

CITY OF ONTARIO
CITY COUNCIL AND HOUSING AUTHORITY
AGENDA
MARCH 4, 2014

Paul S. Leon
Mayor

Alan D. Wapner
Mayor pro Tem

Jim W. Bowman
Council Member

Debra Dorst-Porada
Council Member

Paul Vincent Avila
Council Member



Al C. Boling
City Manager

John E. Brown
City Attorney

Mary E. Wirtes, MMC
City Clerk

James R. Milhiser
Treasurer

WELCOME to a meeting of the Ontario City Council.

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

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

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

CALL TO ORDER (*OPEN SESSION*)

6:00 p.m.

ROLL CALL

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

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

CLOSED SESSION

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

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

PLEDGE OF ALLEGIANCE

Council Member Bowman

INVOCATION

Brother Donald Sanders, Calvary Apostolic Tabernacle

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 February 4, 2014, and approving same as on file in the Records Management Department.

2. BILLS/PAYROLL

Bills January 26, 2014 through February 8, 2014 and **Payroll** January 26, 2014 through February 8, 2014 when audited by the Finance Committee.

3. A RESOLUTION APPROVING AN IMPROVEMENT AGREEMENT, IMPROVEMENT SECURITY AND FINAL TRACT MAP NO. 18911 LOCATED AT THE NORTHEAST CORNER OF FERN AVENUE AND RIVERSIDE DRIVE

That the City Council adopt a resolution approving an improvement agreement, improvement security and Final Tract Map No. 18911 located at the northeast corner of Fern Avenue and Riverside Drive.

RESOLUTION NO. _____

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF ONTARIO, CALIFORNIA, APPROVING AN IMPROVEMENT AGREEMENT, IMPROVEMENT SECURITY AND FINAL TRACT MAP NO. 18911 LOCATED ON THE NORTHEAST CORNER OF FERN AVENUE AND RIVERSIDE DRIVE.

4. A RESOLUTION APPROVING AN IMPROVEMENT AGREEMENT, IMPROVEMENT SECURITY AND PARCEL MAP NO. 19336 LOCATED AT THE SOUTHWEST CORNER OF ONTARIO MILLS PARKWAY AND ETIWANDA AVENUE

That the City Council adopt a resolution approving an improvement agreement, improvement security and Parcel Map No. 19336, located at the southwest corner of Ontario Mills Parkway and Etiwanda Avenue within the Crossroads Business Park Specific Plan.

RESOLUTION NO. _____

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF ONTARIO, CALIFORNIA, APPROVING AN IMPROVEMENT AGREEMENT, IMPROVEMENT SECURITY AND PARCEL MAP NO. 19336, LOCATED AT THE SOUTHWEST CORNER OF ONTARIO MILLS PARKWAY AND ETIWANDA AVENUE.

5. AGREEMENT FOR ARCHITECTURAL SERVICES BETWEEN ROBERT R. COFFEE ARCHITECT + ASSOCIATES AND THE CITY OF ONTARIO FOR THE ANTHONY MUNOZ COMMUNITY CENTER REHABILITATION AND PARK PROJECT/ROBERT R. COFFEE ARCHITECT + ASSOCIATES

That the City Council take the following actions:

- (A) Award an Agreement for Architectural Services (“Agreement”) to Robert R. Coffee Architect + Associates (RCA+A) of Newport Beach, California, in the amount of \$545,210, for the Anthony Munoz Community Center, located at 1240 West Fourth Street, architectural services related to the conceptual and architectural construction plans for a new community center including a new 10,000 square foot community center and a community pool at Anthony Munoz Hall of Fame Park;
- (B) Authorize a project reserve in the amount of \$114,225 for additional architectural services, if required, to include architectural drawings for a gymnasium, \$30,000 for estimated reimbursable expenses, and a 15% contingency of \$103,415; and
- (C) Authorize the City Manager or his designee to execute any and all documents necessary or desirable to implement this project, including but not limited to, contracts, and contract amendments to increase scope of work to add gymnasium design option.

6. AN ORDINANCE APPROVING AN AMENDMENT TO THE DEVELOPMENT AGREEMENT BETWEEN ONTARIO SCHAEFER HOLDINGS, LLC, AND THE CITY OF ONTARIO TO UPDATE CERTAIN PROVISIONS OF THE EXISTING DEVELOPMENT AGREEMENT AND TO PROVIDE FOR PHASING OF THE CONSTRUCTION OF PUBLIC INFRASTRUCTURE

That the City Council consider and adopt an ordinance approving an amendment (File No. PDA14-001) to the Development Agreement between Ontario Schaefer Holdings, LLC of Anaheim Hills, CA, and the City of Ontario to update certain provisions of the existing Development Agreement to conform with the Construction Agreement Amendment with NMC Builders, LLC, and to provide for phasing of the construction of public infrastructure.

ORDINANCE NO. _____

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF ONTARIO, CALIFORNIA, APPROVING AN AMENDMENT TO THE DEVELOPMENT AGREEMENT BETWEEN THE CITY OF ONTARIO AND ONTARIO SCHAEFER HOLDINGS, LLC, FILE NO. PDA14-001, TO UPDATE CERTAIN PROVISIONS OF THE EXISTING DEVELOPMENT AGREEMENT TO CONFORM WITH THE CONSTRUCTION AGREEMENT AMENDMENT WITH NMC BUILDERS LLC, AND TO PROVIDE FOR PHASING OF THE CONSTRUCTION OF PUBLIC INFRASTRUCTURE AS PROVIDED IN TRACT MAP NO. 18419, AND MAKING FINDINGS IN SUPPORT THEREOF (APN: 0218-201-14 AND 44).

PUBLIC HEARINGS

7. A DESIGN-BUILD CONTRACT FOR SOLAR PHOTOVOLTAIC PROJECTS AT THE ONTARIO CONVENTION CENTER AND THE ONTARIO POLICE DEPARTMENT BETWEEN THE CITY OF ONTARIO AND SUNPOWER CORPORATION, SYSTEMS

That the City Council take the following actions:

- A) Adopt a resolution, making findings pursuant to the California Environmental Quality Act that the whole proposed project is statutorily exempt under Public Resources Code, Section 21080.35 and categorically exempt under State CEQA Guidelines, Sections 15301 and 15311, and which further makes certain Government Code findings related to energy services contracting and authorizes the execution of a Design-Build Contract ("Contract") with SunPower Corporation, Systems ("SunPower") of Richmond, California, for the construction of solar photovoltaic projects at the Ontario Convention Center ("OCC"), located at 2000 East Convention Center Way and the Ontario Police Department ("OPD"), located at 2500 South Archibald Avenue, in the amount of \$10,141,025, plus 15% contingency of \$1,521,154 for a total not to exceed amount of \$11,662,179 (on file with the Records Management Department);
- B) Approve a 25-year Operations and Maintenance Agreement ("O&M Agreement") between the City of Ontario and SunPower, in the amount of \$1,047,533 (on file with the Records Management Department);

- C) Approve a 25-year Performance Guarantee Agreement (“PEGU Agreement”) between the City of Ontario and SunPower, in the amount of \$189,698 (on file with the Records Management Department);
- D) Approve the Third Amendment to the Professional Services Agreement between the City of Ontario and Sage Renewable Energy Consulting, Inc. of Inverness, California, in the amount of \$62,800 (on file with the Records Management Department); and
- E) Authorize the City Manager to execute the contract and agreements necessary to implement this project.

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.

RESOLUTION NO. _____

A RESOLUTION THE CITY COUNCIL OF THE CITY OF ONTARIO, CALIFORNIA, MAKING FINDINGS UNDER THE GOVERNMENT CODE AND THE CALIFORNIA ENVIRONMENTAL QUALITY ACT IN FURTHERANCE OF ITS SOLAR PHOTOVOLTAIC PROJECT WITH SUNPOWER CORPORATION.

8. A PUBLIC HEARING TO CONSIDER AN ORDINANCE TO MODIFY SALARY COMPENSATION FOR CITY COUNCIL MEMBERS AND ADOPTION OF A RESOLUTION TO MODIFY SALARY COMPENSATION FOR THE CITY CLERK AND CITY TREASURER

That the City Council introduce and waive further reading of an ordinance to modify salary compensation for City Council Members subject to California Government Code Section 36516; Ontario Municipal Code Title 2, Chapter 1, Article 2; and Ontario Municipal Code Title 2, Chapter 3, Article 5; and adopt a resolution to modify salary compensation for the City Clerk and City Treasurer.

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, AMENDING SECTION 2-1.203 OF THE ONTARIO MUNICIPAL CODE RELATING TO COUNCIL MEMBER SALARIES.

RESOLUTION NO. _____

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF
ONTARIO, CALIFORNIA, SETTING THE COMPENSATION OF THE
CITY CLERK AND CITY TREASURER AND RESCINDING
PREVIOUS RESOLUTION NO. 2009-005.

COUNCIL MATTERS

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

STAFF MATTERS

City Manager Boling

ADJOURNMENT

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

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

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

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

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

No Reportable Action	Continue	Approved
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/ /

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Disposition: _____

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

CITY OF ONTARIO

Agenda Report

March 4, 2014

SECTION: CONSENT CALENDAR

SUBJECT: A RESOLUTION APPROVING AN IMPROVEMENT AGREEMENT, IMPROVEMENT SECURITY AND FINAL TRACT MAP NO. 18911 LOCATED AT THE NORTHEAST CORNER OF FERN AVENUE AND RIVERSIDE DRIVE

RECOMMENDATION: That the City Council adopt a resolution approving an improvement agreement, improvement security and Final Tract Map No. 18911 located at the northeast corner of Fern Avenue and Riverside Drive.

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

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

BACKGROUND: The 14.86 acre subdivision, located within the Borba Village Specific Plan, was submitted by the developer, FH II, LLC (Frontier Communities) of Rancho Cucamonga, California (Mr. Richard Munkvold, Managing Member). The development consists of 130 lots for single-family homes and 49 lettered lots for open space and public utility purposes as shown on the attached exhibit. Public improvements required of the project include roadway construction, curb and gutter, sidewalk, street lights, sewer, water and storm drain improvements and parkway landscaping. Tentative Tract Map No. 18911 was approved by the Planning Commission on November 18, 2013.

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

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

Prepared by: Dean A. Williams
Department: Engineering

City Manager
Approval: 

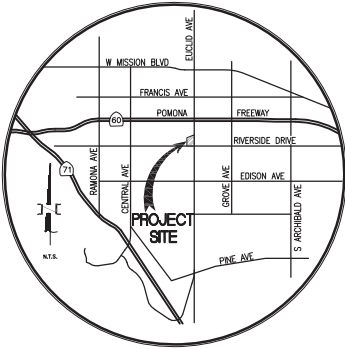
Submitted to Council/O.H.A. 03/04/2014

Approved: _____

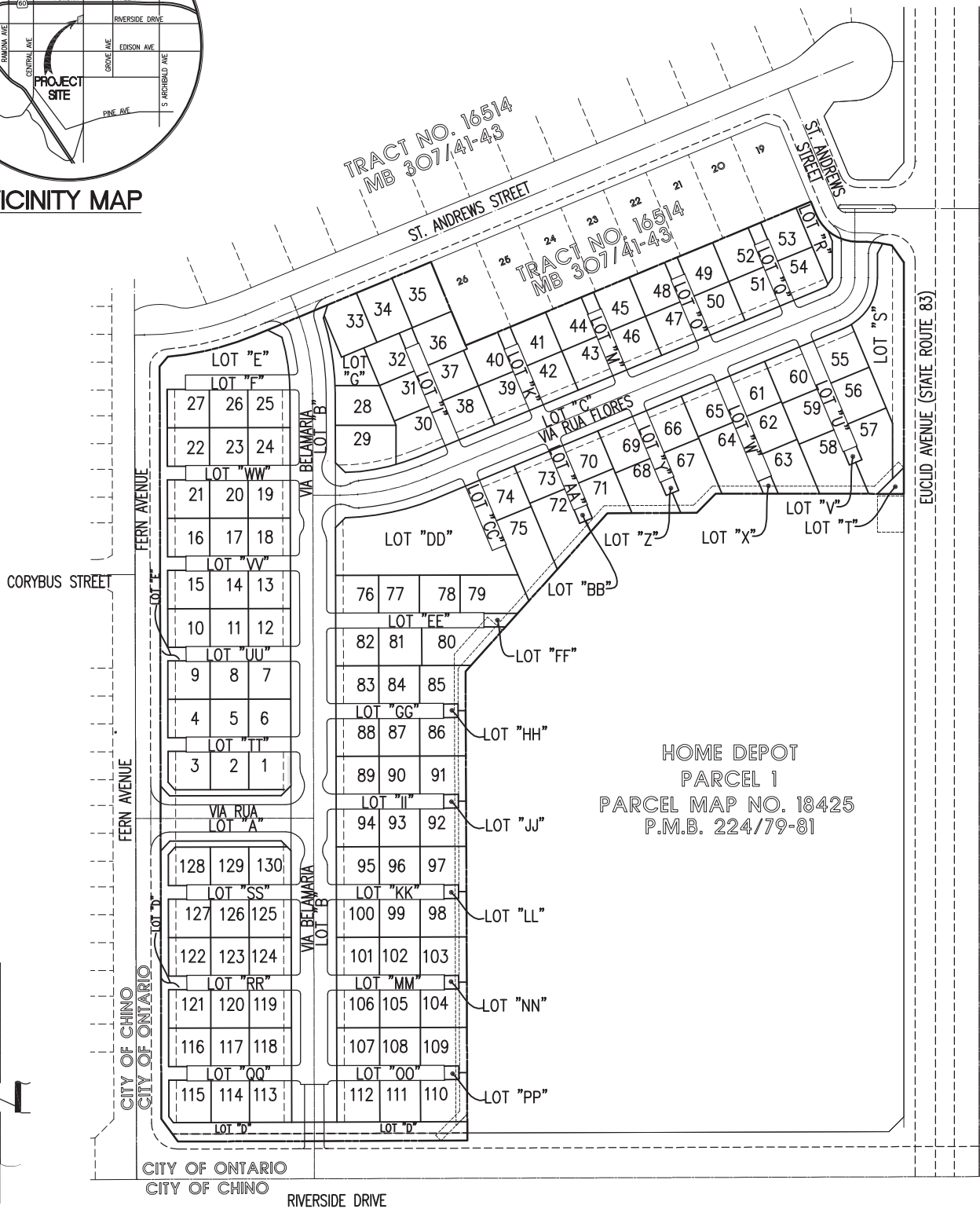
Continued to: _____

Denied: _____

EXHIBIT



VICINITY MAP



SCALE 1" = 200'

CITY OF ONTARIO
ENGINEERING DEPARTMENT

FILE NO. TRACT NO. 18911

APPLICANT: **FH II, LLC**

PROJECT: **130 NUMBERED LOTS
40 LETTERED LOTS**

RESOLUTION NO. _____

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF ONTARIO, CALIFORNIA, APPROVING AN IMPROVEMENT AGREEMENT, IMPROVEMENT SECURITY AND FINAL TRACT MAP NO. 18911 LOCATED ON THE NORTHEAST CORNER OF FERN AVENUE AND RIVERSIDE DRIVE.

WHEREAS, Tentative Tract Map No. 18911, submitted for approval by the developer, FH II, LLC, a California Limited Liability Company of Rancho Cucamonga, California, was approved by the Planning Commission of the City of Ontario on November, 18, 2013; and

WHEREAS, Tentative Tract Map No. 18911 consisting of 130 numbered lots and 49 lettered lots, being a subdivision of Remainder Parcel of Parcel map No. 18425, as shown on a map recorded in Book 224, Pages 79 through 81 of Parcel Maps, Records of San Bernardino, California, is the division of land approved, as shown on Tentative Tract Map No. 18911; and

WHEREAS, to meet the requirements established as prerequisite to final approval of Final Tract Map No. 18911, 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, the requirement of the preparation of Covenants, Conditions and Restrictions (CC&Rs), reviewed and approved by the City Attorney's office and the City Engineer, to ensure the right to mutual ingress and egress and continued maintenance of common facilities by the commonly affected property owners, has been deferred to coincide with the timing of recordation of the Final Map of Tract No. 18911.

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

1. That said Improvement Agreement be, and the same is approved and the City Manager is authorized to execute same on behalf of said City, and the City Clerk is authorized to attest thereto; and
2. That said improvement security is accepted as good and sufficient, subject to approval as to form and content thereof by the City Attorney; and
3. That Final Tract Map No. 18911 be approved and that the City Clerk be authorized to execute the statement thereon on behalf of said City.

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

PASSED, APPROVED, AND ADOPTED this 4th day of March 2014.

PAUL S. LEON, MAYOR

ATTEST:

MARY E. WIRTES, MMC, CITY CLERK

APPROVED AS TO LEGAL FORM:

BEST BEST & KRIEGER LLP
CITY ATTORNEY

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

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

AYES: COUNCIL MEMBERS:

NOES: COUNCIL MEMBERS:

ABSENT: COUNCIL MEMBERS:

MARY E. WIRTES, MMC, CITY CLERK

(SEAL)

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

MARY E. WIRTES, MMC, CITY CLERK

(SEAL)

CITY OF ONTARIO

Agenda Report

March 4, 2014

SECTION: CONSENT CALENDAR

SUBJECT: A RESOLUTION APPROVING AN IMPROVEMENT AGREEMENT, IMPROVEMENT SECURITY AND PARCEL MAP NO. 19336 LOCATED AT THE SOUTHWEST CORNER OF ONTARIO MILLS PARKWAY AND ETIWANDA AVENUE

RECOMMENDATION: That the City Council adopt a resolution approving an improvement agreement, improvement security and Parcel Map No. 19336, located at the southwest corner of Ontario Mills Parkway and Etiwanda Avenue within the Crossroads Business Park Specific Plan.

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

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


BACKGROUND: Parcel Map No. 19336 consisting of four numbered lots and two lettered lots on 29.91 acres for the development of four industrial buildings has been submitted by the developer, PSIP WR Etiwanda, LLC of Newport Beach, California, a Delaware Limited Liability Company (Western Realco). This subdivision is located at the southwest corner of Ontario Mills Parkway and Etiwanda Avenue as shown on Exhibit 1. Improvements required of the project include curb and gutter, sidewalk, street light, traffic signal modification, Portland Cement Concrete (PCC) pavement, and parkway landscaping.

Tentative Parcel Map No. 19336 was approved by the Planning Commission on June 26, 2012 and is consistent with the adopted Crossroads Business Park Specific Plan.

