

**CITY OF ONTARIO
CITY COUNCIL AND HOUSING AUTHORITY
AGENDA
APRIL 21, 2020**

Paul S. Leon
Mayor

Debra Dorst-Porada
Mayor pro Tem

Alan D. Wapner
Council Member

Jim W. Bowman
Council Member

Ruben Valencia
Council Member



Scott Ochoa
City Manager

Scott E. Huber
City Attorney

Sheila Mautz
City Clerk

James R. Milhiser
Treasurer

SPECIAL AND URGENT NOTICE

In accordance with the Governor's Declarations of Emergency for the State of California (Executive Orders N-25-20 and N-29-20) and the Governor's Stay at Home Order (Executive Order N-33-20), the Ontario City Council Meetings are being conducted via teleconference to limit in-person attendance at the upcoming meeting of the City of Ontario City Council and Housing Authority.

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

The meeting will be live broadcast on local cable Channel 3 as well as internet live streamed: www.ontarioca.gov/Agendas/CityCouncil

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

WELCOME to a meeting of the Ontario City Council.

- All documents for public review are on file with the Records Management/City Clerk's Department located at 303 East B Street, Ontario, CA 91764.
- Anyone wishing to provide public comment or to address the Council have been provided alternative measures including U.S. mail, email, a website comment form, and the ability to dial in and record a 3 minute voicemail. All public comments received by the established deadline for this meeting will be included as part of the official meeting record.
- In accordance with State Law, remarks during public comment are to be limited to subjects within Council's jurisdiction. Remarks on other agenda items will be limited to those items.

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

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

CALL TO ORDER (*OPEN SESSION*)

6:00 p.m.

ROLL CALL

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

PLEDGE OF ALLEGIANCE

Council Member Wapner

INVOCATION

PUBLIC COMMENTS

6:30 p.m.

Members of the public who wish to provide a general comment or address a specific agenda item may do so by mailing comments to the City Clerk's Office, or by calling (909) 395-2251 or by emailing PublicComments@ontarioca.gov no later than 4:00 p.m. on the day of the meeting. Under provisions of the Brown Act, Council is prohibited from taking action on oral requests.

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

CONSENT CALENDAR

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

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

1. APPROVAL OF MINUTES

Minutes for the regular meeting of the City Council and Housing Authority of March 17, 2020, and the special meeting of the City Council and Housing Authority of March 31, 2020, approving same as on file in the Records Management Department.

2. BILLS/PAYROLL

Bills March 20, 2020 through April 2, 2020 and **Payroll** March 15, 2020 through March 28, 2020, when audited by the Finance Committee.

3. A REPORT ON STATE AND FEDERAL REGULATIONS RELATING TO THE EVICTION OF INDIVIDUALS AND BUSINESSES EXPERIENCING LOSS OF INCOME DURING THE STATE OF EMERGENCY CAUSED BY THE COVID-19 PANDEMIC

That the City Council receive a report on state and federal regulations relating to the eviction of individuals and businesses experiencing loss of income during the state of emergency caused by the COVID-19 pandemic.

4. A DEVELOPMENT IMPACT FEE CREDIT AGREEMENT (FILE NO. PDIF20-003) BETWEEN THE CITY OF ONTARIO AND KB HOME CALIFORNIA LLC, FOR FACILITY CONSTRUCTION ASSOCIATED WITH TRACT MAP 18400 (FILE NO. PMTT12-013), LOCATED AT THE SOUTHEAST CORNER OF ARCHIBALD AVENUE AND EUCALYPTUS AVENUE WITHIN THE SUBAREA 29 SPECIFIC PLAN, AND TRACT MAP 18810 (FILE NO. PMTT13-003), LOCATED AT THE NORTHWEST CORNER OF ARCHIBALD AVENUE AND CHINO AVENUE WITHIN THE COUNTRYSIDE SPECIFIC PLAN

That the City Council approve the Development Impact Fee Credit Agreement (File No. PDIF20-003) between the City of Ontario and KB Home California LLC, for facility construction associated with Tract Map 18400 (File No. PMTT12-013), located at the southeast corner of Archibald Avenue and Eucalyptus Avenue within the Subarea 29 Specific Plan, and Tract Map 18810 (File No. PMTT13-003), located at the northwest corner of Archibald Avenue and Chino Avenue within the Countryside Specific Plan; and authorize the City Manager to execute the agreement.

5. A RESOLUTION REQUESTING MITIGATION FOR FINANCIAL IMPACTS CAUSED BY FEDERAL AND STATE MEASURES TO COMBAT THE COVID-19 PANDEMIC

That the City Council consider and adopt a resolution requesting mitigation for financial impacts caused by Federal and State measures to combat the COVID-19 pandemic.

RESOLUTION NO. _____

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF ONTARIO, CALIFORNIA, REQUESTING MITIGATION FOR FINANCIAL IMPACTS CAUSED BY FEDERAL AND STATE MEASURES TO COMBAT THE COVID-19 PANDEMIC.

6. AUTHORIZE THE PURCHASE OF TABLET COMPUTERS FROM CDCE INCORPORATED

That the City Council authorize the purchase of 80 Panasonic “Toughbook” tablet computers at a cost of \$270,038 from CDCE Incorporated of Yorba Linda, California; for the Utility Billing System Project and authorize a project contingency of \$27,000 for any necessary hardware, updates or accessories required for project deployment.

7. A PROFESSIONAL SERVICES AGREEMENT WITH PM AM CORPORATION FOR SECURITY ALARM MANAGEMENT SERVICES

That the City Council approve and authorize the City Manager to execute a five-year Professional Services Agreement (on file in the Records Management Department) with PM AM Corporation of Dallas, Texas, for third-party management services of security alarms permitted and installed in residential and business properties throughout the City; and authorize the City Manager to extend the agreement for up to two additional years.

8. AWARD A CONSTRUCTION AGREEMENT FOR CRACK SEALING SERVICES/SAFE USA INC.

That the City Council authorize the City Manager to execute a three-year Construction Agreement (on file in the Records Management Department) for Contract No. SM1920-5 with Safe USA Inc., located in Ontario, California, for an annual estimated cost of \$102,000 plus an annual contingency of \$5,100; authorize the addition of future service areas; and the option to extend the agreement for up to two additional years consistent with the City Council approved budgets.

9. AUTHORIZE THE PURCHASE AND INSTALLATION REPLACEMENT HEAVY TRUCK LIFT EQUIPMENT/SOUTHWEST LIFT AND EQUIPMENT, INC.

That the City Council take the following actions:

- (A) Authorize a cooperative purchase agreement in the amount of \$384,348 for the acquisition, relocation and installation services for heavy truck lift equipment for Fleet Services from Southwest Lift and Equipment, Inc. of San Bernardino, California, consistent with the terms and conditions of the of the Sourcewell (formerly NJPA) Contract # 061015-SKI;
- (B) Authorize the City Manager to execute all documents required for the completion of the project including, but not limited to, contracts, agreements, reduction of retention accounts, and filing of a notice of completion at the conclusion of all construction related activities; and
- (C) Authorize the City Manager to execute a Construction Contract (on file in the Records Management Department), and the addition of future acquisitions or services to complete this project, as consistent with the City Council approved budgets.

10. AWARD OF A CONSTRUCTION CONTRACT FOR THE RENOVATION OF RESTROOMS LOCATED AT THE ONTARIO MUNICIPAL UTILITIES COMPANY (OMUC)/NEW DIMENSIONS GENERAL CONSTRUCTION

That the City Council take the following actions:

- (A) Reject H2M and New Millennium protests against New Dimensions General Construction for D&C19-004 OMUC Restrooms;

- (B) Authorize the City Manager to execute Construction Contract No. D&C19-004 OMUC Restrooms (on file in the Records Management Department) with New Dimensions General Construction of Anaheim Hills, California, for the renovation of the OMUC Employee Restrooms in the amount of \$353,400;
- (C) Authorize a project reserve in the amount of \$72,785 to cover additional services identified after bid closing for plumbing, electrical, heating/ventilation and air conditioning systems services, temporary locker set-up and disposal and an additional temporary restroom unit for Fleet Services;
- (D) Authorize a 15% contingency of \$63,928 to address any unforeseen issues that may arise during construction; and
- (E) Authorize the City Manager or his designee to execute all documents required for the completion of the project including, but not limited to, contracts, agreements, reduction of retention accounts and filing a notice of completion at the conclusion of all construction related activities.

11. A RESOLUTION OF THE ONTARIO CITY COUNCIL FINDING THAT THE PUBLIC INTEREST AND CONVENIENCE REQUIRE THE SALE OF CERTAIN REAL PROPERTY AND DECLARING ITS INTENT TO SELL SUCH PROPERTY

That the City Council adopt a resolution finding the public interest and convenience require the sale of certain real property located at 116 East D Street and declaring its intent to sell a portion of such property.

RESOLUTION NO. _____

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF ONTARIO, CALIFORNIA, FINDING THAT THE PUBLIC INTEREST AND CONVENIENCE REQUIRE THE SALE OF CERTAIN REAL PROPERTY AND DECLARING ITS INTENT TO SELL SUCH PROPERTY.

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.

12. A PUBLIC HEARING TO CONSIDER AN ORDINANCE APPROVING A DEVELOPMENT CODE AMENDMENT (FILE NO. PDCA20-001) TO AMEND ONTARIO DEVELOPMENT CODE SECTION 4.02.010.D.2.F, BILLBOARD RELOCATION AGREEMENTS, INTERAGENCY RELOCATION EXCEPTION, TO REVISE THE LOCATIONAL CRITERIA AND THE NUMBER OF BILLBOARDS TO BE ELIMINATED WITHIN THE CITY

That the City Council introduce and waive further reading of an ordinance approving a Development Code Amendment (PDCA20-001) amending Ontario Development Code Section 4.02.010.D.2.f, Billboard Relocation Agreements, Interagency Relocation Exception, to revise the locational criteria and the number of billboards to be eliminated within the City.

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 CITY COUNCIL OF THE CITY OF ONTARIO, CALIFORNIA, APPROVING FILE NO. PDCA20-001, A REQUEST TO AMEND ONTARIO DEVELOPMENT CODE SECTION 4.02.010.D.2.F, BILLBOARD RELOCATION AGREEMENTS, INTERAGENCY RELOCATION EXCEPTION, TO REVISE THE LOCATIONAL CRITERIA AND THE NUMBER OF BILLBOARDS TO BE ELIMINATED WITHIN THE CITY.

STAFF MATTERS

City Manager Ochoa

COUNCIL MATTERS

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

ADJOURNMENT

CITY OF ONTARIO

Agenda Report
April 21, 2020

SECTION:
CONSENT CALENDAR

SUBJECT: A REPORT ON STATE AND FEDERAL REGULATIONS RELATING TO THE EVICTION OF INDIVIDUALS AND BUSINESSES EXPERIENCING LOSS OF INCOME DURING THE STATE OF EMERGENCY CAUSED BY THE COVID-19 PANDEMIC

RECOMMENDATION: That the City Council receive a report on state and federal regulations relating to the eviction of individuals and businesses experiencing loss of income during the state of emergency caused by the COVID-19 pandemic.


COUNCIL GOALS: Maintain the Current High Level of Public Safety
Operate in a Businesslike Manner
Focus Resources in Ontario's Commercial and Residential Neighborhoods

FISCAL IMPACT: None.

BACKGROUND: On April 7, 2020, the City Council adopted Ordinance No. 3159, which prohibits the eviction of residential and commercial tenants, as well as storage unit patrons, experiencing a loss of income due to the COVID-19 pandemic. In conjunction with adoption of the ordinance, the City Council requested that staff bring back a report on relevant federal and state regulations that might affect how the ordinance is enforced.

On March 16, 2020, Governor Gavin Newsom issued Executive Order N-28-20, which authorizes local jurisdictions to regulate the eviction of residential and commercial tenants experiencing a loss of income due to the Coronavirus Disease 19 (COVID-19) pandemic. Eleven days later, the Governor took more direct action, and issued Executive Order N-37-20, which affirmatively prohibits the evictions of residential tenants who have experienced a loss of income for specified reasons related to COVID-19. That executive order does not apply to commercial tenants or to storage unit patrons and does not afford a grace period for residential tenants to pay rents incurred during the state of emergency.

STAFF MEMBER PRESENTING: David Sheasby, Deputy City Manager

Prepared by: David Sheasby
Department: Management Services
City Manager Approval: 

Submitted to Council/O.H.A. 04/21/2020
Approved: _____
Continued to: _____
Denied: _____

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Separate and apart from his two executive orders, on March 25, 2020, the Governor secured commitments from over two hundred financial institutions, including CitiGroup, JP Morgan Chase, U.S. Bank and Wells Fargo, to implement a sixty-day moratorium on foreclosures and evictions, as well as a ninety-day grace period for the repayment of mortgage payments. The moratorium and grace period provide relief not only to homeowners, but to commercial and residential landlords who may miss mortgage payments due to missed payments by renters. The grace period, in particular, is useful as it allows for payments to be deferred and shifted to the end of an extended term or incorporated into modified payments throughout the current payment schedule. While the tools are valuable, it should be noted that they were voluntarily implemented by financial institutions, and that the Governor has not issued an executive order to this point. Local agencies have almost universally refrained from weighing in as well. This is likely because the complex matrix of state and federal regulations over mortgages divests local agencies of the power to expressly prohibit foreclosures.

Complementing these protections for mortgagors, the federal government has implemented relief measures for homeowners with government-guaranteed mortgages. Under the CARES Act, enacted on March 27, 2020, homeowners with loans backed by the Federal Housing Authority (FHA), U.S. Department of Agriculture, Department of Housing and Urban Development (HUD), Veterans Affairs, Fannie Mae, or Freddie Mac, are eligible for a loan forbearance for up to one year without fees, penalties, or interest. The CARES Act also includes restrictions on reporting mortgage delinquencies to credit bureaus.

Lastly, in addition to the Governor's executive orders and the aforementioned protections for mortgagors, the state courts have layered on even greater protections. On April 6, 2020, via two emergency court rules adopted by the Judicial Council, the state courts prohibited the issuance of all summons related to evictions and all judicial actions related to foreclosures for a period to include the remainder of the state of emergency plus ninety days. These rules effectively prohibit the eviction of commercial tenants, residential tenants, or storage unit patrons, as well as the foreclosure of mortgagors during this period. While these are important and valuable protections, it must be noted that the rules do not address a renter/mortgagor's underlying duty to pay, however. As such, the rule, even acting in concert with the other regulatory protections in place, would not afford commercial tenants and storage unit patrons an option to defer rents during the pandemic, making unpaid payments late and subject to fees and interest once the courts are reopened.

For this reason, there is a gap in federal and state regulation. City of Ontario Ordinance No. 3159 addresses the gap by expressly relieving commercial tenants and storage unit patrons of a duty to pay rents and fees until six months after the end of the state of local emergency. Moreover, Ordinance No. 3159 incorporates the operative language from state and federal regulation in areas that overlap to ensure a consistent and comprehensive regulatory environment within the City.

CITY OF ONTARIO

Agenda Report
April 21, 2020

SECTION:
CONSENT CALENDAR

SUBJECT: A DEVELOPMENT IMPACT FEE CREDIT AGREEMENT (FILE NO. PDIF20-003) BETWEEN THE CITY OF ONTARIO AND KB HOME CALIFORNIA LLC, FOR FACILITY CONSTRUCTION ASSOCIATED WITH TRACT MAP 18400 (FILE NO. PMTT12-013), LOCATED AT THE SOUTHEAST CORNER OF ARCHIBALD AVENUE AND EUCALYPTUS AVENUE WITHIN THE SUBAREA 29 SPECIFIC PLAN, AND TRACT MAP 18810 (FILE NO. PMTT13-003), LOCATED AT THE NORTHWEST CORNER OF ARCHIBALD AVENUE AND CHINO AVENUE WITHIN THE COUNTRYSIDE SPECIFIC PLAN

RECOMMENDATION: That the City Council approve the Development Impact Fee Credit Agreement (File No. PDIF20-003) between the City of Ontario and KB Home California LLC, for facility construction associated with Tract Map 18400 (File No. PMTT12-013), located at the southeast corner of Archibald Avenue and Eucalyptus Avenue within the Subarea 29 Specific Plan, and Tract Map 18810 (File No. PMTT13-003), located at the northwest corner of Archibald Avenue and Chino Avenue within the Countryside Specific Plan; and authorize the City Manager to execute the agreement.

