

**CITY OF ONTARIO**  
**CITY COUNCIL/HOUSING AUTHORITY/SUCCESSOR AGENCY**  
**TO THE ONTARIO REDEVELOPMENT AGENCY**  
**AGENDA**  
**MAY 5, 2015**

**Paul S. Leon**  
Mayor

**Alan D. Wapner**  
Mayor pro Tem

**Jim W. Bowman**  
Council Member

**Debra Dorst-Porada**  
Council Member

**Paul Vincent Avila**  
Council Member



**Al C. Boling**  
City Manager

**John E. Brown**  
City Attorney

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

**James R. Milhiser**  
Treasurer

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

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

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

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

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

**6:00 p.m.**

***ROLL CALL***

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

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

***CLOSED SESSION***

- GC 54956.8, CONFERENCE WITH REAL PROPERTY NEGOTIATORS  
Property: Parcel 5 of Parcel Map No. 19560; City/Authority Negotiator: Al C. Boling or his designee; Negotiating parties: Ontario Edison Holdings, LLC; Under negotiation: Price and terms of payment.
- GC 54956.8, CONFERENCE WITH REAL PROPERTY NEGOTIATORS  
Property: APN: 0218-241-22; 10350 Eucalyptus Avenue; City/Authority Negotiator: Al C. Boling or his designee; Negotiating parties: EPC Holdings 823, LLC; Under negotiation: Price and terms of payment.
- GC 54956.9 (d)(1), CONFERENCE WITH LEGAL COUNSEL, EXISTING LITIGATION: *City of Ontario v. City of Los Angeles, Los Angeles World Airports, and Los Angeles Board of Airport Commissioners, RIC 1306498.*

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

***PLEDGE OF ALLEGIANCE***

Council Member Bowman

**INVOCATION**

Pastor Steve Marquedant, Sovereign Grace Baptist Church

**REPORT ON CLOSED SESSION**

City Attorney

**PUBLIC COMMENTS**

**6:30 p.m.**

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

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

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

**SPECIAL CEREMONIES**

**FIFTEENTH ANNUAL MODEL COLONY AWARDS**

That the City Council Present the 2015 “Model Colony” Awards for Historic Preservation.

**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/Housing Authority/Successor Agency to the Ontario Redevelopment Agency of April 7, 2015, and approving same as on file in the Records Management Department.

**2. BILLS/PAYROLL**

**Bills** March 22, 2015 through April 4, 2015 and **Payroll** March 22, 2015 through April 4, 2015, when audited by the Finance Committee.

**3. A RESOLUTION APPROVING A SIGN EASEMENT AGREEMENT AND DECLARATION OF COVENANTS RELATED TO AN ELECTRONIC LED SIGN LOCATED AT CITRUS MOTORS ONTARIO, INC.**

That the City Council adopt a resolution approving a sign easement agreement (on file in the Records Management Department) and declaration of covenants with Citrus Motors Ontario, Inc., a California Corporation, for a not-to-exceed amount of \$246,410, and authorize the City Manager to execute said agreement granting the City an easement for the purposes of displaying certain messages on the dealership sign, located at 1375 South Woodruff Way.

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

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF ONTARIO, CALIFORNIA, APPROVING A SIGN EASEMENT AND DECLARATION OF COVENANTS WITH CITRUS MOTORS ONTARIO, INC.

**4. RESOLUTIONS TO APPROVE THE TRANSFER OF FORMER ONTARIO REDEVELOPMENT AGENCY PROPERTIES FROM THE SUCCESSOR AGENCY TO THE CITY OF ONTARIO OR THE ONTARIO HOUSING AUTHORITY**

- (A) That the City Council adopt a resolution approving the transfer of former Ontario Redevelopment Agency properties from the Successor Agency to the City;
- (B) That the Ontario Housing Authority adopt a resolution approving the transfer of former Ontario Redevelopment Agency properties from the Successor Agency to the Ontario Housing Authority; and
- (C) That the Successor Agency adopt a resolution approving the transfer of former Ontario Redevelopment Agency properties from the Successor Agency to the City of Ontario and Ontario Housing Authority.



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

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF ONTARIO, CALIFORNIA, APPROVING THE TRANSFER OF CERTAIN PROPERTIES OF THE FORMER ONTARIO REDEVELOPMENT AGENCY FROM THE SUCCESSOR AGENCY TO THE ONTARIO REDEVELOPMENT AGENCY TO THE CITY OF ONTARIO FOR GOVERNMENTAL USE.

RESOLUTION NO. OHA- \_\_\_\_\_

A RESOLUTION OF THE ONTARIO HOUSING AUTHORITY OF THE CITY OF ONTARIO, CALIFORNIA, APPROVING THE TRANSFER OF CERTAIN PROPERTIES OF THE FORMER ONTARIO REDEVELOPMENT AGENCY FROM THE SUCCESSOR AGENCY TO THE ONTARIO REDEVELOPMENT AGENCY TO THE ONTARIO HOUSING AUTHORITY PURSUANT TO HEALTH AND SAFETY CODE SECTION 34176.

RESOLUTION NO. SA- \_\_\_\_\_

A RESOLUTION OF THE SUCCESSOR AGENCY TO THE ONTARIO REDEVELOPMENT AGENCY OF THE CITY OF ONTARIO, CALIFORNIA, APPROVING THE TRANSFER OF CERTAIN PROPERTIES OF THE FORMER ONTARIO REDEVELOPMENT AGENCY TO THE CITY OF ONTARIO FOR GOVERNMENTAL USE AND ONTARIO HOUSING AUTHORITY PURSUANT TO HEALTH AND SAFETY CODE SECTION 34176.

**5. A RESOLUTION ORDERING THE SUMMARY VACATION OF THE RIGHTS-OF-WAY AND PUBLIC SERVICE EASEMENTS IN A PORTION OF MCCLEVE WAY EAST AND RECONVEYING ANY OF THE CITY'S INTEREST THEREIN**

That the City Council adopt a resolution ordering the summary vacation of the rights-of-way and public service easements in a portion of McCleve Way East and reconveying any of the City's interest therein and authorize the City Manager to execute the documents necessary to evidence the vacation and the reconveyance of the City's interest therein.

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

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF ONTARIO, CALIFORNIA, ORDERING THE SUMMARY VACATION OF THE RIGHTS-OF-WAY AND PUBLIC SERVICE EASEMENTS IN A PORTION OF MCCLEVE WAY EAST AND RECONVEYING ANY OF THE CITY'S INTEREST THEREIN.

**6. A FIRST AMENDMENT TO THE CONSOLIDATED PLAN ANNUAL ACTION PLAN FOR THE 2014-15 PROGRAM YEAR AND RESOLUTIONS APPROVING AGREEMENTS FOR THE ACQUISITION AND MINOR REHABILITATION OF THE VESTA APARTMENTS**

That the City Council and Authority Board take the following actions:

- (A) Approve the First Amendment to the Consolidated Plan Annual Action Plan (on file in the Records Management Department) for the 2014-15 Program Year (“Substantial Amendment”);
- (B) Adopt resolutions approving a Community Development Block Grant (“CDBG”) loan agreement between the City and Ontario Housing Authority (“Authority”), in the amount of \$200,000; the Assignment, Assumption, and Amendment Agreement of the existing HOME Investment Partnership Agreement (“HOME Agreement”) between the City and Housing Opportunities Group, Inc. (“HOGI”), in the amount of \$244,713; the Assumption and Amendment of the existing Inland Fair Housing and Mediation Board (“IFHMB”) loan between IFHMB and HOGI, in the amount of \$158,565; and the assumption of the property management agreement between HOGI and Cannon Management Company, located in Riverside, California, for the Vesta Apartments, located at 520 – 526 ½ West Vesta Street (AKA 520 West Vesta Street). All agreements are on file in the Records Management Department;
- (C) Authorize the Authority to pay outstanding property management fees and maintenance expenses, not to exceed \$17,000, utilizing existing OHA revenues; and
- (D) Authorize the City Manager and Executive Director, to take all actions necessary or desirable to implement these activities related to the acquisition of the Vesta Apartments.

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

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF ONTARIO, CALIFORNIA, APPROVING A LOAN OF COMMUNITY DEVELOPMENT BLOCK GRANT (CDBG) PROGRAM FUNDS TO THE ONTARIO HOUSING AUTHORITY (AUTHORITY), AND THE ASSUMPTION AND AMENDMENT OF AN EXISTING HOME INVESTMENT PARTNERSHIP PROGRAM FUNDS LOAN AND RELATED AGREEMENTS BETWEEN THE CITY AND HOUSING OPPORTUNITIES GROUP, INC. (HOGI) BY THE AUTHORITY, ALL FOR THE ACQUISITION, MINOR REHABILITATION AND OPERATION OF AFFORDABLE HOUSING AT THE PROPERTY LOCATED AT 520-526 1/2 WEST VESTA STREET; AND APPROVING THE ASSUMPTION AND RECORDATION OF AMENDED AFFORDABILITY COVENANTS AGAINST SAID PROPERTY BY THE AUTHORITY.

## RESOLUTION NO. OHA-\_\_\_\_\_

A RESOLUTION OF THE ONTARIO HOUSING AUTHORITY OF THE CITY OF ONTARIO, CALIFORNIA, APPROVING THE BORROWING OF COMMUNITY DEVELOPMENT BLOCK GRANT (CDBG) PROGRAM FUNDS FROM THE CITY OF ONTARIO (CITY), THE ASSUMPTION AND AMENDMENT OF AN EXISTING HOME INVESTMENT PARTNERSHIP PROGRAM FUNDS LOAN AND RELATED AGREEMENTS BETWEEN THE CITY AND HOUSING OPPORTUNITIES GROUP, INC. (HOGI), THE ASSUMPTION AND AMENDMENT OF AN EXISTING LOAN AGREEMENT BETWEEN INLAND FAIR HOUSING AND MEDIATION BOARD AND HOGI, AND THE PAYMENT OF OUTSTANDING PROPERTY MANAGEMENT FEES AND MAINTENANCE EXPENSES ALL FOR THE ACQUISITION, MINOR REHABILITATION AND OPERATION OF AFFORDABLE HOUSING AT THE PROPERTY LOCATED AT 520-526 1/2 WEST VESTA STREET; APPROVING THE ASSUMPTION AND RECORDATION OF AMENDED AFFORDABILITY COVENANTS AGAINST SAID PROPERTY; AND APPROVING THE ASSUMPTION OF A PROPERTY MANAGEMENT AGREEMENT WITH CANNON MANAGEMENT COMPANY FOR SAID PROPERTY.

**7. A FIVE-YEAR CONSOLIDATED PLAN FOR FISCAL YEARS 2015-19 AND A ONE-YEAR ACTION PLAN FOR THE COMMUNITY DEVELOPMENT BLOCK GRANT, HOME INVESTMENT PARTNERSHIPS, AND EMERGENCY SOLUTIONS GRANT PROGRAMS FOR FISCAL YEAR 2015-16**

That the City Council:

- (A) Approve the Five-Year Consolidated Plan for Fiscal Years 2015-19 and a One-Year Action Plan for Fiscal Year 2015-16 for the Community Development Block Grant for the Community Development Block Grant (“CDBG”), HOME Investment Partnerships (“HOME”), and Emergency Solutions Grant (“ESG”) Programs (on file in the Records Management Department) for Fiscal Year 2015-16;
- (B) Direct staff to prepare and transmit the final documents to the U.S. Department of Housing and Urban Development (“HUD”); and
- (C) Authorize the City Manager, or his designee, to take all actions necessary or desirable to implement the Five-Year Consolidated Plan, One-Year Action Plan, Subrecipient Agreements, and the Analysis of Impediments to Fair Housing Choice (“AI”).

**8. MAINTENANCE AGREEMENT FOR MANAGED PRINT SERVICES OF CITYWIDE KONICA MINOLTA MULTIFUNCTION COPIERS/KONICA MINOLTA (KM) BUSINESS SOLUTIONS**

That the City Council authorize the City Manager to execute a recurring annual maintenance contract with Konica Minolta (KM) Business Solutions of San Bernardino, California, for supplies and maintenance of KM multifunction copiers, estimated to be \$130,000 annually, consistent with the terms and conditions of the County of San Bernardino’s contract for print services.

**9. PURCHASE AND IMPLEMENTATION OF A NEW CITYWIDE HUMAN RESOURCES AND PAYROLL SOFTWARE SOLUTION USING WORKDAY SOFTWARE AS A SERVICE**

That the City Council authorize the City Manager to execute a multi-year agreement with Workday, Inc. of Pleasanton, California (on file with the Records Management Department) for human resources and payroll software on their hosted, cloud based software as a service (SAAS) platform, in the amount of \$3,454,400; and a services agreement with SteelBridge Solutions, Inc. of Atlanta, Georgia (on file with the Records Management Department) for implementation of the Workday Human Resources and Payroll software, in the amount of \$300,000 and authorize a project-wide contingency of \$938,600 (25%) for a combined project total amount not to exceed \$4,693,000.

**10. RECOGNITION OF “WATER AWARENESS MONTH” IN THE CITY OF ONTARIO**

That the City Council proclaim the month of May 2015 as “Water Awareness Month” in the City of Ontario.

**11. RECOGNITION OF “HISTORIC PRESERVATION MONTH” IN THE CITY OF ONTARIO**

That the City Council proclaim the month of May 2015 as “Historic Preservation Month” in the City of Ontario.

**12. RESOLUTIONS AUTHORIZING TWO APPLICATIONS FOR ACTIVE TRANSPORTATION PROGRAM GRANT FUNDING FOR BICYCLE AND PEDESTRIAN IMPROVEMENTS**

That the City Council adopt two resolutions authorizing staff to submit applications through the California Department of Transportation (CALTRANS) for Active Transportation Program (ATP) Grant funds totaling \$57,007 for: (1) various sidewalk improvements around El Camino Elementary School in Ontario; and (2) in partnership with the adjacent cities of Montclair, Upland and Chino, for the design and installation of Class II and Class III bicycle improvements for G/Orchard Street Crosstown Bike Route from Mills Avenue in Montclair to Etiwanda Avenue in Ontario, and San Antonio Avenue Corridor from Foothill Boulevard in Upland thru Ontario to Walnut Avenue in Chino; and authorize the City Manager to execute all required CALTRANS grant and funding agreements.

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

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF ONTARIO, CALIFORNIA, AUTHORIZING APPLICATION FOR CYCLE 2 ACTIVE TRANSPORTATION PROGRAM (ATP) FUNDING THROUGH CALIFORNIA DEPARTMENT OF TRANSPORTATION AND SOUTHERN CALIFORNIA ASSOCIATION OF GOVERNMENTS FOR VARIOUS SAFE ROUTES TO SCHOOLS IMPROVEMENTS AROUND EL CAMINO ELEMENTARY SCHOOL.

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

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF ONTARIO, CALIFORNIA, AUTHORIZING APPLICATION FOR CYCLE 2 ACTIVE TRANSPORTATION PROGRAM (ATP) FUNDING THROUGH CALIFORNIA DEPARTMENT OF TRANSPORTATION AND SOUTHERN CALIFORNIA ASSOCIATION OF GOVERNMENTS FOR VARIOUS SAFE ROUTES TO SCHOOLS IMPROVEMENTS AROUND EL CAMINO ELEMENTARY SCHOOL.

## **PUBLIC HEARINGS**

### **13. A PUBLIC HEARING TO CONSIDER AN ORDINANCE AMENDING CHAPTER 5 OF TITLE 4 OF THE ONTARIO MUNICIPAL CODE RELATING TO TAXICABS AND AUTOMOBILES FOR HIRE**

That the City Council introduce and waive further reading of an ordinance amending Chapter 5 to Title 4 of the Ontario Municipal Code, updating the regulation of taxicabs and automobiles for hire.

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 CHAPTER 5 TO TITLE 4 OF THE ONTARIO MUNICIPAL CODE RELATING TO TAXICABS AND AUTOMOBILES FOR HIRE.

## **ADMINISTRATIVE REPORTS/DISCUSSION/ACTION**

### **14. DECLARATION OF MANDATORY WATER RESTRICTIONS – STAGE 2**

That the City Council implement Stage 2 of the City's Municipal Code Water Conservation Plan.

## **STAFF MATTERS**

City Manager Boling

## COUNCIL MATTERS

### ***SCHOOL DISTRICT LIAISONS REPORT***

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

## ADJOURNMENT

**CITY OF ONTARIO  
CLOSED SESSION REPORT**

City Council // Housing Authority // Other // (GC 54957.1)  
**May 5, 2015**

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

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

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

- GC 54956.8, CONFERENCE WITH REAL PROPERTY NEGOTIATORS  
Property: Parcel 5 of Parcel Map No. 19560; City/Authority Negotiator: Al C. Boling or his designee; Negotiating parties: Ontario Edison Holdings, LLC; Under negotiation: Price and terms of payment.

**No Reportable Action**

**Continue**

**Approved**

/ /

/ /

/ /

Disposition: \_\_\_\_\_

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

- GC 54956.8, CONFERENCE WITH REAL PROPERTY NEGOTIATORS  
Property: APN: 0218-241-22; 10350 Eucalyptus Avenue; City/Authority Negotiator: Al C. Boling or his designee; Negotiating parties: EPC Holdings 823, LLC; Under negotiation: Price and terms of payment.

**No Reportable Action**

**Continue**

**Approved**

/ /

/ /

/ /

Disposition: \_\_\_\_\_



**CITY OF ONTARIO  
CLOSED SESSION REPORT**

City Council // Housing Authority // Other // (GC 54957.1)

**May 5, 2015**

(continued)

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

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

**No Reportable Action**

**Continue**

**Approved**

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Disposition: \_\_\_\_\_

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

# CITY OF ONTARIO

Agenda Report  
May 5, 2015

SECTION:  
SPECIAL CEREMONIES

**SUBJECT: FIFTEENTH ANNUAL MODEL COLONY AWARDS**

**RECOMMENDATION:** That the City Council Present the 2015 "Model Colony" Awards for Historic Preservation.

**COUNCIL GOALS:** Regain Local Control of the Ontario International Airport  
Focus Resources in Ontario's Commercial and Residential Neighborhoods  
Encourage, Provide or Support Enhanced Recreational, Educational, Cultural and Healthy City  
Programs, Policies and Activities

**FISCAL IMPACT:** The Model Colony Award Presentations will not have a fiscal impact.

**BACKGROUND:** The Planning Commission, acting as the Historic Preservation Commission, developed the "Model Colony" Awards program to recognize outstanding achievements in the preservation of Ontario's historic properties.

The "Model Colony" Awards are presented by the City Council each spring to coincide with National Preservation Month. Five awards will be presented in the categories of preservation. On April 28, 2015, the Planning Commission considered each category and chose the following recipients:

**George Chaffey  
Memorial Award:**

For distinguished leadership in the preservation of Ontario's heritage.

**Recipient: NOEL Committee  
The Euclid Avenue Nativity Scene**

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

Prepared by: Elly Antuna  
Department: Planning

Submitted to Council/O.H.A. 05/05/2015

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

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

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

City Manager  
Approval: 

**Award of Merit:** For achievement in the ongoing preservation of a historic resource.

***Recipient:* 205 East Plaza Serena  
Armando Ramos**

**Award of Merit:** For achievement in the ongoing preservation of a historic resource.

***Recipient:* 646 East Princeton Street  
Jodie Boytos  
Andrew and Fran Boytos, Jr.**

**Award of Merit:** For achievement in the ongoing preservation of a historic resource.

***Recipient:* 825 North Euclid Avenue  
Ray Adamyk**

**Award of Merit:** For achievement in the ongoing preservation of a historic resource.

***Recipient:* 403 West E Street  
Mary and John Kashuba**

# CITY OF ONTARIO

*Agenda Report*  
May 5, 2015

**SECTION:**  
**CONSENT CALENDAR**

**SUBJECT: A RESOLUTION APPROVING A SIGN EASEMENT AGREEMENT AND DECLARATION OF COVENANTS RELATED TO AN ELECTRONIC LED SIGN LOCATED AT CITRUS MOTORS ONTARIO, INC.**

**RECOMMENDATION:** That the City Council adopt a resolution approving a sign easement agreement (on file in the Records Management Department) and declaration of covenants with Citrus Motors Ontario, Inc., a California Corporation, for a not-to-exceed amount of \$246,410, and authorize the City Manager to execute said agreement granting the City an easement for the purposes of displaying certain messages on the dealership sign, located at 1375 South Woodruff Way.

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

**FISCAL IMPACT:** Under the terms of the subject agreement, the City will pay Citrus Motors Ontario, Inc. the lesser of one-half the actual costs to upgrade the existing sign with the installation of LED sign panels for a not-to-exceed amount of \$246,410, to be paid within thirty (30) calendar days following the date on which the sign is fully operational and Citrus Motors Ontario, Inc. has obtained final building permit sign off by City for the sign. In return, the City will be entitled to 15% of the sign's operating time for the display of City messages over an eight year period, with an option to utilize 20% in the event of an emergency. If approved, budget adjustments for appropriations will be included in the next budget update report to the City Council.

**BACKGROUND:** Citrus Motors Ontario, Inc. owns and operates a sign at 1375 South Woodruff Way, generally located at the intersection of Interstate 15 and East Jurupa Street. Citrus Motors Ontario, Inc. operators wish to update the existing sign through the installation of a new double-faced electronic LED sign. Under the terms of the proposed agreement, the City will be entitled to 15% of the LED sign's operating time each hour over the next eight years for the purpose of displaying City messages such as citywide events, recreation programs, and public service announcements including State of California Emergency Digital Information Service messages. The owner will be responsible for on-going

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

Prepared by: John Andrews  
Department: Economic Development

City Manager  
Approval: 

Submitted to Council/O.H.A. 05/05/2015

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

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

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

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maintenance and repair of the sign. The subject Agreement will facilitate an important and timely use enhancement to the subject sign and allow for improved City messaging at a highly visible location in the City.

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

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF ONTARIO,  
CALIFORNIA, APPROVING A SIGN EASEMENT AND DECLARATION  
OF COVENANTS WITH CITRUS MOTORS ONTARIO, INC.

WHEREAS, Citrus Motors Ontario, Inc., a California Corporation ("Citrus Motors") owns certain real property located at 1375 South Woodruff Way, in the City of Ontario, California ("Property"), on which it owns and operates a Ford automobile dealership and service business; and

WHEREAS, Citrus Motors intends to install on the Property a new electronic reader board sign ("Sign"); and

WHEREAS, the City of Ontario ("City") desires to utilize the Sign for displaying public messages which may include, but are not limited to, advertising or public service announcements; and

WHEREAS, in consideration for the use of the easement, the City agree to reimburse Citrus Motors an amount equal to 50 percent of sign, not to exceed \$246,410, to be paid within thirty (30) calendar days following the date on which the Sign is fully operational; and in consideration for City's payment of fifty percent (50%) of the cost of the Sign, for a period of eight years the City will be entitled to display public messages on the Sign for fifteen percent (15%) of each hour that the Sign is in use for the entire eight (8) years, with an option to utilize twenty percent (20%) of the sign's operating time in the event of an emergency; and

WHEREAS, the City and Citrus Motors have negotiated the terms of the Declaration of Covenants and Sign Easement ("Easement"), a copy of which is attached to this Resolution as Exhibit A, in order to set forth the terms and conditions in which the City will provide funding for fifty percent (50%) of the cost of the Sign, not to exceed \$246,410, in exchange for fifteen percent (15%) of each operating hour of the Sign for eight (8) years and with an option to utilize twenty percent (20%) of the sign's operating time in the event of an emergency, and for Citrus Motors to be solely responsible for the installment and maintenance of the Sign for the term of the Easement; and

WHEREAS, City staff has determined that the City's approval of the Easement is exempt from the California Environmental Quality Act ("CEQA"), pursuant to CEQA Guidelines Section 15311(a) because the installation of the Sign constitutes the construction and placement of a minor structure accessory to an existing commercial facility.

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

SECTION 1. RECITALS. The above recitals are true and correct, and are incorporated into this Resolution by reference as though fully set forth herein.

SECTION 2. Approval of Easement. The City Council hereby approves the Easement substantially in the form attached to this Resolution as Exhibit A. The City Council hereby authorizes the City Manager, with the concurrence of the City Attorney, to execute and deliver on behalf of the City the Easement and such other documents and instruments as may be necessary or convenient in furtherance of the actions authorized in this Resolution.

SECTION 3. Authorization. The City Council hereby authorizes and directs City staff to do all that is necessary to effectuate the intent of the Easement and this Resolution.

SECTION 4. CEQA Compliance. The City Council hereby authorizes and directs City staff to file a Notice of Exemption under CEQA with the Clerk of San Bernardino County within five (5) calendar days following approval of this Resolution.

SECTION 5. Effective Date. This Resolution shall become effective immediately upon its adoption.

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

PASSED, APPROVED, AND ADOPTED this 5<sup>th</sup> day of May 2015.

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PAUL S. LEON, MAYOR

ATTEST:

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MARY E. WIRTES, MMC, CITY CLERK

APPROVED AS TO LEGAL FORM:

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BEST BEST & KRIEGER LLP  
CITY ATTORNEY



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

I, Mary E. Wirtes, City Clerk of the City of Ontario, do hereby certify that foregoing Resolution No. 2015-     was duly passed and adopted by the City Council of the City of Ontario at their regular meeting held May 5, 2015 by the following roll call vote, to wit:

AYES:           COUNCIL MEMBERS:

NOES:           COUNCIL MEMBERS:

ABSENT:        COUNCIL MEMBERS:

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MARY E. WIRTES, MMC, CITY CLERK

(SEAL)

The foregoing is the original of Resolution No. 2015-     duly passed and adopted by the Ontario City Council at their regular meeting held May 5, 2015.

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MARY E. WIRTES, MMC, CITY CLERK

(SEAL)

EXHIBIT A  
DECLARATION OF COVENANTS AND SIGN EASMENT AGREEMENT

[Attached behind this cover page]

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

City of Ontario  
303 E. B Street  
Ontario, California 91764  
Attn: Economic Development Director

Space above line for Recorder's use only  
Exempt from recording fees per Govt. Code § 27383  
Exempt from Documentary Transfer Tax per Rev. &  
Tax. Code § 11911

**CITY OF ONTARIO**

**DECLARATION OF COVENANTS AND  
SIGN EASEMENT  
(Citrus Motors)**

THIS DECLARATION OF COVENANTS AND SIGN EASEMENT (Citrus Motors) (this "**Covenant**") is dated as of \_\_\_\_\_, 2015 ("**Effective Date**"), and is entered into by and between the CITY OF ONTARIO, a California municipal corporation ("**City**"), and CITRUS MOTORS ONTARIO, INC. a California corporation ("**Owner**"). City and Owner enter into this Covenant with reference to the following recited facts (each a "**Recital**"):

**RECITALS**

A. Owner owns that certain real property located at 1375 S. Woodruff Way, in the City of Ontario, California ("**Property**"), as further described in Exhibit "1" attached to this Covenant and incorporated herein by this reference, on which Owner owns and operates the Business (as defined herein).

B. Owner desires, and City agrees, for Owner to install on the Property a new double face "V'd" electronic YESCO LED display ("**Sign**") and to grant an easement to City for fifteen percent (15%) of each hour that the Sign is in use for any public purpose which may include, but is not limited to, advertising or public service announcements, with the option to increase City's usage to twenty percent (20%) of each hour in the event of an emergency, for the Operating Period, as such term is defined in Section 1.26 ("**Easement**").