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

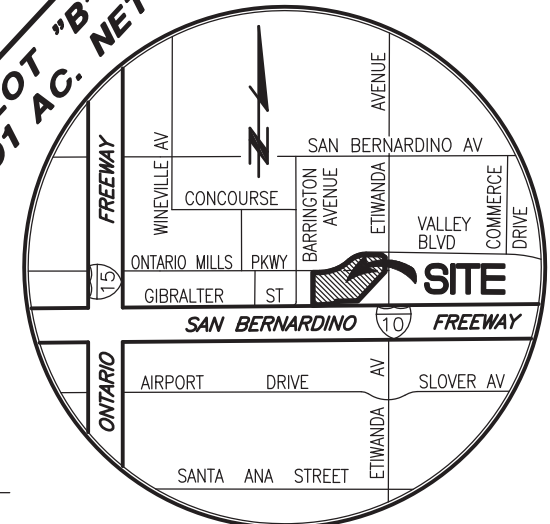
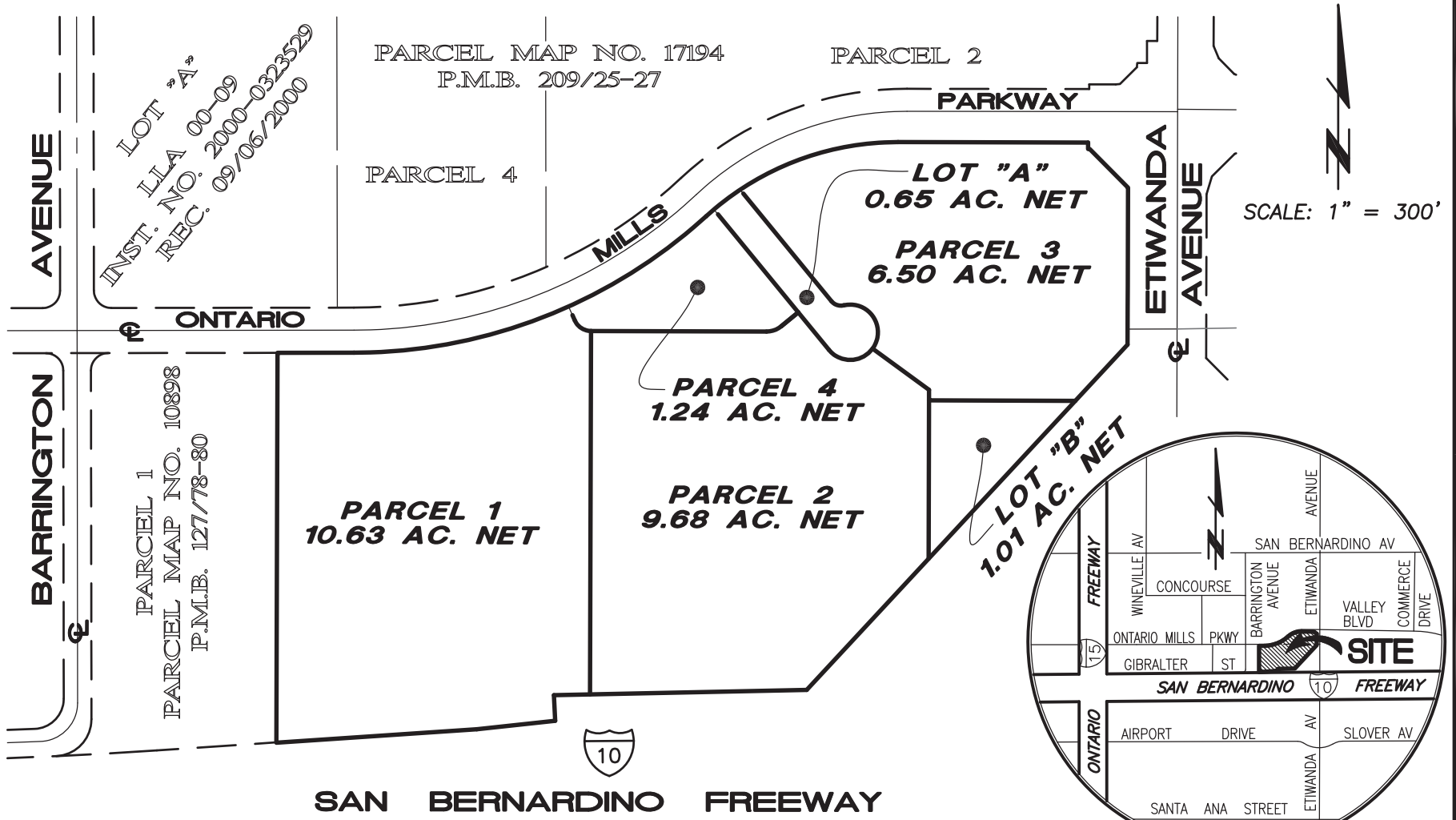
STAFF MEMBER PRESENTING: Louis Abi-younes, P.E., City Engineer

Prepared by: Mike Eskander, P.E.
Department: Engineering

City Manager
Approval: 

Submitted to Council/O.H.A. 03/04/2014
Approved: _____
Continued to: _____
Denied: _____

EXHIBIT 1



Thienes Engineering, Inc.
CIVIL ENGINEERING • LAND SURVEYING
14349 FIRESTONE BOULEVARD
LA MIRADA, CALIFORNIA 90638
PH.(714)521-4811 FAX(714)521-4173

**CITY OF ONTARIO
ENGINEERING DEPARTMENT**

FILE NO. PM 19336

APPLICANT:
PSIP WR ETIWANDA, LLC
**PROJECT: 4 NUMBERED LOTS
2 LETTERED LOTS**

RESOLUTION NO. _____

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF ONTARIO, CALIFORNIA, APPROVING AN IMPROVEMENT AGREEMENT, IMPROVEMENT SECURITY AND PARCEL MAP NO. 19336, LOCATED AT THE SOUTHWEST CORNER OF ONTARIO MILLS PARKWAY AND ETIWANDA AVENUE.

WHEREAS, Tentative Parcel Map No. 19336, submitted for approval by the developer, PSIP WR Etiwanda, LLC of Newport Beach, California , a Delaware Limited Liability Company, was approved by the Planning Commission of the City of Ontario on June 26, 2012; and

WHEREAS, Tentative Parcel Map No. 19336 consists of four (4) numbered lots and two (2) lettered lots, being a subdivision of parcel 1 through 7, inclusive, of Parcel Map No. 6945, as per map filed in book 76, pages 50 and 51, of parcel maps, and portion of Ontario Mills Parkway as shown on said map, together with parcel 5 of amending Parcel Map No. 17149, as per map filed in book 239, pages 7 through 10, inclusive, of parcel maps, all maps in the office of the County Recorder of said County; and

WHEREAS, to meet the requirements established as prerequisite to final approval of Parcel Map No. 19336, 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 developer has prepared and submitted Covenants, Conditions and Restrictions (CC&Rs), and they have been reviewed and approved by the City Attorney's office, to ensure the right to mutual ingress and egress and continued maintenance of common facilities by the commonly affected property owners.

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

1. That said improvement agreement be, and the same is, approved and the City Manager is authorized to execute same on behalf of said City, and the City Clerk is authorized to attest thereto; and
2. That said improvement security is accepted as good and sufficient, subject to approval as to form and content thereof by the City Attorney; and
3. That Parcel Map No. 19336 be approved and that the City Clerk be authorized to execute the statement thereon on behalf of said City.

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

PASSED, APPROVED, AND ADOPTED this 4th day of March 2014.

PAUL S. LEON, MAYOR

ATTEST:

MARY E. WIRTES, MMC, CITY CLERK

APPROVED AS TO LEGAL FORM:

BEST BEST & KRIEGER LLP
CITY ATTORNEY

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

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

AYES: COUNCIL MEMBERS:

NOES: COUNCIL MEMBERS:

ABSENT: COUNCIL MEMBERS:

MARY E. WIRTES, MMC, CITY CLERK

(SEAL)

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

MARY E. WIRTES, MMC, CITY CLERK

(SEAL)

CITY OF ONTARIO

Agenda Report

March 4, 2014

SECTION: CONSENT CALENDAR

SUBJECT: AGREEMENT FOR ARCHITECTURAL SERVICES BETWEEN ROBERT R. COFFEE ARCHITECT + ASSOCIATES AND THE CITY OF ONTARIO FOR THE ANTHONY MUNOZ COMMUNITY CENTER REHABILITATION AND PARK PROJECT

RECOMMENDATION: That the City Council take the following actions:

- (A) Award an Agreement for Architectural Services ("Agreement") to Robert R. Coffee Architect + Associates (RCA+A) of Newport Beach, California, in the amount of \$545,210, for the Anthony Munoz Community Center, located at 1240 West Fourth Street, architectural services related to the conceptual and architectural construction plans for a new community center including a new 10,000 square foot community center and a community pool at Anthony Munoz Hall of Fame Park;
- (B) Authorize a project reserve in the amount of \$114,225 for additional architectural services, if required, to include architectural drawings for a gymnasium, \$30,000 for estimated reimbursable expenses, and a 15% contingency of \$103,415; and
- (C) Authorize the City Manager or his designee to execute any and all documents necessary or desirable to implement this project, including but not limited to, contracts, and contract amendments to increase scope of work to add gymnasium design option.

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

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

Encourage, Provide or Support Enhanced Recreational, Educational, Cultural and Healthy City Programs, Policies and Activities

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

Prepared by: Julie Bjork
Department: Housing and Municipal Services

City Manager
Approval: 

Submitted to Council/O.H.A.

Approved: _____

Continued to: _____

Denied: _____

03/04/2014

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FISCAL IMPACT: The Adopted Budget for Fiscal Year 2013-2014 includes appropriations totaling \$7,150,000 for the Anthony Munoz Community Center Rehabilitation and Park Project. The approved project budget covers the cost of architectural and engineering services, demolition, and construction of a 10,000 square foot new community center with a new community pool.

The total recommended allocation for architectural services is \$792,850. The approved allocation would cover the following costs: design, plans and specifications of new community center and pool (\$545,210), an optional gymnasium design component (\$114,225), estimated reimbursable expenses (\$30,000), and a 15% contingency (\$103,415).

BACKGROUND: On November 1, 2013, the City issued a Request for Proposals from the prequalified bidders for the Anthony Munoz Community Center Rehabilitation Project. Two bids were received as listed below:

Architectural Firm	City, State
Robert Coffee Architect +Associates	Newport Beach, California
LPA, Inc.	Irvine, California

Upon review of the proposals, staff is recommending RCA+A based upon their superior vision for this project, experience of key staff members, and customer service. RCA+A has assembled a team for this project that has over 17 years of experience in designing award winning community centers. Recent projects include projects located in the cities of Lawndale, Newport Beach, Buena Park, Mission Viejo, Fullerton, and Rancho Cucamonga. RCA+A received California Parks and Recreation Society's Award of Excellence in Facility Design and the American Public Works Association Facility Design – Project of the Year for the Fullerton Community Center.

The proposed scope of work within the contract, in the amount of \$545,210, includes the following key items:

- All work necessary to design and build a minimum 10,000 SF Community Center, a community outdoor pool, and an enclosed tot lot playground accessed from the tiny-tot classroom;
- Exploration of three methods of integrating solar enhancements to the project;
- Research all Leadership in Energy and Environmental Design (LEED) prerequisites in relation to the project scope of work and review for possible LEED credits that can be incorporated into the design and construction for LEED certification and determine possible SCE rebates.

The optional gymnasium design component, in the amount of \$114,225, provides the City with the flexibility to add a gymnasium to this project, if desired.

If approved, the project would begin in Spring 2014 and plans would be ready for bidding by late Winter 2014.

CITY OF ONTARIO

Agenda Report
March 4, 2014

SECTION:
CONSENT CALENDAR

SUBJECT: AN ORDINANCE APPROVING AN AMENDMENT TO THE DEVELOPMENT AGREEMENT BETWEEN ONTARIO SCHAEFER HOLDINGS, LLC, AND THE CITY OF ONTARIO TO UPDATE CERTAIN PROVISIONS OF THE EXISTING DEVELOPMENT AGREEMENT AND TO PROVIDE FOR PHASING OF THE CONSTRUCTION OF PUBLIC INFRASTRUCTURE

RECOMMENDATION: That the City Council consider and adopt an ordinance approving an amendment (File No. PDA14-001) to the Development Agreement between Ontario Schaefer Holdings, LLC of Anaheim Hills, CA, and the City of Ontario to update certain provisions of the existing Development Agreement to conform with the Construction Agreement Amendment with NMC Builders, LLC, and to provide for phasing of the construction of public infrastructure.

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

FISCAL IMPACT: The proposed Development Agreement Amendment will update certain provisions of the existing Development Agreement to conform with the Construction Agreement Amendment with NMC Builders, LLC, and to provide for phasing of the construction of public infrastructure. In addition, the City will receive Public Service Funding fees plus development impact, compliance processing, licensing, and permitting fees. Original Model Colony revenue will not be used to support the New Model Colony development. The Development Agreement and the related tract map conditions require the developer to construct public infrastructure.

STAFF MEMBER PRESENTING: Scott Murphy, Planning Director

Prepared by: Scott Murphy
Department: Planning

City Manager
Approval: 

Submitted to Council/O.H.A. 03/04/2014

Approved: _____

Continued to: _____

Denied: _____

6

BACKGROUND: On February 18, 2014, the City Council introduced an ordinance approving an amendment (File No. PDA14-001) to the Development Agreement between Ontario Schaefer Holdings, LLC of Anaheim Hills, CA. Ontario Schaefer Holdings, LLC, (“Ontario Schaefer”) and the City recognized that the financial commitment required for construction in the New Model Colony was substantial. To adequately forecast these costs and gain assurance that the project may proceed under the existing policies, rules and regulations, Ontario Schaefer entered into a Development Agreement with the City providing for the development of up to 234 dwelling units. The Development Agreement, approved in June 2007, addressed issues of parkland, public facilities, public services funding, infrastructure and affordable housing.

The Amendment incorporates new and modified provisions to conform to the Construction Agreement Amendment, including:

- Continues the requirement for funding of Fire Station No. 9
- Requires evidence of compliance with the Construction Agreement requirements for participation in funding of regional water infrastructure and regional storm water treatment facilities (Mill Creek Wetlands)
- Modifies the amounts and escalation factors for the funding for City services

The amendment also incorporates specific requirements for the phased construction and completion of required public infrastructure, including regional and local streets and traffic signals, water and sewer utilities, and regional and local storm drain improvements.

The Development Agreement and the amendment continue to require funding for all new City expenses created by the development of the project. These expenses include all additional City-provided services, infrastructure and affordable housing requirements.

The main points of the Development Agreement including the provisions of the amendment are as follows:

Term:	Maintains the same term of ten years with a five year option.
Assignment:	Assignable with all terms and conditions applying to the assignee. New provisions are added in the Amendment to recognize and provide City approval of all partial assignments.
Fees:	
Development Impact Fees:	To be paid at current amounts; varies by category (i.e.; Streets and Bridges, Police, Fire, Open Space/Parks etc.). This is a separate fee from existing City licensing fees and permits and is due at building permit issuance for each unit.
Public Services Funding Fees:	Reduces the fee from \$1,980/unit to \$1,800/unit due in two installments:

- 1) \$900/unit with the issuance of each building permit or within 30 days of City commencing construction of Fire Station No. 9, whichever occurs first.
- 2) \$900 upon issuance of each remaining building permits, the cost of which shall increase each January 1, beginning January 1, 2014.

Community Facilities

District (CFD):	City will cooperate with Owner to form a CFD to reimburse costs of the regional backbone infrastructure construction and maintenance of public facilities.
Parks/Open Space:	Maintains The Ontario Plan (General Plan) requirement of five acres per 1,000 projected population through park dedication and/or the payment of in-lieu fees.
Housing:	Maintains the provision of affordable housing as required by the General Plan through construction, rehabilitation, or by paying an In-Lieu Fee.
Schools:	Maintains the requirement to satisfy Mountain View Elementary School District and Chaffey High School District school facilities requirements.
Termination:	Maintains the City's ability to terminate the Agreement if substantial evidence is found of noncompliance.

In considering the application at their meeting January 28, 2014, the Planning Commission found that the Development Agreement Amendment is consistent with State law, The Ontario Plan, the City's Development Agreement policies, and other Development Agreements previously approved for NMC development, and unanimously recommended approval of the Development Agreement Amendment to the City Council.

ENVIRONMENTAL REVIEW: The environmental impacts of this project were previously reviewed in conjunction with The Avenue Specific Plan, for which an Environmental Impact Report (SCH #2005071109) was certified by the City Council on December 19, 2006. This Application introduces no new significant environmental impacts. All previously adopted mitigation measures are a condition of project approval and are incorporated herein by reference.

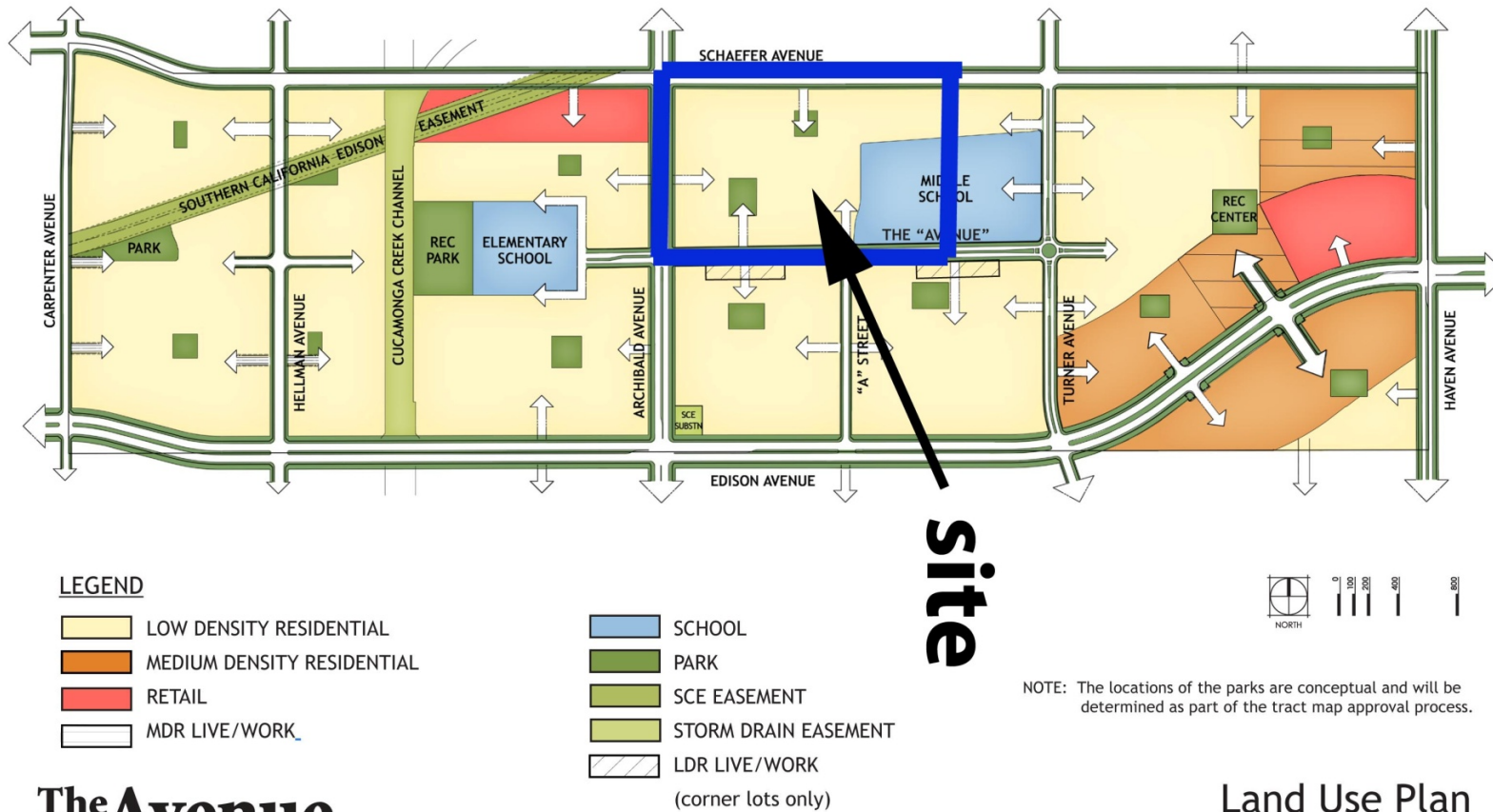


EXHIBIT "A"
THE AVENUE SPECIFIC PLAN LAND USE MAP



PLANNING COMMISSION STAFF REPORT

January 28, 2014

SUBJECT: An Amendment to the Development Agreement between Ontario Schaefer Holdings, LLC, and the City of Ontario (**File No. PDA14-001**) to update certain provisions of the existing Development Agreement to conform with the Construction Agreement Amendment with NMC Builders LLC

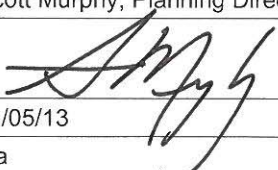
PROPERTY OWNER: Ontario Schaefer Holdings, LLC

RECOMMENDED ACTION: That the Planning Commission recommend City Council adoption of an ordinance approving the Amendment to the Development Agreement between Ontario Schaefer Holdings, LLC, and the City of Ontario.



