

**CITY OF ONTARIO**  
**CITY COUNCIL AND HOUSING AUTHORITY**  
**AGENDA**  
**DECEMBER 5, 2017**

**Paul S. Leon**  
Mayor

**Alan D. Wapner**  
Mayor pro Tem

**Jim W. Bowman**  
Council Member

**Debra Dorst-Porada**  
Council Member

**Ruben Valencia**  
Council Member



**Scott Ochoa**  
City Manager

**John E. Brown**  
City Attorney

**Sheila Mautz**  
City Clerk

**James R. Milhiser**  
Treasurer

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

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

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

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

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

**6:30 p.m.**

***ROLL CALL***

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

***PLEDGE OF ALLEGIANCE***

Council Member Valencia

***INVOCATION***

Pastor Azriel Joaquin, The Light of the World

**PUBLIC COMMENTS**

**6:30 p.m.**

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

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

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

## **CONSENT CALENDAR**

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

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

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

Minutes for the regular meeting of the City Council and Housing Authority of November 7, 2017, approving same as on file in the Records Management Department.

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

**Bills** October 8, 2017 through October 21, 2017 and **Payroll** October 8, 2017 through October 21, 2017, when audited by the Finance Committee.

### **3. A RESOLUTION APPROVING AN IMPROVEMENT AGREEMENT, IMPROVEMENT SECURITY AND FINAL PARCEL MAP NO. 19721 LOCATED AT THE NORTHWEST CORNER OF MISSION BOULEVARD AND GROVE AVENUE**

That the City Council adopt a resolution approving an improvement agreement, improvement security and Final Parcel Map No. 19721 located at the northwest corner of Mission Boulevard and Grove Avenue.

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

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF ONTARIO, CALIFORNIA, APPROVING AN IMPROVEMENT AGREEMENT, IMPROVEMENT SECURITY AND FINAL PARCEL MAP NO. 19721, LOCATED AT THE NORTHWEST CORNER OF MISSION BOULEVARD AND GROVE AVENUE.

### **4. A COOPERATIVE AGREEMENT WITH THE SAN BERNARDINO COUNTY TRANSPORTATION AUTHORITY FOR THE SAN BERNARDINO VALLEY COORDINATED TRAFFIC SIGNAL SYSTEM OPERATION AND MAINTENANCE PROJECT**

That the City Council approve a Cooperative Agreement (on file with the Records Management Department) between the City of Ontario and the San Bernardino County Transportation Authority (SBCTA) for the San Bernardino Valley Coordinated Traffic Signal System (SBVCTSS) Operation and Maintenance Project within the City of Ontario; and authorize the City Manager to execute said agreement and any future amendments within the City Council approved budget.

**5. A RESOLUTION ORDERING THE SUMMARY VACATION OF AN EASEMENT FOR STORM DRAIN PURPOSES**

That the City Council adopt a resolution ordering the summary vacation of an easement for storm drain purposes lying within Parcel 3 of Parcel Map No. 19612, generally located at the southwest corner of the intersection of Fourth Street and the Cucamonga Creek Channel within the Meredith International Specific Plan.

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

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF ONTARIO, CALIFORNIA, ORDERING THE SUMMARY VACATION OF AN EASEMENT FOR STORM DRAIN PURPOSES.

**6. A RESOLUTION ORDERING THE SUMMARY VACATION OF A PORTION OF INLAND EMPIRE BOULEVARD AND RECONVEYANCE OF THE CITY'S INTEREST THEREIN**

That the City Council adopt a resolution ordering the summary vacation of a portion of Inland Empire Boulevard from Vineyard Avenue to approximately 1,940 feet east and reconveyance of the City's interest therein.

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

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF ONTARIO, CALIFORNIA, ORDERING THE SUMMARY VACATION OF A PORTION OF INLAND EMPIRE BOULEVARD AND RECONVEYANCE ANY OF THE CITY'S INTEREST THEREIN.

**7. ACCEPT WRITTEN PETITIONS TO CREATE A COMMUNITY FACILITIES DISTRICT, ADOPT A RESOLUTION OF INTENTION TO ESTABLISH CITY OF ONTARIO COMMUNITY FACILITIES DISTRICT NO. 26 (PARK PLACE FACILITIES PHASE III), AND AUTHORIZE THE ASSOCIATED LEVY OF SPECIAL TAXES AND ADOPT A RESOLUTION TO INCUR BONDED INDEBTEDNESS**

That the City Council:

- (A) Accept written petitions (on file with the Records Management Department) from The New Home Company Southern California LLC, a Delaware limited liability company located in Aliso Viejo, California, Taylor Morrison of California, LLC, a California limited liability company located in Irvine, California, and CDG Park Place Venture, LLC, a Delaware limited liability company located in Newport Beach, California, to create a community facilities district, and to waive certain procedural matters, under the Mello-Roos Community Facilities Act of 1982;
- (B) Adopt a Resolution of Intention to establish City of Ontario Community Facilities District No. 26 (Park Place Facilities Phase III) (the "CFD"), authorize the associated levy of special taxes therein; and set a public hearing for the formation of the CFD as part of the regularly scheduled City Council meeting on Tuesday, January 16, 2018; and
- (C) Adopt a Resolution to Incur Bonded Indebtedness of proposed Community Facilities District No. 26 (Park Place Facilities Phase III).

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

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF ONTARIO, CALIFORNIA, OF INTENTION TO ESTABLISH A COMMUNITY FACILITIES DISTRICT, PROPOSED TO BE NAMED CITY OF ONTARIO COMMUNITY FACILITIES DISTRICT NO. 26 (PARK PLACE FACILITIES PHASE III), AND TO AUTHORIZE THE LEVY OF SPECIAL TAXES.

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

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF ONTARIO, CALIFORNIA, TO INCUR BONDED INDEBTEDNESS OF THE PROPOSED CITY OF ONTARIO COMMUNITY FACILITIES DISTRICT NO. 26 (PARK PLACE FACILITIES PHASE III).

**8. A DEVELOPMENT IMPACT FEE CREDIT AND REIMBURSEMENT AGREEMENT WITH CLDFI REMINGTON, LLC (CAPROCK)**

That the City Council authorize the City Manager to execute a Development Impact Fee Credit and Reimbursement Agreement (on file with the Records Management Department) with CLDFI Remington, LLC (Caprock) for the construction of public infrastructure in the Colony Commerce Center West project.

**9. AWARD OF PUBLIC WORKS CONTRACTS FOR CONCRETE REPAIR AND MAINTENANCE; AND INSTALLATION OR RECONSTRUCTION OF WHEELCHAIR RAMPS SERVICES**

That the City Council take the following actions:

- (A) Authorize the City Manager to execute a three-year Public Works Contract (on file with the Records Management Department) for Contract No. SM1718-1 with CT&T Concrete Paving, Inc. located in Diamond Bar, California, for an annual estimated cost of \$664,507;
- (B) Authorize the City Manager to execute a three-year Public Works Contract (on file with the Records Management Department) for Contract No. SM1718-3 with C.J. Concrete Construction, Inc. located in Santa Fe Springs, California, for an annual estimated cost of \$175,000; and
- (C) Authorize the addition of future service areas and the option to extend the contracts for up to two one-year periods consistent with the City Council approved budgets.

**10. AN ORDINANCE APPROVING FILE NO. PSP15-002, A SPECIFIC PLAN (ARMSTRONG RANCH) REQUEST TO ESTABLISH LAND USE DESIGNATIONS, DEVELOPMENT STANDARDS, AND DESIGN GUIDELINES FOR 189.8 ACRES OF LAND, WHICH INCLUDES THE POTENTIAL DEVELOPMENT OF 891 DWELLING UNITS AND A 10-ACRE ELEMENTARY SCHOOL SITE. THE PROJECT SITE IS BOUNDED BY RIVERSIDE DRIVE TO THE NORTH, CHINO AVENUE TO THE SOUTH, CUCAMONGA CREEK CHANNEL TO THE EAST, AND VINEYARD AVENUE TO THE WEST (APNS:0218-101-01, 0218-101-02, 0218-101-03, 0218-101-04, 0218-101-05, 0218-101-06, 0218-101-07, 0218-101-08, 0218-102-10, 0218-102-11, 0218-111-04, 0218-111-05, 0218-111-06, 0218-111-08, 0218-111-09, 0218-111-11, 0218-111-12, 0218-111-45 0218-111-49 AND 0218-111-50)**

That the City Council consider and adopt an ordinance approving the Armstrong Ranch Specific Plan (File No. PSP15-002).

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

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF ONTARIO, CALIFORNIA, APPROVING THE ARMSTRONG RANCH SPECIFIC PLAN (FILE NO. PSP15-002), TO ESTABLISH LAND USE DESIGNATIONS, DEVELOPMENT STANDARDS, DESIGN GUIDELINES AND INFRASTRUCTURE IMPROVEMENTS FOR 189.8 GROSS ACRES OF LAND, WHICH INCLUDES THE POTENTIAL DEVELOPMENT OF 891 DWELLING UNITS AND A 11.6 GROSS ACRE ELEMENTARY SCHOOL. THE PROJECT SITE IS BOUNDED BY RIVERSIDE DRIVE TO THE NORTH, CHINO AVENUE TO THE SOUTH, VINEYARD AVENUE TO THE WEST AND THE CUCAMONGA CREEK FLOOD CONTROL CHANNEL TO THE EAST, AND MAKING FINDINGS IN SUPPORT THEREOF — APNS: 0218-101-01, 0218-101-02, 0218-101-03, 0218-101-04, 0218-101-05, 0218-101-06, 0218-101-07, 0218-101-08, 0218-102-10, 0218-102-11, 0218-111-04, 0218-111-05, 0218-111-06, 0218-111-08, 0218-111-09, 0218-111-11, 0218-111-12, 0218-111-45, 0218-111-49 AND 0218-111-50.

**11. AN ORDINANCE APPROVING A DEVELOPMENT AGREEMENT BETWEEN THE CITY OF ONTARIO AND BROOKCAL ONTARIO, LLC, FOR THE DEVELOPMENT OF UP TO 48 SINGLE FAMILY AND 217 MULTI-FAMILY RESIDENTIAL UNITS (FILE NO. PMTT17-002/TT18937) ON 23.66 ACRES OF LAND WITHIN THE LOW MEDIUM DENSITY RESIDENTIAL (LMDR) DISTRICT OF PLANNING AREA 7 OF THE AVENUE SPECIFIC PLAN, GENERALLY LOCATED AT THE NORTHEAST CORNER OF ARCHIBALD AVENUE AND ONTARIO RANCH ROAD (APN:0218-201-18)**

That the City Council consider and adopt an ordinance approving a Development Agreement (File No. PDA15-003), on file with the Records Management Department) between the City of Ontario and Brookcal Ontario, LLC, to establish the terms and conditions for the development of Tentative Tract Map 18937 (File No. PMTT17-002).

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

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF ONTARIO, CALIFORNIA, APPROVING A DEVELOPMENT AGREEMENT BETWEEN THE CITY OF ONTARIO AND BROOKCAL ONTARIO, LLC, FOR THE DEVELOPMENT OF UP TO 48 SINGLE FAMILY AND 217 MULTI-FAMILY RESIDENTIAL UNITS (FILE NO. PMTT17-002/TT18937) ON 23.66 ACRES OF LAND FOR PROPERTY GENERALLY LOCATED AT THE NORTHEAST CORNER OF ARCHIBALD AVENUE AND ONTARIO RANCH ROAD, WITHIN THE LOW MEDIUM DENSITY RESIDENTIAL (LMDR) DISTRICT OF PLANNING AREA 7 OF THE AVENUE SPECIFIC PLAN, AND MAKING FINDINGS IN SUPPORT THEREOF — APN: 0218-201-18.

**12. AN ORDINANCE APPROVING A DEVELOPMENT AGREEMENT BETWEEN THE CITY OF ONTARIO AND LOYOLA PROPERTIES 1, LP, FOR THE POTENTIAL DEVELOPMENT OF UP TO 587 RESIDENTIAL UNITS (FILE NO. PMTT16-021/TPM 19787) ON 76.68 ACRES OF LAND WITHIN HIGH DENSITY RESIDENTIAL (HDR) DISTRICT OF PLANNING AREAS 7 AND 8 OF THE GRAND PARK SPECIFIC PLAN, LOCATED AT THE SOUTHEAST CORNER OF ONTARIO RANCH ROAD AND ARCHIBALD AVENUE (APN: 0218-241-31)**

That the City Council consider and adopt an ordinance approving a Development Agreement (File No. PDA17-001), on file with the Records Management Department, between the City of Ontario and Loyola Properties 1, LP, to establish the terms and conditions for the development of Tentative Parcel Map 19787 (File No. PMTT16-021).

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

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF ONTARIO, CALIFORNIA, APPROVING A DEVELOPMENT AGREEMENT FILE NO. PDA17-001, BETWEEN THE CITY OF ONTARIO AND LOYOLA PROPERTIES 1, LP, FOR THE POTENTIAL DEVELOPMENT OF UP TO 587 RESIDENTIAL UNITS (FILE NO. PMTT16-021/PM 19787) ON 76.68 ACRES OF LAND WITHIN HIGH DENSITY RESIDENTIAL (HDR) DISTRICT OF PLANNING AREAS 7 AND 8 OF THE GRAND PARK SPECIFIC PLAN, LOCATED AT THE SOUTHEAST CORNER OF ONTARIO RANCH ROAD AND ARCHIBALD AVENUE, AND MAKING FINDINGS IN SUPPORT THEREOF — APN: 0218-241-31.

**13. PROCUREMENT OF NIGHT VISION TECHNOLOGY AND EQUIPMENT**

That the City Council authorize the City Manager to execute a sole source procurement with Aardvark Tactical of La Verne, California, in the amount not to exceed \$287,000 for the purchase of 20 night vision equipment packages and related accessories.

**14. A RESOLUTION AUTHORIZING THE EXECUTION OF A JOINT EXERCISE OF POWERS AGREEMENT BY AND BETWEEN THE CITY OF ONTARIO, INLAND EMPIRE UTILITIES AGENCY, CUCAMONGA VALLEY WATER DISTRICT AND MONTE VISTA WATER DISTRICT CREATING THE CHINO BASIN WATER BANK PLANNING AUTHORITY**

That the City Council adopt a resolution authorizing the City Manager to execute a Joint Exercise of Powers Agreement (on file with the Records Management Department), subject to non-substantive changes, by and between the City of Ontario, Inland Empire Utilities Agency, Cucamonga Valley Water District and Monte Vista Water District creating the Chino Basin Water Bank Planning Authority (Planning Authority).

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

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF ONTARIO, CALIFORNIA, AUTHORIZING THE EXECUTION OF A JOINT EXERCISE OF POWERS AGREEMENT BY AND BETWEEN THE CITY OF ONTARIO AND INLAND EMPIRE UTILITIES AGENCY, CUCAMONGA VALLEY WATER DISTRICT, AND MONTE VISTA WATER DISTRICT.

**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.**

**15. CONSIDERATION OF A SPENDING PLAN FOR CITIZEN'S OPTION FOR PUBLIC SAFETY / ENHANCING LAW ENFORCEMENT ACTIVITIES SUBACCOUNT GRANT PROGRAM**

That the City Council receive public comment for the Fiscal Year 2017-18 Citizen's Option for Public Safety (COPS) / Enhancing Law Enforcement Activities Subaccount (ELEAS) Grant; and approve the proposed spending plan.

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

Written communication.

Oral presentation.

Public hearing closed.



**STAFF MATTERS**

City Manager Ochoa

**COUNCIL MATTERS**

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

**ADJOURNMENT**

# CITY OF ONTARIO

Agenda Report  
December 5, 2017

SECTION:  
CONSENT CALENDAR

**SUBJECT: A RESOLUTION APPROVING AN IMPROVEMENT AGREEMENT, IMPROVEMENT SECURITY AND FINAL PARCEL MAP NO. 19721 LOCATED AT THE NORTHWEST CORNER OF MISSION BOULEVARD AND GROVE AVENUE**

**RECOMMENDATION:** That the City Council adopt a resolution approving an improvement agreement, improvement security and Final Parcel Map No. 19721 located at the northwest corner of Mission Boulevard and Grove Avenue.

**COUNCIL GOALS:** Invest in the Growth and Evolution of the City's Economy  
Focus Resources in Ontario's Commercial and Residential Neighborhoods  
Invest in the City's Infrastructure (Water, Streets, Sewers, Parks, Storm Drains and Public Facilities)

**FISCAL IMPACT:** None. All public infrastructure improvements required for this subdivision will be constructed by the developer at its sole cost.

**BACKGROUND:** Final Parcel Map No. 19721, consisting of one (1) industrial lot on 2.82 acres, as shown on Exhibit A, has been submitted by the developer, Fullmer/MG, LLC, a California Limited Liability Company of Tustin, California (Mr. James L. Fullmer, Manager).

Tentative Parcel Map No. 19721 was approved by the Planning Commission (7 to 0) on September 27, 2016.

Improvements will include AC pavement, sidewalk, landscaped parkways, fiber optic conduits, fire hydrants, sewer, water, storm drain laterals, and street lights. The improvements in parkway landscaping will be consistent with current City approved drought measures. The developer has entered into an improvement agreement with the City for Final Parcel Map No. 19721 and has posted adequate security to ensure construction of the required public improvements.

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

Prepared by: Bryan Lirley, PE  
Department: Engineering

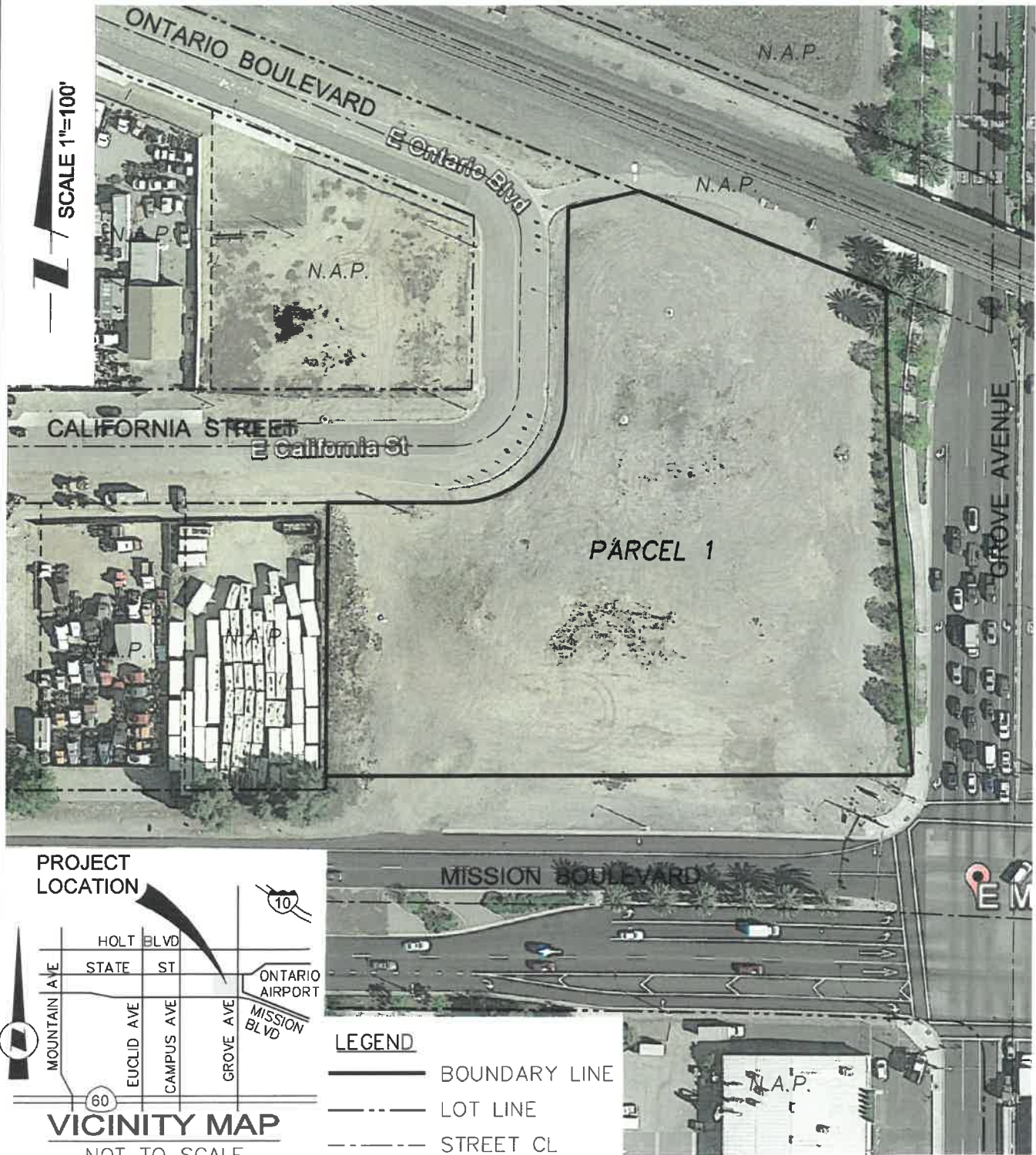
City Manager Approval: 

Submitted to Council/O.H.A. 12/05/2017  
Approved: \_\_\_\_\_  
Continued to: \_\_\_\_\_  
Denied: \_\_\_\_\_

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This map meets all conditions of the Subdivision Map Act and the Ontario Municipal Code and has been reviewed and approved by the City Engineer.

# EXHIBIT A



PREPARED BY:



**VALUED**

ENGINEERING, INC  
CIVIL ENGINEERING • LAND SURVEYING • LAND PLANNING  
180 N. BENSON AVE, STE A, UPLAND, CA 91785  
PHONE: (909) 982-4601

CITY OF ONTARIO  
ENGINEERING DEPARTMENT

FILE NO. PM 19721

APPLICANT:  
FULLMER MG, LLC

PROJECT:  
MISSION & GROVE  
INDUSTRIAL DEVELOPMENT

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

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF ONTARIO, CALIFORNIA, APPROVING AN IMPROVEMENT AGREEMENT, IMPROVEMENT SECURITY AND FINAL PARCEL MAP NO. 19721, LOCATED AT THE NORTHWEST CORNER OF MISSION BOULEVARD AND GROVE AVENUE.

WHEREAS, Tentative Parcel Map No. 19721, submitted for approval by the developer, Fullmer/MG, LLC, a California Limited Liability Company of Tustin, California (Mr. James L. Fullmer, Manager) was approved by the Planning Commission of the City of Ontario on September 27, 2016; and

WHEREAS, Tentative Parcel Map No. 19721 consists of one (1) numbered lot, being a subdivision of a portion of lot 223, Villa Plots, south side tract, as per map on file in Book 6 of maps, page 11 and portion of Lot 15 of revised map of Hanson and Company's addition to Ontario, as per map on file in Book 12 of maps, Page 51, and as recorded in Document Number 2016-0447172 and document number 2017-0486288, official records of said county; and

WHEREAS, to meet the requirements established as prerequisite to final approval of Final Parcel Map No. 19721, said developer has offered an improvement agreement, together with good and sufficient security, in conformance with the City Attorney's approved format, for approval and execution by the City; and

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

1. That said improvement agreement be, and the same is, approved and the City Manager is authorized to execute same on behalf of said City, and the City Clerk is authorized to attest thereto; and
2. That said improvement security is accepted as good and sufficient, subject to approval as to form and content thereof by the City Attorney; and
3. That Final Parcel Map No. 19721, be approved and that the City Clerk be authorized to execute the statement thereon on behalf of said City.

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

PASSED, APPROVED, AND ADOPTED this 5<sup>th</sup> day of December 2017.

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PAUL S. LEON, MAYOR

ATTEST:

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SHEILA MAUTZ, CITY CLERK

APPROVED AS TO LEGAL FORM:

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BEST BEST & KRIEGER LLP  
CITY ATTORNEY

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

I, SHEILA MAUTZ, City Clerk of the City of Ontario, DO HEREBY CERTIFY that foregoing Resolution No. 2017- was duly passed and adopted by the City Council of the City of Ontario at their regular meeting held December 5, 2017 by the following roll call vote, to wit:

AYES: COUNCIL MEMBERS:

NOES: COUNCIL MEMBERS:

ABSENT: COUNCIL MEMBERS:

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

(SEAL)

The foregoing is the original of Resolution No. 2017- duly passed and adopted by the Ontario City Council at their regular meeting held December 5, 2017.

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

(SEAL)

# CITY OF ONTARIO

Agenda Report  
December 5, 2017

SECTION:  
CONSENT CALENDAR

**SUBJECT: A COOPERATIVE AGREEMENT WITH THE SAN BERNARDINO COUNTY TRANSPORTATION AUTHORITY FOR THE SAN BERNARDINO VALLEY COORDINATED TRAFFIC SIGNAL SYSTEM OPERATION AND MAINTENANCE PROJECT**

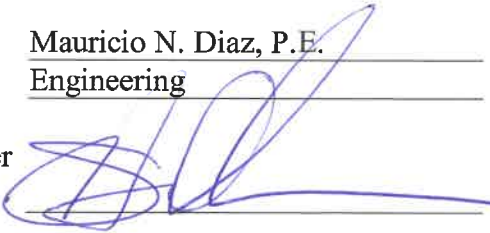
**RECOMMENDATION:** That the City Council approve a Cooperative Agreement (on file with the Records Management Department) between the City of Ontario and the San Bernardino County Transportation Authority (SBCTA) for the San Bernardino Valley Coordinated Traffic Signal System (SBVCTSS) Operation and Maintenance Project within the City of Ontario; and authorize the City Manager to execute said agreement and any future amendments within the City Council approved budget.

**COUNCIL GOALS:** Maintain the Current High Level of Public Safety  
Pursue City's Goals and Objectives by Working with other Governmental Agencies  
Invest in the City's Infrastructure (Water, Streets, Sewers, Parks, Storm Drains and Public Facilities)

**FISCAL IMPACT:** There are 176 signals identified in Table 1 (Exhibit A) of the Agreement for which funding is included in the City's annual operating budget for ongoing signal timing work. The City will receive a financial incentive of \$500 per year for each signal that meets the SBCTA performance criteria while the Agreement is in effect. The adopted Fiscal Year 2017-18 Budget also includes appropriations of \$180,000 for a signal timing project for the 41 signals identified in Table 2 (Exhibit A-1) of the Agreement. For those, SBCTA will reimburse the City 50% of the project costs up to a maximum of \$2,000 per signal, or \$82,000. Additionally, the on-call support services for traffic signal coordination on the SBVCTSS corridors will be provided by SBCTA on a case-by-case basis at no cost to the City.

**BACKGROUND:** SBCTA worked collaboratively with various cities in San Bernardino County to develop the SBVCTSS with the goal of interconnecting and synchronizing traffic signals on major arterial corridors, valley-wide, on a multijurisdictional basis. The SBVCTSS was completed in 2012 and has been working successfully. However, the system requires on-going maintenance and regular updates to ensure continual benefits.

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

Prepared by: Mauricio N. Diaz, P.E.  
Department: Engineering  
City Manager Approval: 

Submitted to Council/O.H.A. 12/05/2017  
Approved: \_\_\_\_\_  
Continued to: \_\_\_\_\_  
Denied: \_\_\_\_\_

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In an effort to improve mobility and reduce delays in the City and the San Bernardino Valley, the City of Ontario and SBCTA would like to enter into the proposed Cooperative Agreement to ensure the SBVCTSS continues to operate in an efficient manner. This Agreement establishes the responsibilities of both parties as:

- (1) The City will provide on-going monitoring, maintenance and timing adjustments for the 176 signals identified in Table 1 (Exhibit A) of the Agreement. SBCTA will conduct semi-annual assessments and verify that said signals are in compliance.
- (2) The City will implement revised timing plans for the 41 signals identified in Table 2 (Exhibit A-1).
- (3) SBCTA will provide on-call support services to assist the City to address major traffic signal coordination and related communication systems issues on the SBVCTSS corridors listed in Table 1 (Exhibit A).

Under this Agreement, the City and SBCTA will continue the operation and maintenance of the SBVCTSS for three (3) years with the option to extend the term for two (2) additional years.

Exhibit A

**TABLE 1**

<b>Corridors Eligible for Reimbursement</b>			
<b>No.</b>	<b>Arterial Street</b>	<b>Limits</b>	<b>Number of Signals</b>
1	Fourth St	Grove to Etiwanda	14
2	Haven Ave	Fourth to Riverside	12
3	Milliken Ave	Fourth to Riverside	13
4	Grove Ave	Eighth to Riverside	17
5	Archibald Ave	Inland Empire to Merrill	15
6	Inland Empire Bl	Vineyard to Milliken	13
7	Ontario Mills Pkwy	Milliken to Etiwanda	4
8	Airport Dr	Grove to Milliken	8
9	Jurupa St	Archibald to Etiwanda	9
10	Vineyard Ave	Eighth to Riverside	12
11	Mission Blvd	Mountain to Cornerstone	10
12	Mountain Ave	Sixth to Philadelphia	11
13	Philadelphia St	Mountain to Mission	6
14	Riverside Dr	Euclid to Hamner	7
15	Etiwanda Ave	Fourth to Francis	7
16	Holt Blvd	Mountain to I-10 Fwy	13
17	Ontario Ranch Rd	Archibald Hamner	2
18	Hamner Ave	Riverside to Belgrave	3
		Total Number of Signals	176

Note: Traffic signals added to an “Arterial Street” within the “Limits” as described by Table 1 after the execution of this Agreement may be added to Table 1 without an amendment.

**TABLE 2**

<b>Corridors Receiving Timing Plan Update</b>			
<b>No.</b>	<b>Arterial Street</b>	<b>Limits</b>	<b>Number of Signals</b>
1	Holt Boulevard	Mountain Avenue to I-10 Freeway	13
2	Mountain Avenue	Sixth Street to Philadelphia Street	11
3	Grove Avenue	Eighth Street to Riverside Drive	17
4			
5			
6			
7			
8			
9			
10			
11			
12			
13			
<b>Total Number of Signals</b>			<b>41</b>

Note: Traffic signals added to an “Arterial Street” within the “Limits” as described by Table 2 after the execution of this Agreement may be added to Table 2 without an amendment.

# CITY OF ONTARIO

Agenda Report  
December 5, 2017

SECTION:  
CONSENT CALENDAR

**SUBJECT: A RESOLUTION ORDERING THE SUMMARY VACATION OF AN EASEMENT FOR STORM DRAIN PURPOSES**

**RECOMMENDATION:** That the City Council adopt a resolution ordering the summary vacation of an easement for storm drain purposes lying within Parcel 3 of Parcel Map No. 19612, generally located at the southwest corner of the intersection of Fourth Street and the Cucamonga Creek Channel within the Meredith International Specific Plan.

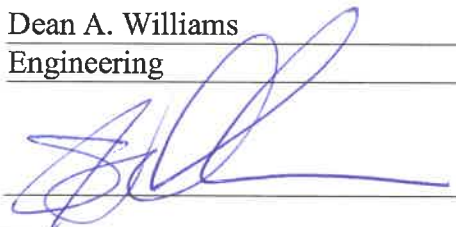
**COUNCIL GOALS:** Invest in the Growth and Evolution of the City's Economy  
Invest in the City's Infrastructure (Water, Streets, Sewers, Parks, Storm Drains and Public Facilities)

**FISCAL IMPACT:** None. The City did not pay for acquiring the subject easement and will not incur any cost by vacating it. The applicant has paid the applicable processing fees to defray the City's cost to process this request.

**BACKGROUND:** The owner of the property (Vineyard Industrial I, LLC) located at 2200 W. Fourth Street, being Parcel 3, as shown on Parcel Map No. 19612, has requested that the City vacate the existing easement for storm drain purposes as shown on Exhibit A of this report and as described and shown in Exhibit "A" and Exhibit "B" of the resolution. The Vineyard Industrial I, LLC development, adjacent to the south side of Fourth Street, revised the original plan for the proposed storm drain system connecting to the Cucamonga Creek Channel. The revised storm drain and new point of connection to the channel make the subject easement no longer necessary for any present or future storm drain or public utility purpose.

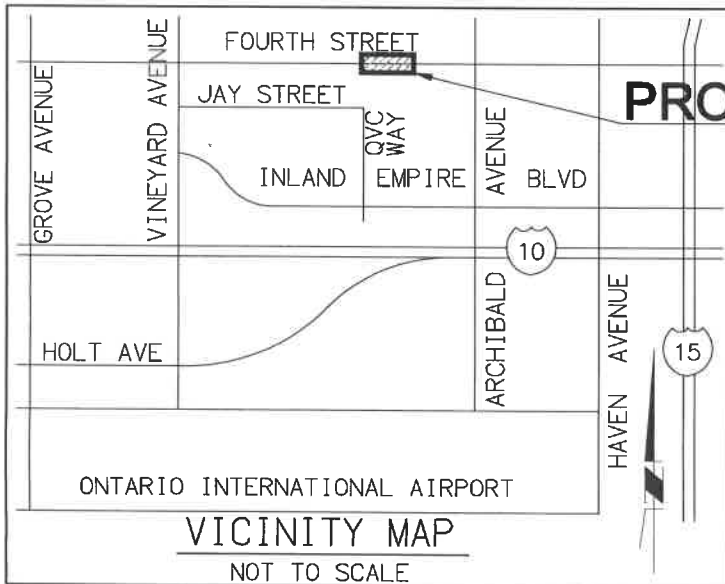
Section 8333(c) of the California Streets and Highways Code authorizes the City to summarily vacate (by resolution without a public hearing) a public service easement that has been superseded by relocation or determined to be excess and there are no other public facilities located within the easement.

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

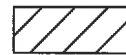
Prepared by: Dean A. Williams  
Department: Engineering  
City Manager Approval: 

Submitted to Council/O.H.A. 12/05/2017  
Approved: \_\_\_\_\_  
Continued to: \_\_\_\_\_  
Denied: \_\_\_\_\_

**EXHIBIT A**  
**V-276**



**LEGEND**



INDICATES STORM DRAIN EASEMENT BEING VACATED

<p><b>Michael Baker</b> <b>INTERNATIONAL</b> 14725 ALTON PARKWAY, IRVINE, CA 92618 Phone: (949) 472-3505 · MBAKERINTL.COM</p>	<p><b>EXHIBIT A</b> <b>PROPERTY TRANSFER</b> <b>CITY OF ONTARIO TO</b> <b>VINEYARD INDUSTRIAL I, LLC</b></p>	SCALE: 1"=50'
		JN: 10108683
		DATE: 11/09/2017

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

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF ONTARIO, CALIFORNIA, ORDERING THE SUMMARY VACATION OF AN EASEMENT FOR STORM DRAIN PURPOSES.

WHEREAS, the City Council of the City of Ontario, California, pursuant to Division 9, Part 3, Chapter 4, of the California Streets and Highways Code, may summarily vacate an easement under certain conditions specified therein; and

WHEREAS, the public easement for storm drain purposes adjacent to the westerly right-of-way of the San Bernardino County Flood Control District's Cucamonga Creek Channel and adjacent to the northerly property line and within Parcel 3 of Parcel Map No. 19612 as recorded in Book 244 of Parcel Maps, Pages 40-53 of Official Records of San Bernardino County, consisting of the area more specifically described and depicted in the attached Exhibit "A" and Exhibit "B", is not needed for any present or future storm drain or public utility purpose; and

WHEREAS, Section 8333(c) of the California Streets and Highways Code authorize the City to summarily vacate by resolution (without a public hearing) a public service easement that has been superseded by relocation or determined to be excess and there are no other public facilities located within the easement; and

WHEREAS, the property owner has requested a vacation of said easement.

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

1. That the above recitals are true and correct.
2. That title to the above-described said easement, more specifically described in Exhibit "A" and depicted on Exhibit "B", is hereby vacated.
3. That the City Clerk of the City of Ontario, California, shall cause a copy of this Resolution to be recorded in the office of the County Recorder of San Bernardino County, California.
4. That upon the recordation required hereby, the vacation is complete, and the public service easement no longer constitutes an easement.

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

PASSED, APPROVED, AND ADOPTED this 5<sup>th</sup> day of December 2017.

\_\_\_\_\_  
PAUL S. LEON, MAYOR

ATTEST:

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

APPROVED AS TO FORM:

\_\_\_\_\_  
BEST BEST & KRIEGER LLP  
CITY ATTORNEY

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

I, SHEILA MAUTZ, City Clerk of the City of Ontario, DO HEREBY CERTIFY that foregoing Resolution No. 2017-     was duly passed and adopted by the City Council of the City of Ontario at their regular meeting held December 5, 2017 by the following roll call vote, to wit:

AYES:            COUNCIL MEMBERS:

NOES:           COUNCIL MEMBERS:

ABSENT:         COUNCIL MEMBERS:

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

(SEAL)

The foregoing is the original of Resolution No. 2017-     duly passed and adopted by the Ontario City Council at their regular meeting held December 5, 2017.

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

(SEAL)



**EXHIBIT "A"**

**V-276**

**Public Easement Vacation  
LEGAL DESCRIPTION**


APN: 0110-310-059

All that real property situated in the City of Ontario, County of San Bernardino, State of California, being that portion of Lot A of Lot Line Adjustment LLA15-008 as described in a document recorded January 19, 2016 as Instrument No. 2016-0018226 of Official Records in the Office of the County Recorder of said San Bernardino County, and in a document recorded December 27, 2016 as Instrument No. 2016-0563298 of said Official Records, being that certain easement for Storm Drain Purposes shown as lying within Parcel 3 and dedicated to the City of Ontario on Parcel Map No. 19612 as shown on the map filed in Book 244, Pages 40 through 53, inclusive, of Parcel Maps in the Office of said County Recorder.

