

**CITY OF ONTARIO
CITY COUNCIL AND HOUSING AUTHORITY
AGENDA
SEPTEMBER 18, 2018**

Paul S. Leon
Mayor

Alan D. Wapner
Mayor pro Tem

Jim W. Bowman
Council Member

Debra Dorst-Porada
Council Member

Ruben Valencia
Council Member



Scott Ochoa
City Manager

John E. Brown
City Attorney

Sheila Mautz
City Clerk

James R. Milhiser
Treasurer

WELCOME to a meeting of the Ontario City Council.

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

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

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

CALL TO ORDER (*OPEN SESSION*)

6:30 p.m.

ROLL CALL

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

PLEDGE OF ALLEGIANCE

Council Member Bowman

INVOCATION

Pastor Mike Urciuoli, Calvary Chapel Ontario

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 August 21, 2018, approving same as on file in the Records Management Department.

2. BILLS/PAYROLL

Bills July 15, 2018 through August 11, 2018 and **Payroll** July 15, 2018 through August, 11, 2018, when audited by the Finance Committee.

3. A RESOLUTION AMENDING THE APPENDIX TO THE CITY OF ONTARIO CONFLICT OF INTEREST CODE

That the City Council adopt a resolution amending the Appendix to the Conflict of Interest Code to update position classification titles and filing requirements for City employees.

RESOLUTION NO. _____

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF ONTARIO, CALIFORNIA, APPROVING AND ADOPTING AN AMENDED APPENDIX OF THE CONFLICT OF INTEREST CODE PURSUANT TO THE POLITICAL REFORM ACT OF 1974.

4. A RESOLUTION TO APPROVE A LEASE AGREEMENT BETWEEN U.S. AUCTIONS AND THE CITY OF ONTARIO

That the City Council adopt a resolution to approve a lease agreement (on file with the Records Management Department) between U.S. Auctions, of Upland, California, and the City of Ontario for the use of certain City-owned property located at 1687 South Bon View Avenue for a three-year term with the option to extend for one additional year.

RESOLUTION NO. _____

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF ONTARIO, CALIFORNIA, APPROVING A LEASE AGREEMENT WITH THE US AUCTIONS, A SOLE PROPRIETORSHIP.

5. A RESOLUTION ADOPTING THE MEASURE I FIVE-YEAR CAPITAL PROJECT NEEDS ANALYSIS FOR FISCAL YEARS 2019/2020 TO 2023/2024

That the City Council adopt a resolution approving the 2019/2020 through 2023/2024 Measure I Five-Year Capital Project Needs Analysis (CPNA) and authorize the City Manager to approve changes to the plan as may be required by the City and/or San Bernardino County Transportation Authority (SBCTA).

RESOLUTION NO. _____

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF ONTARIO, CALIFORNIA, ADOPTING THE MEASURE I FIVE-YEAR CAPITAL PROJECT NEEDS ANALYSIS FOR FISCAL YEARS 2019/2020 TO 2023/2024.

6. A PROFESSIONAL SERVICES AGREEMENT FOR THE PREPARATION OF A SYSTEMIC SAFETY ANALYSIS REPORT FOR EUCLID AVENUE BETWEEN RIVERSIDE DRIVE AND I-10 FREEWAY/CHEN RYAN ASSOCIATES, INC.

That the City Council approve a Professional Services Agreement (on file in the Records Management Department) with Chen Ryan Associates, Inc. (Chen Ryan) of San Diego, California, to prepare a safety analysis of Euclid Avenue between Riverside Drive and the I-10 Freeway for \$249,480 plus a 10% contingency of \$24,948, for a total authorized expenditure of \$274,428; and authorize the City Manager to execute said agreement and all future amendments.

7. RECOGNITION OF OCTOBER 7-13, 2018 AS “NATIONAL FIRE PREVENTION WEEK”

That the City Council recognize the week of October 7-13, 2018 as “National Fire Prevention Week” in the City of Ontario and invite the public to attend the Ontario Fire Department Open House to be held on October 6, 2018.

8. ONTARIO HOUSING AUTHORITY ANNUAL REPORT FOR FISCAL YEAR 2017-18

That the Board of the Ontario Housing Authority (“OHA”) approve the OHA Annual Report for the Fiscal Year 2017-18 (“OHA Annual Report”) (on file in the Records Management Department) and authorize the Executive Director of the OHA to transmit to the California Department of Housing and Community Development the OHA Annual Report as required by State law.

9. AUTHORIZE THE PURCHASE AND IMPLEMENTATION OF, AND ONGOING SUBSCRIPTION TO, KRONOS WORKFORCE DIMINSIONS AND TELESTAFF FOR USE AS THE CITY’S TIMEKEEPING AND FIRE STAFF SCHEDULING SYSTEMS

That the City Council authorize the City Manager to: (1) execute a five-year agreement (on file with the Records Management Department) with Kronos, Inc of Lowell, Massachusetts, for the purchase and implementation of Kronos Workforce Dimensions with a one-time implementation cost of \$21,220 and annual subscription cost of \$138,349 fixed for the five-year term, subject to future annual operating budgets adopted by the City Council; (2) authorize the City Manager to extend the Workforce Dimensions subscription for up to three years with a 3% subscription cost escalator per year; and (3) execute a three-year agreement (on file with the Records Management Department) with Kronos for the purchase and implementation of TeleStaff with a one-time implementation cost of \$10,845 and annual subscription cost of \$19,200 fixed for the three-year term, subject to future annual operating budgets adopted by the City Council.

10. AUTHORIZE THE PURCHASE OF REPLACEMENT FLEET VEHICLES

That the City Council take the following actions:

- (A) Authorize the cooperative purchase and delivery of one Chevrolet Tahoe in the amount of \$39,984 for the Police Department, from National Auto Fleet Group of Watsonville, California, consistent with the terms and conditions of the Sourcewell (formerly known as NJPA) Cooperative Contract 120716-NAF;
- (B) Authorize the cooperative purchase and delivery of six Ford Escapes in the amount of \$141,899 (two for Housing and Neighborhood Preservation, two for Engineering, one for the Police Department, and one for the Fire Department) from National Auto Fleet Group of Watsonville, California, consistent with the terms and conditions of the Sourcewell (formerly known as NJPA) Cooperative Contract 120716-NAF;
- (C) Authorize the cooperative purchase and delivery of five Chevrolet Colorados in the amount of \$134,864 (two for Housing and Neighborhood Preservation, one for Parks and Maintenance, one for Integrated Waste, and one for Utilities) from National Auto Fleet Group of Watsonville, California, consistent with the terms and conditions of the Sourcewell (formerly known as NJPA) Cooperative Contract 120716-NAF; and
- (D) Authorize the cooperative purchase and delivery of two Chevrolet EV Bolts in the amount of \$80,559 (one for Housing and Neighborhood Preservation and one for the Library) from National Auto Fleet Group of Watsonville, California, consistent with the terms and conditions of the Sourcewell (formerly known as NJPA) Cooperative Contract 120716-NAF.

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.

11. A PUBLIC HEARING TO RECEIVE TESTIMONY AND ADOPT THE CONSOLIDATED ANNUAL PERFORMANCE AND EVALUATION REPORT (CAPER) FOR THE 2017-18 FISCAL YEAR

That the City Council:

- (A) Hold a public hearing to receive testimony on the draft Consolidated Annual Performance and Evaluation Report (CAPER) for the 2017-18 Fiscal Year (on file in the Records Management Department);
- (B) Direct staff to prepare and transmit to the U.S. Department of Housing and Urban Development (HUD) the final CAPER, which will address all public comments received on the draft CAPER; and
- (C) Authorize the City Manager to execute any and all documents necessary and/or desirable to transmit the CAPER to HUD.

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.

12. A PUBLIC HEARING TO CONSIDER AN ORDINANCE APPROVING A DEVELOPMENT AGREEMENT (FILE NO. PDA18-001) BETWEEN THE CITY OF ONTARIO AND RICHLAND DEVELOPERS, INC., TO ESTABLISH THE TERMS FOR THE DEVELOPMENT OF TENTATIVE TRACT MAP 18929 (FILE NO. PMTT13-016) TO SUBDIVIDE 54.81 ACRES OF LAND INTO 207 RESIDENTIAL NUMBERED LOTS AND 24 LETTERED LOTS AND TENTATIVE TRACT MAP 18930 (FILE NO. PMTT13-017) TO SUBDIVIDE 49.45 ACRES OF LAND INTO 225 RESIDENTIAL NUMBERED LOTS AND 26 LETTERED LOTS FOR PROPERTIES BOUNDED BY EUCALYPTUS AVENUE TO THE NORTH, MERRILL AVENUE TO THE SOUTH, ARCHIBALD AVENUE TO THE EAST AND THE CUCAMONGA FLOOD CONTROL CHANNEL TO THE WEST, AND LOCATED WITHIN THE CONVENTIONAL SMALL LOT RESIDENTIAL DISTRICT OF PLANNING AREA 1 AND WITHIN THE NEIGHBORHOOD COMMERCIAL CENTER DISTRICT OF PLANNING AREA 2 OF THE SUBAREA 29 SPECIFIC PLAN (APNS: 0218-271-11 AND 0218-271-19)

That the City Council introduce and waive further reading of an ordinance approving a Development Agreement (File No. PDA18-001, on file with the Records Management Department) between the City of Ontario and Richland Developers, Inc., to establish the terms and conditions for the development of Tentative Tract Maps 18929 (File No. PMTT13-016) and 18930 (File No. PMTT13-017).

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

Written communication.
Oral presentation.
Public hearing closed.

ORDINANCE NO. _____

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF ONTARIO, CALIFORNIA, APPROVING A DEVELOPMENT AGREEMENT, FILE NO. PDA18-001, A DEVELOPMENT AGREEMENT BETWEEN THE CITY OF ONTARIO AND RICHLAND DEVELOPERS, INC., TO ESTABLISH THE TERMS FOR THE DEVELOPMENT OF TENTATIVE TRACT MAP 18929 (FILE NO. PMTT13-016) TO SUBDIVIDE 54.81 ACRES OF LAND INTO 207 RESIDENTIAL NUMBERED LOTS AND 24 LETTERED LOTS AND TENTATIVE TRACT MAP 18930 (FILE NO. PMTT13-017) TO SUBDIVIDE 49.45 ACRES OF LAND INTO 225 RESIDENTIAL NUMBERED LOTS AND 26 LETTERED LOTS. THE PROPERTIES ARE BOUNDED BY EUCALYPTUS AVENUE TO THE NORTH, MERRILL AVENUE TO THE SOUTH, ARCHIBALD AVENUE TO THE EAST AND THE CUCAMONGA FLOOD CONTROL CHANNEL TO THE WEST, AND LOCATED WITHIN THE CONVENTIONAL SMALL LOT RESIDENTIAL DISTRICT OF PLANNING AREA 1 AND WITHIN THE NEIGHBORHOOD COMMERCIAL CENTER DISTRICT OF PLANNING AREA 2 OF THE SUBAREA 29 SPECIFIC PLAN., AND MAKING FINDINGS IN SUPPORT THEREOF —APNS: 0218-271-11 AND 0218-271-19.

13. A PUBLIC HEARING TO CONSIDER FILE NO. PWIL18-003, A PETITION TO CANCEL WILLIAMSON ACT CONTRACT NO. 77-515 (FILE NO. PWIL18-003), FOR 54.81 ACRES OF LAND LOCATED AT THE SOUTHWEST CORNER OF ARCHIBALD AVENUE AND EUCALYPTUS AVENUE AT 14610 SOUTH ARCHIBALD AVENUE, WITHIN THE CONVENTIONAL SMALL LOT RESIDENTIAL DISTRICT OF PLANNING AREA 1 AND WITHIN THE NEIGHBORHOOD COMMERCIAL CENTER DISTRICT OF PLANNING AREA 2 OF THE SUBAREA 29 SPECIFIC PLAN (APN:0218-271-11)

That the City Council consider and adopt a resolution approving the Tentative Cancellation Land Conservation Contract No. 77-515, File No. PWIL18-003.

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

Written communication.

Oral presentation.

Public hearing closed.

RESOLUTION NO. _____

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF ONTARIO, CALIFORNIA, APPROVING FILE NO. PWIL18-003, A TENTATIVE CANCELLATION OF LAND CONSERVATION CONTRACT NUMBER 77-515 FOR 54.81 ACRES OF LAND GENERAL LOCATED AT THE SOUTHWEST CORNER OF EUCALYPTUS AVENUE AND ARCHIBALD AVENUE AT 14610 SOUTH ARCHIBALD AVENUE, WITHIN PLANNING AREAS 1 AND 2 OF THE SUBAREA 29 SPECIFIC PLAN AND MAKING FINDINGS IN SUPPORT THEREOF—APN: 0218-271-11.

14. A PUBLIC HEARING TO CONSIDER A CONDITIONAL USE PERMIT (FILE NO. PCUP18-008) TO ESTABLISH A 208-ROOM FULL-SERVICE HOTEL ON 4.95 ACRES OF LAND, GENERALLY LOCATED AT THE SOUTHEAST CORNER OF ARCHIBALD AVENUE AND INLAND EMPIRE BOULEVARD, WITHIN THE OH (HIGH INTENSITY OFFICE) ZONING DISTRICT (APNS: 0210-191-29, 0210-191-30, 0210-191-31 AND 0210-191-32)

Item continued to October 2, 2018.

15. A PUBLIC HEARING TO CONSIDER, AN AMENDMENT TO THE MEREDITH INTERNATIONAL CENTRE SPECIFIC PLAN (FILE NO. PSPA18-004), ESTABLISHING SIGN STANDARDS AND GUIDELINES FOR A FREEWAY IDENTIFICATION SIGN AND FOR SINGLE USES OCCUPYING MORE THAN 200,000 SQUARE FEET OF BUILDING AREA, WITHIN THE URBAN COMMERCIAL LAND USE DISTRICT (APNs: 0110-311-52, 0110-311-53, 0110-311-54, 0110-311-55, 0110-321-29, 0110-321-68, 0110-321-72, 0110-321-73, 0110-321-74, 0110-321-75, 0110-321-76, 0110-321-77, 0110-321-78, 0110-321-79)

Item continued to October 2, 2018.

STAFF MATTERS

City Manager Ochoa

COUNCIL MATTERS

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

ADJOURNMENT

CITY OF ONTARIO

Agenda Report
September 18, 2018

SECTION:
CONSENT CALENDAR

SUBJECT: A RESOLUTION AMENDING THE APPENDIX TO THE CITY OF ONTARIO CONFLICT OF INTEREST CODE

RECOMMENDATION: That the City Council adopt a resolution amending the Appendix to the Conflict of Interest Code to update position classification titles and filing requirements for City employees.

COUNCIL GOALS: Operate in a Businesslike Manner


FISCAL IMPACT: The proposed action has no fiscal impact.

BACKGROUND: The City of Ontario originally adopted the Conflict of Interest Code in 1976, in compliance with Government Code Section 87000 et seq., with the last update occurring in October 2016. The Political Reform Act requires every local government agency to review its conflict of interest code biennially to determine if amendments or modifications are needed.

The Appendix to the Conflict of Interest Code designates those employees, officers and consultants who make or participate in the making of decisions which may affect the City's financial interests and therefore must disclose those interests in financial disclosure statements. These officials and employees must also disqualify themselves from, making or participating in the making of governmental decisions affecting those interests.

Staff has reviewed the City's Conflict of Interest Code and is recommending that the Appendix of the Conflict of Interest Code be amended to reflect any new or changed position classification titles since the last update, as well as update the respective filing categories. No other amendments to the Code are recommended at this time. A list of the proposed changes is attached and a full revised copy of the Appendix has been prepared and is available in the Records Management Department.

STAFF MEMBER PRESENTING: Al C. Boling, Assistant City Manager

Prepared by: Vicki Kasad
Department: City Clerk/Records Mgmt.
City Manager Approval: 

Submitted to Council/O.H.A. 09/18/2018
Approved: _____
Continued to: _____
Denied: _____

3

Conflict of Interest Code Filer Changes

<u>Titles to Add</u>	<u>Proposed Filing Categories</u>
Assistant Community Development Director	2,3,6,7
Assistant Director of Housing & Neighborhood Preservation	2,3,6,7
Assistant Parks and Maintenance Director	2,3,6,7
Broadband Operations Director	2,3,6,7
Broadband Operations Manager	6,7
Budget Manager	6,7
Chief Investment/Bond Officer	1,2
Community Improvement Director	2,3,6,7
Community Improvement Manager	6,7
Community Improvement Officer	6
Community Life and Culture Officer	6
Community Relations and Communication Manager	6,7
Deputy City Manager	1,2
Deputy Fire Marshal	2,6,7
Design and Construction Director	2,3,6,7
Executive Director Community Life and Culture	1,2
Executive Director Development	1,2
Executive Director Economic Development	1,2
Executive Director Housing & Neighborhood Preservation	1,2
Executive Director Human Resources	1,2
Executive Director Information Technology	1,2
Executive Director of Finance	1,2
Executive Director Public Works	1,2
Fire Administrative Director	2,3,6,7
Fire Investigation Supervisor	6
Fire Protection Analyst	2,3
Government Affairs Director	2,3,6,7
Parks and Maintenance Director	2,3,6,7
Parks and Maintenance Manager	6,7
Payroll Manager	6,7
Principal IT Analyst	2,3
Purchasing Team Leader	6
Recreation/Community Services Director	2,3,6,7
Recreation/Community Services Manager	6,7
Risk/Safety Manager	6,7
Senior Community Improvement Officer	6
Senior Landscape Architect	6
Utilities Administrative Services and Integrated Waste Director	2,3,6,7
Utilities Operations Director	2,3,6,7
Utilities Operations Manager	6,7

Not currently active classifications (proposed for deletion)

Assessment District Specialist
Assistant Public Services Director
Associate Library Director

Benefits Supervisor
Code Enforcement Director
Code Enforcement Manager
Code Enforcement Officer
Community & Public Services Director
Development Director
Economic Development Administrator
Economic Development Director
Housing & Municipal Services Director
Housing Director
Human Resources Director
Information Technology Director
Information Technology Operations Manager
Information Technology Systems Manager
Redevelopment Manager
Redevelopment Program Analyst
Risk Management Director
Senior Code Enforcement Officer
Solid Waste Division Manager
Supervising Code Enforcement Officer
Utilities Administrative Services Manager
Utilities Engineering Division Manager
Utilities Operations Division Manager
Utilities Program Analyst

RESOLUTION NO. _____

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF ONTARIO, CALIFORNIA, APPROVING AND ADOPTING AN AMENDED APPENDIX OF THE CONFLICT OF INTEREST CODE PURSUANT TO THE POLITICAL REFORM ACT OF 1974.

WHEREAS, the Legislature of the State of California enacted the Political Reform Act of 1974, Government Code Section 81000 et seq. (the "Act"), which contains provisions relating to conflicts of interest which potentially affect all officers, employees and consultants of the City of Ontario (the "City") and requires all public agencies to adopt and promulgate a Conflict of Interest Code; and

WHEREAS, the City Council adopted a Conflict of Interest Code which was last amended on September 4, 2012, by Resolution No. 2012-071, in compliance with Government Code Section 81000 et seq.; and

WHEREAS, the potential penalties for violation of the provisions of the Act are substantial and may include criminal and civil liability, as well as equitable relief which could result in the City being restrained or prevented from acting in cases where the provisions of the Act may have been violated; and

WHEREAS, a public meeting was held upon the proposed amended Appendix of the Conflict of Interest Code at a regular meeting of the City Council on September 18, 2018, at which all present were given an opportunity to be heard on the proposed amended Appendix.

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

SECTION 1. The City Council does hereby adopt the proposed amended Appendix of the Conflict of Interest Code, a copy of which is attached hereto and shall be on file with the Records Management Director along with the Conflict of Interest Code and available to the public for inspection and copying.

SECTION 2. That said amended Appendix of the Conflict of Interest Code shall become effective 30 days after adoption and approval.

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

PASSED, APPROVED, AND ADOPTED this 18th day of September, 2018.

PAUL S. LEON, MAYOR

ATTEST:

SHEILA MAUTZ, CITY CLERK

APPROVED AS TO LEGAL FORM:

BEST BEST & KRIEGER LLP
CITY ATTORNEY

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

I, SHEILA MAUTZ, City Clerk of the City of Ontario, DO HEREBY CERTIFY that foregoing Resolution No. 2018- was duly passed and adopted by the City Council of the City of Ontario at their regular meeting held September 18, 2018 by the following roll call vote, to wit:

AYES: MAYOR/COUNCIL MEMBERS:

NOES: COUNCIL MEMBERS:

ABSENT: COUNCIL MEMBERS:

SHEILA MAUTZ, CITY CLERK

(SEAL)

The foregoing is the original of Resolution No. 2018- duly passed and adopted by the Ontario City Council at their regular meeting held September 18, 2018.

SHEILA MAUTZ, CITY CLERK

(SEAL)

ATTACHMENT

CONFLICT OF INTEREST CODE

**CONFLICT OF INTEREST CODE
OF THE
CITY OF ONTARIO**



- Appendix Amended September 18, 2018 – Resolution No. 2018-**
- Appendix Amended October 4, 2016 – Resolution No. 2016-097**
- Appendix Amended October 21, 2014 – Resolution No. 2014-101**
- Appendix Amended September 4, 2012 – Resolution No. 2012-071**
- Appendix Amended December 7, 2010 – Resolution No. 2010-098**
- Appendix Amended November 18, 2008 – Resolution No. 2008-115**
- Appendix Amended November 21, 2006 – Resolution No. 2006-113**
- Appendix Amended January 18, 2005 – Resolution No. 2005-006**
- Appendix Amended December 17, 2002 – Resolution No. 2002-124**
- Appendix Amended February 19, 2002 – Resolution No. 2002-027**

Adopted July 20, 1999 – Resolution 99-102

APPENDIX

CONFLICT OF INTEREST CODE

OF THE

CITY OF ONTARIO

Amended September 18, 2018

EXHIBIT "A"

The Mayor, Members of the City Council and Planning Commission, the City Manager, the City Attorney, the City Treasurer, and All Other City Officials who manage public investments, as defined by 2 Cal. Code of Regs. § 18701(b), are NOT subject to the City's Code but are subject to the disclosure requirements of the Act (Government Code Section 87200 et sec.). [Regs. § 18730(b)(3)]

OFFICIALS WHO MANAGE PUBLIC INVESTMENTS

It has been determined that the positions listed below are Other City Officials who manage public investments. These positions are listed here for information purposes only.

Administrative Services /Finance Director

Investment Officer

Financial Consultant

Individuals holding one of the above - listed positions may contact the FPPC for assistance or written advice regarding their filing obligations if they believe that their position has been categorized incorrectly. The FPPC makes the final determination whether a position is covered by §87200.

DESIGNATED POSITIONS

GOVERNED BY THE CONFLICT OF INTEREST CODE

<u>DESIGNATED EMPLOYEES'</u> <u>TITLE OR FUNCTION</u>	<u>DISCLOSURE CATEGORIES</u> <u>ASSIGNED</u>
Accounting Manager	4
Administrative Officer	6
Administrative Specialist	6
Assistant City Clerk/Records Management Director	6
Assistant City Engineer	2, 3, 6, 7
Assistant City Manager	1, 2
Assistant Civil Engineer	2, 3, 6, 7
Assistant Community Development Director	2,3,6,7
Assistant Director of Facilities & Municipal Services	2, 3, 6, 7
Assistant Director of Housing & Neighborhood Preservation	2,3,6,7
Assistant Engineer	2, 3, 6, 7
Assistant Library Director	2, 3, 6
Assistant Parks and Maintenance Director	2,3,6,7
Assistant Planner	2, 3, 6, 7
Assistant Planning Director	2, 3, 6, 7
Assistant Recreation/Community Services Director	2, 3, 6
Associate Civil Engineer	2, 3, 6, 7
Associate Engineer	2, 3, 6, 7
Associate Landscape Planner	2, 3, 6, 7

Associate Planner	2, 3, 6, 7
Broadband Operations Director	2,3,6,7
Broadband Operations Manager	6,7
Budget Manager	6,7
Building Inspection Manager	2, 3, 6, 7
Building Official	2, 3, 6, 7
Building Plans Examiner	7
Building Plans Specialist	7
Business Operations Director	1, 2
Chief Investment/Bond Officer	1,2
City Attorney (not filing under Gov Code § 87200)	1, 2
City Engineer	2, 3, 6, 7
City Prosecutor	1, 2
Combination Building Inspector	6, 7
Community Improvement Director	2,3,6,7
Community Improvement Manager	6,7
Community Improvement Officer	6
Community Life and Culture Officer	6
Community Relations and Communication Manager	6,7
Custodial Services Supervisor	6
Database Administrator	6
Departmental Administrator	1, 2
Deputy City Manager	1,2

Deputy Fire Chief	2, 6, 7
Deputy Fire Marshal	2,6,7
Deputy Police Chief	2, 6, 7
Design and Construction Director	2,3,6,7
Development Manager	3, 6
Economic Development Coordinator	2
Economic Development Manager	1,2
Economic Development Specialist	2
Emergency Manager	5
EMS Nurse Administrator	6, 7
Engineering Assistant	6
Engineering Assistant - GIS	6
Environmental Programs Manager	5,7
Environmental Water/Waste Engineer	2, 3, 5, 7
Executive Director Community Life and Culture	1,2
Executive Director Development	1,2
Executive Director Economic Development	1,2
Executive Director Housing & Neighborhood Preservation	1,2
Executive Director Human Resources	1,2
Executive Director Information Technology	1,2
Executive Director of Finance	1,2
Executive Director Public Works	1,2

Facilities Maintenance Supervisor	6
Financial Analyst	5
Fire Administrative Director	2,3,6,7
Fire Battalion Chief	6, 7
Fire Chief	2, 6, 7
Fire Investigation Supervisor	6
Fire Prevention Inspector	6, 7
Fire Protection Analyst	2,3
Fire Safety Specialist	6
Fiscal Services Director	1, 2
Fleet Services Manager	6
Forensic Supervisor	6
Government Affairs Director	2,3,6,7
Housing Director	2, 3, 6
Housing Manager	6
Information Technology Applications Manager	6
Internal Auditor	1
Landscape Planner	2, 3, 7
Library Director	6
Management Analyst	6
Management Services Director	6
Municipal Services Director	6
Municipal Services Manager	6

Museum Director	6
Neighborhood Improvement Specialist	1, 2
Parks and Maintenance Director	2,3,6,7
Parks and Maintenance Manager	6,7
Parks and Maintenance Supervisor	6
Payroll Manager	6,7
Plan Check Engineer	2, 7
Planning Director	2, 3, 6, 7
Police Administrative Director	6
Police Captain	6, 7
Police Chief	6, 7
Police Lieutenant	6, 7
Principal Engineer	2, 3, 6, 7
Principal IT Analyst	2,3
Principal Planner	2, 3, 6, 7
Project Coordinator	2, 3, 6
Project Manager	2, 3, 6
Public Facility Maintenance Manager	6
Public Services Project Manager	6
Public Works Inspector	6, 7
Purchasing Assistant	6
Purchasing Team Leader	6
Recreation/Community Services Director	2,3,6,7

Recreation/Community Services Manager	6,7
Recreation /Community Services Supervisor	6
Revenue Services Director	6
Revenue Services Specialist	6
Revenue Services Supervisor	6
Risk/Safety Manager	6,7
Senior Associate Civil Engineer	2, 3, 6, 7
Senior Associate Engineer	2, 3, 6, 7
Senior Combination Building Inspector	6, 7
Senior Community Improvement Officer	6
Senior Deputy Fire Chief	2, 3, 7
Senior Environmental Technician	6
Senior Financial Analyst	5
Senior Fire Safety Specialist	6
Senior Human Resources Analyst	6
Senior Landscape Architect	6
Senior Landscape Planner	6
Senior Legislative Analyst	6
Senior Management Analyst	6
Senior Neighborhood Improvement Specialist	1, 2
Senior Plan Check Engineer	2, 7
Senior Planner	2, 3, 6, 7
Senior Project Coordinator	2, 3, 6

Senior Project Manager	2, 3, 6
Senior Public Works Inspector	6, 7
Senior Systems Analyst	6
Senior Telecommunications Analyst	5
Senior Recreation/Community Services Supervisor	6
Solid Waste Supervisor	6
Street Maintenance Supervisor	6
Supervising Building Inspector	6, 7
Supervising Public Works Inspector	6, 7
Survey Party Chief	6, 7
Sustainability Program Manager	6
Telecommunications Manager	6
Traffic/Transportation Manager	2, 3, 6, 7
Utilities Administrative Services and Integrated Waste Director	2,3,6,7
Utilities General Manager	1, 2
Utilities Operations Director	2,3,6,7
Utilities Operations Manager	6,7
Utilities Project Manager	2, 3, 6
Utilities Supervisor	6
Water Production Manager	6, 7
Water Quality Specialist	6, 7
Water Resources Manager	6, 7
Water/Sewer Maintenance Manager	6, 7

BOARDS, COMMISSIONS AND COMMITTEES

Library Board of Trustees	2, 3, 6
Museum Board Members	6
Oversight Board to the Successor Agency	1, 2, 3, 6
Recreation and Parks Commission Members	2, 3, 6

CONSULTANTS

Consultants shall be included in the list of Designated Employees and shall disclose pursuant to the broadest disclosure category in this Code subject to the following limitation:

The City Manager may determine in writing that a particular consultant, although a "designated position," is hired to perform a range of duties that are limited in scope and thus is not required to fully comply with the disclosure requirements described in this Section. Such written determination shall include a description of the consultant's duties and, based upon that description, a statement of the extent of disclosure requirements. The City Manager's determination is a public record and shall be retained for public inspection in the same manner and location as this Conflict of Interest Code.

EXHIBIT "B"

DISCLOSURE CATEGORIES

The disclosure categories listed below identify the types of investments, business entities, sources of income, or real property, which the Designated Employee must disclose for each disclosure category to which he or she is assigned.

Category 1: All investments and business positions in, and sources of income from, business entities that do business or own real property within jurisdiction of the City, plan to do business or own real property within the jurisdiction of the City within the next year, or have done business or owned real property within the jurisdiction of the City within the past two (2) years.

Category 2: All interests in real property which is located in whole or in part within, or not more than two (2) miles outside, the jurisdiction of the City.

Category 3: All investments and business positions in, and sources of income from, business entities that are engaged in land development, construction, or the acquisition or sale of real property within the jurisdiction of the City, plan to engage in such activities within the jurisdiction of the City within the next year, or have engaged in such activities within the jurisdiction of the City within the past two (2) years.

Category 4: All investments and business positions in, and sources of income from, business entities that are banking, savings and loan, or other financial institutions.

Category 5: All investments and business positions in, and sources of income from, business entities that provide services, supplies, materials, machinery, vehicles or equipment of a type purchased or leased by the City.

Category 6: All investments and business positions in, and sources of income from, business entities that provide services, supplies, materials, machinery, vehicles or equipment of a type purchased or leased by the Designated Employee's Department.

Category 7: All investments and business positions in, and sources of income from, business entities subject to the regulatory, permit, or licensing authority of the Designated Employee's Department, will be subject to such authority within the next year, or have been subject to such authority within the past two (2) years.

CITY OF ONTARIO

Agenda Report
September 18, 2018

SECTION:
CONSENT CALENDAR

SUBJECT: A RESOLUTION TO APPROVE A LEASE AGREEMENT BETWEEN U.S. AUCTIONS AND THE CITY OF ONTARIO

RECOMMENDATION: That the City Council adopt a resolution to approve a lease agreement (on file with the Records Management Department) between U.S. Auctions, of Upland, California, and the City of Ontario for the use of certain City-owned property located at 1687 South Bon View Avenue for a three-year term with the option to extend for one additional year.


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

FISCAL IMPACT: The recommended lease rate for the subject property is \$26,135 per month, or \$940,860 for the three-year term. Further, taxable sales from the auction operations to be performed at the site will benefit the City of Ontario as 1% of the tax generated will come back to the City.

BACKGROUND: U.S. Auctions, with administrative offices based in Upland, California, currently conducts monthly auctions in Pomona and Dixon, California, focusing on vehicle & equipment types such as vans, pickup trucks, utility trucks, dump trucks, box trucks, refuse trucks, roll off trucks, aerial trucks used in utility and tree industries, digger derricks, backhoes, front loaders, skiploaders, skid steers, and cranes.

US Auctions desires to relocate their Southern California business operations to the City of Ontario. During the site search process, a City-owned vacant parcel, located at 1687 South Bon View Avenue was identified as a potential candidate for a short-term ground lease. This parcel is part of the inventory of parcels controlled by Ontario Municipal Utilities Company ("OMUC") which, in the long-term, will be developed to support utility operations. In the short-term, however, there is the opportunity to utilize a portion of the subject parcel (approximately 5 acres) for the proposed Lessee's monthly auction operational needs.

STAFF MEMBER PRESENTING: John Andrews, Executive Director Economic Development

Prepared by: John Andrews
Department: Economic Development
City Manager Approval: 

Submitted to Council/O.H.A. 09/18/2018
Approved: _____
Continued to: _____
Denied: _____

4

Under the terms of the proposed lease, U.S. Auctions would occupy approximately 5 acres (217,800 s.f.) of the subject parcel for a three-year term with an option to extend for one additional year. U.S. Auctions would be responsible for all interim site improvements to consist of perimeter fencing, gravel base, placement of a temporary office trailer, and lighting. No permanent structures or improvements will be placed on the site. The estimated value of these improvements is approximately \$125,000.

Staff considers the recommended lease to be a beneficial interim arrangement which will provide time to identify and plan for a permanent long-term solution for the company's operations in Ontario.

RESOLUTION NO. _____

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF ONTARIO, CALIFORNIA, APPROVING A LEASE AGREEMENT WITH THE US AUCTIONS, A SOLE PROPRIETORSHIP.

WHEREAS, the City of Ontario owns that certain real property located at S. Bon View Avenue in the City of Ontario, San Bernardino County, California, having Assessor Parcel Number 1051-201-01, in the City of Ontario ("Property"); and

WHEREAS, the City of Ontario ("City") desires to enter into a short term lease with US Auctions, a sole proprietorship, to allow conduct vehicle and equipment auction operations on the Property; and

WHEREAS, City is authorized, pursuant to Government Code Section 37395, to lease land for commercial development for a period not to exceed 55 years if the City determines by ordinance or resolution that the property is not required for other City purposes; and

WHEREAS, the Property is currently vacant and underutilized by the City; and

WHEREAS, the City does not anticipate needing the Property for other City purposes within the next few years; and

WHEREAS, US Auctions will be paying the fair market rent for the Property during the term of the lease; and

WHEREAS, the City and US Auctions have negotiated the terms of a Lease Agreement ("Agreement"), a copy of which is attached to this Resolution as Exhibit A, in order to set forth the terms and conditions by which US Auctions will lease the Property from the City; and

WHEREAS, City staff has determined that the City's approval of the Agreement is exempt from the California Environmental Quality Act ("CEQA"), pursuant to CEQA Guidelines Section 15332.

NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF ONTARIO, CALIFORNIA, DOES HEREBY RESOLVE AS FOLLOWS:

SECTION 1. Recitals. The above recitals are true and correct, and are incorporated into this Resolution by reference as though fully set forth herein.

SECTION 2. Findings. The City Council hereby finds and declares that the Property is underutilized currently, is not needed by the City for other purposes, and entering into the Agreement is in the best interest of the community as it will result in the beneficial use of a vacant lot.

SECTION 3. Approval of Agreement. The City Council hereby approves the Agreement substantially in the form attached to this Resolution as Exhibit A. The City Council hereby authorizes the City Manager, with the concurrence of the City Attorney, to execute and deliver on behalf of the City the Agreement and such other documents and instruments as may be necessary or convenient in furtherance of the actions authorized in this Resolution.

SECTION 4. Authorization. The City Council hereby authorizes and directs City staff to do all that is necessary to effectuate the intent of the Agreement and this Resolution, including but not limited to, causing the Agreement to be recorded against the Property.

SECTION 5. CEQA Compliance. The City Council hereby authorizes and directs City staff to file a Notice of Exemption under CEQA with the Clerk of San Bernardino County within five (5) calendar days following approval of this Resolution.

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

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

PASSED, APPROVED, AND ADOPTED this 18th day of September 2018.

PAUL S. LEON, MAYOR

ATTEST:

SHEILA MAUTZ, CITY CLERK

APPROVED AS TO FORM:

BEST BEST & KRIEGER LLP
CITY ATTORNEY

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

I, SHEILA MAUTZ, City Clerk of the City of Ontario, DO HEREBY CERTIFY that foregoing Resolution No. 2018- was duly passed and adopted by the City Council of the City of Ontario at their regular meeting held September 18, 2018 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. 2018- duly passed and adopted by the Ontario City Council at their regular meeting held September 18, 2018.

SHEILA MAUTZ, CITY CLERK

(SEAL)

EXHIBIT A
LEASE AGREEMENT

[Attached behind this cover page]

LAND LEASE

This LAND LEASE (“**Lease**”) is effective as of _____, 2018 (“**Effective Date**”) by and between THE CITY OF ONTARIO, a California municipal corporation (“**Landlord**”) and US AUCTIONS, a sole proprietorship (“**Tenant**”). Landlord and Tenant are referred to individually as a “**Party**” and collectively as the “**Parties**.”

RECITALS

- A. Landlord owns a 5 acre (approximately 217,800 square foot) vacant parcel of real property located on S. Bonview Avenue in the City of Ontario, San Bernardino County, California, having Assessor Parcel Number 1051-201-01, as depicted on the “Map of the Premises” attached hereto as **Exhibit A** and legally described in the “Legal Description of the Premises” **Exhibit B** attached hereto (the “**Premises**”).
- B. Landlord desires to lease to Tenant, and Tenant desires to lease from Landlord, the Premises subject to the terms and conditions of this Lease.

NOW, THEREFORE, in consideration of the mutual covenants in this Lease, and for other good and valuable consideration, the receipt and sufficiency of which are hereby mutually acknowledged, the Parties agree as follows:

1. Lease of Premises. Landlord hereby leases to Tenant, and Tenant leases from Landlord, the Premises for the Term, as defined in Section 2.
2. Term. The term of this Lease (“**Initial Term**”) shall be for a period of three (3) years, commencing on _____, 2018 and continuing until _____, 2021, unless terminated or extended as provided herein. Tenant shall have the option to extend the Term by one (1) additional 12 month year, provided that Tenant has delivered written notice to Landlord of Tenant’s exercise of this option at least 90 days prior to the end of the Term (“**Option Term**”). Initial Term and Option Term, if applicable, shall be collectively referred to in this Lease as the “**Term**”.
3. Rent. For the Initial Term, Tenant shall pay monthly rent for the Premises in the amount of \$0.12 per square foot. For the Option Term, Tenant shall pay monthly rent for the Premises at the then market rate per square foot, as determined by an appraiser chosen by Landlord and paid for at Tenant’s sole cost and expense. Rent shall be payable on or before the first business day of each calendar month, in advance, without prior notice or demand. Tenant shall deliver all payments of Rent to Landlord’s address for notices as set forth below, or at any other address designated by Landlord from time to time.
4. Use of the Premises; Improvements. Tenant may use the Premises to conduct vehicle and equipment auction operations. Tenant estimates investing approximately \$125,000 in the improvements listed in the preceding sentence. Notwithstanding the foregoing, Tenant shall not commit or allow any waste on or about the Premises, nor commit, allow or maintain any public or private nuisance on or about the Premises, or impairment of the Premises, or any part thereof. Tenant may, upon ten (10) days’ prior written notice to Landlord and at Tenant’s sole cost, make such changes, alterations, improvements, or additions to the Premises (“**Improvements**”) as reasonably necessary and as permitted

under this Section. Any Improvements not permitted under this Section shall be prohibited unless Tenant receives Landlord's prior written consent, which may be withheld in Landlord's sole discretion.

5. Maintenance. Tenant specifically covenants and agrees that it will at all times during the Term keep the Premises and all improvements, additions, and alterations located in, on, or about the Premises in good condition and repair and in compliance with all laws, regulations, and ordinances ("**Regulations**") at Tenant's sole cost and expense including, without limitation, removal of trash and weed abatement. Tenant shall obtain, at Tenant's sole cost and expense, all licenses, permits and approvals that the Regulations require for the use or operation of the Property, and shall maintain all required licenses, permits and approvals throughout the Term of this Lease. Tenant agrees that Landlord shall not be required to perform any maintenance, repairs, or services or to assume any expense not specifically assumed herein in connection with the Premises. Tenant, at Tenant's sole cost and expense, shall take all reasonable measures to mitigate and control any dust that emanates from the Premises, including but not limited to any directives from the City of Ontario regarding dust mitigation. At the expiration of the Term, Tenant shall remove all improvements and materials placed upon the Premises by Tenant and shall restore the Premises to substantially the same condition as it was in at the time of the commencement of this Lease, reasonable wear and tear excepted.
6. Liens. Tenant shall not, directly or indirectly, create or permit to be created or to remain, and will promptly discharge, at its expense, any mortgage, lien, encumbrance or charge on or pledge of the Premises or any part thereof, or Tenant's interest therein, or the rent, additional rent or other sums payable by Tenant under this Lease. Tenant shall notify Landlord promptly of any lien or encumbrance which has been created on or attached to the Premises, or to Tenant's leasehold estate therein, whether by act of Tenant or otherwise. The existence of any mechanic's, laborer's, materialmen's, supplier's or vendor's lien, or any right in respect thereof, shall not constitute a violation if payment is not yet due upon the contract or for the goods or services in respect of which any such lien has arisen.
7. Utilities. Tenant shall be solely responsible for the cost of all utility services delivered to the Premises during the Term. Tenant shall pay all utility service invoices for the Premises by their due dates.
8. Hazardous Substances. The term "**Hazardous Substances**", as used in this Lease, shall mean any chemical substance or other material that is defined as a "Hazardous Material" under any local, state or federal law. The laws regulating the storage, handling, generation, treatment, disposal, discharge, release, transportation, or clean-up of Hazardous Substances are collectively referred to in this Lease as the "**Hazardous Substance Laws**". Tenant shall, at Tenant's own expense, comply with all Hazardous Substance Laws concerning the Premises. Tenant shall not cause or permit to occur:
 - (i) Any violation of any Hazardous Substance Law now or hereafter enacted, related to environmental conditions on, under, or about the Premises, or arising from Tenant's use or occupancy of the Premises, including, but not limited to, soil and ground water conditions; or

- (ii) The use, generation, release, manufacture, refining, production, processing, handling, treating, storage, or disposal of any Hazardous Substances on, under, or about the Premises, or the transportation to or from the Premises of any Hazardous Substances unless, in both cases, after Landlord's prior written consent and in full compliance with all applicable laws. Tenant acknowledges and agrees that any disposal, release, or discharge of Hazardous Substances in, on, or under the Premises which is not approved by Landlord shall be in and of itself an unreasonable use of the Premises and a default by Tenant. Tenant shall be responsible, at its sole cost and expense, for remediating any release or spill of Hazardous Substances on the Premises caused by Tenant during the Term. Notwithstanding the foregoing, nothing herein shall be construed to prohibit the customary use of fuels and lubricants in vehicles and equipment which may be present from time to time on and about the Premises.

9. Assignment and Subletting. Tenant may not assign its interest in this Lease or sublease the Premises without Landlord's prior written consent, which may be withheld in Landlord's sole and absolute discretion.

10. Termination. This Lease may be terminated, without penalty or further liability, as follows:

- (a) By Landlord, after the expiration of the cure periods set forth in Section 14;
- (b) by Tenant upon written notice to Landlord, if Tenant is unable to obtain, or maintain, any required approval(s) or the issuance of a license or permit by any agency, board, court or other governmental authority necessary for the construction or operation of the Improvements as now or hereafter intended by Tenant; or if Tenant determines, in its sole discretion that the cost of or delay in obtaining or retaining the same is commercially unreasonable;
- (c) by Tenant upon written notice to Landlord for any reason or no reason, at any time prior to commencement of construction of the Improvements by Tenant; or
- (d) by Tenant upon sixty (60) days' prior written notice to Landlord for any reason or no reason, so long as Tenant pays Landlord a termination fee equal to three (3) months' Rent, at the then-current rate

11. Insurance.

- (a) Required Coverage. Commencing on the Effective Date and continuing thereafter during the Term, Tenant shall, at its sole cost and expense, procure, pay for, and keep in full force and effect the following types of insurance, in at least the amounts specified below.
 - (i) Commercial general liability insurance with a combined single limit coverage limit of not less than one million dollars (\$1,000,000.00) per occurrence. Tenant's policy must specifically insure the insurable performance by Tenant of the indemnity agreement set forth in Section 13

and include, but not be limited to, blanket contractual, cross-liability, and severability of interest clauses, products/completed operations, broad form property damage, and independent contractor's coverage.

- (ii) Workers' compensation and employer's liability coverage to the extent required by law.
 - (iii) Comprehensive automobile liability and property insurance with a combined single limit of not less than one million dollars (\$1,000,000.00) per occurrence for bodily injury and property damage.
- (b) Policy Requirements. All insurance policies required hereunder shall meet the following requirements:
- (i) Except for Tenant's workers' compensation and employer's liability policies, all such policies shall name as additional insureds Landlord, and any other persons and entities reasonably designated by Landlord.
 - (ii) All policies shall be issued on an occurrence basis. "Claims Made" policies are not acceptable.
 - (iii) All policies must be issued by companies with general policy holder's and financial ratings of at least A-/Class VII, as rated in the most current available "Best's Key Rating Guide" (provided that if the financial rating is XII, the generally policyholder rating may be B+), and which are qualified to do business in the State of California.
 - (iv) Liability policies must be written as primary policies, and any insurance carried by Landlord shall not be contributing thereto.
 - (v) Each insurer must be obligated to give Landlord at least (30) days written notice in advance of any cancellation or lapse or of the effective date of any reduction in the coverage amounts.
 - (vi) All policies must waive the insurer's right of subrogation.
- (c) Evidence of Coverage. Concurrent with Tenant's delivery of Tenant executed counterparts of this Lease, Tenant shall deliver to Landlord a certificate of insurance and endorsements indicating that all required insurance coverage is currently in force. Thereafter, certificates and endorsements evidencing the required coverage shall be delivered to Landlord within (30) days prior to the expiration of the term of each policy and whenever requested by Landlord.
- (d) Blanket Policies. Tenant's obligation to carry insurance may be satisfied by coverage under a so-called blanket policy of insurance, provided that the requirements set forth in this Lease are otherwise satisfied.

12. Waiver of Subrogation; Damages. To the maximum extent allowed by law, except for Landlord's gross negligence or willful misconduct, Landlord shall not be liable to Tenant or to any insurance company (by way of subrogation or otherwise) insuring Tenant for any direct or consequential loss or damage to the Premises or to any building, structure, or other tangible property or for any resulting loss of income or losses under workers' compensation laws and benefits, even though such loss or damage might have been occasioned by the negligence of Landlord or its agents or employees, if any such loss or damage is covered by insurance benefiting Tenant. Tenant shall obtain from its insurers issuing policies required hereunder endorsements providing that the insurers waive all rights of recovery by way of subrogation against Landlord. To the maximum extent allowed by law, except for Landlord's gross negligence or willful misconduct, Tenant hereby waives all claims and demands against Landlord, its elected officials, officers, employees, volunteers, consultants and agents for injury to persons, damage to property or any other interest of Tenant sustained by Tenant or any other person claiming through Tenant and resulting from any occurrence on or about the Premises. Tenant has been advised by its legal counsel concerning the content and effect of California Civil Code Section 1542, which provides:

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

In reference to the waivers set forth in this Section, Tenant hereby waives the benefits of Civil Code Section 1542 and all other state or federal statutes, legal principles, or judicial decisions of the same or similar effect. The provisions of this Section shall survive the expiration or termination of this Lease.

_____ Tenant's Initials

13. Indemnity. To the fullest extent permitted by law, Tenant covenants with Landlord that the Landlord shall not be liable for, and Tenant shall protect, defend, indemnify, and hold harmless the Landlord from and against, any and all claims, allegations, expenses, liabilities, losses, damages, fines, penalties, and costs, including reasonable attorneys' fees (collectively, "**Claims**") incurred in connection with, arising from, due to, or as a result of (a) the death or any accident, injury, loss, or damage to any person or property howsoever caused, as shall occur in or about the Premises during the Term, (b) any deposit, spill, discharge, or other release of Hazardous Substances that occurs during the Term at or from the Premises, (c) Tenant's failure, during the Term, to provide all information, make all submissions, and take all steps required by all governmental agencies under, and/or the violation of, any Hazardous Substance Laws or other Regulations, (d) Tenant's failure or refusal to vacate the Premises by the end of the Term, or (e) any default by Tenant under this Lease. Notwithstanding the foregoing, Tenant's indemnity obligations under this Section shall not extend to Claims caused by the Landlord's fraud, willful misconduct, gross negligence or violation of law.

14. Default by Tenant.

- (a) Events of Default. Tenant shall be in default under this Lease if:
- (i) Tenant fails to make any payment of Rent required hereunder for more than three (3) days after written notice from Landlord that the payment is overdue; or
 - (ii) Tenant vacates or abandons the Premises; or
 - (iii) Tenant fails to perform any other obligation under this Lease after written notice from Landlord, provided that if the failure is not reasonably susceptible to cure within ten (10) days then Tenant shall not be in default within the meaning of this Section if Tenant commences curing the failure within the ten (10) day period and thereafter diligently pursues the cure to completion.

The notices required in this Section shall be in lieu of, and not in addition to, any notices required by law.

- (b) Remedies. Landlord may treat the occurrence of any one (1) or more of the foregoing events as a breach of this Lease, and, in addition to any and all other rights or remedies of Landlord under this Lease, at law, or in equity, Landlord may, without further notice or demand of any kind to Tenant or any other person except as then may be required by law, (i) declare the Term ended, re-enter and re-take possession of the Premises, and remove all persons therefrom; (ii) re-enter the Premises and occupy the whole or any part for and on account of Tenant, to the extent then permitted by California law, without declaring this Lease terminated, and collect any unpaid Rent and other charges which have become payable, or which may thereafter become payable; or (iii) even though it may have re-entered the Premises pursuant to clause (ii), elect thereafter to terminate this Lease and all of the rights of Tenant in and to the Premises; provided, however, that Landlord shall not be deemed to have terminated this Lease by re-entering the Premises pursuant to this Section, or by any action in unlawful detainer or otherwise to obtain possession of the Premises, unless Landlord shall have notified Tenant in writing that it has so elected to terminate this Lease; or (iv) hire a contractor to perform the salvage and cleanup of the Premises so as to render the Premises in substantially the same condition as on the Effective Date and recover those costs and expenses from Tenant. Landlord's remedies shall include without limitation those set forth in California Civil Code Sections 1951.2 and 1951.4. The damages that Landlord may recover include, but are not limited to, the worth at the time of award of the amount by which the unpaid Rent for the balance of the Term exceeds the amount of the rental loss for the same period that Tenant proves could be reasonably avoided.
- (c) Acknowledgement of Adequacy of Relocation Benefits Paid. If either Party terminates this Lease for any reason contemplated or authorized by this Section 14 or any other Section of the Lease, Tenant hereby expressly, knowingly and

voluntarily waives any and all rights, benefits and/or assistance it may be entitled to receive from Landlord due to such termination, including, without limitation, loss of goodwill, inverse condemnation, or relocation assistance as provided for in California Government Code sections 7260, et seq. and 42 U.S.C. section 4601, et seq.

15. Entry. Landlord may, but shall not be obligated to, enter the Premises at any reasonable time and upon reasonable notice to Tenant to inspect the Premises; to perform any obligation or exercise any right or remedy of Landlord under this Lease; to make repairs, alterations, improvements, and additions to the Premises as Landlord deems necessary or desirable; to perform work necessary to comply with laws, ordinances, rules, or the regulations of any governmental authority or of any insurance underwriter; to perform work that Landlord deems necessary to prevent waste or deterioration in connection with the Premises; to show the Premises to prospective or actual purchasers, tenants, lenders, investors, and insurers; to post notices of non-responsibility; and for any other purpose permitted by law. Tenant hereby waives any claim for damages or for any injury or inconvenience to or interference with Tenant's business, any loss of occupancy or quiet enjoyment of the Premises, and any other loss occasioned thereby.
16. Sale of Premises. In the event of any sale, conveyance, or other transfer of fee title to the Premises, Landlord shall (i) assign this Lease to the buyer or transferee, so that the Lease remains in effect, and (ii) automatically shall be released from all liability hereunder arising or based on facts or events occurring after the consummation of the sale (but not from any liability that accrued prior to the sale, conveyance, or transfer).
17. Notices. No notice, request, demand, instruction, or other document to be given hereunder to any Party shall be effective for any purpose unless personally delivered, delivered by commercial overnight delivery service, or sent by certified or registered mail, return receipt requested, to the appropriate address set forth below, or transmitted by email to the email set forth below. For all purposes herein, notices shall be provided as follows:

If to Tenant, to: U.S. Auctions
 Attn: Mr. Armando L. Camarena, CEO

Email: armando@usauctions.net

With a copy to: U.S. Auctions
 Attn: Mr. Marco Galvan, President

Email: marco@usauctions.net

If to Landlord: City of Ontario
Attn.: _____
303 East B Street
Ontario, CA 91764
Email: _____

Best Best & Krieger LLP
Attn: Elizabeth Hull
18101 Von Karman Ave Suite 1000
Irvine, CA 92612
Email: Elizabeth.Hull@bbklaw.com

Notices that are mailed shall be deemed to have been given on the second day following deposit of same in any United States Post Office mailbox in the state to which the notice is addressed or on the third day following deposit in any such post office box other than in the state to which the notice is addressed, postage prepaid, addressed as set forth above. Notices sent via commercial overnight delivery service shall be deemed to have been given the next business day after deposit with the commercial delivery service. Notices that are transmitted via email shall be deemed to have been given the business day transmitted, if transmitted before 5:00 p.m. recipient's time, and on the next business day, if transmitted after 5:00 p.m. recipient's time. The addresses and email addresses for the purposes of this paragraph may be changed by giving written notice of such change in the manner herein provided for giving notice.

18. Waiver. Any waiver by Landlord of a breach of a covenant of this Lease by Tenant shall: (i) not be construed as a waiver of a subsequent breach of the same or any other covenant; or (ii) affect or alter this Lease but each and every term and provision of this Lease shall continue in full force and effect with respect to any other then existing or subsequent breach thereof. The consent or approval by Landlord to or of anything requiring Landlord's consent or approval shall not be deemed a waiver of Landlord's right to withhold consent or approval of any subsequent similar act or request by Tenant.
19. Rights Cumulative. Except as provided herein specifically to the contrary, the rights and remedies of Landlord and Tenant specified in this Lease shall be cumulative and in addition to any rights and remedies not specified in this Lease.
20. Entire Agreement. This Lease represents the entire agreement of the Parties with respect to the subject matter hereof. All previous oral or written agreements or representations between the Parties hereto affecting the Premises and/or this Lease, if any, are hereby merged into this Lease and this Lease supersedes and cancels any and all previous negotiations, arrangements, representations, agreements, and understandings, if any, between Landlord and Tenant or displayed by Landlord to Tenant.
21. Amendments in Writing. No provision of this Lease may be amended except by an agreement in writing signed by both Landlord and Tenant.

22. Governing Law; Forum. This Lease shall be governed by and construed and enforced in accordance with the laws of the State of California. The courts of San Bernardino County, California shall have sole and exclusive jurisdiction over any proceeding arising from this Lease.
23. Severability. If any provision of this Lease or the application of such provision to any person, entity, or circumstance is found invalid or unenforceable by a court of competent jurisdiction, the determination shall not affect the other provisions of this Lease and all other provisions of this Lease shall be deemed valid and enforceable.
24. Successors. All rights and obligations of Landlord and Tenant under this Lease shall extend to and bind the respective heirs, executors, administrators, successors-in-interest and assignees of the Parties hereto.
25. Time of Essence. Time is of the essence in this Lease.
26. Attorneys' Fees. In the event of litigation arising from or relating to this Lease, the prevailing party shall be entitled to recover its reasonable attorneys' fees, expert witness fees and costs.
27. LEASE NEGOTIATIONS. THIS LEASE IS AN IMPORTANT DOCUMENT WHICH SETS FORTH IN WRITING THE AGREEMENT OF THE PARTIES WITH REGARD TO THE MATTERS ADDRESSED IN THIS LEASE. IMPORTANT RIGHTS AND OBLIGATIONS OF BOTH PARTIES ARE INVOLVED, AND EACH PARTY HAS BEEN URGED TO CONSULT ITS RESPECTIVE ATTORNEYS AND OTHER APPROPRIATE EXPERTS AND CONSULTANTS. BOTH PARTIES AGREE THAT ALL OF THE TERMS AND CONDITIONS OF THIS LEASE HAVE BEEN FREELY NEGOTIATED BETWEEN THE PARTIES AND THAT EACH PARTY HAS HAD AN OPPORTUNITY TO BE REPRESENTED BY COUNSEL AND HAS PROVIDED INPUT INTO THIS DOCUMENT AND CHANGES HAVE BEEN MADE AT THE REQUEST OF EACH PARTY. FOR THIS REASON, THIS LEASE WILL NOT BE INTERPRETED SO AS TO PREFER THE INTEREST OF ONE PARTY OR CONSTRUED AGAINST EITHER PARTY.
28. Obligation to Refrain from Discrimination. Tenant shall not discriminate against any person, or group of persons, on account of sex, marital status, race, color, creed, religion, national origin or ancestry in the sale, lease, sublease, transfer, use, occupancy, tenure or enjoyment of the Premises.
29. Condition of Premises. Tenant acknowledges that it intends to and will occupy the Premises on the Effective Date in its AS-IS condition, as of the Effective Date. Tenant acknowledges and agrees that Landlord has made absolutely no representations, guarantees or warranties regarding the Premises, nor has Landlord made representations, guarantees or warranties regarding whether the Premises comply with applicable Regulations in effect on the Effective Date.
30. Taxable Possessory Interests. If the County determines that this Lease creates a taxable possessory interest pursuant to California Revenue and Taxation Code Section 107, Tenant shall be liable for and shall pay any and all taxes levied on this interest.

IN WITNESS WHEREOF, Landlord and Tenant have duly executed this Lease as of the Effective Date.

“LANDLORD”

CITY OF ONTARIO, a California municipal corporation

By: _____
Scott Ochoa
City Manager

ATTEST:

City Clerk, Ontario

APPROVED AS TO FORM:
BEST, BEST & KREIGER LLP

City Attorney

LIST OF EXHIBITS

- Exhibit A: Map of the Premises
- Exhibit B: Legal Description of Premises

“TENANT”

US AUCTIONS, a sole proprietorship

By: _____
Name: _____
Its: _____

By: _____
Name: _____
Its: _____

EXHIBIT A

MAP OF THE PREMISES

EXHIBIT B

LEGAL DESCRIPTION OF THE PREMISES

The land referred to herein is situated in the State of California, County of San Bernardino, City of Ontario and described as follows:

Lot 5, Block 'G,' Blackburn's Addition, in the City of Ontario, County of San Bernardino, State of California, as per plat recorded in Book 12 Page 55 of Maps, records of said county.

Said map recites that areas and distances are computed to street centers.

APN: 1051-201-01

CITY OF ONTARIO

Agenda Report
September 18, 2018

SECTION:
CONSENT CALENDAR

SUBJECT: A RESOLUTION ADOPTING THE MEASURE I FIVE-YEAR CAPITAL PROJECT NEEDS ANALYSIS FOR FISCAL YEARS 2019/2020 TO 2023/2024


RECOMMENDATION: That the City Council adopt a resolution approving the 2019/2020 through 2023/2024 Measure I Five-Year Capital Project Needs Analysis (CPNA) and authorize the City Manager to approve changes to the plan as may be required by the City and/or San Bernardino County Transportation Authority (SBCTA).

COUNCIL GOALS: Invest in the Growth and Evolution of the City's Economy
Pursue City's Goals and Objectives by Working with Other Governmental Agencies
Invest in the City's Infrastructure (Water, Streets, Sewers, Parks, Storm Drains and Public Facilities)

FISCAL IMPACT: The Measure I Five-Year CPNA is a tool to assist the SBCTA Board of Directors and staff in programming available and projected Measure I Fund revenues. The CPNA is not a budget commitment. The individual projects listed in the CPNA are either currently identified in the City of Ontario Capital Improvement Program Budget (CIP) or will be identified in the CIP at the time that the local fund share is needed and approved by the City Council.

BACKGROUND: San Bernardino County voters approved passage of the 2010 through 2040, thirty-year Measure I program in November 2004, authorizing San Bernardino Associated Governments, now SBCTA, to impose a one-half percent retail transactions and use tax in the incorporated and unincorporated territory of the County of San Bernardino. Revenue from the tax can only be used for transportation improvements and traffic management programs authorized in the 2010-2040 Measure I Expenditure Plan set forth in Ordinance No. 89-1 and Ordinance No. 04-1 of the Authority. The Expenditure Plan for the San Bernardino Valley Subarea, of which Ontario is a part, requires that Measure I revenue be applied to the following programs.

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

Prepared by: David Tan
Department: Engineering
City Manager Approval: 

Submitted to Council/O.H.A. 09/18/2018
Approved: _____
Continued to: _____
Denied: _____

5

Freeways	29%
Freeway Interchanges	11%
Major Streets (including Railroad Grade Separations)	20%
Local Streets (per capita pass through)	20%
Metrolink/Passenger Rail	8%
Senior/Disabled Transit Service	8%
Express Bus/Bus Rapid Transit Service	2%
Traffic Management Systems	2%

The 2010-2040 Measure I Strategic Plan requires each local jurisdiction applying for revenue from the Valley Major Street and Freeway Interchange Programs to annually adopt and update a Five-Year CPNA. The Five-Year CPNA is not a funding commitment by either SBCTA or the City, but a tool to assist SBCTA staff and their Board of Directors in programming available Measure I Fund revenues. The CPNA is not a wish list but a financially constrained, realistic schedule of the projects for which the agency intends to use Measure I dollars. “Financially constrained” means that the required local Development Impact Fee (DIF) match contribution will be available before the project begins or the DIF match requirement has been met by an internal Measure I loan arranged with SBCTA in accordance with the Measure I Strategic Plan.

The Five-Year CPNA covers projects in the Measure I Major Street Arterial Sub-program and Valley Freeway Interchange Program. This year’s Five-Year CPNA includes the following projects: Grove Avenue widening (from Fourth Street to Airport Drive); Grove Avenue and Holt Boulevard intersection widening; Mountain Avenue and Holt Boulevard intersection widening; Etiwanda Avenue and Airport Drive intersection improvements; and SR-60 at Archibald Avenue interchange improvements. Also included are three (3) projects that will be constructed as part of SBCTA’s I-10 Express Lane Project: the Fourth Street bridge undercrossing improvement (between I-10 eastbound and westbound ramps); I-10 at Vineyard Avenue interchange improvements; and I-10 at Euclid Avenue interchange improvements. Grade separation projects are not included in the CPNA as they are accounted for in separate agreements.

The CPNA process requires that the City Council approve the CPNA by resolution. City staff anticipates that there may need to be changes to the CPNA during the fiscal year. Therefore, staff is recommending that the City Manager be given the authority to approve changes to the CPNA as requested by SBCTA and/or City staff, provided the changes do not conflict with the approved budget.

RESOLUTION NO. _____

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF ONTARIO, CALIFORNIA, ADOPTING THE MEASURE I FIVE-YEAR CAPITAL PROJECT NEEDS ANALYSIS FOR FISCAL YEARS 2019/2020 TO 2023/2024.

WHEREAS, San Bernardino County voters approved passage of Measure I in November 2004, authorizing the San Bernardino County Transportation Authority to impose a one-half of one percent retail transactions and use tax applicable in the incorporated and unincorporated territory of the County of San Bernardino; and

WHEREAS, revenue from the tax can only be used for transportation improvement and traffic management programs authorized in the Expenditure Plans set forth in Ordinance No. 89-1 and Ordinance No. 04-1 of the Authority; and

WHEREAS, the Strategic Plan requires each local jurisdiction applying for revenue from certain Measure I Programs to annually adopt and update a Five-Year Capital Project Needs Analysis.

NOW, THEREFORE, BE IT RESOLVED by the City Council of the City of Ontario, State of California, that the Measure I Five-Year Capital Project Needs Analysis, attached to this Resolution as Exhibit A, is hereby adopted.

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

PASSED, APPROVED, AND ADOPTED this 18th day of September 2018.

PAUL S. LEON, MAYOR

ATTEST:

SHEILA MAUTZ, CITY CLERK

APPROVED AS TO LEGAL FORM:

BEST BEST & KRIEGER LLP
CITY ATTORNEY

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

I, SHEILA MAUTZ, City Clerk of the City of Ontario, DO HEREBY CERTIFY that foregoing Resolution No. 2018- was duly passed and adopted by the City Council of the City of Ontario at their regular meeting held September 18, 2018 by the following roll call vote, to wit:

AYES: MAYOR/COUNCIL MEMBERS:

NOES: COUNCIL MEMBERS:

ABSENT: COUNCIL MEMBERS:

SHEILA MAUTZ, CITY CLERK

(SEAL)

The foregoing is the original of Resolution No. 2018- duly passed and adopted by the Ontario City Council at their regular meeting held September 18, 2018.

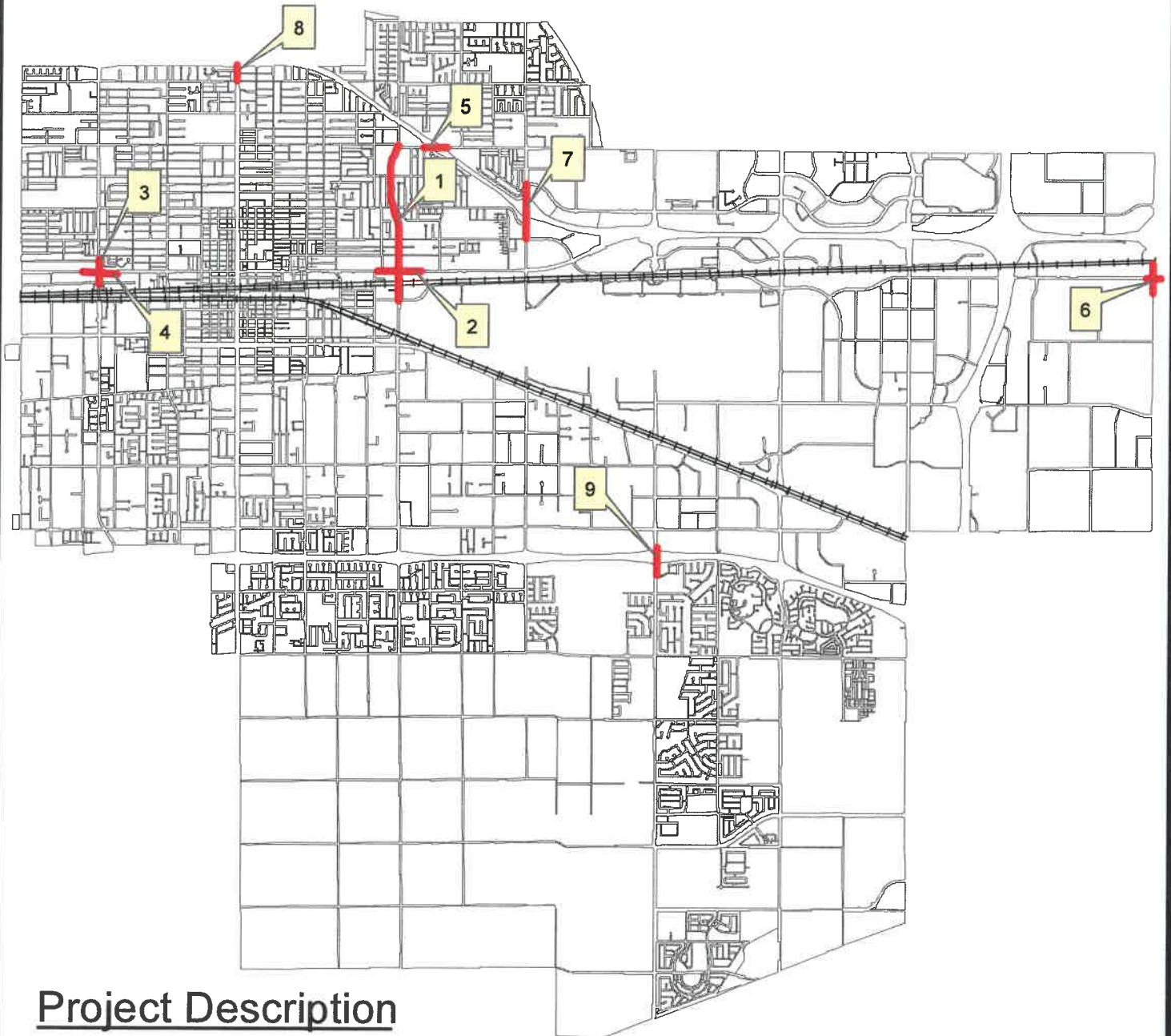
SHEILA MAUTZ, CITY CLERK

(SEAL)

Exhibit A

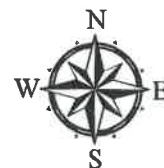
Five-Year Capital Project Needs Analysis

2019/2020 - 2023/2024



Project Description

- 1 Widen Grove Ave. from Fourth St. to Airport Dr. from 4 to 6 lanes.
- 2 Widen Holt Blvd. from 750 ft. west of to 750 ft. east of Grove Ave. from 4 to 6 lanes.
- 3 Widen Mountain Ave. between Brooks St. and Vesta St. from 4 to 6 lanes.
- 4 Widen Holt Blvd. from 750 ft. west of to 750 Ft. east of Mountain Ave. from 4 to 6 lanes.
- 5 Fourth Street Bridge Undercrossing Improvement.
- 6 Etiwanda Avenue and Airport Drive Intersection Improvements.
- 7 I-10 at Vineyard Ave. Interchange Improvements.
- 8 I-10 at Euclid Ave. Interchange Improvements.
- 9 SR-60 at Archibald Ave. Interchange Improvements.



