

**CITY OF ONTARIO**  
**CITY COUNCIL AND HOUSING AUTHORITY**  
**AGENDA**  
**FEBRUARY 4, 2014**

**Paul S. Leon**  
Mayor

**Alan D. Wapner**  
Mayor pro Tem

**Jim W. Bowman**  
Council Member

**Debra Dorst-Porada**  
Council Member

**Paul Vincent Avila**  
Council Member



**Al C. Boling**  
City Manager

**John E. Brown**  
City Attorney

**Mary E. Wirtes, MMC**  
City Clerk

**James R. Milhiser**  
Treasurer

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

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

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

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

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

**6:00 p.m.**

***ROLL CALL***

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

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

***CLOSED SESSION***

- GC 54956.9 (d)(1), CONFERENCE WITH LEGAL COUNSEL, EXISTING LITIGATION: *City of Ontario vs. City of Los Angeles, Los Angeles World Airports, and Los Angeles Board of Airport Commissioners, RIC 1306498*

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

***PLEDGE OF ALLEGIANCE***

Council Member Dorst-Porada

***INVOCATION***

Dan Gross, Assistant Pastor, Montecito Baptist Church

***REPORT ON CLOSED SESSION***

City Attorney

## **PUBLIC COMMENTS**

**6:30 p.m.**

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

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

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

## **CONSENT CALENDAR**

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

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

### **1. *BILLS/PAYROLL***

**Bills** December 15, 2013 through January 11, 2014 and **Payroll** December 15, 2013 through January 11, 2014, when audited by the Finance Committee.

### **2. *A MEMORANDUM OF UNDERSTANDING FOR REIMBURSEMENT OF COSTS INCURRED RELATED TO THE TRANSFER OF THE ONTARIO INTERNATIONAL AIRPORT TO THE ONTARIO INTERNATIONAL AIRPORT AUTHORITY***

That the City Council authorize the City Manager to execute a Memorandum of Understanding (MOU) by and between the Ontario International Airport Authority (OIAA) and the City of Ontario (Ontario) setting forth the terms and conditions for reimbursement of costs and expenditures incurred and anticipated to be incurred on behalf of the OIAA in pursuit of a successful Ontario International Airport (ONT) transfer.

**3. AMENDMENT TO AN OWNER PARTICIPATION AGREEMENT BETWEEN THE SUCCESSOR AGENCY TO THE ONTARIO REDEVELOPMENT AGENCY AND ONTARIO AIRPORT TOWERS, LLC**

That the City Council, acting as the Successor Agency to the former Ontario Redevelopment Agency, adopt the attached resolution in connection with the approval of an amendment to an Owner Participation Agreement between the Successor Agency to the Ontario Redevelopment Agency and Ontario Airport Towers, LLC, a Delaware Limited Liability Company.

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

A RESOLUTION OF THE SUCCESSOR AGENCY TO THE ONTARIO REDEVELOPMENT AGENCY OF THE CITY OF ONTARIO, CALIFORNIA, APPROVING A FIRST AMENDMENT TO THE OWNER PARTICIPATION AGREEMENT BETWEEN THE SUCCESSOR AGENCY AND TNHYIF REIV INDIA, LLC.

**4. ACCEPT A WRITTEN PETITION TO CREATE A COMMUNITY FACILITIES DISTRICT, A RESOLUTION OF INTENT TO ESTABLISH CITY OF ONTARIO COMMUNITY FACILITIES DISTRICT NO. 23 (PARK PLACE SERVICES) AND AUTHORIZE THE ASSOCIATED LEVY OF SPECIAL TAXES**

That the City Council:

- (A) Accept the written petition (on file with the Records Management Department) from SL Ontario Development Company, LLC, located in Irvine, CA, to create a Community Facilities District (“CFD”), and to waive certain procedural matters, under the Mello-Roos Community Facilities Act of 1982; and
- (B) Adopt a Resolution of Intent to establish City of Ontario Community Facilities District No. 23 (Park Place Services); authorize the levy of special taxes therein; and set a public hearing for the formation of the CFD as part of the regularly scheduled City Council meeting scheduled for Tuesday, March 18, 2014.

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

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF ONTARIO, CALIFORNIA, OF INTENTION TO ESTABLISH A COMMUNITY FACILITIES DISTRICT AND TO AUTHORIZE THE LEVY OF SPECIAL TAXES.

**5. A RESOLUTION APPROVING AN APPLICATION FOR THE FISCAL YEAR 2013-14 USED OIL COMPETITIVE GRANT PROGRAM (UOC1) FROM THE DEPARTMENT OF RESOURCES RECYCLING AND RECOVERY (CALRECYCLE)**

That the City Council adopt a resolution approving the City’s application up to \$250,000 for the Fiscal Year 2013-14 Used Oil Competitive Grant Program (UOC1) pursuant to Sections 40000 et seq. of the Public Resources Code; and authorize the City Manager to execute said application.

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

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF ONTARIO, CALIFORNIA, APPROVING A GRANT APPLICATION TO THE DEPARTMENT OF RESOURCES RECYCLING AND RECOVERY (CALRECYCLE) USED OIL COMPETITIVE GRANT PROGRAM TO FUND MITIGATION PROJECTS PREVENTING USED OIL STORM WATER POLLUTION, EXPAND THE USED OIL AND FILTER COLLECTION PROGRAM TO CERTIFIED COLLECTION CENTERS; PROVIDE EDUCATION AND OUTREACH TO INFORM THE PUBLIC OF LOCAL USED OIL AND FILTER RECYCLING OPPORTUNITIES AND WAYS TO PREVENT STORM WATER POLLUTION CAUSED BY USED OIL.

**6. A RESOLUTION APPROVING AN APPLICATION FOR FISCAL YEAR 2014-15 FOR FISCAL YEAR 2014-15 LOCAL GOVERNMENT WASTE TIRE CLEANUP GRANT PROGRAM FROM THE DEPARTMENT OF RESOURCES RECYCLING AND RECOVERY (CALRECYCLE)**

That the City Council adopt a resolution approving the City's application for the Fiscal Year 2014-15 Local Government Waste Tire Cleanup Grant Program (TCU15) pursuant to Sections 40000 et seq. of the Public Resources Code; and authorize the City Manager to execute said application.

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

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF ONTARIO, CALIFORNIA, APPROVING A GRANT APPLICATION FROM THE DEPARTMENT OF RESOURCES RECYCLING AND RECOVERY LOCAL GOVERNMENT WASTE TIRE CLEANUP GRANT PROGRAM (TCU15) FOR FISCAL YEAR 2014-2015 TO FUND COLLECTION REMOVAL AND TRANSPORT OF CALIFORNIA WASTE TIRES ILLEGALLY DUMPED ALONG PUBLIC RIGHT OF WAY.

**7. A PROFESSIONAL SERVICES AGREEMENT FOR DESIGN SERVICES FOR SEWER MAIN IMPROVEMENTS AT VARIOUS LOCATIONS/PARSONS BRINCKERHOFF, INC.**

That the City Council authorize the City Manager to execute a professional services agreement with Parsons Brinckerhoff, Inc. (on file with the Records Management Department) located in San Bernardino, California, to provide professional design services for sewer main improvements at various locations in the amount of \$163,300 plus a 15% contingency (\$24,495) for a total of \$187,795.

**8. AN ORDINANCE APPROVING FILE NO. PSP12-001, A SPECIFIC PLAN (GRAND PARK) TO ESTABLISH LAND USE DESIGNATIONS, DEVELOPMENT STANDARDS, AND DESIGN GUIDELINES FOR APPROXIMATELY 320 GROSS ACRES LOCATED WITHIN THE NEW MODEL COLONY AND BOUNDED BY EDISON AVENUE TO THE NORTH, EUCALYPTUS AVENUE TO THE SOUTH, ARCHIBALD AVENUE TO THE WEST, AND HAVEN AVENUE TO THE EAST (APNS: 218-241-06, 10, 11, 13, 14, 15, 16, 19, 20, 22 AND 23)**

That the City Council consider and adopt an ordinance approving the Grand Park Specific Plan (File No. PSP12-001).

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

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF ONTARIO, CALIFORNIA, APPROVING THE GRAND PARK SPECIFIC PLAN, FILE NO. PSP12-001, ESTABLISHING LAND USE DESIGNATIONS, DEVELOPMENT STANDARDS, AND DESIGN GUIDELINES FOR 320.2 ACRES, WHICH INCLUDES THE POTENTIAL DEVELOPMENT OF 1,327 DWELLING UNITS AND A 146.7 ACRE PUBLIC PARK, BOUNDED BY EDISON AVENUE TO THE NORTH, EUCALYPTUS AVENUE TO THE SOUTH, ARCHIBALD AVENUE TO THE WEST, AND HAVEN AVENUE TO THE EAST, AND MAKING FINDINGS IN SUPPORT THEREOF - APN(S): 218-241-06, 10, 11, 13, 14, 15, 16, 19, 20, 22 AND 23.

**COUNCIL MATTERS**

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

**STAFF MATTERS**

City Manager Boling

**ADJOURNMENT**

**CITY OF ONTARIO  
CLOSED SESSION REPORT**  
City Council // Housing Authority //  
Other // (GC 54957.1)  
**February 4, 2014**

**ROLL CALL:** Wapner \_\_, Bowman \_\_, Dorst-Porada \_\_, Avila \_\_  
Mayor / Chairman Leon \_\_.

**STAFF:** City Manager / Executive Director \_\_, City Attorney \_\_

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

- GC 54956.9 (d)(1), CONFERENCE WITH LEGAL COUNSEL, EXISTING LITIGATION: *City of Ontario vs. City of Los Angeles, Los Angeles World Airports, and Los Angeles Board of Airport Commissioners, RIC 1306498*

| No Reportable Action | Continue | Approved |
|----------------------|----------|----------|
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| / / | / / | / / |
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Disposition: \_\_\_\_\_

Reported by: \_\_\_\_\_  
City Attorney / City Manager / Executive Director

# CITY OF ONTARIO

## Agenda Report

February 4, 2014

## SECTION: CONSENT CALENDAR

**SUBJECT: A MEMORANDUM OF UNDERSTANDING FOR REIMBURSEMENT OF COSTS INCURRED RELATED TO THE TRANSFER OF THE ONTARIO INTERNATIONAL AIRPORT TO THE ONTARIO INTERNATIONAL AIRPORT AUTHORITY**

**RECOMMENDATION:** That the City Council authorize the City Manager to execute a Memorandum of Understanding (MOU) by and between the Ontario International Airport Authority (OIAA) and the City of Ontario (Ontario) setting forth the terms and conditions for reimbursement of costs and expenditures incurred and anticipated to be incurred on behalf of the OIAA in pursuit of a successful Ontario International Airport (ONT) transfer.

**COUNCIL GOALS: Develop Strategies and Take Actions, Including Regaining Local Control of the Ontario International Airport, to Minimize the Negative Impacts of the Global Financial Downturn on Ontario's Economy and the City's Fiscal Health**  
**Invest in the Growth and Evolution of the City's Economy**  
**Pursue City's Goals and Objectives by Working with Other Governmental Agencies**

**FISCAL IMPACT:** In accordance with the terms and conditions of the recommended MOU, any and all funds expended, by the City of Ontario on behalf of the OIAA in pursuit of a successful ONT transfer shall be reimbursed by the OIAA to Ontario after the airport's financial systems and operating budgets are transferred from the City of Los Angeles to the OIAA. The total reimbursement to the City of Ontario is undetermined at this time, but will be tabulated after transfer of the airport and shall be subject to applicable Federal guidelines regulating allowable and allocable airport costs.

**BACKGROUND:** In October 2012, the OIAA was formed through a Joint Exercise of Powers Agreement to accept control of ONT from the City of Los Angeles. Since OIAA's formation, the City of Ontario has provided services in support of the OIAA's mission. Earlier in the same year, Ontario also launched the "Set ONTario Free" campaign to mobilize Southern California's communities to affect a transfer of ONT to local control.

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

Prepared by: Jacob Green  
Department: Administration

City Manager  
Approval: 

Submitted to Council/O.H.A. 02/04/2014  
Approved: \_\_\_\_\_  
Continued to: \_\_\_\_\_  
Denied: \_\_\_\_\_

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To date, the City of Ontario has spent over \$1 million on behalf of the entire region and the OIAA to facilitate a successful transfer of ONT. The OIAA has approved to formalize through an MOU, the current and anticipated future use of the City of Ontario on a contract-basis for certain administrative, legal, operating, marketing, communications, and consultants/contractors. The OIAA also has approved to reimburse the City of Ontario for all costs associated with the “Set ONTario Free” campaign and those services associated with the transfer.

Accordingly, it is recommended that the City approve the MOU by and between the OIAA (a non-CalPERS entity) and the City of Ontario (a CalPERS agency) to facilitate the reimbursement of all expenses associated with the airport campaign and subsequent transfer of the airport.

# CITY OF ONTARIO

*Agenda Report*

February 4, 2014

SECTION:  
CONSENT CALENDAR

**SUBJECT: AMENDMENT TO AN OWNER PARTICIPATION AGREEMENT BETWEEN THE SUCCESSOR AGENCY TO THE ONTARIO REDEVELOPMENT AGENCY AND ONTARIO AIRPORT TOWERS, LLC**

**RECOMMENDATION:** That the City Council, acting as the Successor Agency to the former Ontario Redevelopment Agency, adopt the attached resolution in connection with the approval of an amendment to an Owner Participation Agreement between the Successor Agency to the Ontario Redevelopment Agency and Ontario Airport Towers, LLC, a Delaware Limited Liability Company.

**COUNCIL GOALS:** Develop Strategies and Take Actions, Including Regaining Local Control of the Ontario International Airport, to Minimize the Negative Impacts of the Global Financial Downturn on Ontario's Economy and the City's Fiscal Health  
Invest in the Growth and Evolution of the City's Economy

**FISCAL IMPACT:** The amendment creates no fiscal obligation beyond that which already exists and is in place in the existing agreement.

