

**CITY OF ONTARIO
CITY COUNCIL AND HOUSING AUTHORITY
AGENDA
JUNE 7, 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 Public Comment at 6:30 p.m. immediately followed by the Regular Meeting and Public Hearings. No agenda item will be introduced for consideration after 10:00 p.m. except by majority vote of the City Council.

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

CALL TO ORDER (*OPEN SESSION*)

6:30 p.m.

ROLL CALL

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

PLEDGE OF ALLEGIANCE

Mayor pro Tem Dorst-Porada

INVOCATION

Pastor George Kelley, Grace Missionary Baptist Church

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 May 3, 2016, approving same as on file in the Records Management Department.

2. BILLS/PAYROLL

Bills April 3, 2016 through April 16, 2016 and **Payroll** April 3, 2016 through April 16, 2016, when audited by the Finance Committee.

3. RESOLUTIONS TO CALL AND GIVE NOTICE, CONSOLIDATE AND ADOPT REGULATIONS FOR CANDIDATE STATEMENTS FOR THE GENERAL MUNICIPAL ELECTION OF NOVEMBER 8, 2016

That the City Council adopt resolutions to call and set the date of the General Municipal Election as November 8, 2016; request the San Bernardino County Registrar of Voters to consolidate the election with the Statewide General Election; and adopt regulations for candidate statements.

RESOLUTION NO. _____

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF ONTARIO, CALIFORNIA, CALLING FOR THE HOLDING OF A GENERAL MUNICIPAL ELECTION TO BE HELD ON TUESDAY, NOVEMBER 8, 2016 FOR THE ELECTION OF CERTAIN OFFICERS AS REQUIRED BY THE PROVISIONS OF THE LAWS OF THE STATE OF CALIFORNIA, RELATING TO GENERAL LAW CITIES.

RESOLUTION NO. _____

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF ONTARIO, CALIFORNIA, REQUESTING THE BOARD OF SUPERVISORS OF THE COUNTY OF SAN BERNARDINO TO CONSOLIDATE A GENERAL MUNICIPAL ELECTION TO BE HELD ON TUESDAY, NOVEMBER 8, 2016, WITH THE STATEWIDE GENERAL ELECTION TO BE HELD ON THE DATE PURSUANT TO §10403 OF THE ELECTIONS CODE.

RESOLUTION NO. _____

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF ONTARIO, CALIFORNIA, ADOPTING REGULATIONS FOR CANDIDATES FOR ELECTIVE OFFICE PERTAINING TO CANDIDATES STATEMENTS SUBMITTED TO THE VOTERS AT AN ELECTION (TO BE HELD ON TUESDAY, NOVEMBER 8, 2016.)

4. BIENNIAL CONFLICT OF INTEREST CODE REVIEW

That the City Council receive the 2014 Local Agency Biennial Notice of the Political Reform Act requirement and direct staff to review the Conflict of Interest Code.

5. A RESOLUTION DELEGATING AMENDMENT AUTHORITY TO THE CITY MANAGER OVER THE CITY'S DEFERRED COMPENSATION PLAN AND FLEXIBLE BENEFITS PLAN

That the City Council adopt a resolution authorizing the City Manager to execute any and all plan documents, contracts, and amendments necessary for the ongoing administration of the City's deferred compensation plan and flexible benefits plan.

RESOLUTION NO. _____

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF ONTARIO, CALIFORNIA, DELEGATING AMENDMENT AUTHORITY TO THE CITY MANAGER OVER THE CITY'S DEFERRED COMPENSATION PLAN AND FLEXIBLE BENEFITS PLAN.

6. RESOLUTIONS MODIFYING THE PROCEDURES GOVERNING INDUSTRIAL DISABILITY RETIREMENT AND DELEGATING APPLICATION AND DETERMINATION AUTHORITY TO THE CITY MANAGER

That the City Council take the following actions:

- (A) Adopt a resolution consistent with Section 21156 of the Government Code of the State of California, rescinding Resolution No. 8966 and setting the procedures governing the making of determinations and findings required of an agency by the Public Employees' Retirement Law relative to the disability retirement of local safety members; and
- (B) Adopt a resolution rescinding Resolution No. 8967 and delegating to the City Manager, under Section 21173 of the Government Code of the State of California, the authority to make determinations of disability retirement.

RESOLUTION NO. _____

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF ONTARIO, CALIFORNIA, DELEGATING TO THE CITY MANAGER, UNDER SECTION 21173 OF THE GOVERNMENT CODE OF THE STATE OF CALIFORNIA, THE AUTHORITY TO MAKE DETERMINATIONS OF DISABILITY RETIREMENT.

RESOLUTION NO. _____

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF ONTARIO, CALIFORNIA, ADOPTING AND SETTING FORTH PROCEDURES GOVERNING THE DETERMINATIONS REQUIRED OF EMPLOYERS OF LOCAL SAFETY MEMBERS RELATIVE TO DISABILITY RETIREMENT BY SECTION 21156 OF THE GOVERNMENT CODE OF THE STATE OF CALIFORNIA AND NOT OTHERWISE ESTABLISHED THEREIN.

7. MANAGEMENT AGREEMENTS WITH SMG WORLDWIDE FOR OPERATION AND MANAGEMENT SERVICES COVERING THE CITIZENS BUSINESS BANK ARENA AND THE ONTARIO CONVENTION CENTER

That the City Council authorize the City Manager to negotiate and execute (1) a management agreement with SMG Worldwide, a Pennsylvania General Partnership, for the management and operation of the Citizens Business Bank Arena for twelve years with the mutual option to extend for up to two five-year periods; (2) an extension of the existing management and operations agreement for the Ontario Convention Center in order to have coterminous performance periods and expirations for the two City-owned facilities; and (3) amend the existing management agreement Anschultz Entertainment Group to effectuate the transfer of facility operators.

8. APPROVE UPDATED INVESTMENT POLICY

That City Council approve an update to the City's Investment Policy.

9. REJECTION OF ALL BIDS RECEIVED FOR THE FY 2015-16 / FY 2016-17 COLLECTOR / ARTERIAL, LOCAL STREET MAINTENANCE – SLURRY SEAL AND CDBG PAVEMENT AND ALLEY PAVEMENT MANAGEMENT REHABILITATION

That the City Council reject all bids received to date in connection with the FY 2015-16 / FY 2016-17 Collector / Arterial, Local Street Maintenance – Slurry Seal and CDBG Pavement and Alley Pavement Management Rehabilitation in accordance with Ontario Municipal Code Title 2, Chapter 6, Section 2-6.13(g).

10. A RESOLUTION ORDERING THE SUMMARY VACATION OF A PUBLIC EASEMENT IN A PORTION OF SUNKIST STREET WEST OF CYPRESS AVENUE

That the City Council adopt a resolution ordering the summary vacation of a public easement for street and other municipal purposes in a portion of Sunkist Street west of Cypress Avenue.

RESOLUTION NO. _____

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF ONTARIO, CALIFORNIA, ORDERING THE SUMMARY VACATION OF A PUBLIC EASEMENT IN A PORTION OF SUNKIST STREET WEST OF CYPRESS AVENUE.

11. 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 consider and adopt 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).

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. 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 consider and adopt 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).

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).

13. A LEASE AMENDMENT FOR A FIVE-YEAR TERM EXTENSION FOR OFFICE AND WAREHOUSE SPACE FOR THE POLICE DEPARTMENT

That the City Council authorize the City Manager to execute the Fourth Amendment to the Lease (on file with the Records Management Department) with Safari Industrial Corporation for a five-year term extension for office and warehouse space for the Police Department.

14. AMENDMENT TO A PROFESSIONAL SERVICES AGREEMENT FOR LEGAL AND TECHNICAL SERVICES PERTAINING TO WATER RESOURCES AND WASTEWATER MATTERS/NOSSAMAN LLP

That the City Council authorize the City Manager to execute a three year extension and amendment to the existing Professional Services Agreement (on file with Records Management Department) with Nossaman LLP of Los Angeles, California for on-going legal and technical services on an as-needed basis with respect to matters relating to sewer disposal, water supply, water rights and water quality, consistent with City Council approved work plans and budgets.

15. CONSTRUCTION CONTRACT FOR WATER MAIN IMPROVEMENTS IN SULTANA AVENUE AND "F" STREET/T.E. ROBERTS, INC.

That the City Council approve the plans and specifications, and award Contract No. UT 1516-07 (on file with the Records Management Department) to T. E. Roberts, Inc. of Orange, California for the construction of Water Main Improvements in Sultana Avenue and "F" Street in the amount of \$2,338,077 plus a 15% contingency of \$350,712, for a total amount of \$2,688,789 and authorize the City Manager to execute said contract and file a notice of completion at the conclusion of all construction activities related to the project.

PUBLIC HEARINGS

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

16. A PUBLIC HEARING TO CONSIDER AN URGENCY ORDINANCE PROHIBITING THE ISSUANCE OF NEW BUSINESS LICENSES OR NEW ENTITLEMENTS FOR COMPOSTING (GREEN WASTE AND MANURE) FACILITIES IN THE CITY OF ONTARIO

That the City Council adopt an interim urgency ordinance placing a temporary moratorium on the issuance of new business licenses or new entitlements for composting facilities.

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 URGENCY ORDINANCE OF THE CITY COUNCIL OF THE CITY OF ONTARIO, CALIFORNIA, TEMPORARILY PROHIBITING THE ISSUANCE OF NEW BUSINESS LICENSES OR NEW ENTITLEMENTS FOR COMPOSTING (GREEN WASTE AND MANURE) FACILITIES IN THE CITY OF ONTARIO.

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

Agenda Report

June 7, 2016

SECTION: CONSENT CALENDAR

SUBJECT: RESOLUTIONS TO CALL AND GIVE NOTICE, CONSOLIDATE AND ADOPT REGULATIONS FOR CANDIDATE STATEMENTS FOR THE GENERAL MUNICIPAL ELECTION OF NOVEMBER 8, 2016

RECOMMENDATION: That the City Council adopt resolutions to call and set the date of the General Municipal Election as November 8, 2016; request the San Bernardino County Registrar of Voters to consolidate the election with the Statewide General Election; and adopt regulations for candidate statements.

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

FISCAL IMPACT: The cost for election services to be provided by the County of San Bernardino is projected to be \$100,000. If approved, appropriations will be included in the Fiscal Year 2016-17 Proposed Budget.

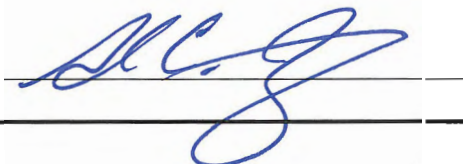
BACKGROUND: California Government Code provides that general law cities conduct elections every two years for the purpose of electing their public officials. Elections in Ontario are conducted in accordance with the California Elections Code. Additionally, the City Council adopted Ordinance No. 2392 on July 21, 1987, providing for consolidation of general municipal elections with the State's General Elections. In the November 2016 election, the community will be asked to elect two City Council Members, a City Clerk and a City Treasurer each for four-year terms.

The proposed resolutions are required by the California Elections Code and cover the options available for the translation, printing and payment for candidate statements. As in past elections, candidates have the option of submitting a candidate statement for inclusion in the voter information pamphlet. State law also requires that a Spanish language translation of each candidate statement be included in the voter information pamphlet. The cost of translation and printing of candidate statements has historically been the responsibility of the candidate. The cost of translation and printing of candidate statements varies

STAFF MEMBER PRESENTING: Al C. Boling, City Manager

Prepared by: Vicki Kasad
Department: Records Management/City Clerk

City Manager
Approval:



Submitted to Council/O.H.A.

06/07/2016

Approved:

Continued to:

Denied:

3

each election based on a number of factors including actual printing costs, the number of candidates statements submitted and the number of registered voters.

Election Code Section 13307 (a) (1) allows the government body of a local agency to determine either a 200 or 400 word limitation for candidate statement. Consistent with past City Council direction, staff recommends that the word count limitation for candidate statements be 400 words. The County has not yet estimated the cost for translating and publishing a 400 word candidate statement for this year's elections.

RESOLUTION NO. _____

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF ONTARIO, CALIFORNIA, CALLING FOR THE HOLDING OF A GENERAL MUNICIPAL ELECTION TO BE HELD ON TUESDAY, NOVEMBER 8, 2016 FOR THE ELECTION OF CERTAIN OFFICERS AS REQUIRED BY THE PROVISIONS OF THE LAWS OF THE STATE OF CALIFORNIA, RELATING TO GENERAL LAW CITIES.

WHEREAS, under the provisions of the laws relating to general law cities in the State of California a General Municipal Election shall be held on November 8, 2016, for the election of Municipal Officers; and

NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF ONTARIO, CALIFORNIA, DOES RESOLVE, DECLARE, DETERMINE AND ORDER AS FOLLOWS:

SECTION 1. That pursuant to the requirements of the laws of the State of California relating to General Law Cities there is called and ordered to be held in the City of Ontario, California, on Tuesday, November 8, 2016, a General Municipal Election for the purpose of electing two (2) Members of the City Council for the full term of four years; a City Clerk of the full term of four years; and a City Treasurer for the full term of four years.

SECTION 2. That the ballots to be used at the election shall be in form and content as required by law.

SECTION 3. That the City Clerk is authorized, instructed and directed to coordinate with the County of San Bernardino Registrar of Voters to procure and furnish any and all official ballots, notices, printed matter and all supplies, equipment and paraphernalia that may be necessary in order to properly and lawfully conduct the election.

SECTION 4. That the polls for the election shall be open at seven o'clock a.m. of the day of the election and shall remain open continuously from that time until eight o'clock p.m. of the same day when the polls shall be closed, pursuant to Election Code §10242, except as provided in §14401 of the Election Code of the State of California.

SECTION 5. That in all particulars not recited in this resolution the election shall be held and conducted as provided by law for holding municipal elections.

SECTION 6. That notice of the time and place of holding the election is given and the City Clerk is authorized, instructed and directed to give further or additional notice of the election, in time, form and manner as required by law.

SECTION 7. That in the event of a tie vote (if any two or more persons receive an equal and the highest number of votes for an office) as certified by the County of San Bernardino Registrar of Voters, the City Council, in accordance with Election Code

§15651(a) shall set a date and time and place and summon the candidates who have received the tie votes to appear and will determine the tie by lot or in accordance with Election Code §15651 (b), shall conduct a special runoff election to resolve the tie vote and such special runoff election is to be held on a Tuesday not less than 40 days nor more than 125 days after the administrative or judicial certification of the election which resulted in a tie vote.

SECTION 8. The City Council authorizes the City Clerk to administer said election and all reasonable and actual election expenses shall be paid by the City upon presentation of a properly submitted bill.

SECTION 9. The City Clerk of the City of Ontario shall certify as to the adoption of this Resolution.

PASSED, APPROVED, AND ADOPTED this 7th day of June 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 June 7, 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 June 7, 2016.

SHEILA MAUTZ, CITY CLERK

(SEAL)

RESOLUTION NO. _____

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF ONTARIO, CALIFORNIA, REQUESTING THE BOARD OF SUPERVISORS OF THE COUNTY OF SAN BERNARDINO TO CONSOLIDATE A GENERAL MUNICIPAL ELECTION TO BE HELD ON TUESDAY, NOVEMBER 8, 2016, WITH THE STATEWIDE GENERAL ELECTION TO BE HELD ON THE DATE PURSUANT TO §10403 OF THE ELECTIONS CODE.

