicable.</i></p>
<p><b>Policy CD4-7:</b> Public Outreach. We provide opportunities for our residents to research and learn about the history of Ontario through the Planning Department, Museum of History and Art, Ontario and the Robert E. Ellingwood Model Colony History Room.</p>	<p><i>Not Applicable.</i></p>
<p><b>Goal CD5:</b> A sustained level of maintenance and improvement of properties, buildings and infrastructure that protects the property values and encourages additional public and private investments.</p>	
<p><b>Policy CD5-1:</b> 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.</p>	<p><i>Consistent. The Specific Plan includes a Maintenance Responsibility Matrix defining the public, private, and utility entities responsible for maintenance of roadways, parkways, trails, sidewalks, common areas, walls and monuments, traffic signals, infrastructure, and utilities within the project.</i></p>
<p><b>Policy CD5-2:</b> Maintenance of Infrastructure. We require the continual maintenance of infrastructure.</p>	<p><i>Consistent. The Specific Plan includes a Maintenance Responsibility Matrix defining the responsible entities for continual maintenance of roadways, sidewalks, traffic signals, off site and on site public water, sewer, and storm drain infrastructure facilities.</i></p>



Plan Policy	Specific Plan Consistency
<p><b>Policy CD5-3:</b> Improvements to Property &amp; Infrastructure. We provide programs to improve property and infrastructure.</p>	<p><i>Not Applicable.</i></p>
<p><b>Policy CD5-4:</b> Neighborhood Involvement. We encourage active community involvement to implement programs aimed at the beautification and improvement of neighborhoods.</p>	<p><i>Not Applicable.</i></p>

## Mobility (M) Element

### Goal M1:

A system of roadways that meets the mobility needs of a dynamic and prosperous Ontario.

<p><b>Policy M1-1:</b> Roadway Design and Maintenance. We require our roadways to:</p> <ul style="list-style-type: none"> <li>» Comply with federal, state and local design and safety standards.</li> <li>» Meet the needs of multiple transportation modes and users.</li> <li>» Handle the capacity envisioned in the Functional Roadway Classification Plan.</li> <li>» Maintain a peak hour Level of Service (LOS) E or better at all intersections.</li> <li>» Be compatible with the streetscape and surrounding land uses.</li> <li>» Be maintained in accordance with best practices and our Right-of-Way Management Plan.</li> </ul>	<p><i>Consistent.</i> The Specific Plan requires consistency with the requirements of the City's Functional Roadway Classification Plan and the Ontario Ranch Streetscape Master Plan. The roadway system is designed to maintain a peak hour Level of Service (LOS) E or better at all intersections as discussed in the project EIR. Site design, source control for the project are required to be submitted by the developer for approval by the City prior to issuance of permits for the project.</p>
<p><b>Policy M1-2:</b> Mitigation of Impacts. We require development to mitigate its traffic impacts.</p>	<p><i>Consistent.</i> All mitigation measures, standard conditions, and project design features identified in the project EIR to mitigate traffic impacts of the project will be implemented by the project prior to any occupancy.</p>
<p><b>Policy M1-3:</b> Roadway Improvements. We work with Caltrans, SANBAG and others to identify, fund and implement needed improvements to roadways identified in the Functional Roadway Classification Plan.</p>	<p><i>Not Applicable.</i></p>
<p><b>Policy M1-4:</b> Adjacent Jurisdictions. We work with neighboring jurisdictions to meet our level of service standards at the City limits.</p>	<p><i>Not Applicable.</i></p>

Plan Policy	Specific Plan Consistency
<p><b>Goal M2:</b> A system of trails and corridors that facilitate and encourage bicycling and walking.</p>	
<p><b>Policy M2-1:</b> Bikeway Plan. We maintain our Multipurpose Trails &amp; Bikeway Corridor Plan to create a comprehensive system of on- and off-street bikeways that connect residential areas, businesses, schools, parks, and other key destination points.</p>	<p><i>Consistent.</i> The Specific Plan includes a plan for providing connectivity to the multipurpose trail along the Cucamonga Creek Channel. From these connection points, pedestrians will have access to the larger City of Ontario system of trails and bikeways.</p>
<p><b>Policy M2-2:</b> Bicycle System. We provide off-street multipurpose trails and Class II bikeways as our primary paths of travel and use the Class III for connectivity in constrained circumstances.</p>	<p><i>Consistent.</i> The Specific Plan includes a plan for providing connectivity to the multipurpose trail along the Cucamonga Creek Channel. From these connection points, pedestrians will have access to the larger City of Ontario system of trails and bikeways.</p>
<p><b>Policy M2-3:</b> Pedestrian Walkways. We require walkways that promote safe and convenient travel between residential areas, businesses, schools, parks, recreation areas, and other key destination points.</p>	<p><i>Consistent.</i> The Specific Plan includes a plan for construction of an off-street pedestrian circulation system comprised of an interconnected, paved sidewalk system within all roadway rights-of-ways, separated from vehicular travel lanes by a landscaped parkway.</p>
<p><b>Policy M2-4:</b> Network Opportunities. We explore opportunities to expand the pedestrian and bicycle networks. This includes consideration of utility easements, levees, drainage corridors, road right-of-ways, medians and other potential options.</p>	<p><i>Consistent.</i> The Specific Plan includes a plan for construction of an off-street pedestrian circulation system comprised of an interconnected, paved sidewalk system within all roadway rights-of-ways, separated from vehicular travel lanes by a landscaped parkway.</p>
<p><b>Goal M3:</b> A public transit system that is a viable alternative to automobile travel and meets basic transportation needs of the transit dependent.</p>	
<p><b>Policy M3-1:</b> Transit Partners. We maintain a proactive working partnership with transit providers to ensure that adequate public transit service is available.</p>	<p><i>Not Applicable.</i></p>
<p><b>Policy M3-2:</b> Transit Facilities at New Development. We require new development to provide transit facilities, such as bus shelters, transit bays and turnouts, as necessary.</p>	<p><i>Not Applicable.</i></p>
<p><b>Policy M3-3:</b> Transit-Oriented Development. We may provide additional development-related incentives to those inherent in the Land Use Plan for projects that promote transit use.</p>	<p><i>Not Applicable.</i></p>
<p><b>Policy M3-4:</b> Bus Rapid Transit (BRT) Corridors. We work with regional transit agencies to implement BRT service to target destinations and along corridors, as shown in the Transit Plan.</p>	<p><i>Not Applicable.</i></p>

Plan Policy	Specific Plan Consistency
<p><b>Policy M3-5:</b> Light Rail. We support extension of the Metro Rail Gold Line to Ontario, and will work to secure station locations adjacent to the Meredith site and at the proposed multimodal transit center.</p>	<p><i>Not Applicable.</i></p>
<p><b>Policy M3-6:</b> Metrolink Expansion. We advocate expansion of Metrolink service to include the Downtown and the multimodal transit center.</p>	<p><i>Not Applicable.</i></p>
<p><b>Policy M3-7:</b> High Speed Rail. We encourage the development of high-speed rail systems that would enhance regional mobility in Southern California and serve the City of Ontario.</p>	<p><i>Not Applicable.</i></p>
<p><b>Policy M3-8:</b> Feeder Systems. We work with regional transit agencies to secure convenient feeder service from the Metrolink station and the proposed multimodal transit center to employment centers in Ontario.</p>	<p><i>Not Applicable.</i></p>
<p><b>Policy M3-9:</b> Ontario Airport Metro Center Circulator. We will explore development of a convenient mobility system, including but not limited to shuttle service, people mover, and shared car system, for the Ontario Airport Metro Center.</p>	<p><i>Not Applicable.</i></p>
<p><b>Policy M3-10:</b> Multimodal Transit Center. We intend to ensure the development of a multimodal transit center near LAONT airport to serve as a transit hub for local buses, BRT, the Gold Line, high-speed rail, the proposed Ontario Airport Metro Center circulator and other future transit modes.</p>	<p><i>Not Applicable.</i></p>
<p><b>Policy M3-11:</b> Transit and Community Facilities. We require the future development of community-wide serving facilities to be sited in transit-ready areas that can be served and made accessible by public transit. Conversely, we plan (and coordinate with other transit agencies to plan) future transit routes to serve existing community facilities.</p>	<p><i>Not Applicable.</i></p>
<p><b>Goal M4:</b></p> <p>An efficient flow of goods through the City that maximizes economic benefits and minimizes negative impacts.</p>	
<p><b>Policy M4-1:</b> Truck Routes. We designate and maintain a network of City truck routes that provide for the effective transport of goods while minimizing negative impacts on local circulation and noise-sensitive land uses, as shown in the Truck Routes Plan.</p>	<p><i>Not Applicable.</i></p>

Plan Policy	Specific Plan Consistency
<p><b>Policy M4-2:</b> Regional Participation. We work with regional and subregional transportation agencies to plan and implement goods movement strategies, including those that improve mobility, deliver goods efficiently and minimize negative environmental impacts</p>	<p><i>Not Applicable.</i></p>
<p><b>Policy M4-3:</b> Railroad Grade Separations. We eliminate at-grade rail crossings identified on the Functional Roadway Classification Plan.</p>	<p><i>Not Applicable.</i></p>
<p><b>Policy M4-4:</b> Environmental Considerations. We support efforts to reduce/eliminate the negative environmental impacts of goods movement.</p>	<p><i>Not Applicable.</i></p>
<p><b>Policy M4-5:</b> Air Cargo. We support and promote a LAONT airport that accommodates 1.6 million tons of cargo per year, as long as the impacts associated with that level of operations are planned for and mitigated.</p>	<p><i>Not Applicable.</i></p>
<p style="text-align: center;"><b>Goal M5:</b> A proactive leadership role to help identify and facilitate implementation of strategies that address regional transportation challenges.</p>	
<p><b>Policy M5-1:</b> Regional Leadership. We maintain a leadership role to help identify and implement potential solutions to long-term regional transportation problems.</p>	<p><i>Not Applicable.</i></p>
<p><b>Policy M5-2:</b> Land Use Compatibility with Regional Transportation Facilities. We work with LAWA, railroads, Caltrans, SANBAG, and other transportation agencies to minimize impacts.</p>	<p><i>Not Applicable.</i></p>

## Environmental Resources (ER) Element

### Goal ER1:

A reliable and cost effective system that permits the City to manage its diverse water resources and needs.

<p><b>Policy ER-1:</b> Local Water Supply. We increase local water supplies to reduce our dependence on imported water.</p>	<p><i>Not Applicable.</i></p>
<p><b>Policy ER-2:</b> Matching Supply to Use. We match water supply and quality to the appropriate use.</p>	<p><i>Not Applicable.</i></p>

Plan Policy	Specific Plan Consistency
<p><b>Policy ER1-3:</b> Conservation. We require conservation strategies that reduce water usage.</p>	<p><b>Consistent.</b> The Specific Plan requires all public and common area landscaping within the project to utilize plant materials listed on the approved Specific Plan Landscape Plant Matrix which is comprised of drought tolerant and California-friendly plant materials. The Specific Plan requires that irrigation systems for both public and private landscaped areas be designed to be as water-efficient as possible and includes the following minimum requirements.</p> <ul style="list-style-type: none"> <li>» All irrigation systems shall have automatic controllers designed to properly water plant materials given the site’s soil conditions, and irrigation systems for all public landscapes shall have automatic rain shut-off devices.</li> <li>» Drip bubblers or low volume irrigation is required in areas less than 8’ wide.</li> <li>» Spray systems shall have low volume matched precipitation heads.</li> <li>» All CFD areas are to be controlled with central control irrigation systems, and all trees are to be irrigated utilizing a pop up stream bubbler system on a separate valve. All CFD areas shall be designed to City Standard Specifications.</li> </ul>
<p><b>Policy ER1-4:</b> Supply-Demand Balance. We require that available water supply and demands be balanced.</p>	<p><b>Not Applicable.</b></p>
<p><b>Policy ER1-5:</b> Groundwater Management. We protect groundwater quality by incorporating strategies that prevent pollution, require remediation where necessary, capture and treat urban run-off, and recharge the aquifer.</p>	<p><b>Consistent.</b> The Specific Plan requires that the developer obtain approval of a StormWater Pollution Prevention Plan (SWPPP) prior to issuance of grading or construction permits. The SWPPP will be prepared to comply with California State Water Resources Control Board’s current “General Permit to Discharge StormWater Associated With Construction Activity” and current “Area Wide Urban Storm Water Runoff (Regional NPDES) Permit.” The SWPPP will identify and detail all appropriate Best Management Practices (BMP’s) to be implemented or installed during construction of the project.</p> <p>In addition to the preparation of a SWPPP for construction-related activities, and as part of the approval of any grading plans for the project, the developer is required to submit a Water Quality Management Plan (WQMP) on the regional model form provided by the City. The WQMP shall identify and detail all Site Design BMP’s, Source Control BMP’s and Treatment Control BMP’s to be implemented or installed as part of the project in order to reduce storm water pollutants and site runoff.</p>