**CONTAINING:** 13,057 square feet, more or less.

**EXHIBIT "B"** attached hereto and by this reference made a part thereof.

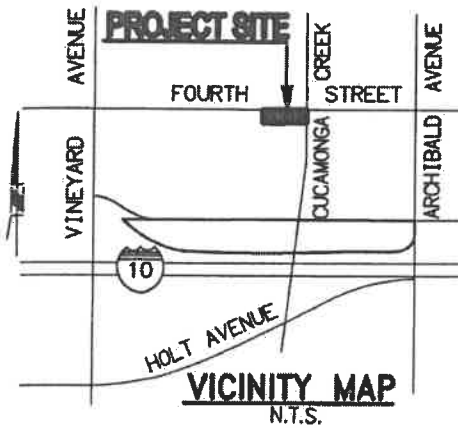
This description was prepared  
by me or under my direction.

  
Thomas E. Verloop, PLS 5348,      01/30/2017  
Date



# EXHIBIT "B"

V-276



LINE/CURVE DATA TABLE

NO	BEARING/DELTA	RADIUS	LENGTH
1	N00°07'41"E	--	30.00'
2	N44°41'40"W	--	73.70'
3	N07°27'27"W	--	37.51'
4	45°55'15"	115.00'	92.17'
5	52°25'08"	65.00'	59.47'
6	N37°27'27"W	--	49.33'

SCALE 1"=60'



FOURTH STREET

HELLMAN AVENUE



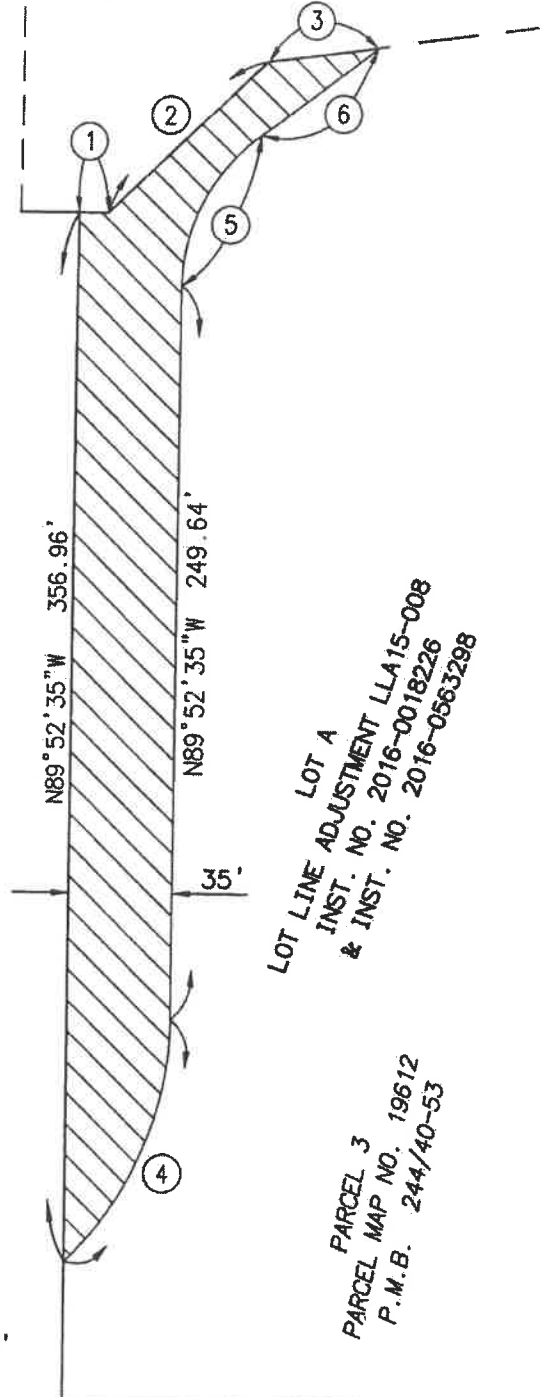
**LEGEND**



INDICATES STORM DRAIN EASEMENT BEING VACATED.

**MEREDITH INTERNATIONAL CENTRE**  
ONTARIO, CALIFORNIA

**CUCAMONGA CREEK CHANNEL**  
(S.B.C.F.C.D.)



LOT A  
LOT LINE ADJUSTMENT LLA15-008  
& INST. NO. 2016-0018226  
& INST. NO. 2016-0563298

PARCEL 3  
PARCEL MAP NO. 19612  
P.M.B. 244/40-53

CITY OF ONTARIO  
PER 6126/310 O.R.

**Michael Baker**  
**INTERNATIONAL**

# CITY OF ONTARIO

Agenda Report  
December 5, 2017

SECTION:  
CONSENT CALENDAR

**SUBJECT: A RESOLUTION ORDERING THE SUMMARY VACATION OF A PORTION OF INLAND EMPIRE BOULEVARD AND RECONVEYANCE OF THE CITY'S INTEREST THEREIN**

**RECOMMENDATION:** That the City Council adopt a resolution ordering the summary vacation of a portion of Inland Empire Boulevard from Vineyard Avenue to approximately 1,940 feet east and reconveyance of the City's interest therein.

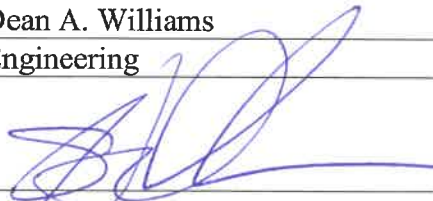
**COUNCIL GOALS:** Invest in the Growth and Evolution of the City's Economy  
Invest in the City's Infrastructure (Water, Streets, Sewers, Parks, Storm Drains and Public Facilities)

**FISCAL IMPACT:** None. The City did not pay for acquiring the subject street right-of-way. There will be no revenue as a result of the reconveyance. The applicant has paid the applicable processing fees to defray the City's cost to process this request.

**BACKGROUND:** Inland Empire Boulevard, being portions of Parcels 8 through 12, as shown on Parcel Map No. 19612, was relinquished by the State of California in fee simple to the City for street purposes. Due to the realignment of Inland Empire Boulevard per the Meredith International Centre Specific Plan and as shown on Parcel Map No. 19612, the street is no longer needed for any present or future public street purpose and is determined to be superseded by relocation. The applicant, Craig Development Corporation of Corona Del Mar, California (Craig Meredith, President) has requested that the City vacate that portion of Inland Empire Boulevard (Parcel 1 and Parcel 2 as described above) and reconvey the vacated portion to the existing owner, who is the successor in interest to the original subdivider.

Section 66477.5(c) of the California Government Code requires the City to reconvey the subject property in interest to the subdivider or successor in interest if the dedication was made in fee simple and the City has determined that the same public purpose for which the dedication was required no longer exists. Since the subdivider offered the right-of-way in fee simple, and said right-of-way is not

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

Prepared by: Dean A. Williams  
Department: Engineering  
City Manager Approval: 

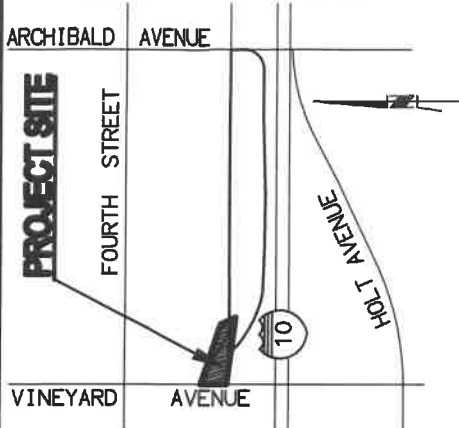
Submitted to Council/O.H.A. 12/05/2017  
Approved: \_\_\_\_\_  
Continued to: \_\_\_\_\_  
Denied: \_\_\_\_\_

6

required for any present or future street purpose, the City will reconvey the subject property to the current subdivider who is the successor in interest.


Section 8330(a) of the California Streets and Highways Code authorizes the City to summarily vacate (by resolution without a public hearing) a street or highway that has been superseded by relocation.

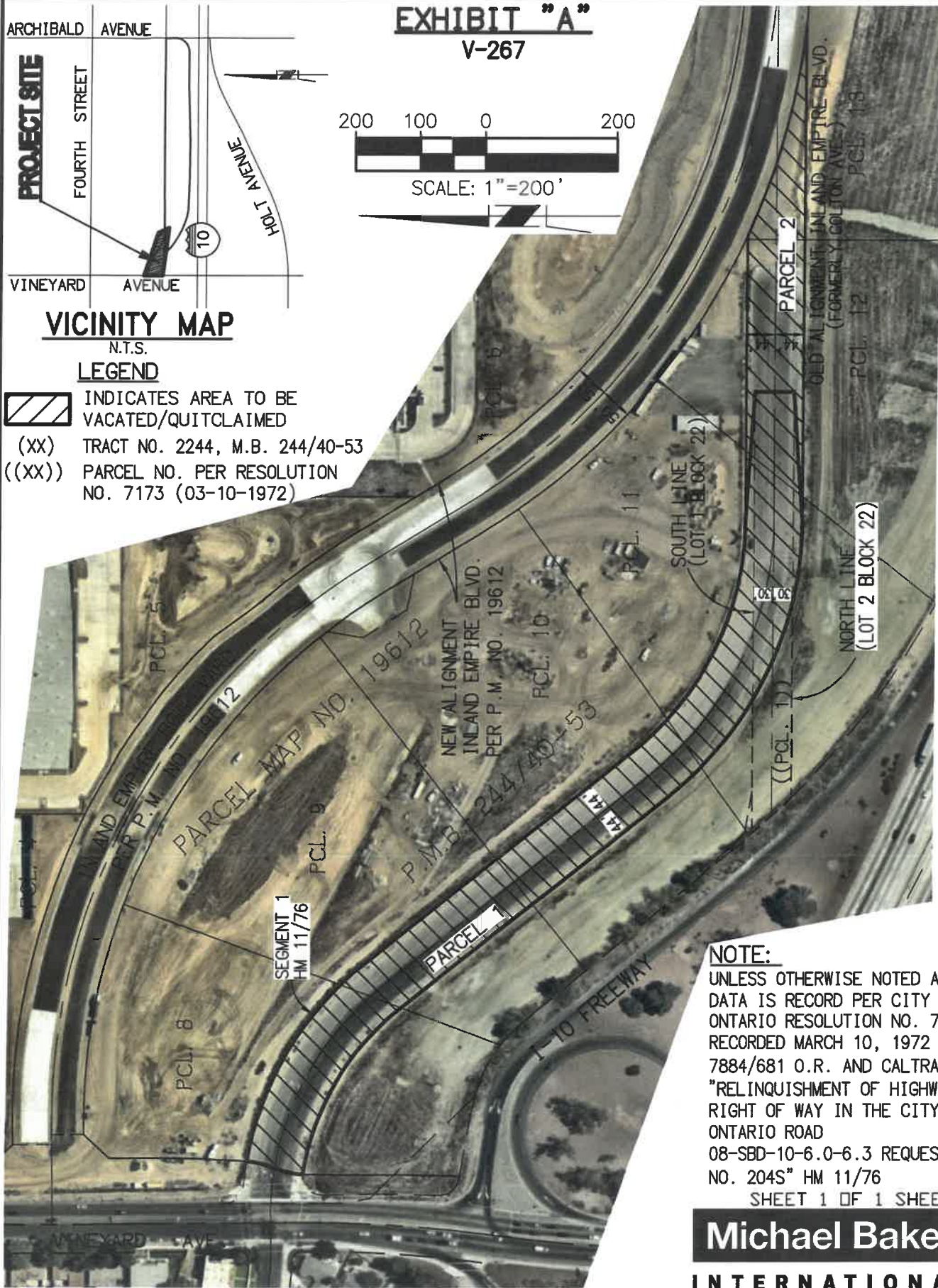
**EXHIBIT "A"**  
V-267



**VICINITY MAP**  
N.T.S.

**LEGEND**

-  INDICATES AREA TO BE VACATED/QUITCLAIMED
- (XX) TRACT NO. 2244, M.B. 244/40-53
- ((XX)) PARCEL NO. PER RESOLUTION NO. 7173 (03-10-1972)



**NOTE:**  
UNLESS OTHERWISE NOTED ALL DATA IS RECORD PER CITY OF ONTARIO RESOLUTION NO. 7173 RECORDED MARCH 10, 1972 7884/681 O.R. AND CALTRANS "RELINQUISHMENT OF HIGHWAY RIGHT OF WAY IN THE CITY OF ONTARIO ROAD 08-SBD-10-6.0-6.3 REQUEST NO. 204S" HM 11/76  
SHEET 1 OF 1 SHEETS

**Michael Baker**  
**INTERNATIONAL**

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

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF ONTARIO, CALIFORNIA, ORDERING THE SUMMARY VACATION OF A PORTION OF INLAND EMPIRE BOULEVARD AND RECONVEYANCE ANY OF THE CITY'S INTEREST THEREIN.

WHEREAS, the State of California, relinquished in fee simple to the City of Ontario, that certain portion of Inland Empire Boulevard for street purposes (Parcel 1) recorded in Book 7823, Page 876 of Official Records, consisting of areas more specifically described and depicted in the attached Exhibits "A" and "B"; and

WHEREAS, that portion of Inland Empire Boulevard (Parcel 2) being an easement for street and other municipal purposes dedicated per Tract No. 2244, recorded in Book 35, Pages 50 to 56 of Official Records, consisting of areas more specifically described and depicted in the attached Exhibits "A" and "B"; and

WHEREAS, that portion of Inland Empire Boulevard, described as Parcel 1 and Parcel 2 per the attached Exhibits "A" and "B" (Property) was realigned per Parcel Map No. 19612, and is no longer needed for any present or future public street purpose and is determined to be superseded by relocation; and

WHEREAS, the California Government Code, Section 66477.5(c) requires the City to reconvey the subject property in interest to the subdivider or successor in interest if the dedication was made to the City in fee simple and the City has determined that the same public purpose for which the dedication was required no longer exists; and

WHEREAS, Section 8330(a) of the California Streets and Highways Code, authorizes the City to summarily vacate (by resolution with no public hearing) a street or highway that has been superseded by relocation; and

WHEREAS, the property owner has requested a vacation of said portion of Inland Empire Boulevard and all other legal prerequisites to the adoption of this Resolution have occurred.

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

1. That the above recitals are true and correct.
2. That title to the above-described said portion of Inland Empire Boulevard, more specifically described in Exhibit "A" and depicted on Exhibit "B" (Parcel 1) attached hereto, is hereby vacated and shall be reconveyed to the subdivider or successor in interest.

3. That title to the above-described said easement portion of Inland Empire Boulevard, more specifically described in Exhibit "A" and depicted on Exhibit "B" (Parcel 2) attached hereto, shall be vacated.
4. That the City Clerk of the City of Ontario, California, shall cause a copy of this Resolution to be recorded in the office of the County Recorder of San Bernardino County, California.
5. That upon recordation required hereby, the vacation is complete and the street and any public service easements vacated no longer constitute a street or public service easement.

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

PASSED, APPROVED, AND ADOPTED this 5<sup>th</sup> day of December 2017.

---

PAUL S. LEON, MAYOR

ATTEST:

---

SHEILA MAUTZ, CITY CLERK

APPROVED AS TO LEGAL FORM:

---

BEST BEST & KRIEGER LLP  
CITY ATTORNEY

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

I, SHEILA MAUTZ, City Clerk of the City of Ontario, DO HEREBY CERTIFY that foregoing Resolution No. 2017-     was duly passed and adopted by the City Council of the City of Ontario at their regular meeting held December 5, 2017 by the following roll call vote, to.wit:

AYES:            COUNCIL MEMBERS:

NOES:            COUNCIL MEMBERS:

ABSENT:          COUNCIL MEMBERS:

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

(SEAL)

The foregoing is the original of Resolution No. 2017-     duly passed and adopted by the Ontario City Council at their regular meeting held December 5, 2017.

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

(SEAL)



**EXHIBIT "A"**  
**V-267**  
**LEGAL DESCRIPTION**

**PARCEL 1:**

All that real property in the City of Ontario, County of San Bernardino, State of California, being portions of Parcels 8 through 12, inclusive, of Parcel Map No. 19612 as shown on the map filed in Book 244, Pages 40 through 53, inclusive of Parcel Maps in the Office of the County Recorder of said San Bernardino County, being Segment 1 as referred to in the "Relinquishment of Highway Right of Way in the City of Ontario, Road 08-Sbd-10-6.0-6.3 Request No. 204S", recorded December 28, 1971, in Book 7823, Page 876 of Official Records and as shown on the map filed for record on November 23, 1971 in State Highway Map Book 11, Page 76 and 77 in the Office of said San Bernardino County Recorder, more particularly described as follows:

Those portions of Lots 1 and 2 and of the certain street shown as Colton Avenue, 60 feet wide, all in Block 22, Tract No. 2244, per map recorded in Book 35, Pages 50 to 56, inclusive, in the Office of the County Recorder of said County, included within the following described lines:

Commencing at the intersection of said Highway right of way line with the south line of said Lot 1 of Block 22, said point being a point on a curve in said Highway right of way line, a radial line of said curve at said point bears S49°28'33"W;; thence along the south line of said Lot 1, being also the northerly line of said Colton Avenue South 89°49'52" East 678.77 feet to the True Point of Beginning; Thence South 0° 10' 08" West 60.00 feet to the north line of said Lot 2, being also the southerly line of said Colton Avenue; Thence South 86°08'49" West 199.62 feet to a line parallel with and distant 44.00 feet southerly from and measured at right angles to the centerline of said Colton Avenue; Thence northwesterly along a 544-foot radius curve, concave northeasterly and being tangent to said parallel line, through a central angle of 51°15'00", a distance of 486.59 feet; Thence North 38°34'52" West 523.32 feet; Thence westerly along a tangent curve, concave southerly and having a radius of 406 feet, through a central angle of 41°33'57", a distance of 294.54 feet; Thence southwestery along a 30-foot radius compound curve, concave southeasterly, through a central angle of 101°27'01", a distance of 53.12 feet; Thence southerly along a 2,050-foot radius reversing curve concave westerly, through a central angle of 2°15'00", a distance of 80.50 feet to the northeasterly boundary of that certain parcel of land described as Parcel 4 in the deed to the State of California, recorded December 12, 1951 in Book 2866 of Official Records, Page 106, in said Recorder's Office; Thence along said northeasterly boundary, North 44° 33' 04" West, 11.38 feet to an angle point; Thence continuing along said boundary, North 12° 14' 40" West, 33.82 feet to the east line of said Vineyard Avenue; Thence along said east line North 0° 24' 00" West, 191.26 feet to the beginning of a 30-foot radius tangent curve, concave northeasterly and also being tangent to a 494-foot radius reverse curve that is concentric with the 406-foot radius curve hereinabove described; Thence southeasterly along said 30-foot radius curve, a distance of 44.13 feet, more or less, to the point of tangency thereof with said 494-foot radius curve; Thence southeasterly along last said curve, a distance of 397.52 feet, more or less, to the point of tangency thereof with a line parallel with and distant 88.00

**EXHIBIT "A"**  
**V-267**  
**LEGAL DESCRIPTION**

feet northeasterly from and measured at right angles to that certain course hereinabove described as having a bearing of North 38° 34' 52" West; Thence along said parallel line, South 38° 34' 52" East 523.32 feet to the point of tangency thereof with a 456-foot radius curve, concave northeasterly and being concentric with the 544-foot radius curve hereinabove described; Thence southeasterly along said 456-foot radius curve, through a central angle of 51°15' 00", a distance of 407.88 feet; Thence South 85° 48' 34" East 199.62 feet to the True Point of Beginning.

**EXCEPTING** therefrom that portion lying westerly of the westerly line of Parcel 8 as shown on said Parcel Map No. 19612.

CONTAINS: 129,174 square feet, or 2.965 acres, more or less.

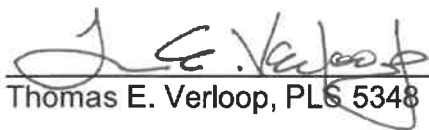
**PARCEL 2:**

All that real property in the City of Ontario, County of San Bernardino, State of California, being portions of Parcels 11 through 13, inclusive, of Parcel Map No. 19612 as shown on the map filed in Book 244, Pages 40 through 53, inclusive of Parcel Maps in the Office of the County Recorder of said San Bernardino County, being that portion of the old alignment of Inland Empire Boulevard (88.00 feet in width) lying easterly of Parcel 1 described above and westerly of the southwesterly line of Inland Empire Boulevard (100.00 feet in width) as shown on said Parcel Map No. 19612.

CONTAINS: 34,969 square feet, or 0.803 acres, more or less.

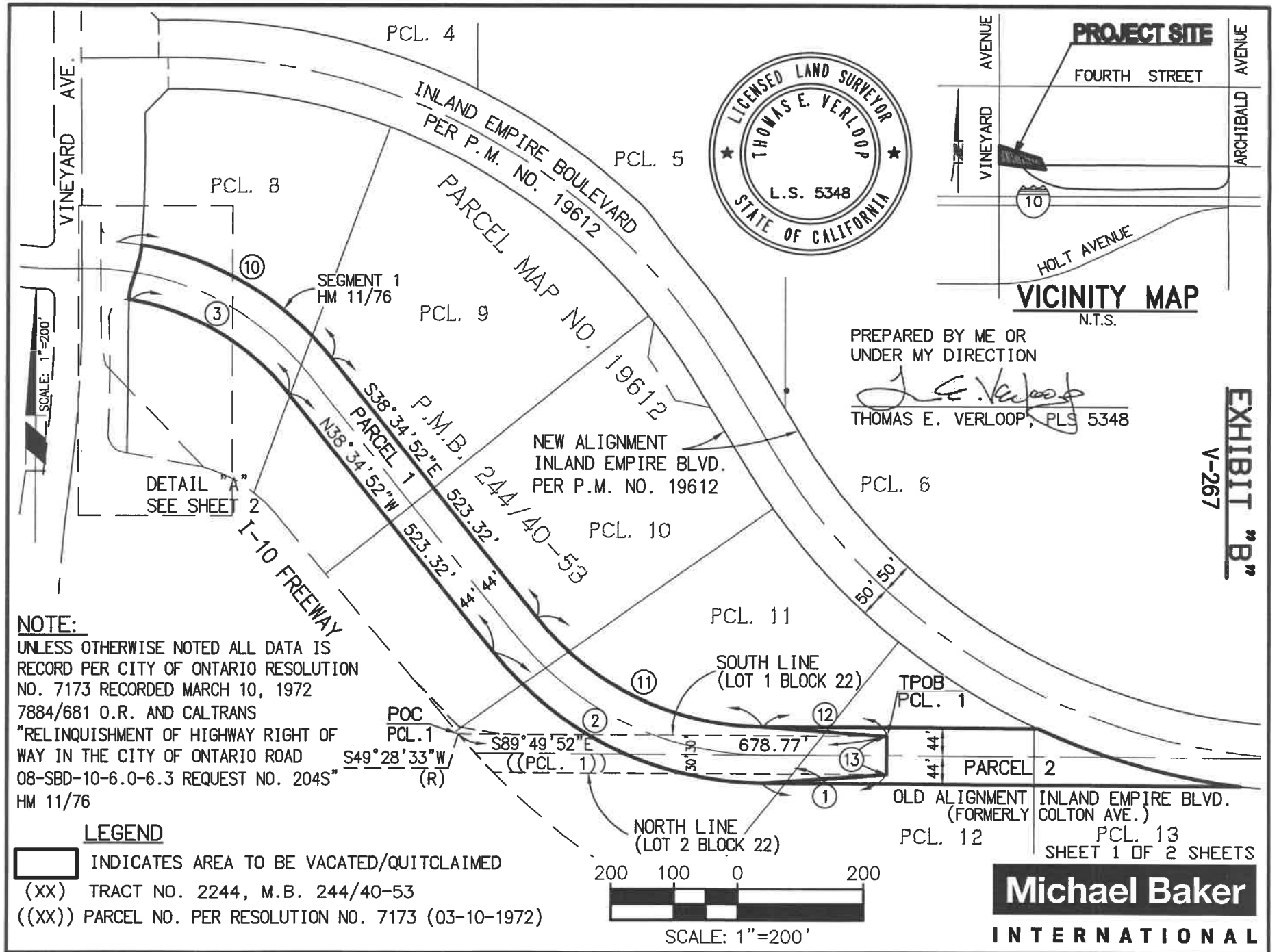
**EXHIBIT "B"** attached hereto and by this reference made a part hereof.

This description was prepared by me  
or under my direction.

  
Thomas E. Verloop, PLS 5348

01-30-2017  
Date:





**PROJECT SITE**

FOURTH STREET

VINEYARD AVENUE

ARCHIBALD AVENUE



HOLT AVENUE

**VICINITY MAP**

N.T.S.



PREPARED BY ME OR UNDER MY DIRECTION

*Thomas E. Verloop*  
 THOMAS E. VERLOOP, PLS 5348

**EXHIBIT "B"**  
 V-267

PCL. 4

PCL. 5

PCL. 8

PCL. 9

PCL. 6

PCL. 10

PCL. 11

TPOB PCL. 1

PARCEL 2

PCL. 12

PCL. 13

SHEET 1 OF 2 SHEETS

INLAND EMPIRE BOULEVARD  
 PER P.M. NO. 19612

PARCEL MAP NO. 19612

NEW ALIGNMENT  
 INLAND EMPIRE BLVD.  
 PER P.M. NO. 19612

OLD ALIGNMENT INLAND EMPIRE BLVD.  
 (FORMERLY COLTON AVE.)

SEGMENT 1  
 HM 11/76

P.M.B. 244/40-53  
 S38°34'52"E 523.32'  
 N38°34'52"W 523.32'  
 44'44"

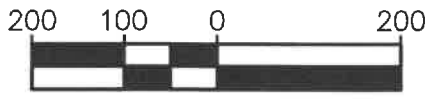
SOUTH LINE  
 (LOT 1 BLOCK 22)

NORTH LINE  
 (LOT 2 BLOCK 22)

**NOTE:**  
 UNLESS OTHERWISE NOTED ALL DATA IS RECORD PER CITY OF ONTARIO RESOLUTION NO. 7173 RECORDED MARCH 10, 1972 7884/681 O.R. AND CALTRANS "RELINQUISHMENT OF HIGHWAY RIGHT OF WAY IN THE CITY OF ONTARIO ROAD 08-SBD-10-6.0-6.3 REQUEST NO. 204S" HM 11/76

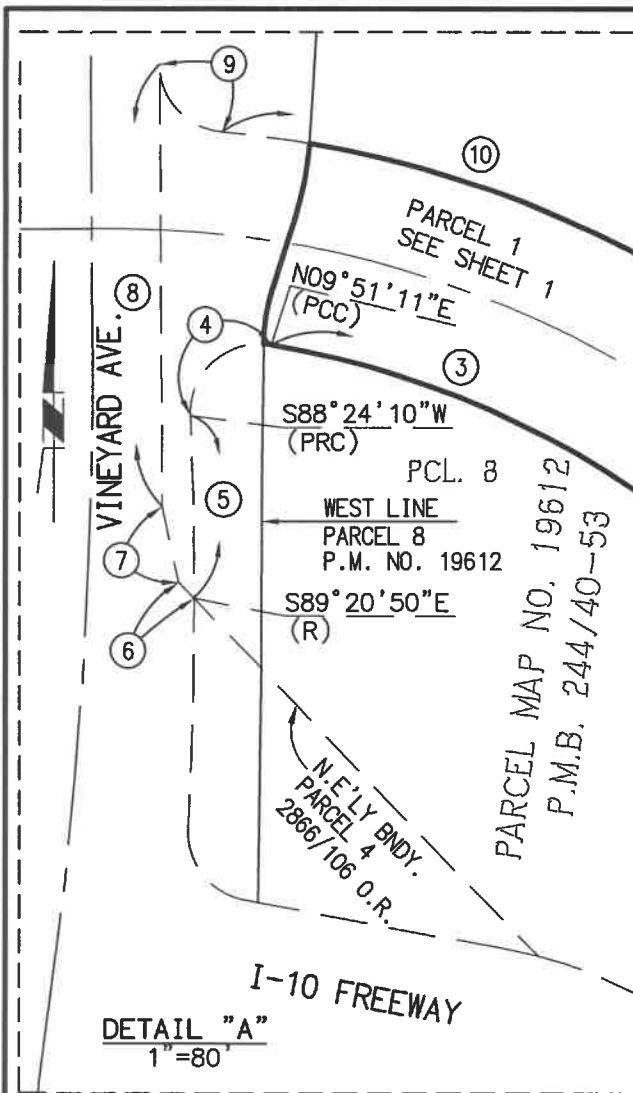
**LEGEND**

- INDICATES AREA TO BE VACATED/QUITCLAIMED
- (XX) TRACT NO. 2244, M.B. 244/40-53
- ((XX)) PARCEL NO. PER RESOLUTION NO. 7173 (03-10-1972)



SCALE: 1"=200'

**Michael Baker**  
 INTERNATIONAL



LINE/CURVE DATA TABLE			
NO	BEARING/DELTA	RADIUS	LENGTH
1	S86°08'49"W	--	199.62'
2	51°15'00"	544.00'	486.59'
3	41°33'57"	406.00'	294.54'
4	101°27'01"	30.00'	53.12'
5	02°15'00"	2050.00'	80.50'
6	N44°33'04"W	--	11.38'
7	N12°14'40"W	--	33.82'
8	N00°24'00"W	--	191.26'
9	84°17'11"	30.00'	44.13'
10	46°06'19"	494.00'	397.52'
11	51°15'00"	456.00'	407.88'
12	S85°48'34"E	--	199.62'
13	S00°10'08"W	--	60.00'

EXHIBIT "B"  
V-267

**NOTE:**

UNLESS OTHERWISE NOTED ALL DATA IS RECORD PER CITY OF ONTARIO RESOLUTION NO. 7173 RECORDED MARCH 10, 1972 7884/681 O.R. AND CALTRANS "RELINQUISHMENT OF HIGHWAY RIGHT OF WAY IN THE CITY OF ONTARIO ROAD 08-SBD-10-6.0-6.3 REQUEST NO. 204S" HM 11/76

**LEGEND**



INDICATES AREA TO BE VACATED/QUITCLAIMED

(XX) TRACT NO. 2244, M.B. 244/40-53

(XX) PARCEL NO. PER RESOLUTION NO. 7173 (03-10-1972)

SHEET 2 OF 2 SHEETS

**Michael Baker**

**INTERNATIONAL**

# CITY OF ONTARIO

Agenda Report  
December 5, 2017

SECTION:  
CONSENT CALENDAR

**SUBJECT: ACCEPT WRITTEN PETITIONS TO CREATE A COMMUNITY FACILITIES DISTRICT, ADOPT A RESOLUTION OF INTENTION TO ESTABLISH CITY OF ONTARIO COMMUNITY FACILITIES DISTRICT NO. 26 (PARK PLACE FACILITIES PHASE III), AND AUTHORIZE THE ASSOCIATED LEVY OF SPECIAL TAXES AND ADOPT A RESOLUTION TO INCUR BONDED INDEBTEDNESS**

**RECOMMENDATION:** That the City Council:

- (A) Accept written petitions (on file with the Records Management Department) from The New Home Company Southern California LLC, a Delaware limited liability company located in Aliso Viejo, California, Taylor Morrison of California, LLC, a California limited liability company located in Irvine, California, and CDG Park Place Venture, LLC, a Delaware limited liability company located in Newport Beach, California, to create a community facilities district, and to waive certain procedural matters, under the Mello-Roos Community Facilities Act of 1982;
- (B) Adopt a Resolution of Intention to establish City of Ontario Community Facilities District No. 26 (Park Place Facilities Phase III) (the "CFD"), authorize the associated levy of special taxes therein; and set a public hearing for the formation of the CFD as part of the regularly scheduled City Council meeting on Tuesday, January 16, 2018; and
- (C) Adopt a Resolution to Incur Bonded Indebtedness of proposed Community Facilities District No. 26 (Park Place Facilities Phase III).

**COUNCIL GOALS: Operate in a Businesslike Manner**

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

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

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

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

Prepared by: Bob Chandler  
Department: Management Services  
City Manager Approval: 

Submitted to Council/O.H.A. 12/05/2017  
Approved: \_\_\_\_\_  
Continued to: \_\_\_\_\_  
Denied: \_\_\_\_\_

7

**FISCAL IMPACT:** The use of Mello-Roos financing for facilities in the residential development of the Park Place Facilities Phase III project is estimated to generate approximately \$8 million, which will be used to help fund a portion of the public infrastructure improvements that will serve the project. Since Mello-Roos bonds are not a direct obligation of the City, and are paid from special taxes levied on each taxable parcel in the district, there is no General Fund impact from the issuance of Mello-Roos bonds.

**BACKGROUND:** The Mello-Roos Community Facilities Act of 1982 provides local government, with the consent from a majority of the property owners, the authority to establish community facilities districts for the purpose of levying special taxes to fund governmental services and to finance various kinds of public infrastructure facilities. With the adoption of Resolution 2014-019 on March 18, 2014, the City Council authorized the levy of special taxes to fund various city services for the district. Under the Mello-Roos Act, the initial steps in the formation of a community facilities district to finance public improvements are adopting resolutions declaring the City's intention to establish a community facilities district and levy special taxes, and to issue bonds.

In the First Amended and Restated Agreement for the Financing and Construction of Limited Infrastructure Improvements to Serve an Easterly Portion of the New Model Colony ("First Amended and Restated Construction Agreement") between the City and NMC Builders, LLC, the City agreed to cooperate with the members of NMC Builders, LLC in the formation of community facilities district to assist in the financing in the public improvements included in the agreement. The New Home Company Southern California LLC, Taylor Morrison of California, LLC, and CDG Park Place Venture, LLC, assignee homebuilders of SL Ontario Development Company, LLC – a member of NMC Builders, LLC - have provided written petitions to the City requesting formation of a community facilities district for the Park Place Facilities Phase III project in Ontario Ranch. The Park Place Facilities Phase III project addresses the development of approximately 17 taxable acres located east of Celebration Avenue, generally west of Haven Avenue, south of Parkview Street and north of Eucalyptus Avenue. At build out, the development is projected to include 279 detached single-family units.

Included, as part of the resolution of intention for the proposed district, is the proposed Rate and Method of Apportionment of Special Tax for the District. The terms of the Rate and Method of Apportionment of Special Tax are consistent with the City Council's adopted Mello-Roos Local Goals and Policies in all aspects, except that the percentage of assessed value of the total annual tax obligation plus the annual Homeowners Association (HOA) fee exceeds the adopted policy thresholds, in aggregate, by .19% for each detached unit. However, as was previously authorized for previous developers in the Ontario Ranch, and as is consistent with the "enhanced level of amenities" provisions of the Memorandum of Understanding executed between the City and NMC Builders on July 21, 2015 (the MOU), it is recommended that the policy threshold limitations be waived in this instance in recognition of the enhanced level of amenities and services to be provided by the project's HOA, which are of the type contemplated by the MOU. The community facilities district is being formed pursuant to the provisions of the SL Ontario Development Company LLC's Development Agreement, and the First Amended and Restated Construction Agreement between the City and NMC Builders.

Under the proposed Rate and Method of Apportionment, **the portion of the maximum annual special tax rates which will be used to fund debt service payments on the bonds is fixed and will not increase over time.** The amount of bonds authorized \$30 million under the resolution is set intentionally higher than the current proposed bond amount approximately \$8 million in order to allow future City Councils the option, without increasing the amount of the annual special taxes, to issue

additional bonds to replace and/or construct new public infrastructure improvements in the future, or to fund City services. The term and structure of the Rate and Method of Apportionment of Special Tax for the Park Place Facilities Phase III projects are consistent with those of the previously adopted Rates and Methods of Apportionment for Ontario Ranch community facilities districts. This will ensure that the special tax rates levied on all residential property owners in community facilities districts in Ontario Ranch be developed in a consistent and equivalent manner. In addition, under the provisions of the Mello-Roos Act, to ensure that home buyers are making an informed decision, all residential builders in Ontario Ranch community facilities districts will be required to disclose the maximum annual special tax amount to each homeowner before entering into a sales contract.

City staff members have discussed the proposed Rate and Method of Apportionment of Special Tax with the landowners. As proposed, the resolution of intention to establish the district and to levy special taxes will set the public hearing date on the formation of the community facilities district for the regularly scheduled City Council meeting on Tuesday, January 16, 2018 to consider the matter.

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

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF ONTARIO, CALIFORNIA, OF INTENTION TO ESTABLISH A COMMUNITY FACILITIES DISTRICT, PROPOSED TO BE NAMED CITY OF ONTARIO COMMUNITY FACILITIES DISTRICT NO. 26 (PARK PLACE FACILITIES PHASE III), AND TO AUTHORIZE THE LEVY OF SPECIAL TAXES.