WHEREAS, the City Council of the City of Ontario, California, called a General Municipal Election to be held on November 8, 2016, for the purpose of the election of two Members of the City Council, a City Clerk and a City Treasurer for full four year terms ending following the canvass of the November 2020 election; and

WHEREAS, it is desirable that the General Municipal election be consolidated with the Statewide General Election to be held on the same date and that within the city the precincts, polling places and election officers of the two elections be the same, and that the county election department of the County of San Bernardino canvass the returns of the General Municipal Election and that the election be held in all respects as if they were only one election.

NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF ONTARIO, CALIFORNIA, DOES RESOLVE, DECLARE, DETERMINE AND ORDER AS FOLLOWS:

SECTION 1. That pursuant to the requirements of §10403 of the Elections Code, the Board of Supervisors of the County of San Bernardino is hereby requested to consent and agree to the consolidation of a General Municipal Election with the Statewide General election on Tuesday, November 8, 2017 for the purpose of the election of two Members of the City Council, a City Clerk and a City Treasurer for full four year terms which end following the canvass of the November, 2020 election.

SECTION 2. That the County Election Department is authorized to canvass the returns of the General Municipal Election. The election shall be held in all respects as if there were only one election, and only one form of ballot shall be used.

SECTION 3. That the Board of Supervisors is requested to issue instructions to the county election department to take any and all steps necessary for the holding of the consolidated election.

SECTION 4. That the City of Ontario recognizes that additional costs will be incurred by the County by reason of this consolidation and agrees to reimburse the County for any related costs.

SECTION 5. That the City Clerk is directed to file a certified copy of this resolution with the Board of Supervisors and the county Election Department of the County of San Bernardino

SECTION 6. That the City Clerk of the City of Ontario shall certify as to the adoption of this Resolution.

PASSED, APPROVED, AND ADOPTED this 7th day of June 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 June 7, 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 June 7, 2016.

SHEILA MAUTZ, CITY CLERK

(SEAL)

RESOLUTION NO. _____

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF ONTARIO, CALIFORNIA, ADOPTING REGULATIONS FOR CANDIDATES FOR ELECTIVE OFFICE PERTAINING TO CANDIDATES STATEMENTS SUBMITTED TO THE VOTERS AT AN ELECTION (TO BE HELD ON TUESDAY, NOVEMBER 8, 2016).

WHEREAS, §13307 of the Elections Code of the State of California provides that the governing body of any local agency adopt regulations pertaining to materials prepared by any candidate for a municipal election, including costs of the candidates statement.

NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF ONTARIO, CALIFORNIA, DOES RESOLVE, DECLARE, DETERMINE AND ORDER AS FOLLOWS:

SECTION 1. GENERAL PROVISIONS. That pursuant to §13307 of the Elections Code of the State of California, each candidate for elective office to be voted for at an Election to be held in the City of Ontario on November 8, 2016, may include the name, age and occupation of the candidate and a brief description of no more than (400) words of the candidate's education and qualification expressed by the candidate himself or herself. The statement shall not include party affiliation of the candidate, nor membership or activity in partisan political organizations. The statement shall be filed (in typewritten form) in the office of the City Clerk at the time the candidate's nomination papers are filed. The statement may be withdrawn, but not changed, during the period for filing nomination papers and until 5:00 p.m. of the next working day after the close of the nomination period.

SECTION 2. FOREIGN LANGUAGE POLICY.

A. Pursuant to the Federal Voting Rights Act, candidates' statements will be translated into all languages required by the County of San Bernardino. The County is required to translate into the following language: Spanish.

B. The County will mail separate sample ballots and candidates statements in Spanish to only those voters who are on the county voter file as having requested a sample ballot in a particular language. The County will also make the sample ballots and candidates statements in the required language available at all polling places, on the County's website and in the Election Official's office.

SECTION 3. PAYMENT

A. The candidate shall be required to pay for the cost of printing the candidates statement in English in the main voter pamphlet.

B. The candidate shall be required to pay of the cost of printing the candidates statement in Spanish in the main voter pamphlet.

The City Clerk shall estimate the total cost of printing, handling, transmitting and mailing the candidates statements filed pursuant to this section, including costs incurred as a result of complying with the Voting Rights Act of 1965 (as amended), and require each candidate filing a statement to pay in advance to the local agency his or her estimated pro rata share as a condition of having his or her statement included in the voter's pamphlet. In the event the estimated payment is required, the estimate is just an approximation of the actual cost that varies from one election to another election and may be significantly more or less than the estimate, depending on the actual number of candidates filing statements. Accordingly the clerk is not bound by the estimate and may, on a pro rata basis, bill the candidate for additional actual expense or refund any excess paid depending on the final actual cost. In the event of underpayment the clerk may require the candidate to pay the balance of the cost incurred. In the event of overpayment, the clerk shall prorate the excess amount among the candidates and refund the excess amount paid within 30 days of the election.

SECTION 4. MISCELLANEOUS

- A. All translations shall be provided by professionally certified translators.
- B. The City Clerk shall NOT allow bold type, underlining, capitalization, indentations, bullets or leading hyphens.
- C. The City Clerk shall comply with all recommendations and standards set forth by the California Secretary of State regarding occupational designations and other matters relating to elections.

SECTION 5. ADDITIONAL MATERIALS. No candidate will be permitted to include additional material in the sample ballot package.

SECTION 6. That the City Clerk shall provide each candidate or the candidate's representative a copy of this Resolution at the time nominating petitions are issued.

SECTION 7. That all previous resolutions establishing council policy on payment for candidates statements are repealed.

SECTION 8. That this resolution shall apply only to the election to be held on November 8, 2016 and then shall be repealed.

SECTION 9. That the City Clerk of the City of Ontario shall certify as to the adoption of this Resolution.

PASSED, APPROVED, AND ADOPTED this 7th day of June 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 June 7, 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 June 7, 2016.

SHEILA MAUTZ, CITY CLERK

(SEAL)

CITY OF ONTARIO

Agenda Report

June 7, 2016

SECTION: CONSENT CALENDAR

SUBJECT: BIENNIAL CONFLICT OF INTEREST CODE REVIEW

RECOMMENDATION: That the City Council receive the 2014 Local Agency Biennial Notice of the Political Reform Act requirement and direct staff to review the Conflict of Interest Code.

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

FISCAL IMPACT: The nominal costs associated with staff review of the City's Conflict of Interest Code are included in the Records Management Department's annual baseline operating budget.

BACKGROUND: The Political Reform Act requires every local government agency to review its conflict of interest code biennially to determine if it is accurate or, alternatively, if the code must be amended. The City's Conflict of Interest Code was last amended on October 21, 2014. To meet the requirements of the Political Reform Act, it is necessary to again review the Conflict of Interest Code to determine whether amendments are necessary based on the following:

- The addition, deletion or modification of the specific types of investments, business positions, interests in real property, and sources of income which are reportable for the designated positions.
- The reclassification, renaming or deletion of previously designated positions.

Any recommendations for updates or confirmation that the current Conflict of Interest Code is accurate will be presented to the City Council for review before the State's deadline of October 1, 2016.

STAFF MEMBER PRESENTING: Al C. Boling, City Manager

Prepared by: Vicki Kasad
Department: Records Management/City Clerk

City Manager
Approval: 

Submitted to Council/O.H.A. 06/07/2016
Approved: _____
Continued to: _____
Denied: _____

CITY OF ONTARIO

Agenda Report

June 7, 2016

SECTION: CONSENT CALENDAR

SUBJECT: A RESOLUTION DELEGATING AMENDMENT AUTHORITY TO THE CITY MANAGER OVER THE CITY'S DEFERRED COMPENSATION PLAN AND FLEXIBLE BENEFITS PLAN

RECOMMENDATION: That the City Council adopt a resolution authorizing the City Manager to execute any and all plan documents, contracts, and amendments necessary for the ongoing administration of the City's deferred compensation plan and flexible benefits plan.

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

FISCAL IMPACT: None.

BACKGROUND: Currently all City employees are eligible to participate in the City's Deferred Compensation Plan; and full time City employees are eligible to participate in the City's IRS Section 125 Flexible Benefits Plan. Periodically, all City benefits plans are reviewed to ensure compliance with State and Federal regulations. A recent review by staff has identified the need for an updated City Council resolution delegating authority to the City Manager to execute any documents, agreements, and contracts, including amendments that are incidental and necessary to the ongoing administration of the Plans to ensure an uninterrupted plan administration program.

STAFF MEMBER PRESENTING: Al C. Boling, City Manager

Prepared by: Christine Lowe
Department: Human Resources

City Manager
Approval: 

Submitted to Council/O.H.A. 06/07/2016

Approved: _____

Continued to: _____

Denied: _____

RESOLUTION NO. _____

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF ONTARIO, CALIFORNIA, DELEGATING AMENDMENT AUTHORITY TO THE CITY MANAGER OVER THE CITY'S DEFERRED COMPENSATION PLAN AND FLEXIBLE BENEFITS PLAN.

WHEREAS, the City of Ontario ("City") maintains a 457 Deferred Compensation Plan and a Flexible Benefits Plan (collectively, "Plans") for the benefit of certain employees; and

WHEREAS, the City Council wishes to delegate authority to the City Manager to execute any documents, agreements and contracts, including amendments and other documents that are incidental and necessary to the ongoing administration of the Plans.

NOW, THEREFORE, BE IT RESOLVED, that the City Council of the City of Ontario authorizes the City Manager to execute any and all documents that are incidental and necessary to the ongoing administration of the City of Ontario's 457 Deferred Compensation Plan;

AND BE IT FURTHER RESOLVED, that the City Council further authorizes the City Manager to execute any and all documents that are incidental and necessary to the ongoing administration of the City of Ontario's IRS Section 125 Flexible Benefits Plan.

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

PASSED, APPROVED, AND ADOPTED this 7th day of June 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 June 7, 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 June 7, 2016.

SHEILA MAUTZ, CITY CLERK

(SEAL)

CITY OF ONTARIO

Agenda Report
June 7, 2016

SECTION: CONSENT CALENDAR

SUBJECT: RESOLUTIONS MODIFYING THE PROCEDURES GOVERNING INDUSTRIAL DISABILITY RETIREMENT AND DELEGATING APPLICATION AND DETERMINATION AUTHORITY TO THE CITY MANAGER

RECOMMENDATION: That the City Council take the following actions:

- (A) Adopt a resolution consistent with Section 21156 of the Government Code of the State of California, rescinding Resolution No. 8966 and setting the procedures governing the making of determinations and findings required of an agency by the Public Employees' Retirement Law relative to the disability retirement of local safety members; and
- (B) Adopt a resolution rescinding Resolution No. 8967 and delegating to the City Manager, under Section 21173 of the Government Code of the State of California, the authority to make determinations of disability retirement.

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

FISCAL IMPACT: None.

BACKGROUND: The City of Ontario utilizes CalPERS for employee retirement benefits. In April 2016, CalPERS conducted a standard review as part of their internal digitization process and concluded that the City of Ontario must take City Council action to update its industrial disability retirement procedures and delegation of authority.

Action by the City Council will rescind Resolution No. 8966, adopted December 18, 1979, which set forth procedures governing the determination required of employers relative to local safety member disability retirement by Section 21156 of the Government Code of the State of California. The Public Employees' Retirement Law was reorganized and renumbered in 1995, and the attached resolutions and items contained within Exhibit "A" of the proposed resolution update the references to the newly

STAFF MEMBER PRESENTING: Al C. Boling, City Manager

Prepared by: Christine Lowe
Department: Human Resources

City Manager
Approval: 

Submitted to Council/O.H.A. 06/07/2016

Approved: _____

Continued to: _____

Denied: _____

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updated Government Code Sections. Modifications are non-substantive and considered administrative in nature.

Adoption of the second proposed resolution by the City Council will rescind Resolution No. 8967, adopted December 18, 1979. This action will delegate authority to the City Manager to certify to CalPERS as to whether any local safety member of the City of Ontario is disabled and whether any such disability is industrial in nature pursuant to the Public Employees' Retirement Law. The action will also authorize the City Manager to complete any necessary applications on behalf of the Agency and to initiate requests for reinstatement of such employees who are retired for disability reasons. These actions will ensure compliance with Section 21173 of the Government Code of the State of California which states, "The governing body of a contracting agency may delegate any authority or duty conferred or imposed under this article to a subordinate officer subject to conditions it may impose."

RESOLUTION NO. _____

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF ONTARIO, CALIFORNIA, DELEGATING TO THE CITY MANAGER, UNDER SECTION 21173 OF THE GOVERNMENT CODE OF THE STATE OF CALIFORNIA, THE AUTHORITY TO MAKE DETERMINATIONS OF DISABILITY RETIREMENT.

WHEREAS, the City of Ontario, California (hereinafter referred to as the Agency) is a contracting agency of the California Public Employees' Retirement System (CalPERS); and

WHEREAS, the Public Employees' Retirement Law requires a contracting agency to determine whether an employee of such agency in which he/she is classified as a local safety member is disabled for purposes of the Public Employees' Retirement Law and whether such disability is "industrial" within the meaning of such law; and

WHEREAS, the City Council of the City of Ontario has adopted and otherwise established and set forth appropriate procedures relative to making such determinations and resolving disputes, not otherwise provided by the Government Code of the State of California; and

WHEREAS, the City Council of the City of Ontario has determined upon legal advice that it may delegate authority to make such determinations to the incumbent of the position of City Manager.

NOW, THEREFORE, BE IT RESOLVED that the City Council of the City of Ontario hereby rescinds Resolution No. 8967 in Title 8 and delegates to the City Manager its authority and duty to certify to CalPERS as to whether any local safety member of the City of Ontario is disabled for purposes of the Public Employees' Retirement Law and whether any such disability is industrial in nature pursuant to the Public Employees' Retirement Law; and

BE IT FURTHER RESOLVED, that the City Manager is authorized to make application on behalf of the Agency for disability retirement of employees in employment in which they are local safety members and to initiate requests for reinstatement of such employees who are retired for disability.

This Resolution supersedes Resolution No. 8967.

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

PASSED, APPROVED, AND ADOPTED this 7th day of June 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 June 7, 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 June 7, 2016.

SHEILA MAUTZ, CITY CLERK

(SEAL)

RESOLUTION NO. _____

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF ONTARIO, CALIFORNIA, ADOPTING AND SETTING FORTH PROCEDURES GOVERNING THE DETERMINATIONS REQUIRED OF EMPLOYERS OF LOCAL SAFETY MEMBERS RELATIVE TO DISABILITY RETIREMENT BY SECTION 21156 OF THE GOVERNMENT CODE OF THE STATE OF CALIFORNIA AND NOT OTHERWISE ESTABLISHED THEREIN.

WHEREAS, the City of Ontario, California is an employer of local safety members as defined by the Government Code of the State of California; and

WHEREAS, the City of Ontario, California (hereinafter referred to as the Agency) is a contracting agency of the California Public Employees' Retirement System (CalPERS); and

WHEREAS, the Public Employees' Retirement Law requires that a contracting agency determine whether an employee of such agency in employment in which he/she is classified as a local safety member is disabled for purposes of the Public Employees' Retirement Law and whether such disability is "industrial" within the meaning of such law; and

WHEREAS, the City Council recognizes that there is a requirement to provide for "due process" in making such determinations and findings as are required by, and in the administration of, the Public Employees' Retirement Law.