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

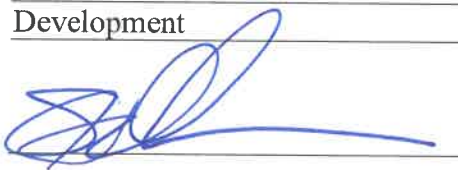
Focus Resources in Ontario's Commercial and Residential Neighborhoods

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: Approval of the proposed Development Impact Fee ("DIF") Credit Agreement (File No. PDIF20-003) will result in no fiscal impact to the City's General Fund. The project's Development Agreements (File Nos. PDA13-001 and PDA13-004) and related conditions requires KB Home California, LLC ("Developer") to construct DIF Program infrastructure with estimated costs of \$1,371,353. The proposed DIF Credit Agreement defines the amount of DIF Credit that the Developer may be eligible to receive for construction of these DIF improvements. The DIF Credit that the

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

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

Submitted to Council/O.H.A. 04/21/2020
Approved: _____
Continued to: _____
Denied: _____

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Developer will receive upon completion of the improvements may be exchanged for a refund of DIF that was paid by the Developer (up to the Developer's maximum DIF obligation) in the respective DIF category.

BACKGROUND: On December 3, 2013, the City Council approved the Development Agreement (File No. PDA13-001) between the City of Ontario and Warm Springs NMC LLC, the original owner for Tract Map 18400. On January 21, 2014, the City Council approved Development Agreement (File No. PDA13-004) between the City of Ontario and JS Bray LLC & JA Bray LLC, the original owner for Tract Map 18810. Both Development Agreements were assigned to Developer and included the construction of necessary infrastructure to serve both tracts.

Per the Development Agreements and related conditions, the Developer is required to construct DIF Program infrastructure to serve Tract Map 18400 and 18810. Improvements include the installation of fiber optic facilities on Eucalyptus Avenue and Chino Avenue; storm drain facilities and full-width street improvements on Eucalyptus Avenue.

Pursuant to the City's adopted DIF Credit policies, construction of DIF Program Facilities requires the Developer and the City to enter into a DIF Credit Agreement ("Agreement"). The terms of the proposed Agreement specify the defined portion of the infrastructure to be constructed by the Developer in the Local Adjacent or Regional DIF categories and includes an estimate of the maximum DIF Credit (not reimbursement) that may be applied in the respective Local Adjacent or Regional DIF category. This infrastructure is within Ontario Ranch Storm Drain, Streets and Fiber Optic System categories. Since the maximum eligible costs in the Agreement for the required infrastructure exceeds the Developer's DIF obligation, the Developer is eligible to receive DIF Credit under the proposed Agreement.

The proposed Agreement complies with the City's DIF Policies and is in conformance with the approved Development Agreement and related conditions. Under the provisions of the City's DIF Program, the City Manager is authorized to execute such agreements upon approval by the City Council.

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

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

Space above this line for Recorder's Use

Exempt from Fees Per Gov. Code §6103

FILE NO. PDIF20-003

**DEVELOPMENT IMPACT FEE CREDIT AGREEMENT
FOR FACILITY CONSTRUCTION**

By and Between

**City of Ontario
a California municipal corporation**

and

**KB Home California LLC
a Delaware limited liability company**

_____, 2020

San Bernardino County, California

**DEVELOPMENT IMPACT FEE CREDIT AGREEMENT FOR FACILITY
CONSTRUCTION BY AND BETWEEN THE CITY OF ONTARIO AND
KB HOME CALIFORNIA LLC**

(File No. PDIF20-003)

This DEVELOPMENT IMPACT FEE CREDIT AGREEMENT (“Fee Credit Agreement”), entered into this _____ day of _____, 2020, between the CITY OF ONTARIO, a California municipal corporation, hereinafter referred to as the “City,” and KB Home California LLC, a Delaware limited liability company, hereinafter referred to as the “Developer.”

RECITALS

A. Developer is the owner and developer of property located within the City, which property has received development approvals from the City, including the Countryside and Subarea 29 Specific Plans (collectively the “Specific Plan”) and Tract Map Nos. 18400 and 18810 (collectively the “Tract Map”). -A legal description of the property is attached as Exhibit 1 (the “Property”). A map of the Property is attached as Exhibit 2.

B. As a condition of the development approvals for the Property, including the Specific Plan and Tract Map approvals, the Developer is required to construct those public improvements identified on Exhibit 3, consisting of certain master planned public infrastructure and Improvements, (hereinafter referred to as the “Improvements”) The estimated costs for the design and construction of the Improvements are set forth in Exhibit 4.

C. On July 1, 2003, City Ordinance No. Ordinance No. 2779 was adopted establishing certain development impact fees (“DIF Fees”) to be paid as a condition to the issuance of certain entitlements within the City. -Section 7 of Ordinance 2779 authorizes the City Manager, when he or she determines that the public interest among other reasons would be served by such an agreement, to execute agreements on behalf of the City with applicants in order to provide a credit to the applicant against certain DIF Fees in exchange for the applicant’s construction and dedication of public improvements, upon reasonable terms and conditions as may be determined on a case by case basis.

D. City and the previous owner of the Property have previously entered into a statutory Development Agreement (File Nos. PDA13-001 and PDA13-004 respectively), pursuant to Section 65864, et seq., of the Government Code, (collectively the “Development Agreement”) and such Development Agreement has been assigned to Developer and Developer has assumed all rights, responsibilities and obligations of the Development Agreement, including the design and construction of the Improvements identified in Exhibit 3 and such improvements are included in the City’s Development Impact Fee (DIF) Program as a project, or a portion of a project and eligible for credit against DIF Fees.

E. City and Developer have agreed that the costs to design and construct the Improvements shall be eligible for DIF Credit in accordance with the City's [Ontario Ranch] DIF Credit policies as contained in the City's DIF Program and Resolution No. 2019-135.

AGREEMENT

NOW, THEREFORE, for good and valuable consideration, the receipt of which is hereby acknowledged, and the mutual promises contained herein, it is agreed as follows:

1. Definitions. For purposes of this Agreement, the terms below shall be defined as follows:

"Acceptable Title" means title to land or an interest therein required for the construction, operation and maintenance of an Improvement, in form acceptable to the City Manager, free and clear of all liens, taxes, assessments, leases, easements and encumbrances, whether or not recorded, but subject to any exceptions determined by the City Manager as not materially interfering with the actual or intended use of the land or interest therein required for the operation of an Improvement. Notwithstanding the foregoing, an irrevocable offer of dedication may constitute "Acceptable Title."

"Acceptance Date" means the earlier of (i) date the City Manager or his/her designee takes final action, in writing, to accept dedication or transfer of an Improvement or (ii) the date determined pursuant to Section 3 below.

"Bid Documents" means all designs, bid documents, construction plans and specifications, system layout drawings and other construction documents and permits approved by the City relating to an Improvement.

"Certificate of DIF Credit" means a City certificate for the issuance of DIF Credit to Developer in the form attached hereto as Exhibit 5.

"City DIF Program and Policies" or "DIF Program" means Ordinance Nos. 2779 and 2780 and Resolution No. 2019-135, as -it may be amended from time to time and as DIF Fees and the capital improvement projects and public infrastructure identified therein may be revised by Resolution.

"City Manager" means the City Manager of the City or his or her designee.

"City Engineer" means the City's City Engineer or his or her designee.

"Completed", "Complete" and "Completion" with respect to an Improvement mean that such Improvement has been completed in accordance with its Bid Documents, including any final "punch list" items, as approved in writing by the City Engineer, which approval shall not be unreasonably withheld, and that such

Improvement is Usable. Notwithstanding the foregoing, if an Improvement which Developer is obligated to construct pursuant to the applicable conditions of approval for a portion of the Property is only a portion of a larger work of improvement, then a determination of "Completed" or "Completion" with respect to that Improvement shall be made only as to that Improvement and not with respect to the larger work of improvement of which it is a portion.

"Credit Request" means a document, substantially in the form of Exhibit 6, to be used by Developer in requesting DIF Credits with respect to one or more Improvements.

"Days" shall mean business days unless otherwise stated.

"Developer Contract" means a contract between the Developer and a qualified contractor awarded to the qualified contractor for the construction of the Improvements at the direction of Developer.

"Development Agreement" has the meaning set forth in Recital D above.

"DIF" or "DIF Fees" means the development impact fees imposed within the [Ontario Ranch] area pursuant to City Ordinance Nos. 2779 and 2780 and City Resolution No. 2019-135 and any subsequent City ordinances and resolutions lawfully adopted by the City Council to update or modify such development impact fees.

"DIF Credit" means credits earned against the payment of DIF pursuant to this Agreement.

"DIF Obligation" means the amount of Developer's total obligation for Development Impact Fees in either the Regional or Local Adjacent portion of a DIF category for the Property. –Developer's DIF Obligation Amounts for each DIF Category shall be as provided in Exhibit 4.

"Effective Date" means the date set forth in the first paragraph of this Agreement.

"Eligible Cost" means the substantiated cost of an Improvement to be used in calculating DIF Credit amounts, which costs may include: (i) the costs for the construction (including grading) of such Improvement, (ii) costs directly related to the construction and/or acquisition of the Improvement, such as costs of payment, performance and/or maintenance bonds, the professional costs of material testing, and insurance costs (including costs of any title insurance required); (iii) the cost of acquiring any real property or interest therein in order to construct or operate the Improvement, (iv) the costs incurred in preparing Bid Documents and the related costs of geotechnical and environmental evaluations of the Improvement, (v) the fees paid to the City and any other governmental agencies for, and all other costs incurred in connection with obtaining permits, licenses or other governmental approvals for

such Improvement, (vi) costs of construction and project management, administration and supervision (but only up to five percent (5%) of the costs described in clause (i) above) incurred for the construction of such Improvement, (vii) professional costs associated with such Improvement, such as design, engineering, accounting, inspection, construction staking, and similar professional services including legal services related to the review of construction contracts. –The maximum amount of Eligible Costs described in clauses (iv) through (vii) shall be limited to a total of fifteen percent (15%) of the costs described in clause (i).

“Improvement” or “Improvements” means the public improvements required to support the development of the Property as described in Exhibit 3 to the extent required by the applicable conditions of approval.

“Program Cost” or “DIF Program Cost” means the estimated cost of an Improvement identified in the “Nexus Study” referenced in City Resolution No. 2019-135 as it may be modified, supplemented or superseded from time to time. –The Program Cost to be applied shall be the Program Cost in effect at the time the DIF Credit Request is submitted to the City.

“Usable” shall mean that, with respect to any particular Improvement, the Improvement is actually usable for its intended purposes, and includes, for water Improvements, connection to the applicable water supply, for sewer Improvements connection to an applicable disposal system, and for recycled water Improvements connection to a treated water supply and distribution system as those connections are set out in the project approvals. Notwithstanding the foregoing, if an Improvement which Developer is obligated to construct pursuant to the applicable conditions of approval for a portion of the Property is only a portion of a larger work of improvement, then a determination by the City Engineer of whether that Improvement is “Usable” shall be made only with respect to that Improvement and not with respect to the larger work of improvement of which it is a portion.

2. Construction and Funding of Improvements by Developer.

(a) Construction of Improvements by Developer. Developer shall commence each Improvements in accordance with the terms of the conditions of approval, Development Agreement and individual Tract or Parcel Maps, including any extension thereof. -In the event of any conflict between these documents, the soonest date of commencement shall apply. Upon commencement of the Improvement(s), Developer shall proceed expeditiously with the construction of the Improvement(s) under the terms herein.

(b) For the purposes of this Agreement, commencement of the Improvements shall mean when Developer receives the first permit from City for any grading of the Property.

(c) City and Developer agree that Developer shall award, or cause to be awarded, all contracts for the construction and Completion of the Improvements

as necessary to assure the timely and satisfactory completion of such Improvements. The Developer shall perform all of its obligations hereunder and shall conduct all operations with respect to the construction of the Improvements in a good, workmanlike and commercially reasonable manner, with the standard of diligence and care normally employed by duly qualified persons utilizing commercially reasonable efforts in the performance of comparable work and in accordance with generally accepted practices appropriate to the activities undertaken.

(d) The Developer shall not be relieved of its obligation to construct the Improvements and shall cause title to the Improvements to be conveyed to the City even if the DIF Credit Amount is less than the actual cost of the Improvements.

(e) If Developer is unable or unwilling to proceed with, and Complete, the construction of the Improvement(s) for any reason, and subject to the provisions in Section 14 below, Developer shall be considered to be in default of this Agreement.

3. Inspection and Acceptance of Completed Improvement by City. –City shall make or shall cause to be made periodic site inspections of Developer's construction work. The Acceptance Date for each Improvement constructed by Developer shall be no later than twenty (20) Days following the last to occur of the following requirements:

(a) the City Engineer's determination the Improvement is Complete;

(b) the City Engineer's determination that Acceptable Title with respect to the Improvement is available for acceptance;

(c) Developer's provision of one (1) set of "as-built" or record drawings or plans for the Improvement, certified and reflecting the condition of the Improvement as constructed; and

(d) Developer's provision of such evidence or proof as the City Manager shall require that all persons, firms and corporations supplying work, labor, materials, supplies and equipment to the construction of the Improvement have been paid and that no claims or liens have been recorded by or on behalf of any such person, firm or corporation. –Alternatively, rather than await the expiration of the time for the recording of claims of liens, Developer may elect to provide a title insurance policy or other security acceptable to the City Manager guaranteeing that no such claims of liens will be recorded or become a lien upon any of the real property required for the Improvement.

4. Conveyance of Acceptable Title to City. Acceptable Title to all property on, in or over which the Improvement is located, shall, prior to and as a condition precedent to the City's acceptance of any Improvement, be conveyed to City by way of dedication of such property on the Tract or Parcel Map or by a separate recorded instrument, to permit the City to properly own, operate and maintain such Improvement. –Developer shall assist the City in obtaining such documents as are

required to obtain Acceptable Title. Completion of the transfer of Acceptable Title shall be evidenced by recordation of the acceptance thereof by the City Engineer.

5. Maintenance and Warranties to be provided to City. Developer shall maintain the Improvement in good and safe condition until the Acceptance Date of the Improvement. Prior to the Acceptance Date, Developer shall, at its sole cost and expense, be responsible for performing any required maintenance on the Improvement. –On or before the Acceptance Date of the Improvement, Developer shall assign to the City all of Developer’s rights in any warranties, guarantees, maintenance obligations or other evidence of contingent obligations of third persons with respect to such Improvement. All warranties, guarantees or other evidences of contingent obligations of third persons with respect to the Improvement shall be delivered to the City Engineer, in writing, as part of the transfer of title.

(a) After the Acceptance Date, City shall be solely responsible for maintenance of the Improvement.

(b) With respect to the Improvement, Developer shall warrant that the Improvement is free from defects in materials and construction defects (and shall correct or cause to be corrected any such defects at Developer’s expense) for a period of one year from the Acceptance Date thereof (the “Warranty Period”) and Developer shall provide a bond or other security reasonably acceptable in form and substance to the City for such period and such purpose to insure that such defects that appear within said period will be repaired, replaced or corrected by Developer, at its own cost and expense, to the reasonable satisfaction of the City Manager. During the Warranty Period, Developer shall continue to repair, replace or correct any such defects within thirty (30) Days after written notice thereof by the City Engineer to Developer, and shall complete such repairs, replacement or correction as soon as practicable.

(c) In the event that Developer does not repair, replace or correct defects after such written notice, in addition to the provisions of Section 14 below, City may repair, replace or correct the defects in the Improvement and charge the Developer for the cost of such repair, replacement or correction plus City staff time and overhead.

6. Issuance of DIF Credit to Developer. Developer shall receive DIF Credits based upon the verified Eligible Costs of the Improvement (or accepted portion of the Improvement). Issued DIF Credits shall specify the DIF Credit infrastructure category and whether the DIF Credit is for construction of a Regional or Local Adjacent DIF Program Improvement.

7. Limitations on the Issuance of DIF Credit to Developer upon Completion of an Improvement. The amount of DIF Credit to be issued by City shall be limited to the amount of the DIF Program Costs for the Improvement or segment cost for the percentage of the Program Costs proportional to the segment of improvement constructed or accepted. The DIF Program Costs identified in the City’s

DIF Program shall be subject to change, from time to time, as part of the continuing update of the City's DIF Program. -The DIF Program Costs for the Improvement (or accepted portion of the Improvement) shall be those in effect at the time the DIF Credit Request is submitted to the City.

