

**CITY OF ONTARIO
CITY COUNCIL AND HOUSING AUTHORITY
AGENDA
FEBRUARY 4, 2020**

Paul S. Leon
Mayor

Debra Dorst-Porada
Mayor pro Tem

Alan D. Wapner
Council Member

Jim W. Bowman
Council Member

Ruben Valencia
Council Member



Scott Ochoa
City Manager

Scott E. Huber
City Attorney

Sheila Mautz
City Clerk

James R. Milhiser
Treasurer

WELCOME to a meeting of the Ontario City Council.

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

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

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

CALL TO ORDER (*OPEN SESSION*)

5:30 p.m.

ROLL CALL

Dorst-Porada, Wapner, Bowman, 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 54956.9 (d)(1), CONFERENCE WITH LEGAL COUNSEL, EXISTING LITIGATION: *Krechmery v. City of Ontario, et al., U.S. District Court, Central District of California, Case No. 5:19-cv-00015-JGB-SPx*
- GC 54956.8, CONFERENCE WITH REAL PROPERTY NEGOTIATORS
Property: APN 1048-551-10 through 1048-551-13; 308 North Euclid Avenue, 334 North Euclid Avenue, 116 East D Street, 127 East C Street; City/Authority Negotiator: Scott Ochoa or his designee; Negotiating parties: Kendrew Development, LLC, a Limited Liability Corporation; Under negotiation: Price and terms of payment.
- GC 54956.8, CONFERENCE WITH REAL PROPERTY NEGOTIATORS
Property: APN 1048-562-01; 215 West C Street; City/Authority Negotiator: Scott Ochoa or his designee; Negotiating parties: United Christian Church of Hacienda Heights; Under negotiation: Price and terms of payment.

- GC 54956.8, CONFERENCE WITH REAL PROPERTY NEGOTIATORS
Property: APN 1048-562-02; 235 North Laurel Avenue; City/Authority Negotiator: Scott Ochoa or his designee; Negotiating parties: RMEICH, LLC; Under negotiation: Price and terms of payment.
- GC 54956.9 (d)(2), CONFERENCE WITH LEGAL COUNSEL, ANTICIPATED LITIGATION: *One case.*
- GC 54957, PUBLIC EMPLOYEE PERFORMANCE EVALUATION: *City Attorney*

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

PLEDGE OF ALLEGIANCE

Council Member Bowman

INVOCATION

Pastor Mike Schrieb, Bible Baptist Church International

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 January 7, 2020, approving same as on file in the Records Management Department.

2. BILLS/PAYROLL

Bills January 3, 2020 through January 16, 2020 and **Payroll** December 22, 2019 through January 4, 2020, when audited by the Finance Committee.

3. A SECOND AMENDMENT TO THE DISPOSITION AND DEVELOPMENT AGREEMENT WITH ONTARIO MILLS LIMITED PARTNERSHIP TO ALLOW FOR THE CONTINUED PROVISION OF POLICE AND PUBLIC SAFETY SERVICES AT THE ONTARIO MILLS MALL

That the City Council:

- (A) Authorize the City Manager to execute a second amendment (on file in the Records Management Department) extending for three years certain terms of the Disposition and Development Agreement (“DDA”) with Ontario Mills Limited Partnership, as successor in interest to The Mills Corporation, allowing for the City’s continued provision of police and public safety services after the expiration of the original DDA dated December 21, 1994 and first amendment which expired December 31, 2019; and
- (B) Consistent with certain terms and conditions of the DDA, authorize the billing of fees in the amount of \$75,000 for each six-month period that such police and public safety services are rendered at the Ontario Mills Mall.

4. AN ORDINANCE APPROVING THE FIRST AMENDMENT TO THE DEVELOPMENT AGREEMENT (FILE NO. PDA15-003) BETWEEN THE CITY OF ONTARIO AND BROOKCAL ONTARIO, LLC, MODIFYING REQUIREMENTS FOR THE COMMENCEMENT AND COMPLETION OF THE DEFERRED FRONTAGE IMPROVEMENTS ASSOCIATED WITH TRACT MAP 18937 (FILE NO. PMTT17-002), LOCATED AT THE NORTHEAST CORNER OF ARCHIBALD AVENUE AND ONTARIO RANCH ROAD, WITHIN PLANNING AREA 7 OF THE AVENUE SPECIFIC PLAN (APNS: 0218-972-01 THROUGH 81; 0218-973-01 THROUGH 16; 0218-974-01 THROUGH 93; AND 0218-975-01 THROUGH 52)

That the City Council consider and adopt an ordinance approving the First Amendment to the Development Agreement (File No. PDA15-003) between the City of Ontario and BrookCal Ontario, LLC, modifying requirements for the commencement and completion of the deferred frontage improvements associated with Tract Map 18937 (File No. PMTT17-002).

ORDINANCE NO. _____

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF ONTARIO, CALIFORNIA, APPROVING THE FIRST AMENDMENT TO THE DEVELOPMENT AGREEMENT (FILE NO. PDA15-003) BETWEEN THE CITY OF ONTARIO AND BROOKCAL ONTARIO, LLC, MODIFYING REQUIREMENTS FOR THE COMMENCEMENT AND COMPLETION OF THE DEFERRED FRONTAGE IMPROVEMENTS ASSOCIATED WITH TRACT MAP 18937 (FILE NO. PMTT17-002), LOCATED AT THE NORTHEAST CORNER OF ARCHIBALD AVENUE AND ONTARIO RANCH ROAD, WITHIN PLANNING AREA 7 OF THE AVENUE SPECIFIC PLAN AND MAKING FINDINGS IN SUPPORT THEREOF—APNS: AS SHOWN IN EXHIBIT A (ATTACHED).

5. ACCEPTANCE OF WRITTEN PETITIONS TO CREATE A COMMUNITY FACILITIES DISTRICT; A RESOLUTION OF INTENTION TO ESTABLISH CITY OF ONTARIO COMMUNITY FACILITIES DISTRICT NO. 53 (TEVELDE FACILITIES) AND TO AUTHORIZE THE LEVY OF SPECIAL TAXES; AND A RESOLUTION TO INCUR BONDED INDEBTEDNESS

That the City Council consider and:

- (A) Accept written petitions (on file with the Records Management Department) from LS ONTARIO LLC, a Delaware limited liability company and ARROYO CAP VII, LLC, a Delaware limited liability company, to create a Community Facilities District, and to waive certain procedural matters under the Mello-Roos Community Facilities Act of 1982;
- (B) Adopt a Resolution of Intention to establish City of Ontario Community Facilities District No. 53 (Tevelde Facilities) (the “CFD”) and authorize the associated levy of special taxes therein; and set a public hearing for the formation of the CFD as part of the regularly scheduled City Council meeting on Tuesday, March 17, 2020; and
- (C) Adopt a Resolution to Incur Bonded Indebtedness of proposed Community Facilities District No. 53 (Tevelde Facilities).

RESOLUTION NO. _____

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. 53 (TEVELDE FACILITIES), AND TO AUTHORIZE THE LEVY OF SPECIAL TAXES.

RESOLUTION NO. _____

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF ONTARIO, CALIFORNIA, TO INCUR BONDED INDEBTEDNESS OF THE PROPOSED CITY OF ONTARIO COMMUNITY FACILITIES DISTRICT NO. 53 (TEVELDE FACILITIES).

6. CONSTRUCTION CONTRACT FOR THE REPLACEMENT AND INSTALLATION OF TREMCO ROOF SYSTEMS AT VARIOUS CITY FACILITIES/SAN MARINO ROOF CO., INC.

That the City Council award Bid No. 1217 and approve a Construction Contract (on file in the Records Management Department) with San Marino Roof Co., Inc. of Fullerton, California, for the replacement and installation of new Tremco Roof Systems at Fire Station No. 6 (\$230,483), Integrated Waste (\$87,465), and Creekside Park Restroom (\$30,432), in the amount of \$348,380 plus a 10% contingency of \$34,838 for a total amount of \$383,218; authorize the City Manager to execute said contract and authorize the filing of the notice of completion at the conclusion of all construction activities related to the project.

7. A CONSTRUCTION CONTRACT FOR RECYCLED WATER IMPROVEMENTS FOR THE CREEKSIDE COMMUNITIES AND HAVEN AVENUE IN ONTARIO RANCH/NORSTAR PLUMBING AND ENGINEERING, INC.

That the City Council approve the plans and specifications and award Contract No. UT 1035 (on file in the Records Management Department) to Norstar Plumbing and Engineering, Inc. of Alta Loma, California, for the construction of Recycled Water Improvements for the Creekside Communities and Haven Avenue in Ontario Ranch in the amount of \$3,027,726 plus a 15% contingency of \$454,159, for a total contract amount of \$3,481,885; and authorize the City Manager to execute said contract and file a Notice of Completion at the conclusion of all construction activities related to the project.

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.

8. A PUBLIC HEARING TO CONSIDER AN ORDINANCE ESTABLISHING THE DEVELOPMENT IMPACT FEE DEFERRAL PROGRAM

That the City Council introduce and waive further reading of an ordinance establishing the Development Impact Fee Deferral Program.

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

Written communication.

Oral presentation.

Public hearing closed.

ORDINANCE NO. _____

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF ONTARIO, CALIFORNIA, ESTABLISHING THE DEVELOPMENT IMPACT FEE (“DIF”) DEFERRAL PROGRAM.

9. PURCHASE AND IMPLEMENTATION OF AUTOMATED LICENSE PLATE RECOGNITION SYSTEM

That the City Council receive public comment prior to the purchase and implementation of an automated license plate recognition (ALPR) system, and authorize the City Manager to execute an agreement with The Flock Group of Dallas, Texas in the amount of \$48,000 for the purchase, installation, and recurring subscription services.

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.

STAFF MATTERS

City Manager Ochoa

COUNCIL MATTERS

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

ADJOURNMENT

**CITY OF ONTARIO
CLOSED SESSION REPORT**
City Council // Housing Authority // Other // (GC 54957.1)
February 4, 2020

ROLL CALL: Dorst-Porada __, Wapner __, Bowman __, Valencia __, Mayor / Chairman Leon __.

STAFF: City Manager / Executive Director __, City Attorney __

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

- GC 54956.9 (d)(1), CONFERENCE WITH LEGAL COUNSEL, EXISTING LITIGATION: Krechmery v. City of Ontario, et al., U.S. District Court, Central District of California, Case No. 5:19-cv-00015-JGB-SPx

No Reportable Action	Continue	Approved
/ /	/ /	/ /

Disposition: _____

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

- GC 54956.8, CONFERENCE WITH REAL PROPERTY NEGOTIATORS
Property: APN 1048-551-10 through 1048-551-13; 308 North Euclid Avenue, 334 North Euclid Avenue, 116 East D Street, 127 East C Street; City/Authority Negotiator: Scott Ochoa or his designee; Negotiating parties: Kendrew Development, LLC, a Limited Liability Corporation; Under negotiation: Price and terms of payment.

No Reportable Action	Continue	Approved
/ /	/ /	/ /

Disposition: _____

**CITY OF ONTARIO
CLOSED SESSION REPORT**
City Council // Housing Authority // Other // (GC 54957.1)
February 4, 2020
(continued)

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

- GC 54956.8, CONFERENCE WITH REAL PROPERTY NEGOTIATORS
Property: APN 1048-562-01; 215 West C Street; City/Authority Negotiator: Scott Ochoa or his designee; Negotiating parties: United Christian Church of Hacienda Heights; Under negotiation: Price and terms of payment.

No Reportable Action	Continue	Approved
/ /	/ /	/ /

Disposition: _____

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

- GC 54956.8, CONFERENCE WITH REAL PROPERTY NEGOTIATORS
Property: APN 1048-562-02; 235 North Laurel Avenue; City/Authority Negotiator: Scott Ochoa or his designee; Negotiating parties: RMEICH, LLC; Under negotiation: Price and terms of payment.

No Reportable Action	Continue	Approved
/ /	/ /	/ /

Disposition: _____

**CITY OF ONTARIO
CLOSED SESSION REPORT**
City Council // Housing Authority // Other // (GC 54957.1)
February 4, 2020
(continued)

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

- GC 54956.9 (d)(2), CONFERENCE WITH LEGAL COUNSEL, ANTICIPATED LITIGATION: *One case.*

No Reportable Action	Continue	Approved
----------------------	----------	----------

//	//	//
----	----	----

Disposition: _____

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

- GC 54957, PUBLIC EMPLOYEE PERFORMANCE EVALUATION: *City Attorney*

No Reportable Action	Continue	Approved
----------------------	----------	----------

//	//	//
----	----	----

Disposition: _____

Reported by:

City Attorney / City Manager / Executive Director

CITY OF ONTARIO

Agenda Report
February 4, 2020

SECTION:
CONSENT CALENDAR

SUBJECT: A SECOND AMENDMENT TO THE DISPOSITION AND DEVELOPMENT AGREEMENT WITH ONTARIO MILLS LIMITED PARTNERSHIP TO ALLOW FOR THE CONTINUED PROVISION OF POLICE AND PUBLIC SAFETY SERVICES AT THE ONTARIO MILLS MALL

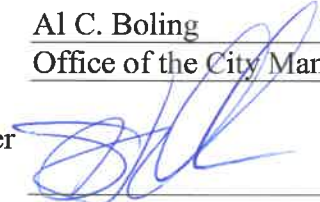
RECOMMENDATION: That the City Council:

- (A) Authorize the City Manager to execute a second amendment (on file in the Records Management Department) extending for three years certain terms of the Disposition and Development Agreement (“DDA”) with Ontario Mills Limited Partnership, as successor in interest to The Mills Corporation, allowing for the City’s continued provision of police and public safety services after the expiration of the original DDA dated December 21, 1994 and first amendment which expired December 31, 2019; and
- (B) Consistent with certain terms and conditions of the DDA, authorize the billing of fees in the amount of \$75,000 for each six-month period that such police and public safety services are rendered at the Ontario Mills Mall.

COUNCIL GOALS: Invest in the Growth and Evolution of the City’s Economy
Maintain the Current High Level of Public Safety
Operate in a Businesslike Manner

FISCAL IMPACT: The City of Ontario provides police and public safety services at the Ontario Mills Mall and receives payments from Ontario Mills Limited Partnership to offset a portion of the costs. This three-year extension will result in \$150,000 of revenue to the City during the first year with fee increases for the second and third years predicated on the change in the Consumer Price Index, but not more than 5% per year. Revenue for the current fiscal year is included in the FY2019-20 Adopted Operating Budget. If approved, revenue for future fiscal years will be included in the respective proposed operating budget for City Council approval.

STAFF MEMBER PRESENTING: Al C. Boling, Assistant City Manager
Derek Williams, Chief of Police

Prepared by: Al C. Boling
Department: Office of the City Manager
City Manager Approval: 

Submitted to Council/O.H.A. 02/04/2020
Approved: _____
Continued to: _____
Denied: _____

3

BACKGROUND: The original 1994 DDA for the Ontario Mills Mall project called for The Mills Corporation, as the developer, to pay to the City a portion of the costs incurred for the provision of police and public safety services at the mall. Upon expiration of the DDA, both the Ontario Mills Limited Partnership, as successor in interest to The Mills Corporation, and the City of Ontario agree that continuation of police and public safety services is a benefit to the tenants and shoppers at the mall as well as the community at large. As such, the parties have agreed to extend certain provisions of the DDA through December 31, 2022, retroactive to the expiration of the DDA's First Amendment, resulting in payments to the City of \$75,000 per six-month period, or a minimum of \$450,000 in total.

CITY OF ONTARIO

Agenda Report
February 4, 2020

SECTION:
CONSENT CALENDAR

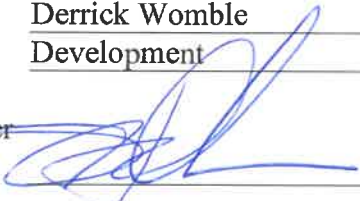
SUBJECT: AN ORDINANCE APPROVING THE FIRST AMENDMENT TO THE DEVELOPMENT AGREEMENT (FILE NO. PDA15-003) BETWEEN THE CITY OF ONTARIO AND BROOKCAL ONTARIO, LLC, MODIFYING REQUIREMENTS FOR THE COMMENCEMENT AND COMPLETION OF THE DEFERRED FRONTAGE IMPROVEMENTS ASSOCIATED WITH TRACT MAP 18937 (FILE NO. PMTT17-002), LOCATED AT THE NORTHEAST CORNER OF ARCHIBALD AVENUE AND ONTARIO RANCH ROAD, WITHIN PLANNING AREA 7 OF THE AVENUE SPECIFIC PLAN (APNS: 0218-972-01 THROUGH 81; 0218-973-01 THROUGH 16; 0218-974-01 THROUGH 93; AND 0218-975-01 THROUGH 52)

RECOMMENDATION: That the City Council consider and adopt an ordinance approving the First Amendment to the Development Agreement (File No. PDA15-003) between the City of Ontario and BrookCal Ontario, LLC, modifying requirements for the commencement and completion of the deferred frontage improvements associated with Tract Map 18937 (File No. PMTT17-002).

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 Ontario Ranch

FISCAL IMPACT: The deferment of improvements proposed with the First Amendment to the Development Agreement (File No. PDA15-003) does not have an impact on the City's existing budget. BrookCal Ontario, LLC ("Owner") has formed Community Facilities Districts (CFD Nos. 40 and 27 respectively), which provide special tax revenues, public services funding fees plus development impact, compliance, processing, licensing, and permitting fees to fund City facilities and services to serve Tract Map 18937 (File No. PMTT17-002). This will address the City Council's long-standing

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

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

Submitted to Council/O.H.A. 02/04/2020
Approved: _____
Continued to: _____
Denied: _____

4

direction that the development of Ontario Ranch generate enough revenue to fund required City services without reliance on the financial resources of the City's General Fund.

BACKGROUND: On January 21, 2020, the City Council introduced and waived further reading of an ordinance approving the First Amendment of the Development Agreement. The Avenue Specific Plan ("Specific Plan") and Environmental Impact Report ("EIR") were approved by the City Council on December 19, 2006. The Specific Plan establishes the land use designations, development standards, and design guidelines for 568 acres, which includes the potential development of 2,326 dwelling units and approximately 174,000 square feet of commercial.

On December 5, 2017, the City Council approved a Development Agreement (File No. PDA15-003), for Tract Map 18937 to subdivide the 23.66 acre project into 48 single-family numbered lots, 7 multi-family numbered lots for Condominium Purposes, and 41 lettered lots for private streets, landscape neighborhood edges and common open space purposes. The project site would facilitate the development of up to 48 single family and 217 multi-family residential units. On September 25, 2018, the Final Map for Tract 18937 was recorded on the property.

The main points of the Development Agreement address Development Impact Fees (DIF); public service funding; Community Facilities District (CFD) for maintenance of public facilities; park/open space requirements; affordable housing in-lieu fees; and school facilities requirements. State law and Section 2.5 of the Development Agreement provide that amendments may be made to the Agreement upon the mutual consent of both parties using the same process and procedures as for the consideration and approval of the original Development Agreement.

The project site is directly adjacent to an existing property owned by Southern California Edison (SCE). Pursuant to the Development Agreement, BrookCal Ontario, LLC ("Owner") is responsible for the construction of street improvements including neighborhood edge landscaping, sidewalks, trails and all other last lane improvements on Archibald Avenue and Ontario Ranch Road that are adjacent to the project site as well as the Edison Substation (the "deferred frontage improvements"). The Development Agreement provided the Owner with an option to defer the initiation and completion of the improvements, contingent upon the Owner's deposit of funds (\$441,102.11) into an Escrow Account for the cost of the improvements, which was made on March 20, 2019.

Thus far, the Owner has been issued 149 building permits for production units and, under the provisions of the Development Agreement, requires the commencement of the deferred frontage improvements for the City to issue additional building permits for production units. However, the Owner has not acquired the necessary rights-of-way from SCE in order to commence construction of the deferred frontage improvements, as California Public Utilities Commission ("CPUC") approval is required.

The Owner has made numerous efforts to seek approval from SCE and cannot commence construction of the deferred frontage improvements until CPUC approval is obtained. Staff believes that the efforts made to date deserve some relief of the condition and is recommending the release of additional building permits. The release of additional building permits, however, necessitates an amendment ("First Amendment") to the Development Agreement in order to reflect the modified terms for the commencement and completion of the deferred frontage improvements. Key points of the First Amendment are as follows:

- Owner shall commence construction of the deferred frontage improvements either prior to Owner requesting the 250th production building permit or by June 30, 2020, whichever occurs first.

- Owner shall complete the construction of the deferred frontage improvements within one hundred eighty (180) days following the commencement by Owner of the deferred frontage improvements.
- Owner shall provide periodic written progress reports to the City commencing thirty (30) days after the Owner initiates construction of the deferred frontage improvements and each thirty (30) days thereafter.
- If Owner is unable to acquire the necessary rights-of-way from SCE, prior to Owner requesting the 250th permit, or by June 30, 2020, whichever occurs first, the City Manager or designee shall have the administrative authority to establish additional requirements of the Owner for the release of the remaining building permits for production units at his/her reasonable discretion.

In considering the application at their meeting on December 16, 2019, the Planning Commission found that the First Amendment was consistent with State law, The Ontario Plan, and the City's Development Agreement policies previously approved for Ontario Ranch developments. As a result, the Planning Commission adopted Resolution No. PC19-099, recommending City Council approval of the First Amendment with a 7-0 vote.

HOUSING ELEMENT COMPLIANCE: The project is consistent with the Housing Element of the Policy Plan (General Plan) component of The Ontario Plan. The project site is one of the properties listed in the Available Land Inventory contained in Table A-3 (Available Land by Planning Area) of the Housing Element Technical Report Appendix, and the proposed project is consistent with the maximum number of dwelling units (287) and density (9.5 DU/AC) specified in the Available Land Inventory.

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

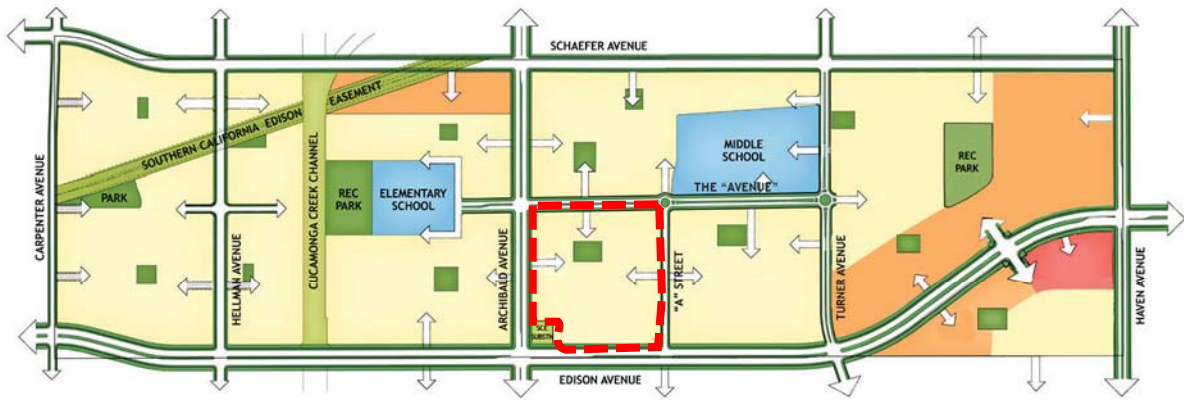
ENVIRONMENTAL REVIEW: The environmental impacts of this project were previously reviewed in conjunction with an amendment to The Avenue Specific Plan (File No. PSPA13-003), for which an addendum to the EIR (SCH#2005071109) was adopted by the City Council on June 17, 2014. This Application introduces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

Exhibit "A"

The Avenue Specific Plan Land Use Map

Land Use Plan

Exhibit 8



LEGEND

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



NOTE: The locations of the parks are conceptual and will be determined as part of the tract map approval process.