NOW, THEREFORE, BE IT RESOLVED that the City Council of the City of Ontario, California does hereby rescind Resolution No. 8966 in Title 8 and adopt and set forth the procedures contained in "EXHIBIT A", and attached hereto as the procedures governing the making of determinations and findings required of an agency by the Public Employees' Retirement Law relative to the disability retirement of local safety members; and

BE IT FURTHER RESOLVED that the City Manager or his or her specifically designated representative is the only one authorized to administer this resolution except as may be otherwise provided herein.

This Resolution supersedes Resolution No. 8966.

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

PASSED, APPROVED, AND ADOPTED this 7th day of June 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 June 7, 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 June 7, 2016.

SHEILA MAUTZ, CITY CLERK

(SEAL)

EXHIBIT A

Procedures Governing the Determinations of Disability Retirement for Local Safety Members

The Government Code of the State of California, Section 21156 provides that a local safety member shall be retired for disability only upon determination by the governing body of the contracting agency that he or she is incapacitated physically or mentally for the performance of the duties of his or her position. The governing body of the contracting agency shall also determine whether or not the disability is industrial. Further, any local safety member retired for disability shall not be reinstated from retirement except upon the determination of the governing body of the contracting agency from whose employment he or she was retired, that he or she is no longer incapacitated for the duties of the position held when retired.

The following procedure is prescribed for carrying out these provisions of the Government Code:

I. Determinations for Disability Retirement

Upon proper application for disability retirement by either the employee or the City, and notification thereof, by the Public Employees' Retirement System, the City Manager, or his or her specifically designated representative, shall determine whether the local safety member is incapacitated for the performance of duties within the meaning of the retirement law. In the event the local safety member is found to be so incapacitated, the City Manager shall determine whether such disability is industrial.

a. The findings and determinations of the City Manager in this regard shall be based upon such competent medical opinion as may be developed as a result of examination and/or treatment of the local safety member and other relevant and related facts and information as may be submitted in writing by the local safety member and the Personnel Officer on behalf of the City.

b. The City Manager shall advise the local safety member and the Personnel Officer of the date by which any medical opinion and other relevant and related facts and information must be submitted, in writing, for consideration by the City Manager in making the required determinations. Such notification shall be made in writing and shall provide a reasonable period of time for the submission of such written evidence. In this regard, the local safety member and the City shall be provided with all reports, evidence and relevant facts and information to be utilized and/or considered by the City Manager in making the required determinations. In any event, this period of time shall not be less than ten (10) working days prior to the date established by the City Manager for consideration of the evidence.

c. The City Manager shall have five (5) working days following the submission of all written evidence, within which to consider the evidence and to make the required findings and determinations. Having made such findings and determinations, the City Manager shall advise, in writing, the local safety member and the Personnel Officer of such findings and determinations.

d. In cases where there is no dispute as to the findings and determination of the City Manager, the decision of the City Manager shall be final and the City Manager shall apprise the Public Employees' Retirement System of his findings and determination and shall instruct the Public Employees' Retirement System to implement the appropriate retirement action.

II. Right to Appeal

In the event the local safety member does not concur with the findings and determination of the City Manager, the local safety member may appeal to the City Council.

a. Notice of appeal shall be made in writing and delivered to the City Clerk of the City of Ontario not more than ten (10) working days following receipt of the notification of the City Manager's findings and determination. Upon receipt of the notice of appeal to the City Council, the City Clerk shall advise the City Manager, in writing, of the notice of appeal and the City Manager shall: (1) take no further action with regard to implementing the retirement action prescribed thus far in this procedure; and (2) shall cause the Office of Administrative Hearings to be contacted to secure the appointment of an Administrative Law Judge (ALJ) and to establish a tentative date, time and place for the required hearing.

b. At the regular meeting of the City Council, immediately following receipt of the notice of appeal by the City Clerk: (1) the City Clerk shall cause the notice of appeal to be brought before the City Council; (2) the City Manager shall advise the City Council of the tentative date, time and place established for the hearing; and (3) the City Council shall, by resolution, (a) acknowledge receipt of the notice of appeal, (b) grant an administrative hearing to be conducted by a qualified hearing officer of the Office of Administrative Hearings of the State of California, and (c) establish the tentative date, time and place for the hearing as recommended by the City Manager, as the official date, time and place of the hearing.

c. Such hearing shall be conducted by the ALJ in accordance with the appropriate procedures as set forth in the Administrative Procedures Act (Section 11500-11529, of the Government Code of the State of California).

d. Following the hearing, the ALJ shall submit his or her proposed decision including findings of fact and conclusions of law to the City Council. A copy of the proposed decision shall be provided to the parties in the case. The City Council, within

fifteen (15) days following the submission of the proposed decision, shall (1) adopt the proposed decision without any further hearing, or (2) in the event the City Council rejects the proposed decision of the ALJ, the City Council shall provide the opportunity for written argument prior to adopting its own decision.

e. If the City Council has rejected the proposed decision of the ALJ, the City Council shall notify the representative of the City and the local safety member of its rejection of the proposed decision. Such notification shall be in writing and by certified mail to the local safety member. A period of not more than fifteen (15) working days following rejection of the proposed decision shall be provided for either party to submit written argument.

f. Upon receipt of the written argument, the City Council shall have thirty (30) days within which to adopt a decision. Upon adopting a decision, the City Council shall within five (5) days notify the local safety member and the City representatives of its decision. Such notification shall be in writing and by certified mail to the employee. The City Manager shall notify the Public Employees' Retirement System of the decision of the City Council including the findings and determination, and shall instruct the Public Employees' Retirement System to implement the appropriate retirement action.

g. The statute of limitations shall be the same as in provided by state law for any such claims against the City

CITY OF ONTARIO

Agenda Report

June 7, 2016

SECTION: CONSENT CALENDAR

SUBJECT: MANAGEMENT AGREEMENTS WITH SMG WORLDWIDE FOR OPERATION AND MANAGEMENT SERVICES COVERING THE CITIZENS BUSINESS BANK ARENA AND THE ONTARIO CONVENTION CENTER


RECOMMENDATION: That the City Council authorize the City Manager to negotiate and execute (1) a management agreement with SMG Worldwide, a Pennsylvania General Partnership, for the management and operation of the Citizens Business Bank Arena for twelve years with the mutual option to extend for up to two five-year periods; (2) an extension of the existing management and operations agreement for the Ontario Convention Center in order to have coterminous performance periods and expirations for the two City-owned facilities; and (3) amend the existing management agreement Anschutz Entertainment Group to effectuate the transfer of facility operators.

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

FISCAL IMPACT: The consolidation of facilities management and operational responsibilities will result in economies of scale and cost savings for the City over the 12-year term of the management agreements. The basic terms and conditions of the SMG management and operations agreement to be negotiated for the Citizens Business Bank Arena will be generally consistent with those contained in the existing agreement with Anschutz Entertainment Group including an annual guaranty to the City (\$1 million per year); an annual management fee to be paid to the operator (estimated at \$250,000 in Year 1); a split of net operating profits; and a required annual contribution by the operator into a capital reserve fund (estimated to be \$250,000 per year). The terms and conditions of the Convention Center agreement to be negotiated will remain generally consistent with the term being extended to match up and be coterminous with the operating agreement for the arena. The contractual split of net operating profits at both facilities will result in financial gains to the City as a result of a single operator's ability to share staff handling similar functions in the areas of administration, facilities maintenance, and event support.

STAFF MEMBER PRESENTING: Al C. Boling, City Manager

Prepared by: Nicholas Gonzalez
Department: Economic Development

City Manager
Approval: 

Submitted to Council/O.H.A. 06/07/2016

Approved: _____

Continued to: _____

Denied: _____

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BACKGROUND: The Ontario Convention Center opened in Fall 1997 with a management arm headed up by a non-profit corporation, a separate food and beverage provider, and ancillary support from outside contractors. In 2000, the City selected SMG Worldwide (SMG) to manage the Convention Center. Since then, the City has worked with SMG to streamline operations by having one management company handle all operations within the building, and has realized financial and administrative economies.

Since 2008, Anschutz Entertainment Group (AEG) has been contracted by the City to operate the Citizens Business Bank Arena. As part of the agreement, AEG has been successful in managing Ontario's minor league hockey team, the Ontario Reign. After several years of growing the Reign as an ECHL (formerly East Coast Hockey League) leader, AEG was instrumental in the westward movement of the American Hockey League (AHL) this season. As the Pacific Division Champions and proud affiliate of the NHL's Los Angeles Kings, the Reign are a valuable and prioritized tenant for the Arena.

Playing to the strengths of all parties involved, AEG and the City of Ontario have now mutually agreed that as of July 1, 2016, AEG will focus its efforts on the Reign and its continued success. With this transition, it is recommended that the management agreement of the Citizens Business Bank Arena be awarded to SMG.

SMG provides management services to over 233 public assembly facilities including convention and exhibition centers, arenas, stadiums, theatres, performing arts centers, equestrian facilities, science centers and a variety of other venues. SMG manages more than 15 million square feet of exhibition space across the globe and more than 1.5 million sports and entertainment seats. SMG provides venue management, sales, marketing, event booking and programming, construction and design consulting, and pre-opening services for such landmark facilities as McCormick Place & Soldier Field in Chicago, Illinois; Moscone Convention Center in San Francisco, California; Houston's NRG Park in Houston, Texas; and the Mercedes-Benz Superdome in New Orleans, Louisiana.

In addition to the management services that SMG provides, SMG has partnered with the City in the management and operation of the Ontario Convention Center, creation and management of the Greater Ontario Convention and Visitor's Bureau, and the management and promotion of events and services at the Ontario Town Square located in downtown Ontario. SMG and the City have enjoyed their partnership over the years in making the City a destination for events in the Inland Empire.

The Citizens Business Bank Arena, as a regional entertainment center, will continue to host ice hockey, indoor soccer, and a variety of other sporting competitions, concerts, family shows, special events, conventions, school and community activities as well as private events. AEG and SMG will work together during this transition period to ensure that events already scheduled are not interrupted and that the Citizens Business Bank Arena will remain home to the Ontario Reign (AHL affiliate of the Los Angeles Kings) and the Ontario Fury, a successful PSAL Soccer Team and proud community partner.

CITY OF ONTARIO

Agenda Report

June 7, 2016

SECTION: CONSENT CALENDAR

SUBJECT: APPROVE UPDATED INVESTMENT POLICY

RECOMMENDATION: That City Council approve an update to the City's Investment Policy.

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

FISCAL IMPACT: This change is recommended to improve financial flexibility, increase safety and marginally increase portfolio returns.

BACKGROUND: Section 53646(a) (2) of the California state Government Code states that the treasurer or chief fiscal officer of any local agency may render to his/her legislative body an investment policy that the legislative body shall consider at a public meeting. City of Ontario Investment Policy states the City Council consider the Investment Policy as well as any changes to said policy at a public meeting.

There is one change to the Policy recommended at this time:

Language enabling the City to invest in fixed-income securities issued by what are termed "Washington-based supranationals." More specifically, they are bonds issued by the International Bank for Reconstruction and Development, the International Financing Corp, and the Inter-American Development Bank. The Int'l Bank for Reconstruction and Development is also known as the World Bank. These are the three supranationals in which the United States is the largest shareholder and wields substantial management influence and they are headquartered in Washington, DC. They are all AAA rated issuers. For comparison purposes, US Treasury debt is rated AA.

This change would enable the City to improve the credit quality of the portfolio and add a small amount of additional yield, as well as giving the City the option of adding additional high-quality issuers. Furthermore, this change is being made to bring the Investment Policy into conformance with recent changes in the state government code with respect to allowable investments.

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

Prepared by: Guy A. Boccasile
Department: Administrative Services

City Manager
Approval: 

Submitted to Council/O.H.A. 06/07/2016

Approved: _____

Continued to: _____

Denied: _____

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It is recommended that each of these issuers be limited to 3% of portfolio (at time of purchase). This is essentially half of the percentage allowed and substantially more conservative than current government code.

City Treasurer Jim Milhiser concurs with this recommendation.

Investment Policy

June 7, 2016



City of Ontario
303 E. B Street
Ontario, Ca 91764
Phone: 909-395-2000
Web: www.ci.ontario.ca.us



CITY OF ONTARIO
STATEMENT OF INVESTMENT POLICY

I. PURPOSE

This statement is intended to: (a) describe the policies and procedures utilized in the City's investment management system; (b) put in place guidelines for the prudent investment of the City's funds, and (c) list and describe suitable investments.

The goals of the City's investment policy and investment management function are enhancement of the economic status of the City and protection of the City's funds.

The investment policies and practices of the City of Ontario are based upon federal and state law and prudent money management principles. The primary goals of these policies are:

- A. To assure compliance with all laws governing the investments under the control of the City Treasurer.
- B. To protect the principal monies entrusted to this office.
- C. To generate the maximum amount of investment income consistent with the parameters established in this Statement of Investment Policy.

II. SCOPE

This investment policy applies to all monies belonging to the City of Ontario, and proceeds from bonds or notes issued by the City of Ontario and any authorized special districts. Bond proceeds and any funds associated with bond issues and other monies arising from bond indebtedness are further restricted by the pertinent bond indenture. Funds described above are accounted for in the City's Comprehensive Annual Financial Report.

The City will comply with all applicable sections of the Internal Revenue Code of 1986, Arbitrage Rebate Regulations and bond covenants with regard to the investment of bond proceeds.

All monies entrusted to the City Treasurer will be pooled in an actively managed portfolio and will be referred to as the "fund" or the "portfolio" throughout the remainder of this document.

In accordance with State law and under the authority granted by the City Council in its resolution dated February 17, 2004, the City Treasurer and Deputy City Treasurer(s) are authorized to invest the unexpended cash in the City treasury. The responsibility for the day-to-day investment of the City's funds is delegated to the Investment Officer. In the absence of the Investment Officer, the Deputy City Treasurers will be responsible for the investment function.

III. PRUDENCE

Investments shall be made with judgment and care, under circumstances then prevailing, which persons of prudence, discretion, and intelligence exercise in the management of their own affairs; not for speculation, but for investment, considering the probable safety of their capital as well as the probable income to be derived. The standard of prudence to be used by investment officials shall be the "prudent investor" standard (California Government Code Section 53600.3) and shall be applied in the context of managing an overall portfolio. Investment officers, acting in

accordance with written procedures and the investment policy and exercising due diligence, shall be relieved of personal responsibility for an individual security's credit risk or market price changes, provided deviations from expectations are reported in a timely fashion and appropriate action is taken to control adverse developments.

IV. OBJECTIVES

A. Safety of Principal

Safety of principal is the foremost objective of the investment policies and practices of the City of Ontario. Investment decisions shall seek to minimize net capital losses on a portfolio basis. This policy recognizes that market conditions may warrant the sale of individual securities incurring losses in order to protect against further and more substantial capital losses. The intent of this policy is to ensure that capital losses are minimized on a portfolio level rather than on each transaction. The City shall seek to preserve principal by mitigating credit risk and market risk.

- 1) Credit Risk – Defined as the risk of loss due to failure or insolvency of an issuer; shall be mitigated by diversifying the fund so that the failure of any one issuer would not unduly harm the City's cash flow. No more than 3% of the portfolio may be invested (at time of purchase) in the securities of any one single issuer except the U.S. Government, its agencies, or the State of California Local Agency Investment Fund.
- 2) Market Risk – Defined as the risk of market value fluctuations due to changes in the general level of interest rates. Because longer maturity fixed-income securities have greater market risk than shorter maturity securities, market risk will be mitigated by limiting the weighted average maturity of the fund to 2 ½ years. It is explicitly recognized that in an active portfolio occasional losses are inevitable and must be considered within the context of the overall investment return.