(a) To the extent that NMC Builders LLC incurred the costs for the design of the Improvements, Developer agrees that the DIF Credit, up to ten (10%) of the DIF Program Costs, for those design costs portion of the Improvements shall be issued to NMC Builders LLC.

8. Issuance of a DIF Credit Certificate. When an Improvement is Complete, Developer shall submit a DIF Credit Request to City with all supporting documentation evidencing the total actual Eligible Costs of the Improvement at the time of submittal. -The City Manager shall determine the completeness of the DIF Credit Request and notify Developer of whether the DIF Credit Request is considered complete or if additional information is needed from Developer. Once the DIF Credit Request is considered complete, the City Manager shall use his or her best efforts to determine the total actual Eligible Costs of the Improvements and provide Developer with a Certificate of DIF Credit within twenty (20) Days following receipt of the completed DIF Credit Request.

9. DIF Program Modifications. The estimated cost in the City's DIF Program for DIF Improvements (or defined portions of DIF Improvements) as listed in Exhibit 4 and Developer's total DIF Obligation amount may be modified from time to time based on modifications to the City's DIF Program.

10. Assignment of DIF Credits. Developer shall have the right to sell, transfer or assign DIF Credits provided for herein, to any person, partnership, limited liability company, joint venture, firm or corporation; provided, however, that any such sale, transfer or assignment shall only be made in strict compliance with the following:

(a) Concurrent with any such sale, transfer or assignment, or within fifteen (15) business days thereafter, Developer (i) shall notify the City Manager, in writing, of such sale, transfer or assignment and (ii) shall provide the City with an executed agreement between Developer and the purchaser, transferee or assignee that identifies the amount of DIF Credits transferred, as provided in Exhibit 8 of this Agreement.

(b) Except for the limited assignment of DIF Credits under subsection 10 (a) above, any assignment by Developer of any of the obligations of Developer under this Agreement (a "DIF Improvement Assignment") with regards to the Improvements listed in Exhibit 3, shall identify the Improvements that are the subject of the Assignment Agreement and require the prior written approval of the City Manager, which approval shall not be unreasonably withheld so long as adequate security as determined by City in its sole discretion, is in place to secure the Completion of the subject Improvements. Any DIF Improvement Assignment not made in strict compliance with the foregoing conditions (other than a transfer under

Section 23 below) shall, unless such obligations are performed by Developer when required by this Agreement notwithstanding such assignment, constitute a default by Developer under Section 14 below. In such event, City shall have no further obligations with regard to acceptance of Certificates of DIF Credit issued to Developer, including any DIF Credit assigned or transferred by Developer.

(c) If Developer enters into a DIF Improvement Assignment with a successor in interest with respect to all or a part of the Property (a "Successor Developer") in accordance with subsection 10(b) above, and the Successor Developer obtains DIF Credit pursuant to this Agreement upon its completion of the Improvements identified in the DIF Improvement Assignment, then

(i) such Successor Developer shall have the right to sell, transfer or assign to Developer, and Developer shall have the right to acquire from such Successor Developer, all or a portion of such DIF Credit by complying only with Section 10(a) above, and

(ii) Developer shall have the right to sell, transfer or assign all or a portion of such DIF Credit to other Successor Developers who acquire other portions of the Property by complying only with Section 10(a) above, if the sale, transfer or assignment of such DIF Credit occurs concurrently with the conveyance of another portion of the Property to the other Successor Developer.

11. Additional Documents/Actions. The City Manager is authorized to approve and execute any documents and to take any actions necessary to effectuate the purposes of this Agreement.

12. Integration. This Agreement reflects the complete understanding of the parties with respect to the subject matter hereof. In all other respects, the parties hereto re-affirm and ratify all other provisions of the Development Agreement.

13. Prevailing Wages. Developer is aware of the requirements of California Labor Code Section 1720, et seq. (as amended by Stats 2001 ch. 938 § 2 (S.B. 975)), through 1770, et seq., as well as California Code of Regulations, Title 8, Section 1600, et seq. and Labor Code Sections 1810, 1811, 1813, 1814; (collectively, the "Prevailing Wage Laws"), which require the payment of prevailing wage rates and the performance of other requirements on "public works" and "maintenance" projects. The Bid Documents and each Developer's Contract shall require all contractors for the construction of Improvements to register with the Department of Industrial Relations and to pay and report prevailing wages in accordance with the applicable provisions of the Labor Code. Developer shall obtain from the City and make copies of the prevailing rates of per diem wages for each craft, classification or type of worker needed to execute the services available to interested parties upon request, and shall post copies at the Developer's principal place of business and at the project site. Developer shall defend, indemnify and hold the City, its officials, officers, employees, agents, contractors, attorneys and volunteers free and harmless from any fine,

penalty claim or liability of any kind arising out of any failure or alleged failure to comply with the Prevailing Wage Laws.

14. Default and Force Majeure.

(a) Default. Failure or delay by Developer or City to perform any of its obligations under this Agreement constitutes a default by such party under this Agreement. –The party alleged to be in default shall have thirty (30) Days after the date of the written notice by the other party to commence to cure such default. –The party alleged to be in default shall diligently pursue such cure to completion within a reasonable timeframe as established in the written notice provided by the party asserting the default. –If the party alleged to be in default has not cured its default within the cure period set forth therein, the defaulting party shall be deemed in breach. Any failure or delay in giving such notice or in asserting any rights and remedies as to any default shall not constitute a waiver of any default, nor shall it change the time of default, nor shall it deprive the party not in default of its rights to institute and maintain any actions or proceeding which it may deem necessary to protect, assert or enforce any of its rights or remedies. If any default by Developer is not cured within the time period provided by the City, City shall be entitled to terminate this Agreement in its entirety and thereafter, the City shall be under no obligation to perform any of City's obligations hereunder, including, but not limited to, the issuance of DIF Credits and DIF Reimbursements that Developer may claim.

(b) Force Majeure. Notwithstanding the provisions contained in the foregoing paragraph, performance by either party hereunder shall not be deemed to be in default where delay or defaults are due to war, insurrection, strikes, lock-outs, riots, floods, earthquakes, fires, casualties, acts of God, acts of the public enemy, epidemics, quarantine restrictions, freight embargoes, lack of transportation, governmental restrictions or priority, litigation brought by a third party, unusually severe weather, reasonably unforeseeable property conditions, acts of the other party, acts or failure to act of the other party or any other public or governmental agency or entity, or any causes beyond the control or without the failure of the party claiming an extension of time to perform (a "Force Majeure Event"). An extension of time for any such cause (an "Excusable Delay") shall be for the time period of the delay and shall commence to run from the time of the commencement of the cause, if notice by the party claiming such extension is sent to the other party within thirty (30) days of knowledge of the commencement of the cause or from the date of the notice if provided after such thirty-day period. Notwithstanding the foregoing, none of the foregoing events shall constitute an Excusable Delay unless and until the party claiming such delay and interference delivers to the other party written notice describing the event, its cause, when and how such party obtained knowledge, the date the event commenced, and the estimated delay resulting therefrom. Any party claiming an Excusable Delay shall make a good faith effort to deliver such written notice within thirty (30) Days after it obtains actual knowledge of the event. Times of performance under this Agreement may also be extended in writing by City and Developer. The Parties hereto expressly acknowledge and agree that changes in either general economic conditions or changes in the economic assumptions of any

of them (unless such conditions were caused by a Force Majeure Event) that may have provided a basis for entering into this Agreement and that occur at any time after the execution of this Agreement are not Force Majeure Events and do not provide any Party with grounds for asserting the existence of a delay in the performance of any covenant or undertaking that may arise under this Agreement. Each Party expressly assumes the risk that changes in general economic conditions or changes in such economic assumptions relating to the terms and covenants of this Agreement could impose an inconvenience or hardship on the continued performance of such Party under this Agreement, but that such inconvenience or hardship is not a force majeure event and does not excuse the performance by such Party of its obligations under this Agreement. –Without limiting the nature of the foregoing, the parties agree that the inability of Developer to obtain a satisfactory commitment from a construction lender for the improvement of the Property or to satisfy any other condition of this Agreement relating to the development of the Property shall not be deemed to be a force majeure event or otherwise provide grounds for the assertion of the existence of a delay under this Section 14.

15. Licenses and Permits. The Developer shall secure (or shall cause to be secured) any and all permits that may be required by the City or any other governmental agency for the construction of the Improvements. The Developer shall be responsible for paying all applicable fees and charges to the City or other governmental agency to obtain any land use entitlements and permits that are necessary to construct the Improvements, although a portion of such costs may be recoverable as DIF credits.

16. Indemnification. The Developer shall protect, indemnify, defend and hold the City, and its respective officials, officers, employees, agents, contractors, attorneys and volunteers, and each of them, harmless from and against any and all claims, losses, expenses, suits, actions, fines, penalties, decrees, judgments, awards, attorney's fees (to Counsel chosen by City), expert and court costs (collectively "Damages") that the City, or its respective officers, officials, employees, agents, contractors and volunteers or any combination thereof, may suffer or that may be sought against or recovered or obtained from the City, or its respective officers, officials, employees, agents, contractors, attorneys or volunteers or any combination thereof, as a result of or by reason of or arising out of or in consequence of (a) the acquisition, construction, or installation of the Improvements; (b) the untruth or inaccuracy of any representation or warranty made by the Developer in this Agreement or in any certifications delivered by the Developer hereunder; or (c) any act or omission of the Developer or any of its subcontractors, or their respective officers, employees, agents, or contractors in connection with the Improvements. If the Developer fails to do so, the City shall have the right, but not the obligation, to defend the same and charge all of the direct, indirect and incidental costs of such defense, including any reasonable attorney fees, expert or court costs, to and recover the same from the Developer. –Notwithstanding the foregoing, neither the City nor its respective officers, officials, employees, agents, contractors, attorneys or volunteers shall be indemnified, defended or held harmless against such Damages to the extent that such Damages have been caused by their sole active negligence or sole willful

misconduct. –The parties acknowledge and agree that the Developer shall be released from the indemnity, defense and hold harmless obligations set forth herein upon the acceptance of the Completed Improvements by the City and completion of the Warranty Period for such Improvements.

17. Developer as a Private Developer. In performing under this Agreement, it is mutually understood that the Developer is acting as a private developer, and not as an agent of the City or as a joint venturer with City. –The City shall have no responsibility for payment to any contractor, subcontractor or supplier of the Developer. Accordingly, this Agreement does not constitute a debt or liability of the City. –The City shall not be obligated to advance any of its own funds or any other costs incurred in connection with the Project. No member, official, employee, agent, contractor, attorney or volunteer of the City shall be personally liable to the Developer, or any successor in interest, in the event of any default or breach by the City or for any amount that may become due to the Developer or its successors, or on any obligations under the terms of this Agreement.

18. Other Obligations. Nothing contained herein shall be construed as affecting the Developer's respective duty to perform its respective obligations under other agreements, land use regulations or subdivision requirements relating to the development of the Property, which obligations are and shall remain independent of the Developer's rights and obligations, and the City's rights and obligations, under this Agreement; provided, however, that the Developer shall use its reasonable and diligent efforts to perform each and every covenant to be performed by it under any lien or encumbrance, instrument, declaration, covenant, condition, restriction, license, order, or other agreement, the nonperformance of which could reasonably be expected to materially and adversely affect the design, acquisition, construction and installation of the Improvements. –This Agreement is not, and shall not be construed as, a statutory development agreement as authorized by Government Code sections 65864 et seq., and this Agreement shall not be interpreted as limiting the authority of the City to adopt and amend regulations concerning permitted uses of property, the density or intensity of use, the maximum height and size of proposed buildings, provisions for the reservation or dedication of land or the payment of impact fees for public purposes.

19. Binding on Successors and Assigns. Except as set forth in Section 10 or Section 23 hereof, neither this Agreement nor the duties and obligations of the Developer hereunder may be assigned to any person or legal entity other than an affiliate of the Developer without the prior written consent of the City, which consent shall not be unreasonably withheld or delayed. Neither this Agreement nor the duties and obligations of the City hereunder may be assigned to any person or legal entity, without the written consent of the Developer, which consent shall not be unreasonably withheld or delayed. –The agreements and covenants included herein shall be binding on and inure to the benefit of any partners, permitted and accepted assigns, and successors-in-interest of the parties hereto.

20. Amendments. This Agreement can only be amended by an instrument in writing executed and delivered by the City and the Developer.

21. Waivers. No waiver of, or consent with respect to, any provision of this Agreement by a party hereto shall in any event be effective unless the same shall be in writing and signed by such party, and then such waiver or consent shall be effective only in the specific instance and for the specific purpose for which it was given.

22. No Third Party Beneficiaries. No person or entity, other than the City, shall be deemed to be a third party beneficiary hereof, and nothing in this Agreement (either express or implied) is intended to confer upon any person or entity, other than the City and the Developer (and their respective successors and assigns), any rights, remedies, obligations or liabilities under or by reason of this Agreement.

23. Mortgagee Protection. The parties hereto agree that this Agreement shall not prevent or limit Developer, at Developer'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. Developer shall have the right to encumber and assign its rights and interests hereunder to the lenders providing such financing as security for such financing without the consent of the City and without complying with Section 10 hereof. 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 Developer 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. A 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 or deed of trust 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 Developer in the performance of Developer'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 Developer under the terms of this Agreement, City shall provide a copy of that notice to the mortgagee within ten (10) Days following the sending of the notice of default to Developer. 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 Developer's obligations or other affirmative covenants of Developer hereunder, or to guarantee such performance; provided, however, that to the extent that any covenant to be performed by Developer 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 10 of this Agreement.

24. Notices. Any written notice, statement, demand, consent approval, authorization, offer, designation, request or other communication to be given hereunder shall be given to the party entitled thereto at its address set forth below, or at such other address as such party may provide to the other party in writing from time to time, namely:

Developer:

KB Home California LLC
36310 Inland Valley Drive, Wildomar, CA 92595
Attn: Heidi McBroom, Director Forward Planning
Email: hmcbbroom@kbhome.com
Phone: (951) 691-5394

with a copy to:

KB Home California LLC
Attn: Phil Darrow, VP Regional Counsel
10990 Wilshire Blvd., 7th Floor
Los Angeles, CA 90024
Phone: (310) 231-4253

City:

City of Ontario
Attn: City Manager
303 East "B" Street
Ontario, CA 91764
Phone: (909) 395-2000

with a copy to:

Scott Huber, City Attorney
Cole Huber, LLP
2281 Lava Ridge Court, Ste. 300
Roseville, CA 95661

Each such notice, statement, demand, consent, approval, authorization, offer, designation, request or other communication hereunder shall be deemed delivered to the party to whom it is addressed (a) if personally served or delivered, upon delivery; (b) if given by electronic communication, whether by telex, or telecopy, upon the sender's receipt of an appropriate answerback or other written acknowledgment; (c) if given by registered or certified mail, return receipt requested, deposited with the United States mail postage prepaid, 72 hours after such notice is deposited with the United States mail; (d) if given by overnight courier, with courier charges prepaid, 24 hours after delivery to said overnight courier; or (e) if given by any other means, upon delivery at the address specified in this Section.

25. Jurisdiction and Venue. City and the Developer (a) agree that any suit, action or other legal proceeding arising out of or relating to this Agreement shall be brought in state or local court in the County of San Bernardino or in the Courts of the United States of America in the district in which the City is located, (b) each consents to the jurisdiction of each such court in any suit, action or proceeding, and (c) each waives any objection that it may have to the venue or any suit, action or proceeding in any of such courts and any claim that any such suit, action or proceeding has been brought in an inconvenient forum. -Each of the City and the Developer agrees that a final and non-appealable judgment in any such action or proceeding shall be conclusive and may be enforced in other jurisdictions by suit on the judgment or in any other manner provided by law.

26. Attorneys' Fees. If any action is instituted to interpret or enforce any of the provisions of this Agreement, the prevailing party in such action shall be entitled to recover from the other party thereto reasonable attorney's fees and costs of such suit (including both prejudgment and post judgment fees and costs) as determined by the court as part of the judgment.