Capital Project Needs Analysis

Agency: Ontario

Program: Valley Arterial Sub-Program

Project Name: Widen Grove Ave from I-10 to Holt Blvd from 4 to 6 lanes, Including W. Cuc. Creek Bridge

Agency Project Name: Grove Corridor Widening (Fourth St to Airport Dr) and Holt Blvd/Grove Ave Intersection Widening

Agency reported Total Project Cost: \$4,100,000

Escalation Factor (%):

Actual Prior Year Dollars and escalated costs in subsequent years (not in 1,000s)

Public Share: 55.60% | Dev. Share: 44.40%

		Funding	Prior	FY 19/20	FY 20/21	FY 21/22	FY 22/23	FY 23/24	Future	Total
Nexus Total Project Cost (All phases): 32,200,000	PA&ED	MI ART	5,589	0	0	0	0	0	0	5,589
		DEMO	50,260	0	0	0	0	0	0	50,260
		DEV FEE	4,463	0	0	0	0	0	0	4,463
		Total	60,312	0	0	0	0	0	0	60,312
Total Presented Funding: 2,356,582	PS&E	MI ART	164,726	0	0	0	0	0	0	164,726
		DEV FEE	131,544	0	0	0	0	0	0	131,544
		Total	296,270	0	0	0	0	0	0	296,270
Total Measure I Request: 1,282,315	ROW	MI ART	34,750	104,250	0	0	0	0	0	139,000
		DEV FEE	27,750	83,250	0	0	0	0	0	111,000
		Total	62,500	187,500	0	0	0	0	0	250,000
	CONST	MI ART	0	486,500	486,500	0	0	0	0	973,000
		DEV FEE	0	388,500	388,500	0	0	0	0	777,000
		Total	0	875,000	875,000	0	0	0	0	1,750,000
Total			419,082	1,062,500	875,000	0	0	0	0	2,356,582

*Prior should identify any expenses incurred in prior years that have not yet been reimbursed by SBCTA including FY 17/18 expenses.

Project Comments: Costs include PA&ED of the Grove Corridor project; and PS&E, ROW and CON for the Grove portion of the Holt/Grove intersection project.

Last Update: 8/17/2018 2:03:45 PM

Reference: Measure I Policy 40006

Capital Project Needs Analysis

Agency: Ontario

Program: Valley Arterial Sub-Program

Project Name: Widen Holt Blvd from Benson Ave to Vineyard Ave from 4 to 6 lanes

Agency Project Name: Widen Holt Blvd. from 750 ft. west to 750 ft. east of Grove Ave. from 4 to 6 lanes

Agency reported Total Project Cost: \$2,400,000

Escalation Factor (%):

Actual Prior Year Dollars and escalated costs in subsequent years (not in 1,000s)

Public Share: 55.60% | Dev. Share: 44.40%

		Funding	Prior	FY 19/20	FY 20/21	FY 21/22	FY 22/23	FY 23/24	Future	Total
Nexus Total Project Cost (All phases): 17,933,000	PA&ED	Total								
Total Presented Funding: 2,296,270	PS&E	MI ART	164,726	0	0	0	0	0	0	164,726
		DEV FEE	131,544	0	0	0	0	0	0	131,544
		Total	296,270	0	0	0	0	0	0	296,270
Total Measure I Request: 1,276,726	ROW	MI ART	34,750	104,250	0	0	0	0	0	139,000
		DEV FEE	27,750	83,250	0	0	0	0	0	111,000
		Total	62,500	187,500	0	0	0	0	0	250,000
	CONST	MI ART	0	486,500	486,500	0	0	0	0	973,000
		DEV FEE	0	388,500	388,500	0	0	0	0	777,000
		Total	0	875,000	875,000	0	0	0	0	1,750,000
Total			358,770	1,062,500	875,000	0	0	0	0	2,296,270

*Prior should identify any expenses incurred in prior years that have not yet been reimbursed by SBCTA including FY 17/18 expenses.

Project Comments: This is a portion of Nexus Project "Widen Holt Blvd from Benson Ave to Vineyard Ave from 4 to 6 lanes". Costs include the PS&E, ROW and CON for the Holt portion of the Holt/Grove intersection project.

Last Update: 8/17/2018 1:49:30 PM

Capital Project Needs Analysis

Agency: Ontario
 Program: Valley Arterial Sub-Program
 Project Name: Widen Mountain Ave from Sixth Street to s/o Holt Blvd
 Agency Project Name: Widen Mountain Ave. between Brooks and Vesta Streets from 4 to 6 lanes
 Agency reported Total Project Cost: \$3,500,000
 Escalation Factor (%):\$0

Actual Prior Year Dollars and escalated costs in subsequent years (not in 1,000s)

Public Share: 55.60% | Dev. Share: 44.40%

		Funding	Prior	FY 19/20	FY 20/21	FY 21/22	FY 22/23	FY 23/24	Future	Total
Nexus Total Project Cost (All phases): 7,467,000	PA&ED	Total								
Total Presented Funding: 3,236,337	PS&E	MI ART	131,403	0	0	0	0	0	0	131,403
		DEV FEE	104,934	0	0	0	0	0	0	104,934
		Total	236,337	0	0	0	0	0	0	236,337
Total Measure I Request: 1,799,403	ROW	MI ART	311,360	77,840	0	0	0	0	0	389,200
		DEV FEE	248,640	62,160	0	0	0	0	0	310,800
		Total	560,000	140,000	0	0	0	0	0	700,000
	CONST	MI ART	639,400	639,400	0	0	0	0	0	1,278,800
		DEV FEE	510,600	510,600	0	0	0	0	0	1,021,200
		Total	1,150,000	1,150,000	0	0	0	0	0	2,300,000
Total			1,946,337	1,290,000	0	0	0	0	0	3,236,337

*Prior should identify any expenses incurred in prior years that have not yet been reimbursed by SBCTA including FY 17/18 expenses.

Project Comments: This is a portion of Nexus Project "Widen Mountain Ave from Sixth Street to s/o Holt Blvd". Costs include the PS&E, ROW and CON for the Mountain portion of the Holt/Mountain intersection project.

Last Update: 8/17/2018 1:20:49 PM

Capital Project Needs Analysis

Agency: Ontario

Program: Valley Arterial Sub-Program

Project Name: Widen Holt Blvd from Benson Ave to Vineyard Ave from 4 to 6 lanes

Agency Project Name: Widen Holt Blvd. from 750 ft. west of to 750 ft. east of Mountain Ave. from 4 to 6 lanes

Agency reported Total Project Cost: \$3,500,000

Escalation Factor (%):

Actual Prior Year Dollars and escalated costs in subsequent years (not in 1,000s)

Public Share: 55.60% | Dev. Share: 44.40%

		Funding	Prior	FY 19/20	FY 20/21	FY 21/22	FY 22/23	FY 23/24	Future	Total
Nexus Total Project Cost (All phases): 17,933,000	PA&ED	Total								
Total Presented Funding: 3,236,337	PS&E	MI ART	131,403	0	0	0	0	0	0	131,403
		DEV FEE	104,934	0	0	0	0	0	0	104,934
		Total	236,337	0	0	0	0	0	0	236,337
Total Measure I Request: 1,799,403	ROW	MI ART	311,360	77,840	0	0	0	0	0	389,200
		DEV FEE	248,640	62,160	0	0	0	0	0	310,800
		Total	560,000	140,000	0	0	0	0	0	700,000
	CONST	MI ART	639,400	639,400	0	0	0	0	0	1,278,800
		DEV FEE	510,600	510,600	0	0	0	0	0	1,021,200
		Total	1,150,000	1,150,000	0	0	0	0	0	2,300,000
Total			1,946,337	1,290,000	0	0	0	0	0	3,236,337

*Prior should identify any expenses incurred in prior years that have not yet been reimbursed by SBCTA including FY 17/18 expenses.

Project Comments: This is a portion of Nexus Project "Widen Holt Blvd from Benson Ave to Vineyard Ave from 4 to 6 lanes". Costs include PS&E, ROW and CON for the Holt portion of the Holt/Mountain intersection project.

Last Update: 8/17/2018 1:35:44 PM

Capital Project Needs Analysis

Agency: Ontario

Program: Valley Arterial Sub-Program

Project Name: Replace 4th St structure between I-10 westbound ramps and I-10 eastbound ramps and widen to 5 lanes

Agency Project Name: Fourth Street Bridge Undercrossing Improvement

Agency reported Total Project Cost: \$21,566,769

Escalation Factor (%):

Actual Prior Year Dollars and escalated costs in subsequent years (not in 1,000s)

Public Share: 55.60% | Dev. Share: 44.40%

		Funding	Prior	FY 19/20	FY 20/21	FY 21/22	FY 22/23	FY 23/24	Future	Total
Nexus Total Project Cost (All phases): 13,650,000	PA&ED	MI ART	347,700	0	0	0	0	0	0	347,700
		DEV FEE	277,660	0	0	0	0	0	0	277,660
		Total	625,360	0	0	0	0	0	0	625,360
Total Presented Funding: 21,566,768	PS&E	MI ART	440,676	185,451	0	0	0	0	0	626,127
		DEV FEE	500,001	0	0	0	0	0	0	500,001
		Total	940,677	185,451	0	0	0	0	0	1,126,128
Total Measure I Request: 11,991,122	ROW	MI ART	982,408	235,600	0	0	0	0	0	1,218,008
		DEV FEE	972,654	0	0	0	0	0	0	972,654
		Total	1,955,062	235,600	0	0	0	0	0	2,190,662
	CONST	MI ART	1,332,983	3,171,373	3,176,958	2,117,973	0	0	0	9,799,287
		DEV FEE	1,441,567	0	0	0	0	0	0	1,441,567
		DEV LOAN	0	2,155,436	2,536,996	1,691,332	0	0	0	6,383,764
		Total	2,774,550	5,326,809	5,713,954	3,809,305	0	0	0	17,624,618
Total		6,295,649	5,747,860	5,713,954	3,809,305	0	0	0	21,566,768	

*Prior should identify any expenses incurred in prior years that have not yet been reimbursed by SBCTA including FY 17/18 expenses.

Project Comments: Loan agreement for \$6,383,764 of City DIF share. SBCTA is the lead agency on the project.

Last Update: 8/24/2018 9:35:45 AM

Capital Project Needs Analysis

Agency: Ontario
 Program: Valley Arterial Sub-Program
 Project Name: Spot Widen Airport Dr from Kettering to Etiwanda Ave from 2 to 4 lanes, including intersection at Etiwanda/Slover
 Agency Project Name: Etiwanda Avenue and Airport Drive Intersection Improvements
 Agency reported Total Project Cost:
 Escalation Factor(%):

Actual Prior Year dollars and escalated costs in subsequent years (not in 1,000s)

Public Share: 55.60% | Dev. Share: 44.40%

		Funding	Prior	FY 19/20	FY 20/21	FY 21/22	FY 22/23	FY 23/24	Future	Total
Nexus Total Project Cost (All phases): 5,270,000	PA&ED	Total								
Total Presented Funding: 3,346,396	PS&E	Total								0
Total Measure I Request: 1,860,596	ROW	MI ART	0	27,800	27,800	0	0	0	0	55,600
		DEV FEE	0	22,200	22,200	0	0	0	0	44,400
		Total	0	50,000	50,000	0	0	0	0	100,000
	CONST	MI ART	0	0	902,498	902,498	0	0	0	1,804,996
		DEV FEE	0	0	720,700	720,700	0	0	0	1,441,400
		Total	0	0	1,623,198	1,623,198	0	0	0	3,246,396
Total			0	50,000	1,673,198	1,623,198	0	0	0	3,346,396

*Prior should identify any expenses incurred in prior years that have not yet been reimbursed by SBCTA including FY 17/18 expenses.

Project Comments: City of Fontana is the lead agency on the project.

Last Update: 8/24/2018 9:53:33 AM

Reference: Measure I Policy 40006

Capital Project Needs Analysis

Agency: Ontario
 Program: Valley Freeway Interchange Program
 Project Name: I-10 & Vineyard Ave
 Agency Project Name:
 Agency reported Total Project Cost: \$3,007,680
 Escalation Factor (%):

Actual Prior Year Dollars and escalated costs in subsequent years (not in 1,000s)

Public Share: 55.60% | Dev. Share: 44.40%

		Funding	Prior	FY 19/20	FY 20/21	FY 21/22	FY 22/23	FY 23/24	Future	Total
Nexus Total Project Cost (All phases): 53,830,000	PA&ED	MI VFI	32,112	0	0	0	0	0	0	32,112
		DEV FEE	48,168	0	0	0	0	0	0	48,168
		Total	80,280	0	0	0	0	0	0	80,280
Total Presented Funding: 3,007,680	PS&E	MI VFI	44,956	19,268	0	0	0	0	0	64,224
		DEV FEE	67,436	28,900	0	0	0	0	0	96,336
		Total	112,392	48,168	0	0	0	0	0	160,560
Total Measure I Request: 1,203,072	ROW	MI VFI	88,640	22,160	0	0	0	0	0	110,800
		DEV FEE	132,960	33,240	0	0	0	0	0	166,200
		Total	221,600	55,400	0	0	0	0	0	277,000
	CONST	MI VFI	146,323	318,605	318,605	212,403	0	0	0	995,936
		DEV FEE	219,485	477,907	477,908	318,604	0	0	0	1,493,904
		Total	365,808	796,512	796,513	531,007	0	0	0	2,489,840
Total			780,080	900,080	796,513	531,007	0	0	0	3,007,680

*Prior should identify any expenses incurred in prior years that have not yet been reimbursed by SBCTA including FY 17/18 expenses.

Project Comments: SBCTA is the lead agency on the project.

Last Update: 8/24/2018 9:36:18 AM

Capital Project Needs Analysis

Agency: Ontario
 Program: Valley Freeway Interchange Program
 Project Name: I-10 & Euclid Ave
 Agency Project Name:
 Agency reported Total Project Cost: \$624,591
 Escalation Factor (%):

Actual Prior Year Dollars and escalated costs in subsequent years (not in 1,000s)

Public Share: 55.60% | Dev. Share: 44.40%

		Funding	Prior	FY 19/20	FY 20/21	FY 21/22	FY 22/23	FY 23/24	Future	Total
Nexus Total Project Cost (All phases): 630,000	PA&ED	MI VFI	118,944	0	0	0	0	0	0	118,944
		DEV FEE	16,704	0	0	0	0	0	0	16,704
		Total	135,648	0	0	0	0	0	0	135,648
Total Presented Funding: 4,873,866	PS&E	MI VFI	158,196	67,798	0	0	0	0	0	225,994
		DEV FEE	22,217	9,521	0	0	0	0	0	31,738
		Total	180,413	77,319	0	0	0	0	0	257,732
Total Measure I Request: 4,249,275	ROW	MI VFI	393,704	98,426	0	0	0	0	0	492,130
		DEV FEE	55,290	13,823	0	0	0	0	0	69,113
		Total	448,994	112,249	0	0	0	0	0	561,243
	CONST	MI VFI	461,109	1,106,662	1,106,662	737,774	0	0	0	3,412,207
		DEV FEE	76,688	161,381	161,381	107,586	0	0	0	507,036
		Total	537,797	1,268,043	1,268,043	845,360	0	0	0	3,919,243
Total		1,302,852	1,457,611	1,268,043	845,360	0	0	0	4,873,866	

*Prior should identify any expenses incurred in prior years that have not yet been reimbursed by SBCTA including FY 17/18 expenses.

Project Comments: SBCTA is the lead agency on the project.

Last Update: 8/21/2018 3:38:14 PM

Capital Project Needs Analysis

Agency: Ontario
 Program: Valley Freeway Interchange Program
 Project Name: SR-60 & Archibald Ave
 Agency Project Name:
 Agency reported Total Project Cost:
 Escalation Factor(%):

Actual Prior Year dollars and escalated costs in subsequent years (not in 1,000s)

Public Share: 55.60% | Dev. Share: 44.40%

		Funding	Prior	FY 19/20	FY 20/21	FY 21/22	FY 22/23	FY 23/24	Future	Total
Nexus Total Project Cost (All phases): 8,550,000	PA&ED	MI VFI	268,488	0	0	0	0	0	0	268,488
		DEV FEE	523,512	0	0	0	0	0	0	523,512
		Total	792,000	0	0	0	0	0	0	0
Total Presented Funding: 14,563,000	PS&E	MI VFI	301,032	0	0	0	0	0	0	301,032
		DEV FEE	586,968	0	0	0	0	0	0	586,968
		Total	888,000	0	0	0	0	0	0	0
Total Measure I Request: 4,869,057	ROW	MI VFI	426,462	0	0	0	0	0	0	426,462
		DEV FEE	831,538	0	0	0	0	0	0	831,538
		Total	1,258,000	0	0	0	0	0	0	0
	CONST	MI VFI	0	3,873,075	0	0	0	0	0	3,873,075
		DEV FEE	0	7,751,925	0	0	0	0	0	7,751,925
		Total	0	11,625,000	0	0	0	0	0	0
Total			2,938,000	11,625,000	0	0	0	0	0	14,563,000

*Prior should identify any expenses incurred in prior years that have not yet been reimbursed by SBCTA including FY 17/18 expenses.

Project Comments: SBCTA is the lead agency on the project.

Last Update: 8/24/2018 9:56:34 AM

Reference: Measure I Policy 40006

CITY OF ONTARIO

Agenda Report
September 18, 2018

SECTION:
CONSENT CALENDAR

SUBJECT: A PROFESSIONAL SERVICES AGREEMENT FOR THE PREPARATION OF A SYSTEMIC SAFETY ANALYSIS REPORT FOR EUCLID AVENUE BETWEEN RIVERSIDE DRIVE AND I-10 FREEWAY

RECOMMENDATION: That the City Council approve a Professional Services Agreement (on file in the Records Management Department) with Chen Ryan Associates, Inc. (Chen Ryan) of San Diego, California, to prepare a safety analysis of Euclid Avenue between Riverside Drive and the I-10 Freeway for \$249,480 plus a 10% contingency of \$24,948, for a total authorized expenditure of \$274,428; and authorize the City Manager to execute said agreement and all future amendments.


COUNCIL GOALS: Maintain the Current High Level of Public Safety
Pursue City's Goals and Objectives by Working with Other Governmental Agencies
Focus Resources in Ontario's Commercial and Residential Neighborhoods

FISCAL IMPACT: The Adopted Operating Budget includes appropriations of \$277,750 consisting of \$249,750 from the State-Funded Systemic Safety Analysis Report Program (SSARP) grant and \$27,750 from Gas Tax funds for the required 10% match.

BACKGROUND: The project will evaluate Euclid Avenue between Riverside Drive and I-10 Freeway and identify high risk roadway characteristics which will help identify and prioritize safety projects along the corridor and develop countermeasures to improve the safety for all users.

In May 2018, the City solicited proposals for the project and received four proposals. A selection team of three City staff reviewed the proposals. The top two firms were interviewed and the selection team recommended Chen Ryan Associates, Inc. Chen Ryan submitted an initial fee proposal of \$249,533. Through the negotiation process, they agreed to lower their base fee by approximately \$11,000. Additional community outreach was added to the scope of work along with a 10% contingency for a total amount of \$274,428.

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

Prepared by: Melanie Mullis
Department: Engineering
City Manager Approval: 

Submitted to Council/O.H.A. 09/18/2018
Approved: _____
Continued to: _____
Denied: _____

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The consultant's hourly rates were found to be reasonable and consistent with industry standards, and their proposed number of hours will provide the required scope of services.

CITY OF ONTARIO

Agenda Report
September 18, 2018

SECTION:
CONSENT CALENDAR

SUBJECT: RECOGNITION OF OCTOBER 7-13, 2018 AS "NATIONAL FIRE PREVENTION WEEK"

RECOMMENDATION: That the City Council recognize the week of October 7-13, 2018 as "National Fire Prevention Week" in the City of Ontario and invite the public to attend the Ontario Fire Department Open House to be held on October 6, 2018.

COUNCIL GOALS: Maintain the Current High Level of Public Safety
Encourage, Provide or Support Enhanced Recreational, Educational, Cultural and Healthy City Programs, Policies and Activities


FISCAL IMPACT: The Fiscal Year 2018-19 Adopted Budget includes appropriations for the minimal staff and materials cost associated with the annual Ontario Fire Department Open House.

BACKGROUND: "National Fire Prevention Week" commemorates the Great Chicago Fire of 1871, which killed more than 250 persons, left 100,000 homeless, and destroyed more than 17,400 buildings. Every year since 1925, the President of the United States has signed a proclamation pronouncing a national observance during Fire Prevention Week.

National Fire Protection Association announced Fire Prevention Week 2018 to be observed throughout the nation on October 7-13. Their theme, "Look. Listen. Learn. Be aware – fire can happen anywhere." will also be the theme at the Ontario Fire Department Open House on Saturday, October 6, 2018, from 9:00 a.m. until 2:00 p.m. at the Ontario Fire Department Training Facility located at 1408 East Francis Street.

This year's theme actively works to motivate Ontario residents to take actions to keep their homes and families safe from fire. This annual observance serves as a way to keep the public informed about the importance of fire prevention.

STAFF MEMBER PRESENTING: Rob Elwell, Fire Chief

Prepared by: Paul Ehrman
Department: Fire
City Manager Approval: 

Submitted to Council/O.H.A. 09/18/2018
Approved: _____
Continued to: _____
Denied: _____

CITY OF ONTARIO

Agenda Report
September 18, 2018

SECTION:
CONSENT CALENDAR

SUBJECT: ONTARIO HOUSING AUTHORITY ANNUAL REPORT FOR FISCAL YEAR 2017-18

RECOMMENDATION: That the Board of the Ontario Housing Authority (“OHA”) approve the OHA Annual Report for the Fiscal Year 2017-18 (“OHA Annual Report”) (on file in the Records Management Department) and authorize the Executive Director of the OHA to transmit to the California Department of Housing and Community Development the OHA Annual Report as required by State law.

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

Focus Resources in Ontario’s Commercial and Residential Neighborhoods

FISCAL IMPACT: None.

BACKGROUND: In accordance with Health and Safety Code (“HSC”) Sections 34328 and 34328.1, the Authority must prepare a complete report of its activities during the previous fiscal year. The OHA Annual Report must be filed with the City Clerk and submitted to the California Department of Housing and Community Development (“HCD”).

The OHA Annual Report has been prepared to comply with the requirements of HSC Sections 34328, 34328.1, and 34312.3, which require the following information:

- A complete report of activities taken during the prior fiscal year;
- Verification of compliance with the following requirements:
 - Minimum amount of housing units affordable to lower income households in housing projects assisted;

STAFF MEMBER PRESENTING: Julie Bjork, Interim Executive Director Housing & Neighborhood Preservation

Prepared by: Julie Bjork
Department: Housing & Neighborhood Preservation

Submitted to Council/O.H.A. 09/18/2018
Approved:

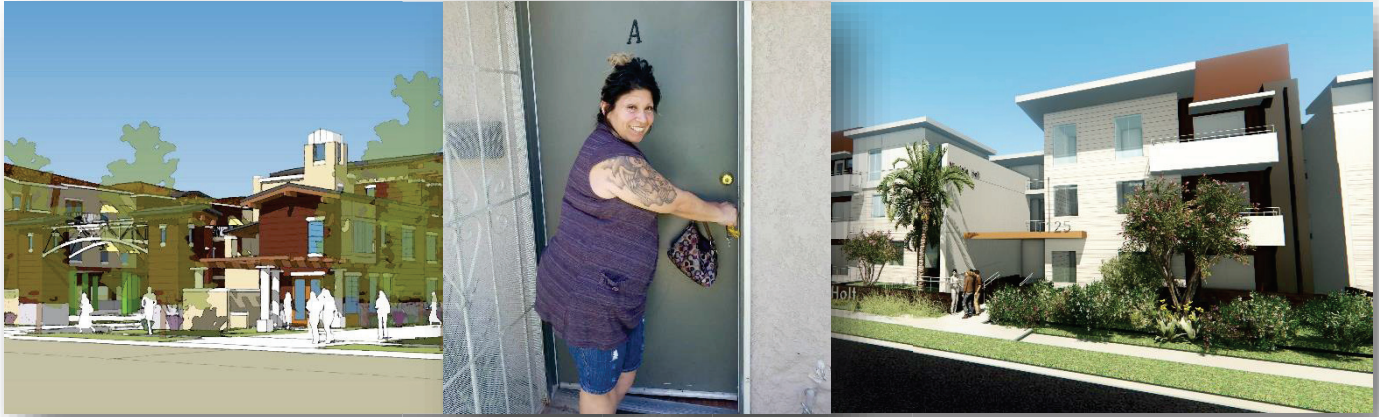
City Manager Approval: 

Continued to: _____
Denied: _____

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- Documentation regarding any minimum and maximum rent requirement for lower income households pursuant to state and federal requirements; and
- Data on termination of tenancies due to domestic violence in housing authority units and a summary of actions taken to address termination of tenancies resulting from domestic violence.

All of the Ontario Housing Authority's properties meet all of the affordability requirements.



ONTARIO HOUSING AUTHORITY

Annual Report for Fiscal Year 2017-18

**Prepared by the
Ontario Housing Authority
208 West Emporia Street
Ontario, CA 91762
(909) 395-2006**

**Ontario Housing Authority
Annual Report for FY 2017-18**

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ONTARIO HOUSING AUTHORITY

Annual Report for Fiscal Year 2017-18

I. INTRODUCTION

Pursuant to California Health and Safety Code (“HSC”) 34328, all housing authorities must file annually with their respective City or County Clerk and with the California Department of Housing and Community Development (“HCD”) a report (“Annual Report”) of its activities for the preceding year.

A. ANNUAL REPORT CONTENTS

This Annual Report has been developed to comply with the reporting requirements of HSC 34328 and 34328.1, including:

- i. To provide a complete report of activities during FY 2017-18 including: any bond issuances; loans, or finance agreements that the Ontario Housing Authority (“Authority”) has entered into; and properties acquired, sold, developed, rehabilitated, or leased;
- ii. To report on compliance with the requirements of HSC 34312.3 such as the minimum amount of housing units affordable to lower income households in projects assisted by the Authority, and establishment of base rents and/or maximum rental payments for lower income households; and
- iii. To document any domestic violence tenancy terminations or Section 8 voucher terminations as required by HSC 34328.1

II. AUTHORITY ACTIVITIES SUBJECT TO HSC 34312.3

Pursuant to HSC Section 34312.3, the Authority must provide a complete report of its activities taken during the prior fiscal year, which includes bonds, loans, and financing agreements for multi-family rental projects.

A. BONDS FOR MULTI-FAMILY HOUSING

During FY 2017-18, the Authority did not issue any bonds.

B. LOANS FOR MULTI-FAMILY HOUSING

On November 21, 2017, the Authority approved the First Loan Modification Agreement and Second Amended Ground Lease for the Seasons at Ontario Senior Apartments. This action facilitated the rehabilitation of this affordable housing development and provided an additional 20 years of affordability. To facilitate the acquisition and rehabilitation of this property to a new ownership entity. The \$3.1 million rehabilitation includes exterior painting of the building; replacement of water heaters, HVAC systems, new dual pane low-e windows, LED-

light fixtures, new kitchen cabinetry and Energy Star appliances, installation of low water use landscaping, and creation of five (5) additional ADA units. Further, the extension of the ground lease allowed for an additional 20 years of affordability.

The City of Ontario issued multi-family housing revenue bonds to financing the acquisition and rehabilitation, in the amount of \$6,937,384, during Fiscal Year 2017-18.

The new affordability restrictions for this property are listed below:

Season at Ontario Senior Apartments Affordability Restrictions			
	1BR	2BR	Total Number of Units
50% of AMI Units (TCAC Affordable Rent)			
# of Units	4	4	8
50% Very Low Income (HSC Affordable Rent)			
# of Units	21	3	24
60% of AMI Units			
# of Units	36	10	46
Property Manager Unit		2	2
TOTAL UNITS	61	19	80

C. FINANCING AGREEMENTS

During FY 2016-17, the Authority entered into three housing agreements including: Emporia Multi-Family Development, Guadalupe Residence (411 N. Parkside), and Mission/Oakland For-Sale Single-Family Housing Project. During FY 2017-18, the Authority entered into a financing agreement for the Virginia-Holt Multi-Family Development.

Listed below is a summary of all of the financing agreements and the actions that occurred during this fiscal year:

1. Emporia Multi-Family Development

On June 20, 2017, the Authority approved a Disposition and Development Agreement (DDA) with Ontario Emporia Housing Partners, L.P. (Developer), for the development a 75-unit housing development. As detailed in the DDA, the Authority will provide a gap loan of \$10,263,875 to the Developer if the Developer is able to secure an allocation of 9% tax credits. The Authority’s loan is a residual receipt note that will be paid back over a 65-year term. The loan will provide \$1,835,000 for the acquisition of the land by the developer, in the form as loan carryback.

Further, the Authority entered into a Grant Agreement with the City. If the developer is able to secure an allocation of 9% tax credits, the City will provide grant funding not to exceed \$8,428,875 to the Authority.

On February 20, 2018, the Authority approved the First Amendment to the Disposition and Development Agreement (First Amendment). The First Amendment increased the Authority’s

gap loan from \$10,263,875 to an estimated amount of \$15,675,000. The final loan amount will be finalized at the time of escrow closing.

The Developer submitted an application for 9% tax credits as part of the 2018 First Round Application cycle to the California Tax Credit Allocation Committee (CTCAC). On June 13, 2018, CTCAC approved the Developer’s application for funding.

This \$32 million development is scheduled to begin construction during Fiscal Year 2018-19 and will provide the following affordable housing units:

Emporia Multifamily Affordability Restrictions					
	1BR	2BR	3BR	4BR	Total Number of Units
30% of AMI Units					
# of Units	1	4	2	1	8
40% of AMI Units					
# of Units	2	7	3	0	12
50% of AMI Units					
# of Units	6	16	7	1	30
60% of AMI Units					
# of Units	4	11	8	1	24
Property Manager Unit		1			1
TOTAL UNITS	13	39	20	3	75

2. Virginia Holt Apartments

On November 7, 2017, the Authority approved a Disposition and Development Agreement (DDA) with National Community Renaissance of California (Developer), for the development a 101-unit housing development. As detailed in the DDA, the Authority will provide a gap loan of \$4,420,000.

This development is a key component of the City of Ontario’s \$35 million application for 2017 Transformative Climate Communities (TCC) Program funding for the implementation of a variety of community development activities within and around downtown Ontario. The TCC Program is a competitive statewide grant program funded through the State’s Cap-and-Trade Program, also known as the California Climate Investments (CCI). During January 2018, the SGC awarded \$35 million to Ontario, one of only three projects within the State to be funded.

This \$32 million development is scheduled to begin construction during Fiscal Year 2018-19 and will provide the following affordable housing units:

Virginia/Holt Multifamily Affordability Restrictions			
	2BR	3BR	Total Number of Units
30% of AMI Units			
# of Units	15	6	21
50% of AMI Units			
# of Units	22	15	37
60% of AMI			
# of Units	32	10	42
Property Manager Unit		1	1
TOTAL UNITS	69	32	101

3. Guadalupe Residence (411 N. Parkside)

On June 20, 2017, the Authority approved the HOME Partnership Agreement with the City of Ontario and Mercy House CHDO for the sale of an affordable housing project, located at 411 N. Parkside Avenue. As part of this project, Mercy House CHDO will purchase the property, located at 411 N. Parkside from the Ontario Housing Authority.

Escrow was closed on February 14, 2018, transferring the property to Mercy House CHDO. All units were previously restricted to moderate-income households and have now been converted to provide five units restricted to low-income households and three units to very low-income households. Rehabilitation work will be completed during FY 2018-19.

4. Mission/Oakland For-Sale Single-Family Housing Project

The Authority entered into a Purchase and Sale Agreement with Inland Investment Partners for the Disposition of the Mission and Oakland site. This project will construct new, infill, for sale housing and generated \$700,000 in funds for the Ontario Housing Authority to create affordable housing units within Ontario. Escrow closed on April 4, 2018.

D. AUTHORITY OWNED ASSETS

The Authority owns 68 rental units, a former mobile home park, three sites with long term ground leases for affordable housing, and various parcels for future housing development.

