

**CITY OF ONTARIO
COUNCIL AGENDA FEBRUARY 17, 2015**

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V. STAFF MATTERS

VI. COUNCIL MATTERS

VII. ADJOURNMENT

**CITY OF ONTARIO
CITY COUNCIL AND HOUSING AUTHORITY
AGENDA
FEBRUARY 17, 2015**

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 v. 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

Pastor Reegis Richard, The Joshua International Center

REPORT ON CLOSED SESSION

City Attorney

PUBLIC COMMENTS

6:30 p.m.

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

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

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

CONSENT CALENDAR

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

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

1. APPROVAL OF MINUTES

Minutes for the regular meeting of the City Council and Housing Authority of January 20, 2015, and approving same as on file in the Records Management Department.

2. BILLS/PAYROLL

Bills January 11, 2015 through January 24, 2015 and **Payroll** January 11, 2015 through January 24, 2015, when audited by the Finance Committee.

3. A RESOLUTION APPROVING AN IMPROVEMENT AGREEMENT, IMPROVEMENT SECURITY AND FINAL PARCEL MAP NO. 19517 LOCATED AT THE NORTHEAST CORNER OF MISSION BOULEVARD AND OAKS AVENUE

That the City Council adopt a resolution approving an improvement agreement, improvement security and Final Parcel Map No. 19517 located at the northeast corner of Mission Boulevard and Oaks Avenue.

RESOLUTION NO. _____

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF ONTARIO, CALIFORNIA, APPROVING AN IMPROVEMENT AGREEMENT, IMPROVEMENT SECURITY AND FINAL PARCEL MAP NO. 19517 LOCATED AT THE NORTHEAST CORNER OF MISSION BOULEVARD AND OAKS AVENUE.

4. A RESOLUTION DEDICATING AN EASEMENT FOR PUBLIC ROAD AND UTILITY PURPOSES OVER A PORTION OF A CITY-OWNED PARCEL AT THE SOUTHWEST CORNER OF BAKER AVENUE AND 6TH STREET

That the City Council adopt a resolution dedicating a portion of a City-owned parcel at the southwest corner of Baker Avenue and 6th Street as a right-of-way easement for public road and utility purposes; and authorize the City Manager to execute the easement deed.

RESOLUTION NO. _____

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF ONTARIO, CALIFORNIA, DEDICATING A PORTION OF A CITY-OWNED PARCEL AT THE SOUTHWEST CORNER OF BAKER AVENUE AND 6TH STREET AS A RIGHT-OF-WAY EASEMENT FOR PUBLIC ROAD AND UTILITY PURPOSES.

5. PURCHASE OF SELF-CONTAINED BREATHING APPARATUS EQUIPMENT/BAUER COMPRESSOR, INC.

That the City Council authorize the purchase of 216 complete sets of self-contained breathing apparatus (SCBA) equipment plus face masks and cylinders from Bauer Compressor, Inc. of Livermore, California, in an amount not to exceed \$1,327,230.

6. FISCAL YEAR 2014-15 SECOND BUDGET UPDATE

That the City Council approve the budget adjustments and recommendations as listed in the Fiscal Year 2014-15 Second Budget Update.

7. A COOPERATIVE PURCHASE AGREEMENT WITH G&K SERVICES FOR THE UNIFORM RENTAL AND LAUNDERING SERVICES/G&K SERVICES

That the City Council authorize the City Manager to execute a two-year cooperative purchase agreement (on file in the Records Management Department) with G&K Services (G&K) of Ontario, California for uniform rental and laundering services of approximately \$80,000 annually through May 19, 2017.

8. A RESOLUTION AFFIRMING THE CITY COUNCIL'S DENIAL OF A GENERAL PLAN AMENDMENT (FILE NO. PGPA14-004) TO REVISE THE LAND USE ELEMENT OF THE ONTARIO PLAN-POLICY PLAN, EXHIBITS LU-01 OFFICIAL LAND USE PLAN AND LU-03: FUTURE BUILDOUT TO: (1) CHANGE THE LAND USE DESIGNATION FOR 15.3 ACRES OF LAND LOCATED ON THE WEST SIDE OF GROVE AVENUE BETWEEN STATE ROUTE 60 AND WALNUT STREET FROM NEIGHBORHOOD COMMERCIAL TO GENERAL COMMERCIAL; AND (2) MODIFY THE FUTURE BUILDOUT TABLE TO BE CONSISTENT WITH THE LAND USE DESIGNATION CHANGES; AND A ZONE CHANGE REQUEST (FILE NO. PZC14-007) FROM C1 (SHOPPING CENTER DISTRICT) TO C3 (COMMERCIAL SERVICE DISTRICT) TO CREATE CONSISTENCY BETWEEN THE ZONING AND THE PROPOSED GENERAL PLAN LAND USE DESIGNATION AMENDMENT (APN: 1051-171-40, 41, 42, 43, 44 AND 1051-321-51, 52, 53, 54, 55, 56, 62, AND 63)

That the City Council adopt a resolution affirming the City Council's January 20, 2015 denial of a General Plan Amendment (File No. PGPA14-004) changing the land use designation from Neighborhood Commercial to General Commercial; and adopt a resolution affirming the denial of a Zone Change (File No. PZC14-007) from C1 (Shopping Center District) to C3 (Commercial Service District).

RESOLUTION NO. _____

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF ONTARIO, CALIFORNIA, DENYING FILE NO. PGPA14-004, TO REVISE THE LAND USE PLAN (EXHIBIT LU-01) CONTAINED WITHIN THE POLICY PLAN COMPONENT OF THE ONTARIO PLAN TO CHANGE THE LAND USE DESIGNATION FROM NEIGHBORHOOD COMMERCIAL TO GENERAL COMMERCIAL FOR 13 PARCELS TOTALING APPROXIMATELY 15.4 ACRES, LOCATED ON THE WEST SIDE OF GROVE AVENUE BETWEEN STATE ROUTE 60 AND WALNUT STREET, AND MAKING FINDINGS IN SUPPORT THEREOF – APN: 1051-171-40, 41, 42, 43, 44 AND 1051-321-51, 52, 53, 54, 55, 56, 62, AND 63.

RESOLUTION NO. _____

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF ONTARIO, CALIFORNIA, DENYING FILE NO. PZC14-007, A ZONE CHANGE REQUEST TO CHANGE THE ZONING DESIGNATION FROM C1 (NEIGHBORHOOD COMMERCIAL) TO C3 (GENERAL COMMERCIAL) FOR 13 PARCELS TOTALING APPROXIMATELY 15.4 ACRES, LOCATED ON THE WEST SIDE OF GROVE AVENUE BETWEEN STATE ROUTE 60 AND WALNUT STREET, AND MAKING FINDINGS IN SUPPORT THEREOF – APN: 1051-171-40, 41, 42, 43, 44 AND 1051-321-51, 52, 53, 54, 55, 56, 62, AND 63.

9. EXTENSION OF TOWING SERVICES AGREEMENTS

That the City Council authorize the City Manager to extend the existing towing services agreements with Certified Towing, Inc.; Dietz Towing, LLC; James Foglesong Towing and Storage, Inc.; and United Road Service, DBA Bill and Wags, Inc. for a period not to exceed 30 days.

PUBLIC HEARINGS

10. A PUBLIC HEARING TO CONSIDER AN ORDINANCE APPROVING A DEVELOPMENT AGREEMENT BETWEEN THE CITY OF ONTARIO AND STRATHAM PROPERTIES, INC., FOR THE DEVELOPMENT OF UP TO 196 RESIDENTIAL UNITS ON 48.73 ACRES OF LAND WITHIN PLANNING AREAS 4 AND 8 OF THE WEST HAVEN SPECIFIC PLAN, LOCATED ON THE NORTHWEST CORNER OF HAVEN AVENUE AND CHINO AVENUE AND THE NORTHWEST CORNER OF HAVEN AVENUE AND SCHAEFER AVENUE

That the City Council introduce and waive further reading of an ordinance approving the Development Agreement (File No. PDA07-005, on file with the Records Management Department) between Stratham Properties, Inc., a California corporation, and the City of Ontario, providing for the construction of up to 196 residential units on 48.73 acres of land within Planning Areas 4 and 8 of the West Haven Specific Plan, located on the northwest corner of Haven Avenue and Chino Avenue and the northwest corner of Haven Avenue and Schaefer Avenue (APN: 0218-151-11 and 0218-151-38).

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

Written communication.

Oral presentation.

Public hearing closed.

ORDINANCE NO. _____

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF ONTARIO, CALIFORNIA, APPROVING A DEVELOPMENT AGREEMENT BETWEEN THE CITY OF ONTARIO AND STRATHAM PROPERTIES, INC., FILE NO. PDA07-005, TO ESTABLISH THE TERMS AND CONDITIONS FOR DEVELOPMENT OF UP TO 196 RESIDENTIAL UNITS ON 48.73 ACRES WITHIN PLANNING AREAS 4 AND 8 OF THE WEST HAVEN SPECIFIC PLAN, LOCATED ON THE NORTHWEST CORNER OF HAVEN AVENUE AND CHINO AVENUE AND THE NORTHWEST CORNER OF HAVEN AVENUE AND SCHAEFER AVENUE, AND MAKING FINDINGS IN SUPPORT THEREOF (APNS: 0238-151-11 AND 0218-151-38).

STAFF MATTERS

City Manager Boling

COUNCIL MATTERS

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

ADJOURNMENT

**CITY OF ONTARIO
CLOSED SESSION REPORT**
City Council // Housing Authority // Other // (GC 54957.1)
February 17, 2015

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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Disposition: _____

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

CITY OF ONTARIO

Agenda Report
February 17, 2015

SECTION:
CONSENT CALENDAR

SUBJECT: A RESOLUTION APPROVING AN IMPROVEMENT AGREEMENT, IMPROVEMENT SECURITY AND FINAL PARCEL MAP NO. 19517 LOCATED AT THE NORTHEAST CORNER OF MISSION BOULEVARD AND OAKS AVENUE

RECOMMENDATION: That the City Council adopt a resolution approving an improvement agreement, improvement security and Final Parcel Map No. 19517 located at the northeast corner of Mission Boulevard and Oaks Avenue.

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

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

BACKGROUND: Final Parcel Map No. 19517, consisting of two industrial parcels on 3.80 acres as shown on the attached Exhibit, has been submitted by the developer, Mission XC, LLC, a California Limited Liability Company (Ms. Gretchen Sauer, President).

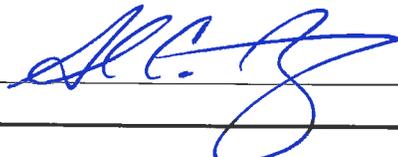
Improvements include street widening, curb, gutter, sidewalk, access ramps, street lights, parkway landscaping and irrigation, street trees, drive approaches, water main extension, water services, sewer laterals, fire hydrants, storm drain improvements and the undergrounding of power lines. The developer has entered into an improvement agreement with the City for the Final Parcel Map and has posted adequate security to secure construction of the required public improvements.

Tentative Parcel Map No. 19517 was approved by the Planning Commission on April 29, 2014.

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

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

Prepared by: Dean A. Williams
Department: Engineering

City Manager
Approval: 

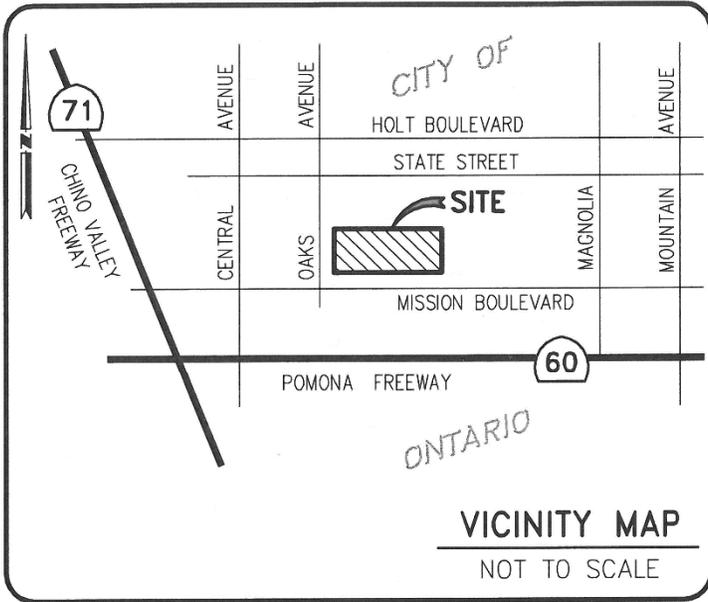
Submitted to Council/O.H.A. 02/17/2015

Approved: _____

Continued to: _____

Denied: _____

EXHIBIT



Prepared by:
Joseph C. Truxaw and Associates, Inc.
 Civil Engineers and Land Surveyors
 265 S. Anita Drive, Suite 111, Orange, (714) 935-0265

PARCEL MAP NO. 19517 IN THE CITY OF ONTARIO		
CITY OF ONTARIO ENGINEERING DEPT.		APPLICANT: MISSION XC, LLC PROJECT: 2 PARCEL SUBDIVISION

RESOLUTION NO. _____

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF ONTARIO, CALIFORNIA, APPROVING AN IMPROVEMENT AGREEMENT, IMPROVEMENT SECURITY AND FINAL PARCEL MAP NO. 19517 LOCATED AT THE NORTHEAST CORNER OF MISSION BOULEVARD AND OAKS AVENUE.

WHEREAS, Tentative Parcel Map No. 19517, submitted for approval by the developer, Mission XC, LLC, a California Limited Liability Company (Ms. Gretchen Sauer, President) was approved by the Planning Commission of the City of Ontario on April 29, 2014; and

WHEREAS, Tentative Parcel Map No. 19517, consisting of two parcels, being a subdivision of Lot 7, Block 12 of Monte Vista Tract No. 2 in the City of Ontario, County of San Bernardino, State of California, as per map recorded in Book 16, page 33 of Maps, in the Office of the County Recorder of said County, except therefrom the southerly 70 feet thereof; and

WHEREAS, to meet the requirements established as prerequisite to final approval of Final Parcel Map No. 19517, said developer has offered an improvement agreement, together with good and sufficient security, in conformance with the City Attorney's approved format, for approval and execution by the City; and

WHEREAS, said offered improvement agreement and good and sufficient security has been accepted by the City and is currently on file in the Office of the City Clerk.

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

1. That said improvement agreement be, and the same is, approved and the City Manager is authorized to execute same on behalf of said City, and the City Clerk is authorized to attest thereto; and
2. That said improvement security is accepted as good and sufficient, subject to approval as to form and content thereof by the City Attorney; and
3. That Final Parcel Map No. 19517 be approved and that the City Clerk be authorized to execute the statement thereon on behalf of said City.
4. The City Clerk of the City of Ontario shall certify as to the adoption of this Resolution.

PASSED, APPROVED, AND ADOPTED this 17th day of February 2015.

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. 2015- was duly passed and adopted by the City Council of the City of Ontario at their regular meeting held February 17, 2015 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. 2015- duly passed and adopted by the Ontario City Council at their regular meeting held February 17, 2015.

MARY E. WIRTES, MMC, CITY CLERK

(SEAL)

CITY OF ONTARIO

Agenda Report
February 17, 2015

SECTION:
CONSENT CALENDAR

SUBJECT: A RESOLUTION DEDICATING AN EASEMENT FOR PUBLIC ROAD AND UTILITY PURPOSES OVER A PORTION OF A CITY-OWNED PARCEL AT THE SOUTHWEST CORNER OF BAKER AVENUE AND 6TH STREET

RECOMMENDATION: That the City Council adopt a resolution dedicating a portion of a City-owned parcel at the southwest corner of Baker Avenue and 6th Street as a right-of-way easement for public road and utility purposes; and authorize the City Manager to execute the easement deed.

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

FISCAL IMPACT: None. The City will not incur any costs for dedicating a right-of-way easement.

BACKGROUND: State law generally requires public streets to be within rights-of-way that have been dedicated for public road and utility purposes.

The City owns a parcel of land at the southwest corner of Baker Avenue and 6th Street, upon which street improvements, including curb, sidewalk and landscaping, currently exist along the perimeter. However, these existing street improvements were built within the parcel's boundaries, rather than upon dedicated public rights-of-way.

Accordingly, portions of said City-owned property need to be dedicated as a right-of-way easement as shown in Exhibit 1 and set forth in the attached resolution. The resolution authorizes the execution of an easement deed that will ensure that San Bernardino County assessor maps will be updated to reflect the City's ultimate right-of-way needs. The current uses on the parcel will neither change nor be impacted by the dedication.

The easement deed has been reviewed and approved as to form by the City Attorney.

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

Prepared by: Larry Tay, P.E.
Department: Engineering

City Manager
Approval: 

Submitted to Council/O.H.A. 02/17/2015

Approved: _____

Continued to: _____

Denied: _____

EXHIBIT 1



LEGEND

 = AREA TO BE DEDICATED FOR PUBLIC ROAD AND PUBLIC UTILITY PURPOSES



RESOLUTION NO. _____

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF ONTARIO, CALIFORNIA, DEDICATING A PORTION OF A CITY-OWNED PARCEL AT THE SOUTHWEST CORNER OF BAKER AVENUE AND 6TH STREET AS A RIGHT-OF-WAY EASEMENT FOR PUBLIC ROAD AND UTILITY PURPOSES.

WHEREAS, in accordance with the City's Master Plan of Streets and Highways, the southwest corner of Baker Avenue and 6th Street requires additional public street right-of-way width; and

WHEREAS, the City has all rights, title and interest to the parcel (APN 0210-021-12) situated on the southwest corner of Baker Avenue and 6th Street and depicted on Exhibits "A" and "B" of the easement deed, from which necessary street right-of-way can be provided; and

WHEREAS, under state law, in order to improve a public road, the law generally requires a right-of-way dedication of property by its owner and acceptance by the City; and

WHEREAS, the City now seeks to dedicate a portion of said City-owned corner parcel as a right-of-way easement; and

WHEREAS, the City Council now seeks to approve the use of the City's property for this desired purpose in order to achieve the ultimate right-of-way required to accommodate City's long-term transportation needs.

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

1. The City Council of the City of Ontario hereby dedicates as an easement for public road and utility purposes, the property as depicted in the attached easement deed.
2. The City Clerk shall cause the attached easement deeds, attested by the City Clerk under seal, to be executed and recorded in the office of the recorder of the County of San Bernardino. An additional purpose for the easement deed is to ensure that future County assessor maps reflect this new expanded right-of-way dedicated for roadway and utility purposes.
3. The City Manager is authorized to execute the attached easement deed for the purposes stated herein.
4. The City Clerk of the City of Ontario shall certify as to the adoption of this Resolution.

PASSED, APPROVED, AND ADOPTED this 17th day of February 2015.

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. 2015- was duly passed and adopted by the City Council of the City of Ontario at their regular meeting held February 17, 2015 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. 2015- duly passed and adopted by the Ontario City Council at their regular meeting held February 17, 2015.

MARY E. WIRTES, MMC, CITY CLERK

(SEAL)

EXHIBIT "A"

LEGAL DESCRIPTION FOR STREET RIGHT OF WAY PURPOSES A.P.N. 0210-021-12

THAT PORTION OF THE EAST 6 ACRES OF LOT 19 PER DEED RECORDED AUGUST 9, 1971 IN BOOK 7727, PAGE 213 OF OFFICIAL RECORDS, SECTION 16, TOWNSHIP 1 SOUTH, RANGE 7 WEST CUCAMONGA FRUIT LANDS IN THE CITY OF ONTARIO, COUNTY OF SAN BERNARDINO, STATE OF CALIFORNIA, AS PER MAP RECORDED IN BOOK 4, PAGE 9 OF MAPS IN THE OFFICE OF THE COUNTY RECORDER OF SAID COUNTY, LYING EASTERLY, NORTHEASTERLY, AND NORTHERLY OF THE FOLLOWING DESCRIBED LINE:

BEGINNING AT A POINT ON THE WESTERLY RIGHT OF WAY LINE OF BAKER AVENUE, 60.00 FEET WIDE, SAID POINT BEING SOUTH 00° 02' 00" EAST A DISTANCE OF 630.56 FEET FROM THE INTERSECTION OF THE SOUTHERLY RIGHT OF WAY LINE OF SIXTH STREET AND THE WESTERLY RIGHT OF WAY LINE OF BAKER AVENUE, SAID POINT BEING ALSO ON THE SOUTHERLY LINE OF SAID LOT 19;

THENCE LEAVING SAID RIGHT OF WAY LINE NORTH 89° 41' 58" WEST ALONG SAID SOUTHERLY LINE A DISTANCE OF 14.00 FEET TO THE **TRUE POINT OF BEGINNING** OF THIS DESCRIPTION;

THENCE NORTH 00° 02' 00" WEST A DISTANCE OF 603.32 FEET;

THENCE NORTH 44° 52' 22" WEST A DISTANCE OF 18.77 FEET;

THENCE NORTH 89° 42' 45" WEST A DISTANCE OF 339.14 FEET TO THE WESTERLY LINE OF SAID EAST 6 ACRES OF SAID LOT 19 TERMINATING THIS DESCRIPTION.

CONTAINING AN AREA OF 13, 848.77 SQUARE FEET, MORE OR LESS.

SEE ATTACHED EXHIBIT "B" AND BY THIS REFERENCE MADE A PART HEREOF.