B. Liquidity

The City's fund will be structured to ensure that the projected expenditure requirements of the City for the next six months can be met with a combination of anticipated revenues, maturing securities, principal and interest payments and liquid instruments as required by California Government Code Section 53646.

C. Performance Measurement

The performance of the City's investment portfolio will be measured on a total return basis. The portfolio's performance will be measured against a benchmark of the Merrill-Lynch 1-3 year Treasury Index. The index's returns are reported monthly on the City's current portfolio report.

V. SAFEKEEPING OF SECURITIES

With the exception of insured Certificates of Deposit and the Local Agency Investment Fund of the State of California, all securities owned by the City, including collateral for repurchase agreements, shall be held in safekeeping by the City's custodial bank or a third party bank trust department acting as agent for the city under terms of a custody or trustee agreement executed

by the bank and the City. All securities will be received and delivered using standard delivery versus payment (DVP) procedures and in accordance with State Code.

VI. REPORTING

The City Treasurer is required to submit an investment report on a quarterly basis to the City Manager, the Internal Auditor, and the City Council, in accordance with California Government Code Section 53646. The report is required to be submitted within 30 days of the end of the quarter. The City Treasurer has elected to provide this report monthly. This report will include the following information:

- Type of investment instrument (i.e. Treasury Bill, CD)
- Issuer name (i.e. US Treasury Note)
- Purchase date (trade and settlement date)
- Maturity date
- Par value
- Purchase price
- Current market value and source of valuation
- Overall portfolio yield based on cost
- Statement of compliance of the portfolio to the investment policy or an explanation of the manner in which the portfolio is not in compliance
- Description of any of the City's funds that are under the management of contracted parties.
- Statement denoting the ability of the City to meet its expenditure requirements for the next six months, or an explanation as to why sufficient money may not be available.

VII. QUALIFIED DEALERS

The Investment Officer shall maintain a list of financial institutions qualified to do business with the City. Banks and broker/dealers will be selected on the basis of creditworthiness, experience, and capitalization. Prior to approval, they must read and sign the City's Broker/Dealer Questionnaire and Certification. In accordance with California Government Code Section 53601, a bank or broker/dealer must be qualified as a dealer regularly reporting to the New York Federal Reserve Bank (a "primary dealer") to conduct repurchase agreements with the City.

VIII. COMPETITIVE BIDDING

It will be the policy of the City to transact all U. S. Treasury securities purchases and sales through a formal and competitive process requiring the solicitation and evaluation of at least three bids/offers. The City will accept the offer, which provides (a) the highest rate of return; and (b) optimizes the investment objectives of the overall portfolio. The purchase of securities other than U.S. Treasuries (corporate notes, Agencies, mortgage-backed securities, etc.) will be executed differently. This is due to the lack of homogeneity among these products and their availability (or unavailability) in dealer inventories. Because of the individualized nature of these securities, it is usually not possible to get more than one offer on the same instrument. Therefore, when purchasing non-Treasury securities, the Investment Officer shall make a subjective evaluation regarding the relative attractiveness of various offers, taking into account maturity, credit ratings, structure and other factors which influence pricing. When selling a security, the City will select the bid, which generates the highest sale price. It will be the responsibility of the personnel involved in each transaction to produce and retain written records, including the name of the financial

institutions solicited, price/rate quoted, description of the security, bid/offer selected, and any special considerations that had an impact on the decision.

IX. PURCHASE AND SALE OF SECURITIES

Purchases and sales of securities will be executed only by the Investment Officer and in his absence the Deputy City Treasurer. All transactions will be reviewed and approved by the City Treasurer.

X. POLICY REVIEW

The City Treasurer shall annually render to the City Council a statement of investment policy, which shall be considered at a public meeting. Any changes in the policy shall also be considered by the City Council at a public meeting.

XI. AUTHORIZED INVESTMENTS

A. The City's Investment Portfolio is governed by California Government Code, Section 53600 et seq. Within the context of these limitations, the following investments are authorized, as further limited herein:

- 1) United States Treasury Bills, Notes, and Bonds, or those securities for which the full faith and credit of the United States are pledged for payment of principal and interest. There is no limitation as to the percentage of the fund, which can be invested in this category.
- 2) Obligations issued by various agencies of the Federal Government including, but not limited to, the Federal Farm Credit Bank System, the Federal Home Loan Bank System, the Federal Home Loan Bank, the Federal National Mortgage Association, the Federal Home Loan Mortgage Corporation, the Student Loan Marketing Association as well as such agencies or enterprises which may be created. There is no percentage limitation on the dollar amount which can be invested in Agency issues in total, no more than 20% of the cost value of the portfolio may be invested in the securities of any one issuer.
- 3) Bills of exchange or time drafts drawn on and accepted by a commercial bank, commonly known as banker's acceptances. Banker's acceptances may not exceed 180 days to maturity. To be eligible for purchase, banker's acceptances must be rated B/C or higher by Thomson Bankwatch. No more than 40% of the cost value of the portfolio may be invested in banker's acceptances and no more than 5% of the cost value of the portfolio may be invested in banker's acceptances of any single bank.
- 4) Commercial paper rated "A1" by Standard and Poor's and "P1" by Moody's Investor Services, and issued by a domestic corporation having assets in excess of \$500 million and having an "A" or better rating on its long-term debentures as provided by Moody's or Standard and Poor's. Purchases of eligible commercial paper may not exceed 270 days maturity nor represent more than 10% of the outstanding paper on an issuing corporation. Purchases of commercial paper may not exceed 15% of the portfolio, which may be invested pursuant to this section. An additional 15% or a total of 30% of

the agency's money may be invested pursuant to this subdivision. The additional 15% may be so invested only if the dollar weighted average maturity of the entire amount does not exceed 31 days.

- 5) Negotiable certificates of deposit issued by a nationally or State chartered bank or a State or Federal savings institution, or a State licensed branch of a foreign bank ("Yankee"). Purchases of negotiable certificates of deposit may not exceed 30% of the cost value of the portfolio. To be eligible for purchase by the City, the certificate of deposit must be rated A-1 by Standard and Poor's and P-1 by Moody's.
- 6) Repurchase Agreements – The City may invest in repurchase agreements with primary dealers of the Federal Reserve Bank of New York with which the City has entered into a master repurchase agreement. The Public Securities Association master repurchase agreement is the "master repurchase agreement". The maturity of repurchase agreements shall not exceed one year. The market value of securities used as collateral for repurchase agreements shall be valued at no less than 102% of the value of the repurchase agreement. Collateral pricing will be monitored no less than monthly by the investment staff and not be allowed to fall below 102% of the value of the repurchase agreement. In order to conform to provisions of the Federal Bankruptcy Code which provide for the liquidation of securities held as collateral for repurchase agreements, the only securities acceptable to the city as collateral shall be securities that are direct obligations of, or that are fully guaranteed as to principal and interest, by the United States or any agency thereof. Investments in repurchase agreements may not exceed 20% of the cost value of the fund.
- 7) Local Agency Investment Fund - The City may invest in the Local Agency Investment Fund ("LAIF") established by the State Treasurer for the benefit of local agencies up to the maximum permitted under Section 16429.1 of the Government Code.
- 8) Time Deposits – The City may invest in non-negotiable time deposits collateralized in accordance with the California Government Code, which meet the requirements for investment in negotiable certificates of deposit. The City may invest in insured certificates of deposit with individual depository institutions up to the insured limit. No more than 25% of the fund may be invested in this category.
- 9) Medium-term notes of a maximum of five years maturity issued by corporations organized and operating within the United States or by depository institutions licensed by the United States or any State, and operating within the United States. The issuing corporation must have a minimum rating of "A" by both Standard and Poor's and Moody's and have in excess of \$500 million in shareholder equity. Purchase of medium-term notes may not exceed 30% of the cost value of the fund with no more than 15% of the cost value of the fund rated below "AA" by both Standard and Poor's and Moody's. No more than 3% of the fund (at time of purchase) may be invested in any one corporate name, including the parent corporation or subsidiaries.
- 10) Any U. S. Government Agency's Mortgage pass-through security, collateralized mortgage obligations, mortgage-backed or other pay-through bond, equipment lease-

backed certificate, or consumer receivable-backed bond of a maximum five years maturity. Securities eligible for investment under this section shall be issued by an issuer having an "A" or higher rating for the issuer's unsecured debt, as provided by a nationally recognized rating service. The securities must be rated "AAA" by both Moody's and Standard and Poor's. Purchase of securities authorized by this subdivision may not exceed 20% of the cost value of the fund.

- 11) Bonds, notes, warrants or other evidences of indebtedness of any local agency of this state, including bonds payable solely out of the revenues from a revenue producing property owned, controlled, or operated by the local agency, or by a department, board, agency, or authority of the local agency.
- 12) Registered state warrants or treasury notes or bonds of this state, including bonds payable solely out of the revenues from a revenue-producing property owned, controlled or operated by the state or by a department, board, agency or authority of the state
- 13) Bonds, notes, warrants, or other evidence of indebtedness of a local agency within this state, including bonds payable solely out of the revenues from a revenue-producing property owned, controlled, or operated by the local agency, or by a department, board, agency, or authority of the local agency.
- 14) United States dollar denominated senior unsecured unsubordinated obligations issued or unconditionally guaranteed by the International Bank for Reconstruction and Development, International Finance Corporation, or Inter-American Development Bank, with a maximum remaining maturity of five years or less, and eligible for purchase and sale within the United States. Investments under this subdivision shall be rated "AA" or better by an NRSRO and shall not exceed 9 percent of the agency's moneys that may be invested pursuant to this section. Investment in these issues is further limited to a 3 percent allocation in any one name.

B. In the event of a rating downgrade of security in the City's portfolio by any of the applicable rating agencies (Standard and Poor's or Moody's) to a rating category below the minimum required for purchase, the Investment Officer will document such downgrade in writing. The Investment Officer will also communicate to the City Treasurer a recommended course of action for said security.

The maximum allowable maturity for all securities purchased shall be no greater than 5 years from the settlement date if the maturity has not been further limited in subsections (1) through (12).D. The 5-year maturity limitation may be exceeded only when investing in securities referred to in section 11 above and only with prior City Council approval. Ineligible investments – investments not described herein-, are prohibited for purchase in the City's portfolio. Specifically prohibited as of January 1, 1996 are: Inverse floaters, range notes, interest-only strips derived from a pool of mortgages, or any security that could result in zero interest accrual if held to maturity.

CITY OF ONTARIO

Agenda Report

June 7, 2016

SECTION: CONSENT CALENDAR

SUBJECT: REJECTION OF ALL BIDS RECEIVED FOR THE FY 2015-16 / FY 2016-17 COLLECTOR / ARTERIAL, LOCAL STREET MAINTENANCE – SLURRY SEAL AND CDBG PAVEMENT AND ALLEY PAVEMENT MANAGEMENT REHABILITATION

RECOMMENDATION: That the City Council reject all bids received to date in connection with the FY 2015-16 / FY 2016-17 Collector / Arterial, Local Street Maintenance – Slurry Seal and CDBG Pavement and Alley Pavement Management Rehabilitation in accordance with Ontario Municipal Code Title 2, Chapter 6, Section 2-6.13(g).

COUNCIL GOALS: Regain Local Control of the Ontario International Airport
Focus Resources in Ontario's Commercial and Residential Neighborhoods
Invest in the City's Infrastructure (Water, Streets, Sewers, Parks, Storm Drains and Public Facilities)

FISCAL IMPACT: None.

BACKGROUND: Two bids on the subject project were received on May 26, 2016. The bids received were from Pavement Coatings Co. of Mira Loma, California and American Asphalt South Inc., of Fontana, California. After reviewing all bids, staff determined that the lowest bidder was non-responsive. At this time it will be in the City's best interest to reject all bids, re-scope the project and re-bid.

The two bidders were notified verbally and via certified mail of staff's recommendation as well as the date of this City Council meeting.

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

Prepared by: Miguel Sotomayor
Department: Engineering

City Manager
Approval: 

Submitted to Council/O.H.A. 06/07/2016

Approved: _____

Continued to: _____

Denied: _____

CITY OF ONTARIO

Agenda Report

June 7, 2016

SECTION: CONSENT CALENDAR

SUBJECT: A RESOLUTION ORDERING THE SUMMARY VACATION OF A PUBLIC EASEMENT IN A PORTION OF SUNKIST STREET WEST OF CYPRESS AVENUE

RECOMMENDATION: That the City Council adopt a resolution ordering the summary vacation of a public easement for street and other municipal purposes in a portion of Sunkist Street west of Cypress Avenue.

COUNCIL GOALS: Regain Local Control of the Ontario International Airport
Focus Resources in Ontario's Commercial and Residential Neighborhoods
Invest in the City's Infrastructure (Water, Streets, Sewers, Parks, Storm Drains and Public Facilities)

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

BACKGROUND: The applicant, Manor Ontario LLC (Gregg Kirkpatrick, Owner), has requested that the City vacate the unimproved 30-foot wide by 645-foot long public street easement within the property located west of Cypress Avenue approximately 693 feet south of State Street as shown on Exhibit 1 (attached) to correct a non-compliance issue. The property is currently used as a mobile home park and there are existing mobile homes encroaching into the subject easement, causing the non-compliance. The easement was originally dedicated to the City in 1964 for public street and other municipal purposes. However, the Sunkist Street extension has not been constructed and is not included in the current City Master Plan of Streets and Highways and the south half of this portion of Sunkist Street was previously vacated in 1967. Therefore, the subject easement is not needed for any present or future purposes and is determined to be excess.

Section 8333 of the California Streets and Highways Code authorizes the City to summarily vacate (by resolution with no public hearing) a public easement that has been determined to be excess and there are no other public facilities located within the easement.