The Avenue
SPECIFIC PLAN

The New Model Colony • Ontario, California

Land Use Plan

3-3



PLANNING COMMISSION STAFF REPORT

December 16, 2019

FILE NO.: PDA15-003

SUBJECT: A First Amendment to the Development Agreement (File No. PDA15-003) between the City of Ontario and BrookCal Ontario, LLC, modifying requirements for the commencement and completion of the Deferred Frontage Improvements associated with Tract Map 18937 (File No. PMTT17-002), located at the northeast corner of Archibald Avenue and Ontario Ranch Road, within Planning Area 7 of The Avenue Specific Plan (APNs: 0218-972-01, -02 through -81; 0218-973-01, -02 through -16; 0218-974-01, -02 through -93; and 0218-975-01, -02 through -52). **Submitted by BrookCal Ontario, LLC. City Council action is required.**

PROPERTY OWNER: BrookCal Ontario, LLC

RECOMMENDED ACTION: That the Planning Commission recommend City Council adoption of an ordinance approving the First Amendment to the Development Agreement (File No. PDA15-003), between the City of Ontario and BrookCal Ontario, LLC, pursuant to the facts and reasons contained in the staff report and attached resolution.

PROJECT SETTING: The project site is comprised of 23.66 acres of land located at the northeast corner of Archibald Avenue and Ontario Ranch Road, within Planning Area 7 of The Avenue Specific Plan, and is depicted in **Figure 1: Project Location**. The project site slopes gently from north to south and is currently under construction with single family and multi-family residential units. The property to the north of the project site is within Planning Area 6A of The Avenue Specific Plan and currently developed with single family homes. The property to the south of the project site is within Planning Areas 7 and 8 of the Grand Park Specific Plan and currently developed with agricultural/dairy uses. The property to

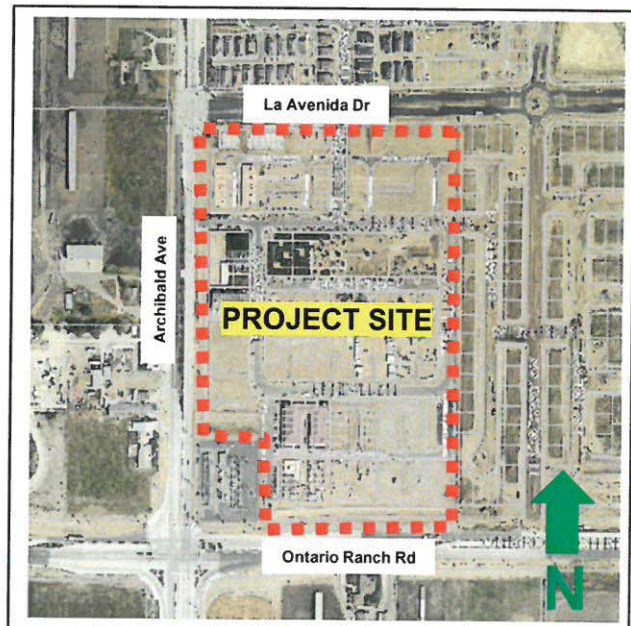
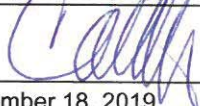


Figure 1: Project Location

Case Planner:	Derrick Womble, Administrative Officer
Planning Director Approval:	
Submittal Date:	November 18, 2019

Hearing Body	Date	Decision	Action
DAB	N/A	N/A	N/A
PC	12/16/2019	Approval	Recommend
CC	01/21/2020		Final

Planning Area 8A of The Avenue Specific Plan and is currently developed with single family residences. The property to the west of the project site is within the Open Space and Elementary School districts of Planning Area 5 of The Avenue Specific Plan and is currently developed with agricultural uses.

PROJECT ANALYSIS:

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

On December 5, 2017, the City Council approved a Development Agreement (File No. PDA15-003), for Tract Map 18937 to subdivide the 23.66 acre project into 48 single-family numbered lots, 7 multi-family numbered lots for Condominium Purposes, and 41 lettered lots for public streets, landscape neighborhood edges and common open space purposes. The project site would facilitate the development of up to 48 single family and 217 multi-family residential units. On September 25, 2018, the Final Map for Tract 18937 was recorded on the property.

The mains points of the Development Agreement address Development Impact Fees (DIF), public service funding, Community Facilities District (CFD) for maintenance of public facilities, park/open space requirements, affordable housing in-lieu fees, school facilities requirements, and remain in full force and effect. State law and Section 2.5 of the Development Agreement provide that amendments may be made to the Agreement upon the mutual consent of both parties, using the same process and procedures as for the consideration and approval of the original Development Agreement.

[2] Staff Analysis — The project site is directly adjacent to an existing property owned by Southern California Edison (SCE). Pursuant to the Development Agreement, BrookCal Ontario, LLC (the “Owner”) is responsible for the construction of street improvements, including neighborhood edge landscaping, sidewalks, trails and all other last lane improvements on Archibald Avenue and Ontario Ranch Road that are adjacent to the project site and adjacent to the Edison Substation (the “Deferred Frontage Improvements”).

The Development Agreement provided the Owner with an option to defer the initiation and completion of the Deferred Frontage Improvements, contingent upon Owner’s deposit (\$441,102.11) into an Escrow Account for the cost of the Deferred Frontage Improvements, which was deposited on March 20, 2019.

Thus far, the Owner has been issued 149 building permits for Production Units, and under the provisions of the Development Agreement, prompts the commencement of the Deferred Frontage Improvements in order for the City to issue additional building permits

for Production Units. However, the Owner has not acquired the necessary Rights-of-Way from SCE in order to commence construction of the Deferred Frontage Improvements.

In considering the Owner is currently making their best reasonable efforts to seek approval from SCE and cannot commence construction of the Deferred Frontage Improvements until an approval is issued, the City has agreed to release additional building permits for Production Units. The release of additional building permits necessitates an amendment (the "First Amendment") to the Development Agreement in order to reflect the modified terms for the commencement and completion of the Deferred Frontage Improvements. Key points of the First Amendment are as follows:

- Owner shall commence construction of the Deferred Frontage Improvements either prior to Owner requesting the 250th Production Permit or by June 30, 2020, whichever occurs first.
- Owner shall complete the construction of the Deferred Frontage Improvements within one hundred eighty (180) days following the commencement by Owner of the Deferred Frontage Improvements.
- Owner shall provide periodic written progress reports to the City commencing thirty (30) days after the Owner initiates construction of the Deferred Frontage Improvements and each thirty (30) days thereafter.
- If Owner is unable to acquire the necessary Rights-of-Way from SCE, prior to Owner requesting the 250th Production Permit, or by June 30, 2020, whichever occurs first, the City Manager or designee shall have the administrative authority to establish additional requirements of the Owner for the release of the remaining building permits for Production Units at his/her reasonable discretion.

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

COMPLIANCE WITH THE ONTARIO PLAN: The proposed First Amendment 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 First Amendment are as follows:

[1] City Council Goals.

- Invest in the Growth and Evolution of the City's Economy
- Operate in a Businesslike Manner

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

[2] Vision.

Distinctive Development:

- Commercial and Residential Development
 - Development quality that is broadly recognized as distinctive and not exclusively tied to the general suburban character typical of much of Southern California.

[3] Governance.

Decision Making:

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

- LU2-6: Infrastructure Compatibility: We require infrastructure to be aesthetically pleasing and in context with the community character.

Housing Element:

- H2-5 Housing Design. We require architectural excellence through adherence to City design guidelines, thoughtful site planning, environmentally sustainable practices and other best practices.

Community Economics Element:

- CE2-1 Development Projects. We require new development and redevelopment to create unique, high-quality places that add value to the community.

➤ CE2-2 Development Review. We require those proposing new development and redevelopment to demonstrate how their projects will create appropriately unique, functional and sustainable places that will compete well with their competition within the region.

➤ CE2-4 Protection of Investment. We require that new development and redevelopment protect existing investment by providing architecture and urban design of equal or greater quality.

➤ CE2-5 Private Maintenance. We require adequate maintenance, upkeep, and investment in private property because proper maintenance on private property protects property values.

Safety Element:

▪ Goal S1: Minimized risk of injury, loss of life, property damage and economic and social disruption caused by earthquake-induced and other geologic hazards.

➤ S1-1 Implementation of Regulations and Standards. We require that all new habitable structures be designed in accordance with the most recent California Building Code adopted by the City, including provisions regarding lateral forces and grading.

Community Design Element:

➤ CD1-3 Neighborhood Improvement. We require viable existing residential and non-residential neighborhoods to be preserved, protected, and enhanced in accordance with our land use policies.

▪ Goal CD2: A high level of design quality resulting in public spaces, streetscapes, and developments that are attractive, safe, functional and distinct.

➤ CD2-1 Quality Architecture. We encourage all development projects to convey visual interest and character through:

- Building volume, massing, and height to provide appropriate scale and proportion;
- A true architectural style which is carried out in plan, section and elevation through all aspects of the building and site design and appropriate for its setting; and
- Exterior building materials that are visually interesting, high quality, durable, and appropriate for the architectural style.

➤ CD2-2 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:

- A pattern of smaller, walkable blocks that promote access, activity and safety;
- Variable setbacks and parcel sizes to accommodate a diversity of housing types;
- Traffic calming measures to slow traffic and promote walkability while maintaining acceptable fire protection and traffic flows;
- Floor plans that encourage views onto the street and de-emphasize the visual and physical dominance of garages (introducing the front porch as the “outdoor living room”), as appropriate; and
- Landscaped parkways, with sidewalks separated from the curb.

➤ CD2-7 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.

➤ CD2-8 Safe Design. We incorporate defensible space design into new and existing developments to ensure the maximum safe travel and visibility on pathways, corridors, and open space and at building entrances and parking areas by avoiding physically and visually isolated spaces, maintenance of visibility and accessibility, and use of lighting.

➤ CD2-9 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.

➤ CD2-11 Entry Statements. We encourage the inclusion of amenities, signage and landscaping at the entry to neighborhoods, commercial centers, mixed use areas, industrial developments, and public places that reinforce them as uniquely identifiable places.

➤ CD2-13 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.

▪ 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.

➤ CD3-2 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.

➤ CD3-5 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.

➤ CD3-6 Landscaping. We utilize landscaping to enhance the aesthetics, functionality and sustainability of streetscapes, outdoor spaces and buildings.

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

➤ CD5-1 Maintenance of Buildings and Property. We require all public and privately owned buildings and property (including trails and easements) to be properly and consistently maintained.

➤ CD5-2 Maintenance of Infrastructure. We require the continual maintenance of infrastructure.

HOUSING ELEMENT COMPLIANCE: The project is consistent with the Housing Element of the Policy Plan (General Plan) component of The Ontario Plan. The project site is one of the properties listed in the Available Land Inventory contained in Table A-3 (Available Land by Planning Area) of the Housing Element Technical Report Appendix, and the proposed project is consistent with the maximum number of dwelling units (287) and density (9.5 DU/AC) specified in the Available Land Inventory.

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

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

Exhibit "A" The Avenue Specific Plan Land Use Map

Land Use Plan

Exhibit 8



The Avenue
 SPECIFIC PLAN

The New Model Colony • Ontario, California

Land Use Plan

3-3

RESOLUTION NO. PC19-099

A RESOLUTION OF THE PLANNING COMMISSION OF THE CITY OF ONTARIO, CALIFORNIA, RECOMMENDING THE CITY COUNCIL APPROVE THE FIRST AMENDMENT TO THE DEVELOPMENT AGREEMENT (FILE NO. PDA15-003), BETWEEN THE CITY OF ONTARIO AND BROOKCAL ONTARIO, LLC, MODIFYING REQUIREMENTS FOR THE COMMENCEMENT AND COMPLETION OF THE DEFERRED FRONTAGE IMPROVEMENTS ASSOCIATED WITH TRACT MAP 18937 (FILE NO. PMTT17-002), LOCATED AT THE NORTHEAST CORNER OF ARCHIBALD AVENUE AND ONTARIO RANCH ROAD, WITHIN PLANNING AREA 7 OF THE AVENUE SPECIFIC PLAN, AND MAKING FINDINGS IN SUPPORT THEREOF—APNS: 0218-972-01, -02 THROUGH -81; 0218-973-01, -02 THROUGH -16; 0218-974-01, -02 THROUGH -93; AND 0218-975-01, -02 THROUGH -52).

WHEREAS, BrookCal Ontario, LLC ("Applicant") has filed an Application for the approval of the First Amendment to the Development Agreement (File No. PDA15-003), as described in the title of this Resolution (hereinafter referred to as "Application" or "Project"); and

WHEREAS, the Application applies to 23.66 acres of land generally located at the northeast corner of Archibald Avenue and Ontario Ranch Road, within Planning Area 7 of The Avenue Specific Plan, and is presently under construction with single family and multi-family residential units; and

WHEREAS, the property to the north of the project site is within Planning Area 6A of The Avenue Specific Plan and currently developed with single family residences. The property to the south of the project site is within Planning Areas 7 and 8 of the Grand Park Specific Plan and currently developed with agricultural/dairy uses. The property to the east of the project site is within Planning Area 8A of The Avenue Specific Plan and is currently developed with single family residences. The property to the west of the project site is within the Open Space and Elementary School districts of Planning Area 5 of The Avenue Specific Plan and is currently developed with agricultural uses; and

WHEREAS, the Final Map for Tract 18937 was recorded in the official records of the San Bernardino County Recorder's Office on September 25, 2018; and

WHEREAS, the project site is directly adjacent to existing property owned by Southern California Edison (SCE) and the Applicant is responsible for the construction of street improvements, including neighborhood edge landscaping, sidewalks, trails and all other last lane improvements on Archibald Avenue and Ontario Ranch Road that are adjacent to the project site and adjacent to the Edison Substation (the "Deferred Frontage Improvements"); and

WHEREAS, on March 20, 2019, pursuant to Section 4.3.1.2 of the Development Agreement, the Applicant deferred the commencement and completion of the Deferred Frontage Improvements, and deposited \$441,102.11 in an Escrow Account for the estimated cost of the improvements; and

WHEREAS, the Applicant has been issued 149 building permits for Production Units, which prompts the commencement of the Deferred Frontage Improvements; and

WHEREAS, the Applicant has not acquired the necessary Rights-of-Way from SCE in order to commence the construction of the Deferred Frontage Improvements; and

WHEREAS, the Applicant has requested, and City has agreed, to perform an amendment (the "First Amendment") to the Development Agreement, to allow the release of additional building permits for Production Units, contingent upon the Applicant's compliance with the terms and provisions provided in the attached First Amendment; and

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

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

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

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

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

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

WHEREAS, on December 16, 2019, the Planning Commission of the City of Ontario conducted a hearing to consider the Project and concluded said hearing on that date; and

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

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

SECTION 1: Environmental Determination and Findings. As the recommending authority for the Project, the Planning Commission has reviewed and considered the information contained in the previous Certified EIR and supporting documentation. Based upon the facts and information contained in the previous Certified EIR and supporting documentation, the Planning Commission finds as follows:

(1) The environmental impacts of this project were reviewed in conjunction with an addendum to The Avenue Specific Plan Environmental Impact Report, certified by the City of Ontario City Council on June 17, 2014, in conjunction with File No. PSPA13-003; and

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

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

(4) The previous Certified EIR reflects the independent judgment of the Planning Commission; and

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

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

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

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

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

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

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

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

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

SECTION 3: *Housing Element Compliance.* Pursuant to the requirements of California Government Code Chapter 3, Article 10.6, commencing with Section 65580, as the recommending authority for the Project, the Planning Commission finds that based on the facts and information contained in the Application and supporting documentation, at the time of Project implementation, the project is consistent with the Housing Element of the Policy Plan (General Plan) component of The Ontario Plan, as the project site is one of the properties listed in the Available Land Inventory contained in Table A-3 (Available Land by Planning Area) of the Housing Element Technical Report Appendix, and the proposed project is consistent with the maximum number of dwelling units (287) and density (9.5 DU/AC) specified in the Available Land Inventory.

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

Ontario approved and adopted the ALUCP, establishing the Airport Influence Area for Ontario International Airport (hereinafter referred to as "ONT"), which encompasses lands within parts of San Bernardino, Riverside, and Los Angeles Counties, and limits future land uses and development within the Airport Influence Area, as they relate to noise, safety, airspace protection, and overflight impacts of current and future airport activity. As the recommending authority for the Project, the Planning Commission has reviewed and considered the facts and information contained in the Application and supporting documentation against the ALUCP compatibility factors, including [1] Safety Criteria (ALUCP Table 2-2) and Safety Zones (ALUCP Map 2-2), [2] Noise Criteria (ALUCP Table 2-3) and Noise Impact Zones (ALUCP Map 2-3), [3] Airspace protection Zones (ALUCP Map 2-4), and [4] Overflight Notification Zones (ALUCP Map 2-5). As a result, the 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 the substantial evidence presented to the Planning Commission during the above-referenced hearing, and upon the specific findings set forth in Section 1 through 4, above, the Planning Commission hereby concludes as follows:

a. The Application applies to 23.66 acres of land generally located at the northeast corner of Archibald Avenue and Ontario Ranch Road within Planning Area 7 of The Avenue Specific Plan; and

b. The property to the north of the project site is within Planning Area 6A of The Avenue Specific plan and currently developed with single family residences. The property to the south of the project site is within Planning Areas 7 and 8 of the Grand Park Specific Plan and currently developed with agricultural/dairy uses. The property to the east of the project site is within Planning Area 8A of The Avenue Specific Plan and is currently developed with single family residences. The property to the west of the project site is within the Open Space and Elementary School districts of Planning Area 5 of The Avenue Specific Plan and is currently developed with agricultural uses; and

c. In acknowledgement that the Owner is currently making their best reasonable efforts to seek approval from SCE and cannot commence construction of the Deferred Frontage Improvements until an approval is granted from SCE, the City has agreed to issue additional building permits for Production Units; and

d. The City's release of additional building permits for Production Units, is contingent upon the Applicant's compliance with the terms and provisions provided in the attached First Amendment; and

e. If the Applicant is unable to receive approval from SCE pursuant to the thresholds provided in the attached First Amendment, the City Manager or designee, shall have the administrative authority to establish additional requirements of

the Applicant for the release of the remaining building permits for Production Units at his/her reasonable discretion; and

f. This Application will not be materially injurious or detrimental to the adjacent properties and will not have a significant impact on the environmental or surrounding properties. The environmental impacts of this of this project were previously reviewed in conjunction with an amendment to The Avenue Specific Plan (File No. PSPA13-003), for which an addendum to the EIR (SCH#2005071109) was adopted by the City Council on June 17, 2014. This application introduces no new significant environmental impacts; and

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

h. The provisions of the Application are consistent with the goals, Policies, plans, and exhibits of the Vision, Policy Plan (General Plan), and the City Council Priorities components of The Ontario Plan, and any applicable specific plans; and

i. The Application 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

j. This Application will promote the goals and objectives of the Land Use Element of the Policy Plan.

SECTION 6: Planning Commission Action. Based upon the findings and conclusions set forth in Sections 1 through 5, above, the Planning Commission hereby RECOMMENDS THE CITY COUNCIL APPROVE the herein described Application, attached hereto as "Attachment B" and incorporated herein by this reference.

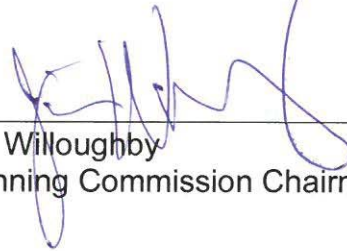
SECTION 7: Indemnification. The Applicant shall agree to defend, indemnify and hold harmless, the City of Ontario or its agents, officers, and employees from any claim, action or proceeding against the City of Ontario or its agents, officers or employees to attack, set aside, void, or annul this approval.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

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

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

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

I hereby certify that the foregoing Resolution was duly and regularly introduced, passed and adopted by the Planning Commission of the City of Ontario at a special meeting thereof held on the 16th day of December 2019, and the foregoing is a full, true and correct copy of said Resolution, and has not been amended or repealed.



Jim Willoughby
Planning Commission Chairman

ATTEST:



Cathy Wahlstrom
Planning Director and
Secretary to the Planning Commission

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

I, Gwen Berendsen, Secretary Pro Tempore of the Planning Commission of the City of Ontario, DO HEREBY CERTIFY that foregoing Resolution No. PC19-099, was duly passed and adopted by the Planning Commission of the City of Ontario at their special meeting held on December 16, 2019, by the following roll call vote, to wit:

AYES: DeDiemar, Downs, Gage, Gregorek, Reyes, Ricci and Willoughby

NOES: None

ABSENT: None

ABSTAIN: None



Gwen Berendsen
Secretary Pro Tempore

ATTACHMENT A:

Assessor Parcel Numbers (APN)

Tract Map 18937

(APN Listing to follow this page)

Planning Commission Resolution

File No. PDA15-003

December 16, 2019

Page 10

0218-972-01	0218-972-47	0218-973-12	0218-974-42	0218-974-88	0218-975-41
0218-972-02	0218-972-48	0218-973-13	0218-974-43	0218-974-89	0218-975-42
0218-972-03	0218-972-49	0218-973-14	0218-974-44	0218-974-90	0218-975-43
0218-972-04	0218-972-50	0218-973-15	0218-974-45	0218-974-91	0218-975-44
0218-972-05	0218-972-51	0218-973-16	0218-974-46	0218-974-92	0218-975-45
0218-972-06	0218-972-52	0218-974-01	0218-974-47	0218-974-93	0218-975-46
0218-972-07	0218-972-53	0218-974-02	0218-974-48	0218-975-01	0218-975-47
0218-972-08	0218-972-54	0218-974-03	0218-974-49	0218-975-02	0218-975-48
0218-972-09	0218-972-55	0218-974-04	0218-974-50	0218-975-03	0218-975-49
0218-972-10	0218-972-56	0218-974-05	0218-974-51	0218-975-04	0218-975-50
0218-972-11	0218-972-57	0218-974-06	0218-974-52	0218-975-05	0218-975-51
0218-972-12	0218-972-58	0218-974-07	0218-974-53	0218-975-06	0218-975-52
0218-972-13	0218-972-59	0218-974-08	0218-974-54	0218-975-07	
0218-972-14	0218-972-60	0218-974-09	0218-974-55	0218-975-08	
0218-972-15	0218-972-61	0218-974-10	0218-974-56	0218-975-09	
0218-972-16	0218-972-62	0218-974-11	0218-974-57	0218-975-10	
0218-972-17	0218-972-63	0218-974-12	0218-974-58	0218-975-11	
0218-972-18	0218-972-64	0218-974-13	0218-974-59	0218-975-12	
0218-972-19	0218-972-65	0218-974-14	0218-974-60	0218-975-13	
0218-972-20	0218-972-66	0218-974-15	0218-974-61	0218-975-14	
0218-972-21	0218-972-67	0218-974-16	0218-974-62	0218-975-15	
0218-972-22	0218-972-68	0218-974-17	0218-974-63	0218-975-16	
0218-972-23	0218-972-69	0218-974-18	0218-974-64	0218-975-17	
0218-972-24	0218-972-70	0218-974-19	0218-974-65	0218-975-18	
0218-972-25	0218-972-71	0218-974-20	0218-974-66	0218-975-19	
0218-972-26	0218-972-72	0218-974-21	0218-974-67	0218-975-20	
0218-972-27	0218-972-73	0218-974-22	0218-974-68	0218-975-21	
0218-972-28	0218-972-74	0218-974-23	0218-974-69	0218-975-22	
0218-972-29	0218-972-75	0218-974-24	0218-974-70	0218-975-23	
0218-972-30	0218-972-76	0218-974-25	0218-974-71	0218-975-24	
0218-972-31	0218-972-77	0218-974-26	0218-974-72	0218-975-25	
0218-972-32	0218-972-78	0218-974-27	0218-974-73	0218-975-26	
0218-972-33	0218-972-79	0218-974-28	0218-974-74	0218-975-27	
0218-972-34	0218-972-80	0218-974-29	0218-974-75	0218-975-28	
0218-972-35	0218-972-81	0218-974-30	0218-974-76	0218-975-29	
0218-972-36	0218-973-01	0218-974-31	0218-974-77	0218-975-30	
0218-972-37	0218-973-02	0218-974-32	0218-974-78	0218-975-31	
0218-972-38	0218-973-03	0218-974-33	0218-974-79	0218-975-32	
0218-972-39	0218-973-04	0218-974-34	0218-974-80	0218-975-33	
0218-972-40	0218-973-05	0218-974-35	0218-974-81	0218-975-34	
0218-972-41	0218-973-06	0218-974-36	0218-974-82	0218-975-35	
0218-972-42	0218-973-07	0218-974-37	0218-974-83	0218-975-36	
0218-972-43	0218-973-08	0218-974-38	0218-974-84	0218-975-37	
0218-972-44	0218-973-09	0218-974-39	0218-974-85	0218-975-38	
0218-972-45	0218-973-10	0218-974-40	0218-974-86	0218-975-39	
0218-972-46	0218-973-11	0218-974-41	0218-974-87	0218-975-40	

ATTACHMENT B:

File No. PDA15-003

FIRST AMENDMENT TO THE DEVELOPMENT AGREEMENT

By and Between

**City of Ontario
a California municipal corporation**

and

**BrookCal Ontario, LLC
a California limited liability company**

(First Amendment to follow this page)

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

CITY OF ONTARIO
CITY CLERK / RECORDS MANAGEMENT
303 EAST "B" STREET
ONTARIO, CA 91764-4196

Space above this line for Recorder's Use

Exempt from Fees Per Gov. Code § 6301

File No. PDA15-003

FIRST AMENDMENT TO THE DEVELOPMENT AGREEMENT

By and Between

**City of Ontario
a California municipal corporation**

and

**BrookCal Ontario, LLC
a California limited liability company**

_____, 2020

San Bernardino County, California

**FIRST AMENDMENT TO THE DEVELOPMENT AGREEMENT BY AND
BETWEEN THE CITY OF ONTARIO AND BROOKCAL ONTARIO LLC
FILE NO. PDA15-003**

This First Amendment to the Development Agreement (hereinafter the "First Amendment") is entered into effective as of the _____ day of _____ 20____ by and among the City of Ontario, a California municipal corporation (hereinafter "CITY"), and BrookCal Ontario LLC, a California limited liability company (hereinafter "OWNER").

