

CITY OF ONTARIO
CITY COUNCIL AND HOUSING AUTHORITY
AGENDA
JUNE 16, 2015

Paul S. Leon
Mayor

Alan D. Wapner
Mayor pro Tem

Jim W. Bowman
Council Member

Debra Dorst-Porada
Council Member

Paul Vincent Avila
Council Member



Al C. Boling
City Manager

John E. Brown
City Attorney

Mary E. Wirtes, MMC
City Clerk

James R. Milhiser
Treasurer

WELCOME to a meeting of the Ontario City Council.

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

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

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

CALL TO ORDER (OPEN SESSION)

6:00 p.m.

ROLL CALL

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

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

CLOSED SESSION

- GC 54956.9 (d)(2), CONFERENCE WITH LEGAL COUNSEL, ANTICIPATED LITIGATION: *Two (2) cases.*
- GC 54956.9 (d)(1), CONFERENCE WITH LEGAL COUNSEL, EXISTING LITIGATION: *Inland Oversight Committee v. City of Ontario, San Bernardino County Superior Court, CIVRS 1208559.*
- GC 54956.9 (d)(1), CONFERENCE WITH LEGAL COUNSEL, EXISTING LITIGATION: *City of Ontario v. City of Los Angeles, Los Angeles World Airports, and Los Angeles Board of Airport Commissioners, RIC 1306498.*

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

PLEDGE OF ALLEGIANCE

Council Member Bowman

INVOCATION

Pastor Brian E. Kennedy, Mt. Zion Baptist Church

REPORT ON CLOSED SESSION

City Attorney

PUBLIC COMMENTS

6:30 p.m.

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

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

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

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 May 19, 2015, and for the special meeting of the City Council and Housing Authority of May 15, 2015, and approving same as on file in the Records Management Department.

2. BILLS/PAYROLL

Bills May 3, 2015 through May 16, 2015 and **Payroll** May 3, 2015 through May 16, 2015, when audited by the Finance Committee.

3. AN ORDINANCE RESCINDING ORDINANCE 3011, REGARDING THE MORATORIUM ON THE ISSUANCE OF BUSINESS LICENSES OR OTHER PERMITS OR ENTITLEMENTS FOR MASSAGE ESTABLISHMENTS.

That the City Council adopt an ordinance rescinding Ordinance 3011.

ORDINANCE NO. _____

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF ONTARIO, CALIFORNIA, RESCINDING ORDINANCE NO. 3011, REGARDING THE MORATORIUM ON THE ISSUANCE OF BUSINESS LICENSES OR OTHER PERMITS OR ENTITLEMENTS FOR MASSAGE ESTABLISHMENTS.

4. AMENDMENT TO THE COMPENSATION AND BENEFITS PROFILE FOR UNREPRESENTED PART-TIME EMPLOYEES DUE TO MANDATED SICK LEAVE BENEFITS

That the City Council approve and authorize the City Manager to execute an amendment to 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 Healthy Workplaces / Healthy Families Act of 2014 (Paid Sick Leave).

5. MAINTENANCE SERVICE AGREEMENT FOR CUSTODIAL MAINTENANCE SERVICES AT VARIOUS CITY LOCATIONS/MERCHANTS BUILDING MAINTENANCE

That the City Council authorize the City Manager to execute a three-year Maintenance Service Agreement (on file in the Records Management Department) with Merchants Building Maintenance of Pomona, California, for an estimated annual cost of \$489,556; authorize the addition of future service areas as needed; and authorize the option to extend the agreement for up to two additional years consistent with City Council approved budgets.

6. ANALYSIS OF IMPEDIMENTS TO FAIR HOUSING CHOICE

That the City Council approve the Analysis of Impediments to Fair Housing Choice Plan ("AI") (on file in the Records Management Department).

7. AMENDMENT TO A PROFESSIONAL SERVICES AGREEMENT WITH MWH CONSTRUCTORS FOR CONSTRUCTION MANAGEMENT & INSPECTION SERVICES RELATED TO THE WELL NO. 41 WELLHEAD TREATMENT PROJECT

That the City Council approve and authorize the City Manager to execute an amendment to the existing Professional Services Agreement (on file with the Records Management Department) with MWH Constructors of Pasadena, California, to provide additional construction management and inspection services for the Well No. 41 Wellhead Treatment Project in the amount of \$250,000.

8. A RESOLUTION ESTABLISHING THE ANNUAL SPECIAL TAX WITHIN COMMUNITY FACILITIES DISTRICT NO. 24 (PARK PLACE FACILITIES - PHASE I) FOR FISCAL YEAR 2015-16

That the City Council adopt a resolution establishing the annual special tax within City of Ontario Community Facilities District No. 24 (Park Place Facilities - Phase I) for Fiscal Year 2015-16.

RESOLUTION NO. _____

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF ONTARIO, CALIFORNIA, ACTING IN ITS CAPACITY AS THE LEGISLATIVE BODY OF CITY OF ONTARIO COMMUNITY FACILITIES DISTRICT NO. 24 (PARK PLACE FACILITIES – PHASE I), ESTABLISHING THE ANNUAL SPECIAL TAX FOR FISCAL YEAR 2015-16.

9. A RESOLUTION ESTABLISHING THE ANNUAL SPECIAL TAX WITHIN COMMUNITY FACILITIES DISTRICT NO. 31 (CARRIAGE HOUSE / AMBERLY LANE) FOR FISCAL YEAR 2015-16 AND ADOPTION OF ORDINANCES LEVYING SPECIAL TAXES WITHIN CITY OF ONTARIO COMMUNITY FACILITIES DISTRICT NO. 31 AND DISSOLVING CITY OF ONTARIO FACILITIES DISTRICT NO. 14 (WEST HAVEN I)

That the City Council:

- (A) Consider and adopt an ordinance authorizing the levy of special taxes within City of Ontario Community Facilities District No. 31 (Carriage House / Amberly Lane);
- (B) Adopt a resolution establishing the annual special tax within City of Ontario Community Facilities District No. 31 (Carriage House / Amberly Lane) for Fiscal Year 2015-16; and
- (C) Consider and adopt an ordinance dissolving City of Ontario Community Facilities District No. 14 (West Haven I).

ORDINANCE NO. _____

AN ORDINANCE OF THE CITY OF ONTARIO, CALIFORNIA, LEVYING SPECIAL TAXES WITHIN THE CITY OF ONTARIO COMMUNITY FACILITIES DISTRICT NO. 31 (CARRIAGE HOUSE / AMBERLY LANE).

RESOLUTION NO. _____

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF ONTARIO, CALIFORNIA, ACTING IN ITS CAPACITY AS THE LEGISLATIVE BODY OF CITY OF ONTARIO COMMUNITY FACILITIES DISTRICT NO. 31 (CARRIAGE HOUSE / AMBERLY LANE), ESTABLISHING THE ANNUAL SPECIAL TAX FOR FISCAL YEAR 2015-16.

ORDINANCE NO. _____

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF ONTARIO, CALIFORNIA, DISSOLVING CITY OF ONTARIO COMMUNITY FACILITIES DISTRICT NO. 14 (WEST HAVEN I).

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.

10. ANNUAL LEVY OF ASSESSMENTS WITHIN ONTARIO PARKWAY MAINTENANCE ASSESSMENT DISTRICTS NO'S. 1, 2, 3 AND 4 FOR FISCAL YEAR 2015-2016

That the City Council take the following actions pertaining to the levy of assessments within Ontario Parkway Maintenance Assessment Districts (OPMAD) No's. 1, 2, 3 and 4:

- (A) Conduct a combined public hearing on the levy of the annual assessments for each district;
- (B) Consider and adopt a resolution approving the Engineer's Reports relating to the levy of assessments for each district; and
- (C) Consider and adopt resolutions confirming the diagrams and assessments, and providing for the assessment levy within each District.

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

Written communication.
Oral presentation.
Public hearing closed.

RESOLUTION NO. _____

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF ONTARIO, CALIFORNIA, APPROVING THE ENGINEER'S REPORTS FOR THE ANNUAL LEVY OF ASSESSMENTS WITHIN ONTARIO PARKWAY MAINTENANCE ASSESSMENT DISTRICTS NO. 1, 2, 3 AND 4 FOR FISCAL YEAR 2015-16.

RESOLUTION NO. _____

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF ONTARIO, CALIFORNIA, CONFIRMING THE DIAGRAMS AND ASSESSMENTS, AND PROVIDING FOR THE ANNUAL ASSESSMENT LEVY WITHIN ONTARIO PARKWAY MAINTENANCE ASSESSMENT DISTRICTS NO. 1, 2 AND 3 FOR FISCAL YEAR 2015-16.