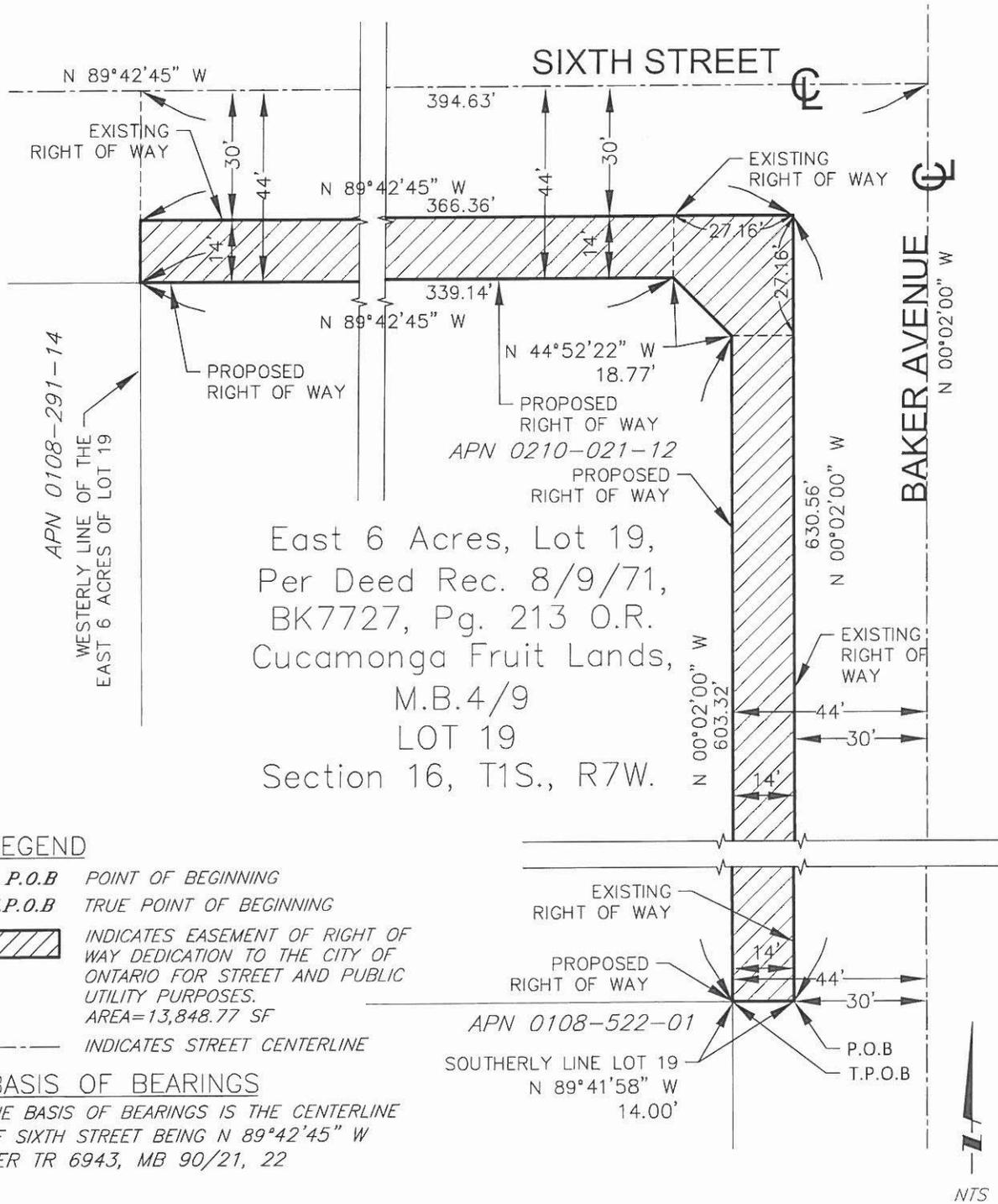
THIS DESCRIPTION WAS PREPARED UNDER MY DIRECTION:


MICHAEL L. FOREMAN, PLS 5778 2/3/15 DATED
REVIEWED FOR THE CITY OF ONTARIO BY
HARRIS & ASSOCIATES



EXHIBIT "B"

EAST 6 ACRES OF LOT 19, SECTION 16, TOWNSHIP 1 SOUTH,
RANGE 7 WEST, CUCAMONGA FRUIT LANDS M.B. 4/9



SHEET 1 OF 2

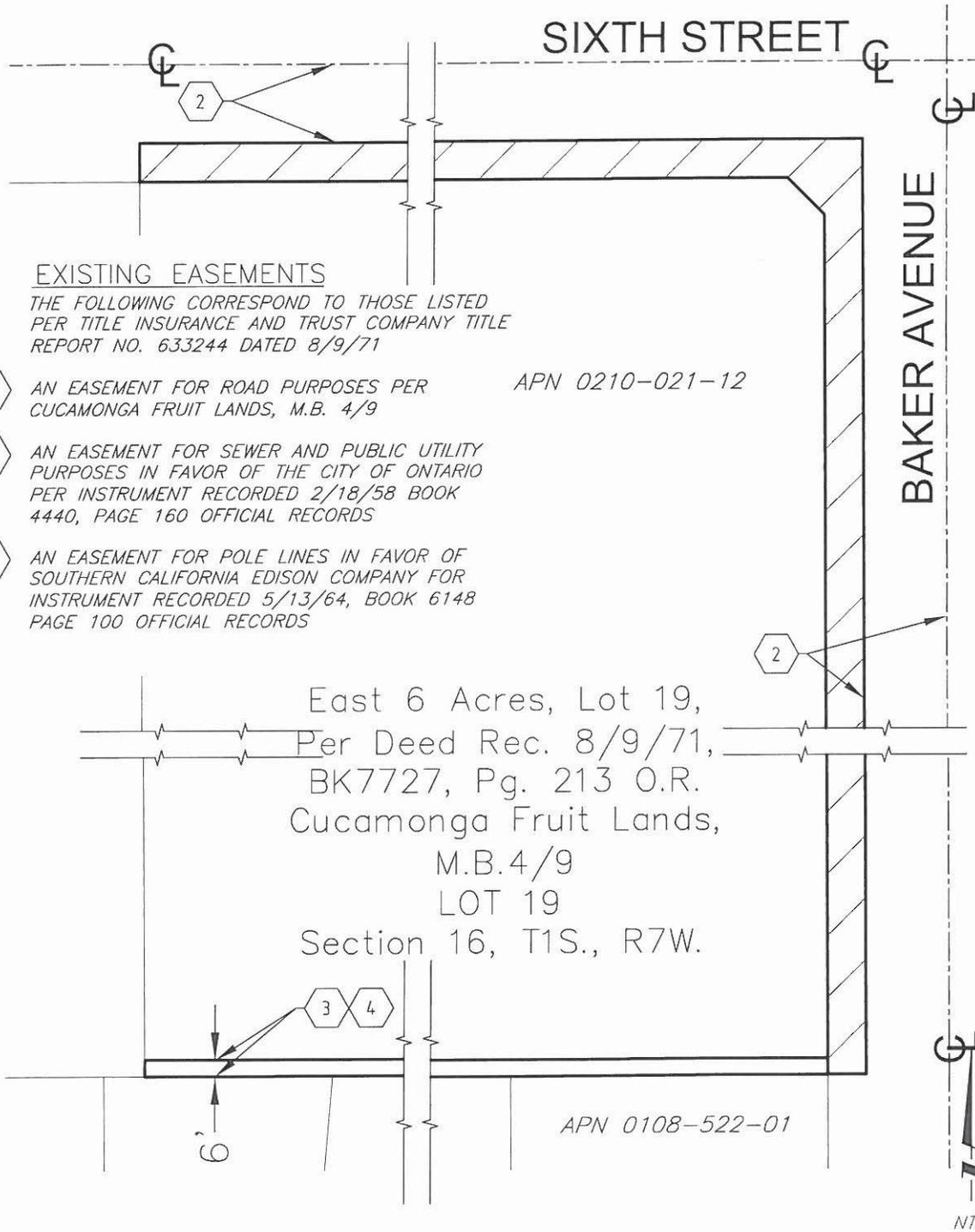
CITY OF ONTARIO

EASEMENT OF RIGHT OF WAY
DEDICATION
APN 0210-021-12

SCALE: NTS
DRAFTED: JMC
CHECKED: LT
DATE: January 20, 2015

EXHIBIT "B"

Existing Easements



EXISTING EASEMENTS

THE FOLLOWING CORRESPOND TO THOSE LISTED
PER TITLE INSURANCE AND TRUST COMPANY TITLE
REPORT NO. 633244 DATED 8/9/71

- 2 AN EASEMENT FOR ROAD PURPOSES PER
CUCAMONGA FRUIT LANDS, M.B. 4/9 APN 0210-021-12
- 3 AN EASEMENT FOR SEWER AND PUBLIC UTILITY
PURPOSES IN FAVOR OF THE CITY OF ONTARIO
PER INSTRUMENT RECORDED 2/18/58 BOOK
4440, PAGE 160 OFFICIAL RECORDS
- 4 AN EASEMENT FOR POLE LINES IN FAVOR OF
SOUTHERN CALIFORNIA EDISON COMPANY FOR
INSTRUMENT RECORDED 5/13/64, BOOK 6148
PAGE 100 OFFICIAL RECORDS

East 6 Acres, Lot 19,
Per Deed Rec. 8/9/71,
BK7727, Pg. 213 O.R.
Cucamonga Fruit Lands,
M.B.4/9
LOT 19
Section 16, T1S., R7W.

APN 0108-522-01

NTS

SHEET 2 OF 2

CITY OF ONTARIO

EASEMENT OF RIGHT OF WAY
DEDICATION
APN 0210-021-12

SCALE:	NTS
DRAFTED:	JMC
CHECKED:	LT
DATE:	January 20, 2015

CITY OF ONTARIO

Agenda Report
February 17, 2015

SECTION:
CONSENT CALENDAR

SUBJECT: PURCHASE OF SELF-CONTAINED BREATHING APPARATUS EQUIPMENT

RECOMMENDATION: That the City Council authorize the purchase of 216 complete sets of self-contained breathing apparatus (SCBA) equipment plus face masks and cylinders from Bauer Compressor, Inc. of Livermore, California, in an amount not to exceed \$1,327,230.

COUNCIL GOALS: Regain Local Control of the Ontario International Airport
Maintain the Current High Level of Public Safety
Pursue City's Goals and Objectives by Working with Other Governmental Agencies

FISCAL IMPACT: On August 19, 2014 the City Council approved the acceptance of a regional grant award from the Federal Emergency Management Agency/U.S. Department of Homeland Security (FEMA/DHS) in the amount of \$1,798,298 for the purchase of SCBA equipment for the participating West End Fire Agencies. Appropriations were included in the Fiscal Year 2014-15 First Quarter Budget Report.

BACKGROUND: In 2013, the National Fire Protection Administration (NFPA) adopted new recommendations and standards for SCBA, which require that all SCBA be tested and certified for use in chemical, biological, radiological, and nuclear (CBRN) emergencies. The 2013 edition of NFPA 1981 rendered our current SCBA equipment obsolete.

In August 2014, the West End Fire Agencies (Upland, Montclair, Rancho Cucamonga, and Ontario) were awarded Federal regional grant funds through the FY 2013 FEMA/DHS Assistance to Firefighters Grant (AFG) program to purchase SCBA equipment, for all the participating agencies.

A committee comprised of members from each participating agency developed product specifications that meet the operational needs of the West End Fire Agencies. In January 2015, the City of Ontario solicited bids on behalf of all the agencies; and three bids were received. All bids were reviewed for accuracy and compliance with the provisions contained in the product specifications.

STAFF MEMBER PRESENTING: Floyd E. Clark, Fire Chief

Prepared by: Cathy Thomas
Department: Fire

City Manager
Approval: 

Submitted to Council/O.H.A. 02/17/2015

Approved: _____

Continued to: _____

Denied: _____

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<u>Vendor</u>	<u>Location</u>	<u>Bid Amount</u>
Bauer Compressors, Inc.	Livermore, CA	\$1,327,230
Allstar Fire Equipment	Arcadia, CA	\$1,496,678
Municipal Emergency Services, Inc.	San Diego, CA	\$1,703,639

Staff recommends contract award to Bauer Compressors of Livermore, California as the lowest qualified bidder with a bid amount of \$1,327,230. The Ontario Fire Department will keep 97 sets of SCBA equipment for their operational needs.

CITY OF ONTARIO

Agenda Report
February 17, 2015

SECTION:
CONSENT CALENDAR

SUBJECT: FISCAL YEAR 2014-15 SECOND BUDGET UPDATE

RECOMMENDATION: That the City Council approve the budget adjustments and recommendations as listed in the Fiscal Year 2014-15 Second Budget Update.

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

FISCAL IMPACT: The recommended actions will affect several fund budgets as outlined in the Fiscal Year 2014-15 Second Budget Update and supporting schedules.

BACKGROUND: This second budget update for Fiscal Year 2014-15 reflects the Administrative Services Agency's continued efforts to provide timely, accurate, and understandable financial information to assist the City Council with decision making and achieve their core goals. All funds have been reviewed in preparing this report. The emphasis of this report is on the General Fund, which funds the majority of government services including public safety, recreation, library, museum, parks, building, and planning. This report also discusses budget trends and the economic outlook that may impact the City's resources.

The primary purposes of this update are to:

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

Recommendations

The Second Budget Update recommendations are routine in nature and are mainly comprised of previously approved City Council actions, adjustments in the revenue budget to reflect estimates based on

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

Prepared by: Doreen M. Nunes
Department: Fiscal Services

City Manager
Approval: 

Submitted to Council/O.H.A. 02/17/2015

Approved: _____

Continued to: _____

Denied: _____

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The Second Budget Update recommendations are routine in nature and are mainly comprised of previously approved City Council actions, adjustments in the revenue budget to reflect estimates based on current trends, and additional appropriations for new or ongoing programs/projects. For the General Fund, the proposed actions will bring the General Fund estimated available ending fund balance to \$32,530,035 or 18.4% of the General Fund operating budget. This amount achieves the 18% goal set by City Council. Major items recommended for the Second Budget Update in the General Fund are: \$1,000,000 to reflect recent increases in Sales Tax revenues; \$862,048 for revised encumbrance carryforward items to rollover purchase orders that have not yet been expended; \$325,000 funding transfer for property acquisitions; and \$138,663 for an environmental impact report related to the Meredith Center Specific Plan (offset by pass-thru revenues collected from the property owner).

Highlights of the Second Budget Update recommendations in Other Funds include over \$400,000 in safety grants for: frontline intelligence and data analysis (\$264,331); ground video receivers (\$100,000); portable night vision binoculars (\$32,818); and teen DUI awareness (\$10,000). In addition, \$195,867 is included for revised encumbrance carryforward items to rollover purchase orders that have not yet been expended.

Interim budget updates also present recommendations for personnel and organizational changes necessary to enhance program operations and efficiency. Recommendations include the transfer and reorganization of the fire dispatch communications division from the Police Department to the Fire Department to streamline and improve dispatch operations. This transfer results in a net zero impact to the General Fund. Other organizational modifications are in the City Administration, Administrative Services, and Economic Development Agencies. The proposed recommendations will result in a net increase of one position but an overall **savings of \$81,228** to the General Fund.

Economic Outlook

The local economy is continuing to show signs of improvement, with continued growth in retail sales, motor vehicles sales, and employment; as well as promising signs reflected in the housing market. Sales tax revenue for the third quarter 2014 grew approximately 12% compared to the same quarter a year ago, with office equipment and new auto sales continuing to be the highest producing sectors. Ontario's unemployment rate declined to 7.5% in December 2014 from 9.3% a year ago. Continued job gains over the last several months continue to drive unemployment down. Home values are strengthening as demonstrated by the 8.5% increase in the median sale price of single-family homes in San Bernardino County for December 2014. Home sales also increased by 5.5% as result of home buyers being pushed out of the Los Angeles and Orange County housing market due to the higher home prices reflected in those regions. The Consumer Confidence Index increased dramatically in January 2015 to a high of 102.9. This is the highest level the index has been at since August 2007.

In contrast, however, passenger traffic levels at the Ontario International Airport continue to be of utmost concern for the City and the region. The airport has lost over 40% of passenger traffic since 2007, which equates to a loss of approximately \$661 million dollars of regional economic impact and over 10,700 local jobs. The transfer of Ontario Airport management to local control is in the best interest for the region and will help the airport regain its status as the economic engine for the Inland Empire. Local control will ensure sufficient airport capacity in the long-term for all of Southern California and protect this vital component of the national airspace system.

CalPERS

The California State Public Employees Retirement System (CalPERS) is considerably underfunded, primarily due to lower than projected earning rates combined with significant investment losses incurred

during the Great Recession. All of this has contributed to dramatic increases to the City's CalPERS contribution rates. With the recent adoption of amortization and smoothing policy changes by the CalPERS Board to address the severity of the underfunding, significant employer contribution rate increases have begun in this fiscal year. CalPERS' proposed rates will increase by approximately 50% by Fiscal Year 2019-20. These rates are dependent upon CalPERS earning a 7.5% return on their investments in the future.

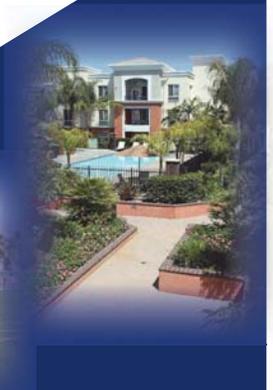
Conclusion

While the City is experiencing improvement during this economic recovery, challenges still remain. The economy is projected to grow slowly over the next couple of years due a continued stagnant wage growth, the potential negative impact to the economy resulting from the unstable global economy, and the Federal Reserve's current actions to taper back its bond purchases (quantitative easing) which has kept borrowing costs low. The City still needs to be attentive during this economic recovery stage to ensure that the City of Ontario is positioned to take advantage of opportunities in the next economic growth cycle.

The Adopted Operating Budget for FY 2014-15, as modified through this Second Budget Update, reflects the City Council's continued commitment to foster steady, controlled growth and to provide the highest level of service to the community within the City's fiscal constraints. With the City Council's leadership and their prudent fiscal policies, the City's long-term fiscal health will further solidify its standing as the economic leader in the Inland Empire, and a formidable player in California and the nation.



**FISCAL YEAR 2014-15
SECOND BUDGET UPDATE
FEBRUARY 17, 2015**



CITY COUNCIL



Paul S. Leon
Mayor

Fiscal Year 2014-15

Primary Goal

Regain Local Control of the Ontario International Airport

Supporting Goals

- Invest in the Growth and Evolution of the City's Economy
- Maintain the Current High Level of Public Safety
- Operate in a Businesslike Manner
- 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)
- Encourage, Provide or Support Enhanced Recreational, Educational, Cultural and Healthy City Programs, Policies and Activities
- Ensure the Development of a Well Planned, Balanced, and Self-Sustaining Community in the New Model Colony



Alan D. Wapner
Mayor pro Tem



Jim W. Bowman
Council Member



Debra Dorst-Porada
Council Member



Paul Vincent Avila
Council Member

ECONOMIC INDICATORS



▲ 2.6% in Fourth Quarter 2014



▲ 102.9 index in January 2015



▼ *December 2014*
 5.6% U.S.
 7.0% CALIF
 7.0% S.B.
 7.5% Ontario

MARKET WATCH



December 2014 - YTY% Change
Median Sold Price of Existing Single-Family Homes:
 ▲ 5.6% Los Angeles County
 ▲ 3.9% Riverside County
 ▲ 8.5% San Bernardino County

▼ *Sales Activity Existing Single-Family Homes:*
 -0.8% Los Angeles County

▲ 2.3% Riverside County
 ▲ 5.5% San Bernardino County

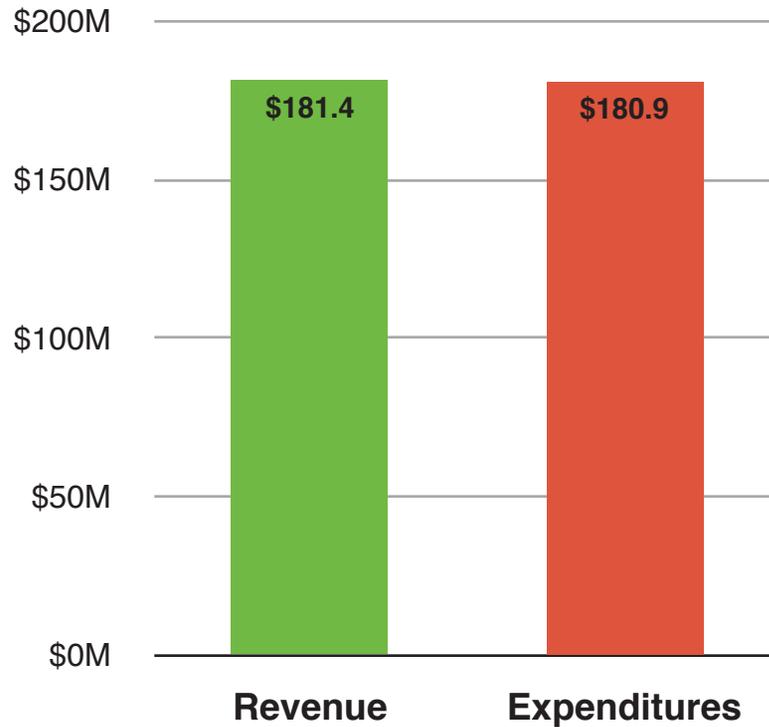


▲ 3.61% YTD Change
 December 2014
 ONT Air Cargo Freight (tons)



▲ 54.5 Inland Empire
 Purchasing Managers Index
 December 2014

GENERAL FUND FISCAL YEAR 2014-15



Breakup of Revenue

Sales Tax / **\$67 million**
 Property Tax / **\$42.2 million**
 Occupancy Tax / **\$9.9 million**
 Other & Transfers-in / **\$62.3 million**

Breakup of Expenditures

Safety / **\$110.4 million**
 Community & Recreation and
 Municipal Services / **\$28.9 million**
 Development / **\$19.5 million**
 Supporting Services / **\$22.1 million**

Unreserved Fund Balance
 \$32.5 million

Second Budget Update Recommendations

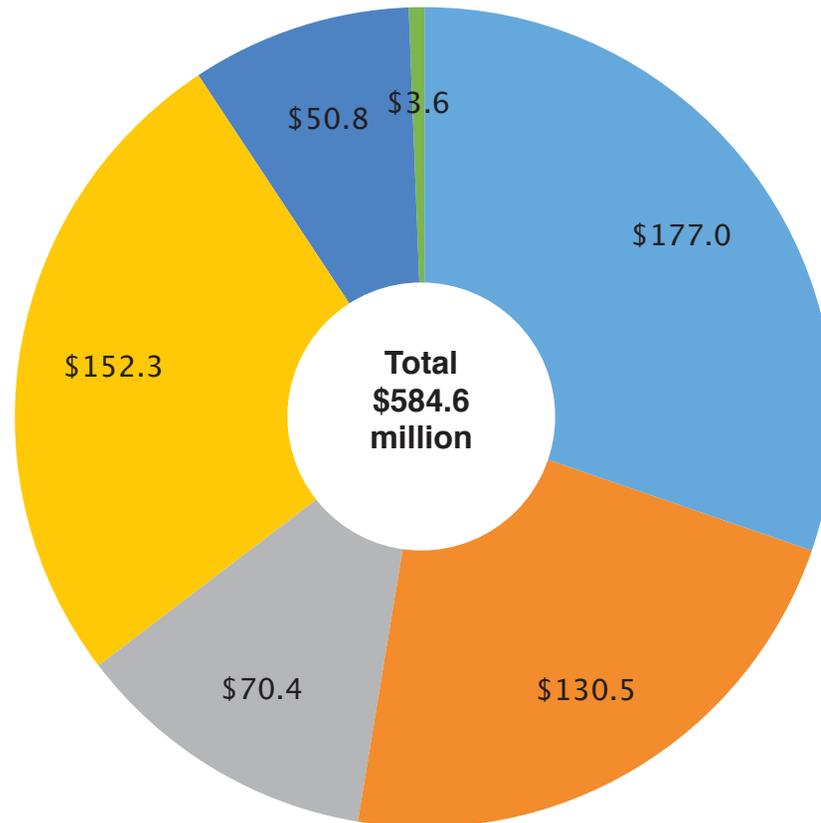
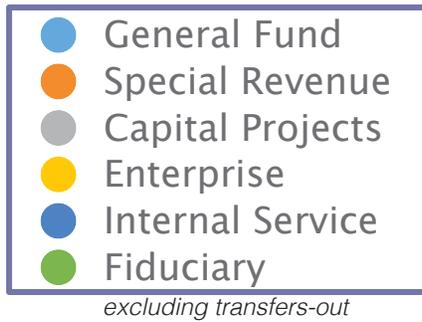
See Detail Schedules I-VI

