

**CITY OF ONTARIO**  
**CITY COUNCIL AND HOUSING AUTHORITY**  
**AGENDA**  
**MAY 6, 2014**

**Paul S. Leon**  
Mayor

**Alan D. Wapner**  
Mayor pro Tem

**Jim W. Bowman**  
Council Member

**Debra Dorst-Porada**  
Council Member

**Paul Vincent Avila**  
Council Member



**Al C. Boling**  
City Manager

**John E. Brown**  
City Attorney

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

**James R. Milhiser**  
Treasurer

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

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

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

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

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

**6:00 p.m.**

***ROLL CALL***

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

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

***CLOSED SESSION***

- GC 54956.8, CONFERENCE WITH REAL PROPERTY NEGOTIATORS  
Property: APN: 0110-321-39 and 0110-321-40; 104 and 116 North Vineyard Avenue;  
City/Authority Negotiator: Al C. Boling or his designee; Negotiating parties: Mark Sabbah; Under negotiation: Price and terms of payment.
- GC 54956.9 (d)(1), CONFERENCE WITH LEGAL COUNSEL, EXISTING LITIGATION:  
*Nancy Schrock, et al. vs. City of Ontario, et al., Case No. EDCV 13-901 VAP (DTBx).*
- GC 54956.9 (d)(1), CONFERENCE WITH LEGAL COUNSEL, EXISTING LITIGATION: *City of Ontario vs. City of Los Angeles, Los Angeles World Airports, and Los Angeles Board of Airport Commissioners, RIC 1306498.*

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

***PLEDGE OF ALLEGIANCE***

Council Member Bowman

**INVOCATION**

Pastor David Horn, BCC Life Changing Ministries

**REPORT ON CLOSED SESSION**

City Attorney

**PUBLIC COMMENTS**

**6:30 p.m.**

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

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

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

**CONSENT CALENDAR**

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

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

**1. APPROVAL OF MINUTES**

Minutes for the regular meeting of the City Council and Housing Authority of April 1, 2014, and approving same as on file in the Records Management Department.

**2. BILLS/PAYROLL**

**Bills** March 23, 2014 through April 5, 2014 and **Payroll** March 23, 2014 through April 5, 2014, when audited by the Finance Committee.

**3. A RESOLUTION SUPPORTING BRANCH COURTHOUSES WITHIN SAN BERNARDINO COUNTY**

That the City Council adopt a resolution supporting branch courthouses within San Bernardino County in lieu of further reorganization or realignment modifications to current courthouses.

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

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF  
ONTARIO, CALIFORNIA, SUPPORTING BRANCH COURTHOUSES  
WITHIN SAN BERNARDINO COUNTY.

**4. AN ARCHITECTURAL SERVICES AGREEMENT WITH WLC ARCHITECTS TO COMPLETE CONSTRUCTION DOCUMENTS AND SERVICES FOR FIRE STATION NO. 9/WLC ARCHITECTS, INC.**

That the City Council authorize the City Manager to execute an Architectural Services agreement (on file with the Records Management Department) with WLC Architects, Inc., of Rancho Cucamonga, California, in the amount of \$290,917, which includes a 10% contingency of \$26,447, for Fire Station No. 9 to be located in the vicinity of the southwest corner of Archibald and Edison Avenues in the New Model Colony.

**5. APPROVAL OF THE ONE-YEAR ANNUAL ACTION PLAN FOR THE COMMUNITY DEVELOPMENT BLOCK GRANT (CDBG), HOME INVESTMENT PARTNERSHIP (HOME), AND EMERGENCY SOLUTIONS GRANT (ESG) PROGRAMS FOR 2014-2015**

That the City Council:

- (A) Approve the proposed One-Year Action Plan for FY 2014-2015 (on file with the Records Management Department);
- (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 One-Year Action Plan for FY 2014-2015.

**6. CONSTRUCTION CONTRACT WITH PACIFIC WINDS BUILDING, INC. FOR THE FLEET SHOP HEATERS UPGRADE PROJECT**

That the City Council award the Fleet Shop Heaters Upgrade Project construction contract to Pacific Winds Building, Inc. of Irvine, California, in the amount of \$313,000 plus a 15% contingency of \$46,950, for a total amount of \$359,950; authorize the City Manager to execute said contract (on file with Records Management Department); and file a notice of completion at the conclusion of all construction activities related to the project.



**7. ACCEPT A WRITTEN PETITION TO CREATE A COMMUNITY FACILITIES DISTRICT, ADOPT A RESOLUTION OF INTENT TO ESTABLISH CITY OF ONTARIO COMMUNITY FACILITIES DISTRICT NO. 27 (NEW HAVEN SERVICES) AND AUTHORIZE THE ASSOCIATED LEVY OF SPECIAL TAXES**

That the City Council:

- (A) Accept a written petition (on file with the Records Management Department) from Brookcal Ontario, LLC, located in Costa Mesa, California, to create a Community Facilities District (“CFD”), and to waive certain procedural matters, under the Mello-Roos Community Facilities Act of 1982; and
- (B) Adopt a Resolution of Intent to establish City of Ontario Community Facilities District No. 27 (New Haven Services); authorize the associated levy of special taxes therein; and set a public hearing for the formation of the CFD as part of the regularly scheduled City Council meeting scheduled for Tuesday, June 17, 2014.

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

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

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

That the City Council proclaim the month of May 2014 as “Water Awareness Month” in the City of Ontario.

**9. A MAINTENANCE SERVICES AGREEMENT FOR LANDSCAPE MAINTENANCE SERVICES AT ONTARIO SOCCER PARK/CLS LANDSCAPE MANAGEMENT, INC.**

That the City Council approve and authorize the City Manager to execute a three-year Maintenance Services Agreement (on file with the Records Management Department) for Contract No. PM 1314-04 with CLS Landscape Management Inc. of Chino, California, for an annual cost of \$184,997 plus a contingency and monitoring services of \$9,965 and \$60,768; and authorize the addition of future service areas and the option to extend the agreement for up to two additional years consistent with City Council approved budgets.

**10. MASTER PLAN DESIGN FOR DEL RANCHO PARK**

That the City Council adopt the proposed Park Master Plan (on file in Records Management) for Del Rancho Park.

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

That the City Council proclaim the month of May 2014 as “Historic Preservation Month” in the City of Ontario.

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

That the City Council consider and adopt two resolutions authorizing staff to submit applications through the California Department of Transportation (CALTRANS) for Active Transportation Program Grant (ATP) funds for various sidewalk improvements around Bon View, Euclid, Corona and Vineyard Elementary Schools (\$1.2 million) and the design and installation of Class II bicycle improvements for Mission Boulevard between Benson Avenue and Milliken Avenue (\$1.6 million); 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 ACTIVE TRANSPORTATION PROGRAM (ATP) FUNDING THROUGH CALIFORNIA DEPARTMENT OF TRANSPORTATION AND SOUTHERN CALIFORNIA ASSOCIATION OF GOVERNMENTS FOR DESIGN AND CONSTRUCTION OF MISSION BOULEVARD BIKE ROUTE AND BIKE ACCESS TO THE METROLINK STATION OFF HAVEN AVENUE.

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

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF ONTARIO, CALIFORNIA, AUTHORIZING APPLICATION FOR ACTIVE TRANSPORTATION PROGRAM (ATP) FUNDING THROUGH CALIFORNIA DEPARTMENT OF TRANSPORTATION AND SOUTHERN CALIFORNIA ASSOCIATION OF GOVERNMENTS FOR VARIOUS SAFE ROUTES TO SCHOOLS IMPROVEMENTS AROUND BON VIEW, EUCLID, CORONA AND VINEYARD ELEMENTARY SCHOOLS.

## **PUBLIC HEARINGS**

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

### **13. A PUBLIC HEARING TO CONSIDER AN ORDINANCE APPROVING A DEVELOPMENT AGREEMENT BETWEEN BROOKCAL ONTARIO, LLC, AND THE CITY OF ONTARIO TO PROVIDE FOR THE CONSTRUCTION OF UP TO 1,166 RESIDENTIAL UNITS AND 10 ACRES OF COMMERCIAL LAND AND REQUIRED INFRASTRUCTURE ON 178.66 ACRES OF LAND WITHIN THE AVENUE SPECIFIC PLAN, LOCATED SOUTH OF SCHAEFER AVENUE, NORTH OF EDISON AVENUE, BETWEEN TURNER AVENUE AND HAVEN AVENUE**

That the City Council adopt a resolution approving an addendum to The Avenue Specific Plan Environmental Impact Report (SCH# 2005071109) and introduce and waive further reading of an ordinance approving the Development Agreement (File No. PDA10-002) between BrookCal Ontario, LLC, and the City of Ontario to provide for the construction of up to 1,166 residential units and 10 acres of commercial land on 178.66 acres of land within Planning Areas 9A, 9B, 10A, 10B and 11 of The Avenue Specific Plan, located south of Schaefer Avenue, north of Edison Avenue, between Turner Avenue and Haven Avenue (APN: 0218-201-05, 0218-201-30, 0218-201-39, 0218-201-42, 0218-201-43 and 0218-201-45).

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

Written communication.

Oral presentation.

Public hearing closed.

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

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF ONTARIO, CALIFORNIA, ADOPTING AN ADDENDUM TO THE AVENUE SPECIFIC PLAN ENVIRONMENTAL IMPACT REPORT (SCH# 2005071109), ADOPTED FOR FILE NO. PSP05-003, PREPARED FOR FILE NO. PDA10-002 FOR WHICH AN INITIAL STUDY WAS PREPARED, ALL IN ACCORDANCE WITH THE CALIFORNIA ENVIRONMENTAL QUALITY ACT, AS AMENDED, AND MAKING FINDINGS IN SUPPORT THEREOF — APN: 0218-201-05, 0218-201-30, 0218-201-39, 0218-201-42, 0218-201-43 and 0218-201-45.

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

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF ONTARIO, CALIFORNIA, APPROVING A DEVELOPMENT AGREEMENT BETWEEN THE CITY OF ONTARIO AND BROOKCAL ONTARIO, LLC, FILE NO. PDA10-002, TO ESTABLISH THE TERMS AND CONDITIONS FOR RESIDENTIAL DEVELOPMENT OF 1,166 RESIDENTIAL UNITS AND 10 ACRES OF COMMERCIAL LAND ON 178.66 ACRES WITHIN PLANNING AREAS 9A, 9B, 10A, 10B AND 11 OF THE AVENUE SPECIFIC PLAN, LOCATED SOUTH OF SCHAEFER AVENUE, NORTH OF EDISON AVENUE, BETWEEN TURNER AVENUE AND HAVEN AVENUE, AND MAKING FINDINGS IN SUPPORT THEREOF - APN: 0218-201-05, 0218-201-30, 0218-201-39, 0218-201-42, 0218-201-43 and 0218-201-45.

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

### **14. CONSIDERATION OF PROCEDURES FOR CONSISTENCY IN THE APPOINTMENT AND REMOVAL PROCESS FOR REGULAR AND AT-LARGE MEMBERS OF CITY COMMISSIONS, COMMITTEES, AND BOARDS**

That the City Council consider amending the practices used for appointment and removal of regular and at-large members of City Commissions, Committees, and Boards to gain consistency between practice and protocols outlined in the Ontario Municipal Code and the Ontario City Boards, Commissions and Committees Handbook.

## **COUNCIL MATTERS**

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

## **STAFF MATTERS**

City Manager Boling

## **ADJOURNMENT**

**CITY OF ONTARIO  
CLOSED SESSION REPORT**  
City Council // Housing Authority //  
Other // (GC 54957.1)  
**May 6, 2014**

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

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

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

- GC 54956.8, CONFERENCE WITH REAL PROPERTY NEGOTIATORS:  
Property: APN: 0110-321-39, 0110-321-40; 104 and 116 North Vineyard Avenue;  
City/Authority Negotiator: Al C. Boling or his designee; Negotiating parties: Mark Sabbah;  
Under negotiation: Price and terms of payment.

**No Reportable Action Continue      Approved**

/ /                      / /                      / /

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

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

- GC 54956.9 (d)(1), CONFERENCE WITH LEGAL COUNSEL, EXISTING LITIGATION:  
Nancy Schrock, et al. vs. City of Ontario, et al., Case No. EDCV 13-901 VAP (DTBx).

**No Reportable Action Continue      Approved**

/ /                      / /                      / /

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

**CITY OF ONTARIO**  
**CLOSED SESSION REPORT**  
City Council // Housing Authority //  
Other // (GC 54957.1)  
**May 6, 2014**  
(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 vs. City of Los Angeles, Los Angeles World Airports, and Los Angeles  
Board of Airport Commissioners, RIC 1306498.

<b>No Reportable Action</b>	<b>Continue</b>	<b>Approved</b>
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Disposition: \_\_\_\_\_

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



# CITY OF ONTARIO

## Agenda Report

May 6, 2014

## SECTION: CONSENT CALENDAR

**SUBJECT: A RESOLUTION SUPPORTING BRANCH COURTHOUSES WITHIN  
SAN BERNARDINO COUNTY**

**RECOMMENDATION:** That the City Council adopt a resolution supporting branch courthouses within San Bernardino County in lieu of further reorganization or realignment modifications to current courthouses.

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

**FISCAL IMPACT:** None.

**BACKGROUND:** The San Bernardino County Superior Court is one of the most under-funded court systems in the State, has the largest deficit of judicial positions, and is substantially understaffed. In October 2012, the statewide Judicial Needs Study ("Study") released guidelines for the San Bernardino County Superior Court ("Court"). The Study reported that the Court should employ 156 judicial officers, consisting of both judges and commissioners, and 1,512 staff members. The Court is currently operating at 57% of the judicial needs with only 86 judicial officers and 862 staff members.

Over the past few years, the Court has experienced significant funding cuts by the State of California. The Court is currently operating at a \$21 million deficit for Fiscal Year 2013-14. The Court has been forced to implement a series of cost reduction measures, which included the closure of courthouses in the cities of Chino, Needles, and Big Bear. Countywide reductions in court services and administrative staff were also affected. The Barstow District Courthouse has also been reduced to three operating days a week and is scheduled to close in July 2014.

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

Prepared by: Al C. Boling  
Department: Citywide Administration

City Manager  
Approval: 

Submitted to Council/O.H.A. 05/06/2014

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

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

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

3

The next round of reductions will be experienced by the Court in May 2014 and includes the reorganization and relocation of court services. The Rancho Cucamonga Courthouse will be realigned to hear criminal, felony, and misdemeanor cases and will no longer hear civil and unlimited cases, family law cases, family court mediation matters, and traffic infractions. The Fontana Courthouse will also be realigned to hear traffic and non-traffic infractions, small claims, and landlord/tenant cases and will no longer hear criminal, felony, and misdemeanor cases.

The City of Ontario is concerned with the proposed reorganization of court services facing the Rancho Cucamonga and Fontana Courthouses and the effects on the citizens in surrounding communities. This reorganization will add cost implications as a result of staff having to drive to San Bernardino or Fontana to appear for cases and will have a direct impact on our citizens who will be forced to drive further away to report for Jury Duty or to have their legal needs met. Accordingly, City Council supports branch courthouses within San Bernardino County in hopes that the State of California will help fund the San Bernardino Superior Court System to provide the services needed to operate a full-service branch courts.

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

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF ONTARIO,  
CALIFORNIA, SUPPORTING BRANCH COURTHOUSES WITHIN  
SAN BERNARDINO COUNTY.

WHEREAS, San Bernardino County Superior Court is one of the most underfunded courts in the State of California; and

WHEREAS, due to ongoing reductions in court funding by the State of California, San Bernardino County Superior Court has been forced to close several courts throughout the County and reorganize court services and court operations; and

WHEREAS, full-service branch courts provide convenient access to the justice system for the citizens of the surrounding communities; and

WHEREAS, full-service branch courts allows the local community to address the wrongs done in the local community and apply local policies and standards to the resolution of disputes and prosecution of crimes; and

WHEREAS, full-service branch courts saves citizens from driving miles every day, cuts pollution and contributes to the reduction of global warming; and

WHEREAS, the City of Ontario is concerned about the potential reorganization of the Rancho Cucamonga and Fontana District Courts and the effect it will have on the surrounding communities.

NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF ONTARIO HEREBY RESOLVES,

SECTION 1. The City Council urges the Governor, State Legislature, and State Judicial Council to resolve the inequities in court funding for San Bernardino County Superior Court in order to maintain full service courthouses throughout the County and provide equal access to the judicial system for all citizens; and

SECTION 2. A copy of this resolution shall be forwarded to the Presiding Judge of San Bernardino County, County of San Bernardino Board of Supervisors, Judicial Council of the State of California, and local Senate and Assembly Members.

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

PASSED, APPROVED, AND ADOPTED this 6<sup>th</sup> day of May 2014.

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PAUL S. LEON, MAYOR

ATTEST:

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MARY E. WIRTES, MMC, CITY CLERK

APPROVED AS TO LEGAL FORM:

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BEST BEST & KRIEGER LLP  
CITY ATTORNEY

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

I, MARY E. WIRTES, City Clerk of the City of Ontario, DO HEREBY CERTIFY that foregoing Resolution No. 2014-        was duly passed and adopted by the City Council of the City of Ontario at their regular meeting held May 6, 2014 by the following roll call vote, to wit:

AYES:           COUNCIL MEMBERS:

NOES:           COUNCIL MEMBERS:

ABSENT:        COUNCIL MEMBERS:

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

(SEAL)

The foregoing is the original of Resolution No. 2014-       duly passed and adopted by the Ontario City Council at their regular meeting held May 6, 2014.

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

(SEAL)

# CITY OF ONTARIO

## Agenda Report

May 6, 2014

## SECTION: CONSENT CALENDAR

**SUBJECT: AN ARCHITECTURAL SERVICES AGREEMENT WITH WLC ARCHITECTS TO COMPLETE CONSTRUCTION DOCUMENTS AND SERVICES FOR FIRE STATION NO. 9**

**RECOMMENDATION:** That the City Council authorize the City Manager to execute an Architectural Services agreement (on file with the Records Management Department) with WLC Architects, Inc., of Rancho Cucamonga, California, in the amount of \$290,917, which includes a 10% contingency of \$26,447, for Fire Station No. 9 to be located in the vicinity of the southwest corner of Archibald and Edison Avenues in the New Model Colony.

**COUNCIL GOALS:** Develop Strategies and Take Actions, Including Regaining Local Control of the Ontario International Airport, to Minimize the Negative Impacts of the Global Financial Downturn on Ontario's Economy and the City's Fiscal Health  
Ensure the Development of a Well Planned, Balanced, and Self-Sustaining Community in the New Model Colony

**FISCAL IMPACT:** The funding for the Fire Station No. 9 design and construction will be provided by NMC Builders under the provisions of the amended construction agreement between the City and NMC Builders. Accordingly, there is no fiscal impact to the City for this proposed contract.

**BACKGROUND:** On December 20, 2005 the City Council approved an architectural services agreement with WLC Architects of Rancho Cucamonga for the design and development of Station 9. This action was taken in anticipation of substantial construction activity in the New Model Colony area.

The subsequent economic downturn stalled the development of all the neighborhoods except those in the Edenglen Specific Plan. In May 2009, when it became apparent that the pace of construction in the New Model Colony would not justify the fire station's construction, WLC was directed to cease further activities upon completion of the design development phase of the plans. However, recent increases in development activity necessitates that the Station 9 program be restarted. WLC has agreed to complete

**STAFF MEMBER PRESENTING:** Otto Kroutil, Development Director

Prepared by: David Simpson  
Department: Development Administration

City Manager  
Approval: 

Submitted to Council/O.H.A. 05/06/2014

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

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

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

4



the remaining activities (construction documents, bidding, commissioning and construction administration) for \$264,470. This proposal is consistent with current industry norms.

It has been the City's practice to include a contingency fund in all construction related contracts to accommodate unforeseen project changes. Approval of a 10% contingency of \$26,447 is recommended.

# CITY OF ONTARIO

## Agenda Report

May 6, 2014

## SECTION: CONSENT CALENDAR

**SUBJECT: APPROVAL OF THE ONE-YEAR ANNUAL ACTION PLAN FOR THE COMMUNITY DEVELOPMENT BLOCK GRANT (CDBG), HOME INVESTMENT PARTNERSHIP (HOME), AND EMERGENCY SOLUTIONS GRANT (ESG) PROGRAMS FOR 2014-2015**

**RECOMMENDATION:** That the City Council:

- (A) Approve the proposed One-Year Action Plan for FY 2014-2015 (on file with the Records Management Department);
- (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 One-Year Action Plan for FY 2014-2015.

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

**FISCAL IMPACT:** In the next fiscal year, the City anticipates receiving approximately \$1,802,546 in CDBG funds, \$483,778 in HOME funds, and \$140,174 in ESG funds from HUD.

**BACKGROUND:** HUD requires that cities prepare and adopt an annual Action Plan for each year of the Five-Year Consolidated Plan which provides for the expenditure of CDBG, HOME, and ESG funds. The FY 2014-2015 Action Plan is the fifth, and final, plan prepared as part of the FY 2010-2014 Five-Year Consolidated Plan.