Plan Policy	Specific Plan Consistency
<p><b>Policy ER1-6:</b> Urban Run-off Quantity. We encourage the use of low impact development strategies to intercept run-off, slow the discharge rate, increase infiltration and ultimately reduce discharge volumes to traditional storm drain systems.</p>	<p><i><b>Consistent.</b> The Specific Plan requires that grading and drainage for the project be designed to detain, filter, and treat surface runoff in a manner which is practical in order to comply with the most recent requirements of the San Bernardino County NPDES Storm Water Program’s Quality Management (WQMP) for significant new development projects. Site design for the project is required to incorporate features which will minimize the use of impervious surfaces and maximize on-site infiltration, Source Control Best Management Practices (BMP’s) and either on-site Structural Treatment Control BMP’s or participation in regional or watershed-based Treatment Control BMP’s.</i></p>
<p><b>Policy ER1-7:</b> Urban Run-off Quality. We require the control and management of urban run-off, consistent with Regional Water Quality Control Board regulations.</p>	<p><i><b>Consistent.</b> The Specific Plan requires that the project comply with the most recent requirements of the San Bernardino County NPDES Storm Water Program’s Quality Management (WQMP) for significant new development projects. A final WQMP is required to be submitted by the developer for approval by the City prior to the issuance of any grading and construction permits for the project.</i></p>
<p><b>Policy ER1-8:</b> Wastewater Management. We require the management of wastewater discharge and collection consistent with waste discharge requirements adopted by the Regional Water Quality Control Board.</p>	<p><i><b>Consistent.</b> The Specific Plan requires the construction of a wastewater system consistent with City requirements and also requires that the project obtain approval of a WQMP for the project prior to the issuance of any grading or construction permit.</i></p>
<p><b>Goal ER2:</b> A cost effective, integrated waste management system that meets or exceeds state and federal recycling and waste diversion mandates.</p>	
<p><b>Policy ER2-1:</b> Waste Diversion. We shall meet or exceed AB 939 requirements.</p>	<p><i><b>Consistent.</b> The Specific Plan shall comply with all state and federal regulations for waste diversion.</i></p>
<p><b>Policy ER2-2:</b> Hazardous and Electronic Wastes. We prohibit the disposal of hazardous and electronic waste into the municipal waste stream pursuant to state law.</p>	<p><i><b>Consistent.</b> The Specific Plan shall comply with all state and federal regulations for waste diversion.</i></p>
<p><b>Policy ER2-3:</b> Purchase Products Made from Recycled Materials. We purchase recycled-content products where it is cost effective.</p>	<p><i><b>Not Applicable.</b></i></p>



Plan Policy	Specific Plan Consistency
<p><b>Goal ER3:</b></p> <p>Cost-effective and reliable energy system sustained through a combination of low impact building, site and neighborhood energy conservation and diverse sources of energy generation that collectively helps to minimize the region’s carbon footprint.</p>	
<p><b>Policy ER3-1:</b> Conservation Strategy. We require conservation as the first strategy to be employed to meet applicable energy-saving standards.</p>	<p><i><b>Consistent.</b> The Specific Plan requires all public and common area landscaping within the project to utilize plant materials listed on the approved Specific Plan Landscape Plant Matrix which is comprised of drought tolerant and California Friendly plant materials. The Specific Plan requires that irrigation systems for both public and private landscaped areas be designed to be as water-efficient as possible. The Specific Plan requires the construction of separate water mains for the use of recycled water in public and common areas of the project. All new construction will utilize fixtures, and heating and cooling controls to conserve water and energy.</i></p>
<p><b>Policy ER3-2:</b> Green Development– Communities. We require the use of best practices identified in green community rating systems to guide the planning and development of all new communities.</p>	<p><i><b>Consistent.</b> The Colony Commerce Center West design guidelines encourages all new construction to utilize design features, fixtures, appliances, and heating and cooling controls to conserve energy and water. The landscape concept for Colony Commerce Center West incorporates a plant palette of drought tolerant materials and requirements that the development implement planting and irrigation systems designed to conserve water.</i></p>
<p><b>Policy ER3-3:</b> Building and Site Design. We require new construction to incorporate energy efficient building and site design strategies, which could include appropriate solar orientation, maximum use of natural daylight, passive solar and natural ventilation.</p>	<p><i><b>Consistent.</b> The Colony Commerce Center West design guidelines encourages all new construction to utilize design features, fixtures, appliances, and heating and cooling controls to conserve energy and water.</i></p>
<p><b>Policy ER3-4:</b> Green Development– Public Buildings. We require all new and substantially renovated City buildings in excess of 10,000 square feet achieve a LEED Silver Certification standard, as determined by the U.S. Green Building Council.</p>	<p><i><b>Not Applicable.</b></i></p>
<p><b>Policy ER3-5:</b> Fuel Efficient and Alternative Energy Vehicles and Equipment. We purchase and use vehicles and equipment that are fuel efficient and meet or surpass state emissions requirements and/or use renewable sources of energy.</p>	<p><i><b>Not Applicable.</b></i></p>

Plan Policy	Specific Plan Consistency
<p><b>Policy ER3-6:</b> Generation- Renewable Sources. We promote the use of renewable energy sources to serve public and private sector development.</p>	<p><i>Not Applicable.</i></p>
<p><b>Goal ER4:</b> Improved indoor and outdoor air quality and reduced locally generated pollutant emissions.</p>	
<p><b>Policy ER4-1:</b> Land Use. We reduce GHG and other local pollutant emissions through compact, mixed use, and transit-oriented development and development that improves the regional jobs-housing balance.</p>	<p><i>Consistent. The industrial uses planned for on the Colony Commerce Center West will have the ability to generate jobs for City of Ontario residents.</i></p>
<p><b>Policy ER4-2:</b> Sensitive Land Uses. We prohibit the future siting of sensitive land uses, within the distances defined by the California Air Resources Board for specific source categories, without sufficient mitigation.</p>	<p><i>Not Applicable.</i></p>
<p><b>Policy ER4-3:</b> Greenhouse Gases (GHG) Emissions Reductions. We will reduce GHG emissions in accordance with regional, state and federal regulations.</p>	<p><i>Not Applicable.</i></p>
<p><b>Policy ER4-4:</b> Indoor Air Quality. We will comply with State Green Building Codes relative to indoor air quality.</p>	<p><i>Consistent. All development within the Specific Plan will be required to comply with the State Green Building Code as implemented by the City.</i></p>
<p><b>Policy ER4-5:</b> Transportation. We promote mass transit and non-motorized mobility options (e.g. walking, biking) to reduce air pollutant emissions.</p>	<p><i>Not Applicable.</i></p>
<p><b>Policy ER4-6:</b> Particulate Matter. We support efforts to reduce particulate matter to meet State and Federal Clean Air Standards.</p>	<p><i>Not Applicable.</i></p>
<p><b>Policy ER4-7:</b> Other Agency Collaboration. We collaborate with other agencies within the South Coast Air Basin to improve regional air quality at the emission source.</p>	<p><i>Not Applicable.</i></p>
<p><b>Policy ER4-8:</b> Tree Planting. We protect healthy trees within the City and plant new trees to increase carbon sequestration and help the regional/local air quality.</p>	<p><i>Not Applicable.</i></p>
<p><b>Goal ER5:</b> Protected high value habitat and farming and mineral resource extraction activities that are compatible with adjacent development.</p>	
<p><b>Policy ER5-1:</b> Habitat Conservation Areas. We support the protection of biological resources through the establishment, restoration and conservation of high quality habitat areas.</p>	<p><i>Not Applicable.</i></p>

Plan Policy	Specific Plan Consistency
<p><b>Policy ER5-2:</b> Entitlement and Permitting Process. We comply with state and federal regulations regarding protected species.</p>	<p><i>Consistent.</i> The project will comply with all mitigation measures identified in the project EIR with regard to biological resources.</p>
<p><b>Policy ER5-3:</b> Right to Farm. We support the right of existing farms to continue their operations within the Ontario Ranch.</p>	<p><i>Consistent.</i> The Specific Plan supports the right of existing farms to continue their operations within the Ontario Ranch.</p>
<p><b>Policy ER5-4:</b> Transition of Farms. We protect both existing farms and sensitive uses around them as agricultural areas transition to urban uses.</p>	<p><i>Consistent.</i> The Specific Plan supports the right of existing farms to continue their operations in addition to transitioning their properties to other uses within the Ontario Ranch.</p>
<p><b>Policy ER5-5:</b> Mining Operations. We prohibit future mining operations where the resource extraction activities are incompatible with existing or proposed adjacent land uses.</p>	<p><i>Not Applicable.</i></p>

## Safety (S) Element

### Goal S1:

Minimized risk of injury, loss of life, property damage and economic and social disruption caused by earthquake-induced and other geologic hazards.

<p><b>Policy S1-1:</b> Implementation of Regulations and Standards. We require that all new habitable structures be designed in accordance with the most recent California Building Code adopted by the City, including provisions regarding lateral forces and grading.</p>	<p><i>Consistent.</i> All development within the Specific Plan will be required to comply with the State of California Building Code as adopted and implemented by the City.</p>
<p><b>Policy S1-2:</b> Entitlement and Permitting Process. We follow state guidelines and the California Building Code to determine when development proposals must conduct geotechnical and geological investigations.</p>	<p><i>Consistent.</i> All development within the Specific Plan will be required to comply with the State of California Building Code as adopted and implemented by the City.</p>
<p><b>Policy S1-3:</b> Continual Update of Technical Information. We maintain up-to-date California Geological Survey seismic hazard maps.</p>	<p><i>Not Applicable.</i></p>
<p><b>Policy S1-4:</b> Seismically Vulnerable Structures. We conform to state law regarding unreinforced masonry structures.</p>	<p><i>Not Applicable.</i></p>

Plan Policy	Specific Plan Consistency
<p><b>Goal S2:</b> Minimized risk of injury, loss of life, property damage and economic and social disruption caused by flooding and inundation hazards.</p>	
<p><b>Policy S2-1:</b> Entitlement and Permitting Process. We follow State guidelines and building code to determine when development proposals require hydrological studies prepared by a State-certified engineer to assess the impact that the new development will have on the flooding potential of existing development down-gradient.</p>	<p><i>Consistent.</i> All development within the Specific Plan will be required to comply with the State of California Building Code as adopted and implemented by the City.</p>
<p><b>Policy S2-2:</b> Flood Insurance. We will limit development in flood plains and participate in the National Flood Insurance Program.</p>	<p><i>Not Applicable.</i></p>
<p><b>Policy S2-3:</b> Facilities that Use Hazardous Materials. We comply with state and federal law and do not permit facilities using, storing, or otherwise involved with substantial quantities of onsite hazardous materials to be located in the 100 year flood zone unless all standards of elevation, flood proofing and storage have been implemented to the satisfaction of the Building Department.</p>	<p><i>Consistent.</i> All development within the Specific Plan will be required to comply with the State of California Building Code as adopted and implemented by the City.</p>
<p><b>Policy S2-4:</b> Prohibited Land Uses. We prohibit the development of new essential and critical facilities in the 100-year floodplain.</p>	<p><i>Not Applicable.</i></p>
<p><b>Policy S2-5:</b> Storm Drain System. We maintain and improve the storm drain system to minimize flooding.</p>	<p><i>Consistent.</i> The project shall improve the storm drain system as planned by the City of Ontario.</p>
<p><b>Policy S2-6:</b> Use of Flood Control Facilities. We encourage joint use of flood control facilities as open space or other types of recreational facilities.</p>	<p><i>Not Applicable.</i></p>
<p><b>Goal S3:</b> Reduced risk of death, injury, property damage and economic loss due to fires, accidents and normal everyday occurrences through prompt and capable emergency response.</p>	
<p><b>Policy S3-1:</b> Prevention Services. We proactively mitigate or reduce the negative effects of fire, hazardous materials release, and structural collapse by implementing the adopted Fire Code.</p>	<p><i>Consistent.</i> All development within the Specific Plan will be required to comply with the State of California Building Code as adopted and implemented by the City.</p>

Plan Policy	Specific Plan Consistency
<p><b>Policy S3-2:</b> Community Outreach. We provide education to local schools and community groups to promote personal and public safety.</p>	<p><i>Not Applicable.</i></p>
<p><b>Policy S3-3:</b> Fire and Emergency Medical Services. We maintain sufficient fire stations, equipment and staffing to respond effectively to emergencies.</p>	<p><i>Not Applicable.</i></p>
<p><b>Policy S3-4:</b> Special Team Services. We maintain effective special rescue services.</p>	<p><i>Not Applicable.</i></p>
<p><b>Policy S3-5:</b> Emergency Communication Services. We maintain a 9-1-1 emergency communication and dispatch center.</p>	<p><i>Not Applicable.</i></p>
<p><b>Policy S3-6:</b> Interagency Cooperation. In order to back up and supplement our capabilities to respond to emergencies, we participate in the California Fire Rescue and Mutual Aid Plan.</p>	<p><i>Not Applicable.</i></p>
<p><b>Policy S3-7:</b> Water Supply and System Redundancy. We monitor our water system to manage firefighting water supplies.</p>	<p><i>Not Applicable.</i></p>
<p><b>Policy S3-8:</b> Fire Prevention through Environmental Design. We require new development to incorporate fire prevention consideration in the design of streetscapes, sites, open spaces and buildings.</p>	<p><i>Consistent. The Specific Plan requires all new development to be reviewed and approved pursuant to the provisions of the City's Subdivision Ordinance and Development Plan Review process which provides for review by the City's Fire Department which may require the development to incorporate fire prevention design elements in streetscapes, sites, open spaces and buildings.</i></p>
<p><b>Policy S3-9:</b> Resource Allocation. We analyze fire data to evaluate the effectiveness of our fire prevention and reduction strategies and allocate resources accordingly.</p>	<p><i>Not Applicable.</i></p>
<p><b>Goal S4:</b> An environment where noise does not adversely affect the public's health, safety, and welfare.</p>	
<p><b>Policy S4-1:</b> Noise Mitigation. We utilize the City's Noise Ordinance, building codes and subdivision and development codes to mitigate noise impacts.</p>	<p><i>Consistent. The Specific Plan shall comply with the City's Noise Ordinance and building codes in order to mitigate noise impacts.</i></p>