**BACKGROUND:** In March 2012, TNHYIF REIV India LLC ("Owner") acquired from Ontario Airport Towers LLC ("Prior Owner") the 21.42 acre property generally located at the southeast corner of Archibald Avenue and the Interstate 10 Freeway ("Property"). The former Ontario Redevelopment Agency and the Prior Owner entered into that certain 2007 Owner Participation Agreement ("Agreement") dated September 4, 2007 which set forth the terms and conditions pursuant to which the Owner was to develop and operate the private improvements on the Property and complete the public improvements (i.e. Guasti Road) necessary for the development of the project. The Agreement further provides for use of the annual tax increment as payment for costs.

The first phase of the private improvements (i.e. the office building, corner commercial/office building, and the associated on-site parking and site improvements) are complete and a Certificate of Completion was recorded on April 17, 2009. Pursuant to Section 4.10 of the Agreement, the Certificate of

**STAFF MEMBER PRESENTING:** John Andrews, Economic Development Director

Prepared by: John Andrews  
Department: Economic Development

City Manager  
Approval: 

Submitted to Council/O.H.A. 02/04/2014

Approved: \_\_\_\_\_

Continued to: \_\_\_\_\_

Denied: \_\_\_\_\_

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Completion is a conclusive determination of the satisfactory completion of the Owner's obligations under the Agreement with respect to the completion of Phase I on the property. Further, the above-noted Guasti Road public improvements are complete and have been accepted by the City of Ontario. In order to properly position the development and Agreement going forward, and to facilitate the marketing and pre-development of the Property by the Owner for future Phase II improvements, the Owner has requested an amendment to the Agreement to revise the Schedule of Performance as contained in the Agreement.

The Agreement, including all terms and annual payments, has been included and approved by the State of California Department of Finance as an enforceable obligation. Following consideration and approval by the City Council acting as the Successor Agency, a resolution approving the amendment will be presented to the Oversight Board for its consideration and approval.

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

A RESOLUTION OF THE SUCCESSOR AGENCY TO THE ONTARIO REDEVELOPMENT AGENCY OF THE CITY OF ONTARIO, CALIFORNIA, APPROVING A FIRST AMENDMENT TO THE OWNER PARTICIPATION AGREEMENT BETWEEN THE SUCCESSOR AGENCY AND TNHIF REIV INDIA, LLC.

WHEREAS, pursuant to Health and Safety Code Section 34173, the City of Ontario ("Successor Agency") is the successor agency to the dissolved Ontario Redevelopment Agency ("Agency"); and

WHEREAS, well in advance of its dissolution, the Agency and Ontario Airport Towers, LLC ("Prior Owner") entered into that certain Owner Participation Agreement (Ontario Airport Towers), dated September 4, 2007 ("Agreement"), which set forth the terms and conditions by which the Prior Owner agreed to develop and operate Private Works of Improvement, as further defined in the Agreement ("PWI"), on that certain real property located in the City of Ontario, California and consisting of approximately 21.462 acres, as further described in the Agreement ("Property"), for the completion of public improvements necessary for the development of the PWI, and to provide for the Agency to pay to Owner an amount as further specified and defined in the Agreement as the "Agency's Yearly Tax Increment Payment" as reimbursement for certain related costs; and

WHEREAS, in 2012, TNHIF REIV India, LLC ("Owner") acquired the Property from the Prior Owner; and

WHEREAS, the public improvements necessary for the development of the PWI have since been completed and accepted by the Agency and City of Ontario ("City"), and the Owner has completed certain PWI and received a Certificate of Completion, recorded on April 17, 2009, for what is referred to as "Phase I" in the Agreement; and

WHEREAS, pursuant to the Agreement, the Certificate of Completion is a conclusive determination of the satisfactory completion of the Owner's obligations under the Agreement with respect to the completion of Phase I of the PWI on the Property; and

WHEREAS, the Agreement also provided that the Owner intended to establish a Mello-Roos Community Facility District (CFD) pursuant to the California Mello-Roos Community Facilities District Law (California Government Code Section 53311, *et seq.*) to finance the costs of constructing the public improvements and, to that purpose, submitted an application and petition to the City to establish a CFD; and

WHEREAS, the Successor Agency and Owner now acknowledge and agree that Owner no longer intends to form a CFD and, as such, have negotiated a First Amendment to the Agreement ("First Amendment") to: (i) remove all references to a CFD in the Agreement; (ii) modify the provisions of the Agreement pertaining to certain payments required to be made by Agency to the Prior Owner to now require those

payments to be disbursed to Owner; and (iii) extend the dates for performance of the remaining requirements of Owner, as set forth in the Schedule of Performance of the Agreement; and

WHEREAS, the Successor Agency has determined that this First Amendment is in the best interests of the Successor Agency, the community and the winding down of the Agency's business and desires to approve the First Amendment.

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

SECTION 1. RECITALS. The Recitals set forth above are true and correct and are incorporated into this Resolution by this reference.

SECTION 2. CEQA Compliance. The First Amendment does not commit the Successor Agency to any action that may have a significant effect on the environment. As a result, such action does not constitute a project subject to the requirements of the California Environmental Quality Act. The City Clerk of the City of Ontario, acting on behalf of the Successor Agency, is authorized and directed to file a Notice of Exemption with the appropriate official of the County of San Bernardino, California, within five (5) days following the date of adoption of this Resolution.

SECTION 3. Approval of the Agreement. The Successor Agency hereby approves the First Amendment attached hereto and incorporated herein by reference as Exhibit "A" and any non-substantive revisions, which may be needed.

SECTION 4. Implementation. The City Manager, acting on behalf of the Successor Agency, is hereby authorized and directed to take any action necessary to carry out the purposes of this Resolution and comply with applicable laws, including to execute the First Amendment on behalf of the Successor Agency and make any non-substantive revisions to the First Amendment, as needed.

SECTION 5. Severability. If any provision of this Resolution or the application of any such provision to any person or circumstance is held invalid, such invalidity shall not affect other provisions or applications of this Resolution that can be given effect without the invalid provision or application, and to this end the provisions of this Resolution are severable. The Successor Agency declares that the Successor Agency would have adopted this Resolution irrespective of the invalidity of any particular portion of this Resolution.

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

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

PASSED, APPROVED, AND ADOPTED this 4<sup>th</sup> day of February 2014.

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PAUL S. LEON, CHAIRMAN

ATTEST:

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MARY E. WIRTES, AGENCY SECRETARY

APPROVED AS TO LEGAL FORM:

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BEST BEST & KRIEGER LLP  
AGENCY COUNSEL

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

I, MARY E. WIRTES, City Clerk of the City of Ontario, in my official capacity as secretary to the Successor Agency to the Ontario Redevelopment Agency, DO HEREBY CERTIFY that Resolution No.        was duly adopted by the Successor Agency to the Ontario Redevelopment Agency at a regular meeting held on the 4<sup>th</sup> day of February, 2014, by the following vote:

AYES:           AGENCY MEMBERS:

NOES:           AGENCY MEMBERS:

ABSENT:        AGENCY MEMBERS:

\_\_\_\_\_  
MARY E. WIRTES, AGENCY SECRETARY

(SEAL)

The foregoing is the original of Resolution No.       duly passed and adopted by the Successor Agency to the Ontario Redevelopment Agency at their regular meeting held February 4, 2014.

\_\_\_\_\_  
MARY E. WIRTES, AGENCY SECRETARY

(SEAL)

EXHIBIT A

FIRST AMENDMENT TO 2007 OWNER PARTICIPATION AGREEMENT  
(ONTARIO AIRPORT TOWERS)

[Attached behind this page]

**FIRST AMENDMENT  
TO  
2007 OWNER PARTICIPATION AGREEMENT  
(ONTARIO AIRPORT TOWERS)**

THIS FIRST AMENDMENT TO 2007 OWNER PARTICIPATION AGREEMENT (Ontario Airport Towers) ("**First Amendment**") is dated effective as of September \_\_\_\_, 2013 ("**Effective Date**"), and is entered into by and between THE SUCCESSOR AGENCY TO THE ONTARIO REDEVELOPMENT AGENCY, a public body, corporate and politic ("**Agency**"), and TNHYIF REIV INDIA, LLC, a Delaware limited liability company, as successor to Ontario Airport Center, LLC, a Delaware limited liability company ("**Owner**"). The Agency and the Owner are sometimes referred to in this First Amendment, each individually, as a "**Party**," or collectively, as the "**Parties**." The Agency and Owner enter into this Agreement with reference to the following recited facts (each a "**Recital**"):

**RECITALS**

A. Pursuant to Health and Safety Code section 34173(d), the City of Ontario became the successor agency to the former Ontario Redevelopment Agency ("RDA") upon the RDA's dissolution on February 1, 2012; and

B. In March 2012, Owner acquired from Ontario Airport Towers, LLC ("Prior Owner") that certain real property of approximately 21.462 acres in size located within the Project Area on the southeast side of Interstate 10 and Archibald Avenue and identified parcels 1, 3 ,4 ,5 ,6 ,7, 8 and 9 on that certain Parcel Map No. 18020 to be recorded in the Official Records of San Bernardino County ("**Property**"), as more particularly defined in the Agreement.

C. The RDA and the Prior Owner entered into that certain "2007 Owner Participation Agreement (Ontario Airport Towers)" dated as of September 4, 2007 (the "**Agreement**"), which set forth the terms and conditions pursuant to which Owner was to develop and operate Private Works of Improvement ("**PWI**") on the Property and complete Public Improvements necessary for the development of the PWI and provide for the Agency's Yearly Tax Increment Payment to be applied as payment for costs. The Public Improvements necessary for the development of the PWI has since been completed and accepted by the Agency and City of Ontario.

D. The Phase 1 PWI was completed and a Certificate of Completion-Ontario Airport Center (Phase 1), contemplated by the provisions of Section 4.10 of the Original Agreement, was recorded April 17, 2009. Pursuant to Section 4.10 of the Agreement, the Certificate is a conclusive determination of the satisfactory completion of Owner's obligations under the Agreement with respect to the completion of Phase 1 of the PWI on the Property, including all buildings and all parking, landscaping and related improvements necessary for Phase 1 and its use and occupancy.

E. The Agreement provided that Owner intended to establish a Mello-Roos Community Facility District (CFD) pursuant to the California Mello-Roos Community Facilities District Law (California Government Code Section 53311, *et seq.*) to finance the costs of

constructing the Public Improvements and, to that purpose, submitted an application and petition to the City to establish a CFD. The Parties now acknowledge and agree that Owner no longer intends to form a CFD.

F. The purpose of this First Amendment is to revise the Agreement to: (i) remove all references to a CFD; (ii) modify the provisions regarding to whom the Agency's Yearly Tax Increment Payment is to be disbursed; (iii) extend the dates for performance by Owner as set forth in the Schedule of Performance; and (iv) provide for the payment of the Financial Consideration due and payable to Owner as of the date of this First Amendment.

NOW THEREFORE, in consideration of the mutual covenants set forth herein and the mutual benefits to be derived therefrom, the Parties agree as follows:

### TERMS

1. The defined term "OAC" or "Owner" shall mean and refer to TNHYIF REIV India, LLC, a Delaware limited liability company.

2. Recitals F of the Agreement shall be deleted in its entirety and replaced with the following:

"F. Reserved."

3. Recital I of the Agreement shall be revised to state as follows:

"I. The intent of the Agency and OAC in entering into this Agreement is to: (i) establish specific development requirements and timelines to govern the development and operation of the PWI on the Property by OAC and its successors and assigns, (ii) ensure that the Public Improvements necessary for the development of the PWI are completed by OAC, and (iii) provide for the Agency's Yearly Tax Increment Payment (as defined below) to be applied as a payment towards the payment of principal and interest and other costs incurred by OAC, as more particularly hereinafter described."

4. Sections 1.1(g) of Article I of the Agreement shall be deleted in its entirety and replaced with the following:

"(g) Reserved."

5. Sections 1.1(h) of Article I of the Agreement shall be deleted in its entirety and replaced with the following:

"(h) Reserved."

6. Sections 1.1(i) of Article I of the Agreement shall be deleted in its entirety and replaced with the following:

"(i) Reserved."

7. Sections 1.1(j) of Article I of the Agreement shall be deleted in its entirety and replaced with the following:

“(j) Reserved.”

8. Sections 1.1(k) of Article I of the Agreement shall be deleted in its entirety and replaced with the following:

“(k) Reserved.”

9. Sections 1.1(l) of Article I of the Agreement shall be deleted in its entirety and replaced with the following:

“(l) Reserved.”

10. Sections 1.1(r) of Article I of the Agreement shall be deleted in its entirety and replaced with the following:

“(r) Reserved.”

11. Section 1.1(u) of Article I to the Agreement shall be revised to state as follows:

“(u) **“Eligibility Period”** means the period commencing with July 1st of the First Fiscal Year and ending upon the date as set forth in the Schedule of Performance.”

12. Section 1.1(z) of Article I of the Agreement shall be revised to state as follows:

“(z) **“Financial Consideration”** means the aggregate amount of each and every Yearly Tax Increment Payment payable by the Agency to OAC, subject to the terms, conditions and limitations of this Agreement.”

13. Section 1.1(ll)(5) of Article I of the Agreement shall be revised to state as follows:

“(5) In the Twenty Seventh Fiscal Year and all following Fiscal Years through the end of the Eligibility Period, inclusive, the amount of Three Hundred Thirty Seven Thousand Dollars (\$337,000).”

14. Sections 1.1(mm) of Article I of the Agreement shall be deleted in its entirety and replaced with the following:

“(mm) Reserved.”

15. Section 1.1(ss) of Article I of the Agreement shall be revised to state as follows:

“(ss) **“Outside Project Completion Date”** means and refers to the date as set forth in the Schedule of Performance.”

16. Section 1.1(ggg) of Article I of the Agreement shall be revised to state as follows:

“(ggg) **“Public Improvements”** means and refers to those certain street, curb, gutter, sidewalk, parkway, median, and other publicly owned improvements to be designed and constructed as conditions of approval for the PWI. The Public Improvements are described, and are limited to those Public Improvements so described, on the attached Exhibit “G”. The term “Public Improvements” includes the physical structures, conduits, paving, and similar appurtenances, together with all permanent and temporary property interests required for the construction and installation of the same. The estimated costs of the Public Improvements set forth on Exhibit “G” are not a representation of the actual costs of the Public Improvements, which actual costs may be more or less than those set forth on Exhibit “G”. OAC shall bear all costs of the Public Improvements which exceed the Financial Consideration paid to OAC; OAC acknowledges that the Financial Consideration may not be sufficient to pay for the entirety of the Public Improvements.”