RESOLUTION NO. _____

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF ONTARIO, CALIFORNIA, CONFIRMING THE DIAGRAM AND ASSESSMENT AND PROVIDING FOR THE ANNUAL ASSESSMENT LEVY WITHIN ONTARIO PARKWAY MAINTENANCE ASSESSMENT DISTRICT NO. 4 FOR FISCAL YEAR 2015-16.

11. ANNUAL LEVY OF ASSESSMENTS WITHIN STREET LIGHTING MAINTENANCE DISTRICTS NO. 1 AND 2 FOR FISCAL YEAR 2015-2016

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

- (A) Conduct a combined public hearing on the levy of the annual assessments for each district;
- (B) Consider and adopt a resolution approving the Engineer's Reports relating to the levy of assessments for each district; and
- (C) Consider and adopt resolutions confirming the diagrams and assessments, and providing for the assessment levy for each District.

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

Written communication.

Oral presentation.

Public hearing closed.

RESOLUTION NO. _____

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF ONTARIO, CALIFORNIA, APPROVING THE ENGINEER'S REPORTS FOR THE ANNUAL LEVY OF ASSESSMENTS WITHIN STREET LIGHTING MAINTENANCE DISTRICTS NO. 1 AND 2 FOR FISCAL YEAR 2015-2016.

RESOLUTION NO. _____

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF ONTARIO, CALIFORNIA, CONFIRMING THE DIAGRAM AND ASSESSMENT AND PROVIDING FOR THE ANNUAL ASSESSMENT LEVY WITHIN STREET LIGHTING MAINTENANCE DISTRICT NO. 1 FOR FISCAL YEAR 2015-2016.

RESOLUTION NO. _____

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF ONTARIO, CALIFORNIA, CONFIRMING THE DIAGRAM AND ASSESSMENT AND PROVIDING FOR THE ANNUAL ASSESSMENT LEVY WITHIN STREET LIGHTING MAINTENANCE DISTRICT NO. 2 FOR FISCAL YEAR 2015-2016.

12. A PUBLIC HEARING REGARDING THE ECONOMIC DEVELOPMENT SUBSIDY REPORT AND AN OPERATING COVENANT AGREEMENT BETWEEN THE CITY OF ONTARIO AND QVC, INC. PURSUANT TO GOVERNMENT CODE SECTION 53083; CONSIDERATION OF RESOLUTIONS ACCEPTING THE ECONOMIC DEVELOPMENT SUBSIDY REPORT, APPROVING THE OPERATING COVENANT AGREEMENT, AND MAKING RELATED FINDINGS

That the City Council take the following actions:

- (A) Hold the public hearing;
- (B) Adopt a resolution accepting the Economic Development Subsidy Report prepared pursuant to Government Code Section 53083 regarding an Operating Covenant Agreement by and between the City of Ontario and QVC, Inc., a Delaware Corporation (on file with the Records Management Department);
- (C) Adopt a resolution approving the Operating Covenant Agreement between the City of Ontario and QVC, Inc. (on file with the Records Management Department), authorizing the City Manager to execute the Operating Covenant Agreement and making related findings; and
- (D) Direct City staff to file a Notice of Determination based upon the City Council's finding that the impacts of this project were analyzed in conjunction with the Meredith International Centre Specific Plan Amendment Environmental Impact Report (SCH #2014051020) that was certified by the City Council on April 7, 2015.

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

Written communication.
Oral presentation.
Public hearing closed.

RESOLUTION NO. _____

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF ONTARIO, CALIFORNIA, ACCEPTING THE ECONOMIC DEVELOPMENT SUBSIDY REPORT PREPARED PURSUANT TO GOVERNMENT CODE SECTION 53083 REGARDING AN OPERATING COVENANT AGREEMENT BY AND BETWEEN THE CITY OF ONTARIO AND QVC, INC.

RESOLUTION NO. _____

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF ONTARIO, CALIFORNIA, APPROVING THE OPERATING COVENANT AGREEMENT BETWEEN THE CITY OF ONTARIO AND QVC, INC. AND MAKING RELATED FINDINGS.

STAFF MATTERS

City Manager Boling

COUNCIL MATTERS

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

ADJOURNMENT

**CITY OF ONTARIO
CLOSED SESSION REPORT**

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

June 16, 2015

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

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

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

- GC 54956.9 (d)(2), CONFERENCE WITH LEGAL COUNSEL, ANTICIPATED LITIGATION:
Two (2) cases.

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, San Bernardino County Superior Court, CIVRS 1208559*

No Reportable Action	Continue	Approved
/ /	/ /	/ /

Disposition: _____

**CITY OF ONTARIO
CLOSED SESSION REPORT**

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

June 16, 2015

(continued)

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

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

No Reportable Action

Continue

Approved

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Disposition: _____

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

CITY OF ONTARIO

Agenda Report
June 16, 2015

SECTION:
CONSENT CALENDAR

SUBJECT: AN ORDINANCE RESCINDING ORDINANCE 3011, REGARDING THE MORATORIUM ON THE ISSUANCE OF BUSINESS LICENSES OR OTHER PERMITS OR ENTITLEMENTS FOR MASSAGE ESTABLISHMENTS.

RECOMMENDATION: That the City Council adopt an ordinance rescinding Ordinance 3011.

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

FISCAL IMPACT: None.

BACKGROUND: On June 2, 2015, the City Council introduced for public hearing an ordinance to rescind Ordinance 3011, regarding the moratorium on the issuance of business licenses or other permits or entitlements for massage establishments.

On December 16, 2014, the City Council adopted Ordinance No. 3009, a forty-five day moratorium on the issuance of business licenses or other permits or entitlements for massage establishments, in response to a threat to the public health and safety due to potential illicit activities occurring at the establishments. The moratorium afforded staff time to study ways to amend the Ontario Municipal Code in accordance with Senate Bill 731, which restored the right for local governments to regulate massage establishments, and allowed the City Council time to adopt amendments. On January 20, 2015, the City Council extended the moratorium by ten months and fifteen days (Ordinance No. 3011).

Staff completed its study of recommended amendments to the Ontario Municipal Code, and the Planning Commission took action on February 24, 2015 to recommend approval by the City Council. The City Council adopted Ordinance No. 3017 on April 7, 2015, which included staff and Planning Commission recommendations.

STAFF MEMBER PRESENTING: Scott Murphy, Planning Director

Prepared by: David Sheasby
Department: Citywide Administration

City Manager
Approval: 

Submitted to Council/O.H.A. 06/16/2015

Approved: _____

Continued to: _____

Denied: _____

3

Now that the amendments to the Ontario Municipal Code are in effect, and the threat to the public health and safety has been addressed, staff recommends that Ordinance No. 3011 be rescinded in its entirety and the moratorium be lifted.

ORDINANCE NO. _____

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF ONTARIO, CALIFORNIA, RESCINDING ORDINANCE NO. 3011, REGARDING THE MORATORIUM ON THE ISSUANCE OF BUSINESS LICENSES OR OTHER PERMITS OR ENTITLEMENTS FOR MASSAGE ESTABLISHMENTS.

WHEREAS, the Ontario City Council adopted a forty-five day moratorium on the issuance of business licenses or other permits or entitlements for massage establishments on December 16, 2014, so staff could study ways to amend the Ontario Municipal Code to comply with Senate Bill 731, regarding local regulation of massage establishments, and allow the City Council time to adopt amendments; and

WHEREAS, the City Council extended the moratorium by ten months and fifteen days on January 20, 2015, via Ordinance No. 3011; and

WHEREAS, City staff completed its study and recommended amendments to the Ontario Municipal Code, which the Ontario City Council ultimately adopted via Ordinance No. 3017 on April 7, 2015; and

WHEREAS, that ordinance is now in effect and there is no longer a need for the moratorium.

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

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

SECTION 2. That Ordinance No. 3011 is rescinded in its entirety.

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

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

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

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

PASSED, APPROVED, AND ADOPTED this 16th day of June 2015.

PAUL S. LEON, MAYOR

ATTEST:

MARY E. WIRTES, MMC, CITY CLERK

APPROVED AS TO FORM:

BEST BEST & KRIEGER LLP
CITY ATTORNEY

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

I, MARY E. WIRTES, City Clerk of the City of Ontario, DO HEREBY CERTIFY that foregoing Ordinance No. 3022 was duly introduced at a regular meeting of the City Council of the City of Ontario held June 2, 2015 and adopted at the regular meeting held June 16, 2015 by the following roll call vote, to wit:

AYES: COUNCIL MEMBERS:

NOES: COUNCIL MEMBERS:

ABSENT: COUNCIL MEMBERS:

MARY E. WIRTES, MMC, CITY CLERK

(SEAL)

I hereby certify that the foregoing is the original of Ordinance No. 3022 duly passed and adopted by the Ontario City Council at their regular meeting held June 16, 2015 and that Summaries of the Ordinance were published on June 9, 2015 and June 23, 2015, in the Inland Valley Daily Bulletin newspaper.