Figure 1. Location Map

BACKGROUND: On December 19, 2006, the City Council gave first reading to the ordinance approving The Avenue Specific Plan (File No. PSP05-003) and certified the Environmental Impact Report (EIR) for the specific plan. On May 22, 2007, the Planning Commission approved Tentative Tract Map No. 18419 for the development of 234

Case Planner: Scott Murphy, Planning Director	Hearing Body	Date	Decision	Action
Planning Director	DAB			
Approval: 	ZA			
Submittal Date: 11/05/13	PC	01/28/14	Approved	Recommend
Hearing Deadline: n/a	CC			Final

single family units on the subject property. On June 19, 2007, the City Council approved the Development Agreement between the City of Ontario and Ontario Land Investments, Inc. ("Ontario Land"), the original applicant for the property.

The original Development Agreement and the proposed Amendment applies to 59.82 acres of land generally located on the east side of Archibald Avenue, south of Shaefer Avenue. The original Development Agreement granted to Ontario Land a vested right to develop the project subject to the terms and conditions of the Development Agreement and The Avenue Specific Plan.

The original Development Agreement covered issues of parkland, public facilities, public services funding, infrastructure and affordable housing. These provisions in the original Development Agreement were based on similar provisions from the Construction Agreement between the City and NMC Builders LLC. The original Development Agreement was based upon the model development agreement that was developed in coordination with the City attorney's office and legal counsel for NMC Builders. This model Development Agreement was consistent with the provisions of the original Construction Agreement. The LLC agreement between NMC Builders' members requires that members of the LLC enter into Development Agreements that are consistent with the provisions of the Construction Agreement as amended.

In August 2012, the City and NMC Builders, LLC, entered into an Amended and Restated Construction Agreement known as the Construction Agreement Amendment. The Construction Agreement Amendment included several modifications that apply to the original Development Agreement between the City and Ontario Land. Additionally, the Construction Agreement Amendment noted the need to amend the existing Development Agreements for NMC Builders, LLC, members to provide more specific infrastructure requirements as the public infrastructure to be constructed by NMC Builders, LLC, was significantly reduced.

State law and Section 2.5 of the existing Development Agreement provide that amendments may be made to the Development Agreement, upon the mutual agreement of the parties, using the same process and procedures as for the consideration and approval of the original Development Agreement. Ontario Land is now seeking to amend the Development Agreement consistent with the Construction Agreement Amendment.

STAFF ANALYSIS: The proposed Amendment continues to apply to the same area as the original Development Agreement.

The Amendment incorporates new and modified provisions to conform to the Construction Agreement Amendment, including:

- Continues the requirement for funding of Fire Station No. 9

- Requirements Ontario Land to have evidence of compliance with the Construction Agreement requirements for participation in funding of regional water infrastructure and regional storm water treatment facilities (Mill Creek Wetlands)
- Modifies the amounts and escalation factors for the funding of City services

The Amendment also incorporates specific requirements for the phased construction and completion of required public infrastructure, including regional and local streets and traffic signals, water and sewer utilities, and regional and local storm drain improvements.

The Development Agreement and the Amendment continue to require funding for all new City expenses created by the development of the project. These expenses include all additional City-provided services, infrastructure and affordable housing requirements.

The main points of the Development Agreement including the provisions of the Amendment are as follows:

Term: Maintains the same term of ten (10) years with a five (5) year option.

Assignment: Assignable with all terms and conditions applying to the assignee. New provisions are added in the Amendment to recognize and provide City approval of all partial assignments.

Fees:

Development Impact Fees: To be paid at current amounts; varies by category (i.e.; Streets and Bridges, Police, Fire, Open Space/Parks etc.). This is a separate fee from existing City licensing fees and permits and is due at building permit issuance for each unit.

Public Services Funding Fees: Reduces the fee from \$1,980/unit to \$1,800/unit due in two (2) installments:

- 1) \$900/unit with the issuance of the each building permit or within 30 days of City commencing construction of the Fire Station No. 9, whichever occurs first.
- 2) \$900 upon issuance of each remaining building permits, the cost of which shall increase each January 1, beginning January 1, 2014.

Community Facilities
District (CFD):

City will cooperate with Owner to form a CFD to reimburse costs of infrastructure construction and maintenance of public facilities.

Parks/Open Space:	Maintains The Ontario Plan (General Plan) requirement of five (5) acres per 1,000 projected population through park dedication and/or the payment of in-lieu fees; and recognizes that Ontario Land will construct 2.13 acres of parks and open space and pay a pro-rate fee for the remainder of the park and open space requirements
Housing:	Maintains the provision of affordable housing as required by the General Plan through construction, rehabilitation, or by paying an In-Lieu Fee.
Schools:	Maintains the requirement to satisfy Mountain View Elementary School District and Chaffey High School District school facilities requirements.
Termination:	Maintains the City's ability to terminate the Agreement if substantial evidence is found of noncompliance.

Staff finds that the Amendment is consistent with State law, The Ontario Plan, the City's Development Agreement policies. As a result, staff requests the Planning Commission recommend approval of the Development Agreement Amendment to the City Council.

COMPLIANCE WITH THE ONTARIO PLAN: The proposed project is consistent with the principles, goals and policies contained within the six components that make up The Ontario Plan (TOP), including: (1) Vision, (2) Governance, (3) Policy Plan (General Plan), (4) City Council Priorities, (5) Implementation and (6) Tracking and Feedback.

Vision

- Planning systems and personnel that exemplify the very best in professional practices, based on a stable Vision and constantly evolving Ontario Plan.
- A demonstrated ability to attract housing in pursuit of our acknowledged responsibility to balance housing with the job growth that drives our quality of life.
- Superior quality and design of the built environment and open spaces through careful attention to detail at every scale, including public and private spaces and structures.
- A reputation for being good for business to work with while still satisfying broader community interests.
- A community that is widely recognized as a creative and effective partner and a leader within the Southern California region and the Inland Empire.
- A community that continues to step into the future ahead of everyone else.

Policy Plan

Land Use

- LU1-1 *Strategic Growth.* We concentrate growth in strategic locations that help create place and identity, maximize available and planned infrastructure, and foster the development of transit.
- LU1-3 *Adequate Capacity.* We require adequate infrastructure and services for all development.
- LU1-6 *Complete Community.* We incorporate a variety of land uses and building types in our land use planning efforts that result in a complete community where residents at all stages of life, employers, workers and visitors have a wide spectrum of choices of where they can live, work, shop and recreate within Ontario.
- LU3-1 *Development Standards.* We maintain clear development standards which allow flexibility to achieve our vision.
- 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.
- LU4-1 *Commitment to Vision.* We are committed to achieving our vision but realize that it may take time and several interim steps to get there.
- LU4-3 *Infrastructure Timing.* We require that the necessary infrastructure and services be in place prior to or concurrently with development.

Housing

- H1-3 *Community Amenities.* We shall provide adequate public services, infrastructure, open space, parking and traffic management, pedestrian, bicycle and equestrian routes and public safety for neighborhoods consistent with City master plans and neighborhood plans.
- H3 A City regulatory environment that balances the need for creativity and excellence in residential design, flexibility and predictability in the project approval process, and the provision of an adequate supply and prices of housing.
- H3-3 *Development Review.* We maintain a residential development review process that provides certainty and transparency for project stakeholders and the public, yet allows for the appropriate review to facilitate quality housing development.

Parks & Recreation

- PR1-6 *Private Parks.* We expect development to provide a minimum of 2 acres of developed private park space per 1,000 residents.
- PR1-9 *Phased Development.* We require parks be built in new communities before a significant proportion of residents move in.

Community Design

- CD5 A sustained level of maintenance and improvement of properties, buildings and infrastructure that protects the property values and encourages additional public and private investments.
- CD2-13 *Entitlement Process.* We work collaboratively with all stakeholders to ensure a high degree of certainty in the efficient review and timely processing of all development plans and permits.

City Council Priorities

Primary Goal:

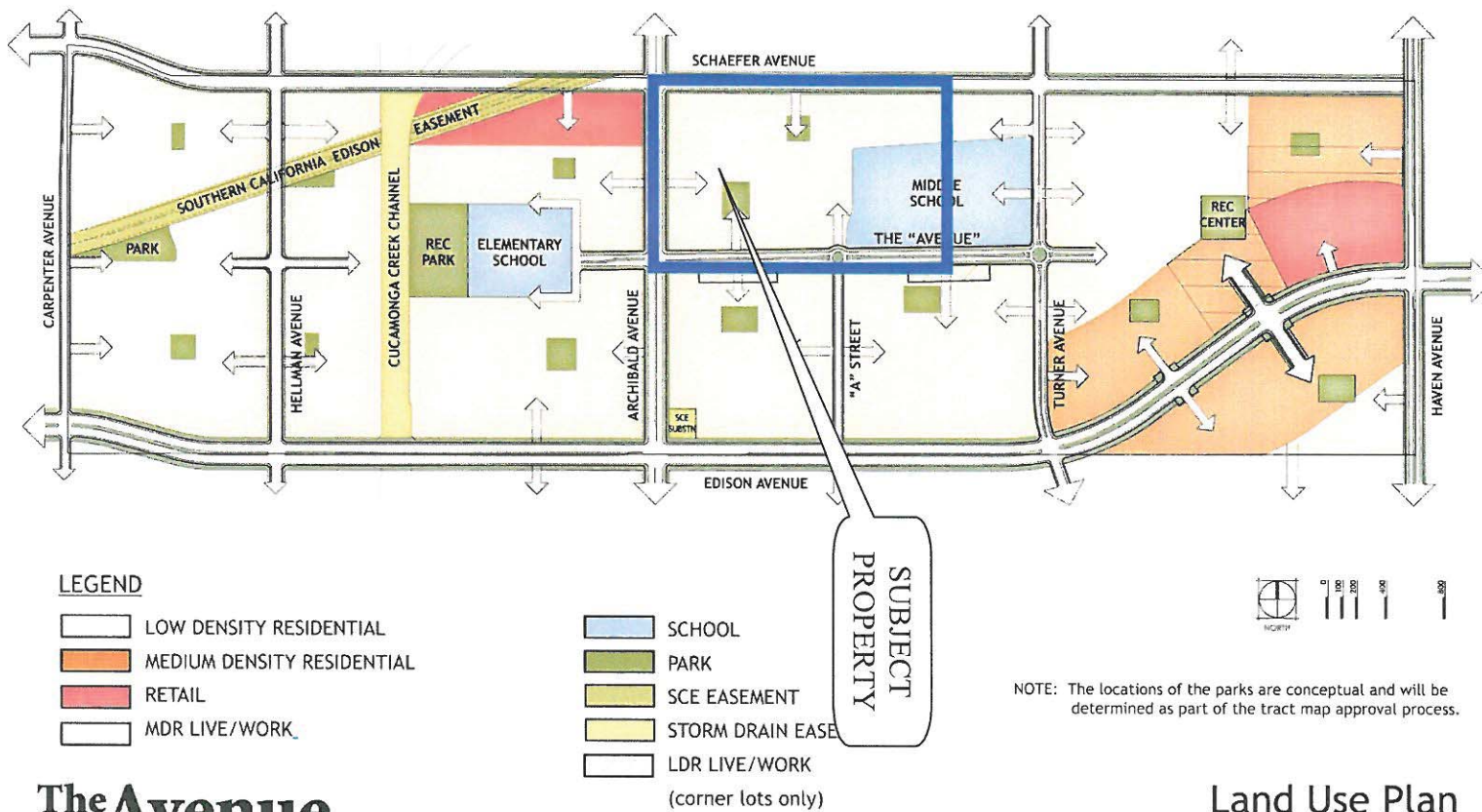
Develop Strategies and Take Actions, Including Regaining Local Control of the Ontario International Airport, to Minimize the Negative Impacts of the Global Financial Downturn on Ontario's Economy and the City's Fiscal Health.

Supporting Goals

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

ENVIRONMENTAL REVIEW: The environmental impacts of this project were previously reviewed in conjunction with The Avenue Specific Plan, for which an Environmental Impact Report (SCH #2005071109) was certified by the City Council on December 19, 2006. This application introduces no new significant environmental impacts. All previously adopted mitigation measures are to be a condition of project approval and are incorporated herein by reference.

EXHIBIT A
SPECIFIC PLAN MAP



The Avenue
 SPECIFIC PLAN

The New Model Colony Ontario, California

Land Use Plan

3-3

Exhibit 8

Land Use Plan

RESOLUTION NO. PC14-008

A RESOLUTION OF THE PLANNING COMMISSION OF THE CITY OF ONTARIO, CALIFORNIA, RECOMMENDING THE CITY COUNCIL APPROVE AN AMENDMENT TO THE DEVELOPMENT AGREEMENT BETWEEN THE CITY OF ONTARIO AND ONTARIO SCHAEFER HOLDINGS, LLC, (FORMERLY ONTARIO LAND INVESTMENTS, INC) FILE NO. PDA14-001, TO UPDATE CERTAIN PROVISIONS OF THE EXISTING DEVELOPMENT AGREEMENT TO CONFORM WITH THE CONSTRUCTION AGREEMENT AMENDMENT WITH NMC BUILDERS LLC, AND TO PROVIDE FOR PHASING OF THE CONSTRUCTION OF PUBLIC INFRASTRUCTURE AS PROVIDED IN TRACT MAP NOS. 18419, AND MAKING FINDINGS IN SUPPORT THEREOF . (APN: 0218-201-15 AND 44)

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

“The Legislature finds and declares that:

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

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

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

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

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

“A Development Agreement shall specify the duration of the Agreement, the permitted uses of the property, the density of intensity of use, the maximum height and size of proposed buildings, and provisions for reservation or dedication of land for public purposes. The Development Agreement may

include conditions, terms, restrictions, and requirements for subsequent discretionary actions, provided that such conditions, terms, restrictions, and requirements for discretionary actions shall not prevent development of the land for the uses and to the density of intensity of development set forth in this Agreement ...”

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

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

WHEREAS, on the 19th day of June 2007, the City Council of the City of Ontario, adopted Ordinance No. 2862, approving a Development Agreement between Ontario Land Investments, Inc, and the City; and

WHEREAS, attached to this resolution, marked Exhibit “A” and incorporated herein by this reference, is the proposed Amendment to the Development Agreement between Ontario Schaefer Holdings, LLC, and the City of Ontario, File No. PDA13-002. Hereinafter in this Resolution, the Development Agreement is referred to as the “Amendment”; and

WHEREAS, the environmental impacts of this project were previously reviewed in conjunction with The Avenue Specific Plan, for which an Environmental Impact Report (SCH #2005071109) was certified by the City Council on December 19, 2006. 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 January 28, 2014, the Planning Commission of the City of Ontario conducted a hearing to consider the Amendment and concluded said hearing on that date; and

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

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

SECTION 1. Based upon substantial evidence presented to the Planning Commission during the above-referenced hearing on January 28, 2014, including written and oral staff reports, together with public testimony, the Planning Commission hereby specifically finds as follows:

a. The Amendment to the Development Agreement applies to 59.82 acres of residential and school land within The Avenue Specific Plan, generally located

on the east side of Archibald Avenue, south of Schaefer Avenue and is presently vacant; and

b. The properties to the north of the Project site are within the R1 (Single Family Residential) zoning designation and are developed with houses. The property to the south of the project site is within The Avenue Specific Plan, planned for single family residential development and is vacant. The property to the east is within The Avenue Specific Plan, is planned for single family residential development and a middle school and is vacant. The property to the west is within The Avenue Specific Plan, is planned for single family residential development and is vacant.; and

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

d. The Amendment to the Development Agreement focuses revisions to the Development to bring it into consistency with the Construction Agreement between the City and New Model Colony Builders, ("NMC"), LLC; and

e. The Amendment to the Development Agreement will provide for the phasing of various improvements established by The Avenue Specific Plan; and

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

g. The Amendment to 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. The Amendment to the Development Agreement will promote the goals and objectives of the Land Use Element of the Policy Plan; and,

i. The Amendment to the 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 Avenue Specific Plan EIR certified by the City Council on December 19, 2006.

SECTION 3. Based upon the findings and conclusions set forth in Sections 1 above, the Planning Commission hereby recommends the City Council approve the Project.

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

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

SECTION 6. The Secretary shall certify to the adoption of the Resolution.

The Secretary Pro Tempore for the Planning Commission of the City of Ontario shall certify as to the adoption of this Resolution.

I hereby certify that the foregoing Resolution was duly and regularly introduced, passed and adopted by the Planning Commission of the City of Ontario at a regular meeting thereof held on the 28th day of January 2014, and the foregoing is a full, true and correct copy of said Resolution, and has not been amended or repealed.



Rick Gage
Planning Commission Chairman

ATTEST:



Scott Murphy
Planning Director/Secretary of Planning
Commission

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

I, Jeanina Romero, Secretary Pro Tempore of the Planning Commission of the City of Ontario, DO HEREBY CERTIFY that foregoing Resolution No. PC14-008 was duly passed and adopted by the Planning Commission of the City of Ontario at their regular meeting held on January 28, 2014, by the following roll call vote, to wit:

AYES: Delman, Downs, Gage, Mautz, Willoughby, Ricci

NOES: None

ABSENT: None

ABSTAIN: Gregorek



Jeanina M. Romero
Secretary Pro Tempore

Exhibit A – First Amendment to the Development Agreement
(See Attached)

**FIRST AMENDMENT TO THE DEVELOPMENT AGREEMENT BY AND
BETWEEN THE CITY OF ONTARIO AND ONTARIO SCHAEFER HOLDINGS,
LLC**

This First Amendment to the Development Agreement (hereinafter "First Amendment") is entered into as of the _____ day of _____ 20__ by and between the CITY OF ONTARIO, a California municipal corporation (hereinafter "CITY"), and ONTARIO SCHAEFER HOLDINGS, LLC, a Delaware limited liability company (hereinafter "OWNER").

RECITALS

WHEREAS, the CITY and Distinguished Land Development, Inc., a California corporation, as predecessor in interest of OWNER, previously entered into a Development Agreement pursuant to Section 65864, et seq., of the Government Code, (hereinafter the "Original Development Agreement") and such Original Development Agreement was recorded in the County of San Bernardino on June 20, 2007 as Document No. 2007-0428993; and

WHEREAS, Section 2.5 of the Original Development Agreement specifies that the Original Development Agreement may be amended, in whole or in part, only in the manner provided for in Government Code Section 65868.1 and the procedure for adopting and entering into an amendment to the Original Development Agreement shall be the same as the procedure for adopting and entering into the Original Development Agreement; and

WHEREAS, the CITY and NMC Builders, LLC, a California limited liability company ("NMC Builders"), entered into that certain Agreement for the Financing and Construction of Phase I and II Infrastructure Improvements to Serve an Easterly Portion of the New Model Colony dated October 4, 2005, which is referred to both herein and in the Original Development Agreement as the "Construction Agreement;" and

WHEREAS, the CITY and NMC Builders have entered into the Amended and Restated Construction Agreement dated August 21, 2012 that supersedes and replaces the Construction Agreement (the "Construction Agreement Amendment"); and

WHEREAS, NMC Builders is identified as the Developer under the Construction Agreement Amendment; and

WHEREAS, OWNER is a member of NMC Builders and is a "Member" as such term is defined in the Construction Agreement Amendment; and

WHEREAS, OWNER and CITY have agreed to apply certain specified provisions of the Construction Agreement Amendment and to modify the Original Development Agreement; and

WHEREAS, the CITY and OWNER agree that execution of this First Amendment shall constitute Certification of Agreement Compliance under Section 6.4 of the Original Development Agreement and CITY shall issue its "Certificate of Agreement Compliance" within 10 days following the Effective Date of this First Amendment.

AGREEMENTS

NOW, THEREFORE, in consideration of the above recitals and of the mutual agreements hereinafter contained, the parties agree as follows:

1. DEFINITIONS AND EXHIBITS.

1.1 Existing Definitions. The following terms when used in this First Amendment shall have the same meaning as defined in the Original Development Agreement: "CITY"; "Construction Agreement"; "Development"; "Development Approvals"; "Development Exaction"; "Development Impact Fee"; "Development Plan"; "General Plan"; "Land Use Regulations"; "OWNER"; "Project", "Property", "Specific Plan"; "Subsequent Development Approvals"; and "Subsequent Land Use Regulations".