17. Section 1.1(rrr) of Article I of the Agreement shall be revised to state as follows:

“(rrr) **“Yearly Tax Increment Payment”** means and refers to, as to any Fiscal Year within the Eligibility Period, an amount equal to the least of: (1) the Yearly Net Eligible Tax Increment for such Fiscal Year; (2) the Yearly Net Eligible Tax Increment Cap applicable to such Fiscal Year; and (3) the Maximum Yearly Tax Increment Payment applicable to such Fiscal Year.”

18. Section 2.4(a) of Article II of the Agreement shall be revised to state as follows:

“(a) The Public Improvements and the PWI shall be completed pursuant to separate construction contracts. The Public Improvements shall be completed pursuant to the terms and conditions of this Agreement and the PWI shall be completed pursuant to separate private construction contracts. No portion of the PWI improvements shall be paid in whole or in part with proceeds of the Agency Financial Consideration.”

19. Section 2.4(c) of Article II of the Agreement shall be revised as follows:

“(c) The PWI shall be financed solely by debt and equity financing provided by OAC at its sole cost and expense and no portion of the Agency Financial Consideration shall be used in whole or in part to pay for any portion of the PWI.”

20. Section 3.4 of Article III of the Agreement shall be revised to state as follows:

“Section 3.4 **Payment of Combined Yearly Tax Increment Payment.** Within thirty (30) days following the Agency’s determination of the Yearly Tax Increment Payment in accordance with Section 3.2 (including the final resolution of any dispute in connection therewith), the Agency shall pay the Yearly Tax Increment Payment to OAC or an approved assignee as provided in Section 3.10.”

21. Section 3.6 of Article III of the Agreement shall be revised to state as follows:

“Section 3.6 **No Restriction on Future Amendment(s) to Redevelopment Plan.** Nothing in this Agreement shall constitute or is a limitation or restriction upon the

Agency's Governing Board's and/or City Council's authority to amend the Redevelopment Plan and/or take any other actions with respect to the PWI or Project Area without notice to or consent from OAC, except as may otherwise be expressly provided by the CRL or other applicable statutory provisions. The foregoing notwithstanding, prior to taking any action with respect to the Redevelopment Plan, Project Area or PWI which may materially impact either the Agency's ability to meet its financial obligations to OAC hereunder or OAC's ability to develop the PWI, Agency shall meet and confer in good faith with OAC and shall reasonably consider OAC's objections to any such proposed action. OAC's objections notwithstanding, the Agency's Governing Board or City Council may take any action with respect to the Redevelopment Plan, Project Area, and the PWI as the Agency's Governing Board and/or City Council may see fit in their legislative discretion and which is otherwise permitted by the CRL, and other applicable statutory provisions. OAC hereby reserves all rights, causes of action and claims that OAC may be able to assert against the Agency as a result of such actions. Nothing set forth in this Section 3.6 will relieve the Agency of any of its obligations under this Agreement, including without limitation, the obligation to pay the Financial Consideration."

22. Section 3.8 of Article III of the Agreement shall be revised to state as follows:

"Section 3.8 **Third Party Public Improvements Payments.** OAC acknowledges that developers of properties adjacent to the Property and/or whose development projects are benefited by the Public Improvements (other than the Project) may be required by the City to pay a fair share contribution towards the cost of the Public Improvements, as determined by the City in its reasonable discretion. The City Manager, on behalf of the City, shall determine the fair share contribution based on the actual and anticipated cost of the public improvements, including but not limited to those costs incurred or to be incurred by the City, Agency and OAC. All such amounts shall be paid to Agency and shall be used to first reimburse Agency for all actual costs incurred by Agency associated with the Public Improvements, with any remaining balance, if any, to be paid to OAC to reimburse OAC for costs incurred by OAC in association with construction of the Public Improvements."

23. Sections 3.10 is hereby added to Article III of the Agreement to state as follows:

**3.10 Assignment of Rights to Receive Yearly Tax Increment Payment.** Notwithstanding anything in this Agreement to the contrary, OAC's right to receive Yearly Tax Increment Payments shall be a right personal to OAC, shall not run with the land or any portion thereof, and shall be fully assignable, in whole or in part, by OAC, upon the approval of the Agency, which approval shall not be unreasonably withheld or delayed. Notwithstanding the foregoing, no approval shall be required for an assignment of all or any portion of Yearly Tax Increment payments to an owner of the Property, or any portion of the Property, or to any lender of all or any portion of the Property. Agency agrees to pay Yearly Tax Increment Payments directly to any approved parties and in such amounts as may be designated by OAC; provided, however, that any additional costs incurred by Agency in making payments to any approved parties including, without

limitation, additional postage charges and bank fees, shall be deducted from the Yearly Tax Increment Payments, or portion thereof, paid to the applicable approved party.

24. Section 4.4(b) of Article IV of the Agreement shall be revised to state as follows:

“(b) The Agency may, acting by and through its Executive Director in his/her sole discretion, extend any date set forth in the Schedule of Performance for any Phase of the PWI for up to two (2) consecutive one (1) year extensions.

25. Section 5.1(b) of Article V of the Agreement shall be revised to state as follows:

“(b) Commencing upon the Effective Date and ending upon the later of (1) the expiration of the Agency’s authority to receive property taxes from the Project Area pursuant to CRL Section 33670(b), and (2) the expiration of the Eligibility Period, OAC, for itself and its successors and assigns, covenants and agrees to pay all ad valorem property taxes and special assessment/tax bills with respect to the Property and all improvements on or to the Property on or before the last day for the timely payment of each property tax and special assessment/tax installment on each December 10 and April 10 during such time period and to timely pay all supplemental tax bills regarding the Property issued by the County of San Bernardino, California. OAC further covenants and agrees to provide to the Agency, on or before each July 31 following the Phase 1 Completion Date until the expiration of the Agency’s authority to receive property taxes from the Project Area pursuant to CRL Section 33670(b) (i) a true and correct copy of all property tax assessment notices, property tax bills and property tax assessment correspondence by and between OAC and the County of San Bernardino, California, regarding the Property and all improvements on or to the Property, with respect to the preceding fiscal year of the County of San Bernardino, California, and (ii) cancelled checks issued by OAC in payment of all property tax payments made to the County of San Bernardino, California, regarding the Property and all improvements on or to the Property, with respect to the preceding fiscal year of the County of San Bernardino, California.”

26. Section 9.2 of Article IX of the Agreement shall be revised to state as follows:

“Section 9.2 **Parties to the Agreement.** The Parties to this Agreement are the Agency and OAC. The City is not a Party to this Agreement. This Agreement and the Parties’ performance hereunder is strictly for the benefit of the Agency and OAC. There are no third party beneficiaries. Except for the provisions of the Amended and Restated Notice of Agreement attached hereto as Exhibit “D,” the rights, duties, and obligations of OAC under the Agreement shall be personal to OAC and shall not be binding on any owner of the Property.

27. Exhibit “C” of the Agreement shall be deleted in its entirety and replaced with Exhibit “C” attached to this First Amendment and incorporated herein by reference.

28. Exhibit “D” of the Agreement shall be deleted in its entirety and replaced with Exhibit “D” attached to this Agreement and incorporated herein by reference.

29. Except as amended by this First Amendment, all provisions of the Agreement, including without limitation the indemnity and insurance provisions, shall remain in full force and effect and shall govern the actions of the Parties under this First Amendment. From and after the date of this First Amendment, whenever the term “Agreement” appears in the Agreement, it shall mean the Agreement as amended by this First Amendment.

30. The Parties hereto irrevocably stipulate and agree that they have each received adequate and independent consideration for the performance of the obligations they have undertaken pursuant to this First Amendment.

**[Signatures on the following page]**

**SIGNATURE PAGE**  
**TO**  
**FIRST AMENDMENT**  
**TO**  
**2007 OWNER PARTICIPATION AGREEMENT**  
**(ONTARIO AIRPORT TOWERS)**

IN WITNESS WHEREOF, the Agency and Owner have executed this First Amendment to 2007 Owner Participation Agreement (Ontario Airport Towers) by and through the signatures of their duly authorized representative(s) set forth below:

**AGENCY:**

THE SUCCESSOR AGENCY TO THE  
ONTARIO REDEVELOPMENT AGENCY, a  
public body, corporate and politic

Dated: September \_\_\_\_, 2013

By: \_\_\_\_\_  
Name: Chris Hughes  
Its: Executive Director

ATTEST:

By: \_\_\_\_\_  
Agency Secretary

APPROVED AS TO FORM:

BEST BEST & KRIEGER LLP

By: \_\_\_\_\_  
Agency Counsel

**OWNER:**

TNHYIF REIV INDIA, LLC, a Delaware  
limited liability company

Dated: September \_\_, 2013

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Its: \_\_\_\_\_

Dated: September \_\_, 2013

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Its: \_\_\_\_\_

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## EXHIBIT "C"

### SCHEDULE OF PERFORMANCE

- A. Days shall be calendar days, unless otherwise specified.
- B. Where the action/task is to be performed by the City, the Agency shall exercise its reasonable efforts to obtain performance by the City.
- C. All specific dates set forth in parentheses in this schedule are estimates only and not binding on the Parties.
- D. In the event of any conflict between this schedule and the Agreement, the terms and provisions of the Agreement shall control.
- E. All defined terms indicated by initial capitalization used in this schedule shall have the meanings ascribed to the same terms in the Agreement.
- F. All dates subject to Unavoidable Delays and to Section 4.4(b) of the Agreement.
- G. The Agency may, acting by and through its Executive Director in his/her sole discretion, extend any of the dates below for up to two (2) years.

|     | Action  | Date Action to be Completed By                             |
|-----|---|--|
| 1.  | Developer shall submit precise plan of design documents to the Agency and City  | Completed  |
| 2.  | Developer to submit plan check documents to the City for plan check review, and diligently resubmit as necessary  | Completed  |
| 3.  | Developer shall provide the Agency with the appropriate Certificates of Insurance per Section 5.8 of the OPA  | Completed  |
| 4.  | Submittal of construction documents, grading, public improvement and landscaping plans  | Completed  |
| 5.  | Developer shall obtain all building permits and any other permits required by the City or any other governmental entity for the construction of, and shall commence construction (developed as the pouring of footing and foundations), of Phase 1 of the PWI | Completed  |
| 6.  | Developer shall obtain all building permits and any other permits required by the City or any other governmental entity for the construction of and shall commence construction (developed as the pouring of footing and foundations), of Phase 2 of the PWI  | September 1, 2017 – Outside Start Date – September 1, 2018 |
| 7.  | Developer shall obtain all building permits and any other permits required by the City or any other governmental entity for the construction of, and shall commence construction (developed as the pouring of footing and foundations), of Phase 3 of the PWI | March 1, 2019 – Outside Start Date – March 1, 2020         |
| 8.  | Start of construction of Public Improvements  | Completed  |
| 9.  | Developer shall complete all of the actions set forth in Section 4.4(a)(1) through (3), inclusive, for Phase 1 of the PWI   | Completed  |
| 10. | Developer shall complete all of the actions set forth in Section 4.4(a)(1) through (3), inclusive, for Phase 2 of the PWI   | September 1, 2021  |

|     | <b>Action</b>   | <b>Date Action to be Completed By</b>   |
|-----|---|---|
| 11. | Developer shall complete all of the actions set forth in Section 4.4(a)(1) through (3), inclusive, for Phase 3 of the PWI ("Outside Project Completion Date") | March 1, 2023   |
| 12. | Owner shall complete construction of the Public Improvements and tender them to the City for dedication   | Completed   |
| 13. | City accepts all Public Improvements following satisfactory completion thereof by owner   | Completed   |
| 14. | Agency shall furnish Owner with a Certificate of Completion for Phase 1 of the PWI  | As provided by Section 4.10   |
| 15. | Agency shall furnish Owner with a Certificate of Completion for Phase 2 of the PWI  | As provided by Section 4.10   |
| 16. | Agency shall furnish Owner with a Certificate of Completion for Phase 3 of the PWI  | As provided by Section 4.10   |
| 17. | End of Eligibility Period   | The latter of: (i) the last day of Thirtieth Fiscal Year; or (ii) June 30, 2043 |

**EXHIBIT “D”**  
**FORM OF NOTICE OF AGREEMENT**

**[Attached behind this cover page]**



**“5.1 Covenant to Maintain Property on Tax Rolls and to Pay Taxes and Assessments.**

(a) OAC shall cause the entire Property to remain on the County of San Bernardino, California, secured real property tax rolls for at all times prior to the expiration of the Agency’s authority to receive property taxes from the Project Area pursuant to CRL Section 33670(b).

(b) Commencing upon the Effective Date and ending upon the later of (1) the expiration of the Agency’s authority to receive property taxes from the Project Area pursuant to CRL Section 33670(b), and (2) the expiration of the Eligibility Period, OAC, for itself and its successors and assigns, covenants and agrees to pay all ad valorem property taxes and special assessment/tax bills with respect to the Property and all improvements on or to the Property on or before the last day for the timely payment of each property tax and special assessment/tax installment on each December 10 and April 10 during such time period and to timely pay all supplemental tax bills regarding the Property issued by the County of San Bernardino, California. OAC further covenants and agrees to provide to the Agency, on or before each July 31 following the date hereof until the expiration of the Agency’s authority to receive property taxes from the Project Area pursuant to CRL Section 33670(b) (i) a true and correct copy of all property tax assessment notices, property tax bills and property tax assessment correspondence by and between OAC and the County of San Bernardino, California, regarding the Property and all improvements on or to the Property, with respect to the preceding fiscal year of the County of San Bernardino, California, and (ii) cancelled checks issued by OAC in payment of all property tax payments made to the County of San Bernardino, California, regarding the Property and all improvements on or to the Property, with respect to the preceding fiscal year of the County of San Bernardino, California.

(c) The covenants of this Section 5.1 shall run with the land of the Property and bind successive owners of the Property.