MARY E. WIRTES, MMC, CITY CLERK

(SEAL)

CITY OF ONTARIO

Agenda Report

June 16, 2015

SECTION:
CONSENT CALENDAR

SUBJECT: AMENDMENT TO THE COMPENSATION AND BENEFITS PROFILE FOR UNREPRESENTED PART-TIME EMPLOYEES DUE TO MANDATED SICK LEAVE BENEFITS

RECOMMENDATION: That the City Council approve and authorize the City Manager to execute an amendment to 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 Healthy Workplaces / Healthy Families Act of 2014 (Paid Sick Leave).

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

FISCAL IMPACT: No additional budget appropriations are necessary as part-time staff are budgeted at a maximum of 990 hours per year; however, staff will monitor for any unintended long range operational impacts that may result in implementing this state mandate.

BACKGROUND: Employees in the Part-Time group are not formally organized and, as such, are not represented by any employee group, union or association. The Compensation and Benefits Profile describes the compensation, benefits, and other relevant provisions as approved by the City Council. The current profile for the Part-Time group expires on June 30, 2016. Due to the passage of the Healthy Workplaces / Healthy Families Act of 2014 it is necessary to revise the Part-Time group profile to include a legally mandated paid sick leave provision.

The Healthy Workplace, Healthy Family Act of 2014 requires that any employee who, on or after July 1, 2015, works for 30 or more days within a year from the beginning of employment be entitled to paid sick leave. Paid sick leave must accrue at the minimum rate of one hour per every 30 hours worked, paid at the employee's regular wage rate. An employee may use accrued sick days beginning on the 90TH day of employment. An employer may cap the use of paid sick to 24 hours or three days in each year of

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

Prepared by: Angela C. Lopez
Department: Human Resources

City Manager
Approval: 

Submitted to Council/O.H.A. 06/16/2015

Approved: _____

Continued to: _____

Denied: _____

4

employment. To ensure compliance with the State's Labor Code, it is recommended that the City modify the Part-Time group Compensation and Benefits Profile to add necessary legal provisions for sick leave accrual and usage.

CITY OF ONTARIO

Agenda Report

June 16, 2015

SECTION:
CONSENT CALENDAR

SUBJECT: MAINTENANCE SERVICE AGREEMENT FOR CUSTODIAL MAINTENANCE SERVICES AT VARIOUS CITY LOCATIONS

RECOMMENDATION: That the City Council authorize the City Manager to execute a three-year Maintenance Service Agreement (on file in the Records Management Department) with Merchants Building Maintenance of Pomona, California, for an estimated annual cost of \$489,556; authorize the addition of future service areas as needed; and authorize the option to extend the agreement for up to two additional years consistent with City Council approved budgets.

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

FISCAL IMPACT: The annual cost of the proposed Maintenance Service Agreement is estimated to be \$479,556 plus a contingency of \$10,000 for urgency services for a total annual amount of \$489,556 for each of the first three years beginning Fiscal Year 2015-16. The General Fund baseline operating budget includes \$441,400 and will be included in the Fiscal Year 2015-16 operating budget. If approved, additional appropriations in the amount of \$48,156 will be included in Fiscal Year 2015-16 first quarter report.

At the City's discretion, two additional one-year extensions may be exercised and pricing for these optional years will be negotiated, but will not exceed four percent per year. Future contracting actions will be commensurate with City Council authorized work programs and budgets. Contracting for the multi-year period will allow the City to limit the potential for yearly increase to the bid amounts, avoid the costs of re-bidding the contract annually and provide service continuity and project future costs.

BACKGROUND: The Maintenance Service Agreement scope provides regularly scheduled custodial maintenance services. In addition, the contract includes quarterly window cleaning (excluding Colony High School Library) and annual floor maintenance.

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

Prepared by: Victor Moraga
Department: Municipal Services

City Manager
Approval: 

Submitted to Council/O.H.A. 06/16/2015

Approved: _____

Continued to: _____

Denied: _____

5

Full Custodial Services

Anthony Munoz Community Center	Ovitt Family Community Library
Armstrong Community Center	Police Department
Code Enforcement/Housing	Police Department Substation (Ontario Mills)
Colony High School Library	Senior Community Center
De Anza Community Center	Westwind Community Center
Dorothy Quesada Community Center	

In April 2015, the City solicited proposals for Custodial Maintenance Services. Proposals were received from the following:

<u>Vendor</u>	<u>Location</u>	<u>Amount</u>
Merchants Building Maintenance	Pomona, CA	\$479,556
Guaranteed Janitorial Services	Chino, CA	\$476,728
DMS Facility Services	Monrovia, CA	\$533,913
Able Building Maintenance	Santa Ana, CA	\$645,458
ABM Janitorial Services	Irvine, CA	\$768,872

Merchants Building Maintenance submitted a proposal that met all the specifications required of the Maintenance Service Agreement. Staff recommends award to Merchants Building Maintenance, based on the quality of proposal, credentials, pricing, references, and ability to respond to urgencies in a timely manner.

CITY OF ONTARIO

Agenda Report
June 16, 2015

SECTION:
CONSENT CALENDAR

SUBJECT: ANALYSIS OF IMPEDIMENTS TO FAIR HOUSING CHOICE

RECOMMENDATION: That the City Council approve the Analysis of Impediments to Fair Housing Choice Plan ("AI") (on file in the Records Management Department).

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

FISCAL IMPACT: There is no impact to the General Fund.

BACKGROUND: As a condition of receiving federal housing and community development funds, the City is required to affirmatively further fair housing. HUD has interpreted that statutory obligation to mean that the City must conduct an Analysis of Impediments to Fair Housing Choice (AI), take appropriate actions to overcome those impediments, and maintain records reflecting the AI and the corrective actions. The AI must be updated every five years concurrent with the Five-Year Consolidated Plan.

Staff worked with a consultant, Lawyers' Committee for Civil Rights Under Law ("LCCRUL"), located in Washington DC, to prepare the 2015 AI. This nationally recognized civil rights organization, performed a comprehensive examination of the structural barriers to fair housing choice and access to housing opportunities within Ontario and the surrounding region. As part of this all-inclusive review, LCCRUL found Ontario's past record to be praiseworthy and identified achievable action steps that will continue to build upon the foundation that Ontario has built to ensure the continued development of a well-planned, balanced, and self-sustaining community for all of its residents.

The key themes identified within the AI, which would enhance the City's ongoing efforts related to fair housing choice include:

- Focus efforts to encourage the development of affordable housing regionally;

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

Prepared by: Katryna Gonzalez
Department: Housing and Municipal Services

City Manager
Approval: 

Submitted to Council/O.H.A. 06/16/2015

Approved: _____

Continued to: _____

Denied: _____

- Advocate for policy change, as necessary, at federal and state levels to encourage investment of housing resources within Ontario;
- Enhance ongoing fair housing education training with a specific focus related to reasonable accommodations for disabled residents; and
- Work collaboratively with public transportation agencies for connectivity of public transportation options throughout the region.

On May 15, 2015, the City advertised the availability of the AI. The AI was available for public review for 30 days from May 15, 2015 through June 14, 2015. No comments were received during the public review period.

CITY OF ONTARIO

Agenda Report
June 16, 2015

SECTION:
CONSENT CALENDAR

SUBJECT: AMENDMENT TO A PROFESSIONAL SERVICES AGREEMENT WITH MWH CONSTRUCTORS FOR CONSTRUCTION MANAGEMENT & INSPECTION SERVICES RELATED TO THE WELL NO. 41 WELLHEAD TREATMENT PROJECT

RECOMMENDATION: That the City Council approve and authorize the City Manager to execute an amendment to the existing Professional Services Agreement (on file with the Records Management Department) with MWH Constructors of Pasadena, California, to provide additional construction management and inspection services for the Well No. 41 Wellhead Treatment Project in the amount of \$250,000.

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

FISCAL IMPACT: The Fiscal Year 2014-15 Capital Improvement Program includes appropriations from the Water Capital Fund for this project in the amount of \$4,326,751. Additional appropriations in the amount of \$250,000 from the Water Capital Fund are required to complete this project, if approved, and will be included in the next budget update to the City Council.

The City will pursue liquidated damages from the construction contractor in order to recover all or a portion of these additional costs. There is no impact to the General Fund.