C. Owner anticipates that the Sign will cost approximately Four Hundred Ninety-Two Thousand Eight Hundred and Twenty Dollars (\$492,820). In consideration for the Easement, City agrees to reimburse Owner an amount equal to fifty percent (50%) of the Sign, not to exceed Two Hundred Forty-Six Thousand Four Hundred and Ten Dollars (\$246,410).

D. City and Owner enter into and record this Covenant to provide for Owner's covenant and agreement to continuously operate the Sign and the Business on the Property for a specified minimum time period, which shall run with the land of the Property and bind successive owners and tenants of the Property, all as set forth in this Covenant, and to create an easement over the Sign for the benefit and use of City.

## **AGREEMENT**

NOW, THEREFORE, IN CONSIDERATION OF THE PROMISES AND COVENANTS SET FORTH IN THIS COVENANT, CITY AND OWNER AGREE, AS FOLLOWS:

**1. DEFINITIONS.** All initially capitalized terms used in this Covenant shall have the meanings set forth in this Section 1 or, if not set forth in this Section 1, where such term first appears in this Covenant, unless the context of usage clearly requires another meaning.

1.1 Affiliate. Any other Person, directly or indirectly, Controlling or Controlled by or under common Control with the specified Person.

1.2 Approval. Any license, permit, approval, consent, certificate, ruling, variance, authorization, conditional use permit, or amendment to any of the foregoing, as shall be necessary or appropriate under any Law to operate the Sign on the Property or operate the Business on the Property.

1.3 Business. That Citrus Motors automobile sales and service business operated by the Owner under the business name "Citrus Motors Ontario, Inc." as of the Effective Date, or a successor name for such business, without any material change in the primary business.

1.4 Business Day. Any weekday on which the City is open to conduct regular municipal functions with regular City personnel.

1.5 City. The City of Ontario, a California municipal corporation, and any assignee of or successor to the rights, powers or responsibilities of the City of Ontario.

1.6 City Manager. The City Manager of City or his or her designee or successor in function.

1.7 City Parties. Collectively, City, the City Council and City's elected officials, employees, agents and attorneys.

1.8 Claim. Any claim, loss, cost, damage, expense, liability, lien, action, cause of action (whether in tort, contract, under statute, at law, in equity or otherwise), charge, award, assessment, fine or penalty of any kind (including consultant and expert fees and expenses and investigation costs of whatever kind or nature, and, if an Indemnitor improperly fails to provide a defense for an Indemnitee, then Legal Costs of the Indemnitee) or any judgment.

1.9 Control. Possession, directly or indirectly, of the power to direct or cause the direction of the management and policies of a Person, whether by ownership of Equity Interests, by contract or otherwise.

1.10 County. The County of San Bernardino, California.

1.11 Covenant Payment. Fifty percent (50%) of the cost of installation of the Sign, not to exceed Two Hundred Forty-Six Thousand Four Hundred and Ten Dollars (\$246,410).

1.12 Default. Defined in Section 16.

1.13 Default Interest. Interest at an annual rate equal to the lesser of: (a) five percent (5%) per annum; or (b) the Usury Limit.

1.14 Easement. Defined in Section 4.

1.15 Environmental Claim. Any and all claims, demands, damages, losses, liabilities, obligations, penalties, fines, actions, causes of action, judgments, suits, proceedings, costs, disbursements or expenses, including Legal Costs and fees and costs of environmental consultants and other experts, and all foreseeable and unforeseeable damages or costs of any kind or of any nature whatsoever, directly or indirectly, relating to or arising from any actual or alleged violation of any Environmental Law or Hazardous Substance Discharge.

1.16 Environmental Law. All Federal, State, local or municipal laws, rules, orders, regulations, statutes, ordinances, codes, decrees or requirements of any government authority, in effect on or enacted after the Effective Date, regulating, relating to, or imposing liability or standards of conduct concerning any Hazardous Substance, the regulation or protection of the environment, including ambient air, soil, soil vapor, groundwater, surface water, or land use or pertaining to occupational health or industrial hygiene or occupational or environmental conditions on, under or about the Property, as now or may at any later time be in effect, including the Comprehensive Environmental Response, Compensation and Liability Act of 1980 (“CERCLA”) [42 USC Section 9601 et seq.]; the Resource Conservation and Recovery Act of 1976 (“RCRA”) [42 USC Section 6901 et seq.]; the Clean Water Act, also known as the Federal Water Pollution Control Act (“FWPCA”) [33 USC Section 1251 et seq.]; the Toxic Substances Control Act (“TSCA”) [15 USC Section 2601 et seq.]; the Hazardous Materials Transportation Act (“HMTA”) [49 USC Section 1801 et seq.]; the Insecticide, Fungicide, Rodenticide Act [7 USC Section 6901 et seq.] the Clean Air Act [42 USC Section 7401 et seq.]; the Safe Drinking Water Act [42 USC Section 300f et seq.]; the Solid Waste Disposal Act [42 USC Section 6901 et seq.]; the Surface Mining Control and Reclamation Act [30 USC Section 101 et seq.] the Emergency Planning and Community Right to Know Act [42 USC Section 11001 et seq.]; the Occupational Safety and Health Act [29 USC Section 655 and 657]; the California Underground Storage of Hazardous Substances Act [California Health and Safety Code Section 25288 et seq.]; the California Hazardous Substances Account Act [California Health and Safety Code Section 25300 et seq.]; the California Safe Drinking Water and Toxic Enforcement Act [California Health and Safety Code Section 24249.5 et seq.]; or the Porter-Cologne Water Quality Act [California Water Code Section 13000 et seq.]; together with any regulations promulgated under the authorities referenced above.

1.17 Equity Interest. All or any part of any direct equity or ownership interest(s) (whether stock, partnership interest, beneficial interest in a trust, membership interest in a limited liability company, or other interest of an ownership or equity nature) in any entity, at any tier of ownership, that directly owns or holds any ownership or equity interest in a Person.

1.18 Government. Any and all courts, boards, agencies, commissions, offices or authorities of any nature whatsoever of any governmental unit (Federal, State, County, district, municipal, City or otherwise) whether now or later in existence.

1.19 Indemnify. Where this Covenant states that any Indemnitor shall “indemnify” any Indemnitee from, against or for a particular Claim, the Indemnitor shall indemnify the Indemnitee and defend and hold the Indemnitee harmless from and against such Claim (alleged or otherwise). “Indemnified” shall have the correlative meaning.

1.20 Indemnitee. Any Person entitled to be Indemnified under the terms of this Covenant.

1.21 Indemnitor. A Party that agrees to Indemnify any other Person under the terms of this Covenant.

1.22 Laws. Every law, ordinance, requirement, order, proclamation, directive, rule or regulation of any Government applicable to the Property or the Sign, in any way, including relating to any development, construction, use, maintenance, taxation, operation, occupancy of or environmental conditions affecting the Property or the Sign or otherwise relating to this Covenant or any Party’s rights, obligations or remedies under this Covenant, or any Transfer of any of the foregoing, whether in force on the Effective Date or passed, enacted, modified, amended or imposed at some later time, subject in all cases, however, to any applicable waiver, variance or exemption.

1.23 Legal Costs. In reference to any Person, all reasonable costs and expenses such Person incurs in any legal proceeding (or other matter for which such Person is entitled to be reimbursed for its Legal Costs), including reasonable attorneys’ fees, court costs and expenses and consultant and expert witness fees and expenses.

1.24 Liability Insurance. Commercial general liability insurance against claims for bodily injury, personal injury, death or property damage occurring upon, in or about the Property, the Sign or adjoining streets or passageways, at least as broad as Insurance Services Office Occurrence Form CG0001, with a minimum liability limit of Two Million Dollars (\$2,000,000) for any one occurrence and Four Million Dollar (\$4,000,000) aggregate (may be provided through a combination of primary and excess or umbrella insurance policies). If commercial general liability insurance or other form with a general aggregate limit is used, either the general aggregate limit shall apply separately to the Sign and the Property, collectively, or the general aggregate limit shall be twice the required minimum liability limit for any one occurrence.

1.25 Notice. Any approval, consent, demand, designation, election, notice, or request relating to this Covenant, including any Notice of Default or termination of this Covenant. All Notices must be in writing and shall be delivered and shall become effective only in accordance with Section 25.

1.26 Operating Period. The time period commencing on the first day of the calendar month subsequent to the date on which the Sign is fully operational during normal business hours and ending at 11:59 p.m. Pacific Standard Time on the eighth (8th) anniversary of the commencement date.

1.27 Owner. Citrus Motors Ontario, Inc., a California corporation, and any assignee of or successor to the rights, powers or responsibilities of Owner under this Covenant.

1.28 Owner Parties. Collectively, Owner and Owner's directors, shareholders, partners, members, managers, employees, agents and attorneys.

1.29 Parties. Collectively, City and Owner.

1.30 Party. Individually, City or Owner, as applicable.

1.31 Person. Any association, corporation, Government, individual, joint venture, joint-stock company, limited liability company, partnership, trust, unincorporated organization or other entity of any kind.

1.32 Prevailing Wage Action. Any of the following: (a) any determination by the State Department of Industrial Relations or its successor for enforcement of State prevailing wage laws that prevailing wage rates should have been paid, but were not; (b) any determination by the State Department of Industrial Relations or its successor for enforcement of State prevailing wage laws that higher prevailing wage rates than those paid should have been paid; (c) any administrative or legal action or proceeding arising from any failure to comply with any of California Labor Code Sections 1720 through 1781; or (d) any administrative or legal action or proceeding to recover wage amounts, at law or in equity, including pursuant to California Labor Code Section 1781.

1.33 Prohibited Use. Any of the following uses: (a) any sale or display of any Pornographic Materials on or from the Property or the Sign; (b) use by any Person, Government or other entity that is immune from civil process, whether automatically or at the election of such Person, Government or other entity; or (c) bars or businesses with "on-sale" alcoholic beverage sale licenses (other than as part of a hotel, restaurant or theater concession); (d) coin laundries or laundromats (other than such facilities provided as part of a hotel); (e) used clothing stores; (f) used appliance sales or service as the primary or dominant operation of the Business or any other business or activity conducted on or from the Property or the Sign; (g) used furniture stores or rummage stores; (h) churches or other religious institutions; (i) massage parlors; (j) swap meet or flea market; or (k) gambling. "Pornographic materials" means any written or pictorial matter with prurient sexual appeal or any objects or instruments that are primarily concerned with lewd or prurient sexual activity, as reasonably determined by City.

1.34 Property. That certain real property specifically described in Exhibit "1" attached to this Covenant.

1.35 Property Insurance. Insurance providing coverage for the Property, the Sign and all other improvements on or to the Property against loss, damage, or destruction by fire or other hazards encompassed under the broadest form of property insurance coverage then customarily used for like properties in the County, in an amount equal to one hundred percent (100%) of the replacement value (without deduction for depreciation) of the Sign and all other improvements on or to the Property (excluding excavations and foundations) and in any event sufficient to avoid co-insurance and with no co-insurance penalty provision, with "ordinance or law" coverage. To the extent customary for like properties in the County at the time, such insurance shall include coverage for explosion of steam and pressure boilers and similar apparatus located on the Property, an "increased cost of construction" endorsement and an endorsement covering demolition and cost of debris removal.



1.36 Real Estate Taxes. All general and special real estate taxes (including taxes on furniture, fixtures, equipment, and the like), supplemental taxes, possessory interest taxes, taxes payable pursuant to California Health and Safety Code Section 33673, special taxes imposed pursuant to the Mello-Roos Community Facilities District Act or other special taxing district, assessments, excises, levies, fines, penalties and other governmental charges and any interest or costs with respect thereto, general and special, ordinary and extraordinary, foreseen and unforeseen, of any kind or nature whatsoever that may be assessed, levied, imposed upon, or become due and payable out of or in respect of, or charged with respect to or become a lien on, the Property, or any vault, passageway or space in, over or under any street that constitutes a portion of the Property, or any furniture, fixtures, equipment, building equipment or other facility used in the operation of the Property, or the rent or income received from the Property, or any use or occupancy of the Property.

1.37 Sign. A new double face “V’d” electronic YESCO LED display sign with the specifications set forth in Exhibit “2” attached to this Covenant.

1.38 State. The State of California.

1.39 Third Person. Any Person that is not a Party, an Affiliate of a Party, or an elected official, officer, director, manager, shareholder, member, principal, partner, employee or agent of a Party.

1.40 Transfer. Regarding any property, right or obligation, any of the following, whether by operation of Law or otherwise, whether voluntary or involuntary and whether direct or indirect: (a) any assignment, conveyance, grant, hypothecation, mortgage, pledge, sale, or other transfer, whether direct or indirect, of all or any part of such property, right or obligation, or of any legal, beneficial, or equitable interest or estate in such property, right or obligation or any part of it (including the grant of any easement, lien, or other encumbrance); (b) any conversion, exchange, issuance, modification, reallocation, sale, or other transfer of any Equity Interest(s) in the owner of such property, right or obligation by the holders of such Equity Interest(s); or (c) any transaction that is in substance equivalent to any of the foregoing. A transaction affecting Equity Interests, as referred to in clauses “(b)” or “(c)” of this Section 1.40, shall be deemed a Transfer by Owner, even though Owner is not technically the transferor. A “Transfer” shall not, however, include any of the following (provided that the other Party has received Notice of such occurrence) relating to the Property or any Equity Interest: (i) a mere change in form of ownership with no material change in beneficial ownership and constitutes a tax-free transaction under Federal income tax law and the State real estate transfer tax law; (ii) a conveyance only to member(s) of the immediate family(ies) of the transferor(s) or trusts for their benefit; or (iii) a conveyance only to any Person that, as of the Effective Date, holds an Equity Interest in the entity whose Equity Interest is being transferred.

1.41 Unavoidable Delay. A delay in either Party performing any obligation under this Covenant arising from or on account of any cause whatsoever beyond the Party’s reasonable control, including strikes, labor troubles or other union activities, casualty, war, acts of terrorism, riots, litigation, governmental action or inaction, regional natural disasters or inability to obtain required materials. Unavoidable Delay shall not include delay caused by a Party’s financial condition or insolvency.

1.42 Usury Limit. The highest rate of interest, if any, that State law allows under the circumstances.

**2. USES.** Owner acknowledges and agrees for itself, its successors, and its assigns that, from and after the Effective Date and throughout the entire Operating Period, the Property and the Sign shall be and remain developed, used and reserved solely for use and occupancy by Owner for operation of the Business, and not for any Prohibited Use. The use restriction established in this Section 2 shall run with the Property as a covenant running with the land and binding on all successive owners or occupants of the Property, until the expiration of the Operating Period.

**3. OPERATION OF SIGN.** Owner covenants to and for the benefit of City that Owner shall, at Owner's sole cost and expense, ensure that the Sign is fully operational and obtain final building permit sign-off by City for the Sign within one (1) year following the Effective Date, subject to any UNAVOIDABLE DELAY.

**4. GRANT OF SIGN USE EASEMENT.** Owner hereby grants to City a non-exclusive easement over the Property and the Sign for the purpose of using the Sign to display messages and information regarding public events and other matters of public interest, in accordance with California Civil Code Section 801, subparagraph 6, including an easement over the Property for the existing line-of-site visibility for the Sign and access to such property and equipment belonging to Owner as is necessary or convenient to the exercise of City's rights pursuant to such easement and this Covenant regarding the Sign ("**Easement**"). The Easement is an easement in gross in favor of City and City's successors and assigns and the Easement shall run with the land of the Property and bind successive owners of the Property throughout the Operating Period. The Easement shall be effective at all times during the Operating Period. All City messages and information to be displayed on the Sign shall be prepared by City and shall not be subject to edit or modification by Owner; provided that Owner may make reasonable modifications and edits to the message and information to ensure that the message or information is properly displayed on the Sign so long as such edits or modifications do not change the content or meaning of the message or information. City shall not be entitled to display messages or other information on the Sign that is of a purely political nature.

4.1 City Use. City shall submit all City messages and information in writing to the Owner and the Owner shall cause such messages and information to appear on the Sign within two (2) Business Days following the date of submission. All City messages and information shall appear on the Sign for a period of time as specified by City, and during all hours of operation of the Sign. During the Operating Period, City messages and information shall be allocated up to but shall not use more than fifteen percent (15%) of the operational time of the Sign during each hour of operation of the Sign.

4.2 Emergency Use. Notwithstanding Section 4.1, in the event of an emergency City messages and information may use up to twenty percent (20%) of the operational time of the Sign during each hour of operation of the Sign. In the event of an emergency, City messages and information shall be submitted to Owner in writing and Owner shall cause such messages and information to appear on the Sign as soon as feasibly possible, but no later than two hours during business hours or by 7:00 a.m. Pacific Standard Time on the following Business Day if the City submits the messages or information after close of business. For purposes of this Section 4.2, an

“event of an emergency” means any situation arising from a sudden and reasonably unforeseen technological, natural or human caused disaster beyond the control of the City that threatens public health and safety, as determined by the City in its sole and exclusive discretion.

**5. COVENANT PAYMENT.** In consideration for Owner granting the Easement to City and Owner’s performance of Owner’s covenants and other obligations pursuant to this Covenant, City shall pay the Covenant Payment to Owner within thirty (30) calendar days following the date on which the Sign is fully operational and Owner has obtained final building permit sign off by City for the Sign, pursuant to Section 3. City’s obligation to make the Covenant Payment is expressly conditioned upon City’s prior receipt of a title insurance policy in form and substance reasonably acceptable to City and issued by a title insurer reasonably acceptable to City insuring the Easement in the Property, subject to only non-delinquent property taxes or assessments, with coverage in the amount of the Covenant Payment. If for any reason, the Sign is not fully operational and Owner has not received final building permit signoff by City for the Sign within one (1) year following the Effective Date, then this Covenant shall automatically terminate and City shall have no obligation to pay any or all of the Covenant Payment to Owner, subject in each instance to any Unavoidable Delay.

**6. CONTINUOUS OPERATION OF BUSINESS.** Owner further covenants to and for the benefit of City, throughout the entirety of the Operating Period, to cause the Business to be continuously operated (no period of inoperation of more than forty-five (45) consecutive days) from and within the Property. Owner’s covenants set forth in the immediately preceding sentence shall include, at Owner’s sole cost and expense, all costs associated with obtaining and maintaining all franchises, permits, contractual arrangements, licenses, and registrations reasonably necessary for the conduct of the Business, causing the Business to be operated in accordance with reasonable and customary practices of similar businesses and in a commercially reasonable and prudent manner, including the obligation to advertise, market and promote the Business in a manner consistent with other similar businesses (including other business locations of Owner).

**7. USE, OPERATION AND MAINTENANCE OF SIGN.** In addition to the covenants of Owner in Sections 6 and 10, Owner covenants and agrees that, at all times during the Operating Period: (1) the Sign shall not be materially altered (except in the ordinary course of maintenance) or removed from the Property; (2) the Sign shall be maintained in a first class condition and shall be promptly repaired or replaced, if damaged or destroyed by any cause whatsoever; (3) the Sign shall be continuously operated twenty-four (24) hours of each day of the year for the benefit of Owner and City; and (4) Owner shall not take or permit any action that would obstruct the visibility of the Sign.

**8. LIQUIDATED DAMAGES PAYMENT.** CITY SHALL PROVIDE WRITTEN NOTICE TO OWNER OF THE EVENT OF A DEFAULT BY OWNER AT ANY TIME DURING THE OPERATING PERIOD. UPON DELIVERY OF SUCH WRITTEN NOTICE, OWNER AND CITY SHALL WORK TOGETHER, IN GOOD FAITH, TO CURE SUCH DEFAULT WITHIN THIRTY (30) CALENDAR DAYS FOLLOWING NOTICE OF SUCH DEFAULT; PROVIDED, HOWEVER, THAT ANY ACTIONS TO CURE SHALL BE AT OWNER’S SOLE COST AND EXPENSE. WHERE SUCH FAILURE IS NOT CURED WITHIN THIRTY (30) CALENDAR DAYS FOLLOWING NOTICE OF SUCH DEFAULT FROM CITY, CITY AND OWNER SHALL MEET, IN GOOD FAITH, TO DETERMINE A

REASONABLE TIME IN WHICH SUCH DEFAULT MAY BE CURED OR OTHER REASONABLE OPTIONS TO THE MUTUAL BENEFIT OF THE PARTIES. IF, AFTER COMPLETING THE FOREGOING, OWNER STILL FAILS TO CURE SUCH DEFAULT, THEN OWNER SHALL PAY TO CITY, AS LIQUIDATED DAMAGES FOR OWNER'S DEFAULT, AN AMOUNT EQUAL TO THE COVENANT PAYMENT. NOTWITHSTANDING THE FOREGOING, CITY MAY PROVIDE WRITTEN NOTICE TO OWNER OF A DEFAULT AT ANY TIME DURING THE OPERATING PERIOD; HOWEVER, IN THE EVENT THAT NOTICE IS PROVIDED WITHIN 60 DAYS OF A CITY COUNCIL ELECTION, OWNER CANNOT BE DEEMED BY CITY TO HAVE FAILED TO CURE SUCH DEFAULT, UNLESS OWNER REFUSES TO CURE SUCH DEFAULT, LESS THAN NINETY (90) DAYS FROM A CITY COUNCIL ELECTION. OWNER ACKNOWLEDGES AND AGREES THAT CITY HAS SPECIFICALLY BARGAINED FOR OWNER'S PERFORMANCE OF THIS COVENANT AND THAT CITY WILL BE SUBSTANTIALLY AND IRREPARABLY DAMAGED BY ANY FAILURE OF OWNER TO PERFORM ITS OBLIGATIONS UNDER THIS COVENANT DURING THE OPERATING PERIOD. FURTHER, THE PARTIES ACKNOWLEDGE AND AGREE THAT THE AMOUNT OF SUCH DAMAGE TO CITY IS EXTREMELY DIFFICULT AND IMPRACTICAL TO DETERMINE. AFTER DILIGENT, BUT UNSUCCESSFUL ATTEMPTS TO DETERMINE THE AMOUNT OF DAMAGES TO CITY ARISING FROM ANY FAILURE OF OWNER TO PERFORM ITS OBLIGATIONS UNDER THIS COVENANT, THE PARTIES AGREE THAT THE PAYMENT BY OWNER TO CITY OF AN AMOUNT EQUAL TO THE COVENANT PAYMENT REPRESENTS A REASONABLE ESTIMATE OF SUCH DAMAGES TO CITY.

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INITIALS OF AUTHORIZED CITY  
REPRESENTATIVE(S)

\_\_\_\_\_  
INITIALS OF AUTHORIZED OWNER  
REPRESENTATIVE(S)

**9. NO TRANSFER TO TAX EXEMPT ENTITY.** Owner covenants to and agrees with City that, throughout the entire Operating Period, neither Owner nor Owner's successors or assigns, shall participate in, cause or allow any Transfer or use of all or any portion of the Property that results in all or any portion of the Property being partially or wholly exempt from the payment of Real Estate Taxes; provided, however, that said covenant shall not apply to either of the following: (i) dedication of a public service easement on, over, or under any portion of the Property to any Government or private utility company consistent with the Approvals for the Sign; or (ii) a Transfer resulting from the exercise by any Government or any other entity with eminent domain powers of its power of eminent domain, including a Transfer under threat of the use of such eminent domain power (as evidenced by adoption of a resolution of necessity pursuant to Code of Civil Procedure Section 1245.210 *et seq.*, by the threatening Government).

**10. OPERATION AND MAINTENANCE COVENANT.** Owner, for itself and Owner's successors and assigns, covenants to and agrees with City that:

10.1 Maintenance Standard. Owner shall operate and maintain the Sign in a commercially reasonable manner and condition, including maintenance, repair, reconstruction and replacement of any and all asphalt, concrete, landscaping, utility systems, irrigation systems, drainage facilities or systems, grading, subsidence, retaining walls or similar support structures, foundations, signage, ornamentation and all other improvements on or to or as required for the

support of the Sign, now existing or made in the future, as necessary to maintain the appearance and character of the Sign, including all of the following, all at Owner's sole cost and expense: (a) maintaining any platform on which the Sign is located in a level, smooth and evenly covered condition with the type of surfacing material originally installed or such substitute as shall in all respects be equal in quality, use and durability; (b) removing all papers, mud, sand, debris, filth and refuse and thoroughly sweeping areas to the extent reasonably necessary to keep areas in a clean and orderly condition; (c) removing or covering graffiti with the type of surface covering originally used on the affected area, (d) placing, keeping in repair and replacing any necessary and appropriate directional signs, markers and lines; (e) installing, operating, keeping in repair and replacing where necessary, such artificial lighting facilities as shall be reasonably required; (f) maintaining, mowing, weeding, trimming and watering all landscaped areas and making such replacements of plants and other landscaping material as necessary to maintain the appearance and character of the landscaping; (g) properly maintaining windows, structural elements and painted exterior surface areas of structures in a clean and presentable manner; and (h) arranging and paying for all fuel, gas, light, power, water, sewage, garbage disposal, telephone and other utility charges, and the expenses of installation, maintenance, use and service in connection with all of the foregoing (collectively, "**Maintenance Standard**"). Notwithstanding the foregoing, to the extent that the Maintenance Standard applies to physical conditions of the Sign, the Maintenance Standard shall not apply during any period after a fire or other casualty loss, as long as Owner is diligently taking reasonable steps to obtain available insurance proceeds and repair, Restore or remove any improvements or conditions that violate the Maintenance Standard. City shall have absolutely no responsibility for any cost or performance associated with any matter that is the responsibility of Owner pursuant to the Maintenance Standard.

10.2 Maintenance Deficiency. If there is an occurrence of an adverse condition of the Sign in contravention of the Maintenance Standard (each such occurrence being a "**Maintenance Deficiency**"), then City may Notify Owner of the Maintenance Deficiency. If a Maintenance Deficiency is not cured within thirty (30) calendar days following Notice to Owner of such Maintenance Deficiency, City shall have the right, but not the obligation, to perform all acts necessary to cure the Maintenance Deficiency or take any other action at law or in equity that may then be available to City to accomplish the abatement of the Maintenance Deficiency. Any amount expended by City for the cure or abatement of a Maintenance Deficiency pursuant to this Section 10.2 (including Legal Costs) shall be reimbursed to City by Owner within thirty (30) calendar days after Notice to Owner of the amount expended. If any amount becoming due to City under this Section 10.2 is not reimbursed to City by Owner within thirty (30) calendar days after Notice to Owner of the amount owed, the amount shall accrue Default Interest from the thirtieth (30th) calendar day after Notice of the amount owed until all of the unpaid principal and accrued Default Interest are paid in full. Nothing in this Section 10.2 is intended to limit or otherwise restrict any right or authority of City outside of this Easement Agreement to abate a condition that is or may be a Maintenance Deficiency.

**11. CONDEMNATION.** Any and all compensation or awards regarding any condemnation of the Sign shall be paid to City and Owner based on their respective ownership rights over the usage of the Sign at the time of condemnation.