**5.2 No Conveyance to Tax Exempt Entity.**

(a) OAC covenants and agrees that neither OAC, nor its successors or assigns shall use or Transfer all or any portion of the Property or the PWI to any Person, or for any use of all or any portion of the Property or the PWI that is partially or wholly exempt from the payment of real property taxes (unless such Person waives, to the extent legally required, any such exemption) or that would cause the exemption of the payment of all or any portion of real property taxes otherwise assessable regarding the Property or the PWI, without the prior written consent of the Agency, given or withheld in the Agency’s sole and absolute discretion, prior to the expiration of the Agency’s authority to receive property taxes from the PWI Area pursuant to CRL Section 33670(b).

(b) The covenants of this Section 5.2 shall run with the land of the Property and bind successive owners of the Property.

**5.3 Maintenance Condition of the Property.** OAC for itself, its successors and assigns, covenants and agrees that:

(a) The entirety of the Property shall be maintained by OAC in good condition and repair and a neat, clean and orderly condition, ordinary wear and tear excepted, including, without limitation, maintenance, repair, reconstruction and replacement of any and all asphalt, concrete, landscaping, utility systems, irrigation systems, drainage facilities or systems, grading, subsidence, retaining walls or similar support structures, foundations, signage, ornamentation, and all other improvements on or to the Property, now existing or made in the future by or with the consent of the OAC as necessary to maintain the appearance and character of the Property. OAC's obligation to maintain the Property described in the immediately preceding sentence shall include, without limitation, (i) maintaining the surfaces in a level, smooth and evenly covered condition with the type of surfacing material originally installed or such substitute as shall in all respects be equal in quality, use, and durability; (ii) removing all papers, mud, sand, debris, filth and refuse and thoroughly sweeping areas to the extent reasonably necessary to keep areas in a clean and orderly condition; (iii) removing or covering graffiti with the type of surface covering originally used on the affected area, (iv) placing, keeping in repair and replacing any necessary and appropriate directional signs, markers and lines; (v) operating, keeping in repair and replacing where necessary, such artificial lighting facilities as shall be reasonably required; (vi) providing security services as reasonably indicated; and (vii) maintaining, mowing, weeding, trimming and watering all landscaped areas and making such replacements of plants and other landscaping material as necessary to maintain the appearance and character of the landscaping, all at the sole cost and expense of OAC. OAC's obligation to maintain the Property described in the two immediately preceding sentences is referred to in this Agreement as the "**Maintenance Standard.**" OAC may contract with a maintenance contractor to provide for performance of all or part of the duties and obligations of OAC with respect to the maintenance of the Property; provided, however, that OAC shall remain responsible and liable for the maintenance of the Property, at all times.

(b) If, at any time, there is an occurrence of an adverse condition on any area of the Property in contravention of the Maintenance Standard (each such occurrence being a "**Maintenance Deficiency**"), then the Agency may notify OAC in writing of the Maintenance Deficiency. If OAC fails to cure or commence and diligently pursue to cure the Maintenance Deficiency within thirty (30) calendar days following its receipt of notice of the Maintenance Deficiency, the Agency may conduct a public hearing, following transmittal of written notice of the hearing to OAC, at least, ten (10) days prior to the scheduled date of such public hearing, to verify whether a Maintenance Deficiency exists and whether OAC has failed to comply with the provisions of this Section 5.3. If, upon the conclusion of the public hearing, the Agency finds that a Maintenance Deficiency exists and remains uncured, the Agency shall have the right to enter the Property and perform all acts necessary to cure the Maintenance Deficiency, or to take any other action at law or in equity that may then be available to the Agency to accomplish the abatement of the Maintenance Deficiency. Any sum expended by the Agency for the abatement of a Maintenance Deficiency on the Property pursuant to this Section 5.3 that is not paid within thirty (30) calendar days after written demand for payment from the Agency, shall accrue interest at the rate of ten percent (10%) per annum, until paid.

(c) Graffiti, as defined in Government Code Section 38772, that has been applied to any exterior surface of a structure or improvement on the Property that is visible from any public right-of-way adjacent or contiguous to the Property, shall be removed by OAC by either painting over the evidence of such vandalism with a paint that has been color-matched to the surface on which the paint is applied, or graffiti may be removed with solvents, detergents or water, as appropriate. If any such graffiti is not removed within seventy-two (72) hours following the time of the discovery of the graffiti, the Agency shall have the right to enter the Property and remove the graffiti, without notice to OAC. Any sum expended by the Agency for the removal of graffiti from the Property pursuant to this Section 5.3(c), shall be limited to an amount not to exceed Five Hundred Dollars (\$500) per entry by the Agency. If any amount becoming due to the Agency under this Section 5.3(c) is not paid within thirty (30) calendar days after written demand to OAC from the Agency, such amount shall accrue interest at the rate of ten percent (10%) per annum, until paid in full.

(d) The obligations of OAC and its successors and assigns under Section 5.3(a), Section 5.3(b) or Section 5.3(c) shall be secured by a lien against the Property. OAC hereby grants to the Agency a security interest in the Property with the power to establish and enforce a lien or other encumbrance against the Property, in the manner provided under Civil Code Sections 2924, 2924b and 2924c, to secure the obligations of OAC and its successors under Section 5.3(a), Section 5.3(b) or Section 5.3(c), including the reasonable attorneys' fees and costs of the Agency associated with the abatement of a Maintenance Deficiency or removal of graffiti. The Amended and Restated Notice of Agreement shall provide record notice of such security interest in favor of the Agency.

(e) The provisions of this Section 5.3, shall be a covenant running with the land of the Property and binding successive owners of the Property until the expiration of the effectiveness of the Redevelopment Plan and shall be enforceable by the Agency. Nothing in the foregoing provisions of this Section 5.3 shall be deemed to preclude OAC from making any alteration, addition, or other change to any improvement or landscaping on the Property that complies with applicable zoning and building regulations of the City. Upon OAC's recordation of covenants, conditions and restrictions ("CC&R's") against the Property which: (1) have been approved by the City and the Agency, (2) provide that the City or Agency may enforce the provisions thereof, and (3) contain materially identical provisions as this Section 5.3, the provisions of this Section 5.3 shall be automatically deleted herefrom without need of further act or instrument by either Party.

**5.4 Obligation to Refrain from Discrimination.** OAC covenants and agrees for itself, its successors, its assigns and every successor-in-interest to all or any portion of the Property, that there shall be no discrimination against or segregation of any person, or group of persons, on account of sex, marital status, race, color, religion, creed, national origin or ancestry in the sale, lease, sublease, transfer, use, occupancy, tenure or enjoyment of the Property nor shall the Owner, itself or any person claiming under or through it, establish or permit any such practice or practices of discrimination or segregation with reference to the selection, location, number, use or occupancy of tenants, lessees, sub-tenants, sub-lessees or vendees of the Property. The covenant of this Section 5.4 shall be a covenant running with the land of the Property and binding on successive owners of the Property, in perpetuity.

**5.5 Form of Non-discrimination and Non-segregation Clauses.** OAC covenants and agrees for itself, its successors, its assigns, and every successor-in-interest to all or any portion of the Property, that OAC, such successors and such assigns shall refrain from restricting the sale, lease, sublease, rental, transfer, use, occupancy, tenure or enjoyment of all or any portion of the Property on the basis of sex, marital status, race, color, religion, creed, ancestry or national origin of any person. All deeds, leases or contracts pertaining to the Property shall contain or be subject to substantially the following non-discrimination or non-segregation covenants:

(a) In deeds: “(1) The grantee herein covenants by and for himself or herself, his or her heirs, executors, administrators, and assigns, and all persons claiming under or through them, that there shall be no discrimination against or segregation of, any person or group of persons on account of any basis listed in subdivision (a) or (d) of Section 12955 of the Government Code, as those bases are defined in Sections 12926, 12926.1, subdivision (m) and paragraph (1) of subdivision (p) of Section 12955, and Section 12955.2 of the Government Code in the sale, lease, sublease, transfer, use, occupancy, tenure, or enjoyment of the premises herein conveyed, nor shall the grantee or any person claiming under or through him or her, establish or permit any practice or practices of discrimination or segregation with reference to the selection, location, number, use or occupancy of tenants, lessees, subtenants, sublessees, or vendees in the premises herein conveyed. The foregoing covenants shall run with the land.

(2) Notwithstanding paragraph (1), with respect to familial status, paragraph (1) shall not be construed to apply to housing for older persons, as defined in Section 12955.9 of the government Code. With respect to familial status, nothing in paragraph (1) shall be construed to affect Sections 51.2, 51.3, 51.4, 51.10, 51.11, and 799.5 of the Civil Code, relating to housing for senior citizens. Subdivision (d) of Section 51 and Section 1360 of the Civil Code and subdivisions (n), (o), and (p) of Section 12955 of the Government Code shall apply to paragraph (1).”

(b) In leases: “(1) The lessee herein covenants by and for himself or herself, his or her heirs, executors, administrators, and assigns, and all persons claiming under or through him or her, and this lease is made and accepted upon and subject to the following conditions:

That there shall be no discrimination against or segregation of any person or group of persons, on account of any basis listed in subdivision (a) or (d) of Section 12955 of the Government Code, as those bases are defined in Sections 12926, 12926.1, subdivision (m) and paragraph (1) of subdivision (p) of Section 12955, and Section 12955.2 of the Government Code in the leasing, subleasing, transferring, use, occupancy, tenure, or enjoyment of the premises herein leased nor shall the lessee himself or herself, or any person claiming under or through him or her, establish or permit any such practice or practices of discrimination or segregation with reference to the selection, location, number, use, or occupancy, of tenants, lessees, sublessees, subtenants, or vendees in the premises herein leased.

(2) Notwithstanding paragraph (1), with respect to familial status, paragraph (1) shall not be construed to apply to housing for older persons, as defined in Section 12955.9 of the Government Code. With respect to familial status, nothing in paragraph (1) shall be construed to affect Sections 51.2, 51.3, 51.4, 51.10, 51.11, and 799.5 of the Civil Code, relating to housing for

senior citizens. Subdivision (d) of Section 51 and Section 1360 of the Civil Code and subdivisions (n), (o), and (p) of Section 12955 of the Government Code shall apply to paragraph (1).”

(c) In contracts: “There shall be no discrimination against or segregation of any person or group of persons on account of race, color, creed, religion, sex, marital status, national origin, or ancestry, in the sale, lease, sublease, transfer, use, occupancy, tenure, or enjoyment of the premises herein conveyed or leased, nor shall the transferee or any person claiming under or through it, establish or permit any such practice or practices of discrimination or segregation with reference to the selection, location, number, use, or occupancy, of tenants, lessees, sub-lessees, sub-tenants, or vendees of the premises herein transferred.” The foregoing provision shall be binding upon and shall obligate the contracting party or parties and any subcontracting party or parties, or other transferees under the instrument.”

(d) The covenants of this Section 5.5 shall be covenants running with the land of the Property and binding on successive owners of the Property, in perpetuity.”

This Amended and Restated Notice of Agreement amends and restates the Notice of Agreement, dated \_\_\_\_\_, 2007, and recorded with the Office of the County Recorder for San Bernardino County as Document No. \_\_\_\_\_, in its entirety (“Original Notice of Agreement”). As of the date of this Amended and Restated Notice of Agreement, the Original Notice of Agreement shall be of no further force and effect.

THIS AMENDED AND RESTATED NOTICE OF AGREEMENT is dated as of September \_\_\_\_, 2013, and has been executed on behalf of OAC and the Agency by and through the signatures of their authorized representative(s) set forth below. This Notice of Agreement may be executed in counterparts and when fully executed each counterpart shall be deemed to be one original instrument.

OAC:

TNHYIF REIV INDIA, LLC, a Delaware  
limited liability company

Dated: \_\_\_\_\_

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

Name: \_\_\_\_\_

Its: \_\_\_\_\_

Dated: \_\_\_\_\_

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

Name: \_\_\_\_\_

Its: \_\_\_\_\_

AGENCY:

THE SUCCESSOR AGENCY TO THE  
ONTARIO REDEVELOPMENT AGENCY, a  
public body, corporate and politic

Dated: \_\_\_\_\_

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

Name: Chris Hughes

Its: Executive Director

ATTEST:

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

Agency Secretary

APPROVED AS TO FORM:

BEST BEST & KRIEGER LLP

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

Agency Counsel

**[ALL SIGNATURES MUST BE NOTARY ACKNOWLEDGED]**

State of California }  
County of \_\_\_\_\_ }

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

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

WITNESS my hand and official seal.

Signature \_\_\_\_\_ (Seal)

State of California }  
County of \_\_\_\_\_ }

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

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

WITNESS my hand and official seal.

Signature \_\_\_\_\_ (Seal)

EXHIBIT "A"  
TO  
NOTICE OF AGREEMENT

**Property Legal Description**

The property located in the City of Ontario, County of San Bernardino, State of California identified by Assessors Parcel Numbers 0210-192-013, 0210-192-016 through 0210-192-024.

EXHIBIT "B"  
TO  
NOTICE OF AGREEMENT

**Legal Description of Adjacent Fair Share Property**

# CITY OF ONTARIO

## Agenda Report

February 4, 2014

## SECTION: CONSENT CALENDAR

**SUBJECT: ACCEPT A WRITTEN PETITION TO CREATE A COMMUNITY FACILITIES DISTRICT, A RESOLUTION OF INTENT TO ESTABLISH CITY OF ONTARIO COMMUNITY FACILITIES DISTRICT NO. 23 (PARK PLACE SERVICES) AND AUTHORIZE THE ASSOCIATED LEVY OF SPECIAL TAXES**

**RECOMMENDATION:** That the City Council:

- (A) Accept the written petition (on file with the Records Management Department) from SL Ontario Development Company, LLC, located in Irvine, CA, to create a Community Facilities District ("CFD"), and to waive certain procedural matters, under the Mello-Roos Community Facilities Act of 1982; and
- (B) Adopt a Resolution of Intent to establish City of Ontario Community Facilities District No. 23 (Park Place Services); authorize the levy of special taxes therein; and set a public hearing for the formation of the CFD as part of the regularly scheduled City Council meeting scheduled for Tuesday, March 18, 2014.

