

CITY OF ONTARIO
CITY COUNCIL/HOUSING AUTHORITY/SUCCESSOR
AGENCY TO THE ONTARIO REDEVELOPMENT AGENCY
AGENDA
MAY 17, 2016

Paul S. Leon
Mayor

Debra Dorst-Porada
Mayor pro Tem

Alan D. Wapner
Council Member

Jim W. Bowman
Council Member

Paul Vincent Avila
Council Member



Al C. Boling
City Manager

John E. Brown
City Attorney

Sheila Mautz
City Clerk

James R. Milhiser
Treasurer

WELCOME to a meeting of the Ontario City Council.

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

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

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

CALL TO ORDER (*OPEN SESSION*)

6:00 p.m.

ROLL CALL

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

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

CLOSED SESSION

- GC 54956.9 (d)(2), CONFERENCE WITH LEGAL COUNSEL, ANTICIPATED LITIGATION: *One (1) case.*

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

PLEDGE OF ALLEGIANCE

Council Member Bowman

INVOCATION

Pastor Steve Marquedant, Sovereign Grace Baptist Church

REPORT ON CLOSED SESSION

City Attorney

PUBLIC COMMENTS

6:30 p.m.

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

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

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

CONSENT CALENDAR

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

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

1. APPROVAL OF MINUTES

Minutes for the regular meeting of the City Council and Housing Authority of April 19, 2016, approving same as on file in the Records Management Department.

2. BILLS/PAYROLL

Bills March 20, 2016 through April 2, 2016 and **Payroll** March 20, 2016 through April 2, 2016, when audited by the Finance Committee.

3. RESOLUTIONS APPROVING AN ASSIGNMENT AND ASSUMPTION AGREEMENT BETWEEN THE SUCCESSOR AGENCY TO THE ONTARIO REDEVELOPMENT AGENCY AND THE CITY OF ONTARIO (THE ONTARIO CENTER – PIEMONTE PROJECT DISPOSITION AND DEVELOPMENT AGREEMENT)

That the Successor Agency to the Ontario Redevelopment Agency and City Council and take the following actions:

- (A) The Successor Agency to the Ontario Redevelopment Agency adopt a resolution approving an Assignment and Assumption Agreement (“Agreement”) between the Successor Agency to the Ontario Redevelopment Agency (“Successor Agency”) and the City of Ontario (“City”) (on file with the Records Management Department), and authorize the Executive Director to execute the Agreement and all other documents required for implementation of the Agreement; and
- (B) The City Council adopt a resolution approving an Assignment and Assumption Agreement between the Successor Agency to the Ontario Redevelopment Agency and the City of Ontario (on file with the Records Management Department), and authorize the City Manager to execute the Agreement and all other documents required for implementation of the Agreement.

RESOLUTION NO. _____

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF ONTARIO, CALIFORNIA, APPROVING AN ASSIGNMENT AND ASSUMPTION AGREEMENT (THE ONTARIO CENTER - PIEMONTE PROJECT DISPOSITION AND DEVELOPMENT AGREEMENT).

RESOLUTION NO. _____

A RESOLUTION OF THE SUCCESSOR AGENCY TO THE ONTARIO REDEVELOPMENT AGENCY OF THE CITY OF ONTARIO, CALIFORNIA, APPROVING AN ASSIGNMENT AND ASSUMPTION AGREEMENT (THE ONTARIO CENTER - PIEMONTE PROJECT DISPOSITION AND DEVELOPMENT AGREEMENT).

4. FISCAL YEAR 2015-16 THIRD BUDGET UPDATE REPORT

That the City Council approve the budget adjustments and recommendations as listed in the Fiscal Year 2015-16 Third Budget Update Report.

5. AWARD A MAINTENANCE AND REPAIR SERVICES AGREEMENT FOR HVAC MAINTENANCE AND REPAIR SERVICES AT VARIOUS CITY FACILITIES/WESTERN ALLIED CORPORATION

That the City Council:

- (A) Award and authorize the City Manager to execute a three-year Maintenance and Repair Services Agreement, (Contract No. MS 1516-12) (on file in the Records Management Department), to Western Allied Corporation of Santa Fe Springs, California, for \$298,224 for the initial three-year term contract, and authorize the option to extend the agreement for up to two successive one-year periods; and

- (B) Authorize urgency repairs based on the established contract rates, and the addition of future services areas as needed.

6. AUTHORIZE THE PURCHASE OF POLICE VEHICLES/NATIONAL AUTO FLEET GROUP/FAIRVIEW FORD

That the City Council takes the following actions:

- (A) Authorize the purchase and delivery of one 2016 Chevrolet Express Van in the amount of \$29,983; two 2017 Ford Escapes in the amount of \$45,952; and one 2016 Ford Explorer in the amount of \$43,258 from National Auto Fleet Group of Watsonville, California, consistent with the terms and conditions of the National Joint Powers Alliance (NJPA) Cooperative Contract 102811; and
- (B) Authorize the purchase and delivery of three 2017 Ford Police Patrol SUV Vehicles in the amount of \$97,221 from Fairview Ford of San Bernardino, California, under the terms and conditions of Bid No. 613.

7. ACCEPT A WRITTEN PETITION TO CREATE A COMMUNITY FACILITIES DISTRICT; ADOPT A RESOLUTION OF INTENT TO ESTABLISH CITY OF ONTARIO COMMUNITY FACILITIES DISTRICT NO. 30 (NEW HAVEN FACILITIES - AREA B) AND TO AUTHORIZE THE ASSOCIATED LEVY OF SPECIAL TAXES; AND ADOPT A RESOLUTION TO INCUR BONDED INDEBTEDNESS

That the City Council:

- (A) Accept written petition (on file with the Records Management Department) from Brookcal Ontario, LLC. located in Costa Mesa, CA, to create a Community Facilities District (CFD), and to waive certain procedural matters, under the Mello-Roos Community Facilities Act of 1982;
- (B) Adopt a Resolution of Intent to establish City of Ontario Community Facilities District No. 30 (New Haven Facilities – Area B); 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, June 21, 2016;
- (C) Adopt a Resolution to incur bonded indebtedness of proposed Community Facilities District No. 30 (New Haven Facilities – Area B).

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. 30 (NEW HAVEN FACILITIES - AREA B), 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. 30 (NEW HAVEN FACILITIES - AREA B).

8. A CITY INITIATED REQUEST TO CHANGE THE ZONING DESIGNATIONS (FILE NO. PZC16-001) ON 881 PROPERTIES GENERALLY LOCATED SOUTH OF FOURTH STREET AND WEST OF EUCLID AVENUE; 127 PROPERTIES ALONG EAST HOLT BOULEVARD; AND 37 OTHER PROPERTIES LOCATED THROUGHOUT THE CITY IN ORDER TO MAKE THE ZONING CONSISTENT WITH THE ONTARIO PLAN LAND USE DESIGNATIONS OF THE PROPERTIES

That City Council consider and adopt an ordinance approving a Zone Change (File No. PZC16-001) to create consistency between the zoning and the General Plan land use designations of the subject properties.

ORDINANCE NO. _____

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF ONTARIO, CALIFORNIA, APPROVING FILE NO. PZC16-001, A CITY INITIATED REQUEST TO CHANGE THE ZONING DESIGNATIONS ON 881 PROPERTIES GENERALLY LOCATED SOUTH OF FOURTH STREET AND WEST OF EUCLID AVENUE, 127 PROPERTIES ALONG EAST HOLT BOULEVARD, AND 37 OTHER PROPERTIES LOCATED THROUGHOUT THE CITY IN ORDER TO MAKE THE ZONING CONSISTENT WITH THE ONTARIO PLAN LAND USE DESIGNATIONS OF THE PROPERTIES, AND MAKING FINDINGS IN SUPPORT THEREOF—APNS: AS SHOWN IN EXHIBIT A (ATTACHED).

9. A RESOLUTION APPROVING THE SUBMITTAL OF AN APPLICATION TO PARTICIPATE IN THE BEVERAGE CONTAINER RECYCLING CITY/COUNTY PAYMENT PROGRAM (FISCAL YEAR 2015-16) FROM THE STATE OF CALIFORNIA DEPARTMENT OF RESOURCES RECYCLING AND RECOVER (CALRECYCLE)

That the City Council adopt a resolution approving the submittal of an application for approximately \$42,000 from the Beverage Container Recycling City/County Payment Program (Fiscal Year 2015-16) and authorize the City Manager or his designee to execute all necessary documents to participate in the program.

RESOLUTION NO. _____

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF ONTARIO, CALIFORNIA, APPROVING THE SUBMITTAL OF AN APPLICATION TO PARTICIPATE IN THE BEVERAGE CONTAINER RECYCLING CITY/COUNTY PAYMENT PROGRAM (FISCAL YEAR 2015-16) FROM THE STATE OF CALIFORNIA DEPARTMENT OF RESOURCES RECYCLING AND RECOVERY (CalRecycle).

10. PROFESSIONAL SERVICES AGREEMENT FOR POTABLE WATER MASTER PLAN UPDATE

That the City Council approve and authorize the City Manager to execute a Professional Services Agreement (on file with the Records Management Department) with AKM Consulting Engineers of Irvine, California, (AKM) to provide Engineering Services for the Potable Water Master Plan Update in the amount of \$297,380 plus a 15% contingency of \$44,607 for a total amount of \$341,987.

PUBLIC HEARINGS

Pursuant to Government Code Section 65009, if you challenge the City's zoning, planning or any other decision in court, you may be limited to raising only those issues you or someone else raised at the public hearing described in this notice, or in written correspondence delivered to the City Council at, or prior to the public hearing.

11. A PUBLIC HEARING TO CONSIDER AN ORDINANCE APPROVING A DEVELOPMENT AGREEMENT (FILE NO. PDA15-005) BETWEEN THE CITY OF ONTARIO AND BROOKCAL ONTARIO, LLC, FOR THE DEVELOPMENT OF UP TO 108 RESIDENTIAL UNITS (TT19907) ON 27.09 GROSS ACRES OF LAND WITHIN THE CONVENTIONAL MEDIUM LOT RESIDENTIAL DISTRICT (PLANNING AREA 29) OF THE SUBAREA 29 SPECIFIC PLAN, LOCATED AT THE SOUTHWEST CORNER OF HAVEN AVENUE AND PARK VIEW STREET

That the City Council introduce and waive further reading of an ordinance approving a Development Agreement (File No. PDA15-005, on file with the Records Management Department) between the City of Ontario and Brookcal Ontario, LLC, for the development of up to 108 residential units (TT19907) on 27.09 gross acres of land within the Conventional Medium Lot Residential district (Planning Area 29) of the Subarea 29 Specific Plan, located at the southwest corner of Haven Avenue and Park View Street (APN: 0218-321-17).

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

Written communication.

Oral presentation.

Public hearing closed.

ORDINANCE NO. _____

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF ONTARIO, CALIFORNIA, APPROVING A DEVELOPMENT AGREEMENT BETWEEN THE CITY OF ONTARIO AND BROOKCAL ONTARIO, LLC., FILE NO. PDA15-005, TO ESTABLISH THE TERMS AND CONDITIONS FOR DEVELOPMENT OF UP TO 108 RESIDENTIAL UNITS (TT 19907) ON 27.09 ACRES WITHIN PLANNING AREA 29 OF THE SUBAREA 29 SPECIFIC PLAN, LOCATED AT THE SOUTHWEST CORNER OF HAVEN AVENUE AND PARK VIEW STREET, AND MAKING FINDINGS IN SUPPORT THEREOF (APN: 0218-321-17).

12. A PUBLIC HEARING TO CONSIDER AN ORDINANCE APPROVING A DEVELOPMENT AGREEMENT (FILE NO. PDA15-006) BETWEEN THE CITY OF ONTARIO AND ROSEVILLE NMC, LLC, ONTARIO, FOR THE DEVELOPMENT OF UP TO 118 RESIDENTIAL UNITS (TT19909) ON 26.81 GROSS ACRES OF LAND WITHIN THE CONVENTIONAL MEDIUM LOT RESIDENTIAL DISTRICT (PLANNING AREA 28) OF THE SUBAREA 29 SPECIFIC PLAN, LOCATED AT THE NORTHWEST CORNER OF HAVEN AVENUE AND PARK VIEW STREET

That the City Council introduce and waive further reading of an ordinance approving a Development Agreement (File No. PDA15-006, on file with the Records Management Department) between the City of Ontario and Roseville NMC, LLC, Ontario, for the development of up to 118 residential units (TT19909) on 26.81 gross acres of land within the Conventional Medium Lot Residential district (Planning Area 28) of the Subarea 29 Specific Plan, located at the northwest corner of Haven Avenue and Park View Street (APN: 0218-321-30).

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

Written communication.

Oral presentation.

Public hearing closed.

ORDINANCE NO. _____

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF ONTARIO, CALIFORNIA, APPROVING A DEVELOPMENT AGREEMENT BETWEEN THE CITY OF ONTARIO AND ROSEVILLE NMC, LLC, FILE NO. PDA15-006, TO ESTABLISH THE TERMS AND CONDITIONS FOR DEVELOPMENT OF UP TO 118 RESIDENTIAL UNITS (TT 19909) ON 26.81 ACRES WITHIN PLANNING AREA 28 OF THE SUBAREA 29 SPECIFIC PLAN, LOCATED ON THE AT THE NORTHWEST CORNER OF HAVEN AVENUE AND PARK VIEW STREET, AND MAKING FINDINGS IN SUPPORT THEREOF (APN:0218-321-30).

STAFF MATTERS

City Manager Boling

COUNCIL MATTERS

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

ADJOURNMENT

CITY OF ONTARIO
CLOSED SESSION REPORT
City Council // Housing Authority //
Successor Agency to the Ontario Redevelopment Agency //Other // (GC 54957.1)
May 17, 2016

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

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

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

- GC 54956.9 (d)(2), CONFERENCE WITH LEGAL COUNSEL, ANTICIPATED LITIGATION:
One (1) case

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

/ /

/ /

/ /

Disposition: _____

Reported by: _____
City Attorney / City Manager / Executive Director

CITY OF ONTARIO

Agenda Report
May 17, 2016

SECTION: CONSENT CALENDAR

SUBJECT: RESOLUTIONS APPROVING AN ASSIGNMENT AND ASSUMPTION AGREEMENT BETWEEN THE SUCCESSOR AGENCY TO THE ONTARIO REDEVELOPMENT AGENCY AND THE CITY OF ONTARIO (THE ONTARIO CENTER – PIEMONTE PROJECT DISPOSITION AND DEVELOPMENT AGREEMENT)

RECOMMENDATION: That the Successor Agency to the Ontario Redevelopment Agency and City Council and take the following actions:

- (A) The Successor Agency to the Ontario Redevelopment Agency adopt a resolution approving an Assignment and Assumption Agreement (“Agreement”) between the Successor Agency to the Ontario Redevelopment Agency (“Successor Agency”) and the City of Ontario (“City”) (on file with the Records Management Department), and authorize the Executive Director to execute the Agreement and all other documents required for implementation of the Agreement; and
- (B) The City Council adopt a resolution approving an Assignment and Assumption Agreement between the Successor Agency to the Ontario Redevelopment Agency and the City of Ontario (on file with the Records Management Department), and authorize the City Manager to execute the Agreement and all other documents required for implementation of the Agreement.

COUNCIL GOALS: Regain Local Control of the Ontario International Airport
Invest in the Growth and Evolution of the City’s Economy

FISCAL IMPACT: There is no direct fiscal impact to the City or the Successor Agency as a result of this contracting action.

BACKGROUND: The Ontario Redevelopment Agency (“Former Redevelopment Agency”) and Panattoni Development Company, LLC (“Panattoni”) entered into a Disposition and Development Agreement (“DDA”) on November 9, 2004 for the development of a multi-phase mixed-use

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

Prepared by: Charity Hernandez
Department: Economic Development

City Manager
Approval: 

Submitted to Council/O.H.A. 05/17/2016

Approved: _____

Continued to: _____

Denied: _____

3

commercial, office and residential project on property located in The Ontario Center and commonly referred to as the Piemonte Project ("Project"). Also within The Ontario Center is the Citizens Business Bank Arena, which provides quality facilities for diverse entertainment, business functions, social gatherings and educational opportunities. Consistent with the terms and conditions of the DDA, certain phases of the Project were completed, specifically the Target commercial center on Fourth Street and the professional Class A office building located on Via Piemonte, immediately adjacent to the Citizens Business Bank Arena. Implementation of the subsequent phases of the Project as described in the DDA were impacted by the negative effects of the economic downturn and Great Recession. As a result, the remaining phases of the Project are still to be completed and are subject to ongoing implementation of the DDA by the Successor Agency.

Of the undeveloped DDA property ("Property"), all but two parcels are now owned by Redus Piemonte, LLC. The two undeveloped DDA parcels which are not owned by Redus Piemonte, LLC are Parcel 22, owned by Piemonte Business Park, LLC and Parcel 23, which is owned by the Successor Agency to the Former Redevelopment Agency. All of the Property owned by Redus Piemonte, LLC, Parcel 22, and Parcel 23 remain subject to the terms and conditions of the DDA and the development requirements contained in the DDA.

Specifically with regard to development of Parcel 22, the DDA calls for the development of a hotel including amenities which together would serve as a catalyst for additional development in the Piemonte Project and complement event activity at the adjacent Citizens Business Bank Arena. Parcel 23 is subject of a proposed Real Estate Purchase and Sale Agreement, which is currently under review by the California State Department of Finance.

Due to the importance of the development of The Ontario Center, staff recommends that the City Council and Successor Agency adopt resolutions assigning to the City the DDA pertaining to and all related agreements to which the Successor Agency is a party, with the City assuming all rights and obligations of the Successor Agency as they apply to the DDA. Implementation of the Assignment Agreement will help wind down the affairs of the Former Redevelopment Agency by transferring contractual obligations of the Former Redevelopment Agency to the City and will help facilitate and further assist the City Council in achieving its goals as they relate to all of the Property subject to the DDA and the overall development of The Ontario Center.

RESOLUTION NO. _____

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF ONTARIO, CALIFORNIA, APPROVING AN ASSIGNMENT AND ASSUMPTION AGREEMENT (THE ONTARIO CENTER - PIEMONTE PROJECT DISPOSITION AND DEVELOPMENT AGREEMENT).

WHEREAS, the City of Ontario ("City") formed the Ontario Redevelopment Agency ("Former Redevelopment Agency") pursuant to the Community Redevelopment Law (Health and Safety Code sections 33000 *et seq.*) ("CRL"); and

WHEREAS, the Redevelopment Agency Dissolution Law (Assembly Bill No. X1 26, as modified by the California Supreme Court pursuant to *California Redevelopment Association v. Matosantos et al.* (2011) 53 Cal.4th 231, as further amended by Assembly Bill No. 1484, as further amended by Assembly Bill No. 1585, as further amended by Senate Bill No. 341, as further amended by Assembly Bill No. 471, as further amended by Assembly Bill No. 1963, and as further amended by Assembly Bill No. 1793) makes certain changes to the CRL including adding Part 1.8 (commencing with Section 34161) and Part 1.85 (commencing with Section 34170) to Division 24 of the Health and Safety Code. Pursuant to the Redevelopment Agency Dissolution Law, all California redevelopment agencies, including the Former Redevelopment Agency, were dissolved on February 1, 2012, and "successor agencies" were designated and vested with the responsibility of paying, performing and enforcing the enforceable obligations of the former redevelopment agencies and expeditiously winding down the business and fiscal affairs of the former redevelopment agencies; and

WHEREAS, pursuant to Health and Safety Code Section 34173(d), the City elected to be the successor agency to the Former Redevelopment Agency ("Successor Agency"), confirmed by Resolution No. 2012-001 on January 10, 2012; and

WHEREAS, pursuant to Health and Safety Code Section 34179(a), the Oversight Board is the Successor Agency's oversight board; and

WHEREAS, pursuant to Health and Safety Code Section 34177(h), the Successor Agency is required to expeditiously wind down the affairs of the Former Redevelopment Agency pursuant to the provisions of the Redevelopment Agency Dissolution Law and in accordance with the direction of the Oversight Board; and

WHEREAS, pursuant to Health and Safety Code Section 34177(i), the Successor Agency is required to continue to oversee development of properties until the contracted work has been completed or the contractual obligations of the Former Redevelopment Agency can be transferred to other parties; and

WHEREAS, the Former Redevelopment Agency and Panattoni Development Company, LLC ("Panattoni") entered into that certain Disposition and Development Agreement dated as of November 9, 2004, as amended by that certain First Implementation Agreement dated as of October 10, 2006, as further amended, modified, or implemented (collectively, the "DDA") pertaining to development of the property described in Section 104 of the DDA. The DDA is incorporated herein by this reference. DDA, as used herein shall mean, refer to, and include the DDA, as well as any riders, exhibits, addenda, implementation agreements, amendments and attachments thereto

(which are hereby incorporated herein by this reference) or other documents expressly incorporated by reference in the DDA. Any capitalized term not otherwise defined herein shall have the meaning ascribed to it in the DDA; and

WHEREAS, the property which is the subject of the DDA ("DDA Property") is located within the area of the City known as The Ontario Center. Also within The Ontario Center is the City-built and City-owned Citizens Business Bank Arena, which provides quality facilities for diverse entertainment, business functions, social gatherings and educational opportunities; and

WHEREAS, in the more than 11 years since the DDA has been in effect only two projects required to be completed by the DDA have been completed; namely, the First Retail Project and the First Office Project (as defined in the DDA). The remaining projects are still to be completed and are subject to further, ongoing implementation of the DDA by the Successor Agency; and

WHEREAS, of the undeveloped DDA Property, all but two parcels are now owned by Wells Fargo bank following foreclosure of the DDA Property which secured a loan of the DDA developer. Following foreclosure, the Wells Fargo-owned DDA Property remains subject to the terms and conditions of the DDA and the development requirements and limitations contained in the DDA. The two undeveloped DDA parcels which are not owned by Wells Fargo are Parcel 22 of Parcel Map No. 17550, which is still owned by the DDA developer, and Parcel 23 of Parcel Map No. 17550, which is owned by the Successor Agency. Parcel 22 and Parcel 23 also remain subject to the terms and conditions of the DDA and the development requirements and limitations contained in the DDA. The remaining DDA projects are still to be completed and are subject to further, ongoing implementation of the DDA by the Successor Agency; and

WHEREAS, the projects still to be completed on the Wells Fargo-owned DDA Property as required by the DDA are the Second Residential Project and Remaining Improvements (as defined in the DDA). The project still to be completed on Parcel 22 as required by the DDA is the Preferred Hotel Project (as defined in the DDA). Parcel 23 is the subject of a proposed Real Estate Purchase and Sale Agreement and Joint Escrow Instructions, which is currently under review by the California State Department of Finance. The proposed Real Estate Purchase and Sale Agreement and Joint Escrow Instructions provides that Parcel 23 would be sold by the Successor Agency and the sales proceeds would be distributed to the taxing entities in accordance with the Redevelopment Agency Dissolution Law. Parcel 23 also remains undeveloped and subject to the terms and conditions of the DDA and the development requirements and limitations contained in the DDA; and

WHEREAS, the Successor Agency continues to have obligations and potential liability with regard to the DDA and undeveloped DDA Property. For example, an Estoppel Certificate executed by the Former Redevelopment Agency for the benefit of Wells Fargo provides that following foreclosure by Wells Fargo and transfer of the Wells Fargo-owned DDA Property to a third-party purchaser, all timelines for construction and development of the improvements set forth in the DDA or otherwise agreed to by the applicable Developer entity shall have no further force and effect, and the Successor Agency must agree to grant to any such third-party transferee a new, commercially reasonable timeline for construction and development. The new timeline is to be reasonably determined by the Successor Agency after consulting, or endeavoring to consult, in good faith with such third-party purchaser. Wells Fargo is under contract to sell the Wells Fargo-owned DDA

Property to a potential developer. In furtherance of the Successor Agency's obligations under the Estoppel Certificate, the Successor Agency would be required to consult with, or endeavor to consult with, the potential developer the Wells Fargo-owned DDA Property. In addition, Section 107 of the DDA requires that the Successor Agency approve all assignments and transfers to any potential assignee or transferee for every parcel until the parcel is developed in accordance with the DDA. Section 317 of the DDA requires the Successor Agency approve all loans and financings for every parcel until the parcel is developed in accordance with the DDA. Also, Section 104.c of the DDA provides that until a parcel is developed in accordance with the DDA the developer of that parcel may not subdivide such parcel unless and until the Successor Agency Executive Director approves a parcel development plan for any such proposed subdivision. Additionally, Section 17.b. of the First Implementation Agreement to the DDA provides that the Successor Agency must make certain determinations regarding any proposed development plan submitted by the DDA developer or a proposed transferee with respect to any transfer of the DDA Property. The Successor Agency's ongoing DDA obligations may require the retention and use of consultants by the Successor Agency, such as engineering, biological, economic, legal, or other qualified consultants. The Successor Agency also remains subject to potential litigation related to the DDA and DDA Property. Parcel 23 has already been the subject of litigation; namely, a lawsuit captioned *Piemonte Residential, Inc., et al. v. Toll Brothers, Inc., et al.*, Case No. CIVRS 906135, Superior Court of the State of California, County of San Bernardino. There is(are) or may be a transite pipe(s) on the DDA Property, which was all previously owned by the Former Redevelopment Agency prior to conveyance to the DDA developer. The transite pipe(s) may contain asbestos containing materials and the City and Former Redevelopment Agency recorded an asbestos disclosure against the DDA Property; and

WHEREAS, the Successor Agency and City have negotiated a draft Assignment and Assumption Agreement ("Assignment Agreement"), a copy of which is on file with the City Records Management Department. The Assignment Agreement provides for the Successor Agency to assign to City all right, title and interest in and to the DDA and all related agreements to which Successor Agency is a party or to which Successor Agency is a beneficiary (express or implied) (including, without limitation, all documents entered into in furtherance of the DDA) and for City to assume all rights and obligations of Successor Agency thereunder; and

WHEREAS, the proposed assignment of the DDA and all related agreements to which Successor Agency is a party or to which Successor Agency is a beneficiary (express or implied) (including, without limitation, all documents entered into in furtherance of the DDA) reduces liabilities to the Successor Agency and is in the best interests of the taxing entities. Based on the size and complexity of the remaining DDA projects, it is anticipated that implementation required by the Successor Agency would be substantial and would take place over a significant amount of time (based on the development completed in the past 11 years). If the Assignment Agreement is approved there would be no remaining obligations or potential liability of the Successor Agency with respect to the DDA or the DDA Property; and

WHEREAS, the implementation of the Assignment Agreement will help wind down the affairs of the Former Redevelopment Agency by transferring contractual obligations of the Former Redevelopment Agency to the City and will help facilitate and further assist the City in achieving the municipal and other public purposes in developing The Ontario Center; and

WHEREAS, 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 AS FOLLOWS:

SECTION 1. The City Council of the City of Ontario hereby finds and determines that the foregoing recitals are true and correct.

SECTION 2. The City Council hereby approves the Assignment Agreement, a copy of which is on file with the City Records Management Department, subject to approval by the Successor Agency Oversight Board.

SECTION 3. Without the requirement of any further approval of the City, the City Manager or designee is authorized and directed to do all of the following: (a) execute the Assignment Agreement on behalf of the City, subject to approval by the Successor Agency Oversight Board; (b) make non-substantive changes or modifications to the Assignment Agreement requested by the Oversight Board or as deemed necessary by the City Manager; and (c) take any action and execute any and all documents and agreements necessary to implement this Resolution, the Assignment Agreement and the DDA and all related agreements which are assigned pursuant to the Assignment Agreement and administer the City's obligations, responsibilities and duties to be performed thereunder (including, without limitation, exercising any option and executing a grant deed certificate of acceptance in connection with any option).

SECTION 4. If any provision of this Resolution or the application of any such provision to any person or circumstance is held invalid, such invalidity shall not affect other provisions or applications of this Resolution that can be given effect without the invalid provision or application, and to this end the provisions of this Resolution are severable. The City declares that the City would have adopted this Resolution irrespective of the invalidity of any particular portion of this Resolution.

SECTION 5. This Resolution shall take effect immediately upon its adoption.

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

PASSED, APPROVED, AND ADOPTED this 17th day of May 2016.

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. 2016- was duly passed and adopted by the City Council of the City of Ontario at their regular meeting held May 17, 2016 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. 2016- duly passed and adopted by the Ontario City Council at their regular meeting held May 17, 2016.

SHEILA MAUTZ, CITY CLERK

(SEAL)

RESOLUTION NO. _____

A RESOLUTION OF THE SUCCESSOR AGENCY TO THE ONTARIO REDEVELOPMENT AGENCY OF THE CITY OF ONTARIO, CALIFORNIA, APPROVING AN ASSIGNMENT AND ASSUMPTION AGREEMENT (THE ONTARIO CENTER - PIEMONTE PROJECT DISPOSITION AND DEVELOPMENT AGREEMENT).

WHEREAS, the City of Ontario ("City") formed the Ontario Redevelopment Agency ("Former Redevelopment Agency") pursuant to the Community Redevelopment Law (Health and Safety Code sections 33000 *et seq.*) ("CRL"); and

WHEREAS, the Redevelopment Agency Dissolution Law (Assembly Bill No. X126, as modified by the California Supreme Court pursuant to *California Redevelopment Association v. Matosantos et al.* (2011) 53 Cal.4th 231, as further amended by Assembly Bill No. 1484, as further amended by Assembly Bill No. 1585, as further amended by Senate Bill No. 341, as further amended by Assembly Bill No. 471, as further amended by Assembly Bill No. 1963, and as further amended by Assembly Bill No. 1793) makes certain changes to the CRL including adding Part 1.8 (commencing with Section 34161) and Part 1.85 (commencing with Section 34170) to Division 24 of the Health and Safety Code. Pursuant to the Redevelopment Agency Dissolution Law, all California redevelopment agencies, including the Former Redevelopment Agency, were dissolved on February 1, 2012, and "successor agencies" were designated and vested with the responsibility of paying, performing and enforcing the enforceable obligations of the former redevelopment agencies and expeditiously winding down the business and fiscal affairs of the former redevelopment agencies; and

WHEREAS, pursuant to Health and Safety Code Section 34173(d), the City elected to be the successor agency to the Former Redevelopment Agency ("Successor Agency"), confirmed by Resolution No. 2012-001 on January 10, 2012; and

WHEREAS, pursuant to Health and Safety Code Section 34179(a), the Oversight Board is the Successor Agency's Oversight Board; and

WHEREAS, pursuant to Health and Safety Code Section 34177(h), the Successor Agency is required to expeditiously wind down the affairs of the Former Redevelopment Agency pursuant to the provisions of the Redevelopment Agency Dissolution Law and in accordance with the direction of the Oversight Board; and

WHEREAS, pursuant to Health and Safety Code Section 34177(i), the Successor Agency is required to continue to oversee development of properties until the contracted work has been completed or the contractual obligations of the Former Redevelopment Agency can be transferred to other parties; and

WHEREAS, the Former Redevelopment Agency and Panattoni Development Company, LLC ("Panattoni") entered into that certain Disposition and Development Agreement dated as of November 9, 2004, as amended by that certain First Implementation Agreement dated as of October 10, 2006, as further amended, modified, or implemented (collectively, the "DDA") pertaining to development of the property described in Section 104 of the DDA. The DDA is incorporated herein by this reference. DDA, as used herein shall mean, refer to, and include the DDA, as well as any riders, exhibits, addenda, implementation agreements, amendments and attachments thereto (which are hereby incorporated herein by this reference) or other documents expressly incorporated by reference in the DDA. Any capitalized term not otherwise defined herein shall have the meaning ascribed to it in the DDA; and

WHEREAS, the property which is the subject of the DDA ("DDA Property") is located within the area of the City known as The Ontario Center. Also within The Ontario Center is the City-built and City-owned Citizens Business Bank Arena, which provides quality facilities for diverse entertainment, business functions, social gatherings and educational opportunities; and

WHEREAS, in the more than 11 years since the DDA has been in effect only two projects required to be completed by the DDA have been completed; namely, the First Retail Project and the First Office Project (as defined in the DDA). The remaining projects are still to be completed and are subject to further, ongoing implementation of the DDA by the Successor Agency; and

WHEREAS, of the undeveloped DDA Property, all but two parcels are now owned by Wells Fargo bank following foreclosure of the DDA Property which secured a loan of the DDA developer. Following foreclosure, the Wells Fargo-owned DDA Property remains subject to the terms and conditions of the DDA and the development requirements and limitations contained in the DDA. The two undeveloped DDA parcels which are not owned by Wells Fargo are Parcel 22 of Parcel Map No. 17550, which is still owned by the DDA developer, and Parcel 23 of Parcel Map No. 17550, which is owned by the Successor Agency. Parcel 22 and Parcel 23 also remain subject to the terms and conditions of the DDA and the development requirements and limitations contained in the DDA. The remaining DDA projects are still to be completed and are subject to further, ongoing implementation of the DDA by the Successor Agency; and

WHEREAS, the projects still to be completed on the Wells Fargo-owned DDA Property as required by the DDA are the Second Residential Project and Remaining Improvements (as defined in the DDA). The project still to be completed on Parcel 22 as required by the DDA is the Preferred Hotel Project (as defined in the DDA). Parcel 23 is the subject of a proposed Real Estate Purchase and Sale Agreement and Joint Escrow Instructions, which is currently under review by the California State Department of Finance. The proposed Real Estate Purchase and Sale Agreement and Joint Escrow Instructions provides that Parcel 23 would be sold by the Successor Agency and the sales proceeds would be distributed to the taxing entities in accordance with the Redevelopment Agency Dissolution Law. Parcel 23 also remains undeveloped and subject to the terms and conditions of the DDA and the development requirements and limitations contained in the DDA; and

WHEREAS, the Successor Agency continues to have obligations and potential liability with regard to the DDA and undeveloped DDA Property. For example, an Estoppel Certificate executed by the Former Redevelopment Agency for the benefit of Wells Fargo provides that following foreclosure by Wells Fargo and transfer of the Wells Fargo-owned DDA Property to a third-party purchaser, all timelines for construction and development of the improvements set forth in the DDA or otherwise agreed to by the applicable Developer entity shall have no further force and effect, and the Successor Agency must agree to grant to any such third-party transferee a new, commercially reasonable timeline for construction and development. The new timeline is to be reasonably determined by the Successor Agency after consulting, or endeavoring to consult, in good faith with such third-party purchaser. Wells Fargo is under contract to sell the Wells Fargo-owned DDA Property to a potential developer. In furtherance of the Successor Agency's obligations under the Estoppel Certificate, the Successor Agency would be required to consult with, or endeavor to consult with, the potential developer the Wells Fargo-owned DDA Property. In addition, Section 107 of the DDA requires that the Successor Agency approve all assignments and transfers to any potential assignee or transferee for every parcel until the parcel is developed in accordance with the DDA. Section 317 of the DDA requires the Successor Agency approve all loans and financings for every parcel until the parcel is developed in accordance with the DDA. Also, Section 104.c of the DDA provides that until a parcel is developed in accordance with the DDA the developer of that parcel may not subdivide such parcel unless and until the Successor Agency Executive Director approves a parcel development plan for any such proposed subdivision. Additionally, Section 17.b. of the First Implementation Agreement to the DDA provides that the Successor Agency must make certain determinations regarding any proposed development plan submitted by the DDA developer or a proposed transferee with respect to any transfer of the DDA Property. The Successor Agency's ongoing DDA obligations may require the retention and use of consultants by the Successor Agency, such as engineering, biological, economic, legal, or other qualified consultants. The Successor Agency also remains subject to potential litigation related to the DDA and DDA Property. Parcel 23 has already been the subject of litigation; namely, a lawsuit captioned *Piemonte Residential, Inc., et al. v. Toll Brothers, Inc., et al.*, Case No. CIVRS 906135, Superior Court of the State of California, County of San Bernardino. There is(are) or may be a transite pipe(s) on the DDA Property, which was all previously owned by the Former Redevelopment Agency prior to conveyance to the DDA developer. The transite pipe(s) may contain asbestos containing materials and the City and Former Redevelopment Agency recorded an asbestos disclosure against the DDA Property; and

WHEREAS, the Successor Agency and City have negotiated a draft Assignment and Assumption Agreement ("Assignment Agreement"), a copy of which is on file with the City Records Management Department. The Assignment Agreement provides for the Successor Agency to assign to City all right, title and interest in and to the DDA and all related agreements to which Successor Agency is a party or to which Successor Agency is a beneficiary (express or implied) (including, without limitation, all documents entered into in furtherance of the DDA) and for City to assume all rights and obligations of Successor Agency thereunder; and

WHEREAS, the proposed assignment of the DDA and all related agreements to which Successor Agency is a party or to which Successor Agency is a beneficiary (express or implied) (including, without limitation, all documents entered into in furtherance of the DDA) reduces liabilities to the Successor Agency and is in the best interests of the taxing entities. Based on the size and complexity of the remaining DDA projects, it is anticipated that implementation required by the Successor Agency would be substantial and would take place over a significant amount of time (based on the development completed in the past 11 years). If the Assignment Agreement is approved there would be no remaining obligations or potential liability of the Successor Agency with respect to the DDA or the DDA Property; and

WHEREAS, the implementation of the Assignment Agreement will help wind down the affairs of the Former Redevelopment Agency by transferring contractual obligations of the Former Redevelopment Agency to the City and will help facilitate and further assist the City in achieving the municipal and other public purposes in developing The Ontario Center; and

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

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

SECTION 1. THE Successor Agency hereby finds and determines that the foregoing recitals are true and correct.

SECTION 2. The Successor Agency hereby approves the Assignment Agreement, a copy of which is on file with the City Records Management Department, subject to approval by the Successor Agency Oversight Board.

SECTION 3. Without the requirement of any further approval of the Successor Agency, the Executive Director or designee is authorized and directed to do all of the following: (a) execute the Assignment Agreement on behalf of the Successor Agency, subject to approval by the Successor Agency Oversight Board; (b) make non-substantive changes or modifications to the Assignment Agreement requested by the Oversight Board or as deemed necessary by the Executive Director; and (c) take any action and execute any and all documents and agreements necessary to implement this Resolution, the Assignment Agreement and the DDA and all related agreements which are assigned pursuant to the Assignment Agreement and administer the Successor Agency's obligations, responsibilities and duties to be performed thereunder.

SECTION 4. If any provision of this Resolution or the application of any such provision to any person or circumstance is held invalid, such invalidity shall not affect other provisions or applications of this Resolution that can be given effect without the invalid provision or application, and to this end the provisions of this Resolution are severable. The Successor Agency declares that the Successor Agency would have adopted this Resolution irrespective of the invalidity of any particular portion of this Resolution.

SECTION 5. This Resolution shall take effect immediately upon its adoption.

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

PASSED, APPROVED, AND ADOPTED this 17th day of May 2016.

PAUL S. LEON, CHAIRMAN

ATTEST:

SHEILA MAUTZ, AGENCY SECRETARY

APPROVED AS TO FORM:

AGENCY COUNSEL

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

I, SHEILA MAUTZ, City Clerk of the City of Ontario, in my official capacity as assistant secretary to the Successor Agency to the Ontario Redevelopment Agency, DO HEREBY CERTIFY that Resolution No. SA- was duly adopted by the Successor Agency to the Ontario Redevelopment Agency at a regular meeting held on May 17, 2016 by the following vote:

AYES: AGENCY MEMBERS:

NOES: AGENCY MEMBERS:

ABSENT: AGENCY MEMBERS:

SHEILA MAUTZ, AGENCY SECRETARY

(SEAL)

The foregoing is the original of Resolution No. SA- duly passed and adopted by the Successor Agency to the Ontario Redevelopment Agency at their regular meeting held May 17, 2016.

SHEILA MAUTZ, AGENCY SECRETARY

(SEAL)

CITY OF ONTARIO

Agenda Report
May 17, 2016

SECTION:
CONSENT CALENDAR

SUBJECT: FISCAL YEAR 2015-16 THIRD BUDGET UPDATE REPORT

RECOMMENDATION: That the City Council approve the budget adjustments and recommendations as listed in the Fiscal Year 2015-16 Third Budget Update Report.

COUNCIL GOALS: Regain Local Control of the Ontario International Airport
Operate in a Businesslike Manner

FISCAL IMPACT: The recommended actions will affect several fund budgets as outlined in the FY 2015-16 Third Budget Update Report and supporting schedules.

BACKGROUND: This third budget update report for Fiscal Year 2015-16 reflects the Administrative Services Agency's continued efforts to provide timely, accurate, and understandable financial information to assist the City Council with decision making and achieve their core goals. All funds have been reviewed in preparing this report. The emphasis of this report is on the General Fund, which funds the majority of government services including public safety, recreation, library, museum, parks, building, and planning. This report also discusses prior year results, budget trends, and the economic outlook that may impact the City's resources.

The primary purposes of this report are to:

- Revise the City's budget to reflect the City Council's actions taken since the beginning of the current fiscal year;
- Recommend budget changes to align the budget with projected year-end results;
- Recommend budget adjustments that are consistent with City Council goals and objectives; and
- Comment on significant budget and economic trends which may impact next fiscal year's budget development.

Third Budget Update Recommendations

Third Budget Update recommendations are routine in nature and comprised predominately by City Council actions taken since the beginning of the fiscal year, adjustments in the revenue budget to reflect

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

Prepared by: Doreen M. Nunes
Department: Fiscal Services

City Manager
Approval: 

Submitted to Council/O.H.A. 05/17/2016

Approved: _____

Continued to: _____

Denied: _____

4

estimates based on current trends, and additional appropriations for new or ongoing programs/projects. For the General Fund, these actions will bring the General Fund estimated available ending fund balance to \$35,609,774; this amount achieves the 18% goal set by City Council. Major items proposed for the Third Budget Update in the General Fund are: \$400,000 increase to Transient Occupancy Tax (TOT) revenues to reflect recent gains; \$325,000 for additional engineering plan check consulting services (offset by a corresponding increase in engineering plan check fee revenue); \$120,000 for emergency maintenance repairs to various City facilities; \$100,000 for additional advertising and marketing services related to the economic development of the City; \$70,000 for additional citywide hazardous materials collection and disposal services; and an additional \$60,000 for Code Enforcement's Community Enhancement Program.

Noteworthy budget adjustments in Other Funds include: revenue of \$4.7 million from the sale of the Sunkist property with a corresponding expense of \$442,800 for the decommission of the substation facility located on the property; an additional \$1.7 million for improvements to the Police Department headquarters (funding transfers of \$1.0 million from the Communications/Computer Dispatch Reserve and \$670,000 from the Information Technology fund); \$1.0 million for the second phase of the Kaiser Permanente HEAL Zone Initiative grant; \$850,000 for Melrose Plaza public street improvements (offset by \$584,000 of property sale proceeds revenue); and an additional \$700,000 for improvements to the Fire Training Center and Tower (funding from available bond proceeds).

Economic Outlook

Consumer spending is continuing to show signs of improvement, with continued growth in retail and motor vehicles sales, and employment, as well as strong gains in the housing market. Sales tax revenue for the fourth quarter 2015 grew approximately 8% compared to same quarter a year ago, with office equipment and new auto sales continuing to be the highest producing sectors. Although the City has experienced strong gains in sales tax revenues, we anticipate a decline or flat growth for calendar year 2017 due to a loss of a significant sales tax producer in the City. The Consumer Confidence Index continues to be at pre-recession levels with a reported 96.2 for March 2016, an increase from the previous month reading of 94.0 but still a decline from September's high of 102.9. This is a result of consumers becoming less optimistic about the long-term growth in the economy.

Ontario's unemployment rate declined slightly to 5.6% in March 2016 from 6.4% a year ago. Continued job gains over the last several months continue to drive unemployment down. Home values are improving as demonstrated by the moderate increase of 4.6% compared to the prior year in the median sale price of single-family homes in the San Bernardino County for March 2016. Home sales experienced significant gains in March as demonstrated by the increase of approximately 42%. This increase is primarily the result of home buyers being pushed out of the Los Angeles and Orange County housing market due to the higher home prices reflected in those regions.

Although the local economy has been growing, the overall U.S. economy has generally been weak. In the opening months of 2016, the U.S. economy experienced a sharp pull back in business investment and weak global demand. Gross Domestic Product (GDP), the broadest measure of economic output, advanced at a 0.5% annual rate in the first quarter. This figure represents the worst performance in two years.

CalPERS

The California State Public Employees Retirement System (CalPERS) is considerably underfunded, primarily due to lower than projected earning rates combined with significant investment losses incurred during the Great Recession. All of this has contributed to dramatic increases to the City's CalPERS contribution rates. With the recent adoption of amortization and smoothing policy changes by the CalPERS Board to address the severity of the underfunding, significant employer contribution rate

increases have begun in this fiscal year. CalPERS' proposed rates will increase by approximately 50% by Fiscal Year 2019-20. These rates are dependent upon CalPERS earning a 7.5% return on their investments in the future.

Conclusion

While the City is experiencing improvement during this economic recovery, challenges still remain. The economy is projected to grow slowly over the next couple of years due to a continued stagnant wage growth, the potential negative impact to the economy resulting from the unstable global economy, and the Federal Reserve's current actions to taper back its bond purchases (quantitative easing) which has kept borrowing costs low. In addition, Ontario needs to be cognizant of a potential decline or flat growth in sales tax revenues in 2017 due to a relocation of a major business out of the City.

The Adopted Operating Budget for FY 2015-16, as modified through this Third Budget Update, reflects the City Council's continued commitment to foster steady, controlled growth and to provide the highest level of service to the community within the City's fiscal constraints. With the City Council's leadership and their prudent fiscal policies, the City's long-term fiscal health will further solidify its standing as the economic leader in the Inland Empire, and a formidable player in California and the nation.