Listed below is a table showing all of the Authority owned real estate assets:

Authority Owned Assets			
Development Name	Site Address	APN	Current Use
Continuum of Care Permanent Housing Units	Begonia Apartments (209, 216, 217, 222, 223, 228, & 231 N. Begonia Ave.)	1010-521-15, -18, -14, -19, -13, -20, and -12	Affordable Housing
	Begonia Apartments (305 N. Begonia Ave.)	1010-521-11	Leased to Mercy House CHDO
	Francis Apartments (307-311 W. Francis St.)	1050-371-24	Leased to Mercy House CHDO
	Guadalupe Residence (411 N. Parkside Ave.)	1048-452-10	Leased to Mercy House
Emporia In-Fill Site	401 W. Holt Blvd.	1049-051-01	Vacant Land (Emporia Multi-Family DDA)
	402 W. Holt Blvd.	1049-051-02	
	113 S. Vine Ave.	1049-051-03	
	205 1/2 S. Vine Ave.	1049-052-03	
	210 S. Fern Ave.	1049-052-04	
	215 S. Vine Ave.	1049-052-05	
	415 W. Transit St.	1049-052-09	
	209 S. Vine Ave.	1049-052-06	
	205 S. Vine Ave.	1049-052-07, and -08	
	201 S. Vine Ave.	1049-052-10	

Authority Owned Assets			
Development Name	Site Address	APN	Current Use
Emporia In-Fill Site	325 W. Transit St.	1049-054-02	Vacant Land
	301 W. Transit St.	1049-054-03	
	303 W. Emporia St.	1049-059-07	
Euclid In-Fill	110 E. Maitland St.	1049-511-03	Vacant Land
	1004 S. Euclid Ave.	1049-563-10	
	1325 S. Euclid Ave.	1049-531-02	
	1329 S. Euclid Ave.	1049-531-01	
Hollowell Apartments	1165 W. Hollowell St.	1010-521-03	Affordable Housing
Holt and Virginia Infill Housing	1125 E. Holt Blvd.	1048-472-01	Vacant Land (Virginia Holt DDA)
	116 N. Virginia Ave.	1048-472-02	
	120 N. Virginia Ave.	1048-472-03	
	126 N. Virginia Ave.	1048-472-04	
	1131 E. Nocta St.	1048-472-11	
Ideal Mobile Home Park	905 E. Holt Blvd.	1048-481-08	Vacant Land
Infill Housing	115-115 1/2 S. Sultana Ave.	1049-091-11	Vacant Land
	1038 E. Fourth St.	1048-131-52	Vacant Land
Mountain View Senior Apartments Phase II	511 N. Palmetto Ave.	1010-461-08	Ground Lease
Ontario Town Square A-1	128 N. Euclid Ave.	1048-553-01	Vacant Land
	115 N. Lemon Ave.	1048-553-05	
	127 E. Holt Blvd.	1048-553-06	
	123 E. Holt Blvd.	1048-553-07	
	117 N. Euclid Ave.	1048-553-08	
	115 E. Holt Blvd.	1048-553-09	
	0 N. Euclid Ave.	1048-553-10	
	110 N. Euclid Ave.	1048-553-11	
	110, 110 1/2, 112, 114 N. Euclid Ave.	1048-553-12	
	114-116 N. Euclid Ave.	1048-553-13	
	118 N. Euclid Ave.	1048-553-14	
	120 N. Euclid Ave.	1048-553-15	
	Ontario Town Square B-1	240 N. Euclid Ave.	
216 N. Euclid Ave.		1048-552-16	
"C" Street		1048-552-15	
109 E. "B" St.		1048-552-19	
Ontario Town Square C-1	116 E. "D" St.	1048-551-10	Vacant Land and Parking Lots
	308 N. Euclid Ave.	1048-551-11	
	334 N. Euclid Ave.	1048-551-12	
	127 E. "C" St.	1048-551-13	
Palm Terrace Senior Apartments Phase II	1449 E. "D" St.	0110-254-78	Ground Lease
State Street	1034 E. State St.	1049-194-07	Vacant Land
Seasons at Gateway	955 N. Palmetto Ave	1010-141-08	Ground Lease
Vesta Apartments	520 – 526 ½ W. Vesta St.	1048-581-58	Affordable Housing
	1164 W. Vesta St.	1010-521-02	Affordable Housing

E. DEVELOPED AND/OR REHABILITATED HOUSING PROJECTS

During this reporting period, the Authority performed the following rehabilitation activities:

- **307-309-311 West Francis Street:** The City of Ontario entered into an agreement to perform rehabilitation work, including painting all structures, installation of new flooring in units as needed, installation of new air conditioning units as needed, repair of existing deck, and repair of existing block wall, at this property which is owned by Ontario Housing Authority and leased to Mercy House CHDO. Rehabilitation work began during May 2018 and is expected to be completed in August 2018.
- **520-526 West Vesta Street:** A fire occurred at this Ontario Housing Authority-owned property on July 5, 2017. During the reporting period demolition and lead-based paint remediation work was performed at the property. Additional minor repair work and painting of the structures is planned to be completed during FY 2018-19.

F. SPECIAL PROGRAMS

During this reporting period, the Authority was one of the lead agencies in operating Ontario's Continuum of Care. Listed below is a description of the special programs:

i. Continuum of Care

Through a partnership with the City of Ontario and Mercy House, the Authority is implementing Ontario's Continuum of Care, which has been designed to provide a comprehensive homeless strategy to assist homeless individuals and families in becoming self-sufficient. This comprehensive Continuum of Care was developed during FY 2004-05. The final component of the Continuum of Care, the Ontario Access Center was completed during FY 2013-14. The City, the Authority, and Mercy House continue to work together to implement this strategy to address homelessness within Ontario. This strategy provides for a full-service intake center, up to 34 transitional housing beds, and 62 permanent housing units for homeless individuals and families.

In addition, the Authority worked cooperatively with the Housing Authority of the County of San Bernardino, the County of San Bernardino Department of Behavioral Health, and Mercy House to administer 12 Shelter Plus Care (S+C) vouchers that are available to provide rental subsidies and wrap around supportive services for mentally ill homeless individuals and families. These 12 S+C vouchers are restricted to 12 units within the Continuum of Care's permanent housing unit inventory. With all of the agencies working together, the Housing Authority of the County of San Bernardino continues to work with the U.S. Department of Housing and Urban Development to renew this contract.

III. HOUSING COMPLIANCE

As set forth by HSC Sections 34328 and 34328.1, the Authority is required to:

- Show compliance with requirements of HSC Section 34312.3 such as the minimum amount of housing units affordable to lower income in projects assisted by the Authority, and document established base rents and/or maximum rental payment for lower income households; and
- Document any domestic violence tenancy or Section 8 voucher termination as required by HSC Section 34328.1.

A. HOUSING AFFORDABILITY REQUIREMENT

Pursuant to HSC Section 34312.3, not less than 20 percent of the units assisted by the Authority, or 15 percent in targeted areas, as defined by Section 103(b) (12)(A) of Title 26 of the United States Code, must be affordable to persons of low income. Of that amount, not less than one-half must be available to persons of very low-income, if the housing development is financed by bonds.

As shown in the tables on the following pages, the Authority complies with the established affordability requirements of HSC Section 34312.3.

Multi-Family Residential Real Estate Assets (Owned or assisted by the Authority)									
Project Name	Location	Funding Source	Building Owner	Project Type	Affordability Restrictions				
					VL	Low	Mod	PM	Total
Continuum of Care Permanent Housing Units (Begonia Apartments) ^{1, 2,}	209, 216, 217, 222, 223, 228, and 231 N. Begonia Ave.	HOME, Low and Moderate Income Housing Funds (LMIHF), Neighborhood Stabilization Program (NSP) NSP1, and NSP3	Authority	Family Rental	13	11	3	1	28
Continuum of Care Permanent Housing Units (Begonia Apartments)	305 N. Begonia Ave.	HOME, and LMIHF	Leased to Mercy House CHDO	Family Rental	0	4	0	0	4
Homeless Continuum of Care Permanent Housing Units (Francis Apartments) ³	307, 309, 311 W. Francis St.	HOME and LMIHF	Leased to Mercy House CHDO	Family Rental	5	7	4	0	15
Hollowell Apartments	1165 W. Hollowell St.	HOME and NSP3	Authority	Family Rental	2	1	1	0	4
Ideal Mobile Home Park	905 E. Holt Blvd.	LMIHF	Authority	Former Mobile Home Park	0	0	0	0	0
Mountain View Senior Apartments Phase II (Ground Lease)	511 N. Palmetto Ave.	Low Income Housing Tax Credits (LIHTC), LMIHF, and Private Financing	Ontario Housing Investors II, LP	Senior Rental	16	4	0	0	20
Palm Terrace Senior Apartments (Ground Lease)	1449 E. "D" St.	HOME and HUD Section 202	D Street Senior Housing, Inc.	Senior Rental	47	0	0	1	48
Vesta Apartments	520 W. Vesta St.	HOME and Community Development Block Grant (CDBG)	Authority	Family Rental	2	2	2	0	6
Vesta Apartments	1164 W. Vesta St.	HOME and NSP3	Authority	Family Rental	0	4	0	0	4
TOTAL					83	34	10	2	129
Percentages					66%	26%	7%	2%	100%
	¹ Eight moderate-income units are being assisted through Project Gateway (S+C) rental subsidies, which allows eight units to be classified as very low-income units pursuant to Section 34312.3(c)(6)(A)								
	² One moderate-income unit is being assisted through HOME Tenant Based Rental Assistance (TBRA) rental subsidies, which allows this unit to be classified as a very low-income unit pursuant to Section 34312.3(c)(6)(A)								
	³ One moderate-income unit is being assisted through TBRA rental subsidies being assisted through TBRA rental subsidies, which allows those units to be classified as a very low-income units pursuant to Section 34312.3(c)(6)(A)								

Multi-Family Residential Real Estate Assets (Transferred to the Authority from the former Agency)									
Project Name	Location	Funding Source	Building Owner	Project Type	Affordability Restrictions				
					VL	Low	Mod	PM	Total
Seasons at Ontario (Ground Lease)	955 N. Palmetto Ave.	LIHTC, LMIHF, and Tax Exempt Bonds	LINC Ontario Apartments LP	Senior Housing	32	46	0	2	80
TOTAL					32	46	0	2	80
Percentages					40%	58%	0%	2%	100%

Multi-Family Residential Real Estate Assets (Pending Projects – Assisted by the Ontario Housing Authority)										
Project Name	Location	Funding Source	Building Owner	Project Type	Affordability Restrictions					
					ELI	VL	Low	Mod	PM	Total
Virginia Holt Apartments	Located on 4.18 acres of land bordered by Holt Boulevard on the south, residentially developed properties on the east, Nocta Street on the north, and Virginia Avenue on the west.	LIHTC, Tax Exempt Bonds, Transformative Climate Communities (TCC), and OHA funds.	National Community Renaissance	Family Housing	21	37	42	0	1	101
Emporia Place	Located on 2.95 acres of land bordered by Holt Boulevard on the north, Fern Avenue on the east, Emporia Street on the south, and Vine Avenue on the west.	LIHTC, Low and Moderate Income Housing Agency Funds (LMIHAF), and OHA funds.	Ontario Emporia Housing Partners, L.P.	Family Housing	8	42	24	0	1	75
TOTAL					29	79	66	0	2	176
Percentages					16%	45%	38%	0%	1%	100%

B. MINIMUM AND MAXIMUM RENTS

HSC Section 34312.3(c) establishes a set of guidelines to determine base and maximum rents that a housing authority can charge for units reserved for lower income households. According to HSC Section 34312.3(c)(2)(B), rental payments for very low-income units shall not exceed the amount derived by multiplying 30 percent time 50 percent of the median adjusted for family size, as determined pursuant to Section 8 of the United States Housing Act of 1937 (42 U.S.C. Sec. 1437f). At this time, the Authority has not established a schedule of base rental payment.

Listed in the table below are the 2018 maximum gross rents that were established for Successor Housing Entities monitoring projects that were previously funded with LMIHF unless there were other affordable housing definitions included in the regulatory agreements transferred to the Authority:

LMIHF-FUNDED PROJECTS					
	Studio	One Bedroom	Two Bedroom	Three Bedroom	Four Bedroom
Very Low Income (50% of AMI)	\$576	\$658	\$740	\$823	\$888
Low Income (80% of AMI)	\$691	\$790	\$888	\$987	\$1,066
Moderate Income (120% of AMI)	\$1,266	\$1,448	\$1,628	\$1,810	\$1,954

In general, the above rental amounts are calculated as follows:

- For extremely low income units, the maximum rental amount is the product of 30 percent times 30 percent of the area median income adjusted for family size appropriate for the unit;
- For very low income units, the maximum rental amount is the product of 30 percent times 50 percent of the area median income adjusted for family size appropriate for the unit;
- For low income units, the maximum rental amount is the product of 30 percent times 60 percent of the area median income adjusted for family size appropriate for the unit.
- For moderate income units, the maximum rental amount is the product of 30 percent time 110 percent of the area median income adjusted for family size appropriate for the unit.

Listed in the table below are the maximum gross rents that were established for 2018 HOME funded projects:

HOME-FUNDED PROJECTS					
	Studio	One Bedroom	Two Bedroom	Three Bedroom	Four Bedroom
Low HOME Rent	\$590	\$632	\$758	\$876	\$977
High HOME Rent	\$768	\$859	\$1,033	\$1,184	\$1,301

IV. DOMESTIC VIOLENCE

State law requires that a housing authority annually disclose data related to domestic violence incidents in units owned or operated by the housing authority. Specifically, the data must include:

- Data on termination of tenancies and/or Section 8 vouchers of victims of domestic violence in housing authority units; and
- Summary of steps taken by the housing authority to address any termination of tenancies and/or Section 8 vouchers of victims of domestic violence.

The Authority did not terminate tenancies for domestic violence during FY 2017-18. In the future, information on any terminations of this kind will be presented under separate cover to protect the privacy of the parties involved.

CITY OF ONTARIO

Agenda Report
September 18, 2018

SECTION:
CONSENT CALENDAR

SUBJECT: AUTHORIZE THE PURCHASE AND IMPLEMENTATION OF, AND ONGOING SUBSCRIPTION TO, KRONOS WORKFORCE DIMINSIONS AND TELESTAFF FOR USE AS THE CITY'S TIMEKEEPING AND FIRE STAFF SCHEDULING SYSTEMS

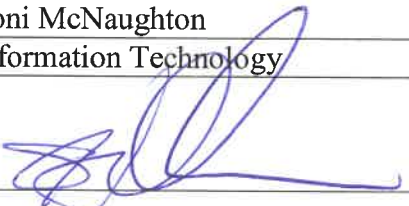
RECOMMENDATION: That the City Council authorize the City Manager to: (1) execute a five-year agreement (on file with the Records Management Department) with Kronos, Inc of Lowell, Massachusetts, for the purchase and implementation of Kronos Workforce Dimensions with a one-time implementation cost of \$21,220 and annual subscription cost of \$138,349 fixed for the five-year term, subject to future annual operating budgets adopted by the City Council; (2) authorize the City Manager to extend the Workforce Dimensions subscription for up to three years with a 3% subscription cost escalator per year; and (3) execute a three-year agreement (on file with the Records Management Department) with Kronos for the purchase and implementation of TeleStaff with a one-time implementation cost of \$10,845 and annual subscription cost of \$19,200 fixed for the three-year term, subject to future annual operating budgets adopted by the City Council.

COUNCIL GOALS: Operate in a Businesslike Manner

FISCAL IMPACT: Appropriations for the first year subscription/maintenance costs and the initial implementation, estimated to be \$189,614, are included in the Fiscal Year 2018/19 Adopted Budget for the Information Technology Fund. If approved, appropriations for future years' costs for the two agreements, estimated to be \$157,549 annually, will be included in the operating budgets of the respective fiscal years to be considered by the City Council.

BACKGROUND: The City purchased and implemented Kronos Workforce Timekeeping System over 13 years ago. The Workforce Timekeeping System collects, accumulates, and calculates total hours for full- and part-time employees in all unions and collective bargaining groups and prepares the timekeeping data for all Fair Labor Standard Act (FLSA) calculations. As such, Workforce Timekeeping plays an essential role in the City's processing of employee payroll.

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

Prepared by: Toni McNaughton
Department: Information Technology
City Manager Approval: 

Submitted to Council/O.H.A. 09/18/2018
Approved: _____
Continued to: _____
Denied: _____

The version of Workforce Timekeeping currently used by the City was built based upon older technologies, including Java. These older technologies are now susceptible to security threats; create compatibility and operational issues; and require patches, fixes, and updates on a frequent basis. Kronos Workforce Dimensions is the next-generation solution utilizing the latest in cloud-based, software as a service (SaaS) platform computing technology; and advancements such as artificial intelligence (AI) and machine learning will help improve how employees and managers interact with the time and attendance system. Kronos Workforce Dimensions will also integrate with the City's other existing products such as Office 365 and Workday for Payroll.

TeleStaff is the scheduling and staffing system used by the Fire Department to ensure the deployment of adequate and necessary staffing, accurate tracking of hours for payroll, and compliance with provisions of the City's Personnel Rules and Regulations as well as fire labor agreements. In 2011, Kronos acquired TeleStaff from PDSI Software. Additionally, the version of TeleStaff that the City is currently using is no longer being maintained or supported by Kronos. The recommended new cloud-based SaaS platform version of TeleStaff developed by Kronos offers the City better performance and additional features which will benefit the Fire Department's operations. It will also allow integration with Kronos Workforce Dimensions.

CITY OF ONTARIO

Agenda Report
September 18, 2018

SECTION:
CONSENT CALENDAR

SUBJECT: AUTHORIZE THE PURCHASE OF REPLACEMENT FLEET VEHICLES

RECOMMENDATION: That the City Council take the following actions:

- (A) Authorize the cooperative purchase and delivery of one Chevrolet Tahoe in the amount of \$39,984 for the Police Department, from National Auto Fleet Group of Watsonville, California, consistent with the terms and conditions of the Sourcewell (formerly known as NJPA) Cooperative Contract 120716-NAF;
- (B) Authorize the cooperative purchase and delivery of six Ford Escapes in the amount of \$141,899 (two for Housing and Neighborhood Presevation, two for Engineering, one for the Police Department, and one for the Fire Department) from National Auto Fleet Group of Watsonville, California, consistent with the terms and conditions of the Sourcewell (formerly known as NJPA) Cooperative Contract 120716-NAF;
- (C) Authorize the cooperative purchase and delivery of five Chevrolet Colorados in the amount of \$134,864 (two for Housing and Neighborhood Presevation, one for Parks and Maintenance, one for Integrated Waste, and one for Utilities) from National Auto Fleet Group of Watsonville, California, consistent with the terms and conditions of the Sourcewell (formerly known as NJPA) Cooperative Contract 120716-NAF; and
- (D) Authorize the cooperative purchase and delivery of two Chevrolet EV Bolts in the amount of \$80,559 (one for Housing and Neighborhood Preservation and one for the Library) from National Auto Fleet Group of Watsonville, California, consistent with the terms and conditions of the Sourcewell (formerly known as NJPA) Cooperative Contract 120716-NAF.

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

STAFF MEMBER PRESENTING: Mark Chase, Executive Director, Public Works

Prepared by: Manuel Rebolledo
Department: Fleet Services

City Manager
Approval: 

Submitted to Council/O.H.A. 09/18/2018

Approved: _____

Continued to: _____

Denied: _____

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FISCAL IMPACT: The Fiscal Year 2018-19 Adopted Budget includes appropriations from the Equipment Services Fund in the amount of \$344,000 for the twelve replacement vehicles described above; further more, \$54,000 from Enterprise Funds will be used for the purchase of two additional fleet vehicles as identified. The total cost of the vehicles recommended for purchase is \$397,306.

BACKGROUND: In coordination with the development of Ontario Ranch, two Chevrolet Colorados for Integrated Waste and Utilities are being purchased, along with the replacement of twelve vehicles for various departments that have reached their maximum useful life cycle. The vehicles recommended for replacement in this action have outlived their useful life, and it is no longer cost effective to maintain them. They are scheduled for replacement pursuant to ongoing efforts to reduce expenses, maximize useful life expectancy and extend replacement cycles of fleet equipment, while ensuring safe and reliable operation. This procurement action will result in the replaced vehicles being available to surplus, with any auction sale proceeds returning to the Equipment Services Fund.

In general conformance with the provisions of Government Code Section 54201 through 54204, Ontario Municipal Code, Section 2-6.11(b)(3), allows for the purchase of supplies and equipment through cooperative purchasing with another governmental agency. Cooperative purchasing allows the City to pool its procurement power with other public agencies to obtain pricing lower than otherwise might be possible.

- (A) Staff recommends the cooperative purchase and delivery of one Chevrolet Tahoe in the amount of \$39,984 for the Police Department, from National Auto Fleet Group of Watsonville, California, consistent with the terms and conditions of the Sourcewell (formerly known as NJPA) Cooperative Contract 120716-NAF.
- (B) Staff recommends the cooperative purchase and delivery of six Ford Escapes in the amount of \$141,899 (two for Housing and Neighborhood Presevation, two for Engineering, one for the Police Department, and one for the Fire Department) from National Auto Fleet Group of Watsonville, California, consistent with the terms and conditions of the Sourcewell (formerly known as NJPA) Cooperative Contract 120716-NAF.
- (C) Staff recommends the cooperative purchase and delivery of five Chevrolet Colorados in the amount of \$134,864 (two for Housing and Neighborhood Presevation, one for Parks and Maintenance, one for Integrated Waste, and one for Utilities) from National Auto Fleet Group of Watsonville, California, consistent with the terms and conditions of the Sourcewell (formerly known as NJPA) Cooperative Contract 120716-NAF.
- (D) Staff recommends the cooperative purchase and delivery of two Chevrolet EV Bolts in the amount of \$80,559 (one for Housing and Neighborhood Preservation and one for the Library) from National Auto Fleet Group of Watsonville, California, consistent with the terms and conditions of the Sourcewell (formerly known as NJPA) Cooperative Contract 120716-NAF.

CITY OF ONTARIO

Agenda Report
September 18, 2018

SECTION:
PUBLIC HEARINGS

SUBJECT: A PUBLIC HEARING TO RECEIVE TESTIMONY AND ADOPT THE CONSOLIDATED ANNUAL PERFORMANCE AND EVALUATION REPORT (CAPER) FOR THE 2017-18 FISCAL YEAR

RECOMMENDATION: That the City Council:


- (A) Hold a public hearing to receive testimony on the draft Consolidated Annual Performance and Evaluation Report (CAPER) for the 2017-18 Fiscal Year (on file in the Records Management Department);
- (B) Direct staff to prepare and transmit to the U.S. Department of Housing and Urban Development (HUD) the final CAPER, which will address all public comments received on the draft CAPER; and
- (C) Authorize the City Manager to execute any and all documents necessary and/or desirable to transmit the CAPER to HUD.

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

FISCAL IMPACT: None.

BACKGROUND: The CAPER is a HUD-required report providing annual information about the City's utilization of HUD funds for local community development and housing projects. During Fiscal Year 2017-18, a combined total of over \$15.6 million of federal and local funds were expended to implement approximately 38 housing and community development programs and projects. These activities were contained in the City's Fiscal Year 2017-18 One-Year Action Plan, approved on July 6, 2017. Federal funding sources in the CAPER include the following HUD programs: Community Development Block Grant (CDBG), HOME Investment Partnership Program (HOME), and Emergency

STAFF MEMBER PRESENTING: Julie Bjork, Interim Executive Director Housing and Neighborhood Preservation

Prepared by: Katryna Gonzalez
Department: Housing & Neighborhood Pres.
City Manager Approval: 

Submitted to Council/O.H.A. 09/18/2018
Approved: _____
Continued to: _____
Denied: _____

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Solutions Grant (ESG). Local funding sources include Ontario Housing Authority and Housing Asset funds.

Listed below are key housing and community development projects discussed in the CAPER:

- The City expended approximately \$6.5 million to implement nine infrastructure and community facility activities and two public service activities under the Community Development Strategy. The major projects within this strategy include, but are not limited to, the following: Pavement Management Rehabilitation Program, Alley Pavement Management Rehabilitation Program, LED Streetlight Conversion Project, Wheelchair Ramp Installation, De Anza Futsal Court Project, Galvin Park Playground Project, De Anza Park Restroom Renovation, De Anza Teen Center New Flooring, COPS Program, and YMCA Child Care Subsidies.
- More than \$2.5 million was expended to implement sixteen housing programs within Ontario as part of the Housing Strategy. The major projects within this strategy include, but are not limited to, the following: Guadalupe Residence (411 North Parkside Avenue), Minor Rehabilitation at 307-309-311 West Francis Street, Tenant Based Rental Assistance Program, and Assisi House Renovation.
- Over \$287,000 was expended as part of the Homeless Strategy to implement six activities. The major projects within this strategy include, but are not limited to, the following: Mercy House Continuum of Care, Project Gateway, Family Stabilization Program at Sova Program Center, Services for Victims of Domestic Violence and Their Children, and Stepping Stones Program.

Attached is the Executive Summary of the CAPER for FY 2017-18. The Executive Summary provides a summary of expenditures and accomplishments for all CDBG, HOME, and ESG funded activities undertaken to address strategies identified within the Five-Year Consolidated Plan adopted by City Council on May 3, 2016 and the One-Year Action Plan, adopted by City Council on July 6, 2017.

The CAPER for FY 2017-18 has been available for public review from August 31, 2018 through September 17, 2018. To date, no comments have been received.

Subsequent to City Council approval of the CAPER, staff will submit the final report to HUD. The deadline to submit the CAPER to HUD is September 28, 2018 (90 days after the end of the fiscal year).

CITY OF ONTARIO

Consolidated Annual Performance and Evaluation Report

For the period of July 1, 2017 - June 30, 2018

EXECUTIVE SUMMARY

The Consolidated Annual Performance and Evaluation Report (CAPER) provides information to Ontario residents, elected officials, City staff, and the U.S. Department of Housing and Urban Development (HUD) about housing and community development needs, projects, and accomplishments. This report covers activities conducted during Fiscal Year 2017-18 which began July 1, 2017 and ended June 30, 2018. During this period, federal and local funds were used to implement a myriad of housing and community development programs and projects. Each activity supported one or more of the priorities originally presented in the City's Five-Year Consolidated Plan.

The following list highlights key housing and community development activities implemented during FY 2017-18:

- The City of Ontario expended more than \$15.6 million in federal and local funds to administer housing and community development programs.
- The City expended approximately \$6.5 million to implement nine infrastructure and community facility activities and two public service activities under the Community Development Strategy. The major projects within this strategy include, but are not limited to, the following: Pavement Management Rehabilitation Program, Alley Pavement Management Rehabilitation Program, Pervious Concrete Gutters, LED Streetlight Conversion Project, Wheelchair Ramp Installation, De Anza Futsal Court Project, Galvin Park Playground Project, De Anza Park Restroom Renovation, De Anza Teen Center New Flooring, COPS Program, and YMCA Child Care Subsidies.
- More than \$2.5 was expended to implement sixteen housing programs within Ontario as part of the Housing Strategy. The major projects within this strategy include, but are not limited to, the following: Guadalupe Residence (411 North Parkside Avenue), Minor Rehabilitation at 307-309-311 West Francis Street, Tenant Based Rental Assistance Program, and Assisi House Renovation.
- Over \$287,000 was expended as part of the Homeless Strategy to implement six activities. The major projects within this strategy include, but are not limited to, the following: Mercy House Continuum of Care, Project Gateway, Family Stabilization Program at Sova Program Center, Services for Victims of Domestic Violence and Their Children, and Stepping Stones Program.

The tables on the following pages demonstrate the breakdown of funds received and expended within each identified strategy: Community (Capital) Development, Housing, Homeless, Special Populations, Fair Housing, and Public Housing.

FUNDING SOURCES

FUNDING SOURCE	ACTIVITIES FUNDED	ACTUAL AMOUNT RECEIVED/ON HAND FOR FY 2017-18
Community Development Block Grant (CDBG)	Infrastructure improvements, code enforcement, housing rehabilitation, and social services.	\$1,733,990
CDBG Program Income	Infrastructure improvements, code enforcement, housing rehabilitation, and social services.	\$0
CDBG Rollover from prior years and reallocated funds	Infrastructure improvements, code enforcement, housing rehabilitation, and social services.	\$557,350
HOME Investment Partnership (HOME)	Housing rehabilitation.	\$477,845
HOME Program Income	Housing rehabilitation.	\$27,977
Emergency Solutions Grant (ESG)	Essential support services and operating expenses for homeless facilities and programs.	\$157,628
Housing Asset Fund (HAF)	Home ownership assistance, housing acquisition and rehabilitation, and homeless services.	\$933,961
Ontario Housing Authority (OHA)	Housing acquisition, property rehabilitation and maintenance.	\$5,020,670
BEGIN Program Reuse Account	Program provides deferred-payment second mortgage loans to qualified buyers of new homes.	\$113,858
TOTAL		\$9,023,279

HOUSING STRATEGY

Program/Project	Funding Source	Expenses	Annual Accomplishment
<i>Priority 1: Preserve existing rental and owner-occupied housing resources.</i>			
Community Improvement Team	CDBG	\$0	No funds were expended during FY 2017-18. The program is currently being reassessed to ensure that it is implemented in an efficient and effective manner for the City's residents.
Emergency Grant Program	CDBG	\$0	No homeowners were assisted through this program during FY 2017-18.
CIT Homeowner Occupied Rehabilitation Loan Program	CDBG	\$0	No homeowner were assisted through this program during FY 2017-18.
Low-Mod Assisted Housing Developments	N/A	N/A	Continued ongoing monitoring efforts of affordable housing developments consisting of over 1,750 units throughout Ontario.
Guadalupe Residence (411 North Parkside Avenue)	CDBG	\$3,600	The acquisition by Mercy House CHDO, Inc. was completed in February 2018. One household was relocated related to this project in June 2018. Rehabilitation work is expected to be complete in early 2019.
	HOME	\$1,155,157	
	Subtotal	\$1,158,757	
Minor Rehabilitation at 307/309/311 W. Francis St.	CDBG	\$77,520	The contract was awarded to New Dimension General Construction and the work began in May 2018. Work is expected to be completed in August 2018.
Assisi House Renovation	CDBG	\$0	During FY 2017-18, a scope of work was developed and bids are expected to be released in fall 2018 with work being completed during the winter of 2018.
TOTAL HOUSING PRIORITY #1		\$1,236,277	

Program/Project	Funding Source	Expenses	Annual Accomplishment
<i>Priority 2: Expand affordable rental housing opportunities, particularly for low-income persons.</i>			
Tenant Based Rental Assistance Program	HOME	\$130,145	A total of twenty (20) households were assisted through this program during FY 2017-18. Six (6) households had their TBRA certificates renewed, and fourteen (14) households were new clients.
520-526 West Vesta Street	CDBG	\$0	Demolition and lead-based paint remediation work was completed during FY 2017-18 to address conditions from a fire that occurred on July 5, 2017. Painting and additional minor repairs are scheduled to be completed by winter 2018.
	OHA	\$49,964	
	Subtotal	\$49,964	
Sites for Future Affordable Housing Development	HAF	\$14,819	The Ontario Housing Authority acting as the successor agency to the Ontario Redevelopment Agency and the City of Ontario acting as the successor agency to the Ontario Redevelopment Agency is currently maintaining approximately 11 sites for future development of affordable housing.
TOTAL HOUSING PRIORITY #2		\$194,928	
<i>Priority 3: Increase affordable homeownership opportunities, particularly for low- and moderate-income persons.</i>			
School Teacher and Employee Loan Program (School Program) (CalHFA)	Bond	\$210,000	One homebuyer was assisted in Ontario during FY 2017-18.
Home Buyer Assistance (County of San Bernardino Mortgage Revenue Bond Program)	Bond Financing	\$861,533	Three (3) Mortgage Credit Certificate (MCC) was issued for a home in Ontario during FY 2017-18.

Program/Project	Funding Source	Expenses	Annual Accomplishment
Neighborhood Partnership Housing Services (NPHS) Programs	Private Financing	N/A	During FY 2017-18, NPHS provided homeownership services to 161 Ontario residents. Foreclosure prevention assistance was provided to 26 homeowners, 9 first-time Ontario homebuyers received downpayment assistance grants through the WISH program, 112 residents were provided pre-purchase/financial wellness education, and 23 residents received reverse mortgage counseling. This fiscal year, NPHS was not able to provide any senior home repair grants due to a lack of funding.
Officer/Teacher/Fireman/Emergency Technician Next Door Program	HUD & FHA	\$0	No homebuyers were assisted in Ontario during FY 2017-18.
Police Residence Assistance Program	Ontario General Fund	\$20,000	Two (2) new loans and five (5) payoffs were processed during FY 2017-18.
Mission Oakland Single-Family Housing Development	HAF	\$3,531	During FY 2017-18, the Ontario Housing Authority sold this property to Inland Investment Partners. The developer plans to build 31 single-family market-rate homes on the site.
TOTAL HOUSING PRIORITY #3		\$1,095,064	
GRAND TOTAL – HOUSING STRATEGY		\$2,526,269	

HOMELESS STRATEGY

Program/Agency	Funding Source	Expenses	Accomplishments
<i>Priority 1: Preserve and improve the supply of supportive housing and public services for the homeless.</i>			
Foothill Family Shelter – Stepping Stones Program	ESG	\$6,122	A total of 21 unduplicated homeless persons were served.