BACKGROUND: On June 3, 2014, the City Council approved a contract with MWH Constructors to provide construction management and inspection services during construction of the Well No. 41 Wellhead Treatment Project. The wellhead treatment facility includes an ion exchange treatment system for perchlorate and the installation of approximately 1,300 linear feet of 16-inch diameter water transmission pipeline from Well No. 41 to the treatment site (former Well No. 18 site).

The project construction timeline was anticipated to be 10 months, and the construction management agreement with MWH Constructors was negotiated accordingly. The professional services agreement

STAFF MEMBER PRESENTING: Scott Burton, Utilities General Manager

Prepared by: Katie Gienger/Engineering
Department: MU/Engineering

City Manager
Approval: 

Submitted to Council/O.H.A. 06/16/2015

Approved: _____

Continued to: _____

Denied: _____

7

with MWH Constructors is \$304,245 with a 15% contingency of \$45,637, for a total of \$349,882. The construction contractor is unable to complete the project within the contractual timeline. There have been weather incidents, performance issues by the construction contractor, and delays in meeting milestones. These issues have resulted in the need to extend both the construction contract and construction management contracts. MWH Constructors' expertise in project management is required to ensure the project is completed in an acceptable manner.

CITY OF ONTARIO

Agenda Report

June 16, 2015

SECTION:
CONSENT CALENDAR

SUBJECT: A RESOLUTION ESTABLISHING THE ANNUAL SPECIAL TAX WITHIN COMMUNITY FACILITIES DISTRICT NO. 24 (PARK PLACE FACILITIES - PHASE I) FOR FISCAL YEAR 2015-16

RECOMMENDATION: That the City Council adopt a resolution establishing the annual special tax within City of Ontario Community Facilities District No. 24 (Park Place Facilities - Phase I) for Fiscal Year 2015-16.

COUNCIL GOALS: Regain Local Control of the Ontario International Airport
Focus Resources in Ontario's Commercial and Residential Neighborhoods
Ensure the Development of a Well Planned, Balanced and Self-Sustaining Community in the New Model Colony

FISCAL IMPACT: The use of Mello-Roos financing for public facilities in the residential development of the Park Place project is estimated to generate approximately \$14 million, which will be used to help fund a portion of the public infrastructure improvements that will serve the project. Since Mello-Roos bonds are not a direct obligation of the City, and are paid from special taxes levied on each taxable parcel in the district, there is no general fund impact from the issuance of Mello-Roos bonds.

BACKGROUND: On September 2, 2014, the City Council, in accordance with the Mello-Roos Act, took the initial steps in the formation of Community Facilities District No. 24 ("District") with the adoption of Resolution No. 2014-090, declaring the City's intention to establish the District and to authorize the levy of special taxes. On November 18, 2014, the City Council adopted Resolution No. 2014-107 establishing the formation of the District. Upon a successful property owner election, the City Council adopted Ordinance No. 3002 on December 2, 2014, authorizing the levy of special taxes for the District to finance City public improvements related to the Park Place project.

The District, as shown on the attached boundary map, addresses the residential development of approximately 72 acres located north of Bellegrave Avenue south of Eucalyptus Avenue, east of

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

Prepared by: Bob Chandler
Department: Management Services

City Manager
Approval: 

Submitted to Council/O.H.A. 06/16/2015

Approved: _____

Continued to: _____

Denied: _____

8

Archibald Avenue, and west of Haven Avenue. At build-out, the development will include 432 detached residential units.

As adopted, the special tax for City public improvements is to be levied each fiscal year, beginning in Fiscal Year 2015-16. The public improvements authorized to be financed, in whole or in part, by City of Ontario Community Facilities District No. 24 (Park Place Facilities Phase I) are as follows: street and bridge improvements, including grading, paving, curbs and gutters, sidewalks, street signalization and signage, street lights and parkway and landscaping related thereto, domestic and recycled water distribution facilities, sewer collection facilities and equipment, aquatic facilities and equipment, fire facilities and equipment, police facilities and equipment, library facilities and equipment, fiber optic telecommunication system facilities, general governmental office, administrative and meeting facilities, and land, rights-of-way and easements necessary for any such facilities.

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 2015-16 will be the first year that the special tax will be levied. The maximum and proposed annual tax rates for Fiscal Year 2015-16, which, as proposed, are being assessed on developed property, are as follows:

Annual Facilities Tax Levy

Land Use	Residential Floor Area (Sq. Ft.)	No. of Units	FY 2015-16 Assigned/Maximum Tax Rates	FY 2015-16 Proposed Annual Tax Rates	Total
Developed Property:					
Residential Property	<1,601	0	\$1,752.00 per Unit	\$1,752.00 per Unit	\$0.00
Residential Property	1,601-1,700	3	\$1,868.00 per Unit	\$1,868.00 per Unit	\$5,604.00
Residential Property	1,701-1,800	3	\$1,975.00 per Unit	\$1,975.00 per Unit	\$5,925.00
Residential Property	1,801-1,900	3	\$2,070.00 per Unit	\$2,070.00 per Unit	\$6,210.00
Residential Property	1,901-2,000	3	\$2,182.00 per Unit	\$2,182.00 per Unit	\$6,546.00
Residential Property	2,001-2,100	0	\$2,199.00 per Unit	\$2,199.00 per Unit	\$0.00
Residential Property	2,101-2,200	6	\$2,349.00 per Unit	\$2,349.00 per Unit	\$14,094.00
Residential Property	2,201-2,300	0	\$2,491.00 per Unit	\$2,491.00 per Unit	\$0.00
Residential Property	2,301-2,400	4	\$2,576.00 per Unit	\$2,576.00 per Unit	\$10,304.00
Residential Property	2,401-2,500	21	\$2,688.00 per Unit	\$2,688.00 per Unit	\$56,448.00
Residential Property	2,501-2,600	0	\$2,791.00 per Unit	\$2,791.00 per Unit	\$0.00
Residential Property	2,601-2,700	12	\$2,898.00 per Unit	\$2,898.00 per Unit	\$34,776.00
Residential Property	2,701-2,800	1	\$2,950.00 per Unit	\$2,950.00 per Unit	\$2,950.00
Residential Property	2,801-2,900	6	\$3,010.00 per Unit	\$3,010.00 per Unit	\$18,060.00
Residential Property	2,901-3,000	8	\$3,117.00 per Unit	\$3,117.00 per Unit	\$24,936.00
Residential Property	3,001-3,100	10	\$3,272.00 per Unit	\$3,272.00 per Unit	\$32,720.00
Residential Property	3,101-3,200	2	\$3,435.00 per Unit	\$3,435.00 per Unit	\$6,870.00
Residential Property	3,201-3,300	17	\$3,499.00 per Unit	\$3,499.00 per Unit	\$59,483.00
Residential Property	3,301-3,400	0	\$3,547.00 per Unit	\$3,547.00 per Unit	\$0.00
Residential Property	3,401-3,500	14	\$3,603.00 per Unit	\$3,603.00 per Unit	\$50,442.00

Residential Property	3,501-3,600	7	\$3,710.00 per Unit	\$3,710.00 per Unit	\$25,970.00
Residential Property	3,601-3,700	0	\$3,795.00 per Unit	\$3,795.00 per Unit	\$0.00
Residential Property	3,701-3,800	0	\$3,880.00 per Unit	\$3,880.00 per Unit	\$0.00
Residential Property	3,801-3,900	0	\$3,965.00 per Unit	\$3,965.00 per Unit	\$0.00
Residential Property	3,901-4,000	8	\$4,050.00 per Unit	\$4,050.00 per Unit	\$32,400.00
Residential Property	>4,000	0	\$4,135.00 per Unit	\$4,135.00 per Unit	\$0.00
				Annual Tax Total	\$393,738.00

RESOLUTION NO. _____

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF ONTARIO, CALIFORNIA, ACTING IN ITS CAPACITY AS THE LEGISLATIVE BODY OF CITY OF ONTARIO COMMUNITY FACILITIES DISTRICT NO. 24 (PARK PLACE FACILITIES – PHASE I), ESTABLISHING THE ANNUAL SPECIAL TAX FOR FISCAL YEAR 2015-16.

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. 24 (Park Place Facilities – Phase I) (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. 3002 (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.

SECTION 2. 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."

SECTION 3. 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.

SECTION 4. 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.

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

- (a) Costs of providing facilities and 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.

SECTION 6. 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.

SECTION 7. All monies above collected shall be paid into the Community Facilities District No. 24 Fund.

SECTION 8. 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 "CFD No. 24 Special Tax," or by any other suitable designation, the installment of the special tax.

SECTION 9. 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.

SECTION 10. 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 XIII A and XIII C 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 16th day of June 2015.