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

28. Usage of Words. As used herein, the singular of any word includes the plural, and terms in the masculine gender shall include the feminine and the non-gender specific.

29. Counterparts. This Agreement may be executed in counterparts, each of which shall be deemed an original.

30. Severability. If any section, sentence, clause or phrase of this Agreement 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 Agreement that can be given effect without the invalid provision of application, and to this end the provisions of this Agreement are severable. -The City Council hereby declares that they would have adopted this Agreement 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.

31. Incorporation by Reference. The following Exhibits attached hereto and the Recitals of this Agreement are hereby incorporated by reference as though fully set forth herein:

- Exhibit 1 – Legal Description of Property
- Exhibit 2 – Map of Property
- Exhibit 3 – Description of Improvements
- Exhibit 4 – Estimated Costs of Improvements
- Exhibit 5 – Certificate of DIF Credit
- Exhibit 6 - DIF Credit Request
- Exhibit 7 - none referenced
- Exhibit 8 - DIF Improvement Assignment

[Signatures On Next Page]

IN WITNESS WHEREOF, the parties have executed this Agreement as of the respective dates set forth below.

“CITY”

CITY OF ONTARIO, a California municipal corporation

Dated: _____, 2020 By: _____
Scott Ochoa, City Manager

ATTEST:

By: _____
City Clerk

APPROVED AS TO FORM:
COLE HUBER, LLP

By: _____
City Attorney

“DEVELOPER”

KB HOME CALIFORNIA LLC,
a Delaware limited liability company

Dated: _____, 2020

By: _____

Name: _____

Its: _____

ACKNOWLEDGEMENT

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

STATE OF CALIFORNIA)
COUNTY OF _____)

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

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

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

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

WITNESS my hand and official seal.

Signature _____
Signature of Notary Public

Place Notary Seal Above

ACKNOWLEDGEMENT

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

STATE OF CALIFORNIA)
COUNTY OF _____)

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

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

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

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

WITNESS my hand and official seal.

Signature _____
Signature of Notary Public

Place Notary Seal Above

Exhibit 1

Legal Description of Property

Tract Map No. 18400

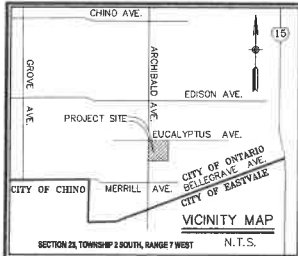
In the City of Ontario, County of San Bernardino, State of California - Being a Subdivision of the Northwest Quarter of Section 23, Township 2 South, Range 7 West, San Bernardino Base and Meridian.

Tract Map No. 18810

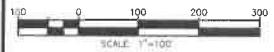
In the City of Ontario, County of San Bernardino, State of California – Being a subdivision of Parcels 2 and 3 of Parcel Map No. 5923, as shown on Map filed in Book 67, Pages 71 and 72, of Parcel Maps, in the Office of the County Recorder of San Bernardino County.

Exhibit 2

Map of Property – Tract Map No. 18400



NUMBERED LOTS: 190
LETTERED LOTS: 10
GROSS ACRES: 39.45
NET ACRES: 24.99



TRACT MAP NO. 18400

IN THE CITY OF ONTARIO, COUNTY OF SAN BERNARDINO, STATE OF CALIFORNIA
BEING A SUBDIVISION OF THE NORTHWEST QUARTER OF THE NORTHWEST QUARTER OF
SECTION 23, TOWNSHIP 2 SOUTH, RANGE 7 WEST, SAN BERNARDINO BASE AND MERIDIAN
VSL ENGINEERING DECEMBER, 2016
INDEX AND BOUNDARY CONTROL SHEET

SHEET 2 OF 9 SHEETS

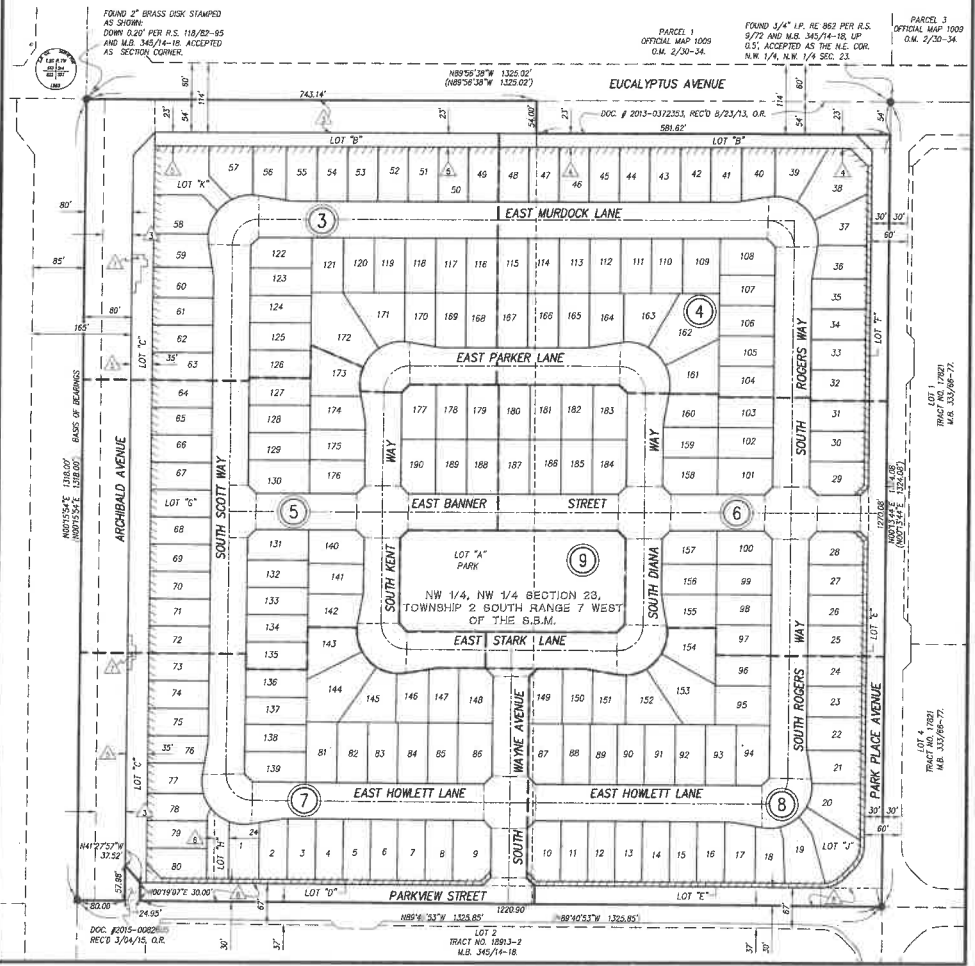
349/28

EASEMENT NOTES

- 1. A RIGHT OF WAY FOR DITCHES OR CANALS CONSTRUCTED BY THE AUTHORITY OF THE UNITED STATES, AS RESERVED IN UNITED STATES PATENT RECORDED APRIL 24, 1884 IN BOOK 1, PAGE 38 OF PATENT RECORDS OF THE COUNTY OF SAN BERNARDINO, SAID EASEMENT NOT PLOTTABLE.
- 2. ANY EASEMENTS OR RIGHTS TO THE WATER WELL, PUMPING PLANT AND PUMP HOUSE IN FAVOR OF LOTS 4 JUDGER AND PAULINE A. ROHRER CO TRUSTES, THE ROHRER FAMILY TRUST, DATED JUNE 23, 1981 RECORDED OCTOBER 27, 1981 AS INSTRUMENT NO. 81-237294 OF OFFICIAL RECORDS, SAID EASEMENT NOT PLOTTABLE.
- 3. AN OFFER OF DEDICATION FOR PUBLIC ROADS, COUNTY HIGHWAYS, AND PUBLIC UTILITY PURPOSES IN FAVOR OF THE CITY OF ONTARIO, RECORDED DECEMBER 21, 2006 AS INSTRUMENT NO. 2106-089836 OF OFFICIAL RECORDS.
- 4. AN EASEMENT FOR NEIGHBORHOOD EDGE AND PUBLIC UTILITY PURPOSES, IN FAVOR OF THE CITY OF ONTARIO, RECORDED SEPTEMBER 25, 2007 AS INSTRUMENT NO. 2007-0548958 OF OFFICIAL RECORDS.
- 5. AN EASEMENT FOR NEIGHBORHOOD EDGE AND PUBLIC UTILITY PURPOSES, IN FAVOR OF THE CITY OF ONTARIO, RECORDED SEPTEMBER 25, 2007 AS INSTRUMENT NO. 2007-0548998 OF OFFICIAL RECORDS.
- 6. AN EASEMENT FOR PUBLIC SEWER AND STORM DRAIN PURPOSES DEDICATED HERETO.
- 7. AN EASEMENT FOR UNDERGROUND ELECTRICAL SUPPLY SYSTEMS, COMMUNICATION SYSTEMS AND INCIDENTAL PURPOSES, IN FAVOR OF S.C.L. RECORDED JANUARY 22, 2015 AS INSTRUMENT NO. 2015-0024405, O.R.
- 8. AN EASEMENT FOR UNDERGROUND ELECTRICAL SUPPLY SYSTEMS, COMMUNICATION SYSTEMS AND INCIDENTAL PURPOSES, IN FAVOR OF S.C.L. RECORDED FEBRUARY 15, 2017 AS INSTRUMENT NO. 2017-0085330, O.R.

SURVEYOR'S NOTES

- 1. THE BASIS OF BEARINGS FOR THIS MAP IS THE WEST LINE OF THE NW 1/4, NW 1/4, SEC. 23 AS SHOWN IN TRACT MAP NO. 18913-2, FILED IN BOOK 345, PAGES 14 THROUGH 18, BEING N 0°15'54" E.
 - 2. INDICATES SET 1" I.P., FLUSH, W/PLASTIC PLUG STAMPED LS 8509 UNLESS NOTED OTHERWISE.
 - 3. INDICATES FOUND MONUMENT AS NOTED.
 - 4. INDICATES 1" I.P., FLUSH, W/TAG STAMPED LS 7724 PER M.B. 345/14-18.
 - 5. N.W. AND TAG STAMPED "1 S. 8509" TO BE SET IN CURB OR PROLONGATED LOT LINES FOR ALL FRONT CORNERS.
 - 6. SET A 1" IP WITH TAG, "1 S. 8509" FLUSH AT ALL REAR LOT CORNERS, ANGLE POINTS IN SIDE OR REAR LOT LINES, AND ANGLE POINTS IN SUBDIVISION BOUNDARY.
 - 7. SET LEAD AND TAG "1 S. 8509" IN TOP OF CURB FOR B.C., F.C.S., P.C.C., P.C.S., AND CORNER OUTBOWS PROJECTED PERPENDICULAR OR RADIAL FROM CENTERLINE.
 - 8. INDICATES RECORDED DATA PER TRACT MAP NO. 18913-2, M.B. 345/14-18.
 - 9. (R) INDICATES RADIAL BEARING.
 - 10. THIS TRACT CONTAINS 40.20 ACRES, GROSS AND 190 NUMBERED LOTS.
- /// INDICATES NON-HEMISPHERICAL ACCESS
- (X) SHEET NUMBERS



349/28

Exhibit 2 Continued

Map of Property – Tract Map No. 18810

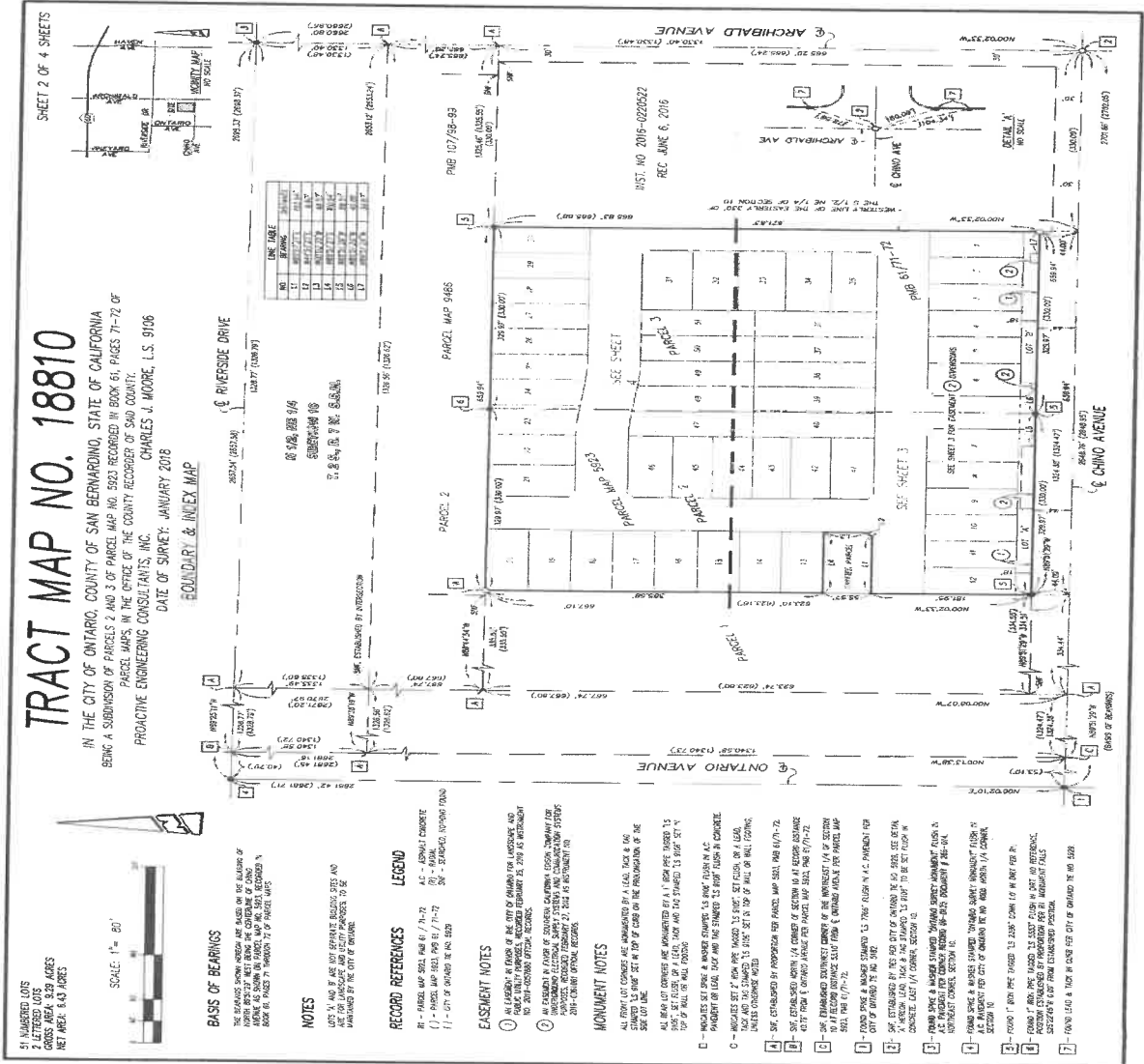


Exhibit 3

Description of Improvements

DIF Eligible Facilities: The DIF Eligible Facilities consist of the following Components and Segments; provided, however, that each such Segment described below shall constitute a Segment for purposes of this Agreement only if such Segment was constructed by or on behalf of the Developer

Storm Drain System Facilities					
<u>Project</u>	<u>DIF Category</u>	<u>DIF Program Project No.</u>	<u>DIF Project Description</u>	<u>Segment Description</u>	<u>Project Scope/Length [LF]</u>
Tract 18400	Local Adjacent Storm Drain	SD-022	Eucalyptus Avenue, Archibald Avenue to 1,300 E/O Archibald Avenue	Storm Drain in Eucalyptus Avenue from Archibald Avenue to Eastern Boundary of Tract 18400	1,456

Streets and Bridges Facilities					
<u>Project</u>	<u>DIF Category</u>	<u>DIF Program Project No.</u>	<u>DIF Project Description</u>	<u>Segment Description</u>	<u>Project Scope/Length [LF]</u>
Tract 18400	Local Adjacent Streets, Signals and Bridges	ST-011	Eucalyptus Avenue from Euclid to Milliken	Ultimate streets improvements on Eucalyptus Avenue including all circulation lanes from Archibald Avenue to Eastern boundary of Tract 18400	1,260
Tract 18400	Local Adjacent Streets, Signals and Bridges	ST-025	Non-Dev ROW Frontage Improvements & SCE Pole Relocations	Curb adjacent lane street improvements on north side of Eucalyptus Avenue from Archibald Avenue to Eastern boundary of Tract 18400	1,260