**COUNCIL GOALS:** Develop Strategies and Take Actions, Including Regaining Local Control of the Ontario International Airport, to Minimize the Negative Impacts of the Global Financial Downtown on Ontario's Economy and the City's Fiscal Health

Focus Resources in Ontario's Commercial and Residential Neighborhoods

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

**FISCAL IMPACT:** In accordance with the City Council's long standing direction that development of the New Model Colony generate sufficient revenues to fund its required City services without reliance on the existing financial resources of the Old Model Colony, the use of Mello-Roos financing in connection with the Park Place development is projected to generate approximately \$2,000,000 per year, at build-out, to fund City services. As proposed, the maximum annual tax rate on the first phase of the project's 432 single family detached units is \$1,387. The use of Mello-Roos financing for City services

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

Prepared by: Bob Chandler  
Department: Management Services

City Manager  
Approval: 

Submitted to Council/O.H.A. 02/04/2014

Approved: \_\_\_\_\_

Continued to: \_\_\_\_\_

Denied: \_\_\_\_\_

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is critical in achieving the City Council's goal of **"Ensure the Development of a Well Planned, Balanced, and Self-Sustaining Community in the New Model Colony."** The use of Mello-Roos financing for the Park Place development will not generate funds for facilities, and bonds will not be issued as part of this formation. The CFD is being formed pursuant to the provisions of the Park Place project's Development Agreement, and the First Amended and Restated Construction Agreement between the City and NMC Builders.

**BACKGROUND:** The Mello-Roos Community Facilities Act of 1982 provides local government, with the consent from a majority of the property owners, the authority to establish community facilities districts for the purpose of levying special taxes to finance various kinds of public infrastructure facilities and city services. City services that may be included in a community facilities district include police protection services, fire protection and suppression services, ambulance and paramedic services, maintenance and lighting of parks, parkways, streets, roads, open space and flood and storm drain protection services, and maintenance and operation of any real property or tangible property with an estimated useful life of five or more years that is owned by the City.

SL Ontario Development Company, a member of NMC Builders, has provided a written petition to the City requesting formation of a community facilities district for its Park Place project in the New Model Colony. The Park Place project addresses the development of approximately 2,714 acres located north of Bellegrave Avenue, south of Eucalyptus Avenue, east of Archibald Avenue, and west of Haven Avenue. At build-out, the development is projected to include 1,429 detached residential units.

Under the Mello-Roos Act, the initial steps in the formation of a community facilities district normally involve resolutions declaring the City's intention to establish a community facilities district, levy special taxes, and issue bonds. As noted, the issuance of bonds is not being contemplated for this project at this time, so there is no resolution to issue bonds associated with this action. As proposed, the resolution of intention to establish the district and to levy special taxes will set the public hearing date on the formation of the CFD for the regularly scheduled City Council meeting on Tuesday, March 18, 2014 to consider the matter.

Included, as part of the resolution of intention, is the proposed Rate and Method of Apportionment of Special Tax for City of Ontario Community Facilities District No. 23 (Park Place Services). The terms of the Rate and Method of Apportionment of Special Tax are consistent with the City Council's adopted Mello-Roos Local Goals and Policies, and City staff have presented and discussed the proposed Rate and Method of Apportionment of Special Tax with the landowner.

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

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF ONTARIO, CALIFORNIA, OF INTENTION TO ESTABLISH A COMMUNITY FACILITIES DISTRICT AND TO AUTHORIZE THE LEVY OF SPECIAL TAXES.

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

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

WHEREAS, the City Council of the City of Ontario (the "City") has received a written petition (the "Petition") from SL Ontario Development Company, LLC (the "Landowner") requesting the institution of proceedings for the establishment of a community facilities district (the "Community Facilities District"), describing the boundaries of the territory that is proposed for inclusion in the Community Facilities District and specifying the types of services to be financed by the Community Facilities District; and

WHEREAS, the Landowner has represented and warranted to the City Council that the Landowner is the owner of not less than 10% of the area of land proposed to be included within the Community Facilities District; and

WHEREAS, the Landowner has previously submitted to the City the fee required by the City to be used to compensate the City Council and the City for all costs incurred in conducting proceedings to create the Community Facilities District, which the City Council has determined to be sufficient for such purpose.

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

SECTION 1. THE above recitals are true and correct and the City Council hereby so finds.

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

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

SECTION 4. The name proposed for the Community Facilities District is "City of Ontario Community Facilities District No. 23 (Park Place Services)".

SECTION 5. The services (the "Services") proposed to be financed by the Community Facilities District pursuant to the Act are described under the caption "Services" on Exhibit A hereto. The incidental expenses proposed to be incurred are described under the caption "Incidental Expenses" on Exhibit A hereto. No facilities are proposed to be financed by the Community Facilities District.

SECTION 6. Except where funds are otherwise available, a special tax sufficient to pay for all Services, secured by recordation of a continuing lien against all nonexempt real property in the Community Facilities District, will be annually levied within the Community Facilities District. The rate and method of apportionment of the special tax (the "Rate and Method"), in sufficient detail to allow each landowner within the proposed Community Facilities District to estimate the maximum amount that he or she will have to pay, is described in Exhibit B attached hereto, which is by this reference incorporated herein. The obligation to pay the special tax may not be prepaid and permanently satisfied. The special tax will be collected in the same manner as ordinary *ad valorem* property taxes or in such other manner as the City Council shall determine, including direct billing of the affected property owners.

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

SECTION 7. The City Council hereby fixes Tuesday, March 18, 2014, at 6:30 p.m., or as soon thereafter as the City Council may reach the matter, at 303 East B Street, Ontario, California, California, as the time and place when and where the City Council will conduct a public hearing on the establishment of the Community Facilities District.

SECTION 8. The City Clerk is hereby directed to publish, or cause to be published, a notice of said public hearing one time in a newspaper of general circulation published in the area of the proposed Community Facilities District. The publication of said notice shall be completed at least seven days prior to the date herein fixed for said hearing. Said notice shall contain the information prescribed by Section 53322 of the Act.

SECTION 9. The levy of said proposed special tax shall be subject to the approval of the qualified electors of the Community Facilities District at a special election. The proposed voting procedure shall be by mailed or hand-delivered ballot among the landowners in the Community Facilities District, with each owner having one vote for each acre or portion of an acre such owner owns in the Community Facilities District.

SECTION 10. Each officer of the City who is or will be responsible for providing one or more of the proposed types of Services is hereby directed to study, or cause to be studied, the proposed Community Facilities District and, at or before said public hearing, file a report with the City Council containing a brief description of the Services by type which will in his or her opinion be required to adequately meet the needs of the Community Facilities District, and his or her estimate of the cost of providing the Services. Such officers are hereby also directed to estimate the fair and reasonable cost of the incidental expenses proposed to be paid. Such report shall be made a part of the record of said public hearing.

SECTION 11. The officers, employees and agents of the City are hereby authorized and directed to take all actions and do all things which they, or any of them, may deem necessary or desirable to accomplish the purposes of this Resolution and not inconsistent with the provisions hereof.

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

PASSED, APPROVED, AND ADOPTED this 4<sup>th</sup> day of February 2014.

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PAUL S. LEON, MAYOR

ATTEST:

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MARY E. WIRTES, MMC, CITY CLERK

APPROVED AS TO LEGAL FORM:

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BEST BEST & KRIEGER LLP  
CITY ATTORNEY

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

I, MARY E. WIRTES, City Clerk of the City of Ontario, DO HEREBY CERTIFY that foregoing Resolution No. 2014-        was duly passed and adopted by the City Council of the City of Ontario at their regular meeting held February 4, 2014 by the following roll call vote, to wit:

AYES:           COUNCIL MEMBERS:

NOES:           COUNCIL MEMBERS:

ABSENT:        COUNCIL MEMBERS:

\_\_\_\_\_  
MARY E. WIRTES, MMC, CITY CLERK

(SEAL)

The foregoing is the original of Resolution No. 2014-   duly passed and adopted by the Ontario City Council at their regular meeting held February 4, 2014.

\_\_\_\_\_  
MARY E. WIRTES, MMC, CITY CLERK

(SEAL)

## EXHIBIT A

### SERVICES AND INCIDENTAL EXPENSES

#### Services

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

#### Incidental Expenses

The incidental expenses proposed to be incurred include the costs associated with the creation of the Community Facilities District, determination of the amount of taxes, collection of taxes, payment of taxes, or costs otherwise incurred in order to carry out the authorized purposes of the Community Facilities District.

## EXHIBIT B

### CITY OF ONTARIO COMMUNITY FACILITIES DISTRICT NO. 23 (PARK PLACE SERVICES)

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

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A Special Tax shall be levied on all Assessor's Parcels in the City of Ontario Community Facilities District No. 23 (Park Place Services) ("CFD No. 23") and collected each Fiscal Year commencing in Fiscal Year 2014-15, in an amount determined by the City Council of the City of Ontario through the application of the Rate and Method of Apportionment, as described below. All of the real property in CFD No. 23, unless exempted by law or by the provisions hereof, shall be taxed for the purposes, to the extent, and in the manner herein provided.

#### A. DEFINITIONS

The terms as may hereinafter be set forth have the following meanings:

**"Act"** means the Mello-Roos Community Facilities Act of 2482, as amended, being Chapter 2.5, Division 2 of Title 5 of the California Government Code.

**"Administrative Expenses"** means the following actual or reasonably estimated costs directly related to the administration of CFD No. 23: the costs of computing the Special Taxes and preparing the annual Special Tax collection schedules (whether by the City or CFD No. 23 or both); the costs of collecting the Special Taxes (whether by the County or otherwise); the costs associated with preparing Special tax disclosure statements and responding to public inquiries regarding the Special Taxes; the costs of the City or CFD No. 23 related to an appeal of the Special Tax; the City's administration fees and third party expenses; the costs of City staff time and reasonable overhead related to CFD No. 23; and amounts estimated or advanced by the City or CFD No. 23 for any other administrative purposes of CFD No. 23, including attorney's fees and other costs related to commencing and pursuing to completion any foreclosure of delinquent Special Taxes.

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

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

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

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

**“CFD No. 23”** means City of Ontario Community Facilities District No. 23 (Park Place Services).

**“City”** means the City of Ontario, California.

**“City Council”** means the City Council of the City, acting as the legislative body of CFD No. 23.

**“County”** means the County of San Bernardino.

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

**“Gated Apartment Community Dwelling Unit”** means a Multiple Family Dwelling Unit within a gated community that, within such community, is primarily served by private interior streets.

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

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

**“Multiple Family Dwelling Unit”** means a Unit within any residential building containing two or more dwelling units, including attached condominiums, townhomes, duplexes, triplexes, and apartments, but excluding Gated Apartment Community Dwelling Units.

**“Non-Residential”** means any buildings that are for commercial lodging use, commercial retail use, institutional use (e.g., churches, private schools), commercial restaurant use, office use, or industrial use.

**“Non-Residential Property”** means, for each Fiscal Year, an Assessor’s Parcel for which a building permit for new construction was issued after January 1, 2014, and before May 1 of the prior Fiscal Year, for a Non-Residential use.

**“Property Owner Association Property”** means, for each Fiscal Year, property within the boundaries of CFD No. 23 that was owned by a property owner association, including any master or sub-association, as of January 1 of the prior Fiscal Year.

**“Proportionately”** means that the ratio of the actual Special Tax levy to the Maximum Special Tax is equal for all Assessor’s Parcels of Taxable Property.

**“Public Property”** means, for each Fiscal Year, property within the boundaries of CFD No. 23 that is (a) owned by, irrevocably offered to, or dedicated to the federal government, the State, the County, the City, or any local government or other public agency or (b) encumbered by an easement for purposes of public right-of-way that makes impractical its use for any purpose other than that set forth in such easement, provided that any property leased by a public agency to a private entity and subject to taxation under Section 53340.1 of the Act shall be taxed and classified according to its use.

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

**“Residential Property”** means, for each Fiscal Year, an Assessor’s Parcel for which a building permit for new construction of one or more Units was issued after January 1, 2014, and before May 1 of the prior Fiscal Year.

**“Services”** means the services authorized to be financed, in whole or in part, by CFD No. 23: police protection services, fire protection and suppression services, ambulance and paramedic services, maintenance and lighting of parks, parkways, streets, roads, and open space, flood and storm protection services, and maintenance and operation of any real property or other tangible property with an estimated useful life of five or more years that is owned by the City.

**“Special Tax”** means the special tax authorized by the qualified electors of CFD No. 23 to be levied within the boundaries of CFD No. 23.

**“Special Tax Requirement”** means the amount necessary in any Fiscal Year to pay the cost of the Services, Administrative Expenses, and an amount equal to Special Tax delinquencies based on the historical delinquency rate for Special Taxes, as determined by the CFD Administrator.

**“Single Family Detached Dwelling Unit”** means any residential building containing only one Unit on one legal lot, including single family residences and single family detached residential condominium units.

**“Square Footage” or “Sq. Ft.”** means, with respect to a building, the gross floor area square footage reflected on the original construction building permit for such building, plus any square footage subsequently added to a building after issuance of a building permit for expansion or renovation of such building.

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

**“Taxable Property”** means, for each Fiscal Year, all Assessor’s Parcels of Residential Property and Non-Residential Property within the boundaries of CFD No. 23 which are not exempt from the Special Tax pursuant to law or Section E below.

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

**B. ASSIGNMENT TO LAND USE CATEGORIES**

Each Fiscal Year, beginning with Fiscal Year 2014-15, all Taxable Property within CFD No. 23 shall be classified as Residential Property (Single Family Detached Dwelling Unit, Multiple Family Dwelling Unit, or Gated Apartment Community Dwelling Unit) or Non-Residential Property and shall be subject to Special Taxes in accordance with the Rate and Method of Apportionment as determined pursuant to Sections C and D below.

**C. MAXIMUM SPECIAL TAX**

The Maximum Special Tax for each Assessor’s Parcel classified as Taxable Property shall be determined by reference to Table 1 below.

