### **CITY OF ONTARIO CITY COUNCIL AND HOUSING AUTHORITY AGENDA JUNE 3, 2014** Paul S. Leon Al C. Boling Mayor **City Manager** Alan D. Wapner John E. Brown Mayor pro Tem **City Attorney** Jim W. Bowman Mary E. Wirtes, MMC **Council Member City Clerk Debra Dorst-Porada** James R. Milhiser **Council Member** Treasurer **Paul Vincent Avila Council Member**

### 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 1083-351-07; 4200 East Mission Boulevard; City/Authority Negotiator: Al C. Boling or his designee; Negotiating parties: Andrew Kallman; Under negotiation: Price and terms of payment.
- GC 54956.9 (d)(1), CONFERENCE WITH LEGAL COUNSEL, EXISTING LITIGATION: Inland Oversight Committee v. City Of Ontario, et al., San Bernardino Superior Court Case No. Case No. CIVRS120855.
- 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

Mayor pro Tem Wapner

#### INVOCATION

Bishop Reid Halterman, Church of Jesus Christ of Latter Day Saints

#### **REPORT ON CLOSED SESSION**

City Attorney

## PUBLIC COMMENTS

6:30 p.m.

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

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

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

## **SPECIAL CEREMONIES**

#### RECOGNITION OF NIAGARA BOTTLING LLC FOR THE CREEKSIDE PARK PROJECT

#### **14TH ANNUAL MODEL COLONY AWARDS**

That the City Council present the 2014 "Model Colony" Awards for Historic Preservation.

### CONSENT CALENDAR

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

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

#### 1. APPROVAL OF MINUTES

Minutes for the regular meeting of the City Council and Housing Authority of April 15, 2014 and the Special Meeting of the City Council and Housing Authority on April 25, 2014, approving same as on file in the Records Management Department.

#### 2. BILLS/PAYROLL

**Bills** April 6, 2014 through May 3, 2014 and **Payroll** April 6, 2014 through May 3, 2014, when audited by the Finance Committee.

#### **3. BIENNIAL CONFLICT OF INTEREST CODE REVIEW**

That the City Council receive the 2014 Local Agency Biennial Notice of the Political Reform Act requirement and direct staff to review the Conflict of Interest Code.

#### 4. A RESOLUTION APPROVING AND ADOPTING THE CITY OF ONTARIO EMERGENCY OPERATIONS PLAN UPDATE

That the City Council adopt a resolution approving the Emergency Operations Plan (EOP) update in accordance with the Standardized Emergency Management System and the National Incident Management System.

RESOLUTION NO.

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF ONTARIO, CALIFORNIA, ADOPTING AN EMERGENCY OPERATIONS PLAN AND THE STANDARD EMERGENCY MANAGEMENT SYSTEM.

#### 5. APPROVE AMENDMENT NO. 3 OF THE COOPERATIVE AGREEMENT WITH SAN BERNARDINO ASSOCIATED GOVERNMENTS FOR THE CONSTRUCTION OF THE NORTH MILLIKEN AVENUE GRADE SEPARATION

That the City Council approve Amendment No. 3 of the Cooperative Agreement with San Bernardino Associated Governments (SANBAG) for the construction of the North Milliken Avenue Grade Separation and authorize the City Manager to approve any future amendments within the approved budget.

#### 6. A CONSTRUCTION CONTRACT FOR THE FY 2013-14 PAVEMENT REHABILITATION PROJECT/ALL AMERICAN ASPHALT

That the City Council approve the plans and specifications and award a construction contract (on file in the Records Management Department) to All American Asphalt of Corona, California, for the FY 2013-14 Pavement Rehabilitation Project for the bid amount of \$2,488,309 plus a 15% contingency of \$373,247 for a total authorized amount of \$2,861,556; and authorize the City Manager to execute related documents necessary and file a notice of completion at the conclusion of construction activities.

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#### 7. A CONSTRUCTION CONTRACT FOR THE FY 2013-14 COLLECTOR/ARTERIAL, LOCAL AND CDBG-FUNDED SLURRY SEAL PROGRAM/AMERICAN ASPHALT SOUTH, INC.

That the City Council approve the plans and specifications and award a construction contract (on file in the Records Management Department) to American Asphalt South, Inc. of Fontana, California, for the FY 2013-14 Collector/Arterial, Local and CDBG-Funded Slurry Seal Program in the bid amount of \$1,088,653 plus a 20% contingency of \$217,731 for a total authorized amount of \$1,306,384; and authorize the City Manager to execute said contract and related documents, and file a notice of completion at the conclusion of all construction activities.

#### 8. A RESOLUTION AMENDING THE RESOLUTION OF NECESSITY NO. 2009-089 FOR THE ACQUISITION OF FEE, MAINTENANCE, ACCESS AND TEMPORARY CONSTRUCTION EASEMENT INTERESTS IN PORTIONS OF CERTAIN REAL PROPERTY

That the City Council adopt a resolution amending Resolution of Necessity No. 2009-089, originally adopted on December 15, 2009, for the purpose of amending legal definitions with respect to fee, maintenance, access and temporary construction easement interests already to be acquired based on the resolution and with regard to Assessor Parcel No. 0211-222-09 (HHI, San Bernardino, LLC) for public right-of-way and the construction of the North Milliken Avenue Grade Separation Project and related public infrastructure improvements.

#### RESOLUTION NO.

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF ONTARIO, CALIFORNIA, AMENDING RESOLUTION NO. 2009-089 A RESOLUTION OF NECESSITY FOR THE ACQUISITION OF FEE, EASEMENT, MAINTENANCE ACCESS EASEMENT AND TEMPORARY CONSTRUCTION EASEMENT INTERESTS IN PORTIONS OF CERTAIN REAL PROPERTY LOCATED AT OR NEAR THE INTERSECTION OF AIRPORT DRIVE AND SOUTH MILLIKEN AVENUE, AND MORE PARTICULARLY DESCRIBED AS ASSESSOR PARCEL NO. 0211-222-09, BY EMINENT DOMAIN, FOR PUBLIC RIGHT-OF-WAY FOR THE CONSTRUCTION OF THE NORTH MILLIKEN AVENUE GRADE SEPARATION PROJECT AND RELATED PUBLIC INFRASTRUCTURE IMPROVEMENTS IN THE CITY OF ONTARIO, SAN BERNARDINO COUNTY, CALIFORNIA.

#### 9. APPROVAL OF COMMON USE AGREEMENTS AND AMENDMENTS TO COMMON USE AGREEMENTS WITH THE SAN BERNARDINO COUNTY FLOOD CONTROL DISTRICT

That the City Council:

(A) Approve two Common Use Agreements between the City of Ontario and the San Bernardino County Flood Control District for the operation and maintenance of facilities at West Cucamonga Channel at Acacia Street and Cucamonga Channel North of Riverside Drive at Westwind Park; and authorize the City Manager to execute said Agreement and future amendments to the Agreement; and

- (B) Approve a three-party Common Use Agreement between the City of Ontario, Inland Empire Utilities Agency (IEUA) and the San Bernardino County Flood Control District for the operation and maintenance of facilities at West Cucamonga Channel and Cucamonga Channel at Philadelphia Street; and authorize the City Manager to execute said Agreement and future amendments to the Agreement; and
- (C) Approve amendments to two Common Use Agreements between the City of Ontario and the San Bernardino Flood Control District for the operation and maintenance of Cucamonga Channel at 4th Street (South Side) and East State Storm Drain at Grove Avenue; and authorize the City Manager to execute said Amendments and future amendments to the Agreement.

#### 10. RESOLUTIONS AMENDING RESOLUTIONS OF NECESSITY NO. 2012-099 AND NO. 2012-093 FOR THE ACQUISITION OF INTERESTS IN PORTIONS OF CERTAIN REAL PROPERTY

That the City Council:

- (A) Adopt a resolution amending Resolution of Necessity No. 2012-099, originally adopted on December 4, 2012, for the purposes of obtaining an additional access easement and amending public utility easement legal definitions pursuant to the request of the property owner with regard to Assessor Parcel No. 1083-351-07 for public right-of-way and the construction of the South Milliken Avenue Grade Separation Project and related public infrastructure improvements; and
- (B) Adopt a resolution amending Resolution of Necessity No. 2012-093, originally adopted on December 4, 2012, for the purpose of amending public utility easement legal definitions pursuant to the request of the property owner with regard to Assessor Parcel No. 1083-351-08 for public right-of-way and the construction of the South Milliken Avenue Grade Separation Project and related public infrastructure improvements.

RESOLUTION NO.

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF ONTARIO, CALIFORNIA, AMENDING RESOLUTION 2012-099, A RESOLUTION OF NECESSITY FOR THE ACQUISITION OF FEE, UTILITY ACCESS EASEMENT, PUBLIC EASEMENT AND TEMPORARY CONSTRUCTION EASEMENT INTERESTS IN PORTIONS OF CERTAIN REAL PROPERTY LOCATED AT OR NEAR THE INTERSECTION OF MISSION BOULEVARD, MILLIKEN AVENUE AND THE UNION PACIFIC RAILROAD CROSSING, AND MORE PARTICULARLY DESCRIBED AS ASSESSOR PARCEL NO. 1083-351-07, BY EMINENT DOMAIN, FOR PUBLIC RIGHT-OF-WAY FOR THE CONSTRUCTION OF THE SOUTH MILLIKEN AVENUE GRADE SEPARATION PROJECT AND RELATED PUBLIC INFRASTRUCTURE IMPROVEMENTS IN THE CITY OF ONTARIO, SAN BERNARDINO COUNTY, CALIFORNIA.

#### RESOLUTION NO.

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF ONTARIO, CALIFORNIA, AMENDING RESOLUTION NO. 2012-093 A RESOLUTION OF NECESSITY FOR THE ACQUISITION OF FEE, UTILITY EASEMENT AND PUBLIC **TEMPORARY** CONSTRUCTION EASEMENT INTERESTS IN PORTIONS OF CERTAIN REAL PROPERTY LOCATED AT OR NEAR THE INTERSECTION OF MISSION BOULEVARD, MILLIKEN AVENUE AND THE UNION PACIFIC RAILROAD CROSSING, AND MORE PARTICULARLY DESCRIBED AS ASSESSOR PARCEL NO. 1083-351-08, BY EMINENT DOMAIN, FOR PUBLIC RIGHT-OF-WAY FOR THE CONSTRUCTION OF THE SOUTH MILLIKEN AVENUE GRADE SEPARATION PROJECT AND RELATED PUBLIC INFRASTRUCTURE IMPROVEMENTS IN THE CITY OF ONTARIO, SAN BERNARDINO COUNTY, CALIFORNIA.

#### 11. A RESOLUTION ORDERING THE SUMMARY VACATION OF A PORTION OF CUCAMONGA AVENUE BETWEEN PHILADELPHIA STREET AND THE CALIFORNIA STATE ROUTE 60 FREEWAY

That the City Council adopt a resolution ordering the summary vacation of the westerly twelve feet of Cucamonga Avenue from Philadelphia Street to 610 feet south.

RESOLUTION NO.

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF ONTARIO, CALIFORNIA, ORDERING THE SUMMARY VACATION OF A PORTION OF CUCAMONGA AVENUE BETWEEN PHILADELPHIA STREET AND THE CALIFORNIA STATE ROUTE 60-FREEWAY.

#### 12. IMPROVEMENT AGREEMENT AND IMPROVEMENT SECURITY FOR FINAL TRACT MAP NO. 16486 FOR PROPERTY LOCATED ON OLIVE STREET APPROXIMATELY 655 FEET EAST OF BAKER AVENUE

That the City Council approve and authorize the City Manager to execute an improvement agreement and improvement security for Final Tract Map No. 16486 for property located on Olive Street approximately 655 feet east of Baker Avenue.

#### 13. AN AGREEMENT WITH SAN BERNARDINO COMMUNITY COLLEGE DISTRICT (CRAFTON HILLS COLLEGE) FOR EMERGENCY MEDICAL SERVICES EDUCATION THROUGH FIELD INTERNSHIP FOR THE PARAMEDIC PROGRAM

That the City Council authorize the City Manager to execute an agreement (on file in the Records Management Department) with San Bernardino Community College District (Crafton Hills College) for the purpose of providing Emergency Medical Services education through field internship for the paramedic program.

#### 14. FISCAL YEAR 2013-14 THIRD QUARTER BUDGET REPORT

That the City Council approve the budget adjustments and recommendations as listed in the Fiscal Year 2013-14 Third Quarter Budget Report.

#### 15. APPROVAL OF REVISIONS TO THE COMPENSATION AND BENEFITS PROFILE FOR UNREPRESENTED PART-TIME EMPLOYEES DUE TO INCREASE IN STATE'S MINIMUM WAGE

That the City Council approve and authorize the City Manager to execute substantive revisions to the salary schedule section of the current Compensation and Benefits Profile (on file with the Records Management Department) for employees in the non-represented part-time group to ensure compliance with the State of California's Labor Code regarding minimum wages and to ensure parity among all part-time classifications.

#### 16. A RESOLUTION ESTABLISHING THE ANNUAL SPECIAL TAX WITHIN COMMUNITY FACILITIES DISTRICT NO. 5 FOR FISCAL YEAR 2014-15

That the City Council adopt a resolution establishing the annual special tax within Community Facilities District No. 5 (Freeway Interchange Project) for Fiscal Year 2014-15.

RESOLUTION NO.

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF ONTARIO, CALIFORNIA, ACTING IN ITS CAPACITY AS THE LEGISLATIVE BODY OF COMMUNITY FACILITIES DISTRICT NO. 5 (FREEWAY INTERCHANGE PROJECT), ESTABLISHING THE ANNUAL SPECIAL TAX FOR FISCAL YEAR 2014-15.

#### 17. A RESOLUTION ESTABLISHING THE ANNUAL SPECIAL TAX WITHIN COMMUNITY FACILITIES DISTRICT NO. 9 FOR FISCAL YEAR 2014-15

That the City Council adopt a resolution establishing the annual special tax within Community Facilities District No. 9 (Edenglen) for Fiscal Year 2014-15.

RESOLUTION NO.

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF ONTARIO, CALIFORNIA, ACTING IN ITS CAPACITY AS THE LEGISLATIVE BODY OF COMMUNITY FACILITIES DISTRICT NO. 9 (EDENGLEN), ESTABLISHING THE ANNUAL SPECIAL TAX FOR FISCAL YEAR 2014-15.

#### 18. A RESOLUTION ESTABLISHING THE ANNUAL SPECIAL TAX WITHIN COMMUNITY FACILITIES DISTRICT NO. 10 FOR FISCAL YEAR 2014-15

That the City Council adopt a resolution establishing the annual special tax within Community Facilities District No. 10 (Ontario Airport Towers) for Fiscal Year 2014-15.

#### RESOLUTION NO.

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF ONTARIO, CALIFORNIA, ACTING IN ITS CAPACITY AS THE LEGISLATIVE BODY OF COMMUNITY FACILITIES DISTRICT NO. 10 (ONTARIO AIRPORT TOWERS), ESTABLISHING THE ANNUAL SERVICES SPECIAL TAX FOR FISCAL YEAR 2014-15.

#### 19. A RESOLUTION ESTABLISHING THE ANNUAL SPECIAL TAX WITHIN COMMUNITY FACILITIES DISTRICT NO. 13 FOR FISCAL YEAR 2014-15

That the City Council adopt a resolution establishing the annual special tax within Community Facilities District No. 13 (California Commerce Center-Phase IV) for Fiscal Year 2014-15.

RESOLUTION NO.

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF ONTARIO, CALIFORNIA, ACTING IN ITS CAPACITY AS THE LEGISLATIVE BODY OF COMMUNITY FACILITIES DISTRICT NO. 13 (CALIFORNIA COMMERCE CENTER – PHASE IV), ESTABLISHING THE ANNUAL SPECIAL TAX FOR FISCAL YEAR 2014-15.

#### 20. A RESOLUTION ESTABLISHING THE ANNUAL SPECIAL TAX WITHIN COMMUNITY FACILITIES DISTRICT NO. 20 FOR FISCAL YEAR 2014-15

That the City Council adopt a resolution establishing the annual special tax within Community Facilities District No. 20 (Wal-mart) for Fiscal Year 2014-15.

RESOLUTION NO.

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF ONTARIO, CALIFORNIA, ACTING IN ITS CAPACITY AS THE LEGISLATIVE BODY OF COMMUNITY FACILITIES DISTRICT NO. 20 (WAL-MART), ESTABLISHING THE ANNUAL SERVICES SPECIAL TAX FOR FISCAL YEAR 2014-15.

#### 21. A RESOLUTION ESTABLISHING THE ANNUAL SPECIAL TAX WITHIN COMMUNITY FACILITIES DISTRICT NO. 21 FOR FISCAL YEAR 2014-15

That the City Council adopt a resolution establishing the annual special tax within Community Facilities District No. 21 of the City of Ontario (Parkside) for Fiscal Year 2014-15.

RESOLUTION NO.

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF ONTARIO, CALIFORNIA, ACTING IN ITS CAPACITY AS THE LEGISLATIVE BODY OF COMMUNITY FACILITIES DISTRICT NO. 21 OF THE CITY OF ONTARIO (PARKSIDE), ESTABLISHING THE ANNUAL SPECIAL TAX FOR FISCAL YEAR 2014-15.

#### 22. ANNUAL LEVY OF ASSESSMENTS WITHIN STREET LIGHTING MAINTENANCE DISTRICTS NO. 1 AND 2 FOR FISCAL YEAR 2014-15

That the City Council adopt resolutions pertaining to the levy of assessments within Street Lighting Maintenance Districts (SLMD) No. 1 and 2:

- (A) A resolution initiating proceedings and ordering the preparation of an Engineer's Report for each district relating to the annual levy of assessments; and
- (B) A resolution giving preliminary approval of the Engineer's Reports; and
- (C) Resolutions declaring the City's intention to levy the special assessments for Fiscal Year 2014-15 and setting the date of July 1, 2014 for a Public Hearing on each district in accordance with the Landscaping and Lighting Act of 1972.

RESOLUTION NO.

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF ONTARIO, CALIFORNIA, ORDERING THE PREPARATION OF THE ASSESSMENT ENGINEER'S REPORTS PURSUANT TO THE PROVISIONS OF DIVISION 15, PART 2, OF THE STREETS AND HIGHWAYS CODE OF THE STATE OF CALIFORNIA, FOR PROCEEDINGS FOR THE ANNUAL ASSESSMENT LEVY WITHIN ONTARIO STREET LIGHTING MAINTENANCE DISTRICTS NO. 1 AND NO. 2 FOR FISCAL YEAR 2014-2015.

RESOLUTION NO.

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF ONTARIO, CALIFORNIA, APPROVING THE ASSESSMENT ENGINEER'S REPORTS FOR THE ANNUAL LEVY OF ASSESSMENTS WITHIN ONTARIO STREET LIGHTING MAINTENANCE DISTRICTS NO. 1 AND NO. 2 FOR FISCAL YEAR 2014-2015.

RESOLUTION NO.

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF ONTARIO, CALIFORNIA, DECLARING ITS INTENTION TO PROVIDE FOR AN ANNUAL LEVY AND COLLECTION OF ASSESSMENTS FOR FISCAL YEAR 2014-2015 IN ONTARIO STREET LIGHTING MAINTENANCE DISTRICT NO. 1 PURSUANT TO THE PROVISIONS OF DIVISION 15, PART 2, OF THE STREETS AND HIGHWAYS CODE OF THE STATE OF CALIFORNIA, AND SETTING A TIME AND PLACE FOR A PUBLIC HEARING THEREON.

#### RESOLUTION NO.

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF ONTARIO, CALIFORNIA, DECLARING ITS INTENTION TO PROVIDE FOR AN ANNUAL LEVY AND COLLECTION OF ASSESSMENTS FOR FISCAL YEAR 2014-2015 IN ONTARIO STREET LIGHTING MAINTENANCE DISTRICT NO. 2, PURSUANT TO THE PROVISIONS OF DIVISION 15, PART 2, OF THE STREETS AND HIGHWAYS CODE OF THE STATE OF CALIFORNIA, AND SETTING A TIME AND PLACE FOR A PUBLIC HEARING THEREON.

#### 23. ANNUAL LEVY OF ASSESSMENTS WITHIN ONTARIO PARKWAY MAINTENANCE ASSESSMENT DISTRICTS NO. 1, 2, 3 AND 4 FOR FISCAL YEAR 2014-15

That the City Council adopt resolutions pertaining to the levy of assessments within Ontario Parkway Maintenance Assessment Districts (OPMAD) No. 1, 2, 3 and 4:

- (A) A resolution initiating proceedings and ordering the preparation of an Engineer's Report for each district relating to the annual levy of assessments; and
- (B) A resolution giving preliminary approval of the Engineer's Reports; and
- (C) Resolutions declaring the City's intention to levy the special assessments for Fiscal Year 2014-15 and setting the date of July 1, 2014 for a Public Hearing on each district in accordance with the Landscaping and Lighting Act of 1972.

RESOLUTION NO.

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF ONTARIO, CALIFORNIA, ORDERING THE PREPARATION OF THE ASSESSMENT ENGINEER'S REPORTS PURSUANT TO THE PROVISIONS OF DIVISION 15, PART 2, OF THE STREETS AND HIGHWAYS CODE OF THE STATE OF CALIFORNIA, FOR PROCEEDINGS FOR THE ANNUAL ASSESSMENT LEVY WITHIN ONTARIO PARKWAY MAINTENANCE ASSESSMENT DISTRICTS NO. 1, 2, 3 AND 4 FOR FISCAL YEAR 2014-2015.

RESOLUTION NO.

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF ONTARIO, CALIFORNIA, APPROVING THE ASSESSMENT ENGINEER'S REPORTS FOR THE ANNUAL LEVY OF ASSESSMENTS WITHIN ONTARIO PARKWAY MAINTENANCE ASSESSMENT DISTRICTS NO. 1, 2, 3 AND 4 FOR FISCAL YEAR 2014-2015.

#### RESOLUTION NO.

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF ONTARIO, CALIFORNIA, DECLARING ITS INTENTION TO PROVIDE FOR AN ANNUAL LEVY AND COLLECTION OF ASSESSMENTS FOR FISCAL YEAR 2014-2015 IN ONTARIO PARKWAY MAINTENANCE ASSESSMENT DISTRICTS NO. 1, 2 AND 3, PURSUANT TO THE PROVISIONS OF DIVISION 15, PART 2, OF THE STREETS AND HIGHWAYS CODE OF THE STATE OF CALIFORNIA, AND SETTING A TIME AND PLACE FOR A PUBLIC HEARING THEREON.

#### RESOLUTION NO.

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF ONTARIO, CALIFORNIA, DECLARING ITS INTENTION TO PROVIDE FOR AN ANNUAL LEVY AND COLLECTION OF ASSESSMENTS FOR FISCAL YEAR 2014-2015 IN ONTARIO PARKWAY MAINTENANCE ASSESSMENT DISTRICT NO. 4, PURSUANT TO THE PROVISIONS OF DIVISION 15, PART 2, OF THE STREETS AND HIGHWAYS CODE OF THE STATE OF CALIFORNIA, AND SETTING A TIME AND PLACE FOR A PUBLIC HEARING THEREON.

#### 24. A MAINTENANCE SERVICES AGREEMENT FOR LANDSCAPE MAINTENANCE SERVICES FOR MEDIANS AND PARKWAYS/S.C. YAMAMOTO, 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 1314-05 with S.C. Yamamoto, Inc. of La Habra, California, for an annual cost of \$90,000 plus a 10% contingency of \$9,000; 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.

#### 25. A MAINTENANCE SERVICES AGREEMENT FOR LANDSCAPE MAINTENANCE SERVICES FOR NMC WEED ABATEMENT AREAS/LANDSCAPE WEST MANAGEMENT SERVICES, 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 1314-06 with Landscape West Management Services, Inc. of Chino, California, for an annual cost of \$79,344 plus a 10% contingency of \$7,935; 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.

#### 26. LEGAL SERVICES FOR SALES AND USE TAX REVENUE MATTERS

That the City Council authorize the City Manager to execute a Letter of Engagement with the law firm of Holland & Knight, of San Francisco, California, for legal services to represent the City in sales and use tax revenue matters.

#### 27. AN AGREEMENT FOR LEGAL AND TECHNICAL SERVICES PERTAINING TO SEWER AND WATER MATTERS/NOSSAMAN LLP

That the City Council approve and authorize the City Manager to execute an agreement (on file with the Records Management Department) with Nossaman LLP of Los Angeles, California, for legal and technical services with respect to matters relating to sewer disposal, water supply, water rights and water quality in an not to exceed amount of \$100,000 for Fiscal Year 2014-15; and the option to extend the agreement for two additional years with a three year total not to exceed amount of \$300,000, consistent with City Council approved budgets.

#### 28. AGREEMENTS WITH USA WASTE AND WEST VALLEY MRF FOR SOLID WASTE HANDLING SERVICES/USA WASTE OF CALIFORNIA, INC./WEST VALLEY MRF, LLC

That the City Council approve and authorize the City Manager to execute agreements for solid waste handling services (on file with the Records Management Department) subject to non-substantive changes as mutually agreed to by the parties with USA Waste of California, Inc., a corporation duly formed and operating under the laws of the State of Delaware, a Waste Management Company (Waste Management) and West Valley MRF, LLC, a limited liability company duly formed and operating under the laws of the State of California and owned in whole or in part by Burrtec Waste Industries, Inc., a California corporation duly formed and operating under the laws of the State of California (Burrtec).

#### 29. A CONSTRUCTION CONTRACT FOR THE WELL NO. 41 WELLHEAD TREATMENT SYSTEM FACILITY PROJECT/ZUSSER COMPANY, INC./KENNEDY JENKS CONSULTANTS, INC./MWH CONSTRUCTORS

That the City Council:

- (A) Approve the plans and specifications;
- (B) Reject the bid protest submitted by Kana Engineering Group, Inc. of Placentia, CA;
- (C) Award Contract No. UT1314-03 (on file with the Records Management Department) to Zusser Company, Inc. of Los Angeles, California, in the bid amount of \$3,358,249 plus a 15% contingency of \$503,737 for a total amount of \$3,861,986; and authorize the City Manager to execute said contract and file a notice of completion at the end of the construction activities related to the project;
- (D) Authorize the City Manager to execute a Professional Services Agreement (on file with the Records Management Department) with Kennedy/Jenks Consultants, Inc. of Pasadena, California, in the amount of \$99,898 plus a 15% contingency of \$14,985 for a total amount of \$114,883 for engineering and start-up support services as the engineer of record; and,
- (E) Authorize the City Manager to execute a Professional Services Agreement (on file with the Records Management Department) with MWH Constructors of Irvine, California, in the amount of \$304,245 plus a 15% contingency of \$45,637 for a total amount of \$349,882 for inspection and construction management services.

#### 30. A WATER PURCHASE AGREEMENT WITH AQUA CAPITAL MANAGEMENT LP

That the City Council approve and authorize the City Manager to execute a water purchase agreement (on file with the Records Management Department) subject to non-substantive changes with Aqua Capital Management LP, located in Omaha, Nebraska, for the permanent transfer of overlying groundwater rights in the amount of \$4,050,000.

#### 31. 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 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, 0218-201-39, 0218-201-42, 0218-201-43 and 0218-201-45).

#### ORDINANCE NO.

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF CALIFORNIA, APPROVING A DEVELOPMENT ONTARIO. AGREEMENT BETWEEN THE CITY OF ONTARIO AND BROOKCAL ONTARIO, LLC, FILE NO. PDA10-002, TO ESTABLISH TERMS AND CONDITIONS FOR RESIDENTIAL THE 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.

#### 32. TWO-YEAR COST SHARING AGREEMENT WITH THE CHAFFEY JOINT UNION HIGH SCHOOL DISTRICT FOR SCHOOL RESOURCE OFFICERS

That the City Council approve and authorize the City Manager to execute a two-year cost sharing agreement (on file in the Records Management Department) with the Chaffey Joint Union High School District for three school resource officers in the amount of \$439,664.

#### 33. APPROVAL OF AN ALLOCATION AND SPENDING PLAN FOR THE BUREAU OF JUSTICE ASSISTANCE (BJA) EDWARD BYRNE MEMORIAL JUSTICE ASSISTANCE GRANT (JAG) PROGRAM FOR FY 2014-15

That the City Council approve and authorize the City Manager to execute all documents necessary to participate in the Bureau of Justice Assistance (BJA) Edward Byrne Memorial Justice Assistance Grant (JAG) Program; and approve the proposed \$43,010 grant spending plan for FY 2014-15.

## 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.

#### 34. A PUBLIC HEARING TO CONSIDER AN ORDINANCE AMENDING CHAPTER 3, TITLE 4, OF THE ONTARIO MUNICIPAL CODE RELATING TO THE CITY'S EMERGENCY ORGANIZATION

That the City Council introduce and waive further reading of an ordinance amending Chapter 3, Title 4, of the Ontario Municipal Code related to the City's Emergency Organization.

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

Written communication. Oral presentation. Public hearing closed.

#### ORDINANCE NO.

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF ONTARIO, CALIFORNIA, AMENDING CHAPTER 3 OF TITLE 4 OF THE ONTARIO MUNICIPAL CODE RELATING TO EMERGENCY ORGANIZATION.

#### 35. A PUBLIC HEARING TO CONSIDER AN ORDINANCE AMENDING THE FLOOD DAMAGE PREVENTION PROGRAM SECTIONS 8-13.201 AND 8-13.508 OF THE ONTARIO MUNICIPAL CODE

That the City Council introduce and waive further reading of an ordinance amending the Flood Damage Prevention Program Sections 8-13.201 and 8-13.508 of the Ontario Municipal Code relating to regulation of recreational vehicles.

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

Written communication. Oral presentation. Public hearing closed.

ORDINANCE NO.

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF ONTARIO, CALIFORNIA, AMENDING THE FLOOD DAMAGE PREVENTION PROGRAM SECTIONS 8-13.201 AND 8-13.508 OF THE ONTARIO MUNICIPAL CODE RELATING TO RECREATIONAL VEHICLES.

#### 36. A PUBLIC HEARING TO CONSIDER AN ORDINANCE APPROVING A ZONE CHANGE FROM C3 (COMMERCIAL SERVICE) TO M1 (LIMITED INDUSTRIAL) ON 3.82 ACRES OF LAND LOCATED AT THE NORTHEAST CORNER OF MISSION BOULEVARD AND OAKS AVENUE

That the City Council introduce and waive further reading of an ordinance approving File No. PZC14-002, a Zone Change from C3 (Commercial Service) to M1 (Limited Industrial) on 3.82 acres of land located at the northeast corner of Mission Boulevard and Oaks Avenue (APN: 1011-211-06).

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

Written communication. Oral presentation. Public hearing closed.

ORDINANCE NO.

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF ONTARIO, CALIFORNIA, APPROVING FILE NO. PZC14-002, A ZONE CHANGE ON 3.82 ACRES OF LAND LOCATED AT THE NORTHEAST CORNER OF MISSION BOULEVARD AND OAKS AVENUE, FROM C3 (COMMERCIAL SERVICE) TO M1 (LIMITED INDUSTRIAL), AND MAKING FINDINGS IN SUPPORT THEREOF – APN: 1011-211-06.

#### 37. A PUBLIC HEARING TO CONSIDER AN ORDINANCE TO AMEND SECTION 2-2.101 OF THE ONTARIO MUNICIPAL CODE RELATING TO THE APPOINTMENT, NUMBER, REMOVAL, TERMS AND VACANCIES OF REGULAR AND AT-LARGE MEMBERS OF CITY COMMISSIONS, COMMITTEES, AND BOARDS

That the City Council introduce and waive further reading of an ordinance relating to Section 2-2.101 of the Ontario Municipal Code relating to the appointment, number, removal, terms and vacancies of regular and at-large members of City Commissions, Committees, and Boards to gain consistency between practices and protocols outlined in the Ontario Municipal Code and the Ontario City Boards, Commissions, and Committees Handbook.

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

Written communication. Oral presentation. Public hearing closed.

ORDINANCE NO.

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF ONTARIO, CALIFORNIA, AMENDING SECTION 2-2.101 OF THE ONTARIO MUNICIPAL CODE, WITH CERTAIN AMENDMENTS THERETO RELATING TO THE APPOINTMENT, NUMBER, REMOVAL, TERMS AND VACANCIES OF REGULAR AND AT-LARGE MEMBERS OF COMMISSIONS, COMMITTEES AND BOARDS.

## **STAFF MATTERS**

City Manager Boling

## **COUNCIL MATTERS**

COMMISSION APPOINTMENT

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

## ADJOURNMENT

CITY HALL 303 EAST B STREET, ONTARIO, CA 91764 - www.ci.ontario.ca.us

#### CITY OF ONTARIO CLOSED SESSION REPORT

City Council / / Housing Authority / / Other / / (GC 54957.1) June 3, 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 1083-351-07; 4200 East Mission Boulevard; City/Authority Negotiator: AI C. Boling or his designee; Negotiating parties: Andrew Kallman; 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: Inland Oversight Committee v. City Of Ontario, et al., San Bernardino Superior Court Case No. Case No. CIVRS120855.

No Reportable Act	tion Continue	Approved
	/ /	/ /

Disposition:

#### CITY OF ONTARIO CLOSED SESSION REPORT City Council / / Housing Authority / / Other / / (GC 54957.1) June 3, 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.

	No Reportable Action Continue		Approved	
	/ /	/ /	/ /	
Disposition:				

Reported by: City Attorney / City Manager / Executive Director

Agenda Report June 3, 2014

## SECTION: SPECIAL CEREMONIES

#### SUBJECT: 14TH ANNUAL MODEL COLONY AWARDS

**RECOMMENDATION:** That the City Council present the 2014 "Model Colony" Awards for Historic Preservation.

COUNCIL GOALS: <u>Develop Strategies and Take Actions, Including Regaining Local Control of</u> the Ontario International Airport, to Minimize the Negative Impacts of the Global Financial <u>Downturn on Ontario's Economy and the City's Fiscal Health</u> <u>Focus Resources in Ontario's Commercial and Residential Neighborhoods</u> <u>Encourage, Provide or Support Enhanced Recreational, Educational, Cultural and Healthy City</u> <u>Programs, Policies and Activities</u>

FISCAL IMPACT: The Model Colony Awards presentation will not have a fiscal impact.

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

The "Model Colony" Awards are presented by the City Council each spring to coincide with National Preservation Month. Five awards will be presented in the categories of Rehabilitation, Restoration, and Merit. On May 27, 2014, the Planning Commission considered each category and chose the following recipients:

**Rehabilitation Award:** For achievement in the exterior and interior rehabilitation of a historic property.

Recipient:The Frankish Building<br/>200 South Euclid Avenue<br/>Housing Authority of County of San Bernardino

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

Prepared by: Department:		Submitted to Co Approved:	ouncil/O.H.A.	06/03/2014
City Manager Approval:	Meg	Continued to: Denied:		

Page 1 of 2

Rehabilitation Award:	For achievement in the exterior and interior rehabilitation of a historic property.	
	Recipient:	Mrs. Dee Gholson Apartment House 621 North Euclid Avenue Real Estate and Land Solutionz, Inc.
Rehabilitation Award:	For achievem historic proper	ent in the exterior and interior rehabilitation of a rty.
	Recipient:	Ontario Power Company Building 217 South Lemon Avenue Chaffey Community Museum of Arts
<b>Restoration Award:</b>		ent in the preservation of a historic resource, that is in the historic character of that resource.
	Recipient:	The Carrie Peoples House 427 East J Street Matthew Taylor, Receiver
Award of Merit:	For achieveme	ent in the ongoing preservation of a historic property.
	Recipient:	The William A. McConnell House 117 East J Street Wilma Stewart

Agenda Report June 3, 2014

## SECTION: CONSENT CALENDAR

#### SUBJECT: BIENNIAL CONFLICT OF INTEREST CODE REVIEW

**RECOMMENDATION:** That the City Council receive the 2014 Local Agency Biennial Notice of the Political Reform Act requirement and direct staff to review the Conflict of Interest Code.

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

**FISCAL IMPACT:** The nominal costs associated with staff review of the City's Conflict of Interest Code are included in the Records Management Department's annual baseline operating budget.

**BACKGROUND:** The Political Reform Act requires every local government agency to review its conflict of interest code biennially to determine if it is accurate or, alternatively, if the code must be amended. The City's Conflict of Interest Code was last amended on September 4, 2012. To meet the requirements of the Political Reform Act, it is necessary to again review the Conflict of Interest Code to determine whether amendments are necessary based on the following:

- The addition, deletion or modification of the specific types of investments, business positions, interests in real property, and sources of income which are reportable for the designated positions.
- The reclassification, renaming or deletion of previously designated positions.

Any recommendations for updates or confirmation that the current Conflict of Interest Code is accurate will be presented to the City Council for review before the State's deadline of October 1, 2014.

#### STAFF MEMBER PRESENTING: Jacob Green, Assistant City Manager

Prepared by: Department:	Vicki Kasad City Clerk/Records Management	Submitted to Co Approved:	uncil/O.H.A.	06/03/2014
City Manager Approval:	Inch	Continued to: Denied:		
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Agenda Report June 3, 2014

### SECTION: CONSENT CALENDAR

#### SUBJECT: A RESOLUTION APPROVING AND ADOPTING THE CITY OF ONTARIO EMERGENCY OPERATIONS PLAN UPDATE

**RECOMMENDATION:** That the City Council adopt a resolution approving the Emergency Operations Plan (EOP) update in accordance with the Standardized Emergency Management System and the National Incident Management System.

#### COUNCIL GOALS: <u>Develop Strategies and Take Actions, Including Regaining Local Control of</u> the Ontario International Airport, to Minimize the Negative Impacts of the Global Financial <u>Downturn on Ontario's Economy and the City's Fiscal Health</u> <u>Maintain the Current High Level of Public Safety</u> <u>Operate in a Businesslike Manner</u>

**FISCAL IMPACT:** Approval of this EOP update will maintain the City's compliance with State and Federal requirements for emergency response and secure the City's eligibility to receive State and Federal emergency assistance funds, as well as Homeland Security Grant Program (HSGP) funding.

**BACKGROUND:** City staff has reviewed and updated the EOP to ensure oversight of all four phases of emergency management: mitigation, preparedness, response, and recovery.

In 1993, California Government Code §8607 enacted the Standardized Emergency Management System (SEMS). This plan establishes the policies, concepts, and general protocols required to implement SEMS. SEMS is the cornerstone of California's emergency response system and the fundamental structure for the response phase of emergency management. Local government entities must use SEMS in order to be eligible for any reimbursement of response related costs under the State's disaster assistance programs. This SEMS compliant plan incorporates the use of the Incident Command System, California Disaster and Master Mutual Aid Agreement, the Operational Area concept and multiagency or inter-agency coordination.

#### STAFF MEMBER PRESENTING: Jacob Green, Assitant City Manager

	Paul G. Walker Citywide Administration	Submitted to Co	ouncil/O.H.A.	06/03/2014
City Manager Approval:	MCG	Continued to: Denied:		4
	0	Page 1 of 2		

To enhance the ability of the United States to manage domestic incidents, Homeland Security Presidential Directive-5 (HSPD-5) was issued in 2003 in order to establish a single comprehensive national incident management system. The National Incident Management System (NIMS) is based on the concept that local jurisdictions retain command, control, and authority over response activities, and is applicable to all incidents and all levels of government, including elected officials, appointed officials, and stakeholders who assume a role in emergency management. HSPD-5 requires adoption of NIMS by States, tribal, and local organizations as a condition for Federal preparedness funding. This updated EOP is compliant with NIMS requirements and identifies how the City fits into the overall National Response Framework.

Ontario's updated EOP has been reviewed by the California Office of Emergency Services, San Bernardino County Office of Emergency Services, and legal counsel. All entities determined that the EOP update meets all State requirements in accordance with the Emergency Service Act and SEMS and NIMS. The updated EOP will be effective upon approval by the City Council and is recommended to be updated every three years.

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

#### A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF ONTARIO, CALIFORNIA, ADOPTING AN EMERGENCY OPERATIONS PLAN AND THE STANDARD EMERGENCY MANAGEMENT SYSTEM.

WHEREAS, Section 8610 of the California Government Code requires the Disaster Councils of all cities and counties to develop a plan for meeting all conditions constituting a local emergency or state of emergency; and

WHEREAS, Chapter 3 of Title 4 of the Ontario Municipal Code requires the development and submission of a disaster response plan to the City Council for adoption; and

WHEREAS, the Governor's Office of Emergency Services requires the formal adoption of the Standardized Emergency Management System (SEMS) pursuant to Section 8607 of the California Government Code; and

WHEREAS, the City of Ontario has developed an Emergency Operations Plan that is Standardized Emergency Management System (SEMS) and National Incident Management System (NIMS) compliant; and

WHEREAS, the City Council of the City of Ontario wishes to provide for the organization of emergency services and coordination of emergency functions within the City and with other public agencies, private organizations, and businesses.

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

<u>SECTION 1</u>. The above recitals are true and correct and the City Council hereby so finds.

<u>SECTION 2</u>. The City of Ontario Emergency Operations Plan (EOP), attached hereto as Exhibit A, is hereby adopted.

<u>SECTION 3</u>. The Director of Emergency Services is authorized to make necessary administrative and operational changes to the EOP so long as those changes are in keeping with the intent of the EOP as approved.

<u>SECTION 4</u>. The Director of Emergency Services or his duly appointed representative is authorized and required to perform all duties required to carry out the EOP.

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

PASSED, APPROVED, AND ADOPTED this 3<sup>rd</sup> day of June 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 June 3, 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 June 3, 2014.

MARY E. WIRTES, MMC, CITY CLERK

(SEAL)

Agenda Report June 3, 2014 SECTION: CONSENT CALENDAR

#### SUBJECT: APPROVE AMENDMENT NO. 3 OF THE COOPERATIVE AGREEMENT WITH SAN BERNARDINO ASSOCIATED GOVERNMENTS FOR THE CONSTRUCTION OF THE NORTH MILLIKEN AVENUE GRADE SEPARATION

**RECOMMENDATION:** That the City Council approve Amendment No. 3 of the Cooperative Agreement with San Bernardino Associated Governments (SANBAG) for the construction of the North Milliken Avenue Grade Separation and authorize the City Manager to approve any future amendments within the approved budget.

COUNCIL GOALS: <u>Develop Strategies and Take Actions, Including Regaining Local Control of</u> the Ontario International Airport, to Minimize the Negative Impacts of the Global Financial <u>Downturn on Ontario's Economy and the City's Fiscal Health</u> <u>Pursue City's Goals and Objectives by Working with Other Governmental Agencies</u> <u>Invest in the City's Infrastructure (Water, Streets, Sewers, Parks, Storm Drains and Public Facilities)</u>

FISCAL IMPACT: No fiscal impact.

**BACKGROUND:** Amendment No. 2 of the Cooperative Agreement was approved by the City Council on March 6, 2012 and allowed the City's nexus share of the construction costs in DIF (\$6,241,901) for the North Milliken Avenue Grade Separation to be paid back at the time of constructing the South Archibald Avenue and the North Vineyard Avenue Grade Separation projects in order to maximize state funding. This allowed the maximum use of the STIP/RIP (State Transportation Improvement Program/Regional Improvement Program) funds. This amendment, at SANBAG's request, transfers the City's nexus share of the construction cost from North Vineyard to the South Milliken Avenue Grade Separation project in order to simplify SANBAG accounting procedures. This is consistent with the Project Funding Agreement for the construction phase of the South Milliken Avenue Grade Separation, executed on June 18, 2013.

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

Prepared by: Department:	Cindy Hackett, P.E. Engineering	Submitted to Co Approved:	ouncil/O.H.A.	06/03	/2014
City Manager	MA	Continued to: Denied:			
Approval:	- And - C				5

Agenda Report June 3, 2014 SECTION: CONSENT CALENDAR

#### SUBJECT: A CONSTRUCTION CONTRACT FOR THE FY 2013-14 PAVEMENT REHABILITATION PROJECT

**RECOMMENDATION:** That the City Council approve the plans and specifications and award a construction contract (on file in the Records Management Department) to All American Asphalt of Corona, California, for the FY 2013-14 Pavement Rehabilitation Project for the bid amount of \$2,488,309 plus a 15% contingency of \$373,247 for a total authorized amount of \$2,861,556; and authorize the City Manager to execute related documents necessary and file a notice of completion at the conclusion of construction activities.

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

**FISCAL IMPACT:** The FY 2013-14 Budget includes appropriations of \$1,785,000 from Measure I funds, \$1,679,000 from Gas Tax funds, and \$200,000 from Department of Housing and Community Development Community Catalyst Grant for a total of \$3,664,000 related to the Pavement Rehabilitation Project. All American Asphalt submitted the lowest bid of \$2,488,309. A 15% contingency is recommended due to the need to extend project limits and the potential for additional repair work.

**BACKGROUND:** The scope of services for the FY 2013-14 Pavement Rehabilitation Project includes cold planing, removal and replacement of damaged pavement, construction of Asphalt Rubber Hot Mix (ARHM) overlay, construction of ADA compliant access ramps, and placement of traffic striping, pavement markings, and raised markers.

The project locations include: rehabilitation of Etiwanda Avenue from Airport Drive to Ontario Mills Parkway (Project No. ST1301); Mountain Avenue from Holt Boulevard to Sixth Street (Project No.

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

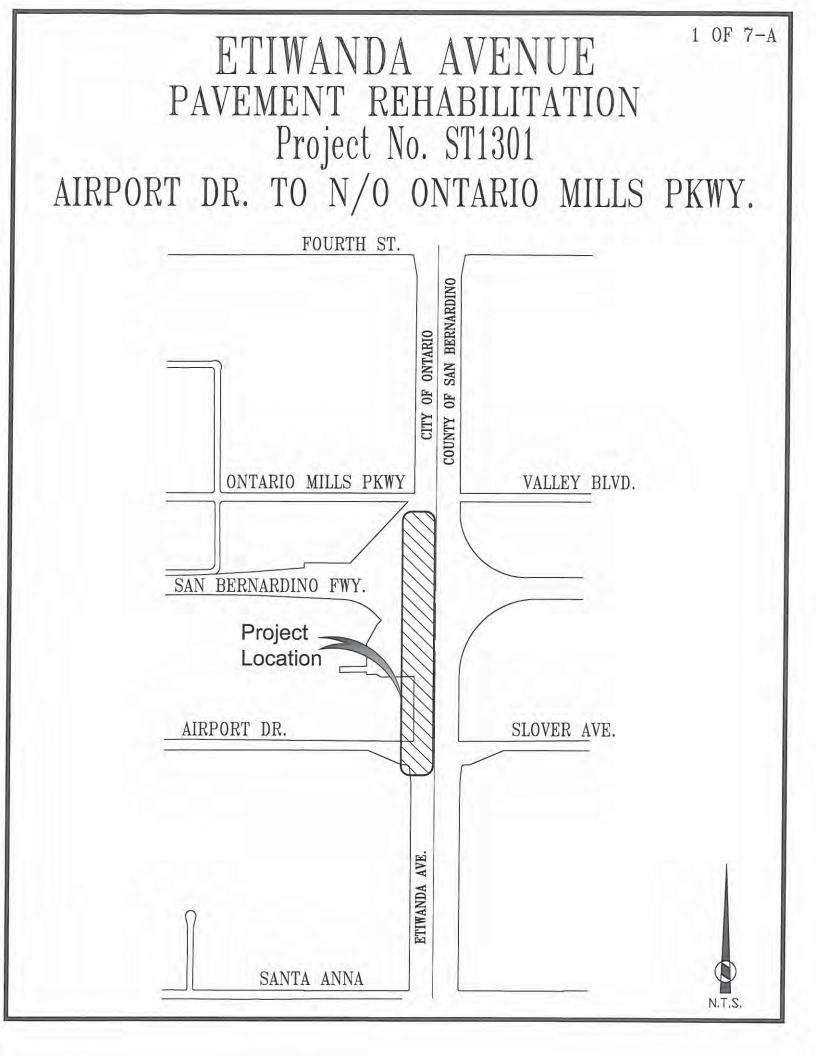
Prepared by: Department:	Bill Braun Engineering	Submitted to Co Approved:	ouncil/O.H.A.	06/03/2014
City Manager Approval:	Maa	Continued to: Denied:		
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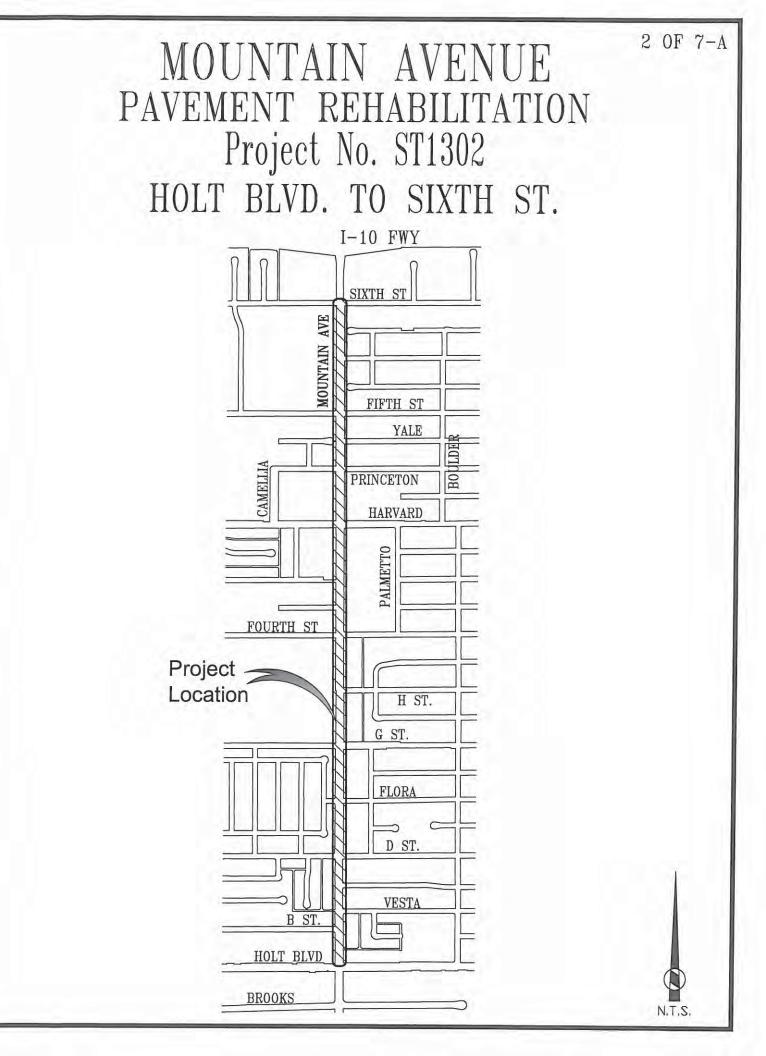
ST1302); Airport Drive from Haven Avenue to Commerce Avenue (Project No. ST1303); Airport Drive from Doubleday Avenue to Milliken Avenue (Project No. ST1304); Milliken Avenue from 500' south of SR 60 to Greystone Drive (Project No. ST1305); Mission Boulevard from Campus Avenue to Grove Avenue (Project No. ST1306); and the Ontario City Hall Employee Parking Lot Rehabilitation. Location maps 1 through 7 are attached for reference. This project will extend the lifespan of the streets by 10 to 20 years. It is anticipated that construction will start in June 2014 and be completed by October 2014.

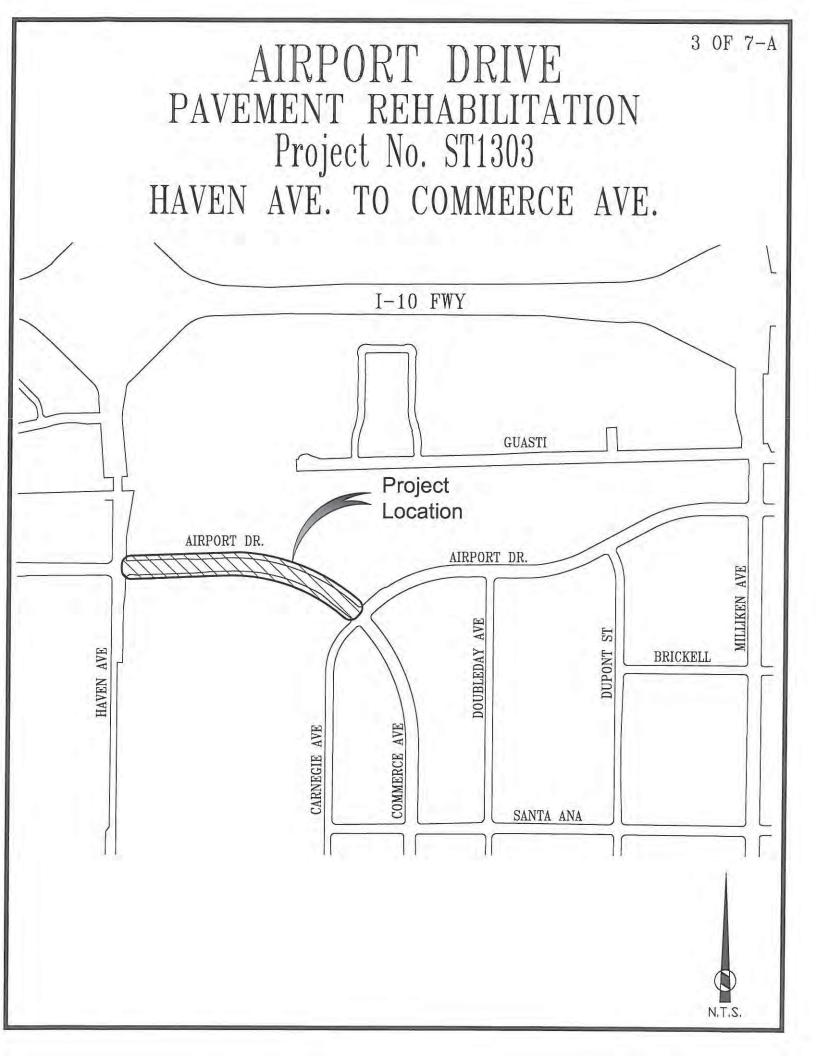
In April 2014, the City solicited bids for this project; and four bids were received. The bid results are:

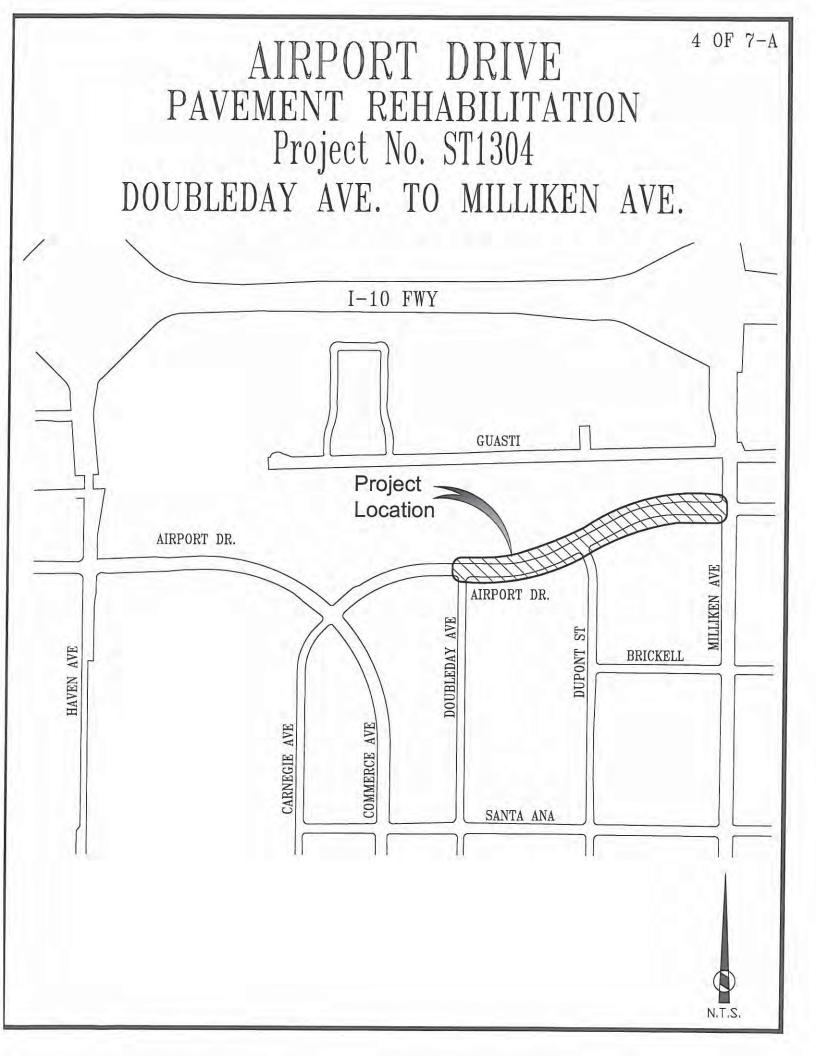
COMPANY	LOCATION	AMOUNT
All American Asphalt	Corona, CA	\$ 2,488,309
Hardy & Harper, Inc	Santa Ana, CA	\$ 2,626,000
KAD Paving Company	Yucaipa, CA	\$ 3,284,620
Gentry Brothers Inc	Irwindale, CA	\$ 3,367,962

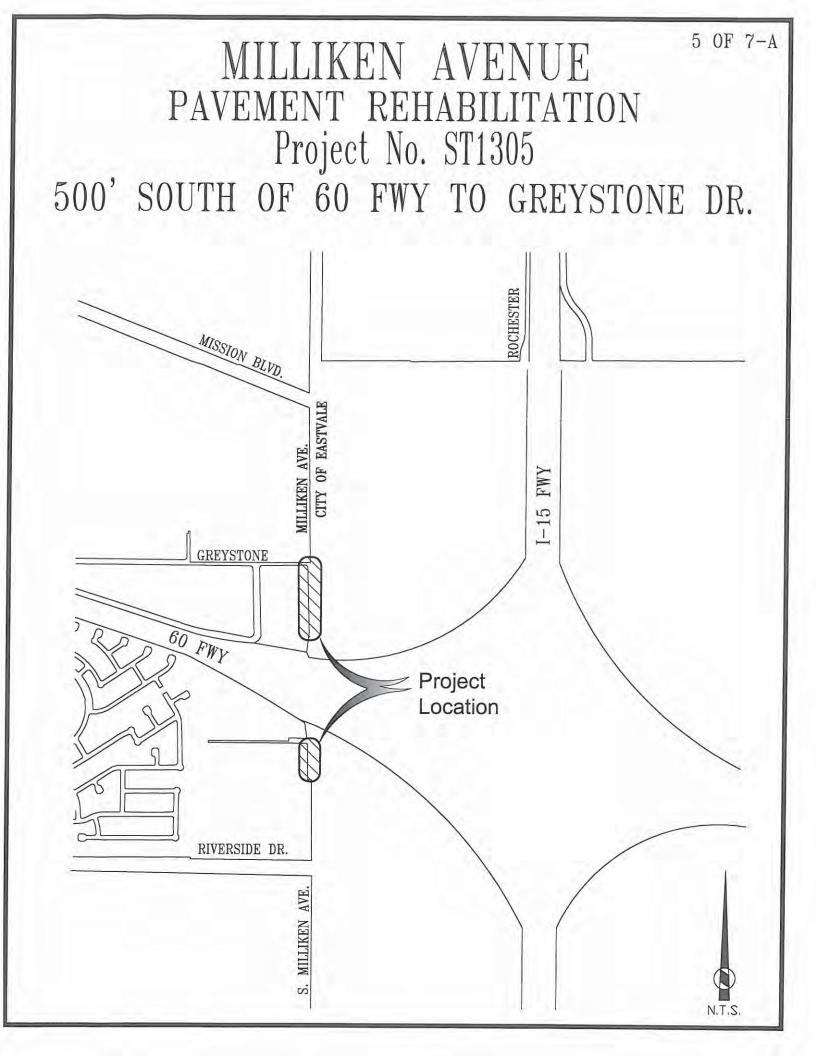
All American Asphalt submitted the lowest responsive bid. All American Asphalt has previously performed similar work for the City of Ontario in a satisfactory manner.

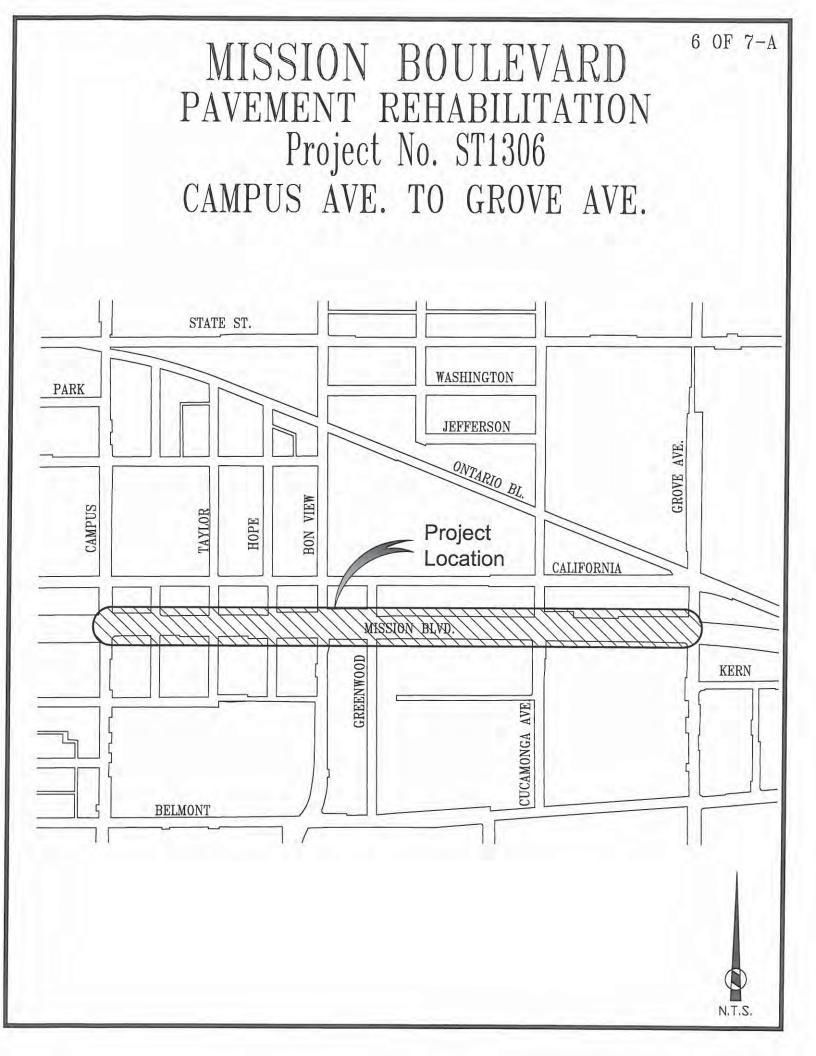


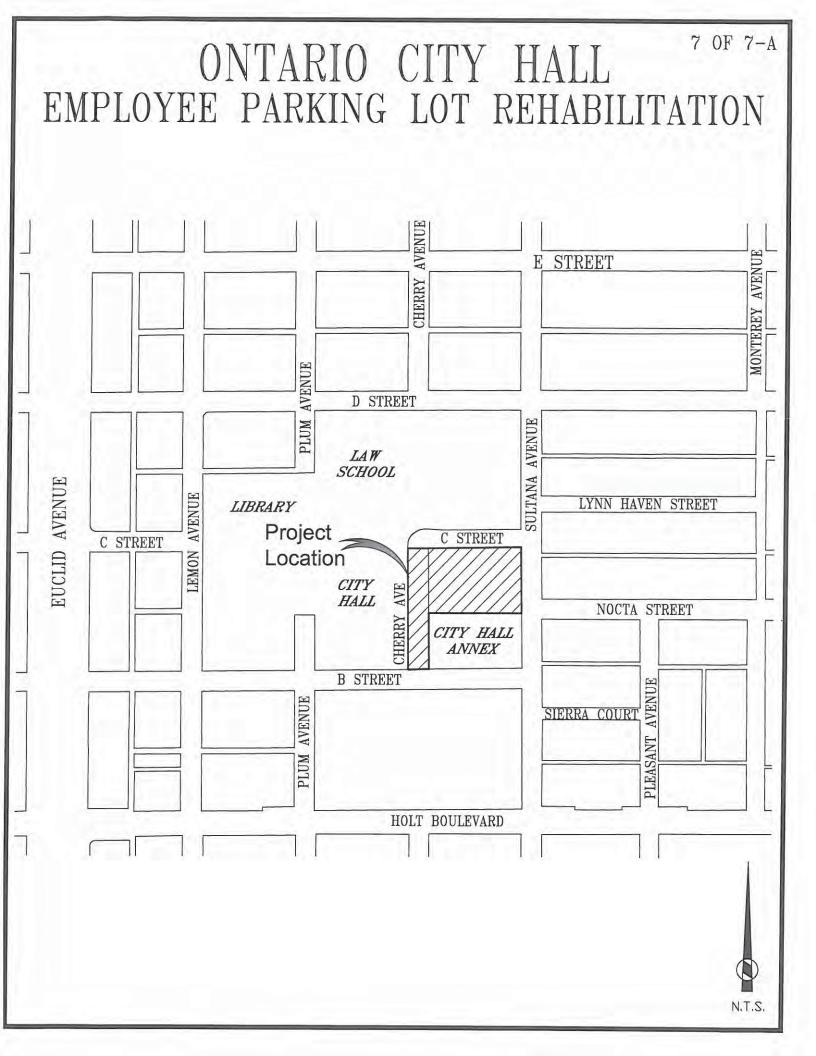












# CITY OF ONTARIO

Agenda Report June 3, 2014 SECTION: CONSENT CALENDAR

### SUBJECT: A CONSTRUCTION CONTRACT FOR THE FY 2013-14 COLLECTOR/ARTERIAL, LOCAL AND CDBG-FUNDED SLURRY SEAL PROGRAM

**RECOMMENDATION:** That the City Council approve the plans and specifications and award a construction contract (on file in the Records Management Department) to American Asphalt South, Inc. of Fontana, California, for the FY 2013-14 Collector/Arterial, Local and CDBG-Funded Slurry Seal Program in the bid amount of \$1,088,653 plus a 20% contingency of \$217,731 for a total authorized amount of \$1,306,384; and authorize the City Manager to execute said contract and related documents, and file a notice of completion at the conclusion of all construction activities.

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

**FISCAL IMPACT:** The FY 2013-14 Budget includes appropriations of \$650,000 from Measure "I" funds, \$400,000 from CDBG funds, \$17,000 from Facilities Maintenance funds and \$412,000 from Gas Tax funds for a total of \$1,479,000 related to this project. The total recommended authorization of \$1,306,384 consists of the bid amount of \$1,088,653 plus a 20% contingency of \$217,731.

**BACKGROUND:** The scope of services for this project includes crack-sealing, removal and replacement of existing thermoplastic traffic striping and markings, localized asphalt concrete pavement repair and placement of Rubber Polymer Modified Slurry Seal (RPMSS) on various collector and arterial streets and on various local streets and alleys and on a portion of the Westwind Park parking lot. Location exhibits are attached for reference (Exhibits 1- 19). This project will extend the lifespan of the streets, alleys and parking lot by six to eight years and prevent more-costly future repairs. In May 2014, the City solicited bids for the project, and three bids were received. The bid results are:

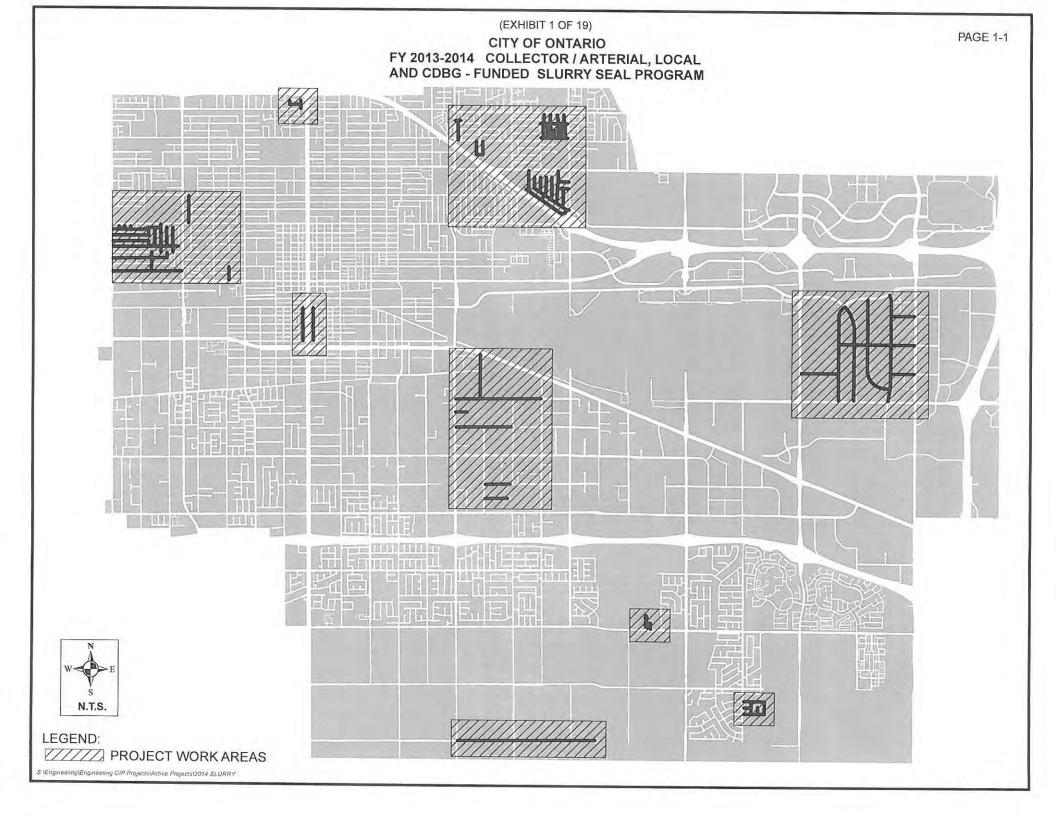
### STAFF MEMBER PRESENTING: Louis Abi-younes, P.E., City Engineer

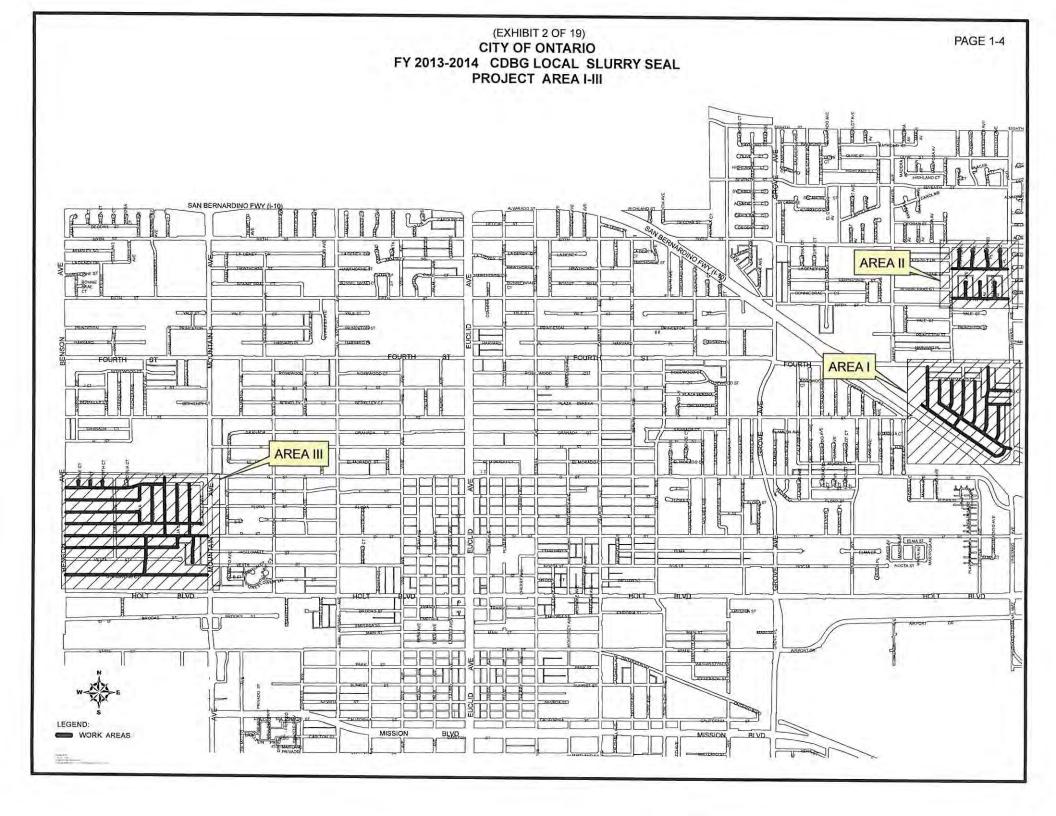
Prepared by: Department:	Gary Harms Engineering	Submitted to Cou Approved:	uncil/O.H.A.	06/03/2014
City Manager Approval:	Alcq	Continued to: Denied:		7
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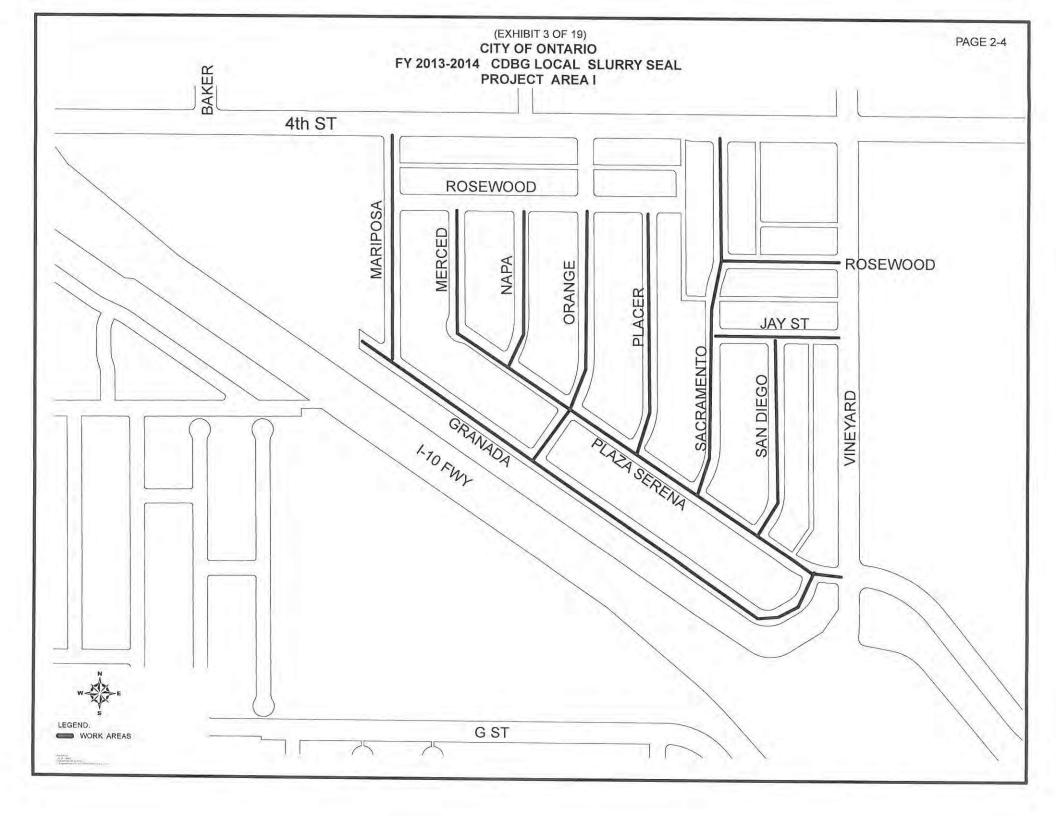
COMPANY	LOCATION	BASE BID (Schedule "A")	OPTION 1 (Schedule "B")	OPTION 2 (Schedule "C")	TOTAL (Reference Only)
American Asphalt South, Inc.	Fontana, CA	\$444,508	\$644,145	\$491,218	\$1,579,870
KAD Paving	Yucaipa, CA	\$670,523	\$695,120	\$579,266	\$1,944,909
All American Asphalt, Inc.	Corona, CA	\$650,242	\$736,992	\$716,076	\$2,103,310

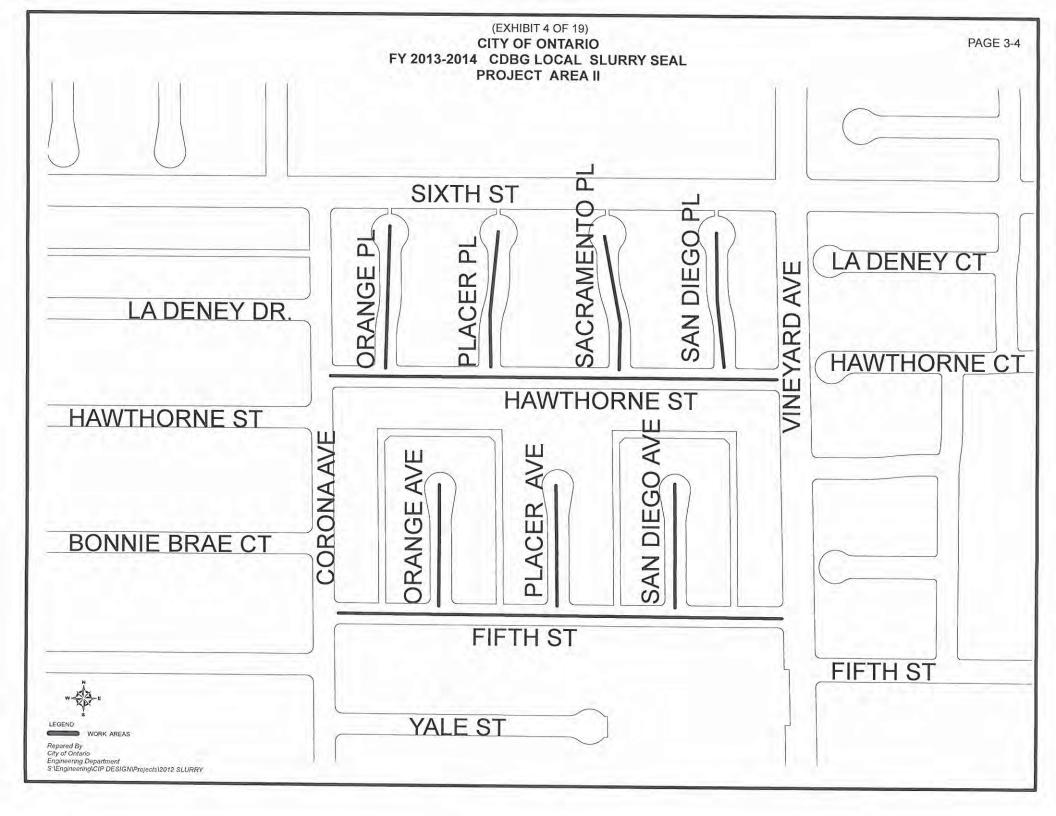
The bid amounts shown above provide for alternative possible awards allowing staff to choose between two different slurry materials. Alternate Bid Schedule "B" includes RPMSS and was chosen due to the higher quality and longer life-cycle combined with favorable bid prices. American Asphalt South, Inc. submitted the lowest-responsible bid; and is recommended at a project cost of \$1,088,653 (Base Bid-Schedule "A" of \$444,508 plus Option 1-Schedule "B" of \$644,145). American Asphalt South, Inc. has performed similar work for the City of Ontario in a satisfactory manner.

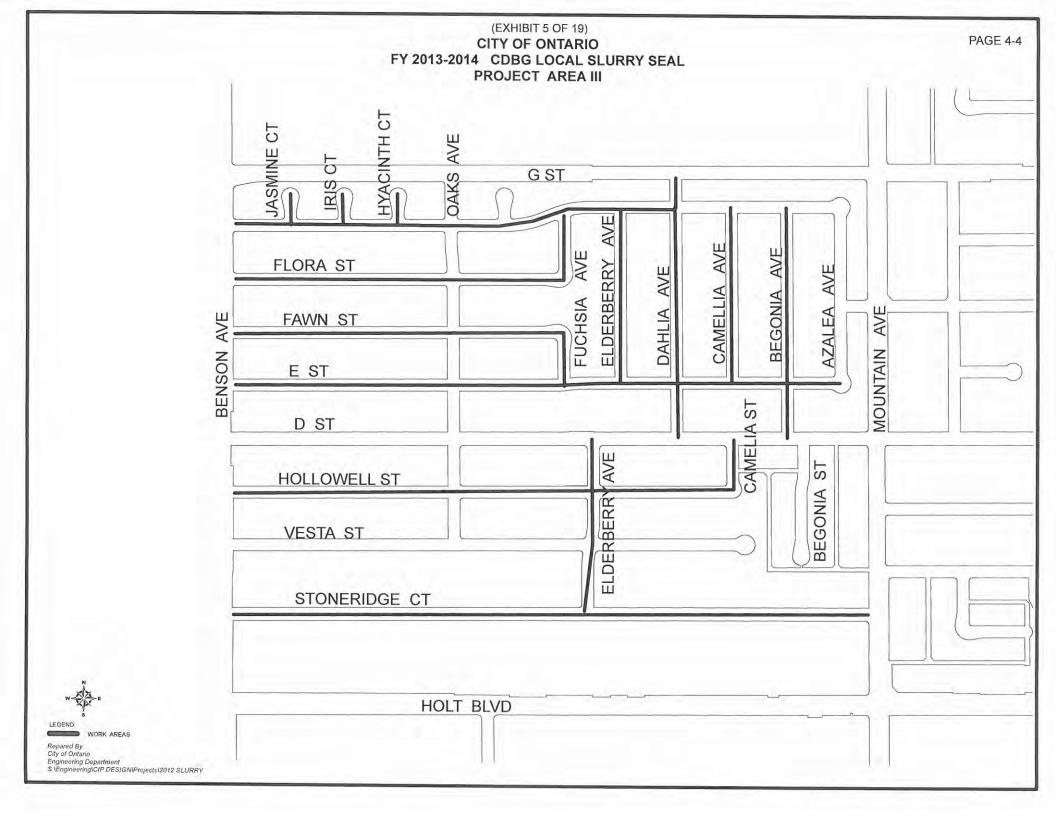
The requested 20% contingency will permit the City to take advantage of the low unit-price for RPMSS and allow additional streets as identified in the approved City's Pavement Management System, to be slurry sealed.