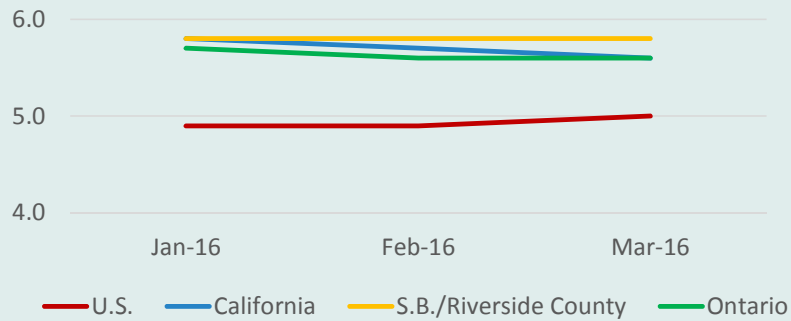
Third Budget Update FY 2015-16

MAY 17, 2016

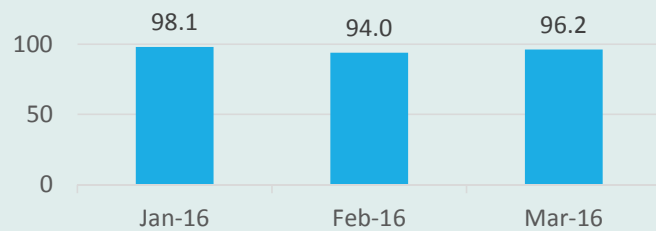


Economic Outlook First Quarter 2016

Unemployment Rate



Consumer Confidence Index



State/Region/County	Median Sold Price of Existing Single-Family Homes			March Sales	
	Jan-16	Feb-16	Mar-16	MTM% Chg	YTY% Chg
Los Angeles Metro Area	\$432,080	\$428,090	\$446,240	39.5%	1.7%
Inland Empire	\$291,920	\$290,430	\$309,890	38.6%	5.3%
Southern California					
Los Angeles	\$480,950	\$445,030	\$440,460	37.9%	-0.4%
Orange	\$704,950	\$712,560	\$721,140	38.5%	-3.5%
Riverside	\$333,370	\$334,440	\$355,590	36.3%	1.6%
San Bernardino	\$234,460	\$226,870	\$237,350	42.5%	12.2%
San Diego	\$542,150	\$537,580	\$573,580	40.5%	1.1%
Ventura	\$638,590	\$610,820	\$620,020	61.3%	8.0%

Source: California Association of Realtors



Manufacturing Index

	U.S.	Inland Empire
Jan-16	48.2	51.3
Feb-16	49.5	56.5
Mar-16	51.8	51.7

FY 2015-16
General
Fund

Third
Budget
Update

Total Revenue Current Budget **\$217,527,440**

Revenue Adjustments

Occupancy Tax \$ 400,000

Development Related 355,000

Revised Revenue Budget **\$218,282,440**

Total Expenditure Current Budget **\$236,922,817**

Expenditure Adjustments

Public Safety \$ 152,735

Development Related 355,000

Economic Development 100,000

Municipal Services-City Facilities 120,000

Code Enforcement-Community Enhancement 60,000

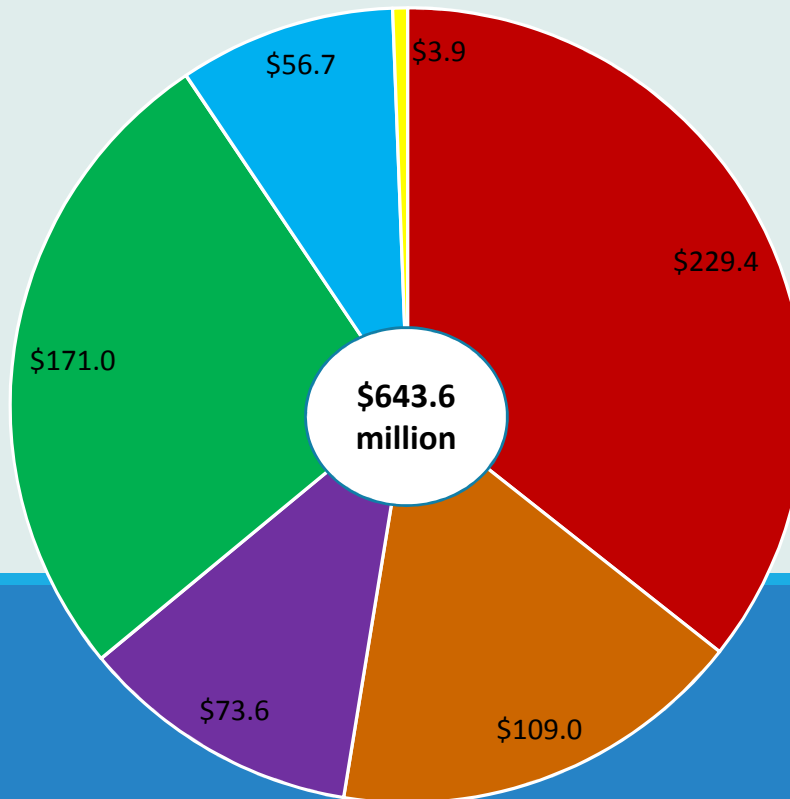
Community & Recreation 26,880

Revised Expenditure Budget **\$237,737,432**

See Schedules I-VI

FY 2015-16 Citywide Budget By Fund

- General Fund
- Special Revenue
- Capital Projects
- Enterprise
- Internal Service
- Fiduciary



Excluding Transfers-Out

Third Budget Update Highlights



Mobile Source Air Pollution
Reduction Match Program
\$420,000



See Schedules V-VI

SCHEDULE I

City of Ontario
Summary of General Fund Recommended Revenue Adjustments
Fiscal Year 2015-16
Third Budget Update

Revenue Source	Original Budget	Current Budget	Recommended Third Budget Update Adjustments	Current Budget After Adjustments	Actuals As of 04/26/2016	Percent of Budget Received
Sales Tax	\$ 71,000,000	\$ 71,000,000	\$ -	\$ 71,000,000	\$ 49,422,169	69.61%
Business License Tax	6,400,000	6,400,000	-	6,400,000	6,727,329	105.11%
Occupancy Tax	10,900,000	10,900,000	400,000	11,300,000	8,818,190	78.04%
Parking Tax	2,700,000	2,700,000	-	2,700,000	2,338,753	86.62%
Franchises	3,200,000	3,200,000	-	3,200,000	2,681,680	83.80%
Property Tax	44,750,000	47,750,000	-	47,750,000	49,621,244	103.92%
Development Related	6,734,988	7,378,114	355,000	7,733,114	7,651,408	98.94%
Recreation Programs	896,300	896,300	-	896,300	759,904	84.78%
Interest & Rentals	1,777,930	1,777,930	-	1,777,930	977,117	54.96%
Miscellaneous Revenues	4,814,295	4,959,295	-	4,959,295	3,846,270	77.56%
Total Recurring Revenues	\$ 153,173,513	\$ 156,961,639	\$ 755,000	\$ 157,716,639	\$ 132,844,064	84.23%
Reimbursables	2,448,717	3,591,717	-	3,591,717	3,375,175	93.97%
Total General Fund Revenues	<u>\$ 155,622,230</u>	<u>\$ 160,553,356</u>	<u>\$ 755,000</u>	<u>\$ 161,308,356</u>	<u>\$ 136,219,239</u>	84.45%

City of Ontario
Summary of General Fund Recommended Expenditure Adjustments
Fiscal Year 2015-16
Third Budget Update

	Expenditures
Adopted Budget	\$ 188,979,590
Current Budget	\$ 228,707,847
Recommended Adjustments:	
Engineering Plan Check Services (offset with Development Related Revenue)	\$ 325,000
Advertising and marketing services	100,000
Additional citywide hazardous materials collection and disposal services	70,000
Overtime - Code Enforcement Community Enhancement Program	60,000
Fire Plan Check Services (offset with Development Related Revenue)	30,000
Fire vehicle (new Fire Administration position/ <i>CC Apprvd 2/16/2016</i>)	30,000
Part-Time Salaries - Veteran's Park Community Center	26,880
CPR & First Aid manikin replacement	20,000
Total Recommended Adjustments	<u>\$ 661,880</u>
Recommended Budget	<u><u>\$ 229,369,727</u></u>

City of Ontario
Summary of General Fund Recommended Transfer Adjustments
Fiscal Year 2015-16
Third Budget Update

	Operating Transfers-In	Operating Transfers-Out
Adopted Budget	<u>\$ 36,753,002</u>	<u>\$ 3,395,642</u>
Current Budget	\$ 56,974,084	\$ 8,214,970
Recommended Adjustments:		
Transfer-out (To Fund 076) City facilities emergency maintenance repairs	\$ -	\$ 120,000
Transfer-out (To Fund 015) FY2016 Emergency Management Performance Grant Program	-	32,735
Total Recommended Adjustments	<u>\$ -</u>	<u>\$ 152,735</u>
Recommended Budget	<u>\$ 56,974,084</u>	<u>\$ 8,367,705</u>

City of Ontario
General Fund Balance with Recommended Adjustments
Fiscal Year 2015-16
Third Budget Update

General Fund	Actual 2014-15 Unaudited	Adopted 2015-16 Budget	Prior Budget Update Approved Adjustments	Current 2015-16 Budget	Third Budget Update Recommended Adjustments	Recommended Budget 2015-16
Total Revenues	\$ 173,389,492	\$ 155,622,230	\$ 4,931,126	\$ 160,553,356	\$ 755,000	\$ 161,308,356
Total Expenditures	(171,670,632)	(188,979,590)	(39,728,257)	(228,707,847)	(661,880)	(229,369,727)
Excess (Deficiency) of Revenues Over (Under) Expenditures	\$ 1,718,860	\$ (33,357,360)	\$ (34,797,131)	\$ (68,154,491)	\$ 93,120	\$ (68,061,371)
Other Sources (Uses):						
Operating Transfer In	\$ 28,114,147	\$ 36,753,002	\$ 20,221,082	\$ 56,974,084	\$ -	\$ 56,974,084
Operating Transfer Out	(11,248,205)	(3,395,642)	(4,819,328)	(8,214,970)	(152,735)	(8,367,705)
Total Other Sources (Uses)	\$ 16,865,942	\$ 33,357,360	\$ 15,401,754	\$ 48,759,114	\$ (152,735)	\$ 48,606,379
Excess (Deficiency) of Revenues and Other Financing Sources Over (Under) Expenditures and Other Financing Uses	\$ 18,584,802	\$ -	\$ (19,395,377)	\$ (19,395,377)	\$ (59,615)	\$ (19,454,992)
Fund Balance, Beginning of Year	85,894,027	104,478,829	-	104,478,829	-	104,478,829
Fund Balance, End of Year	<u>\$ 104,478,829</u>	<u>\$ 104,478,829</u>	<u>\$ (19,395,377)</u>	<u>\$ 85,083,452</u>	<u>\$ (59,615)</u>	<u>\$ 85,023,837</u>
FUND BALANCE						
Non-Spendable:						
Inventory	\$ 123,798	\$ 123,798	\$ -	\$ 123,798	\$ -	\$ 123,798
Advanced to Other Funds (RDA loan Repayment)	3,500,000	3,500,000	-	3,500,000	-	3,500,000
Long-Term Receivable	15,000	15,000	-	15,000	-	15,000
Prepays	73,591	73,591	-	73,591	-	73,591
Total Non-Spendable	\$ 3,712,389	\$ 3,712,389	\$ -	\$ 3,712,389	\$ -	\$ 3,712,389
Assigned:						
Continuing Appropriations	1,080,042	1,080,042	(1,080,042)	-	-	-
ORA Loan Payments	37,456,674	37,456,674	-	37,456,674	-	37,456,674
DOF Settlement/State Sales Tax	8,245,000	8,245,000	-	8,245,000	-	8,245,000
18% Stabilization Plan	53,984,724	53,984,724	(18,315,335)	35,669,389	(59,615)	35,609,774
Total Assigned	\$ 100,766,440	\$ 100,766,440	\$ (19,395,377)	\$ 81,371,063	\$ (59,615)	\$ 81,311,448
Total Fund Balance (Non-Spendable, Assigned)	104,478,829	104,478,829	(19,395,377)	85,083,452	(59,615)	85,023,837
Total Available for Contingencies and Emergencies	<u>\$ 55,064,766</u>	<u>\$ 55,064,766</u>	<u>\$ (19,395,377)</u>	<u>\$ 35,669,389</u>	<u>\$ (59,615)</u>	<u>\$ 35,609,774</u>

City of Ontario
Unreserved Fund Balance with Recommended Adjustments for All Funds
Fiscal Year 2015-16
Third Budget Update

Funds/Sources	Total Unreserved Fund Balance July 1, 2015	Current Budget Control					Estimated Total Unreserved Fund Balance June 30, 2016	Recommended Third Budget Update Adjustments Increase(Decrease) to Fund Balance Net Adjustments	Adjusted Unreserved Fund Balance June 30, 2016
		Revenues	Operating Transfers-In	Operating Transfers-Out	Total Available	Expenditures			
General Fund (incl. encumbrances)									
001 General Fund	\$ 55,064,766	\$ 160,553,356	\$ 56,974,084	\$ 8,214,970	\$ 264,377,236	\$ 228,707,847	\$ 35,669,389	\$ (59,615)	\$ 35,609,774
Total General Fund	<u>\$ 55,064,766</u>	<u>\$ 160,553,356</u>	<u>\$ 56,974,084</u>	<u>\$ 8,214,970</u>	<u>\$ 264,377,236</u>	<u>\$ 228,707,847</u>	<u>\$ 35,669,389</u>	<u>\$ (59,615)</u>	<u>\$ 35,609,774</u>
Special Revenue Funds									
002 Quiet Home Program	-	\$ 3,112,868	\$ -	\$ -	\$ 3,112,868	\$ 3,112,868	\$ -	\$ -	\$ -
003 Gas Tax	4,427,488	3,754,915	900,000	2,496,997	6,585,406	5,279,441	1,305,965	(266,000)	1,039,965
004 Measure I	6,096,863	2,576,410	-	-	8,673,273	7,085,313	1,587,960	-	1,587,960
005 Measure I -Valley Major Projects	-	71,714,204	-	-	71,714,204	71,714,204	-	-	-
007 Park Impact/Quimby	8,523,062	54,000	-	-	8,577,062	-	8,577,062	-	8,577,062
008 C.D.B.G.	-	3,640,756	-	-	3,640,756	3,640,756	-	-	-
009 HOME Grants	-	1,306,426	-	-	1,306,426	1,306,426	-	-	-
010 Asset Seizure	3,709,532	-	-	10,000	3,699,532	1,238,693	2,460,839	-	2,460,839
011 Neighborhood Stabilization	-	-	-	-	-	-	-	-	-
013 A.D. Administration	970,263	13,000	-	-	983,263	248,333	734,930	-	734,930
014 Mobile Source Air	878,727	205,000	-	14,685	1,069,042	573,197	495,845	-	495,845
015 General Fund Grants	-	7,469,932	40,986	-	7,510,918	7,510,918	-	-	-
018 Building Safety	391,432	910,000	-	56,096	1,245,336	1,221,502	23,834	-	23,834
019 Parkway Maintenance	917,777	590,080	279,970	186,400	1,601,427	709,679	891,748	-	891,748
021 Storm Drain Fee District	67,906	400	-	-	68,306	-	68,306	-	68,306
060 OMC CFD #21-Parkside Services	27,918	41,610	-	16,110	53,418	25,500	27,918	-	27,918
061 NMC CFD #31-Lennar Services	-	28,840	-	23,840	5,000	5,000	-	-	-
062 NMC CFD #23-Park Place Services	-	155,736	-	150,736	5,000	5,000	-	-	-
069 NMC CFD #20-Walmart Services	24,609	25,980	-	2,980	47,609	23,000	24,609	-	24,609
048 Ontario Housing Authority	2,583,263	544,800	-	-	3,038,476	615,508	2,422,968	-	2,422,968
070 Street Light Maintenance	1,914,655	485,079	15,672	89,587	2,404,618	355,134	2,049,484	-	2,049,484
071 CFD #10-Public Services	-	10,788	-	10,788	-	-	-	-	-
072 NMC CFD #9-Edenglen Services	27,532	524,218	-	511,818	39,932	39,932	-	-	-
076 Facilities Maintenance	425,636	-	750,000	-	1,175,636	1,175,636	-	-	-
077 Storm Drain Maintenance	1,115,090	1,242,000	-	-	2,357,090	1,646,008	711,082	-	711,082
114 Historic Preservation	195,172	1,300	-	-	196,472	-	196,472	-	196,472
119 NMC Public Services	3,688,400	25,000	-	-	3,713,400	-	3,713,400	-	3,713,400
Total Special Revenue Funds	<u>\$ 35,985,325</u>	<u>\$ 98,433,342</u>	<u>\$ 1,986,628</u>	<u>\$ 3,570,037</u>	<u>\$ 132,824,470</u>	<u>\$ 107,532,048</u>	<u>\$ 25,292,422</u>	<u>\$ (266,000)</u>	<u>\$ 25,026,422</u>
Capital Project Funds									
016 Ground Access	7,854,709	* \$ 3,968,947	\$ -	\$ -	\$ 11,823,656	\$ 3,968,947	\$ 7,854,709	\$ -	\$ 7,854,709
017 Capital Projects	27,180,046	* 7,805,000	3,003,000	-	37,988,046	26,879,595	11,108,451	(700,000)	10,408,451
101 Law Enforcement Impact	(1,900,491)	* 5,800	-	-	(1,894,691)	15,316	(1,910,007)	-	(1,910,007)
102 Fire Impact	125,398	1,000	-	-	126,398	2,377,456	(2,251,058)	-	(2,251,058)
103 OMC Street Impact	5,094,481	292,900	-	-	5,387,381	21,341,661	(15,954,280)	-	(15,954,280)
104 OMC Water Impact	8,034,626	55,000	-	-	8,089,626	117,368	7,972,258	-	7,972,258
105 OMC Sewer Impact	3,169,232	138,079	-	-	3,307,311	1,263,581	2,043,730	-	2,043,730
106 Solid Waste Impact	1,709,789	11,000	-	-	1,720,789	100,000	1,620,789	-	1,620,789
107 General Facility Impact	1,540,907	10,000	-	-	1,550,907	-	1,550,907	-	1,550,907

City of Ontario
Unreserved Fund Balance with Recommended Adjustments for All Funds
Fiscal Year 2015-16
Third Budget Update

Funds/Sources	Total Unreserved Fund Balance July 1, 2015	Current Budget Control					Estimated Total Unreserved Fund Balance June 30, 2016	Recommended Third Budget Update Adjustments Increase(Decrease) to Fund Balance Net Adjustments	Adjusted Unreserved Fund Balance June 30, 2016
		Revenues	Operating Transfers-In	Operating Transfers-Out	Total Available	Expenditures			
108 Library Impact	959,805	6,000	-	-	965,805	-	965,805	-	965,805
109 Public Meeting Impact	1,841,224	12,000	-	-	1,853,224	145,000	1,708,224	-	1,708,224
110 Aquatics Impact	179,839	1,200	-	-	181,039	-	181,039	-	181,039
111 OMC Storm Drainage Impact	14,815,650	103,000	-	-	14,918,650	7,747,842	7,170,808	-	7,170,808
112 Species Habitat Impact	1,376,480	9,000	-	-	1,385,480	-	1,385,480	-	1,385,480
113 Fiber Impact	6,384	-	-	-	6,384	-	6,384	-	6,384
115 NMC Street Impact	444,539	85,700	-	-	530,239	4,189,723	(3,659,484)	-	(3,659,484)
116 NMC Water Impact	-	-	-	-	-	-	-	-	-
117 NMC Sewer Impact	213,588	1,400	-	-	214,988	-	214,988	-	214,988
118 NMC Storm Drainage Impact	1,447,401	10,000	-	-	1,457,401	-	1,457,401	-	1,457,401
120 Affordability In-Lieu	3,059,751	19,000	-	-	3,078,751	-	3,078,751	-	3,078,751
170 OMC - Regional Streets	4,994,760	33,000	-	-	5,027,760	50,000	4,977,760	-	4,977,760
171 OMC - Local Adjacent Streets	2,199,375	14,000	-	-	2,213,375	-	2,213,375	-	2,213,375
172 OMC - Regional Storm Drains	269,535	1,800	-	-	271,335	-	271,335	-	271,335
173 OMC - Local Adjacent Storm Drain	5,118,819	34,000	-	-	5,152,819	2,300,000	2,852,819	-	2,852,819
174 OMC - Regional Water	3,075,804	20,000	-	-	3,095,804	-	3,095,804	-	3,095,804
175 OMC - Local Adjacent Water	770,390	5,100	-	-	775,490	-	775,490	-	775,490
176 OMC - Regional Sewer	455,255	3,000	-	-	458,255	-	458,255	-	458,255
177 OMC - Local Adjacent Sewer	681,496	4,000	-	-	685,496	-	685,496	-	685,496
178 OMC - Fire Impact	181,746	-	-	-	181,746	-	181,746	-	181,746
180 OMC - Regional Streets	491,568	2,000	-	-	493,568	-	493,568	-	493,568
181 NMC - Local Adjacent Streets	1,773,533	2,000	-	-	1,775,533	-	1,775,533	-	1,775,533
182 NMC - Regional Storm Drains	252,496	2,000	-	-	254,496	-	254,496	-	254,496
183 NMC - Local Adjacent Storm Drain	824,790	6,000	-	-	830,790	-	830,790	-	830,790
184 NMC - Regional Water	423,318	2,500	-	-	425,818	-	425,818	-	425,818
185 NMC - Local Adjacent Water	541,322	3,000	-	-	544,322	-	544,322	-	544,322
186 NMC - Regional Sewer	34,081	-	-	-	34,081	-	34,081	-	34,081
187 NMC - Local Adjacent Sewer	51,165	500	-	-	51,665	-	51,665	-	51,665
188 NMC - Local Regional Fiber	12,555	60	-	-	12,615	-	12,615	-	12,615
189 NMC - Local Adjacent Fiber	101,590	540	-	-	102,130	-	102,130	-	102,130
190 NMC - Fire Impact	7,312,464	-	-	-	7,312,464	-	7,312,464	-	7,312,464
501 CFD #9-Edenglen	-	-	-	-	-	-	-	-	-
502 CFD #10-OAT	150	-	-	-	150	-	150	-	150
503 CFD #11-Armada	27,371	190	-	-	27,561	-	27,561	-	27,561
504 CFD #21-Ontario Parkside	74,846	-	-	-	74,846	-	74,846	-	74,846
505 CFD #13-Commerce Center	58,441	300	-	-	58,741	-	58,741	-	58,741
508 CFD #20-Walmart	67	-	-	-	67	-	67	-	67
509 CFD #23 & #24-Park Place Services	-	-	-	-	-	-	-	-	-
510 NMC CFD #27-New Haven Services	29,224	-	-	-	29,224	-	29,224	-	29,224
511 Richland Countryside CFD	75,000	-	-	-	75,000	-	75,000	-	75,000
512 NMC CFD #19-Forestar Services	82,788	-	-	-	82,788	-	82,788	-	82,788
513 NMC CFD #1-Lennar Services	33,667	-	-	-	33,667	-	33,667	-	33,667
514 NMC CFD #2-Archibald/Schaefer Services	22,943	-	-	-	22,943	-	22,943	-	22,943
Total Capital Project Funds	\$ 107,123,917	\$ 12,669,016	\$ 3,003,000	\$ -	\$ 122,795,933	\$ 70,496,489	\$ 52,299,444	\$ (700,000)	\$ 51,599,444

City of Ontario
Unreserved Fund Balance with Recommended Adjustments for All Funds
Fiscal Year 2015-16
Third Budget Update

Funds/Sources	Total Unreserved Fund Balance July 1, 2015		Current Budget Control					Estimated	Recommended	
			Revenues	Operating Transfers-In	Operating Transfers-Out	Total Available	Expenditures	Total	Third Budget Update	
								Unreserved Fund Balance June 30, 2016	Increase(Decrease) to Fund Balance Net Adjustments	Adjusted Unreserved Fund Balance June 30, 2016
Enterprise Funds										
024 Water Operating	56,315,160	*	\$ 47,369,000	\$ -	\$ 28,118,079	\$ 75,566,081	\$ 40,523,803	\$ 35,042,278	4,230,480	\$ 39,272,758
025 Water Capital	58,931,277	*	13,111,015	17,600,000	5,267,530	84,374,762	76,123,256	8,251,506	(200,000)	8,051,506
026 Sewer Operating	23,818,270	*	21,802,000	-	8,716,754	36,903,516	16,701,160	20,202,356	-	20,202,356
027 Sewer Capital	17,502,662	*	126,000	3,500,000	761,600	20,367,062	5,897,326	14,469,736	-	14,469,736
029 Solid Waste	34,277,886	*	31,164,373	-	6,979,002	58,463,257	31,104,332	27,358,925	-	27,358,925
031 Solid Waste Facilities	637,122	*	4,400	-	-	641,522	63,838	577,684	-	577,684
Total Enterprise Funds	<u>\$ 191,482,377</u>		<u>\$ 113,576,788</u>	<u>\$ 21,100,000</u>	<u>\$ 49,842,965</u>	<u>\$ 276,316,200</u>	<u>\$ 170,413,715</u>	<u>\$ 105,902,485</u>	<u>\$ 4,030,480</u>	<u>\$ 109,932,965</u>
Internal Service Funds										
032 Equipment Services	38,241,333		\$ 11,291,015	\$ -	\$ -	\$ 49,532,348	\$ 20,284,409	\$ 29,247,939	\$ -	\$ 29,247,939
033 Self Insurance	13,215,019		9,414,726	-	-	22,629,745	7,481,934	\$ 15,147,811	-	15,147,811
034 Information Technology	30,402,343		8,420,830	90,000	840,000	38,073,173	28,965,825	\$ 9,107,348	(670,000)	8,437,348
Total Internal Service Funds	<u>\$ 81,858,695</u>		<u>\$ 29,126,571</u>	<u>\$ 90,000</u>	<u>\$ 840,000</u>	<u>\$ 110,235,266</u>	<u>\$ 56,732,168</u>	<u>\$ 53,503,098</u>	<u>\$ (670,000)</u>	<u>\$ 52,833,098</u>
Fiduciary Funds										
098 General Fund Trust	43,534,171		\$ -	\$ 5,938,342	\$ 26,624,082	\$ 22,848,431	\$ -	\$ 22,848,431	\$ (1,159,123)	\$ 21,689,308
099 Other Post Employment Benefits (OPEP)	106,067,443		9,470,175	-	-	115,537,618	3,900,000	111,637,618	-	111,637,618
Total Trust Funds	<u>\$ 149,601,614</u>		<u>\$ 9,470,175</u>	<u>\$ 5,938,342</u>	<u>\$ 26,624,082</u>	<u>\$ 138,386,049</u>	<u>\$ 3,900,000</u>	<u>\$ 134,486,049</u>	<u>\$ (1,159,123)</u>	<u>\$ 133,326,926</u>
	<u>\$ 621,116,694</u>		<u>\$ 423,829,248</u>	<u>\$ 89,092,054</u>	<u>\$ 89,092,054</u>	<u>\$ 1,044,935,154</u>	<u>\$ 637,782,267</u>	<u>\$ 407,152,887</u>	<u>\$ 1,175,742</u>	<u>\$ 408,328,629</u>

* Fund Balance amount is the Fund's actual working capital

City of Ontario
Recommended Adjustments by Fund
Fiscal Year 2015-16
Third Budget Update

SCHEDULE VI

Description	Appropriation Adjustments	Revenue Adjustments	Operating Transfer-In	Operating Transfer-Out	Fund Balance Impact
Fund 001 - General Fund					
<i>Current Year Adjustments to Fund Balance</i>					
Engineering Plan Check Services (offset with Development Related Revenue)	325,000	325,000			-
Revise budget estimate: Occupancy Tax		400,000			400,000
Advertising and marketing services	100,000				(100,000)
Additional citywide hazardous materials collection and disposal services	70,000				(70,000)
Overtime - Code Enforcement Community Enhancement Program	60,000				(60,000)
Fire Plan Check Services (offset with Development Related Revenue)	30,000	30,000			-
Fire vehicle (new Fire Administration position/CC Apprvd 2/16/2016)	30,000				(30,000)
Part-Time Salaries - Veteran's Park Community Center	26,880				(26,880)
CPR & First Aid manikin replacement	20,000				(20,000)
Transfer-out (To Fund 076) City facilities emergency maintenance repairs				120,000	(120,000)
Transfer-out (To Fund 015) FY2016 Emergency Management Performance Grant Program - City's match				32,735	(32,735)
Total General Fund Adjustments	661,880	755,000	-	152,735	(59,615)
Fund 003 - Gas Tax					
Melrose Plaza Public Street Improvements	266,000				(266,000)
	266,000	-	-	-	(266,000)
Fund 015 - General Fund Grants					
Kaiser Permanente HEAL Zone Initiative Grant - Phase II (CC Apprvd 4/19/2016)	1,000,000	1,000,000			-
Mobile Source Air Pollution Reduction Review Committee Local Government Match Program (CC Apprvd 4/19/2016)	270,000	270,000			-
Mobile Source Air Pollution Reduction Review Committee/CNG Slow Fill Posts (CC Apprvd 3/1/2016)	150,000	150,000			-
FY2016 Emergency Management Performance	65,470	32,735	32,735		-
Police Department Headquarters Improvements/Revise spending plan	(388,681)	(388,681)			-
FY2014 Homeland Security Grant Program (Police)/Revise grant allocation	(32,818)	(32,818)			-
FY2015 Homeland Security Grant Program (Fire)/Revise grant allocation	(4,566)	(4,566)			-
	1,059,405	1,026,670	32,735	-	-
Fund 017 - Capital Projects					
Police Department Headquarters Improvements/Revise budget (Transfers-in From Fund 034 and Fund 098)	1,679,973		1,679,973		-
Melrose Plaza Public Street Improvements	584,000	584,000			-
Fire Training Center & Tower/Revise budget	700,000				(700,000)
Downtown Parking Facility & Improvements/Revise budget (Transfer-in From Fund 098)	149,150		149,150		-
	3,113,123	584,000	1,829,123	-	(700,000)
Fund 024 - Water Operating					
Land proceeds/Property at East Sunkist Street (CC Apprvd 7/21/2015)		4,673,280			4,673,280
Decommission Substation Facilities/East Sunkist Street (CC Apprvd 7/21/2015)	442,800				(442,800)
	442,800	4,673,280	-	-	4,230,480

City of Ontario
Recommended Adjustments by Fund
Fiscal Year 2015-16
Third Budget Update

SCHEDULE VI

Description	Appropriation Adjustments	Revenue Adjustments	Operating Transfer-In	Operating Transfer-Out	Fund Balance Impact
Fund 025 - Water Capital					
Wellhead Treatment System Well No. 41/Revise budget (<i>CC Apprvd 3/1/2016</i>)	200,000				(200,000)
	<u>200,000</u>	<u>-</u>	<u>-</u>	<u>-</u>	<u>(200,000)</u>
Fund 034 - Information Technology					
Transfer-out (To Fund 017) Police Department Headquarters Improvements				670,000	(670,000)
	<u>-</u>	<u>-</u>	<u>-</u>	<u>670,000</u>	<u>(670,000)</u>
Fund 076 - Facility Maintenance					
City facilities emergency maintenance repairs (Transfer-in From Fund 001)	120,000		120,000		-
	<u>120,000</u>	<u>-</u>	<u>120,000</u>	<u>-</u>	<u>-</u>
Fund 098 - General Fund Trust					
Transfer-out (To Fund 017) Police Department Headquarters Improvements (Comm/Computer Dispatch Reserve)				1,009,973	(1,009,973)
Transfer-out (To Fund 017) Downtown Parking Facility & Improvements (City Facilities Reserve)				149,150	(149,150)
	<u>-</u>	<u>-</u>	<u>-</u>	<u>1,159,123</u>	<u>(1,159,123)</u>
Total Other Fund Adjustments	<u>5,201,328</u>	<u>6,283,950</u>	<u>1,981,858</u>	<u>1,829,123</u>	<u>1,235,357</u>

CITY OF ONTARIO

Agenda Report
May 17, 2016

SECTION: CONSENT CALENDAR

SUBJECT: AWARD A MAINTENANCE AND REPAIR SERVICES AGREEMENT FOR HVAC MAINTENANCE AND REPAIR SERVICES AT VARIOUS CITY FACILITIES

RECOMMENDATION: That the City Council:

- (A) Award and authorize the City Manager to execute a three-year Maintenance and Repair Services Agreement, (Contract No. MS 1516-12) (on file in the Records Management Department), to Western Allied Corporation of Santa Fe Springs, California, for \$298,224 for the initial three-year term contract, and authorize the option to extend the agreement for up to two successive one-year periods; and
- (B) Authorize urgency repairs based on the established contract rates, and the addition of future services areas as needed.

**COUNCIL GOALS: Regain Local Control of the Ontario International Airport
Operate in a Businesslike Manner**

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

FISCAL IMPACT: The initial three-year term cost for the proposed heating, ventilation and air conditioning (HVAC) system maintenance and repair service agreement is \$298,224 plus 15% contingency of \$44,734 for a total amount of \$342,958 beginning in Fiscal Year 2016-17. At the City's discretion, two successive one-year extensions may be exercised.

The Contractor will be compensated on an on-call, urgency needs basis, at the rates set forth in the agreement unless earlier terminated by the City. Total compensation and authorized reimbursements paid to the contractor by the City shall not exceed the amounts allocated in their budgets for each fiscal year.

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

Prepared by: Pat Malloy
Department: Housing/Municipal Services

City Manager
Approval: 

Submitted to Council/O.H.A. 05/17/2016

Approved: _____

Continued to: _____

Denied: _____

5

BACKGROUND: This Maintenance and Repair Service Agreement will provide for regularly scheduled maintenance and urgent repairs of HVAC equipment in accordance with manufacturer's warranties and specifications, as well as repair services on an as-needed basis at 28 city facilities.

On March 10, 2016, the City solicited Request for Proposals for HVAC Maintenance and Repair Services, which called for a base contract rate plus an hourly rate for scheduled maintenance, and an hourly rate for emergency repairs services. Proposals were received from the following contractors:

Annual HVAC Maintenance Proposal		
<u>Supplier</u>	<u>Location</u>	<u>Bid Amount</u>
Western Allied Corporation	Santa Fe Springs, CA	\$99,408
South Coast Mechanical Inc.	Anaheim, CA	\$110,196
F.M. Thomas Air Conditioning	Brea, CA	\$132,264
*ACCO Engineered Systems	Commerce, CA	Unresponsive

After reviewing each of the responses according to the criteria outlined in the RFP scope of work, staff determined that Western Allied Corporation submitted a proposal that met all the RFP specifications required. *ACCO Engineered Systems proposal was deemed non-responsive because they did not provide the required certifications as specified in the RFP.

Staff recommends awarding the contract to Western Allied Corporation based on the quality of proposal, credentials, pricing, references, and based on past experience, the ability to respond to urgencies in a timely manner.

CITY OF ONTARIO

Agenda Report
May 17, 2016

SECTION: CONSENT CALENDAR

SUBJECT: AUTHORIZE THE PURCHASE OF POLICE VEHICLES

RECOMMENDATION: That the City Council takes the following actions:

- (A) Authorize the purchase and delivery of one 2016 Chevrolet Express Van in the amount of \$29,983; two 2017 Ford Escapes in the amount of \$45,952; and one 2016 Ford Explorer in the amount of \$43,258 from National Auto Fleet Group of Watsonville, California, consistent with the terms and conditions of the National Joint Powers Alliance (NJPA) Cooperative Contract 102811; and
- (B) Authorize the purchase and delivery of three 2017 Ford Police Patrol SUV Vehicles in the amount of \$97,221 from Fairview Ford of San Bernardino, California, under the terms and conditions of Bid No. 613.

COUNCIL GOALS: Regain Local Control of the Ontario International Airport
Maintain the Current High Level of Public Safety
Operate in a Businesslike Manner

FISCAL IMPACT: The Fiscal Year 2015-16 second quarterly budget report included appropriations in the amount of \$278,000 for the purchase of the vehicles listed above. The total cost of the vehicles recommended for purchase is \$216,414.

BACKGROUND: The vehicles recommended for purchase will all be deployed for Police Department personnel.

(A) Four Vehicles for the Police Department

Staff recommends the cooperative purchase and delivery of one 2016 Chevrolet Express Van in the amount of \$29,983; two 2017 Ford Escapes in the amount of \$45,952; and one 2016 Ford Explorer in the amount of \$43,258 for the Police Department from National Auto Fleet Group of Watsonville,

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

Prepared by: Craig Grabow
Department: Fleet Services

City Manager
Approval: 

Submitted to Council/O.H.A. 05/17/2016

Approved: _____

Continued to: _____

Denied: _____

6

California, consistent with the terms and conditions of the National Joint Powers Alliance (NJPA) Cooperative Contract 102811.

City of Ontario Municipal Code Section 2-6.11 (b) (3) allows for the purchase of supplies and equipment through cooperative purchasing when another governmental agency generally follows the provisions of Government Code Section 54201 through 54204. Cooperative purchasing allows the City to pool its procurement power with other public agencies to obtain pricing lower than might otherwise be possible. NJPA's Cooperative Contract 102811 meets the provisions of the Government Code.

(B) Three 2017 Ford Police Patrol SUV Vehicles for the Police Department

Staff recommends the purchase of three 2017 Ford Police Patrol SUV Vehicles from Fairview Ford, located in San Bernardino, California.

On April 19, 2016, the City Council approved Bid No. 613 and authorized the purchase of five 2017 Ford Police Patrol SUV Vehicles from Fairview Ford. The awarded bid states the City reserves the right to order more, less, or no items at the "per unit cost" stated in the bid proposal. Accordingly, staff recommends the purchase of three additional 2017 Ford Police Patrol SUV at the same price per unit (\$32,407), as previously ordered.

CITY OF ONTARIO

Agenda Report
May 17, 2016

SECTION: CONSENT CALENDAR

SUBJECT: ACCEPT A WRITTEN PETITION TO CREATE A COMMUNITY FACILITIES DISTRICT; ADOPT A RESOLUTION OF INTENT TO ESTABLISH CITY OF ONTARIO COMMUNITY FACILITIES DISTRICT NO.30 (NEW HAVEN FACILITIES - AREA B) AND TO AUTHORIZE THE ASSOCIATED LEVY OF SPECIAL TAXES; AND ADOPT A RESOLUTION TO INCUR BONDED INDEBTEDNESS

RECOMMENDATION: That the City Council:

- (A) Accept written petition (on file with the Records Management Department) from Brookcal Ontario, LLC. located in Costa Mesa, CA, to create a Community Facilities District (CFD), and to waive certain procedural matters, under the Mello-Roos Community Facilities Act of 1982;
- (B) Adopt a Resolution of Intent to establish City of Ontario Community Facilities District No. 30 (New Haven Facilities – Area B); 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, June 21, 2016;
- (C) Adopt a Resolution to incur bonded indebtedness of proposed Community Facilities District No. 30 (New Haven Facilities – Area B).

COUNCIL GOALS: Regain Local Control of the Ontario International Airport

Focus Resources in Ontario's Commercial and Residential Neighborhoods

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

FISCAL IMPACT: The use of Mello-Roos financing for facilities in the residential development of the New Haven Facilities – Area B project is estimated to generate approximately \$11.9 million which will be used to help fund a portion of the public infrastructure improvements that will serve the project.

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

Prepared by: Bob Chandler
Department: Management Services

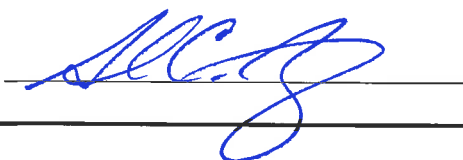
Submitted to Council/O.H.A. 05/17/2016

Approved: _____

Continued to: _____

Denied: _____

City Manager
Approval: _____



7

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. Under the Mello-Roos Act, the initial steps in the formation of a community facilities district to finance public improvements are adopting resolutions declaring the intention to establish a community facilities district, authorizing the levy of special taxes, and incurring bonded indebtedness. On October 20, 2015, the City Council adopted Resolution of Formation No. 2015-115, and associated resolutions, establishing Community Facilities District No. 29 (New Haven Facilities – Area B). Subsequently, to capitalize on market conditions, the developer requested the annexation of an additional 100 detached units and 56 attached units into Community Facilities District No. 29 (New Haven Facilities – Area B), along with an expansion of the District’s acreage by 21 acres. The process of annexing in the additional units and acreage consists of forming a new district and dissolving the existing district. The proposed Community Facilities District No. 30 (New Haven Facilities – Area B) represents the new district, and the existing Community Facilities District No. 29 will be dissolved upon the successful formation of Community Facilities District No. 30.

In the First Amended and Restated Agreement for the Financing and Construction of Limited Infrastructure Improvements to Serve an Easterly Portion of the New Model Colony (“First Amended and Restated Construction Agreement”) between the City and NMC Builders, LLC, the City agreed to cooperate with the members of NMC Builders, LLC in the formation of community facilities districts. Brookcal Ontario, LLC, a member of NMC Builders, has provided a written petition to the City requesting formation of a reconfigured community facilities district (as explained above) for the New Haven Facilities – Area B project in the Ontario Ranch. The reconfigured New Haven Facilities – Area B project addresses the development of approximately 58 gross acres located generally east of Archibald Avenue, west of Haven Avenue, south of Schaefer Avenue and north of Ontario Ranch Road (formerly Edison Avenue). At build out, the development is projected to include 444 units - 346 detached units and 98 attached 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 Homeowners Association (HOA) fee exceeds the adopted policy thresholds, in aggregate, by .25% for detached units, and by .48% for attached units. However, as has been previously authorized for other similar community facilities districts 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(s), which are of the type contemplated by the MOU.

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.** As proposed, the amount of bonds authorized for the district (\$39 million) is set intentionally higher than the current estimated bond amount (approximately \$11.9 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 New Haven Facilities – Area B project is consistent with those of the previously adopted Rates and Methods of Apportionment for Ontario Ranch community facilities districts. This ensures that the special tax rates levied on all residential property owners in community facilities districts in Ontario Ranch are developed in a consistent and equivalent manner. In addition, under the provisions of the Mello-Roos Act, to ensure that home buyers are making an informed decision, all residential builders in the Ontario Ranch districts will be required to disclose the maximum annual special tax amount to each homeowner before entering into a sales contract.

City staff have presented and discussed the proposed Rate and Method of Apportionment of Special Tax with the landowner. 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 CFD for the regularly scheduled City Council meeting on Tuesday, June 21, 2016 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. 30 (NEW HAVEN FACILITIES - AREA B), 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 a written petition (the "Petition") from BrookCal Ontario, L.L.C. (the "Landowner") 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 Landowner has represented and warranted to the City Council that the Landowner is the owner of 100% of the area of land proposed to be included within the Community Facilities District; 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 the Landowner entered into a Deposit and Reimbursement Agreement, dated as of April 1, 2016 (the "Deposit Agreement"), relating to the Community Facilities District, that provides for the advancement of funds by the Landowner 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 the Landowner 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 City Council hereby finds that the Petition is signed by the requisite number of owners of land proposed to be included in the Community Facilities District.

SECTION 2. 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 3. The name proposed for the Community Facilities District is "City of Ontario Community Facilities District No. 30 (New Haven Facilities - Area B)."

SECTION 4. 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 5. 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 6. 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 7. 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 8. 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 9. The City Council hereby fixes Tuesday, June 21, 2016, 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 10. 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 11. 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 12. 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 13. The Landowner 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 14. 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 15. 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 17th day of May 2016.

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. 2016- was duly passed and adopted by the City Council of the City of Ontario at their regular meeting held May 17, 2016 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. 2016- duly passed and adopted by the Ontario City Council at their regular meeting held May 17, 2016.

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

CITY OF ONTARIO COMMUNITY FACILITIES DISTRICT NO. 30 (NEW HAVEN FACILITIES – AREA B)

RATE AND METHOD OF APPORTIONMENT OF SPECIAL TAX

A Special Tax shall be levied on all Assessor's Parcels in the City of Ontario Community Facilities District No. 30 (New Haven Facilities – Area B) ("CFD No. 30") and collected each Fiscal Year, commencing in Fiscal Year 2016-17, 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. 30, 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. 30: the costs of computing the Special Taxes and preparing the annual Special Tax collection schedules (whether by the City or CFD No. 30 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. 30 of complying with arbitrage rebate requirements; the costs to the City or CFD No. 30 of complying with City, CFD No. 30, 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. 30 related to the analysis and reduction, if any, of the Special Tax on Single Family Property in accordance with Section C.1 herein; the costs of the City or CFD No. 30 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. 30; and amounts estimated or advanced by the City or CFD No. 30 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. 30 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. 30 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. 30" means City of Ontario Community Facilities District No. 30 (New Haven Facilities – Area B).

"City" means the City of Ontario, California.

"City Council" means the City Council of the City, acting as the legislative body of CFD No. 30.

"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, 2015, and before May 1 of the prior Fiscal Year.

“Expected Residential Lot Count” means 444 Buildable Lots of Single Family Property or, as determined by the CFD Administrator, the number of Buildable Lots of Single Family 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. 30.

“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.

“Other Residential Property” means all Assessor’s Parcels of Developed Property for which a building permit was issued by the City for purposes of constructing Units, excluding Single Family Attached Property and Single Family Detached Property.

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

“Price Point Consultant” means any consultant or firm of such consultants selected by CFD No. 30 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. 30 or the City, (d) does not have any substantial interest, direct or indirect, with or in (i) CFD No. 30, (ii) the City, (iii) any owner of real property in CFD No. 30, or (iv) any real property in CFD No. 30, and (e) is not connected with CFD No. 30 or the City as an officer or employee thereof, but who may be regularly retained to make reports to CFD No. 30 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. 30 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. 30 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 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. 30. 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.

“Services” means the services authorized to be financed, in whole or in part, by CFD No. 30.

“Single Family Attached Property” means all Assessor’s Parcels of Developed Property for which a building permit or use permit was issued for construction of a residential structure consisting of two or more Units that share common walls, have separate Assessor’s Parcel Numbers assigned to them (except for a duplex unit, which may share an Assessor’s Parcel with another duplex unit), and may be purchased by individual homebuyers (which shall still be the case even if the Units are purchased and subsequently offered for rent by the owner of the Unit), including such residential structures that meet the statutory definition of a condominium contained in Civil Code Section 1351.

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

“Single Family Property” means all Assessor’s Parcels of Single Family Attached Property and Single Family Detached Property.

“Special Tax” means the special tax authorized by the qualified electors of CFD No. 30 to be levied within the boundaries of CFD No. 30.

“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. 30 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. 30, issued for construction of Single Family Property, Other 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. 30 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.

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

“TTM 18993” means Tentative Tract Map No. 18993, the area of which is located within CFD No. 30.

“TTM 18994” means Tentative Tract Map No. 18994, the area of which is located within CFD No. 30.

“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 2016-17, all Taxable Property within CFD No. 30 shall be classified as Developed Property, Final Mapped Property, Taxable Public Property, Taxable Property Owner Association Property, or Undeveloped Property and shall be subject to Special Taxes in accordance with the Rate and Method of Apportionment as determined pursuant to Sections C and D below. Assessor’s Parcels of Single Family Detached Property shall be assigned to Land Use Classes 1 through 13, and Assessor’s Parcels of Single Family Attached Property shall be assigned to Land Use Classes 14 through 21, as listed in Table 1 below based on the Residential Floor Area of the Units on such Assessor’s Parcels. Other Residential Property shall be assigned to Land Use Class 22, and Non-Residential Property shall be assigned to Land Use Class 23.

C. MAXIMUM SPECIAL TAX

1. Special Tax

At least 30 days prior to the issuance of Bonds, the Assigned Special Tax on Developed Property (set forth in Table 1 below) shall be analyzed in accordance with and subject to the conditions set forth in this Section C. At such time, CFD No. 30 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 Single Family Property to be constructed within CFD No. 30 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. The Special Tax reductions required pursuant to this paragraph shall be reflected in an amended notice of Special Tax lien which CFD No. 30 shall cause to be recorded by executing a certificate in substantially the form attached herein as Exhibit A. The reductions in this section apply to Single Family Property, but not to Other Residential Property or 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	Single Family Detached Property	< 1,701	\$1,660 per Unit
2	Single Family Detached Property	1,701 – 1,900	\$1,837 per Unit
3	Single Family Detached Property	1,901 – 2,100	\$1,896 per Unit
4	Single Family Detached Property	2,101 – 2,300	\$2,053 per Unit
5	Single Family Detached Property	2,301 – 2,500	\$2,251 per Unit
6	Single Family Detached Property	2,501 – 2,700	\$2,404 per Unit
7	Single Family Detached Property	2,701 – 2,900	\$2,557 per Unit
8	Single Family Detached Property	2,901 – 3,100	\$2,703 per Unit
9	Single Family Detached Property	3,101 – 3,300	\$2,816 per Unit
10	Single Family Detached Property	3,301 – 3,500	\$2,962 per Unit
11	Single Family Detached Property	3,501 – 3,700	\$3,156 per Unit
12	Single Family Detached Property	3,701 – 3,900	\$3,274 per Unit
13	Single Family Detached Property	> 3,900	\$3,429 per Unit
14	Single Family Attached Property	< 801	\$851 per Unit
15	Single Family Attached Property	801 – 950	\$911 per Unit
16	Single Family Attached Property	951 – 1,100	\$1,019 per Unit
17	Single Family Attached Property	1,101 – 1,300	\$1,136 per Unit
18	Single Family Attached Property	1,301 – 1,500	\$1,300 per Unit
19	Single Family Attached Property	1,501 – 1,700	\$1,595 per Unit

20	Single Family Attached Property	1,701 – 1,900	\$1,691 per Unit
21	Single Family Attached Property	> 1,900	\$1,886 per Unit
22	Other Residential Property		\$28,946 per Acre
23	Non-Residential Property		\$28,946 per Acre

3) *Backup Special Tax*

The Backup Special Tax shall be \$2,364 per Unit for Single Family Detached Property and \$1,374 per Unit for Single Family Attached Property. However, if the Expected Residential Lot Count does not equal 346 for Single Family Detached Property or 98 for Single Family Attached Property, and the City has not issued Bonds, then the Backup Special Tax for Designated Buildable Lots of Single Family Property shall be calculated separately for Single Family Detached Property and Single Family Attached Property according to the following formula:

$$\text{Backup Special Tax} = \$818,009 \div \text{Expected Residential Lot Count for Single Family Detached Property}$$

$$\text{or } \$134,683 \div \text{Expected Residential Lot Count for Single Family Attached Property}$$

If any portion of a Final Subdivision Map, or any area expected by CFD No. 30 to become Final Mapped Property, such as the area within TTM 18993, TTM 18994, 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 Single Family Detached Property or Single Family Attached 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 Single Family Detached Property and Single Family Attached Property, 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 Single Family Detached Property and Single Family Attached Property, 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 Single Family Detached Property or Single Family Attached Property.

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 \$28,946 per Acre, 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 Single Family Property and Acres of Other Residential Property and Non-Residential Property (based on the pro rata share of Square Footage between Other Residential Property and Non-Residential Property, according to 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 2016-17, 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 Single Family Property or Other 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. 30 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 17.69 Acres of Public Property and up to 3.68 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. 30 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 \$10,979,000 for 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. 30.

"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, 2016, through June 30, 2050.

“Prepayment Period 2” means July 1, 2050, through June 30, 2083.

“Prepayment Period 3” means July 1, 2083, through June 30, 2117.

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, 2015, 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
less	<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. 30 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. 30, 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. 30, 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 Future Facilities Costs for the applicable Prepayment Period.
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. 30, 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. 30.

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. 30 (after excluding 17.69 Acres of Public Property and 3.68 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, 2015, 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:

$$PP = PF \times \%$$

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

% = 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. 30 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 2116-2117, 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)

CITY OF ONTARIO AND CFD No. 30 CERTIFICATE

1. Pursuant to Section C.1 of the Rate and Method of Apportionment of Special Tax for City of Ontario Community Facilities District No. 30 (New Haven Facilities – Area B) (“CFD No. 30”), the Assigned Special Tax and the Backup Special Tax for Developed Property within CFD No. 30 has been modified.
 - a. The information in Table 1 relating to the Assigned Special Tax for Developed Property within CFD No. 30, 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	Single Family Detached Property	< 1,701	\$[] per Unit
2	Single Family Detached Property	1,701 – 1,900	\$[] per Unit
3	Single Family Detached Property	1,901 – 2,100	\$[] per Unit
4	Single Family Detached Property	2,101 – 2,300	\$[] per Unit
5	Single Family Detached Property	2,301 – 2,500	\$[] per Unit
6	Single Family Detached Property	2,501 – 2,700	\$[] per Unit
7	Single Family Detached Property	2,701 – 2,900	\$[] per Unit
8	Single Family Detached Property	2,901 – 3,100	\$[] per Unit
9	Single Family Detached Property	3,101 – 3,300	\$[] per Unit
10	Single Family Detached Property	3,301 – 3,500	\$[] per Unit
11	Single Family Detached Property	3,501 – 3,700	\$[] per Unit
12	Single Family Detached Property	3,701 – 3,900	\$[] per Unit
13	Single Family Detached Property	> 3,900	\$[] per Unit

EXHIBIT A

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

14	Single Family Attached Property	< 801	\$[] per Unit
15	Single Family Attached Property	801 – 950	\$[] per Unit
16	Single Family Attached Property	951 – 1,100	\$[] per Unit
17	Single Family Attached Property	1,101 – 1,300	\$[] per Unit
18	Single Family Attached Property	1,301 – 1,500	\$[] per Unit
19	Single Family Attached Property	1,501 – 1,700	\$[] per Unit
20	Single Family Attached Property	1,701 – 1,900	\$[] per Unit
21	Single Family Attached Property	> 1,900	\$[] per Unit
22	Other Residential Property		\$[] per Acre
23	Non-Residential Property		\$[] 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 Single Family Detached Property and \$[] per Unit for Single Family Attached Property. However, if the Expected Residential Lot Count does not equal 346 for Single Family Detached Property or 98 for Single Family Attached Property, and the City has not issued Bonds, then the Backup Special Tax for Designated Buildable Lots of Single Family Property shall be calculated separately for Single Family Detached Property and Single Family Attached Property according to the following formula:

$$\text{Backup Special Tax} = \$[] \div \begin{array}{l} \text{Expected Residential} \\ \text{Lot Count for Single Family} \\ \text{Detached Property} \end{array}$$

or $\$[] \div \begin{array}{l} \text{Expected Residential Lot} \\ \text{Count for Single Family Attached} \\ \text{Property} \end{array}$

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. 30 Bonds.
3. Upon execution of this certificate by CFD No. 30, CFD No. 30 shall cause an amended notice of Special Tax lien for CFD No. 30 to be recorded reflecting the modifications set forth herein.

By execution hereof, the undersigned acknowledge, on behalf of the City and CFD No. 30, receipt of this certificate and modification of the Rate and Method of Apportionment as set forth in this certificate.

CITY OF ONTARIO COMMUNITY FACILITIES DISTRICT NO. 30 (NEW HAVEN
FACILITIES – AREA B)

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. 30 (NEW HAVEN FACILITIES - AREA B).

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. 30 (New Haven Facilities – Area B), and to Authorize the Levy of Special Taxes," stating its intention to establish City of Ontario Community Facilities District No. 30 (New Haven Facilities - Area B) (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 \$39,000,000;

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

SECTION 1. The City Council hereby declares that in order to finance the Facilities, it is necessary to incur bonded indebtedness.

SECTION 2. 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 3. The maximum amount of the proposed debt is \$39,000,000.

SECTION 4. The City Council hereby fixes Tuesday, June 21, 2016, 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 5. 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 6. 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 7. 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 17th day of May, 2016.

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. 2016- was duly passed and adopted by the City Council of the City of Ontario at their regular meeting held May 17, 2016 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. 2016- duly passed and adopted by the Ontario City Council at their regular meeting held May 17, 2016.

SHEILA MAUTZ, CITY CLERK

(SEAL)

CITY OF ONTARIO

Agenda Report

May 17, 2016

SECTION: CONSENT CALENDAR

SUBJECT: A CITY INITIATED REQUEST TO CHANGE THE ZONING DESIGNATIONS (FILE NO. PZC16-001) ON 881 PROPERTIES GENERALLY LOCATED SOUTH OF FOURTH STREET AND WEST OF EUCLID AVENUE; 127 PROPERTIES ALONG EAST HOLT BOULEVARD; AND 37 OTHER PROPERTIES LOCATED THROUGHOUT THE CITY IN ORDER TO MAKE THE ZONING CONSISTENT WITH THE ONTARIO PLAN LAND USE DESIGNATIONS OF THE PROPERTIES

RECOMMENDATION: That City Council consider and adopt an ordinance approving a Zone Change (File No. PZC16-001) to create consistency between the zoning and the General Plan land use designations of the subject properties.