RECITALS

WHEREAS, the CITY and OWNER have previously entered into a Development Agreement dated December 5, 2017 and recorded in San Bernardino County, California on December 20, 2017 as Instrument No. 2017-0542426 pursuant to Section 65864, et seq., of the Government Code, (hereinafter the "Development Agreement"); and

WHEREAS, pursuant to Section 3.7.2.2 of the Development Agreement, the OWNER is required at OWNER's sole cost and expense, to construct the neighborhood edge landscaping, sidewalks, trails, and all other last lane improvements on Archibald Avenue and Ontario Ranch Road, that are adjacent to the Property, and adjacent to existing property owned by Southern California Edison ("the Edison Substation"), and on Ontario Ranch Road and Archibald Avenue, known as the "Deferred Frontage Improvements"; and

WHEREAS, OWNER and CITY agree and acknowledge that the Deferred Frontage Improvements adjacent to the Edison Substation, requires the review, approval, and permitting by Southern California Edison ("SCE"); and

WHEREAS, OWNER has requested, and CITY has agreed, to modify certain specified requirements for the commencement and completion of the Deferred Frontage Improvements; and

WHEREAS, on March 20, 2019, OWNER made the required deposit (\$441,102.11) to the Escrow Account (File No. OSA-5864661) established by CITY and OWNER as required by Section 4.3.1.2 of the Development Agreement; and

WHEREAS, as of November 1, 2019, OWNER and CITY acknowledge that SCE is pursuing (a) the approval from the California Public Utilities Commission ("CPUC") of the terms of a Purchase and Sale Agreement by and between OWNER and SCE for the conveyance by OWNER to SCE of certain real property adjacent to the Edison Substation and the grant to the City of an easement for right of way purposes over a portion of SCE's property and (b) the completion of certain improvements relating the Edison Substation so as to make the land and improvements available as necessary for OWNER to perform the Deferred Frontage Improvements.

WHEREAS, OWNER is requesting that CITY issue an additional building permits for the construction of Model Units and Production Units prior to OWNER's completion of the construction of the Deferred Frontage Improvements; and

WHEREAS, CITY and OWNER have agreed that CITY may issue additional building permits for the construction of Model Units and Production Units conditioned upon OWNER's agreement to commence the Deferred Frontage Improvements either prior to (1) the request of the 250th residential building permit, (2) or by June 30, 2020, whichever occurs, over the property owned by SCE at the corner of Archibald Avenue and Ontario Ranch Road, and complete the Deferred Frontage Improvements within one hundred eighty (180) days following the commencement of the Deferred Frontage Improvements.

AGREEMENTS

NOW, THEREFORE, in consideration of the above recitals and of the mutual agreements hereinafter contained, the parties agree as follows:

1. **MODIFICATIONS TO DEVELOPMENT AGREEMENT TO AMEND CERTAIN REQUIREMENTS FOR THE COMMENCEMENT AND COMPLETION OF THE DEFERRED FRONTAGE IMPROVEMENTS.**

The following shall replace Section 4.3.1.1 of the Development Agreement:

Deferral of Construction of Improvements on Archibald Avenue and Ontario Ranch Road Adjacent to the Property and the SCE Substation on Ontario Ranch road and Archibald Avenue. Notwithstanding the above, OWNER has requested and CITY has agreed that OWNER may defer the initiation and completion of the Deferred Frontage Improvements described in Section 3.7.2.2 of this Development Agreement and shown on Exhibit F and described as the street and other improvements on Archibald Avenue directly adjacent to the Project and the SCE Substation and the street and other improvements on Ontario Ranch Road adjacent to the Project and the SCE Substation. CITY's agreement to issue building permits for Production Units prior to OWNER's completion of the improvements described in Section 3.7.2 and as shown on Exhibit F is conditioned upon OWNER's compliance with the following conditions:

- a) Prior to, and as a condition precedent to, OWNER requesting and City granting of the first building permit for the Property, OWNER shall have completed the designs for the Deferred Frontage Improvements and also shall have completed the real property transaction to acquire the necessary Rights of Way for the Deferred Frontage Improvements, or OWNER shall have made the required deposit to the Escrow Account established by the CITY and OWNER as required by Section 4.3.1.2.
- b) Either prior to, and as a condition precedent to, (i) OWNER requesting and CITY granting the 250th residential building permit, including permits for the Model Units, (ii) or before June 30, 2020, whichever occurs first, OWNER shall commence the construction of the Deferred Frontage Improvements over that portion of the property owned by SCE as more particularly described on Exhibit "B" attached hereto and depicted on Exhibit "C" attached hereto.

- c) OWNER shall complete the construction of the Deferred Frontage Improvements within one hundred eighty (180) days following the commencement by OWNER of the Deferred Frontage Improvements.
- d) OWNER shall provide periodic written progress reports to CITY commencing thirty (30) days after the OWNER initiates construction of the Deferred Frontage Improvements and each thirty (30) days thereafter, regarding the progress of the construction of the Deferred Frontage Improvements until such Improvements are accepted by the CITY.
- e) Should OWNER not receive the required Rights of Way from SCE, prior to OWNER requesting the 250th residential building permit, or before June 30, 2020, whichever occurs first, and the OWNER has made its best reasonable efforts to seek approval from SCE, the City Manager or designee shall have the administrative authority to establish additional requirements of the Owner for the release of the remaining building permits for Production Units at his/her reasonable discretion.
- f) Subject to the provisions of Section 8 of this Development Agreement, if OWNER does not comply with the conditions of this Section 4.3.1.1, OWNER shall be deemed to be in default of this Development Agreement and CITY shall be entitled to pursue all such remedies as available under the provisions of this Development Agreement.

- 2. **Integration.** All remaining Sections of the Development Agreement and the Exhibits thereto shall not be affected by this First Amendment.
- 3. **Additional Documents/Actions.** The City Manager is authorized to approve and execute any documents and to take any actions necessary to effectuate the purposes of this First Amendment to the Development Agreement.
- 4. **Defined Terms/Other Provisions.** Unless otherwise defined herein, capitalized terms contained in this First Amendment shall have the meanings ascribed to them in the Development Agreement. Except as expressly amended herein, all provisions of the Development Agreement, as supplemented, restated and amended, shall remain.
- 5. **Integration.** This First Amendment reflects the complete understanding of the parties with respect to the subject matter hereof. To the extent this First Amendment conflicts with the Development Agreement, this First Amendment supersedes such previous document. In all other respects, the parties hereto re-affirm and ratify all other provisions of the Development Agreement as amended.
- 6. **Indemnification.** OWNER hereby agrees to indemnify, defend and hold harmless the CITY, its officials, officers, employees, agents, contractors and volunteers from and against any and all claims, suits or proceedings arising from or related to CITY's entering into, or carrying out, this First Amendment. This indemnification includes the

payment of all penalties, fines, judgments, awards, decrees, attorney's fees and related costs or expenses incurred by the CITY.

{signature page to follow}

IN WITNESS WHEREOF, the parties hereto have executed this First Amendment as of the date below, the ("Effective Date").

**SIGNATURE PAGE
TO FIRST AMENDMENT TO DEVELOPMENT AGREEMENT**

**BROOKCAL ONTARIO LLC
"OWNER"**

Brookcal Ontario LLC, a California limited liability company

By: _____
Name: _____
Title: Authorized Representative
Date: _____

"CITY"

CITY OF ONTARIO

By: _____
Scott Ochoa, City Manager
Date: _____

ATTEST:

City Clerk, Ontario

APPROVED AS TO FORM:
COLE HUBER LLP

City Attorney

ACKNOWLEDGEMENT

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

STATE OF CALIFORNIA)
COUNTY OF _____)

On _____, 20____, before me, _____,
Date *Insert Name and Title of the Officer*

personally appeared _____
Name(s) of Signer(s)

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

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

WITNESS my hand and official seal.

Signature _____
Signature of Notary Public

Place Notary Seal Above

ACKNOWLEDGEMENT

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

STATE OF CALIFORNIA)
COUNTY OF _____)

On _____, 20____, before me, _____,
Date *Insert Name and Title of the Officer*

personally appeared _____
Name(s) of Signer(s)

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

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

WITNESS my hand and official seal.

Signature _____
Signature of Notary Public

Place Notary Seal Above

Exhibit "A"

LEGAL DESCRIPTION OF PROPERTY

All of Tract Map No. 18937 as recorded in the Recorder's Office of San Bernardino County, State of California, filed under Document No. 2018-0352453 on September 25, 2018 in Book 351 of Tract Map at Page(s) 18 – 26.



Exhibit "B"

CITY ROAD EASEMENT DESCRIPTION

EXHIBIT "B"
ROAD EASEMENT
SERIAL NO. 71701A

IN THE CITY OF ONTARIO, COUNTY OF SAN BERNARDINO, STATE OF CALIFORNIA, BEING A PORTION OF THE WEST 30 ACRES OF THE SOUTHWEST ONE QUARTER ($\frac{1}{4}$) OF THE NORTHWEST ONE QUARTER ($\frac{1}{4}$) OF SECTION 14, TOWNSHIP 2 SOUTH, RANGE 7 WEST, SAN BERNARDINO BASE AND MERIDIAN, MORE PARTICULARLY DESCRIBED AS FOLLOWS:

PARCEL 1

BEGINNING AT THE SOUTHWEST CORNER OF LOT "UU" OF TRACT MAP 18937 RECORDED 09-25-2018 IN MAP BOOK 351 PAGES 18-26, INCLUSIVE, RECORDED IN SAID COUNTY OF RECORDS, ALSO BEING ON A POINT ON A LINE PARALLEL WITH AND 68.00 FEET EASTERLY OF THE CENTERLINE OF ARCHIBALD AVENUE;

THENCE LEAVING SAID CORNER, SOUTHERLY ALONG SAID PARALLEL LINE, SOUTH 00° 00' 12" EAST, 214.96 FEET, TO THE BEGINNING OF A TANGENT CURVE CONCAVE EASTERLY HAVING A RADIUS OF 35.00 FEET ;

THENCE SOUTHEASTERLY ALONG SAID CURVE, 55.02 FEET THROUGH A CENTRAL ANGLE OF 90° 03' 53", TO A POINT ON A LINE PARALLEL WITH AND 80.00 FEET NORTHERLY OF THE CENTERLINE OF ONTARIO RANCH ROAD;

THENCE ALONG SAID PARALLEL LINE, NORTH 89° 55' 55" EAST, 179.96 FEET TO A POINT BEING THE SOUTHWESTERLY CORNER OF LOT "TT" OF SAID TRACT MAP;

THENCE LEAVING SAID CORNER, SOUTH 00° 00' 12" EAST, 22.00 FEET TO A POINT ON A LINE PARALLEL WITH AND 58.00 FEET NORTHERLY OF THE CENTERLINE OF ONTARIO RANCH ROAD;

THENCE SOUTH 89° 55' 55" WEST, 192.96 FEET ALONG SAID PARALLEL LINE TO THE BEGINNING OF A TANGENT CURVE CONCAVE EASTERLY HAVING A RADIUS OF 35.00 FEET ;

THENCE NORTHWESTERLY ALONG SAID CURVE, 55.02 FEET THROUGH A CENTRAL ANGLE OF 90° 03' 53", TO A POINT PARALLEL WITH AND 55.00 FEET EASTERLY OF THE CENTERLINE OF ARCHIBALD AVENUE;

THENCE NORTHERLY ALONG SAID PARALLEL LINE, NORTH 00° 00' 12" WEST, 236.96 FEET ON SAID PARALLEL LINE TO A POINT ON THE WESTERLY PRODUCTION OF THE SOUTH LINE OF SAID LOT "UU" AND 55.00 FEET EASTERLY OF THE CENTERLINE OF ARCHIBALD AVENUE;

THENCE NORTH 89° 55' 55" EAST, 13.00 FEET ALONG SAID WESTERLY PROLONGATION OF THE SOUTH LINE OF LOT "UU" TO THE **POINT OF BEGINNING** .

PRERARED BY: K&A ENGINEERING
357 N. SHERIDAN ST.
CORONA, CA 92880

DATE EXHIBIT PREPARED: JUNE 7, 2018

1 OF 2

Exhibit "B" Continued

CITY ROAD EASEMENT DESCRIPTION

EXHIBIT "B"
ROAD EASEMENT
SERIAL NO. 71701A

PARCEL 1 CONT'D

CONTAINING: 8,266 SQ. FT. MORE OR LESS

EXHIBIT B: ATTACHED HERETO AND BY THIS REFERENCE MADE A PART HEREOF.

SUBJECT TO: COVENANTS, CONDITIONS, RESERVATIONS, RESTRICTIONS, RIGHT OF WAY AND EASEMENTS IF ANY.

PREPARED UNDER THE SUPERVISION OF:

 05/01/19
WILLIAM E. SNOW DATE
P.L.S. NO. 4725
REG. EXP. 9/30/2019

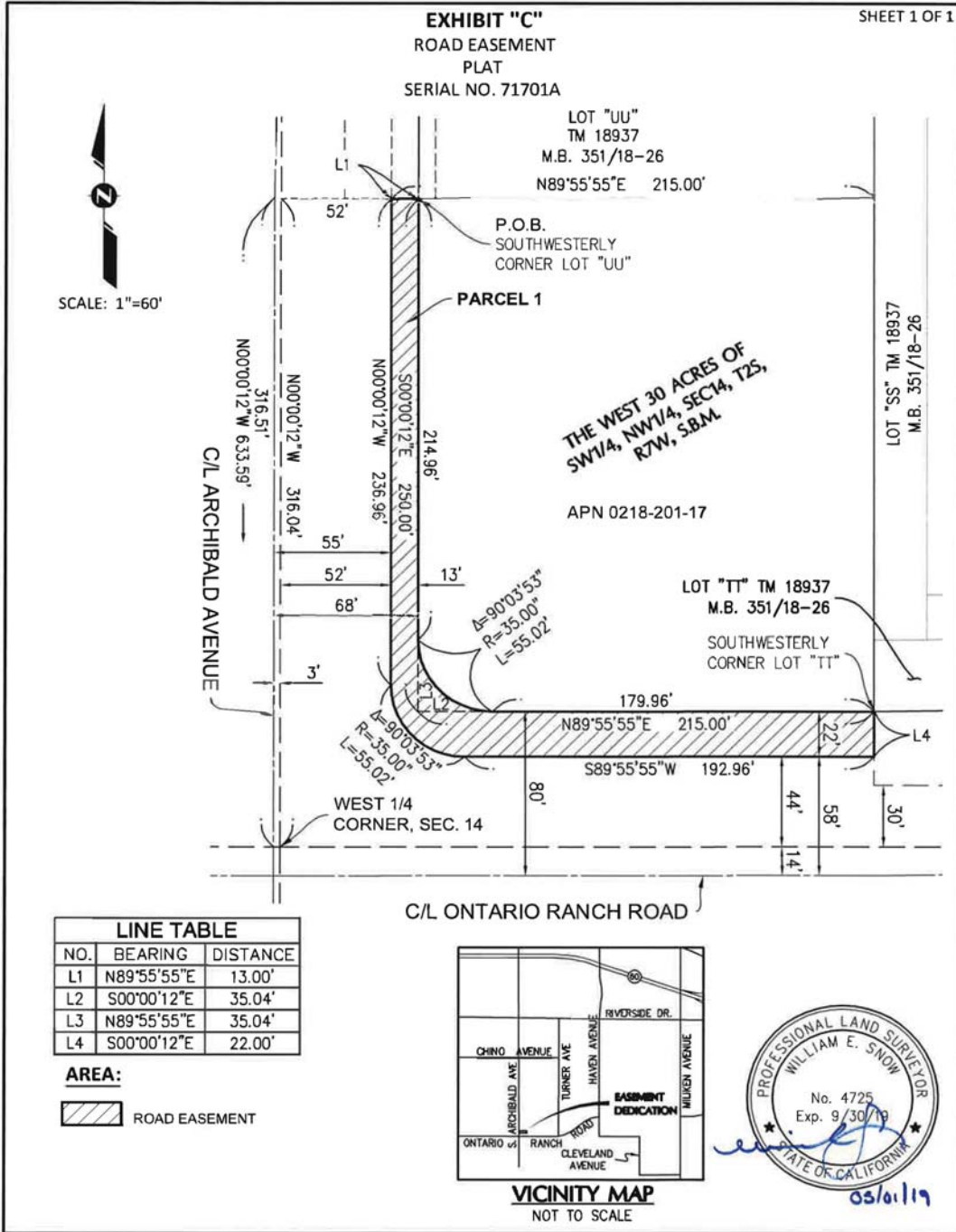


PRERARED BY: K&A ENGINEERING
357 N. SHERIDAN ST.
CORONA, CA 92880

DATE EXHIBIT PREPARED: JUNE 7, 2018

Exhibit "C"

CITY ROAD EASEMENT DEPICTION



ORDINANCE NO. _____

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF ONTARIO, CALIFORNIA, APPROVING THE FIRST AMENDMENT TO THE DEVELOPMENT AGREEMENT (FILE NO. PDA15-003) BETWEEN THE CITY OF ONTARIO AND BROOKCAL ONTARIO, LLC, MODIFYING REQUIREMENTS FOR THE COMMENCEMENT AND COMPLETION OF THE DEFERRED FRONTAGE IMPROVEMENTS ASSOCIATED WITH TRACT MAP 18937 (FILE NO. PMTT17-002), LOCATED AT THE NORTHEAST CORNER OF ARCHIBALD AVENUE AND ONTARIO RANCH ROAD, WITHIN PLANNING AREA 7 OF THE AVENUE SPECIFIC PLAN AND MAKING FINDINGS IN SUPPORT THEREOF—APNS: AS SHOWN IN EXHIBIT A (ATTACHED).

WHEREAS, BrookCal Ontario, LLC ("Applicant") has filed an Application for the approval of the First Amendment to the Development Agreement, File No. PDA15-003, as described in the title of this Ordinance (hereinafter referred to as "Application" or "Project"); and

WHEREAS, the Application applies to 23.66 acres of land generally located at the northeast corner of Archibald Avenue and Ontario Ranch Road, within Planning Area 7 of The Avenue Specific Plan, and is presently under construction with single family and multi-family residential units; and

WHEREAS, the property to the north of the project site is within Planning Area 6A of The Avenue Specific Plan and currently developed with single family residences. The property to the south of the project site is within Planning Areas 7 and 8 of the Grand Park Specific Plan and currently developed with agricultural/dairy uses. The property to the east of the project site is within Planning Area 8A of The Avenue Specific Plan and is currently developed with single family residences. The property to the west of the project site is within the Low Density Residential district of Planning Area 5 of The Avenue Specific Plan and is currently developed with agricultural uses; and

WHEREAS, the Final Map for Tract 18937 was recorded in the official records of the San Bernardino County Recorder's Office on September 25, 2018; and

WHEREAS, the project site is directly adjacent to existing property owned by Southern California Edison (SCE) and the Applicant is responsible for the construction of street improvements, including neighborhood edge landscaping, sidewalks, trails and all other last lane improvements on Archibald Avenue and Ontario Ranch Road that are adjacent to the project site and adjacent to the Edison Substation (the "Deferred Frontage Improvements"); and

WHEREAS, on March 20, 2019, pursuant to Section 4.3.1.2 of the Development Agreement, the Applicant deferred the commencement and completion of the deferred frontage improvements and deposited \$441,102.11 in an Escrow Account for the estimated cost of the improvements; and

WHEREAS, the Applicant has been issued 149 building permits for production units, which requires the commencement of the deferred frontage improvements; and

WHEREAS, the Applicant has not acquired the necessary rights-of-way from SCE in order to commence the construction of the deferred frontage improvements; and

WHEREAS, the Applicant has requested an amendment (the "First Amendment") to the Development Agreement, to allow the release of additional building permits for production units, contingent upon the Applicant's compliance with the terms and provisions provided in the attached First Amendment; and

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

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

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

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

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

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

WHEREAS, on December 16, 2019, the Planning Commission of the City of Ontario conducted a hearing to consider the Project, and concluded said hearing on that date, voting to issue Resolution No. PC19-099 recommending the City Council approve the Application; and

WHEREAS, on January 21, 2020, the City Council of the City of Ontario conducted a hearing to consider the Project and concluded said hearing on that date; and

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

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

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

(1) The environmental impacts of this project were previously reviewed in conjunction with an addendum to The Avenue Specific Plan Environmental Impact Report, certified by the City of Ontario City Council on June 17, 2014, in conjunction with File No. PSPA13-003.

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

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

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

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

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

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

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

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

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

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

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

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

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

SECTION 4. *Housing Element Compliance.* Pursuant to the requirements of California Government Code Chapter 3, Article 10.6, commencing with Section 65580, as the APPROVING authority for the Project, the CITY COUNCIL finds that based on the facts and information contained in the Application and supporting documentation, at the time of Project implementation, the project is consistent with the Housing Element of the Policy Plan (General Plan) component of The Ontario Plan, as the project site is one of the properties listed in the Available Land Inventory contained in Table A-3 (Available Land by Planning Area) of the Housing Element Technical Report Appendix, and the proposed project is consistent with the maximum number of dwelling units (287) and density (9.5 DU/AC) specified in the Available Land Inventory.