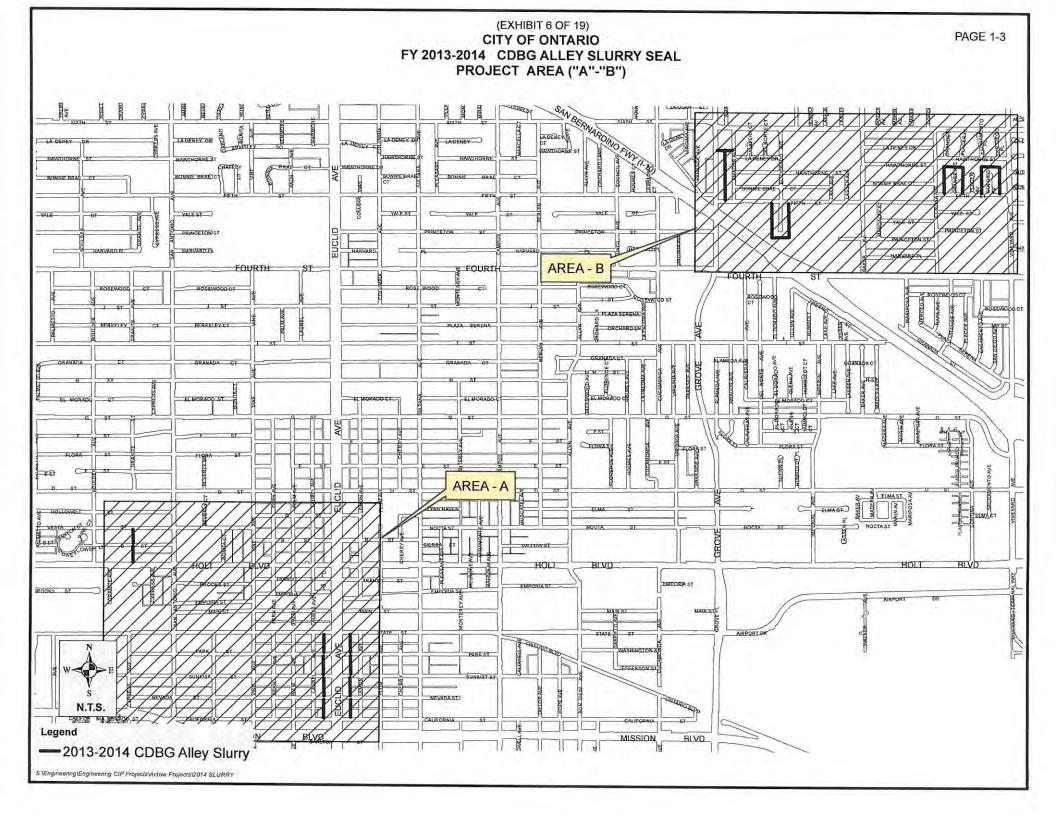


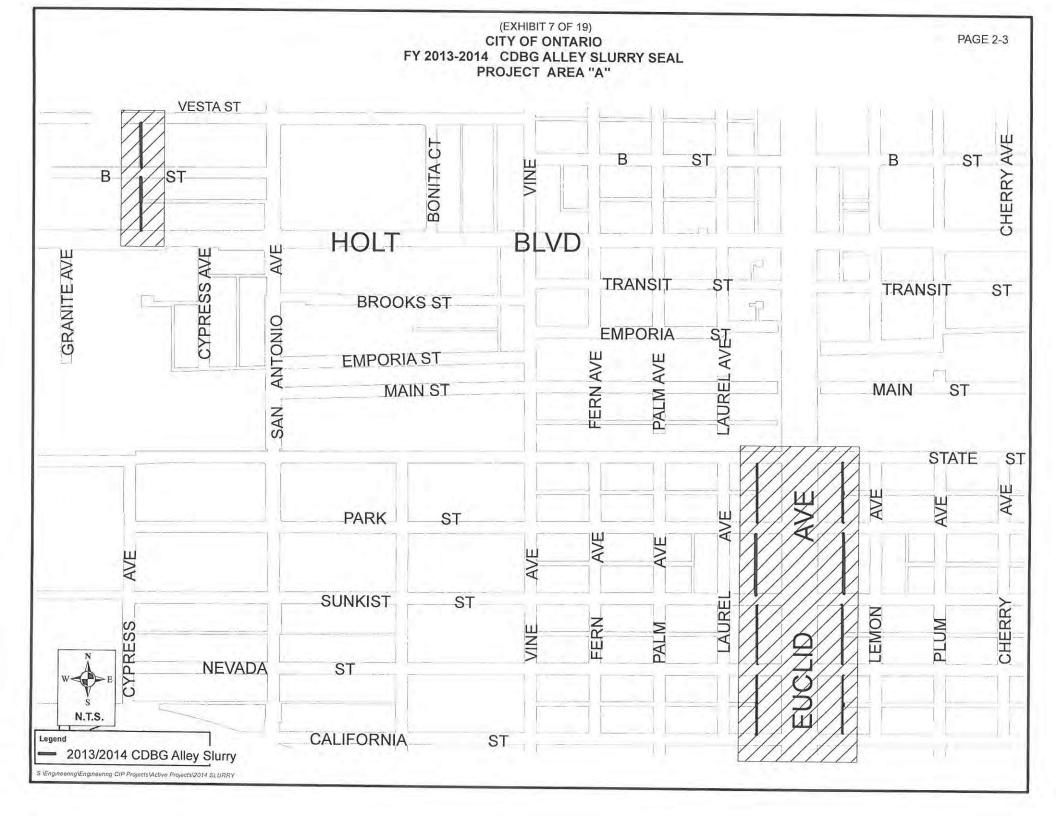


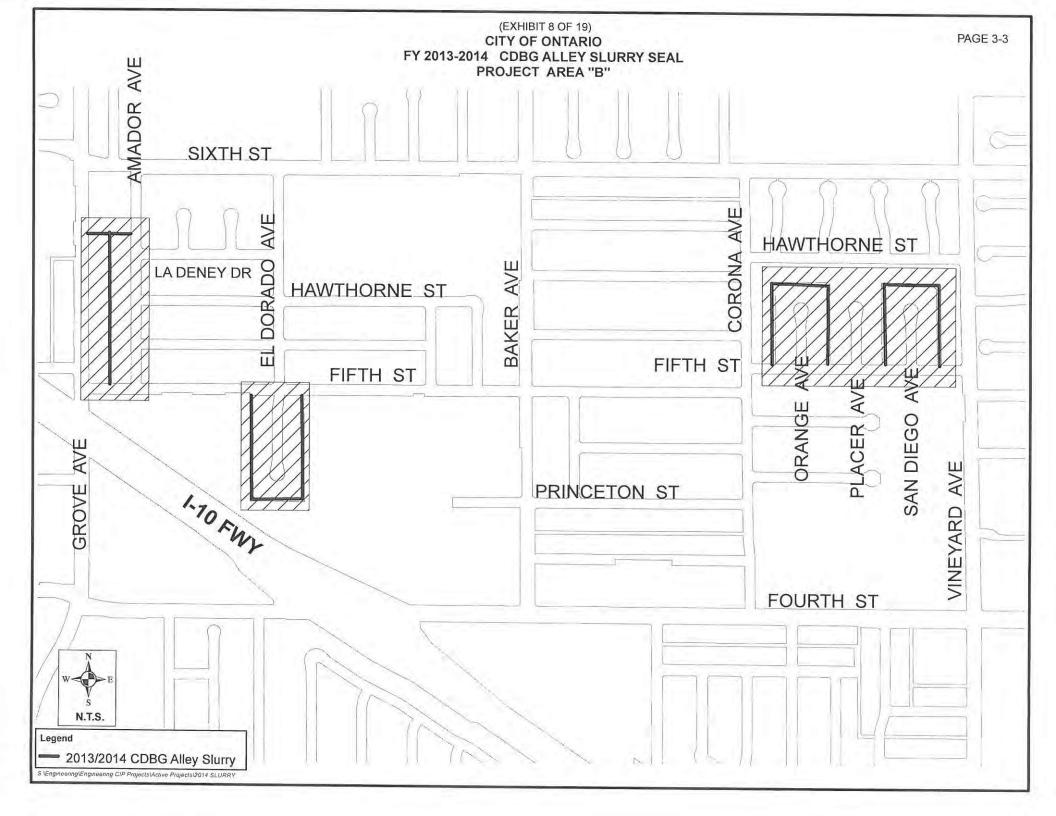


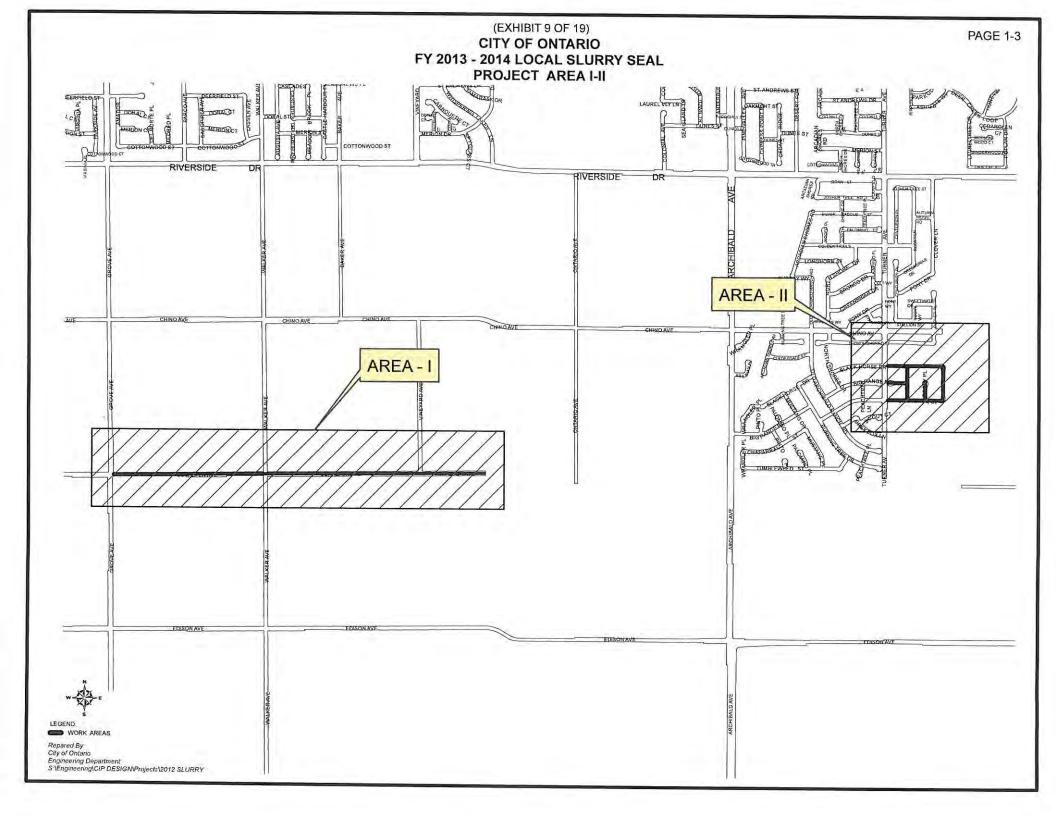


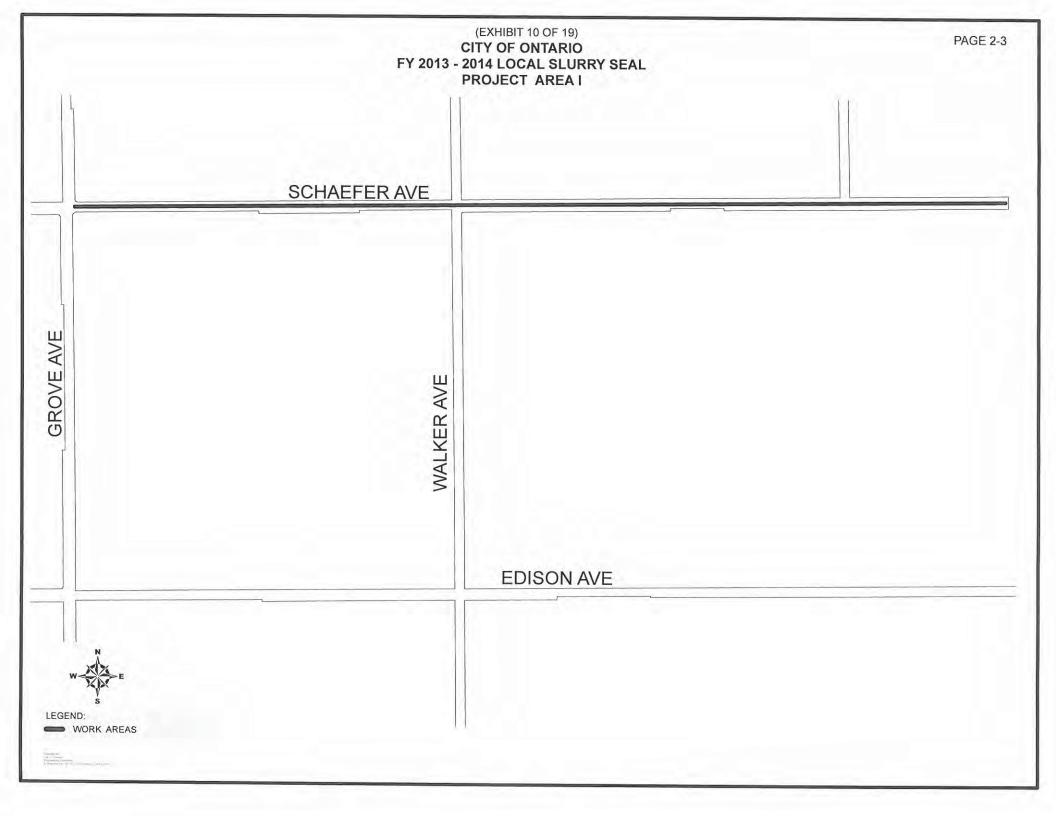


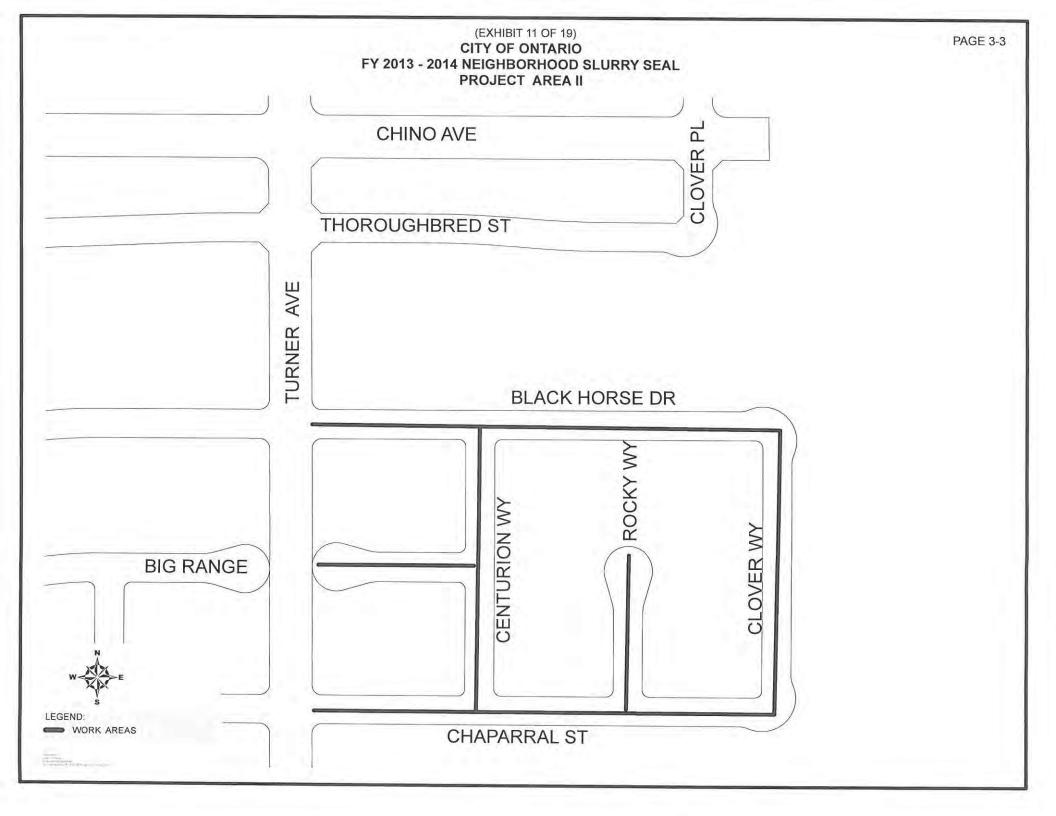


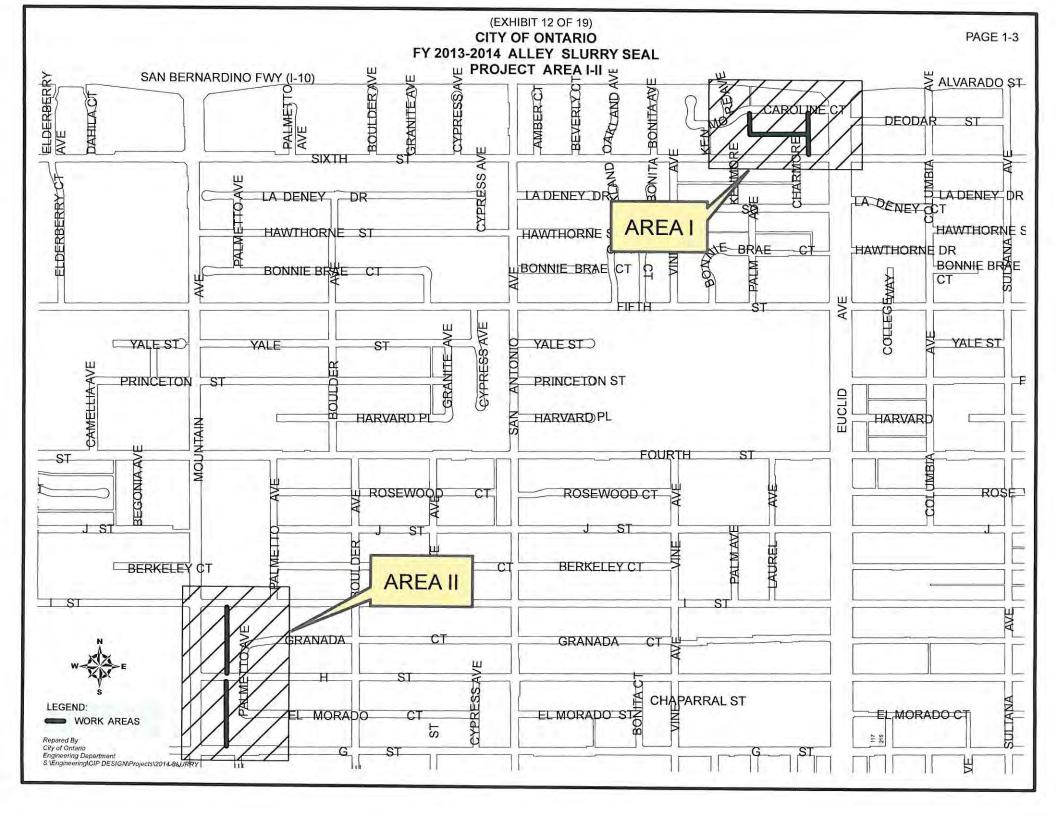


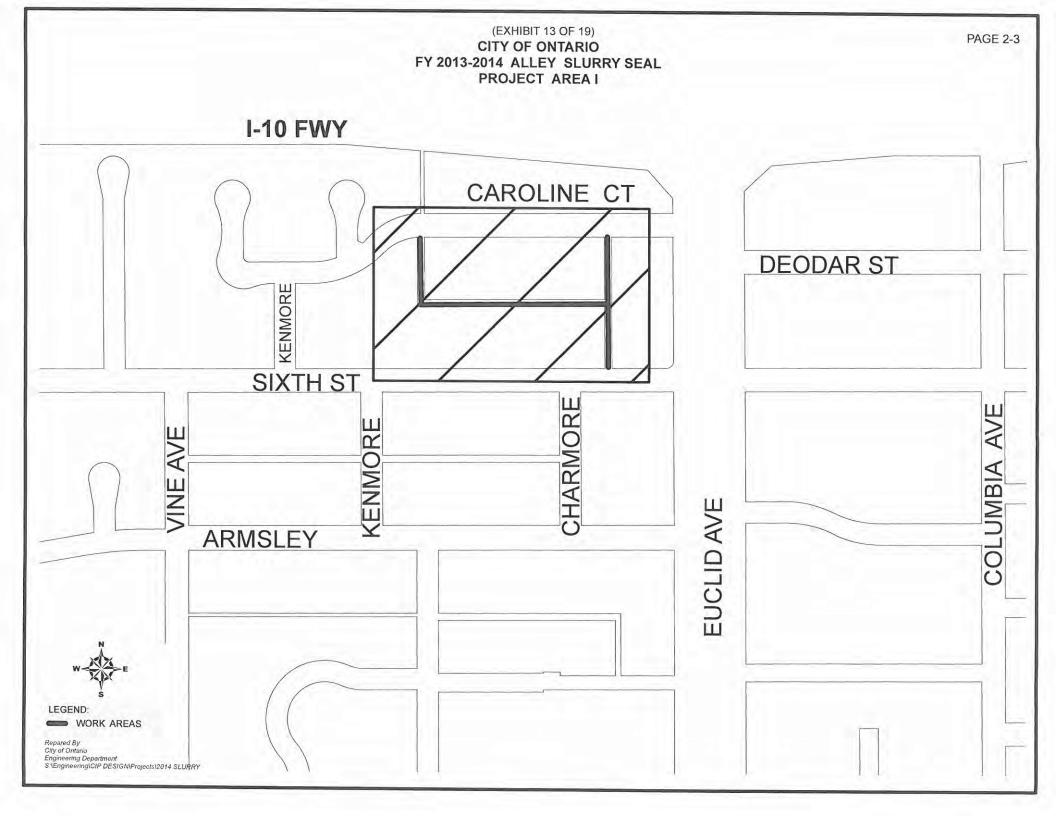


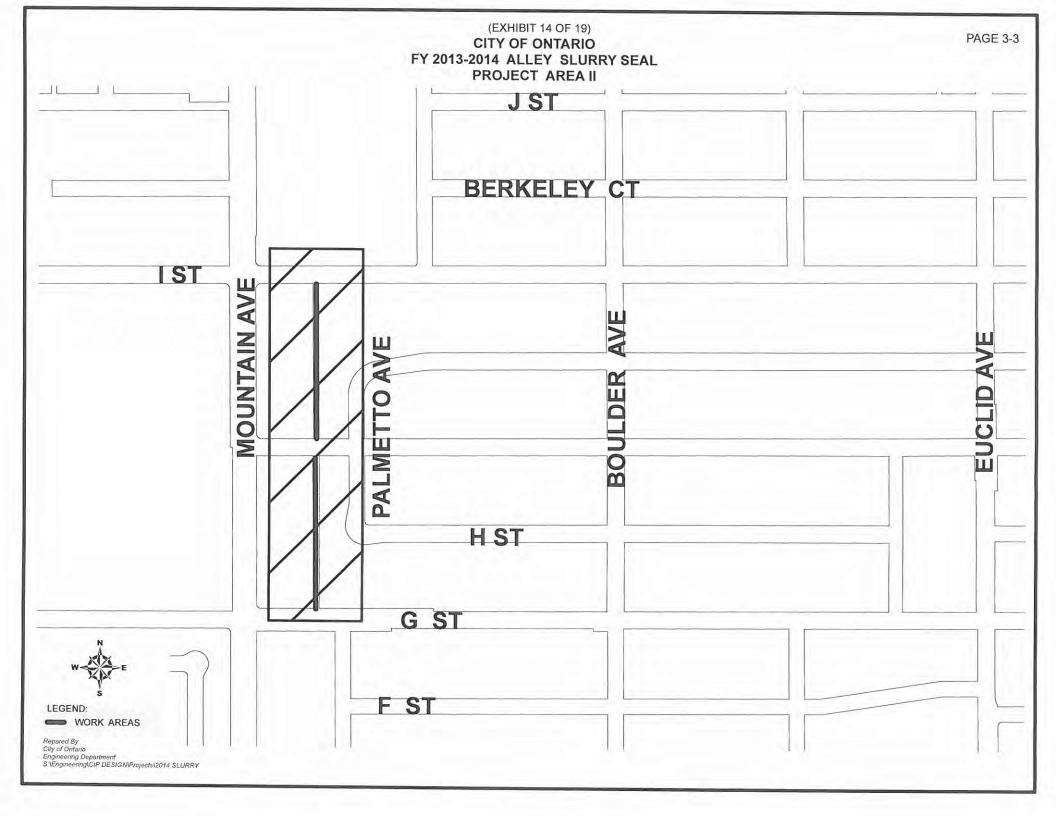


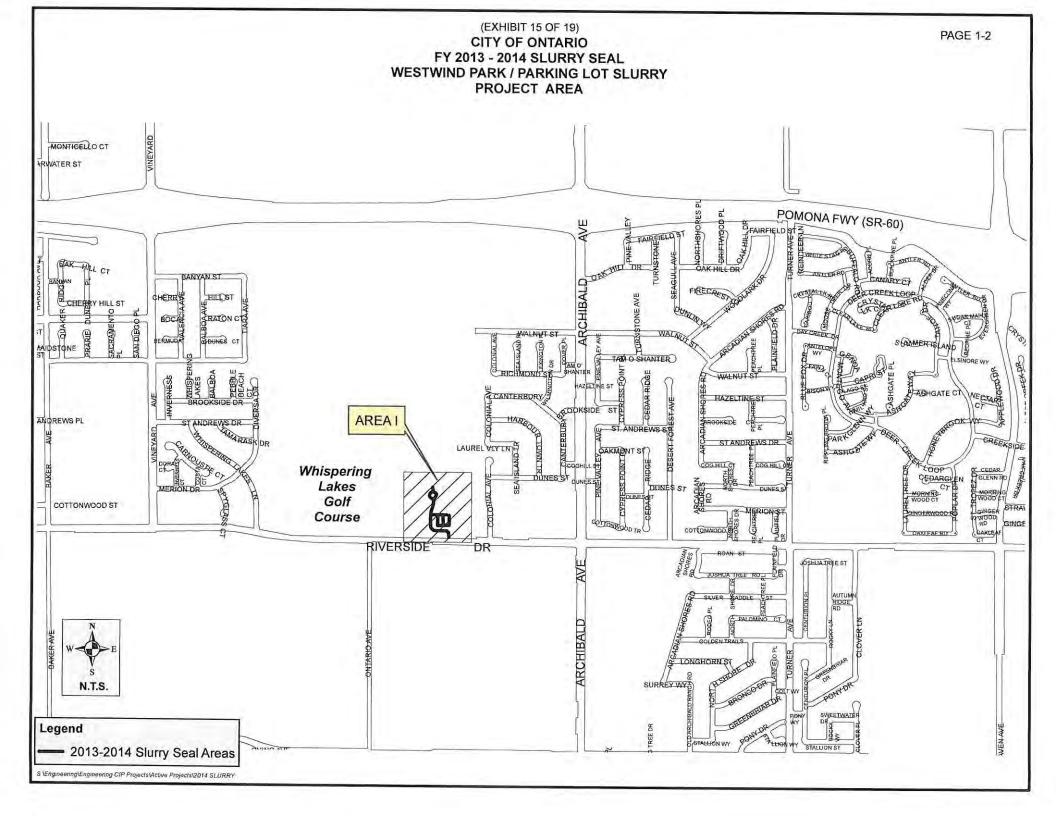


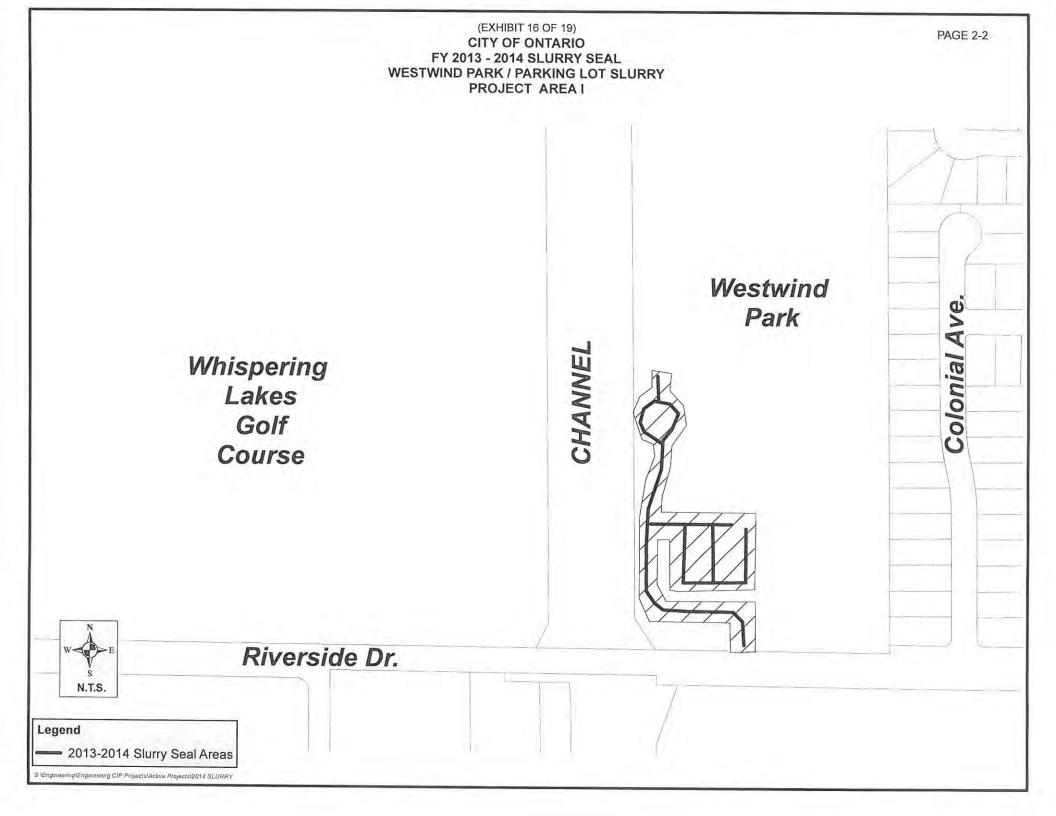


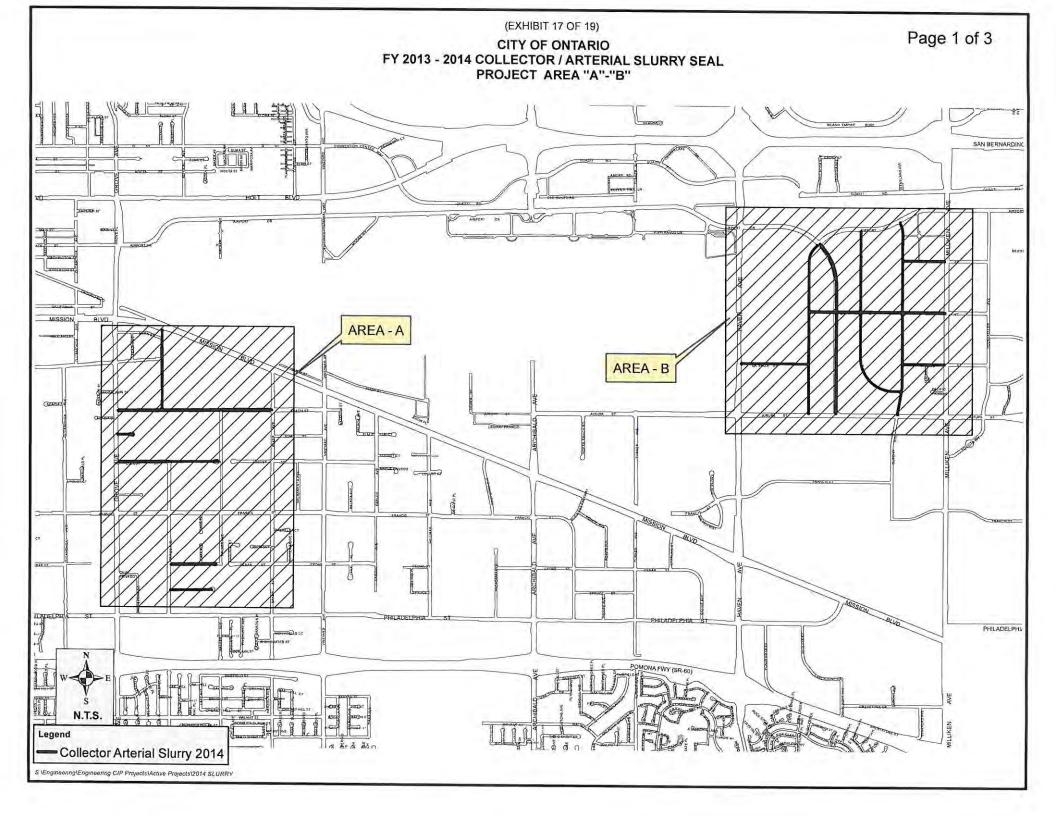


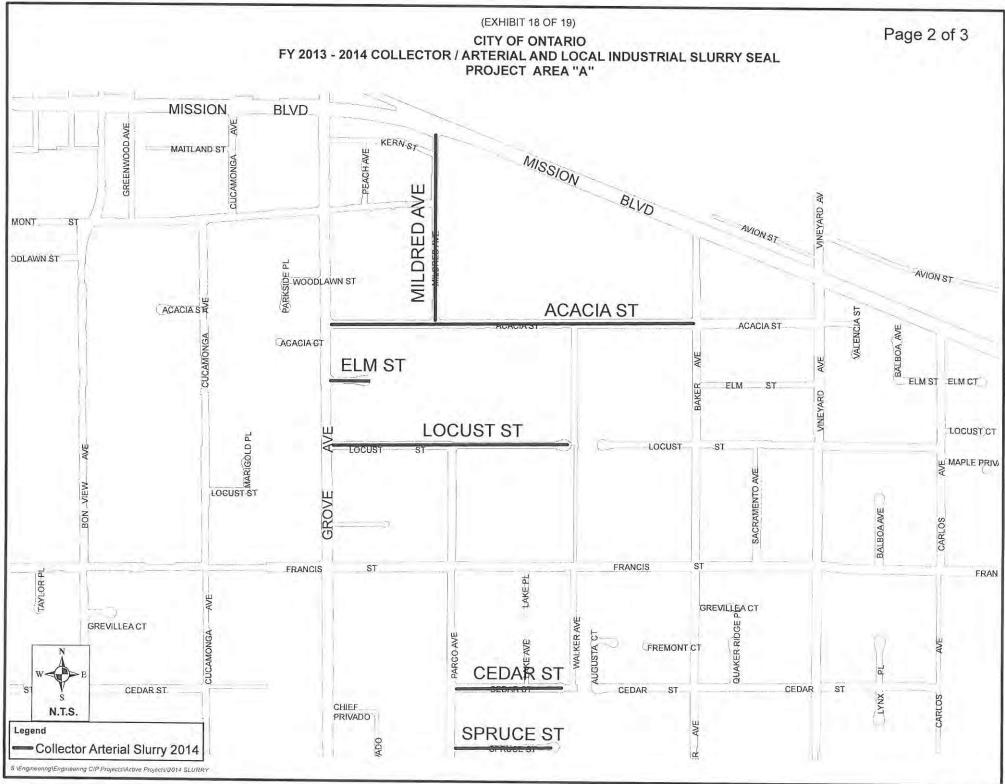


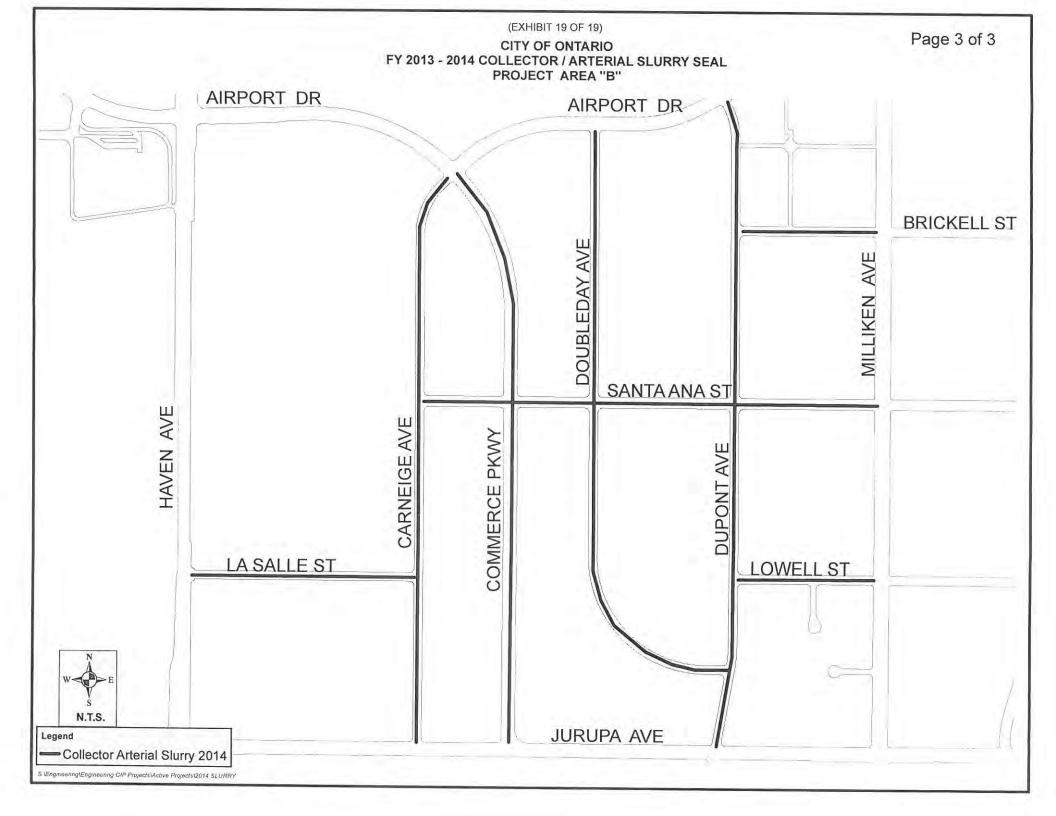












# **CITY OF ONTARIO** Agenda Report

June 3, 2014

## SECTION: CONSENT CALENDAR

### SUBJECT: A RESOLUTION AMENDING THE RESOLUTION OF NECESSITY NO. 2009-089 FOR THE ACQUISITION OF FEE, MAINTENANCE, ACCESS AND TEMPORARY CONSTRUCTION EASEMENT INTERESTS IN PORTIONS OF CERTAIN REAL PROPERTY

**RECOMMENDATION:** That the City Council adopt a resolution amending Resolution of Necessity No. 2009-089, originally adopted on December 15, 2009, for the purpose of amending legal definitions with respect to fee, maintenance, access and temporary construction easement interests already to be acquired based on the resolution and with regard to Assessor Parcel No. 0211-222-09 (HHI, San Bernardino, LLC) for public right-of-way and the construction of the North Milliken Avenue Grade Separation Project and related public infrastructure improvements.

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

FISCAL IMPACT: No fiscal impact.

**BACKGROUND:** The North Milliken Avenue Grade Separation Project and related public infrastructure improvements are required for and will benefit the community by eliminating potential conflicts between vehicular and train traffic, increasing travel reliability on Airport Drive and North Milliken Avenue, enhancing the flow of truck traffic and improving air quality.

As established by staff and conveyed to the City Council during its meeting of December 15, 2009, the City obtained appraisals of the affected properties from Lidgard & Associates and made offers of just compensation to the property owners pursuant to California Government Code section 7267.2. The City also retained the consulting firm of Overland, Pacific & Cutler, Inc., which has negotiated on behalf of the City to purchase the properties. Preliminary title reports were ordered to determine the identities of

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

Prepared by: Department:	Cindy Hackett, P.E. Engineering	Submitted to Council/O.H., Approved:	A. 06/03/2014
City Manager Approval:	Allo	Continued to: Denied:	8
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the record owners. Following standard public records and due diligence searches for ownership information, a notice of the public hearing was mailed to the property owners. Resolutions of Necessity (including Resolution No. 2009-089) were adopted on December 15, 2009. A true and correct copy of Resolution No. 2009-089 is attached hereto as Exhibit "A."

Following the adoption of the Resolution of Necessity, on March 8, 2010, the City filed an eminent domain action to condemn the property interests set forth in Resolution No. 2009-089. Subsequently, the parties having entered into settlement negotiations, were able to reach an all-inclusive settlement of the matter. As part of the settlement negotiations, the property owner requested and the parties agreed that certain legal definitions for property interest being acquired would be revised to clarify the scope of said interests and that the City will seek to amend its resolution to reflect the revisions. A redlined version of the revised legal definitions setting forth the changes being made attached hereto as Exhibit "C" and the legal description and plat map for the additional access easement is attached hereto as Exhibit "B." The new legal definitions were approved by Legal Counsel for the property owner.

The next step in the litigation process is for the City to amend Resolution No. 2009-089 to replace the legal definitions with the new version. A true and correct copy of the revised legal definitions, legal descriptions and plat maps are attached as Exhibit "A" to the proposed amended Resolution of Necessity. Once the resolution is amended, the parties can then finalize the settlement documentation as to the interests being acquired and conclude the matter with respect to acquisition of the property and the claims of the property owner.

**DESCRIPTION OF PROPERTY TO BE ACQUIRED:** The property affected is owned by HHI San Bernardino, LLC, located at 54 South Milliken Avenue, Ontario (San Bernardino County), California, and is identified as Assessor Parcel No. 0211-222-09. The City seeks to acquire fee, access easement, maintenance easement, and temporary construction easement interests in the property.

RESOLUTION NO.

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF ONTARIO, RESOLUTION CALIFORNIA. AMENDING NO. 2009-089 Α RESOLUTION OF NECESSITY FOR THE ACQUISITION OF FEE, ACCESS EASEMENT. MAINTENANCE EASEMENT AND TEMPORARY CONSTRUCTION EASEMENT INTERESTS IN PORTIONS OF CERTAIN REAL PROPERTY LOCATED AT OR NEAR THE INTERSECTION OF AIRPORT DRIVE AND SOUTH MILLIKEN AVENUE. AND MORE PARTICULARLY DESCRIBED ASSESSOR AS PARCEL NO. 0211-222-09, BY EMINENT DOMAIN, FOR PUBLIC RIGHT-OF-WAY FOR THE CONSTRUCTION OF THE NORTH MILLIKEN AVENUE GRADE SEPARATION PROJECT AND RELATED PUBLIC INFRASTRUCTURE IMPROVEMENTS IN THE CITY OF ONTARIO. SAN BERNARDINO COUNTY, CALIFORNIA.

WHEREAS, the City of Ontario (the "City") proposes to acquire fee, access easement, maintenance easement and temporary construction easement interests in portions of certain real property located at or near the intersection of Airport Drive and Milliken Avenue and more particularly described as Assessor Parcel No. 0211-222-09, for public right-of-way purposes and the construction of the North Milliken Avenue Grade Separation Project and related public infrastructure improvements, in the City of Ontario, California, pursuant to the authority granted to it by Section 37350.5 of the California Government Code; and

WHEREAS, pursuant to Section 1245.235 of the California Code of Civil Procedure, the City scheduled a public hearing for Tuesday, December 15, 2009, at 6:30 p.m. at the Ontario City Hall, Council Chambers, 303 East "B" Street, Ontario, California, and gave to each person whose property is to be acquired and whose name and address appeared on the last equalized county assessment roll, notice and a reasonable opportunity to appear at said hearing and be heard on the matters referred to in section 1240.030 of the California Code of Civil Procedure; and

WHEREAS, said hearing has been held by the City and each person whose property is to be acquired by eminent domain was afforded an opportunity to be heard on said matters; and

WHEREAS, the City may now adopt a Resolution of Necessity pursuant to Section 1240.040 of the California Code of Civil Procedure.

NOW, THEREFORE, THE CITY DOES HEREBY RESOLVE AND DECLARE AS FOLLOWS:

<u>SECTION 1.</u> Compliance with California Code of Civil Procedure and California Environmental Quality Act. There has been compliance by the City with the requirements of Section 1245.235 of the California Code of Civil Procedure and the California Environmental Quality Act.

<u>SECTION 2.</u> Public Use. The public use for which the real property is to be acquired is for public right-of-way purposes and the construction of the South Milliken Avenue Grade Separation Project and related public infrastructure improvements, in San Bernardino County, California. Section 37350.5 of the California Government Code authorizes the City to acquire by eminent domain real property necessary for such purposes.

<u>SECTION 3.</u> Description of Property. Attached and marked as Exhibit "A" is the legal description and depiction of the real property to be acquired by the City, which describes the general location and extent of the property to be acquired with sufficient detail for reasonable identification.

<u>SECTION 4.</u> Findings. The City hereby finds and determines each of the following:

- (a) The public interest and necessity require the proposed project;
- (b) The proposed project is planned or located in the manner that will be most compatible with the greatest public good and least private injury;
- (c) The real property described in Exhibit "A" are necessary for the proposed project;
- (d) The offer required by Section 7267.2 of the California Government Code was made.

<u>SECTION 5.</u> Use Not Unreasonably Interfering with Existing Public Use(s). Some or all of the real property to be acquired is subject to easements and rights-of-way appropriated to existing public uses. The legal descriptions of these easements and rights-of-way are on file with the City and describe the general location and extent of the easements and rights-of-way with sufficient detail for reasonable identification. In the event the herein described use or uses will not unreasonably interfere with or impair the continuance of the public use as it now exists or may reasonably be expected to exist in the future, counsel for the City is authorized to acquire the real property subject to such existing public use(s) pursuant to Section 1240.510 of the California Code of Civil Procedure.

<u>SECTION 6.</u> More Necessary Public Use. Some or all of the real property to be acquired is subject to easements and rights-of-way appropriated to existing public uses. To the extent that the herein described use or uses will unreasonably interfere with or impair the continuance of the public use as it now exists or may reasonably be expected to exist in the future, the City finds and determines that the herein described use or uses are more necessary than said existing public use. Counsel for the City is authorized to acquire the real property appropriated to such existing public use(s) pursuant to Section 1240.610 of the California Code of Civil Procedure. Staff is further authorized to make such improvements to the real property being acquired that it determines is reasonably necessary to mitigate any adverse impact upon the existing public use.

SECTION 7. Further Activities. Counsel for the City is hereby authorized to file legal proceedings necessary to acquire the hereinabove described real property in the name of and on behalf of the City by eminent domain, and counsel is authorized to institute and prosecute such legal proceedings as may be required in connection therewith. Legal counsel is further authorized to take such steps as may be authorized and required by law, and to make such security deposits as may be required by order of court, to permit the City to take possession of and use said real property at the earliest possible time. Counsel is further authorized to correct any errors or to make or agree to non-material changes in the legal description of the real property that are deemed necessary for the conduct of the condemnation action or other proceedings or transaction required to acquire the subject real property. Counsel is further authorized to reduce or modify the extent of the interests or property to be acquired so as to reduce the compensation payable in the action where such change would not substantially impair the construction and operation for the project for which the real property is being acquired.

<u>SECTION 8.</u> Effective Date. This Amended Resolution shall be retroactive to December 15, 2009, the date the original Resolution No. 2009-089 was adopted.

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

PASSED, APPROVED, AND ADOPTED this 3<sup>rd</sup> day of June 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 June 3, 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 June 3, 2014.

MARY E. WIRTES, MMC, CITY CLERK

(SEAL)

## EXHIBIT 'A' Legal Description Right-op-Way Take

### APN 0211-222-09

In the City of Ontario, County of San Bernardino, State of California, being that portion of Parcel 6 of Parcel Map No. 12458, filed in Book 151, Pages 1 and 2 of Parcel Maps, records of said county, described as follows:

Beginning at the northeasterly corner of said Parcel 6; thence along the northerly line of said Parcel 6 South 88°02'34" West 16.33 feet; thence leaving said northerly line South 01°35'15" East 14.58 feet to the beginning of a curve concave northwesterfy having a radius of 9.50 feet; thence southwesterly along said curve through a central angle of 90°00'00" an arc distance of 14.92 feet; thence South 01°35'15" East 36.64 feet to the beginning of a non-tangent curve concave southwesterly having a radius of 9.50 feet, a radial line to said curve bears North 01°35'15" West; thence southeasterly along said curve through a central angle of 90°00'00" an arc distance of 14.92 feet: thence South 01°35\*15" East 149.36 feet to the beginning of a curve concave northwesterly having a radius of 49.50 feet; thence southwesterly along said curve through a central angle of 91°44'06" an are distance of 79.25 fast; thence South 00°08'51" West 0.33 feet to a point on the southerly line of said Parcel 6; thence along said southerly line South 89°51'59" East 11.39 feet to the beginning of a curve concave northwesterly having a radius of 50.00 feat; thence northeasterly along the southeasterly boundary of said Parcel 6 through a central angle of 90°33'52" an arc distance of 79.03 feet to a point on the easterly line of said Parcel 6; thence along said easterly line North 00°25'51" West 220.92 feet to the POINT OF BEGINNING,

Containing 4,103 square feet.

Page | of 2

EXHIBIT A, PAGE 1

-

All as shown on Exhibit "B" attached hereto and made a part thereof.

This legal description is not intended to be used in the conveyance of land in violation of the Subdivision Map Act of the State of California.

This legal description was prepared by me or under my direction.

Kari J. Lauren, SLS 5679

MARCH 24.200 Date Ċ.

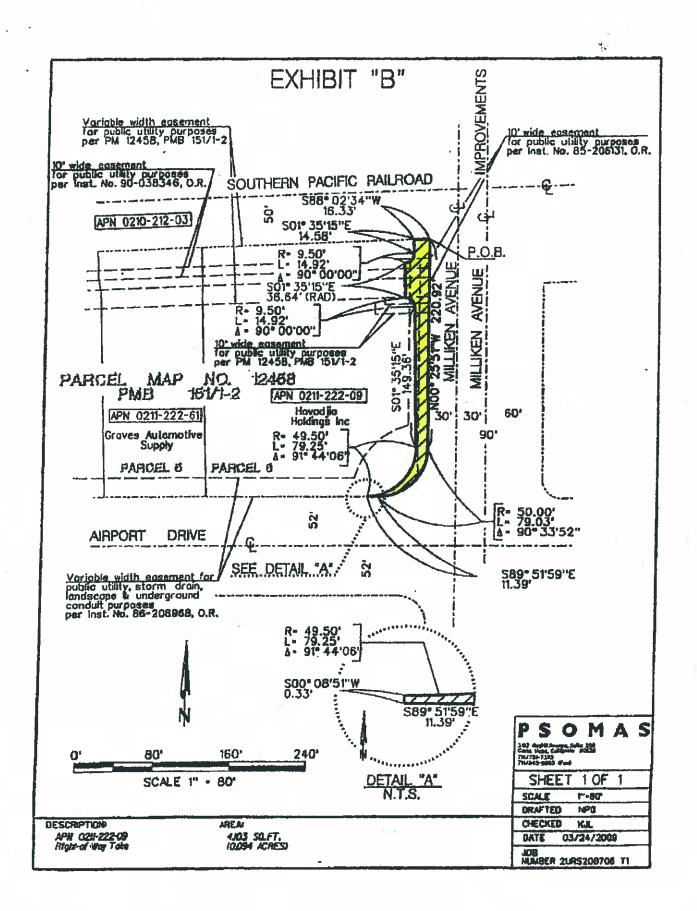


EXHIBIT A, PAGE 3

### Definitions of Legal Rights to be Acquired

"Maintenance Easement" grants to the City of Ontario (the "City") a non-exclusive permanent and perpetual easement together with the right of the City, its successors and assigns, to forever maintain, improve, alter, relocate, inspect, occupy and use for the construction and maintenance of a wall structure including, but not limited to, the removal of graffiti.

Property owner may utilize the easement area for reasonable ingress and egress purposes and to traverse across, so long as said use does not interfere with City's easement rights.

Property owners shall not erect or construct, or permit to be erected or constructed, any building, structure or improvement on, over or under any portion of the easement, or park any vehicles or store any other type of personal property, or plant any tree or trees or plant any other vegetation or flora on, over or under any portion of the easement except at the written consent of the City, its successors and assigns.

The City shall be entitled to trim, cut, or clear away any trees, brush, or other vegetation or flora from time to time determined in its sole discretion without payment of any additional compensation.

No other easement or easements shall be granted on, under or over the easement without obtaining the prior written consent of the City, its successors and assigns.

"Access Easement" grants to the City a non-exclusive permanent and perpetual easement together with the right of the City, its successors and assigns, to forever maintain, improve, alter, relocate, inspect, occupy and use for the access to the maintenance easement, as determined necessary.

Property owner may utilize the easement area for reasonable ingress and egress purposes and to traverse across, so long as said use does not interfere with City's easement rights.

Property owners shall not erect or construct, or permit to be erected or constructed, any building, structure or improvement on, over or under any portion of the easement, or park any vehicles or store any other type of personal property, or plant any tree or trees or plant any other vegetation or flora on, over or under any portion of the easement except at the written consent of the City, its successors and assigns.

The City shall be entitled to trim, cut, or clear away any trees, brush, or other vegetation or flora from time to time determined in its sole discretion without payment of any additional compensation.

No other easement or easements shall be granted on, under or over the easement without obtaining the prior written consent of the City, its successors and assigns.

The existing ground elevations of the easement shall not be increased or decreased, without obtaining the prior written consent of the City, its successors and assigns.

"Temporary construction easement (TCE)" refers to the right of the City, its successors and assigns, to engage in construction and related activities for the project, together with all necessary rights of ingress and egress to the easement area in connection with the exercise of any of the easement rights.

Prior to termination of this easement, property owners shall not erect or construct, or permit to be erected or constructed, any building, structure or improvement on, over or under any portion of the easement, nor shall property owners plant any tree or trees or plant any other vegetation or flora on any portion of the easement except at the written consent of the City, its successors and assigns.

The City shall be entitled to trim, cut, or clear away any trees, brush, or other vegetation or flora from time to time as plaintiff determines in its sole discretion without payment of any additional compensation to property owners.

No other easement or easements shall be granted on, under, or over this easement without obtaining the prior written consent of the City, its successors and assigns.

The duration of the rights under this easement shall not be for less than twenty-four (24) months, and will begin on the date construction on the property commences. The City shall have an option to extend the temporary construction easement on a month-to-month basis, until construction on the property is completed.

### EXHIBIT 'A'

## LEGAL DESCRIPTION MAINTENANCE EASEMENT

### APN 0211-222-09

In the City of Ontario, County of San Bernardino, State of California, being that portion of Parcel 6 of Parcel Map No. 12458, filed in Book 151, Pages 1 and 2 of Parcel Maps, records of said county, described as follows:

Beginning at the northeasterly corner of said Parcel 6; thence along the northerly line of said Parcel 6 South 88°02'34" West 15.80 feet to the <u>TRUE POINT OF BEGINNING</u>; thence leaving said northerly line South 01°33'51" East 12.30 feet; thence South 88°02'34" West 106.98 feet; North 01°56'37" West 12.30 feet to a point on the northerly line of said Parcel 6; thence along said northerly line North 88°02'34" East 107.07 feet to the <u>TRUE POINT OF BEGINNING</u>.

Containing 1,316 square feet.

All as shown on Exhibit "B" attached hereto and made a part thereof.

This legal description is not intended to be used in the conveyance of land in violation of the Subdivision Map Act of the State of California.

This legal description was prepared by me or under my direction.

Kari J. Launen, HUS 5679

Date

Page I of I

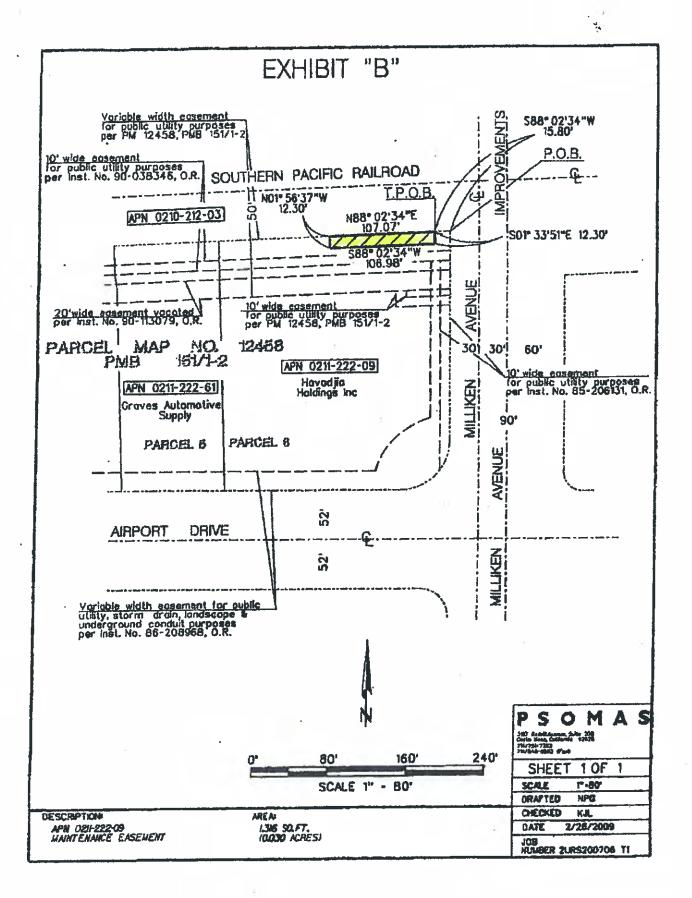


EXHIBIT A, PAGE 7

## EXHIBIT 'A' LEGAL DESCRIPTION ACCESS EASEMENT

### APN 0211-222-09

In the City of Ontario, County of San Bernardino, State of California, being that portion of Parcel 6 of Parcel Map No. 12458, filed in Book 151, Pages 1 and 2 of Parcel Maps, records of said county, described as follows:

Beginning at the northeasterly comer of said Parcel 6; thence along the northerly line of said Parcel 6 South 88°02'34" West 196.85 feet to the <u>TRUE POINT OF</u> <u>BEGINNING</u>; thence leaving said northerly line South 01°57'26" East 30.00 feet; thence North 88°03'20" East 170.83 feet; thence South 01°35'15" East 10.00 feet; thence South 88°03'52" West 200.78 feet; thence North 01°56'37" West 39.96 feet to a point on the northerly line of said Parcel 6; thence along said northerly line North 88°02'34" East 30.01 feet to the TRUE POINT OF BEGINNING.

Containing 2,905 square feet.

All as shown on Exhibit "B" attached hereto and made a part thereof.

This legal description is not intended to be used in the conveyance of land in violation of the Subdivision Map Act of the State of California.

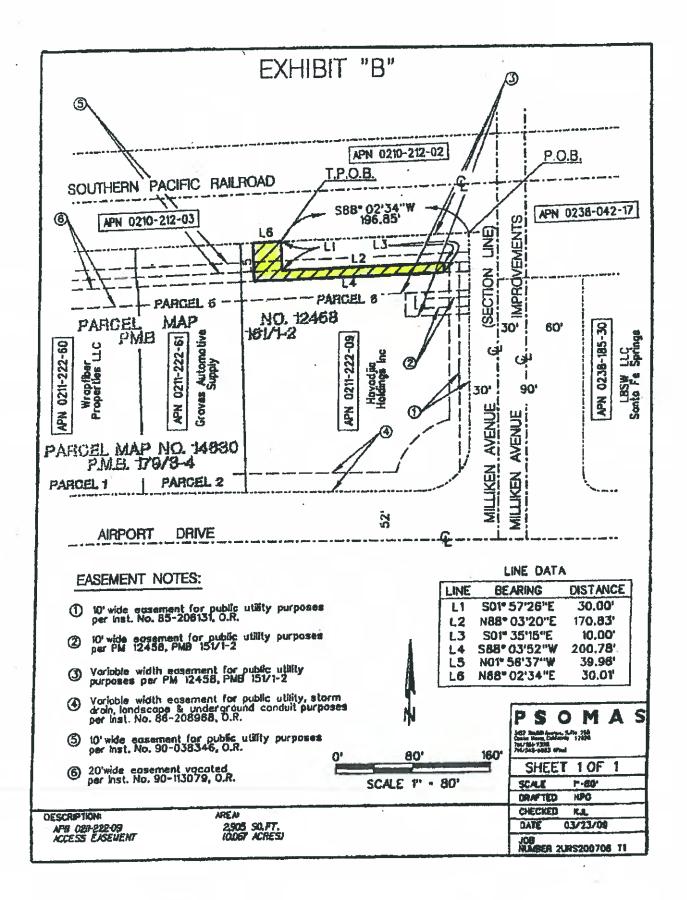
This legal description was prepared by me or under my direction.

Kari J. Launen, PLS 5679

24. 210,47 The CALL FORM

Page 1 of 1

Date



### EXHIBIT 'A'

### LEGAL DESCRIPTION

### **TEMPORARY CONSTRUCTION EASEMENT**

#### APN 0211-222-09

In the City of Ontario, County of San Bernardino, State of California, being that portion of Parcel 6 of Parcel Map No. 12458, filed in Book 151, Pages 1 and 2 of Parcel Maps, records of said county, described as follows:

Beginning at the northeasterly comer of said Parcel 6; thence along the northerly line of said Parcel 6 South 88°02'34" West 16.33 feet to the TRUE POINT OF BEGINNING: thence leaving said northerly line South 01°35'15" East 14.58 feet to the beginning of a curve conceve northwesterly having a radius of 9.50 feet; thence southwesterly along said curve through a contral angle of 90°00'00" an arc distance of 14.92 feet; thence South 01°35'15" East 36.64 feet to the beginning of a non-tangent curve concave south westerly having a radius of 9.50 feet, a radial line to said curve bears North 01°35'15" West; thence southeasterly along said curve through a central angle of 90°00'00" an are distance of 14.92 feet; thence South 01°35'15" East 149.36 feet to the beginning of a curve concave northwesterly having a radius of 49.50 feet; thence south westerly along said curve through a central angle of 91°44'06" an arc distance of 79.25 feet; thence North 00°08'51" East 10.00 feet to the beginning of a non-tangent curve concave northwesterly having a radius of 39.50 feet, a radial line to said curve bears South 00°08'51" West; thence northeasterly along said curve through a central angle of 91°44'06" an arc distance of 63.24 feet; thence North 01°35'15" Weat 149,42 feet; thence South 88°23'26" West 69.44 feet; thence North 01°56'08" West 57.38 feet; thence North 88°02'49" East 54.32 feet; thence North 01°36'34" West 12.30 feet to a point on the northerly line of said Parcel 6; thence along said northerly line North 88°02'34" East 25.48 feet to the TRUE POINT OF BEGINNING.

Containing 6,721 square feet.

Page 1 of 2

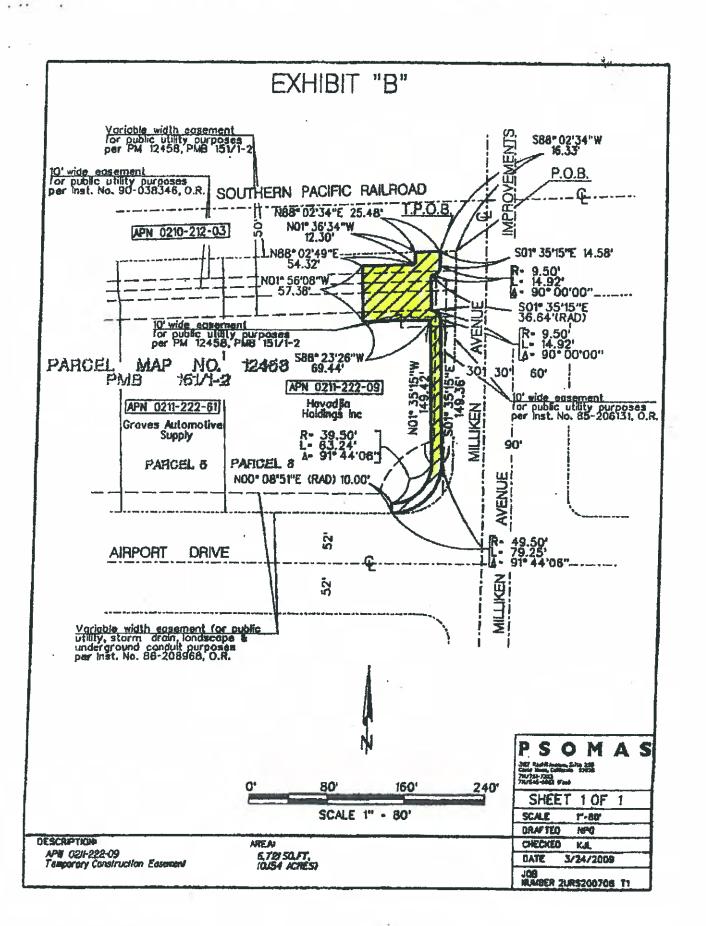
All as shown on Exhibit "B" attached hereto and made a part thereof.

This legal description is not intended to be used in the conveyance of land in violation of the Subdivision Map Act of the State of California.

This legal description was prepared by me or under my direction.

5573 Kari J. Launen, PLS 5679 Date Ci

Page 2 of 2



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

I, Eva M. Frame, Deputy City Clerk of the City of Ontario, do hereby certify that the attached copy of Resolution No. 2009-089, that was duly approved and adopted by the City Council at a regular meeting thereof held on the 15<sup>th</sup> day of December 2009, is a true and correct copy of the original document which is on file in my office.

SS

EXECUTED this 16<sup>th</sup> day of December, 2009 Ontario, California.

Va M Frame Frame, Deputy City Clerk

## RESOLUTION NO. 2009-089

A RESOLUTION OF NECESSITY OF THE CITY COUNCIL OF THE CITY OF ONTARIO, CALIFORNIA, FOR THE ACQUISITION OF FEE AND EASEMENT INTERESTS IN PORTIONS OF CERTAIN REAL PROPERTY LOCATED ON BOTH SIDES OF MILLIKEN AVENUE BETWEEN GUASTI ROAD AND AIRPORT DRIVE AT THE UNION PACIFIC RAILROAD ALHAMBRA SUBDIVISION RAIL CROSSING, MORE PARTICULARLY DESCRIBED AS APNS: 0211-222-09, 0238-185-30, 0211-222-62, 0211-222-63 AND 0211-222-65; BY EMINENT DOMAIN IS NECESSARY FOR PUBLIC RIGHT-OF-WAY FOR THE CONSTRUCTION OF THE NORTH MILLIKEN AVENUE GRADE SEPARATION PROJECT AND RELATED PUBLIC INFRASTRUCTURE IMPROVEMENTS IN THE CITY OF ONTARIO, SAN BERNARDINO COUNTY, CALIFORNIA.

WHEREAS, the City of Ontario (the "City") proposes to acquire fee and easements interests in portions of certain real property located on both sides of Milliken Avenue between Guasti Road and Airport Drive at the Union Pacific Railroad Alhambra subdivision rail crossing, more particularly described as Assessor Parcel Numbers 0211-222-09, 0238-185-30, 0211-222-62, 0211-222-63, and 0211-222-65 for public right-of-way purposes and the construction of the North Milliken Avenue Grade Separation Project and related public infrastructure improvements, in the City of Ontario, California, pursuant to the authority granted to it be by Section 37350.5 of the California Government Code; and

WHEREAS, pursuant to Section 1245.235 of the California Code of Civil Procedure, the City scheduled a public hearing for Tuesday, December 15, 2009, at 6:30 p.m. at the Ontario City Hall, Council Chambers, 303 East "B" Street, Ontario, California, and gave to each person whose property is to be acquired and whose name and address appeared on the last equalized county assessment roll, notice and a reasonable opportunity to appear at said hearing and be heard on the matters referred to in Section 1240.030 of the California Code of Civil Procedure; and

WHEREAS, said hearing has been held by the City and each person whose property is to be acquired by eminent domain was afforded an opportunity to be heard on said matters; and

WHEREAS, the City may now adopt a Resolution of Necessity pursuant to Section 1240.040 of the California Code of Civil Procedure.

NOW, THEREFORE, THE CITY DOES HEREBY RESOLVE AND DECLARE AS FOLLOWS:

<u>SECTION 1.</u> Compliance with California Code of Civil Procedure and California Environmental Quality Act. There has been compliance by the City with the requirements of Section 1245.235 of the California Code of Civil Procedure and the California Environmental Quality Act.

SECTION 2. Public Use. The public use for which the real property is to be acquired is for public right-of-way purposes and the construction of the North Milliken Avenue Grade Separation Project and related public infrastructure improvements, in San Bernardino County, California. Section 37350.5 of the California Government Code authorizes the City to acquire by eminent domain real property necessary for such purposes.

<u>SECTION 3.</u> Description of Property. Attached and marked as Exhibits "A" through "E" are the legal descriptions and plat maps of the real property to be acquired by the City, which describes the general location and extent of the property to be acquired with sufficient detail for reasonable identification.

SECTION 4. Findings. The City hereby finds and determines each of the following:

(a) The public interest and necessity require the proposed project;

(b) The proposed project is planned or located in the manner that will be most compatible with the greatest public good and least private injury;

(c) The real property described in Exhibits "A" through "E" are necessary for the proposed project;

(d) The offer required by Section 7267.2 of the California Government Code was made.

<u>SECTION 5.</u> Use Not Unreasonably Interfering with Existing Public Use(s). Some or all of the real property to be acquired is subject to easements and rights-of-way appropriated to existing public uses. The legal descriptions of these easements and rights-of-way are on file with the City and describe the general location and extent of the easements and rights-of-way with sufficient detail for reasonable identification. In the event the herein described use or uses will not unreasonably interfere with or impair the continuance of the public use as it now exists or may reasonably be expected to exist in the future, counsel for the City is authorized to acquire the real property subject to such existing public use(s) pursuant to Section 1240.510 of the California Code of Civil Procedure.

<u>SECTION 6.</u> More Necessary Public Use. Some or all of the real property to be acquired is subject to easements and rights-of-way appropriated to existing public uses. To the extent that the herein described use or uses will unreasonably interfere with or impair the continuance of the public use as it now exists or may reasonably be expected to exist in the future, the City finds and determines that the herein described use or uses are more necessary than said existing public use. Counsel for the City is authorized to acquire the real property appropriated to such existing public use(s) pursuant to Section 1240.610 of the California Code of Civil Procedure. Staff is further authorized to make such improvements to the real property being acquired that it determines is reasonably necessary to mitigate any adverse impact upon the existing public use.

Further Activities. Counsel for the City is hereby authorized to SECTION 7. file legal proceedings necessary to acquire the herein above described real property in the name of and on behalf of the City by eminent domain, and counsel is authorized to institute and prosecute such legal proceedings as may be required in connection therewith. Legal counsel is further authorized to take such steps as may be authorized and required by law, and to make such security deposits as may be required by order of court, to permit the City to take possession of and use said real property at the earliest possible time. Counsel is further authorized to correct any errors or to make or agree to non-material changes in the legal description of the real property that are deemed necessary for the conduct of the condemnation action or other proceedings or transaction required to acquire the subject real property. Counsel is further authorized to reduce or modify the extent of the interests or property to be acquired so as to reduce the compensation payable in the action where such change would not substantially impair the construction and operation for the project for which the real property is being acquired.

SECTION 8. Effective Date. This Resolution shall take effect upon adoption.

SECTION 9. The City Clerk of the City of Ontario shall certify as to the adoption of this Resolution.

PASSED, APPROVED, AND ADOPTED this 15<sup>th</sup> day of December 2009.

ATTEST:

RTES, MMC, CITY CLERK

## 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. 2009-089 was duly passed and adopted by the City Council of the City of Ontario at their regular meeting held December 15, 2009, by the following roll call vote, to wit:

)

MAYOR/COUNCIL MEMBERS: LEON, BOWMAN, WAPNER, MAUTZ, AYES: AND DORST-PORADA NONE

NOES: COUNCIL MEMBERS:

ABSENT: COUNCIL MEMBERS: NONE

MAR RTES, MMC, CITY CLERK

(SEAL)

The foregoing is the original of Resolution No. 2009-089 duly passed and adopted by the Ontario City Council at their regular meeting held December 15, 2009.

MARY É. WHATES, MMC, CITY CLERK

(SEAL)



# EXHIBIT "A"

# HHI SAN BERNARDINO, LLC

Exhibit B Page6

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# EXHIBIT 'A' LEGAL DESCRIPTION RIGHT-OF-WAY TAKE

### APN 0211-222-09

In the City of Outario, County of San Bernardino, State of California, being that portion of Parcel 6 of Parcel Map No. 12458, filed in Book 151, Pages 1 and 2 of Parcel Maps, records of said county, described as follows:

Beginning at the northeasterly comer of said Parcel 6; thence along the northerly line of said Parcel 6 South 88°02'34" West 16.33 fest; thence leaving said northerly line South 01°35'15" East 14.58 feet to the beginning of a curve concave northwesterly having a radius of 9.50 feet; thence southwesterly along said curve through a central angle of 90°00'00" an arc distance of 14.92 feet; thence South 01°35'15" Bast 36.64 feet to the beginning of a non-tangent curve concave couthwesterily having a radius of 9.50 feet, a radial line to said curve beam North 01°35'15" West; thence southeasterly along said curve through a central angle of 90°00'00" an arc distance of 14.92 feet; thence South 01°35"15" East 149.36 fest to the beginning of a curve concave northwesterly having a radius of 49.50 fact; thence southwesterly along said curve through a central angle of 91°44'06" an are distance of 79.25 feet, thence South 00°08'51" Went 0.33 fost to a point on the southerly line of said Parcel 6; thence along said southerly line South 89"51'59" East 11.39 feet to the beginning of a curve conceve northwesterly having a radius of 50.00 feet; thence northeasterly along the southeasterly boundary of said Parcel 6 through a central angle of 90°33'52" an are distance of 79.03 feet to a point on the easterly line of said Parcel 6; thence along said easterly line North 00°25'51" West 220.92 feet to the POINT OF BEGINNING.

Containing 4,103 square feet.

Page 1 of 2

Exhibit A Page 01

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All as shown on Exhibit "B" attached hereto and made a part thereof. . .

This legal description is not intended to be used in the conveyance of land in violation of the Subdivision Map Act of the State of California.

This legal description was prepared by me or under my direction.

Kari J. Launen, MLS 5679

24 2 MARCH Date

Pegs1of2

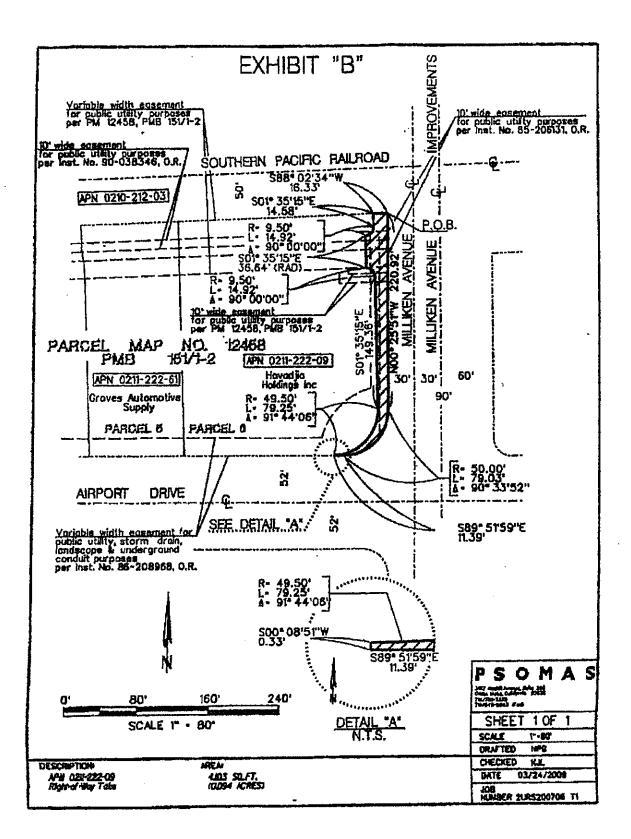


Exhibit A Page 03

### EXHIBIT 'A'

# LEGAL DESCRIPTION MAINTENANCE EASEMENT

### APN 0211-222-09

In the City of Ontario, County of San Bernardino, State of California, being that portion of Parcel 6 of Parcel Map No. 12458, filed in Book 151, Pages 1 and 2 of Parcel Maps, records of taid county, described as follows:

Baginning at the northeasteriy corner of said Parcel 6; thence along the portherly line of said Parcel 6 South 88°02'34" West 15.80 fact to the <u>TRUE POINT OF BEGINNING</u>; thence leaving said northerly line South 01°33'51" Hest 12.30 fact; thence South 88°02'34" West 106.98 fact; North 01°56'37" West 12.30 fact; thence northerly line of said Parcel 6; thence along said northerly line North 88°02'34" East 107.07 fact to the <u>TRUE POINT OF BEGINNING</u>.

Containing 1,316 square foot.

All as shown on Exhibit "B" attached hereto and made a part thereof.

This legal description is not intended to be used in the conveyance of land in violation of the Subdivision Map Act of the State of California.

This legal description was prepared by me or under my direction.

Kari J. Launen, HLS 5679

Date

Page 1 of 1

Exhibit B Page10

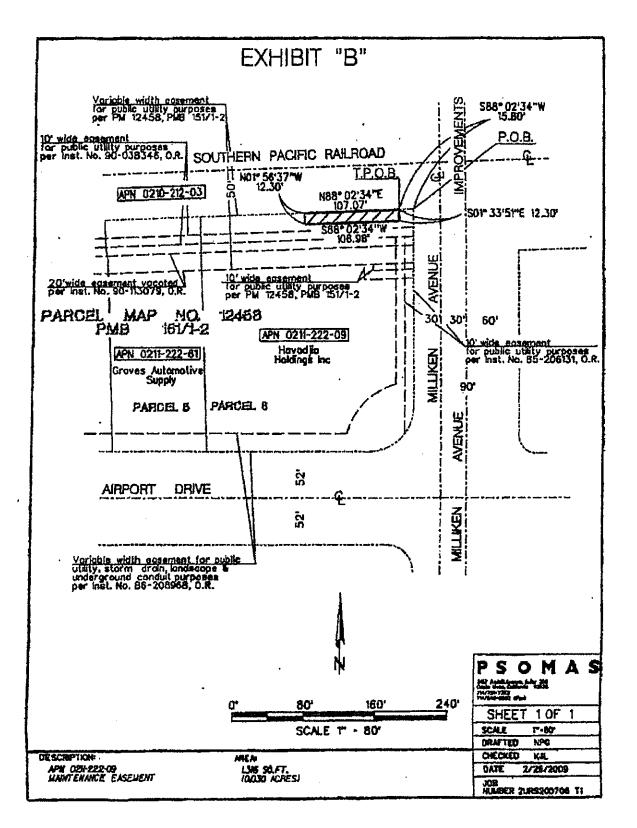


Exhibit A Page 05

### EXHIBIT 'A'

## LEGAL DESCRIPTION ACCESS EASEMENT

APN 0211-222-09

In the City of Ontario, County of San Bernardino, State of California, being that portion of Parcel 6 of Parcel Map No. 12458, filed in Book 151, Pages 1 and 2 of Parcel Maps, records of said county, described as follows:

Beginning at the northeasterly comer of said Parcel 6; thence along the northerly line of said Parcel 6 South 88°02'34" West 196.85 feet to the <u>TRUE POINT OF</u> <u>IECONNING</u>; thence leaving said northerly line South 01°57'26" East 30.00 feet; thence North 88°03'20" East 170.83 feet; thence South 01°35'15" East 10.00 feet; thence South 88°03'52" West 200.78 feet; thence North 01°56'37" West 39.96 feet to a point on the northerly line of said Parcel 6; thence along said northerly line North 88°02'34" East 30.01 feet to the <u>TRUE POINT OF BECINNING</u>.

Containing 2,905 square feet.

All at shown on Exhibit "B" attached hereto and made a part thereof.

This legal description is not intended to be used in the conveyance of land in violation of the Subdivision Map Act of the State of California.

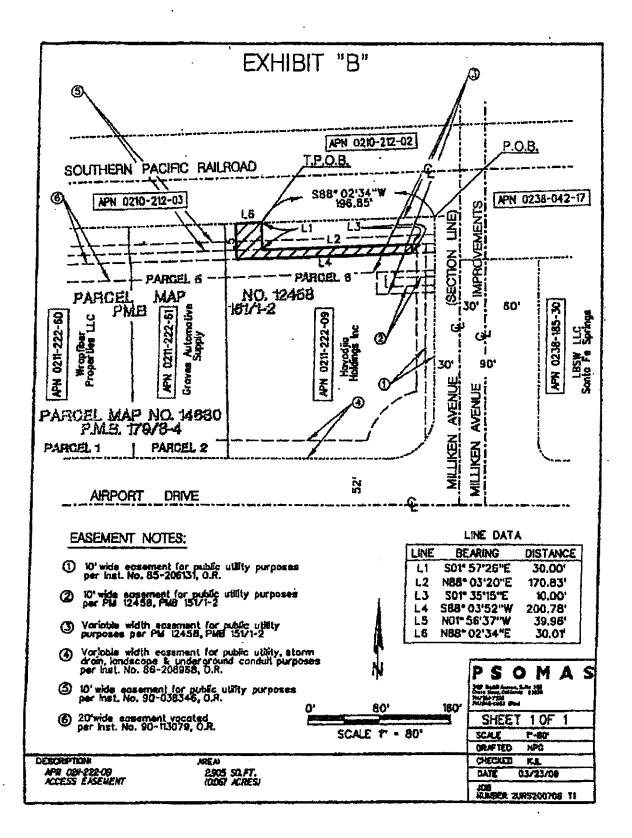
This legal description was prepared by me or under my direction.

Kari J. Launen, PLS 5679

MARCH 24. 2 Date

Page 1 of 1

Exhibit A Page 06



### EXHIBIT 'A'

# Legal Description Temporary Construction Easement

### APN 0211-222-09

In the City of Ontario, County of San Bernardino, State of California, being that portion of Parcel 6 of Parcel Map No. 12458, filed in Book 151, Pages 1 and 2 of Parcel Maps, records of said county, described as follows:

Beginning at the northeasterly comer of said Parcel 6; thence along the northerly line of said Parcel 6 South 88"02'34" West 16.33 feet to the TRUE POINT OF BEGINNING: thence leaving said northerly line South 01°35'15" East 14.58 feet to the beginning of a ourve concave northwesterly having a radius of 9.50 feet; thence southwesterly along said curve through a contral angle of 90°00'00" an arc distance of 14.92 feet; thence " South 01\*35'15" East 36.64 feet to the beginning of a non-tangent curve concave south westerly having a radius of 9.50 feet, a radial line to said curve bears North 01"35"15" West; thence southeasterly along said curve through a central angle of 90°00' on are distance of 14.92 feet; thence South 01°35'15" Bast 149.36 feet to the beginning of a curve concave northwesterly having a radius of 49.50 feet; thence southwesterly along said curve through a central angle of 91°44'06" en are distance of 79.25 feet; thence North 00°08'51" East 10.00 feet to the beginning of a non-tangent curve concerve northwesterly having a radius of 39.50 fest, a radial line to said curve bears South 00°08'51" West; thence northeasterly along said curve through a central angle of 91°44'06" an are distance of 63.24 feet; thence North 01°35'15" Weat 149.42 feet; thence South 88°23'26" West 69.44 feet; thence North 01°56'08" West 57.38 feet; thence North 88°02'49" Bast 54.32 feet; thence North 01°36'34" West 12.30 fast to a point on the northerly line of said Parcel 6; thence along said northerly line North 88°02'34" Bast 25.48 foot to the TRUE POINT OF BEGINNING.

Containing 6,721 square feet.

Page L of 2

All as shown on Exhibit "B" attached hereto and made a part thereof.

This legal description is not intended to be used in the conveyance of land in violation of the Subdivision Map Act of the State of California.

This legal description was prepared by me or under my direction.

Kari J. Lauren, PLS 5679 Date

tagi 2of 2

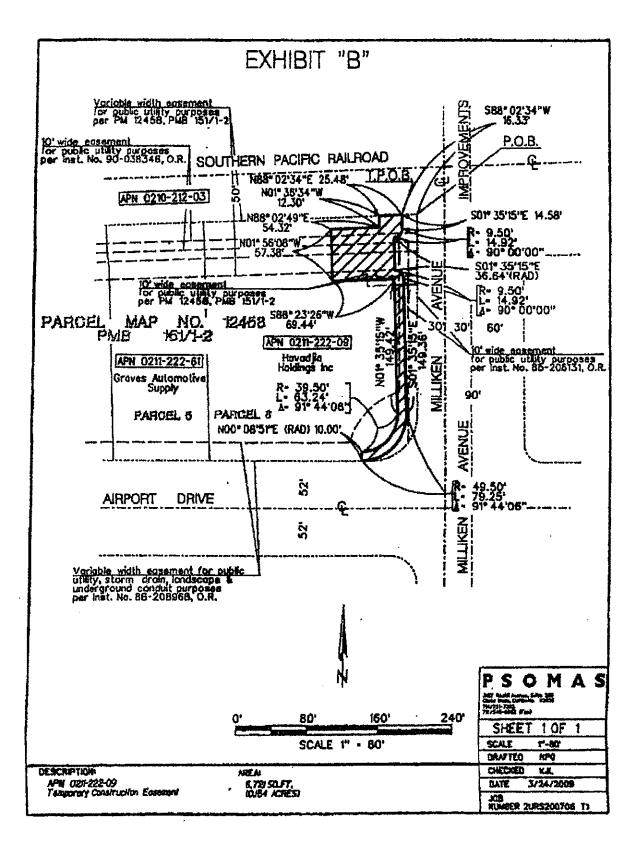


Exhibit A Page 10

# EXHIBIT "B"

# LBSW, LLC

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Exhibit B Page17

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# EXHIBIT 'A' LECAL DESCRIPTION RIGHT-OF-WAY TAKE

### APN 0238-185-30

In the City of Ontario, County of San Bernardino, State of California, being that portion of Parcel 1 of Parcel Map No. 8792 filed in Book 97, Pages 44 and 45 of Parcel Maps, . records of said county, described as follows:

Beginning at the northwesterly corner of said Parcel 1; thence along the northerly line of said Parcel I North 88°04'06" Hast 11.40 feet; thence South 00°40'45" West 184.47 feet to the beginning of a curve concave northeasterly having a radius of 50.00 feet; thence routherly along said curve through a central angle of 59°20'11" an are distance of \$1.78 feet to a point on the southerly line of said parcel 1; thence along said southerly line South 89°55'02" West 11.61 feet to the beginning of a curve concave northerly along said southerly line South 89°55'02" West 11.61 feet to the beginning of a curve concave northersterly having a radius of 20.00 feet; thence northerly along said curve through a central angle of 89°39'07" an arc distance of 31.29 feet to a point on the westerly line of said Parcel 1; thence along said westerly line North 60° 25'51" West 207.54 feet to the <u>POINT OF</u> <u>BEGINNING</u>.

Containing 2,319 square feet.

Figs 1 of 2

Exhibit B Page 01

All as shown on Exhibit "B" attached hereto and made a part thereof.

This legal description is not intended to be used in the conveyance of land in violation of the Subdivision Map Act of the State of California.

This legal description was prepared by ms or under my direction.

Kari J. Launch PLS 5679

Feb. 9.11 Date

Page 2 of 2

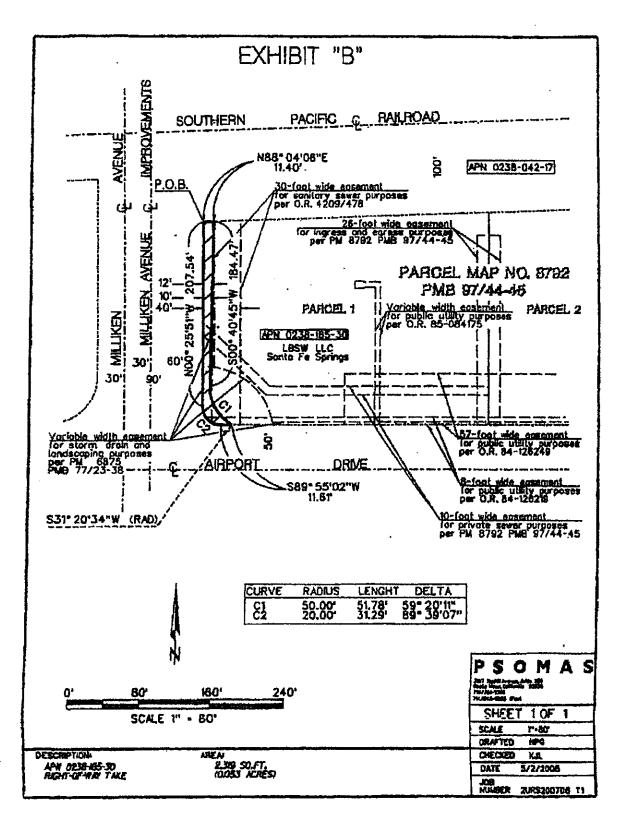


Exhibit B Page 03

#### **RECORDING REQUESTED BY**

SOUTHERN CALIFORNIA EDISON COMPANY

WHEN RECORDED MAIL TO

SOUTHERN CALLFORNIA EDISON COMPANY 14799 CHESTNUT STREET WESTMINSTER, CA. 92863-5240

ATTN: TITLE & REAL ESTATE SERVICES

SPACE ABOVE THIS LINE FOR RECORDER'S USE

#### GRANT OF EASEMENT

Location: City of Ontario A.P.N. 0238-185-30 RP FILE: REL08209533

	DOCEMENTARY TRANSFER YAX	SER, 68316A Service Order 800205386
<b>io</b> 33	COMPUTED ON FULL VALUE OF PROPERTY CONVEYED OR COMPUTED ON FULL VALUE LESS LENS AND ENCLINERANCES REMAINING AT TIME OF BALE 80. CALF EDISON CO. SIGNATURE OF DECLARANT OR AGENT DETERMINING TAX FIRM NAME	Approved Corporate Real Estate Department BY RK DATE 3/2009

LBSW LLC, a Delaware limited liability company, hereinafter called "Grantor", hereby grants to SOUTHERN CALIFORNIA EDISON COMPANY, a corporation, its successors and assigns, hereinafter called "Grantee", all those cartain permanent easements and rights of way to construct, use, maintain, alter, add to, enlarge, repair, replace, inspect, and/or remove, at any time and from time to time, both overhead and underground electric lines, consisting of poles and towers made of various materials, "H" frame structures, guy wires and anchors, crossarms, wires, underground conduits, cables, vaults, manholes, handholes, and including above-ground enclosures, markers and concrete pads and other fixtures and appliances and communication circuits with necessary appurtenances, both overhead and underground, for conveying electric energy to be used for light, heat, power, and for transmitting intelligence by electrical means and/or other purposes, in, under, on, over, along and across a strip of land ten (10.00) feet wide, hereinafter described and designated as "Right of Way Strip," lying within that certain real property of the Grantor, situated in the County of San Bernardino, State of California, described as follows:

Parcel 1 of Parcel Map No. 8792, in the City of Ontario, County of San Bernardino, State of California, as per plat recorded in Book 97 of Parcel Maps, Pages 44 and 45, records of said county.

The said right of way strip is more particularly described on the Exhibit "A" and more particularly shown on the Exhibit "B", both attached hereto and by this reference made a part hereof.

Grantor further grants, bargains, sells and conveys unto the Grantee the right of assignment, in whole or in part, to others, without limitation, and the right to apportion or divide in whatever manner Grantee deems desirable, any one or more, or all, of the easements and rights, including but not limited to all rights of access and ingress and egress granted to the Grantee by this Grant of Easement.

Grantor hereby also grants to Grantee, its successors and assigns, and its and their contractors, agents, and employees, the right to clear and to keep clear said right of way strip, free from explosives, buildings, equipment, brush, combustible material and any and all other obstructions of any kind (except for those herein provided) and the right to trim or remove any tree or shrub which in the opinion of Grantee, may endanger said electric lines or any part thereof or interfere with the exercise of the rights herein granted.

Orant of Easement LESW LLC, a Delaware limited liability company, to S.C.E.Co., a corp. Serial No. 68316A RP FILE: REL08209533

Grantor reserves for Grantor and Grantor's successors and assigns, across (but not longitudinally slong) said right of way strip, rights for (1) underground water pipelines, (2) farm, grazing or pasture fences, and (3) roads, provided, however, that the exercise of such rights does not interfers with or enclanger, in the opinion of Grantee, the operation or maintenance of the electric lines of Grantee, or Grantee's ready access to its said electric lines, or the exercise of any of the rights herein granted to Grantee.

Grantor hereby also grants to Grantee, its successors and assigns, and its and their contractors, agents, and employees, the right of free access to said systems and every part thereof, at all times, for the purpose of exercising the rights herein granted, and the right to clear and keep clear the above described real property, free from explosives, buildings, structures, equipment, bruah, combustible material and any and all other obstructions of any kind, including but not limited to planter boxes, walls, fences (other than farm, grazing or pasture fences) and earth fill and the right to trim or remove any tree, tree root, vine, or shrub or other obstructions which, in the opinion of Grantee, may endanger said systems, or any part thereof, or interfere with the exercise of the rights herein granted.

Grantor shall not excavate or change, nor permit the encavation or changing of the surface of the ground of the above described real property without the previous written consent of the Grantee, which consent shall not be unreasonably withheld.

The terms, covenants and conditions of this Grant of Easement shall bind and inure to the benefit of the successors and assigns of Grantor and the successors and assigns of Grantee.

IN WITNESS WHEREOF, Grantor has caused this instrument to be executed by its officers thereunto duly authorized, this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_.

LBSW LLC, a Delaware limited liability company

By: The Serrano Community Property Trust U/D/T dated April 5, 1997, its managing member

By Hoberto Serrano, Trustee

By\_\_\_\_\_\_ Maria de Jesus Serrano, Trustee

2

Grant of Easement LESW LLC, a Delaware limited liability company, to S.C.E.Co., a corp. Serial No. 68316A RP FILE: REL08209533

State of California

County of \_\_\_\_\_)

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

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

WIINESS my hand and official seal.

Signature \_\_\_\_\_

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State of California )

County of \_\_\_\_\_}

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

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

WITNESS my hand and official scal.