**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. 05/06/2014

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

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

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

5

The City of Ontario conducted a community forum/public meeting on April 3, 2014 to solicit public participation in the development of the One-Year Action Plan. On April 7, 2014 and April 10, 2014, the City of Ontario advertised the availability of the draft Action Plan for public review. The draft One-Year Action Plan was available for public review from April 7, 2014 through May 7, 2014.

The City of Ontario's CDBG, HOME, and ESG allocations from HUD for FY 2014-2015 as compared to last year's allocations are illustrated below:

	<b>FY 13-14</b>	<b>FY 14-15</b>	<b>Difference</b>
<b>CDBG</b>	\$1,725,456	\$1,802,546	\$77,090
<b>HOME</b>	\$430,661	\$483,778	\$53,117
<b>ESG</b>	\$126,332	\$140,174	\$13,842
<b>TOTAL</b>	<b>\$2,282,449</b>	<b>\$2,426,498</b>	<b>\$144,049</b>

The One-Year Action Plan allocates funds to programs designed to support strategies identified in the Consolidated Plan. The detailed FY 2014-2015 funding allocations are provided in the attached Exhibit A.

Subsequent to City Council approval, the FY 2014-2015 One-Year Action Plan will be submitted to the U.S. Department of Housing and Urban Development prior to the May 15, 2014 deadline.

# EXHIBIT A

## FY 2014-2015 FUNDING ALLOCATION SUMMARY

### RECOMMENDED CDBG FUNDING

Program	Agency	FY 13-14	Recommended FY 14-15
<b>CAPITAL IMPROVEMENT PROJECTS</b>			
Owner-Occupied Rehabilitation Loan Program	Housing & Municipal Services	\$269,323	\$0
Ontario Access Center	Housing & Municipal Services	\$52,224	\$0
Cypress Park Energy Efficient Induction Light Fixtures	Housing & Municipal Services	\$0	\$20,000
Galvin Park Energy Efficient Induction Light Fixtures	Housing & Municipal Services	\$0	\$15,000
Street Pavement Rehabilitation	Engineering Department	\$225,000	\$192,500
Alley Pavement Rehabilitation	Engineering Department	\$175,000	\$433,170
Wheelchair Ramp Installation	Community & Public Services	\$100,000	\$102,485
James Bryant Park Restroom Rehabilitation	Community & Public Services	\$0	\$20,000
Sam Alba Park Restroom Rehabilitation	Community & Public Services	\$0	\$18,500
Galvin Park West Side Picnic Structure/BBQ Area Improvements and California Friendly Landscape Renovation	Community & Public Services	\$0	\$35,000
Galvin Park Renovation of Tennis Court to Futsal Court	Community & Public Services	\$0	\$35,000
<b>SUBTOTAL</b>		<b>\$821,547</b>	<b>\$871,655</b>
<b>HOUSING</b>			
Community Improvement Team	Ontario Code Enforcement	\$300,000	\$300,000
<b>SUBTOTAL</b>		<b>\$300,000</b>	<b>\$300,000</b>
<b>PUBLIC SERVICES</b>			
C.O.P.S. Program	Ontario Police Department	\$151,765	\$177,171
Mercy House Continuum of Care	Mercy House	\$85,053	\$71,211
Child Care Subsidies	Ontario-Montclair YMCA	\$22,000	\$22,000
<b>SUBTOTAL</b>		<b>\$258,818</b>	<b>\$270,382</b>
<b>ADMINISTRATION</b>			
Administration	City of Ontario	\$312,891	\$328,309
Fair Housing/Mediation Services	Inland Fair Housing & Mediation Board	\$32,200	\$32,200
<b>SUBTOTAL</b>		<b>\$345,091</b>	<b>\$360,509</b>
<b>TOTAL</b>		<b>\$1,725,456</b>	<b>\$1,802,546</b>

### RECOMMENDED HOME FUNDING

Program	Agency	FY 13-14	Recommended FY 14-15
Community Housing Development Organizations (CHDOs) Housing Program	Community Housing Development Organizations (CHDOs)	\$64,600	\$72,567
HOME Tenant Based Rental Assistance (TBRA) Program	Ontario Housing Agency	\$100,000	\$362,834
HOME Downpayment Assistance Loan (DPAL) Program	Ontario Housing Agency	\$222,995	\$0
Administration	City of Ontario	\$43,066	\$48,377
<b>TOTAL</b>		<b>\$430,661</b>	<b>\$483,778</b>

### RECOMMENDED ESG FUNDING

Program	Agency	FY 13-14	Recommended FY 14-15
Stepping Stones Program	Foothill Family Shelter	\$6,122	\$6,122
SOVA Hunger Center	Inland Valley Council of Churches	\$18,410	\$18,410
Services for Battered Women and Children	House of Ruth	\$12,600	\$12,600
Mercy House Continuum of Care	Mercy House	\$85,313	\$92,529
Administration – Mercy House	Mercy House	\$0	\$6,626
Administration – City of Ontario	City of Ontario	\$3,887	\$3,887
<b>TOTAL</b>		<b>\$126,332</b>	<b>\$140,174</b>

# CITY OF ONTARIO

*Agenda Report*  
May 6, 2014

SECTION:  
CONSENT CALENDAR

**SUBJECT: CONSTRUCTION CONTRACT WITH PACIFIC WINDS BUILDING, INC. FOR THE FLEET SHOP HEATERS UPGRADE PROJECT**

**RECOMMENDATION:** That the City Council award the Fleet Shop Heaters Upgrade Project construction contract to Pacific Winds Building, Inc. of Irvine, California, in the amount of \$313,000 plus a 15% contingency of \$46,950, for a total amount of \$359,950; authorize the City Manager to execute said contract (on file with Records Management Department); and file a notice of completion at the conclusion of all construction activities related to the project.

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

**FISCAL IMPACT:** The Fiscal Year 2013-14 Capital Improvement Program includes adequate appropriations from a grant from South Coast Air Quality Management District (SCAQMD), Mobile Source Air Pollution Reduction Review Committee Local Government Match Program, and the Mobile Source Air Fund for Fleet Shop Heaters Upgrade Project. The total recommended contract authorization of \$359,950 includes 15% contingency (\$46,950). There is no impact to the General Fund.

**BACKGROUND:** The Fleet Shop Heaters Upgrade Project provides upgrades to the existing Fleet Shop facility by the removal of four existing gas heaters and associated gas piping and installation of ten electric heaters and associated power in the fleet shop area. Currently, repairs on the compressed natural gas vehicles are done outside of the shop as a safety precaution when the heaters are operating. Converting the heaters to a pilotless electric system enables staff to work inside of the shop where parts and tools are readily available making the work more efficient and safer.

On March 21 2014, eight bids were received for the Fleet Shop Heaters Upgrade Project. The lowest responsive bidder was Pacific Winds Building, Inc., located in Irvine, California. The eight bids are summarized below:

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

Prepared by: Pat Malloy  
Department: MS/Facilities

City Manager  
Approval: 

Submitted to Council/O.H.A. 05/06/2014

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

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

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

6

<b><u>Bidder</u></b>	<b><u>Location</u></b>	<b><u>Amount</u></b>
Pacific Winds Building, Inc.	Irvine, CA	\$313,000
K & J Air Conditioning, Inc.	Buena Park, CA	\$337,570
Airite Heating & Air Conditioning, Inc.	Ontario, CA	\$354,990
United Mechanical Contractors, Inc.	Simi Valley, CA	\$373,000
Los Angeles Air Conditioning	La Verne, CA	\$383,500
Pardess Air, Inc.	Los Angeles, CA	\$396,000
Pacific Air Heating & Cooling, Inc.	Riverside, CA	\$398,000
Fast-Track Construction	Culver City, CA	\$472,800

Pacific Winds Building, Inc. submitted the lowest responsive bid that met all the plans and specifications required of the construction contract and have performed this type work in the past. For the purpose of goods, the City, in order to promote the economic health of the City and to encourage local participation in the procurement process, may take into consideration the sales tax which would be returned to the City as a result of the award in determining the lowest responsive bid. Staff recommends award to Pacific Winds Building, Inc. based on their expertise and ability to perform the work in a timely manner.

Upon approval of contract, a Notice to Proceed will be issue to Pacific Winds Building, Inc. in May 2014. It is estimated that the project will be completed in August 2014.



# CITY OF ONTARIO

## Agenda Report

May 6, 2014

## SECTION: CONSENT CALENDAR

**SUBJECT: ACCEPT A WRITTEN PETITION TO CREATE A COMMUNITY FACILITIES DISTRICT, ADOPT A RESOLUTION OF INTENT TO ESTABLISH CITY OF ONTARIO COMMUNITY FACILITIES DISTRICT NO. 27 (NEW HAVEN SERVICES) AND AUTHORIZE THE ASSOCIATED LEVY OF SPECIAL TAXES**

**RECOMMENDATION:** That the City Council:

- (A) Accept a written petition (on file with the Records Management Department) from Brookcal Ontario, LLC, located in Costa Mesa, California, to create a Community Facilities District ("CFD"), and to waive certain procedural matters, under the Mello-Roos Community Facilities Act of 1982; and
- (B) Adopt a Resolution of Intent to establish City of Ontario Community Facilities District No. 27 (New Haven Services); authorize the associated levy of special taxes therein; and set a public hearing for the formation of the CFD as part of the regularly scheduled City Council meeting scheduled for Tuesday, June 17, 2014.

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

Focus Resources in Ontario's Commercial and Residential Neighborhoods

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

**FISCAL IMPACT:** In accordance with the City Council's long standing direction that development of the New Model Colony generate sufficient revenues to fund its required City services without reliance on the existing financial resources of the Old Model Colony, the use of Mello-Roos financing in connection with the New Haven development is projected to generate approximately \$2,000,000 per year, at build-out, to fund City services. As proposed, the maximum annual tax rate to be assessed on

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

Prepared by: Bob Chandler  
Department: Management Services

Submitted to Council/O.H.A. 05/06/2014

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

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

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

City Manager  
Approval: 

7

the residences are \$1,387 for each single family detached unit, \$1,202 per each multi family unit, and \$1,008 for each gated apartment unit. The use of Mello-Roos financing for City services is critical in achieving the City Council's goal of **"Ensure the Development of a Well Planned, Balanced, and Self-Sustaining Community in the New Model Colony."** The use of Mello-Roos financing for the New Haven development will not generate funds for facilities, and bonds will not be issued as part of this formation. The CFD is being formed pursuant to the provisions of the New Haven project's Development Agreement, and the First Amended and Restated Construction Agreement between the City and NMC Builders.

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

Brookcal Ontario, LLC, a member of NMC Builders, has provided a written petition to the City requesting formation of a community facilities district for its New Haven project in the New Model Colony. The New Haven project addresses the development of approximately 179 acres located north of Edison Avenue, south of Schaefer Avenue, east of Archibald Avenue, and west of Haven Avenue. At build-out, the development is projected to include 1,247 residential units: 712 detached units, 352 attached units, and 183 apartments.

Under the Mello-Roos Act, the initial steps in the formation of a community facilities district normally involve resolutions declaring the City's intention to establish a community facilities district, levy special taxes, and issue bonds. As noted, the issuance of bonds is not being contemplated for this project at this time, so there is no resolution to issue bonds associated with this action. As proposed, the resolution of intention to establish the district and to levy special taxes will set the public hearing date on the formation of the CFD for the regularly scheduled City Council meeting on Tuesday, June 17, 2014 to consider the matter.

Included, as part of the resolution of intention, is the proposed Rate and Method of Apportionment of Special Tax for City of Ontario Community Facilities District No. 27 (New Haven Services). The terms of the Rate and Method of Apportionment of Special Tax are consistent with the City Council's adopted Mello-Roos Local Goals and Policies, and City staff have presented and discussed the proposed Rate and Method of Apportionment of Special Tax with the landowner.

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

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

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

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

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

WHEREAS, the Landowner has represented and warranted to the City Council that the Landowner is the owner of 100% of the area of land proposed to be included within the Community Facilities District; and

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

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

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

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

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

SECTION 4. The name proposed for the Community Facilities District is "City of Ontario Community Facilities District No. 27 (New Haven Services)."

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

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

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

SECTION 7. The City Council hereby fixes Tuesday, June 17, 2014, at 6:30 p.m., or as soon thereafter as the City Council may reach the matter, at 303 East B Street, Ontario, California, as the time and place when and where the City Council will conduct a public hearing on the establishment of the Community Facilities District.

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

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

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

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

SECTION 12. This Resolution shall take effect 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 6<sup>th</sup> day of May 2014.

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PAUL S. LEON, MAYOR

ATTEST:

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MARY E. WIRTES, MMC, CITY CLERK

APPROVED AS TO LEGAL FORM:

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BEST BEST & KRIEGER LLP  
CITY ATTORNEY



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

I, MARY E. WIRTES, City Clerk of the City of Ontario, DO HEREBY CERTIFY that foregoing Resolution No. 2014-        was duly passed and adopted by the City Council of the City of Ontario at their regular meeting held May 6, 2014 by the following roll call vote, to wit:

AYES:            COUNCIL MEMBERS:

NOES:            COUNCIL MEMBERS:

ABSENT:         COUNCIL MEMBERS:

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

(SEAL)

The foregoing is the original of Resolution No. 2014-   duly passed and adopted by the Ontario City Council at their regular meeting held May 6, 2014.

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

(SEAL)

CLERK'S CERTIFICATE

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

I, Mary E. Wirtes, City Clerk of the City of Ontario, California, hereby certify that the foregoing is a full, true and correct copy of a Resolution duly adopted at a regular meeting of the City Council of said City duly and regularly held at the regular meeting place thereof on May 6, 2014, of which meeting all of the members of said City Council had due notice and at which a majority thereof were present; and that at said meeting said Resolution was adopted by the following vote:

AYES:     COUNCIL MEMBERS:

NOES:     COUNCIL MEMBERS:

ABSENT: COUNCIL MEMBERS:

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

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

Dated: May 6, 2014

\_\_\_\_\_  
Vicki L. Kasad, ASSISTANT CITY CLERK

## EXHIBIT A

### SERVICES AND INCIDENTAL EXPENSES

#### Services

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

#### Incidental Expenses

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

## EXHIBIT B

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

**CITY OF ONTARIO  
COMMUNITY FACILITIES DISTRICT NO. 27  
(NEW HAVEN SERVICES)**

**RATE AND METHOD OF APPORTIONMENT OF SPECIAL TAX**

---

A Special Tax shall be levied on all Assessor's Parcels in the City of Ontario Community Facilities District No. 27 (New Haven Services) ("CFD No. 27") and collected each Fiscal Year commencing in Fiscal Year 2014-15, in an amount determined by the City Council of the City of Ontario through the application of the Rate and Method of Apportionment, as described below. All of the real property in CFD No. 27, unless exempted by law or by the provisions hereof, shall be taxed for the purposes, to the extent, and in the manner herein provided.

**A. DEFINITIONS**

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

**"Act"** means the Mello-Roos Community Facilities Act of 1982, as amended, being Chapter 2.5, Division 2 of Title 5 of the California Government Code.

**"Administrative Expenses"** means the following actual or reasonably estimated costs directly related to the administration of CFD No. 27: the costs of computing the Special Taxes and preparing the annual Special Tax collection schedules (whether by the City or CFD No. 27 or both); the costs of collecting the Special Taxes (whether by the County or otherwise); the costs associated with preparing Special tax disclosure statements and responding to public inquiries regarding the Special Taxes; the costs of the City or CFD No. 27 related to an appeal of the Special Tax; the City's administration fees and third party expenses; the costs of City staff time and reasonable overhead related to CFD No. 27; and amounts estimated or advanced by the City or CFD No. 27 for any other administrative purposes of CFD No. 27, including attorney's fees and other costs related to commencing and pursuing to completion any foreclosure of delinquent Special Taxes.

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

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

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

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

**“CFD No. 27”** means City of Ontario Community Facilities District No. 27 (New Haven Services).

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

**“City Council”** means the City Council of the City, acting as the legislative body of CFD No. 27.

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

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

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

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

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

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

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

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

**“Property Owner Association Property”** means, for each Fiscal Year, property within the boundaries of CFD No. 27 that was owned by a property owner association, including any master or sub-association, as of January 1 of the prior Fiscal Year.

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

**“Public Property”** means, for each Fiscal Year, property within the boundaries of CFD No. 27 that is (a) owned by, irrevocably offered to, or dedicated to the federal government, the State, the County, the City, or any local government or other public agency or (b) encumbered by an easement for purposes of public right-of-way that makes impractical its use for any purpose other than that set forth in such easement, provided that any property

leased by a public agency to a private entity and subject to taxation under Section 53340.1 of the Act shall be taxed and classified according to its use.

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

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

**“Services”** means the services authorized to be financed, in whole or in part, by CFD No. 27: police protection services, fire protection and suppression services, ambulance and paramedic services, maintenance and lighting of parks, parkways, streets, roads, and open space, flood and storm protection services, and maintenance and operation of any real property or other tangible property with an estimated useful life of five or more years that is owned by the City.

**“Special Tax”** means the special tax authorized by the qualified electors of CFD No. 27 to be levied within the boundaries of CFD No. 27.

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

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

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

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

**“Taxable Property”** means, for each Fiscal Year, all Assessor’s Parcels of Residential Property and Non-Residential Property within the boundaries of CFD No. 27 which are not exempt from the Special Tax pursuant to law or Section E below.

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

**B. ASSIGNMENT TO LAND USE CATEGORIES**

Each Fiscal Year, beginning with Fiscal Year 2014-15, all Taxable Property within CFD No. 27 shall be classified as Residential Property (Single Family Detached Dwelling Unit, Multiple Family Dwelling Unit, or Gated Apartment Community Dwelling Unit) or Non-Residential Property and shall be subject to Special Taxes in accordance with the Rate and Method of Apportionment as determined pursuant to Sections C and D below.

**C. MAXIMUM SPECIAL TAX**

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

**TABLE 1  
MAXIMUM SPECIAL TAX**

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

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

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

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

Each Fiscal Year, beginning with Fiscal Year 2014-15, the CFD Administrator shall determine the Special Tax Requirement. The Special Tax shall then be levied Proportionately on each Assessor's Parcel of Taxable Property up to 100% of the applicable Maximum Special Tax for such Assessor's Parcel, until the Special Tax Requirement is satisfied. However, the Special Tax levied in any Fiscal Year shall not increase by more than 4.0% of the amount of the Special Tax levied in the prior Fiscal Year.



**E. EXEMPTIONS**

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

**F. APPEALS**

Any property owner may file a written appeal of the Special Tax with CFD No. 27 claiming that the amount or application of the Special Tax is not correct. The appeal must be filed not later than one calendar year after having paid the Special Tax that is disputed, and the appellant must be current in all payments of Special Taxes. In addition, during the term of the appeal process, all Special Taxes levied must be paid on or before the payment date established when the levy was made.

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

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

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

**G. MANNER OF COLLECTION**

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

**H. TERM OF SPECIAL TAX**

The Special Tax shall continue to be levied indefinitely on an annual basis on all Taxable Property in CFD No. 27.

# CITY OF ONTARIO

## Agenda Report

May 6, 2014

## SECTION: CONSENT CALENDAR

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

**RECOMMENDATION:** That the City Council proclaim the month of May 2014 as "Water Awareness Month" in the City of Ontario.

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

**FISCAL IMPACT:** None.

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

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

Prepared by: Ryan Shaw  
Department: MU/Administration

City Manager  
Approval: 

Submitted to Council/O.H.A. 05/06/2014

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

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

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

8

On January 17, 2014, Governor Jerry Brown declared a Drought State of Emergency, as the State of California continues to experience record dry conditions; with 2014 projected to become the driest year on record. As of April 1, 2014, the State's snowpack water content levels were at thirty-two percent below normal and most key surface water storage reservoirs are fifty percent below normal. As a result, California's Department of Water Resources (DWR) has issued a current allocation of zero percent from the State Water Project. This means that for the first time in the history of the State Water Project, Southern California water supplies from this source are not expected to be available.

Despite a current zero percent allocation from the State Water Project, Metropolitan Water District of Southern California (MWD), whom Ontario purchases imported water from, has invested in storage reservoirs all across the State and as a result, currently has enough stored water to meet its member agencies' water demands this year. However, if California has another dry year, MWD may have to reduce water deliveries to its member agencies which will have a direct impact on Ontario's water supply.

As part of the Governor's declaration, State agencies, led by DWR, were ordered to execute a statewide water conservation campaign to make all Californians aware of the drought and encourage personal actions to reduce water usage. This campaign will be built on the existing "Save Our Water" campaign ([www.saveourh20.org](http://www.saveourh20.org)) and will coordinate with local water agencies. This campaign will call on Californians to reduce their water usage by twenty percent.

Consistent with the Governor's declaration, Ontario is planning similar residential and business customer outreach to do our share in implementing the State's water conservation campaign, as well as continue to implement the City's existing water conservation efforts; providing water use efficiency rebate programs and education classes/materials to residents and businesses.