**12. TAXES AND ASSESSMENTS.** Owner shall pay, without abatement, deduction or offset, any and all Real Estate Taxes and other charges (including any increase caused by a change in the tax rate or by a change in assessed valuation) of any description levied or assessed

by any Government on or against the Property or personal property located on or in the Property. Any and all taxes and assessments and installments of taxes and assessments required to be paid by Owner shall be paid by Owner before each such tax, assessment or installment of tax or assessment becomes delinquent. Owner, at Owner's own cost and expense, shall have the right, at any time, to contest or seek a reduction in the assessed valuation attributable to the Property, or to contest any taxes or assessments attributable to the Property, provided Owner undertakes all proceedings necessary to prevent the sale of the Property for such taxes or assessments (including payment of the full contested amount subject to such contest or possible reduction, if required by applicable law), and promptly upon termination of such proceedings (but in any event prior to the sale of the Property to satisfy the contested tax or assessment) pays in full the taxes or assessments determined to be due and owing, plus all interest, penalties and other costs with respect to such contest. Owner shall Indemnify City regarding any liability, loss or damage resulting from any taxes, assessments or other charges required by this Covenant to be paid by Owner and from all interest, penalties, and other sums imposed thereon and from any sales or other proceedings to enforce collection of any such taxes, assessments, or other charges.

### **13. INSURANCE.**

13.1 Types. Owner shall maintain at the sole cost and expense of Owner, all of the following insurance (or, if unavailable, its then reasonably available equivalent): (a) Liability Insurance; (b) Automobile Liability Insurance; (c) Property Insurance; and (d) Workers Compensation Insurance. All Liability Insurance, Automobile Liability Insurance, Property Insurance and Workers Compensation Insurance policies this Easement Agreement requires shall be issued by carriers that: (a) are listed in the then current "Best's Key Rating Guide—Property/Casualty—United States & Canada" publication (or its equivalent, if such publication ceases to be published) with a minimum financial strength rating of "A-" and a minimum financial size category of "VII" (exception may be made for the State Compensation Insurance Fund, when not specifically rated); and (b) are authorized to do business in the State by the State Department of Insurance. Owner may provide any insurance under a "blanket" or "umbrella" insurance policy, provided that: (i) such policy or a certificate of such policy shall specify the amount(s) of the total insurance allocated to the Property, which amount(s) shall equal or exceed the amount(s) required by this Covenant; and (ii) such policy otherwise complies with the requirements of this Covenant regarding such insurance. All insurance obtained and maintained by Owner in satisfaction of the requirements of this Covenant shall be fully paid for and non-assessable.

13.2 Insured. Liability Insurance and Automobile Liability Insurance policies shall name the City Parties as "additional insured." Property Insurance policies shall name City as a "loss payee." All Liability Insurance and Automobile Liability Insurance shall provide for separation of insured for Owner and the City Parties. Insurance policies obtained in satisfaction of or in accordance with the requirements of this Covenant may provide a cross-suits exclusion for suits between named insured Persons, but shall not exclude suits between named insured Persons and additional insured Persons. Any insurance or self-insurance maintained by the City Parties shall be excess of all insurance required to be maintained by Owner under this Covenant and shall not contribute with any insurance required to be maintained by Owner under this Covenant. Owner shall not carry separate or additional insurance concurrent in form or contributing in the event of loss with insurance coverage required by this Covenant, unless the City Parties are made additional insured or loss payee, as applicable, under such insurance

coverage, consistent with the provisions of this Covenant applicable to such form of insurance or insurance covering the same type(s) of loss.

13.3 Deductibles and Self-Insured Retentions. Any and all deductibles or self-insured retentions under insurance policies required to be maintained by Owner under this Covenant shall be declared to and approved by City. Owner shall pay all such deductibles or self-insured retentions regarding the City Parties. Each insurance policy issued in satisfaction of the requirements of this Covenant shall provide that, to the extent that Owner fails to pay all or any portion of a self-insured retention under such policy regarding an otherwise insured loss, City may pay the unpaid portion of such self-insured retention, in City's sole and absolute discretion. All amounts paid by City toward self-insured retentions regarding insurance policies covering the City Parties pursuant to this Covenant shall be reimbursable to City by Owner in the same manner that insurance costs are reimbursable to City from Owner pursuant to Section 13.6.

13.4 Deliveries to City. Evidence of Owner's maintenance of all insurance policies required by this Covenant shall be delivered to City prior to the Effective Date. No later than three (3) days before any insurance required by this Covenant expires, is cancelled or its liability limits are reduced or exhausted, Owner shall deliver to City evidence of Owner's maintenance of all insurance required by this Covenant. Each insurance policy required by this Covenant shall be endorsed to state that coverage shall not be cancelled, suspended, voided, reduced in coverage or in limits, except after thirty (30) calendar days' advance written notice of such action has been given to City by certified mail, return receipt requested; provided, however, that only ten (10) days' advance written notice shall be required for any such action arising from non-payment of the premium for the insurance. Phrases such as "endeavor to" and "but failure to mail such notice shall impose no obligation or liability of any kind upon the company" shall not be included in the cancellation wording of any certificates or policies of insurance applicable to the City Parties pursuant to this Covenant.

13.5 Waiver of Certain Claims. Owner shall cause each insurance carrier providing any Liability Insurance, Property Insurance, Worker's Compensation Insurance or Automobile Liability Insurance coverage under this Covenant to endorse their applicable policy(ies) with a Waiver of Subrogation with respect to the City Parties, if not originally in the policy. To the extent that Owner obtains an insurance policy covering both the Owner and the City Parties and containing a Waiver of Subrogation, the Parties release each other from any Claims for damage to any Person or property to the extent such Claims are paid pursuant to such insurance policy.

13.6 City Option to Obtain Coverage. During the continuance of an Event of Default arising from the failure of Owner to carry any insurance required by this Covenant, City may, in City's sole and absolute discretion, purchase any such required insurance coverage. City shall be entitled to immediate payment from Owner of any premiums and associated reasonable costs paid by City to obtain such insurance coverage. Any amount becoming due and payable to City under this Section 13.6 that is not paid within fifteen (15) calendar days after written demand from City for payment of such amount, with an explanation of the amounts demanded, will accrue Default Interest from the date of the demand, until paid in full. Any election by City to purchase or not to purchase insurance coverage otherwise required by the terms of this Covenant to be carried by Owner shall not relieve the Owner of Owner's Default or Owner's obligation to obtain and maintain any insurance coverage required by this Covenant.



**14. PREVAILING WAGES.**

14.1 OWNER AGREES WITH CITY THAT OWNER SHALL ASSUME ANY AND ALL RESPONSIBILITY AND BE SOLELY RESPONSIBLE FOR DETERMINING WHETHER OR NOT LABORERS EMPLOYED RELATIVE TO THE INSTALLATION OF THE SIGN MUST BE PAID THE PREVAILING PER DIEM WAGE RATE FOR THEIR LABOR CLASSIFICATION, AS DETERMINED BY THE STATE, PURSUANT TO LABOR CODE SECTION 1720 *ET SEQ.*

OWNER, ON BEHALF OF ITSELF, ITS SUCCESSORS, AND ASSIGNS, WAIVES AND RELEASES CITY FROM ANY RIGHT OF ACTION THAT MAY BE AVAILABLE TO ANY OF THEM PURSUANT TO LABOR CODE SECTION 1781. OWNER ACKNOWLEDGES THE PROTECTIONS OF CIVIL CODE SECTION 1542 RELATIVE TO THE WAIVER AND RELEASE CONTAINED IN THIS SECTION 14, WHICH READS AS FOLLOWS:

A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS WHICH THE CREDITOR DOES NOT KNOW OR SUSPECT TO EXIST IN HIS OR HER FAVOR AT THE TIME OF EXECUTING THE RELEASE, WHICH IF KNOWN BY HIM OR HER MUST HAVE MATERIALLY AFFECTED HIS OR HER SETTLEMENT WITH THE DEBTOR.

BY INITIALING BELOW, OWNER KNOWINGLY AND VOLUNTARILY WAIVES THE PROVISIONS OF SECTION 1542 SOLELY IN CONNECTION WITH THE WAIVERS AND RELEASES OF THIS SECTION 14:

\_\_\_\_\_  
INITIALS OF AUTHORIZED OWNER  
REPRESENTATIVE(S)

**15. ADEQUATE CONSIDERATION.**

15.1 Exchange of Consideration. The Parties agree that: (1) the payment of the Covenant Payment to Owner represents fair consideration to Owner for granting the Easement to City and performing Owner's covenants and other obligations under this Covenant; and (2) Owner granting the Easement to City and Owner's performance of Owner's covenants and other obligations under this Covenant represent fair consideration to City for City's payment of the Covenant Payment to Owner and performance of City's obligations under this Covenant.

15.2 No Unstated Consideration. Owner acknowledges and agrees that Owner will receive no consideration under this Covenant other than the payment of the Covenant Payment to Owner. Owner shall not be entitled to any other reimbursement or compensation from City regarding this Covenant.

**16. DEFAULTS.** Subject to any extensions of time provided for in this Covenant for Unavoidable Delay, the occurrence of any of the following events shall constitute a "Default": (a) the failure of Owner to complete installation of the Sign on the Property in accordance with Section 3; (b) Owner's breach of the covenants set forth in Sections 6, 7 or 10; (c) the failure of

Owner to correct each and every Maintenance Deficiency or reimburse City for amounts expended by City (including accrued Default Interest on such amounts) to correct such Maintenance Deficiencies; (d) Owner's failure to provide insurance in accordance with Section 13; (e) Owner's breach of the representation and warranty made in Section 36; (f) the failure of Owner to perform Owner's indemnity obligation, if such failure is not cured within ten (10) calendar days after Notice from City that such obligation was not performed; or (g) any other action or failure to act by Owner that, with the giving of Notice or the passage of time or neither, would constitute a material breach of this Covenant.

**17. CITY'S REMEDIES.** Subject to the express Notice and opportunity to cure provisions of this Covenant regarding a specific Default, City shall have the following remedies regarding a Default by Owner:

17.1 Recovery of Amounts Due. Upon the occurrence of a Default by Owner under this Covenant, City may pursue recovery of all liquidated damages or other amounts due and payable to City under this Covenant through any legal means and recover any damages arising from failure of Owner to perform Owner's obligations under this Covenant.

17.2 Right to Cure Defaults. During the continuance of a Default by Owner under this Covenant, City shall have the right, but not the obligation, following five (5) days advance Notice to Owner, to cure the subject Default(s). Any sum expended by City to cure any Default of Owner pursuant to this Section 17.2 shall be reimbursed to City by Owner, within fifteen (15) calendar days after Notice to Owner of the amount. Any amount expended by City to cure any Default of Owner pursuant to this Section 17.2 that is not reimbursed to City by Owner within such fifteen (15) calendar days after Notice to Owner of such amount, shall accrue Default Interest, until paid in full.

17.3 Enforcement of Indemnity Obligations. Upon the occurrence of a Default by Owner described in Section 16, City may enforce the indemnity obligations of Owner arising under this Covenant through any legal means and recover any damages arising from failure of Owner to perform such indemnity obligations.

17.4 Other Rights. Nothing in this Covenant is intended to prevent or limit City's exercise of any other right or remedy of City under this Covenant or under law or in equity following or arising from a breach or Default by Owner under this Covenant.

**18. OWNER'S REMEDIES.** If City fails to pay the Covenant Payment, as and when due pursuant to Section 5, if such failure is not cured within thirty (30) calendar days after Notice from Owner to City that such obligation was not performed, Owner's sole and exclusive remedies for such failure shall be: (a) institute a legal action to seek specific performance of City's obligation to pay the Covenant Payment to Owner under this Covenant; or (b) terminate this Covenant. Under no circumstances shall City be liable to Owner for any lost profits, speculative or consequential damages arising from any failure of City to perform City's obligations under this Covenant or any other Claim relating to this Covenant.

**19. NO LIMITATION ON CITY AUTHORITY.** Nothing in this Covenant shall be deemed to limit, modify or abridge the governmental police power or other legal authority (whether direct or delegated) of City under applicable Law regarding the Property, the Sign or Owner.

## **20. INDEMNIFICATION**

20.1 Owner Indemnity Obligations. Owner shall Indemnify the City Parties against any Claim related to this Covenant or the Sign to the extent such Claim arises from: (a) any wrongful intentional act or negligence of the Owner Parties; (b) any agreements that Owner (or anyone claiming by or through Owner) makes with a Third Person regarding the Property or the Sign; or (c) any workers compensation claim or determination relating to any employee of Owner Parties or their contractors; (d) any Prevailing Wage Action relating to this Covenant or the Sign; or (e) any Environmental Claim attributable to any action or failure to act by the Owner Parties.

20.2 Independent Insurance and Indemnity Obligations. Owner's insurance or indemnification obligations under this Covenant are independent of each other and shall not in any way satisfy restrict, limit or modify the other obligation.

20.3 Survival of Obligation to Indemnify. The obligation of Owner to Indemnify the City Parties pursuant to this Covenant shall survive the termination of this Covenant, until any and all actual or prospective Claims regarding any matter subject to such obligation to Indemnify the City Parties pursuant to this Covenant are fully, finally, absolutely and completely barred by applicable statutes of limitations.

**21. CITY CONTRACT ADMINISTRATION.** The City Manager shall administer this Covenant on behalf of City. Except as otherwise expressly provided in this Covenant, the City Manager has the authority to approve or consent to those matters in this Covenant requiring City's approval or consent, to make all other decisions and execute any other documents arising from this Covenant on behalf of City, and to approve any non-substantive changes, amendments or modifications to this Covenant, subject to the City Manager's retained and reserved sole and absolute discretion to seek City Council's approval of any such matter.

**22. GOVERNING LAW.** The substantive and procedural laws of the State shall govern the interpretation and enforcement of this Covenant, without application of conflicts or choice of laws statutes or principles.

**23. NO EFFECT ON EMINENT DOMAIN AUTHORITY.** Nothing in this Covenant shall be deemed to limit, modify, abridge or affect in any manner whatsoever City's eminent domain powers with respect to the Property or any improvements on the Property.

**24. NON-LIABILITY OF CITY OFFICIALS AND EMPLOYEES.** No member of the governing body, elected official, officer, contractor, consultant, attorney, employee or agent of City shall be personally liable to Owner, any voluntary or involuntary successor or assign of Owner, or any lender or other Person holding an interest in Owner, the Property or the Sign in the event of any breach of this Covenant by City, or for any amount that may be or become due to Owner or its successors or assigns from City under this Covenant, or on any obligations arising under this Covenant.

## **25. NOTICES.**

25.1 Delivery. Any and all Notices submitted by any Party to another Party pursuant to or as required by this Covenant shall be proper, if in writing and sent by messenger for

immediate personal delivery, nationally recognized overnight (one Business Day) delivery service (i.e., United Parcel Service, Federal Express, etc.) or by registered or certified United States mail, postage prepaid, return receipt requested, to the address of the recipient Party, as designated in Section 25.2. Notices may be sent in the same manner to such other addresses as either Party may from time to time designate by Notice in accordance with this Section 25. Notice shall be deemed received by the addressee, regardless of whether or when any return receipt is received by the sender or the date set forth on such return receipt, on the day that the Notice is sent by messenger for immediate personal delivery, one Business Day after delivery to a nationally recognized overnight delivery service or three (3) calendar days after the Notice is placed in the United States mail in accordance with this Section 25. Any attorney representing a Party may give any Notice on behalf of such Party.

25.2 Addresses. The following are the authorized addresses for the submission of Notices to the Parties under this Covenant, as of the Effective Date:

To Owner:	Citrus Motors Ontario, Inc. PO Box 4270 Ontario, CA 91761 Attn.: _____
To City:	City of Ontario 303 E. B Street Ontario, CA 91764 Attn: Economic Development Director

**26. JURISDICTION AND VENUE.** The Parties each acknowledge and agree that this Covenant is entered into and is to be fully performed in the City of Ontario, County of San Bernardino, State of California, and that all legal actions arising from this Covenant shall be filed in the Superior Court of the State of California in and for the County of San Bernardino, California, or the United States District Court with jurisdiction in the County of San Bernardino, California.

**27. LEGAL CHALLENGES.** In the event of any challenge to the validity of this Covenant, at the option of City, in City's sole and absolute discretion, either: (a) Owner shall indemnify City regarding such challenge, including employment of legal counsel reasonably acceptable to City for the defense of City regarding such challenge; or (b) City may terminate this Covenant, without liability to Owner or any other Person.

**28. PRINCIPLES OF INTERPRETATION.** No inference in favor of or against any Party shall be drawn from the fact that such Party has drafted any part of this Covenant. The Parties have both participated substantially in the negotiation, drafting and revision of this Covenant, with advice from legal counsel and other advisers of their own selection. A term defined in the singular in this Covenant may be used in the plural, and vice versa, all in accordance with ordinary principles of English grammar, which also govern all other language in this Covenant. The words "include" and "including" shall be construed to be followed by the words: "without limitation." Each collective noun in this Covenant shall be interpreted as if followed by the words "(or any part of it)," except where the context clearly requires otherwise. Every reference in this Covenant to any document, including this Covenant, refers to such document as modified

from time to time (excepting any modification that violates this Covenant), and includes all exhibits, schedules, addenda and riders to such document. The word “or” includes the word “and.” Every reference in this Covenant to a law, statute, regulation, order, form or similar governmental requirement refers to each such requirement as amended, modified, renumbered, superseded or succeeded, from time to time.

**29. COUNTERPART ORIGINALS; INTEGRATION.** This Covenant may be signed in multiple counterpart originals, each of which is deemed to be an original, but all of which taken together shall constitute one and the same instrument. This Covenant, the exhibit(s) attached to this Covenant and the documents (including maps) referenced in this Covenant represent the entire understanding of the Parties and supersede all previous negotiations, letters of intent, memoranda of understanding or agreements between the Parties with respect to all or any part of the subject matter of this Covenant.

**30. SEVERABILITY.** If any term or provision of this Covenant or application of any term or provision of this Covenant to any Person or circumstance shall to any extent be invalid or unenforceable, then the remainder of this Covenant or the application of such term or provision to Persons or circumstances, except those as to which the term or provision is invalid or unenforceable, shall not be affected by such invalidity or unenforceability. All remaining terms and provisions of this Covenant shall be valid and shall be enforced to the fullest extent allowed by Law.

**31. NO WAIVER.** Failure to insist on any one occasion upon strict compliance with any of the terms, covenants, conditions, restrictions or agreements contained in this Covenant shall not be deemed a waiver of such term, covenant, condition, restriction or agreement, nor shall any waiver or relinquishment of any rights or powers under this Covenant at any one time or more times be deemed a waiver or relinquishment of such right or power at any other time or times.

**32. TIME IS OF THE ESSENCE.** Time is of the essence in the performance of the Parties’ obligations under this Covenant.

**33. UNAVOIDABLE DELAY; EXTENSION OF TIME FOR PERFORMANCE.**

33.1 Notice. Performance by either Party under this Covenant shall not be deemed or considered to be in Default or breach, where such Default or breach is due to an Unavoidable Delay. Any Party claiming Unavoidable Delay shall Notify the other Party: (a) within twenty (20) days after such Party knows of such Unavoidable Delay; and (b) within twenty (20) days after such Unavoidable Delay ceases to exist. To be effective, any Notice of an Unavoidable Delay must describe the Unavoidable Delay in reasonable detail. The extension of time for an Unavoidable Delay shall commence on the date of occurrence of the Unavoidable Delay and shall continue until the end of the condition causing the Unavoidable Delay. The Party seeking to be excused from performance shall exercise reasonable efforts to cure the condition causing the Unavoidable Delay, within a reasonable time.

33.2 Assumption of Economic Risks. ANYTHING IN THIS COVENANT TO THE CONTRARY NOTWITHSTANDING, THE PARTIES EXPRESSLY ASSUME THE RISK OF UNFORESEEABLE CHANGES IN ECONOMIC CIRCUMSTANCES AND/OR MARKET DEMAND/CONDITIONS AND WAIVE, TO THE GREATEST LEGAL EXTENT, ANY DEFENSE, CLAIM, OR CAUSE OF ACTION BASED IN WHOLE OR IN PART ON

ECONOMIC NECESSITY, IMPRACTICABILITY, CHANGED ECONOMIC CIRCUMSTANCES, FRUSTRATION OF PURPOSE OR SIMILAR THEORIES. EACH PARTY AGREES THAT ADVERSE CHANGES IN ECONOMIC CONDITIONS, EITHER OF SUCH PARTY SPECIFICALLY OR THE ECONOMY GENERALLY, OR CHANGES IN MARKET CONDITIONS OR DEMANDS, SHALL NOT OPERATE TO EXCUSE OR DELAY THE STRICT OBSERVANCE OF EACH AND EVERY ONE OF THE OBLIGATIONS, COVENANTS, CONDITIONS AND REQUIREMENTS OF THIS COVENANT. THE PARTIES EXPRESSLY ASSUME THE RISK OF SUCH ADVERSE ECONOMIC OR MARKET CHANGES, WHETHER OR NOT FORESEEABLE AS OF THE EFFECTIVE DATE.

\_\_\_\_\_  
INITIALS OF AUTHORIZED CITY  
REPRESENTATIVE(S)

\_\_\_\_\_  
INITIALS OF AUTHORIZED OWNER  
REPRESENTATIVE(S)

**34. NO THIRD PARTY BENEFICIARIES.** The performance of the Parties' respective obligations under this Covenant are not intended to benefit any Person other than City and Owner, except as may be expressly provided otherwise in this Covenant. No Person not a signatory to this Covenant shall have any rights or causes of action against any Party to this Covenant as a result of that Party's performance or non-performance under this Covenant, except as otherwise expressly provided in this Covenant.

**35. NO OTHER REPRESENTATIONS OR WARRANTIES.** Except as expressly set forth in this Covenant, no Party makes any representation or warranty material to this Covenant to any other Party.

**36. WARRANTIES AGAINST PAYMENT OF CONSIDERATION FOR COVENANT.** Owner represents and warrants to City that: (a) Owner has not employed or retained any Person to solicit or secure this Covenant upon an agreement or understanding for a commission, percentage, brokerage, or contingent fee, excepting bona fide employees of Owner; and (b) no gratuities, in the form of entertainment, gifts or otherwise have been or will be given by Owner or any of its agents, employees or representatives to any elected or appointed official or employee of City in an attempt to secure this Covenant or favorable terms or conditions for this Covenant. Breach of the representations or warranties of this Section 36 shall entitle City to terminate this Covenant upon seven (7) days' Notice to Owner and recover damages in the total amount of the Covenant Payment.

**37. RELATIONSHIP OF PARTIES.** The Parties agree and intend that City and Owner are independent contracting entities and do not intend by this Covenant to create any partnership, joint venture, or similar business arrangement, relationship or association between them.

**38. SURVIVAL OF COVENANT.** All of the provisions of this Covenant shall be applicable to any dispute between the Parties arising from this Covenant, whether prior to or following expiration or termination of this Covenant, until any such dispute is finally and completely resolved between the Parties, either by written settlement, entry of a non-appealable judgment or expiration of all applicable limitations periods and all terms and conditions of this Covenant relating to dispute resolution and limitations on damages or remedies shall survive any expiration or termination of this Covenant.

**39. RECORDING.** The Parties intend that this Covenant be recorded in the official records of the Recorder for the County. Owner authorizes City to cause this Covenant to be recorded in the official records of the Recorder for the County on or after the Effective Date. City shall pay any and all costs (if any) associated with recording this Covenant in the official records of the Recorder for the County.

**[Signatures on the following page]**

**SIGNATURE PAGE  
TO  
DECLARATION OF COVENANTS AND  
SIGN EASEMENT  
(Citrus Motors)**

Owner and City sign and enter into this Covenant by and through the signatures of their authorized representatives set forth below:

**CITY:**

CITY OF ONTARIO,  
a California municipal corporation

**OWNER:**

CITRUS MOTORS ONTARIO, INC.  
a California corporation

By: \_\_\_\_\_  
Al Boling  
City Manager

By: \_\_\_\_\_  
Dennis Shannon, Jr.  
President

*Attest:*

By: \_\_\_\_\_  
City Clerk

*Approved as to form:*  
Best Best & Krieger LLP

By: \_\_\_\_\_  
City Attorney



**EXHIBIT “1”  
TO  
DECLARATION OF COVENANTS AND  
SIGN EASEMENT  
(Citrus Motors)**

**Property Legal Description**

The subject property on which the sign is located is 1375 South Woodruff Way, Ontario, CA 91761.

APN # 23822122

Parcel Map # 9752 Map 2

**EXHIBIT “2”  
TO  
DECLARATION OF COVENANTS AND  
SIGN EASEMENT  
(Citrus Motors)**

**Sign Specifications**

The subject sign is a freestanding, two-sided freeway oriented monument sign containing at LED screen used for the purpose of dealership advertisement and messaging. The sign is located along the east frontage of the property adjacent to the Interstate 15 freeway.

# CITY OF ONTARIO

*Agenda Report*  
May 5, 2015

**SECTION:**  
**CONSENT CALENDAR**

**SUBJECT: RESOLUTIONS TO APPROVE THE TRANSFER OF FORMER ONTARIO REDEVELOPMENT AGENCY PROPERTIES FROM THE SUCCESSOR AGENCY TO THE CITY OF ONTARIO OR THE ONTARIO HOUSING AUTHORITY**

**RECOMMENDATION:**

- (A) That the City Council adopt a resolution approving the transfer of former Ontario Redevelopment Agency properties from the Successor Agency to the City;
- (B) That the Ontario Housing Authority adopt a resolution approving the transfer of former Ontario Redevelopment Agency properties from the Successor Agency to the Ontario Housing Authority; and
- (C) That the Successor Agency adopt a resolution approving the transfer of former Ontario Redevelopment Agency properties from the Successor Agency to the City of Ontario and Ontario Housing Authority.

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

**FISCAL IMPACT:** None.

**BACKGROUND:** Pursuant to Health and Safety Code Section 34172, the Ontario Redevelopment Agency ("Redevelopment Agency") was dissolved as of February 1, 2012. The City of Ontario elected to serve as the Successor Agency to the Ontario Redevelopment Agency ("Successor Agency").

The Redevelopment Agency previously directed the transfer of certain real properties, as further identified in the attached resolutions, through a Cooperation Agreement entered into by and between the Redevelopment Agency and the City, dated February 15, 2011. However, pursuant to Assembly Bill 1X 26, enacted in June 2011, and Assembly Bill 1484, enacted in June 2012 (collectively, the "Dissolution

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

Prepared by: Charity Hernandez  
Department: Economic Development

City Manager  
Approval: 

Submitted to Council/O.H.A. 05/05/2015

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

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

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

4

Act”), asset transfers between the former Redevelopment Agency, the City and/or the Ontario Housing Authority after January 1, 2011 are potentially invalid.

Pursuant to Health and Safety Code Section 34167.5, the State Controller’s Office (SCO) scheduled an audit to review all transfers of the former Redevelopment Agency. The SCO finalized their findings in a report, dated September 30, 2014. The SCO’s report provided that the transfer of the properties from the Redevelopment Agency to the City or Housing Authority pursuant to the Cooperation Agreement were unallowable transfers. The SCO Report directed the City to turn these properties over to the Successor Agency.

On April 7, 2015, the City, Housing Authority, and Successor Agency approved and adopted resolutions directing staff to transfer the properties back to the Successor Agency.

Staff is currently recommending the transfer of certain properties intended for either a public purpose use or current and/or future in-fill housing development projects to the City or Housing Authority. Should the transfers be approved, staff would then schedule the same action items for approval by the Successor Agency Oversight Board. If approved by the Oversight Board, staff will then forward all the approved resolutions to the State Department of Finance for a one-hundred day review period.