Development
\$138,663

Safety
\$30,000

Community & Recreation Services
\$43,440

CITYWIDE BUDGET BY FUND FISCAL YEAR 2014-15



Additions: 3 FTE
 Deletions: 2 FTE
 Reclassifications: 2 FTE
 Realignments: 4 FTE
 Reorganizations: 15 FTE
 Title Changes: 2

Second Budget Update Other Funds Recommendations

See Detail Schedule VI



\$407,149



\$325,000

City of Ontario
Summary of General Fund Recommended Revenue Adjustments
Fiscal Year 2014-15
Second Budget Update

Revenue Source	Original Budget	Current Budget	Recommended Second Budget Update Adjustments	Current Budget After Adjustments	Actuals As of 01/28/2015	Percent of Budget Received
Sales Tax	\$ 66,000,000	\$ 66,000,000	\$ 1,000,000	\$ 67,000,000	\$ 31,094,809	46.41%
Business License Tax	6,000,000	6,000,000	-	6,000,000	2,971,156	49.52%
Occupancy Tax	9,900,000	9,900,000	-	9,900,000	4,990,656	50.41%
Parking Tax	2,700,000	2,700,000	-	2,700,000	1,381,033	51.15%
Franchises	3,000,000	3,000,000	-	3,000,000	717,526	23.92%
Property Tax	42,250,000	42,250,000	-	42,250,000	25,829,614	61.14%
Development Related	8,117,905	8,717,905	168,663	8,886,568	4,890,180	55.03%
Recreation Programs	870,000	870,000	-	870,000	568,425	65.34%
Interest & Rentals	1,660,690	1,660,690	-	1,660,690	114,545	6.90%
Miscellaneous Revenues	4,953,800	4,953,800	-	4,953,800	1,998,842	40.35%
Total Recurring Revenues	<u>\$ 145,452,395</u>	<u>\$ 146,052,395</u>	<u>\$ 1,168,663</u>	<u>\$ 147,221,058</u>	<u>\$ 74,556,786</u>	50.64%
Reimbursables	<u>2,472,445</u>	<u>2,607,445</u>	<u>43,440</u>	<u>2,650,885</u>	<u>1,835,833</u>	69.25%
Total General Fund Revenues	<u><u>\$ 147,924,840</u></u>	<u><u>\$ 148,659,840</u></u>	<u><u>\$ 1,212,103</u></u>	<u><u>\$ 149,871,943</u></u>	<u><u>\$ 76,392,619</u></u>	50.97%

City of Ontario
Summary of General Fund Recommended Expenditure Adjustments
Fiscal Year 2014-15
Second Budget Update

	Expenditures
Adopted Budget	\$ 176,661,086
Current Budget	\$ 175,952,507
Recommended Adjustments:	
Other professional services ref: Meredith Center Specific Plan-Environmental Impact Report (pass-thru)	\$ 138,663
Maintenance services ref: turf replacement program at James Bryant Park (MWD rebate program)	43,440
Fire Code Plan Check and Hazardous Waste Review (offset with Fire Plan Check Fees)	30,000
Recommended personnel changes	(81,228)
Revise Carryforward Encumbrances from FY 2013-14	862,048
Total Recommended Adjustments	<u>\$ 992,923</u>
Recommended Budget	<u><u>\$ 176,945,430</u></u>

City of Ontario
Summary of General Fund Recommended Transfer Adjustments
Fiscal Year 2014-15
Second Budget Update

	Operating Transfers-In	Operating Transfers-Out
Adopted Budget	<u>\$ 31,587,746</u>	<u>\$ 2,851,500</u>
Current Budget	\$ 31,587,746	\$ 3,668,750
Recommended Adjustments:		
Transfer-out (To Fund 017) property acquisitions	<u>\$ -</u>	<u>\$ 325,000</u>
Total Recommended Adjustments	<u>\$ -</u>	<u>\$ 325,000</u>
Recommended Budget	<u>\$ 31,587,746</u>	<u>\$ 3,993,750</u>

City of Ontario
General Fund Balance with Recommended Adjustments
Fiscal Year 2014-15
Second Budget Update

General Fund	Actual 2013-14 Unaudited	Adopted 2014-15 Budget	Prior Quarterly Approved Adjustments	Current 2014-15 Budget	Second Budget Update Recommended Adjustments	Recommended Budget 2014-15
Total Revenues	\$ 156,853,313	\$ 147,924,840	\$ 735,000	\$ 148,659,840	\$ 1,212,103	\$ 149,871,943
Total Expenditures	(159,971,725)	(176,661,086)	708,579	(175,952,507)	(992,923)	(176,945,430)
Excess (Deficiency) of Revenues Over (Under) Expenditures	\$ (3,118,412)	\$ (28,736,246)	\$ 1,443,579	\$ (27,292,667)	\$ 219,180	\$ (27,073,487)
Other Sources (Uses):						
Operating Transfer In	\$ 32,769,412	\$ 31,587,746	\$ -	\$ 31,587,746	\$ -	\$ 31,587,746
Operating Transfer Out	(10,443,004)	(2,851,500)	(817,250)	(3,668,750)	(325,000)	(3,993,750)
Total Other Sources (Uses)	\$ 22,326,408	\$ 28,736,246	\$ (817,250)	\$ 27,918,996	\$ (325,000)	\$ 27,593,996
Excess (Deficiency) of Revenues and Other Financing Sources Over (Under) Expenditures and Other Financing Uses	\$ 19,207,996	\$ -	\$ 626,329	\$ 626,329	\$ (105,820)	\$ 520,509
Fund Balance, Beginning of Year	66,686,030	85,894,026	-	85,894,026	-	85,894,026
Fund Balance, End of Year	\$ 85,894,026	\$ 85,894,026	\$ 626,329	\$ 86,520,355	\$ (105,820)	\$ 86,414,535
FUND BALANCE						
Non-Spendable:						
Inventory	\$ 210,855	\$ 210,855	\$ -	\$ 210,855	\$ -	\$ 210,855
Advanced to Other Funds (RDA loan Repayment)	3,500,000	3,500,000	-	3,500,000	-	3,500,000
Long-Term Receivable	18,819	18,819	-	18,819	-	18,819
Prepays	1,157,293	1,157,293	-	1,157,293	-	1,157,293
Total Non-Spendable	\$ 4,886,967	\$ 4,886,967	\$ -	\$ 4,886,967	\$ -	\$ 4,886,967
Assigned:						
Continuing Appropriations	518,611	518,611	(518,611)	-	-	-
ORA Loan Payments	49,026,802	49,026,802	-	49,026,802	-	49,026,802
18% Stabilization Plan	31,490,915	31,490,915	1,144,940	32,635,855	(105,820)	32,530,035
Total Assigned	\$ 81,036,328	\$ 81,036,328	\$ 626,329	\$ 81,662,657	\$ (105,820)	\$ 81,556,837
Total Fund Balance (Non-Spendable, Assigned)	85,923,295	85,923,295	626,329	86,549,624	(105,820)	86,443,804
Total Available for Contingencies and Emergencies	\$ 32,009,526	\$ 32,009,526	\$ 626,329	\$ 32,635,855	\$ (105,820)	\$ 32,530,035

City of Ontario
Unreserved Fund Balance with Recommended Adjustments for All Funds
Fiscal Year 2014-15
Second Budget Update

Funds/Sources	Total Unreserved Fund Balance July 1, 2014	Current Budget Control					Estimated Total Unreserved Fund Balance June 30, 2015	Recommended Second Budget Update Adjustments Increase(Decrease) to Fund Balance Net Adjustments	Adjusted Unreserved Fund Balance June 30, 2015	
		Revenues	Operating Transfers-In	Operating Transfers-Out	Total Available	Expenditures				
General Fund (incl. encumbrances)										
001 General Fund	\$ 32,009,526	\$ 148,659,840	\$ 31,587,746	\$ 3,668,750	\$ 208,588,362	\$ 175,952,507	\$ 32,635,855	\$ (105,820)	\$ 32,530,035	
Total General Fund	<u>\$ 32,009,526</u>	<u>\$ 148,659,840</u>	<u>\$ 31,587,746</u>	<u>\$ 3,668,750</u>	<u>\$ 208,588,362</u>	<u>\$ 175,952,507</u>	<u>\$ 32,635,855</u>	<u>\$ (105,820)</u>	<u>\$ 32,530,035</u>	
Special Revenue Funds										
002 Quiet Home Program	-	\$ 7,569,223	\$ -	\$ -	\$ 7,569,223	\$ 7,569,223	\$ -	\$ -	\$ -	
003 Gas Tax	5,067,949	4,687,460	707,500	2,402,274	8,060,635	6,423,776	1,636,859	-	1,636,859	
004 Measure I	4,604,734	2,541,411	-	-	7,146,145	5,784,796	1,361,349	-	1,361,349	
005 Measure I - Valley Major Projects	-	84,409,629	-	-	84,409,629	84,409,629	-	-	-	
007 Park Impact/Quimby	5,138,217	50,000	-	-	5,188,217	1,069,326	4,118,891	-	4,118,891	
008 C.D.B.G.	-	2,849,862	-	-	2,849,862	2,849,862	-	-	-	
009 HOME Grants	-	1,498,186	-	-	1,498,186	1,498,186	-	-	-	
010 Asset Seizure	3,499,762	-	-	-	3,499,762	897,980	2,601,782	-	2,601,782	
011 Neighborhood Stabilization	-	-	-	-	-	-	-	-	-	
013 A.D. Administration	954,524	14,000	-	-	968,524	207,293	761,231	-	761,231	
014 Mobile Source Air	821,603	206,000	-	12,690	1,014,913	301,934	712,979	(99,100)	613,879	
015 General Fund Grants	-	14,057,888	81,615	-	14,139,503	14,139,503	-	-	-	
018 Building Safety	542,987	862,500	-	58,390	1,347,097	1,170,047	177,050	-	177,050	
019 Parkway Maintenance	840,882	584,274	267,662	165,420	1,527,398	682,982	844,416	-	844,416	
021 Storm Drain Fee District	67,377	500	-	-	67,877	-	67,877	-	67,877	
048 Ontario Housing Authority	2,435,906	784,060	-	-	3,219,966	972,496	2,247,470	-	2,247,470	
070 Street Light Maintenance	1,747,983	475,181	19,000	83,600	2,158,564	345,176	1,813,388	-	1,813,388	
076 Facilities Maintenance	-	-	1,038,763	-	1,038,763	1,032,790	5,973	-	5,973	
077 Storm Drain Maintenance	1,217,758	1,188,000	13,210	-	2,418,968	1,716,467	702,501	-	702,501	
114 Historic Preservation	318,822	2,370	-	125,000	196,192	-	196,192	-	196,192	
119 NMC Public Services	3,431,615	25,610	-	-	3,457,225	-	3,457,225	-	3,457,225	
166 Housing Asset Fund / HA	22,200,368	165,870	-	-	22,366,238	17,640,288	4,725,950	-	4,725,950	
Total Special Revenue Funds	<u>\$ 52,890,487</u>	<u>\$ 121,972,024</u>	<u>\$ 2,127,750</u>	<u>\$ 2,847,374</u>	<u>\$ 174,142,887</u>	<u>\$ 148,711,754</u>	<u>\$ 25,431,133</u>	<u>\$ (99,100)</u>	<u>\$ 25,332,033</u>	
Capital Project Funds										
016 Ground Access	7,636,687	* \$ 4,135,886	\$ -	\$ -	\$ 11,772,573	\$ 4,135,886	\$ 7,636,687	\$ -	\$ 7,636,687	
017 Capital Projects	30,436,193	*	-	1,208,000	-	31,644,193	20,541,684	11,102,509	-	11,102,509
071 CFD #10-Public Services	-	10,580	-	10,580	-	-	-	-	-	
072 NMC CFD	-	500,245	-	453,635	46,610	46,610	-	-	-	
101 Law Enforcement Impact	(2,232,204)	* 4,000	-	-	(2,228,204)	101,000	(2,329,204)	-	(2,329,204)	
102 Fire Impact	351,896	4,000	-	-	355,896	2,605,459	(2,249,563)	-	(2,249,563)	
103 OMC Street Impact	11,542,715	411,600	-	-	11,954,315	21,956,882	(10,002,567)	-	(10,002,567)	
104 OMC Water Impact	7,967,586	59,400	-	-	8,026,986	-	8,026,986	-	8,026,986	
105 OMC Sewer Impact	3,143,602	23,470	-	-	3,167,072	-	3,167,072	-	3,167,072	
106 Solid Waste Impact	1,322,264	9,850	-	-	1,332,114	100,000	1,232,114	-	1,232,114	
107 General Facility Impact	1,214,349	9,050	-	-	1,223,399	-	1,223,399	-	1,223,399	
108 Library Impact	309,202	2,275	-	-	311,477	-	311,477	-	311,477	
109 Public Meeting Impact	1,049,587	7,800	-	-	1,057,387	-	1,057,387	-	1,057,387	
110 Aquatics Impact	124,291	900	-	-	125,191	-	125,191	-	125,191	

**City of Ontario
Unreserved Fund Balance with Recommended Adjustments for All Funds
Fiscal Year 2014-15
Second Budget Update**

Funds/Sources	Total Unreserved Fund Balance July 1, 2014	Current Budget Control					Estimated Total Unreserved Fund Balance June 30, 2015	Recommended Second Budget Update Adjustments Increase(Decrease) to Fund Balance Net Adjustments	Adjusted Unreserved Fund Balance June 30, 2015
		Revenues	Operating Transfers-In	Operating Transfers-Out	Total Available	Expenditures			
111 OMC Storm Drainage Impact	14,820,825	50,690	-	-	14,871,515	15,652,715	(781,200)	-	(781,200)
112 Species Habitat Impact	1,347,067	5,730	-	-	1,352,797	-	1,352,797	-	1,352,797
113 Fiber Impact	6,336	0	-	-	6,336	-	6,336	-	6,336
115 NMC Street Impact	1,477,686	91,420	-	-	1,569,106	4,856,360	(3,287,254)	-	(3,287,254)
116 NMC Water Impact	-	0	-	-	-	-	-	-	-
117 NMC Sewer Impact	216,822	1,620	-	-	218,442	-	218,442	-	218,442
118 NMC Storm Drainage Impact	1,436,484	3,225	-	-	1,439,709	-	1,439,709	-	1,439,709
120 Affordability In-Lieu	1,776,770	13,260	-	-	1,790,030	-	1,790,030	-	1,790,030
170 OMC - Regional Streets	3,148,685	23,400	-	-	3,172,085	-	3,172,085	-	3,172,085
171 OMC - Local Adjacent Streets	1,348,742	10,000	-	-	1,358,742	-	1,358,742	-	1,358,742
172 OMC - Regional Storm Drains	172,386	1,200	-	-	173,586	-	173,586	-	173,586
173 OMC - Local Adjacent Storm Drain	3,272,193	24,300	-	-	3,296,493	-	3,296,493	-	3,296,493
174 OMC - Regional Water	1,191,777	8,700	-	-	1,200,477	-	1,200,477	-	1,200,477
175 OMC - Local Adjacent Water	298,907	2,200	-	301,107	301,107	-	301,107	-	301,107
176 OMC - Regional Sewer	176,519	1,300	-	-	177,819	-	177,819	-	177,819
177 OMC - Local Adjacent Sewer	263,938	1,900	-	-	265,838	-	265,838	-	265,838
180 OMC - Regional Streets	122,622	900	-	-	123,522	-	123,522	-	123,522
181 NMC - Local Adjacent Streets	100,322	700	-	-	101,022	-	101,022	-	101,022
182 NMC - Regional Storm Drains	73,823	500	-	-	74,323	-	74,323	-	74,323
183 NMC - Local Adjacent Storm Drian	137,147	1,000	-	-	138,147	-	138,147	-	138,147
184 NMC - Regional Water	214,628	1,600	-	-	216,228	-	216,228	-	216,228
185 NMC - Local Adjacent Water	91,974	600	-	-	92,574	-	92,574	-	92,574
186 NMC - Regional Sewer	11,542	-	-	-	11,542	-	11,542	-	11,542
187 NMC - Local Adjacent Sewer	17,315	100	-	-	17,415	-	17,415	-	17,415
188 NMC - Local Regional Fiber	3,456	25	-	-	3,481	-	3,481	-	3,481
189 NMC - Local Adjacent Fiber	8,074	60	-	-	8,134	-	8,134	-	8,134
501 CFD No. 9-Edenglen	0	-	-	-	-	-	-	-	-
502 CFD No. 10-OAT	150	-	-	-	150	-	150	-	150
503 CFD No. 11-Armada	27,371	-	-	-	27,371	-	27,371	-	27,371
504 CFD No. 21-Ontario Parkside	74,846	33,200	-	-	108,046	33,200	74,846	-	74,846
505 CFD No. 13-Commerce Center	58,441	-	-	-	58,441	-	58,441	-	58,441
506 CFD No. 14-West Haven I	-	-	-	-	-	-	-	-	-
507 CFD No. 15-Historic Guasti District	-	-	-	-	-	-	-	-	-
508 CFD No. 20-Walmart	367	22,000	-	-	22,367	22,000	367	-	367
509 CFD No. 23-Park Place	40,268	-	-	-	40,268	-	40,268	-	40,268
Total Capital Project Funds	\$ 94,803,651	\$ 5,478,686	\$ 1,208,000	\$ 464,215	\$ 101,026,122	\$ 70,051,796	\$ 30,974,326	\$ -	\$ 30,974,326
Enterprise Funds									
024 Water Operating	51,154,953	\$ 55,875,000	\$ -	\$ 27,348,578	\$ 79,681,375	\$ 41,221,541	\$ 38,459,834	\$ -	\$ 38,459,834
025 Water Capital	64,352,822	14,333,856	17,600,000	4,338,645	91,948,033	60,272,738	31,675,295	-	31,675,295
026 Sewer Operating	22,241,141	22,010,000	-	7,979,867	36,271,274	15,593,772	20,677,502	-	20,677,502
027 Sewer Capital	16,039,969	115,000	3,500,000	685,140	18,969,829	4,901,571	14,068,258	-	14,068,258
029 Solid Waste	32,997,178	30,906,340	-	6,460,521	57,442,997	30,319,837	27,123,160	-	27,123,160
031 Solid Waste Facilities	632,317	3,500	-	-	635,817	63,838	571,979	-	571,979
Total Enterprise Funds	\$ 187,418,380	\$ 123,243,696	\$ 21,100,000	\$ 46,812,751	\$ 284,949,325	\$ 152,373,297	\$ 132,576,028	\$ -	\$ 132,576,028

City of Ontario
Unreserved Fund Balance with Recommended Adjustments for All Funds
Fiscal Year 2014-15
Second Budget Update

Funds/Sources	Total Unreserved Fund Balance July 1, 2014	Current Budget Control					Estimated Total Unreserved Fund Balance June 30, 2015	Recommended Second Budget Update Adjustments Increase(Decrease) to Fund Balance Net Adjustments	Adjusted Unreserved Fund Balance June 30, 2015
		Revenues	Operating Transfers-In	Operating Transfers-Out	Total Available	Expenditures			
Internal Service Funds									
032 Equipment Services	37,439,088	\$ 11,272,692	\$ -	\$ -	\$ 48,711,780	\$ 17,710,092	\$ 31,001,688	\$ (96,767)	\$ 30,904,921
033 Self Insurance	13,136,928	9,143,305	-	1,813,406	20,466,827	7,178,719	\$ 13,288,108	-	13,288,108
034 Information Technology	31,511,317	8,509,740	124,000	840,000	39,305,057	25,871,146	\$ 13,433,911	-	13,433,911
Total Internal Service Funds	<u>\$ 82,087,333</u>	<u>\$ 28,925,737</u>	<u>\$ 124,000</u>	<u>\$ 2,653,406</u>	<u>\$ 108,483,664</u>	<u>\$ 50,759,957</u>	<u>\$ 57,723,707</u>	<u>\$ (96,767)</u>	<u>\$ 57,626,940</u>
Trust Funds									
098 General Trust	46,224,155	\$ -	\$ 1,450,000	\$ 1,151,000	\$ 46,523,155	\$ -	\$ 46,523,155	\$ -	\$ 46,523,155
099 Other Post Employment Benefits (OPEP)	95,004,466	8,931,636	-	-	103,936,102	3,600,000	100,336,102	-	100,336,102
Total Trust Funds	<u>\$ 141,228,621</u>	<u>\$ 8,931,636</u>	<u>\$ 1,450,000</u>	<u>\$ 1,151,000</u>	<u>\$ 150,459,257</u>	<u>\$ 3,600,000</u>	<u>\$ 146,859,257</u>	<u>\$ -</u>	<u>\$ 146,859,257</u>
	<u>\$ 590,437,998</u>	<u>\$ 437,211,619</u>	<u>\$ 57,597,496</u>	<u>\$ 57,597,496</u>	<u>\$ 1,027,649,617</u>	<u>\$ 601,449,311</u>	<u>\$ 426,200,306</u>	<u>\$ (301,687)</u>	<u>\$ 425,898,619</u>

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

City of Ontario
Recommended Adjustments by Fund
Fiscal Year 2014-15
Second Budget Update

SCHEDULE VI

Description	Appropriation Adjustments	Revenue Adjustments	Operating Transfer-In	Operating Transfer-Out	Fund Balance Impact
Fund 001 - General Fund					
<i>Current Year Adjustments to Fund Balance</i>					
Revise budget estimate: Sales Tax	\$ -	1,000,000			\$ 1,000,000
Other professional services ref: Meredith Center Specific Plan-Environmental Impact Report (pass-thru)	138,663	138,663			-
Maintenance services ref: turf replacement program at James Bryant Park (MWD rebate program)	43,440	43,440			-
Fire Code Plan Check and Hazardous Waste Review (offset with Fire Plan Check Fees)	30,000	30,000			-
Transfer-out (to Fund 017) property acquisitions	-			325,000	(325,000)
Revise Carryforward Encumbrances from FY 2013-14	862,048				(862,048)
Recommended personnel changes	(81,228)				81,228
Total General Fund Adjustments	<u>\$ 992,923</u>	<u>1,212,103</u>	<u>-</u>	<u>325,000</u>	<u>\$ (105,820)</u>
Fund 014 - Mobile Source Air					
Revise Carryforward CIP Appropriations from FY 2013-14	\$ 99,100				\$ (99,100)
	<u>\$ 99,100</u>	<u>-</u>	<u>-</u>	<u>-</u>	<u>\$ (99,100)</u>
Fund 015 - General Fund Grants					
FY2014-2015 COPS/ELEAS Grant Program: frontline intelligence and data analysis (CC Apprvd 12/2/2014)	\$ 264,331	264,331			\$ -
FY2014 Urban Area Security Initiative Grant Program: ground video receivers (CC Apprvd 01/20/2015)	100,000	100,000			-
FY2014 Homeland Security Grant Program: portable night vision binoculars	32,818	32,818			-
FY2015 Every 15 Minutes Grant Program: teen DUI awareness (CC Apprvd 11/18/2014)	10,000	10,000			-
Revise Carryforward CIP Appropriations from FY 2013-14	(99,100)	(99,100)			-
	<u>\$ 308,049</u>	<u>308,049</u>	<u>-</u>	<u>-</u>	<u>\$ -</u>
Fund 017 - Capital Projects					
Transfer-In (From Fund 001) property acquisitions	\$ 325,000		325,000		\$ -
	<u>\$ 325,000</u>	<u>-</u>	<u>325,000</u>	<u>-</u>	<u>\$ -</u>
Fund 032 - Equipment Services					
Revise Carryforward Encumbrances from FY 2013-14	\$ 96,767				\$ (96,767)
	<u>\$ 96,767</u>	<u>-</u>	<u>-</u>	<u>-</u>	<u>\$ (96,767)</u>
Total Other Fund Adjustments	<u>\$ 828,916</u>	<u>308,049</u>	<u>325,000</u>	<u>-</u>	<u>\$ (195,867)</u>