**TABLE 1  
MAXIMUM SPECIAL TAX**

| <b>Land Use Class</b>                   | <b>Maximum Special Tax<br/>Fiscal Year 2014-15</b> |
|---|--|
| <b>Residential Property:</b>            |  |
| Single Family Detached Dwelling Unit    | \$1,387 per Unit                                   |
| Multiple Family Dwelling Unit           | \$1,202 per Unit                                   |
| Gated Apartment Community Dwelling Unit | \$1,008 per Unit                                   |
| <b>Non-Residential Property</b>         | \$0.26 per Sq. Ft.                                 |

On January 1 of each Fiscal Year, commencing January 1, 2015, the Maximum Special Tax to be applied in the next Fiscal Year shall be subject to an automatic increase at a rate equal to 4.0% of the amount in effect for the prior Fiscal Year.

In some instances an Assessor’s Parcel of Taxable Property may contain more than one Land Use Class. The Maximum Special Tax levied on an Assessor’s Parcel shall be the sum of the Maximum Special Tax for all Units of Residential Property and Square Footage of Non-Residential Property (based on the applicable final subdivision map, parcel map, condominium plan, or other recorded County map) located on that Assessor’s Parcel.

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

Each Fiscal Year, beginning with Fiscal Year 2014-15, the CFD Administrator shall determine the Special Tax Requirement. The Special Tax shall then be levied

Proportionately on each Assessor's Parcel of Taxable Property up to 100% of the applicable Maximum Special Tax for such Assessor's Parcel, until the Special Tax Requirement is satisfied. However, the Special Tax levied in any Fiscal Year shall not increase by more than 4.0% of the amount of the Special Tax levied in the prior Fiscal Year.

**E. EXEMPTIONS**

Notwithstanding anything in this Rate and Method of Apportionment to the contrary, no Special Tax shall be levied on Public Property or Property Owner Association Property.

**F. APPEALS**

Any property owner may file a written appeal of the Special Tax with CFD No. 23 claiming that the amount or application of the Special Tax is not correct. The appeal must be filed not later than one calendar year after having paid the Special Tax that is disputed, and the appellant must be current in all payments of Special Taxes. In addition, during the term of the appeal process, all Special Taxes levied must be paid on or before the payment date established when the levy was made.

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

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

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

**G. MANNER OF COLLECTION**

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

**H. TERM OF SPECIAL TAX**

The Special Tax shall continue to be levied indefinitely on an annual basis on all Taxable Property in CFD No. 23.

CLERK'S CERTIFICATE

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

I, Mary E. Wirtes, City Clerk of the City of Ontario, California hereby certify that the foregoing is a full, true and correct copy of a Resolution duly adopted at a regular meeting of the City Council of said City duly and regularly held at the regular meeting place thereof on February 4, 2014, of which meeting all of the members of said City Council had due notice and at which a majority thereof were present; and that at said meeting said Resolution was adopted by the following vote:

AYES:     COUNCIL MEMBERS:

NOES:     COUNCIL MEMBERS:

ABSENT: COUNCIL MEMBERS:

An agenda of said meeting was posted at least 72 hours before said meeting at 303 East B Street, Ontario, California, a location freely accessible to members of the public, and a brief general description of said Resolution appeared on said agenda.

I further certify that I have carefully compared the same with the original minutes of said meeting on file and of record in my office; that the foregoing Resolution is a full, true and correct copy of the original Resolution adopted at said meeting and entered in said minutes; and that said Resolution has not been amended, modified or rescinded since the date of its adoption, and the same is now in full force and effect.

Dated: \_\_\_\_\_, 2014

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City Clerk

# CITY OF ONTARIO

## Agenda Report

February 4, 2014

## SECTION: CONSENT CALENDAR

**SUBJECT:** A RESOLUTION APPROVING AN APPLICATION FOR THE FISCAL YEAR 2013-14 USED OIL COMPETITIVE GRANT PROGRAM (UOC1) FROM THE DEPARTMENT OF RESOURCES RECYCLING AND RECOVERY (CAL RECYCLE)

**RECOMMENDATION:** That the City Council adopt a resolution approving the City's application up to \$250,000 for the Fiscal Year 2013-14 Used Oil Competitive Grant Program (UOC1) pursuant to Sections 40000 et seq. of the Public Resources Code; and authorize the City Manager to execute said application.

**COUNCIL GOALS:** Develop Strategies and Take Actions, Including Regaining Local Control of the Ontario International Airport, to Minimize the Negative Impacts of the Global Financial Downturn on Ontario's Economy and the City's Fiscal Health

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

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:** The City may receive up to \$250,000 in grant reimbursement for the cost of installing storm drain filters in 75 storm drains; provide public education and outreach to inform the public of local used oil and filter recycling opportunities; ways to prevent storm water pollution caused by used oil; and hold used oil filter exchange events. No matching funds are required. There is no impact to the General Fund.

**BACKGROUND:** The City is eligible to apply for a Used Oil Competitive Grant (UOC1) from the State of California, Department of Resources Recycling and Recovery (CalRecycle). This grant is designed to provide funding opportunities for California cities to mitigate illegal disposal by increasing used oil and used oil filter collection, recycling opportunities, public education, source reduction, reuse of used oil, and prevention of storm water pollution from used oil. Installing storm drain filters is intended to decrease storm water pollution by waste oil.

**STAFF MEMBER PRESENTING:** Scott Burton, Utilities General Manager

Prepared by: Bob Figoni

Department: MU/Solid Waste

City Manager

Approval: 

Submitted to Council/O.H.A. 02/04/2014

Approved: \_\_\_\_\_

Continued to: \_\_\_\_\_

Denied: \_\_\_\_\_

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

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF ONTARIO, CALIFORNIA, APPROVING A GRANT APPLICATION TO THE DEPARTMENT OF RESOURCES RECYCLING AND RECOVERY (CALRECYCLE) USED OIL COMPETITIVE GRANT PROGRAM TO FUND MITIGATION PROJECTS PREVENTING USED OIL STORM WATER POLLUTION, EXPAND THE USED OIL AND FILTER COLLECTION PROGRAM TO CERTIFIED COLLECTION CENTERS; PROVIDE EDUCATION AND OUTREACH TO INFORM THE PUBLIC OF LOCAL USED OIL AND FILTER RECYCLING OPPORTUNITIES AND WAYS TO PREVENT STORM WATER POLLUTION CAUSED BY USED OIL.

WHEREAS, Public Resources Code Sections 40000 et seq authorize the Department of Resources Recycling and Recovery (CalRecycle) to administer various Grant Programs in furtherance of the State of California's efforts to reduce, reuse and recycle solid waste generated in the State, thereby preserving landfill capacity and protecting public health and safety and the environment, and

WHEREAS, in furtherance of this authority, CalRecycle is required to establish procedures governing the application, awarding, and management of the grants, and

WHEREAS, CalRecycle grant application procedures require, among other things, an Applicant's governing body to declare by resolution certain authorizations related to the administration of CalRecycle grants, and

WHEREAS, if awarded, the Applicant will enter into a Grant Agreement with CalRecycle to install storm drain filters in seventy-five storm drains; provide public education and outreach to inform the public of local used oil and filter recycling opportunities and ways to prevent storm water pollution caused by used oil, and hold eight (8) used oil and oil filter exchange events,

NOW, THEREFORE, BE IT RESOLVED that the City Council of the City of Ontario authorizes the submittal of an application to CalRecycle for the Used Oil Competitive Grant Program.

BE IT FURTHER RESOLVED that the City Manager or his designee is hereby authorized and empowered to execute in the name of the City of Ontario all grant documents, including but not limited to applications, agreements and requests for payment necessary to secure grant funds and implement the approved grant project, and

BE IT FURTHER RESOLVED that these authorizations are effective for five (5) years from the date of adoption of this Resolution.

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

PASSED, APPROVED, AND ADOPTED this 4<sup>th</sup> day of February 2014.

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PAUL S. LEON, MAYOR

ATTEST:

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MARY E. WIRTES, MMC, CITY CLERK

APPROVED AS TO LEGAL FORM:

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BEST BEST & KRIEGER LLP  
CITY ATTORNEY

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

I, MARY E. WIRTES, City Clerk of the City of Ontario, DO HEREBY CERTIFY that foregoing Resolution No. 2014-        was duly passed and adopted by the City Council of the City of Ontario at their regular meeting held February 4, 2014 by the following roll call vote, to wit:

AYES:            COUNCIL MEMBERS:

NOES:           COUNCIL MEMBERS:

ABSENT:        COUNCIL MEMBERS:

\_\_\_\_\_  
MARY E. WIRTES, MMC, CITY CLERK

(SEAL)

The foregoing is the original of Resolution No. 2014-        duly passed and adopted by the Ontario City Council at their regular meeting held February 4, 2014.

\_\_\_\_\_  
MARY E. WIRTES, MMC, CITY CLERK

(SEAL)

# CITY OF ONTARIO

## Agenda Report

February 4, 2014

## SECTION: CONSENT CALENDAR

**SUBJECT: A RESOLUTION APPROVING AN APPLICATION FOR FISCAL YEAR 2014-15 LOCAL GOVERNMENT WASTE TIRE CLEANUP GRANT PROGRAM FROM THE DEPARTMENT OF RESOURCES RECYCLING AND RECOVERY (CALRECYCLE)**

**RECOMMENDATION:** That the City Council adopt a resolution approving the City's application for the Fiscal Year 2014-15 Local Government Waste Tire Cleanup Grant Program (TCU15) pursuant to Sections 40000 et seq. of the Public Resources Code; and authorize the City Manager to execute said application.

**COUNCIL GOALS:** Develop Strategies and Take Actions, Including Regaining Local Control of the Ontario International Airport, to Minimize the Negative Impacts of the Global Financial Downturn on Ontario's Economy and the City's Fiscal Health  
Pursue City's Goals and Objectives by Working with Other Governmental Agencies  
Focus Resources in Ontario's Commercial and Residential Neighborhoods

**FISCAL IMPACT:** The City may receive \$100,000 in grant reimbursement for the cost of California waste tire collection, removal and transport of tires illegally dumped along the public right of way for Fiscal Year 2014-15. No matching funds are required. There is no impact to the General Fund.

**BACKGROUND:** The City is eligible to apply for the Local Government Waste Tire Cleanup Grant Program for Fiscal Year 2014-15 from the State of California, Department of Resources Recycling and Recovery. The tire grant programs are designed to reduce the number of waste tires going to landfills and eliminate the stockpiling of waste tires. Revenue for the grant is generated from a tire fee on each new tire sold in California.

The program provides funding on a competitive basis to local governments to collect, remove and transport waste tires illegally dumped along the public right-of-ways. Grant awards are competitive and will be based on the estimated cost per tire.

**STAFF MEMBER PRESENTING:** Scott Burton, Utilities General Manager

Prepared by: Bob Figoni  
Department: SW/Solid Waste

City Manager  
Approval: 

Submitted to Council/O.H.A. 02/04/2014

Approved: \_\_\_\_\_

Continued to: \_\_\_\_\_

Denied: \_\_\_\_\_

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

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF ONTARIO, CALIFORNIA, APPROVING A GRANT APPLICATION FROM THE DEPARTMENT OF RESOURCES RECYCLING AND RECOVERY LOCAL GOVERNMENT WASTE TIRE CLEANUP GRANT PROGRAM (TCU15) FOR FISCAL YEAR 2014-2015 TO FUND COLLECTION REMOVAL AND TRANSPORT OF CALIFORNIA WASTE TIRES ILLEGALLY DUMPED ALONG PUBLIC RIGHT OF WAY.

WHEREAS, Public Resources Code Sections 40000 et seq. authorize the Department of Resources Recycling and Recovery (CalRecycle) to administer various Grant Programs in furtherance of the State of California's efforts to reduce, reuse and recycle solid waste generated in the State, thereby preserving landfill capacity and protecting public health and safety and the environment, and

WHEREAS, in furtherance of this authority CalRecycle is required to establish procedures governing the application, awarding, and management of the grants, and

WHEREAS, CalRecycle grant application procedures require, among other things, an applicant's governing body to declare by resolution certain authorizations related to the administration of CalRecycle grants, and

WHEREAS, if awarded, the applicant will enter into a Grant Agreement with CalRecycle to collect and remove waste tires from areas where illegal dumping has occurred along public rights of way; then transport to a CalRecycle approved end use facility during the grant period,

NOW, THEREFORE, BE IT RESOLVED that the City Council of the City of Ontario authorizes the submittal of an application to CalRecycle for the Local Government Waste Amnesty Tire Cleanup Grant Program.

BE IT FURTHER RESOLVED that the City Manager or his designee is hereby authorized and empowered to execute in the name of the City of Ontario all grant documents, including but not limited to applications, agreements and requests for payment, necessary to secure grant funds and implement the approved grant project; and

BE IT FURTHER RESOLVED that these authorizations are effective for five (5) years from the date of adoption of this resolution.

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

PASSED, APPROVED AND ADOPTED this 4<sup>th</sup> day of February 2014.

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

ATTEST:

\_\_\_\_\_  
MARY E. WIRTES, MMC, CITY CLERK

APPROVED AS TO LEGAL FORM:

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

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

I, MARY E. WIRTES, City Clerk of the City of Ontario, DO HEREBY CERTIFY that foregoing Resolution No. 2014-        was duly passed and adopted by the City Council of the City of Ontario at their regular meeting held February 4, 2014 by the following roll call vote, to wit:

AYES:            COUNCIL MEMBERS:

NOES:            COUNCIL MEMBERS:

ABSENT:          COUNCIL MEMBERS:

\_\_\_\_\_  
MARY E. WIRTES, MMC, CITY CLERK

(SEAL)

The foregoing is the original of Resolution No. 2014-        duly passed and adopted by the Ontario City Council at their regular meeting held February 4, 2014.

\_\_\_\_\_  
MARY E. WIRTES, MMC, CITY CLERK

(SEAL)

# CITY OF ONTARIO

## Agenda Report

February 4, 2014

## SECTION: CONSENT CALENDAR

**SUBJECT: A PROFESSIONAL SERVICES AGREEMENT FOR DESIGN SERVICES FOR SEWER MAIN IMPROVEMENTS AT VARIOUS LOCATIONS**

**RECOMMENDATION:** That the City Council authorize the City Manager to execute a professional services agreement with Parsons Brinckerhoff, Inc. (on file with the Records Management Department) located in San Bernardino, California, to provide professional design services for sewer main improvements at various locations in the amount of \$163,300 plus a 15% contingency (\$24,495) for a total of \$187,795.