Information about Ontario's water conservation campaign and programs is located on the Municipal Utilities page of the City's website. Water is a precious resource, and we always encourage the public to use water wisely.

# CITY OF ONTARIO

*Agenda Report*  
May 6, 2014

SECTION:  
CONSENT CALENDAR

**SUBJECT: A MAINTENANCE SERVICES AGREEMENT FOR LANDSCAPE MAINTENANCE SERVICES AT ONTARIO SOCCER PARK**

**RECOMMENDATION:** That the City Council approve and authorize the City Manager to execute a three-year Maintenance Services Agreement (on file with the Records Management Department) for Contract No. PM 1314-04 with CLS Landscape Management Inc. of Chino, California, for an annual cost of \$184,997 plus a contingency and monitoring services of \$9,965 and \$60,768; and authorize the addition of future service areas and the option to extend the agreement for up to two additional years consistent with City Council approved budgets.

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

**FISCAL IMPACT:** The estimated annual base cost of the proposed Maintenance Services Agreement is \$184,997 for landscape maintenance services plus \$9,965 of contingency for urgency services and \$60,768 for monitoring services for a total contract amount of \$255,730 for each of the first three years. The monitoring service expenditures in any year of the agreement will be based on actual work performed as directed by the City at the contract rates. The maintenance cost for the Ontario Soccer Park will be funded by the General Fund and if approved will be included in the Fiscal Year 2014-15 proposed operating budget.

At the City's discretion, two additional one-year extensions may be exercised with no price increases for the fourth and fifth years. Future contracting actions will be commensurate with City Council authorized work programs and budgets. Contracting for the multi-year period will allow the City to limit the potential for yearly increase to the bid amounts; avoid the costs of re-bidding the contract annually; provide service continuity; and project future costs.

**STAFF MEMBER PRESENTING:** Mark Chase, Community and Public Services Director

Prepared by: Roberto Perez  
Department: Parks and Maintenance

City Manager  
Approval: 

Submitted to Council/O.H.A. 05/06/2014

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

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

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

9

**BACKGROUND:** In January 2014, the City solicited proposals for landscape maintenance and monitoring services for the Ontario Soccer Park. Ten proposals were received that met bid criteria and standards necessary to perform this work. Landscape and monitoring services base cost proposals ranged from \$245,765 to \$352,476.

<u>Vendor</u>	<u>Location</u>
Brickman	Upland, CA
<b>CLS Landscape Mgmt, Inc.</b>	<b>Chino, CA</b>
Ctia Pacific Greenspace	Murrieta, CA
Mariposa Landscape	Irwindale, CA
Master Landscape	Westminster, CA
Merchants Landscape	Rancho Cucamonga, CA
Midori	Santa Ana, CA
SC Yamamoto, Inc	La Habra, CA
So Cal Land Maintenance	Anaheim, CA
ValleyCrest Landscape	Fontana, CA

CLS Landscape Management located in Chino, California, submitted a proposal that met all the required specifications with a base cost, three-year total of \$737,295. Based on their proposal, credentials, pricing and favorable references, staff recommends award of a Maintenance Services Agreement to CLS Landscape Management, Inc.

# CITY OF ONTARIO

## Agenda Report

May 6, 2014

## SECTION: CONSENT CALENDAR

**SUBJECT: MASTER PLAN DESIGN FOR DEL RANCHO PARK**

**RECOMMENDATION:** That the City Council adopt the proposed Park Master Plan (on file in Records Management) for Del Rancho Park.

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

**FISCAL IMPACT:** The approval of the proposed Park Master Plan does not commit any funds or require additional budget appropriations. The costs of constructing the planned park improvements will occur when necessary funds become available and as development for future park facilities takes place. This action establishes the site layouts for planned future facilities and by adopting the master plan, the City will be better prepared to aggressively pursue grant opportunities to assist with the possible future development of Del Rancho Park.

**BACKGROUND:** On October 28, 2013, the Parks and Recreation Commission approved the subject Park Master Plan and recommended it be forwarded for City Council approval.

The existing Del Rancho Park is 4.75 acres of mostly open space with a small picnic area, trellis structure, and tot lot playground with a small parking lot along Cypress Avenue. By utilizing the policies identified in the Comprehensive Park and Recreation Master Plan adopted by City Council in September 2002, staff evaluated Del Rancho park and identified several recommended park improvements. The goal of the park master plan is to enhance the appearance, add additional recreational amenities and create more of a special use neighborhood park.

The proposed conceptual master plan include, but are not limited to: universally accessible themed playgrounds for 2-5 year olds and 5-12 year olds, a single person restroom, several shade trellis picnic

**STAFF MEMBER PRESENTING:** Mark Chase, Community and Public Services Director

Prepared by: Roberto Perez  
Department: Parks & Maintenance

City Manager  
Approval: 

Submitted to Council/O.H.A. 05/06/2014

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

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

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

10

structures, an enhanced parking lot along Cypress Avenue, decomposed granite walkways, security lighting, monument signs and new furniture amenities.

This project is categorically exempt from the requirements of the California Environmental Quality Act (CEQA) pursuant to 15061 (b)(3) (General Rule), 15304 (Minor alterations to land), and 15332 (In-Fill Development Projects) of the CEQA Guidelines.



# DEL RANCHO PARK IMPROVEMENTS

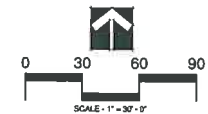
CITY OF ONTARIO, CA  
CONCEPT-E FEBRUARY 28, 2014



PROJECT WILL COMPLY WITH WQMP AND STREET LIGHT REQUIREMENTS.

## KEY NOTES

- |   |   |
|---|---|
| ① GROUP PICNIC AREA (8 PICNIC TABLES) ON DECOMPOSED GRANITE SURFACE W/ OPEN TRELLIS/LATTICE SHADE STRUCTURE, TYP. | ①⑦ 5:1 SLOPE  |
| ② PICNIC TABLES ON CONCRETE PAD, TYP.   | ①⑧ UNIVERSALLY ACCESSIBLE THEMED PLAY AREA  |
| ③ OPEN TURF AREA  | ①⑨ RESTROOM BUILDING (SINGLE PERSON RESTROOM UNIT) (RESTROOMS TO REMAIN OPEN ON WEEKENDS) |
| ④ DECOMPOSED GRANITE PATH, TYP.   | ②① BIOWALL, DRY STREAM BED W/ BOULDERS  |
| ⑤ NATIVE PLANTING AREA  | ②② PEDESTRIAN BRIDGE  |
| ⑥ GROUP PICNIC AREA (4 PICNIC TABLES) ON CONCRETE PAD W/ OPEN TRELLIS/LATTICE SHADE STRUCTURE, TYP.               | ②③ ACCESSIBLE DRINKING FOUNTAIN   |
| ⑦ PARK IDENTIFICATION SIGN  | ②④ ACCESSIBLE PARKING STALL   |
| ⑧ TRASH RECEPTACLE, TYP.  | ②⑤ VAN ACCESSIBLE PARKING STALL   |
| ⑨ BARBEQUE, TYP.  | ②⑥ A.D.A. ACCESSIBLE RAMP   |
| ⑩ DECORATIVE BOULDERS   | ②⑦ VINES ON WALL  |
| ⑪ CONCRETE WALKWAY  | ②⑧ LOW WALL   |
| ⑫ SHADE TRELLIS   | ②⑨ PARKING LOT LIGHTING   |
| ⑬ ACCESSIBLE TRASH ENCLOSURE  | ③① SECURITY LIGHTING  |
| ⑭ NEW PARKING LOT (42 STALLS) W/ ASPHALT PAVING   | ③② BELOW GRADE STORM WATER RETENTION  |
| ⑮ EXISTING SIDEWALK   | ③③ DECORATIVE PAVING  |
| ⑯ PARK BENCH ON DECOMPOSED GRANITE PAD, TYP.  | ③④ PARK ENTRY ADORNMENT WITH PLASTERS   |
|   | ③⑤ PARK BENCH ON CONCRETE PAD, TYPICAL  |



**HAN & ASSOCIATES, INC.**  
Landscape Architecture & Planning  
3001 East Tenth Street, Suite 100  
Anaheim, California 92805  
Phone: 714.835.8800 Fax: 714.835.8801  
www.hanlandscape.com L-14-1710



# CITY OF ONTARIO

*Agenda Report*  
May 6, 2014

SECTION:  
CONSENT CALENDAR

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

**RECOMMENDATION:** That the City Council proclaim the month of May 2014 as "Historic Preservation Month" in the City of Ontario.

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

**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.

The 2014 Nationwide Historic Preservation Month theme is "New Age Preservation: Embark, Inspire, Engage" as adopted by the National Trust of Historic Preservation. This year's theme is intended to excite current supporters and introduce new audiences to the work that individuals, non-profit agencies and local jurisdictions are doing to enrich and preserve the places that make a community special. In 2011, a report by the National Trust concluded that less than 1% of the United States population, approximately 500,000, considered themselves to be "preservationist." However, 15 million people were categorized as "local preservationists" or those whom regularly engage in preservation-related activities. Another 50 million were considered "active sympathizers," and 120 million were "passive consumers." To further improve and sustain preservation in communities, the National Trust advocates

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

Prepared by: Diane Ayala  
Department: Planning

City Manager  
Approval: 

Submitted to Council/O.H.A. 05/06/2014

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

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

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

11

preservation as a means to achieve larger goals of a community in relation to increased quality of life and economic development.

The City inspires preservation by hosting the fourteenth annual Model Colony Awards to showcase exceptional historic properties that have been preserved, restored, or rehabilitated. The City engages the community by supporting Ontario Heritage, the non-profit local preservation advocacy group, in preparing, promoting, and participating in events such as the cemetery tour, home tour, and walking tours. The City embarks in revitalization efforts by investing in Ontario's downtown and historic neighborhoods. Embarking, inspiring, and engaging the community in preservation results in adding value and yields benefits community wide.

This year, the Model Colony Awards will be presented at the June 3, 2014, City Council meeting.

# CITY OF ONTARIO

## Agenda Report

May 6, 2014

## SECTION: CONSENT CALENDAR

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

**RECOMMENDATION:** That the City Council consider and adopt two resolutions authorizing staff to submit applications through the California Department of Transportation (CALTRANS) for Active Transportation Program Grant (ATP) funds for various sidewalk improvements around Bon View, Euclid, Corona and Vineyard Elementary Schools (\$1.2 million) and the design and installation of Class II bicycle improvements for Mission Boulevard between Benson Avenue and Milliken Avenue (\$1.6 million); and authorize the City Manager to execute all required CALTRANS grant and funding agreements.

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

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

Focus Resources in Ontario's Commercial and Residential Neighborhoods

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

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 (\$1.2 million) and to complete the Mission Boulevard Bike Route design and construction (\$1.6 million). If the City receives the grant awards, appropriations and corresponding revenue adjustments will be included in a future quarterly budget report for Council consideration. No matching funds are required.

**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, and enhancing public health (including reducing

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

Prepared by: Melanie Mullis  
Department: Planning

City Manager  
Approval: 

Submitted to Council/O.H.A. 05/06/2014

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

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

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

12

childhood obesity). On March 20, 2014, the California Transportation Commission approved a call-for-projects which will bundle three years of funding into one grant process. Safe Routes to School projects and projects which serve Disadvantaged Communities do not require 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 Mission Boulevard Bike Route is consistent with The Ontario Plan (Figure M-3, Multi-Purpose Trails and Bikeway Corridor Plan) and the San Bernardino County Non-Motorized Transportation Plan (Exhibit "A"). This route is being recommended because it provides east-west access across the City to the heart of the City's industrial base and the Metrolink station off Haven Avenue. A map showing the Mission Boulevard Bike Route is attached as Exhibit "B".

The sidewalk improvements being proposed for the Safe Routes to Schools grant application are around Vineyard Elementary, Bon View Elementary, Euclid Elementary and Corona Elementary schools. Two of these schools (Euclid and Bon View Elementary Schools) are within the Ontario HEAL zone. All of these schools have a fairly high obesity rate (39.5% - 51.8% of 5<sup>th</sup> graders assessed as part of 2012-13 California Physical Fitness Report). In addition, more than 75% of the students at these schools are eligible for the reduced Lunch Program. The proposed sidewalk improvements around these schools should facilitate students walking to school in a safer manner. The location of the schools associated with this grant application is attached as Exhibit "C".



### Mission Blvd. Bike Route Project Limits



A detailed map of the area around Euclid Elementary School. The map shows a grid of streets including Benson Ave, Mountain Ave, San Antonio Ave, Euclid Ave, Sultana Ave, Campus Ave, Grove Ave, and Archibald. Major highways shown are I-10 FRWY at the top and SR-60 FRWY at the bottom. Several schools are marked: Vineyard Elem. and Corona Elem. in the upper right, Euclid Elem. in the center, and Bon View Elem. in the lower center. Other streets shown include Fourth St, G St, D St, Holt Bl, Mission Bl, Phillips, Francis St, and Philadelphia St. A scale bar indicates distances up to 1 mile, and a north arrow is present in the upper right corner.

**EXHIBIT C**



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

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF ONTARIO, CALIFORNIA, AUTHORIZING APPLICATION FOR ACTIVE TRANSPORTATION PROGRAM (ATP) FUNDING THROUGH CALIFORNIA DEPARTMENT OF TRANSPORTATION AND SOUTHERN CALIFORNIA ASSOCIATION OF GOVERNMENTS FOR DESIGN AND CONSTRUCTION OF MISSION BOULEVARD BIKE ROUTE AND BIKE ACCESS TO THE METROLINK STATION OFF HAVEN AVENUE.

WHEREAS, on March 20, 2014, 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 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 on Mission Boulevard between Benson and Milliken Avenues and on Haven Avenue between Mission Boulevard and Francis Street.

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 as follows:

- a. The design and construction of bike lanes on Mission Boulevard and Haven 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 not be required to provide matching funds, and that the City Manager or his designee 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 6<sup>th</sup> day of May 2014.

---

PAUL S. LEON, MAYOR

ATTEST:

---

MARY E. WIRTES, MMC, CITY CLERK

APPROVED AS TO LEGAL FORM:

---

BEST BEST & KRIEGER LLP  
CITY ATTORNEY

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

I, MARY E. WIRTES, City Clerk of the City of Ontario, DO HEREBY CERTIFY that foregoing Resolution No. 2014-     was duly passed and adopted by the City Council of the City of Ontario at their regular meeting held May 6, 2014 by the following roll call vote, to wit:

AYES:           COUNCIL MEMBERS:

NOES:           COUNCIL MEMBERS:

ABSENT:        COUNCIL MEMBERS:

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

(SEAL)

The foregoing is the original of Resolution No. 2014-     duly passed and adopted by the Ontario City Council at their regular meeting held May 6, 2014.

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

(SEAL)



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

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF ONTARIO, CALIFORNIA, AUTHORIZING APPLICATION FOR ACTIVE TRANSPORTATION PROGRAM (ATP) FUNDING THROUGH CALIFORNIA DEPARTMENT OF TRANSPORTATION AND SOUTHERN CALIFORNIA ASSOCIATION OF GOVERNMENTS FOR VARIOUS SAFE ROUTES TO SCHOOLS IMPROVEMENTS AROUND BON VIEW, EUCLID, CORONA AND VINEYARD ELEMENTARY SCHOOLS.

WHEREAS, on March 20, 2014, 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."*

WHEREAS, the City of Ontario desires to submit an application for ATP funds to construct sidewalk improvements around Bon View, Euclid, Corona and Vineyard Elementary Schools which will help to reduce the deficiencies in the sidewalk systems around these schools 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 as follows:

- a. The design and construction of sidewalks on various streets around Bon View, Euclid, Corona and Vineyard Elementary Schools are 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 not be required to provide matching funds, and that the City Manager or his designee 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 6<sup>th</sup> day of May 2014.

---

PAUL S. LEON, MAYOR

ATTEST:

---

MARY E. WIRTES, MMC, CITY CLERK

APPROVED AS TO LEGAL FORM:

---

BEST BEST & KRIEGER LLP  
CITY ATTORNEY

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

I, MARY E. WIRTES, City Clerk of the City of Ontario, DO HEREBY CERTIFY that foregoing Resolution No. 2014-     was duly passed and adopted by the City Council of the City of Ontario at their regular meeting held May 6, 2014 by the following roll call vote, to wit:

AYES:           COUNCIL MEMBERS:

NOES:           COUNCIL MEMBERS:

ABSENT:        COUNCIL MEMBERS:

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

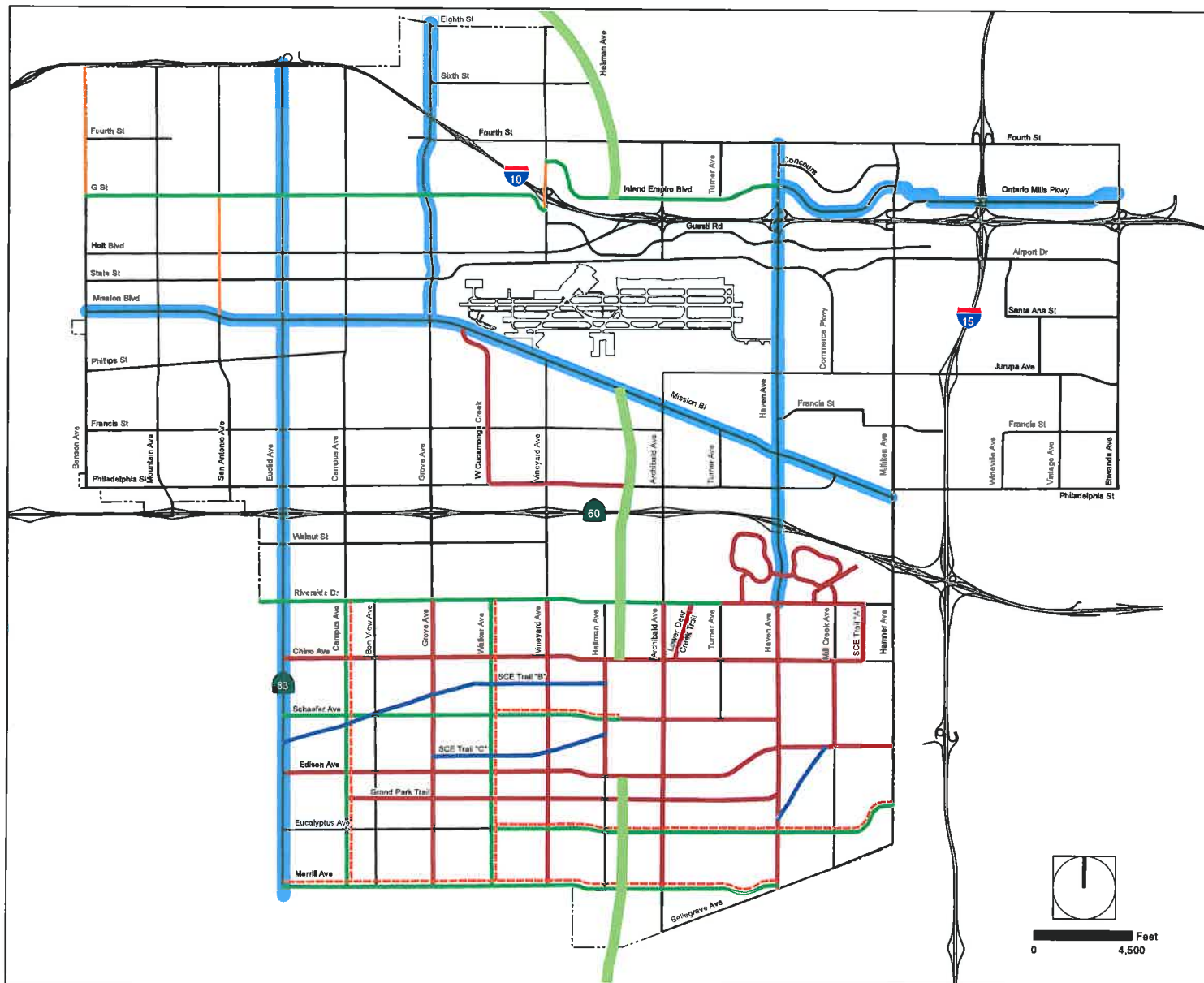
(SEAL)

The foregoing is the original of Resolution No. 2014-     duly passed and adopted by the Ontario City Council at their regular meeting held May 6, 2014.