**City of Ontario
Full-Time Personnel Changes
Fiscal Year 2014-15
Second Budget Update**

ADDITIONS	POSITION TITLE	SALARY RANGE
Economic Development	Management Analyst	\$4,798 - \$5,832
Administrative Services-Fiscal Services	Payroll Analyst*	\$4,798 - \$5,832
City Administration-City Manager	Senior Administrative Assistant	\$3,993 - \$4,853
 DELETIONS		
City Administration-City Manager	Administrative Specialist	\$3,931 - \$4,778
City Administration-Code Enforcement	Code Enforcement Manager	\$7,232 - \$8,790
 RECLASSIFICATIONS/REALIGNMENTS/REORGANIZATIONS		
City Administration-Human Resources	Reclass: Benefits Supervisor to Senior Human Resources Analyst	\$5,290 - \$6,430 to \$6,431 - \$7,817
Administrative Services-Management Services	Reclass: Investment Officer to Chief Investment/Bond Officer	\$7,228 - \$8,785 to \$8,663 - \$10,530
Administrative Services-Management Services	Salary Realignment: Management Services Director	\$7,887 - \$9,587 to \$8,931 - \$10,857
Administrative Services-Revenue Services	Salary Realignment: Revenue Services Director	\$7,887 - \$9,587 to \$8,931 - \$10,857
City Administration-Risk Management	Salary Realignment: Risk Management Director	\$8,139 - \$9,894 to \$8,663 - \$10,530
City Administration-Records Management	Salary Realignment: Assistant City Clerk/Records Management Director	\$7,887 - \$9,587 to \$8,663 - \$10,530
Police Department-Communications	Reorganization: (1) Assistant Communications Manager transfer to Fire Department	N/A
Police Department-Communications	Reorganization: (4) Communications Supervisors transfer to Fire Department	N/A
Police Department-Communications	Reorganization: (10) Senior Public Safety Dispatcher transfer to Fire Department	N/A
Police Department-Communications	Title Change: (4) Communications Supervisor to Police Dispatch Supervisor	No Change
Police Department-Communications	Title Change: (21) Senior Public Safety Dispatcher to Senior Police Dispatcher	No Change
Fire Department	Title Change: (4) Communications Supervisor to Fire Dispatch Supervisor	No Change
Fire Department	Title Change: (10) Senior Public Safety Dispatcher to Senior Fire Dispatcher	No Change
 <u>Cost by Fund</u>		
	<u>Total Cost</u>	
Fund 001	(\$81,228)	
Fund 034	\$34,396*	

*Funding is available in the Payroll/HR System Upgrade project for the first two years

CITY OF ONTARIO

Agenda Report
February 17, 2015

SECTION:
CONSENT CALENDAR

SUBJECT: A COOPERATIVE PURCHASE AGREEMENT WITH G&K SERVICES FOR THE UNIFORM RENTAL AND LAUNDERING SERVICES

RECOMMENDATION: That the City Council authorize the City Manager to execute a two-year cooperative purchase agreement (on file in the Records Management Department) with G&K Services (G&K) of Ontario, California for uniform rental and laundering services of approximately \$80,000 annually through May 19, 2017.

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

FISCAL IMPACT: The City spends approximately \$80,000 annually for the rental, cleaning and replacement of uniforms, coveralls, towels, door mats, and dust control items for various City departments including the Municipal Utilities Company, Housing and Municipal Services Agency, Parks and Maintenance Departments, Police Department, and the Fire Department. The cooperative purchase agreement includes favorable pricing that results in a 10% cost savings from the City's current pricing. Price adjustments in subsequent years will be limited to a maximum of 3% and are subject to City approval.

BACKGROUND: The City Council authorized a cooperative purchase agreement with G&K Services in November 2010 in accordance with the terms and conditions of the City of Los Angeles' Contract No. DA-4355, for uniform rental and laundering services. The City has received consistent quality service during the term of this agreement; and to continue G&K's services at a reduced cost, it is recommended that a new cooperative purchase agreement be initiated based on terms and conditions of the City of San Jose's Agreement RFB 11-12-31.

In general conformance with the provisions of Government Code Section 54201 through 54204 and the Ontario Municipal Code, Section 2-6.11(b)(3), allows for the purchase of supplies and equipment through cooperative purchasing with another governmental agency. Cooperative purchasing allows the City to pool its procurement power with other public agencies to obtain pricing lower than might otherwise be possible.

STAFF MEMBER PRESENTING: Scott Burton, Utilities General Manager

Prepared by: Anthony Parada
Department: MU/Administration
City Manager Approval: 

Submitted to Council/O.H.A. 02/17/2015
Approved: _____
Continued to: _____
Denied: _____

CITY OF ONTARIO

Agenda Report
February 17, 2015

SECTION:
CONSENT CALENDAR

SUBJECT: A RESOLUTION AFFIRMING THE CITY COUNCIL'S DENIAL OF A GENERAL PLAN AMENDMENT (FILE NO. PGPA14-004) TO REVISE THE LAND USE ELEMENT OF THE ONTARIO PLAN-POLICY PLAN, EXHIBITS LU-01 OFFICIAL LAND USE PLAN AND LU-03: FUTURE BUILDOUT TO: (1) CHANGE THE LAND USE DESIGNATION FOR 15.3 ACRES OF LAND LOCATED ON THE WEST SIDE OF GROVE AVENUE BETWEEN STATE ROUTE 60 AND WALNUT STREET FROM NEIGHBORHOOD COMMERCIAL TO GENERAL COMMERCIAL; AND (2) MODIFY THE FUTURE BUILDOUT TABLE TO BE CONSISTENT WITH THE LAND USE DESIGNATION CHANGES; AND A ZONE CHANGE REQUEST (FILE NO. PZC14-007) FROM C1 (SHOPPING CENTER DISTRICT) TO C3 (COMMERCIAL SERVICE DISTRICT) TO CREATE CONSISTENCY BETWEEN THE ZONING AND THE PROPOSED GENERAL PLAN LAND USE DESIGNATION AMENDMENT (APN: 1051-171-40, 41, 42, 43, 44 AND 1051-321-51, 52, 53, 54, 55, 56, 62, AND 63)

RECOMMENDATION: That the City Council adopt a resolution affirming the City Council's January 20, 2015 denial of a General Plan Amendment (File No. PGPA14-004) changing the land use designation from Neighborhood Commercial to General Commercial; and adopt a resolution affirming the denial of a Zone Change (File No. PZC14-007) from C1 (Shopping Center District) to C3 (Commercial Service District).

COUNCIL GOALS: Regain Local Control of the Ontario International Airport
Invest in the Growth and Evolution of the City's Economy
Focus Resources in Ontario's Commercial and Residential Neighborhoods

FISCAL IMPACT: None.

BACKGROUND: On January 20, 2015, the City Council conducted a public hearing to consider requests for a General Plan Amendment and Zone Change for the property located on the west side of Grove Avenue between State Route 60 and Walnut Street. The request proposed to change the General

STAFF MEMBER PRESENTING: Scott Murphy, Planning Director

Prepared by: Scott Murphy
Department: Planning

City Manager
Approval: 

Submitted to Council/O.H.A. 02/17/2015

Approved: _____

Continued to: _____

Denied: _____

8

Plan land use designation from Neighborhood Commercial to General Commercial and the Zoning designation from C1 (Shopping Center District) to C3 (Commercial Services District). After receiving all public testimony on the applications, the City Council determined that the proposed change had the potential to bring undesirable uses into the neighborhood center, inconsistent with the intent of The Ontario Plan Policy Plan (General Plan) and the Development Code. As a result, the City Council voted 3-1-1 (Avila-no, Leon-abstain) to deny the requests and directed staff to prepare resolutions affirming their denial of a General Plan Amendment (File No. PGPA14-004) and a Zone Change (File No. PZC14-007).

RESOLUTION NO. _____

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF ONTARIO, CALIFORNIA, DENYING FILE NO. PGPA14-004, TO REVISE THE LAND USE PLAN (EXHIBIT LU-01) CONTAINED WITHIN THE POLICY PLAN COMPONENT OF THE ONTARIO PLAN TO CHANGE THE LAND USE DESIGNATION FROM NEIGHBORHOOD COMMERCIAL TO GENERAL COMMERCIAL FOR 13 PARCELS TOTALING APPROXIMATELY 15.4 ACRES, LOCATED ON THE WEST SIDE OF GROVE AVENUE BETWEEN STATE ROUTE 60 AND WALNUT STREET, AND MAKING FINDINGS IN SUPPORT THEREOF – APN: 1051-171-40, 41, 42, 43, 44 AND 1051-321-51, 52, 53, 54, 55, 56, 62, AND 63.

WHEREAS, the Grove Plaza Partners ("Applicant") has initiated an Application for the approval of a General Plan Amendment, File No. PGPA14-004, to change the land use designation for six parcels from Neighborhood Commercial to General Commercial; and

WHEREAS, the City has expanded the General Plan Amendment to include the 13 parcels within the commercial center, totaling approximately 15.4 acres, included in the General Plan Amendment (File No. PGPA14-001), which constitutes the Project (hereinafter referred to as "Application" or "Project"); and

WHEREAS, the Application applies to 15.4 acres of land located on the west side of Grove Avenue between State Route 60 and Walnut Street and is developed with a commercial center; and

WHEREAS, the properties to the south and west are designated as Low Density Residential (2-5 dwelling units per acre) and are developed with single family residential structures. The properties to the east are designated as Low Density Residential and Neighborhood Commercial and are developed with single family residences and retail uses; and

WHEREAS, the City of Ontario adopted the Policy Plan (General Plan) as part of The Ontario Plan ("TOP") in January 2010. Since the adoption of TOP, the Applicant has evaluated Figures LU-01: Official Land Use Plan and LU-03: Future Buildout further and is proposing modifications; and

WHEREAS, the Application proposes changes to Figure LU-01 Official Land Use Plan include changes to the land use designation from Neighborhood Commercial to General Commercial for certain properties located on the west side of Grove Avenue between State Route 60 and Walnut Street; and

WHEREAS, Figure LU-03 Future Buildout specifies the likely buildout for Ontario with the adopted land use designations. The Application proposed changes to Figure LU-01 Official Land Use Plan that will require Figure LU-03 Future Buildout be modified to be consistent with LU-01 Official Land Use Plan; and

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

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

WHEREAS, on November 25, 2014, the Planning Commission of the City of Ontario conducted a public hearing to consider the Project, and concluded said hearing on that date. After considering all public testimony on the application, the Planning Commission voted 4-3 to recommend approval of the application; and

WHEREAS, on January 20, 2015, the City Council of the City of Ontario conducted a public hearing to consider the Project, and concluded said hearing on that date. After concluding all public testimony the City Council voted 3-1-1 (Avila-no, Leon-abstain) to deny the application and directed staff to prepare a resolution of denial; and

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

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

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

a. The proposed amendment is not consistent with the goals and policies of the General Plan as follows:

LU2-1 Land Use Decisions. We minimize adverse impacts on adjacent properties when considering land use and zoning requests. Non-compliance: Re-designating the site as General Commercial/C3 will allow a greater variety of uses, including but not limited to food banks; recreation uses such as batting cages, simulated race cars, and skate parks; assembly uses including auditoriums and movie theaters; hookah establishments; and, auto-related uses including auctions, repair/body/paint, towing services, and may expose existing residents to undesirable impacts associated with those uses.

LU2-5 Regulation of Uses. We regulate the location, concentration and operations of uses that have impacts on surrounding land uses. Non-compliance: The C3 zone provides for a greater variety of uses than the C1 zone, some of which may not be compatible with adjacent residential uses. Rezoning the site to C3 may allow these uses in close proximity to residential neighborhoods.

LU3-3 Land Use Flexibility. We consider uses not typically permitted within a land use category if doing so improves livability, reduces vehicular trips, creates community gathering places and activity nodes, and helps create identity. Non-compliance: While rezoning the site to General Commercial/C3 would provide greater flexibility for the center, the allowable uses, in close proximity to residential uses, may negatively impact the neighborhood, contrary to the policy.

b. The proposed General Plan Amendment would be detrimental to the public interest, health, safety, convenience, or general welfare of the City. Changing the site from Neighborhood Commercial/C1 to General Commercial/C3 will allow uses in close proximity to residential uses that may have a negative impact on existing residents.

c. No Council Member who participated in the decision is subject to a statutory conflict of interest connected with the foregoing facts. No unacceptable probability of actual bias arises from the participation of any Council Member.

SECTION 2. Based upon the findings and conclusions set forth in Section 1 above, the City Council hereby denies the Project.

SECTION 3. The Applicant shall agree to defend, indemnify and hold harmless, the City of Ontario or its agents, officers, and employees from any claim, action or proceeding against the City of Ontario or its agents, officers or employees to attack, set aside, void or annul this approval. The City of Ontario shall promptly notify the applicant of any such claim, action or proceeding, and the City of Ontario shall cooperate fully in the defense.

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

SECTION 5. The City Clerk shall certify to the adoption of the Resolution.

PASSED, APPROVED AND ADOPTED this 17th day of February, 2015.

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. 2015- was duly passed and adopted by the City Council of the City of Ontario at their regular meeting held February 17, 2015 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. 2015- duly passed and adopted by the Ontario City Council at their regular meeting held February 17, 2015.

MARY E. WIRTES, MMC, CITY CLERK

(SEAL)

RESOLUTION NO. _____

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF ONTARIO, CALIFORNIA, DENYING FILE NO. PZC14-007, A ZONE CHANGE REQUEST TO CHANGE THE ZONING DESIGNATION FROM C1 (NEIGHBORHOOD COMMERCIAL) TO C3 (GENERAL COMMERCIAL) FOR 13 PARCELS TOTALING APPROXIMATELY 15.4 ACRES, LOCATED ON THE WEST SIDE OF GROVE AVENUE BETWEEN STATE ROUTE 60 AND WALNUT STREET, AND MAKING FINDINGS IN SUPPORT THEREOF – APN: 1051-171-40, 41, 42, 43, 44 AND 1051-321-51, 52, 53, 54, 55, 56, 62, AND 63.

WHEREAS, Grove Plaza Partners ("Applicant") has filed an Application for the approval of a Zone Change, File No. PZC14-006, to change the zoning of 6 parcels from C1 (Neighborhood Commercial) to C3 (General Commercial); and

WHEREAS, the City has expanded the Zone Change to match the 13 parcels totaling approximately 15.4 acres included in the associated General Plan Amendment (File No. PGPA14-001) and the zone change request, as expanded, constitutes the Project (hereinafter referred to as "Application" or "Project"); and

WHEREAS, the Application applies to 15.4 acres of land located on the west side of Grove Avenue between State Route 60 and Walnut Street and is developed with a commercial center; and

WHEREAS, the properties to the south and west are zoned R1, Single Family Residential (1-5 dwelling units per acre) and are developed with single family residential structures. The properties to the east are zoned R1, Single Family Residential, and C1, Shopping Center, and are developed with single family residences and retail uses; and

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

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

WHEREAS, on November 25, 2014, the Planning Commission of the City of Ontario conducted a public hearing to consider the Project, and concluded said hearing on that date. After considering all public testimony on the application, the Planning Commission voted 4-3 to recommend approval of the application; and

WHEREAS, on January 20, 2015, the City Council of the City of Ontario conducted a public hearing to consider the Project, and concluded said hearing on that date. After concluding all public testimony the City Council voted 3-1-1 (Avila-no,

Leon-abstain) to deny the application and directed staff to prepare a resolution of denial; and

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

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

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

a. The proposed zone change is not consistent with the goals and policies of the general plan as follows:

LU2-1 Land Use Decisions. We minimize adverse impacts on adjacent properties when considering land use and zoning requests. Non-compliance: Re-designating the site as General Commercial/C3 will allow a greater variety of uses, including but not limited to food banks; recreation uses such as batting cages, simulated race cars, and skate parks; assembly uses including auditoriums and movie theaters; hookah establishments; and, auto-related uses including auctions, repair/body/paint, towing services, and may expose existing residents to undesirable impacts associated with those uses.

LU2-5 Regulation of Uses. We regulate the location, concentration and operations of uses that have impacts on surrounding land uses. Non-compliance: The C3 zone provides for a greater variety of uses than the C1 zone, some of which may not be compatible with adjacent residential uses. Rezoning the site to C3 may allow these uses in close proximity to residential neighborhoods.

LU3-3 Land Use Flexibility. We consider uses not typically permitted within a land use category if doing so improves livability, reduces vehicular trips, creates community gathering places and activity nodes, and helps create identity. Non-compliance: While rezoning the site to General Commercial/C3 would provide greater flexibility for the center, the allowable uses, in close proximity to residential uses, may negatively impact the neighborhood, contrary to the policy.

b. The proposed zone change is not reasonable and beneficial, and in the interest of good zoning practice. Changing the site from Neighborhood Commercial/C1 to General Commercial/C3 will allow uses in close proximity to residential uses that may have a negative impact on existing residents.

c. The proposed zone change will adversely affect the harmonious relationship with adjacent parcels and land uses. Changing the site from Neighborhood

Commercial/C1 to General Commercial/C3 will allow uses in close proximity to residential uses that may have a negative impact on existing residents.

d. No Council Member who participated in the decision is subject to a statutory conflict of interest connected with the foregoing facts. No unacceptable probability of actual bias arises from the participation of any Council Member.

SECTION 2. Based upon the findings and conclusions set forth in Section 1 above, the City Council hereby denies the Project.

SECTION 3. The Applicant shall agree to defend, indemnify and hold harmless, the City of Ontario or its agents, officers, and employees from any claim, action or proceeding against the City of Ontario or its agents, officers or employees to attack, set aside, void or annul this approval. The City of Ontario shall promptly notify the applicant of any such claim, action or proceeding, and the City of Ontario shall cooperate fully in the defense.

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

SECTION 5. The City Clerk shall certify to the adoption of the Resolution.

PASSED, APPROVED AND ADOPTED this 17th day of February, 2015.

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. 2015- was duly passed and adopted by the City Council of the City of Ontario at their regular meeting held February 17, 2015 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. 2015- duly passed and adopted by the Ontario City Council at their regular meeting held February 17, 2015.

MARY E. WIRTES, MMC, CITY CLERK

(SEAL)

CITY OF ONTARIO

Agenda Report
February 17, 2015

SECTION:
CONSENT CALENDAR

SUBJECT: EXTENSION OF TOWING SERVICES AGREEMENTS

RECOMMENDATION: That the City Council authorize the City Manager to extend the existing towing services agreements with Certified Towing, Inc.; Dietz Towing, LLC; James Foglesong Towing and Storage, Inc.; and United Road Service, DBA Bill and Wags, Inc. for a period not to exceed 30 days.

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

FISCAL IMPACT: None.

BACKGROUND: On September 1, 2009 the City Council granted towing carrier permits and executed towing services agreements with Certified Towing Inc.; Dietz Towing, LLC; James Foglesong Towing and Storage Inc.; and United Road Towing, DBA Bill and Wags, Inc., all of Ontario, California, for a period of five years. The agreements became effective on November 24, 2009 and were set to expire on November 23, 2014. Pursuant to the terms, covenants and conditions of the agreements, the agreements were extended for a period of 90 days to allow staff to perform a comprehensive review of the Ontario Municipal Code and tow operations requirements originally established in 2004, before considering any new towing services agreements.

On December 16, 2014 the City Council adopted Ordinance No. 3008 amending Chapter 19 to Title 4 of the Ontario Municipal Code, regarding the regulation of rotational towing services. Staff is now requesting that the City Council grant an extension period not to exceed 30 days to allow for the issuance of a request for proposals, review of submittals, and the issuance of towing services agreements consistent with the updated Municipal Code.

STAFF MEMBER PRESENTING: Brad Kaylor, Chief of Police

Prepared by: Darryl Polk
Department: Police

City Manager
Approval: 

Submitted to Council/O.H.A. 02/17/2015

Approved: _____

Continued to: _____

Denied: _____

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CITY OF ONTARIO

Agenda Report
February 17, 2015

SECTION:
PUBLIC HEARINGS

SUBJECT: A PUBLIC HEARING TO CONSIDER AN ORDINANCE APPROVING A DEVELOPMENT AGREEMENT BETWEEN THE CITY OF ONTARIO AND STRATHAM PROPERTIES, INC., FOR THE DEVELOPMENT OF UP TO 196 RESIDENTIAL UNITS ON 48.73 ACRES OF LAND WITHIN PLANNING AREAS 4 AND 8 OF THE WEST HAVEN SPECIFIC PLAN, LOCATED ON THE NORTHWEST CORNER OF HAVEN AVENUE AND CHINO AVENUE AND THE NORTHWEST CORNER OF HAVEN AVENUE AND SCHAEFER AVENUE

RECOMMENDATION: That the City Council introduce and waive further reading of an ordinance approving the Development Agreement (File No. PDA07-005, on file with the Records Management Department) between Stratham Properties, Inc., a California corporation, and the City of Ontario, providing for the construction of up to 196 residential units on 48.73 acres of land within Planning Areas 4 and 8 of the West Haven Specific Plan, located on the northwest corner of Haven Avenue and Chino Avenue and the northwest corner of Haven Avenue and Schaefer Avenue (APN: 0218-151-11 and 0218-151-38).

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

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

STAFF MEMBER PRESENTING: Scott Murphy, Planning Director

Prepared by: Rudy Zeledon
Department: Planning

City Manager
Approval: 

Submitted to Council/O.H.A. 02/17/2015
Approved: _____
Continued to: _____
Denied: _____

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and permitting fees. No Original Model Colony revenue will be used to support the New Model Colony development.