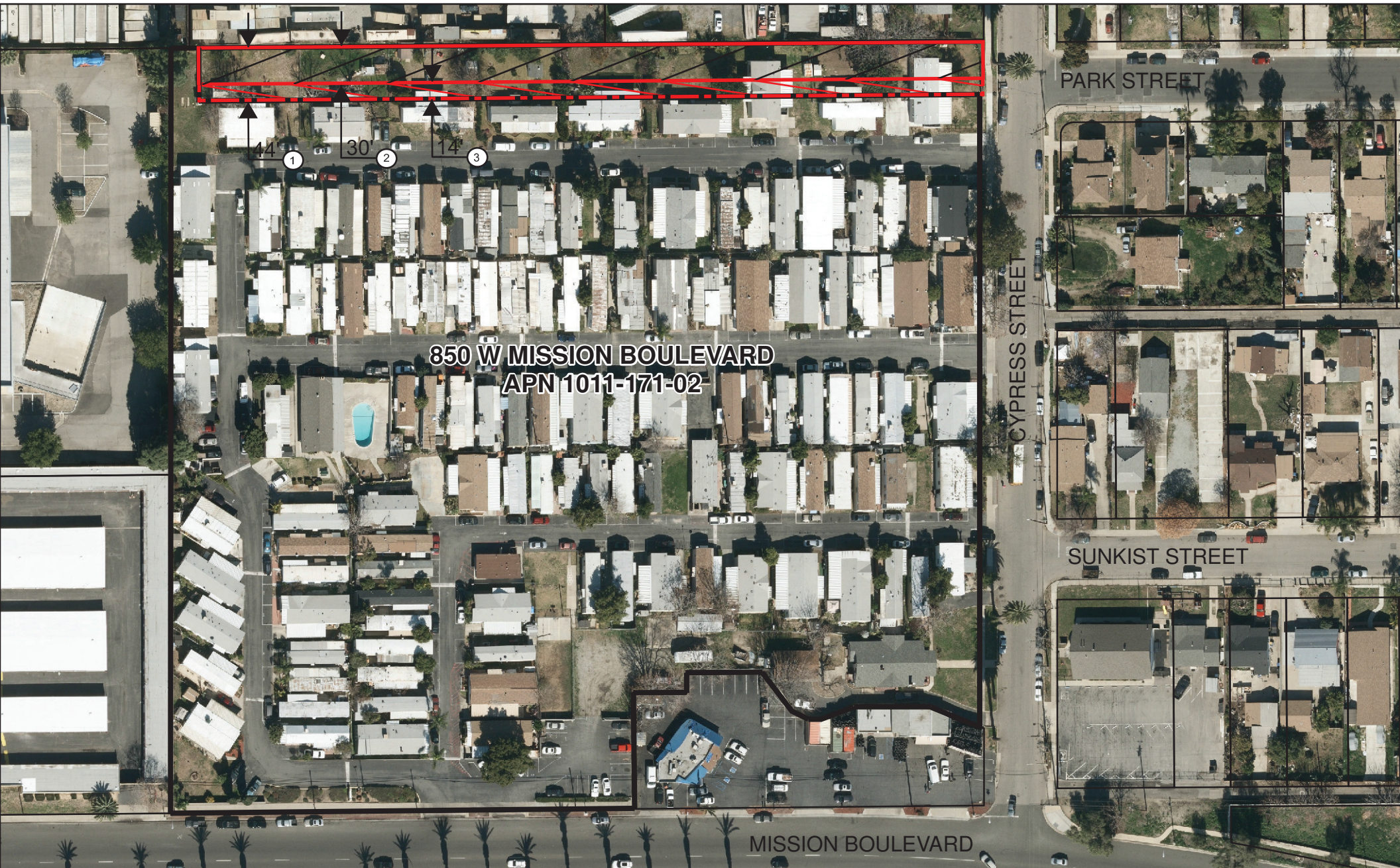
STAFF MEMBER PRESENTING: Louis Abi-Younes, P.E., City Engineer

Prepared by: Arij Baddour
Department: Engineering

City Manager
Approval: 

Submitted to Council/O.H.A. 06/07/2016
Approved: _____
Continued to: _____
Denied: _____

EXHIBIT "1"
VACATION
V-271



LEGEND

①



INDICATES INSTRUMENT NO. 591 RECORDED
NOVEMBER 10, 1964, IN BOOK 6269 PAGE 818
OF OFFICIAL RECORDS

②



PUBLIC EASEMENT FOR STREET AND OTHER
MUNICIPAL PURPOSES TO BE VACATED

③



PORTION OF PUBLIC EASEMENT VACATED BY
CITY OF ONTARIO RESOLUTION 6484 AS ADOPTED
BY CITY COUNCIL ON 11/21/67



MAP NOT TO SCALE

RESOLUTION NO. _____

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF ONTARIO, CALIFORNIA, ORDERING THE SUMMARY VACATION OF A PUBLIC EASEMENT IN A PORTION OF SUNKIST STREET WEST OF CYPRESS AVENUE.

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

WHEREAS, the public easement over the northerly portion of Lot 6, block 14, Monte Vista Tract No. 2 as recorded in book 16 of Maps, Page 33 in the City of Ontario, County of San Bernardino, State of California, with said easement filed in Book 6269, Page 818 in the County Recorder's Office of said County and located west of Cypress Avenue, approximately 693 feet south of State Street, is not needed for any present or future street or other municipal purposes and is determined to be excess; and

WHEREAS, Section 8333 of the California Streets and Highways Code authorizes the City to summarily vacate (by resolution with no public hearing) a public easement that has been determined to be excess and there are no other public facilities located within the easement; and

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

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

1. That the above recitals are true and correct.
2. That title to the above-described said easement, more specifically described in Exhibit A and depicted on Exhibit B, attached hereto, shall be vacated.
3. That the City Clerk of the City of Ontario, California, shall cause a copy of this Resolution to be recorded in the office of the County Recorder of San Bernardino County, California.

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

PASSED, APPROVED, AND ADOPTED this 7th day of June 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 June 7, 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 June 7, 2016.

SHEILA MAUTZ, CITY CLERK

(SEAL)

EXHIBIT "A"

Vacation
V-271
Legal Description

That portion of Lot 6, Block 14, Monte Vista Tract No. 2, in the City of Ontario, County of San Bernardino, State of California, as per map recorded in Book 16, page 33, of Maps, Records of said county, more particularly described as follows:

The northerly 30 feet of that certain easement for street and other municipal purposes over the northerly 44 feet of said Lot 6 as granted to the City of Ontario by Instrument No. 591 recorded November 10, 1964, in Book 6269, page 818 of Official Records of said county, lying easterly of the following described line:

Beginning at a point on the north line of said Lot 6, a distance of 645 feet easterly from the northwest corner of Lot 5, of said Block 14, said 645 feet being measured along the north lines of said Lots 5 and 6; thence southerly by a straight line, a distance of 626.66 feet, more or less, to a point of termination in the north line of the south 70 feet of Lot 8 of said Block 14, said point being 641.36 feet East of the west line of Lot 7 of said Block 14, being measured along the north line of the south 70 feet of said Lots 7 and 8 of said Block 14.

EXCEPT therefrom the easterly 3.00 feet thereof lying within Cypress Avenue.

Contains 19,013 square feet (0.437 acres)

As shown on Exhibit "B" attached here to and by this reference made a part hereof

Prepared under my supervision:

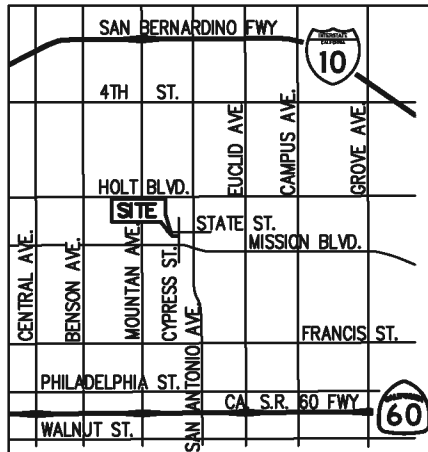
David O. Knell 2/10/2016
David O. Knell PLS 5301 Date



EXHIBIT "B"

VACATION
V-271

STATE STREET



VICINITY MAP
NO SCALE

LOT 2

LOT 3
APN 1011-161-05

LOT 4

APN 1011-161-16

NORTHERLY LINE OF
LOT 6, BLOCK 14,
MONTE VISTA TRACT
NO. 2, M.B. 16/33-34

CYPRESS STREET

SUNKIST
ST

PUBLIC EASEMENT
TO BE VACATED

APN 1011-161-02

PORTION OF LOT 6
BLOCK 14
MONTE VISTA TRACT NO. 2
MB 16/33



PUBLIC EASEMENT FOR STREET AND OTHER
MUNICIPAL PURPOSES TO BE VACATED

①



PORTION OF PUBLIC EASEMENT VACATED BY
CITY OF ONTARIO RESOLUTION 6484 AS
ADOPTED BY THE CITY COUNCIL ON 11/21/1967

②

INDICATES INSTRUMENT NO. 591 RECORDED
11/10/1964, IN BOOK 6269 PAGE 818 OF
OFFICIAL RECORDS



SCALE: 1"=150'

SCALE: 1"=150'

DATE: 2-10-2016

DRAWN BY: SCB

CHECKED BY: DOK

SKETCH TO ACCOMPANY
LEGAL DESCRIPTION

CITY OF ONTARIO

Agenda Report

June 7, 2016

SECTION: CONSENT CALENDAR

SUBJECT: 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 consider and adopt 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.

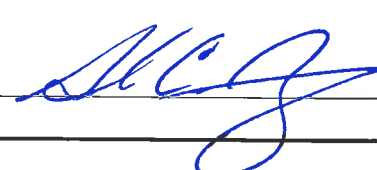
BACKGROUND: On May 17, 2016, the City Council introduced an Ordinance approving the Development Agreement. Brookcal Ontario, LLC., and the City recognized that the financial commitment

STAFF MEMBER PRESENTING: Scott Murphy, Planning Director

Prepared by: Rudy Zeledon

Department: Planning

City Manager

Approval: 

Submitted to Council/O.H.A. 06/07/2016

Approved: _____

Continued to: _____

Denied: _____

11

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).

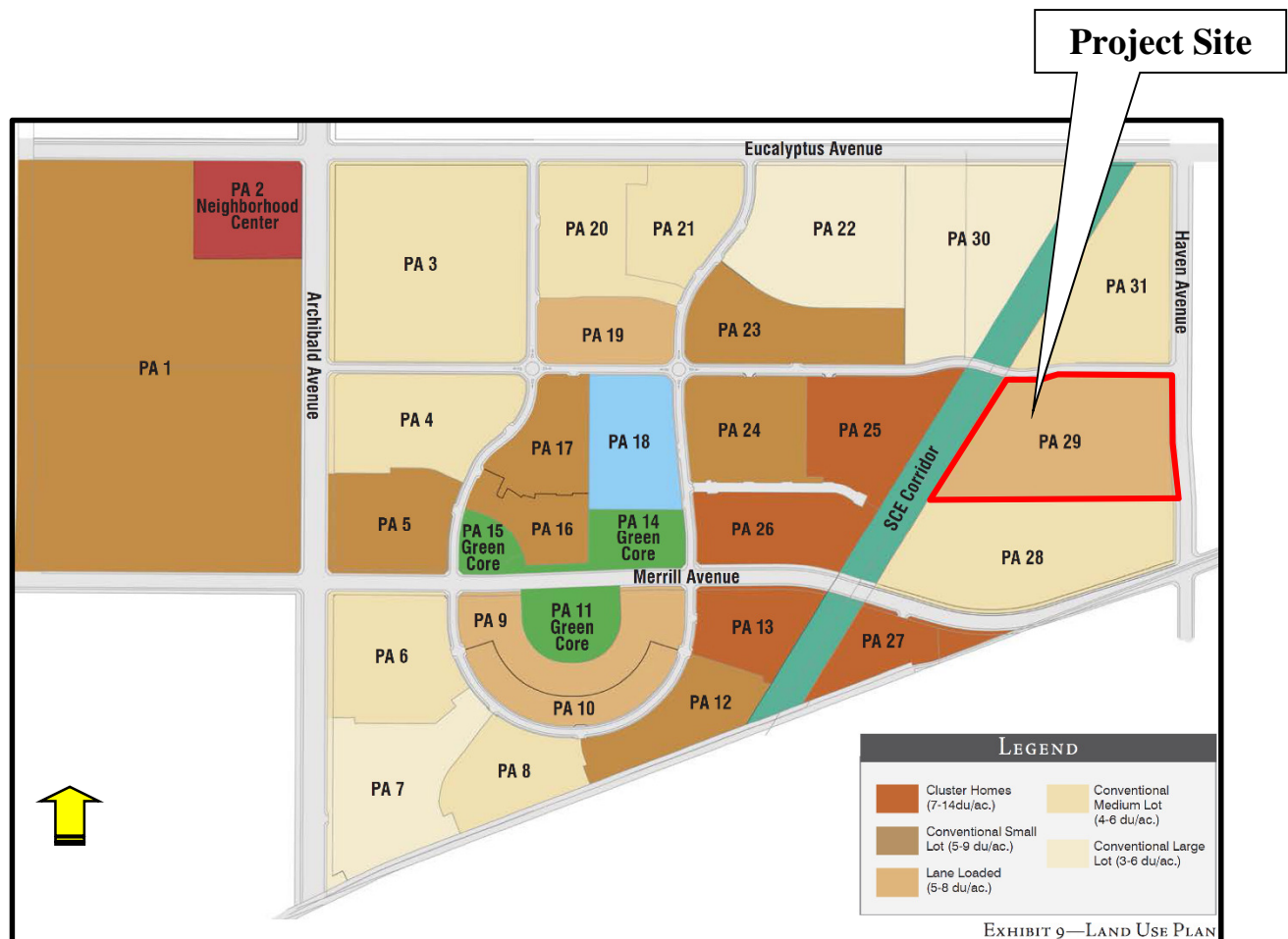
HOUSING ELEMENT COMPLIANCE: The project is consistent with the Housing Element of the Policy Plan (General Plan) component of The Ontario Plan, as the project does not affect the properties in the Available Land Inventory contained in Table A-3 (Available Land by Planning Area) of the Housing Element 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 7th day of June 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. 3051 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 June 7, 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. 3051 duly passed and adopted by the Ontario City Council at their regular meeting held June 7, 2016 and that Summaries of the Ordinance were published on May 24, 2016 and June 14, 2016, 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

DESCRIPTION OF ATTACHED DOCUMENT

- ☐ Individual
☐ Corporate Officer

Title(s)