Signature

Exhibit B Page 06

# EXHIBIT "A" SOUTHERN CALIFORNIA EDISON COMPANY TRANSMISSION EASEMENT PORTION OF APN 0238-185-30

IN THE CITY OF ONTARIO, COUNTY OF SAN BERNARDINO, STATE OF CALIFORNIA, BEING THAT PORTION OF PARCEL 1 OF PARCEL MAP NO. 8792 RECORDED IN BOOK 97, PAGES 44 AND 45, OF PARCEL MAPS, IN THE OFFICE OF THE COUNTY RECORDER OF SAID COUNTY, DESCRIBED AS FOLLOWS:

BEGINNING AT THE SOUTHEAST CORNER OF SAID PARCEL 1 OF PARCEL MAP NO. 8792 RECORDED IN BOOK 97, PAGES 44 AND 45, OF PARCEL MAPS, IN THE OFFICE OF THE COUNTY RECORDER OF SAID COUNTY; THENCE ALONG THE SOUTHERLY LINE OF SAID PARCEL 1 SOUTH 89°55'02" WEST 180.18 FEET; THENCE NORTH 00°04'58" WEST 5.00 FEET TO THE TRUE POINT OF BEGINNING; SAID POINT BEING BEGINNING OF CENTERLINE FOR 10-FOOT WIDE EASEMENT; THENCE SOUTH 89°55'02" WEST 110.00 FEET.

CONTAINING 1,100 SQUARE FEET OR 0.025 ACRES, MORE OR LESS.

AS MORE PARTICULARLY SHOWN ON EXHIBIT "B" ATTACHED HERETO AND BY THIS REFERENCE MADE A PART HEREOF.

KARI J. LAUNEN PLS 5679 EXPIRES 09/30/2009



# Berial 68316A

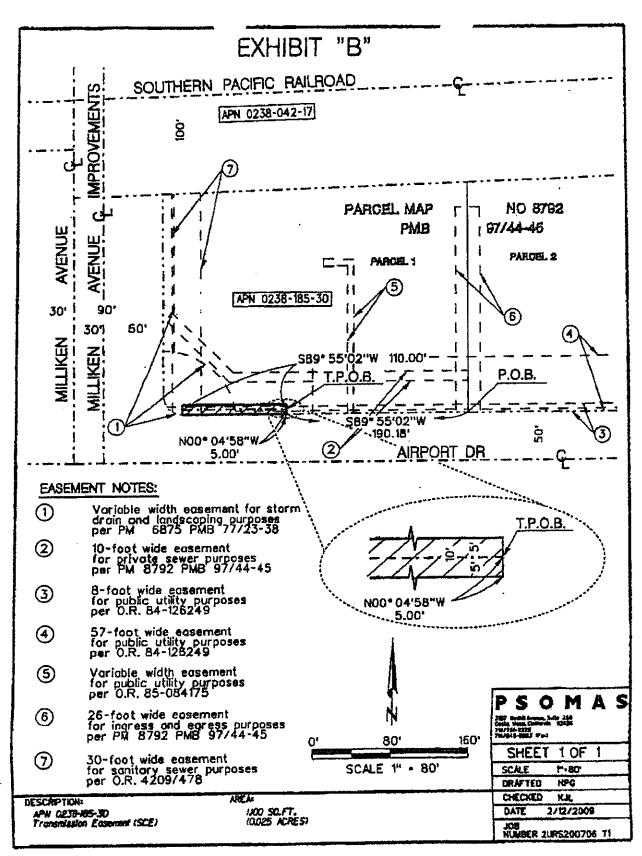


Exhibit B Page 08

## EXHIBIT 'A'

# LEGAL DESCRIPTION TEMPORARY CONSTRUCTION EASEMENT

#### APN 0238-185-30

In the City of Ontario, County of San Bernardino, State of California, being that portion of Parcei I of Parcel Map No. 8792, filed in Book 97, Pages 44 and 45 of Parcel Maps, records of said county, described as follows:

Beginning at the northwesterly corner of said Parcel 1; thence along the northerly line of said Parcel 1 South 88°04'06" West 11.40 feet to the <u>TRUE POINT OF BEGINNING</u>; thence South 00°40'45" West 184.47 feet to the beginning of a curve noncave northeasterly having a radius of 50.00 feet; thence southerly along said curve through a central angle of 59°20'11" an arc distance of 51.78 foet to a point on the southerly line of said Parcel 1; thence along said southerly line North 89°55'02" Hast 27.53 feet; thence leaving said southerly line North 00°04'58" West 4.51 feet to the beginning of a non-tangent curve concave northeasterly having a radius of 60.00 feet; a radius line to said curve bears South 00°16'01" East; thence northerly along said ourve through a central angle of 90°32'04" an arc distance of 63.20 feet; thence North 00°16'04" East 183.36 feet to a point on the northerly line of said Parcel 1; thence along said northerly line of said Parcel 1; thence along said northerly line of said Parcel 1; thence along said northerly line of 63.20 feet; thence along said northerly line South 88°04'06" West 10.01 feet to the <u>TRUE POINT OF BECINNING</u>.

Containing 2,684 square feet.

tops i of 2

Exhibit B Page 09

All as shown on Exhibit "B" attached hereio and made a part thereof.

This legal description is not intended to be used in the conveyance of land in violation of the subdivision map act of the State of California.

This legal description was prepared by ms or under my direction.

Kari J. Launch PLS 5679

- da 76 Date

Pupe 2 of 2

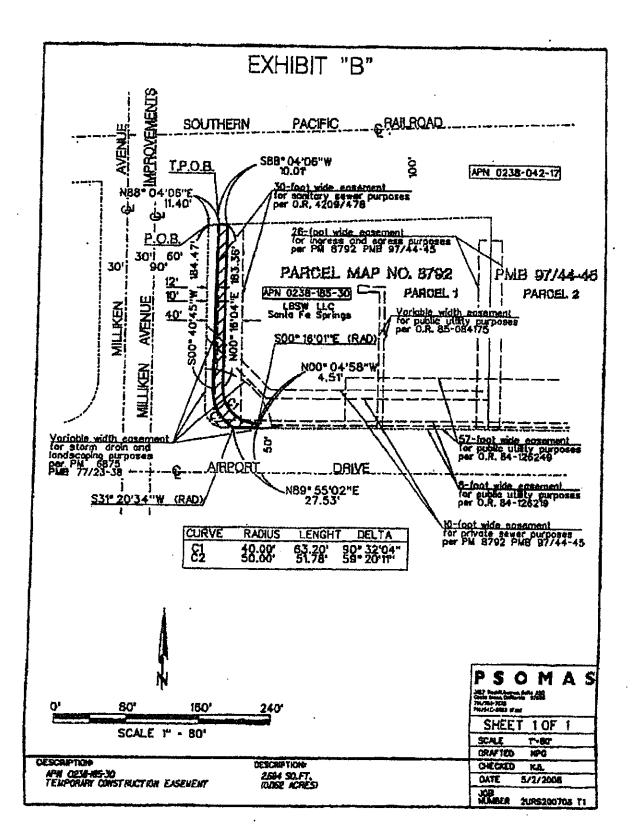


Exhibit B Page 11

# EXHIBIT "C"

# **PROLOGIS CALIFORNIA I, LLC**

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Exhibit B Page29

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# EXHIBIT 'A' LEGAL DESCRIPTION RIGHT-OF-WAY TAKE

#### APN 8211-222-62

in the City of Ontario, County of San Beroardino, State of California, being that portion of Parcel 1 of Parcel Map No. 14914, filed in Book 181, Pages 13 and 14 of Parcel Maps, records of said county, described as follows:

Beginning at the northwesterly corner of said Parcel 1; thence along the northerly line of said Parcel 1 North 88°02'34" Bast 1093.48 foet; thence South 01°57'26" Bast 48.94 foot to the beginning of a non-tangent curve concave southerly, having a radius of 302.81 feet, a radial line to said curve bears North 27°02'16" East; thence westerly along raid curve through a central angle of 28°58'24" an are distance of 153.12 feet; thence South 89°08'17" West 51.82 feet; thence South 88°02'34" West 895.00 flet to a point on the westerly line of said Parcel 1; thence along said westerly line North 01°57'26" West 10.00 fbet to the <u>POINT OF BEGINNENG</u>

Containing 12,909 square foet.

All as shown on Exhibit "B" attached hereto and made a part thereof.

This legal description is not intended to be used in the conveyance of land in violation of the Subdivision Map Act of the State of California.

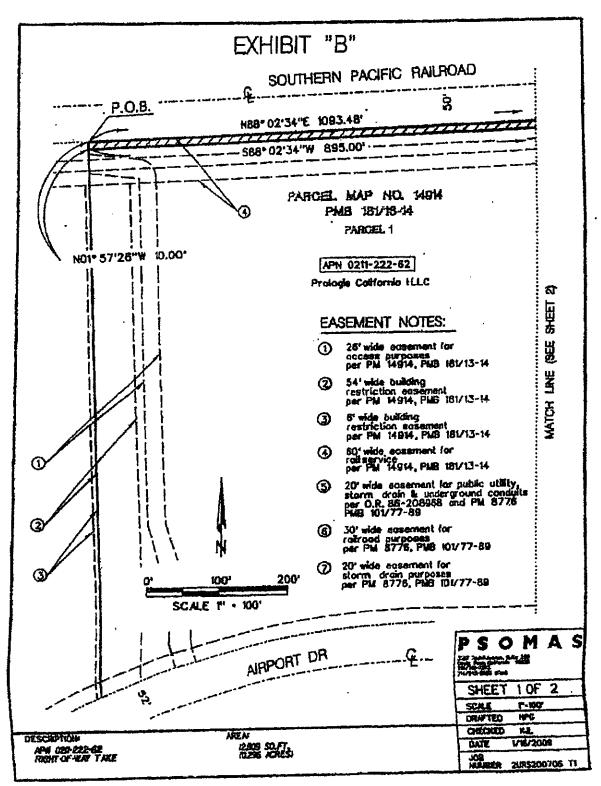
This legal description was prepared by me or under my direction.

Kari J. Lanned, PLS 5679

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Page 1 of 1

Exhibit C Page 01



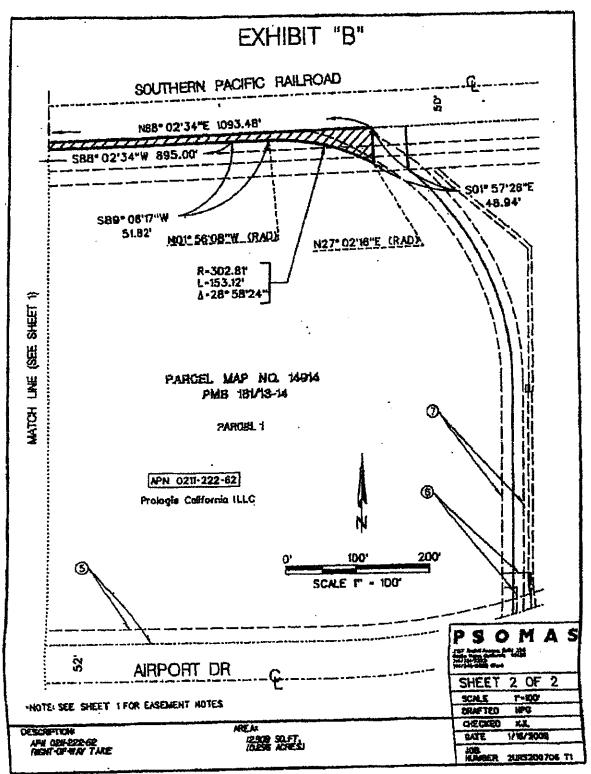


Exhibit C Page 03

#### EXHIBIT 'A'

LEGAL DESCRIPTION MAINTENANCE BASEMENT

#### APN 0211-222-62

In the City of Ontario, County of San Bernardino, State of California, being that portion of Parcel 1 of Parcel Map No. 14914, filed in Book 181, Pages 13 and 14 of Parcel Maps, records of said county, described at follows:

Beginning at the northwesterly comer of said Parcel 1; thence along the westerly line of said Parcel 1 South 01°57'26" Rest 10.00 feet to the <u>TRUE POINT OF BEGINNING</u>; thence North 88°02'34" East 895.00 feet; thence North 89°08°17" East 51.82 feet to the beginning of a non-tangent curve concave southerly, having a radius of 302.81 feet, a radial line to said curve bears North 01°56'08" West; thence easterly along said curve through a central angle of 28°58'24" an arc distance of 153.12 feet; thence North 01°57'26" West 48.94 feet to a point on the northerly line of said Parcel 1; thence along said northerly line North 88°02'34" East 10.00 feet; thence South 01°57'26" West 286'02'34" East 10.00 feet; thence South 01°57'26" West 28'02'34" West 186.91 feet; thence North 01°57'26" West 20.00 feet; thence South 88°02'34" West 916.57 faet to a point on the westerly line of said Parcel 1; thence along said westerly line North 01°57'26" West 30.00 feet to the TRUE FOINT OF BEGINNING.

Containing 34,968 square feat.

Page ) of Z

Exhibit C Page 04

All as shown on Exhibit "B" attached hereto and made a part thereof.

This legal description is not intended to be used in the conveyance of land in violation of the Sabdivision Map Act of the State of California.

This legal description was prepared by me or under my direction.

Karl J. Launen, PLS 5679

Date GÅ

tage 3 of 2

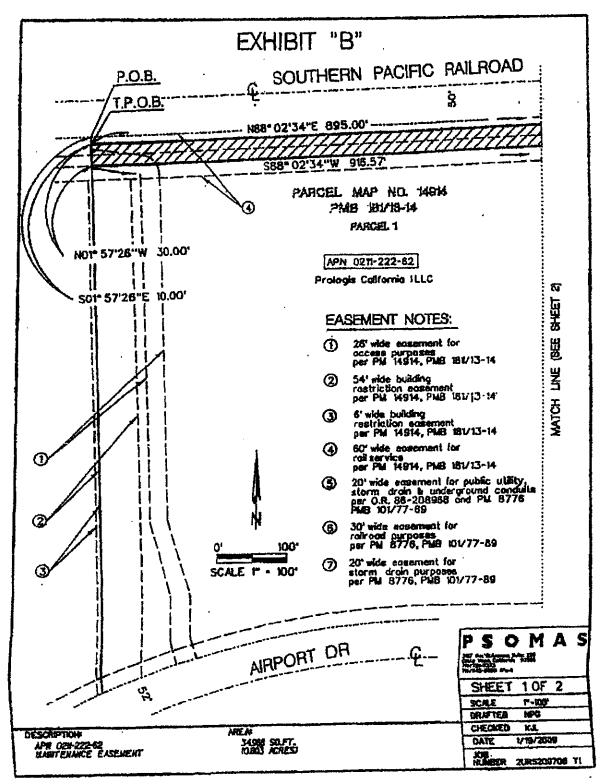


Exhibit C Page 06

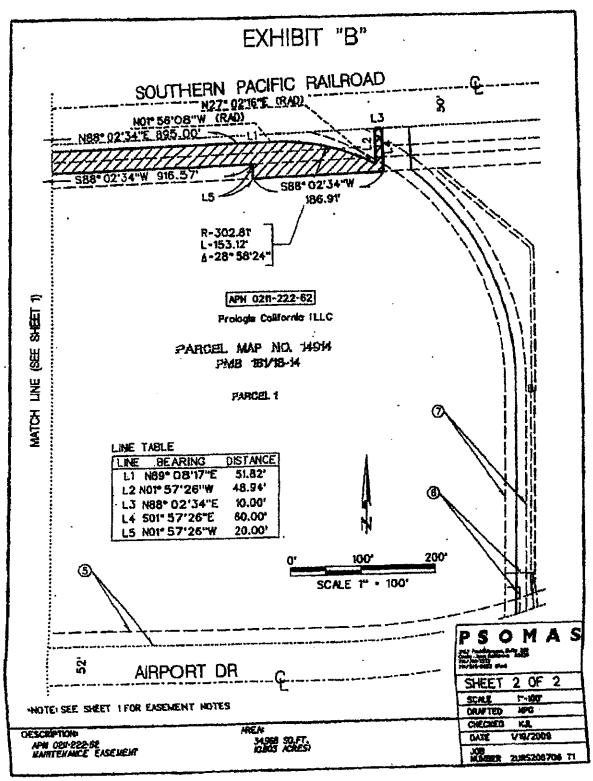


Exhibit C Page 07

## EXHIBIT 'A' LEGAL DESCRIPTION ACCESS EASEMENT

#### APN 0211-222-62

In the City of Ontario, County of San Bernardino, State of California, being that portion of Parcel 1 of Parcel Map No. 14914, filed in Book 181, Pages 13 and 14 of Parcel Maps, records of zaid county, described as follows:

Beginning at the northeasterly corner of said Parcel 1; thence along the easterly line of said Parcel 1 South 01°57'26" East 40.64 fact to a point on the northeasterly line of a 30foot wide easternent as shown on Parcel Map No. 8776, filed in Book 101, Pages 77 through 89, all inclusive, of Parcel Maps, records of San Bernardino County, said point also being the beginning of a non-tangent curve concave southwesterly, laving a radius of 397.24 feet, a radial line to said beginning bears North 36°37'53" East; thence along said northeasterly line through a central angle of 06°39'59", an arc distance of 46.22 feet; thence along said northeasterly line North 88°02'34" East 37.72 feet to the <u>POINT OF</u> BECHNNING.

Containing 1,010 square fest.

hestofi

All as shown on Exhibit "B" attached hereto and made a part thereof.

This legal description is not intended to be used in the conveyance of hand in violation of the Subdivision Map Act of the State of California.

This logal description was prepared by me or under my direction.

Kari J. Laufen, PLS 5679

Date

Page 2 of 2

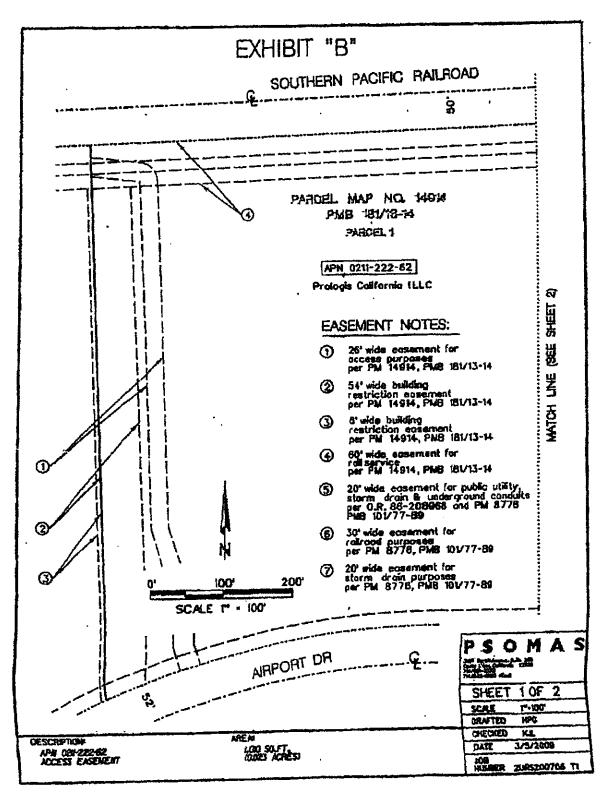


Exhibit C Page 10

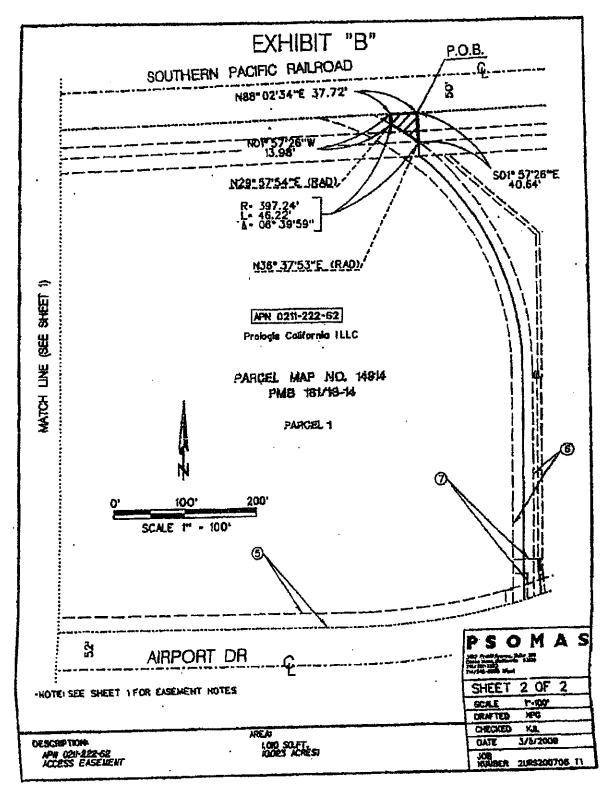


Exhibit C Page 11

### EXHIBIT 'A'

LEGAL DESCRIPTION

### TEMPORARY CONSTRUCTION EASEMENT

#### APN 0211-222-62

In the City of Ontario, County of San Bernardino, State of California, being that portion of Parcel 1 of Parcel Map No. 14914, filed in Book 151, Pages 13 and 14 of Parcel Maps, records of said county, described as follows:

Beginning at the northwesterly comer of said Parcel 1; thence along the westerly line of said Parcel 1 South 01°57°26" East 10.00 feet to the <u>TRUE POINT OF EECINNING</u>: thence continuing along said westerly line South 01°57°26" East 15.74 feet; thence leaving said westerly line North 88°02'34" East 1013.95 feet to the beginning of a non-tangent curve concave southwesterly, having a radius of 295.81 feet, a radial line to said heginning bears North 11°10'59" Bast; thence southeasterly along said curve through a central angle of 17°23'44" an arc distance of 89.81 feet; thence North 28°34'43" East 12.76 feet; thence North 01°57'26" West 48.02 feet to a point on the northerly line of said Parcel 1; thence along said northerly line South 01°57'26" Bast 48.94 feet to the beginning of a contangent curve concave southwesterly, having a radius of 302.81 feet; a radial line to said beginning bears North 27°02'16" Bast; thence northwesterly along said ourve through a contangent curve concave southwesterly, having a radius of 302.81 feet, a radial line to said beginning bears North 27°02'16" Bast; thence northwesterly along said ourve through a contangent curve concave southwesterly, having a radius of 302.81 feet, a radial line to said beginning bears North 27°02'16" Bast; thence northwesterly along said ourve through a contangent curve concave southwesterly, having a radius of 302.81 feet, a radial line to said beginning bears North 27°02'16" Bast; thence northwesterly along said ourve through a contangle of 28°58'24" an arc distance of 153.12 feet; thence South 89°08'17" West 51.82 foet; thence South 68°02'34" West 895.00 feet to the <u>TRUE POINT OF</u> Bast 31.82 foet; thence South 68°02'34" West 895.00 feet to the <u>TRUE POINT OF</u>

Containing 16,843 square feet.

Page Lof 2

All as abown on Exhibit "B" attached hereto and made a part thereof.

This legal description is not intended to be used in the conveyance of land in violation of the Subdivision Map Act of the State of California.

This legal description was prepared by ms or under my direction.

67 I.L Karl J. Launer, PLS 5679 Date

hgs2of2

Exhibit C Page 13

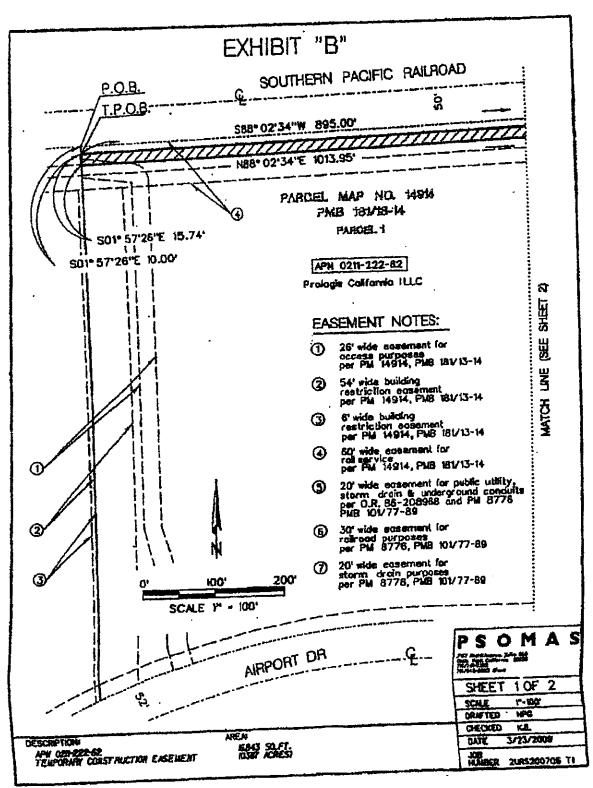


Exhibit C Page 14

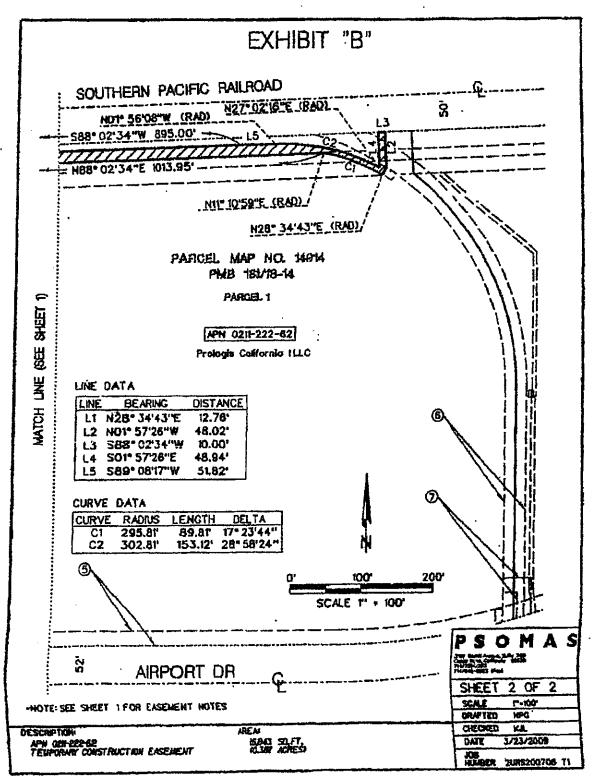


Exhibit C Page 15

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## EXHIBIT "D"

# TCAM CORE PROPERTY FUND OPERATING L.P.

#### EXHIBIT 'A'

LEGAL DESCRIPTION RIGHT-OF-WAY TAKE

#### APN 0211-222-63

In the City of Ontario, County of San Bernardino, State of California, being that portion of Parcel 2 of Parcel Map No. 14914, filed in Book 181, Pages 13 and 14 of Parcel Maps, records of said county, described as follows:

Beginning at the northeasterly corner of said Parcel 2; thence along the easterly line of said Parcel 2 South 01°57'26" East 10.00; thence South 88°02'34" West 525.06 feet; thence North 01°57'26" West 10.00 feet to a point on the northerly line of said Parcel 2; thence along said northerly line North 88°02'34" East 525.06 feet to the <u>POINT OF</u> BEGINNING

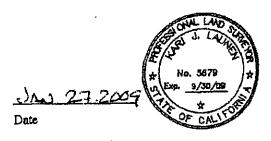
Containing 5,251 square feet.

All as shown on Exhibit "B" allached herete and made a part thereof.

This legal description is not intended to be used in the conveyance of land in violation of the Subdivision Map Act of the State of California.

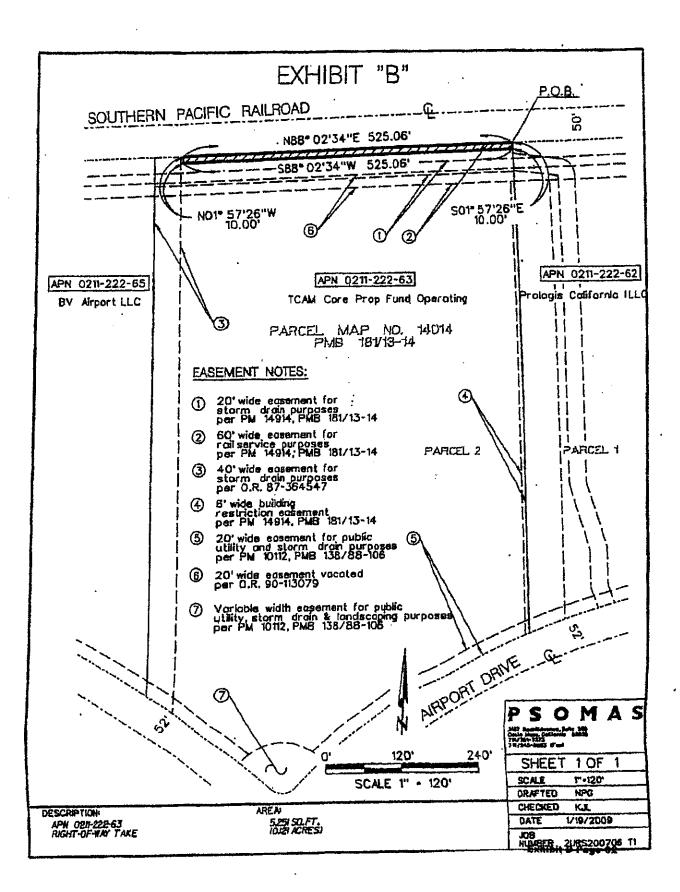
This legal description was prepared by me or under my direction.

Kari J. Launen, PLS 5679.



Tage Lot 1

Exhibit D Page 01



## EXHIBIT 'A' Legal Description Slope Easement

#### APN 0211-222-63

In the City of Ontario, County of San Bernardino, State of California, being that portion of Parcel 2 of Parcel Map No. 14914, filed in Book 181, Pages 13 and 14 of Parcel Maps, records of said county, described as follows:

Beginning at the northwesterly corner of said Parcel 2; thence along the westerly line of said Parcel 2 North 88°02'34" East 43.36 feet; thence South 01°57'26" East 15.96 feet; thence South 88°03'52" West 43.94 feet to a point on the westerly line of said Parcel 2; thence along said westerly line North 00°08'01" East 15.96 feet to the <u>POINT</u> OF BEGINNING

Containing 696 square feet.

All as shown on Exhibit "B" attached hereto and made a part thereof.

This legal description is not intended to be used in the conveyance of land in violation of the Subdivision Map Act of the State of California.

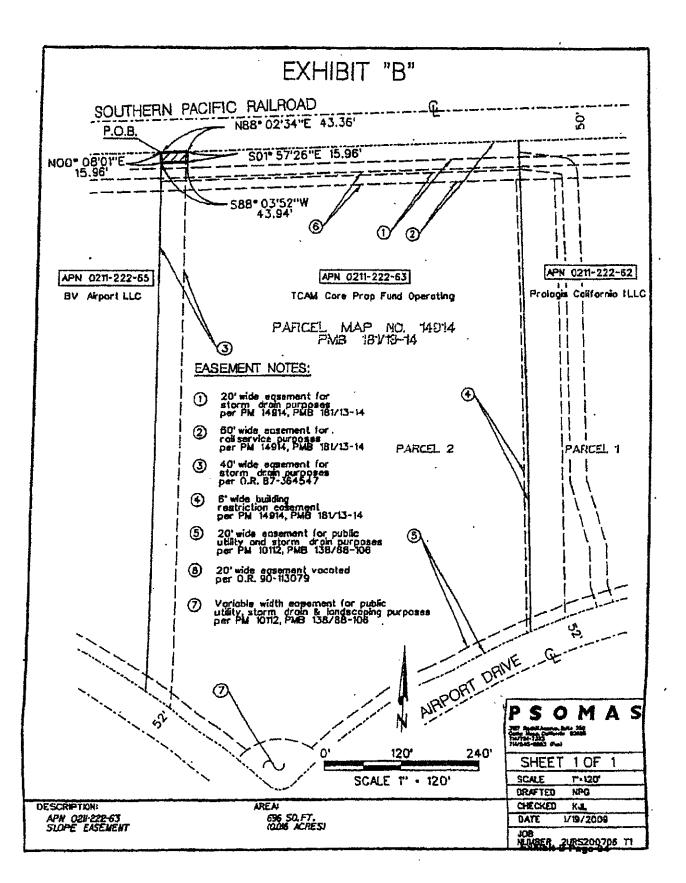
This legal description was prepared by me or under my direction.

Kari J. Launen, ALS 5679

No. 5679 Date C.A

Page 1 of 1

Exhibit D Page 03



## EXHIBIT 'A' LEGAL DESCRIPTION

#### MAINTENANCE EASEMENT

APN 0211-222-63

In the City of Ontario, County of San Bernardino, State of California, being that portion of Parcel 2 of Parcel Map No. 14914, filed in Book 181, Pages 13 and 14 of Parcel Maps, records of said county, described as follows:

Beginning at the northeasterly corner of said Parcel 2; thence along the casterly line of said Parcel 2 South 01°57'26" West 10.00 feet to the <u>TRUE POINT OF BEGINNING</u>: thence leaving said easterly line South 88°02'34" West 525.06 feet; thence South 01°57'26" East 5.96 feet; thence South 88°03'52" West 43.94 feet; thence South 00°08'01" West 24.10 feet; thence North 88°02'34" East 569.88 feet to a point on the easterly line of said Parcel 2; thence along said easterly line North 01°57'26" West 30.03 feet to the TRUE POINT OF BEGINNING.

Containing 16,836 square feet.

All as shown on Exhibit "B" attached hereto and made a part thereof.

This legal description is not intended to be used in the conveyance of land in violation of the Subdivision Map Act of the State of California.

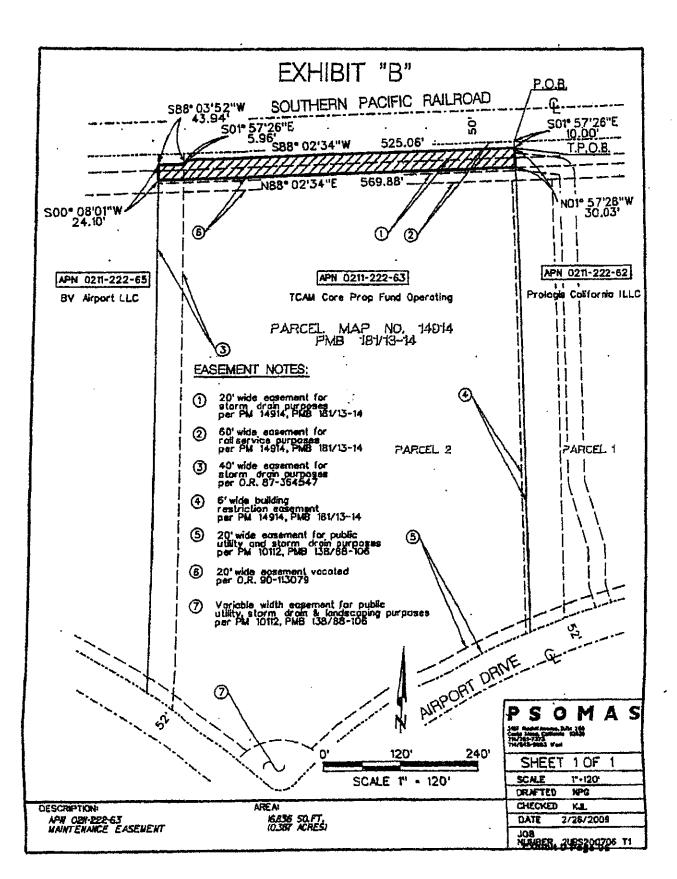
This legal description was prepared by me or under my direction.

Kari J. Launen, PLS 5679

112/ 5679 Date c.

Page 1 of 1

Exhibit D Page 05



## EXHIBIT 'A' LEGAL DESCRIPTION ACCESS EASEMENT

#### APN 0211-222-63

In the City of Ontario, County of San Bernardino, State of California, being that portion of Parcel 2 of Parcel Map No. 14914, filed in Book 181, Pages 13 and 14 of Parcel Maps, records of said county, described as follows:

Beginning at the northwesterly comer of said Parcel 2; thence along the westerly line of said Parcel 2 South 00°08'01" West 93.68 feet to the <u>TRUE POINT OF BEGINNING;</u> thence continuing along said westerly line South 00°08'01" West 10.00 feet; thence leaving said westerly line South 89°51'59" East 125.73 feet; thence South 00°08'01" West 56.78 feet to a point on the southerly line of said Parcel 2, said point also being the beginning of a non-tangent curve concave southwesterly, having a radius of 1552.00 feet, a radial line to said beginning beam North 37°07'17" East; thence along said curve through a central angle of 00°22'09", an arc distance of 10.00 feet; thence leaving said southerly line North 37°18'21" East 60.14 feet; thence North 00°08'01" West 58.22 feet; thence South 88°02'34" West 10.01 feet; thence South 00°08'01" West 58.22 feet; thence North 89°51'59" West 125.73 feet to the <u>TRUE POINT OF BEGINNING</u>.

Containing 10,197 square feet.

Page 1 of 2

Exhibit D Page 07

All as shown on Exhibit "B" attached hereto and made a part thereof.

This legal description is not intended to be used in the conveyance of land in violation of the Subdivision Map Act of the State of California.

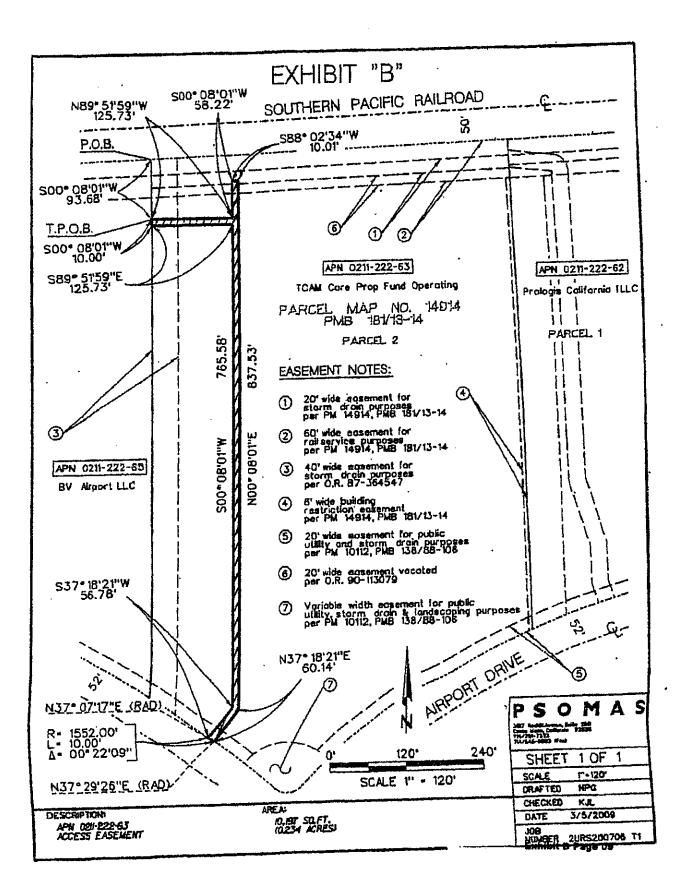
This legal description was prepared by me or under my direction.

Kari J. Launer, PLS 5679

No. 5679 0/30 A MARCH Date

Page 2 of 2

Exhibit D Page 08



#### EXHIBIT 'A'

#### LEGAL DESCRIPTION

#### TEMPORARY CONSTRUCTION EASEMENT

#### APN 0211-222-63

In the City of Ontario, County of San Bernsrdino, State of California, being that portion of Parcel 2 of Parcel Map No. 14914, filed in Book 181, Pages 13 and 14 of Parcel Maps, records of said county, described as follows:

Beginning at the northwesterly corner of said Parcel 2; thence along the westerly line of said Parcel 2 South 00°08'01" West 15.96 feet to the <u>TRUE POINT OF BEGINNING</u>: thence continuing along said westerly line South 00°08'01" West 9.00 feet; thence leaving said westerly line North 88°03'52" East 84.27 feet; thence North 01°57'26" West 5.67 feet; thence North 88°02'34" East 485.06 feet to a point on the easterly line of said Parcel 2; thence along said easterly line North 01°57'26" West 9.30 feet; thence leaving said easterly line South 88°02'34" West 525.06 feet; thence South 01°57'26" East 5.96 feet; thence South 88°03'52" West 43.94 feet to the <u>TRUE POINT OF</u> <u>BEGINNING</u>.

Containing 5,506 square feet.

Page 1 of 2

Exhibit B Page55

All as shown on Exhibit "B" stuched hereto and made a part thereof.

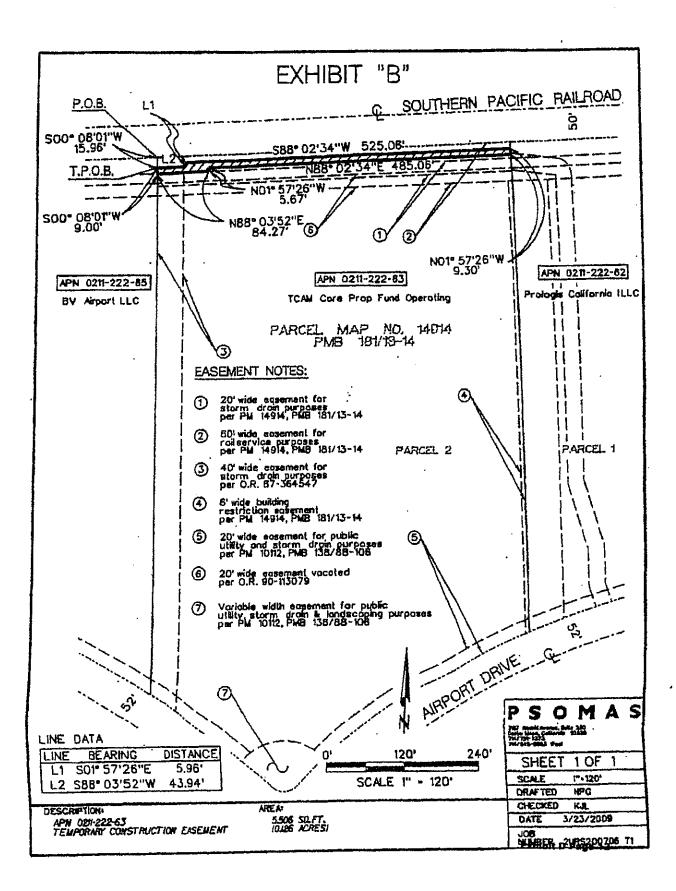
This legal description is not intended to be used in the conveyance of land in violation of the Subdivision Map Act of the State of California.

This legal description was prepared by me or under my direction.

5679 Na. Ú Kari J. Lamen, Phys 5679 Date CA

Page 2 of 2

Exhibit D Page 11



## **EXHIBIT "E"**

**BV AIRPORT, LLC** 

. . .

#### EXHIBIT 'A'

### LEGAL DESCRIPTION SLOPE EASEMENT

#### APN 0211-222-65

In the City of Ontario, County of San Bernardino, State of California, being that portion. of Parcel 1 of Parcel Map No. 15162, filed in Book 185, Pages 84 and 85 of Parcel Maps, records of said counsty, described as follows:

Beginning at the northeasterly comer of said Parcel 1; thence along the easterly line of said Parcel | South 00°08'01" West 15.96 feet; thence South 88°03'52" East 294.00 fest; thence North 01"57'26" West 15.84 fest to a point on the northerly line of said Parcel 2; thence along said northerly line North 82°02'34" East 294.58 feet to the POINT OF BEGINNING

Containing 4,678 square feet,

All as shown on Exhibit "B" stached hereto and made a part thereof.

This legal description is not intended to be used in the conveyance of land in violation of the Subdivision Map Act of the State of California,

This legal description was prepared by me or under my direction.

Kari J. Launen/FLS 5679

Feb Data

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Exhibit E Page 01

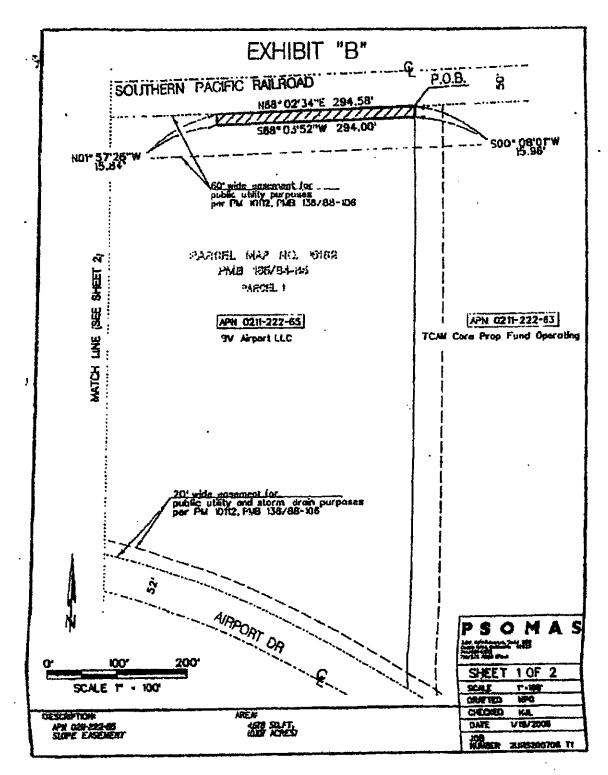


Exhibit E Page 02

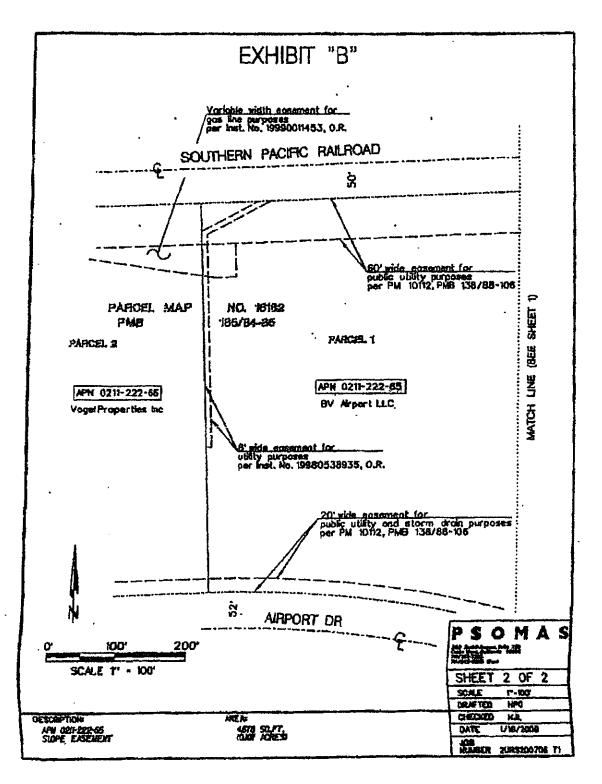


Exhibit E Page 03

#### PXHIBTT 'A'

LEGAL DESCRIPTION

#### MAINTENANCE EASEMENT

#### APN 0211-222-65

In the City of Ontacio, County of San Bernardino, State of California, being that portion of Parcel 1 of Parcel Map No. 15162, filed in Book 185, Pages 84 and 85 of Parcel Maps, records of said county, described as follows:

Beginning at the northeasteriy comer of said Parcel 1; thence along the casteriy line of said Parcel 1 South 00°08'01" West 15.96 feet to the <u>TRUE POINT OF BEGINNING</u>; thence continuing along said easterly line South 00°08'01" West 24.10 feet; thence leaving said easterly line South 88°02'34" West 192.96 feet; thence North 02°1 1'07" West 24.19 feet; thence North 88°03'52" East 293.94 feet to the <u>TRUE</u> POINT OF BEGINNING.

Containing 7,082 square feet.

All as shown on Exhibit "B" attached hereto and made a part thereof.

This legal descriptions is not intended to be used in the conveyance of land in violation of the Subdivision Map Act of the State of California.

This legal description was prepared by me or under my direction.

Kari J. Launen, ALS 5679

F1Silli Date

Nge i sif i

Exhibit B Page62

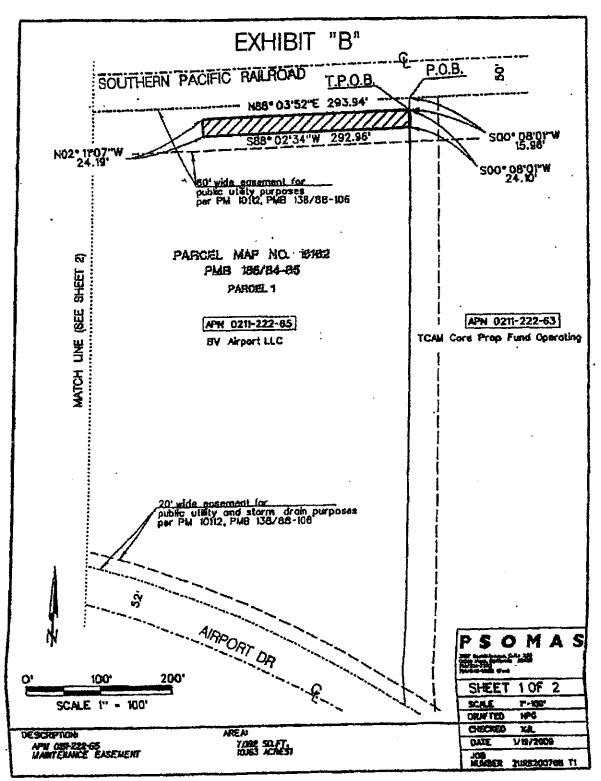


Exhibit E Page 05

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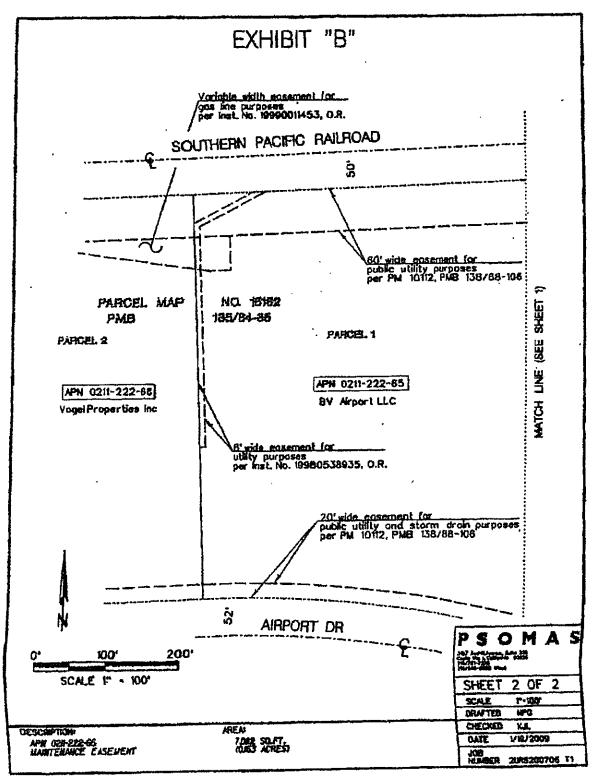


Exhibit E Page 06

RECORDING REQUESTED BY

EDISON

Corporate Real Estate 14799 Chesterit Westminster, CA 92683-5240

Ann: Distribution/TRES

#### SPACE ABOVE THIS LINE FOR RECORDER'S USE

		25:825	WORK SHEEK	Contraction of the local data	
	DOGLASHITANY TRANSFER TAX & HOHE MALLE	Ostaria	6034-6766	1-6794	
EASEMENT	AND CONSIDERATION LESS THAN SIDE OF		TD# 320510		
		FAL 204-2150-1 APM 0211-222-65	APPROVER-	SLS/8T	(12/24/09

BV AIRPORT, a California lizzited liability company (hereinafter referred to as "Grantor"), hereby grant to SOUTHERN CALIFORNIA EDISON COMPANY, a corporation, its successors and assigns (hereinafter referred to as "Grantee"), in essentent and right of way to construct, us, maintain, operate, alter, add to, repair, replace, reconstruct, impact, and remove at any time and from time to time underground electrical supply systems and communication systems (hereinafter referred to as "systems"), consisting of wires, underground conduits, cables, vanits, manholes, handhales, and including aboveground enclosures, markers and concrete pads and other appartement factores and equipment necessary or useful for distributing electrical energy and for transmitting intelligence by nectrical means, h, on, over, under, across and along that certain real property in the County of San Bernardino, State of California, described as follows:

VARIOUS STRIPS OF LAND LYING WITHIN PARCEL I OF PARCEL MAP NO. 15162, AS PER MAP FILED IN BOOK 185, PAGES 14 AND 35 OF PARCEL MAPS, IN THE OFFICE OF THE COUNTY RECORDER OF SAID COUNTY, THE CENTERLINES OF SAID STRIPS BEING DESCRIBED AS FOLLOWS:

STRIP #1 (10.00 FEET WIDE) .

COMMENCING AT THE NORTHEAST CORNER OF SAID PARCEL 1; THENCE ALONG THE NORTHERLY UNE OF SAID PARCEL 1, SOUTH 11°21°33" WEST 194.71 FEBT TO THE TRUE POINT OF BEGINNING; THENCE LEAVING SAID NORTHERLY LINE, SOUTH 01°31'27" BAST 13.59 FEET TO THE BEGINNING OF A TANGENT CURVE, CONCA VE TO THE NORTHWEST AND HAVING A RADIUS OF 12.50 FEET; THENCE SOUTHERLY, SOUTHWESTERLY, AND WESTERLY ALONG SAID CURVE THROUGH A CENTRAL ANGLE OF 90°00"60" AN ARC DISTANCE OF 19.63 FEET; THENCE SOUTH 51°21°33" WEST 31.44 FEET TO A POINT HEREINAFTER REFERRED TO AS POINT "A"; THENCE CONTINUING SOUTH 15°26°33" WEST 23.66 FEET TO A POINT OF ENDING, SAID POINT HEREINAFTER REFERRED TO AS POINT "B".

#### STRIP #2 (18.50 FEET WIDE)

BEGINNING AT SAID POINT "A", THENCE SOUTH 01"31"27" EAST 8.00 FEET TO A FOINT OF ENDING.

EXCEPTING THEREFROM THAT FORTION LYING WITHIN SAID STRIP #1.

Exhibit E Page 07

#### STRIP #1 (6.00 FEET WIDE)

BEGINNING AT SAID POINT "B"; THENCE NORTH 75"18'22" WEST 50.00 FEET TO A POINT OF ENDING.

THE SIDELINES OF SAID STRIP ARE TO BE PROLONGED OR SHORTENED TO TERMINATE SOUTHEASTERLY IN THE WESTERLY SIDELINE OF SAID STRIP #1.

This legal description was propared pursuant to Sec. \$730(c) of the Business & Professions Code,

Grantor agrees for himself, his hoirs and assigns, not to creat, place or maintain, our to permit the scattion, placement or maintanence of any building, platter boxes, such fill or other structures except wells and fonces on the above described ran property. The Grantse, and its contractors, agents and employees, shall have the right to trim or cut tree roots as many eachager or interfece with said systems and shall have free access to said systems and every part thereof, at all times, for the purpose of exercising the rights have in grants; provided, however, that is making any excervation on said property of the Grantor, the Grantee shall make the same is pack a manner as will cause the least injury to the surface of the ground around such accevation, and shall replace the earth to removed by it and restore the surface of the ground to as near the same condition as it was prior to such accevation as its practicable.

EXECUTED this \_\_\_\_\_ day of \_\_\_\_\_\_ 20\_\_\_\_

#### GRANTOR

BV AIRPORT, a California limited liability company

, personally

Signature

Title

Print Name

State of Children's

County of \_\_\_\_\_

Op\_\_\_\_\_before ms,

(have insert name and title of the officer)

appeared who proved to use on the basis of substanceory evidence to be the person(s) whose name(s) isfare subscribed to the within instrument and autonowledged to not that he/dothay eccented the same is his/heribely subscribely (sat), and that by his/heribely signature(s) an the instrument the person(s), or the cally upon behalf of which the person(s) acted, exceeded the instrument.

i certify under PENALTY OF PERGRY under the laws of the State of California that the foregoing paragraph is true and correct

WITNESS my hand and afficial scal.

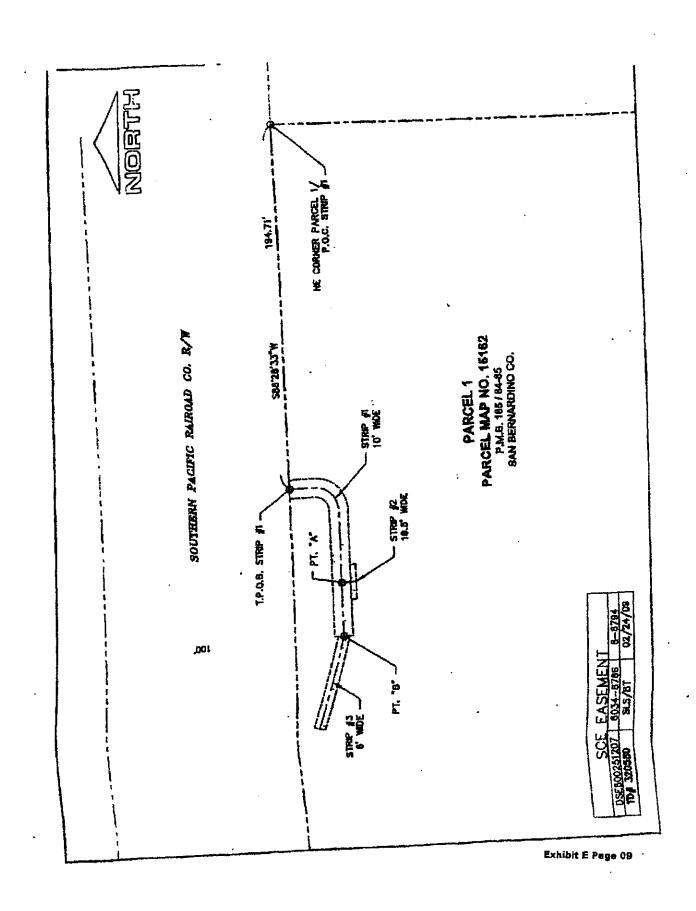
Signature

(This eres for solary stamp)

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DSE800251207 6034-6766 / 8-6794 TD# 320580

Exhibit E Page 08



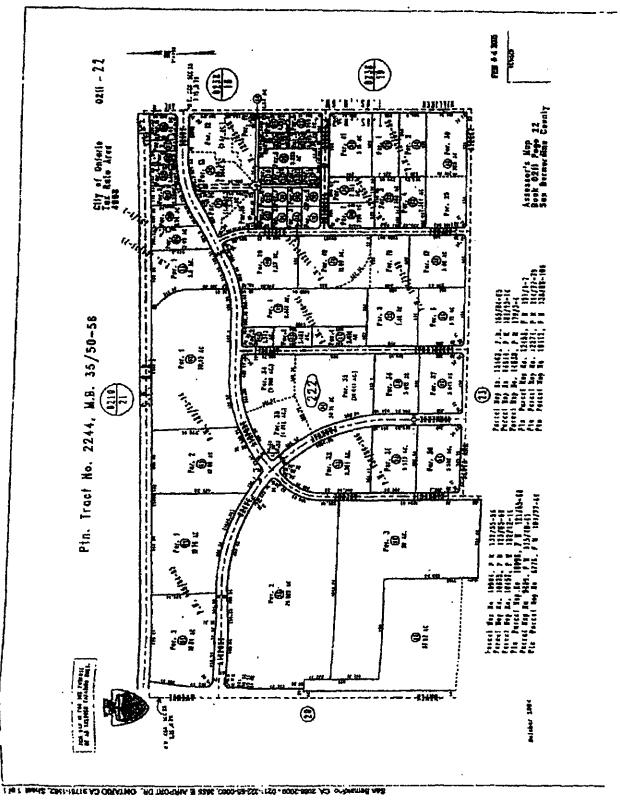


Exhibit E Page 10

## PSOMAS

## EXHIBIT 'A' LEGAL DESCRIPTION ACCESS EASEMENT

#### APN 0211-222-65

In the City of Ontario, County of San Bernardino, State of California, being that portion of Parcel 1 of Parcel Map No. 15162, filed in Book 185, Pages 34 and 85 of Parcel Maps, records of said county, described as follows:

Beginning at the northeasterly corner of said Parcel 1; thence along the casterly line of said Parcel 1 South 00°08'01" West 40.06 feet to the <u>TRUE POINT OF BEGINNING</u>: thence continuing along said easterly line South 00°08'01" West 63.63 feet; thence leaving said easterly line North 89°51'59" West 28.00 feet; thence North 00°08'01" Hast 62.60 feet; thence North 88°02'34" East 28.02 feet to the <u>TRUE POINT OF</u> BEGINNING.

Containing 1,767 square foot.

All us shown on Exhibit "B" attached hereto and made a part thereof.

This legal description is not intended to be used in the conveyance of land in violation of the Subdivision Map Act of the State of California.

This legal description was prepared by me or under my direction.

Kmi J. Launen, PLS 5679



Page 1 of 1

Exhibit E Page 11

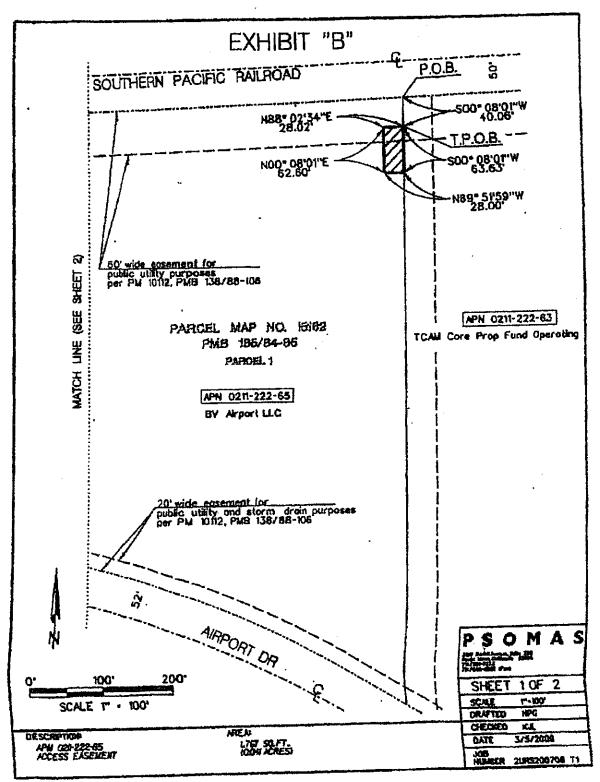
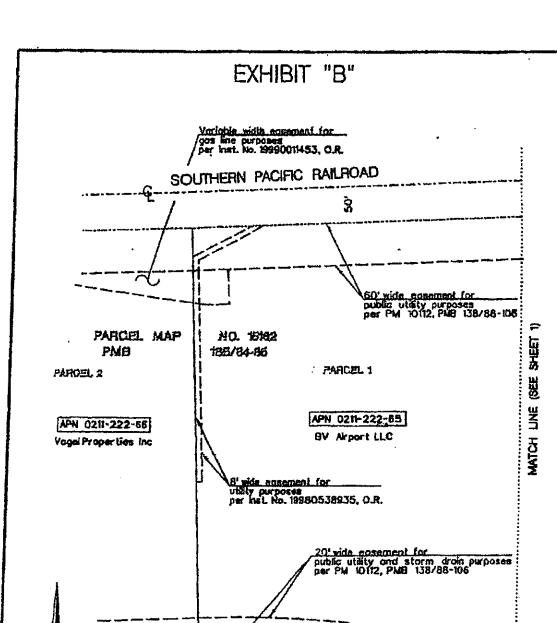


Exhibit E Page 12



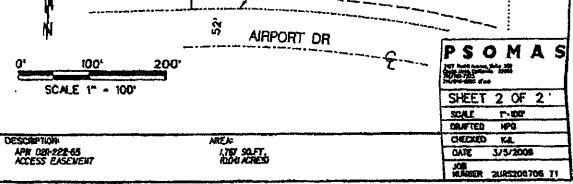


Exhibit E Page 13

# PSOMAS

#### EXHIBIT 'A'

LEGAL DESCRIPTION

#### TEMPORARY CONSTRUCTION RASEMENT

#### APN 0211-222-65

In the City of Ontario, County of San Bernardino, State of California, being that portion of Parcel I of Parcel Map No. 15162, filed in Book 185, Pages 84 and 85 of Parcel Maps, records of said county, described as follows:

Beginning at the northeasterly comer of said Parcel 1; thence along the easterly line of said Parcel 1 South 00°08'01" West 15.96 feet to the <u>TRUE POINT OR BEGUNNING</u>; thence continuing along said easterly line South 00°08'01" West 9.00 feet; thence South 88°03'52" Bast 293.67 feet; thence North 01°57'26" West 9.00 feet; thence North 88°03'52" Bast 294.00 feet to the <u>TRUE POINT OF BEGUNNING</u>.

Containing 2,645 square feet.

Ali as shown on Exhibit."B" attached hereto and made a part thereof.

This logal description is not intended to be used in the conveyance of land in violation of the Subdivision Map Act of the State of California.

This legal description was prepared by me or under my direction.

Kari J. Launea, PI(S 5679

11. Date

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Exhibit E Page 14

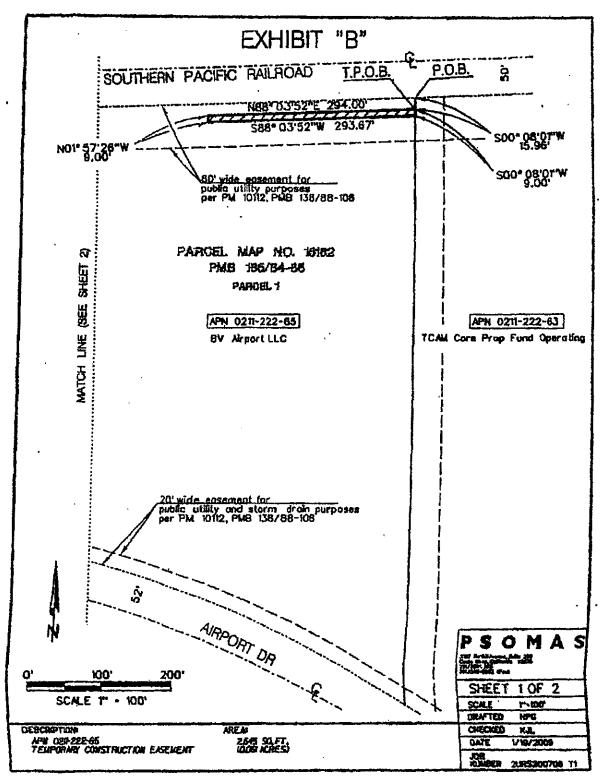


Exhibit E Page 15

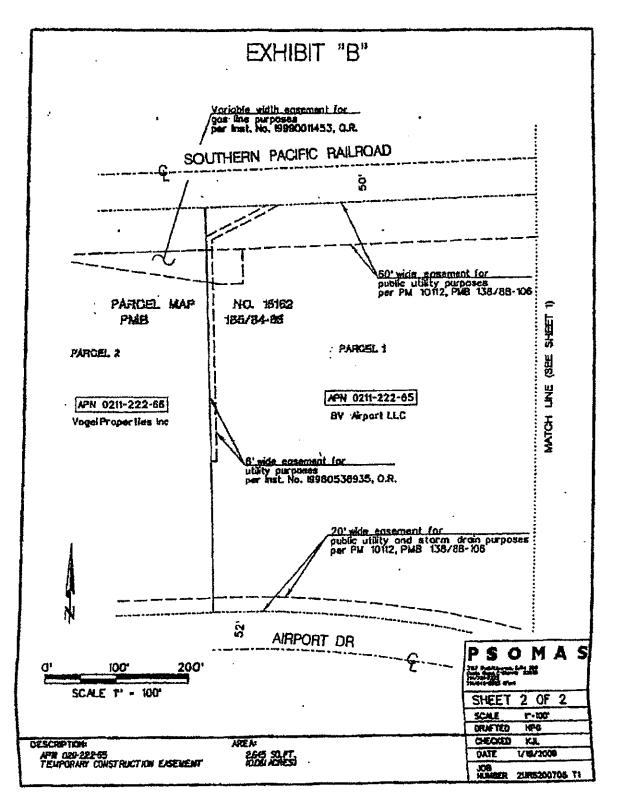


Exhibit E Page 16

#### Definition of Legal Rights to be Acquired

#### Exhibit "C"

"Maintenance Easement" shall mean a non-exclusive permanent and perpetual easement for the construction and maintenance of a wall structure, vegetation or flora, irrigation and other improvements related thereto, together with the right of the City of Ontario, or its successors or assigns (hereinafter, "Easement Holder"), to maintain, improve, repair, replace and inspect said wall structure and related improvements.

The scope of the maintenance easement as set forth hereinabove shall not include any right to physically alter or improve the area of the maintenance easement, but rather, is expressly limited to the right to use said area to maintain the wall, vegetation or flora, irrigation and other improvements situated on the adjoining railroad right-of-way.

With the exception of the existing trash enclosure which may slightly encroach into the easement area, property owners shall not erect or construct, or permit to be erected or constructed, any building, structure or improvement on, over or under any portion of the easement, or park any vehicles or store any other type of personal property, or plant any tree or trees, or plant any flora or vegetation which could compromise the integrity of the wall structure on, over or under any portion of the easement except at the written consent of the Easement Holder, which consent shall not be unreasonably withheld. This prohibition shall not be construed to prohibit the property owners from maintaining, repairing or replacing the landscaping and irrigation system already in existence in the maintenance easement area.

The Easement Holder shall be entitled at its sole cost and expense to trim, cut, or clear away any trees, brush, or other vegetation or flora from time to time determined in the Easement Holder's sole discretion to be necessary to perform the maintenance authorized pursuant to this maintenance easement. Any such action by the Easement Holder shall not cause the property owners or tenants to be in violation of any City code or permit.

No other easement or easements shall be granted on, under or over the maintenance easement without obtaining the prior written consent of the Easement Holder, which consent may not be unreasonably withheld by the easement holder.

Whenever the Easement Holder's consent is required as set forth hereinabove, the property owner shall notify Easement Holder in writing of its intended altered use of the easement area, or, as the case may be, the nature and scope of the easement or easements sought to be granted on, under or over the maintenance easement. In the event the Easement Holder fails to respond to any request for consent within sixty (60) days after submitting such request to the Easement Holder, such failure to respond shall be construed as the Easement Holder's consent to the proposed use or improvement of the easement Holder responds in writing declining the request for consent, the reasonableness of the Easement Holder's failure to consent shall be evaluated by determining whether the proposed use or improvement of the easement area, or the proposed easement or easements sought to be granted. In the granted, unreasonably interfere with Easement Holder's use of the maintenance easement for the purposes set forth hereinabove. In the event litigation is commenced to determine whether such

activities constitute an unreasonable interference with Easement Holder's use of the maintenance easement, the prevailing party shall be entitled to recover its reasonable litigation expenses including without limitation attorney's fees and expert witness fees.

"Access Easement" shall mean a non-exclusive permanent and perpetual easement for vehicular and pedestrian access to the railroad right-of-way and maintenance easement, as necessary to gain access thereto for the Easement Holder.

The property owners shall not erect or construct, or permit to be erected or constructed, any building, structure or impediment to access over any portion of the easement, or parking any vehicles over the easement area, without the written consent of the Easement Holder, which consent shall not be unreasonably withheld.

The Easement Holder shall be entitled at its sole cost and expense to trim, cut, or clear away any trees, brush, or other vegetation of flora from time to time as determined in the Easement Holder's discretion to be necessary to exercise the easement rights embodied herein, without payment of any additional compensation. Any such action by the Easement Holder shall not cause the property owners or tenants to be in violation of any City code or permit.

The existing ground elevations of the easement shall not be materially increased or decreased in a manner to impair the City's access rights embodied herein, without obtaining the prior written consent of the Easement Holder, which consent shall not be unreasonably withheld.

Whenever the Easement Holder's consent is required as set forth hereinabove, the property owner shall notify Easement Holder in writing of its intended altered use of the easement area. In the event the Easement Holder fails to respond to any request for consent within sixty (60) days after submitting such request to the Easement Holder, such failure to respond shall be construed as the Easement Holder's consent to the proposed use or improvement of the easement area. In the event the Easement Holder responds in writing declining the request for consent, the reasonableness of the Easement Holder's failure to consent shall be evaluated by determining whether the proposed use or improvement of the easement area unreasonably interferes with Easement Holder's use of the access easement for the purposes set forth hereinabove. In the event litigation is commenced to determine whether such activities constitute an unreasonable interference with Easement Holder's use of the access including without limitation attorney's fees and expert witness fees.

"Temporary Construction Easement (TCE)" refers to the right of the City, its successors and assigns, to engage in construction and related activities for the project, together with all necessary rights of ingress and egress to the easement area in connection with the exercise of any of the easement rights.

Prior to termination of this easement, property owners shall not erect or construct, or permit to be erected or constructed, any building, structure or improvement on, over or under any portion of the easement, nor shall property owners plant any tree or trees or plant any other vegetation or flora on any portion of the easement except at the written consent of the City, its successors and assigns. The City shall be entitled to trim, cut, or clear away any trees, brush, or other vegetation or flora from time to time as plaintiff determines in its sole discretion without payment of any additional compensation to property owners.

No other easement or easements shall be granted on, under, or over this easement without obtaining the prior written consent of the City, its successors and assigns.

The duration of the rights under this easement shall not be for less than twenty-four (24) months, and will begin on the date construction on the property commences. The City shall have an option to extend the temporary construction easement on a month-to-month basis, until construction on the property is completed.

# CITY OF ONTARIO

Agenda Report JUNE 3, 2014 SECTION: CONSENT CALENDAR

### SUBJECT: APPROVAL OF COMMON USE AGREEMENTS AND AMENDMENTS TO COMMON USE AGREEMENTS WITH THE SAN BERNARDINO COUNTY FLOOD CONTROL DISTRICT

### **RECOMMENDATION:** That the City Council:

- (A) Approve two Common Use Agreements between the City of Ontario and the San Bernardino County Flood Control District for the operation and maintenance of facilities at West Cucamonga Channel at Acacia Street and Cucamonga Channel North of Riverside Drive at Westwind Park; and authorize the City Manager to execute said Agreement and future amendments to the Agreement; and
- (B) Approve a three-party Common Use Agreement between the City of Ontario, Inland Empire Utilities Agency (IEUA) and the San Bernardino County Flood Control District for the operation and maintenance of facilities at West Cucamonga Channel and Cucamonga Channel at Philadelphia Street; and authorize the City Manager to execute said Agreement and future amendments to the Agreement; and
- (C) Approve amendments to two Common Use Agreements between the City of Ontario and the San Bernardino Flood Control District for the operation and maintenance of Cucamonga Channel at 4th Street (South Side) and East State Storm Drain at Grove Avenue; and authorize the City Manager to execute said Amendments and future amendments to the Agreement.

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

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

Prepared by: Department:	Tricia Espinoza, P.E. Engineering	Submitted to Council/O.H.A. Approved:		06/03/2014
City Manager Approval:	MA	Continued to: Denied:		
	- Antroy			9

**FISCAL IMPACT:** The City of Ontario has been operating and maintaining all of the noted locations in compliance with permits issued by the San Bernardino County Flood Control District. No additional appropriations are required.

**BACKGROUND:** Over the years, the San Bernardino County Flood Control District has issued permits to the City for construction, maintenance and operation of facilities at various locations. As part of the permit conditions, the City accepted full maintenance and operational responsibilities for facility improvements. The District has requested that the City assist in closing out the following permits and implementing Common Use Agreements to reflect the proper maintenance responsibilities as originally stated in the permit conditions.

### 1) Common Use Agreement – West Cucamonga Channel at Acacia Street (Exhibit "A")

On October 24, 2001, the San Bernardino County Flood Control District issued a permit to the City of Ontario to construct, operate and maintain storm drain connections and a street crossing over the West Cucamonga Channel at Acacia Street. On January 10, 2002, the District issued another permit to the City to construct street improvements on Acacia Street, crossing the West Cucamonga Channel. The purpose of the Common Use Agreement is to set forth the rights, responsibilities and liabilities as they pertain to the maintenance and operation of the aforementioned improvements.

# 2) Common Use Agreement – Cucamonga Channel North of Riverside Drive at Westwind Park (Exhibit "B")

On February 28, 1989, the San Bernardino County Flood Control District issued a permit to the City of Ontario to construct, operate and maintain storm drain connections to the Cucamonga Channel and Westwind Park improvements. On August 31, 1990, the District issued an amendment to the permit for landscaping within the District right-of-way. The purpose of the Common Use Agreement is to set forth the rights, responsibilities and liabilities as they pertain to the maintenance and operation of the park facilities and the east channel access road within the area of common use.

# 3) Three-Party Common Use Agreement – West Cucamonga Channel and Cucamonga Channel at Philadelphia Street (Exhibit "C")

On January 12, 2005, the San Bernardino County Flood Control District issued a permit to the Inland Empire Utilities Agency (IEUA) to construct, operate and maintain an access road, a storm drain connection to the Cucamonga Channel, and landscaping improvements. The purpose of the three-party Common Use Agreement between the District, the City of Ontario and IEUA is to set forth the rights, responsibilities and liabilities as they pertain to IEUA's improvements within City property and District right-of-way. The City will continue to be responsible for the maintenance of landscaping currently maintained by the City, within City property. The City also consents to IEUA's use of the roads within City property and the area of common use. This agreement has already been executed by IEUA.

The San Bernardino County Flood Control District and the City of Ontario have two existing Common Use Agreements for the construction, operation and maintenance of two locations within the City. Subsequent to the original agreements being executed, the limits of the projects changed and the City has since taken over additional responsibility. However, the original Common Use Agreements were

never revised to reflect the changes and the District has requested the City to assist in amending the following Agreements to reflect the proper maintenance responsibilities.

# 4) Amendment No. 1 to Common Use Agreement – Cucamonga Channel at 4th Street (South Side) (Exhibit "D")

The City of Ontario and the San Bernardino Flood Control District entered into a Common Use Agreement for the 4th Street crossing of the District's Cucamonga Channel (on file with the Records Management Department) on October 17, 1978 for the purpose of setting forth the rights, responsibilities and liabilities as they pertain to the construction, operation and maintenance of the street improvements. The original Common Use Area excluded a small portion of land on the south side of Fourth Street at the channel.

On April 2, 2002, the Ontario City Council approved a Common Use Agreement for the portion on the south side of 4th Street at the Cucamonga Channel. However, this agreement was never executed by the San Bernardino County Flood Control District. The purpose of Amendment No. 1 is to include this additional portion as part of the Common Use Area that the City is responsible for maintaining and operating under the existing Common Use Agreement.

# 5) Amendment No. 1 to Common Use Agreement – East State Storm Drain at Grove Avenue (Exhibit "E")

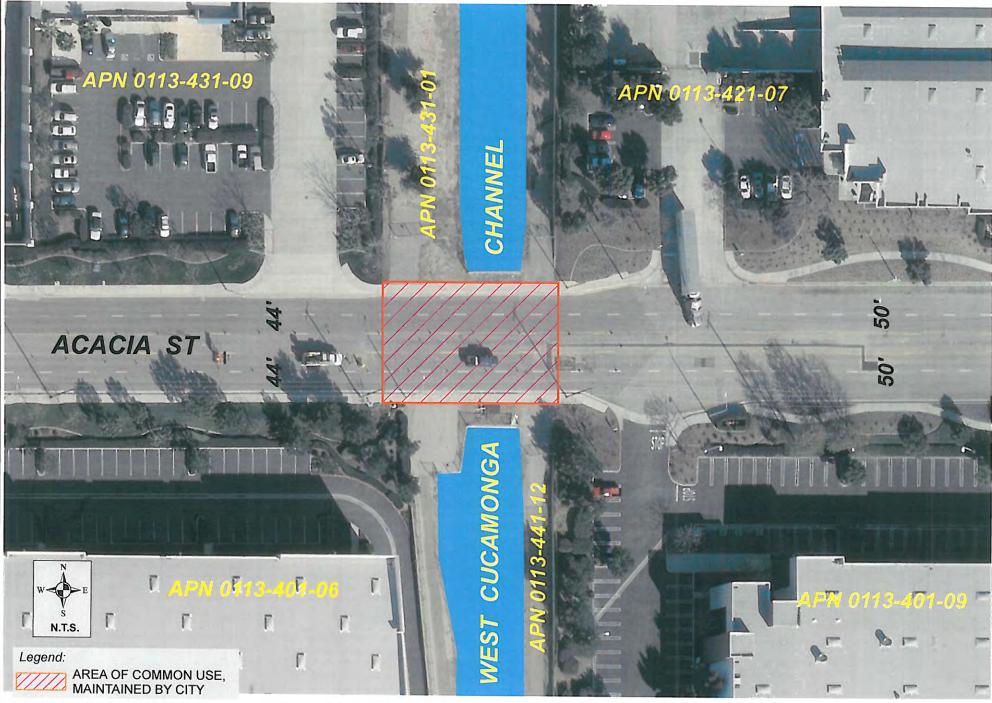
The City of Ontario and the San Bernardino Flood Control District entered into a Common Use Agreement for East State Storm Drain (on file with the Records Management Department) on February 7, 1972 for the purpose of setting forth the rights, responsibilities and liabilities as they pertain to the construction of East State Storm Drain. The Common Use Agreement required the San Bernardino County Flood Control District to construct, operate and maintain the entire East State Storm Drain System.

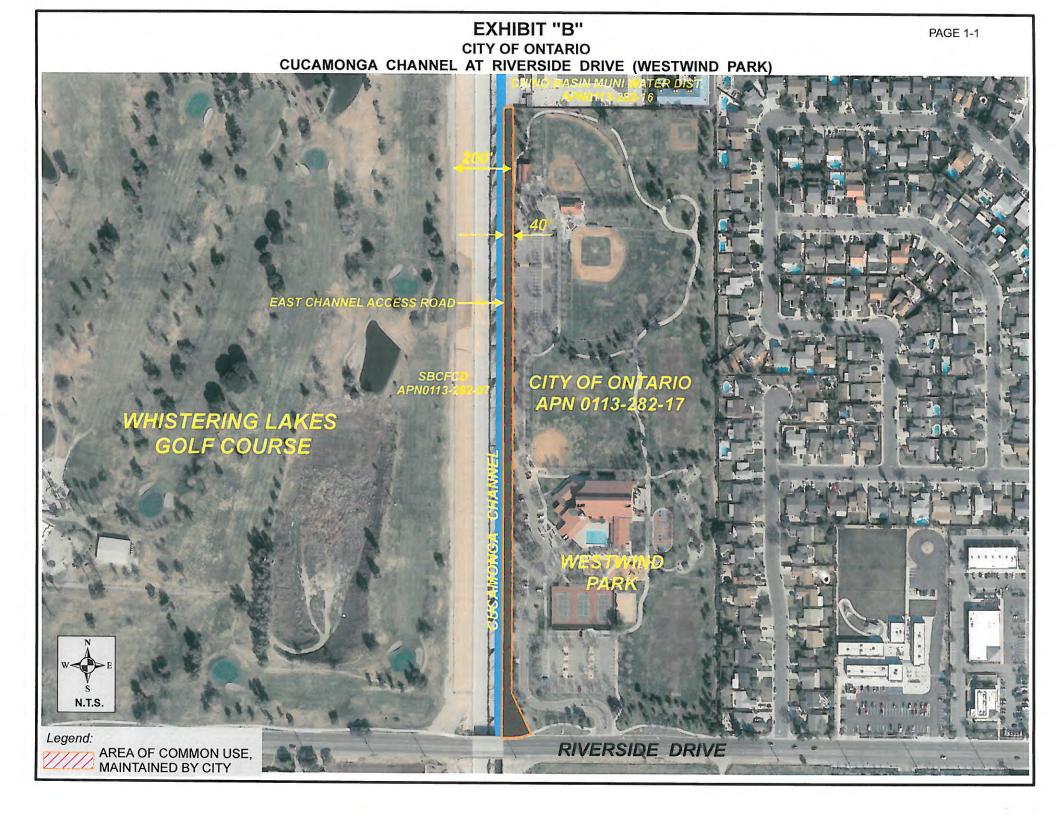
On January 4, 2011, the San Bernardino County Flood Control District issued a permit to the City of Ontario to construct, operate and maintain a Realigned Segment of the East State Storm Drain. At that time, the City was in the process of constructing the Grove Avenue Grade Separation Project and the East State Storm Drain System crossing Grove Avenue had to be relocated in order to accommodate the new railroad bridge. The purpose of Amendment No. 1 is to reflect the transfer of responsibility to the City for the Realigned Segment of East State Storm Drain.

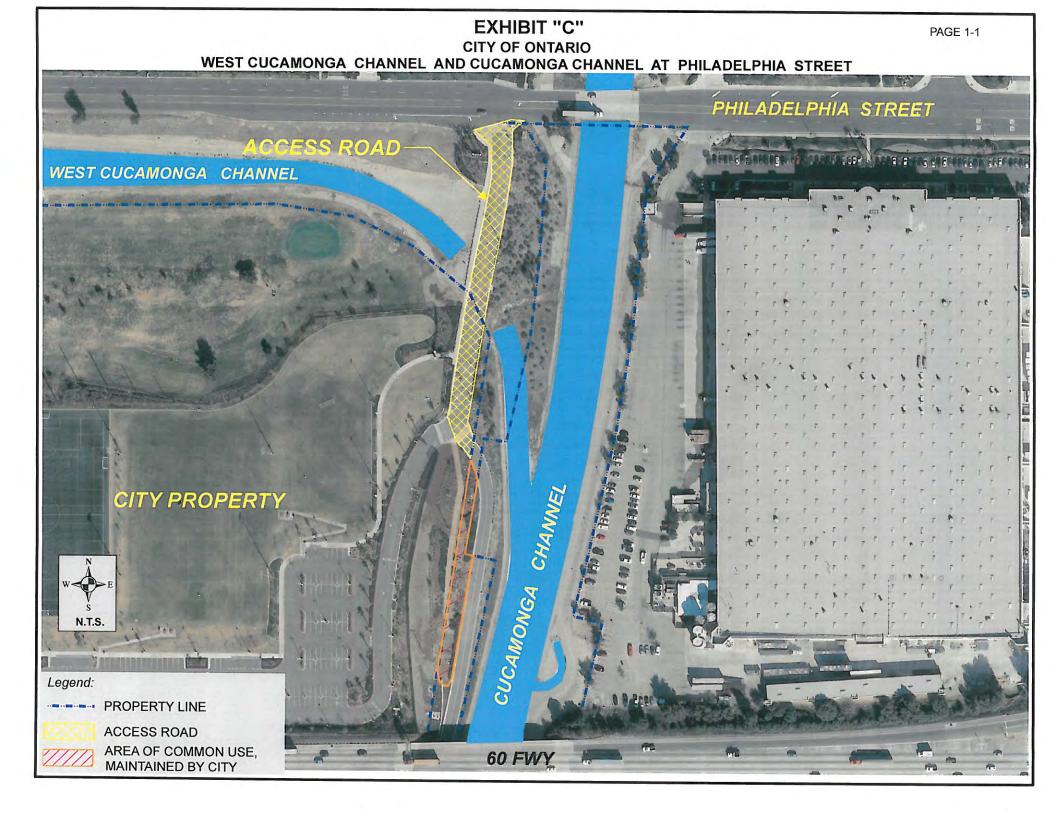
All Common Use Agreements have been reviewed and approved by the City Attorney and City Engineer.