PAUL S. LEON, MAYOR

ATTEST:

MARY E. WIRTES, MMC, CITY CLERK

APPROVED AS TO LEGAL FORM:

BEST BEST & KRIEGER LLP
CITY ATTORNEY

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

I, MARY E. WIRTES, City Clerk of the City of Ontario, DO HEREBY CERTIFY that foregoing Resolution No. 2015- was duly passed and adopted by the City Council of the City of Ontario at their regular meeting held June 16, 2015 by the following roll call vote, to wit:

AYES: COUNCIL MEMBERS:

NOES: COUNCIL MEMBERS:

ABSENT: COUNCIL MEMBERS:

MARY E. WIRTES, MMC, CITY CLERK

(SEAL)

The foregoing is the original of Resolution No. 2015- duly passed and adopted by the Ontario City Council at their regular meeting held June 16, 2015.

MARY E. WIRTES, MMC, CITY CLERK

(SEAL)

EXHIBIT "A"

**CITY OF ONTARIO
COMMUNITY FACILITIES DISTRICT NO. 24 (PARK PLACE FACILITIES – PHASE I)**

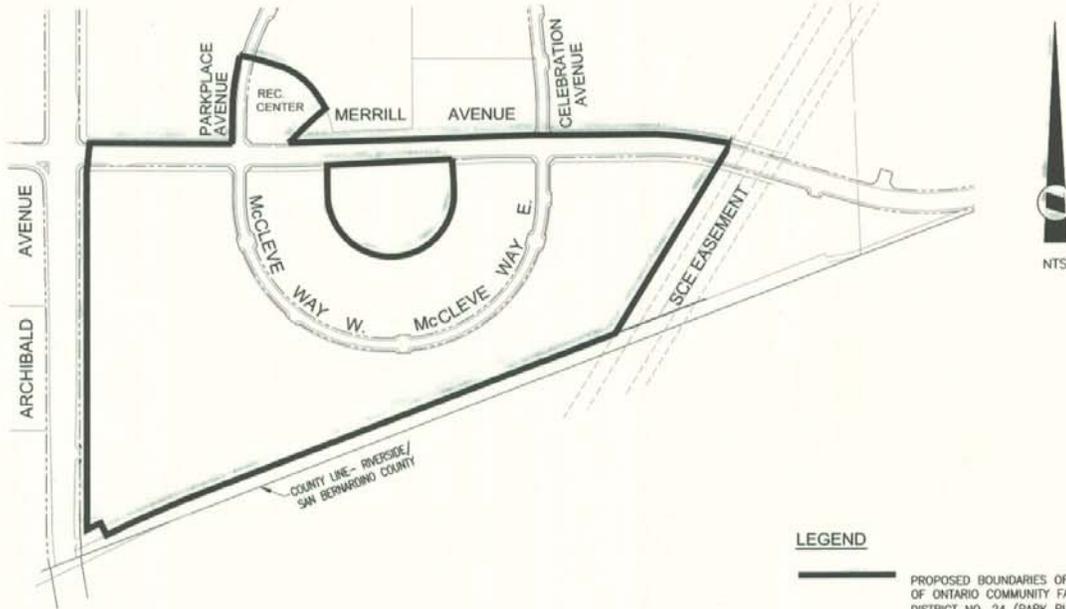
**SPECIAL TAX RATES
FOR FISCAL YEAR 2015-16**

ANNUAL FACILITIES TAX LEVY

Land Use	Residential Floor Area (Sq. Ft.)	FY 2015-16 Assigned/Maximum Tax Rates		FY 2015-16 Proposed Annual Tax Rates	
Developed Property:					
Residential Property	<1,601	\$1,752.00	per Unit	\$1,752.00	per Unit
Residential Property	1,601-1,700	\$1,868.00	per Unit	\$1,868.00	per Unit
Residential Property	1,701-1,800	\$1,975.00	per Unit	\$1,975.00	per Unit
Residential Property	1,801-1,900	\$2,070.00	per Unit	\$2,070.00	per Unit
Residential Property	1,901-2,000	\$2,182.00	per Unit	\$2,182.00	per Unit
Residential Property	2,001-2,100	\$2,199.00	per Unit	\$2,199.00	per Unit
Residential Property	2,101-2,200	\$2,349.00	per Unit	\$2,349.00	per Unit
Residential Property	2,201-2,300	\$2,491.00	per Unit	\$2,491.00	per Unit
Residential Property	2,301-2,400	\$2,576.00	per Unit	\$2,576.00	per Unit
Residential Property	2,401-2,500	\$2,688.00	per Unit	\$2,688.00	per Unit
Residential Property	2,501-2,600	\$2,791.00	per Unit	\$2,791.00	per Unit
Residential Property	2,601-2,700	\$2,898.00	per Unit	\$2,898.00	per Unit
Residential Property	2,701-2,800	\$2,950.00	per Unit	\$2,950.00	per Unit
Residential Property	2,801-2,900	\$3,010.00	per Unit	\$3,010.00	per Unit
Residential Property	2,901-3,000	\$3,117.00	per Unit	\$3,117.00	per Unit
Residential Property	3,001-3,100	\$3,272.00	per Unit	\$3,272.00	per Unit
Residential Property	3,101-3,200	\$3,435.00	per Unit	\$3,435.00	per Unit
Residential Property	3,201-3,300	\$3,499.00	per Unit	\$3,499.00	per Unit
Residential Property	3,301-3,400	\$3,547.00	per Unit	\$3,547.00	per Unit
Residential Property	3,401-3,500	\$3,603.00	per Unit	\$3,603.00	per Unit
Residential Property	3,501-3,600	\$3,710.00	per Unit	\$3,710.00	per Unit
Residential Property	3,601-3,700	\$3,795.00	per Unit	\$3,795.00	per Unit
Residential Property	3,701-3,800	\$3,880.00	per Unit	\$3,880.00	per Unit
Residential Property	3,801-3,900	\$3,965.00	per Unit	\$3,965.00	per Unit
Residential Property	3,901-4,000	\$4,050.00	per Unit	\$4,050.00	per Unit
Residential Property	>4,000	\$4,135.00	per Unit	\$4,135.00	per Unit

PROPOSED BOUNDARIES OF
CITY OF ONTARIO
COMMUNITY FACILITIES DISTRICT NO. 24
(PARK PLACE FACILITIES PHASE 1)
COUNTY OF SAN BERNARDINO
STATE OF CALIFORNIA

CONTAINS ALL OF TRACT 18913-1 AND A PORTION OF TRACT 17821 AS SHOWN ON MAPS FILED IN BOOK 338 OF TRACT MAPS, AT PAGES 1 THROUGH 7 AND BOOK 333 OF TRACT MAPS, PAGES 64 THROUGH 77, RESPECTIVELY, IN THE OFFICE OF THE COUNTY RECORDER OF THE COUNTY OF SAN BERNARDINO, STATE OF CALIFORNIA.



LEGEND

— PROPOSED BOUNDARIES OF THE CITY OF ONTARIO COMMUNITY FACILITIES DISTRICT NO. 24 (PARK PLACE FACILITIES PHASE 1)

CFD NO. 24 APNs

- 0218-062-01 Thru 66
- 0218-072-01 Thru 38
- 0218-063-01 Thru 28
- 0218-092-01 Thru 47
- 0218-355-01 Thru 75
- 0218-342-01 Thru 57
- 0218-362-01 Thru 55
- 0218-022-13
- 0218-052-13, 16, 18 & 19

FILED IN THE OFFICE OF THE CLERK OF THE CITY OF ONTARIO
THIS 2nd DAY OF September, 2014

CLERK OF THE CITY OF ONTARIO

I HEREBY CERTIFY THAT THE WITHIN MAP SHOWING THE PROPOSED BOUNDARIES OF CITY OF ONTARIO COMMUNITY FACILITIES DISTRICT NO. 24 (PARK PLACE FACILITIES PHASE 1), 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 2nd DAY OF September, 2014, BY ITS RESOLUTION NO. 2014-090

Vincent Kandel
CLERK OF THE CITY OF ONTARIO



SAN BERNARDINO COUNTY RECORDER'S CERTIFICATE

FILED THIS 4th DAY OF September, 2014, AT THE HOUR OF 2:47 O'CLOCK P.M. IN BOOK 86 OF MAPS OF ASSESSMENT AND COMMUNITY FACILITIES DISTRICTS AT PAGE 28, AND AS INSTRUMENT NO. 2014-0327047 IN THE OFFICE OF THE COUNTY RECORDER OF THE COUNTY OF SAN BERNARDINO, STATE OF CALIFORNIA. EXEMPT RECORDING REQUESTED PER CALIFORNIA CODE 6403-