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

(SEAL)

Figure M-3  
Multipurpose Trails and  
Bikeway Corridor Plan



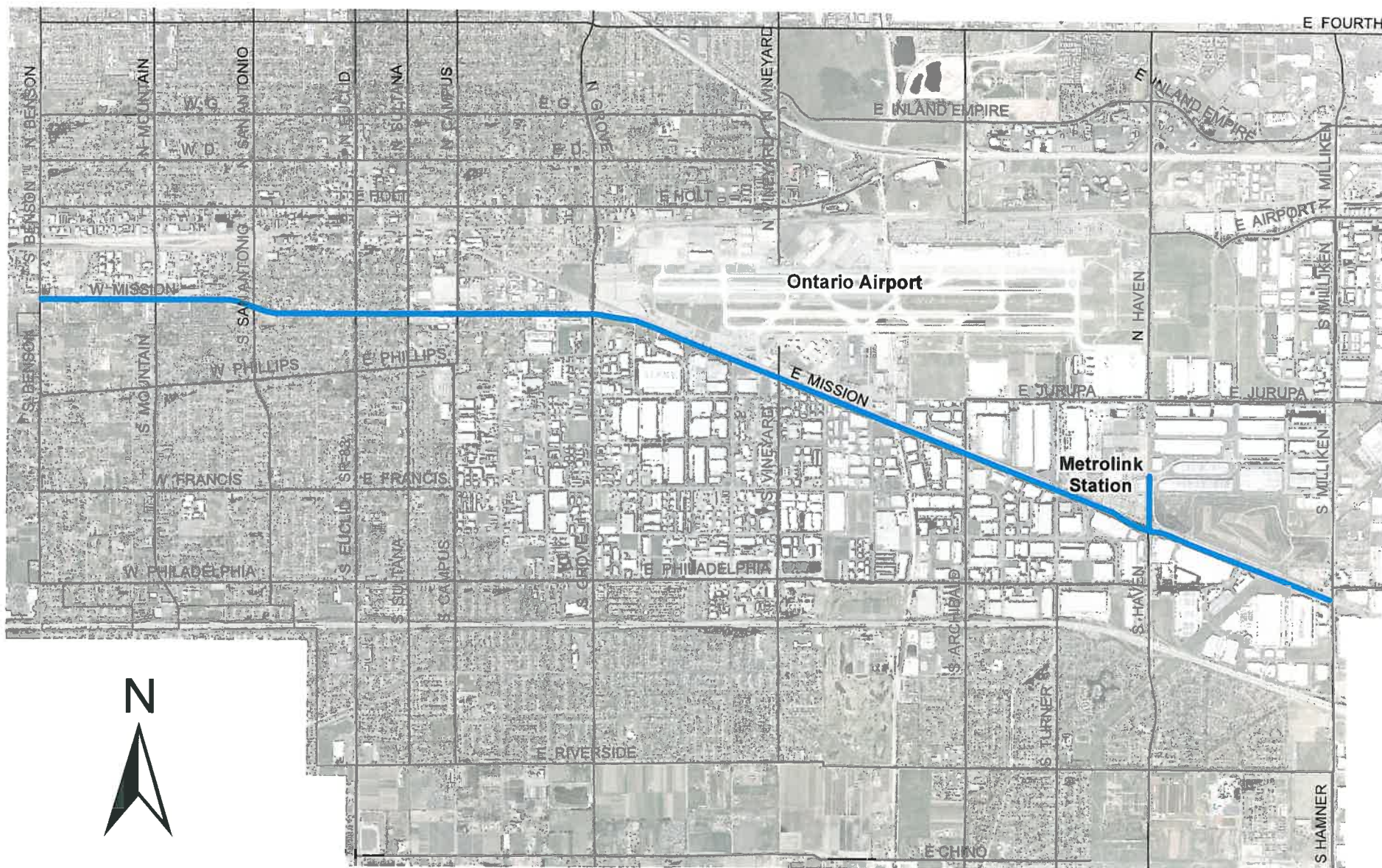
- Freeways
- Backbone Street System
- Multipurpose Trail
- - - Class II & Multipurpose Trail
- Class II
- Class III
- SCE Trails
- Cucamonga Creek Multipurpose Trail
- Bicycle Corridors

- 1) The City's goal is to provide an off-street multipurpose (pedestrian and bicycle travel) and Class II (on-street, striped, and signed bike lanes) bicycle system. Class III (on-street signed) bike lanes are to be used as connections between multipurpose and Class II bikeways.
- 2) Bicycle Corridors denote ideal bike routes wherein the exact facility type and alignment are not known at this time. Bicycle Corridors require further study to determine the exact alignment and may include combinations of off-street Multipurpose Trails, Class II, and Class III bikeways. In some cases, the bikeway may need to be rerouted to create a safer and/or more efficient connection.
- 3) This Bicycle Plan does not preclude the addition of extra bike routes.
- 4) SCE trails are located within SCE easements corridors and development is contingent upon SCE approval. SCE trails are considered to be potential trail sites since policies on allowing trails within easements can change without notice.

EXHIBIT A



## Mission Blvd. Bike Route and Metrolink Connection



**EXHIBIT B**

**— Mission Blvd. Bike Route Project Limits**

0 0.25 0.5 1 1.5 2  
Miles

# School Locations for ATP Grant Application

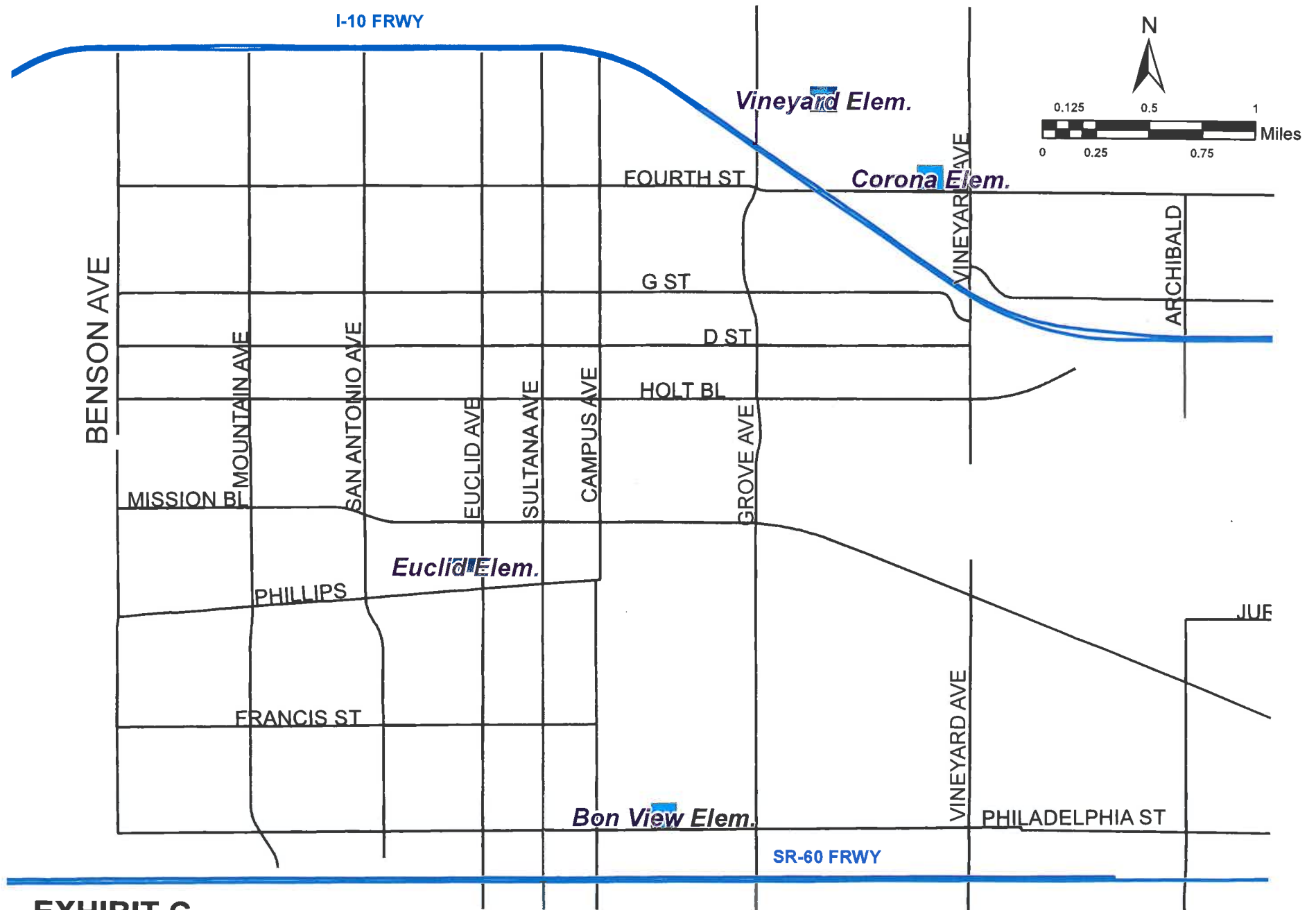


EXHIBIT C

# CITY OF ONTARIO

*Agenda Report*

May 6, 2014

SECTION:  
PUBLIC HEARINGS

**SUBJECT:** A PUBLIC HEARING TO CONSIDER AN ORDINANCE APPROVING A DEVELOPMENT AGREEMENT BETWEEN BROOKCAL ONTARIO, LLC, AND THE CITY OF ONTARIO TO PROVIDE FOR THE CONSTRUCTION OF UP TO 1,166 RESIDENTIAL UNITS AND 10 ACRES OF COMMERCIAL LAND AND REQUIRED INFRASTRUCTURE ON 178.66 ACRES OF LAND WITHIN THE AVENUE SPECIFIC PLAN, LOCATED SOUTH OF SCHAEFER AVENUE, NORTH OF EDISON AVENUE, BETWEEN TURNER AVENUE AND HAVEN AVENUE

**RECOMMENDATION:** That the City Council adopt a resolution approving an addendum to The Avenue Specific Plan Environmental Impact Report (SCH# 2005071109) and introduce and waive further reading of an ordinance approving the Development Agreement (File No. PDA10-002) between BrookCal Ontario, LLC, and the City of Ontario to provide for the construction of up to 1,166 residential units and 10 acres of commercial land on 178.66 acres of land within Planning Areas 9A, 9B, 10A, 10B and 11 of The Avenue Specific Plan, located south of Schaefer Avenue, north of Edison Avenue, between Turner Avenue and Haven Avenue (APN: 0218-201-05, 0218-201-30, 0218-201-39, 0218-201-42, 0218-201-43 and 0218-201-45).

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

Invest in the Growth and Evolution of the City's Economy

Operate in a Businesslike Manner

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

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

**FISCAL IMPACT:** The proposed Development Agreement will provide funding from a community facilities district (CFD) for additional City services required to support The Avenue Specific Plan development, thereby mitigating the increased cost associated with such services. In addition, the City

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

Prepared by: Scott Murphy

Department: Planning

City Manager

Approval: 

Submitted to Council/O.H.A. 05/06/2014

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

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

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

13



will receive Public Services Funding fees plus development impact, compliance processing, licensing, and permitting fees. No Original Model Colony revenue will be used to support the New Model Colony development.

**BACKGROUND:** BrookCal Ontario, LLC, (“BrookCal”) and the City recognize that the financial commitment required for construction in the New Model Colony is substantial. To adequately forecast these costs and gain assurance that the project may proceed under the existing policies, rules and regulations, BrookCal is entering into a Development Agreement with the City providing for the development of up to 1,166 dwelling units and 10 acres of commercial land. The Development Agreement provides funding for new City expenses created by the project, including operational costs related to the review, approval and administration of the BrookCal project, additional project related services, infrastructure and affordable housing requirements.

The Development Agreement proposes to include 178.66 acres of residential and commercial development as shown in Exhibit A (Specific Plan Map). The Agreement grants BrookCal a vested right to develop their project as long as BrookCal complies with the terms and conditions of The Avenue Specific Plan and EIR.

The main points of the Agreement are as follows:

- |                                      |   |
|--------------------------------------|---|
| Term:                                | Ten years with a five year option.  |
| Assignment:                          | Assignable with all terms and conditions applying to the assignee. The City has conditional approval and City will assess a processing fee.   |
| Fees:                                |   |
| Development Impact:                  | Varies by category (i.e.; Streets and Bridges, Police, Fire, Open Space/Parks etc.). This is a separate fee from existing City licensing fees and permits.  |
| Public Services Funding:             | \$1,800/unit fee due in two installments: <ul style="list-style-type: none"><li>1) \$900 within 30 days following the City’s start of construction of Fire Station No. 9.</li><li>2) \$900 upon issuance of remaining building permits, the cost of which shall increase each January 1, beginning January 1, 2014.</li></ul> |
| Community Facilities District (CFD): | City will cooperate with Owner to form a CFD to reimburse costs of the regional backbone infrastructure construction and maintenance of public facilities.  |
| Parks/Open Space:                    | As required by the General Plan, Owner will supply five acres per 1,000 projected population through park dedication and/or the payment of in-lieu fees.  |
| Housing:                             | Provide affordable housing as required by the General Plan through construction, rehabilitation, or by paying an In-Lieu Fee.   |

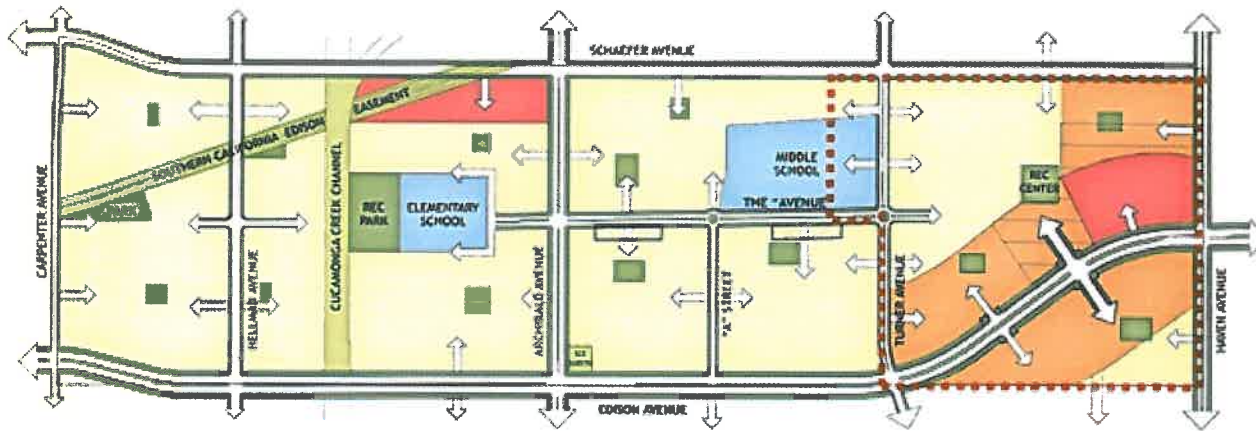


Compliance:	Owner will submit an annual monitoring report which the City will review for compliance. The City will assess a review/approval processing fee. If Owner is found to be in compliance, the City will issue a Certificate of Compliance. If noncompliance is identified, a letter of correction will be issued.
Schools:	Must satisfy Mountain View Elementary School District and Chaffey High School District school facilities requirements.
Termination:	The City may terminate the agreement if substantial evidence is found of noncompliance.

In considering the application at their meeting of April 8, 2014, the Planning Commission found that the Development Agreement was consistent with State law, The Ontario Plan, the City's Development Agreement policies, and other Development Agreements previously approved for NMC development, and unanimously recommended approval of the Development Agreement to the City Council.

**ENVIRONMENTAL REVIEW:** Pursuant to CEQA Section 21166 and Sections 15162 and 15163 of the CEQA Guidelines, an Addendum to the Certified Environmental Impact Report for The Avenue Specific Plan (SCH# 2005071109) was prepared by the City with regard to the Project ("Addendum"). The Addendum incorporates, by reference, the analysis contained in the Certified Environmental Impact Report for The Avenue Specific Plan, and addresses only those issues specific to the Project. As described in the Addendum and the Initial Study, the Certified Environmental Impact Report for The Avenue Specific Plan adequately describes the activity proposed. The Addendum concludes that the Project will not result in new, or substantially more adverse, significant environmental impacts than those disclosed in the Certified Environmental Impact Report for The Avenue Specific Plan.

# EXHIBIT "A" THE AVENUE SPECIFIC PLAN



## LEGEND

- LOW DENSITY RESIDENTIAL
- MEDIUM DENSITY RESIDENTIAL
- RETAIL
- MDR LIVE/WORK

- SCHOOL
- PARK
- SCE EASEMENT
- STORM DRAIN EASEMENT
- LDR LIVE/WORK  
(corner lots only)



..... Tentative Tract Map 18922 Boundary

**The Avenue**  
SPECIFIC PLAN

The New Model Colony • Ontario, California

Land Use Plan

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

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF ONTARIO, CALIFORNIA, ADOPTING AN ADDENDUM TO THE AVENUE SPECIFIC PLAN ENVIRONMENTAL IMPACT REPORT (SCH# 2005071109), ADOPTED FOR FILE NO. PSP05-003, PREPARED FOR FILE NO. PDA10-002 FOR WHICH AN INITIAL STUDY WAS PREPARED, ALL IN ACCORDANCE WITH THE CALIFORNIA ENVIRONMENTAL QUALITY ACT, AS AMENDED, AND MAKING FINDINGS IN SUPPORT THEREOF — APN: 0218-201-05, 0218-201-30, 0218-201-39, 0218-201-42, 0218-201-43 and 0218-201-45.

WHEREAS, prior to the adoption of this Resolution, the Planning Director of the City of Ontario prepared an Initial Study and an Addendum to The Avenue Specific Plan Environmental Impact Report (EIR) (File No. PSP05-003) for Planning File No. PDA10-002 (the "Addendum"), all in accordance with the requirements of the California Environmental Quality Act of 1970, together with state and local guidelines implementing said Act, all as amended to date (collectively "CEQA"); and

WHEREAS, File No. PDA10-002 (the "Project") analyzed under the Addendum consists of a Development Agreement for up to 1,166 residential units and 10 acres of land commercial, within Planning Areas 9A, 9B, 10A, 10B and 11 of The Avenue Specific Plan, located south of Schaefer Avenue, north of Edison Avenue, between Turner Avenue and Haven Avenue; and

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

WHEREAS, on December 9, 2006, the City Council certified an EIR (SCH# 2005071109) and a related Mitigation Monitoring and Reporting Program for File No. PSP05-003; and

WHEREAS, on February 2, 2010, the City Council approved an Amendment to The Avenue Specific Plan (File No. PSPA07-004) and certified a Supplemental EIR (SCH# 2005071109) and a related Mitigation Monitoring and Reporting Program for File No. PSPA10; and

WHEREAS, pursuant to Public Resources Code section 21166 and sections 15162 and 15163 of the State CEQA Guidelines, the Addendum to The Avenue Specific Plan EIR for File No. PSP05-003 was prepared by the City with regard to the Project. The Addendum incorporates, by reference, the analysis contained in the certified EIR and related Mitigation Monitoring and Reporting Program for File No's. PSP05-003 and PSPA07-004 and addresses only those issues specific to the Project. The Addendum concludes that the Project will not result in impacts beyond what was previously analyzed in the certified EIR, because the Project does not have new or substantially more severe significant environmental impacts, either directly or indirectly; and

WHEREAS, the City of Ontario is the lead agency on the Project, and the City Council is the decision-making body for the proposed approval to construct and otherwise undertake the Project; and

WHEREAS, the City Council has reviewed and considered the Addendum for the Project and intends to take actions on the Project in compliance with CEQA, and state and local guidelines implementing CEQA; and

WHEREAS, the Addendum for the Project and the certified EIR for File No. PSP05-002 are on file in the Planning Department, located at 303 East B Street, Ontario, CA 91764, and are available for inspection by any interested person at that location and are, by this reference, incorporated into this Resolution as if fully set forth herein;

NOW THEREFORE BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF ONTARIO AS FOLLOWS:

SECTION 1. THAT THE CITY COUNCIL does hereby make the following findings: (1) it has independently reviewed and analyzed the Addendum/Initial Study and other information in the record and has considered the information contained therein, prior to acting upon or approving the Project, (2) the Addendum prepared for the Project has been completed in compliance with CEQA and is consistent with state and local guidelines implementing CEQA, and (3) the Addendum represents the independent judgment and analysis of the City of Ontario, as lead agency for the Project.

SECTION 2. THAT THE CITY COUNCIL does hereby find that based upon the entire record of proceedings before it and all information received and pursuant to State CEQA Guidelines Section 15162 and 15164, that there is no substantial evidence that the Project will result in any new, increased, or substantially different significant impacts, other than those previously considered and addressed in The Avenue Specific Plan EIR for File No. PSP05-002 and that no changes or additions to the adopted EIR analyses are necessary, nor is there a need for any additional mitigation measures, and that none of the conditions described in State CEQA Guidelines Section 15162 that would require subsequent or supplemental CEQA review for the Project otherwise exist.

SECTION 3. The documents and materials that constitute the record of proceedings on which these findings have been based upon are located at the City of Ontario City Hall, 303 East B Street, Ontario, California 91764. The custodian for these records is the City Clerk of the City of Ontario

SECTION 4. The City Clerk of the City of Ontario shall certify as to the adoption of this Resolution.

PASSED, APPROVED AND ADOPTED this 6<sup>th</sup> day of May 2014.