Title or Type of Document

- ☐ Partner(s) ☐ Limited
☐ General

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

Number Of Pages

Date Of Document

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

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

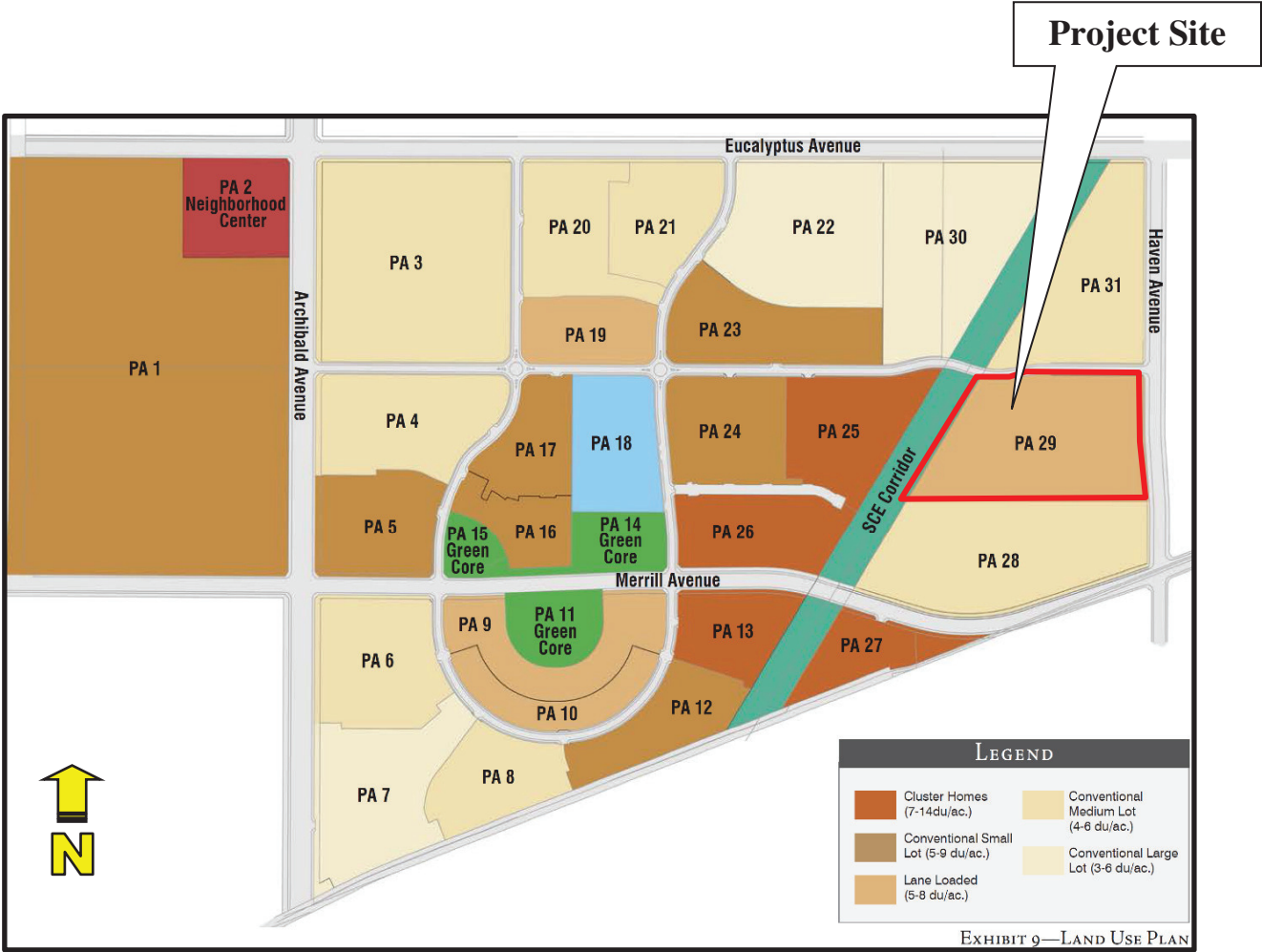


EXHIBIT "C"
TO DEVELOPMENT AGREEMENT

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

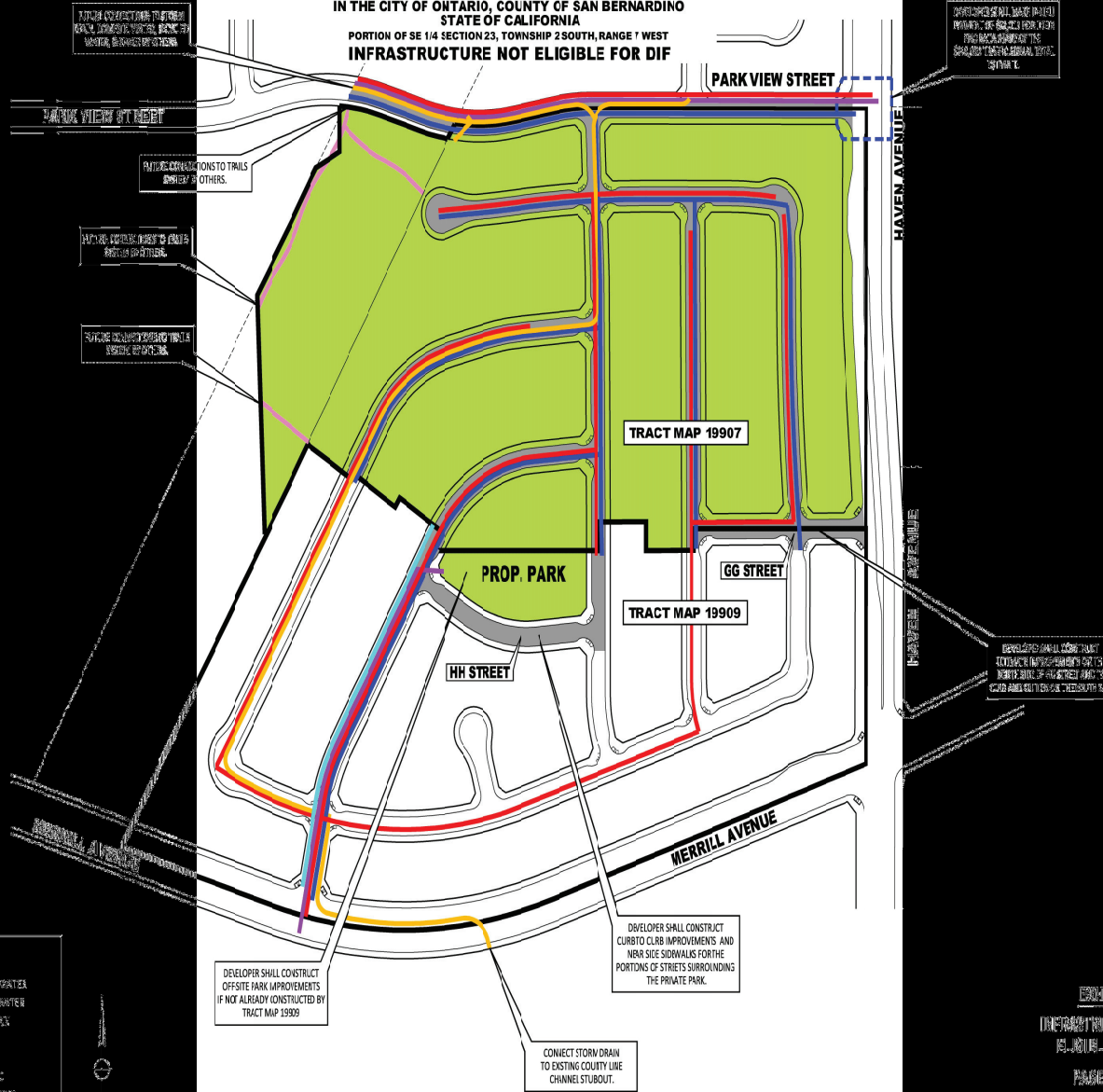
These documents are listed for reference only:

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

TENTATIVE TRACT MAP 19907

IN THE CITY OF ONTARIO, COUNTY OF SAN BERNARDINO
STATE OF CALIFORNIA

PORTION OF SE 1/4 SECTION 23, TOWNSHIP 2 SOUTH, RANGE 7 WEST
INFRASTRUCTURE NOT ELIGIBLE FOR DIF



Required Infrastructure Improvements

Exhibit "F"

EXHIBIT F
TENTATIVE TRACT MAP 19907
AS AMENDED BY ORDER 1815
PAGE 1 OF 2

VSL ENGINEERING

1000 W. 10TH STREET, SUITE 100
ONTARIO, CA 91764
TEL: (951) 200-1100 FAX: (951) 200-1101

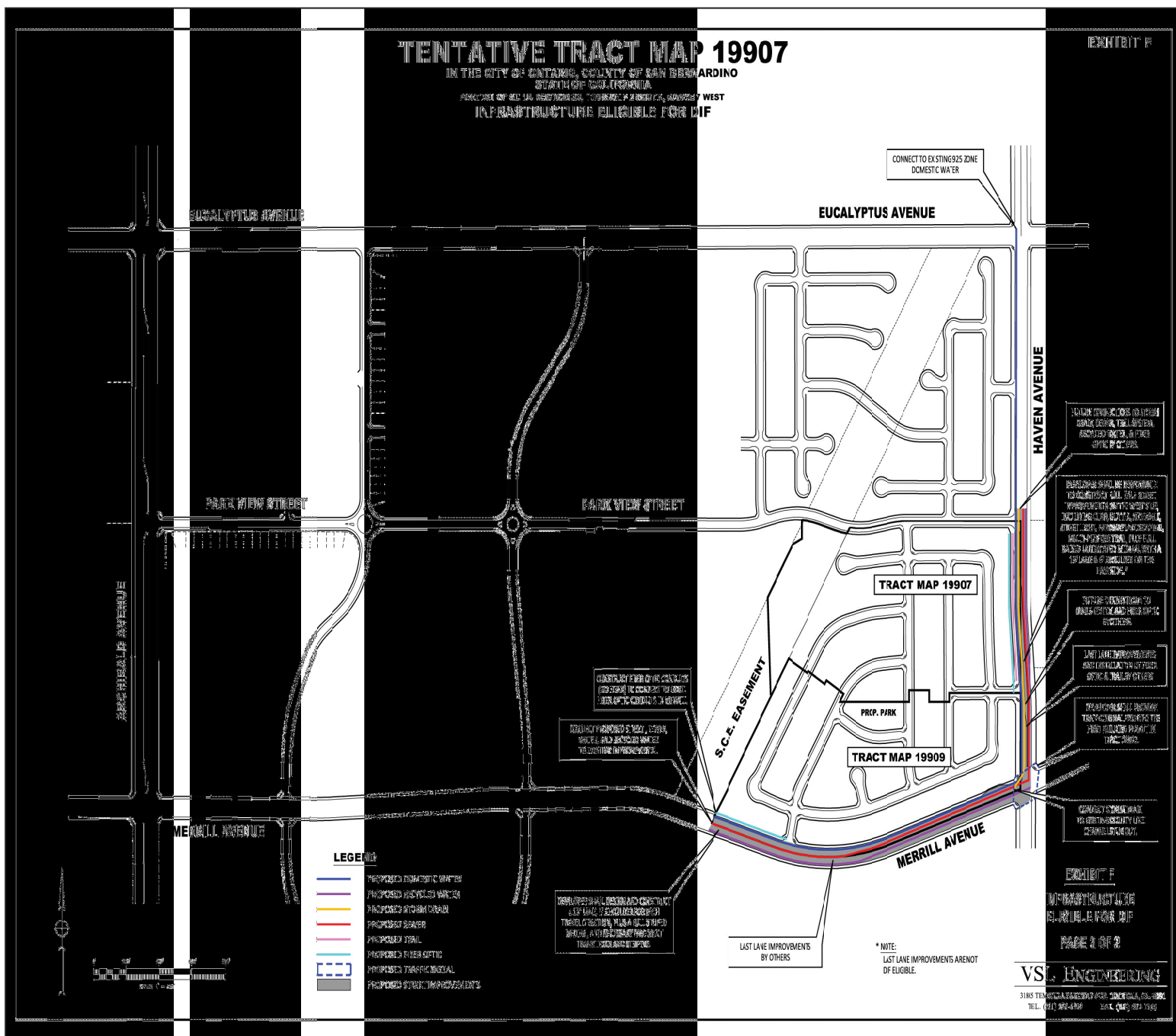
NOTE:
DEVELOPER SHALL BE RESPONSIBLE FOR
DESIGNING AND CONSTRUCTING
INFRASTRUCTURE NOT ELIGIBLE FOR DIF

ADULTS IN THE 14-17 AGE RANGE, TO BE 14-17 YEARS OF AGE, SOUTHERN WEST
IN THE 14-17 AGE RANGE, TO BE 14-17 YEARS OF AGE, SOUTHERN WEST

附錄 3 續

3185 TEMPLE AVE. #100, JACKSON, MS 39201
TEL. (601) 372-4332 FAX (601) 372-1901

Exhibit “F”



CITY OF ONTARIO

Agenda Report

June 7, 2016

SECTION: CONSENT CALENDAR

SUBJECT: 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 consider and adopt 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.

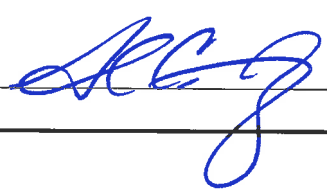
BACKGROUND: On May 17, 2016, the City Council introduced an Ordinance approving the Development Agreement. Roseville NMC, LLC, and the City recognized that the financial commitment

STAFF MEMBER PRESENTING: Scott Murphy, Planning Director

Prepared by: Rudy Zeledon

Department: Planning

City Manager

Approval: 

Submitted to Council/O.H.A. 06/07/2016

Approved: _____

Continued to: _____

Denied: _____

12

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).

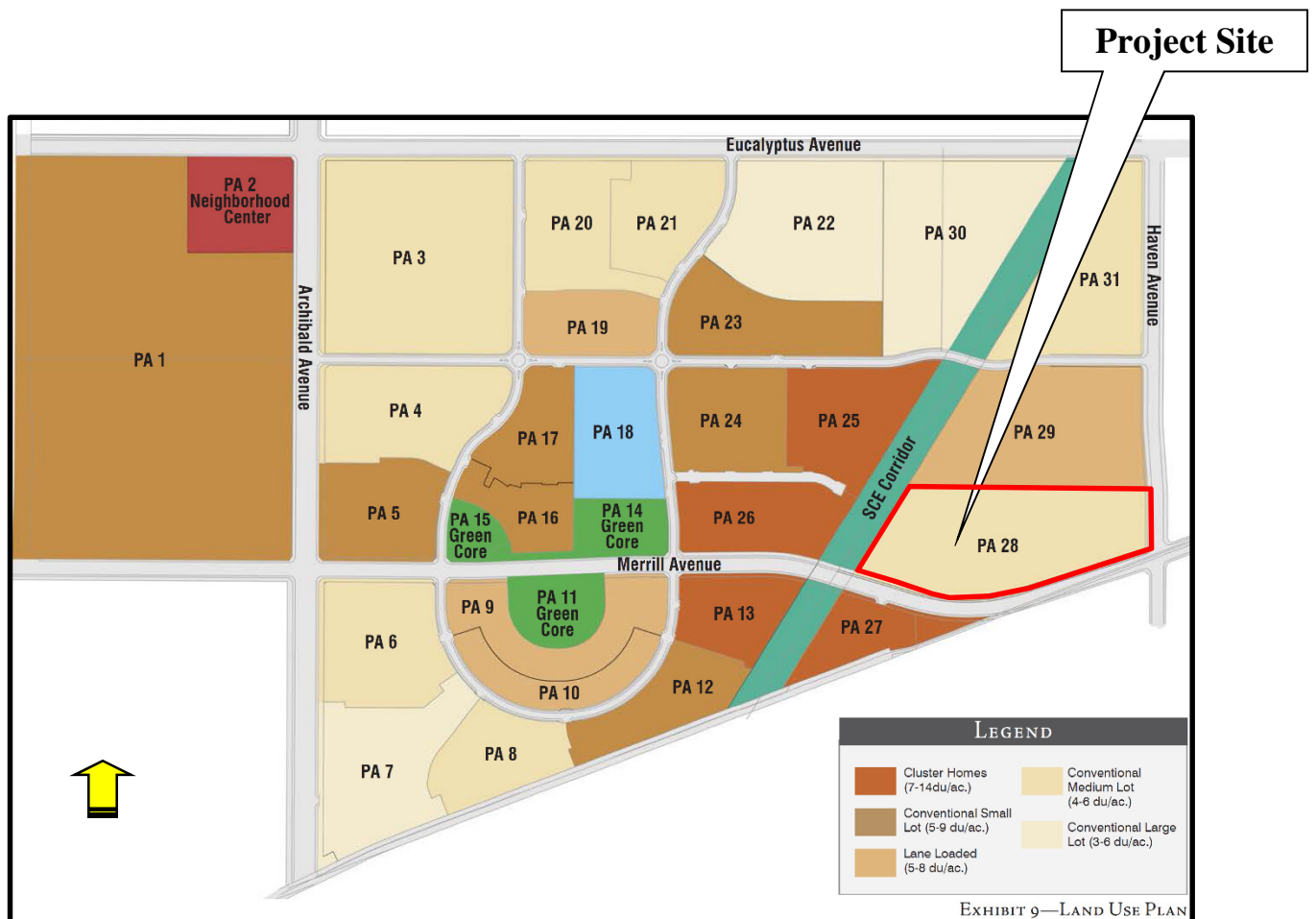
HOUSING ELEMENT COMPLIANCE: The project is consistent with the Housing Element of the Policy Plan (General Plan) component of The Ontario Plan, as the project does not affect the properties in the Available Land Inventory contained in Table A-3 (Available Land by Planning Area) of the Housing Element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