Plan Policy	Specific Plan Consistency
<p><b>Policy S4-2:</b> Coordination with Transportation Authorities. We collaborate with airport owners, FAA, Caltrans, SANBAG, SCAG, neighboring jurisdictions, and other transportation providers in the preparation and maintenance of, and updates to transportation-related plans to minimize noise impacts and provide appropriate mitigation measures.</p>	<p><i>Not Applicable.</i></p>
<p><b>Policy S4-3:</b> Airport Noise Mitigation. We aggressively pursue funding and utilize programs to reduce effects of aircraft noise in impacted areas of our community.</p>	<p><i>Not Applicable.</i></p>
<p><b>Policy S4-4:</b> Truck Traffic. We manage truck traffic to minimize noise impacts on sensitive land uses.</p>	<p><i>Not Applicable.</i></p>
<p><b>Policy S4-5:</b> Roadway Design. We design streets and highways to minimize noise impacts.</p>	<p><i>Not Applicable.</i></p>
<p><b>Policy S4-6:</b> Airport Noise Compatibility. We utilize information from Airport Land Use Compatibility Plans to prevent the construction of new noise sensitive land uses within airport noise impact zones.</p>	<p><i>Not Applicable.</i></p>
<p style="text-align: center;"><b>Goal S5:</b> Reduced risk of injury, property damage and economic loss resulting from windstorms and wind-related hazards.</p>	
<p><b>Policy S5-1:</b> Backup Power in Critical Facilities. We require backup power be maintained in critical facilities.</p>	<p><i>Not Applicable.</i></p>
<p><b>Policy S5-2:</b> Dust Control Measures. We require the implementation of Best Management Practices for dust control at all excavation and grading projects.</p>	<p><i>Consistent. Construction within the Specific Plan will comply with a City approved construction management plan and all mitigation measures identified in the project EIR with regard to dust control.</i></p>
<p><b>Policy S5-3:</b> Grading in High Winds. We prohibit excavation and grading during strong wind conditions, as defined by the Building Code.</p>	<p><i>Not Applicable.</i></p>
<p style="text-align: center;"><b>Goal S6:</b> Reduced potential for hazardous materials exposure and contamination.</p>	
<p><b>Policy S6-1:</b> Disclosure and Notification. We enforce disclosure laws that require all users, producers, and transporters of hazardous materials and wastes to clearly identify the materials that they store, use or transport.</p>	<p><i>Not Applicable.</i></p>



Plan Policy	Specific Plan Consistency
<p><b>Policy S6-2:</b> Response to Hazardous Materials Releases. We respond to hazardous materials incidents and coordinate these services with other jurisdictions.</p>	<p><i>Not Applicable.</i></p>
<p><b>Policy S6-3:</b> Safer Alternatives. We minimize our use of hazardous materials by choosing non-toxic alternatives that do not pose a threat to the environment.</p>	<p><i>Not Applicable.</i></p>
<p><b>Policy S6-4:</b> Safe Storage and Maintenance Practices. We require that the users of hazardous materials be adequately prepared to prevent and mitigate hazardous materials releases.</p>	<p><i>Not Applicable.</i></p>
<p><b>Policy S6-5:</b> Location of Hazardous Material Facilities. We regulate facilities that will be involved in the production, use, storage or disposal of hazardous materials, pursuant to federal, state, county, and local regulations, so that impacts to the environment and sensitive land uses are mitigated.</p>	<p><i>Not Applicable.</i></p>
<p><b>Policy S6-6:</b> Location of Sensitive Land Uses. We prohibit new sensitive land uses from locating within airport Safety Zones and near existing sites that use, store, or generate large quantities of hazardous materials.</p>	<p><i>Not Applicable.</i></p>
<p><b>Policy S6-7:</b> Household Hazardous Waste. We support the proper disposal of household hazardous substances.</p>	<p><i>Not Applicable.</i></p>
<p><b>Policy S6-8:</b> Mitigation and Remediation of Groundwater Contamination. We actively participate in local and regional efforts directed at both mitigating environmental exposure to contaminated groundwater and taking action to clean up contaminated groundwater once exposure occurs.</p>	<p><i>Consistent. The project will comply with all mitigation measures identified as part of the project EIR for groundwater remediation and if necessary, proper action to clean up contaminated groundwater within the project.</i></p>
<p><b>Policy S6-9:</b> Remediation of Methane. We require development to assess and mitigate the presence of methane, per regulatory standards and guidelines.</p>	<p><i>Consistent. The project will comply with all mitigation measures identified as part of the project EIR for soil remediation and if necessary, proper venting to address the potential existence of methane gases within the project.</i></p>
<p><b>Goal S7:</b> Neighborhoods and commercial and industrial districts that are kept safe through a multi-faceted approach of prevention, suppression, community involvement and a system of continuous monitoring.</p>	
<p><b>Policy S7-1:</b> Police Unit Response. We respond to calls for service in a timely manner.</p>	<p><i>Not Applicable.</i></p>

Plan Policy	Specific Plan Consistency
<p><b>Policy S7-2:</b> Community Oriented Problem Solving (C.O.P.S.). We support and maintain the mission of COPS to identify and resolve community problems.</p>	<p><i>Not Applicable.</i></p>
<p><b>Policy S7-3:</b> Prevention Services. We provide crime prevention programs targeted to youth, parents, seniors, businesses, and neighborhoods.</p>	<p><i>Not Applicable.</i></p>
<p><b>Policy S7-4:</b> Crime Prevention through Environmental Design (CPTED). We require new development to incorporate CPTED in the design of streetscapes, sites, open spaces and buildings.</p>	<p><i>Consistent. The Specific Plan requires all new development to be reviewed and approved pursuant to the provisions of the City's Subdivision Ordinance and Development Plan Review process which provides for review by the City's Police Department which may require the development to incorporate CPTED in the design of streetscapes, sites, open spaces and buildings.</i></p>
<p><b>Policy S7-5:</b> Interdepartmental Coordination. We utilize all City departments to help reduce crime and promote public safety.</p>	<p><i>Not Applicable.</i></p>
<p><b>Policy S7-6:</b> Partnerships. We partner with other local, state and federal law enforcement agencies and private security providers to enhance law enforcement service to Ontario.</p>	<p><i>Not Applicable.</i></p>
<p><b>Policy S7-7:</b> Resource Allocation. We analyze crime data to evaluate the effectiveness of crime prevention and reduction strategies and allocate resources accordingly.</p>	<p><i>Not Applicable.</i></p>
<p><b>Goal S8:</b> Disaster resilient, prepared community through effective emergency/disaster preparedness, response, mitigation and recovery.</p>	
<p><b>Policy S8-1:</b> State and Federal Mandates. We maintain emergency management programs that meet the requirements of the State of California Standardized Emergency Management System (SEMS) and the National Incident Management System (NIMS).</p>	<p><i>Not Applicable.</i></p>
<p><b>Policy S8-2:</b> Emergency Management Plans. We maintain, update and adopt the Emergency Operations Plan (EOP) and the Hazard Mitigation Plan (HMP).</p>	<p><i>Not Applicable.</i></p>
<p><b>Policy S8-3:</b> Emergency/Disaster Training Exercises. We conduct training and exercises to prepare for and evaluate emergency/disaster response and recovery procedures.</p>	<p><i>Not Applicable.</i></p>

Plan Policy	Specific Plan Consistency
<p><b>Policy S8-4:</b> Interagency Collaboration. We partner with public and private organizations, such as participation in the California Master Mutual Aid Agreement, in order to enhance and compliment our planning and response capabilities.</p>	<p><i>Not Applicable.</i></p>
<p><b>Policy S8-5:</b> Interdepartmental Coordination. We utilize all City departments to help support emergency/disaster preparedness, response, mitigation and recovery.</p>	<p><i>Not Applicable.</i></p>
<p><b>Policy S8-6:</b> Community Outreach. We provide education to the community to promote personal, family and community emergency preparedness.</p>	<p><i>Not Applicable.</i></p>

## Community Economics (CE) Element

### Goal CE1:

A complete community that provides for all incomes and stages of life.

<p><b>Policy CE1-1:</b> 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.</p>	<p><i>Consistent.</i> The industrial uses planned for on the Colony Commerce Center West will have the ability to generate jobs for City of Ontario residents.</p>
<p><b>Policy CE1-2:</b> 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.</p>	<p><i>Not Applicable.</i></p>
<p><b>Policy CE1-3:</b> Regional Approach to Workforce Development. We work with our partners to provide workforce training and development services throughout the region recognizing that Ontario employers rely on workers living outside of the City.</p>	<p><i>Not Applicable.</i></p>

Plan Policy	Specific Plan Consistency
<p><b>Policy CE1-4:</b> Business Retention and Expansion. We continuously improve two-way communication with the Ontario business community and emphasize customer service to existing businesses as part of our competitive advantage.</p>	<p><i>Not Applicable.</i></p>
<p><b>Policy CE1-5:</b> Business Attraction. We proactively attract new and expanding businesses to Ontario in order to increase the City’s share of growing sectors of the regional and global economy.</p>	<p><i>Consistent. The Colony Commerce Center West allows for the development of regionally serving employment centers accommodating a variety of jobs that can meet short- and long-term market demands. The project is also consistent with regional planning goals such as SCAG’s Goods Movement Corridor with consideration to strategies that facilitate goods movement through the area.</i></p>
<p><b>Policy CE1-6:</b> Diversity of Housing. We collaborate with residents, housing providers and the development community to provide housing opportunities for every stage of life; we plan for a variety of housing types and price points to support our workforce, attract business and foster a balanced community.</p>	<p><i>Not Applicable.</i></p>
<p><b>Policy CE1-7:</b> Retail Goods and Services. We seek to ensure a mix of retail businesses that provide the full continuum of goods and services for the community.</p>	<p><i>Not Applicable.</i></p>
<p><b>Policy CE1-8:</b> Regional Attraction. We encourage the development and programming of regional, cultural, and entertainment destinations in Ontario.</p>	<p><i>Not Applicable.</i></p>
<p><b>Policy CE1-9:</b> Regional Leadership. We provide leadership for public, quasi-public, and private-sector partners that help Ontario and its residents and businesses realize our goals and achieve our Vision.</p>	<p><i>Not Applicable.</i></p>
<p><b>Policy CE1-10:</b> Life-Long Education. We work with our partners who provide life-long learning to ensure that our residents and workforce have access to education at all stages of life.</p>	<p><i>Not Applicable.</i></p>
<p><b>Policy CE1-11:</b> Socioeconomic Trends. We continuously monitor, plan for, and respond to changing socioeconomic trends.</p>	<p><i>Not Applicable.</i></p>

Plan Policy	Specific Plan Consistency
<p><b>Policy CE1-12:</b> Circulation. We continuously plan and improve public transit and non-vehicular circulation for the mobility of all, including those with limited or no access to private automobiles.</p>	<p><i>Not Applicable.</i></p>
<p><b>Policy CE1-13:</b> Safety and Security. We invest in public safety and communicate our successes because the perception and reality of safety and security are necessary prerequisites for private investment and economic growth.</p>	<p><i>Not Applicable.</i></p>
<p><b>Goal CE2:</b> A City of distinctive neighborhoods, districts, and corridors, where people choose to be.</p>	
<p><b>Policy CE2-1:</b> Development Projects. We require new development and redevelopment to create unique, high-quality places that add value to the community.</p>	<p><i>Consistent. The Specific Plan includes design guidelines that will encourage a quality development that adds value to the surrounding area.</i></p>
<p><b>Policy CE2-2:</b> Development Review. We require those proposing new development and redevelopment to demonstrate how their projects will create appropriately unique, functional and sustainable places that will compete well with their competition within the region.</p>	<p><i>Consistent. The Specific Plan requires all new development to be reviewed and approved pursuant to the provisions of the City's Subdivision Ordinance and Development Plan Review process which provides for review by the City's Planning Department which may require the development to demonstrate how the project will create appropriately unique, functional and sustainable places.</i></p>
<p><b>Policy CE2-3:</b> Interim Development. We require interim development that does not reflect the long-term Vision, be limited in scale of development so that the investment can be sufficiently amortized to make Vision-compatible redevelopment financially feasible.</p>	<p><i>Not Applicable.</i></p>
<p><b>Policy CE2-4:</b> Protection of Investment. We require that new development and redevelopment protect existing investment by providing architecture and urban design of equal or greater quality.</p>	<p><i>Not Applicable.</i></p>
<p><b>Policy CE2-5:</b> Private Maintenance. We require adequate maintenance, upkeep, and investment in private property because proper maintenance on private property protects property values.</p>	<p><i>Consistent. The Specific Plan includes a Maintenance Responsibility Matrix defining the private responsibilities for maintenance of private roadways, parkways, trails, common areas, parks, yards, walls, and monuments within the project.</i></p>

Plan Policy	Specific Plan Consistency
<p><b>Policy CE2-6:</b> Public Maintenance. We require the establishment and operation of maintenance districts or other vehicles to fund the long-term operation and maintenance of the public realm whether on private land, in rights-of-way, or on publicly-owned property.</p>	<p><i>Consistent.</i> The Specific Plan includes a Maintenance Responsibility Matrix defining the responsible public entities, including special districts, for maintenance of roadways, sidewalks, traffic signals, off site and on site public water, sewer, and storm drain infrastructure facilities.</p>

## Housing (H) Element

### Goal H1:

Stable neighborhoods of quality housing, ample community services and public facilities, well-maintained infrastructure, and public safety that foster a positive sense of identity.