As a result, staff recommends approval of the attached resolutions transferring those certain properties from the Successor Agency to the City or Housing Authority.

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

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF ONTARIO, CALIFORNIA, APPROVING THE TRANSFER OF CERTAIN PROPERTIES OF THE FORMER ONTARIO REDEVELOPMENT AGENCY FROM THE SUCCESSOR AGENCY TO THE ONTARIO REDEVELOPMENT AGENCY TO THE CITY OF ONTARIO FOR GOVERNMENTAL USE.

WHEREAS, pursuant to Health and Safety Code Section 34173(d), the City of Ontario ("City") elected to serve as the successor agency ("Successor Agency") to the former Ontario Redevelopment Agency ("Agency"), following dissolution of the Redevelopment Agency pursuant to AB X1 26, adopted in June 2011, and AB 1484, adopted in June 2012 (collectively, the "Dissolution Act"); and

WHEREAS, pursuant to Health and Safety Code Section 34177(e), the Successor Agency is required to "dispose of assets and properties of the former redevelopment agency as directed by the oversight board;" and under Health and Safety Code Section 34181(a), the Oversight Board is required to direct the Successor Agency to "dispose of all assets and properties of the former redevelopment agency," however, the oversight board may instead direct the successor agency to transfer ownership of assets that were constructed and used for a governmental purpose, such as roads, school buildings, parks, and fire stations, to the appropriate public jurisdiction; and

WHEREAS, Health and Safety Code Section 34191.3 provides that the provisions of Section 34177(e) and 34181(a) shall be suspended until the Department of Finance ("DOF") has approved a long-range property management plan, "except as those provisions apply to the transfers for governmental use;" and

WHEREAS, the Agency acquired certain properties, as more particularly described in Attachment 1 ("Properties"), which properties are being used for governmental purposes or, pursuant to an existing agreement with a third party, are to be used for a governmental purpose; and

WHEREAS, the Successor Agency desires to convey the Properties to the City, and the City accepts such conveyance of the Properties for purposes of ensuring that such Properties continue to be used for a governmental purpose.

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

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

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

SECTION 2. CEQA Compliance. The approval of the transfer of the Properties from the Successor Agency to the City does not commit the Successor Agency or City to any action that may have a significant effect on the environment. As a result, such action does not constitute a project subject to the requirements of the California Environmental Quality Act.

SECTION 3. Transfer of Properties. The City hereby approves and accepts the transfer of title to the Properties listed in Attachment 1 from the Successor Agency to the City.

SECTION 4. Implementation. The City Manager or his or her designee is hereby authorized and directed to, on behalf of the City, execute any and all documents, and take any and all action necessary to effectuate the transfer of the properties from the Successor Agency to the City in accordance with this Resolution and applicable law.

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

SECTION 6. Certification. The City Clerk shall certify to the adoption of this Resolution.

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

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

PASSED, APPROVED, AND ADOPTED this 5<sup>th</sup> day of May, 2015.

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PAUL S. LEON, MAYOR

ATTEST:

---

MARY E. WIRTES, MMC, CITY CLERK

APPROVED AS TO LEGAL FORM:

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BEST BEST & KRIEGER LLP  
CITY ATTORNEY

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

I, MARY E. WIRTES, City Clerk of the City of Ontario, DO HEREBY CERTIFY that foregoing Resolution No. 2015-        was duly passed and adopted by the City Council of the City of Ontario at their regular meeting held May 5, 2015 by the following roll call vote, to wit:

AYES:            COUNCIL MEMBERS:

NOES:           COUNCIL MEMBERS:

ABSENT:        COUNCIL MEMBERS:

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

(SEAL)

The foregoing is the original of Resolution No. 2015-        duly passed and adopted by the Ontario City Council at their regular meeting held May 5, 2015.

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

(SEAL)



**ATTACHMENT 1**

**PROPERTIES**

<b>Properties Being Transferred From the Successor Agency to the City of Ontario</b>	
<b>EMPORIA (Housing and Code Building)</b>	
<b>Site Address</b>	<b>APN</b>
221 W. Transit Street	1049-056-01
211 W. Transit Street	1049-056-02
211 W. Transit Street	1049-056-03
200 S. Laurel Avenue	1049-056-04
208 W. Emporia Avenue	1049-056-05
228 W. Emporia Avenue	1049-056-06
<b>ONTARIO TOWN SQUARE B-1</b>	
<b>Site Address</b>	<b>APN</b>
126 E. C Street	1048-552-13
124 E. C Street	1048-552-14
208, 210, 214, 216, 220, 222, 224, and 226 N. Euclid Avenue	1048-552-16
203 N. Euclid	1048-552-18
<b>ORA PROPERTIES (REDEVELOPMENT PROJECTS)</b>	
<b>Site Address</b>	<b>APN</b>
2000 E. Holt Boulevard	0110-322-34
1947 Convention Center Way	0110-321-57
502 E. Nocta Street	1048-521-13
204 E. Transit Street	1049-064-01
208 E. Transit Street	1049-064-02
212 E. Transit Street	1049-064-03
228 E. Transit Street	1049-064-05
0 N. Lemon Avenue	1048-566-14

RESOLUTION NO. OHA- \_\_\_\_\_

A RESOLUTION OF THE ONTARIO HOUSING AUTHORITY OF THE CITY OF ONTARIO, CALIFORNIA, APPROVING THE TRANSFER OF CERTAIN PROPERTIES OF THE FORMER ONTARIO REDEVELOPMENT AGENCY FROM THE SUCCESSOR AGENCY TO THE ONTARIO REDEVELOPMENT AGENCY TO THE ONTARIO HOUSING AUTHORITY PURSUANT TO HEALTH AND SAFETY CODE SECTION 34176.

WHEREAS, the Ontario Redevelopment Agency ("Agency") previously acquired certain properties, as more particularly described in Attachment 1 ("Properties"), and entered into or intended to enter into agreements governing the Properties to promote the goals and objectives of the Agency including, but not limited to, the provision of affordable housing to residents of the City of Ontario; and

WHEREAS, following dissolution of the Agency pursuant to AB X1 26, adopted in June 2011, the City Council of the City of Ontario ("City") designated the Ontario Housing Authority ("Authority") as the entity to retain the housing assets and functions previously performed by the Agency, pursuant to Health and Safety Code Section 34176(b); and

WHEREAS, pursuant to Health and Safety Code Section 34176(b), all rights, powers, assets, liabilities, duties and obligations associated with the housing activities of the Agency, excluding any amounts in the Low and Moderate Income Housing Fund, shall be transferred to the Authority, as the designated housing successor to the Agency; and

WHEREAS, the Successor Agency desires to convey the Properties to the Authority, and the Authority accepts such conveyance of the Properties, in accordance with Health and Safety Code Section 34176 to ensure that such Properties continue to be used for affordable housing purposes; and

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

NOW, THEREFORE, THE GOVERNING BOARD OF THE ONTARIO HOUSING AUTHORITY DOES HEREBY RESOLVE AS FOLLOWS:

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

SECTION 2. CEQA Compliance. The approval of the transfer of the Properties from the Successor Agency to the Authority does not commit the Successor Agency or Authority to any action that may have a significant effect on the environment. As a result, such action does not constitute a project subject to the requirements of the California Environmental Quality Act.

SECTION 3. Transfer of Properties. The Authority hereby approves and accepts the transfer of title to the Properties listed in Attachment 1 from the Successor Agency to the Authority.

SECTION 4. Implementation. The Executive Director or his or her designee is hereby authorized and directed to, on behalf of the Authority, execute any and all documents, and take any and all action necessary to effectuate the transfer of the properties from the Successor Agency to the Authority in accordance with this Resolution and applicable law.

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

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

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

PASSED, APPROVED, AND ADOPTED this 5<sup>th</sup> day of May, 2015

---

PAUL S. LEON, CHAIRMAN

ATTEST:

---

MARY E. WIRTES, AUTHORITY SECRETARY

APPROVED AS TO FORM:

---

AUTHORITY COUNSEL

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

I, MARY E. WIRTES, Secretary of the Ontario Housing Authority, DO HEREBY CERTIFY that the foregoing Resolution No. OHA-     was duly passed and adopted by the Board Members of the Ontario Housing Authority at their regular meeting held May 5, 2015, by the following roll call vote, to wit:

AYES:           BOARD MEMBERS:

NOES:           BOARD MEMBERS:

ABSENT:        BOARD MEMBERS:

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

(SEAL)

The foregoing is the original of Resolution No. OHA     duly passed and adopted by the Ontario Housing Authority at their regular meeting held May 5, 2015.

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

(SEAL)

**ATTACHMENT 1****HOUSING PROPERTIES**

<b>Properties Being Transferred From the Successor Agency to the Ontario Housing Authority</b>	
<b>EMPORIA IN-FILL SITE</b>	
<b>Site Address</b>	<b>APN</b>
401 W. Holt Boulevard	1049-051-01
401 W. Holt Boulevard	1049-051-02
205 1/2 S. Vine Avenue	1049-052-03
210 S. Fern Avenue	1049-052-04
215 S. Vine Avenue	1049-052-05
415 W. Transit Street	1049-052-09
209 S. Vine Avenue	1049-052-06
205 S. Vine Avenue	1049-052-07
205 S. Vine Avenue	1049-052-08
201 S. Vine Avenue	1049-052-10
325 W. Transit Street	1049-054-02
301 W. Transit Street	1049-054-03
303 W. Emporia Avenue	1049-059-07
<b>EUCLID IN-FILL</b>	
<b>Site Address</b>	<b>APN</b>
110 E. Maitland Avenue	1049-511-03
1004 S. Euclid Avenue	1049-563-10
1325 S. Euclid Avenue	1049-531-02
1329 S. Euclid Avenue	1049-531-01
<b>MERCY HOUSE CONTINUUM OF CARE PERMANENT HOUSING UNITS (MERCY HOUSE)</b>	
<b>Site Address</b>	<b>APN</b>
411 N. Parkside Avenue	1048-452-10
<b>MISSION/OAKLAND</b>	
<b>Site Address</b>	<b>APN</b>
908 S. Oakland Avenue	1049-323-12
908 S. Oakland Avenue	1049-323-13
905 - 907 S. San Antonio Avenue	1049-323-06
911 S. San Antonio Avenue	1049-323-07
911 S. San Antonio Avenue	1049-323-08
<b>TAX DEFAULTED PROPERTIES (ACQUISITION)</b>	
<b>Site Address</b>	<b>APN</b>
4th and Cucamonga Avenue	1048-131-52
<b>AFFORDABLE HOUSING DEVELOPMENTS</b>	
<b>Site Address</b>	<b>APN</b>
1449 E. D Street	0110-254-78
511 N. Palmetto Avenue	1010-461-11
951-959 N. Palmetto Avenue	1010-141-08

RESOLUTION NO. SA- \_\_\_\_\_

A RESOLUTION OF THE SUCCESSOR AGENCY TO THE ONTARIO REDEVELOPMENT AGENCY OF THE CITY OF ONTARIO, CALIFORNIA, APPROVING THE TRANSFER OF CERTAIN PROPERTIES OF THE FORMER ONTARIO REDEVELOPMENT AGENCY TO THE CITY OF ONTARIO FOR GOVERNMENTAL USE AND ONTARIO HOUSING AUTHORITY PURSUANT TO HEALTH AND SAFETY CODE SECTION 34176.

WHEREAS, pursuant to Health and Safety Code Section 34173(d), the City of Ontario ("City") elected to serve as the successor agency ("Successor Agency") to the former Ontario Redevelopment Agency ("Agency"), following dissolution of the Redevelopment Agency pursuant to AB X1 26, adopted in June 2011, and AB 1484, adopted in June 2012 (collectively, the "Dissolution Act"); and

WHEREAS, pursuant to Health and Safety Code Section 34176(b), the City designated the Ontario Housing Authority ("Authority") as the entity to retain the housing assets and functions previously performed by the Agency; and

WHEREAS, pursuant to Health and Safety Code Section 34177(e), the Successor Agency is required to "dispose of assets and properties of the former redevelopment agency as directed by the oversight board;" and under Health and Safety Code Section 34181(a), the Oversight Board is required to direct the Successor Agency to "dispose of all assets and properties of the former redevelopment agency," however, the oversight board may instead direct the successor agency to transfer ownership of assets that were constructed and used for a governmental purpose, such as roads, school buildings, parks, and fire stations, to the appropriate public jurisdiction; and

WHEREAS, Health and Safety Code Section 34191.3 provides that the provisions of Section 34177(e) and 34181(a) shall be suspended until the Department of Finance ("DOF") has approved a long-range property management plan, "except as those provisions apply to the transfers for governmental use;" and

WHEREAS, the Agency acquired certain properties, as more particularly described in Attachment 1 ("Governmental Use Properties"), which properties are being used for governmental purposes or, pursuant to an existing agreement with a third party, are to be used for a governmental purpose; and

WHEREAS, the Successor Agency desires to convey the Governmental Use Properties to the City, and the City desires to accept the conveyance of the Governmental Use Properties for purposes of ensuring that the Governmental Use Properties continue to be used for a governmental purpose; and

WHEREAS, the Agency also acquired certain properties, as more particularly described in Attachment 2 ("Housing Properties"), and entered into or intended to enter into agreements governing the Housing Properties to promote the goals and objectives of the Agency including, but not limited to, the provision of affordable housing to residents of the City of Ontario; and

WHEREAS, pursuant to Health and Safety Code Section 34176(b), all rights, powers, assets, liabilities, duties and obligations associated with the housing activities of the Agency, excluding any amounts in the Low and Moderate Income Housing Fund, shall be transferred to the Authority, as the designated housing successor to the Agency; and

WHEREAS, the Successor Agency desires to convey the Housing Properties to the Authority, and the Authority desires to accept the conveyance of the Housing Properties, in accordance with Health and Safety Code Section 34176 to ensure that the Housing Properties continue to be used for affordable housing purposes; and

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

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

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

SECTION 2. CEQA Compliance. The approval of the transfer of Properties from the Successor Agency to the City and Authority does not commit the Successor Agency, City or Authority to any action that may have a significant effect on the environment. As a result, such action does not constitute a project subject to the requirements of the California Environmental Quality Act.

SECTION 3. Transfer of Properties. The Successor Agency hereby approves and authorizes the transfer of title to the Governmental Use Properties listed in Attachment 1 from the Successor Agency to the City, and approves and authorizes the transfer of title to the Housing Properties listed in Attachment 2 from the Successor Agency to the Authority.

SECTION 4. Implementation. The City Manager or his or her designee is hereby authorized and directed to, on behalf of the Successor Agency, execute any and all documents, and take any and all action necessary to effectuate the transfer of the properties from the Successor Agency to the City and Authority in accordance with this Resolution and applicable law.

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

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

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

PASSED, APPROVED, AND ADOPTED this 5<sup>th</sup> day of May 2015.

---

PAUL S. LEON, CHAIRMAN

ATTEST:

---

MARY E. WIRTES, AGENCY SECRETARY

APPROVED AS TO FORM:

---

AGENCY COUNSEL



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

I, MARY E. WIRTES, City Clerk of the City of Ontario, in my official capacity as secretary to the Successor Agency to the Ontario Redevelopment Agency, DO HEREBY CERTIFY that Resolution No. SA-        was duly adopted by the Successor Agency to the Ontario Redevelopment Agency at a regular meeting held on May 5, 2015 by the following vote:

AYES:            AGENCY MEMBERS:

NOES:           AGENCY MEMBERS:

ABSENT:         AGENCY MEMBERS:

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

(SEAL)

The foregoing is the original of Resolution No. SA-       duly passed and adopted by the Successor Agency to the Ontario Redevelopment Agency at their regular meeting held May 5, 2015.

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

(SEAL)

**ATTACHMENT 1****GOVERNMENTAL USE AND HOUSING PROPERTIES**

<b>Properties Being Transferred From the Successor Agency to the Ontario Housing Authority</b>	
<b>EMPORIA IN-FILL SITE</b>	
<b>Site Address</b>	<b>APN</b>
401 W. Holt Boulevard	1049-051-01
401 W. Holt Boulevard	1049-051-02
205 1/2 S. Vine Avenue	1049-052-03
210 S. Fern Avenue	1049-052-04
215 S. Vine Avenue	1049-052-05
415 W. Transit Street	1049-052-09
209 S. Vine Avenue	1049-052-06
205 S. Vine Avenue	1049-052-07
205 S. Vine Avenue	1049-052-08
201 S. Vine Avenue	1049-052-10
325 W. Transit Street	1049-054-02
301 W. Transit Street	1049-054-03
303 W. Emporia Avenue	1049-059-07
<b>EUCLID IN-FILL</b>	
<b>Site Address</b>	<b>APN</b>
110 E. Maitland Avenue	1049-511-03
1004 S. Euclid Avenue	1049-563-10
1325 S. Euclid Avenue	1049-531-02
1329 S. Euclid Avenue	1049-531-01
<b>INFILL HOUSING</b>	
<b>Site Address</b>	<b>APN</b>
115-115 1/2 S. Sultana Avenue	1049-091-11
<b>MERCY HOUSE CONTINUUM OF CARE PERMANENT HOUSING UNITS (MERCY HOUSE)</b>	
<b>Site Address</b>	<b>APN</b>
517, 521, 525 N. Virginia Avenue	1048-442-13
411 N. Parkside Avenue	1048-452-10
<b>MISSION/OAKLAND</b>	
<b>Site Address</b>	<b>APN</b>
908 S. Oakland Avenue	1049-323-12
908 S. Oakland Avenue	1049-323-13
905 - 907 S. San Antonio Avenue	1049-323-06
911 S. San Antonio Avenue	1049-323-07
911 S. San Antonio Avenue	1049-323-08
<b>TAX DEFAULTED PROPERTIES (ACQUISITION)</b>	
<b>Site Address</b>	<b>APN</b>
4th and Cucamonga Avenue	1048-131-52

<b>AFFORDABLE HOUSING DEVELOPMENTS</b>	
<b>Site Address</b>	<b>APN</b>
1449 E. D Street	0110-254-78
511 N. Palmetto Avenue	1010-461-11
951-959 N. Palmetto Avenue	1010-141-08
<b>Properties Being Transferred From the Successor Agency to the City of Ontario</b>	
<b>EMPORIA (Housing and Code Building)</b>	
<b>Site Address</b>	<b>APN</b>
221 W. Transit Street	1049-056-01
211 W. Transit Street	1049-056-02
211 W. Transit Street	1049-056-03
200 S. Laurel Avenue	1049-056-04
208 W. Emporia Avenue	1049-056-05
228 W. Emporia Avenue	1049-056-06
<b>ONTARIO TOWN SQUARE B-1</b>	
<b>Site Address</b>	<b>APN</b>
126 E. C Street	1048-552-13
124 E. C Street	1048-552-14
203 N. Euclid	1048-552-18
<b>ORA PROPERTIES (REDEVELOPMENT PROJECTS)</b>	
<b>Site Address</b>	<b>APN</b>
2000 E. Holt Boulevard	0110-322-34
1947 Convention Center Way	0110-321-57
502 E. Nocta Street	1048-521-13
204 E. Transit Street	1049-064-01
208 E. Transit Street	1049-064-02
212 E. Transit Street	1049-064-03
228 E. Transit Street	1049-064-05
0 N. Lemon Avenue	1048-566-14

# CITY OF ONTARIO

*Agenda Report*  
May 5, 2015

**SECTION:**  
**CONSENT CALENDAR**

**SUBJECT: A RESOLUTION ORDERING THE SUMMARY VACATION OF THE RIGHTS-OF-WAY AND PUBLIC SERVICE EASEMENTS IN A PORTION OF MCCLEVE WAY EAST AND RECONVEYING ANY OF THE CITY'S INTEREST THEREIN**

**RECOMMENDATION:** That the City Council adopt a resolution ordering the summary vacation of the rights-of-way and public service easements in a portion of McCleve Way East and reconveying any of the City's interest therein and authorize the City Manager to execute the documents necessary to evidence the vacation and the reconveyance of the City's interest therein.

**COUNCIL GOALS:** Regain Local Control of the Ontario International Airport  
Ensure the Development of a Well Planned, Balanced, and Self-Sustaining Community in the New Model Colony

**FISCAL IMPACT:** None. The City did not pay to acquire the subject property. There will be no revenue as a result of the reconveyance. The applicant has paid applicable processing fees to defray the City's cost to process this request.

**BACKGROUND:** McCleve Way East was offered for dedication in fee simple to the City for street and public utility purposes by the subdivider, SL Ontario Development Company, LLC, as one of the requirements for the development of Tract Map Nos. 17821 and 18913-1 within the Subarea 29 Specific Plan area. The City has not yet accepted the offer for dedication. Due to the realignment of the cross street Chip Smith Way, a portion of McCleve Way East will not be needed for any present or future street and/or public utility purposes. SL Ontario Development Company has requested the City to vacate that portion of McCleve Way East and reconvey the vacated portion to the company.

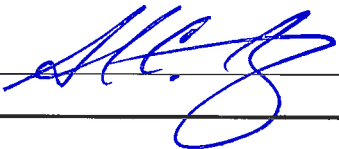
Section 66477.5(c) of the California Government Code requires the City to reconvey the subject property in interest to the subdivider if the dedication was made in fee simple and the City has determined that the same public purpose for which the dedication was required no longer exist. Since the

**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. 05/05/2015

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

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

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

5

subdivider offered the right-of-way in fee simple, and this portion of McCleve Way East is not required for street and/or public utility purposes, the City will reconvey the subject property to the subdivider.

Sections 8330-8336 of the California Streets and Highways Code authorize the City to summarily vacate (by resolution with no public hearing) excess public service easement or right-of-way of a street not required for street or highway purposes.

This summary vacation and reconveyance meets the California Government Code, Streets and Highways Code, and Ontario Municipal Code and has been reviewed and approved by the City Attorney.

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

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF ONTARIO, CALIFORNIA, ORDERING THE SUMMARY VACATION OF THE RIGHTS-OF-WAY AND PUBLIC SERVICE EASEMENTS IN A PORTION OF MCCLEVE WAY EAST AND RECONVEYING ANY OF THE CITY'S INTEREST THEREIN.

WHEREAS, SL Ontario Development Company, LLC offered for dedication to the City of Ontario, for right-of-way purposes, in fee simple, certain property located within the City, commonly known as McCleve Way East, and consisting of an area more specifically described and depicted in the attached Exhibit A and B ("Property"); and

WHEREAS, such offer was made on Final Map Nos. 17821 and 18913-1, and the City has not accepted the offer of dedication; and

WHEREAS, the Property was originally intended to be developed for street and road purposes, but never has been so developed, and changes in the planned development patterns for the vicinity of the Property have rendered the Property unnecessary for such purposes; and

WHEREAS, this vacation of the rights-of-way and any public service easement on the Property is made pursuant to the requirements of California Streets and Highways Code, Division 9 - Change of Grade and Vacation, Part 3 - Public Streets, Highways, and Service Easements Vacation Law (Streets & Highways Code Sections 8300 et seq.), Chapter 4 - Summary Vacation; and

WHEREAS, the California Government Code requires the City to reconvey the subject property in interest to the subdivider if the dedication was made to the City in fee simple and the City has determined that the same public purpose for which the dedication was required no longer exist; and

WHEREAS, the California Government Code provides that offers for dedication that are made on a final map may be terminated and abandoned by way of the "summary vacation" process set forth in the California Streets and Highways Code; and

WHEREAS, Section 8334(a) of the California Streets and Highways Code authorizes the City to summarily vacate (by resolution with no public hearing) excess public service easement or right-of-way of a street not required for street or highway purposes; and

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

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

1. That the above recitals are true and correct.
2. That title to the portion of McCleve Way East more specifically described in Exhibit A and depicted on Exhibit B is hereby vacated and shall be reconveyed to the subdivider SL Ontario Development Company, LLC.
3. That the City Clerk of the City of Ontario, California, shall cause a copy of this Resolution to be recorded in the office of the County Recorder of San Bernardino County, California.
4. That upon the recordation required hereby, the vacation is complete, and the street and any public service easements vacated no longer constitute a street or public service easement.
5. That City Manager is authorized to execute the documents necessary to evidence the vacation and reconveyance of the City's interest in the Property to the subdivider, SL Ontario Development Company, LLC.

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

PASSED, APPROVED, AND ADOPTED this 5<sup>th</sup> day of May 2015.

---

PAUL S. LEON, MAYOR

ATTEST:

---

MARY E. WIRTES, MMC, CITY CLERK

APPROVED AS TO LEGAL FORM:

---

BEST BEST & KRIEGER LLP  
CITY ATTORNEY

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

I, MARY E. WIRTES, City Clerk of the City of Ontario, DO HEREBY CERTIFY that foregoing Resolution No. 2015-        was duly passed and adopted by the City Council of the City of Ontario at their regular meeting held May 5, 2015 by the following roll call vote, to wit:

AYES:            COUNCIL MEMBERS:

NOES:           COUNCIL MEMBERS:

ABSENT:        COUNCIL MEMBERS:

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

(SEAL)

The foregoing is the original of Resolution No. 2015-        duly passed and adopted by the Ontario City Council at their regular meeting held May 5, 2015.

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



**EXHIBIT A**  
**LEGAL DESCRIPTION**  
**PORTION OF McCLEVE WAY EAST SUMMARY VACATION**

THAT PORTION OF McCLEVE WAY EAST, TRACT NO. 18913-1, IN THE CITY OF ONTARIO, COUNTY OF SAN BERNARDINO, STATE OF CALIFORNIA, AS SHOWN ON THE MAP FILED IN BOOK 338, PAGES 1 THROUGH 7 INCLUSIVE OF MAPS IN THE OFFICE OF THE COUNTY RECORDER OF SAID COUNTY, DESCRIBED AS FOLLOWS:

**BEGINNING** AT THE NORTHERLY TERMINUS OF THE EASTERLY LINE OF LOT 'J' AS SHOWN ON SAID MAP, ALSO BEING A POINT ON THE EASTERLY LINE OF SAID McCLEVE WAY EAST;

**THENCE** ALONG THE NORTHERLY CONTINUATION OF SAID EASTERLY LINE OF LOT 'J', BEING A CURVE CONCAVE WESTERLY WITH A RADIUS OF 737.00 FEET, A RADIAL LINE TO SAID POINT BEARS SOUTH 86°40'27" EAST, 24.46 FEET THROUGH A CENTRAL ANGLE OF 01° 54'07";

**THENCE** LEAVING SAID CURVE, NORTH 44°16'21" EAST 7.74 FEET;

**THENCE** SOUTH 1°46'12" WEST 24.77 FEET TO A POINT ON THE NORTHEASTERLY PROLONGATION OF THE NORTHWESTERLY LINE OF SAID LOT 'J';

**THENCE** SOUTH 47°14'24" WEST 7.70 FEET TO THE **POINT OF BEGINNING**.

CONTAINING 130 SQUARE FEET, MORE OR LESS.

AS SHOWN ON EXHIBIT "B" ATTACHED HERETO AND MADE A PART HEREOF.