BACKGROUND: Stratham Properties, Inc. (“Stratham”), and the City recognized that the financial commitment required for construction in the New Model Colony (NMC) is substantial. To adequately forecast these costs and gain assurance that the project may proceed under the existing policies, rules and regulations, Stratham is entering into a Development Agreement with the City providing for the development of up to 196 dwelling units. The Development Agreement provides funding for new City expenses created by the project, including operational costs related to the review, approval and administration of the Stratham Properties Inc. project, additional project related services, infrastructure and affordable housing requirements.

The Development Agreement proposes to include 48.73 acres of land within Planning Area 4 (Tentative Tract Map No. 18026) and Planning Area 8 (Tentative Tract Map No. 18027) of the West Haven Specific Plan as shown in Exhibit A. The Agreement grants Stratham a vested right to develop Tentative Tract Map Nos. 18026 and 18027, as long as the Stratham complies with the terms and conditions of the West Haven Specific Plan and Environmental Impact Report.

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

In considering the application at their meeting of January 27, 2015, the Planning Commission found that the Development Agreement was consistent with State law, The Ontario Plan, the City’s Development Agreement policies, and other Development Agreements previously approved for NMC development and, with a 7 to 0 vote, recommended approval of the Development Agreement to the City Council.

ENVIRONMENTAL REVIEW: The environmental impacts of this project were reviewed in conjunction with the West Haven Specific Plan (File No. PSP03-006) EIR (SCH #2004071095). This application is consistent with the previously adopted EIR and introduces no new significant environmental impacts. The City's "Guidelines for the Implementation of the California Environmental Quality Act (CEQA)" provide for the use of a single environmental assessment in situations where the impacts of subsequent projects are adequately analyzed. All previously adopted mitigation measures shall be a condition of project approval and are incorporated herein by reference.

EXHIBIT "A" WEST HAVEN SPECIFIC PLAN

SECTION 3 • LAND USE PLAN



**Exhibit 3-1
WEST HAVEN LAND USE PLAN**

ORDINANCE NO. _____

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF ONTARIO, CALIFORNIA, APPROVING A DEVELOPMENT AGREEMENT BETWEEN THE CITY OF ONTARIO AND STRATHAM PROPERTIES, INC., FILE NO. PDA07-005, TO ESTABLISH THE TERMS AND CONDITIONS FOR DEVELOPMENT OF UP TO 196 RESIDENTIAL UNITS ON 48.73 ACRES WITHIN PLANNING AREAS 4 AND 8 OF THE WEST HAVEN SPECIFIC PLAN, LOCATED ON THE NORTHWEST CORNER OF HAVEN AVENUE AND CHINO AVENUE AND THE NORTHWEST CORNER OF HAVEN AVENUE AND SCHAEFER AVENUE, AND MAKING FINDINGS IN SUPPORT THEREOF (APNS: 0238-151-11 and 0218-151-38).

WHEREAS, California Government Code Section 65864 now provides, in pertinent part, as follows:

“The Legislature finds and declares that:

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

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

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

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

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

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

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

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

WHEREAS, attached to this Ordinance, marked Exhibit "A" and incorporated herein by this reference, is the proposed Development Agreement between Stratham Properties Inc., and the City of Ontario, File No. PDA07-005, concerning those 48.73 acres of land within Planning Areas 4 and 8 of the West Haven Specific Plan, located on the northwest corner of Haven Avenue and Chino Avenue and the northwest corner of Haven Avenue and Schaefer Avenue and as legally described in the attached Development Agreement. Hereinafter in this Ordinance, the Development Agreement is referred to as the "Development Agreement"; and

WHEREAS, on January 16, 2007, the City Council of the City of Ontario certified the West Haven Specific Plan EIR (SCH #2004071095); and

WHEREAS, on July 17, 2007, the City Council of the City of Ontario adopted Ordinance No. 2870 approving the West Haven Specific Plan; and

WHEREAS, on January 27, 2015, the Planning Commission of the City of Ontario conducted a hearing to consider the Agreement and concluded said hearing on that date. After considering the public testimony, the Planning Commission voted unanimously to recommend approval of the Development Agreement to the City Council; and

WHEREAS, the environmental impacts of this project were reviewed in conjunction with the West Haven Specific Plan (File No. PSP03-006) EIR (SCH #2004071095) that was certified by the City Council on January 16, 2007. This Application introduces no new significant environmental impacts. All previously adopted mitigation measures are be a condition of project approval and are incorporated herein by reference; and

WHEREAS, on February 17, 2015, the City Council of the City of Ontario conducted a public hearing to consider the Agreement and concluded said hearing on that date; and

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

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

SECTION 1. Based upon substantial evidence presented to the City Council during the above-referenced hearing on February 17, 2015, including written and oral staff reports, together with public testimony, the City Council hereby specifically finds as follows:

a. The Development Agreement applies to 48.73 acres of residential land within Planning Areas 4 (Tentative Tract Map No. 18026) and 8 (Tentative Tract Map No. 18027) of the West Haven Specific Plan, generally located on the northwest corner of Haven Avenue and Chino Avenue and the northwest corner of Haven Avenue and Schaefer Avenue and is presently utilized for dairy and agriculture uses; and

b. The property to the north is located within Planning Areas 3 of the West Haven Specific Plan and is zoned for Low Density Residential and is currently being utilized with existing dairy/agriculture uses. The properties to the south and east are zoned Open Space Non-Recreation and developed by the SCE utility corridor. The properties to the west are located in the Rich Haven Specific Plan within Planning Area 4 and 14 (Single Family Residential) and are currently being utilized with existing dairy/agriculture use; and

c. The Development Agreement establishes parameters for the development of the West Haven residential projects. The Development Agreement also grants Stratham Properties, Inc., the right to develop, the ability to quantify the fees; and establish the terms and conditions that apply to those projects. These terms and conditions are consistent with The Ontario Plan Policy plan (General Plan), design guidelines and development standards for the West Haven Specific Plan; and

d. The Development Agreement focuses on 48.73 acres, consisting of Tentative Tract Map No. 18026, which subdivides 19.73 acres of land into 102 residential lots and 10 numbered lots within Planning Area 4, and Tentative Tract Map No. 18027, which subdivides 29 acres of land into 94 residential lots and 5 lettered lots within Planning Area 8; and

e. The Development Agreement will provide for development of up to 196 residential units as established for Planning Ares 4 and 8 West Haven Specific Plan; and

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

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

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

i. This Development Agreement will not be materially injurious or detrimental to the adjacent properties and will have a significant impact on the environment or the surrounding properties but the benefits of the project outweighs the potential environmental impacts and the mitigation of these impacts were addressed in the West Haven Specific Plan EIR certified by the City Council on January 16, 2007.

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

SECTION 3. The Applicant shall agree to defend, indemnify and hold harmless, the City of Ontario or its agents, officers, and employees from any claim, action or proceeding against the City of Ontario or its agents, officers or employees to attack, set aside, void or annul this approval. The City of Ontario shall promptly notify the applicant of any such claim, action or proceeding, and the City of Ontario shall cooperate fully in the defense.

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

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

SECTION 6. Effective Date. This Ordinance shall become effective thirty (30) days following its adoption.

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

PASSED, APPROVED, AND ADOPTED this _____ day of _____ 2015.

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. _____ was duly introduced at a regular meeting of the City Council of the City of Ontario held February 17, 2015 and adopted at the regular meeting held _____, 2015 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. _____ duly passed and adopted by the Ontario City Council at their regular meeting held _____ and that Summaries of the Ordinance were published on _____ and _____, in the Inland Valley Daily Bulletin newspaper.

MARY E. WIRTES, MMC, CITY CLERK

(SEAL)

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

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

Exempt from Fees Per Gov. Code § 6301

Space above this line for Recorder's Use Only

DEVELOPMENT AGREEMENT

By and Between

City of Ontario, a California municipal corporation,

and

Stratham Properties Inc.

a California corporation

_____, **2015**

San Bernardino County, California

DEVELOPMENT AGREEMENT NO. __

This Development Agreement (hereinafter "Agreement") is entered into effective as of the ____ day of _____, 2015 by and among the City of Ontario, a California municipal corporation (hereinafter "CITY"), and Stratham Properties, Inc. a California Corporation (hereinafter "OWNER"):

RECITALS

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

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

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

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

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

WHEREAS, all of the procedures of the California Environmental Quality Act have been met with respect to the Project and the Agreement in that West Haven Specific Plan (State Clearinghouse No. SCH#2004071095 (the "FEIR"). The City Council found and determined that the FEIR was prepared in accordance with the requirements of the California Environmental Quality Act and adequately describes the impacts of the project described in the FEIR, which included consideration of this Agreement; and

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

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

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

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

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

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

COVENANTS

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

1. DEFINITIONS AND EXHIBITS.

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

1.1.1 "Agreement" means this Development Agreement.

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

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

1.1.4 "Deferred Infrastructure" means the Improvements listed in Exhibit "F-1"; for which the completion of the construction may be deferred pursuant to the terms of Sections 4.3.1, 4.3.2 and 4.3.3 below.

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

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

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

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

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

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

in Sections 51287, 56383, 57004, 65104, 65456, 65863.7, 65909.5, 66013, 66014, and 66451.2 of the Government Code, Sections 17951, 19132.3, and 19852 of the Health and Safety Code, Section 41901 of the Public Resources Code, and Section 21671.5 of the Public Utilities Code, as such codes may be amended or superseded, including by amendment or replacement.

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

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

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

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

1.1.13 “Improvement” or “Improvements” means those public improvements required to support the development of the Property as described in the Tract Map conditions for Tract Nos. 18026, and 18027 and as further described in Exhibit “F” (the “Infrastructure Improvements Exhibit”).

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

- (a) the conduct of businesses, professions, and occupations;
- (b) taxes and assessments;
- (c) the control and abatement of nuisances;
- (d) the granting of encroachment permits and the conveyance of similar rights and interests that provide for the use of or the entry upon public property;
- (e) the exercise of the power of eminent domain.

1.1.15 "Model Units" means a maximum of Ten (10) units constructed by OWNER prior to the construction of any Production units and not offered for sale and occupancy until after all of the of the building permits for Production Units are issued.

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

1.1.17 "General Plan" means the General Plan adopted on January 27, 2010, by Ordinance No.____.

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

1.1.19 "Phase 1 Recycled Water System Improvements" means the extension of the recycled water system to serve the Property (both Tract Nos. 18026 and 18027) as described in the attached Exhibit F.

1.1.20 "Phase 2 Recycled Water System Improvements" means the extension of master-planned recycled water system improvements in Riverside Drive and Haven Avenue as described in the attached Exhibit F.

1.1.21 "Production Units" means all units constructed by OWNER for sale and occupancy and excludes a maximum of ten (10) Model Units constructed by OWNER for promotion of sales

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

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

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

1.1.25 "Specific Plan" means that certain specific plan adopted by the City Council, and entitled, "West Haven Specific Plan."

1.1.26 "Storm Water Treatment Capacity Availability" means a designated portion of the total Storm Water Treatment Capacity Availability made available through the completion of construction of a Phase of regional storm water treatment facilities by the NMC Builders LLC as described in the Construction Agreement Amendment. The amount, in acres, of Storm Water Treatment Capacity Availability required for the issuance of a grading permit shall be based upon the factors and assumptions listed in the Construction Agreement Amendment.

1.1.27 “Subsequent Development Approvals” means all Development Approvals required subsequent to the Effective Date in connection with development of the Property.

1.1.28 “Subsequent Land Use Regulations” means any Land Use Regulations adopted and effective after the Effective Date of this Agreement.

1.1.29 “Water Availability Equivalent (WAE)” means a designated portion of the total Net MDD made available through the construction of each Phase described in the Water Phasing Plan of the Construction Agreement Amendment. The number of Water Availability Equivalents (of portions thereof) required for the issuance of each building permit shall be based upon water demand factors and assumptions listed in the Construction Agreement Amendment as “Water Availability Equivalents by Land Use” for each land use category.

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

Exhibit “A” — Legal Description of the Property.

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

Exhibit “C” — Existing Development Approvals.

Exhibit “D” — Existing Land Use Regulations.

Exhibit “E” — Conceptual Phasing Plan

Exhibit “F” — Infrastructure Improvements Exhibit

2. GENERAL PROVISIONS.

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

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

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

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

(b) In non-mixed use projects, the OWNER shall have obtained, as applicable, building permits for at least forty-four percent (44%) of the actual number of residential units permitted under this Agreement; and

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

2.4 Assignment.

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

(a) No sale, transfer or assignment of any right or interest under this Agreement shall be made unless made together with the sale, transfer or assignment of all or a part of the Property.

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

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

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

release shall be provided by CITY upon the full satisfaction by such transferring owner of the following conditions:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

2.7 Notices.

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

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

If to CITY:

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

with a copy to:

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

If to OWNER:

Stratham Properties, Inc.
2201 Dupont Drive, Suite 300
Irvine CA, 92612
Attn: Jeff Evans
Email: Jevans@strathamhomes.com
Phone: (949) 833-1554 x 225
Fax: (949) 833-7853

with a copy to:

Songstad Randall Coffee & Humphrey LLP
2201 Dupont Drive, Suite 100
Irvine CA, 92612
Attn: Tim Randall
Email: trandall@sr-firm.com
Phone: (949) 757-1600
Fax: (949) 757-1613

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

3. DEVELOPMENT OF THE PROPERTY.

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

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

3.3 Timing of Development. The parties acknowledge that OWNER cannot at this time predict when or the rate at which phases of the Property will be developed. Such decisions depend upon numerous factors which are not within the control of OWNER, such as market orientation and demand, interest rates, absorption, completion and other similar factors. Since the California Supreme Court held in Pardee Construction Co. v. City of Camarillo (1984) 37 Ca1. 3d 465, that the failure of the

parties therein to provide for the timing of development resulted in a later adopted initiative restricting the timing of development to prevail over such parties' agreement, it is the parties' intent to cure that deficiency by acknowledging and providing that OWNER shall have the right to develop the Property in such order and at such rate and at such times as OWNER deems appropriate within the exercise of its subjective business judgment.

3.4 Conceptual Phasing Plan. Development of the Property is contingent, in part, on the phasing of area-wide infrastructure improvements over which the OWNER has limited control. Attached hereto as Exhibit "E" is a conceptual phasing plan which is based on the OWNER's best estimate of the timing of the completion of needed infrastructure improvements and the availability of interim improvements and services. The conceptual phasing plan is an estimate only and is subject to the same timing constraints and the exercise of OWNER's business judgment as set forth in Section 3.3 above.

3.4.1 Attached hereto as Exhibit "F" is a description of the infrastructure improvements needed for the development of the Tract Numbers 18026 and 18027 ("the Infrastructure Improvement Exhibits").

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

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

3.6 Reservations of Authority.

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

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

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

3.6.3 Modification or Suspension by State or Federal Law. In the event that State or Federal laws or regulations, enacted after the Effective Date of this Agreement, prevent or preclude compliance with one or more of the provisions of this

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

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

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

3.7.1 Continuing Requirement for the Funding of Fire Station No. 9 by NMC Builders for Issuance of Building Permits. The issuance of building permits for Production Units within the Property is contingent upon, among other things, the provision of payments from NMC Builders for the completion of the construction of CITY's Fire Station No. 9. CITY shall not issue building permits for the construction of Production Units within the Property unless and until CITY receives payments from NMC Builders in the amount estimated by CITY to be necessary and sufficient for the completion of the design and construction of Fire Station No. 9. If OWNER requests that CITY issue building permits for any units, including Model Units, prior to CITY's receipt of payments from NMC Builders in an amount deemed by CITY to be necessary and sufficient for the design and construction of Fire Station No. 9, then prior to and as a condition precedent to CITY's issuance of any such building permits for the construction of any units, OWNER shall deposit, or shall have deposited, with NMC Builders an amount equal to the OWNER's Fire Station No. 9 Capital Contribution allocable to such unit(s).

3.7.2 Continuing Requirement for the Funding of Regional Water and Storm Water Treatment Improvements. Prior to, and as a condition precedent to, CITY's approval of any final Tract Maps for the Property, CITY shall require OWNER to provide evidence of sufficient Water Availability Equivalents for the number of units included in the respective Tract Map. Prior to, and as a condition precedent to, CITY's issuance of grading permits for any grading of the Property or prior to, and as a condition precedent to, CITY's approval of any final Tract Maps for the Property, OWNER shall provide evidence of sufficient Storm Water Treatment Capacity Availability for the Project. CITY and OWNER agree that the evidence of Storm Water Treatment Capacity Availability for the Project shall be based on the net acreage of OWNER's Project for Tract Map Nos. 18026 and 18027, as defined in the Construction Agreement Amendment. CITY hereby acknowledges that Tract Nos. 18026 and 18027 have an approved preliminary Water Quality Management Plan and are grandfathered into the Mill Creek Wetlands solution.

3.7.3 Requirement for Construction of "Phillips Zone" Water Improvements to Serve Tract No 18026. OWNER shall be responsible for the construction of the necessary extension of permanent master planned potable water infrastructure and Improvements within the CITY's Phillips Pressure Zone to the Property in Tract No. 18026 in Riverside Drive, Haven Avenue and Chino Avenue, and as shown on Exhibit "F" hereto, to the extent that such potable water utility infrastructure has not been constructed by others. OWNER shall only initiate grading after recordation of the Final Tract Map for Tract No. 18026. OWNER also acknowledges and agrees that no Building Permits shall be issued by CITY for Production Units prior to the completion of the extension of permanent master planned potable water utility infrastructure and Improvements within the Phillips Pressure Zone to serve the portion of the Project in Tract No. 18026.

3.7.4 Requirement for Construction of "Francis Zone Water Improvements to Serve Tract No. 18027. OWNER shall be responsible for the design and construction of the necessary extension of permanent master planned potable water infrastructure and improvements within the CITY's Francis Pressure Zone to the Property in Tract No. 18027 including the construction of master planned potable water infrastructure and improvements and as shown on Exhibit "F" to the extent that such potable water utility infrastructure has not been constructed and completed by others. OWNER shall only initiate grading after recordation of the Final Tract Map for Tract No. 18027. OWNER also acknowledges and agrees that no Building Permits shall be issued by CITY for Production Units prior to the completion of the extension of permanent master planned potable water utility infrastructure and improvements within the Francis Pressure Zone to serve the portion of the Project in Tract No. 18027. OWNER acknowledges and agrees that the master planned potable water and recycled water utility improvements in Edison Avenue shown in Exhibit F as "existing" are currently under construction and have not been completed and accepted by CITY. To the extent that OWNER is relying upon the completion of the construction of the improvements in Edison Avenue, OWNER also agrees that no Building Permits shall be issued by CITY for Production Units prior to the completion of the required necessary improvements in Edison Avenue.

3.7.5 Requirement for Construction of Recycled Water Improvements.

OWNER shall design and construct permanent master planned recycled water utility infrastructure as described in Exhibit F as the "Phase 1 Recycled Water Improvements," consisting of the construction of permanent master planned recycled water for Tract Numbers 18026 and 18027. OWNER agrees that no building permits shall be issued by CITY for Production Units for the portion of the Project in Tract No. 18027 prior to completion of the Phase 1 Recycled Water Improvements as described in Exhibit F for Tract 18027. OWNER also agrees that no building permits shall be issued by CITY for Production Units for the portion of the Project in Tract 18026 prior to completion of the Phase 1 Recycled Water Improvements as described in the Exhibit F for Tract 18026. CITY agrees that OWNER may, at OWNER's option, complete the construction of improvements that provide for connection of the portion of the Project in Tract 18026 to either the 930 recycled water pressure zone on an interim basis or the 1050 recycled water pressure zone to the extent that such alternatives are identified and shown in Exhibit F for Tract No 18026. If OWNER elects to connect the portion of the Project in Tract 18026 to the 930 recycled water pressure zone, on an interim basis, OWNER shall be responsible for the construction of a permanent connection of the portion of the Project in Tract 18026 to the 1050 recycled water pressure zone when the Phase 2 Recycled Water Improvements are constructed to extend the recycled water improvements in Riverside Drive and Haven Avenue by OWNER, NMC Builders or others. Additionally, OWNER or NMC Builders shall be responsible for the design and construction of an additional extension of master planned recycled water infrastructure in Riverside Drive and Haven Avenue (the "Phase 2 Recycled Water Improvements") to serve the entire Project as described in the attached Exhibit F. Prior to September 1, 2018, OWNER shall deposit, or shall have deposited, with NMC Builders an amount equal to the OWNER's capital contribution for the design and construction of the Phase 2 Recycled Water Improvements. If OWNER has not deposited such amount, or if NMC Builders has not initiated construction of the Phase 2 Recycled Water System Improvements, prior to September 1, 2018, OWNER shall initiate and complete construction of the Phase 2 Recycled Water System Improvements no later than September 1, 2019. OWNER acknowledges and agrees that if OWNER or NMC Builders has not completed the design and construction of the Phase 2 Recycled Water System Improvements prior to September 1, 2019, then CITY shall be entitled to withhold issuance of any further building permits for the Project, unless and until the design and construction of the Phase 2 Recycled Water System Improvements is completed. If NMC Builders LLC or others have completed the design and initiated construction of the required Phase 2 Recycled Water System Improvements prior to September 1, 2019 then OWNER shall not be required to construct such improvements and OWNER shall not be eligible to receive the special reimbursement described in Section 4.3.3.1.

3.7.6 Requirement for Construction of Sewer System Improvements.

OWNER shall design and construct permanent master planned sewer system improvements to serve the portions of the Project in Tract Nos. 18026 and 18027 and as shown in the attached Exhibit "F" to the extent that such sewer system improvements have not been constructed by others. OWNER agrees that no building permits shall be

issued by CITY for Production Units unless and until the respective sewer system improvements to serve for Tract Nos. 18026 and 18027 are completed.

3.7.7 Requirement for Construction of Storm Drain Improvements.

OWNER agrees that development of the Project shall require the construction of a significant portion of Storm Drain facilities known as the "Turner Avenue Storm Drain" from the northern boundary of the Property to the connection with the County Line Channel. OWNER shall be responsible for the construction of the necessary extension of master planned Storm Drain facilities to the extent that such Storm Drain Improvements have not been constructed by NMC Builders or others. OWNER also acknowledges and agrees that no Building Permits shall be issued by CITY for Production Units prior to the completion of the extension of permanent master planned Storm Drain facilities in Turner Avenue to the County line Channel as described in Exhibit F.

3.7.8 Requirement for Construction of Street Improvements.

OWNER shall construct a portion of Chino Avenue and Haven Avenue and OWNER shall be required to construct signalized intersections as shown in the attached Exhibit "F" to the extent that such improvements have not been constructed by others. OWNER agrees that no Building Permits shall be issued by CITY for Production Units prior to the completion of the master planned street improvements as described in Exhibit F.