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

a. The Application applies to 23.66 acres of land generally located at the northeast corner of Archibald Avenue and Ontario Ranch Road within Planning Area 7 of The Avenue Specific Plan; and

b. The property to the north of the project site is within Planning Area 6A of The Avenue Specific plan and currently developed with single family residences. The property to the south of the project site is within Planning Areas 7 and 8 of the Grand Park Specific Plan and currently developed with agricultural/dairy uses. The property to the east of the project site is within Planning Area 8A of The Avenue Specific Plan and is currently developed with single family residences. The property to the west of the project site is within the Open Space and Elementary School districts of Planning Area 5 of The Avenue Specific Plan and is currently developed with agricultural uses; and

c. In acknowledgement that the Applicant is currently making their best reasonable efforts to seek approval from SCE and cannot commence construction of the Deferred Frontage Improvements until an approval is granted from SCE, the City has agreed to issue additional building permits for Production Units; and

d. The City's release of additional building permits for Production Units, is contingent upon the Applicant's compliance with the terms and provisions provided in the attached First Amendment; and

e. If the Applicant is unable to receive approval from SCE pursuant to the thresholds provided in the attached First Amendment, the City Manager or designee, shall have the administrative authority to establish additional requirements of the Applicant for the release of the remaining building permits for Production Units at his/her reasonable discretion; and

f. This Application will not be materially injurious or detrimental to the adjacent properties and will not have a significant impact on the environmental or surrounding properties. The environmental impacts of this of this project were previously reviewed in conjunction with an amendment to The Avenue Specific Plan (File No. PSPA13-003), for which an addendum to the EIR (SCH#2005071109) was adopted by the City Council on June 17, 2014. This application introduces no new significant environmental impacts; and

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

h. The provisions of the Application are consistent with the goals, Policies, plans, and exhibits of the Vision, Policy Plan (General Plan), and the City Council Priorities components of The Ontario Plan, and any applicable specific plans; and

i. The Application 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

j. This Application will promote the goals and objectives of the Land Use Element of the Policy Plan.

SECTION 6. ***City Council Action.*** Based upon the findings and conclusions set forth in Sections 1 through 5, above, the City Council hereby APPROVES the herein described First Amendment to the Development Agreement (File No. PDA15-003), attached hereto as "Attachment B," and incorporated herein by this reference.

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

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

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

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

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

PASSED, APPROVED, AND ADOPTED this 4th day of February 2020.

PAUL S. LEON, MAYOR

ATTEST:

SHEILA MAUTZ, CITY CLERK

APPROVED AS TO FORM:

COLE HUBER 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. 3154 was duly introduced at a regular meeting of the City Council of the City of Ontario held January 21, 2020 and adopted at the regular meeting held February 4, 2020 by the following roll call vote, to wit:

AYES: COUNCIL MEMBERS:

NOES: COUNCIL MEMBERS:

ABSENT: COUNCIL MEMBERS:

SHEILA MAUTZ, CITY CLERK

(SEAL)

I hereby certify that the foregoing is the original of Ordinance No. 3154 duly passed and adopted by the Ontario City Council at their regular meeting held February 4, 2020 and that Summaries of the Ordinance were published on January 28, 2020 and February 11, 2020, in the Inland Valley Daily Bulletin newspaper.

SHEILA MAUTZ, CITY CLERK

(SEAL)

ATTACHMENT A:

Assessor Parcel Numbers (APN)

Tract Map 18937

(APN Listing to follow this page)

TRACT MAP 18937 – ASSESSOR PARCEL LISTING

0218-972-01	0218-972-47	0218-973-12	0218-974-42	0218-974-88	0218-975-41
0218-972-02	0218-972-48	0218-973-13	0218-974-43	0218-974-89	0218-975-42
0218-972-03	0218-972-49	0218-973-14	0218-974-44	0218-974-90	0218-975-43
0218-972-04	0218-972-50	0218-973-15	0218-974-45	0218-974-91	0218-975-44
0218-972-05	0218-972-51	0218-973-16	0218-974-46	0218-974-92	0218-975-45
0218-972-06	0218-972-52	0218-974-01	0218-974-47	0218-974-93	0218-975-46
0218-972-07	0218-972-53	0218-974-02	0218-974-48	0218-975-01	0218-975-47
0218-972-08	0218-972-54	0218-974-03	0218-974-49	0218-975-02	0218-975-48
0218-972-09	0218-972-55	0218-974-04	0218-974-50	0218-975-03	0218-975-49
0218-972-10	0218-972-56	0218-974-05	0218-974-51	0218-975-04	0218-975-50
0218-972-11	0218-972-57	0218-974-06	0218-974-52	0218-975-05	0218-975-51
0218-972-12	0218-972-58	0218-974-07	0218-974-53	0218-975-06	0218-975-52
0218-972-13	0218-972-59	0218-974-08	0218-974-54	0218-975-07	
0218-972-14	0218-972-60	0218-974-09	0218-974-55	0218-975-08	
0218-972-15	0218-972-61	0218-974-10	0218-974-56	0218-975-09	
0218-972-16	0218-972-62	0218-974-11	0218-974-57	0218-975-10	
0218-972-17	0218-972-63	0218-974-12	0218-974-58	0218-975-11	
0218-972-18	0218-972-64	0218-974-13	0218-974-59	0218-975-12	
0218-972-19	0218-972-65	0218-974-14	0218-974-60	0218-975-13	
0218-972-20	0218-972-66	0218-974-15	0218-974-61	0218-975-14	
0218-972-21	0218-972-67	0218-974-16	0218-974-62	0218-975-15	
0218-972-22	0218-972-68	0218-974-17	0218-974-63	0218-975-16	
0218-972-23	0218-972-69	0218-974-18	0218-974-64	0218-975-17	
0218-972-24	0218-972-70	0218-974-19	0218-974-65	0218-975-18	
0218-972-25	0218-972-71	0218-974-20	0218-974-66	0218-975-19	
0218-972-26	0218-972-72	0218-974-21	0218-974-67	0218-975-20	
0218-972-27	0218-972-73	0218-974-22	0218-974-68	0218-975-21	
0218-972-28	0218-972-74	0218-974-23	0218-974-69	0218-975-22	
0218-972-29	0218-972-75	0218-974-24	0218-974-70	0218-975-23	
0218-972-30	0218-972-76	0218-974-25	0218-974-71	0218-975-24	
0218-972-31	0218-972-77	0218-974-26	0218-974-72	0218-975-25	
0218-972-32	0218-972-78	0218-974-27	0218-974-73	0218-975-26	
0218-972-33	0218-972-79	0218-974-28	0218-974-74	0218-975-27	
0218-972-34	0218-972-80	0218-974-29	0218-974-75	0218-975-28	
0218-972-35	0218-972-81	0218-974-30	0218-974-76	0218-975-29	
0218-972-36	0218-973-01	0218-974-31	0218-974-77	0218-975-30	
0218-972-37	0218-973-02	0218-974-32	0218-974-78	0218-975-31	
0218-972-38	0218-973-03	0218-974-33	0218-974-79	0218-975-32	
0218-972-39	0218-973-04	0218-974-34	0218-974-80	0218-975-33	
0218-972-40	0218-973-05	0218-974-35	0218-974-81	0218-975-34	
0218-972-41	0218-973-06	0218-974-36	0218-974-82	0218-975-35	
0218-972-42	0218-973-07	0218-974-37	0218-974-83	0218-975-36	
0218-972-43	0218-973-08	0218-974-38	0218-974-84	0218-975-37	
0218-972-44	0218-973-09	0218-974-39	0218-974-85	0218-975-38	
0218-972-45	0218-973-10	0218-974-40	0218-974-86	0218-975-39	
0218-972-46	0218-973-11	0218-974-41	0218-974-87	0218-975-40	

ATTACHMENT B:

File No. PDA15-003

FIRST AMENDMENT TO THE DEVELOPMENT AGREEMENT

By and Between

**City of Ontario
a California municipal corporation**

and

**BrookCal Ontario, LLC
a California limited liability company**

(First Amendment to follow this page)

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

CITY OF ONTARIO
CITY CLERK / RECORDS MANAGEMENT
303 EAST "B" STREET
ONTARIO, CA 91764-4196

Space above this line for Recorder's Use

Exempt from Fees Per Gov. Code § 6301

File No. PDA15-003

FIRST AMENDMENT TO THE DEVELOPMENT AGREEMENT

By and Between

**City of Ontario
a California municipal corporation**

and

**BrookCal Ontario, LLC
a California limited liability company**

_____, 2020

San Bernardino County, California

**FIRST AMENDMENT TO THE DEVELOPMENT AGREEMENT BY AND
BETWEEN THE CITY OF ONTARIO AND BROOKCAL ONTARIO LLC
FILE NO. PDA15-003**

This First Amendment to the Development Agreement (hereinafter the "First Amendment") is entered into effective as of the ____ day of _____ 2020 by and among the City of Ontario, a California municipal corporation (hereinafter "CITY"), and BrookCal Ontario LLC, a California limited liability company (hereinafter "OWNER").

RECITALS

WHEREAS, the CITY and OWNER have previously entered into a Development Agreement dated December 5, 2017 and recorded in San Bernardino County, California on December 20, 2017 as Instrument No. 2017-0542426 pursuant to Section 65864, et seq., of the Government Code, (hereinafter the "Development Agreement"); and

WHEREAS, pursuant to Section 3.7.2.2 of the Development Agreement, the OWNER is required at OWNER's sole cost and expense, to construct the neighborhood edge landscaping, sidewalks, trails, and all other last lane improvements on Archibald Avenue and Ontario Ranch Road, that are adjacent to the Property, and adjacent to existing property owned by Southern California Edison ("the Edison Substation"), and on Ontario Ranch Road and Archibald Avenue, known as the "Deferred Frontage Improvements"; and

WHEREAS, OWNER and CITY agree and acknowledge that the Deferred Frontage Improvements adjacent to the Edison Substation, requires the review, approval, and permitting by Southern California Edison ("SCE"); and

WHEREAS, OWNER has requested, and CITY has agreed, to modify certain specified requirements for the commencement and completion of the Deferred Frontage Improvements; and

WHEREAS, on March 20, 2019, OWNER made the required deposit (\$441,102.11) to the Escrow Account (File No. OSA-5864661) established by CITY and OWNER as required by Section 4.3.1.2 of the Development Agreement; and

WHEREAS, as of November 1, 2019, OWNER and CITY acknowledge that SCE is pursuing (a) the approval from the California Public Utilities Commission ("CPUC") of the terms of a Purchase and Sale Agreement by and between OWNER and SCE for the conveyance by OWNER to SCE of certain real property adjacent to the Edison Substation and the grant to the City of an easement for right of way purposes over a portion of SCE's property and (b) the completion of certain improvements relating the Edison Substation so as to make the land and improvements available as necessary for OWNER to perform the Deferred Frontage Improvements.

WHEREAS, OWNER is requesting that CITY issue an additional building permits for the construction of Model Units and Production Units prior to OWNER's completion of the construction of the Deferred Frontage Improvements; and

WHEREAS, CITY and OWNER have agreed that CITY may issue additional building permits for the construction of Model Units and Production Units conditioned upon OWNER's agreement to commence the Deferred Frontage Improvements either prior to (1) the request of the 250th residential building permit, (2) or by June 30, 2020, whichever occurs, over the property owned by SCE at the corner of Archibald Avenue and Ontario Ranch Road, and complete the Deferred Frontage Improvements within one hundred eighty (180) days following the commencement of the Deferred Frontage Improvements.

AGREEMENTS

NOW, THEREFORE, in consideration of the above recitals and of the mutual agreements hereinafter contained, the parties agree as follows:

1. **MODIFICATIONS TO DEVELOPMENT AGREEMENT TO AMEND CERTAIN REQUIREMENTS FOR THE COMMENCEMENT AND COMPLETION OF THE DEFERRED FRONTAGE IMPROVEMENTS.**

The following shall replace Section 4.3.1.1 of the Development Agreement:

Deferral of Construction of Improvements on Archibald Avenue and Ontario Ranch Road Adjacent to the Property and the SCE Substation on Ontario Ranch road and Archibald Avenue. Notwithstanding the above, OWNER has requested and CITY has agreed that OWNER may defer the initiation and completion of the Deferred Frontage Improvements described in Section 3.7.2.2 of this Development Agreement and shown on Exhibit F and described as the street and other improvements on Archibald Avenue directly adjacent to the Project and the SCE Substation and the street and other improvements on Ontario Ranch Road adjacent to the Project and the SCE Substation. CITY's agreement to issue building permits for Production Units prior to OWNER's completion of the improvements described in Section 3.7.2 and as shown on Exhibit F is conditioned upon OWNER's compliance with the following conditions:

- a) Prior to, and as a condition precedent to, OWNER requesting and City granting of the first building permit for the Property, OWNER shall have completed the designs for the Deferred Frontage Improvements and also shall have completed the real property transaction to acquire the necessary Rights of Way for the Deferred Frontage Improvements, or OWNER shall have made the required deposit to the Escrow Account established by the CITY and OWNER as required by Section 4.3.1.2.
- b) Either prior to, and as a condition precedent to, (i) OWNER requesting and CITY granting the 250th residential building permit, including permits for the Model Units, (ii) or before June 30, 2020, whichever occurs first, OWNER shall commence the construction of the Deferred Frontage Improvements over that portion of the property owned by SCE as more particularly described on Exhibit "B" attached hereto and depicted on Exhibit "C" attached hereto.

- c) OWNER shall complete the construction of the Deferred Frontage Improvements within one hundred eighty (180) days following the commencement by OWNER of the Deferred Frontage Improvements.
- d) OWNER shall provide periodic written progress reports to CITY commencing thirty (30) days after the OWNER initiates construction of the Deferred Frontage Improvements and each thirty (30) days thereafter, regarding the progress of the construction of the Deferred Frontage Improvements until such Improvements are accepted by the CITY.
- e) Should OWNER not receive the required Rights of Way from SCE, prior to OWNER requesting the 250th residential building permit, or before June 30, 2020, whichever occurs first, and the OWNER has made its best reasonable efforts to seek approval from SCE, the City Manager or designee shall have the administrative authority to establish additional requirements of the Owner for the release of the remaining building permits for Production Units at his/her reasonable discretion.
- f) Subject to the provisions of Section 8 of this Development Agreement, if OWNER does not comply with the conditions of this Section 4.3.1.1, OWNER shall be deemed to be in default of this Development Agreement and CITY shall be entitled to pursue all such remedies as available under the provisions of this Development Agreement.

- 2. **Integration.** All remaining Sections of the Development Agreement and the Exhibits thereto shall not be affected by this First Amendment.
- 3. **Additional Documents/Actions.** The City Manager is authorized to approve and execute any documents and to take any actions necessary to effectuate the purposes of this First Amendment to the Development Agreement.
- 4. **Defined Terms/Other Provisions.** Unless otherwise defined herein, capitalized terms contained in this First Amendment shall have the meanings ascribed to them in the Development Agreement. Except as expressly amended herein, all provisions of the Development Agreement, as supplemented, restated and amended, shall remain.
- 5. **Integration.** This First Amendment reflects the complete understanding of the parties with respect to the subject matter hereof. To the extent this First Amendment conflicts with the Development Agreement, this First Amendment supersedes such previous document. In all other respects, the parties hereto re-affirm and ratify all other provisions of the Development Agreement as amended.
- 6. **Indemnification.** OWNER hereby agrees to indemnify, defend and hold harmless the CITY, its officials, officers, employees, agents, contractors and volunteers from and against any and all claims, suits or proceedings arising from or related to CITY's entering into, or carrying out, this First Amendment. This indemnification includes the

payment of all penalties, fines, judgments, awards, decrees, attorney's fees and related costs or expenses incurred by the CITY.

{signature page to follow}

IN WITNESS WHEREOF, the parties hereto have executed this First Amendment as of the date below, the ("Effective Date").

**SIGNATURE PAGE
TO FIRST AMENDMENT TO DEVELOPMENT AGREEMENT**

BROOKCAL ONTARIO LLC

"OWNER"

Brookcal Ontario LLC, a California limited liability company

By: _____

Name: _____

Title: Authorized Representative

Date: _____

"CITY"

CITY OF ONTARIO

By: _____

Scott Ochoa, City Manager

Date: _____

ATTEST:

City Clerk, Ontario

APPROVED AS TO FORM:

COLE HUBER LLP

City Attorney

ACKNOWLEDGEMENT

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

STATE OF CALIFORNIA)
COUNTY OF _____)

On _____, 20____, before me, _____,
Date *Insert Name and Title of the Officer*

personally appeared _____
Name(s) of Signer(s)

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

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

WITNESS my hand and official seal.

Signature _____
Signature of Notary Public

Place Notary Seal Above

ACKNOWLEDGEMENT

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

STATE OF CALIFORNIA)
COUNTY OF _____)

On _____, 20____, before me, _____,
Date *Insert Name and Title of the Officer*

personally appeared _____
Name(s) of Signer(s)

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

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

WITNESS my hand and official seal.

Signature _____
Signature of Notary Public

Place Notary Seal Above

Exhibit "A"

LEGAL DESCRIPTION OF PROPERTY

All of Tract Map No. 18937 as recorded in the Recorder's Office of San Bernardino County, State of California, filed under Document No. 2018-0352453 on September 25, 2018 in Book 351 of Tract Map at Page(s) 18 – 26.



Exhibit "B"

CITY ROAD EASEMENT DESCRIPTION

EXHIBIT "B"

ROAD EASEMENT
SERIAL NO. 71701A

IN THE CITY OF ONTARIO, COUNTY OF SAN BERNARDINO, STATE OF CALIFORNIA, BEING A PORTION OF THE WEST 30 ACRES OF THE SOUTHWEST ONE QUARTER ($\frac{1}{4}$) OF THE NORTHWEST ONE QUARTER ($\frac{1}{4}$) OF SECTION 14, TOWNSHIP 2 SOUTH, RANGE 7 WEST, SAN BERNARDINO BASE AND MERIDIAN, MORE PARTICULARLY DESCRIBED AS FOLLOWS:

PARCEL 1

BEGINNING AT THE SOUTHWEST CORNER OF LOT "UU" OF TRACT MAP 18937 RECORDED 09-25-2018 IN MAP BOOK 351 PAGES 18-26, INCLUSIVE, RECORDED IN SAID COUNTY OF RECORDS, ALSO BEING ON A POINT ON A LINE PARALLEL WITH AND 68.00 FEET EASTERLY OF THE CENTERLINE OF ARCHIBALD AVENUE;

THENCE LEAVING SAID CORNER, SOUTHERLY ALONG SAID PARALLEL LINE, SOUTH 00° 00' 12" EAST, 214.96 FEET, TO THE BEGINNING OF A TANGENT CURVE CONCAVE EASTERLY HAVING A RADIUS OF 35.00 FEET ;

THENCE SOUTHEASTERLY ALONG SAID CURVE, 55.02 FEET THROUGH A CENTRAL ANGLE OF 90° 03' 53", TO A POINT ON A LINE PARALLEL WITH AND 80.00 FEET NORTHERLY OF THE CENTERLINE OF ONTARIO RANCH ROAD;

THENCE ALONG SAID PARALLEL LINE, NORTH 89° 55' 55" EAST, 179.96 FEET TO A POINT BEING THE SOUTHWESTERLY CORNER OF LOT "TT" OF SAID TRACT MAP;

THENCE LEAVING SAID CORNER, SOUTH 00° 00' 12" EAST, 22.00 FEET TO A POINT ON A LINE PARALLEL WITH AND 58.00 FEET NORTHERLY OF THE CENTERLINE OF ONTARIO RANCH ROAD;

THENCE SOUTH 89° 55' 55" WEST, 192.96 FEET ALONG SAID PARALLEL LINE TO THE BEGINNING OF A TANGENT CURVE CONCAVE EASTERLY HAVING A RADIUS OF 35.00 FEET ;

THENCE NORTHWESTERLY ALONG SAID CURVE, 55.02 FEET THROUGH A CENTRAL ANGLE OF 90° 03' 53", TO A POINT PARALLEL WITH AND 55.00 FEET EASTERLY OF THE CENTERLINE OF ARCHIBALD AVENUE;

THENCE NORTHERLY ALONG SAID PARALLEL LINE, NORTH 00° 00' 12" WEST, 236.96 FEET ON SAID PARALLEL LINE TO A POINT ON THE WESTERLY PRODUCTION OF THE SOUTH LINE OF SAID LOT "UU" AND 55.00 FEET EASTERLY OF THE CENTERLINE OF ARCHIBALD AVENUE;

THENCE NORTH 89° 55' 55" EAST, 13.00 FEET ALONG SAID WESTERLY PROLONGATION OF THE SOUTH LINE OF LOT "UU" TO THE **POINT OF BEGINNING** .

PRERARED BY: K&A ENGINEERING
357 N. SHERIDAN ST.
CORONA, CA 92880

DATE EXHIBIT PREPARED: JUNE 7, 2018

1 OF 2

Exhibit "B" Continued

CITY ROAD EASEMENT DESCRIPTION

EXHIBIT "B"
ROAD EASEMENT
SERIAL NO. 71701A

PARCEL 1 CONT'D

CONTAINING: 8,266 SQ. FT. MORE OR LESS

EXHIBIT B: ATTACHED HERETO AND BY THIS REFERENCE MADE A PART HEREOF.

SUBJECT TO: COVENANTS, CONDITIONS, RESERVATIONS, RESTRICTIONS, RIGHT OF WAY AND EASEMENTS IF ANY.

PREPARED UNDER THE SUPERVISION OF:

 05/01/19
WILLIAM E. SNOW _____ DATE
P.L.S. NO. 4725
REG. EXP. 9/30/2019

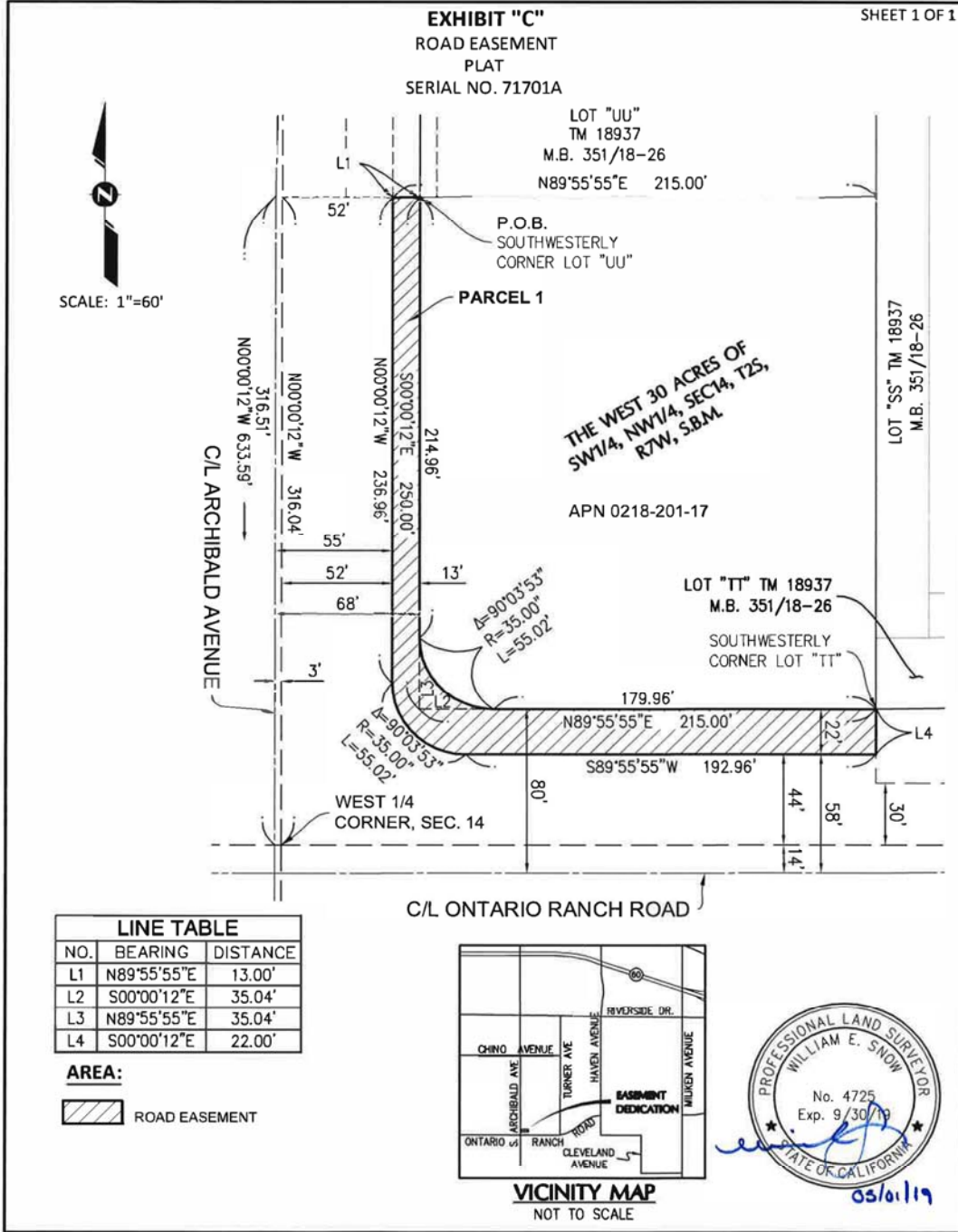


PRERARED BY: K&A ENGINEERING
357 N. SHERIDAN ST.
CORONA, CA 92880

DATE EXHIBIT PREPARED: JUNE 7, 2018

Exhibit "C"

CITY ROAD EASEMENT DEPICTION



CITY OF ONTARIO

Agenda Report
February 4, 2020

SECTION:
CONSENT CALENDAR

SUBJECT: ACCEPTANCE OF WRITTEN PETITIONS TO CREATE A COMMUNITY FACILITIES DISTRICT; A RESOLUTION OF INTENTION TO ESTABLISH CITY OF ONTARIO COMMUNITY FACILITIES DISTRICT NO. 53 (TEVELDE FACILITIES) AND TO AUTHORIZE THE LEVY OF SPECIAL TAXES; AND A RESOLUTION TO INCUR BONDED INDEBTEDNESS

RECOMMENDATION: That the City Council consider and:

- (A) Accept written petitions (on file with the Records Management Department) from LS ONTARIO LLC, a Delaware limited liability company and ARROYO CAP VII, LLC, a Delaware limited liability company, to create a Community Facilities District, and to waive certain procedural matters under the Mello-Roos Community Facilities Act of 1982;
- (B) Adopt a Resolution of Intention to establish City of Ontario Community Facilities District No. 53 (Tevelde Facilities) (the "CFD") and authorize the associated levy of special taxes therein; and set a public hearing for the formation of the CFD as part of the regularly scheduled City Council meeting on Tuesday, March 17, 2020; and
- (C) Adopt a Resolution to Incur Bonded Indebtedness of proposed Community Facilities District No. 53 (Tevelde Facilities).