1.2 Additional and Modified Definitions.

1.2.1 The following additional terms shall be defined as follows:

"Construction Agreement Amendment" means that certain Amended and Restated Agreement for the Financing and Construction of Infrastructure Improvements to Serve an Easterly Portion of the New Model Colony, entered into between the CITY and NMC Builders dated August 21, 2012.

"Effective Date" means the date that the ordinance adopting this First Amendment becomes effective.

"Model Units" means a maximum of fifteen (15) 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.

"OWNER" means Ontario Schaefer Holdings, LLC, a Delaware limited liability company as successor in interest to Distinguished Land Development, Inc., a California corporation.

"Production Units" means all units constructed for sale and occupancy by OWNER but excludes the maximum fifteen (15) Model Units constructed by OWNER for promotion of sales.

"Storm Water Capacity Availability Equivalents" means a designated portion of the total Storm Water Capacity Availability made available through the completion of construction of each Phase of regional storm

water treatment facilities by the NMC Builders. OWNER shall be required to provide evidence of sufficient Storm Water Capacity Availability Equivalents (or portions thereof) based upon the storm water generation factors and assumptions contained in the Construction Agreement Amendment.

“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 (or portions thereof) required 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.

1.2.2 The following definitions shall be revised as follows:

“Existing Development Approvals” is revised to mean all Development Approvals approved or issued prior to the Effective Date of this Amendment. Existing Development Approvals includes the Development Approvals incorporated herein as Exhibit “C-R” and all other Development Approvals that are a matter of public record on the Effective Date of this Amendment.

“Existing Land Use Regulations” is revised to mean all Land Use Regulations in effect on the Effective Date of this Amendment and all other Land Use Regulations that are in effect and a matter of public record on the Effective Date of this Amendment. Existing Land Use Regulations includes the Regulations incorporated herein as Exhibit “D-R,” and all other Land Use Regulations that are in effect and a matter of public record on the Effective Date of this Amendment.

“Improvement” or “Improvements” is revised to mean those public improvements required to support the development of the Project as described in the Tract Map conditions for Tract No. 18419 and as further described in Exhibit “F” (the “Infrastructure Improvements Exhibit”).

1.3 Exhibits. The following documents are attached to, and by this reference made a part of, this First Amendment:

Exhibit “C-R” –Revised Existing Development Approvals

Exhibit “D-R” – Revised Existing Land Use Regulations

Exhibit “F” — Infrastructure Improvements Exhibit

2. MODIFICATIONS TO DEVELOPMENT AGREEMENT TO CONFORM TO CONSTRUCTION AGREEMENT AMENDMENT

2.1 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.

2.2 Fire Station Funding Requirements for Any permits Issued Prior the Provision of Payments from NMC Builders for the Completion of Construction of CITY'S Fire Station No. 9. If OWNER requests that CITY issue building permits for any Model Units or Production 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 Model Units or Product 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).

2.3 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 the Tract Map for Tract No. 18419, CITY shall require OWNER to provide evidence of sufficient Water Availability Equivalents for all Model Units and Production Units to be constructed on the Property. 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 the final Tract Map for Tract No. 18419, 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 as defined in the Construction Agreement Amendment and as of the Effective Date of this Amendment such net acreage has been determined to be 42.439 acres. If the CITY has not issued sufficient Storm Water Treatment Capacity Availability for 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.

2.4 Modification of Public Services Funding Fees. As required by Section 4.6 of the Original Development Agreement and in order to ensure that the adequate provision of public services, including without limitation, police, fire, and other public safety services, is available to residents and occupants of OWNER's Project, OWNER shall provide a "Public Services Funding Fee." Section 4.6 of the Original Development Agreement stated that if the Construction Agreement with NMC Builders LLC was amended to modify the timing and/or the amounts of the installment payments prior to

Owner's payment of such installment payments, OWNER shall have the option to utilize the modified timing and amounts for the installment payments described in Sections 4.6.1 through 4.6.3. of the Original Development Agreement. Pursuant to those provisions, OWNER was not required, and has not paid, the First and Second Installments of the Public Service Funding Fees to CITY. The provisions of Section 4.6 of the Original Development Agreement shall be superseded and replaced with the following:

"4.6 Public Services Funding Fee. OWNER shall pay a Public Services Funding fee in the total amount of One Thousand Eight Hundred dollars (\$1,800.00) per residential dwelling unit. OWNER shall pay the Public Services Funding Fee in one (1) installment within one hundred eighty (180) calendar days after the Effective Date of this First Amendment, or, at OWNER's option, in two (2) installments as follows:

4.6.1 First Installment (Residential uses). The first installment of the Public Services Funding Fee shall be Nine Hundred dollars (\$900.00) per residential dwelling unit. The first installment shall be paid prior to, and as a condition precedent to the issuance of each building permit unless, the City commences construction of Fire Station No. 9 prior to the issuance of the first residential building permit for the Project (in which case the following payment structure shall apply). If the City commences construction of Fire Station No. 9 prior to the issuance of the first residential building permit for the Project, the first installment shall be based upon the "Maximum Development Density" of OWNER's Project, or the number of units described on "B Maps" if approved, as defined in Section 3.7.2.3 of the Construction Agreement Amendment. The first installment shall then be due and payable no later than 30 days following CITY's commencement of construction of Fire Station No. 9. Commencement of the construction shall be defined as the issuance of a grading permit or building permits, whichever, occurs first.

If the first installment amount is not paid for all residential dwelling units within the Project (based on the Maximum Development Density of the OWNER's Project, or the number of units described on "B Maps" if approved) by January 1, 2014, 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(s). Additionally, the amount shall be further increased automatically by the percentage increase in the Consumer Price Index (Los Angeles-Anaheim-Riverside) on each January 1 thereafter.

4.6.2 Second Installment (Residential Uses). The second installment of the Public Services Funding Fee shall be Nine Hundred dollars (\$900) per residential unit. The second installment shall be paid by OWNER 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, 2014. 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 the Project on or before each December 31st, before the second installment amount is automatically increased.

4.6.3 Single Installment (Non-residential Uses). A single installment payment of the Public Services Funding Fee shall be required in the amount of Fifty Four Cents (\$.54) per square foot of non-residential buildings. The single installment for non-residential uses shall be due and payable prior to the issuance of each building permit for each 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 each preceding year on January 1st of each year, beginning on January 1, 2014. 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.

2.5 Modification of School Financing Provisions. The provisions of Section 5.2 School Financing, of the Original Development Agreement shall be superseded and replaced with the following:

5.2 Schools. CITY and OWNER agree that OWNER, 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 its school obligations may be required by the CITY as a 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), 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 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 5.2."

2.6 Modification of the Amounts of the CFD to Finance City Services. Prior to, and as a condition precedent to, the recordation of each final subdivision map creating buildable lots, such map shall be included in a Community Facilities District (CFD) to finance CITY services through annual special taxes. The amounts contained in Section 5.1 Financing Mechanism(s) in the Original Development Agreement shall be modified as follows:

Single Family Detached Dwelling Unit to \$1,334.00

Multiple Family Dwelling Unit to \$1,156.00

Gated Apartment Community Dwelling Unit to \$969.00

Non-Residential buildings to \$.25 per square foot.

These modified amounts shall be subject to an automatic increase, not to exceed four (4%) percent per year, beginning on January 1, 2014.

2.7 Remaining Provisions of Section 5. FINANCING OF PUBLIC IMPROVEMENTS All other provisions of Section 5. FINANCING OF PUBLIC IMPROVEMENTS shall continue and shall be unaffected by this First Amendment.

3. MODIFICATIONS TO DEVELOPMENT AGREEMENT TO REQUIRE CONSTRUCTION OF SPECIFIED PUBLIC IMPROVEMENTS

3.1 Modifications to Conceptual Phasing Plan. Section 3.4 of the Original Development Agreement is hereby amended to read as follows:

“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-R” is a revised Conceptual Phasing Plan which is based on the OWNER’s best estimate of the timing of the completion of needed infrastructure improvements. The conceptual phasing plan is an estimate only and is subject to the same timing constraints and the exercise of OWNER’s business judgment as set forth in the Original Development Agreement.

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

3.4.2 OWNER agrees that development of the Property shall require the construction of a significant portion of permanent master planned water utility infrastructure, known as the “Francis Zone Water Loop.” OWNER shall be responsible for the construction of the necessary extension of permanent master planned water utility infrastructure to the Property to the extent that such water utility infrastructure has not been constructed by NMC Builders or others. CITY agrees that OWNER may initiate grading after recordation of the Final Tract Map; however, OWNER 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 and recycled water utility infrastructure to serve the Project.

3.4.3 OWNER agrees that development of the Project shall require the construction of a significant portion of Archibald Avenue and also a portion of Schaefer Avenue, all as shown on Exhibit F. OWNER shall be responsible for the construction of the master planned street and related improvements in Archibald and Schaefer Avenues. City and OWNER also acknowledge and agree that OWNER shall be required to construct signalized intersection improvements at the intersections of Archibald Avenue and The Avenue and Archibald Avenue and Schaefer Avenues, however, OWNER shall only be required to construct the intersection improvements at these intersections as shown on Exhibit F.”

3.2 Requirements for the Construction of Public Infrastructure and Improvements. The following provisions shall be added to Section 3.7 Public Works; Utilities of the Original Development Agreement:

“3.7.1 OWNER shall be responsible for the timely construction and completion of all public infrastructure required for the Project as shown on the attached Exhibit “F” and any and all tentative tract map conditions. Unless otherwise specified in the Subdivision Agreement/Tract Map conditions, all other required Improvements for each Tract Map, shall be completed and operational prior to, and as a condition precedent to, OWNER requesting and CITY’s granting of the first building permit for any units for the Project, except the maximum number of fifteen (15) Model Units.

3.7.1.1 Construction of Model Units prior to Construction of the Interim Units and Production Units. Subject to the prior submittal by OWNER and approval by CITY of a plan to provide sufficient public infrastructure for the construction of a maximum number of fifteen (15) Model Units and other temporary sales facilities, City may issue a maximum of fifteen (15) building permits for Model Units. The plan to be submitted by OWNER for CITY approval shall describe the utilities and other infrastructure necessary to provide sufficient fire protection and other public health and safety requirements for the Model Units.”

3.3 Modifications to Section 4.2 of the Original Development Agreement. Section 4.2.1, 4.2.2 and 4.2.3 of the Original Development Agreement shall be amended to read as follows:

“4.2.1 Amount of Development Impact Fee. Development Impact Fees shall be paid by OWNER, and any credit and/or reimbursement shall be provided to OWNER, in accordance with Section 3.1 of the Construction Agreement Amendment. Without limiting the nature of the foregoing, nothing contained in this Agreement shall affect the ability of other public agencies 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 a building permit for each applicable residential or other unit, except for Development Impact Fees and Open Space and Habitat Acquisition Development Impact fees 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. CITY and OWNER agree that Lots O, M, J and I of Tract 18419 consisting of approximately 2.13 net acres shall satisfy OWNER’s additional park development requirement. Areas designated as Park areas shall be transferred to a homeowners’ association and the homeowners’ association shall be responsible for all maintenance of the developed park areas. OWNER shall also pay the full Development Impact Fee for the Parkland Acquisition and Development Fee category (Quimby Act fees) for the Project.

Additionally, Sections 4.2.4 and 4.2.5 of the Original Development Agreement shall be removed and replaced by the following:

“4.2.4 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 Amendment, CITY agrees that CITY shall issue DIF Credit (as defined in the Construction Agreement Amendment) in accordance with the provisions of the Construction Agreement Amendment 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 Amendment and any amendments thereto.

4.2.5 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 in the Construction Agreement Amendment between CITY and NMC Builders LLC, CITY agrees that CITY shall issue DIF Credit and DIF Reimbursement in accordance with the provisions of a separate Fee Credit Agreement between CITY and OWNER. Limitation on the use of DIF Credit issued to OWNER to offset OWNER’s DIF payment obligations shall also be subject to the provisions of a separate Fee Credit Agreement. OWNER may also

be eligible to receive reimbursement from DIF collected by CITY and paid by other development that benefits from OWNER's construction of DIF Program Infrastructure. Any such DIF Reimbursement shall be subject to a Fee Credit Agreement between CITY and OWNER. CITY and OWNER agree that the Fee Credit Agreement between CITY and OWNER shall comply with CITY's adopted policies applicable to such agreements."

4. OTHER MODIFICATIONS.

4.1 Assignment and Assumption. CITY and OWNER acknowledge that Distinguished Land Development, Inc. ("DLD") has transferred the Property to OWNER and has transferred and assigned to OWNER, all rights, title and interest to the Property. OWNER hereby expressly and unconditionally assumes all the rights, duties and obligations of DLD as the predecessor in interest to OWNER under the Original Development Agreement, including, without limitation, all of the general rights, duties and obligations of DLD under the Original Development Agreement for the development of the Property. OWNER agrees to observe and fully perform all of DLD's and OWNER's obligations under the Original Development Agreement and this First Amendment and to be subject to all the terms and conditions thereof, it being the express intention that OWNER, upon execution of this First Amendment, shall become substituted for DLD as the "OWNER" under the Original Development Agreement and this First Amendment.

4.2 Release of Assignor. Pursuant to section 2.4.2 of the Original Development Agreement, DLD as the previous OWNER shall be free from any and all liabilities accruing on or after the date of the transfer of title to the Property with respect to the Development Agreement. No breach or default under this First Amendment or the Development Agreement by the current OWNER shall be attributed to DLD as the previous OWNER.

5. INTEGRATION.

5.1 Integration of Previous Understandings and Clarifications. This First Amendment reflects the complete understanding of the parties with respect to the subject matter hereof. To the extent this First Amendment conflicts with the Original Development Agreement, this First Amendment supersedes such previous document(s). In all other respects, the parties hereto re-affirm and ratify all other provisions of the Original Development Agreement and First Supplemental Memorandum. This First Amendment shall be recorded against the Property.

IN WITNESS WHEREOF, the parties hereto have executed this First Amendment as of the date the ordinance adopting this First Amendment becomes effective ("Effective Date").

SIGNATURE PAGE
TO FIRST AMENDMENT TO THE DEVELOPMENT AGREEMENT BY AND
BETWEEN THE CITY OF ONTARIO AND ONTARIO SCHAEFER HOLDINGS, LLC

"OWNER"

Ontario Schaefer Holdings, LLC
a Delaware limited liability company

By: _____
Richard Cisakowski
Manager

Date: _____

"CITY"

CITY OF ONTARIO

By: _____
Chris Hughes, City Manager

Date: _____

ATTEST:

City Clerk, Ontario

APPROVED AS TO FORM:
BEST, BEST & KRIEGER LLP

City Attorney

Exhibit "C-R"
Revised Existing Development Approvals

On November 28, 2006, the Planning Commission:

- a) Issued Resolution No. PC06-*** recommending City Council adopt and certify The Avenue Specific Plan Environmental Impact Report;
- b) Issued Resolution No. PC06-143 recommending City Council approval of The Avenue Specific Plan (PSP05-003).

On December 19, 2006, the City Council:

- a) Adopted Resolution No. 2006-131 certifying The Avenue Specific Plan Environmental Impact Report (SCH No. 2005071109)

On January 16, 2007, the City Council:

- a) Adopted Ordinance No. 2851 approving The Avenue Specific Plan (PSP05-003)

On May 22, 2007, the Planning Commission:

- a) Adopted Resolution No. PC07-061 recommending City Council approval of the Ontario Land Investments, LLC, Development Agreement (PDA07-001)

On June 19, 2007, the City Council:

- a) Adopted Ordinance No. 2862 approving the Ontario Land Investments, LLC, Development Agreement

On February 2, 2010, the City Council:

- a) Adopted Resolution No. 2010-010 certifying the Supplemental Environmental Impact Report for an amendment to The Avenue Specific Plan (File No. PSPA07-004)
- b) Adopted Resolution No. 2010-011 approving an amendment to The Avenue Specific Plan (File No. PSPA07-004)

On January 28, 2014, the Planning Commission:

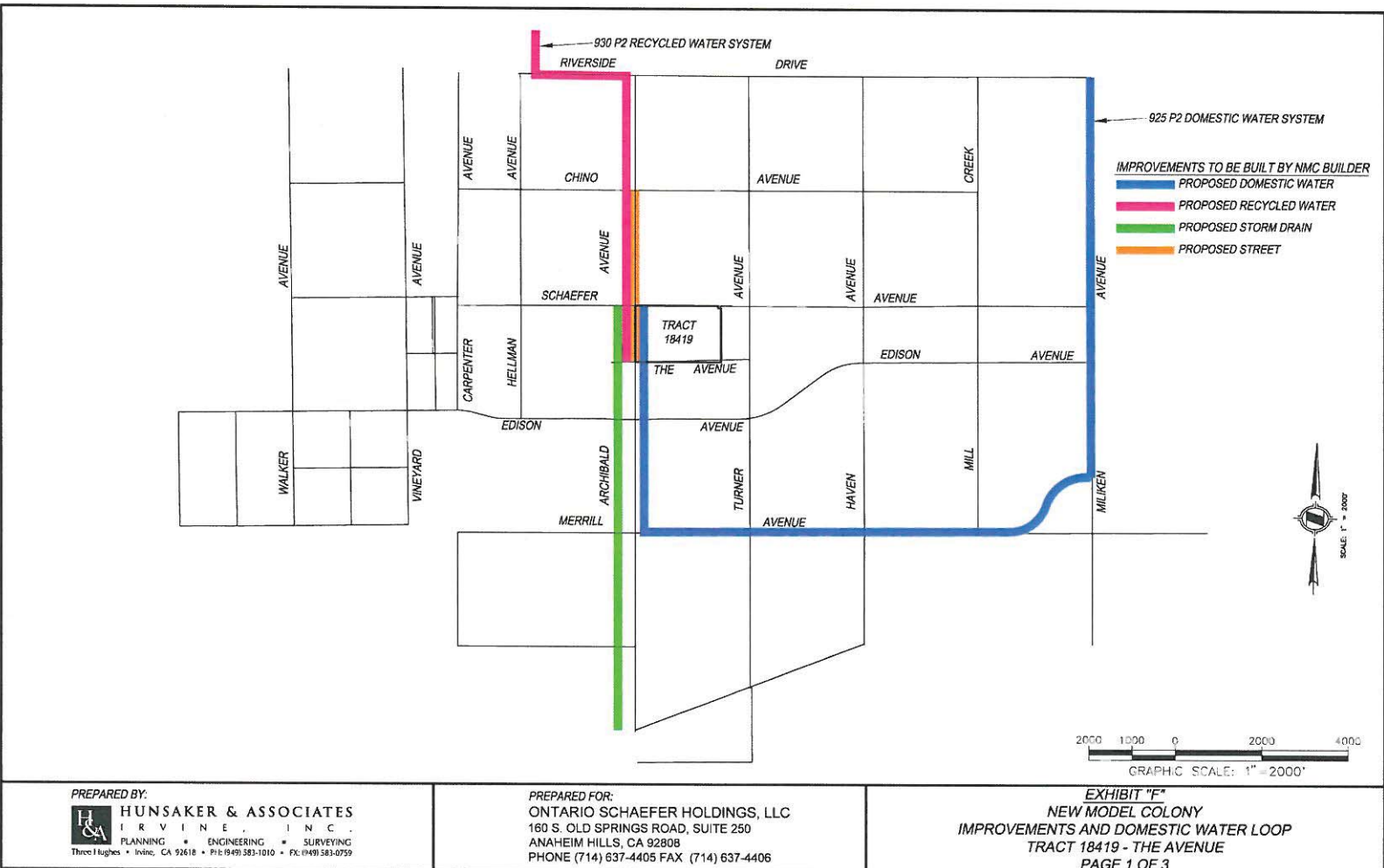
- a) Adopted Resolution No. PC13-*** recommending City Council approval of the Ontario Schaefer Holdings, LLC, Development Agreement Amendment