Exhibit 3 Continued

Description of Improvements

Fiber Optic Communications Facilities					
<u>Project</u>	<u>DIF Category</u>	<u>DIF Program Project No.</u>	<u>DIF Project Description</u>	<u>Segment Description</u>	<u>Project Scope/Length [LF]</u>
TM 18400	Local Adjacent Fiber Optic Communications Facilities	FO-004	Distribution Network - Major Streets Conduit System	Installation of Fiber Conduit in Eucalyptus Avenue from Archibald Avenue to eastern boundary of Tract 18400	1,319
TM 18810	Local Adjacent Fiber Optic Communications Facilities	FO-004	Distribution Network - Major Streets Conduit System	Installation of Fiber Conduit in Chino Avenue adjacent to Tract 18810 and continuing to the eastern boundary of Tract 18855	986

Exhibit 4

Estimated Costs of Improvements

Storm Drain System Facilities								
<u>Project</u>	<u>DIF Category</u>	<u>DIF Program Project No.</u>	<u>DIF Project Description</u>	<u>Segment Description</u>	<u>Project Scope/Length [LF]</u>	<u>Total DIF Project Costs</u>	<u>Segment Cost Percentage</u>	<u>Maximum Eligible Costs</u>
Tract 18400	Local Adjacent Storm Drain	SD-022	Eucalyptus Avenue, Archibald Avenue to 1,300 E/O Archibald Avenue	Storm Drain in Eucalyptus Avenue from Archibald Avenue to Eastern Boundary of Tract 18400	1,456	\$ 1,102,511	53.8810%	\$ 594,044
Subtotal Local Adjacent Storm Drain								\$ 594,044

Streets and Bridges Facilities								
<u>Project</u>	<u>DIF Category</u>	<u>DIF Program Project No.</u>	<u>DIF Project Description</u>	<u>Segment Description</u>	<u>Project Scope/Length [LF]</u>	<u>Total DIF Project Costs</u>	<u>Segment Cost Percentage</u>	<u>Maximum Eligible Costs</u>
Tract 18400	Local Adjacent Streets, Signals and Bridges	ST-011	Eucalyptus Avenue from Euclid to Milliken	Ultimate streets improvements on Eucalyptus Avenue including all circulation lanes from Archibald Avenue to Eastern boundary of Tract 18400	1,260	\$ 8,779,073	4.5487%	\$ 399,337
Tract 18400	Local Adjacent Streets, Signals and Bridges	ST-025	Non-Dev ROW Frontage Improvements & SCE Pole Relocations	Curb adjacent lane street improvements on north side of Eucalyptus Avenue from Archibald Avenue to Eastern boundary of Tract 18400	1,260	\$ 54,458,324	0.5784%	\$ 315,000
Subtotal Local Adjacent Streets and Bridges								\$ 714,337

Fiber Optic Communications Facilities								
<u>Project</u>	<u>DIF Category</u>	<u>DIF Program Project No.</u>	<u>DIF Project Description</u>	<u>Segment Description</u>	<u>Project Scope/Length [LF]</u>	<u>Total DIF Project Costs</u>	<u>Segment Cost Percentage</u>	<u>Maximum Eligible Costs</u>
TM 18400	Local Adjacent Fiber Optic Communications Facilities	FO-004	Distribution Network - Major Streets Conduit System	Installation of Fiber Conduit in Eucalyptus Avenue from Archibald Avenue to eastern boundary of Tract 18400	1,319	\$ 9,819,358	0.3670%	\$ 36,035
TM 18810	Local Adjacent Fiber Optic Communications Facilities	FO-004	Distribution Network - Major Streets Conduit System	Installation of Fiber Conduit in Chino Avenue adjacent to Tract 18810 and continuing to the eastern boundary of Tract 18855	986	\$ 9,819,358	0.2743%	\$ 26,938
Subtotal Local Adjacent Fiber Optic Communications								\$ 62,973

Exhibit 4 Continued

Estimated Costs of Improvements

Total DIF Eligible Facilities - KB Home California LLC			
Tract Map Nos. 18400 & 18810	DIF Eligible Improvements to be Constructed or Funded		
Infrastructure Category	Total DIF Eligible Costs	DIF Obligations	DIF Credit in Excess of Obligation
Local Adjacent Storm Drain System Facilities	\$ 594,044	\$ 964,241	\$ -
Local Adjacent Streets and Bridges Facilities	\$ 714,337	\$ 700,828	\$ 13,509
Local Adjacent Fiber Optic Facilities	\$ 62,973	\$ 207,260	\$ -
Totals- DIF Eligible	\$ 1,371,353	\$ 1,872,329	\$ 13,509

Exhibit 5

FORM OF CERTIFICATE OF REGIONAL OR LOCAL ADJACENT DIF CREDIT

Pursuant to Section 6 of the Development Impact Fee Credit Agreement for Facility Construction by and between the City of Ontario and _____ dated _____, 20__, the terms and definitions of which are hereby incorporated herein by this reference and hereinafter called the "Fee Credit Agreement", the City of Ontario hereby certifies that Developer is entitled to the following amount and nature of DIF Credits:

Amount of Credit: \$ _____
Infrastructure Category of DIF: _____
Local Adjacent or Regional Category of DIF: _____

Scott Ochoa, City Manager

Dated: _____

Exhibit 6

FORM OF DIF CREDIT REQUEST

DIF Project Name & Number: _____

The undersigned (the "Developer"), hereby requests DIF Credits in the DIF categories and amounts specified in Attachment 1 hereto, attached and incorporated. In connection with this Credit Request, the undersigned hereby represents and warrants to the City as follows:

1. He (she) is a duly authorized officer or representative of the Developer, qualified to execute this Credit Request on behalf of the Developer and is knowledgeable as to the matters set forth herein.

2. All costs of the Improvements for which credit is requested hereby are Eligible Costs (as defined in the Fee Credit Agreement) and have not been inflated in any respect. The Eligible Costs for which credit is requested have not been the subject of any prior credit request submitted to the City.

3. Supporting documentation (such as the applicable Developer Contract, third party invoices, lien releases and cancelled checks or other evidence of payment) is attached with respect to each cost for which credit is requested.

4. The Improvement for which credit is requested was constructed in accordance with the requirements of the Fee Credit Agreement.

5. Please issue a Certificate of DIF Credit to the Developer in the amount requested.

I declare under penalty of perjury that the above representations and warranties are true and correct.

DEVELOPER:

CITY:

[INSERT ENTITY]

Credit Request Approved

By: _____
Authorized Representative of Developer
Date: _____

Scott Ochoa, City Manager
Date: _____

ATTACHMENT 1 to **Form of DIF Credit Request**

SUMMARY OF IMPROVEMENTS AND REQUESTED DIF CREDITS

Improvement	Eligible Costs/Contract Amount	DIF Credit Requested
-------------	--------------------------------	----------------------

[List here all Improvements for
which credit is requested, and attach support documentation]

Exhibit 8

FORM OF ASSIGNMENT, SALE, OR TRANSFER OF DIF CREDIT

FROM _____ to _____

This Sale or Transfer of DIF Credit ("DIF Credit Transfer") is entered into as of _____, 20__, between _____, a _____
"Transferor")
and _____ ("Transferee").

A. NMC Builders, LLC is a limited liability company formed under the laws of the state of California, the business affairs of which are governed by that certain Amended and Restated Limited Liability Company Agreement of NMC Builders, LLC dated as of March 31, 2005, as amended ("NMC Agreement").

B. Transferor is a Member of the NMC Builders, LLC.

C. Pursuant to that certain Certificate of DIF Credit (the "Certificate") issued by the City of Ontario to NMC Builders, LLC, dated _____, an amount of DIF Credit was made available to the Transferor for use in the eastern portion of the New Model Colony. A copy of the Certificate is DIF Credit issued to NMC Builders, LLC by CITY is attached hereto and incorporated herein as Exhibit "C-2".

D. Transferee is owner of real property within the eastern portion of the New Model Colony of the City of Ontario and further described as Tract Map No. _____. (or other description of the property).

D. Pursuant to the terms of this DIF Credit Assignment, Transferee desires to receive from the Transferor, a share of the DIF Credit issued to Transferor by NMC Builders LLC.

For good, valuable and sufficient consideration received, the receipt of which is hereby acknowledged, the Transferor and Transferee hereby agree as follows:

1. TRANSFER

The Transferor hereby assigns, transfers and conveys to Transferee the DIF Credit of:

DIF Credit Category

DIF Credit Amount

2. ACCEPTANCE

Transferee hereby accepts and assumes DIF Credit as listed above. Transferee and CITY shall track DIF Credit as it is redeemed, and the remaining balance to be used, by completing, dating and initialing Exhibit "D-3" attached hereto and incorporated herein. The original Exhibit "C-2" shall not be removed from this Transfer Agreement.

3. EFFECTIVE DATE.

This Transfer Agreement shall become effective as of the date first above written.

4. TRANSFEROR'S REPRESENTATIONS AND WARRANTIES.

The Transferor makes the following representations and warranties, which representations and warranties shall survive this DIF Credit Transfer:

The Transferor has the full power and authority to enter into this DIF Credit Transfer.

The execution, delivery and performance of this DIF Credit Transfer will not result in any violation or default under its organizational documents or any instruments to which the Transferor is a party.

From and after the date of this DIF Credit Transfer, the Transferor shall have no further rights, title or interest in or to the DIF Credit.

5. TRANSFEREE'S REPRESENTATION AND WARRANTIES.

Transferee makes the following representations and warranties, which representations and warranties shall survive this Transfer:

Transferee is the owner of Tract No. _____ (*or other property description*) in the eastern portion of the New Model Colony, City of Ontario.

Transferee has the full power and authority to enter into this DIF Credit Transfer.

This DIF Credit Transfer, when executed, shall constitute a valid and legal obligation binding as to Transferee.

6. NOTICES.

All notices, consents, waivers and other communications under this DIF Credit Transfer must be in writing and will be deemed to have been duly given when (a) delivered by hand (with written confirmation of receipt), (b) when received by the addressee, if sent by a nationally recognized overnight delivery service (receipt requested), in each case to the appropriate addresses set forth below (or to such other addresses as a party may designate by notice to the other parties); (c) when received by the addresses as confirmed by a confirmation receipt, if sent by facsimile to the appropriate facsimile number designated below (or to such other facsimile number as the parties may designate by notice to the other parties).

If to the Transferor: Entity Name: _____
Address: _____

Attention: _____
Phone: _____
Email: _____

If to Transferee: Entity Name: _____
Address: _____

Attention: _____
Phone: (____) _____
Email: _____

7. GENERAL PROVISIONS.

Severability. In the event that the application of any of the provisions of this DIF Credit Transfer are held to be unenforceable or invalid, the validity and enforceability of other applications of that provision and of the remaining provisions shall not be affected.

Counterparts. This DIF Credit Transfer may be executed in counterparts.

Entire Agreement. This DIF Credit Transfer contains the entire final understanding of and between the parties and supersedes any prior written or oral agreements between them respecting the subject matter of this DIF Credit Transfer. There are no representations, agreements, arrangements or understandings, oral or written, between the parties that are not fully set forth herein.

Construction. Every covenant, term and provision of this DIF Credit Transfer shall be construed simply according to its fair meaning and not strictly for or against any party.

No Modifications. No supplement, modifications or amendment to this DIF Credit Transfer shall be binding unless executed in writing by both parties.

Further Assurances. The Transferor and Transferee each agree to execute such other documents and perform such other acts as may be necessary or desirable to effectuate this DIF Credit Transfer.

Effect of NMC Agreement and Certificate. This DIF Credit Transfer Agreement is, and shall remain, subject to the terms and conditions of the DIF Credit Certificate and the NMC Agreement, as may be amended by the parties thereto from time to time.

No Third Party Beneficiaries. This DIF Credit Transfer Agreement is made and entered into for the sole protection and benefit of the parties hereto, the City of Ontario, and their respective successors and assigns. No other person or entity shall have any right of action based upon any provision of this DIF Credit Transfer Agreement.

IN WITNESS WHEREOF, the Transferor and Transferee have duly executed this DIF Credit Transfer as of the date first written above.

TRANSFEROR:

Entity Name (NMC Builders Member) a _____

By: _____

By: _____

TRANSFEEE:

Entity Name _____ a, _____

By: _____

By: _____

(All Signatures must be notarized)

EXHIBIT “C-2” to Transfer of DIF Credit

(Certificate of DIF Credit)

(Original DIF Credit Certificate issued by City must be attached).

EXHIBIT "D-3" to Transfer of DIF Credit

Available DIF Credit Reconciliation

DIF Credit Category _____

Assigned to: _____ **(NMC Member)**

Date Assigned to NMC Member: _____

Transferee: _____

Date Transferred: _____

Starting DIF Credit Balance	Amount Redeemed	Date	Remaining DIF Credit Balance	City's Initials	Transferee's Initials

CITY OF ONTARIO

Agenda Report
April 21, 2020

SECTION:
CONSENT CALENDAR

SUBJECT: A RESOLUTION REQUESTING MITIGATION FOR FINANCIAL IMPACTS CAUSED BY FEDERAL AND STATE MEASURES TO COMBAT THE COVID-19 PANDEMIC

RECOMMENDATION: That the City Council consider and adopt a resolution requesting mitigation for financial impacts caused by Federal and State measures to combat the COVID-19 pandemic.


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

FISCAL IMPACT: The actual fiscal impacts relating to COVID-19 pandemic are unknown at this time; however, the revenue impacts of the pandemic are being felt most severely in tourism, airports, transportation, retail, restaurant and entertainment industries, thus impacting the City's revenue sources such as sale taxes, hotel taxes, business license taxes, and parking taxes, to name a few.

The City's sales tax consultant, MuniServices LLC, estimates that the local impact from a state imposed sales tax deferral to small businesses will be a loss of between \$4.6 million to \$5 million to the City's General Fund based on one quarter or a three-month period. If this deferral period were to last a full year, the consultant estimates Ontario's loss to be about \$18 million in the form of a sales tax revenue reduction.

BACKGROUND: On March 4, 2020, Governor Newsom declared a state of emergency concerning Coronavirus Disease 19 ("COVID-19"). As the spread of the virus progressed, on March 16, 2020, the California Department of Public Health (CDPH) instituted guidelines halting all service at bars, wineries, breweries, and restaurants, except for drive-thru, pick-up and delivery options, an action that triggered widespread layoffs and business closures and had ripple effects through the entire state economy. Then, on March 19, 2020, in an even more aggressive attempt to slow the spread, the Governor instituted a statewide stay-at-home order that prohibited social gatherings and mandated the

STAFF MEMBER PRESENTING: Armen Harkalyan, Executive Director of Finance
David Sheasby, Deputy City Manager

Prepared by: Alonso Ramirez
Department: Management Services
City Manager Approval: 

Submitted to Council/O.H.A. 04/21/2020
Approved: _____
Continued to: _____
Denied: _____

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temporary shutdown of all businesses in non-essential sectors, further slowing down financial activity across the state.

Recognizing the financial stress that the shutdown was placing on millions of individuals and small businesses across the state, on March 30, 2020, the Governor signed Executive Order N-40-20, which provides a 90-day extension for tax returns and payments for all individuals and businesses filing returns of less than \$1 million in taxes. As a result, small businesses will have until the end of July to transmit sales and use tax collections due to the state for the period of January 2020 – March 2020. Further, on April 2, 2020, Governor Newsom announced an extension of his economic relief plan by allowing small businesses to defer payment of sales and use tax of up to \$50,000 for up to twelve months.

Local officials have also taken measures to provide relief to businesses and property owners. On April 4, 2020, the California State Association of Counties (CSAC) and the California Association of County Treasurers and Tax Collectors (CACTTC) announced that they would be using their existing authority to cancel penalties and other charges for homeowners, small businesses, and other property owners that are unable to afford their property taxes due on April 10, 2020. Although the extension will be granted only on a case-by-case basis to those able to show economic hardship, any diversion of these revenues, which constitute the single largest funding source for schools, counties, cities and special districts, could be profound.