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

ATTEST:

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

APPROVED AS TO LEGAL FORM:

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

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

I, MARY E. WIRTES, City Clerk of the City of Ontario, DO HEREBY CERTIFY that foregoing Resolution No. 2014-        was duly passed and adopted by the City Council of the City of Ontario at their regular meeting held May 6, 2014 by the following roll call vote, to wit:

AYES:           COUNCIL MEMBERS:

NOES:           COUNCIL MEMBERS:

ABSENT:        COUNCIL MEMBERS:

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

(SEAL)

The foregoing is the original of Resolution No. 2014-   duly passed and adopted by the Ontario City Council at their regular meeting held May 6, 2014.

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

(SEAL)

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

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF ONTARIO, CALIFORNIA, APPROVING A DEVELOPMENT AGREEMENT BETWEEN THE CITY OF ONTARIO AND BROOKCAL ONTARIO, LLC, FILE NO. PDA10-002, TO ESTABLISH THE TERMS AND CONDITIONS FOR RESIDENTIAL DEVELOPMENT OF 1,166 RESIDENTIAL UNITS AND 10 ACRES OF COMMERCIAL LAND ON 178.66 ACRES WITHIN PLANNING AREAS 9A, 9B, 10A, 10B AND 11 OF THE AVENUE SPECIFIC PLAN, LOCATED SOUTH OF SCHAEFER AVENUE, NORTH OF EDISON AVENUE, BETWEEN TURNER AVENUE AND HAVEN AVENUE, AND MAKING FINDINGS IN SUPPORT THEREOF — APN: 0218-201-05, 0218-201-30, 0218-201-39, 0218-201-42, 0218-201-43 and 0218-201-45.

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

“The Legislature finds and declares that:

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

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

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

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

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

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

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

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

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

WHEREAS, Attached to this Ordinance, marked Exhibit “A” and incorporated herein by this reference, is the proposed Development Agreement between BrookCal Ontario, LLC and the City of Ontario, File No. PDA10-002 concerning those 178.66 acres of land generally located south of Schaefer Avenue, north of Edison Avenue, between Turner Avenue and Haven Avenue and as legally described in the attached Development Agreement. Hereinafter in this Ordinance, the Development Agreement is referred to as the “Development Agreement”; and

WHEREAS, on the 28<sup>th</sup> day of November 2006, the Planning Commission of the City of Ontario conducted a duly noticed public hearing and issued a Resolution recommending City Council approval of The Avenue Specific Plan (PSP05-003); and

WHEREAS, on the 9<sup>th</sup> day of December 2006, the City Council of the City of Ontario certified The Avenue Specific Plan Environmental Impact Report (“EIR”) (SCH# 2005071109); and

WHEREAS, on the 16<sup>th</sup> day of January 2007, the City Council of the City of Ontario adopted Ordinance No. 2851 approving The Avenue Specific Plan; and

WHEREAS, on April 8, 2014, the Planning Commission of the City of Ontario conducted a hearing to consider the Agreement and concluded said hearing on that date. After considering the public testimony, the Planning Commission voted unanimously to recommend approval of the Agreement to the City Council; and

WHEREAS, The first action on the Project, on May 6, 2014, the approved a Resolution adopting an Addendum to The Avenue Specific Plan EIR (SCH# 20050711090) adopted by City Council on December 9, 2006, for File No. PSP05-003. The Addendum finds that the proposed project introduces no new significant environmental impacts, and all previously adopted mitigation measures are incorporated into the Project by reference; and

WHEREAS, on May 6, 2014, the City Council of the City of Ontario conducted a hearing to consider the Agreement and concluded said hearing on that date; and

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



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

SECTION 1. Based upon substantial evidence presented to the City Council during the above-referenced hearing on May 6, 2014, including written and oral staff reports, together with public testimony, the City Council hereby specifically finds as follows:

a. The Development Agreement applies to 178.66 acres of land within The Avenue Specific Plan, generally located south of Schaefer Avenue, north of Edison Avenue, between Turner Avenue and Haven Avenue and is presently vacant; and

b. The properties to the north of the project site are located within Planning Area 9 of the West Haven Specific Plan and are currently vacant and mass graded. The properties to the south of the project site are located within Planning Areas 1- 6 and 9 of the Grand Park Specific Plan and are developed with dairy and agriculture uses. The properties to the east of the project site are located within Planning Areas 14, 15, and 19 of the Rich Haven Specific Plan and are developed with dairy and agriculture uses. The properties to the west of the project site are located within Planning Areas 6A, 8A, and 8B of The Avenue Specific Plan and are developed with dairy and agriculture uses; and

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

d. The Development Agreement focuses on the 178.66 acres of land within The Avenue Specific Plan; and

e. The Development Agreement will provide for development of up to 1,166 residential units and 10 acres of commercial land as established by The Avenue Specific Plan; and

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

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

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

i. This Development Agreement will not be materially injurious or detrimental to the adjacent properties and will have a significant impact on the environment or the surrounding properties but the benefits of the project outweighs the potential environmental impacts and the mitigation of these impacts were addressed in The Avenue Specific Plan EIR certified by the City Council on December 9, 2006.

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

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

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

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

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

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

PASSED, APPROVED, AND ADOPTED this \_\_\_\_\_ day of \_\_\_\_\_ 2014.

---

PAUL S. LEON, MAYOR

ATTEST:

---

MARY E. WIRTES, MMC, CITY CLERK

APPROVED AS TO FORM:

---

BEST BEST & KRIEGER LLP  
CITY ATTORNEY

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

I, MARY E. WIRTES, City Clerk of the City of Ontario, DO HEREBY CERTIFY that foregoing Ordinance No. \_\_\_\_\_ was duly introduced at a regular meeting of the City Council of the City of Ontario held May 6, 2014, and adopted at the regular meeting held \_\_\_\_\_, 2014 by the following roll call vote, to wit:

AYES:           COUNCIL MEMBERS:

NOES:           COUNCIL MEMBERS:

ABSENT:        COUNCIL MEMBERS:

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

(SEAL)

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

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

(SEAL)

Exhibit A – Development Agreement  
(See Attached)

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

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

Exempt from Fees Per Gov. Code § 6301

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Space above this line for Recorder's Use Only

**DEVELOPMENT AGREEMENT**

**By and Between**

**City of Ontario, a California municipal corporation,**

**and**

**BrookCal Ontario LLC**

**a California limited liability company**

\_\_\_\_\_, 2014

**San Bernardino County, California**

## DEVELOPMENT AGREEMENT NO. PDA10-002

This Development Agreement (hereinafter "Agreement") is entered into effective as of the \_\_\_\_ day of \_\_\_\_\_, 2014 by and among the City of Ontario, a California municipal corporation (hereinafter "CITY"), and BrookCal Ontario, LLC, a California limited liability company (hereinafter "OWNER"):

### RECITALS

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

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

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

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

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

WHEREAS, all of the procedures of the California Environmental Quality Act have been met with respect to the Project and this Agreement in that The Avenue Specific Plan was certified by the City Council of the City of Ontario on December 19, 2006 (State Clearinghouse No. 2005071109) (the "FEIR"). The City Council found and determined that the FEIR was prepared in accordance with the requirements of the California Environmental Quality Act and adequately describes the impacts of the project described in the FEIR, which included consideration of this Agreement; and

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

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

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

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

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

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

### COVENANTS

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

#### 1. DEFINITIONS AND EXHIBITS.

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

1.1.1 "Agreement" means this Development Agreement.

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

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

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



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

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

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

1.1.7 "Development Impact Fee" means a monetary exaction, other than a tax or special assessment, whether characterized as a fee or a tax and whether established for a broad class of projects by legislation of general applicability or imposed on a specific project on an ad hoc basis, that is charged by a local agency to the applicant in connection with approval of a development project for the purpose of defraying all or a portion of the cost of public facilities related to the development project, and, for purposes of this Agreement only, includes fees collected under development agreements adopted pursuant to Article 2.5 of the Government Code (commencing with Section 65864) of Chapter 4 For purposes of this Agreement only, "Development Impact Fee" shall not include processing fees and charges imposed by CITY to cover the estimated actual costs to CITY of processing applications for Development Approvals or for monitoring compliance with any Development Approvals granted or issued, including, without limitation, fees for zoning variances; zoning changes; use permits; building inspections; building permits; filing and processing applications and petitions filed with the local agency formation commission or conducting preliminary proceedings or proceedings under the Cortese-Knox-Hertzberg Local Government Reorganization Act of 2000, Division 3 (commencing with Section 56000) of Title 5 of the Government Code; the processing of maps under the provisions of the Subdivision Map Act, Division 2 (commencing with Section 66410) of Title 7 of the Government Code; or planning services under the authority of Chapter 3 (commencing with Section 65100) of Division 1 of Title 7 of the Government Code, fees and charges as described in Sections 51287, 56383, 57004, 65104, 65456, 65863.7, 65909.5, 66013, 66014, and 66451.2 of the

Government Code, Sections 17951, 19132.3, and 19852 of the Health and Safety Code, Section 41901 of the Public Resources Code, and Section 21671.5 of the Public Utilities Code, as such codes may be amended or superseded, including by amendment or replacement.

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

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

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

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

1.1.12 “General Plan” means the General Plan adopted on January 27, 2010, by Ordinance No.\_\_\_\_.

1.1.13 “Improvement” or “Improvements” means those public improvements required to support the development of the Project, or a phase of the Project as described in the Phased Tract Map conditions for Tract Nos. 18922-1, 18922-2, 18922-3, and 18922-4, as further described in Exhibits “F”, F-Phase 1, and F-Phase 2, F-Phase 3 and F-Phase 4(F) (the “Infrastructure Improvements Exhibits”).

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

- (a) the conduct of businesses, professions, and occupations;
- (b) taxes and assessments;
- (c) the control and abatement of nuisances;

- (d) the granting of encroachment permits and the conveyance of similar rights and interests that provide for the use of or the entry upon public property;
- (e) the exercise of the power of eminent domain.

1.1.15 “Model Units” means a maximum of forty-one (41) units constructed by OWNER prior to the construction of any Production Units and not offered for sale and occupancy prior to the issuance of building permits for any Phase 1 Production Units.

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

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

1.1.18 “Phase 1 Improvements” means the public infrastructure and improvements that shall be designed, or designed, constructed and completed by OWNER prior to, and as a condition precedent to, CITY’s issuance of the first building permit for Production Units and as shown in Exhibit F- Phase 1 Improvements.”

1.1.19 “Phase 1 Units” means approximately three-hundred seventy-seven (377) units located within the portion of the Project designated in the Conceptual Phasing Plan (Exhibit E) as the Phase 1 Area for which the CITY issues building permits to OWNER and shall include up to forty-one (41) Model Units and such units are served by the Phase 1 Improvements.

1.1.20 “Phase 2 Improvements” means the public infrastructure and improvements that shall be designed, or designed, constructed and completed by OWNER prior to, and as a condition precedent to, CITY’s issuance of the first building permit for Phase 2 Units and as shown in Exhibit F – Phase 2 Improvements.”

1.1.21 “Phase 2 Recycled Water System Improvements” means the extension of the recycled water system to serve the Property in Haven and Riverside Avenues as described in the attached Exhibit F- Phase 2.

1.1.22 “Phase 2 Units” means approximately one-hundred ninety-four (194) units located within the portion of the Project designated in the Conceptual Phasing Plan (Exhibit E) as the Phase 2 Area for which the CITY issues building permits to OWNER and such units are served by the Phase 2 Improvements.

1.1.23 "Phase 3 Improvements means the public infrastructure and improvements that shall be designed, or designed constructed and completed by OWNER prior to, and as a condition precedent to, CITY's issuance of the first building permit for Phase 3 Units.

1.1.24 "Phase 3 Units" means approximately one-hundred ninety-eight (198) units located within the portion of the Project designated in the Conceptual Phasing Plan (Exhibit E) as the Phase 3 Area for which CITY issues building permits to OWNER and such units are served by the Phase 3 Improvements.

1.1.25 "Phase 4 (F) Improvements means the public infrastructure and improvements that shall be designed, or designed constructed and completed by OWNER prior to, and as a condition precedent to, CITY's issuance of the first building permit for Phase 4 (F) Units.

1.1.26 "Phase 4 (F) Units" means approximately three-hundred fifty-nine (359) units located within the portion of the Project designated in the Conceptual Phasing Plan (Exhibit E) as the Phase 4 (F) Area for which CITY issues building permits to OWNER and such units are served by the Phase 4 (F) Improvements.

1.1.27 "Production Units" means all residential or non-residential units constructed by OWNER for sale and occupancy and excludes a maximum of forty-one (41) Model Units constructed by OWNER for promotion of sales.

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

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

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

1.1.31 "Specific Plan" means that certain specific plan approved by the City Council on January 16, 2007 by the adoption of Ordinance No. \_\_\_\_ entitled PSP05-0003, and amended on \_\_\_\_\_, 2014 and titled "The Avenue Specific Plan

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

upon the factors and assumptions listed in the Construction Agreement Amendment.

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

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

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

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

Exhibit “A” — Legal Description of the Property.

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

Exhibit “C” — Existing Development Approvals.

Exhibit “D” — Existing Land Use Regulations.

Exhibit “E” — Conceptual Phasing Plan

Exhibit “F” — Infrastructure Improvements Exhibit

Exhibit “F-Phase 1” - Phase 1 Improvements Exhibit.

Exhibit “F-Phase 2” - Phase 2 Improvements Exhibit

Exhibit “F-Phase 3” – Phase 3 Improvements Exhibit

Exhibit “F-Phase 4 (F)” – Phase 4 Improvements Exhibit

Exhibit “G” – Partial Assignment and Assumption of Development Agreement

## 2. GENERAL PROVISIONS.

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

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

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

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

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

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

2.4 Assignment.

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

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

(b) Concurrent with any such sale, transfer or assignment, or within fifteen (15) business days thereafter, OWNER shall notify CITY's City Manager, in writing, of such sale, transfer or assignment and shall provide CITY with: (1) an executed agreement, in a form reasonably acceptable to CITY, by the purchaser, transferee or assignee and providing therein that the purchaser, transferee or assignee expressly and unconditionally assumes all the duties and obligations of

OWNER under this Agreement with respect to the portion of the Property so sold, transferred or assigned; and (2) the payment of the applicable processing charge to cover the CITY's review and consideration of such sale, transfer or assignment.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

2.4.6 Partial Assignment and Assumption. CITY and OWNER agree OWNER may partially assign obligations and rights under this Development Agreement, and all amendments hereto, to a purchaser, transferee or assignee of a lot, which has been subdivided subject to provisions of a Partial Assignment and Assumption of Development Agreement in a form substantially the same as in the attached Exhibit "G" attached hereto, and incorporated herein. Any such completed and executed Partial Assignment and Assumption of Development Agreement shall be submitted to CITY for approval pursuant to Section 2.4.1 of the Development Agreement. Within thirty (30) days following such submittal, CITY shall review, and if the above conditions are satisfied shall approve the partial assignment and release and notify the purchaser, transferee or assignee in writing thereof. No such release approved pursuant to this Subsection 2.4.6 shall cause, or otherwise affect, a release of OWNER from the duties and obligations under this Development Agreement that are retained by OWNER and excluded from the transfer or assignment.

2.5 Amendment or Cancellation of Agreement. This Agreement may be amended or cancelled in whole or in part only in the manner provided for in Government Code Section 65868.1. Any amendment of this Agreement, which amendment has been requested by OWNER, shall be considered by the CITY only upon the payment of the applicable processing charge. This provision shall not limit any remedy of CITY or OWNER as provided by this Agreement. Either Party or successor in interest, may



propose an amendment to or cancellation, in whole or in part, of this Agreement. Any amendment or cancellation shall be by mutual consent of the parties or their successors in interest except as provided otherwise in this Agreement or in Government Code Section 65865.1. For purposes of this section, the term "successor in interest" shall mean any person having a legal or equitable interest in the whole of the Property, or any portion thereof as to which such person wishes to amend or cancel this Agreement. The procedure for proposing and adopting an amendment to, or cancellation of, in whole or in part, this Agreement shall be the same as the procedure for adopting and entering into this Agreement in the first instance. Notwithstanding the foregoing sentence, if the CITY initiates the proposed amendment to, or cancellation of, in whole or in part, this Agreement, CITY shall first give notice to the OWNER of its intention to initiate such proceedings at least sixty (60) days in advance of the giving the public notice of intention to consider the amendment or cancellation.

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

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

- (a) Expiration of the stated term of this Agreement as set forth in Section 2.3.
- (b) Entry of a final judgment setting aside, voiding or annulling the adoption of the ordinance approving this Agreement.
- (c) The adoption of a referendum measure overriding or repealing the ordinance approving this Agreement.
- (d) Completion of the Project in accordance with the terms of this Agreement including issuance of all required occupancy permits and acceptance by CITY or applicable public agency of all required dedications.

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

residential units on which construction has not yet begun shall be refunded to OWNER by CITY.

2.7 Notices.

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

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

All notices shall be addressed as follows:

If to CITY:

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

with a copy to:

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

If to OWNER:

Dave Bartlett  
BrookCal Ontario, LLC  
3090 Bristol Street, Suite 200  
Costa Mesa, CA 92626  
Email: Dave.Bartlett@Brookfieldrp.com  
Phone: 714.200.1533  
Fax: 714.200.1833

with a copy to:

John A. Ramirez  
Rutan & Tucker, LLP

611 Anton Blvd.  
Suite 1400  
Costa Mesa, CA 92626  
Phone: (714) 662-4610  
Fax: (714) 546-9035

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

### 3. DEVELOPMENT OF THE PROPERTY.

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

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

3.3 Timing of Development. The parties acknowledge that OWNER cannot at this time predict when or the rate at which phases of the Property will be developed. Such decisions depend upon numerous factors which are not within the control of OWNER, such as market orientation and demand, interest rates, absorption, completion and other similar factors. Since the California Supreme Court held in Pardee Construction Co. v. City of Camarillo (1984) 37 Ca1. 3d 465, that the failure of the parties therein to provide for the timing of development resulted in a later adopted initiative restricting the timing of development to prevail over such parties' agreement, it is the parties' intent to cure that deficiency by acknowledging and providing that OWNER shall have the right to develop the Property in such order and at such rate and at such times as OWNER deems appropriate within the exercise of its subjective business judgment.

3.4 Conceptual Phasing Plan. Development of the Property is contingent in part on the phasing of area-wide infrastructure improvements over which the OWNER has control. Attached hereto as Exhibit "E" is OWNER's established phasing for the completion of needed infrastructure improvements and the availability of improvements and services to serve Phased Tract Map No.s 18922-1, 18922-2, 18922-3 18922-4.

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

3.4.2 Subject to the prior submittal by OWNER and approval by CITY of a plan to provide sufficient public infrastructure for the construction of a maximum number of forty-one (41) Model Units and a common private recreation and sales facilities, City may issue a maximum of forty-one (41) building permits for Model Units and a building permit or permits for the common private recreation and sales facilities. The plan to be submitted by OWNER for CITY approval shall describe the utilities and other infrastructure necessary to provide sufficient fire protection and other public health and safety requirements for the Model Units and other facilities.

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

- (a) Alter the permitted uses of the Property as a whole; or,
- (b) Increase the density or intensity of use of the Property as a whole; or,
- (c) Increase the maximum height and size of permitted buildings; or,
- (d) Delete a requirement for the reservation or dedication of land for public purposes within the Property as a whole; or,

- (e) Constitute a project requiring a subsequent or supplemental environmental impact report pursuant to Section 21166 of the Public Resources Code.

### 3.6 Reservations of Authority.

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

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

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

Land Use Regulations or any Subsequent Land Use Regulation not in conflict with the Development Plan.

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

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

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

3.7.1 Continuing Requirement for the Funding of Fire Station No. 9 by NMC Builders for Issuance of Building Permits. The issuance of building permits for Production Units within the Property is contingent upon, among other things, the provision of payments from NMC Builders for the completion of the construction of CITY's Fire Station No. 9. CITY shall not issue building permits for the construction of Production Units within the Property unless and until CITY receives payments from NMC Builders in the amount estimated by CITY to be necessary and sufficient for the completion of the design and construction of Fire Station No. 9. If OWNER requests that CITY issue building permits for any units,

including Model Units, prior to CITY's receipt of payments from NMC Builders in an amount deemed by CITY to be necessary and sufficient for the design and construction of Fire Station No. 9, then prior to and as a condition precedent to CITY's issuance of any such building permits for the construction of any units, OWNER shall deposit, or shall have deposited, with NMC Builders an amount equal to the OWNER's Fire Station No. 9 Capital Contribution allocable to such unit(s).