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

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

WHEREAS, the City Council (the "City Council") of the City of Ontario (the "City") has received written petitions (the "Petitions") from each of Taylor Morrison of California, LLC, The New Home Company Southern California LLC and CDG Park Place Venture, LLC (collectively, the "Landowners") requesting the institution of proceedings for the establishment of a community facilities district (the "Community Facilities District"), describing the boundaries of the territory that is proposed for inclusion in the Community Facilities District and specifying the types of facilities and services to be financed by the Community Facilities District; and

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

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

WHEREAS, Section 53314.9 of the Act further provides that the legislative body may enter into an agreement, by resolution, with the person or entity advancing the funds, to repay all or a portion of the funds advanced, as determined by the legislative



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

WHEREAS, the City and SL Ontario Development Company, LLC ("SL Ontario") have entered into a Deposit and Reimbursement Agreement, dated as of October 1, 2017 (the "Deposit Agreement"), relating to the Community Facilities District, that provides for the advancement of funds by SL Ontario to be used to pay costs incurred in connection with the establishment of the Community Facilities District and the issuance of special tax bonds thereby, and provides for the reimbursement to SL Ontario of such funds advanced, without interest, from the proceeds of any such bonds issued by the Community Facilities District; and

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

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

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

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

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

SECTION 4. The name proposed for the Community Facilities District is "City of Ontario Community Facilities District No. 26 (Park Place Facilities Phase III)."

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

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

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

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

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

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

SECTION 10. The City Council hereby fixes Tuesday, January 16, 2018, at 6:30 p.m., or as soon thereafter as the City Council may reach the matter, at 303 East B Street, Ontario, California, as the time and place when and where the City Council will conduct a public hearing on the establishment of the Community Facilities District.

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

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

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

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

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

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

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

PASSED, APPROVED, AND ADOPTED this 5<sup>th</sup> day of December 2017.

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PAUL S. LEON, MAYOR

ATTEST:

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SHEILA MAUTZ, CITY CLERK

APPROVED AS TO FORM:

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BEST BEST & KRIEGER LLP  
CITY ATTORNEY

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

I, SHEILA MAUTZ, City Clerk of the City of Ontario, DO HEREBY CERTIFY that foregoing Resolution No. 2017-     was duly passed and adopted by the City Council of the City of Ontario at their regular meeting held December 5, 2017 by the following roll call vote, to wit:

AYES:            COUNCIL MEMBERS:

NOES:           COUNCIL MEMBERS:

ABSENT:         COUNCIL MEMBERS:

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

(SEAL)

The foregoing is the original of Resolution No. 2017-     duly passed and adopted by the Ontario City Council at their regular meeting held December 5, 2017.

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

(SEAL)

## EXHIBIT A

### FACILITIES AND INCIDENTAL EXPENSES

#### Facilities

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

#### Facilities to be Purchased

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

#### Services

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

#### Incidental Expenses

The incidental expenses proposed to be incurred include the following:

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

EXHIBIT B

PROPOSED RATE AND METHOD OF APPORTIONMENT OF SPECIAL TAX

## EXHIBIT B

### CITY OF ONTARIO COMMUNITY FACILITIES DISTRICT NO. 26 (PARK PLACE FACILITIES PHASE III)

#### RATE AND METHOD OF APPORTIONMENT OF SPECIAL TAX

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A Special Tax shall be levied on all Assessor's Parcels in the City of Ontario Community Facilities District No. 26 (Park Place Facilities Phase III) ("CFD No. 26") and collected each Fiscal Year, commencing in Fiscal Year 2018-19, in an amount determined by the City Council of the City of Ontario through the application of the Rate and Method of Apportionment, as described below. All of the real property in CFD No. 26, unless exempted by law or by the provisions hereof, shall be taxed for the purposes, to the extent, and in the manner herein provided.

#### A. DEFINITIONS

The terms hereinafter set forth have the following meanings:

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

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

**"Administrative Expenses"** means the following actual or reasonably estimated costs directly related to the administration of CFD No. 26: the costs of computing the Special Taxes and preparing the annual Special Tax collection schedules (whether by the City or CFD No. 26 or both); the costs of collecting the Special Taxes (whether by the County or otherwise); the costs of remitting the Special Taxes to the Trustee; the costs of the Trustee (including its legal counsel) in the discharge of the duties required of it under the Indenture; the costs to the City or CFD No. 26 of complying with arbitrage rebate requirements; the costs to the City or CFD No. 26 of complying with City, CFD No. 26, or obligated persons disclosure requirements associated with applicable federal and state securities laws and of the Act; the costs associated with preparing Special Tax disclosure statements and responding to public inquiries regarding the Special Taxes; the costs of the City or CFD No. 26 related to the analysis and reduction, if any, of the Special Tax on Residential Property in accordance with Section C.1 herein; the costs of the City or CFD No. 26 related to an appeal of the Special Tax; the costs associated with the release of funds from any escrow account; the City's administration fees and third party expenses; the costs of City staff time and reasonable overhead relating to CFD No. 26; and amounts estimated or advanced by the City or CFD No. 26 for any other administrative purposes



of the CFD, including attorney's fees and other costs related to commencing and pursuing to completion any foreclosure of delinquent Special Taxes.

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

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

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

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

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

**"Bonds"** means any bonds or other debt (as defined in Section 53317(d) of the Act) issued by CFD No. 26 under the Act and payable from Special Taxes.

**"Buildable Lot"** means an individual lot, within a Final Subdivision Map or an area expected by CFD No. 26 to become Final Mapped Property, such as the area within a Tentative Tract Map, for which a building permit may be issued without further subdivision of such lot.

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

**"CFD No. 26"** means City of Ontario Community Facilities District No. 26 (Park Place Facilities Phase III).

**"City"** means the City of Ontario, California.

**"City Council"** means the City Council of the City, acting as the legislative body of CFD No. 26.

**"County"** means the County of San Bernardino.

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

**"Developed Property"** means for each Fiscal Year, all Taxable Property, exclusive of Final Mapped Property, Taxable Property Owner Association Property, and Taxable Public Property, for which a building permit or other applicable permit for new construction was issued after January 1, 2017, and before May 1 of the prior Fiscal Year.

**“Expected Residential Lot Count”** means 279 Buildable Lots of Residential Property or, as determined by the CFD Administrator, the number of Buildable Lots of Residential Property based on the most recent Tentative Tract Map(s) or most recently recorded Final Subdivision Map(s) or modified Final Subdivision Map(s).

**“Facilities”** means the public facilities authorized to be financed, in whole or in part, by CFD No. 26.

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

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

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

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

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

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

**“Minimum Sale Price”** means the minimum price at which Units of a given Land Use Class have sold or are expected to be sold in a normal marketing environment and shall not include prices for such Units that are sold at a discount to expected sales prices for the purpose of stimulating the initial sales activity with respect to such Land Use Class.

**“Non-Residential Property”** means all Assessor’s Parcels of Developed Property for which a building permit was issued by the City permitting the construction of one or more non-residential structures or facilities that are not public school facilities.

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

**“PACE Charges”** means a contractual assessment or special tax as established by a public agency pursuant to AB 811 or SB 555, respectively, levied on an Assessor’s Parcel to fund eligible improvements to private property and entered into voluntarily by the property owner.

**“Price Point Consultant”** means any consultant or firm of such consultants selected by CFD No. 26 that (a) has substantial experience in performing price point studies for residential units within community facilities districts established under the Act or otherwise estimating or confirming pricing for residential units in such community facilities districts, (b) has recognized expertise in analyzing economic and real estate data that relates to the pricing of residential units in such community facilities districts, (c) is in fact independent and not under the control of CFD No. 26 or the City, (d) does not have any substantial interest, direct or indirect, with or in (i) CFD No. 26, (ii) the City, (iii) any owner of real property in CFD No. 26, or (iv) any real property in CFD No. 26, and (e) is not connected with CFD No. 26 or the City as an officer or employee thereof, but who may be regularly retained to make reports to CFD No. 26 or the City.

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

**“Property Owner Association Property”** means, for each Fiscal Year, any property within the boundaries of CFD No. 26 that was owned by a property owner association, including any master or sub-association, as of January 1 of the prior Fiscal Year.

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

**“Public Property”** means, for each Fiscal Year, property within the boundaries of CFD No. 26 that is (a) owned by, irrevocably offered to, or dedicated to the federal government, the State, the County, the City, or any local government or other public agency or (b) encumbered by an easement for purposes of public right-of-way that makes impractical its use for any purpose other than that set forth in such easement, provided that any property leased by a public agency to a private entity and subject to taxation under Section 53340.1 of the Act shall be taxed and classified according to its use.

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

**“Residential Floor Area”** means all of the Square Footage of living area within the perimeter of a residential Unit, not including any carport, walkway, garage, overhang, patio, enclosed patio, or similar area. The determination of Residential Floor Area shall be as set forth in the building permit(s) issued for such Assessor’s Parcel, or as set forth in other official records maintained by the City’s Building Department or other appropriate means selected by CFD No. 26. The actual Square Footage shall be rounded up to the next whole square foot. Once such determination has been made for an Assessor’s Parcel, it shall remain fixed in all future Fiscal Years unless an appeal pursuant to Section F below is approved that results in a change in the actual Square Footage.

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

**“Services”** means the services authorized to be financed, in whole or in part, by CFD No. 26.

**“Special Tax”** means the special tax authorized by the qualified electors of CFD No. 26 to be levied within the boundaries of CFD No. 26.

**“Special Tax Requirement”** means for any Fiscal Year that amount required, after taking into account available amounts held in the funds and accounts established under the Indenture, for CFD No. 26 to: (i) pay debt service on all Outstanding Bonds which is due in the calendar year that commences in such Fiscal Year; (ii) pay periodic costs on the Bonds, including, but not limited to, credit enhancement and rebate payments on the Bonds; (iii) pay Administrative Expenses; (iv) provide any amounts required to establish or replenish any reserve fund for the Bonds; (v) pay directly for acquisition or construction of Facilities, or the cost of Services, to the extent that the inclusion of such amounts does not increase the Special Tax levy on Final Mapped Property or Undeveloped Property; (vi) provide an amount equal to Special Tax delinquencies based on the historical delinquency rate for the Special Tax as determined by the CFD Administrator.

**“Square Footage”** or **“Sq. Ft.”** means the floor area square footage reflected on the original construction building permit, or as set forth in other official records maintained by the City’s Building Department or other appropriate means selected by CFD No. 26, issued for construction of Residential Property or Non-Residential Property, plus any square footage subsequently added to a building of Non-Residential Property after issuance of a building permit for expansion or renovation of such building.

**“State”** means the State of California.

**“Taxable Property”** means, for each Fiscal Year, all of the Assessor’s Parcels within the boundaries of CFD No. 26 that are not exempt from the Special Tax pursuant to law or Section E below.

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

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

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

**“Total Tax Burden”** means for any Unit, the annual Special Tax, together with *ad valorem* property taxes, special assessments, special taxes for any overlapping community facilities district, and any other taxes, fees, and charges which are levied and imposed on such Unit and the real property on which it is located and collected by the County on *ad valorem* tax bills and which are secured by such Unit and the real property on which it is located, assuming such Unit had been completed, sold, and subject to such levies and impositions, excluding service charges such as those related to sewer and trash and excluding PACE Charges levied on individual Assessor’s Parcels.

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

**“TTM 18073”** means Tentative Tract Map No. 18073, the area of which is located within CFD No. 26 and is commonly referred to as a portion of planning area 24 (or PA 24).

**“TTM 18074”** means Tentative Tract Map No. 18074, the area of which is located within CFD No. 26 and is commonly referred to as a portion of planning area 25 (or PA 25).

**“TTM 18998”** means Tentative Tract Map No. 18998, the area of which is located within CFD No. 26 and is commonly referred to as planning area 26 (or PA 26).

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

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

**B. ASSIGNMENT TO LAND USE CATEGORIES**

Each Fiscal Year, beginning with Fiscal Year 2018-19, all Taxable Property within CFD No. 26 shall be classified as Developed Property, Final Mapped Property, Taxable Public Property, Taxable Property Owner Association Property, or Undeveloped Property and shall be subject to Special Taxes in accordance with the Rate and Method of Apportionment as determined pursuant to Sections C and D below. Assessor's Parcels of Residential Property shall be assigned to Land Use Classes 1 through 17 as listed in Table 1 below based on the Residential Floor Area of the Units on such Assessor's Parcels. Non-Residential Property shall be assigned to Land Use Classes 18 through 20.

**C. MAXIMUM SPECIAL TAX**

**1. Special Tax**

At least 30 days prior to the issuance of Bonds, the Assigned Special Tax on Developed Property (set forth in Table 1 below) shall be analyzed in accordance with and subject to the conditions set forth in this Section C. At such time, CFD No. 26 shall select and engage a Price Point Consultant and the CFD Administrator shall request the Price Point Consultant to prepare a Price Point Study setting forth the Minimum Sale Price of Units within each Land Use Class. If based upon such Price Point Study the CFD Administrator calculates that the Total Tax Burden applicable to Units within one or more Land Use Classes of Residential Property to be constructed within CFD No. 26 exceeds 1.95% of the Minimum Sale Price of such Units, the Assigned Special Tax shall be reduced to the extent necessary to cause the Total Tax Burden that shall apply to Units within such Land Use Class(es) not to exceed 1.95% of the Minimum Sale Price of such Units.

Each Assigned Special Tax reduction for a Land Use Class shall be calculated by the CFD Administrator separately, and it shall not be required that such reduction be proportionate among Land Use Classes. In connection with any reduction in the Assigned Special Tax, the Backup Special Tax shall also be reduced by the CFD Administrator based on the percentage reduction in Maximum Special Tax revenues within the Tentative Tract Map area(s) where the Assigned Special Tax reductions occurred. Upon determining the reductions, if any, in the Assigned Special Tax and Backup Special Tax required pursuant to this Section C, the CFD Administrator shall complete the Certificate of Modification of Special Tax substantially in the form attached hereto as Exhibit A (the "Certificate of Modification"), shall execute such completed Certificate of Modification, and shall deliver such executed Certificate of Modification to CFD No. 26. Upon receipt thereof, if in satisfactory form, CFD No. 26 shall execute such Certificate of Modification. The reduced Assigned Special Tax and Backup Special Tax specified in such Certificate of Modification shall become effective upon the execution of such Certificate of Modification by CFD No. 26

The Special Tax reductions required pursuant to this section shall be reflected in an amended notice of Special Tax lien which CFD No. 26 shall cause to be

recorded with the County Recorded as soon as practicable after execution of the Certificate of Modification by CFD No. 26. The reductions in this section apply to Residential Property, but not to Non-Residential Property.

*a. Developed Property*

1) *Maximum Special Tax*

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

2) *Assigned Special Tax*

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

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

Land Use Class	Description	Residential Floor Area (Square Footage)	Assigned Special Tax
1	Residential Property	< 1,701	\$1,937 per Unit
2	Residential Property	1,701 – 1,800	\$2,034 per Unit
3	Residential Property	1,801 – 1,900	\$2,147 per Unit
4	Residential Property	1,901 – 2,000	\$2,331 per Unit
5	Residential Property	2,001 – 2,100	\$2,375 per Unit
6	Residential Property	2,101 – 2,200	\$2,401 per Unit
7	Residential Property	2,201 – 2,300	\$2,480 per Unit
8	Residential Property	2,301 – 2,400	\$2,674 per Unit
9	Residential Property	2,401 – 2,500	\$2,718 per Unit
10	Residential Property	2,501 – 2,600	\$2,793 per Unit
11	Residential Property	2,601 – 2,700	\$2,863 per Unit
12	Residential Property	2,701 – 2,800	\$3,025 per Unit
13	Residential Property	2,801 – 2,900	\$3,122 per Unit
14	Residential Property	2,901 – 3,000	\$3,227 per Unit
15	Residential Property	3,001 – 3,100	\$3,324 per Unit
16	Residential Property	3,101 – 3,200	\$3,420 per Unit
17	Residential Property	> 3,200	\$3,517 per Unit

18	Non-Residential Property TTM 18073		\$41,577 per Acre
19	TTM 18074		\$55,099 per Acre
20	TTM 18998		\$35,217 per Acre

3) *Backup Special Tax*

The Backup Special Tax shall be \$2,789 per Unit for Residential Property in TTM 18073, \$2,338 per Unit for Residential Property in TTM 18074, and \$2,334 per Unit for Residential Property in TTM 18998. However, if the Expected Residential Lot Count does not equal 75 for TTM 18073, 102 for TTM 18074, or 102 for TTM 18998, and the City has not issued Bonds, then the Backup Special Tax for Designated Buildable Lots of Residential Property shall be calculated separately for each Tentative Tract Map area according to the following formula:

$$\begin{aligned}
 \text{Backup Special Tax} &= \$41,577 \text{ for TTM 18073 or} \\
 &\quad \$55,099 \text{ for TTM 18074 or} \\
 &\quad \$35,217 \text{ for TTM 18998} \\
 &\quad \times \text{ Acreage of Designated Buildable Lots} \\
 &\quad \text{of Residential Property within the} \\
 &\quad \text{applicable Tentative Tract Map} \\
 &\quad \div \text{ Expected Residential Lot Count for} \\
 &\quad \text{Residential Property within the} \\
 &\quad \text{applicable Tentative Tract Map}
 \end{aligned}$$

If any portion of a Final Subdivision Map, or any area expected by CFD No. 26 to become Final Mapped Property, such as the area within TTM 18073, TTM 18074, TTM 18998, or any other Tentative Tract Map, changes any time after the City has issued Bonds, causing an adjustment to the number of Designated Buildable Lots, then the Backup Special Tax for all Designated Buildable Lots of Residential Property subject to the change shall be calculated according to the following steps:

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



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

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

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

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

The Maximum Special Tax for Final Mapped Property, Taxable Public Property, Taxable Property Owner Association Property, and Undeveloped Property shall be \$41,577 per Acre for such property in TTM 18073, \$55,099 per Acre for such property in TTM 18074, and \$35,217 per Acre for such property in TTM 18998, and shall not be subject to increase or reduction and, therefore, shall remain the same in every Fiscal Year.

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

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

**D. METHOD OF APPORTIONMENT OF THE SPECIAL TAX**

Each Fiscal Year, beginning with Fiscal Year 2018-19, the CFD Administrator shall determine the Special Tax Requirement for such Fiscal Year. The Special Tax shall then be levied as follows:

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

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

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

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

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

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

Notwithstanding the above, under no circumstances shall the Special Tax levied in any Fiscal Year on any Assessor's Parcel of Residential Property for which an occupancy permit for private residential use has been issued be increased as a result of delinquency or default by the owner or owners of any other Assessor's Parcel or Assessor's Parcels within CFD No. 26 by more than ten percent above the amount that would have been levied in that Fiscal Year had there never been any such delinquencies or defaults.

#### **E. EXEMPTIONS**

No Special Tax shall be levied on up to 9.32 Acres of Public Property and up to 7.45 Acres of Property Owner Association Property. Tax-exempt status will be assigned by the CFD Administrator in the chronological order in which property becomes Public Property or Property Owner Association Property.

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

#### **F. APPEALS**

Any property owner may file a written appeal of the Special Tax with CFD No. 26 claiming that the amount or application of the Special Tax is not correct. The appeal

must be filed not later than one calendar year after having paid the Special Tax that is disputed, and the appellant must be current in all payments of Special Taxes. In addition, during the term of the appeal process, all Special Taxes levied must be paid on or before the payment date established when the levy was made.

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

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

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

**G. MANNER OF COLLECTION**

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

**H. PREPAYMENT OF SPECIAL TAX**

The following definitions apply to this Section H:

**“CFD Public Facilities”** means \$8,860,000 each Prepayment Period, or such lower number as determined by the City Council to be sufficient to fund the Facilities and Services to be provided by CFD No. 26.

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

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

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

“Prepayment Period 1” means July 1, 2018, through June 30, 2052.

“Prepayment Period 2” means July 1, 2052, through June 30, 2085.

“Prepayment Period 3” means July 1, 2085, through June 30, 2119.

**1. Prepayment in Full**

The obligation of an Assessor's Parcel to pay the Special Tax may be prepaid as described herein, provided that a prepayment may be made only for Assessor's Parcels for which a building permit for new construction was issued after January 1, 2017, and only if there are no delinquent Special Taxes with respect to such Assessor's Parcel at the time of prepayment. An owner of an Assessor's Parcel intending to prepay the Special Tax obligation shall provide the CFD Administrator with written notice of intent to prepay. Within 30 days of receipt of such written notice, the CFD Administrator shall notify such owner of the prepayment amount for such Assessor's Parcel. The CFD Administrator may charge a fee for providing this service. Prepayment in any six month period must be made not less than 45 days prior to the next occurring date that notice of redemption of Bonds from the proceeds of such prepayment may be given to the Trustee pursuant to the Indenture.

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

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

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

**Paragraph No.**

1. Confirm that no Special Tax delinquencies apply to such Assessor's Parcel, and determine the Prepayment Period for the proposed prepayment.
2. Compute the Assigned Special Tax and Backup Special Tax for the Assessor's Parcel to be prepaid based on the Developed Property Special Tax which is, or could be, charged in the current Fiscal Year. For Assessor's Parcels of Final Mapped Property (for which a building permit has been issued but which is not

yet classified as Developed Property) to be prepaid, compute the Assigned Special Tax and Backup Special Tax for that Assessor's Parcel as though it was already designated as Developed Property, based upon the building permit which has already been issued for that Assessor's Parcel.

3. (a) Divide the Assigned Special Tax computed pursuant to Paragraph 2 by the total estimated Assigned Special Tax for CFD No. 26 based on the Developed Property Special Tax which could be charged in the current Fiscal Year on all expected development through buildout of CFD No. 26, excluding any Assessor's Parcels which have been prepaid, and  
  
(b) Divide the Backup Special Tax computed pursuant to Paragraph 2 by the estimated total Backup Special Tax at buildout of CFD No. 26, excluding any Assessor's Parcels which have been prepaid.
4. Multiply the larger quotient computed pursuant to Paragraph 3(a) or 3(b) by the Outstanding Bonds to compute the amount of Outstanding Bonds to be retired and prepaid (the "Bond Redemption Amount").
5. Multiply the Bond Redemption Amount computed pursuant to Paragraph 4 by the applicable redemption premium (e.g., the redemption price minus 100%), if any, on the Outstanding Bonds to be redeemed (the "Redemption Premium").
6. Compute the current Future Facilities Costs.
7. Multiply the larger quotient computed pursuant to Paragraph 3(a) or 3(b) by the amount determined pursuant to Paragraph 6 to compute the amount of Future Facilities Costs to be prepaid (the "Future Facilities Amount").
8. Compute the amount needed to pay interest on the Bond Redemption Amount from the first bond interest and/or principal payment date following the current Fiscal Year until the earliest redemption date for the Outstanding Bonds.
9. Determine the Special Tax levied on the Assessor's Parcel in the current Fiscal Year which has not yet been paid.
10. Add the amounts computed pursuant to Paragraphs 8 and 9 to determine the "Defeasance Amount".
11. Verify the administrative fees and expenses of CFD No. 26, including the costs to compute the prepayment, the costs to invest the prepayment proceeds, the costs to redeem Bonds, and the costs to record any notices to evidence the prepayment and the redemption (the "Administrative Fees and Expenses").
12. If reserve funds for the Outstanding Bonds, if any, are at or above 100% of the reserve requirement (as defined in the Indenture) on the prepayment date, a reserve fund credit shall be calculated as a reduction in the applicable reserve fund for the Outstanding Bonds to be redeemed pursuant to the prepayment (the

“Reserve Fund Credit”). No Reserve Fund Credit shall be granted if reserve funds are below 100% of the reserve requirement on the prepayment date or the redemption date.

13. The Special Tax prepayment is equal to the sum of the amounts computed pursuant to Paragraphs 4, 5, 7, 10, and 11, less the amount computed pursuant to Paragraph 12 (the “Prepayment Amount”).
14. From the Prepayment Amount, the amounts computed pursuant to Paragraphs 4, 5, 10, and 12 shall be deposited into the appropriate fund as established under the Indenture and be used to retire Outstanding Bonds or make debt service payments. The amount computed pursuant to Paragraph 7 shall be deposited into the Expenditures Fund. The amount computed pursuant to Paragraph 11 shall be retained by CFD No. 26.

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

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

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

Notwithstanding the foregoing, no Special Tax prepayment shall be allowed unless the amount of Maximum Special Tax that may be levied on Taxable Property within CFD No. 26 (after excluding 9.32 Acres of Public Property and 7.45 acres of Property Owner Association Property) both prior to and after the proposed prepayment is at least 1.1 times the maximum annual debt service on all Outstanding Bonds.

## 2. Prepayment in Part

The Special Tax on an Assessor's Parcel for which a building permit for new construction was issued after January 1, 2017, may be partially prepaid. The amount of the prepayment shall be calculated as in Section H.1, except that a partial prepayment shall be calculated by the CFD Administrator according to the following formula:

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

The terms above have the following meaning:

PP = the partial prepayment

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

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

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

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

The owner of any Assessor's Parcel who desires such prepayment shall notify the CFD Administrator of such owner's intent to partially prepay the Special Tax and the percentage by which the Special Tax shall be prepaid. The CFD Administrator shall provide the owner with a statement of the amount required for the partial prepayment of the Special Tax for an Assessor's Parcel within thirty (30) days of the request and may charge a fee for providing this service. With respect to any Assessor's Parcel that is partially prepaid, the CFD Administrator shall (i) distribute the remitted prepayment funds according to Section H.1, and (ii) indicate in the records of CFD No. 26 that there has been a partial prepayment of the Special Tax and that a portion of the Special Tax with respect to such Assessor's Parcel, equal to the outstanding percentage (100% - "%", as defined above) of the Maximum Special Tax, shall continue to be levied on such Assessor's Parcel pursuant to Section D during the Prepayment Period in which the partial prepayment is made.

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

### I. TERM OF SPECIAL TAX

The Fiscal Year after which no further Special Tax shall be levied or collected is Fiscal Year 2118-2119, except that the Special Tax that was lawfully levied in or before such Fiscal Year and that remains delinquent may be collected in subsequent years.

**EXHIBIT A**

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

**CFD No. 26 CERTIFICATE**

1. Pursuant to Section C.1 of the Rate and Method of Apportionment of Special Tax (the “Rate and Method”) for City of Ontario Community Facilities District No. 26 (Park Place Facilities Phase III) (“CFD No. 26”), the Assigned Special Tax and the Backup Special Tax for Developed Property within CFD No. 26 has been modified.
  - a. The information in Table 1 relating to the Assigned Special Tax for Developed Property within CFD No. 26, as stated in Section C.1.a.2 of the Rate and Method of Apportionment, has been modified as follows:

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

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



**EXHIBIT A**

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

18	Non-Residential Property TTM 18073		[\$ ] per Acre
19	TTM 18074		[\$ ] per Acre
20	TTM 18998		[\$ ] per Acre

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

The Backup Special Tax shall be \$[ ] per Unit for Residential Property in TTM 18073, \$[ ] per Unit for Residential Property in TTM 18074, and \$[ ] per Unit for Residential Property in TTM 18998. However, if the Expected Residential Lot Count does not equal 75 for TTM 18073, 102 for TTM 18074, or 102 for TTM 18998, and the City has not issued Bonds, then the Backup Special Tax for Designated Buildable Lots of Residential Property shall be calculated according to the following formula:

$$\begin{aligned}
 \text{Backup Special Tax} &= \$[ ] \text{ for TTM 18073 or} \\
 &\quad \$[ ] \text{ for TTM 18074 or} \\
 &\quad \$[ ] \text{ for TTM 18998} \\
 &\times \text{ Acreage of Designated Buildable Lots} \\
 &\quad \text{of Residential Property within the} \\
 &\quad \text{applicable Tentative Tract Map} \\
 &\div \text{ Expected Residential Lot Count for} \\
 &\quad \text{Residential Property within the} \\
 &\quad \text{applicable Tentative Tract Map}
 \end{aligned}$$

**EXHIBIT A**

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

2. The Special Tax for Developed Property may only be modified prior to the first issuance of CFD No. 26 Bonds.
3. Upon execution of this Certificate by CFD No. 26, CFD No. 26 shall cause an amended notice of Special Tax lien for CFD No. 26 to be recorded reflecting the modifications set forth herein.

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

GOODWIN CONSULTING GROUP, INC.  
CFD ADMINISTRATOR

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

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

CITY OF ONTARIO  
COMMUNITY FACILITIES DISTRICT NO. 26  
(PARK PLACE FACILITIES PHASE III)

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

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

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF ONTARIO, CALIFORNIA, TO INCUR BONDED INDEBTEDNESS OF THE PROPOSED CITY OF ONTARIO COMMUNITY FACILITIES DISTRICT NO. 26 (PARK PLACE FACILITIES PHASE III).

WHEREAS, the City Council (the "City Council") of the City of Ontario (the "City"), pursuant to the Mello-Roos Community Facilities Act of 1982 (the "Act"), has this date adopted its Resolution entitled "A Resolution of the City Council of the City of Ontario, California, of Intention to Establish a Community Facilities District, Proposed to be Named City of Ontario Community Facilities District No. 26 (Park Place Facilities Phase III) and to Authorize the Levy of Special Taxes," stating its intention to establish City of Ontario Community Facilities District No. 26 (Park Place Facilities Phase III) (the "Community Facilities District") for the purpose of financing certain public facilities (the "Facilities") and services, as further provided in said Resolution; and

WHEREAS, in order to finance the Facilities it is necessary to incur bonded indebtedness in the amount of up to \$30,000,000;

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

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

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

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

SECTION 4. The maximum amount of the proposed debt is \$30,000,000.

SECTION 5. The City Council hereby fixes Tuesday, January 16, 2018, at 6:30 p.m., or as soon thereafter as the City Council may reach the matter, at 303 East B Street, Ontario, California, as the time and place when and where the City Council will conduct a public hearing on the proposed debt authorization.

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

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

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

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

PASSED, APPROVED, AND ADOPTED this 5<sup>th</sup> day of December 2017.

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PAUL S. LEON, MAYOR

ATTEST:

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SHEILA MAUTZ, CITY CLERK

APPROVED AS TO FORM:

---

BEST BEST & KRIEGER LLP  
CITY ATTORNEY

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

I, SHEILA MAUTZ, City Clerk of the City of Ontario, DO HEREBY CERTIFY that foregoing Resolution No. 2017-    was duly passed and adopted by the City Council of the City of Ontario at their regular meeting held December 5, 2017 by the following roll call vote, to wit:

AYES:            COUNCIL MEMBERS:

NOES:            COUNCIL MEMBERS:

ABSENT:         COUNCIL MEMBERS:

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

(SEAL)

The foregoing is the original of Resolution No. 2017-    duly passed and adopted by the Ontario City Council at their regular meeting held December 5, 2017.

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

(SEAL)

# CITY OF ONTARIO

Agenda Report  
December 5, 2017

SECTION:  
CONSENT CALENDAR

**SUBJECT: A DEVELOPMENT IMPACT FEE CREDIT AND REIMBURSEMENT AGREEMENT WITH CLDFI REMINGTON, LLC (CAPROCK)**

**RECOMMENDATION:** That the City Council authorize the City Manager to execute a Development Impact Fee Credit and Reimbursement Agreement (on file with the Records Management Department) with CLDFI Remington, LLC (Caprock) for the construction of public infrastructure in the Colony Commerce Center West project.

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


Focus Resources in Ontario's Commercial and Residential Neighborhoods

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

**FISCAL IMPACT:** Approval of the proposed action will result in no fiscal impact to the City's General Fund. The Project's Development Agreement and related conditions require the Developer to construct or fund Development Impact Fee (DIF) Program infrastructure with estimated costs of approximately \$6,497,491. The proposed DIF Credit and Reimbursement Agreement defines the amount of DIF credit and DIF reimbursement that the developer may be eligible to receive. The DIF credit that the Developer will receive upon completion of the improvements may be exchanged for a refund of DIF that was paid by Developer up to the Developer's maximum DIF obligation in the respective DIF category. Additionally, DIF reimbursement may also become available when other developers that benefit from the improvements pay their respective development impact fees.

**BACKGROUND:** CLDFI Remington, LLC (Caprock) entered into a Development Agreement with the City that addresses the development of approximately 1,289,292 square feet of industrial uses. The Development Agreement, approved in October 2017, included requirements for the construction of the public facilities to serve the project and the surrounding area. The Development Agreement, requires CLDFI Remington, LLC (Caprock) to construct public infrastructure that is contained within the City's Development Impact Fee Program.

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

Prepared by: Bob Chandler  
Department: Management Services  
City Manager Approval: 

Submitted to Council/O.H.A. 12/05/2017  
Approved: \_\_\_\_\_  
Continued to: \_\_\_\_\_  
Denied: \_\_\_\_\_

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This infrastructure is within the Ontario Ranch (OR) Water and Sewer DIF Program categories. Since the estimated costs in the City's DIF Program for the required infrastructure in the Water and Sewer categories exceeds the Developer's DIF obligations, the Developer is also eligible to receive future reimbursements from DIF collected when future development projects in the area pay their respective DIF in the Water and Sewer categories. The Development Agreement with CLDFI Remington, LLC (Caprock) provides that the City and CLDFI Remington, LLC (Caprock) would enter into a DIF credit and reimbursement agreement to provide DIF credit and reimbursement to the developer for the construction of the DIF Program improvements. The DIF Credit and Reimbursement Agreement also provides for the issuance of DIF credit in the Regional Water DIF category in recognition of the requirement in the Development Agreement that CLDFI Remington, LLC (Caprock) will also provide funding in the amount of \$3.5 million for the eventual construction of a water well that is part of a future phase of water improvements to serve the Ontario Ranch area. Under the terms of the proposed DIF Credit and Reimbursement Agreement and the Development Agreement, CLDFI Remington, LLC (Caprock) will be eligible to assign any unredeemed DIF credit to another development entity in the Ontario Ranch area for use against that development's DIF obligation in the Regional Water category.

The proposed agreement is in compliance with the City's DIF Policies and in conformance with the Development Agreement between the City and CLDFI Remington, LLC (Caprock). Under the provisions of the City's DIF Program, the City Manager is authorized to execute such agreements with the approval of the City Council.

# CITY OF ONTARIO

Agenda Report  
December 5, 2017

SECTION:  
CONSENT CALENDAR

**SUBJECT: AWARD OF PUBLIC WORKS CONTRACTS FOR CONCRETE REPAIR AND MAINTENANCE; AND INSTALLATION OR RECONSTRUCTION OF WHEELCHAIR RAMPS SERVICES**

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

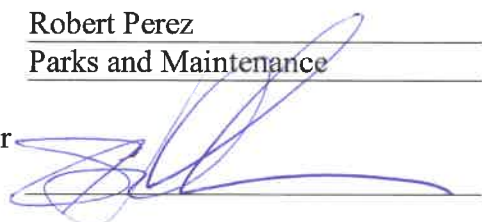
- (A) Authorize the City Manager to execute a three-year Public Works Contract (on file with the Records Management Department) for Contract No. SM1718-1 with CT&T Concrete Paving, Inc. located in Diamond Bar, California, for an annual estimated cost of \$664,507;
- (B) Authorize the City Manager to execute a three-year Public Works Contract (on file with the Records Management Department) for Contract No. SM1718-3 with C.J. Concrete Construction, Inc. located in Santa Fe Springs, California, for an annual estimated cost of \$175,000; and
- (C) Authorize the addition of future service areas and the option to extend the contracts for up to two one-year periods consistent with the City Council approved budgets.

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

**FISCAL IMPACT:** The estimated annual cost of the proposed Public Works Contracts is as follows:

- (A) Appropriations of \$664,507 from the General Fund are available in the annual baseline budget for CT&T Concrete Paving, Inc. concrete repair and maintenance services. Actual expenditures will be based on the fixed unit pricing applied to the extent of services actually rendered. At the City's sole discretion, two additional one-year extensions may be exercised with an average unit price increase of 11% and 4% for fourth and fifth years, respectively.
- (B) Appropriations of \$175,000 from the Community Development Block Grant fund are included in the Fiscal Year 2017-18 Adopted Budget for CJ Concrete Construction, Inc. contract for the

**STAFF MEMBER PRESENTING:** Mark Chase, Community and Public Services Director

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

Submitted to Council/O.H.A. 12/05/2017  
Approved: \_\_\_\_\_  
Continued to: \_\_\_\_\_  
Denied: \_\_\_\_\_

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installation and reconstruction of wheelchair ramps throughout the City. Actual expenditures will be based on the fixed unit pricing applied to the extent of services actually rendered. Future years expenditures will be commensurate with the City Council approved budgets for the respective fiscal years. At the City's sole discretion, two additional one-year extensions may be exercised with the option years having no increase in unit pricing.

Future contracting actions will be commensurate with the City Council authorized work programs and budgets. Contracting for a the multi-year period will allow the City to: limit the potential for yearly increases to the bid amounts; avoid the costs of re-bidding the contract annually, provide service continuity; and better project future costs.

**BACKGROUND:** A summary of the bid results follows:

**(A) Concrete Repairs and Maintenance Services**

The Public Works Right-of-Way Management Study includes inventories and maintenance programs for sidewalks, curbs and gutters. The Fiscal Year 2017-18 Adopted Operating Budget includes funding of \$664,507 to complete projects scheduled in accordance with the study and described as reconstruction of concrete sidewalks and drive approaches and the reconstruction or installation of curb and gutter.

In October 2017, the City solicited bids for Contract No. SM1718-1 for concrete repair and maintenance services. Four (4) bids were received that met the bid criteria and standards necessary to perform this work. The three year base cost proposed ranged from \$1,993,521 to \$2,929,500.