COUNCIL GOALS: Operate in a Businesslike Manner


Focus Resources in Ontario's Commercial and Residential Neighborhoods

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

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

FISCAL IMPACT: The use of Mello-Roos financing for facilities in the residential development of the proposed CFD for the Tevelde project is estimated to generate approximately \$18.5 million, which

STAFF MEMBER PRESENTING: Jason M. Jacobsen, Departmental Administrator

Prepared by: Jason M. Jacobsen
Department: Financial Services
City Manager Approval: 

Submitted to Council/O.H.A. 02/04/2020
Approved: _____
Continued to: _____
Denied: _____

5

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. There is no fiscal impact at this time; however, there will be proposed levies in future years that will require City Council approval.

BACKGROUND: 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 facilities district to finance public improvements are adopting resolutions declaring the intention to establish a community facilities district, authorizing the levy of special taxes, and to issue bonds.

In the First Amended and Restated Agreement for the Financing and Construction of Limited Infrastructure Improvements to Serve an Easterly Portion of the New Model Colony (“First Amended and Restated Construction Agreement”) between the City and NMC Builders, LLC, the City agreed to cooperate with the members of NMC Builders, LLC in the formation of community facilities districts. LS ONTARIO LLC and ARROYO CAP VII, LLC, have provided written petitions to the City requesting formation of a community facilities district for the Tevelde project in Ontario Ranch. The Tevelde project addresses the development of approximately 82 gross acres located generally east of Cucamonga Channel, generally west of Archibald Avenue, south of Eucalyptus Avenue, and north of Merrill Avenue. At build out, the development is projected to include 432 detached units and will generate approximately \$1.4 million for debt service.

Included, as part of the resolution of intention for the proposed district, is the proposed Rate and Method of Apportionment of Special Tax for City of Ontario Community Facilities District No. 53 (Tevelde Facilities). The terms of the Rate and Method of Apportionment of Special Tax are consistent with the City Council’s adopted Mello-Roos Local Goals and Policies, Resolution No. 2006-021, in all aspects.

Under the proposed Rate and Method of Apportionment, **the portion of the maximum annual special tax rates which will be used to fund debt service payments on the bonds is fixed and will not increase over time.** The amount of bonds authorized (\$70 million) under the resolution is set intentionally higher than the current proposed bond amount (approximately \$18.5 million) in order to allow future City Councils the option to issue additional bonds to replace and/or construct new public infrastructure improvements in the future, or to fund City services without increasing the amount of the annual special taxes. The term and structure of the Rate and Method of Apportionment of Special Tax for the Tevelde project are consistent with those of the previously adopted Rate and Method of Apportionments for Ontario Ranch community facilities districts. This will ensure that the special tax rates levied on all residential property owners in community facilities districts in Ontario Ranch are developed in a consistent and equivalent manner. In addition, under the provisions of the Mello-Roos Act, to ensure that home buyers are making an informed decision, all residential builders in Ontario Ranch community facilities districts will be required to disclose the maximum annual special tax amounts to each homeowner before they enter into a sales contract.

List of infrastructure to be funded;

- Water and Recycled Water System Facilities
- Streets and Traffic Circulation System Facilities
- Storm Drain System Facilities
- Fiber Optic System Facilities

City staff has discussed the proposed Rate and Method of Apportionment of Special Tax with the landowners. As proposed, the resolution of intention to establish the district and to levy special taxes will set the public hearing date for the formation of the community facilities district for the regularly scheduled City Council meeting on Tuesday, March 17, 2020 to consider the matter.

RESOLUTION NO. _____

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. 53 (TEVELDE FACILITIES), AND TO AUTHORIZE THE LEVY OF SPECIAL TAXES.

WHEREAS, Section 53318 of the Mello-Roos Community Facilities Act of 1982 (the "Act") provides that proceedings for the establishment of a Community Facilities District shall be instituted by a legislative body of a local agency when a petition requesting the institution of the proceedings signed by the owners of not less than 10% of the area of land proposed to be included in the community facilities district and not proposed to be exempt from the special tax, describing the boundaries of the territory that is proposed for inclusion in the community facilities district and specifying the types of facilities and services to be financed by the community facilities district is filed with the clerk of the legislative body; and

WHEREAS, Section 53318 of the Act further provides that such a petition is not required to be acted upon until the payment of a fee in an amount that the legislative body determines, within 45 days of receiving such petition, is sufficient to compensate the legislative body for all costs incurred in conducting proceedings to create a community facilities district pursuant to the Act; and

WHEREAS, the City Council (the "City Council") of the City of Ontario (the "City") has received written petitions (the "Petitions") from LS-ONTARIO LLC, a Delaware limited liability company ("LS-ONTARIO"), and ARROYO CAP VII, LLC, a Delaware limited liability company (collectively, the "Landowners"), requesting the institution of proceedings for the establishment of a community facilities district (the "Community Facilities District"), describing the boundaries of the territory that is proposed for inclusion in the Community Facilities District and specifying the types of facilities and services to be financed by the Community Facilities District; and

WHEREAS, the Landowners have represented and warranted to the City Council that the Landowners are the owners of 100% of the area of land proposed to be included within the Community Facilities District and not proposed to be exempt from the special tax; and

WHEREAS, Section 53314.9 of the Act provides that, at any time either before or after the formation of a community facilities district, the legislative body may accept advances of funds from any source, including, but not limited to, private persons or private entities and may provide, by resolution, for the use of those funds for any authorized purpose, including, but not limited to, paying any cost incurred by the local agency in creating a community facilities district; and

WHEREAS, Section 53314.9 of the Act further provides that the legislative body may enter into an agreement, by resolution, with the person or entity advancing the funds, to repay all or a portion of the funds advanced, as determined by the legislative body, with or without interest, under all the following conditions: (a) the proposal to repay the funds is included in both the resolution of intention to establish a community facilities district adopted pursuant to Section 53321 of the Act and in the resolution of formation to establish a community facilities district pursuant to Section 53325.1 of the Act, (b) any proposed special tax is approved by the qualified electors of the community facilities district pursuant to the Act, and (c) any agreement shall specify that if the qualified electors of the community facilities district do not approve the proposed special tax, the local agency shall return any funds which have not been committed for any authorized purpose by the time of the election to the person or entity advancing the funds; and

WHEREAS, the City and LS-ONTARIO have entered into a Deposit and Reimbursement Agreement, dated as of February 1, 2020 (the "Deposit Agreement"), relating to the Community Facilities District, that provides for the advancement of funds by LS-ONTARIO to be used to pay costs incurred in connection with the establishment of the Community Facilities District and the issuance of special tax bonds thereby, and provides for the reimbursement to LS-ONTARIO of such funds advanced, without interest, from the proceeds of any such bonds issued by the Community Facilities District; and

WHEREAS, the City desires to include in this Resolution, in accordance with Section 53314.9 of the Act, the proposal to repay funds pursuant to the Deposit Agreement.

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

SECTION 1. The foregoing recitals are true and correct, and the City Council so finds and determines.

SECTION 2. The City Council hereby finds that the Petitions are signed by the owners of the requisite amount of land proposed to be included in the Community Facilities District.

SECTION 3. The City Council proposes to establish a community facilities district under the terms of the Act. The boundaries of the territory proposed for inclusion in the Community Facilities District are described in the map showing the proposed Community Facilities District (the "Boundary Map") on file with the City Clerk of the City (the "City Clerk"), which boundaries are hereby preliminarily approved and to which map reference is hereby made for further particulars. The City Clerk is hereby directed to sign the original Boundary Map and record, or cause to be recorded, the Boundary Map with all proper endorsements thereon in the office of the San Bernardino County Recorder within 15 days of the date of adoption of this Resolution, all as required by Section 3111 of the California Streets and Highways Code.

SECTION 4. The name proposed for the Community Facilities District is "City of Ontario Community Facilities District No. 53 (Tevelde Facilities)".

SECTION 5. The public facilities (the “Facilities”) proposed to be financed by the Community Facilities District pursuant to the Act are described under the caption “Facilities” on Exhibit A hereto, which is by this reference incorporated herein. Those Facilities proposed to be purchased as completed public facilities are described under the caption “Facilities to be Purchased” on Exhibit A hereto. The services (the “Services”) proposed to be financed by the Community Facilities District pursuant to the Act are described under the caption “Services” on Exhibit A hereto. The incidental expenses proposed to be incurred are identified under the caption “Incidental Expenses” on Exhibit A hereto. All or any portion of the Facilities may be financed through a financing plan, including, but not limited to, a lease, lease-purchase or installment-purchase arrangement.

SECTION 6. Except where funds are otherwise available, a special tax sufficient to pay for all Facilities and Services, secured by recordation of a continuing lien against all nonexempt real property in the Community Facilities District, will be annually levied within the Community Facilities District. The rate and method of apportionment of the special tax (the “Rate and Method”), in sufficient detail to allow each landowner within the proposed Community Facilities District to estimate the maximum amount that he or she will have to pay, is described in Exhibit B attached hereto, which is by this reference incorporated herein. The conditions under which the obligation to pay the special tax to pay for Facilities may be prepaid and permanently satisfied are specified in the Rate and Method. The special tax will be collected in the same manner as ordinary *ad valorem* property taxes or in such other manner as the City Council shall determine, including direct billing of the affected property owners.

SECTION 7. The special tax may only finance the Services to the extent that they are in addition to those provided in the territory of the Community Facilities District before the Community Facilities District is created. The Services may not supplant services already available within that territory when the Community Facilities District is created.

SECTION 8. The tax year after which no further special tax to pay for Facilities will be levied against any parcel used for private residential purposes is specified in the Rate and Method. Under no circumstances shall the special tax to pay for Facilities in any fiscal year against any parcel used for private residential purposes be increased as a consequence of delinquency or default by the owner or owners of any other parcel or parcels within the Community Facilities District by more than 10% above the amount that would have been levied in that fiscal year had there never been any such delinquencies or defaults. For purposes of this paragraph, a parcel shall be considered “used for private residential purposes” not later than the date on which an occupancy permit for private residential use is issued.

SECTION 9. Pursuant to Section 53344.1 of the Act, the City Council hereby reserves to itself the right and authority to allow any interested owner of property within the Community Facilities District, subject to the provisions of said Section 53344.1 and to those conditions as it may impose, and any applicable prepayment penalties as prescribed in the bond indenture or comparable instrument or document, to tender to the Community Facilities District treasurer in full payment or part payment of any

installment of the special taxes or the interest or penalties thereon which may be due or delinquent, but for which a bill has been received, any bond or other obligation secured thereby, the bond or other obligation to be taken at par and credit to be given for the accrued interest shown thereby computed to the date of tender.

SECTION 10. The City Council hereby fixes Tuesday, March 17, 2020, at 6:30 p.m., or as soon thereafter as the City Council may reach the matter, at 303 East B Street, Ontario, California, as the time and place when and where the City Council will conduct a public hearing on the establishment of the Community Facilities District.

SECTION 11. The City Clerk is hereby directed to publish, or cause to be published, a notice of said public hearing one time in a newspaper of general circulation published in the area of the proposed Community Facilities District. The publication of said notice shall be completed at least seven days prior to the date herein fixed for said hearing. Said notice shall contain the information prescribed by Section 53322 of the Act.

SECTION 12. The levy of said proposed special tax shall be subject to the approval of the qualified electors of the Community Facilities District at a special election. The proposed voting procedure shall be by mailed or hand-delivered ballot among the landowners in the Community Facilities District, with each owner having one vote for each acre or portion of an acre such owner owns in the Community Facilities District.

SECTION 13. Each officer of the City who is or will be responsible for providing one or more of the proposed types of Facilities or Services is hereby directed to study, or cause to be studied, the proposed Community Facilities District and, at or before said public hearing, file a report with the City Council containing a brief description of the Facilities and Services by type which will in his or her opinion be required to adequately meet the needs of the Community Facilities District, and his or her estimate of the cost of providing the Facilities and Services. Such officers are hereby also directed to estimate the fair and reasonable cost of the Facilities proposed to be purchased as completed public facilities and of the incidental expenses proposed to be paid. Such report shall be made a part of the record of said public hearing.

SECTION 14. LS-ONTARIO has heretofore advanced certain funds, and may advance additional funds, which have been or may be used to pay costs incurred in connection with the establishment of the Community Facilities District and the issuance of special tax bonds thereby. The City Council proposes to repay all or a portion of such funds expended for such purpose, solely from the proceeds of such bonds, pursuant to the Deposit Agreement. The Deposit Agreement is hereby incorporated herein as though set forth in full herein.

SECTION 15. The officers, employees and agents of the City are hereby authorized and directed to take all actions and do all things which they, or any of them, may deem necessary or desirable to accomplish the purposes of this Resolution and not inconsistent with the provisions hereof.

SECTION 16. This Resolution shall take effect immediately upon its adoption.

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

PASSED, APPROVED, AND ADOPTED this 4th day of February 2020.

PAUL S. LEON, MAYOR

ATTEST:

SHEILA MAUTZ, CITY CLERK

APPROVED AS TO FORM:

COLE HUBER, LLP
CITY ATTORNEY

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

I, SHEILA MAUTZ, City Clerk of the City of Ontario, DO HEREBY CERTIFY that foregoing Resolution No. 2020- was duly passed and adopted by the City Council of the City of Ontario at their regular meeting held February 4, 2020 by the following roll call vote, to wit:

AYES: COUNCIL MEMBERS:

NOES: COUNCIL MEMBERS:

ABSENT: COUNCIL MEMBERS:

SHEILA MAUTZ, CITY CLERK

(SEAL)

The foregoing is the original of Resolution No. 2020- duly passed and adopted by the Ontario City Council at their regular meeting held February 4, 2020.

SHEILA MAUTZ, CITY CLERK

(SEAL)

EXHIBIT A

FACILITIES AND INCIDENTAL EXPENSES

Facilities

The types of facilities to be financed by the Community Facilities District are street and bridge improvements, including grading, paving, curbs and gutters, sidewalks, street signalization and signage, street lights and parkway and landscaping related thereto, domestic and recycled water distribution facilities, sewer collection facilities, solid waste facilities, storm drainage facilities, park and recreation facilities and equipment, aquatic facilities and equipment, fire facilities and equipment, police facilities and equipment, library facilities and equipment, fiber optic telecommunication system facilities, general governmental office, administrative and meeting facilities, and land, rights-of-way and easements necessary for any of such facilities.

Facilities to be Purchased

The types of facilities to be purchased as completed facilities are street and bridge improvements, including grading, paving, curbs and gutters, sidewalks, street signalization and signage, street lights and parkway and landscaping related thereto, domestic and recycled water distribution facilities, sewer collection facilities, solid waste facilities, storm drainage facilities, park and recreation facilities and equipment, aquatic facilities and equipment, fire facilities and equipment, police facilities and equipment, library facilities and equipment, fiber optic telecommunication system facilities, general governmental office, administrative and meeting facilities, and land, rights-of-way and easements necessary for any of such facilities.

Services

The types of services to be financed by the Community Facilities District are police protection services, fire protection and suppression services, ambulance and paramedic services, maintenance and lighting of parks, parkways, streets, roads and open space, flood and storm protection services and maintenance and operation of any real property or other tangible property with an estimated useful life of five or more years that is owned by the City.

Incidental Expenses

The incidental expenses proposed to be incurred include the following:

- (a) the cost of planning and designing public facilities to be financed, including the cost of environmental evaluations of those facilities;
- (b) the costs associated with the creation of the Community Facilities District, issuance of bonds, determination of the amount of taxes, collection of taxes, payment of taxes, or costs otherwise incurred in order to carry out the authorized purposes of the Community Facilities District; and
- (c) any other expenses incidental to the construction, completion, and inspection of the authorized work.

EXHIBIT B

PROPOSED RATE AND METHOD OF APPORTIONMENT OF SPECIAL TAX

EXHIBIT B

CITY OF ONTARIO COMMUNITY FACILITIES DISTRICT No. 53 (TEVELDE FACILITIES)

RATE AND METHOD OF APPORTIONMENT OF SPECIAL TAX

A Special Tax shall be levied on all Assessor's Parcels in the City of Ontario Community Facilities District No. 53 (Tevelde Facilities) ("CFD No. 53") and collected each Fiscal Year, commencing in Fiscal Year 2020-21, in an amount determined by the City Council of the City of Ontario through the application of the Rate and Method of Apportionment, as described below. All of the real property in CFD No. 53, unless exempted by law or by the provisions hereof, shall be taxed for the purposes, to the extent, and in the manner herein provided.

A. DEFINITIONS

The terms hereinafter set forth have the following meanings:

"Acre" or "Acreage" means the land area of an Assessor's Parcel as shown on an Assessor's Parcel Map, or if the land area is not shown on an Assessor's Parcel Map, the land area shown on the applicable Final Subdivision Map, parcel map, condominium plan, or other recorded County map.

"Act" means the Mello-Roos Community Facilities Act of 1982, as amended, being Chapter 2.5 of Part 1 of Division 2 of Title 5 of the California Government Code.

"Administrative Expenses" means the following actual or reasonably estimated costs directly related to the administration of CFD No. 53: the costs of computing the Special Taxes and preparing the annual Special Tax collection schedules (whether by the City or CFD No. 53 or both); the costs of collecting the Special Taxes (whether by the County or otherwise); the costs of remitting the Special Taxes to the Trustee; the costs of the Trustee (including its legal counsel) in the discharge of the duties required of it under the Indenture; the costs to the City or CFD No. 53 of complying with arbitrage rebate requirements; the costs to the City or CFD No. 53 of complying with City, CFD No. 53, or obligated persons disclosure requirements associated with applicable federal and state securities laws and of the Act; the costs associated with preparing Special Tax disclosure statements and responding to public inquiries regarding the Special Taxes; the costs of the City or CFD No. 53 related to the analysis and reduction, if any, of the Special Tax on Residential Property in accordance with Section C.1 herein; the costs of the City or CFD No. 53 related to an appeal of the Special Tax; the costs associated with the release of funds from any escrow account; the City's administration fees and third party expenses; the costs of City staff time and reasonable overhead relating to CFD No. 53; and amounts estimated or advanced by the City or CFD No. 53 for any other administrative purposes

of CFD No. 53, including attorney's fees and other costs related to commencing and pursuing to completion any foreclosure of delinquent Special Taxes.

"Assessor's Parcel" means a lot or parcel shown in an Assessor's Parcel Map with an assigned Assessor's Parcel Number.

"Assessor's Parcel Map" means an official map of the Assessor of the County designating parcels by Assessor's Parcel Number.

"Assessor's Parcel Number" means, with respect to an Assessor's Parcel, that number assigned to such Assessor's Parcel by the County for purposes of identification.

"Assigned Special Tax" means the Special Tax for each Land Use Class of Developed Property, as determined in accordance with Section C.1.a.2 below.

"Backup Special Tax" means the Special Tax for each Land Use Class of Developed Property, as determined in accordance with Section C.1.a.3 below.

"Bonds" means any bonds or other debt (as defined in Section 53317(d) of the Act) issued by CFD No. 53 under the Act and payable from Special Taxes.

"Buildable Lot" means an individual lot, within a Final Subdivision Map or an area expected by CFD No. 53 to become Final Mapped Property, such as the area within a Tentative Tract Map, for which a building permit may be issued without further subdivision of such lot.

"CFD Administrator" means an official of the City responsible for determining the Special Tax Requirement, providing for the levy and collection of the Special Taxes, and performing the other duties provided for herein.

"CFD No. 53" means City of Ontario Community Facilities District No. 53 (Tevelde Facilities).

"City" means the City of Ontario, California.

"City Council" means the City Council of the City, acting as the legislative body of CFD No. 53.

"Contractual Impositions" means (a) a voluntary contractual assessment established and levied on an Assessor's Parcel pursuant to Chapter 29 of Part 3 of Division 7 of the California Streets and Highways Code (commencing with Section 5898.10 *et seq.*), as amended from time to time, (b) a special tax established and levied on an Assessor's Parcel pursuant to Section 53328.1 of the California Government Code and related provisions of the Act, as amended from time to time, and (c) any other fee, charge, tax, or assessment established and levied on an individual Assessor's Parcel pursuant to a contractual agreement or other voluntary consent by the owner thereof (e.g., property owner association assessments).

“**County**” means the County of San Bernardino.

“**Designated Buildable Lot**” means a Buildable Lot for which a building permit has not been issued by the City as of the date of calculation of the Backup Special Tax.

“**Developed Property**” means for each Fiscal Year, all Taxable Property, exclusive of Final Mapped Property, Taxable Property Owner Association Property, and Taxable Public Property, for which a building permit or other applicable permit for new construction was issued after January 1, 2019, and before May 1 of the prior Fiscal Year.

“**Expected Residential Lot Count**” means 432 Buildable Lots of Residential Property or, as determined by the CFD Administrator, the number of Buildable Lots of Residential Property based on the most recent Tentative Tract Map(s) or most recently recorded Final Subdivision Map(s) or modified Final Subdivision Map(s).

“**Facilities**” means the public facilities authorized to be financed, in whole or in part, by CFD No. 53.

“**Final Mapped Property**” means, for each Fiscal Year, all Taxable Property, exclusive of Developed Property, Taxable Property Owner Association Property, and Taxable Public Property, which as of January 1 of the previous Fiscal Year was located within a Final Subdivision Map. The term Final Mapped Property shall include any parcel map or Final Subdivision Map, or portion thereof, that creates individual lots for which a building permit may be issued, including Parcels that are designated as a remainder Parcel (i.e., one where the size, location, etc., precludes any further subdivision or taxable use).