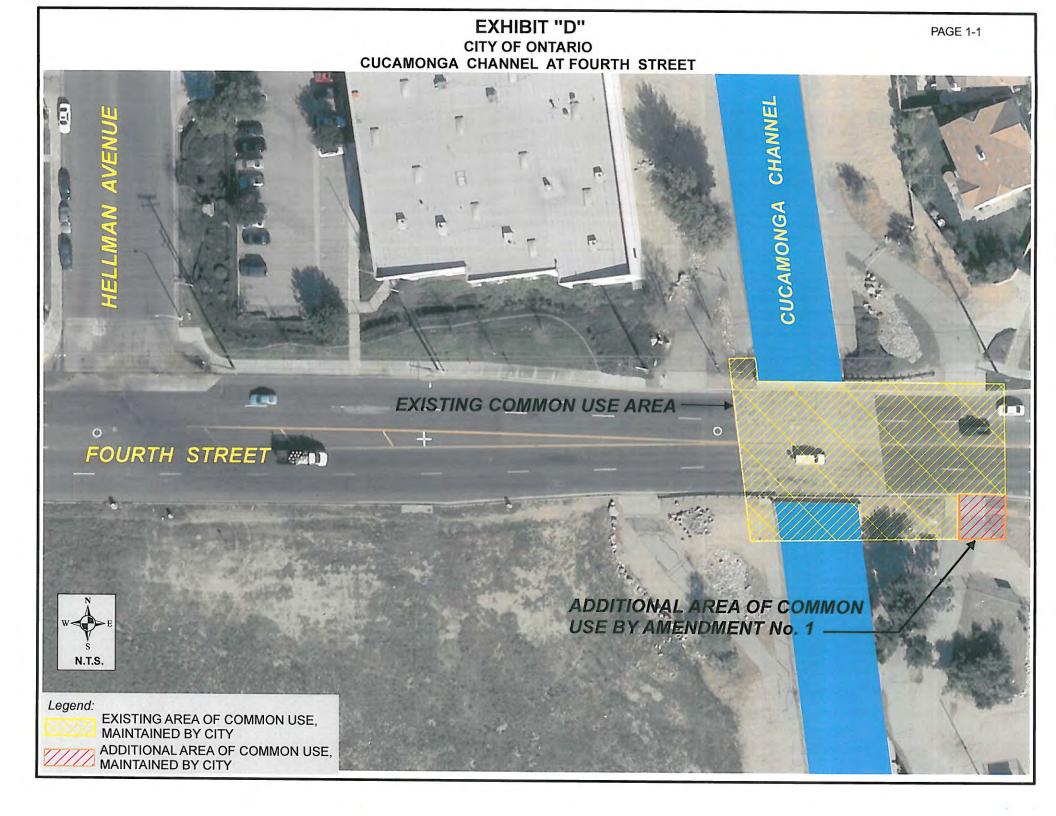
### EXHIBIT "A" CITY OF ONTARIO WEST CUCAMONGA CHANNEL AT ACACIA STREET

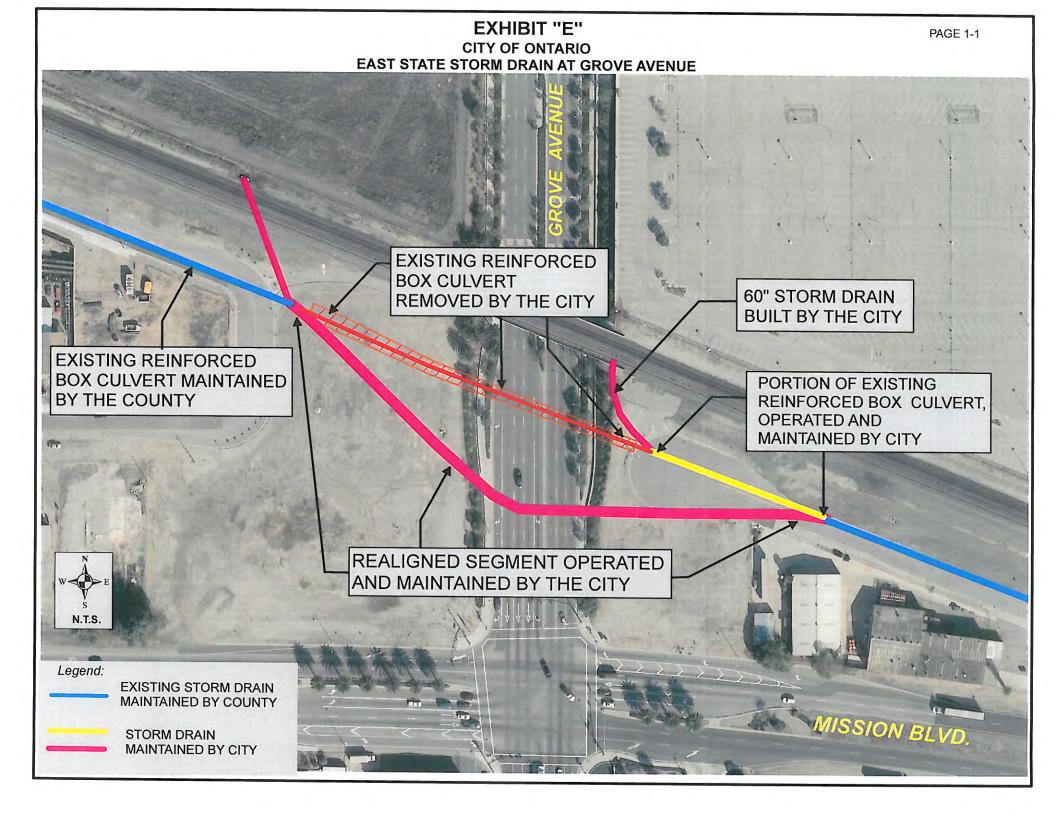
PAGE 1-1











# **CITY OF ONTARIO**

Agenda Report June 3, 2014 SECTION: CONSENT CALENDAR

#### SUBJECT: RESOLUTIONS AMENDING RESOLUTIONS OF NECESSITY NO. 2012-099 AND NO. 2012-093 FOR THE ACQUISITION OF INTERESTS IN PORTIONS OF CERTAIN REAL PROPERTY

### **RECOMMENDATION:** That the City Council:

- (A) Adopt a resolution amending Resolution of Necessity No. 2012-099, originally adopted on December 4, 2012, for the purposes of obtaining an additional access easement and amending public utility easement legal definitions pursuant to the request of the property owner with regard to Assessor Parcel No. 1083-351-07 for public right-of-way and the construction of the South Milliken Avenue Grade Separation Project and related public infrastructure improvements; and
- (B) Adopt a resolution amending Resolution of Necessity No. 2012-093, originally adopted on December 4, 2012, for the purpose of amending public utility easement legal definitions pursuant to the request of the property owner with regard to Assessor Parcel No. 1083-351-08 for public right-of-way and the construction of the South Milliken Avenue Grade Separation Project and related public infrastructure improvements.

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

**FISCAL IMPACT:** The adopted Capital Improvement Program Budget includes appropriations for the right-of-way phase of the South Milliken Avenue Grade Separation Project.

**BACKGROUND:** The South Milliken Avenue Grade Separation Project and related public infrastructure improvements are required for and will benefit the community by eliminating potential conflicts between vehicular and train traffic, increasing travel reliability on Mission Boulevard and Milliken Avenue, enhancing the flow of truck traffic and improving air quality.

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

Prepared by: Department:	Jay Bautista Engineering	Submitted to Co Approved:	uncil/O.H.A.	06/03/2014
City Manager	1 aad	Continued to: Denied:		
Approval:	Alt			10

apportionment of the special tax. Ordinance No. 2902 also rescinded the previously adopted special tax ordinances.

The public infrastructure facilities required for the development of the Ontario Airport Towers project were originally planned to be financed with the issuance of bonds by the District. However, due to the economic downturn, the planned issuance of bonds was abandoned. The special tax for City services remains in full force and effect.

The Ontario Airport Towers project addresses the development of approximately 25 acres and is generally located on the south side of Interstate 10 Freeway, north of Guasti Road, east of Archibald Avenue and west of Turner Avenue. The project is planned for development in 5 phases: 850,000 square feet of Class A office space (five buildings), 10,000 square feet of retail space, and a 175 room hotel.

The special tax for City services is levied each fiscal year to fund services and administrative expenses as follows: police protection services, fire protection and rescue services and parkway and open space maintenance services; and all costs related to financing and administering the services, the determination of the amount of special taxes to be levied and costs otherwise incurred in order to carry out the authorized purposes of the District and administering the District. Special tax collections and expenses for the District were \$10,166 and \$10,167 respectively, during Fiscal Year 2012-2013, which is the most recent fiscal year ended.

The adoption of a resolution by the City Council is required annually to establish the special tax rate to be levied. Fiscal Year 2008-09 was the first year that the special tax for City Services was levied. Pursuant to the Rate and Method of Apportionment of Special Tax that was approved by the property owners, beginning on July 1, 2008, and annually thereafter, the maximum annual Services Special tax rate shall be increased by an amount equal to the greater of (i) the increase, if any, in the Consumer Price Index for the Los Angeles-Riverside-Orange County Area for All Urban Consumers, or (ii) 2% of the amount in effect the previous Fiscal Year. The special tax rate for Fiscal Year 2013-14 was \$546.57 per acre. The proposed tax rate for Fiscal Year 2014-15 is \$557.50 per acre, which represents a 2.0% increase over the previous Fiscal Year.

#### RESOLUTION NO 2012-099

A RESOLUTION OF NECESSITY OF THE CITY COUNCIL OF THE CITY OF ONTARIO, CALIFORNIA, FOR THE ACQUISITION OF FEE, EASEMENT AND TEMPORARY CONSTRUCTION EASEMENT INTERESTS IN PORTIONS OF CERTAIN REAL PROPERTY LOCATED AT OR NEAR THE INTERSECTION OF MISSION BOULEVARD, PHILADELPHIA STREET AND THE UNION PACIFIC RAILROAD CROSSING, AND MORE PARTICULARLY DESCRIBED AS ASSESSOR PARCEL NO 1083-351-07, BY EMINENT DOMAIN, IS NECESSARY FOR PUBLIC RIGHT-OF-WAY FOR THE CONSTRUCTION OF THE SOUTH MILLIKEN AVENUE GRADE SEPARATION PROJECT AND RELATED PUBLIC INFRASTRUCTURE IMPROVEMENTS IN THE CITY OF ONTARIO, SAN BERNARDINO COUNTY, CALIFORNIA

WHEREAS, the City of Ontario (the "City") proposes to acquire fee, easement and temporary construction easement interests in portions of certain real property located at or near the intersection of Mission Boulevard, Philadelphia Street and the Union Pacific Railroad crossing, and more particularly described as Assessor Parcel No 1083-351-07, for public right-of-way purposes and the construction of the South Milliken Avenue Grade Separation Project and related public infrastructure improvements, in the City of Ontario, California, pursuant to the authority granted to it by Section 37350 5 of the California Government Code, and

WHEREAS, pursuant to Section 1245 235 of the California Code of Civil Procedure, the City scheduled a public hearing for Tuesday, December 4, 2012, at 6 30 p m at the Ontario City Hall, Council Chambers, 303 East "B" Street, Ontario, California, and gave to each person whose property is to be acquired and whose name and address appeared on the last equalized county assessment roll, notice and a reasonable opportunity to appear at said hearing and be heard on the matters referred to in Section 1240 030 of the California Code of Civil Procedure, and

WHEREAS, said hearing has been held by the City and each person whose property is to be acquired by eminent domain was afforded an opportunity to be heard on said matters, and

WHEREAS, the City may now adopt a Resolution of Necessity pursuant to Section 1240 040 of the California Code of Civil Procedure

NOW, THEREFORE, THE CITY DOES HEREBY RESOLVE AND DECLARE AS FOLLOWS

<u>SECTION 1</u> Compliance with California Code of Civil Procedure and California Environmental Quality Act There has been compliance by the City with the requirements of Section 1245 235 of the California Code of Civil Procedure and the California Environmental Quality Act

<u>SECTION 2</u> Public Use The public use for which the real property is to be acquired is for public right-of-way purposes and the construction of the South Milliken Avenue Grade Separation Project and related public infrastructure improvements, in San Bernardino County, California Section 37350 5 of the California Government Code authorizes the City to acquire by eminent domain real property necessary for such purposes

<u>SECTION 3</u> Description of Property Attached and marked as Exhibit "A" is the legal description and depiction of the real property to be acquired by the City, which describes the general location and extent of the property to be acquired with sufficient detail for reasonable identification

<u>SECTION 4</u> Findings The City hereby finds and determines each of the following

- (a) The public interest and necessity require the proposed project,
- (b) The proposed project is planned or located in the manner that will be most compatible with the greatest public good and least private injury,
- (c) The real property described in Exhibit "A" are necessary for the proposed project,
- (d) The offer required by Section 7267 2 of the California Government Code was made

<u>SECTION 5</u> Use Not Unreasonably Interfering with Existing Public Use(s) Some or all of the real property to be acquired is subject to easements and rights-of-way appropriated to existing public uses. The legal descriptions of these easements and rights-of-way are on file with the City and describe the general location and extent of the easements and rights-of-way with sufficient detail for reasonable identification. In the event the herein described use or uses will not unreasonably interfere with or impair the continuance of the public use as it now exists or may reasonably be expected to exist in the future, counsel for the City is authorized to acquire the real property subject to such existing public use(s) pursuant to Section 1240 510 of the California Code of Civil Procedure

<u>SECTION 6</u> More Necessary Public Use Some or all of the real property to be acquired is subject to easements and rights-of-way appropriated to existing public uses To the extent that the herein described use or uses will unreasonably interfere with or impair the continuance of the public use as it now exists or may reasonably be expected to exist in the future, the City finds and determines that the herein described use or uses are more necessary than said existing public use Counsel for the City is authorized to acquire the real property appropriated to such existing public use(s) pursuant to Section 1240 610 of the California Code of Civil Procedure Staff is further authorized to make such improvements to the real property being acquired that it determines is reasonably necessary to mitigate any adverse impact upon the existing public use

SECTION 7 Further Activities Counsel for the City is hereby authorized to file legal proceedings necessary to acquire the hereinabove described real property in the name of and on behalf of the City by eminent domain, and counsel is authorized to institute and prosecute such legal proceedings as may be required in connection therewith Legal counsel is further authorized to take such steps as may be authorized and required by law, and to make such security deposits as may be required by order of court, to permit the City to take possession of and use said real property at the earliest possible time Counsel is further authorized to correct any errors or to make or agree to non-material changes in the legal description of the real property that are deemed necessary for the conduct of the condemnation action or other proceedings or transaction required to acquire the subject real property. Counsel is further authorized to reduce or modify the extent of the interests or property to be acquired so as to reduce the compensation payable in the action where such change would not substantially impair the construction and operation for the project for which the real property is being acquired

SECTION 8 Effective Date This Resolution shall take effect upon adoption

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

PASSED, APPROVED, AND ADOPTED this 4<sup>th</sup> day of December 2012

LEON.

ATTEST

MARY E WIRTES, MMC

APPROVED AS TO EGAL FORM

BEST BEST & KRIEGER LLP CITY ATTORNEY

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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 2012-099 was duly passed and adopted by the City Council of the City of Ontario at their regular meeting held December 4, 2012 by the following roll call vote, to wit

AYES	MAYOR/COUNCIL MEMBERS	,	WAPNER, DRADA AND AV	BOWMAN, ′ILA
NOES	COUNCIL MEMBERS	NONE		
ABSENT	COUNCIL MEMBERS	NONE		

MARY E WIRTES, MMC, CIT

(SEAL)

The foregoing is the original of Resolution No 2012-099 duly passed and adopted by the Ontario City Council at their regular meeting held December 4, 2012

(SEAL)

#### Legal Definitions of Property to be Acquired

The following is a list of definitions of legal rights to be acquired by the City of Ontario:

"Fee Acquisition" also known as fee simple or fee simple absolute, refers to complete or absolute ownership of the property in the City of Ontario (the "City"), County of San Bernardino, State of California.

"Temporary Construction Easement" or "TCE" refers to the right of the City, its successors, and assigns, to engage in construction and related activities related to the South Milliken Grade Separation Project, together with all necessary rights of ingress and egress to the non- exclusive easement area in connection with such construction and related activities.

The TCE shall commence after the owner is provided 5 calendar days advanced written notice by the City of the City's intent to utilize the TCE area. The use of the TCE area shall not exceed 4 months; provided however, that the term of the TCE may be extended upon payment by the City to the Property Owner of an amount equal to \$4,687.34 a month, prorated to the actual date upon which the City's use of the Property terminates.

Property Owner shall not cause, directly, indirectly or negligently, any interference with or harm to the rights conveyed hereunder.

"Public Utility Easement" refers to a non-exclusive permanent easement in favor of the City, its successors, and assigns, over, upon, under, and across the lands hereinafter described together with the right to access, maintain, improve, alter, relocate, inspect, construct, reconstruct, install, replace, and remove public improvements and facilities, including those in the public right of way, and public utilities, including water and sewer lines, as determined necessary by the City, together with all necessary rights incidental thereto.

Property Owner shall not erect or construct, or permit to be erected or constructed, any building, structure or improvement on, over, or under any portion of the easement, or plant trees or any other vegetation on any portion of the easement except with the prior written consent of the City, its successors and assigns.

The City shall have the right to trim, cut or clear away any trees, brush, or other vegetation from time to time as determined in its sole discretion, without payment of additional compensation.

No other easements shall be granted on, under or over the easement without the prior written consent of the City, its successors and assigns.

The existing ground elevations upon completion of construction shall not be further increased or decreased without the prior written consent of the City.

Coast Surveying, Inc. February 24, 2012

#### EXHIBIT "A" LEGAL DESCRIPTION RIGHT OF WAY

THAT PORTION OF PARCEL B OF LOT LINE ADJUSTMENT NO. LL-99-27, IN THE CITY OF ONTARIO, COUNTY OF SAN BERNARDINO, STATE OF CALIFORNIA, AS RECORDED JUNE 19, 2000 AS INSTRUMENT NO. 20000217781, OFFICIAL RECORDS, IN THE OFFICE OF THE COUNTY RECORDER OF SAID COUNTY, DESCRIBED AS FOLLOWS:

BEGINNING AT THE NORTHWEST CORNER OF SAID PARCEL B, SAID POINT BEING ON THE SOUTHWESTERLY RIGHT OF WAY LINE OF MISSION BOULEVARD (150 FEET WIDE); THENCE ALONG THE NORTHEASTERLY LINE OF SAID PARCEL B, ALSO BEING SAID SOUTHWESTERLY RIGHT OF WAY LINE SOUTH 68°24'25" EAST 392.02 FEET TO THE BEGINNING OF A CURVE CONCAVE SOUTHWESTERLY HAVING A RADIUS OF 20.00 FEET; THENCE SOUTHEASTERLY 24.79 FEET ALONG SAID CURVE, ALSO BEING THE SOUTHWESTERLY RIGHT OF WAY LINE OF MILLIKEN AVENUE AS DESCRIBED IN THE EASEMENT DEED TO THE CITY OF ONTARIO RECORDED OCTOBER 15, 1997 AS DOCUMENT NO. 19970378175, OFFICIAL RECORDS, THROUGH A CENTRAL ANGLE OF 71°01'51"; THENCE ALONG THE WESTERLY RIGHT OF WAY LINE OF MILLIKEN AVENUE AS DESCRIBED IN SAID EASEMENT DEED THE FOLLOWING THREE COURSES:

- 1. SOUTH 02°37'26" WEST 97.59 FEET TO THE BEGINNING OF A CURVE CONCAVE EASTERLY HAVING A RADIUS OF 1560.00 FEET;
- 2. SOUTHERLY 91.88 FEET ALONG SAID CURVE THROUGH A CENTRAL ANGLE OF 03°22'28";
- 3. SOUTH 00°45'02" EAST 355.94 FEET TO THE SOUTHERLY LINE OF SAID PARCEL B;

THENCE ALONG SAID SOUTHERLY LINE SOUTH 89°14'58" WEST 6.81 FEET; THENCE LEAVING SAID SOUTHERLY LINE NORTH 02°14'41" WEST 115.20 FEET TO THE BEGINNING OF A CURVE CONCAVE EASTERLY HAVING A RADIUS OF 6082.92 FEET; THENCE NORTHERLY 437.48 FEET ALONG SAID CURVE THROUGH A CENTRAL ANGLE OF 04°08'03" TO A LINE PARALLEL WITH AND 12.00 FEET SOUTHWESTERLY OF SAID SOUTHWESTERLY RIGHT OF WAY LINE OF MISSION BOULEVARD; THENCE NONTANGENT ALONG SAID PARALLEL LINE NORTH 68°24'25" WEST 390.64 FEET TO THE WESTERLY LINE OF SAID PARCEL B; THENCE ALONG SAID WESTERLY LINE NORTH 00°21'48" EAST 12.87 FEET TO THE POINT OF BEGINNING.

CONTAINING 10,925 SQUARE FEET, MORE OR LESS.

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

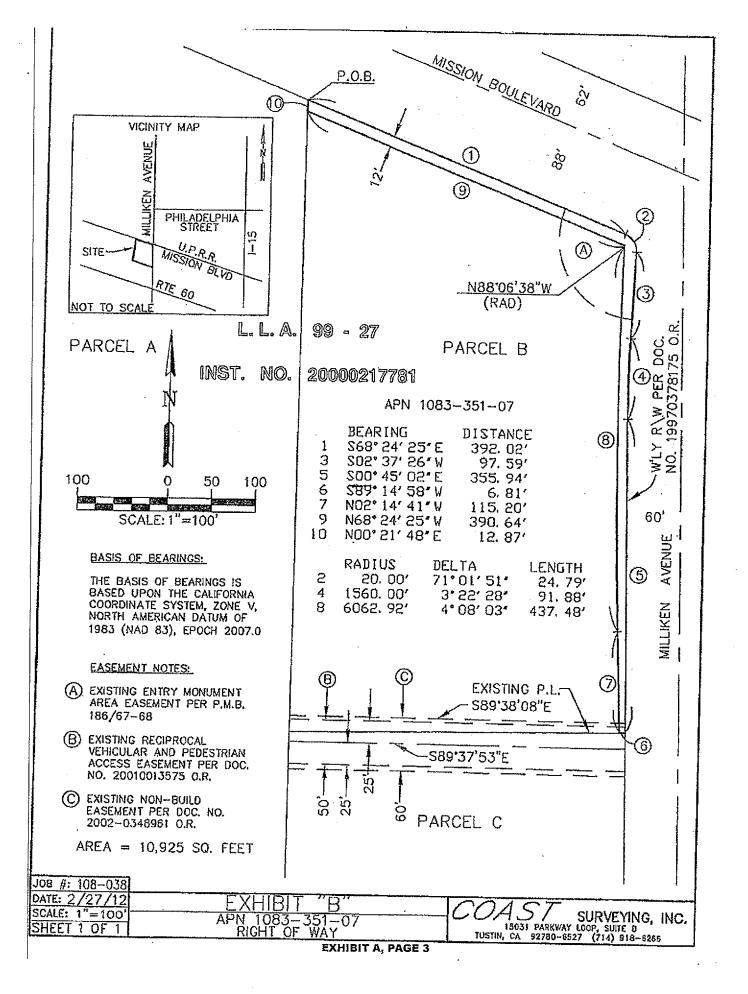
DATED THIS 27<sup>TH</sup> DAY OF FEBRUARY, 2012.

GWEN-VERA DEL CASTILLO, PLS 5108



JN 108038 AP 1083-351-07 RW

#### EXHIBIT A, PAGE 2



Coast Surveying, Inc. February 24, 2012

#### EXHIBIT "A" LEGAL DESCRIPTION UTILITY EASEMENT

THAT PORTION OF PARCEL B OF LOT LINE ADJUSTMENT NO. LL-99-27, IN THE CITY OF ONTARIO, COUNTY OF SAN BERNARDINO, STATE OF CALIFORNIA, AS RECORDED JUNE 19, 2000 AS INSTRUMENT NO. 20000217781, OFFICIAL RECORDS, IN THE OFFICE OF THE COUNTY RECORDER OF SAID COUNTY, DESCRIBED AS FOLLOWS;

COMMENCING AT THE INTERSECTION OF THE SOUTHERLY LINE OF SAID PARCEL B AND THE WESTERLY RIGHT OF WAY LINE OF MILLIKEN AVENUE (60 FEET HALF WIDTH); THENCE ALONG THE SOUTHERLY LINE OF SAID PARCEL B SOUTH 89°14'58" WEST 6.81 FEET TO THE TRUE POINT OF BEGINNING; THENCE CONTINUING ALONG SAID SOUTHERLY LINE SOUTH 89°14'58" WEST 42.84 FEET; THENCE LEAVING SAID SOUTHERLY LINE NORTH 00°55'42" WEST 339.78 FEET; THENCE NORTH 01°20'41" WEST 216.89 FEET; THENCE NORTH 02°06'39" EAST 15.02 FEET TO A LINE PARALLEL WITH AND 12.00 FEET SOUTHWESTERLY OF THE SOUTHWESTERLY RIGHT OF WAY LINE OF MISSION BOULEVARD (150 FEET WIDE); THENCE ALONG SAID PARALLEL LINE SOUTH 68°24'25" EAST 50.35 FEET TO THE BEGINNING OF A NONTANGENT CURVE CONCAVE SOUTHEASTERLY HAVING A RADIUS OF 6062.92 FEET, A RADIAL BEARING TO SAID CURVE BEARS NORTH 88°06'38" WEST; THENCE SOUTHERLY 437.48 FEET ALONG SAID CURVE THROUGH A CENTRAL ANGLE OF 04°08'03"; THENCE SOUTH 02°14'41" EAST 115.20 FEET TO THE TRUE POINT OF BEGINNING.

CONTAINING 22,974 SQUARE FEET, MORE OR LESS.

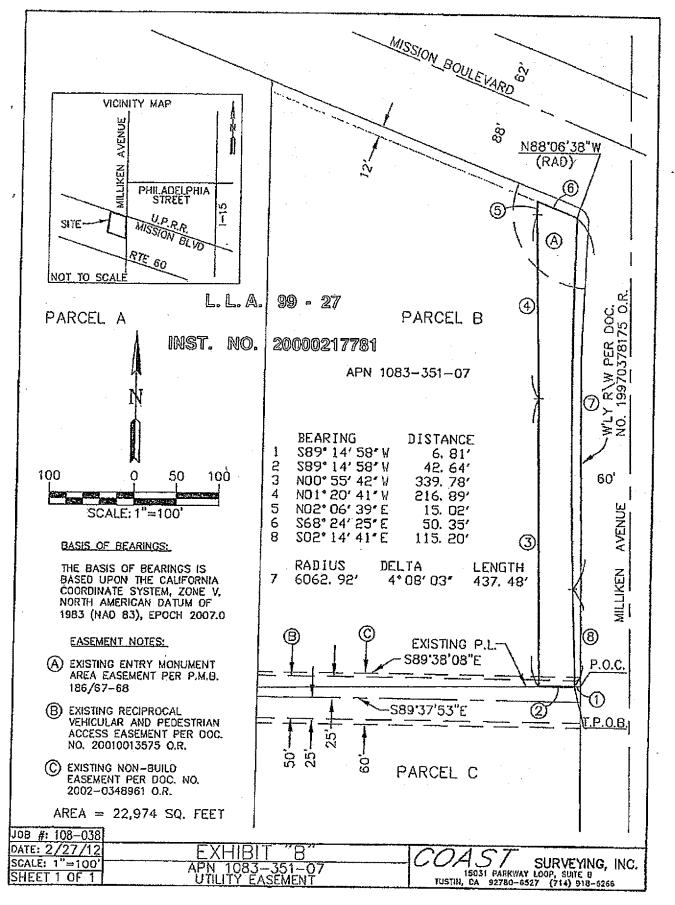
ALL AS MORE PARTICULARLY SHOWN ON EXHIBIT "B" ATTACHED HERETO AND MADE A PART HEREOF.

DATED THIS 27<sup>TH</sup> DAY OF FEBRUARY, 2012.

**GWEN-VERA DEL CASTILLO, PLS 5108** 



JN 108038 AP 1083-351-07 Utility



**EXHIBIT A, PAGE 5** 

Coast Surveying, Inc. February 24, 2012

#### EXHIBIT "A" LEGAL DESCRIPTION TEMPORARY CONSTRUCTION EASEMENT

THAT PORTION OF PARCEL B OF LOT LINE ADJUSTMENT NO. LL-99-27, IN THE CITY OF ONTARIO, COUNTY OF SAN BERNARDINO, STATE OF CALIFORNIA, AS RECORDED JUNE 19, 2000 AS INSTRUMENT NO. 20000217781, OFFICIAL RECORDS, IN THE OFFICE OF THE COUNTY RECORDER OF SAID COUNTY, DESCRIBED AS FOLLOWS:

COMMENCING AT THE NORTHWEST CORNER OF SAID PARCEL B, SAID POINT BEING ON THE SOUTHWESTERLY RIGHT OF WAY LINE OF MISSION BOULEVARD (150 FEET WIDE); THENCE ALONG THE WESTERLY LINE OF SAID PARCEL B SOUTH 00°21'48" WEST 12.87 FEET TO A LINE PARALLEL WITH AND 12.00 FEET SOUTHWESTERLY OF THE SOUTHWESTERLY RIGHT OF WAY LINE OF MISSION BOULEVARD, BEING THE <u>TRUE POINT OF BEGINNING</u>; THENCE ALONG SAID PARALLEL LINE SOUTH 68°24'25" EAST 340.29 FEET; THENCE LEAVING SAID PARALLEL LINE SOUTH 02°06'39" WEST 15.02 FEET; THENCE SOUTH 01°20'41" EAST 90.75 FEET; THENCE NORTH 36°16'49" WEST 86.02 FEET; THENCE NORTH 68°24'25" WEST 50.44 FEET; THENCE SOUTH 21°35'35" WEST 33.60 FEET; THENCE NORTH 89°40'44" WEST 140.70 FEET; THENCE SOUTH 00°34'41" WEST 15.86 FEET; THENCE NORTH 89°40'44" WEST 68.21 FEET TO SAID WESTERLY LINE OF PARCEL B; THENCE ALONG SAID WESTERLY LINE NORTH 00°21'48" EAST 188.60 FEET TO THE TRUE POINT OF BEGINNING.

CONTAINING 36,215 SQUARE FEET, MORE OR LESS.

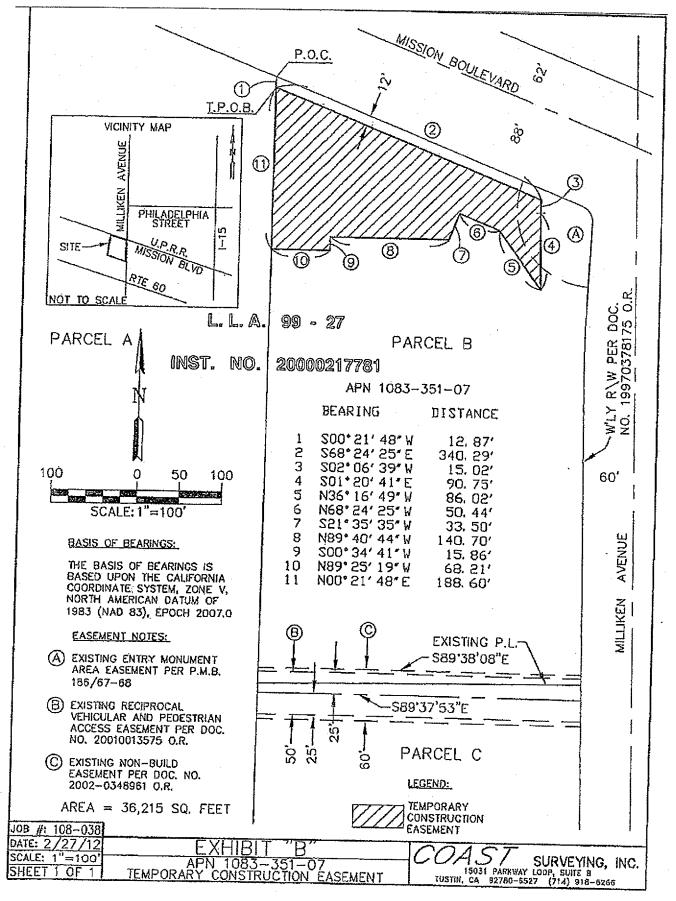
ALL AS MORE PARTICULARLY SHOWN ON EXHIBIT "B" ATTACHED HERETO AND MADE A PART HEREOF.

DATED THIS 27TH DAY OF FEBRUARY, 2012.

**GWEN-VERA DEL CASTILLO, PLS 5108** 



JN 108038 AP 1083-351-07 TCE



**EXHIBIT A, PAGE 7** 

Coast Surveying, Inc. May 24, 2012

#### EXHIBIT "A" LEGAL DESCRIPTION TEMPORARY CONSTRUCTION EASEMENT

THAT PORTION OF PARCEL B OF LOT LINE ADJUSTMENT NO. LL-99-27, IN THE CITY OF ONTARIO, COUNTY OF SAN BERNARDINO, STATE OF CALIFORNIA, AS RECORDED JUNE 19, 2000 AS INSTRUMENT NO. 20000217781, OFFICIAL RECORDS, IN THE OFFICE OF THE COUNTY RECORDER OF SAID COUNTY, DESCRIBED AS FOLLOWS:

COMMENCING AT THE INTERSECTION OF THE SOUTHERLY LINE OF SAID PARCEL B AND THE WESTERLY RIGHT OF WAY LINE OF MILLIKEN AVENUE (60 FEET HALF WIDTH); THENCE ALONG THE SOUTHERLY LINE OF SAID PARCEL B SOUTH 89°14'58" WEST 49.45 FEET TO THE TRUE POINT OF BEGINNING; THENCE CONTINUING ALONG SAID SOUTHERLY LINE SOUTH 89°14'58" WEST 118,95 FEET; THENCE LEAVING SAID SOUTHERLY LINE NORTH 00°07'02" EAST 28.01 FEET; THENCE SOUTH 89°36'08" EAST 61.79 FEET; THENCE NORTH 00°26'01" WEST 61.22 FEET; THENCE SOUTH 89°36'09" EAST 34.70 FEET; THENCE NORTH 00°23'51" EAST 48.15 FEET; THENCE NORTH 89°14'58" EAST 20.33 FEET; THENCE SOUTH 00°55'42" EAST 136.43 FEET TO THE TRUE POINT OF BEGINNING.

CONTAINING 7,648 SQUARE FEET, MORE OR LESS.

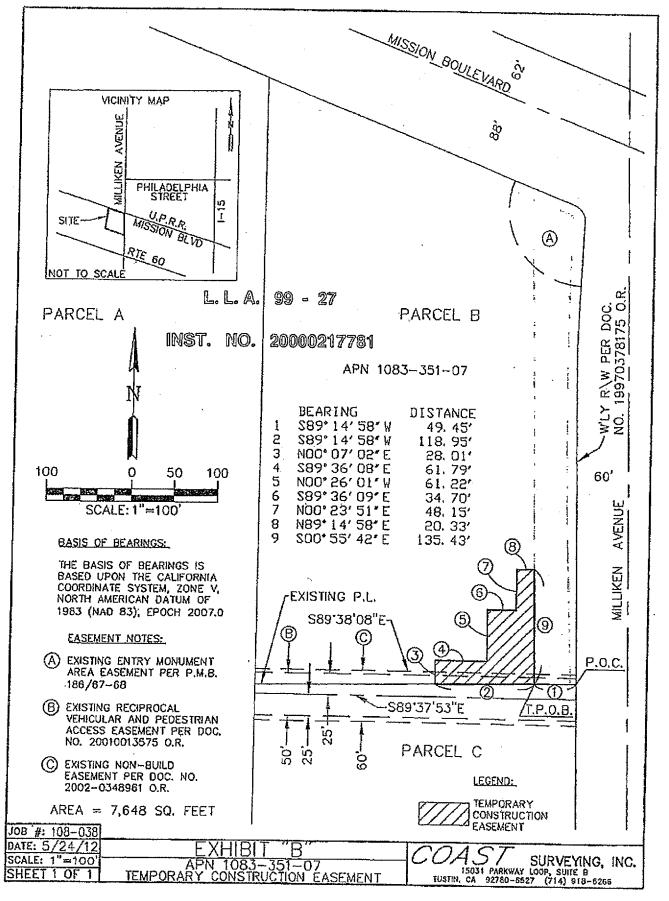
ALL AS MORE PARTICULARLY SHOWN ON EXHIBIT "B" ATTACHED HERETO AND MADE A PART HEREOF.

DATED THIS 25TH DAY OF MAY, 2012.

**GWEN-VERA DEL CASTILLO, PLS 5108** 



#### JN 108038 AP 1083-351-07 TCE



**EXHIBIT A, PAGE 9** 

#### RESOLUTION NO 2012-093

A RESOLUTION OF NECESSITY OF THE CITY COUNCIL OF THE CITY OF ONTARIO, CALIFORNIA, FOR THE ACQUISITION OF FEE, EASEMENT AND TEMPORARY CONSTRUCTION EASEMENT INTERESTS IN PORTIONS OF CERTAIN REAL PROPERTY LOCATED AT OR NEAR THE INTERSECTION OF MISSION BOULEVARD, PHILADELPHIA STREET AND THE UNION PACIFIC RAILROAD CROSSING, AND MORE PARTICULARLY DESCRIBED AS ASSESSOR PARCEL NO 1083-351-08, BY EMINENT DOMAIN, IS NECESSARY FOR PUBLIC RIGHT-OF-WAY FOR THE CONSTRUCTION OF THE SOUTH MILLIKEN AVENUE GRADE SEPARATION PROJECT AND RELATED PUBLIC INFRASTRUCTURE IMPROVEMENTS IN THE CITY OF ONTARIO, SAN BERNARDINO COUNTY, CALIFORNIA

WHEREAS, the City of Ontario (the "City") proposes to acquire fee, easement and temporary construction easement interests in portions of certain real property located at or near the intersection of Mission Boulevard, Philadelphia Street and the Union Pacific Railroad crossing, and more particularly described as Assessor Parcel No 1083-351-08, for public right-of-way purposes and the construction of the South Milliken Avenue Grade Separation Project and related public infrastructure improvements, in the City of Ontario, California, pursuant to the authority granted to it by Section 37350 5 of the California Government Code, and

WHEREAS, pursuant to section 1245 235 of the California Code of Civil Procedure, the City scheduled a public hearing for Tuesday, December 4, 2012, at 6 30 p m at the Ontario City Hall, Council Chambers, 303 East "B" Street, Ontario, California, and gave to each person whose property is to be acquired and whose name and address appeared on the last equalized county assessment roll, notice and a reasonable opportunity to appear at said hearing and be heard on the matters referred to in Section 1240 030 of the California Code of Civil Procedure, and

WHEREAS, said hearing has been held by the City and each person whose property is to be acquired by eminent domain was afforded an opportunity to be heard on said matters, and

WHEREAS, the City may now adopt a Resolution of Necessity pursuant to Section 1240 040 of the California Code of Civil Procedure

NOW, THEREFORE, THE CITY DOES HEREBY RESOLVE AND DECLARE AS FOLLOWS

<u>SECTION 1</u> Compliance with California Code of Civil Procedure and California Environmental Quality Act There has been compliance by the City with the requirements of Section 1245 235 of the California Code of Civil Procedure and the California Environmental Quality Act

<u>SECTION 2</u> Public Use The public use for which the real property is to be acquired is for public right-of-way purposes and the construction of the South Milliken Avenue Grade Separation Project and related public infrastructure improvements, in San Bernardino County, California Section 37350 5 of the California Government Code authorizes the City to acquire by eminent domain real property necessary for such purposes

<u>SECTION 3</u> Description of Property Attached and marked as Exhibit "A" is the legal description and depiction of the real property to be acquired by the City, which describes the general location and extent of the property to be acquired with sufficient detail for reasonable identification

<u>SECTION 4</u> Findings The City hereby finds and determines each of the following

- (a) The public interest and necessity require the proposed project,
- (b) The proposed project is planned or located in the manner that will be most compatible with the greatest public good and least private injury,
- (c) The real property described in Exhibit "A" are necessary for the proposed project,
- (d) The offer required by Section 7267 2 of the California Government Code was made

<u>SECTION 5</u> Use Not Unreasonably Interfering with Existing Public Use(s) Some or all of the real property to be acquired is subject to easements and rights-of-way appropriated to existing public uses. The legal descriptions of these easements and rights-of-way are on file with the City and describe the general location and extent of the easements and rights-of-way with sufficient detail for reasonable identification. In the event the herein described use or uses will not unreasonably interfere with or impair the continuance of the public use as it now exists or may reasonably be expected to exist in the future, counsel for the City is authorized to acquire the real property subject to such existing public use(s) pursuant to Section 1240 510 of the California Code of Civil Procedure

<u>SECTION 6</u> More Necessary Public Use Some or all of the real property to be acquired is subject to easements and rights-of-way appropriated to existing public uses To the extent that the herein described use or uses will unreasonably interfere with or impair the continuance of the public use as it now exists or may reasonably be expected to exist in the future, the City finds and determines that the herein described use or uses are more necessary than said existing public use Counsel for the City is authorized to acquire the real property appropriated to such existing public use(s) pursuant to Section 1240 610 of the California Code of Civil Procedure Staff is further authorized to make such improvements to the real property being acquired that it determines is reasonably necessary to mitigate any adverse impact upon the existing public use

Further Activities Counsel for the City is hereby authorized to SECTION 7 file legal proceedings necessary to acquire the hereinabove described real property in the name of and on behalf of the City by eminent domain, and counsel is authorized to institute and prosecute such legal proceedings as may be required in connection therewith Legal counsel is further authorized to take such steps as may be authorized and required by law, and to make such security deposits as may be required by order of court, to permit the City to take possession of and use said real property at the earliest possible time Counsel is further authorized to correct any errors or to make or agree to non-material changes in the legal description of the real property that are deemed necessary for the conduct of the condemnation action or other proceedings or transaction required to acquire the subject real property Counsel is further authorized to reduce or modify the extent of the interests or property to be acquired so as to reduce the compensation payable in the action where such change would not substantially impair the construction and operation for the project for which the real property is being acquired

<u>SECTION 8</u> Effective Date This Resolution shall take effect upon adoption

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

PASSED, APPROVED, AND ADOPTED this 4<sup>th</sup> day of December 2012

LEON. M

ATTEST

WIRTES, MMC

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 2012-093 was duly passed and adopted by the City Council of the City of Ontario at their regular meeting held December 4, 2012 by the following roll call vote, to wit

AYES	MAYOR/COUNCIL MEMBERS	,	WAPNER, DRADA AND AV	BOWMAN, /ILA
NOES	COUNCIL MEMBERS	NONE		
ABSENT	COUNCIL MEMBERS	NONE		

MARY E WIRTES, MMC, CITY CLERK

(SEAL)

The foregoing is the original of Resolution No 2012-093 duly passed and adopted by the Ontario City Council at their regular meeting held December 4, 2012

WIRTES, MMC, CITY MAR

(SEAL)

### Legal Definitions of Property to be Acquired

The following is a list of definitions of legal rights to be acquired by the City of Ontario:

"Fee Acquisition" also known as fee simple or fee simple absolute, refers to complete or absolute ownership of the property in the City of Ontario (the "City"), County of San Bernardino, State of California.

"Temporary Construction Easement" or "TCE" refers to the right of the City, its successors, and assigns, to engage in construction and related activities related to the South Milliken Grade Separation Project, together with all necessary rights of ingress and egress to the non- exclusive easement area in connection with such construction and related activities.

The TCE shall commence after the owner is provided 5 calendar days advanced written notice by the City of the City's intent to utilize the TCE area. The use of the TCE area shall not exceed 4 months; provided however, that the term of the TCE may be extended upon payment by the City to the Property Owner of an amount equal to \$1,092.46 a month, prorated to the actual date upon which the City's use of the Property terminates.

Property Owner shall not cause, directly, indirectly or negligently, any interference with or harm to the rights conveyed hereunder.

"Public Utility Easement" refers to a non-exclusive permanent easement in favor of the City, the definition of which includes its successors, and assigns, including the right to enter upon the property herein described at any time that it may see fit to construct, reconstruct, maintain, repair, replace, and operate underground facilities for any purpose, including the conveyance of facilities through and under the property, together with the right to excavate and fill ditches and trenches for the location and construction of said facilities and the further right to remove trees, bushes, undergrowth, crops and other obstructions interfering with the construction, maintenance, repair, replacement and operation of said City facilities.

Except in emergencies, the City shall notify the overlying property owner prior to performing any work within the easement including removing trees, bushes, undergrowth, crops or other obstructions. If the City determines that an emergency requiring immediate corrective action exists, the City may proceed immediately with the corrective action and notify the overlying property owner as soon as reasonably possible. The City shall replace any improvements removed, by the City, for maintenance of the facilities, which have been installed with the City's approval.

The owner, its lessees, assigns and successors will not allow any change in surface or subsurface conditions including but not limited to placing fences, trees, walls, buildings, structures earth fills, excavations, construction of loading surcharge on or over the City's facilities or hinder the City's access to said facilities without approval of the City. The City will not unreasonably withhold or delay approval of changes in surface conditions if those changes will not interfere with the access, construction, maintenance, repair, replacement, operating integrity or structural integrity of said City facilities.

The non-exclusive easement rights shall also include the right of the City over, upon, under, and across the property together with the right to access, maintain, improve, alter, relocate, inspect, construct, reconstruct, install, replace, and remove public improvements and facilities, including those in the public right of way, and public utilities, including water and sewer lines, as determined necessary by the City, together with all necessary rights incidental thereto.

No other easements shall be granted on, under or over the easement without the prior written consent of the City, its successors and assigns.

The existing ground elevations upon completion of construction shall not be further increased or decreased without the prior written consent of the City.

Coast Surveying, Inc. February 24, 2012

### EXHIBIT "A" LEGAL DESCRIPTION RIGHT OF WAY

THAT PORTION OF PARCEL C OF LOT LINE ADJUSTMENT NO. LL-99-27, IN THE CITY OF ONTARIO, COUNTY OF SAN BERNARDINO, STATE OF CALIFORNIA, AS RECORDED JUNE 19, 2000 AS INSTRUMENT NO. 20000217781, OFFICIAL RECORDS, IN THE OFFICE OF THE COUNTY RECORDER OF SAID COUNTY, DESCRIBED AS FOLLOWS:

BEGINNING AT THE INTERSECTION OF THE NORTHERLY LINE OF SAID PARCEL C AND THE WESTERLY RIGHT OF WAY LINE OF MILLIKEN AVENUE (60 FEET HALF WIDTH); THENCE ALONG SAID WESTERLY RIGHT OF WAY LINE OF MILLIKEN AVENUE, SOUTH 00°45'02" EAST 260.94 FEET; THENCE LEAVING SAID WESTERLY RIGHT OF WAY LINE, NORTH 02°14'41" WEST 261.02 FEET TO THE NORTHERLY LINE OF SAID PARCEL C; THENCE ALONG SAID NORTHERLY LINE NORTH 89°14'58" EAST 6.81 FEET TO THE POINT OF BEGINNING.

CONTAINING 888 SQUARE FEET, MORE OR LESS.

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

DATED THIS 27<sup>TH</sup> DAY OF FEBRUARY, 2012.

Ch.

**GWEN-VERA DEL CASTILLO, PLS 5108** 



#### JN 108038 AP 1083-351-08 RW

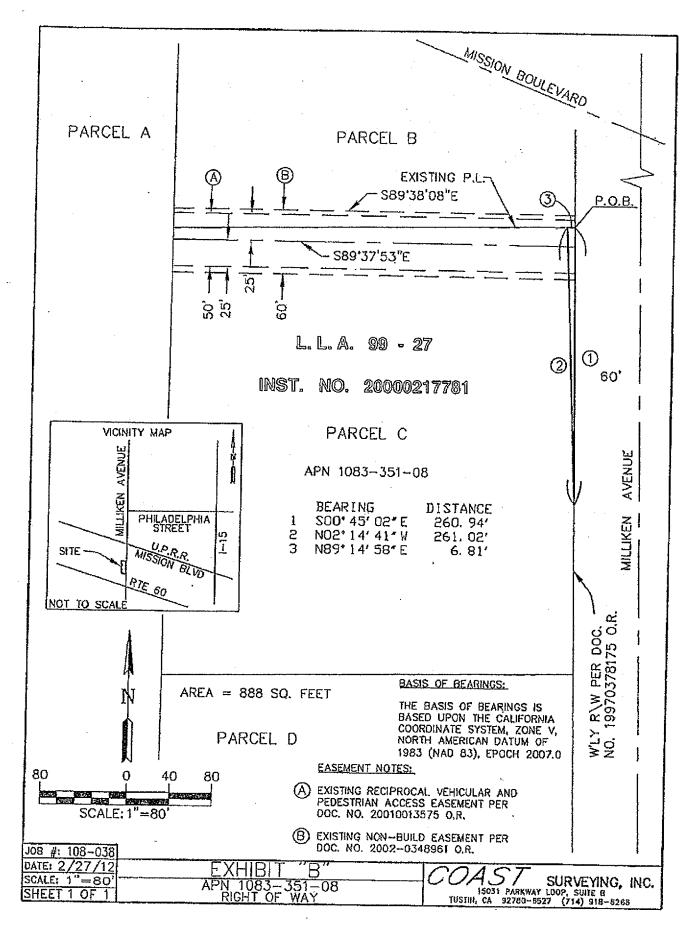


EXHIBIT A, PAGE 4

Coast Surveying, Inc. February 24, 2012

### EXHIBIT "A" LEGAL DESCRIPTION UTILITY EASEMENT

THAT PORTION OF PARCEL C OF LOT LINE ADJUSTMENT NO. LL-99-27, IN THE CITY OF ONTARIO, COUNTY OF SAN BERNARDINO, STATE OF CALIFORNIA, AS RECORDED JUNE 19, 2000 AS INSTRUMENT NO. 20000217781, OFFICIAL RECORDS, IN THE OFFICE OF THE COUNTY RECORDER OF SAID COUNTY, DESCRIBED AS FOLLOWS:

BEGINNING AT THE INTERSECTION OF THE SOUTHERLY LINE OF SAID PARCEL C AND THE WESTERLY RIGHT OF WAY LINE OF MILLIKEN AVENUE (60 FEET HALF WIDTH); THENCE ALONG THE SOUTHERLY LINE OF SAID PARCEL C, SOUTH 89°14'58" WEST 48.14 FEET; THENCE LEAVING SAID SOUTHERLY LINE, NORTH 00°55'42" WEST 421.72 FEET TO THE NORTHERLY LINE OF SAID PARCEL C; THENCE ALONG SAID NORTHERLY LINE, NORTH 89°14'58" EAST 42.64 FEET; THENCE LEAVING SAID NORTHERLY LINE, SOUTH 02°14'41" EAST 261.02 FEET TO SAID WESTERLY RIGHT OF WAY LINE OF MILLIKEN AVENUE; THENCE ALONG SAID WESTERLY RIGHT OF WAY LINE OF MILLIKEN AVENUE; THENCE ALONG SAID WESTERLY RIGHT OF WAY LINE OF MILLIKEN AVENUE; THENCE ALONG SAID WESTERLY RIGHT OF WAY LINE OF MILLIKEN AVENUE; THENCE ALONG SAID WESTERLY RIGHT OF WAY LINE OF MILLIKEN AVENUE; THENCE ALONG SAID WESTERLY RIGHT OF WAY LINE OF MILLIKEN AVENUE; THENCE ALONG SAID WESTERLY RIGHT OF WAY LINE OF MILLIKEN AVENUE; THENCE ALONG SAID WESTERLY RIGHT OF WAY LINE OF MILLIKEN AVENUE; THENCE ALONG SAID WESTERLY RIGHT OF WAY LINE OF MILLIKEN AVENUE; THENCE ALONG SAID WESTERLY RIGHT OF WAY LINE OF MILLIKEN AVENUE; THENCE ALONG SAID WESTERLY RIGHT OF WAY LINE OF MILLIKEN AVENUE; THENCE ALONG SAID WESTERLY RIGHT OF WAY LINE OF MILLIKEN AVENUE; THENCE ALONG SAID WESTERLY RIGHT OF WAY LINE.

CONTAINING 19,691 SQUARE FEET, MORE OR LESS.

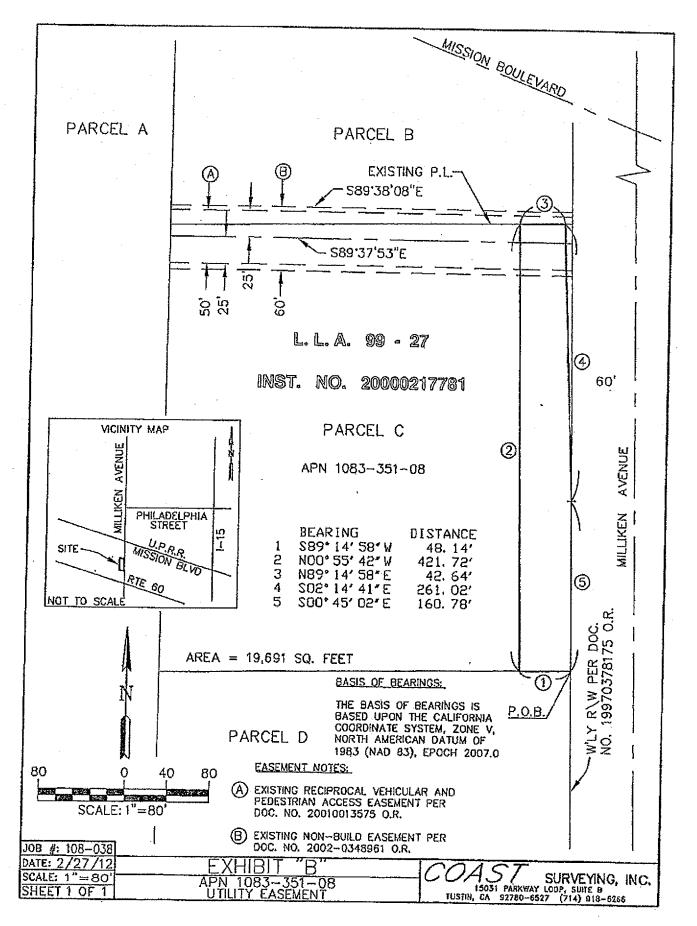
ALL AS MORE PARTICULARLY SHOWN ON EXHIBIT "B" ATTACHED HERETO AND MADE A PART HEREOF.

DATED THIS 27TH DAY OF FEBRUARY, 2012,

**GWEN-VERA DEL CASTILLO, PLS 5108** 



#### JN 108038 AP 1083-351-08 Utility



**EXHIBIT A, PAGE 6** 

Coast Surveying, Inc. May 24, 2012

### EXHIBIT "A" LEGAL DESCRIPTION TEMPORARY CONSTRUCTION EASEMENT

THAT PORTION OF PARCEL C OF LOT LINE ADJUSTMENT NO. LL-99-27, IN THE CITY OF ONTARIO, COUNTY OF SAN BERNARDINO; STATE OF CALIFORNIA, AS RECORDED JUNE 19, 2000 AS INSTRUMENT NO. 20000217781, OFFICIAL RECORDS, IN THE OFFICE OF THE COUNTY RECORDER OF SAID COUNTY, DESCRIBED AS FOLLOWS:

COMMENCING AT THE INTERSECTION OF THE SOUTHERLY LINE OF SAID PARCEL C AND THE WESTERLY RIGHT OF WAY LINE OF MILLIKEN AVENUE (60 FEET HALF WIDTH); THENCE ALONG THE SOUTHERLY LINE OF SAID PARCEL C SOUTH 89°14'58" WEST 48.14 FEET TO THE TRUE POINT OF BEGINNING: THENCE CONTINUING ALONG SAID SOUTHERLY LINE, SOUTH 89°14'58" WEST 10.00 FEET; THENCE LEAVING SAID SOUTHERLY LINE, NORTH 00°55'42" WEST 211.50 FEET; THENCE SOUTH 89°54'58" WEST 12.56 FEET; THENCE NORTH 00°20'15" EAST 118.79 FEET; THENCE NORTH 88°08'35" EAST 4.01 FEET; THENCE NORTH 00°15'31" EAST 15.51 FEET; THENCE NORTH 89º42'24" WEST 7.81 FEET; THENCE NORTH 00º15'21" EAST 20.16 FEET; THENCE NORTH 89°44'27" WEST 19.90 FEET; THENCE NORTH 00°17'11" EAST 8.00 FEET; THENCE NORTH 89°44'36" WEST 15.63 FEET; THENCE SOUTH 00°17'24" WEST 7.90 FEET; THENCE NORTH 89°43'17" WEST 61.42 FEET; THENCE NORTH 00°07'02" EAST 38.59 FEET TO A LINE PARALLEL WITH AND 15.00 FEET SOUTHERLY OF THE NORTHERLY LINE OF SAID PARCEL C; THENCE ALONG SAID PARALLEL LINE SOUTH 89°14'58" WEST 144.75 FEET; THENCE SOUTH 45°21'48" WEST 95.14 FEET TO THE WESTERLY LINE OF SAID PARCEL C; THENCE ALONG SAID WESTERLY LINE NORTH 00°21'48" EAST 21.21 FEET TO A LINE PARALLEL WITH AND 15.00 FEET NORTHWESTERLY OF THE ABOVE MENTIONED COURSE "SOUTH 45"21'48" WEST 95.14 FEET"; THENCE ALONG SAID PARALLEL LINE NORTH 45°21'48" EAST 86.19 FEET TO THE NORTHERLY LINE OF SAID PARCEL C; THENCE ALONG SAID NORTHERLY LINE, NORTH 89°14'58" EAST 269,97 FEET; THENCE LEAVING SAID NORTHERLY LINE SOUTH 00°55'42" EAST 421.72 FEET TO THE TRUE POINT OF BEGINNING.

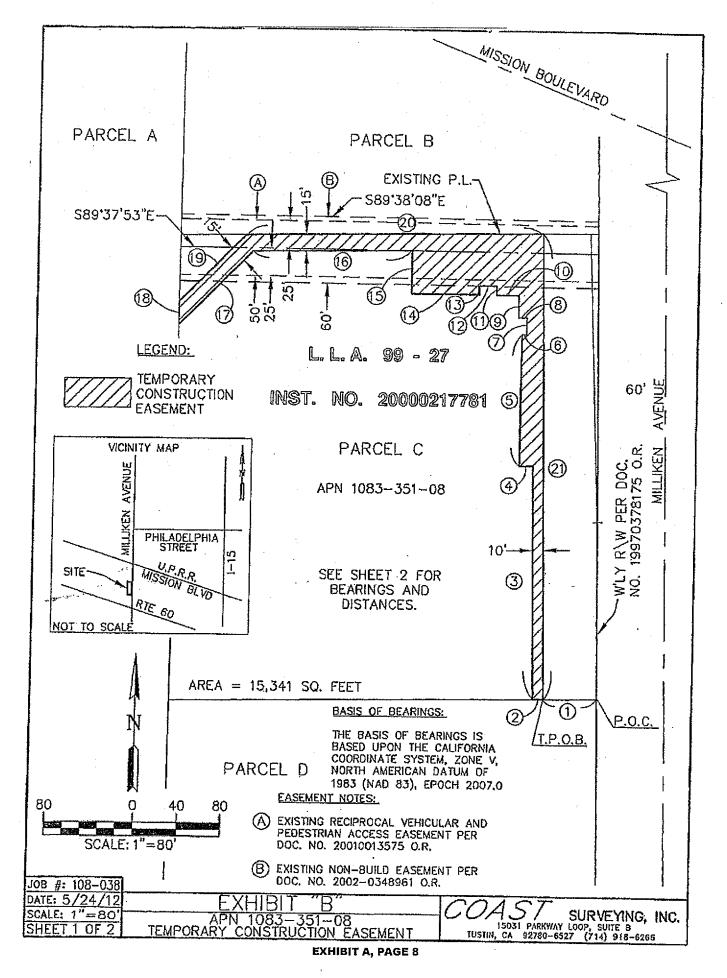
CONTAINING 15,341 SQUARE FEET, MORE OR LESS.

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

DATED THIS 25TH DAY OF MAY, 2012.

GWEN-VERA DEL CASTILLO, PLS 5108





Const Surveying, Inc. May 24, 2012

### EXHIBIT "A" LEGAL DESCRIPTION TEMPORARY CONSTRUCTION EASEMENT

THAT PORTION OF PARCEL B OF LOT LINE ADJUSTMENT NO. LL-99-27, IN THE CITY OF ONTARIO, COUNTY OF SAN BERNARDINO, STATE OF CALIFORNIA, AS RECORDED JUNE 19, 2000 AS INSTRUMENT NO. 20000217781, OFFICIAL RECORDS, IN THE OFFICE OF THE COUNTY RECORDER OF SAID COUNTY, DESCRIBED AS FOLLOWS:

COMMENCING AT THE INTERSECTION OF THE SOUTHERLY LINE OF SAID PARCEL B AND THE WESTERLY RIGHT OF WAY LINE OF MILLIKEN AVENUE (60 FEET HALF WIDTH); THENCE ALONG THE SOUTHERLY LINE OF SAID PARCEL B SOUTH 89°14'58" WEST 49.45 FEET TO THE <u>TRUE</u> <u>POINT OF BEGINNING</u>; THENCE CONTINUING ALONG SAID SOUTHERLY LINE SOUTH 89°14'58" WEST 118.95 FEET; THENCE LEAVING SAID SOUTHERLY LINE NORTH 00°07'02" EAST 28.01 FEET; THENCE SOUTH 89°36'08" EAST 61.79 FEET; THENCE NORTH 00°26'01" WEST 61.22 FEET; THENCE SOUTH 89°36'09" EAST 34.70 FEET; THENCE NORTH 00°23'51" EAST 48.15 FEET; THENCE NORTH 89°14'58" EAST 20.33 FEET; THENCE SOUTH 00°55'42" EAST 135.43 FEET TO THE TRUE POINT OF BEGINNING.

CONTAINING 7,648 SQUARE FEET, MORE OR LESS.

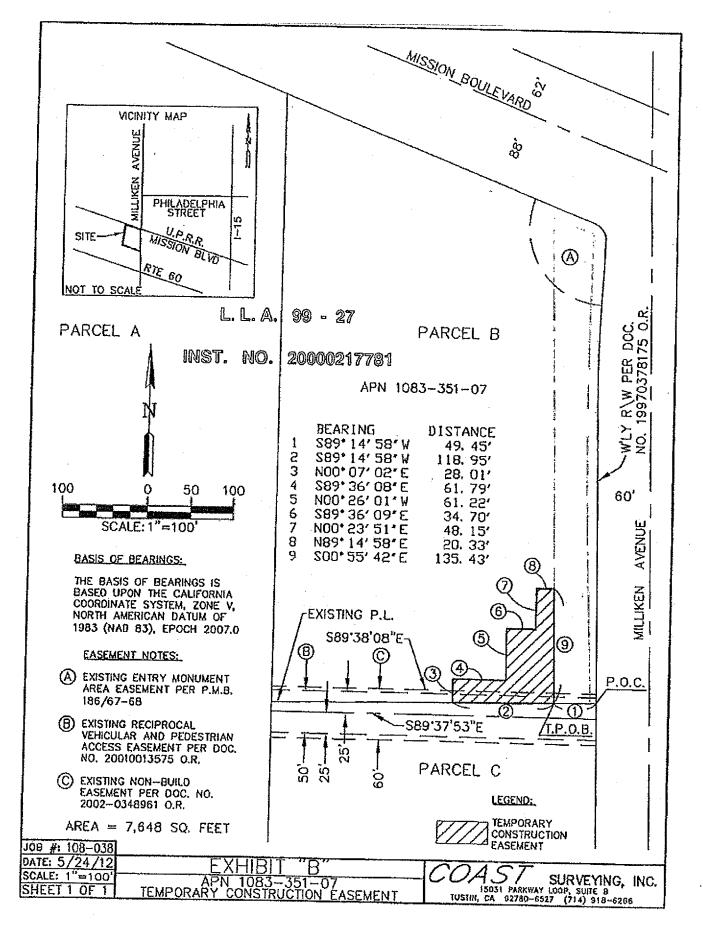
ALL AS MORE PARTICULARLY SHOWN ON EXHIBIT "B" ATTACHED HERETO AND MADE A PART HEREOF,

DATED THIS 25TH DAY OF MAY, 2012,

**GWEN-VERA DEL CASTILLO, PLS 5108** 



JN 108038 AP 1083-351-07 TCE



RESOLUTION NO.

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF ONTARIO, CALIFORNIA, AMENDING RESOLUTION 2012-099, A RESOLUTION OF NECESSITY FOR THE ACQUISITION OF FEE, ACCESS EASEMENT, PUBLIC UTILITY EASEMENT AND TEMPORARY CONSTRUCTION EASEMENT INTERESTS IN PORTIONS OF CERTAIN REAL PROPERTY LOCATED AT OR NEAR THE INTERSECTION OF MISSION BOULEVARD, MILLIKEN AVENUE AND THE UNION PACIFIC RAILROAD CROSSING, AND MORE PARTICULARLY DESCRIBED AS ASSESSOR PARCEL NO. 1083-351-07, BY EMINENT DOMAIN, FOR PUBLIC RIGHT-OF-WAY FOR THE CONSTRUCTION OF THE SOUTH MILLIKEN AVENUE GRADE SEPARATION PROJECT AND RELATED PUBLIC INFRASTRUCTURE IMPROVEMENTS IN THE CITY OF ONTARIO, SAN BERNARDINO COUNTY, CALIFORNIA.

WHEREAS, the City of Ontario (the "City") proposes to acquire fee, access easement, public utility easement and temporary construction easement interests in portions of certain real property located at or near the intersection of Mission Boulevard, Milliken Avenue and the Union Pacific Railroad crossing, and more particularly described as Assessor Parcel No. 1083-351-07, for public right-of-way purposes and the construction of the South Milliken Avenue Grade Separation Project and related public infrastructure improvements, in the City of Ontario, California, pursuant to the authority granted to it by Section 37350.5 of the California Government Code; and

WHEREAS, pursuant to Section 1245.235 of the California Code of Civil Procedure, the City scheduled a public hearing for Tuesday, December 4, 2012, at 6:30 p.m. at the Ontario City Hall, Council Chambers, 303 East "B" Street, Ontario, California, and gave to each person whose property is to be acquired and whose name and address appeared on the last equalized county assessment roll, notice and a reasonable opportunity to appear at said hearing and be heard on the matters referred to in Section 1240.030 of the California Code of Civil Procedure; and

WHEREAS, said hearing has been held by the City and each person whose property is to be acquired by eminent domain was afforded an opportunity to be heard on said matters; and

WHEREAS, the City may now adopt a Resolution of Necessity pursuant to Section 1240.040 of the California Code of Civil Procedure.

NOW, THEREFORE, THE CITY DOES HEREBY RESOLVE AND DECLARE AS FOLLOWS:

<u>SECTION 1.</u> Compliance with California Code of Civil Procedure and California Environmental Quality Act. There has been compliance by the City with the requirements of Section 1245.235 of the California Code of Civil Procedure and the California Environmental Quality Act.

<u>SECTION 2.</u> Public Use. The public use for which the real property is to be acquired is for public right-of-way purposes and the construction of the South Milliken Avenue Grade Separation Project and related public infrastructure improvements, in San Bernardino County, California. Section 37350.5 of the California Government Code authorizes the City to acquire by eminent domain real property necessary for such purposes.

<u>SECTION 3.</u> Description of Property. Attached and marked as Exhibit "A" is the legal description and depiction of the real property to be acquired by the City, which describes the general location and extent of the property to be acquired with sufficient detail for reasonable identification.

<u>SECTION 4.</u> Findings. The City hereby finds and determines each of the following:

- (a) The public interest and necessity require the proposed project;
- (b) The proposed project is planned or located in the manner that will be most compatible with the greatest public good and least private injury;
- (c) The real property described in Exhibit "A" are necessary for the proposed project;
- (d) The offer required by section 7267.2 of the California Government Code was made.

<u>SECTION 5.</u> Use Not Unreasonably Interfering with Existing Public Use(s). Some or all of the real property to be acquired is subject to easements and rights-ofway appropriated to existing public uses. The legal descriptions of these easements and rights-of-way are on file with the City and describe the general location and extent of the easements and rights-of-way with sufficient detail for reasonable identification. In the event the herein described use or uses will not unreasonably interfere with or impair the continuance of the public use as it now exists or may reasonably be expected to exist in the future, counsel for the City is authorized to acquire the real property subject to such existing public use(s) pursuant to Section 1240.510 of the California Code of Civil Procedure.

<u>SECTION 6.</u> More Necessary Public Use. Some or all of the real property to be acquired is subject to easements and rights-of-way appropriated to existing public uses. To the extent that the herein described use or uses will unreasonably interfere with or impair the continuance of the public use as it now exists or may reasonably be expected to exist in the future, the City finds and determines that the herein described use or uses are more necessary than said existing public use. Counsel for the City is authorized to acquire the real property appropriated to such existing public use(s) pursuant to Section 1240.610 of the California Code of Civil Procedure. Staff is further authorized to make such improvements to the real property being acquired that it determines is reasonably necessary to mitigate any adverse impact upon the existing public use.

SECTION 7. Further Activities. Counsel for the City is hereby authorized to file legal proceedings necessary to acquire the hereinabove described real property in the name of and on behalf of the City by eminent domain, and counsel is authorized to institute and prosecute such legal proceedings as may be required in connection therewith. Legal counsel is further authorized to take such steps as may be authorized and required by law, and to make such security deposits as may be required by order of court, to permit the City to take possession of and use said real property at the earliest possible time. Counsel is further authorized to correct any errors or to make or agree to non-material changes in the legal description of the real property that are deemed necessary for the conduct of the condemnation action or other proceedings or transaction required to acquire the subject real property. Counsel is further authorized to reduce or modify the extent of the interests or property to be acquired so as to reduce the compensation payable in the action where such change would not substantially impair the construction and operation for the project for which the real property is being acquired.

<u>SECTION 8.</u> Effective Date. This Amended Resolution shall be retroactive to December 4, 2012, the date the original Resolution No. 2012-099 was adopted.

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

PASSED, APPROVED, AND ADOPTED this 3<sup>rd</sup> day of June 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 June 3, 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 June 3, 2014.

MARY E. WIRTES, MMC, CITY CLERK

(SEAL)

### Legal Definitions of Property to be Acquired

The following is a list of definitions of legal rights to be acquired by the City of Ontario:

"Fee Acquisition" also known as fee simple or fee simple absolute, refers to complete or absolute ownership of the property in the City of Ontario (the "City"), County of San Bernardino, State of California.

**"Temporary Construction Easement**" or **"TCE**" refers to the right of the City, its successors, and assigns, to engage in construction and related activities related to the South Milliken Grade Separation Project, together with all necessary rights of ingress and egress to the non- exclusive easement area in connection with such construction and related activities.

The TCE shall commence after the owner is provided 5 calendar days advanced written notice by the City of the City's intent to utilize the TCE area. The use of the TCE area shall not exceed 4 months; provided however, that the term of the TCE may be extended upon payment by the City to the Property Owner of an amount equal to \$4,687.34 a month, prorated to the actual date upon which the City's use of the Property terminates.

Property Owner shall not cause, directly, indirectly or negligently, any interference with or harm to the rights conveyed hereunder.

**"Public Utility Easement"** refers to a non-exclusive permanent easement in favor of the City, its successors, and assigns, over, upon, under and across the lands hereinafter described together with the right to access, maintain, improve, alter, relocate, inspect, construct, reconstruct, install, replace, and remove public improvements and facilities, including those in the public right of way, and public utilities, including water, and sewer lines, as determined necessary by the City, together with all incidental rights thereto.

The City shall replace any improvements removed, by the City, and which have been installed with the City's approval, after construction of the project and each time the City exercises its easement rights for maintenance of the public utilities, improvements and facilities.

Except in emergencies, no more than fifteen (15) parking spaces will be closed by the City at any time.

Property Owner shall not erect or construct, or permit to be erected or constructed, any building, structure or improvement on, over, or under any portion of the easement, or plant trees or any other vegetation on any portion of the easement except with the prior written consent of the City, its successors and assigns.

The City shall have the right to trim, cut or clear away any trees, brush, or other vegetation from time to time as determined in its sole discretion, without payment of additional compensation.

No other easements shall be granted on, under or over the easement without the prior written consent of the City, its successors and assigns.

The existing ground elevations upon completion of construction shall not be further increased or decreased without the prior written consent of the City.

After construction of the grade separation project is completed, City shall always keep the Milliken Avenue driveway of the property open.

"Access Easement" refers to an non-exclusive permanent and perpetual easement and right of way in favor of the City, the definition of which includes its successors and assigns, over, upon, under and across the lands hereinafter described, to traverse an access way to access City owned facilities as determined necessary by the City, together with all necessary rights incidental thereto.

Property Owner shall not erect or construct, or permit to be erected or constructed, any building, structure or improvement on, over, or under any portion of the easement, or plant trees or any other vegetation on any portion of the easement except with the prior written consent of the City, its successors and assigns.

The City shall have the right to trim, cut or clear away any trees, brush, or other vegetation from time to time as determined in its sole discretion, without payment of additional compensation.

No other easements shall be granted on, under or over the easement without the prior written consent of the City, its successors and assigns.

The existing ground elevations upon completion of construction shall not be further increased or decreased without the prior written consent of the City.

Property Owner shall not cause, directly, indirectly or negligently, any interference with or harm to the rights conveyed hereunder.

### EXHIBIT "A" LEGAL DESCRIPTION RIGHT OF WAY

THAT PORTION OF PARCEL B OF LOT LINE ADJUSTMENT NO. LL-99-27, IN THE CITY OF ONTARIO, COUNTY OF SAN BERNARDINO, STATE OF CALIFORNIA, AS RECORDED JUNE 19, 2000 AS INSTRUMENT NO. 20000217781, OFFICIAL RECORDS, IN THE OFFICE OF THE COUNTY RECORDER OF SAID COUNTY, DESCRIBED AS FOLLOWS:

BEGINNING AT THE NORTHWEST CORNER OF SAID PARCEL B, SAID POINT BEING ON THE SOUTHWESTERLY RIGHT OF WAY LINE OF MISSION BOULEVARD (150 FEET WIDE); THENCE ALONG THE NORTHEASTERLY LINE OF SAID PARCEL B, ALSO BEING SAID SOUTHWESTERLY RIGHT OF WAY LINE SOUTH 68°24'25" EAST 392.02 FEET TO THE BEGINNING OF A CURVE CONCAVE SOUTHWESTERLY HAVING A RADIUS OF 20.00 FEET; THENCE SOUTHEASTERLY 24.79 FEET ALONG SAID CURVE, ALSO BEING THE SOUTHWESTERLY RIGHT OF WAY LINE OF MILLIKEN AVENUE AS DESCRIBED IN THE EASEMENT DEED TO THE CITY OF ONTARIO RECORDED OCTOBER 15, 1997 AS DOCUMENT NO. 19970378175, OFFICIAL RECORDS, THROUGH A CENTRAL ANGLE OF 71°01'51"; THENCE ALONG THE WESTERLY RIGHT OF WAY LINE OF MILLIKEN AVENUE AS DESCRIBED IN SAID EASEMENT DEED THE FOLLOWING THREE COURSES:

- 1. SOUTH 02°37'26" WEST 97.59 FEET TO THE BEGINNING OF A CURVE CONCAVE EASTERLY HAVING A RADIUS OF 1560.00 FEET;
- 2. SOUTHERLY 91.88 FEET ALONG SAID CURVE THROUGH A CENTRAL ANGLE OF 03°22'28";
- 3. SOUTH 00°45'02" EAST 355.94 FEET TO THE SOUTHERLY LINE OF SAID PARCEL B:

THENCE ALONG SAID SOUTHERLY LINE SOUTH 89°14'58" WEST 6.81 FEET; THENCE LEAVING SAID SOUTHERLY LINE NORTH 02°14'41" WEST 115.20 FEET TO THE BEGINNING OF A CURVE CONCAVE EASTERLY HAVING A RADIUS OF 6082.92 FEET; THENCE NORTHERLY 437.48 FEET ALONG SAID CURVE THROUGH A CENTRAL ANGLE OF 04°08'03" TO A LINE PARALLEL WITH AND 12.00 FEET SOUTHWESTERLY OF SAID SOUTHWESTERLY RIGHT OF WAY LINE OF MISSION BOULEVARD; THENCE NONTANGENT ALONG SAID PARALLEL LINE NORTH 68°24'25" WEST 390.64 FEET TO THE WESTERLY LINE OF SAID PARCEL B; THENCE ALONG SAID WESTERLY LINE NORTH 00°21'48" EAST 12.87 FEET TO THE POINT OF BEGINNING.

CONTAINING 10,925 SQUARE FEET, MORE OR LESS.

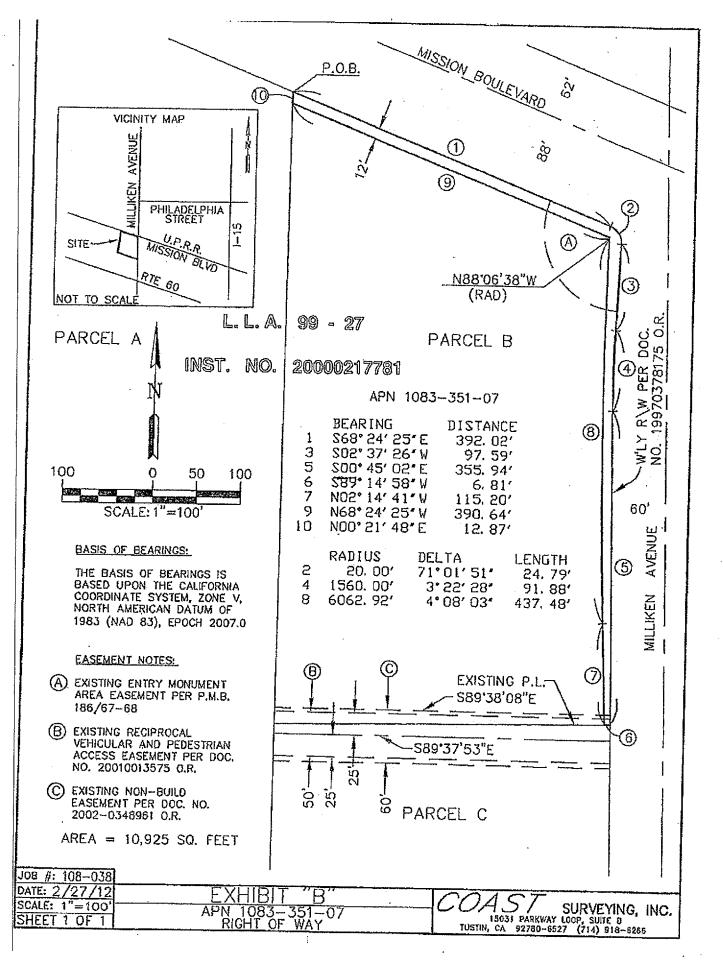
ALL AS MORE PARTICULARLY SHOWN ON EXHIBIT "B" ATTACHED HERETO AND MADE A PART HEREOF.

DATED THIS 27<sup>TH</sup> DAY OF FEBRUARY, 2012.

GWEN-VERA DEL CASTILLO, PLS 5108



JN 108038 AP 1083-351-07 RW



### EXHIBIT "A" LEGAL DESCRIPTION UTILITY EASEMENT

THAT PORTION OF PARCEL B OF LOT LINE ADJUSTMENT NO. LL-99-27, IN THE CITY OF ONTARIO, COUNTY OF SAN BERNARDINO, STATE OF CALIFORNIA, AS RECORDED JUNE 19, 2000 AS INSTRUMENT NO. 20000217781, OFFICIAL RECORDS, IN THE OFFICE OF THE COUNTY RECORDER OF SAID COUNTY, DESCRIBED AS FOLLOWS;

COMMENCING AT THE INTERSECTION OF THE SOUTHERLY LINE OF SAID PARCEL B AND THE WESTERLY RIGHT OF WAY LINE OF MILLIKEN AVENUE (60 FEET HALF WIDTH); THENCE ALONG THE SOUTHERLY LINE OF SAID PARCEL B SOUTH 89°14'58" WEST 6.81 FEET TO THE TRUE POINT OF BEGINNING; THENCE CONTINUING ALONG SAID SOUTHERLY LINE SOUTH 89°14'58" WEST 42.84 FEET; THENCE LEAVING SAID SOUTHERLY LINE NORTH 00°55'42" WEST 339.78 FEET; THENCE NORTH 01°20'41" WEST 216.89 FEET; THENCE NORTH 02°06'39" EAST 15.02 FEET TO A LINE PARALLEL WITH AND 12.00 FEET SOUTHWESTERLY OF THE SOUTHWESTERLY RIGHT OF WAY LINE OF MISSION BOULEVARD (150 FEET WIDE); THENCE ALONG SAID PARALLEL LINE SOUTH 68°24'25" EAST 50.35 FEET TO THE BEGINNING OF A NONTANGENT CURVE CONCAVE SOUTHEASTERLY HAVING A RADIUS OF 6062.92 FEET, A RADIAL BEARING TO SAID CURVE BEARS NORTH 88°06'38" WEST; THENCE SOUTHERLY 437.48 FEET ALONG SAID CURVE THROUGH A CENTRAL ANGLE OF 04°08'03"; THENCE SOUTH 02°14'41" EAST 115.20 FEET TO THE TRUE POINT OF BEGINNING.

CONTAINING 22,974 SQUARE FEET, MORE OR LESS.

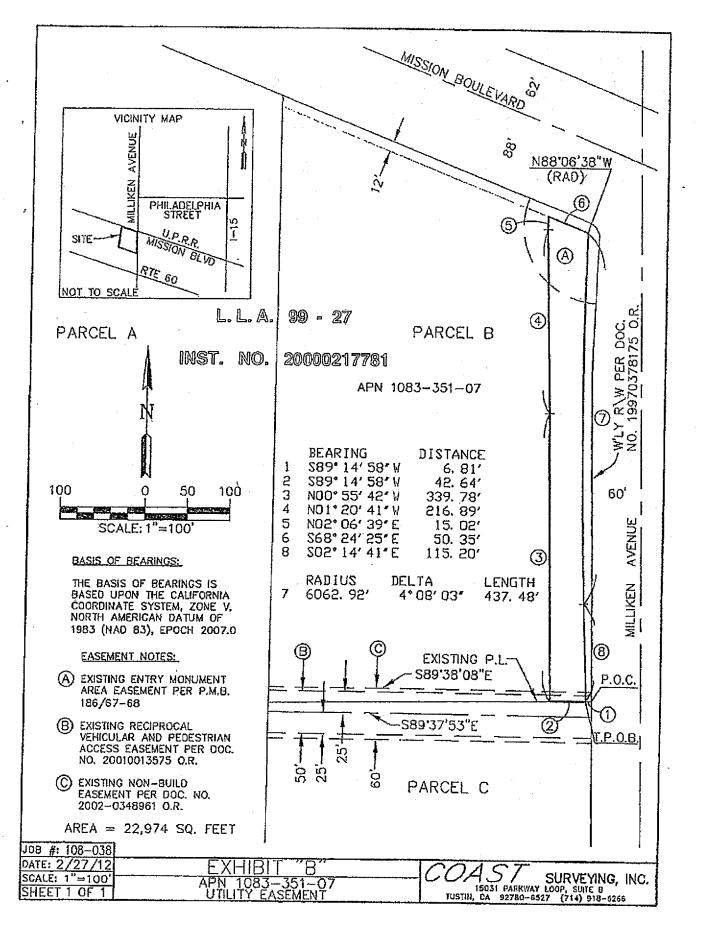
ALL AS MORE PARTICULARLY SHOWN ON EXHIBIT "B" ATTACHED HERETO AND MADE A PART HEREOF.

DATED THIS 27<sup>TH</sup> DAY OF FEBRUARY, 2012.

**GWEN-VERA DEL CASTILLO, PLS 5108** 



JN 108038 AP 1083-351-07 Unity



### EXHIBIT "A" LEGAL DESCRIPTION TEMPORARY CONSTRUCTION EASEMENT

THAT PORTION OF PARCEL B OF LOT LINE ADJUSTMENT NO. LL-99-27, IN THE CITY OF ONTARIO, COUNTY OF SAN BERNARDINO, STATE OF CALIFORNIA, AS RECORDED JUNE 19, 2000 AS INSTRUMENT NO. 20000217781, OFFICIAL RECORDS, IN THE OFFICE OF THE COUNTY RECORDER OF SAID COUNTY, DESCRIBED AS FOLLOWS:

COMMENCING AT THE NORTHWEST CORNER OF SAID PARCEL B, SAID POINT BEING ON THE SOUTHWESTERLY RIGHT OF WAY LINE OF MISSION BOULEVARD (150 FEET WIDE); THENCE ALONG THE WESTERLY LINE OF SAID PARCEL B SOUTH 00°21'48" WEST 12.87 FEET TO A LINE PARALLEL WITH AND 12.00 FEET SOUTHWESTERLY OF THE SOUTHWESTERLY RIGHT OF WAY LINE OF MISSION BOULEVARD, BEING THE <u>TRUE POINT OF BEGINNING</u>; THENCE ALONG SAID PARALLEL LINE SOUTH 66°24'25" EAST 340.29 FEET; THENCE LEAVING SAID PARALLEL LINE SOUTH 02°06'39" WEST 15.02 FEET; THENCE SOUTH 01°20'41" EAST 90.75 FEET; THENCE NORTH 36°16'49" WEST 86.02 FEET; THENCE NORTH 68°24'25" WEST 50.44 FEET; THENCE SOUTH 21°35'35" WEST 33.60 FEET; THENCE NORTH 89°40'44" WEST 140.70 FEET; THENCE SOUTH 00°34'41" WEST 15.86 FEET; THENCE NORTH 89°25'19" WEST 68.21 FEET TO SAID WESTERLY LINE OF PARCEL B; THENCE ALONG SAID WESTERLY LINE NORTH 00°21'48" EAST 188.60 FEET TO THE TRUE POINT OF BEGINNING.

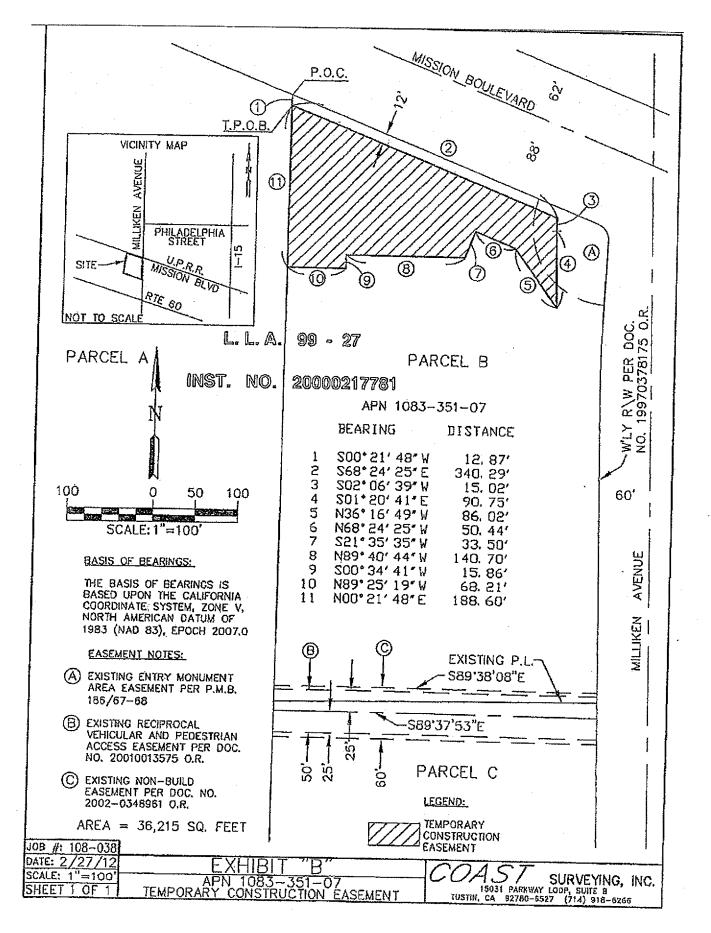
CONTAINING 36,215 SQUARE FEET, MORE OR LESS.

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

DATED THIS 27TH DAY OF FEBRUARY, 2012.

**GWEN-VERA DEL CASTILLO, PLS 5108** 





Coast Surveying, Inc. May 24, 2012

### EXHIBIT "A" LEGAL DESCRIPTION TEMPORARY CONSTRUCTION EASEMENT

THAT PORTION OF PARCEL B OF LOT LINE ADJUSTMENT NO. LL-99-27, IN THE CITY OF ONTARIO, COUNTY OF SAN BERNARDINO, STATE OF CALIFORNIA, AS RECORDED JUNE 19, 2000 AS INSTRUMENT NO. 20000217781, OFFICIAL RECORDS, IN THE OFFICE OF THE COUNTY RECORDER OF SAID COUNTY, DESCRIBED AS FOLLOWS:

COMMENCING AT THE INTERSECTION OF THE SOUTHERLY LINE OF SAID PARCEL B AND THE WESTERLY RIGHT OF WAY LINE OF MILLIKEN AVENUE (60 FEET HALF WIDTH); THENCE ALONG THE SOUTHERLY LINE OF SAID PARCEL B SOUTH 89°14'58" WEST 49.45 FEET TO THE TRUE POINT OF BEGINNING; THENCE CONTINUING ALONG SAID SOUTHERLY LINE SOUTH 89°14'58" WEST 118,95 FEET; THENCE LEAVING SAID SOUTHERLY LINE NORTH 00°07'02" EAST 28.01 FEET; THENCE SOUTH 89°36'08" EAST 61.79 FEET; THENCE NORTH 00°26'01" WEST 61.22 FEET; THENCE SOUTH 89°36'09" EAST 34.70 FEET; THENCE NORTH 00°23'51" EAST 48.15 FEET; THENCE NORTH 89°14'58" EAST 20.33 FEET; THENCE SOUTH 00°55'42" EAST 136.43 FEET TO THE TRUE POINT OF BEGINNING.