Exhibit "D-R"
Revised Existing Land Use Regulations

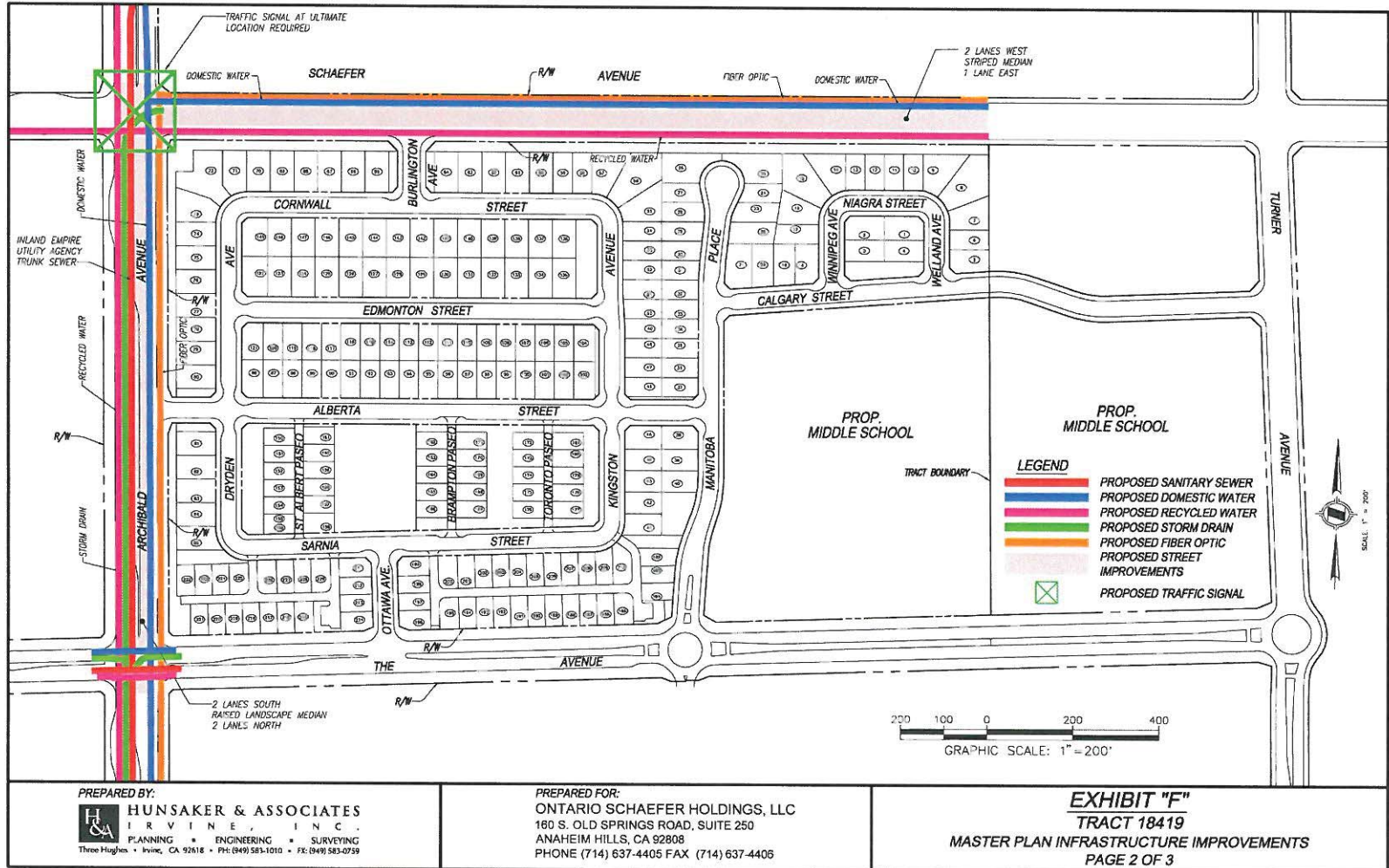
These documents are attached by reference only:

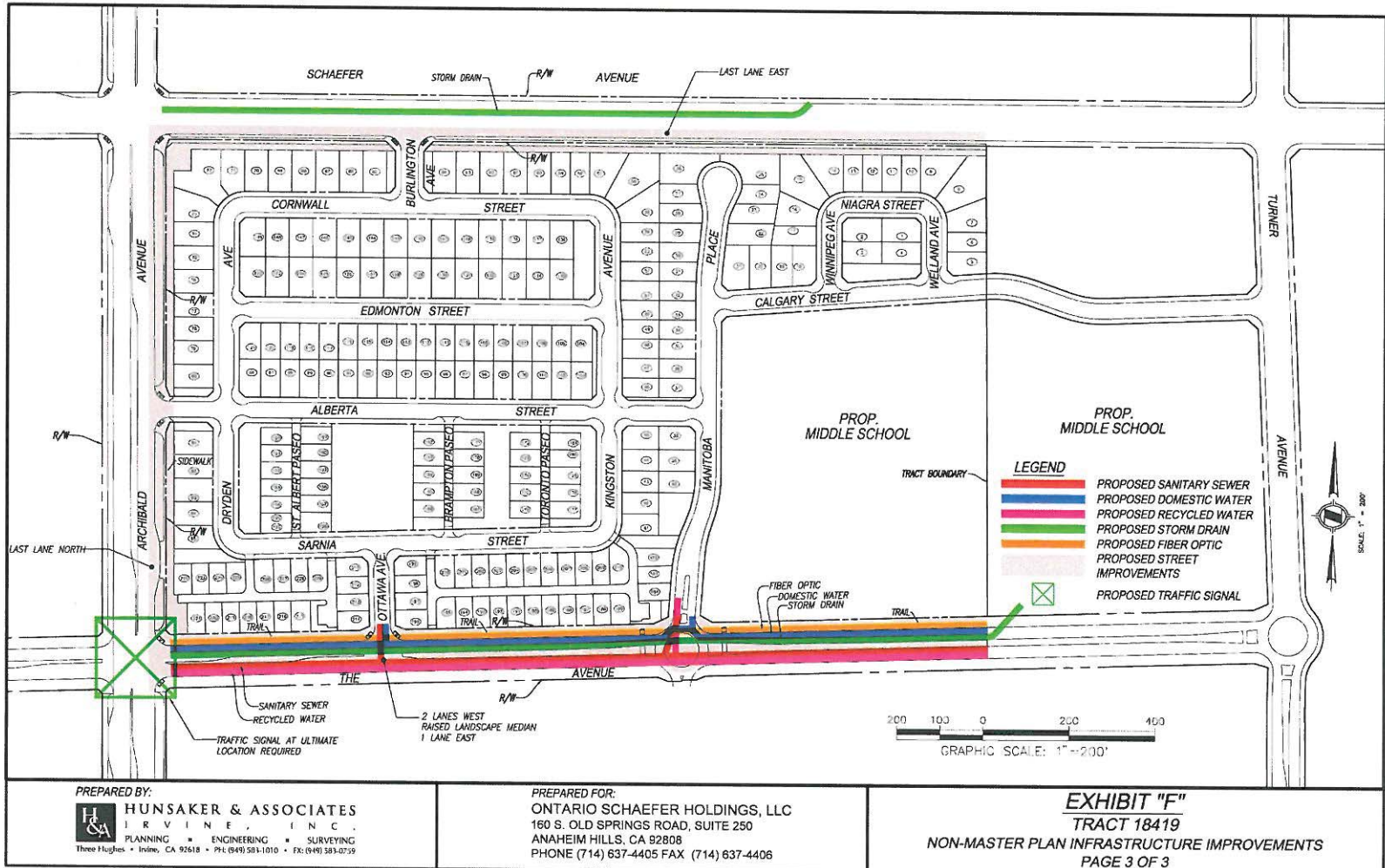
1. The Avenue Specific Plan
2. The Avenue Environmental Impact Report and Supplemental EIR, Resolution Nos. 2006-131 and 2010-010
3. City of Ontario Municipal Code, Titles:
 - a. Six - Sanitation & Health
 - b. Seven - Public Works
 - c. Eight - Building Regulations
 - d. Nine - Development Code
 - e. Ten - Parks & Recreation

Exhibit "F" Infrastructure Improvements



PLOTTED BY: Markus Klein DATE: Dec. 11, 2013 05:44:27 PM FILE: F:\0202\Engineering\SA\TM 18419\Exh_Development-Agreement\0001 - Water Loop.dwg





ORDINANCE NO. _____

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF ONTARIO, CALIFORNIA, APPROVING AN AMENDMENT TO THE DEVELOPMENT AGREEMENT BETWEEN THE CITY OF ONTARIO AND ONTARIO SCHAEFER HOLDINGS, LLC, FILE NO. PDA14-001, TO UPDATE CERTAIN PROVISIONS OF THE EXISTING DEVELOPMENT AGREEMENT TO CONFORM WITH THE CONSTRUCTION AGREEMENT AMENDMENT WITH NMC BUILDERS LLC, AND TO PROVIDE FOR PHASING OF THE CONSTRUCTION OF PUBLIC INFRASTRUCTURE AS PROVIDED IN TRACT MAP NO. 18419, AND MAKING FINDINGS IN SUPPORT THEREOF (APN: 0218-201-14 AND 44).

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

“The Legislature finds and declares that:

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

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

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

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

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

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

for the uses and to the density of intensity of development set forth in this Agreement ...”

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

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

WHEREAS, on the 19th day of June 2007, the City Council of the City of Ontario adopted Ordinance No. 2862, approving a Development Agreement between Ontario Land Investments, Inc., and the City; and

WHEREAS, attached to this Resolution, marked Exhibit “A” and incorporated herein by this reference, is the proposed Amendment to the Development Agreement between Ontario Schaefer Holdings, and the City of Ontario, File No. PDA14-001. Hereinafter in this Resolution, the Development Agreement is referred to as the “Amendment”; and

WHEREAS, the environmental impacts of this project were previously reviewed in conjunction with The Avenue Specific Plan, for which an Environmental Impact Report (SCH #2005071109) was certified by the City Council on December 2006. 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 January 28, 2014, the Planning Commission of the City of Ontario conducted a hearing to consider the Amendment and concluded said hearing on that date. After considering all public testimony, the Planning Commission unanimously recommended approval of the Amendment to the City Council; and

WHEREAS, on February 18, 2014, the City Council of the City of Ontario conducted a hearing to consider the Amendment 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 18, 2014, including written and oral staff reports, together with public testimony, the City Council hereby specifically finds as follows:

a. The Amendment to the Development Agreement applies to 59.82 acres of residential and school land within The Avenue Specific Plan, generally located on the east side of Archibald Avenue, south of Schaefer Avenue and is presently vacant; and

b. The properties to the north of the Project site are within the R1 (Single Family Residential) zoning designation and are developed with houses. The property to the south of the project site is within The Avenue Specific Plan, planned for single family residential development and is vacant. The property to the east is within The Avenue Specific Plan, is planned for single family residential development and a middle school and is vacant. The property to the west is within The Avenue Specific Plan, is planned for single family residential development and is vacant; and

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

d. The Amendment to the Development Agreement focuses revisions to the Development to bring it into consistency with the Construction Agreement between the City and New Model Colony Builders, ("NMC"), LLC; and

e. The Amendment to the Development Agreement will provide for the phasing of various improvements established by The Avenue Specific Plan; and

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

g. The Amendment to 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. The Amendment to the Development Agreement will promote the goals and objectives of the Land Use Element of the Policy Plan; and

i. The Amendment to the 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 Avenue Specific Plan EIR certified by the City Council on December 19, 2006.

SECTION 2. Based upon the findings and conclusions set forth in Section 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 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 4th day of March 2014.

PAUL S. LEON, MAYOR

ATTEST:

MARY E. WIRTES, MMC, CITY CLERK

APPROVED AS TO FORM:

BEST BEST & KRIEGER LLP
CITY ATTORNEY

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

I, MARY E. WIRTES, City Clerk of the City of Ontario, DO HEREBY CERTIFY that foregoing Ordinance No. 2986 was duly introduced at a regular meeting of the City Council of the City of Ontario held February 18, 2014 and adopted at the regular meeting held March 4, 2014 by the following roll call vote, to wit:

AYES: COUNCIL MEMBERS:

NOES: COUNCIL MEMBERS:

ABSENT: COUNCIL MEMBERS:

MARY E. WIRTES, MMC, CITY CLERK

(SEAL)

I hereby certify that the foregoing is the original of Ordinance No. 2986 duly passed and adopted by the Ontario City Council at their regular meeting held March 4, 2014 and that Summaries of the Ordinance were published on February 25, 2014 and March 11, 2014 in the Inland Valley Daily Bulletin newspaper.

MARY E. WIRTES, MMC, CITY CLERK

(SEAL)

Exhibit A – First Amendment to the Development Agreement
(See Attached)

**FIRST AMENDMENT TO THE DEVELOPMENT AGREEMENT BY AND
BETWEEN THE CITY OF ONTARIO AND ONTARIO SCHAEFER HOLDINGS,
LLC**

This First Amendment to the Development Agreement (hereinafter "First Amendment") is entered into as of the _____ day of _____ 20__ by and between the CITY OF ONTARIO, a California municipal corporation (hereinafter "CITY"), and ONTARIO SCHAEFER HOLDINGS, LLC, a Delaware limited liability company (hereinafter "OWNER").

RECITALS

WHEREAS, the CITY and Distinguished Land Development, Inc., a California corporation, as predecessor in interest of OWNER, previously entered into a Development Agreement pursuant to Section 65864, et seq., of the Government Code, (hereinafter the "Original Development Agreement") and such Original Development Agreement was recorded in the County of San Bernardino on June 20, 2007 as Document No. 2007-0428993; and

WHEREAS, Section 2.5 of the Original Development Agreement specifies that the Original Development Agreement may be amended, in whole or in part, only in the manner provided for in Government Code Section 65868.1 and the procedure for adopting and entering into an amendment to the Original Development Agreement shall be the same as the procedure for adopting and entering into the Original Development Agreement; and

WHEREAS, the CITY and NMC Builders, LLC, a California limited liability company ("NMC Builders"), entered into that certain Agreement for the Financing and Construction of Phase I and II Infrastructure Improvements to Serve an Easterly Portion of the New Model Colony dated October 4, 2005, which is referred to both herein and in the Original Development Agreement as the "Construction Agreement;" and

WHEREAS, the CITY and NMC Builders have entered into the Amended and Restated Construction Agreement dated August 21, 2012 that supersedes and replaces the Construction Agreement (the "Construction Agreement Amendment"); and

WHEREAS, NMC Builders is identified as the Developer under the Construction Agreement Amendment; and

WHEREAS, OWNER is a member of NMC Builders and is a "Member" as such term is defined in the Construction Agreement Amendment; and

WHEREAS, OWNER and CITY have agreed to apply certain specified provisions of the Construction Agreement Amendment and to modify the Original Development Agreement; and

WHEREAS, the CITY and OWNER agree that execution of this First Amendment shall constitute Certification of Agreement Compliance under Section 6.4 of the Original Development Agreement and CITY shall issue its "Certificate of Agreement Compliance" within 10 days following the Effective Date of this First Amendment.

AGREEMENTS

NOW, THEREFORE, in consideration of the above recitals and of the mutual agreements hereinafter contained, the parties agree as follows:

1. DEFINITIONS AND EXHIBITS.

1.1 Existing Definitions. The following terms when used in this First Amendment shall have the same meaning as defined in the Original Development Agreement: "CITY"; "Construction Agreement"; "Development"; "Development Approvals"; "Development Exaction"; "Development Impact Fee"; "Development Plan"; "General Plan"; "Land Use Regulations"; "OWNER"; "Project", "Property", "Specific Plan"; "Subsequent Development Approvals"; and "Subsequent Land Use Regulations".

1.2 Additional and Modified Definitions.

1.2.1 The following additional terms shall be defined as follows:

"Construction Agreement Amendment" means that certain Amended and Restated Agreement for the Financing and Construction of Infrastructure Improvements to Serve an Easterly Portion of the New Model Colony, entered into between the CITY and NMC Builders dated August 21, 2012.

"Effective Date" means the date that the ordinance adopting this First Amendment becomes effective.

"Model Units" means a maximum of fifteen (15) 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.

"OWNER" means Ontario Schaefer Holdings, LLC, a Delaware limited liability company as successor in interest to Distinguished Land Development, Inc., a California corporation.

"Production Units" means all units constructed for sale and occupancy by OWNER but excludes the maximum fifteen (15) Model Units constructed by OWNER for promotion of sales.

"Storm Water Capacity Availability Equivalents" means a designated portion of the total Storm Water Capacity Availability made available through the completion of construction of each Phase of regional storm

water treatment facilities by the NMC Builders. OWNER shall be required to provide evidence of sufficient Storm Water Capacity Availability Equivalents (or portions thereof) based upon the storm water generation factors and assumptions contained in the Construction Agreement Amendment.

“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 (or portions thereof) required 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.

1.2.2 The following definitions shall be revised as follows:

“Existing Development Approvals” is revised to mean all Development Approvals approved or issued prior to the Effective Date of this Amendment. Existing Development Approvals includes the Development Approvals incorporated herein as Exhibit “C-R” and all other Development Approvals that are a matter of public record on the Effective Date of this Amendment.

“Existing Land Use Regulations” is revised to mean all Land Use Regulations in effect on the Effective Date of this Amendment and all other Land Use Regulations that are in effect and a matter of public record on the Effective Date of this Amendment. Existing Land Use Regulations includes the Regulations incorporated herein as Exhibit “D-R,” and all other Land Use Regulations that are in effect and a matter of public record on the Effective Date of this Amendment.

“Improvement” or “Improvements” is revised to mean those public improvements required to support the development of the Project as described in the Tract Map conditions for Tract No. 18419 and as further described in Exhibit “F” (the “Infrastructure Improvements Exhibit”).

1.3 Exhibits. The following documents are attached to, and by this reference made a part of, this First Amendment:

Exhibit “C-R” –Revised Existing Development Approvals

Exhibit “D-R” – Revised Existing Land Use Regulations

Exhibit “F” — Infrastructure Improvements Exhibit

2. MODIFICATIONS TO DEVELOPMENT AGREEMENT TO CONFORM TO CONSTRUCTION AGREEMENT AMENDMENT

2.1 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.

2.2 Fire Station Funding Requirements for Any permits Issued Prior the Provision of Payments from NMC Builders for the Completion of Construction of CITY'S Fire Station No. 9. If OWNER requests that CITY issue building permits for any Model Units or Production 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 Model Units or Product 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).

2.3 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 the Tract Map for Tract No. 18419, CITY shall require OWNER to provide evidence of sufficient Water Availability Equivalents for all Model Units and Production Units to be constructed on the Property. 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 the final Tract Map for Tract No. 18419, 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 as defined in the Construction Agreement Amendment and as of the Effective Date of this Amendment such net acreage has been determined to be 42.439 acres. If the CITY has not issued sufficient Storm Water Treatment Capacity Availability for 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.