DENNIS DRAEGER
ASSESSOR-RECORDER-COUNTY CLERK
COUNTY OF SAN BERNARDINO

By: Susan Garcia
DEPUTY RECORDER

Recorded in Official Records
County of San Bernardino
Book 2014-0327047
9/04/2014 2:41 PM

CITY OF ONTARIO

Agenda Report

June 16, 2015

SECTION:
CONSENT CALENDAR

SUBJECT: A RESOLUTION ESTABLISHING THE ANNUAL SPECIAL TAX WITHIN COMMUNITY FACILITIES DISTRICT NO. 31 (CARRIAGE HOUSE / AMBERLY LANE) FOR FISCAL YEAR 2015-16 AND ADOPTION OF ORDINANCES LEVYING SPECIAL TAXES WITHIN CITY OF ONTARIO COMMUNITY FACILITIES DISTRICT NO. 31 AND DISSOLVING CITY OF ONTARIO FACILITIES DISTRICT NO. 14 (WEST HAVEN I)

RECOMMENDATION: That the City Council:

- (A) Consider and adopt an ordinance authorizing the levy of special taxes within City of Ontario Community Facilities District No. 31 (Carriage House / Amberly Lane);
- (B) Adopt a resolution establishing the annual special tax within City of Ontario Community Facilities District No. 31 (Carriage House / Amberly Lane) for Fiscal Year 2015-16; and
- (C) Consider and adopt an ordinance dissolving City of Ontario Community Facilities District No. 14 (West Haven I).

COUNCIL GOALS: Regain Local Control of the Ontario International Airport
Focus Resources in Ontario's Commercial and Residential Neighborhoods
Ensure the Development of a Well Planned, Balanced and Self-Sustaining Community in the New Model Colony

FISCAL IMPACT: The use of Mello-Roos financing for facilities in the residential development of the Carriage House /Amberly Lane project is estimated to generate approximately \$6 million, which will be used to help fund a portion of the public infrastructure improvements that will serve the project, and approximately \$200,000 per year, at build out, to fund City services. Since Mello-Roos bonds are not a direct obligation of the City, and are paid from special taxes levied on each taxable parcel in the district, there is no general fund impact from the issuance of Mello-Roos bonds.

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

Prepared by: Bob Chandler
Department: Management Services

City Manager
Approval: 

Submitted to Council/O.H.A. 06/16/2015

Approved: _____

Continued to: _____

Denied: _____

9

BACKGROUND: On April 21, 2015, the City Council, in accordance with the Mello-Roos Act, took the initial steps in the formation of Community Facilities District No. 31 (“District”) with the adoption of Resolution No. 2015-028, declaring the City’s intention to establish the District and to authorize the levy of special taxes. On June 2, 2015, the City Council adopted Resolution No. 2015-057 establishing the formation of the District, and introduced and waived further reading of the ordinance authorizing the levy of special taxes within the District to finance public improvements and City services related to the Lennar project. Adoption of the ordinance authorizing the levy of special taxes within the District concludes the formation process for the District.

The District, as shown on the attached boundary map, addresses the residential development of approximately 30.9 gross acres located East of Turner Avenue, generally west of Haven Avenue, generally south of Chino Avenue and north of Schaefer Avenue. At build out, the development is projected to include 143 single-family units.

As adopted, special taxes to fund public improvements and City services are to be levied each fiscal year, beginning in Fiscal Year 2015-16. The public improvements authorized to be financed, in whole or in part, by City of Ontario Community Facilities District No. 31 (Carriage House / Amberly Lane) are as follows: street and bridge improvements, including grading, paving, curbs and gutters, sidewalks, street signalization and signage, street lights and parkway and landscaping related thereto, domestic and recycled water distribution facilities, sewer collection facilities and equipment, aquatic facilities and equipment, fire facilities and equipment, police facilities and equipment, library facilities and equipment, fiber optic telecommunication system facilities, general governmental office, administrative and meeting facilities, and land, rights-of-way and easements necessary for any such facilities. City services authorized to be levied are as follows: police protection services, fire protection and suppression services, ambulance and paramedic services, maintenance and lighting of parks, parkways, streets, roads, open space and flood and storm drain protection services, and maintenance and operation of any real property or tangible property owned by the City with an estimated useful life of five or more years.

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 2015-16 will be the first year that the special tax will be levied. Pursuant to the Rate and Method of Apportionment of Special Tax that was approved by the property owners, beginning on January 1, 2015, and annually thereafter, the maximum annual services special tax rate shall be increased at a rate equal to 4.0% of the amount in effect for the prior Fiscal Year. There will be no annual increase to the facilities special tax rates. The maximum and proposed annual tax rates for Fiscal Year 2015-16, which, as proposed, are being assessed only on developed property, are as follows:

Annual Facilities Tax Levy

Land Use	Residential Floor Area (Sq. Ft.)	No. of Units	FY 2015-16 Assigned/Maximum Facilities Tax Rates	FY 2015-16 Proposed Facilities Tax Rates	Total
Developed Property:					
Single Family Detached	<2,101	3	\$2,282.00 per Unit	\$2,282.00 per Unit	\$6,846.00
Single Family Detached	2,101-2,400	0	\$2,424.00 per Unit	\$2,424.00 per Unit	\$0.00
Single Family Detached	2,401-2,700	4	\$2,849.00 per Unit	\$2,849.00 per Unit	\$11,396.00
Single Family Detached	2,701-3,000	0	\$2,960.00 per Unit	\$2,960.00 per Unit	\$0.00

Single Family Detached	3,001-3,300	7	\$3,286.00 per Unit	\$3,286.00 per Unit	\$23,002.00
Single Family Detached	3,301-3,600	2	\$3,550.00 per Unit	\$3,550.00 per Unit	\$7,100.00
Single Family Detached	>3,600	4	\$4,153.00 per Unit	\$4,153.00 per Unit	\$16,612.00
Annual Tax Amount					\$64,956.00

Annual Services Tax Levy

Land Use	No. of Units/ Sq. Ft.	FY 2015-16 Maximum Tax Rates	FY 2015-16 Proposed Annual Tax Rates	Total
Developed Property				
Single Family Detached	20	\$1,442.00 per Unit	\$1,442.00 per Unit	\$28,840.00
Multiple Family	0	\$1,250.00 per Unit	\$1,250.00 per Unit	\$0.00
Gated Apartment Community	0	\$1,048.00 per Unit	\$1,048.00 per Unit	\$0.00
Non-Residential Property				
Non-Residential Property	0	\$0.27 per Sq. Ft.	\$0.27 per Sq. Ft.	\$0.00
Annual Tax Amount				\$28,840.00

Related to the formation of the District is the dissolution of City of Ontario Community Facilities District No. 14 (West Haven I). Community Facilities District No. 14 was formed several years ago to finance public facilities and services in the Lennar project area. In anticipation of the formation of Community Facilities District No. 31, the landowner requested dissolution of Community Facilities District No. 14, since with the formation of Community Facilities District No. 31, a suitable alternate mechanism would be in place to fund public facilities and services in the project area. Accordingly, on June 2, 2015, the City Council introduced and waived further reading of the ordinance dissolving City of Ontario Community Facilities District No. 14 (West Haven I). With the successful formation of Community Facilities District No. 31, it is now appropriate to proceed with dissolving Community Facilities District No. 14. Adoption of the ordinance will conclude the dissolution.

ORDINANCE NO. _____

AN ORDINANCE OF THE CITY OF ONTARIO, CALIFORNIA, LEVYING SPECIAL TAXES WITHIN THE CITY OF ONTARIO COMMUNITY FACILITIES DISTRICT NO. 31 (CARRIAGE HOUSE / AMBERLY LANE).

WHEREAS, on April 21, 2015, the City Council (the "City Council") of the City of Ontario (the "City"), pursuant to the Mello-Roos Community Facilities Act of 1982 (the "Act"), adopted a resolution entitled "A Resolution of the City Council of the City of Ontario, California, of Intention to Establish a Community Facilities District and to Authorize the Levy of Special Taxes" stating its intention to establish City of Ontario Community Facilities District No. 31 (Carriage House / Amberly Lane) (the "Community Facilities District") and to finance certain public facilities (the "Facilities") and services (the "Services"); and

WHEREAS, on June 2, 2015, the City Council held said hearing on the establishment of the Community Facilities District, as required by the Act; and

WHEREAS, subsequent to the close of said hearing, the City Council adopted resolutions entitled "A Resolution of the City Council of the City of Ontario, California, of Formation of the City of Ontario Community Facilities District No. 31 (Carriage House / Amberly Lane), Authorizing the Levy of a Special Tax within the Community Facilities District and Establishing an Appropriations Limit for the Community Facilities District" (the "Resolution of Formation"), "A Resolution of the City Council of the City of Ontario, California, Deeming it Necessary to Incur Bonded Indebtedness within City of Ontario Community Facilities District No. 31 (Carriage House / Amberly Lane)" and "A Resolution of the City Council of the City of Ontario, California, Calling Special Election for City of Ontario Community Facilities District No. 31 (Carriage House / Amberly Lane)", which resolutions established the Community Facilities District, authorized the levy of a special tax within the Community Facilities District and called an election within the Community Facilities District on the proposition of incurring indebtedness, levying a special tax within the Community Facilities District and establishing an appropriations limit for the Community Facilities District, respectively; and

WHEREAS, on June 2, 2015, an election was held in which the qualified electors of the Community Facilities District approved said proposition by more than the two-thirds vote required by the Act.