“**Final Subdivision Map**” means a final tract map, parcel map, or lot line adjustment approved by the City pursuant to the Subdivision Map Act (California Government Code Section 66410 et seq.) or a condominium plan recorded pursuant to California Civil Code 1352 that, in either case, creates individual lots for which building permits may be issued without further subdivision.

“**Fiscal Year**” means the period starting July 1 and ending on the following June 30.

“**Indenture**” means the indenture, fiscal agent agreement, resolution, or other instrument pursuant to which Bonds are issued, as modified, amended, and/or supplemented from time to time.

“**Land Use Class**” means any of the classes listed in Table 1 below.

“**Maximum Special Tax**” means, with respect to an Assessor’s Parcel of Taxable Property, the Maximum Special Tax determined in accordance with Section C.1 below that can be levied in any Fiscal Year on such Assessor’s Parcel of Taxable Property.

“**Minimum Sale Price**” means the minimum price at which Units of a given Land Use Class have sold or are expected to be sold in a normal marketing environment and shall

not include prices for such Units that are sold at a discount to expected sales prices for the purpose of stimulating the initial sales activity with respect to such Land Use Class.

“Other Property” means all Assessor’s Parcels of Developed Property for which a building permit was issued by the City for purposes of constructing Units, excluding Single Family Detached One Story Property and Single Family Detached Property, or for purposes of constructing one or more non-residential structures or facilities.

“Outstanding Bonds” means all Bonds which are outstanding under and in accordance with the provisions of the Indenture.

“Price Point Consultant” means any consultant or firm of such consultants selected by CFD No. 53 that (a) has substantial experience in performing price point studies for residential units within community facilities districts established under the Act or otherwise estimating or confirming pricing for residential units in such community facilities districts, (b) has recognized expertise in analyzing economic and real estate data that relates to the pricing of residential units in such community facilities districts, (c) is in fact independent and not under the control of CFD No. 53 or the City, (d) does not have any substantial interest, direct or indirect, with or in (i) CFD No. 53, (ii) the City, (iii) any owner of real property in CFD No. 53, or (iv) any real property in CFD No. 53, and (e) is not connected with CFD No. 53 or the City as an officer or employee thereof, but who may be regularly retained to make reports to CFD No. 53 or the City.

“Price Point Study” means a price point study or a letter updating a previous price point study prepared by the Price Point Consultant pursuant to Section C herein.

“Property Owner Association Property” means, for each Fiscal Year, any property within the boundaries of CFD No. 53 that was owned by a property owner association, including any master or sub-association, as of January 1 of the prior Fiscal Year.

“Proportionately” means (a) for Developed Property in the first step of Section D below, that the ratio of the actual Special Tax levy to the Maximum Special Tax is equal for all Assessor’s Parcels of Developed Property; however, for Developed Property in the fourth step of Section D below, Proportionately means that the amount of the increase above the Assigned Special Tax, if necessary, is equal for all Assessor’s Parcels of Developed Property, except that if the Backup Special Tax limits the increase on any Assessor’s Parcel(s), then the amount of the increase shall be equal for the remaining Assessor’s Parcels; (b) for Final Mapped Property, that the ratio of the actual Special Tax levy to the Maximum Special Tax is equal for all Assessor’s Parcels of Final Mapped Property; (c) for Undeveloped Property, that the ratio of the actual Special Tax levy to the Maximum Special Tax is equal for all Assessor's Parcels of Undeveloped Property; (d) for Taxable Property Owner Association Property, that the ratio of the actual Special Tax levy to the Maximum Special Tax is equal for all Assessor’s Parcels of Taxable Property Owner Association Property; and (e) for Taxable Public Property, that the ratio of the actual Special Tax levy to the Maximum Special Tax is equal for all Assessor’s Parcels of Taxable Public Property.

“Public Property” means, for each Fiscal Year, property within the boundaries of CFD No. 53 that is (a) owned by, irrevocably offered to, or dedicated to the federal government, the State, the County, the City, or any local government or other public agency or (b) encumbered by an easement for purposes of public or utility right-of-way that makes impractical its use for any purpose other than that set forth in such easement, provided that any property leased by a public agency to a private entity and subject to taxation under Section 53340.1 of the Act shall be taxed and classified according to its use.

“Rate and Method of Apportionment” means this Rate and Method of Apportionment of Special Tax.

“Residential Floor Area” means all of the Square Footage of living area within the perimeter of a residential Unit, not including any carport, walkway, garage, overhang, patio, enclosed patio, or similar area. The determination of Residential Floor Area shall be as set forth in the building permit(s) issued for such Assessor’s Parcel, or as set forth in other official records maintained by the City’s Building Department or other appropriate means selected by CFD No. 53. The actual Square Footage shall be rounded up to the next whole square foot. Once such determination has been made for an Assessor’s Parcel, it shall remain fixed in all future Fiscal Years unless an appeal pursuant to Section F below is approved that results in a change in the actual Square Footage.

“Residential Property” means all Assessor’s Parcels of Taxable Property for which a building permit may be issued for purposes of constructing one or more Units.

“Services” means the services authorized to be financed, in whole or in part, by CFD No. 53.

“Single Family Detached One Story Property” means all Assessor’s Parcels of Residential Property for which a building permit was issued for construction of a Unit, on one legal lot, that does not share a common wall with another Unit, contains one floor of living area at the time the Unit is constructed, and is located within TTM 18929 or TTM 18930.

“Single Family Detached Property” means all Assessor’s Parcels of Residential Property for which a building permit was issued for construction of a Unit, on one legal lot, that does not share a common wall with another Unit, and is not Single Family Detached One Story Property.

“Special Tax” means the special tax authorized by the qualified electors of CFD No. 53 to be levied within the boundaries of CFD No. 53.

“Special Tax Requirement” means for any Fiscal Year that amount required, after taking into account available amounts held in the funds and accounts established under the Indenture, for CFD No. 53 to: (i) pay debt service on all Outstanding Bonds which is due in the calendar year that commences in such Fiscal Year; (ii) pay periodic costs on the Bonds, including, but not limited to, credit enhancement and rebate payments on the

Bonds; (iii) pay Administrative Expenses; (iv) provide any amounts required to establish or replenish any reserve fund for the Bonds; (v) pay directly for acquisition or construction of Facilities, or the cost of Services, to the extent that the inclusion of such amounts does not increase the Special Tax levy on Final Mapped Property or Undeveloped Property; (vi) provide an amount equal to Special Tax delinquencies based on the historical delinquency rate for the Special Tax as determined by the CFD Administrator.

“Square Footage” or “Sq. Ft.” means the floor area square footage reflected on the original construction building permit, or as set forth in other official records maintained by the City’s Building Department or other appropriate means selected by CFD No. 53, issued for construction of Residential Property or Other Property, plus any square footage subsequently added to a building of Other Property after issuance of a building permit for expansion or renovation of such building.

“State” means the State of California.

“Taxable Property” means, for each Fiscal Year, all of the Assessor’s Parcels within the boundaries of CFD No. 53 that are not exempt from the Special Tax pursuant to law or Section E below.

“Taxable Property Owner Association Property” means, for each Fiscal Year, all Assessor’s Parcels of Property Owner Association Property that are not exempt from the Special Tax pursuant to Section E below.

“Taxable Public Property” means, for each Fiscal Year, all Assessor’s Parcels of Public Property that are not exempt from the Special Tax pursuant to law or Section E below.

“Tentative Tract Map” means a map: (i) showing a proposed subdivision of an Assessor’s Parcel(s) and the conditions pertaining thereto; (ii) that may or may not be based on a detailed survey; and (iii) that is not recorded by the County to create legal lots.

“Total Tax Burden” means, for a Unit within a Land Use Class, for the Fiscal Year in which Total Tax Burden is being calculated, the sum of (a) the Assigned Special Tax for such Land Use Class for such Fiscal Year, plus (b) the *ad valorem* property taxes, special assessments, special taxes for any overlapping community facilities districts, and any other governmental fees, charges (other than fees or charges for services such as sewer and trash), taxes, and assessments (which do not include Contractual Impositions) collected by the County on *ad valorem* tax bills and that the CFD Administrator estimates would be levied or imposed on such Unit in such Fiscal Year if the residential dwelling unit thereon or therein had been completed and sold, and was subject to such fees, charges, taxes, and assessments in such Fiscal Year.

“Trustee” means the trustee or fiscal agent under the Indenture.

“TTM 18929” means Tentative Tract Map No. 18929, the area of which is located within CFD No. 53.

“**TTM 18930**” means Tentative Tract Map No. 18930, the area of which is located within CFD No. 53.

“**Undeveloped Property**” means, for each Fiscal Year, all Taxable Property not classified as Developed Property, Final Mapped Property, Taxable Public Property, or Taxable Property Owner Association Property.

“**Unit**” means an individual single-family detached or attached home, townhome, condominium, apartment, or other residential dwelling unit, including each separate living area within a half-plex, duplex, triplex, fourplex, or other residential structure.

B. ASSIGNMENT TO LAND USE CATEGORIES

Each Fiscal Year, beginning with Fiscal Year 2020-21, all Taxable Property within CFD No. 53 shall be classified as Developed Property, Final Mapped Property, Taxable Public Property, Taxable Property Owner Association Property, or Undeveloped Property and shall be subject to Special Taxes in accordance with the Rate and Method of Apportionment as determined pursuant to Sections C and D below. Assessor’s Parcels of Single Family Detached Property shall be assigned to Land Use Classes 1 through 18, and Assessor’s Parcels of Single Family Detached One Story Property shall be assigned to Land Use Classes 19 through 22, as listed in Table 1 below based on the Residential Floor Area of the Units on such Assessor’s Parcels. Other Property shall be assigned to Land Use Class 23.

C. MAXIMUM SPECIAL TAX

1. Special Tax

At least 30 days prior to the issuance of Bonds, the Assigned Special Tax on Developed Property (set forth in Table 1 below) shall be analyzed in accordance with and subject to the conditions set forth in this Section C. At such time, CFD No. 53 shall select and engage a Price Point Consultant and the CFD Administrator shall request the Price Point Consultant to prepare a Price Point Study setting forth the Minimum Sale Price of Units within each Land Use Class. If based upon such Price Point Study the CFD Administrator calculates that the Total Tax Burden applicable to Units within one or more Land Use Classes of Residential Property to be constructed within CFD No. 53 exceeds 1.95% of the Minimum Sale Price of such Units, the Assigned Special Tax shall be reduced to the extent necessary to cause the Total Tax Burden that shall apply to Units within such Land Use Class(es) not to exceed 1.95% of the Minimum Sale Price of such Units.

Each Assigned Special Tax reduction for a Land Use Class shall be calculated by the CFD Administrator separately, and it shall not be required that such reduction be proportionate among Land Use Classes. In connection with any reduction in the Assigned Special Tax, the Backup Special Tax shall also be reduced by the CFD Administrator based on the percentage reduction in Maximum Special Tax revenues within the Tentative Tract Map area(s) where the Assigned Special Tax

reductions occurred. Upon determining the reductions, if any, in the Assigned Special Tax and Backup Special Tax required pursuant to this Section C, the CFD Administrator shall complete the Certificate of Modification of Special Tax substantially in the form attached hereto as Exhibit A (the “Certificate of Modification”), shall execute such completed Certificate of Modification, and shall deliver such executed Certificate of Modification to CFD No. 53. Upon receipt thereof, if in satisfactory form, CFD No. 53 shall execute such Certificate of Modification. The reduced Assigned Special Tax and Backup Special Tax specified in such Certificate of Modification shall become effective upon the execution of such Certificate of Modification by CFD No. 53.

The Special Tax reductions required pursuant to this section shall be reflected in an amended notice of Special Tax lien which CFD No. 53 shall cause to be recorded with the County Recorder as soon as practicable after execution of the Certificate of Modification by CFD No. 53. The reductions in this section apply to Residential Property, but not to Other Property.

a. Developed Property

1) *Maximum Special Tax*

The Maximum Special Tax that may be levied in any Fiscal Year for each Assessor’s Parcel classified as Developed Property shall be the greater of (i) the amount derived by application of the Assigned Special Tax or (ii) the amount derived by application of the Backup Special Tax. The Maximum Special Tax shall not increase in future years, other than as calculated pursuant to Section C.1.a.3 below.

2) *Assigned Special Tax*

The Assigned Special Tax that may be levied in any Fiscal Year for each Land Use Class is shown below in Table 1.

**TABLE 1
ASSIGNED SPECIAL TAX – DEVELOPED PROPERTY**

Land Use Class	Description	Residential Floor Area: Square Footage	Assigned Special Tax
1	Single Family Detached Property	< 2,201	\$2,529 per Unit
2	Single Family Detached Property	2,201 – 2,300	\$2,642 per Unit
3	Single Family Detached Property	2,301 – 2,400	\$2,798 per Unit
4	Single Family Detached Property	2,401 – 2,500	\$2,956 per Unit
5	Single Family Detached Property	2,501 – 2,600	\$3,049 per Unit

6	Single Family Detached Property	2,601 – 2,700	\$3,094 per Unit
7	Single Family Detached Property	2,701 – 2,800	\$3,260 per Unit
8	Single Family Detached Property	2,801 – 2,900	\$3,329 per Unit
9	Single Family Detached Property	2,901 – 3,000	\$3,484 per Unit
10	Single Family Detached Property	3,001 – 3,100	\$3,639 per Unit
11	Single Family Detached Property	3,101 – 3,200	\$3,657 per Unit
12	Single Family Detached Property	3,201 – 3,300	\$3,770 per Unit
13	Single Family Detached Property	3,301 – 3,400	\$3,974 per Unit
14	Single Family Detached Property	3,401 – 3,500	\$3,998 per Unit
15	Single Family Detached Property	3,501 – 3,600	\$4,108 per Unit
16	Single Family Detached Property	3,601 – 3,700	\$4,221 per Unit
17	Single Family Detached Property	3,701 – 3,800	\$4,356 per Unit
18	Single Family Detached Property	> 3,800	\$4,437 per Unit
	Single Family Detached:		
19	One Story Property	< 2,201	\$2,946 per Unit
20	One Story Property	2,201 – 2,300	\$3,042 per Unit
21	One Story Property	2,301 – 2,400	\$3,123 per Unit
22	One Story Property	> 2,400	\$3,198 per Unit
23	Other Property TTM 18929 TTM 18930		\$33,652 per Acre \$33,652 per Acre

3) Backup Special Tax

The Backup Special Tax shall be \$3,412 per Unit for Residential Property. However, if the Expected Residential Lot Count does not equal 432, and the City has not issued Bonds, then the Backup Special Tax for Designated Buildable Lots of Residential Property shall be calculated according to the following formula:

$$\begin{aligned} \text{Backup Special Tax} &= \$33,652 \\ &\times \text{Acreage of Designated Buildable Lots} \\ &\quad \text{of Residential Property} \\ &\div \text{Expected Residential Lot Count for} \\ &\quad \text{Residential Property} \end{aligned}$$

If any portion of a Final Subdivision Map, or any area expected by CFD No. 53 to become Final Mapped Property, such as the area within TTM 18929, TTM 18930, or any other Tentative Tract Map, changes any time after the City has issued Bonds, causing an

adjustment to the number of Designated Buildable Lots, then the Backup Special Tax for all Designated Buildable Lots of Residential Property subject to the change shall be calculated according to the following steps:

Step 1: Determine the total Backup Special Taxes that could have been collected from Designated Buildable Lots, separately for each Tentative Tract Map, prior to the Final Subdivision Map or expected Final Mapped Property change.

Step 2: Divide the amount(s) determined in Step 1 by the number of Designated Buildable Lots, separately for each Tentative Tract Map, that exists after the Final Subdivision Map or expected Final Mapped Property change.

Step 3: Apply the amount(s) determined in Step 2 as the Backup Special Tax per Unit for Residential Property for each Tentative Tract Map.

The Backup Special Tax for an Assessor's Parcel shall not change once an Assessor's Parcel is classified as Developed Property.

b. Final Mapped Property, Taxable Public Property, Taxable Property Owner Association Property, and Undeveloped Property

The Maximum Special Tax for Final Mapped Property, Taxable Public Property, Taxable Property Owner Association Property, and Undeveloped Property shall be \$33,652 per Acre for such property in TTM 18929, and \$33,652 per Acre for such property in TTM 18930, and shall not be subject to increase or reduction and, therefore, shall remain the same in every Fiscal Year.

2. Multiple Land Use Classes on an Assessor's Parcel

In some instances an Assessor's Parcel of Developed Property may contain more than one Land Use Class. The Maximum Special Tax levied on such Assessor's Parcel shall be the sum of the Maximum Special Tax for all Units of Residential Property and Acres of Other Property (based on the applicable building permits, Final Subdivision Map, parcel map, condominium plan, or other recorded County map) located on that Assessor's Parcel.

D. METHOD OF APPORTIONMENT OF THE SPECIAL TAX

Each Fiscal Year, beginning with Fiscal Year 2020-21, the CFD Administrator shall determine the Special Tax Requirement for such Fiscal Year. The Special Tax shall then be levied as follows:

First: If needed to satisfy the Special Tax Requirement, the Special Tax shall be levied Proportionately on each Assessor's Parcel of Developed Property up to 100% of the applicable Assigned Special Tax;

Second: If additional monies are needed to satisfy the Special Tax Requirement after the first step has been completed, then the Special Tax shall be levied Proportionately on each Assessor's Parcel of Final Mapped Property up to 100% of the Maximum Special Tax for Final Mapped Property;

Third: If additional monies are needed to satisfy the Special Tax Requirement after the first two steps have been completed, then the Special Tax shall be levied Proportionately on each Assessor's Parcel of Undeveloped Property up to 100% of the Maximum Special Tax for Undeveloped Property;

Fourth: If additional monies are needed to satisfy the Special Tax Requirement after the first three steps have been completed, then the levy of the Special Tax on each Assessor's Parcel of Developed Property whose Maximum Special Tax is determined through the application of the Backup Special Tax shall be increased Proportionately from the Assigned Special Tax up to the Maximum Special Tax for each such Assessor's Parcel;

Fifth: If additional monies are needed to satisfy the Special Tax Requirement after the first four steps have been completed, then the Special Tax shall be levied Proportionately on each Assessor's Parcel of Taxable Property Owner Association Property up to the Maximum Special Tax for Taxable Property Owner Association Property; and

Sixth: If additional monies are needed to satisfy the Special Tax Requirement after the first five steps have been completed, then the Special Tax shall be levied Proportionately on each Assessor's Parcel of Taxable Public Property up to the Maximum Special Tax for Taxable Public Property.

Notwithstanding the above, under no circumstances shall the Special Tax levied in any Fiscal Year on any Assessor's Parcel of Residential Property for which an occupancy permit for private residential use has been issued be increased as a result of delinquency or default by the owner or owners of any other Assessor's Parcel or Assessor's Parcels within CFD No. 53 by more than ten percent above the amount that would have been levied in that Fiscal Year had there never been any such delinquencies or defaults.

E. EXEMPTIONS

No Special Tax shall be levied on up to 24.26 Acres of Public Property and up to 8.74 Acres of Property Owner Association Property. Tax-exempt status will be assigned by

the CFD Administrator in the chronological order in which property becomes Public Property or Property Owner Association Property.

Property Owner Association Property or Public Property that is not exempt from the Special Tax under this section shall be subject to the levy of the Special Tax and shall be taxed Proportionately as part of the fifth or sixth step, respectively, in Section D above, up to 100% of the applicable Maximum Special Tax for Taxable Property Owner Association Property and Taxable Public Property. No Special Tax shall be levied in any Fiscal Year on Assessor's Parcels that have fully prepaid the Special Tax obligation pursuant to the formula set forth in Section H.

F. APPEALS

Any property owner may file a written appeal of the Special Tax with CFD No. 53 claiming that the amount or application of the Special Tax is not correct. The appeal must be filed not later than one calendar year after having paid the Special Tax that is disputed, and the appellant must be current in all payments of Special Taxes. In addition, during the term of the appeal process, all Special Taxes levied must be paid on or before the payment date established when the levy was made.

The appeal must specify the reasons why the appellant claims the Special Tax is in error. The CFD Administrator shall review the appeal, meet with the appellant if the CFD Administrator deems necessary, and advise the appellant of its determination.

If the property owner disagrees with the CFD Administrator's decision relative to the appeal, the owner may then file a written appeal with the City Council whose subsequent decision shall be final and binding on all interested parties. If the decision of the CFD Administrator or subsequent decision by the City Council requires the Special Tax to be modified or changed in favor of the property owner, then the CFD Administrator shall determine if sufficient Special Tax revenue is available to make a cash refund. If a cash refund cannot be made, then an adjustment shall be made to credit future Special Tax levy(ies).

This procedure shall be exclusive and its exhaustion by any property owner shall be a condition precedent to filing any legal action by such owner.

G. MANNER OF COLLECTION

The Special Tax shall be collected in the same manner and at the same time as ordinary *ad valorem* property taxes; provided, however, that the Special Taxes may be collected in such other manner as the City Council shall determine, including direct billing of affected property owners.

H. PREPAYMENT OF SPECIAL TAX

The following definitions apply to this Section H:

“CFD Public Facilities” means \$20,542,000 each Prepayment Period, or such lower number as determined by the City Council to be sufficient to fund the Facilities and Services to be provided by CFD No. 53.

“Expenditures Fund” means funds or accounts, regardless of their names, that are established to hold moneys that are available to acquire or construct Facilities and to fund Services.

“Future Facilities Costs” means the CFD Public Facilities minus (i) Facilities and Services costs previously paid from the Expenditures Fund during the Prepayment Period in which the prepayment is being made, (ii) moneys currently on deposit in the Expenditures Fund from deposits made during the Prepayment Period in which the prepayment is being made, and (iii) moneys currently on deposit in an escrow fund that are expected to be available to finance Facilities costs. In no event shall the amount of Future Facilities Costs be less than zero.

“Prepayment Period” means one of three periods of time during which a Special Tax prepayment may be made.

“Prepayment Period 1” means July 1, 2020, through June 30, 2054.

“Prepayment Period 2” means July 1, 2054, through June 30, 2087.

“Prepayment Period 3” means July 1, 2087, through June 30, 2121.

1. Prepayment in Full

The obligation of an Assessor's Parcel to pay the Special Tax may be prepaid as described herein, provided that a prepayment may be made only for Assessor's Parcels for which a building permit for new construction was issued after January 1, 2019, and only if there are no delinquent Special Taxes with respect to such Assessor's Parcel at the time of prepayment. An owner of an Assessor's Parcel intending to prepay the Special Tax obligation shall provide the CFD Administrator with written notice of intent to prepay. Within 30 days of receipt of such written notice, the CFD Administrator shall notify such owner of the prepayment amount for such Assessor's Parcel. The CFD Administrator may charge a fee for providing this service. Prepayment in any six month period must be made not less than 45 days prior to the next occurring date that notice of redemption of Bonds from the proceeds of such prepayment may be given to the Trustee pursuant to the Indenture.

The Special Tax Prepayment Amount (defined below) shall be calculated as summarized below (capitalized terms as defined below):

	Bond Redemption Amount
plus	Redemption Premium
plus	Future Facilities Amount
plus	Defeasance Amount
plus	Administrative Fees and Expenses
<u>less</u>	<u>Reserve Fund Credit</u>
Total	Prepayment Amount

As of the proposed date of prepayment, the Special Tax Prepayment Amount (defined below) shall be calculated by the CFD Administrator as follows:

Paragraph No.