<p><b>Policy H1-1:</b> Housing Rehabilitation. We support the rehabilitation, maintenance, and improvement of single-family, multiple-family, and mobile homes through code compliance, removal of blight where necessary, and provision of rehabilitation assistance where feasible.</p>	<p><i>Not Applicable.</i></p>
<p><b>Policy H1-2:</b> Neighborhood Conditions. We direct efforts to improve the long-term sustainability of neighborhoods through comprehensive planning, provision of neighborhood amenities, rehabilitation and maintenance of housing, and community building efforts.</p>	<p><i>Not Applicable.</i></p>
<p><b>Policy H1-3:</b> Community Amenities. We shall provide adequate public services, infrastructure, open space, parking and traffic management, pedestrian, bicycle and equestrian routes and public safety for neighborhoods consistent with City master plans and neighborhood plans.</p>	<p><i>Not Applicable.</i></p>
<p><b>Policy H1-4:</b> Historical Preservation. We support the preservation and enhancement of residential structures, properties, street designs, lot configurations, and other reminders of Ontario’s past that are considered to be local historical or cultural resources.</p>	<p><i>Not Applicable.</i></p>
<p><b>Policy H1-5:</b> Neighborhood Identity. We strengthen neighborhood identity through creating parks and recreational outlets, sponsoring neighborhood events and encouraging resident participation in the planning and improvement of their neighborhoods.</p>	<p><i>Not Applicable.</i></p>

### Goal H2:

Diversity of types of quality housing that are affordable to a range of household income levels, accommodate changing demographics, and support and reinforce the economic sustainability of Ontario.



Plan Policy	Specific Plan Consistency
<p><b>Policy H2-1:</b> Corridor Housing. We revitalize transportation corridors by encouraging the production of higher density residential and mixed-uses that are architecturally, functionally and aesthetically suited to corridors.</p>	<p><i>Not Applicable.</i></p>
<p><b>Policy H2-2:</b> Historic Downtown. We foster a vibrant historic downtown through facilitating a wide range of housing types and affordability levels for households of all ages, housing preferences, and income levels.</p>	<p><i>Not Applicable.</i></p>
<p><b>Policy H2-3:</b> Ontario Airport Metro Center. We foster a vibrant, urban, intense and highly amenitized community in the Ontario Airport Metro Center Area through a mix of residential, entertainment, retail and office-oriented uses.</p>	<p><i>Not Applicable.</i></p>
<p><b>Policy H2-4:</b> Ontario Ranch. We support a premier lifestyle community in the Ontario Ranch distinguished by diverse housing, highest design quality, and cohesive and highly amenitized neighborhoods.</p>	<p><i>Not Applicable.</i></p>
<p><b>Policy H2-5:</b> Housing Design. We require architectural excellence through adherence to City design guidelines, thoughtful site planning, environmentally sustainable practices and other best practices.</p>	<p><i>Not Applicable.</i></p>
<p><b>Policy H2-6:</b> Infill Development. We support the revitalization of neighborhoods through the construction of higher-density residential developments on underutilized residential and commercial sites.</p>	<p><i>Not Applicable.</i></p>
<p><b>Goal H3:</b> A City regulatory environment that balances the need for creativity and excellence in residential design, flexibility and predictability in the project approval process, and the provision of an adequate supply and prices of housing.</p>	
<p><b>Policy H3-1:</b> Incentives. We maintain incentive programs that can be offered to projects that provide benefits to the community such as exceptional design quality, economic advantages, environmental sustainability, or other benefits that would otherwise be unrealized.</p>	<p><i>Not Applicable.</i></p>
<p><b>Policy H3-2:</b> Flexible Standards. We allow flexibility in the application of residential and mixed-use development standards in order to gain benefits such as exceptional design quality, economic advantages, sustainability, or other benefits that would otherwise be unrealized.</p>	<p><i>Not Applicable.</i></p>

Plan Policy	Specific Plan Consistency
<p><b>Policy H3-3:</b> Development Review. We maintain a residential development review process that provides certainty and transparency for project stakeholders and the public, yet allows for the appropriate review to facilitate quality housing development.</p>	<p><i>Not Applicable.</i></p>
<p><b>Policy H3-4:</b> Financial Incentives. We consider financial incentives to facilitate and encourage the production, rehabilitation or improvement of housing, or provision of services where such activity furthers housing and community-wide goals.</p>	<p><i>Not Applicable.</i></p>
<p><b>Goal H4:</b> Increased opportunities for low and moderate income households and families to afford and maintain quality ownership and rental housing opportunities, including move-up opportunities.</p>	
<p><b>Policy H4-1:</b> Preservation of Affordable Apartments. We strive to facilitate the preservation of the affordability of publicly assisted apartments for lower income households through financial assistance, technical assistance, rehabilitation, and collaborative partnerships.</p>	<p><i>Not Applicable.</i></p>
<p><b>Policy H4-2:</b> Homeownership Opportunities. We increase and expand homeownership rates for lower and moderate income households by offering financial assistance, low-interest loans and educational resources, and by working in collaboration with partnerships.</p>	<p><i>Not Applicable.</i></p>
<p><b>Policy H4-3:</b> Rental Assistance. We support the provision of rental assistance for individuals and families earning extremely low, very low, and low income with funding from the state and federal government.</p>	<p><i>Not Applicable.</i></p>
<p><b>Policy H4-4:</b> Mixed-income Housing. We encourage the integration of affordable housing in the Ontario Ranch, Ontario Airport Metro Center Area, and existing neighborhoods.</p>	<p><i>Not Applicable.</i></p>
<p><b>Policy H4-5:</b> Collaborative Partnerships. We support collaborative partnerships of nonprofit organizations, affordable housing developers, major employers, and for-profit developers to produce affordable housing.</p>	<p><i>Not Applicable.</i></p>
<p><b>Policy H4-6:</b> Fair Housing. We further fair housing by prohibiting discrimination in the housing market and providing education, support, and enforcement services to address discriminatory practices.</p>	<p><i>Not Applicable.</i></p>

Plan Policy	Specific Plan Consistency
<p style="text-align: center;"><b>Goal H5:</b> A full range of housing types and community services that meet the special housing needs for all individuals and families in Ontario, regardless of income level, age or other status.</p>	
<p><b>Policy H5-1:</b> Senior Housing. We support the development of accessible and affordable senior housing and provide financial assistance for seniors to maintain and improve their homes.</p>	<p><i>Not Applicable.</i></p>
<p><b>Policy H5-2:</b> Family Housing. We support the development of larger rental apartments that are appropriate for families with children, including, as feasible, the provision of services, recreation and other amenities.</p>	<p><i>Not Applicable.</i></p>
<p><b>Policy H5-3:</b> Disabled People. We increase the supply of permanent, affordable and accessible housing for people with disabilities, and provide assistance to allow them to maintain and improve their homes.</p>	<p><i>Not Applicable.</i></p>
<p><b>Policy H5-4:</b> Homeless People. We partner with non-profit partners to provide emergency shelters, transitional housing, permanent supportive housing, and supportive services for people who are homeless.</p>	<p><i>Not Applicable.</i></p>
<p><b>Policy H5-5:</b> Supportive Services. We financially support organizations, as feasible, that provide support services that meet the needs of those with special needs and further the greatest level of independence.</p>	<p><i>Not Applicable.</i></p>
<p><b>Policy H5-6:</b> Partnerships. We collaborate with non-profit organizations, private developers, employers, government agencies and other interested parties to develop affordable housing and provide support services.</p>	<p><i>Not Applicable.</i></p>

### Parks & Rec (PR) Element

<p style="text-align: center;"><b>Goal PR1:</b> A system of safe and accessible parks that meets the needs of the community.</p>	
<p><b>Policy PR1-1:</b> Access to Parks. We strive to provide a park and/or recreational facility within walking distance (¼ mile) of every residence.</p>	<p><i>Not Applicable.</i></p>
<p><b>Policy PR1-2:</b> Adjacency to Schools. We examine locating parks adjacent to school sites to promote joint-use opportunities.</p>	<p><i>Not Applicable.</i></p>

Plan Policy	Specific Plan Consistency
<b>Policy PR1-3:</b> Funding. We shall seek outside, one-time sources of funding for capital improvements and reserve ongoing City funds primarily for operations and maintenance.	<i>Not Applicable.</i>
<b>Policy PR1-4:</b> Joint-use Opportunities. In areas where there is a need but no City recreational facility, we explore joint-use opportunities. (e.g., school sites).	<i>Not Applicable.</i>
<b>Policy PR1-5:</b> Acreage Standard. We strive to provide 5 acres of parkland (public and private) per 1,000 residents.	<i>Not Applicable.</i>
<b>Policy PR1-6:</b> Private Parks. We expect development to provide a minimum of 2 acres of developed private park space per 1,000 residents.	<i>Not Applicable.</i>
<b>Policy PR1-7:</b> Special Needs/Universal Design. We attempt to provide recreational opportunities at parks for people of all ages and abilities.	<i>Not Applicable.</i>
<b>Policy PR1-8:</b> Renovation. We examine renovating existing facilities prior to building replacement facilities.	<i>Not Applicable.</i>
<b>Policy PR1-9:</b> Phased Development. We require parks be built in new communities before a significant proportion of residents move in.	<i>Not Applicable.</i>
<b>Policy PR1-10:</b> Master Plans for Individual Park Facilities. We require an individual park master plan for parks in excess of 10 acres.	<i>Not Applicable.</i>
<b>Policy PR1-11:</b> Environmental Function of Parks. We require new parks to meet environmental management objectives.	<i>Not Applicable.</i>
<b>Policy PR1-12:</b> Trails. We promote connections between parks and local trails including those managed by other public agencies.	<i>Not Applicable.</i>
<b>Policy PR1-13:</b> Equestrian Trails. We require the design, construction and maintenance of equestrian trails in Rural Residential designated areas.	<i>Not Applicable.</i>
<b>Policy PR1-14:</b> Multi-family Residential Developments. We require that new multi-family residential developments of five or more units provide recreational facilities or open space, in addition to paying adopted impact fees.	<i>Not Applicable.</i>
<b>Policy PR1-15:</b> Trail Connectivity. We strengthen and improve equestrian, bike and multipurpose trail connections within the City and work to improve trail connections into adjacent jurisdictions.	<i>Not Applicable.</i>

Plan Policy	Specific Plan Consistency
<p><b>Policy PR1-16:</b> Equestrian Master Plan. We use Homer Briggs Park as the primary focal point for the development of a Master Plan of Equestrian Trails in the Rural Residential area.</p>	<p><i>Not Applicable.</i></p>
<p><b>Goal PR2:</b> A range of recreational programs provided by public, private and non-profit organizations that meet the needs of the community’s varied interests, age groups and abilities.</p>	
<p><b>Policy PR2-1:</b> Participation. We program park facilities to maximize utilization and participation, while considering park size, location and population served.</p>	<p><i>Not Applicable.</i></p>
<p><b>Policy PR2-2:</b> Needs Assessment. We track the needs and priorities for recreational programming and look for ways to meet demand.</p>	<p><i>Not Applicable.</i></p>
<p><b>Policy PR2-3:</b> Community Involvement. We involve the local community in planning programs for neighborhood and community park facilities.</p>	<p><i>Not Applicable.</i></p>
<p><b>Policy PR2-4:</b> Access to Programs. We provide a range of program opportunities for residents of all income levels.</p>	<p><i>Not Applicable.</i></p>
<p><b>Policy PR2-5:</b> Partnerships. We partner with local and regional agencies, non-profit organizations and the private sector to provide a comprehensive range of recreational programs.</p>	<p><i>Not Applicable.</i></p>
<p><b>Policy PR2-6:</b> Crime Deterrents. We promote and participate in recreational programming as part of our crime prevention effort.</p>	<p><i>Not Applicable.</i></p>

### Social Resources (SR) Element

<p><b>Goal SR1:</b> A community where residents have access to information, services and goods that improve their health and well being.</p>	
<p><b>Policy SR1-1:</b> Partnering for Healthcare. We work with healthcare providers, and local, regional, state and federal agencies to attract and retain a diversity of affordable, quality healthcare and facilities for the entire community.</p>	<p><i>Not Applicable.</i></p>
<p><b>Policy SR1-2:</b> Nutrition Choices. We support the promotion of healthy nutritional food choices in the community.</p>	<p><i>Not Applicable.</i></p>
<p><b>Policy SR1-3:</b> Health Education. We promote health education, including disease prevention, mental health, nutrition and physical fitness.</p>	<p><i>Not Applicable.</i></p>