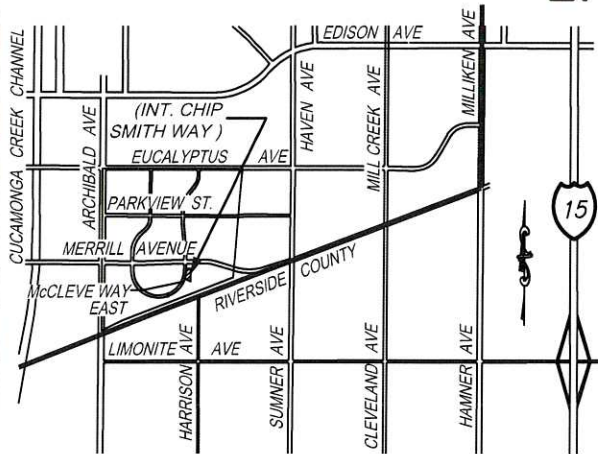
PREPARED UNDER THE SUPERVISION OF:



WALTER A. SHEEK, PLS 4838  
EXPIRES SEPTEMBER 30, 2016

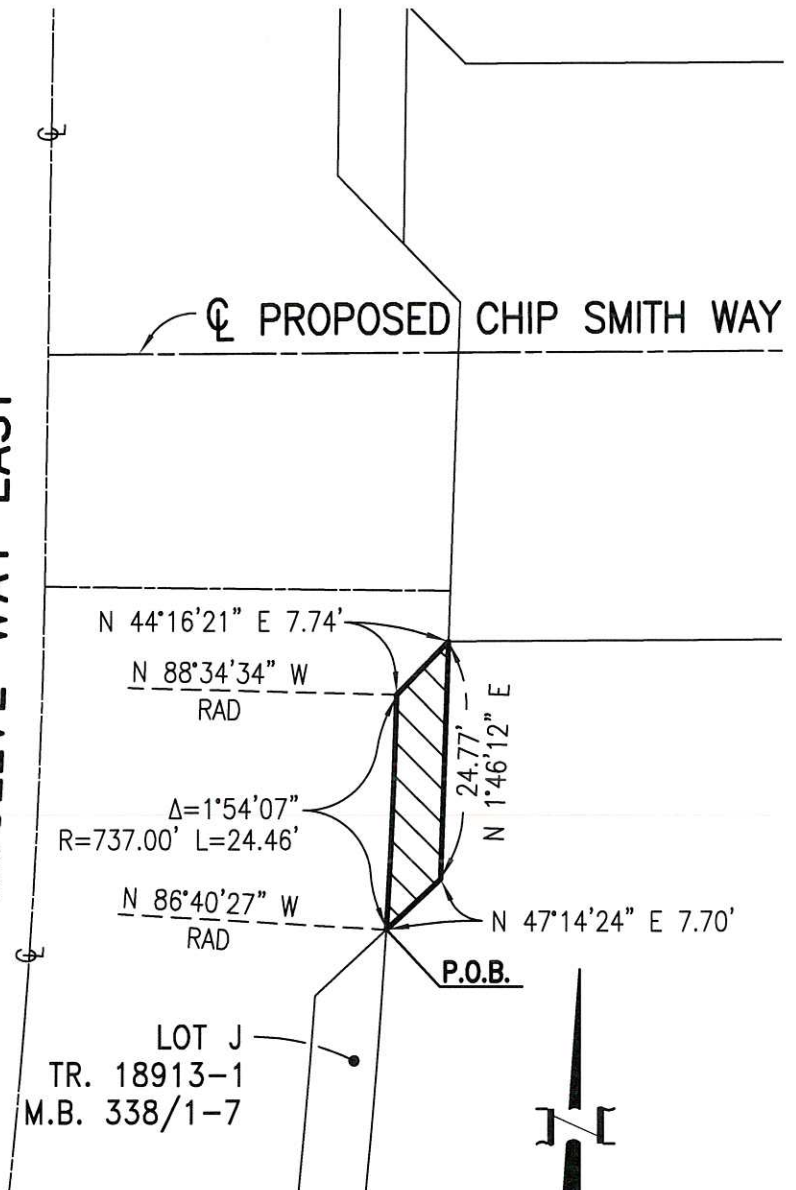


# EXHIBIT "B"



**VICINITY MAP**  
SECTION 13 AND 24, T5S, R3W, SBM

**McCLELLAN WAY EAST**



## SURVEYOR'S CERTIFICATE

PREPARED UNDER THE SUPERVISION OF:

*Walter A. Sheek*  
WALTER A. SHEEK  
LICENSED LAND SURVEYOR NO. 4838  
MY LICENSE EXPIRES 9/30/16

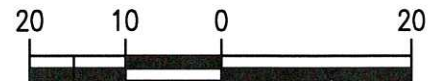
## LEGEND



INDICATES AREA TO BE  
SUMMARY VACATED

## PROPOSED SUMMARY VACATION

<b>MDS</b> CONSULTING	MORSE	17320 REDHILL AVE. SUITE 350 IRVINE, CA 92614 PH: 949-251-8821 FAX: 949-251-0516
	SCHULTZ	
PLANNERS	ENGINEERS	SURVEYORS



SCALE 1" = 20'

# CITY OF ONTARIO

*Agenda Report*  
May 5, 2015

SECTION:  
CONSENT CALENDAR

**SUBJECT: A FIRST AMENDMENT TO THE CONSOLIDATED PLAN ANNUAL ACTION PLAN FOR THE 2014-15 PROGRAM YEAR AND RESOLUTIONS APPROVING AGREEMENTS FOR THE ACQUISITION AND MINOR REHABILITATION OF THE VESTA APARTMENTS**

**RECOMMENDATION:** That the City Council and Authority Board take the following actions:

- (A) Approve the First Amendment to the Consolidated Plan Annual Action Plan (on file in the Records Management Department) for the 2014-15 Program Year ("Substantial Amendment");
- (B) Adopt resolutions approving a Community Development Block Grant ("CDBG") loan agreement between the City and Ontario Housing Authority ("Authority"), in the amount of \$200,000; the Assignment, Assumption, and Amendment Agreement of the existing HOME Investment Partnership Agreement ("HOME Agreement") between the City and Housing Opportunities Group, Inc. ("HOGI"), in the amount of \$244,713; the Assumption and Amendment of the existing Inland Fair Housing and Mediation Board ("IFHMB") loan between IFHMB and HOGI, in the amount of \$158,565; and the assumption of the property management agreement between HOGI and Cannon Management Company, located in Riverside, California, for the Vesta Apartments, located at 520 – 526 ½ West Vesta Street (AKA 520 West Vesta Street). All agreements are on file in the Records Management Department;
- (C) Authorize the Authority to pay outstanding property management fees and maintenance expenses, not to exceed \$17,000, utilizing existing OHA revenues; and
- (D) Authorize the City Manager and Executive Director, to take all actions necessary or desirable to implement these activities related to the acquisition of the Vesta Apartments.

**COUNCIL GOALS: Regain Local Control of the Ontario International Airport**  
**Focus Resources in Ontario's Commercial and Residential Neighborhoods**

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

Prepared by: Julie Bjork  
Department: Housing & Municipal Services

City Manager  
Approval: 

Submitted to Council/O.H.A. 05/05/2015

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

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

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

6

**FISCAL IMPACT:** The Substantial Amendment allocates \$200,000 in CDBG for the acquisition costs and minor rehabilitation of the Vesta Apartments. The CDBG funds will be provided as a 0% interest fully deferred loan to the Ontario Housing Authority. The existing HOME loan between the City and HOGI, which will be assumed by the Authority, will be modified from a 3% simple interest deferred loan to a 0% deferred loan. The existing deferred interest on this loan in the amount of \$88,087 will be forgiven. The Authority would also assume the IFHMB loan between HOGI and IFHMB. The Authority will also provide up to \$17,000 to cure outstanding property management and maintenance expenses with OHA revenue. No General Fund monies will be used for this project.

**BACKGROUND:** On February 13, 2003, the City Council approved the First Amendment to the HOME Agreement between HOGI and the City for the acquisition and substantial rehabilitation of the historic Vesta Apartments. The HOME Agreement provided HOGI with a loan in the amount of \$324,713 at a 3% simple interest deferred. HOGI also obtained financing from the Clearinghouse CDFI, in the amount of \$200,000 and IFHMB, in the amount of \$158,566.

The Vesta Apartments, built in the 1920s, consists of five one-bedroom cottages and one two-bedroom house. This property, a craftsman style bungalow court, is historically significant because it embodies distinguishing architectural characteristics of a style, type, and period of construction. HOGI was able to acquire and substantially rehabilitate the property. HOGI received the 2004 Model Colony Award for their historic rehabilitation of this property from the Ontario Planning Commission. Since the completion of this rehabilitation, HOGI has continued to operate the project as an affordable housing development with two units reserved for very low-income, one unit reserved for low-income, and three units reserved for moderate-income in compliance with the HOME Agreement.

HOGI informed the City staff of their intent to dissolve in 2015, and has requested that the Authority acquire the property for its use as affordable housing.

The current debt with is approximately \$581,624 and the City has had the property appraised at a value of \$630,000 with the affordable covenants. The proposed debt restructuring would modify the current debt owed on the property to \$603,278. The first mortgage held by the Clearinghouse CDFI, with a current balance of approximately \$161,346, would be paid off using the proceeds from the proposed CDBG loan between the City and the Authority. Ontario staff is recommending an amendment to the City's existing loan, with a principal balance of \$244,713 from a 3% simple interest deferred note to a 0% interest fully deferred note. Ontario staff has also negotiated with IFHMB staff to restructure IFHMB's loan, with a current principal balance of \$158,565 from a 3% simple interest deferred note to a 0% interest with a monthly payment of \$1,000. The deferred interest on both the City's loan, in the amount of \$88,087 of deferred interest, and IFHMB's loan, in the amount of \$74,293 of deferred interest would be forgiven. The current and proposed debt is shown on Exhibit A.

To comply with CDBG regulations, the affordability covenants require modifications so that the property has 51% of the residents at or below 80% of area median income. To achieve this affordability requirement, one one-bedroom moderate-income unit will be converted to a one-bedroom low-income unit. The current and proposed affordability is shown on Exhibit B.

The estimated net cash flow from the property is approximately \$22,500. Net proceeds from this property may be available to fund a portion of the cost of the homeless Continuum of Care Program.

Cannon Management Company is currently managing the property. Currently, Cannon Management Company is managing all of the other Authority-owned residential units. Cannon Management Company has extensive experience in property management and currently manages over 18,000 units

within California and Nevada. Cannon Management Company's negotiated property management fee for this property is 4% of the gross rent receipts. The current management agreement will be transferred to the Authority.

The proposed action to utilize CDBG funds for the acquisition and minor rehabilitation of the Vesta Apartments qualifies as a substantial amendment and requires the City to formally amend the Consolidated Plan Annual Action Plan for the 2014-15 Program Year.

The draft Substantial Amendment was available for public review from April 3, 2015 through May 4, 2015. No public comments were received during the public review period. Subsequent to City Council approval, the plan will be submitted to the U.S. Department of Housing and Urban Development.

## EXHIBIT A FINANCIAL INFORMATION

### 1. Sources/Uses

Sources	Amount	Uses
CDBG	\$162,000	Estimated Pay off 1 <sup>st</sup> Mortgage
	\$15,000	Estimated Closing Costs, Appraisal, Title, Soils, etc.
	\$23,000	Painting and Minor Rehabilitation
<b>CDBG TOTAL</b>	<b>\$200,000</b>	
OHA	\$17,000	Pay-off Outstanding Property Management and Maintenance Expenses
<b>OHA TOTAL</b>	<b>\$17,000</b>	
<b>TOTAL</b>	<b>\$217,000</b>	

### 2. Current Debt and Proposed Debt

CURRENT DEBT			PROPOSED DEBT	
Lender/Initial Loan Amount	Terms	Estimated Principal	Terms	Principal
CDFI (\$200,000)	7% interest amortizing loan	\$161,346		
City (HOME CHDO) (\$324,713)	3% simple interest deferred loan	\$244,713	0% fully deferred loan. Deferred interest forgiven	\$244,713
IFHMB (\$158,565)	3% simple interest deferred loan	\$158,565	0% interest loan with a monthly payment of \$1,000. Deferred interest forgiven	\$158,565
HOGI's Outstanding Property Management and Maintenance Expenses		\$17,000		
City (CDBG)			Fully deferred zero percent interest	\$200,000
<b>TOTAL DEBT</b>		<b>\$581,624</b>		<b>\$603,278</b>

**EXHIBIT B**  
**AFFORDABILITY INFORMATION**

<b>Current Affordability Mix</b>			<b>Proposed Affordability</b>	
<b>Income/Unit Type</b>	<b>Number of Units</b>	<b>Actual Rent</b>	<b>Number of Units</b>	<b>Estimated Rent</b>
Low HOME Units (50% of AMI) (1 bd)	2	\$557	2	\$557
High Home Rent (80% of AMI) (1 bd)	1	\$726	2	\$726
Moderate-Income Units (120% of AMI) (1 bd)	2	\$875	1	\$875
Moderate-Income Units (120% of AMI) (2 bd - House)	1	\$1,400	1	\$1,400
<b>TOTAL</b>	<b>6</b>	<b>\$4,990</b>	<b>6</b>	<b>\$4,841</b>



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

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF ONTARIO, CALIFORNIA, APPROVING A LOAN OF COMMUNITY DEVELOPMENT BLOCK GRANT (CDBG) PROGRAM FUNDS TO THE ONTARIO HOUSING AUTHORITY (AUTHORITY), AND THE ASSUMPTION AND AMENDMENT OF AN EXISTING HOME INVESTMENT PARTNERSHIP PROGRAM FUNDS LOAN AND RELATED AGREEMENTS BETWEEN THE CITY AND HOUSING OPPORTUNITIES GROUP, INC. (HOGI) BY THE AUTHORITY, ALL FOR THE ACQUISITION, MINOR REHABILITATION AND OPERATION OF AFFORDABLE HOUSING AT THE PROPERTY LOCATED AT 520-526 1/2 WEST VESTA STREET; AND APPROVING THE ASSUMPTION AND RECORDATION OF AMENDED AFFORDABILITY COVENANTS AGAINST SAID PROPERTY BY THE AUTHORITY.

WHEREAS, the City of Ontario has received funds from the United States Department of Housing and Urban Development ("HUD") under the Community Development Block Grant ("CDBG") Program, to be used pursuant to the City's Consolidated Plan Annual Action Plan for the Program Year 2014-15, as amended, and the regulations pertaining to the CDBG Program (24 CFR Part 570); and

WHEREAS, the City desires to develop and support affordable rental housing, and stabilize the community through the use of CDBG funds; and

WHEREAS, the Authority wishes to purchase and complete minor rehabilitation of that certain real property commonly referred to as 520-526 1/2 West Vesta Street, in the City of Ontario, County of San Bernardino, Assessor's Parcel Number 1048-581-58-0-00 ("Property"), in order to ensure that a foreclosure of the Property does not occur which would eliminate the existing affordability covenants on the Property recorded pursuant to that certain HOME Investment Partnership Agreement between the City and the current owner, Housing Opportunities Group, Inc. ("HOGI") a California nonprofit, public benefit corporation, and in order to maintain the Property as affordable housing in the City; and

WHEREAS, the Authority is in need of funds to complete the purchase and minor rehabilitation of the Property; and

WHEREAS, the Authority wishes to borrow from the City and the City wishes to extend to the Authority financial assistance in the form of a loan in the amount of Two Hundred Thousand Dollars (\$200,000) in CDBG monies (the "CDBG Loan") to assist in the acquisition and minor rehabilitation of the Property, in accordance with the terms and conditions set forth in the CDBG Loan Agreement, on file at the City's Records Management Department, and the City desires to make the CDBG Loan to the Authority; and

WHEREAS, in order to assist the Authority in effectuating the purchase of the Property, the City will consent to the assumption by the Authority of an existing HOME Investment Partnership Agreement on the Property, as amended by that First Loan



Modification Agreement, dated February 28, 2003. Said agreement was entered into in relation to a HOME loan made to HOGI by the City ("HOME Loan"), which is evidenced by a promissory note and a deed of trust, as the same were amended by the First Loan Modification Agreement. In order to ensure the continued use of the Property for the purposes of providing affordable housing within the City, the City will agree to amend the terms of the HOME Loan, and related promissory note and deed of trust, to change the HOME Loan from a three percent (3%) simple interest deferred note to zero percent (0%) interest fully deferred note; and

WHEREAS, as a condition to the City making the CDBG Loan, the City and the Authority will amend the affordability covenants recorded against the Property ("Affordability Covenants") in order to change one of the units designated as a moderate income unit to a low-income unit, with the same change made to the above referenced HOME Investment Partnership Agreement.

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

SECTION 1. Recitals. The above recitals are true and correct, and are incorporated into this Resolution by reference as though fully set forth herein.

SECTION 2. Approval of CDBG Loan Agreement. The City Council hereby approves the CDBG Loan Agreement, in the form on file at the City's Records Management Department.

SECTION 3. Approval of Assignment, Assumption and Amendment to HOME Loan Agreements. The City Council hereby approves the Assignment, Assumption and Amendment to the HOME Investment Partnership Agreement, the HOME Promissory Note, and the HOME Deed of Trust, as previously amended, in the form on file at the City's Records Management Department.

SECTION 4. Authorization. The City Council hereby authorizes the City Manager (with the concurrence of the City Attorney) to execute and deliver on behalf of the City the agreements referenced herein, with such changes as may be authorized by the City Attorney, and such other documents and instruments as may be necessary or convenient in the furtherance of the actions authorized in this Resolution.

SECTION 5. Direction. City staff is hereby directed to do all that is necessary to effectuate the intent of this Resolution.

SECTION 6. CEQA Compliance. The City has determined that it can be seen with certainty that there is no possibility that approval of the actions authorized under this Resolution will have a significant adverse effect on the environment. Thus, the adoption of this Resolution is exempt from the requirements of the California Environmental Quality Act ("CEQA") pursuant to Section 15061(b)(3) of the CEQA Guidelines. The City hereby directs staff to file a Notice of Exemption with the County Clerk of San Bernardino County within five (5) working days following the approval of this Resolution.

SECTION 7.     Certification. The City Clerk shall certify the adoption of this Resolution.

SECTION 8.     Effective Date. This Resolution shall become effective upon its adoption.

PASSED, APPROVED, AND ADOPTED this 5<sup>th</sup> day of May, 2015.

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PAUL S. LEON, MAYOR

ATTEST:

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MARY E. WIRTES, MMC, CITY CLERK

APPROVED AS TO LEGAL FORM:

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BEST BEST & KRIEGER LLP  
CITY ATTORNEY

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

I, MARY E. WIRTES, City Clerk of the City of Ontario, DO HEREBY CERTIFY that foregoing Resolution No. 2015-     was duly passed and adopted by the City Council of the City of Ontario at their regular meeting held May 5, 2015 by the following roll call vote, to wit:

AYES:           COUNCIL MEMBERS:

NOES:           COUNCIL MEMBERS:

ABSENT:        COUNCIL MEMBERS:

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

(SEAL)

The foregoing is the original of Resolution No. 2015-     duly passed and adopted by the Ontario City Council at their regular meeting held May 5, 2015.

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

(SEAL)

RESOLUTION NO. OHA-\_\_\_\_\_

A RESOLUTION OF THE ONTARIO HOUSING AUTHORITY OF THE CITY OF ONTARIO, CALIFORNIA, APPROVING THE BORROWING OF COMMUNITY DEVELOPMENT BLOCK GRANT (CDBG) PROGRAM FUNDS FROM THE CITY OF ONTARIO (CITY), THE ASSUMPTION AND AMENDMENT OF AN EXISTING HOME INVESTMENT PARTNERSHIP PROGRAM FUNDS LOAN AND RELATED AGREEMENTS BETWEEN THE CITY AND HOUSING OPPORTUNITIES GROUP, INC. (HOGI), THE ASSUMPTION AND AMENDMENT OF AN EXISTING LOAN AGREEMENT BETWEEN INLAND FAIR HOUSING AND MEDIATION BOARD AND HOGI, AND THE PAYMENT OF OUTSTANDING PROPERTY MANAGEMENT FEES AND MAINTENANCE EXPENSES ALL FOR THE ACQUISITION, MINOR REHABILITATION AND OPERATION OF AFFORDABLE HOUSING AT THE PROPERTY LOCATED AT 520-526 1/2 WEST VESTA STREET; APPROVING THE ASSUMPTION AND RECORDATION OF AMENDED AFFORDABILITY COVENANTS AGAINST SAID PROPERTY; AND APPROVING THE ASSUMPTION OF A PROPERTY MANAGEMENT AGREEMENT WITH CANNON MANAGEMENT COMPANY FOR SAID PROPERTY.

WHEREAS, the City of Ontario has received funds from the United States Department of Housing and Urban Development ("HUD") under the Community Development Block Grant ("CDBG") Program, to be used pursuant to the City's Consolidated Plan Annual Action Plan for the Program Year 2014-15, as amended, and the regulations pertaining to the CDBG Program (24 CFR Part 570); and

WHEREAS, the City desires to develop and support affordable rental housing, and stabilize the community through the use of CDBG funds; and

WHEREAS, the Authority wishes to purchase and complete minor rehabilitation of that certain real property commonly referred to as 520-526 1/2 West Vesta Street, in the City of Ontario, County of San Bernardino, Assessor's Parcel Number 1048-581-58-0-00 ("Property"), in order to ensure that a foreclosure of the Property does not occur which would eliminate the existing affordability covenants on the Property recorded pursuant to that certain HOME Investment Partnership Agreement between the City and the current owner, Housing Opportunities Group, Inc. ("HOGI") a California nonprofit, public benefit corporation, and in order to maintain the Property as affordable housing in the City; and

WHEREAS, the Authority is in need of funds to complete the purchase and minor rehabilitation of the Property; and

WHEREAS, the Authority wishes to borrow from the City and the City wishes to extend to the Authority financial assistance in the form of a loan in the amount of Two Hundred Thousand Dollars (\$200,000) in CDBG monies (the "CDBG Loan") to assist in the acquisition and minor rehabilitation of the Property, in accordance with the terms and conditions set forth in the CDBG Loan Agreement. A copy of the CDBG Loan Agreement is on file at the City's Records Management Department; and

WHEREAS, in order to effectuate the purchase of the Property, the Authority desires to assume an existing HOME Investment Partnership Agreement on the Property, as amended by that First Loan Modification Agreement, dated February 28, 2003. Said agreement was entered into in relation to a HOME loan made to HOGI by the City ("HOME Loan"), which is evidenced by a promissory note and a deed of trust, as the same were amended by the First Loan Modification Agreement. The remaining balance of the HOME Loan is Two Hundred Forty Four Thousand, Seven Hundred Thirteen Dollars (\$244,713). The Authority will assume the HOME Loan provided that the City agrees to amend the terms of the HOME Loan, and related promissory note and deed of trust, to change the HOME Loan from a three percent (3%) simple interest deferred note to zero percent (0%) interest fully deferred note; and

WHEREAS, as a condition to the City making the CDBG Loan, the City and the Authority will amend the affordability covenants recorded against the Property ("Affordability Covenants") in order to change one of the units designated as moderate income unit to a low-income unit, with the same change made to the above referenced HOME Investment Partnership Agreement; and

WHEREAS, in order to effectuate the purchase of the Property, the Authority will also assume an existing Inland Fair Housing and Mediation Board ("IFHMB") loan agreement on the Property ("IFHMB Loan"), which loan was made to HOGI and is evidenced by a promissory note and a deed of trust, with a current principal balance of One Hundred Fifty Eight Thousand, Five Hundred Sixty Five Dollars (\$158,565). The Authority will assume the IFHMB Loan provided that IFHMB agrees to amend the terms of the IFHMB Loan from a three percent (3%) simple interest deferred note to zero percent (0%) interest note, with a monthly payment to IFHMB of One Thousand Dollars (\$1,000); and

WHEREAS, as part of the consideration for the purchase of the Property, the Authority desires to pay outstanding Property management fees and maintenance expenses incurred by HOGI, in an amount not to exceed Seventeen Thousand Dollars (\$17,000), to be evidenced by invoices provided to and approved by the Authority; and

WHEREAS, in order to operate the Property for the purpose of providing affordable housing within the City, the Authority desires to assume the existing property management agreement between HOGI and the Cannon Management Company ("Property Management Agreement"), dated as of April 22, 2015. A copy of the Property Management Agreement is on file at the City's Records Management Department.

NOW, THEREFORE, BE IT RESOLVED by the Governing Board of the Ontario Housing Authority ("Governing Board") as follows:

SECTION 1. Recitals. The above recitals are true and correct, and are incorporated into this Resolution by reference as though fully set forth herein.

SECTION 2. Approval of CDBG Loan Agreement. The Governing Board hereby approves the CDBG Loan Agreement, in the form on file at the Offices of the Authority.

SECTION 3. Approval of Assignment, Assumption and Amendment to HOME Loan Agreements. The Governing Board hereby approves the Assignment, Assumption and Amendment to the HOME Investment Partnership Agreement, the HOME Promissory Note, and the HOME Deed of Trust, as previously amended, in the form on file at the Offices of the Authority.

SECTION 4. Approval of Assignment and Assumption of Amended IFHMB Loan Agreement. The Governing Board hereby approves the Assignment, Assumption and Amendment to the IFHMB Loan Agreement, in such form as shall be agreed upon by IFHMB and the Executive Director, with Authority Counsel review, provided that the terms reflect the change from a three percent (3%) simple interest deferred note to zero percent (0%) interest note, with a monthly payment to IFHMB of One Thousand Dollars (\$1,000).

SECTION 5. Approval of Payment of Outstanding Property Management Fees and Maintenance Expenses. The Governing Board hereby approves the payment by the Authority of outstanding property management fees and maintenance expenses incurred by HOGI in an amount not to exceed Seventeen Thousand Dollars (\$17,000). Payments shall be made based on invoices provided to and approved by the Authority.

SECTION 6. Approval of Assignment and Assumption of Property Management Agreement. The Governing Board hereby approves the Assignment and Assumption of the Property Management Agreement, in the form on file at the Offices of the Authority.

SECTION 7. Authorization. The Governing Board hereby authorizes the Executive Director (with the concurrence of Authority Counsel) to execute and deliver on behalf of the Authority the agreements referenced herein, with such minor changes as may be authorized by the Authority Counsel, and such other documents and instruments as may be necessary or convenient in the furtherance of the actions authorized in this Resolution. Notwithstanding any other provisions of this Resolution, the authorizations granted herein are contingent on the negotiation and execution of a Purchase and Sale Agreement for the Property with terms satisfactory to the Authority.

SECTION 8. Filing. The Authority Secretary is hereby directed to file a copy of the executed agreements with the City Clerk at City Hall, and to record the executed Assignment, Assumption and Amendment to Affordability Covenants with the Office of the County Recorder of San Bernardino County.

SECTION 9. Direction. Authority staff is hereby directed to do all that is necessary to effectuate the intent of this Resolution.

SECTION 10. CEQA Compliance. The Authority has determined that it can be seen with certainty that there is no possibility that approval of the actions authorized under this Resolution will have a significant adverse effect on the environment. Thus, the adoption of this Resolution is exempt from the requirements of the California Environmental Quality Act ("CEQA") pursuant to Section 15061(b)(3) of the CEQA Guidelines. The Authority hereby directs staff to file a Notice of Exemption with the County Clerk of San Bernardino County within five (5) working days following the approval of this Resolution.

SECTION 11.    Certification. The Authority Secretary shall certify the adoption of this Resolution.