3.7.2 Continuing Requirement for the Funding of Regional Water and Storm Water Treatment Improvements. Prior to, and as a condition precedent to, CITY's approval of any final Tract Maps for the Property, CITY shall require OWNER to provide evidence of sufficient Water Availability Equivalents for the number of units included in the respective Tract Map. Prior to, and as a condition precedent to, CITY's issuance of grading permits for any grading of the Property or prior to, and as a condition precedent to, CITY's approval of any final Tract Maps for the Property, OWNER shall provide evidence of sufficient Storm Water Treatment Capacity Availability for the Project. CITY and OWNER agree that the evidence of Storm Water Treatment Capacity Availability for the Project shall be based on the net acreage of OWNER's Project for Tract Map Nos. 18922-1, 18922-2, 18922-3, 18922-4, as defined in the Construction Agreement Amendment and as of the Effective Date of this Agreement such net acreage has been determined to be 122.93 net acres. If the CITY has not issued sufficient Storm Water Treatment Capacity Availability for the issuance of grading permits for the Phase 1 area of OWNER's Project, because regional storm water treatment facilities are not completed by NMC Builders, then OWNER may provide and CITY, in its sole discretion, may accept evidence of sufficient Storm Water Treatment Capacity that is conditioned upon the future completion of the regional storm water treatment facilities.

3.7.3 OWNER agrees that development of the Property shall require the construction of a significant portion of permanent master planned water utility infrastructure, known as the "Francis Zone Water Loop." OWNER shall be responsible for the construction of the necessary extension of permanent master planned water utility infrastructure to the Property to the extent that such water utility infrastructure has not been constructed by NMC Builder LLC or others. OWNER acknowledges and agrees that no building permits for Production Units in Phase 1 shall be issued by CITY for the Project prior to the completion of the extension of permanent master planned water utility infrastructure to serve the Project.

3.7.4 OWNER agrees that development of the Project shall require the construction of a significant portion of Storm Drain facilities known as the "Turner Avenue Storm Drain" from the northern boundary of the Property to the connection with the County Line Channel. OWNER shall be responsible for the construction of the necessary extension of master planned Storm Drain facilities.

3.7.5 OWNER agrees that development of the Project shall require the construction of a portion of Edison Avenue, from Milliken Avenue to Archibald Avenue and Schaefer Avenue improvements from Haven Avenue to the Project limits. OWNER shall also be responsible for the construction of the master planned street and related improvements in the portion of Edison and Schaefer Avenues.

3.7.6 OWNER agrees that development of the Property shall require the construction of a significant portion of permanent master planned recycled water utility infrastructure to serve the Property with recycled water from two identified sources. OWNER shall be responsible for the design and construction of the necessary extension of permanent master planned recycled water utility infrastructure to the Property from Archibald Avenue as described in the attached Exhibit F – Phase 2 prior to, and as a condition precedent to, the issuance of the first building permit for Production Units in Phase 1 (Tract No. 18922-1). OWNER acknowledges and agrees that no building permits for Production Units in Phase 1 (Tract No. 18922-1) shall be issued by CITY for the Project prior to the completion of the extension of permanent master planned recycled water utility infrastructure on Archibald and Edison Avenues to serve the Project, as described in the attached Exhibit F – Phase 1 (Tract No. 18922-1). Additionally, OWNER shall be responsible for the design and construction of an additional extension of master planned recycled water infrastructure in Haven and Riverside Avenues to serve the Project as described in the attached Exhibit F - Phase 2 (Tract No. 18922-2). OWNER shall complete the design and initiate construction of the additional Phase 2 Recycled Water System Improvements no later than June 1, 2015 and prior to, and as a condition precedent CITY's issuance of a building permit for the 185<sup>th</sup> production unit of the Phase 1 Units (Tract No. 18922-1). OWNER shall complete construction of the Phase 2 Recycled Water System Improvements no later than June 1, 2016 and prior to, and as a condition precedent to, CITY's issuance of any of the Phase 2 units (Tract No. 18922-2). OWNER acknowledges and agrees that if OWNER has not completed the design and initiated construction of the Phase 2 Recycled Water System Improvements, prior to applying to CITY for the issuance of the 185<sup>th</sup> building permit for production units in Phase 2, then CITY shall withhold issuance of any further building permits for the Project until the design of the Phase 2 Recycled Water System Improvements is completed and construction has been initiated. OWNER also acknowledges and agrees that if OWNER has not completed the construction of the Phase 2 Recycled Water System Improvements, prior to applying to CITY for the issuance of any of the Phase 2 Units, then CITY shall withhold issuance of any further building permits for the Project until the Phase 2 Recycled Water System Improvements are completed. If NMC Builders LLC or others have completed the design and initiated construction of the required Phase 2 Recycled Water System Improvements prior to CITY's issuance of a building permit for the 185<sup>th</sup> production unit in Phase 1, and NMC Builders or others have completed the construction of the Phase 2 Recycled Water System Improvements prior to the issuance of any building



permits for the Phase 2 Units, then OWNER shall not be required to construct such improvements and shall not be eligible to receive the special reimbursement described in Section 4.3.1.1.

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

3.8.1 CITY Acquisition of Non-Construction Agreement Offsite Property. In the event OWNER is required to construct any public improvements on land not owned by OWNER, but such requirement is not based upon the Construction Agreement, Sections 3.8.1 and 3.8.2 shall control the acquisition of the necessary property interest(s) ("Non-Construction Agreement Offsite Property"). If the OWNER is unable to acquire such Non-Construction Agreement Offsite Property, and following the written request from the OWNER to CITY, CITY agrees to use reasonable and diligent good faith efforts to acquire the Non-Construction Agreement Offsite Property from the owner or owners of record by negotiation to the extent permitted by law and consistent with this Agreement. If CITY is unable to acquire the Non-Construction Agreement Offsite Property by negotiation within thirty (30) days after OWNER'S written request, CITY shall, initiate proceedings utilizing its power of eminent domain to acquire that Non-Construction Agreement Subject Property at a public hearing noticed and conducted in accordance with California Code of Civil Procedure Section 1245.235 for the purpose of considering the adoption of a resolution of necessity concerning the Non-Construction Agreement Offsite Property, subject to the conditions set forth in this Section 3.8. The CITY and OWNER acknowledge that the timelines set forth in this Section 3.8.1 represent the maximum time periods which CITY and OWNER reasonably believe will be necessary to complete the acquisition of any Non-Construction Agreement Offsite Property. CITY agrees to use reasonable good faith efforts to complete the actions described within lesser time periods, to the extent that it is reasonably able to do so, consistent with the legal constraints imposed upon CITY.

3.8.2 Owner's Option to Terminate Proceedings. CITY shall provide written notice to OWNER no later than fifteen (15) days prior to making an offer to the owner of the Non-Construction Agreement Offsite Property. At any time within that fifteen (15) day period, OWNER may, at its option, notify CITY that it wants CITY to cease all acquisition proceedings with respect to that Non-Construction

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

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

3.10 Tentative Tract Maps; Extension. With respect to applications by OWNER for tentative subdivision maps for portions of the Property, CITY agrees that OWNER may file and process tentative maps in accordance with Chapter 4.5 (commencing with Section 66498.1) of Division 2 of Title 7 of the California Government Code and the applicable provisions of CITY's subdivision ordinance, as the same may be amended from time to time. In accordance with the provisions of Section 66452.6 of the Government Code, each tentative subdivision map or tentative parcel map, heretofore or hereafter approved in connection with development of the Property, shall be deemed to have been granted an extension of time to and until the date that is five (5) years following the Effective Date of this Agreement.; The CITY's City Council may, in its discretion, extend any such map for an additional period of up to five (5) years beyond its original term, so long as the subdivider files a written request for an extension with the City prior to the expiration of the initial five (5) year term.

#### 4. PUBLIC BENEFITS.

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

#### 4.2 Development Impact Fees.

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

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

4.2.3 Parkland and Quimby Act Fees. Pursuant to the General Plan (OntarioPlan) Goal PR1, Policy PR1-5 (achievement of a park standard of 5 acres of parkland per 1,000 residents) OWNER shall provide improved parks, developed in accordance with the City's park standards in an amount equal to two (2) acres per 1,000 of projected population without credit, reimbursement, offset or consideration from City. Such areas shall either be dedicated to the City or transferred to a homeowners association. If approved by the City Manager, OWNER may satisfy this requirement through the development of non-public recreation facilities such as private recreational clubhouses or pool facilities. Credit for such private recreational facilities areas shall be limited to a maximum of 50% of the foregoing park development requirement. If OWNER's Project does not provide dedicated and developed park acreage equal to two (2) acres per 1,000 projected population, OWNER shall pay a fee in-lieu equal to the per acre estimated costs of acquisition and development of parkland in the City's Development Impact Fee for the calculated park acreage deficiency. Such in-lieu fee shall be due and payable within 10 days following the issuance of the first building permit issued to OWNER. OWNER shall also pay, without credit or offset, the Development Impact Fee for the Parkland Acquisition and Development Fee category (Quimby Act fees).

#### 4.3 Responsibility for Construction of Public Improvements.

4.3.1 Timely Construction of Public Infrastructure. The phasing of the infrastructure construction within the Property shall be as approved by the CITY. OWNER shall be responsible for the timely design, construction and completion of all public infrastructure required for each Phase of the Project as shown on the attached Exhibits for each Phase of the Project. OWNER shall also be

responsible for compliance with any and all other tract map conditions. Unless otherwise specified in a Subdivision Agreement and Tract Map conditions, all other required improvements and all other conditions or requirements of "A" Tract Map 18922-1 shall be completed and operational prior to, and as a condition precedent to, CITY's granting of a building permit for Phase 1 Units. Additionally, unless otherwise specified in a Subdivision Agreement/Tract Map conditions, all other required improvements and all other conditions for each "B" Tract Map in the Phase 1 area shall be completed and operational prior to, and as a condition precedent to, OWNER requesting and CITY's granting of a building permit for Production Units within each such "B" Tract Map. When OWNER is required to complete only the design of a required improvement as a condition of a phased tract map, the design of such required improvement shall be deemed completed when the design plans have been submitted by OWNER and approved by CITY.

4.3.1.1 OWNER shall design, or design construct and complete all public infrastructure required for Phase 1 of the Project as shown on Exhibit F- Phase 1 prior to, and as a condition precedent to, CITY's issuance of the first building permit for Production Units for the Property.

4.3.1.2 OWNER shall complete the design and initiate construction of the Phase 2 Recycled Water System Improvements as shown on Exhibit F – Phase 2 (Tract No. 18922-2), prior to, and as a condition precedent to, CITY's issuance of the 185<sup>th</sup> building permit for Production Units for the Property or by June 1, 2015 whichever comes first.

4.3.1.3 OWNER shall complete construction of the Phase 2 Recycled Water System Improvements as shown on the Exhibit F- Phase 2, prior to, and as a condition precedent to, CITY's issuance of the first building permit for the Phase 2 Units (Tract No. 18922-2) or by June 1, 2016, whichever comes first.

4.3.1.4 CITY and OWNER acknowledge that the two separate property developments adjacent to OWNER's Property have been required to pay to CITY, amounts In-lieu of the design and construction of a portion of Schaefer Avenue. CITY and OWNER also acknowledge that the design and construction of such Improvements on Schaefer Avenue are included in the Phase 1 Improvements as described in Exhibit – Phase 1, to be designed and constructed by OWNER. Upon completion of the design and construction of the specified Improvements to Schaefer Avenue by OWNER, and upon acceptance of such specified Improvements by CITY, CITY shall release the In-lieu payment amounts of Two Hundred Ninety Four Thousand, Five Hundred Eighty-Five Dollars (\$294,585) and Three Hundred Forty-Two Thousand, One Hundred eighteen Dollars (\$342,118) to OWNER, within thirty (30) days, if CITY has received such in-lieu payment. If CITY has not received either or both such In-lieu payments at the time of completion and acceptance of the specified Improvements, then CITY shall release such amounts to OWNER within 30 days after

such In-lieu payments are received by CITY. No other funds of CITY, including the General Fund, shall be liable for payment for the OWNER's costs to construct the specified Improvements to Schaefer Avenue.

4.3.1.5 OWNER shall file an application with CITY for approval of Tract Map 18922-2 and shall design, or design, construct and complete all public infrastructure for Phase 2 as shown in Exhibit F-Phase 2 prior to, and as a condition precedent to, CITY's issuance of any building permits for any Production Units in the portion of the Project designated as the Phase 2 area on the Conceptual Phasing Plan (Exhibit E). Unless otherwise specified in a Subdivision Agreement and Tract Map conditions, all other required improvements and all other conditions or requirements of "A" Tract Map 18922-2 shall be completed and operational prior to, and as a condition precedent to, CITY's granting of a building permit for any Phase 2 Units. Additionally, unless otherwise specified in a Subdivision Agreement and Tract Map conditions, all other required improvements and all other conditions for each "B" Tract Map in the Phase 2 area shall be completed and operational prior to, and as a condition precedent to, OWNER requesting and CITY's granting of any building permits for Production Units within any such "B" Tract Map.

4.3.1.6 OWNER shall file an application with CITY for approval of Tract Map 18922-3 and shall design, construct and complete all public infrastructure required for Phase 3 as shown in Exhibit F-Phase 3, prior to and as a condition precedent to, CITY's issuance of any building permits for any Production Units in the portion of the Project designated as the Phase 3 area on the Conceptual Phasing Plan (Exhibit E). Unless otherwise specified in a Subdivision Agreement and Tract Map conditions, all other required improvements and all other conditions or requirements of "A" Tract Map 18922-3 shall be completed and operational prior to, and as a condition precedent to, CITY's granting of any building permits for Phase 3 Units. Additionally, unless otherwise specified in a Subdivision Agreement/Tract Map conditions, all other required improvements and all other conditions for each "B" Tract Map in the Phase 3 area shall be completed and operational prior to, and as a conditions precedent to, OWNER requesting and CITY's granting of any building permits for Production Units within any such "B" Tract Map.

4.3.1.7 OWNER shall file an application with CITY for approval of Tract Map 18922-4 and shall design, construct and complete all public infrastructure required for Phase 4 as shown in Exhibit F-Phase 4 (F), prior to and as a condition precedent to, CITY's issuance of any building permits for any Production Units, including any commercial retail units in the portion of the Project designated as the Phase 4 area on the Conceptual Phasing Plan (Exhibit E). Unless otherwise specified in a Subdivision Agreement and Tract Map conditions, all other required improvements and all other conditions or requirements of "A" Tract Map

18922-4 shall be completed and operational prior to, and as a condition precedent to, CITY's granting of any building permits for Phase 4 Units, including any commercial retail units. Additionally, unless otherwise specified in a Subdivision Agreement and Tract Map conditions, all other required improvements and all other conditions for each "B" Tract Map in the Phase 4 area shall be completed and operational prior to, and as a conditions precedent to, OWNER requesting and CITY's granting of any building permits for Production Units within any such "B" Tract Map.

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

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

4.3.3.1 CITY Reimbursement for Phase 2 Recycled Water System Improvements. CITY agrees that the provisions of the DIF Credit and Reimbursement Agreement referenced above shall also include a requirement for a special reimbursement from CITY to OWNER upon completion and acceptance by CITY of the Phase 2 Recycled Water System Improvements. The amount of the reimbursement shall be forty-four percent (44%) of the eligible design and construction costs for the portion of the Phase 2 Recycled Water System Improvements located in Riverside Avenue between Haven Avenue and Archibald Avenue. At this time the estimated eligible costs for the design and construction of this portion of the Phase 2 Recycled Water System Improvements is one



million, eight hundred thousand dollars (\$1,800,000). The actual amount of the special reimbursement shall be determined upon completion and acceptance of the improvements by CITY and shall be based upon the actual eligible costs for the design and construction of the improvements or the estimated costs in CITY's DIF Program for the improvements, whichever is less.

#### 4.4 Affordable Housing Requirement.

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

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

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

housing costs or rents (as applicable) and maintenance and occupancy standards shall be prepared, executed and recorded against such units as a condition to the issuance of a building permit. The Affordable Housing Agreement shall hold a recorded priority position senior to any other non-statutory lien or encumbrance affecting the unit.

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

4.4.2.3 In-Lieu Fee. If OWNER has not fully complied with the requirements of Section 4.3.1 by providing the minimum number of affordable units through the construction of new affordable units or by the substantial rehabilitation of existing units, shall pay an **"Affordability In-Lieu Fee"**. If OWNER has not provided any affordable residential units by construction or rehabilitation, the Affordability In-Lieu fee shall be equal to Two Dollars Twenty Seven Cents (\$2.27) per square foot of residential development within OWNER's Project or, if pre-paid as set forth below, One Dollar Ninety-Nine Cents (\$1.99) per square foot of residential development within OWNER's Project. If OWNER has partially complied with the requirements of Section 4.4.1 by construction or rehabilitation of less than the minimum number of units, then the Affordability In-lieu Fee shall be recalculated and reduced in consideration of the number and type of affordable units provided. The Affordability In-Lieu Fee shall be paid by



OWNER to City no later than prior to the issuance of each building permit within OWNER's Project based on the square footage of the residential unit for which such building permit is sought; provided however that OWNER may, at OWNER's election, pre-pay such Affordability In-Lieu Fee by paying such Affordability In-Lieu Fee within thirty (30) days following the earliest discretionary approval by the City for OWNER's Project, including, but not limited to, any general plan amendment, specific plan adoption, development agreement, tentative map approval, variance, conditional use permit, or resolution of intention to form any public financing mechanism. The Two Dollars, Twenty Seven Cent (\$2.27) and the One Dollar Ninety Nine Cents (\$1.99) per square foot amounts shall automatically be increased annually, commencing on July 31, 2014, and automatically each July 1 thereafter. Such adjustment shall be based on the percentage increase (but no decrease) in the Consumer Price Index (Los Angeles-Anaheim-Riverside County), 1950-2001 (1982-84=100) over the preceding year. The pre-paid Affordability In-Lieu Fee shall be calculated based on the maximum floor area ratio (FAR) permitted within the General Plan and any applicable FAR contained within the applicable specific plan, whichever is greater, and the Maximum Development Density. For purposes of this Agreement, "**Maximum Development Density**" shall be determined by multiplying the OWNER's Project's density for residential development potential as set forth in the General Plan or the applicable Specific Plan, whichever is less, by the net acreage of land within OWNER's Project. All "Affordability In-Lieu Fees" collected by the City shall be used to promote the construction of affordable housing within the City.

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

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

against said entity by the City. Any such covenants shall be approved by the Planning Director and the City Attorney.

#### 4.4 Schools Obligations.

##### 4.4.1 Written Evidence of Compliance with Schools Obligations.

OWNER shall, either through joint or individual agreements between OWNER and the applicable school district(s), shall satisfy its new school obligations. The new school obligations for the Mountain View School District in the New Model Colony area have been projected to include the acquisition or dedication of school sites for, and construction of, up to eight (8) schools. Of these eight (8) schools, six (6) are to be elementary (K-5) grade schools and two (2) are to be middle grade schools. The new school obligations for the Chaffey Joint Union High School District in the New Model Colony area have been projected to include the dedication of a school site for, and construction of, an additional high school. The new school obligations for the applicable school district shall be met by a combination of the following: (1) designating and dedicating school site(s) within the Property as set forth in the General Plan, and/or (2) paying school impact fees, (3) entering into a joint mitigation agreement or individual mitigation agreements, or (4) any combination of the foregoing. Written evidence of approval by the applicable school district that OWNER has met their school obligations may be required by the City as the condition to the issuance by the City of any entitlements for OWNER's Project. In the event OWNER is unable to provide such written evidence from the applicable school district(s), the City shall have the right to decline to honor any DIF Credit, Certificates of MDD Availability, Certificates of Storm Water Treatment Capacity Availability, or any combination thereof, presented by such OWNER, without liability to the City. To the extent that a joint mitigation agreement is approved by the applicable school district(s), and OWNER is a participant in good standing in such mitigation agreement, OWNER shall be deemed to have mitigated its new school obligations under this Section 4.4.1.

#### 4.5 Public Services Funding Fee.

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

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

4.5.2.1 First Installment (Residential uses). The First Installment of the Public Services Funding Fee shall be Nine Hundred Ten dollars (\$910.00) per residential dwelling unit. The First Installment shall be based upon the **"Maximum Development Density"** of the OWNER Project, or the number of units described on "B Maps" if approved, as defined in Section 3.7.2.3 of the First Amended and Restated Construction Agreement. The First Installment shall be due and payable 30 days following City's start of construction of Fire Station No. 9. If OWNER applies for the first production building permit, prior to CITY's start of construction of Fire Station No. 9 then the First Installment is due for all residential units based on the Maximum Development Density of the OWNER's Project (or number of units described on B Tract maps) at the time the first production building permit is issued.

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

4.5.2.2 Second Installment (Residential Uses). The Second Installment of the Public Services Funding Fee shall be Nine Hundred Ten dollars (\$910) per residential unit. The Second Installment shall be paid at the time of the issuance of each building permit for the Project. The amount of the Second Installment shall increase automatically by percentage increase (but no decrease) in the Consumer Price Index (Los Angeles-Anaheim-Riverside County), 1950-2001 (1982-84=100) over the preceding year on January 1<sup>st</sup> of each year, beginning on January 1, 2015. OWNER may exercise the option to pay the Second Installment amount for all residential units, a portion of the residential units, or for the remainder of the residential units within OWNER's Project on or before each December 31st, before the Second Installment amount is automatically increased.