**COUNCIL GOALS:** Develop Strategies and Take Actions, Including Regaining Local Control of the Ontario International Airport, to Minimize the Negative Impacts of the Global Financial Downturn on Ontario's Economy and the City's Fiscal Health  
Invest in the City's Infrastructure (Water, Streets, Sewers, Parks, Storm Drains and Public Facilities)

**FISCAL IMPACT:** The Fiscal Year 2013-14 Capital Improvement Program includes appropriations from the Sewer Capital Fund for the Sewer Main Replacement Program. The recommended agreement is for \$163,300 plus a 15% contingency (\$24,495) for a total of \$187,795. There is no impact to the General Fund.

**BACKGROUND:** The City's sewer system includes approximately 366 miles of pipeline, approximately 30% of which is more than 50 years old. The Sewer Master Plan has identified capacity deficiencies in the City's sewer collection system and provides capital improvement recommendations to minimize the potential for sewer overflows. Pipeline improvements at seven locations, including the relocation of the sewer main underneath the University of La Verne College of Law building, have been prioritized based on such capacity deficiencies and the current level of maintenance activities required to provide adequate service reliability (see attached location map).

On August 22, 2013, a Request for Proposal (RFP) was sent to seven professional consulting firms. On September 25, 2013, seven proposals were received. The proposals were reviewed and evaluated in accordance with State law governing selection of professional engineering services.

**STAFF MEMBER PRESENTING:** Scott Burton, Utilities General Manager

Prepared by: Dennis Mejia

Department: MU/Utilities

City Manager

Approval: 

Submitted to Council/O.H.A. 02/04/2014

Approved: \_\_\_\_\_

Continued to: \_\_\_\_\_

Denied: \_\_\_\_\_

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Parsons Brinckerhoff, Inc. is recommended based on their proposal, engineering expertise, fee for service, and capability to perform the work in a timely manner. Parsons Brinckerhoff, Inc. has successfully performed similar design services and is familiar with the City plan approval process.

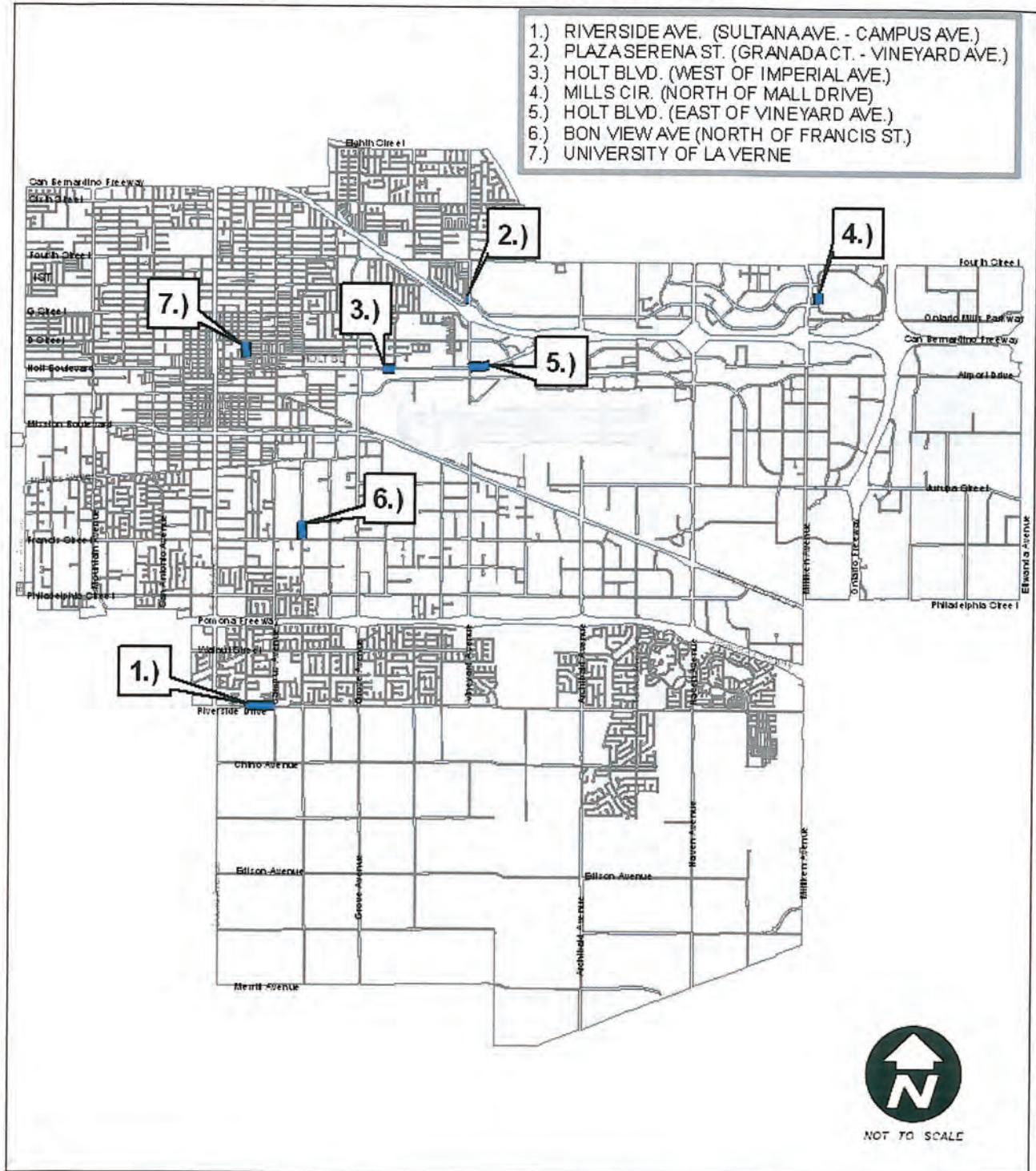
The following is a list of firms who submitted proposals for this project:

| <b>Firm</b>                       | <b>Location</b>           |
|-----------------------------------|---------------------------|
| AEI-CASC Consulting               | Colton, CA                |
| David Evans & Associates, Inc.    | Ontario, CA               |
| KEC Engineers, Inc.               | Chino, CA                 |
| LD King, Inc.                     | Ontario, CA               |
| <b>Parsons Brinckerhoff, Inc.</b> | <b>San Bernardino, CA</b> |
| TKE Engineering                   | Riverside, CA             |
| Tmad, Taylor & Gaines Engineers   | Ontario, CA               |

The authorization to provide professional design services for the sewer main replacement project is not a project under the California Environmental Quality Act (CEQA). Upon completion of the sewer pipeline replacement design, an environmental review will be pursuant to CEQA. Any required CEQA compliance measures will be brought to the City Council for consideration.

## VICINITY MAP

### FY 13-14 SEWER MAIN IMPROVEMENTS AT VARIOUS LOCATIONS



# CITY OF ONTARIO

*Agenda Report*  
February 4, 2014

SECTION:  
CONSENT CALENDAR

**SUBJECT:** AN ORDINANCE APPROVING FILE NO. PSP12-001, A SPECIFIC PLAN (GRAND PARK) TO ESTABLISH LAND USE DESIGNATIONS, DEVELOPMENT STANDARDS, AND DESIGN GUIDELINES FOR APPROXIMATELY 320 GROSS ACRES LOCATED WITHIN THE NEW MODEL COLONY AND BOUNDED BY EDISON AVENUE TO THE NORTH, EUCALYPTUS AVENUE TO THE SOUTH, ARCHIBALD AVENUE TO THE WEST, AND HAVEN AVENUE TO THE EAST (APNS: 218-241-06, 10, 11, 13, 14, 15, 16, 19, 20, 22 AND 23)

**RECOMMENDATION:** That the City Council consider and adopt an ordinance approving the Grand Park Specific Plan (File No. PSP12-001).

**COUNCIL GOALS:** Develop Strategies and Take Actions, Including Regaining Local Control of the Ontario International Airport, to Minimize the Negative Impacts of the Global Financial Downturn on Ontario's Economy and the City's Fiscal Health  
Invest in the Growth and Evolution of the City's Economy  
Operate in a Businesslike Manner  
Invest in the City's Infrastructure (Water, Streets, Sewers, Parks, Storm Drains, and Public Facilities)  
Ensure the Development of a Well Planned, Balanced, and Self-Sustaining Community in the New Model Colony

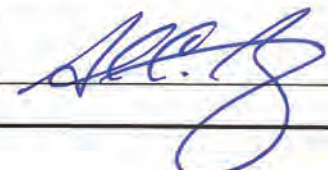
**FISCAL IMPACT:** Adoption of the Grand Park Specific Plan would result in both short and long term fiscal impacts to the City. Short term impacts include infrastructure improvements to serve the new development. The cost of these improvements is included in the Nexus Study and Development Impact Fees previously adopted by the City Council. The developer will be required to install improvements or pay the Development Impact Fee ("DIF") associated with the various improvements. Long term fiscal impacts include the ongoing operations and maintenance services (police, fire, maintenance, etc.) necessary to serve the new development. While the development will result in increased property and sales tax revenue, the increase is not sufficient to cover the cost of services associated with the project. To address this shortfall, the development will be required to form and/or join a Community Facilities

**STAFF MEMBER PRESENTING:** Scott Murphy, Planning Director

Prepared by: Rudy Zeledon

Department: Planning

City Manager

Approval: 

Submitted to Council/O.H.A.

Approved:

Continued to:

Denied:

02/04/2014

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District (“CFD”) to cover the additional public service costs. No Original Model Colony dollars will be used to fund the New Model Colony development.

**BACKGROUND:** On January 21, 2014, the City Council introduced an ordinance approving the Grand Park Specific Plan. The Ontario Plan (TOP) Policy Plan (General Plan) provides the basic framework for development within the 8,200-acre area commonly referred to as the New Model Colony (“NMC”). The Policy Plan requires City approval of a Specific Plan for new developments within the NMC. Specific Plans are required to ensure that sufficient land area is included to achieve cohesive, unified districts and neighborhoods. Specific Plans are required to incorporate a development framework for detailed land use, circulation, infrastructure (including drainage, sewer, and water facilities), and provisions for public services (including parks and schools, and urban design and landscape plans).

**GRAND PARK SPECIFIC PLAN:** The Grand Park Specific Plan serves to implement the City’s Policy Plan for the project site and provides zoning regulations for development of the project site by establishing permitted land use, development standards, infrastructure requirements, and implementation requirements for development of the 320 acres within the Specific Plan boundaries. The Specific Plan establishes a comprehensive set of design guidelines and development regulations to guide and regulate site planning, landscape, and architectural character within the community, ensuring that excellence in community design is achieved during project development. The Grand Park Specific Plan establishes the procedures and requirements to approve new development within the project site to ensure TOP goals and policies are achieved.

The Grand Park Specific Plan proposes a land use plan that includes a mixture of uses and is based on the traditional neighborhood design principles and concepts. The Specific Plan is unique from previously approved specific plans in that the majority of land within the Specific Plan is devoted to public uses. The Specific Plan is comprised of the following land use categories:

- Residential – 106.6 acres
- Public Park (Great Park) – 146.7 acres
- Elementary School – 11.2 acres
- High School – 55.7 acres

Community Design — The Grand Park Specific Plan organizes residential areas around a simple and understandable grid pattern of streets with the focal point of the Specific Plan being the City’s “Great Park,” a planned +450-acre park extending approximately four miles across the southern portion of the NMC. Residential areas are located within walking and biking distance to parks and schools and are connected through a network of greenbelts, sidewalks, off-street bike paths, and multi-use trails.

Residential Development — TOP Policy Plan Land Use Plan designates 44.3 acres of land within the Grand Park Specific Plan for Low Density Residential (2.1 - 5.0 du/ac) and 61.9 acres for Medium Density Residential (11.1 - 25 du/ac) with a development capacity of 1,561 dwelling units. The Grand Park Specific Plan proposes the development of up to 1,327 residential dwelling units. The 1,327 residential units will be contained within 8 distinctive Planning Areas. Planning Areas 2, 4, 5 and 6 are comprised of Low Density Residential (6-12 du/ac) uses. Planning Areas 1 and 3 are designated for Medium Density Residential (12-18 du/ac) uses and Planning Areas 7 and 8 are comprised of High Density Residential (18-25 du/ac) uses.

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

Circulation Plan — The primary entrances into the Grand Park community will occur from Edison Avenue on the north, Archibald Avenue on the west and Haven Avenue on the east. The primary east-west street connecting Haven Avenue and Archibald Avenue through the Great Park, “Park Street”, will provide internal access and connectivity between residential areas and the proposed high school and elementary school sites. Street traffic calming will be introduced through the incorporation of three roundabouts at key local street intersections along Park Street and by narrowing the pavement sections at intersections (intersections tapers).

Landscape Plan — Careful attention has been given to creating an appropriate and appealing landscape design which will compliment, enhance and reinforce the creation of the traditional neighborhoods within Grand Park through entry monumentation, enhanced/expanded parkways, and accent plantings.

Parks and Trails — The Great Park extends east from Campus Avenue to Haven Avenue. The eastern portion of the Great Park, between Archibald Avenue and Haven Avenue, is located along the lower portion of the Grand Park Specific Plan area. All of the Grand Park community is within ¼ mile walk of the Great Park. This eastern portion of the Great Park will include both passive and active areas. Pocket parks will also be provided within each residential neighborhood.

Infrastructure and Services — Backbone infrastructure to serve all areas of the Grand Park Specific Plan will be installed by the developer(s) in accordance with the NMC Master Plans for streets, water (including recycled water), sewer, storm drain, and fiber optic facilities. Natural gas will be provided by the Gas Company and electricity by Southern California Edison. While various improvements are currently under construction, conditions of approval for development of the project will require the installation of all infrastructure necessary to serve the project as a standalone development.