Program/Agency	Funding Source	Expenses	Accomplishments
Mercy House Living Centers - Ontario Continuum of Care	CDBG	\$55,553	A total of 52 unduplicated homeless persons were served through the Assisi House and Aftercare Services Program. A total of 944 unduplicated homeless persons were served at the Ontario Access Center.
	ESG	\$108,674	
	Subtotal	\$164,227	
House of Ruth – Services for Victims of Domestic Violence and Their Children	ESG	\$12,600	A total of 106 unduplicated battered women and children were provided with services.
Inland Valley Hope Partners – Family Stabilization Program at Sova Program Center	ESG	\$18,410	A total of 2,723 unduplicated persons were served.
Project Gateway (Supportive Housing Program)	HUD	\$86,446	Twelve (12) households were housed using Supportive Housing Program (SHP) vouchers.
GRAND TOTAL – HOMELESS STRATEGY		\$287,805	

SPECIAL NEEDS STRATEGY

Program/Agency	Funding Source	Expenses	Accomplishments
<i>Priority 1: Provide supportive services for special needs populations.</i>			
Inland Fair Housing and Mediation Board – Senior Services	CDBG	\$10,000	A total of 319 seniors were served.
GRAND TOTAL – SPECIAL NEEDS STRATEGY		\$10,000	

FAIR HOUSING STRATEGY

Program/Agency	Funding Source	Expenses	Accomplishments
<i>Priority 1: Continue to implement the Fair Housing Laws by providing funding to further fair housing.</i>			
Inland Fair Housing and Mediation Board – Fair Housing (AFFH) Program	CDBG	\$22,000	A total of 204 persons were provided with fair housing services.
Inland Fair Housing and Mediation Board – Landlord/Tenant Mediation Services	CDBG	\$10,200	A total of 1,313 persons were provided with landlord/tenant mediation services.
GRAND TOTAL – FAIR HOUSING STRATEGY		\$32,200	

PUBLIC HOUSING STRATEGY

Program/Agency	Funding Source	Expenses	Accomplishments
<i>Priority 1: Continue to support ongoing efforts of the Housing Authority of the County of San Bernardino to maximize the use of Section 8 subsidies and other resources in the City.</i>			
Housing Authority of the County of San Bernardino (Housing Choice Voucher Program)	HUD	\$5,854,740	527 households assisted in Ontario.
Housing Authority of the County of San Bernardino (Family Self-Sufficiency)	HUD	N/A	Six (6) Ontario residents served.
GRAND TOTAL – PUBLIC HOUSING STRATEGY		\$5,854,740	

COMMUNITY DEVELOPMENT STRATEGY

Program/Project	Funding Source	Expenses	Accomplishments
<i>Priority 1: Provide for needed infrastructure improvements in lower and moderate-income neighborhoods.</i>			
FY 2017-18 Pavement Management Rehabilitation Program	CDBG	\$156,522	During FY 2017-18, the project was bid and a contract was awarded to All American Asphalt in July 2017. Construction began on September 15, 2017, and was completed on January 11, 2018. The contract included the rehabilitation of 13 streets, which total over half a million square feet of asphalt roadway. The project rehabilitated existing street surfacing in eligible CDBG areas by installing a Rubberized-Modified Slurry Seal, extending the service life of the asphalt concrete pavement by an estimated 10 to 15 years. This project provided improved infrastructure for the entire neighborhood with resurfaced asphalt.
	Gas Tax	\$501,000	
	Measure I	\$4,191,713	
	Subtotal	\$4,849,235	
FY 2017-18 Alley Pavement Management Program	CDBG	\$238,924	Alley improvements were located between D and Nocta Streets and Campus and Alley Avenue. It is estimated that 60 homes will benefit from these alley improvements. This project improved the infrastructure for the entire neighborhood with the new asphalt, no standing water, and smooth driving surface.
	Gas Tax	\$609,165	
	Measure I	\$249,481	
	Subtotal	\$1,097,570	
Pervious Concrete Gutters	CDBG	\$35,216	The scope of work included the construction of 520 linear feet of pervious concrete gutter along with other required improvements to achieve the installation. Construction began on August 25, 2017 and was completed October 23, 2017. The purpose of the project was to help mitigate any nuisance water in various areas around the City. The pervious concrete gutters work by draining the standing water faster and also preventing the street from being damaged by ponding water.
	Storm Drain	\$37,679	
	Maintenance		
	Subtotal	\$72,895	

Program/Project	Funding Source	Expenses	Accomplishments
LED Light Conversion Project	CDBG	\$2,056	Engineering awarded an initial construction contract of \$58,999 on March 28, 2018 to Siemens Industry, Inc. to retrofit 206 LED street light fixtures. Due to available funds in the budget, a change order for 59 additional lights was processed for \$16,530. In total, 265 street light fixtures will be retrofitted as part of this contract with a total cost of \$75,529.
Wheelchair Ramp Installation	CDBG	\$173,148	The Parks and Maintenance Department installed a total of 69 wheelchair ramps, adjoining sidewalks, and curbs and repaired 3 wheelchair ramps.
TOTAL COMMUNITY DEVELOPMENT PRIORITY #1		\$6,194,904	
<i>Priority 2: Provide for new community facilities, neighborhood enhancement activities, and improve the quality of existing community facilities to serve lower- and moderate-income neighborhoods.</i>			
De Anza Futsal Court Project	CDBG	\$14,666	During FY 2017-18, the project was underway. The following activities were completed by in-house staff: grading of an existing turf area in the north west side of the park, compaction of graded area, installation of a new concrete pad, and irrigation repairs. Bids were solicited for the fencing, as well as court resurfacing. The project is expected to be completed in August 2018.
Galvin Park Playground Project	CDBG	\$0	Design work was completed for a new playground for 2/5 years old and 5/12 years old to replace existing playground. During FY 2017-18, conceptual designs were approved by Parks Commission and bids were solicited. Work is expected to be completed in fall 2018.
De Anza Teen Center New Flooring and Dance Room Renovation	CDBG	\$87,825	In FY 2017-18, the project was completed. The project consisted of installation of new laminated vinyl plank flooring in the Multi-Purpose Room, Kitchen, Dance Room, hallways, and the northeast office areas.

Program/Project	Funding Source	Expenses	Accomplishments
Restroom Renovation at De Anza Park	CDBG	\$23,000	Project was placed out to bid and due to high bid results, the project was rebid with a reduced scope of work including the omission of parking lot work and electrical relocation (this work to be done by in-house staff). Bids will be solicited and the work is expected to be completed during FY 2018-19.
	Park Funds	\$17,450	
	Subtotal	\$40,450	
TOTAL COMMUNITY DEVELOPMENT PRIORITY #2		\$142,941	
<i>Priority 3: Provide needed community services to serve lower- and moderate-income residents.</i>			
COPS Program	CDBG	\$172,545	During FY 2017-18, the COPS Division addressed many community concerns including but not limited to: graffiti, the transients/homeless population, panhandlers, prostitution, metal theft, theft of utilities, illegal dumping, truancy, curfew violations, and violations of various city building and habitation codes.
Ontario-Montclair YMCA - Child Care Subsidies Program	CDBG	\$22,000	Eighty-seven (87) unduplicated youths were served.
TOTAL COMMUNITY DEVELOPMENT PRIORITY #3		\$194,545	
GRAND TOTAL – COMMUNITY DEVELOPMENT STRATEGY		\$6,532,390	

ADMINISTRATIVE COSTS

Program/Project	Funding Source	Expenses	Accomplishments
CDBG Administration	CDBG	\$314,105	Administration of the CDBG Program.
HOME Administration	HOME	\$59,443	Administration of HOME Program.
ESG Administration	ESG	\$6,379	Administration of ESG Program.
GRAND TOTAL – Administrative Costs		\$379,927	
GRAND TOTAL – All Projects & Administration		\$15,623,331	

CITY OF ONTARIO

Agenda Report
September 18, 2018


SECTION:
PUBLIC HEARINGS

SUBJECT: A PUBLIC HEARING TO CONSIDER AN ORDINANCE APPROVING A DEVELOPMENT AGREEMENT (FILE NO. PDA18-001) BETWEEN THE CITY OF ONTARIO AND RICHLAND DEVELOPERS, INC., TO ESTABLISH THE TERMS FOR THE DEVELOPMENT OF TENTATIVE TRACT MAP 18929 (FILE NO. PMTT13-016) TO SUBDIVIDE 54.81 ACRES OF LAND INTO 207 RESIDENTIAL NUMBERED LOTS AND 24 LETTERED LOTS AND TENTATIVE TRACT MAP 18930 (FILE NO. PMTT13-017) TO SUBDIVIDE 49.45 ACRES OF LAND INTO 225 RESIDENTIAL NUMBERED LOTS AND 26 LETTERED LOTS FOR PROPERTIES BOUNDED BY EUCALYPTUS AVENUE TO THE NORTH, MERRILL AVENUE TO THE SOUTH, ARCHIBALD AVENUE TO THE EAST AND THE CUCAMONGA FLOOD CONTROL CHANNEL TO THE WEST, AND LOCATED WITHIN THE CONVENTIONAL SMALL LOT RESIDENTIAL DISTRICT OF PLANNING AREA 1 AND WITHIN THE NEIGHBORHOOD COMMERCIAL CENTER DISTRICT OF PLANNING AREA 2 OF THE SUBAREA 29 SPECIFIC PLAN (APNS: 0218-271-11 AND 0218-271-19)

RECOMMENDATION: That the City Council introduce and waive further reading of an ordinance approving a Development Agreement (File No. PDA18-001, on file with the Records Management Department) between the City of Ontario and Richland Developers, Inc., to establish the terms and conditions for the development of Tentative Tract Maps 18929 (File No. PMTT13-016) and 18930 (File No. PMTT13-017).

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

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

Prepared by: Rudy Zeledon
Department: Planning
City Manager Approval: 

Submitted to Council/O.H.A. 09/18/2018
Approved: _____
Continued to: _____
Denied: _____

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FISCAL IMPACT: The proposed Development Agreement will provide funding from a community facilities district for additional City services required to support the Subarea 29 Specific Plan development, thereby mitigating the increased cost associated with such services. In addition, the City will receive public service funding fees plus development impact, compliance processing, licensing, and permitting fees. No Original Model Colony revenue will be used to support the Ontario Ranch development.

BACKGROUND: In October 2006, the City Council approved the Subarea 29 Specific Plan (File No. PSP03-003) and the Environmental Impact Report (EIR). The Specific Plan established the land use designations, development standards, and design guidelines for approximately 540 gross acres of land, which included the potential development of 2,293 single-family units and approximately 87,000 square feet of commercial. The applicant, Richland Developers, Inc., has submitted Tentative Tract Map 18929 (File No. PMTT13-016) to subdivide 54.81 acres of land into 207 residential numbered lots and 24 lettered lots and Tentative Tract Map 18930 (File No. PMTT13-017) to subdivide 49.45 acres of land into 225 residential numbered lots and 26 lettered lots. The properties are bounded by Eucalyptus Avenue to the north, Merrill Avenue to the south, Archibald Avenue to the east and the Cucamonga Flood Control channel to the west, and located within the Conventional Small Lot Residential district of Planning Area 1 and within the Neighborhood Commercial Center district of Planning Area 2 of the Subarea 29 Specific Plan.

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

The Development Agreement proposes to include 104.26 acres of land within Planning Areas 1 and 2 of Subarea 29 Specific Plan as shown in Exhibit “A” (Subarea 29 Specific Plan – Land Use Map). The Agreement grants Richland Developers, Inc., a vested right to develop Tentative Tract Maps 18929 and 18930 as long as the Richland Developers, Inc., complies with the terms and conditions of Subarea 29 Specific Plan and Environmental Impact Report.

The term of the Development Agreement is for ten years with a five year option. The main points of the agreement address funding for all new City expenses created by the project which includes;

- Development Impact Fees (DIF) for construction of public improvements (i.e. streets and bridges, police, fire, open space/parks etc.);
- Public Service Funding to ensure adequate provisions of public services (police, fire and other public services);
- The creation of a Community Facilities District (CFD) for reimbursement of public improvements and maintenance of public facilities;
- The Park/Open Space Policy Plan requirement of five acres per 1,000 projected population through park dedication and/or the payment of in-lieu fees; and
- Public infrastructure improvements required to support the development of TT 18929 and TT 18930.

Other points addressed by the Agreement include provisions for affordable housing, as required by the Policy Plan, through construction, rehabilitation, or by paying an in-lieu fee, and satisfaction of the

Mountain View School District and Chaffey Joint Union High School District school facilities requirements.

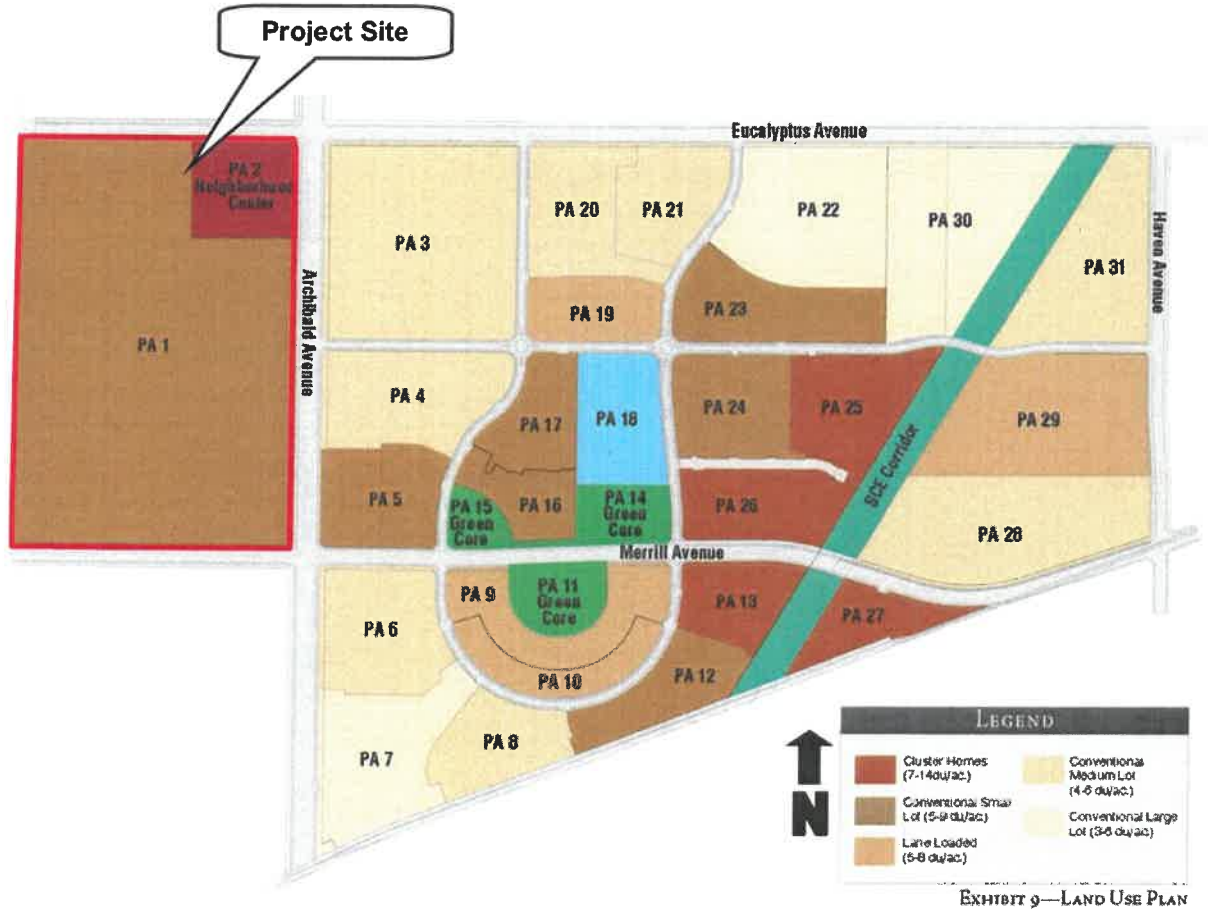
In considering the application at their meeting of August 28, 2018, the Planning Commission found that the Agreement was consistent with State law, The Ontario Plan, the City's Development Agreement policies, and other Development Agreements previously approved for Ontario Ranch developments and, with a 6 to 0 vote (Resolution No. PC18-083), recommended approval of the Agreement to the City Council.

HOUSING ELEMENT COMPLIANCE: The project is consistent with the Housing Element of the Policy Plan (General Plan) component of The Ontario Plan. 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 (482) and density (4.8 DU/AC) specified within Planning Area 1 of the Subarea 29 Specific Plan. Per the Available Land Inventory, the entire Subarea 29 Specific Plan is required to provide 2,552 dwelling units with a density range of 2-12 DU/AC.

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

ENVIRONMENTAL REVIEW: The environmental impacts of this project were previously reviewed in conjunction with the Subarea 29 Specific Plan EIR (SCH# 2004011009) certified by the City Council on October 17, 2006. This application is consistent with the previously adopted EIR and introduces no new significant environmental impacts. The City's "Guidelines for the Implementation of the California Environmental Quality Act (CEQA)" provide for the use of a single environmental assessment in situations where the impacts of subsequent projects are adequately analyzed. All previously adopted mitigation measures shall be a condition of project approval and are incorporated herein by reference.

EXHIBIT "A" SUBAREA 29 SPECIFIC PLAN



ORDINANCE NO. _____

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF ONTARIO, CALIFORNIA, APPROVING A DEVELOPMENT AGREEMENT, FILE NO. PDA18-001, A DEVELOPMENT AGREEMENT BETWEEN THE CITY OF ONTARIO AND RICHLAND DEVELOPERS, INC., TO ESTABLISH THE TERMS FOR THE DEVELOPMENT OF TENTATIVE TRACT MAP 18929 (FILE NO. PMTT13-016) TO SUBDIVIDE 54.81 ACRES OF LAND INTO 207 RESIDENTIAL NUMBERED LOTS AND 24 LETTERED LOTS AND TENTATIVE TRACT MAP 18930 (FILE NO. PMTT13-017) TO SUBDIVIDE 49.45 ACRES OF LAND INTO 225 RESIDENTIAL NUMBERED LOTS AND 26 LETTERED LOTS. THE PROPERTIES ARE BOUNDED BY EUCALYPTUS AVENUE TO THE NORTH, MERRILL AVENUE TO THE SOUTH, ARCHIBALD AVENUE TO THE EAST AND THE CUCAMONGA FLOOD CONTROL CHANNEL TO THE WEST, AND LOCATED WITHIN THE CONVENTIONAL SMALL LOT RESIDENTIAL DISTRICT OF PLANNING AREA 1 AND WITHIN THE NEIGHBORHOOD COMMERCIAL CENTER DISTRICT OF PLANNING AREA 2 OF THE SUBAREA 29 SPECIFIC PLAN., AND MAKING FINDINGS IN SUPPORT THEREOF —APNS: 0218-271-11 AND 0218-271-19.

WHEREAS, CALIFORNIA GOVERNMENT CODE SECTION 65864 NOW provides, in pertinent part, as follows:

“The Legislature finds and declares that:

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

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

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

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

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

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

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

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

WHEREAS, attached to this Ordinance marked Attachment “A” and incorporated herein by this reference, is the proposed Development Agreement between the City of Ontario and Richland Developers, Inc., to establish the terms for the development of Tentative Tract Map 18929 (File No. PMTT13-016) to subdivide 54.81 acres of land into 207 residential numbered lots and 24 lettered lots and Tentative Tract Map 18930 (File No. PMTT13-017) to subdivide 49.45 acres of land into 225 residential numbered lots and 26 lettered lots. The properties are bounded by Eucalyptus Avenue to the north, Merrill Avenue to the south, Archibald Avenue to the east and the Cucamonga Flood Control channel to the west, and located within the Conventional Small Lot Residential district of Planning Area 1 and within the Neighborhood Commercial Center district of Planning Area 2 of the Subarea 29 Specific Plan and as legally described in the attached Development Agreement. Hereinafter in this Ordinance, the Development Agreement is referred to as the “Development Agreement”; and

WHEREAS, on September 26, 2006, the Planning Commission of the City of Ontario conducted a duly noticed public hearing and issued Resolution PC06-095 recommending City Council certification of Subarea 29 Specific Plan EIR and Issued Resolution PC06-097 recommending approval of Subarea 29 Specific Plan (File No. PSP03-003); and

WHEREAS, on October 17, 2006, the City Council of the City of Ontario issued Resolution No. 2006-089 certifying the Subarea 29 Specific Plan EIR (SCH#. 2004011009) and

WHEREAS, on November 7, 2006, the City Council of the City of Ontario adopted Ordinance No. 2845 approving the Subarea 29 Specific Plan; and

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

WHEREAS, the environmental impacts of this project were previously reviewed in conjunction with the Subarea 29 Specific Plan EIR (SCH# 2004011009) certified by the City Council on October 17, 2006. This application is consistent with the previously adopted EIR and introduces no new significant environmental impacts. The City's "Guidelines for the Implementation of the California Environmental Quality Act (CEQA)" provide for the use of a single environmental assessment in situations where the impacts of subsequent projects are adequately analyzed. All previously adopted mitigation measures shall be a condition of project approval and are incorporated herein by reference; and

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

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

WHEREAS, on August 28, 2018, the Planning Commission of the City of Ontario conducted a hearing to consider the Agreement and concluded said hearing on that date. After considering the public testimony, the Planning Commission voted 6 to 0 to recommend approval (Resolution No. PC18-083) of the Development Agreement to the City Council; and

WHEREAS, on September 18, 2018, the City Council of the City of Ontario conducted a public hearing to consider the Agreement and concluded said hearing on that date; and

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

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

SECTION 1. *Environmental Determination and Findings.* As the decision-making body for the Project, the City Council has reviewed and considered the information contained in the previous Subarea 29 Specific Plan EIR (SCH#2004011009) and supporting documentation. Based upon the facts and information contained in the previous Subarea 29 Specific Plan EIR (SCH#2004011009) and supporting documentation, the City Council finds as follows:

(1) The environmental impacts of this project were reviewed in conjunction with the Subarea 29 Specific Plan EIR (SCH#2004011009), certified by the City of Ontario City Council on October 17, 2006, in conjunction with File No. PSP03-003.

(2) The previous the Subarea 29 Specific Plan EIR (SCH#2004011009) contains a complete and accurate reporting of the environmental impacts associated with the Project; and

(3) The previous the Subarea 29 Specific Plan EIR (SCH#2004011009), was completed in compliance with CEQA and the Guidelines promulgated thereunder; and

(4) The previous the Subarea 29 Specific Plan EIR (SCH#2004011009) 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 Subarea 29 Specific Plan EIR (SCH#2004011009), and all mitigation measures previously adopted with the Subarea 29 Specific Plan EIR (SCH#2004011009), are incorporated herein by this reference.

SECTION 2. Subsequent or Supplemental Environmental Review Not Required. Based on the information presented to the City Council, and the specific findings set forth in Section 1, above, the City Council finds that the preparation of a subsequent or supplemental to the Subarea 29 Specific Plan EIR (SCH#2004011009) is not required for the Project, as the Project:

(1) Does not constitute substantial changes to the Subarea 29 Specific Plan EIR (SCH#2004011009) that will require major revisions to the Subarea 29 Specific Plan EIR (SCH#2004011009) 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 Subarea 29 Specific Plan EIR (SCH#2004011009) was prepared, that will require major revisions to the Subarea 29 Specific Plan EIR (SCH#2004011009) 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 Subarea 29 Specific Plan EIR (SCH#2004011009) was certified/adopted, that shows any of the following:

(a) The project will have one or more significant effects not discussed in the Subarea 29 Specific Plan EIR (SCH#2004011009); or

(b) Significant effects previously examined will be substantially more severe than shown in the Subarea 29 Specific Plan EIR (SCH#2004011009); 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 Subarea 29 Specific Plan EIR (SCH#2004011009) would substantially reduce one or more significant effects on the environment, but which the City declined to adopt.

SECTION 3. *Housing Element Consistency.* Pursuant to the requirements of California Government Code Chapter 3, Article 10.6, commencing with Section 65580, as the decision-making body for the Project, the City Council finds that based on the facts and information contained in the Application and supporting documentation, at the time of Project implementation, the project is consistent with the Housing Element of the Policy Plan (General Plan) component of The Ontario Plan. The project 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 (482) and density (4.8 DU/AC) specified within Planning Area 1 of the Subarea 29 Specific Plan. Per the Available Land Inventory, the entire Subarea 29 Specific Plan is required to provide 2,552 dwelling units with a density range of 2-12 DU/AC.

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

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

a. The Development Agreement applies to 104.26 acres of land, for property bounded by Eucalyptus Avenue to the north, Merrill Avenue to the south, Archibald Avenue to the east and the Cucamonga Flood Control channel to the west, and located within the Conventional Small Lot Residential district of Planning Area 1 and within the Neighborhood Commercial Center district of Planning Area 2 of the Subarea 29 Specific Plan., and is presently used for agriculture and dairy uses; and

b. The properties to the north of the Project site are within Planning Areas 4 (Multi-Family Attached) and 5 (Single-Family Detached) of the Parkside Specific Plan, and is presently improved with agriculture uses. The property to the south is within Planning Areas 1 and 2 (Business Park\Industrial) of the Colony Commerce Center East Specific Plan and developed with agriculture uses. The properties to the east is located within Planning Areas 3, 4 and 5 (Single Family Conventional) of the Subarea 29 Specific Plan and are under development with residential homes. The property to the west is zoned Non Recreational Open Space and developed with the Cucamonga Creek Channel; and

c. The Development Agreement establishes parameters for the development of Tentative Tract Map 18929 for the potential development of 207 residential units and Tentative Tract Map 18930 for the potential development of 225 residential units within Planning Area 1 (Conventional Small Lot) of the Subarea 29 Specific Plan. The Development Agreement also grants Richland Developers, Inc., the right to develop, the ability to quantify the fees, and establish the terms and conditions that apply to those projects. These terms and conditions are consistent with The Ontario Plan Policy Plan (General Plan), design guidelines and development standards for the Subarea 29 Specific Plan; and

d. The Development Agreement focuses on Tentative Tract Map 18929 (File No. PMTT13-016) that will subdivide 54.81 acres of land into 207 residential numbered lots and 24 lettered lots (public streets, neighborhood edges, paseos, parks and parkways) and Tentative Tract Map 18930 (File No. PMTT13-017) that will subdivide 49.45 acres of land into 225 residential numbered lots and 26 lettered lots (public streets, neighborhood edges, paseos, parks and parkways); and

e. The Development Agreement will provide for the development of up to 432 single family units as established for Planning Area 1 and approximately 87,000 square feet of commercial uses for Planning 2 of Subarea 29 Specific Plan; and

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

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

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

i. This Development Agreement will not be materially injurious or detrimental to the adjacent properties and will have a significant impact on the environment or the surrounding properties. The environmental impacts of this project were previously reviewed in conjunction with the Subarea 29 Specific Plan EIR (SCH# 2004011009) certified by the City Council on October 17, 2006. This Application introduces no new significant environmental impacts. This application introduces no new significant environmental impacts; and

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

SECTION 6. City Council Action. Based upon the findings and conclusions set forth in paragraphs 1, 2, 3, 4 and 5 above, the City Council hereby APPROVES the Development Agreement subject to each and every condition set forth in Subarea 29 Specific Plan and EIR, incorporated by this reference.

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

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

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

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

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

PASSED, APPROVED, AND ADOPTED this ____ day of _____ 2018.

PAUL S. LEON, MAYOR

ATTEST:

SHEILA MAUTZ, CITY CLERK

APPROVED AS TO FORM:

BEST BEST & KRIEGER LLP
CITY ATTORNEY

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

I, SHEILA MAUTZ, City Clerk of the City of Ontario, DO HEREBY CERTIFY that foregoing Ordinance No. _____ was duly introduced at a regular meeting of the City Council of the City of Ontario held September 18, 2018 and adopted at the regular meeting held _____, 2018 by the following roll call vote, to wit:

AYES: COUNCIL MEMBERS:

NOES: COUNCIL MEMBERS:

ABSENT: COUNCIL MEMBERS:

SHEILA MAUTZ, CITY CLERK

(SEAL)

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

SHEILA MAUTZ, CITY CLERK

(SEAL)

ATTACHMENT A:

**File No. PDA18-001
Development Agreement
Between
The City of Ontario and Richland Developers, Inc.**

(Development Agreement to follow this page)

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

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

Exempt from Fees Per Gov. Code § 6301

Space above this line for Recorder's Use Only

DEVELOPMENT AGREEMENT

By and Between

City of Ontario, a California municipal corporation,

and

Richland Developers, Inc.

a Delaware corporation

_____, 2018

San Bernardino County, California

DEVELOPMENT AGREEMENT NO. PDA18-001

This Development Agreement (hereinafter "Agreement") is entered into effective as of the ____ day of _____, 2018 by and among the City of Ontario, a California municipal corporation (hereinafter "CITY"), and Richland Developers, Inc., a Delaware corporation (hereinafter "OWNER"):

RECITALS

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

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

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

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

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

WHEREAS, all of the procedures of the California Environmental Quality Act have been met with respect to the Project and the Agreement in that Subarea 29 Specific Plan (State Clearinghouse No. 2004011009 (the "FEIR")). The City Council found and determined that the FEIR was prepared in accordance with the requirements of the California Environmental Quality Act and adequately describes the impacts of the project described in the FEIR, which included consideration of this Agreement; and

WHEREAS, this Agreement and the Project are consistent with the CITY's Comprehensive General Plan and the Subarea 29 Specific Plan; and

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

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

WHEREAS, this Agreement will eliminate uncertainty in planning and provide for the orderly development of the Property, ensure progressive installation of necessary

improvements, provide for public services appropriate to the development of the Project, and generally serve the purposes for which development agreements under Sections 65864 et seq. of the Government Code are intended; and

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

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

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

COVENANTS

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

1. DEFINITIONS AND EXHIBITS.

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

1.1.1 "Agreement" means this Development Agreement.

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

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

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

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

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

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

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

processing of maps under the provisions of the Subdivision Map Act, Division 2 (commencing with Section 66410) of Title 7 of the Government Code; or planning services under the authority of Chapter 3 (commencing with Section 65100) of Division 1 of Title 7 of the Government Code, fees and charges as described in Sections 51287, 56383, 57004, 65104, 65456, 65863.7, 65909.5, 66013, 66014, and 66451.2 of the Government Code, Sections 17951, 19132.3, and 19852 of the Health and Safety Code, Section 41901 of the Public Resources Code, and Section 21671.5 of the Public Utilities Code, as such codes may be amended or superseded, including by amendment or replacement.

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

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

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

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

1.1.12 “General Plan” means the General Plan adopted on January 27, 2010.

1.1.13 “Improvement” or “Improvements” means those public improvements required to support the development of the Project as described in the Tract Map conditions for Tract Nos. 18929 and 18930 as further described in Exhibits “F-1” through F-4 (the “Infrastructure Improvements Exhibits”).

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

- (a) the conduct of businesses, professions, and occupations;
- (b) taxes and assessments;
- (c) the control and abatement of nuisances;

(d) the granting of encroachment permits and the conveyance of similar rights and interests that provide for the use of or the entry upon public property;

(e) the exercise of the power of eminent domain.

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

1.1.16 “Model Units” means a maximum of thirty-two (32) model units, with a maximum of sixteen (16) in each Phase, private common recreation facilities and sales facilities constructed by OWNER prior to the construction of any Production units and not offered for sale and occupancy for a period of time after the issuance of permits for Production Units for the respective Phase.

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

1.1.18 “Phase 1 Improvements” means the public infrastructure and improvements that shall be designed, or designed, constructed and completed by OWNER prior to, and as a condition precedent to, CITY’s issuance of the first building permit for Production Units and as shown in Exhibit F- Phase 1 Improvements.”

1.1.19 “Phase 1 Units” means approximately two-hundred twenty-five (225) units located within the portion of the Project designated in the Conceptual Phasing Plan (Exhibit E) as the Phase 1 Area for which the CITY issues building permits to OWNER and shall include up to Thirty-two (32) Model Units and such units are served by the Phase 1 Improvements.

1.1.20 “Phase 2 Improvements” means the public infrastructure and improvements that shall be designed, or designed, constructed and completed by OWNER prior to, and as a condition precedent to, CITY’s issuance of the first building permit for Phase 2 Units and as shown in Exhibit F – Phase 2 Improvements.”

1.1.22 “Phase 2 Units” means approximately two-hundred seven (207) units located within the portion of the Project designated in the Conceptual Phasing Plan (Exhibit E) as the Phase 2 Area for which the CITY issues building permits to OWNER and such units are served by the Phase 2 Improvements.

1.1.23 “Production Unit(s)” means all units constructed for sale and occupancy by OWNER and excludes the specified number of Model Units constructed by OWNER for promotion of sales.

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

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

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

1.1.27 "Specific Plan" means that certain specific plan adopted by the City Council, and entitled, "Subarea 29 Specific Plan."

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

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

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

1.1.31 "Water Availability Equivalent (WAE)" means a designated portion of the total Net MDD made available through the construction of each Phase described in the Water Phasing Plan of the Construction Agreement. The number of Water Availability Equivalents (of portions thereof) required for the issuance of each building permit shall be based upon water demand factors and assumptions listed in the Construction Agreement and Construction Agreement Amendment as "Water Availability Equivalents by Land Use" for each land use category.

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

Exhibit "A" — Legal Description of the Property.

Exhibit "B" — Map showing Property and its location.

Exhibit "C" — Existing Development Approvals.

Exhibit "D" — Existing Land Use Regulations.

Exhibit "E" — Phasing Plan

Exhibit "F" — Infrastructure Improvements Exhibits

F- 1 and F-2 Phase 1 Tract 18930

F- 3 and F-4 Phase 2 Tract 18929

Exhibit "G" - Form of Plume Disclosure Letter

2. GENERAL PROVISIONS.

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

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

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

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

(b) In non-mixed use and residential use only projects, the OWNER shall have obtained, as applicable, building permits for at least seventy percent (70%) of the actual number of residential units permitted under this Agreement; and

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

2.4 Assignment.

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

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

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

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

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

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

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

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

(d) The purchaser, transferee or assignee provides CITY with security equivalent to any security previously provided by OWNER to secure performance of its obligations hereunder.

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

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

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

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

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

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

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

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

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

2.5.1 Amendment to Reflect Consistency With Future Amendments to the Construction Agreement. To the extent any future amendment to the Construction Agreement provides for modifications to rights or obligations that differ from or alter the

same or similar rights or obligations contained in this Development Agreement, OWNER reserves the right to request an amendment to the Development Agreement to reflect any or all of such modifications.

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

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

(b) Entry of a final judgment setting aside, voiding or annulling the adoption of the ordinance approving this Agreement.

(c) The adoption of a referendum measure overriding or repealing the ordinance approving this Agreement.

(d) Completion of the Project in accordance with the terms of this Agreement including issuance of all required occupancy permits and acceptance by CITY or applicable public agency of all required dedications.

Termination of this Agreement shall not constitute termination of any other land use entitlements approved for the Property. Upon the termination of this Agreement, no party shall have any further right or obligation hereunder except with respect to any obligation to have been performed prior to such termination or with respect to any default in the performance of the provisions of this Agreement which has occurred prior to such termination or with respect to any obligations which are specifically set forth as surviving this Agreement. Upon such termination, any public facilities and services mitigation fees paid pursuant to Section 4.2 of this Agreement by OWNER to CITY for residential units on which construction has not yet begun shall be refunded to OWNER by CITY.

2.7 Notices.

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

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

If to CITY:

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

Ontario California, California 91764

with a copy to:

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

If to OWNER:

Roseville Investments, LLC
3161 Michelson Drive, Suite 425
Irvine, CA 92612
Attn: Craig Cristina
Email: ccristina@richlandcommunities.com
Phone: (949) 383-4124
Fax: (949) 261-7016

with a copy to:

Richland Legal Department

3161 Michelson Drive, Suite 425
Irvine, CA 92612
Attn: Courtney Nelson
Email: cnelson@richlandinvestments.com
Phone: (949) 261-7010 x210
Fax: (949) 261-7013

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

3. DEVELOPMENT OF THE PROPERTY.

3.1 Rights to Develop. Subject to the terms of this Agreement including the Reservations of Authority, OWNER shall have a vested right to develop the Property in accordance with, and to the extent of, the Development Plan. The Project shall remain subject to all Subsequent Development Approvals required to complete the Project as contemplated by the Development Plan. Except as otherwise provided in this Agreement,

the permitted uses of the Property, the density and intensity of use, the maximum height and size of proposed buildings, and provisions for reservation and dedication of land for public purposes shall be those set forth in the Development Plan.

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

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

3.4 Requirement for Public Infrastructure Improvements. Development of the Property is contingent in part on the phasing of area-wide infrastructure improvements over which the OWNER has control. The issuance of building permits by CITY for Model Units and Production Units is, in general, contingent on OWNER's completion of needed infrastructure improvements and the availability of improvements and services to serve the Property.

3.4.1 Attached hereto as Exhibit "F" is a description of the infrastructure improvements needed for the development of the Property ("the Infrastructure Improvement Exhibit").

3.4.2 Subject to the prior submittal by OWNER and approval by CITY of a plan to provide sufficient public infrastructure for the construction of a maximum number of (sixteen (16) Model Units per Phase, private common recreation facilities and sales facilities. CITY may issue a maximum of sixteen (16) building permits per Phase for Model Units in addition to private common recreation facilities and sales facilities. The plan to be submitted by OWNER for CITY approval shall describe the utilities and other infrastructure necessary to provide sufficient fire protection

and other public health and safety requirements for the Model Units and other facilities.