This impact will hit as other revenue streams have already precipitously declined. Revenues from Transient Occupancy Tax (TOT), parking taxes, and other fees are less than half of what would normally be expected. The toll of the public health orders on not just businesses, but also on municipal governments, cannot be denied.

Municipal governments provide vital, frontline services in the fight against COVID-19, such as fire, police, and public works, and, without adequate levels of funding, existing levels of service cannot be maintained. As such, the proposed resolution requests that the Federal and State governments recognize that: public health efforts have had profound impacts on municipal finances; there is a need to keep municipal services staffed and fully operational to keep up the fight on COVID-19 and to manage the economic recovery to follow; and therefore, there is need for direct and immediate financial assistance for local agencies.

RESOLUTION NO. _____

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF ONTARIO, CALIFORNIA, REQUESTING MITIGATION FOR FINANCIAL IMPACTS CAUSED BY FEDERAL AND STATE MEASURES TO COMBAT THE COVID-19 PANDEMIC.

WHEREAS, on March 4, 2020, the Governor of the State of California declared a State of Emergency; and

WHEREAS, on March 16, 2020, the California Department of Public Health instituted guidelines halting all sit-down, on premises service for bars, breweries, wineries, and restaurants to slow the spread of Coronavirus Disease 19 ("COVID-19"); and

WHEREAS, on March 19, 2020, the Governor instituted a stay-at-home order to further stop the spread of COVID-19, which mandated the temporary shutdown of businesses in non-essential sectors and further slowed down financial activity across the state; and

WHEREAS, the revenue impacts have been felt most severely in tourism, airport, transportation, retail, restaurant and entertainment industries, thus impacting City's revenue sources such as sale taxes, hotel taxes, business license taxes and parking taxes; and

WHEREAS, on March 30, 2020, the Governor signed Executive Order N-40-20, providing a ninety-day extension for tax returns and payments for all businesses filing a return of less than \$1 million in local and state taxes, including sales and use tax; and

WHEREAS, on April 2, 2020, the Governor expanded the above-mentioned Executive Order allowing small businesses to defer payment of sales and use tax of up to \$50,000 for up to twelve months; and

WHEREAS, the City of Ontario is anticipating a potential loss of millions of dollars of essential revenues because of the deferral of sales and use tax due for transactions occurring during January 2020 – March 2020; and

WHEREAS, the City of Ontario would potentially lose millions of dollars more if sales and use taxes due for transactions occurring for the rest of 2020 and beyond are also deferred; and

WHEREAS, counties and tax collectors will waive penalties and other charges for property owners unable to afford property taxes by the April 10, 2020 deadline; and

WHEREAS, the City of Ontario would potentially lose millions of essential revenues from property tax payments if property owners do not remit payment of property taxes due on April 10, 2020; and

WHEREAS, the City Council of City of Ontario has adopted a Fiscal Year 2019-2020 budget authorizing projects and programs based on estimated receipt of these essential revenues; and

WHEREAS, there is no guarantee that the City will receive deferred revenues should circumstances force the closure of a business that has not remitted sales or use tax proceeds; and

WHEREAS, these revenues fund police, fire and other essential City services needed to maintain the current high level of public safety in Ontario; and

WHEREAS, city services are vital to the effort to combat the spread of COVID-19 across the State of California and the United States; and

WHEREAS, municipalities, including the City of Ontario, will experience increased operational costs as a result of the effort to combat COVID-19; and

WHEREAS, relief funding heretofore made available from the federal government has primarily targeted municipalities larger than 500,000 persons in population; and

WHEREAS, the State of California has not yet provided financial relief for municipalities suffering from a loss of revenue due to the economic slowdown caused by the COVID-19 pandemic.

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

SECTION 1. The recitals set forth above are true and correct and are hereby adopted as findings in support of this Resolution as if fully set forth herein.

SECTION 2. Request for Financial Mitigation for Loss of Revenues Caused by Federal and State Measures to Address COVID-19.

While measures taken by the Federal Government and the State of California to slow the spread of COVID-19 are necessary and supported by the City, those measures have taken a toll on the state and local economies. On top of that toll, measures taken by the State of California to defer sales and use tax, and to waive penalties and other charges relating to property taxes will put a significant burden on City resources, severely decreasing projected revenues, and potentially impacting service levels. As such, it is imperative that the Federal Government and the State of California recognize the financial strain placed on municipalities as a result of these measures and provide relief in the form of direct and immediate financial assistance.

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

PASSED, APPROVED, AND ADOPTED this 21st day of April 2020.

PAUL S. LEON, MAYOR

ATTEST:

SHEILA MAUTZ, CITY CLERK

APPROVED AS TO FORM:

COLE HUBER, LLP
CITY ATTORNEY

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

I, SHEILA MAUTZ, City Clerk of the City of Ontario, DO HEREBY CERTIFY that foregoing Resolution No. 2020- was duly passed and adopted by the City Council of the City of Ontario at their regular meeting held April 21, 2020 by the following roll call vote, to wit:

AYES: COUNCIL MEMBERS:

NOES: COUNCIL MEMBERS:

ABSENT: COUNCIL MEMBERS:

SHEILA MAUTZ, CITY CLERK

(SEAL)

The foregoing is the original of Resolution No. 2020- duly passed and adopted by the Ontario City Council at their regular meeting held April 21, 2020.

SHEILA MAUTZ, CITY CLERK

(SEAL)

CITY OF ONTARIO

Agenda Report
April 21, 2020

SECTION:
CONSENT CALENDAR

SUBJECT: AUTHORIZE THE PURCHASE OF TABLET COMPUTERS FROM CDCE INCORPORATED

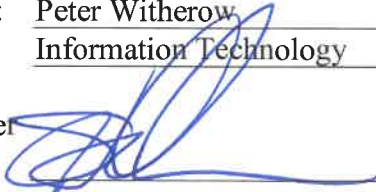
RECOMMENDATION: That the City Council authorize the purchase of 80 Panasonic “Toughbook” tablet computers at a cost of \$270,038 from CDCE Incorporated of Yorba Linda, California; for the Utility Billing System Project and authorize a project contingency of \$27,000 for any necessary hardware, updates or accessories required for project deployment.

COUNCIL GOALS: Operate in a Businesslike Manner

FISCAL IMPACT: The Fiscal Year 2019-20 Adopted Budget includes appropriations from the Information Technology Fund in the amount of \$297,038 for the purchase of tablet computers as part of the City’s Utility Billing System Project. The City has approved CDCE as it’s sole source vendor to standardize the computer model and installation protocols for this project.

BACKGROUND: In Fiscal Year 2017-18, the City Council approved a project to replace the City’s Utility Billing System with a more modern system. One aspect of the project is the ability to provide work orders and customer information to the workers in the field which will improve the customer experience. The City’s current system is a cumbersome paper-based system; the new system is mobile and will enable field workers to receive updates in real time. Among the many tools available with the mobile solution is the ability to provision new services, quicker response time for missed trash pickups, better routing of work orders, and better verification of services at a location. The purchase of these tablets will enable the Integrated Waste Department to bring these updated capabilities into the hands of the drivers and eliminate the use of thousands of pieces of paper monthly.

STAFF MEMBER PRESENTING: Toni McNaughton, IT Applications Director

Prepared by: Peter Witherow
Department: Information Technology
City Manager Approval: 

Submitted to Council/O.H.A. 04/21/2020
Approved: _____
Continued to: _____
Denied: _____

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CITY OF ONTARIO

Agenda Report
April 21, 2020

SECTION:
CONSENT CALENDAR

SUBJECT: A PROFESSIONAL SERVICES AGREEMENT WITH PM AM CORPORATION FOR SECURITY ALARM MANAGEMENT SERVICES

RECOMMENDATION: That the City Council approve and authorize the City Manager to execute a five-year Professional Services Agreement (on file in the Records Management Department) with PM AM Corporation of Dallas, Texas, for third-party management services of security alarms permitted and installed in residential and business properties throughout the City; and authorize the City Manager to extend the agreement for up to two additional years.

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


FISCAL IMPACT: The \$60,000 estimated revenues for alarm permit and false alarm fees are already included in the Police Department budget. PM AM Corporation proposes to charge the City an average share of 15 percent of alarm revenues collected for both permits and false alarms, or \$51,000.

BACKGROUND: In March, the City issued a Request for Proposal (RFP) for companies to provide security alarm management services in support of the City's security alarm program. Based upon the responses received, staff recommends award of the Security Alarm Management Systems contract to PM AM Corporation.

In February 2020, the City updated its Security Alarm Ordinance, along with implementing new security alarm permit and false alarm fee schedules within the Citywide Fee Schedule. Currently, the Police Department administers the Security Alarm Program with in-house staff. Contracting with PM AM Corporation will allow the staff to focus its limited resources in other areas to better serve the needs and expectations of residents and the business community. PM AM offers a 100% web-based, turn-key solution and will maintain all alarm permit information for the City in real time.

The following summary of responses is presented for comparison purposes.

STAFF MEMBER PRESENTING: Derek Williams, Chief of Police

Prepared by: Donna Bailey
Department: Police
City Manager Approval: 

Submitted to Council/O.H.A. 04/21/2020
Approved: _____
Continued to: _____
Denied: _____

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RFP No. 1274: Security Alarm Management Systems

In March 2020, the City solicited and received proposals for security alarm management systems from the following firms.

<u>Vendor</u>	<u>Location</u>
PM AM Corporation	Dallas, Texas
Alarm Program Systems, LLC	Corydon, Indiana

One vendor presented its scope of services in general terms and had not been in the industry as long as the other. The second vendor responded to the RFP detailing their experience in the alarm management industry, offering free online training and additional assistance at no cost if the City's alarm ordinance needs to be updated. Staff recommends award to PM AM Corporation of Dallas, Texas, as the responsive bidder that best met criteria specifications. If approved, PM AM Corporation will begin implementation immediately with an anticipated live date no later than June 1, 2020.

CITY OF ONTARIO

Agenda Report
April 21, 2020

SECTION:
CONSENT CALENDAR

SUBJECT: AWARD A CONSTRUCTION AGREEMENT FOR CRACK SEALING SERVICES

RECOMMENDATION: That the City Council authorize the City Manager to execute a three-year Construction Agreement (on file in the Records Management Department) for Contract No. SM1920-5 with Safe USA Inc., located in Ontario, California, for an annual estimated cost of \$102,000 plus an annual contingency of \$5,100; authorize the addition of future service areas; and the option to extend the agreement for up to two additional years consistent with the City Council approved budgets.

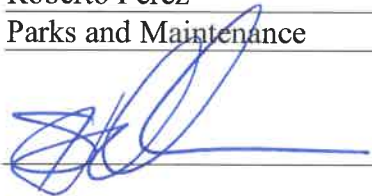
COUNCIL GOALS: Invest in the City's Infrastructure (Water, Streets, Sewers, Parks, Storm Drains and Public Facilities)
Ensure the Development of a Well Planned, Balanced and Self-Sustaining Community in Ontario Ranch

FISCAL IMPACT: The estimated base cost of the proposed Construction Agreement is \$102,000 plus \$5,100 of contingency for unforeseen services that might be needed due to weather, unforeseen events, or extraordinary circumstances for a total of \$107,100 for each of the first three years, for a total estimated contract cost of \$321,300. Appropriations for crack sealing services will be included in the Fiscal Year 2020-21 Proposed Annual Operating Budget.

At the City's sole discretion, two one-year extensions may be exercised, the first option year includes a base price increase of 5% and no base price increase is called for in the second option year. Future contracting actions will be commensurate with the City Council authorized work programs and adopted budgets. Contracting for the multi-year period will allow the City to avoid the cost of re-bidding the contract annually, provide service continuity, and allow for a better projection of future years' costs.

BACKGROUND: In January 2020, the City solicited bids for Contract No. SM1920-5 for crack sealing services citywide. Five bids were received. Four bids met the bid criteria and standards necessary to perform this work and one was deemed non-responsive. The proposed base cost ranged from \$306,000 to \$630,000.

STAFF MEMBER PRESENTING: Tito Haes, Executive Director Public Works

Prepared by: Roberto Perez
Department: Parks and Maintenance
City Manager Approval: 

Submitted to Council/O.H.A. 04/21/2020
Approved: _____
Continued to: _____
Denied: _____

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A summary of the three-year base bid costs for comparison purposes is as follows:

<u>Vendor</u>	<u>Location</u>	<u>Amount</u>
Safe USA Inc.	Ontario, CA.	\$306,000
Hardy & Harper	Lake Forest, CA	\$387,000
Carter Enterprises	Costa Mesa, CA	\$495,000
Roy Allan Slurry	Santa Fe Springs, CA	\$630,000
*Global Road Sealing, Inc.	Garden Grove, CA	N/A

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

Safe USA Inc. located in Ontario, California submitted the lowest bid that met all the required specifications with a base cost, three-year total of \$306,000. Based on their bid, credentials, pricing and favorable reference checks, staff recommends award of a Construction to Safe USA, Inc.

CITY OF ONTARIO

Agenda Report
April 21, 2020

SECTION:
CONSENT CALENDAR

SUBJECT: AUTHORIZE THE PURCHASE AND INSTALLATION REPLACEMENT HEAVY TRUCK LIFT EQUIPMENT

RECOMMENDATION: That the City Council take the following actions:

- (A) Authorize a cooperative purchase agreement in the amount of \$384,348 for the acquisition, relocation and installation services for heavy truck lift equipment for Fleet Services from Southwest Lift and Equipment, Inc. of San Bernardino, California, consistent with the terms and conditions of the of the Sourcewell (formerly NJPA) Contract # 061015-SKI;
- (B) Authorize the City Manager to execute all documents required for the completion of the project including, but not limited to, contracts, agreements, reduction of retention accounts, and filing of a notice of completion at the conclusion of all construction related activities; and
- (C) Authorize the City Manager to execute a Construction Contract (on file in the Records Management Department), and the addition of future acquisitions or services to complete this project, as consistent with the City Council approved budgets.

COUNCIL GOALS: Maintain the Current High Level of Public Safety
Invest in the City's Infrastructure (Water, Streets, Sewers, Parks, Storm Drains and Public Facilities)

FISCAL IMPACT: The Fiscal Year 2019-20 Adopted Operating Budget includes appropriations from the Integrated Waste Fund in the amount of \$326,696 and \$57,792 in the Equipment Services Fund for the Heavy Truck Lift Replacements. The total cost for the acquisition and installation of the lift equipment recommended for purchase is estimated to be \$384,348.

BACKGROUND: The two heavy truck lifts recommended for replacement in this action have outlived their useful life at over 35 years old. One lift is currently broken and non-operational, and the other has been difficult to maintain and is no longer adequate for daily operations. The recommended heavy truck lifts will be compatible with new vehicles and equipment thus increasing employee safety and

STAFF MEMBER PRESENTING: Tito Haes, Executive Director Public Works

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

Submitted to Council/O.H.A. 04/21/2020
Approved: _____
Continued to: _____
Denied: _____

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operational efficiency. The current in-ground lifts will be removed and after soil remediation is complete, the pits will be filled in with concrete and two new flush mount lifts will be installed in more optimal locations. In addition, two, two-post lifts will be relocated to a different area in the shop to give adequate room to place the new lifts in a manner that allows employees to drive directly onto and off the lifts without having to make multiple vehicle maneuvers to enter and exit the shop.

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.

Staff recommends the cooperative purchase of Stertil-Koni products and installation services for the heavy truck lifts and equipment in the amount of \$384,348 from Southwest Lift and Equipment, Inc. of San Bernardino, California, consistent with the terms and conditions of the Sourcewell (formerly NJPA) Cooperative Contract # 061015-SKI.

CITY OF ONTARIO

Agenda Report
April 21, 2020

SECTION:
CONSENT CALENDAR

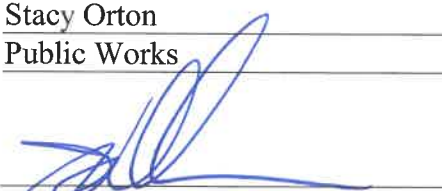
SUBJECT: AWARD OF A CONSTRUCTION CONTRACT FOR THE RENOVATION OF RESTROOMS LOCATED AT THE ONTARIO MUNICIPAL UTILITIES COMPANY (OMUC)

RECOMMENDATION: That the City Council take the following actions:

- (A) Reject H2M and New Millennium protests against New Dimensions General Construction for D&C19-004 OMUC Restrooms;
- (B) Authorize the City Manager to execute Construction Contract No. D&C19-004 OMUC Restrooms (on file in the Records Management Department) with New Dimensions General Construction of Anaheim Hills, California, for the renovation of the OMUC Employee Restrooms in the amount of \$353,400;
- (C) Authorize a project reserve in the amount of \$72,785 to cover additional services identified after bid closing for plumbing, electrical, heating/ventilation and air conditioning systems services, temporary locker set-up and disposal and an additional temporary restroom unit for Fleet Services;
- (D) Authorize a 15% contingency of \$63,928 to address any unforeseen issues that may arise during construction; and
- (E) Authorize the City Manager or his designee to execute all documents required for the completion of the project including, but not limited to, contracts, agreements, reduction of retention accounts and filing a notice of completion at the conclusion of all construction related activities.