CONTAINING 7,648 SQUARE FEET, MORE OR LESS.

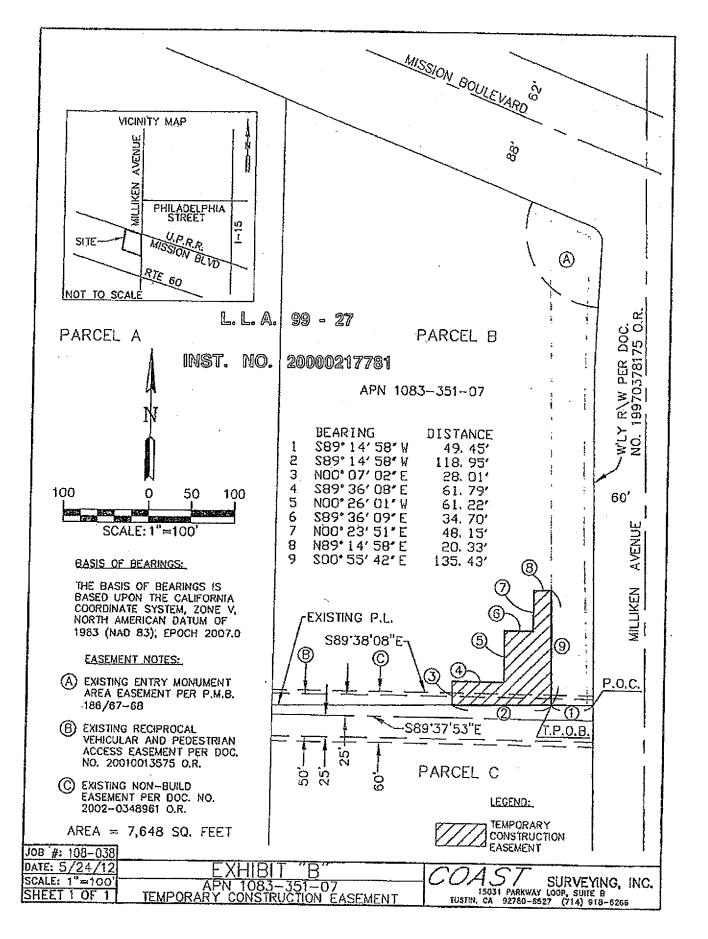
ALL AS MORE PARTICULARLY SHOWN ON EXHIBIT "B" ATTACHED HERETO AND MADE A PART HEREOF.

DATED THIS 25TH DAY OF MAY, 2012.

**GWEN-VERA DEL CASTILLO, PLS 5108** 



#### JN 108038 AP 1083-351-07 TCE



### EXHIBIT "A" LEGAL DESCRIPTION

THAT PORTION OF PARCEL B OF LOT LINE ADJUSTMENT NO. LL-99-27, IN THE CITY OF ONTARIO, COUNTY OF SAN BERNARDINO, STATE OF CALIFORNIA, AS RECORDED JUNE 19, 2000 AS INSTRUMENT NO. 20000217781, OFFICIAL RECORDS, IN THE OFFICE OF THE COUNTY RECORDER OF SAID COUNTY, DESCRIBED AS FOLLOWS:

COMMENCING AT THE NORTHWEST CORNER OF SAID PARCEL B, SAID POINT BEING ON THE SOUTHWESTERLY RIGHT OF WAY LINE OF MISSION BOULEVARD (150 FEET WIDE); THENCE ALONG THE NORTHEASTERLY LINE OF SAID PARCEL B, ALSO BEING SAID SOUTHWESTERLY RIGHT OF WAY LINE SOUTH 68°24'25" EAST 43.43 FEET TO THE **TRUE POINT OF BEGINNING**; THENCE CONTINUING ALONG SAID NORTHEASTERLY LINE SOUTH 68°24'25" EAST 39.00 FEET; THENCE LEAVING SAID NORTHEASTERLY LINE SOUTH 21°35'35" WEST 39.00 FEET; THENCE LEAVING SAID NORTHEASTERLY LINE SOUTH 21°35'35" WEST 39.00 FEET; THENCE SOUTH 68°24'25" EAST 216.00 FEET; THENCE SOUTH 36°09'56" EAST 91.88 FEET; THENCE SOUTH 01°20'41" EAST 43.78 FEET TO A LINE PARALLEL WITH AND 25.00 FEET SOUTHWESTERLY MEASURED AT RIGHT ANGLE OF THE ABOVE COURSE SHOWN AS "SOUTH 36°09'56" EAST 91.88 FEET"; THENCE ALONG SAID PARALLEL LINE NORTH 36°09'56" WEST 120.60 FEET TO A LINE PARALLEL WITH AND 25.00 FEET SOUTHWESTERLY OF THE ABOVE COURSE SHOWN AS "SOUTH 68°24'25" EAST 216.00 FEET, THENCE ALONG SAID PARALLEL LINE NORTH 36°09'56" WEST 120.60 FEET TO A LINE PARALLEL WITH AND 25.00 FEET SOUTHWESTERLY OF THE ABOVE COURSE SHOWN AS "SOUTH 68°24'25" EAST 216.00 FEET. THENCE ALONG SAID PARALLEL LINE NORTH 36°09'56" WEST 120.60 FEET TO A LINE PARALLEL WITH AND 25.00 FEET SOUTHWESTERLY OF THE ABOVE COURSE SHOWN AS "SOUTH 68°24'25" EAST 216.00 FEET. THENCE ALONG SAID PARALLEL LINE NORTH 36°09'56" WEST 120.60 FEET TO A LINE PARALLEL WITH AND 25.00 FEET SOUTHWESTERLY OF THE ABOVE COURSE SHOWN AS "SOUTH 68°24'25" EAST 216.00 FEET. THENCE ALONG SAID PARALLEL LINE NORTH 68°24'25" WEST 247.77 FEET; THENCE NORTH 21°35'35" EAST 64.00 FEET TO THE TRUE POINT OF BEGINNING.

CONTAINING 10,462 SQUARE FEET, MORE OR LESS.

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

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DATED THIS 30<sup>TH</sup> DAY OF APRIL, 2014.

GWEN-VERA DEL CASTILLO, PLS 5108



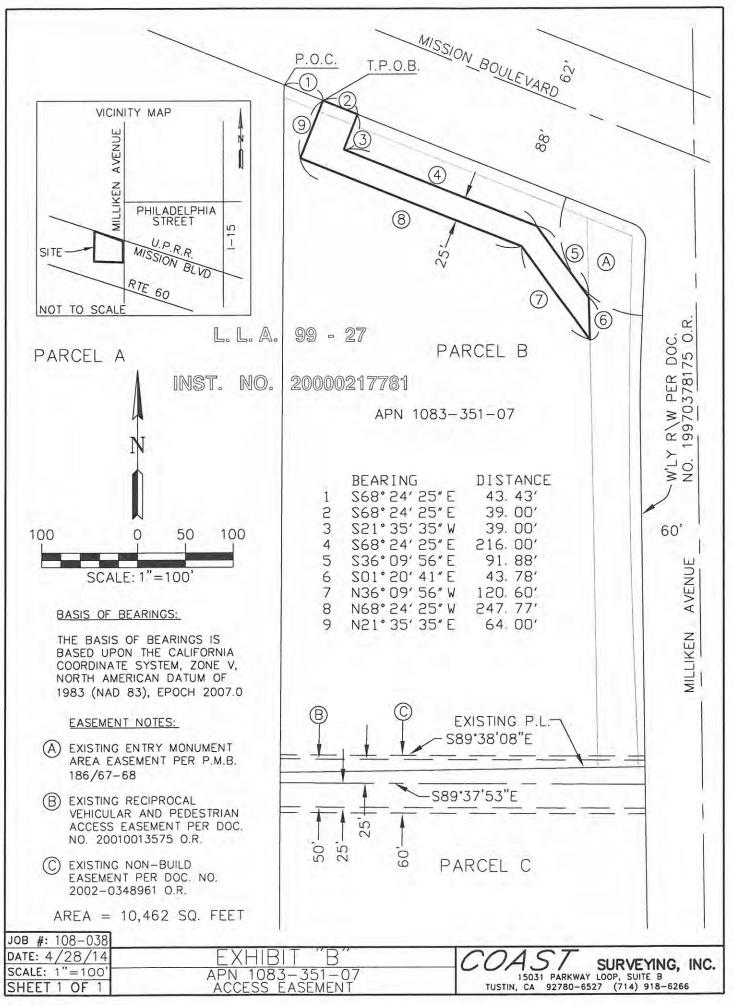


EXHIBIT A, PAGE 12

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF ONTARIO, RESOLUTION CALIFORNIA. AMENDING NO. 2012-093 Α RESOLUTION OF NECESSITY FOR THE ACQUISITION OF FEE, PUBLIC UTILITY EASEMENT AND TEMPORARY CONSTRUCTION EASEMENT INTERESTS IN PORTIONS OF CERTAIN REAL PROPERTY LOCATED AT OR NEAR THE INTERSECTION OF MISSION BOULEVARD, MILLIKEN AVENUE AND THE UNION PACIFIC RAILROAD CROSSING, AND MORE PARTICULARLY DESCRIBED AS ASSESSOR PARCEL NO. 1083-351-08, BY EMINENT DOMAIN, FOR PUBLIC RIGHT-OF-WAY FOR THE CONSTRUCTION OF THE SOUTH MILLIKEN AVENUE GRADE SEPARATION PROJECT AND RELATED PUBLIC INFRASTRUCTURE IMPROVEMENTS IN THE CITY OF ONTARIO, SAN BERNARDINO COUNTY, CALIFORNIA.

WHEREAS, the City of Ontario (the "City") proposes to acquire fee, public utility easement and temporary construction easement interests in portions of certain real property located at or near the intersection of Mission Boulevard, Milliken Avenue and the Union Pacific Railroad crossing, and more particularly described as Assessor Parcel No. 1083-351-08, for public right-of-way purposes and the construction of the South Milliken Avenue Grade Separation Project and related public infrastructure improvements, in the City of Ontario, California, pursuant to the authority granted to it by Section 37350.5 of the California Government Code; and

WHEREAS, pursuant to Section 1245.235 of the California Code of Civil Procedure, the City scheduled a public hearing for Tuesday, December 4, 2012, at 6:30 p.m. at the Ontario City Hall, Council Chambers, 303 East "B" Street, Ontario, California, and gave to each person whose property is to be acquired and whose name and address appeared on the last equalized county assessment roll, notice and a reasonable opportunity to appear at said hearing and be heard on the matters referred to in Section 1240.030 of the California Code of Civil Procedure; and

WHEREAS, said hearing has been held by the City and each person whose property is to be acquired by eminent domain was afforded an opportunity to be heard on said matters; and

WHEREAS, the City may now adopt a Resolution of Necessity pursuant to Section 1240.040 of the California Code of Civil Procedure.

NOW, THEREFORE, THE CITY DOES HEREBY RESOLVE AND DECLARE AS FOLLOWS:

<u>SECTION 1.</u> Compliance with California Code of Civil Procedure and California Environmental Quality Act. There has been compliance by the City with the requirements of Section 1245.235 of the California Code of Civil Procedure and the California Environmental Quality Act.

<u>SECTION 2.</u> Public Use. The public use for which the real property is to be acquired is for public right-of-way purposes and the construction of the South Milliken Avenue Grade Separation Project and related public infrastructure improvements, in San Bernardino County, California. Section 37350.5 of the California Government Code authorizes the City to acquire by eminent domain real property necessary for such purposes.

<u>SECTION 3.</u> Description of Property. Attached and marked as Exhibit "A" is the legal description and depiction of the real property to be acquired by the City, which describes the general location and extent of the property to be acquired with sufficient detail for reasonable identification.

<u>SECTION 4.</u> Findings. The City hereby finds and determines each of the following:

- (a) The public interest and necessity require the proposed project;
- (b) The proposed project is planned or located in the manner that will be most compatible with the greatest public good and least private injury;
- (c) The real property described in Exhibit "A" are necessary for the proposed project;
- (d) The offer required by section 7267.2 of the California Government Code was made.

<u>SECTION 5.</u> Use Not Unreasonably Interfering with Existing Public Use(s). Some or all of the real property to be acquired is subject to easements and rights-ofway appropriated to existing public uses. The legal descriptions of these easements and rights-of-way are on file with the City and describe the general location and extent of the easements and rights-of-way with sufficient detail for reasonable identification. In the event the herein described use or uses will not unreasonably interfere with or impair the continuance of the public use as it now exists or may reasonably be expected to exist in the future, counsel for the City is authorized to acquire the real property subject to such existing public use(s) pursuant to Section 1240.510 of the California Code of Civil Procedure.

<u>SECTION 6.</u> More Necessary Public Use. Some or all of the real property to be acquired is subject to easements and rights-of-way appropriated to existing public uses. To the extent that the herein described use or uses will unreasonably interfere with or impair the continuance of the public use as it now exists or may reasonably be expected to exist in the future, the City finds and determines that the herein described use or uses are more necessary than said existing public use. Counsel for the City is authorized to acquire the real property appropriated to such existing public use(s) pursuant to Section 1240.610 of the California Code of Civil Procedure. Staff is further authorized to make such improvements to the real property being acquired that it determines is reasonably necessary to mitigate any adverse impact upon the existing public use.

SECTION 7. Further Activities. Counsel for the City is hereby authorized to file legal proceedings necessary to acquire the hereinabove described real property in the name of and on behalf of the City by eminent domain, and counsel is authorized to institute and prosecute such legal proceedings as may be required in connection therewith. Legal counsel is further authorized to take such steps as may be authorized and required by law, and to make such security deposits as may be required by order of court, to permit the City to take possession of and use said real property at the earliest possible time. Counsel is further authorized to correct any errors or to make or agree to non-material changes in the legal description of the real property that are deemed necessary for the conduct of the condemnation action or other proceedings or transaction required to acquire the subject real property. Counsel is further authorized to reduce or modify the extent of the interests or property to be acquired so as to reduce the compensation payable in the action where such change would not substantially impair the construction and operation for the project for which the real property is being acquired.

<u>SECTION 8.</u> Effective Date. This Amended Resolution shall be retroactive to December 4, 2012, the date the original Resolution No. 2012-093 was adopted.

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

PASSED, APPROVED, AND ADOPTED this 3<sup>rd</sup> day of June 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 June 3, 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 June 3, 2014.

MARY E. WIRTES, MMC, CITY CLERK

(SEAL)

### Legal Definitions of Property to be Acquired

The following is a list of definitions of legal rights to be acquired by the City of Ontario:

"Fee Acquisition" also known as fee simple or fee simple absolute, refers to complete or absolute ownership of the property in the City of Ontario (the "City"), County of San Bernardino, State of California.

**"Temporary Construction Easement**" or **"TCE**" refers to the right of the City, its successors, and assigns, to engage in construction and related activities related to the South Milliken Grade Separation Project, together with all necessary rights of ingress and egress to the non- exclusive easement area in connection with such construction and related activities.

The TCE shall commence after the owner is provided 5 calendar days advanced written notice by the City of the City's intent to utilize the TCE area. The use of the TCE area shall not exceed 4 months; provided however, that the term of the TCE may be extended upon payment by the City to the Property Owner of an amount equal to \$1,092.46 a month, prorated to the actual date upon which the City's use of the Property terminates.

Property Owner shall not cause, directly, indirectly or negligently, any interference with or harm to the rights conveyed hereunder.

**"Public Utility Easement"** refers to a non-exclusive permanent easement in favor of the City, the definition of which includes its successors, and assigns, including the right to enter upon the property herein described at any time that it may see fit to construct, reconstruct, maintain, repair, replace, and operate underground facilities for any purpose, including the conveyance of facilities through and under the property, together with the right to excavate and fill ditches and trenches for the location and construction of said facilities and the further right to remove trees, bushes, undergrowth, crops and other obstructions interfering with the construction, maintenance, repair, replacement and operation of said City facilities.

Except in emergencies, the City shall notify the overlying property owner prior to performing any work within the easement including removing trees, bushes, undergrowth, crops or other obstructions. If the City determines that an emergency requiring immediate corrective action exists, the City may proceed immediately with the corrective action and notify the overlying property owner as soon as reasonably possible. The City shall replace any improvements removed, by the City, and which have been installed with the City's approval, after construction of the project and each time the City exercises its easement rights for maintenance of the public utilities, improvements and facilities.

Except in emergencies, no more than fifteen (15) parking spaces will be closed by the City at any time.

The owner, its lessees, assigns and successors will not allow any change in surface or subsurface conditions including but not limited to placing fences, trees, walls, buildings, structures, earth fills, excavations, construction of loading surcharge on or over the City's facilities or hinder the

City's access to said facilities without approval of the City. The City will not unreasonably withhold or delay approval of changes in surface conditions if those changes will not interfere with the access, construction, maintenance, repair, replacement, operating integrity or structural integrity of said City facilities.

The non-exclusive easement rights shall also include the right of the City over, upon, under, and across the property together with the right to access, maintain, improve, alter, relocate, inspect, construct, reconstruct, install, replace, and remove public improvements and facilities, including those in the public right of way, and public utilities, including water and sewer lines, as determined necessary by the City, together with all necessary rights incidental thereto.

No other easements shall be granted on, under or over the easement without the prior written consent of the City, its successors and assigns.

The existing ground elevations upon completion of construction shall not be further increased or decreased without the prior written consent of the City.

After construction of the grade separation project is completed, City shall keep the northerly Milliken Avenue driveway of the property open at all times.

### EXHIBIT "A" LEGAL DESCRIPTION RIGHT OF WAY

THAT PORTION OF PARCEL C OF LOT LINE ADJUSTMENT NO. LL-99-27, IN THE CITY OF ONTARIO, COUNTY OF SAN BERNARDINO, STATE OF CALIFORNIA, AS RECORDED JUNE 19, 2000 AS INSTRUMENT NO. 20000217781, OFFICIAL RECORDS, IN THE OFFICE OF THE COUNTY RECORDER OF SAID COUNTY, DESCRIBED AS FOLLOWS:

BEGINNING AT THE INTERSECTION OF THE NORTHERLY LINE OF SAID PARCEL C AND THE WESTERLY RIGHT OF WAY LINE OF MILLIKEN AVENUE (60 FEET HALF WIDTH); THENCE ALONG SAID WESTERLY RIGHT OF WAY LINE OF MILLIKEN AVENUE, SOUTH 00°45'02" EAST 260.94 FEET; THENCE LEAVING SAID WESTERLY RIGHT OF WAY LINE, NORTH 02°14'41" WEST 261.02 FEET TO THE NORTHERLY LINE OF SAID PARCEL C; THENCE ALONG SAID NORTHERLY LINE NORTH 89°14'58" EAST 6.81 FEET TO THE POINT OF BEGINNING.

CONTAINING 888 SQUARE FEET, MORE OR LESS.

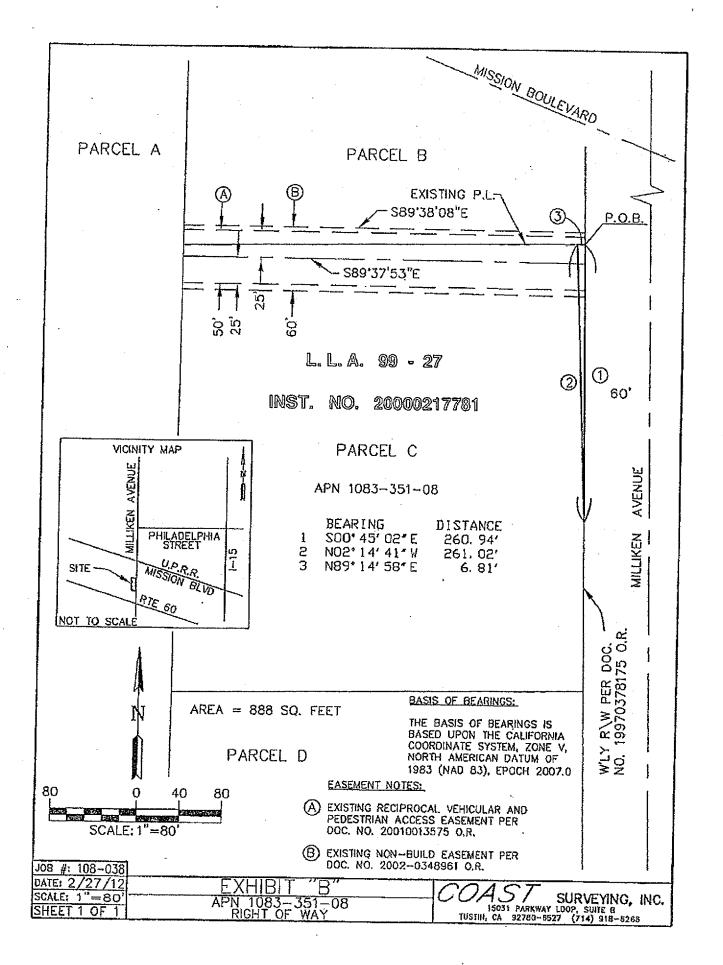
ALL AS MORE PARTICULARLY SHOWN ON EXHIBIT "B" ATTACHED HERETO AND MADE A PART HEREOF.

DATED THIS 27<sup>TH</sup> DAY OF FEBRUARY, 2012.

**GWEN-VERA DEL CASTILLO, PLS 5108** 



#### JN 108038 AP 1083-351-08 RW



### EXHIBIT "A" LEGAL DESCRIPTION UTILITY EASEMENT

THAT PORTION OF PARCEL C OF LOT LINE ADJUSTMENT NO. LL-99-27, IN THE CITY OF ONTARIO, COUNTY OF SAN BERNARDINO, STATE OF CALIFORNIA, AS RECORDED JUNE 19, 2000 AS INSTRUMENT NO. 20000217781, OFFICIAL RECORDS, IN THE OFFICE OF THE COUNTY RECORDER OF SAID COUNTY, DESCRIBED AS FOLLOWS:

BEGINNING AT THE INTERSECTION OF THE SOUTHERLY LINE OF SAID PARCEL C AND THE WESTERLY RIGHT OF WAY LINE OF MILLIKEN AVENUE (60 FEET HALF WIDTH); THENCE ALONG THE SOUTHERLY LINE OF SAID PARCEL C, SOUTH 89°14'58" WEST 48.14 FEET; THENCE LEAVING SAID SOUTHERLY LINE, NORTH 00°55'42" WEST 421.72 FEET TO THE NORTHERLY LINE OF SAID PARCEL C; THENCE ALONG SAID NORTHERLY LINE, NORTH 89°14'58" EAST 42.64 FEET; THENCE LEAVING SAID NORTHERLY LINE, SOUTH 02°14'41" EAST 261.02 FEET TO SAID WESTERLY RIGHT OF WAY LINE OF MILLIKEN AVENUE; THENCE ALONG SAID WESTERLY RIGHT OF WAY LINE OF MILLIKEN AVENUE; THENCE ALONG SAID WESTERLY RIGHT OF WAY LINE OF MILLIKEN AVENUE; THENCE ALONG SAID WESTERLY RIGHT OF WAY LINE OF MILLIKEN AVENUE; THENCE ALONG SAID WESTERLY RIGHT OF WAY LINE OF MILLIKEN AVENUE; THENCE ALONG SAID WESTERLY RIGHT OF WAY LINE OF MILLIKEN AVENUE; THENCE ALONG SAID WESTERLY RIGHT OF WAY LINE OF WAY LINE OF MILLIKEN AVENUE; THENCE ALONG SAID WESTERLY RIGHT OF WAY LINE, SOUTH 00°45'02" EAST 160,78 FEET TO THE POINT OF BEGINNING,

CONTAINING 19,691 SQUARE FEET, MORE OR LESS.

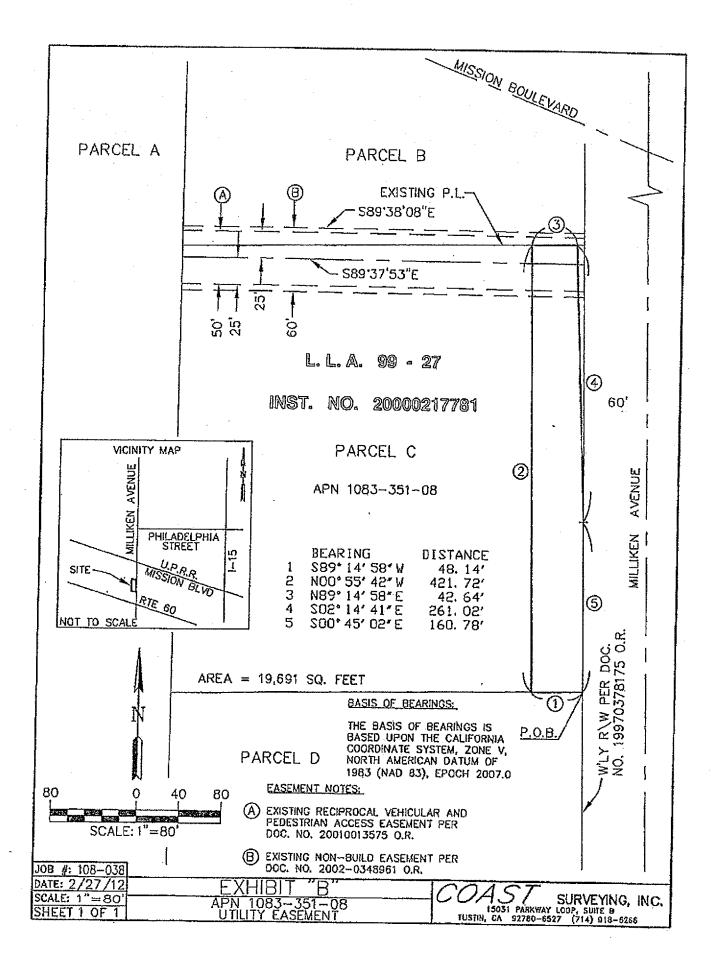
ALL AS MORE PARTICULARLY SHOWN ON EXHIBIT "B" ATTACHED HERETO AND MADE A PART HEREOF.

DATED THIS 27TH DAY OF FEBRUARY, 2012.

**GWEN-VERA DEL CASTILLO, PLS 5108** 



#### JN 108038 AP 1083-351-08 Utility



Coast Surveying, Inc. May 24, 2012

#### EXHIBIT "A" LEGAL DESCRIPTION TEMPORARY CONSTRUCTION EASEMENT

THAT PORTION OF PARCEL C OF LOT LINE ADJUSTMENT NO. LL-99-27, IN THE CITY OF ONTARIO, COUNTY OF SAN BERNARDINO, STATE OF CALIFORNIA, AS RECORDED JUNE 19, 2000 AS INSTRUMENT NO. 20000217781, OFFICIAL RECORDS, IN THE OFFICE OF THE COUNTY RECORDER OF SAID COUNTY, DESCRIBED AS FOLLOWS:

COMMENCING AT THE INTERSECTION OF THE SOUTHERLY LINE OF SAID PARCEL C AND THE WESTERLY RIGHT OF WAY LINE OF MILLIKEN AVENUE (60 FEET HALF WIDTH); THENCE ALONG THE SOUTHERLY LINE OF SAID PARCEL C SOUTH 89°14'58" WEST 48.14 FEET TO THE TRUE POINT OF BEGINNING: THENCE CONTINUING ALONG SAID SOUTHERLY LINE, SOUTH 89°14'58" WEST 10.00 FEET; THENCE LEAVING SAID SOUTHERLY LINE, NORTH 00°55'42" WEST 211.50 FEET; THENCE SOUTH 89°54'58" WEST 12.56 FEET; THENCE NORTH 00°20'15" EAST 118.79 FEET; THENCE NORTH 88°08'35" EAST 4.01 FEET; THENCE NORTH 00°15'31" EAST 15.51 FEET; THENCE NORTH 89º42'24" WEST 7.81 FEET; THENCE NORTH 00º15'21" EAST 20.16 FEET; THENCE NORTH 89°44'27" WEST 19.90 FEET; THENCE NORTH 00°17'11" EAST 8.00 FEET; THENCE NORTH 89°44'36" WEST 15.63 FEET; THENCE SOUTH 00°17'24" WEST 7.90 FEET; THENCE NORTH 89°43'17" WEST 61.42 FEET; THENCE NORTH 00°07'02" EAST 38.59 FEET TO A LINE PARALLEL WITH AND 15.00 FEET SOUTHERLY OF THE NORTHERLY LINE OF SAID PARCEL C; THENCE ALONG SAID PARALLEL LINE SOUTH 89°14'58" WEST 144.75 FEET; THENCE SOUTH 45°21'48" WEST 95.14 FEET TO THE WESTERLY LINE OF SAID PARCEL C; THENCE ALONG SAID WESTERLY LINE NORTH 00°21'48" EAST 21.21 FEET TO A LINE PARALLEL WITH AND 15.00 FEET NORTHWESTERLY OF THE ABOVE MENTIONED COURSE "SOUTH 45"21'48" WEST 95.14 FEET"; THENCE ALONG SAID PARALLEL LINE NORTH 45°21'48" EAST 86.19 FEET TO THE NORTHERLY LINE OF SAID PARCEL C; THENCE ALONG SAID NORTHERLY LINE, NORTH 89°14'58" EAST 269.97 FEET; THENCE LEAVING SAID NORTHERLY LINE SOUTH 00°55'42" EAST 421.72 FEET TO THE TRUE POINT OF BEGINNING.

CONTAINING 15,341 SQUARE FEET, MORE OR LESS.

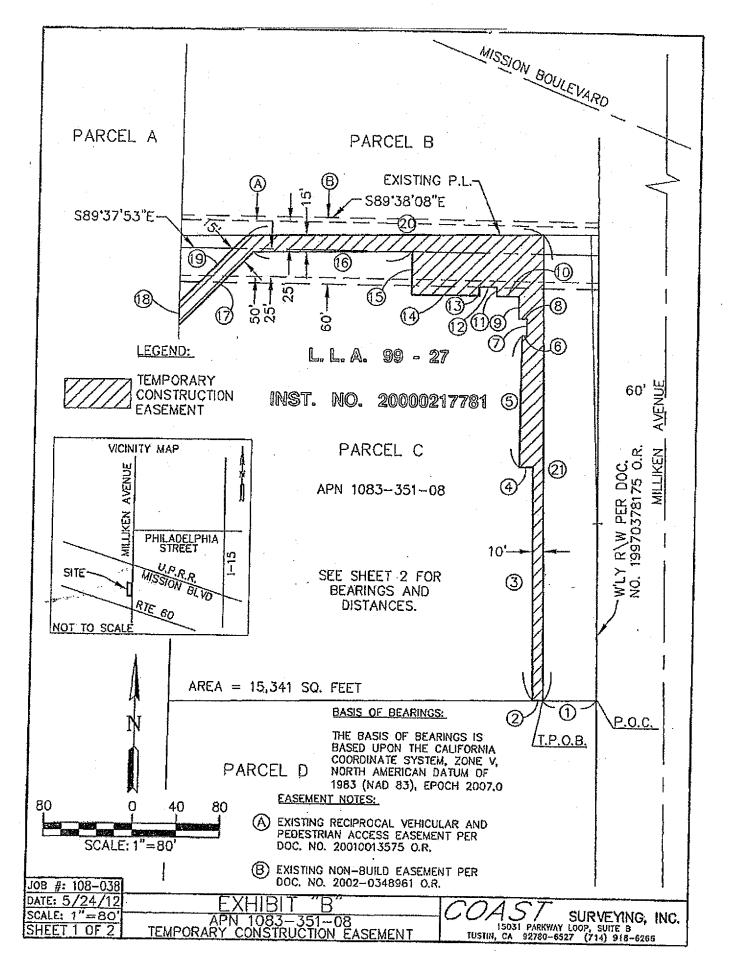
ALL AS MORE PARTICULARLY SHOWN ON EXHIBIT "B" ATTACHED HERETO AND MADE A PART HEREOF.

DATED THIS 25TH DAY OF MAY, 2012.

GWEN-VERA DEL CASTILLO, PLS 5108



JN 108038 AP 1083-351-08 TCE



Coast Surveying, Inc. May 24, 2012

#### EXHIBIT "A" LEGAL DESCRIPTION TEMPORARY CONSTRUCTION EASEMENT

THAT PORTION OF PARCEL B OF LOT LINE ADJUSTMENT NO. LL-99-27, IN THE CITY OF ONTARIO, COUNTY OF SAN BERNARDINO, STATE OF CALIFORNIA, AS RECORDED JUNE 19, 2000 AS INSTRUMENT NO. 20000217781, OFFICIAL RECORDS, IN THE OFFICE OF THE COUNTY RECORDER OF SAID COUNTY, DESCRIBED AS FOLLOWS;

COMMENCING AT THE INTERSECTION OF THE SOUTHERLY LINE OF SAID PARCEL B AND THE WESTERLY RIGHT OF WAY LINE OF MILLIKEN AVENUE (60 FEET HALF WIDTH); THENCE ALONG THE SOUTHERLY LINE OF SAID PARCEL B SOUTH 89°14'58" WEST 49.45 FEET TO THE <u>TRUE</u> <u>POINT OF BEGINNING</u>; THENCE CONTINUING ALONG SAID SOUTHERLY LINE SOUTH 89°14'58" WEST 118.95 FEET; THENCE LEAVING SAID SOUTHERLY LINE NORTH 00°07'02" EAST 28.01 FEET; THENCE SOUTH 89°36'08" EAST 61.79 FEET; THENCE NORTH 00°26'01" WEST 61.22 FEET; THENCE SOUTH 89°36'09" EAST 34.70 FEET; THENCE NORTH 00°23'51" EAST 48.15 FEET; THENCE NORTH 89°14'58" EAST 20.33 FEET; THENCE SOUTH 00°55'42" EAST 135.43 FEET TO THE TRUE POINT OF BEGINNING.

CONTAINING 7,648 SQUARE FEET, MORE OR LESS.

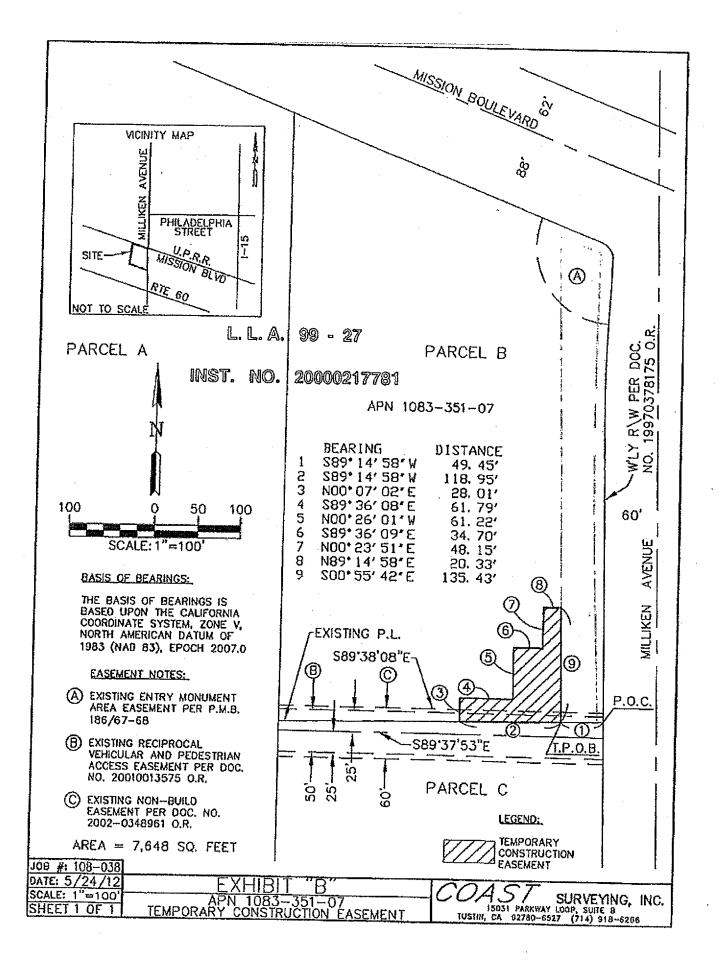
ALL AS MORE PARTICULARLY SHOWN ON EXHIBIT "B" ATTACHED HERETO AND MADE A PART HEREOF,

DATED THIS 25TH DAY OF MAY, 2012,

**GWEN-VERA DEL CASTILLO, PLS 5108** 



JN 108038 AP 1083-351-07 TCE



Agenda Report June 3, 2014

### SECTION: CONSENT CALENDAR

#### SUBJECT: A RESOLUTION ORDERING THE SUMMARY VACATION OF A PORTION OF CUCAMONGA AVENUE BETWEEN PHILADELPHIA STREET AND THE CALIFORNIA STATE ROUTE 60 FREEWAY

**RECOMMENDATION:** That the City Council adopt a resolution ordering the summary vacation of the westerly twelve feet of Cucamonga Avenue from Philadelphia Street to 610 feet south.

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

**FISCAL IMPACT:** None. The City did not pay for acquiring the subject right-of-way. The applicant has paid the applicable processing fees to defray the City's cost to process this request.

**BACKGROUND:** The developer of proposed Tract Map No. 18909, SC Colony Limited Partnership (Keyvan Razi, Managing Member), has requested the summary vacation of the westerly twelve feet of Cucamonga Avenue along the property frontage as described and shown in Exhibits "A" and "B" of the resolution. This is consistent with the City of Ontario Master Plan of Streets and Highways. The subject right-of-way is not needed for present or future street or utility purposes.

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

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

Prepared by: Department:	Dean A. Williams Engineering	Submitted to Co Approved:	ouncil/O.H.A.	06/03/	2014
City Manager Approval:	Alles	Continued to: Denied:			11
	$\mathcal{O}$				

RESOLUTION NO.

#### A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF ONTARIO, CALIFORNIA, ORDERING THE SUMMARY VACATION OF A PORTION OF CUCAMONGA AVENUE BETWEEN PHILADELPHIA STREET AND THE CALIFORNIA STATE ROUTE 60-FREEWAY.

WHEREAS, the City Council of the City of Ontario, California, pursuant to Division 9, Part 3, Chapter 4, of the Streets and Highways Code, may summarily vacate an easement under certain conditions specified therein; and

WHEREAS, the public easement for street and utility purposes, designated as Cucamonga Avenue, adjacent to the east property line of Parcel 1 of Parcel Map No. 5195, as recorded in Book 51 of Maps, Page 62, Official records of San Bernardino County, State of California is currently twelve feet (12') wider on the west side of the street than on the east side of the street and said twelve feet (12') is not needed for any present or future street and utility purposes and vacation of same will render the street consistent with the City of Ontario Master Plan of Streets and Highways; and

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

WHEREAS, the developer of the adjacent property has requested a vacation of said portion of Cucamonga Avenue.

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

- 1. That the above recitals are true and correct.
- 2. That title to the above-described said easement more specifically described in Exhibit A and depicted on Exhibit B shall be vacated.
- 3. That the City Clerk of the City of Ontario, California, shall cause a copy of this Resolution to be recorded in the office of the County Recorder of San Bernardino County, California.

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

PASSED, APPROVED, AND ADOPTED this 3<sup>rd</sup> day of June 2014.

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 June 3, 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 June 3, 2014.

MARY E. WIRTES, MMC, CITY CLERK

(SEAL)

#### EXHIBIT "A" V-260 STREET VACATION

A portion of Lot 3 of Section 5, Township 2 South, Range 7 West, San Bernardino Base and Meridian, per Map of Subdivision of Part of Rancho Santa Ana Del Chino as recorded in Book 6, Page 15, records of the County of San Bernardino, State of California, more particularly described as follows:

**BEGINNING** at the Southeasterly corner of Parcell as shown on Parcel Map No. 5195, filed in Book 51, Page 622 of Parcel Maps, records of said county, said corner being on the Westerly right of way line of Cucamonga Avenue (44.00 foot half width) as shown on said Parcel Map No. 5195;

THENCE along the Easterly line of said Parcel 1 and the Westerly line of said right of way line, North 00°38'43" West, a distance of 590.29 feet to a point on the Southwesterly right of way line of Cucamonga Avenue as shown on said Parcel Map No. 5195, said point also being the beginning of a tangent 20.00 foot radius curve concave Southwesterly;

THENCE Northwesterly along said Southwesterly right of way line and the arc of said curve through a central angle of 90°00'09", a distance of 31.42 feet to a point on the Northerly line of said Parcel 1 and the Southerly right of way line of Philadelphia Street (50.00 foot half width) as shown on said Parcel Map No. 5195;

THENCE along the Easterly prolongation of said Northerly line and said right of way line tangent to said curve, North 89°21'08" East, a distance of 14.00 feet;

THENCE South 45°38'48" East, a distance of 25.46 feet to a line lying 32.00 feet Westerly of, as measured at right angles to and parallel with the centerline of said Cucamonga Avenue;

THENCE along said parallel line, South 00°38'43" East, a distance of 592.29 feet;

THENCE perpendicular to said parallel line, South 89°21'17" West, a distance of 12.00 feet to the **POINT OF BEGINNING.** 

Containing 0.166 acres, 7231 square feet, more or less.

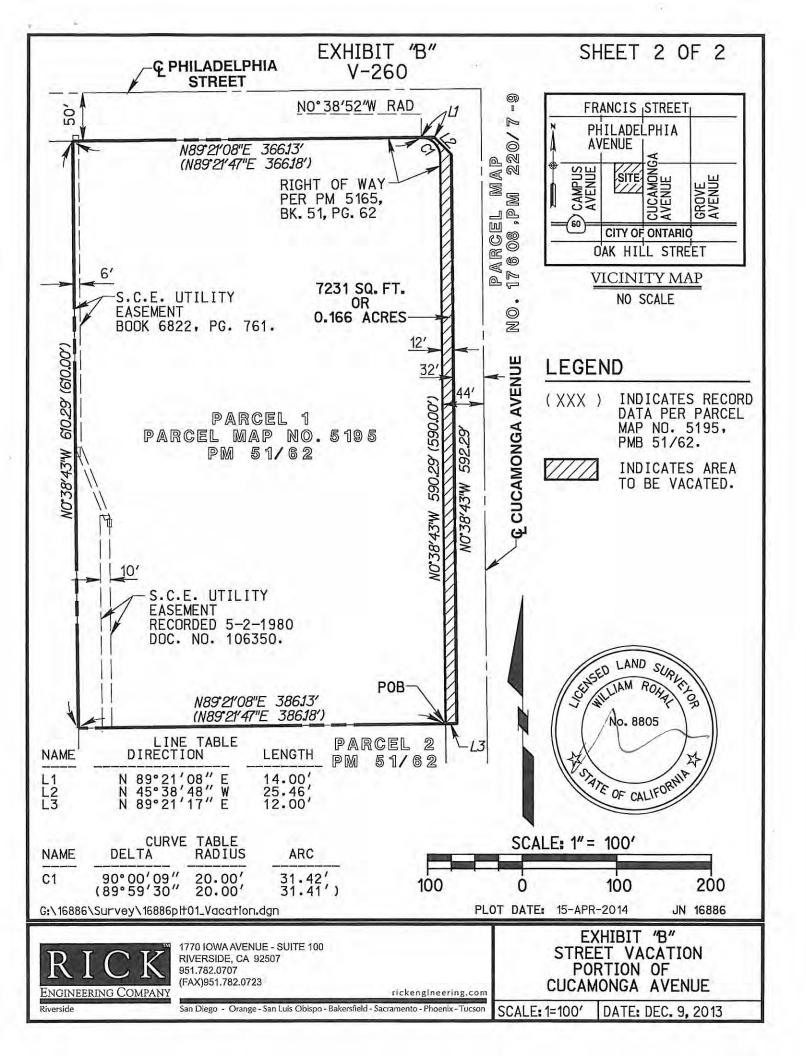
EXHIBIT "B" ATTACHED HERETO AND BY THIS REFERENCE MADE A PART HEREOF.

This description was prepared by me or under by direction.

William Rohal L.S. 8805 Exp. Date 12/31/2014

4-15-2014

Date G:\16886\Survey\legal\16886\_Street Vacation-Cucamonga Avenue



Agenda Report June 3, 2014

### SECTION: CONSENT CALENDAR

#### SUBJECT: IMPROVEMENT AGREEMENT AND IMPROVEMENT SECURITY FOR FINAL TRACT MAP NO. 16486 FOR PROPERTY LOCATED ON OLIVE STREET APPROXIMATELY 655 FEET EAST OF BAKER AVENUE

**RECOMMENDATION:** That the City Council approve and authorize the City Manager to execute an improvement agreement and improvement security for Final Tract Map No. 16486 for property located on Olive Street approximately 655 feet east of Baker Avenue.

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

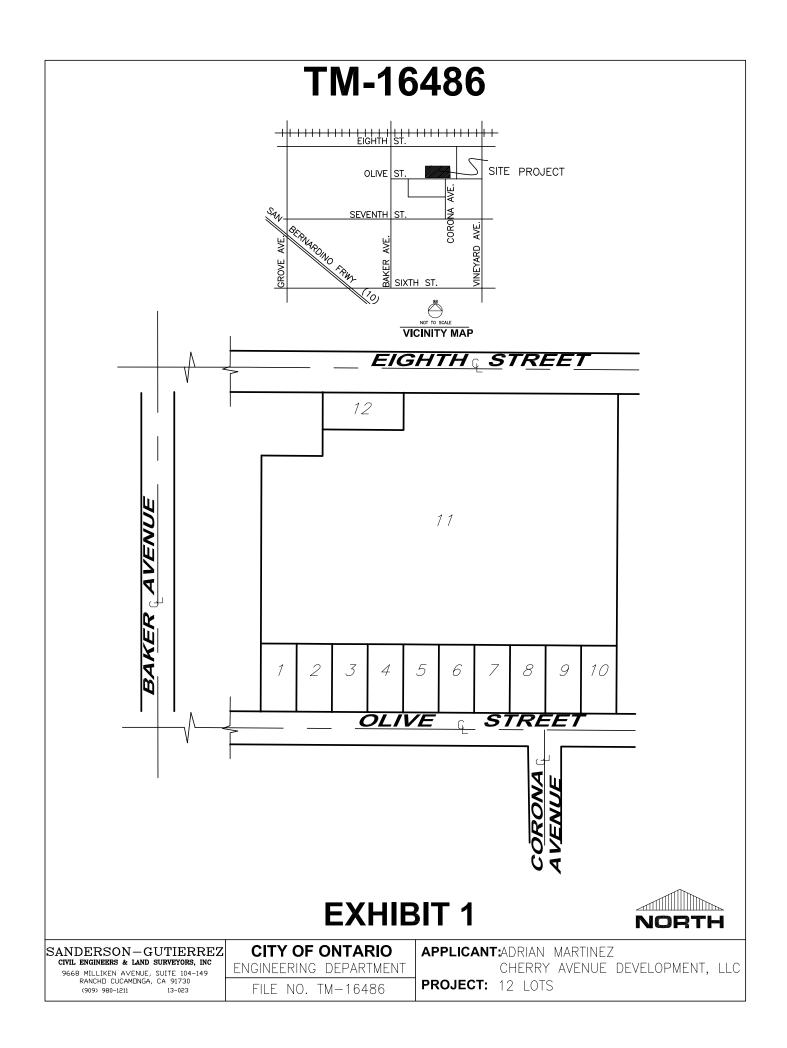
**FISCAL IMPACT:** None. All public infrastructure improvements required for this subdivision will be constructed by the developer at its sole cost.

**BACKGROUND:** Final Tract Map No. 16486, consisting of twelve residential lots on 9.32 acres as shown on Exhibit 1, was submitted by the developer, G-Apex, Inc. and was approved by the City Council on February 1, 2005 and subsequently recorded on February 10, 2005. G-Apex, Inc. had entered into an improvement agreement with the City and posted adequate improvement security. However, G-Apex never proceeded with the construction of any public improvements and has since transferred ownership of the property to Cherry Avenue Development, LLC (Ruben Moreno, Managing Member). Cherry Avenue Development, LLC is submitting the attached improvement agreement and security as a substitute for the ones previously submitted by G-Apex, Inc.

Improvements will include street widening on Olive Street, curb, gutter, sidewalk, parkway landscaping and irrigation, fire hydrants, sewer main, water laterals, and street lights.

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

Prepared by: Department:	Miguel Sotomayor Engineering	Submitted to Co Approved:	ouncil/O.H.A.	06/03/2014
City Manager Approval:	Alleg	Continued to: Denied:		12
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Agenda Report June 3, 2014 SECTION: CONSENT CALENDAR

#### SUBJECT: AN AGREEMENT WITH SAN BERNARDINO COMMUNITY COLLEGE DISTRICT (CRAFTON HILLS COLLEGE) FOR EMERGENCY MEDICAL SERVICES EDUCATION THROUGH FIELD INTERNSHIP FOR THE PARAMEDIC PROGRAM

**RECOMMENDATION:** That the City Council authorize the City Manager to execute an agreement (on file in the Records Management Department) with San Bernardino Community College District (Crafton Hills College) for the purpose of providing Emergency Medical Services education through field internship for the paramedic program.

#### COUNCIL GOALS: <u>Develop Strategies and Take Actions, Including Regaining Local Control of</u> <u>the Ontario International Airport, to Minimize the Negative Impacts of the Global Financial</u> <u>Downturn on Ontario's Economy and the City's Fiscal Health</u> <u>Maintain the Current High Level of Public Safety</u>

**FISCAL IMPACT:** The recommended agreement provides for the continuation of the existing paramedic field internship program between the City and San Bernardino Community College District (Crafton Hills College) for an additional five year period at no cost to the City. The cost for staffing of interns, uniforms, and any ancillary items is to be borne by the college in return for the City providing field training for the paramedic program.

**BACKGROUND:** The training of new emergency medical services personnel, including paramedics, involves the joint cooperation between authorized training institutions, hospitals, and public safety emergency medical services providers. All prospective paramedic students must first complete a classroom didactic portion at a training institution, then a clinical hospital internship, and end with the successful field internship with an actual emergency medical services provider. Each of these segments is a two month period. In order to ensure that a current cadre of trained professional paramedics is available to meet demand, agencies like the City of Ontario participate in this process.

#### STAFF MEMBER PRESENTING: Floyd E. Clark, Fire Chief

Prepared by: Department:	Ray Ramirez Jr. Fire	Submitted to Co Approved:	uncil/O.H.A.	06/03/2014
City Manager Approval:	Alle	Continued to: Denied:		13
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Agenda Report June 3, 2014

### SECTION: CONSENT CALENDAR

### SUBJECT: FISCAL YEAR 2013-14 THIRD QUARTER BUDGET REPORT

**RECOMMENDATION:** That the City Council approve the budget adjustments and recommendations as listed in the Fiscal Year 2013-14 Third Quarter Budget Report.

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

**FISCAL IMPACT:** The recommended actions will affect several fund budgets as outlined in the FY 2013-14 Third Quarter Budget Report and supporting schedules.

**BACKGROUND:** This is the third interim budget report for Fiscal Year 2013-14 which reflects the Administrative Services Agency's continued efforts to provide timely, accurate, and understandable financial information to assist the City Council with decision making and achieve their core goals. All funds have been reviewed in preparing this report. The emphasis of this report is on the General Fund, which funds most of the government services including public safety, recreation, library, museum, parks, building, and planning. This report also discusses budget trends and the economic outlook that may impact the City's resources.

The primary purposes of this report are to:

- Revise the City's budget to reflect the City Council's actions taken since the Mid-Year Budget Report;
- Recommend budget changes to align the budget with projected year-end results;
- Recommend budget adjustments that are consistent with City Council goals and objectives; and
- Comment on significant budget trends which may impact next fiscal year's budget development.

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

	Doreen M. Nunes Fiscal Services	Submitted to Council/O.H.A. Approved:	06/03/2014
City Manager	Mal	Continued to: Denied:	
Approval:	- All -		14

#### Third Quarter Budget Recommendations

Third Quarter Budget recommendations are routine in nature and mainly comprised of previously approved City Council actions, adjustments in the revenue budget to reflect estimates based on current trends, and additional appropriations for new or ongoing program/projects. For the General Fund, the proposed actions will result in a net impact of zero, sustaining the estimated ending fund balance at \$37,366,946 – approximately 22.3 percent of the General Fund operating budget, which exceeds the 18 percent reserve goal.

Major budgetary items reflected in the Third Quarter Budget include: \$67,760 for tree trimming services on Euclid Avenue (offset with a reimbursement agreement with CalTrans) and \$438,663 for an environmental impact report related to a General Plan amendment (offset with pass-thru revenue).

Noteworthy budget adjustments in Other Funds include: \$764,798 for the Well No. 41 wellhead treatment project; \$504,000 from the Urban Area Security Initiative Grant Programs for the Regional Aviation Downlink police project; \$250,000 grant from the Department of Resources Recycling and Recovery (CalRecycle) for the used oil recycling program; \$216,836 for the Mercy House HOME Program Participation agreement; and \$148,000 for various City facility and streetlight repairs.

#### **Economic Outlook**

The local economy is continuing to show signs of improvement, with continued growth in the retail and motor vehicle sales, manufacturing, and employment. Cumulative sales tax revenue through the third quarter of 2013 increased 7.3 percent compared to the same time period in 2012, with the majority of the growth in retail and motor vehicle sectors. The index for manufacturing activity (Purchasing Managers Index or PMI) increased to 54.9 in April compared to 53.7 for April. The recent surge in job growth demonstrates the economy is gaining strength; an average of 214,000 more jobs per month for this year and an anticipated 233,000 per month by the end of the year. The unemployment rate has remained unchanged for California and the Inland Empire at 8.1 percent and 9.4 percent, respectively, compared to February 2014. The housing recovery has cooled recently as buyers struggled to afford a home after rapid price increases last year and higher mortgage rates. Home sales remained essentially flat in April from a month earlier.

Although the economy is improving, there are still concerns relating to the continuing progress. The housing recovery will be tested in the upcoming year with higher mortgage rates and home prices. The key to sustaining consumer spending will be continued job and wage growth. The economy is trending in the right direction; however, federal fiscal constraints and the debt ceiling are potential negative impacts on the economy.

In addition, the declining passenger traffic at the Ontario International Airport is of upmost concern for the City. The airport has lost over 40 percent of passenger traffic since 2007, which equates to a loss of approximately \$540 million dollars of regional economic impact and over 10,000 local jobs. The transfer of Ontario Airport management decisions to local control is in the best interest for the region and will help the Airport regain its status as the economic engine for the Inland Empire while ensuring sufficient airport capacity in the long-term for all of Southern California.

#### CalPERS

The California State Public Employees Retirement System (CalPERS) is considerably underfunded, primarily due to lower than projected earning rates combined with significant investment losses incurred during the Great Recession. All of this has contributed to dramatic increases to the City's CalPERS contribution rates. With the recent adoption of amortization and smoothing policy changes by the CalPERS Board to address the severity of the underfunding, significant employer contribution rate

increases will begin in Fiscal Year 2014-15. CalPERS' proposed rates will increase by approximately 50 percent by Fiscal Year 2019-20. These rates are dependent upon CalPERS earning a 7.5 percent return on their investments in the future.

#### Conclusion

In summary, while the City is experiencing improvement during the economic recovery, challenges still remain. The economy is projected to grow slowly over the next couple of years due to a continued sluggish job market, the potential negative impact to the economy resulting from the federal deficit, and the Federal Reserve's potential actions to begin tapering back its bond purchases (quantitative easing) which has kept borrowing costs low. The City still needs to be attentive during this economic recovery stage to ensure that the City of Ontario is positioned to take advantage of opportunities in the next economic growth cycle.

The Adopted Operating Budget for FY 2013-14, as modified through this Third Quarter Budget Report, continues to reflect the City Council's commitment to foster steady, controlled growth and to provide the highest level of service to the community within the City's fiscal constraints. With the City Council's leadership and their prudent fiscal policies, the City's long-term fiscal health will further solidify its standing as the economic leader in the Inland Empire, and a formidable player in California and the nation.

Agenda Report June 3, 2014 SECTION: CONSENT CALENDAR

#### SUBJECT: APPROVAL OF REVISIONS TO THE COMPENSATION AND BENEFITS PROFILE FOR UNREPRESENTED PART-TIME EMPLOYEES DUE TO INCREASE IN STATE'S MINIMUM WAGE

**RECOMMENDATION:** That the City Council approve and authorize the City Manager to execute substantive revisions to the salary schedule section of the current Compensation and Benefits Profile (on file with the Records Management Department) for employees in the non-represented part-time group to ensure compliance with the State of California's Labor Code regarding minimum wages and to ensure parity among all part-time classifications.

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

**FISCAL IMPACT:** The projected cost for the recommended changes for all employees in the parttime group for FY 2014-15 is \$26,722. If approved, these costs will be included in the Proposed Fiscal Year 2014-15 Operating Budgets for departments with part-time group employees.

**BACKGROUND:** Employees in the part-time group are not formally organized and, as such, are not represented by any employee group, union or association. For unrepresented groups, the Compensation and Benefits Profile for each group describes the compensation, benefits, and other relevant provisions as approved by the City Council. The current profile for the part-time group was planned to address the group's compensation needs through June 30, 2016. However, due to increases in the State's minimum wage it is necessary to revise the salary schedule to ensure compliance with these changes and to address parity among all part-time group classifications. The expiration date of the revised part-time group profile will remain June 30, 2016.

#### STAFF MEMBER PRESENTING: Angela C. Lopez, Human Resources Director

Prepared by: Department:	Angela C. Lopez Human Resources	Submitted to C Approved:	Council/O.H.A.	06/03/2014
City Manager Approval:	Ma	Continued to: Denied:		15
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The California Legislature has approved modifications to the Labor Code which will increase the minimum wage for all industries. Effective July 1, 2014, the minimum wage in California will be \$9.00 per hour. The minimum wage will increase to \$10.00 per hour effective January 1, 2016.

Increases to the salary ranges for part-time classifications were previously approved and are addressed in the current part-time profile's salary schedule. Despite these increases, as of July 1, 2014, the salary ranges for Administrative Intern, Library Page, Museum Attendant, and Recreation Assistant, will include salary steps below the State's minimum wage of \$9.00 per hour. In addition to the classifications previously referenced, the salary ranges for Lifeguard and Recreation Leader will also include salary ranges below \$10.00 per hour as of January 1, 2016.

To ensure compliance with the State's Labor Code and to maintain parity among all part-time group classifications, it is recommended to revise the salary schedule of the part-time group profile to replace the base salary increases scheduled for July 13, 2014 and July 15, 2015 as follows.

The adjustment of all part-time salary ranges will ensure parity among all part-time group classifications and will ensure that the City continues to be able to attract, retain and motivate a highly qualified parttime workforce. Employees designated as part-time but working a full-time classification will not be eligible for the salary range adjustments.

	Current	Proposed Salary Range	Proposed Salary Range
Classification	Salary Range	June 2014	July 2015
Administrative Intern	\$8.50 - \$13.16	\$9.01 - \$13.95	\$10.02 - \$15.52
Instructor Guard	\$9.69 - \$11.77	\$10.27 - \$12.47	\$11.42 - \$13.88
Library Monitor Specialist	\$12.99 - \$15.79	\$13.77 - \$16.74	\$15.32 - \$18.62
Library Page	\$8.50 - \$10.32	\$9.01 - \$10.94	\$10.02 - \$12.18
Lifeguard	\$9.03 - \$10.97	\$9.57 - \$11.63	\$10.64 - \$12.94
Museum Assistant	\$12.16 - \$14.79	\$12.89 - \$15.68	\$14.35 - \$17.44
Museum Attendant	\$8.50 - \$10.32	\$9.01 - \$10.94	\$10.02 - \$12.18
Police Cadet	\$10.66 - \$14.28	\$11.30 - \$15.14	\$12.58 - \$16.84
Pool Manager	\$11.64 - \$14.15	\$12.34 -\$15.00	\$13.73 - \$16.69
Recreation Assistant	\$8.50 - \$10.32	\$9.01 - \$10.94	\$10.02 - \$12.18
Recreation Leader	\$9.03 - \$10.97	\$9.57 - \$11.63	\$10.64 - \$12.94
Senior Pool Manager	\$12.68 - \$15.40	\$13.44 - \$16.33	\$14.95 - \$18.17
Senior Recreation Leader	\$10.29 - \$12.51	\$10.91 - \$13.26	\$12.13 - \$14.75

Agenda Report June 3, 2014

## SECTION: CONSENT CALENDAR

### SUBJECT: A RESOLUTION ESTABLISHING THE ANNUAL SPECIAL TAX WITHIN COMMUNITY FACILITIES DISTRICT NO. 5 FOR FISCAL YEAR 2014-15

**RECOMMENDATION:** That the City Council adopt a resolution establishing the annual special tax within Community Facilities District No. 5 (Freeway Interchange Project) for Fiscal Year 2014-15.

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

**FISCAL IMPACT:** Special tax revenue, required to pay debt service on the District's outstanding bonds, administration and incidental expenses in the coming year, will be generated in the amount of \$706,388.

**BACKGROUND:** On June 6, 1995, the City Council adopted Resolution No. 95-65 establishing the formation of Community Facilities District No. 5, ("District") as shown on the attached location map. Community Facilities District No. 5 was formed to provide funding for the construction of three projects, as follows:

- Improvement of the Milliken Avenue/I-10 Freeway Interchange,
- Improvement of the Fourth Street/I-15 Freeway Interchange, and
- Improvement of Milliken Avenue from the I-10 Freeway to the south side of Guasti Road, including portions of Guasti Road east and west of Milliken Avenue to the entrances of the two truck stops.

These improvements are vital to traffic circulation in the northeastern portion of Ontario, to the Ontario Mills, to the Ontario Center, and to the truck stops south of the I-10 Freeway at Milliken Avenue.

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

Prepared by: Department:	Bob Chandler Management Services	Submitted to Council/O.H.A. Approved:	06/03/2014
City Manager Approval:	AR	Continued to: Denied:	
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On September 12, 1995, upon conclusion of the property owner election, the District received an 82.5% affirmative vote of the property owners in favor of approving the sale of bonds and the levy of an annual special tax to secure the bonded indebtedness. On July 15, 1997, the City Council adopted Resolution No. 97-059, authorizing the issuance of \$12,000,000 in bonds, and Ordinance No. 2639, authorizing the levy of an annual special tax.

Due to the varying levels of benefit received by the properties within the District from the improvements, the District is divided into two tax rate zones identified as Zone A and Zone B. The special tax for the properties within Zone B was prepaid prior to the issuance of bonds; therefore, there is no special tax levy on the properties within Zone B of this District.

The modification of the Fourth Street/I-15 Freeway Interchange was completed in March 1997. The Milliken Avenue and Guasti Road project was completed in January 1999. The modification of the Milliken Avenue/I-10 Freeway Interchange was completed in May 2001. Bond proceeds have been fully expended and the District has no further obligation for funding the improvements.

The adoption of a resolution by the City Council is required annually to establish the special tax rates to be levied, until the bonds mature in 2017. The tax rates required for Fiscal Year 2014-15 are \$1219.71 per Taxable Acre for Zone A, and \$0.00 per Taxable Acre for Zone B, where the property owners have prepaid their tax obligation. The tax rates for Fiscal Year 2013-14 were \$1,399.43 per Taxable Acre for Zone A, and \$0.00 per Taxable Acre for B. This special tax finances the annual debt service, administration and incidental expenses for the bonds issued by the District. The maximum annual special tax that may be levied is \$2,500.00 per Taxable Acre within Zone A.

RESOLUTION NO.

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF ONTARIO, CALIFORNIA, ACTING IN ITS CAPACITY AS THE LEGISLATIVE BODY OF COMMUNITY FACILITIES DISTRICT NO. 5 (FREEWAY INTERCHANGE PROJECT), ESTABLISHING THE ANNUAL SPECIAL TAX FOR FISCAL YEAR 2014-15.

WHEREAS, the City Council of the City of Ontario, California, has initiated proceedings, held a public hearing, conducted an election and received a favorable vote from the qualified electors relating to the levy of a special tax in a community facilities district, all as authorized pursuant to the terms and provisions of the "Mello-Roos Community Facilities Act of 1982," being Chapter 2.5, Part 1, Division 2, Title 5, of the Government Code of the State of California. This Community Facilities District is designated as COMMUNITY FACILITIES DISTRICT NO. 5 (FREEWAY INTERCHANGE PROJECT) (hereinafter referred to as "District"); and

WHEREAS, the City Council did, acting as the legislative body of the District, by the enactment of Ordinance No. 2639 (the "Special Tax Ordinance") as authorized by Section 53340 of the Government Code of the State of California, authorize the levy of a special tax to pay for costs and expenses related to the District, and this legislative body is desirous to establish the specific rates of the special tax to be collected for the specified Fiscal Year.

NOW, THEREFORE, IT IS HEREBY RESOLVED AS FOLLOWS:

<u>SECTION 1.</u> The above recitals are all true and correct.

<u>SECTION 2.</u> That the specific rates and amount of the special tax to be collected to pay for the costs and expenses for the referenced Fiscal Year for the District is hereby determined and established as set forth in the attached referenced and incorporated Exhibit "A."

<u>SECTION 3.</u> That the rates as set forth above do not exceed the amount as previously authorized by Ordinance of this legislative body, and is not in excess of that as previously approved by the qualified electors of the District.

<u>SECTION 4.</u> The City Manager is authorized and directed to file a certified copy of this Resolution, together with a list of all parcels subject to the special tax for the above specified Fiscal Year and the amount of the special tax to be levied against each such parcel, with the County Auditor/Tax Collector of the County of San Bernardino on or before August 10; provided, however, that such may be filed after August 10, but not later than August 21, if the City Manager obtains the prior written consent of such County Auditor/Tax Collector.

<u>SECTION 5.</u> That the proceeds of the special tax shall be used only to pay the following costs and expenses:

- (a) Debt service on all bonds or other indebtedness issued to finance those facilities and incidental expenses authorized to be financed by the District (including the costs of any credit enhancement);
- (b) Costs of those facilities authorized to be financed by the District;
- (c) Costs incurred by the District and the City in the annual levy and collection of the special taxes;
- (d) Administrative costs of the District; and
- (e) Any amounts required to replenish any reserve funds established in association with bonds issued to finance those facilities and incidental expenses authorized to be financed by the District.

<u>SECTION 6.</u> The special tax shall be collected in the same manner as ordinary ad valorem property taxes are collected, and shall be subject to the same penalties and same procedure and sale in cases of any delinquency for ad valorem taxes, and the County Auditor/Tax Collector is hereby authorized to deduct reasonable administrative costs incurred in collecting any said special tax.

<u>SECTION 7.</u> All monies above collected shall be paid into the Community Facilities District No. 5 Fund.

<u>SECTION 8.</u> The County Auditor/Tax Collector is hereby directed to enter in the next County assessment roll on which taxes will become due, opposite each lot or parcel of land affected in a space marked "Ontario C.F.D. No. 5, Special Tax," or by any other suitable designation, the installment of the special tax.

<u>SECTION 9.</u> The County Auditor/Tax Collector shall then, at the close of the tax collection period, promptly render to the District a detailed report showing the amount and/or amounts of such special tax installments, interests, penalties, and percentages so collected and from what property collected, and also provide a statement of any percentages retained for the expense of making any such collection.

<u>SECTION 10.</u> This legislative body hereby certifies that the levy of the special tax was authorized in accordance with the provisions of the Act, and complies with the requirements of Articles XIIIA and XIIIC of the Constitution of the State of California.

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

PASSED, APPROVED, AND ADOPTED this 3<sup>rd</sup> day of June 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 June 3, 2014 by the following roll call vote, to wit:

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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 June 3, 2014.

MARY E. WIRTES, MMC, CITY CLERK

(SEAL)

#### EXHIBIT "A"

#### CITY OF ONTARIO COMMUNITY FACILITIES DISTRICT NO. 5 (FREEWAY INTERCHANGE PROJECT)

#### SPECIAL TAX RATES FOR FISCAL YEAR 2014-15

The Community Facilities District has been divided into two (2) Tax Rate Zones:

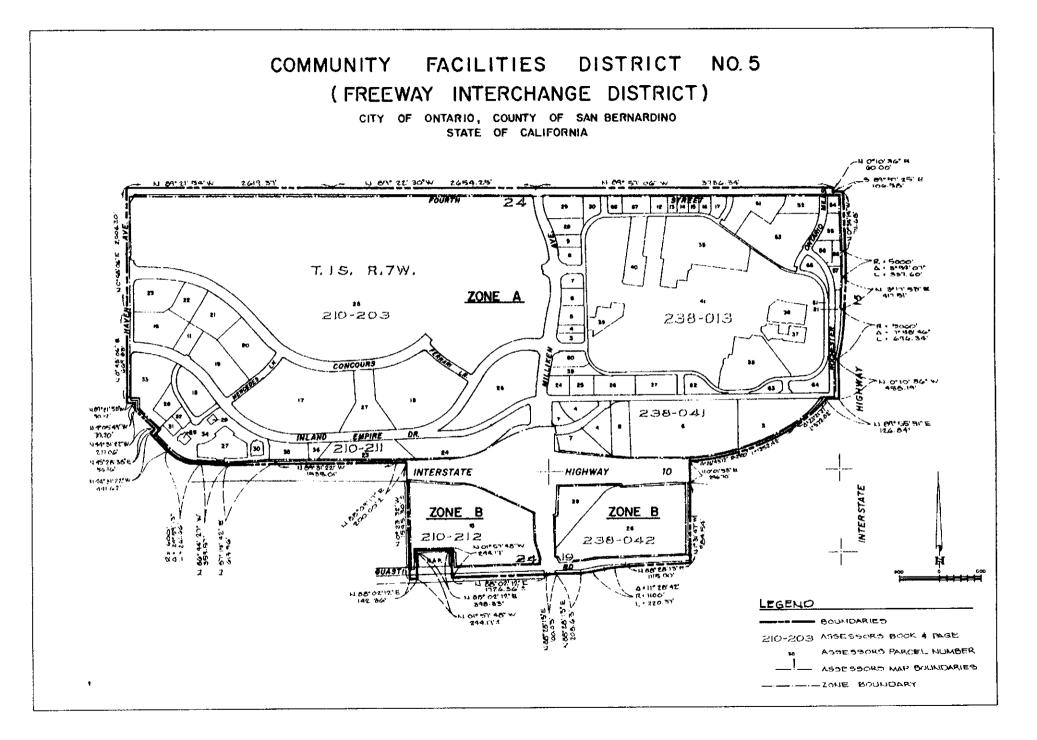
- 1. Zone "A": Properties generally located north of the I-10 freeway, which primarily benefit from the improvement of the Milliken Avenue/I-10 Freeway Interchange, and the improvement of the Fourth Street/I-15 Freeway Interchange.
- 2. Zone "B": Properties generally located south of the I-10 Freeway, which primarily benefit from the improvement of the Milliken Avenue/I-10 Freeway Interchange, and the improvement of Milliken Avenue from the I-10 Freeway to the south side of Guasti Road, and portions of Guasti Road east and west of Milliken Avenue.

The rate of the special tax for each zone is as follows:

Zone "A":	\$1,2	19.71 per Taxable Acre
Zone "B":	\$	0.00 per Taxable Acre

For the purpose of calculating the special tax, "Taxable Acre" shall be as defined in Ordinance No. 2639, which authorizes the levy of the special tax.

The above rates are based on the amount required to pay debt service on the outstanding bonds, together with any adjustments required, as authorized by ordinance. Data used in the calculation of the rates relative to parcel acreage and taxable status may change prior to issuance of the tax bills by the County. If changes do occur, the amount levied upon each property shall be adjusted.



Agenda Report June 3, 2014

## SECTION: CONSENT CALENDAR

#### SUBJECT: A RESOLUTION ESTABLISHING THE ANNUAL SPECIAL TAX WITHIN COMMUNITY FACILITIES DISTRICT NO. 9 FOR FISCAL YEAR 2014-15

**RECOMMENDATION:** That the City Council adopt a resolution establishing the annual special tax within Community Facilities District No. 9 (Edenglen) for Fiscal Year 2014-15.

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

**FISCAL IMPACT:** Special tax revenue will be generated in the amount of \$513,939 to fund City services, administration and incidental expenses.

**BACKGROUND:** On March 20, 2007, the City Council, in accordance with the Mello-Roos Act, took the initial steps in the formation of Community Facilities District No. 9 ("District") with the adoption of Resolution No. 2007-036, declaring the City's intention to establish the District and to authorize the levy of special taxes, and Resolution No. 2007-037, to issue bonds for the District. On May 1, 2007, the City Council adopted Resolution No. 2007-056 establishing the formation of the District.

Upon a successful property owner election, the City Council adopted Ordinance No. 2860 on May 15, 2007, authorizing the levy of special taxes for the District to finance facilities (Special Tax A) and to fund City services (Special Tax B). Due to the downturn in the housing market, Edenglen Ontario LLC, the developer, retracted its request for bond financing of facilities. On October 16, 2007, the City Council adopted Resolution No. 2007-120 determining that Special Tax A for facilities cease to be levied. Special Tax B for City services remains in full force and effect.

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

Prepared by: Department:	Bob Chandler Management Services	Submitted to Council/O.H.A. Approved:	D6032014
City Manager	110 0	Continued to: Denied:	
Approval:	Altop	-	17

The District, as shown in the attached boundary map, is within the westerly portion of the Edenglen Specific Plan development within the New Model Colony. The Edenglen Specific Plan addresses the development of approximately 160 acres and is generally located on the south side of Riverside Drive, north of Chino Avenue, west of Milliken Avenue and east of Mill Creek Avenue. The residential portion of the development, which comprises the District, is approximately 80 acres and will consist of 310 single family units and 274 multi-family units at build-out.

Special Tax B is levied each fiscal year to fund authorized services and administrative expenses associated with administering the District. The authorized services to be funded from special taxes are police protection services, fire protection and suppression services, ambulance and paramedic services, maintenance of parks, parkways and open space and flood and storm protection services. To date, for Fiscal Year 2013-14, the current fiscal year, special tax collections and expenses for the District are \$482,542 and \$482,240, respectively.

The adoption of a resolution by the City Council is required annually to establish the special tax rates to be levied. Fiscal Year 2008-09 was the first year that this special tax was levied. Pursuant to the Rate and Method of Apportionment of Special Tax, as approved by the property owners, beginning on July 1, 2010, and annually thereafter, the maximum annual tax rates shall be increased by an amount equal to 2% of the amount in effect the previous Fiscal Year. The Fiscal Year 2013-14 tax rates and the maximum and proposed annual tax rates for Fiscal Year 2014-15 are as follows:

	Annual Tax Rates									
Land Use Class	Land Use	Tax Zone		)13-14 Fax Rates		)14-15 Fax Rates	FY 201 Maximum		No. of Units or SF	Totals
1-11	Residential	1	\$1,342.22	per Unit	\$1,369.06	per Unit	\$1,369.06	per Unit	218	\$298,455.08
13-21	Residential	2	\$1,051.04	per Unit	\$1,072.06	per Unit	\$1,072.06	per Unit	201	\$215,484.06
12 or 22	Non-Residential	N/A	\$ 0.2598	per SF	\$ 0.2650	per SF	\$ 0.2650	per SF	0 _	\$

#### Total Annual Tax \$513,939.14

RESOLUTION NO.

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF ONTARIO, CALIFORNIA, ACTING IN ITS CAPACITY AS THE LEGISLATIVE BODY OF COMMUNITY FACILITIES DISTRICT NO. 9 (EDENGLEN), ESTABLISHING THE ANNUAL SPECIAL TAX FOR FISCAL YEAR 2014-15.

WHEREAS, the City Council of the City of Ontario, California, has initiated proceedings, held a public hearing, conducted an election and received a favorable vote from the qualified electors relating to the levy of a special tax in a community facilities district, all as authorized pursuant to the terms and provisions of the "Mello-Roos Community Facilities Act of 1982," being Chapter 2.5, Part 1, Division 2, Title 5, of the Government Code of the State of California. This Community Facilities District is designated as City of Ontario Community Facilities District No. 9 (Edenglen) (hereinafter referred to as "District"); and

WHEREAS, the City Council did, acting as the legislative body of the District, by the enactment of Ordinance No. 2860 (the "Special Tax Ordinance") as authorized by Section 53340 of the Government Code of the State of California, authorize the levy of a special tax to pay for costs and expenses related to the District, and this legislative body is desirous to establish the specific rates of the special tax to be collected for the specified Fiscal Year.

NOW, THEREFORE, IT IS HEREBY RESOLVED AS FOLLOWS:

<u>SECTION 1.</u> The above recitals are all true and correct.

<u>SECTION 2.</u> That the specific rates and amount of the special tax to be collected to pay for the costs and expenses for the referenced Fiscal Year for the District is hereby determined and established as set forth in the attached referenced and incorporated Exhibit "A."

<u>SECTION 3.</u> That the rates as set forth above does not exceed the amount as previously authorized by the Special Tax Ordinance of this legislative body, and is not in excess of that as previously approved by the qualified electors of the District.

<u>SECTION 4.</u> The City Manager is authorized and directed to file a certified copy of this Resolution, together with a list of all parcels subject to the special tax for the above specified Fiscal Year and the amount of the special tax to be levied against each such parcel, with the County Auditor/Tax Collector of the County of San Bernardino on or before August 10; provided, however, that such may be filed after August 10, but not later than August 21, if the City Manager obtains the prior written consent of such County Auditor/Tax Collector.

<u>SECTION 5.</u> That the proceeds of the special tax shall be used only to pay the following costs and expenses:

- (a) Costs of those services authorized to be financed by the District;
- (b) Costs incurred by the District and the City in the annual levy and collection of the special taxes;
- (c) Administrative costs of the District; and
- (d) Any incidental expenses authorized to be financed by the District.

<u>SECTION 6.</u> The special tax shall be collected in the same manner as ordinary ad valorem property taxes are collected, and shall be subject to the same penalties and same procedure and sale in cases of any delinquency for ad valorem taxes, and the County Auditor/Tax Collector is hereby authorized to deduct reasonable administrative costs incurred in collecting any said special tax.

<u>SECTION 7.</u> All monies above collected shall be paid into the Community Facilities District No. 9 Fund.

<u>SECTION 8.</u> The County Auditor/Tax Collector is hereby directed to enter in the next County assessment roll on which taxes will become due, opposite each lot or parcel of land affected in a space marked "Ontario C.F.D. No. 9 Special Tax," or by any other suitable designation, the installment of the special tax.

<u>SECTION 9.</u> The County Auditor/Tax Collector shall then, at the close of the tax collection period, promptly render to the District a detailed report showing the amount and/or amounts of such special tax installments, interests, penalties, and percentages so collected and from what property collected, and also provide a statement of any percentages retained for the expense of making any such collection.

<u>SECTION 10.</u> This legislative body hereby certifies that the levy of the special tax was authorized in accordance with the provisions of the Act, and complies with the requirements of Articles XIIIA and XIIIC of the Constitution of the State of California.

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

PASSED, APPROVED, AND ADOPTED this 3<sup>rd</sup> day of June 2014.

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 June 3, 2014 by the following roll call vote, to wit:

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)

)

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 June 3, 2014.

MARY E. WIRTES, MMC, CITY CLERK

(SEAL)

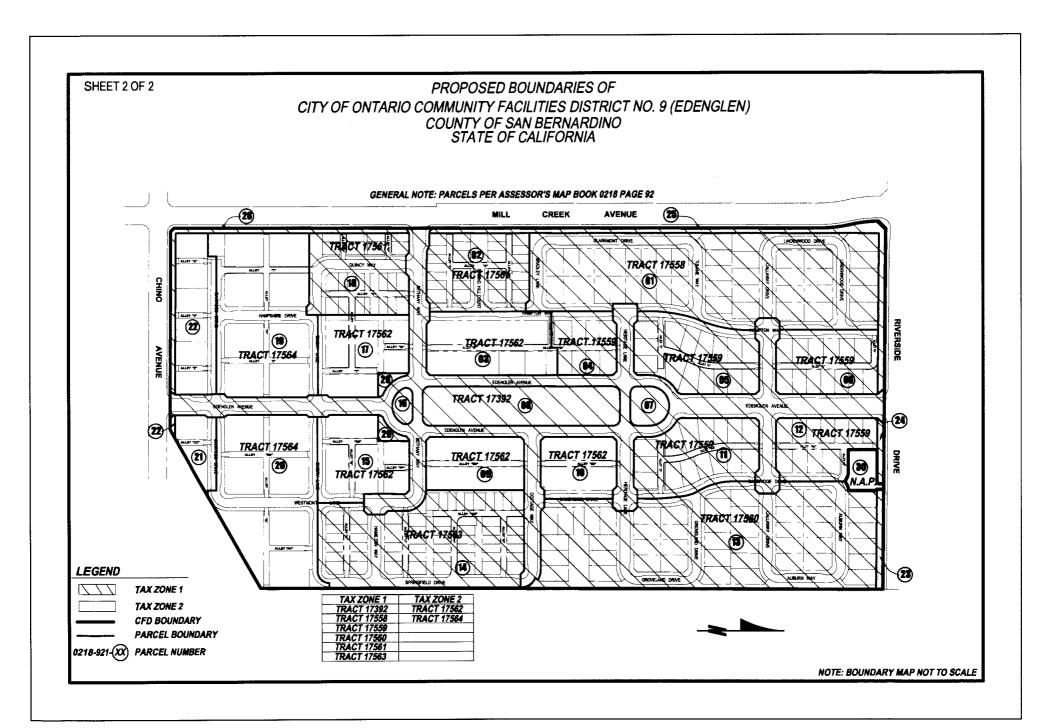
#### EXHIBIT "A"

#### CITY OF ONTARIO COMMUNITY FACILITIES DISTRICT NO. 9 (EDENGLEN)

#### SPECIAL TAX RATES FOR FISCAL YEAR 2014-15

Land Use Class	Land Use	Tax Zone	Annual Tax Rates
1-11	Residential	1	\$1,369.06 per Unit
13-21	Residential	2	\$1,072.06 per Unit
12 or 22	Non-Residential	N/A	\$0.2650 per SF

'N/A' means not applicable. 'SF' means Square Footage and 'Unit' means residential dwelling unit, as defined in the Rate and Method of Apportionment of Special Tax for the District.



Agenda Report June 3, 2014

### SECTION: CONSENT CALENDAR

### SUBJECT: A RESOLUTION ESTABLISHING THE ANNUAL SPECIAL TAX WITHIN COMMUNITY FACILITIES DISTRICT NO. 10 FOR FISCAL YEAR 2014-15

**RECOMMENDATION:** That the City Council adopt a resolution establishing the annual special tax within Community Facilities District No. 10 (Ontario Airport Towers) for Fiscal Year 2014-15.

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

**FISCAL IMPACT:** Special tax revenue will be generated in the amount of \$10,576 to fund City services, administration and incidental expenses.

**BACKGROUND:** On June 5, 2007, the City Council, in accordance with the Mello-Roos Act, took the initial steps in the formation of Community Facilities District No. 10 ("District") with the adoption of Resolution No. 2007-066, declaring the City's intention to establish the District and to authorize the levy of a special tax, and Resolution No. 2007-067, to issue bonds for the District. On July 17, 2007, the City Council adopted Resolution No. 2007-093 establishing formation of the District. Upon a successful property owner election, on August 21, 2007, the City Council adopted Ordinance No. 2871, authorizing the levy of a special tax for the District to finance facilities, City services, administration and incidental expenses related to the Ontario Airport Towers project. The District boundaries are shown on the attached boundary map.

Subsequent to the initial proceedings forming the District, authorizing the issuance of bonds and the levy of the special tax, the City Council conducted several additional proceedings relating to amending the rate and method of apportionment of the special tax, reauthorizing the issuance of bonds, and reauthorizing the levy of the special tax. On March 17, 2009, the City Council adopted Ordinance No. 2902 which authorized the levy of a special tax pursuant to the last amended rate and method of

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

	Bob Chandler Management Services	Submitted to Council/O.H.A. Approved:	06/03/2014
City Manager Approval:	Met	Continued to: Denied:	
			18

apportionment of the special tax. Ordinance No. 2902 also rescinded the previously adopted special tax ordinances.

The public infrastructure facilities required for the development of the Ontario Airport Towers project were originally planned to be financed with the issuance of bonds by the District. However, due to the economic downturn, the planned issuance of bonds was abandoned. The special tax for City services remains in full force and effect.

The Ontario Airport Towers project addresses the development of approximately 25 acres and is generally located on the south side of Interstate 10 Freeway, north of Guasti Road, east of Archibald Avenue and west of Turner Avenue. The project is planned for development in 5 phases: 850,000 square feet of Class A office space (five buildings), 10,000 square feet of retail space, and a 175 room hotel.

The special tax for City services is levied each fiscal year to fund services and administrative expenses as follows: police protection services, fire protection and rescue services and parkway and open space maintenance services; and all costs related to financing and administering the services, the determination of the amount of special taxes to be levied and costs otherwise incurred in order to carry out the authorized purposes of the District and administering the District. Special tax collections and expenses for the District were \$10,166 and \$10,167 respectively, during Fiscal Year 2012-2013, which is the most recent fiscal year ended.

The adoption of a resolution by the City Council is required annually to establish the special tax rate to be levied. Fiscal Year 2008-09 was the first year that the special tax for City Services was levied. Pursuant to the Rate and Method of Apportionment of Special Tax that was approved by the property owners, beginning on July 1, 2008, and annually thereafter, the maximum annual Services Special tax rate shall be increased by an amount equal to the greater of (i) the increase, if any, in the Consumer Price Index for the Los Angeles-Riverside-Orange County Area for All Urban Consumers, or (ii) 2% of the amount in effect the previous Fiscal Year. The special tax rate for Fiscal Year 2013-14 was \$546.57 per acre. The proposed tax rate for Fiscal Year 2014-15 is \$557.50 per acre, which represents a 2.0% increase over the previous Fiscal Year.

RESOLUTION NO.

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF ONTARIO, CALIFORNIA, ACTING IN ITS CAPACITY AS THE LEGISLATIVE BODY OF COMMUNITY FACILITIES DISTRICT NO. 10 (ONTARIO AIRPORT TOWERS), ESTABLISHING THE ANNUAL SERVICES SPECIAL TAX FOR FISCAL YEAR 2014-15.

WHEREAS, the City Council of the City of Ontario, California, has initiated proceedings, held a public hearing, conducted an election and received a favorable vote from the qualified electors relating to the levy of a special tax in a community facilities district, all as authorized pursuant to the terms and provisions of the "Mello-Roos Community Facilities Act of 1982," being Chapter 2.5, Part 1, Division 2, Title 5, of the Government Code of the State of California. This Community Facilities District is designated as "COMMUNITY FACILITIES DISTRICT NO. 10 OF THE CITY OF ONTARIO (ONTARIO AIRPORT TOWERS)" (hereinafter referred to as "District" or "Community Facilities District No. 10"); and

WHEREAS, the City Council did, acting as the legislative body of the District, by the enactment of Ordinance No. 2902 (the "Special Tax Ordinance") as authorized by Section 53340 of the Government Code of the State of California, authorize the levy of a services special tax (the "Services Special Tax") and a facilities special tax (the "Facilities Special Tax") to pay for costs and expenses related to the District, and this legislative body is desirous to establish the specific rate of the Services Special Tax to be collected for the specified Fiscal Year.

NOW, THEREFORE, IT IS HEREBY RESOLVED AS FOLLOWS:

SECTION 1. The above recitals are all true and correct.

<u>SECTION 2.</u> That the specific rate and amount of the Services Special Tax to be collected to pay for the Services (as defined in Section 5 below) and Services Incidental Expenses (as defined in Section 5 below) for the referenced Fiscal Year for the District is hereby determined and established as set forth in the attached referenced and incorporated Exhibit "A."

<u>SECTION 3.</u> That the rate as set forth above does not exceed the amount as previously authorized by Ordinance of this legislative body, and is not in excess of that as previously approved by the qualified electors of the District.

<u>SECTION 4.</u> The City Manager is authorized and directed to file a certified copy of this Resolution together with a list of all parcels subject to the Services Special Tax for the above specified Fiscal Year and the amount of the special tax to be levied against each such parcel, with the County Auditor/Tax Collector of the County of San Bernardino on or before August 10; provided, however, that such may be filed after August 10, but not later than August 21, if the City Manager obtains the prior written consent of such County Auditor/Tax Collector.