3.5 Changes and Amendments. The parties acknowledge that refinement and further development of the Project will require Subsequent Development Approvals and may demonstrate that changes are appropriate and mutually desirable in the Existing Development Approvals. In the event OWNER finds that a change in the Existing Development Approvals is necessary or appropriate, OWNER shall apply for a Subsequent Development Approval to effectuate such change and CITY shall process and act on such application in accordance with the Existing Land Use Regulations, except as otherwise provided by this Agreement including the Reservations of Authority. If approved, any such change in the Existing Development Approvals shall be incorporated herein as an addendum to Exhibit "C", and may be further changed from time to time as provided in this Section. Unless otherwise required by law, as determined in CITY's reasonable discretion, a change to the Existing Development Approvals shall be deemed "minor" and not require an amendment to this Agreement provided such change does not:

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

3.6 Reservations of Authority.

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

- (a) Processing fees by CITY to cover costs of processing applications for development approvals or for monitoring compliance with any development approvals;
- (b) Procedural regulations relating to hearing bodies, petitions, applications, notices, findings, records and any other matter of procedure;

- (c) Regulations, policies and rules governing engineering and construction standards and specifications applicable to public and private improvements, including all uniform codes adopted by the CITY and any local amendments to those codes adopted by the CITY; provided however that, OWNER shall have a vested right to develop the Property in accordance with, and to the extent of, the standards and specifications that are expressly identified in the Specific Plan;
- (d) Regulations that may conflict with this Agreement and the Development Plan but that are reasonably necessary to protect the residents of the project and/or of the immediate community from a condition perilous to their health or safety;
- (e) Regulations that do not conflict with those rules, regulations and policies set forth in this Agreement or the Development Plan;
- (f) Regulations that may conflict but to which the OWNER consents.

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

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

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

stated terms if necessary, to reserve to CITY all such power and authority which cannot be restricted by contract.

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

3.7.1 OWNER agrees that development of the Project shall require the construction of Storm Drain facilities from the Property to the connection with the Cucamonga Creek Channel as described in Exhibits F-1 through F-4. OWNER shall be responsible for the construction of the necessary extension of master planned Storm Drain facilities as shown in Exhibits F-1 through F-4.

3.7.1.1 OWNER also acknowledges that Lots D and E of Tract Map No. 18929 and Lots A, B and C of Tract Map No. 18930 shall be developed as a storm water retention and/or water quality area that provides for storm water retention and/or water quality for both Tract Map Nos. 18929 and 18930. OWNER agrees that OWNER shall accept storm water flows from Tract Map No.18929 and OWNER agrees to allow access for the construction of the combined storm water retention basin as required for the development of Tract Map No. 18930. Such combined storm water retention areas shall be transferred to a single homeowner's association and such homeowner's association shall be responsible for all maintenance of the combined storm water retention areas.

3.7.2 OWNER agrees that development of the Project shall require the construction of Master Planned street improvements on Archibald Avenue, Eucalyptus Avenue and Merrill Avenue, including signalization and bridge improvements as described in Exhibits F-1 through Exhibit F-4.

3.7.2.1 Street Improvements Phasing. OWNER shall design, construct and complete Street Improvements as described in Exhibits "F-1 through F-4. The Street Improvements as shown on Exhibits F-1 and F-2 shall be completed prior to, and as a condition precedent to OWNER requesting the issuance of the first Production Permit for the Phase 1 Units. The Street Improvements as shown on Exhibits F-3 and F-4, shall be completed prior to, and as a condition precedent to OWNER requesting the issuance of the first Production Permit for the Phase 2 Units.

3.7.2.2 Merrill and Eucalyptus Bridge Improvements and Phasing.

OWNER shall be required to complete the designs and commence construction of the widening of the existing Merrill Avenue Bridge Improvements (Merrill Bridge) as shown in Exhibit F-2, prior to and as a condition precedent to OWNER requesting a Production Unit building permit for a Phase 1 Unit. The Merrill Bridge Improvements shall consist of widening the north side of the existing bridge to its ultimate width with all striping transitions to existing conditions occurring east of the west end of the bridge and utilities as described in Exhibit F-2. OWNER shall also be required to complete the designs and commence construction of the Eucalyptus Avenue Bridge (Eucalyptus Bridge) as shown in Exhibit F-4, prior to and as a condition precedent to OWNER requesting a Production Unit building permit for a Phase 2 Unit. The Eucalyptus Bridge improvements shall consist of the ultimate south half, plus one westbound lane and utilities as described in Exhibit "F-4". If OWNER has not commenced construction on the Merrill Bridge Improvements prior to OWNER requesting a building permit for a Phase 1 Production Unit, OWNER shall provide proof to the satisfaction of the CITY, that OWNER has exercised one of the following two options:

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

Additionally, If OWNER has not commenced construction on the Eucalyptus Avenue Bridge Improvements, as shown on the attached Exhibit F- 4, prior to OWNER requesting a building permit for a Phase 2 Production Unit, OWNER shall provide proof, to the satisfaction of CITY that OWNER has exercised one of the following two options:

- a. OWNER has entered into a cost sharing agreement with other developer(s) for the construction and completion of the Eucalyptus Bridge Improvements and OWNER has fully funded OWNER'S obligations under the cost sharing agreement; or

b. OWNER has deposited an amount acceptable to CITY for future construction of the Eucalyptus Avenue Bridge Improvements into an Escrow Account (“Escrow Account”) in which CITY has sufficient authority necessary to use such funds deposited by OWNER to commence and complete the construction of the Eucalyptus Avenue Bridge Improvements. OWNER to provide Escrow Instructions acceptable to the City Attorney of CITY.

3.7.3 OWNER agrees that development of the Property shall require the extension of permanent master planned water and recycled water utility infrastructure for each Phase as described in Exhibits F-1 through Exhibit F-4, consisting generally of the construction of the extension of permanent master planned water and recycled water utility improvements to serve the respective Phase of the Property. OWNER agrees that no building permits shall be issued by CITY for Phase 1 Units prior to, and as a condition precedent to the completion of the water and recycled water Improvements as described in Exhibits F-1 and F-2. OWNER also agrees that no building permits shall be issued by the CITY for the Phase 2 Units prior to, and as a condition precedent to the completion of the water and recycled water Improvements as described in Exhibit F-3 and F- 4.

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

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

3.7.5 OWNER agrees that development of the Property shall require the extension of permanent master planned sewer improvements, at OWNER’s sole cost and expense, as described in the attached Exhibits F-1 through Exhibit F-4, consisting generally of the construction of the extension of sewer infrastructure within Merrill Avenue to serve the respective Phase of the Property.

3.7.6 OWNER agrees that development of the Property shall require the extension of permanent master planned fiber optic communications infrastructure, at OWNER's sole cost and expense, as described in the attached Exhibits F- 1 through Exhibit F- 4 consisting generally of the construction of the extension of fiber optic communications infrastructure to serve the respective Phase of the Property.

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

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

3.8.2 Owner's Option to Terminate Proceedings. CITY shall provide written notice to OWNER no later than fifteen (15) days prior to making an offer to the owner of the Non-Construction Agreement Offsite Property. At any time within that fifteen (15) day period, OWNER may, at its option, notify CITY that it wants CITY

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

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

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

4. PUBLIC BENEFITS.

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

4.2 Development Impact Fees.

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

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

4.2.3 Parkland and Quimby Act Fees. Pursuant to the General Plan (Ontario Plan) Goal PR1, Policy PR1-5 (achievement of a park standard of 5 acres of parkland per 1,000 residents) OWNER shall provide improved parks, developed in accordance with the City's park standards in an amount equal to two (2) acres per 1,000 of projected population without credit, reimbursement, offset or consideration from City. CITY and OWNER agree that Lots C and E of Tract 18929 of 4.00 net acres combined and Lot C and G of Tract 18930 of 2.55 net acres combined shall satisfy OWNER's additional park development requirement. OWNER shall also pay the full Development Impact Fee for the Parkland Acquisition and Development Fee category (Quimby Act fees) for the Project.

4.3 Responsibility for Construction of Public Improvements.

4.3.1 Timely Construction of Public Infrastructure. The phasing of the infrastructure construction within the Property shall be as approved by the CITY. OWNER shall be responsible for the timely design, construction and completion of all public infrastructure required for each Phase of the Project as described in this Agreement and as shown on the attached Exhibits for each Phase of the Project. OWNER shall also be responsible for compliance with any and all other tract map conditions. Unless otherwise specified in a Subdivision Agreement and Tract Map conditions, all other required improvements and all other conditions or requirements of Tract Map 18930 shall be completed and operational prior to, and as a condition precedent to, CITY's granting of a building permit for Phase 1 Units. Additionally, unless otherwise specified in a Subdivision Agreement/Tract Map conditions, all other required improvements and all other conditions for Tract Map 18929 in the Phase 1 area shall be completed and operational prior to, and as a

condition precedent to, OWNER requesting and CITY's granting of a building permit for Production Units within the Phase 1 area of the Property.

4.3.1.1 Subject to the provisions of Section 3.7 above, OWNER shall design, or design construct and complete all public infrastructure required for Phase 1 of the Project as shown on Exhibits F-1 and F-2 prior to, and as a condition precedent to, CITY's issuance of the first building permit for Production Units for the Property.

4.3.1.2 OWNER shall design, or design, construct and complete all public infrastructure for Phase 2 as shown in Exhibits F- 3 and F-4, prior to, and as a condition precedent to, CITY's issuance of any building permits for any Production Units in the portion of the Project designated as the Phase 2 area on the Conceptual Phasing Plan (Exhibit E). Unless otherwise specified in a Subdivision Agreement and Tract Map conditions, all other required improvements and all other conditions or requirements Tract Map 18929 shall be completed and operational prior to, and as a condition precedent to, CITY's granting of a building permit for any Phase 2 Units.

4.3.2 Construction of DIF Program Infrastructure (Construction Agreement). To the extent OWNER is required to construct and completes construction of public improvements that are included in CITY's Development Impact Fee Program and the Construction Agreement between CITY and NMC Builders LLC, CITY agrees that CITY shall issue DIF Credit in accordance with the provisions of the Construction Agreement and any amendments thereto. Use of DIF Credit issued to OWNER as a member of NMC Builders LLC or as a merchant builder to offset OWNER's DIF payment obligations shall also be subject to the provisions of the Construction Agreement and any amendments thereto.

4.3.3 Construction of DIF Program Infrastructure (Non-Construction Agreement). To the extent OWNER is required to construct and completes construction of public improvements that are included in CITY's Development Impact Fee Program and such public improvements are not included the Construction Agreement between CITY and NMC Builders LLC, CITY agrees that CITY shall issue DIF Credit and DIF Reimbursement in accordance with the provisions of a separate Fee Credit Agreement between CITY and OWNER. Limitation on the use of DIF Credit issued to OWNER to offset OWNER's DIF payment obligations shall also be subject to the provisions of a separate Fee Credit Agreement. OWNER may also be eligible to receive reimbursement from DIF collected by CITY and paid by other development that benefits from OWNER's construction of DIF Program Infrastructure. Any such DIF Reimbursement shall be subject to a Fee Credit Agreement between CITY and OWNER. CITY and OWNER agree that the Fee Credit Agreement between CITY and OWNER shall comply with CITY's adopted policies applicable to such agreements.

4.4 Affordable Housing Requirement.

4.4.1 Affordable Housing- Number of Units. OWNER shall provide a minimum number of affordable housing units, equivalent to 10% of the OWNER's total approved residential units within the Project, that are affordable to very low, low and moderate income households. Such requirement for affordable housing shall be met through one, or a combination of one or more, of the options provided in the following Sections 4.4.2.1 through 4.4.2.3. For the purposes of this Section, any term not defined in this Agreement shall be as defined by California Community Redevelopment Law (California Health and Safety Code Section 33000 et seq.).

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

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

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

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

4.4.2.3 In-Lieu Fee. If OWNER has not fully complied with the requirements of Section 4.4.2 by providing the minimum number of affordable units through the construction of new affordable units or by the substantial rehabilitation of existing units, shall pay an **“Affordability In-Lieu Fee”**. If OWNER has not provided any affordable residential units by construction or rehabilitation, the Affordability In-Lieu fee shall be equal to Two Dollars, Fifty-Three Cents (\$2.53) per square foot of residential development within OWNER’s Project or, if pre-paid as set forth below, Two Dollars Twenty-One Cents (\$2.21) per square foot of residential development within OWNER’s Project. If OWNER has partially complied with the requirements of Section 4.4.1 by construction or rehabilitation of less than the minimum number of units, then the Affordability In-lieu Fee shall be recalculated and reduced in consideration of the number and type of affordable units provided. The Affordability In-Lieu Fee shall be paid by OWNER to City no later than prior to the issuance of each building permit within OWNER’s Project based on the square footage of the residential unit for which such building permit is sought; provided however that OWNER may, at OWNER’s election, pre-pay such Affordability In-Lieu Fee by paying such Affordability In-Lieu Fee within thirty (30) days following the earliest discretionary approval by the City for OWNER’s Project, including, but not limited to, any general plan amendment, specific plan adoption, development agreement, tentative map approval, variance, conditional use permit, or resolution of intention to form any public financing mechanism. The Two Dollars, Fifty-Three Cents (\$2.53) and the Two Dollars Twenty-One Cents

(\$2.21) per square foot amounts shall automatically be increased annually, commencing on July 1, 2018, and automatically each July 1 thereafter. Such adjustment shall be based on the percentage increase (but no decrease) in the Consumer Price Index (Los Angeles-Anaheim-Riverside County), 1950-2001 (1982-84=100) over the preceding year. The pre-paid Affordability In-Lieu Fee shall be calculated based on the maximum floor area ratio (FAR) permitted within the General Plan and any applicable FAR contained within the applicable specific plan, whichever is greater, and the Maximum Development Density. For purposes of this Agreement, “**Maximum Development Density**” shall be determined by multiplying the OWNER’s Project’s density for residential development potential as set forth in the General Plan or the applicable Specific Plan, whichever is less, by the net acreage of land within OWNER’s Project. All “Affordability In-Lieu Fees” collected by the City shall be used to promote the construction of affordable housing within the City.

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

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

4.5 Schools Obligations.

4.5.1 Written Evidence of Compliance with Schools Obligations.

OWNER shall, either through joint or individual agreements between OWNER and the applicable school district(s), shall satisfy its new school obligations. The new school obligations for the Mountain View School District in the Ontario Ranch area have been projected to include the acquisition or dedication of school sites for, and construction of, up to eight (8) schools. Of these eight (8) schools, six (6) are to

be elementary (K-5) grade schools and two (2) are to be middle grade schools. The new school obligations for the Chaffey Joint Union High School District in the Ontario Ranch area have been projected to include the dedication of a school site for, and construction of, an additional high school. The new school obligations for the applicable school district shall be met by any of the following or any combination thereof: (1) designating and dedicating school site(s) within the Property as set forth in the General Plan, and/or (2) paying school impact fees, (3) entering into a joint mitigation agreement or individual mitigation agreements, or (4) any combination of the foregoing. Written evidence of approval by the applicable school district that OWNER has met their school obligations may be required by the City as the condition to the issuance by the City of any entitlements for OWNER's Project. In the event OWNER is unable to provide such written evidence from the applicable school district(s), the City shall have the right to decline to honor any DIF Credit, Certificates of MDD Availability, Certificates of Storm Water Treatment Capacity Availability, or any combination thereof, presented by such OWNER, without liability to the City. To the extent that a joint mitigation agreement is approved by the applicable school district(s), and OWNER is a participant in good standing in such mitigation agreement, OWNER shall be deemed to have mitigated its new school obligations under this Section 4.4.1.

4.6 Public Services Funding Fee.

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

4.6.2 Public Services Funding Fee Amount. OWNER shall pay a Public Services Funding fee in the total amount of One Thousand Nine Hundred Seventy-Five dollars (\$1,975.00) per residential dwelling unit. The Public Services Funding Fee shall be paid in one (1) installment within one hundred eighty (180) calendar days after the effective date of the Development Agreement or in two (2) installments, at OWNER's option, as follows:

4.6.2.1 First Installment (Residential uses). The First Installment of the Public Services Funding Fee shall be Nine Hundred Eighty-Seven dollars and fifty cents (\$987.50) per residential dwelling unit. The First Installment shall be based upon the "**Maximum Development Density**" of the OWNER Project, as defined in Section 3.7.2.3 of the First Amended and Restated Construction Agreement. The First Installment shall be due and payable 30 days following the effective date of this Development Agreement.

If the First installment amount is not paid for all residential dwelling units within the Project (based on the Maximum Development Density, or the number of units described on "B Maps" if approved) by January 1, 2019, the

amount of the First Installment shall be increased. Such increase shall be based on the percentage increase (but no decrease) in the Consumer Price Index (Los Angeles-Anaheim-Riverside County), 1950-2001 (1982-84=100) over the preceding year. Additionally, the amount shall be further increased automatically by the percentage increase in the Consumer Price Index (Los Angeles-Anaheim-Riverside) on each January 1 thereafter.

4.6.2.2 Second Installment (Residential Uses). The Second Installment of the Public Services Funding Fee shall be Nine Hundred Eighty-Seven dollars and fifty cents (\$987.50) per residential unit. The Second Installment shall be paid at the time of the issuance of each building permit for the Project. The amount of the Second Installment shall increase automatically by percentage increase (but no decrease) in the Consumer Price Index (Los Angeles-Anaheim-Riverside County), 1950-2001 (1982-84=100) over the preceding year on January 1st of each year, beginning on January 1, 2019. OWNER may exercise the option to pay the Second Installment amount for all residential units, a portion of the residential units, or for the remainder of the residential units within OWNER's Project on or before each December 31st, before the Second Installment amount is automatically increased.

4.6.2.3 Single Installment (Non-residential Uses). A single installment payment of the Public Services Funding Fee shall be required in the amount of Fifty-Seven Cents (\$.57) per square foot of non-residential buildings. The single installment for non-residential uses shall be due and payable prior to the issuance of the building permit for a non-residential building. The amount of the Single Installment for non-residential uses shall automatically increase by percentage increase (but no decrease) in the Consumer Price Index (Los Angeles-Anaheim-Riverside County), 1950-2001 (1982-84=100) over the preceding year on January 1st of each year, beginning on January 1, 2019. OWNER may exercise the option to pay any single installment amounts for the remainder of the non-residential square footage within the Project on or before December 31st, before the Single Installment amount is automatically increased.

4.7 Net MDD/Water Availability Equivalents.

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

4.7.2 Use of Assigned Net MDD Water Availability. OWNER shall provide evidence of sufficient Net MDD Water Availability Equivalents (or portions thereof) prior to and as a condition precedent to, the City's approval of any and all tract maps for the Property. The amount of Net MDD Water Availability Equivalents required for City's approval of a tract map shall be based upon water demand factors and assumptions listed in Exhibit C-2R of the Construction Agreement Amendment as "Water Demand Equivalents by Land Use" for each land use category.

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

4.8 Storm Water Capacity Availability. OWNER and CITY agree that the Project may utilize onsite treatment or offsite treatment or a combination thereof. If OWNER does not or is unable to, provide 100% of the required treatment capacity within the Project OWNER shall be required to provide to CITY evidence of sufficient regional Storm Water Treatment Capacity shall be provided by OWNER.

4.8.1 Requirement for Storm Water Treatment Capacity Availability. In the event OWNER does not or is unable to provide all the required storm water treatment capacity onsite as described in section 4.8 above, OWNER shall provide evidence of sufficient Storm Water Treatment Capacity Availability as reserved in a Certificate of Storm Water Treatment Capacity Availability the same manner and subject to the same limitations as provided for the assignment of Certificates of Net MDD Availability in Section 4.6 of this Agreement.

4.8.2 Use of Storm Water Treatment Capacity Availability. The amount of Storm Water Treatment Capacity Availability required for the issuance of a grading permit to OWNER shall be based upon the Net Residential Acreage of the area to be graded regardless of the corresponding use, less the calculated acreage capacity of Storm Water treatment facilities provided within the Project site.

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

4.9 Maintenance of Open Space. OWNER shall provide for the ongoing maintenance of all park, common areas and open space areas within the Project as more particularly set forth in the Specific Plan, through a homeowners' association as approved

by the CITY. Covenants, conditions and restrictions establishing any homeowners' association shall be approved by the Planning Director and City Attorney.

4.10 Compliance with Public Benefits Requirements.

4.11.1 Failure to Provide Public Benefits. In the event OWNER fails or refuses to comply with any condition referenced in Section 4.1 through 4.10, or challenges (whether administratively or through legal proceedings) the imposition of such conditions, OWNER shall be deemed in default of this Agreement pursuant to Section 8.4 hereof, thereby entitling the City to any and all remedies available to it, including, without limitation, the right of the City to withhold OWNER's Project-related building permits, certificates of occupancy, or discretionary approvals, without liability.

5. FINANCING OF PUBLIC IMPROVEMENTS.

5.1 Financing Mechanism(s). In accordance with the Memorandum of Agreement between the CITY and NMC Builders, CITY will cooperate with OWNER in the formation of a CFD, or CFDs, to include all of the Project, to provide a financing mechanism to reimburse the OWNER for funds paid to NMC Builders LLC for OWNER's share of the costs of public infrastructure pursuant to the Construction Agreement and to acquire other public facilities constructed by OWNER subject to the provisions of the Memorandum of Agreement between CITY and NMC Builders LLC. Notwithstanding such reimbursements and acquisitions, OWNER shall remain entitled to DIF Credits as provided for in Article 3 of the Construction Agreement and/or as provided for in a separate Fee Credit Agreement between CITY and OWNER. OWNER agrees that, prior to the recordation of any Tract Map for the Property, the Property shall be included in a CFD to finance City services through annual special taxes that shall initially be \$1,622.00 per Single Family Detached Dwelling Unit, \$1,406.00 per Multiple-Family Dwelling Unit, \$1,179.00 per Gated Apartment Community Dwelling Unit, and \$.30 per square foot for Non-Residential buildings for the CITY's fiscal year 2018-19. These amounts shall be subject to an automatic increase at a rate not to exceed four (4%) percent per year. Depending on the fiscal year that the CFD is formed and the CFD tax is levied, the annual special taxes may be higher. CITY shall be the sole and exclusive lead agency in the formation of any CFD, assessment district or other public financing mechanism within the Property; provided however, that the proceeds of any such CFD, assessment district, or financing mechanism may be used, subject to restrictions that may be imposed by applicable law, for the purposes of acquiring, constructing or maintaining public facilities to be owned or operated by other public agencies, including, without limitation those facilities owned or operated by a school district. In addition to the rights of the CITY pursuant to section 5.2 hereof, CITY shall have the right, but not the obligation, to condition the formation of any CFD, assessment district or other public financing mechanism within the Property on the OWNER mitigating all Project-related impacts to the applicable school district(s) as required by such school district(s). Written evidence by such school district(s) may be required by the CITY as the condition to the

formation of any CFD, assessment district or other public financing mechanism within the Property, or any steps preliminary thereto, including, without limitation, the adoption of any resolution of intention to form such CFD, assessment district or other public financing mechanism within the Property. It is not the intent of the parties hereto, by this provision, to prohibit or otherwise limit the City's ability to take any and all necessary steps requisite to the formation of the CFD to finance City services through annual special taxes as set forth in this Section 5.1. Formation of any CFD, assessment district or other public financing mechanism within the Property, shall be subject to CITY's ability to make all findings required by applicable law and complying with all applicable legal procedures and requirements including, without limitation, CITY's public financing district policies as such policies may be amended from time to time. Notwithstanding the foregoing, it is acknowledged and agreed by the parties that nothing contained in this Agreement shall be construed as requiring CITY or the City Council to form any such district or to issue and sell bonds.

6. REVIEW FOR COMPLIANCE.

6.1 Periodic and Special Reviews.

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

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

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

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

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

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

6.1.6 Procedure Upon Findings.

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

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

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

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

(a) The time and place of the hearing;

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

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

6.3 Hearing on Modification or Termination. At the time and place set for the hearing on modification or termination, the OWNER shall be given an opportunity to be heard. The OWNER shall be required to demonstrate good faith compliance with the terms and conditions of this Agreement. The burden of proof on this issue shall be on the OWNER. If the City Council finds, based upon substantial evidence in the administrative record, that the OWNER has not complied in good faith with the terms and conditions of the agreement, the City Council may terminate or modify this Agreement and impose those conditions to the action it takes as it considers necessary to protect the interests of the CITY. The decision of the City Council shall be final, subject only to judicial review pursuant to Section 1094.5 of the Code of Civil Procedure.

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

7. [RESERVED]

8. DEFAULT AND REMEDIES.

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

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

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

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

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

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

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

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

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

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

8.5 Termination of Agreement for Default of CITY. OWNER may terminate this Agreement only in the event of a default by CITY in the performance of a material term of

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

9. THIRD PARTY LITIGATION.

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

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

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

9.4 Environment Assurances. OWNER shall indemnify and hold CITY, its officers, agents, and employees free and harmless from any liability, based or asserted,

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

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

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

10. MORTGAGEE PROTECTION.

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

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

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

(c) If CITY timely receives a request from a Mortgagee requesting a copy of any notice of default given to OWNER under the terms of this Agreement, CITY shall provide a copy of that notice to the Mortgagee within ten (10) days of sending the notice of default

to OWNER. The Mortgagee shall have the right, but not the obligation, to cure the default during the remaining cure period allowed such party under this Agreement.

(d) Any Mortgagee who comes into possession of the Property, or any part thereof, pursuant to foreclosure of the mortgage or deed of trust, or deed in lieu of such foreclosure, shall take the Property, or part thereof, subject to the terms of this Agreement. Notwithstanding any other provision of this Agreement to the contrary, no Mortgagee shall have an obligation or duty under this Agreement to perform any of OWNER's obligations or other affirmative covenants of OWNER hereunder, or to guarantee such performance; provided, however, that to the extent that any covenant to be performed by OWNER is a condition precedent to the performance of a covenant by CITY, the performance thereof shall continue to be a condition precedent to CITY's performance hereunder, and further provided that any sale, transfer or assignment by any Mortgagee in possession shall be subject to the provisions of Section 2.4 of this Agreement.

11. MISCELLANEOUS PROVISIONS.

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

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

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

11.4 Interpretation and Governing Law. This Agreement and any dispute arising hereunder shall be governed and interpreted in accordance with the laws of the State of

California. This Agreement shall be construed as a whole according to its fair language and common meaning to achieve the objectives and purposes of the parties hereto, and the rule of construction to the effect that ambiguities are to be resolved against the drafting party shall not be employed in interpreting this Agreement, all parties having been represented by counsel in the negotiation and preparation hereof.

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

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

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

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

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

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

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

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

11.13 Successors in Interest. The burdens of this Agreement shall be binding upon, and the benefits of this Agreement shall inure to, all successors in interest to the parties to this Agreement. All provisions of this Agreement shall be enforceable as equitable servitudes and constitute covenants running with the land. Each covenant to do or refrain from doing some act hereunder with regard to development of the Property: (a) is for the benefit of and is a burden upon every portion of the Property; (b) runs with the Property and each portion thereof; and, (c) is binding upon each party and each successor in interest during ownership of the Property or any portion thereof.

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

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

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

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

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

11.19 Agent for Service of Process. In the event OWNER is not a resident of the State of California or it is an association, partnership or joint venture without a member, partner or joint venturer resident of the State of California, or it is a foreign corporation,

then in any such event, OWNER shall file with the Planning Director, upon its execution of this Agreement, a designation of a natural person residing in the State of California, giving his or her name, residence and business addresses, as its agent for the purpose of service of process in any court action arising out of or based upon this Agreement, and the delivery to such agent of a copy of any process in any such action shall constitute valid service upon OWNER. If for any reason service of such process upon such agent is not feasible, then in such event OWNER may be personally served with such process out of this County and such service shall constitute valid service upon OWNER. OWNER is amenable to the process so served, submits to the jurisdiction of the Court so obtained and waives any and all objections and protests thereto. OWNER for itself, assigns and successors hereby waives the provisions of the Hague Convention (Convention on the Service Abroad of Judicial and Extra Judicial Documents in Civil or Commercial Matters, 20 U.S.T. 361, T.I.A.S. No. 6638).

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

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

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

[SIGNATURES CONTAINED ON FOLLOWING PAGE]

**SIGNATURE PAGE
TO DEVELOPMENT AGREEMENT**

"OWNER"

Richland Developers, Inc.,
a Delaware corporation

By: _____
Name: _____
Its: _____
Date: _____

"CITY"

CITY OF ONTARIO

By: _____
Scott Ochoa
City Manager

Date: _____

ATTEST:

City Clerk, Ontario

APPROVED AS TO FORM:

BEST, BEST & KREIGER LLP

City Attorney

CALIFORNIA ALL-PURPOSE ACKNOWLEDGMENT

STATE OF STATE)
) ss.
COUNTY OF SAN BERNARDINO)

On _____, 2018 _____,
before me, _____,
Date Name And Title Of Officer (e.g. "Jane Doe, Notary Public")

personally appeared _____,
Name of Signer(s)

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

WITNESS my hand and official seal.

Signature of Notary Public

OPTIONAL

Though the data below is not required by law, it may prove valuable to persons relying on the document and could prevent fraudulent reattachment of this form.

CAPACITY CLAIMED BY SIGNER

- Individual
- Corporate Officer

Title(s)

- Partner(s) Limited General
- Attorney-In-Fact
- Trustee(s)
- Guardian/Conservator
- Other: _____

Signer is representing:
Name Of Person(s) Or Entity(ies)

DESCRIPTION OF ATTACHED DOCUMENT

Title or Type of Document

Number Of Pages

Date Of Document

Signer(s) Other Than Named Above

EXHIBIT "A" TO DEVELOPMENT AGREEMENT

Legal Description of Property

TRACT MAP NO. 18929

REAL PROPERTY IN THE CITY OF ONTARIO, COUNTY OF SAN BERNARDINO, STATE OF CALIFORNIA, DESCRIBED AS FOLLOWS:

PARCEL NO. 1:

THE EASTERLY 1830 FEET OF THE NORTHEAST 1/4 OF SECTION 22, TOWNSHIP 2 SOUTH, RANGE 7 WEST, SAN BERNARDINO BASE AND MERIDIAN, ACCORDING TO THE UNITED STATES GOVERNMENT TOWNSHIP PLAT THEREOF.

EXCEPTING THEREFROM THE SOUTH 1312 FEET THEREOF.

ALSO EXCEPTING THEREFROM THAT PORTION CONVEYED TO THE SAN BERNARDINO COUNTY FLOOD CONTROL DISTRICT, A BODY CORPORATE AND POLITIC BY GRANT DEED RECORDED NOVEMBER 18, 1977 AS INSTRUMENT NO. 390, IN BOOK 9308, PAGE 683 OF OFFICIAL RECORDS.

ALSO EXCEPTING THEREFROM ALL OIL, GAS, MINERALS AND HYDROCARBON SUBSTANCES LYING BELOW A DEPTH OF 500 FEET FROM THE SURFACE OF SAID LAND FOR THE PURPOSE OF EXPLORING FOR, BORING, EXTRACTING, DRILLING, MINING, PROSPECTING FOR, REMOVING OR MARKETING SAID SUBSTANCES AS CONVEYED IN THE DEED FROM RINKER DEVELOPMENT CORP., TO HARKER DEVELOPMENT CORP., BY DOCUMENT RECORDED IN BOOK 6910, PAGE 174 OF OFFICIAL RECORDS.

TRACT MAP NO. 18930

BEING A PORTION OF THE SOUTHERLY 1312.00 FEET OF THE NORTHEAST QUARTER OF SECTION 22, TOWNSHIP 2 SOUTH, RANGE 7 WEST, SAN BERNARDINO BASE AND MERIDIAN, IN THE COUNTY OF SAN BERNARDINO, STATE OF CALIFORNIA, ACCORDING TO THE OFFICIAL PLAT THEREOF, ALSO SHOWN ON A RECORD OF SURVEY FILED IN BOOK 30, PAGE 27 OF RECORD OF SURVEYS, IN THE OFFICE OF THE COUNTY RECORDER OF SAID COUNTY. MORE PARTICULARLY DESCRIBED AS FOLLOWS:

BEGINNING AT THE SOUTHEAST CORNER OF SAID NORTHEAST QUARTER OF SECTION 22, ALSO BEING THE CENTERLINE INTERSECTION OF MERRILL AVENUE, 50.00 FEET WIDE, AND ARCHIBALD AVENUE, 60.00 FEET WIDE, AS SHOWN ON SAID RECORD OF SURVEY;

THENCE ALONG SAID CENTERLINE OF MERRILL AVENUE NORTH 89° 43' 20" WEST, 1629.70 FEET TO THE SOUTHEAST CORNER OF THAT PARCEL OF LAND DESCRIBED IN DOCUMENT RECORDED IN BOOK 9259, PAGE 335, OFFICIAL RECORDS OF SAID COUNTY;

THENCE ALONG THE EASTERLY LINE OF SAID PARCEL NORTH 39° 22' 40" WEST, 154.96 FEET TO A POINT ON A 12,110.00 FOOT RADIUS, NON-TANGENT CURVE, CONCAVE WESTERLY, A RADIAL LINE TO SAID POINT BEARS SOUTH 87° 05' 52" EAST,

THENCE CONTINUING ALONG SAID EASTERLY LINE, NORTHERLY ALONG SAID CURVE THROUGH A CENTRAL ANGLE OF 02° 44' 12" AN ARC DISTANCE OF 578.42 FEET;

THENCE CONTINUING ALONG SAID EASTERLY LINE, NORTH 00° 09' 56" EAST, 272.35 FEET;

THENCE CONTINUING ALONG SAID EASTERLY LINE, NORTH 89° 50' 04" WEST, 15.00 FEET;

THENCE CONTINUING ALONG SAID EASTERLY LINE, NORTH 00° 09' 56" EAST, 342.15 FEET TO THE NORTHERLY LINE OF SAID SOUTHERLY 1312.00 FEET OF THE NORTHEAST QUARTER OF SECTION 22;

THENCE ALONG SAID NORTHERLY LINE SOUTH 89° 43' 20" EAST, 1729.95 FEET TO SAID CENTERLINE OF ARCHIBALD AVENUE;

THENCE ALONG SAID CENTERLINE SOUTH 00° 11' 00" WEST, 1312.00 FEET TO THE POINT OF BEGINNING,

CONTAINING 51.73 ACRES, MORE OR LESS.