Plan Policy	Specific Plan Consistency
<p><b>Policy SR1-4:</b> Physical Activity. We encourage activities and community design that improve the physical fitness of our community members.</p>	<p><i>Not Applicable.</i></p>
<p align="center"><b>Goal SR2:</b> A range of educational and training opportunities for residents and workers of all ages and abilities that improves their life choices and provides a skilled workforce for our businesses.</p>	
<p><b>Policy SR2-1:</b> Educational Partners. We partner with educational institutions throughout the region in order to expand the range and quality of educational offerings available to the community.</p>	<p><i>Not Applicable.</i></p>
<p><b>Policy SR2-2:</b> Workforce Training. We will work with industrial organizations, businesses and educational institutions to create opportunities for workforce training.</p>	<p><i>Not Applicable.</i></p>
<p><b>Policy SR2-3:</b> Joint Use of Facilities. We partner with public and private educational institutions to jointly use facilities for both City and educational purposes.</p>	<p><i>Not Applicable.</i></p>
<p><b>Policy SR2-4:</b> Access to Schools. We work with local and regional partners to improve the safety in and around schools and to improve access for citizens of all ages and abilities to schools and community services, such as after school and other programs.</p>	<p><i>Not Applicable.</i></p>
<p><b>Policy SR2-5:</b> School Facilities. We plan and coordinate with school districts for designing and locating school facilities to meet the City’s goals, such as for health, walkability, and safety and to minimize impacts to existing neighborhoods.</p>	<p><i>Not Applicable.</i></p>
<p align="center"><b>Goal SR3:</b> A range of community and leisure programs and activities provided by public, private and non-profit organizations that meet the needs of the community’s varied interests, age groups and abilities.</p>	
<p><b>Policy SR3-1:</b> Partnerships. We partner with local and regional agencies, non-profit organizations and the private sector to provide a comprehensive range of community activities and events to citizens.</p>	<p><i>Not Applicable.</i></p>
<p><b>Policy SR3-2:</b> Needs Assessment. We track the needs and priorities for community services and look for ways to meet demands and avoid duplication of offerings.</p>	<p><i>Not Applicable.</i></p>
<p><b>Policy SR3-3:</b> Program Outreach. We promote information about leisure activities, classes, special events and other services and activities to our community.</p>	<p><i>Not Applicable.</i></p>
<p><b>Policy SR3-4:</b> Community Events. We plan and actively participate in regularly scheduled community events and seasonal or yearly citywide events.</p>	<p><i>Not Applicable.</i></p>

Plan Policy	Specific Plan Consistency
<p><b>Policy SR3-5:</b> Community Activities as Crime Deterrents. We promote and participate in community activities as part of our crime prevention efforts.</p>	<p><i>Not Applicable.</i></p>
<p><b>Goal SR4:</b> City libraries that connect community members of all ages and abilities to a broad range of programs, communication and informational resources.</p>	
<p><b>Policy SR4-1:</b> Community Needs. We identify and monitor community needs for library services, technologies and facilities, and tailor them to effectively meet those needs.</p>	<p><i>Not Applicable.</i></p>
<p><b>Policy SR4-2:</b> Interagency Coordination. We leverage relationships with outside agencies, educational institutions and neighboring jurisdictions to share library resources to the benefit of Ontario residents.</p>	<p><i>Not Applicable.</i></p>
<p><b>Policy SR4-3:</b> Library Outreach. We outreach to the community to increase the patronage of the library.</p>	<p><i>Not Applicable.</i></p>
<p><b>Policy SR4-4:</b> Coordination with Other Community Services. We coordinate library programs with other recreational and community programs and facilities.</p>	<p><i>Not Applicable.</i></p>
<p><b>Policy SR4-5:</b> Focal Points of the Community. We design and program Ontario’s libraries as focal points for community engagement, including public outreach and community events.</p>	<p><i>Not Applicable.</i></p>
<p><b>Policy SR4-6:</b> Robert E. Ellingwood Model Colony History Room. We work with the Museum of History and Art, Ontario in order to collect, preserve and display artifacts and images from Ontario’s heritage and connect the City’s past to the present through the History Room.</p>	<p><i>Not Applicable.</i></p>
<p><b>Goal SR5:</b> Local heritage, entertainment and cultural experiences that enrich the lives of Ontario’s residents, workers, and visitors and serve to attract residents and businesses to the City.</p>	
<p><b>Policy SR5-1:</b> Provision of Entertainment and Culture. We support a range of entertainment and cultural experiences such as public art, exhibitions and performances.</p>	<p><i>Not Applicable.</i></p>
<p><b>Policy SR5-2:</b> Local Heritage Education. We partner with educational providers to promote culture and heritage.</p>	<p><i>Not Applicable.</i></p>
<p><b>Policy SR5-3:</b> Public Art. We encourage public art in buildings, parks, open spaces and other public and private spaces.</p>	<p><i>Not Applicable.</i></p>



Plan Policy	Specific Plan Consistency
<p><b>Policy SR5-4:</b> Private-Public Sector Events. We partner with private and nonprofit sectors to provide and promote participation in cultural activities including fairs, festivals and other events geared to neighborhoods, the City as a whole and the region.</p>	<p><i>Not Applicable.</i></p>
<p><b>Policy SR5-5:</b> Promotion of Ontario Artists and Musicians. We promote awareness of entertainment and culture produced in Ontario.</p>	<p><i>Not Applicable.</i></p>

# B1

## APPENDIX GREENHOUSE GAS EMISSIONS

### B1.1 CEQA Thresholds and Screening Tables

The Ontario Climate Action Plan (CAP) includes reducing 39,769 Metric Tons of Carbon Dioxide Equivalents per year from new development by 2020 as compared to the 2020 unmitigated conditions. This requires new development to be 25% more efficient. Reductions related to transportation, water, solid waste, energy, and renewable energy sources all play a part in gaining this level of efficiency within new development.

The purpose of this Screening Table is to provide preliminary guidance for the Colony Commerce Center Specific Plan in measuring the reduction of greenhouse gas emissions. The actual design features, choices, and construction measures to be incorporated into the development projects will be presented during the Development Plan submittal process to the City.

The Screening Table assigns points for each option incorporated into a project as mitigation or a project design feature (collectively referred to as “feature”). The point values correspond to the minimum emissions reduction expected from each feature. The menu of features allows maximum flexibility and options for how development within the Colony Commerce Center Specific Plan can implement the GHG reduction measures.

The point levels are based upon improvements compared to 2008 emission levels of efficiency. Projects within the Specific

Plan that garner at least 100 points will be consistent with the reduction quantities anticipated in the City’s CAP.

As such, those projects that garner a total of 100 points or greater would not require quantification of project specific GHG emissions. Consistent with CEQA Guidelines, such projects would be determined to have a less than significant individual and cumulative impact for GHG emissions.

CEQA THRESHOLDS AND SCREENING TABLES

**Table 2: Screening Table for Implementation of GHG Reduction Measures for Commercial/Industrial Development**

Feature	Description	Assigned Point Values	Project Points
<b>Reduction Measure PS E3: Commercial/Industrial Energy Efficiency Development</b>			
<b>Building Envelope</b>			
Insulation	2008 baseline (walls R-13; roof/attic R-30)	0 points	<b>15</b>
	Modestly Enhanced Insulation (walls R-13, roof/attic R-38))	15 points	
	Enhanced Insulation (rigid wall insulation R-13, roof/attic R-38)	18 points	
	Greatly Enhanced Insulation (spray foam insulated walls R-15 or higher, roof/attic R-38 or higher) <i>(Applies to the conditioned space, defined as those areas within the building that have air conditioning and heating.)</i>	20 points	
Windows	2008 Baseline Windows (0.57 U-factor, 0.4 solar heat gain coefficient [SHGC])	0 points	<b>8</b>
	Modestly Enhanced Window Insulation (0.4 U-factor, 0.32 SHGC)	7 points	
	Enhanced Window Insulation (0.32 U-factor, 0.25 SHGC)	8 points	
	Greatly Enhanced Window Insulation (0.28 or less U-factor, 0.22 or less SHGC) <i>(Applies to the conditioned space, defined as those areas within the building that have air conditioning and heating.)</i>	12 points	
Cool Roof	Modest Cool Roof (CRRC Rated 0.15 aged solar reflectance, 0.75 thermal emittance)	12 points	<b>12</b>
	Enhanced Cool Roof (CRRC Rated 0.2 aged solar reflectance, 0.75 thermal emittance)	14 points	
	Greatly Enhanced Cool Roof ( CRRC Rated 0.35 aged solar reflectance, 0.75 thermal emittance)	16 points	
Air Infiltration	Minimizing leaks in the building envelope is as important as the insulation properties of the building. Insulation does not work effectively if there is excess air leakage.		<b>-</b>
	Air barrier applied to exterior walls, caulking, and visual inspection such as the HERS Verified Quality Insulation Installation (QII or equivalent)	12 points	
	Blower Door HERS Verified Envelope Leakage or equivalent <i>(Applies to the conditioned space, defined as those areas within the building that have air conditioning and heating.)</i>	10 points	
Thermal Storage of Building	Thermal storage is a design characteristic that helps keep a constant temperature in the building. Common thermal storage devices include strategically placed water filled columns, water storage tanks, and thick masonry walls.		

**CEQA THRESHOLDS AND SCREENING TABLES**

Feature	Description	Assigned Point Values	Project Points
	Modest Thermal Mass (10% of floor or 10% of walls 12" or more thick exposed concrete or masonry with no permanently installed floor covering such as carpet, linoleum, wood or other insulating materials)	4 points	
	Enhanced Thermal Mass (20% of floor or 20% of walls 12" or more thick exposed concrete or masonry with no permanently installed floor covering such as carpet, linoleum, wood or other insulating materials)	6 points	-
	Enhanced Thermal Mass (80% of floor or 80% of walls 12" or more thick exposed concrete or masonry with no permanently installed floor covering such as carpet, linoleum, wood or other insulating materials)	24 points	
<b>Indoor Space Efficiencies</b>			
Heating/ Cooling Distribution System	Minimum Duct Insulation (R-4.2 required)	0 points	<b>14</b>
	Modest Duct insulation (R-6)	8 points	
	Enhanced Duct Insulation (R-8)	10 points	
	Distribution loss reduction with inspection (HERS Verified Duct Leakage or equivalent) <i>(Applies to the conditioned space, defined as those areas within the building that have air conditioning and heating.)</i>	14 points	
Space Heating/ Cooling Equipment	2008 Minimum HVAC Efficiency (EER 13/60% AFUE or 7.7 HSPF)	0 points	-
	Improved Efficiency HVAC (EER 14/65% AFUE or 8 HSPF)	7 points	
	High Efficiency HVAC (EER 15/72% AFUE or 8.5 HSPF)	8 points	
	Very High Efficiency HVAC (EER 16/80% AFUE or 9 HSPF) <i>(Applies to the conditioned space, defined as those areas within the building that have air conditioning and heating.)</i>	12 points	
Commercial Heat Recovery Systems	Heat recovery strategies employed with commercial laundry, cooking equipment, and other commercial heat sources for reuse in HVAC air intake or other appropriate heat recovery technology. Point values for these types of systems will be determined based upon design and engineering data documenting the energy savings.	TBD	-
Water Heaters	2008 Minimum Efficiency (0.57 Energy Factor)	0 points	-
	Improved Efficiency Water Heater (0.675 Energy Factor)	14 points	
	High Efficiency Water Heater (0.72 Energy Factor)	16 points	
	Very High Efficiency Water Heater (0.92 Energy Factor)	19 points	
	Solar Pre-heat System (0.2 Net Solar Fraction)	4 points	
	Enhanced Solar Pre-heat System (0.35 Net Solar Fraction)	8 points	
Daylighting	Daylighting is the ability of each room within the building to provide outside light during the day reducing the need for artificial lighting during daylight hours.		



**CEQA THRESHOLDS AND SCREENING TABLES**

<b>Feature</b>	<b>Description</b>	<b>Assigned Point Values</b>	<b>Project Points</b>
	All peripheral rooms within building have at least one window or skylight	1 points	<b>7</b>
	All rooms within building have daylight (through use of windows, solar tubes, skylights, etc.)	5 points	
	All rooms daylighted	7 points	
<b>Artificial Lighting</b>	2008 Minimum (required)	0 points	<b>9</b>
	Efficient Lights (25% of in-unit fixtures considered high efficacy. High efficacy is defined as 40 lumens/watt for 15 watt or less fixtures; 50 lumens/watt for 15-40 watt fixtures, 60 lumens/watt for fixtures >40watt)	9 points	
	High Efficiency Lights (50% of in-unit fixtures are high efficacy)	12 points	
	Very High Efficiency Lights (100% of in-unit fixtures are high efficacy)	14 points	
<b>Appliances</b>	Energy Star Commercial Refrigerator (new)	4 points	<b>8</b>
	Energy Star Commercial Dish Washer (new)	4 points	
	Energy Star Commercial Cloths Washing	4 points	
<b>Miscellaneous Commercial/Industrial Building Efficiencies</b>			
<b>Building Placement</b>	North/South alignment of building or other building placement such that the orientation of the buildings optimizes conditions for natural heating, cooling, and lighting.	6 point	<b>6</b>
<b>Shading</b>	At least 90% of south-facing glazing will be shaded by vegetation or overhangs at noon on June 21st.	6 Points	-
<b>Other</b>	This allows innovation by the applicant to provide design features that increases the energy efficiency of the project not provided in the table. Note that engineering data will be required documenting the energy efficiency of innovative designs and point values given based upon the proven efficiency beyond Title 24 Energy Efficiency Standards.	TBD	-
<b>Existing Commercial building Retrofits</b>	The applicant may wish to provide energy efficiency retrofit projects to existing commercial buildings to further the point value of their project. Retrofitting existing commercial buildings within the City is a key reduction measure that is needed to reach the reduction goal. The potential for an applicant to take advantage of this program will be decided on a case by case basis and must have the approval of the Ontario Planning Department. The decision to allow applicants the ability to participate in this program will be evaluated based upon, but not limited to the following:	TBD	-