1. Confirm that no Special Tax delinquencies apply to such Assessor’s Parcel, and determine the Prepayment Period for the proposed prepayment.
2. Compute the Assigned Special Tax and Backup Special Tax for the Assessor’s Parcel to be prepaid based on the Developed Property Special Tax which is, or could be, charged in the current Fiscal Year. For Assessor’s Parcels of Final Mapped Property (for which a building permit has been issued but which is not yet classified as Developed Property) to be prepaid, compute the Assigned Special Tax and Backup Special Tax for that Assessor’s Parcel as though it was already designated as Developed Property, based upon the building permit which has already been issued for that Assessor’s Parcel.
3. (a) Divide the Assigned Special Tax computed pursuant to Paragraph 2 by the total estimated Assigned Special Tax for CFD No. 53 based on the Developed Property Special Tax which could be charged in the current Fiscal Year on all expected development through buildout of CFD No. 53, excluding any Assessor’s Parcels which have been prepaid, and

(b) Divide the Backup Special Tax computed pursuant to Paragraph 2 by the estimated total Backup Special Tax at buildout of CFD No. 53, excluding any Assessor’s Parcels which have been prepaid.
4. Multiply the larger quotient computed pursuant to Paragraph 3(a) or 3(b) by the Outstanding Bonds to compute the amount of Outstanding Bonds to be retired and prepaid (the “Bond Redemption Amount”).
5. Multiply the Bond Redemption Amount computed pursuant to Paragraph 4 by the applicable redemption premium (e.g., the redemption price minus 100%), if any, on the Outstanding Bonds to be redeemed (the “Redemption Premium”).
6. Compute the current Future Facilities Costs.
7. Multiply the larger quotient computed pursuant to Paragraph 3(a) or 3(b) by the amount determined pursuant to Paragraph 6 to compute the amount of Future Facilities Costs to be prepaid (the “Future Facilities Amount”).

8. Compute the amount needed to pay interest on the Bond Redemption Amount from the first bond interest and/or principal payment date following the current Fiscal Year until the earliest redemption date for the Outstanding Bonds.
9. Determine the Special Tax levied on the Assessor's Parcel in the current Fiscal Year which has not yet been paid.
10. Add the amounts computed pursuant to Paragraphs 8 and 9 to determine the "Defeasance Amount".
11. Verify the administrative fees and expenses of CFD No. 53, including the costs to compute the prepayment, the costs to invest the prepayment proceeds, the costs to redeem Bonds, and the costs to record any notices to evidence the prepayment and the redemption (the "Administrative Fees and Expenses").
12. If reserve funds for the Outstanding Bonds, if any, are at or above 100% of the reserve requirement (as defined in the Indenture) on the prepayment date, a reserve fund credit shall be calculated as a reduction in the applicable reserve fund for the Outstanding Bonds to be redeemed pursuant to the prepayment (the "Reserve Fund Credit"). No Reserve Fund Credit shall be granted if reserve funds are below 100% of the reserve requirement on the prepayment date or the redemption date.
13. The Special Tax prepayment is equal to the sum of the amounts computed pursuant to Paragraphs 4, 5, 7, 10, and 11, less the amount computed pursuant to Paragraph 12 (the "Prepayment Amount").
14. From the Prepayment Amount, the amounts computed pursuant to Paragraphs 4, 5, 10, and 12 shall be deposited into the appropriate fund as established under the Indenture and be used to retire Outstanding Bonds or make debt service payments. The amount computed pursuant to Paragraph 7 shall be deposited into the Expenditures Fund. The amount computed pursuant to Paragraph 11 shall be retained by CFD No. 53.

The Special Tax Prepayment Amount may be sufficient to redeem other than a \$5,000 increment of Bonds. In such cases, the increment above \$5,000, or integral multiple thereof, will be retained in the appropriate fund established under the Indenture to be used with the next prepayment of Bonds or to make debt service payments.

As a result of the payment of the current Fiscal Year's Special Tax levy as determined under Paragraph 9 (above), the CFD Administrator shall remove the current Fiscal Year's Special Tax levy for such Assessor's Parcel from the County tax rolls. With respect to any Assessor's Parcel that is prepaid during Prepayment Period 3, the CFD Administrator shall cause a suitable notice to be recorded in compliance with the Act to indicate that the Special Tax has been prepaid and that the obligation of such Assessor's Parcel to pay the Special Tax shall cease.

With respect to the Special Tax for any Assessor's Parcel that is prepaid during Prepayment Period 1 or Prepayment Period 2, the obligation of such Assessor's Parcel to pay the Special Tax shall be tolled, or suspended, through the end of such Prepayment Period, but shall resume in the first Fiscal Year of the subsequent Prepayment Period. The CFD Administrator shall cause a suitable notice to be recorded in compliance with the Act to indicate that the Special Tax has been satisfied for the remainder of the applicable Prepayment Period but has not been permanently satisfied and the obligation to pay the Special Tax will resume in the first Fiscal Year of the Prepayment Period following the Prepayment Period in which the prepayment was made. Once the obligation of an Assessor's Parcel to pay the Special Tax resumes, the Special Tax for the then applicable Prepayment Period may be prepaid.

Notwithstanding the foregoing, no Special Tax prepayment shall be allowed unless the amount of Maximum Special Tax that may be levied on Taxable Property within CFD No. 53 (after excluding 24.26 Acres of Public Property and 8.74 acres of Property Owner Association Property) both prior to and after the proposed prepayment is at least 1.1 times the maximum annual debt service on all Outstanding Bonds.

2. Prepayment in Part

The Special Tax on an Assessor's Parcel for which a building permit for new construction was issued after January 1, 2019, may be partially prepaid. The amount of the prepayment shall be calculated as in Section H.1, except that a partial prepayment shall be calculated by the CFD Administrator according to the following formula:

$$PP = (PF - AE) \times \% + AE.$$

The terms above have the following meaning:

PP = the partial prepayment

PF = the Prepayment Amount (full prepayment) for the Special Tax calculated according to Section H.1

AE = the Administrative Fees and Expenses determined pursuant to paragraph 11 above

% = the percentage by which the owner of the Assessor's Parcel(s) is partially prepaying the Special Tax

The Special Tax partial prepayment amount must be sufficient to redeem at least a \$5,000 increment of Bonds.

The owner of any Assessor's Parcel who desires such prepayment shall notify the CFD Administrator of such owner's intent to partially prepay the Special Tax and the percentage by which the Special Tax shall be prepaid. The CFD Administrator shall provide the owner with a statement of the amount required for the partial prepayment of the Special Tax for an Assessor's Parcel within thirty (30) days of the request and may charge a fee for providing this service. With respect to any Assessor's Parcel that is partially prepaid, the CFD Administrator shall (i) distribute the remitted prepayment funds according to Section H.1, and (ii) indicate in the records of CFD No. 53 that there has been a partial prepayment of the Special Tax and that a portion of the Special Tax

with respect to such Assessor's Parcel, equal to the outstanding percentage (100% - "%", as defined above) of the Maximum Special Tax, shall continue to be levied on such Assessor's Parcel pursuant to Section D during the Prepayment Period in which the partial prepayment is made.

For partial prepayments made during Prepayment Period 1 or Prepayment Period 2, the full amount of the Special Tax shall resume in the first Fiscal Year of the Prepayment Period following the Prepayment Period in which the partial prepayment was made. Once the obligation of an Assessor's Parcel to pay the Special Tax resumes, the Special Tax for the then applicable Prepayment Period may be prepaid.

I. TERM OF SPECIAL TAX

The Fiscal Year after which no further Special Tax shall be levied or collected is Fiscal Year 2120-2121, except that the Special Tax that was lawfully levied in or before such Fiscal Year and that remains delinquent may be collected in subsequent years.

EXHIBIT A

**CERTIFICATE OF MODIFICATION OF SPECIAL TAX
(PAGE 1 OF 3)**

CFD No. 53 CERTIFICATE

1. Pursuant to Section C.1 of the Rate and Method of Apportionment of Special Tax (the “Rate and Method”) for City of Ontario Community Facilities District No. 53 (Tevelde Facilities) (“CFD No. 53”), the Assigned Special Tax and the Backup Special Tax for Developed Property within CFD No. 53 has been modified.
 - a. The information in Table 1 relating to the Assigned Special Tax for Developed Property within CFD No. 53, as stated in Section C.1.a.2 of the Rate and Method, has been modified as follows:

**TABLE 1
ASSIGNED SPECIAL TAX – DEVELOPED PROPERTY**

Land Use Class	Description	Residential Floor Area: Square Footage	Assigned Special Tax
1	Single Family Detached Property	< 2,201	[\$] per Unit
2	Single Family Detached Property	2,201 – 2,300	[\$] per Unit
3	Single Family Detached Property	2,301 – 2,400	[\$] per Unit
4	Single Family Detached Property	2,401 – 2,500	[\$] per Unit
5	Single Family Detached Property	2,501 – 2,600	[\$] per Unit
6	Single Family Detached Property	2,601 – 2,700	[\$] per Unit
7	Single Family Detached Property	2,701 – 2,800	[\$] per Unit
8	Single Family Detached Property	2,801 – 2,900	[\$] per Unit
9	Single Family Detached Property	2,901 – 3,000	[\$] per Unit
10	Single Family Detached Property	3,001 – 3,100	[\$] per Unit
11	Single Family Detached Property	3,101 – 3,200	[\$] per Unit
12	Single Family Detached Property	3,201 – 3,300	[\$] per Unit
13	Single Family Detached Property	3,301 – 3,400	[\$] per Unit
14	Single Family Detached Property	3,401 – 3,500	[\$] per Unit
15	Single Family Detached Property	3,501 – 3,600	[\$] per Unit
16	Single Family Detached Property	3,601 – 3,700	[\$] per Unit

EXHIBIT A

**CERTIFICATE OF MODIFICATION OF SPECIAL TAX
(PAGE 2 OF 3)**

17	Single Family Detached Property	3,701 – 3,800	\$[] per Unit
18	Single Family Detached Property	> 3,800	\$[] per Unit
	Single Family Detached:		
19	One Story Property	< 2,201	\$[] per Unit
20	One Story Property	2,201 – 2,300	\$[] per Unit
21	One Story Property	2,301 – 2,400	\$[] per Unit
22	One Story Property	> 2,400	\$[] per Unit
23	Other Property TTM 18929 TTM 18930		\$[] per Acre \$[] per Acre

- b. The Backup Special Tax for Developed Property, as stated in Section C.1.a.3, shall be modified as follows:

The Backup Special Tax shall be \$[_____] per Unit for Residential Property. However, if the Expected Residential Lot Count does not equal 432, and the City has not issued Bonds, then the Backup Special Tax for Designated Buildable Lots of Residential Property shall be calculated according to the following formula:

$$\begin{aligned} \text{Backup Special Tax} &= \$[_____] \\ &\times \text{Acreage of Designated Buildable Lots} \\ &\quad \text{of Residential Property} \\ &\div \text{Expected Residential Lot Count for} \\ &\quad \text{Residential Property} \end{aligned}$$

2. The Special Tax for Developed Property may only be modified prior to the first issuance of CFD No. 53 Bonds.
3. Upon execution of this Certificate by CFD No. 53, CFD No. 53 shall cause an amended notice of Special Tax lien for CFD No. 53 to be recorded reflecting the modifications set forth herein.

EXHIBIT A

**CERTIFICATE OF MODIFICATION OF SPECIAL TAX
(PAGE 3 OF 3)**

Capitalized undefined terms used herein have the meanings ascribed thereto in the Rate and Method. The modifications set forth in this Certificate have been calculated by the CFD Administrator in accordance with the Rate and Method.

GOODWIN CONSULTING GROUP, INC.
CFD ADMINISTRATOR

By: _____

Date: _____

The undersigned acknowledges receipt of this certificate and of the modification of the Assigned Special Tax and the Backup Special Tax for Developed Property as set forth in this Certificate.

CITY OF ONTARIO
COMMUNITY FACILITIES DISTRICT NO. 53
(TEVELDE FACILITIES)

By: _____

Date: _____

RESOLUTION NO. _____

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF ONTARIO, CALIFORNIA, TO INCUR BONDED INDEBTEDNESS OF THE PROPOSED CITY OF ONTARIO COMMUNITY FACILITIES DISTRICT NO. 53 (TEVELDE FACILITIES).

WHEREAS, 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"), has this date adopted its 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. 53 (Tevelde Facilities), and to Authorize the Levy of Special Taxes," stating its intention to establish City of Ontario Community Facilities District No. 53 (Tevelde Facilities) (the "Community Facilities District") for the purpose of financing certain public facilities (the "Facilities") and services, as further provided in said Resolution; and

WHEREAS, in order to finance the Facilities it is necessary to incur bonded indebtedness in the amount of up to \$70,000,000;

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

SECTION 1. The foregoing recitals are true and correct, and the City Council so finds and determines.

SECTION 2. The City Council hereby declares that in order to finance the Facilities, it is necessary to incur bonded indebtedness.

SECTION 3. The purpose for which the proposed debt is to be incurred is to provide the funds necessary to pay the costs of the Facilities, including all costs and estimated costs incidental to, or connected with, the accomplishment of said purpose and of the financing thereof, as permitted by Section 53345.3 of the Act.

SECTION 4. The maximum amount of the proposed debt is \$70,000,000.

SECTION 5. The City Council hereby fixes Tuesday, March 17, 2020, at 6:30 p.m., or as soon thereafter as the City Council may reach the matter, at 303 East B Street, Ontario, California, as the time and place when and where the City Council will conduct a public hearing on the proposed debt authorization.

SECTION 6. The City Clerk is hereby directed to publish, or cause to be published, a notice of said public hearing one time in a newspaper of general circulation published in the area of the proposed Community Facilities District. The publication of said notice shall be completed at least seven days prior to the date herein fixed for said hearing. Said notice shall contain the information prescribed by Section 53346 of the Act.

SECTION 7. The officers, employees and agents of the City are hereby authorized and directed to take all actions and do all things which they, or any of them, may deem necessary or desirable to accomplish the purposes of this Resolution and not inconsistent with the provisions hereof.

SECTION 8. This Resolution shall take effect immediately upon its adoption.

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

PASSED, APPROVED, AND ADOPTED this 4th day of February 2020.

PAUL S. LEON, MAYOR

ATTEST:

SHEILA MAUTZ, CITY CLERK

APPROVED AS TO FORM:

COLE HUBER, LLP
CITY ATTORNEY

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

I, SHEILA MAUTZ, City Clerk of the City of Ontario, DO HEREBY CERTIFY that foregoing Resolution No. 2020- was duly passed and adopted by the City Council of the City of Ontario at their regular meeting held February 4, 2020 by the following roll call vote, to wit:

AYES: COUNCIL MEMBERS:

NOES: COUNCIL MEMBERS:

ABSENT: COUNCIL MEMBERS:

SHEILA MAUTZ, CITY CLERK

(SEAL)

The foregoing is the original of Resolution No. 2020- duly passed and adopted by the Ontario City Council at their regular meeting held February 4, 2020.

SHEILA MAUTZ, CITY CLERK

(SEAL)

CITY OF ONTARIO

Agenda Report
February 4, 2020

SECTION:
CONSENT CALENDAR

SUBJECT: CONSTRUCTION CONTRACT FOR THE REPLACEMENT AND INSTALLATION OF TREMCO ROOF SYSTEMS AT VARIOUS CITY FACILITIES

RECOMMENDATION: That the City Council award Bid No. 1217 and approve a Construction Contract (on file in the Records Management Department) with San Marino Roof Co., Inc. of Fullerton, California, for the replacement and installation of new Tremco Roof Systems at Fire Station No. 6 (\$230,483), Integrated Waste (\$87,465), and Creekside Park Restroom (\$30,432), in the amount of \$348,380 plus a 10% contingency of \$34,838 for a total amount of \$383,218; authorize the City Manager to execute said contract; and authorize the filing of a Notice of Completion at the conclusion of all construction activities related to the project.

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

FISCAL IMPACT: The Fiscal Year 2019-20 Capital Improvement Program Budget includes appropriations for roof replacements at Fire Station No. 6 and the Integrated Waste Facility. There are sufficient project savings in the Capital Projects Budget to cover the Fire Station No. 6 roof replacement additional estimated cost of \$5,483. The Parks and Maintenance Department operating budget includes appropriations of \$15,000 for the Creekside Park Restroom roof replacement, and there are sufficient Public Budgetary Savings to cover the project's additional estimated cost of \$15,432.

BACKGROUND: The roof at Fire Station No. 6 is approximately 25 years old and has required increased maintenance due to deterioration. The recommended replacement is an energy-efficient "Cool Roof" that meets California Title 24 specifications. The new roof system will provide better drainage, faster evaporation and lower roof-top temperatures thus increasing life expectancy. In addition, by reducing roof-top temperatures this system decreases interior building temperatures, resulting in reduced heating and cooling costs. The roof system at Integrated Waste is a metal roof that has required increased maintenance due to deterioration and has received no major repairs in the last 30 years. The entire roof will receive a Tremco Solargard 6083 acrylic elastomeric roof coating

STAFF MEMBER PRESENTING: Tito Haes, Executive Director Public Works

Prepared by: Michael Johnson
Department: Municipal Services
City Manager Approval: 

Submitted to Council/O.H.A. 02/04/2020
Approved: _____
Continued to: _____
Denied: _____

6

designed to waterproof and weatherproof the surface. The Creekside Park restroom is over 30 years old and has significantly deteriorated. It will be replaced with a new asphalt shingle roof that is expected to last approximately 40 years.

On November 27, 2019, seven bids were received for the various City facility roof replacements. The bid results are listed below.

<u>Vendor</u>	<u>Location</u>	<u>Amount</u>
San Marino Roof Co., Inc.	Orange, CA	\$348,380
Rite-Way Roof Corp	Fontana, CA	\$410,135
Best Contracting Services	Gardena, CA	\$467,218
ERC Roofing	Santa Ana, CA	\$477,500
Exbon Development Inc.	Garden Grove, CA	\$481,000
Commercial Roofing Systems, Inc.	Arcadia, CA	\$584,227
*Chapman Coast Roof	Fullerton, CA	N/A

* *Bid Proposal was incomplete and therefore deemed non-responsive*

Staff recommends award bid No. 1217 to San Marino Roof Co., Inc. as they submitted the lowest responsive bid.

CITY OF ONTARIO

Agenda Report
February 4, 2020

SECTION:
CONSENT CALENDAR

SUBJECT: A CONSTRUCTION CONTRACT FOR RECYCLED WATER IMPROVEMENTS FOR THE CREEKSIDE COMMUNITIES AND HAVEN AVENUE IN ONTARIO RANCH

RECOMMENDATION: That the City Council approve the plans and specifications and award Contract No. UT 1035 (on file in the Records Management Department) to Norstar Plumbing and Engineering, Inc. of Alta Loma, California, for the construction of Recycled Water Improvements for the Creekside Communities and Haven Avenue in Ontario Ranch in the amount of \$3,027,726 plus a 15% contingency of \$454,159, for a total contract amount of \$3,481,885; and authorize the City Manager to execute said contract and file a Notice of Completion at the conclusion of all construction activities related to the project.

COUNCIL GOALS: 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 Development of a Well Planned, Balanced, and Self-Sustaining Community in Ontario Ranch

FISCAL IMPACT: The Fiscal Year 2019-20 Adopted Operating Budget includes appropriations in the amount of \$2,926,493 from the Water Capital Fund and \$555,392 from the New Model Colony (NMC) Local Adjacent Development Impact Fees to pay for this project. Pursuant to subsequent agreements with the NMC Builders, LLC under the First Amended and Restated Agreement for the Financing and Construction of Limited Infrastructure Improvements to Serve an Easterly Portion of the NMC, the NMC Builders have agreed to reimburse the City \$325,000 towards the construction for the Haven Avenue portion of the project. There is no impact to the General Fund.

BACKGROUND: The City's 2015 Urban Water Management Plan identifies the use of recycled water as a critical element of the City's supply to meet its future demand for water. Expanding the use of recycled water provides a long-term sustainable water source that is not subject to the same limitations under drought conditions as potable water supplies and will result in significant reductions in the City's long-term reliance on more expensive and increasingly less reliable imported potable water supplies.

STAFF MEMBER PRESENTING: Scott Burton, Utilities General Manager

Prepared by: Thomas Palmieri, PE
Department: MU/Engineering

City Manager Approval: 

Submitted to Council/O.H.A. 02/04/2020

Approved: _____

Continued to: _____

Denied: _____

7

The proposed project will construct recycled water main improvements in Creekside Drive, Haven Avenue, Lytle Creek Loop, Mill Creek Loop, Deer Creek Loop and Elsinore Way. The work under the proposed contract consists of installation of approximately 13,400 linear feet of recycled water pipelines, installation of recycled water appurtenances, installation of potable and recycled water service laterals and meters, multiple recycled water main connections, and pavement repair and street restoration. A location map is provided for reference.

The proposed project will provide recycled water for the City’s maintained parkways, Creek View Elementary School, and Creekside East and West Homeowner’s Associations. Usage of recycled water for irrigation purposes is expected to reduce reliance of potable water by approximately 152 acre/ft per year. Additionally, the Haven Avenue main south of Riverside Drive is an integral part of the backbone recycled water system for Ontario Ranch.

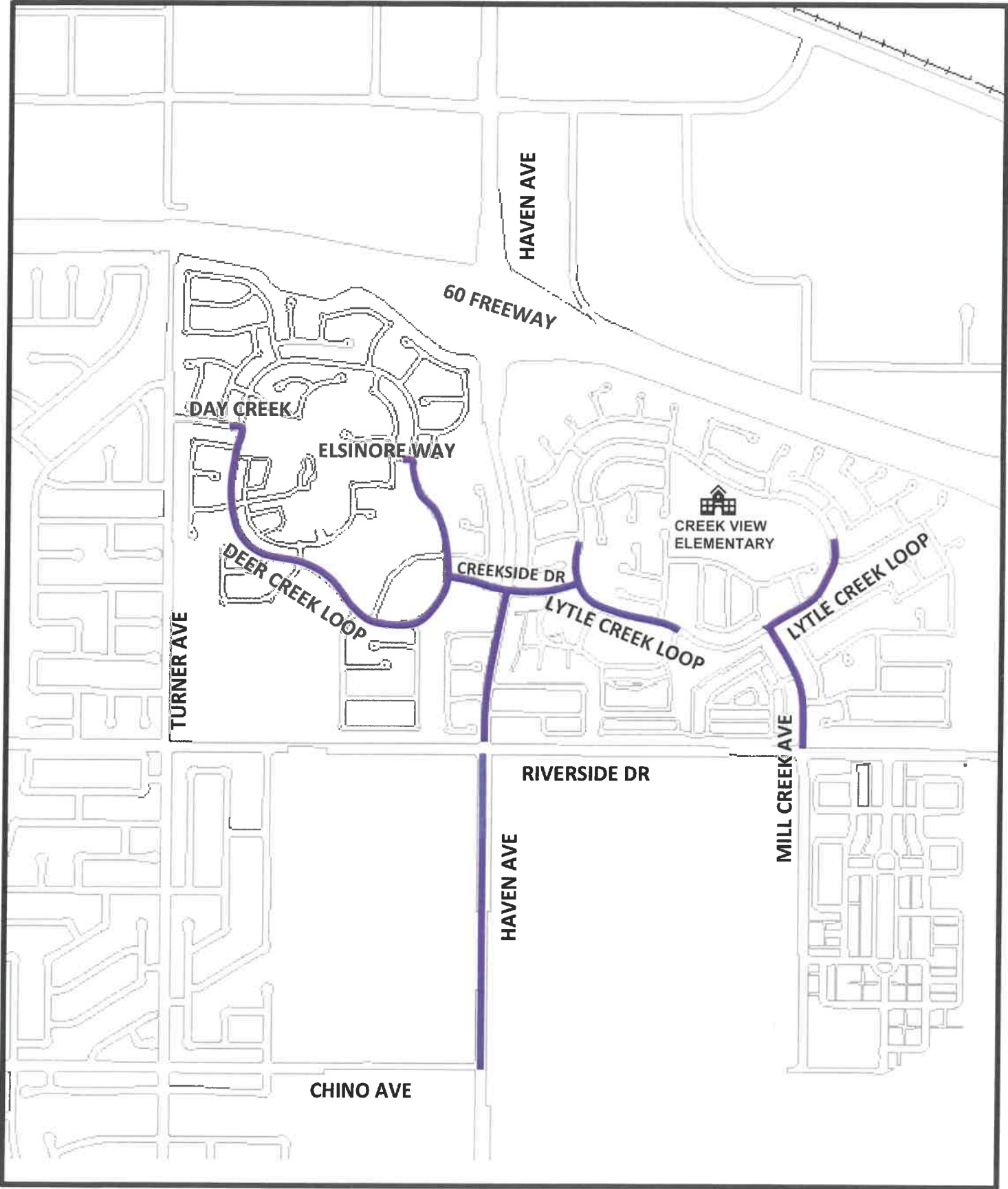
On December 6, 2019, fifteen (15) bids were received for Bid No. 1218, Recycled Water Improvements for Creekside Community and Haven Avenue, OMUC Contract No. UT1035. The bids ranged from \$3,027,726 to \$6,345,996 as summarized below.