COUNCIL GOALS: Regain Local Control of the Ontario International Airport
Operate in a Businesslike Manner

FISCAL IMPACT: The potential fiscal impacts of the project were analyzed as part of The Ontario Plan ("TOP") adopted in January 2010. The proposed Zone Change will not introduce any fiscal impacts that were not previously analyzed as part of TOP.

BACKGROUND: On May 3, 2016 the City Council introduced an ordinance approving the Zone Changes. In January 2010, the City Council approved TOP, which lays out the long term land use pattern for the City. Since that time, the City has undertaken an effort to ensure that the zoning and TOP land use designations are consistent for all properties in the City. In addition, a comprehensive update to the Ontario Development Code to implement TOP was adopted and went into effect on January 1, 2016. This Zone Change, which proposes changes to about 1,100 properties that are predominantly located south of Fourth Street and west of Euclid Avenue or along East Holt Boulevard, is part of the TOP-Zoning Consistency Project.

STAFF MEMBER PRESENTING: Scott Murphy, Planning Director

Prepared by: C. Burden/M. Mullis
Department: Planning

City Manager
Approval: 

Submitted to Council/O.H.A. 05/17/2016

Approved: _____

Continued to: _____

Denied: _____

8

The proposed changes are shown in Exhibit A of the proposed ordinance and the area maps contained in the Planning Commission staff report. The changes are proposed in order to:

- Provide consistency with TOP land use designations of properties
- Eliminate P1 zoned properties (zone has been eliminated)
- Eliminate split zoning of properties
- Accommodate adequate housing sites per the adequate sites inventory of the Housing Element
- Encourage the elimination of strip commercial along Holt Boulevard in order to revitalize the corridor
- Allow the ongoing use of properties uniquely designed to accommodate commercial uses by the use of an ICC, Interim Community Commercial Overlay
- Place flood control channels in the UC, Utilities Corridor, zone
- Place the cemetery in a unique zone for cemetery use (OS-C, Open Space Cemetery)
- Allow the continued use of certain rural properties on Magnolia Avenue for large animal keeping as agreed to during the development and adoption of TOP

Subject property owners and all property owners within 300 feet of the subject properties were sent Community Open House notices regarding the approximate 1,100 proposed zone changes. In addition, a large display advertisement was published in the Inland Valley Daily Bulletin. On January 25 and January 27, 2016, Community Open Houses were held. About 250 people attended. The majority of the people in attendance were seeking information about the proposed zone changes and did not voice any opposition to the project. Fifty-two people provided written comments. Nineteen of these responses did not support the proposed changes. Subsequent to the Community Open Houses, two written responses, which were not in support of the zone changes, were received and transmitted to the Planning Commission. On March 22, 2016, the Planning Commission conducted a hearing attended by about 40 people, eleven of whom spoke. Concerns expressed included:

Parking: Residents expressed concerns about the lack of available street parking for single family residences near existing multi-family development and that the zone changes, which would allow some higher densities in the area, could make the problem worse. Staff explained that the existing multi-family developments in the area were built decades ago when parking requirements were different, and that any new units would need to comply with the current Development Code requirements including the provision of on-site parking.

Large Animal Keeping: Requests were made to maintain the current agricultural residential zoning of larger rural lots (some of which have large animal keeping) that are scattered within low and medium density residential areas east of Magnolia Avenue, instead of being rezoned to be consistent with the adjacent properties and the General Plan. Staff explained that any existing legal large animal keeping on these properties would be allowed to continue as a nonconforming use, while allowing the area to transition over time to uses more in keeping with the neighborhood.

Multi-Family Zoning Close To Single Family: One speaker expressed that, although her property does not have a proposed change, she does not want apartments across the street from her single family home. Another indicated concern that a plant nursery would change to apartments. Staff explained that the area already has multi-family development and over time, lots could be consolidated and reconfigured. The medium density residential zoning would provide a transition of uses and any future development would need to comply with current Development Code requirements which would promote compatibility with the existing neighborhood.

Commercial Uses In Mixed Use Zone Close To Single Family: One speaker was concerned that residences would be replaced with a large shopping center and trucks would come through his neighborhood. The current zoning in the area includes individual lots with either commercial or residential zoning, and the mixed use zone would allow for a mixture of residential and commercial uses with more flexibility in how those properties are laid out. Mixed use is not strictly commercial but a blend which would ideally provide an integrated design where residents could walk to shopping without having to get into their cars.

ICC Overlay: One property owner requested that his property receive the ICC, Interim Community Commercial Overlay, which the Planning Commission agreed to include in its recommendation to City Council.

The Planning Commission voted unanimously, 6 to 0, to recommend that City Council approve the project.

AIRPORT LAND USE COMPATIBILITY: The Proposed project is located within the Airport Influence Area of Ontario International Airport (ONT) and was evaluated and found to be consistent with the policies and criteria of the Airport Land Use Compatibility Plan (ALUCP) Ontario.

ENVIRONMENTAL REVIEW: The application is a project pursuant to the California Environmental Quality Act (Public Resources Code Section 21000 et seq.) ("CEQA"). The environmental impacts of this project were previously reviewed in conjunction The Ontario Plan Environmental Impact Report (State Clearinghouse No. 2008101140) adopted by City Council on January 27, 2010, and in conjunction with and Addendum prepared for File No. PGPA06-001. This Application introduces no new significant environmental impacts not previously analyzed in the Environmental Impact Report. All previously adopted mitigation measures are a condition of project approval and are incorporated herein by reference. The environmental documentation for this project is available for review at the Planning Department public counter.

ORDINANCE NO. _____

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF ONTARIO, CALIFORNIA, APPROVING FILE NO. PZC16-001, A CITY INITIATED REQUEST TO CHANGE THE ZONING DESIGNATIONS ON 881 PROPERTIES GENERALLY LOCATED SOUTH OF FOURTH STREET AND WEST OF EUCLID AVENUE, 127 PROPERTIES ALONG EAST HOLT BOULEVARD, AND 37 OTHER PROPERTIES LOCATED THROUGHOUT THE CITY IN ORDER TO MAKE THE ZONING CONSISTENT WITH THE ONTARIO PLAN LAND USE DESIGNATIONS OF THE PROPERTIES, AND MAKING FINDINGS IN SUPPORT THEREOF—APNS: AS SHOWN IN EXHIBIT A (ATTACHED).

WHEREAS, City of Ontario ("Applicant") has initiated an Application for the approval of a Zone Change, File No. PZC16-001, as described in the title of this Resolution (hereinafter referred to as "Application" or "Project"); and

WHEREAS, the Application applies to 1,045 properties totaling about 522 acres; and

WHEREAS, the zoning of the properties is inconsistent with The Ontario Plan ("TOP"): land use designations of the properties and the proposed zone changes will make the zoning consistent with TOP land use designations of the properties as shown in Exhibit A; and

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

WHEREAS, the project is consistent with the Housing Element of the Policy Plan (General Plan) component of The Ontario Plan. Sixty-six parcels within Groups A7, A8, A9, A10, A11, A12, A13, A35, A36, A42, A43, E7, and E8 as shown in Exhibit A (attached) are 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 density specified in the Available Land Inventory.

WHEREAS, the proposed project is located within the Airport Influence Area of Ontario International Airport (ONT) and was evaluated and found to be consistent with the policies and criteria of the Airport Land Use Compatibility Plan (ALUCP) for ONT; and

WHEREAS, the environmental impacts of this project were previously reviewed in conjunction with The Ontario Plan (TOP) (File No. PGPA06-001), for which an Environmental Impact Report (SCH # 2008101140) was adopted by the City Council on January 27, 2010, and an Addendum to TOP EIR prepared for File No. GPA16-001, adopted by the City Council on May 3, 2016, and this Application introduces no new significant environmental impacts; and

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

WHEREAS, on March 22, 2016, the Planning Commission of the City of Ontario conducted a hearing to consider the Project, and unanimously adopted Resolution No. PC16-010 recommending City Council approval of the project; and

WHEREAS, on May 3, 2016, the City Council of the City of Ontario conducted a hearing to consider the Project, and concluded said hearing on that date; and

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

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

SECTION 1. As the decision-making body for the Project, the City Council has reviewed and considered the information contained in the previously adopted Environmental Impact Report (SCH # 2008101140) and Addendum for File No. PGPA16-001, and supporting documentation. Based upon the facts and information contained in the Environmental Impact Report (SCH # 2008101140), Addendum, and supporting documentation, the City Council finds as follows:

- a. The previous EIR contains a complete and accurate reporting of the environmental impacts associated with the Project; and
- b. The previous EIR was completed in compliance with CEQA and the Guidelines promulgated thereunder; and
- c. The previous EIR reflects the independent judgment of the City Council; and
- d. All previously adopted mitigation measures, which are applicable to the Project, shall be a condition of Project approval and are incorporated herein by reference.

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

- a. The proposed Zone Change is consistent with the goals, policies, plans and exhibits of the Vision, Policy Plan (General Plan), and City Council Priorities components of The Ontario Plan as follows:

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

Compliance: Undertaking the zone changes to provide consistency between the zoning and TOP land use designations will further the City's intent of becoming a complete community which will result in a land use pattern that provides residents, employers, workers and visitors a wide spectrum of choices to live, work, shop and recreate within Ontario.

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

Compliance: The zone changes will help to bring consistency between the zoning and TOP land uses and will bring the achievement of our Vision closer.

H1-2 Neighborhood Conditions. We direct efforts to improve the long-term sustainability of neighborhoods through comprehensive planning, provisions of neighborhood amenities, rehabilitation and maintenance of housing, and community building efforts.

Compliance: Changing the zoning of certain existing residential properties, to comply with our Vision, will provide for long term stability of the neighborhoods

S4-6 Airport Noise Compatibility. We utilize information from Airport Land Use Compatibility Plans to prevent the construction of new noise sensitive land uses within airport noise impact zones.

Compliance: The proposed zone changes are consistent with the adopted Airport Land Use Compatibility Plan for both Ontario Airport and Chino Airport.

b. The proposed zone change is reasonable and beneficial, and in the interest of good zoning practice.

c. The project site is physically suitable, including, but not limited to parcel size, shape, access, availability of utilities and compatibility with adjoining land uses, for the requested zoning designation and anticipated development.

d. The proposed zone change will not adversely affect the harmonious relationship with adjacent parcels and land uses.

e. The proposed zone change will not have a significant adverse impact on the environment.

SECTION 3. Based upon the findings and conclusions set forth in Sections 1 and 2 above, the City Council hereby approves the Project.

SECTION 4. If any section, subsection, paragraph, sentence, clause or phrase of this ordinance is for any reason held to be invalid, unconstitutional or otherwise struck-down by a court of competent jobs, such decision shall not affect the validity of the remaining portions of this Ordinance. The City Council hereby declares that it would have adopted this Ordinance and each section, subsection, paragraph, sentence, clause or phrase thereof, irrespective of the fact that any one or more portions of this ordinance might be declared invalid.

SECTION 5. 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. The Mayor shall sign this Ordinance and the City Clerk shall certify as to the adoption and shall cause a summary thereof to be published at least once, in a newspaper of general circulation in the City of Ontario, California within fifteen (15) days of the adoption. The City Clerk shall post a certified copy of this ordinance, including the vote for and against the same, in the Office of the City Clerk, in accordance with Government Code Section 36933.

PASSED, APPROVED, AND ADOPTED this 17th day of May 2016.

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. 3050 was duly introduced at a regular meeting of the City Council of the City of Ontario held May 3, 2016, and adopted at the regular meeting held May 17, 2016, by the following roll call vote, to wit:

AYES: COUNCIL MEMBERS:

NOES: COUNCIL MEMBERS:

ABSENT: COUNCIL MEMBERS:

SHEILA MAUTZ, MMC, CITY CLERK

(SEAL)

I hereby certify that the foregoing is the original of Ordinance No. 3050 duly passed and adopted by the Ontario City Council at their regular meeting held May 17, 2016 and that Summaries of the Ordinance were published on May 10, 2016 and May 24, 2016, in the Inland Valley Daily Bulletin newspaper.


































SHEILA MAUTZ, CITY CLERK

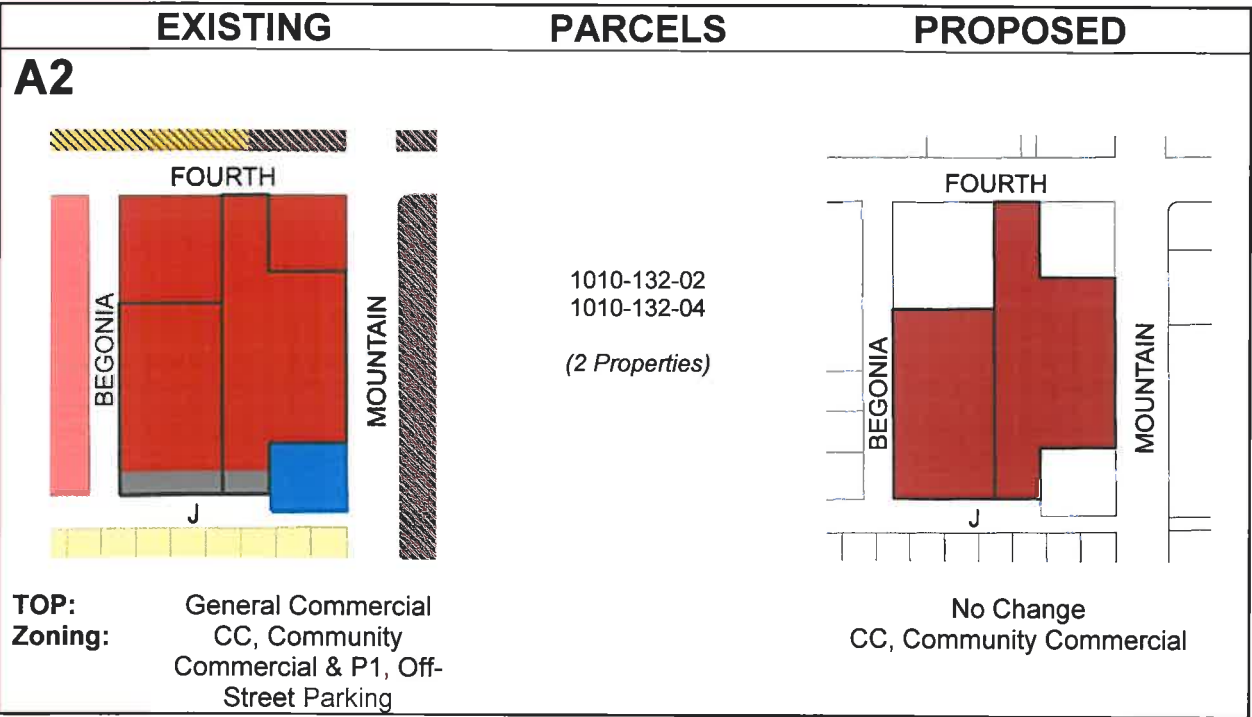
(SEAL)

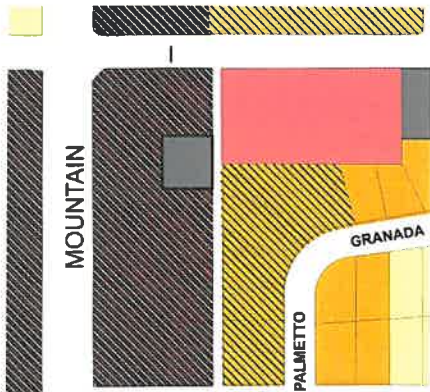
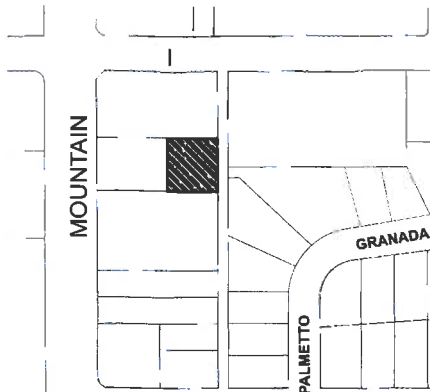
Exhibit A

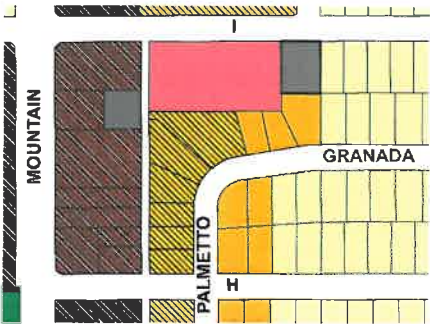
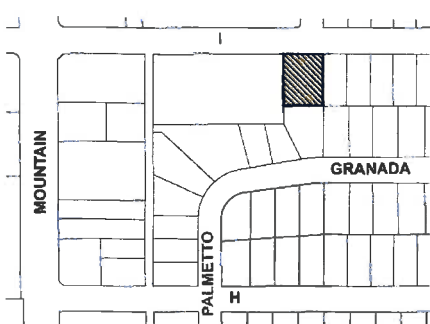
PZC16-001

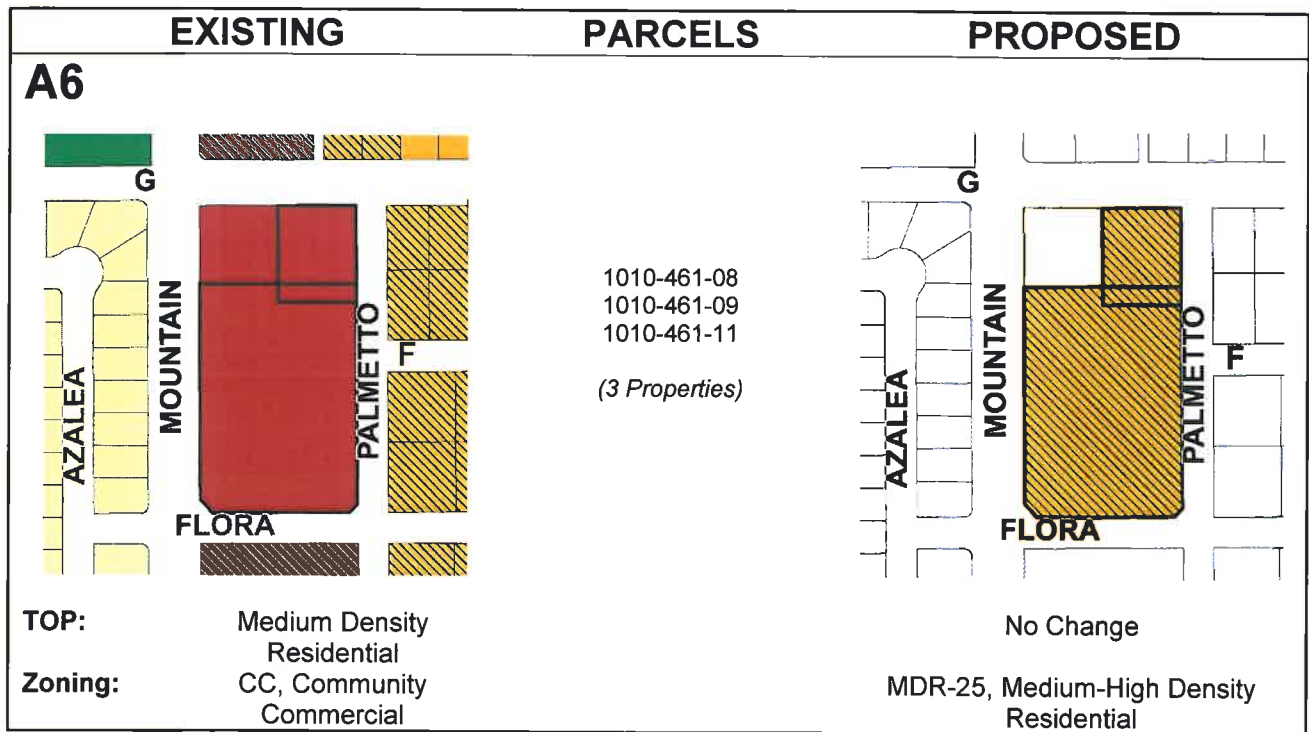
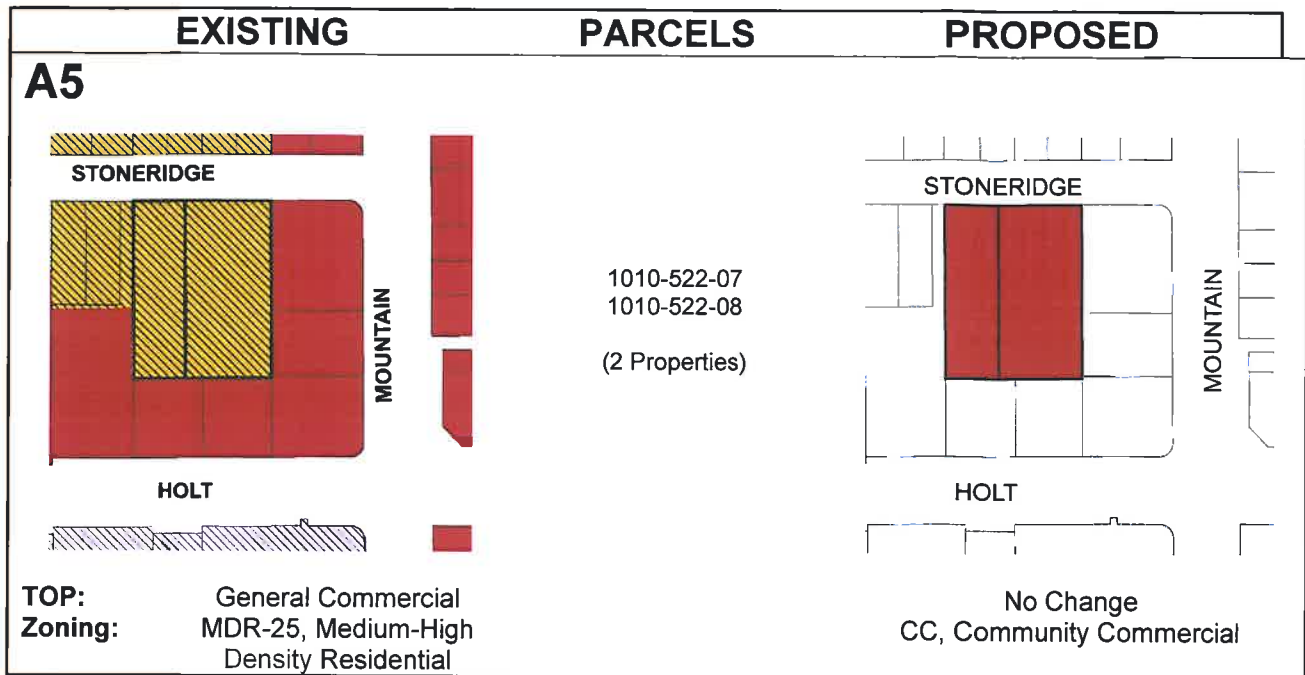
ZONING Legend:

	AR-2, Residential-Agricultural		PUD, Planned Unit Development		BP, Business Park		OS-R, Open Space - Recreation
	RE-2, Rural Estate		MU, Mixed Use 1 – Downtown, 2-East Holt, 11-Francis&Euclid		IP, Industrial Park		OS-C, Open Space-Cemetery
	RE-4, Residential Estate		CS, Corner Store		IL, Light Industrial		UC, Utilities Corridor
	LDR-5, Low Density Residential		CN, Neighborhood Commercial		IG, General Industrial		SP, Specific Plan
	MDR-11, Low-Medium Density Residential		CC, Community Commercial		IH, Heavy Industrial		SP(AG), Specific Plan with Agricultural Overlay
	MDR-18, Medium Density Residential		CCS, Convention Center Support		ONT, Ontario Int'l Airport		ES, Emergency Shelter Overlay
	MDR-25, Medium-High Density Residential		OL, Low Intensity Office		CIV, Civic		MTC, Multimodal Transit Center Overlay
	HDR-45, High Density Residential		OH, High Intensity Office		RC, Rail Corridor		ICC, Interim Community Commercial Overlay
	MHP, Mobile Home Park						



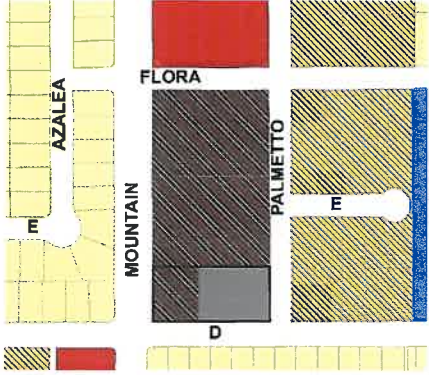

EXISTING	PARCELS	PROPOSED
A3		
	<p>1010-191-43 (1 Property)</p>	
<p>TOP: Neighborhood Commercial</p> <p>Zoning: P1, Off-Street Parking</p>		<p>No Change</p> <p>CN, Neighborhood Commercial</p>

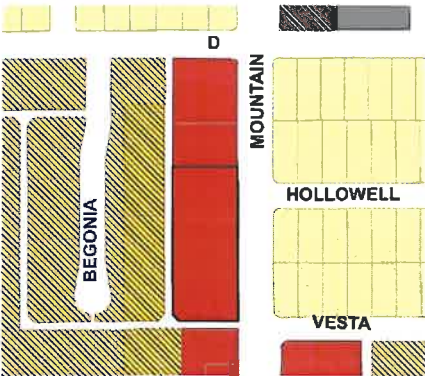
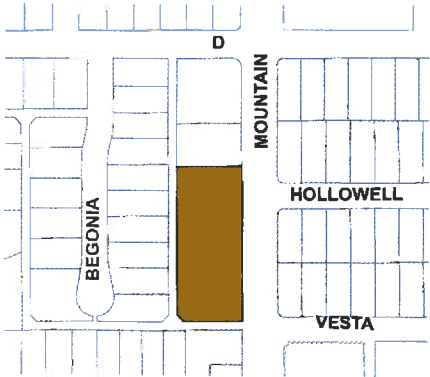
EXISTING	PARCELS	PROPOSED
A4		
	<p>1010-191-31 (1 Property)</p>	
<p>TOP: Low Density Residential</p> <p>Zoning: P1, Off-Street Parking</p>		<p>Medium Density Residential</p> <p>MDR-25, Medium-High Density Residential</p>

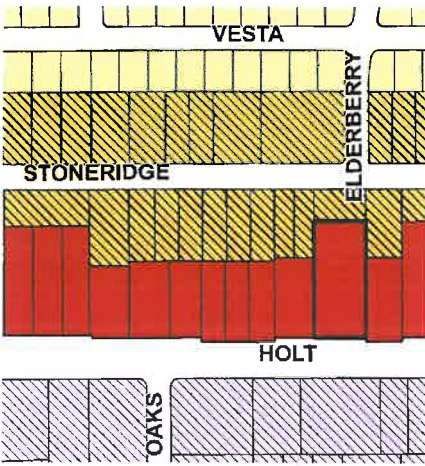
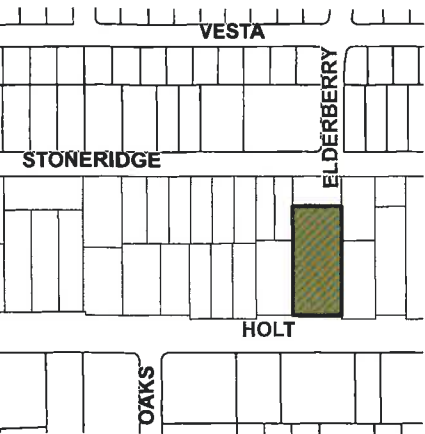


EXISTING	PARCELS	PROPOSED
A7		
<p>1008-513-16 1008-522-01 (2 Properties)</p>		<p>No Change CN, Neighborhood Commercial</p>
TOP: Neighborhood Commercial Zoning: CN, Neighborhood Commercial & P1, Off-Street Parking		

EXISTING	PARCELS	PROPOSED
A8		
<p>1010-462-02 1010-462-03 (2 Properties)</p>		<p>No Change HDR-45, High Density Residential with ICC, Interim Community Commercial Overlay</p>
TOP: High Density Residential Zoning: CN, Neighborhood Commercial		

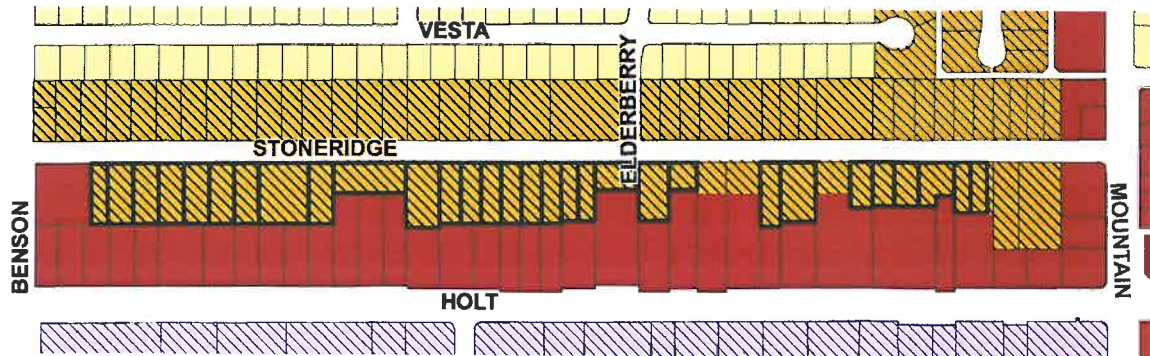
EXISTING	PARCELS	PROPOSED
A9		
 <p>TOP: High Density Residential Zoning: CN, Neighborhood Commercial & P1, Off-Street Parking</p>	<p>1010-462-01 (1 Property)</p>	 <p>No Change HDR-45, High Density Residential with ICC, Interim Community Commercial Overlay</p>

EXISTING	PARCELS	PROPOSED
A10		
 <p>TOP: High Density Residential Zoning: CC, Community Commercial</p>	<p>1010-521-28 (1 Property)</p>	 <p>No Change HDR-45, High Density Residential</p>

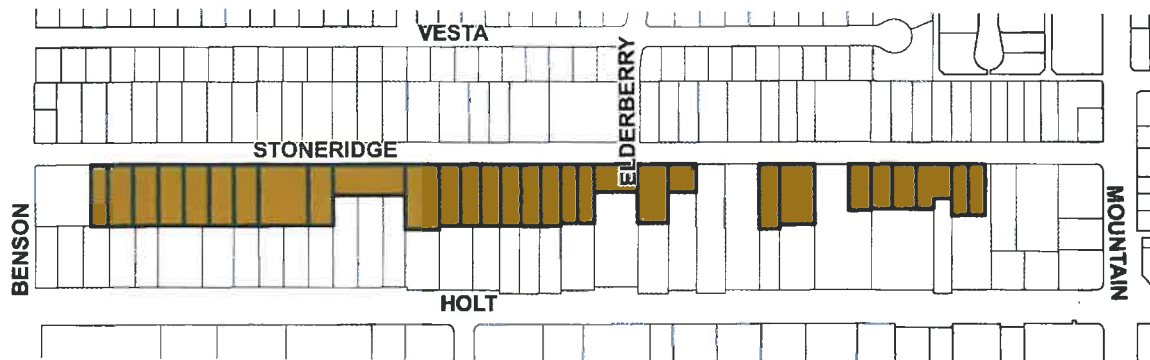
EXISTING	PARCELS	PROPOSED
<p>A11</p>  <p>TOP: High Density Residential Zoning: CC, Community Commercial</p>	<p>1010-543-02 <i>(1 Property)</i></p>	 <p>No Change HDR-45, High Density Residential with ICC, Interim Community Commercial Overlay</p>

A12

EXISTING



PROPOSED



Parcels: (30 Properties)

1010-522-02 – 1010-522-05

1010-522-16

1010-543-16 – 1010-543-29

1010-543-31

1010-552-17 – 1010-552-23

1010-552-26

1010-552-31

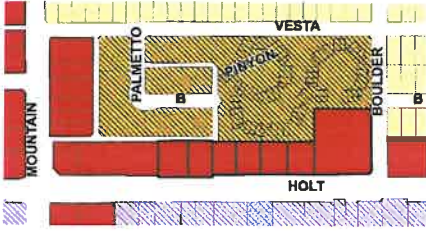
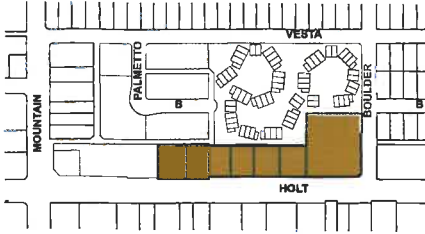
1010-552-35

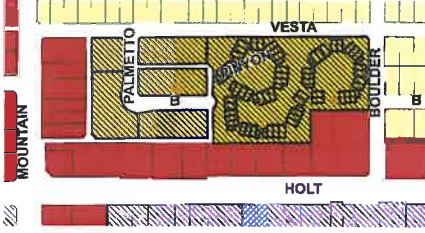
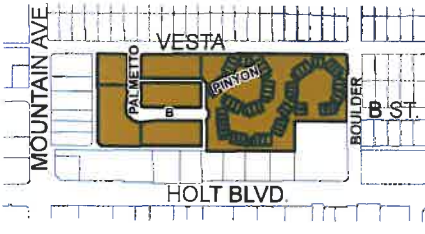
EXISTING

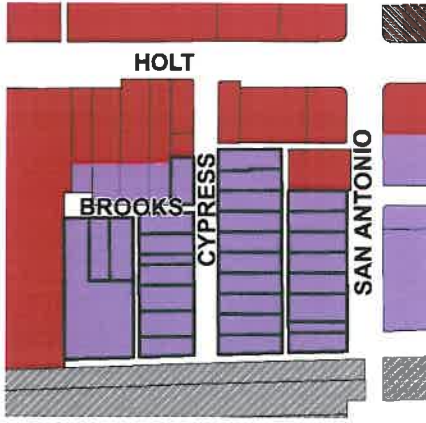
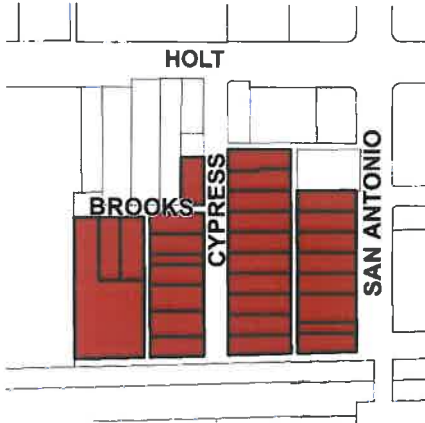
TOP: High Density Residential
Zoning: MDR-25, Medium-High Density Residential

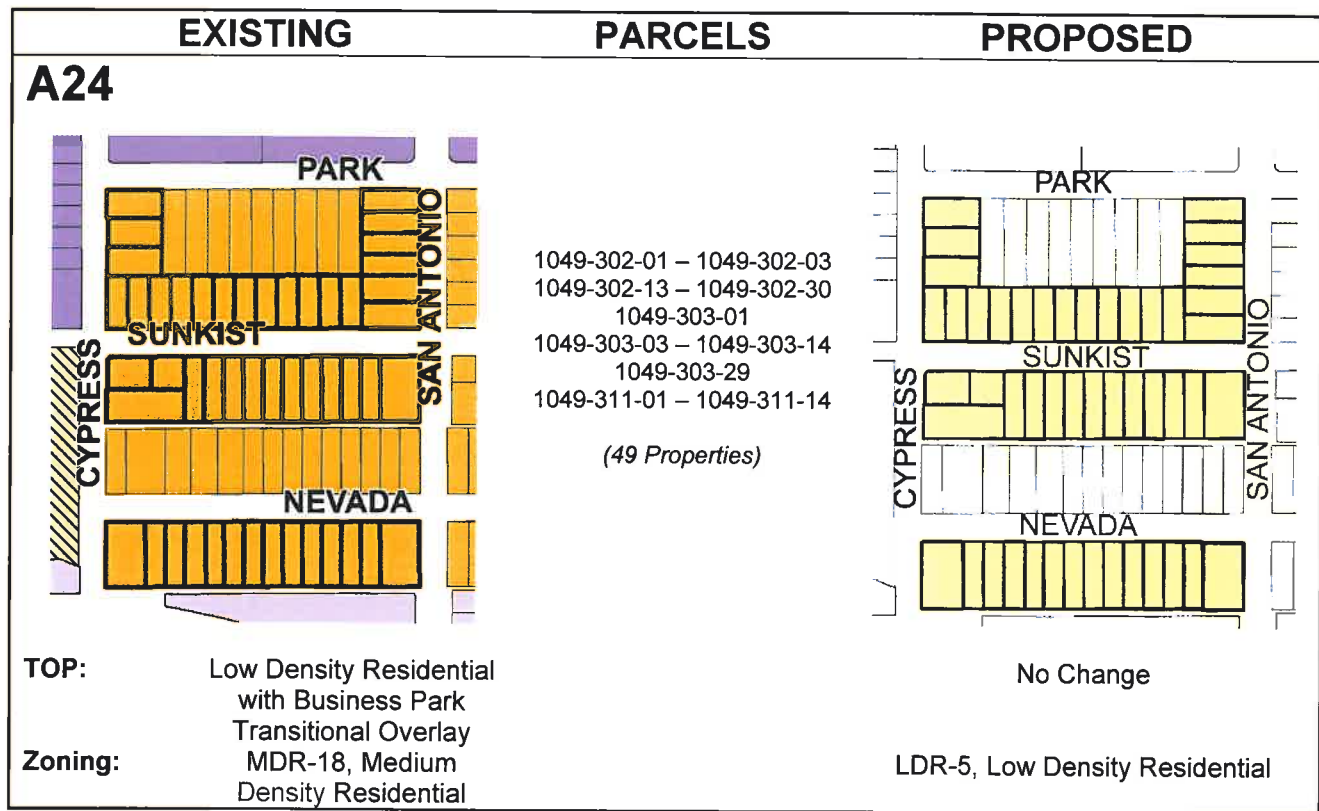
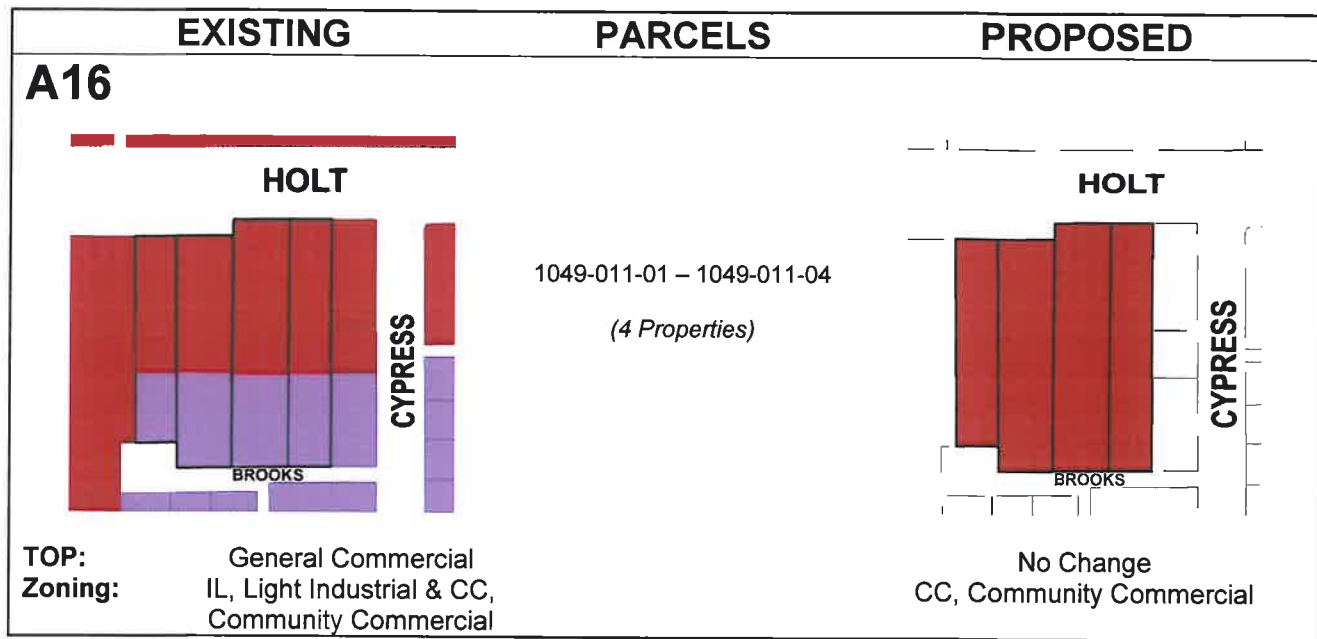
PROPOSED

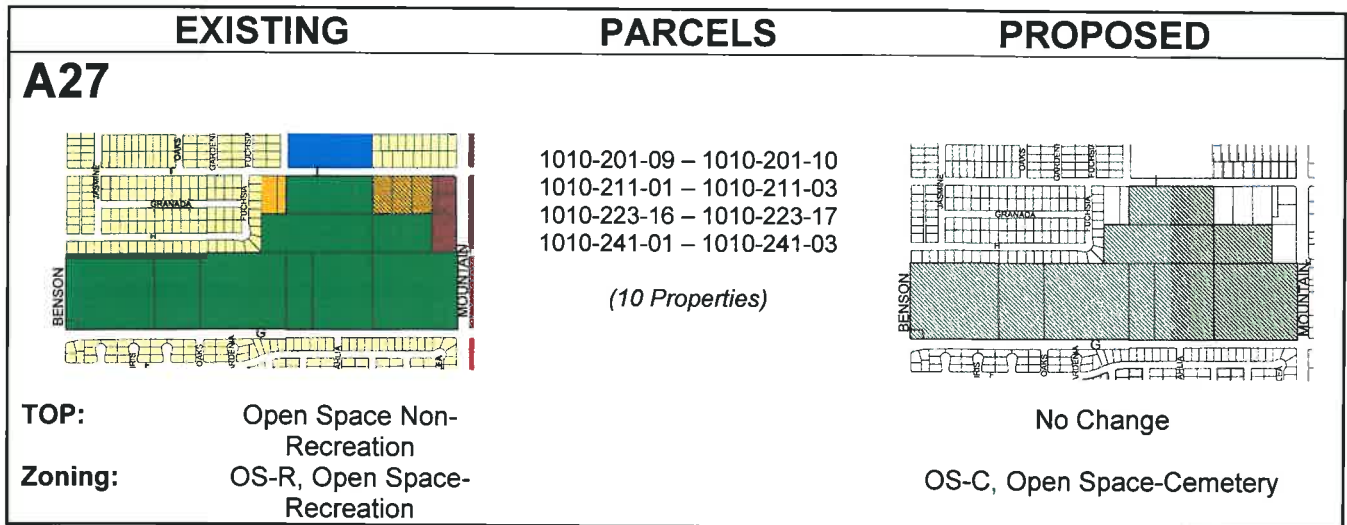
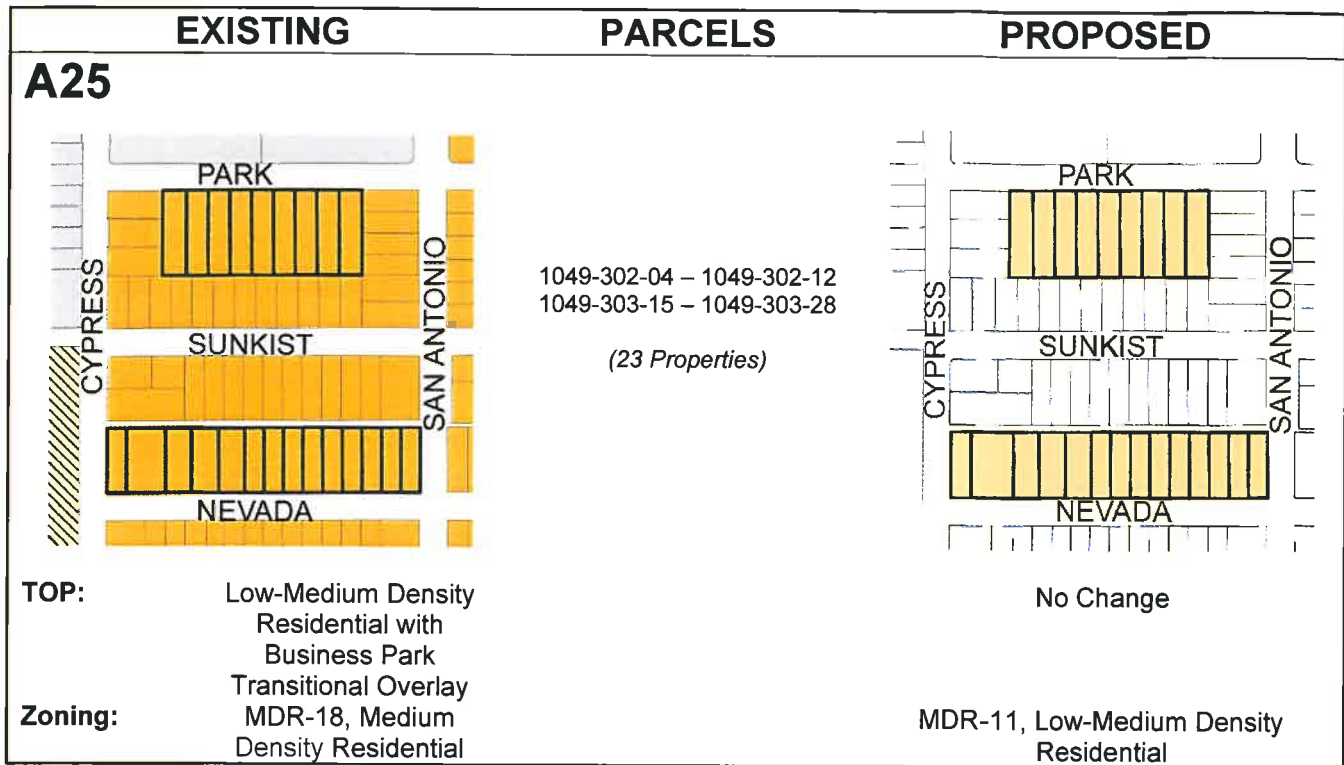
No Change
HDR-45, High Density Residential

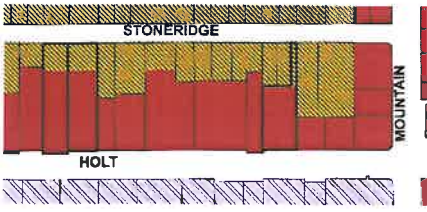
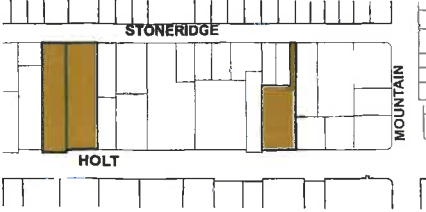
EXISTING	PARCELS	PROPOSED
A13		
	<p>1010-501-76 – 1010-501-80 1010-502-06 – 1010-502-07</p> <p>(7 Properties)</p>	
<p>TOP: High Density Residential Zoning: CC, Community Commercial</p>		<p>No Change HDR-45, High Density Residential</p>

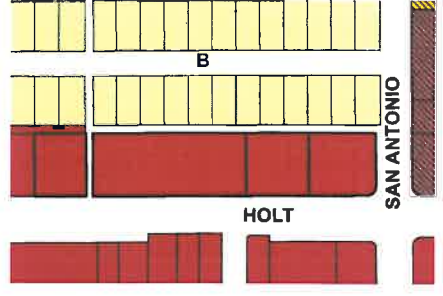
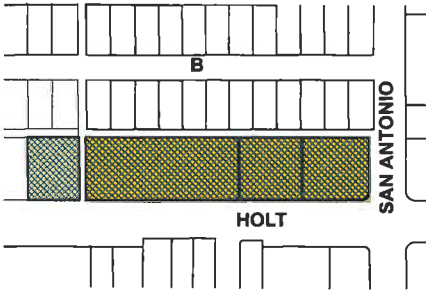
EXISTING	PARCELS	PROPOSED
A14		
	<p>1010-501-06 – 1010-501-75 1010-501-81 1010-502-16 – 1010-502-17 1010-502-23 – 1010-502-25</p> <p>(76 Properties)</p>	
<p>TOP: High Density Residential Zoning: MDR-25, Medium-High Density Residential</p>		<p>No Change HDR-45, High Density Residential</p>

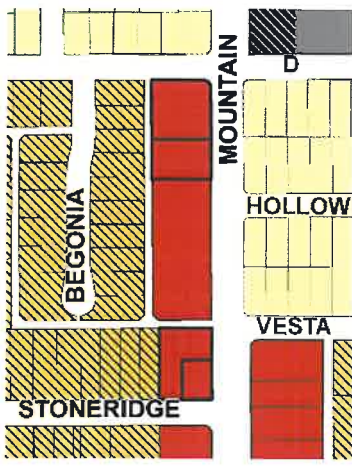
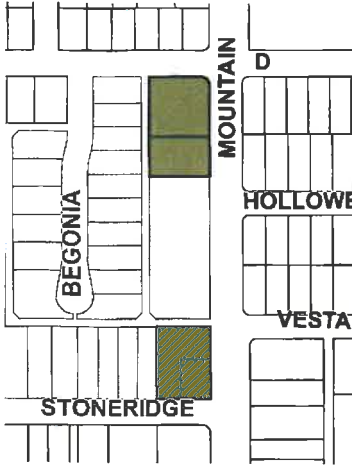
EXISTING	PARCELS	PROPOSED
A15		
	<p>1049-011-07 – 1049-011-17 1049-012-06 – 1049-012-21 1049-012-29 – 1049-012-30</p> <p>(29 Properties)</p>	
<p>TOP: General Commercial Zoning: IL, Light Industrial</p>		<p>No Change CC, Community Commercial</p>





EXISTING	PARCELS	PROPOSED
A35		
	<p>1010-522-06 1010-543-04 1010-543-05</p> <p>(3 Properties)</p>	
TOP: Zoning:	<p>Business Park CC, Community Commercial & MDR-25, Medium-High Density Residential</p>	<p>No Change HDR-45, High Density Residential</p>

EXISTING	PARCELS	PROPOSED
A36		
	<p>1010-491-16 1048-604-13 1048-604-14</p> <p>(3 Properties)</p>	
TOP: Zoning:	<p>Medium Density Residential CC, Community Commercial</p>	<p>No Change MDR-25, Medium-High Density Residential with ICC, Interim Community Commercial Overlay</p>