THE CITY COUNCIL OF THE CITY OF ONTARIO DOES ORDAIN AS FOLLOWS:

SECTION 1. The City Council hereby authorizes and levies special taxes within the Community Facilities District pursuant to Sections 53328 and 53340 of the Act, at the rate and in accordance with the method of apportionment set forth in Exhibit B to the Resolution of Formation (the "Rate and Method of Apportionment"). The special taxes are hereby levied commencing in fiscal year 2015-16 and in each fiscal year thereafter until the last fiscal year in which such special taxes are authorized to be levied pursuant to the Rate and Method of Apportionment.

SECTION 2. The City Council may, in accordance with subdivision (b) of Section 53340 of the Act, provide, by resolution, for the levy of the special tax in future tax years at the same rate or at a lower rate than the rate provided by this Ordinance. In no event shall the special tax be levied on any parcel within the Community Facilities District in excess of the maximum tax specified therefor in the Rate and Method of Apportionment.

SECTION 3. The special tax shall be levied on all of the parcels in the Community Facilities District, unless exempted by law or by the Rate and Method of Apportionment.

SECTION 4. The proceeds of the special tax shall only be used to pay, in whole or in part, the cost of providing the Facilities and Services and incidental expenses pursuant to the Act.

SECTION 5. 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 the same procedure, sale and lien priority in the case of delinquency as is provided for *ad valorem* taxes, unless another procedure is adopted by the City Council.

SECTION 6. If for any reason any portion of this Ordinance is found to be invalid, or if the special tax is found inapplicable to any particular parcel within the Community Facilities District, by a court of competent jurisdiction, the balance of this Ordinance and the application of the special tax to the remaining parcels within the Community Facilities District shall not be affected.

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

PASSED, APPROVED, AND ADOPTED this 16th day of June 2015.

PAUL S. LEON, MAYOR

ATTEST:

MARY E. WIRTES, MMC, CITY CLERK

APPROVED AS TO FORM:

BEST BEST & KRIEGER LLP
CITY ATTORNEY

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

I, MARY E. WIRTES, City Clerk of the City of Ontario, DO HEREBY CERTIFY that foregoing Ordinance No. 3020 was duly introduced at a regular meeting of the City Council of the City of Ontario held June 2, 2015 and adopted at the regular meeting held June 16, 2015 by the following roll call vote, to wit:

AYES: COUNCIL MEMBERS:

NOES: COUNCIL MEMBERS:

ABSENT: COUNCIL MEMBERS:

MARY E. WIRTES, MMC, CITY CLERK

(SEAL)

I hereby certify that the foregoing is the original of Ordinance No. 3020 duly passed and adopted by the Ontario City Council at their regular meeting held June 16, 2015 and that Summaries of the Ordinance were published on June 9, 2015 and June 23, 2015, in the Inland Valley Daily Bulletin newspaper.

MARY E. WIRTES, MMC, CITY CLERK

(SEAL)

RESOLUTION NO. _____

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF ONTARIO, CALIFORNIA, ACTING IN ITS CAPACITY AS THE LEGISLATIVE BODY OF CITY OF ONTARIO COMMUNITY FACILITIES DISTRICT NO. 31 (CARRIAGE HOUSE / AMBERLY LANE), ESTABLISHING THE ANNUAL SPECIAL TAX FOR FISCAL YEAR 2015-16.

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. 31 (Carriage House / Amberly Lane) (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. 3020 (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.

SECTION 2. 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."

SECTION 3. 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.

SECTION 4. 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.

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

- (a) Costs of providing facilities and 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.

SECTION 6. 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.

SECTION 7. All monies above collected shall be paid into the Community Facilities District No. 31 Fund.

SECTION 8. 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 "CFD No. 31 Special Tax," or by any other suitable designation, the installment of the special tax.

SECTION 9. 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.

SECTION 10. 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 XIII A and XIII C 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 16th day of June 2015.

PAUL S. LEON, MAYOR

ATTEST:

MARY E. WIRTES, MMC, CITY CLERK

APPROVED AS TO LEGAL FORM:

BEST BEST & KRIEGER LLP
CITY ATTORNEY

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

I, MARY E. WIRTES, City Clerk of the City of Ontario, DO HEREBY CERTIFY that foregoing Resolution No. 2015- was duly passed and adopted by the City Council of the City of Ontario at their regular meeting held June 16, 2015 by the following roll call vote, to wit:

AYES: COUNCIL MEMBERS:

NOES: COUNCIL MEMBERS:

ABSENT: COUNCIL MEMBERS:

MARY E. WIRTES, MMC, CITY CLERK

(SEAL)

The foregoing is the original of Resolution No. 2015- duly passed and adopted by the Ontario City Council at their regular meeting held June 16, 2015.

MARY E. WIRTES, MMC, CITY CLERK

(SEAL)

EXHIBIT "A"