DESCRIPTION OF ATTACHED DOCUMENT

- ☐ Individual
☐ Corporate Officer

Title(s)

Title or Type of Document

- ☐ Partner(s) ☐ Limited
☐ General

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

Number Of Pages

Date Of Document

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

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

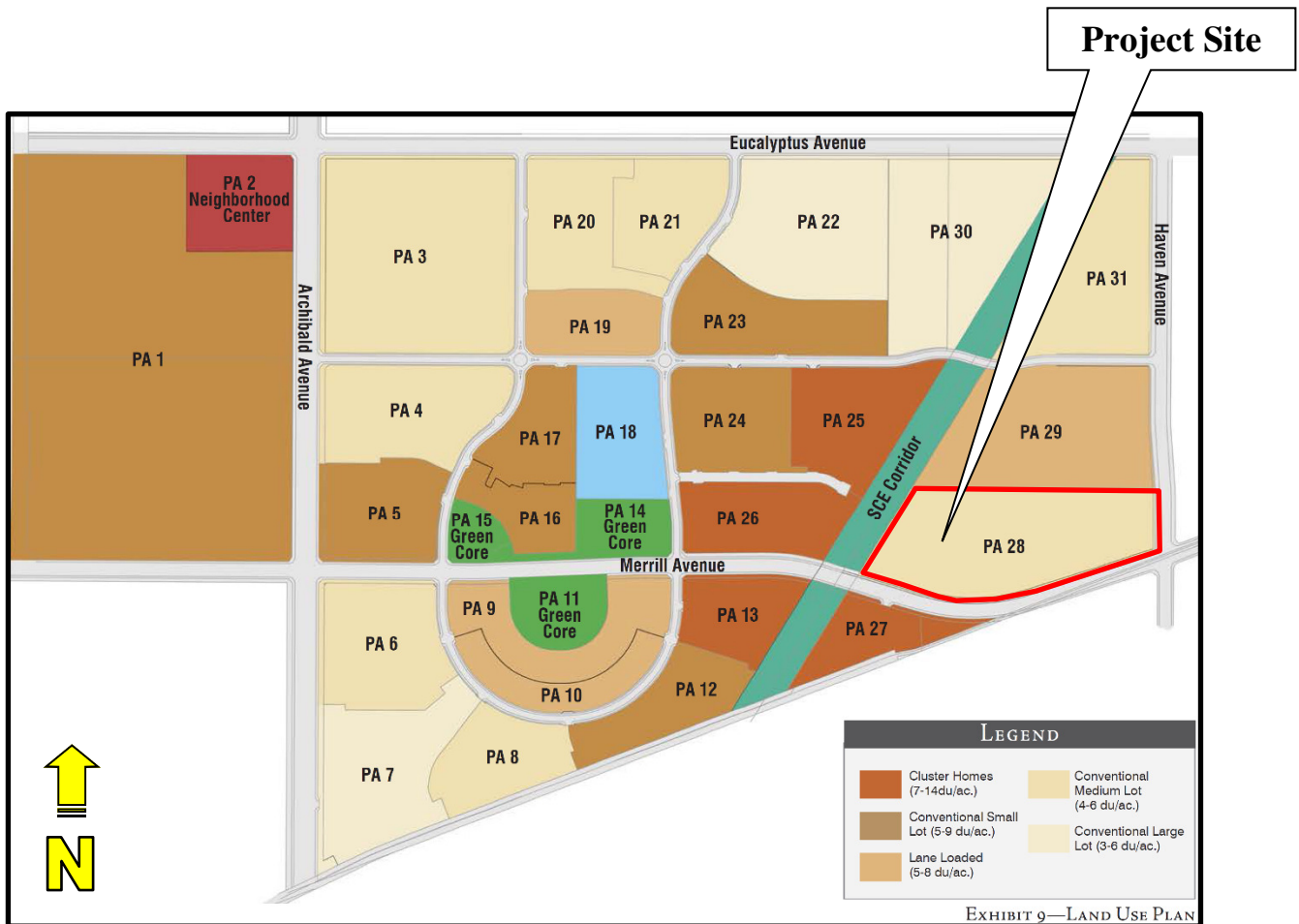


EXHIBIT "C"
TO DEVELOPMENT AGREEMENT

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

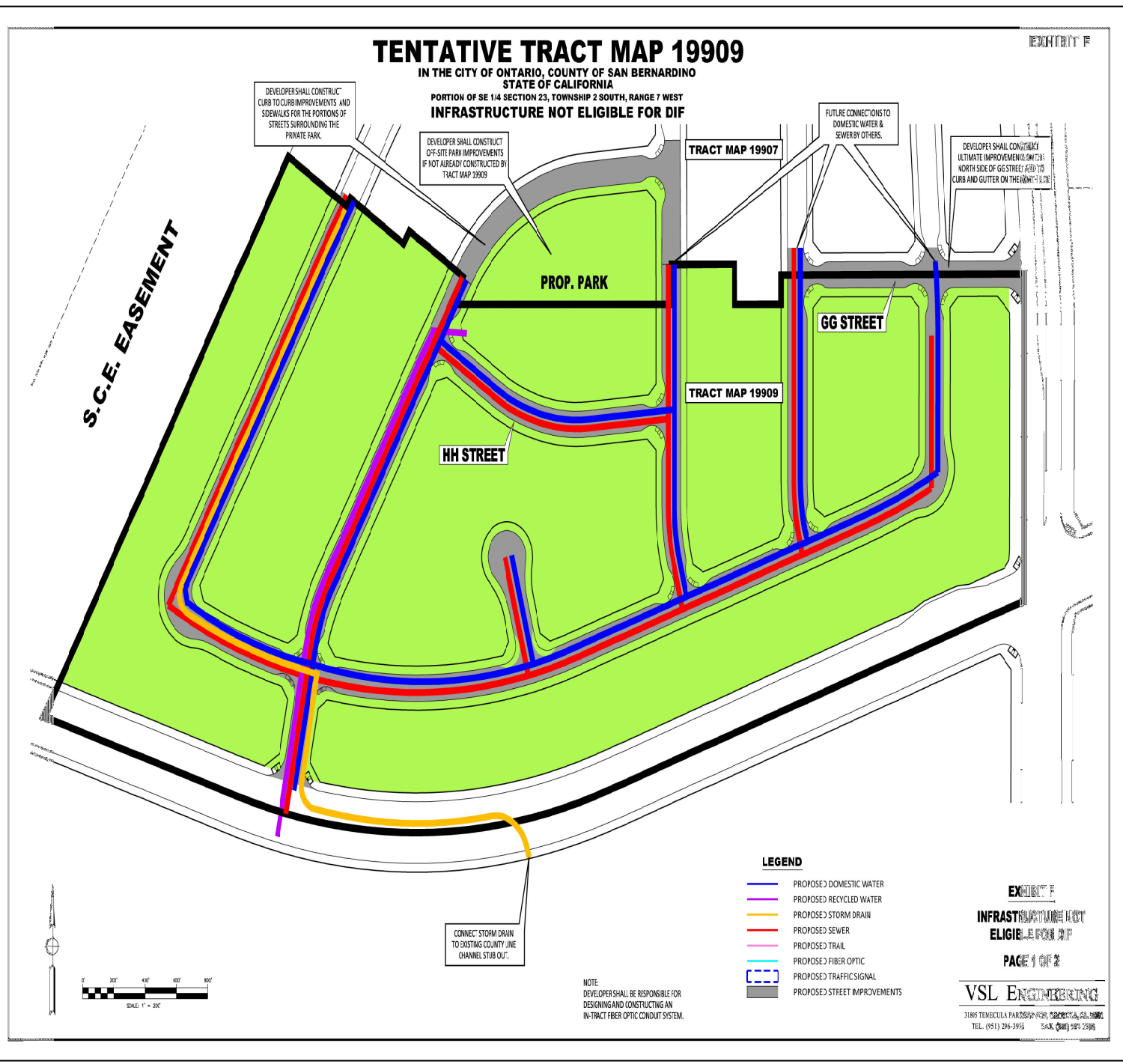
Existing Land Use Regulations

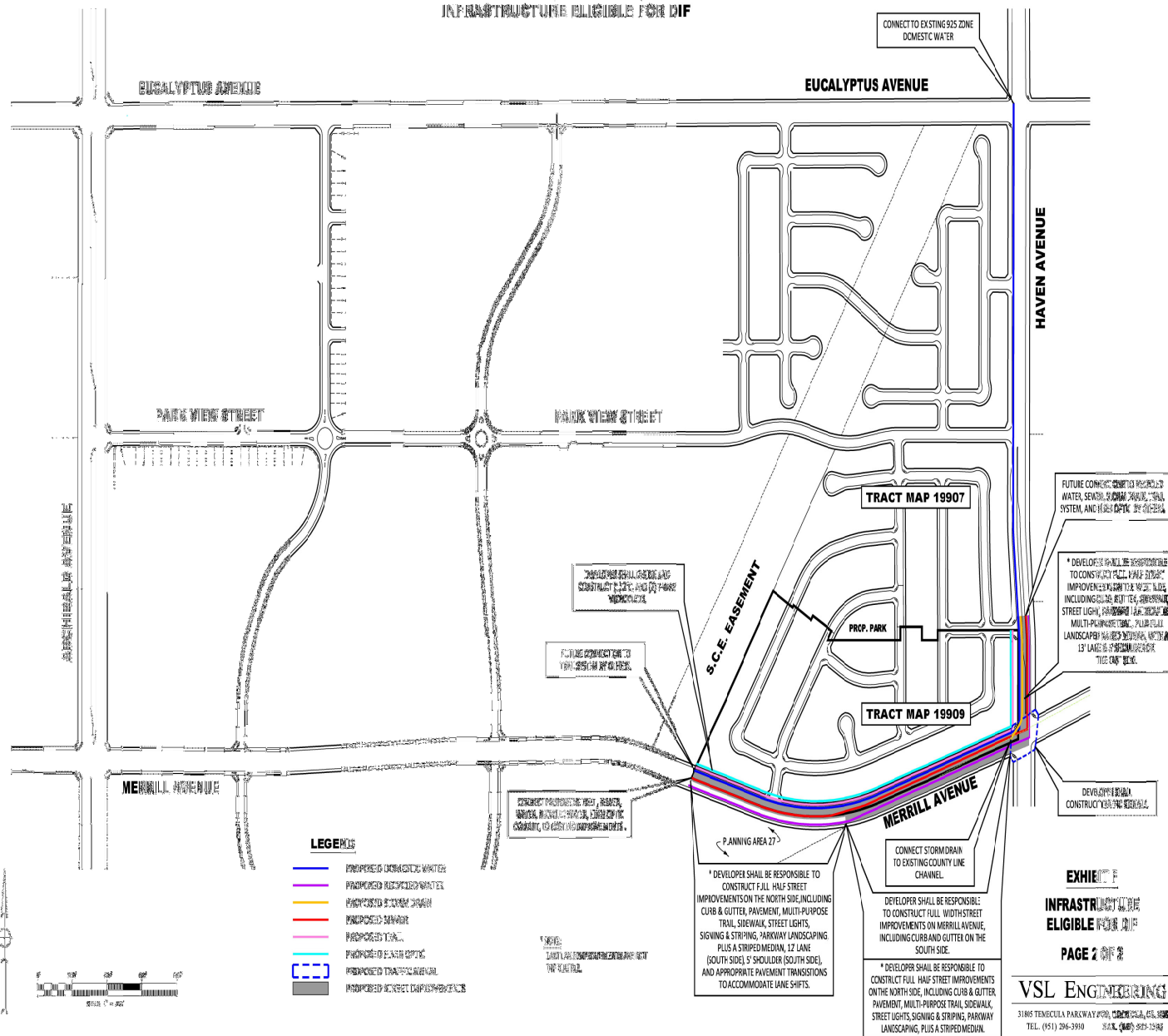
These documents are listed for reference only:

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)

Exhibit “F”

CITY OF ONTARIO

Agenda Report

June 7, 2016

SECTION: CONSENT CALENDAR

SUBJECT: A LEASE AMENDMENT FOR A FIVE-YEAR TERM EXTENSION FOR OFFICE AND WAREHOUSE SPACE FOR THE POLICE DEPARTMENT

RECOMMENDATION: That the City Council authorize the City Manager to execute the Fourth Amendment to the Lease (on file with the Records Management Department) with Safari Industrial Corporation for a five-year term extension for office and warehouse space for the Police Department.

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 annual cost will be \$93,295 for the first year with an annual increase of approximately 2.7% for the remaining four years. Funds have been appropriated from asset seizure funds therefore, there is no fiscal impact to General Fund. Appropriations are included in the Police Department's proposed annual operating budget for the upcoming Fiscal Year 2016-17 and will be added to future years' budgets, if approved.

BACKGROUND: Federal and State legislation allows for funds seized by law enforcement during the investigation of specific narcotics law violations to be forfeited to the investigating law enforcement organizations. These funds are restricted in use to law enforcement and must be used to supplement, not supplant, the Police Department's annual budget.

The Police Department currently occupies office and warehouse space and desires to continue occupancy. The current lease term will expire on June 30, 2016. The Lease Amendment provides for a five-year extension and early lease termination in the event the asset seizure funds become unavailable during the five-year term.

The proposed rental lease is a permissible use of Federal Sharing Funds under the guidelines set forth in the Department of Justice Guidance.

STAFF MEMBER PRESENTING: Brad Kaylor, Chief of Police

Prepared by: Christine Booker
Department: Police

City Manager
Approval: 

Submitted to Council/O.H.A. 06/07/2016

Approved: _____

Continued to: _____

Denied: _____

CITY OF ONTARIO

Agenda Report

June 7, 2016

SECTION: CONSENT CALENDAR

SUBJECT: AMENDMENT TO A PROFESSIONAL SERVICES AGREEMENT FOR LEGAL AND TECHNICAL SERVICES PERTAINING TO WATER RESOURCES AND WASTEWATER MATTERS

RECOMMENDATION: That the City Council authorize the City Manager to execute a three year extension and amendment to the existing Professional Services Agreement (on file with Records Management Department) with Nossaman LLP of Los Angeles, California for on-going legal and technical services on an as-needed basis with respect to matters relating to sewer disposal, water supply, water rights and water quality, consistent with City Council approved work plans and budgets.

COUNCIL GOALS: Regain Local Control of the Ontario International Airport
Invest in the City's Infrastructure (Water, Streets, Sewers, Parks, Storm Drains and Public Facilities)

FISCAL IMPACT: This amendment will extend the existing agreement with Nossaman through June 2019. The agreement provides for on-going services to be provided on an as-needed basis with expenditures limited to City Council budget appropriations each year. Any increases to the billing rates during the final two years of the agreement will be negotiated at the City's discretion, but shall not exceed five percent (3%) annually. There is no impact to the General Fund.

BACKGROUND: The City has historically used Nossaman LLP for legal and technical representation regarding sewer disposal, water supply, water rights and water quality matters. There are several critical multi-year efforts in process as well as emerging regional topics planned over the next several years. The proposed agreement will ensure service continuity in dealing with these and other water and sewer related matters critical to preserving and managing Ontario's utility resources and services to the community.