**COMPLIANCE WITH THE ONTARIO PLAN:** The proposed project is consistent with the principles, goals and policies contained within the Vision, Governance, Policy Plan (General Plan), and City Council Priorities components of The Ontario Plan (TOP). California Government Code (Title 7, Division 1, Chapter 3, Article 8, Section 65450-65457) permits the adoption and administration of specific plans as an implementation tool for elements contained in the local general plan. Specific plans must demonstrate consistency in regulations, guidelines, and programs with the goals and policies set forth in the general plan. The Grand Park Specific Plan has been prepared in conformance with the goals and policies of the City of Ontario Policy Plan (General Plan). The policy analysis in *Table 9-1, “Policy Plan Consistency,”* of the Specific Plan describes the manner in which the Grand Park Specific Plan complies with the Policy Plan goals and policies applicable to the Grand Park Specific Plan.

**COMPLIANCE WITH THE AIRPORT LAND USE COMPATIBILITY PLAN:** The project site is located within the Airport Influence Areas of LA/Ontario International Airport and Chino Airport and has been found to be consistent with the policies and criteria set forth within the LA/Ontario International Airport and Chino Airport Land Use Compatibility Plans (ALUCP).

**ENVIRONMENTAL REVIEW:** On January 27, 2010, the City adopted The Ontario Plan (TOP) and certified the accompanying EIR. TOP EIR identified many areas that might have a potentially

significant impact on the environment, including: 1) Aesthetics; 2) Biological Resources; 3) Geology and Soils; 4) Hazards and Hazardous Materials; 5) Hydrology and Water Quality; 6) Land Use and Planning; 7) Mineral Resources; 8) Population and Housing; 9) Public Services; 10) Recreation; and 11) Utilities and Service Systems. Through the EIR process, potentially significant impacts were analyzed, revisions were incorporated into the plan and/or mitigation measures were identified that reduced the potential environmental impacts to a level that was less than significant for most of the impacts. In some cases, however, the impacts could not be reduced to a level of less than significant and a Statement of Overriding Considerations was adopted. These areas included: 1) Agriculture; 2) Air Quality; 3) Cultural Resources; 4) Global Climate Change; 5) Noise; and 6) Transportation and Traffic.

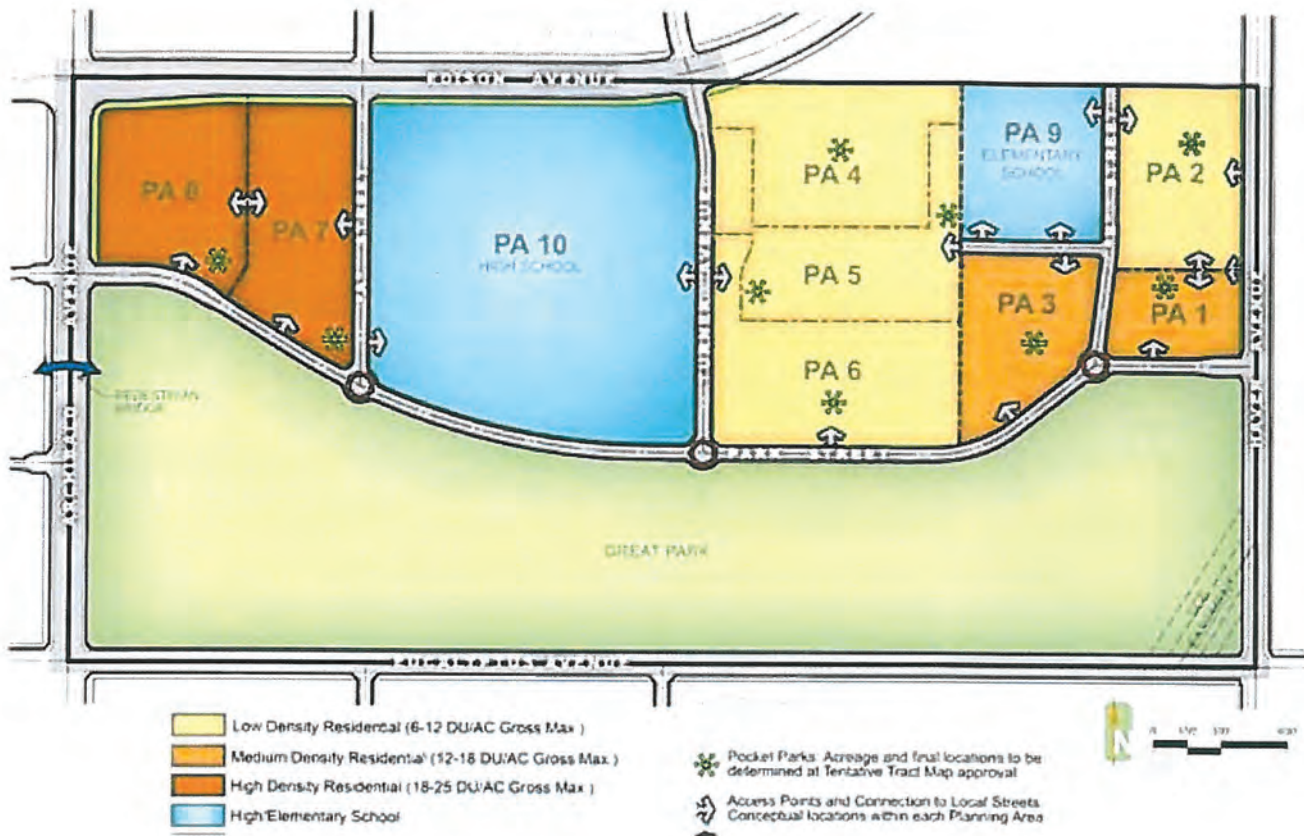
Even though an EIR was prepared for TOP, the analyses focused on the program or “big picture” impacts associated with development. Staff completed an Initial Study for the project and determined that an EIR should be prepared at the project level for the Grand Park Specific Plan. As noted in the Planning Commission staff report dated December 16, 2013, an EIR was prepared addressing thirteen areas. The Grand Park Specific Plan EIR evaluated each of these various areas and identifies mitigation measures and/or revisions to the plan to mitigate the impact areas. Of the thirteen areas, two impacts areas, air quality and agricultural resources, could not be reduced to less than significant, resulting in the impacts remaining potentially significant and unavoidable.

While mitigation of all potential impacts to a level of less than significant is desirable, the fact that two areas will remain significant and unavoidable is not unexpected. The identification of these areas as significant and unavoidable validates the work previously completed for TOP. Staff determined that the benefits of the proposed development outweigh the potential impacts associated with it. Therefore, staff recommends the City Council certify the EIR, including the Statement of Overriding Considerations for the project.

**PLANNING COMMISSION REVIEW:** On December 16, 2013, the Planning Commission voted unanimously (6-0) to recommend City Council certification of the Grand Park Specific Plan Environment Impact Report (SCH# 2012061057) and approval of the Grand Park Specific Plan (File No. PSP12-001).

**APPLICATION PROPONENTS:** The Grand Park Specific Plan application is being requested by Distinguished Homes.

# Grand Park Specific Plan Land Use Plan



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

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF ONTARIO, CALIFORNIA, APPROVING THE GRAND PARK SPECIFIC PLAN, FILE NO. PSP12-001, ESTABLISHING LAND USE DESIGNATIONS, DEVELOPMENT STANDARDS, AND DESIGN GUIDELINES FOR 320.2 ACRES, WHICH INCLUDES THE POTENTIAL DEVELOPMENT OF 1,327 DWELLING UNITS AND A 146.7 ACRE PUBLIC PARK, BOUNDED BY EDISON AVENUE TO THE NORTH, EUCALYPTUS AVENUE TO THE SOUTH, ARCHIBALD AVENUE TO THE WEST, AND HAVEN AVENUE TO THE EAST, AND MAKING FINDINGS IN SUPPORT THEREOF – APN(S): 218-241-06, 10, 11, 13, 14, 15, 16, 19, 20, 22 AND 23.

WHEREAS, Distinguished Homes ("Applicant") has filed an Application for the approval of the Grand Park Specific Plan, File No. PSP12-001, as described in the title of this Ordinance (hereinafter referred to as "Application" or "Project"); and

WHEREAS, the Application applies to property bounded by Edison Avenue to the north, Eucalyptus Avenue to the south, and Archibald Avenue to the west, and Haven Avenue to the east. The site has a street frontage of approximately 4,576 along Edison Avenue and Eucalyptus Avenue and approximately 2,386 feet along Archibald Avenue and Haven Avenue and is presently improved with dairy and agriculture uses; and

WHEREAS, the properties to the north of the Project site are zoned for Low and Medium Density Residential within The Avenue Specific Plan and are developed with dairy and agriculture uses. The properties to the south are within the Subarea 29 Specific Plan, zoned for Low Density Residential and are developed with dairy and agriculture uses. The properties to the east are zoned SP/AG (Specific Plan/Agriculture Preserve) and are developed with dairy and agriculture uses. The properties to the west are within the Parkside Specific Plan, zoned for Medium Density Residential and General Commercial and are developed with dairy and agriculture uses; and

WHEREAS, the Specific Plan identifies the allowable land uses, maximum development intensity consistent with TOP Policy Plan Land Use Plan, design guidelines, and development standards for the 320 acres of land; and

WHEREAS, the Specific Plan is comprised of approximately 320 acres of land into the following land use categories: 106.6 gross acres of residential, 11.2 gross acres for an elementary school, 55.7 gross acres for a high school and 146.7 gross acres for a public park; and

WHEREAS, TOP Policy Plan establishes a development capacity of 1,561 dwelling units for the Specific Plan area. As proposed, the Specific Plan allows the development of up to 1,327 residential dwelling units. In situations where developments encompass multiple properties (Specific Plans) and contain more than one land use designation, TOP Policy Plan allows the maximum number of units permitted for the development to be spread over the entire site, allowing the blending of the residential

densities. In addition, when calculating the number of units permitted, the existing parcel size (gross acres), before required dedication, is to be used. The 1,327 residential units will be contained within 8 distinctive Planning Areas (See Figure 2.), with Planning Areas 2, 4, 5 and 6 comprised of Low Density Residential (6-12 du/ac), Planning Areas 1 and 3 comprised of Medium Density Residential (12-18 du/ac) and Planning Area 7 and 8 comprised of High Density Residential (18-25 du/ac). All Planning Areas are linked by a network of street separated sidewalks and bicycle trails connecting all neighborhoods to parks and schools; and

WHEREAS, the Specific Plan residential planning areas include a variety of housing products that respond to a variety of homeownership needs and desires. The Specific Plan offers a variety of conventional low density single family detached residential products as well as higher density motor court and stacked flats condominium style residential products; and

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

WHEREAS, this Specific Plan will not be materially injurious or detrimental to the adjacent properties, but will have a significant impact on the environment or the surrounding properties. The benefits of the project, however, outweigh the potential environmental impacts and a Statement of Overriding Considerations is recommended for the project; and

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

WHEREAS, the environmental impacts of this project are being reviewed in conjunction with the Grand Park Specific Plan (File No. PSP12-001) Environmental Impact Report (SCH # 2012061057); and

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

WHEREAS, on December 16, 2013, the Development Advisory Board of the City of Ontario conducted a hearing and issued Decision No. DAB138, recommending Planning Commission approval of the Application; and

WHEREAS, on December 16, 2013, the Planning Commission of the City of Ontario conducted a hearing and issued Resolution PC13-083 recommending the City Council approval of the Application; and

WHEREAS, as the first action on the Project on January 21, 2014, the City Council approved a Resolution certifying the Grand Park Specific Plan Final EIR (SCH# 2012061057). The Final EIR concluded that implementation of the Project could result in significant and unavoidable negative environmental effects despite the imposition of all feasible mitigation measures identified in the Final EIR. The City Council determined that the benefits of the project outweigh the avoidable adverse impacts as documented in the Statement of Overriding Considerations included in the Final EIR Resolution; and

WHEREAS, on January 21, 2014, the City Council of the City of Ontario conducted a hearing on the Project and concluded said hearing on that date; and

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

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

SECTION 1. As the decision-making body for the Project, the City Council has reviewed and considered the information contained together with all written and oral reports included for the environmental assessment for the application. The City Council finds that the environmental impacts of this project were reviewed in conjunction with the Grand Park Specific Plan Environmental Impact Report (SCH # 2012061057) and supporting documentation and the City Council finds as follows:

a. The Grand Park Specific Plan Environmental Impact Report contains a complete and accurate reporting of the environmental impacts associated with the Project; and

b. The Grand Park Specific Plan Environmental Impact Report was completed in compliance with CEQA and the Guidelines promulgated thereunder; and

c. The Grand Park Specific Plan Environmental Impact Report reflects the independent judgment of the City Council; and

d. All applicable mitigation measures adopted with the certification by the City Council of the Grand Park Specific Plan Environmental Impact Report will become a condition of project approval.

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

a. The 320 acre Specific Plan 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 Grand Park Specific Plan is in conformance with the Land Use Policies and Goals of the Policy Plan and will provide for development, within the district, in a manner consistent with the Policy Plan and with related development; and

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

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

SECTION 3. Based upon the findings and conclusions set forth in Sections 1 and 2 above, the City Council hereby approves the Project subject to each and every condition set forth in the Department reports, attached hereto and incorporated herein by this reference.

SECTION 4. 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. 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 4<sup>th</sup> day of February 2014.

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

ATTEST:

\_\_\_\_\_  
MARY E. WIRTES, MMC, CITY CLERK

APPROVED AS TO FORM:

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

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

I, MARY E. WIRTES, City Clerk of the City of Ontario, DO HEREBY CERTIFY that foregoing Ordinance No. 2985 was duly introduced at a regular meeting of the City Council of the City of Ontario held January 21, 2014 and adopted at the regular meeting held February 4, 2014 by the following roll call vote, to wit:

AYES:           COUNCIL MEMBERS:

NOES:           COUNCIL MEMBERS:

ABSENT:        COUNCIL MEMBERS:

\_\_\_\_\_  
MARY E. WIRTES, MMC, CITY CLERK

(SEAL)

I hereby certify that the foregoing is the original of Ordinance No. 2985 duly passed and adopted by the Ontario City Council at their regular meeting held February 4, 2014 and that Summaries of the Ordinance were published on January 28, 2014 and February 11, 2014, in the Inland Valley Daily Bulletin newspaper.

\_\_\_\_\_  
MARY E. WIRTES, MMC, CITY CLERK

(SEAL)