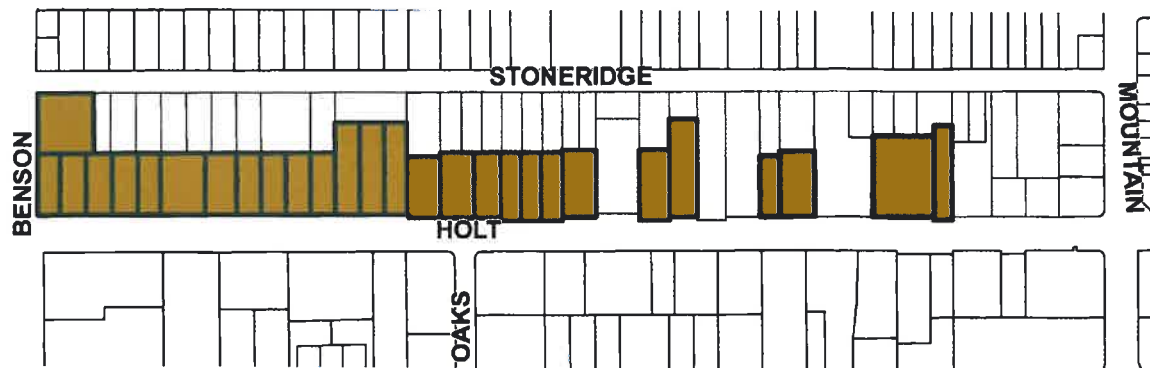
EXISTING	PARCELS	PROPOSED
<p>A42</p> 	<p>1010-521-26 1010-521-27 1010-521-29 1010-521-30</p> <p><i>(4 Properties)</i></p>	
<p>TOP: High Density Residential</p> <p>Zoning: CC, Community Commercial</p>		<p>No Change</p> <p>HDR-45, High Density Residential with ICC, Interim Community Commercial Overlay</p>

A43

EXISTING



PROPOSED



Parcels: (28 Properties)

1010-522-13	1010-543-09 – 1010-543-14	1010-552-11 – 1010-552-16
1010-522-17	1010-543-32	1010-552-32 – 1010-552-34
1010-543-02 – 1010-543-03	1010-552-04 – 1010-552-07	1010-552-37 – 1010-552-38
1010-543-06 – 1010-543-07		

EXISTING

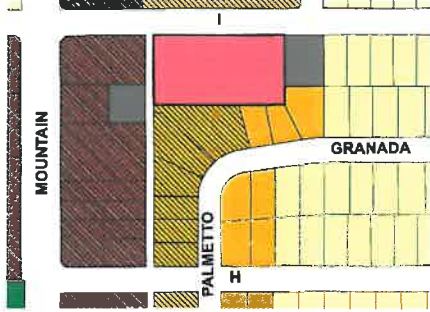
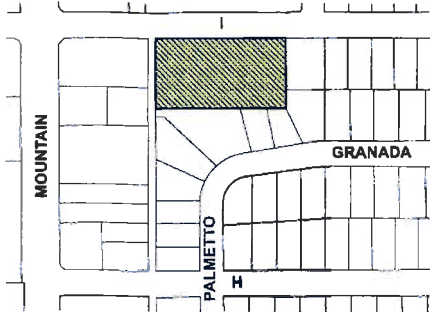
TOP: High Density Residential
Zoning: CC, Community Commercial

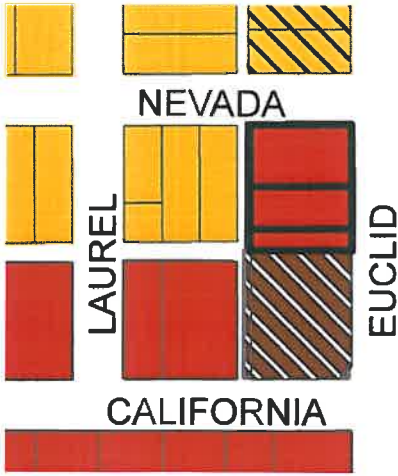
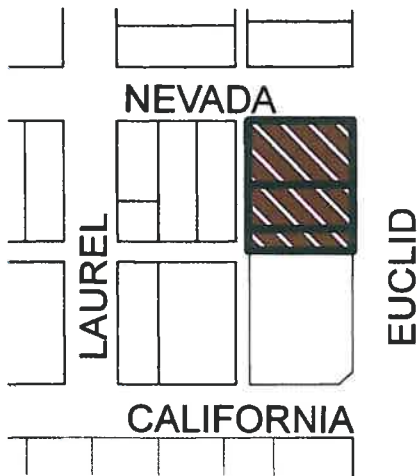
PROPOSED

No Change
 HDR-45, High Density Residential

EXISTING	PARCELS	PROPOSED
A44		
	<p>1010-543-01</p> <p>(1 Property)</p>	
<p>TOP: Business Park</p> <p>Zoning: CC, Community Commercial & MDR-25, Medium-High Density Residential</p>		<p>No Change</p> <p>HDR-45, High Density Residential with ICC, Interim Community Commercial Overlay</p>

EXISTING	PARCELS	PROPOSED
A45		
	<p>1010-491-02</p> <p>1010-491-03</p> <p>1010-491-15</p> <p>1048-604-15</p> <p>(4 Properties)</p>	
<p>TOP: Medium Density Residential</p> <p>Zoning: CC, Community Commercial</p>		<p>No Change</p> <p>MDR-25, Medium-High Density Residential</p>

EXISTING	PARCELS	PROPOSED
A46		
	<p>1010-191-30 (1 Property)</p>	
<p>TOP: Office Commercial Zoning: OL, Low Intensity Office</p>		<p>Medium Density Residential MDR-25, Medium High Density Residential with ICC, Interim Community Commercial Overlay</p>

EXISTING	PARCELS	PROPOSED
B1		
	<p>1049-268-05 – 1049-268-07 (3 Properties)</p>	
<p>TOP: Neighborhood Commercial with a Business Park Transitional Overlay Zoning: CC, Community Commercial</p>		<p>No Change CN, Neighborhood Commercial</p>

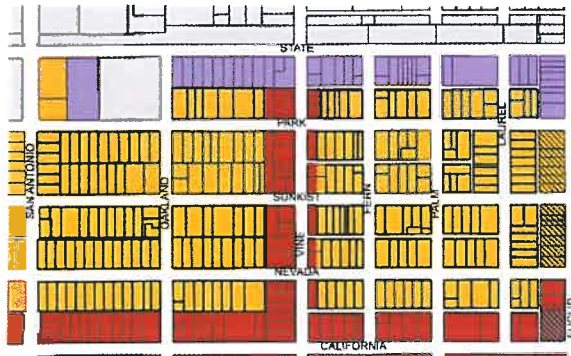
EXISTING	PARCELS	PROPOSED
B2		
	<p>1049-274-08 (1 Property)</p>	
TOP: Neighborhood Commercial with a Business Park Transitional Overlay Zoning: MDR-18, Medium Density Residential		<p>No Change</p> <p>CS, Corner Store</p>

EXISTING	PARCELS	PROPOSED
B8		
	<p>1048-353-13 (1 Property)</p>	
TOP: High Density Residential Zoning: MU-1, Downtown Mixed Use & P1, Off-Street Parking		<p>No Change</p> <p>HDR-45, High Density Residential</p>

EXISTING

PROPOSED

B10



Parcels: (244 Properties)

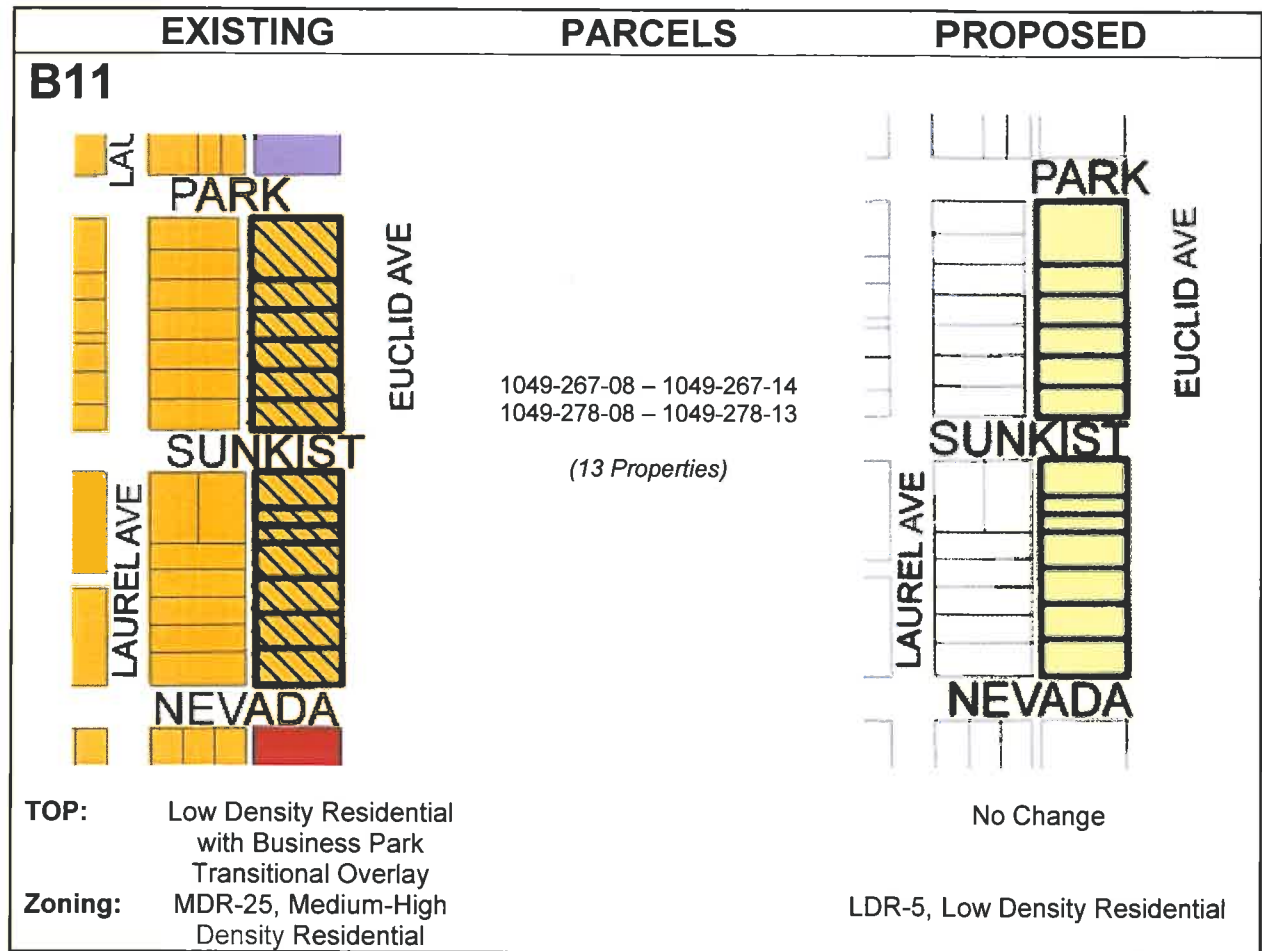
1049-261-03 – 1049-261-12	1049-271-08 – 1049-271-12	1049-276-01 – 1049-276-14	1049-284-17 – 1049-284-27
1049-261-15 – 1049-261-16	1049-272-02 – 1049-272-12	1049-276-17	1049-291-01 – 1049-291-02
1049-261-19	1049-273-10 – 1049-273-13	1049-277-12 – 1049-277-15	1049-291-05 – 1049-291-13
1049-262-02 – 1049-262-06	1049-273-15 – 1049-273-16	1049-278-01 – 1049-278-07	1049-291-16 – 1049-291-31
1049-263-01 – 1049-263-12	1049-274-01 – 1049-274-02	1049-282-01 – 1049-282-16	1049-292-01 – 1049-292-13
1049-264-01 – 1049-264-06	1049-274-06 – 1049-274-07	1049-282-18 – 1049-282-25	1049-293-01 – 1049-293-07
1049-265-01 – 1049-265-10	1049-274-09 – 1049-274-12	1049-282-28	1049-293-15 – 1049-293-24
1049-266-01 – 1049-266-05	1049-274-16	1049-283-17 – 1049-283-23	1049-294-01 – 1049-294-09
1049-267-01 – 1049-267-07	1049-274-20 – 1049-274-22	1049-284-01 – 1049-284-05	
1049-268-01 – 1049-268-04	1049-275-05 – 1049-275-10	1049-284-07 – 1049-284-08	

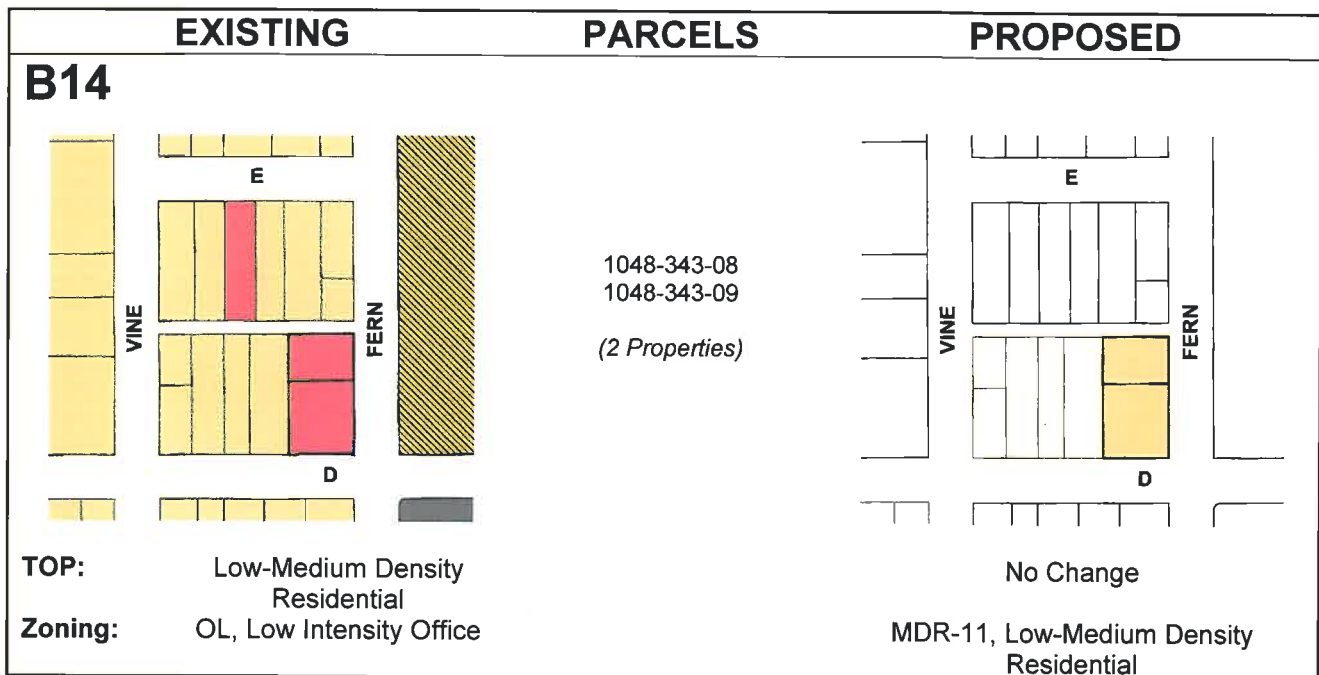
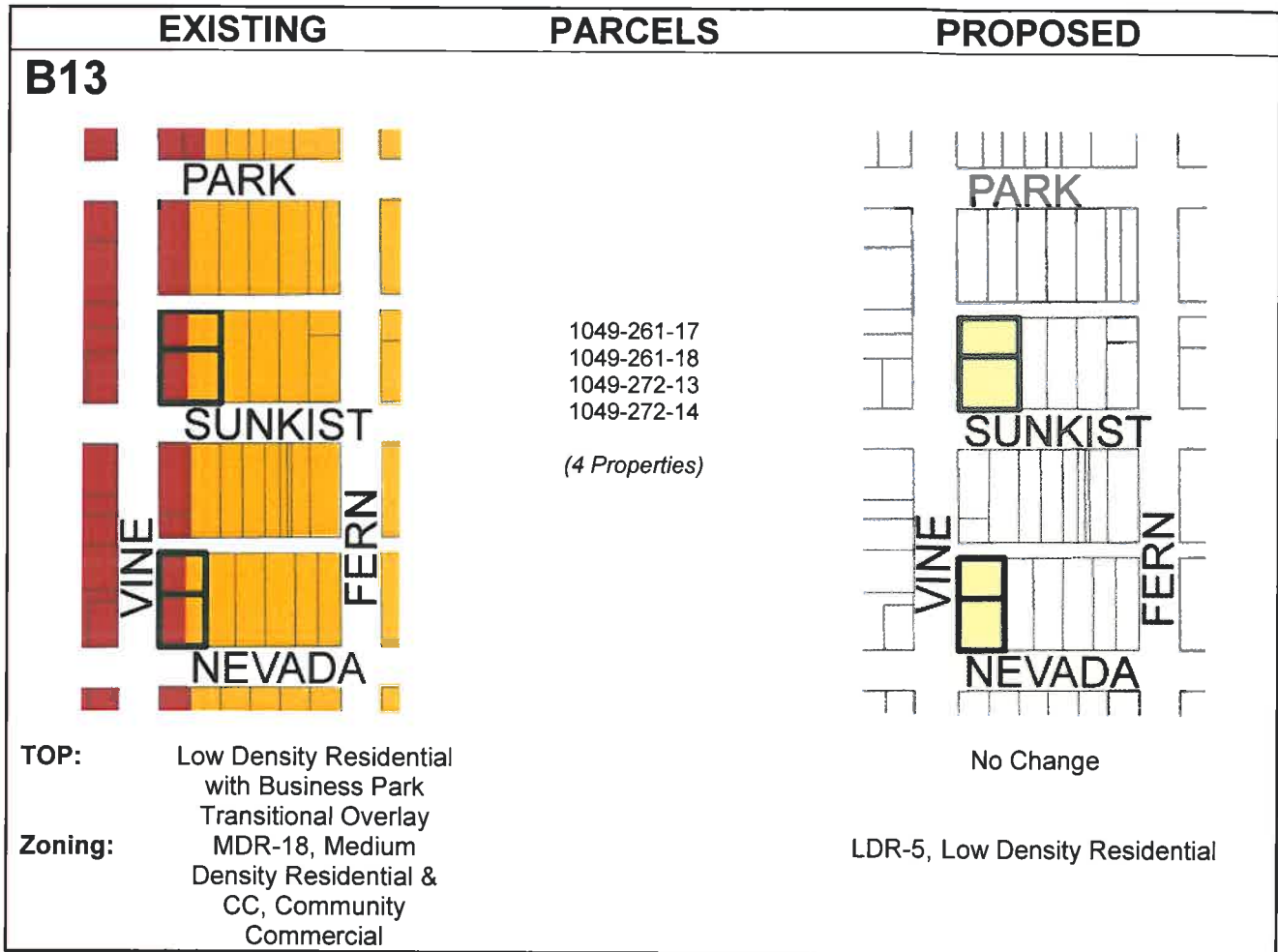
TOP: Low Density Residential with Business
Park Transitional Overlay

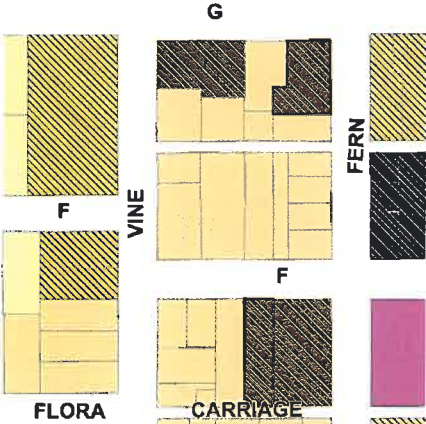
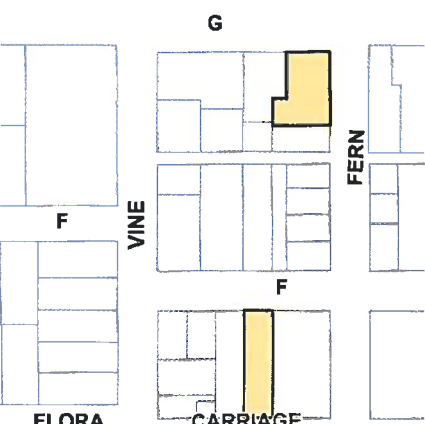
No Change

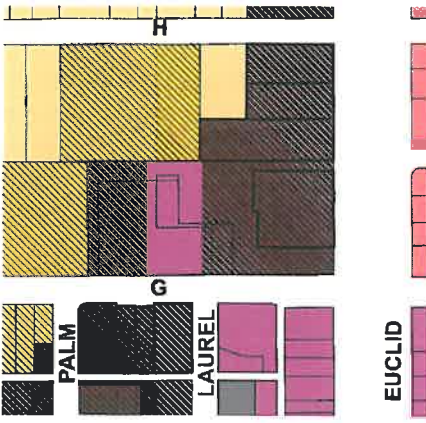

Zoning: MDR-18, Medium Density Residential

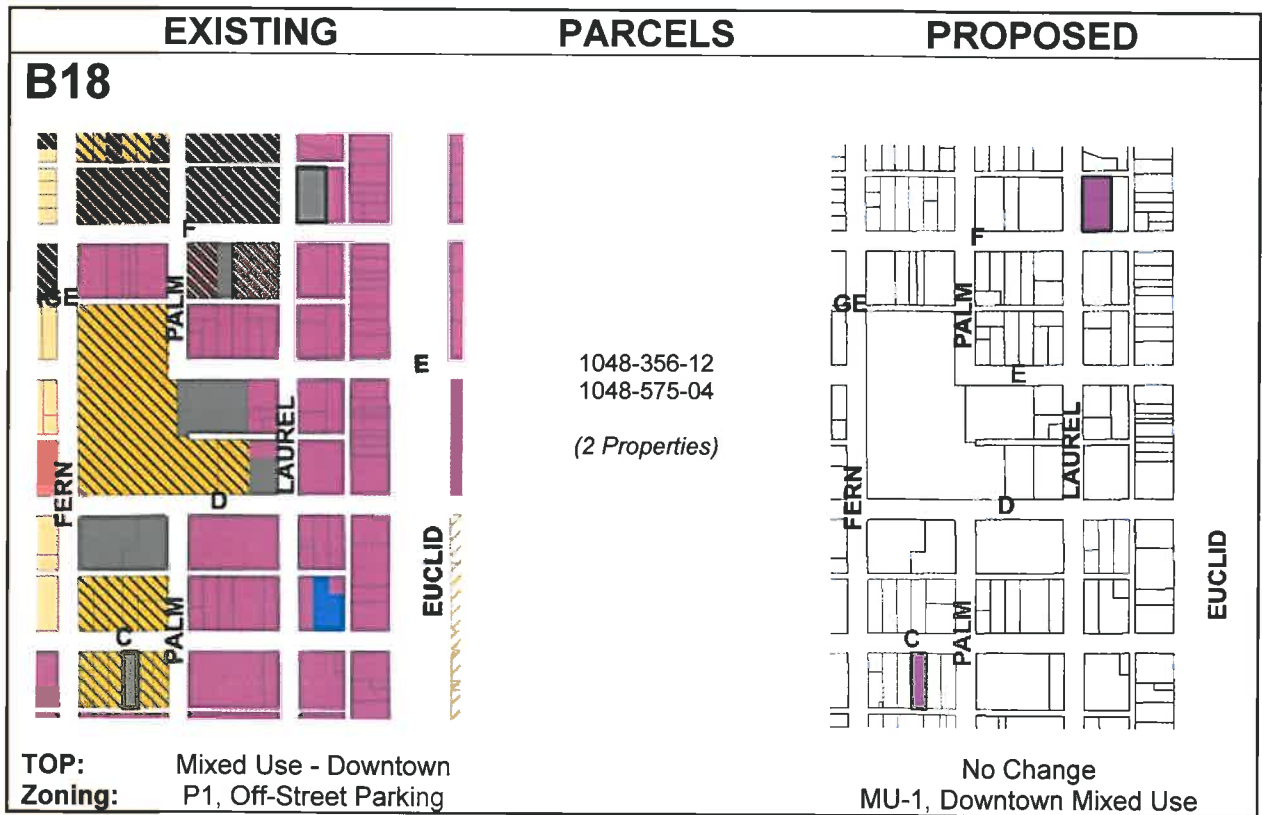
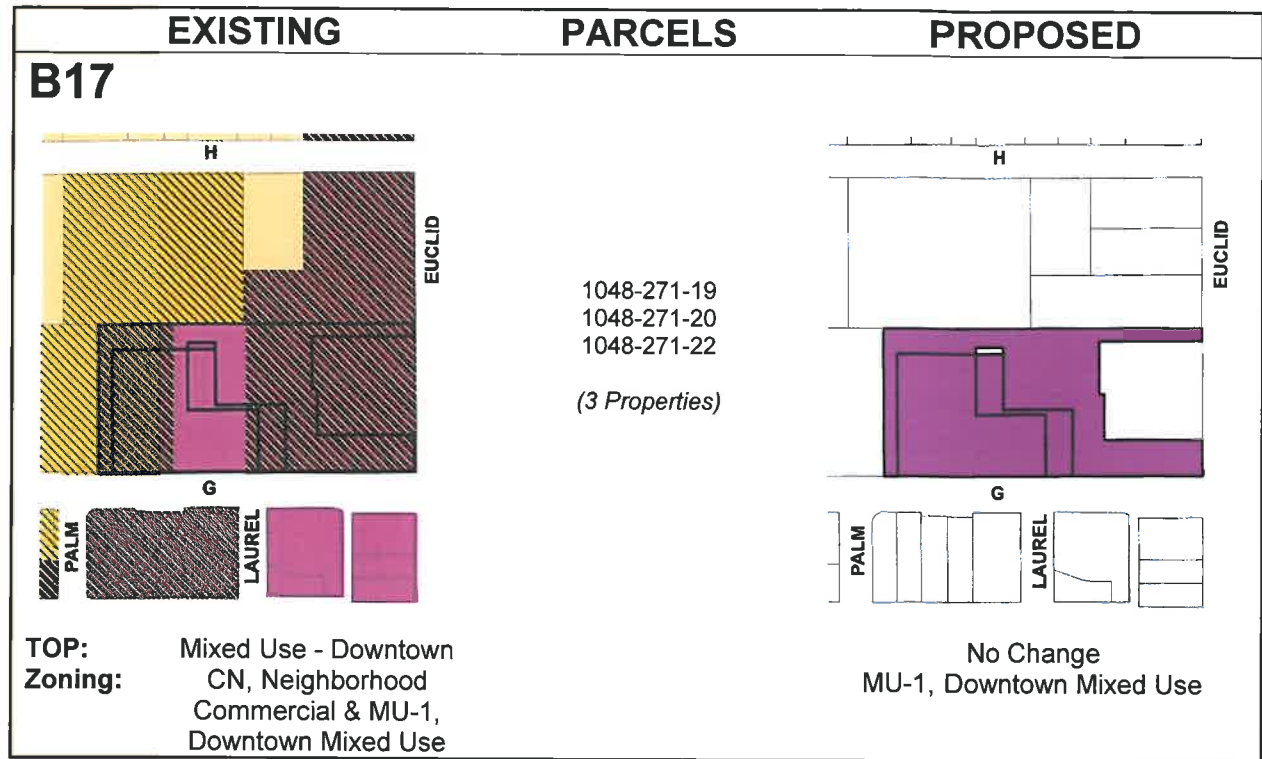
LDR-5, Low Density Residential

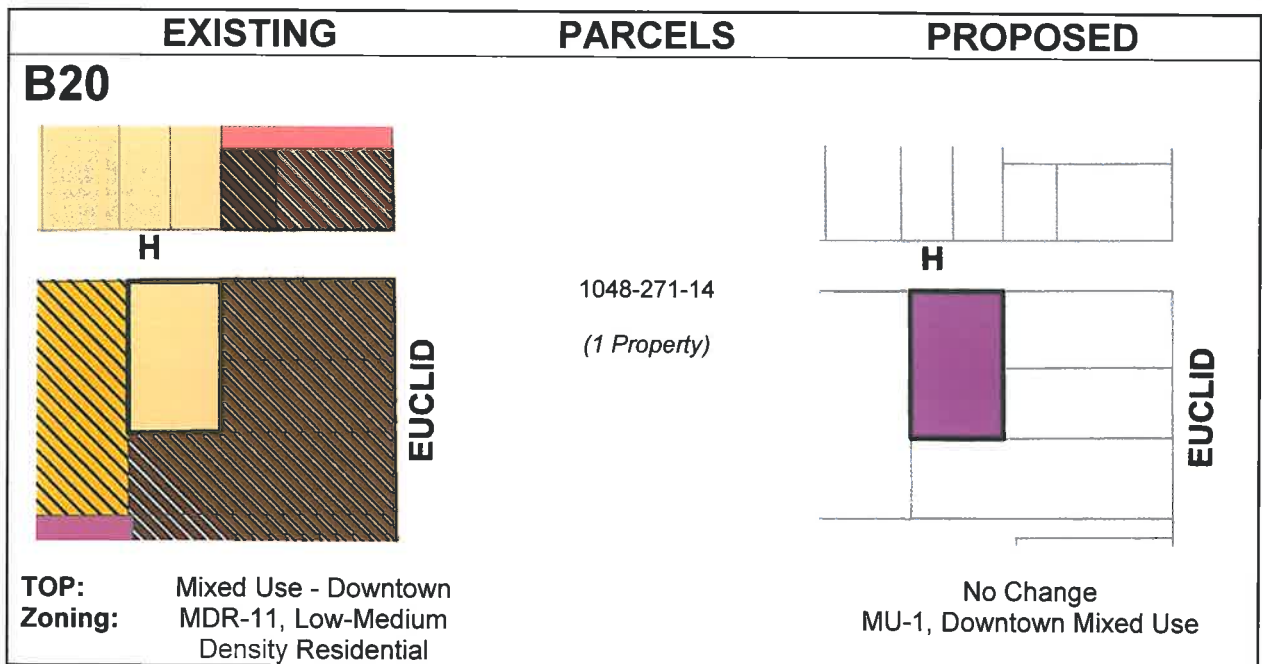




EXISTING	PARCELS	PROPOSED
B15		
	<p>1048-341-03 1048-342-04</p> <p>(2 Properties)</p>	
TOP: Low-Medium Density Residential Zoning: CN, Neighborhood Commercial		<p>No Change</p> <p>MDR-11, Low-Medium Density Residential</p>

EXISTING	PARCELS	PROPOSED
B16		
	<p>1048-271-15 – 1048-271-18 1048-351-01 – 1048-351-05</p> <p>(9 Properties)</p>	
TOP: Mixed Use - Downtown Zoning: CN, Neighborhood Commercial		<p>No Change</p> <p>MU-1, Downtown Mixed Use</p>





B21

EXISTING



PROPOSED



Parcels: (23 Properties)

1048-575-01 – 1048-575-03

1048-575-05 – 1048-575-06

1048-575-15 – 1048-575-16

1048-591-35

1048-592-03 – 1048-592-14

1048-592-27 – 1048-592-29

EXISTING

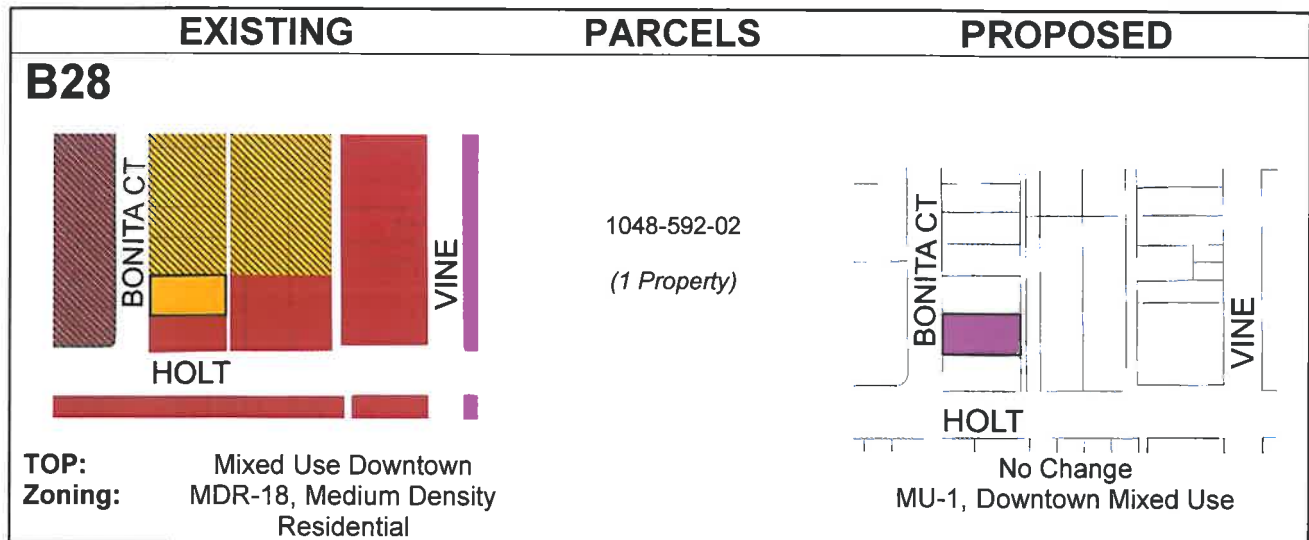
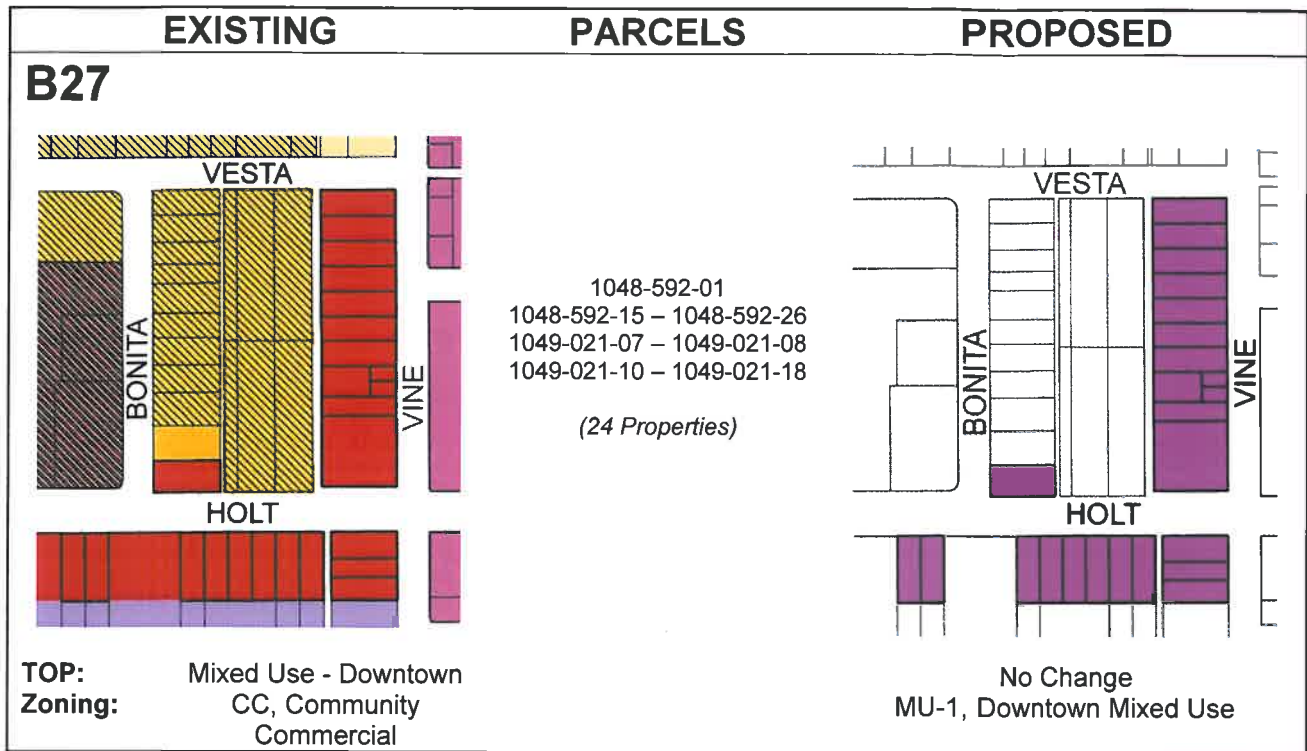
TOP: Mixed Use – Downtown

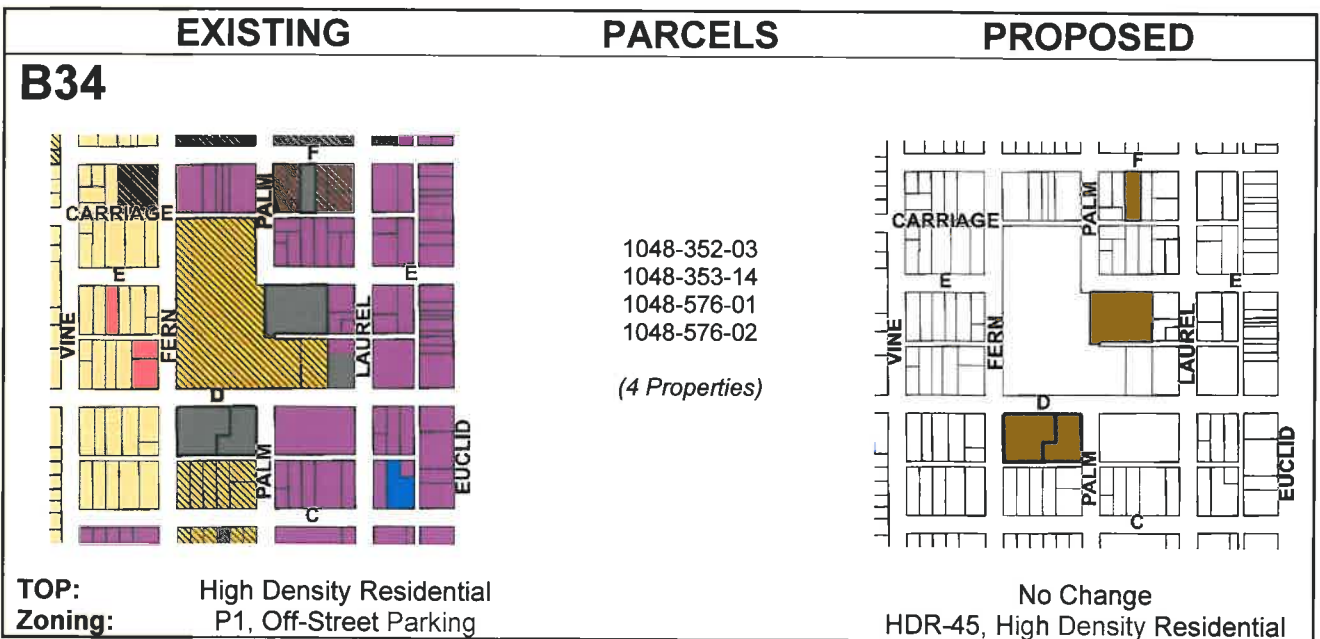
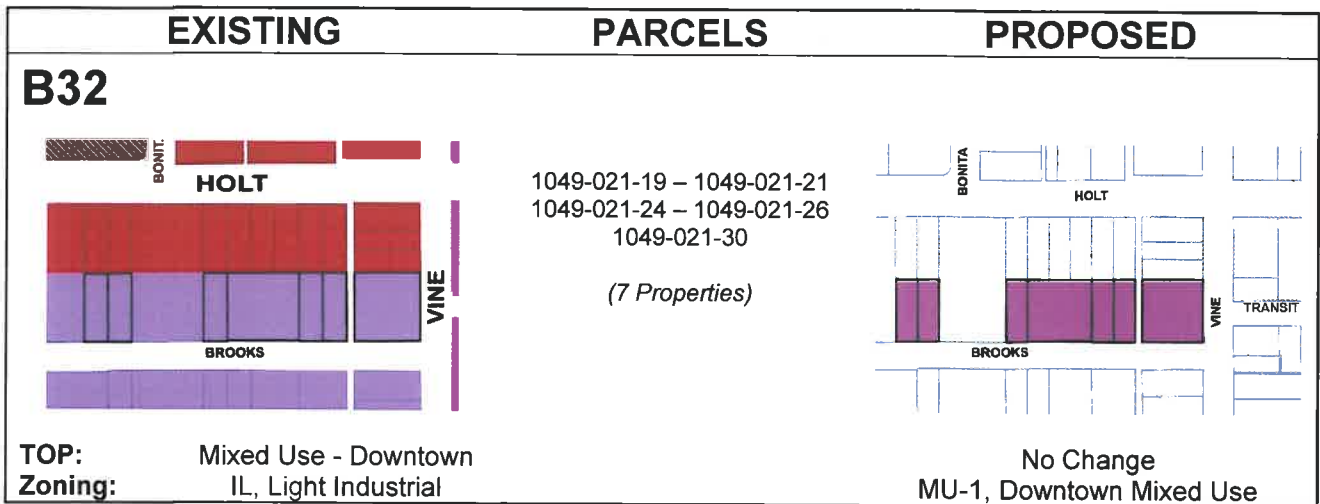
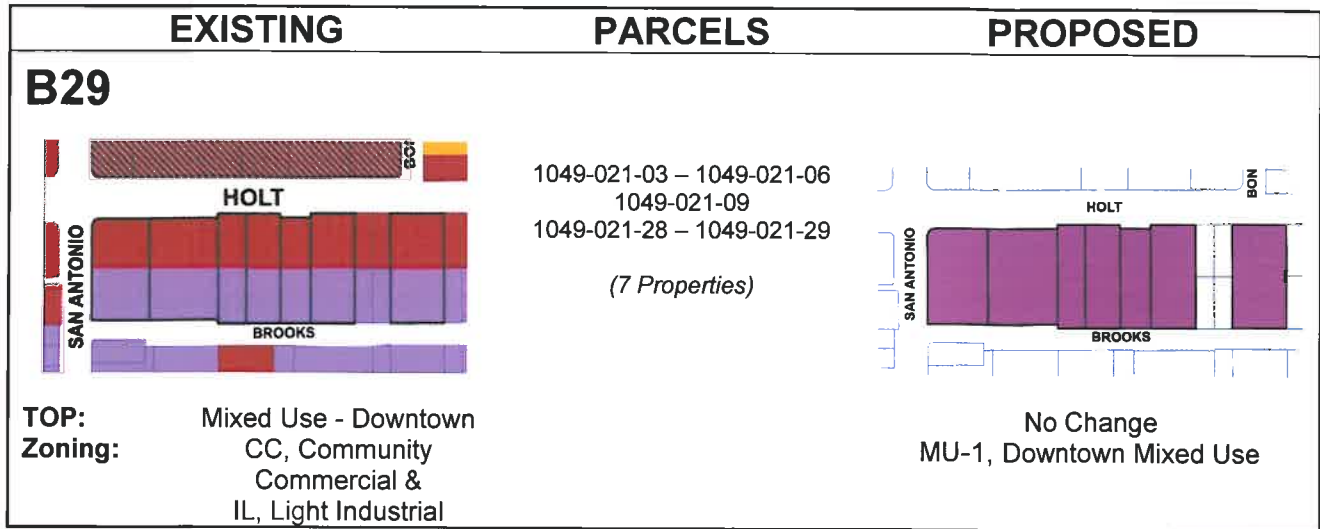
Zoning: MDR-25, Medium-High Density Residential

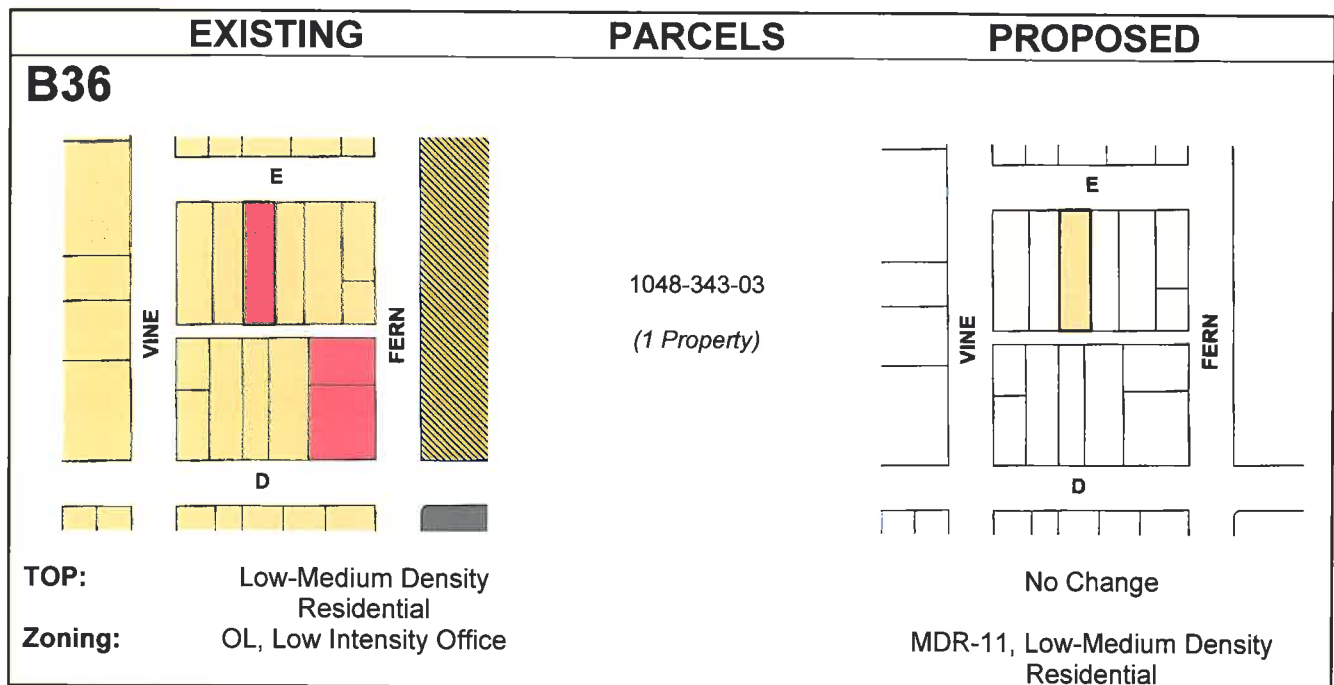
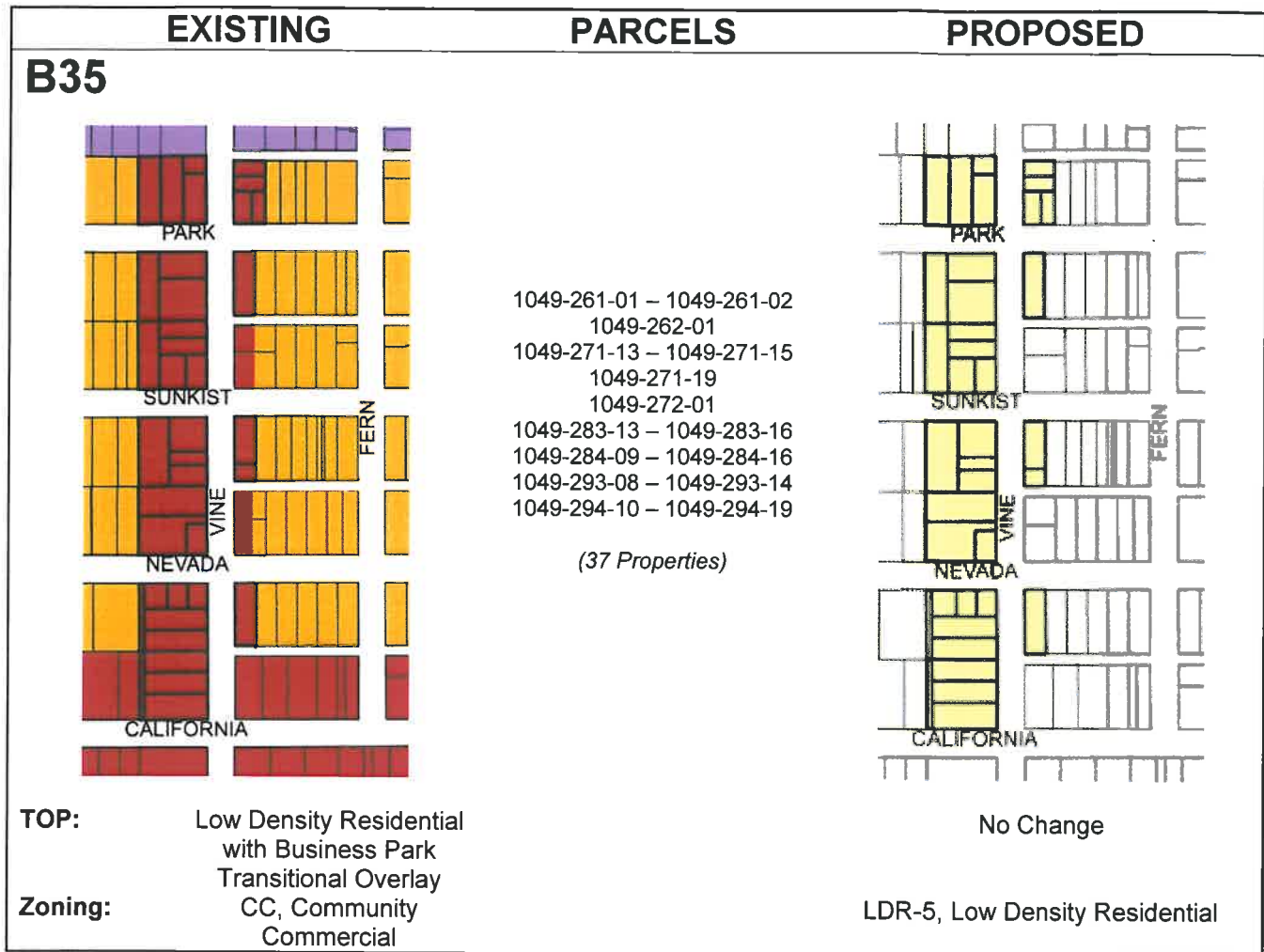
PROPOSED

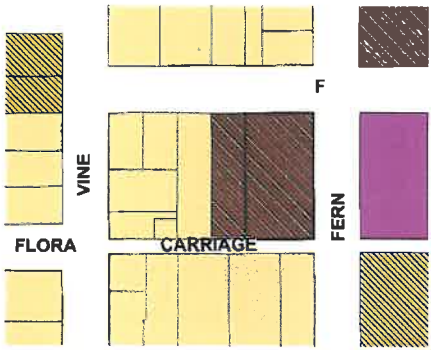
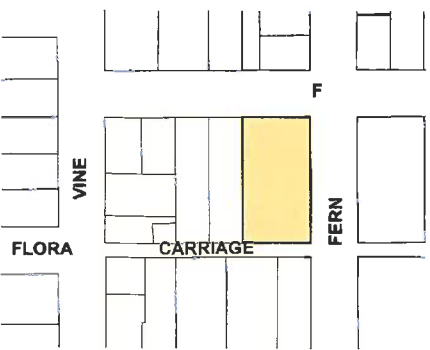
No Change

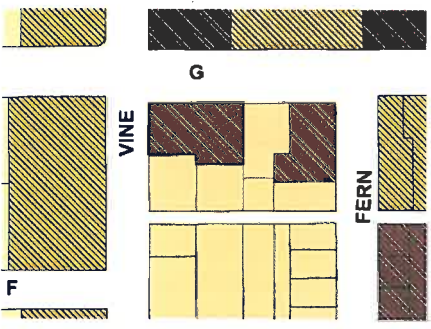
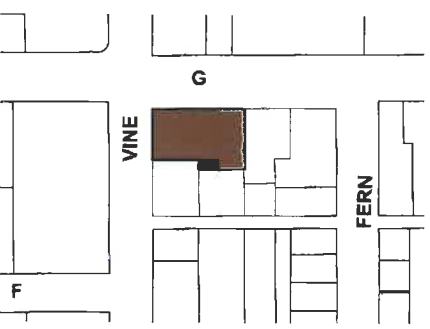
MU-1, Downtown Mixed Use