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

3.8.1 CITY Acquisition of Non-Construction Agreement Offsite Property.

In the event OWNER is required to construct any public improvements on land not owned by OWNER, but such requirement is not based upon the Construction Agreement, Sections 3.8.1 and 3.8.2 shall control the acquisition of the necessary property interest(s) ("Non-Construction Agreement Offsite Property"). If the OWNER is unable to acquire such Non-Construction Agreement Offsite Property, and following the written request from the OWNER to CITY, CITY agrees to use reasonable and diligent good faith efforts to acquire the Non-Construction Agreement Offsite Property from the owner or owners of record by negotiation to the extent permitted by law and consistent with this Agreement. If CITY is unable to acquire the Non-Construction Agreement Offsite Property by negotiation within thirty (30) days after OWNER'S written request, CITY shall initiate proceedings utilizing its power of eminent domain to acquire that Non-

Construction Agreement Subject Property at a public hearing noticed and conducted in accordance with California Code of Civil Procedure Section 1245.235 for the purpose of considering the adoption of a resolution of necessity concerning the Non-Construction Agreement Offsite Property, subject to the conditions set forth in this Section 3.8. The CITY and OWNER acknowledge that the timelines set forth in this Section 3.8.1 represent the maximum time periods which CITY and OWNER reasonably believe will be necessary to complete the acquisition of any Non-Construction Agreement Offsite Property. CITY agrees to use reasonable good faith efforts to complete the actions described within lesser time periods, to the extent that it is reasonably able to do so, consistent with the legal constraints imposed upon CITY.

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

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

3.10 Tentative Tract Maps; Extension. With respect to applications by OWNER for tentative subdivision maps for portions of the Property, CITY agrees that OWNER may file and process tentative maps in accordance with Chapter 4.5 (commencing with Section 66498.1) of Division 2 of Title 7 of the California Government Code and the applicable provisions of CITY's subdivision ordinance, as the same may be amended from time to time. In accordance with the provisions of Section 66452.6 of the Government Code, each tentative subdivision map or tentative parcel map, heretofore or hereafter approved in connection with development of the Property, shall be deemed to have been granted an extension of time to and until the date that is five (5) years

following the Effective Date of this Agreement. The CITY's City Council may, in its discretion, extend any such map for an additional period of up to five (5) years beyond its original term, so long as the subdivider files a written request for an extension with the City prior to the expiration of the initial five (5) year term.

4. PUBLIC BENEFITS.

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

4.2 Development Impact Fees.

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

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

4.2.3 Parkland and Quimby Act Fees. Pursuant to the General Plan (OntarioPlan) Goal PR1, Policy PR1-5 (achievement of a park standard of 5 acres of parkland per 1,000 residents) OWNER shall provide improved parks, developed in accordance with the City's park standards in an amount equal to two (2) acres per 1,000 of projected population without credit, reimbursement, offset or consideration from City. Such areas shall either be dedicated to the City or transferred to a homeowners association. If approved by the City Manager, OWNER may satisfy this requirement through the development of non-public recreation facilities such as private recreational clubhouses or pool facilities. Credit for such private recreational facilities areas shall be limited to a maximum of 50% of the foregoing park development requirement. CITY and OWNER agree that Lot A of Tentative Tract No. 18027 and Lot A of Tract No. 18026 total 1.88 gross acres which shall count towards OWNER's satisfaction of CITY Park

requirements. Areas designated as Park areas shall be transferred to a homeowners' association and the homeowners' association shall be responsible for all maintenance of developed park areas. OWNER shall also pay the full Development Impact Fee for the Parkland Acquisition and Development Fee category (Quimby Act fees). OWNER shall also design and construct improvements to develop the areas designated as trails in the Specific Plan, in accordance with the Tract Map conditions for Tract Number 18026 and 18027, without credit, reimbursement, offset or other consideration from CITY.

4.3 Responsibility for Construction of Public Improvements.

4.3.1 Responsibility for Construction of Improvements. The phasing of the area wide infrastructure construction within the New Model Colony will be as approved by the City Manager. OWNER shall be responsible for the timely construction and completion of all public infrastructure required for the Project as shown on the attached Exhibit F. and any and all tentative tract map conditions. CITY agrees that OWNER may initiate grading after recordation of the Final Tract Map; however, OWNER acknowledges and agrees that no building permits for any Model Units or Production Units shall be issued by CITY for the Project prior to the completion of the permanent master planned water and recycled water utility infrastructure to serve the Project.

4.3.1.1 Responsibility for In-lieu Payments. OWNER shall also be required to pay the amount of three hundred forty-two thousand and one-hundred eighteen dollars (\$342,118) to CITY in-lieu of the OWNER's construction of a portion of Schaefer Avenue. Such payment shall be made by OWNER prior to and as a condition precedent to, CITY's issuance of the first building permit for any units for Tract No. 18027.

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

4.3.3 Construction of DIF Program Infrastructure (Non-Construction Agreement). To the extent OWNER is required to construct and completes construction of public improvements that are included in CITY's Development Impact Fee Program and such public improvements are not included the Construction Agreement between CITY and NMC Builders LLC, CITY agrees that CITY shall issue DIF Credit and DIF Reimbursement in accordance with the provisions of a separate Fee Credit Agreement between CITY and OWNER. Limitation on the use of DIF Credit issued to OWNER to offset OWNER's DIF payment obligations shall also be subject to the provisions of a separate Fee Credit Agreement. OWNER may also be eligible to receive reimbursement from DIF collected by CITY and paid by other development that benefit

from OWNER's construction of DIF Program Infrastructure. Any such DIF Reimbursement shall be subject to a Fee Credit Agreement between CITY and OWNER. CITY and OWNER agree that the Fee Credit Agreement between CITY and OWNER shall comply with CITY's adopted policies applicable to such agreements.

4.3.3.1 CITY Reimbursement for Phase 2 Recycled Water System Improvements. If OWNER constructs the Phase 2 Recycled Water Improvements, then CITY agrees that the provisions of the DIF Credit and Reimbursement Agreement referenced above shall also include a requirement for a special reimbursement from CITY to OWNER upon completion by OWNER and acceptance by CITY of the Phase 2 Recycled Water System Improvements to the extent such improvements are constructed by OWNER. The amount of the reimbursement shall be forty-four percent (44%) of the eligible design and construction costs for the portion of the Phase 2 Recycled Water System Improvements located in Riverside Avenue between Haven Avenue and Archibald Avenue. At this time, the estimated eligible costs for the design and construction of the portion of the Phase 2 Recycled Water System Improvements located in Riverside Avenue between Haven Avenue and Archibald Avenue is one million, eight hundred thousand dollars (\$1,800,000). The actual amount of the special reimbursement shall be determined upon completion and acceptance of the improvements by CITY and shall be based upon the actual eligible costs for the design and construction of the improvements or the estimated costs in CITY's DIF Program for the improvements, whichever is less."

4.4 Affordable Housing Requirement.

4.4.1 Affordable Housing- Number of Units. OWNER shall provide a minimum number of affordable housing units, equivalent to 10% of the OWNER's total approved residential units within the Project, that are affordable to very low, low and moderate income households. Such requirement for affordable housing shall be met through one, or a combination of one or more, of the options provided in the following Sections 4.3.2.1 through 4.3.2.1. For the purposes of this Section, any term not defined in this Agreement shall be as defined by California Community Redevelopment Law (California Health and Safety Code Section 33000 et seq.).

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

4.4.2.1 New Construction. If OWNER elects to fully or partially satisfy the affordable housing requirement by the construction of new residential units,

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

4.4.2.2 Rehabilitation. If OWNER elects to fully or partially satisfy the affordable housing requirement by the substantial rehabilitation of existing residential units in the City, it shall substantially rehabilitate and restrict the affordability of, the number of residential units specified in Section 4.4.1, provided that such units shall be provided elsewhere within the City. The rehabilitation work shall be substantial and of high quality and shall also address any deferred property maintenance issues on the property. "**Substantial rehabilitation**" shall mean rehabilitated multi-family rented dwelling units with three or more units and the value of the rehabilitation constitutes 25 percent of the after rehabilitation value of the dwelling, inclusive of land value pursuant to Health and Safety Code Section 33413(b)(2)(A)(iii-iv) as such section exists as of the Effective Date of this Agreement. If OWNER chooses the option of rehabilitation of existing housing units within the City, a detailed Affordable Housing Agreement specifying the terms for the allowable month housing costs or rents (as applicable) and maintenance and occupancy standards shall be prepared, executed and recorded against such units as a condition to the issuance of a building permit. Such rehabilitation shall be completed no later than the date that is five (5) years following the issuance of the first building permit for OWNER's Project; provided however that to the extent OWNER has not rehabilitated the required percentage of units, based on the number of

building permits, OWNER shall, prior to the issuance of such building permits, provide security (in the form and substance approved by the City Manager and City Attorney) to the City in order to ensure the faithful completion of such required percentage of rehabilitation.

4.4.2.3 In-Lieu Fee. If OWNER has not fully complied with the requirements of Section 4.3.1 by providing the minimum number of affordable units through the construction of new affordable units or by the substantial rehabilitation of existing units, OWNER shall pay an “**Affordability In-Lieu Fee**”. If OWNER has not provided any affordable residential units by construction or rehabilitation, the Affordability In-Lieu fee shall be equal to Two Dollars Thirty One Cents (\$2.31) per square foot of residential development within OWNER’s Project or, if pre-paid as set forth below, Two Dollars Two Cents (\$2.02) per square foot of residential development within OWNER’s Project. If OWNER has partially complied with the requirements of Section 4.4.1 by construction or rehabilitation of less than the minimum number of units, then the Affordability In-lieu Fee shall be recalculated and reduced in consideration of the number and type of affordable units provided. The Affordability In-Lieu Fee shall be paid by OWNER to City no later than prior to the issuance of each building permit within Owner’s Project based on the square footage of the residential unit for which such building permit is sought; provided however that OWNER may, at OWNER’s election, pre-pay such Affordability In-Lieu Fee by paying such Affordability In-Lieu Fee within thirty (30) days following the earliest discretionary approval by the City for OWNER’s Project, including, but not limited to, any general plan amendment, specific plan adoption, development agreement, tentative map approval, variance, conditional use permit, or resolution of intention to form any public financing mechanism. The Two Dollars, Thirty One Cent (\$2.31) and the Two Dollars Two Cents (\$2.02) per square foot amounts shall automatically be increased annually, commencing on July 1, 2015, and automatically each July 1 thereafter. Such adjustment shall be based on the percentage increase (but no decrease) in the Consumer Price Index (Los Angeles-Anaheim-Riverside County), 1950-2001 (1982-84=100) over the preceding year. The pre-paid Affordability In-Lieu Fee shall be calculated based on the maximum floor area ratio (FAR) permitted within the General Plan and any applicable FAR contained within the applicable specific plan, whichever is greater, and the Maximum Development Density. For purposes of this Agreement, “**Maximum Development Density**” shall be determined by multiplying the OWNER’s Project’s density for residential development potential as set forth in the General Plan or the applicable Specific Plan, whichever is less, by the net acreage of land within OWNER’s Project. All “Affordability In-Lieu Fees” collected by the City shall be used to promote the construction of affordable housing within the City.

4.4.2.4 Affordability Covenants. Prior to the issuance of the first building

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

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

4.4 Schools Obligations.

4.4.1 Written Evidence of Compliance with Schools Obligations.

OWNER shall, either through joint or individual agreements between OWNER and the applicable school district(s), shall satisfy its new school obligations. The new school obligations for the Mountain View School District in the New Model Colony area have been projected to include the acquisition or dedication of school sites for, and construction of, up to eight (8) schools. Of these eight (8) schools, six (6) are to be elementary (K-5) grade schools and two (2) are to be middle grade schools. The new school obligations for the Chaffey Joint Union High School District in the New Model Colony area have been projected to include the dedication of a school site for, and construction of, an additional high school. The new school obligations for the applicable school district shall be met by a combination of the following: (1) designating and dedicating school site(s) within the Property as set forth in the General Plan, and/or (2) paying school impact fees, (3) entering into a joint mitigation agreement or individual mitigation agreements, or (4) any combination of the foregoing. Written evidence of approval by the applicable school district that OWNER has met their school obligations may be required by the City as the condition to the issuance by the City of any entitlements for OWNER's Project. In the event OWNER is unable to provide such written evidence from the applicable school district(s), the City shall have the right to decline to honor any DIF Credit, Certificates of MDD Availability, Certificates of Storm Water Treatment Capacity Availability, or any combination thereof, presented by such OWNER, without liability to the City. To the extent that a joint mitigation agreement is approved by the applicable school district(s), and OWNER is a participant in good

standing in such mitigation agreement, OWNER shall be deemed to have mitigated its new school obligations under this Section 4.4.1.

4.5 Public Services Funding Fee.

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

4.5.2 Public Services Funding Fee Amount. OWNER shall pay a Public Services Funding fee in the total amount of One Thousand Eight Hundred Twenty dollars (\$1,820.00) per residential dwelling unit. The Public Services Funding Fee shall be paid in one (1) installment within one hundred eighty (180) calendar days after the effective date of the Development Agreement or in two (2) installments, at OWNER’s option, as follows:

4.5.2.1 First Installment (Residential uses). The First Installment of the Public Services Funding Fee shall be Nine Hundred Ten dollars (\$910.00) per residential dwelling unit. The First Installment shall be based upon the “**Maximum Development Density**” of the OWNER Project, as defined in Section 3.7.2.3 of the First Amended and Restated Construction Agreement. The First Installment shall be due and payable 30 days following City’s start of construction of Fire Station No. 9.

If the First installment amount is not paid for all residential dwelling units within the Project (based on the Maximum Development Density, or the number of units described on “B Maps” if approved) by January 1, 2015, the amount of the First Installment shall be increased. Such increase shall be based on the percentage increase (but no decrease) in the Consumer Price Index (Los Angeles-Anaheim-Riverside County), 1950-2001 (1982-84=100) over the preceding year. Additionally, the amount shall be further increased automatically by the percentage increase in the Consumer Price Index (Los Angeles-Anaheim-Riverside) on each January 1 thereafter.

4.5.2.2 Second Installment (Residential Uses). The Second Installment of the Public Services Funding Fee shall be Nine Hundred Ten dollars (\$910.00) per residential unit. The Second Installment shall be paid at the time of the issuance of each building permit for the Project. The amount of the Second Installment shall increase automatically by percentage increase (but no decrease) in the Consumer Price Index (Los Angeles-Anaheim-

Riverside County), 1950-2001 (1982-84=100) over the preceding year on January 1st of each year, beginning on January 1, 2015. OWNER may exercise the option to pay the Second Installment amount for all residential units, a portion of the residential units, or for the remainder of the residential units within OWNER's Project on or before each December 31st, before the Second Installment amount is automatically increased.

4.5.2.3 Single Installment (Non-residential Uses). A single installment payment of the Public Services Funding Fee shall be required in the amount of Fifty Five Cents (\$.55) per square foot of non-residential buildings. The single installment for non-residential uses shall be due and payable prior to the issuance of the building permit for a non-residential building. The amount of the Single Installment for non-residential uses shall automatically increase by percentage increase (but no decrease) in the Consumer Price Index (Los Angeles-Anaheim-Riverside County), 1950-2001 (1982-84=100) over the preceding year on January 1st of each year, beginning on January 1, 2015. OWNER may exercise the option to pay any single installment amounts for the remainder of the non-residential square footage within the Project on or before December 31st, before the Single Installment amount is automatically increased.

4.6 Net MDD/Water Availability Equivalents.

4.6.1 Assigned Net MDD/Water Availability Equivalents. The City has agreed with NMC Builders LLC to reserve exclusively for Members of NMC Builders, including OWNER, Net MDD made available through the construction of water system improvements funded by NMC Builders LLC. NMC Builders has assigned to OWNER its allocable share of the Net MDD issued by City. The provisions of the Construction Agreement Amendment requires that the City shall not issue building permits or certificates of occupancy for the area of development within the New Model Colony served by the water system improvements funded by NMC Builders LLC, except to the bearer of an Assignment of Net MDD Water Availability.

4.6.2 Use of Assigned Net MDD Water Availability. OWNER shall provide evidence of sufficient Net MDD Water Availability Equivalents (or portions thereof) prior to and as a condition precedent to, the approval of any Tract map for the Property. The amount of Net MDD Water Availability Equivalents required for the issuance of each building permit shall be based upon water demand factors and assumptions listed in Exhibit C-2R of the Construction Agreement Amendment as "Water Demand Equivalents by Land Use" for each land use category.

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

4.7 Storm Water Capacity Availability.

4.7.1 Requirement for Storm Water Treatment Capacity Availability. OWNER shall provide evidence of sufficient Storm Water Treatment Capacity Availability as reserved in a Certificate of Storm Water Treatment Capacity Availability at the same time, and in the same manner, and subject to the same limitations as provided for the assignment of Certificates of Net MDD Availability in Section 4.6 of this Agreement. If the CITY has not issued sufficient Storm Water Treatment Capacity Availability for the issuance of grading permits for the Phase I area of OWNER's Project, because regional storm water treatment facilities are not completed by NMC Builders, then OWNER may provide and CITY, in its sole discretion, may accept evidence of sufficient Storm Water Treatment Capacity that is conditioned upon the future completion of the regional storm water treatment facilities.

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

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

4.8 Maintenance of Open Space. OWNER shall provide for the ongoing maintenance of all park and open space areas within the Project as more particularly set forth in the Specific Plan, through a homeowners' association or public financing mechanism, as approved by the CITY. Covenants, conditions and restrictions establishing any homeowners' association shall be approved by the Planning Director and City Attorney. If requested by OWNER, the CITY shall use good faith efforts to require other developments within the Specific Plan to join such homeowners' association or public financing mechanism for the purpose of maintaining such parks and open spaces that are open to the public.

4.9 Edison Easement Improvements. OWNER shall use commercially reasonable efforts to obtain appropriate easements, acceptable to CITY, from Southern California Edison for the areas designated as trails in the Specific Plan without credit, reimbursement, offset or other consideration from CITY. OWNER shall develop such areas to CITY standards. After acceptance and completion of all warranty periods, CITY shall assume responsibility for maintenance of the areas designated as trails. Said park or open space development shall be consistent with the New Model Colony Park Master Plan standards for park and open space development. Notwithstanding OWNER's development of park or open space areas as required by this Section 4.8. OWNER shall not be entitled to any credit, offset or reimbursement from the CITY for such park or open space development.

4.10 Compliance with Public Benefits Requirements.

4.10.1 Failure to Provide Public Benefits. In the event OWNER fails or refuses to comply with any condition referenced in Section 4.1 through 4.5 and Section 5.1, or challenges (whether administratively or through legal proceedings) the imposition of such conditions, OWNER shall be deemed in default of this Agreement pursuant to Section 8 hereof, thereby entitling the City to any and all remedies available to it, including, without limitation, the right of the City to withhold OWNER's Project-related building permits, certificates of occupancy, or discretionary approvals, without liability.

4.10.2 Conformance with Construction Agreement. The conditions and requirements referenced in Section 4.1 through 4.5 and Section 5.1 of this Development Agreement are consistent with the Construction Agreement as amended by the Amended and Restated Construction Agreement dated August 21, 2012. To the extent any future amendment to the Construction Agreement provides for modifications to rights or obligations that differ from or alter the same or similar rights or obligations contained in this Development Agreement, OWNER reserves the right to request an amendment to the Development Agreement to reflect any or all of such modifications. The CITY shall cooperate fully with OWNER in processing any such amendments.

5. FINANCING OF PUBLIC IMPROVEMENTS.

5.1 Financing Mechanism(s). CITY will cooperate with OWNER in the formation of a CFD, or CFDs, to include the entire Project, to provide a financing mechanism to reimburse the OWNER for funds paid to NMC Builders LLC for OWNER's share of the costs of public infrastructure pursuant to the Construction Agreement. Notwithstanding such reimbursements, OWNER shall remain entitled to DIF Credits as provided for in Article 3 of the Construction Agreement and/or as provided for in a separate Fee Credit Agreement between CITY and OWNER. OWNER agrees that, prior to the recordation of any B Map, the property subject to such B Map shall be included in a CFD to finance City services through annual special taxes that will initially be \$1,387.00 per Single Family Detached Dwelling Unit, \$1,202.00 per Multiple-Family Dwelling Unit, \$1,008.00 per Gated Apartment Community Dwelling Unit, and \$.26 per square foot for Non-Residential buildings. These amounts shall be subject to an automatic increase at a rate not to exceed four (4%) percent per year. CITY shall be the sole and exclusive lead agency in the formation of any CFD, assessment district or other public financing mechanism within the Property; provided however, that the proceeds of any such CFD, assessment district, or financing mechanism may be used, subject to restrictions that may be imposed by applicable law, for the purposes of acquiring, constructing or maintaining public facilities to be owned or operated by other public agencies, including, without limitation those facilities owned or operated by a school district. In addition to the rights of the CITY pursuant to section 5.2 hereof, CITY shall have the right, but not the obligation, to condition the formation of any CFD, assessment district or other public financing mechanism within the Property on the OWNER mitigating all Project-related impacts to the applicable school district(s) as required by such school district(s). Written evidence by such school district(s) may be required by the CITY as the condition to the formation of any CFD, assessment district

or other public financing mechanism within the Property, or any steps preliminary thereto, including, without limitation, the adoption of any resolution of intention to form such CFD, assessment district or other public financing mechanism within the Property. It is not the intent of the parties hereto, by this provision, to prohibit or otherwise limit the City's ability to take any and all necessary steps requisite to the formation of the CFD to finance City services through annual special taxes as set forth in this Section 5.1. Formation of any CFD, assessment district or other public financing mechanism within the Property, shall be subject to CITY's ability to make all findings required by applicable law and complying with all applicable legal procedures and requirements including, without limitation, CITY's public financing district policies as such policies may be amended from time to time. Notwithstanding the foregoing, it is acknowledged and agreed by the parties that nothing contained in this Agreement shall be construed as requiring CITY or the City Council to form any such district or to issue and sell bonds.

6. REVIEW FOR COMPLIANCE.

6.1 Periodic and Special Reviews.

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

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

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

6.1.3 Notice of Special Review. The City Manager shall begin the special review proceeding by giving notice that the CITY intends to undertake a special review

of this Agreement to the OWNER. Such notice shall be given at least ten (10) days in advance of the time at which the matter will be considered by the Planning Commission.

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

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

6.1.6 Procedure Upon Findings.

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

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

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

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

(a) The time and place of the hearing;

(b) A statement as to whether or not the CITY proposes to terminate or to modify this Agreement; and

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

6.3 Hearing on Modification or Termination. At the time and place set for the hearing on modification or termination, the OWNER shall be given an opportunity to be heard. The OWNER shall be required to demonstrate good faith compliance with the terms and conditions of this Agreement. The burden of proof on this issue shall be on the OWNER. If the City Council finds, based upon substantial evidence in the administrative record, that the OWNER has not complied in good faith with the terms

and conditions of the agreement, the City Council may terminate or modify this Agreement and impose those conditions to the action it takes as it considers necessary to protect the interests of the CITY. The decision of the City Council shall be final, subject only to judicial review pursuant to Section 1094.5 of the Code of Civil Procedure.