SECTION 12.    Effective Date. This Resolution shall become effective upon its adoption.

PASSED, APPROVED, AND ADOPTED this 5<sup>th</sup> day of May 2015

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PAUL S. LEON, CHAIRMAN

ATTEST:

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MARY E. WIRTES, AUTHORITY SECRETARY

APPROVED AS TO FORM:

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AUTHORITY COUNSEL

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

I, MARY E. WIRTES, Secretary of the Ontario Housing Authority, DO HEREBY CERTIFY that the foregoing Resolution No. OHA-     was duly passed and adopted by the Board Members of the Ontario Housing Authority at their regular meeting held May 5, 2015, by the following roll call vote, to wit:

AYES:           BOARD MEMBERS:

NOES:           BOARD MEMBERS:

ABSENT:        BOARD MEMBERS:

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

(SEAL)

The foregoing is the original of Resolution No. OHA     duly passed and adopted by the Ontario Housing Authority at their regular meeting held May 5, 2015.

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

(SEAL)



# CITY OF ONTARIO

*Agenda Report*  
May 5, 2015

**SECTION:  
CONSENT CALENDAR**

**SUBJECT: A FIVE-YEAR CONSOLIDATED PLAN FOR FISCAL YEARS 2015-19 AND A ONE-YEAR ACTION PLAN FOR THE COMMUNITY DEVELOPMENT BLOCK GRANT, HOME INVESTMENT PARTNERSHIPS, AND EMERGENCY SOLUTIONS GRANT PROGRAMS FOR FISCAL YEAR 2015-16**

**RECOMMENDATION:** That the City Council:

- (A) Approve the Five-Year Consolidated Plan for Fiscal Years 2015-19 and a One-Year Action Plan for Fiscal Year 2015-16 for the Community Development Block Grant for the Community Development Block Grant ("CDBG"), HOME Investment Partnerships ("HOME"), and Emergency Solutions Grant ("ESG") Programs (on file in the Records Management Department) for Fiscal Year 2015-16;
- (B) Direct staff to prepare and transmit the final documents to the U.S. Department of Housing and Urban Development ("HUD"); and
- (C) Authorize the City Manager, or his designee, to take all actions necessary or desirable to implement the Five-Year Consolidated Plan, One-Year Action Plan, Subrecipient Agreements, and the Analysis of Impediments to Fair Housing Choice ("AI").

**COUNCIL GOALS:** Regain Local Control of the Ontario International Airport  
Pursue City's Goals and Objectives by Working with Other Governmental Agencies

**FISCAL IMPACT:** In the next fiscal year, the City will receive approximately \$1,787,737 in CDBG funds and \$358,774 in prior year unallocated CDBG funds, \$434,607 in HOME funds, and \$160,673 in ESG funds from HUD. There is no impact to the General Fund.

**BACKGROUND:** HUD requires that cities prepare and adopt a Five-Year Consolidated Plan and a One-Year Action Plan, which provides for the expenditure of CDBG, HOME, and ESG funds.

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

Prepared by: Katryna Gonzalez  
Department: Housing and Municipal Services

City Manager  
Approval: 

Submitted to Council/O.H.A. 05/05/2015

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

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

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

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**FIVE-YEAR CONSOLIDATED PLAN:** Provides a strategic plan to identify priorities for the utilization of CDBG, HOME and ESG funds.

The top priorities are summarized below:

Housing Strategy

- Preserve existing rental and owner-occupied housing resources.
- Expand affordable rental housing opportunities, particularly for low-income persons.
- Increase affordable homeownership opportunities, particularly for low and moderate income persons.

Homeless Strategy

- Preserve and improve the supply of supportive housing and public services for the homeless and homelessness prevention services.

Community Development Strategy

- Provide needed public infrastructure and neighborhood improvements in target lower and moderate income neighborhoods.
- Provide for new community facilities and improve the quality of existing community facilities to serve lower and moderate income neighborhoods.
- Provide needed community services to serve lower and moderate income residents.
- Expand the City's economic base and promote greater employment opportunities.

Two community forums/public hearings were held to solicit public participation in the development of the Consolidated Plan and Action Plan. The community forums/public hearings were held on January 22, 2015 and April 2, 2015. In addition, a community needs assessment survey was published online for the purpose of identifying needs and priorities. Comments received at the meetings and from the surveys were incorporated into the Action Plan.

On April 3, 2015, the City advertised the availability of the draft Consolidated Plan/Action Plan for public review. The draft Consolidated Plan/Action Plan was available for public review from April 3, 2015 to May 4, 2015.

**ACTION PLAN:** The Action Plan allocates funds to programs designed to support strategies identified in the Consolidated Plan. Recommended funding allocations in Fiscal Year 2015-16 for the following programs included in the Action Plan are as follows:

	CDBG	HOME	ESG
CDBG	\$1,787,737		
Unallocated prior year CDBG funds	\$358,774		
HOME		\$434,607	
ESG			\$160,673
<b>TOTAL</b>	<b>\$2,146,511</b>	<b>\$434,607</b>	<b>\$160,673</b>

The City's CDBG, HOME, and ESG allocations have changed for Fiscal Year 2015-16 from last year's allocation as illustrated below:

	FY 2014-15	FY 2015-16	Difference
CDBG	\$1,802,546	\$1,787,737	(\$14,809)
HOME	\$483,778	\$434,607	(\$49,171)
ESG	\$140,174	\$160,673	\$20,499
<b>TOTAL</b>	<b>\$2,426,498</b>	<b>\$2,383,017</b>	<b>(\$43,481)</b>

The detailed Fiscal Year 2015-16 funding allocations are provided in Exhibit A. The City solicited applications for funding from public service providers and for CDBG capital improvement projects for Fiscal Year 2015-16 in accordance with HUD funding requirements. The City solicits for applications every two years. Details of applications received and funding recommendations for these projects can be found in Exhibit B.

## EXHIBIT A

### FISCAL YEAR 2015-16 FUNDING ALLOCATION SUMMARY

#### RECOMMENDED CDBG FUNDING

<u>Proposed Programs</u>	<u>Implementing Agency</u>	<u>Amount</u>
Administration	City of Ontario Housing & Municipal Services	\$ 325,347
Fair Housing	Inland Fair Housing and Mediation Board	\$ 22,000
Housing Mediation	Inland Fair Housing and Mediation Board	\$ 10,200
Senior Services	Inland Fair Housing and Mediation Board	\$ 10,000
Mercy House Continuum of Care	Mercy House	\$ 52,249
Community Improvement Team (CIT)	City of Ontario Code Enforcement	\$ 100,000
CARES Homeowner Occupied Loan Program	City of Ontario Housing & Municipal Services	\$ 500,000
CARES Emergency Grant Program	City of Ontario Housing & Municipal Services	\$ 100,000
Ontario Senior Center Light Fixtures	City of Ontario Housing & Municipal Services	\$ 45,000
De Anza Community Center Roof Replacement	City of Ontario Housing & Municipal Services	\$ 110,000
ADA Compliant Doors at De Anza, Quesada, and Westwind Centers	City of Ontario Housing & Municipal Services	\$ 80,000
Alley Pavement Rehabilitation	City of Ontario Engineering	\$ 200,000
Rubber-Polymer Modified Slurry Seal (RPMSS) Project	City of Ontario Engineering	\$ 200,000
Wheelchair Ramp Installation	City of Ontario Community & Public Services	\$ 120,803
Galvin Park Restroom Renovation	City of Ontario Community & Public Services	\$ 65,000
COPS Program	Ontario Police Department	\$ 183,912
Child Care Subsidies	Ontario-Montclair YMCA	\$ 22,000
	<b>TOTAL</b>	<b>\$ 2,146,511</b>

#### RECOMMENDED HOME FUNDING

<u>Proposed Programs</u>	<u>Implementing Agency</u>	<u>Amount</u>
Tenant Based Rental Assistance Program	City of Ontario Housing Agency	\$ 325,955
Community Housing Development Organizations (CHDOs) Housing Program	CHDOs	\$ 65,192
Administration	City of Ontario Housing & Municipal Services	\$ 43,460
	<b>TOTAL</b>	<b>\$ 434,607</b>

#### RECOMMENDED ESG FUNDING

<u>Proposed Programs</u>	<u>Implementing Agency</u>	<u>Amount</u>
Administration	City of Ontario Housing & Municipal Services	\$ 5,424
Administration	Mercy House	\$ 6,626
Stepping Stones Program	Foothill Family Shelter	\$ 6,122
Family Stabilization at SOVA Program Center	Inland Valley Hope Partners	\$ 18,410
Services for Battered Women and Children	House of Ruth	\$ 12,600
Mercy House Continuum of Care	Mercy House	\$ 111,491
	<b>TOTAL</b>	<b>\$ 160,673</b>

## EXHIBIT B

### FY 2015-16 SUMMARY OF APPLICATIONS RECEIVED

#### CDBG CAPITAL IMPROVEMENT PROJECTS

<u>Project Name</u>	<u>Agency Submitting Application</u>	<u>Amount Requested</u>	<u>Amount Recommended</u>
Roof Repairs at American Legion	American Legion Post 112	\$16,000	\$0
SOVA Program Center Building Upgrade	Inland Valley Hope Partners	\$10,000	\$0
<b>Total</b>		<b>\$26,000</b>	<b>\$0</b>

#### CDBG PUBLIC SERVICE PROJECTS

<u>Project Name</u>	<u>Agency Submitting Application</u>	<u>Amount Requested</u>	<u>Amount Recommended</u>
Senior Support Services	Inland Fair Housing and Mediation Board	\$10,000	\$10,000
Landlord/Tenant Mediation Program	Inland Fair Housing and Mediation Board	\$13,000	\$10,200
Fair Housing Program	Inland Fair Housing and Mediation Board	\$26,000	\$22,000
Ontario Continuum of Care	Mercy House Living Centers	\$71,211	\$52,249
Child Care, Family, and Youth Subsidies	Ontario-Montclair YMCA	\$22,000	\$22,000
<b>Total</b>		<b>\$142,211</b>	<b>\$116,449</b>

#### ESG PROJECTS

<u>Project Name</u>	<u>Agency Submitting Application</u>	<u>Amount Requested</u>	<u>Amount Recommended</u>
Ontario Continuum of Care	Mercy House Living Centers	\$92,529	\$111,491
Family Stabilization at SOVA Program Center	Inland Valley Hope Partners	\$36,500	\$18,410
Services for Battered Women and Children	House of Ruth	\$18,000	\$12,600
Stepping Stones Program	Foothill Family Shelter	\$10,500	\$6,122
<b>Total</b>		<b>\$157,529</b>	<b>\$148,623</b>

# CITY OF ONTARIO

## Agenda Report

May 5, 2015

## SECTION: CONSENT CALENDAR

**SUBJECT: MAINTENANCE AGREEMENT FOR MANAGED PRINT SERVICES OF CITYWIDE KONICA MINOLTA MULTIFUNCTION COPIERS**

**RECOMMENDATION:** That the City Council authorize the City Manager to execute a recurring annual maintenance contract with Konica Minolta (KM) Business Solutions of San Bernardino, California, for supplies and maintenance of KM multifunction copiers, estimated to be \$130,000 annually, consistent with the terms and conditions of the County of San Bernardino's contract for print services.

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

**FISCAL IMPACT:** Cumulative annual costs for copies, supplies and maintenance of KM copiers has increased overtime and is now estimated to be \$130,000 annually. Funding to cover these costs is included in the annual Information Technology Department operating budget.

**BACKGROUND:** Multifunction copier technology has created new opportunities for departments to centralize faxing, scanning and printing. Total costs of ownership for multifunction KM equipment is lower than other separate printing and scanning options. The City purchases KM copiers under a County of San Bernardino contract for managed print services where each purchase includes a cost per copy maintenance plan covering the cost of all copies, supplies, parts and maintenance through the life of the copier. Per copy costs, which can be as low as .00314 cents per copy, are generally lower on newer and larger copiers, facilitating a stable, proactive replacement strategy. While the City continues to evaluate and procure copiers from competing manufacturers, the KM price, performance and quality justify the continued procurement and use of that equipment. The City presently has an inventory of 79 copiers, 69 of which are KM multifunction copiers.

In general conformance with the provisions of Government Code Section 54201 through 54204 the Ontario Municipal Code, Section 2-6.11(b)(3), allows for the purchase of supplies and equipment through cooperative purchasing with other governmental agencies. Cooperative purchasing allows the

**STAFF MEMBER PRESENTING:** Elliott Ellsworth, Information Technology Director

Prepared by: Colin Fernandes,  
Department: Information Technology

City Manager  
Approval: 

Submitted to Council/O.H.A. 05/05/2015

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

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

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

City to pool its procurement power with other public agencies to obtain pricing lower than might otherwise be possible.

# CITY OF ONTARIO

*Agenda Report*  
May 5, 2015

**SECTION:**  
**CONSENT CALENDAR**

**SUBJECT: PURCHASE AND IMPLEMENTATION OF A NEW CITYWIDE HUMAN RESOURCES AND PAYROLL SOFTWARE SOLUTION USING WORKDAY SOFTWARE AS A SERVICE**

**RECOMMENDATION:** That the City Council authorize the City Manager to execute a multi-year agreement with Workday, Inc. of Pleasanton, California (on file with the Records Management Department) for human resources and payroll software on their hosted, cloud based software as a service (SAAS) platform, in the amount of \$3,454,400; and a services agreement with SteelBridge Solutions, Inc. of Atlanta, Georgia (on file with the Records Management Department) for implementation of the Workday Human Resources and Payroll software, in the amount of \$300,000 and authorize a project-wide contingency of \$938,600 (25%) for a combined project total amount not to exceed \$4,693,000.

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

**FISCAL IMPACT:** Workday and SteelBridge professional services, travel, training and project contingency required to transition the City's HR and Payroll systems into Workday SAAS are estimated to be \$4,693,000. Actual cost will be based upon actual time expended and reimbursement of expenses. Appropriations for the project implementation are included in the FY 2014-15 Adopted Budget.

The term of the agreement is three years, with an optional renewal period of five years. Ongoing annual software licensing is estimated to be \$265,000, which will be included in future years appropriation from the information technology fund to cover the existing number of employees and retirees.

**BACKGROUND:** The City purchased and implemented PeopleSoft HR / Payroll and Financials ("PeopleSoft") software almost 15 years ago. The PeopleSoft system has functioned well over time; however, due to consolidations of software companies, technical support for PeopleSoft by Oracle is no longer available. The Workday SAAS solution provides an opportunity to bring the City into a state of the art solution, leveraging cloud infrastructure and hosted support. Internal functional and technical staff

**STAFF MEMBER PRESENTING:** Elliott Ellsworth, Information Technology Director

Prepared by: Elliott Ellsworth  
Department: Information Technology

City Manager  
Approval: 

Submitted to Council/O.H.A. 05/05/2015

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

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will administer the systems, bringing flexibility and additional support through Workday managing system infrastructure, implanting version upgrades and assisting in any technical or interface issues.

This is a major system upgrade addressing unique and complex processes and business practices citywide. It is anticipated that the project could take up to two years to fully implement. The project will require Workday professional services as well as a dedicated internal project team to transition successfully. The implementation also provides an opportunity for the City to evaluate its current practices and operations against industry leading best practices and make adjustments as appropriate.

The City of Ontario strives to operate in a businesslike manner. The City will meet this goal through using Workday, a highly regarded, publicly traded, industry leading SAAS solution, accessible anytime, anywhere. Notable Workday clients include: LinkedIn, Facebook, Netflix, Symantec, VMware, Toyota Motor Sales, USA, Warner Brothers Entertainment, Western Digital, Yahoo! Inc., MGM Resorts International, City of Orlando, County of San Mateo, Pierce County, and the State of Maryland.

Features of the Workday solution include:

- True SAAS, high performance, web-based architecture running in the cloud;
- 24/7 remote access for staff and retirees with role based security;
- Multi-tenancy (City owns and manages its own data), under “one code line” software;
- Industry leading security (Workday boasts that their systems have never been compromised);
- Software used by Fortune 500 companies, higher education and government;
- Lower total cost of ownership;
- Interfaces / integrations with other key City systems for seamless processes and data flow;
- All major updates at no additional cost, so the City will never be left behind on an outdated version of software; and
- Updates of traditional software could take months to complete and have a high cost in consulting fees, with Workday, updates take a matter of a week or two to manage.

SteelBridge Solutions, Inc. brings unique project management and change management experience to government sector implementations of Workday. The company is presently winding down the County of San Mateo implementation. Lessons learned from that implementation will be valuable to help ensure our implementation is successful. SteelBridge Solutions will assist the City in keeping the project on track and having a plan for change management.

# CITY OF ONTARIO

Agenda Report  
May 5, 2015

SECTION:  
CONSENT CALENDAR

**SUBJECT: RECOGNITION OF "WATER AWARENESS MONTH" IN THE CITY OF ONTARIO**

**RECOMMENDATION:** That the City Council proclaim the month of May 2015 as "Water Awareness Month" in the City of Ontario.

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

**FISCAL IMPACT:** None.

**BACKGROUND:** For over twenty years, cities, counties, local water agencies, State agencies and organizations throughout California have recognized May as "Water Awareness Month." The City of Ontario supports these efforts to raise awareness of the need for safe and reliable drinking water supplies for public health, fire protection, economic development, and the overall quality of life.

Ontario has wisely invested in an extensive water supply portfolio, including both imported and local supplies, which help "drought proof" Ontario during water supply shortages, as California is currently facing.

Approximately 25% of Ontario's water supply is imported water that comes from the snowpack in the Sierra Nevada Mountains through the State Water Project and processed at Ontario's jointly owned Agua de Lejos Treatment Plant. Approximately 65% of Ontario's water supply comes from groundwater via City wells or treated at the Chino Basin Desalters. The remaining 10% of Ontario's water supply comes from recycled water used for irrigation and other approved non-potable uses.

California's severely depleted water supplies are due to limited rainfall and snowfall this winter, a record low snowpack in the Sierra Nevada Mountains, decreased water levels in most California reservoirs, reduced flows in the state's rivers and shrinking supplies in groundwater basins. As a result, Governor Jerry Brown signed Executive Order B-29-15 on April 1, 2015 requiring the State Water

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

Prepared by: Ryan Shaw  
Department: MU/Administration

City Manager  
Approval: 

Submitted to Council/O.H.A. 05/05/2015

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

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

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

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Resources Control Board to impose restrictions to achieve a statewide 25% reduction of potable urban water use through February 28, 2016.

In response to State conservation measures, Metropolitan Water District of Southern California (MWD), from which Ontario purchases imported water, has enacted their Water Supply Allocation Plan reducing deliveries by 20% beginning July 1, 2015. Ontario's investments in local water supplies, such as recycled water, desalter water and water use efficiency programs, will provide a significant buffer to its residents and businesses during this record breaking drought.

Ontario will achieve additional potable water use reductions through customer outreach to residents and businesses, providing water use efficiency rebate programs and offering education classes and materials.

Water is a precious resource, and we always encourage the public to use water wisely. Information about Ontario's water conservation campaign and programs can be found at [www.OntarioWaterWise.org](http://www.OntarioWaterWise.org).

# ***PROCLAMATION***

**WHEREAS**, the health of California's growing population and the welfare of our communities depend on a reliable, high quality water supply; and

**WHEREAS**, the fact that California will experience periodic droughts and water conservation is critical not only during drought periods, but at all times; and

**WHEREAS**, local governments, water agencies, agriculture, industry, environmentalist and concerned citizens are working together to conserve and protect our valuable water resources; and

**WHEREAS**, by encouraging statewide understanding and appreciation of the value of water conservation, we foster wise decisions on water issues; and

**WHEREAS** during May 2015, water agencies, cities, counties and organizations throughout California will organize activities to educate the public about water management efforts on behalf of business, agriculture, industry, and others.

**NOW, THEREFORE, BE IT RESOLVED** that I, Paul S. Leon, Mayor of the City of Ontario, along with the entire City Council, proclaim the month of May 2015 as

## ***WATER AWARENESS MONTH***

in the City of Ontario, and encourage all citizens to join in supporting efforts to use water wisely not only during the month of May, but all year round.

GIVEN UNDER THE CORPORATE SEAL  
OF THE CITY OF ONTARIO, CALIFORNIA  
this 5<sup>th</sup> day of May, 2015.

---

**PAUL S. LEON**  
**Mayor**

# CITY OF ONTARIO

*Agenda Report*  
May 5, 2015

SECTION:  
CONSENT CALENDAR

**SUBJECT: RECOGNITION OF “HISTORIC PRESERVATION MONTH” IN THE CITY OF ONTARIO**

**RECOMMENDATION:** That the City Council proclaim the month of May 2015 as “Historic Preservation Month” in the City of Ontario.

**COUNCIL GOALS:** Regain Local Control of the Ontario International Airport  
Focus Resources in Ontario's Commercial and Residential Neighborhoods  
Encourage, Provide or Support Enhanced Recreational, Educational, Cultural and Healthy City Programs, Policies and Activities

**FISCAL IMPACT:** None.

**BACKGROUND:** Since 1971, the National Trust for Historic Preservation has conducted nationwide campaigns to celebrate historical places and showcase preservation activities. In 2005, the National Trust began designating the month of May as Historic Preservation Month. The goals of Historic Preservation Month are to promote historical places for the purpose of instilling national and community pride, promoting heritage tourism, and showcasing the social and economic benefits of historic preservation. This year, the City is celebrating historic preservation month by continuing the “Model Colony” Awards program, presentation and reception.

Ontario’s designated historic districts and landmarks include many unique historic resources that have been recognized for their significance in the City’s history. The 2015 Ontario Historic Preservation Month and Model Colony Awards program theme, “Exploring Ontario’s Neighborhoods,” is intended to showcase historic resources beyond those resources that have been formally designated. “Exploring Ontario’s Neighborhoods” provides an opportunity to discover buildings, sites, and objects that may carry historic significance to further enrich Ontario’s heritage. These resources can be represented throughout the City including the impressive collection of custom mid-century architectural style homes predominately located in the northern portion of the City. In southern Ontario, there are many Art Deco and Streamline Moderne architectural style milk barns, constructed in the 1920s, that are important for

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

Prepared by: Diane Ayala  
Department: Planning

City Manager  
Approval: 

Submitted to Council/O.H.A. 05/05/2015  
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Continued to: \_\_\_\_\_  
Denied: \_\_\_\_\_

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understanding the dairy industry's history in the City. Located west and east of the designated historic districts are equally notable Victorian, Craftsman, Mediterranean Revival, Minimal Traditional, and other historic architectural style buildings.

## ***PROCLAMATION***

**WHEREAS**, "*Exploring Ontario's Neighborhoods*" is the theme for Historic Preservation Month 2015, sponsored by the City of Ontario; and

**WHEREAS**, the City's character and history are reflected in its cultural, historical, and architectural heritage with an emphasis on the "Model Colony" as declared by an Act of the Congress of the United States in 1903 and presented at the St. Louis World's Fair in 1904; and

**WHEREAS**, the City's historical foundation should be preserved and promoted in order to foster an understanding of the City's past, and provide future generations the opportunity to appreciate, enjoy, and understand Ontario's rich heritage; and

**WHEREAS**, historic preservation is an effective tool for managing smart growth, revitalizing neighborhoods, fostering local pride and maintaining community character while enhancing livability; and

**WHEREAS**, historic preservation is relevant for communities across the nation, both urban and rural, and for Americans of all ages, all walks of life and all ethnic backgrounds; and

**WHEREAS**, it is important to celebrate the role of history in our lives and the contributions made by dedicated individuals in helping to preserve the tangible aspects of the heritage that has shaped us as a people; and

**WHEREAS**, historic preservation provides an opportunity for the citizens of Ontario to be involved in the community and participate in the revitalization of the City; and

**WHEREAS**, HISTORIC PRESERVATION MONTH provides an opportunity to celebrate this City's unique history, promote awareness of the tangible aspects of that history and recognize the dedicated individuals that have helped to preserve this heritage that has shaped us as a people; and

**WHEREAS**, May 2015, has been proclaimed HISTORIC PRESERVATION MONTH in the United States; and

**NOW, THEREFORE**, the City of Ontario, its City Council and staff members do declare the month of May 2015 as

### **HISTORIC PRESERVATION MONTH**

Given this 5th day of May, 2015, by the Ontario City Council

Paul S. Leon, Mayor  
Alan D. Wapner, Mayor pro Tem  
Jim W. Bowman  
Debra Dorst-Porada  
Paul Vincent Avila  
Council Members



# CITY OF ONTARIO

*Agenda Report*  
May 5, 2015

SECTION:  
CONSENT CALENDAR

**SUBJECT: RESOLUTIONS AUTHORIZING TWO APPLICATIONS FOR ACTIVE TRANSPORTATION PROGRAM GRANT FUNDING FOR BICYCLE AND PEDESTRIAN IMPROVEMENTS**

**RECOMMENDATION:** That the City Council adopt two resolutions authorizing staff to submit applications through the California Department of Transportation (CALTRANS) for Active Transportation Program (ATP) Grant funds totaling \$57,007 for: (1) various sidewalk improvements around El Camino Elementary School in Ontario; and (2) in partnership with the adjacent cities of Montclair, Upland and Chino, for the design and installation of Class II and Class III bicycle improvements for G/Orchard Street Crosstown Bike Route from Mills Avenue in Montclair to Etiwanda Avenue in Ontario, and San Antonio Avenue Corridor from Foothill Boulevard in Upland thru Ontario to Walnut Avenue in Chino; and authorize the City Manager to execute all required CALTRANS grant and funding agreements.

**COUNCIL GOALS:** Regain Local Control of the Ontario International Airport  
Pursue City's Goals and Objectives by Working with Other Governmental Agencies  
Focus Resources in Ontario's Commercial and Residential Neighborhoods  
Invest in the City's Infrastructure (Water, Streets, Sewers, Parks, Storm Drains and Public Facilities)  
Encourage, Provide or Support Enhanced Recreational, Educational, Cultural and Healthy City Programs, Policies and Activities

**FISCAL IMPACT:** The requested grant amounts are equal to the Engineering Department estimates for the Safe Routes to School sidewalk improvements (\$400,000) and for the design and construction of the G/Orchard Street Crosstown Bike Route and the San Antonio Avenue Bike Corridor (\$625,000 for Ontario portions and \$792,000 for entire length). If the City receives the grant awards, appropriations and corresponding revenue adjustments will be included in a future budget update report to City Council. The City's funding match for both projects is \$57,007. Cities partnering in the Bike Route improvement project (Montclair, Upland and Chino) will provide match funds in equal proportions to Ontario's match for portions of the corridors that are within their jurisdictions.