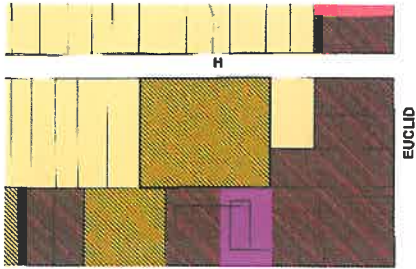
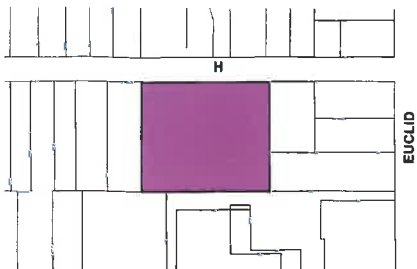


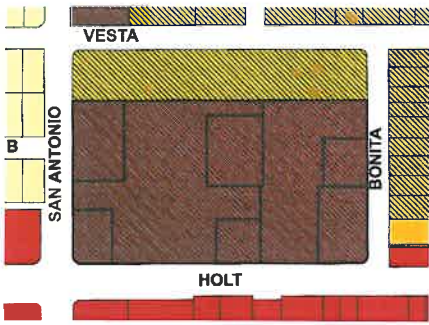
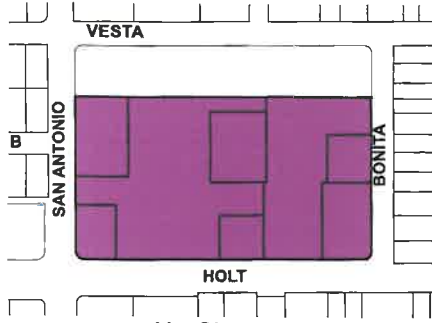


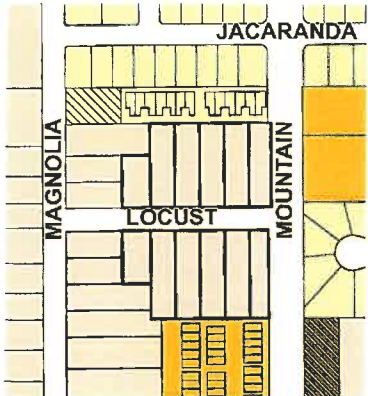
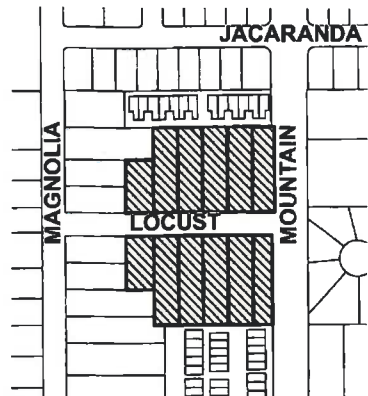


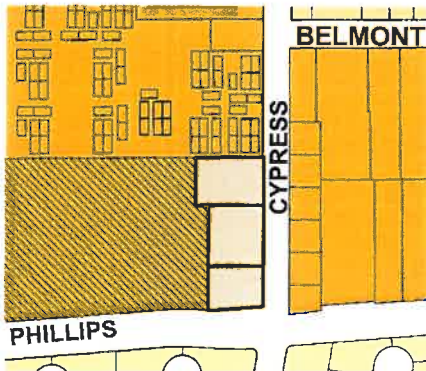
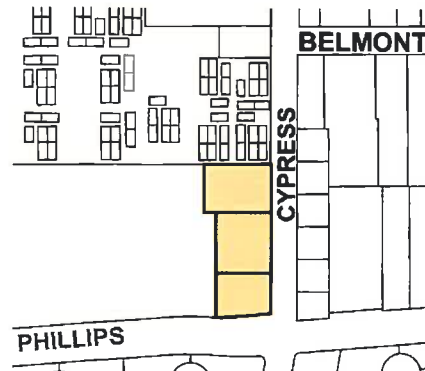
EXISTING	PARCELS	PROPOSED
B37		
	<p>1048-342-05 (1 Property)</p>	
<p>TOP: Low-Medium Density Residential</p> <p>Zoning: CN, Neighborhood Commercial</p>		<p>No Change</p> <p>MDR-11, Low-Medium Density Residential</p>

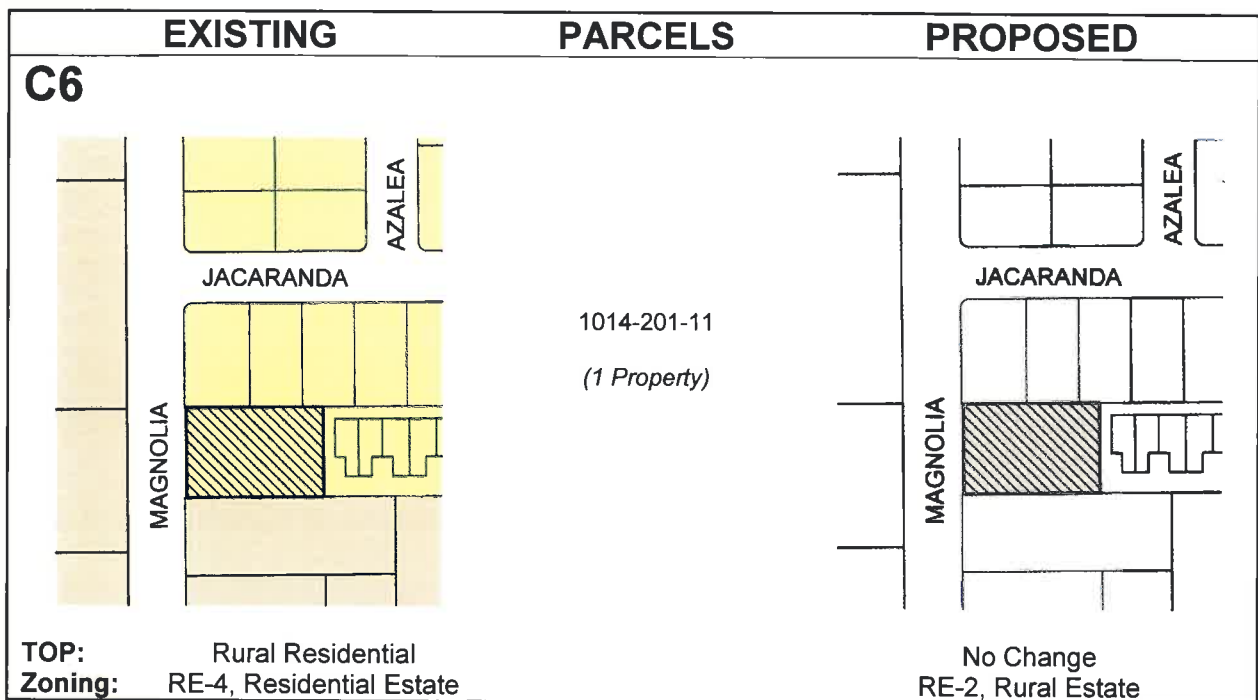
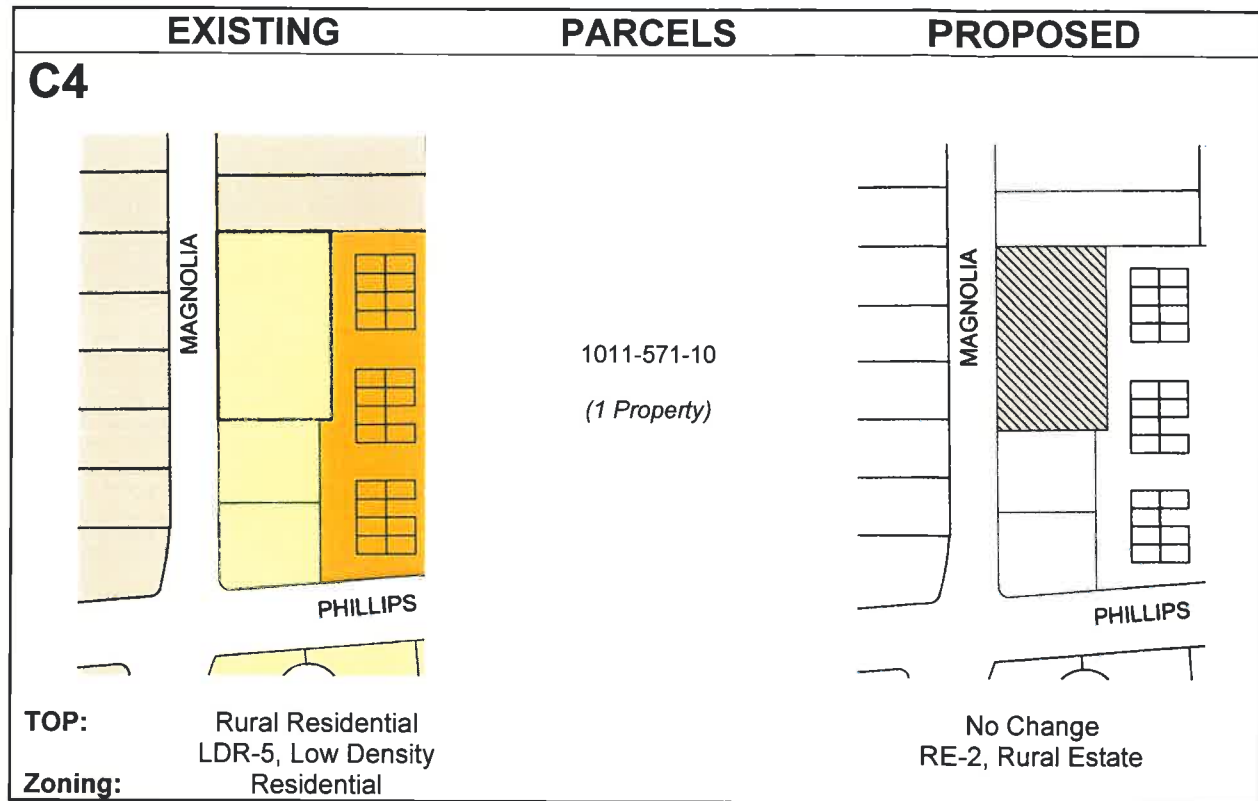
EXISTING	PARCELS	PROPOSED
B38		
	<p>1048-341-01 (1 Property)</p>	
<p>TOP: Low-Medium Density Residential</p> <p>Zoning: CN, Neighborhood Commercial</p>		<p>Neighborhood Commercial</p> <p>CS, Corner Store</p>

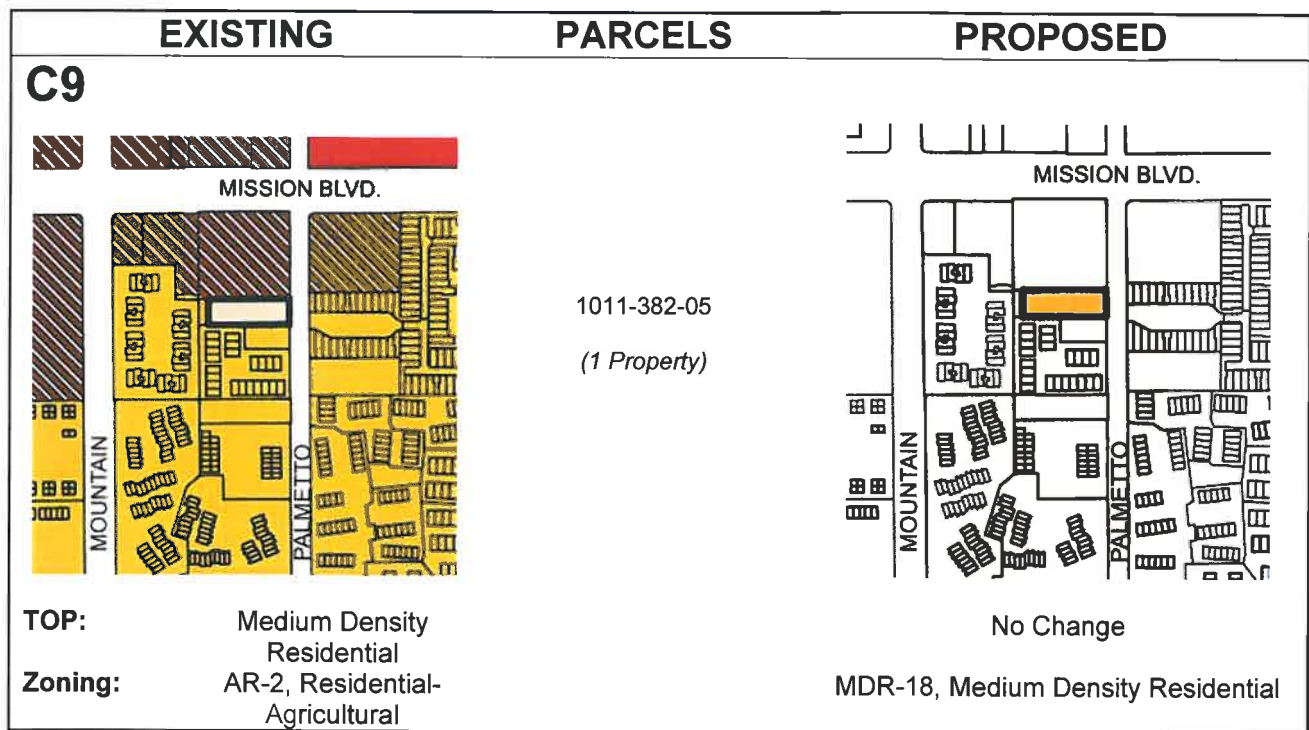
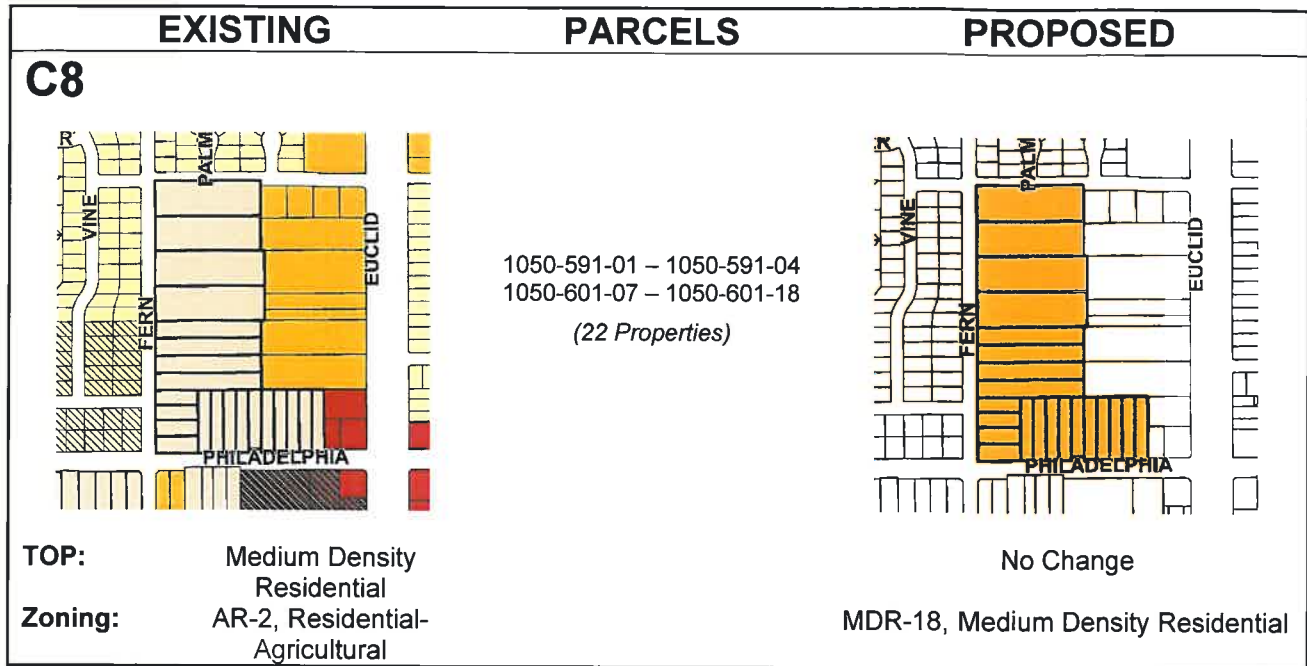
EXISTING	PARCELS	PROPOSED
B40		
	<p>1048-271-46</p> <p>(1 Property)</p>	
<p>TOP: Mixed Use – Downtown</p> <p>Zoning: MDR-25, Medium-High Density Residential</p>		<p>No Change</p> <p>MU-1, Downtown Mixed Use</p>

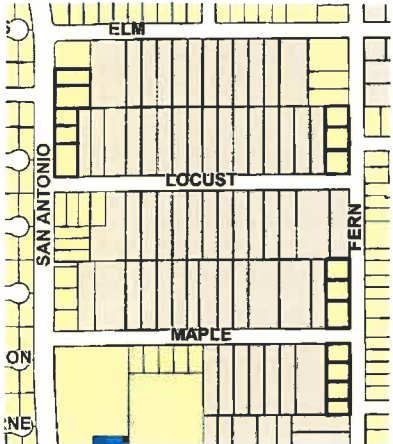
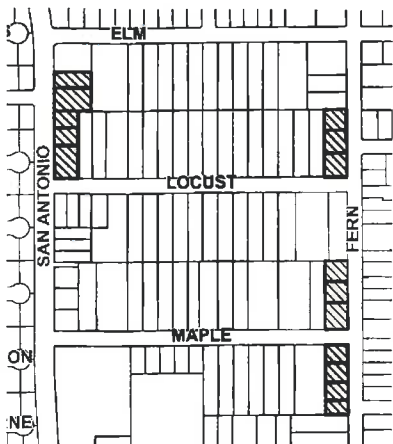
EXISTING	PARCELS	PROPOSED
B44		
	<p>1048-591-27 – 1048-591-34</p> <p>(8 Properties)</p>	
<p>TOP: Mixed Use - Downtown</p> <p>Zoning: CN, Neighborhood Commercial</p>		<p>No Change</p> <p>MU-1, Downtown Mixed Use</p>

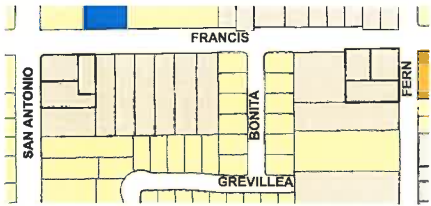
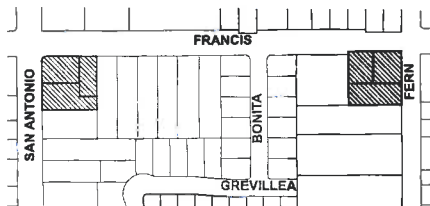
EXISTING	PARCELS	PROPOSED
C1		
	<p>1014-201-02 – 1014-201-07 1014-202-02 – 1014-202-07</p> <p>(12 Properties)</p>	
TOP: Low Density Residential Zoning: AR-2, Residential-Agricultural		Rural Residential RE-2, Rural Estate

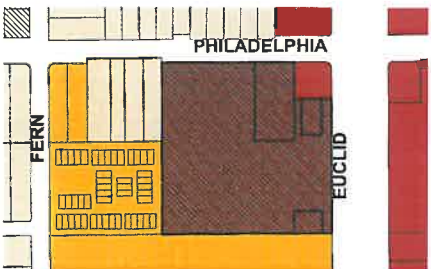
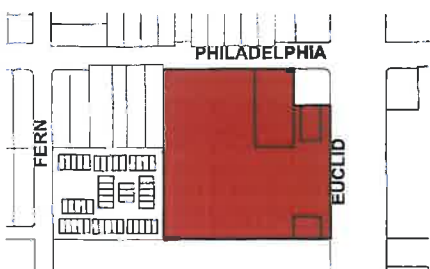
EXISTING	PARCELS	PROPOSED
C2		
	<p>1011-561-01 - 1011-561-03</p> <p>(3 Properties)</p>	
TOP: Low-Medium Density Residential Zoning: AR-2, Residential-Agricultural		No Change MDR-11, Low-Medium Density Residential

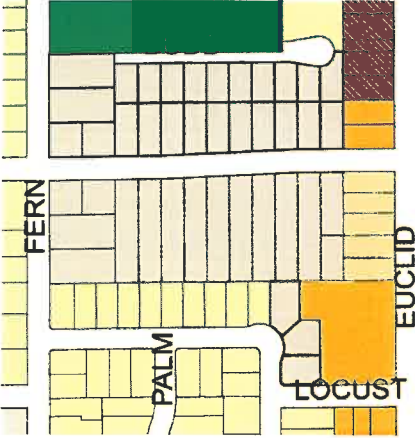
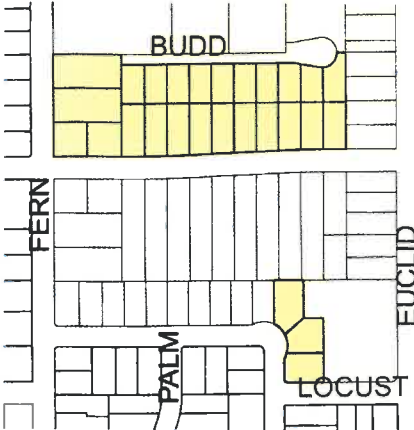


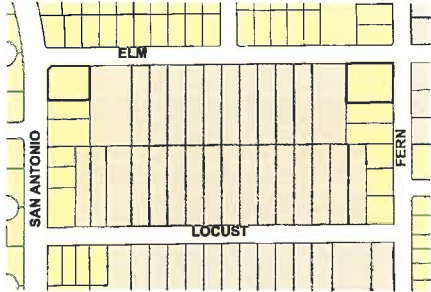
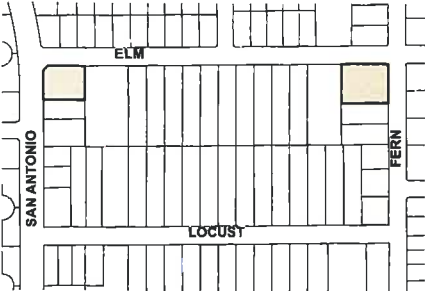


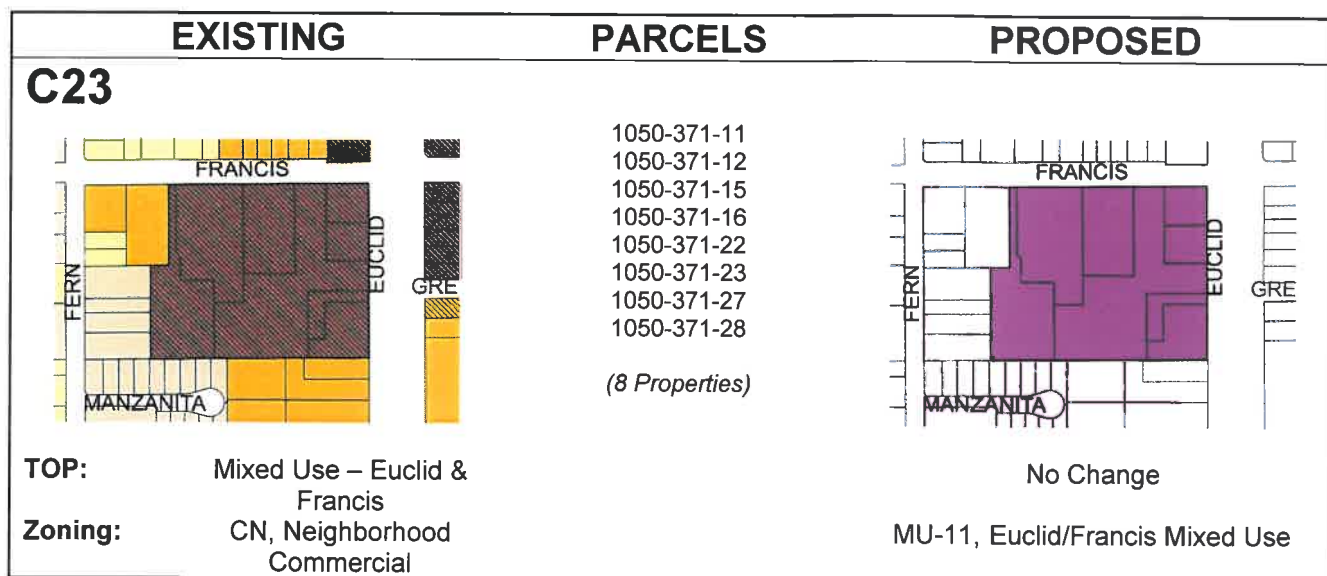
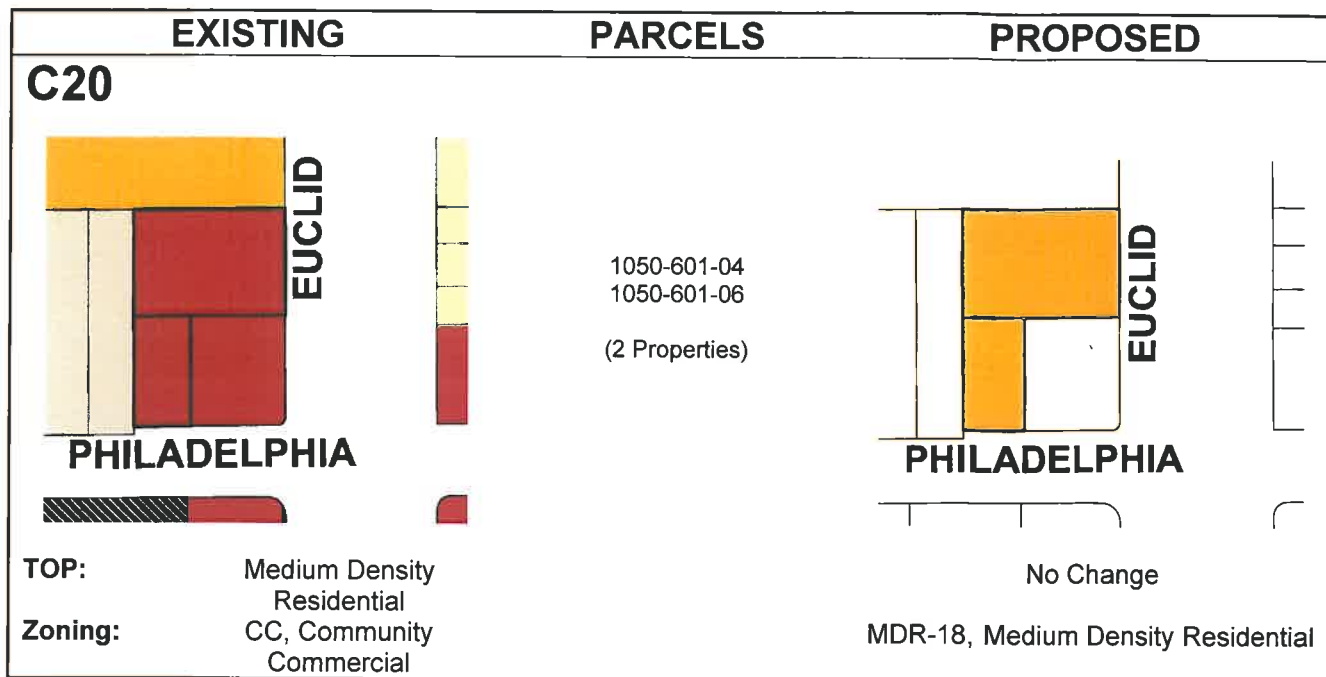
EXISTING	PARCELS	PROPOSED
C10		
	<p>1050-031-16 – 1050-031-18 1050-031-36 1050-031-38 – 1050-031-40 1050-031-44 1050-291-10 – 1050-291-13 1050-301-39 – 1050-301-41</p> <p>(15 Properties)</p>	
TOP: Low Density Residential Zoning: LDR-5, Low Density Residential		Rural Residential RE-2, Rural Estate

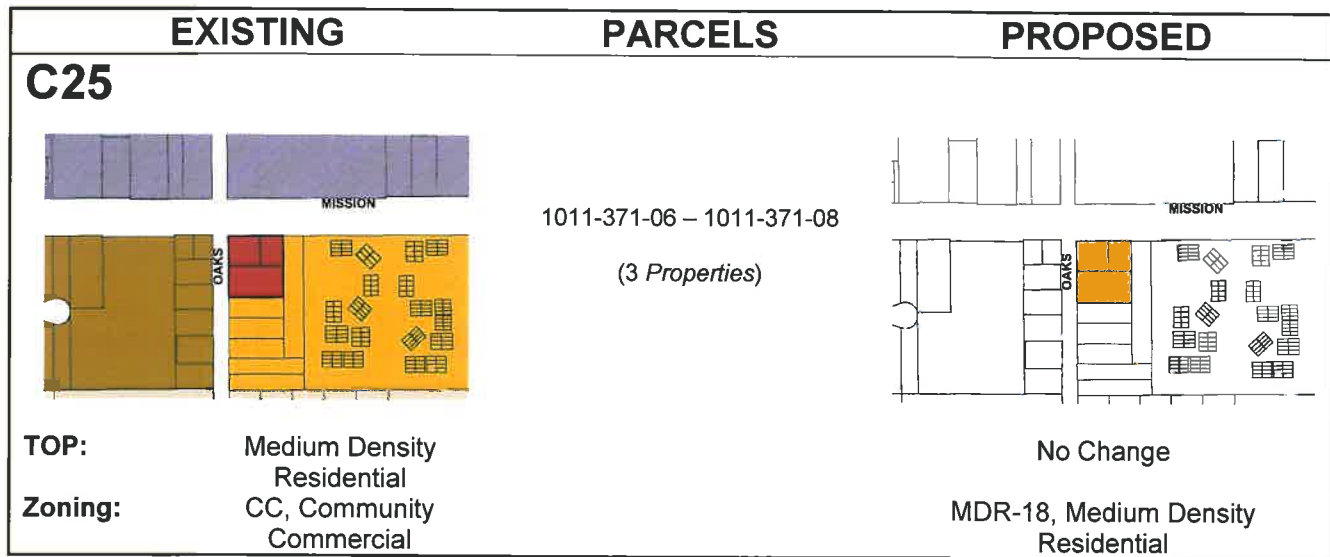
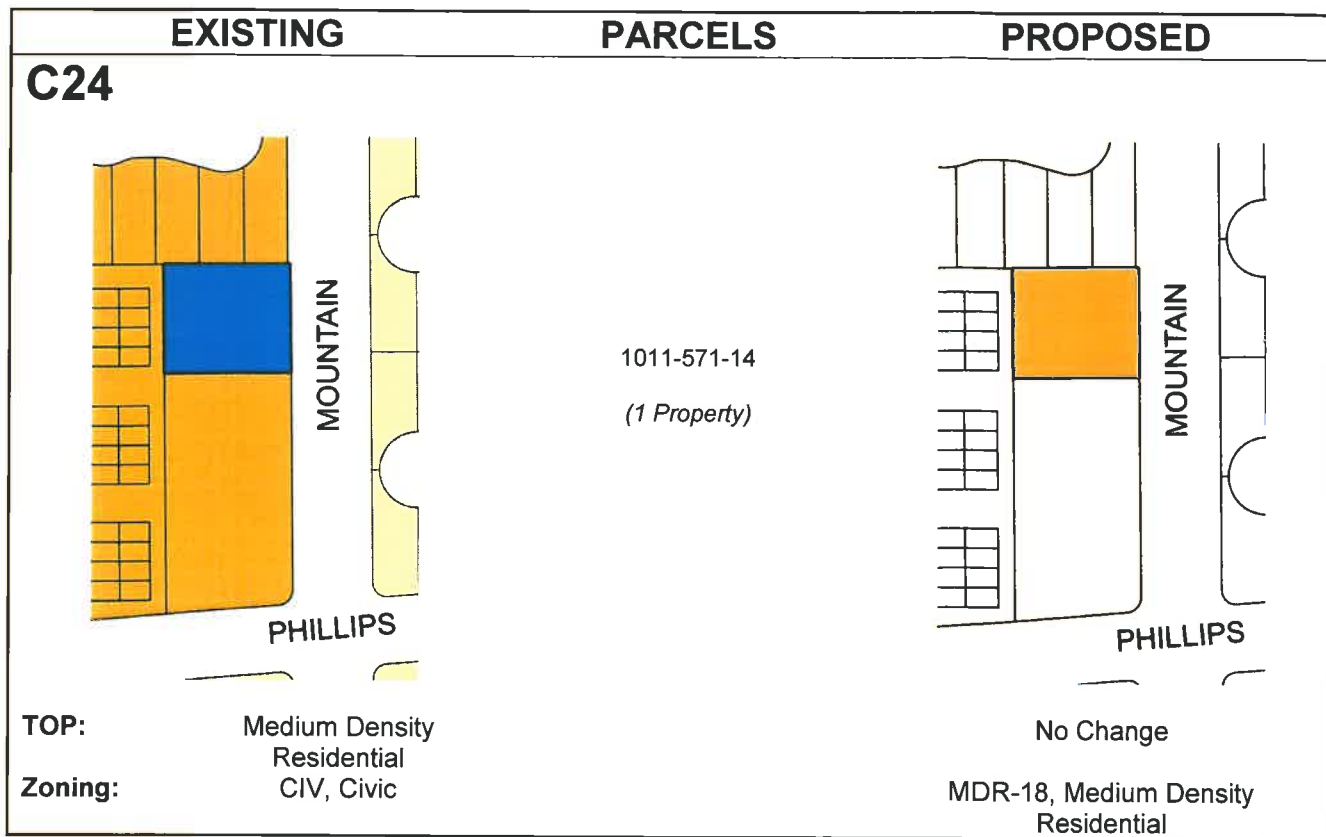
EXISTING	PARCELS	PROPOSED
C12		
	<p>1050-351-23 – 1050-351-24 1050-351-27 1050-361-03 – 1050-361-05</p> <p>(6 Properties)</p>	
TOP: Low Density Residential Zoning: AR-2, Residential-Agricultural		Rural Residential RE-2, Rural Estate

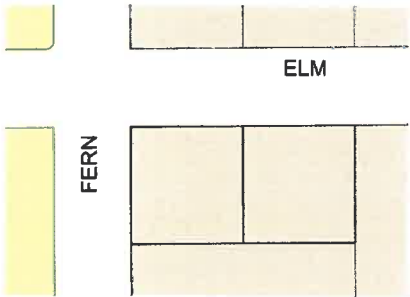
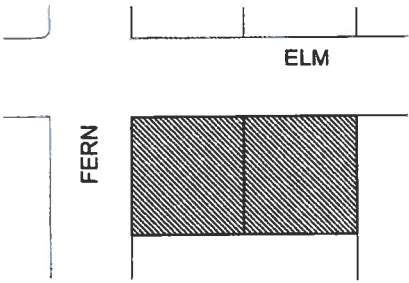
EXISTING	PARCELS	PROPOSED
C13		
	<p>1051-051-11 1051-051-17 1051-051-71 1051-051-72</p> <p>(4 Properties)</p>	
TOP: General Commercial Zoning: CN, Neighborhood Commercial		No Change CC, Community Commercial

EXISTING	PARCELS	PROPOSED
C18		
	<p>1050-051-08 – 1050-051-14 1050-051-17 – 1050-051-29 1050-051-34 – 1050-051-37 1050-061-43 1050-061-45 – 1050-061-46</p> <p>(27 Properties)</p>	
TOP: Low Density Residential Zoning: AR-2, Residential-Agricultural		<p>No Change LDR-5, Low Density Residential</p>

EXISTING	PARCELS	PROPOSED
C19		
	<p>1050-031-13 1050-031-43</p> <p>(2 Properties)</p>	
TOP: Rural Residential Zoning: LDR-5, Low Density Residential		<p>No Change AR-2, Residential-Agricultural</p>

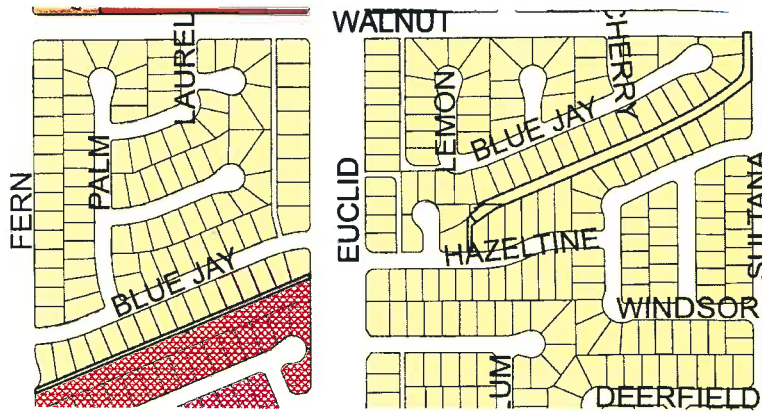




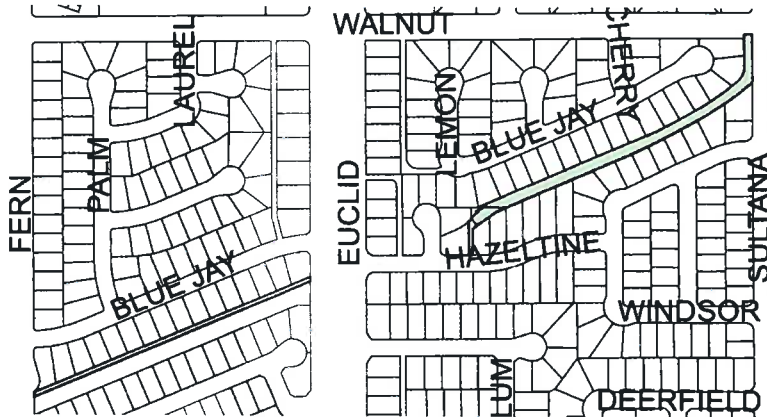
	EXISTING	PARCELS	PROPOSED
C27  TOP: Zoning:	Low Density Residential AR-2, Residential- Agricultural	1050-061-04 1050-061-05 <i>(2 Properties)</i>	 Rural Residential RE-2, Rural Estate

C28

EXISTING



PROPOSED



Parcels: (4 Properties)

1051-411-07

1051-411-40

EXISTING

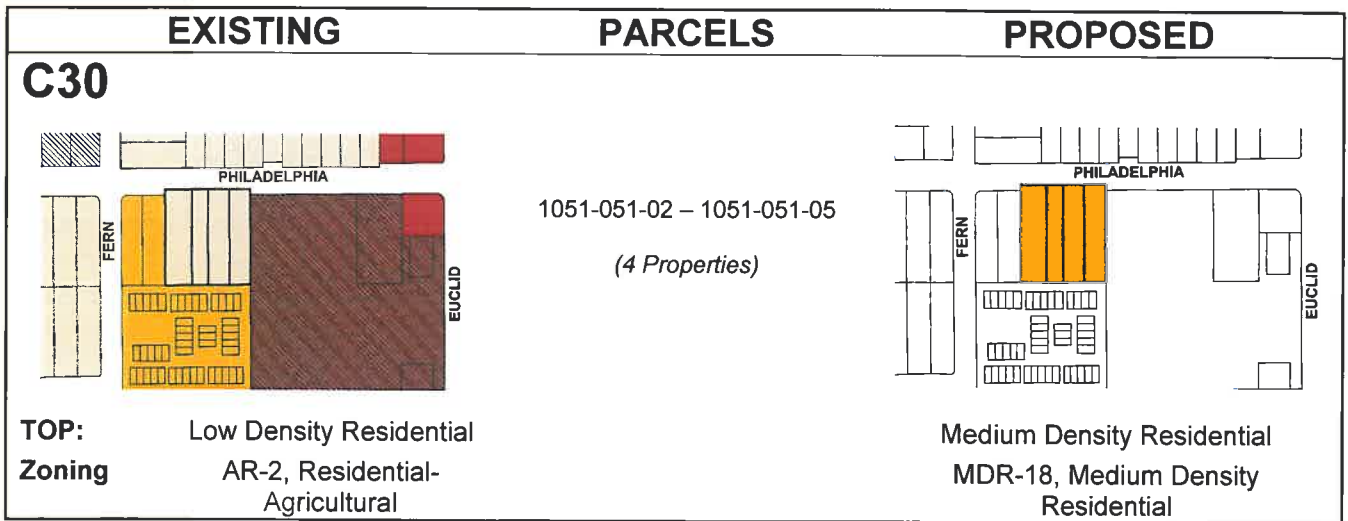
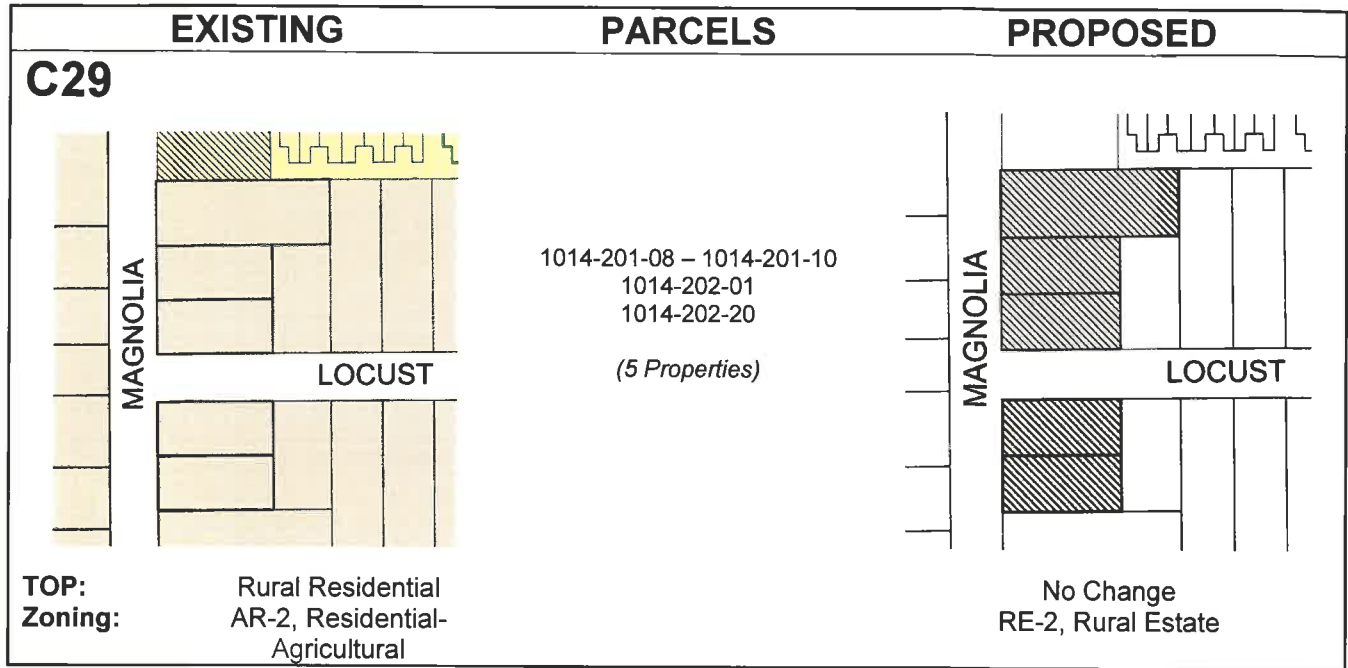
TOP: Open Space-Non Recreation
Zoning: LDR-5, Low Density Residential

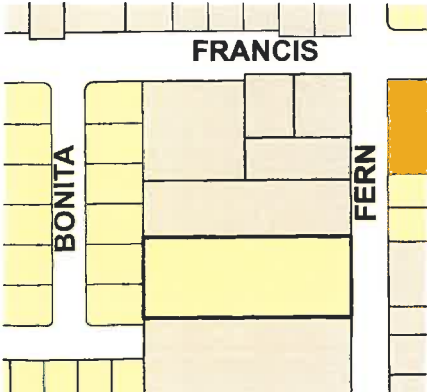
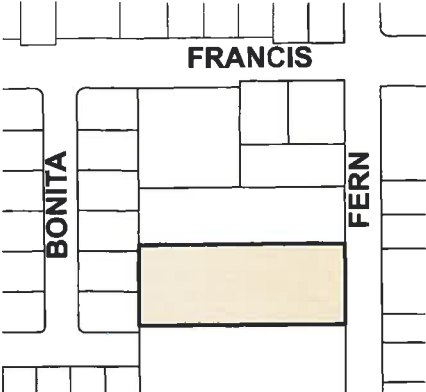
1051-421-63

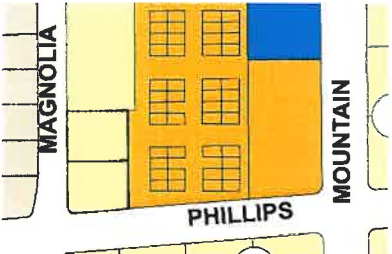
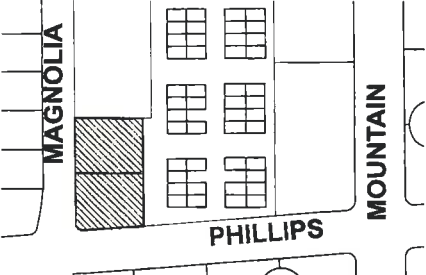
1051-441-04

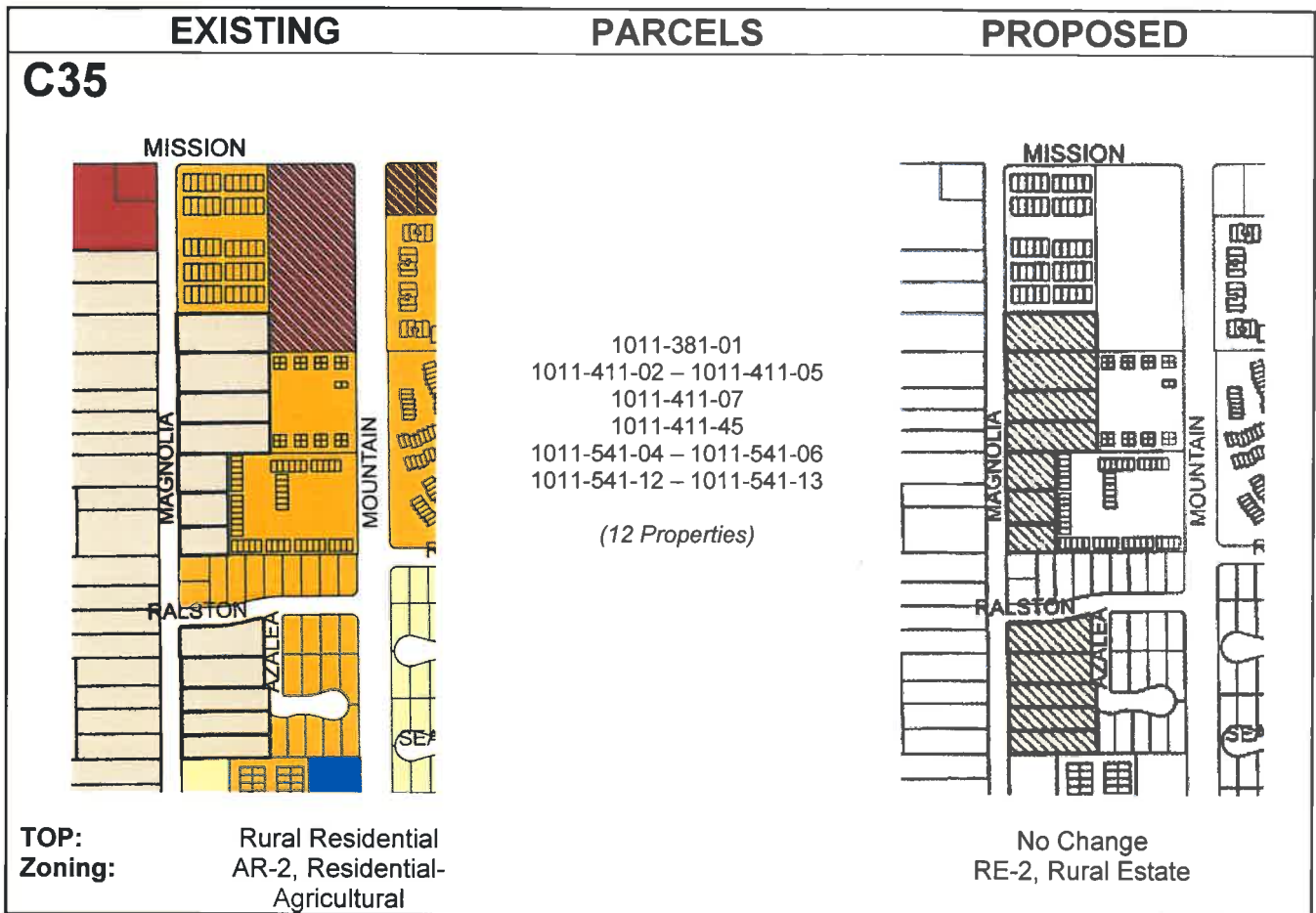
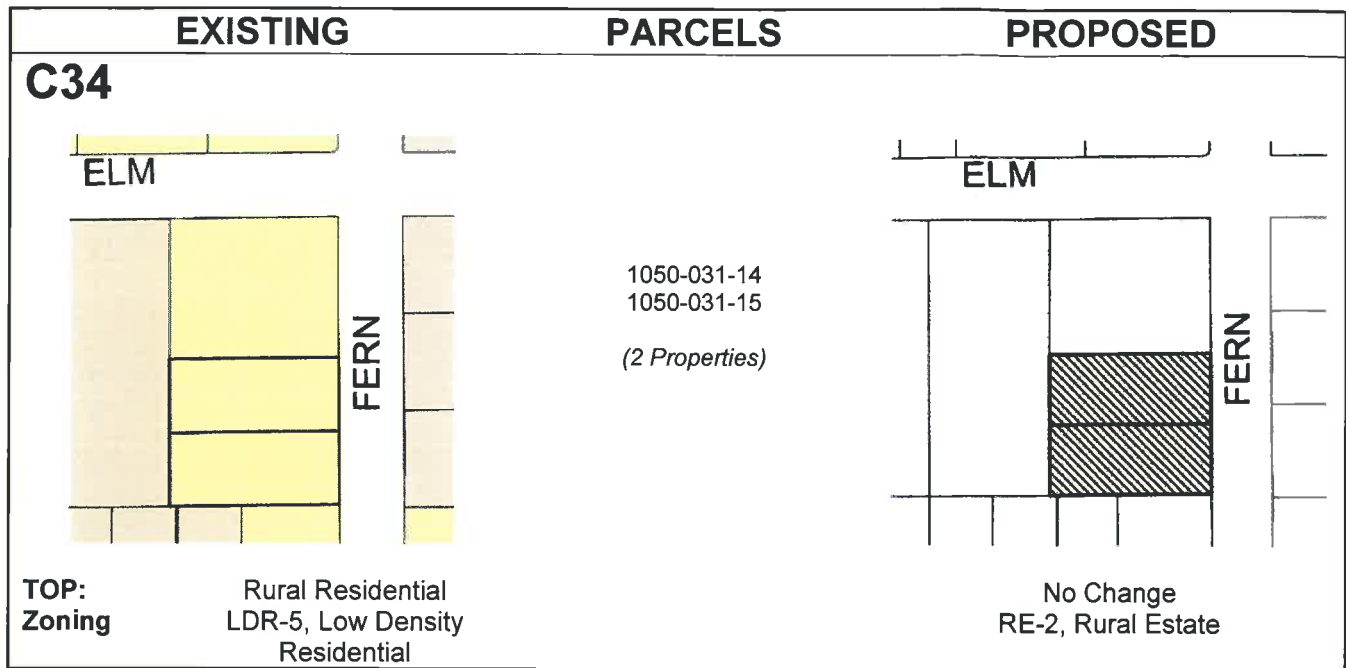
PROPOSED