<u>SECTION 5.</u> That the proceeds of the special tax shall be used only to pay the following costs and expenses:

- (a) police protection services, fire protection and rescue services and parkway and open space maintenance services (the "Services"); and
- (b) all costs related to financing and administering the Services, the determination of the amount of special taxes to be levied and costs otherwise incurred in order to carry out the authorized purposes of the District and administering the District (the "Services Incidental Expenses").

<u>SECTION 6.</u> The Services Special Tax shall be collected in the same manner as ordinary ad valorem property taxes are collected, and shall be subject to the same penalties and same procedure and sale in cases of any delinquency for ad valorem taxes, and the County Auditor/Tax Collector is hereby authorized to deduct reasonable administrative costs incurred in collecting any said Services Special Tax.

<u>SECTION 7.</u> The County Auditor/Tax Collector is hereby directed to enter in the next County assessment roll on which taxes will become due, opposite each lot or parcel of land affected in a space marked "Ontario C.F.D. No. 10 Special Tax," or by any other suitable designation, the installment of the Services Special Tax.

<u>SECTION 8.</u> The County Auditor/Tax Collector shall then, at the close of the tax collection period, promptly render to the District a detailed report showing the amount and/or amounts of such Services Special Tax installments, interests, penalties, and percentages so collected and from what property collected, and also provide a statement of any percentages retained for the expense of making any such collection.

<u>SECTION 9.</u> This legislative body hereby certifies that the levy of the Services Special Tax was authorized in accordance with the provisions of the Act, and complies with the requirements of Articles XIIIA and XIIIC of the Constitution of the State of California.

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

PASSED, APPROVED, AND ADOPTED this 3<sup>rd</sup> day of June 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 June 3, 2014 by the following roll call vote, to wit:

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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 June 3, 2014.

MARY E. WIRTES, MMC, CITY CLERK

(SEAL)

#### EXHIBIT "A"

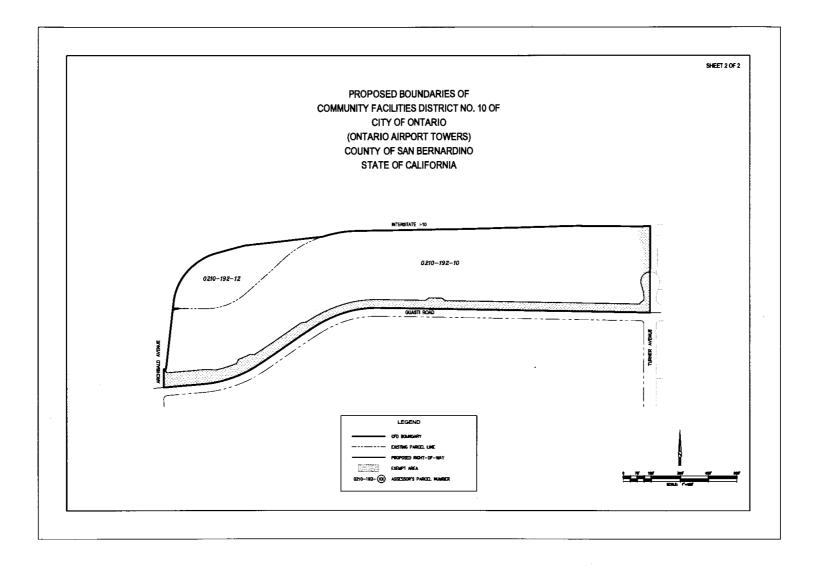
#### CITY OF ONTARIO COMMUNITY FACILITIES DISTRICT NO. 10 (ONTARIO AIRPORT TOWERS)

#### SERVICES SPECIAL TAX RATE FOR FISCAL YEAR 2014-15

All Assessor's Parcels of Taxable Property within Community Facilities District No. 10 shall be taxed at the following special tax rate pursuant to the Rate and Method of Apportionment of Special tax, as amended:

FY 2014-15 Special Tax Rate: \$557.50 per Acre

Assessor's Parcel, Acre and Taxable Property shall all have the meanings as defined in the Rate and Method of Apportionment of Special tax, as amended.



# CITY OF ONTARIO

Agenda Report June 3, 2014

# SECTION: CONSENT CALENDAR

#### SUBJECT: A RESOLUTION ESTABLISHING THE ANNUAL SPECIAL TAX WITHIN COMMUNITY FACILITIES DISTRICT NO. 13 FOR FISCAL YEAR 2014-15

**RECOMMENDATION:** That the City Council adopt a resolution establishing the annual special tax within Community Facilities District No. 13 (California Commerce Center-Phase IV) for Fiscal Year 2014-15.

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

Operate in a Businesslike Manner

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

**FISCAL IMPACT:** Special tax revenue, required to pay the debt service on the District's outstanding bonds, administration and incidental expenses, will be generated in the amount of \$382,675.

**BACKGROUND:** On April 1, 2008, the City Council, in accordance with the Mello-Roos Act, took the initial steps in the formation of Community Facilities District No. 13 ("District") with the adoption of Resolution No. 2008-018, declaring the City's intention to establish the District and to authorize the levy of special taxes, and Resolution No. 2008-019, to issue bonds for the District. On May 6, 2008, the City Council adopted Resolution No. 2008-032 establishing the formation of the District. The District is located along the south side of Francis Street, between Haven and Milliken Avenues, as shown on the attached boundary map.

Upon a successful property owner election, the City Council adopted Ordinance No. 2893 on June 3, 2008, authorizing the levy of special taxes for the District to finance facilities, administration and incidental expenses. The facilities are public infrastructure facilities required for the development of the California Commerce Center – Phase IV, which was developed by SR Acquisition Corporation,

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

	Bob Chandler Management Services	Submitted to Coun Approved:	cil/O.H.A.	06032014
City Manager	Math	Continued to: Denied:		
Approval:	ACC			19

LLC and Ontario Industrial, LLC (affiliates of the SARES REGIS Group and J.P. Morgan). The facilities include street improvements and utility connections on Francis Street between Haven Avenue and Dupont Street, and the installation of new storm drain facilities to tie into the existing Lower Deer Creek storm drain system.

The California Commerce Center - Phase IV project addresses the development of approximately 100 acres and is generally located on the south side of Francis Street, east of Haven Avenue and west of Milliken Avenue. SR Acquisition Corporation, LLC and Ontario Industrial, LLC developed 6 parcels of warehouse industrial buildings comprising approximately 1.94 million square feet of floor space, and one parcel of commercial retail building(s) totaling approximately 20,000 square feet of floor space.

The public infrastructure facilities authorized to be funded by the special tax were fully completed by the developer and accepted by the City in January 2009. Bond proceeds have been fully expended and the District has no further obligation for funding of the facilities. To date, for Fiscal Year 2013-14, the current fiscal year, special tax collections and expenses for the District are \$381,578 and \$342,938, respectively.

The adoption of a resolution by the City Council is required annually to establish the special tax rates to be levied, until the bonds mature in 2038. Fiscal Year 2008-09 was the first year that the special tax was levied. The proposed annual tax rates for Fiscal Year 2014-15 are as follows:

Land Use Class	Description			Maximum Tax Rate Annual Tax Rates		roposed	Totals		
1	Industrial	1,936,142	Bldg. SF	\$ 0.2111	per SF	\$	0.1923	per SF	\$372,419.55
2	Commercial	2.05	Acres	\$11,275.00	Per Parcel		),255.70 otal Ann	per Parcel ual Tax	\$ 10,255.70 \$382,675.25

# Tax Levy Fiscal Year 2014-15

RESOLUTION NO.

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF ONTARIO, CALIFORNIA, ACTING IN ITS CAPACITY AS THE LEGISLATIVE BODY OF COMMUNITY FACILITIES DISTRICT NO. 13 (CALIFORNIA COMMERCE CENTER – PHASE IV), ESTABLISHING THE ANNUAL SPECIAL TAX FOR FISCAL YEAR 2014-15.

WHEREAS, the City Council of the City of Ontario, California, has initiated proceedings, held a public hearing, conducted an election and received a favorable vote from the qualified electors relating to the levy of a special tax in a community facilities district, all as authorized pursuant to the terms and provisions of the "Mello-Roos Community Facilities Act of 1982" (the "Act"), being Chapter 2.5, Part 1, Division 2, Title 5, of the Government Code of the State of California. This Community Facilities District is designated as "COMMUNITY FACILITIES DISTRICT NO. 13 OF THE CITY OF ONTARIO (CALIFORNIA COMMERCE CENTER – PHASE IV)" (hereinafter referred to as "District" or "Community Facilities District No. 13"); and

WHEREAS, the City Council did, acting as the legislative body of the District, by the enactment of Ordinance No. 2893 (the "Special Tax Ordinance") as authorized by Section 53340 of the Government Code of the State of California, authorize the levy of a special tax to pay for costs and expenses related to the District, and this legislative body is desirous to establish the specific rates of the special tax to be collected for the specified Fiscal Year.

NOW, THEREFORE, IT IS HEREBY RESOLVED AS FOLLOWS:

SECTION 1. The above recitals are all true and correct.

<u>SECTION 2.</u> That the specific rates and amount of the special tax to be collected to pay for the costs and expenses for the referenced Fiscal Year for the District is hereby determined and established as set forth in the attached referenced and incorporated Exhibit "A."

<u>SECTION 3.</u> That the rates as set forth above do not exceed the amount as previously authorized by Ordinance of this legislative body, and is not in excess of that as previously approved by the qualified electors of the District.

<u>SECTION 4.</u> The City Manager is authorized and directed to file a certified copy of this Resolution together with a list of all parcels subject to the special tax for the above specified Fiscal Year and the amount of the special tax to be levied against each such parcel, with the County Auditor/Tax Collector of the County of San Bernardino on or before August 10; provided, however, that such may be filed after August 10, but not later than August 21, if the City Manager obtains the prior written consent of such County Auditor/Tax Collector.

<u>SECTION 5.</u> That the proceeds of the special tax shall be used only to pay the following costs and expenses:

- (a) Debt service on all bonds or other indebtedness issued to finance those facilities and incidental expenses authorized to be financed by the District (including the costs of any credit enhancement);
- (b) Costs of those facilities authorized to be financed by the District;
- (c) Costs incurred by the District and the City in the annual levy and collection of the special taxes;
- (d) Administrative costs of the District; and
- (e) Any amounts required to replenish any reserve funds established in association with bonds issued to finance those facilities and incidental expenses authorized to be financed by the District.

<u>SECTION 6.</u> The special tax shall be collected in the same manner as ordinary ad valorem property taxes are collected, and shall be subject to the same penalties and same procedure and sale in cases of any delinquency for ad valorem taxes, and the County Auditor/Tax Collector is hereby authorized to deduct reasonable administrative costs incurred in collecting any said special tax.

<u>SECTION 7.</u> All monies above collected shall be paid into a Special Tax Fund created and established in connection with the issuance of bonds by the District.

<u>SECTION 8.</u> The County Auditor/Tax Collector is hereby directed to enter in the next County assessment roll on which taxes will become due, opposite each lot or parcel of land affected in a space marked "Ontario C.F.D. No. 13 Special Tax," or by any other suitable designation, the installment of the special tax.

<u>SECTION 9.</u> The County Auditor/Tax Collector shall then, at the close of the tax collection period, promptly render to the District a detailed report showing the amount and/or amounts of such special tax installments, interests, penalties, and percentages so collected and from what property collected, and also provide a statement of any percentages retained for the expense of making any such collection.

<u>SECTION 10.</u> This legislative body hereby certifies that the levy of the special tax was authorized in accordance with the provisions of the Act, and complies with the requirements of Articles XIIIA and XIIIC of the Constitution of the State of California.

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

PASSED, APPROVED, AND ADOPTED this 3<sup>rd</sup> day of June 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 June 3, 2014 by the following roll call vote, to wit:

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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 June 3, 2014.

MARY E. WIRTES, MMC, CITY CLERK

(SEAL)

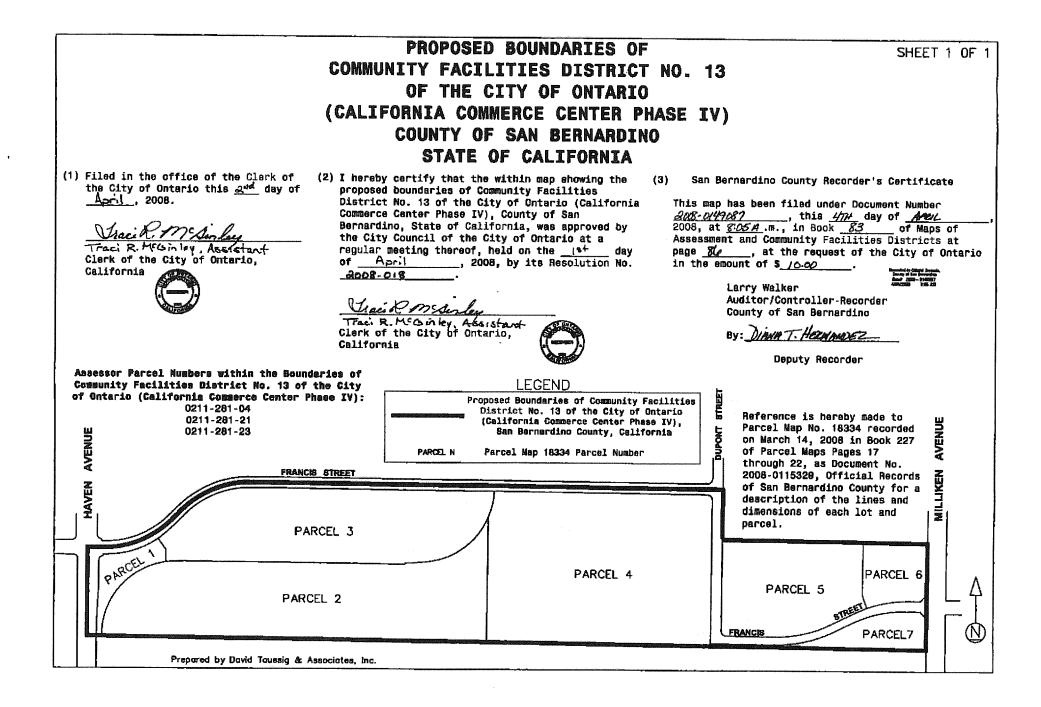
#### EXHIBIT "A"

#### CITY OF ONTARIO COMMUNITY FACILITIES DISTRICT NO. 13 (CALIFORNIA COMMERCE CENTER – PHASE IV)

#### SPECIAL TAX RATES FOR FISCAL YEAR 2014-15

Land use Class	Description	Annual Tax Rates
1	Industrial	\$0.1923 per SF
2	Commercial	\$10,255.70 per Parcel

"SF" means Square Footage as defined in the Rate and Method of Apportionment of Special Tax for the District.



# CITY OF ONTARIO

Agenda Report June 3, 2014

# SECTION: CONSENT CALENDAR

#### SUBJECT: A RESOLUTION ESTABLISHING THE ANNUAL SPECIAL TAX WITHIN COMMUNITY FACILITIES DISTRICT NO. 20 FOR FISCAL YEAR 2014-15

**RECOMMENDATION:** That the City Council adopt a resolution establishing the annual special tax within Community Facilities District No. 20 (Wal-mart) for Fiscal Year 2014-15.

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

**FISCAL IMPACT:** Special tax revenue will be generated in the amount of \$25,160 to fund City services, administration and incidental expenses.

**BACKGROUND:** On June 4, 2013, the City Council, in accordance with the Mello-Roos Act, took the initial steps in the formation of Community Facilities District No. 20 ("District") with the adoption of Resolution No. 2013-035, declaring the City's intention to establish the District and to authorize the levy of special taxes. On July 16, 2013, the City Council adopted Resolution No. 2013-082 establishing the formation of the District. Upon a successful property owner election, the City Council adopted Ordinance No. 2963 on August 20, 2013, authorizing the levy of special taxes for the District to finance City services, administration and incidential expenses related to the Community Facilities District.

The District, as shown in the attached boundary map, addresses the commercial development of approximately 16.29 acres located on the west side of Mountain Avenue, south of Sixth Street, and north of Fifth Street.

As adopted, the special tax for City services is to be levied each fiscal year, beginning in Fiscal Year 2014-15, to fund City services and related administrative and incidental expenses. The project addresses the commercial development of approximately 16.29 acres located on the west side of Mountain

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

Prepared by: Department:	Bob Chandler Management Services	Submitted to Council/O.H.A. Approved:	06/03/2014
City Manager	MRD	Continued to: Denied:	
Approval:	still		20
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Avenue, south of Sixth Street and north of Fifth Street. The services authorized to be financed, in whole or in part, by Community Facilities District No. 20 of the City of Ontario are as follows: (1) the operation and maintenance of the public street lighting facilities and appurtenances that serve the property and whose installation is identified as part of the project and (2) the maintenance and servicing of the landscaping and appurtenant improvements of the raised, landscaped median to be constructed by the landowner on Mountain Avenue between Fifth Street and Sixth Street.

The adoption of a resolution by the City Council is required annually to establish the special tax rates to be levied. As noted, Fiscal Year 2014-2015 is the first year that this special tax will be levied. Pursuant to the Rate and Method of Apportionment of Special Tax, as approved by the property owners, beginning on April 1, 2014, and annually thereafter, the maximum annual tax rates shall be increased by the greater of Consumer Price Index for All Urban Consumers in the Los Angeles-Riverside-Orange County area or the Southern California Edison LS-2 rate. The maximum and proposed annual tax rates for Fiscal Year 2014-15 is \$1,544.52 per acre.

RESOLUTION NO.

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF ONTARIO, CALIFORNIA, ACTING IN ITS CAPACITY AS THE LEGISLATIVE BODY OF COMMUNITY FACILITIES DISTRICT NO. 20 (WAL-MART), ESTABLISHING THE ANNUAL SERVICES SPECIAL TAX FOR FISCAL YEAR 2014-15.

WHEREAS, the City Council of the City of Ontario, California, has initiated proceedings, held a public hearing, conducted an election and received a favorable vote from the qualified electors relating to the levy of a special tax in a community facilities district, all as authorized pursuant to the terms and provisions of the "Mello-Roos Community Facilities Act of 1982," being Chapter 2.5, Part 1, Division 2, Title 5, of the Government Code of the State of California. This Community Facilities District is designated as "COMMUNITY FACILITIES DISTRICT NO. 20 OF THE CITY OF ONTARIO (WAL-MART)" (hereinafter referred to as "District" or "Community Facilities District No. 20"); and

WHEREAS, the City Council did, acting as the legislative body of the District, by the enactment of Ordinance No. 2963 (the "Special Tax Ordinance") as authorized by Section 53340 of the Government Code of the State of California, authorize the levy of a services special tax (the "Services Special Tax") and a facilities special tax (the "Facilities Special Tax") to pay for costs and expenses related to the District, and this legislative body is desirous to establish the specific rate of the Services Special Tax to be collected for the specified Fiscal Year.

NOW, THEREFORE, IT IS HEREBY RESOLVED AS FOLLOWS:

SECTION 1. The above recitals are all true and correct.

SECTION 2. That the specific rate and amount of the Services Special Tax to be collected to pay for the Services (as defined in Section 5 below) and Services Incidental Expenses (as defined in Section 5 below) for the referenced Fiscal Year for the District is hereby determined and established as set forth in the attached referenced and incorporated Exhibit "A."

<u>SECTION 3.</u> That the rate as set forth above does not exceed the amount as previously authorized by Ordinance of this legislative body, and is not in excess of that as previously approved by the qualified electors of the District.

<u>SECTION 4.</u> The City Manager is authorized and directed to file a certified copy of this Resolution together with a list of all parcels subject to the Services Special Tax for the above specified Fiscal Year and the amount of the special tax to be levied against each such parcel, with the County Auditor/Tax Collector of the County of San Bernardino on or before August 10; provided, however, that such may be filed after August 10, but not later than August 21, if the City Manager obtains the prior written consent of such County Auditor/Tax Collector.

<u>SECTION 5.</u> That the proceeds of the special tax shall be used only to pay the following costs and expenses:

- (a) police protection services, fire protection and rescue services and parkway and open space maintenance services (the "Services"); and
- (b) all costs related to financing and administering the Services, the determination of the amount of special taxes to be levied and costs otherwise incurred in order to carry out the authorized purposes of the District and administering the District (the "Services Incidental Expenses").

<u>SECTION 6.</u> The Services Special Tax shall be collected in the same manner as ordinary ad valorem property taxes are collected, and shall be subject to the same penalties and same procedure and sale in cases of any delinquency for ad valorem taxes, and the County Auditor/Tax Collector is hereby authorized to deduct reasonable administrative costs incurred in collecting any said Services Special Tax.

<u>SECTION 7.</u> The County Auditor/Tax Collector is hereby directed to enter in the next County assessment roll on which taxes will become due, opposite each lot or parcel of land affected in a space marked "Ontario C.F.D. No. 20 Special Tax," or by any other suitable designation, the installment of the Services Special Tax.

<u>SECTION 8.</u> The County Auditor/Tax Collector shall then, at the close of the tax collection period, promptly render to the District a detailed report showing the amount and/or amounts of such Services Special Tax installments, interests, penalties, and percentages so collected and from what property collected, and also provide a statement of any percentages retained for the expense of making any such collection.

<u>SECTION 9.</u> This legislative body hereby certifies that the levy of the Services Special Tax was authorized in accordance with the provisions of the Act, and complies with the requirements of Articles XIIIA and XIIIC of the Constitution of the State of California.

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

PASSED, APPROVED, AND ADOPTED this 3<sup>rd</sup> day of June 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 June 3, 2014 by the following roll call vote, to wit:

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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 June 3, 2014.

MARY E. WIRTES, MMC, CITY CLERK

(SEAL)

#### EXHIBIT "A"

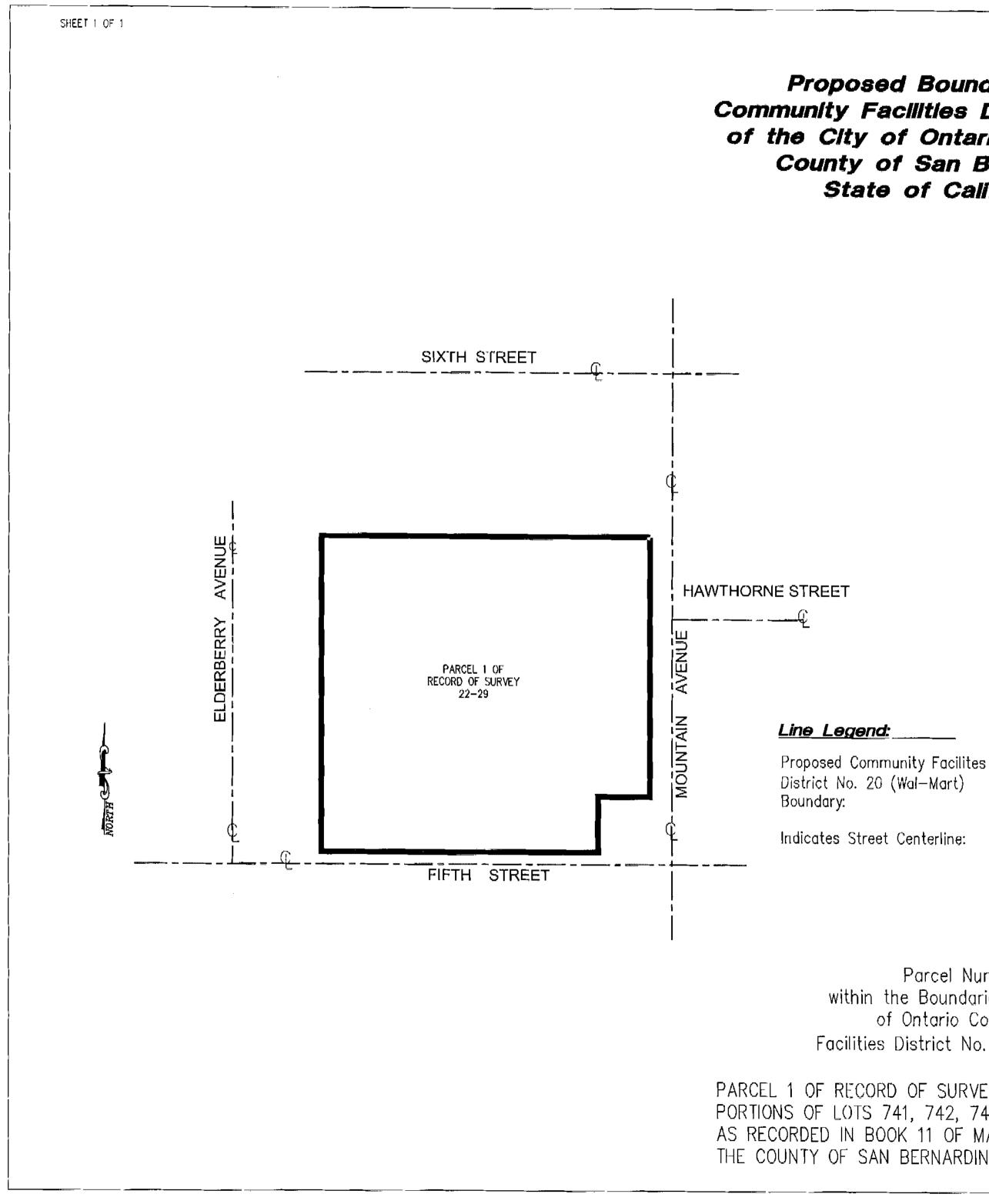
#### CITY OF ONTARIO COMMUNITY FACILITIES DISTRICT NO. 20 (WAL-MART)

#### SERVICES SPECIAL TAX RATE FOR FISCAL YEAR 2014-15

All Assessor's Parcels of Taxable Property within Community Facilities District No. 20 shall be taxed at the following special tax rate pursuant to the Rate and Method of Apportionment of Special tax, as amended:

FY 2014-15 Special Tax Rate: \$1,544.52 per Acre

Assessor's Parcel, Acre and Taxable Property shall all have the meanings as defined in the Rate and Method of Apportionment of Special tax, as amended.



Proposed Boundaries of Community Facilities District No. 20 of the City of Ontario (Wal-Mart) County of San Bernardino State of California

Filed in the office of the Clerk of the City of Ontario this 4th day of June 2012.

Assistant C Clerk of the City of Ontario

I hearby certify that the within map showing the proposed boundaries of Community Facilities District No. 20 of the City of Ontario (Wal-Mart), County of San Bernardino, State of California, was approved by the City Council of the City of Ontario at a regular meeting thereof, held on the <u>415</u> day of <u>June</u>, 2012, 2013, by its Resolution No. <u>2013-035</u>

Assistant ( Clerk of the City of Ontario

San Bernardino County Recorder's Certificate

This map has been filed under Document Number <u>2013 0265512</u>, this <u>13+4</u> day of Sune., 20183at 2:43 P.m. in Book 85 of Maps of Assessment and Community Facilities Districts at Page 65 , at the Request of the City of Ontario in the amount of \$\_\_\_\_\_\_

Recorded In Official Records, County of San Bernardino Doc#: 2013-0265512 6/13/2013 2:48 PM

Dennis Draeger Assessor-Recorder-Clerk County of San Bernardino

By: Cure Mars

Parcel Numbers within the Boundaries of the City of Ontario Community Facilities District No. 20 (Wal-Mart):

PARCEL 1 OF RECORD OF SURVEY 22-29, BEING A SURVEY OF PORTIONS OF LOTS 741, 742, 747 AND 748, MAP OF ONTARIO, AS RECORDED IN BOOK 11 OF MAPS, PAGE 6, RECORDS OF THE COUNTY OF SAN BERNARDINO, STATE OF CALIFORNIA

# CITY OF ONTARIO

Agenda Report June 3, 2014

# SECTION: CONSENT CALENDAR

### SUBJECT: A RESOLUTION ESTABLISHING THE ANNUAL SPECIAL TAX WITHIN COMMUNITY FACILITIES DISTRICT NO. 21 FOR FISCAL YEAR 2014-15

**RECOMMENDATION:** That the City Council adopt a resolution establishing the annual special tax within Community Facilities District No. 21 of the City of Ontario (Parkside) for Fiscal Year 2014-15.

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

**FISCAL IMPACT:** Special tax revenue will be generated in the amount of \$32,098 to fund City services, administration and incidental expenses.

**BACKGROUND:** On July 2, 2013, the City Council, in accordance with the Mello-Roos Act, took the initial steps in the formation of Community Facilities District No. 21 ("District") with the adoption of Resolution No. 2013-071, declaring the City's intention to establish the District and to authorize the levy of a special tax. On August 20, 2013, the City Council adopted Resolution No. 2013-088 establishing formation of the District. Upon a successful property owner election, the City Council adopted Ordinance No. 2966 on September 3, 2013, authorizing the levy of a special tax for the District to finance City services, administration and incidental expenses related to the Parkside residential project.

The District, as shown on the attached boundary map, addresses the residential development of approximately 19.6 acres located north of Inland Empire Boulevard, south of Fourth Street, east of Archibald Avenue and west of Turner Avenue. At build-out, the development will include 150 detached units and 152 attached units.

As adopted, the special tax for City services is to be levied each fiscal year, beginning in Fiscal Year 2014-15, to fund City services and related administrative and incidental expenses. The services

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

Prepared by: Department:	Bob Chandler Management Services	Submitted to Council/O.H.A. Approved:	06/03/2014
City Manager	LATT	Continued to: Denied:	
Approval:	- Alli'S		21

authorized to be financed, in whole or in part, by Community Facilities District No. 21 of the City of Ontario (Parkside) are as follows: (1) the operation and maintenance of the public street lighting facilities and appurtenances that serve the property and whose installation is identified in the Parkside Development's Conditions of Approval; (2) the maintenance and servicing of the landscaping and appurtenant improvements of the raised, landscaped median conditioned to be constructed by the landowners on Inland Empire Boulevard pursuant to the Parkside Development's Conditions of Approval; and (3) the maintenance and servicing of the landscaping and appurtenant improvements for the City right-of-way parkways bordering the project on the north side of Inland Empire Boulevard and the west side of Tuner Avenue.

The adoption of a resolution by the City Council will be required annually to establish the special tax rates to be levied. As noted, Fiscal Year 2014-15 will be the first year that the special tax is levied. Pursuant to the Rate and Method of Apportionment of Special Tax that was approved by the property owners, beginning on July 1, 2014, and annually thereafter, the maximum annual Services Special tax rate shall be increased by an amount equal to the greater of (i) the increase, if any, in the Consumer Price Index for the Los Angeles-Riverside-Orange County Area for All Urban Consumers, or (ii) 2% of the amount in effect the previous Fiscal Year. The maximum and proposed annual tax rates for Fiscal Year 2014-15 are as follows:

Land Use		-14 Annual Rates		15 Annual Rates	FY 20 Maximum		No. of Units	Totals
Detached Property	N/A	per Unit	\$213.99	per Unit	\$213.99	per Unit	150	\$32,098.50
Attached Property	N/A	per Unit	\$167.58	per Unit	\$167.58	per Unit	0	<u>\$ 0.00</u>
						Total An	nual Tax	\$32,098.50

RESOLUTION NO.

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF ONTARIO, CALIFORNIA, ACTING IN ITS CAPACITY AS THE LEGISLATIVE BODY OF COMMUNITY FACILITIES DISTRICT NO. 21 OF THE CITY OF ONTARIO (PARKSIDE), ESTABLISHING THE ANNUAL SPECIAL TAX FOR FISCAL YEAR 2014-15.

WHEREAS, the City Council of the City of Ontario, California, has initiated proceedings, held a public hearing, conducted an election and received a favorable vote from the qualified electors relating to the levy of a special tax in a community facilities district, all as authorized pursuant to the terms and provisions of the "Mello-Roos Community Facilities Act of 1982," being Chapter 2.5, Part 1, Division 2, Title 5, of the Government Code of the State of California. This Community Facilities District is designated as City of Ontario Community Facilities District No. 21 (Parkside) (hereinafter referred to as "District"); and

WHEREAS, the City Council did, acting as the legislative body of the District, by the enactment of Ordinance No. 2966 (the "Special Tax Ordinance") as authorized by Section 53340 of the Government Code of the State of California, authorize the levy of a special tax to pay for costs and expenses related to the District, and this legislative body is desirous to establish the specific rates of the special tax to be collected for the specified Fiscal Year.

NOW, THEREFORE, IT IS HEREBY RESOLVED AS FOLLOWS:

<u>SECTION 1.</u> The above recitals are all true and correct.

<u>SECTION 2.</u> That the specific rates and amount of the special tax to be collected to pay for the costs and expenses for the referenced Fiscal Year for the District is hereby determined and established as set forth in the attached referenced and incorporated Exhibit "A."

<u>SECTION 3.</u> That the rates as set forth above does not exceed the amount as previously authorized by the Special Tax Ordinance of this legislative body, and is not in excess of that as previously approved by the qualified electors of the District.

<u>SECTION 4.</u> The City Manager is authorized and directed to file a certified copy of this Resolution, together with a list of all parcels subject to the special tax for the above specified Fiscal Year and the amount of the special tax to be levied against each such parcel, with the County Auditor/Tax Collector of the County of San Bernardino on or before August 10; provided, however, that such may be filed after August 10, but not later than August 21, if the City Manager obtains the prior written consent of such County Auditor/Tax Collector.

<u>SECTION 5.</u> That the proceeds of the special tax shall be used only to pay the following costs and expenses:

- (a) Costs of those services authorized to be financed by the District;
- (b) Costs incurred by the District and the City in the annual levy and collection of the special taxes;
- (c) Administrative costs of the District; and
- (d) Any incidental expenses authorized to be financed by the District.

<u>SECTION 6.</u> The special tax shall be collected in the same manner as ordinary ad valorem property taxes are collected, and shall be subject to the same penalties and same procedure and sale in cases of any delinquency for ad valorem taxes, and the County Auditor/Tax Collector is hereby authorized to deduct reasonable administrative costs incurred in collecting any said special tax.

<u>SECTION 7.</u> All monies above collected shall be paid into the Community Facilities District No. 21 Fund.

<u>SECTION 8.</u> The County Auditor/Tax Collector is hereby directed to enter in the next County assessment roll on which taxes will become due, opposite each lot or parcel of land affected in a space marked "Ontario C.F.D. No. 21 Special Tax," or by any other suitable designation, the installment of the special tax.

<u>SECTION 9.</u> The County Auditor/Tax Collector shall then, at the close of the tax collection period, promptly render to the District a detailed report showing the amount and/or amounts of such special tax installments, interests, penalties, and percentages so collected and from what property collected, and also provide a statement of any percentages retained for the expense of making any such collection.

<u>SECTION 10.</u> This legislative body hereby certifies that the levy of the special tax was authorized in accordance with the provisions of the Act, and complies with the requirements of Articles XIIIA and XIIIC of the Constitution of the State of California.

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

PASSED, APPROVED, AND ADOPTED this 3<sup>rd</sup> day of June 2014.

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 June 3, 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 June 3, 2014.

MARY E. WIRTES, MMC, CITY CLERK

(SEAL)

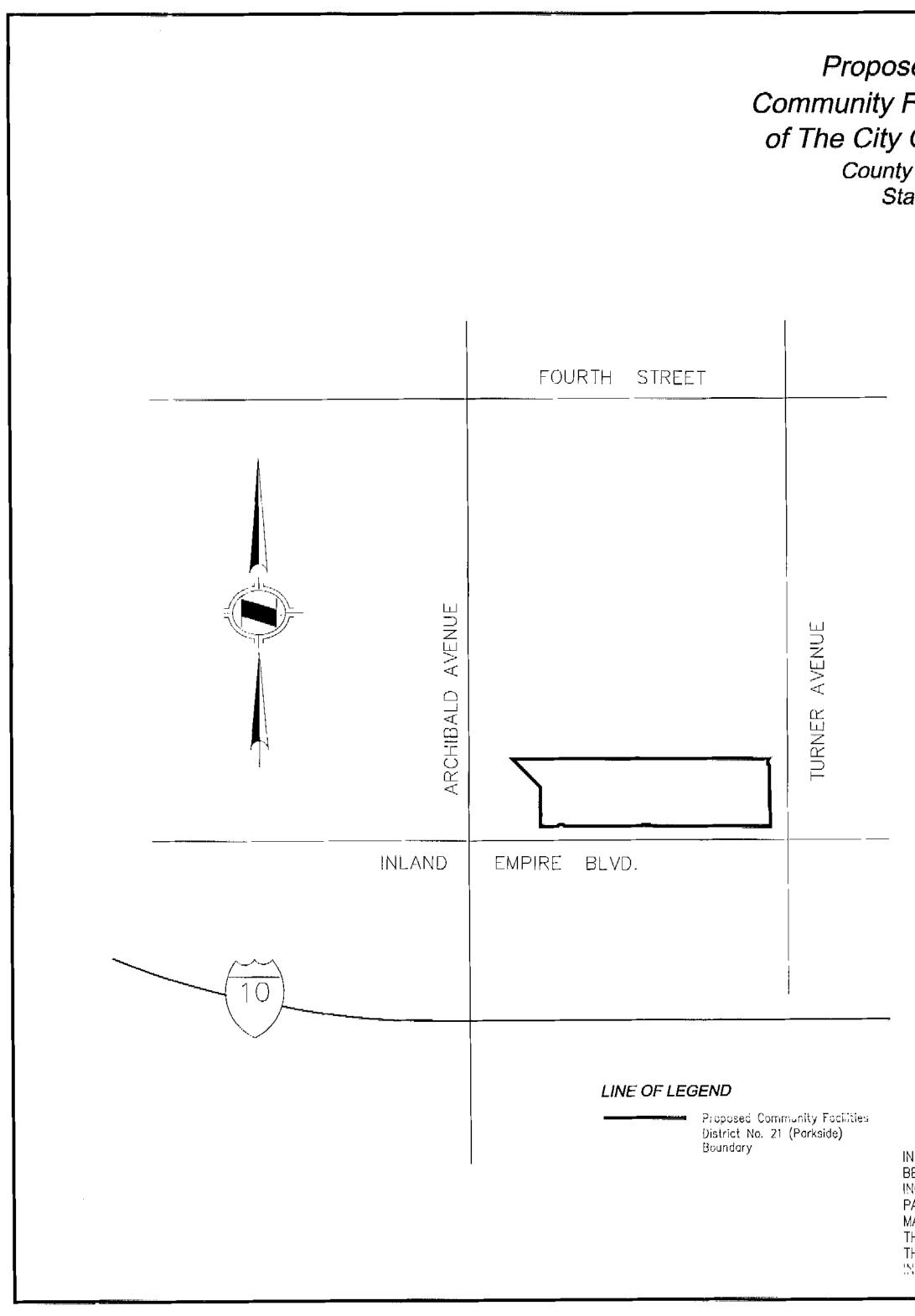
# EXHIBIT "A"

#### CITY OF ONTARIO COMMUNITY FACILITIES DISTRICT NO. 21 (PARKSIDE)

### SPECIAL TAX RATES FOR FISCAL YEAR 2014-15

Г

Land Use Class	Land Use	Annual Tax Rates
Detached Property	Residential	\$213.99 per Unit
Attached Property	Residential	\$167.58 per Unit



Proposed Boundaries of Community Facilities District No. 21 of The City Of Ontario (Parkside) County Of San Bernardino State Of California

Filed in the office of the Clerk of the City of Onlario this \_\_\_\_\_\_, 2013.

Clerk of the City of Onlario

I hereby certify that the within map showing the proposed boundaries of Community Facilities District No. 21 of the City of Ontario (Parkside), County of San Bernardino, State of California, was approved by the City Council of the City of Ontario at a regular meeting thereof, held on the \_\_\_\_\_\_ day of \_\_\_\_\_, 2013, by its Resolution No.\_\_\_\_\_\_

Clerk of the City of Ontario



San Bernardino County Recorder's Certificate

This map has been filed under Document Number <u>2013-03(x)897</u>, this <u>974</u> day of <u>Silly</u> 2013, at <u>2:26 p.m.</u> in Book <u>85</u> of Maps of Assessment and Community Facilities Districts at Page <u>80-89</u>, at the Request of the City of Ontario in the amount of \$<u>12.00</u>

Dennis Draeger Assessor-Recorder-Clerk County of San Bernardino

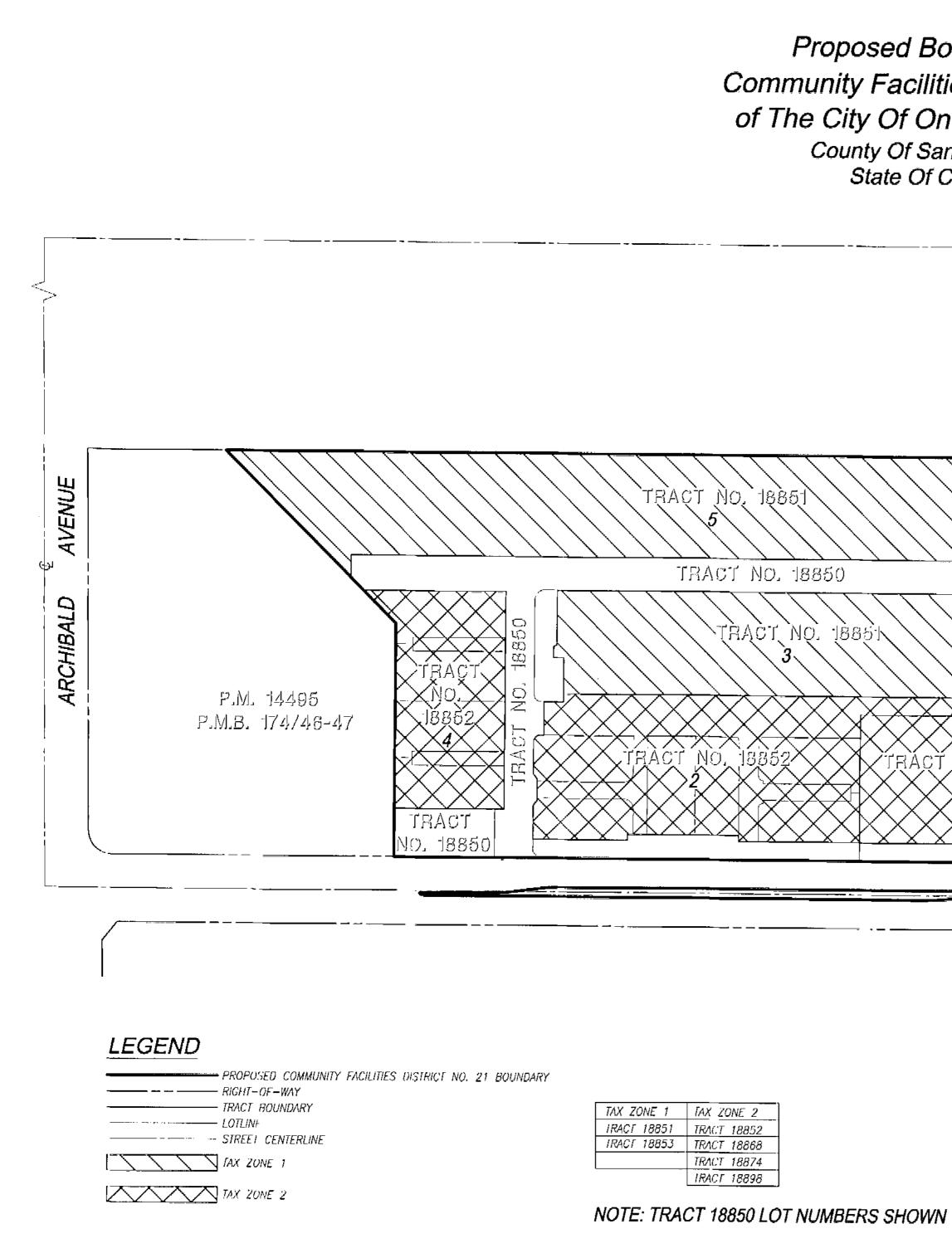
cole Mensio-Deput

Recorded in Official Records, County of San Bernardino Doc#: 2013 - 0800897 7/09/2013 2:26 PM

Parcel Numbers within the Boundaries of the City of Ontario Community Facilities District No. 21 (Parkside):

IN THE CITY OF ONTARIO, COUNTY OF SAN BERNARDINO, STATE OF CALIFORNIA, BEING LOTS 1 THROUGH 11, INCLUSIVE, AND LETTERED LOTS A THROUGH G, INCLUSIVE OF TRACT NO. 18850, AS SHOWN ON A MAP FILED IN BOOK 337, PAGE 16 THROUGH 20, INCLUSIVE, OF MAPS, PARCELS 1 AND 2 OF PARCEL MAP NO. 16979, AS SHOWN ON A MAP FILED IN BOOK 234, PAGES 51 THROUGH 54, INCLUSIVE, OF PARCEL MAPS AND A PORTION OF LOT 14 OF THE MAP OF CUCAMONGA LANDS RECORDED IN BOOK 4 PAGE 9 OF MAPS, ALL IN THE OFFICE OF THE COUNTY RECORDER OF SAID COUNTY.





SHEET 2 OF 2 Proposed Boundaries of Community Facilities District No. 21: of The City Of Ontario (Parkside) County Of San Bernardino State Of California IAGUAR WAY FOURTH STREET AVENUE RACT NO. 1885 (<del>ф</del>и TURNER TRACT NO. 18850 TRACT NO. RĄCT NO. าโซิฮิฮิฮิฮิ 18850 6 INLAND EMPIRE BOULEVARD 120 60 0 :20 360 GRAPHIC SCALE: 1"=120'

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# CITY OF ONTARIO

Agenda Report June 3, 2014

# SECTION: CONSENT CALENDAR

#### SUBJECT: ANNUAL LEVY OF ASSESSMENTS WITHIN STREET LIGHTING MAINTENANCE DISTRICTS NO. 1 AND 2 FOR FISCAL YEAR 2014-15

**RECOMMENDATION:** That the City Council adopt resolutions pertaining to the levy of assessments within Street Lighting Maintenance Districts (SLMD) No. 1 and 2:

- (A) A resolution initiating proceedings and ordering the preparation of an Engineer's Report for each district relating to the annual levy of assessments; and
- (B) A resolution giving preliminary approval of the Engineer's Reports; and
- (C) Resolutions declaring the City's intention to levy the special assessments for Fiscal Year 2014-15 and setting the date of July 1, 2014 for a Public Hearing on each district in accordance with the Landscaping and Lighting Act of 1972.

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

**FISCAL IMPACT:** As proposed, special assessment revenue will be generated in the amount of \$382,535 from SLMD No. 1 and \$89,649 from SLMD No. 2 during Fiscal Year 2014-15. A portion of the facilities within SLMD No. 1 provide general benefit to the public at large and cannot be funded with the assessment. The amount of general benefit is \$19,150. The total of the recommended assessments is increasing by 2.3% for the two Benefit Zones within SLMD No. 1, and by 0.5% for the twelve Maintenance Areas in SLMD No. 2.

**BACKGROUND:** Street Lighting Maintenance District No. 1 was formed in 1984, and Street Lighting Maintenance District No. 2 was formed in 1999, pursuant to the Landscaping and Lighting Act of 1972

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

Prepared by: Department:	Bob Chandler Management Services	Submitted to Council/O.H.A. Approved:	06/03/2014
City Manager Approval:	MCA	Continued to: Denied:	
		-	22

(the "1972 Act"), to help minimize the continually increasing cost for maintaining and operating the City's street lighting system. A special assessment is levied annually on benefiting properties for the cost of maintenance and operation of certain street lighting facilities within the districts. The locations of the districts are shown on the attached maps.

The City's Municipal Services Department establishes the annual maintenance costs and maintains the street lighting system. An Engineer's Report for each district must be prepared annually, apportioning the costs to each parcel within the districts. The districts are comprised of commercial, industrial and some multi-family residential properties. Due to varying characteristics, the districts are organized into Benefit Zones and/or Maintenance Areas. Each zone/maintenance area is assessed for only the operation and maintenance of the facilities from which it receives direct special benefit. The total assessment for each zone/maintenance area is then apportioned to its constituent parcels. Therefore, the assessments are unique and specific to each individual parcel of property.

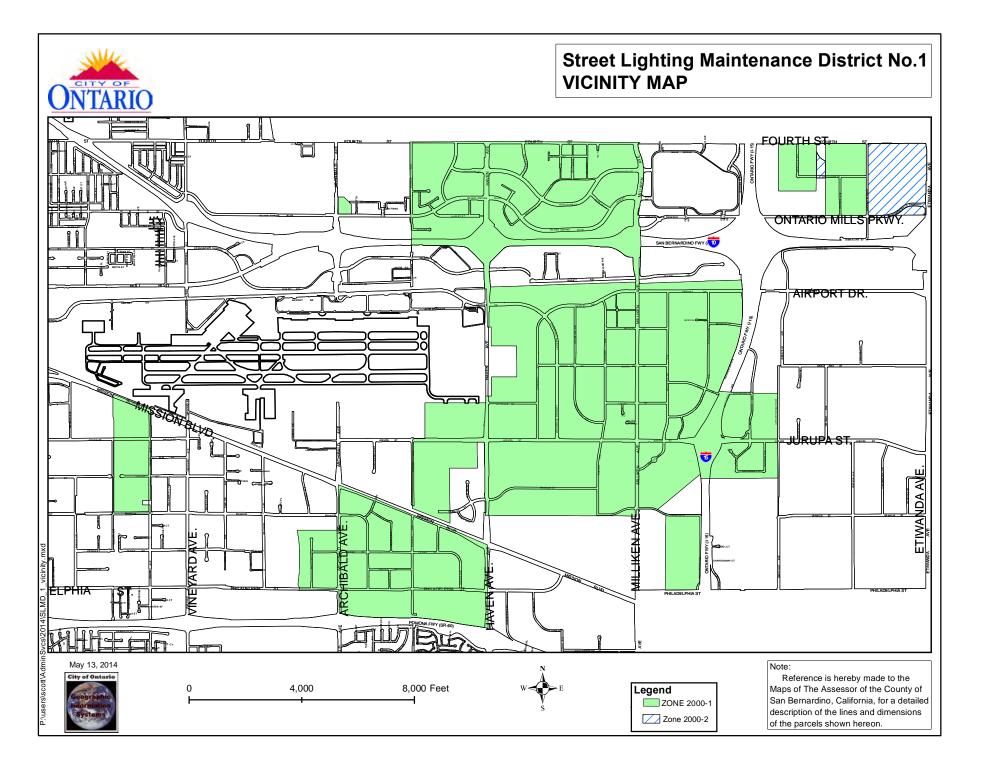
The total assessment during tax year 2013-14 was \$373,986 in SLMD No. 1, and \$89,203 in SLMD No. 2. The proposed total assessment levy for tax year 2014-15 is \$382,535 in SLMD No. 1, and \$89,649 in SLMD No. 2. A portion of the facilities within SLMD No. 1 provide general benefit to the public at large and cannot be funded with the assessment. The amount of general benefit is \$19,150. The recommended assessment rates are increasing by an average of 0.9% for the two Benefit Zones within SLMD No. 1, and by an average of 0.4% for the 12 Maintenance Areas in SLMD No. 2.

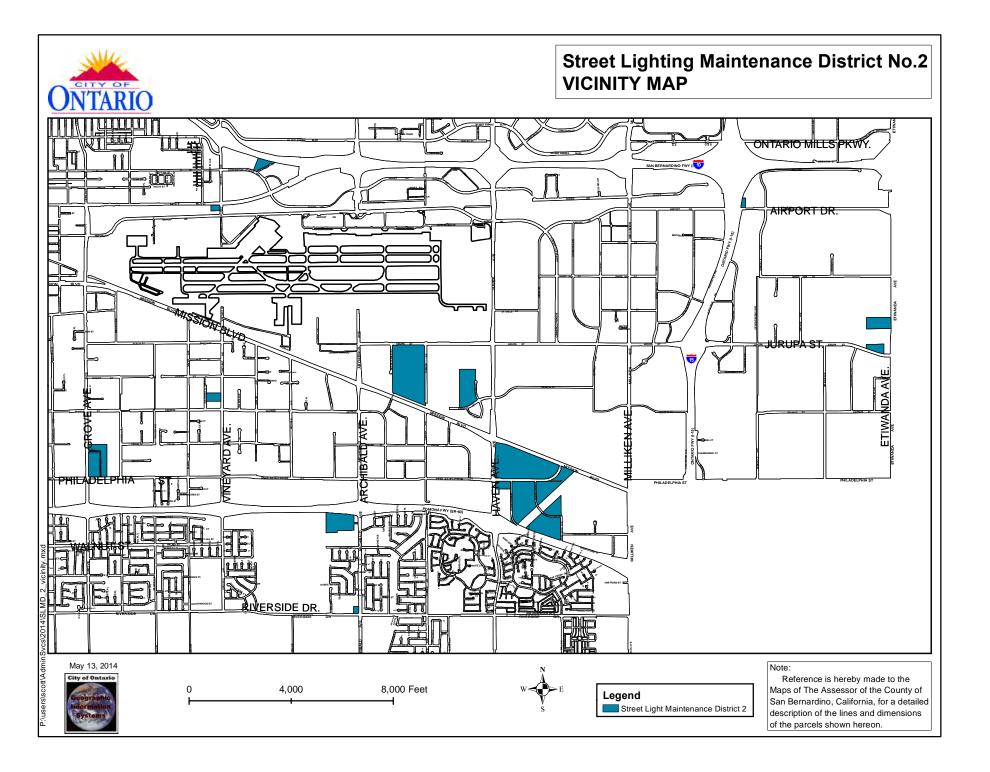
		Α	ssessed	Р	roposed	Ν	laximum
		2	013-14	2	2014-15	-	2014-15
SLMD No. 1, Zone 2000-1	Per AU	\$	133	\$	134	\$	134
SLMD No. 1, Zone 2000-2	Per AU	\$	66	\$	66	\$	110
SLMD No. 2, MA# 99-1		\$	3,952	\$	3,983	\$	9,583
SLMD No. 2, MA# 99-2		\$	2,058	\$	2,058	\$	4,765
SLMD No. 2, MA# 99-3		\$	4,117	\$	4,112	\$	7,940
SLMD No. 2, MA# 99-4		\$	1,373	\$	1,376	\$	3,180
SLMD No. 2, MA# 99-5		\$	1,244	\$	1,256	\$	2,982
SLMD No. 2, MA# 99-6		\$	12,209	\$	12,314	\$	27,828
SLMD No. 2, MA# 99-7		\$	372	\$	374	\$	860
SLMD No. 2, MA# 99-8		\$	2,744	\$	2,744	\$	6,352
SLMD No. 2, MA# 00-1		\$	2,614	\$	2,625	\$	2,923
SLMD No. 2, MA# 00-2		\$	1,373	\$	1,376	\$	1,950
SLMD No. 2, MA# 00-3		\$	7,546	\$	7,539	\$	10,720
SLMD No. 2, MA# 00-4		\$	49,603	\$	49,891	\$	61,384

AU-Assessment Unit (e.g. – Zone 2000-1: 1 vacant acre = 0.25 AU; Zone 2000-2: 1 vacant acre = 1 AU)

Pursuant to the "1972 Act," Engineer's Reports have been prepared for each district, and are on file with the Records Management Department. Each report includes plans and specifications for the improvements being operated and maintained, an estimate of costs, a diagram of the area proposed to be assessed, and an assessment of the costs to the various parcels within the districts.

A public hearing is required for each district prior to adoption of the proposed assessments. A combined public hearing will be held on July 1, 2014 for the purpose of accepting comments and written protests. At the conclusion of the public hearing, the City Council will consider adoption of resolutions confirming the assessments and ordering the levy of the assessments for tax year 2014-15. Notice of the public hearing for the levy of assessments will be published in the local newspaper, in accordance with the applicable statutes.





A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF ONTARIO, CALIFORNIA, ORDERING THE PREPARATION OF THE ASSESSMENT ENGINEER'S REPORTS PURSUANT TO THE PROVISIONS OF DIVISION 15, PART 2, OF THE STREETS AND HIGHWAYS CODE OF THE STATE OF CALIFORNIA, FOR PROCEEDINGS FOR THE ANNUAL ASSESSMENT LEVY WITHIN ONTARIO STREET LIGHTING MAINTENANCE DISTRICTS NO. 1 AND NO. 2 FOR FISCAL YEAR 2014-2015.

WHEREAS, the City Council of the City of Ontario, California, previously formed maintenance districts pursuant to the terms and provisions of the "Landscaping and Lighting Act of 1972," being Division 15, Part 2, of the Streets and Highways Code of the State of California (the "1972 Act"), known and designated as

#### CITY OF ONTARIO STREET LIGHTING MAINTENANCE DISTRICTS NO. 1 AND 2

(the "Districts"); and

WHEREAS, at this time the City Council desires to initiate proceedings to provide for the annual levy of assessments for the referenced Fiscal Year to provide for the annual costs for maintenance of improvements within the Districts; and

WHEREAS, the proceedings for the annual levy of assessments shall relate to the Fiscal Year commencing July 1, 2014, and ending June 30, 2015; and

WHEREAS, there has been submitted to this City Council for its consideration at this time, maps showing the boundaries of the areas affected by the levy of the assessments for the above-referenced Fiscal Year, and inventory maps showing and describing in general the works of improvement proposed to be maintained in said Districts, said description being sufficient to identify the works of improvement and the areas proposed to be assessed for said maintenance thereof.

NOW, THEREFORE, IT IS HEREBY RESOLVED as follows:

<u>SECTION 1</u>. That the above recitals are all true and correct.

SECTION 2. That the maps entitled

#### CITY OF ONTARIO STREET LIGHTING MAINTENANCE DISTRICTS NO. 1 AND 2 BOUNDARY MAP AND INVENTORY MAPS

attached hereto, as submitted to this City Council, showing the boundaries of the proposed areas to be assessed and showing the works of improvement to be

maintained, are hereby approved, and a copy thereof shall be on file in the Records Management Department and open to public inspection. The proposed parcels and properties within said areas are those to be assessed to pay the costs and expenses for said maintenance work.

<u>SECTION 3</u>. That the proposed maintenance work within the areas proposed to be assessed shall be for street lighting and signal and appurtenant improvements, as said maintenance work is set forth in the Reports to be presented to this City Council for consideration.

<u>SECTION 4</u>. That the Assessment Engineer, Harris & Associates, is hereby ordered to prepare and file with this City Council the Assessment Engineer's Reports relating to said annual assessment and levy in accordance with the provisions of 1972 Act, Article XIIID of the Constitution of the State of California ("Article XIIID"), and the Proposition 218 Omnibus Implementation Act (Government Code Section 53750 and following) (the "Implementation Act") (the 1972 Act, Article XIIID and the Implementation Act are referred to collectively as the "Assessment Law").

<u>SECTION 5</u>. That upon completion, said Assessment Engineer's Reports shall be filed with the City Clerk, who shall then submit the same to this City Council for its consideration pursuant to the Assessment Law.

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

PASSED, APPROVED, AND ADOPTED this 3<sup>rd</sup> day of June 2014.

# PAUL S. LEON, MAYOR

ATTEST:

MARY E. WIRTES, MMC, CITY CLERK

APPROVED AS TO LEGAL FORM:

#### 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 June 3, 2014 by the following roll call vote, to wit:

AYES: COUNCIL MEMBERS:

NOES: COUNCIL MEMBERS:

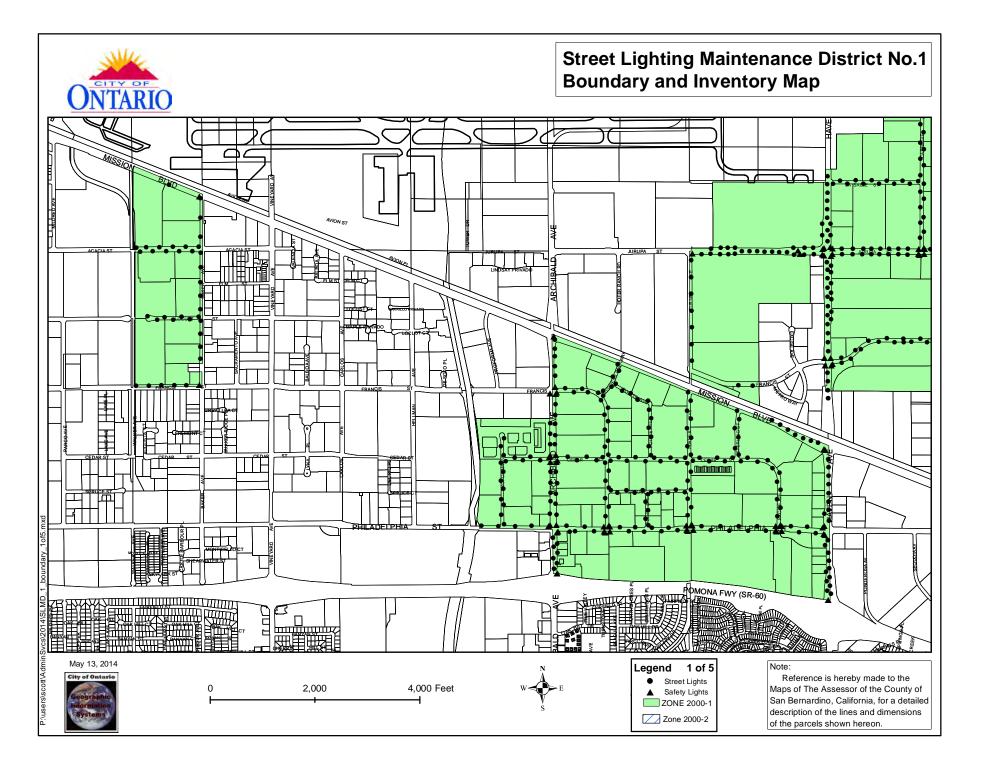
ABSENT: COUNCIL MEMBERS:

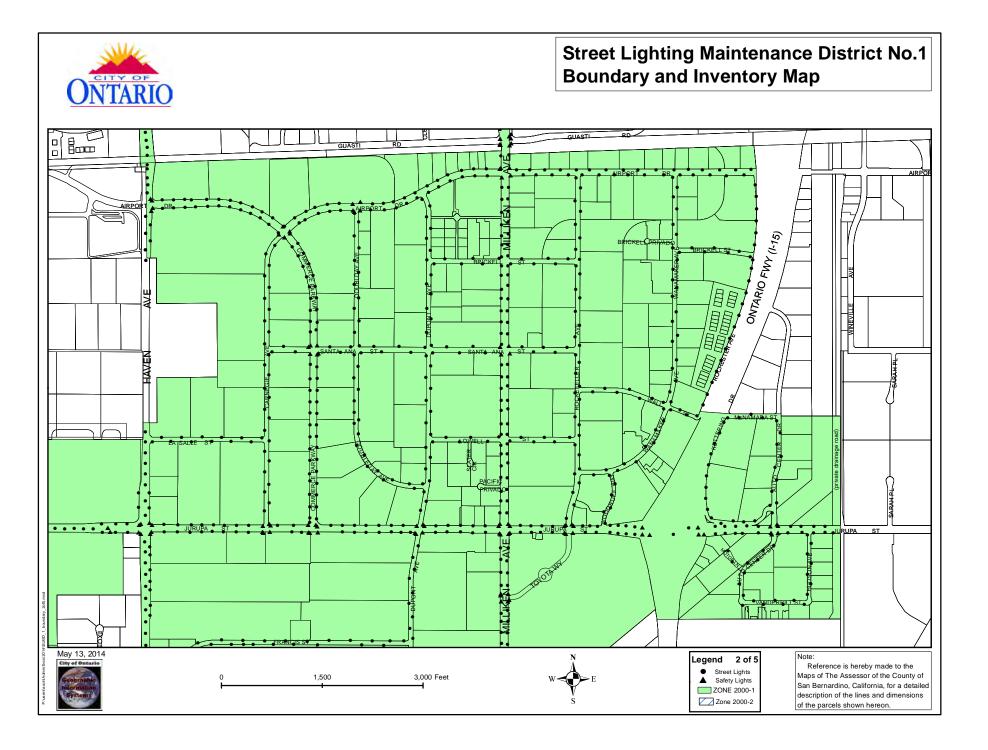
# MARY E. WIRTES, MMC, CITY CLERK

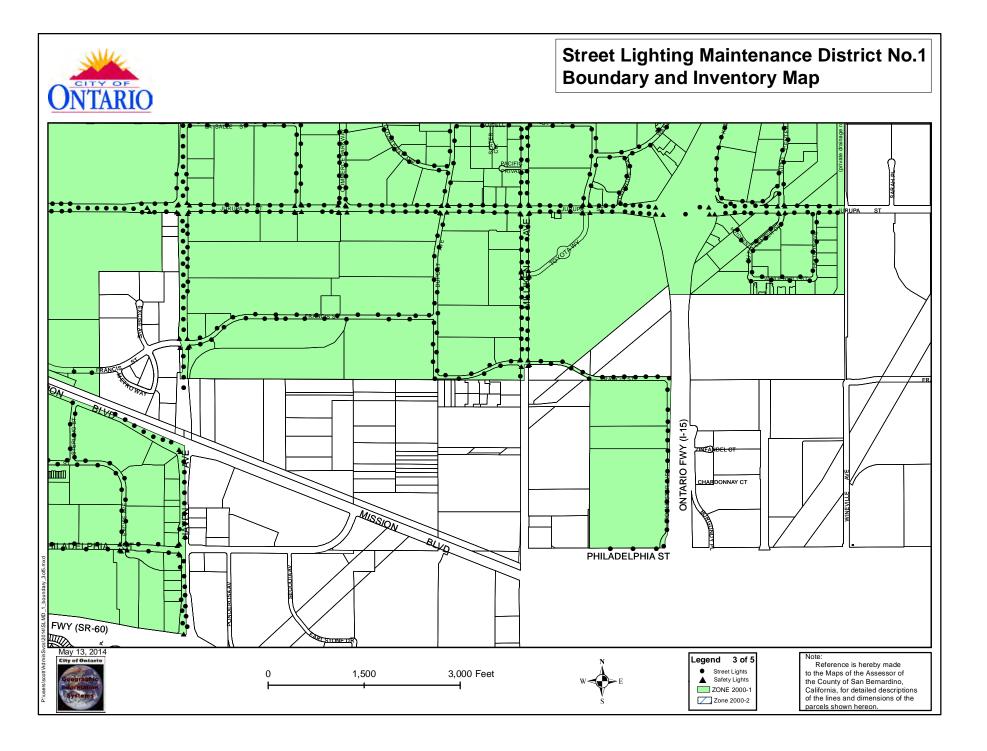
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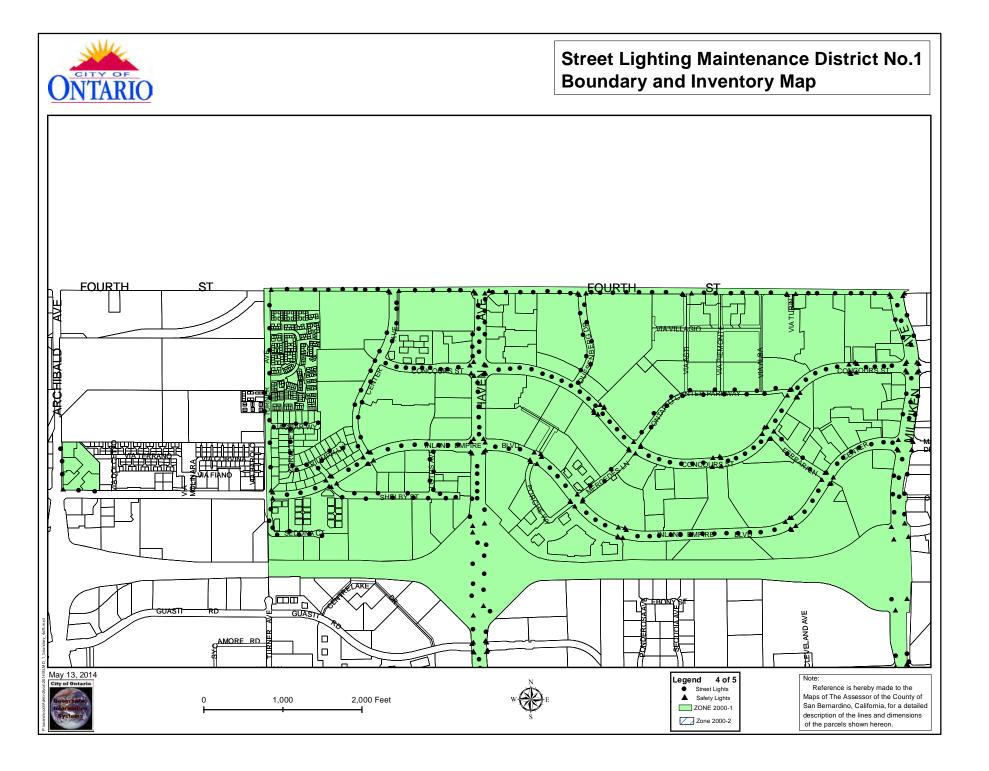
The foregoing is the original of Resolution No. 2014- duly passed and adopted by the Ontario City Council at their regular meeting held June 3, 2014.

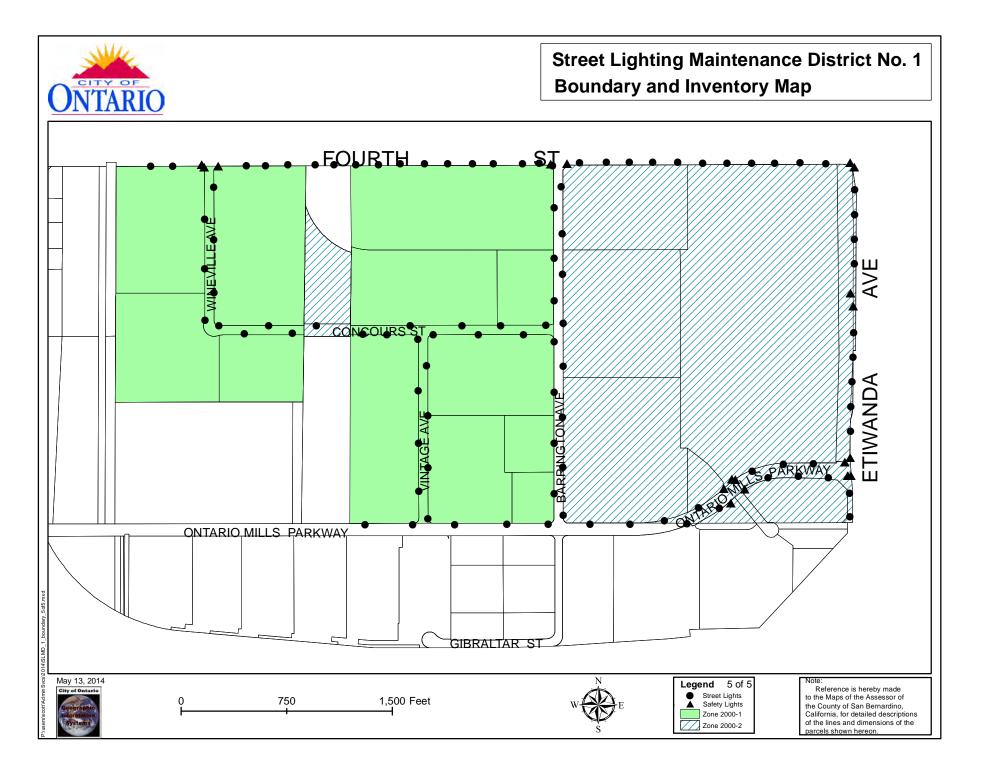
MARY E. WIRTES, MMC, CITY CLERK

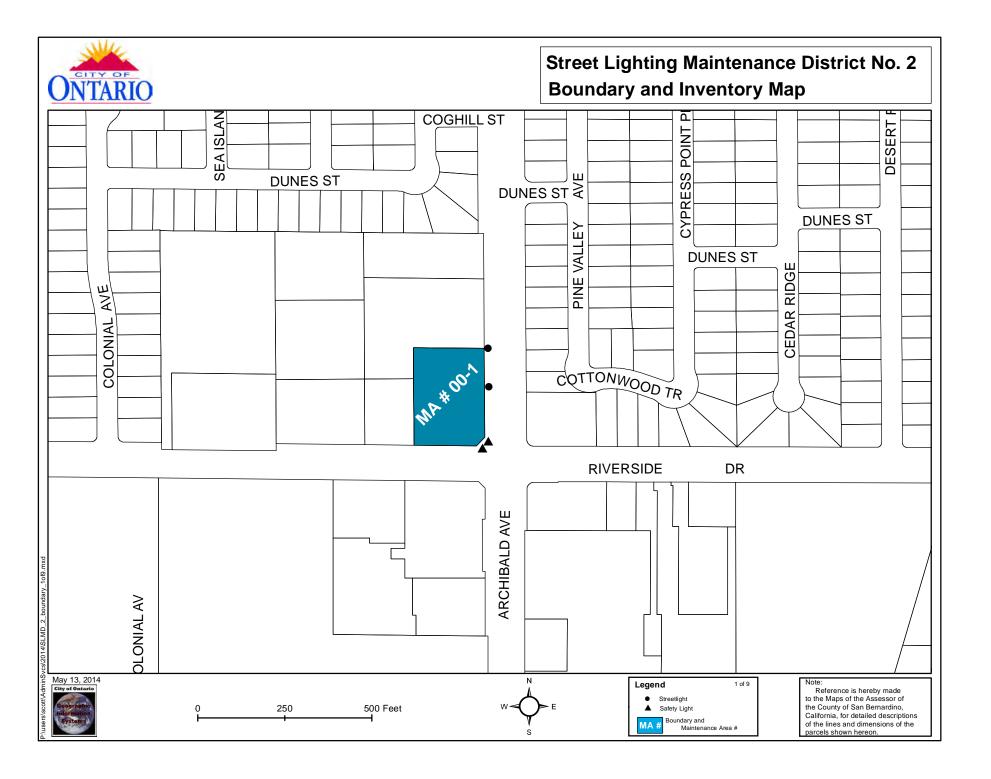


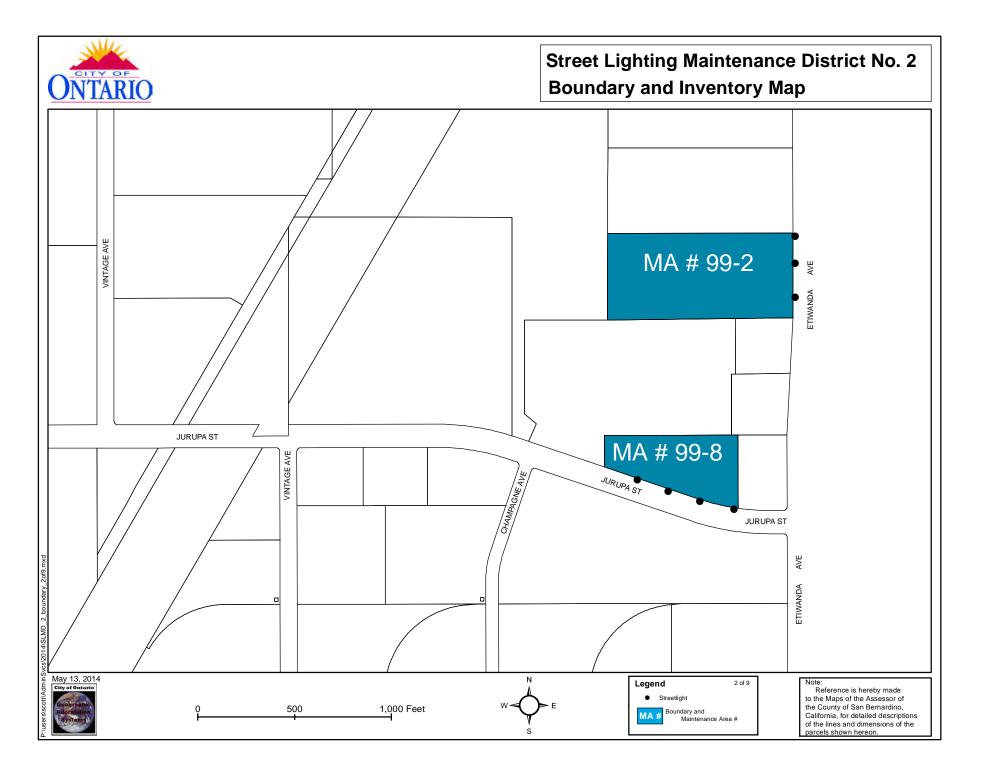


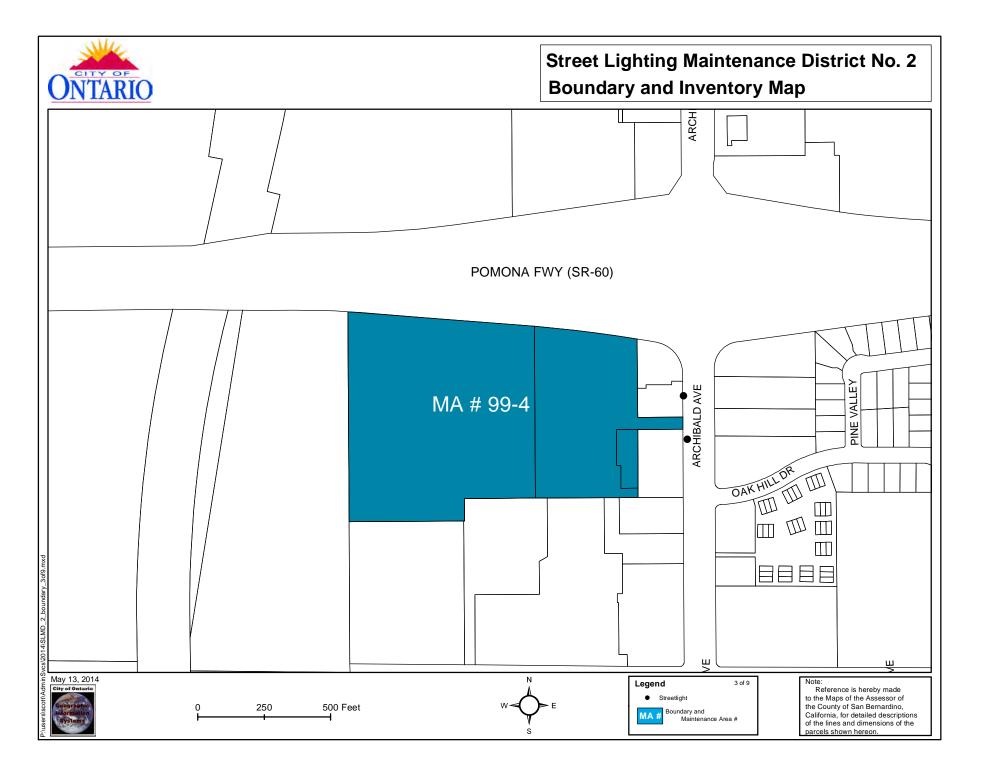


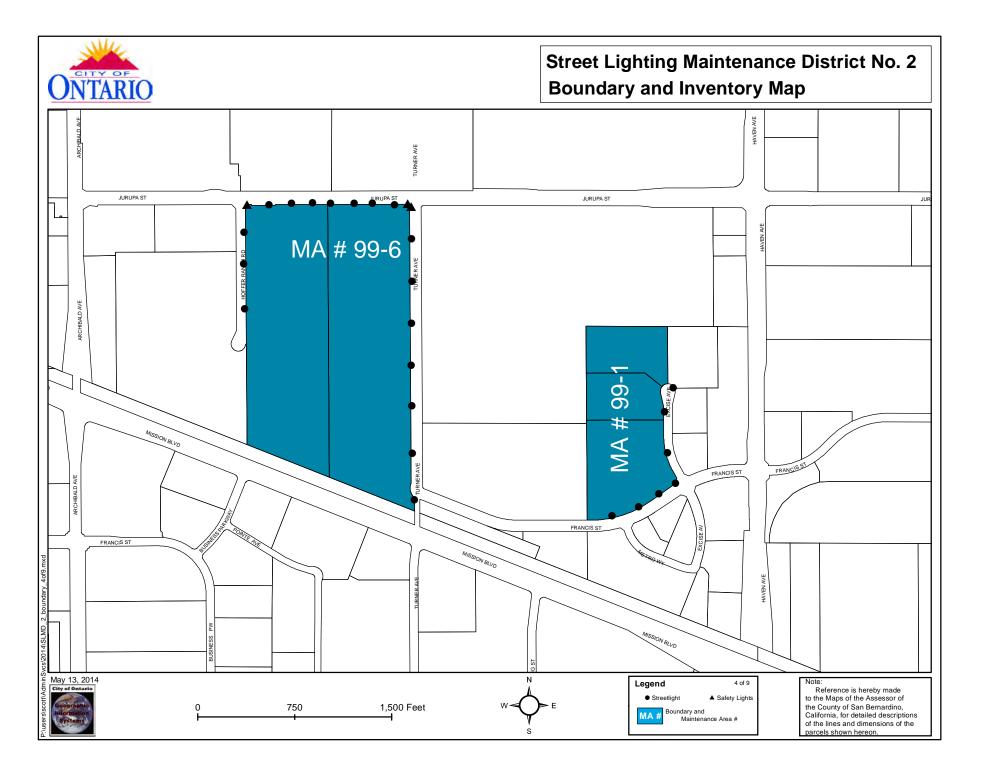


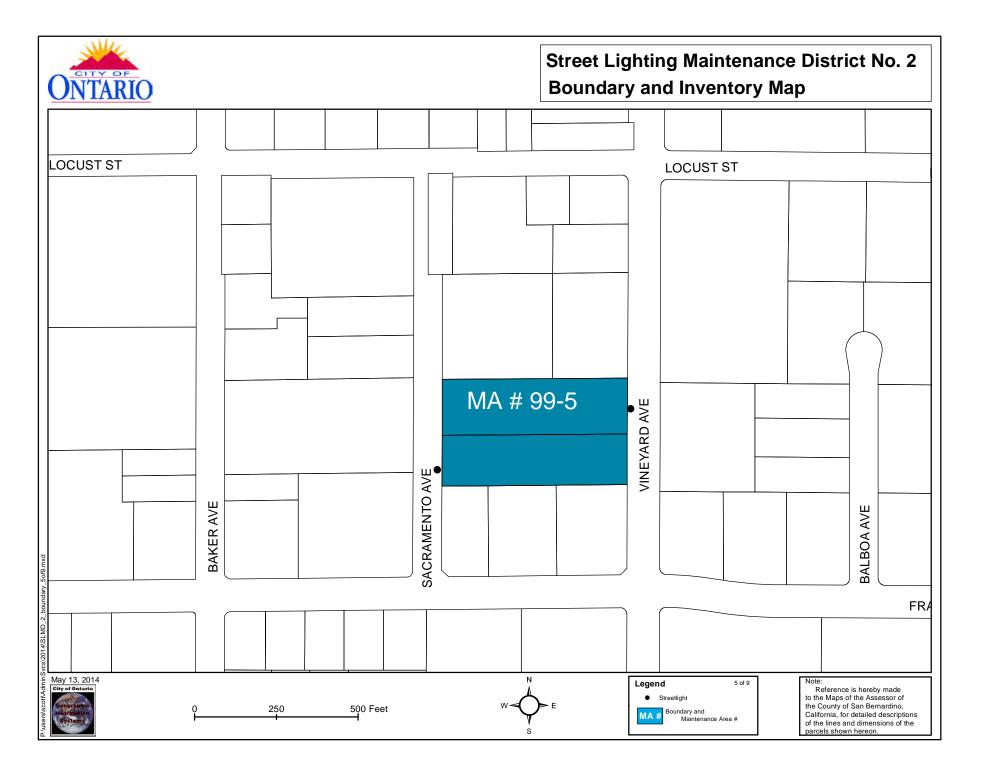


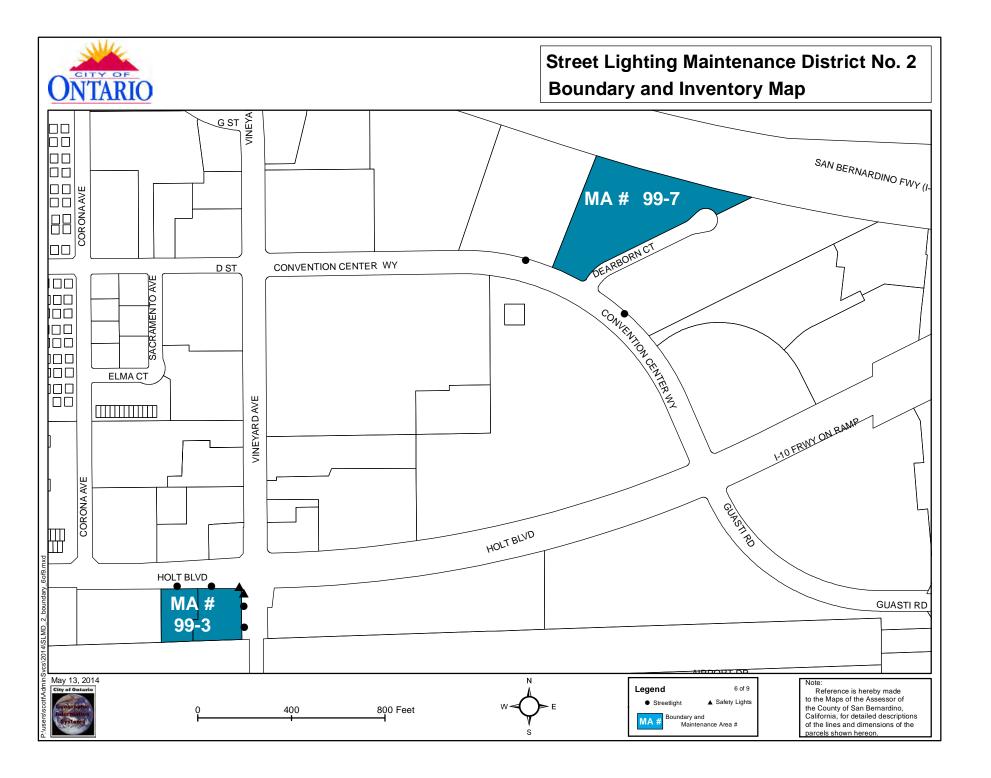


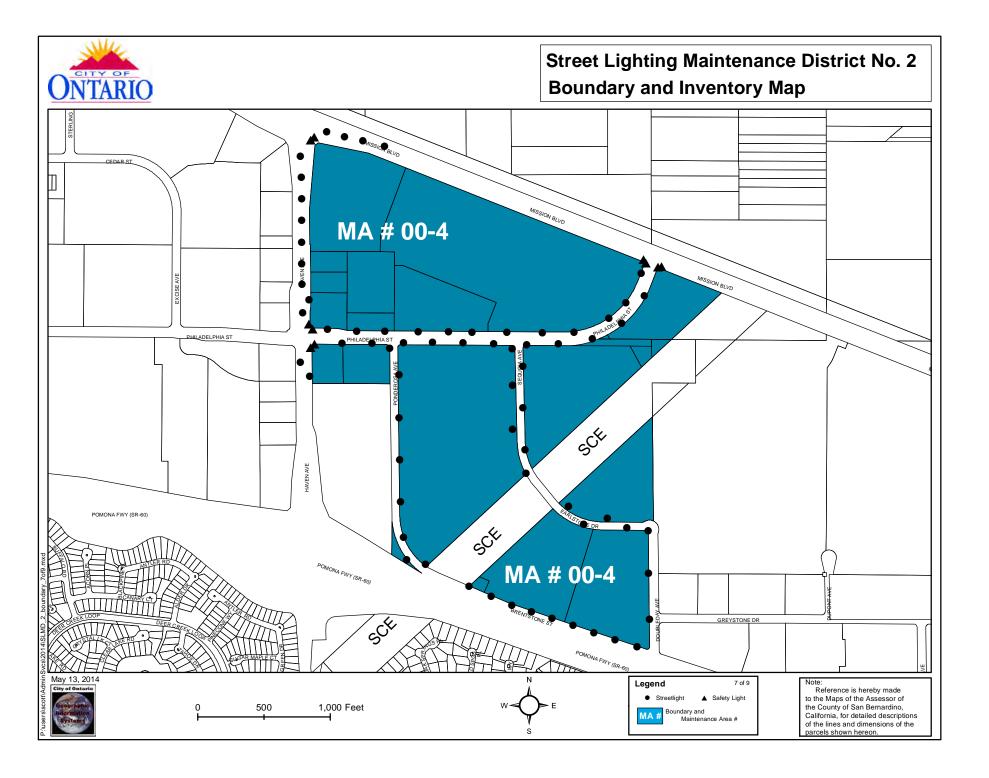


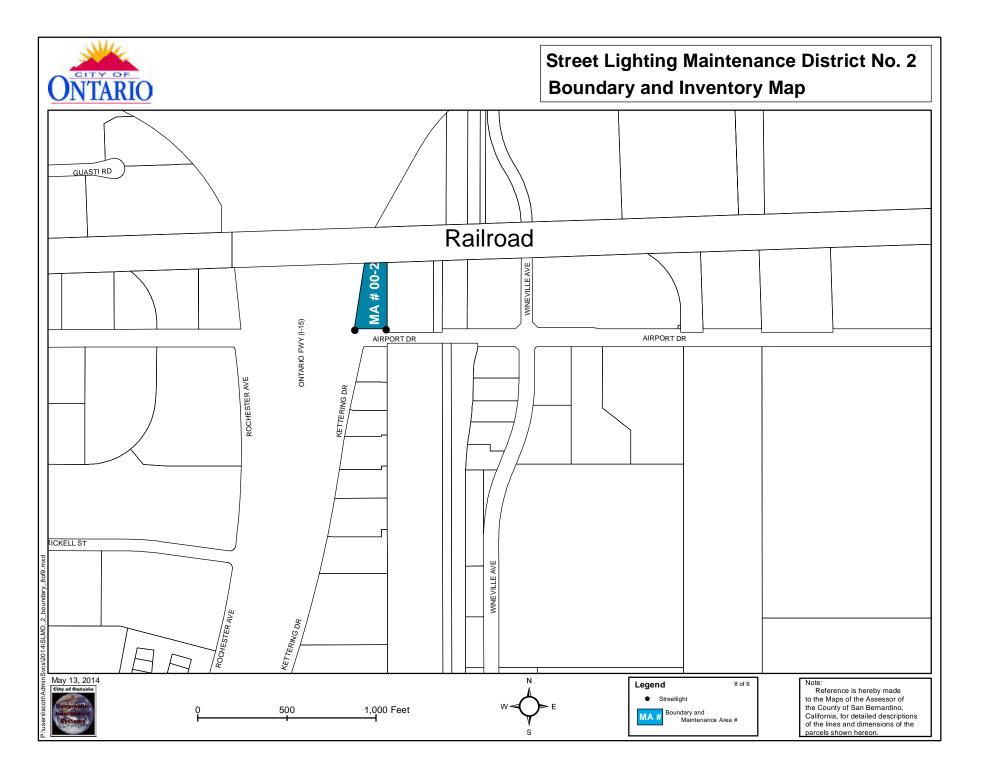


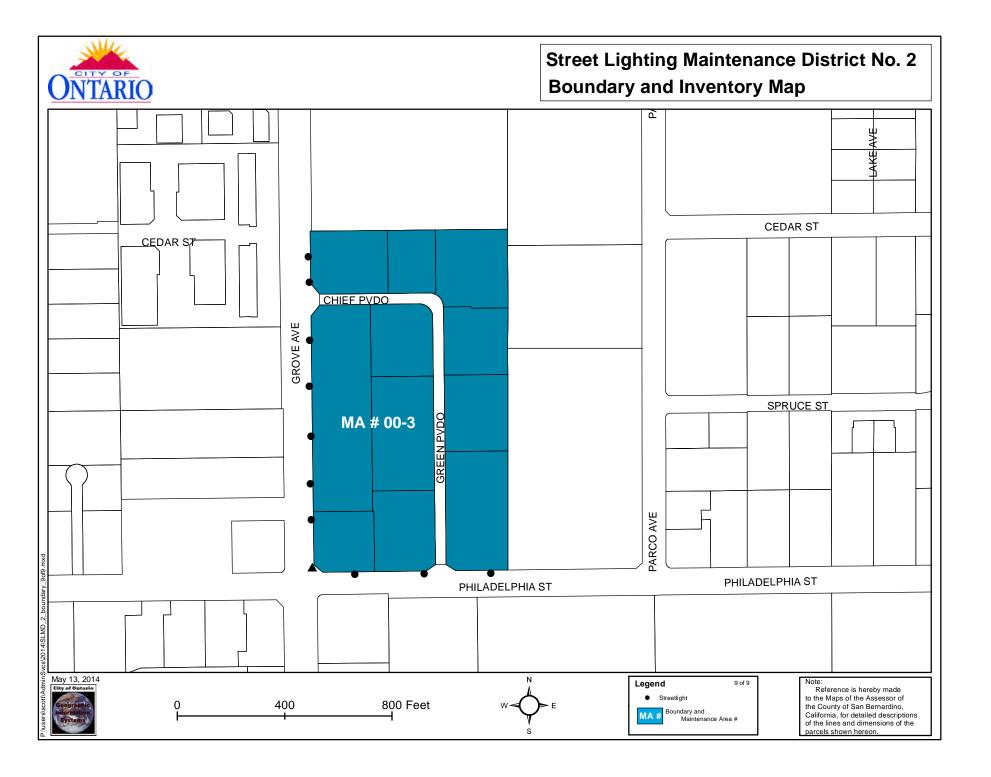












A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF ONTARIO, CALIFORNIA, APPROVING THE ASSESSMENT ENGINEER'S REPORTS FOR THE ANNUAL LEVY OF ASSESSMENTS WITHIN ONTARIO STREET LIGHTING MAINTENANCE DISTRICTS NO. 1 AND NO. 2 FOR FISCAL YEAR 2014-2015.