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

7. [RESERVED]

8. DEFAULT AND REMEDIES.

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

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

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

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

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

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

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

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

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

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

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

9. THIRD PARTY LITIGATION.

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

9.2 Third Party Litigation Concerning Agreement. OWNER shall defend, at its expense, including attorneys' fees, indemnify, and hold harmless CITY, its agents, officers and employees from any claim, action or proceeding against CITY, its agents, officers, or employees to attack, set aside, void, or annul the approval of this Agreement or the approval of any permit granted pursuant to this Agreement. CITY shall promptly notify OWNER of any such claim, action or proceeding, and CITY shall cooperate in the defense. If CITY fails to promptly notify OWNER of any such claim, action or proceeding, or if CITY fails to cooperate in the defense, OWNER shall not thereafter be responsible to defend, indemnify, or hold harmless CITY. CITY may in its discretion participate in the defense of any such claim, action or proceeding.

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

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

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

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

10. MORTGAGEE PROTECTION.

The parties hereto agree that this Agreement shall not prevent or limit OWNER, in any manner, at OWNER's sole discretion, from encumbering the Property or any portion thereof or any improvement thereon by any mortgage, deed of trust or other security device securing financing with respect to the Property. CITY acknowledges that the lenders providing such financing may require certain Agreement interpretations and modifications and agrees upon request, from time to time, to meet with OWNER and representatives of such lenders to negotiate in good faith any such request for interpretation or modification. CITY will not unreasonably withhold its consent to any such requested interpretation or modification provided such interpretation or modification is consistent with the intent and purposes of this Agreement. Any Mortgagee of the Property shall be entitled to the following rights and privileges:

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

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

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

(d) Any Mortgagee who comes into possession of the Property, or any part thereof, pursuant to foreclosure of the mortgage or deed of trust, or deed in lieu of such foreclosure, shall take the Property, or part thereof, subject to the terms of this Agreement. Notwithstanding any other provision of this Agreement to the contrary, no Mortgagee shall have an obligation or duty under this Agreement to perform any of OWNER's obligations or other affirmative covenants of OWNER hereunder, or to guarantee such performance; provided, however, that to the extent that any covenant to

be performed by OWNER is a condition precedent to the performance of a covenant by CITY, the performance thereof shall continue to be a condition precedent to CITY's performance hereunder, and further provided that any sale, transfer or assignment by any Mortgagee in possession shall be subject to the provisions of Section 2.4 of this Agreement.

11. MISCELLANEOUS PROVISIONS.

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

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

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

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

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

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

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

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

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

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

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

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

11.13 Successors in Interest. The burdens of this Agreement shall be binding upon, and the benefits of this Agreement shall inure to, all successors in interest to the parties to this Agreement. All provisions of this Agreement shall be enforceable as

equitable servitudes and constitute covenants running with the land. Each covenant to do or refrain from doing some act hereunder with regard to development of the Property: (a) is for the benefit of and is a burden upon every portion of the Property; (b) runs with the Property and each portion thereof; and, (c) is binding upon each party and each successor in interest during ownership of the Property or any portion thereof.

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

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

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

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

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

11.19 Agent for Service of Process. In the event OWNER is not a resident of the State of California or it is an association, partnership or joint venture without a member, partner or joint venturer resident of the State of California, or it is a foreign corporation, then in any such event, OWNER shall file with the Planning Director, upon its execution of this Agreement, a designation of a natural person residing in the State of California, giving his or her name, residence and business addresses, as its agent for the purpose

of service of process in any court action arising out of or based upon this Agreement, and the delivery to such agent of a copy of any process in any such action shall constitute valid service upon OWNER. If for any reason service of such process upon such agent is not feasible, then in such event OWNER may be personally served with such process out of this County and such service shall constitute valid service upon OWNER. OWNER is amenable to the process so served, submits to the jurisdiction of the Court so obtained and waives any and all objections and protests thereto. OWNER for itself, assigns and successors hereby waives the provisions of the Hague Convention (Convention on the Service Abroad of Judicial and Extra Judicial Documents in Civil or Commercial Matters, 20 U.S.T. 361, T.I.A.S. No. 6638).

11.20 Estoppel Certificate. Within thirty (30) business days following a written request by any of the parties, the other party shall execute and deliver to the requesting party a statement certifying that (i) either this Agreement is unmodified and in full force and effect or there have been specified (date and nature) modifications to the Agreement, but it remains in full force and effect as modified; and (ii) either there are no known current uncured defaults under this Agreement or that the responding party alleges that specified (date and nature) defaults exist. The statement shall also provide any other reasonable information requested. The failure to timely deliver this statement shall constitute a conclusive presumption that this Agreement is in full force and effect without modification except as may be represented by the requesting party and that there are no uncured defaults in the performance of the requesting party, except as may be represented by the requesting party. OWNER shall pay to CITY all costs incurred by CITY in connection with the issuance of estoppel certificates under this Section 11.20 prior to CITY's issuance of such certificates.

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

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

[SIGNATURES CONTAINED ON FOLLOWING PAGE]

**SIGNATURE PAGE
TO DEVELOPMENT AGREEMENT**

"OWNER"

Stratham Properties, Inc. a California
corporation

By: _____

Ali Razi
Its: President

Date: _____

"CITY"

CITY OF ONTARIO

By: _____

Al Boling
City Manager

Date: _____

ATTEST:

City Clerk, Ontario

APPROVED AS TO FORM:

BEST, BEST & KREIGER LLP

City Attorney

CALIFORNIA ALL-PURPOSE ACKNOWLEDGMENT

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

On _____, 2015 _____,
 before me, _____,
Date Name And Title Of Officer (e.g. "Jane Doe, Notary Public")

personally appeared _____,
Name of Signer(s)

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

WITNESS my hand and official seal.

 Signature of Notary Public

OPTIONAL

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

CAPACITY CLAIMED BY SIGNER

DESCRIPTION OF ATTACHED DOCUMENT

- Individual
- Corporate Officer

Title(s)

Title or Type of Document

- Partner(s) Limited
- General

Number Of Pages

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

Date Of Document

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

Signer(s) Other Than Named Above

EXHIBIT "A"
Legal Description of Property

Tentative Tract Map 18026

IN THE CITY OF ONTARIO, COUNTY OF SAN BERNARDINO, STATE OF CALIFORNIA BEING A SUBDIVISION OF THE SOUTH 1/2 OF THE SOUTHEAST 1/4 OF THE NORTHEAST 1/4 OF SECTION 11, TOWNSHIP 2 SOUTH, RANGE 7 WEST, SAN BERNARDINO BASE AND MERIDIAN.

APN: 0218-151-11

Tentative Tract Map 18027

IN THE CITY OF ONTARIO, COUNTY OF SAN BERNARDINO, STATE OF CALIFORNIA BEING A SUBDIVISION OF PARCEL 2 OF PARCEL MAP NO. 4117 FILED IN BOOK 38, PAGES 37 AND 38 OF PARCEL MAPS, SAN BERNARDINO COUNTY RECORDS.

APN: 0218-151-38

EXHIBIT "B" West Haven Specific Plan

SECTION 3 • LAND USE PLAN



**Exhibit 3-1
WEST HAVEN LAND USE PLAN**

EXHIBIT "C"
Existing Development Approvals

On December 18, 2006, the Planning Commission:

- a) Issued Resolution No. PC06-166 Recommending City Council Adopt and certify the West Haven Specific Plan Environmental Impact Report;
- b) Issued Resolution No. PC06-167 Recommending City Council approval of the West Haven Specific Plan (File No. PSP03-006); and
- c) Issued Resolution No. PC06-168 approving Tentative Tract Map No. 18027 (File No. PMTT06-031); and
- d) Issued Resolution No. PC06-169 approving Tentative Tract Map No. 18026 (File No. PMTT06-032).

On January 16, 2007, the City Council:

- a) Adopted and certified the West Haven Specific Plan Environmental Impact Report and issued Resolution No. 2007-010;and

On July 17, 2007, the City Council:

- a) Adopted Ordinance No. 2870 approving the West Haven Specific Plan.

On January 27, 2015, the Planning Commission:

- a) Issued Resolution No. PC15-015 approving a modification to Tentative Tract Map No. 18027 (File No. PMTT11-002); and
- b) Issued Resolution No. PC15-014 approving a modification to Tentative Tract Map No. 18026 (File No. PMTT11-003); and

EXHIBIT "D"

Existing Land Use Regulations

These documents are attached by reference only:

1. West Haven Specific Plan, Ordinance No. 2870.
2. West Haven Environmental Impact Report, Resolution No. 2007-010.
3. City of Ontario Municipal Code
 - a. Six – Sanitation & Health
 - b. Seven – Public Works
 - c. Eight - Building Regulations
 - d. Nine – Development Code
 - e. Ten – Parks and Recreation

Exhibit "F"

Required Infrastructure Improvements Tentative Tracts 18026 and TT18027

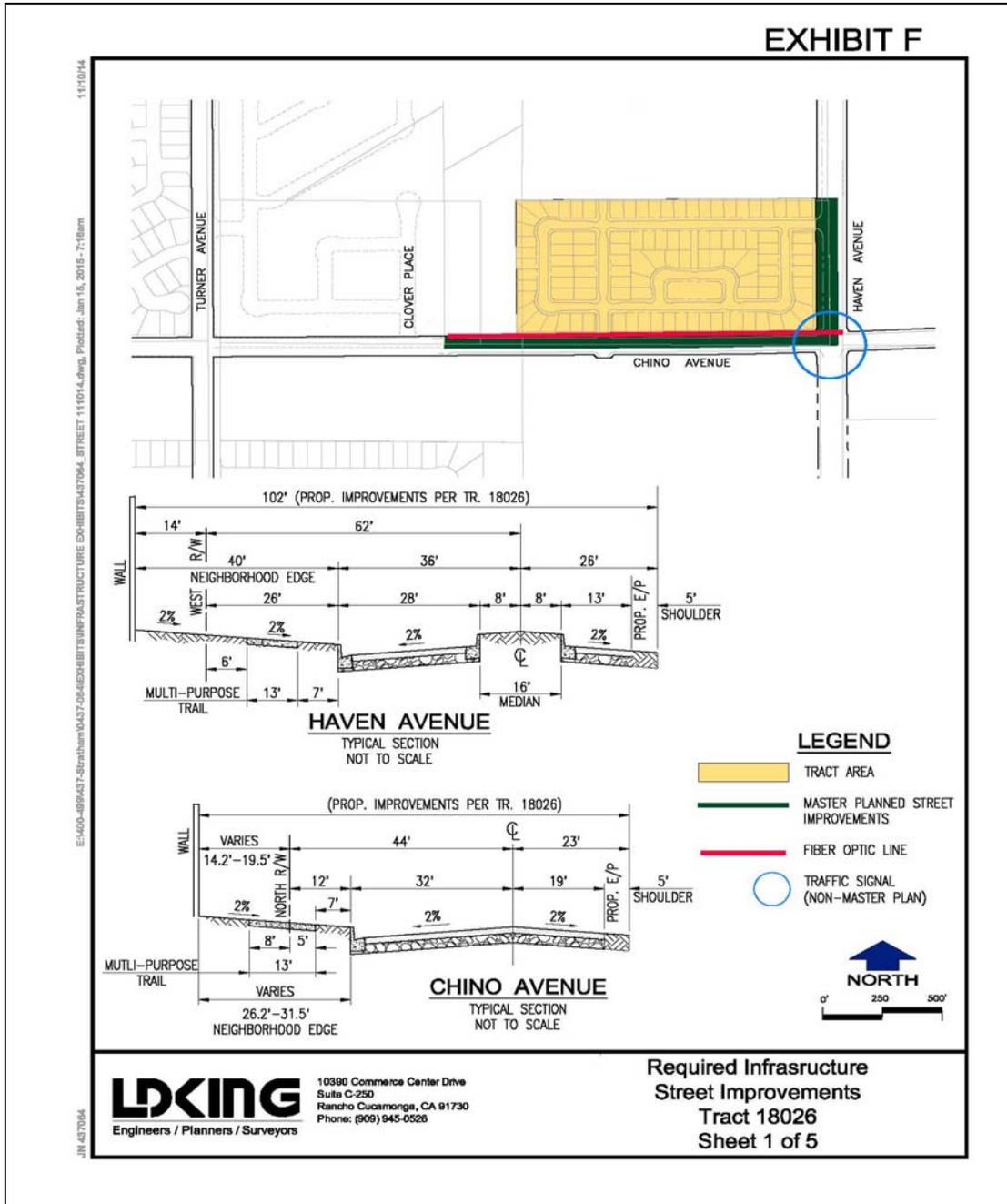
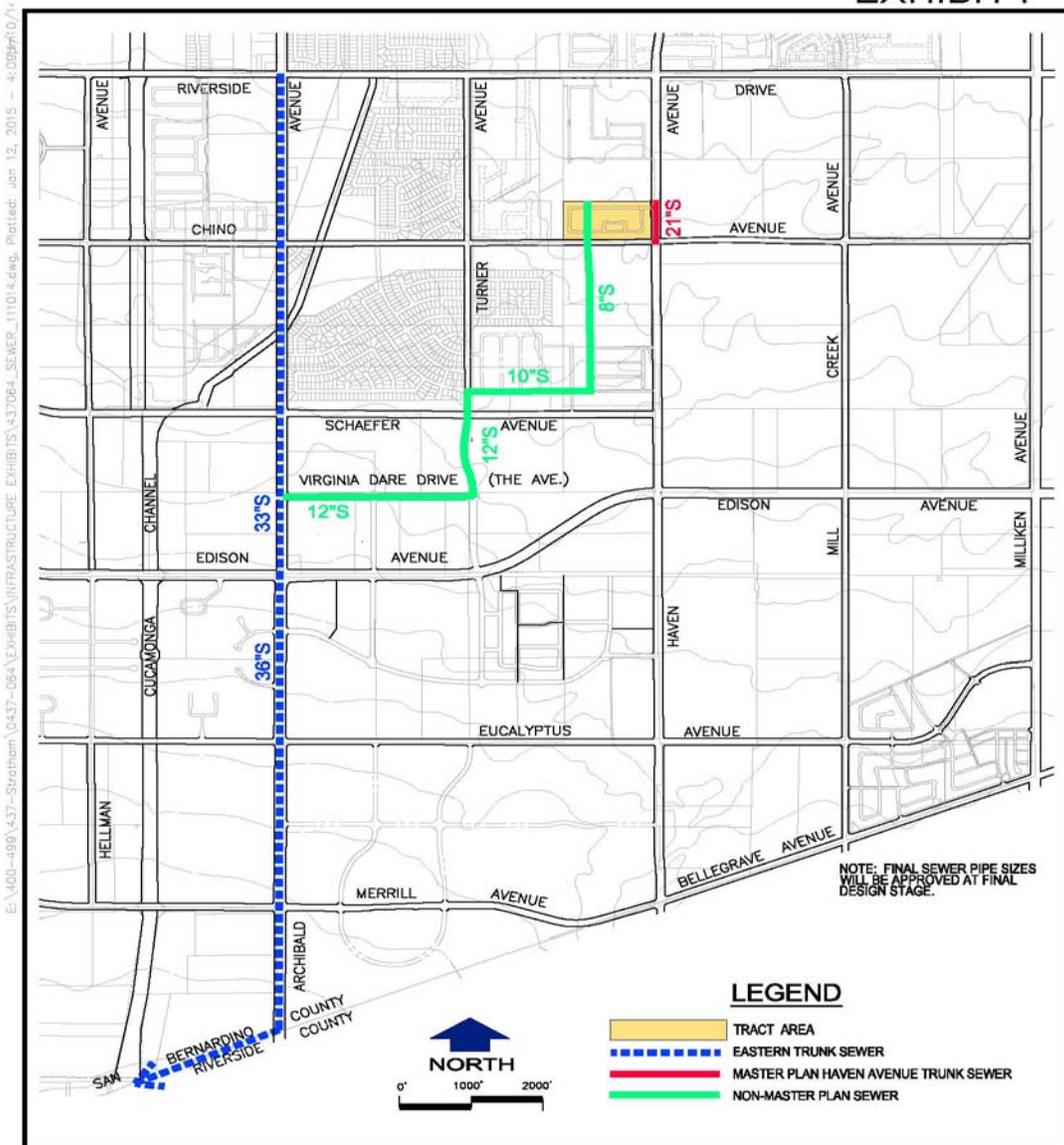


EXHIBIT F



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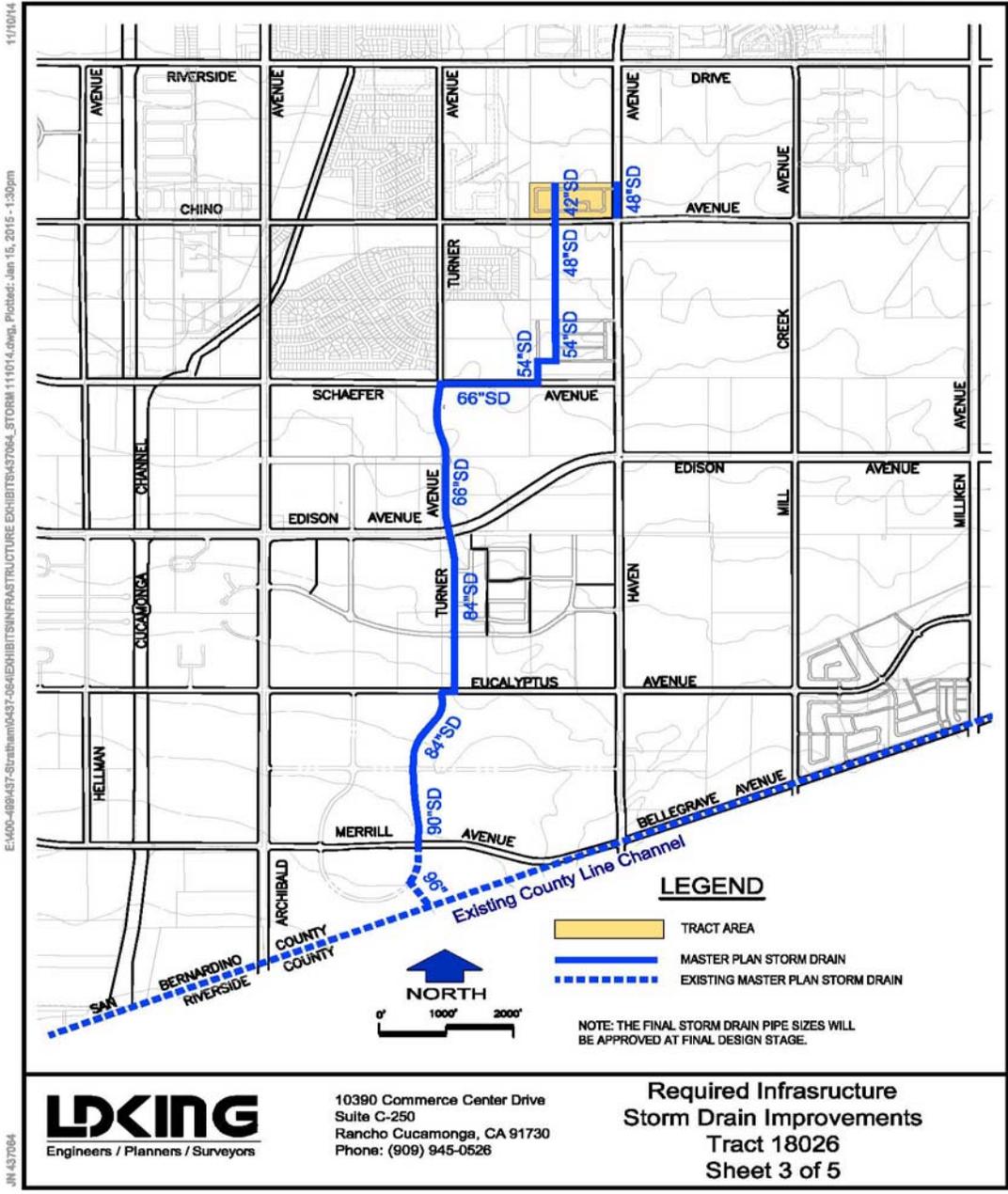
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LDKING
Engineers / Planners / Surveyors

10390 Commerce Center Drive
Suite C-250
Rancho Cucamonga, CA 91730
Phone: (909) 945-0526

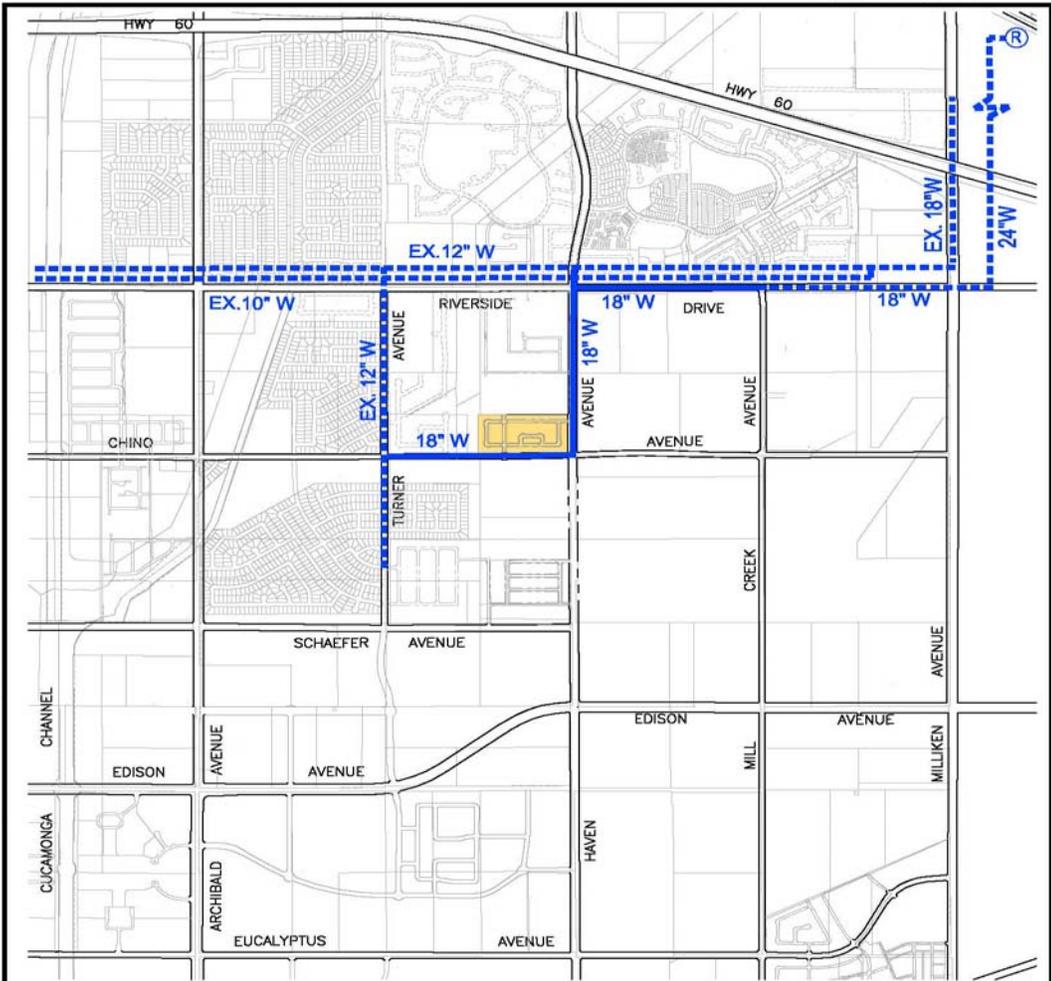
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Sewer Improvements
Tract 18026
Sheet 2 of 5**