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

Prepared by: Melanie Mullis  
Department: Planning

City Manager  
Approval: 

Submitted to Council/O.H.A. 05/05/2015

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

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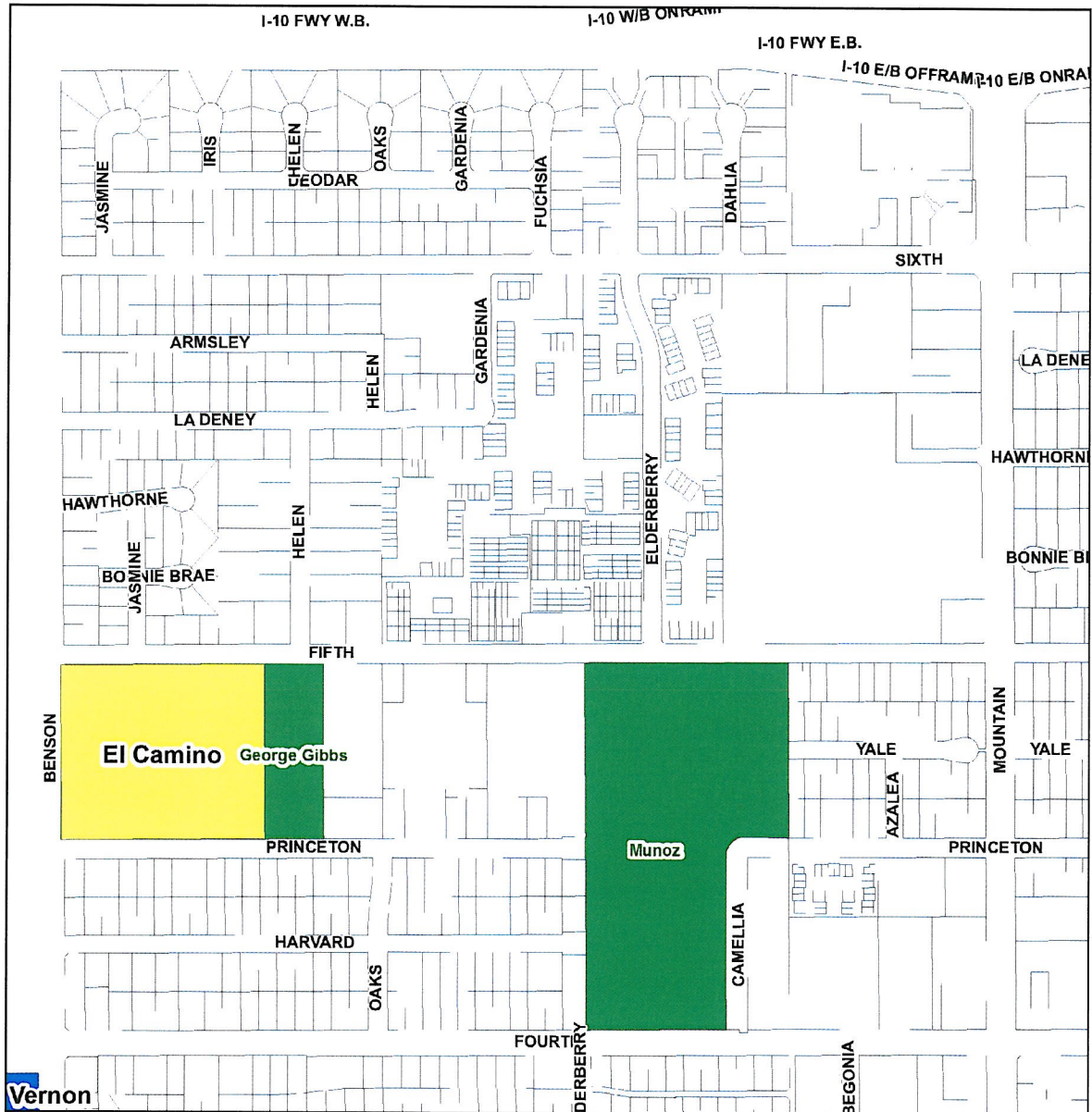
**BACKGROUND:** In September 2013, SB99 and AB101 were adopted creating the Active Transportation Program for the purpose of increasing biking and walking trips, improving non-motorized safety and mobility for non-motorized users, advancing the active transportation efforts of regional agencies to achieve greenhouse gas (GHG) reduction goals, enhancing public health (including reducing childhood obesity), ensuring that disadvantaged communities fully share the benefits of the program, and to provide a broad spectrum of projects to benefit many types of active transportation users. On March 26, 2015, the California Transportation Commission approved a call-for-projects which will bundle three years of funding into one grant process. ATP projects do not require a local match, however, additional points are awarded for applications that provide a local match. Projects which are not awarded a portion of the \$180 million to be dispersed by the State, may be awarded funds from Southern California Association of Governments' share of \$76 million of the available ATP grant funding. Qualifying projects include infrastructure, non-infrastructure or a combination of both.

The sidewalk improvements being proposed for the Safe Routes to Schools grant application are near El Camino Elementary School which has a fairly high obesity rate (46.15% of 5th graders assessed as part of 2013-14 California Physical Fitness Report). In addition, more than 75% of the students at these schools are eligible for the reduced Lunch Program. The proposed improvements would address community concerns about pedestrian crossings and traffic speeds on Fifth Street and Fourth Street and provide handicap ramp improvements around the school that should facilitate students walking to school in a safer manner consistent with the ATP goals of enhancing public health and providing benefits to disadvantaged communities. The location of this school is shown on Exhibit "A." In order to garner more points in the review process, staff is recommending the City leverage \$32,000 of local funds.

The two proposed bike routes (G/Orchard Street Crosstown Bike Route and San Antonio Avenue Bike Corridor) are consistent with the San Bernardino County Non-Motorized Transportation Plan and the ATP program goal of increasing regional efforts. The routes being proposed provide east-west and north-south access across the City of Ontario and into the cities of Montclair to the west, Upland to the north and Chino to the south. These routes provide access for local residents to numerous public schools, public facilities, employment and commercial centers, transit and to the Pacific Electric Recreational Trail. A map showing these routes is attached as Exhibit "B." This application is a collaborative effort between the four west valley cities of Ontario, Chino, Montclair and Upland. Each city will provide its fair share of the proposed local match in addition to the \$126,667 recently authorized by San Bernardino Association of Governments (SANBAG) from Transportation Development Act Article 3 funds. Ontario's portion of local match is \$25,007. The ATP application allocates additional points for projects that leverage local funds.

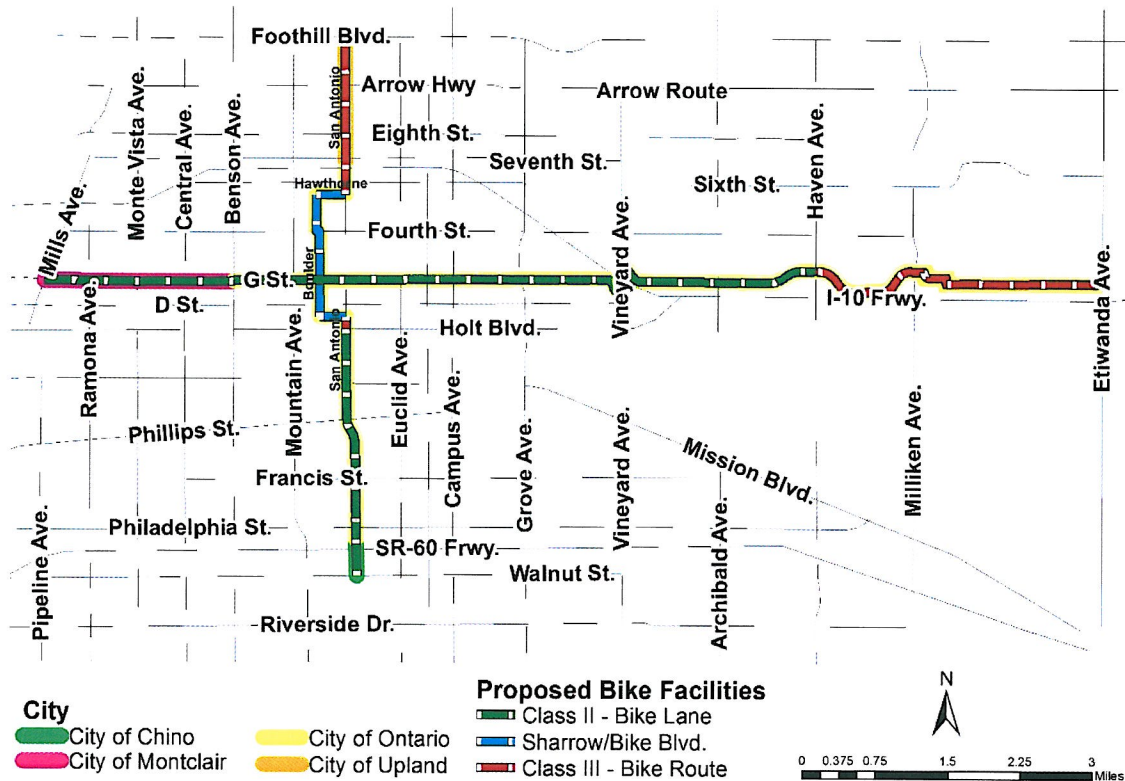
# EXHIBIT A

## CYCLE 2 ATP SAFE ROUTES TO SCHOOL LOCATION



# EXHIBIT B

## CYCLE 2 ATP PROPOSED BIKE ROUTES



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

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF ONTARIO, CALIFORNIA, AUTHORIZING APPLICATION FOR CYCLE 2 ACTIVE TRANSPORTATION PROGRAM (ATP) FUNDING THROUGH CALIFORNIA DEPARTMENT OF TRANSPORTATION AND SOUTHERN CALIFORNIA ASSOCIATION OF GOVERNMENTS FOR VARIOUS SAFE ROUTES TO SCHOOLS IMPROVEMENTS AROUND EL CAMINO ELEMENTARY SCHOOL.

WHEREAS, on March 26, 2015, the California Transportation Commission issued a call-for-projects for the Active Transportation Program; and

WHEREAS, the City of Ontario recognizes the need to plan for and construct Safe Routes to School improvements to increase the opportunity for children around public schools to walk to school in a safe manner; and

WHEREAS, the City Council of the City of Ontario, through the adoption of The Ontario Plan (General Plan), approved Policy M2-3:

*“Pedestrian Walkways. We require walkways that promote safe and convenient travel between residential areas, businesses, schools, parks, recreation areas, and other key destination points;”* and

WHEREAS, the City of Ontario desires to submit an application for ATP funds to construct sidewalk improvements around El Camino Elementary School, which will help to reduce the deficiencies in the sidewalk systems around the school and increase the opportunity for children to walk to and from school in a safe manner.

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

SECTION 1. As the decision-making body for the project, the City Council has reviewed and considered the information contained in the administrative record for the Project. Based upon the facts and information contained in the administrative record, including all written and oral evidence presented to the City Council, the City Council finds that the design and construction of sidewalks on various streets around El Camino Elementary School is exempt from the California Environmental Quality Act pursuant to Section 15301(c) (Existing Facilities).

SECTION 2. Based upon the substantial evidence presented to the City Council and upon the specific findings set forth in Section 1 above, the City Council hereby concludes that an application be made to CALTRANS and Southern California Association of Governments for Active Transportation Program funding, that the City of Ontario will be required to provide \$32,000 in matching funds, and that the City Manager is hereby authorized to file such application and execute all required ATP funding agreements and other documents as needed to secure and administer the funding.

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

PASSED, APPROVED, AND ADOPTED this 5<sup>th</sup> day of May 2015.

---

PAUL S. LEON, MAYOR

ATTEST:

---

MARY E. WIRTES, MMC, CITY CLERK

APPROVED AS TO LEGAL FORM:

---

BEST BEST & KRIEGER LLP  
CITY ATTORNEY

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

I, MARY E. WIRTES, City Clerk of the City of Ontario, DO HEREBY CERTIFY that foregoing Resolution No. 2015-        was duly passed and adopted by the City Council of the City of Ontario at their regular meeting held May 5, 2015 by the following roll call vote, to wit:

AYES:            COUNCIL MEMBERS:

NOES:           COUNCIL MEMBERS:

ABSENT:        COUNCIL MEMBERS:

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

(SEAL)

The foregoing is the original of Resolution No. 2015-        duly passed and adopted by the Ontario City Council at their regular meeting held May 5, 2015.

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

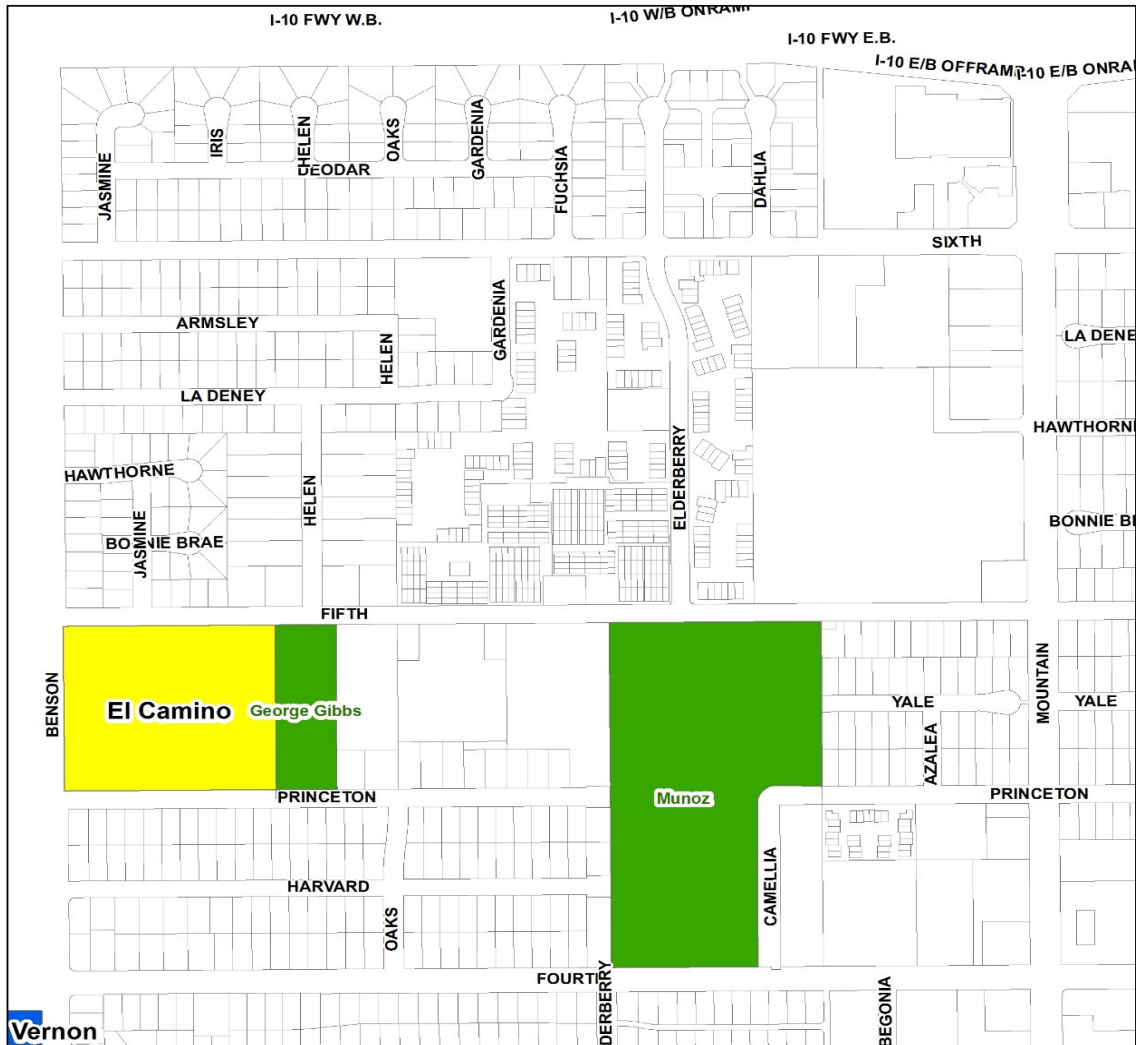
(SEAL)

**EXHIBIT A**

**CYCLE 2 ATP**

**SAFE ROUTES**

**TO SCHOOL LOCATION**



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

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF ONTARIO, CALIFORNIA, AUTHORIZING APPLICATION FOR CYCLE 2 ACTIVE TRANSPORTATION PROGRAM (ATP) FUNDING THROUGH CALIFORNIA DEPARTMENT OF TRANSPORTATION AND SOUTHERN CALIFORNIA ASSOCIATION OF GOVERNMENTS FOR VARIOUS SAFE ROUTES TO SCHOOLS IMPROVEMENTS AROUND EL CAMINO ELEMENTARY SCHOOL.

WHEREAS, on March 26, 2015, the California Transportation Commission issued a call-for-projects for Active Transportation Program; and

WHEREAS, the City of Ontario recognizes the need to plan for and construct non-motorized transportation infrastructure to provide alternative modes of travel; and

WHEREAS, the City Council of the City of Ontario, through the adoption of The Ontario Plan (General Plan), approved a Multi-Purpose Trails and Bikeway Corridor Plan and also adopted the San Bernardino County Non-Motorized Transportation Plan, which identifies the master planned bicycle routes and facilities; and

WHEREAS, the City of Ontario desires to submit an application for ATP funds to design and construct a portion of the master planned bicycle network in conjunction with the adjacent cities of Montclair, Upland and Chino generally described as being on G Street and San Antonio Avenue, as shown in Exhibit A, attached.

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

SECTION 1. As the decision-making body for the project, the City Council has reviewed and considered the information contained in the administrative record for the Project. Based upon the facts and information contained in the administrative record, including all written and oral evidence presented to the City Council, the City Council finds that the design and construction of bike lanes on G Street and San Antonio Avenue are exempt from the California Environmental Quality Act pursuant to Section 15304 (h) (Minor Alterations to Land).

SECTION 2. Based upon the substantial evidence presented to the City Council and upon the specific findings set forth in Section 1 above, the City Council hereby concludes that an application be made to CALTRANS and Southern California Association of Governments for Active Transportation Program funding, that the City of Ontario will provide matching funds in the amount of \$25,007, and that the City Manager is hereby authorized to file such application and execute all required ATP funding agreements and other documents as needed to secure and administer the funding.



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

PASSED, APPROVED, AND ADOPTED this 5<sup>th</sup> day of May 2015.

---

PAUL S. LEON, MAYOR

ATTEST:

---

MARY E. WIRTES, MMC, CITY CLERK

APPROVED AS TO LEGAL FORM:

---

BEST BEST & KRIEGER LLP  
CITY ATTORNEY

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

I, MARY E. WIRTES, City Clerk of the City of Ontario, DO HEREBY CERTIFY that foregoing Resolution No. 2015-     was duly passed and adopted by the City Council of the City of Ontario at their regular meeting held May 5, 2015 by the following roll call vote, to wit:

AYES:           COUNCIL MEMBERS:

NOES:           COUNCIL MEMBERS:

ABSENT:        COUNCIL MEMBERS:

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

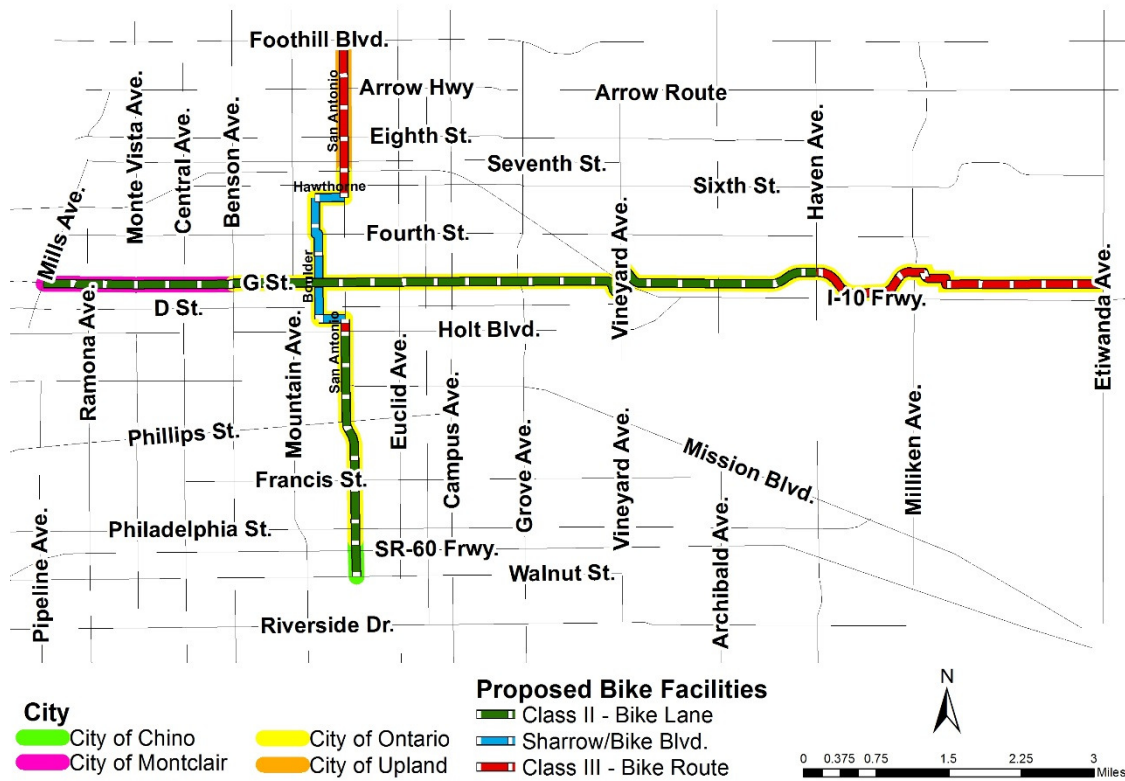
(SEAL)

The foregoing is the original of Resolution No. 2015-     duly passed and adopted by the Ontario City Council at their regular meeting held May 5, 2015.

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

(SEAL)

# EXHIBIT A CYCLE 2 ATP PROPOSED BIKE ROUTES



# CITY OF ONTARIO

*Agenda Report*  
May 5, 2015

**SECTION:  
PUBLIC HEARINGS**

**SUBJECT: A PUBLIC HEARING TO CONSIDER AN ORDINANCE AMENDING  
CHAPTER 5 OF TITLE 4 OF THE ONTARIO MUNICIPAL CODE RELATING  
TO TAXICABS AND AUTOMOBILES FOR HIRE**

**RECOMMENDATION:** That the City Council introduce and waive further reading of an ordinance amending Chapter 5 to Title 4 of the Ontario Municipal Code, updating the regulation of taxicabs and automobiles for hire.

**COUNCIL GOALS: Regain Local Control of the Ontario International Airport  
Operate in a Businesslike Manner  
Focus Resources in Ontario's Commercial and Residential Neighborhoods**

**FISCAL IMPACT:** None.


**BACKGROUND:** Title 4, Chapter 5 of the Ontario Municipal Code establishes comprehensive requirements and City regulations concerning the provision of automobiles for hire and taxicab services within the City of Ontario. As part of a regular maintenance of the code, there are provisions in this chapter that are no longer needed, and are in need of an update.

Section 4-5.03(a) addresses permits existing when the ordinance was amended in 1999. This section is no longer applicable and may be eliminated.

The City's requirements for inspections can be updated. As taxicab companies may be subject to inspection requirements from multiple jurisdictions, staff recommends amending Section 4-5.16(f) to allow the Chief of Police discretion to accept certificates of inspection from surrounding jurisdictions as satisfaction of the City's request to inspect a taxicab.

The City's required procedures for taxicab complaints can be updated to reflect technological advances. Section 4-5.16(n)(3) currently requires taxicab operators to display a complaint procedure card and to

**STAFF MEMBER PRESENTING:** Brad Kaylor, Police Chief

Prepared by: David Sheasby  
Department: Citywide Administration  
City Manager  
Approval: 

Submitted to Council/O.H.A. 05/05/2015  
Approved: \_\_\_\_\_  
Continued to: \_\_\_\_\_  
Denied: \_\_\_\_\_

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maintain a written log of complaints to be submitted to the City Council quarterly. In light of the ability to record complaints electronically, staff recommends amending this section to require that taxicab operators provide the City's complaint webpage, email address and phone number on the complaint procedure card, and that this information also be placed at the bottom of any paper or electronic receipts provided to passengers.

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

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF ONTARIO, CALIFORNIA, AMENDING CHAPTER 5 OF TITLE 4 OF THE ONTARIO MUNICIPAL CODE RELATING TO TAXICABS AND AUTOMOBILES FOR HIRE.

WHEREAS, the City Council adopted comprehensive regulation of taxicabs and automobiles for hire in 1998 via Ordinance No. 2668; and

WHEREAS, the City Council amended those regulations in 1999 via Ordinance No. 2678; and

WHEREAS, there is now a need to eliminate sections no longer necessary and to update sections to reflect current needs and changes in technology.

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

SECTION 1. Findings. The above recitals are true and correct and are incorporated herein by this reference.

SECTION 2. Section 4-5 of Chapter 5, of Title 4 of the Ontario Municipal Code is amended to read as follows:

- 4-5.01 Definitions
- 4-5.02 Compliance with provisions
- 4-5.03 Establishing performance criteria
- 4-5.04 Owner's Permits: Required; Permit Fees
- 4-5.05 Public convenience and necessity
- 4-5.06 Owner's Permits: Applications; Procedure; Fee; Form
- 4-5.07 Annual Review of Owner's Permits
- 4-5.08 Owner's Permits: Modifications
- 4-5.09 Owner's Permits: Transferability
- 4-5.10 Driver's Permits: Required
- 4-5.11 Driver's Permits: Applications; Granting; Conditions
- 4-5.12 Driver's Permits: Form
- 4-5.13 Driver's Permits: Posting
- 4-5.14 Operators: Driver's licenses
- 4-5.15 Rules and Regulations
- 4-5.16 Insurance
- 4-5.17 Taximeter
- 4-5.18 Stands: Permits Required
- 4-5.19 Rates
- 4-5.20 Refusal to Pay Fares
- 4-5.21 Refusal to Carry Passengers
- 4-5.22 Parking on Euclid Avenue

- 4-5.23 Transporting Persons for Unlawful Purposes
- 4-5.24 Disqualification
- 4-5.25 Permits: Revocation
- 4-5.26 Conflicting Ordinances Repealed
- 4-5.27 Severability

#### **Sec. 4-5.01. Definitions.**

For the purposes of this chapter, unless otherwise apparent from the context, certain words and phrases used in this chapter are defined as follows:

- (a) “Automobile for hire” shall mean and include every automobile or motor-propelled vehicle by means of which passengers are transported for hire upon any public street in the City, not over a regular or defined route, and irrespective of whether the operation extends beyond the boundary limits of the City or not. “Automobile for hire” shall not include vehicles defined as taxicabs in subsection (b) of this section nor vehicles of transportation companies, as defined in subsection (f) of this section. Further, “automobile for hire” shall not include automobiles used exclusively by or under written agreement with a hotel, motel, airport, hospital, club or other such entity for the transportation of its members, guests, patients or clients; provided, that each vehicle under such agreement will have the same distinctive visible outside painted appearance as each other vehicle under the agreement to any such hotel, motel, airport, hospital, club, or other such entity.
- (b) “Taxicab” shall mean and include every automobile or motor-propelled vehicle by means of which passengers are transported for hire upon any public street in the City, not over a regular or defined route, and irrespective of whether the operation extends beyond the boundary limits of the City or not, where the charge for such transportation is measured by the distance traveled or by the time required for such transportation, or both. “Taxicab” shall not include vehicles of transportation companies, as defined in subsection (d) of this section.
- (c) “Taximeter” shall mean a mechanical instrument or device by which the charge for hire of a passenger-carrying, motor-propelled vehicle is mechanically registered, calculated, and/or indicated by means of figures in accordance with the distance traveled or the time elapsed, or waiting time, or both.
- (d) “Taxi Permit” shall mean the permit issued by the Chief of Police to an applicant to operate taxis or limousine service in the City.