<u>Vendor</u>	<u>Location</u>
<b>CT&amp;T Concrete Paving, Inc.</b>	<b>Diamond Bar, CA</b>
CJ Concrete Construction, Inc.	Santa Fe Springs, CA
Golden State Contractors	Huntington Beach, CA
S& H Civilworks	Colton, CA

CT&T Concrete Paving, Inc. located in Diamond Bar, California, submitted the lowest bid that met all the required specifications with unit cost for services rendered, three year total of \$1,993,521. Based on their bid, credentials, pricing and favorable reference checks, staff recommends award of a Public Works Contract to CT&T Concrete Paving, Inc.

**(B) Installation or Reconstruction of Wheelchair Ramps**

Scheduled CDBG projects for Fiscal Year 2017-18 includes \$175,000 toward the installation or reconstruction of wheelchair ramps at various City locations.

In August 2017, the City solicited bids for Contract No. SM1718-3 for concrete repair services citywide. Three bids were received that met the bid criteria and standards necessary to perform this work. The three year base cost proposed ranged from \$511,000 to \$1,341,480.

<u>Vendor</u>	<u>Location</u>
<b>CJ Concrete Construction, Inc.</b>	<b>Santa Fe Springs, CA</b>
CT&T Concrete Paving, Inc.	Diamond Bar, CA
All American Asphalt	Corona, CA

CJ Concrete Construction, Inc. located in Santa Fe Springs, California, submitted a proposal that met all the required specifications with base cost, three year total of \$511,000. Based on their bid, credentials, pricing and favorable reference checks, staff recommends award of a Public Work Contract to CJ Concrete Construction, Inc.

# CITY OF ONTARIO

Agenda Report  
December 5, 2017

SECTION:  
CONSENT CALENDAR

**SUBJECT:** AN ORDINANCE APPROVING FILE NO. PSP15-002, A SPECIFIC PLAN (ARMSTRONG RANCH) REQUEST TO ESTABLISH LAND USE DESIGNATIONS, DEVELOPMENT STANDARDS, AND DESIGN GUIDELINES FOR 189.8 ACRES OF LAND, WHICH INCLUDES THE POTENTIAL DEVELOPMENT OF 891 DWELLING UNITS AND A 10-ACRE ELEMENTARY SCHOOL SITE. THE PROJECT SITE IS BOUNDED BY RIVERSIDE DRIVE TO THE NORTH, CHINO AVENUE TO THE SOUTH, CUCAMONGA CREEK CHANNEL TO THE EAST, AND VINEYARD AVENUE TO THE WEST (APNS:0218-101-01, 0218-101-02, 0218-101-03, 0218-101-04, 0218-101-05, 0218-101-06, 0218-101-07, 0218-101-08, 0218-102-10, 0218-102-11, 0218-111-04, 0218-111-05, 0218-111-06, 0218-111-08, 0218-111-09, 0218-111-11, 0218-111-12, 0218-111-45 0218-111-49 AND 0218-111-50)

**RECOMMENDATION:** That the City Council consider and adopt an ordinance approving the Armstrong Ranch Specific Plan (File No. PSP15-002).

**COUNCIL GOALS:** Invest in the Growth and Evolution of the City's Economy  
Operate in a Businesslike Manner  
Invest in the City's Infrastructure (Water, Streets, Sewers, Parks, Storm Drains and Public Facilities)  
Ensure the Development of a Well Planned, Balanced, and Self-Sustaining Community in the New Model Colony

**FISCAL IMPACT:** Adoption of the Armstrong Ranch Specific Plan would result in both short and long term fiscal impacts to the City. Short term impacts include infrastructure improvements to serve the new residential development. The cost of these improvements is included in the Nexus Study and Development Impact Fees previously adopted by the City Council. The developer will be required to install improvements or pay the Development Impact Fees ("DIF") associated with the various improvements. Long term fiscal impacts include the ongoing operations and maintenance services (police, fire, maintenance, etc.) necessary to serve the new development. While the development will

**STAFF MEMBER PRESENTING:** Scott Murphy, Assistant Development Director

Prepared by: Lorena Mejia  
Department: Planning  
City Manager Approval: 

Submitted to Council/O.H.A. 12/05/2017  
Approved: \_\_\_\_\_  
Continued to: \_\_\_\_\_  
Denied: \_\_\_\_\_

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result in increased property tax revenue, the increase is not sufficient to cover the total cost of services associated with the project. To address this shortfall, the developer will be required to form and/or join a Community Facilities District (“CFD”) to cover the additional public service costs.

**BACKGROUND:** On November 21, 2017, the City Council introduced an ordinance approving the Specific Plan. The Ontario Plan (TOP) Policy Plan (General Plan) provides the basic framework for development within the 8,200-acre area commonly referred to as Ontario Ranch. The Policy Plan requires City Council approval of a Specific Plan for new developments within Ontario Ranch. Specific Plans are required to ensure that sufficient land area is included to achieve cohesive, unified districts and neighborhoods. Specific Plans are required to incorporate a development framework for detailed land use, circulation, infrastructure (including drainage, sewer, and water facilities), provision for public services (including parks and schools), and urban design and landscape plans.

**ARMSTRONG RANCH SPECIFIC PLAN:** The Armstrong Ranch Specific Plan (File No. PSP15-002) serves to implement the City’s Policy Plan for the project site and provides zoning regulations for development of the project site by establishing permitted land use, development standards, infrastructure requirements, and implementation requirements for the development of 189.8 acres within the Specific Plan boundaries. The Specific Plan establishes a comprehensive set of development regulations and design guidelines to regulate site planning, landscaping, and architectural character within the community, ensuring that excellence in community design is achieved during the project development. The Armstrong Ranch Specific Plan establishes the procedures and requirements to approve new development within the project site to ensure TOP goals and policies are achieved.

The Armstrong Ranch Specific Plan proposes a land use plan that includes six residential Planning Areas and one future elementary school site (see *Exhibit “A”: Armstrong Ranch Specific Plan - Land Use Plan*). The land use plan concept is based on traditional neighborhood design principals and concepts that include pedestrian and bicycle connectivity, a traditional grid street network, and a variety of housing types and architectural styles. The Specific Plan is comprised of the following land use categories:

- Residential – 178.2 gross acres
- Elementary School – 11.6 gross acres

The Armstrong Ranch Specific Plan proposes the development of up to 891 residential dwelling units (see *Exhibit “B”: Armstrong Ranch Land Use Plan Summary Table*). Planning Areas 1 thru 6 are comprised of Low Density Residential at 4.8 - 5.2 dwelling units per gross acres (average 5.0 dwelling units per gross acres) and Planning Area 7 is a 11.6-acre future elementary school site.

The Residential Planning Areas includes a variety of housing products that respond to a variety of lifestyles, such as singles, families, executives and “empty nesters”. The Specific Plan offers a variety of low density, single family detached residential products (conventional, Z-Lot and cluster) and multi-family (duplex townhomes and rowtowns) residential products.

Community Design/Vision — The vision for Armstrong Ranch is to incorporate and acknowledge the legacy of John Armstrong (an early pioneer of commercial nursery farming in Southern California that made landscape and plant materials available to consumers throughout the region) by designing a new residential community oriented towards outdoor living. The Armstrong Ranch Specific Plan is organized

into individual neighborhoods designed around a densely landscaped themed street system encouraging walking that leads to parks centrally located within each neighborhood.

Residential Architectural Styles — The architectural styles for the Specific Plan area have been selected in order to be reflective of older neighborhoods of historic Ontario as well as to accommodate innovative transitional architectural and modern architectural influences.

Circulation Plan — The primary entrances into the Armstrong Ranch community will occur from Riverside Drive on the north, Vineyard Avenue on the west and Chino Avenue on the south. The primary north-south street through the community will be Hellman Avenue, which will connect Riverside Drive and Chino Avenue. This north-south connection will provide internal access and connectivity between residential areas and the future elementary school site. Street traffic calming will be introduced by incorporating loop streets around parks, landscaped areas adjacent to streets, and narrowed intersections to influence a driver's peripheral vision and encourage drivers to proceed slowly throughout the community.

Landscape Plan — Careful attention has been given to creating an appropriate and appealing landscape architectural design, which will compliment, enhance and reinforce the vision for Armstrong Ranch through entry monumentation, enhanced/expanded parkways, and accent themed plantings.

Parks, Paseos and Trails — The centrally located, two-acre Armstrong Park is accessible from adjacent neighborhood streets/sidewalks and the proposed rose-themed Charlotte Armstrong Trail that bisects the community and extends from Vineyard Avenue to the future elementary school site. Pocket parks will be developed within each residential Planning Area and have a minimum area of a ¼-acre. Typical recreational improvements for pocket parks may include: tot lots, picnic and barbecue facilities, multipurpose trails, rose gardens, water features, gardens and/or informal play areas.

Multi-use trails are an integral element to creating accessibility and mobility within Armstrong Ranch to the surrounding community. A master planned, multi-use trail is located along the north side of Chino Avenue, adjacent to the project site that connects to the Cucamonga Creek Trail to the east of the project site. Additionally, a pedestrian bridge is proposed over Cucamonga Creek Channel to provide safe connectivity to areas to the east and a pedestrian access to the future elementary school site.

Class II bike lanes are planned on both sides of Riverside Drive and Hellman Avenue. The bike trail system planned as part of Armstrong Ranch connects all residential neighborhoods to one another and to the elementary school.

Infrastructure and Services — Backbone infrastructure to serve all areas of Armstrong Ranch will be installed by the developer(s) in accordance with the NMC Master Plans for streets, water (including recycled water), sewer, storm drain, and fiber optic facilities. Natural gas will be provided by the Gas Company and electricity by SCE. Development of the project requires the installation by the developer of all infrastructure necessary to serve the project as if it were a standalone development.

**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).

California Government Code (Title 7, Division 1, Chapter 3, Article 8, Section 65450-65457) permits the adoption and administration of specific plans as an implementation tool for elements contained in the local General Plan. Specific plans must demonstrate consistency in regulations, guidelines, and programs with the goals and policies set forth in the General Plan. The Armstrong Ranch Specific Plan has been prepared in conformance with the goals and policies of the City of Ontario Policy Plan (General Plan). The policy analysis in *Section 9, "General Plan Consistency,"* of the Specific Plan describes the manner in which the Armstrong Ranch Specific Plan complies with the Policy Plan goals.

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

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

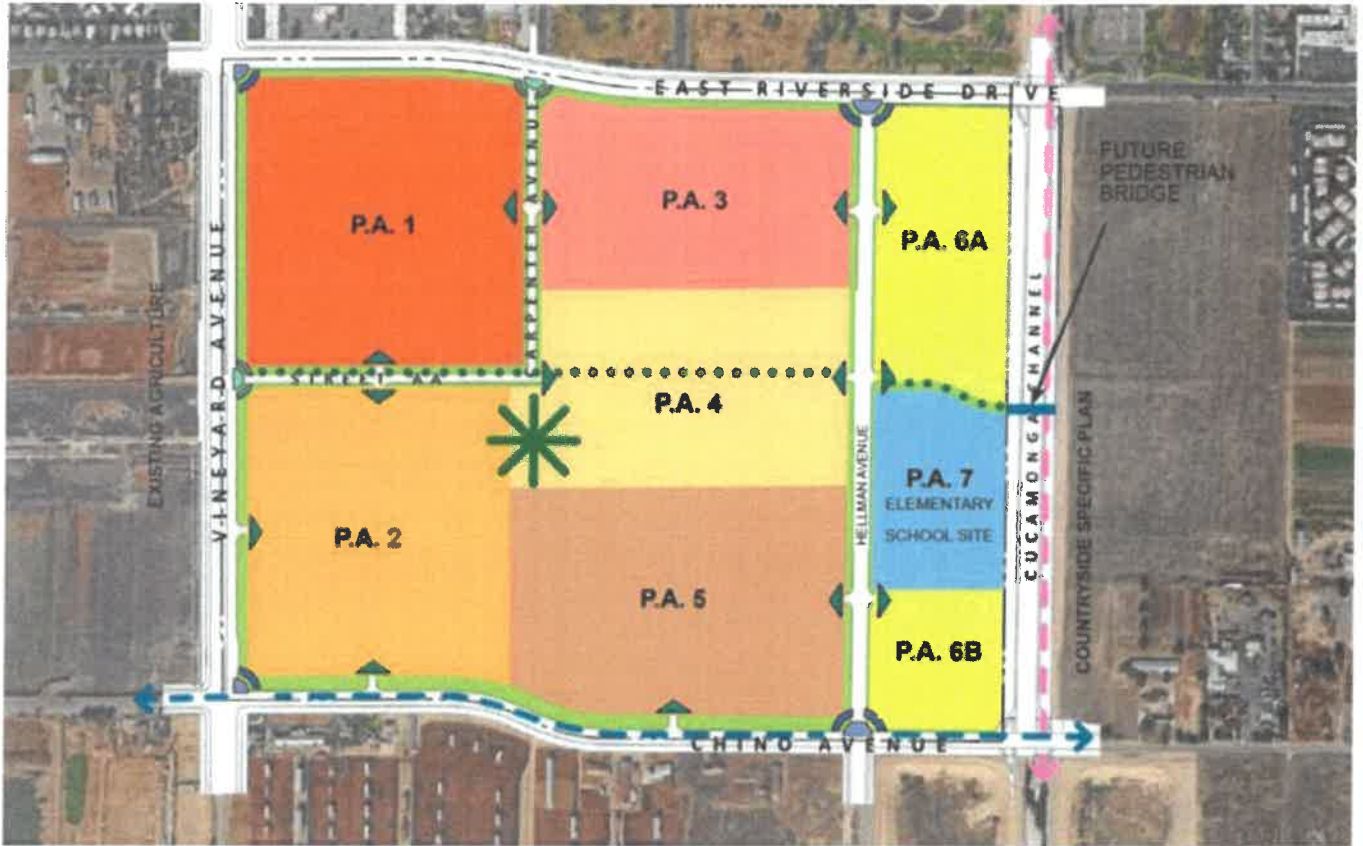
**ENVIRONMENTAL REVIEW:** On January 27, 2010, the City adopted The Ontario Plan (TOP) and certified the accompanying Environmental Impact Report (SCH# 2008101140). TOP serves as the City's new General Plan for the entire City, including the NMC (now referred to as Ontario Ranch). TOP Environmental Impact Report (EIR) identified many areas that might have a potentially significant impact on the environment. These areas included: 1) Aesthetics; 2) Biological Resources; 3) Geology and Soils; 4) Hazards and Hazardous Materials; 5) Hydrology and Water Quality; 6) Land Use and Planning; 7) Mineral Resources; 8) Population and Housing; 9) Public Services; 10) Recreation; and 11) Utilities and Service Systems. Through the EIR process, these potential impacts were analyzed, revisions were incorporated into the plan and/or mitigation measures were identified that reduced the potential environmental impacts to a level that was less than significant. In some cases, however, the impacts could not be reduced a level of less than significant and a Statement of Overriding Considerations was adopted. These areas included 1) Agriculture; 2) Air Quality; 3) Cultural Resources; 4) Global Climate Change; 5) Noise; and 6) Transportation and Traffic.

Even though an EIR was prepared for TOP, the analyses focused on the program or "big picture" impacts associated with development. With the submittal of the Armstrong Ranch Specific Plan, staff is charged with evaluating the potential impacts of development at the project level. An Initial Study was prepared for the project and determined that an EIR should be prepared for the Armstrong Ranch Specific Plan. The Armstrong Ranch Specific Plan EIR (SCH# 2006111009) evaluated 15 areas of potential impact and identified mitigation measures and/or revisions to the plan to lessen the level of significance. Of the 15 areas considered by the EIR, all but air quality and agriculture resources could not be reduced to less than significant, resulting in these two impacts remaining as potentially significant and unavoidable. While mitigation of all potential impacts to a level of less than significant is desirable, the fact that two areas will remain significant and unavoidable is not unexpected. The identification of these areas as significant and unavoidable validates the work previously completed for TOP. Staff believes that the benefits of the proposed development outweigh the potential impacts associated with it. Therefore, staff recommends the City Council certify the EIR, including the Statement of Overriding Considerations and Mitigation Monitoring Program for the project.

**PLANNING COMMISSION REVIEW:** On October 24, 2017, the Planning Commission conducted a public hearing and voted unanimously (6-0) to recommend City Council certification of the Armstrong


Ranch Specific Plan Environmental Impact Report (SCH#2006111009) including the adoption of a Statement of Overriding Considerations and Mitigation Monitoring Program and approval of the Armstrong Ranch Specific Plan (File No. PSP15-002).

**Exhibit "A"**  
**Armstrong Ranch Specific Plan - Land Use Plan**



**LEGEND**

**EXHIBIT 4-1: Land Use Plan**

 P.A. 1	 P.A. 5	 COMMUNITY ENTRY	 ARMSTRONG PARK
 P.A. 2	 P.A. 6A/6B	 NEIGHBORHOOD ENTRY	 CITY MASTER PLAN MULTI-PURPOSE TRAIL
 P.A. 3	 P.A. 7	 CHARLOTTE ARMSTRONG TRAIL	 EXISTING TRAIL
 P.A. 4			



**Exhibit "B"**  
**Armstrong Ranch Land Use Plan Summary Table**

Land Use	Gross Acres	Net Acres	Dwelling Units	Gross Density	Net Density
Residential Single Family					
Planning Area 1	36.8	33.0	192	5.2	5.8
Planning Area 2	36.4	32.5	173	4.8	5.3
Planning Area 3	26.3	24.6	132	5.0	5.4
Planning Area 4	26.3	26.9	132	5.0	4.9
Planning Area 5	30.2	32.6	151	5.0	4.6
Planning Area 6	22.2	21.0	111	5.0	5.3
Planning Area 7*	11.6	10.0	0	0.0	0.0
Roadways		1.6			
Enhanced Neighborhood Edges		7.6			
<b>Total</b>	<b>189.8 AC</b>	<b>189.8 AC</b>	<b>891</b>	<b>5.0 DU/AC</b>	<b>5.5 DU/AC</b>

\*This parcel contains a 10 AC school site overlay.

**Planning Commission – Backup and  
Specific Plan for  
ARMSTRONG RANCH  
Ontario, California  
(PSP15-002)**

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**Complete text and all supporting documents are  
available for public review during  
normal business hours at the  
City Clerk's office**

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

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF ONTARIO, CALIFORNIA, APPROVING THE ARMSTRONG RANCH SPECIFIC PLAN (FILE NO. PSP15-002), TO ESTABLISH LAND USE DESIGNATIONS, DEVELOPMENT STANDARDS, DESIGN GUIDELINES AND INFRASTRUCTURE IMPROVEMENTS FOR 189.8 GROSS ACRES OF LAND, WHICH INCLUDES THE POTENTIAL DEVELOPMENT OF 891 DWELLING UNITS AND A 11.6 GROSS ACRE ELEMENTARY SCHOOL. THE PROJECT SITE IS BOUNDED BY RIVERSIDE DRIVE TO THE NORTH, CHINO AVENUE TO THE SOUTH, VINEYARD AVENUE TO THE WEST AND THE CUCAMONGA CREEK FLOOD CONTROL CHANNEL TO THE EAST, AND MAKING FINDINGS IN SUPPORT THEREOF — APNS: 0218-101-01, 0218-101-02, 0218-101-03, 0218-101-04, 0218-101-05, 0218-101-06, 0218-101-07, 0218-101-08, 0218-102-10, 0218-102-11, 0218-111-04, 0218-111-05, 0218-111-06, 0218-111-08, 0218-111-09, 0218-111-11, 0218-111-12, 0218-111-45, 0218-111-49 AND 0218-111-50.

WHEREAS, CVRC ONTARIO INVESTMENTS, LLC ("Applicant") has filed an Application for the approval of a Specific Plan, File No. PSP15-002, as described in the title of this Ordinance (hereinafter referred to as "Application" or "Project"); and

WHEREAS, the Application applies to approximately 189.8 acres of land, bounded by Riverside Drive to the north, Chino Avenue to the south, Cucamonga Creek Flood Control Channel to the east, and Vineyard Avenue to the west, within the SP (AG) land use designation, and is presently improved with vacant/agriculture and farm related uses; and

WHEREAS, the properties to the north of the Project site are within the LDR-5 (Low Density Residential), CN (Neighborhood Commercial), MDR-25 (Medium Density Residential) and OS-R Open Space Recreational zoning districts and are developed with Residential, Commercial, School & Park land uses. The property to the east is within the SP (AG) zoning district and is developed with the Cucamonga Creek Flood Control Channel. The property to the south is within the SP (AG) zoning district and is developed with a flood control basin and dairy/agricultural land uses. The property to the west is within the SP (AG) zoning district located and is developed with dairy/agricultural land uses; and

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

WHEREAS, the Armstrong Ranch Specific Plan consists of 189.8 gross acres of land, which includes the potential development of 891 dwelling units and a 11.6-acre elementary school site; and

WHEREAS, the Armstrong Ranch Specific Plan proposes a land use plan that includes mixture of residential uses and is based on traditional neighborhood design principals and concepts that include pedestrian and bicycle connectivity, a traditional grid street network, and a variety of housing types and architectural styles. The Specific Plan is comprised of 7 planning areas and two land use categories Residential (178.2 gross acres) and a 11.6 gross acre future Elementary School; and

WHEREAS, the Armstrong Ranch Specific Plan has been prepared in conformance with the goals and policies of the City of Ontario Policy Plan (General Plan). The policy (General Plan) analysis in Section 9, "*General Plan Consistency*", of the Specific Plan describes the manner in which the Armstrong Ranch Specific Plan complies with the Policy Plan goals and policies applicable to the Armstrong Ranch Specific Plan; and

WHEREAS, the Specific Plan does not conflict with the Land Use Policies of the General Plan (TOP) and will provide for development, in a manner consistent with the General Plan. The policy (General Plan) analysis in Section 9, "*General Plan Consistency*", of the Specific Plan describes the manner in which the Armstrong Ranch Specific Plan complies with the TOP Policy Plan goals and policies; and

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

WHEREAS, an Environmental Impact Report (EIR) (SCH#2006111009) has been prepared in accord with the California Environmental Quality (CEQA), the State CEQA Guidelines and the City of Ontario Guidelines to address the environmental effects of the Specific Plan (Armstrong Ranch Specific Plan); and

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

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

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

WHEREAS, on October 24, 2017, the Planning Commission of the City of Ontario conducted a duly noticed public hearing to consider the Project and concluded said hearing on that date. After considering all public testimony on the application, the Planning Commission voted 6 to 0 to issue its Resolution No. PC17-079 recommending the City Council approval of the Application; and

WHEREAS, on November 21, 2017, the City Council of the City of Ontario conducted a duly noticed public hearing to consider the Project and concluded said hearing on that date; and

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

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

**SECTION 1. *Environmental Determination and Findings.*** As the decision-making body for the Project, the City Council has reviewed and considered the information contained in the Environmental Impact Report (EIR) prepared for the project and supporting documentation. Based upon the facts and information contained in the EIR (SCH# 2006111009) and supporting documentation, the City Council finds as follows:

- (1) The Armstrong Ranch Specific Plan EIR contains a complete and accurate reporting of the environmental impacts associated with the Project; and
- (2) The Armstrong Ranch Specific Plan EIR was completed in compliance with CEQA and the Guidelines promulgated thereunder; and
- (3) The Armstrong Ranch Specific Plan EIR reflects the independent judgment of the City Council; and

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

(ALUCP Map 2-5). As a result, the City Council, therefore, finds and determines that the Project, when implemented in conjunction with the conditions of approval, will be consistent with the policies and criteria set forth within the ALUCP.

**SECTION 3. *Concluding Facts and Reasons.*** Based upon the substantial evidence presented to the City Council during the above-referenced hearing, and upon the specific findings set forth in Section 1 and 2, above, the City Council hereby concludes as follows:

(1) The 189.8-acre Armstrong Ranch Specific Plan is suitable for residential development, uses permitted in the proposed district in terms of access, size, and compatibility with existing land use in the surrounding area; and

(2) The proposed Armstrong Ranch Specific Plan is in conformance with the Land Use Policies and Goals of the Policy Plan and will provide for development, within the district, in a manner consistent with the Policy Plan and with related development. The Armstrong Ranch Specific Plan has been prepared in conformance with the goals and policies of the City of Ontario Policy Plan (General Plan). The policy analysis in *Section 9, "General Plan Consistency,"* of the Specific Plan describes the manner in which the Armstrong Ranch Specific Plan complies with the Policy Plan goals; and

(3) During the Armstrong Ranch Specific Plan review, opportunities for the involvement of citizens, California Native American Indian tribes (Government Code Section 65352.3.), public agencies, public utility companies, and civic, education, and other community groups, through public hearings or other means were implemented consistent with California Government Code Section 65351; and

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

**SECTION 4. *City Council Action.*** Based upon the findings and conclusions set forth in Sections 1 through 3, above, the City Council hereby APPROVES the herein described Application.

**SECTION 5. *Indemnification.*** The Applicant shall agree to defend, indemnify and hold harmless, the City of Ontario or its agents, officers, and employees from any claim, action or proceeding against the City of Ontario or its agents, officers or employees to attack, set aside, void, or annul this approval. The City of Ontario shall promptly notify the applicant of any such claim, action, or proceeding, and the City of Ontario shall cooperate fully in the defense.

**SECTION 6. *Custodian of Records.*** The documents and materials that constitute the record of proceedings on which these findings have been based are located at the City of Ontario City Hall, 303 East "B" Street, Ontario, California 91764. The custodian for these records is the City Clerk of the City of Ontario.

**SECTION 7. Severability.** If any section, sentence, clause or phrase of this Ordinance or the application thereof to any entity, person or circumstance is held for any reason to be invalid or unconstitutional, such invalidity or unconstitutionality shall not affect other provisions or applications of this Ordinance which can be given effect without the invalid provision or application, and to this end the provisions of this Ordinance are severable. The People of the City of Ontario hereby declare that they would have adopted this Ordinance and each section, sentence, clause or phrase thereof, irrespective of the fact that any one or more section, subsections, sentences, clauses or phrases be declared invalid or unconstitutional.

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

**SECTION 9. Publication and Posting.** The Mayor shall sign this Ordinance and the City Clerk shall certify as to the adoption and shall cause a summary thereof to be published at least once, in a newspaper of general circulation in the City of Ontario, California within 15 days following the adoption. The City Clerk shall post a certified copy of this ordinance, including the vote for and against the same, in the Office of the City Clerk, in accordance with Government Code Section 36933.

PASSED, APPROVED, AND ADOPTED this 5<sup>th</sup> day of December 2017.

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PAUL S. LEON, MAYOR

ATTEST:

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SHEILA MAUTZ, CITY CLERK

APPROVED AS TO FORM:

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BEST BEST & KRIEGER LLP  
CITY ATTORNEY

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

I, SHEILA MAUTZ, City Clerk of the City of Ontario, DO HEREBY CERTIFY that foregoing Ordinance No. 3084 was duly introduced at a regular meeting of the City Council of the City of Ontario held November 21, 2017 and adopted at the regular meeting held December 5, 2017 by the following roll call vote, to wit:

AYES:            COUNCIL MEMBERS:

NOES:           COUNCIL MEMBERS:

ABSENT:         COUNCIL MEMBERS:

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

(SEAL)

I hereby certify that the foregoing is the original of Ordinance No. 3084 duly passed and adopted by the Ontario City Council at their regular meeting held December 5, 2017 and that Summaries of the Ordinance were published on November 28, 2017 and December 12, 2017, in the Inland Valley Daily Bulletin newspaper.

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

(SEAL)



# CITY OF ONTARIO

Agenda Report  
December 5, 2017

SECTION:  
CONSENT CALENDAR

**SUBJECT: AN ORDINANCE APPROVING A DEVELOPMENT AGREEMENT BETWEEN THE CITY OF ONTARIO AND BROOKCAL ONTARIO, LLC, FOR THE DEVELOPMENT OF UP TO 48 SINGLE FAMILY AND 217 MULTI-FAMILY RESIDENTIAL UNITS (FILE NO. PMTT17-002/TT18937) ON 23.66 ACRES OF LAND WITHIN THE LOW MEDIUM DENSITY RESIDENTIAL (LMDR) DISTRICT OF PLANNING AREA 7 OF THE AVENUE SPECIFIC PLAN, GENERALLY LOCATED AT THE NORTHEAST CORNER OF ARCHIBALD AVENUE AND ONTARIO RANCH ROAD (APN:0218-201-18)**

**RECOMMENDATION:** That the City Council consider and adopt an ordinance approving a Development Agreement (File No. PDA15-003), on file with the Records Management Department) between the City of Ontario and Brookcal Ontario, LLC, to establish the terms and conditions for the development of Tentative Tract Map 18937 (File No. PMTT17-002).

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

**Operate in a Businesslike Manner**


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

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

**FISCAL IMPACT:** The proposed Development Agreement will provide funding from a community facilities district (CFD) for additional City services required to support The Avenue Specific Plan development, thereby mitigating the increased cost associated with such services. In addition, the City will receive Public Service Funding fees plus development impact, compliance processing, licensing, and permitting fees.

**BACKGROUND:** On November 21, 2017, the City Council introduced an ordinance approving the Development Agreement. Brookcal Ontario, LLC, ("Brookcal") and the City recognize that the financial commitment required for construction in Ontario Ranch is substantial. To adequately forecast these costs and gain assurance that the project may proceed under the existing policies, rules and regulations,

**STAFF MEMBER PRESENTING:** Scott Murphy, Assistant Development Director

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

Submitted to Council/O.H.A. 12/05/2017  
Approved: \_\_\_\_\_  
Continued to: \_\_\_\_\_  
Denied: \_\_\_\_\_

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Brookcal is entering into a Development Agreement with the City which provides for the development of up to 48 single family and 217 multi-family residential units. The Development Agreement provides funding for new City expenses created by the project, including operational costs related to the review, approval and administration of the Brookcal project, additional project related services, infrastructure and affordable housing requirements.

The Development Agreement proposes to include 23.66 acres of land within the Low-Medium Density Residential (LMDR) district of Planning Area 7 of The Avenue Specific Plan as shown on Exhibit "A" (The Avenue Specific Plan Land Use Map). The Agreement grants Brookcal a vested right to develop Tentative Tract Map 18937 as long as the Brookcal complies with the terms and conditions of The Avenue Specific Plan and Environmental Impact Report.

The term of the Development Agreement is for ten years with a five year option. The main points of the agreement address funding for all new City expenses created by the project which includes: Development Impact Fees (DIF) for construction of public improvements (i.e., streets and bridges, police, fire, open space/parks, etc.); Public Service Funding to ensure adequate provisions of public services (police, fire and other public services); the creation of a Community Facilities District (CFD) for reimbursement of public improvements and maintenance of public facilities; and the Park/Open Space Policy Plan requirement of five acres per 1,000 projected population through park dedication and/or the payment of in-lieu fees. Other points addressed by the Agreement include provisions for affordable housing, as required by the Policy Plan, through construction, rehabilitation, or by paying an in-lieu fee, and satisfaction of the Mountain View Elementary School District and Chaffey Joint Union High School District school facilities requirements.

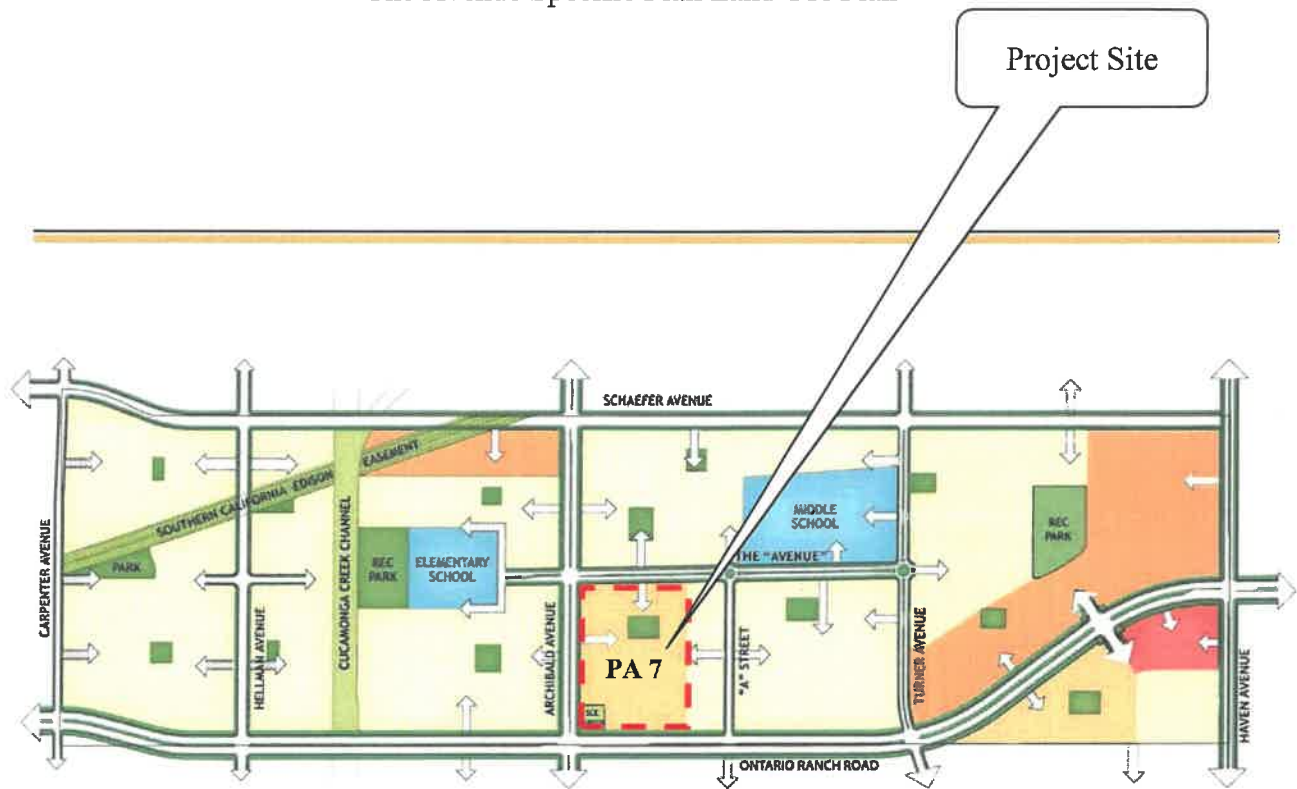
In considering the application at their meeting of October 24, 2017, the Planning Commission found that the Development Agreement was consistent with State law, The Ontario Plan, the City's Development Agreement policies, and other Development Agreements previously approved for Ontario Ranch developments; and with a 6 to 0 vote (Resolution No. PC17-080), recommended approval of the Development Agreement to the City Council.

**HOUSING ELEMENT COMPLIANCE:** The project is consistent with the Housing Element of the Policy Plan (General Plan) component of The Ontario Plan. The project site is one of the properties listed in the Available Land Inventory contained in Table A-3 (Available Land by Planning Area) of the Housing Element Technical Report Appendix, and the proposed project is consistent with the maximum number of dwelling units (287) and density (9.5 DU/AC) specified within The Avenue Specific Plan. Per the Available Land Inventory, The Avenue Specific Plan is required to provide 2,552 dwelling units with a density range of 2-12 DU/AC.

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

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

EXHIBIT "A"  
The Avenue Specific Plan Land Use Plan



LEGEND

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



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

**The Avenue**  
SPECIFIC PLAN

The New Model Colony Ontario, California

Land Use Plan

3-31

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

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF ONTARIO, CALIFORNIA, APPROVING A DEVELOPMENT AGREEMENT APPROVING A DEVELOPMENT AGREEMENT BETWEEN THE CITY OF ONTARIO AND BROOKCAL ONTARIO, LLC, FOR THE DEVELOPMENT OF UP TO 48 SINGLE FAMILY AND 217 MULTI-FAMILY RESIDENTIAL UNITS (FILE NO. PMTT17-002/TT18937) ON 23.66 ACRES OF LAND FOR PROPERTY GENERALLY LOCATED AT THE NORTHEAST CORNER OF ARCHIBALD AVENUE AND ONTARIO RANCH ROAD, WITHIN THE LOW MEDIUM DENSITY RESIDENTIAL (LMDR) DISTRICT OF PLANNING AREA 7 OF THE AVENUE SPECIFIC PLAN, AND MAKING FINDINGS IN SUPPORT THEREOF — APN: 0218-201-18.