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

any single installment amounts for the remainder of the non-residential square footage within the Project on or before December 31st, before the Single Installment amount is automatically increased.

#### 4.6 Net MDD/Water Availability Equivalents.

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

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

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

#### 4.7 Storm Water Capacity Availability.

4.7.1 Requirement for Storm Water Treatment Capacity Availability. OWNER shall provide evidence of sufficient Storm Water Treatment Capacity Availability as reserved in a Certificate of Storm Water Treatment Capacity Availability at the same time, and in the same manner, and subject to the same limitations as provided for the assignment of Certificates of Net MDD Availability in Section 4.6 of this Agreement. If the CITY has not issued sufficient Storm Water Treatment Capacity Availability for the issuance of grading permits for the Phase 1 area of OWNER's Project, because regional storm water treatment facilities are not completed by NMC Builders, then OWNER shall provide and CITY, in its sole discretion, may accept evidence of sufficient Storm Water

Treatment Capacity that is conditioned upon the future completion of the regional storm water treatment facilities.

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

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

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

#### 4.9 Compliance with Public Benefits Requirements.

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

4.10 Undergrounding of SCE Transmission Lines. OWNER shall be subject to all City requirements regarding undergrounding of utilities, including SCE lines.

#### 5. FINANCING OF PUBLIC IMPROVEMENTS.

5.1 Financing Mechanism(s). CITY will cooperate with OWNER in the formation of a CFD, or CFDs, to include all of the Project, to provide a financing mechanism to reimburse the OWNER for funds paid to NMC Builders LLC for OWNER's share of the costs of public infrastructure pursuant to the Construction Agreement. Notwithstanding such reimbursements, OWNER shall remain entitled to DIF Credits as provided for in Article 3 of the Construction Agreement and/or as

provided for in a separate Fee Credit Agreement between CITY and OWNER. OWNER agrees that, prior to the recordation of any B Map, the property subject to such B Map shall be included in a CFD to finance City services through annual special taxes that will initially be \$1,387.00 per Single Family Detached Dwelling Unit, \$1,202.00 per Multiple-Family Dwelling Unit, \$1,008.00 per Gated Apartment Community Dwelling Unit, and \$.26 per square foot for Non-Residential buildings. These amounts shall be subject to an automatic increase at a rate not to exceed four (4%) percent per year. CITY shall be the sole and exclusive lead agency in the formation of any CFD, assessment district or other public financing mechanism within the Property; provided however, that the proceeds of any such CFD, assessment district, or financing mechanism may be used, subject to restrictions that may be imposed by applicable law, for the purposes of acquiring, constructing or maintaining public facilities to be owned or operated by other public agencies, including, without limitation those facilities owned or operated by a school district. In addition to the rights of the CITY pursuant to section 5.2 hereof, CITY shall have the right, but not the obligation, to condition the formation of any CFD, assessment district or other public financing mechanism within the Property on the OWNER mitigating all Project-related impacts to the applicable school district(s) as required by such school district(s). Written evidence by such school district(s) may be required by the CITY as the condition to the formation of any CFD, assessment district or other public financing mechanism within the Property, or any steps preliminary thereto, including, without limitation, the adoption of any resolution of intention to form such CFD, assessment district or other public financing mechanism within the Property. It is not the intent of the parties hereto, by this provision, to prohibit or otherwise limit the City's ability to take any and all necessary steps requisite to the formation of the CFD to finance City services through annual special taxes as set forth in this Section 5.1. Formation of any CFD, assessment district or other public financing mechanism within the Property, shall be subject to CITY's ability to make all findings required by applicable law and complying with all applicable legal procedures and requirements including, without limitation, CITY's public financing district policies as such policies may be amended from time to time. Notwithstanding the foregoing, it is acknowledged and agreed by the parties that nothing contained in this Agreement shall be construed as requiring CITY or the City Council to form any such district or to issue and sell bonds.

## 6. REVIEW FOR COMPLIANCE.

### 6.1 Periodic and Special Reviews.

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

intent to conduct a Special Review pursuant to Sections 6.1.2 through 6.1.6. Issuance of a notice of continuing compliance may be issued by the City Manager or his designee.

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

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

6.1.3 Notice of Special Review. The City Manager shall begin the special review proceeding by giving notice that the CITY intends to undertake a special review of this Agreement to the OWNER. Such notice shall be given at least ten (10) days in advance of the time at which the matter will be considered by the Planning Commission.

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

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

6.1.6 Procedure Upon Findings.

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

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

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

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

The notice shall contain:

- (a) The time and place of the hearing;
- (b) A statement as to whether or not the CITY proposes to terminate or to modify this Agreement; and
- (c) Other information that the CITY considers necessary to inform the OWNER of the nature of the proceeding.

6.3 Hearing on Modification or Termination. At the time and place set for the hearing on modification or termination, the OWNER shall be given an opportunity to be heard. The OWNER shall be required to demonstrate good faith compliance with the terms and conditions of this Agreement. The burden of proof on this issue shall be on the OWNER. If the City Council finds, based upon substantial evidence in the administrative record, that the OWNER has not complied in good faith with the terms and conditions of the agreement, the City Council may terminate or modify this Agreement and impose those conditions to the action it takes as it considers necessary to protect the interests of the CITY. The decision of the City Council shall be final, subject only to judicial review pursuant to Section 1094.5 of the Code of Civil Procedure.

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

7. [RESERVED]

8. DEFAULT AND REMEDIES.



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

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

- (a) For any breach of this Agreement or for any cause of action which arises out of this Agreement; or
- (b) For the taking, impairment or restriction of any right or interest conveyed or provided under or pursuant to this Agreement; or
- (c) Arising out of or connected with any dispute, controversy or issue regarding the application or interpretation or effect of the provisions of this Agreement.

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

- (a) Money damages are unavailable against CITY as provided in Section 8.1 above.
- (b) Due to the size, nature and scope of the project, it may not be practical or possible to restore the Property to its natural condition once implementation of this Agreement has begun. After such implementation, OWNER may be foreclosed from other choices it may have had to utilize the Property or portions thereof. OWNER has invested significant time and resources and performed extensive planning and processing of the Project in agreeing to the terms of this Agreement and will be investing even more significant time and resources in implementing the Project in reliance upon the terms of this Agreement, and it is not possible to determine the sum of money which would adequately compensate OWNER for such efforts.

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

upon the CITY because it entered into this Agreement or because of the terms of this Agreement.

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

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

## 9. THIRD PARTY LITIGATION.

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

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

responsible to defend, indemnify, or hold harmless CITY. CITY may in its discretion participate in the defense of any such claim, action or proceeding.

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

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

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

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

## 10. MORTGAGEE PROTECTION.

The parties hereto agree that this Agreement shall not prevent or limit OWNER, in any manner, at OWNER's sole discretion, from encumbering the Property or any portion thereof or any improvement thereon by any mortgage, deed of trust or other security device securing financing with respect to the Property. CITY acknowledges that the lenders providing such financing may require certain Agreement interpretations and modifications and agrees upon request, from time to time, to meet with OWNER and representatives of such lenders to negotiate in good faith any such request for

interpretation or modification. CITY will not unreasonably withhold its consent to any such requested interpretation or modification provided such interpretation or modification is consistent with the intent and purposes of this Agreement. Any Mortgagee of the Property shall be entitled to the following rights and privileges:

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

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

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

(d) Any Mortgagee who comes into possession of the Property, or any part thereof, pursuant to foreclosure of the mortgage or deed of trust, or deed in lieu of such foreclosure, shall take the Property, or part thereof, subject to the terms of this Agreement. Notwithstanding any other provision of this Agreement to the contrary, no Mortgagee shall have an obligation or duty under this Agreement to perform any of OWNER's obligations or other affirmative covenants of OWNER hereunder, or to guarantee such performance; provided, however, that to the extent that any covenant to be performed by OWNER is a condition precedent to the performance of a covenant by CITY, the performance thereof shall continue to be a condition precedent to CITY's performance hereunder, and further provided that any sale, transfer or assignment by any Mortgagee in possession shall be subject to the provisions of Section 2.4 of this Agreement.

## 11. MISCELLANEOUS PROVISIONS.

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

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

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

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

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

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

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

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

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

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

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

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

11.13 Successors in Interest. The burdens of this Agreement shall be binding upon, and the benefits of this Agreement shall inure to, all successors in interest to the parties to this Agreement. All provisions of this Agreement shall be enforceable as equitable servitudes and constitute covenants running with the land. Each covenant to do or refrain from doing some act hereunder with regard to development of the Property: (a) is for the benefit of and is a burden upon every portion of the Property; (b) runs with the Property and each portion thereof; and, (c) is binding upon each party and each successor in interest during ownership of the Property or any portion thereof.

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

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

11.16 Project as a Private Undertaking. It is specifically understood and agreed by and between the parties hereto that the development of the Project is a private

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

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

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

11.19 Agent for Service of Process. In the event OWNER is not a resident of the State of California or it is an association, partnership or joint venture without a member, partner or joint venturer resident of the State of California, or it is a foreign corporation, then in any such event, OWNER shall file with the Planning Director, upon its execution of this Agreement, a designation of a natural person residing in the State of California, giving his or her name, residence and business addresses, as its agent for the purpose of service of process in any court action arising out of or based upon this Agreement, and the delivery to such agent of a copy of any process in any such action shall constitute valid service upon OWNER. If for any reason service of such process upon such agent is not feasible, then in such event OWNER may be personally served with such process out of this County and such service shall constitute valid service upon OWNER. OWNER is amenable to the process so served, submits to the jurisdiction of the Court so obtained and waives any and all objections and protests thereto. OWNER for itself, assigns and successors hereby waives the provisions of the Hague Convention (Convention on the Service Abroad of Judicial and Extra Judicial Documents in Civil or Commercial Matters, 20 U.S.T. 361, T.I.A.S. No. 6638).

11.20 Estoppel Certificate. Within thirty (30) business days following a written request by any of the parties, the other party shall execute and deliver to the requesting party a statement certifying that (i) either this Agreement is unmodified and in full force and effect or there have been specified (date and nature) modifications to the Agreement, but it remains in full force and effect as modified; and (ii) either there are no known current uncured defaults under this Agreement or that the responding party alleges that specified (date and nature) defaults exist. The statement shall also provide any other reasonable information requested. The failure to timely deliver this statement

shall constitute a conclusive presumption that this Agreement is in full force and effect without modification except as may be represented by the requesting party and that there are no uncured defaults in the performance of the requesting party, except as may be represented by the requesting party. OWNER shall pay to CITY all costs incurred by CITY in connection with the issuance of estoppel certificates under this Section 11.20 prior to CITY's issuance of such certificates.

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

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

**[SIGNATURES CONTAINED ON FOLLOWING PAGE]**



**SIGNATURE PAGE  
TO DEVELOPMENT AGREEMENT**

**"OWNER"**

BrookCal Ontario, L.L.C.,  
a California limited liability company

By: \_\_\_\_\_  
Name: Dave Bartlett  
Its: Vice President  
Date: \_\_\_\_\_

**"CITY"**

CITY OF ONTARIO

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

Date: \_\_\_\_\_

ATTEST:

\_\_\_\_\_  
City Clerk, Ontario

APPROVED AS TO FORM:

BEST, BEST & KREIGER LLP

\_\_\_\_\_  
City Attorney

# CALIFORNIA ALL-PURPOSE ACKNOWLEDGMENT

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

On \_\_\_\_\_, 2014  
before me, \_\_\_\_\_  
Date Name And Title Of Officer (e.g. "Jane Doe, Notary Public")

personally appeared \_\_\_\_\_  
Name of Signer(s)

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

WITNESS my hand and official seal.

\_\_\_\_\_  
Signature of Notary Public

## OPTIONAL

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

### CAPACITY CLAIMED BY SIGNER

- ☐ Individual  
☐ Corporate Officer

\_\_\_\_\_  
Title(s)

- ☐ Partner(s) ☐ Limited  
☐ General  
☐ Attorney-In-Fact  
☐ Trustee(s)  
☐ Guardian/Conservator  
☐ Other: \_\_\_\_\_

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

### DESCRIPTION OF ATTACHED DOCUMENT

\_\_\_\_\_  
Title or Type of Document

\_\_\_\_\_  
Number Of Pages

\_\_\_\_\_  
Date Of Document

\_\_\_\_\_  
Signer(s) Other Than Named Above

**EXHIBIT "A"**  
**TO DEVELOPMENT AGREEMENT**

**Legal Description of Property**

Real Property in the City of Ontario, County of San Bernardino, State of California, described as follows:

APN: 0218-201-42-0-000

Parcel 1 of Parcel Map No. 5022, in the County of San Bernardino, State of California, as per plat recorded in Book 47 of Parcel Maps, Pages 87 and 88, records of said County.

APN: 0218-201-43-0-000

Parcel 2 of Parcel Map No. 5022, in the County of San Bernardino, State of California, as per plat recorded in Book 47 of Parcel Maps, Pages 87 and 88, records of said County.

APN: 0218-201-39-0-000

Parcel 2 of Parcel Map No. 2764, in the County of San Bernardino, State of California, as per plat recorded in Book 24 of Parcel Maps, Pages 44 and 45, records of said County.

APN: Portion of 0218-201-05-0-000

The east ½ of the northwest ¼ of the northeast ¼ of Section 14, Township 2 South, Range 7 West, San Bernardino Meridian, in the City of Ontario, County of San Bernardino, State of California, according to the official plat thereof.

APN: Portion of 0218-201-05-0-000

The west ½ of the northwest ¼ of the northeast ¼ of Section 14, Township 2 South, Range 7 West, San Bernardino Meridian, in the City of Ontario, County of San Bernardino, State of California, according to the official plat thereof.

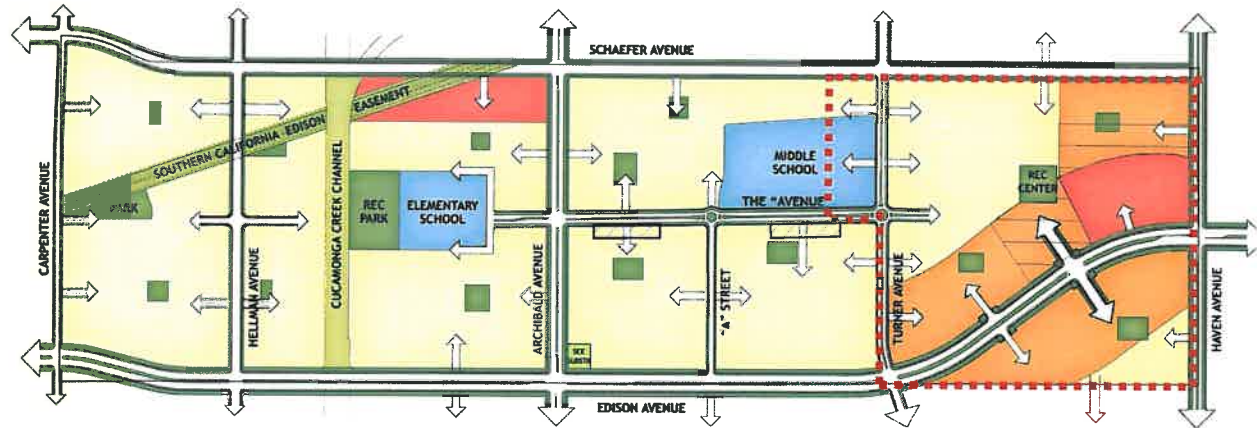
APN: 0218-201-45-0-000

Parcel 2 of Parcel Map No. 14273, in the County of San Bernardino, State of California, as shown by map on file in Book 169, Pages 63 and 64 of Parcel Maps, records of San Bernardino County, California.

APN:0218-201-30-0-000

The northwest ¼ of the northeast ¼ of Section 14, Township 2 South, Range 7 West, San Bernardino Meridian, in the City of Ontario, County of San Bernardino, State of California, according to the United States government township plat thereof approved by the Surveyor General December 30, 1881.

# EXHIBIT "B" TO DEVELOPMENT AGREEMENT



## LEGEND

- LOW DENSITY RESIDENTIAL
- MEDIUM DENSITY RESIDENTIAL
- RETAIL
- MDR LIVE/WORK

- SCHOOL
- PARK
- SCE EASEMENT
- STORM DRAIN EASEMENT
- LDR LIVE/WORK (corner lots only)



..... Tentative Tract Map 16922 Boundary

**TheAvenue**  
SPECIFIC PLAN

The New Model Colony • Ontario, California

Land Use Plan

**EXHIBIT "C"**  
**TO DEVELOPMENT AGREEMENT**

**Existing Development Approvals**

On November 28, 2006, the Planning Commission:

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

On December 9, 2006, the City Council:

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

On January 16, 2007, the City Council:

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

On February 2, 2010, the City Council:

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

On April 8, 2014, the Planning Commission:

- a) Adopted Resolution No. PC14-\*\*\* recommending City Council approval of the BrookCal Ontario, LLC, Development Agreement Amendment

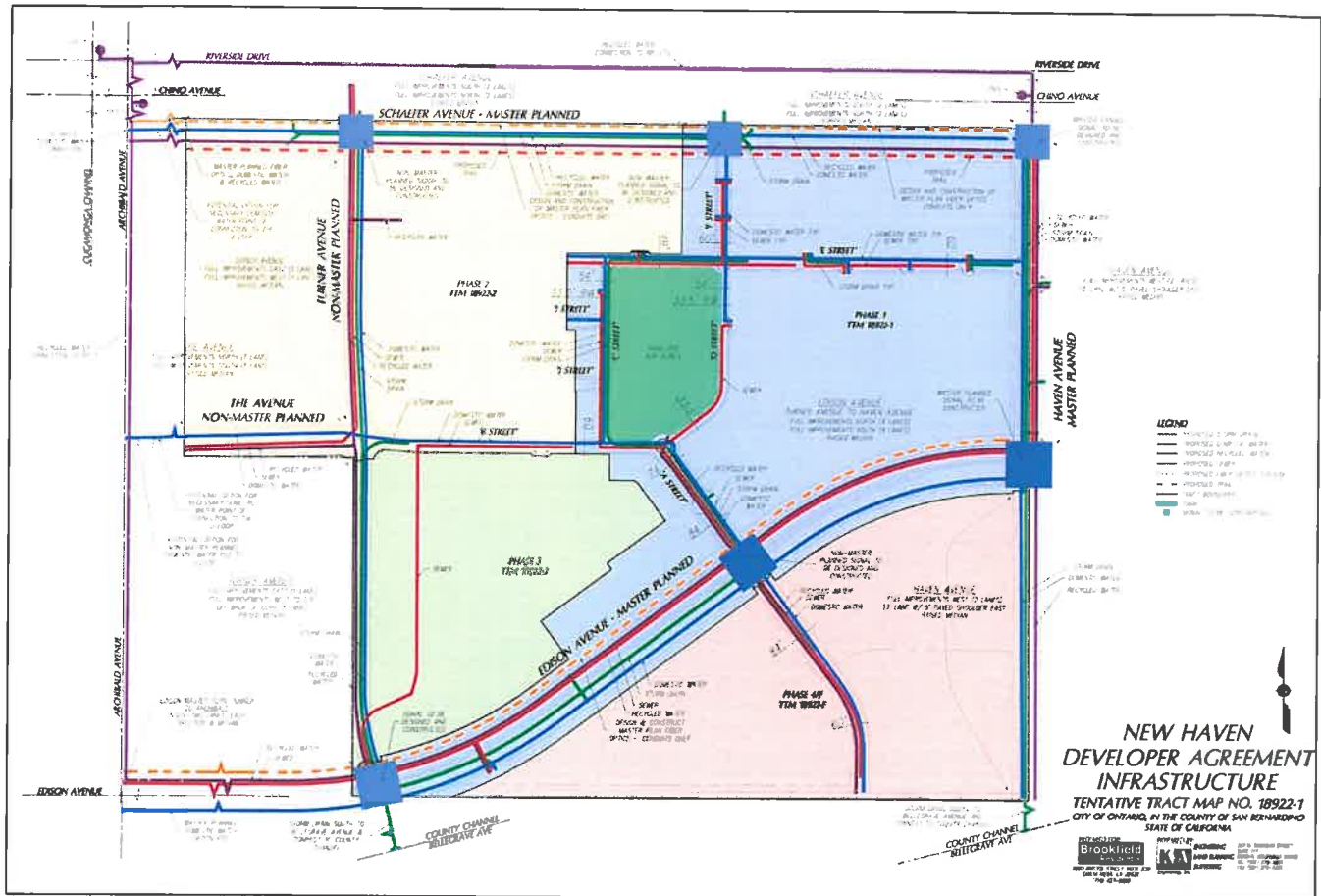
**EXHIBIT "D"**  
**TO DEVELOPMENT AGREEMENT**

**Existing Land Use Regulations**

These documents are attached by reference only:

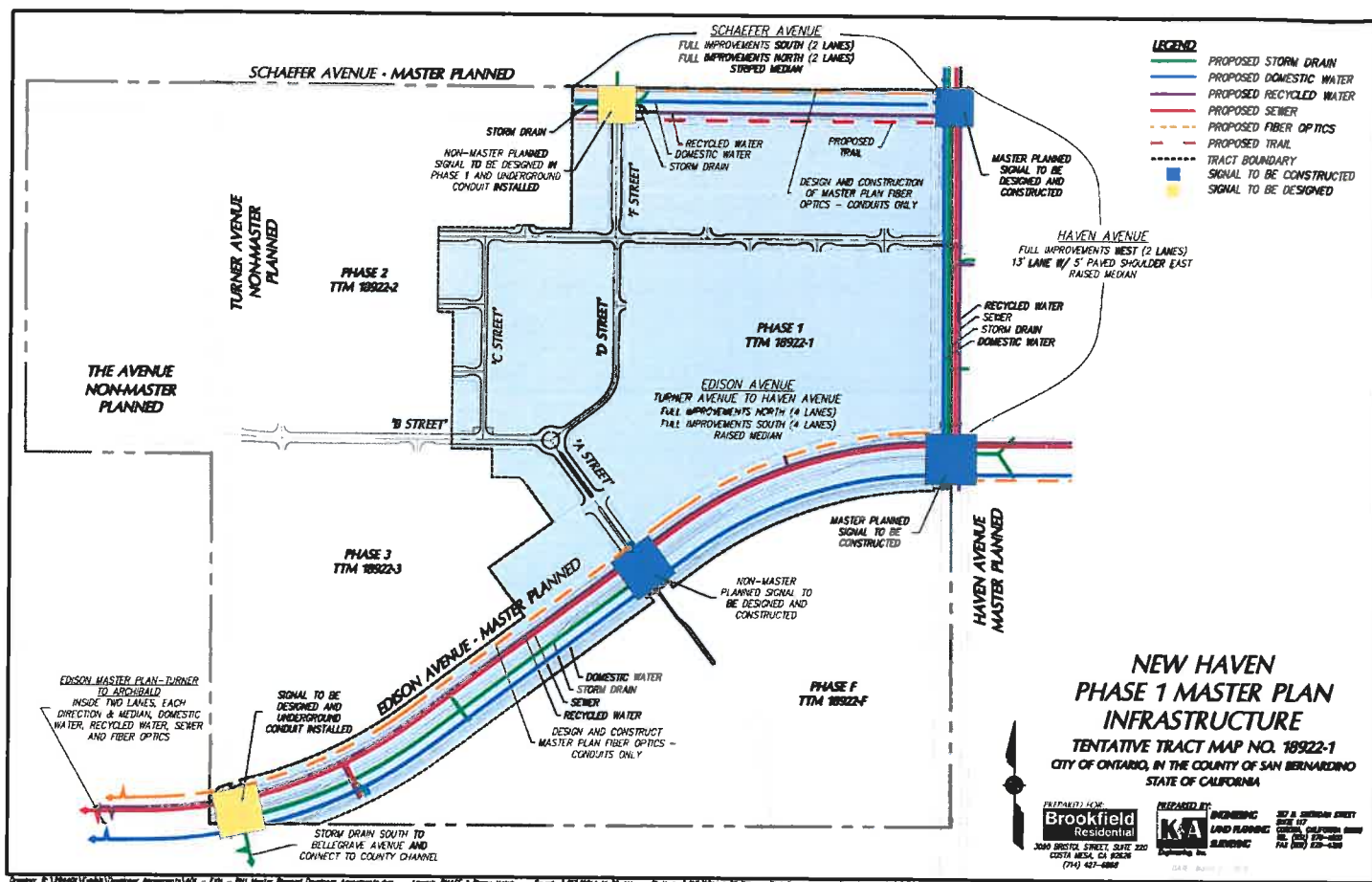
1. The Avenue Specific Plan
2. The Avenue Environmental Impact Report and Supplemental EIR, Resolution Nos. 2006-131 and 2010-010
3. City of Ontario Municipal Code, Titles:
  - a. Six - Sanitation & Health
  - b. Seven - Public Works
  - c. Eight - Building Regulations
  - d. Nine - Development Code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

## Conceptual Phasing Plan

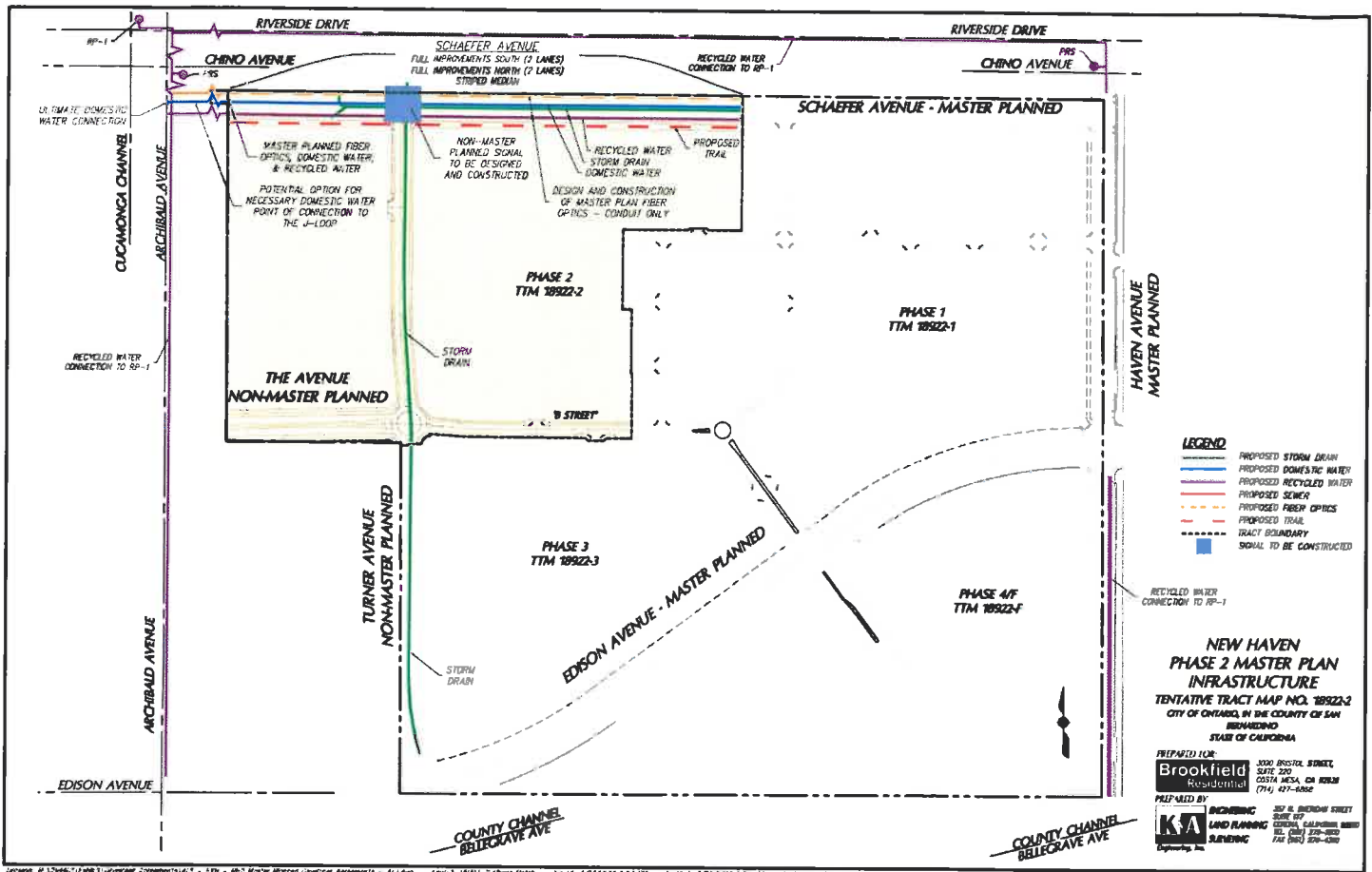


# Exhibit "F"

## Required Infrastructure Improvements

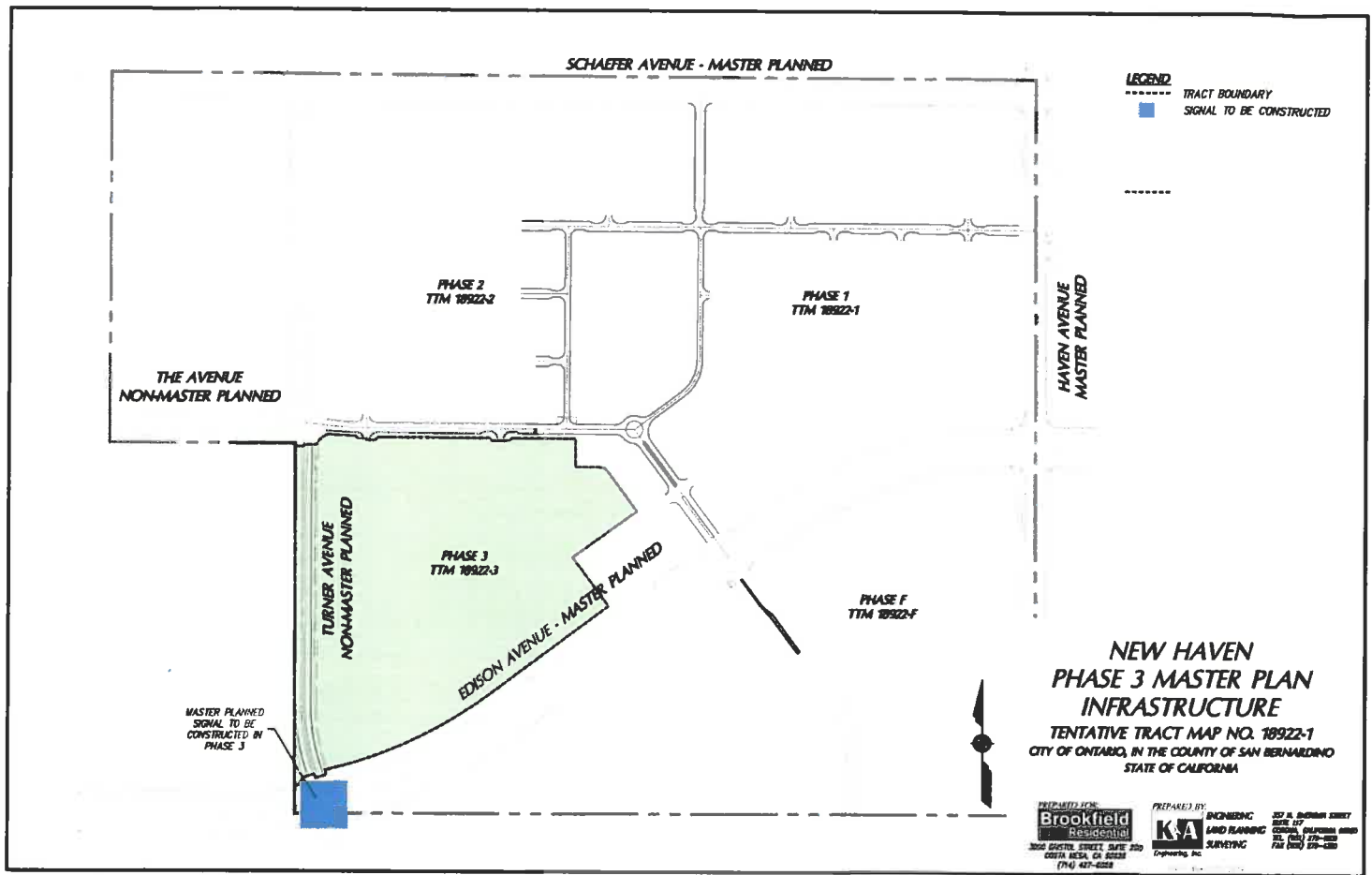




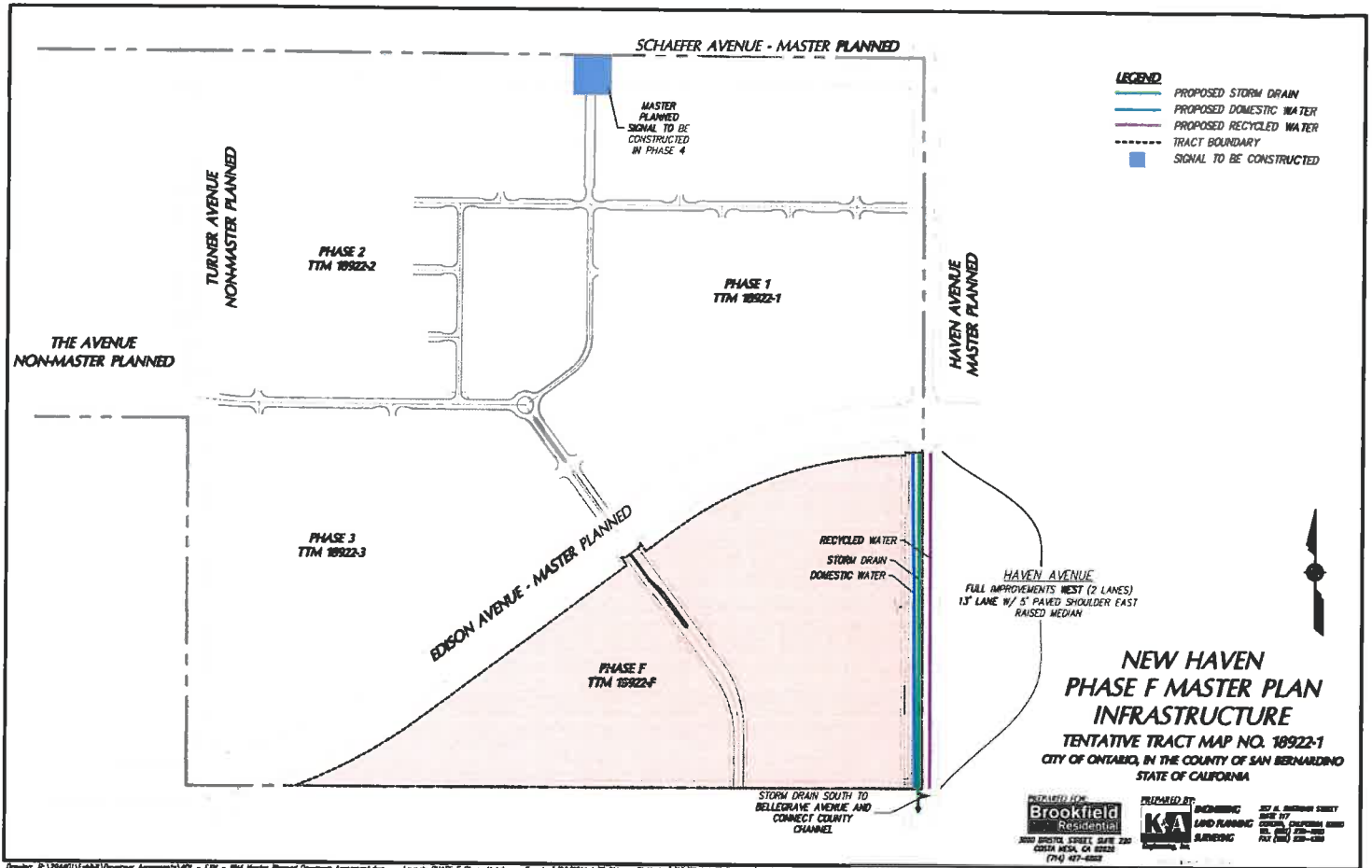


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Drawing: R:\284401\Exhibit\Developer Agreements\401 - EXH - PH3 Master Planned Developer Agreements.dwg Layout: PHASE 3 Plans Hatch Saved: 3/21/2014 11:43 AM Plotted: 3/21/2014 1:30 PM Plot Scale: 1:1 By: Lachay Williams



Drawing: C:\1254201\1254201\Drawings\Agreements\1254201 - LHM - PHM Master Planned Developer Agreement.dwg Layout: PHMSE F Phase Hatch Date: 3/21/2014 1:30 PM Plotted: 3/21/2014 1:39 PM Plot Scale: 1"=1' By: Lindsay Whitman

# CITY OF ONTARIO

*Agenda Report*  
May 6, 2014

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

**SUBJECT: CONSIDERATION OF PROCEDURES FOR CONSISTENCY IN THE APPOINTMENT AND REMOVAL PROCESS FOR REGULAR AND AT-LARGE MEMBERS OF CITY COMMISSIONS, COMMITTEES, AND BOARDS**

**RECOMMENDATION:** That the City Council consider amending the practices used for appointment and removal of regular and at-large members of City Commissions, Committees, and Boards to gain consistency between practice and protocols outlined in the Ontario Municipal Code and the Ontario City Boards, Commissions and Committees Handbook.

**COUNCIL GOALS:** Develop Strategies and Take Actions, Including Regaining Local Control of the Ontario International Airport, to Minimize the Negative Impacts of the Global Financial Downturn on Ontario's Economy and the City's Fiscal Health  
Operate in a Businesslike Manner  
Encourage, Provide or Support Enhanced Recreational, Educational, Cultural and Healthy City Programs, Policies and Activities

**FISCAL IMPACT:** None.

**BACKGROUND:** At the April 15, 2014 meeting of the Ontario City Council, staff received direction to review the existing practices and processes for the appointment and removal of appointees to City Commissions, Committees, and Boards to ensure consistency between practice and protocols. Council also directed that a moratorium be placed on any new or pending appointee changes until such time as an updated policy is implemented.

The City's current policy and practices are outlined in the Ontario Municipal Code and the Ontario City Boards, Commissions and Committees Handbook (January 2012) ("Handbook"). The Handbook contains relevant policy and protocol statements adopted by the City Council and incorporates pertinent sections of the Ontario Municipal Code. The Handbook is issued to all City Council Members and each appointee upon the commencement of their respective positions.

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

Prepared by: Al C. Boling  
Department: Citywide Administration

City Manager  
Approval: 

Submitted to Council/O.H.A. 05/06/2014

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

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

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

14

For the addition of an appointee, a standardized process is called out as provided in the Handbook and Ontario Municipal Code Section 2-2.101(d)(3) which states that:

Each of the five (5) City Council members shall submit to the Mayor the name of one (1) person proposed for appointment to a committee, commission or board; said nominees shall be eligible for appointment only if a formal application is on file with the City Clerk, and upon approval of such appointment by the Mayor and concurrence of the City Council, the name of the appointee shall be recorded in the minutes of the City Council meeting.

A similar standardized process is to be followed for appointment of at-large appointees as provided in Ontario Municipal Code Section 2-2.101(d)(4) whereby the Council Nominations Committee:

...bring[s] forward a nominee from the applicant pool to serve on committees, commissions or boards as at-large appointees; upon approval of such appointment by the Mayor, said nominee shall be considered by the full City Council....

The City's policies for removing an appointee are inconsistent and lack details on a process to be followed, which has led to a more abbreviated practice for removal of appointees. As contained in the Handbook and Ontario Municipal Code Section 2-2.101(e), "Members of each committee, commission or board may be removed by the City Council member nominating them." However, in contradiction to or in supplement of that provision, Section 2-2.101(f) indicates, "Any member of any committee, commission or board may be removed by a majority vote of the City Council." In practice, the vast majority of appointees serve their full terms and are often reappointed to serve multiple terms. In instances where a City Council Member that previously appointed an individual to a board, commission, or committee desires to remove an appointee, past practice included a written notice by the Council Member to the appointee thanking that individual for their service and a statement that their term has ended. No further action was taken by the Mayor, the full City Council, nor was the action typically reflected in the minutes of any Council meeting.

Additionally, as stated in Section 4 of the Handbook covering Council Expectations, a vacancy may be created by virtue of an appointee's absences from advisory body meetings: "Absence from any four meetings within a twelve-month period, for any reason, or absence from three consecutive meetings without the formal consent of the advisory body shall be deemed to constitute the resignation of such member and the position declared vacant."

Thus, the Municipal Code and the Handbook permit an appointee to be removed by the individual City Council member who nominated him or her; or by a majority of the City Council; or by operation of fact in the case of an appointee's own actions relative to absenteeism. The methods by which those removals could take place range from no action required by the City Council, a letter initiated by an individual Council Member, or the vote of the full City Council as an agenda item in a duly noticed public meeting and documented by the minutes of the City Clerk.

Staff has reviewed options and determined in consultation with the City Attorney's Office that in order to establish a more consistent practice for the appointment and removal of appointees, the City Council could consider for adoption an ordinance amending the Ontario Municipal Code to clarify and simplify the process for removal of appointees prior to their end of term.

The recommended ordinance could include language consistent with the process used for appointments:

“A City Council member may submit to the Mayor the name of the appointee proposed for removal from a committee, commission or board, and upon approval of such name by the Mayor and concurrence of the City Council, such appointee’s removal shall be recorded in the minutes of the City Council meeting.”

Such language would result in the same process for appointment and removal of an individual from a committee, commission or board. If approved by the City Council, inclusion of language similar to the above proposed text will be incorporated into a recommended ordinance to be introduced at the June 3, 2014 City Council meeting after publication of the legal notice of public hearing.