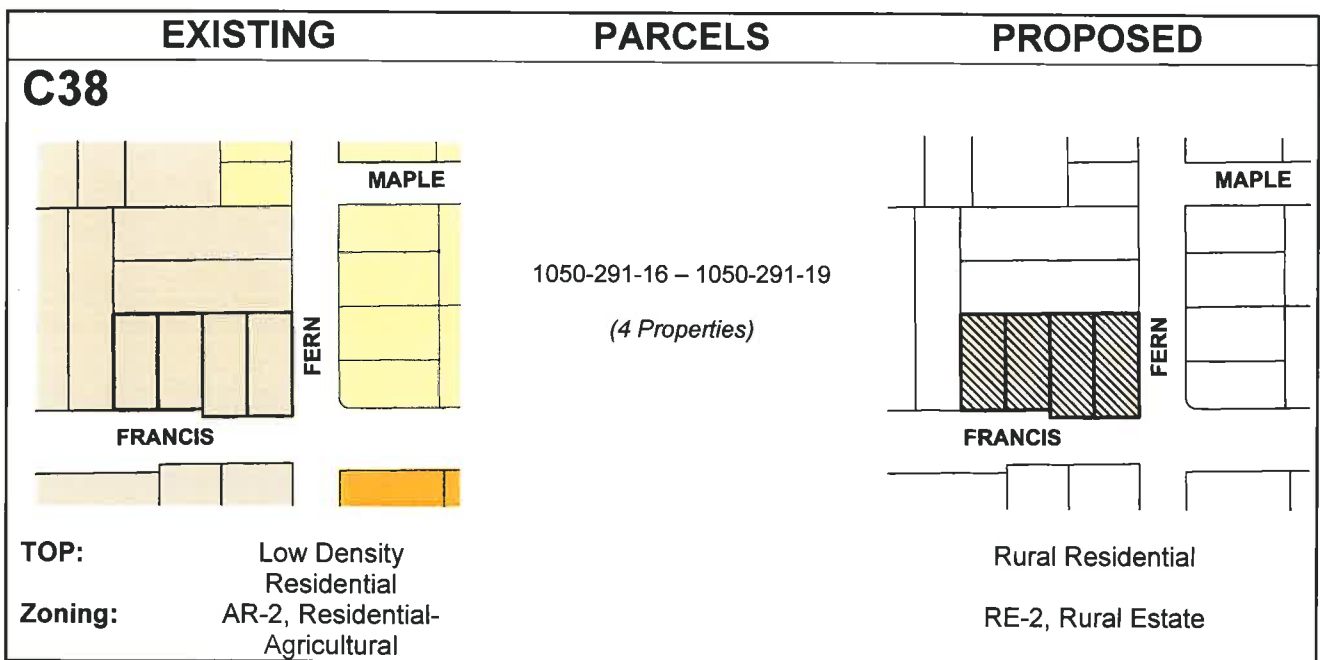
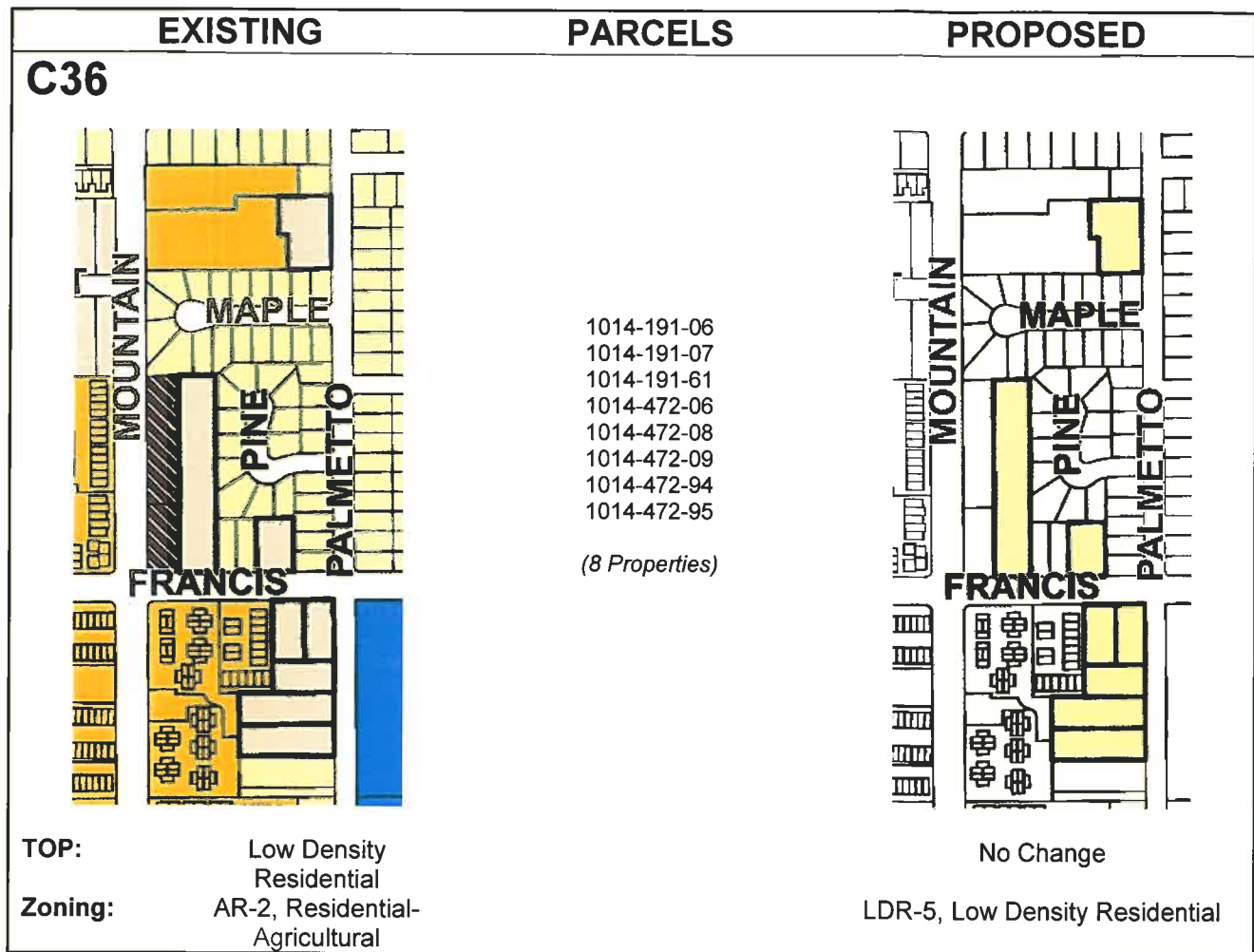
No Change
UC, Utilities Corridor

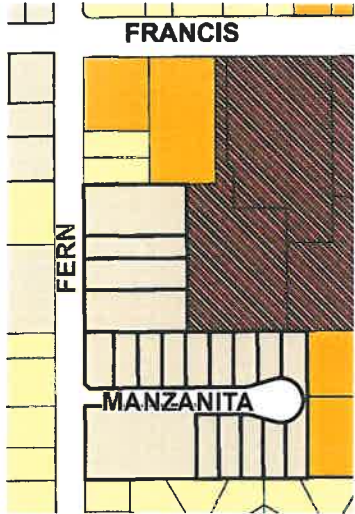
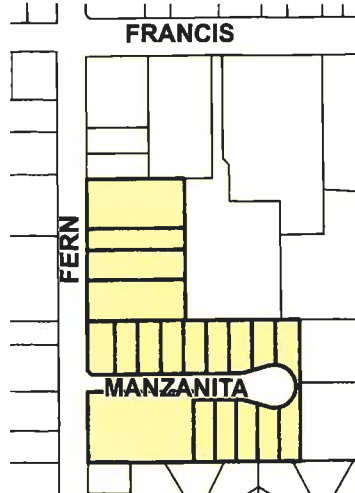


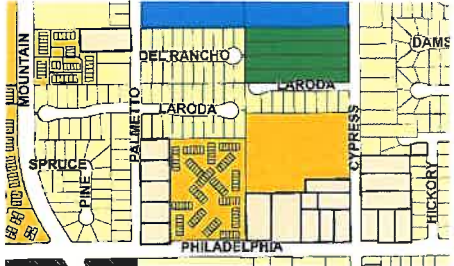
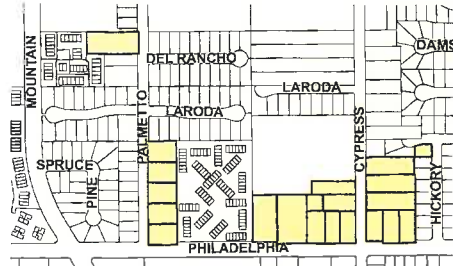
EXISTING	PARCELS	PROPOSED
<p>C32</p>  <p>TOP: Zoning</p> <p>Low Density Residential LDR-5, Low Density Residential</p>	<p>1050-361-07 <i>(1 Property)</i></p>	 <p>Rural Residential AR-2, Residential-Agricultural</p>

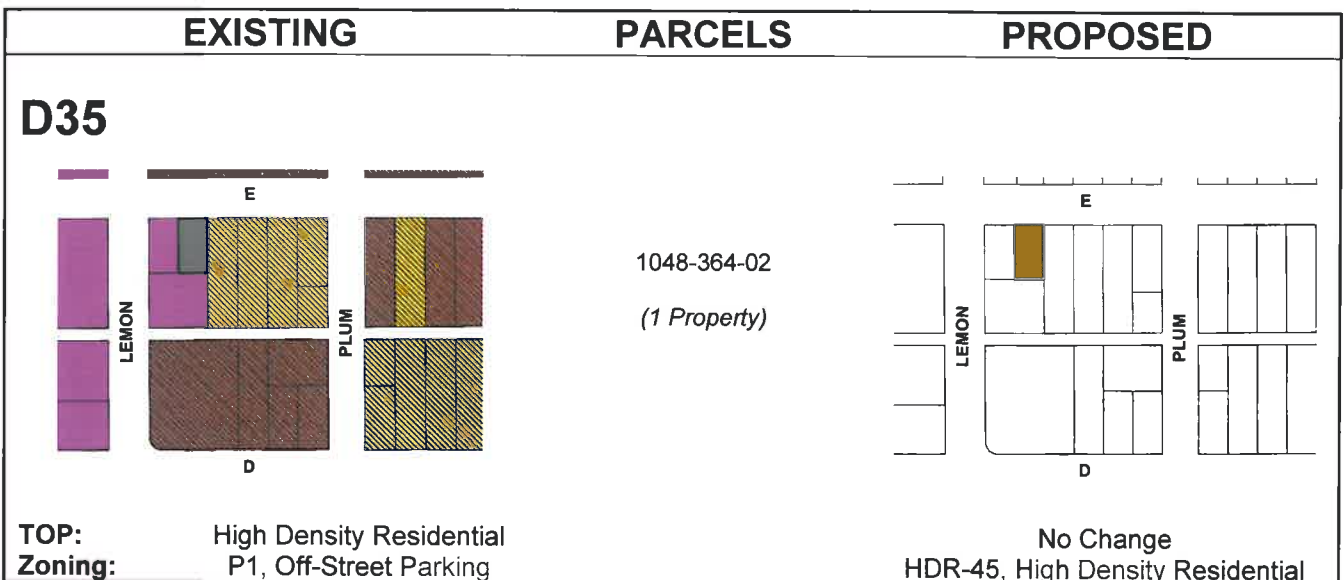
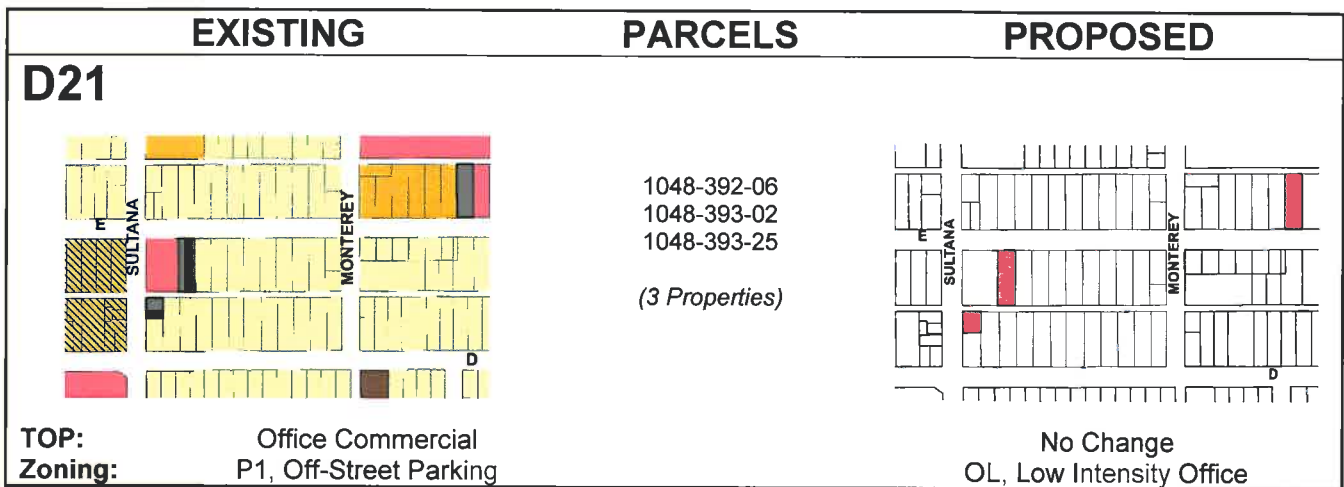
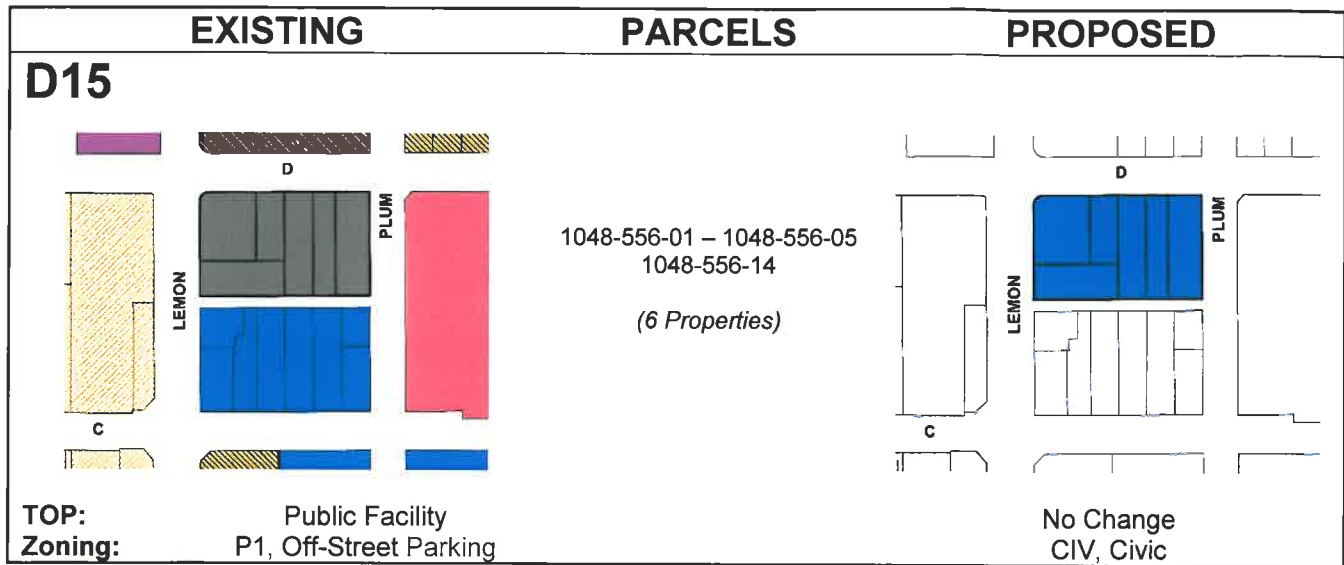
EXISTING	PARCELS	PROPOSED
<p>C33</p>  <p>TOP: Zoning</p> <p>Rural Residential LDR-5, Low Density Residential</p>	<p>1011-571-61 1011-571-62 <i>(2 Properties)</i></p>	 <p>No Change RE-2, Rural Estate</p>





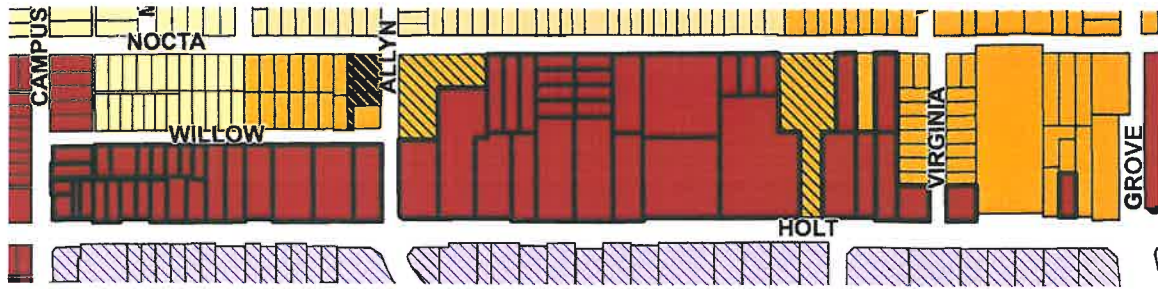
EXISTING	PARCELS	PROPOSED
C39		
	<p>1050-371-01 – 1050-371-04 1050-381-34 1050-381-38 - 1050-381-51</p> <p>(19 Properties)</p>	
TOP: Zoning:	Low Density Residential AR-2, Residential-Agricultural	No Change LDR-5, Low Density Residential

EXISTING	PARCELS	PROPOSED
C40		
	<p>1014-511-04 – 1014-511-11 1014-513-31 – 1014-513-35 1014-532-04 1050-641-04 - 1050-641-08 1050-641-11 1050-641-19</p> <p>(21 Properties)</p>	
TOP: Zoning:	Low Density Residential AR-2, Residential-Agricultural	No Change LDR-5, Low Density Residential

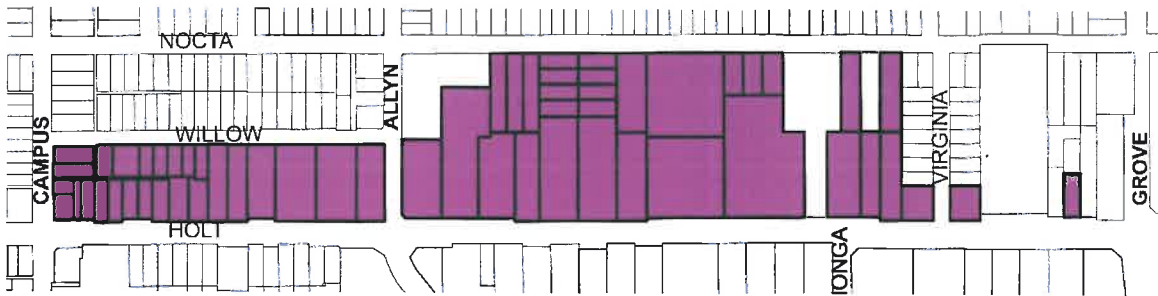


E7

EXISTING



PROPOSED



Parcels: (59 Properties)

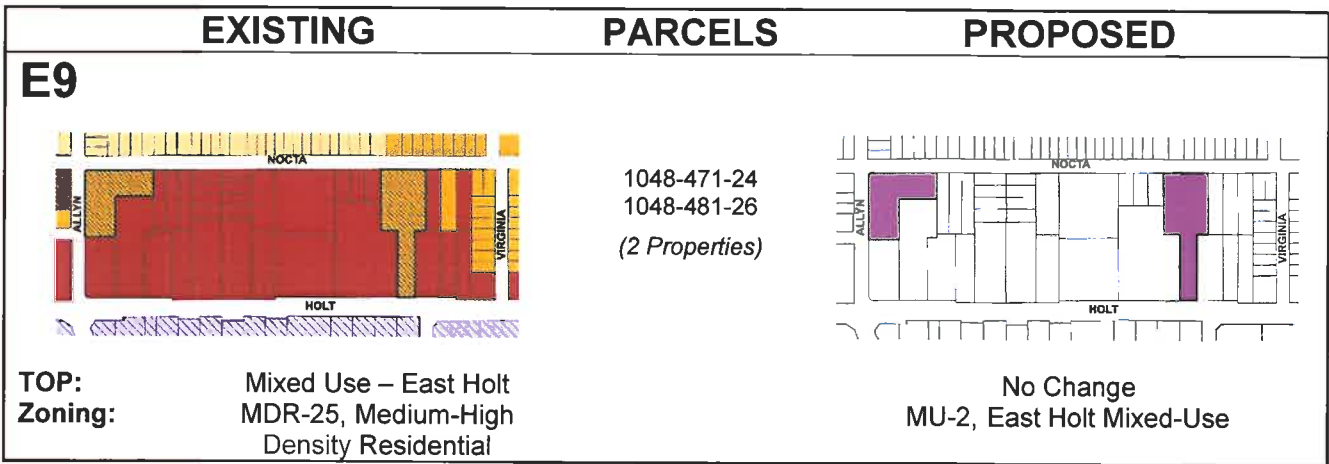
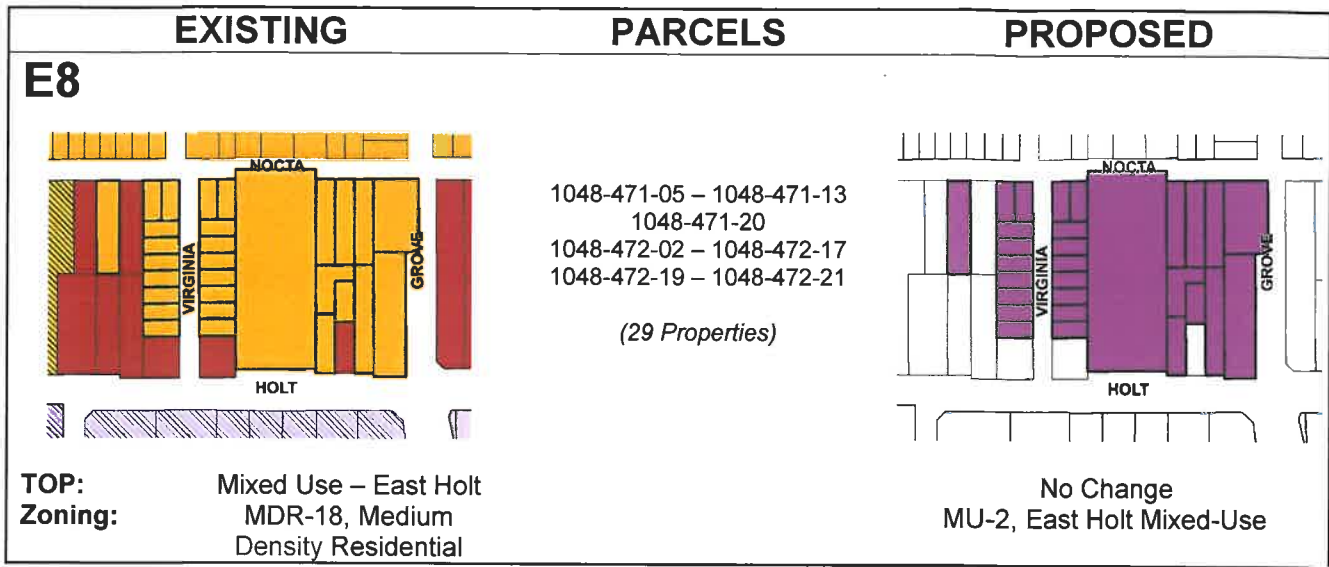
1048-471-02	1048-472-01	1048-481-10 – 1048-481-25
1048-471-04	1048-472-18	1048-481-27 – 1048-481-29
1048-471-14 – 1048-471-15	1048-481-01 – 1048-481-03	1048-512-01 – 1048-512-26
1048-471-22 – 1048-471-23	1048-481-06 – 1048-481-08	

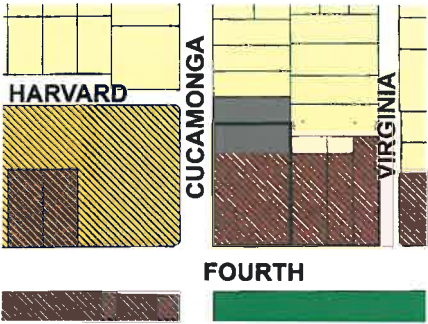
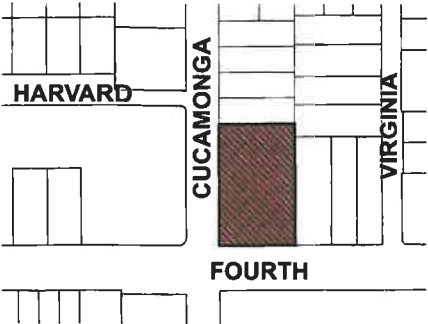
EXISTING

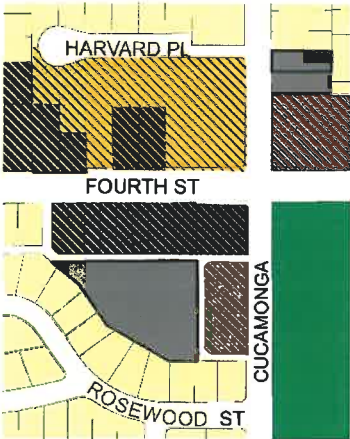
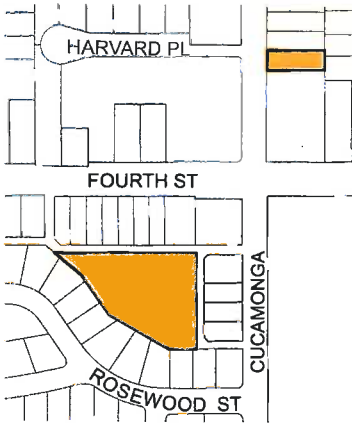
TOP: Mixed Use – East Holt
Zoning: CC, Community Commercial

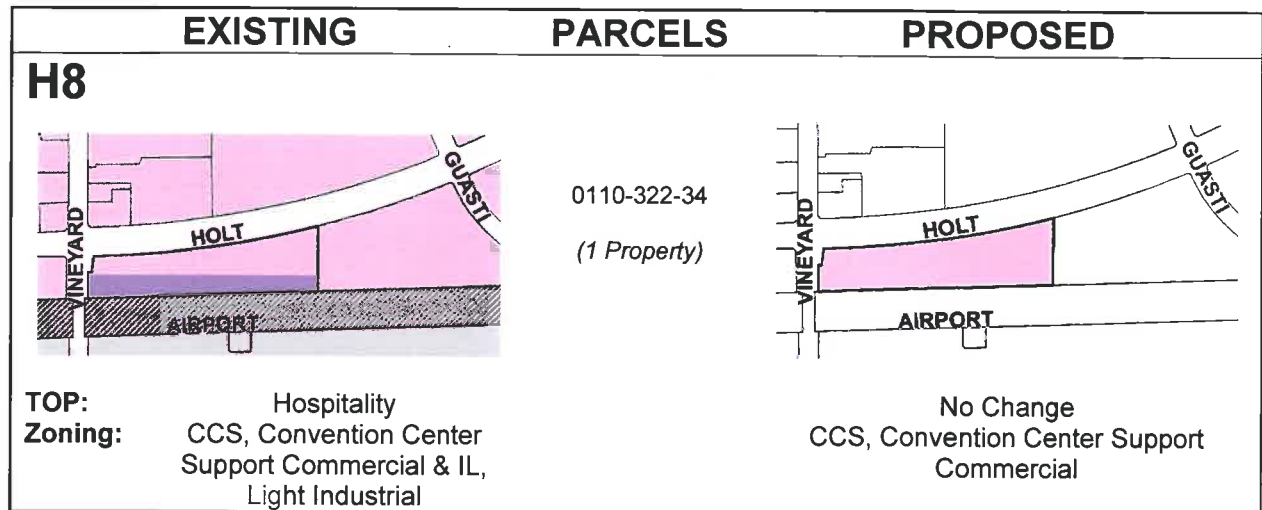
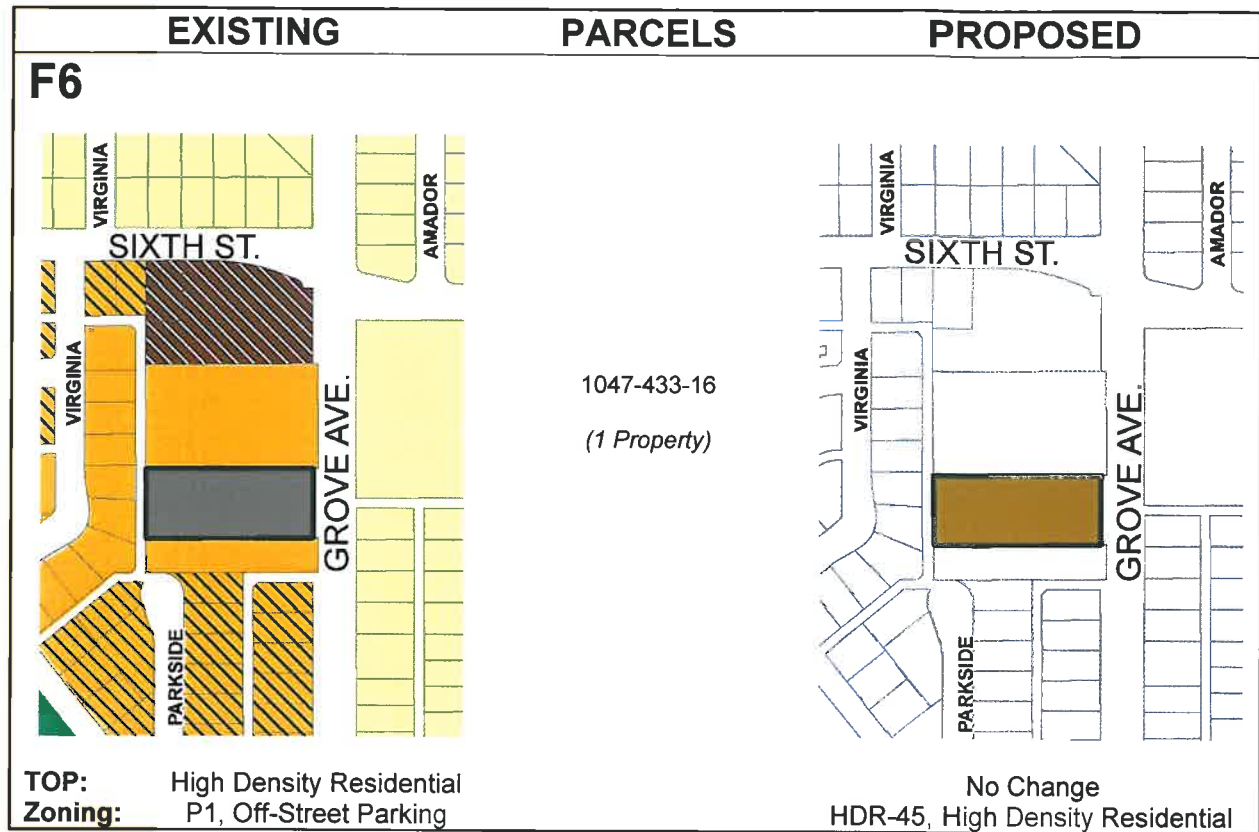
PROPOSED

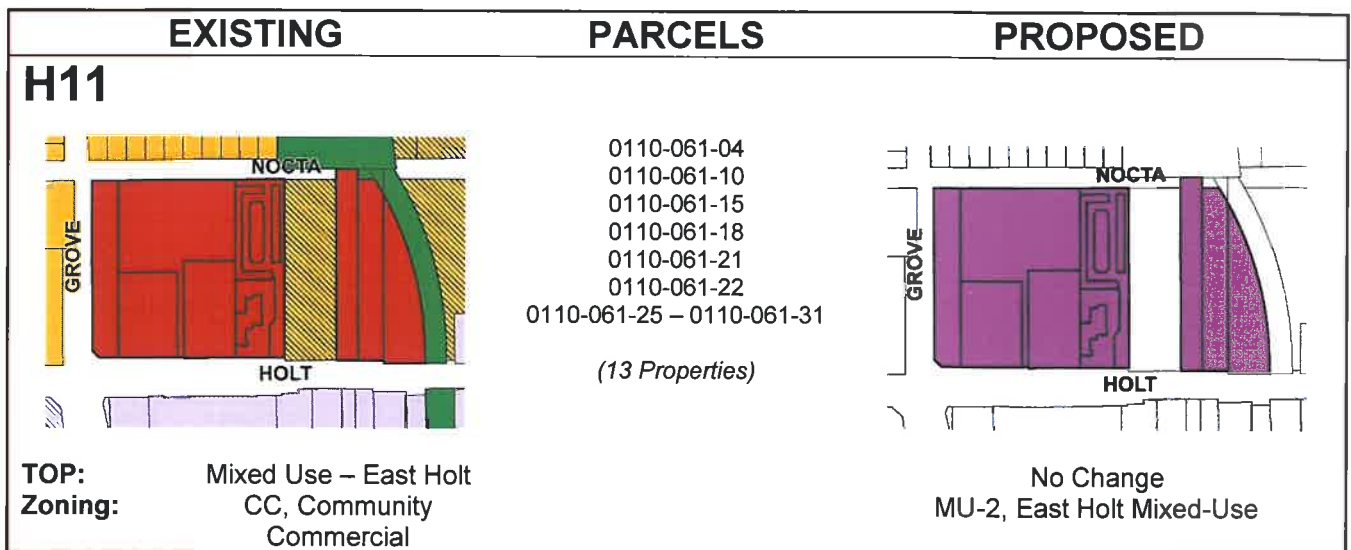
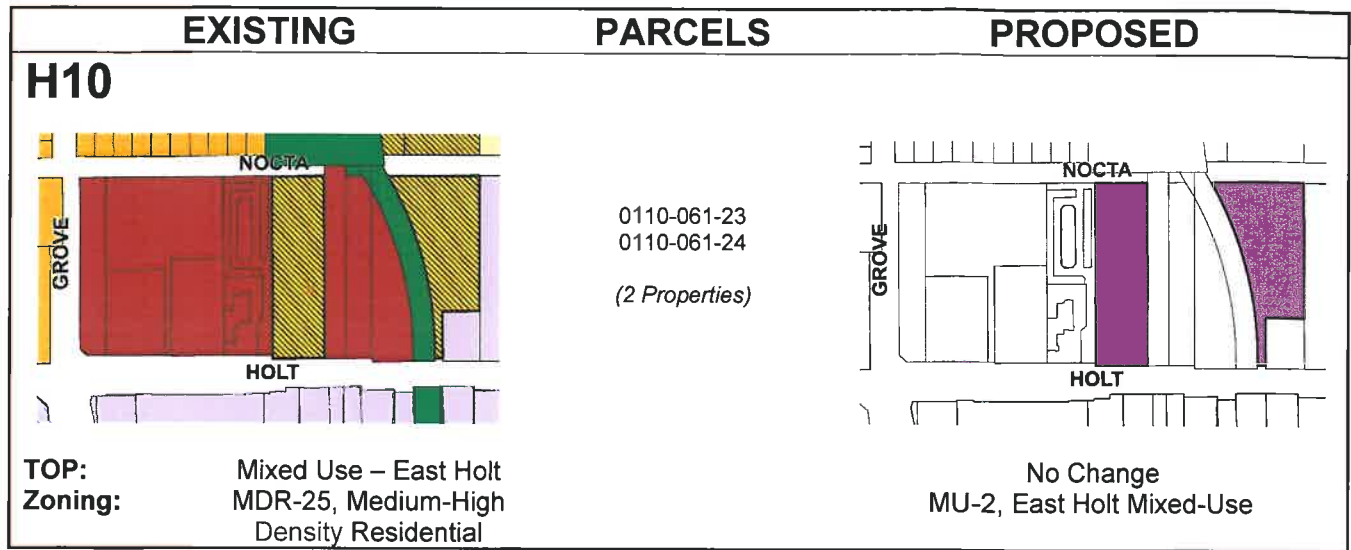
TOP: No Change
Zoning: MU-2, East Holt Mixed-Use

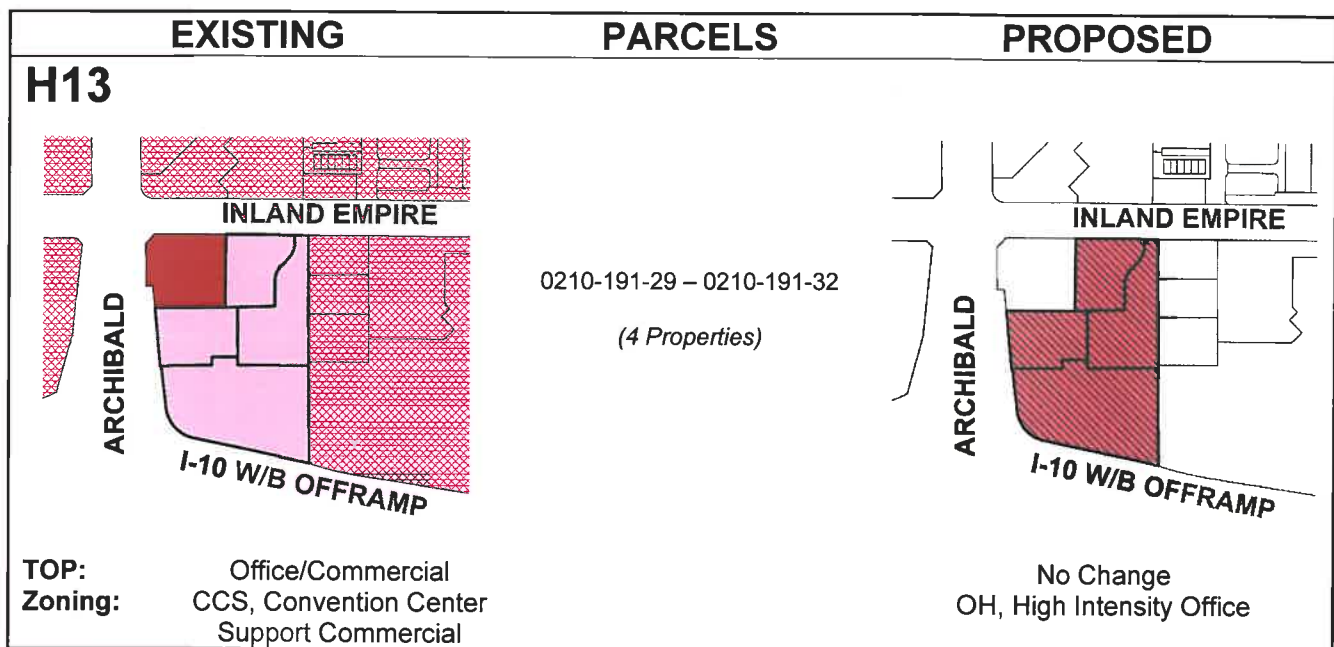
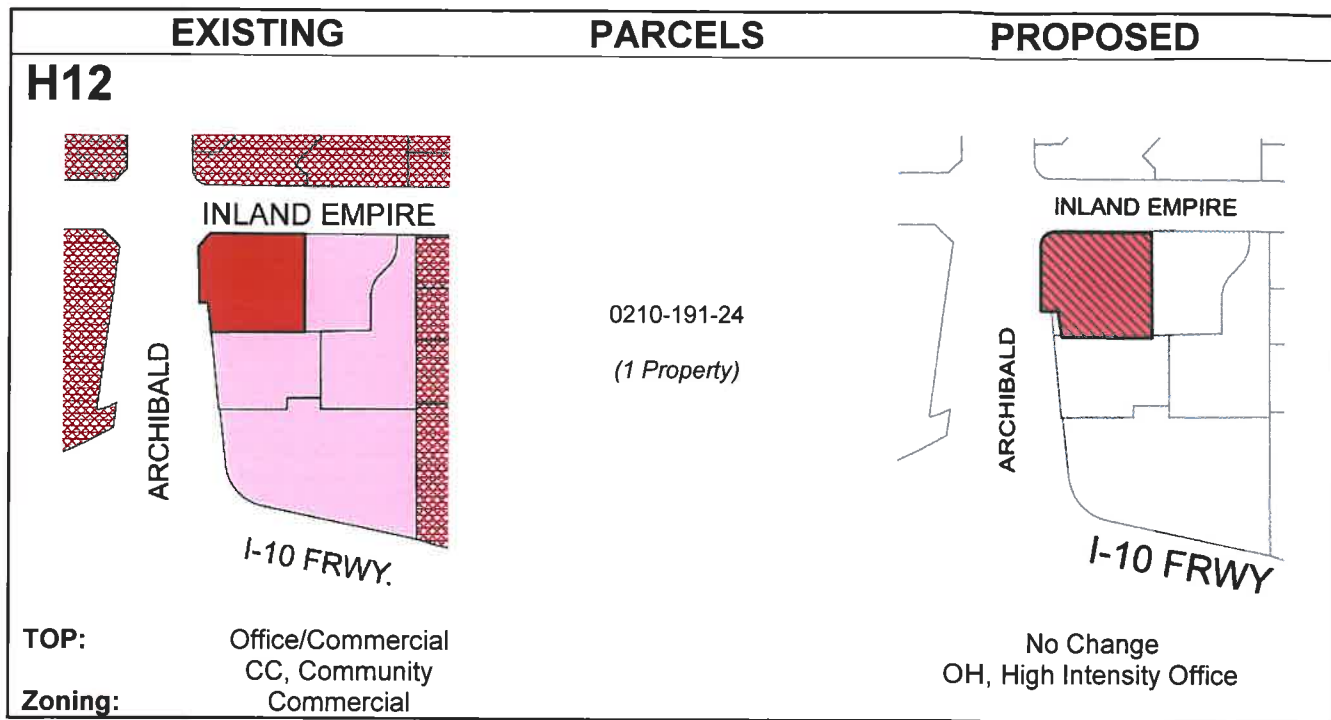


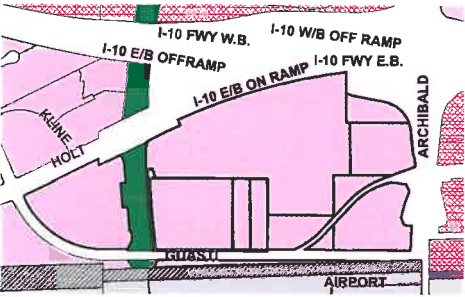
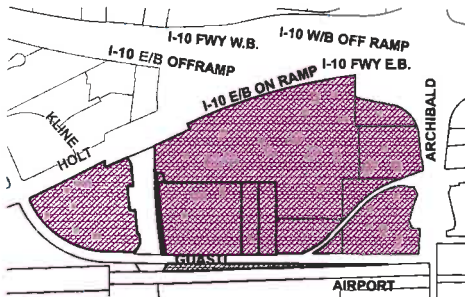
EXISTING	PARCELS	PROPOSED
E21		
	<p>1047-461-20</p> <p>(1 Property)</p>	
<p>TOP: Medium Density Residential</p> <p>Zoning: CN, Neighborhood Commercial & P1, Off-Street Parking</p>		<p>Neighborhood Commercial</p> <p>CN, Neighborhood Commercial</p>

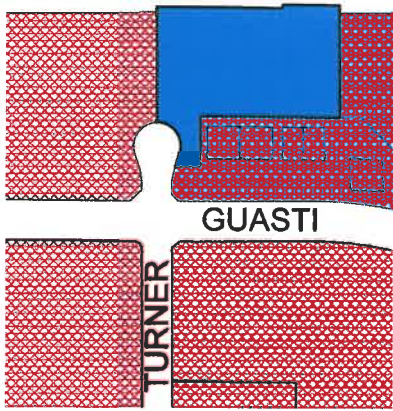

EXISTING	PARCELS	PROPOSED
E22		
	<p>1047-461-02</p> <p>1048-131-52</p> <p>(2 Properties)</p>	
<p>TOP: Medium Density Residential</p> <p>Zoning: P1, Off-Street Parking</p>		<p>No Change</p> <p>MDR-18, Medium Density Residential</p>







EXISTING	PARCELS	PROPOSED
H14 	<p>0110-322-08 0110-322-17 – 0110-322-18 0110-322-21 – 0110-322-22 0110-322-25 0110-322-28 – 0110-322-31 0110-322-33 0110-323-05</p> <p>(11 Properties)</p>	
TOP: Mixed Use – Multi Zoning: Modal Mixed Use CCS, Convention Center Support Commercial		<p>No Change SP, Specific Plan with MTC, Multimodal Transit Center Overlay</p>

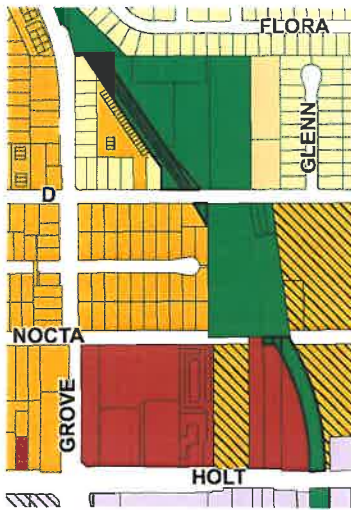
EXISTING	PARCELS	PROPOSED
H17 	<p>0210-551-01</p> <p>(1 Property)</p>	
TOP: Office/Commercial Zoning: CIV, Civic		<p>No Change OH, High Intensity Office</p>

EXISTING

PARCELS

PROPOSED

H19



0110-013-07 – 0110-013-13

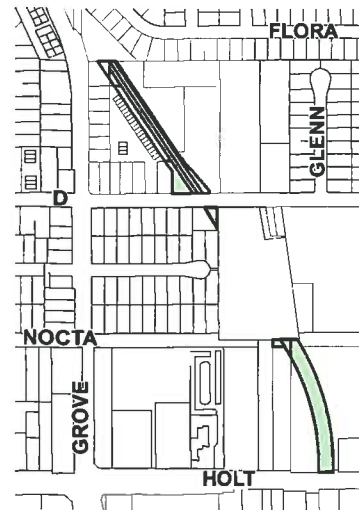
0110-051-12

0110-061-00

0110-061-17

0110-061-19

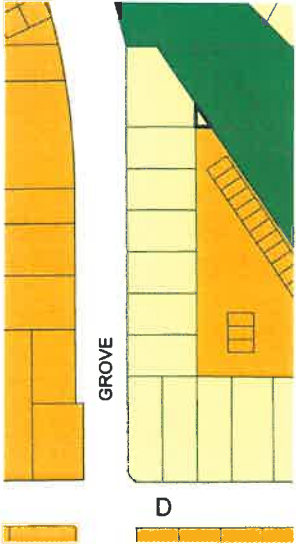
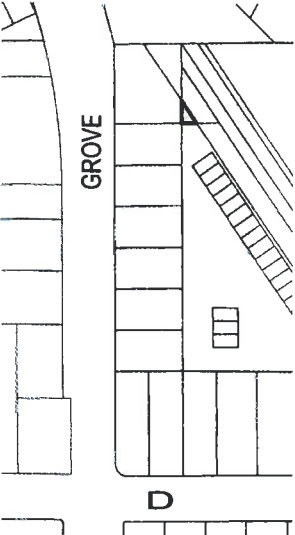
(11 Properties)

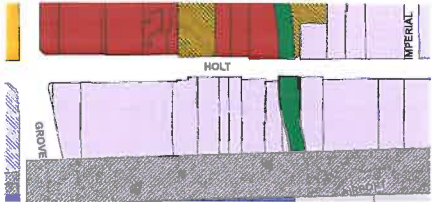
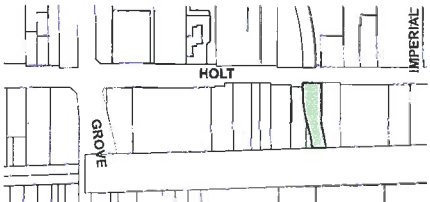



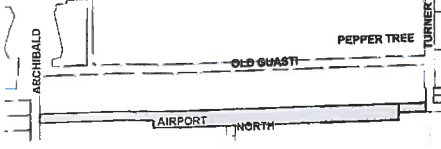
No Change

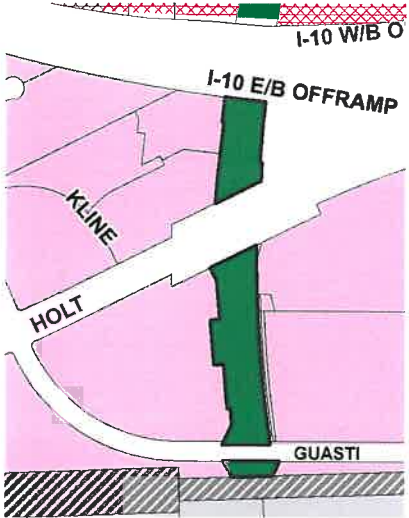
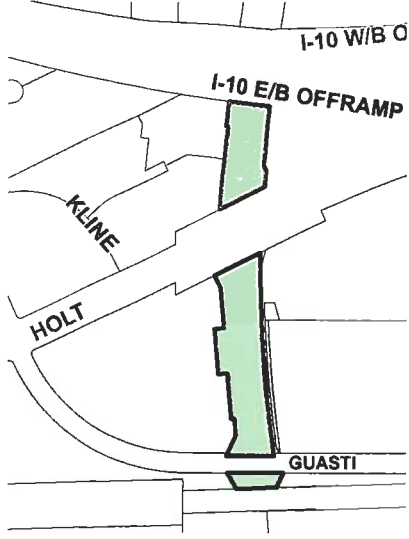
UC, Utilities Corridor

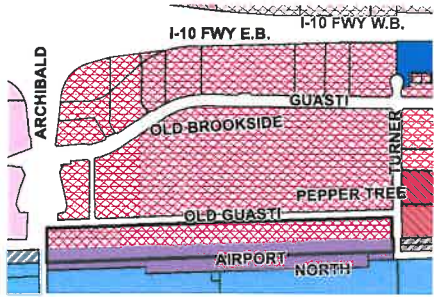
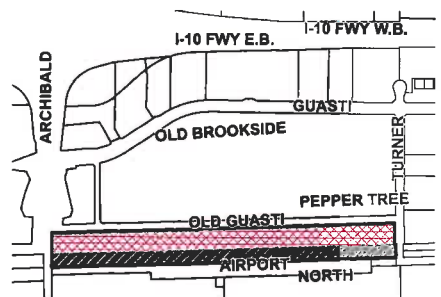
TOP: Open Space –
Non Recreation
Zoning: OS-R, Open Space-
Recreation

EXISTING	PARCELS	PROPOSED
H20		
	<p>0110-013-27</p> <p>(1 Property)</p>	
<p>TOP: Open Space – Non Recreation</p> <p>Zoning: LDR-5, Low Density Residential</p>		<p>No Change</p> <p>UC, Utilities Corridor</p>

EXISTING	PARCELS	PROPOSED
H21		
	<p>0110-131-22</p> <p>(1 Property)</p>	
<p>TOP: Business Park & Open Space – Non Recreation</p> <p>Zoning: OS-R, Open Space - Recreation</p>		<p>Open Space – Non Recreation</p> <p>UC, Utility Corridor</p>

EXISTING	PARCELS	PROPOSED
H22		
	0211-201-04 0211-201-06 (2 Properties)	
TOP: Right-of-Way		Airport
Zoning: IL, Light Industrial		ONT, Ontario International Airport

EXISTING	PARCELS	PROPOSED
H23		
	0110-321-30 0110-322-27 0110-323-02 (3 Properties)	
TOP: Open Space – Non Recreation		No Change
Zoning: OS-R, Open Space-Recreation		UC, Utilities Corridor

EXISTING	PARCELS	PROPOSED
H24		
	0211-201-15 (1 Property)	
TOP: Mixed Use/Rail		No Change
Zoning: SP, Specific Plan & IL, Light Industrial		SP, Specific Plan & RC, Rail Corridor

EXISTING	PARCELS	PROPOSED
I6		
	<p>1051-321-55 (1 Property)</p>	
<p>TOP: Neighborhood Commercial</p> <p>Zoning: P1, Off-Street Parking</p>		<p>No Change</p> <p>CN, Neighborhood Commercial</p>

EXISTING	PARCELS	PROPOSED
L5		
	<p>0238-052-11 (1 Property)</p>	
<p>TOP: Industrial</p> <p>Zoning: IH, Heavy Industrial</p>		<p>No Change</p> <p>IG, General Industrial</p>

CITY OF ONTARIO

Agenda Report
May 17, 2016

SECTION:
CONSENT CALENDAR

SUBJECT: A RESOLUTION APPROVING THE SUBMITTAL OF AN APPLICATION TO PARTICIPATE IN THE BEVERAGE CONTAINER RECYCLING CITY/COUNTY PAYMENT PROGRAM (FISCAL YEAR 2015-16) FROM THE STATE OF CALIFORNIA DEPARTMENT OF RESOURCES RECYCLING AND RECOVER (CALRECYCLE)

RECOMMENDATION: That the City Council adopt a resolution approving the submittal of an application for approximately \$42,000 from the Beverage Container Recycling City/County Payment Program (Fiscal Year 2015-16) and authorize the City Manager or his designee to execute all necessary documents to participate in the program.