2.4 Modification of Public Services Funding Fees. As required by Section 4.6 of the Original Development Agreement and in order to ensure that the adequate provision of public services, including without limitation, police, fire, and other public safety services, is available to residents and occupants of OWNER's Project, OWNER shall provide a "Public Services Funding Fee." Section 4.6 of the Original Development Agreement stated that if the Construction Agreement with NMC Builders LLC was amended to modify the timing and/or the amounts of the installment payments prior to

Owner's payment of such installment payments, OWNER shall have the option to utilize the modified timing and amounts for the installment payments described in Sections 4.6.1 through 4.6.3. of the Original Development Agreement. Pursuant to those provisions, OWNER was not required, and has not paid, the First and Second Installments of the Public Service Funding Fees to CITY. The provisions of Section 4.6 of the Original Development Agreement shall be superseded and replaced with the following:

“4.6 Public Services Funding Fee. OWNER shall pay a Public Services Funding fee in the total amount of One Thousand Eight Hundred dollars (\$1,800.00) per residential dwelling unit. OWNER shall pay the Public Services Funding Fee in one (1) installment within one hundred eighty (180) calendar days after the Effective Date of this First Amendment, or, at OWNER’s option, in two (2) installments as follows:

4.6.1 First Installment (Residential uses). The first installment of the Public Services Funding Fee shall be Nine Hundred dollars (\$900.00) per residential dwelling unit. The first installment shall be paid prior to, and as a condition precedent to the issuance of each building permit unless, the City commences construction of Fire Station No. 9 prior to the issuance of the first residential building permit for the Project (in which case the following payment structure shall apply). If the City commences construction of Fire Station No. 9 prior to the issuance of the first residential building permit for the Project, the first installment shall be based upon the “Maximum Development Density” of OWNER’s Project, or the number of units described on “B Maps” if approved, as defined in Section 3.7.2.3 of the Construction Agreement Amendment. The first installment shall then be due and payable no later than 30 days following CITY’s commencement of construction of Fire Station No. 9. Commencement of the construction shall be defined as the issuance of a grading permit or building permits, whichever, occurs first.

If the first installment amount is not paid for all residential dwelling units within the Project (based on the Maximum Development Density of the OWNER’s Project, or the number of units described on “B Maps” if approved) by January 1, 2014, 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(s). Additionally, the amount shall be further increased automatically by the percentage increase in the Consumer Price Index (Los Angeles-Anaheim-Riverside) on each January 1 thereafter.

4.6.2 Second Installment (Residential Uses). The second installment of the Public Services Funding Fee shall be Nine Hundred dollars (\$900) per residential unit. The second installment shall be paid by OWNER 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, 2014. 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 the Project on or before each December 31st, before the second installment amount is automatically increased.

4.6.3 Single Installment (Non-residential Uses). A single installment payment of the Public Services Funding Fee shall be required in the amount of Fifty Four Cents (\$.54) per square foot of non-residential buildings. The single installment for non-residential uses shall be due and payable prior to the issuance of each building permit for each 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 each preceding year on January 1st of each year, beginning on January 1, 2014. 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.

2.5 Modification of School Financing Provisions. The provisions of Section 5.2 School Financing of the Original Development Agreement shall be superseded and replaced with the following:

5.2 Schools. CITY and OWNER agree that OWNER, 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 its school obligations may be required by the CITY as a 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), 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 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 5.2."

2.6 Modification of the Amounts of the CFD to Finance City Services. Prior to, and as a condition precedent to, the recordation of each final subdivision map creating buildable lots, such map shall be included in a Community Facilities District (CFD) to finance CITY services through annual special taxes. The amounts contained in Section 5.1 Financing Mechanism(s) in the Original Development Agreement shall be modified as follows:

Single Family Detached Dwelling Unit to \$1,334.00

Multiple Family Dwelling Unit to \$1,156.00

Gated Apartment Community Dwelling Unit to \$969.00

Non-Residential buildings to \$.25 per square foot.

These modified amounts shall be subject to an automatic increase, not to exceed four (4%) percent per year, beginning on January 1, 2014.

2.7 Remaining Provisions of Section 5. FINANCING OF PUBLIC IMPROVEMENTS All other provisions of Section 5. FINANCING OF PUBLIC IMPROVEMENTS shall continue and shall be unaffected by this First Amendment.

3. MODIFICATIONS TO DEVELOPMENT AGREEMENT TO REQUIRE CONSTRUCTION OF SPECIFIED PUBLIC IMPROVEMENTS

3.1 Modifications to Conceptual Phasing Plan. Section 3.4 of the Original Development Agreement is hereby amended to read as follows:

“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-R” is a revised Conceptual Phasing Plan which is based on the OWNER’s best estimate of the timing of the completion of needed infrastructure improvements. The conceptual phasing plan is an estimate only and is subject to the same timing constraints and the exercise of OWNER’s business judgment as set forth in the Original Development Agreement.

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

3.4.2 OWNER agrees that development of the Property shall require the construction of a significant portion of permanent master planned water utility infrastructure, known as the “Francis Zone Water Loop.” OWNER shall be responsible for the construction of the necessary extension of permanent master planned water utility infrastructure to the Property to the extent that such water utility infrastructure has not been constructed by NMC Builders or others. CITY agrees that OWNER may initiate grading after recordation of the Final Tract Map; however, OWNER 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 and recycled water utility infrastructure to serve the Project.

3.4.3 OWNER agrees that development of the Project shall require the construction of a significant portion of Archibald Avenue and also a portion of Schaefer Avenue, all as shown on Exhibit F. OWNER shall be responsible for the construction of the master planned street and related improvements in Archibald and Schaefer Avenues. City and OWNER also acknowledge and agree that OWNER shall be required to construct signalized intersection improvements at the intersections of Archibald Avenue and The Avenue and Archibald Avenue and Schaefer Avenues, however, OWNER shall only be required to construct the intersection improvements at these intersections as shown on Exhibit F.”

3.2 Requirements for the Construction of Public Infrastructure and Improvements. The following provisions shall be added to Section 3.7 Public Works; Utilities of the Original Development Agreement:

“3.7.1 OWNER shall be responsible for the timely construction and completion of all public infrastructure required for the Project as shown on the attached Exhibit “F” and any and all tentative tract map conditions. Unless otherwise specified in the Subdivision Agreement/Tract Map conditions, all other required Improvements for each Tract Map, shall be completed and operational prior to, and as a condition precedent to, OWNER requesting and CITY’s granting of the first building permit for any units for the Project, except the maximum number of fifteen (15) Model Units.

3.7.1.1 Construction of Model Units prior to Construction of the Interim Units and Production Units. Subject to the prior submittal by OWNER and approval by CITY of a plan to provide sufficient public infrastructure for the construction of a maximum number of fifteen (15) Model Units and other temporary sales facilities, City may issue a maximum of fifteen (15) building permits for Model Units. The plan to be submitted by OWNER for CITY approval shall describe the utilities and other infrastructure necessary to provide sufficient fire protection and other public health and safety requirements for the Model Units.”

3.3 Modifications to Section 4.2 of the Original Development Agreement. Section 4.2.1, 4.2.2 and 4.2.3 of the Original Development Agreement shall be amended to read as follows:

“4.2.1 Amount of Development Impact Fee. Development Impact Fees shall be paid by OWNER, and any credit and/or reimbursement shall be provided to OWNER, in accordance with Section 3.1 of the Construction Agreement Amendment. Without limiting the nature of the foregoing, nothing contained in this Agreement shall affect the ability of other public agencies 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 a building permit for each applicable residential or other unit, except for Development Impact Fees and Open Space and Habitat Acquisition Development Impact fees 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. CITY and OWNER agree that Lots O, M, J and I of Tract 18419 consisting of approximately 2.13 net acres shall satisfy OWNER’s additional park development requirement. Areas designated as Park areas shall be transferred to a homeowners’ association and the homeowners’ association shall be responsible for all maintenance of the developed park areas. OWNER shall also pay the full Development Impact Fee for the Parkland Acquisition and Development Fee category (Quimby Act fees) for the Project.

Additionally, Sections 4.2.4 and 4.2.5 of the Original Development Agreement shall be removed and replaced by the following:

“4.2.4 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 Amendment, CITY agrees that CITY shall issue DIF Credit (as defined in the Construction Agreement Amendment) in accordance with the provisions of the Construction Agreement Amendment 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 Amendment and any amendments thereto.

4.2.5 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 in the Construction Agreement Amendment between CITY and NMC Builders LLC, CITY agrees that CITY shall issue DIF Credit and DIF Reimbursement in accordance with the provisions of a separate Fee Credit Agreement between CITY and OWNER. Limitation on the use of DIF Credit issued to OWNER to offset OWNER’s DIF payment obligations shall also be subject to the provisions of a separate Fee Credit Agreement. OWNER may also

be eligible to receive reimbursement from DIF collected by CITY and paid by other development that benefits from OWNER's construction of DIF Program Infrastructure. Any such DIF Reimbursement shall be subject to a Fee Credit Agreement between CITY and OWNER. CITY and OWNER agree that the Fee Credit Agreement between CITY and OWNER shall comply with CITY's adopted policies applicable to such agreements."

4. OTHER MODIFICATIONS.

4.1 Assignment and Assumption. CITY and OWNER acknowledge that Distinguished Land Development, Inc. ("DLD") has transferred the Property to OWNER and has transferred and assigned to OWNER, all rights, title and interest to the Property. OWNER hereby expressly and unconditionally assumes all the rights, duties and obligations of DLD as the predecessor in interest to OWNER under the Original Development Agreement, including, without limitation, all of the general rights, duties and obligations of DLD under the Original Development Agreement for the development of the Property. OWNER agrees to observe and fully perform all of DLD's and OWNER's obligations under the Original Development Agreement and this First Amendment and to be subject to all the terms and conditions thereof, it being the express intention that OWNER, upon execution of this First Amendment, shall become substituted for DLD as the "OWNER" under the Original Development Agreement and this First Amendment.

4.2 Release of Assignor. Pursuant to section 2.4.2 of the Original Development Agreement, DLD as the previous OWNER shall be free from any and all liabilities accruing on or after the date of the transfer of title to the Property with respect to the Development Agreement. No breach or default under this First Amendment or the Development Agreement by the current OWNER shall be attributed to DLD as the previous OWNER.

5. INTEGRATION.

5.1 Integration of Previous Understandings and Clarifications. This First Amendment reflects the complete understanding of the parties with respect to the subject matter hereof. To the extent this First Amendment conflicts with the Original Development Agreement, this First Amendment supersedes such previous document(s). In all other respects, the parties hereto re-affirm and ratify all other provisions of the Original Development Agreement and First Supplemental Memorandum. This First Amendment shall be recorded against the Property.

IN WITNESS WHEREOF, the parties hereto have executed this First Amendment as of the date the ordinance adopting this First Amendment becomes effective ("Effective Date").

SIGNATURE PAGE
TO FIRST AMENDMENT TO THE DEVELOPMENT AGREEMENT BY AND
BETWEEN THE CITY OF ONTARIO AND ONTARIO SCHAEFER HOLDINGS, LLC

"OWNER"

Ontario Schaefer Holdings, LLC
a Delaware limited liability company

By: _____
Richard Cisakowski
Manager

Date: _____

"CITY"

CITY OF ONTARIO

By: _____
Al C. Boling, City Manager

Date: _____

ATTEST:

City Clerk, Ontario

APPROVED AS TO FORM:
BEST, BEST & KRIEGER LLP

City Attorney

Exhibit "C-R"
Revised Existing Development Approvals

On November 28, 2006, the Planning Commission:

- a) Issued Resolution No. PC06-*** recommending City Council adopt and certify The Avenue Specific Plan Environmental Impact Report;
- b) Issued Resolution No. PC06-143 recommending City Council approval of The Avenue Specific Plan (PSP05-003).

On December 19, 2006, the City Council:

- a) Adopted Resolution No. 2006-131 certifying The Avenue Specific Plan Environmental Impact Report (SCH No. 2005071109)

On January 16, 2007, the City Council:

- a) Adopted Ordinance No. 2851 approving The Avenue Specific Plan (PSP05-003)

On May 22, 2007, the Planning Commission:

- a) Adopted Resolution No. PC07-061 recommending City Council approval of the Ontario Land Investments, LLC, Development Agreement (PDA07-001)

On June 19, 2007, the City Council:

- a) Adopted Ordinance No. 2862 approving the Ontario Land Investments, LLC, Development Agreement

On February 2, 2010, the City Council:

- a) Adopted Resolution No. 2010-010 certifying the Supplemental Environmental Impact Report for an amendment to The Avenue Specific Plan (File No. PSPA07-004)
- b) Adopted Resolution No. 2010-011 approving an amendment to The Avenue Specific Plan (File No. PSPA07-004)

On January 28, 2014, the Planning Commission:

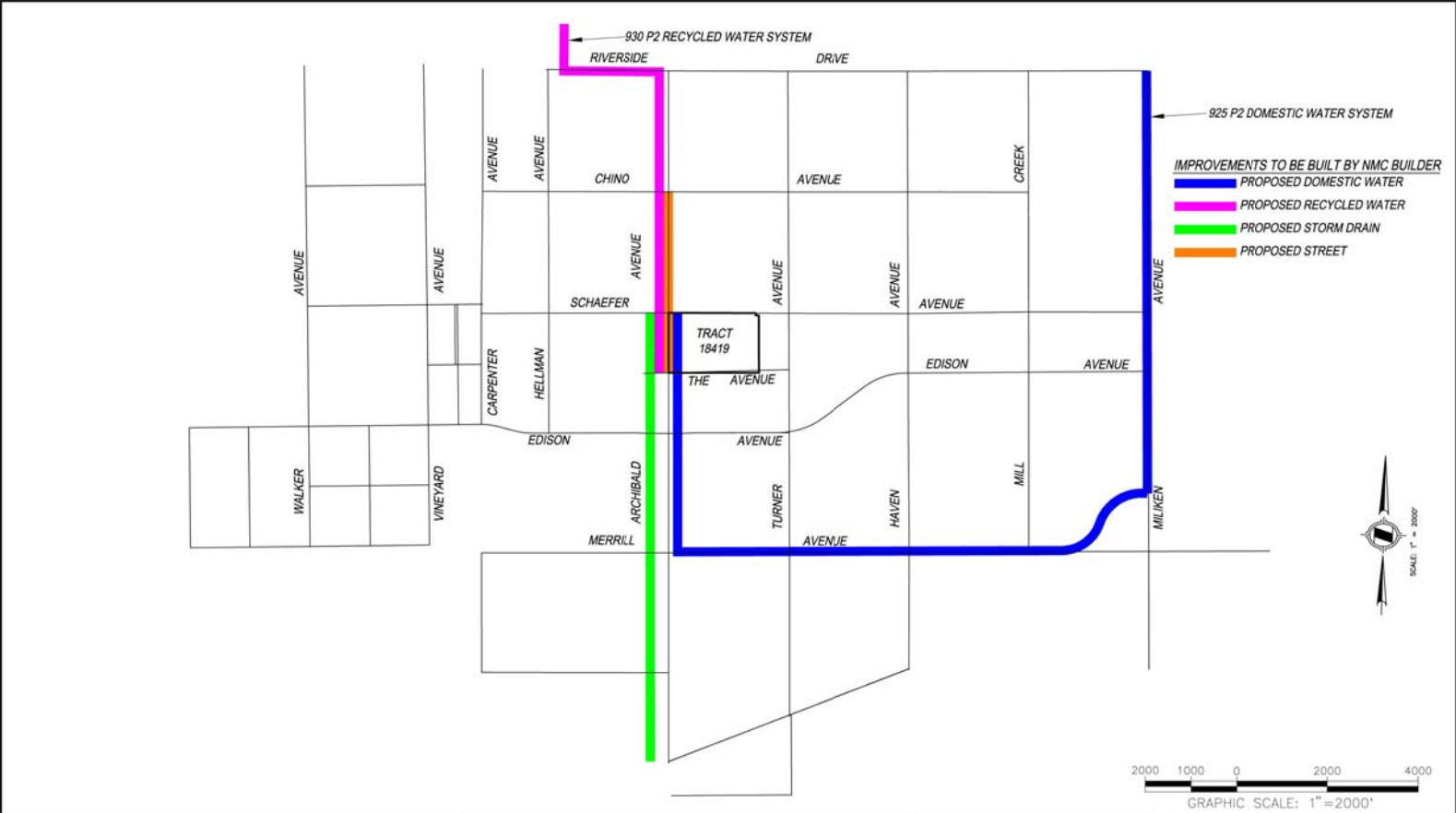
- a) Adopted Resolution No. PC13-*** recommending City Council approval of the Ontario Schaefer Holdings, LLC, Development Agreement Amendment

Exhibit "D-R"
Revised Existing Land Use Regulations

These documents are attached by reference only:

1. The Avenue Specific Plan
2. The Avenue Environmental Impact Report and Supplemental EIR, Resolution Nos. 2006-131 and 2010-010
3. City of Ontario Municipal Code, Titles:
 - a. Six - Sanitation & Health
 - b. Seven - Public Works
 - c. Eight - Building Regulations
 - d. Nine - Development Code
 - e. Ten - Parks & Recreation