WHEREAS, the City Council of the City of Ontario, California, pursuant to the provisions of Division 15, Part 2, of the Streets and Highways Code of the State of California (the "1972 Act"), Article XIIID of the Constitution of the State of California ("Article XIIID"), and the Proposition 218 Omnibus Implementation Act (Government Code Section 53750 and following) (the "Implementation Act") (the 1972 Act, Article XIIID and the Implementation Act are referred to collectively as the "Assessment Law"), did, by previous Resolution, order the preparation of the Assessment Engineer's Reports for the annual levy of assessments for the referenced Fiscal Year in the maintenance assessment districts known and designated as

#### CITY OF ONTARIO STREET LIGHTING MAINTENANCE DISTRICTS NO. 1 AND 2

(the "Districts"); and

WHEREAS, there has now been presented to this City Council the Assessment Engineer's Reports as required by the Assessment Law and as previously directed by Resolution; and

WHEREAS, this City Council has now examined and reviewed the Assessment Engineer's Reports as presented, and is satisfied with each and all of the items and documents as set forth therein, and is satisfied that the assessments on a preliminary basis, have been assessed in accordance with the special benefits received from the improvements to be maintained, as set forth in said Assessment Engineer's Reports.

NOW, THEREFORE, IT IS HEREBY RESOLVED as follows:

<u>SECTION 1</u>. That the above recitals are all true and correct.

<u>SECTION 2</u>. That the Assessment Engineer's Reports as presented, consisting of the following:

- A. Plans and specifications describing the general nature, location, and extent of the improvements to be maintained and the extent of such maintenance for each District;
- B. An estimate of the cost of the maintenance of the improvements for each District for the referenced Fiscal Year;

- C. A diagram for each District, showing the area and properties proposed to be assessed; and
- D. An annual assessment within each District for the referenced Fiscal Year of the estimated costs of the maintenance of those improvements to be maintained during such Fiscal Year, assessing the net amount upon all assessable lots and/or parcels within each District in proportion to the special benefits received;

are hereby approved on a preliminary basis and are ordered to be filed in the Records Management Department as a permanent record and to remain open to public inspection.

<u>SECTION 3</u>. That the City Clerk shall certify to the passage and adoption of this Resolution, and the minutes of this meeting shall so reflect the presentation of the Assessment Engineer's Reports.

PASSED, APPROVED, AND ADOPTED this 3<sup>rd</sup> day of June 2014.

# PAUL S. LEON, MAYOR

ATTEST:

MARY E. WIRTES, MMC, CITY CLERK

APPROVED AS TO LEGAL FORM:

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 June 3, 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 June 3, 2014.

MARY E. WIRTES, MMC, CITY CLERK

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF ONTARIO, CALIFORNIA, DECLARING ITS INTENTION TO PROVIDE FOR AN ANNUAL LEVY AND COLLECTION OF ASSESSMENTS FOR FISCAL YEAR 2014-2015 IN ONTARIO STREET LIGHTING MAINTENANCE DISTRICT NO. 1 PURSUANT TO THE PROVISIONS OF DIVISION 15, PART 2, OF THE STREETS AND HIGHWAYS CODE OF THE STATE OF CALIFORNIA, AND SETTING A TIME AND PLACE FOR A PUBLIC HEARING THEREON.

WHEREAS, the City Council of the City of Ontario, California, has previously formed a street lighting maintenance assessment district pursuant to the terms and provisions of the "Landscaping and Lighting Act of 1972," being Division 15, Part 2, of the Streets and Highways Code of the State of California (the "1972 Act"), in what is known and designated as

#### CITY OF ONTARIO STREET LIGHTING MAINTENANCE DISTRICT NO. 1

(hereinafter referred to as the District); and

WHEREAS, the City Council has previously undertaken proceedings as required by the 1972 Act, Article XIIID of the Constitution of the State of California ("Article XIIID"), and the Proposition 218 Omnibus Implementation Act (Government Code Section 53750 and following) (the "Implementation Act and, together with the 1972 Act and Article XIIID, the "Assessment Law") to approve and has approved the levy of maximum annual assessments to finance the estimated costs of the maintenance of all of the improvements to be maintained, assessing the net amount upon all assessable lots and/or parcels within the District in proportion to the special benefits received; together with a formula pursuant to which such maximum assessments may be adjusted annually for inflation; and

WHEREAS, at this time, this City Council desires to conduct proceedings to provide for the annual levy of assessments for the referenced Fiscal Year, to provide for the costs and expenses necessary for continual maintenance of improvements within said District; and

WHEREAS, at this time, there has been presented and approved by this City Council, the Engineer's Report as required by law, and this City Council desires to conduct the proceedings for said annual levy; and

WHEREAS, the proposed annual assessments for the referenced Fiscal Year as set forth in the Assessment Engineer's Report do not exceed the maximum annual assessments as previously authorized to be levied and, therefore, the proposed levy of assessments for the referenced Fiscal Year are not deemed to be "increased" over the maximum annual assessments. NOW, THEREFORE, IT IS HEREBY RESOLVED as follows:

<u>SECTION 1</u>. That the above recitals are all true and correct.

<u>SECTION 2</u>. That the public interest and convenience requires, and it is the intention of this City Council, to undertake proceedings for the annual levy and collection of special assessments for the continual maintenance of certain improvements, all to service and specially benefit said District as said area is shown and delineated on the maps as previously approved by this City Council and on file in the Records Management Department, open to public inspection, and herein so referenced and made a part hereof, and proposed changes thereto are set forth in the Engineer's Report, incorporated herein as a part hereof.

# REPORT

<u>SECTION 3</u>. That the Engineer's Report regarding the annual levy for said District, which Report is for maintenance for said Fiscal Year, is hereby approved and is directed to be filed in the Records Management Department. Reference is made to such Report for a full and detailed description of the improvements to be maintained, the boundaries of the District and the zones therein, and the proposed assessments on assessable lots and parcels of land within the District.

#### ASSESSMENT

<u>SECTION 4</u>. That the public interest and convenience requires, and it is the intention of this City Council to order the annual assessment levy for the District as set forth and described in said Engineer's Report, and further it is determined to be in the best public interest and convenience to levy and collect annual assessments to pay the costs and expenses of said maintenance and improvement as estimated in said Report.

#### DESCRIPTION OF MAINTENANCE

<u>SECTION 5</u>. The assessments levied and collected shall be for the maintenance of certain street lighting and appurtenant improvements, as set forth in the Engineer's Report, referenced and so incorporated herein.

# COUNTY AUDITOR

<u>SECTION 6</u>. The County Auditor shall enter on the County Assessment Roll the amount of the assessments, and the County Tax Collector shall collect said assessments at the time and in the same manner as County taxes are collected. After collection by the County, the net amount of the assessments, after the deduction of any compensation due to the County for collection, shall be paid to the Treasurer for purposes of paying for the costs and expenses of said District.

#### SPECIAL FUND

<u>SECTION 7</u>. That all monies collected shall be deposited in a special fund. Payment shall be made out of said fund only for the purpose provided for in this Resolution, and in order to expedite the making of this maintenance and improvement, the City Council may transfer into said fund as it may deem necessary to expedite the proceedings. Any such transfer shall be repaid out of the proceeds of the assessments provided for in this Resolution.

#### BOUNDARIES OF DISTRICT

<u>SECTION 8</u>. Said contemplated maintenance work is in the opinion of this City Council, of special benefit to the properties within the boundaries of the District, and this City Council makes the costs and expenses of said maintenance chargeable upon the District, which District said City Council hereby declares to be the District specially benefited by said improvement and maintenance, and to be further assessed to pay the costs and expenses thereof. Said District shall include each and every parcel of land within the boundaries of said District, as said District is shown on the maps as approved by this City Council and on file in the Records Management Department.

#### PUBLIC HEARING

SECTION 9. NOTICE IS HEREBY GIVEN THAT A PUBLIC HEARING WILL BE HELD THE 1st DAY OF JULY, 2014, AT THE HOUR OF 6:30 O'CLOCK P.M., IN THE REGULAR MEETING OF THE CITY COUNCIL, BEING IN THE COUNCIL CHAMBERS, WHICH IS THE TIME AND PLACE FIXED BY THIS CITY COUNCIL FOR THE HEARING OF PROTESTS OR OBJECTIONS IN REFERENCE TO THE ANNUAL LEVY OF ASSESSMENTS, TO THE EXTENT OF THE MAINTENANCE, BY PROPERTY OWNERS AFFECTED HEREBY AND ANY OTHER MATTERS CONTAINED IN THIS RESOLUTION. ANY PERSONS WHO WISH TO OBJECT TO THE PROCEEDINGS FOR THE ANNUAL LEVY SHOULD FILE A WRITTEN PROTEST WITH THE CITY CLERK PRIOR TO THE TIME SET AND SCHEDULED FOR SAID PUBLIC HEARING.

#### NOTICE

<u>SECTION 10</u>. That the City Clerk is hereby authorized and directed to publish, pursuant to Government Code Section 6061, a copy of this Resolution in the INLAND VALLEY DAILY BULLETIN, a newspaper of general circulation within said City, said publication shall be made one time and not less than ten (10) days before the date set for the Public Hearing.

<u>SECTION 11</u>. That this Resolution shall take effect immediately upon its adoption.

<u>SECTION 12</u>. For any and all information relating to the proceedings, protest procedure, any documentation and/or information of a procedural or technical nature, your attention is directed to the below listed person at the local agency or department so designated:

#### Bob Chandler City of Ontario 415 East "B" Street Ontario, California 91764 (909) 395-2353

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

PASSED, APPROVED, AND ADOPTED this 3<sup>rd</sup> day of June 2014.

PAUL S. LEON, MAYOR

ATTEST:

MARY E. WIRTES, MMC, CITY CLERK

APPROVED AS TO LEGAL FORM:

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 June 3, 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 June 3, 2014.

MARY E. WIRTES, MMC, CITY CLERK

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF ONTARIO, CALIFORNIA, DECLARING ITS INTENTION TO PROVIDE FOR AN ANNUAL LEVY AND COLLECTION OF ASSESSMENTS FOR FISCAL YEAR 2014-2015 IN ONTARIO STREET LIGHTING MAINTENANCE DISTRICT NO. 2, PURSUANT TO THE PROVISIONS OF DIVISION 15, PART 2, OF THE STREETS AND HIGHWAYS CODE OF THE STATE OF CALIFORNIA, AND SETTING A TIME AND PLACE FOR A PUBLIC HEARING THEREON.

WHEREAS, the City Council of the City of Ontario, California, has previously formed a street lighting maintenance assessment district, and authorized the levy of assessments therein pursuant to the terms and provisions of the "Landscaping and Lighting Act of 1972," being Division 15, Part 2, of the Streets and Highways Code of the State of California (the "1972 Act"), Article XIIID of the Constitution of the State of California ("Article XIIID"), and the Proposition 218 Omnibus Implementation Act (Government Code Section 53750 and following) (the "Implementation Act") (the 1972 Act, Article XIIID and the Implementation Act are referred to collectively as the "Assessment Law") in what is known and designated as

# CITY OF ONTARIO STREET LIGHTING MAINTENANCE DISTRICT NO. 2

(the "District"); and

WHEREAS, the City Council previously undertook proceedings as required by the Assessment Law to consider the approval of the levy of (a) maximum annual assessments to finance the estimated costs of the maintenance of all of the improvements to ultimately be maintained upon the completion and acceptance thereof for maintenance, assessing the net amount upon all assessable lots and/or parcels within the District in proportion to the special benefits received; together with a formula pursuant to which such maximum assessment may be adjusted annually for inflation, and (b) an initial annual assessment of the estimated costs of the maintenance of those improvements to be maintained during such Fiscal Year, assessing the net amount upon all assessable lots and/or parcels within the District in proportion to the special benefits received; and

WHEREAS, upon the conclusion of the public hearing related to the proposed levy of the maximum annual assessments referred to in the preceding recital, the assessment ballots submitted in favor of the maximum annual assessments and the assessment ballots received in opposition to the levy of the maximum annual assessments were tabulated with assessment ballots weighted according to the proportional financial obligation of the affected properties; and WHEREAS, as a result of the tabulation of the assessment ballots submitted, it was determined that the assessment ballots submitted, and not withdrawn, in favor of the proposed maximum annual assessment exceeded the assessment ballots submitted, and not withdrawn, in opposition to the levy of the maximum annual assessment; and

WHEREAS, this City Council has initiated proceedings to provide for the annual levy of assessments for the referenced Fiscal Year, to finance the costs and expenses necessary for continual maintenance of improvements within said District; and

WHEREAS, at this time, there has been presented and approved by this City Council, the Assessment Engineer's Report as required by the Assessment Law, and this City Council desires to conduct the proceedings to authorize said annual levy; and

WHEREAS, the proposed annual assessments for the referenced Fiscal Year as set forth in the Assessment Engineer's Report do not exceed the maximum annual assessments as previously authorized to be levied and, therefore, the proposed levy of assessments for the referenced Fiscal Year are not deemed to be "increased" over the maximum annual assessments.

NOW, THEREFORE, IT IS HEREBY RESOLVED as follows:

# RECITALS

<u>SECTION 1</u>. That the above recitals are all true and correct.

#### IMPROVEMENTS AND MAINTENANCE

<u>SECTION 2</u>. That the public interest and convenience requires, and it is the intention of this City Council, to undertake proceedings for the annual levy and collection of special assessments for the continual maintenance of the improvements described below, all to service and specially benefit the properties within said District as said area is shown and delineated on a map as previously approved by this City Council and on file in the Records Management Department, open to public inspection, and herein so referenced and made a part hereof:

The improvements to be maintained include street lighting facilities specially benefiting the properties within the District. Such street lighting facilities include all works or improvements used or useful for street lighting, including luminaires, poles, supports, tunnels, manholes, vaults, conduits, pipes, wires, conductors, guys, stubs, platforms, braces, transformers, insulators, contacts, switches, capacitors, meters, communications circuits, appliances, attachments and appurtenances.

The maintenance of such street lighting facilities shall include the furnishing of services and materials for the ordinary and usual maintenance and servicing of the street lighting facilities, including:

- (a) Repair, removal, or replacement of all or any part of any street lighting facility; and
- (b) The provision of electric current for the operation of such street lighting facilities.

Reference is made to the Assessment Engineer's Report for further information regarding the improvements to be maintained and the scope of such maintenance.

The annual assessment for the referenced Fiscal Year shall be levied only for those improvements completed or projected to be completed and accepted by this City Council for maintenance prior to or during said Fiscal Year.

# ASSESSMENT ENGINEER'S REPORT

SECTION 3. That the Assessment Engineer's Report regarding the annual levy for said District, which Report is for maintenance for the said Fiscal Year, is hereby approved and is directed to be filed in the Records Management Department. Reference is made to such Report for a full and detailed description of the improvements to be maintained, the boundaries of the District and any zones therein, and the proposed assessments upon assessable lots and parcels of land within the District.

#### ASSESSMENT

<u>SECTION 4</u>. That the public interest and convenience requires, and it is the intention of this City Council to order the annual assessment levy for the District as set forth and described in said Assessment Engineer's Report, and further it is determined to be in the best public interest and convenience to levy and collect annual assessments to pay the costs and expenses of said maintenance and improvement as estimated in the Assessment Engineer's Report.

# BOUNDARIES OF DISTRICT

<u>SECTION 5</u>. Said contemplated maintenance work is in the opinion of this City Council, of direct benefit to the properties within the boundaries of the District, and this City Council makes the costs and expenses of said maintenance chargeable upon a District, which District said City Council hereby declares to be the District benefited by said improvement and maintenance, and to be further assessed to pay the costs and expenses thereof. Said District shall include each and every parcel of land within the boundaries of said District, as said District is shown on a map as approved by this City Council and on file in the Records Management Department, and so designated by the name of the District.

#### PUBLIC HEARING

SECTION 6. NOTICE IS HEREBY GIVEN THAT A PUBLIC HEARING WILL BE HELD THE 1st DAY OF JULY, 2014, AT THE HOUR OF 6:30 O'CLOCK P.M., IN THE REGULAR MEETING OF THE CITY COUNCIL, BEING IN THE COUNCIL CHAMBERS, WHICH IS THE TIME AND PLACE FIXED BY THIS CITY COUNCIL FOR THE HEARING OF PROTESTS OR OBJECTIONS IN REFERENCE TO THE ANNUAL LEVY OF ASSESSMENTS, TO THE EXTENT OF THE MAINTENANCE, BY ANY INTERESTED PERSON AND ANY OTHER MATTERS CONTAINED IN THIS RESOLUTION. ANY PERSONS WHO WISH TO OBJECT TO THE PROCEEDINGS FOR THE ANNUAL LEVY SHOULD FILE A WRITTEN PROTEST WITH THE CITY CLERK PRIOR TO THE TIME SET AND SCHEDULED FOR SAID PUBLIC HEARING.

#### NOTICE

<u>SECTION 7</u>. That the City Clerk is hereby authorized and directed to publish, pursuant to Government Code Section 6061, a copy of this Resolution in the INLAND VALLEY DAILY BULLETIN, a newspaper of general circulation within said City, said publication shall be made one time and not less than ten (10) days before the date set for the Public Hearing.

#### EFFECTIVE DATE OF RESOLUTION

<u>SECTION 8</u>. That this Resolution shall take effect immediately upon its adoption.

#### PROCEEDING INQUIRIES

<u>SECTION 9</u>. For any and all information relating to the proceedings, protest procedure, any documentation and/or information of a procedural or technical nature, your attention is directed to the below listed person at the local agency or department so designated:

#### Bob Chandler City of Ontario 415 East "B" Street Ontario, California 91764 (909) 395-2353

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

PASSED, APPROVED, AND ADOPTED this 3<sup>rd</sup> day of June 2014.

PAUL S. LEON, MAYOR

ATTEST:

MARY E. WIRTES, MMC, CITY CLERK

APPROVED AS TO LEGAL FORM:

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 June 3, 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 June 3, 2014.

MARY E. WIRTES, MMC, CITY CLERK

# CITY OF ONTARIO

Agenda Report June 3, 2014

# SECTION: CONSENT CALENDAR

# SUBJECT: ANNUAL LEVY OF ASSESSMENTS WITHIN ONTARIO PARKWAY MAINTENANCE ASSESSMENT DISTRICTS NO. 1, 2, 3 AND 4 FOR FISCAL YEAR 2014-15

**RECOMMENDATION:** That the City Council adopt resolutions pertaining to the levy of assessments within Ontario Parkway Maintenance Assessment Districts (OPMAD) No. 1, 2, 3 and 4:

- (A) A resolution initiating proceedings and ordering the preparation of an Engineer's Report for each district relating to the annual levy of assessments; and
- (B) A resolution giving preliminary approval of the Engineer's Reports; and
- (C) Resolutions declaring the City's intention to levy the special assessments for Fiscal Year 2014-15 and setting the date of July 1, 2014 for a Public Hearing on each district in accordance with the Landscaping and Lighting Act of 1972.

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

**FISCAL IMPACT:** As proposed, special assessment revenue will be generated in the amount of \$283,671 from OPMAD No's. 1, 2 and 3, and \$297,245 from OPMAD No. 4 during Fiscal Year 2014-15. The operation and maintenance costs of \$571,240 within OPMAD No's. 1, 2 and 3 will exceed the assessment revenues by \$287,569. The differential will be funded with \$19,907 from available fund balance in the Parkway Maintenance District Fund; and with \$267,662 from the General Fund. If approved, the General Fund portion will be included in the City's proposed budget for Fiscal Year 2014-15. The total proposed special assessment for OPMAD No. 4 is sufficient to pay all expenses within this service area. The special assessments for OPMAD No's. 1, 2, and 3 Zone 2000-1 are capped, so there are no proposed changes from the FY 2013-14 special assessments. The

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

	Bob Chandler Management Services	Submitted to Council/O.H.A. Approved:	06/03/2014
City Manager	INC A	Continued to: Denied:	
Approval:		-	23

recommended special assessment rate for OMPAD No. 3 Zone 2000-2 represents an increase of 4.8%. The average increase in the recommended special assessment rates for the 6 maintenance areas in OPMAD No. 4 is 1.5%.

**BACKGROUND:** The first of these districts was formed in 1976 pursuant to the Landscaping and Lighting Act of 1972 (the "1972 Act"). Additional territories are annexed to the districts from time to time as development proceeds. The districts were formed to help minimize the continually increasing cost of maintaining and operating the landscaping along public streets where the property owners do not have direct access to the landscaping. A special assessment is levied annually on benefiting properties for the cost of operation and maintenance of certain parkway landscaping facilities within the districts. The City's Community and Public Services Agency establishes the annual operation and maintenance of the landscaping. Annually, an Engineer's Report for each district must be prepared which apportions these costs to each parcel within the districts. The locations of the districts are shown on the attached maps.

**OPMAD No's. 1, 2, and 3** are comprised of single-family residential developments. Due to varying characteristics, the districts are organized into benefit zones and/or maintenance areas. Each zone/maintenance area is assessed for only the operation and maintenance of the facilities from which it receives special direct benefit. The total assessment for each maintenance area is then apportioned to its constituent parcels.

Special assessment revenue will be generated in the combined amount of \$283,671 from OPMAD No's. 1, 2 and 3. The maximum and proposed Fiscal Year 2014-15 special assessment rates for OPMAD No.'s 1, 2 and 3 along with last year's special assessment rates are as follows:

	Prior Year 2013-14	Proposed 2014-15	Maximum 2014-15
OPMAD No. 1	\$ 66.32 Per lot	\$ 66.32	\$ 66.32
OPMAD No. 2	\$ 34.04 Per lot	\$ 34.04	\$ 34.04
OPMAD No. 3, Zone 2000-1	\$ 41.29 Per lot	\$ 41.29	\$ 41.29
OPMAD No. 3, Zone 2000-2	\$ 161.42 Per lot	\$ 169.17	\$ 207.88

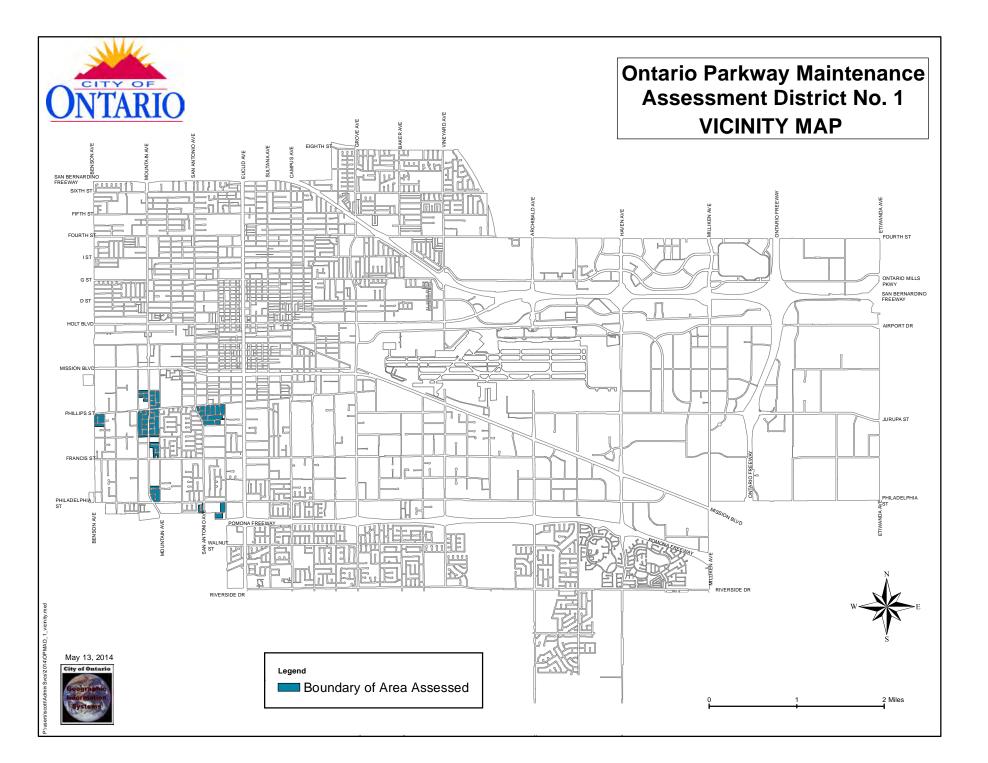
**OPMAD No. 4** is comprised of single-family residential tracts and the Ontario Mills development area. The district is organized into 6 Maintenance Areas (MAs). Each maintenance area is assessed for only the operation and maintenance of the facilities from which it receives direct special benefit. The total assessment for each maintenance area is then apportioned to its constituent parcels.

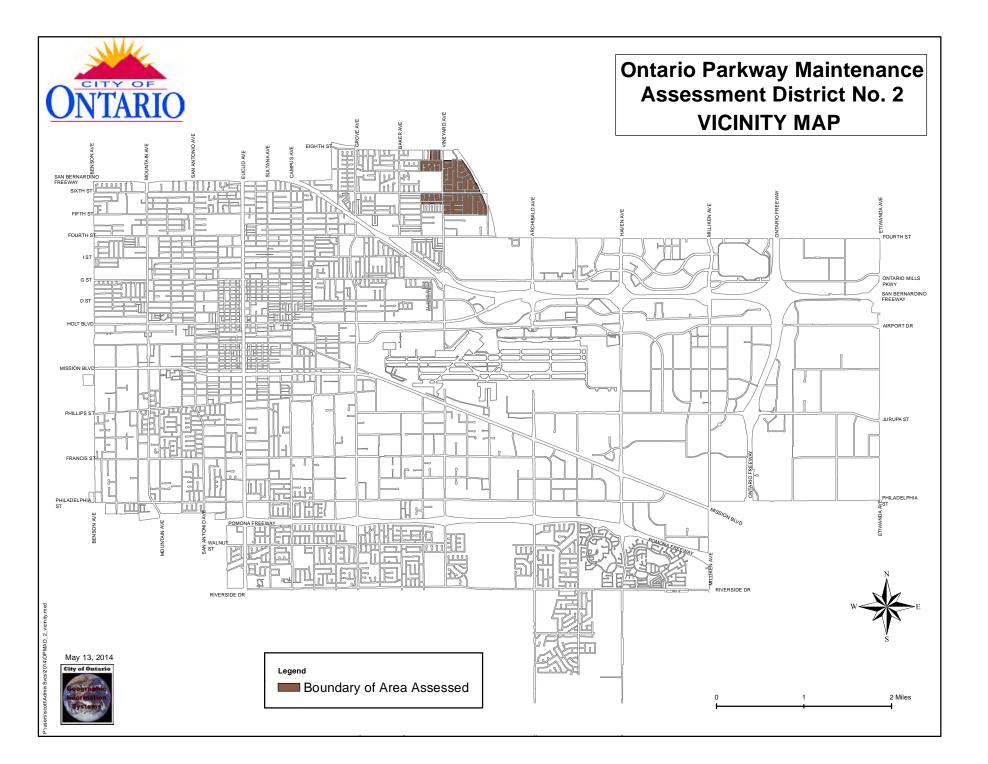
The assessments for OPMAD No. 4 will generate a total of \$297,245. OPMAD No. 4 will generate sufficient revenue to pay all expenses within the service area. The maximum and proposed Fiscal Year 2014-15 special assessment rates for OPMAD No. 4 along with last year's special assessment rates are as follows:

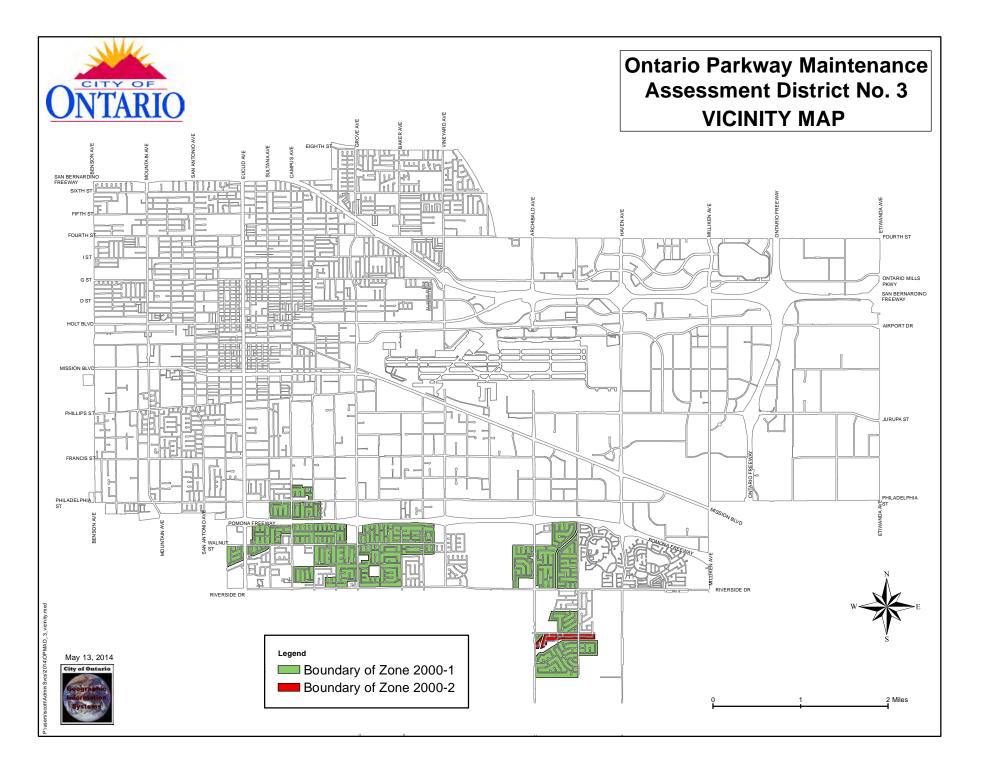
	Prior Year 2013-14	Proposed 2014-15	Maximum 2014-15
MA# 99-1	\$ 50.18 Per lot	\$ 50.58	\$ 50.58
MA# 99-2	\$ 316.53 Per lot	\$ 319.06	\$ 319.06
MA# 99-3	\$ 960.07 Per Acre	\$ 979.27	\$ 1,145.67
MA# 00-1	\$ 235.85 Per lot	\$ 240.57	\$ 314.24
MA# 04-1	\$ 954.68 Per lot	\$ 972.84	\$ 2,001.58
MA# 05-1	\$ 1,300.25 Per lot	\$ 1,323.67	\$ 2,481.06

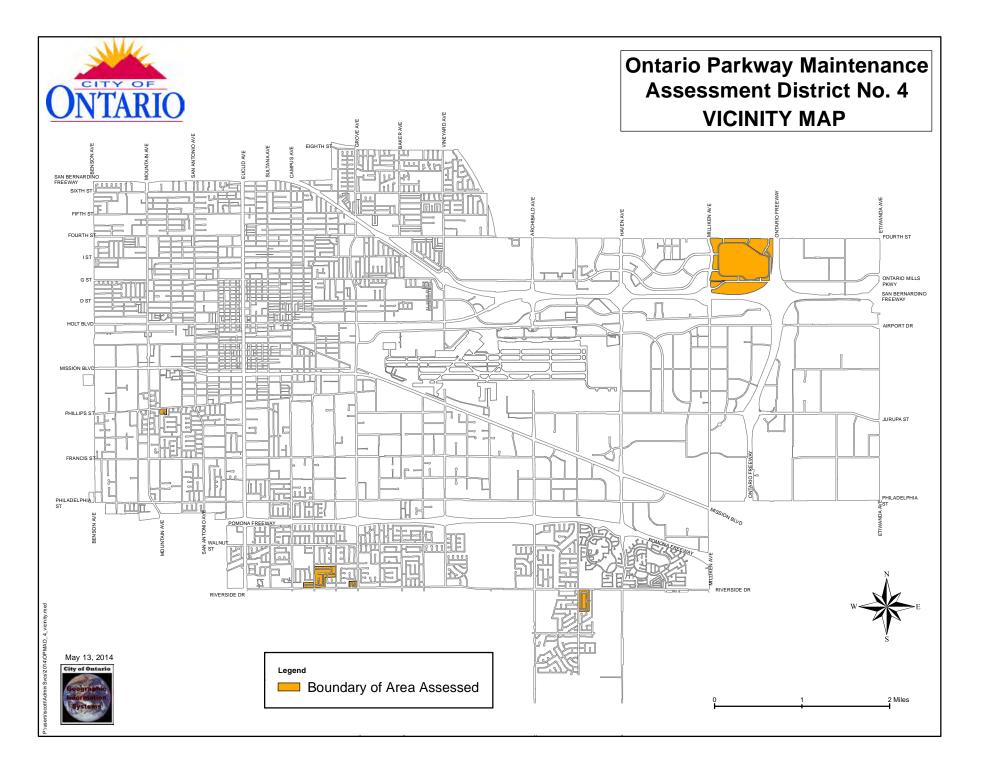
Pursuant to the "1972 Act," Engineer's Reports have been prepared for each district, and are on file with the Records Management Department. Each report includes plans and specifications for the improvements and maintenance, an estimate of costs, a diagram of the area proposed to be assessed, and an assessment of the costs to the various parcels within each district.

A public hearing is required for each district prior to adoption of the proposed assessments. A combined public hearing will be held on July 1, 2014 for the purpose of accepting comments and written protests. At the conclusion of the public hearing, the City Council will consider adoption of resolutions confirming the assessments and ordering the levy of the assessments for tax year 2014-15. Notice of the public hearing for the levy of assessments will be published in the local newspaper, in accordance with the applicable statutes.









RESOLUTION NO.

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF ONTARIO, CALIFORNIA, ORDERING THE PREPARATION OF THE ASSESSMENT ENGINEER'S REPORTS PURSUANT TO THE PROVISIONS OF DIVISION 15, PART 2, OF THE STREETS AND HIGHWAYS CODE OF THE STATE OF CALIFORNIA, FOR PROCEEDINGS FOR THE ANNUAL ASSESSMENT LEVY WITHIN ONTARIO PARKWAY MAINTENANCE ASSESSMENT DISTRICTS NO. 1, 2, 3 AND 4 FOR FISCAL YEAR 2014-2015.

WHEREAS, the City Council of the City of Ontario, California, previously formed maintenance districts pursuant to the terms and provisions of the "Landscaping and Lighting Act of 1972," being Division 15, Part 2, of the Streets and Highways Code of the State of California (the "1972 Act"), known and designated as

#### CITY OF ONTARIO

#### PARKWAY MAINTENANCE ASSESSMENT DISTRICTS NO. 1, 2, 3 AND 4

(the "Districts"); and

WHEREAS, at this time the City Council desires to initiate proceedings to provide for the annual levy of assessments for the ensuing fiscal year to provide for the annual costs for maintenance of improvements within the Districts; and

WHEREAS, the proceedings for the annual levy of assessments shall relate to the fiscal year commencing July 1, 2014, and ending June 30, 2015; and

WHEREAS, there has been submitted to this City Council for its consideration at this time, maps showing the boundaries of the area affected by the levy of the assessment for the above-referenced fiscal year, and inventory maps showing and describing in general the works of improvement proposed to be maintained in said Districts, said description being sufficient to identify the works of improvement and the areas proposed to be assessed for said maintenance thereof.

NOW, THEREFORE, IT IS HEREBY RESOLVED as follows:

<u>SECTION 1</u>. That the above recitals are all true and correct.

<u>SECTION 2</u>. That the maps entitled

#### CITY OF ONTARIO PARKWAY MAINTENANCE ASSESSMENT DISTRICTS NO. 1, 2, 3 AND 4 BOUNDARY AND INVENTORY MAPS

attached hereto, as submitted to this City Council, showing the boundaries of the proposed areas to be assessed and showing the works of improvement to be maintained, are hereby approved, and a copy thereof shall be on file in the Records

Management Department and open to public inspection. The parcels and properties within said area are those proposed to be assessed to pay the costs and expenses for said maintenance work.

<u>SECTION 3</u>. That the proposed maintenance work within the area proposed to be assessed shall be for certain landscaping and appurtenant improvements, as said maintenance work is set forth in the Reports to be presented to this City Council for consideration.

<u>SECTION 4</u>. That the Assessment Engineer, Harris & Associates, is hereby ordered to prepare and file with this City Council the Assessment Engineer's Reports relating to said annual assessment and levy in accordance with the provisions of 1972 Act, Article XIIID of the Constitution of the State of California ("Article XIIID"), and the Proposition 218 Omnibus Implementation Act (Government Code Section 53750 and following) (the "Implementation Act") (the 1972 Act, Article XIIID and the Implementation Act are referred to collectively as the "Assessment Law").

<u>SECTION 5</u>. That upon completion, said Assessment Engineer's Reports shall be filed with the City Clerk, who shall then submit the same to this City Council for its consideration pursuant to the Assessment Law.

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

PASSED, APPROVED, AND ADOPTED this 3<sup>rd</sup> day of June 2014.

# PAUL S. LEON, MAYOR

ATTEST:

MARY E. WIRTES, MMC, CITY CLERK

APPROVED AS TO LEGAL FORM:

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 June 3, 2014 by the following roll call vote, to wit:

AYES: COUNCIL MEMBERS:

NOES: COUNCIL MEMBERS:

ABSENT: COUNCIL MEMBERS:

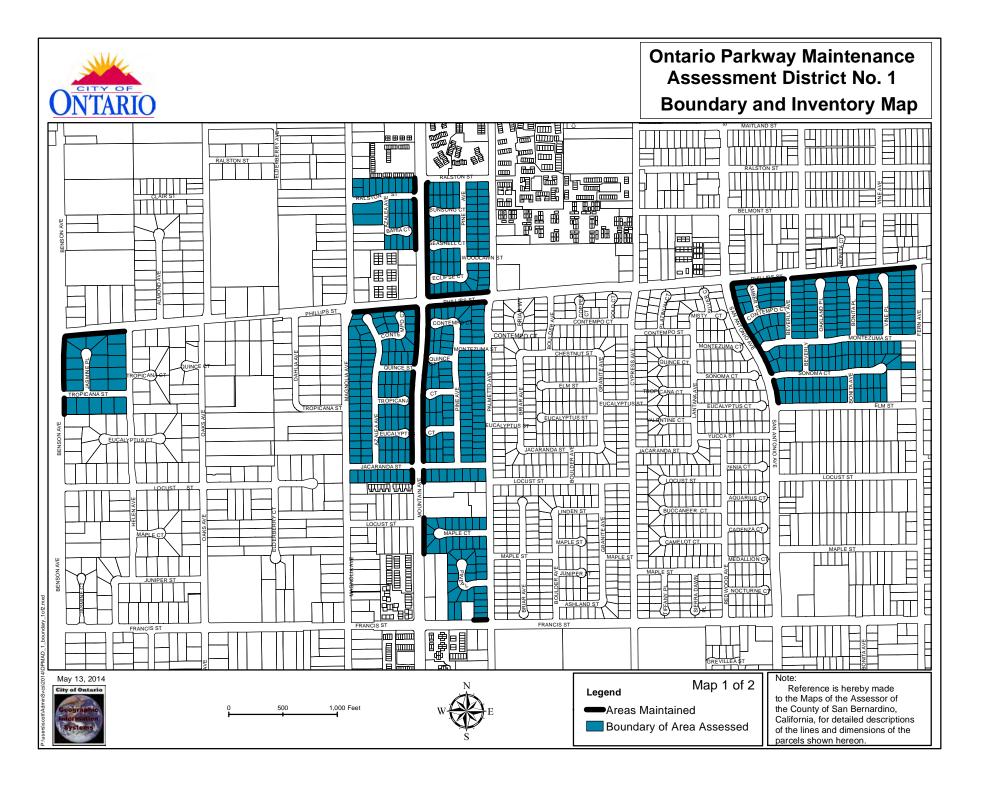
MARY E. WIRTES, MMC, CITY CLERK

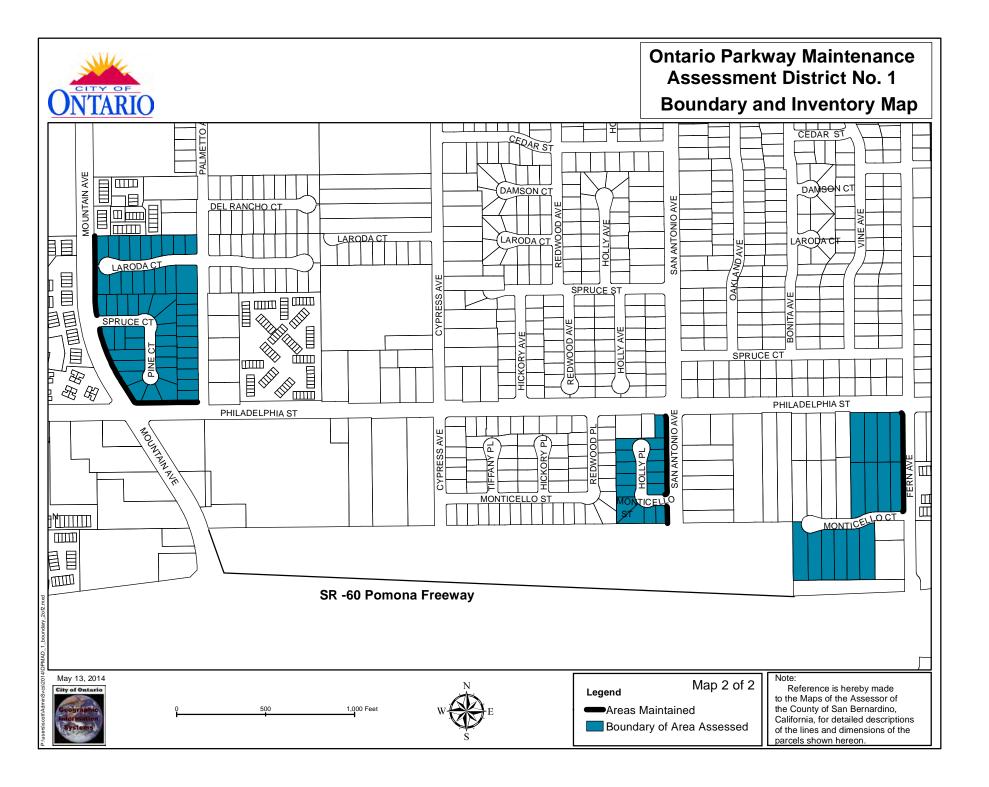
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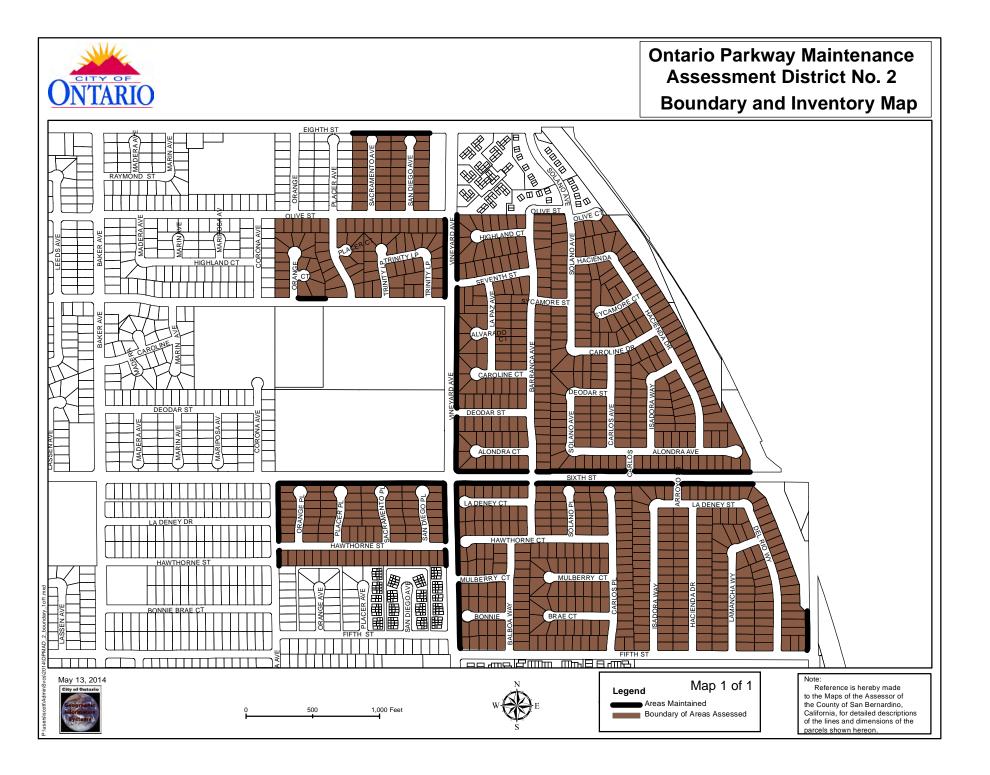
The foregoing is the original of Resolution No. 2014- duly passed and adopted by the Ontario City Council at their regular meeting held June 3, 2014.

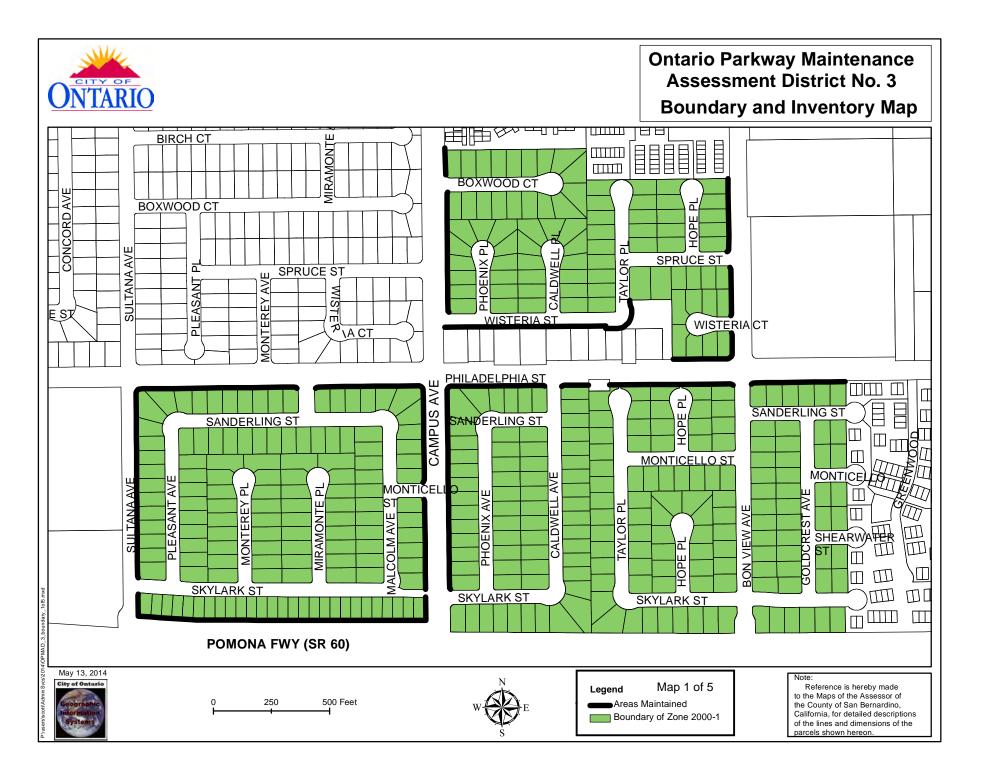
MARY E. WIRTES, MMC, CITY CLERK

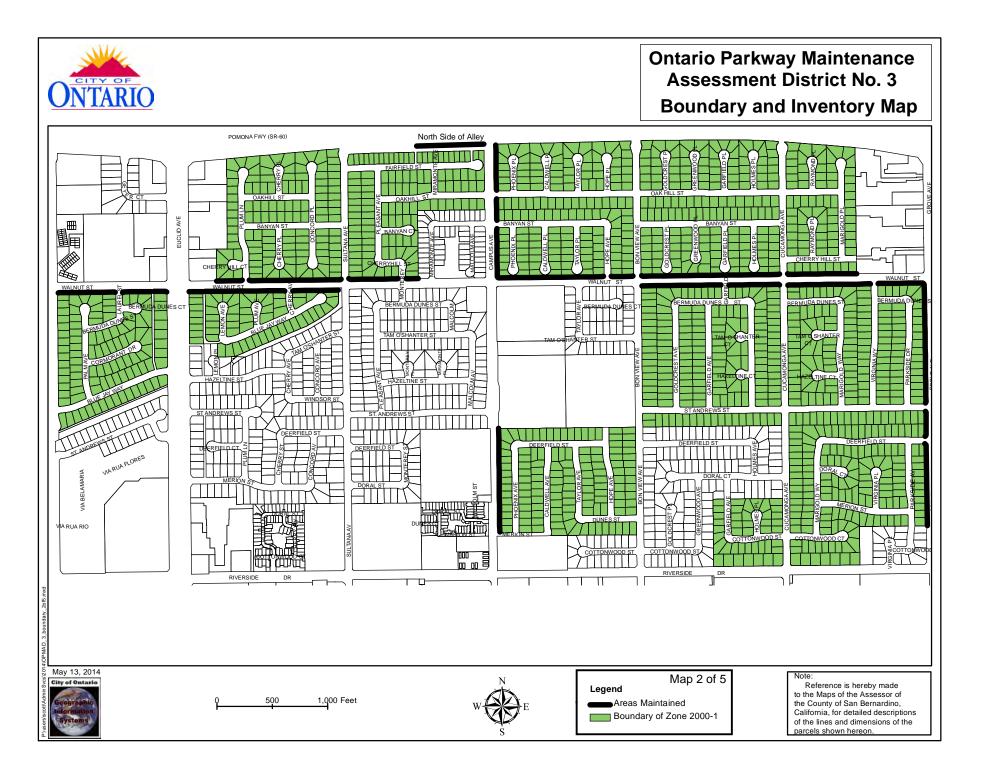
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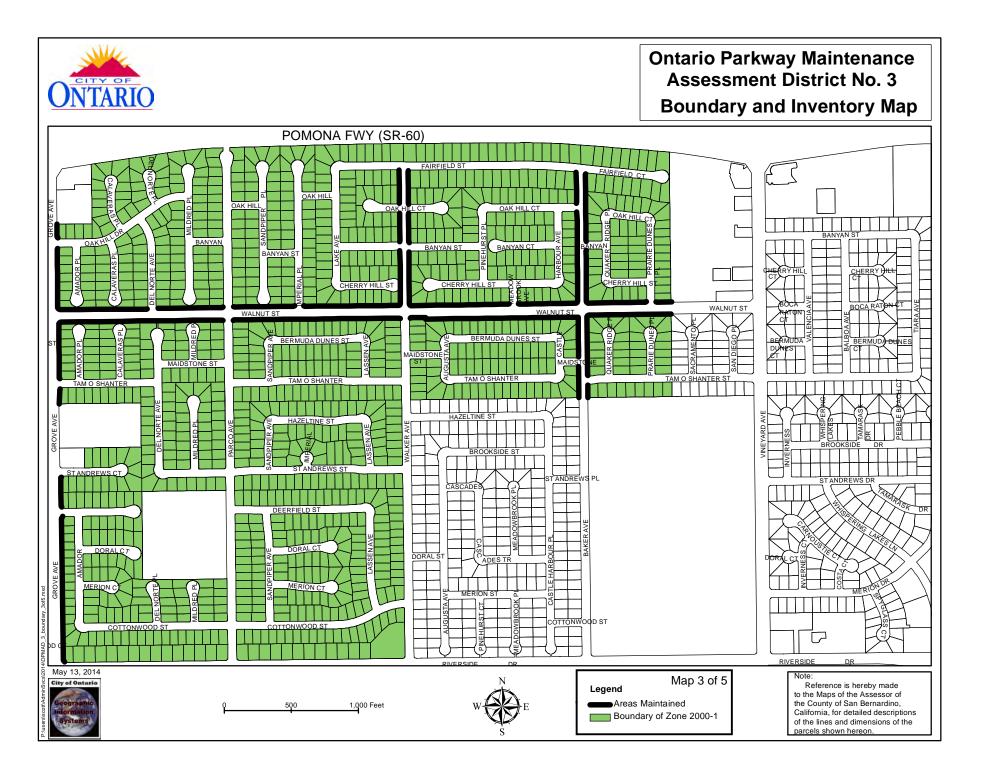


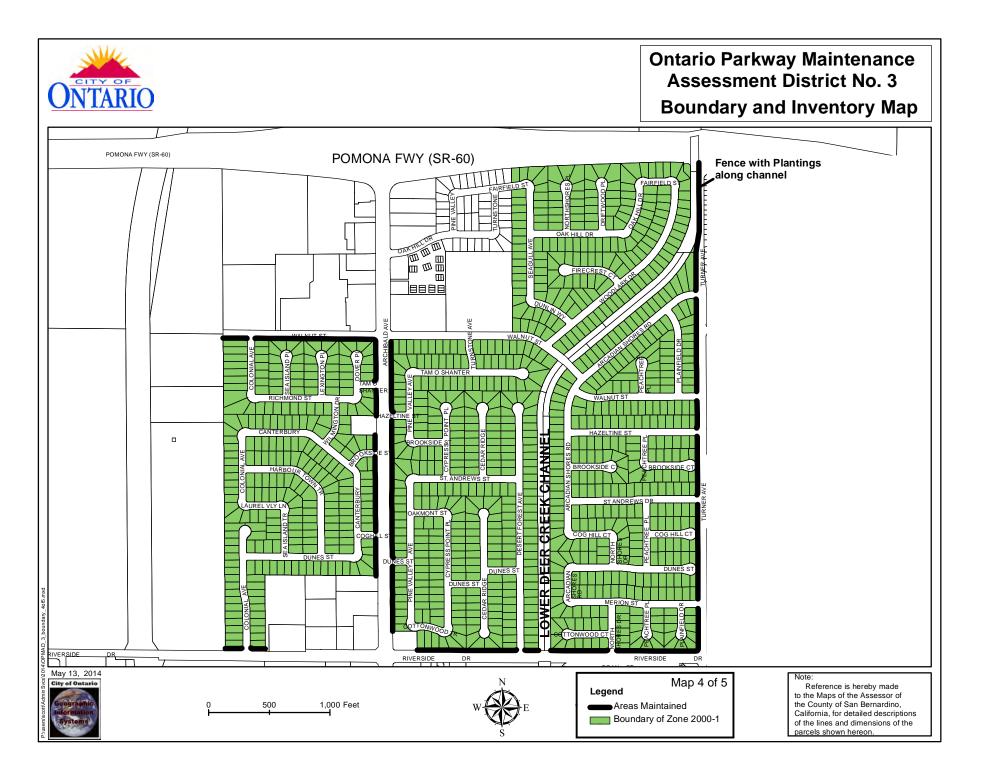


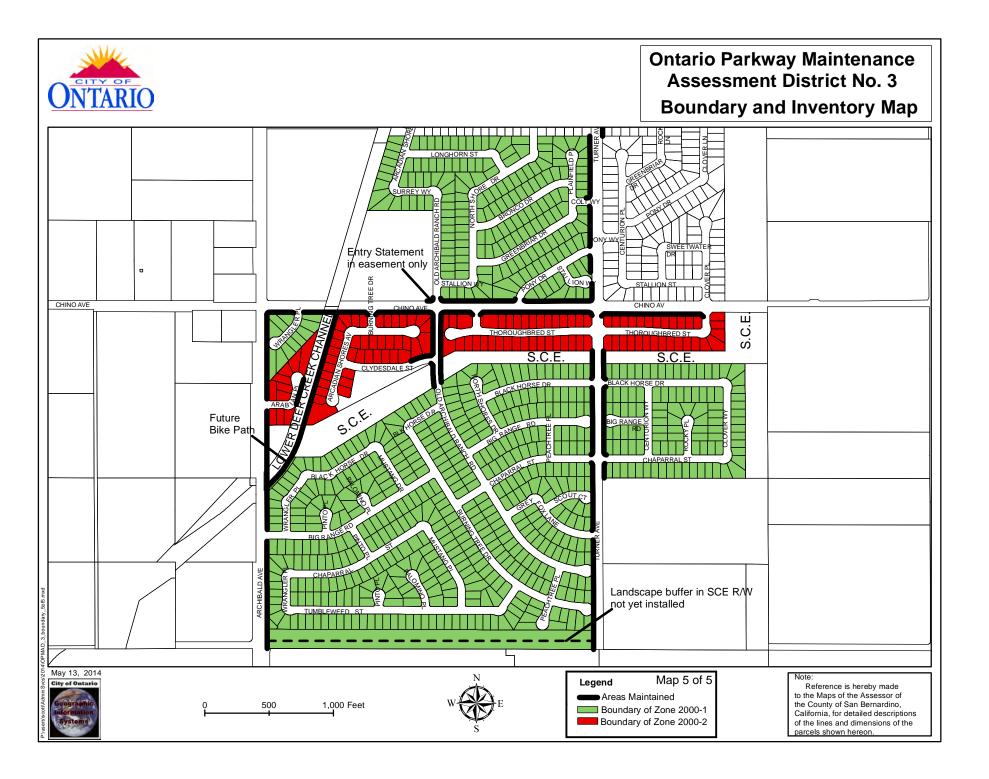


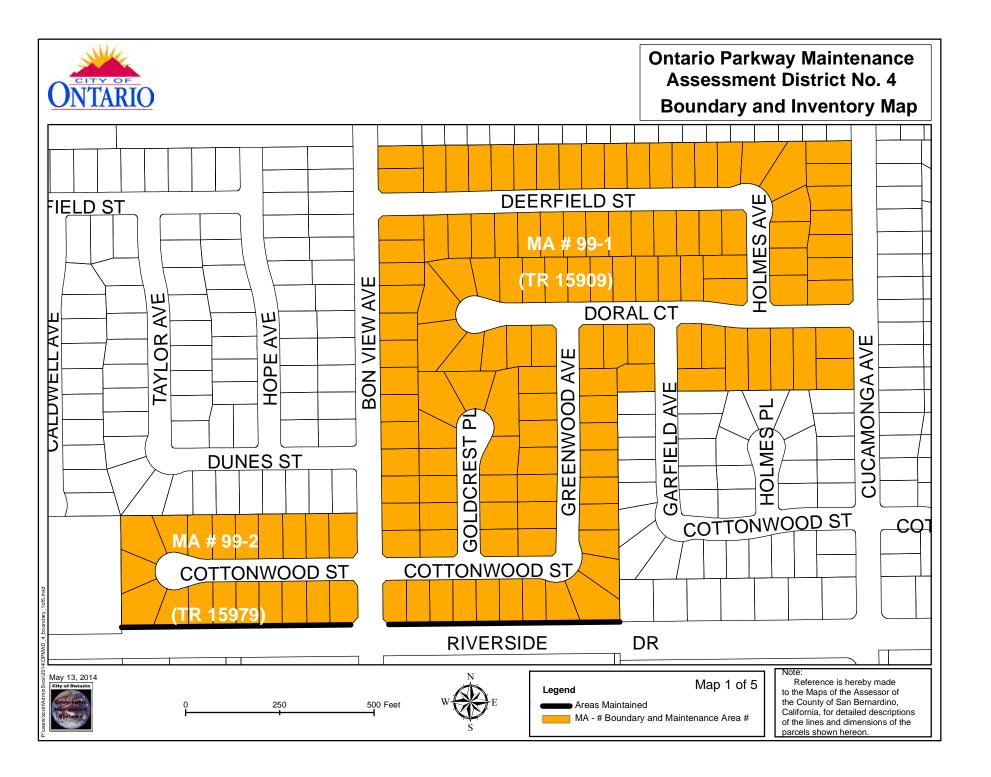


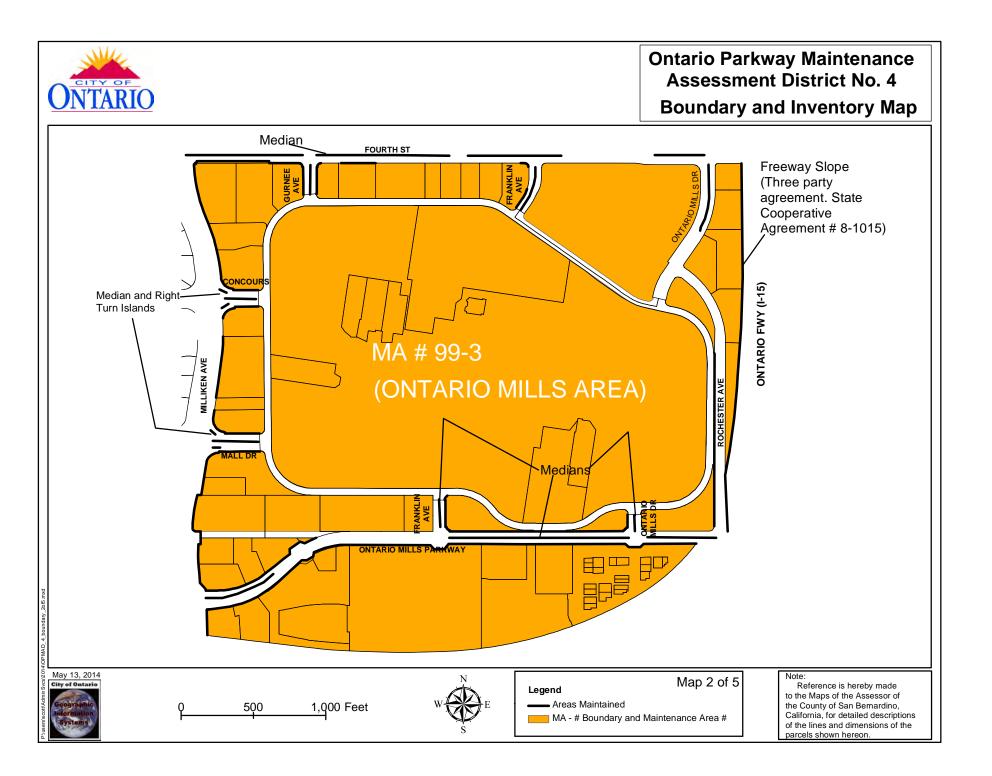


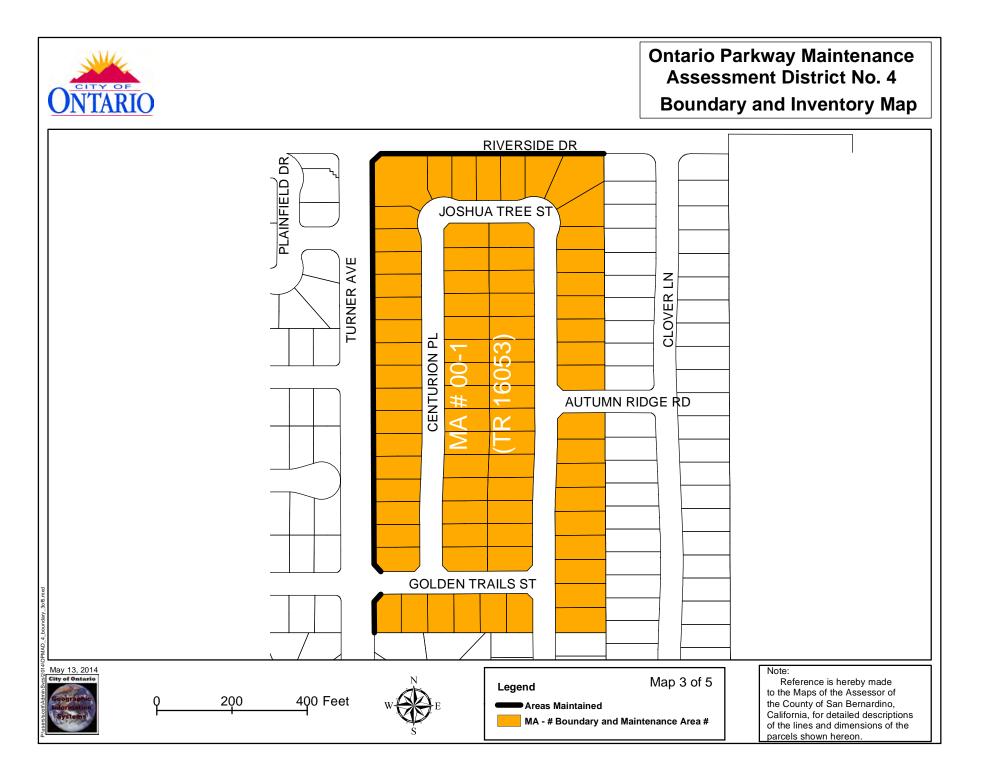


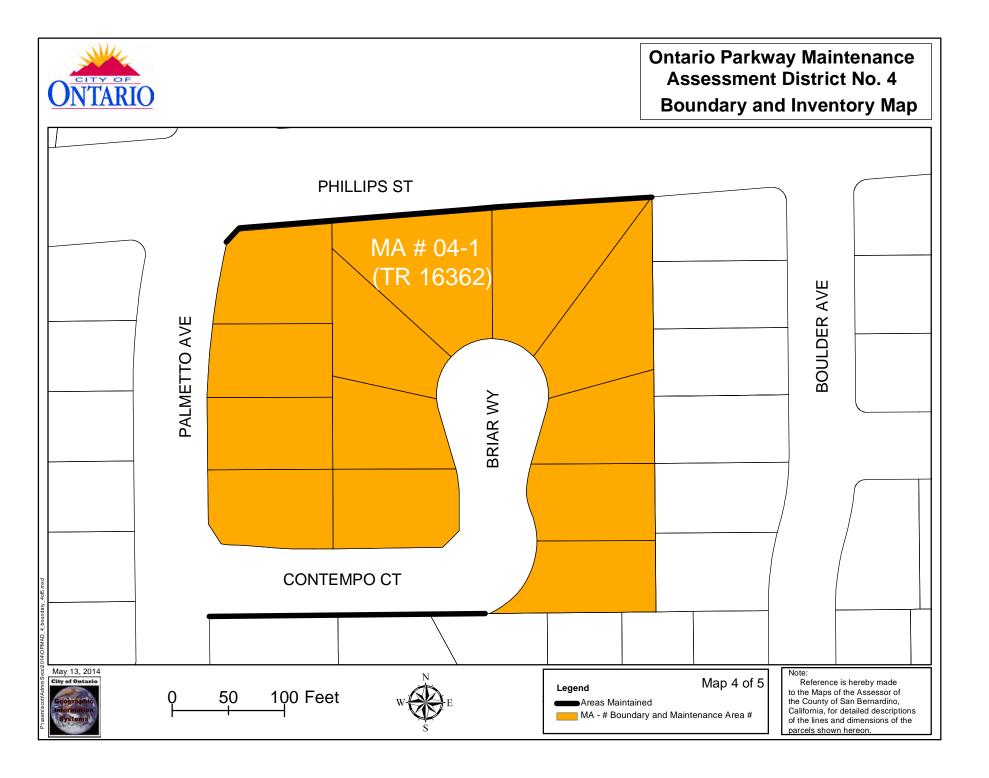


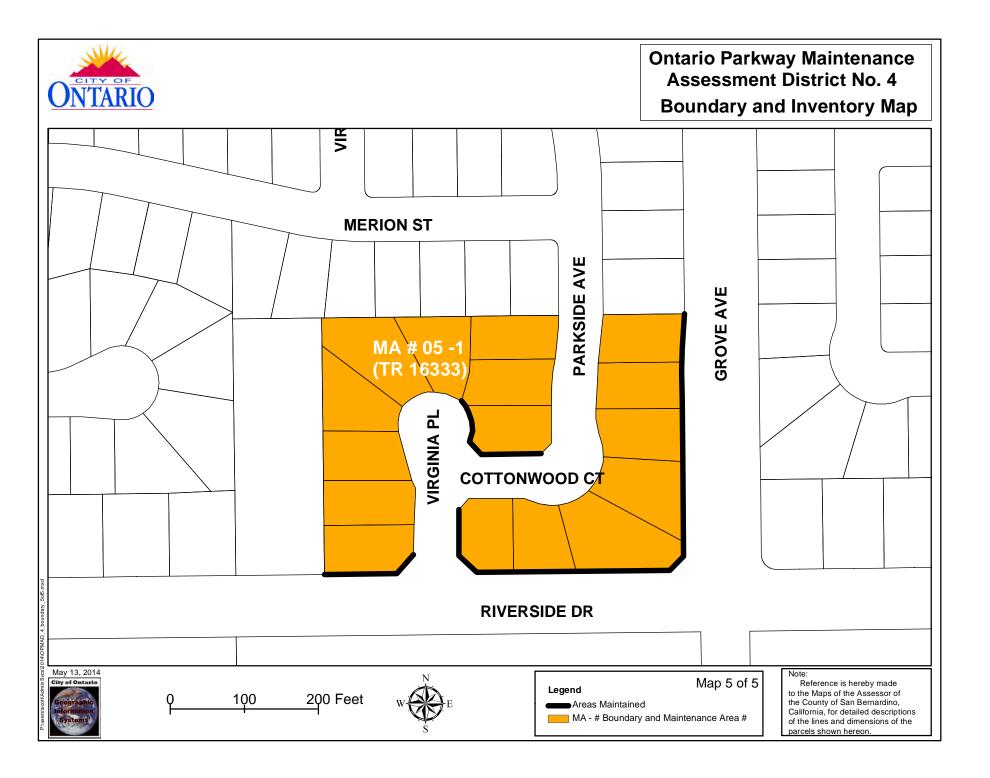












RESOLUTION NO.

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF ONTARIO, CALIFORNIA, APPROVING THE ASSESSMENT ENGINEER'S REPORTS FOR THE ANNUAL LEVY OF ASSESSMENTS WITHIN ONTARIO PARKWAY MAINTENANCE ASSESSMENT DISTRICTS NO. 1, 2, 3 AND 4 FOR FISCAL YEAR 2014-2015.

WHEREAS, the City Council of the City of Ontario, California, pursuant to the provisions of Division 15, Part 2, of the Streets and Highways Code of the State of California (the "1972 Act"), Article XIIID of the Constitution of the State of California ("Article XIIID"), and the Proposition 218 Omnibus Implementation Act (Government Code Section 53750 and following) (the "Implementation Act") (the 1972 Act, Article XIIID and the Implementation Act are referred to collectively as the "Assessment Law"), did, by previous Resolution, order the preparation of the Assessment Engineer's Reports for the annual levy of assessments for the referenced Fiscal Year in the maintenance assessment districts known and designated as

## CITY OF ONTARIO PARKWAY MAINTENANCE ASSESSMENT DISTRICTS NO. 1, 2, 3 AND 4

(the "Districts"); and

WHEREAS, there has now been presented to this City Council the Assessment Engineer's Reports as required by the Assessment Law and as previously directed by Resolution; and

WHEREAS, this City Council has now examined and reviewed the Assessment Engineer's Reports as presented, and is satisfied with each and all of the items and documents as set forth therein, and is satisfied that the assessments on a preliminary basis, have been spread in accordance with the special benefits received from the improvements to be maintained, as set forth in said Assessment Engineer's Reports.

NOW, THEREFORE, IT IS HEREBY RESOLVED as follows:

<u>SECTION 1</u>. That the above recitals are all true and correct.

<u>SECTION 2</u>. That the Assessment Engineer's Reports as presented, consisting of the following:

- A. Plans and specifications describing the general nature, location, and extent of the improvements to be maintained and the extent of such maintenance;
- B. An estimate of the cost of the maintenance of the improvements for the Districts for the referenced fiscal year;

- C. A diagram for each District, showing the area and properties proposed to be assessed; and
- D. An annual assessment for the referenced Fiscal Year of the estimated costs of the maintenance of those improvements to be maintained during such Fiscal Year, assessing the net amount upon all assessable lots and/or parcels within the Districts in proportion to the special benefits received;

are hereby approved on a preliminary basis and are ordered to be filed in the Records Management Department as a permanent record and to remain open to public inspection.

<u>SECTION 3</u>. That the City Clerk shall certify to the passage and adoption of this Resolution, and the minutes of this meeting shall so reflect the presentation of the Assessment Engineer's Reports.

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

PASSED, APPROVED, AND ADOPTED this 3<sup>rd</sup> day of June 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 June 3, 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 June 3, 2014.

MARY E. WIRTES, MMC, CITY CLERK

(SEAL)

RESOLUTION NO.

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF ONTARIO, CALIFORNIA, DECLARING ITS INTENTION TO PROVIDE FOR AN ANNUAL LEVY AND COLLECTION OF ASSESSMENTS FOR FISCAL YEAR 2014-2015 IN ONTARIO PARKWAY MAINTENANCE ASSESSMENT DISTRICTS NO. 1, 2 AND 3, PURSUANT TO THE PROVISIONS OF DIVISION 15, PART 2, OF THE STREETS AND HIGHWAYS CODE OF THE STATE OF CALIFORNIA, AND SETTING A TIME AND PLACE FOR A PUBLIC HEARING THEREON.

WHEREAS, the City Council of the City of Ontario, California, has previously formed landscaping maintenance assessment districts pursuant to the terms and provisions of the "Landscaping and Lighting Act of 1972," being Division 15, Part 2, of the Streets and Highways Code of the State of California, in what is known and designated as

#### CITY OF ONTARIO PARKWAY MAINTENANCE ASSESSMENT DISTRICTS NO. 1, 2 AND 3

(hereinafter referred to as the Districts); and

WHEREAS, at this time, this City Council desires to conduct proceedings to provide for the annual levy of assessments for the ensuing fiscal year, to provide for the costs and expenses necessary for continual maintenance of improvements within said Districts; and

WHEREAS, at this time, there has been presented and approved by this City Council, the Engineer's Reports as required by law, and this City Council desires to conduct the proceedings for said annual levy.

NOW, THEREFORE, IT IS HEREBY RESOLVED as follows:

SECTION 1. That the above recitals are all true and correct.

<u>SECTION 2</u>. That the public interest and convenience requires, and it is the intention of this City Council, to undertake proceedings for the annual levy and collection of special assessments for the continual maintenance of certain improvements, all to service and benefit said Districts as said area is shown and delineated on the maps as previously approved by this City Council and on file in the Records Management Department, open to public inspection, and herein so referenced and made a part hereof, and proposed changes thereto are set forth in the Engineer's Reports, incorporated herein as a part hereof.

#### REPORT

<u>SECTION 3</u>. That the Engineer's Reports regarding the annual levy for said Districts, which Reports are for maintenance for said fiscal year, are hereby approved and are directed to be filed in the Records Management Department.

#### ASSESSMENT

<u>SECTION 4</u>. That the public interest and convenience requires, and it is the intention of this City Council to order the annual assessment levy for the Districts as set forth and described in said Engineer's Reports, and further it is determined to be in the best public interest and convenience to levy and collect annual assessments to pay the costs and expenses of said maintenance and improvement as estimated in said Reports.

#### DESCRIPTION OF MAINTENANCE

<u>SECTION 5</u>. The assessments levied and collected shall be for the maintenance of certain parkway landscaping and appurtenant improvements, as set forth in the Engineer's Reports, referenced and so incorporated herein.

## COUNTY AUDITOR

<u>SECTION 6</u>. The County Auditor shall enter on the County Assessment Roll the amount of the assessments, and the County Tax Collector shall collect said assessments at the time and in the same manner as County taxes are collected. After collection by the County, the net amount of the assessments, after the deduction of any compensation due to the County for collection, shall be paid to the Treasurer for purposes of paying for the costs and expenses of said Districts.

#### SPECIAL FUND

<u>SECTION 7</u>. That all monies collected shall be deposited in a special fund. Payment shall be made out of said fund only for the purpose provided for in this Resolution, and in order to expedite the making of this maintenance and improvement, the City Council may transfer into said fund as it may deem necessary to expedite the proceedings. Any such transfer shall be repaid out of the proceeds of the assessments provided for in this Resolution.

## BOUNDARIES OF DISTRICTS

<u>SECTION 8</u>. Said contemplated maintenance work is in the opinion of this City Council, of direct benefit to the properties within the boundaries of the Districts, and this City Council makes the costs and expenses of said maintenance chargeable upon the Districts, which Districts said City Council hereby declares to be the Districts benefited by said improvement and maintenance, and to be further assessed to pay the costs and expenses thereof. Said Districts shall include each and every parcel of land within the boundaries of said Districts, as said Districts are shown on the maps as approved by this City Council and on file in the Records Management Department.

# PUBLIC PROPERTY

<u>SECTION 9</u>. Any lots or parcels of land known as public property, as the same are defined in Section 22663 of Division 15, Part 2, of the Streets and Highways Code of the State of California, which are included within the boundaries of the Districts, shall be omitted and exempt from any assessment to be made under these proceedings to cover any of the costs and expenses of said improvement and maintenance work.

#### PUBLIC HEARING

SECTION 10. NOTICE IS HEREBY GIVEN THAT A PUBLIC HEARING WILL BE HELD THE 1<sup>st</sup> DAY OF JULY, 2014, AT THE HOUR OF 6:30 O'CLOCK P.M., IN THE REGULAR MEETING OF THE CITY COUNCIL, BEING IN THE COUNCIL CHAMBERS, WHICH IS THE TIME AND PLACE FIXED BY THIS CITY COUNCIL FOR THE HEARING OF PROTESTS OR OBJECTIONS IN REFERENCE TO THE ANNUAL LEVY OF ASSESSMENTS, TO THE EXTENT OF THE MAINTENANCE, BY PROPERTY OWNERS AFFECTED HEREBY AND ANY OTHER MATTERS CONTAINED IN THIS RESOLUTION. ANY PERSONS WHO WISH TO OBJECT TO THE PROCEEDINGS FOR THE ANNUAL LEVY SHOULD FILE A WRITTEN PROTEST WITH THE CITY CLERK PRIOR TO THE TIME SET AND SCHEDULED FOR SAID PUBLIC HEARING.

#### NOTICE

<u>SECTION 11</u>. That the City Clerk is hereby authorized and directed to publish, pursuant to Government Code Section 6061, a copy of this Resolution in the INLAND VALLEY DAILY BULLETIN, a newspaper of general circulation within said City, said publication shall be made one time and not less than ten (10) days before the date set for the Public Hearing.

SECTION 12. That this Resolution shall take effect immediately upon its adoption.

<u>SECTION 13</u>. For any and all information relating to the proceedings, protest procedure, any documentation and/or information of a procedural or technical nature, your attention is directed to the below listed person at the local agency or department so designated:

Bob Chandler City of Ontario 415 East "B" Street Ontario, California 91764 (909) 395-2353

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

PASSED, APPROVED, AND ADOPTED this 3<sup>rd</sup> day of June 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 June 3, 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 June 3, 2014.

MARY E. WIRTES, MMC, CITY CLERK

(SEAL)

RESOLUTION NO.

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF ONTARIO, CALIFORNIA, DECLARING ITS INTENTION TO PROVIDE FOR AN ANNUAL LEVY AND COLLECTION OF ASSESSMENTS FOR FISCAL YEAR 2014-2015 IN ONTARIO PARKWAY MAINTENANCE ASSESSMENT DISTRICT NO. 4, PURSUANT TO THE PROVISIONS OF DIVISION 15, PART 2, OF THE STREETS AND HIGHWAYS CODE OF THE STATE OF CALIFORNIA, AND SETTING A TIME AND PLACE FOR A PUBLIC HEARING THEREON.

WHEREAS, the City Council of the City of Ontario, California, has previously formed a landscaping maintenance assessment district, and authorized the levy of assessments therein pursuant to the terms and provisions of the "Landscaping and Lighting Act of 1972," being Division 15, Part 2, of the Streets and Highways Code of the State of California (the "1972 Act"), Article XIIID of the Constitution of the State of California (the "1972 Act"), Article XIIID of the Constitution of the State of California ("Article XIIID"), and the Proposition 218 Omnibus Implementation Act (Government Code Section 53750 and following) (the "Implementation Act") (the 1972 Act, Article XIIID and the Implementation Act are referred to collectively as the "Assessment Law") in what is known and designated as

# CITY OF ONTARIO PARKWAY MAINTENANCE ASSESSMENT DISTRICT NO. 4

(the "District"); and

WHEREAS, the City Council previously undertook proceedings as required by the Assessment Law to consider the approval of the levy of (a) maximum annual assessments to finance the estimated costs of the maintenance of all of the improvements to ultimately be maintained upon the completion and acceptance thereof for maintenance, assessing the net amount upon all assessable lots and/or parcels within the District in proportion to the special benefits received; together with a formula pursuant to which such maximum assessment may be adjusted annually for inflation, and (b) an initial annual assessment of the estimated costs of the maintenance of those improvements to be maintained during such Fiscal Year, assessing the net amount upon all assessable lots and/or parcels within the District in proportion to the special benefits received; and

WHEREAS, upon the conclusion of the public hearing related to the proposed levy of the maximum annual assessments referred to in the preceding recital, the assessment ballots submitted in favor of the maximum annual assessments and the assessment ballots received in opposition to the levy of the maximum annual assessments were tabulated with assessment ballots weighted according to the proportional financial obligation of the affected properties; and WHEREAS, as a result of the tabulation of the assessment ballots submitted, it was determined that the assessment ballots submitted, and not withdrawn, in favor of the proposed maximum annual assessment exceeded the assessment ballots submitted, and not withdrawn, in opposition to the levy of the maximum annual assessment; and

WHEREAS, this City Council has initiated proceedings to provide for the annual levy of assessments for the referenced Fiscal Year, to finance the costs and expenses necessary for continual maintenance of improvements within said Districts; and

WHEREAS, at this time, there has been presented and approved by this City Council, the Assessment Engineer's Report as required by the Assessment Law, and this City Council desires to conduct the proceedings to authorize said annual levy; and

WHEREAS, the proposed annual assessments for the referenced Fiscal Year as set forth in the Assessment Engineer's Report do not exceed the maximum annual assessments as previously authorized to be levied and, therefore, the proposed levy of assessments for the referenced Fiscal Year are not deemed to be "increased" over the maximum annual assessments.

NOW, THEREFORE, IT IS HEREBY RESOLVED as follows:

# RECITALS

<u>SECTION 1</u>. That the above recitals are all true and correct.

## IMPROVEMENTS AND MAINTENANCE

<u>SECTION 2</u>. That the public interest and convenience requires, and it is the intention of this City Council, to undertake proceedings for the annual levy and collection of special assessments for the continual maintenance of the improvements described below, all to service and specially benefit the properties within said District as said area is shown and delineated on a map as previously approved by this City Council and on file in the Records Management Department, open to public inspection, and herein so referenced and made a part hereof.

The improvements to be maintained include the landscaping, planting, shrubbery, trees, irrigation systems, hardscapes, fixtures, sidewalks within designated medians, parkways, other public rights-of-way and dedicated easements specially benefiting the properties within the District.

The maintenance of such landscaping shall include the furnishing of services and materials for the ordinary and usual maintenance and servicing of the improvements, including:

- (a) Repair, removal, or replacement of all or any part of any improvement;
- (b) Providing for the life, growth, health, and beauty of the improvements, including cultivation, irrigation, trimming, spraying, fertilizing, and/or treating for disease and injury; and
- (c) The removal of trimmings, rubbish, and debris.

The annual assessment for the referenced Fiscal Year shall be levied only for those improvements completed or projected to be completed and accepted by this City Council for maintenance prior to or during said Fiscal Year.

# ASSESSMENT ENGINEER'S REPORT

SECTION 3. That the Assessment Engineer's Report regarding the annual levy for said District, which Report is for maintenance for the said Fiscal Year, is hereby approved and is directed to be filed in the Records Management Department. Reference is made to such Report for a full and detailed description of the improvements to be maintained, the boundaries of the District and any zones therein, and the proposed assessments upon assessable lots and parcels of land within the District.

# ASSESSMENT

<u>SECTION 4</u>. That the public interest and convenience requires, and it is the intention of this City Council to order the annual assessment levy for the District as set forth and described in said Assessment Engineer's Report, and further it is determined to be in the best public interest and convenience to levy and collect annual assessments to pay the costs and expenses of said maintenance and improvement as estimated in the Assessment Engineer's Report.