COUNCIL GOALS: Regain Local Control of Ontario International Airport
Pursue City's Goals and Objectives by Working with other Government Agencies

FISCAL IMPACT: The City is eligible to receive approximately \$42,000 through the Beverage Container Recycling City/County Payment Program (Fiscal Year 2015-16) for implementation of beverage container recycling and litter cleanup activities. There is no additional cost and no matching fund requirement for the City to participate in this program. There is no impact to the General Fund.

BACKGROUND: The California Beverage Container Recycling and Litter Reduction Act provides annual payments to local governments for the implementation of beverage container recycling and litter cleanup activities. The costs covered by this program include public education promoting beverage container recycling, curbside recycling programs, litter reduction and cleanup where the waste stream includes beverage containers that will be recycled. The program is intended to assist the City in achieving the goals set by the State of California to reduce the amount of waste sent to landfills by 50%, and reach and maintain an 80% recycling rate for all California Refund Value beverage containers.

STAFF MEMBER PRESENTING: Scott Burton, Utilities General Manager

Prepared by: Bonnie Butler
Department: MU/Solid Waste

City Manager
Approval: 

Submitted to Council/O.H.A. 05/17/2016

Approved: _____

Continued to: _____

Denied: _____

RESOLUTION NO. _____

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF ONTARIO, CALIFORNIA, APPROVING THE SUBMITTAL OF AN APPLICATION TO PARTICIPATE IN THE BEVERAGE CONTAINER RECYCLING CITY/COUNTY PAYMENT PROGRAM (FISCAL YEAR 2015-16) FROM THE STATE OF CALIFORNIA DEPARTMENT OF RESOURCES RECYCLING AND RECOVERY (CalRecycle).

WHEREAS, pursuant to Public Resources Code §14581 the Department of Resources Recycling and Recovery (CalRecycle) has established the Beverage Container Recycling City/County Payment Program to make payments to qualifying jurisdictions for implementation of their beverage container recycling and litter cleanup activities; and

WHEREAS, in furtherance of this authority, CalRecycle is required to establish procedures governing the administration of the Beverage Container Recycling City/County Payment Programs; and

WHEREAS, CalRecycle's procedures for administering the Beverage Container Recycling City/County Payment Program require, among other things, an applicant's governing body to declare by resolution certain authorizations related to the administration of the Beverage Container Recycling City/County Payment.

NOW, THEREFORE, BE IT RESOLVED that the City of Ontario is authorized to submit an application to CalRecycle for the Beverage Container City/County Payment Program; and

BE IT FURTHER RESOLVED that the City Manager or his designee is hereby authorized and empowered to execute in the name of the City of Ontario all documents, including but not limited to applications, agreements, annual reports including expenditure reports and amendments necessary to secure said payments to support our Beverage Container Recycling Program

BE IT FURTHER RESOLVED that this authorization is effective until rescinded by the signature authority or this Governing Body.

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

PASSED, APPROVED AND ADOPTED this 17th day of May, 2016.

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. 2016- was duly passed and adopted by the City Council of the City of Ontario at their regular meeting held May 17, 2016 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. 2016- duly passed and adopted by the Ontario City Council at their regular meeting held May 17, 2016.

SHEILA MAUTZ, CITY CLERK

(SEAL)

CITY OF ONTARIO

Agenda Report

May 17, 2016

SECTION: CONSENT CALENDAR

SUBJECT: PROFESSIONAL SERVICES AGREEMENT FOR POTABLE WATER MASTER PLAN UPDATE

RECOMMENDATION: That the City Council approve and authorize the City Manager to execute a Professional Services Agreement (on file with the Records Management Department) with AKM Consulting Engineers of Irvine, California, (AKM) to provide Engineering Services for the Potable Water Master Plan Update in the amount of \$297,380 plus a 15% contingency of \$44,607 for a total amount of \$341,987.

COUNCIL GOALS: Regain Local Control of the Ontario International Airport

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: The Fiscal Year 2015-16 Capital Improvement Program includes appropriations from the Water Capital Fund for this project. The recommended contract award to AKM is for \$297,380 plus 15% contingency of \$44,607 for a total amount of \$341,987. There is no impact to the General Fund.

BACKGROUND: The Water Master Plan (WMP) identifies the water production, transmission, and distribution system improvements necessary to serve existing and future residents and businesses of the City. The hydraulic modeling and analysis of the water system determines near and long-term capital improvement needs and subsequent investments presently averaging about \$10 million per year in the annual budget. The WMP recommendations are factored into the two-year rate review and adjustment consistent with State law (Proposition 26 and 218). In addition, they provide the basis of the Development Impact Fees charged by the City for new development.

The water system includes over 500 miles of existing main lines with significant expansion underway in Ontario Ranch. This WMP update will review changing water demands resulting from recent and emerging water use efficiency standards, including State mandated conservation goals, and will include updated water demand factors in the hydraulic analysis. The updated model is used for assessing system operations such as evaluating service pressures and providing fire flow data used in the design of on-site

STAFF MEMBER PRESENTING: Scott Burton, Utilities General Manager

Prepared by: Jeff Krizek
Department: MU/Engineering

City Manager
Approval: 

Submitted to Council/O.H.A. 05/17/2016

Approved: _____

Continued to: _____

Denied: _____

10

sprinkler systems for new development. Within the existing system, operational challenges and trends (such as water main leaks) are factored into the capital improvement program. Within Ontario Ranch and other rapidly changing areas of the City, the WMP update will reflect the latest infrastructure conditions and planning for expansion. The existing WMP was last updated based on 2009 water demand and land use data and was subsequently approved by City Council in 2012.

AKM Consulting Engineers was selected as part of a competitive RFP process in preparing the existing WMP. They have since completed various technical studies necessary to evaluate infrastructure needs for growth within Ontario Ranch. AKM Consulting Engineers is recommended for the WMP update based on their proposal, engineering expertise, successful completion of this type of work in the past, capability to perform the work in a timely manner, and in order to maintain continuity and efficiency in supporting the Municipal Utilities Company.

CITY OF ONTARIO

Agenda Report
May 17, 2016

SECTION: PUBLIC HEARINGS

SUBJECT: A PUBLIC HEARING TO CONSIDER AN ORDINANCE APPROVING A DEVELOPMENT AGREEMENT (FILE NO. PDA15-005) BETWEEN THE CITY OF ONTARIO AND BROOKCAL ONTARIO, LLC, FOR THE DEVELOPMENT OF UP TO 108 RESIDENTIAL UNITS (TT19907) ON 27.09 GROSS ACRES OF LAND WITHIN THE CONVENTIONAL MEDIUM LOT RESIDENTIAL DISTRICT (PLANNING AREA 29) OF THE SUBAREA 29 SPECIFIC PLAN, LOCATED AT THE SOUTHWEST CORNER OF HAVEN AVENUE AND PARK VIEW STREET

RECOMMENDATION: That the City Council introduce and waive further reading of an ordinance approving a Development Agreement (File No. PDA15-005, on file with the Records Management Department) between the City of Ontario and Brookcal Ontario, LLC, for the development of up to 108 residential units (TT19907) on 27.09 gross acres of land within the Conventional Medium Lot Residential district (Planning Area 29) of the Subarea 29 Specific Plan, located at the southwest corner of Haven Avenue and Park View Street (APN: 0218-321-17).

COUNCIL GOALS: Regain Local Control of the Ontario International Airport

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)

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 Subarea 29 Specific Plan development, thereby mitigating the increased cost associated with such services. In addition, the City will receive Public Service Funding fees plus development impact, compliance processing, licensing, and permitting fees. No Original Model Colony revenue will be used to support the Ontario Ranch development.

STAFF MEMBER PRESENTING: Scott Murphy, Planning Director

Prepared by: Rudy Zeledon

Department: Planning

City Manager

Approval: 

Submitted to Council/O.H.A. 05/17/2016

Approved: _____

Continued to: _____

Denied: _____

BACKGROUND: Brookcal Ontario, LLC., and the City recognized that the financial commitment required for construction in Ontario Ranch is substantial. To adequately forecast these costs and gain assurance that the project may proceed under the existing policies, rules and regulations, Brookcal Ontario, LLC., is entering into a Development Agreement with the City providing for the development of up to 108 dwelling 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 Ontario project, additional project related services, infrastructure and affordable housing requirements.

The Development Agreement proposes to include 27.09 acres of land within the Conventional Medium Lot Residential district (Planning Area 29) of the Subarea 29 Specific Plan as shown in Exhibit A (Subarea 29 Specific Plan Map). The Agreement grants Brookcal Ontario, LLC., a vested right to develop Tentative Tract Map 19907 as long as Brookcal complies with the terms and conditions of the Subarea 29 Specific Plan and Environmental Impact Report.

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

In considering the application at their meeting of April 26, 2016, 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 development and, with a 5 to 0 vote (Resolution No. PC16-016), recommended approval of the Development Agreement to the City Council.

COMPLIANCE WITH THE ONTARIO PLAN: The proposed project is consistent with the principles, goals and policies contained within the Vision, Governance, and Policy Plan (General Plan) components of The Ontario Plan (TOP). More specifically, TOP goals and policies furthered by the proposed project are noted in the Planning Commission staff report (attached).

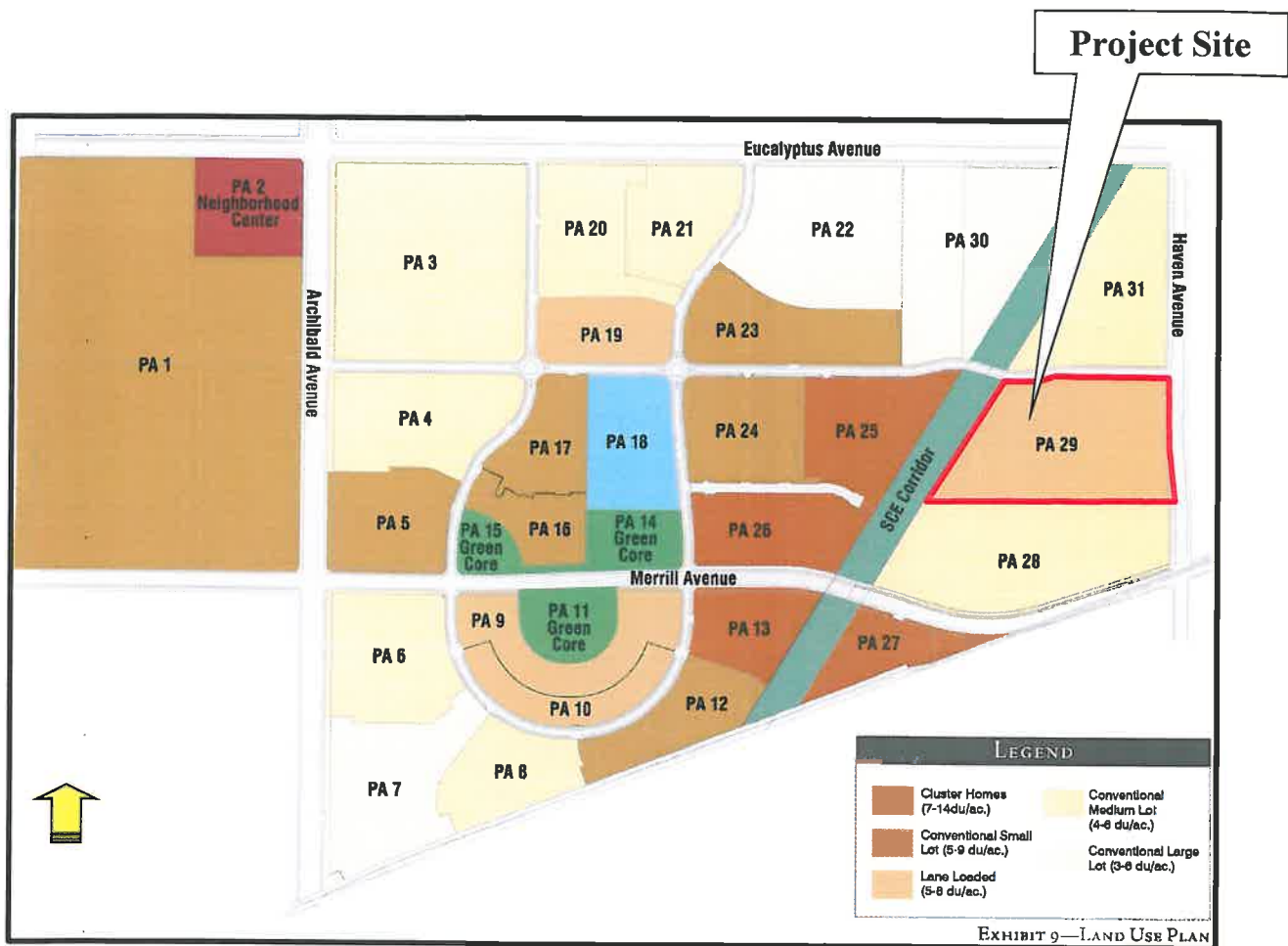
HOUSING ELEMENT COMPLIANCE: The project is consistent with the Housing Element of the Policy Plan (General Plan) component of The Ontario Plan, as the project does not affect the properties in the Available Land Inventory contained in Table A-3 (Available Land by Planning Area) of the Housing Element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

AIRPORT LAND USE COMPATIBILITY PLAN COMPLIANCE: The proposed project is located within the Airport Influence Area of Ontario International Airport (ONT) and Chino Airport, and was evaluated and found to be consistent with the policies and criteria of the Airport Land Use Compatibility Plan (ALUCP) for both airports.

ENVIRONMENTAL REVIEW: The environmental impacts of this project were previously analyzed in an addendum to the Subarea 29 Specific Plan EIR (SCH# 2004011009) that was adopted by the City Council on April 21, 2015. This application is consistent with the previously adopted addendum and introduces no new significant environmental impacts. The City's "Guidelines for the Implementation of

the California Environmental Quality Act (CEQA)" provide for the use of a single environmental assessment in situations where the impacts of subsequent projects are adequately analyzed. All previously adopted mitigation measures shall be a condition of project approval and are incorporated herein by reference.

EXHIBIT "A"
SUBAREA 29 SPECIFIC PLAN



ORDINANCE NO. _____

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF ONTARIO, CALIFORNIA, APPROVING A DEVELOPMENT AGREEMENT BETWEEN THE CITY OF ONTARIO AND BROOKCAL ONTARIO, LLC., FILE NO. PDA15-005, TO ESTABLISH THE TERMS AND CONDITIONS FOR DEVELOPMENT OF UP TO 108 RESIDENTIAL UNITS (TT 19907) ON 27.09 ACRES WITHIN PLANNING AREA 29 OF THE SUBAREA 29 SPECIFIC PLAN, LOCATED AT THE SOUTHWEST CORNER OF HAVEN AVENUE AND PARK VIEW STREET, AND MAKING FINDINGS IN SUPPORT THEREOF (APN: 0218-321-17).

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 the 4th day of April 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.

WHEREAS, on the 10th day of September 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 Brookcal Ontario, LLC., and the City of Ontario, File No. PDA15-005, concerning those 27.09 acres of land within Planning Area 29 of the Subarea 29 Specific Plan, located on the southwest corner of Haven Avenue and Park View Street and as legally described in the attached Development Agreement. Hereinafter in this Resolution, the Development Agreement is referred to as the "Development Agreement"; and

WHEREAS, on the 19th day of October 2006, the City Council of the City of Ontario certified the Subarea 29 Specific Plan EIR (SCH #2004011009); and

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

WHEREAS, on April 26, 2016, 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. PC16-016) of the Development Agreement to the City Council; and

WHEREAS, the environmental impacts of this project were previously analyzed in an addendum to the Subarea 29 Specific Plan EIR (SCH# 2004011009) that was adopted by the City Council on April 21, 2015. This application is consistent with the previously adopted addendum and introduces no new significant environmental impacts. All previously adopted mitigation measures shall be a condition of project approval and are incorporated herein by reference; and

WHEREAS, on May 17, 2016, 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. Based upon substantial evidence presented to the City Council during the above-referenced hearing on May 17, 2016, including written and oral staff reports, together with public testimony, the City Council hereby specifically finds as follows:

a. The Development Agreement applies to 27.09 acres of land located at the southwest corner of Haven Avenue and Parkview Street within Planning Area 29 (Conventional Medium Lot Residential) of the Subarea 29 Specific Plan, and is presently vacant and previously used for dairy and agricultural uses; and

b. The property to the north of the Project site is within Planning Area 31 (Conventional Medium Lot Residential) of the Subarea 29 Specific Plan, and is presently vacant and previously used for dairy and agricultural uses. The property to the east is within the Specific Plan (Ag Preserve) zoning district, and is presently vacant and previously used for dairy and agricultural uses. The property to the south is within Planning Area 28 (Conventional Medium Lot Residential) of the Subarea 29 Specific Plan, and is presently vacant and previously used for dairy and agricultural uses. The property to the west is within the SCE Corridor/Easement of the Subarea 29 Specific Plan, and is developed as an SCE Easement; and

c. The Development Agreement establishes parameters for the development of Tentative Tract Map 19907 within Subarea 29 of the Subarea 29 Specific Plan for residential development. 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 Subarea 29 Specific Plan.

d. The Development Agreement focuses on 27.09 acres, consisting of Tentative Tract Map 19907, which subdivides 27.09 acres of land into 108 residential lots and 10 lettered lots within Planning Area 29; and

e. The Development Agreement will provide for the development of up to 108 residential units as established for Planning Area 29 of the Subarea 29 Specific Plan; and

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

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

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

i. This Development Agreement will not be materially injurious or detrimental to the adjacent properties and will have a significant impact on the environment or the surrounding properties but the benefits of the project outweighs the potential environmental impacts and the mitigation of these impacts were addressed in the Subarea 29 Specific Plan EIR certified by the City Council on October 19, 2006.

SECTION 2. Based upon the findings and conclusions set forth in Sections 1 above, the City Council hereby approves the Development Agreement (File No. PDA15-005).

SECTION 3. *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 4. *Custodian of Records.* The documents and materials that constitute the record of proceedings on which these findings have been based are located at the City of Ontario City Hall, 303 East "B" Street, Ontario, California 91764. The custodian for these records is the City Clerk of the City of Ontario.

SECTION 5. *Severability.* If any section, sentence, clause or phrase of this Ordinance or the application thereof to any entity, person or circumstance is held for any reason to be invalid or unconstitutional, such invalidity or unconstitutionality shall not affect other provisions or applications of this Ordinance which can be given effect without the invalid provision or application, and to this end the provisions of this Ordinance are severable. The People of the City of Ontario hereby declare that they would have adopted this Ordinance and each section, sentence, clause or phrase thereof, irrespective of the fact that any one or more section, subsections, sentences, clauses or phrases be declared invalid or unconstitutional.

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

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

PASSED, APPROVED, AND ADOPTED this _____ day of _____ 2016.

PAUL S. LEON, MAYOR

ATTEST:

SHEILA MAUTZ, CITY CLERK

APPROVED AS TO FORM:

BEST BEST & KRIEGER LLP
CITY ATTORNEY

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

I, SHEILA MAUTZ, City Clerk of the City of Ontario, DO HEREBY CERTIFY that foregoing Ordinance No. _____ was duly introduced at a regular meeting of the City Council of the City of Ontario held May 17, 2016 and adopted at the regular meeting held _____, 2016 by the following roll call vote, to wit:

AYES: COUNCIL MEMBERS:

NOES: COUNCIL MEMBERS:

ABSENT: COUNCIL MEMBERS:

SHEILA MAUTZ, CITY CLERK

(SEAL)

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

SHEILA MAUTZ, CITY CLERK

(SEAL)

EXHIBIT A

**DEVELOPMENT AGREEMENT
BETWEEN THE CITY OF ONTARIO AND BROOKCAL ONTARIO, LLC.,**

**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

BrookCal Ontario L.L.C.

a California limited liability company

_____, 2016

San Bernardino County, California

DEVELOPMENT AGREEMENT NO. PDA15-005

This Development Agreement (hereinafter "Agreement") is entered into effective as of the ____ day of _____, 2016 by and among the City of Ontario, a California municipal corporation (hereinafter "CITY"), and BrookCal Ontario LLC, California 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 Subarea 29 Specific Plan (State Clearinghouse No. 2004011009 (the "FEIR"). The City Council found and determined that the FEIR was prepared in accordance with the requirements of the California Environmental Quality Act and adequately describes the impacts of the project described in the FEIR, which included consideration of this Agreement; and

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

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

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

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

WHEREAS, OWNER has incurred and will in the future incur substantial costs in order to assure development of the Property in accordance with this Agreement; and

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

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

COVENANTS

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

1. DEFINITIONS AND EXHIBITS.

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

1.1.1 "Agreement" means this Development Agreement.

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

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

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

redevelopment of any building, structure, improvement or facility after the construction and completion thereof.

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

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

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

1.1.7 "Development Impact Fee" means a monetary exaction, other than a tax or special assessment, whether characterized as a fee or a tax and whether established for a broad class of projects by legislation of general applicability or imposed on a specific project on an ad hoc basis, that is charged by a local agency to the applicant in connection with approval of a development project for the purpose of defraying all or a portion of the cost of public facilities related to the development project, and, for purposes of this Agreement only, includes fees collected under development agreements adopted pursuant to Article 2.5 of the Government Code (commencing with Section 65864) of Chapter 4. For purposes of this Agreement only, "Development Impact Fee" shall not include processing fees and charges imposed by CITY to cover the estimated actual costs to CITY of processing applications for Development Approvals or for monitoring compliance with any Development Approvals granted or issued, including, without limitation, fees for zoning variances; zoning changes; use permits; building inspections; building permits; filing and processing applications and petitions filed with the local agency formation commission or conducting preliminary proceedings or proceedings under the Cortese-Knox-Hertzberg Local Government Reorganization Act of 2000, Division 3 (commencing with Section 56000) of Title 5 of the Government Code; the processing of maps under the provisions of the Subdivision Map Act, Division 2 (commencing with Section 66410) of Title 7 of the Government Code; or planning services under the authority of Chapter 3 (commencing with Section 65100) of Division 1 of Title 7 of the Government Code, fees and charges as described

in Sections 51287, 56383, 57004, 65104, 65456, 65863.7, 65909.5, 66013, 66014, and 66451.2 of the Government Code, Sections 17951, 19132.3, and 19852 of the Health and Safety Code, Section 41901 of the Public Resources Code, and Section 21671.5 of the Public Utilities Code, as such codes may be amended or superceded, 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. 19907 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 six (6) 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 and any structures in the open space or common areas of Tract 19907.

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 "Specific Plan" means that certain specific plan adopted by the City Council, and entitled, "The Sub Area 29 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 "Trail Portion" means the portion of Lot I of Tract 19907, which is to be constructed on Lot I of Tract 19907 as an open space trail area, approximately fifty (50) feet in width and as shown on the attached Exhibit F.

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 issuance of each building permit shall be based upon water demand factors and assumptions listed in the Construction Agreement and Construction Agreement Amendment as "Water Availability Equivalents by Land Use" for each land use category.

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

Exhibit "A" — Legal Description of the Property.

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

Exhibit "C" — Existing Development Approvals.

Exhibit "D" — Existing Land Use Regulations.

Exhibit "E" — (Reserved – Not used)

Exhibit "F" — Infrastructure Improvements Exhibits.

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 forty percent (40%) 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.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

2.5 Amendment or Cancellation of Agreement. This Agreement may be amended or cancelled in whole or in part only in the manner provided for in Government Code Section 65868.1. Any amendment of this Agreement, which amendment has been requested by OWNER, shall be considered by the CITY only upon the payment of the applicable processing charge. This provision shall not limit any remedy of CITY or

OWNER as provided by this Agreement. Either Party or successor in interest, may propose an amendment to or cancellation, in whole or in part, of this Agreement. Any amendment or cancellation shall be by mutual consent of the parties or their successors in interest except as provided otherwise in this Agreement or in Government Code Section 65865.1. For purposes of this section, the term "successor in interest" shall mean any person having a legal or equitable interest in the whole of the Property, or any portion thereof as to which such person wishes to amend or cancel this Agreement. The procedure for proposing and adopting an amendment to, or cancellation of, in whole or in part, this Agreement shall be the same as the procedure for adopting and entering into this Agreement in the first instance. Notwithstanding the foregoing sentence, if the CITY initiates the proposed amendment to, or cancellation of, in whole or in part, this Agreement, CITY shall first give notice to the OWNER of its intention to initiate such proceedings at least sixty (60) days in advance of the giving the public notice of intention to consider the amendment or cancellation.

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

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

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

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

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

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

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

OWNER to CITY for residential units on which construction has not yet begun shall be refunded to OWNER by CITY.

2.7 Notices.

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

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

If to CITY:

Al C. Boling, City Manager
City of Ontario
303 East "B" Street
Ontario California, California 91764

with a copy to:

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

If to OWNER:

Dave Bartlett
BrookCal Ontario, LLC
3090 Bristol Street, Suite 200
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 Ca1. 3d 465, that the failure of the parties therein to provide for the timing of development resulted in a later adopted initiative restricting the timing of development to prevail over such parties' agreement, it is the parties' intent to cure that deficiency by acknowledging and providing that OWNER shall have the right to develop the Property in such order and at such rate and at such times as OWNER deems appropriate within the exercise of its subjective business judgment.

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

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

3.4.2 Subject to the prior submittal by OWNER and approval by CITY of a plan to provide sufficient public infrastructure for the construction of a maximum number of six (6) Model Units and any structures associated with the development of the open space park area, CITY may issue a maximum of six (6) building permits for Model Units and building permits for any structures associated with the development of the open space park area. 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 the other facilities.

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

- (a) Alter the permitted uses of the Property as a whole; or,
 - (b) Increase the density or intensity of use of the Property as a whole;
- or,
- (c) Increase the maximum height and size of permitted buildings; or,
 - (d) Delete a requirement for the reservation or dedication of land for public purposes within the Property as a whole; or,

(e) Constitute a project requiring a subsequent or supplemental environmental impact report pursuant to Section 21166 of the Public Resources Code.

3.6 Reservations of Authority.

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

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

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

Land Use Regulations or any Subsequent Land Use Regulation not in conflict with the Development Plan.

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

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

3.7 Public 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, storm drain, fiber optic communications, gas, electric, and other utility service to the Project. As a further condition of development approval, OWNER shall contract with the CITY for CITY-owned or operated utilities for this purpose, for such price and on such terms as may be available to similarly situated customers in the CITY.

3.7.1 OWNER agrees that development of the Project shall require the construction of Storm Drain facilities from the Property to the connection with the County Line Channel as described in the attached 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 on Haven Avenue including a signalized

intersection of Haven and Merrill Avenues and as further described in the attached Exhibit F.

3.7.2.1 OWNER agrees that OWNER shall either design and construct the signalized intersection on Haven Avenue and Park View Street or make a payment in-lieu for the design and construction of a portion of a signalized intersection on Haven Avenue and Park View Street. The amount of the in-lieu payment shall be Sixty-Two Thousand and Thirteen dollars (\$62,013), which is twenty-five percent (25%) of the estimated cost of the design and construction of the signalized intersection. The completion of the signal or in-lieu payment is to be made to CITY at the time that OWNER requests the first building permit for Production Units.

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 infrastructure 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.

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" prior to September 1, 2016. If OWNER has not deposited such amount, with NMC Builders prior to September 1, 2016 then CITY shall be entitled to withhold issuance of any further building permits 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.

3.7.5 OWNER agrees that development of the Property shall require the extension of permanent master planned sewer infrastructure as described in the attached Exhibit F consisting generally of the construction of the extension of sewer infrastructure to serve the Property.

3.7.6 OWNER agrees that development of the Property shall require the extension of permanent master planned fiber optic communications infrastructure as described in the attached Exhibit F consisting generally of the construction of the extension of fiber optic communications infrastructure to serve the Property.

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

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

3.8.2 Owner's Option to Terminate Proceedings. CITY shall provide written notice to OWNER no later than fifteen (15) days prior to making an offer to the owner of the Non-Construction Agreement Offsite Property. At any time within that fifteen (15) day period, OWNER may, at its option, notify CITY that it wants CITY to cease all acquisition proceedings with respect to that Non-Construction Agreement Offsite Property, whereupon CITY shall cease such proceedings. CITY shall provide written notice to OWNER no later than fifteen (15) days prior to the date of the hearing on CITY'S intent to consider the adoption of a resolution of necessity as to any Non-Construction Agreement Offsite Property.

At any time within that fifteen (15) day period, OWNER may, at its option, notify CITY that it wants CITY to cease condemnation proceedings, whereupon CITY shall cease such proceedings. If OWNER does not notify CITY to cease condemnation proceedings within said fifteen (15) day period, then the CITY may proceed to consider and act upon the Non-Construction Agreement Offsite Property resolution of necessity. If CITY adopts such resolution of necessity, then CITY shall diligently institute condemnation proceedings and file a complaint in condemnation and seek an order of immediate possession with respect to the Non-Construction Agreement Offsite Property.

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

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

4. PUBLIC BENEFITS.

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

4.2 Development Impact Fees.

4.2.1 Amount of Development Impact Fee. Development Impact Fees (DIF) shall be paid by OWNER. The Development Impact Fee amounts to be paid by OWNER shall be the amounts that are in effect at the time such amounts are

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

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

4.2.3 Parkland and Quimby Act Fees. Pursuant to the General Plan (OntarioPlan) Goal PR1, Policy PR1-5 (achievement of a park standard of 5 acres of parkland per 1,000 residents). In order to meet this standard OWNER shall provide improved parks, developed in accordance with the City's park standards in an amount equal to two (2) acres per 1,000 of projected population without credit, reimbursement, offset or consideration from CITY. CITY and OWNER agree that Lot A of Tract No. 19907 consisting of 1.21 net acres shall be improved as an open space park area and transferred to a homeowner's association to meet OWNER's additional park requirements. The homeowner's association shall be responsible for the maintenance of the developed open space park area on Lot A of Tract No. 19907. OWNER shall also pay the full Development Impact Fee for the Parkland Acquisition and Development Fee category (Quimby Act fees) for the Project.

4.2.3.1 OWNER acknowledges that Lot A of Tract Map No. 19907 is a portion of a combined open space park area. The combined open space park area also includes Lot J of Tract Map No. 19909, which is owned by others. OWNER agrees that both Lot A of Tract Map No. 19907 and Lot J of Tract Map No. 19909 shall be developed as a single open space park area at the same time. OWNER agrees that if the combined open space park area has not been developed and improved by others prior to OWNER requesting the first building permit for Production Units, OWNER agrees that OWNER shall be required to develop both Lot A of Tract Map No. 19907 and Lot J of Tract Map No. 19909 as a combined open space park area, at OWNER's sole expense. Such combined open space park shall be transferred to a single homeowners' association. The homeowners' association shall be responsible for all maintenance of the combined open space park area.

4.2.3.2 CITY and OWNER agree that Lot I of Tract No. 19907 contains Southern California Edison (SCE) utility infrastructure and such Lot I is encumbered by an easement granted to SCE. Lot I shall be retained as

open space area and transferred to the single homeowners' association. The OWNER agrees that open space trail improvements are to be constructed by OWNER on the Trail Portion of Lot I. Such open space improvements on the Trail Portion of Lot I shall be an approximate width of fifty (50) feet over the Trail Portion of Lot I. The approximate location of open space improvements on the Trail Portion of Lot I are shown on the attached Exhibit F. OWNER shall complete the construction of the open space improvements on the Trail Portion of Lot I prior to, and as a condition precedent to, CITY's issuance of the 54th building permit within Tract 19907. Upon completion of the construction and acceptance by CITY of the open space improvements on the Trail Portion, the improvements on the Trail Portion of Lot I shall be maintained by the CITY. OWNER shall provide an easement to CITY for the purpose of maintaining the Trail Portion of the open space improvements on Lot I of Tract 19907.

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 of the City of Ontario 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. 19907 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. 19907. All Infrastructure and Improvements shall be completed as required by the Subdivision Agreement/Tract Map conditions for Tract No. 19907.

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 and DIF Reimbursement in accordance with the provisions of a separate Fee Credit Agreement between CITY and OWNER.

Limitation on the use of DIF Credit issued to OWNER to offset OWNER's DIF payment obligations shall also be subject to the provisions of a separate Fee Credit Agreement. OWNER may also be eligible to receive reimbursement from DIF collected by CITY and paid by other development that benefits from OWNER's construction of DIF Program Infrastructure. Any such DIF Reimbursement shall be subject to a Fee Credit Agreement between CITY and OWNER. CITY and OWNER agree that the Fee Credit Agreement between CITY and OWNER shall comply with CITY's adopted policies applicable to such agreements.

4.4 Affordable Housing Requirement.

4.4.1 Affordable Housing- Number of Units. OWNER shall provide a minimum number of affordable housing units, equivalent to 10% of the OWNER's total approved residential units within the Project, that are affordable to very low, low and moderate income households. Such requirement for affordable housing shall be met through one, or a combination of one or more, of the options provided in the following Sections 4.3.2.1 through 4.3.2.1. 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 4.3.1 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 and Thirty-four Cents (\$2.34) per square foot of residential development within OWNER's Project or, if pre-paid as set forth below, Two Dollars and Five Cents (\$2.05) 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 Thirty-four Cents (\$2.34) and the Two Dollars and Five Cents (\$2.05) per square foot amounts shall automatically be increased annually, commencing on July 1, 2016, and automatically each July 1 thereafter. Such adjustment shall be based on the percentage increase (but no decrease) in the Consumer Price Index (Los Angeles-Anaheim-Riverside County), 1950-2001 (1982-84=100) over the preceding year. The pre-paid Affordability In-Lieu Fee shall be calculated based on the maximum floor area ratio (FAR) permitted within the General Plan and any applicable FAR contained within the applicable specific plan, whichever is greater, and the Maximum Development Density. For purposes of this Agreement, "**Maximum Development Density**" shall be determined by multiplying the OWNER's Project's density for residential development potential as set forth in the General Plan or the applicable Specific Plan, whichever is less, by the net acreage of land within OWNER's Project. All "Affordability In-Lieu Fees" collected by the City shall be used to promote the construction of affordable housing within the City.

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

4.4.2.5 Transfer of Affordable Project. No transfer of title to any affordable housing project shall occur without the prior written consent of the City. In the event OWNER transfers title to any affordable housing project required to be constructed pursuant to this Agreement to a non-profit entity, or other entity, that receives an exemption from ad valorem real property taxes, the

City shall be required to assure payment of an annual in lieu fee to the City on July 1 of each year equal to one-tenth of one percent (0.1%) of the assessed value of such project. The City may permit OWNER to satisfy this obligation by recorded covenants against the property and enforceable against said entity by the City. Any such covenants shall be approved by the Planning Director and the City Attorney.

4.5 Schools Obligations.

4.5.1 Written Evidence of Compliance with Schools Obligations.

OWNER shall, either through joint or individual agreements between OWNER and the applicable school district(s), shall satisfy its new school obligations. The new school obligations for the Mountain View School District in the Ontario Ranch area have been projected to include the acquisition or dedication of school sites for, and construction of, up to eight (8) schools. Of these eight (8) schools, six (6) are to be elementary (K-5) grade schools and two (2) are to be middle grade schools. The new school obligations for the Chaffey Joint Union High School District in the Ontario Ranch area have been projected to include the dedication of a school site for, and construction of, an additional high school. The new school obligations for the applicable school district shall be met by 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 Eight Hundred

Seventy Three Dollars (\$1,873.00) 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 Thirty Six dollars and fifty cents (\$936.50) 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 at either 30 days following CITY's start of construction of Fire Station No. 9 or paid at the time of the issuance of each building permit for the Project.

If the First installment amount is not paid for all residential dwelling units within the Project (based on the Maximum Development Density, or the number of units described on "B Maps" if approved) by January 1, 2017, the amount of the First Installment shall be increased. Such increase shall be based on the percentage increase (but no decrease) in the Consumer Price Index (Los Angeles-Anaheim-Riverside County), 1950-2001 (1982-84=100) over the preceding year. Additionally, the amount shall be further increased automatically by the percentage increase in the Consumer Price Index (Los Angeles-Anaheim-Riverside) on each January 1 thereafter.

4.6.2.2 Second Installment (Residential Uses). The Second Installment of the Public Services Funding Fee shall be Nine Hundred Thirty Six dollars and fifty cents (\$936.50) per residential unit. The Second Installment shall be paid at the time of the issuance of each building permit for the Project. The amount of the Second Installment shall increase automatically by percentage increase (but no decrease) in the Consumer Price Index (Los Angeles-Anaheim-Riverside County), 1950-2001 (1982-84=100) over the preceding year on January 1st of each year, beginning on January 1, 2017. 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 Six Cents (\$.56) per square foot of non-residential buildings. The single installment for non-residential uses shall be due and payable prior to the issuance of the building permit for a non-residential building. The amount of the Single Installment for non-residential uses shall automatically increase by percentage increase (but no decrease) in the Consumer Price Index (Los Angeles-Anaheim-Riverside County), 1950-2001 (1982-84=100) over the preceding year on January 1st of each year, beginning on January 1, 2017. OWNER may exercise the option to pay

any single installment amounts for the remainder of the non-residential square footage within the Project on or before December 31st, before the Single Installment amount is automatically increased.

4.7 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 requires that the City shall not issue building permits or certificates of occupancy 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. 19907. 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 4.6 of this Agreement.

4.8.1.1 Temporary Deferral of Requirement for Storm Water Treatment Capacity Availability. At this time, the regional storm water treatment facilities constructed by NMC Builders do not meet the requirements of the NPDES permit for the Property. Therefore, the CITY and NMC Builders have agreed that the provisions of Section 3.8 of the Construction Agreement have been temporarily suspended for an interim period and the requirements for evidence of Storm Water Treatment

Capacity shall not apply to the Property, if OWNER's application for a tentative subdivision map is approved during this interim period of the suspension. If it is later determined that the regional storm water treatment facilities constructed by NMC Builders may be utilized to meet the requirements of the NPDES permit for the Property and OWNER elects to utilize the regional storm water treatment facilities to meet the requirements of the NPDES permit then the requirements of Section 3.8 of the Construction Agreement shall be applicable to the Property and OWNER shall be required to provide evidence of sufficient Storm Water Treatment Capacity Availability for the total Net Residential Acreage.

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

4.10 Edison Easement Improvements. OWNER shall develop as open space that area within the Project 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. Notwithstanding OWNER's development of open space areas as required by Sections 4.2.3. and 4.2.3.2 OWNER shall not be entitled to any credit, offset or reimbursement from the CITY for such 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 4.9, 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 CITY and NMC Builders LLC, 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 5.2 hereof, CITY shall have the right, but not the obligation, to condition the formation of any CFD, assessment district or other public financing mechanism within the Property on the OWNER mitigating all Project-related impacts to the applicable school district(s) as required by such school district(s). Written evidence by such school district(s) may be required by the CITY as the condition to the formation of any CFD, assessment district or other public financing mechanism within the Property, or any steps preliminary thereto, including, without limitation, the adoption of any resolution of intention to form such CFD, assessment district or other public financing mechanism within the Property. It is not the intent of the parties hereto, by this provision, to prohibit or otherwise limit the City's ability to take any and all necessary steps requisite to the formation of the CFD to finance City services through annual special taxes as set forth in this Section 5.1. Formation of any CFD, assessment district or other public financing mechanism within the Property, shall be subject to CITY's ability to make all findings required by applicable law and complying with all applicable legal procedures and requirements including, without limitation, CITY's public financing district policies as such policies may be amended from time to time. Notwithstanding the foregoing, it is acknowledged and agreed by the parties that nothing contained in this Agreement shall be construed as requiring CITY or the City Council to form any such district or to issue and sell bonds.

6. REVIEW FOR COMPLIANCE.

6.1 Periodic and Special Reviews.

6.1.1 Time for and Initiation of Periodic Review. The CITY shall review this Agreement every twelve (12) months from the Effective Date in order to ascertain the good faith compliance by the OWNER with the terms of this Agreement. 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 6.3 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: _____
Al C. Boling
City Manager

Date: _____

ATTEST:

City Clerk, Ontario

APPROVED AS TO FORM:

BEST, BEST & KREIGER LLP

City Attorney

CALIFORNIA ALL-PURPOSE ACKNOWLEDGMENT

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

On _____, 2016
before me, _____
Date Name And Title Of Officer (e.g. "Jane Doe, Notary Public")

personally appeared _____
Name of Signer(s)

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

WITNESS my hand and official seal.

Signature of Notary Public

OPTIONAL

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

CAPACITY CLAIMED BY SIGNER

- ☐ Individual
☐ Corporate Officer

Title(s)

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

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

DESCRIPTION OF ATTACHED DOCUMENT

Title or Type of Document

Number Of Pages

Date Of Document

Signer(s) Other Than Named Above

EXHIBIT "A"

TO DEVELOPMENT AGREEMENT

Legal Description of Property

Real property in the City of Ontario, County of San Bernardino, State of California, described as follows:

PARCEL 2 OF CERTIFICATE APPROVING LOT LINE ADJUSTMENT OWNER'S CERTIFICATE NO. LLA-06-08, RECORDED MARCH 15, 2007 AS INSTRUMENT NO. 2007-163169 OF OFFICIAL RECORDS, DESCRIBED AS FOLLOWS:

THAT PORTION OF LOT 4 OF THE BONITO RANCHO SUBDIVISION, IN THE CITY OF ONTARIO, COUNTY OF SAN BERNARDINO, STATE OF CALIFORNIA, AS SHOWN ON A MAP RECORDED IN BOOK 20, PAGE 49, OF MAPS IN THE OFFICE OF THE COUNTY RECORDER OF SAID COUNTY, DESCRIBED AS FOLLOWS:

BEGINNING AT THE INTERSECTION OF THE NORTHWESTERLY LINE OF SAID LOT 4 WITH THE NORTHWESTERLY LINE OF A STRIP OF LAND SEVENTY-FIVE (75) FEET WIDE DESCRIBED IN THE DEED TO SOUTHERN CALIFORNIA EDISON COMPANY, RECORDED MAY 18, 1953 IN BOOK 3169, PAGE 535 OF OFFICIAL RECORDS IN THE OFFICE OF SAID COUNTY RECORDER; THENCE ALONG SAID NORTHWESTERLY LINE OF SAID LOT 4 NORTH 62° 24' 03" EAST, 243.17 FEET TO THE SOUTHERLY LINE OF THE LAND DESCRIBED IN THE GRANT DEED TO BAS VAN DAM AND NELLIE VAN DAM, RECORDED FEBRUARY 16, 1966 IN BOOK 6571, PAGE 977 OF SAID OFFICIAL RECORDS; THENCE ALONG SAID SOUTHERLY LINE SOUTH 89° 56' 41" EAST, 1168.22 FEET TO THE EASTERLY LINE OF SAID LOT 4; THENCE ALONG SAID EASTERLY LINE SOUTH 0° 06' 09" WEST, 797.50 FEET TO THE NORTHERLY LINE OF THE LAND DESCRIBED IN THE GRANT DEED TO RICHLAND ROSEVILLE, LTD., RECORDED JULY 18, 2003 AS INSTRUMENT NO. 2003-0528688 OF SAID OFFICIAL RECORDS; THENCE ALONG SAID NORTHERLY LINE SOUTH 89° 48' 05" WEST, 1513.33 FEET TO THE EASTERLY LINE OF THE LAND DESCRIBED IN THE GRANT DEED TO GEORGE BUCCOLA AND IDA BUCCOLA, RECORDED MAY 5, 1947 IN BOOK 2049, PAGE 151 OF SAID OFFICIAL RECORDS; THENCE ALONG SAID EASTERLY LINE NORTH 2° 11' 57" WEST, 448.49 FEET TO SAID NORTHWESTERLY LINE OF SAID STRIP OF LAND SEVENTY-FIVE (75) FEET WIDE; THENCE ALONG SAID NORTHWESTERLY LINE NORTH 31° 22' 45" EAST, 284.70 FEET TO THE POINT OF BEGINNING.