**CEQA THRESHOLDS AND SCREENING TABLES**

Feature	Description	Assigned Point Values	Project Points
	<p>Will the energy efficiency retrofit project benefit low income or disadvantaged communities?</p> <p>Does the energy efficiency retrofit project fit within the overall assumptions in the reduction measure associated with commercial building energy efficiency retrofits?</p> <p>Does the energy efficiency retrofit project provide co-benefits important to the City?</p> <p>Point value will be determined based upon engineering and design criteria of the energy efficiency retrofit project.</p>		
<b>Reduction Measure PS E4: Commercial/Industrial Renewable Energy</b>			
Photovoltaic	<p>Solar Photovoltaic panels installed on commercial buildings or in collective arrangements within a commercial development such that the total power provided augments:</p> <p>Solar Ready Roofs (sturdy roof and electric hookups)</p> <p>10 percent of the power needs of the project</p> <p>20 percent of the power needs of the project</p> <p>30 percent of the power needs of the project</p> <p>40 percent of the power needs of the project</p> <p>50 percent of the power needs of the project</p> <p>60 percent of the power needs of the project</p> <p>70 percent of the power needs of the project</p> <p>80 percent of the power needs of the project</p> <p>90 percent of the power needs of the project</p> <p>100 percent of the power needs of the project</p>	<p>2 points</p> <p>8 points</p> <p>14 points</p> <p>20 points</p> <p>26 points</p> <p>32 points</p> <p>38 points</p> <p>44 points</p> <p>50 points</p> <p>56 points</p> <p>60 points</p>	-
Wind turbines	<p>Some areas of the City lend themselves to wind turbine applications. Analysis of the areas capability to support wind turbines should be evaluated prior to choosing this feature.</p> <p>Wind turbines as part of the commercial development such that the total power provided augments:</p> <p>10 percent of the power needs of the project</p> <p>20 percent of the power needs of the project</p> <p>30 percent of the power needs of the project</p> <p>40 percent of the power needs of the project</p> <p>50 percent of the power needs of the project</p> <p>60 percent of the power needs of the project</p> <p>70 percent of the power needs of the project</p>	<p>8 points</p> <p>14 points</p> <p>20 points</p> <p>26 points</p> <p>32 points</p> <p>38 points</p> <p>44 points</p>	-

**CEQA THRESHOLDS AND SCREENING TABLES**

Feature	Description	Assigned Point Values	Project Points
	80 percent of the power needs of the project	50 points	
	90 percent of the power needs of the project	56 points	
	100 percent of the power needs of the project	60 points	
Off-site renewable energy project	The applicant may submit a proposal to supply an off-site renewable energy project such as renewable energy retrofits of existing commercial/industrial that will help implement reduction measures associated with existing buildings. These off-site renewable energy retrofit project proposals will be determined on a case by case basis accompanied by a detailed plan documenting the quantity of renewable energy the proposal will generate. Point values will be based upon the energy generated by the proposal.	TBD	-
Other Renewable Energy Generation	The applicant may have innovative designs or unique site circumstances (such as geothermal) that allow the project to generate electricity from renewable energy not provided in the table. The ability to supply other renewable energy and the point values allowed will be decided based upon engineering data documenting the ability to generate electricity.	TBD	-
<b>Reduction Measure PS W2: Commercial/Industrial Water Conservation</b>			
<b>Irrigation and Landscaping</b>			
Water Efficient Landscaping	Eliminate conventional turf from landscaping Only moderate water using plants Only low water using plants Only California Native landscape that requires no or only supplemental irrigation	0 points 3 points 4 points 8 points	<b>4</b>
Trees	Increase tree planting in parking areas 50% beyond City Code requirements	TBD	-
Water Efficient irrigation systems	Low precipitation spray heads < .75"/hr or drip irrigation Weather based irrigation control systems combined with drip irrigation (demonstrate 20 reduced water use)	1 point 5 points	<b>1</b>
Recycled Water	Recycled water connection (purple pipe) to irrigation system on site	5 points	<b>5</b>
Storm water Reuse Systems	Innovative on-site stormwater collection, filtration and reuse systems are being developed that provide supplemental irrigation water and provide vector control. These systems can greatly reduce the irrigation needs of a project. Point values for these types of systems will be determined based upon design and engineering data documenting the water savings.	TBD	-



**CEQA THRESHOLDS AND SCREENING TABLES**

Feature	Description	Assigned Point Values	Project Points
<b>Potable Water</b>			
Showers	Water Efficient Showerheads (2.0 gpm)	3 points	-
Toilets	Water Efficient Toilets/Urinals (1.5gpm)	3 points	-
	Waterless Urinals (note that commercial buildings having both waterless urinals and high efficiency toilets will have a combined point value of 6 points)	4 points	
Faucets	Water Efficient faucets (1.28gpm)	3 points	-
Commercial Dishwashers	Water Efficient dishwashers (20% water savings)	4 points	<b>4</b>
Commercial Laundry Washers	Water Efficient laundry (15% water savings) High Efficiency laundry Equipment that captures and reuses rinse water (30% water savings)	3 points 6 points	-
Commercial Water Operations Program	Establish an operational program to reduce water loss from pools, water features, etc., by covering pools, adjusting fountain operational hours, and using water treatment to reduce draw down and replacement of water. Point values for these types of plans will be determined based upon design and engineering data documenting the water savings.	TBD	-
<b>Reduction Measure PS T1: Land Use Based Trips and VMT Reduction</b>			
Mixed Use	Mixes of land uses that complement one another in a way that reduces the need for vehicle trips can greatly reduce GHG emissions. The point value of mixed use projects will be determined based upon traffic studies that demonstrate trip reductions and/or reductions in vehicle miles traveled	TBD	-
Local Retail Near Residential (Commercial only Projects)	Having residential developments within walking and biking distance of local retail helps to reduce vehicle trips and/or vehicle miles traveled.  The point value of residential projects in close proximity to local retail will be determined based upon traffic studies that demonstrate trip reductions and/or reductions in vehicle miles traveled	TBD	-
<b>Reduction Measure PS T2: Bicycle Master Plan</b>			
Bicycle Infrastructure	Ontario's Bicycle Master Plan is extensive and describes the construction on 11.5 miles of Class I bike paths and 23 miles of Class II and Class III bikeways to build upon the current 8 miles of bikeways.	TBD	-
	Provide bicycle paths within project boundaries.	TBD	
	Provide bicycle path linkages between project site and other land uses.	2 points	
	Provide bicycle path linkages between project site and transit.	5 points	

**CEQA THRESHOLDS AND SCREENING TABLES**

Feature	Description	Assigned Point Values	Project Points
<b>Reduction Measure PS T3: Electric Vehicle Infrastructure</b>			
Electric Vehicles	Provide public charging station for use by an electric vehicle. <i>(ten points for each charging station within the facility)</i>	10 points	<b>10</b>
<b>Reduction Measure PS T4: Employee Based Trip &amp;VMT Reduction Policy</b>			
Compressed Work Week	Reduce the number of days per week that employees need to be on site will reduce the number of vehicle trips associated with commercial/industrial development. Compressed work week such that full time employees are on site: 5 days per week 4 days per week on site 3 days per week on site	TBD	-
Car/Vanpools	Car/vanpool program Car/vanpool program with preferred parking Car/vanpool with guaranteed ride home program Subsidized employee incentive car/vanpool program Combination of all the above	TBD	-
Employee Bicycle/ Pedestrian Programs	Complete sidewalk to residential within ½ mile Complete bike path to residential within 3 miles Bike lockers and secure racks Showers and changing facilities Subsidized employee walk/bike program (Note combine all applicable points for total value)	TBD	-
Shuttle/Transit Programs	Local transit within ¼ mile Light rail transit within ½ mile Shuttle service to light rail transit station Guaranteed ride home program Subsidized Transit passes Note combine all applicable points for total value	TBD	-
CRT	Employer based Commute Trip Reduction (CRT). CRTs apply to commercial, offices, or industrial projects that include a reduction of vehicle trip or VMT goal using a variety of employee commutes trip reduction methods. The point value will be determined based upon a TIA that demonstrates the trip/VMT reductions. Suggested point ranges:  Incentive based CRT Programs (1-8 points) Mandatory CRT programs (5-20 points)	TBD	-
Other Trip Reductions	Other trip or VMT reduction measures not listed above with TIA and/or other traffic data supporting the trip and/or VMT for the project.	TBD	-
<b>Total Points from Commercial/Industrial Project:</b>			<b>103</b>

**Colony Commerce Center West**

**Specific Plan**

Draft | March 2017

# CITY OF ONTARIO

Agenda Report  
October 3, 2017

SECTION:  
PUBLIC HEARINGS

**SUBJECT: A PUBLIC HEARING TO CONSIDER THE ISSUANCE OF QUALIFIED RESIDENTIAL RENTAL PROJECT BONDS FOR SEASONS AT ONTARIO SENIOR APARTMENTS, LOCATED AT 955 NORTH PALMETTO AVENUE**

**RECOMMENDATION:** That the following actions be taken by the respective bodies:

- (A) That the City Council hold a public hearing to consider approval of a resolution authorizing the issuance of qualified residential rental project bonds in one or more series (the "Bonds") in a principal amount not to exceed \$8,000,000 for the purpose of financing the acquisition and rehabilitation of Seasons at Ontario Senior Apartments (the "Project"), approving and authorizing the execution and delivery of any and all documents necessary to issue the bonds and implement the resolution, and ratifying and approving any action taken in connection with the bonds; and
- (B) That the Ontario Housing Authority Board ("Authority") approve the term sheet as shown in Exhibit A.

**COUNCIL GOALS: Focus Resources in Ontario's Commercial and Residential Neighborhoods Pursue City's Goals and Objectives by Working with Other Governmental Agencies**

**FISCAL IMPACT:** All costs and expenses related to the bond financing will be paid by LINC Ontario Apartments LP. The City will have no liability for payment of the bonds, as the bonds are payable solely from the revenues from the property. Additionally, the City will receive an annual bond issuer fee in the estimated amount of \$9,309.

The Authority would extend its existing ground lease and loan for this property an additional 20 years from the existing term to December 31, 2072. As part of this extension, LINC Ontario Apartments LP will pay the Authority:

- Two hundred thousand dollars (\$200,000) at escrow closing for the ground lease extension fee (\$100,000) and a loan payment (\$100,000); and

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

Prepared by: Julie Bjork  
Department: Housing/Municipal Services

City Manager  
Approval: 

Submitted to Council/O.H.A. 10/03/2017  
Approved: \_\_\_\_\_  
Continued to: \_\_\_\_\_  
Denied: \_\_\_\_\_

- Depending on the cash flow performance of the Project, 75% of the residual cash flow as loan payments on the existing debt of \$4,190,156 (principal and interest as of December 31, 2017).

**BACKGROUND:** Seasons at Ontario, located at 955 North Palmetto Avenue is an existing 80-unit affordable senior housing development that was originally built in 1998 utilizing tax credit financing along with financial assistance from the Ontario Redevelopment Agency (“Agency”), in the form of a \$2.6 million loan and a ground lease. The Agency was abolished as part of the statewide abolishment of all redevelopment agencies, and these assets were transferred to the Authority.

While the Project has been successfully managed to provide affordable housing within Ontario, the existing debt senior in priority to the Agency loans has significantly limited the ability of LINC Housing Corporation to address needed property and system upgrades and to make payments on the existing Authority residual receipts note.

Recently, LINC Housing Corporation, located in Long Beach, CA, approached Ontario staff about the possibility of changing the ownership and refinancing the Project. LINC Housing Corporation’s proposal would provide for \$3.1 million in funding for the rehabilitation of the Project, eliminate existing higher priority debt on the Project that had unfavorable financing terms, and extend the existing affordability term.

The key highlights of the LINC proposal include:

- Acquisition of the property by a new ownership entity that includes LINC Housing Corporation as the general partner. The new partnership will assume the Authority’s existing loan including principal and accrued interest;
- Elimination of the existing Ontario Mountain Avenue Partners (“OMAP”), which is currently in first position. With the elimination of this debt, cash flow would become available to make payments on the existing Authority loan;
- Interior and exterior rehabilitation totaling approximately \$3.1 million. This rehabilitation will include exterior painting of the buildings; replacement of water heaters, HVAC systems, new dual pane low-e windows, LED-light fixtures, new kitchen cabinetry and Energy Star appliances, installation of low water use landscaping, and creation of five (5) additional ADA units;
- Extension of the existing Authority ground lease, loan, and affordability restrictions to December 31, 2072. The development is restricted to occupancy by very low and low-income seniors, many of which earn less than \$10,000 per year; and
- Allow for two manager’s units at the property to match the current tax credit restrictions.

If the resolution to issue bonds is approved, the City will request that the California Debt Limit Allocation Committee (“CDLAC”) grant up to \$8,000,000 of the private activity bond allocation set aside for Calendar Year 2017. It is anticipated that CDLAC staff will consider the requested bond amount at its November 15, 2017 allocation meeting. If approved by CDLAC, final bond documents will be prepared and reviewed by City staff, financial advisors, bond counsel, and special counsel and submitted to the City Council prior to November 30, 2017.

It is anticipated that escrow will close on or about December 1, 2017, and that rehabilitation is anticipated to begin shortly thereafter and will be completed within 12 months.