Exhibit "F" Infrastructure Improvements

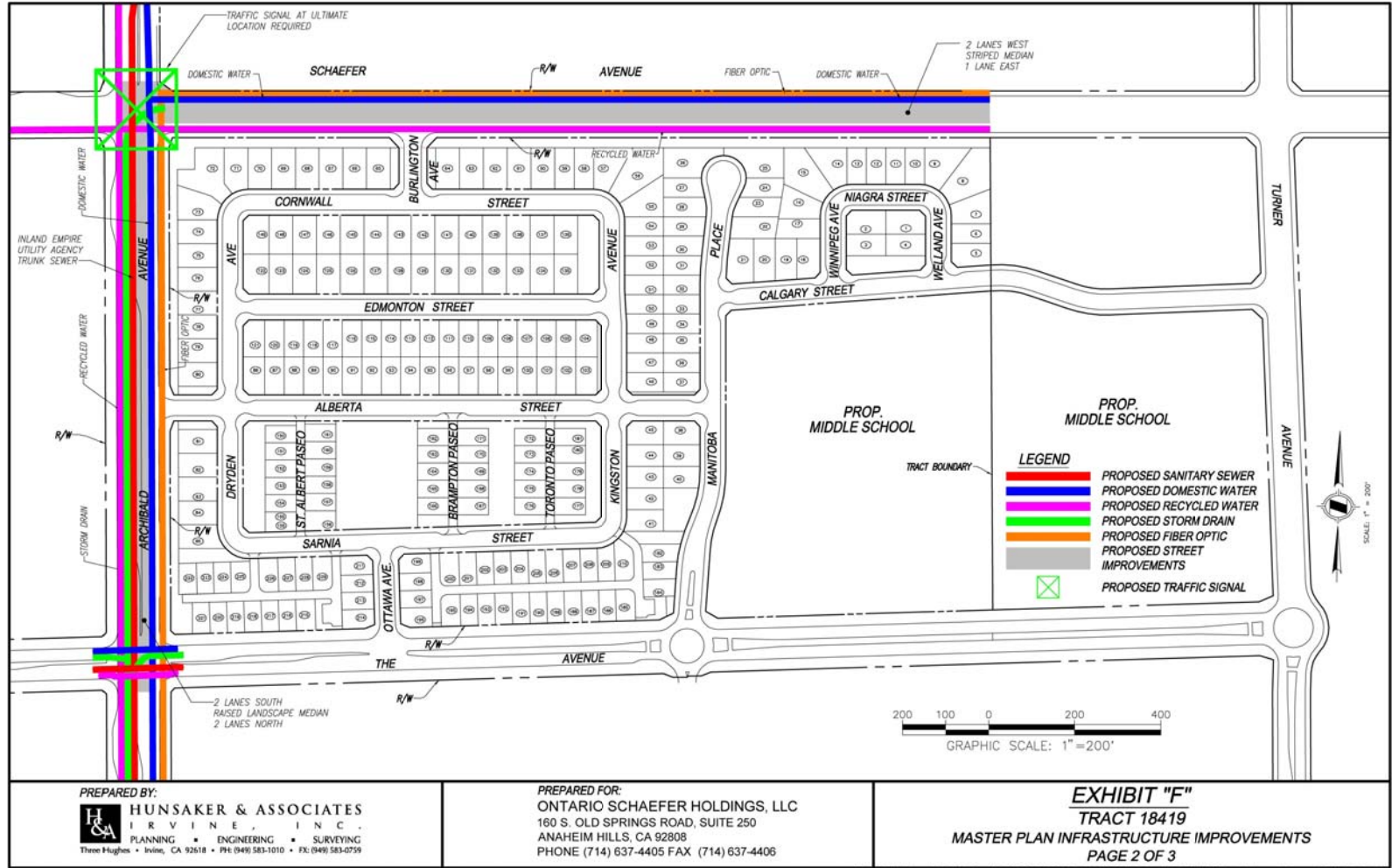


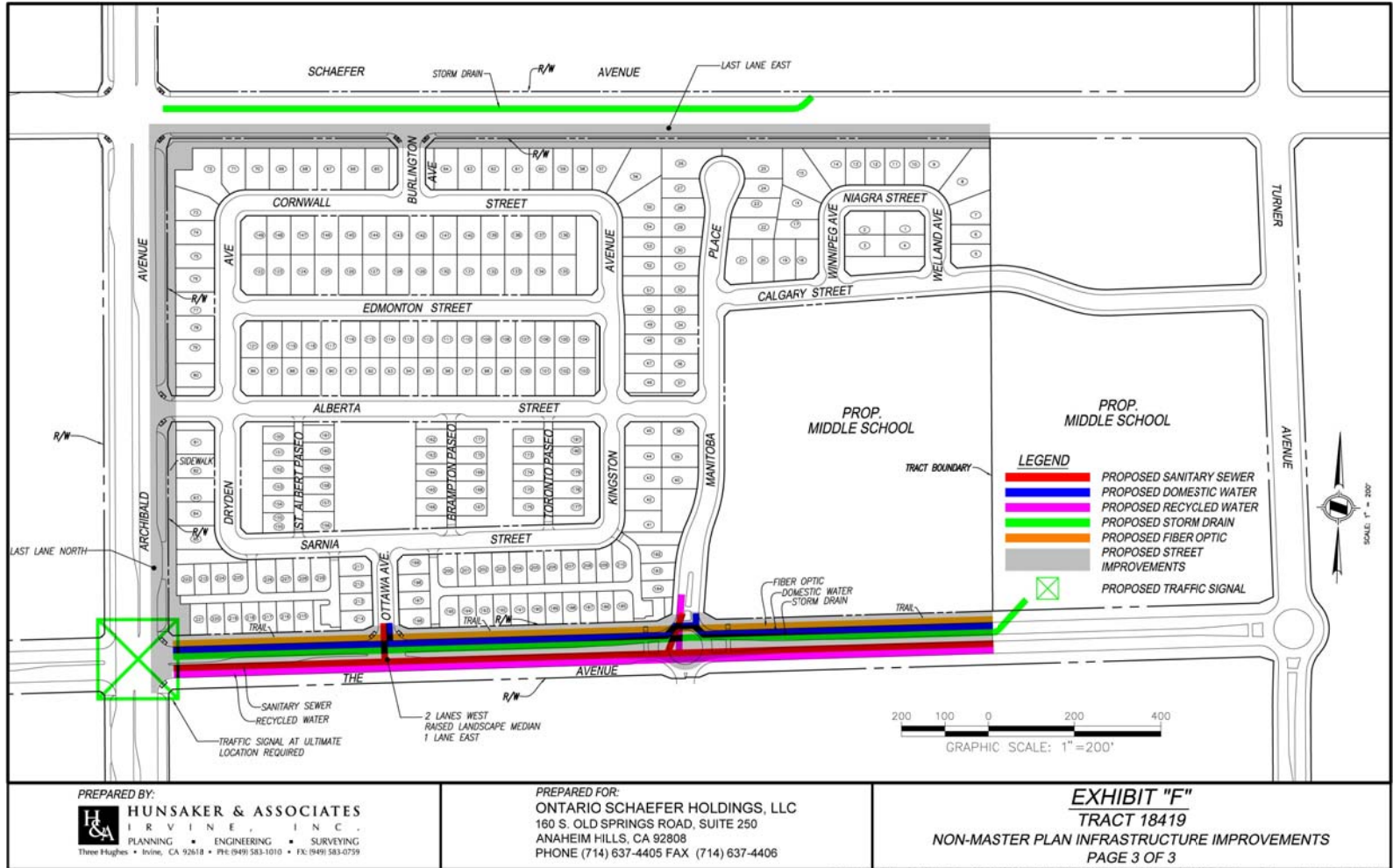
PREPARED BY:
HUNSAKER & ASSOCIATES
IRVINE, INC.
PLANNING • ENGINEERING • SURVEYING
Three Hughes • Irvine, CA 92618 • PH: (949) 583-1010 • FX: (949) 583-0759

PREPARED FOR:
ONTARIO SCHAEFER HOLDINGS, LLC
160 S. OLD SPRINGS ROAD, SUITE 250
ANAHEIM HILLS, CA 92808
PHONE (714) 637-4405 FAX (714) 637-4406

EXHIBIT "F"
NEW MODEL COLONY
IMPROVEMENTS AND DOMESTIC WATER LOOP
TRACT 18419 - THE AVENUE
PAGE 1 OF 3

PLOTTED BY: Markus Klein DATE: Dec. 11, 2013 09:44:27 PM FILE: F:\0292\Engineering\SA_TTM 18419\Exh_Development-Agreement\DEC01 - Water Loop.dwg





CITY OF ONTARIO

Agenda Report

March 4, 2014

SECTION: PUBLIC HEARINGS

SUBJECT: A DESIGN-BUILD CONTRACT FOR SOLAR PHOTOVOLTAIC PROJECTS AT THE ONTARIO CONVENTION CENTER AND THE ONTARIO POLICE DEPARTMENT BETWEEN THE CITY OF ONTARIO AND SUNPOWER CORPORATION, SYSTEMS

RECOMMENDATION: That the City Council take the following actions:

- (A) Adopt a resolution, making findings pursuant to the California Environmental Quality Act that the whole proposed project is statutorily exempt under Public Resources Code, Section 21080.35 and categorically exempt under State CEQA Guidelines, Sections 15301 and 15311, and which further makes certain Government Code findings related to energy services contracting and authorizes the execution of a Design-Build Contract ("Contract") with SunPower Corporation, Systems ("SunPower") of Richmond, California, for the construction of solar photovoltaic projects at the Ontario Convention Center ("OCC"), located at 2000 East Convention Center Way and the Ontario Police Department ("OPD"), located at 2500 South Archibald Avenue, in the amount of \$10,141,025, plus 15% contingency of \$1,521,154 for a total not to exceed amount of \$11,662,179 (on file with the Records Management Department);
- (B) Approve a 25-year Operations and Maintenance Agreement ("O&M Agreement") between the City of Ontario and SunPower, in the amount of \$1,047,533 (on file with the Records Management Department);
- (C) Approve a 25-year Performance Guarantee Agreement ("PEGU Agreement") between the City of Ontario and SunPower, in the amount of \$189,698 (on file with the Records Management Department);
- (D) Approve the Third Amendment to the Professional Services Agreement between the City of Ontario and Sage Renewable Energy Consulting, Inc. of Inverness, California, in the amount of \$62,800 (on file with the Records Management Department); and

STAFF MEMBER PRESENTING: Brent Schultz, Housing & Municipal Services Director

Prepared by: Julie Bjork
Department: Housing Agency

City Manager
Approval: 

Submitted to Council/O.H.A. 03/04/2014

Approved: _____

Continued to: _____

Denied: _____

7

(E) Authorize the City Manager to execute the contract and agreements necessary to implement this project.

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

FISCAL IMPACT: The recommended Contract amount is \$10,141,025, plus a 15% contingency of \$1,521,154, for a total not to exceed amount of \$11,662,179. The contract amount includes design, procurement, construction and commissioning of net-metered photovoltaic systems, installation of new roofing under new solar panels, preventative maintenance for roof areas not receiving solar photovoltaic systems at the OCC, and insulation at the OPD.

The O&M Agreement amount is \$1,047,533 for 25 years. The PEGU Agreement amount is \$189,698 for 25 years. Payments for the O&M Agreement and the PEGU Agreement will be amortized over a 25 year period and will be submitted to City Council for funding allocation during the City's annual budget process. The year one payment for the O&M will be \$28,732 and the PEGU will be \$5,203.

The Third Amendment to the Professional Services Agreement with Sage Renewable Energy Consulting, Inc. will increase the current contract amount by \$62,800, increasing the total contract amount to \$120,000.

On July 16, 2013, the City Council and the Board of Directors of the Ontario Public Financing Authority authorized the issuance of lease revenue bonds for future City public facilities, including the solar photovoltaic systems. These bond proceeds will be used to fund this project. The cost of the proposed solar projects to be installed will be offset by anticipated savings of \$13,734,970 over a 25-year period.

BACKGROUND: On August 14, 2013, the City of Ontario issued a Request for Proposals ("RFP") consistent with California Government Code Section 4217.17 et. seq. to construct solar photovoltaic projects at the OCC and OPD sites ("Solar Project"). Three companies responded to the RFP which were SunPower, Solar City and Vanir Construction.

After extensive review of proposals and interviews, staff is recommending SunPower to design and construct the Solar Project pursuant to the Contract. Staff believes that SunPower's proposal provides the highest and best value to the City. SunPower, located in Richmond, California, brings the following strengths to this project:

Highest Performing Solar Panels

SunPower provides the highest performing solar photovoltaic panels with an estimate 0.25% annual module degradation. SunPower's solar cells also produce up to 33% more energy per square foot than standard efficiency solar cells.

Experience and Capacity

SunPower has a 28-year successful track-record of producing similar type projects. SunPower's experience includes developing over 1,700 megawatts ("MW") of ground mounted projects, over 300 MW of rooftop and parking shade structures and over one gigawatt ("GW") of projects being operated and maintained.

SunPower is vertically integrated, from cell design and manufacturing; to project engineering, construction, financial structuring, and long term operations and maintenance. With this vertical integration, the lead time and staging requirements for the project will be minimized.

Financial Strength

SunPower's financial strength was a critical factor in staff's recommendation. SunPower is a publicly traded company with reported revenues in excess of \$2.42 billion in 2012. In 2011, Total S.A. acquired a 60 percent equity stake in SunPower, providing SunPower with support from one of the strongest balance sheets in the energy industry. Total S.A. is the eleventh largest company in the world.

A summary of SunPower's proposed system is shown in the table below and the array layouts for the OCC and OPD buildings are shown in Exhibits A and B:

SunPower's Proposed System	
System Size Kilowatt peak ("kWp")	OCC Rooftop: 680.2 kWp OPD Rooftop: 918.2 kWp <u>OPD Carport: 313.2 kWp</u> TOTAL: 1911.6 kWp
Solar/Roof Project Cost (Design Build Contract)	Solar System: \$6,053,499 <u>Roofing Costs: \$4,087,526</u> TOTAL: \$10,141,025
25-Year Production Kilowatt hours ("kWh")	82,052,636
Estimated First-Year Value of Energy Produced	\$478,524
25-Year Cumulative Savings	\$13,734,970

The cost of the Solar Project under the proposed Contract is \$10,141,025. The City of Ontario will receive an approximate total of \$1,769,155 in State rebates during the first five years of operation of the completed Solar Project under the California Solar Initiative ("CSI"). The solar photovoltaic panels have a standard manufacturer warranty of 25 years. Over that 25 year period, the Solar Project is estimated to generate approximately \$13,734,970 in energy cost-savings and offset over 57 million pounds of CO₂ emissions. The cost of constructing the Solar Project will be entirely by the savings generated.

Staff is also recommending that the City enter into O&M and PEGU Agreements for a period of 25 years. Payment on these agreements will be made in annual installments and will require SunPower to maintain the systems and guarantee their performance.

As part of the City's effort to implement these contracts, staff is recommending the Third Amendment to the Professional Services Agreement with Sage Renewable Energy Consulting, Inc. to provide City staff with technical assistance from an independent solar consulting firm throughout the Solar Project.

SECTION 4217.12 OF THE CALIFORNIA GOVERNMENT CODE: Section 4217.12 of the California Government Code provides flexibility to public agencies when entering into energy service contracts so that public agencies are able to select contractors based upon the highest and best value rather than utilizing a competitive hard bid process since these systems often require performance guarantees and compliance with certain qualitative measures that may not otherwise be obtainable from a contractor selected through a low bid process. Section 4217.12 authorizes public agencies to enter into energy service contracts on such terms as their governing bodies determine are in the best interests of the public agency if the determination is made at a regularly scheduled public hearing. A public notice is required, and must be given at least two weeks in advance, indicating that the anticipated cost to the City for energy services under the energy services contract will be less than the anticipated marginal cost to the City of thermal, electrical, or other energy that would have been consumed by the City in the absence of those purchases. In accordance with the Section 4217.12 of the Government Code, the City published a notice of this public hearing in the Inland Valley Daily Bulletin on February 18, 2014.

CEQA FINDINGS: Staff, in consultation with its attorneys and consultants, has determined, based on all evidence in the administrative record, including the attached resolution, that the proposed Solar Project is exempt from review under the California Environmental Quality Act (Pub. Res. Code § 21000 et seq.: "CEQA") on multiple grounds. Each of the following exemptions is independently sufficient to exempt the whole of the action from CEQA.

1. First, the proposed Solar Project is exempt from CEQA pursuant to the statutory exemption outlined in Public Resources Code, Section 21080.35 for installation of solar energy systems. Specifically, that section states that CEQA "does not apply to the installation of a solar energy system on the roof of an existing building or at an existing parking lot." (Pub. Res. Code, § 21080.35.)
2. Second, the solar energy system improvements are exempt from CEQA pursuant to a Class 1 categorical exemption. (14 C.C.R., § 15301.)
3. Additionally, the proposed Solar Project is exempt from CEQA because it involves the construction of minor structures accessory to existing facilities. (14 C.C.R., § 15311.)
4. Finally, to the extent that the Class 1 and Class 11 categorical exemptions apply to the proposed Solar Project, none of the exceptions to the categorical exemptions applies. (14 C.C.R., § 15300.2)

Within five working days after the approval of the proposed Solar Project, staff will prepare, execute and file a Notice of Exemption with the San Bernardino County Clerk.

Upon approval of the Contract, a Notice to Proceed will be issued to SunPower in March 2014. Design work will begin immediately and the project is scheduled to be completed by late Winter 2014.

EXHIBIT A

OCC SOLAR PHOTOVOLTAIC SYSTEM

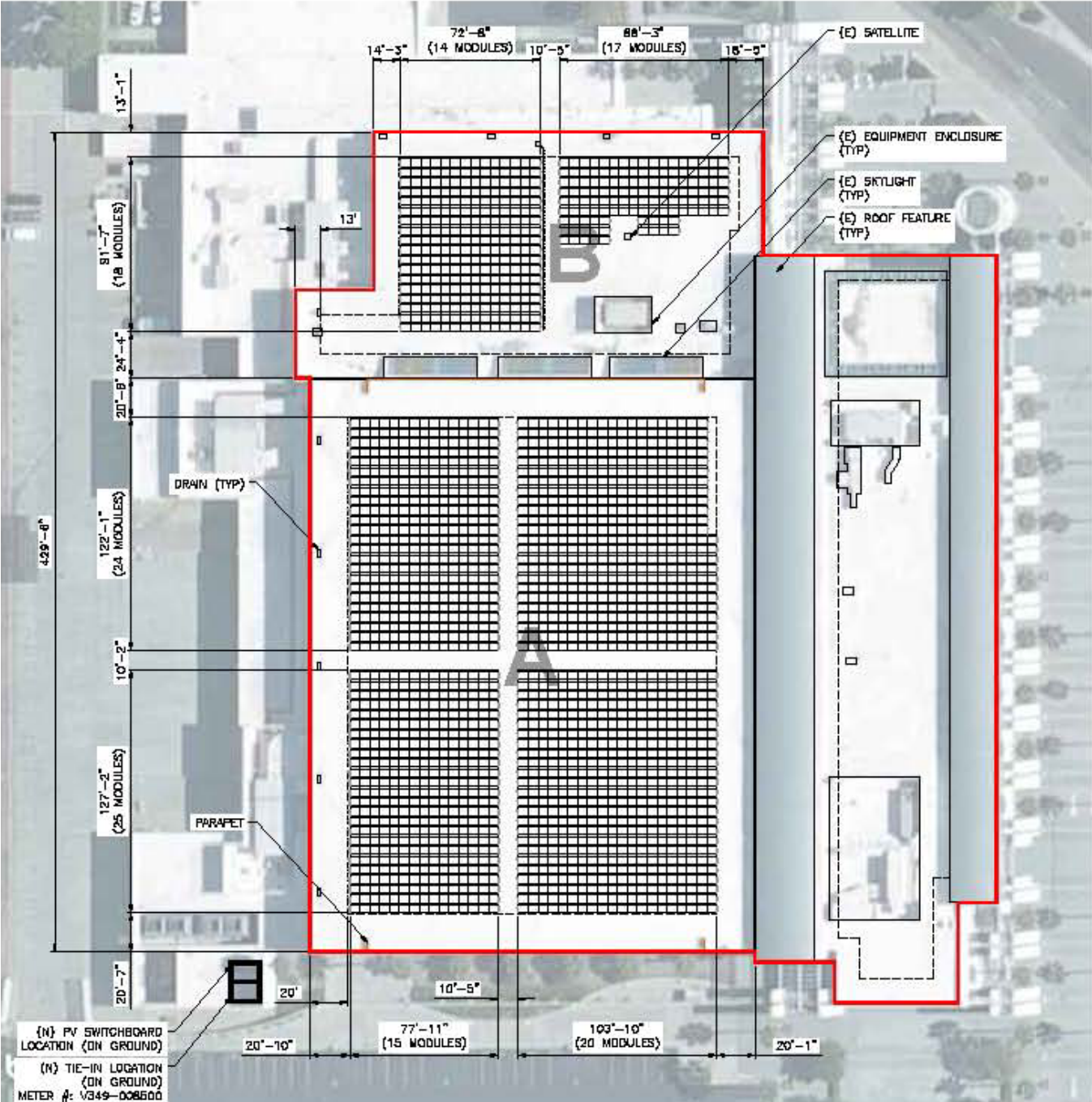
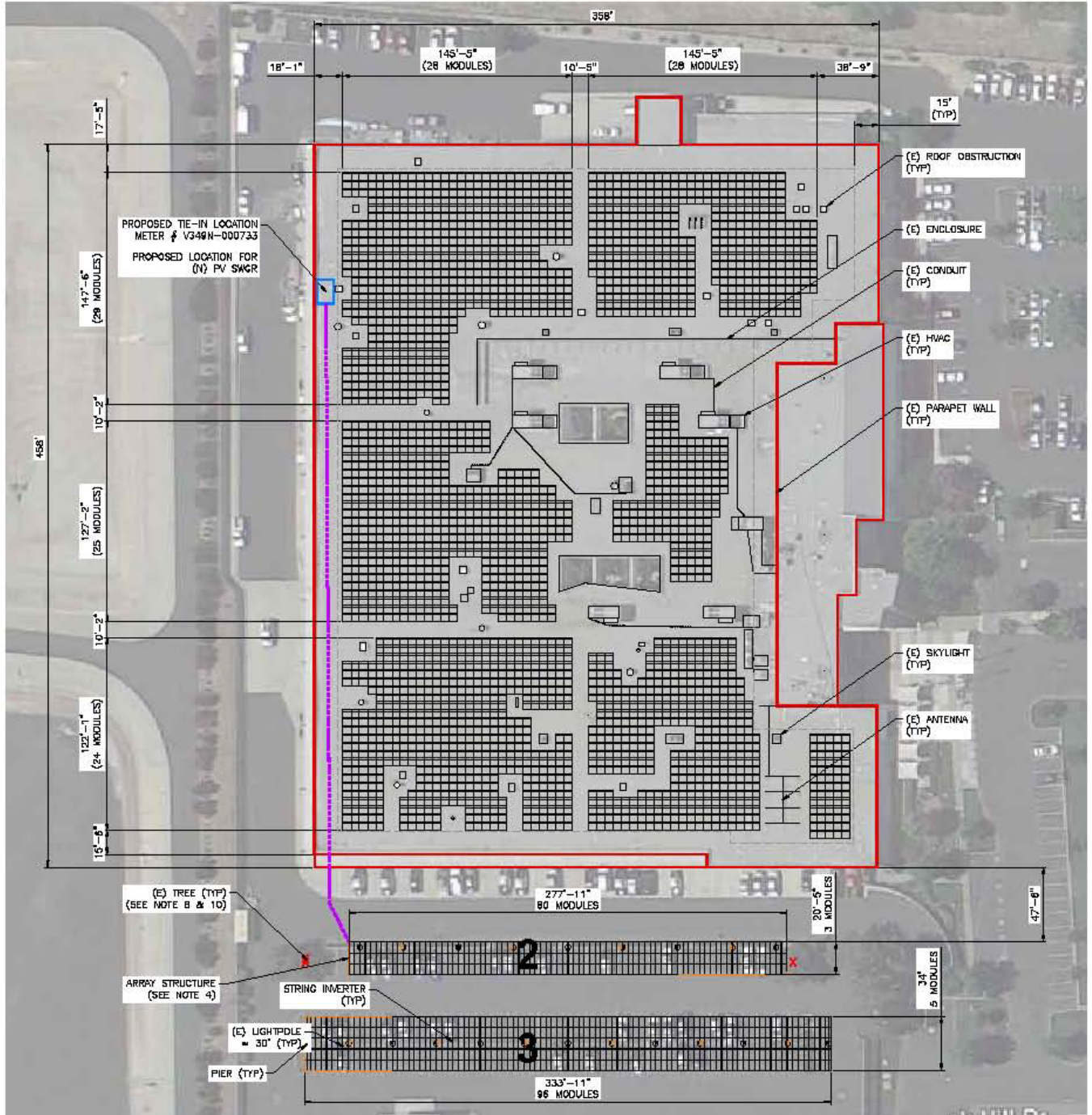


EXHIBIT B
OPD SOLAR PHOTOVOLTAIC SYSTEM



RESOLUTION NO. _____

A RESOLUTION THE CITY COUNCIL OF THE CITY OF ONTARIO, CALIFORNIA, MAKING FINDINGS UNDER THE GOVERNMENT CODE AND THE CALIFORNIA ENVIRONMENTAL QUALITY ACT IN FURTHERANCE OF ITS SOLAR PHOTOVOLTAIC PROJECT WITH SUNPOWER CORPORATION.