EXHIBIT F



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JIN 437064

EXHIBIT F



- LEGEND**
- TRACT AREA
 - MASTER PLAN WATER - 1010 ZONE
 - EXISTING WATER - 1010 ZONE
 - R EXISTING RESERVOIR



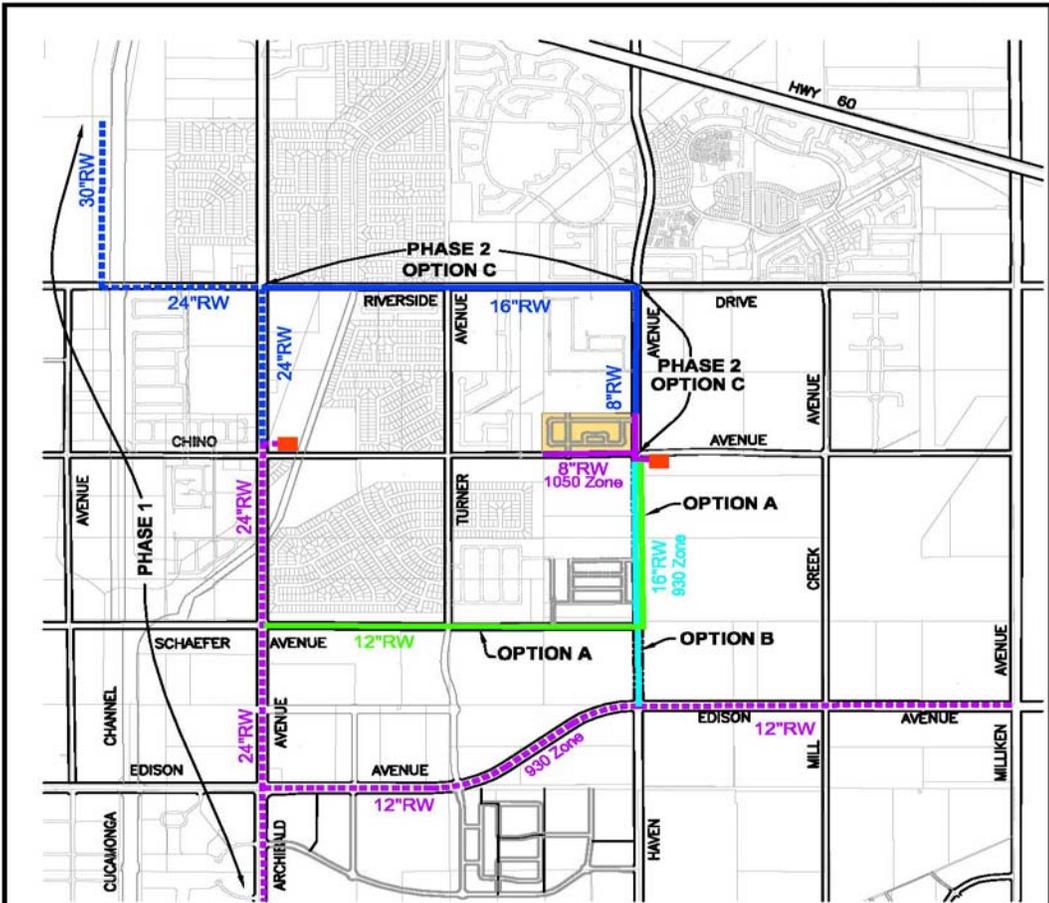
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LDKING
 Engineers / Planners / Surveyors

10380 Commerce Center Drive
 Suite C-250
 Rancho Cucamonga, CA 91730
 Phone: (909) 945-0526

**Required Infrastructure
 Domestic Water Improvements
 Tract 18026
 Sheet 4 of 5**

EXHIBIT F



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LEGEND

- TRACT AREA
- EXISTING MASTER PLAN RECYCLED WATER ZONE 1050 (PHASE 1)
- MASTER PLAN RECYCLED WATER ZONE 1050 (PHASE 2)
- EXISTING MASTER PLAN RECYCLED WATER 930 ZONE
- MASTER PLAN RECYCLED WATER - 930 ZONE BY OWNER
- PRESSURE REDUCING STATION PER NMC
- OPTION A MASTER PLAN RECYCLED WATER ZONE 930
- OPTION B MASTER PLAN RECYCLED WATER ZONE 930



JN 437064

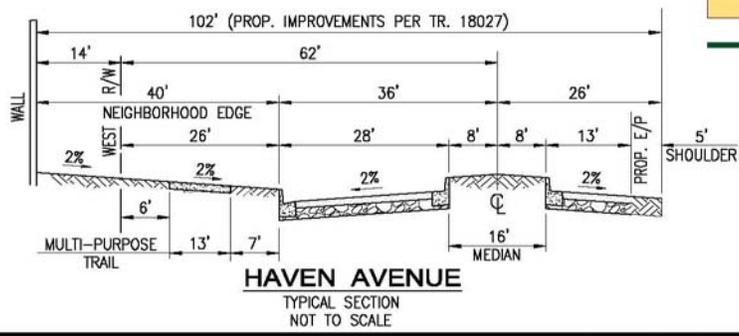
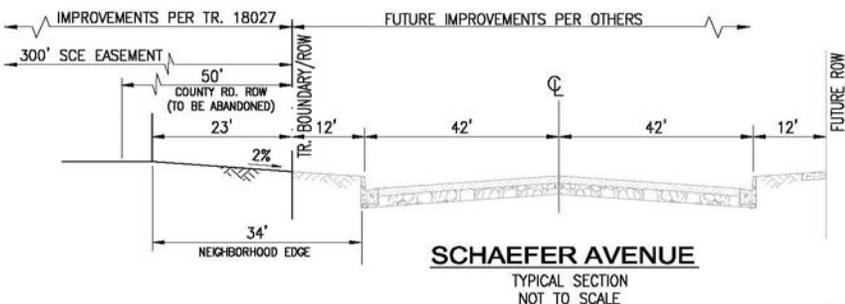
LDKING
Engineers / Planners / Surveyors

10390 Commerce Center Drive
Suite C-250
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Phone: (909) 945-0526

Required Infrastructure
Recycled Water Improvements
Tract 18026
Sheet 5 of 5

EXHIBIT F

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- LEGEND**
- TRACT AREA
 - MASTER PLAN STREET IMPROVEMENTS
 - TRAFFIC SIGNAL

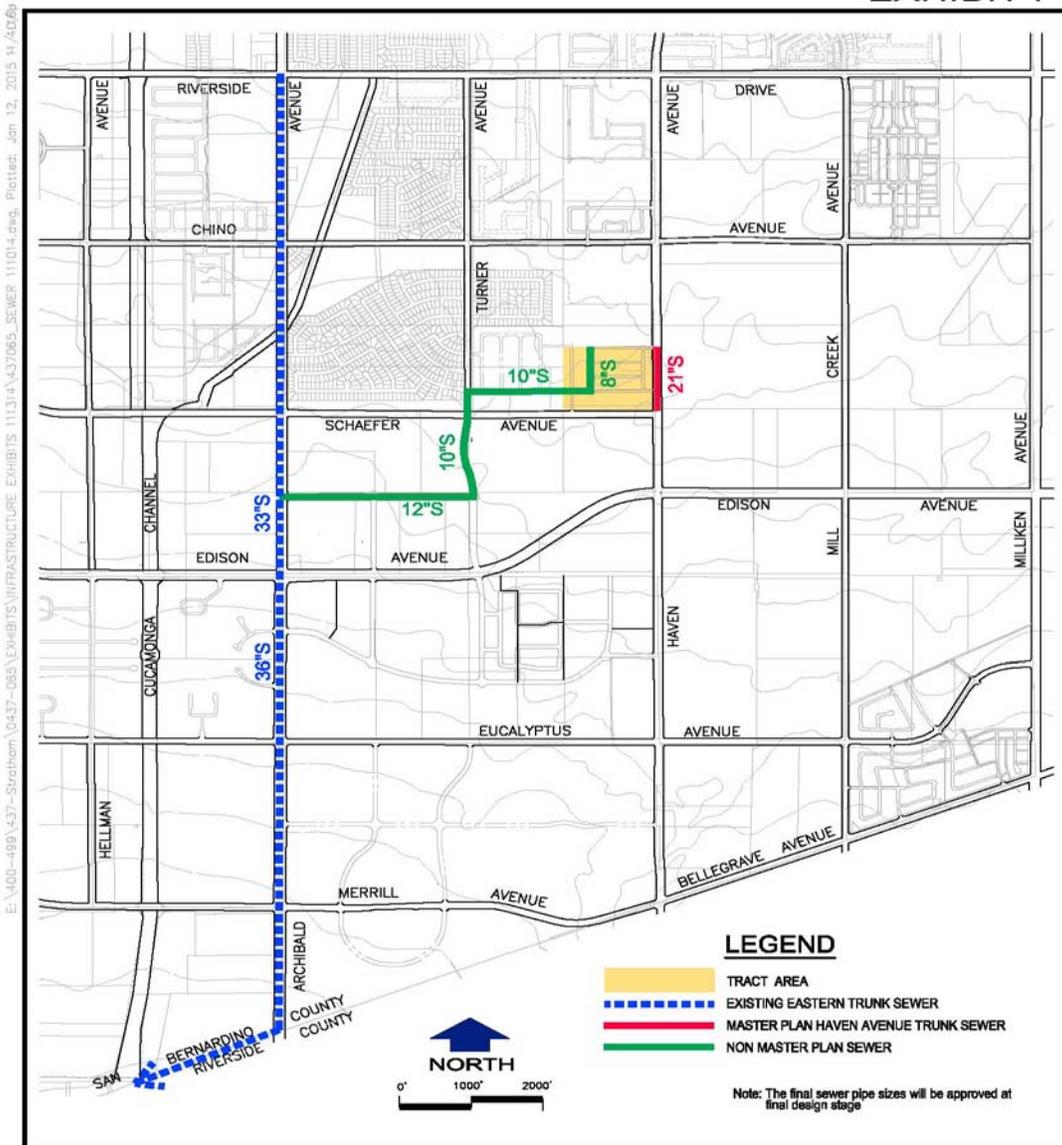


LDKING
Engineers / Planners / Surveyors

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Suite C-250
Rancho Cucamonga, CA 91730
Phone: (909) 945-0526

**Required Infrastructure
Street Improvements
Tract 18027
Sheet 1 of 5**

EXHIBIT F



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LEGEND

- TRACT AREA
- EXISTING EASTERN TRUNK SEWER
- MASTER PLAN HAVEN AVENUE TRUNK SEWER
- NON MASTER PLAN SEWER

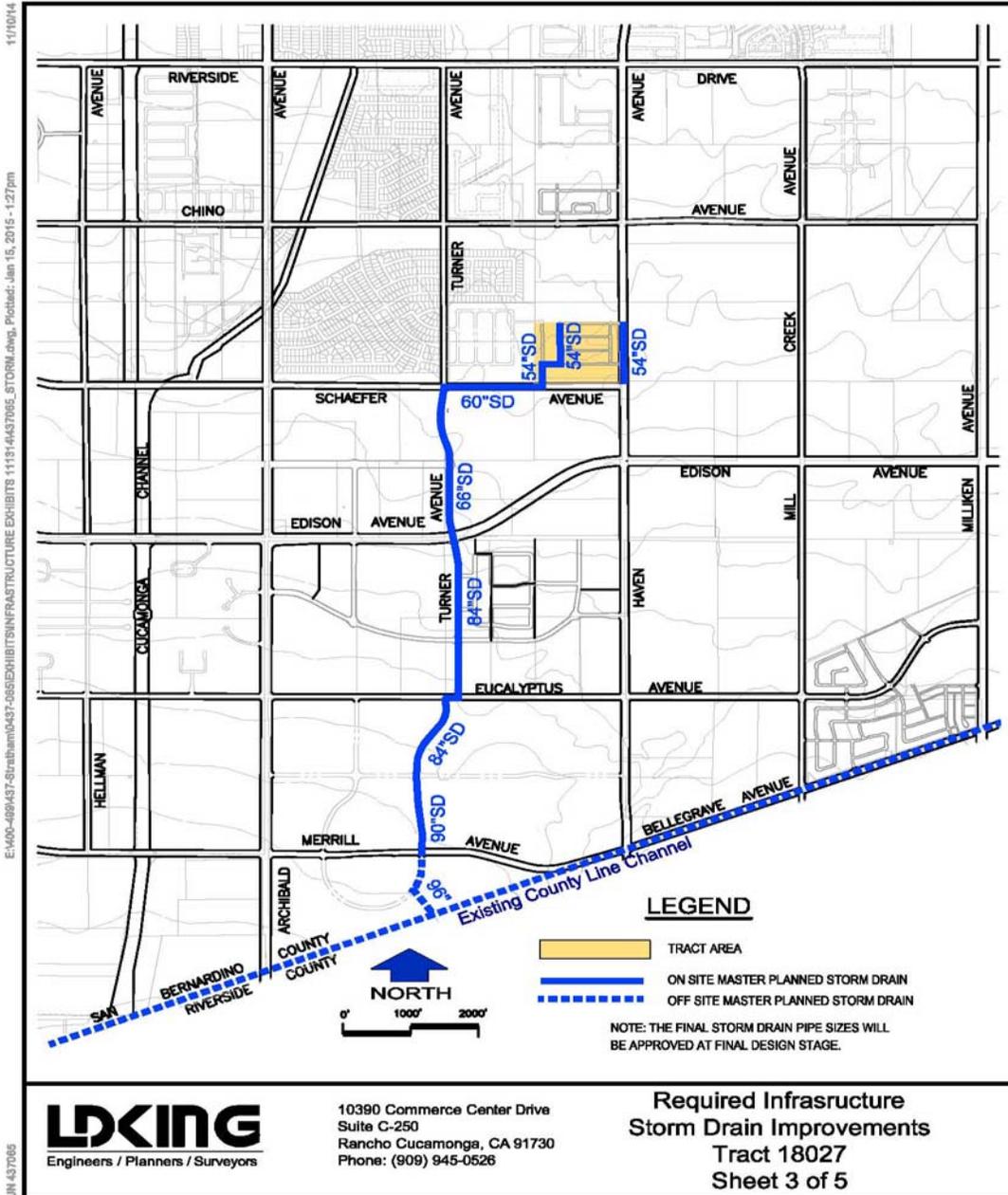
Note: The final sewer pipe sizes will be approved at final design stage



10390 Commerce Center Drive
Suite C-250
Rancho Cucamonga, CA 91730
Phone: (909) 945-0526

Required Infrastructure
Sewer Improvements
Tract 18027
Sheet 2 of 5

EXHIBIT F



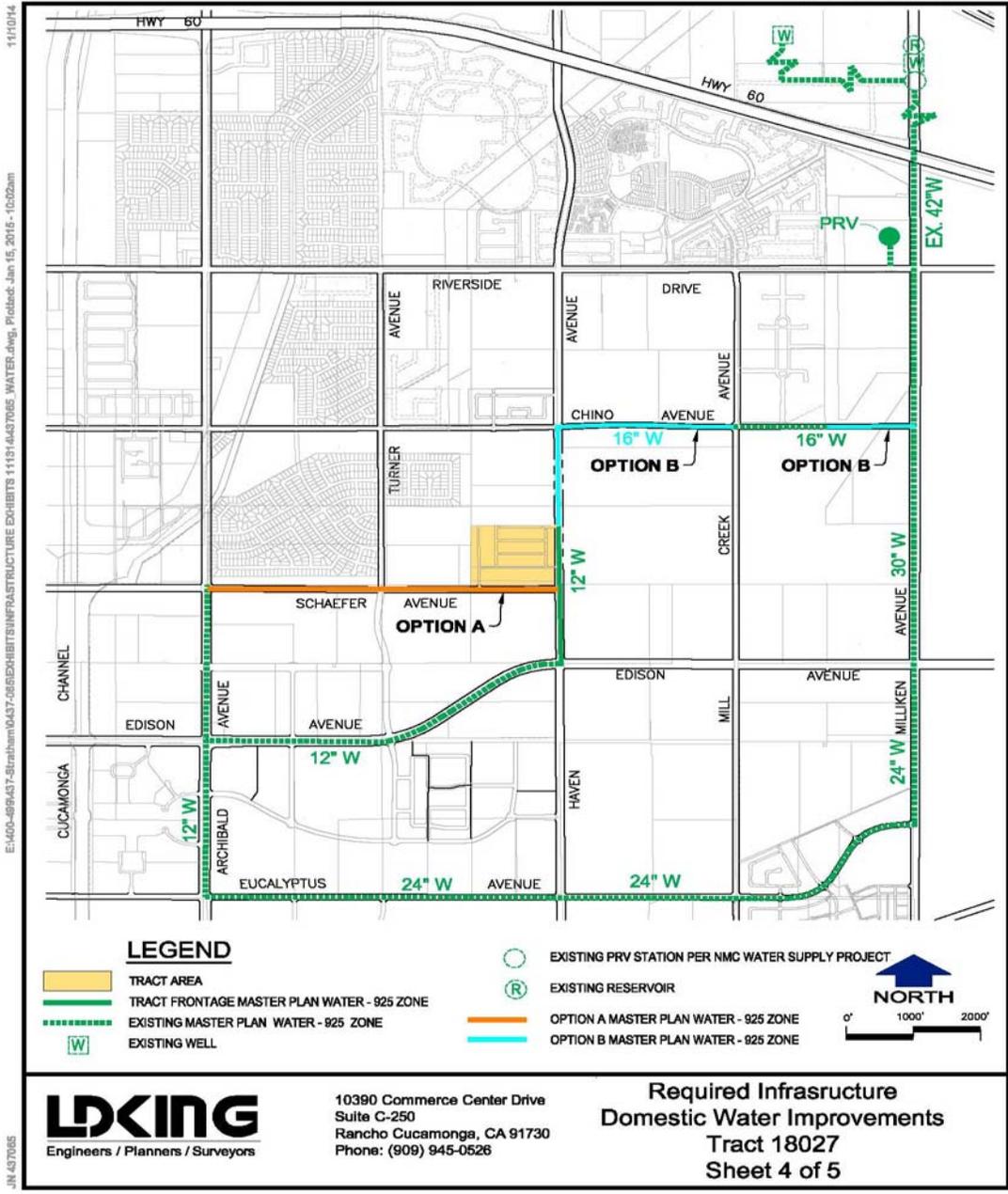
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10390 Commerce Center Drive
 Suite C-250
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 Phone: (909) 945-0526

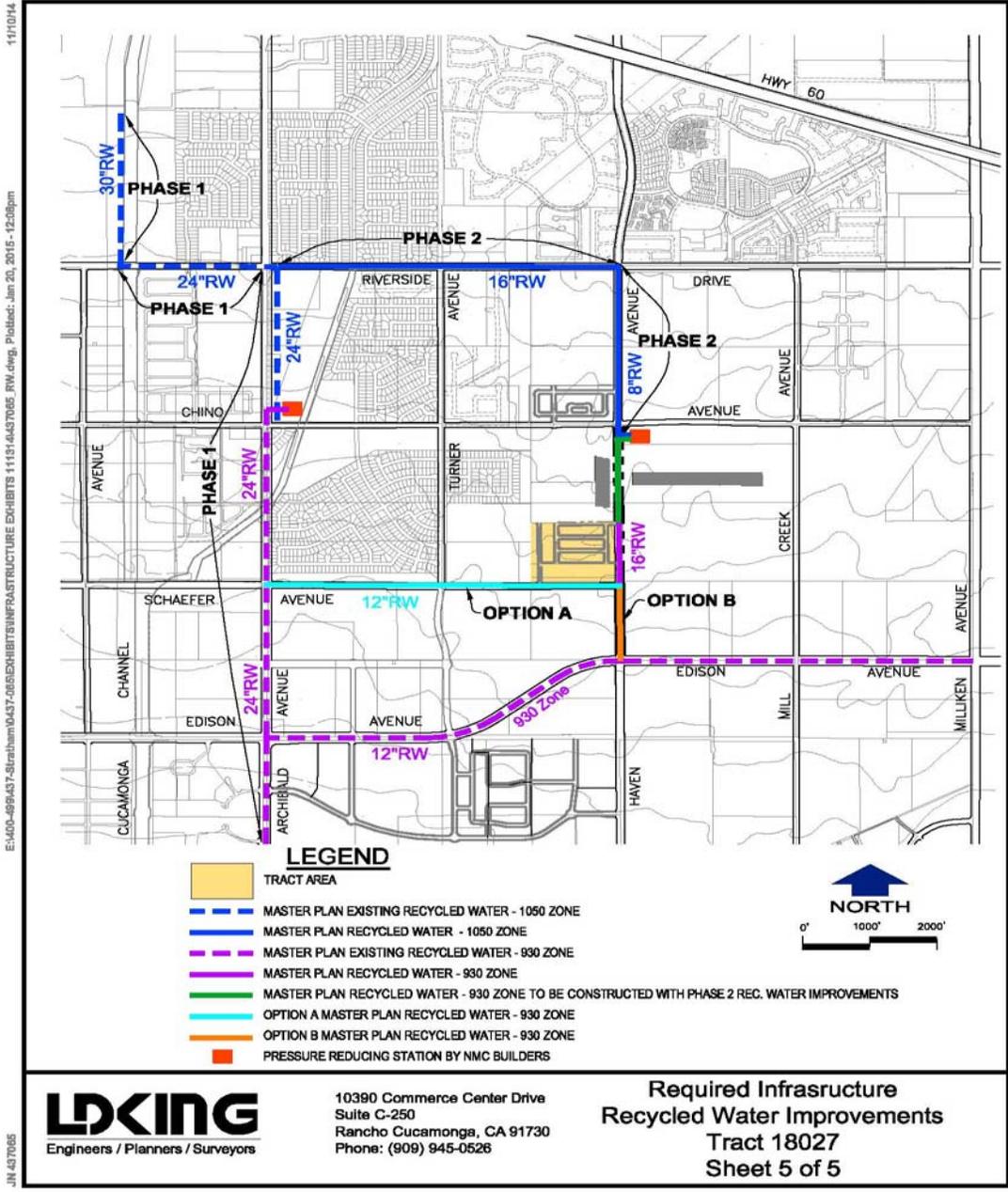
**Required Infrastructure
 Storm Drain Improvements
 Tract 18027
 Sheet 3 of 5**

EXHIBIT F



11/10/14
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EXHIBIT F



11/10/14
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