## **EXHIBIT A**

### **SEASONS AT ONTARIO TERM SHEET**

1. New ownership will acquire the property and LINC Housing Corporation will be the general partner of the new ownership entity. The new partnership will assume Ontario Housing Authority's existing loan including principal and accrued interest;
2. Amend the existing OHA loan by an additional 20 years with a new expiration date of December 31, 2072. The new owners will make an initial loan payment of \$100,000 at the close of escrow.
3. Amend the existing ground lease to extend the affordability restrictions and term an additional 20 years with a new expiration date of December 31, 2072. The new owners will pay at time of escrow closing a ground lease extension fee in the amount of \$100,000.
4. Eliminate the existing Ontario Mountain Avenue Partners ("OMAP"), which is currently in first position. With the elimination of this debt, cash flow would become available to make payments on the existing Ontario Housing Authority loan;
5. New ownership will begin substantial rehabilitation totaling approximately \$3.1 million within 15 days after escrow closing. The rehabilitation will include exterior painting of the buildings; replacement of water heaters, HVAC systems, new dual pane low-e windows, LED-light fixtures, new kitchen cabinetry and Energy Star appliances, installation of low water use landscaping, and creation of five (5) additional ADA units; and
6. Allow for two manager's units at the property to match the current tax credit restrictions.

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

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF ONTARIO, CALIFORNIA, APPROVING THE ISSUANCE OF REVENUE BONDS IN AN AGGREGATE PRINCIPAL AMOUNT NOT TO EXCEED \$8,000,000 TO FINANCE THE ACQUISITION, REHABILITATION, IMPROVEMENT AND EQUIPPING OF AN 80-UNIT MULTIFAMILY RENTAL HOUSING FACILITY FOR THE BENEFIT OF LINC HOUSING CORPORATION OR A LIMITED PARTNERSHIP TO BE ESTABLISHED BY LINC HOUSING OR AN AFFILIATE THEREOF, AND CERTAIN OTHER MATTERS RELATING THERETO.

WHEREAS, LINC Housing Corporation, a California not-for-profit public benefit corporation (the "Sponsor") has requested that the City of Ontario (the "City") participate in the issuance of one or more series of revenue bonds in an aggregate principal amount not to exceed \$8,000,000 (the "Bonds") for the acquisition, rehabilitation, improvement and equipping of an 80-unit multifamily rental housing facility located at 955 North Palmetto Avenue in the City of Ontario (the "Project") to be owned and operated by a limited partnership to be created by the Sponsor, or an affiliate thereof (the "Borrower"); and

WHEREAS, pursuant to Section 147(f) of the Internal Revenue Code of 1986 (the "Code"), the issuance of the Bonds by the City must be approved by the City because the Project is located within the territorial limits of the City; and

WHEREAS, the City Council of the City (the "City Council") is the elected legislative body of the City and is one of the "applicable elected representatives" required to approve the issuance of the Bonds under Section 147(f) of the Code; and

WHEREAS, pursuant to Section 147(f) of the Code, the City Council has, following notice duly given, held a public hearing regarding the issuance of the Bonds, and now desires to approve the issuance of the Bonds by the City.

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

SECTION 1. The foregoing recitals are true and correct.

SECTION 2. The City Council hereby approves the issuance of the Bonds by the City. It is the purpose and intent of the City Council that this resolution constitute approval of the issuance of the Bonds by the City, for the purposes of Section 147(f) of the Code, by the applicable elected representative of the governmental unit having jurisdiction over the area in which the Project is located.

SECTION 3. The officers of the City are hereby authorized and directed, jointly and severally, to do any and all things and to execute and deliver any and all documents which they deem necessary or advisable in order to carry out, give effect to and comply with the terms and intent of this resolution and the financing transaction approved hereby.

SECTION 4. This Resolution shall take effect immediately upon its adoption.

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

PASSED, APPROVED, AND ADOPTED this 3<sup>rd</sup> day of October 2017.

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

ATTEST:

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

APPROVED AS TO FORM:

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

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

I, SHEILA MAUTZ, City Clerk of the City of Ontario, DO HEREBY CERTIFY that foregoing Resolution No. 2017-    was duly passed and adopted by the City Council of the City of Ontario at their regular meeting held October 3, 2017 by the following roll call vote, to wit:

AYES:            COUNCIL MEMBERS:

NOES:           COUNCIL MEMBERS:

ABSENT:         COUNCIL MEMBERS:

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

(SEAL)

The foregoing is the original of Resolution No. 2017-    duly passed and adopted by the Ontario City Council at their regular meeting held October 3, 2017.

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

(SEAL)

# CITY OF ONTARIO

Agenda Report  
October 3, 2017

SECTION:  
ADMINISTRATIVE REPORTS/  
DISCUSSION/ACTION

**SUBJECT: CITY MANAGER EMPLOYMENT AGREEMENT**

**RECOMMENDATION:** That the City Council and Housing Authority Board approve an employment agreement (on file in the Records Management Department) with Scott Ochoa to serve as City Manager and Executive Director of the Housing Authority, respectively; and adopt a resolution in accordance with California Government Code section 36506 setting the salary for the City Manager.

**COUNCIL GOALS:** Operate in a Businesslike Manner

**FISCAL IMPACT:** Appropriations for the ongoing salary and associated benefits costs have been included in the City's baseline operating budget and the Adopted Budget for Fiscal Year 2017-18. Funding for future years' costs will be included in the respective operating budgets for those periods.

**BACKGROUND:** On September 19, 2017, the City Council gave direction to negotiate terms and conditions of employment with Scott Ochoa as a candidate for the position of City Manager/Executive Director. The subject employment agreement reflects the results of those negotiations, and it has been reviewed and approved by the City Attorney's Office.

**STAFF MEMBER PRESENTING:** Al C. Boling, City Manager

Prepared by: Al C. Boling  
Department: Citywide Administration

City Manager  
Approval: 

Submitted to Council/O.H.A. 10/03/2017

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

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

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

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

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF ONTARIO,  
CALIFORNIA, APPROVING A CITY MANAGER EMPLOYMENT  
AGREEMENT.

WHEREAS, Scott Ochoa and the City of Ontario, California (the "City") desire to enter into an Employment Agreement by which the City agrees to employ Mr. Ochoa as its City Manager effective November 20, 2017; and

WHEREAS, under the terms of the Employment Agreement, the City Manager would receive an annual salary of \$310,000; those salary adjustments and benefits as are set forth in the Executive Management Compensation and Benefits Profile; and other terms and conditions as described in the Employment Agreement; and

WHEREAS, the City Attorney prepared an Employment Agreement; and

WHEREAS, the City Council has reviewed the Employment Agreement with the City Manager, 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 Employment Agreement attached hereto as Exhibit "A" is hereby approved.

SECTION 2. The initial salary of \$310,000 provided for in the Employment Agreement shall be effective November 20, 2017, with a 3% salary increase effective January 7, 2018, and future salary increases shall be consistent with those granted in the Executive Management Compensation and Benefits Profile.

SECTION 3. This Resolution shall become effective immediately upon its passage.

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

PASSED, APPROVED, AND ADOPTED this 3<sup>rd</sup> day of October, 2017.

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PAUL S. LEON, MAYOR



ATTEST:

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

APPROVED AS TO LEGAL FORM:

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

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

I, SHEILA MAUTZ, City Clerk of the City of Ontario, DO HEREBY CERTIFY that foregoing Resolution No. 2017-    was duly passed and adopted by the City Council of the City of Ontario at their regular meeting held October 3, 2017 by the following roll call vote, to wit:

AYES:            COUNCIL MEMBERS:

NOES:           COUNCIL MEMBERS:

ABSENT:        COUNCIL MEMBERS:

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

(SEAL)

The foregoing is the original of Resolution No. 2017-    duly passed and adopted by the Ontario City Council at their regular meeting held October 3, 2017.

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

(SEAL)

**EXHIBIT A**  
**EMPLOYMENT AGREEMENT**

## EMPLOYMENT AGREEMENT

**THIS EMPLOYMENT AGREEMENT** (hereinafter referred to as the "Agreement"), by and between the CITY OF ONTARIO, a General Law City in the State of California (hereinafter referred to as "Ontario"), the ONTARIO HOUSING AUTHORITY, a public body, corporate and politic (hereinafter referred to as the "Authority") and SCOTT OCHOA, an individual (hereinafter referred to as "Ochoa") (Ontario, the Authority and Ochoa may also hereinafter be referred to as "the Parties") provides as follows:

1. **Employment** - Ontario and the Authority hereby agree to employ Ochoa as the City Manager for the City of Ontario ("City Manager") and as Executive Director of the Ontario Housing Authority ("Executive Director") and Ochoa agrees and does accept employment as the City Manager and the Executive Director.

2. **Duties** - As City Manager and Executive Director, Ochoa shall perform the functions and duties specified by state law and local rules, laws and regulations, the applicable sections of the Ontario Municipal Code, as well as such other legally permissible duties as the members of the City Council of Ontario ("City Council") and the Board of Directors of the Housing Authority ("Authority Board") may direct from time to time.

3. **Term** - Ochoa's employment as City Manager and Executive Director shall be for a term beginning as of November 20, 2017, and ending four (4) years thereafter, unless extended by mutual agreement. This Agreement shall have a renewal period whereas, one year prior to the end of the Agreement, Ontario and the Authority will notify Ochoa in writing whether, or not, they will renew this Agreement or terminate his employment. Contingent upon the action taken, the following will occur:

A. If Ontario and the Authority give notice to Ochoa that this Agreement will not be renewed, Ochoa will continue his employment for one (1) year after the notice of non-renewal, unless otherwise agreed to in writing among the Parties, and subject to Ochoa's right to voluntarily resign in accordance with Section 4(c) of this Agreement; and

B. In the event written notice is not given for non-renewal, as provided for in this Agreement, the term of this Agreement shall be extended one (1) day at a time, so that there will always be one (1) year remaining on the term of this Agreement until such notice is given.

#### 4. **Termination and Severance Pay**

A. Nothing shall prevent Ontario and the Authority from terminating this Agreement, by written notice, prior to the end of the term hereof, provided that such vote to terminate may not take place in the six (6) months after the seating of any member of the City Council unless such vote is "for cause" as defined in Section 4.B. hereof, and further provided that the following occurs:

- (1) On the date of separation, Ochoa shall be entitled to:

- (a) A severance payment equal to 12 months' of Ochoa's base salary or equal to the number of months remaining on the unexpired term of this Agreement, whichever is less; and
- (b) To the extent allowed by Government Code section 53261 the cash value of medical and dental insurance for 12 months or until Ochoa obtains other employment; and
- (c) The full cash value of all accrued, but unused annual, management and administrative leave.

B. Should Ochoa be terminated "for cause" as defined here, then he shall receive no severance pay. For the purposes of this Agreement, "for cause" shall only mean (1) the commission of a felony or crime involving moral turpitude, as defined by relevant case law, substantially related to the functions and duties of the City Manager or the Executive Director, or (2) the intentional violation of specific written direction of at least a majority of the City Council to the City Manager or of at least a majority of the Authority Board to the Executive Director as long as that direction would not cause Ochoa to violate any federal, state or local law, or the ICMA Code of Ethics. For purposes of this section, "written direction" includes approved minutes of City Council or Authority Board proceedings which evidence direction of the City Council or Authority Board.

C. In the event Ochoa voluntarily resigns his position with Ontario and the Authority before expiration of the aforesaid term of his employment, Ochoa shall give Ontario and the Authority not less than one (1) month written notice in advance of his resignation date unless the parties agree otherwise.

D. By entering into this Agreement, Ochoa expressly waives any right he may have had or may have claimed to have had to be terminated only "for cause," except as provided herein.

## **5. Salary and Benefits**

A. Ontario and the Authority agree to pay Ochoa for his services rendered a base salary of three hundred and ten thousand dollars (\$310,000) per year, less required and authorized deductions, in installments at the same time as other employees of Ontario and the Authority are paid.

B. Following the annual performance evaluation of Ochoa, as set forth in Section 6(A), Ontario and the Authority may elect, in their sole discretion, to grant to Ochoa performance incentive pay in recognition of his performance.

C. In addition to the aggregate salary, Ochoa shall receive those benefits as are set forth in the Executive Management Compensation and Benefits Profile, incorporated herein by reference, as they now exist or may be modified in the future, which are generally described as follows: medical coverage, dental coverage, life insurance, annual leave, administrative leave, holidays, auto allowance or vehicle as provided in Section 10 hereof, long and short-term disability insurance, PERS contribution and deferred compensation and shall

receive the same across the board or cost of living salary increases as are provided Executive Management.

D. In compliance with the Public Employees Pension Reform Act (PEPRA), Ochoa shall pay the employee's share of retirement contributions.

E. On the first day of the first full pay period in calendar year 2018, Ochoa will be granted the same base salary increase as was granted Executive Management, effective July 9, 2017.