EXHIBIT "B" TO DEVELOPMENT AGREEMENT

Map showing Property and its location

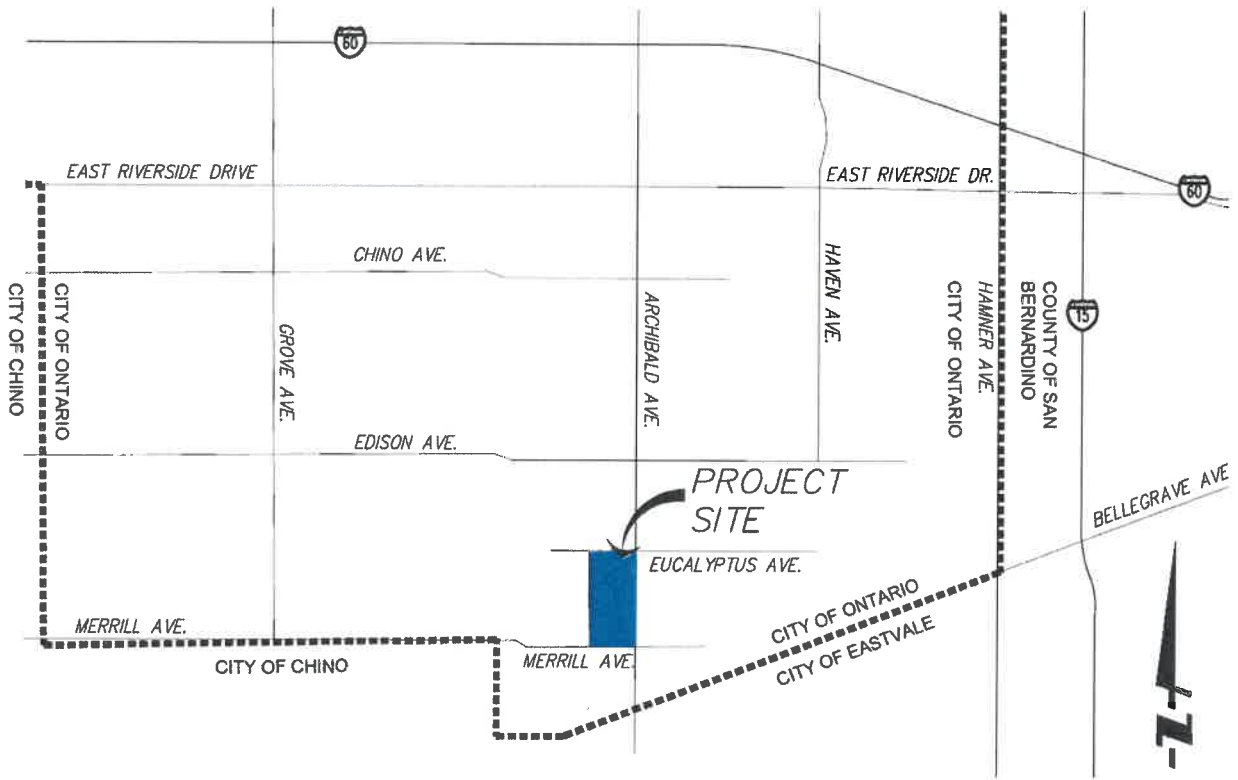


EXHIBIT "C"
TO DEVELOPMENT AGREEMENT
Existing Development Approvals

On September 26, 2006, the Planning Commission:

- a) Issued Resolution No. PC06-095 recommending City Council adopt and certify the Subarea 29 Specific Plan (File No. PSP03-003) Environmental Impact Report;
- b) Issued Resolution No. PC06-096 recommending City Council approval of the General Plan Amendment (File No. PGPA06-003); and
- c) Issued Resolution No. PC06-097 recommending City Council approval of the Subarea 29 Specific Plan (File No. PSP03-003).

On October 17, 2006, the City Council:

- a) Issued Resolution No. 2006-089 certifying the Subarea 29 Specific Plan (File No. PSP03-003) Environmental Impact Report;
- b) Issued Resolution No. 2006-090 approving the General Plan Amendment (File No. PGPA06-003);

On November 7, 2006, the City Council:

- a) Issued Ordinance No. 2845 approving of the Subarea 29 Specific Plan (File No. PSP03-003);

On March 27, 2007, the Planning Commission:

- b) Issued Resolution No. PC07-036 recommending City Council approval an Amendment to the Subarea 29 Specific Plan (File No. PSPA07-003).

On May 1, 2007, the City Council:

- a) Issued Resolution No. 2007-053 approving an amendment to the Subarea 29 Specific Plan (File No. PSPA07-003)

On February 26, 2008, the Planning Commission:

- a) Issued Resolution No. PC08-007 recommending City Council approval an Amendment to the Subarea 29 Specific Plan (File No. PSPA07-007).

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

On March 18, 2008 the City Council:

- a) Issued Resolution No. 2008-017 approving an amendment to the Subarea 29 Specific Plan (File No. PSPA07-007).

On August 28, 2013, the Zoning Administrator:

- a) Issued Decision No. 2013-025 approving a minor amendment to the Subarea 29 Specific Plan (File No. PSPA13-002).

On March 24, 2015, the Planning Commission:

- a) Issued Resolution No. PC15-034 recommending City Council approval an Addendum to the Subarea 29 Specific Plan EIR (File No. PSPA14-002).
- b) Issued Resolution No. PC15-035 recommending City Council approval an Amendment to the Subarea 29 Specific Plan (File No. PSPA14-002).

On April 21, 2015 the City Council:

- a) Issued Resolution No. 2015-030 approving an Addendum to the Subarea 29 Specific Plan EIR (File No. PSPA14-002).
- b) Issued Resolution No. 2015-031 approving an amendment to the Subarea 29 Specific Plan (File No. PSPA14-002).

On August 28, 2018, the Planning Commission:

- a) Issued Resolution No. PC18-081 recommending City Council Tentative Cancellation of Williamson Act Contract 77-515 (File No. PWIL18-002).
- b) Issued Resolution No. PC18-086 approving Tentative Tract Map 18929 (File No. PMTT13-016) and Resolution No. PC18-082 approving Tentative Tract Map 18930 (File No. PMTT13-017).

EXHIBIT "D"
TO DEVELOPMENT AGREEMENT

Existing Land Use Regulations

These documents are listed for reference only:

1. Subarea 29 Specific Plan Environmental Impact Report, Resolution No. 2006-089.
2. Subarea 29 Specific Plan (File No. PSP03-003), Ordinance No. 2845.
3. City of Ontario Municipal Code
 - a. Six – Sanitation & Health
 - b. Seven – Public Works
 - c. Eight – Building Regulations
 - d. Nine – Development Code
 - e. Ten – Parks & Recreation

Exhibit "E"
TO DEVELOPMENT AGREEMENT
Phasing Plan

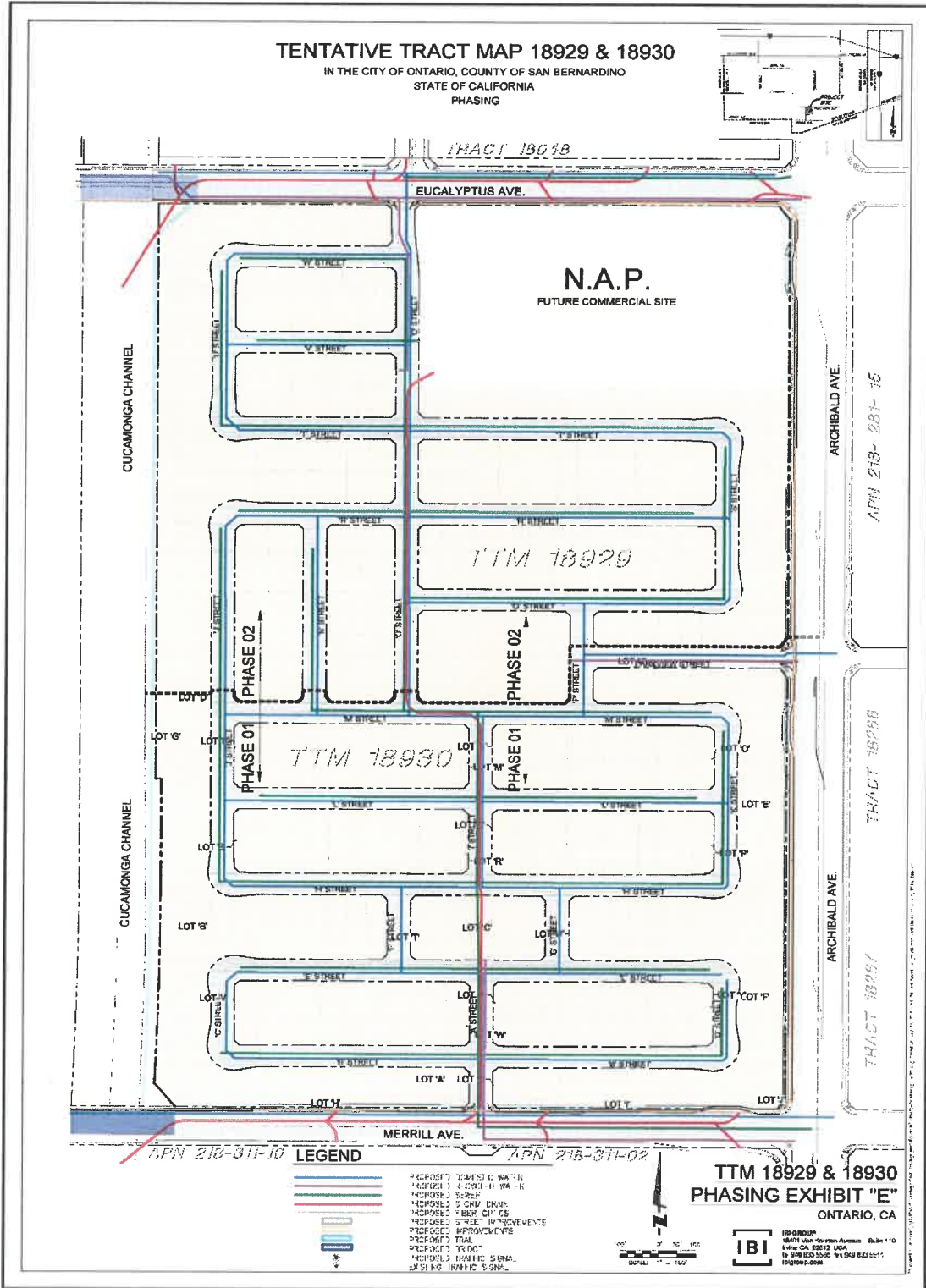
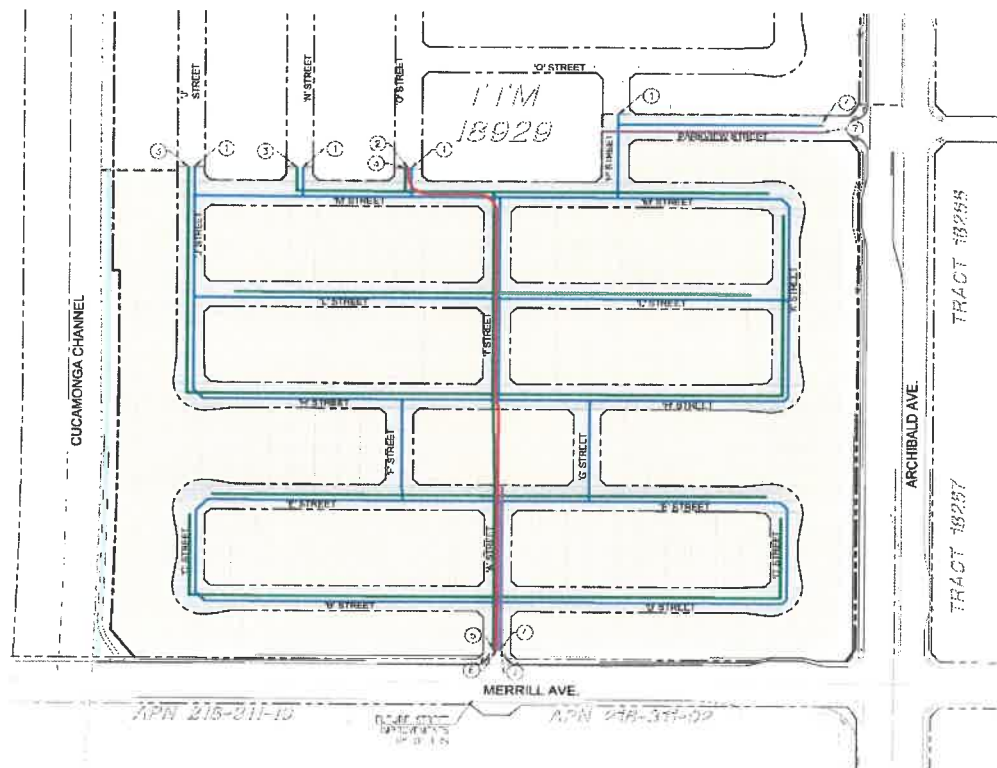


Exhibit "F-1"

TO DEVELOPMENT AGREEMENT Required Infrastructure Improvements

TENTATIVE TRACT MAP 18930
IN THE CITY OF ONTARIO, COUNTY OF SAN BERNARDINO
STATE OF CALIFORNIA
ONSITE INFRASTRUCTURE IMPROVEMENTS

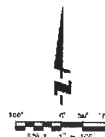


INFRASTRUCTURE IMPROVEMENTS

- ① FUTURE CONNECTION TO DOMESTIC WATER FOR TTM 18929
- ② FUTURE CONNECTION TO STORM DRAIN FOR TTM 18929
- ③ FUTURE CONNECTION TO SANITARY SEWER FOR TTM 18929
- ④ CONNECT TO EXISTING DOMESTIC WATER LINE
- ⑤ CONNECT TO EXISTING SEWER LINE
- ⑥ CONNECT TO EXISTING STORM DRAIN LINE
- ⑦ CONNECT TO EXISTING WASTEWATER TREATMENT

LEGEND

- PROPOSED DOMESTIC WATER
- PROPOSED SEWER
- PROPOSED STORM DRAIN
- PROPOSED DRIVE TO WATER LINE
- PROPOSED STREET IMPROVEMENTS
- PROPOSED DRIVE TO WATER LINE
- PROPOSED DRIVE TO WATER LINE



TTM 18930
EXHIBIT "F-1"

ONTARIO, CA

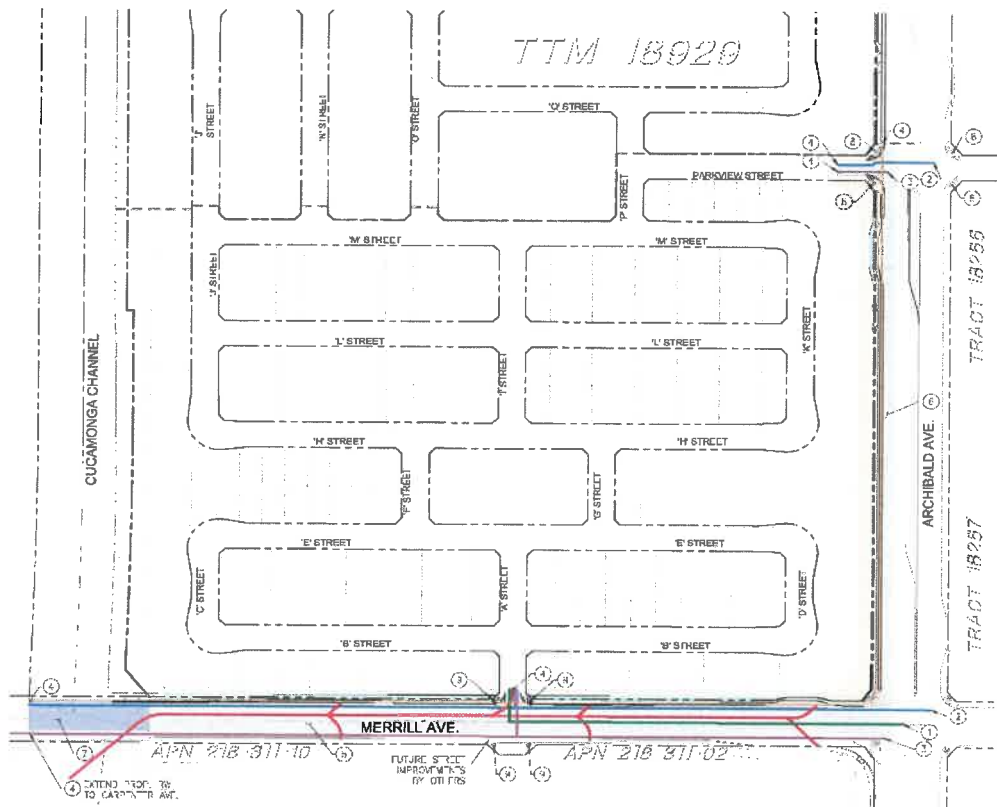


18451 Van Gorman Avenue, Suite 110
Irvine, CA 92612 USA
Tel: 949.251.1000 Fax: 949.251.1001
ibi@ibigroup.com

Exhibit "F-2"

TO DEVELOPMENT AGREEMENT Required Infrastructure Improvements

TENTATIVE TRACT MAP 18930 IN THE CITY OF ONTARIO, COUNTY OF SAN BERNARDINO STATE OF CALIFORNIA OFFSITE INFRASTRUCTURE IMPROVEMENTS

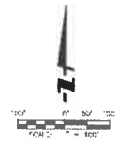


CONSTRUCTION NOTE TABLE

- ① CONNECT TO EXISTING SEWER LINE
- ② CONNECT TO EXISTING DOMESTIC WATER LINE
- ③ CONNECT TO EXISTING FORCE MAIN LINE
- ④ CONNECTION FOR CURB IMPROVEMENTS
- ⑤ THIS DRAWING IS RESPONSIBLE TO PROVIDE ALL NECESSARY INFORMATION ON THE ADJACENT PARCELS TO BE CONSIDERED FOR THE PROPOSED IMPROVEMENTS. THIS DRAWING IS NOT TO BE USED FOR ANY OTHER PURPOSES. THE USER OF THIS DRAWING IS RESPONSIBLE FOR VERIFYING THE ACCURACY OF ALL INFORMATION AND FOR OBTAINING ALL NECESSARY PERMITS AND APPROPRIATE "AS-BUILT" RECORDS TO ACCOMMODATE LANE SHIFTS.
- ⑥ THIS DRAWING IS RESPONSIBLE TO PROVIDE ALL NECESSARY INFORMATION ON THE ADJACENT PARCELS TO BE CONSIDERED FOR THE PROPOSED IMPROVEMENTS. THIS DRAWING IS NOT TO BE USED FOR ANY OTHER PURPOSES. THE USER OF THIS DRAWING IS RESPONSIBLE FOR VERIFYING THE ACCURACY OF ALL INFORMATION AND FOR OBTAINING ALL NECESSARY PERMITS AND APPROPRIATE "AS-BUILT" RECORDS TO ACCOMMODATE LANE SHIFTS.
- ⑦ BUILDUP SHALL BE THE RESPONSIBILITY OF THE ADJACENT PARCELS TO BE CONSIDERED FOR THE PROPOSED IMPROVEMENTS. THIS DRAWING IS NOT TO BE USED FOR ANY OTHER PURPOSES. THE USER OF THIS DRAWING IS RESPONSIBLE FOR VERIFYING THE ACCURACY OF ALL INFORMATION AND FOR OBTAINING ALL NECESSARY PERMITS AND APPROPRIATE "AS-BUILT" RECORDS TO ACCOMMODATE LANE SHIFTS.
- ⑧ EXISTING SIGNAL SIGNAL MAY BE REQUIRED
- ⑨ THE USER SHALL BE RESPONSIBLE TO INSTALL NEW TRAFFIC SIGNAL

LEGEND

- PROPOSED DOMESTIC WATER
- PROPOSED FORCE MAIN
- PROPOSED SEWER
- PROPOSED SIGN DRAWN
- PROPOSED HIGH SPEED
- PROPOSED STREET IMPROVEMENTS
- PROPOSED IMPROVEMENTS PER TTM 18930
- PROPOSED TRAIL
- PROPOSED BRIDGE
- PROPOSED TRAFFIC SIGNAL
- EXISTING TRAFFIC SIGNAL



**TTM 18930 DA
EXHIBIT "F-2"**

ONTARIO, CA
IBI GROUP
18411 Main Avenue, Suite 110
Ontario, CA 91764 USA
Tel: 951.952.5555 Fax: 951.952.5555
www.ibigroup.com

Exhibit "F-3"

TO DEVELOPMENT AGREEMENT Required Infrastructure Improvements

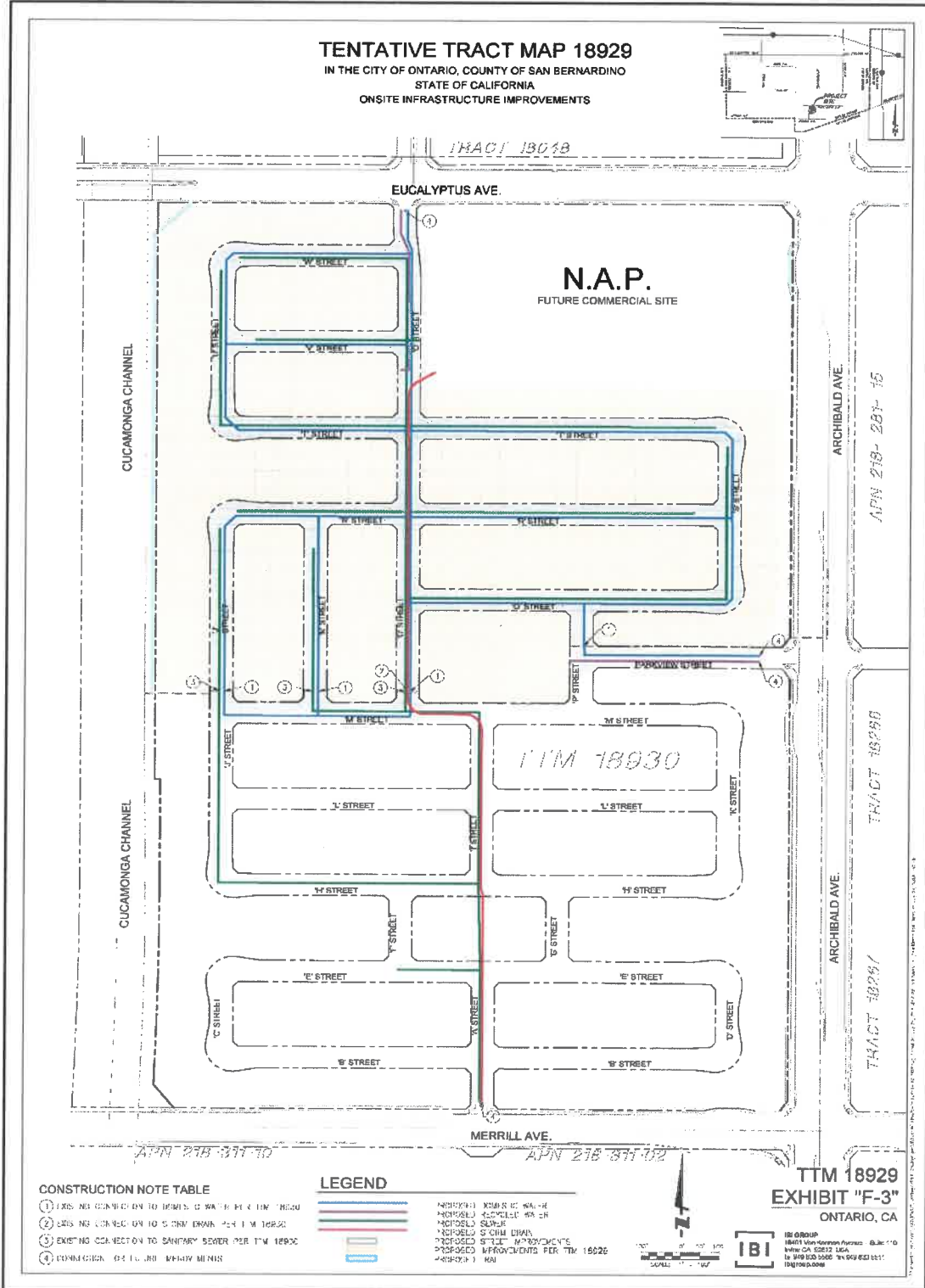
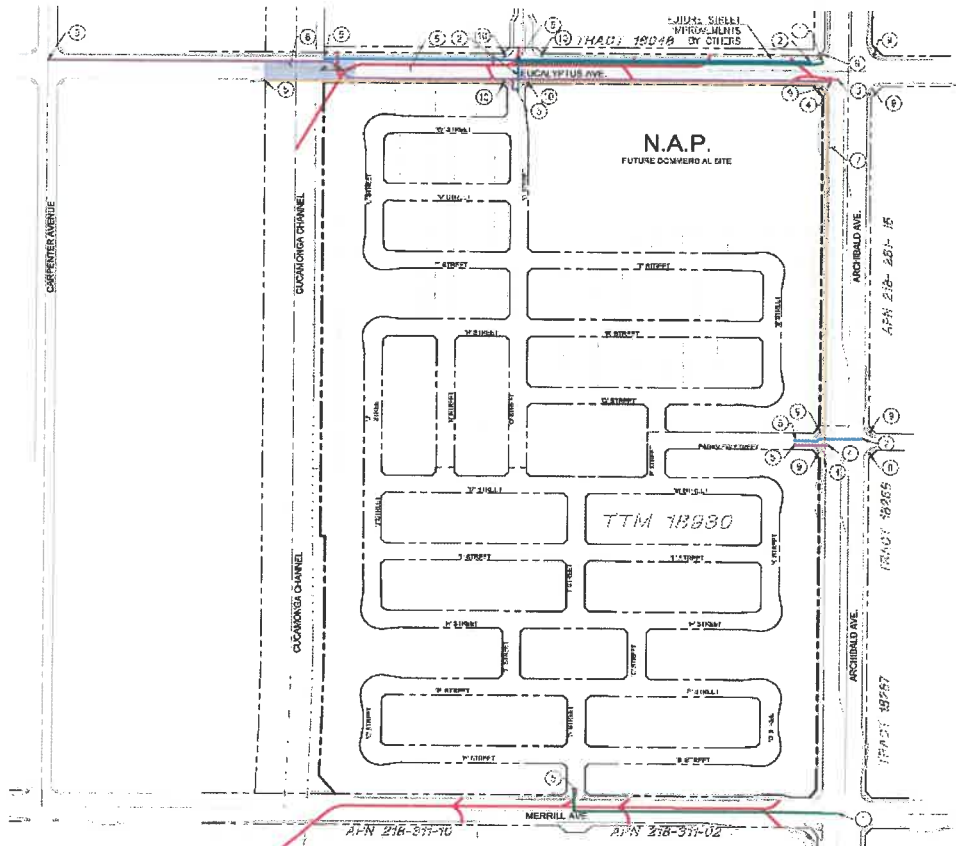


Exhibit "F-4"

TO DEVELOPMENT AGREEMENT Required Infrastructure Improvements

TENTATIVE TRACT MAP 18929
IN THE CITY OF ONTARIO, COUNTY OF SAN BERNARDINO
STATE OF CALIFORNIA
OFFSITE INFRASTRUCTURE IMPROVEMENTS

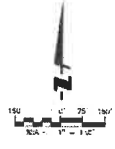


CONSTRUCTION NOTE TABLE

- ① CONNECT TO EXISTING SEWER LINE.
- ② CONNECT TO EXISTING DOMESTIC WATER L.I.
- ③ CONNECT TO EXISTING STORM MAIN LINE.
- ④ CONNECT TO EXISTING RECYCLED WATER LINE.
- ⑤ CONNECTION TO FUTURE IMPROVEMENTS.
- ⑥ DEVELOPER SHALL BE RESPONSIBLE TO CONTRACT WITH CITY APPROVEDS ON THE WEST SIDE INCLUDING CURB & GUTTER, PAVEMENT, WALK-FURROW, SIDEWALK, STREET LIGHTS, SIGNING & STRIPING, PARKWAY LANDSCAPING, & UN A 5' MIN TYPICAL WESTBOUND LANE (NORTH SIDE), 8' SHOULDER (NORTH SIDE), ULTIMATE UTILITIES UNDER PAVEMENT AND APPROPRIATE PAVEMENT TRANSITION TO ACCOMMODATE LAND SITES.
- ⑦ DEVELOPER SHALL BE RESPONSIBLE TO DESIGN & CONSTRUCT BRIDGE ON THE WEST SIDE OF THE S. SIDE, CURB & GUTTER, PARKWAY LANDSCAPING, SIDEWALK AND A MULTI-LANED BRIDGE.
- ⑧ DEVELOPER SHALL DESIGN AND CONSTRUCT THE EUCALYPTUS AVENUE BRIDGE AT THE CUCUMBERA CREEK CHANNEL CROSSING. THE BRIDGE SHALL BE CONSTRUCTED TO ITS ULTIMATE WIDTH ON THE SOUTHERN HALF AND ONE WESTBOUND LANE.
- ⑨ EXISTING SIGNAL SIGNAL WOOD MAY BE REQUIRED.
- ⑩ 1'-4" HIGH & 4" DIA. IN 4-SPACING - TO MATCH N-W 1/4 - C SERVICE.

LEGEND

- PROPOSED DOMESTIC MAIN
- PROPOSED 4" - 10" DIA. W
- PROPOSED SEWER
- PROPOSED STORM MAIN
- PROPOSED FIBER OPTICS
- PROPOSED STAFF IMPROVEMENTS
- PROPOSED TA
- PROPOSED TRUNK
- PROPOSED 4" - 10" DIA. W
- EXISTING 4" - 10" DIA. W



TTM 18929
EXHIBIT "F-4"
ONTARIO, CA
IBI GROUP
1801 Van Goyne Avenue, Suite 110
Inglewood, CA 90215 USA
Tel: 310.533.0000 Fax: 310.533.0001
ibi@ibigroup.com



**Exhibit "G" TO DEVELOPMENT AGREEMENT
Form of Plume Disclosure Letter**



PAUL S. LEON
MAYOR

DEBRA DORST-PORADA
MAYOR PRO TEM

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

March 2017

AL C. BOLING
CITY MANAGER

SHEILA MAUTZ
CITY CLERK

JAMES R. MILHISER
TREASURER

SCOTT BURTON
UTILITIES GENERAL MANAGER

**DISCLOSURE NOTICE
SOUTH ARCHIBALD TRICHLOROETHYLENE PLUME**

Dear Property Owner/Developer/Applicant:

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

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

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

Further and current information may be found on the Regional Board's Geotracker website at https://geotracker.waterboards.ca.gov/profile_report?global_id=T10000004658.

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

CITY OF ONTARIO

Agenda Report
September 18, 2018

SECTION:
PUBLIC HEARINGS

SUBJECT: A PUBLIC HEARING TO CONSIDER FILE NO. PWIL18-003, A PETITION TO CANCEL WILLIAMSON ACT CONTRACT NO. 77-515 (FILE NO. PWIL18-003), FOR 54.81 ACRES OF LAND LOCATED AT THE SOUTHWEST CORNER OF ARCHIBALD AVENUE AND EUCALYPTUS AVENUE AT 14610 SOUTH ARCHIBALD AVENUE, WITHIN THE CONVENTIONAL SMALL LOT RESIDENTIAL DISTRICT OF PLANNING AREA 1 AND WITHIN THE NEIGHBORHOOD COMMERCIAL CENTER DISTRICT OF PLANNING AREA 2 OF THE SUBAREA 29 SPECIFIC PLAN (APN:0218-271-11)

RECOMMENDATION: That the City Council consider and adopt a resolution approving the Tentative Cancellation Land Conservation Contract No. 77-515, File No. PWIL18-003.

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 cancellation of Land Conservation Contract No. 77-515 will have a positive impact on revenue as property taxes for the project area will be reassessed based on residential and commercial land uses rather than agriculture.

BACKGROUND: Agricultural lands under a Williamson Act Contract are governed by the California Land Conservation Act of 1965, also known as the Williamson Act. Upon annexation, the City of Ontario assumed responsibility for administration of the Land Conservation Contracts which existed in the Ontario Ranch area. The City adopted the Agricultural Overlay Zoning District, or a "Right-to-Farm" Ordinance, that would allow existing agricultural uses within Ontario Ranch to continue for as long as the landowner desired.

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

Prepared by: Rudy Zeledon
Department: Planning
City Manager Approval: 

Submitted to Council/O.H.A. 09/18/2018
Approved: _____
Continued to: _____
Denied: _____

13

Richland Communities has submitted a petition to cancel Land Conservation Contract No. 77-515. The subject property totals 54.81 acres of land and is located at the southwest corner of Archibald Avenue and Eucalyptus Avenue, within the Conventional Small Lot Residential district of Planning Area 1 and within the Neighborhood Commercial Center district of Planning Area 2 of the Subarea 29 Specific Plan. The Williamson Act Contract Cancellation has been submitted in conjunction with a Tentative Tract Map (File No. PMTT13-016/TT 18929) which proposes to subdivide the 54.81 acres of land into 207 residential numbered lots and 24 lettered lots for public streets, pocket park and landscape neighborhood edges. On August 28, 2018, the Planning Commission approved the related Tentative Tract Map subject to City Council approval of the Tentative Cancellation of Land Conservation Contract No. 77-515.

CANCELLATION FEE: As required by the Williamson Act, there is a penalty fee for cancellation of an Agricultural Contract. The fee is equal to 12.5 percent of the unrestricted base value of the land. The property appraisal, as determined by the County Assessor's Office, is valid for one year from the date of assessment. The fee for the subject property totals \$2,116,586. As required by the Williamson Act, a copy of the Assessor's value appraisal was sent to the Director of the Department of Conservation on April 12, 2018, to allow the opportunity to request a formal review from the Assessor. To date, a request has not been received.

REQUIRED FINDINGS: The cancellation process for Williamson Act Contracts identifies findings which must be made in order to cancel a Contract. The City Council must find that the proposed cancellation is consistent with the purposes of the Williamson Act or is in the public interest. Staff has reviewed the request and believes that the cancellation is consistent with the purposes of the Williamson Act as follows:

1. The cancellation is for land on which a Notice of Non-Renewal has been served.
2. Cancellation is not likely to result in the removal of adjacent lands from agricultural use.
3. Cancellation is for an alternative use which is consistent with the applicable provisions of the City's General Plan.
4. Cancellation will not result in discontinuous patterns of urban development.
5. There is no proximate non-Contracted land, which is both available and suitable for the alternative proposed use or that development of the subject property will provide more contiguous patterns of urban development than development of proximate non-Contracted land.

The findings are identified in the attached resolution. Following each required finding is the supporting statements that satisfy the requirements for cancellation.