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

“The Legislature finds and declares that:

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

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

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

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

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

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

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

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

WHEREAS, attached to this Ordinance, marked Exhibit "A" and incorporated herein by this reference, is the proposed Development Agreement between the City of Ontario and Brookcal Ontario, LLC, for the development of up to 48 single family and 217 multi-family residential units (File No. PMTT17-002/TT18937) on 23.66 acres of land for property generally located at the northeast corner of Archibald Avenue and Ontario Ranch Road, within the Low Medium Density Residential (LMDR) district of Planning Area 7 of The Avenue Specific Plan and as legally described in the attached Development Agreement. Hereinafter in this Ordinance, the Development Agreement is referred to as the "Development Agreement"; and

WHEREAS, on November 28, 2006, the Planning Commission of the City of Ontario conducted a duly noticed public hearing and issued Resolution PC06-041 recommending City Council certification of The Avenue Specific Plan EIR and Issued Resolution PC06-043 recommending approval of The Avenue Specific Plan (File No. PSP05-003); and

WHEREAS, on December 9, 2006, the City Council of the City of Ontario certified The Avenue Specific Plan EIR (SCH# 2005071109); and

WHEREAS, on January 16, 2007, the City Council of the City of Ontario adopted Ordinance No. 2851 approving the The Avenue Specific Plan; and

WHEREAS, on February 2, 2010, the City Council of the City of Ontario adopted Resolution No. 2010-010 certifying the Supplemental Environmental Impact Report for an amendment to The Avenue Specific Plan (File No. PSPA07-004); and

WHEREAS, on February 2, 2010, the City Council of the City of Ontario adopted Resolution No. 2010-011 approving an amendment to The Avenue Specific Plan (File No. PSPA07-004); and

WHEREAS, on June 17, 2014, the City Council of the City of Ontario adopted Resolution No. 2014-069 approving an amendment to The Avenue Specific Plan (File No. PSPA13-003) and issued Resolution No. 2014-068 adopting an addendum to The Avenue Specific Plan EIR (SCH# 2005071109); and

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

WHEREAS, on the October 24, 2017, the Planning Commission of the City of Ontario conducted a hearing to consider the Agreement and concluded said hearing on that date. After considering the public testimony, the Planning Commission voted 6 to 0 to recommend approval (Resolution No. 17-080) of the Development Agreement to the City Council; and

WHEREAS, on November 21, 2017, the City Council of the City of Ontario conducted a public hearing to consider the Agreement and concluded said hearing on that date; and

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

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

**SECTION 1. *Environmental Determination and Findings.*** As the decision-making body for the Project, the City Council has reviewed and considered the information contained in the previous addendum to The Avenue Specific Plan EIR (SCH# 2005071109) and supporting documentation. Based upon the facts and information contained in the previous addendum to The Avenue Specific Plan EIR (SCH# 2005071109) and supporting documentation, the City Council finds as follows:

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

(2) The previous addendum to The Avenue Specific Plan EIR (SCH# 2005071109) contains a complete and accurate reporting of the environmental impacts associated with the Project; and

(3) The previous addendum to The Avenue Specific Plan EIR (SCH# 2005071109) was completed in compliance with CEQA and the Guidelines promulgated thereunder; and

(4) The previous addendum to The Avenue Specific Plan EIR (SCH# 2005071109) reflects the independent judgment of the Planning Commission; and

(5) The proposed project will introduce no new significant environmental impacts beyond those previously analyzed in the previous addendum to The Avenue Specific Plan EIR (SCH# 2005071109), and all mitigation measures previously adopted with the addendum to The Avenue Specific Plan EIR (SCH# 2005071109), are incorporated herein by this reference.

**SECTION 2. *Subsequent or Supplemental Environmental Review Not Required.*** Based on the information presented to the City Council, and the specific findings set forth in Section 1, above, the City Council finds that the preparation of a subsequent or supplemental addendum to The Avenue Specific Plan EIR (SCH# 2005071109) is not required for the Project, as the Project:

(1) Does not constitute substantial changes to the addendum to The Avenue Specific Plan EIR (SCH# 2005071109) that will require major revisions to the addendum to The Avenue Specific Plan EIR (SCH# 2005071109) due to the involvement of new significant environmental effects or a substantial increase in the severity of previously identified significant effects; and

(2) Does not constitute substantial changes with respect to the circumstances under which the addendum to The Avenue Specific Plan EIR (SCH# 2005071109) was prepared, that will require major revisions to the addendum to The Avenue Specific Plan EIR (SCH# 2005071109) due to the involvement of new significant environmental effects or a substantial increase in the severity of the previously identified significant effects; and

(3) Does not contain new information of substantial importance that was not known and could not have been known with the exercise of reasonable diligence at the time the addendum to The Avenue Specific Plan EIR (SCH# 2005071109) was certified/adopted, that shows any of the following:

(a) The project will have one or more significant effects not discussed in the addendum to The Avenue Specific Plan EIR (SCH# 2005071109); or

(b) Significant effects previously examined will be substantially more severe than shown in the addendum to The Avenue Specific Plan EIR (SCH# 2005071109); or

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

(d) Mitigation measures or alternatives considerably different from those analyzed in the addendum to The Avenue Specific Plan EIR (SCH# 2005071109) would substantially reduce one or more significant effects on the environment, but which the City declined to adopt.

**SECTION 3. *Housing Element Consistency.*** Pursuant to the requirements of California Government Code Chapter 3, Article 10.6, commencing with Section 65580, as the decision-making body for the Project, the City Council finds that based on the facts and information contained in the Application and supporting documentation, at the time of Project implementation, the project is consistent with the Housing Element of the Policy Plan (General Plan) component of The Ontario Plan. The project site is one of the properties listed in the Available Land Inventory contained in Table A-3 (Available Land by Planning Area) of the Housing Element Technical Report Appendix, and the proposed

project is consistent with the maximum number of dwelling units (287) and density (9.5 DU/AC) specified within The Avenue Specific Plan. Per the Available Land Inventory, The Avenue Specific Plan is required to provide 2,552 dwelling units with a density range of 2-12 DU/AC.

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

**SECTION 5. *Concluding Facts and Reasons.*** Based upon substantial evidence presented to the City Council during the above-referenced hearing on November 21, 2017, including written and oral staff reports, together with public testimony, the City Council hereby specifically finds as follows:

a. The Development Agreement applies to 23.66 acres of land located at the northeast corner of Archibald Avenue and Ontario Ranch Road, within the Low Medium Density Residential (LMDR) district of Planning Area 7 of The Avenue Specific Plan, and is presently vacant; and

b. The property to the north of the Project site is within the Low Density Residential district of Planning Area 6A of The Avenue Specific Plan and is vacant. The property to the east is within the Low Density Residential district of Planning Area 8A of The Avenue Specific Plan and is currently developed with agricultural/dairy uses. The property to the south is within the High Density Residential district of Planning Areas 7 and 8 of the Grand Park Specific Plan and is currently developed with agricultural/dairy uses. The property to the west of the project site is within the Low Medium Density Residential, Open Space and Elementary School districts of Planning Area 5 of The Avenue Specific Plan and is currently developed with agricultural uses; and

c. The Development Agreement establishes parameters for the development of Tentative Tract Map 19737 within Planning Area 7 of The Avenue Specific Plan for the potential development of 48 single family units and 217 multi-family



residential units. The Development Agreement also grants Brookcal Ontario, LLC. the right to develop, the ability to quantify the fees; and establish the terms and conditions that apply to those projects. These terms and conditions are consistent with The Ontario Plan Policy Plan (General Plan), design guidelines and development standards for The Avenue Specific Plan.

d. The Development Agreement focuses on Tentative Tract Map 19737 that proposes to subdivide the 23.66 acre project into: 1) 48 single-family numbered lots (6-Pack Cluster); 2) 7 multi-family numbered lots for Condominium Purposes (Lots 49 thru 55); and 3) 41 lettered lots for public streets, landscape neighborhood edges and common open space purposes; and

e. The Development Agreement will provide for the development of 48 single family units and 217 multi-family residential units as established for Planning Area 7 of The Avenue Specific Plan; and

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

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

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

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

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

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

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

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

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

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

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

PASSED, APPROVED, AND ADOPTED this 5<sup>th</sup> day of December 2017.

\_\_\_\_\_  
PAUL S. LEON, MAYOR

ATTEST:

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

APPROVED AS TO FORM:

\_\_\_\_\_  
BEST BEST & KRIEGER LLP  
CITY ATTORNEY

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

I, SHEILA MAUTZ, City Clerk of the City of Ontario, DO HEREBY CERTIFY that foregoing Ordinance No. 3085 was duly introduced at a regular meeting of the City Council of the City of Ontario held November 21, 2017 and adopted at the regular meeting held December 5, 2017 by the following roll call vote, to wit:

AYES: COUNCIL MEMBERS:

NOES: COUNCIL MEMBERS:

ABSENT: COUNCIL MEMBERS:

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

(SEAL)

I hereby certify that the foregoing is the original of Ordinance No. 3085 duly passed and adopted by the Ontario City Council at their regular meeting held December 5, 2017 and that Summaries of the Ordinance were published on November 28, 2017 and December 12, 2017, in the Inland Valley Daily Bulletin newspaper.

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

(SEAL)

**ATTACHMENT A:**

**Development Agreement**

*(Document to follow this page)*

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

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

Exempt from Fees Per Gov. Code § 6301

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Space above this line for Recorder's Use Only

**DEVELOPMENT AGREEMENT**

**By and Between**

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

**and**

**BrookCal Ontario LLC**

**a Delaware limited liability company**

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

**San Bernardino County, California**

## **DEVELOPMENT AGREEMENT NO. PDA15-003**

This Development Agreement (hereinafter "Agreement") is entered into effective as of the \_\_\_\_ day of \_\_\_\_\_, 2017 by and among the City of Ontario, a California municipal corporation (hereinafter "CITY"), and BrookCal Ontario LLC, Delaware limited liability company (hereinafter "OWNER"):

### RECITALS

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

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

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

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

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

WHEREAS, all of the procedures of the California Environmental Quality Act have been met with respect to the Project and the Agreement in The Avenue Specific Plan. The City Council found and determined that the FEIR was prepared in accordance with the requirements of the California Environmental Quality Act and adequately describes the impacts of the project described in the FEIR, which included consideration of this Agreement; and

WHEREAS, this Agreement and the Project are consistent with the CITY's Comprehensive General Plan and The Avenue (New Haven) Specific Plan; and

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

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

WHEREAS, this Agreement will eliminate uncertainty in planning and provide for the orderly development of the Property, ensure progressive installation of necessary improvements, provide for public services appropriate to the development of the Project, and generally serve the purposes for which development agreements under Sections 65864 et seq. of the Government Code are intended; and

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

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

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

### COVENANTS

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

#### 1. DEFINITIONS AND EXHIBITS.

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

1.1.1 "Agreement" means this Development Agreement.

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

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

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

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

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

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

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



Reorganization Act of 2000, Division 3 (commencing with Section 56000) of Title 5 of the Government Code; the processing of maps under the provisions of the Subdivision Map Act, Division 2 (commencing with Section 66410) of Title 7 of the Government Code; or planning services under the authority of Chapter 3 (commencing with Section 65100) of Division 1 of Title 7 of the Government Code, fees and charges as described in Sections 51287, 56383, 57004, 65104, 65456, 65863.7, 65909.5, 66013, 66014, and 66451.2 of the Government Code, Sections 17951, 19132.3, and 19852 of the Health and Safety Code, Section 41901 of the Public Resources Code, and Section 21671.5 of the Public Utilities Code, as such codes may be amended or superseded, including by amendment or replacement.

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

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

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

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

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

1.1.13 “Improvement” or “Improvements” means those public improvements required to support the development of the Project as described in the Tract Map conditions for Tract No. 18937 and as further described in Exhibit “F” (the “Infrastructure Improvements Exhibit”).

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

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

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

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

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

1.1.16 "Model Units" means a maximum of twenty-three (23) model units, including, if constructed, the necessary common private amenities and sales facilities constructed by OWNER prior to the construction of any Production units and not offered for sale and occupancy for a period of time after the issuance of permits for Production Units.

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

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

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

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

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

1.1.22 "Deferred Frontage Improvements" means the improvements on Archibald Avenue and the Property and the SCE Substation and the Improvements on Ontario Ranch Road adjacent to the Property and the SCE Substation including the design and construction of street improvements, neighborhood edge landscaping, sidewalks, trails and all related Improvements"

1.1.22 "Specific Plan" means that certain specific plan adopted by the City Council, and entitled, "The Avenue Specific Plan."

1.1.23 "Storm Water Treatment Capacity Availability" means a designated portion of the total Storm Water Treatment Capacity Availability made available through the completion of construction of a Phase of regional storm water treatment facilities by the NMC Builders LLC as described in the Construction Agreement Amendment. The amount, in acres, of Storm Water Treatment Capacity Availability required for the

issuance of a grading permit shall be based upon the factors and assumptions listed in the Construction Agreement Amendment.

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

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

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

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

Exhibit "A" — Legal Description of the Property.

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

Exhibit "C" — Existing Development Approvals.

Exhibit "D" — Existing Land Use Regulations.

Exhibit "E" — Not Used

Exhibit "F" — Infrastructure Improvements Exhibit

Exhibit "G" - Form of Plume Disclosure Letter

## 2. GENERAL PROVISIONS.

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

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

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

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

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

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

## 2.4 Assignment.

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

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

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

(c) Any sale, transfer or assignment not made in strict compliance with the foregoing conditions shall constitute a default by OWNER under this Agreement. Notwithstanding the failure of any purchaser, transferee or assignee to execute the agreement required by Paragraph (b) of this Subsection 2.4.1, the burdens of this Agreement shall be binding upon such purchaser, transferee or assignee, but the

benefits of this Agreement shall not inure to such purchaser, transferee or assignee until and unless such agreement is executed. The City Manager shall have the authority to review, consider and either approve, conditionally approve, or deny any proposed sale, transfer or assignment that is not made in compliance with this section 2.4.

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

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

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

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

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

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

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

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

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

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

2.4.5 Termination of Agreement with Respect to Individual Lots Upon Sale to Public and Completion of Construction. The provisions of Subsection 2.4.1 shall not apply to the sale or lease (for a period longer than one year) of any lot which has been finally subdivided and is individually (and not in "bulk") sold or leased to a member of the public or other ultimate user. Notwithstanding any other provisions of this Agreement, this Agreement shall terminate with respect to any lot and such lot shall be

released and no longer be subject to this Agreement without the execution or recordation of any further document upon satisfaction of both of the following conditions:

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

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

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

**2.5.1 Amendment to Reflect Consistency with Future Amendments to the Construction Agreement.** To the extent any future amendment to the Construction Agreement provides for modifications to rights or obligations that differ from or alter the same or similar rights or obligations contained in this Development Agreement, OWNER reserves the right to request an amendment to the Development Agreement to reflect any or all of such modifications.

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

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

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

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

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

Termination of this Agreement shall not constitute termination of any other land use entitlements approved for the Property. Upon the termination of this Agreement, no party shall have any further right or obligation hereunder except with respect to any obligation to have been performed prior to such termination or with respect to any default in the performance of the provisions of this Agreement which has occurred prior to such termination or with respect to any obligations which are specifically set forth as surviving this Agreement.

## 2.7 Notices.

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

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

If to CITY:

Scott Ochoa, City Manager  
City of Ontario  
303 East "B" Street  
Ontario California, California 91764

with a copy to:

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

If to OWNER:

Dave Bartlett  
BrookCal Ontario, LLC  
3200 Park Center Drive, Suite 1000

Costa Mesa, CA 92626  
Email: Dave.Bartlett@Brookfieldrp.com  
Phone: 714.200.1533  
Fax: 714.200.1833

with a copy to:

John A. Ramirez  
Rutan & Tucker, LLP  
611 Anton Blvd.  
Suite 1400  
Costa Mesa, CA 92626  
Phone: (714) 662-4610  
Fax: (714) 546-9035

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

### 3. DEVELOPMENT OF THE PROPERTY.

3.1 Rights to Develop. Subject to the terms of this Agreement including the Reservations of Authority, OWNER shall have a vested right to develop the Property in accordance with, and to the extent of, the Development Plan. The Project shall remain subject to all Subsequent Development Approvals required to complete the Project as contemplated by the Development Plan. Except as otherwise provided in this Agreement, the permitted uses of the Property, the density and intensity of use, the maximum height and size of proposed buildings, and provisions for reservation and dedication of land for public purposes shall be those set forth in the Development Plan.

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

3.3 Timing of Development. The parties acknowledge that OWNER cannot at this time predict when or the rate at which phases of the Property will be developed.



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

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

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

3.4.2 Subject to the prior submittal by OWNER and approval by CITY of a plan to provide sufficient public infrastructure for the construction of a maximum number of twenty-three (23) Model Units including, if constructed, the necessary common private recreation amenities and sales facilities. The plan to be submitted by OWNER for CITY approval shall describe the utilities and other infrastructure necessary to provide sufficient fire protection and other public health and safety requirements for the Model Units and other facilities.

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

- (a) Alter the permitted uses of the Property as a whole; or,

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

### 3.6 Reservations of Authority.

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

- (a) Processing fees by CITY to cover costs of processing applications for development approvals or for monitoring compliance with any development approvals;
- (b) Procedural regulations relating to hearing bodies, petitions, applications, notices, findings, records and any other matter of procedure;
- (c) Regulations, policies and rules governing engineering and construction standards and specifications applicable to public and private improvements, including all uniform codes adopted by the CITY and any local amendments to those codes adopted by the CITY; provided however that, OWNER shall have a vested right to develop the Property in accordance with, and to the extent of, the standards and specifications that are expressly identified in the Specific Plan;
- (d) Regulations that may conflict with this Agreement and the Development Plan but that are reasonably necessary to protect the residents of the project and/or of the immediate community from a condition perilous to their health or safety;
- (e) Regulations that do not conflict with those rules, regulations and policies set forth in this Agreement or the Development Plan;
- (f) Regulations that may conflict but to which the OWNER consents.

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

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

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

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

3.7.1 OWNER agrees that development of the Project shall require the construction of Storm Drain facilities, at OWNER's sole cost and expense, from the Property to master planned storm drain facilities to serve the Property as

described in Exhibit F. OWNER shall be responsible for the construction of the necessary extension of master planned Storm Drain facilities.

3.7.2 OWNER agrees that development of the Project shall require the construction of street improvements, at OWNER's sole cost and expense as described in Exhibit F.

3.7.2.1 Notwithstanding the requirements of Section 3.7.2, OWNER agrees that OWNER shall be responsible for the construction of street improvements, at OWNER's sole cost and expense, on La Avenida from the Eastern Project limits to Turner Avenue as shown on Exhibit F and OWNER's obligation to design and construct Improvements on La Avenida shall include the Water, Recycled Water, Storm Drain and Street Improvements from Archibald Avenue to a point of connection with La Avenida Drive at the boundary of Tract 18922-2. However, CITY and OWNER agree that if all or a portion of OWNER's required street improvements on La Avenida are constructed by others, OWNER shall be responsible for reimbursing such other parties for the fair share portion of OWNER's required street improvements on La Avenida constructed by others. Conversely, if OWNER constructs the street improvements on La Avenida as shown on Exhibit F, that others are also required to construct CITY shall use its best efforts to require such party or parties to reimburse OWNER for the respective fair share portion of the street improvements that OWNER constructed that the other party or parties were required to construct.

3.7.2.2 OWNER agrees that OWNER shall be responsible for the construction of street improvements, at OWNER's sole cost and expense, including neighborhood edge landscaping, sidewalks, trails and all other last lane improvements on Archibald Avenue and Ontario Ranch Road that are adjacent to the Property and adjacent to existing property owned by Southern California Edison ("the Edison Substation") and on Ontario Ranch Road and Archibald Avenue as shown on Exhibit F and described as the "Deferred Frontage Improvements".

3.7.3 OWNER agrees that development of the Property shall require the extension of permanent master planned water and recycled water utility infrastructure as described in Exhibit F consisting generally of the construction of the extension of permanent master planned water and recycled water utility improvements, at OWNER's sole cost and expense, to serve the Property. OWNER agrees that no building permits shall be issued by CITY for Production Units prior to completion of the water and recycled water Improvements as described in Exhibit F. OWNER also agrees that recycled water shall be available and utilized by OWNER for all construction-related water uses including prior to, and during, any grading of the Property.

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

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

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

which CITY and OWNER reasonably believe will be necessary to complete the acquisition of any Non-Construction Agreement Offsite Property. CITY agrees to use reasonable good faith efforts to complete the actions described within lesser time periods, to the extent that it is reasonably able to do so, consistent with the legal constraints imposed upon CITY.

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

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

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

#### 4. PUBLIC BENEFITS.

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

#### 4.2 Development Impact Fees.

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

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

4.2.3 Parkland and Quimby Act Fees. Pursuant to the General Plan (OntarioPlan) Goal PR1, Policy PR1-5 (achievement of a park standard of 5 acres of parkland per 1,000 residents). OWNER shall provide improved parks, developed in accordance with the City's park standards in an amount equal to two (2) acres per 1,000 of projected population without credit, reimbursement, offset or consideration from CITY. Such areas shall either be dedicated to CITY or transferred to a homeowners' association. If approved by the City Manager, OWNER may satisfy this requirement through the development of non-public recreation facilities such as private recreational clubhouses or pool facilities. Credit for such private recreational facilities areas shall be limited to a maximum of 50% of the foregoing park development requirement. If OWNER's Project does not provide dedicated and developed park acreage equal to two (2) acres per 1,000 projected population, OWNER shall pay a fee in-lieu equal to the per acre estimated costs of acquisition and development of parkland in the City's Development Impact Fee for the calculated park acreage deficiency. Such in-lieu fee shall be due and payable within 10 days following the issuance of the first

building permit issued to OWNER. The homeowner's association shall be responsible for the maintenance of all developed common facilities and open space park areas. OWNER shall also pay the full Development Impact Fee for the Parkland Acquisition and Development Fee category (Quimby Act fees) for the Project.

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

4.3.1 Timely Construction of Public Infrastructure. The phasing of the areawide infrastructure construction within the Ontario Ranch will be as approved by the CITY. OWNER shall be responsible for the timely construction and completion of all public infrastructure required for the Project as shown on the attached Exhibit "F" and any and all tentative tract map conditions. Unless otherwise specified in the Subdivision Agreement/Tract Map conditions, all other required Improvements for Tract No. 18937 shall be completed and operational prior to, and as a condition precedent to, OWNER requesting and CITY's granting of the first building permit for Production Units for Tract No. 18937. All Infrastructure and Improvements shall be completed as required by the Subdivision Agreement/Tract Map conditions for Tract No. 18937.

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

a. Prior to, and as a condition precedent to, OWNER requesting and CITY granting of the first building permit for the Property, OWNER shall have completed the designs for the Deferred Frontage Improvements and also shall have completed the real property transaction to acquire the necessary Rights of Way for the Deferred Frontage Improvements, or OWNER shall have made the required deposit to the Escrow Account established by the CITY and OWNER as required by Section 4.3.1.2 below.

b. Prior to, and as a condition precedent to, OWNER requesting and CITY granting of building permits for the fiftieth (50<sup>th</sup>) residential unit,



including permits for the Model Units, OWNER shall initiate the construction of the Deferred Frontage Improvements.

c. OWNER shall diligently pursue construction of the Deferred Frontage Improvements and shall complete the construction of the Deferred Frontage Improvements and shall have requested CITY acceptance of the Deferred Frontage Improvements prior to, and as a condition precedent to, OWNER requesting a building permit for the one hundred fiftieth (150) residential unit for the Project.

d. OWNER shall provide periodic written progress reports to CITY commencing ninety (90) days after the OWNER initiates construction of the Deferred Frontage Improvements and each ninety (90) days thereafter regarding the progress of the construction of the Deferred Frontage Improvements until such Improvements are accepted by CITY.

e. Subject to the provisions of Section 8 of this Development Agreement, if OWNER does not comply with the conditions of this Section 4.3.1.1, OWNER shall be deemed to be in default of this Development Agreement and CITY shall be entitled to pursue all such remedies as available under the provisions of this Development Agreement.

4.3.1.2 Requirement for OWNER Deposits to an Escrow Account for the Construction of the Deferred Frontage Improvements. If, OWNER has not completed the designs for the Deferred Frontage Improvements and also completed the real property transaction to acquire the necessary Rights of Way for the Deferred Frontage Improvements, prior to, and as a condition precedent to, OWNER requesting and CITY granting of the first building permit for the Property, OWNER shall be required to deposit to the Escrow Account established the CITY and OWNER to fund the design and the construction of the Deferred Frontage Improvements. OWNER's deposits shall be deposited directly into a restricted escrow account (the "Escrow Account"), with an escrow officer mutually agreeable to the parties. Funds placed into the Escrow Account may only be used to make payments to the contractors selected to construct the required Deferred Improvements. Escrow instructions shall be provided by OWNER, in a form approved by the City; provided however, that the escrow instructions shall contain a provision prohibiting the release of any funds without the prior written approval of CITY. OWNER shall deposit the estimated costs for Deferred Frontage Improvements as determined by the City Engineer, which shall include the estimated costs of all OWNER's "last lane" improvements and all other construction activities related to the completion of the Deferred Frontage Improvements, whether or not the costs of such Improvements are considered to be DIF Credit eligible Improvements. In the event that, during the progress of the construction, additional funds become necessary for completion of the Deferred Frontage Improvements or activities (i.e., because of change orders, extra work claims, etc.), CITY

shall notify OWNER of the need for additional funds. Within ten (10) calendar days following such notice, OWNER shall deposit into the Escrow Account an amount determined by the CITY to be necessary to cover such overage(s). If OWNER fails to make the required deposit, or fails to make subsequent deposits to cover any overages, or fails to initiate and make reasonable progress or complete construction of the Deferred Frontage Improvements as required herein, OWNER shall be considered to be in default of this Development Agreement. If OWNER defaults, any and all remaining funds in the Escrow Account shall be utilized by CITY to complete the construction of the Deferred Frontage Improvements. Upon the completion of construction of the Deferred Frontage, any remaining funds and accrued interest, if any, in the Escrow Account shall be returned to OWNER.

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

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

#### 4.4 Affordable Housing Requirement.

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

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

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

4.4.2.2 Rehabilitation. If OWNER elects to fully or partially satisfy the affordable housing requirement by the substantial rehabilitation of existing residential units in the City, it shall substantially rehabilitate and restrict the affordability of, the number of residential units specified in Section 4.4.1, provided that such units shall be provided elsewhere within the City. The rehabilitation work shall be substantial and of high quality and shall also address any deferred property maintenance issues on the property. “Substantial rehabilitation” shall mean rehabilitated multi-family rented dwelling units with three or more units and the value of the rehabilitation constitutes 25 percent of the after-rehabilitation value of the dwelling, inclusive of land value pursuant to Health and Safety Code Section 33413(b)(2)(A)(iii-iv) as such section exists as of the Effective Date of this Agreement. If OWNER chooses the option of rehabilitation of existing

housing units within the City, a detailed Affordable Housing Agreement specifying the terms for the allowable month housing costs or rents (as applicable) and maintenance and occupancy standards shall be prepared, executed and recorded against such units as a condition to the issuance of a building permit. Such rehabilitation shall be completed no later than the date that is five (5) years following the issuance of the first building permit for OWNER's Project; provided however that to the extent OWNER has not rehabilitated the required percentage of units, based on the number of building permits, OWNER shall, prior to the issuance of such building permits, provide security (in the form and substance approved by the City Manager and City Attorney) to the City in order to ensure the faithful completion of such required percentage of rehabilitation.

4.4.2.3 In-Lieu Fee. If OWNER has not fully complied with the requirements of Section 4.4.1 by providing the minimum number of affordable units through the construction of new affordable units or by the substantial rehabilitation of existing units, OWNER shall pay an "Affordability In-Lieu Fee". If OWNER has not provided any affordable residential units by construction or rehabilitation, the Affordability In-Lieu fee shall be equal to Two Dollars and Forty-Three Cents (\$2.43) per square foot of residential development within OWNER's Project or, if pre-paid as set forth below, Two Dollars and Thirteen Cents (\$2.13) per square foot of residential development within OWNER's Project. If OWNER has partially complied with the requirements of Section 4.4.1 by construction or rehabilitation of less than the minimum number of units, then the Affordability In-lieu Fee shall be recalculated and reduced in consideration of the number and type of affordable units provided. The Affordability In-Lieu Fee shall be paid by OWNER to City no later than prior to the issuance of each building permit within OWNER's Project based on the square footage of the residential unit for which such building permit is sought; provided however that OWNER may, at OWNER's election, pre-pay such Affordability In-Lieu Fee by paying such Affordability In-Lieu Fee within thirty (30) days following the earliest discretionary approval by the City for OWNER's Project, including, but not limited to, any general plan amendment, specific plan adoption, development agreement, tentative map approval, variance, conditional use permit, or resolution of intention to form any public financing mechanism. The Two Dollars and Forty-Three Cents (\$2.43) and the Two Dollars and Thirteen Cents (\$2.13) per square foot amounts shall automatically be increased annually, commencing on July 1, 2018, and automatically each July 1 thereafter. Such adjustment shall be based on the percentage increase (but no decrease) in the Consumer Price Index (Los Angeles-Anaheim-Riverside County), 1950-2001 (1982-84=100) over the preceding year. The pre-paid Affordability In-Lieu Fee shall be calculated based on the maximum floor area ratio (FAR) permitted within the General Plan and any applicable FAR contained within the applicable specific plan, whichever is greater, and the Maximum Development

Density. For purposes of this Agreement, “**Maximum Development Density**” shall be determined by multiplying the OWNER’s Project’s density for residential development potential as set forth in the General Plan or the applicable Specific Plan, whichever is less, by the net acreage of land within OWNER’s Project. All “Affordability In-Lieu Fees” collected by the City shall be used to promote the construction of affordable housing within the City.

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

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

4.5 Written Evidence of Compliance with Schools Obligations. OWNER shall, either through joint or individual agreements between OWNER and the applicable school district(s), shall satisfy its new school obligations. The new school obligations for the Mountain View School District in the Ontario Ranch area have been projected to include the acquisition or dedication of school sites for, and construction of, up to eight (8) schools. Of these eight (8) schools, six (6) are to be elementary (K-5) grade schools and two (2) are to be middle grade schools. The new school obligations for the Chaffey Joint Union High School District in the Ontario Ranch area have been projected to include the dedication of a school site for, and construction of, an additional high school. The new school obligations for the applicable school district shall be met by a combination of the following: (1) designating and dedicating school site(s) within the Property as set forth in the General Plan, and/or (2) paying school impact fees, (3) entering into a joint mitigation agreement or individual mitigation agreements, or (4) any combination of the foregoing. Written evidence of approval by the applicable school district that OWNER has met their school obligations may be required by the City as the condition to the issuance by the City of any entitlements for OWNER’s Project. In the

event OWNER is unable to provide such written evidence from the applicable school district(s), the City shall have the right to decline to honor any DIF Credit, Certificates of MDD Availability, Certificates of Storm Water Treatment Capacity Availability, or any combination thereof, presented by such OWNER, without liability to the City. To the extent that a joint mitigation agreement is approved by the applicable school district(s), and OWNER is a participant in good standing in such mitigation agreement, OWNER shall be deemed to have mitigated its new school obligations under this Section 4.4.1.

#### 4.6 Public Services Funding Fee.

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

4.6.2 Public Services Funding Fee Amount. OWNER shall pay a Public Services Funding fee in the total amount of One Thousand Nine Hundred and Seven Dollars (\$1,907.00) per residential dwelling unit. The Public Services Funding Fee shall be paid in one (1) installment within one hundred eighty (180) calendar days after the effective date of the Development Agreement or in two (2) installments, at OWNER's option, as follows:

4.6.2.1 First Installment (Residential uses). The First Installment of the Public Services Funding Fee shall be Nine Hundred Fifty-Three dollars and fifty cents (\$953.50) per residential dwelling unit. The First Installment shall be based upon the "Maximum Development Density" of the OWNER Project, as defined in Section 3.7.2.3 of the First Amended and Restated Construction Agreement. The First Installment shall be due and payable 30 days following the effective date of this Development Agreement.

4.6.2.2 Second Installment (Residential Uses). The Second Installment of the Public Services Funding Fee shall be Nine Hundred Fifty-Three dollars and fifty cents (\$953.50) per residential unit. The Second Installment shall be paid at the time of the issuance of each building permit for the Project. The amount of the Second Installment shall increase automatically by percentage increase (but no decrease) in the Consumer Price Index (Los Angeles-Anaheim-Riverside County), 1950-2001 (1982-84=100) over the preceding year on January 1<sup>st</sup> of each year, beginning on January 1, 2018. OWNER may exercise the option to pay the Second Installment amount for all residential units, a portion of the residential units, or for the remainder of the residential units within OWNER's Project on or before each December 31st, before the Second Installment amount is automatically increased.

4.6.2.3 Single Installment (Non-residential Uses). A single installment payment of the Public Services Funding Fee shall be required in the

amount of Fifty-Seven Cents (\$.57) per square foot of non-residential buildings. The single installment for non-residential uses shall be due and payable prior to the issuance of the building permit for a non-residential building. The amount of the Single Installment for non-residential uses shall automatically increase by percentage increase (but no decrease) in the Consumer Price Index (Los Angeles-Anaheim-Riverside County), 1950-2001 (1982-84=100) over the preceding year on January 1<sup>st</sup> of each year, beginning on January 1, 2018. OWNER may exercise the option to pay any single installment amounts for the remainder of the non-residential square footage within the Project on or before December 31<sup>st</sup>, before the Single Installment amount is automatically increased.

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

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

4.7.2 Use of Assigned Net MDD Water Availability. OWNER shall provide evidence of sufficient Net MDD Water Availability Equivalents (or portions thereof) prior to and as a condition precedent to, CITY's approval of the final Tract Map for Tract No.18937. The amount of Net MDD Water Availability Equivalents required shall be based upon water demand factors and assumptions listed in Exhibit C-2R of the Construction Agreement Amendment as "Water Demand Equivalents by Land Use" for each land use category.

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

#### 4.8 Storm Water Capacity Availability.

4.8.1 Requirement for Storm Water Treatment Capacity Availability. OWNER shall provide evidence of sufficient Storm Water Treatment Capacity Availability as reserved in a Certificate of Storm Water Treatment Capacity Availability the same manner and subject to the same limitations as provided for the assignment of Certificates of Net MDD Availability in Section 4.7 of this Agreement.

4.8.2 Use of Storm Water Treatment Capacity Availability. The amount of Storm Water Treatment Capacity Availability required for the issuance of a grading permit to OWNER shall be based upon the Net Residential Acreage of the area to be graded regardless of the corresponding use.

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

4.9 Maintenance of Common Areas and Open Space. OWNER shall provide for the ongoing maintenance of all park, common areas and open space areas within the Project as more particularly set forth in the Specific Plan, through a homeowners' association as approved by the CITY. Covenants, conditions and restrictions establishing any homeowners' association shall be approved by the Planning Director and City Attorney.

#### 4.11 Compliance with Public Benefits Requirements.

4.11.1 Failure to Provide Public Benefits. In the event OWNER fails or refuses to comply with any condition referenced in Section 4.1 through 4.9, or challenges (whether administratively or through legal proceedings) the imposition of such conditions, OWNER shall be deemed in default of this Agreement pursuant to Section 8 hereof, thereby entitling the City to any and all remedies available to it, including, without limitation, the right of the City to withhold OWNER's Project-related building permits, certificates of occupancy, or discretionary approvals, without liability.

### 5. FINANCING OF PUBLIC IMPROVEMENTS.

5.1 Financing Mechanism(s). In accordance with the Memorandum of Agreement between the CITY and NMC Builders, CITY will cooperate with OWNER in the formation of a CFD, or CFDs, to include all of the Project, to provide a financing mechanism to reimburse the OWNER for funds paid to NMC Builders LLC for OWNER's share of the costs of public infrastructure pursuant to the Construction Agreement and to acquire other public facilities constructed by OWNER subject to the provisions of the Memorandum of Agreement between CITY and NMC Builders LLC. Notwithstanding such reimbursements and acquisitions, OWNER shall remain entitled to DIF Credits as provided for in Article 3 of the Construction Agreement and/or as provided for in a separate Fee Credit Agreement between CITY and OWNER. OWNER agrees that, prior to the recordation of any Tract Map for the Property, the Property shall be included in a CFD to finance City services through annual special taxes that will initially be \$1,442.00 per Single Family Detached Dwelling Unit, \$1,250.00 per Multiple-Family Dwelling Unit, \$1,048.00 per Gated Apartment Community Dwelling Unit, and \$.27 per square foot for Non-Residential buildings. These amounts shall be subject to an automatic increase at a rate not to exceed four (4%) percent per year. CITY shall be



the sole and exclusive lead agency in the formation of any CFD, assessment district or other public financing mechanism within the Property; provided however, that the proceeds of any such CFD, assessment district, or financing mechanism may be used, subject to restrictions that may be imposed by applicable law, for the purposes of acquiring, constructing or maintaining public facilities to be owned or operated by other public agencies, including, without limitation those facilities owned or operated by a school district. In addition to the rights of the CITY pursuant to section 4.5 hereof, CITY shall have the right, but not the obligation, to condition the formation of any CFD, assessment district or other public financing mechanism within the Property on the OWNER mitigating all Project-related impacts to the applicable school district(s) as required by such school district(s). Written evidence by such school district(s) may be required by the CITY as the condition to the formation of any CFD, assessment district or other public financing mechanism within the Property, or any steps preliminary thereto, including, without limitation, the adoption of any resolution of intention to form such CFD, assessment district or other public financing mechanism within the Property. It is not the intent of the parties hereto, by this provision, to prohibit or otherwise limit the City's ability to take any and all necessary steps requisite to the formation of the CFD to finance City services through annual special taxes as set forth in this Section 5.1. Formation of any CFD, assessment district or other public financing mechanism within the Property, shall be subject to CITY's ability to make all findings required by applicable law and complying with all applicable legal procedures and requirements including, without limitation, CITY's public financing district policies as such policies may be amended from time to time. Notwithstanding the foregoing, it is acknowledged and agreed by the parties that nothing contained in this Agreement shall be construed as requiring CITY or the City Council to form any such district or to issue and sell bonds.