#### **Sec. 4-5.02. Compliance with provisions.**

It shall be unlawful to operate, or cause to be operated, an automobile for hire or a taxicab upon any public street within the City without complying with the provisions of this chapter.

### **Sec. 4-5.03. Establishing performance criteria.**

The City Council shall, from time to time, develop objective performance criteria to be used in evaluating permit requests for the awarding of additional permits to operate taxi cabs in the City of Ontario. The objective performance criteria shall be established by separate resolution and contain minimum performance standards to be met by permit applicants. The resolution adopting the objective performance criteria shall also identify the number of points to be awarded to an applicant for exceeding the minimum performance standards identified. The Chief of Police shall award future permits to the most qualified permittee accumulating the most points.

### **Sec. 4-5.04. Owner's Permits: Required; Permit Fees.**

It shall be unlawful to operate, or cause to be operated, an automobile for hire or taxicab upon any public street within the City without first having obtained a permit to do so, in accordance with the provisions of this chapter, and without first paying the appropriate permit fee as established by resolution of the City Council.

### **Sec 4-5.05. Owner's Permits: Required; Permit Fees. Public convenience and necessity.**

(a) Between June 1 and June 30, inclusive, of each year, or within thirty (30) days of the expiration of an existing permit, any person desiring to obtain a permit to operate automobiles for hire or taxicabs shall submit a letter to the City Clerk requesting the City Council determine that the public convenience and necessity require that a permit be issued or renewed. The letter shall include information demonstrating why the public convenience and necessity require awarding additional permits or renewing existing permits. Within thirty (30) days of receipt of the letter, the matter shall be set for hearing and all existing permittees shall be notified by letter at least ten (10) days prior to the hearing. No additional permits shall be granted until the City Council shall have determined by resolution that the public convenience and necessity require the issuance of additional permits.

(b) In determining whether the public convenience or necessity require additional permits, the City Council shall be guided by the following:

- (1) the transportation needs of residents and visitors of the City;
- (2) the number of taxicabs and limousines, and other automobiles for hire already operational in the City;
- (3) whether existing transportation services are adequate to meet the public need;
- (4) the probable effect of additional taxicabs or automobiles for hire on local traffic conditions;



(5) the effect of increased competition on the revenues of existing permittees and on the wages, compensation, hours and conditions of service of existing licensed drivers; and

(6) other relevant factors.

(c) Nothing in this section shall prohibit the Council from determining that the public convenience and necessity require additional permits be issued at any time upon finding that emergency circumstances and conditions exist that necessitate granting additional permits for the health, welfare, and benefit of the residents of the City.

#### **Sec. 4-5.06. Owner's Permits: Applications; Procedure; Fee; Form.**

If the City Council determines that the public convenience and necessity require the issuance of additional permits, it shall direct the Chief of Police to accept applications from all persons desiring to obtain such permits. The applicants shall pay to the City a nonrefundable fee in an amount set by resolution of the City Council and shall make an application for such permit to the Chief of Police. The applications shall set forth the following information:

(a) The name, residence and businesses addresses and present occupation of the applicant;

(b) If the applicant is a corporation, the names and present occupation(s) of its principal officers;

(c) If the applicant is a partnership, association, or fictitious company, the names of the partners or persons comprising the association or company with the residence and businesses addresses of each;

(d) A statement as to whether the permit is desired for an automobile for hire or a taxicab;

(e) A description of every motor vehicle which the applicant proposes to use, giving:

(1) The make, model, body style and year;

(2) The motor and serial numbers;

(3) The State license number; and

(4) The seating capacity.

(f) The street number and exact location of the place where the applicant proposes to stand each such automobile;

(g) The distinctive color scheme, name, monogram, or insignia proposed to be used on such automobile;

- (h) A financial statement prepared by a certified public accountant, showing net worth and results of operation for the prior twelve (12) months and/or last fiscal year;
- (i) A statement as to whether the applicant, person or corporation has any unpaid judgments, and if so, the nature and amount of any unpaid or unbonded judgment;
- (j) A statement of any bankruptcies, either personal or business, including the number, court and date of discharge;
- (k) A statement of experience of the applicant in the operation of taxicabs; and
- (l) A statement of facts indicating how the applicant meets the objective performance criteria established by resolution of the City Council.

A permit awarded to an operator by the Chief of Police shall state that the permit is granted for a term of five (5) years, shall indicate that the permit is nonexclusive and nonrenewable, and shall include a statement that any violation of the terms of this chapter may be grounds for revoking the permit.

#### **Sec. 4-5.07. Annual Review of Owner's Permits.**

Notwithstanding the 5 year approval period granted, all owner's permits shall be subject to review by the Chief of Police, or designee, on an annual basis occurring on the anniversary of the granting of the permit. Such review shall be limited to determining whether the owner is complying with the provisions and standards contained in this chapter. The Chief of Police, or designee, may refer the matter to the City Council for review in accordance with the provisions contained in § 4-5.25 upon finding that a permittee is not complying with the provisions and standards set forth in this chapter.

#### **Sec. 4-5.08. Owner's Permits: Modifications.**

In the event any permittee desires to change his schedule of rates, or desires to change the color scheme, name, monogram, or insignia used on the automobile for hire or taxicab, he shall make application for permission to do so from the City Council, which permission shall be granted if, in the discretion of the City Council, it deems the public interest, necessity, and convenience will be served by such change and if the permittee has complied with all the provisions of this chapter.

#### **Sec. 4-5.09. Owner's Permits: Transferability.**

No permit issued pursuant to the provisions of this chapter shall be transferable, either by contract or operation of law, without the permission of the City Council having been first obtained, and any such attempted transfer shall be sufficient cause for revocation of such permit.

#### **Sec. 4-5.10. Driver's Permits: Required.**

It shall be unlawful for any permittee to permit a taxicab to be driven for hire by any person who has not obtained a permit from the Chief of Police to operate as a taxicab driver.

#### **Sec. 4-5.11. Driver's Permits: Applications; Granting; Conditions.**

Driver's permit applications (including renewal and replacement) shall be on the form provided by the Chief of Police and shall become void upon termination of employment by the stated employer, who shall notify the Chief of Police upon termination and cause the permit to be returned to the City. First-time applications shall be accompanied by a non-refundable application fee set by resolution of the City Council. Driver's permits issued upon approval of applications shall remain in force for a period of one (1) year from the date of issue. Fees for replacement and renewal driver's permit shall also be set by resolution of the City Council.

As a condition to granting or renewing a taxicab driver's permit, the Chief of Police is hereby empowered to require the applicant:

- (a) To be fingerprinted;
- (b) To undergo background checks by the California Department of Motor Vehicles and any other agency deemed appropriate to determine the safety practices of the drivers;
- (c) To undergo testing for controlled substances and alcohol pursuant to Cal. Gov't Code § 53075.5;
- (d) To submit a statement of the applicant's physical condition, including statement of whether an applicant has ever had epilepsy, blackout periods, fainting spells, or been addicted to the use of alcohol, narcotics, or other form of dangerous drugs. Based upon such statement, an applicant may be required to submit a medical report and have a valid medical certificate. In such a situation, the applicant for a driver's permit may be granted a temporary permit for thirty (30) days pending receipt of a valid certificate. Upon submittal of the valid medical certificate and acceptance by the Chief of Police, a regular permit shall be issued to an applicant if all other requirements of this chapter have been met; and
- (e) No driver's permit shall be issued to any person:
  - (1) Who is subject to epilepsy, fainting or loss of consciousness by reason of chronic medical condition;
  - (2) Who is addicted to the use of narcotics;

- (3) Who is known to have been a user of dangerous drugs or alcohol to an excessive degree;
- (4) Whose driving record indicates five (5) violations of traffic laws involving moving vehicles within two (2) years preceding the date of application;
- (5) Who has willfully furnished false information on this application or omitted to furnish all information requested on said application forms;
- (6) Who has been convicted of driving while under the influence of intoxicating liquor or narcotic drugs, or both, within three (3) years of the date of application; or
- (7) Who has been convicted of a felony or any crime involving moral turpitude within five (5) years preceding the date of application.

The Chief of Police is also hereby empowered to accept a permit from another jurisdiction in lieu of the submittal of a permit application, upon a showing by the applicant that the jurisdiction contains substantially the same permit requirements.

#### **Sec. 4-5.12. Driver's Permits: Form.**

Such taxicab driver's permit shall contain all the information contained on the operator's driver's license and shall include a picture of the driver.

#### **Sec. 4-5.13. Driver's Permits: Posting.**

The taxicab driver's permit shall be posted in a conspicuous place in the vehicle which the driver is operating at all times while he is operating the same for the purpose of carrying passengers for hire.

#### **Sec. 4-5.14. Operators: Driver's Licenses.**

It shall be unlawful for any permittee to permit a taxicab to be driven for hire by any person who has not complied with the requirements of the California Vehicle Code requiring a valid driver's license, within the appropriate automobile classification.

#### **Sec. 4-5.15. Rules and Regulations.**

The rules and regulations set forth in this section shall be observed by all persons operating taxicabs and automobiles for hire, and it shall be unlawful to operate such taxicabs or automobiles for hire in violation of any such rules and regulations.

- (a) Uniforms and driver's appearance. Any person operating a taxicab or automobile for hire shall wear a distinctive uniform with an emblem, badge or insignia and similar color scheme identifying the driver's association with an operating company licensed by the City. The driver's uniforms shall be clean and

in good, non-faded condition. Drivers shall be well groomed and shall not wear t-shirts or tank tops without collars. All persons operating taxicabs and automobiles for hire in the City shall take all efforts to be neat, clean and well groomed in their appearance and attire at all times while operating a vehicle regulated by this chapter.

(b) Stopping at railroad crossing. All taxicabs and automobiles for hire shall, while carrying passengers, come to a full stop within thirty (30) feet of the nearest railroad rail before crossing any railroad track where no gates are maintained.

(c) Stopping and standing. No automobile for hire or taxicab shall remain standing upon any portion of any public street within the City except for loading and unloading passengers, and then not for a period of more than five (5) minutes, excepting such stand as may be designated by the City Council and described in the application for a permit. The provisions of this subsection shall not apply to any automobile for hire or taxicab while the same is engaged by, and being paid for by, a passenger.

(d) Direct routes. The operator of a taxicab shall carry any passenger engaging the same safely and expeditiously to his destination by the most direct and accessible route.

(e) Soliciting patronage in certain places. No owner or operator of any automobile for hire or taxicab shall solicit patronage for the same at the Ontario International Airport or the Ontario Convention Center, from such vehicle or within 100 yards therefrom, or upon any public street, except at railroad and interurban depots and within the boundaries of the space to be designated by the Chief of Police for such purposes.

(f) Mechanical condition. All automobiles for hire and taxicabs shall be kept in good mechanical condition. It shall be the obligation of the permittee to maintain and inspect vehicles on a regular basis. The City also reserves the right to conduct periodic inspections or require that selected automobiles for hire or taxicabs be inspected by an automobile service professional certified by the State of California Bureau of Automotive Repair, and selected by the City. The permittee agrees not to interfere in any way with any such inspections. The City may charge a reasonable inspection and reinspection fees to be set by resolution of the City Council to offset the costs of such inspections and reinspections. At the discretion of the Chief of Police, inspections performed by other jurisdictions may be accepted as satisfaction of the City's request.

In addition to maintaining each taxicab and vehicle for hire in good mechanical condition, each taxicab operator and vehicle permittee shall maintain every taxicab free from:

- (1) Unsightly dirt, grime and stains inside and out including the trunk.
- (2) Cracked or broken windows, headlights, taillights and interior lights.

- (3) Missing or broken door locks and handles and window cranks.
- (4) Torn floor covering, headliner or upholstery.
- (5) Unusual or unsightly paint defacement and body dents.
- (6) Unauthorized signs or markings, such as bumper stickers.
- (7) Missing parts such as hubcaps and moldings.

The City shall have the right to prohibit the use of any vehicle determined, after inspection, not to be in good mechanical condition or maintained in accordance with the standards contained in this chapter.

(g) Sanitation. No automobile for hire or taxicab shall be operated unless the passenger compartment is kept clean and in a sanitary condition.

(h) Interior lighting. Hours. Every automobile for hire and taxicab shall be equipped with a light of not less than two (2) candlepower, within such vehicle, so arranged to illuminate the entire passenger compartment. Such light shall be constantly lighted at all times while the passenger is in such vehicle, except when the vehicle is in motion, from one-half ( $\frac{1}{2}$ ) hour after sunset of any day until one-half ( $\frac{1}{2}$ ) hour before sunrise of the following day, and no shade or blinds shall be drawn over the windows of an automobile for hire or taxicab while any passenger is in such vehicle.

(i) Operation by minors and certain other persons. No taxicab or automobile for hire shall be operated by any person who:

- (1) Is under the age of twenty-one (21) years;
- (2) Does not have a valid driver's license issued by the State of California;
- (3) Is under the influence of intoxicating liquors or narcotics;
- (4) Is using tobacco in any form while operating such vehicle;
- (5) Is for any reason whatever unable or incompetent to safely handle such vehicle; or
- (6) Operates such vehicle in violation of any law.

(j) Unfair competition. No owner or operator of any automobile for hire or taxicab shall indulge in unfair competition with competitors or commit any fraud upon the public or other persons engaged in the same business. The City Council shall be the sole judge of what constitutes fraud or unfair competition for the purposes of this subsection. Any complaint to the Council of any violation of

the provisions of this subsection shall only be heard upon a written complaint specifying the act complained of and sworn to by the complainant before a notary public or other officer authorized to administer oaths.

(k) Posting of rates and provisions. Every taxicab shall have posted in the passenger compartment visible to passengers a schedule of rates and charges for the hire of such vehicle, and a copy of the provisions of this chapter.

(l) Overcharging. No charge shall be made by any operator or owner of a taxicab or automobile for hire in excess of the rates approved by the City Council and posted in the passenger compartment of such vehicle.

(m) Advertising automobiles for hire as taxicabs. No automobile for hire shall be designated as a "taxicab" or by any word or phrase using the words "taxi" or "taxicab" in any sign or advertising matter.

(n) Taxicab vehicles and equipment. Each taxicab will be equipped with the following:

(1) A radio transmitter and receiver in good working order capable of two-way communication with a dispatcher anywhere in the service area over the taxicab operator's assigned frequency.

(2) An approved rate card showing City approved rates plainly visible to all passengers in the front and back seats of the vehicle.

(3) An approved complaint procedure card plainly visible to all passengers in the front and back seats of the vehicle identifying the City and the City's complaint phone number, the City's complaint email address, and the web address to the complaint section on the City's website. This information shall be also placed at the bottom of any paper or electronic receipts provided to passengers. A written log of complaints received by the City shall be submitted to the City Council quarterly.

(4) A sufficient number of seat belts, properly bolted in place, at least three sets in the rear and two sets in the front seat, to accommodate each passenger and the driver.

(5) An emergency system to signal when a robbery is in progress or when a felon suspect is in the taxicab.

(6) An approved fire extinguisher.

#### **Sec. 4-5.16. Insurance.**

Before a permit shall be issued by the City, the applicant to whom a permit shall have been awarded by the City Council, as provided in § 4-5.06 of this chapter, shall deliver to the License Official a policy of insurance executed by a company duly authorized under the laws of the State of California to engage in the insurance business. The policy shall provide that the City is named as an additional insured, and that all such insurance shall not be materially changed, terminated or allowed to expire except on 60 days prior written notice to the City. By the provisions of such policy the insurance company shall promise and undertake to pay in full all claims for damages to persons or property resulting from the operation of the vehicles described in the application for such permit; provided, however, the minimum amounts for which liability shall be assumed shall be as follows:

- (a) For the injury or death of one person in any one event, One Million Dollars (\$1,000,000.00); and
- (b) For bodily injury to, or destruction of property in any one event, One Million Dollars (\$1,000,000.00).

Before a permit shall be issued by the City, a policy of Worker's Compensation Insurance covering all employees and lease drivers, with statutory limits, must be executed and a certificate filed with the City, if Worker's Compensation Insurance is required by the State of California.

#### **Sec. 4-5.17. Taximeter.**

Each taxicab operator or vehicle permittee shall equip each taxicab with a State of California approved taximeter with unbroken State of California or County of San Bernardino Bureau of Weights and Measures seal affixed. A taximeter shall be placed in each taxicab or vehicle for hire so that the reading dial showing the amount to be charged shall be well lit and readily discernible to the passenger(s) riding in any such taxicab. No passenger shall be carried in any taxicab unless said taximeter shall be in operation. Every taximeter used in the operation of taxicabs shall be subject to inspection at any time by the City, or any of its agents or employees. Upon discovery or notification of any inaccuracy of the taximeter, the operator thereof shall remove, or cause to be removed from service any vehicle equipped with said taximeter until the taximeter has been repaired and accurately adjusted. Every taximeter shall be inspected and tested for accuracy by the carrier at least once annually. Certification is to be presented to the City indicating date of inspection and the name of the governmental agency performing the certification.

#### **Sec. 4-5.18. Stands: Permits Required.**

Any applicant for a permit pursuant to the provisions of this chapter who desires space to stand a vehicle on the street shall obtain the written permission of the property owner(s) as well as the written consent thereto of all the occupants of the ground floor of any building in front of which such automobile is to be located and for fifty (50) feet



each way therefrom or, if there is no such occupant, by the written consent thereto of the owner or lessee of such building. No applicant shall be entitled to space on the street for more than one (1) automobile for hire or taxicab; and all applicants for permits for more than one (1) vehicle shall be required to provide parking space for the remainder of such vehicles off the streets of the City and shall not be entitled to stand such vehicles on the public streets longer than necessary to load and unload passengers, except while the vehicle is actually paid for and engaged by a passenger.

#### **Sec. 4-5.19. Rates.**

Persons licensed pursuant to the provisions of this chapter shall charge the rates set forth by separate resolution adopted by the City Council, and it shall be unlawful for any person licensed pursuant to the provisions of this chapter to charge rates higher than provided by resolution of the City Council.

#### **Sec. 4-5.20. Refusal to Pay Fares.**

It shall be unlawful for any person to refuse to pay the legal fare for the hire of any automobile for hire or taxicab, after having hired the same, with the intent to defraud the person from whom it is hired.

#### **Sec. 4-5.21. Refusal to Carry Passengers.**

It shall be unlawful for any driver operating under a permit issued pursuant to this chapter to refuse to transport passengers who present themselves for carriage in a sober and orderly manner and for a lawful purpose when the vehicle is in service and not otherwise engaged. This section is intended to prevent drivers from discriminating against a person on the basis of trip length, or on the basis of race, ethnicity or gender. It is not intended to require the driver to transport a person whom the driver knows has not paid a fare in the past, or who presents a threat to the safety of the driver.

#### **Sec. 4-5.22. Parking on Euclid Avenue.**

It shall be unlawful for any person to use any portion of Euclid Avenue between Transit Street and H Street for the purpose of parking taxicabs; provided, however, that provisions of this section shall not prohibit the reasonable use of such portion of Euclid Avenue for the purpose of stopping to receive or discharge passengers, the purpose of this section being to prohibit the use of such portion of Euclid Avenue for depot purposes.

#### **Sec. 4-5.23. Transporting Persons for Unlawful Purposes.**

It shall be unlawful for any driver of a taxicab to knowingly transport any passenger to the abode of a prostitute, or knowingly to transport any criminal, narcotic peddler, prostitute or bootlegger in the commission of a crime or as a panderer for prostitutes or a contact for unlawful establishments of any nature.

#### **Sec. 4-5.24. Disqualification.**

Any person who, while operating a taxicab or automobile for hire within the City, violates any provision of the Vehicle Code of the State of California, the violation of which is declared a misdemeanor or felony, and who is later convicted thereof shall be disqualified from driving taxicabs or automobiles for hire within the City.

#### **Sec. 4-5.25. Permits: Revocation.**

Any owner's or driver's permit granted pursuant to the provisions of this chapter may be revoked by the City Council, either as whole or as to any vehicle described therein or as to the right to use any distinctive color, monogram, or insignia, after five (5) days notice to the permittee requiring him to appear at a certain time and place to show cause why such permit should not be revoked for any of the following reasons:

- (a) That the required insurance policy provided for in § 4-5.16 of this chapter has not been given or has been withdrawn or lapsed for the nonpayment of premiums or is not in force for any reason;
- (b) For the nonpayment of any permit or license fee provided by law;
- (c) For failure to observe any of the rules, regulations, standards, or provisions set forth in this chapter;
- (d) For the violation, and later conviction, of any laws of the State of California or the City by any permittee, operator, or driver of any automobile for hire or taxicab;
- (e) For failure to maintain satisfactory service to the public by means of any of the vehicles described in the permit, or failure to keep any vehicle described in the permit in use for an unreasonable length of time, or for failure to use the distinctive color, monogram, or insignia described in the application; and
- (f) For any cause which, in the opinion of the City Council make it contrary to the public interest, convenience, and necessity for the permit to be continued.

#### **Sec. 4-5.26. Conflicting Ordinances Repealed.**

All ordinances or parts of ordinances, or regulations in conflict with the provisions of this chapter are hereby repealed.

#### **Sec. 4-5.27. Severability.**

If any provision or clause in this chapter or the application thereof to any person or circumstance is held to be unconstitutional or otherwise invalid by any court of competent jurisdiction, such invalidity shall not affect other provisions or clauses or applications of this chapter which can be implemented without the invalid provision, clause or application; and to this end, the provisions of this chapter are declared to be severable.

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

SECTION 4. Custodian of Records. The documents and materials that constitute the record of proceedings on which these findings and this Ordinance are based are located at the City Clerk's office located at 303 East "B" Street, Ontario, CA 91764. The custodian of these records is the City Clerk.

SECTION 5. Effective Date. This Ordinance shall become effective thirty (30) days following its adoption.

SECTION 6. The Mayor shall sign this Ordinance and the City Clerk shall certify as to the adoption and shall cause a summary thereof to be published at least once, in a newspaper of general circulation in the City of Ontario, California within fifteen (15) days of the adoption. The City Clerk shall post a certified copy of this ordinance, including the vote for and against the same, in the Office of the City Clerk, in accordance with Government Code Section 36933.

PASSED, APPROVED, AND ADOPTED this \_\_\_\_\_ day of \_\_\_\_\_ 2015.

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

ATTEST:

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

APPROVED AS TO FORM:

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BEST BEST & KRIEGER LLP  
CITY ATTORNEY

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

I, MARY E. WIRTES, City Clerk of the City of Ontario, DO HEREBY CERTIFY that foregoing Ordinance No. \_\_\_\_\_ was duly introduced at a regular meeting of the City Council of the City of Ontario held \_\_\_\_\_ and adopted at the regular meeting held \_\_\_\_\_, 2015 by the following roll call vote, to wit:

AYES:           COUNCIL MEMBERS:

NOES:           COUNCIL MEMBERS:

ABSENT:        COUNCIL MEMBERS:

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

(SEAL)

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

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

(SEAL)

# CITY OF ONTARIO

*Agenda Report*  
May 5, 2015

**SECTION:**  
**ADMINISTRATIVE REPORTS/  
DISCUSSION/ACTION**

**SUBJECT: DECLARATION OF MANDATORY WATER RESTRICTIONS – STAGE 2**

**RECOMMENDATION:** That the City Council implement Stage 2 of the City's Municipal Code Water Conservation Plan.

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

**FISCAL IMPACT:** The mandated water conservation measures will result in reduced revenue for the water enterprise fund and a corresponding reduction in operational costs such as water purchases. There may be incidental costs related to compliance efforts for City controlled irrigation. Local water suppliers can expect fines from the State of \$10,000 per day if they fail to meet reduction requirements.

**BACKGROUND:** In response to statewide severe drought conditions, on April 1, 2015, Governor Jerry Brown signed an Executive Order requiring all water suppliers in California to reduce potable water use by 25%, beginning June 1, 2015 and continuing through February 28, 2016.

On August 19, 2014, the City Council declared a water shortage and approved implementation of Stage 1 of the City's Municipal Code Water Conservation Plan (as described in section 6-8.26 of Ontario's Municipal Code, Chapter 8A), consistent with the State Water Resources Control Board (SWRCB) Emergency Conservation Regulations approved in July, 2014. Since that action, Ontario has achieved about a 5% reduction in potable water usage.

The SWRCB is responsible for oversight and implementation of the Executive Order and enforcing Emergency Conservation Regulations. One of the mandated regulations requires that water suppliers implement, by May 11, 2015, Water Shortage Contingency Plans to a level that imposes limiting the number of days per week that customers can irrigate outdoors, as well as provide monthly reports to the SWRCB that include water use, conservation and enforcement actions. Moving into Stage 2 of the City's Water Conservation Plan (as described in section 6-8.27 of Ontario's Municipal Code, Chapter 8A) achieves this mandate.

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

Prepared by: Ryan Shaw  
Department: MU/Administration

City Manager  
Approval: 

Submitted to Council/O.H.A. 05/05/2015

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

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

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

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Below is a summary of the specific water restrictions in Stage 2 of the City's Water Conservation Plan.

- (1) All prohibitions and restrictions in Section 6-8.26 (Stage 1) shall be in effect provided that more restrictive measures noted in this section shall take precedence.
- (2) Commercial nurseries, golf courses, and other water dependent industries shall be prohibited from watering lawn, landscape, or other turf areas more than every other day. Irrigation shall occur between the hours of 6:00 p.m. and 6:00 a.m.
- (3) All water customers other than commercial nurseries, golf courses, and other water dependent industries shall be limited in the use of outdoor sprinkling, watering, or irrigating any shrubbery, trees, lawns, grass, groundcovers, plants, vines, gardens, vegetables, flowers, or any other landscaped or vegetated areas to a two (2) day per week schedule between the hours of 4:00 p.m. and 9:00 a.m. based on street address.
  - All locations ending in an odd number shall have outdoor water scheduled on Mondays and Thursdays.
  - All locations ending in an even number shall have outdoor water scheduled on Wednesdays and Saturdays.
  - There shall be no outdoor watering on Tuesdays, Fridays, or Sundays.
  - The use of a hand-held hose with shut-off valve shall be permitted any day of the week.
  - The replenishment of swimming pools shall be limited to the same days as other outdoor watering.
- (4) Filling or refilling empty swimming pools shall not occur without permission from the City Manager or his/her designee.

The Ontario Municipal Code, Chapter 8A, contains violation provisions for non-compliance that can result in a surcharge of up to \$500 on a customer's water bill. However, staff recommends educating and empowering customers with water use efficiency tips and offering various conservation rebate programs as the primary method of reducing water use; and only using the violation provisions as a last resort.

The Governor's Executive Order and the SWRCB Regulations include additional mandates that are not covered by any stage of the City's Water Conservation Plan. The SWRCB Board is scheduled to hold a hearing and adopt the implementation plan for the regulations in early May. Staff recommends a City Council Workshop to review all regulations, with the intent of developing a comprehensive implementation plan encompassing both the Executive Order and the SWRCB's regulations.

To assist residents and businesses in achieving the Governor's 25% potable water use reduction goal, the City has available to its residents and businesses water saving rebate programs, free landscape workshops and free classroom education materials; which can be found at [www.OntarioWaterWise.org](http://www.OntarioWaterWise.org). There is a Water Waste Form available on the My Ontario App and the City website, where customers can report suspected water waste incidents.