WHEREAS, the City of Ontario ("City") owns and controls the Ontario Police Department and the Ontario Convention Center upon which the City desires to contract with SunPower Corporation under a Design-Build Contract ("Contract") to design, permit, construct the Ontario Convention Center and Ontario Police Department Solar Photovoltaic Project ("Solar Project"); and

WHEREAS, California Government Code Section 4217.10 *et seq.* authorizes public agencies to contract for energy services if its governing body determines, after holding a regularly scheduled public hearing, public notice of which is given at least two weeks in advance, that the anticipated cost to the City for the energy services contract will be less than the anticipated marginal cost to the City of electrical energy that would have been consumed by the City in the absence of the energy services contract; and

WHEREAS, the City has been working with SunPower Corporation to scope the Solar Project and based on the overall project proposal and energy cost-savings, among other factors, desires to contract with SunPower Corporation to design and construct the Solar Project pursuant to the Agreement; and

WHEREAS, in accordance with Government Code Section 4217.12, on February 18, 2014, the City published a notice of a public hearing at which the City Council would consider the Solar Project; and

WHEREAS, in accordance with California Government Code Section 4217.10 *et seq.*, based on the energy cost savings to be generated by the proposed Solar Project, the cost of the energy purchases contemplated under the Agreement will be offset and will be less than the anticipated marginal cost to the City of electrical energy that would have been expended by the City if such Solar Project was not completed; and

WHEREAS, the City has reviewed the proposed Solar Project and has determined that it is exempt from the provisions of CEQA pursuant to a statutory exemption for solar energy systems installed on existing parking lots (Pub. Res. Code § 21080.35); and

WHEREAS, the City has further reviewed the proposed Solar Project and has also determined that it is exempt from the provisions of CEQA pursuant to both Class 1 and Class 11 categorical exemptions outlined in the State CEQA Guidelines (14 C.C.R. § 15301 and 15311); and

WHEREAS, the City has determined that none of the exceptions to the categorical exemptions outlined in Title 14, California Code of Regulations, section 15300.2 applies to the Solar Project; and

WHEREAS, each of the foregoing exemptions is sufficient to independently exempt the whole of the action from CEQA.

NOW, THEREFORE, the City Council of City of Ontario does hereby resolve, determine and order as follows:

SECTION 1. Recitals. The City Council hereby finds and determines that all of the recitals set forth above are true and correct.

SECTION 2. CEQA Findings. The City Council hereby finds that the Solar Project is exempt from review under CEQA on multiple grounds. Each of the following grounds is independently sufficient to exempt the entire solar photovoltaic project from CEQA.

a) First, City Council hereby finds that proposed Solar Project is exempt from CEQA pursuant to the statutory exemption outlined in Public Resources Code, section 21080.35 for installation of solar energy systems.

Public Resources Code, section 21080.35 provides that CEQA “does not apply to the installation of a solar energy system on the roof of an existing building or at an existing parking lot.” (Pub. Res. Code § 21080.35.) A solar energy system “includes all associated equipment.” (*Id.*) “Associated equipment consists of parts and materials that enable the generation and use of solar electricity or solar-heated water, including any monitoring and control, safety, conversion and emergency responder equipment necessary to connect to the customer’s electrical service or plumbing and any equipment, as well as any equipment necessary to connect the energy generated to the electrical grid, whether that connection is onsite or on an adjacent parcel of the building and separated only by an improved right-of-way.” (*Id.*) An “existing parking lot” is defined as “an area designated and used for parking of vehicles as of the time of the application for the solar energy system and for at least the previous two years.” (*Id.*)

The proposed Solar Project involves the installation of a solar energy system at the Ontario Convention Center and the Ontario Police Department consisting of rooftop ballasted rack-mounted systems and carports. The solar photovoltaic system and any associated equipment would be installed on the existing roofs at both the Ontario Convention Center and the Ontario Police Department and the carports would be installed within an existing parking lot at the Ontario Police Department. The solar photovoltaic systems will include inverters and be connected to the grid through net-energy meters and existing switchgear. The inverters will be mounted within the property boundary at the Solar Project site. The installation of the carports allow the parking lot to continue being used in its current capacity and at current parking ratios while concurrently facilitating the solar project. Consequently, the carports are materials that enable the generation and use of solar electricity and thus constitute associated

equipment within the meaning set forth in Public Resources Code, section 21080.35(b)(2).

The Ontario Convention Center was built in 1997. Since that time, the Ontario Convention Center has been in continuous use as a convention center. The Ontario Police Department and its associated parking lot were substantially rehabilitated in 2004. Since that time, the Ontario Police Department and its associated parking lot have been in continuous use as a police facility and the associated parking lot for parking of police vehicles. Thus, the buildings and associated parking lot satisfy the requirement of Public Resources Code, section 21080.35(b)(1) that the parking lot be used for parking vehicles at the time of project application and for at least two years prior. Consequently, the Solar Project is exempt from CEQA pursuant to Public Resources Code, section 21080.35 and no further environmental review is required.

b) Second, the City Council hereby finds that the Solar Project is exempt from CEQA pursuant to a Class 1 categorical exemption. (14 C.C.R. § 15301.) The Solar Project qualifies for the Class 1 exemption because it involves the minor alteration of the existing parking lots at the Ontario Police Department site. Specifically, the Solar Project contemplates the installation of mechanical equipment at the Ontario Convention Center and the Ontario Police Department sites, which improvements would lead to negligible or no expansion of use beyond the use existing at this time. (14 C.C.R. § 15301.) The installation of solar photovoltaic panels at the Ontario Convention Center and the Ontario Police Department will make these buildings more energy efficient. The arrays mounted on top of the to-be-installed carports on the parking lots at the Ontario Police Department site will allow the Ontario Police Department to generate its own electrical energy through the solar arrays and thus would place less demand on the existing electricity grid. The solar panels would not lead to an intensification of the existing uses at Ontario Convention Center and the Ontario Police Department because the improvements do not expand occupiable building square footage. Furthermore, the Solar Project does not involve any improvements that would increase the maximum capacity at either of the locations. In all, the proposed Solar Project would lead to net environmental benefits by reducing energy consumption at the Ontario Convention Center and Ontario Police Department. Therefore, the proposed Solar Project would be exempt pursuant to a Class 1 exemption. (14 C.C.R. § 15301.)

c) Third, the City Council hereby determines that the Solar Project is exempt from CEQA because it involves the construction of minor structures accessory to existing institutional facilities. (14 C.C.R. § 15311.) As explained above, the proposed Solar Project would involve the installation of roof mounted solar photovoltaic panels and installation of solar photovoltaic carports to be installed over an existing parking lot. The roof mounted solar photovoltaic panels would be low profile and would lie within the existing permitted height of the buildings. Views would not be interrupted by the solar panels and they would blend with the existing structures. Therefore, the proposed Solar Project would be exempt pursuant to a Class 11 exemption. (14 C.C.R. § 15311.)

SECTION 3. Additional CEQA Findings. To the extent that the Class 1 and Class 11 categorical exemptions apply to the proposed Solar Project, the City Council further finds that none of the exceptions to the categorical exemptions applies. (14 C.C.R. §15300.2.) Specifically, the City Council finds that the proposed Solar Project is not located in a particularly sensitive environment. The improvements will be installed on existing structures in urbanized/developed areas. The cumulative impact of successive projects of this same type in the same place over time would not be significant because the sites are limited in size and can only accommodate carport solar photovoltaic to the extent there is space available on existing parking lots at the Ontario Police Department site. As explained above, the proposed Solar Project involves installation of roof mounted solar photovoltaic panels and installation of solar photovoltaic carports on existing parking lots. These types of improvements are not unusual. Moreover, the Ontario Convention Center and Ontario Police Department are not located within an officially designated state scenic highway. Thus, the proposed Solar Project would not have an impact in this regard. Similarly, the Ontario Convention Center and the Ontario Police Department are not located on sites designated pursuant to Government Code section 65962.5. Finally, the proposed Solar Project does not involve any improvements, modifications, or other changes to an historical resource. Therefore, none of the circumstances outlined in Title 14, California Code of Regulations, Section 15300.2 applies. Thus, the categorical exemptions outlined above remain applicable to the proposed Solar Project.

SECTION 4. Notice of Exemption. Within five (5) working days after the passage and adoption of this Resolution, the City Council hereby authorizes and directs staff to prepare, execute and file with the County Clerk a Notice of Exemption for the proposed Solar Project.

SECTION 5. Custodian of Records. The administrative record for the Solar Project is maintained at City of Ontario City Hall, located at 303 E. B Street, Ontario, CA 91764. The custodian of records is the Vicki Kasad, Assistant City Clerk, City of Ontario Records Management Department.

SECTION 6. Government Code Findings. This Resolution is adopted following a meeting at which a public hearing was held at a regularly scheduled meeting of the City Council for which a minimum of two weeks' public notice was duly given. The City Council hereby finds that, pursuant to Government Code section 4217.12, the anticipated cost to the City for electrical energy services to be purchased by the City under the Agreement will be less than the anticipated marginal cost to the City of electrical or other energy that would have been consumed by the City if purchased from the local utility.

SECTION 7. Authorization to Execute Proposed Design-Build Contract. Based on the findings herein, the City Council hereby authorizes the City Manager or designee to execute the proposed Design-Build Contract (on file with the Records

Management Department) with SunPower Corporation or a special purpose entity formed by SunPower Corporation.

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

PASSED, APPROVED, AND ADOPTED this 4th day of March 2014.

PAUL S. LEON, MAYOR

ATTEST:

MARY E. WIRTES, MMC, CITY CLERK

APPROVED AS TO LEGAL FORM:

BEST BEST & KRIEGER LLP
CITY ATTORNEY

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

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

AYES: COUNCIL MEMBERS:

NOES: COUNCIL MEMBERS:

ABSENT: COUNCIL MEMBERS:

MARY E. WIRTES, MMC, CITY CLERK

(SEAL)

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

MARY E. WIRTES, MMC, CITY CLERK

(SEAL)

CITY OF ONTARIO

Agenda Report
March 4, 2014

SECTION:
PUBLIC HEARINGS

SUBJECT: A PUBLIC HEARING TO CONSIDER AN ORDINANCE TO MODIFY SALARY COMPENSATION FOR CITY COUNCIL MEMBERS AND ADOPTION OF A RESOLUTION TO MODIFY SALARY COMPENSATION FOR THE CITY CLERK AND CITY TREASURER

RECOMMENDATION: That the City Council introduce and waive further reading of an ordinance to modify salary compensation for City Council Members subject to California Government Code Section 36516; Ontario Municipal Code Title 2, Chapter 1, Article 2; and Ontario Municipal Code Title 2, Chapter 3, Article 5; and adopt a resolution to modify salary compensation for the City Clerk and City Treasurer.

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

FISCAL IMPACT: Modification to salary compensation for all elected officials would become effective after certification of the November 2014 election results and after the next City Council is sworn in and seated. The projected annual fiscal impact will be \$18,183 for City Council positions and \$4,816 for the City Clerk and City Treasurer positions.

BACKGROUND: Pursuant to California Government Code §36516, the City Council may adjust salary compensation up to 5% each year. Salary compensation for City Council Members was last adjusted by Ordinance No. 2826 which set the monthly amount at \$1,406.25, effective after the November 2006 election. In January 2008, the City Council approved a 10% increase (\$144.14 per month) to be effective after the new City Council was seated as a result of the November 2008 election. In January 2009, in light of the epic nationwide economic downturn, the City Council deferred the previously approved 10% salary adjustment which had yet to be implemented after the 2008 election. The Council's action took place in conjunction with all City employee groups and labor units foregoing raises and/or merit increases during the recession. The Council's deferral was to continue until such

STAFF MEMBER PRESENTING: Al C. Boling, City Manager

Prepared by: Al C. Boling
Department: Administration

City Manager
Approval: 

Submitted to Council/O.H.A. 03/04/2014

Approved: _____

Continued to: _____

Denied: _____

8

time as all City employee groups and labor units were able to receive salary increases. A similar situation existed with the City Clerk and City Treasurer with a 10% increase (approved by Resolution No. 2007-151) also being deferred in January 2009.

Since the last City Council salary adjustment was effective after the 2006 election (or eight years ago), the maximum allowable increase would be 40%, effective after the November 2014 election. On February 18, 2014, the City Council reviewed the maximum allowable adjustments and recommended approval of only half of the allowable 40%, resulting in an adjustment of \$303.06 per month. The new salary would be effective after certification of the next election in November 2014 and the elected officials are seated.

The salary compensation for the City Clerk and City Treasurer are currently \$931.25 per month. Ontario Municipal Code Sections 2-3.501(a) and 2-3.502(a) provide that salaries for these positions shall be fixed from time to time by the City Council. A change in salary compensation rates for the City Clerk and City Treasurer, consistent with the recommended change for Council Members, would result in an adjustment of \$200.69 per month. This adjustment is recommended to become effective after the next election in November 2014, consistent with City Council adjustments.

ORDINANCE NO. _____

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF ONTARIO,
CALIFORNIA, AMENDING SECTION 2-1.203 OF THE ONTARIO
MUNICIPAL CODE RELATING TO COUNCIL MEMBER SALARIES.

WHEREAS, the City Council's last adjustments to the salary compensation for City Council Members of the City of Ontario were effective in December 2006; and

WHEREAS, under Government Code Section 36516 the City Council may adjust salary compensation up to 5% each calendar year and a "calendar year" is defined as "each 12-month period since the operative date of the last adjustment of the salary in effect when the ordinance or amendment is enacted;" and

WHEREAS, based upon the definition of a calendar year in Government Code Section 36516, eight calendar years have passed since the last adjustment to City Council Member salaries, therefore, the salary compensation for City Council Member positions may be adjusted up to 40%; and

WHEREAS, on February 18, 2014 the City Council reviewed the maximum allowable adjustments and recommended approval of half of the allowable 40%; and

WHEREAS, the new salary would be effective after certification of the next election in November 2014 and the elected officials are seated; and

WHEREAS, the City Council desires to modify the salary compensation for all City Council Members.

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

SECTION 1. Section 2-1.203 of Chapter 1, of Title 2 of the Ontario Municipal Code is hereby amended, in its entirety, to read as follows:

Sec. 2-1.203. Payment.

- (a) Each member of the Council shall receive as salary the sum of One-Thousand-Seven-Hundred-Nine and 31/100ths Dollars (\$1,709.31) per month.
- (b) The Mayor shall receive as salary the sum of Two-Thousand-Ninety-Four and 56/100ths Dollars (\$2,094.56) per month.
- (c) Said salaries shall be payable from and after the operative date of this section at the same time and in the same manner as salaries are paid to other officers and employees of the City.

SECTION 2. Pursuant to Section 36516.5 of the California Government Code, the increases set forth herein shall become effective upon the completion and installation of the new members of the City Council subsequent to November 4, 2014, pursuant to California Elections Code Section 10262.

SECTION 3. The Mayor shall sign this ordinance and the City Clerk shall cause the same to be published within fifteen (15) days after its passage at least once in a newspaper of general circulation published and circulated in the City of Ontario, California.

PASSED, APPROVED, AND ADOPTED this _____ day of _____ 2014.

PAUL S. LEON, MAYOR

ATTEST:

MARY E. WIRTES, MMC, CITY CLERK

APPROVED AS TO FORM:

BEST BEST & KRIEGER LLP
CITY ATTORNEY

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

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

AYES: COUNCIL MEMBERS:

NOES: COUNCIL MEMBERS:

ABSENT: COUNCIL MEMBERS:

MARY E. WIRTES, MMC, CITY CLERK

(SEAL)

I hereby certify that the foregoing is the original of Ordinance No. _____ 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)

RESOLUTION NO. _____

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF ONTARIO, CALIFORNIA, SETTING THE COMPENSATION OF THE CITY CLERK AND CITY TREASURER AND RESCINDING PREVIOUS RESOLUTION NO. 2009-005.

WHEREAS, the City Council last reviewed and adjusted the salary compensation of the City Clerk and City Treasurer positions in December 2005 and such adjustments were effective after the election in November 2006; and

WHEREAS, the City Council adopted Resolution No. 2009-005 on January 6, 2009 to amend Sections 2-3.501(a) and 2-3.502(a) of the Ontario Municipal Code providing that the salaries for the City Clerk and City Treasurer positions shall be fixed by action of the City Council; and

WHEREAS, the City Council has reviewed the salaries for the City Clerk and City Treasurer positions and desires to adjust such salaries.

NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF ONTARIO, CALIFORNIA, DOES HEREBY RESOLVE AS FOLLOWS:

SECTION 1. Pursuant to Section 2-3.501(a) of Chapter 3, Title 2, Article 5 of the Ontario Municipal Code, the compensation of the City Clerk shall be One-Thousand-One-Hundred-Thirty-One and 94/100ths Dollars (\$1,131.94) per month.

SECTION 2. Pursuant to Section 2-3.502(a) of Chapter 3, Title 2, Article 5 of the Ontario Municipal Code, the compensation of the City Treasurer shall be One-Thousand-One-Hundred-Thirty-One and 94/100ths Dollars (\$1,131.94) per month.

SECTION 3. The compensation of the City Clerk and City Treasurer set by this resolution shall become effective upon the installation of the City Council Members subsequent to the November 4, 2014 election.

SECTION 4. Previous Resolution No. 2009-005 is hereby repealed to the extent it is inconsistent with the provisions of this resolution.

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

PASSED, APPROVED, AND ADOPTED this 4th day of March 2014.

PAUL S. LEON, MAYOR

ATTEST:

MARY E. WIRTES, MMC, CITY CLERK

APPROVED AS TO LEGAL FORM:

BEST BEST & KRIEGER LLP
CITY ATTORNEY

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

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

AYES: COUNCIL MEMBERS:

NOES: COUNCIL MEMBERS:

ABSENT: COUNCIL MEMBERS:

MARY E. WIRTES, MMC, CITY CLERK

(SEAL)

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

MARY E. WIRTES, MMC, CITY CLERK

(SEAL)