## 6. REVIEW FOR COMPLIANCE.

### 6.1 Periodic and Special Reviews.

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

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

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

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

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

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

6.1.6 Procedure Upon Findings.

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

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

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

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

- (a) The time and place of the hearing;
- (b) A statement as to whether or not the CITY proposes to terminate or to modify this Agreement; and

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

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

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

7. [RESERVED]

8. DEFAULT AND REMEDIES.

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

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

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

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

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

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

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

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

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

8.4 Termination or Modification of Agreement for Default of OWNER. Subject to the provisions contained in Subsection 6.2 and 6.3 herein, CITY may terminate or modify this Agreement for any failure of OWNER to perform any material duty or obligation of OWNER under this Agreement, or to comply in good faith with the terms of this Agreement (hereinafter referred to as "default"); provided, however, CITY may terminate or modify this Agreement pursuant to this Section only after providing written notice to OWNER of default setting forth the nature of the default and the actions, if any, required by OWNER to cure such default and, where the default can be cured, OWNER has failed to take such actions and cure such default within 60 days after the effective date of such notice or, in the event that such default cannot be cured within such 60 day period but can be cured within a longer time, has failed to commence the actions

necessary to cure such default within such 60 day period and to diligently proceed to complete such actions and cure such default.

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

## 9. THIRD PARTY LITIGATION.

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

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

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

and independent contractors in any legal action based upon such alleged acts or omissions. CITY may in its discretion participate in the defense of any such legal action.

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

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

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

## 10. MORTGAGEE PROTECTION.

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

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

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

(c) If CITY timely receives a request from a Mortgagee requesting a copy of any notice of default given to OWNER under the terms of this Agreement, CITY shall provide a copy of that notice to the Mortgagee within ten (10) days of sending the notice of default to OWNER. The Mortgagee shall have the right, but not the obligation, to cure the default during the remaining cure period allowed such party under this Agreement.

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

## 11. MISCELLANEOUS PROVISIONS.

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

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

11.3 Severability. If any term, provision, covenant or condition of this Agreement shall be determined invalid, void or unenforceable, the remainder of this Agreement shall not be affected thereby to the extent such remaining provisions are not rendered impractical to perform taking into consideration the purposes of this Agreement. Notwithstanding the foregoing, the provision of the Public Benefits set forth in Section 4 of this Agreement, including the payment of the fees set forth therein, are essential elements of this Agreement and CITY would not have entered into this

Agreement but for such provisions, and therefore in the event such provisions are determined to be invalid, void or unenforceable, this entire Agreement shall be null and void and of no force and effect whatsoever.

11.4 Interpretation and Governing Law. This Agreement and any dispute arising hereunder shall be governed and interpreted in accordance with the laws of the State of California. This Agreement shall be construed as a whole according to its fair language and common meaning to achieve the objectives and purposes of the parties hereto, and the rule of construction to the effect that ambiguities are to be resolved against the drafting party shall not be employed in interpreting this Agreement, all parties having been represented by counsel in the negotiation and preparation hereof.

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

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

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

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

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

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

11.11 Force Majeure. Neither party shall be deemed to be in default where failure or delay in performance of any of its obligations under this Agreement is caused by floods, earthquakes, other Acts of God, fires, wars, riots or similar hostilities, strikes and other labor difficulties beyond the party's control, (including the party's employment force), government regulations, court actions (such as restraining orders or injunctions), or other causes beyond the party's control. If any such events shall occur, the term of this Agreement and the time for performance by either party of any of its obligations



hereunder may be extended by the written agreement of the parties for the period of time that such events prevented such performance, provided that the term of this Agreement shall not be extended under any circumstances for more than five (5) years.

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

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

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

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

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

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

duties under this Agreement to an Assistant City Manager or other management level employee of the CITY.

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

11.19 Agent for Service of Process. In the event OWNER is not a resident of the State of California or it is an association, partnership or joint venture without a member, partner or joint venturer resident of the State of California, or it is a foreign corporation, then in any such event, OWNER shall file with the Planning Director, upon its execution of this Agreement, a designation of a natural person residing in the State of California, giving his or her name, residence and business addresses, as its agent for the purpose of service of process in any court action arising out of or based upon this Agreement, and the delivery to such agent of a copy of any process in any such action shall constitute valid service upon OWNER. If for any reason service of such process upon such agent is not feasible, then in such event OWNER may be personally served with such process out of this County and such service shall constitute valid service upon OWNER. OWNER is amenable to the process so served, submits to the jurisdiction of the Court so obtained and waives any and all objections and protests thereto. OWNER for itself, assigns and successors hereby waives the provisions of The Hague Convention (Convention on the Service Abroad of Judicial and Extra Judicial Documents in Civil or Commercial Matters, 20 U.S.T. 361, T.I.A.S. No. 6638).

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

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

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

**[SIGNATURES CONTAINED ON FOLLOWING PAGE]**

**SIGNATURE PAGE  
TO DEVELOPMENT AGREEMENT**

**BROOKCAL ONTARIO LLC  
"OWNER"**

BrookCal Ontario LLC, a California limited liability company

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

Name:

Title: Authorized Representative

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

**"CITY"**

CITY OF ONTARIO

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

Scott Ochoa  
City Manager

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

ATTEST:

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

APPROVED AS TO FORM:

BEST, BEST & KREIGER LLP

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

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

State of California

County of San Bernardino

On \_\_\_\_\_ before me, \_\_\_\_\_, Notary Public, personally appeared \_\_\_\_\_

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

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

WITNESS my hand and official seal.

Signature \_\_\_\_\_

(Seal

**EXHIBIT "A"**  
**TO DEVELOPMENT AGREEMENT**

**Legal Description of Property**

**LEGAL DESCRIPTION**

Real property in the City of Ontario, County of San Bernardino, State of California, described as follows:

THE WEST 30 ACRES OF THE SOUTHWEST 1/4 OF THE NORTHWEST 1/4 OF SECTION 14, TOWNSHIP 2 SOUTH, RANGE 7 WEST, SAN BERNARDINO BASE AND MERIDIAN, ACCORDING TO THE OFFICIAL PLAT THEREOF.

AREAS AND DISTANCES ARE COMPUTED TO THE CENTER OF ADJOINING STREETS.

EXCEPT THE SOUTH 30 FEET THEREOF AS RESERVED FOR ROAD PURPOSES.

ALSO EXCEPT THE WESTERLY 280 FEET OF THE SOUTHERLY 316 FEET THEREOF.

ALSO EXCEPT THE WEST 52.00 FEET OF THE SOUTH 500.00 FEET OF THE WEST 30.00 ACRES OF THE SOUTHWEST 1/4 OF THE NORTHWEST 1/4 OF SECTION 14, TOWNSHIP 2 SOUTH, RANGE 7 WEST, SAN BERNARDINO MERIDIAN, ACCORDING TO THE OFFICIAL PLAT THEREOF.

SAVING AND EXCEPTING THEREFROM THE SOUTHERLY 316 FEET THEREOF.

FURTHER EXCEPTING THEREFROM THOSE PORTIONS OF SAID LAND CONVEYED TO THE CITY OF ONTARIO, A POLITICAL SUBDIVISION OF THE STATE OF CALIFORNIA, BY GRANT DEED RECORDED SEPTEMBER 8, 2014 AS INSTRUMENT NO. [2014-0329810](#), OFFICIAL RECORDS.

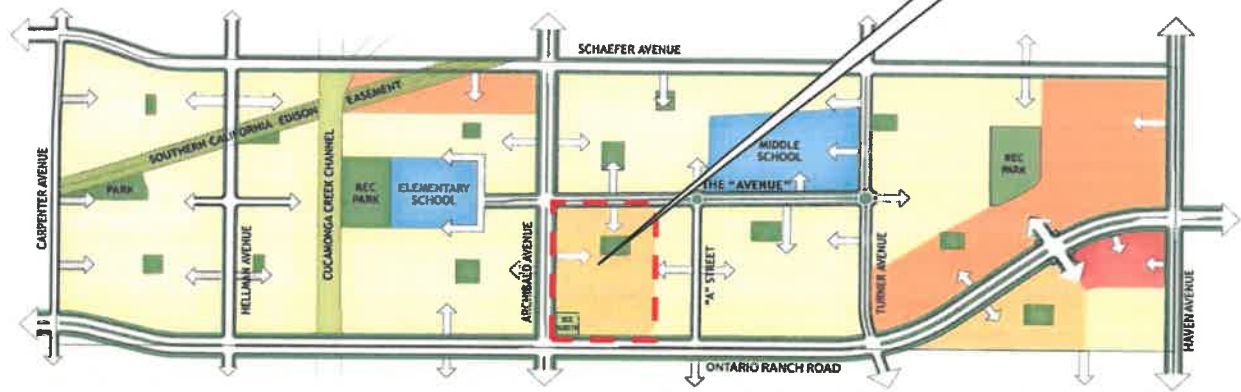
APN: 0218-201-18-0-000

**EXHIBIT "B"  
TO DEVELOPMENT AGREEMENT**

**Map showing Property and its location**

**Project Site  
TT18937**

**Exhibit 8**



**LEGEND**

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



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

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

**Existing Development Approvals**

On November 28, 2006, the Planning Commission:

- a) Issued Resolution No. PC06-141 recommending City Council adopt and certify The Avenue Specific Plan Environmental Impact Report;
- b) Issued Resolution No. PC06-143 recommending City Council approval of The Avenue Specific Plan (PSP05-003).

On December 9, 2006, the City Council:

- a) Adopted Resolution No. 2006-131 certifying The Avenue Specific Plan Environmental Impact Report (SCH No. 2005071109)

On January 16, 2007, the City Council:

- a) Adopted Ordinance No. 2851 approving The Avenue Specific Plan (PSP05-003)

On February 2, 2010, the City Council:

- a) Adopted Resolution No. 2010-010 certifying the Supplemental Environmental Impact Report for an amendment to The Avenue Specific Plan (File No. PSPA07-004)
- b) Adopted Resolution No. 2010-011 approving an amendment to The Avenue Specific Plan (File No. PSPA07-004)

On May 27, 2014, the Planning Commission:

- a) Issued Resolution No. PC14-042 recommending City Council approval of an addendum to The Avenue Specific Plan Environmental Impact Report (SCH #2005071109).
- b) Issued Resolution No. PC14-043 recommending City Council approval of an Amendment to The Avenue Specific Plan (File No. PSPA13-003).

On June 14, 2014, the City Council:



- a) Adopted Resolution No. 2017-068 approving an addendum to The Avenue Specific Plan Environmental Impact Report (SCH #2005071109).
- b) Adopted Resolution No. 2017-069 approving an Amendment to The Avenue Specific Plan (File No. PSPA13-003).

On October 24, 2014, the Planning Commission:

- a) Adopted Resolution No. PC17-081 recommending City Council approval of the Brookcal Ontario, LLC, Development Agreement File No. PDA15-003.
- b) Adopted Resolution No. PC17-080 approving Tentative Tract Map 18987

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

**Existing Land Use Regulations**

These documents are listed for reference only:

1. The Avenue Specific Plan Environmental Impact Report, Resolution No. 2006-131.
2. The Avenue Specific Plan (File No. PSP12-001, Ordinance No. 2851).
3. The Avenue Specific Plan Amendment Supplemental Environmental Impact Report (File No. PSPA07-004, Resolution No. 2010-010).
4. The Avenue Specific Plan Amendment (File No. PSPA07-004, Resolution No. 2010-011).
5. The Avenue Specific Plan addendum to the Environmental Impact Report (File No. PSPA13-003, Resolution No. 2017-068).
6. The Avenue Specific Plan Amendment (File No. PSPA13-003, Resolution No. 2017-069).
7. City of Ontario Municipal Code
  - a. Six – Sanitation & Health
  - b. Seven – Public Works
  - c. Eight – Building Regulations
  - d. Nine – Development Code
  - e. Ten – Parks & Recreation

# EXHIBIT F

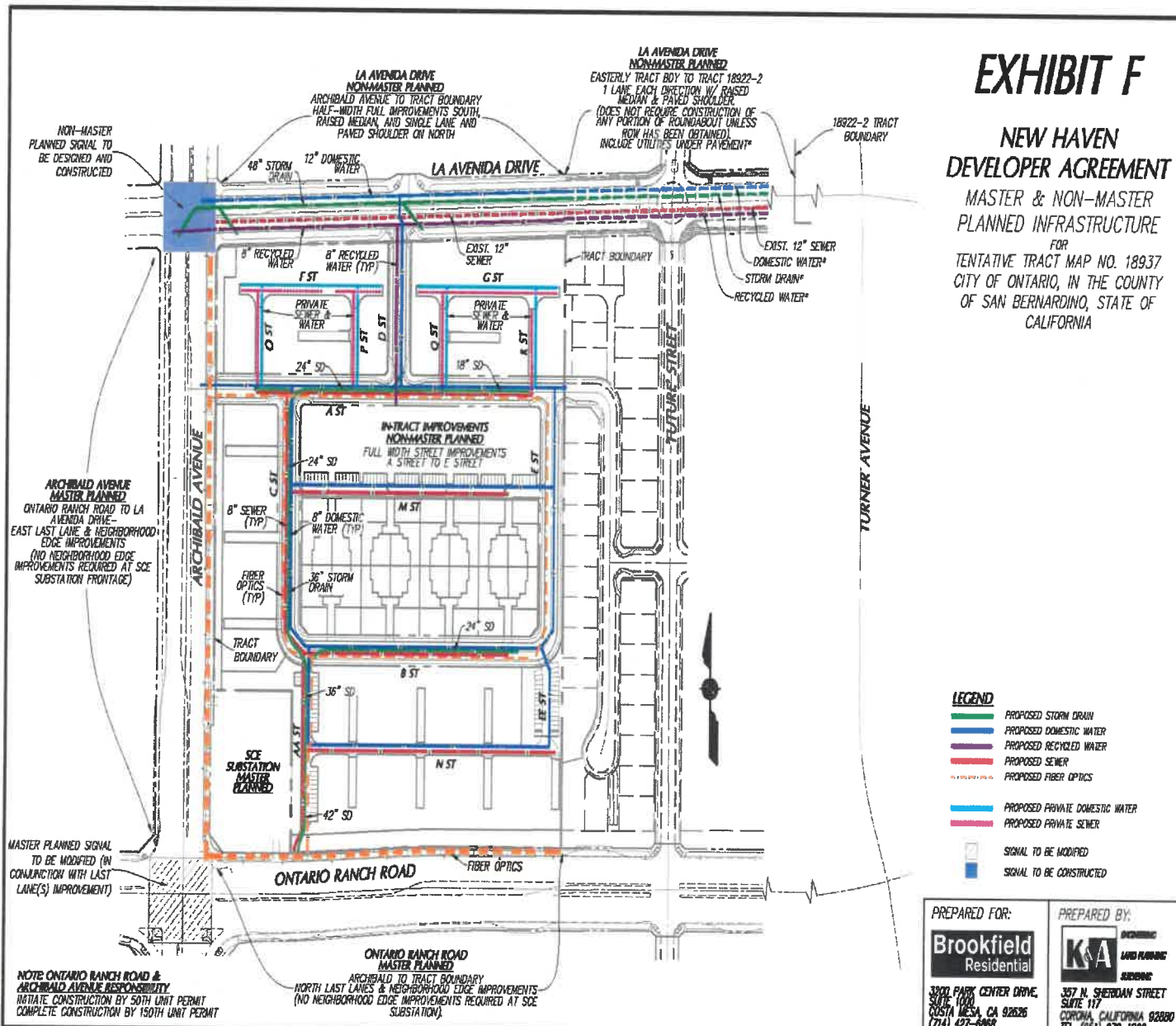
## NEW HAVEN DEVELOPER AGREEMENT

### MASTER & NON-MASTER PLANNED INFRASTRUCTURE

FOR  
TENTATIVE TRACT MAP NO. 18937  
CITY OF ONTARIO, IN THE COUNTY  
OF SAN BERNARDINO, STATE OF  
CALIFORNIA

### Required Infrastructure Improvements

### Exhibit "F"



<p>PREPARED FOR:</p> <p><b>Brookfield Residential</b></p> <p>3300 PARK CENTER DRIVE, SUITE 1000 COSTA MESA, CA 92626 (714) 427-6868</p>	<p>PREPARED BY:</p> <p><b>K&amp;A</b> ENGINEERING LAND PLANNING SERVICES</p> <p>357 N. SHERIDAN STREET SUITE 117 CORONA, CALIFORNIA 92880 TEL: (951) 279-1800</p>
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DATE: OCTOBER 2017

**Exhibit "G"**

**FORM OF PLUME DISCLOSURE LETTER**



**ONTARIO MUNICIPAL UTILITIES COMPANY**

**PAUL S. LEON**  
MAYOR

**DEBRA DORST-PORADA**  
MAYOR PRO TEM

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

**March 2017**

**AL C. BOLING**  
CITY MANAGER

**SHEILA MAUTZ**  
CITY CLERK

**JAMES R. MILHSER**  
TREASURER

**SCOTT BURTON**  
UTILITIES GENERAL MANAGER

**DISCLOSURE NOTICE**  
**SOUTH ARCHIBALD TRICHLOROETHYLENE PLUME**

Dear Property Owner/Developer/Applicant:

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

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

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

Further and current information may be found on the Regional Board's Geotracker website at [https://geotracker.waterboards.ca.gov/profile\\_report?global\\_id=T10000004658](https://geotracker.waterboards.ca.gov/profile_report?global_id=T10000004658).

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

# CITY OF ONTARIO

Agenda Report  
December 5, 2017

SECTION:  
CONSENT CALENDAR

**SUBJECT: AN ORDINANCE APPROVING A DEVELOPMENT AGREEMENT BETWEEN THE CITY OF ONTARIO AND LOYOLA PROPERTIES 1, LP, FOR THE POTENTIAL DEVELOPMENT OF UP TO 587 RESIDENTIAL UNITS (FILE NO. PMTT16-021/TPM 19787) ON 76.68 ACRES OF LAND WITHIN HIGH DENSITY RESIDENTIAL (HDR) DISTRICT OF PLANNING AREAS 7 AND 8 OF THE GRAND PARK SPECIFIC PLAN, LOCATED AT THE SOUTHEAST CORNER OF ONTARIO RANCH ROAD AND ARCHIBALD AVENUE (APN: 0218-241-31)**

**RECOMMENDATION:** That the City Council consider and adopt an ordinance approving a Development Agreement (File No. PDA17-001), on file with the Records Management Department, between the City of Ontario and Loyola Properties 1, LP, to establish the terms and conditions for the development of Tentative Parcel Map 19787 (File No. PMTT16-021).

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

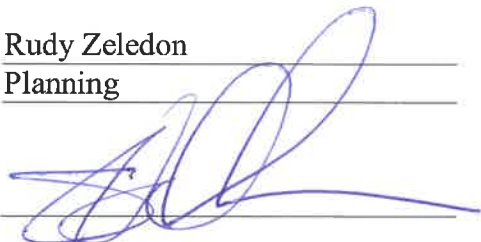
Invest in the City's Infrastructure (Water, Streets, Sewers, Parks, Storm Drains and Public Facilities)

Ensure the Development of a Well Planned, Balanced, and Self-Sustaining Community in the New Model Colony

**FISCAL IMPACT:** The proposed Development Agreement will provide funding from a community facilities district (CFD) for additional City services required to support the Grand Park Specific Plan development, thereby mitigating the increased cost associated with such services. In addition, the City will receive Public Service Funding fees plus development impact, compliance processing, licensing, and permitting fees.

**BACKGROUND:** On November 21, 2017, the City Council introduced an ordinance approving the Development Agreement. Loyola Properties 1, LP, ("Loyola") and the City recognize that the financial commitment required for construction in Ontario Ranch is substantial. To adequately forecast these costs and gain assurance that the project may proceed under the existing policies, rules and regulations, Loyola is entering into a Development Agreement with the City providing for the development of up to

**STAFF MEMBER PRESENTING:** Scott Murphy, Assistant Development Director

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

Submitted to Council/O.H.A. 12/05/2017  
Approved: \_\_\_\_\_  
Continued to: \_\_\_\_\_  
Denied: \_\_\_\_\_

12

587 residential units. The Development Agreement provides funding for new City expenses created by the project, including operational costs related to the review, approval and administration of the Loyola project, additional project related services, infrastructure and affordable housing requirements.

The Development Agreement proposes to include 76.88 acres of land that is within Tentative Parcel Map 19787, located within the High Density Residential (HDR) zoning district of Planning Areas 7 and 8 of the Grand Park Specific Plan as shown on Exhibit A (The Grand Park Specific Plan Land Use Map). The Development Agreement grants Loyola a vested right to develop Tentative Parcel Map 19787 as long as Loyola complies with the terms and conditions of the Grand Park Specific Plan and Environmental Impact Report.

The term of the Development Agreement is for ten years with a five year option. The main points of the agreement address funding for all new City expenses created by the project which include: Development Impact Fees (DIF) for construction of public improvements (i.e., streets and bridges, police, fire, open space/parks etc.); Public Service Funding to ensure adequate provisions of public services (police, fire and other public services); the creation of a Community Facilities District (CFD) for reimbursement of public improvements and maintenance of public facilities; and the Park/Open Space Policy Plan requirement of five acres per 1,000 projected population through park dedication and/or the payment of in-lieu fees. Other points addressed by the agreement include provisions for affordable housing, as required by the Policy Plan, through construction, rehabilitation, or by paying an in-lieu fee, and satisfaction of the Mountain View Elementary School District and Chaffey High School District school facilities requirements.

In considering the application at their meeting of October 24, 2017, the Planning Commission found that the Development Agreement was consistent with State law, The Ontario Plan, the City's Development Agreement policies, and other Development Agreements previously approved for Ontario Ranch developments and, with a 5 to 0 vote (Resolution No. PC17-083), recommended approval of the Development Agreement to the City Council.

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

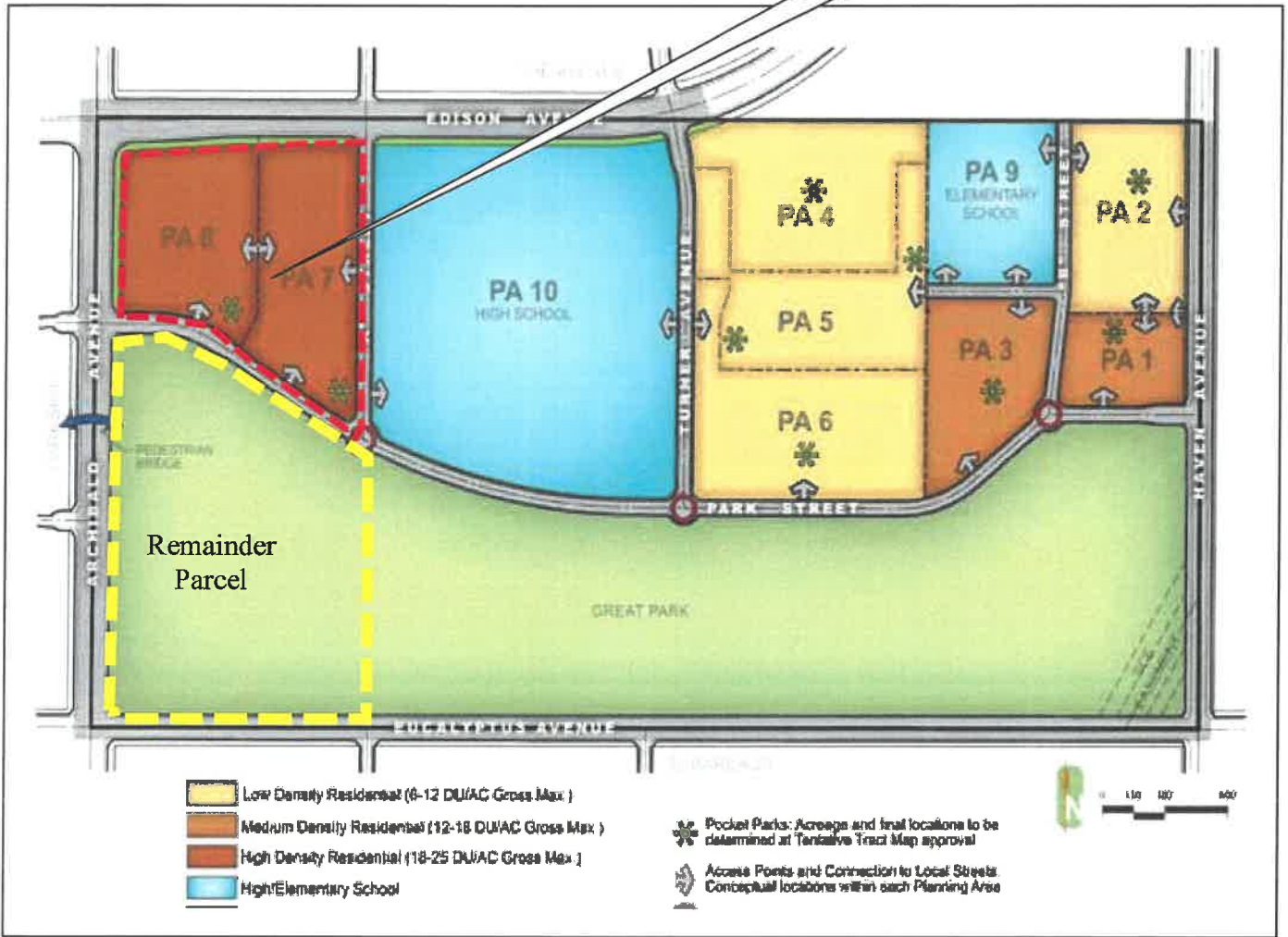
**AIRPORT LAND USE COMPATIBILITY PLAN (ALUCP) COMPLIANCE:** The project site is located within the Airport Influence Area of the Ontario International Airport (ONT), and has been found to be consistent with the policies and criteria set forth within the ALUCP for ONT.

**ENVIRONMENTAL REVIEW:** The environmental impacts of this project were previously reviewed in conjunction with the Grand Park Specific Plan, for which an Environmental Impact Report (SCH# 2012061057) was certified by the City Council on January 21, 2014. This application introduces no new significant environmental impacts. All previously adopted mitigation measures are be a condition of project approval and are incorporated herein by reference.

EXHIBIT "A"

# The Grand Park Specific Plan Land Use Plan

Project Site



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

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF ONTARIO, CALIFORNIA, APPROVING A DEVELOPMENT AGREEMENT FILE NO. PDA17-001, BETWEEN THE CITY OF ONTARIO AND LOYOLA PROPERTIES 1, LP, FOR THE POTENTIAL DEVELOPMENT OF UP TO 587 RESIDENTIAL UNITS (FILE NO. PMTT16-021/PM 19787) ON 76.68 ACRES OF LAND WITHIN HIGH DENSITY RESIDENTIAL (HDR) DISTRICT OF PLANNING AREAS 7 AND 8 OF THE GRAND PARK SPECIFIC PLAN, LOCATED AT THE SOUTHEAST CORNER OF ONTARIO RANCH ROAD AND ARCHIBALD AVENUE, AND MAKING FINDINGS IN SUPPORT THEREOF — APN: 0218-241-31.

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

“The Legislature finds and declares that:

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

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

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

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

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

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



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

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

WHEREAS, attached to this Ordinance, marked Exhibit "A" and incorporated herein by this reference, is the proposed Development Agreement between Loyola Properties 1, LP, and the City of Ontario, File No. PDA17-001, concerning those 76.68 acres of land within High Density Residential (HDR) district of Planning Areas 7 and 8 of the Grand Park Specific Plan, located at the southeast corner of Ontario Ranch Road and Archibald Avenue and as legally described in the attached Development Agreement. Hereinafter in this Ordinance, the Development Agreement is referred to as the "Development Agreement"; and

WHEREAS, on December 16, 2013, the Planning Commission of the City of Ontario conducted a duly noticed public hearing and issued Resolution PC13-082 recommending City Council certification of the Grand Park Specific EIR and Issued Resolution PC13-83 recommending approval of the Grand Park Specific Plan (File No. PSP12-001); and

WHEREAS, on January 21, 2014, the City Council of the City of Ontario certified the Grand Park Specific Plan EIR (SCH# 2012061057); and

WHEREAS, on February 4, 2014, the City Council of the City of Ontario adopted Ordinance No. 2985 approving the Grand Park Specific Plan; and

WHEREAS, the environmental impacts of this project were previously reviewed in conjunction with the Grand Park Specific Plan, for which an Environmental Impact Report (SCH# 2012061057) was certified by the City Council on January 21, 2014. This Application introduces no new significant environmental impacts. All previously adopted mitigation measures are be a condition of project approval and are incorporated herein by reference; and

WHEREAS, on October 24, 2017, the Planning Commission of the City of Ontario conducted a hearing to consider the Agreement and concluded said hearing on that date. After considering the public testimony, the Planning Commission voted 5 to 0 to recommend approval (Resolution No. 17-083) of the Development Agreement to the City Council; and

WHEREAS, on November 21, 2017, the City Council of the City of Ontario conducted a public hearing to consider the Agreement and concluded said hearing on that date; and

WHEREAS, all legal prerequisites to the adoption of this 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 previously adopted Grand Plan Specific Plan Environmental Impact Report (SCH# 2012061057) and supporting documentation. Based upon the facts and information contained in Grand Plan Specific Plan Environmental Impact Report (EIR) and supporting documentation, the City Council finds as follows:

(1) The environmental impacts of this project were previously reviewed in conjunction with the Environmental Impact Report (EIR) prepared for The Grand Park Specific Plan (SCH# 2012061057) that was adopted by the City Council on January 21, 2014. This application introduces no new significant environmental impacts; and

(2) The previous Grand Plan Specific Plan EIR (SCH# 2012061057) contains a complete and accurate reporting of the environmental impacts associated with the Project; and

(3) The previous Grand Plan Specific Plan EIR (SCH# 2012061057) was completed in compliance with CEQA and the Guidelines promulgated thereunder; and

(4) The previous Grand Plan Specific Plan EIR (SCH# 2012061057) reflects the independent judgment of the Planning Commission; and

(5) The proposed project will introduce no new significant environmental impacts beyond the Environmental Impact Report (EIR) prepared for The Grand Park Specific Plan (SCH# 2012061057) that was adopted by the City Council on January 21, 2014, and all mitigation measures previously adopted with the EIR, are incorporated herein by this reference.

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

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

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

(3) Does not contain new information of substantial importance that was not known and could not have been known with the exercise of reasonable diligence at the time the Environmental Impact Report (EIR) prepared for The Grand Park Specific Plan (SCH# 2012061057) that was adopted by the City Council on January 21, 2014, that shows any of the following:

(a) The project will have one or more significant effects not discussed in the Environmental Impact Report (EIR) prepared for The Grand Park Specific Plan (SCH# 2012061057) that was adopted by the City Council on January 21, 2014; or

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

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

(d) Mitigation measures or alternatives considerably different from those analyzed in the Environmental Impact Report (EIR) prepared for The Grand Park Specific Plan (SCH# 2012061057) that was adopted by the City Council on January 21, 2014, would substantially reduce one or more significant effects on the environment, but which the City declined to adopt.

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

**SECTION 4. *Ontario International Airport Land Use Compatibility Plan ("ALUCP") Compliance.*** The California State Aeronautics Act (Public Utilities Code Section 21670 et seq.) requires that an Airport Land Use Compatibility Plan be prepared for all public use airports in the State; and requires that local land use plans and individual development proposals must be consistent with the policies set forth in the adopted Airport Land Use Compatibility Plan. On April 19, 2011, the City Council of the City of Ontario approved and adopted the Ontario International Airport Land use Compatibility Plan ("ALUCP"), establishing the Airport Influence Area for Ontario International Airport ("ONT"), which encompasses lands within parts of San Bernardino, Riverside, and Los Angeles Counties, and limits future land uses and development within the Airport Influence Area, as they relate to noise, safety, airspace protection, and overflight impacts of current and future airport activity. As the decision-making body for the Project, the City Council has reviewed and considered the facts and information contained in the

Application and supporting documentation against the ALUCP compatibility factors, including [1] Safety Criteria (ALUCP Table 2-2) and Safety Zones (ALUCP Map 2-2), [2] Noise Criteria (ALUCP Table 2-3) and Noise Impact Zones (ALUCP Map 2-3), [3] Airspace protection Zones (ALUCP Map 2-4), and [4] Overflight Notification Zones (ALUCP Map 2-5). As a result, the Planning Commission, therefore, finds and determines that the Project, when implemented in conjunction with the conditions of approval, will be consistent with the policies and criteria set forth within the ALUCP.

**SECTION 5. *Concluding Facts and Reasons.*** Based upon substantial evidence presented to the City Council during the above-referenced hearing on November 21, 2017, including written and oral staff reports, together with public testimony, the City Council hereby specifically finds as follows:

a. The Development Agreement applies to 76.68 acres of land generally located along the southeast corner of Ontario Ranch Road and Archibald Avenue, within the High Density Residential (HDR) district of Planning Areas 7 and 8 of the Grand Park Specific Plan, and is presently vacant and previously used for dairy and agricultural uses; and

b. The property to the north is located within Planning Area 7 (Low Density Residential) of the Avenue Specific Plan and developed with SCE Substation and vacant land. The property to the south is within Planning Area 3 (Conventional Medium Lot) of the Subarea 29 Specific Plan and is currently vacant. The property to the east is within Planning Area 10 (Future High School) of the Grand Park Specific Plan and is vacant. The property to the west is within the Planning Area 21 of the Parkside Specific Plan (Commercial) and is currently vacant; and

c. The Development Agreement establishes parameters for the development of Tentative Parcel Map 19787 within Planning Areas 7 and 8 of the Grand Park Specific Plan for the potential development of 587 residential units. The Development Agreement also grants Loyola Properties 1, LP, the right to develop, the ability to quantify the fees; and establish the terms and conditions that apply to those projects. These terms and conditions are consistent with The Ontario Plan Policy Plan (General Plan), design guidelines and development standards for the Grand Park Specific Plan.

d. The Development Agreement focuses on Tentative Parcel Map 19787 that proposes to subdivide 76.68 acres of land into 4 parcels and 2 letter lots for public road purposes and a remainder parcel for the future portion of the Great Park, within the High Density Residential (HDR) district of Planning Areas 7 and 8 of the Grand Park Specific Plan. The subdivision will allow the orderly build-out of the backbone infrastructure and the future "B" Maps for the subdivision of residential neighborhoods and internal circulation. The parcels range from 6.03 gross acres to 8.41 gross acres; and

e. The Development Agreement will provide for the development for the potential development of 587 residential units as established for Planning Areas 7 and 8 of the Grand Park Specific Plan; and

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

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

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

i. This Development Agreement will not be materially injurious or detrimental to the adjacent properties and will have a significant impact on the environment or the surrounding properties. The environmental impacts of this project were previously reviewed in conjunction with the Environmental Impact Report (EIR) prepared for The Grand Park Specific Plan (SCH# 2012061057) that was adopted by the City Council on January 21, 2014. This application introduces no new significant environmental impacts; and

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

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

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

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

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

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

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

PASSED, APPROVED, AND ADOPTED this 5<sup>th</sup> day of December 2017.

---

PAUL S. LEON, MAYOR

ATTEST:

---

SHEILA MAUTZ, CITY CLERK

APPROVED AS TO FORM:

---

BEST BEST & KRIEGER LLP  
CITY ATTORNEY

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

I, SHEILA MAUTZ, City Clerk of the City of Ontario, DO HEREBY CERTIFY that foregoing Ordinance No. 3086 was duly introduced at a regular meeting of the City Council of the City of Ontario held November 21, 2017 and adopted at the regular meeting held December 5, 2017 by the following roll call vote, to wit:

AYES:            COUNCIL MEMBERS:

NOES:           COUNCIL MEMBERS:

ABSENT:         COUNCIL MEMBERS:

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

(SEAL)

I hereby certify that the foregoing is the original of Ordinance No. 3086 duly passed and adopted by the Ontario City Council at their regular meeting held December 5, 2017 and that Summaries of the Ordinance were published on November 28, 2017 and December 12, 2017, in the Inland Valley Daily Bulletin newspaper.

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

(SEAL)

**ATTACHMENT A:**

**Development Agreement**

*(Document to follow this page)*



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

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

Exempt from Fees Per Gov. Code § 6301

---

Space above this line for Recorder's Use Only

**DEVELOPMENT AGREEMENT**

**By and Between**

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

**And the**

**Ronald and Kristine Pietersma Family Trust  
and  
Loyola Properties I L.P.**

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

**San Bernardino County, California**

## **DEVELOPMENT AGREEMENT NO. PDA17-001**

This Development Agreement (hereinafter "Agreement") is entered into effective as of the \_\_\_\_ day of \_\_\_\_\_, 2017 by and among the City of Ontario, a California municipal corporation (hereinafter "CITY"), and the Ronald and Kristine Pietersma Family Trust and Loyola Properties I L.P. a California limited partnership (hereinafter referenced jointly as "OWNER"):

### RECITALS

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

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

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

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

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

WHEREAS, all of the procedures of the California Environmental Quality Act have been met with respect to the Project and the Agreement in that Grand Park Specific Plan Environmental Impact Report and all addendums (the "EIR"). The City Council found and determined that the EIR was prepared in accordance with the requirements of the California Environmental Quality Act and adequately describes the impacts of the project described in the EIR, which included consideration of this Agreement; and

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

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

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

WHEREAS, this Agreement will eliminate uncertainty in planning and provide for the orderly development of the Property, ensure progressive installation of necessary improvements, provide for public services appropriate to the development of the Project, and generally serve the purposes for which development agreements under Sections 65864 et seq. of the Government Code are intended; and

WHEREAS, OWNER has incurred and will in the future incur substantial costs in order to assure development of the Property in accordance with this Agreement; and

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

WHEREAS, the Ronald and Kristine Pietersma Family Trust and Loyola Properties I L.P. jointly referenced as "OWNER" represent that they are the owners of the fee simple title to the Property; and,

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

WHEREAS, the City of Ontario and NMC Builders LLC have previously entered into the First Amended and Restated Agreement for the Financing and Construction of Limited Infrastructure Improvements to Serve the Easterly Portion of the New Model Colony in August 2012 and such Agreement requires that the City reserve exclusively for Members of NMC Builders; and,

WHEREAS, Certificates of Net Water Availability made available through the construction of the Phase 1 water system Improvements are provided to NMC Builders LLC Members only and the provisions of the Construction Agreement Amendment require that the City shall not issue building permits or certificates of occupancy for the area of development within the New Model Colony served by the water system improvements funded by NMC Builders LLC, except to the bearer of a Certificate of Net MDD Water Availability; and,

WHEREAS, OWNER acknowledge that OWNER shall be required to become a Member of NMC Builders and OWNER Property is a Phase 2 Property under the provisions of the Amendment to the Construction Agreement between the City and NMC Builders and OWNER shall be required to participate in the funding of the Phase 2 Water Improvements in order to receive the required Certificate of Phase 2 Net Water Availability; and

WHEREAS, OWNERS' Property is defined in the Amendment to the Construction Agreement between the CITY and NMC Builders as a "Phase 2 Water Property" as such, shall be required to provide funding for CITY's future construction of the "Phase 2 Water Improvements" which will result in the availability of additional Net MDD Water Availability required for the development; and,

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

## COVENANTS

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

### 1. DEFINITIONS AND EXHIBITS.

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

1.1.1 "Agreement" means this Development Agreement.