APN: 0218-321-17-0-000

EXHIBIT "B" TO DEVELOPMENT AGREEMENT

Map showing Property and its location

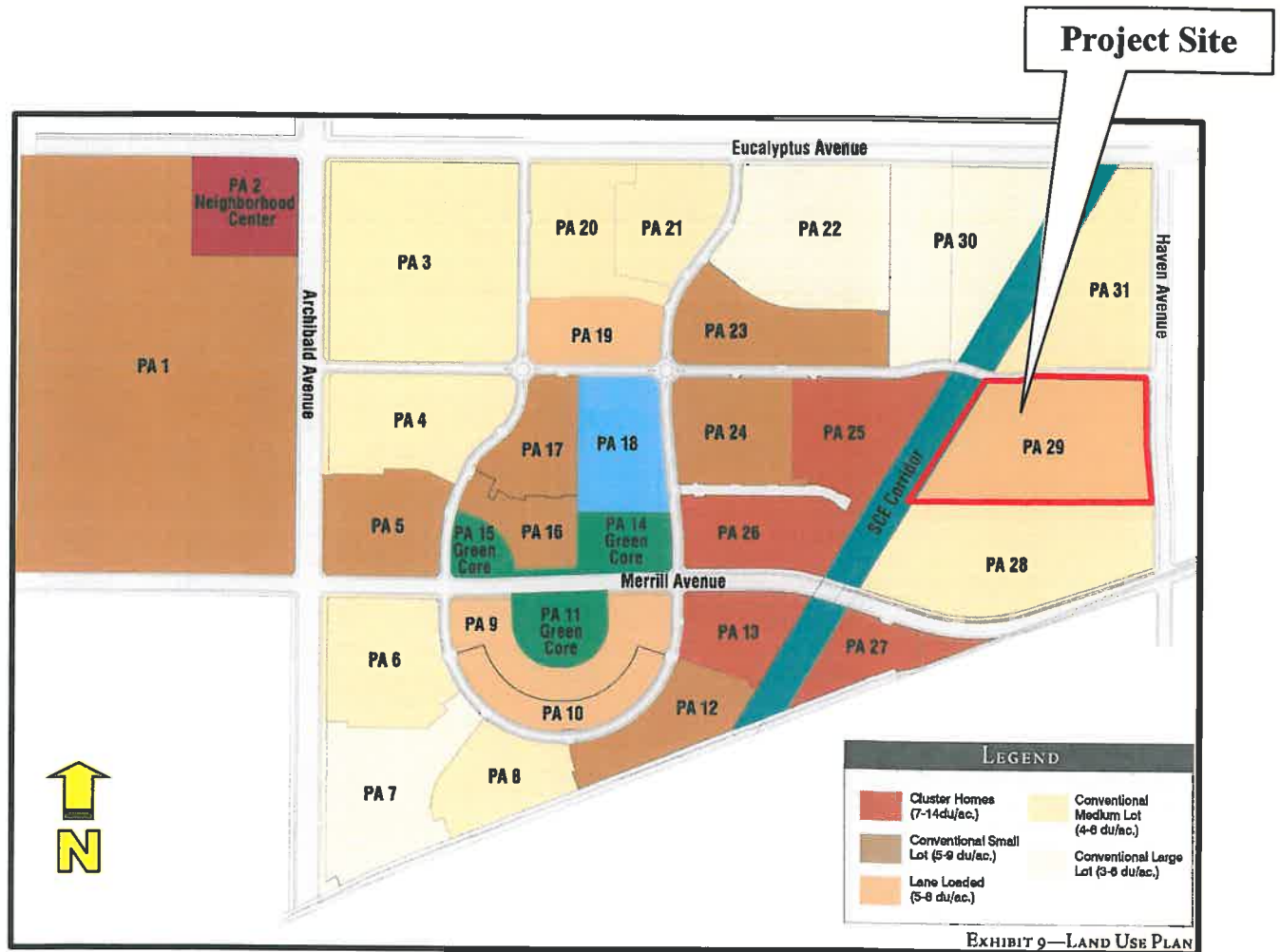


EXHIBIT "C"
TO DEVELOPMENT AGREEMENT

Existing Development Approvals

On September 26, 2006, the Planning Commission:

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

On October 19, 2006, the City Council:

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

On November 7, 2006, the City Council:

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

On March 27, 2007, the Planning Commission:

- a) Issued Resolution No. PC07-036 recommending City Council approval of an amendment to the Subarea 29 Specific Plan (PSPA07-007)

On May 1, 2007, the City Council:

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

On August 28, 2013 the Zoning Administrator:

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

EXHIBIT "C"
TO DEVELOPMENT AGREEMENT

Existing Development Approvals (Continued)

On March 24, 2015, the Planning Commission:

- b) Issued Resolution No. PC15-035 recommending City Council approval of an amendment to the Subarea 29 Specific Plan (PSPA14-002)

On April 21, 2015 the City Council:

- b) Issued Resolution No. 2015-030 approving an amendment to the Subarea 29 Specific Plan

On April 26, 2016, the Planning Commission:

- a) Issued Resolution No. PC16-016 recommending City Council approval of the Development Agreement (File No. PDA 15-005)
- b) Issued Resolution No. PC16-017 approving Tentative Tract Map 19907 (File No. PMTT14-024)

EXHIBIT "D"
TO DEVELOPMENT AGREEMENT

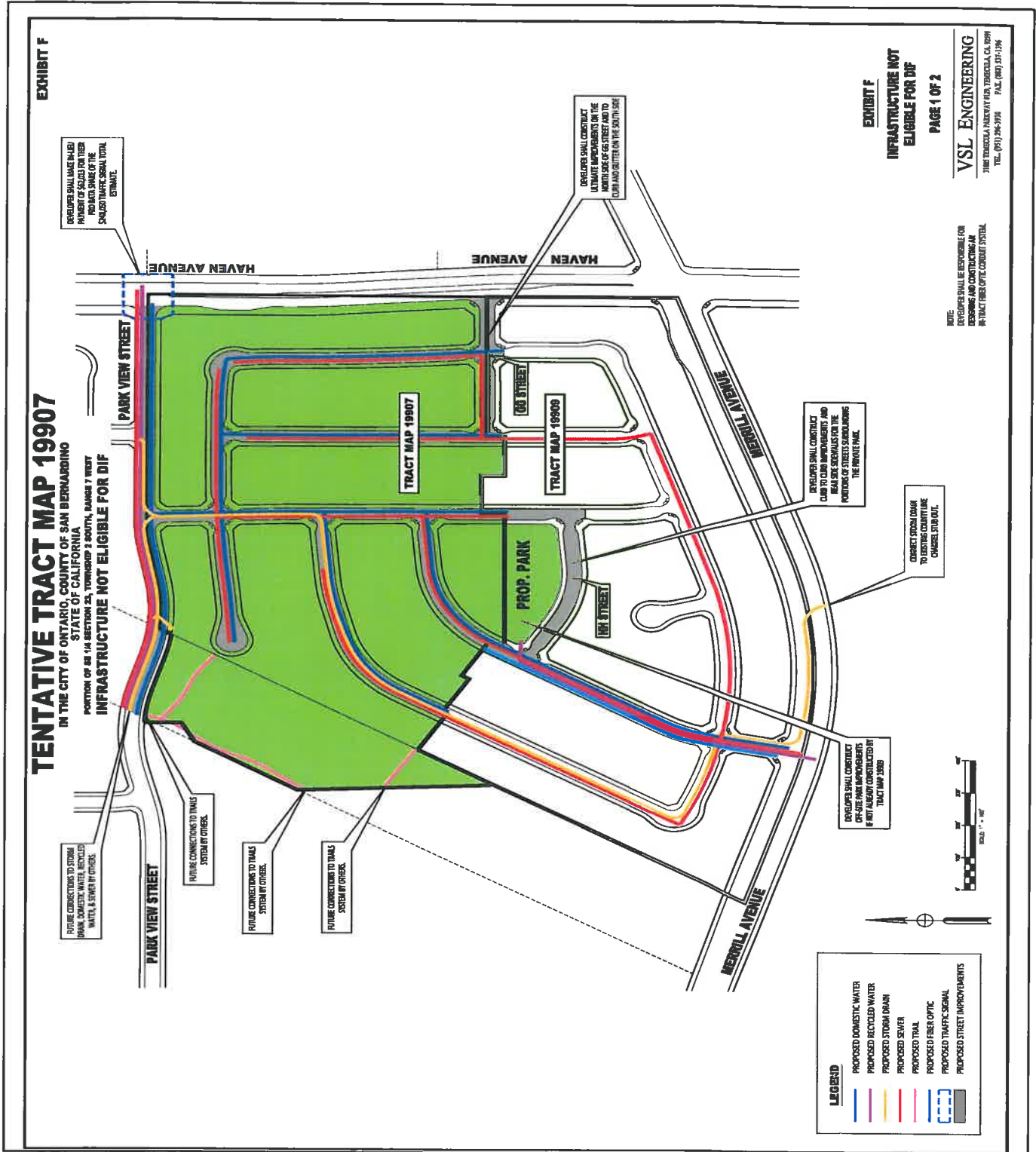
Existing Land Use Regulations

These documents are listed for reference only:

1. Subarea 29 (Park place) Environmental Impact Report, Resolution No. 2006-089
2. Subarea 29 (Park Place) General Plan Amendment (PGPA06-003), Resolution No. 2006-090
3. Subarea 29 (Park Place) Specific Plan (PSP03-003), Ordinance No. 2845
4. Amendment to the Subarea 29 Specific Plan (PSPA07-003), Resolution No. 2007-053
5. Amendment to the Subarea 29 Specific Plan (PSPA13-002), Decision No. 2013-025
6. Amendment to the Subarea 29 Specific Plan (PSPA14-002), Resolution No. 2015-030
7. Tentative Tract Map No. 19907, Resolution No. PC16-017
8. 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"

Required Infrastructure Improvements



Required Infrastructure Improvements (Continued)



CITY OF ONTARIO

Agenda Report
May 17, 2016

SECTION: PUBLIC HEARINGS

SUBJECT: A PUBLIC HEARING TO CONSIDER AN ORDINANCE APPROVING A DEVELOPMENT AGREEMENT (FILE NO. PDA15-006) BETWEEN THE CITY OF ONTARIO AND ROSEVILLE NMC, LLC, ONTARIO, FOR THE DEVELOPMENT OF UP TO 118 RESIDENTIAL UNITS (TT19909) ON 26.81 GROSS ACRES OF LAND WITHIN THE CONVENTIONAL MEDIUM LOT RESIDENTIAL DISTRICT (PLANNING AREA 28) OF THE SUBAREA 29 SPECIFIC PLAN, LOCATED AT THE NORTHWEST CORNER OF HAVEN AVENUE AND PARK VIEW STREET

RECOMMENDATION: That the City Council introduce and waive further reading of an ordinance approving a Development Agreement (File No. PDA15-006, on file with the Records Management Department) between the City of Ontario and Roseville NMC, LLC, Ontario, for the development of up to 118 residential units (TT19909) on 26.81 gross acres of land within the Conventional Medium Lot Residential district (Planning Area 28) of the Subarea 29 Specific Plan, located at the northwest corner of Haven Avenue and Park View Street (APN: 0218-321-30).

COUNCIL GOALS: Regain Local Control of the Ontario International Airport

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)

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 Subarea 29 Specific Plan development, thereby mitigating the increased cost associated with such services. In addition, the City will receive Public Service Funding fees plus development impact, compliance processing, licensing, and permitting fees. No Original Model Colony revenue will be used to support the Ontario Ranch development.

STAFF MEMBER PRESENTING: Scott Murphy, Planning Director

Prepared by: Rudy Zeledon

Department: Planning

City Manager

Approval: 

Submitted to Council/O.H.A.

05/17/2016

Approved: _____

Continued to: _____

Denied: _____

12

BACKGROUND: Roseville NMC, LLC, and the City recognized that the financial commitment required for construction in Ontario Ranch is substantial. To adequately forecast these costs and gain assurance that the project may proceed under the existing policies, rules and regulations, Roseville NMC, LLC, is entering into a Development Agreement with the City providing for the development of up to 118 dwelling 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 Roseville NMC, LLC, project, additional project related services, infrastructure and affordable housing requirements.

The Development Agreement proposes to include 26.81 acres of land within Planning Area 28 of the Subarea 29 Specific Plan as shown in Exhibit A (Subarea 29 Specific Plan Map). The Agreement grants Roseville NMC, LLC, a vested right to develop Tentative Tract Map 19909 as long as the Roseville NMC, LLC, complies with the terms and conditions of the Subarea 29 Specific Plan and Environmental Impact Report.

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

In considering the application at their meeting of April 26, 2016, 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 NMC development and, with a 5 to 0 vote (Resolution No. PC16-016), recommended approval of the Development Agreement to the City Council.

COMPLIANCE WITH THE ONTARIO PLAN: The proposed project is consistent with the principles, goals and policies contained within the Vision, Governance, and Policy Plan (General Plan) components of The Ontario Plan (TOP). More specifically, TOP goals and policies furthered by the proposed project are noted in the Planning Commission staff report (attached).

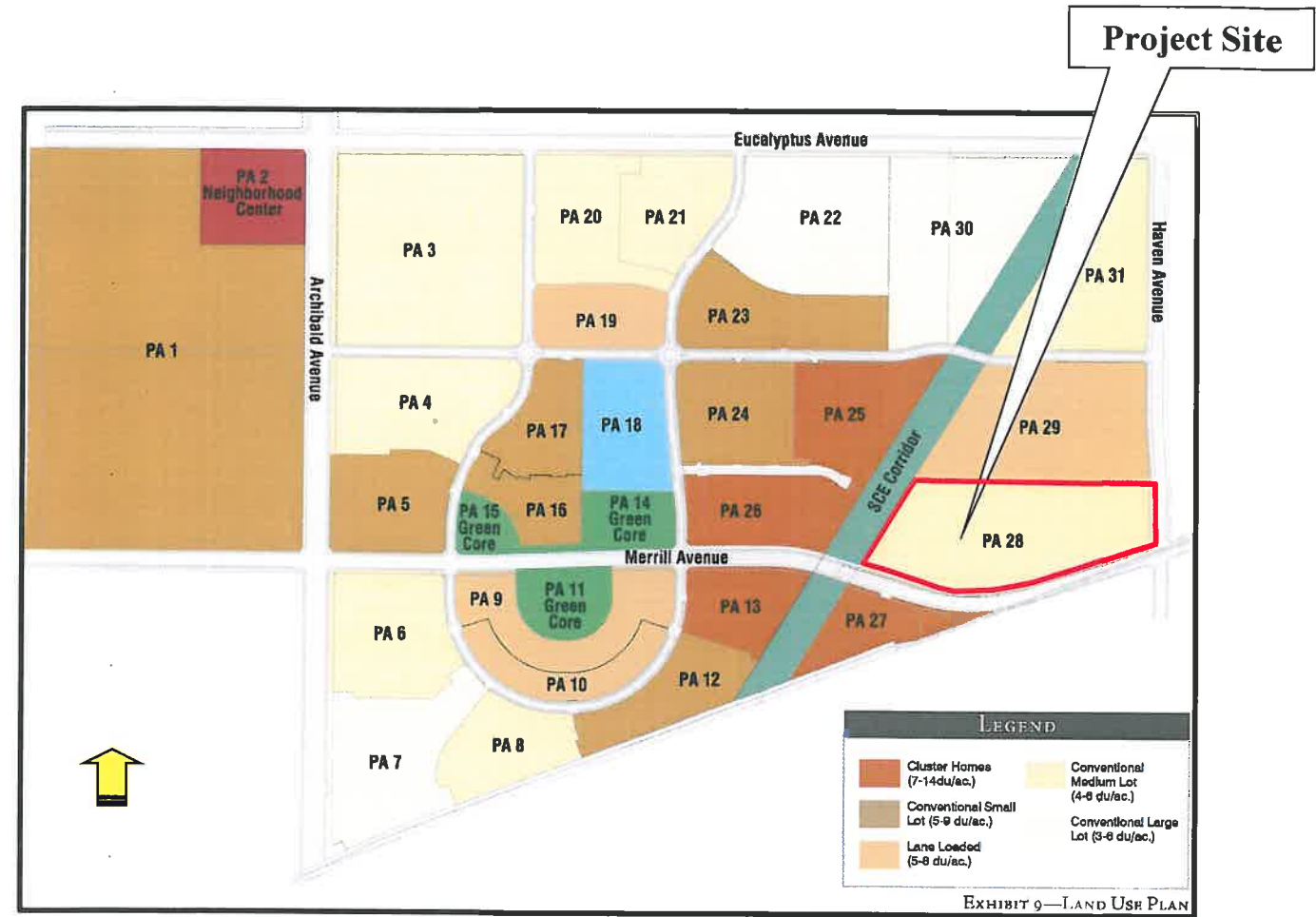
HOUSING ELEMENT COMPLIANCE: The project is consistent with the Housing Element of the Policy Plan (General Plan) component of The Ontario Plan, as the project does not affect the properties in the Available Land Inventory contained in Table A-3 (Available Land by Planning Area) of the Housing Element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

AIRPORT LAND USE COMPATIBILITY PLAN COMPLIANCE: The proposed project is located within the Airport Influence Area of Ontario International Airport (ONT) and Chino Airport, and was evaluated and found to be consistent with the policies and criteria of the Airport Land Use Compatibility Plan (ALUCP) for both airports.

ENVIRONMENTAL REVIEW: The environmental impacts of this project were previously analyzed in an addendum to the Subarea 29 Specific Plan EIR (SCH# 2004011009) that was adopted by the City Council on April 21, 2015. This application is consistent with the previously adopted addendum and introduces no new significant environmental impacts. The City's "Guidelines for the Implementation of

the California Environmental Quality Act (CEQA)" provide for the use of a single environmental assessment in situations where the impacts of subsequent projects are adequately analyzed. All previously adopted mitigation measures shall be a condition of project approval and are incorporated herein by reference.

EXHIBIT "A"
SUBAREA 29 SPECIFIC PLAN



ORDINANCE NO. _____

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF ONTARIO, CALIFORNIA, APPROVING A DEVELOPMENT AGREEMENT BETWEEN THE CITY OF ONTARIO AND ROSEVILLE NMC, LLC, FILE NO. PDA15-006, TO ESTABLISH THE TERMS AND CONDITIONS FOR DEVELOPMENT OF UP TO 118 RESIDENTIAL UNITS (TT 19909) ON 26.81 ACRES WITHIN PLANNING AREA 28 OF THE SUBAREA 29 SPECIFIC PLAN, LOCATED ON THE AT THE NORTHWEST CORNER OF HAVEN AVENUE AND PARK VIEW STREET, AND MAKING FINDINGS IN SUPPORT THEREOF (APN:0218-321-30).

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 the 4th day of April 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.

WHEREAS, on the 10th day of September 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 Roseville NMC, LLC, and the City of Ontario, File No. PDA15-006, concerning those 26.81 acres of land within Planning Area 28 of the Subarea 29 Specific Plan, located on the northwest corner of Haven Avenue and Park View Street and as legally described in the attached Development Agreement. Hereinafter in this Resolution, the Development Agreement is referred to as the "Development Agreement"; and

WHEREAS, on the 19th day of October 2006, the City Council of the City of Ontario certified the Subarea 29 Specific Plan EIR (SCH #2004011009); and

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

WHEREAS, on the 26th day of April 2016, 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. PC16-018) of the Development Agreement to the City Council; and

WHEREAS, the environmental impacts of this project were previously analyzed in an addendum to the Subarea 29 Specific Plan EIR (SCH# 2004011009) that was adopted by the City Council on April 21, 2015. This application is consistent with the previously adopted addendum and introduces no new significant environmental impacts. All previously adopted mitigation measures shall be a condition of project approval and are incorporated herein by reference; and

WHEREAS, on May 17, 2016, 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. Based upon substantial evidence presented to the City Council during the above-referenced hearing on May 17, 2016, including written and oral staff reports, together with public testimony, the City Council hereby specifically finds as follows:

a. The Development Agreement applies to 26.81 acres of land located at the northwest corner of Haven Avenue and Parkview Street within Planning Area 28 (Conventional Medium Lot Residential) of the Subarea 29 Specific Plan, and is presently vacant and previously used for dairy and agricultural uses; and

b. The property to the north of the Project Site is within Planning Area 29 (Conventional Medium Lot Residential) of the Subarea 29 Specific Plan, and is presently vacant and previously used for dairy and agricultural uses. The property to the east is within the Specific Plan (Ag Preserve) zoning district, and is presently vacant and previously used for dairy and agricultural uses. The property to the south is within Planning Area 27 (Cluster Home Residential) of the Subarea 29 Specific Plan, and is presently vacant and previously used for dairy and agricultural uses. The property to the west is within the SCE Corridor/Easement of the Subarea 29 Specific Plan, and is developed as an SCE Easement; and

c. The Development Agreement establishes parameters for the development of Tentative Tract 19909 within Planning Area 28 of the Subarea 29 Specific Plan for residential development. The Development Agreement also grants Roseville NMC, 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 Subarea 29 Specific Plan.

d. The Development Agreement focuses on 26.81 acres, consisting of Tentative Tract Map 19909, which subdivides 26.81 acres of land into 118 residential lots and 17 lettered lots within Planning Area 28; and

e. The Development Agreement will provide for the development of up to 118 residential units as established for Planning Area 28 of the Subarea 29 Specific Plan; and

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

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

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

i. This Development Agreement will not be materially injurious or detrimental to the adjacent properties and will have a significant impact on the environment or the surrounding properties but the benefits of the project outweighs the potential environmental impacts and the mitigation of these impacts were addressed in the Subarea 29 Specific Plan EIR certified by the City Council on October 19, 2006.

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

a. The subject property is suitable for the uses permitted in the proposed district in terms of access, size, and compatibility with existing land use in the surrounding area; and

b. The proposed Development Agreement will have significant impacts on the environment or the surrounding properties but the benefits of the project outweighs the potential environmental impacts and the environmental impacts have been adequately addressed in the Subarea 29 Specific Plan EIR (SCH# 2004011009); and

c. The proposed Development Agreement is in conformance with The Ontario Plan Policy Plan (General Plan).

SECTION 3. Based upon the findings and conclusions set forth in Sections 1 above, the City Council hereby approves the Development Agreement (File No. PDA15-006DA).

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

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

SECTION 6. *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 7. *Effective Date.* This Ordinance shall become effective 30 days following its adoption.

SECTION 8. *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 fifteen (15) days of the adoption. The City Clerk shall post a certified copy of this ordinance, including the vote for and against the same, in the Office of the City Clerk, in accordance with Government Code Section 36933.

PASSED, APPROVED, AND ADOPTED this _____ day of _____ 2016.

PAUL S. LEON, MAYOR

ATTEST:

SHEILA MAUTZ, CITY CLERK

APPROVED AS TO FORM:

BEST BEST & KRIEGER LLP
CITY ATTORNEY

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

I, SHEILA MAUTZ, City Clerk of the City of Ontario, DO HEREBY CERTIFY that foregoing Ordinance No. _____ was duly introduced at a regular meeting of the City Council of the City of Ontario held _____ and adopted at the regular meeting held _____, 2016 by the following roll call vote, to wit:

AYES: COUNCIL MEMBERS:

NOES: COUNCIL MEMBERS:

ABSENT: COUNCIL MEMBERS:

SHEILA MAUTZ, CITY CLERK

(SEAL)

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

SHEILA MAUTZ, CITY CLERK

(SEAL)

EXHIBIT A

**DEVELOPMENT AGREEMENT
BETWEEN THE CITY OF ONTARIO AND ROSEVILLE NMC, LLC**

**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

Roseville NMC, LLC,

a Florida limited liability company

_____, 2016

San Bernardino County, California

DEVELOPMENT AGREEMENT NO. PDA15-006

This Development Agreement (hereinafter "Agreement") is entered into effective as of the ____ day of _____, 2016, by and among the City of Ontario, a California municipal corporation (hereinafter "CITY"), and Roseville NMC, LLC, a Florida 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 that Subarea 29 Specific Plan (State Clearinghouse No. 2004011009) (the "FEIR"). The City Council found and determined that the FEIR was prepared in accordance with the requirements of the California Environmental Quality Act and adequately describes the impacts of the project described in the FEIR, which included consideration of this Agreement; and

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

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

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

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

WHEREAS, OWNER has incurred and will in the future incur substantial costs in order to assure development of the Property in accordance with this Agreement; and

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

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

COVENANTS

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

1. DEFINITIONS AND EXHIBITS.

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

1.1.1 "Agreement" means this Development Agreement.

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

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

1.1.4 "Development" means the improvement of the Property for the purposes of completing the structures, improvements and facilities comprising the Project including, but not limited to: grading; the construction of public infrastructure and public facilities related to the Project whether located within or outside the Property; the construction of buildings and structures; and the installation of landscaping.

“Development” does not include the maintenance, repair, reconstruction or redevelopment of any building, structure, improvement or facility after the construction and completion thereof.

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

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

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

1.1.7 “Development Impact Fee” means a monetary exaction, other than a tax or special assessment, whether characterized as a fee or a tax and whether established for a broad class of projects by legislation of general applicability or imposed on a specific project on an ad hoc basis, that is charged by a local agency to the applicant in connection with approval of a development project for the purpose of defraying all or a portion of the cost of public facilities related to the development project, and, for purposes of this Agreement only, includes fees collected under development agreements adopted pursuant to Article 2.5 of the Government Code (commencing with Section 65864) of Chapter 4. For purposes of this Agreement only, “Development Impact Fee” shall not include processing fees and charges imposed by CITY to cover the estimated actual costs to CITY of processing applications for Development Approvals or for monitoring compliance with any Development Approvals granted or issued, including, without limitation, fees for zoning variances; zoning changes; use permits; building inspections; building permits; filing and processing applications and petitions filed with the local agency formation commission or conducting preliminary proceedings or proceedings under the Cortese-Knox-Hertzberg Local Government Reorganization Act of 2000, Division 3 (commencing with Section 56000) of Title 5 of the Government Code; the processing of maps under the provisions of the Subdivision Map Act, Division 2 (commencing with Section 66410) of Title 7 of the Government Code; or planning services under the authority of Chapter 3 (commencing with Section

65100) of Division 1 of Title 7 of the Government Code, fees and charges as described in Sections 51287, 56383, 57004, 65104, 65456, 65863.7, 65909.5, 66013, 66014, and 66451.2 of the Government Code, Sections 17951, 19132.3, and 19852 of the Health and Safety Code, Section 41901 of the Public Resources Code, and Section 21671.5 of the Public Utilities Code, as such codes may be amended or superceded, 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 Tract Map conditions for Tract No. 19909 and as further described in Exhibit "F" (the "Infrastructure Improvements Exhibit").

1.1.13 "General Plan" means the General Plan adopted on January 27, 2010.

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 six (6) 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 “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 a 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 “Specific Plan” means that certain specific plan adopted by the City Council, and entitled, “Subarea 29 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 Maximum Daily Demand (“MDD”) made available through the construction of each Phase described in the Water Phasing Plan of the Construction Agreement. The number of Water Availability Equivalents (of portions thereof) required for the issuance of each building permit shall be based upon water demand factors and assumptions listed in the Construction Agreement and Construction Agreement Amendment as “Water Availability Equivalents by Land Use” for each land use category.

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

Exhibit “A” — Legal Description of the Property.

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

Exhibit “C” — Existing Development Approvals.

Exhibit “D” — Existing Land Use Regulations.

Exhibit “E” — Reserved (Not Used)

Exhibit “F” — Infrastructure Improvements Exhibits

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 forty percent (40%) 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.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Termination of this Agreement shall not constitute termination of any other land use entitlements approved for the Property. Upon the termination of this Agreement, no party shall have any further right or obligation hereunder except with

respect to any obligation to have been performed prior to such termination or with respect to any default in the performance of the provisions of this Agreement which has occurred prior to such termination or with respect to any obligations which are specifically set forth as surviving this Agreement. Upon such termination, any public facilities and services mitigation fees paid pursuant to Section 4.2 of this Agreement by OWNER to CITY for residential units on which construction has not yet begun shall be refunded to OWNER by CITY.

2.7 Notices.

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

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

If to CITY:

Al C. Boling, City Manager
City of Ontario
303 East "B" Street
Ontario California, California 91764

with a copy to:

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

If to OWNER:

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

with a copy to:

Courtney Nelson
Richland Investments
3161 Michelson Drive, Suite 425
Irvine, CA 92612

Email: Cnelson@richlandinvestments.com
Phone: (949) 261-7010 x210
Fax: (949) 261-7013

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

3. DEVELOPMENT OF THE PROPERTY.

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

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

3.3 Timing of Development. The parties acknowledge that OWNER cannot at this time predict when or the rate at which phases of the Property will be developed. Such decisions depend upon numerous factors which are not within the control of OWNER, such as market orientation and demand, interest rates, absorption, completion

and other similar factors. Since the California Supreme Court held in Pardee Construction Co. v. City of Camarillo (1984) 37 Ca1. 3d 465, that the failure of the parties therein to provide for the timing of development resulted in a later adopted initiative restricting the timing of development to prevail over such parties' agreement, it is the parties' intent to cure that deficiency by acknowledging and providing that OWNER shall have the right to develop the Property in such order and at such rate and at such times as OWNER deems appropriate within the exercise of its subjective business judgment.

3.4 Requirements 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 or 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 six (6) Model Units CITY may issue a maximum of six (6) building permits for Model Units. 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 all 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, storm drain, fiber optic communications, gas, electric, and other utility service to the Project. As a further condition of development approval, OWNER shall contract with the CITY for CITY-owned or operated utilities for this purpose, for such price and on such terms as may be available to similarly situated customers in the CITY.

3.7.1 OWNER agrees that development of the Project shall require the construction of Storm Drain facilities from the Property to the connection with the County Line Channel as described in the attached Exhibit F. OWNER shall be

responsible for the construction of the necessary extension of master planned Storm Drain facilities.

3.7.1.1 OWNER also acknowledges that Lot I of Tract Map No. 19909 shall be developed as a storm water retention area that provides for storm water retention for both Tract Map Nos. 19907 and 19909. OWNER agrees that OWNER shall accept storm water flows from Tract Map No. 19907 and OWNER agrees to allow access for the construction of the combined storm water retention basin as required for the development of Tract Map No. 19907. OWNER also agrees that if the combined storm water retention areas in Tract No. 19909 have not been constructed by others prior to OWNER requesting the first building permit for Production Units, OWNER shall be required to construct all combined storm water retention areas in Tract No. 19909, at OWNER's sole expense. Such combined storm water retention areas shall be transferred to a single homeowner's association and such homeowner's association shall be responsible for all maintenance of the combined storm water retention areas.

3.7.2 OWNER agrees that development of the Project shall require the construction of street improvements on Haven Avenue and Merrill Avenue, including a signalized intersection Haven and Merrill Avenues and 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 as described in Exhibit F consisting generally of the construction of the extension of permanent master planned water and recycled water utility improvements 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 the attached Exhibit F.

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" prior to September 1, 2016. If OWNER has not deposited such amount, with NMC Builders prior to September 1, 2016 then CITY shall be entitled to withhold issuance of any further building permits 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.

3.7.5 OWNER agrees that development of the Property shall require the extension of permanent master planned sewer infrastructure as described in the attached Exhibit F consisting generally of the construction of the extension of sewer infrastructure to serve the Property.

3.7.6 OWNER agrees that development of the Property shall require the extension of permanent master planned fiber optic communications infrastructure as described in the attached Exhibit F consisting generally of the construction of the extension of fiber optic communications infrastructure to serve the Property.

3.7.7 OWNER agrees that development of the adjacent area consisting of Tract Map No. 19907 requires that OWNER provide access as required for the development of Tract Map No. 19907 including access for the construction of utilities within the areas designated as future Streets AA, BB, and CC as shown on Tract Map No. 19909. OWNER also agrees that development of Tract Map No. 19907 shall require that OWNER provide access as required for the full-width construction of Street GG on Tract Map No. 19909. OWNER shall provide access as required for the construction of such utilities and street improvements for the development of Tract Map No. 19907.

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). In order to meet this standard, OWNER shall provide improved parks, developed in accordance with the CITY'S park standards in an amount equal to two (2) acres per 1,000 of projected population without credit, reimbursement, offset or consideration from CITY. CITY and OWNER agree that Lot J of Tract Map No. 19909 of 0.95 net acres shall be improved as an open space park area and shall be transferred to a homeowners' association and the homeowners' association shall be responsible for all maintenance of all developed 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.

4.2.3.1 OWNER acknowledges that Lot J of Tract Map No. 19909 is a portion of a combined open space park area. The combined open space park

area also includes Lot A of Tract Map No. 19907, which is owned by others. OWNER agrees that both Lot J of Tract Map No. 19909 and Lot A of Tract Map No. 19907 shall be developed as a single open space park area at the same time. OWNER agrees that if the combined open space park area has not been developed and improved by others prior to OWNER requesting the first building permit for Production Units, OWNER agrees that OWNER shall be required to develop both Lot J of Tract Map No. 19907 and Lot A of Tract Map No. 19909 as a combined open space park area, at OWNER's sole expense. Such combined open space park shall be transferred to a single homeowners' association. The homeowners' association shall be responsible for all maintenance of the combined open space park area.

4.3 Responsibility for Construction of Public Improvements.

4.3.1 Timely Construction of Public Infrastructure. The phasing of the area wide infrastructure construction within the Ontario Ranch area 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. 19909 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 the Tract Map for Tract No. 19909. All Infrastructure and Improvements shall be completed as required by the Subdivision Agreement/Tract Map conditions for Tract No 19909.

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 and DIF Reimbursement in accordance with the provisions of a separate Fee Credit Agreement between CITY and OWNER. Limitation on the use of DIF Credit issued to OWNER to offset OWNER's DIF payment obligations shall also be subject to the provisions of a separate Fee Credit Agreement. OWNER may also be eligible to receive reimbursement from DIF collected by CITY and paid by other development that benefits from OWNER's construction of DIF Program Infrastructure. Any such DIF

Reimbursement shall be subject to a Fee Credit Agreement between CITY and OWNER. CITY and OWNER agree that the Fee Credit Agreement between CITY and OWNER shall comply with CITY's adopted policies applicable to such agreements.

4.4 Affordable Housing Requirement.

4.4.1 Affordable Housing- Number of Units. OWNER shall provide a minimum number of affordable housing units, equivalent to 10% of the OWNER's total approved residential units within the Project, that are affordable to very low, low and moderate income households. Such requirement for affordable housing shall be met through one, or a combination of one or more, of the options provided in the following Sections 4.3.2.1 through 4.3.2.1. 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 4.3.1 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 and Thirty-four Cents (\$2.34) per square foot of residential development within OWNER's Project or, if pre-paid as set forth below, Two Dollars and Five Cents (\$2.05) 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 Thirty-four Cents (\$2.34) and the Two Dollars and Five Cents (\$2.05) per square foot amounts shall automatically be increased annually, commencing on July 1, 2016, and automatically each July 1 thereafter. Such adjustment shall be based on the percentage increase (but no decrease) in the Consumer Price Index (Los Angeles-Anaheim-Riverside County), 1950-2001 (1982-84=100) over the preceding year. The pre-paid Affordability In-Lieu Fee shall be calculated based on the maximum floor area ratio (FAR) permitted within the General Plan and any applicable FAR contained within the applicable specific plan, whichever is greater, and the Maximum Development Density. For purposes of this Agreement, "**Maximum Development Density**" shall be determined by multiplying the OWNER's Project's density for residential development potential as set forth in the General Plan or the applicable Specific Plan, whichever is less, by the net acreage of land within OWNER's Project. All "Affordability In-Lieu Fees" collected by the City shall be used to promote the construction of affordable housing within the City.

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

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

4.5 Schools Obligations.

4.5.1 Written Evidence of Compliance with Schools Obligations.

OWNER shall, either through joint or individual agreements between OWNER and the applicable school district(s), shall satisfy its new school obligations. The new school obligations for the Mountain View School District in the Ontario Ranch area have been projected to include the acquisition or dedication of school sites for, and construction of, up to eight (8) schools. Of these eight (8) schools, six (6) are to be elementary (K-5) grade schools and two (2) are to be middle grade schools. The new school obligations for the Chaffey Joint Union High School District in the Ontario Ranch area have been projected to include the dedication of a school site for, and construction of, an additional high school. The new school obligations for the applicable school district shall be met by 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 Eight Hundred Seventy-three dollars (\$1,873.00) 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 Thirty Six dollars and

Fifty Cents (\$936.50) per residential dwelling unit. The First Installment shall be based upon the “**Maximum Development Density**” of the OWNER Project, as defined on the approved Tract No. 19909 as 118 dwelling units. The First Installment shall be due and payable 30 days following City’s start of construction of Fire Station No. 9.

If the First installment amount is not paid for all residential dwelling units within the Project (based on the Maximum Development Density, or the number of units described on “B Maps” if approved) by January 1, 2017, the amount of the First Installment shall be increased. Such increase shall be based on the percentage increase (but no decrease) in the Consumer Price Index (Los Angeles-Anaheim-Riverside County), 1950-2001 (1982-84=100) over the preceding year. Additionally, the amount shall be further increased automatically by the percentage increase in the Consumer Price Index (Los Angeles-Anaheim-Riverside) on each January 1 thereafter.

4.6.2.2 Second Installment (Residential Uses). The Second Installment of the Public Services Funding Fee shall be Nine Hundred Thirty Six dollars and Fifty Cents (\$917.500) per residential unit. The Second Installment shall be paid at the time of the issuance of each building permit for the Project. The amount of the Second Installment shall increase automatically by percentage increase (but no decrease) in the Consumer Price Index (Los Angeles-Anaheim-Riverside County), 1950-2001 (1982-84=100) over the preceding year on January 1st of each year, beginning on January 1, 2017. 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 Six Cents (\$.56) per square foot of non-residential buildings. The single installment for non-residential uses shall be due and payable prior to the issuance of the building permit for a non-residential building. The amount of the Single Installment for non-residential uses shall automatically increase by percentage increase (but no decrease) in the Consumer Price Index (Los Angeles-Anaheim-Riverside County), 1950-2001 (1982-84=100) over the preceding year on January 1st of each year, beginning on January 1, 2017. OWNER may exercise the option to pay any single installment amounts for the remainder of the non-residential square footage within the Project on or before December 31st, before the Single Installment amount is automatically increased.

4.7 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 requires that the City shall not issue building permits or certificates of occupancy for the area of development within the Ontario Ranch area 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. 19909. The amount of Net MDD Water Availability Equivalents required for the issuance of each building permit 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 in the same manner and subject to the same limitations as provided for Certificates of Net MDD Availability in Section 4.7 of this Agreement.

4.8.1.1 Temporary Deferral of Requirement for Storm Water Treatment Capacity Availability. At this time, in the current opinion of the Regional Board staff, the regional storm water treatment facilities constructed by NMC Builders do not meet the requirements of the NPDES permit for the Property. Therefore, the CITY and NMC Builders have agreed that the provisions of Section 3.8 of the Construction Agreement have been temporarily suspended for an interim period and the requirements for evidence of Storm Water Treatment Capacity shall not apply to the Property, if OWNER's application for a tentative subdivision

map is approved during this interim period of the suspension. If it is later determined that the regional storm water treatment facilities constructed by NMC Builders may be utilized to meet the requirements of the NPDES permit for the Property and OWNER elects to utilize the regional storm water treatment facilities to meet the requirements of the NPDES permit then the requirements of Section 3.8 of the Construction Agreement shall be fully applicable to the Property and OWNER shall be required to provide evidence of sufficient Storm Water Treatment Capacity Availability for the total Net Residential Acreage.

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 Open Space. OWNER shall provide for the ongoing maintenance of all park 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. If requested by OWNER, the CITY shall use good faith efforts to require the adjacent Tract No. 19907 to join such homeowners' association for the purpose of maintaining such parks and open spaces.

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 8.4 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 CITY and NMC Builders LLC, 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 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, the property subject to such Tract 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 \$0.27 per square foot for Non-Residential buildings. These amounts shall be subject to an automatic increase at a rate not to exceed four (4%) percent per year. CITY shall be the sole and exclusive lead agency in the formation of any CFD, assessment district or other public financing mechanism within the Property; provided however, that the proceeds of any such CFD, assessment district, or financing mechanism may be used, subject to restrictions that may be imposed by applicable law, for the purposes of acquiring, constructing or maintaining public facilities to be owned or operated by other public agencies, including, without limitation those facilities owned or operated by a school district. In addition to the rights of the CITY pursuant to section 5.2 hereof, CITY shall have the right, but not the obligation, to condition the formation of any CFD, assessment district or other public financing mechanism within the Property on the OWNER mitigating all Project-related impacts to the applicable school district(s) as required by such school district(s). Written evidence by such school district(s) may be required by the CITY as the condition to the formation of any CFD, assessment district or other public financing mechanism within the Property, or any steps preliminary thereto, including, without limitation, the adoption of any resolution of intention to form such CFD, assessment district or other public financing mechanism within the Property. It is not the intent of the parties hereto, by this provision, to prohibit or otherwise limit the City's ability to take any and all necessary steps requisite to the formation of the CFD to finance City services through annual special taxes as set forth in this Section 5.1. Formation of any CFD, assessment district or other public financing mechanism within the Property, shall be subject to CITY's ability to make all findings required by applicable law and complying with all applicable legal procedures and requirements including, without limitation, CITY's public financing district policies as such policies may be amended from time to time. Notwithstanding the foregoing, it is acknowledged and agreed by the parties that nothing contained in this Agreement shall be construed as requiring CITY or the City Council to form any such district 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 6.3 herein, CITY may terminate or modify this Agreement for any failure of OWNER to perform any material duty or obligation of OWNER under this Agreement, or to comply in good faith with the terms of this Agreement (hereinafter referred to as "default"); provided, however, CITY may terminate or modify this Agreement pursuant to this Section only after providing written notice to OWNER of default setting forth the nature of the default and the actions, if any, required by OWNER to cure such default and, where the default can be cured, OWNER has failed to take such actions and cure such default within 60 days after the effective date of such notice or, in the event that such default cannot be cured within such 60 day period but can be cured within a longer time, has failed to commence the actions necessary to cure such default within such 60 day period and to diligently proceed to complete such actions and cure such default.

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

9. THIRD PARTY LITIGATION.

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

9.2 Third Party Litigation Concerning Agreement. OWNER shall defend, at its expense, including attorneys' fees, indemnify, and hold harmless CITY, its agents, officers and employees from any claim, action or proceeding against CITY, its agents, officers, or employees to attack, set aside, void, or annul the approval of this Agreement or the approval of any permit granted pursuant to this Agreement. CITY shall promptly notify OWNER of any such claim, action or proceeding, and CITY shall cooperate in the

defense. If CITY fails to promptly notify OWNER of any such claim, action or proceeding, or if CITY fails to cooperate in the defense, OWNER shall not thereafter be responsible to defend, indemnify, or hold harmless CITY. CITY may in its discretion participate in the defense of any such claim, action or proceeding.

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

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

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

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

10. MORTGAGEE PROTECTION.

The parties hereto agree that this Agreement shall not prevent or limit OWNER, in any manner, at OWNER's sole discretion, from encumbering the Property or any portion thereof or any improvement thereon by any mortgage, deed of trust or other security device securing financing with respect to the Property. CITY acknowledges that

the lenders providing such financing may require certain Agreement interpretations and modifications and agrees upon request, from time to time, to meet with OWNER and representatives of such lenders to negotiate in good faith any such request for interpretation or modification. CITY will not unreasonably withhold its consent to any such requested interpretation or modification provided such interpretation or modification is consistent with the intent and purposes of this Agreement. Any Mortgagee of the Property shall be entitled to the following rights and privileges:

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

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

(c) If CITY timely receives a request from a Mortgagee requesting a copy of any notice of default given to OWNER under the terms of this Agreement, CITY shall provide a copy of that notice to the Mortgagee within ten (10) days of sending the notice of default to OWNER. The Mortgagee shall have the right, but not the obligation, to cure the default during the remaining cure period allowed such party under this Agreement.

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

11. MISCELLANEOUS PROVISIONS.

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

applicant to comply in good faith with the terms or conditions of this Agreement, the City Clerk shall have notice of such action recorded with the San Bernardino County Recorder.

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

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

11.4 Interpretation and Governing Law. This Agreement and any dispute arising hereunder shall be governed and interpreted in accordance with the laws of the State of California. This Agreement shall be construed as a whole according to its fair language and common meaning to achieve the objectives and purposes of the parties hereto, and the rule of construction to the effect that ambiguities are to be resolved against the drafting party shall not be employed in interpreting this Agreement, all parties having been represented by counsel in the negotiation and preparation hereof.

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

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

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

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

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

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

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

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

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

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

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

hereto waive all provisions of law providing for the filing, removal or change of venue to any other court.

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

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

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

11.19 Agent for Service of Process. In the event OWNER is not a resident of the State of California or it is an association, partnership or joint venture without a member, partner or joint venturer resident of the State of California, or it is a foreign corporation, then in any such event, OWNER shall file with the Planning Director, upon its execution of this Agreement, a designation of a natural person residing in the State of California, giving his or her name, residence and business addresses, as its agent for the purpose of service of process in any court action arising out of or based upon this Agreement, and the delivery to such agent of a copy of any process in any such action shall constitute valid service upon OWNER. If for any reason service of such process upon such agent is not feasible, then in such event OWNER may be personally served with such process out of this County and such service shall constitute valid service upon OWNER. OWNER is amenable to the process so served, submits to the jurisdiction of the Court so obtained and waives any and all objections and protests thereto. OWNER for itself, assigns and successors hereby waives the provisions of the Hague Convention (Convention on the Service Abroad of Judicial and Extra Judicial Documents in Civil or Commercial Matters, 20 U.S.T. 361, T.I.A.S. No. 6638).

11.20 Estoppel Certificate. Within thirty (30) business days following a written request by any of the parties, the other party shall execute and deliver to the requesting

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

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

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

[SIGNATURES CONTAINED ON FOLLOWING PAGE]

**SIGNATURE PAGE
TO DEVELOPMENT AGREEMENT**

"OWNER"

Roseville NMC, LLC,
a Florida limited liability company

By: _____
Name: _____
Title: _____

Date: _____

"CITY"

CITY OF ONTARIO

By: _____
Al C. Boling
City Manager

Date: _____

ATTEST:

City Clerk, Ontario

APPROVED AS TO FORM:

BEST, BEST & KREIGER LLP

City Attorney

CALIFORNIA ALL-PURPOSE ACKNOWLEDGMENT

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

On _____, 2016
before me, _____
Date Name And Title Of Officer (e.g. "Jane Doe, Notary Public")

personally appeared _____
Name of Signer(s)

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

WITNESS my hand and official seal.

Signature of Notary Public

OPTIONAL

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

CAPACITY CLAIMED BY SIGNER

- ☐ Individual
☐ Corporate Officer

Title(s)

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

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

DESCRIPTION OF ATTACHED DOCUMENT

Title or Type of Document

Number Of Pages

Date Of Document

Signer(s) Other Than Named Above

EXHIBIT "A"
TO DEVELOPMENT AGREEMENT

Legal Description of Property

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

TENTATIVE MAP NO. T/F IS A SUBDIVISION OF THE LAND DESCRIBED AS FOLLOWS:

PARCEL 2 AS SHOWN ON APPROVING LOT LINE ADJUSTMENT LLA NO. 07-012, AS EVIDENCED BY DOCUMENT RECORDED JUNE 10, 2008 AS INSTRUMENT NO. 2008-0263646 OF OFFICIAL RECORDS, BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

THAT PORTION OF THE BONITO RANCHO SUBDIVISION, IN THE COUNTY OF SAN BERNARDINO, STATE OF CALIFORNIA PER MAP RECORDED IN BOOK 20, PAGE 49 OF MAPS, IN THE OFFICE OF THE COUNTY RECORDER OF SAID COUNTY, AND SECTION 23, TOWNSHIP 2 SOUTH, RANGE 7 WEST, SAN BERNARDINO MERIDIAN, ACCORDING TO THE OFFICIAL PLAT THEREOF, DESCRIBED AS FOLLOWS:

BEGINNING AT THE INTERSECTION OF THE WEST LINE OF HAVEN AVENUE AND THE SAN BERNARDINO-RIVERSIDE COUNTY LINE, SAID WEST LINE BEING 60.00 FEET WESTERLY OF THE CENTERLINE OF HAVEN AVENUE; THENCE NORTH 0°20'57" EAST ALONG SAID WEST LINE, 470.75 FEET; THENCE NORTH 89°57'71" WEST PARALLEL, WITH THE NORTHERLY LINE OF SAID SECTION 23, 1456.16 FEET TO THE EASTERLY LINE OF LAND CONVEYED TO GEORGE BUCCOLA AND IDA BUCCOLA BY DEED RECORDED IN BOOK 2049, PAGE 151 OF OFFICIAL RECORDS. THENCE SOUTH 2°05'59" EAST ALONG SAID EASTERLY LINE, 14.74 FEET TO A POINT ON THE SOUTHEASTERLY LINE OF THE EASEMENT DEDICATED TO SOUTHERN CALIFORNIA EDISON COMPANY BY DOCUMENT RECORDED IN BOOK 7283, PAGE 491 OF OFFICIAL RECORDS; THENCE SOUTH 31°37'51" WEST ALONG SAID SOUTHEASTERLY LINE, 683.75 FEET; THENCE SOUTH 73°22'17" EAST, 387.86 FEET TO THE BEGINNING OF A TANGENT CURVE CONCAVE NORTHERLY AND HAVING A RADIUS OF 1200.00 FEET; THENCE EASTERLY ALONG SAID CURVE THROUGH A CENTRAL ANGLE OF 30°03'59" AN ARC DISTANCE OF 629.71 FEET; THENCE SOUTH 13°23'16" EAST, 54.00 FEET TO A POINT ON THE SAN BERNARDINO-RIVERSIDE COUNTY LINE; THENCE NORTH 69°11'33" EAST ALONG SAID COUNTY LINE, 861.04 FEET TO THE POINT OF BEGINNING.

APN: 0218-321-30-0-000

EXHIBIT "B" TO DEVELOPMENT AGREEMENT

Map showing Property and its location

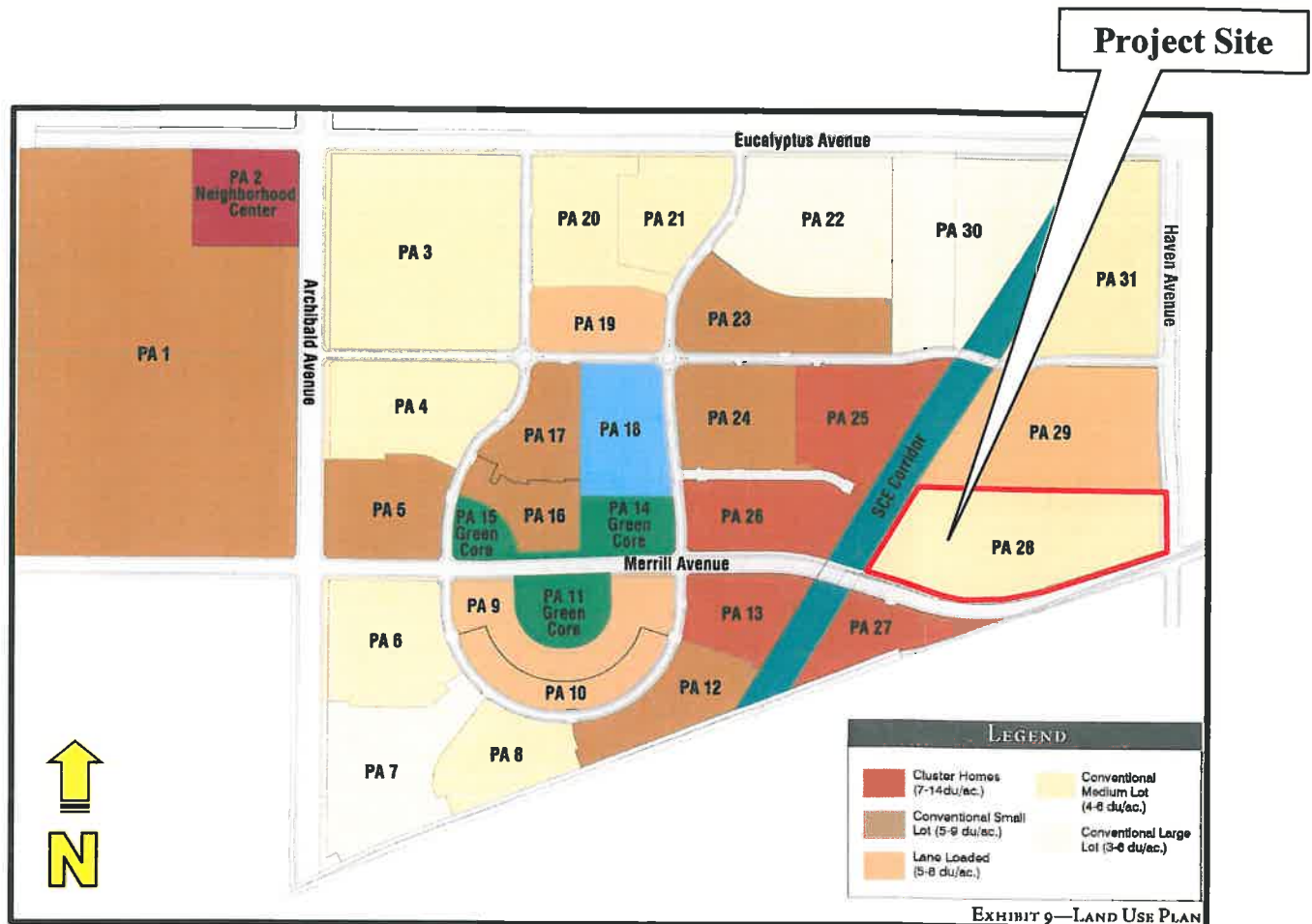


EXHIBIT "C"
TO DEVELOPMENT AGREEMENT

Existing Development Approvals

On September 26, 2006, the Planning Commission:

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

On October 19, 2006, the City Council:

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

On November 7, 2006, the City Council:

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

On March 27, 2007, the Planning Commission:

- a) Issued Resolution No. PC07-036 recommending City Council approval of an amendment to the Subarea 29 Specific Plan (PSPA07-007)

On May 1, 2007, the City Council:

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

On August 28, 2013 the Zoning Administrator:

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

EXHIBIT "C"
TO DEVELOPMENT AGREEMENT

Existing Development Approvals (Continued)

On March 24, 2015, the Planning Commission:

- b) Issued Resolution No. PC15-035 recommending City Council approval of an amendment to the Subarea 29 Specific Plan (PSPA14-002)

On April 21, 2015 the City Council:

- b) Issued Resolution No. 2015-030 approving an amendment to the Subarea 29 Specific Plan

On April 26, 2016, the Planning Commission:

- a) Issued Resolution No. PC16-018 recommending City Council approval of the Development Agreement (File No. PDA 15-006)
- b) Issued Resolution No. PC16-019 approving Tentative Tract Map 19909 (File No. PMTT14-025)

EXHIBIT "D"
TO DEVELOPMENT AGREEMENT

Existing Land Use Regulations

These documents are listed for reference only:

1. Subarea 29 (Park place) Environmental Impact Report, Resolution No. 2006-089
2. Subarea 29 (Park Place) General Plan Amendment (PGPA06-003), Resolution No. 2006-090
3. Subarea 29 (Park Place) Specific Plan (PSP03-003), Ordinance No. 2845
4. Amendment to the Subarea 29 Specific Plan (PSPA07-003), Resolution No. 2007-053
5. Amendment to the Subarea 29 Specific Plan (PSPA13-002), Decision No. 2013-025
6. Amendment to the Subarea 29 Specific Plan (PSPA14-002), Resolution No. 2015-030
7. Tentative Tract Map No. 19909, Resolution No. PC16-019
8. 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"

Required Infrastructure Improvements



Required Infrastructure Improvements (Continued)