## **6. Performance Evaluation**

A. The City Council and the Authority Board shall review and evaluate the performance of Ochoa at least once annually in advance of the adoption of the annual operating budget. Said review and evaluation shall be in accordance with specific criteria developed jointly by Ontario and the Authority and Ochoa. Said criteria may be added to or deleted from as the City Council may from time to time determine, in consultation with Ochoa. Further, the City Council and the Authority Board shall provide Ochoa with a summary written statement of the findings of the City Council and the Authority Board and provide an adequate opportunity to Ochoa to discuss his evaluation with the City Council and the Authority Board. The failure of the City Council and the Authority Board to conduct an annual review and evaluation and/or to provide Ochoa with a statement of its findings shall not affect the parties' rights to terminate this Agreement pursuant to Section 4 hereof. Annually, the City Council and the Authority Board and Ochoa shall define such goals and performance objectives which they determine necessary for the proper operation of Ontario and the Authority and in the attainment of the City Council's and the Authority Board's policy objectives and shall further establish a relative priority among those various goals and objectives, said goals and objectives to be reduced to writing. They shall generally be attainable within the time limitations as specified and the annual operation and capital budgets and appropriations, provided that the failure of the City Council and the Authority Board to define such goals and performance objectives, to establish a relative priority among those various goals and objectives, and/or to reduce them to writing shall not affect the parties rights to terminate this Agreement pursuant to Section 4 hereof.

B. In effecting the provisions of this Section 6, the City Council and Authority Board and Ochoa mutually agree to abide by the provisions of applicable law.

7. **Leave and Hours of Work** - It is recognized that Ochoa must devote a great deal of time outside the normal office hours to business of Ontario and the Authority. So, notwithstanding the applicability of provisions of the Compensation and Executive Benefits Profile as described in Paragraph 5.C. above, Ochoa will be given a leave bank of 80 hours at the start of his employment and will be allowed to take compensatory time off as shall be deemed appropriate during said normal office hours. In recognition of his prior experience, Ochoa shall accrue annual leave as an employee with 16 or more years of service under the Executive Management Compensation and Benefits Profile.

8. **Annual Physical Examination** - Ochoa is entitled to a complete physical examination annually; cost is not to exceed One Thousand Dollars (\$1,000). If not utilized for a physical examination this amount may be utilized for any health-related expenditures permitted.

9. **Outside Activities** - Ochoa shall not spend more than ten (10) hours per week in teaching, counseling or other non-Ontario and the Authority connected business without the prior approval of the City Council and Authority.

10. **Vehicle** - Ochoa's duties require use at all times of a fully equipped vehicle during his employment with Ontario. As set forth in Section 5.C. Ontario and the Authority shall provide Ochoa a fully equipped vehicle of a type to be mutually agreed upon between Ochoa and Ontario, or Ochoa shall receive an auto allowance in lieu of the subject vehicle. Should Ochoa later decide to take a vehicle in lieu of an auto allowance, Ontario and the Authority shall be responsible for paying for liability, property damage and comprehensive insurance and for the purchase, operation, maintenance, repair and regular replacement of said vehicle. It is expected that Ochoa's spouse may make incidental use of the vehicle.

11. **Cellular Telephone and Computer Purchase** - Ontario and the Authority shall provide, during the term of this Agreement, at no cost to Ochoa, a Cellular Telephone, a personal computer and a tablet (e.g., iPad) for unrestricted home use, including dedicated telephone line, if necessary; hardware accessories; and software which is commonly used in the Ontario and the Authority workplace environment. Upon termination, all computer hardware and software may, at Ochoa's option, be purchased by Ochoa. The purchase price of such hardware and software to Ochoa shall be fixed as the actual acquisition cost of the system components and depreciated by fifty percent (50%) per year that Ochoa is in possession of said computer system components. Should Ochoa not exercise this option, all such computer hardware and software shall be returned to Ontario.

12. **Dues, Professional Activities and Incidental Benefits** - Ontario and the Authority shall pay all reasonable dues, subscriptions, travel expenses and other costs reasonably associated with performance of Ochoa's duties as City Manager and Executive Director and the continuance of his professional development, including up to six (6) units per year of college credit. Ontario and the Authority acknowledge for purposes of this Agreement that Ochoa in the performance of his duties may be required to attend certain business or social events incidental to his duties as City Manager and Executive Director which may, under the requirements of the Political Reform Act, constitute the receipt of gifts from time to time. The receipt of such gifts, provided they are accepted and disclosed in a manner permitted by the Political Reform Act, is expressly permitted under the terms and conditions of this Agreement and shall not otherwise be deemed to be inconsistent with other Ontario and Authority rules or policies.

13. **Bonding** - Ontario and the Authority shall bear the full cost of any fidelity or other bonds required of Ochoa under any law or ordinance.

14. **Authority of City Manager** - Ontario and the Authority agree that Ochoa will exercise his authority as provided in Section 2-3.105 through Section 2-3.107 of the City of Ontario Municipal Code. Any attempt to significantly diminish this authority by the City Council or the Authority Board may, at Ochoa's discretion, be deemed to be a termination pursuant to Section 4.0 of this Agreement. Notwithstanding Section 2-3.107 of the City of Ontario Municipal Code, the City Council shall reserve the right to confirm all appointments to



the positions of Police Chief and Fire Chief. The foregoing provisions of Section 2-3.107 shall not apply to limit the future authority of the City Council pursuant to new ordinances, changes in existing ordinances, or change in form of city government; e.g., conversion to Charter City status; provided, however, that to the extent that such new ordinances or changes to existing ordinances or form of government eliminate the City Council-City Manager form of government or substantially and unreasonably diminish the City Manager's current authority under existing ordinances and the existing form of city government, then, at Ochoa's option, Ontario and the Authority will be deemed to have terminated this Agreement pursuant to Section 4, et. seq. hereof.

**15. Other Terms and Conditions of Employment**

A. Ontario and the Authority in consultation with Ochoa, shall fix any such other terms and conditions of employment, as it may be determined, from time to time, relating to the performance of Ochoa, provided such terms and conditions are not inconsistent with or in conflict with the provisions of this Agreement, Ontario's Municipal Code or any other federal, state or local law.

B. Ontario and the Authority shall hereinafter and in consultation with Ochoa reasonably allocate the compensation and benefits paid to Ochoa pursuant to this Agreement.

C. All provisions of California State Law and Ontario's Municipal Code, Ordinances and Rules and Regulations relating to holiday and other fringe benefits as they now exist or hereafter may be amended, shall also apply to Ochoa. Annual leave benefits, as well as pension benefits shall begin upon commencement of employment.

**16. No Reduction of Benefits** - Ontario and the Authority shall not at any time during the term of this Agreement, reduce the salary, compensation or other financial benefits of Ochoa, except to the degree of such a reduction across-the-board for all employees of Ontario.

**17. Dispute Resolution**

A. Mediation: The Parties agree to mediate any dispute or claim arising between them out of this Agreement before resorting to arbitration or court action. The mediation shall be conducted by and through a mediation provider or service mutually agreed to between the Parties. The mediation shall take place within sixty (60) days from the date either Party presents a claim or dispute pertaining to any terms of this Agreement. Mediation fees, if any, shall be divided equally among the Parties involved. If, for any dispute or claim to which this paragraph applies, any Party (i) commences an action without first attempting to resolve the matter through mediation, or (ii) before commencement of an action, refuses to mediate after a request has been made, then that Party shall not be entitled to recover attorneys' fees pursuant to Section 21.J., even if they would otherwise be available to that Party in any such action.

B. Arbitration of Disputes: Ochoa and Ontario and the Authority mutually consent to the resolution by arbitration of all claims or controversies, whether or not arising out of Ochoa's employment (or its termination), that Ochoa may have against Ontario, the Authority, their administrators, employees or agents, or against the City Council and the Authority Board or that Ontario and the Authority may have against Ochoa. The claims covered by this provision

include, but are not limited to, claims for wages or other compensation due; claims for breach of any contract, or covenant (express or implied); tort claims; claims for discrimination or harassment (including, but not limited to, race, sex, sexual orientation, religion, national origin, age, marital status, medical condition, handicap or disability), claims for benefits (except where Ochoa's benefit or pension plan specifies that its claims procedure shall culminate in an arbitration procedure different from this one); and claims for violation of any federal, state or other governmental law, status, regulation or ordinance, except for claims Ochoa may have for Workers' Compensation or unemployment compensation benefits. Ochoa and Ontario and the Authority agree that the arbitration shall be in accordance with the current model of arbitration procedures set forth by the American Arbitration Association ("AAA"). Said arbitration shall occur before an arbitrator who is mutually selected by and between Ontario and the Authority and Ochoa. The arbitration shall take place within San Bernardino County, California or other mutually-agreed upon, reasonable location, within one hundred twenty (120) days of the date of the request by either party, and shall be governed by the California Arbitration Act, Sections 1280 through 1294.2 of the California Code of Civil Procedure.

C. Waiver of Rights: The Parties are agreeing to have any dispute arising out of the matters included in Section 17.B. above, and further deciding to have said dispute decided by neutral arbitration as provided by California law are giving up any rights each might possess to have the dispute litigated in a court or jury trial. By executing this Agreement each Party is giving up their respective judicial rights to discovery and appeal, unless those rights are specifically included in Section 17.B. above.

18. Notice - All notices under this Agreement shall be in writing and shall be delivered by personal service, or by certified or registered mail, postage prepaid, return receipt requested, to the parties. Any written notice to any of the parties required or permitted hereunder shall be deemed to have been duly given on the date of service, if served personally or seventy-two (72) hours after the mailing thereof. Rejection or other refusal to accept, or the inability to deliver because of changed address of which no notice was given as provided hereunder, shall be deemed to be receipt of the notice, demand or request sent. Notices to the parties shall be addressed as follows:

CITY:

CITY OF ONTARIO/AUTHORITY

Attention: City Council/Ontario Housing Authority  
303 E "B" Street  
Ontario, CA 91764-4196

and

OCHOA: SCOTT OCHOA

By giving the other party at least thirty (30) days written notice thereof, the parties hereto shall have the right from time to time, or any time during the term hereof, to change their respective addresses for notice.

**19. Indemnification** – Pursuant to Government Code Section 825 and all other applicable sections of the Government Code concerning defense and indemnification of public employees, Ochoa shall be entitled to, and Ontario and the Authority agree to indemnify, defend and hold Ochoa harmless from any, and all claims, actions, causes of action, damages, costs and expenses, including reasonable attorneys' fees, arising out of or resulting in any manner from Ochoa's acts or omissions occurring within the scope of his employment.

**20. Abuse of Office or Position** - Pursuant to Government Code Sections 53243, 53243.1 and 53243.2, if Ochoa is convicted of a crime involving an abuse of his office or position, all of the following shall apply: (1) if Ochoa is provided with administrative leave pay pending an investigation, Ochoa shall be required to fully reimburse Ontario and the Authority such amounts paid; (2) if Ontario and the Authority pay for the criminal legal defense of Ochoa (which would be in their sole discretion, as they are generally not obligated to pay for a criminal defense), Ochoa shall be required to fully reimburse Ontario and the Authority such amounts paid; and (3) if this Agreement is terminated, any Severance Pay and Severance Benefits related to the termination that Ochoa may receive from Ontario and the Authority shall be fully reimbursed to Ontario and the Authority or void if not yet paid to Ochoa. For purposes of this Section, abuse of office or position means either: (1) an abuse of public authority, including waste, fraud, and violation of the law under color of authority; or (2) a crime against public justice, including, but not limited to, a crime described in Title 7 (commencing with Section 92) of Part 1 of the Penal Code.

**21. General Provisions**

A. This Agreement shall be binding upon and inure to the benefit of the heirs at law and executors of Ochoa.

B. This Agreement shall become effective commencing upon adoption by the City Council and Authority.

C. This Agreement supersedes any and all other agreements, either oral or written, between the parties hereto with respect to the employment of Ochoa by Ontario and the Authority and contains all of the covenants and agreements between the parties with respect to the employment of Ochoa by Ontario and the Authority.

D. Each party agrees and acknowledges that no representations, inducements, promises, or agreements, orally or otherwise, have been made by any party, or anyone acting on behalf of any party, which are not embodied herein and that any agreement, statement or promise not contained in this Agreement shall not be valid or binding on either party.

E. Any modification of this Agreement will be effective only if made in writing and signed by Ochoa and Ontario and the Authority.

F. If any provision of this Agreement is held by court of competent jurisdiction to be invalid, void or unenforceable, the remaining provisions shall nevertheless continue in full force and effect without being impaired or invalidated in any way.

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

H. This Agreement shall be construed as a whole according to its fair meaning, and not in favor or against any party. By way of example and not in limitation, this Agreement shall not be construed in favor of the party receiving a benefit nor against the party responsible for language in this Agreement.

I. Ochoa acknowledges that he has had an opportunity to consult legal counsel regarding this Agreement, that he has read and understands this Agreement, that he is fully aware of its legal effect, and that he has entered into it freely and voluntarily and based on his own judgment and not on any representation or promises other than those contained in this Agreement.

J. Should this Agreement be the subject of litigation between the parties hereto, the parties agree that the prevailing party shall be entitled to an award of attorney's fees, costs, and the prevailing statutory interest from the other party.

[Continued on following page]

K. If any other provisions or agreements are necessary to enforce the intent of this Agreement, both parties agree to execute such provisions or agreements upon request.

IN WITNESS WHEREOF, the parties have executed this Agreement this day of , 2017 at Ontario, California.

**“CITY”**

CITY OF ONTARIO  
a California municipal corporation

By: \_\_\_\_\_  
Paul S. Leon  
Its: Mayor

ATTEST:

By: \_\_\_\_\_  
Sheila Mautz,  
City Clerk

APPROVED AS TO FORM:  
BEST, BEST & KRIEGER LLP

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

**“OCHOA”**

By: \_\_\_\_\_  
Scott Ochoa

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

**“AUTHORITY”**

ONTARIO HOUSING AUTHORITY  
a public body, corporate and politic

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

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

ATTEST:

By: \_\_\_\_\_  
Authority Secretary