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

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

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

reconstruction or redevelopment of any building, structure, improvement or facility after the construction and completion thereof.

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

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

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

1.1.7 "Development Impact Fee" means a monetary exaction, other than a tax or special assessment, whether characterized as a fee or a tax and whether established for a broad class of projects by legislation of general applicability or imposed on a specific project on an ad hoc basis, that is charged by a local agency to the applicant in connection with approval of a development project for the purpose of defraying all or a portion of the cost of public facilities related to the development project, and, for purposes of this Agreement only, includes fees collected under development agreements adopted pursuant to Article 2.5 of the Government Code (commencing with Section 65864) of Chapter 4, For purposes of this Agreement only, "Development Impact Fee" shall not include processing fees and charges imposed by CITY to cover the estimated actual costs to CITY of processing applications for Development Approvals or for monitoring compliance with any Development Approvals granted or issued, including, without limitation, fees for zoning variances; zoning changes; use permits; building inspections; building permits; filing and processing applications and petitions filed with the local agency formation commission or conducting preliminary proceedings or proceedings under the Cortese-Knox-Hertzberg Local Government Reorganization Act of 2000, Division 3 (commencing with Section 56000) of Title 5 of the Government Code; the processing of maps under the provisions of the Subdivision Map Act, Division 2 (commencing with Section 66410) of Title 7 of the Government Code; or planning services under the

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

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

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

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

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

1.1.12 “Improvement” or “Improvements” means those public improvements required to support the development of the Project as described in the Parcel Map conditions for Parcel Map No. 19787 and as further described in Exhibit “F” (the “Infrastructure Improvements Exhibit”).

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

- (a) the conduct of businesses, professions, and occupations;
- (b) taxes and assessments;
- (c) the control and abatement of nuisances;
- (d) the granting of encroachment permits and the conveyance of similar rights and interests that provide for the use of or the entry upon public property;

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

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

1.1.15 "General Plan" means the General Plan adopted on January 27, 2010.

1.1.16 "Model Units" means a maximum of twenty-five (25) residential units constructed by OWNER prior to the construction of any Production units and not offered for sale and occupancy for a period of time after the issuance of permits for Production Units.

1.1.17 "Non-Residential Units" means the non-residential buildings constructed by OWNER on the Property.

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

1.1.19 "Phase 2 Water EDUs" means the number of equivalent dwelling units or non-residential square footage assigned to OWNER upon payment to CITY of the Phase 2 Water Participation Fee for the Project and evidenced by the issuance by CITY of a Certificate of Phase 2 Net MDD Availability in the form attached as Exhibit G.

11.20 "Phase 2 Water Improvements" means the future water infrastructure Improvements required for the issuance by CITY of the "Water Availability Equivalents" (WAE) for the Project.

1.1.21 "Phase 2 Water Participation Fee" means the fee paid to CITY upon CITY to fund the Property's respective share of the projected costs of the design and construction of the Phase 2 Water Improvements by CITY.

1.1.22 "Production Unit(s)" means all residential units constructed for sale and occupancy by OWNER and, unless specified otherwise, excludes a specified number of Model Units constructed by OWNER for promotion of sales.

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

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

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

1.1.26 "Specific Plan" means that certain specific plan adopted by the City Council, and entitled, "Grand Park Specific Plan."

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

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

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

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

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

Exhibit "A" — Legal Description of the Property.

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

Exhibit "C" — Existing Development Approvals.

Exhibit "D" — Existing Land Use Regulations.

Exhibit "E" — Conceptual Phasing Plan

Exhibit "F" — Infrastructure Improvements Exhibit for Parcel Map No. 19787

Exhibit "F-1- Phasing Plan of Improvements Exhibit for Parcel Map No. 19787

Exhibit "G" – Form of Certificate of Net MDD to be issued by CITY

Exhibit "H" – Form of Certificate of DIF Credit to be issued by CITY

Exhibit "I" - Form of Disclosure letter



## 2. GENERAL PROVISIONS.

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

2.2 Ownership of Property. OWNER represents and covenants that it is the owner of the fee simple title to the Property.

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

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

(b) In non-mixed use projects, the OWNER shall have obtained, as applicable, building permits for at least forty percent (40%) of the actual number of residential units permitted under this Agreement; and in mixed use areas of projects, the OWNER shall have obtained, as applicable, building permits for at least forty (40%) percent of the non-residential floor area permitted under this Agreement and at least forty (40%) percent of the actual number of residential units permitted under this Agreement; and

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

## 2.4 Assignment.

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

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

- (b) Concurrent with any such sale, transfer or assignment, or within fifteen (15) business days thereafter, OWNER shall notify CITY's City Manager, in writing, of such sale, transfer or assignment and shall provide CITY with: (1) an executed agreement, in a form reasonably acceptable to CITY, by the purchaser, transferee or assignee and providing therein that the purchaser, transferee or assignee expressly and unconditionally assumes all the duties and obligations of OWNER under this Agreement with respect to the portion of the Property so sold, transferred or assigned; and (2) the payment of the applicable processing charge to cover the CITY's review and consideration of such sale, transfer or assignment.
- (c) Any sale, transfer or assignment not made in strict compliance with the foregoing conditions shall constitute a default by OWNER under this Agreement. Notwithstanding the failure of any purchaser, transferee or assignee to execute the agreement required by Paragraph (b) of this Subsection 2.4.1, the burdens of this Agreement shall be binding upon such purchaser, transferee or assignee, but the benefits of this Agreement shall not inure to such purchaser, transferee or assignee until and unless such agreement is executed. The City Manager shall have the authority to review, consider and either approve, conditionally approve, or deny any proposed sale, transfer or assignment that is not made in compliance with this section 2.4.

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

- (a) OWNER no longer has a legal or equitable interest in all or any part of the portion of the Property sold, transferred or assigned.
- (b) OWNER is not then in default under this Agreement.
- (c) OWNER has provided CITY with the notice and executed agreement required under Paragraph (b) of Subsection 2.4.1 above.
- (d) The purchaser, transferee or assignee provides CITY with security equivalent to any security previously provided by OWNER to secure performance of its obligations hereunder.

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

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

- (b) The owner of the Retained Property shall be liable for the performance of all obligations of OWNER with respect to Retained Property, but shall have no further obligations with respect to the transferred property.
- (c) The assignee's exercise, use and enjoyment of the Property or portion thereof shall be subject to the terms of this Agreement to the same extent as if the assignee were the OWNER.

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

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

- (a) The lot has been finally subdivided and individually (and not in "bulk") sold or leased (for a period longer than one year) to a member of the public or other ultimate user; and,
- (b) A certificate of occupancy has been issued for a building on the lot, and the fees set forth under Section 4 of this Agreement have been paid.

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

initiate such proceedings at least sixty (60) days in advance of the giving the public notice of intention to consider the amendment or cancellation.

2.5.1 Amendment To Reflect Consistency With Future Amendments to the Construction Agreement. To the extent any future amendment to the Construction Agreement provides for modifications to rights or obligations that differ from or alter the same or similar rights or obligations contained in this Development Agreement, OWNER reserves the right to request an amendment to the Development Agreement to reflect any or all of such modifications.

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

- (a) Expiration of the stated term of this Agreement as set forth in Section 2.3.
- (b) Entry of a final judgment setting aside, voiding or annulling the adoption of the ordinance approving this Agreement.
- (c) The adoption of a referendum measure overriding or repealing the ordinance approving this Agreement.
- (d) Completion of the Project in accordance with the terms of this Agreement including issuance of all required occupancy permits and acceptance by CITY or applicable public agency of all required dedications.

Termination of this Agreement shall not constitute termination of any other land use entitlements approved for the Property. Upon the termination of this Agreement, no party shall have any further right or obligation hereunder except with respect to any obligation to have been performed prior to such termination or with respect to any default in the performance of the provisions of this Agreement which has occurred prior to such termination or with respect to any obligations which are specifically set forth as surviving this Agreement.

2.7 Notices.

- (a) As used in this Agreement, "notice" includes, but is not limited to, the communication of notice, request, demand, approval, statement, report, acceptance, consent, waiver, appointment or other communication required or permitted hereunder.
- (b) All notices shall be in writing and shall be considered given either: (i) when delivered in person, including, without limitation, by courier, to the recipient named below; or (ii) on the date of delivery shown on the return receipt, after deposit in the United States mail in a sealed envelope as either registered or certified mail with return receipt requested, and postage and postal charges prepaid, and addressed to the recipient named below. All notices shall be addressed as follows:

If to CITY:

Scott Ochoa, City Manager  
City of Ontario  
303 East "B" Street  
Ontario California, California 91764

with a copy to:

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

If to OWNERS:

Pietersma Family Trust and Loyola Properties 1 L.P.  
C/O RCCD Inc.  
Attn: Jason Lee, Applicant  
8101 E. Kaiser Blvd.  
Suite 140  
Anaheim Hills, CA 92808

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

### 3. DEVELOPMENT OF THE PROPERTY.

3.1 Rights to Develop. Subject to the terms of this Agreement including the Reservations of Authority, OWNER shall have a vested right to develop the Property in accordance with, and to the extent of, the Development Plan. The Project shall remain subject to all Subsequent Development Approvals required to complete the Project as contemplated by the Development Plan. Except as otherwise provided in this Agreement, the permitted uses of the Property, the density and intensity of use, the maximum height and size of proposed buildings, and provisions for reservation and dedication of land for public purposes shall be those set forth in the Development Plan.

3.2 Effect of Agreement on Land Use Regulations. Except as otherwise provided under the terms of this Agreement including the Reservations of Authority, the rules, regulations and official policies governing permitted uses of the Property, the density and intensity of use of the Property, the maximum height and size of proposed

buildings, and the design, improvement and construction standards and specifications applicable to development of the Property shall be the Existing Land Use Regulations. In connection with any Subsequent Development Approval, CITY shall exercise discretion in accordance with the same manner as it exercises its discretion under its police powers, including the Reservations of Authority set forth herein; provided however, that such discretion shall not prevent development of the Property for the uses and to the density or intensity of development set forth in this Agreement.

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

3.4 Conceptual Phasing Plan. Development of the Property is contingent in part on the phasing of infrastructure improvements over which the OWNER has control. Attached hereto as Exhibit "E" is a conceptual phasing plan which is based on the OWNER's best estimate of the timing of the completion of needed infrastructure improvements. The conceptual phasing plan is an estimate only and is subject to the same timing constraints and the exercise of OWNER's business judgment as set forth in Section 3.3 above. OWNER and CITY agree that the development of any one of the Parcels in Parcel Map 19787 may be developed prior to, concurrent with, or after the development of any of the other Parcels in Parcel Map 19787, subject to completion of the infrastructure improvements required for the respective Parcel Map as described in Section 3.7, and in Exhibit F and as determined by the City Engineer.

3.4.1 Attached hereto as Exhibit "F" is a description of the Infrastructure Improvements required for the development of the portion of the Property included in Parcel Map No. 19787 ("the Infrastructure Improvement Exhibits").

3.5 Changes and Amendments. The parties acknowledge that refinement and further development of the Project will require Subsequent Development Approvals and may demonstrate that changes are appropriate and mutually desirable in the Existing Development Approvals. In the event OWNER finds that a change in the Existing Development Approvals is necessary or appropriate, OWNER shall apply for a Subsequent Development Approval to effectuate such change and CITY shall process and act on such application in accordance with the Existing Land Use Regulations, except as otherwise provided by this Agreement including the Reservations of Authority. If approved, any such change in the Existing Development Approvals shall be incorporated herein as an addendum to Exhibit "C", and may be further changed from

time to time as provided in this Section. Unless otherwise required by law, as determined in CITY's reasonable discretion, a change to the Existing Development Approvals shall be deemed "minor" and not require an amendment to this Agreement provided such change does not:

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

### 3.6 Reservations of Authority.

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

- (a) Processing fees by CITY to cover costs of processing applications for development approvals or for monitoring compliance with any development approvals;
- (b) Procedural regulations relating to hearing bodies, petitions, applications, notices, findings, records and any other matter of procedure;
- (c) Regulations, policies and rules governing engineering and construction standards and specifications applicable to public and private improvements, including all uniform codes adopted by the CITY and any local amendments to those codes adopted by the CITY; provided however that, OWNER shall have a vested right to develop the Property in accordance with, and to the extent of, the standards and specifications that are expressly identified in the Specific Plan;
- (d) Regulations that may conflict with this Agreement and the Development Plan but that are reasonably necessary to protect the residents of the project and/or of the immediate community from a condition perilous to their health or safety;

- (e) Regulations that do not conflict with those rules, regulations and policies set forth in this Agreement or the Development Plan;
- (f) Regulations that may conflict but to which the OWNER consents.

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

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

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

3.7 Public Infrastructure and Utilities. OWNER is required by this Agreement to construct any public works facilities which will be dedicated to CITY or any other public agency upon completion, and if required by applicable laws to do so, OWNER shall perform such work in the same manner and subject to the same requirements as would be applicable to CITY or such other public agency should it have undertaken such construction. As a condition of development approval of any portion of the Property covered by Parcel Map No. 19787, OWNER shall connect the portion of the Project covered by Parcel Map No. 19787 to all utilities necessary to provide adequate water, recycled water, sewer, storm drain, fiber optic communications, gas, electric, and other utility service to the portion of the Project covered by Parcel Map No. 19787.



As a further condition of development approval for the Project, OWNER shall contract with the CITY for CITY-owned or operated utilities for this purpose, for such price and on such terms as may be available to similarly situated customers in the CITY.

- 3.7.1 OWNER agrees that development of the portion of the Project within the boundaries of Parcel Map No. 19787 shall require the construction of, at OWNER's sole cost and expense, Storm Drain facilities along Eucalyptus Avenue from the eastern Project limits to the existing facilities in Archibald Avenue, and as further described in the attached Exhibit F.
- 3.7.2 OWNER agrees that development of the portion of the Project within the boundaries of Parcel Map No. 19787 shall require the construction, at OWNER's sole cost and expense, of street improvements on Ontario Ranch Road, "A" Street, Grand Park Street, Archibald Avenue and Eucalyptus Avenue. Such street improvements shall include two signalized intersections; one on Ontario Ranch Road and "A" Street and one at the intersection of Grand Park Street and Archibald Avenue. Such improvements shall also include modifications to the traffic signal at Eucalyptus Avenue and Archibald Avenue. All such street improvements shall also be as further described in the attached Exhibit F.
- 3.7.3. OWNER agrees that development of the Property shall require the extension of permanent master planned water and recycled water utility infrastructure, at OWNER's sole cost and expense, as described in Exhibit F consisting generally of the construction of the extension of permanent master planned water and recycled water utility infrastructure to serve the Property. OWNER agrees that no building permits shall be issued by CITY for Non-Residential Buildings or Production Units within the boundaries of Tract 19787 prior to completion of the water and recycled water Improvements as described in Exhibit F. OWNER also agrees that recycled water shall be available and utilized by OWNER for all construction-related water uses including prior to, and during, any grading of the Property.
- 3.7.4 OWNER agrees that NMC Builders shall be responsible for funding a portion of the design and construction of an additional extension of master planned recycled water infrastructure in Riverside and Haven Avenues to be constructed by CITY. These master planned recycled water Improvements shall also serve the Project. OWNER shall deposit, or shall have deposited, with NMC Builders an amount equal to the OWNER's capital contribution for the design and construction of the NMC Builders portion of the recycled water improvements in Riverside and Haven Avenues known as the "Phase 2 Recycled Water Improvements" within 30 days after CITY requests such funds from NMC Builders. If OWNER has not deposited such amount, with NMC Builders within 30 days after CITY requests such funds from NMC Builders then CITY shall be entitled to withhold issuance of any further permits for the Project (whether discretionary or ministerial) unless and until OWNER deposits the amount of OWNER's capital contribution with NMC Builders for the design and construction

of the NMC Builders portion of the Phase 2 Recycled Water System Improvements.

- 3.7.5 OWNER agrees that development of the Property shall require the extension of permanent master planned sewer infrastructure, at OWNER's sole cost and expense as described in the attached Exhibit F consisting generally of the construction of the extension of sewer infrastructure in to serve the Property and as further described in the attached Exhibits F.
- 3.7.6 OWNER agrees that development of the portion of the Property within the boundaries of Parcel Map 19787 shall require the extension of permanent master planned fiber optic communications infrastructure, at OWNER's sole cost and expense, as described in the attached Exhibit F, consisting generally of the construction of the extension of fiber optic communications infrastructure to serve the portion of the Property within the boundaries of Parcel Map 19787.
- 3.7.7 CITY agrees that OWNER may separate the construction of the Improvements described in Section 3.7.1 through Section 3.7.6 above into two (2) phases of construction as shown in the attached Exhibit "F-1" "Phasing Plan of Improvements" attached hereto and incorporated herein. Notwithstanding the above, OWNER agrees that the portion of the improvements to the areas described on the attached Exhibit "F-1" as the phase 1 improvements shall be completed prior to OWNER requesting and CITY issuance of the first building permit for any Production Unit for the Property. CITY's agreement to issue building permits for Production Units prior to OWNER's completion of the improvements shown as the phase 2 improvements on Exhibit "F-1" is conditioned upon OWNER's compliance with the following conditions:
- a. Prior to, and as a condition precedent to, OWNER requesting and CITY's granting of building permits for the two hundred fiftieth (250<sup>th</sup>) Production Unit, including permits for the Model Units, OWNER shall initiate the construction of the improvements shown on Exhibit F-1 as the phase 2 improvements, including improvements to, in or adjacent to, Eucalyptus Avenue and Grand Park Street, as shown in Exhibit "F" and Exhibit "F-1".
- b. OWNER shall diligently pursue construction of the phase 2 improvements and shall complete the construction of the phase 2 improvements and shall have requested CITY acceptance of the phase 2 improvements as shown in Exhibit "F-1" prior to OWNER requesting that CITY issue a building permit for the three hundred fiftieth (350<sup>th</sup>) Production Unit, including permits for Model Units.
- c. OWNER shall provide periodic written progress reports to CITY commencing ninety (90) days after the OWNER initiates construction of the phase 2 improvements and each ninety (90) days thereafter regarding the progress of the construction of the phase 2 improvements until such Improvements are accepted by CITY.

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

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

3.8.2 Owner's Option to Terminate Proceedings. CITY shall provide written notice to OWNER no later than fifteen (15) days prior to making an offer to the owner of the Non-Construction Agreement Offsite Property. At any time within that fifteen (15) day period, OWNER may, at its option, notify CITY that it wants CITY to cease all acquisition proceedings with respect to that Non-Construction Agreement Offsite Property, whereupon CITY shall cease such proceedings. CITY shall provide written notice to OWNER no later than fifteen (15) days prior to the date of the hearing on CITY'S intent to consider the adoption of a resolution of necessity as to any Non-Construction Agreement Offsite Property.

At any time within that fifteen (15) day period, OWNER may, at its option, notify CITY that it wants CITY to cease condemnation proceedings, whereupon CITY shall cease such proceedings. If OWNER does not notify CITY to cease condemnation proceedings within said fifteen (15) day period, then the CITY may proceed to consider and act upon the Non-Construction Agreement Offsite Property resolution of necessity. If CITY adopts such resolution of necessity, then CITY shall diligently institute condemnation proceedings and file a complaint in condemnation and seek an order of immediate possession with respect to the Non-Construction Agreement Offsite Property.

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

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

#### 4. PUBLIC BENEFITS.

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

#### 4.2 Development Impact Fees.

4.2.1 Amount of Development Impact Fee. Development Impact Fees (DIF) shall be paid by OWNER. The Development Impact Fee amounts to be paid by OWNER shall be the amounts that are in effect at the time such amounts are due.

Nothing contained in this Agreement shall affect the ability of the CITY to impose new Development Impact Fees or amend the amounts of existing Development Impact Fees. Additionally, nothing contained in this Agreement shall affect the ability of other public agencies that are not controlled by CITY to impose and amend, from time to time, Development Impact Fees established or imposed by such other public agencies, even though such Development Impact Fees may be collected by CITY.

- 4.2.2 Time of Payment. The Development Impact Fees required pursuant to Subsection 4.2.1 shall be paid to CITY prior to the issuance of building permit for each applicable residential or other unit, except for the Open Space and Habitat Acquisition Development Impact fee, which shall be paid by OWNER to CITY prior to the issuance of a grading permit. Deferral of the payment of Development Impact Fees may be granted pursuant to a separate agreement approved by City pursuant to City policy.
- 4.2.3 Parkland and Quimby Act Fees. Pursuant to the General Plan (OntarioPlan) Goal PR1, Policy PR1-5 (achievement of a park standard of 5 acres of parkland per 1,000 residents) OWNER shall provide improved parks, developed in accordance with the City's park standards in an amount equal to two (2) acres per 1,000 of projected population without credit, reimbursement, offset or consideration from City. Such areas shall either be dedicated to the City or transferred to a homeowner's association. If approved by the City Manager, OWNER may satisfy this requirement through the development of non-public recreation facilities such as private recreational clubhouses or pool facilities. Credit for such private recreational facilities areas shall be limited to a maximum of 50% of the foregoing park development requirement. If OWNER's Project does not provide dedicated and developed park acreage equal to two (2) acres per 1,000 projected population, OWNER shall pay a fee in-lieu equal to the per acre estimated costs of acquisition and development of parkland in the City's Development Impact Fee for the calculated park acreage deficiency. Such in-lieu fee shall be due and payable within 10 days following the issuance of the first building permit for a Production Unit issued to OWNER.
- 4.2.4 Acquisition of Grand Park Property. The Grand Park acreage identified in Tract Number 18662 shall be transferred to the CITY as a "Non-Program Interest" as provided in Section 3.6 of the Construction Agreement Amendment. CITY shall acquire, pursuant to a separate acquisition agreement with OWNER, at the Fair Market Value as set forth in Section 3.6.2 of the Construction Agreement Amendment. Compensation to OWNER for such property may be in the form of Development Impact Fee Credit for use by OWNER as a credit against OWNER's Development Impact Fee obligation in the Parkland Facilities Development Fee category or other form of compensation paid directly to OWNER, as stated in the separate acquisition agreement.

4.3 Responsibility for Construction of Public Improvements.

4.3.1 Timely Construction of Public Infrastructure. The phasing of the areawide infrastructure construction within the Ontario Ranch area will be as approved by the CITY. OWNER shall be responsible, at OWNER's sole cost and expense, for the timely construction and completion of all public infrastructure required for the portion of the Project within the boundaries of Parcel Map 19787 as shown on the attached Exhibit F. OWNER shall also be responsible for the construction and completion of any and all tentative parcel map conditions. Unless otherwise specified in the Subdivision Agreement/Parcel Map conditions, all other required Improvements for each Parcel Map, and all subsequent Parcel or Tract Maps for the Property shall be completed and operational prior to, and as a condition precedent to, OWNER requesting and CITY's granting of the first building permit for a Non-Residential Unit or for Production Units for any such Parcel Map or future Tract Map. All Infrastructure and Improvements shall be completed as required by the Subdivision Agreement/Parcel Map conditions for Parcel Map Nos. 19787 and as required by any future Tract Maps for the Property. Notwithstanding the above, OWNER and CITY agree that the development of any one of the Parcels in Parcel Map 19787 may be developed prior to, concurrent with, or after the development of any of the other Parcels in Parcel Map 19787, subject to completion of the conditions of approval for the Parcel Map as determined by the City Engineer.

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

4.3.3 Construction of DIF Program Infrastructure (Non-Construction Agreement). To the extent OWNER is required to construct and completes construction of public improvements that are included in CITY's Development Impact Fee Program and such public improvements are not included the Construction Agreement between CITY and NMC Builders LLC, CITY agrees that once OWNER has become a Member of NMC Builders LLC, CITY shall issue DIF Credit in accordance with the provisions of a separate Fee Credit Agreement between CITY and OWNER. DIF Credit issued to OWNER to offset OWNER's DIF payment obligations shall also be subject to the provisions of a separate Fee Credit Agreement. CITY and OWNER agree that the Fee Credit Agreement between CITY and OWNER shall comply with CITY's adopted policies applicable to such agreements.

4.4 Affordable Housing Requirement.

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

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

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

4.4.2.2 Rehabilitation. If OWNER elects to fully or partially satisfy the affordable housing requirement by the substantial rehabilitation of existing residential units in the City, it shall substantially rehabilitate and restrict the affordability of, the number of residential units specified in Section 4.4.1, provided that such units shall be provided elsewhere within the City. The rehabilitation work shall be

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

4.4.2.3 In-Lieu Fee. If OWNER has not fully complied with the requirements of Section 4.4.1 by providing the minimum number of affordable units through the construction of new affordable units or by the substantial rehabilitation of existing units, shall pay an **“Affordability In-Lieu Fee”**. If OWNER has not provided any affordable residential units by construction or rehabilitation, the Affordability In-Lieu fee shall be equal to Two Dollars Forty-Three Cents (\$2.43) per square foot of residential development within OWNER’s Project or, if pre-paid as set forth below, Two Dollars Thirteen Cents (\$2.13) per square foot of residential development within OWNER’s Project. If OWNER has partially complied with the requirements of Section 4.4.1 by construction or rehabilitation of less than the minimum number of units, then the Affordability In-lieu Fee shall be recalculated and reduced in consideration of the number and type of affordable units provided. The Affordability In-Lieu Fee shall be paid by OWNER to City no later than prior to the issuance of each building permit within OWNER’s Project based on the square footage of the residential unit for which such building permit is sought; provided however that OWNER may, at OWNER’s election, pre-pay such Affordability In-Lieu Fee by paying such Affordability In-Lieu Fee within thirty (30) days following the earliest discretionary approval by the City for OWNER’s Project, including, but not limited to, any general plan amendment, specific plan adoption, development agreement, tentative map approval, variance, conditional use permit, or resolution of intention to form any public financing mechanism. The Two Dollars, Forty-Three Cents (\$2.43) and the Two Dollars Thirteen Cents (\$2.13) per square foot amounts shall automatically be increased annually, commencing on July 1, 2018, and automatically each July 1 thereafter. Such adjustment shall be based on the percentage increase (but no decrease) in the Consumer Price Index (Los Angeles-Anaheim-Riverside County), 1950-2001 (1982-84=100) over the preceding year. The pre-paid Affordability In-Lieu Fee shall be calculated based on the maximum floor area ratio (FAR) permitted within



the General Plan and any applicable FAR contained within the applicable specific plan, whichever is greater, and the Maximum Development Density. For purposes of this Agreement, “**Maximum Development Density**” shall be determined by multiplying the OWNER’s Project’s density for residential development potential as set forth in the General Plan or the applicable Specific Plan, whichever is less, by the net acreage of land within OWNER’s Project. All “Affordability In-Lieu Fees” collected by the City shall be used to promote the construction of affordable housing within the City.

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

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

4.5 Schools Obligations. Written Evidence of Compliance with Schools Obligations. OWNER shall, either through joint or individual agreements between OWNER and the applicable school district(s), shall satisfy its new school obligations. The new school obligations for the Mountain View School District in the New Model Colony area have been projected to include the acquisition or dedication of school sites for, and construction of, up to eight (8) schools. Of these eight (8) schools, six (6) are to be elementary (K-5) grade schools and two (2) are to be middle grade schools. The new school obligations for the Chaffey Joint Union High School District in the New Model Colony area have been projected to include the dedication of a school site for, and construction of, an additional high school. The new school obligations for the applicable school district shall be met by a combination of the following: (1) designating and dedicating school site(s) within the Property as set forth in the General Plan, and/or (2) paying school impact fees, (3) entering into a joint mitigation agreement or individual mitigation agreements, or (4) any combination of the foregoing. Written evidence of approval by the applicable school district that OWNER has met their school obligations may be required by the City as the condition to the issuance by the City of any

entitlements for OWNER's Project. In the event OWNER is unable to provide such written evidence from the applicable school district(s), the City shall have the right to decline to honor any DIF Credit, Certificates of MDD Availability, Certificates of Storm Water Treatment Capacity Availability, or any combination thereof, presented by such OWNER, without liability to the City. To the extent that a joint mitigation agreement is approved by the applicable school district(s), and OWNER is a participant in good standing in such mitigation agreement, OWNER shall be deemed to have mitigated its new school obligations under this Section 4.5.

#### 4.6 Public Services Funding Fee.

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

4.6.2 Public Services Funding Fee Amount. OWNER shall pay a Public Services Funding fee in the total amount of One Thousand Nine Hundred Seven dollars (\$1,907.00) per residential dwelling unit. The Public Services Funding Fee shall be paid in one (1) installment within one hundred eighty (180) calendar days after the effective date of the Development Agreement or in two (2) installments, at OWNER's option, as follows:

4.6.2.1 First Installment (Residential uses). The First Installment of the Public Services Funding Fee shall be Nine Hundred Fifty-Three dollars and fifty cents (\$953.50) per residential dwelling unit. The First Installment shall be based upon the "**Maximum Development Density**" of the OWNER's Project, as defined in Section 3.7.2.3 of the First Amended and Restated Construction Agreement. The First Installment shall be due and payable 30 days after the effective date of this Development Agreement.

4.6.2.2 Second Installment (Residential Uses). The Second Installment of the Public Services Funding Fee shall be Nine Hundred Fifty-Three dollars and fifty cents (\$953.50) per residential unit. The Second Installment shall be paid at the time of the issuance of each building permit for the Project. The amount of the Second Installment shall increase automatically by percentage increase (but no decrease) in the Consumer Price Index (Los Angeles-Anaheim-Riverside County), 1950-2001 (1982-84=100) over the preceding year on January 1<sup>st</sup> of each year, beginning on January 1, 2018. OWNER may exercise the option to pay the Second Installment amount for all residential units, a portion of the residential units, or for the remainder of the residential units within OWNER's Project on or before each December 31<sup>st</sup>, before the Second Installment amount is automatically increased.

4.6.2.3 Single Installment (Non-residential Uses). A single installment payment

of the Public Services Funding Fee shall be required in the amount of Fifty-Seven Cents (\$.57) per square foot of non-residential buildings. The single installment for non-residential uses shall be due and payable prior to the issuance of the building permit for a non-residential building. The amount of the Single Installment for non-residential uses shall automatically increase by percentage increase (but no decrease) in the Consumer Price Index (Los Angeles-Anaheim-Riverside County), 1950-2001 (1982-84=100) over the preceding year on January 1<sup>st</sup> of each year, beginning on January 1, 2018. OWNER may exercise the option to pay any single installment amounts for the remainder of the non-residential square footage within the Project on or before December 31<sup>st</sup>, before the Single Installment amount is automatically increased.

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

- 4.7.1 Assigned Net MDD/Water Availability Equivalents. The City has agreed with NMC Builders to reserve exclusively for Members of NMC Builders, including OWNER, Net MDD made available through the construction of water system improvements funded by NMC Builders and/or OWNER. OWNER acknowledges that the provisions of the Construction Agreement Amendment between the City and NMC Builders LLC require that the City shall not approve a final parcel map or tract map for the area of development within the Ontario Ranch served by the water system improvements funded by NMC Builders LLC, except to the bearer of an Assignment of Net MDD Water Availability.
- 4.7.2 Requirement for Amendment to Construction Agreement with NMC Builders. OWNER and CITY agree that OWNER's' payment to CITY required by Section 4.7.3 below represents OWNER's contribution to the funding required for the future construction of the Phase 2 Water Improvements and the availability of additional Net MDD Water Availability required for the development of the Property described in Exhibit A of this Agreement. CITY and OWNER also agree that CITY approval of this Agreement shall be conditioned upon OWNER's agreement to become a Member of NMC Builders. OWNER shall become a Member of NMC Builders within ninety (90) days of the effective date of this Development Agreement.
- 4.7.3 CITY issuance Water Availability Equivalents. The Phase 2 Water Participation Fee shall be the calculated based on the amount of the projected Regional Water DIF, the Maximum Development Density and the approved land use category for such Project. The calculated amount of the Phase 2 Water Participation Fee shall be paid to City within 30 days after the effectiveness of this Development Agreement or, at OWNER's option, the Phase 2 Water Participation Fee may be paid to City in two (2) installments. The first installment shall be fifty percent (50%) of the total Phase 2 Water Participation Fee and such first installment shall be due and payable to City within 30 days after the effective date of this Development Agreement. The second installment shall be the remaining amount

of the Phase 2 Water Participation Fee and such second installment shall be due and payable to City within one (1) year after the payment of the first installment, or prior to, and as a condition precedent to the recording of any final tract map for the Project, whichever occurs first. Upon OWNER's complete payment to CITY of the Phase 2 Water Participation Fee CITY shall issue a Certificate of Water Availability Equivalents in the form attached hereto as Exhibit G. Such Water Availability Equivalents Certificate shall be issued by CITY within thirty (30) days of the receipt of such required payment. CITY and OWNER agree that the amount of Water Availability Equivalents issued to OWNER shall be based on the maximum projected need for Water Availability Equivalents required for the Property based upon water demand factors and assumptions listed in Exhibit C-2R of the Phase 2 Water Amendment, "Water Demand Equivalents by Land Use" for each land use category. Additionally, within thirty (30) days of CITY's receipt of OWNER complete payment as required under Section 4.7.3, CITY shall issue a certificate of DIF Credit against OWNER's DIF obligations in the regional water DIF Category. The amount of the DIF Credit issued by CITY shall be equivalent to OWNER's payment to CITY of the Phase 2 Water Participation Fee. The form of the Certificate of DIF Credit shall be as described in Exhibit H, attached hereto and incorporated herein.

4.7.3.1 OWNER may qualify for a partial refund of a portion of OWNER's Phase 2 Water Participation Fee, if OWNER's Phase 2 Water Participation Fee has been calculated and paid to CITY based on the Maximum Development Density and OWNER subsequently applies for, and CITY approves, Tract Maps that contain a lower number of residential parcels than the Maximum Development Density. OWNER may, at OWNER's option, notify CITY that OWNER may qualify for a partial refund of OWNER's paid Phase 2 Water Participation Fee based on CITY issuance of a reduced number of actual residential building permits for the Project. Such notice shall include the original calculation of the Phase 2 Water Participation Fee, and OWNER's recalculation of the Phase 2 Water Participation Fee based on the lower number of actual residential building permits and OWNER's calculation of the partial refund amount. OWNER agrees that CITY may modify the amount of the Phase 2 Water Participation Fee after OWNER pays such Phase 2 Water Participation Fee and the calculation of the amount of a partial refund, if any, shall consider that the Phase 2 Water Participation Fee may have increased during the period between when OWNER pays the Phase 2 Water Participation Fee based upon the Maximum Development Density and such time as OWNER may request a partial refund of the Phase 2 Water Participation Fee based on a reduced number of actual residential parcels. OWNER agrees that the calculation of the requested refund shall be based upon the Phase 2 Water Participation Fee in effect at the time that OWNER files a request for a refund. Within 20 days of receipt of the notice from OWNER, the CITY shall review OWNER's notice and make a determination that:

- a. OWNER's recalculation of the Phase 2 Water Participation Fee is accurate and the CITY shall issue a refund to OWNER of the amount requested by OWNER, or
- b. CITY shall notify OWNER of the need for revisions to OWNER's calculations and the need for OWNER to resubmit the request for a partial refund; or
- c. CITY shall notify OWNER that OWNER is not eligible for a partial refund of OWNER's Phase 2 Water Participation Fee based on a reduced number of actual building permits for residential units with the reasons for the rejection of OWNER's request.

If CITY approves OWNER's request for a partial refund of OWNER's paid Phase 2 Water Participation Fee, OWNER agrees that, prior to, and as a condition precedent to CITY's issuance of a partial refund to OWNER, OWNER shall surrender to CITY, the Certificate of Water Availability Equivalents previously issued to OWNER and the Certificate of DIF Credit in the Regional Water DIF category previously issued to OWNER by CITY. Upon surrender by OWNER of such Certificates to CITY, CITY shall reissue a Certificate of Water Availability Equivalents based on a reduced amount of Water Availability Equivalents required for OWNER's Project and CITY shall also reissue a Certificate of DIF Credit in the Regional Water DIF category based upon OWNER's reduced Phase 2 Water Participation Fee for the Property.