One of the multi-year efforts in process is the resetting of groundwater supply capacity and related rights by the Chino Basin Watermaster. This effort is required by the Watermaster Court and is the first time the Safe Yield capacity has been adjusted since the Chino Basin was adjudicated in 1978. As part of the Safe Yield Reset Agreement submitted to the Watermaster Court, and currently being challenged by

STAFF MEMBER PRESENTING: Scott Burton, Utilities General Manager

Prepared by: Ryan Shaw
Department: MU/Administration

City Manager
Approval: 

Submitted to Council/O.H.A. 06/07/2016
Approved: _____
Continued to: _____
Denied: _____

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several parties to the Judgement, the next effort will be to address groundwater storage issues within the Chino Basin including developing a storage management plan.

The member agencies of the Inland Empire Utilities Agency (IEUA), including Ontario, have a Regional Sewer Service Contract with IEUA that was entered into almost 50 years ago and expires in 2022. Among other things, the agreement establishes the terms for wastewater treatment and recycled water rights and related costs for these services. Over the next several years it's expected that this agreement will be amended to address current issues and renegotiated to reflect the needs of IEUA and the member agencies in order to provide continued and efficient services to the public.

CITY OF ONTARIO

Agenda Report
June 7, 2016

SECTION:
CONSENT CALENDAR

SUBJECT: CONSTRUCTION CONTRACT FOR WATER MAIN IMPROVEMENTS IN SULTANA AVENUE AND "F" STREET

RECOMMENDATION: That the City Council approve the plans and specifications, and award Contract No. UT 1516-07 (on file with the Records Management Department) to T. E. Roberts, Inc. of Orange, California for the construction of Water Main Improvements in Sultana Avenue and "F" Street in the amount of \$2,338,077 plus a 15% contingency of \$350,712, for a total amount of \$2,688,789 and authorize the City Manager to execute said contract and file a notice of completion at the conclusion of all construction activities related to the project.

COUNCIL GOALS: Regain Local Control of the Ontario International Airport
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 T. E. Roberts, Inc. is for \$2,338,077 plus 15% contingency of \$350,712, for a total amount of \$2,688,789. There is no impact to the General Fund.

BACKGROUND: The City's potable water system includes approximately 564 miles of pipeline. The City's Water Master Plan has identified the need to replace undersized and aging pipelines to maintain the reliability of water service to the community and to improve service pressure and fire flow availability. Improvements are prioritized based on capacity deficiencies, deterioration, and the current level of maintenance activities required to provide adequate and reliable water service.

The proposed project consists of replacing an existing 8-inch pipeline with a new 12-inch pipeline in Sultana Avenue and replacing existing 4-inch and 6-inch pipelines with an 8-inch pipeline in "F" Street and in Lynn Haven Court. The length of the project is approximately 8,500 linear feet of water pipelines and will replace the existing water services and will install new fire hydrants to meet current Fire Department spacing requirements. The existing 4-inch, 6-inch and 8-inch pipelines were originally

STAFF MEMBER PRESENTING: Scott Burton, Utilities General Manager

Prepared by: Fernando Cobos
Department: MU/Engineering

City Manager
Approval: 

Submitted to Council/O.H.A. 06/07/2016

Approved: _____

Continued to: _____

Denied: _____

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constructed in the 1950's and are beyond their service life. Additionally, these pipelines are recommended to be upsized to improve fire flow availability. A location map is provided for reference.

On April 14, 2016, twelve bids were received for construction of Water Main Improvements in Sultana Avenue and "F" Street (OMUC Contract No. UT 1516-07). The bids ranged from \$2,338,077 to \$3,915,384. The lowest five bids are summarized below.

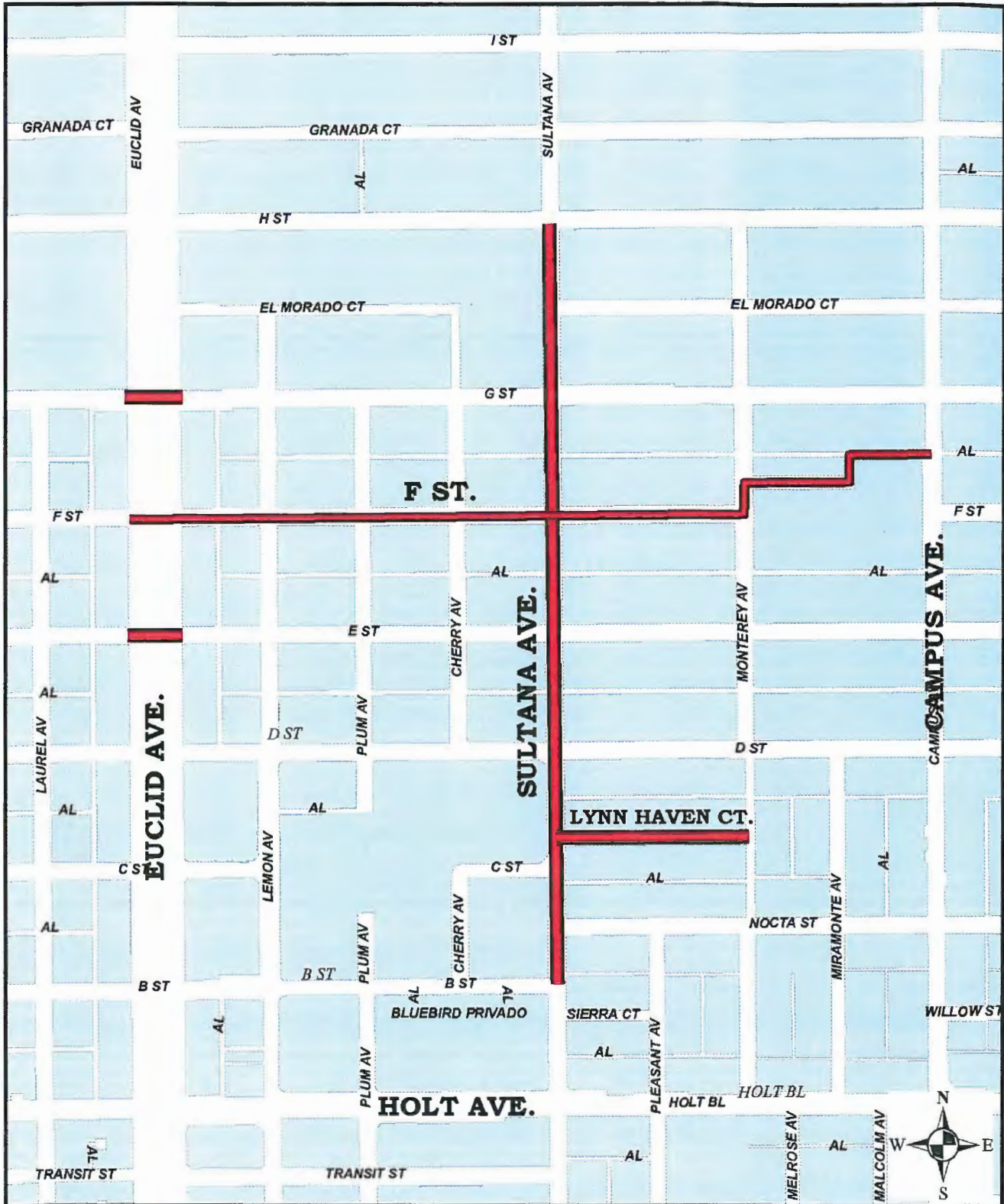
<u>Bidder</u>	<u>Location</u>	<u>Amount</u>
T. E. Roberts, Inc.	Orange, CA	\$2,338,077
Norstar Engineering & Plumbing	Alta Loma, CA	\$2,569,158
Ferreira Coastal	Chino, CA	\$2,771,529
Sully Miller Contracting Co.	Brea, CA	\$2,798,980
TBU, Inc.	Beaumont, CA	\$2,799,920

Staff recommends the award to T. E. Roberts, Inc. of Orange, California, based on their expertise and ability to perform the work in a timely manner and successful completion of this type of work in the past.

The City's Engineering Department will provide construction management and inspection services.

ENVIRONMENTAL REVIEW: The project is a component of the 2012 Infrastructure Master Plans approved by the City Council on December 4, 2012. A Mitigated Negative Declaration was prepared and approved for the 2012 Infrastructure Master Plans pursuant to the provisions of CEQA. The Mitigated Negative Declaration addressed the drainage, sewer, water and recycled water master plans (2012 Infrastructure Master Plans) including their alignments, pipe sizes and installation for the City. An analysis of the project has determined that there is no deviation from the description of this component of the overall 2012 Infrastructure Master Plans. Thus, no further CEQA analysis is required.

**WATER MAIN IMPROVEMENT
AT SULTANA AVENUE AND "F" STREET
OMUC Co. No. UT 1516-07**



CITY OF ONTARIO

Agenda Report

June 7, 2016

SECTION: PUBLIC HEARINGS

SUBJECT: A PUBLIC HEARING TO CONSIDER AN URGENCY ORDINANCE PROHIBITING THE ISSUANCE OF NEW BUSINESS LICENSES OR NEW ENTITLEMENTS FOR COMPOSTING (GREEN WASTE AND MANURE) FACILITIES IN THE CITY OF ONTARIO

RECOMMENDATION: That the City Council adopt an interim urgency ordinance placing a temporary moratorium on the issuance of new business licenses or new entitlements for composting facilities.

COUNCIL GOALS: Regain Local Control of the Ontario International Airport

Maintain the Current High level of Public Safety

Operate in a Businesslike Manner

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

FISCAL IMPACT: None.


BACKGROUND: With the annexation of Ontario Ranch into the City of Ontario in 1999, the City adopted a "right to farm" ordinance that allowed for on-going agricultural uses within the former agricultural preserve. One of the uses identified in the right to farm ordinance was "Waste management/fertilizer operations in accordance with applicable Local, State, and Federal Regulations." Over the past five years, several applications for composting facilities have been received, with the most recent application being submitted in 2015. During the course of the review for this application, concern was expressed about the potential public health and safety concerns associated with composting operations, including impacts to air quality, water quality, and traffic. As a result of these concerns, the City Council directed staff to enact a moratorium on all new composting facility applications to allow staff time to review the City's current requirements, available information, and, if appropriate, provide revised standards for future composting establishments.

STAFF MEMBER PRESENTING: Scott Murphy, Planning Director

Prepared by: Scott Murphy

Department: Planning

City Manager

Approval: 

Submitted to Council/O.H.A. 06/07/2016

Approved: _____

Continued to: _____

Denied: _____

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To provide adequate time to study what changes should be made to the City's Development Code to address the health and safety concerns, staff recommends that the City Council place a moratorium on all new business licenses and new development entitlements through adoption of an urgency ordinance. Under Government Code Section 65858, the City Council may issue a 45-day moratorium via adoption of an initial urgency ordinance by at least a 4/5 vote of the City Council.

ORDINANCE NO. _____

AN URGENCY ORDINANCE OF THE CITY COUNCIL OF THE CITY OF ONTARIO, CALIFORNIA, TEMPORARILY PROHIBITING THE ISSUANCE OF NEW BUSINESS LICENSES OR NEW ENTITLEMENTS FOR COMPOSTING (GREEN WASTE AND MANURE) FACILITIES IN THE CITY OF ONTARIO.

WHEREAS, in 1999, the City annexed 13 square miles of the San Bernardino County Agricultural Preserve, previously known as the New Model Colony or "NMC"; and

WHEREAS, the City recognized the need to allow for/maintain the existing agricultural uses in the NMC and to provide for the logical transition of uses over time; and

WHEREAS, in 2000, the City adopted Ordinance 2727, establishing the Agricultural Overlay and providing for waste and fertilizer operations as a conditionally permitted use; and

WHEREAS, concern has been expressed about the potential public health and safety impacts resulting from composting (green waste and manure) facilities, including air quality, water quality, and traffic impacts; and

WHEREAS, City staff requires time to gather data about the adverse impacts of composting establishments and research, study, and consider ways to amend the City's business license process and the Ontario Development Code to reduce potential impacts occurring at composting facilities; and

WHEREAS, Government Code Section 65858 expressly authorizes the City Council to adopt an urgency ordinance for the immediate preservation of the public health, safety, or welfare and to prohibit any use that may be in conflict with a contemplated general plan, specific plan, or zoning proposal that the legislative body, planning commission, or the planning department is considering or studying or intends to study within a reasonable time; and

WHEREAS, the Ontario City Council finds that there is a current and immediate threat to the public health, safety, or welfare from the unrestrained growth and continued operation of composting facilities; and

WHEREAS, the Ontario City Council further finds that the approval of additional business licenses or other permits or entitlements for the composting facilities, which is required in order to comply with the Ontario Development Code, would prolong or exacerbate the current and immediate threat to public health, safety, or welfare; and

WHEREAS, the Ontario City Council now wishes, on an urgency basis, to temporarily prohibit the issuance of business licenses or other permits or entitlements for the establishment or operation of composting facilities.

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

SECTION 1. Findings. The above recitals are true and correct and are incorporated herein by this reference. The Ontario City Council hereby finds that this Urgency Ordinance is necessary for the current and immediate protection of the public health, safety, and welfare of the City and its residents.

SECTION 2. Urgency Action. For a period of forty-five (45) days following the adoption of this Urgency Ordinance, no business license or other permit or entitlement shall be issued for the establishment or operation of a composting facility. The Ontario City Council hereby finds that there is an urgent need to adopt this temporary prohibition in order to eliminate the current and immediate threats set forth above.

SECTION 3. Adoption. Pursuant to Government Code Section 36937, this Urgency Ordinance is designed to protect the health, safety, and welfare of the City and its residents and becomes effective immediately upon adoption by at least a four-fifths (4/5) vote of the City Council following the notice and public hearing required by Government Code section 65858(a).

SECTION 4. CEQA. This Urgency Ordinance is not a project within the meaning of Section 15378 of the State of California Environmental Quality Act ("CEQA") Guidelines, because it has no potential for resulting in physical change in the environment, directly or indirectly. The City Council further finds, under Title 14 of the California Code of Regulations, section 15061(b)(3), that this Urgency Ordinance is nonetheless exempt from the requirements of CEQA in that the activity is covered by the general rule that CEQA applies only to projects which have the potential for causing a significant effect on the environment. Where it can be seen with certainty that there is no possibility that the activity in question may have a significant effect on the environment, the activity is not subject to CEQA. The City Council, therefore, directs that a Notice of Exemption be filed with the County Clerk of the County of San Bernardino in accordance with CEQA Guidelines.

SECTION 5. Custodian of Records. The documents and materials that constitute the record of proceedings on which these findings and this Urgency Ordinance are based are located at the Office of the City Clerk, located at 303 East "B" Street, Ontario, CA 91764. The custodian of these records is the City Clerk.

SECTION 6. Severability. If any section, sentence, clause or phrase of this Urgency 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 Urgency Ordinance which can be given effect without the invalid provision or application, and to this end the provisions of this Urgency Ordinance are severable. The People of the City of Ontario hereby declare that they would have adopted this Urgency 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 Urgency Ordinance shall become effective immediately upon its adoption.

SECTION 8. Publication and Posting. The Mayor shall sign this Urgency Ordinance and the City Clerk shall certify as to its 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 Urgency 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 7th day of June 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 Urgency Ordinance No. _____ was duly introduced and adopted at a regular meeting of the City Council of the City of Ontario held June 7, 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 Urgency Ordinance No. _____ duly passed and adopted by the Ontario City Council at their regular meeting held June 7, 2016 and the entire Ordinance was published on June 14, 2016, in the Inland Valley Daily Bulletin newspaper.

SHEILA MAUTZ, CITY CLERK

(SEAL)