<u>Bidder</u>	<u>Location</u>	<u>Amount</u>
Norstar Plumbing and Engineering	Alta Loma, CA	\$3,027,726
Big Ben Engineering	Irvine, CA	\$3,170,469
Christensen Brothers	Apple Valley, CA	\$3,328,991
Gwinco Incorporated	Ontario, CA	\$3,397,272
Weka	Highland, CA	\$3,461,059
TE Roberts	Orange, CA	\$3,499,333
E.J. Meyer Company	Highland, CA	\$3,533,333
James W. Fowler Co.	Dallas, OR	\$3,850,385
Downing Construction	Redlands, CA	\$4,030,464
C.P. Construction Co., Inc.	Ontario, CA	\$4,140,413
Ferreira Coastal Construction	Chino, CA	\$4,199,268
Colich & Sons L.P.	Gardena, CA	\$4,577,215
Sukut Construction	Santa Ana, CA	\$4,577,222
Mike Bubalo Construction Co., Inc.	Baldwin Park, CA	\$5,363,530
Kana Pipeline	Riverside, CA	\$6,345,996

Staff recommends award to Norstar Plumbing and Engineering, Inc. of Alta Loma, California, based on their expertise, ability to perform the work in a timely manner, and their successful completion of this type of work in the past.

ENVIRONMENTAL REVIEW: On January 16, 2007, City Council approved the Environmental Impact Report for The West Haven Specific Plan, including the Haven Avenue improvements south of Riverside Drive. On December 4, 2012, City Council approved a Mitigated Negative Declaration prepared and approved for the 2012 Infrastructure Master Plans pursuant to the provisions of CEQA. The Mitigated Negative Declaration addressed the drainage, sewer, water and recycled water master plans, including their alignments, pipe sizes and installation for the City. On September 6, 2016, City Council approved a Mitigated Negative Declaration for the Euclid Avenue and Riverside Drive Recycled Water Distribution System, which includes the Creekside Communities improvements. No further CEQA analysis is required.

RECYCLE WATER IMPROVEMENT PROJECT
CREEKSIDE COMMUNITY AND HAVEN AVE FROM CREEKSIDE TO CHINO AVE
CITY OF ONTARIO



CITY OF ONTARIO

Agenda Report
February 4, 2020

SECTION:
PUBLIC HEARINGS

SUBJECT: A PUBLIC HEARING TO CONSIDER AN ORDINANCE ESTABLISHING THE DEVELOPMENT IMPACT FEE DEFERRAL PROGRAM

RECOMMENDATION: That the City Council introduce and waive further reading of an ordinance establishing the Development Impact Fee Deferral Program.

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 Ontario Ranch

FISCAL IMPACT: The proposed Development Impact Fee ("DIF") Deferral Program permits deferral of the payment of DIF from the time of building permit issuance to the time of final inspection. This action will impact the potential interest earnings the City would have received during the period of deferral (not to exceed two [2] years from the effective date of a fee deferral agreement). However, this loss of earnings would not impact the City's General Fund revenues as interest earnings on DIF must be segregated from other City revenues and remain in the DIF program accounts. A proposed DIF Administrative Fee of \$7,500 for those that participate in the DIF Deferral Program will offset the City's costs for initiating and administering the fee deferral agreements. No changes are proposed to any City DIF amounts. The proposed DIF Deferral Program will continue to address the City Council's long-standing direction that new development generates enough revenue to fund required City infrastructure without reliance on the financial resources of the City General Fund.

BACKGROUND: On June 23, 2003, the City Council adopted Resolution No. 2003-039 establishing policies for the implementation of the DIF Program for new development. The resolution recognizes the need to finance adequate infrastructure and other public facilities made necessary by new development. The resolution further identifies the requirement for the payment of DIF at the time of building permit issuance. Specifically, requiring for payment of DIF no more than five (5) days prior to the issuance of building permits.

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

Prepared by: Derrick Womble

Department: Development

City Manager Approval: 

Submitted to Council/O.H.A. 02/04/2020

Approved: _____

Continued to: _____

Denied: _____

8

In response to the recession of 2008, the City Council established a temporary Economic Stimulus Program for residential and non-residential development (the “DIF Deferral Program”), which began May 6, 2008 and expired December 31, 2014. During that interim period, the DIF Deferral Program provided developers with the option to defer payment of all DIF fees (except the IEUA Sewer Capacity Fee and the City’s Species, Habitat Conservation, and Open Space Mitigation fees) on the construction of residential and non-residential development. The deferred DIF fees were due when final inspection was requested on the first completed unit or building, or after 12 months, whichever occurred first.

In discussions with the Building Industry Association of Southern California (BIA) and NMC Builders, LLC (NMC Builders), concerns were expressed regarding payment of DIF at the time of building permit issuance creating a significant financial burden on developers during the pre-construction phase. The BIA and NMC Builders both mutually requested the City consider allowing developers to defer DIF until the request for the first final inspection within a phase of the project.

In weighing the needs of private development and the needs for public infrastructure throughout the City, staff determined that deferring DIF payments to final inspection adequately accomplishes the City’s need to obtain funding for needed public infrastructure while providing developers with a mechanism to better manage their cash flow than by paying DIF at building permit issuance.

Therefore, staff is proposing the re-establishment of the DIF Deferral Program and make it available to all developers city-wide. The DIF Deferral Program shall apply to residential and non-residential development city-wide to provide developers the option to defer DIF for a maximum period of two (2) years from the effective date of a deferral agreement (the “DIF Deferral Agreement”) or until a final inspection is requested for the first unit or building within a construction phase, whichever occurs first. The DIF Deferral Program shall be limited to only City DIF and any other fees assessed at building permit issuance (e.g. IEUA Sewer Capacity Fee) shall remain in full force and effect and not subject to deferment. DIF for the Species, Habitat Conservation, and Open Space Mitigation categories are excluded from the deferral option and shall continue to be due and payable upon the issuance of a grading permit.

In order to qualify for the DIF Deferral Program, developers shall be required to enter into a DIF Deferral Agreement with the City, which will be recorded on the property to secure the developer’s payment of DIF. The amount of DIF due and payable to the City will be determined in accordance with the DIF schedule in effect at the time of payment, and not at the time of building permit issuance. Additionally, the City Manager shall have the administrative authority to execute DIF Deferral Agreements without further action of the City Council.

Lastly, should the City Council choose to re-establish the DIF Deferral Program as presented, the DIF Deferral Program shall continue in perpetuity and be made available to developers city-wide, unless and until further action is taken by the City Council to modify the program.

Staff finds this proposal is consistent with The Ontario Plan and the City’s DIF Program and recommends City Council adoption of the ordinance as presented.

ORDINANCE NO. _____

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF ONTARIO,
CALIFORNIA, ESTABLISHING THE DEVELOPMENT IMPACT FEE
("DIF") DEFERRAL PROGRAM.

WHEREAS, on June 23, 2003, the City Council of the City of Ontario (the "City Council") adopted Resolution No. 2003-039 to establish policies for the implementation of the new and modified Development Impact Fees ("DIF"). Resolution

No. 2003-039 requires the payment of DIF no more than five (5) days prior to the issuance of building permits; and

WHEREAS, on July 1, 2003, the City Council adopted Ordinance Nos. 2779 and 2780 to implement new and modified DIF in recognition of the need to finance adequate infrastructure and other public improvements and facilities made necessary by new development in the City of Ontario (the "City"); and

WHEREAS, during the recession of 2008, the City Council adopted Resolution Nos. 2008-035, 2008-078, 2009-031, 2009-032, 2010-102, 2011-072, 2012-087, and 2013-130, to establish a temporary Economic Stimulus Program for residential and non-residential development (the "DIF Deferral Program"), which provided for the temporary deferment of DIF until requests for final inspection; and

WHEREAS, the temporary DIF Deferral Program began on May 6, 2008, and expired on December 31, 2014; and

WHEREAS, the City Council recognizes the importance of encouraging continuing investments in the City's residential, commercial, and industrial development, throughout the City; and

WHEREAS, the City Council further recognizes the importance of providing for needed infrastructure that is made necessary by new development within the City; and

WHEREAS, the City Council determines that deferring the timing of DIF payments to the time of requests for final inspection adequately accomplishes the needs of obtaining funding for needed public infrastructure while providing developers with a mechanism to manage their cash flow by paying DIF at building final inspections; and

WHEREAS, a permanent DIF Deferral Program provides an option for developers to defer payment of certain DIF until the time of requests for a final inspection, contingent upon developer's execution of a deferral agreement with the City; and

WHEREAS, the City Council, as the City's governing body, has the authority to establish and modify policies for the implementation of the City's DIF Program; 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 February 4, 2020, the City Council of the City of Ontario conducted a hearing to consider the Project and concluded said hearing on that date; and

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

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

SECTION 1. ***DIF Deferral Program.*** The DIF Deferral Program shall apply to residential and non-residential development city-wide to provide developers the option to defer certain DIF.

SECTION 2. ***Limitations.*** The DIF Deferral Program shall be limited to only City DIF and any other fees assessed at building permit issuance, including fees assessed on behalf of other agencies, shall remain in full force and effect and not subject to deferment. The payment of DIF for residential and non-residential development may be deferred for all fee categories, except the Species, Habitat Conservation, and Open Space Mitigation fee. DIF for the Species, Habitat and Open Space Mitigation categories are excluded from the deferral option and shall continue to be due and payable upon the issuance of a grading permit. In no case will a certificate of occupancy be issued for any unit or building within the phase(s), unless and until all fees due to the City for such phase(s) have been paid. A final inspection shall not occur until the applicable DIF is paid in full by the developer.

SECTION 3. ***Residential Developments.*** For a developer of residential development, the determination of deferred DIF shall be assessed for the entire phase(s) included in the project development and identified in the DIF Deferral Agreement. Any deferred DIF shall be due and payable when the first unit within a phase(s) requests its final inspection, or at the end of the deferral period, whichever occurs first.

SECTION 4. ***Non-Residential Developments.*** For a developer of a non-residential development, the determination of deferred DIF shall be assessed for each building included within the phase(s) and identified in the DIF Deferral Agreement. Any deferred DIF shall be due and payable when the first building within the phase(s) requests its final inspection, or at the end of the deferral period, whichever occurs first.

SECTION 5. ***Payment of DIF.*** The deferred DIF shall become due and payable on: (1) the end of the deferral period of a maximum period of two (2) years from the effective date of the DIF Deferral Agreement or (2) the date a final inspection is requested for the first unit or building within the phase(s), whichever occurs first. The determination of the DIF shall be the DIF in effect at the time of payment, and not at the time of building permit issuance. Deferred fees are subject to change due to modifications in the DIF Program and application of DIF Credits.

SECTION 6. ***DIF Deferral Agreement.*** Prior to issuance of any building permit for construction of any residential unit or portion of a non-residential development for which any DIF are requested for deferral pursuant to this program, the City shall require the developer, as a condition prior to issuance of that first building permit, to execute a DIF Deferral Agreement (Attachment "A") to pay the DIF, or applicable portion thereof, prior to: (1) the end of the deferral period of a maximum period of two (2) years from the effective date of the DIF Deferral Agreement or (2) the date a final inspection is requested for the first unit or building within the phase(s), whichever occurs first. The obligation to pay the DIF shall inure to the benefit of, and be enforceable by, the City. The DIF Deferral Agreement shall contain a legal description of the property affected and shall be recorded in the San Bernardino County Recorder's Office. The City, in its sole and absolute discretion, may require that the DIF Deferral Agreement contain a provision, which provides that from the date of recordation, the agreement shall constitute a first priority lien for the payment of the DIF, which lien shall be enforceable against successors-in-interest to the property owner. The DIF Deferral Agreement shall be recorded in the grantor-grantee index in the name of the City as grantee and in the name of the property owner or lessee as grantor. In the event the City requires first priority lien status in the DIF Deferral Agreement, the City shall require an executed subordination agreement from any and all encumbrancers for value that the City Manager or designee deem necessary. The City shall record a release of the obligation, containing a legal description of the property, in the event the DIF obligation is paid in full. The DIF Deferral Agreement shall require the property owner to provide written notification to the City of the opening of any escrow for the sale of any portion of property for which the building permit was issued and to provide in the escrow instructions that the DIF shall be paid to the City from the sale proceeds in escrow prior to disbursing proceeds to the seller or any other party. Such agreement may, in the City Manager's discretion, also require the developer to provide security up to the amount of the deferred DIF. The DIF Deferral Agreement shall also provide that the developer agrees to indemnify, defend and hold harmless the City and its officials, officers, agents, and employees for any claims, causes of action or damages/costs arising from the City's deferral of DIF pursuant to this program. The City Manager shall be authorized to execute a standardized DIF Deferral Agreement, without further action of the City Council.

SECTION 7. ***Processing and Administration Fee.*** A processing and administration fee of seven thousand five hundred dollars (\$7,500) is hereby authorized to be collected at the time the agreement is executed. This fee is based upon the City's estimated costs to process and administer the individual agreements between the City and the participating developer and the costs of tracking and eventual collection of the deferred fees.

SECTION 8. ***Indemnification.*** The developer shall agree to defend, indemnify and hold harmless, the City of Ontario or its agents, officers, and employees from any claim, action or proceeding against the City of Ontario or its agents, officers or employees to attack, set aside, void, or annul this approval. The City of Ontario shall promptly notify the applicant of any such claim, action, or proceeding, and the City of Ontario shall cooperate fully in the defense.

SECTION 9. **Custodian of Records.** The documents and materials that constitute the record of proceedings on which these findings have been based are located at the City of Ontario City Hall, 303 East "B" Street, Ontario, California 91764. The custodian for these records is the City Clerk of the City of Ontario.

SECTION 10. **Severability.** If any section, sentence, clause or phrase of this Ordinance or the application thereof to any entity, person or circumstance is held for any reason to be invalid or unconstitutional, such invalidity or unconstitutionality shall not affect other provisions or applications of this Ordinance which can be given effect without the invalid provision or application, and to this end the provisions of this Ordinance are severable. The People of the City of Ontario hereby declare that they would have adopted this Ordinance and each section, sentence, clause or phrase thereof, irrespective of the fact that any one or more section, subsections, sentences, clauses or phrases be declared invalid or unconstitutional.

SECTION 11. **Effective Date.** This Ordinance shall become effective 30 days following its adoption.

SECTION 12. **Publication and Posting.** The Mayor shall sign this Ordinance and the City Clerk shall certify as to the adoption and shall cause a summary thereof to be published at least once, in a newspaper of general circulation in the City of Ontario, California within 15 days following the adoption. The City Clerk shall post a certified copy of this ordinance, including the vote for and against the same, in the Office of the City Clerk, in accordance with Government Code Section 36933.

PASSED, APPROVED, AND ADOPTED this ____ day of _____ 2020.

PAUL S. LEON, MAYOR

ATTEST:

SHEILA MAUTZ, CITY CLERK

APPROVED AS TO FORM:

COLE HUBER LLP

CITY ATTORNEY

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

I, SHEILA MAUTZ, City Clerk of the City of Ontario, DO HEREBY CERTIFY that foregoing Ordinance No. _____ was duly introduced at a regular meeting of the City Council of the City of Ontario held February 4, 2020 and adopted at the regular meeting held _____, 2020 by the following roll call vote, to wit:

AYES: COUNCIL MEMBERS:

NOES: COUNCIL MEMBERS:

ABSENT: COUNCIL MEMBERS:

SHEILA MAUTZ, CITY CLERK

(SEAL)

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

SHEILA MAUTZ, CITY CLERK

(SEAL)

ATTACHMENT A:

**DEVELOPMENT IMPACT FEE “DIF”
DEFERRAL AGREEMENT**

(Sample Document follows this page)

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

CITY OF ONTARIO
CITY CLERK/ RECORDS MANAGEMENT
303 EAST "B" STREET
ONTARIO, CA 91764

Space above this line for Recorder's Use

Exempt from Fees Per Gov. Code § 6301

**DEVELOPMENT IMPACT FEE "DIF"
DEFERRAL AGREEMENT**

By and Between

**City of Ontario,
a municipal corporation**

and

("Owner")

_____, 2020

San Bernardino County, California

DEVELOPMENT IMPACT FEE DEFERRAL AGREEMENT

This Development Impact Fee Deferral Agreement (the "Agreement") is made and entered into by and between the City of Ontario, a California municipal corporation ("City") and _____ ("Owner") collectively, the ("Parties") with reference to the following facts:

RECITALS

- A. The recording of this document is for the benefit of the City to secure Owner's payment of Development Impact Fees ("DIF").
- B. Owner is the owner of that certain real property in the City of Ontario, County of San Bernardino, State of California, more particularly described on the attached Exhibit "A" (the "Property").
- C. Owner has requested the deferment of DIF on _____ permits/buildings (collectively the "building permits") within the Property.
- D. The building permits applicable to deferral are more particularly described on Exhibit "B" attached.
- E. Pursuant to the DIF Deferral Program, the City Manager may defer the payment of certain DIFs for a maximum period of two (2) years from the effective date of this Agreement, or until a final inspection is requested for the first building permit within the phase(s), whichever occurs first.

AGREEMENT

NOW, THEREFORE, THE PARTIES AGREE AS FOLLOWS:

- 1. All the above recitals are true and correct and are fully incorporated into this Agreement by reference and made a part hereof.
- 2. City agrees to defer collection of the payment of the DIFs identified in Exhibit "B" for a maximum period of two (2) years from the effective date of this Agreement or until a final inspection is requested for the first building permit within the phase(s), whichever occurs first.
- 3. Owner shall pay a non-refundable administrative processing fee totaling Seven Thousand Five Hundred Dollars (\$7,500) to process this Agreement.
- 4. Owner, on behalf of itself and its successors and assigns, agrees to pay the DIFs on the building permits identified in Exhibit "B" with a cashiers/certified check concurrent with the request for final inspection for the first building permit within a phase(s) or within two (2) years from the effective date of this Agreement, whichever occurs first. A final inspection may not be scheduled until the DIFs for the building permits in Exhibit "B" are paid in full by the Owner.

5. For payment of DIFs at the time the building permits identified in Exhibit "B" become payable, the amount of the DIFs for the building permits shall be determined in accordance with the DIF schedule in effect at the time of payment.
6. This Agreement shall be recorded against the Property in the Office of the San Bernardino County Recorder and shall constitute a lien for the payment of the DIFs binding upon, and running with, the Property. If Owner sells all or any portion of the Property, Property shall not be released of any obligations under this Agreement relating to the Property or the portion of the Property which is being acquired. This Agreement shall be binding upon, and the benefits of this Agreement shall inure, to the Parties and all successors in interest to the Parties.
7. The burden of this Agreement shall be released from title to the Property upon full payment of the DIFs for the Building permits in Exhibit "B". Within a reasonable time, following payment of the DIFs, the City shall execute a lien release releasing the burden of this Agreement from the title to the Property.
8. The person signing on behalf of Owner certifies that s/he can legally bind Owner and agrees to hold City harmless if it is later determined that such authority does not exist.
9. Owner agrees to indemnify, defend and hold harmless the City and its officials, officers, agents, and employees for any claims, causes of action or damages/costs arising from the City's deferral of DIF pursuant to this Agreement.
10. This Agreement shall be effective upon the date it is executed by the City Manager.

IN WITNESS WHEREOF, the parties hereto have executed this Development Impact Fee Deferral Agreement as of the date below, the ("Effective Date").

**SIGNATURE PAGE
TO DEVELOPMENT IMPACT FEE
DEFERRAL AGREEMENT**

"OWNER"

By: _____
Name: _____
Title: Authorized Representative
Date: _____

"CITY"

CITY OF ONTARIO

By: _____
Scott Ochoa, City Manager
Date: _____

ATTEST:

City Clerk, Ontario

**APPROVED AS TO FORM:
COLE HUBER, LLP**

City Attorney

ACKNOWLEDGEMENT

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

STATE OF CALIFORNIA)
COUNTY OF _____)

On _____, 20____, before me, _____,
Date *Insert Name and Title of the Officer*

personally appeared _____
Name(s) of Signer(s)

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

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

WITNESS my hand and official seal.

Signature _____
Signature of Notary Public

Place Notary Seal Above

ACKNOWLEDGEMENT

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

STATE OF CALIFORNIA)
COUNTY OF _____)

On _____, 20____, before me, _____,
Date *Insert Name and Title of the Officer*

personally appeared _____
Name(s) of Signer(s)

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

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

WITNESS my hand and official seal.

Signature _____
Signature of Notary Public

Place Notary Seal Above

Exhibit “A”
Legal Description

Exhibit “B”
Permits/Buildings
Subject to DIF Deferral ⁽¹⁾

Tract/Parcel Number(s)	Lot/Phase Number(s)	Developer	Dwelling Type	Units
------------------------	---------------------	-----------	---------------	-------

- (1) The deferred DIF shall become due and payable on: (a) the date that a final inspection of the first unit or building within the project phase(s) is requested; or (b) the date that is two [2] years following the effective date of the DIF Deferral Agreement, whichever occurs first. The determination of the DIF shall be the DIF in effect at the time of payment, and not at the time of building permit issuance. Deferred fees are subject to change due to modifications in the DIF Program and application of DIF Credits.

CITY OF ONTARIO

Agenda Report
February 4, 2020

SECTION:
PUBLIC HEARINGS

SUBJECT: PURCHASE AND IMPLEMENTATION OF AUTOMATED LICENSE PLATE RECOGNITION SYSTEM

RECOMMENDATION: That the City Council receive public comment prior to the purchase and implementation of an automated license plate recognition (ALPR) system, and authorize the City Manager to execute an agreement with The Flock Group of Dallas, Texas in the amount of \$48,000 for the purchase, installation, and recurring subscription services.

COUNCIL GOALS: Maintain the Current High Level of Public Safety

FISCAL IMPACT: The Fiscal Year 2019-20 Adopted Budget includes appropriations for the implementation of an automated license plate recognition system. The estimated annual cost of the subscription-based system is \$2,000 per camera, for a total of \$48,000. If approved, appropriations for the recurring annual subscription cost of \$2,000 per camera will be included in future annual budgets.

BACKGROUND: The Ontario Police and Information Technology Departments intend to purchase and install an automated license plate recognition (ALPR) system to be deployed throughout the City. The subscription-based ALPR system will include 24 pole-mounted cameras that will be used by the Police Department to recover stolen vehicles, identify wanted persons, collect evidence for criminal prosecution, and monitor "Amber Alerts."

Senate Bill 34, enacted in 2015, amended the Civil Code to require public agencies that intend to operate an ALPR system "provide an opportunity for public comment at a regularly scheduled public meeting of the governing body" before the system is implemented. The law also requires ALPR operators to maintain reasonable security procedures and practices to protect ALPR information and implement a usage and privacy policy. Existing Ontario Police Department policy establishes the usage, storage, dissemination, and retention of ALPR data. The Ontario Police Department trains its officers in the proper use of the system and securely stores all data associated with the system.

STAFF MEMBER PRESENTING: Derek Williams, Police Chief

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

Submitted to Council/O.H.A. 02/04/2020
Approved: _____
Continued to: _____
Denied: _____

9