- 4.7.4 Use of Net MDD Water Availability. OWNER shall provide evidence of sufficient Water Availability Equivalents (or portions thereof) prior to and as a condition precedent to approval of any final Parcel Map for the Property. The amount of Water Availability Equivalents required for the approval of a final Parcel Map shall be based upon water demand factors and assumptions listed in Exhibit C-2R of the Construction Agreement Amendment as "Water Demand Equivalents by Land Use" for each land use category.
- 4.7.5 Requirement for other Water System Improvements. A Certificate of Net MDD Availability is evidence only of available water capacity and does not satisfy any other conditions applicable to OWNER's Project, including those relating to design and construction of master-planned potable water and recycled water transmission and distribution system for the respective pressure zone and other public infrastructure requirements.
- 4.8 Storm Water Capacity Availability.
  - 4.8.1 Requirement for Storm Water Treatment Capacity Availability. For each Tract Map within the Property OWNER shall provide evidence of sufficient Storm Water Treatment Capacity Availability as reserved in a Certificate of Storm Water Treatment Capacity Availability. Evidence of sufficient Storm Water Treatment Capacity Availability shall be provided for the area of a Tract Map shall be

provided to CITY prior to, and as a condition precedent to the recording of any final tract map. The amount of Storm Water Treatment Capacity Availability required shall be based upon the Net Residential Acreage of the area to be graded regardless of the corresponding use.

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

4.8.2 CITY agrees that OWNER, at OWNER's option, and, as an alternative to the requirements in Section 4.8.1, may chose not to provide evidence of sufficient Storm Water Treatment Capacity Availability for the area of a Tract Map within the Property. OWNER agrees that if OWNER does not provide evidence of sufficient Storm Water Treatment Capacity Availability the area within the Tract Map shall not utilize the regional storm water treatment facilities to meet the requirements of the NPDES permit and the requirements of Section 3.8 of the Construction Agreement shall not apply to the area of the Tract Map. OWNER also agrees that if OWNER selects this option, OWNER shall provide on-site storm water treatment facilities to meet the requirements of the NPDES permit.

4.9 Maintenance of Common Areas or Open Space. OWNER shall provide for the ongoing maintenance of all park and common or open space areas within the Project as more particularly set forth in the Specific Plan, through a homeowners' association or public financing mechanism, as approved by the CITY. Covenants, conditions and restrictions establishing any homeowners' association shall be approved by the Planning Director and City Attorney. If requested by OWNER, the CITY shall use good faith efforts to require other developments within the Specific Plan to join such homeowners' association or public financing mechanism for the purpose of maintaining such parks and open spaces that are open to the public.

4.10 Edison Easement Improvements. OWNER shall develop as park or open space purposes that area within the Project areas owned in fee by Southern California Edison or in which Southern California Edison has an easement or license, as more particularly set forth in the Specific Plan. Said park or open space development shall be consistent with the New Model Colony Park Master Plan standards for park and open space development. Notwithstanding OWNER's development of park or open space areas as required by this Section 4.10, OWNER shall not be entitled to any credit, offset or reimbursement from the CITY for such park or open space development.

4.11 Compliance with Public Benefits Requirements.

4.11.1 Failure to Provide Public Benefits. In the event OWNER fails or refuses to comply with any condition referenced in Section 4.1 through 4.10, or challenges (whether administratively or through legal proceedings) the imposition of such

conditions, OWNER shall be deemed in default of this Agreement pursuant to Section 8.4 hereof, thereby entitling the City to any and all remedies available to it, including, without limitation, the right of the City to withhold OWNER's Project-related building permits, certificates of occupancy, or discretionary approvals, without liability.

## 5. FINANCING OF PUBLIC IMPROVEMENTS.

5.1 Financing Mechanism(s). In accordance with the Memorandum of Agreement between the CITY and NMC Builders, CITY will cooperate with OWNER in the formation of a CFD, or CFDs, to include all of the Project, to provide a financing mechanism to reimburse the OWNER for funds paid to NMC Builders LLC for OWNER's share of the costs of public infrastructure pursuant to the Construction Agreement. Notwithstanding such reimbursements, OWNER shall remain entitled to DIF Credits as provided for in Article 3 of the Construction Agreement and/or as provided for in a separate Fee Credit Agreement between CITY and OWNER. OWNER agrees that, prior to the recordation of any B Map, the property subject to such B Map shall be included in a CFD to finance City services through annual special taxes that will initially be \$1,442.00 per Single Family Detached Dwelling Unit, \$1,250.00 per Multiple-Family Dwelling Unit, \$1,048.00 per Gated Apartment Community Dwelling Unit, and \$.27 per square foot for Non-Residential buildings. These amounts shall be subject to an automatic increase at a rate not to exceed four (4%) percent per year. CITY shall be the sole and exclusive lead agency in the formation of any CFD, assessment district or other public financing mechanism within the Property; provided however, that the proceeds of any such CFD, assessment district, or financing mechanism may be used, subject to restrictions that may be imposed by applicable law, for the purposes of acquiring, constructing or maintaining public facilities to be owned or operated by other public agencies, including, without limitation those facilities owned or operated by a school district. CITY shall have the right, but not the obligation, to condition the formation of any CFD, assessment district or other public financing mechanism within the Property on the OWNER mitigating all Project-related impacts to the applicable school district(s) as required by such school district(s). Written evidence by such school district(s) may be required by the CITY as the condition to the formation of any CFD, assessment district or other public financing mechanism within the Property, or any steps preliminary thereto, including, without limitation, the adoption of any resolution of intention to form such CFD, assessment district or other public financing mechanism within the Property. It is not the intent of the parties hereto, by this provision, to prohibit or otherwise limit the City's ability to take any and all necessary steps requisite to the formation of the CFD to finance City services through annual special taxes as set forth in this Section 5.1. Formation of any CFD, assessment district or other public financing mechanism within the Property, shall be subject to CITY's ability to make all findings required by applicable law and complying with all applicable legal procedures and requirements including, without limitation, CITY's public financing district policies as such policies may be amended from time to time. Notwithstanding the foregoing, it is acknowledged and agreed by the parties that nothing contained in this Agreement shall be construed as requiring CITY or the City Council to form any such district or to issue and sell bonds.

6. REVIEW FOR COMPLIANCE.

6.1 Periodic and Special Reviews.

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

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

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

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

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

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

6.1.6 Procedure Upon Findings.



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

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

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

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

- (a) The time and place of the hearing;
- (b) A statement as to whether or not the CITY proposes to terminate or to modify this Agreement; and
- (c) Other information that the CITY considers necessary to inform the OWNER of the nature of the proceeding.

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

6.4 Certificate of Agreement Compliance. If, at the conclusion of a Periodic or Special Review, OWNER is found to be in compliance with this Agreement, CITY shall, upon written request by OWNER, issue a Certificate of Agreement Compliance ("Certificate") to OWNER stating that after the most recent Periodic or Special Review and based upon the information known or made known to the Planning Director and City Council that (1) this Agreement remains in effect and (2) OWNER is not in default.

The Certificate shall be in recordable form, shall contain information necessary to communicate constructive record notice of the finding of compliance, shall state whether the Certificate is issued after a Periodic or Special Review and shall state the anticipated date of commencement of the next Periodic Review. OWNER may record the Certificate with the County Recorder. Whether or not the Certificate is relied upon by assignees or other transferees or OWNER, CITY shall not be bound by a Certificate if a default existed at the time of the Periodic or Special Review, but was concealed from or otherwise not known to the Planning Director or City Council.

7. [RESERVED]

8. DEFAULT AND REMEDIES.

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

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

- (a) For any breach of this Agreement or for any cause of action which arises out of this Agreement; or
- (b) For the taking, impairment or restriction of any right or interest conveyed or provided under or pursuant to this Agreement; or
- (c) Arising out of or connected with any dispute, controversy or issue regarding the application or interpretation or effect of the provisions of this Agreement.

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

- (a) Money damages are unavailable against CITY as provided in Section 8.1 above.
- (b) Due to the size, nature and scope of the project, it may not be practical or possible to restore the Property to its natural condition once implementation of this Agreement has begun. After such implementation, OWNER may be foreclosed from other choices it may have had to utilize the Property or portions thereof. OWNER has invested significant time and resources and performed extensive planning and processing of the Project in agreeing to the terms of this Agreement and will be investing even more significant time and resources in implementing the Project in reliance upon

the terms of this Agreement, and it is not possible to determine the sum of money which would adequately compensate OWNER for such efforts.

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

8.4 Termination or Modification of Agreement for Default of OWNER. Subject to the provisions contained in Subsections 6.2 and 6.3 herein, CITY may terminate or modify this Agreement for any failure of OWNER to perform any material duty or obligation of OWNER under this Agreement, or to comply in good faith with the terms of this Agreement (hereinafter referred to as "default"); provided, however, CITY may terminate or modify this Agreement pursuant to this Section only after providing written notice to OWNER of default setting forth the nature of the default and the actions, if any, required by OWNER to cure such default and, where the default can be cured, OWNER has failed to take such actions and cure such default within 60 days after the effective date of such notice or, in the event that such default cannot be cured within such 60 day period but can be cured within a longer time, has failed to commence the actions necessary to cure such default within such 60 day period and to diligently proceed to complete such actions and cure such default.

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

## 9. THIRD PARTY LITIGATION.

9.1 General Plan Litigation. CITY has determined that this Agreement is consistent with its Comprehensive General Plan, as such General Plan exists as of the Effective Date ("General Plan"), and that the General Plan meets all requirements of law. OWNER has reviewed the General Plan and concurs with CITY's determination. CITY shall have no liability in damages under this Agreement for any failure of CITY to perform under this Agreement or the inability of OWNER to develop the Property as contemplated by the Development Plan of this Agreement as the result of a judicial

determination that on the Effective Date, or at any time thereafter, the General Plan, or portions thereof, are invalid or inadequate or not in compliance with law.

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

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

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

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

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

10. MORTGAGEE PROTECTION.

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

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

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

(c) If CITY timely receives a request from a Mortgagee requesting a copy of any notice of default given to OWNER under the terms of this Agreement, CITY shall provide a copy of that notice to the Mortgagee within ten (10) days of sending the notice of default to OWNER. The Mortgagee shall have the right, but not the obligation, to cure the default during the remaining cure period allowed such party under this Agreement.

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

11. MISCELLANEOUS PROVISIONS.

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

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

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

11.4 Interpretation and Governing Law. This Agreement and any dispute arising hereunder shall be governed and interpreted in accordance with the laws of the State of California. This Agreement shall be construed as a whole according to its fair language and common meaning to achieve the objectives and purposes of the parties hereto, and the rule of construction to the effect that ambiguities are to be resolved against the drafting party shall not be employed in interpreting this Agreement, all parties having been represented by counsel in the negotiation and preparation hereof.

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

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

11.7 Joint and Several Obligations. Subject to section 2.4, if at any time during the term of this Agreement the Property is owned, in whole or in part, by more than one owner, all obligations of such owners under this Agreement shall be joint and several, and the default of any such owner shall be the default of all such owners.

Notwithstanding the foregoing, no owner of a single lot which has been finally subdivided and sold to such owner as a member of the general public or otherwise as an ultimate user shall have any obligation under this Agreement except as provided under Section 4 hereof.

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

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

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

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

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

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

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

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

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

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

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

11.19 Agent for Service of Process. In the event OWNER is not a resident of the State of California or it is an association, partnership or joint venture without a member, partner or joint venturer resident of the State of California, or it is a foreign corporation, then in any such event, OWNER shall file with the Planning Director, upon its execution of this Agreement, a designation of a natural person residing in the State of California, giving his or her name, residence and business addresses, as its agent for the purpose of service of process in any court action arising out of or based upon this Agreement, and the delivery to such agent of a copy of any process in any such action shall constitute valid service upon OWNER. If for any reason service of such process upon such agent is not feasible, then in such event OWNER may be personally served with such process out of this County and such service shall constitute valid service upon OWNER. OWNER is amenable to the process so served, submits to the jurisdiction of the Court so obtained and waives any and all objections and protests thereto. OWNER for itself, assigns and successors hereby waives the provisions of The Hague Convention (Convention on the Service Abroad of Judicial and Extra Judicial Documents in Civil or Commercial Matters, 20 U.S.T. 361, T.I.A.S. No. 6638).



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

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

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

**[SIGNATURES CONTAINED ON FOLLOWING PAGE]**

**SIGNATURE PAGE  
TO DEVELOPMENT AGREEMENT**

**"OWNERS"**

\_\_\_\_\_  
Ronald C. Pietersma, Trustee of the  
Ronald and Kristine Pietersma Family  
Trust dated February 15, 1992

\_\_\_\_\_  
Kristine B. Pietersma, Trustee of the  
Ronald and Kristine Pietersma Family  
Trust dated February 15, 1992

Loyola Properties I, L.P.,  
a California limited partnership

By: \_\_\_\_\_  
Michael J. Bidart, Managing Member

**"CITY"**

CITY OF ONTARIO

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

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

ATTEST:

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

APPROVED AS TO FORM:

BEST, BEST & KREIGER LLP

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City Attorney

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

State of California

County of San Bernardino

On \_\_\_\_\_ before me, \_\_\_\_\_, Notary  
Public, \_\_\_\_\_ personally \_\_\_\_\_ appeared

\_\_\_\_\_

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

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

WITNESS my hand and official seal.

Signature \_\_\_\_\_

(Seal

**EXHIBIT "A"**  
**TO DEVELOPMENT AGREEMENT**  
**Legal Description**

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

TENTATIVE MAP NO. PM 19787 IS A SUBDIVISION OF THE LAND DESCRIBED AS FOLLOWS:

THE WEST HALF OF THE SOUTHWEST QUARTER OF SECTION 14, TOWNSHIP 2 SOUTH, RANGE 7 WEST, SAN BERNARDINO MERIDIAN, IN THE CITY OF ONTARIO, COUNTY OF SAN BERNARDINO, STATE OF CALIFORNIA, ACCORDING TO THE OFFICIAL PLAT THEREOF.

EXCEPTING THEREFROM THAT PORTION OF SAID LAND CONVEYED TO THE COUNTY OF SAN BERNARDINO BY DEED RECORDED SEPTEMBER 12, 1990 AS INSTRUMENT NO. 90-364062, OFFICIAL RECORDS.

ALSO EXCEPTING THEREFROM THAT PORTION KNOWN AS PARCEL 2 OF OFFICIAL MAP NO. 1099, FILED ON APRIL 18, 2016 AS INSTRUMENT NO. 2016-0145786, IN BOOK 2, PAGES 30 THROUGH 34, INCLUSIVE OF OFFICIAL MAPS, SAN BERNARDINO COUNTY RECORDS.

APN: 0218-241-31-0-000

**EXHIBIT "B"**  
**TO DEVELOPMENT AGREEMENT**  
**Map Showing Property and its Location**



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

On December 16, 2013, the Planning Commission:

- a) Issued Resolution No. PC13-082 recommending City Council adopt and certify the Grand Park Specific Plan Environmental Impact Report;
- b) Issued Resolution No. PC13-083 recommending City Council approval of the Grand Park Specific Plan (File No. PSP12-001).

On February 4, 2014, the City Council:

- a) Issued Resolution No. 2014-002 certifying the Grand Park Environmental Impact Report;
- c) Issued Ordinance No. 2985 approving the Grand Park Specific Plan (File No. PSP12-001).

On October 24, 2017, the Planning Commission:

- a) Issued Resolution No. PC17-083 recommending City Council approval of the Development Agreement (File No. PDA17-001);
- b) Issued Resolution No. PC17-082 approving Tentative Parcel Map 19787 (File No. PMTT16-021).

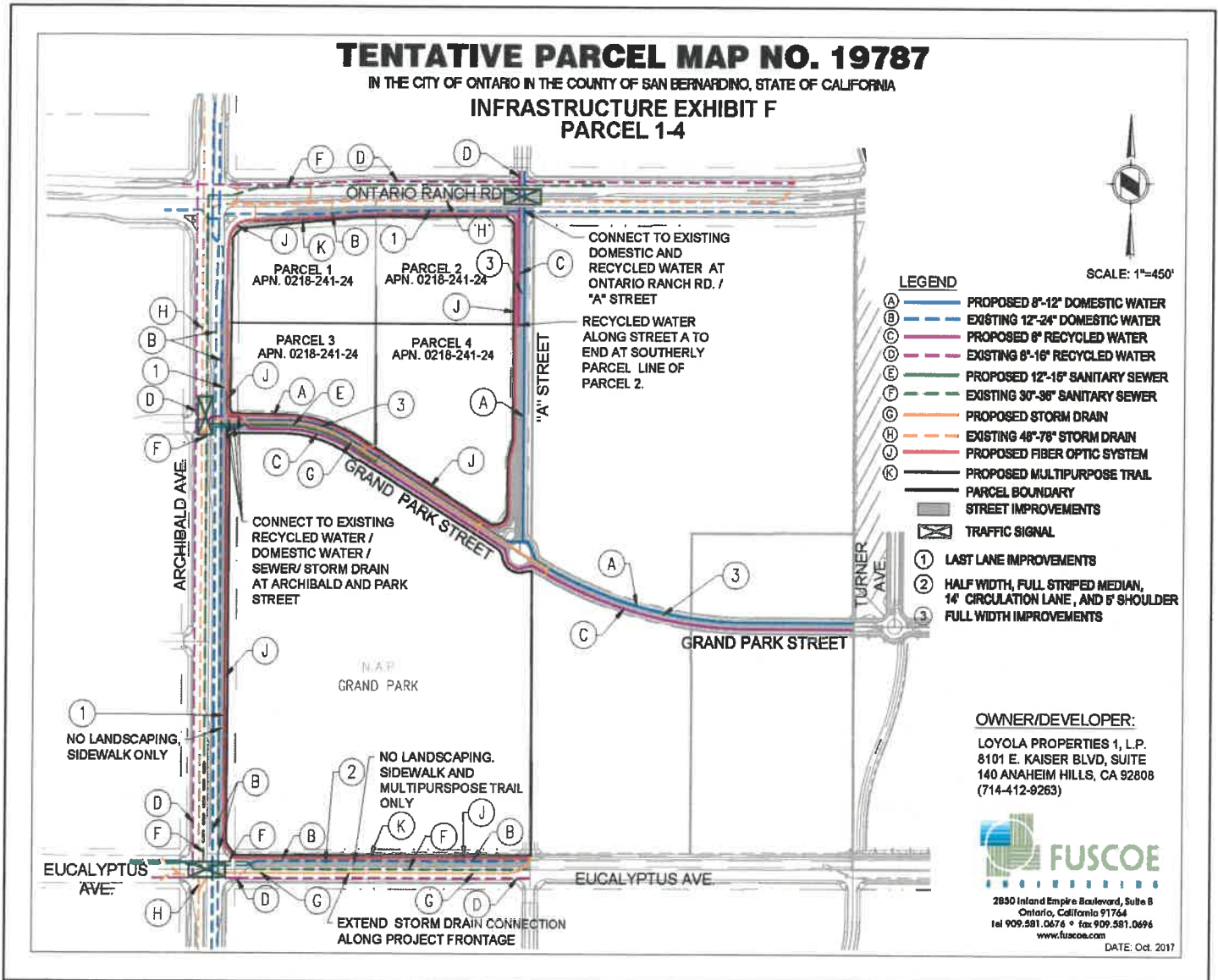
**EXHIBIT “D”  
TO DEVELOPMENT AGREEMENT  
Existing Land Use Regulations**

These documents are listed for reference only:

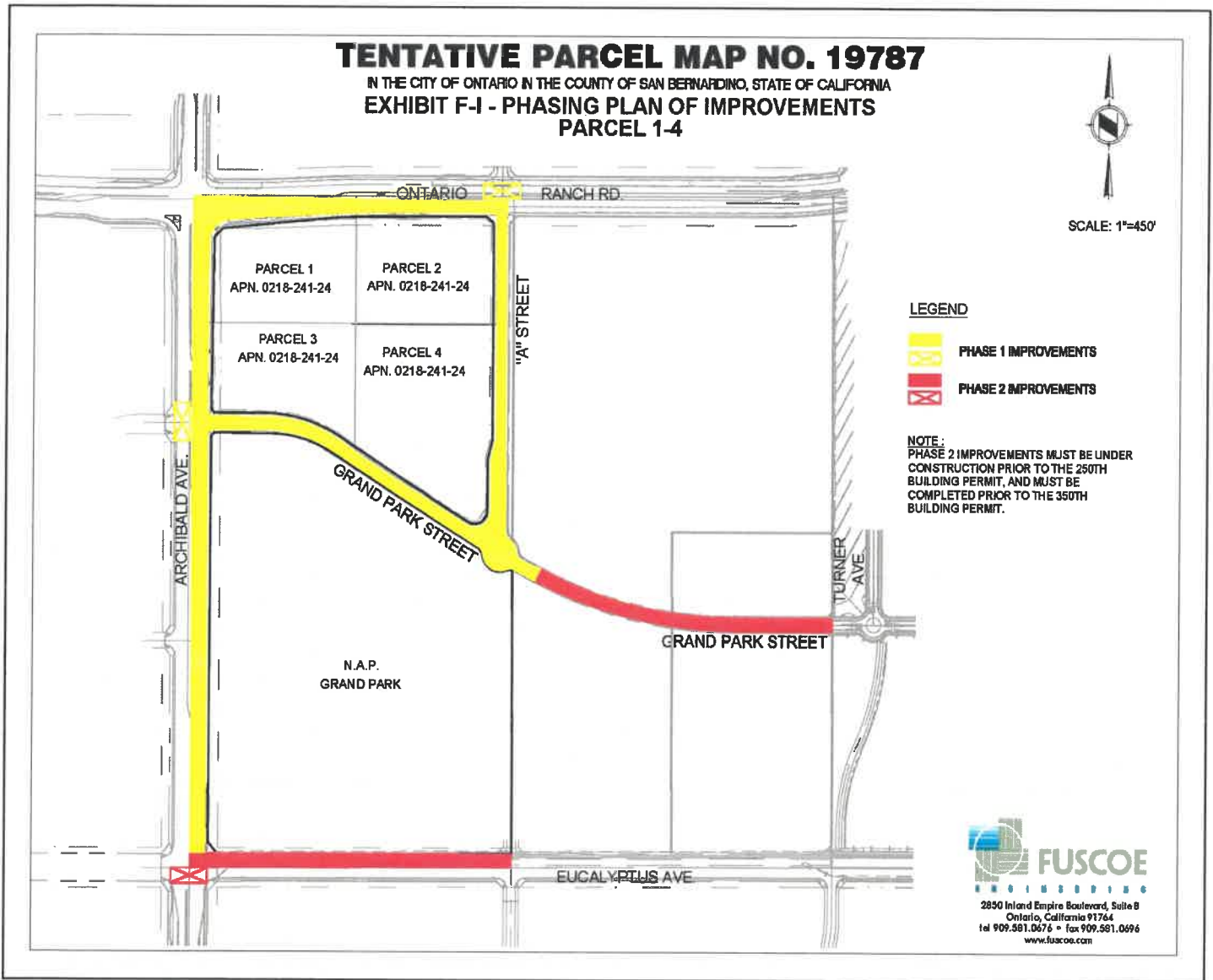
1. The Grand Park Specific Plan Environmental Impact Report, Resolution No. 2014-002
2. The Grand Park Specific Plan (File No. PSP12-001, Ordinance No. 2985)
3. City of Ontario Municipal Code
  - a. Six – Sanitation & Health
  - b. Seven – Public Works
  - c. Eight – Building Regulations
  - d. Nine – Development Code
  - e. Ten – Parks & Recreation



**EXHIBIT "F"**  
**TO DEVELOPMENT AGREEMENT**  
**Required Infrastructure Improvements**



**EXHIBIT "F-1"**  
**TO DEVELOPMENT AGREEMENT**  
**Phasing Plan of Required Infrastructure Improvements**



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

FORM OF CERTIFICATE OF NET MDD AVAILABILITY

Pursuant to Section \_\_\_\_ of this Agreement between the City of Ontario, a California municipal corporation, and the Ronald and Kristine Pietersma Family Trust and Loyola Properties I L.P. a California limited partnership hereinafter called "OWNER", the terms and definitions of which are hereby incorporated herein by this reference and hereinafter called "Agreement", the City of Ontario hereby certifies based on CITY receipt of payment of OWNER's share of the funding for the Phase 2 Water Improvements, that OWNER is entitled to the following Net MDD Water Availability.

Amount of Net MDD \_\_\_\_\_ gpm

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

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

**Exhibit "H"**

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

Pursuant to Section 4.5.3 of this Agreement by and between the City of Ontario and the Ronald and Kristine Pietersma Family Trust and Loyola Properties I L.P. a California limited partnership (hereinafter "OWNERS"), dated \_\_\_\_\_, 2017, the terms and definitions of which are hereby incorporated herein by this reference and hereinafter called the "Development Agreement", the City of Ontario hereby certifies that OWNER is entitled to the following amount and nature of DIF Credits in the Regional Water DIF Infrastructure Category:

Amount of Credit: \$ \_\_\_\_\_

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

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

Exhibit "I"

**FORM OF PLUME DISCLOSURE LETTER**

CITY OF



ONTARIO

ONTARIO MUNICIPAL UTILITIES COMPANY

PAUL S. LEON  
MAYOR

DEBRA DORST-PORADA  
MAYOR PRO TEM

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

March 2017

AL C. BOLING  
CITY MANAGER

SHEILA MAUTZ  
CITY CLERK

JAMES R. MILHNER  
TREASURER

SCOTT BURTON  
UTILITIES GENERAL MANAGER

**DISCLOSURE NOTICE  
SOUTH ARCHIBALD TRICHLOROETHYLENE PLUME**

Dear Property Owner/Developer/Applicant:

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

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

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

Further and current information may be found on the Regional Board's Geotracker website at [https://geotracker.waterboards.ca.gov/profile\\_report?global\\_id=T10000004658](https://geotracker.waterboards.ca.gov/profile_report?global_id=T10000004658).

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

# CITY OF ONTARIO

Agenda Report  
December 5, 2017

SECTION:  
CONSENT CALENDAR

**SUBJECT: PROCUREMENT OF NIGHT VISION TECHNOLOGY AND EQUIPMENT**

**RECOMMENDATION:** That the City Council authorize the City Manager to execute a sole source procurement with Aardvark Tactical of La Verne, California, in the amount not to exceed \$287,000 for the purchase of 20 night vision equipment packages and related accessories.

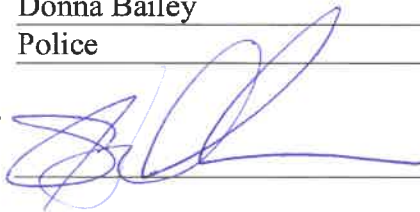
**COUNCIL GOALS:** Maintain the Current High Level of Public Safety  
Operate in a Businesslike Manner

**FISCAL IMPACT:** Appropriations from the Asset Seizure Fund for the purchase of police night vision equipment were included in the First Quarter Fiscal Year 2017-18 Budget Report approved by the City Council. There is no impact to the General Fund.

**BACKGROUND:** The law enforcement tactical unit is at times unable to complete nighttime operations due to near darkness visibility. The purchase of night vision equipment will maximize nighttime operations in situations such as, but not limited to, open area searches, hostage rescue situations and search warrants.

The vendor, Aardvark Tactical, has created exclusively for the police department a comprehensive package for 20 night vision equipment that will meet staff specifications to enhance productivity, night acuity and officer safety. The sole source acquisition of the night operator's package from Aardvark Tactical is recommended based on its cost effectiveness and tactical outfitting features.

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

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

Submitted to Council/O.H.A. 12/05/2017  
Approved: \_\_\_\_\_  
Continued to: \_\_\_\_\_  
Denied: \_\_\_\_\_

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# CITY OF ONTARIO

Agenda Report  
December 5, 2017

SECTION:  
CONSENT CALENDAR

**SUBJECT: A RESOLUTION AUTHORIZING THE EXECUTION OF A JOINT EXERCISE OF POWERS AGREEMENT BY AND BETWEEN THE CITY OF ONTARIO, INLAND EMPIRE UTILITIES AGENCY, CUCAMONGA VALLEY WATER DISTRICT AND MONTE VISTA WATER DISTRICT CREATING THE CHINO BASIN WATER BANK PLANNING AUTHORITY**

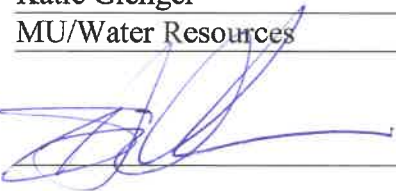
**RECOMMENDATION:** That the City Council adopt a resolution authorizing the City Manager to execute a Joint Exercise of Powers Agreement (on file with the Records Management Department), subject to non-substantive changes, by and between the City of Ontario, Inland Empire Utilities Agency, Cucamonga Valley Water District and Monte Vista Water District creating the Chino Basin Water Bank Planning Authority (Planning Authority).

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

**FISCAL IMPACT:** If approved, there is no immediate fiscal impact. On June 20, 2017 the City Council approved an Amendment to a Cost Sharing Agreement to study the feasibility of the Chino Basin Water Bank. The City of Ontario's share set by the Agreement is \$150,000 and appropriations are included in the Water Capital Fund of the Fiscal Year 2017-18 Budget. Future expenses for the Planning Authority will consist of work programs and annual budgets approved by all parties to the Agreement. There is no impact to the General Fund.

**BACKGROUND:** A majority of Ontario's water supply is groundwater from the Chino Basin. The Chino Basin is under the jurisdiction of a 1978 court-ordered judgment and a series of subsequently approved agreements as administered by a court-appointed Watermaster. One of the major commitments of the parties to the Chino Basin Judgment is the funding and ongoing implementation of an Optimum Basin Management Plan (OBMP) in order to maximize the public benefit of this precious resource. The OBMP includes elements such as water quality management, water storage management, developing

**STAFF MEMBER PRESENTING:** Scott Burton, Utilities General Manager

Prepared by: Katie Gienger  
Department: MU/Water Resources  
City Manager Approval: 

Submitted to Council/O.H.A. 12/05/2017  
Approved: \_\_\_\_\_  
Continued to: \_\_\_\_\_  
Denied: \_\_\_\_\_

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supplemental supplies (such as imported water), developing water storage and recovery programs, and partnering with various agencies to improve overall basin management.

The Chino Basin has a significant storage capacity which provides for greater water supply reliability to water rights holders such as the City of Ontario. Examples include the ability to store unused water rights over multiple years or to purchase excess imported water when available, hold the water in storage, and produce the groundwater in times of drought. One of the upcoming OBMP efforts is the development of a new Storage Management Plan. There is also the opportunity for municipalities within the Chino Basin parties to participate in a regional storage and recovery program called the Santa Ana Regional Conservation and Conjunctive Use Program (SARCCUP). Both efforts are in the early stages of implementation and require further due diligence and feasibility level assessment.

Staff recommends authorizing the formation of the Planning Authority between several of the major Chino Basin water rights holders (Ontario, Cucamonga Valley Water District, Monte Vista Water District) and the Inland Empire Utilities Agency whose services include imported water supply and management of certain OBMP projects. The purpose of the Planning Authority is to engage in planning activities and perform due diligence review to determine the feasibility, financial viability, governance, and various benefits and challenges for the potential implementation of projects to maximize beneficial use of the Chino Basin for the benefit of the local water rights holders, including the City of Ontario. Subsequent implementation of any of these projects shall be the subject of a new joint exercise of powers agreement or an amendment to the agreement creating the Planning Authority. There is a provision for other parties to be added to the Planning Authority by amendment, subject to approval of the original signatories, which could reduce Ontario's ultimate future cost share.



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

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF ONTARIO, CALIFORNIA, AUTHORIZING THE EXECUTION OF A JOINT EXERCISE OF POWERS AGREEMENT BY AND BETWEEN THE CITY OF ONTARIO AND INLAND EMPIRE UTILITIES AGENCY, CUCAMONGA VALLEY WATER DISTRICT, AND MONTE VISTA WATER DISTRICT.

WHEREAS, the City of Ontario, California (the "City") is a general law city organized and existing under the laws of the State of California; and

WHEREAS, the City, acting pursuant to Article I (commencing with Section 6500) of Chapter 5 of Division 7 of Title 1 of the Government Code of the State of California (the "JPA Act") may enter into a joint exercise of powers agreement with one or more other public agencies pursuant to which such contracting parties may jointly exercise any power common to them and, pursuant to Government Code Section 6588, exercise certain additional powers; and

WHEREAS, the City and Inland Empire Utilities Agency ("IEUA"), Cucamonga Valley Water District ("CVWD"), and Monte Vista Water District ("MVWD") desire to create and establish the Chino Basin Water Bank Planning Authority (the "Authority") pursuant to the JPA Act; and

WHEREAS, there has been presented at this meeting a proposed form of Joint Exercise of Powers Agreement, dated as of December 13, 2017 (the "Joint Powers Agreement") by and between the City and IEUA, CVWD, and MVWD, which Joint Powers Agreement creates and establishes the Authority; and

WHEREAS, under California law and the Joint Powers Agreement, the Authority will be a public entity separate and apart from the parties to the Joint Powers Agreement, and the debts, liabilities and obligations of the Authority will not be the debts, liabilities or obligations of the City, IEUA, CVWD, or MVWD, or any representative of the City, IEUA, CVWD, or MVWD, serving on the governing body of the Authority.

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

SECTION 1. The above recitals and statements, findings and determinations set forth in the preamble of the Joint Powers Agreement are true and correct.

SECTION 2. The form of the Joint Powers Agreement on file with the City Clerk is hereby approved. The Mayor, the City Clerk or the City Manager or the designee thereof is hereby authorized and directed, on behalf of the City, to execute and deliver the Joint Powers Agreement substantially in the approved form with such changes as may be recommended by the City Attorney, said execution being conclusive evidence of such approval.

SECTION 3. The Mayor, the City Clerk or the City Manager or the designee thereof and any other proper officer of the City, acting singly, be and each of them hereby is authorized and directed to execute and deliver any and all documents and instruments and to do and cause to be done any and all acts and things necessary or proper for carrying out the transactions contemplated by the Joint Powers Agreement and this Resolution. All prior actions of such officers or staff of the City with respect thereto are hereby ratified and approved.

SECTION 4. This Resolution shall take effect immediately upon its passage.

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

PASSED, APPROVED, AND ADOPTED this 5<sup>th</sup> day of December 2017.

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PAUL S. LEON, MAYOR

ATTEST:

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SHEILA MAUTZ, CITY CLERK

APPROVED AS TO FORM:

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BEST BEST & KRIEGER LLP  
CITY ATTORNEY

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

I, SHEILA MAUTZ, City Clerk of the City of Ontario, DO HEREBY CERTIFY that foregoing Resolution No. 2017- was duly passed and adopted by the City Council of the City of Ontario at their regular meeting held December 5, 2017 by the following roll call vote, to wit:

AYES: COUNCIL MEMBERS:

NOES: COUNCIL MEMBERS:

ABSENT: COUNCIL MEMBERS:

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

(SEAL)

The foregoing is the original of Resolution No. 2017- duly passed and adopted by the Ontario City Council at their regular meeting held December 5, 2017.

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

(SEAL)

# CITY OF ONTARIO

Agenda Report  
December 5, 2017

SECTION:  
PUBLIC HEARINGS

**SUBJECT: CONSIDERATION OF A SPENDING PLAN FOR CITIZEN'S OPTION FOR PUBLIC SAFETY / ENHANCING LAW ENFORCEMENT ACTIVITIES SUBACCOUNT GRANT PROGRAM**

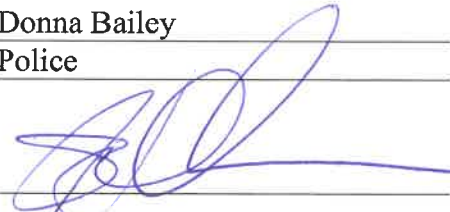
**RECOMMENDATION:** That the City Council receive public comment for the Fiscal Year 2017-18 Citizen's Option for Public Safety (COPS) / Enhancing Law Enforcement Activities Subaccount (ELEAS) Grant; and approve the proposed spending plan.

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

**FISCAL IMPACT:** On September 11, 2017, the California State Department of Finance announced the estimated funding allocation amounts to be awarded to each participating agency under the COPS/ELEAS grant program. The City of Ontario is eligible to receive a maximum grant award of \$266,654. Since this amount is based on an estimation of the FY2017-18 State of California's Vehicle License Fee (VLF) revenues, the allocation may be re-calculated and adjusted by the State Controller's Office. The grant funds will be distributed to the City in monthly installments. The City is not required to provide matching funds for this grant. If approved, the associated revenue and expenditure adjustments will be presented in the next quarterly budget report to the City Council.

**BACKGROUND:** Beginning in FY 2002-03, the State of California allocated grant monies (COPS/ELEAS), formerly known as Supplemental Law Enforcement Services Fund/Citizen's Option for Public Safety, to counties, who in turn, granted those monies to cities for the purpose of supporting front-line law enforcement needs. A public hearing is required for public input before the grant funds can be utilized.

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

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

Submitted to Council/O.H.A. 12/05/2017  
Approved: \_\_\_\_\_  
Continued to: \_\_\_\_\_  
Denied: \_\_\_\_\_

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Based on current front-line operational needs, the Police Department proposes the following grant spending plan:

- Frontline law enforcement equipment \$266,654

**TOTAL** **\$266,654**