CONDITIONS AND CONTINGENCIES: The following conditions and contingencies will be required to be satisfied upon approval of the Tentative Cancellation by the City Council and before Final Cancellation. All applicable conditions must be satisfied within one year of the date of recording of the Certificate of Tentative Cancellation. Conditions and contingencies include:

1. Upon approval, a Certificate of Tentative Cancellation must be recorded with the County Clerk;

2. Payment in full of the penalty fee. If the fee is not paid or a Certificate of Cancellation is not issued within one year from the date of the recording of the Tentative Cancellation, the fee shall be recomputed; and
3. Obtain all approvals necessary (including Specific Plan, EIR adoption, and Tentative Map(s) to commence the specified alternative use.

Within 30 days of satisfaction of the conditions, the City Council must execute and record a Certificate of Final Cancellation of Contract.

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 207 (432 total dwelling units within Planning Area 1) and density (3.78 DU/AC) specified within the Subarea 29 Specific Plan. Per the Available Land Inventory, the Subarea 29 Specific Plan is required to provide 2,293 dwelling units with a density range of 4-8 DU/AC.

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

ENVIRONMENTAL REVIEW: The environmental impacts of this project were previously reviewed in conjunction with File No. PSP03-003, the Subarea 29 Specific Plan EIR (SCH# 2004011009) certified by the City Council on October 17, 2006. This Application introduces no new significant environmental impacts. All previously adopted mitigation measures are be a condition of project approval and are incorporated herein by reference.

PLANNING COMMISSION REVIEW: On August 28, 2018, the Planning Commission conducted a public hearing and voted (6-0) to recommend City Council approval of the Tentative Cancellation of Williamson Act Contract No. 77-515 (File No. PWIL18-003).

RESOLUTION NO. _____

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF ONTARIO, CALIFORNIA, APPROVING FILE NO. PWIL18-003, A TENTATIVE CANCELLATION OF LAND CONSERVATION CONTRACT NUMBER 77-515 FOR 54.81 ACRES OF LAND GENERAL LOCATED AT THE SOUTHWEST CORNER OF EUCALYPTUS AVENUE AND ARCHIBALD AVENUE AT 14610 SOUTH ARCHIBALD AVENUE, WITHIN PLANNING AREAS 1 AND 2 OF THE SUBAREA 29 SPECIFIC PLAN AND MAKING FINDINGS IN SUPPORT THEREOF—APN: 0218-271-11.

WHEREAS, RICHLAND REAL ESTATE FUND, LLC, ("Applicant") has filed an Application for the approval of the cancellation of Land Conservation Contract Number 77-515, File No. PWIL18-003, as described in the title of this Resolution (hereinafter referred to as "Application" or "Project"); and

WHEREAS, the Application applies to 54.81 acres of land located at the southwest corner of Eucalyptus Avenue and Archibald Avenue at 14610 South Archibald Avenue, within Planning Areas 1 and 2 of the Subarea 29 Specific Plan, and is presently improved with agriculture uses; and

WHEREAS, the property to the north of the Project site is within Planning Areas 4 (Multi-Family Attached) and 5 (Single-Family Detached) of the Parkside Specific Plan, and is presently improved with agriculture uses. The property to the south is within Planning 1 of the Subarea 29 Specific Plan and developed with agriculture uses. The property to the east is located within Planning Area 3 (Single Family Conventional) of the Subarea 29 Specific Plan and is under development with residential homes. The property to the west is zoned Non Recreational Open Space and developed with the Cucamonga Creek Channel.

WHEREAS, the subject property was annexed into the City of Ontario on November 30, 1999; and

WHEREAS, the City of Ontario certified the *Ontario Sphere of Influence Final Environmental Impact Report* in January 7, 1998. The Final EIR evaluated the potential impacts to prime agricultural land and to agricultural productivity that would result from the full and complete build-out of the New Model Colony (NMC) pursuant the General Plan Amendment. The Final EIR concluded that the conversion of agricultural uses to urban uses within the NMC would result in significant and unavoidable impacts to agriculture, therefore a Statement of Overriding Considerations was approved; and

WHEREAS, the City, upon annexation, assumed responsibility for administration of the Land Conservation Contracts which existed in the annexed area; and

WHEREAS, the City Ontario certified the Environmental Impact Report for The Ontario Plan (TOP) on January 27, 2010. The adoption of TOP also included the approval of the Policy Plan (General Plan), which replaced the previous Ontario General Plan and

New Model Colony General Plan Amendment. The Final TOP EIR concluded that the conversion of agricultural uses to urban uses within Ontario Ranch (NMC) would result in significant and unavoidable impacts to agriculture, therefore a Statement of Overriding Considerations was approved.

WHEREAS, The City's the Agricultural Overlay Zoning District, or a "right-to-farm" ordinance (Development Code Division 6.01, Section 6.01.035), allows existing agricultural uses within Ontario Ranch to continue for as long as the landowner desires; and

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

WHEREAS, the environmental impacts of this project were reviewed in conjunction with Subarea 29 Specific Plan File No. PSP03-003, Environmental Impact Report (SCH#2004011009) certified by the City Council on October 17, 2006; 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, the project site is located within the Airport Influence Area of the Ontario International Airport (ONT), and has been found to be consistent with the policies and criteria set forth within the ALUCP for ONT. The project site is also located within the Airport Influence area of Chino Airport and is consistent with policies and criteria set forth within the 2011 California Airport Land Use Planning Handbook published by the California Department of Transportation, Division of Aeronautics; and

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

WHEREAS, on August 28, 2018, the Planning Commission of the City of Ontario conducted a hearing to consider the Project, and concluded said hearing on that date, voting (6-0) to issue Resolution No. PC18-081, recommending the City Council approve the Application; 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, on September 18, 2018, the City Council of the City of Ontario conducted a hearing to consider the Project, and concluded said hearing on that date; and

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

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

SECTION 1. *Environmental Determination and Findings.* As the decision-making body for the Project, the City Council has reviewed and considered the information contained in the Subarea 29 Specific Plan Environmental Impact Report (SCH#2004011009) and supporting documentation. Based upon the facts and information contained in the Subarea 29 Specific Plan Environmental Impact Report (SCH#2004011009) and supporting documentation, the City Council finds as follows:

(1) The Subarea 29 Specific Plan Environmental Impact Report (SCH#2004011009) contains a complete and accurate reporting of the environmental impacts associated with the Project; and

(2) The Subarea 29 Specific Plan Environmental Impact Report (SCH#2004011009) was completed in compliance with CEQA and the Guidelines promulgated thereunder; and

(3) The Subarea 29 Specific Plan Environmental Impact Report (SCH#2004011009) reflects the independent judgment of the City Council; and

(4) All applicable mitigation measures adopted with the certification by the City Council of the Subarea 29 Specific Plan Environmental Impact Report (SCH#2004011009) will become a condition of project approval.

SECTION 2. *Housing Element Compliance.* Pursuant to the requirements of California Government Code Chapter 3, Article 10.6, commencing with Section 65580, as the decision-making body for the Project, the City Council finds that based on the facts and information contained in the Application and supporting documentation, at the time of Project implementation, the project is consistent with the Housing Element of the Policy Plan (General Plan) component of The Ontario Plan. The project site is one of the properties listed in the Available Land Inventory contained in Table A-3 (Available Land by Planning Area) of the Housing Element Technical Report Appendix, and the proposed project is consistent with the maximum number of dwelling units (432) and density (5.2 DU/AC) specified within the Subarea 29 Specific Plan. Per the Available Land Inventory, the Subarea 29 Specific Plan is required to provide 2,293 dwelling units with a density range of 4-8 DU/AC.

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. The project site is also located within the Airport Influence area of Chino Airport and is consistent with policies and criteria set forth within the 2011 California Airport Land Use Planning Handbook published by the California Department of Transportation, Division of Aeronautics.

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

a. **The cancellation is for land on which a Notice of Non-Renewal has been served.** Pursuant with Government Code § 51245 a Notice of Non-Renewal of Land Conservation Contract Numbers 77-515, was on recorded July 25, 2014, as Instrument No. 2014-0269861, Official Records, has been served.

b. **Cancellation is not likely to result in the removal of adjacent lands from agricultural use.** Cancellation of the Land Conservation Contract No. 77-515 is not likely to result in the removal of adjacent lands from agricultural uses. Dairy and agriculture uses exist to the south of the subject property within the Subarea 29 Specific Plan, to the north (across Eucalyptus Avenue) within the Parkside Specific Plan and to the west across the Cucamonga Flood Control Channel. The change in use in this parcel would be due to the development of the specific plan and not to the cancellation of land conservation contract. Moreover, the policy decision to transition uses in the area from agriculture to urban was made when the City adopted TOP Policy Plan. The environmental consequences of that decision were analyzed in the Environmental Impact Report certified in conjunction with The Ontario Plan (TOP). Thus, the City's prior planning decision, and not the cancellation of the contract associated with this project, would be the cause of any influence on the decision to remove land from agricultural use. Additionally, to ease the transition from agricultural to urban uses and to minimize conflicts between the two uses, the City has adopted an Agricultural Overlay District.

c. **Cancellation is for an alternative use which is consistent with the applicable provisions of the City's General Plan.** The City of Ontario Policy Plan (General Plan) zones the subject property for Specific Plan. The subject property located within Planning Area 1 (Single Family Residential) and Planning 2 (Commercial) of the Subarea 29 Specific Plan and is planned in accordance with the City of Ontario Policy Plan's (General Plan) land use designation of Low Density Residential (2.1- 5 du/ac) and Neighborhood Commercial (0.40 FAR) as illustrated by Exhibit LU-01 "Land Use Plan" of the Policy Plan (General Plan).

d. ***Cancellation will not result in discontinuous patterns of urban development. The cancellation of the Land Conservation Contracts will not result in discontinuous patterns of urban development.*** The cancellation of the Land Conservation Contract will not result in discontinuous patterns of urban development. The subject property is part of Subarea 29 Specific Plan. The Ontario Plan Policy Plan (General Plan) includes requirements for subsequent approval by the City of a Specific Plan for development within Ontario Ranch. Specific Plans are required to ensure that sufficient land area is included to achieve unified districts and neighborhoods. The Subarea 29 Specific Plan incorporates the development framework for detailed land use, circulation, infrastructure including drainage, sewer, and water facilities, provision for public services including parks and schools, and urban design and landscape plans. Also, existing and future residential tracts bound the project site to the north, south and east, within the Parkside Specific Plan and the Subarea 29 Specific Plan. In addition, all lands within the Ontario Ranch area (Approximately 8,200 acres south of Riverside Drive, north of Merrill Avenue\Bellegrave Channel, east of Euclid Avenue and West of Hamner Avenue), between the project site and existing urban areas will be urbanized in the near future, the cancellation of the Williamson Act contract associated with the Project would not result in leap-frog development.

e. ***There is no proximate non-Contracted land, which is both available and suitable for the alternative proposed use or that development of the subject property will provide more contiguous patterns of urban development than development of proximate non-Contracted land.*** The cancellation of the Land Conservation Contract No. 77-515 will not result in discontinuous patterns of urban development. The contracted land lies within the boundaries of Subarea 29 Specific Plan. The adjacent non-contracted land to the north is within the Parkside Specific Plan and will be developed with future residential development. To the south and east, the properties are within the Subarea 29 Specific Plan (non-contracted) and developed with existing and future single family homes. The west, across the Cucamonga Creek Channel, is the proposed West Ontario Commerce Center Specific Plan (contracted and non-contracted) that is planned for industrial development. Development of the subject site and adjacent non-contracted land within the Subarea 29 Specific Plan will eliminate "leap frog" development. Furthermore, since the subject site is within Specific Plan, once the adjacent parcels are developed it will provide for more contiguous patterns of urban development than development of proximate non-contracted land.

SECTION 5. City Council Action. Based upon the findings and conclusions set forth in Sections 1 through 4, above, the City Council hereby APPROVES the herein described Application, attached hereto as "Attachment A," and incorporated herein by this reference.

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

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

SECTION 8. Certification to Adoption. The Secretary shall certify to the adoption of the Resolution.

PASSED, APPROVED, AND ADOPTED this 18th day of September 2018.

PAUL S. LEON, MAYOR

ATTEST:

SHEILA MAUTZ, CITY CLERK

APPROVED AS TO FORM:

BEST BEST & KRIEGER LLP
CITY ATTORNEY

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

I, SHEILA MAUTZ, City Clerk of the City of Ontario, DO HEREBY CERTIFY that foregoing Resolution No. 2018- was duly passed and adopted by the City Council of the City of Ontario at their regular meeting held September 18, 2018, 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. 2018- duly passed and adopted by the Ontario City Council at their regular meeting held September 18, 2018.

SHEILA MAUTZ, CITY CLERK

(SEAL)

ATTACHMENT "A"

Certificate of Tentative Cancellation of
Land Conservation Contract 77-515
(Document follows this page)

CERTIFICATE OF TENTATIVE CANCELLATION
OF
LAND CONSERVATION CONTRACT

This certifies that in accordance with the California Government Code Article 5, Chapter 7, Division 1 of Title 5 (beginning with Section 51280), the City Council of the City of Ontario has made findings necessary to support issuance of this Certificate of Tentative Cancellation to 77-515, hereinafter referred to as OWNER, for cancellation of the Land Conservation Contract attached hereto and made a part hereof as Exhibit "A".

This Certificate concerns 54.81 Acres of real property described in Exhibit "B" (map and legal description), attached hereto and made a part hereof, which is in the City of Ontario and which is (all) (a portion) of the property subject to the provisions of the above-referenced contract ("Property").

The petition for cancellation was accompanied by a proposal for a specified alternative use of the Property, and sets forth the following proposed alternative use:

The City of Ontario Policy Plan (General Plan) zones the subject property for Specific Plan. The subject property located within Planning Area 1 (Single Family Residential) and Planning 2 (Commercial) of the Subarea 29 Specific Plan and is planned in accordance with the City of Ontario Policy Plan's (General Plan) land use designation of Low Density Residential (2.1- 5 du/ac) and Neighborhood Commercial (0.40 FAR) as illustrated by Exhibit LU-01 "Land Use Plan" of the Policy Plan (General Plan).

The City Council of the City of Ontario will, in accordance with Government Code Section 51283.4(b), within thirty (30) days of receipt of written notice from OWNER that the conditions and contingencies hereinafter set forth have been satisfied, make its determination whether or not such conditions and contingencies are, in fact, satisfied, and if it is determined that the conditions and contingencies have been satisfied, the City will execute, City Manager, a Certificate of Cancellation of the above Land Conservation Contract set forth in Exhibit "A" covering the Property and cause the same to be recorded.

The conditions and contingencies which must be satisfied prior to execution of a Certificate of Cancellation by the City Manager of the City of Ontario are as follows:

1. Payment in full of the cancellation fee, determined in accordance with Government Code Section 51283, in the amount of \$2,116,586.00; and
2. Certification of associated Environmental Impact Report; and
3. Approval of Tentative Map on the subject property, which are required to commence the specified alternative use; and

Should the OWNER fail to pay the cancellation fee as herein provided within one (1) year from the date this Certificate is recorded or a Certificate of Cancellation cannot otherwise be issued within one (1) year from the date this Certificate is recorded, the cancellation fee shall be recomputed.

If the OWNER has been unable to satisfy the above conditions and contingencies, owner shall so notify the City of Ontario of the particular conditions or contingencies which they are unable to satisfy. Within thirty (30) days after receipt of such notice, and upon a determination that the OWNER is in fact unable to satisfy such conditions and contingencies, the City Manager of the City of Ontario shall execute a Certificate of Withdrawal of this Certificate of Tentative Cancellation and cause such certificate to be recorded.

This Certificate of Tentative Cancellation is hereby executed on this _____ day of _____ 2018, by the City Manager of the City of Ontario.

Scott Ochoa, City Manager

ATTEST:

City Clerk

A notary public or other officer completing this certificate certifies 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 _____ before me, _____, Notary Public,

personally appeared _____

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

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

WITNESS my hand and official seal.

Signature _____

(Seal)

EXHIBIT "A"

BOOK 9119 PAGE 1309

#77-515

RECORDED
REQUEST OF

FILE TO Bernardino Dept.
of Planning & Development 1246

835

RECORDED IN OFFICIAL RECORDS,
FEB 22 1977 AT 3:30 PM
V. DENNIS WARDLE
CLERK-RECORDER
SAN BERNARDINO COUNTY, CALIF.

NO FEE
A

LAND CONSERVATION AGREEMENT

THIS AGREEMENT is made and entered into this 3rd day
of February, 1977, by and between

~~Group of National Banks, Federal Reserve Bank of San Francisco~~
~~Angelen~~ Rose Ketchoyan, as Trustee of Testamentary Trust under Will of
Angelen Kazian aka Angelen Gendian
~~Group of National Banks, Federal Reserve Bank of San Francisco~~
~~Group of National Banks, Federal Reserve Bank of San Francisco~~

(All owners, including multiple owners, and spouses, must be entered above. If unmarried, so indicate.) hereinafter to as "OWNER" (for both singular and plural), and the COUNTY OF SAN BERNARDINO, a political subdivision of the State of California, hereinafter referred to as "COUNTY":

WITNESSETH

WHEREAS, OWNER possesses certain real property located within the COUNTY, which property is presently devoted to agricultural and compatible uses and is particularly described in Exhibit "A", attached hereto and made a part hereof, and

WHEREAS, said property is located in an agricultural preserve heretofore established by COUNTY by Resolution dated 2/9/76 and 2/17/76 with reference to Preserve Map, and

WHEREAS, both OWNER and COUNTY desire to limit the use of said property to agricultural and compatible uses in order to discourage premature and unnecessary conversion of such lands from agricultural uses, recognizing that such land has definite public value as open space and that the preservation of such land in agricultural production constitutes an important physical, social, esthetic and economic asset to the COUNTY to maintain the agricultural economy of the COUNTY and the State of California, and

WHEREAS, both OWNER and COUNTY intend that the terms, conditions and restrictions of this Agreement are substantially similar to contracts authorized by the California Land Conservation Act of 1965 so as to be an enforceable restriction under the provisions of California Revenue and Taxation Code Section 422, and

CC
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6. No payments by COUNTY - OWNER shall not receive any payment from COUNTY in consideration of the obligations imposed hereunder, it being recognized and agreed that the consideration for the execution of this contract is the substantial public benefit to be derived therefrom and the advantages which will accrue to OWNER as a result of the effect on the method of determining the assessed value of land described herein and any reduction thereof due to the imposition of the limitations on its use contained herein.

7. Successors in Interest - This contract shall run with the land described herein, and shall be binding upon the heirs, successors and assigns of OWNER.

8. Cancellation - Except as provided in Clause 9 below, this contract may be cancelled as to any or all of the land described in Exhibit "A" by mutual agreement of OWNER and COUNTY providing such cancellation is strictly pursuant to the provisions of Government Code Sections 51280 through 51285.

9. Restrictive Law Alteration - This contract may be cancelled by mutual agreement of COUNTY and OWNER without payments or public hearing if it is replaced by an enforceable restriction authorized by Article XXVIII of the California Constitution or whenever there is no operative legislation or other law implementing said Article at the time the cancellation is requested by OWNER.

10. Division of Land under Contract - Whenever the land under this contract is divided, the owner of any parcel may exercise, independent of any other owner of a portion of the divided land, any of the rights of the owner of the original contract, including the right to give notice of non-renewal and to petition for cancellation. The effect of any such action by the owner of a parcel created by the division of land under contract shall not be imputed to the owners of the remaining parcels and shall have no effect on the contract as it applies to the remaining parcels of divided land.

11. Information from OWNER - OWNER, upon request of COUNTY, shall provide information relating to OWNER's obligation under this contract.

12. Acts of Non-Renewal by COUNTY - Removal of land under this contract from an agricultural preserve shall be the equivalent of notice of non-renewal by COUNTY, and COUNTY shall, at least sixty (60) days prior to the next renewal date following the removal, serve a notice of non-renewal as provided in Government Code Section 51245.

13. Termination Document Recordation - In the event of termination of this contract by (1) notice of non-renewal, (2) cancellation, (3) nullification by annexation or condemnation, the COUNTY shall record the appropriate documents in the County Recorder's Office and file such documents with any other governmental agency authorized to receive them.

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WHEREAS, it is the intent of COUNTY and OWNER that the continued existence of the within Agreement is made dependent upon the existence of legislation or other law implementing Article XXVIII of the California Constitution so the effect of the terms, conditions and restrictions of the Agreement on property values for taxation purposes is as favorable to OWNER as the legislation existing on the last renewal date.

NOW THEREFORE, the parties in consideration of the mutual covenants and conditions set forth herein and the substantial public benefits to be derived therefrom, do hereby agree as follows:

1. California Land Conservation Act of 1965, as amended - This contract is made and entered into pursuant to the California Land Conservation Act of 1965, as amended (Chapter 7 of Part 1 of Division 1 of Title 5 of the California Government Code commencing with Section 51200), and is subject to all the provisions, including amendments thereto which may be enacted, which are specifically applicable to such contracts.

2. Agricultural and Compatible Uses - During the term of this contract or any renewals thereof, the above described land shall not be used for any purpose, other than the production of agricultural commodities for commercial purposes and compatible uses as listed in the resolution establishing the preserve within which the land is located; a copy of such list is attached hereto and marked as Exhibit "B".

3. Additional Agricultural Uses - The Board of Supervisors of COUNTY may from time to time and during the term of this contract or any extensions thereof, by resolution add to those uses listed in the resolution establishing the preserve within which the land is located; provided, however, said Board shall not eliminate, without written consent of OWNER, a compatible use during the term of this contract or any renewals thereof.

4. Condemnation - In the event of an action in eminent domain or on acquisition in lieu of eminent domain in respect to the land, or any part thereof, described herein, this contract shall be subject to the provisions of Government Code Section 51290 et seq.

5. Term of Contract - This contract shall be effective commencing on January 1, 1977, and shall remain in effect for a period ending December 31, 1986, and during such renewals of this contract.

This contract shall be automatically extended for an additional year on the first day of each January [so that the unexpired term is ten (10) years from the first day of each January], unless notice of nonrenewal is given pursuant to Government Code Section 51245 et seq. Upon receipt of timely notice of nonrenewal by either party this contract shall remain in effect for the balance of the period remaining since the original execution or the last renewal of the contract, as the case may be.

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14. Annexation of Land within One Mile - In the event that the land of the OWNER, or any portion thereof, which is included in Exhibit "A" and is within one mile of the boundaries of a city at the time this contract is executed, is subsequently annexed by such city, but such city by its acts does not succeed to all the rights, duties and powers of this contract, then the OWNER and the land, or such portion thereof, shall be subject to a charge amounting to the differential (for the last five assessments prior to annexation, or the actual number of assessments, if less than five, during the existence of this contract) between the taxes as actually computed under this contract, and the taxes which would have been computed without the benefit of the restrictions of this contract.

15. Notices - Any notices required to be given hereunder or required to be given by law shall be given by United States Registered Mail, return receipt requested, and any notice to the COUNTY shall be sent to the Clerk of the Board of Supervisors of San Bernardino County, San Bernardino, California, and any notice to the OWNER shall be sent to the last known address as shown on the latest assessment roll. Such address shall be the proper address for every person in the case of multiple owners.

16. Severability - It is understood and agreed by the parties hereto that if any of these provisions shall contravene the Land Conservation Act of 1965, as amended, or be invalid under any law, such contravention or invalidity shall be construed as if not containing the particular provision or provisions held to be invalid, and the rights and obligations of the parties shall be construed and enforced accordingly.

IN WITNESS WHEREOF, OWNER and COUNTY have executed this contract on the day and year first above written.

COUNTY OF SAN BERNARDINO

By Robert O. Anderson
Chairman of the
Board of Supervisors

ATTEST:

LEONA RAPOPORT, Clerk
of the Board of Supervisors

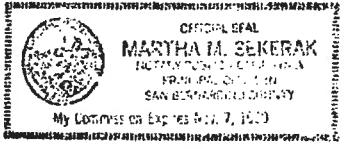
By Leona Rapoport

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STATE OF CALIFORNIA)
) ss.
 COUNTY OF SAN BERNARDINO)

On this 17th day of February, 19 77, before me
Martha M. Sekerak, Notary Public in and for said County and
 State, residing therein, duly commissioned and sworn, personally
 appeared ROBERT G. TOWNSEND known to me to be the
 ----- Chairman of the Board of Supervisors
 of the County of San Bernardino that executed the within Agreement
 and acknowledged to me that said County of San Bernardino did
 execute the same.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed
 my official seal the day and year in this Certificate first above
 written.



Martha M. Sekerak
 NOTARY PUBLIC in and for said
 County and State
 MARTHA M. SEKERAK

NOTE: All owners, including multiple owners, and spouses, must
 execute this Agreement. All signatures must be notarized,
 either separately or collectively. Please obtain the
 certification sheets necessary for the signatures and attach
 them after this page.

OWNER(S) :

~~XX~~
~~XX~~

By _____

 Title

 Title

 Title

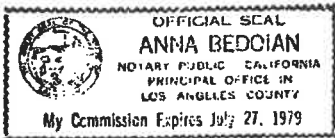
Rose Ketchoyian - aka Rose Kitcheyan
Rose Ketchoyian, Trustee of Testamentary
Trust under Will of Angelen Kazian aka
Angelen Gandian

STATE OF CALIFORNIA)
) ss.
COUNTY OF ~~SAN BERNARDINO~~)
LOS ANGELES

On this third day of February, 19 77, before me
Anna Bedoian, a Notary Public in and for said County
and State, residing therein, duly commissioned and sworn, personally
appeared Rose Ketchoyian, Trustee of Testamentary Trust under Will of
Angelan Karian aka Angelan Gerdian,

known to me to be the person(s) whose name(s) is (are) subscribed to
the within instrument, and acknowledged that he (she) executed the
same.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed
my official seal the day and year in this Certificate first above
written.



(SEAL)

Anna Bedoian

Anna Bedoian
NOTARY PUBLIC in and for said
County and State

STATE OF CALIFORNIA)
) ss.
COUNTY OF SAN BERNARDINO)

On this _____ day of _____, 19____, before me
_____, a Notary Public in and for said County
and State, residing therein, duly commissioned and sworn, personally
appeared _____

known to me to be the person(s) whose name(s) is (are) subscribed to
the within instrument, and acknowledged that he (they) executed the
same.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed
my official seal the day and year in this Certificate first above
written.

(SEAL)

NOTARY PUBLIC in and for said
County and State

EXHIBIT "A"

DESCRIPTION OF PROPERTY

TAX PARCEL NUMBER	EXACT DESCRIPTION FROM LAST TAX STATEMENT
218-271-02 (55 ac)	The easterly 1830 feet of the northeast 1/4 of Section 22 Township 2 South, Range 7 West, San Bernardino Base and Meridian, according to the Official Plat of said land approved by the Surveyor General, dated August 10, 1873. Excepting therefrom the south 1312 feet.

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EXHIBIT "A"

UNIFORM RULES AND COMPATIBLE USES
FOR AGRICULTURAL PRESERVES IN SAN BERNARDINO COUNTY

The following uses are hereby determined to be agricultural and compatible uses within an agricultural preserve, and all other uses are prohibited therein:

- (1) Agricultural use, described as any use of land for the purpose of producing an agricultural commodity, consisting of any and all plant and animal products, for commercial purposes, provided such use is permitted by the applicable zoning and not prohibited by other law or ordinance.
- (2) A stand for display and sale of agricultural commodities produced on the premises or on other premises within the preserve.
- (3) Gas, electric, water, and communication utility facilities and public service facilities of like nature operated by a public agency or mutual water company.
- (4) Public highways.
- (5) Fire protection works and facilities.
- (6) Flood control works, including channel rectification and alteration.
- (7) Public works required for fish and wildlife enhancement and preservation.
- (8) Improvements for the primary benefit of the lands within the preserve.
- (9) State improvements described in Section 51293, subsections (f) and (g) of the California Government Code.
- (10) One-family dwellings for the use only of an owner or manager of land within the agricultural preserve, or a person employed on said land, if such use is permitted by the applicable zoning, but not exceeding three (3) dwellings for each parcel of not less than ten (10) acres.
- (11) Farm labor camps, including temporary trailer housing, subject to the conditions of law or ordinance otherwise applicable.
- (12) Drying, packing or other processing of an agricultural commodity usually performed on the premises where it is produced.
- (13) Any other use, not inconsistent with uses listed in (1) above, existing on the date the land is included within an agricultural preserve, but such use once discontinued for two (2) years shall not be resumed unless permitted under these rules.
- (14) "Open space use" as defined in California Government Code Section 51201.
- (15) Any use required to be permitted by an amendment to the California Land Conservation Act of 1965 hereafter adopted.
- (16) Any use determined to be a compatible use in all agricultural preserves by the Board of Supervisors, after public hearing on ten (10) days' published notice and such other notice, if any, as they may specify. Thereafter such use shall be deemed a compatible use in any agricultural preserve, providing that it is not inconsistent with uses listed in paragraph (1) above.

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EXHIBIT "B"

Exhibit "B"

APN #0218-271-11-0-000
LCC #77-515

EXHIBIT "A" LEGAL DESCRIPTION

REAL PROPERTY IN THE CITY OF ONTARIO, COUNTY OF SAN BERNARDINO,
STATE OF CALIFORNIA, DESCRIBED AS FOLLOWS:

THE EASTERLY 1830 FEET OF THE NORTHEAST ¼ OF SECTION 22,
TOWNSHIP 2 SOUTH, RANGE 7 WEST, SAN BERNARDINO BASE AND
MERIDIAN, ACCORDING TO THE UNITED STATES GOVERNMENT TOWNSHIP
PLAT THEREOF.

EXCEPTING THEREFROM THE SOUTH 1312 FEET THEREOF.

ALSO EXCEPTING THERFROM THAT PORTION CONVEYED TO THE SAN
BERNARDINO COUNTY FLOOD CONTROL DISTRICT, A BODY CORPORATE
AND POLITIC BY GRANT DEED RECORDED NOVEMBER 18, 1977 AS
INSTRUMENT NO. 390, IN BOOK 9308, PAGE 683 OF OFFICIAL RECORDS.

ALSO EXCEPTING THEREFROM ALL OIL, GAS, MINERALS AND
HYDROCARBON SUBSTANCES LYING BELOW A DEPTH OF 500 FEET FROM
THE SURFACE OF SAID LAND FOR THE PURPOSE OF EXPLORING FOR,
BORING, EXTRACTING, DRILLING, MINING, PROSPECTING FOR, REMOVING
OR MARKETING SAID SUBSTANCES AS CONVEYED IN THE DEED FROM
RINKER DEVELOPMENT CORP., TO HARKER DEVELOPMENT CORP., BY
DOCUMENT RECORDED IN BOOK 6910, PAGE 174 OF OFFICIAL RECORDS.

Exhibit "B" Continued

Ptn. N.E.1/4 Sec.22, T.2S.,R.7W., S.B.B.&M.

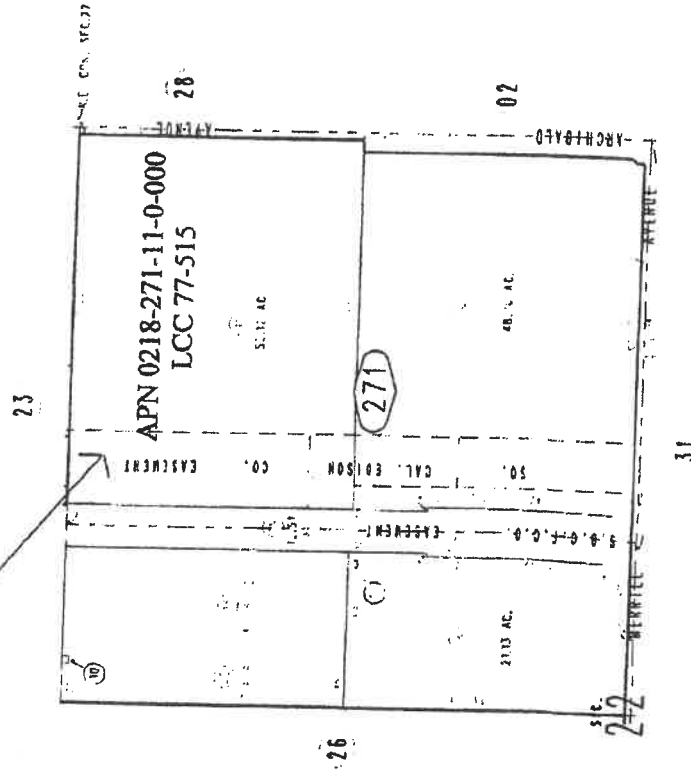
City of Ontario
Tax Rate Area
4075

0218 - 27

THIS MAP IS FOR THE PURPOSE
OF A TAX MAP FOR THE YEAR 2004



Subject Property



0218-27
0218-27
0218-27

Assessor's Map
Book 0218 Page 27
San Bernardino County

September 2004

Scott Ochoa, City Manager

ATTEST:

City Clerk

A notary public or other officer completing this certificate certifies 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 _____ before me, _____, Notary Public,

personally appeared _____

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

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

WITNESS my hand and official seal.

Signature _____

(Seal)

CITY OF ONTARIO

Agenda Report
September 18, 2018

**SECTION:
PUBLIC HEARINGS**

SUBJECT: | A PUBLIC HEARING TO CONSIDER A CONDITIONAL USE PERMIT (FILE NO. PCUP18-008) TO ESTABLISH A 208-ROOM FULL-SERVICE HOTEL ON 4.95 ACRES OF LAND, GENERALLY LOCATED AT THE SOUTHEAST CORNER OF ARCHIBALD AVENUE AND INLAND EMPIRE BOULEVARD, WITHIN THE OH (HIGH INTENSITY OFFICE) ZONING DISTRICT (APNS: 0210-191-29, 0210-191-30, 0210-191-31 AND 0210-191-32) |

**ITEM CONTINUED TO
OCTOBER 2, 2018**

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CITY OF ONTARIO

Agenda Report
September 18, 2018

**SECTION:
PUBLIC HEARINGS**

SUBJECT: | A PUBLIC HEARING TO CONSIDER, AN AMENDMENT TO THE MEREDITH INTERNATIONAL CENTRE SPECIFIC PLAN (FILE NO. PSPA18-004), ESTABLISHING SIGN STANDARDS AND GUIDELINES FOR A FREEWAY IDENTIFICATION SIGN AND FOR SINGLE USES OCCUPYING MORE THAN 200,000 SQUARE FEET OF BUILDING AREA, WITHIN THE URBAN COMMERCIAL LAND USE DISTRICT (APNs: 0110-311-52, 0110-311-53, 0110-311-54, 0110-311-55, 0110-321-29, 0110-321-68, 0110-321-72, 0110-321-73, 0110-321-74, 0110-321-75, 0110-321-76, 0110-321-77, 0110-321-78, 0110-321-79) |

**ITEM CONTINUED TO
OCTOBER 2, 2018**

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