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

STAFF MEMBER PRESENTING: Tito Haes, Executive Director Public Works

Prepared by: Stacy Orton
Department: Public Works
City Manager Approval: 

Submitted to Council/O.H.A. 04/21/2020
Approved: _____
Continued to: _____
Denied: _____

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FISCAL IMPACT: The Fiscal Year 2019-20 Adopted Operating Budget includes appropriations of \$490,113 from the following funding sources: Capital Projects, Water Capital, Sewer Capital, Integrated Waste and Equipment Services Funds for the renovation of employee restrooms at the Public Works and Ontario Municipal Utilities Company (OMUC) yard facility. The total cost for the renovation of the restrooms is estimated to be \$490,113 including the project reserve and 15% contingency.

BACKGROUND: The proposed OMUC Restroom project will remodel existing showers, locker room, and three restroom facilities at the Public Works and OMUC yard. The remodel will include improvements to meet ADA requirements, new fixtures, partitions and flooring.

On January 8, 2020, the City solicited bids for the renovation of the OMUC Employee Restrooms. Ten bids were received with New Dimensions General Construction, Inc. the apparent low bidder. On February 5, 2020, the City received two bid protest letters from H2M Construction, Inc. and New Millennium Construction Services. Staff consulted with the City Attorney and found the protests are without merit and New Dimensions remains the lowest responsive bidder.

The base cost proposed ranged from \$353,400 to \$476,800 and are summarized below.

Vendor	Location	Bid Amount
New Dimensions General Construction, Inc.	Anaheim Hills, CA	\$353,400
H2M Construction, Inc.	Glendale, CA	\$377,000
New Millennium Construction Services	Chino Hills, CA	\$390,300
RS Construction & Development, Inc.	Upland, CA	\$393,400
Reed Family Enterprises	Temecula, CA	\$403,277
Broughton Construction, Inc.	Rancho Cucamonga, CA	\$411,935
Golden Gate Steel, Inc.	Norwalk, CA	\$447,874
Dalke & Sons Construction, Inc.	Riverside, CA	\$458,690
States Link Construction, Inc.	Buena Park, CA	\$476,800
* Corral Construction & Development, Inc.	Commerce, CA	N/A

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

New Dimensions General Construction, located in Anaheim Hills, California, submitted the lowest bid that met all the required specifications with base cost of \$353,400. Based on their bid, credentials, pricing and favorable reference checks, staff recommends award of a Construction Contract to New Dimensions General Construction.

On March 4, 2020, a meeting was held to finalize logistics and scope of work. At this time, additional items were determined necessary outside of the scope of work. The project reserve covers these items: temporary restroom unit for Fleet Services staff, set-up and removal of the temporary lockers, addition of water shut-off valves, and upgrading the heating/ventilation and air conditioning system to meet building code requirements.

Once the contract is awarded, it is anticipated that the restroom construction will commence May 2020 and be completed by August 2020.

CITY OF ONTARIO

Agenda Report
April 21, 2020

SECTION:
CONSENT CALENDAR

SUBJECT: A RESOLUTION OF THE ONTARIO CITY COUNCIL FINDING THAT THE PUBLIC INTEREST AND CONVENIENCE REQUIRE THE SALE OF CERTAIN REAL PROPERTY AND DECLARING ITS INTENT TO SELL SUCH PROPERTY

RECOMMENDATION: That the City Council adopt a resolution finding the public interest and convenience require the sale of certain real property located at 116 East D Street and declaring its intent to sell a portion of such property.

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

FISCAL IMPACT: None.

BACKGROUND: California Government Code Sections 37420 through 37430 authorizes the City to dispose of public property. Government Code Section 37421 states that when the legislative body of a city finds that the public interest and convenience require the sale of public buildings and sites, it must adopt a resolution of its finding and intention to sell such property. Government Code Section 37422 states that such resolution shall fix a time for hearing protests to the property conveyance, provide for publication of notice of the hearing, fix the time when the City will take final action regarding the property conveyance, and contain an accurate description of the property to be conveyed.

The City is well along in the advancement of revitalizing downtown and the proposed conveyance of a portion of the City owned property located at 116 East D Street ("Property") is essential to allow for the redevelopment of the entire city block bound by Euclid Avenue, D Street, Lemon Avenue, and C Street; a location map is provided for reference as Exhibit "A". Redevelopment of the Property would include a centralized parking facility adjacent to a multi-story mixed-use project consisting of multi-family housing and neighborhood retail uses. The proposed development will fittingly tie-in with the visioning and place making efforts staff, local stakeholder, and prospective developers are striving for in downtown,

STAFF MEMBER PRESENTING: John Andrews, Executive Director Economic Development

Prepared by: Charity Hernandez
Department: Economic Development

City Manager Approval: 

Submitted to Council/O.R.A./O.H.A. 04/21/2020
Approved: _____
Continued to: _____
Denied: _____

||

compliment the Town Square public space, and help spur additional development opportunities in downtown.

Conveyance of the Property will also help alleviate conditions of economic and physical blight downtown and create an increase in property taxes, all of which benefit the health, safety and welfare of the City.

Staff recommends adoption of the resolution declaring the City's intent to dispose of and convey a portion of the Property pursuant to the terms of the proposed Disposition and Development Agreement to be considered on May 5, 2020, for final action on the disposition of the Property, the hearing of any protests to the disposition, and provide for publication of the notice of the said hearing in a newspaper of general circulation no less than ten days prior to May 5, 2020.

RESOLUTION NO. _____

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF ONTARIO, CALIFORNIA, FINDING THAT THE PUBLIC INTEREST AND CONVENIENCE REQUIRE THE SALE OF CERTAIN REAL PROPERTY AND DECLARING ITS INTENT TO SELL SUCH PROPERTY.

WHEREAS, the City of Ontario ("City") currently owns in fee that certain real property generally located at 111-116 East D Street in the City of Ontario (APN: 1048-551-10) and legally described in Exhibit "A" attached to this resolution and incorporated by reference herein (the "Property"); and

WHEREAS, the City desires to sell the Property by entering into a Disposition and Development Agreement ("DDA") with Kendrew Development Company LLC., a limited liability company, for purposes of economic development; and

WHEREAS, California Government Code Sections 37420 through 37430 authorize the City to dispose of property; and

WHEREAS, California Government Code Section 37421 provides that when the legislative body of a city finds that the public interest and convenience require the sale of public buildings and sites, it must adopt a resolution of its finding and intention to sell such property; and

WHEREAS, California Government Code Section 37422 provides that such resolution shall fix a time for hearing protests to the property conveyance, provide for publication of notice of the hearing, fix the time when the City will take final action regarding the property conveyance; and contain an accurate description of the property to be conveyed; and

WHEREAS, pursuant to Government Code section 65402, the proposed disposition of the Property pursuant to the DDA shall be presented to the City's Planning Commission ("Planning Commission"), and such disposition shall be contingent on a finding by the Planning Commission that the conveyance of the Property from City to Brand Pacific Construction Inc. is in conformance with the City's general plan; and

WHEREAS, the City wishes to declare its intent to dispose of and convey the Property pursuant to the terms of the DDA, fix a time for the hearing of any protests to the disposition, provide for publication of the notice of said hearing, and fix the time for final action on the disposition of the Property and approval of the DDA.

WHEREAS, City staff has determined that the approval and adoption of this resolution does not constitute an approval of any specific program, project or expenditure and does not constitute a project within the meaning of the California Environmental Quality Act (Public Resources Code § 21000) ("CEQA"); and

WHEREAS, pursuant to the foregoing, City staff has determined that a notice of exemption ("Notice of Exemption") for the approval of this should be filed with the County of San Bernardino, pursuant to CEQA, the State CEQA Guidelines and the City's Local CEQA Guidelines.

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

SECTION 1. Incorporation of Recitals. The foregoing recitals are true and correct and are incorporated herein and made an operative part of this Resolution.

SECTION 2. Findings. The City Council of the City hereby finds and determines that public convenience and necessity require the sale of the Property. The factors demonstrating that the public convenience and necessity require the sale of the Property include, but are not limited to the following: the Property will consist of a centralized parking facility adjacent to a multi-story mixed-use project consisting of multi-family housing and neighborhood retail uses for economic development purposes, which will create jobs within the City, alleviate conditions of economic and physical blight in the City, and create an increase in property taxes, all of which benefit the health, safety and welfare of the City.

SECTION 3. Declaration of Intent to Sell; Fixing of Hearing and Time of Final Action. The City Council of the City hereby declares its intent to sell the Property pursuant to the DDA and fixes May 5, 2020, at 6:00 P.M. or as soon thereafter that the matter can be heard at the City of Ontario, City Council Chambers, located at 303 East "B" Street, Ontario, California 91764 as the date, time and location for hearing any protests to the proposed sale of the Property, approval of the DDA, and as the final action date.

SECTION 4. Publication and Posting. In compliance with California Government Code Section 37423, the City Council of the City hereby directs City staff to publish this resolution at least once in a daily newspaper prior to May 5, 2020 and to post this Resolution for not less than ten (10) days in at least three (3) conspicuous places upon the Property prior to May 5, 2020.

SECTION 5. CEQA. The City Council of the City hereby directs City staff to file a Notice of Exemption with the San Bernardino County Clerk's Office within five (5) working days of the adoption of this Resolution.

SECTION 6. Severability. If any provision of this Resolution is held invalid, the remainder of this Resolution shall not be affected by such invalidity, and the provisions of this Resolution are severable.

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

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

PASSED, APPROVED, AND ADOPTED this 21st day of April 2020.

PAUL S. LEON, MAYOR

ATTEST:

SHELIA MAUTZ, CITY CLERK

APPROVED AS TO FORM:

COLE HUBER, LLP
CITY ATTORNEY

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

I, SHELIA MAUTZ, City Clerk of the City of Ontario, DO HEREBY CERTIFY that foregoing Resolution No. 2020- was duly passed and adopted by the City Council of the City of Ontario at their regular meeting held April 21, 2020, by the following roll call vote, to wit:

AYES: COUNCIL MEMBERS:

NOES: COUNCIL MEMBERS:

ABSENT: COUNCIL MEMBERS:

SHELIA MAUTZ, CITY CLERK

(SEAL)

The foregoing is the original of Resolution No. 2020- duly passed and adopted by the Ontario City Council at their regular meeting held April 21, 2020.

SHELIA MAUTZ, CITY CLERK

(SEAL)

EXHIBIT "A"

LEGAL DESCRIPTION OF PROPERTY

APN: 1048-551-10

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

TRACT 18029-3 PTN LOT 1 FORMERLY DESC AS ONTARIO CITY LOTS 1 2 3 16 AND
17 BLK 29 AND PTN ALLEY VAC ADJ ON WEST, NORTH AND SOUTH EX ST

EXHIBIT A



CITY OF ONTARIO

Agenda Report
April 21, 2020

SECTION:
PUBLIC HEARINGS

SUBJECT: A PUBLIC HEARING TO CONSIDER AN ORDINANCE APPROVING A DEVELOPMENT CODE AMENDMENT (FILE NO. PDCA20-001) TO AMEND ONTARIO DEVELOPMENT CODE SECTION 4.02.010.D.2.F, BILLBOARD RELOCATION AGREEMENTS, INTERAGENCY RELOCATION EXCEPTION, TO REVISE THE LOCATIONAL CRITERIA AND THE NUMBER OF BILLBOARDS TO BE ELIMINATED WITHIN THE CITY

RECOMMENDATION: That the City Council introduce and waive further reading of an ordinance approving a Development Code Amendment (PDCA20-001) amending Ontario Development Code Section 4.02.010.D.2.f, Billboard Relocation Agreements, Interagency Relocation Exception, to revise the locational criteria and the number of billboards to be eliminated within the City.

COUNCIL GOALS: Operate in a Businesslike Manner
Pursue City's Goals and Objectives by Working with Other Governmental Agencies

FISCAL IMPACT: None.

BACKGROUND: Going back several decades, the City began prohibiting the construction of new billboard signs. In 2003, the City approved an amendment to the Development Code Sign Section that would allow for the construction of a new billboard as part of a billboard relocation agreement. The intent of the billboard relocation agreement was "to reduce the overall number of legal nonconforming billboards within the city by allowing relocated billboards in more suitable locations and provide more attractive, aesthetically pleasing billboard designs through a Billboard Relocation Agreement." A further purpose is to reduce or eliminate the City's obligation to pay compensation for the removal of legal nonconforming billboards. Billboard Relocation Agreements are part of the demonstrated commitment of the City of Ontario to improve the aesthetic appearance of the City. The consideration and execution of Billboard Relocation Agreements shall be at the sole discretion of the City of Ontario. The provisions require the removal of at least six existing billboards for every new, relocated billboard sign.

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

Prepared by: Scott Murphy
Department: Development

City Manager Approval: 

Submitted to Council/O.H.A. 04/21/2020

Approved: _____

Continued to: _____

Denied: _____

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In 2015, the City was involved in several discussions with San Bernardino County Transportation Authority (“SBCTA”), the regional transportation planning agency of which the City is a part, regarding the relocation of billboards necessary to complete freeway improvement projects. Because most cities in the region prohibit new billboards, the ability to relocate billboards is minimal. In cases where billboards cannot be relocated, SBCTA was placed in a position of having to purchase the billboard and compensate the billboard companies for lost revenue potential – these costs can be substantial.

To assist SBCTA and other public agencies in relocating billboards, the City Council approved an amendment to the City’s billboard relocation agreement provisions that would allow billboards to be relocated within the City, under very specific criteria, through an “Interagency Relocation Exception.” The exception reads as follows:

- f) Notwithstanding the foregoing, a billboard may be relocated from outside the City to any location within the City pursuant to an agreement, approved at the discretion of the City Council, between the City and another public agency so long as the following findings can be met:
 - 1) A minimum of six (6) existing, legal nonconforming billboards shall be removed, at least five (5) of which must be currently located within the City;
 - 2) The billboard’s relocation is necessitated by work being performed on the same freeway as the planned new site for the billboard; and
 - 3) The public health, safety, and welfare are not impaired by the relocation.

That amendment provided for a billboard to be relocated to the Mountain/Interstate 10 intersection and the removal of five billboards within the City along Holt Boulevard, Vineyard Avenue, and Mountain Avenue.

Recently, the City has been reviewing the plans of the Interstate 10 express lanes project. As part of the freeway widening, a billboard located on the north side of Interstate 10, between the Vineyard Avenue and Fourth Street interchanges, is within the future freeway right-of-way. As part of the freeway widening, SBCTA would be required to relocate the same billboard to the north, outside the future right-of-way or purchase the billboard rights outright at a very high cost. Staff has had discussions with the billboard owner about the potential to relocate the billboard on the same site with a more pleasing design and obtain the removal of additional billboards within the City.

The current language only provides for interagency relocation of billboards located outside of the City to be relocated within the City. However, as the Development Code is silent on billboards within the City, relocation of existing billboards within the City would be prohibited. As a result, the language must be revised to address existing billboards within the City. Additionally, staff has determined that the number of older billboards in less desirable areas in the interior of the City (e.g. Holt Boulevard, Mountain Avenue, Mission Boulevard, etc.) has been dramatically reduced, thereby making the six billboard removals unattainable. Therefore, the number of billboards proposed for removal is being reduced to three (3) signs for existing billboards within the City to be relocated. The Interagency Relocation Exception Development Code Section 4.02.010.D.2.f, would read as follows:

(f) Interagency Relocation Exception. Notwithstanding the foregoing, a billboard may be relocated from **inside or** outside the City to any location within the City pursuant to an agreement, approved at the discretion of the City Council, between the City and another public agency so long as the following findings can be met:

- 1) **For a billboard that is to be relocated from within the City, a minimum of three (3) existing, legal nonconforming billboards currently located within the City shall be removed.**
- 2) **For a billboard that is to be relocated from outside the City, a minimum of six (6) existing, legal nonconforming billboards shall be removed, at least five (5) of which must be currently located within the City.**
- 3) The billboard's relocation is necessitated by work being performed on the same freeway as the planned new site for the billboard.
- 4) The public health, safety, and welfare are not impaired by the relocation.