# BOUNDARIES OF DISTRICT

<u>SECTION 5</u>. Said contemplated maintenance work is in the opinion of this City Council, of direct benefit to the properties within the boundaries of the District, and this City Council makes the costs and expenses of said maintenance chargeable upon a District, which District said City Council hereby declares to be the District benefited by said improvement and maintenance, and to be further assessed to pay the costs and expenses thereof. Said District shall include each and every parcel of land within the boundaries of said District, as said District is shown on a map as approved by this City Council and on file in the Records Management Department, and so designated by the name of the District.

#### PUBLIC HEARING

SECTION 6. NOTICE IS HEREBY GIVEN THAT A PUBLIC HEARING WILL BE HELD THE 1<sup>st</sup> DAY OF JULY, 2014, AT THE HOUR OF 6:30 O'CLOCK P.M., IN THE REGULAR MEETING OF THE CITY COUNCIL, BEING IN THE COUNCIL CHAMBERS, WHICH IS THE TIME AND PLACE FIXED BY THIS CITY COUNCIL FOR THE HEARING OF PROTESTS OR OBJECTIONS IN REFERENCE TO THE ANNUAL LEVY OF ASSESSMENTS, TO THE EXTENT OF THE MAINTENANCE, BY ANY INTERESTED PERSON AND ANY OTHER MATTERS CONTAINED IN THIS RESOLUTION. ANY PERSONS WHO WISH TO OBJECT TO THE PROCEEDINGS FOR THE ANNUAL LEVY SHOULD FILE A WRITTEN PROTEST WITH THE CITY CLERK PRIOR TO THE TIME SET AND SCHEDULED FOR SAID PUBLIC HEARING.

#### NOTICE

<u>SECTION 7</u>. That the City Clerk is hereby authorized and directed to publish, pursuant to Government Code Section 6061, a copy of this Resolution in the INLAND VALLEY DAILY BULLETIN, a newspaper of general circulation within said City, said publication shall be made one time and not less than ten (10) days before the date set for the Public Hearing.

## EFFECTIVE DATE OF RESOLUTION

<u>SECTION 8</u>. That this Resolution shall take effect immediately upon its adoption.

#### PROCEEDING INQUIRIES

<u>SECTION 9</u>. For any and all information relating to the proceedings, protest procedure, any documentation and/or information of a procedural or technical nature, your attention is directed to the below listed person at the local agency or department so designated:

#### Bob Chandler City of Ontario 415 East "B" Street Ontario, California 91764 (909) 395-2353

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

PASSED, APPROVED, AND ADOPTED this 3<sup>rd</sup> day of June 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 June 3, 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 June 3, 2014.

MARY E. WIRTES, MMC, CITY CLERK

(SEAL)

# CITY OF ONTARIO

Agenda Report June 3, 2014

# SECTION: CONSENT CALENDAR

# SUBJECT: A MAINTENANCE SERVICES AGREEMENT FOR LANDSCAPE MAINTENANCE SERVICES FOR MEDIANS AND PARKWAYS

**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 1314-05 with S.C. Yamamoto, Inc. of La Habra, California, for an annual cost of \$90,000 plus a 10% contingency of \$9,000; 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: <u>Develop Strategies and Take Actions, Including Regaining Local Control of</u> the Ontario International Airport, to Minimize the Negative Impacts of the Global Financial <u>Downturn on Ontario's Economy and the City's Fiscal Health</u> <u>Invest in the City's Infrastructure (Water, Streets, Sewers, Parks, Storm Drains and Public Facilities)</u>

**FISCAL IMPACT:** The estimated annual base cost of the proposed Maintenance Services Agreement is \$90,000 plus \$9,000 for urgency services for a total contract amount of \$99,000 for each of the first three years. If approved, General Fund appropriations will be included in the Fiscal Year 2014-15 proposed 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 allows the City to limit the potential for yearly increase to the bid amounts, avoid the costs for re-bidding the contract annually, provide service continuity, and project future costs.

**BACKGROUND:** In February 2014, the City solicited proposals for landscape maintenance services for Median and Parkway Landscape Services and received nine proposals. Of the nine proposals received, eight proposals met the bid criteria and standards necessary to perform this work; and one was

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

Prepared by: Department:	Roberto Perez Parks and Maintenance	Submitted to Council/O.H.A. Approved:	06/03/2014	
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Approval:	set.y		24	

non-responsive. For comparative purposes, the proposed annual base cost for the responsive proposals ranged from \$90,000 to \$132,732.

<u>Vendor</u>	<b>Location</b>		
Brickman	Upland, CA		
Landscape West Mgmt	Chino, CA		
Marina Landscape, Inc.	Anaheim, CA		
Mariposa Landscape	Irwindale, CA		
Master Landscape *	Westminster, CA		
Merchants Landscape	Rancho Cucamonga, CA		
Midori	Santa Ana, CA		
SC Yamamoto, Inc	La Habra, CA		
Valley Crest Landscape	Fontana, CA		

\* Bid proposal was incomplete and therefore deemed non-responsive.

S.C. Yamamoto, Inc. located La Habra, California, submitted a proposal that met all the required specifications with a base, three-year total of \$270,000. Based on their proposal, credentials, pricing and favorable references, staff recommends award of a Maintenance Services Agreement to S.C. Yamamoto, Inc.

# CITY OF ONTARIO

Agenda Report June 3, 2014

# SECTION: CONSENT CALENDAR

# SUBJECT: A MAINTENANCE SERVICES AGREEMENT FOR LANDSCAPE MAINTENANCE SERVICES FOR NMC WEED ABATEMENT AREAS

**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 1314-06 with Landscape West Management Services, Inc. of Chino, California, for an annual cost of \$79,344 plus a 10% contingency of \$7,935; 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: <u>Develop Strategies and Take Actions, Including Regaining Local Control of</u> <u>the Ontario International Airport, to Minimize the Negative Impacts of the Global Financial</u> <u>Downturn on Ontario's Economy and the City's Fiscal Health</u> <u>Invest in the City's Infrastructure (Water, Streets, Sewers, Parks, Storm Drains and Public Facilities)</u>

**FISCAL IMPACT:** The estimated annual base cost of the proposed Maintenance Services Agreement is \$79,344 plus \$7,935 for urgency services for a total contract amount of \$87,279 for each of the first three years. If approved, General Fund appropriations will be included in the Fiscal Year 2014-15 proposed budget.

At the City's sole discretion, two additional one-year extensions may be exercised with an increase of 5% for the fourth year and no increase for the fifth year. Future contracting actions will be commensurate with City Council authorized work programs and budgets. Contracting for the multi-year period allows the City to limit the potential for yearly increase to the bid amounts, avoid the costs for rebidding the contract annually, provide service continuity, and project future costs.

**BACKGROUND:** In February 2014, the City solicited proposals for landscape maintenance services for NMC Weed Abatement areas. Seven proposals were received that met bid criteria and standards necessary to perform this work. For comparative purposes, the proposed annual base cost ranged from \$79,344 to \$123,723.

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

Prepared by: Department:	Roberto Perez Parks and Maintenance	Submitted to Council/O.H.A. Approved:		06 03	12014
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Approval:	A.C.				25

Location		
nd, CA		
sbad, CA		
io, ČA		
ndale, CA		
Rancho Cucamonga, CA		
abra, CA		
ana, CA		

Landscape West Management Services, Inc. located in Chino, California, submitted a proposal that met all the required specifications with a base, three-year total of \$238,032. Based on their proposal, credentials, pricing and favorable references, staff recommends award of a Maintenance Services Agreement to Landscape West Management Services, Inc.

## CITY OF ONTARIO

Agenda Report June 3, 2014

## SECTION: CONSENT CALENDAR

## SUBJECT: LEGAL SERVICES FOR SALES AND USE TAX REVENUE MATTERS

**RECOMMENDATION:** That the City Council authorize the City Manager to execute a Letter of Engagement with the law firm of Holland & Knight, of San Francisco, California, for legal services to represent the City in sales and use tax revenue matters.

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

**FISCAL IMPACT:** The actual cost of legal services will be based on fixed hourly rates for work performed, with the maximum rate not to exceed \$725 an hour, dependent upon the engagement and case specific needs. The annual baseline budget for the Administrative Services Agency includes appropriations for legal services.

**BACKGROUND:** The City's annual sales and use tax revenue of approximately \$63 million is the single highest revenue source for the City's General Fund. In California, the State Board of Equalization (BOE), administers the collection and distribution of the local sales and use tax revenues to cities. Pursuant to regulations of the BOE, the allocation and distribution of the sales and use tax is based on the seller's point of sale location or situs-based method.

From time to time, cities dispute the determination of the location of the point of sale with the BOE and/or with other local government agencies. To protect the City's interest in these cases, the City requires specialized legal assistance in dealing with disagreements related to the allocation of sales and use tax revenue. Based on the qualifications and experience of its personnel, it is recommended that the City engage the firm of Holland & Knight to represent the City in sales and use tax revenue matters. Holland & Knight has a network of more than 1,000 attorneys and 18 offices throughout the United

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

Prepared by: Department:	Grant D. Yee Administrative Services	Submitted to Council/O.H.A. Approved:	06/03/2014
City Manager Approval:	MEE	Continued to: Denied:	
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States. Mr. Charles Coleman, a partner in the firm, has over 30 years of experience and will be assigned as the lead attorney in Ontario's matters.

## CITY OF ONTARIO

Agenda Report June 3, 2014

## SECTION: CONSENT CALENDAR

## SUBJECT: AN AGREEMENT FOR LEGAL AND TECHNICAL SERVICES PERTAINING TO SEWER AND WATER MATTERS

**RECOMMENDATION:** That the City Council approve and authorize the City Manager to execute an agreement (on file with the Records Management Department) with Nossaman LLP of Los Angeles, California, for legal and technical services with respect to matters relating to sewer disposal, water supply, water rights and water quality in an not to exceed amount of \$100,000 for Fiscal Year 2014-15; and the option to extend the agreement for two additional years with a three year total not to exceed amount of \$300,000, consistent with City Council approved budgets.

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

**FISCAL IMPACT:** The Proposed Fiscal Year 2014-15 budget includes funds in the Water and Sewer Funds for these legal and technical services. At the City's discretion, the agreement may be extended for up two additional years consistent with City Council approved budgets. Annual adjustments in the billing rates for the option years will be negotiated at the City's discretion, but will not exceed 3% annually. There is no impact to the General Fund.

**BACKGROUND:** In Fiscal Year 2009-10, the City entered into an Agreement with Nossaman LLP for legal and technical representation regarding sewer disposal, water supply, water rights and water quality matters. The agreement term covered Fiscal Year 2009-10 and included optional annual extensions, which have been exercised. These services are still required for Fiscal Year 2014-15 and may be necessary in future years. Providing the option to extend the agreement for additional years ensures service continuity in dealing with sewer and water related issues.

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

Prepared by: Department:	Ryan Shaw MU/Administration	Submitted to Council/O.H.A. Approved:	06/03/2014
City Manager Approval:	IAA	Continued to: Denied:	
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## CITY OF ONTARIO

Agenda Report June 3, 2014

## SECTION: CONSENT CALENDAR

## SUBJECT: AGREEMENTS WITH USA WASTE AND WEST VALLEY MRF FOR SOLID WASTE HANDLING SERVICES

**RECOMMENDATION:** That the City Council approve and authorize the City Manager to execute agreements for solid waste handling services (on file with the Records Management Department) subject to non-substantive changes as mutually agreed to by the parties with USA Waste of California, Inc., a corporation duly formed and operating under the laws of the State of Delaware, a Waste Management Company (Waste Management) and West Valley MRF, LLC, a limited liability company duly formed and operating under the laws of the State of california and owned in whole or in part by Burrtec Waste Industries, Inc., a California corporation duly formed and operating under the laws of the State of California (Burrtec).

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

**FISCAL IMPACT:** Funding for solid waste handling services is included in the Proposed Fiscal Year 2014-15 Solid Waste Budget and costs are included in the rate study. The proposed agreement with Waste Management for the processing, transportation and landfill disposal of the City's refuse includes a 2.5% savings from the current per ton rate. The proposed agreements with Burrtec for recycling and organics (greenwaste) processing services include pricing and revenue sharing terms that are consistent with the current agreements. All three of the proposed agreements contain annual inflation factors and adjustment dates that are generally consistent with the existing agreements, and the terms could reach up to 15 years based on performance incentives and optional extensions. There is no impact to the General Fund.

**BACKGROUND:** The City currently has one option year remaining that could extend its existing solid waste handling services agreements with Waste Management and Burrtec through April 2016. The Ontario Municipal Code Section 6-3.105 Sections 40059 and 49300 of the California Public Resources

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

Prepared by: Department:	Mike Sigsbee MU/Utilities	Submitted to Council/O.H.A. Approved:	06/03/2014
City Manager	Maa	Continued to: Denied:	
Approval:	Alto		28

Code et seq. provide that the City may enter into solid waste handling and recycling service contracts with independent contractors without utilizing the formal bidding process. As a result, since there are limited numbers of solid waste, greenwaste or organics composting, and recyclable materials processors proximal to the City, staff conducted a proposal process with City Attorney review.

The City issued a Request for Qualifications (RFQ) on April 2, 2013, to solicit Statements of Qualifications (SOQs) for refuse and recycling services. The RFQ was reviewed by 22 vendors including Waste Management, Burrtec and Beneficial Ag Services. Subsequently, a Request for Proposals (RFP) for solid waste handling services was issued on June 18, 2013, to Waste Management, Burrtec and Beneficial Ag Services based on these company's responses to the RFQ and their qualifications to potentially meet the City's service requirements. Staff reviewed the service and cost proposals and conducted interviews in order to determine which prospective vendors could best meet the City's needs. As a result of the proposal review process, staff recommends the City Council authorize award of these agreements to Waste Management and Burrtec.

Waste Management has provided the City's landfill services since 1999 at the El Sobrante Landfill, located in Corona, California. Under the existing agreement, City refuse is delivered to the West Valley Material Recovery Facility (West Valley MRF), from where it is transferred to El Sobrante for landfill via subcontract between Waste Management and Burrtec. Burrtec has provided the City's recycling processing services since 1999 and has provided the City's greenwaste processing since 2009 at the West Valley MRF, located in Fontana, California. Both, El Sobrante and West Valley MRF maintain the appropriate permits and have the capacity required to meet the City's current and future projected refuse disposal and recyclable materials handling needs. These arrangements would remain the same in the proposed agreements initially, but could change due to emerging State requirements or if the City were to develop its own transfer or handling facility in the future.

In order to achieve the goal of having 75% of California's solid waste source-reduced, recycled or composted by the year 2020 as required by Assembly Bill 341, the State continues to increase restrictions on landfill materials like greenwaste and organics and to legislate new programs like mandatory commercial recycling and construction and demolition recycling. Whether source-separated by the customer or recovered at a material recovery facility like West Valley MRF, these efforts play an integral role in the City's ability to meet these mandates. As more commodities are mandated to be diverted from the waste stream, and as new recycling programs and infrastructure emerge, the combined efforts and partnerships of the City, its solid waste customers and Waste Management and Burrtec are essential to manage the City's solid waste and recycling services.

## **CITY OF ONTARIO**

Agenda Report June 3, 2014 SECTION: CONSENT CALENDAR

### SUBJECT: A CONSTRUCTION CONTRACT FOR THE WELL NO. 41 WELLHEAD TREATMENT SYSTEM FACILITY PROJECT

**RECOMMENDATION:** That the City Council:

- (A) Approve the plans and specifications;
- (B) Reject the bid protest submitted by Kana Engineering Group, Inc. of Placentia, CA;
- (C) Award Contract No. UT1314-03 (on file with the Records Management Department) to Zusser Company, Inc. of Los Angeles, California, in the bid amount of \$3,358,249 plus a 15% contingency of \$503,737 for a total amount of \$3,861,986; and authorize the City Manager to execute said contract and file a notice of completion at the end of the construction activities related to the project;
- (D) Authorize the City Manager to execute a Professional Services Agreement (on file with the Records Management Department) with Kennedy/Jenks Consultants, Inc. of Pasadena, California, in the amount of \$99,898 plus a 15% contingency of \$14,985 for a total amount of \$114,883 for engineering and start-up support services as the engineer of record; and,
- (E) Authorize the City Manager to execute a Professional Services Agreement (on file with the Records Management Department) with MWH Constructors of Irvine, California, in the amount of \$304,245 plus a 15% contingency of \$45,637 for a total amount of \$349,882 for inspection and construction management services.

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

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

Prepared by: Department:	Tim Mim Mack MU/Utilities	Submitted to Council/O.H.A. Approved:	06/03/2014
City Manager	1102	Continued to: Denied:	
Approval:	Alto		29

**FISCAL IMPACT:** The Fiscal Year 2013-14 Capital Improvement Program includes appropriations from the Water Capital Fund for this project in the amount \$3,561,953. The recommended combined contract awards to Zusser Company, Inc., Kennedy/Jenks Consultants, Inc., and MWH Constructors, are \$3,762,392 plus a 15% contingency of \$564,359 for a total of \$4,326,751. Additional appropriations in the amount of \$764,798 from the Water Capital Fund are required to complete this project; and if approved will be included in the Third Quarter Budget Report to the City Council.

On May 7, 2013, the City Council adopted Resolution No. 2013-033 authorizing execution of a reimbursement grant funding agreement with the State of California, Department of Public Health for funds under the Proposition 50 Safe Drinking Water grant funding program which will allow the City to be reimbursed up to \$1,465,000. There is no impact to the General Fund.

**BACKGROUND:** On May 7, 2013, the City Council awarded a design services agreement to Kennedy/Jenks Consultants, Inc., for the design of the Well No. 41 Wellhead Treatment System Facility. The wellhead treatment facilities consist of an ion exchange treatment system for perchlorate to be constructed on the existing parcel of former Well No. 18 on Fourth Street and a connecting pipeline from Well No. 41 to former Well No. 18. The pipeline work consists of the installation of approximately 1,300 linear feet of 16-inch diameter water transmission pipeline and 460 feet of 16-inch storm drain pipeline (see the attached location map). Award of the engineering construction support services was deferred to coincide with the construction phase of the project. Kennedy/Jenks Consultants, Inc. is the "engineer of record" and will provide engineering services during construction and start-up services.

A Request for Proposals (RFP) was sent to other professional consulting firms to provide for independent inspection, construction management services, and start-up support services. The following is a list of firms who submitted proposals for this project:

<u>Name</u>	<b>Location</b>
Arcadis U.S., Inc	Irvine, CA
MWH Constructors	Irvine, CA
Baker (RBF)	Ontario, CA

MWH Constructors is recommended based on their proposal, engineering expertise, fee for service, and capability to perform the work in a timely manner. MWH Constructors has successfully performed similar services and is familiar with the City's requirements.

On April 1, 2014, ten bids were received for the construction of the Well No. 41 Wellhead Treatment System Facility. The bids ranged from \$3,358,249 to \$4,341,155. The lowest five bids are summarized below:

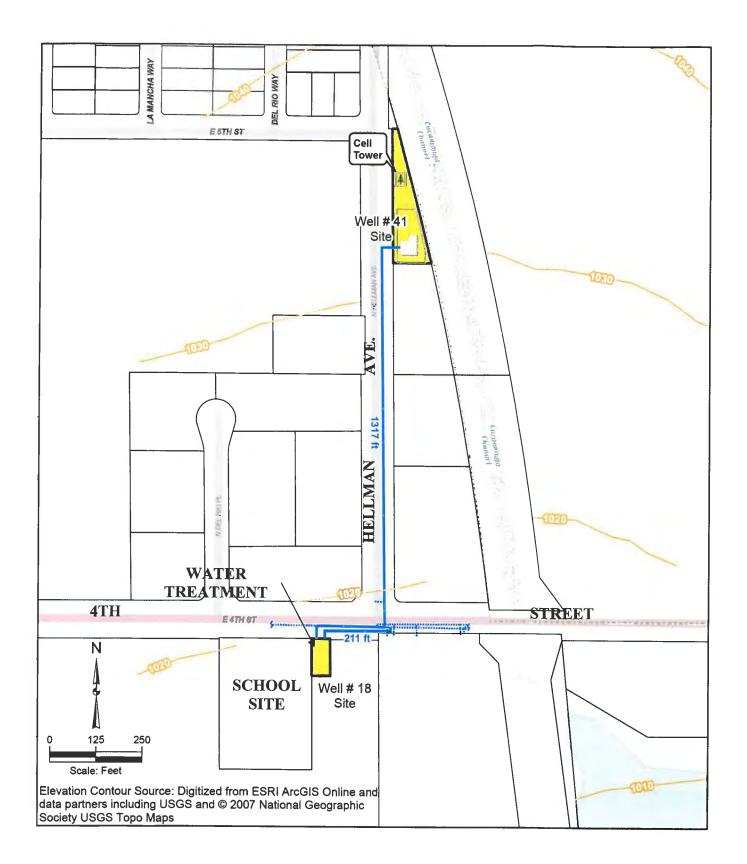
<u>Bidder</u>	Location	Amount
Zusser Company, Inc.	Los Angeles, CA	\$3,358,249
Kana Engineering Group, Inc.	Rancho Cucamonga, CA	\$3,376,135
Schuler Engineering Corp.	Corona, CA	\$3,685,594
Vido Samarzich, Inc.	Alta Loma, CA	\$3,753,780
Environmental Construction, Inc.	Woodland Hills, CA	\$3,795,077

The City received a bid protest from Kana Engineering Group, Inc., the second low bidder, stating that the apparent low bid submitted by Zusser Company's bid is non-responsive due to certain bid omissions. In consultation with the City Attorney's Office, staff reviewed the elements of the bid protest with both

Kana Engineering Group and Zusser Company and found no sufficient basis to deem the low bid non-responsive. Therefore, staff recommends that the City Council reject the bid protest submitted by Kana Engineering Group, Inc.

Staff recommends the award to Zusser Company, Inc. of Los Angeles, California, based on their expertise, ability to perform the work in a timely manner, successful completion of this type of work in the past, and recommendation by the design engineer, Kennedy/Jenks Consultants, Inc. of Pasadena, California.

A Mitigated Negative Declaration was prepared and approved by the City Council on September 17, 2013 for the Wellhead Treatment Project. In addition, a Mitigation Monitoring and Reporting Program was prepared pursuant to CEQA Guidelines Section 15097. Therefore, no further CEQA analysis is required.



## CITY OF ONTARIO

Agenda Report June 3, 2014

## SECTION: CONSENT CALENDAR

## SUBJECT: A WATER PURCHASE AGREEMENT WITH AQUA CAPITAL MANAGEMENT LP

**RECOMMENDATION:** That the City Council approve and authorize the City Manager to execute a water purchase agreement (on file with the Records Management Department) subject to non-substantive changes with Aqua Capital Management LP, located in Omaha, Nebraska, for the permanent transfer of overlying groundwater rights in the amount of \$4,050,000.

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

**FISCAL IMPACT:** The total purchase price of \$4,050,000 will acquire the overlying groundwater rights from Aqua Capital Management LP. If approved, funding will be included in the Proposed Fiscal Year 2014-15 budget from the Water Capital Fund for this water rights purchase. The purchase amount is based on current market rates for similar transactions. There is no impact to the General Fund.

**BACKGROUND:** The City obtains a majority of its water resources from the Chino Groundwater Basin. The basin has been adjudicated since 1978, Superior Court Case RCV 51010, which allocated shares of the basin operating safe yield. The City's basin rights are less than its demand, and the City has supplemented its supplies through the investment of imported water, Chino Basin Desalter water, recycled water, one-time purchases from other basin parties and the purchase of permanent basin overlying groundwater rights from Sunkist, Koll, Praxair and Southern California Edison.

Aqua Capital Management LP has 300 acre-feet per year of operating safe yield production rights in the Chino Basin Overlying Non-Agricultural Pool associated with real property presently referred to as Assessor Parcel Number 1007-722-03. This agreement will permanently transfer 300 acre-feet per year of operating safe yield overlying groundwater rights to the City, subject to requirements of the Chino Basin Judgment, Peace Agreements, subsequent amendments, and Watermaster approval.

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

City Manager Approval: Denied: 30	Prepared by: Department:	Ryan Shaw MU/Administration	Submitted to Co Approved: Continued to:	ouncil/O.H.A.	06/03/2014
		All. of			

# CITY OF ONTARIO

Agenda Report June 3, 2014

## SECTION: CONSENT CALENDAR

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

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

Prepared by: Department:	Scott Murphy Planning	Submitted to Co Approved:	uncil/O.H.A.	06/03/2014
City Manager	1/11	Continued to: Denied:		
Approval:	-			31
	$\sim$			

**BACKGROUND:** On May 6, 2014, the City Council introduced the ordinance approving the Development Agreement between BrookCal Ontario, LLC, and the City of Ontario. 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:
	1) \$900 within 30 days following the City's start of construction of Fire Station No. 9.
	<ol> <li>\$900 upon issuance of remaining building permits, the cost of which shall increase each January 1, beginning January 1, 2014.</li> </ol>
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



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, on June 3, 2014, the City Council of the City of Ontario conducted a hearing to adopt 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:

<u>SECTION 1</u>. 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.

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

<u>SECTION 3</u>. 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.

<u>SECTION 4</u>. 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.

<u>SECTION 5</u>. 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.

<u>SECTION 6</u>. Effective Date. This Ordinance shall become effective 30 days following its adoption.

<u>SECTION 7.</u> 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 3<sup>rd</sup> day of June 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. 2989 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 June 3, 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. 2989 duly passed and adopted by the Ontario City Council at their regular meeting held June 3, 2014 and that Summaries of the Ordinance were published on May 20, 2014 and June 10, 2014 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

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, <u>et seq</u>. 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. <u>DEFINITIONS AND EXHIBITS</u>.

1.1 <u>Definitions</u>. 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 <u>Exhibits</u>. 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. <u>GENERAL PROVISIONS</u>.

2.1 <u>Binding Effect of Agreement</u>. 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 <u>Ownership of Property</u>. 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 <u>Term</u>. 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 <u>Right to Assign</u>. 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, <u>et seq</u>.), 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 <u>Release of Transferring Owner</u>. 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 <u>Effect of Assignment and Release of Obligations</u>. 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 <u>Subsequent Assignment</u>. 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 <u>Termination of Agreement With Respect to Individual Lots Upon</u> <u>Sale to Public and Completion of Construction</u>. 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 <u>Amendment or Cancellation of Agreement</u>. 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 <u>Amendment To Reflect Consistency With Future Amendments to</u> <u>the Construction Agreement</u>. 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 <u>Termination</u>. 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 <u>Notices</u>.

(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. <u>DEVELOPMENT OF THE PROPERTY</u>.

3.1 <u>Rights to Develop</u>. 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 <u>Effect of Agreement on Land Use Regulations</u>. 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 <u>Timing of Development</u>. 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 <u>Pardee</u> <u>Construction Co. v. City of Camarillo</u> (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 <u>Conceptual Phasing Plan</u>. 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 <u>Changes and Amendments</u>. 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 <u>Reservations of Authority</u>.

3.6.1 <u>Limitations, Reservations and Exceptions</u>. 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:

- 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 <u>Subsequent Development Approvals</u>. 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 <u>Modification or Suspension by State or Federal Law</u>. 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 for 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 <u>Intent</u>. 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 <u>Public Infrastructure and Utilities</u>. 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 <u>Continuing Requirement for the Funding of Fire Station No. 9 by NMC</u> <u>Builders for Issuance of Building Permits.</u> 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 If the CITY has not issued sufficient Storm Water be 122.93 net acres. 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 OWNER shall complete construction of the Phase 2 (Tract No. 18922-1). 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 <u>Acquisition of Offsite Provision of Real Property Interests</u>. 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 <u>Owner's Option to Terminate Proceedings</u>. 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 <u>Regulation by Other Public Agencies</u>. 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 <u>Tentative Tract Maps; Extension</u>. 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. <u>PUBLIC BENEFITS</u>.

4.1 <u>Intent</u>. 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 <u>Development Impact Fees</u>.

4.2.1 <u>Amount of Development Impact Fee</u>. 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 <u>Time of Payment</u>. 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 <u>Responsibility for Construction of Public Improvements</u>.

4.3.1 <u>Timely Construction of Public Infrastructure</u>. 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 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 -24-

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 <u>Construction of DIF Program Infrastructure (Construction Agreement)</u>. 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 Agreements 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.

<u>4.3.3.1</u> 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 fortyfour 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 <u>Affordable Housing- Number of Units</u>. 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 <u>Affordability Spread</u>. 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 nonstatutory 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 guality 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 <u>Affordability Covenants</u>. 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 <u>Transfer of Affordable Project</u>. 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 <u>Schools Obligations</u>.

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 <u>Requirement for Payment of Public Services Funding Fee</u>. 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 <u>Public Services Funding Fee Amount</u>. 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 <u>First Installment (Residential uses)</u>. 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 <u>Second Installment (Residential Uses)</u>. 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 <u>Single Installment (Non-residential Uses)</u>. 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 <u>Assigned Net MDD/Water Availability Equivalents</u>. 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 <u>Use of Assigned Net MDD Water Availability</u>. 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 <u>Requirement for other Water System Improvements</u>. 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 <u>Requirement for Storm Water Treatment Capacity Availability</u>. 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 <u>Use of Storm Water Treatment Capacity Availability</u>. 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 <u>Requirement for other Storm Water Improvements</u>. 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 <u>Maintenance of Open Space</u>. 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 <u>Failure to Provide Public Benefits</u>. 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 <u>Undergrounding of SCE Transmission Lines</u>. OWNER shall be subject to all City requirements regarding undergounding of utilities, including SCE lines.

# 5. <u>FINANCING OF PUBLIC IMPROVEMENTS</u>.

5.1 <u>Financing Mechanism(s)</u>. 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. <u>REVIEW FOR COMPLIANCE</u>.

# 6.1 <u>Periodic and Special Reviews</u>.

6.1.1 <u>Time for and Initiation of Periodic Review</u>. 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 -33-

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 <u>Initiation of Special Review</u>. 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 <u>Notice of Special Review</u>. 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 <u>Public Hearing</u>. 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 <u>Findings Upon Public Hearing</u>. 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 <u>Proceedings Upon Modification or Termination</u>. 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 <u>Hearing on Modification or Termination</u>. 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 <u>Certificate of Agreement Compliance</u>. 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. <u>DEFAULT AND REMEDIES</u>.

8.1 <u>Remedies in General</u>. 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 <u>Specific Performance</u>. 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 <u>Release</u>. 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 <u>Termination or Modification of Agreement for Default of OWNER</u>. 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 <u>Termination of Agreement for Default of CITY</u>. 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. <u>THIRD PARTY LITIGATION</u>.

9.1 <u>General Plan Litigation</u>. 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 <u>Third Party Litigation Concerning Agreement</u>. 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 <u>Environment Assurances</u>. 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 <u>Reservation of Rights</u>. 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 <u>Survival</u>. 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. <u>MISCELLANEOUS PROVISIONS</u>.

11.1 <u>Recordation of Agreement</u>. 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 65868.1 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 <u>Entire Agreement</u>. 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 <u>Severability</u>. 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 <u>Interpretation and Governing Law</u>. 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 <u>Section Headings</u>. All section headings and subheadings are inserted for convenience only and shall not affect any construction or interpretation of this Agreement.

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

11.7 <u>Joint and Several Obligations</u>. 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 <u>Time of Essence</u>. Time is of the essence in the performance of .the provisions of this Agreement as to which time is an element.

11.9 <u>Waiver</u>. 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 <u>No Third Party Beneficiaries</u>. 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 <u>Force Majeure</u>. 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 <u>Mutual Covenants</u>. 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 <u>Successors in Interest</u>. 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 <u>Counterparts</u>. 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 <u>Jurisdiction and Venue</u>. 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 <u>Project as a Private Undertaking</u>. 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 <u>Further Actions and Instruments</u>. 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 <u>Eminent Domain</u>. 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 <u>Estoppel Certificate</u>. 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 <u>Authority to Execute</u>. 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

R	۰,	•
	y	•

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

ST	ATE OF STATE		)	
COUNTY OF SAN BERNARDINO		RNARDINO	) SS. )	
On		, 2014	,	
bet	ore me,		Name And Title Of Officer (e.g. "Jane Doe, Notary Public")	
	rsonally appeared			
□ personally known to me – <b>OR</b> – <b>⊠</b> proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the with instrument and acknowledged to me that he/she/the 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 CLAIM	IED BY SIGNER	DESCRIPTION OF ATTACHED DOCUMENT	
	Individual Corporate Officer			
	Tit	ile(s)	Title or Type of Document	
	Partner(s)	<ul><li>□ Limited</li><li>□ General</li></ul>		
	Attorney-In-Fact Trustee(s) Guardian/Conservator Other:		Number Of Pages	
Sig	ner is representing: ne Of Person(s) Or Entity(ies)		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



# 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

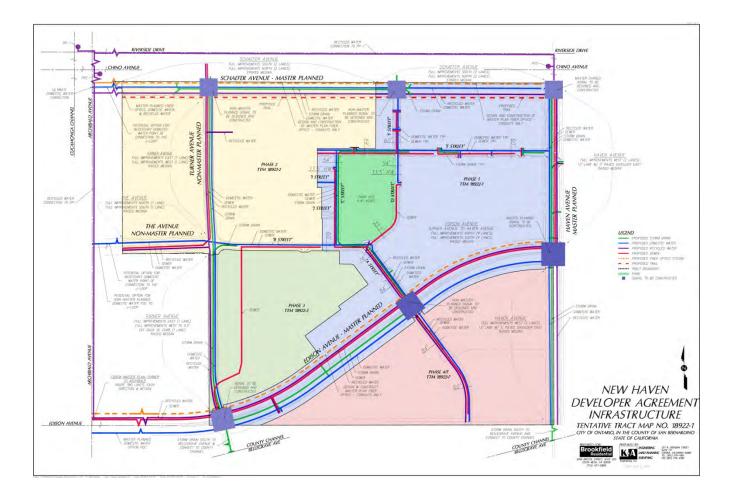
# EXHIBIT "D" TO DEVELOPMENT AGREEMENT

# **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

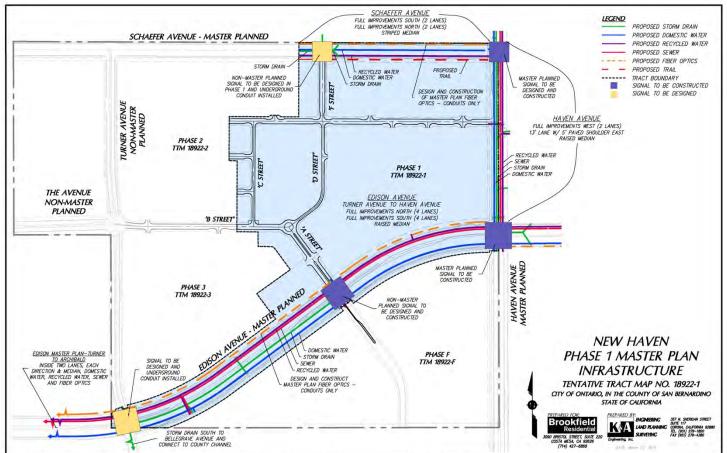
# EXHIBIT "E" TO DEVELOPMENT AGREEMENT



# **Conceptual Phasing Plan**

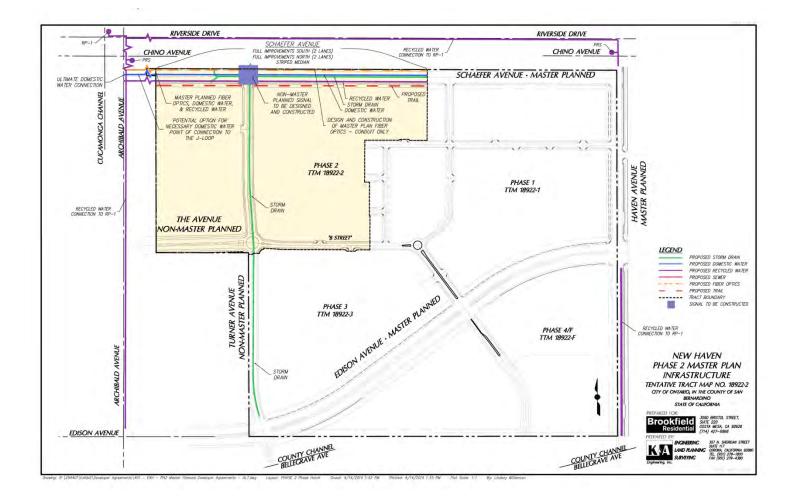
# Exhibit "F"

# **Required Infrastructure Improvements**



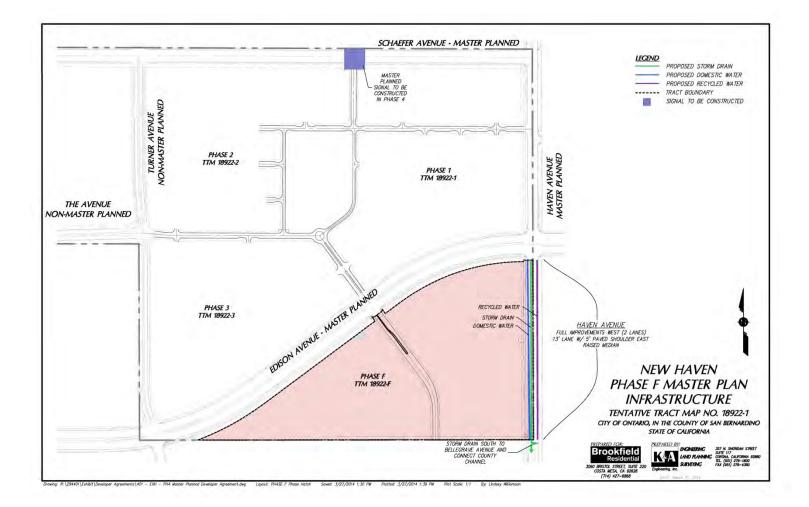
Drawly: R 1294401 (Exhibit Questioner Agreements 1401 - EM - EM Master Prenned Developer Agreements deg Layout: FHASE 1 Phose Holds. Scient. 3/27/2014 11:39 AM Piottes: 3/27/2014 11:39 FM Piot Scient: 11 By Lindery Williamson

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# **CITY OF ONTARIO**

Agenda Report June 3, 2014

## SECTION: CONSENT CALENDAR

#### SUBJECT: TWO-YEAR COST SHARING AGREEMENT WITH THE CHAFFEY JOINT UNION HIGH SCHOOL DISTRICT FOR SCHOOL RESOURCE OFFICERS

**RECOMMENDATION:** That the City Council approve and authorize the City Manager to execute a two-year cost sharing agreement (on file in the Records Management Department) with the Chaffey Joint Union High School District for three school resource officers in the amount of \$439,664.

#### COUNCIL GOALS: <u>Develop Strategies and Take Actions, Including Regaining Local Control of</u> <u>the Ontario International Airport, to Minimize the Negative Impacts of the Global Financial</u> <u>Downturn on Ontario's Economy and the City's Fiscal Health</u> <u>Maintain the Current High Level of Public Safety</u>

**FISCAL IMPACT:** The City has assigned one School Resource Officer (SRO) at each of the following high schools: Chaffey High School, Colony High School and Ontario High School. Chaffey Joint Union High School District (CJUHSD) has agreed to reimburse the City \$219,832 per fiscal year, consistent with the current two year agreement. This amount covers approximately 46% of the annual cost of the three officers (\$476,889) for the school years of August 5, 2014 through May 27, 2015 and August 4, 2015 through May 26, 2016.

**BACKGROUND:** In addition to providing a police presence at each high school, SROs serve as positive role models for students; foster student, faculty, staff and law enforcement interaction; and provide on-site crisis intervention. CJUHSD has agreed to enter into a two-year cost sharing agreement in the amount of \$219,832 per fiscal year, which is the same amount as the previous three contracts covering prior fiscal years. Under this agreement, the Ontario Police Department will provide SRO services at Chaffey, Colony and Ontario High Schools to maintain a safe and secure environment on these campuses.

#### STAFF MEMBER PRESENTING: Eric Hopley, Chief of Police

Prepared by: Department:	Donna Bailey Police	Submitted to Co Approved:	ouncil/O.H.A.	06/03/2014
City Manager	Man	Continued to: Denied:		
Approval:	- Children			32

# **CITY OF ONTARIO**

Agenda Report June 3, 2014 SECTION: CONSENT CALENDAR

#### SUBJECT: APPROVAL OF AN ALLOCATION AND SPENDING PLAN FOR THE BUREAU OF JUSTICE ASSISTANCE (BJA) EDWARD BYRNE MEMORIAL JUSTICE ASSISTANCE GRANT (JAG) PROGRAM FOR FY 2014-15

**RECOMMENDATION:** That the City Council approve and authorize the City Manager to execute all documents necessary to participate in the Bureau of Justice Assistance (BJA) Edward Byrne Memorial Justice Assistance Grant (JAG) Program; and approve the proposed \$43,010 grant spending plan for FY 2014-15.

COUNCIL GOALS: <u>Develop Strategies and Take Actions, Including Regaining Local Control of</u> <u>the Ontario International Airport, to Minimize the Negative Impacts of the Global Financial</u> <u>Downturn on Ontario's Economy and the City's Fiscal Health</u> <u>Maintain the Current High Level of Public Safety</u> <u>Pursue City's Goals and Objectives by Working with Other Governmental Agencies</u>

**FISCAL IMPACT:** Upon approval and receipt of the grant award, a separate Grant Identification Number will be established to record, monitor and report on the financial activities of this grant award. The total grant award is \$45,274, of which 5% (\$2,264) will be assigned to the Law & Justice Group of San Bernardino County for administrative fees, resulting in a net award to the City in the amount of \$43,010. This is a one-time allocation with no local matching funds requirement, and grant expenditures must be completed within the four-year grant period. The revenue and associated expenditure adjustments will be included in the Fiscal Year 2014-15 First Quarter Budget Report.

**BACKGROUND:** The Bureau of Justice Assistance has announced the availability of grant funds through the Edward Byrne Memorial JAG Program. Ontario has participated in the JAG Program (formerly the Local Law Enforcement Block Grant) since 1997. Grant allocations are predetermined through a formula based on population and crime statistics. Ontario has been allocated \$45,274 for FY 2014-15. Under the JAG legislation, the County of San Bernardino will act as the fiscal agent for disbursement of the funds.

#### **STAFF MEMBER PRESENTING:** Eric Hopley, Chief of Police

Prepared by: Department:	Donna Bailey Police	Submitted to Council/O.H.A. Approved:		06/03/2014
City Manager	MAS	Continued to: Denied:		
Approval:	Here's			33

Based on current law enforcement operational needs, the Police Department proposes the following grant spending plan:

٠	Law Enforcement Intelligence Production and Data Analysis	\$43,010

TOTAL <u>\$43,010</u>

# CITY OF ONTARIO

Agenda Report June 3, 2014 SECTION: PUBLIC HEARINGS

#### SUBJECT: A PUBLIC HEARING TO CONSIDER AN ORDINANCE AMENDING CHAPTER 3, TITLE 4, OF THE ONTARIO MUNICIPAL CODE RELATING TO THE CITY'S EMERGENCY ORGANIZATION

**RECOMMENDATION:** That the City Council introduce and waive further reading of an ordinance amending Chapter 3, Title 4, of the Ontario Municipal Code related to the City's Emergency Organization.

#### COUNCIL GOALS: <u>Develop Strategies and Take Actions, Including Regaining Local Control of</u> the Ontario International Airport, to Minimize the Negative Impacts of the Global Financial <u>Downturn on Ontario's Economy and the City's Fiscal Health</u> <u>Maintain the Current High Level of Public Safety</u> Operate in a Businesslike Manner

**FISCAL IMPACT:** The proposed Ontario Municipal Code (OMC) amendment will align the OMC with California's Standardized Emergency Management System (SEMS) and the National Incident Management System (NIMS), thus supporting the City's eligibility to receive State and Federal Emergency Assistance funds and Homeland Security Grant Program (HSGP) funding.

**BACKGROUND:** Amending this section of the OMC will ensure consistency between the newly approved, updated Emergency Operations Plan and the legal parameters within which the Ontario City Council and Emergency Organization must operate. Furthermore, amending the Ontario Municipal Code satisfies the requirements of the California SEMS and the NIMS ensuring the City's eligibility to receive Emergency Assistance funds and HSGP funding.

The Emergency Organization for the City of Ontario is detailed in Chapter 3, Title 4, of the OMC and was last amended in 1999. This OMC chapter provides requirements for the preparation and implementation of disaster protocols for the protection of persons and property within the City. The OMC specifies the membership and associated responsibilities of the City of Ontario Disaster Council, creates a structure for oversight of the emergency organization, supports the City Emergency

#### STAFF MEMBER PRESENTING: Jacob Green, Assistant City Manager

	Paul G. Walker Citywide Administration	Submitted to Council/O.H.A Approved: Continued to:	06/03/2014
City Manager Approval:	Alero	Denied:	
			34

Management Working Committee, and empowers the elected body to enact various actions and enforcement protocols during emergencies. Formally establishing a Disaster Council and ensuring plans are created to meet conditions constituting a local emergency or state of emergency allows the City to meet requirements of California Office of Emergency Services accreditation set forth in California Government Code Title 2, Division 1, Chapter 7, Article 10, Section 8610.

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

#### AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF ONTARIO, CALIFORNIA, AMENDING CHAPTER 3 OF TITLE 4 OF THE ONTARIO MUNICIPAL CODE RELATING TO EMERGENCY ORGANIZATION.

WHEREAS, the City Council of the City of Ontario has adopted provisions regarding the City's Emergency Organization, codified at Chapter 3, Title 4 of the City of Ontario Municipal Code; and

WHEREAS, those provisions were most recently updated through Ordinance 2706 in December 1999; and

WHEREAS, since 1999, there have been significant advancements in emergency planning and amendments to the California Emergency Services Act; and

WHEREAS, the City Council now desires to update its provisions relating to the City's Emergency Organization to ensure that they comply with the law, the California Emergency Services Act, Standardized Emergency Management System (SEMS), and National Incident Management System (NIMS) and better account for current circumstances.

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

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

<u>SECTION 2.</u> Chapter 3 of Title 4 of the Ontario Municipal Code is hereby amended, in its entirety, to read as follows:

CHAPTER 3: EMERGENCY ORGANIZATION

- 4-3.01 Purpose
- 4-3.02 Definition
- 4-3.03 Disaster Council: Membership
- 4-3.04 Disaster Council: Powers, Duties, Meetings
- 4-3.05 Director and Assistant Director of Emergency Services, Emergency Manager
- 4-3.06 Powers of the Director of Emergency Services, Assistant Director of Emergency Services, and Emergency Manager
- 4-3.07 Emergency Management Working Committee
- 4-3.08 Emergency Organization
- 4-3.09 Emergency Plan
- 4-3.10 Expenditures
- 4-3.11 Violations of provisions: Penalties
- 4-3.12 Effective Date
- 4-3.13 Severability

Sec. 4-3.01 Purpose.

The declared purpose of this Chapter is to provide for the preparation and carrying out of plans for the protection of persons and property within the City of Ontario in the event of an emergency. This Chapter shall provide for the direction of the emergency organization and the coordination of the emergency functions with all other public agencies, corporations, organizations, and affected private persons.

Sec. 4-3.02 Definition.

As used in this Chapter, "emergency" shall mean the actual or threatened existence of conditions of disaster or of extreme peril to the safety of persons and property within the City's jurisdiction caused by such conditions as air pollution, fire, flood, storm, epidemic, riot, drought, sudden and severe energy shortage, plant or animal infestation or disease, the Governor's warning of an earthquake or volcanic prediction, or an earthquake, or other conditions, other than conditions resulting from a labor controversy, which are, or are likely to be, beyond the control of the services, personnel, equipment, and facilities of the City, requiring the combined forces of other political subdivisions to combat.

Sec. 4-3.03 Disaster Council: Membership.

The City of Ontario Disaster Council is hereby created and shall consist of the following:

- (a) The Mayor, who shall be chair.
- (b) The Mayor pro Tem, who shall be vice chair.
- (c) All members of the Ontario City Council.

(d) Staff, technical advisors, and community representatives as may be appointed by the Disaster Council Chair with the concurrence of a majority of the above Disaster Council members.

Sec. 4-3.04 Disaster Council Powers and Duties.

It shall be the duty of the City of Ontario Disaster Council, and it is hereby empowered, to develop and recommend for adoption by the City Council, emergency and mutual aid plans and agreements and such ordinances and resolutions and rules and regulations as are necessary to implement such plans and agreements. The Disaster Council shall meet upon call of the Disaster Council chair or upon call of the Disaster Council vice chair in the absence of the chair.

Sec. 4-3.05 Director and Assistant Director of Emergency Services, Emergency Manager.

(a) There is hereby created the office of Director of Emergency Services. The City Manager of the City of Ontario shall be the Director of Emergency Services.

(b) There is hereby created the office of Assistant Director of Emergency Services, who shall be appointed by the Director of Emergency Services. The Director of Emergency Services may appoint either the Assistant City Manager, Fire Chief, Police Chief, or Emergency Manager as the Assistant Director of Emergency Services.

(c) There is hereby created the office of Emergency Manager, who shall act at the will of the Director of Emergency Services. The Emergency Manager of the City of Ontario shall manage day-to-day affairs of the emergency management program and have certain other emergency management functions as specified.

Sec. 4-3.06 Powers and Duties of the Director and Assistant Director of Emergency Services.

(a) The Director of Emergency Services is hereby empowered to:

(1) Request the City Council to proclaim the existence or threatened existence of a "local emergency" if the City Council is in session, or to issue such proclamation if the City Council is not in session. Whenever a local emergency is proclaimed by the Director of Emergency Services, the City Council shall take action to ratify the proclamation within seven (7) days thereafter or the proclamation shall have no further force or effect; and

(2) Request the City Council to review the need for continuing the local emergency at least once every 30 days until the City Council terminates the local emergency; and

(3) Request the Governor to proclaim a "state of emergency" when, in the opinion of the Director of Emergency Services, the locally available resources are inadequate to cope with the emergency; and

(4) Control and direct the effort of the Emergency Organization of the City for the accomplishment of the purposes of this Chapter; and

(5) Direct cooperation between and coordination of services and staff of the Emergency Organization of the City and resolve questions of authority and responsibility that may arise between them; and

(6) Represent the City in all dealings with public or private agencies on matters pertaining to emergencies as defined in this Chapter; and

(7) In the event of the proclamation of a "local emergency," the proclamation of a "state of emergency" by the Governor or the Secretary of the California Emergency Management Agency, or the existence of a "state of war emergency," the Director of Emergency Services is hereby empowered to:

(i) Promulgate written orders and regulations necessary to provide for the protection of life and property as affected by such emergency, including orders or regulations imposing a curfew within designated boundaries where necessary to preserve the public order and safety; provided, however, such rules and regulations shall be widely publicized and noticed and shall be confirmed at the earliest practicable time by the City Council; and

(ii) Obtain vital supplies, equipment, and such other properties found lacking and needed for the protection of life and property and to bind the City for the fair value thereof and, if required immediately, to commandeer the same for public use; and

(iii) Require emergency services of any City officer or employee and, in the event of the proclamation of a "state of emergency" in the County of San Bernardino or the existence of a "state of war emergency," to command the aid of as many citizens of the community as deemed necessary in the execution of duties; such persons shall be entitled to all privileges, benefits, and immunities as are provided by state law for registered disaster services workers; and

(iv) Requisition necessary personnel or material of any City departments or agencies; and

(v) Execute: all ordinary powers; all special powers conferred by this Chapter, by resolution, and by an adopted Emergency Plan; and all other powers conferred by statute, agreement approved by the City Council, or by any other lawful authority; and

(vi) Approve contracts as necessary to support the Emergency Organization and to protect the life and property of the citizens of Ontario.

(b) In the absence of the Director of Emergency Services, the Assistant Director of Emergency Services is empowered to take on the powers of the Director of Emergency Services under Section 4-3.06(a). In the absence of both the Director of Emergency Services and the Assistant Director of Emergency Services, the Emergency Manager is empowered to take on the powers of the Director of Emergency Services under Section 4-3.06(a). The Director of Emergency Services shall be deemed absent where he or she is unavailable to participate in meetings or otherwise is unable to perform his or her duties during an emergency.

(c) The Director of Emergency Services may supplement the order of succession to that office identified in Section 4-3.06(b), to take effect in the event the Director is absent. Such order of succession shall be approved by the Governing body.

(d) The Assistant Director of Emergency Services shall, under the supervision of the Director of Emergency Services, supervise the activities of the Emergency Manager and shall have such other powers and duties as may be assigned by the Director of Emergency Services.

Sec. 4-3.07 Emergency Management Working Committee.

(a) There is also created the Emergency Management Working Committee which shall consist of the following:

(1) The Emergency Manager who shall serve as chair and shall schedule meetings and projects as necessary.

(2) One representative from each agency or department with responsibilities assigned under the City of Ontario Emergency Plan.

(b) The Emergency Management Working Committee shall:

(1) Develop plans and procedures for the effective accomplishment of emergency management objectives, including the review and update of the City of Ontario Emergency Plan.

(2) Maintain the City's designated Emergency Operations Center (EOC) in a constant state of readiness so that it remains functional and meets the needs of all organizations with assignments and positions in the EOC.

(3) Review, recommend for purchase, and keep current emergency management automated systems so that they meet the needs of all organizations that may be represented in the Ontario EOC. (4) Achieve a high level of knowledge about specific emergency management functions assigned to the various City departments.

(5) Training an adequate number of staff members from each department so as to ensure that personnel are available to respond to and perform in an EOC environment.

(6) Design and call emergency management exercises to test various components of the City of Ontario Emergency Plan as necessary; provided, however, that with respect to any such test exercise no one shall have the power to command the assistance of any private citizen, and the failure of a citizen to follow any orders or regulations pertaining to a test exercise shall not constitute a violation of this Chapter.

(7) Serve as a resource for trained exercise simulators and observers so that the learning value of such activities is maximized.

(8) Serve as a department contact for all emergency management issues such as the gathering of information for disaster assistance claims, circulation of pertinent legislation, notification of events and activities, and liaison with executive level managers.

(9) Ensure that each of the five phases of emergency management (mitigation, planning, preparedness, response, and recovery) are addressed in a systematic fashion so as to provide a comprehensive, integrated, and effective emergency management program for the City of Ontario.

Sec. 4-3.08 Emergency Organization.

All officers and employees, together with those volunteer forces enrolled to aid them during an emergency, and all groups, organizations, and persons who may by agreement or operation of law, including persons impressed into service under the provisions of Section 4-3.06(a)(7)(iii), be charged with duties incident to the protection of life and property during such emergency, shall constitute the Emergency Organization of the City of Ontario.

Sec. 4-3.09 Emergency Plan.

The City of Ontario Disaster Council shall be responsible for the development of the Emergency Plan, which shall provide for the effective mobilization of all of the resources of this jurisdiction, both public and private, to meet any condition constituting a local emergency, state of emergency, or state of war emergency; and shall provide for the organization, powers and duties, services, and staff of the emergency organization. Such plan shall take effect upon adoption by resolution of the City Council.

#### Sec. 4-3.10 Expenditures.

Any expenditure made in connection with emergency activities, including mutual aid activities, shall be deemed conclusively to be for the direct protection and benefit of the inhabitants and property of the City of Ontario. Under certain emergency conditions the Disaster Council, or any City staff member of the Emergency Organization, may enact conditional changes in procurement processes, spending limits, approval authorities, and allocation of City resources in order to support the City's required response activities.

Sec. 4-3.11 Violations of Provisions: Penalties.

It shall be a misdemeanor, punishable by fine of not to exceed five hundred dollars (\$500.00), or by imprisonment in the County Jail for a period of time not to exceed six (6) months, or both, for any person, during an emergency to:

(a) Willfully obstruct, hinder, or delay any member of the Emergency Organization in the enforcement of any lawful rule or regulation issued pursuant to the provisions of this Chapter or in the performance of any duty imposed upon him by virtue of said provisions; and

(c) Do any act forbidden by any lawful rule or regulation issued pursuant to the provisions of this Chapter if such act is of such a nature as to give, or be likely to give, assistance to the enemy or imperil the lives or property of inhabitants of the City, or to prevent, hinder, or delay the defense or protection thereof; or

(c) Wear, carry, or display, without authority, any means of identification specified by the emergency agency of the State.

<u>SECTION 3.</u> CEQA. This Ordinance is not a project within the meaning of Section 15378 of the State of California Environmental Quality Act ("CEQA") Guidelines, because it has no potential for resulting in physical change in the environment, directly or indirectly. The City Council further finds, under Title 14 of the California Code of Regulations, Section 15061(b)(3), that this Ordinance is nonetheless exempt from the requirements of CEQA in that the activity is covered by the general rule that CEQA applies only to projects which have the potential for causing a significant effect on the environment. Where it can be seen with certainty that there is no possibility that the activity in question may have a significant effect on the environment, the activity is not subject to CEQA. The City Council, therefore, directs that a Notice of Exemption be filed with the County Clerk of the County of San Bernardino in accordance with CEQA Guidelines. <u>SECTION 4.</u> Custodian of Records. The documents and materials that constitute the record of proceedings on which these findings and this Ordinance are based are located at the City Clerk's office located at 303 East "B" Street, Ontario, CA 91764. The custodian of these records is the City Clerk.

<u>SECTION 5.</u> 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.

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

<u>SECTION 7.</u> Publication. 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.

<u>SECTION 8.</u> Office of Emergency Services. The City Clerk shall submit a certified copy of the adopted Ordinance to the Office of Emergency Services not later than sixty (60) days following the passage of this Ordinance.

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 June 3, 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)

# **CITY OF ONTARIO** Agenda Report

June 3, 2014

## SECTION: PUBLIC HEARINGS

#### SUBJECT: A PUBLIC HEARING TO CONSIDER AN ORDINANCE AMENDING THE FLOOD DAMAGE PREVENTION PROGRAM SECTIONS 8-13.201 AND 8-13.508 OF THE ONTARIO MUNICIPAL CODE

**RECOMMENDATION:** That the City Council introduce and waive further reading of an ordinance amending the Flood Damage Prevention Program Sections 8-13.201 and 8-13.508 of the Ontario Municipal Code relating to regulation of recreational vehicles.

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

**FISCAL IMPACT:** No fiscal impact. Costs involved in enforcing the new regulations will be recoverable through the collection of civil penalties for violations under Section 1-2.01 of the Ontario Municipal Code.

**BACKGROUND:** The Federal Emergency Management Agency (FEMA) manages the National Flood Insurance Program and publishes maps with flood insurance related information. FEMA is preparing a Physical Map Revision (PMR) for San Sevaine Channel to update the Flood Insurance Rate Map (FIRM) panels for our area. Since the City is affected by the new PMR FIRM panels, FEMA automatically requires a review of the City's Flood Damage Prevention Program (Section 8-13 of the Ontario Municipal Code). Based on its review, FEMA notified the City that its Flood Damage Prevention Program needs to be updated to include a mandatory provision pertaining to recreational vehicles and adding "recreational vehicle" to the definitions. This ordinance has been reviewed and approved by the City Attorney.

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

Prepared by: Department:	Tricia Espinoza, P.E. Engineering	Submitted to Co Approved:	uncil/O.H.A.	06/03/2014
City Manager Approval:	Meto	Continued to: Denied:		25
				35

ORDINANCE NO.

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF ONTARIO, CALIFORNIA, AMENDING THE FLOOD DAMAGE PREVENTION PROGRAM SECTIONS 8-13.201 AND 8-13.508 OF THE ONTARIO MUNICIPAL CODE RELATING TO RECREATIONAL VEHICLES.

WHEREAS the City of Ontario by Ordinances 2109 (1980) and 2409 (1988) established the Flood Damage Prevention Program, which is codified in Chapter 8-13 of the Ontario Municipal Code; and

WHEREAS the Federal Emergency Management Agency ("FEMA") manages the National Flood Insurance Program and publishes maps with flood insurance related information; and

WHEREAS FEMA has undertaken the San Sevaine Channel Physical Map Revision ("PMR") to update flood insurance rate map panels ("FIRM panels"); and

WHEREAS as part of the PMR, FEMA reviewed the City's Flood Damage Prevention Program, because the City is affected by the new PMR FIRM panels; and

WHEREAS FEMA requires the City to incorporate regulations relating to recreation vehicles into the Flood Damage Prevention Program; and

WHEREAS the City wishes to amend Sections 8-13.201 and 8-13.508 of the Municipal Code to comply with the direction provided by FEMA.

THE CITY COUNCIL OF THE CITY OF ONTARIO DOES ORDAIN AS FOLLOWS:

<u>SECTION 1.</u> Those portions of Ordinances 2109 and 2409 adopting and amending Section 8-13.201 subdivision (v) is hereby deleted and Section 8-13.201 of the Ontario Municipal Code is hereby amended to add subdivision (jj), defining the term "Recreational Vehicle," and to revise the definition of "manufactured home" in subdivision (v) as follows:

Section 8-13.201 Definitions

(v) "Manufactured home" means a structure, transportable in one or more sections, which is built on a permanent chassis and is designed for us with or without a permanent foundation when connected to the required utilities. For floodplain management purposes, the term "manufactured home" also includes park trailers, travel trailers and other similar vehicles placed on a site for greater than one hundred eighty (180) consecutive days. "Manufactured home" does not include a "recreational vehicle."

(jj) "Recreational vehicle" means a vehicle which is all of the following:

- (1) Built on a single chassis;
- (2) 400 square feet or less when measured at the largest horizontal projection;
- (3) Designed to be self-propelled or permanently towable by a light-duty truck; and
- (4) Designed primarily not for use as a permanent dwelling but as temporary living quarters for recreational, camping, travel, or seasonal use.

SECTION 2. Section 8-13.508 is hereby added to the Ontario Municipal Code to read in its entirety as follows:

Section 8-13.508 Standards for Recreational Vehicles

(a) All recreational vehicles placed in SFHA Zones A1-30, AH or AE must either:

- (1) Be on the site for fewer than 180 consecutive days;
- (2) Be fully licensed and ready for highway use; or
- (3) Meet the permit requirements of Section 8-13.401 and the elevation and anchoring requirements for manufactured homes in Section 8-13.504.

(b) For purposes of this section, a recreational vehicle is ready for highway use if it is on its wheels or jacking system, is attached to the site only by quick disconnect type utilities and security devices, and has no permanently attached additions.

<u>SECTION 3.</u> If any section, subsection, paragraph, sentence, clause or phrase of this ordinance is for any reason held to be invalid, unconstitutional or otherwise struck-down by a court of competent jurisdiction, such decision shall not affect the validity of the remaining portions of this Ordinance. The City Council hereby declares that it would have adopted this ordinance and each section, subsection, paragraph, sentence, clause or phrase thereof, irrespective of the fact that any one or more portions of this ordinance might be declared invalid.

<u>SECTION 4.</u> 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.

<u>SECTION 5.</u> This Ordinance shall be become effective thirty (30) days from its adoption.

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 June 3, 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)

# **CITY OF ONTARIO** Agenda Report

June 3, 2014

# **SECTION: PUBLIC HEARINGS**

#### SUBJECT: A PUBLIC HEARING TO CONSIDER AN ORDINANCE APPROVING A ZONE CHANGE FROM C3 (COMMERCIAL SERVICE) TO M1 (LIMITED INDUSTRIAL) ON 3.82 ACRES OF LAND LOCATED AT THE NORTHEAST CORNER OF MISSION BOULEVARD AND OAKS AVENUE

**RECOMMENDATION:** That the City Council introduce and waive further reading of an ordinance approving File No. PZC14-002, a Zone Change from C3 (Commercial Service) to M1 (Limited Industrial) on 3.82 acres of land located at the northeast corner of Mission Boulevard and Oaks Avenue (APN: 1011-211-06).

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

**FISCAL IMPACT:** The proposed Zone Change would facilitate the development of two industrial buildings totaling approximately 88,850 square feet, resulting in increased on-going property tax revenues to the City, and the one-time payment to the City of plan check fees and development impact fees.

**BACKGROUND:** The Planning Department has initiated a Zone Change on approximately 3.82 acres of land located at the northeast corner of Mission Boulevard and Oaks Avenue, from C3 (Commercial Service) to M1 (Limited Industrial). The application was initiated by staff in response to Tentative Parcel Map (File No. PMTT14-001/PM 19517) and Development Plan (File No. PDEV14-001) requests filed by Xebec Development Company for the development of the project site consistent with the site's current TOP Policy Plan (General Plan) land use designation of "Business Park."

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

Prepared by: Department:	Charles Mercier Planning	Submitted to Co Approved:	ouncil/O.H.A.	06/03/2014
City Manager Approval:	Alter	Continued to: Denied:		36

The M1 zoning designation proposed is the existing zoning designation most consistent with the Business Park TOP land use designation. Staff is currently preparing an update to the City's Development Code (Ontario Municipal Code Title 9) that will establish zoning districts consistent with the TOP Policy Plan (General Plan) land use designations. Staff anticipates the Development Code amendment to go before the Planning Commission and City Council in the near future, to be followed by a Zone Change on the project site, changing the zoning designation on the project site to Business Park (BP). However, in the near term, staff is recommending the City Council adopt an ordinance changing the zoning designation on the project site to M1, Limited Industrial, which will allow the development on the project site to move forward.

On April 29, 2014, the Planning Commission voted unanimously (7-0) to recommend the City Council approve the proposed Zone Change. On the same date, the Planning Commission approved the development project proposed by Xebec Development Company, including Tentative Parcel Map No. 19517 (File No. PMTT14-001/PM19517) and a Development Plan (File No. PDEV14-001), subject to the approval of the proposed Zone Change by the City Council. The development project has been designed consistent with the Business Park zoning district development standards being proposed by staff.

**ENVIRONMENTAL REVIEW:** The project is categorically exempt from the requirements of the California Environmental Quality Act (CEQA) pursuant to Section 15332 (Infill Development) of the CEQA Guidelines.









# PLANNING COMMISSION STAFF REPORT April 29, 2014

**SUBJECT:** A Zone Change from the C3 (Commercial Service) zoning district to the M1 (Limited Industrial) zoning district on 3.82 acres (gross) of land located at the northeast corner of Mission Boulevard and Oaks Avenue (APN: 1011-211-06); City Initiated.

PROPERTY OWNER: Lynda Nicolson

**RECOMMENDED ACTION:** That the Planning Commission adopt a resolution recommending City Council approval of File No. PZC14-002, pursuant to the facts and reasons contained in the staff report and attached resolution.

**PROJECT SETTING:** The project site is a single 3.82-acre (gross) parcel of land, which lies in the C3 (Commercial Service) zoning district. The property is largely undeveloped, and has been regularly used for the farming of food crops, such as strawberries. The project site is depicted in Figure 1 (Project Location Map), below.



Figure 1: Project Location Map

Case Planner: Charles Mercier	Hearing Body	Date	Decision	Action
Planning Director	DAB	4/21/2014	Approval	Recommend
Approval:	ZA		· · · · ·	
Submittal Date: 1/15/2014	PC	4/29/2014		Final
Hearing Deadline: 5/15/2014	CC		······································	

The area surrounding the project site is characterized by automobile repair facilities on the property to north, which lies in the M3 (General Industrial) zoning district. The abutting property to the east is developed with single-family dwellings and lies in the C3 (Commercial Service) zoning district. Properties located south of the project site, across Mission Boulevard, are developed with a variety of land uses, including a single-family dwelling located in the C3 (Commercial Service) zoning district, and a small private school and a residential condominium project, which are both located in the R2 (Medium Density Residential) zoning district. The property located west of the project site, across Oaks Avenue, is developed with retail commercial land uses and lies in the C3 (Commercial Service) zoning district.

#### PROJECT BACKGROUND AND ANALYSIS:

The Planning Department has initiated a Zone Change on 3.82 acres (gross) of land located at the northeast corner of Mission Boulevard and Oaks Avenue. The Zone Change will change the zoning designation on the project site from the C3 (Commercial Service) zoning district to the M1 (Limited Industrial) zoning district.

The application was initiated by staff in response to Tentative Parcel Map (File No. PMTT14-001/PM 19517) and Development Plan (File No. PDEV14-001) requests to develop the project site consistent with the site's current Business Park land use designation, assigned to the property at the time of adoption of The Ontario Plan (TOP) in January 2010.

The M1 zoning designation proposed is the existing zoning designation most consistent with the Business Park land use district of TOP Land Use Plan (Exhibit LU-01). Staff is currently preparing an update to the City's Development Code (Title 9 of the Ontario Municipal Code) that, in part, is intended to establish a Business Park (BP) zoning district, which will be consistent with, and implement, the Business Park land use designation of TOP Land Use Plan. Staff anticipates the Development Code amendment to go before the Planning Commission and City Council in the near future. Upon establishment of the BP zoning district, staff will initiate a zone change on the project site, changing the zoning designation on the property to BP. However, in the near term, staff is recommending the Planning Commission adopt resolutions recommending the City Council approve the Zone Change to M1, Limited Industrial.

**COMPLIANCE WITH THE ONTARIO PLAN:** The proposed project is consistent with the principles, goals and policies contained within the Vision, Governance, Policy Plan (General Plan), and City Council Priorities components of The Ontario Plan (TOP). More specifically, the goals and policies of TOP that are furthered by the proposed project are as follows:

#### [1] <u>City Council Priorities</u>.

[a] *Primary Goal:* Develop Strategies and Take Actions, including Regaining Local Control of the Ontario International Airport, to Minimize the Negative Impacts of the Global Financial Downturn on Ontario's Economy and the City's Fiscal Health.

[b] Supporting Goals: [1] Invest in the Growth and Evolution of the City's Economy; [2] Focus Resources in Ontario's Commercial and Residential Neighborhoods; and [3] Invest in the City's Infrastructure (Water, Streets, Sewers, Parks, Storm Drains and Public Facilities).

- [2] Policy Plan (General Plan).
  - [a] Land Use—Compatibility

Goal: LU2 Compatibility between a wide range of uses.

Policies:

LU2-1 Land Use Decisions. We minimize adverse impacts on adjacent properties when considering land use and zoning requests.

LU2-2 *Buffers.* We require new uses to provide mitigation or buffers between existing uses where potential adverse impacts could occur.

LU2-5 *Regulation of Uses.* We regulate the location, concentration and operations of uses that have impacts on surrounding land uses.

LU2-6 Infrastructure Compatibility. We require infrastructure to be aesthetically pleasing and in context with the community character.

[b] Land Use—Flexibility

<u>Goal</u>: LU3 Staff, regulations and processes that support and allow flexible response to conditions and circumstances in order to achieve the Vision.

<u>Policies</u>: LU3-1 *Development Standards*. We maintain clear development standards which allow flexibility to achieve our Vision.

[c] Community Design—Design Quality

<u>Goal</u>: CD2 A high level of design quality resulting in public spaces, streetscapes, and developments that are attractive, safe, functional and distinct.

CD2-13 *Entitlement Process.* We work collaboratively with all stakeholders to ensure a high degree of certainty in the efficient review and timely processing of all development plans and permits.

CD2-14 Availability of Information. We provide easy access to information for developers, builders and the public about design quality, construction quality, and sustainable building practices.

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

**ENVIRONMENTAL REVIEW:** The project is categorically exempt from the requirements of the California Environmental Quality Act (CEQA) pursuant to Section 15332 (Infill Development) of the CEQA Guidelines.

**CONDITIONS OF APPROVAL:** See attached department reports.

### **TECHNICAL APPENDIX:**

### Surrounding Zoning and Land Use:

free and the second states	Existing Land Use	General Plan Designation	Zoning Designation
Site	Vacant	Business Park	C3 (Commercial Service)
North	Automobile Repair	Business Park	M3 (General Industrial)
South	Residential, Vacant & School (K through 8)	Medium Density Residential (11.1 to 25.0 DUs/Acre)	C3 (Commercial Service) & R2 (Medium Density Residential)
East	Residential	Business Park	C3 (Commercial Service)
West	Retail Commercial	Business Park	C3 (Commercial Service)

## **Development Summary:**

ltem	Proposed	Min./Max. Standard	Meets Y/N
Project Area (acres):	3.82 (gross)	N/A	
Lot/Parcel Size:	Parcel 1: 1.93 acres (gross) Parcel 2: 1.87 acres (gross)	10,000 SF (0.22 acre) Min.	Y

#### **RESOLUTION NO. PC14-028**

A RESOLUTION OF THE PLANNING COMMISSION OF THE CITY OF ONTARIO, CALIFORNIA, RECOMMENDING THE CITY COUNCIL APPROVE FILE NO. PZC14-002, A CHANGE IN THE ZONING DESIGNATION ON 3.82 GROSS ACRES OF LAND LOCATED AT THE NORTHEAST CORNER OF MISSION BOULEVARD AND OAKS AVENUE, AT 1320 AND 1380 WEST MISSION BOULEVARD, FROM C3 (COMMERCIAL SERVICE) TO M1 (LIMITED INDUSTRIAL), AND MAKING FINDINGS IN SUPPORT THEREOF – APN: 1011-211-06.

WHEREAS, the City of Ontario ("Applicant") has initiated a Zone Change, File No. PZC14-002, as described in the title of this Resolution (hereinafter referred to as "Application" or "Project"); and

WHEREAS, the Application applies to 3.82 gross acres of land located at the northeast corner of Oaks Avenue and Mission Boulevard, which is largely undeveloped, and has been regularly used for the farming of food crops, such as strawberries; and

WHEREAS, the area surrounding the project site is characterized by automobile repair facilities on the abutting property to north, which lies in the M3 (General Industrial) zoning district. The property to the east is developed with single-family dwellings in the C3 (Commercial Service) zoning district. Properties located south of the project site, across Mission Boulevard, are developed with a variety of land uses, including a single-family dwelling located in the C3 (Commercial Service) zoning district and a small private school and a residential condominium project, which are both located in the R2 (Medium Density Residential) zoning district. The property located west of the project site, across Oaks Avenue, is developed with retail commercial land uses and lies in the C3 (Commercial Service) zoning district; and

WHEREAS, the proposed zone change was initiated by the City in response to Tentative Parcel Map (File No. PMTT14-001/PM 19517) and Development Plan (File No. PDEV14-001) requests to develop the project site consistent with the project site's current Business Park land use designation, assigned to the property at the time of adoption of The Ontario Plan in January 2010; and

WHEREAS, the M1 zoning designation proposed to be assigned to the project site is with the Business Park land use district of The Ontario Plan Land Use Plan (Exhibit LU-01); and

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

Planning Commission Resolution File No. PZC14-002 Ápril 29, 2014

WHEREAS, the Project is exempt from CEQA pursuant to a categorical exemption (listed in CEQA Guidelines Article 19, commencing with Section 15300) and the application of that categorical exemption is not barred by one of the exceptions set forth in CEQA Guidelines Section 15300.2; and

WHEREAS, the project site is located within the Airport Influence Area of Ontario International Airport and the Project is consistent with the policies and criteria set forth within the Airport Land Use Compatibility Plan; and

WHEREAS, on April 29, 2014, the Planning Commission of the City of Ontario conducted a hearing to consider the Project, and concluded said hearing on that date; and

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

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

SECTION 1. As the decision-making body for the Project, the Planning Commission 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 Planning Commission, the Planning Commission finds as follows:

a. The Project is categorically exempt from environmental review pursuant to Section 15332 (Infill Development) of the CEQA Guidelines; and

b. The application of the categorical exemption is not barred by one of the exceptions set forth in CEQA Guidelines Section 15300.2; and

c. The determination of CEQA exemption reflects the independent judgment of the Planning Commission.

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

a. The proposed zone change is consistent with the goals and policies of the general plan.

b. The proposed zone change is reasonable and beneficial, and in the interest of good zoning practice.

Planning Commission Resolution File No. PZC14-002 April 29, 2014

c. The project sites are physically suitable, including, but not limited to parcel size, shape, access, availability of utilities and compatibility with adjoining land uses, for the requested zoning designations and anticipated developments.

d. The proposed zone change will not adversely affect the harmonious relationship with adjacent parcels and land uses.

e. The proposed zone change will not have a significant adverse impact on the environment.

f. The proposed project is consistent with the adopted Housing Element. The site is not one of the properties listed in the Available Land Inventory in the Housing Element. Changing the zoning designation of the subject property from C3 (Commercial Service) to M1 (Limited Industrial) will not impact the City's Regional Housing Needs Allocation obligations or the City's ability to satisfy its share of the region's future housing need.

SECTION 3. Based upon the findings and conclusions set forth in Sections 1 and 2 above, the Planning Commission hereby recommends approval of the requested Zone Change as shown on the attached Exhibit "A".

SECTION 4. If any section, subsection, paragraph, sentence, clause or phrase of this resolution is for any reason held to be invalid, unconstitutional or otherwise struck-down by a court of competent jurisdiction, such decision shall not affect the validity of the remaining portions of this resolution. The Planning Commission hereby declares that it would have adopted this resolution and each section, subsection, paragraph, sentence, clause or phrase thereof, irrespective of the fact that any one or more portions of this resolution might be declared invalid.

SECTION 5. 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 6. 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 7. The Secretary shall certify to the adoption of the Resolution.

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Planning Commission Resolution File No. PZC14-002 April 29, 2014

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

I hereby certify that the foregoing Resolution was duly and regularly introduced, passed and adopted by the Planning Commission of the City of Ontario at a special meeting thereof held on the 29<sup>th</sup> day of April 2014, and the foregoing is a full, true and correct copy of said Resolution, and has not been amended or repealed.

Rick Gage, Planning Commission Chairman

ATTEST:

Scott Murphy, Planning/Director/ Secretary of Planning Commission

Planning Commission Resolution File No. PZC14-002 April 29, 2014

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

I, Jeanina M. Romero, Secretary Pro Tempore of the Planning Commission of the City of Ontario, DO HEREBY CERTIFY that foregoing Resolution No. PC14-028 was duly passed and adopted by the Planning Commission of the City of Ontario at their special meeting held on April 29, 2014 by the following roll call vote, to wit:

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

NOES: None

**ABSENT: Ricci** 

**ABSTAIN: None** 

Jeanina M. Romero, Secretary

Tempore

Existing Zoning Designation	Assessor Parcel Number Involved	Proposed Zoning Designation		
M3 M3 Project Site C3 MISSION BL/D MISSION BL/D R2. R2. M8 R2	101121106 (1 of 1 properties)	M3 C3 R2 AR swo	M3 Project Site Missic	C3
C3 (Commercial Service)	Northeast Corner Mission Boulevard and Oaks Avenue	M1 (Limited Industrial)		

## EXHIBIT A: Zone Change

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF ONTARIO, CALIFORNIA, APPROVING FILE NO. PZC14-002, A ZONE CHANGE ON 3.82 ACRES OF LAND LOCATED AT THE NORTHEAST CORNER OF MISSION BOULEVARD AND OAKS AVENUE, FROM C3 (COMMERCIAL SERVICE) TO M1 (LIMITED INDUSTRIAL), AND MAKING FINDINGS IN SUPPORT THEREOF – APN: 1011-211-06.

WHEREAS, the City of Ontario ("Applicant") has initiated a Zone Change, File No. PZC14-002, as described in the title of this Ordinance (hereinafter referred to as "Application" or "Project"); and

WHEREAS, the Application applies to 3.82 acres of land located at the northeast corner of Oaks Avenue and Mission Boulevard, which is largely undeveloped, and has been regularly used for the farming of food crops, such as strawberries; and

WHEREAS, the area abutting the project site to the north is characterized by automobile repair facilities, which lies in the M3 (General Industrial) zoning district. The property to the east is developed with single-family dwellings in the C3 (Commercial Service) zoning district. Properties located south of the project site, across Mission Boulevard, are developed with a variety of land uses including a single-family dwelling located in the C3 (Commercial Service) zoning district, a small private school and a residential condominium project, both of which are located in the R2 (Medium Density Residential) zoning district. The property located west of the project site, across Oaks Avenue, is developed with retail commercial land uses and lies in the C3 (Commercial Service) zoning district; and

WHEREAS, the proposed zone change was initiated by the City in response to Tentative Parcel Map (File No. PMTT14-001/PM 19517) and Development Plan (File No. PDEV14-001) requests to develop the project site consistent with the project site's current Business Park land use designation; and

WHEREAS, the M1 zoning designation proposed to be assigned to the project site is consistent with the Business Park land use district of The Ontario Plan Land Use Plan (Exhibit LU-01); and

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

WHEREAS, the Project is exempt from CEQA pursuant to a categorical exemption (listed in CEQA Guidelines Article 19, commencing with Section 15300) and the application of that categorical exemption is not barred by one of the exceptions set forth in CEQA Guidelines Section 15300.2; and

WHEREAS, the project site is located within the Airport Influence Area of Ontario International Airport and the Project is consistent with the policies and criteria set forth within the Airport Land Use Compatibility Plan; and

WHEREAS, on April 29, 2014, the Planning Commission of the City of Ontario conducted a duly noticed public hearing and issued Resolution No. PC14-028, recommending the City Council approve the application; and

WHEREAS, on June 3, 2014, the City Council of the City of Ontario conducted a hearing to consider the Project, and concluded said hearing on that date; and

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

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

<u>SECTION 1</u>. 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 Project is categorically exempt from environmental review pursuant to Section 15332 (Infill Development) of the CEQA Guidelines; and

b. The application of the categorical exemption is not barred by one of the exceptions set forth in CEQA Guidelines Section 15300.2; and

c. The determination of CEQA exemption reflects the independent judgment of the City Council.

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

a. The proposed zone change is consistent with the goals and policies of the Policy Plan component of The Ontario Plan.

b. The proposed zone change is reasonable and beneficial, and in the interest of good zoning practice.

c. The project sites are physically suitable, including, but not limited to parcel size, shape, access, availability of utilities and compatibility with adjoining land uses, for the requested zoning designations and anticipated developments.

d. The proposed zone change will not adversely affect the harmonious relationship with adjacent parcels and land uses.

e. The proposed zone change will not have a significant adverse impact on the environment.

f. The proposed project is consistent with the adopted Housing Element. The site is not one of the properties listed in the Available Land Inventory in the Housing Element. Changing the zoning designation of the subject property from C3 (Commercial Service) to M1 (Limited Industrial) will not impact the City's Regional Housing Needs Allocation obligations or the City's ability to satisfy its share of the region's future housing need.

<u>SECTION 3</u>. Based upon the findings and conclusions set forth in Sections 1 and 2 above, the City Council hereby approves the requested Zone Change, as shown on the attached Exhibit A.

<u>SECTION 4</u>. If any section, subsection, paragraph, sentence, clause or phrase of this ordinance is for any reason held to be invalid, unconstitutional or otherwise struck-down by a court of competent jobs, such decision shall not affect the validity of the remaining portions of this Ordinance. The City Council hereby declares that it would have adopted this ordinance and each section, subsection, paragraph, sentence, clause or phrase thereof, irrespective of the fact that any one or more portions of this ordinance might be declared invalid.

<u>SECTION 5</u>. 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.

<u>SECTION 6</u>. 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.

<u>SECTION 7</u>. Effective Date. This Ordinance shall become effective 30 days following its adoption.

<u>SECTION 8</u>. 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.

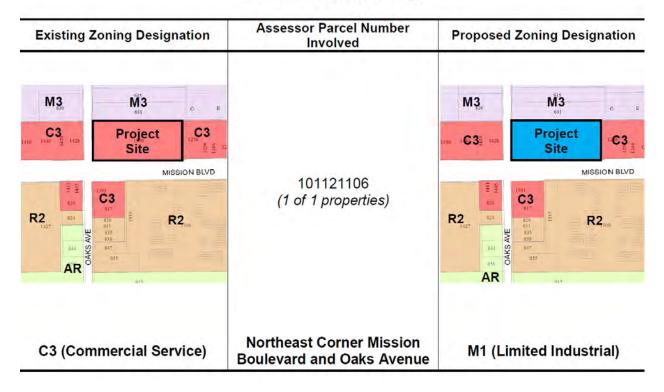
PAUL S. LEON, MAYOR

ATTEST:

MARY E. WIRTES, MMC, CITY CLERK

APPROVED AS TO FORM:

BEST BEST & KRIEGER LLP CITY ATTORNEY



### **EXHIBIT A: Zone Change**

# **CITY OF ONTARIO** Agenda Report

June 3, 2014

## SECTION: PUBLIC HEARINGS

SUBJECT: A PUBLIC HEARING TO CONSIDER AN ORDINANCE TO AMEND SECTION 2-2.101 OF THE ONTARIO MUNICIPAL CODE RELATING TO THE APPOINTMENT, NUMBER, REMOVAL, TERMS AND VACANCIES OF REGULAR AND AT-LARGE MEMBERS OF CITY COMMISSIONS, COMMITTEES, AND BOARDS

**RECOMMENDATION:** That the City Council introduce and waive further reading of an ordinance relating to Section 2-2.101 of the Ontario Municipal Code relating to the appointment, number, removal, terms and vacancies of regular and at-large members of City Commissions, Committees, and Boards to gain consistency between practices and protocols outlined in the Ontario Municipal Code and the Ontario City Boards, Commissions, and Committees Handbook.

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

**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. At the April 15, 2014 meeting of the Ontario City Council, the City Council voted to update Section 2-2.101 of the Ontario Municipal Code to implement a more standardize and consistent process.

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

Prepared by: Department:	Al C. Boling Citywide Administration	Submitted to Council/O.H.A Approved:	06/03/2014
City Manager Approval:	MCA	Continued to: Denied:	
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The City's current policy and practices are outlined in Section 2-2.101 of 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.

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. 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.

The Municipal Code and the Handbook permit an appointee to be removed by the individual City Council member who nominated him or her; by a majority vote 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 agendized matter 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.

If approved by the City Council, the City's Commissions, Committees, and Boards will be able to update their respective Bylaws and an updated version of the Handbook will be presented to all City Council Members and all regular and at-large members of the City's Commission, Committees, and Boards.

ORDINANCE NO.

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF ONTARIO, CALIFORNIA, AMENDING SECTION 2-2.101 OF THE ONTARIO MUNICIPAL CODE, WITH CERTAIN AMENDMENTS THERETO RELATING TO THE APPOINTMENT, NUMBER, REMOVAL, TERMS AND VACANCIES OF REGULAR AND AT-LARGE MEMBERS OF COMMISSIONS, COMMITTEES AND BOARDS.

WHEREAS, the general provisions governing the members of commissions, committees and boards are set forth in Chapter 2 of Title 2 of the Ontario Municipal Code; and

WHEREAS, at the April 15, 2014 meeting of the Ontario City Council, City 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 practices and protocols; and

WHEREAS, on May 6, 2014, the Ontario City Council voted to update Section 2-2.101 of the Ontario Municipal Code to implement a more standardized and consistent process for all City Commissions, Committees and Boards.

WHEREAS, on June 3, 2014, the City Council conducted a public hearing to introduce and waive further reading of an ordinance relating to the appointment and removal of appointees to City Commissions, Committees and Boards; and

WHEREAS, the City Council desires to establish a more consistent practice, clarify and simplify the process for the appointment and removal of appointees included within the Ontario Municipal Code; and

WHEREAS, the updated appointment and removal process of appointees to City Commissions, Committees and Boards will become effective within thirty (30) days upon approval by the City Council.

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

<u>SECTION 1</u>. Section 2-2.101(d)(4-5) of Chapter 2, of Title 2 of the Ontario Municipal Code is hereby amended, in its entirety, to read as follows:

Sec. 2-2.101(d)(4-5)

(4) The City Council, by a majority vote, shall appoint two (2) of its members to serve as a Nominations Committee to bring 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 to fill one of the two (2) at-large memberships on the committees, commissions or boards after each regularly scheduled election. (5) In the case of a vacancy on committees, commissions or boards, a City Council member may nominate a person to fill the vacancy; if the vacancy occurs by an at-large member appointed by process in subdivision (4) of this subsection, then the nomination shall be by a repeat of that process in accordance with subsection (d)(4).

<u>SECTION 2.</u> Section 2-2.101(e) of Chapter 2, of Title 2 of the Ontario Municipal Code is hereby repealed and shall be deleted in its entirety; and Section 2-2.101(f) shall be renumbered accordingly.

<u>SECTION 3.</u> Section 2-2.101(f) of Chapter 2, of Title 2 of the Ontario Municipal Code is hereby amended, in its entirety, to read as follows:

Sec. 2-2.101(f)

(f) A City Council member may submit to the Mayor the name of the appointee proposed for removal from a commission, committee 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.

<u>SECTION 4.</u> This updated amendment to the Ordinance shall become effective thirty (30) days following its adoption.

<u>SECTION 5.</u> 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:

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 June 3, 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)