On January 28, 2020, the Planning Commission conducted a public hearing to consider the Development Code Amendment. After receiving all public testimony, the Planning Commission voted unanimously to approve its Resolution No. PC20-002, recommending approval to the City Council.

ENVIRONMENTAL REVIEW: The project is categorically exempt from the requirements of the California Environmental Quality Act (CEQA) pursuant to § 15601(b)(3) (General Rule) of the CEQA Guidelines based on the fact that it is not known whether an interagency billboard relocation agreement will be proposed, where the location of any new relocation might occur, and the total number and locations of billboards proposed for removal as part of such an agreement might be.



PLANNING COMMISSION STAFF REPORT

January 28, 2020

FILE NO.: PDCA20-001


SUBJECT: A Development Code Amendment request to amend Ontario Development Code Section 4.02.010.D.2.f, Billboard Relocation Agreements, Interagency Relocation Exception, to revise the locational criteria and the number of billboards to be eliminated within the City; **City Initiated. City Council action is required.**

RECOMMENDED ACTION: That the Planning Commission consider and recommend approval of File No. PDCA20-001 to the City Council, pursuant to the facts and reasons contained in the staff report and attached resolution.

PROJECT ANALYSIS:

[1] Background — Going back several decades, the City began prohibiting the construction of new billboard signs. In 2003, the City approved an amendment to the Development Code Sign Section that would allow for the construction of a new billboard as part of a billboard relocation agreement. The intent of the billboard relocation agreement was “to reduce the overall number of legal nonconforming billboards within the city by allowing relocated billboards in more suitable locations and provide more attractive, aesthetically pleasing billboard designs through a Billboard Relocation Agreement.” A further purpose is to reduce or eliminate the City's obligation to pay compensation for the removal of legal nonconforming billboards. Billboard Relocation Agreements are part of the demonstrated commitment of the City of Ontario to improve the aesthetic appearance of the City. The consideration and execution of Billboard Relocation Agreements shall be at the sole discretion of the City of Ontario. The provisions require the removal of at least six existing billboards for every new, relocated billboard sign.

In 2015, the City was involved in several discussions with San Bernardino County Transportation Authority (“SBCTA”), the regional transportation planning agency of which the City is a part, regarding the relocation of billboards necessary to complete freeway improvement projects. Because most cities in the region prohibit new billboards, the ability to relocate billboards is minimal. In cases where billboards cannot be relocated, SBCTA was placed in a position of having to purchase the billboard and compensate the billboard companies for lost revenue potential – these costs can be substantial.

Case Planner:	Scott Murphy, Development Director
Planning Director Approval:	
Submittal Date:	01/13/2020

Hearing Body	Date	Decision	Action
DAB			
PC	01/28/2020	Approval	Recommend
CC			Final

To assist SBCTA and other public agencies in relocating billboards, the City Council approved an amendment to the billboard relocation agreement that would allow billboards to be relocated within the City, under very specific criteria, through an “Interagency Relocation Exception.” The exception reads as follows:

Notwithstanding the foregoing, a billboard may be relocated from outside the City to any location within the City pursuant to an agreement, approved at the discretion of the City Council, between the City and another public agency so long as the following findings can be met:

- a) A minimum of six (6) existing, legal nonconforming billboards shall be removed, at least five (5) of which must be currently located within the City; and
- b) The billboard’s relocation is necessitated by work being performed on the same freeway as the planned new site for the billboard; and
- c) The public health, safety, and welfare are not impaired by the relocation.

That amendment provided for a billboard to be relocated to the Mountain/Interstate 10 intersection and the removal of five billboards within the City along Holt Boulevard, Vineyard Avenue, and Mountain Avenue.

[2] Analysis — Recently, the City has been reviewing the plans of the Interstate 10 express lanes project. As part of the freeway widening, a billboard located on the north side of Interstate 10, between the Vineyard Avenue and Fourth Street interchanges, is within the future freeway right-of-way. As part of the freeway widening, SBCTA would be required to relocate the same billboard to the north, outside the future right-of-way or purchase the billboard rights outright at a very high cost. Staff has had discussions with the billboard owner about the potential to relocate the billboard on the same site with a more pleasing design and obtain the removal of additional billboards within the City.

The current language only provides for relocation of billboards located outside of the City to be relocated within the City. However, the Development Code is silent on billboards within the City, relocation of existing billboards within the City would be prohibited. As a result, the language must be revised to address existing billboards within the City. Additionally, staff has determined that the number of older billboards in less desirable areas in the interior of the City (e.g. Holt Boulevard, Mountain Avenue, Mission Boulevard, etc.) has been dramatically reduced, thereby making the six billboard removals unattainable. Therefore, the number of billboards proposed for removal is being reduced to three (3) signs. The Interagency Relocation Exception (Development Code Section 4.02.010.D.2.f) would read as follows:

- (f) Interagency Relocation Exception. Notwithstanding the foregoing, a billboard may be relocated from **inside or** outside the City to any location within the

City pursuant to an agreement, approved at the discretion of the City Council, between the City and another public agency so long as the following findings can be met:

(1) A minimum of ~~six (6)~~ **three (3)** existing, legal nonconforming billboards **within the City** shall be removed, ~~at least five (5) of which must be currently located within the City;~~

(2) The billboard's relocation is necessitated by work being performed on the same freeway as the planned new site for the billboard; and

(3) The public health, safety, and welfare are not impaired by the relocation.

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

[1] City Council Goals.

- Invest in the Growth and Evolution of the City's Economy
- Operate in a Businesslike Manner
- Pursue City's Goals and Objectives by Working with Other Governmental Agencies

[2] Policy Plan (General Plan)

Land Use Element:

- Goal LU2: Compatibility between a wide range of uses.
 - LU2-5 *Regulation of Uses.* We regulate the location, concentration and operations of uses that have impacts on surrounding land uses.
 - LU2-7 *Inter-jurisdictional Coordination.* We maintain an ongoing liaison with IEUA, LAWA, Caltrans, Public Utilities Commission, the railroads and other agencies to help minimize impacts and improve the operations and aesthetics of their facilities.
- Goal LU3: Staff, regulations and processes that support and allow flexible response to conditions and circumstances in order to achieve the Vision.

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

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

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

ENVIRONMENTAL REVIEW: The project is categorically exempt from the requirements of the California Environmental Quality Act (CEQA) pursuant to § 15601(b)(3) (General Rule) of the CEQA Guidelines based on the fact that it is not known whether an interagency billboard relocation agreement will be proposed, where the location of any new relocation might occur, and the total number and locations of billboards proposed for removal as part of such an agreement might be.

RESOLUTION NO. PC20-002

A RESOLUTION OF THE PLANNING COMMISSION OF THE CITY OF ONTARIO, CALIFORNIA, RECOMMENDING APPROVAL OF FILE NO. PDCA20-001, A REQUEST TO AMEND ONTARIO DEVELOPMENT CODE SECTION 4.02.010.D.2.F, BILLBOARD RELOCATION AGREEMENTS, INTERAGENCY RELOCATION EXCEPTION, TO REVISE THE LOCATIONAL CRITERIA AND THE NUMBER OF BILLBOARDS TO BE ELIMINATED WITHIN THE CITY.

WHEREAS, THE CITY OF ONTARIO ("Applicant") has initiated an Application for the approval of a revision to Development Code, File No. PDCA20-001, as described in the title of this Resolution (hereinafter referred to as "Application" or "Project"); and

WHEREAS, in 2003, the City recognized the benefit of allowing billboard relocations as a method of achieving an overall reduction in the number of billboards within the City; and

WHEREAS, public agencies occasionally encounter the need to remove a billboard in order to complete necessary public infrastructure; and

WHEREAS, the removal of billboards in order to install necessary infrastructure improvements can be very costly when considering the anticipated future revenue of a billboard; and

WHEREAS, the City understands the public benefit in reducing the costs of public infrastructure; and

WHEREAS, the City recognizes an opportunity to reduce public infrastructure costs while, at the same time, reducing the overall number of billboards located within the City; and

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

WHEREAS, the Application is exempt from the requirements of CEQA pursuant to Section 15601(b)(3) (General Rule) based on the fact that it is not known whether an interagency billboard relocation agreement will be proposed, where the location of any new relocation might occur, and the total number and locations of billboards proposed for removal as part of such an agreement might be; and

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

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

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

WHEREAS, on January 28, 2020, the Planning Commission of the City of Ontario conducted a hearing to consider the Project, and concluded said hearing on that date; and

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

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

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

- a. The Project is exempt from environmental review pursuant to Section 15601(b)(3) (General Rule) of the CEQA Guidelines; and
- b. The application of the categorical exemption is not barred by one of the exceptions set forth in CEQA Guidelines Section 15300.2; and
- c. The determination of CEQA exemption reflects the independent judgment of the Planning Commission.

SECTION 2. Concluding Facts and Reasons. Based upon the substantial evidence presented to the Planning Commission during the above-referenced hearing,

and upon the specific findings set forth in Section 1, above, the Planning Commission hereby concludes as follows:

a. The proposed Development Code Amendment is consistent with the goals, policies, plans and exhibits of the Vision, Policy Plan (General Plan), and City Council Priorities components of The Ontario Plan; and

b. The proposed Development Code Amendment is consistent with the goals and policies of the Development Code; and

c. The proposed Development Code Amendment would not be detrimental to the public interest, health, safety, convenience, or general welfare of the City.

SECTION 3. Planning Commission Action. Based upon the findings and conclusions set forth in Sections 1 through 2, above, the Planning Commission hereby **RECOMMENDS THE CITY COUNCIL APPROVE** the herein described Application, modifying Section 4.02.010(D)(2)(f) of the Development Code to read as follows:

(f) Interagency Relocation Exception. Notwithstanding the foregoing, a billboard may be relocated from inside or outside the City to any location within the City pursuant to an agreement, approved at the discretion of the City Council, between the City and another public agency so long as the following findings can be met:

(1) For a billboard that is to be relocated from within the City, a minimum of three (3) existing, legal nonconforming billboards currently located within the City shall be removed.

(2) For a billboard that is to be relocated from outside the City, a minimum of six (6) existing, legal nonconforming billboards shall be removed, at least five (5) of which must be currently located within the City.

(3) The billboard's relocation is necessitated by work being performed on the same freeway as the planned new site for the billboard.

(4) The public health, safety, and welfare are not impaired by the relocation.

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

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

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

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

I hereby certify that the foregoing Resolution was duly and regularly introduced, passed and adopted by the Planning Commission of the City of Ontario at a regular meeting thereof held on the 28th day of January, 2020, and the foregoing is a full, true and correct copy of said Resolution, and has not been amended or repealed.



Jim Willoughby
Planning Commission Chairman

ATTEST:



Cathy Wahlstrom
Planning Director and
Secretary to the Planning Commission

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

I, Gwen Berendsen, Secretary Pro Tempore of the Planning Commission of the City of Ontario, DO HEREBY CERTIFY that foregoing Resolution No. PC20-002, was duly passed and adopted by the Planning Commission of the City of Ontario at their regular meeting held on January 28, 2020, by the following roll call vote, to wit:

AYES: DeDiemar, Downs, Gage, Gregorek, Reyes, Ricci, and Willoughby
NOES: None
ABSENT: None
ABSTAIN: None



Gwen Berendsen
Secretary Pro Tempore

ORDINANCE NO. _____

AN ORDINANCE OF CITY COUNCIL OF THE CITY OF ONTARIO, CALIFORNIA, APPROVING FILE NO. PDCA20-001, A REQUEST TO AMEND ONTARIO DEVELOPMENT CODE SECTION 4.02.010.D.2.F, BILLBOARD RELOCATION AGREEMENTS, INTERAGENCY RELOCATION EXCEPTION, TO REVISE THE LOCATIONAL CRITERIA AND THE NUMBER OF BILLBOARDS TO BE ELIMINATED WITHIN THE CITY.

WHEREAS, THE CITY OF ONTARIO ("Applicant") has initiated an Application for the approval of a revision to Development Code, File No. PDCA20-001, as described in the title of this Ordinance (hereinafter referred to as "Application" or "Project"); and

WHEREAS, in 2003, the City recognized the benefit of allowing billboard relocations as a method of achieving an overall reduction in the number of billboards within the City; and

WHEREAS, public agencies occasionally encounter the need to remove a billboard in order to complete necessary public infrastructure; and

WHEREAS, the removal of billboards in order to install necessary infrastructure improvements can be very costly when considering the anticipated future revenue of a billboard; and

WHEREAS, the City understands the public benefit in reducing the costs of public infrastructure; and

WHEREAS, the City recognizes an opportunity to reduce public infrastructure costs while, at the same time, reducing the overall number of billboards located within the City; and

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

WHEREAS, the Application is exempt from the requirements of CEQA pursuant to Section 15601(b)(3) (General Rule) based on the fact that it is not known whether an interagency billboard relocation agreement will be proposed, where the location of any new relocation might occur, and the total number and locations of billboards proposed for removal as part of such an agreement might be; and

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

WHEREAS, the Project is located within the Airport Influence Area of Ontario International Airport, which encompasses lands within parts of San Bernardino, Riverside,

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

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

WHEREAS, on January 28, 2020, the Planning Commission of the City of Ontario conducted a hearing to consider the Project and concluded said hearing on that date. After considering all public testimony, the Planning Commission voted unanimously to adopt its Resolution No. PC20-002, recommending approval of the application to the City Council; and

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

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

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

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

a. The Project is exempt from environmental review pursuant to Section 15601(b)(3) (General Rule) of the CEQA Guidelines; and

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

c. The determination of CEQA exemption reflects the independent judgment of the City Council.

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

a. The proposed Development Code Amendment is consistent with the goals, policies, plans and exhibits of the Vision, Policy Plan (General Plan), and City Council Priorities components of The Ontario Plan; and

b. The proposed Development Code Amendment is consistent with the goals and policies of the Development Code; and

c. The proposed Development Code Amendment would not be detrimental to the public interest, health, safety, convenience, or general welfare of the City.

SECTION 3. City Council Action. Based upon the findings and conclusions set forth in Sections 1 through 2, above, the City Council hereby APPROVES the herein described Application, modifying Section 4.02.010(D)(2)(f) of the Development Code to read as follows:

(f) Interagency Relocation Exception. Notwithstanding the foregoing, a billboard may be relocated from inside or outside the City to any location within the City pursuant to an agreement, approved at the discretion of the City Council, between the City and another public agency so long as the following findings can be met:

(1) For a billboard that is to be relocated from within the City, a minimum of three (3) existing, legal nonconforming billboards currently located within the City shall be removed.

(2) For a billboard that is to be relocated from outside the City, a minimum of six (6) existing, legal nonconforming billboards shall be removed, at least five (5) of which must be currently located within the City.

(3) The billboard's relocation is necessitated by work being performed on the same freeway as the planned new site for the billboard.

(4) The public health, safety, and welfare are not impaired by the relocation.

SECTION 4. 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 5. 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 6. Effective Date. This Ordinance shall become effective 30 days following its adoption.

SECTION 7. *Publication and Posting.* The Mayor shall sign this Ordinance and the City Clerk shall certify as to the adoption and shall cause a summary thereof to be published at least once, in a newspaper of general circulation in the City of Ontario, California within 15 days following the adoption. The City Clerk shall post a certified copy of this ordinance, including the vote for and against the same, in the Office of the City Clerk, in accordance with Government Code Section 36933.

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

PAUL S. LEON, MAYOR

ATTEST:

SHEILA MAUTZ, CITY CLERK

APPROVED AS TO FORM:

COLE HUBER LLP
CITY ATTORNEY

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

I, SHEILA MAUTZ, City Clerk of the City of Ontario, DO HEREBY CERTIFY that foregoing Ordinance No. ___ was duly introduced at a regular meeting of the City Council of the City of Ontario held April 21, 2020, and adopted at the regular meeting held _____ 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)