**CITY OF ONTARIO
COMMUNITY FACILITIES DISTRICT NO. 31
(CARRIAGE HOUSE / AMBERLY LANE)**

**SPECIAL TAX RATES
FOR FISCAL YEAR 2015-16**

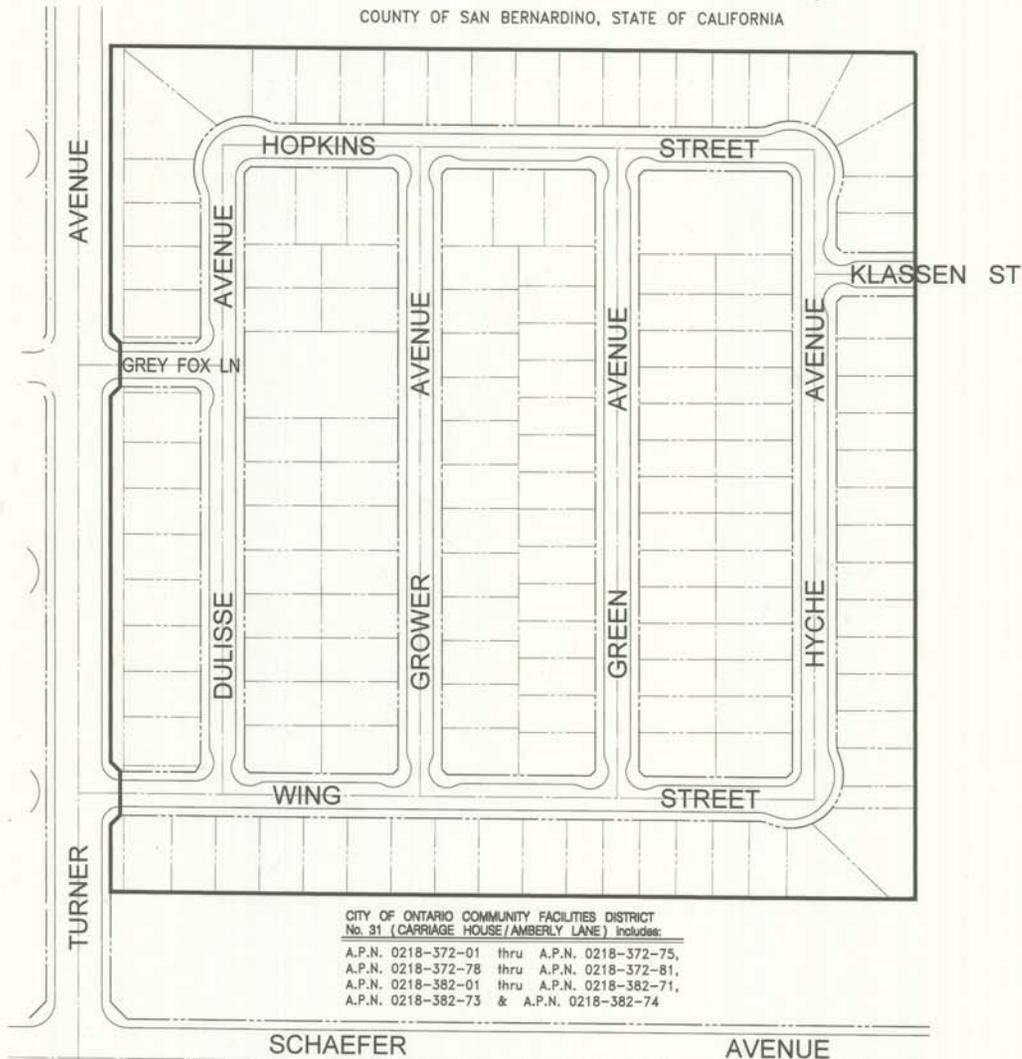
ANNUAL FACILITIES TAX LEVY

Land Use	Residential Floor Area (Sq. Ft.)	FY 2015-16 Assigned/Maximum Facilities Tax Rates	FY 2015-16 Proposed Annual Tax Rates
Developed Property:			
Single Family Detached	<2,101	\$2,282.00 per Unit	\$2,282.00 per Unit
Single Family Detached	2,101-2,400	\$2,424.00 per Unit	\$2,424.00 per Unit
Single Family Detached	2,401-2,700	\$2,849.00 per Unit	\$2,849.00 per Unit
Single Family Detached	2,701-3,000	\$2,960.00 per Unit	\$2,960.00 per Unit
Single Family Detached	3,001-3,300	\$3,286.00 per Unit	\$3,286.00 per Unit
Single Family Detached	3,301-3,600	\$3,550.00 per Unit	\$3,550.00 per Unit
Single Family Detached	>3,600	\$4,153.00 per Unit	\$4,153.00 per Unit

ANNUAL SERVICES TAX LEVY

Land Use	FY 2015-16 Maximum Facilities Tax Rates		FY 2015-16 Proposed Annual Tax Rates		Total
Developed Property:					
Single Family Detached	\$1,442.00	per Unit	\$1,442.00	per Unit	\$28,840.00
Multiple Family	\$1,250.00	per Unit	\$1,250.00	per Unit	\$0.00
Gated Apartment Community	\$1,048.00	per Unit	\$1,048.00	per Unit	\$0.00
Non-Residential Property					
Non-Residential Property	\$0.27	per Sq. Ft.	\$0.27	per Sq. Ft.	\$0.00

PROPOSED BOUNDARIES OF CITY OF ONTARIO COMMUNITY FACILITIES DISTRICT No. 31
 (CARRIAGE HOUSE / AMBERLY LANE)
 COUNTY OF SAN BERNARDINO, STATE OF CALIFORNIA



CITY OF ONTARIO COMMUNITY FACILITIES DISTRICT
 No. 31 (CARRIAGE HOUSE / AMBERLY LANE) includes:
 A.P.N. 0218-372-01 thru A.P.N. 0218-372-75,
 A.P.N. 0218-372-78 thru A.P.N. 0218-372-81,
 A.P.N. 0218-382-01 thru A.P.N. 0218-382-71,
 A.P.N. 0218-382-73 & A.P.N. 0218-382-74



LEGEND

- PROPOSED BOUNDARIES OF CITY OF ONTARIO COMMUNITIES FACILITIES DISTRICT No. 31 (CARRIAGE HOUSE/AMBERLY LANE)
- RIGHT-OF-WAY
- STREET CENTERLINE
- CURB

Filed in the office of the City Clerk of the City of Ontario this 14th day of April, 2015.

Didi Yasad

Asst. City Clerk of the City of Ontario

CITY OF ONTARIO CLERK'S CERTIFICATE

I hereby certify that the within map showing the proposed boundaries of City of Ontario Community Facilities District No. 31 (Carriage House/Amberly Lane), 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 21st day of April, 2015, by its Resolution No. 2015-029.

Didi Yasad

Asst. City Clerk of the City of Ontario



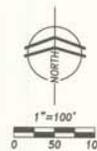
SAN BERNARDINO COUNTY RECORDER'S CERTIFICATE

Filed this 28th day of April, 2015, at the hour of 9:14 o'clock A.M. in Book 210 of Maps of Assessment and Community Facilities Districts at Page 20 and under Document Number 2015-029 in the Office of the County Recorder in the County of San Bernardino, State of California, at the request of the City of Ontario, in the amount of \$10.00.

Dennis Droeger
 Assessor-Recorder-Clerk,
 County of San Bernardino

by: *Michelle Lurie-Roth*
 Deputy Recorder

Recorded in Official Records,
 County of San Bernardino
 Book 2015 - 017045
 4/28/2015 9:14 AM



ORDINANCE NO. 3021

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF ONTARIO, CALIFORNIA, DISSOLVING CITY OF ONTARIO COMMUNITY FACILITIES DISTRICT NO. 14 (WEST HAVEN I).

WHEREAS, the City Council (the "City Council") of the City of Ontario, California (the "City") has previously established the City of Ontario Community Facilities District No. 14 (West Haven I) (the "Community Facilities District") under the Mello-Roos Community Facilities Act of 1982 (the "Act"); and

WHEREAS, the qualified electors of the Community Facilities District authorized the levy of special taxes (the "Special Taxes") within the Community Facilities District to finance certain public facilities (the "Facilities") and services (the "Services"); and

WHEREAS, none of the Facilities and Services have been so financed to date; and

WHEREAS, pursuant to the Act, a Notice of Special Tax Lien with respect to the Community Facilities District was recorded in the Office of the County Recorder of the County of San Bernardino on January 22, 2008, as Instrument No. 2008-0027353 (the "Notice of Special Tax Lien"); and

WHEREAS, the owner of 100% of the land in the Community Facilities District not exempt from the Special Taxes has submitted a written request to the City Council requesting that the Facilities and Services not be financed with the Special Taxes and that the Community Facilities District be dissolved pursuant to Section 53338.5 of the Act; and

WHEREAS, the City Council has determined that an adequate alternative method of financing the Facilities and Services that would otherwise be financed with the Special Taxes have been provided and that, therefore, it is appropriate to grant the landowners' request that such Facilities and Services not be financed with the Special Taxes; and

WHEREAS, the Community Facilities District is not obligated to pay any outstanding debt; and

WHEREAS, if no Facilities and Services are to be financed with the Special Taxes, the Community Facilities District will have no authorization to levy the Special Taxes; and

WHEREAS, the City Council desires to dissolve the Community Facilities District pursuant to Section 53338.5 of the Act; and

WHEREAS, the City is authorized to undertake all of the above pursuant to the Constitution and other applicable laws of the State of California.

THE CITY COUNCIL OF THE CITY OF ONTARIO DOES ORDAIN AS FOLLOWS:

SECTION 1. The foregoing recitals are true and correct and the City Council so finds.

SECTION 2. The City Council hereby finds and determines that the Community Facilities District is not obligated to pay any outstanding debt.

SECTION 3. The request of the owner of 100% of the land in the Community Facilities District not exempt from the Special Taxes that the Facilities and Services not be financed with the Special Taxes is hereby granted and the City Council hereby determines that the Facilities and Services shall not be so financed.

SECTION 4. The City Council hereby finds and determines that, as no Facilities and Services will be financed with the Special Taxes, the Community Facilities District has no authorization to levy the Special Taxes.

SECTION 5. The Community Facilities District is hereby dissolved.

SECTION 6. The City Clerk of the City is hereby directed to cause to be recorded with the County Recorder of the County of San Bernardino an addendum to the Notice of Special Tax Lien, which shall state that the Community Facilities District and all associated liens, if any, have been dissolved.

SECTION 7. The officers, employees and agents of the City are hereby authorized and directed to take all actions and do all things which they, or any of them, may deem necessary or desirable to accomplish the purposes of this Ordinance and not inconsistent with the provisions hereof.

SECTION 8. 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 16th day of June 2015.

PAUL S. LEON, MAYOR

ATTEST:

MARY E. WIRTES, MMC, CITY CLERK

APPROVED AS TO FORM:

BEST BEST & KRIEGER LLP
CITY ATTORNEY

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

I, MARY E. WIRTES, City Clerk of the City of Ontario, DO HEREBY CERTIFY that foregoing Ordinance No. 3021 was duly introduced at a regular meeting of the City Council of the City of Ontario held June 2, 2015 and adopted at the regular meeting held June 16, 2015 by the following roll call vote, to wit:

AYES: COUNCIL MEMBERS:

NOES: COUNCIL MEMBERS:

ABSENT: COUNCIL MEMBERS:

MARY E. WIRTES, MMC, CITY CLERK

(SEAL)

I hereby certify that the foregoing is the original of Ordinance No. 3021 duly passed and adopted by the Ontario City Council at their regular meeting held June 16, 2015 and that Summaries of the Ordinance were published on June 9, 2015 and June 23, 2015 in the Inland Valley Daily Bulletin newspaper.

MARY E. WIRTES, MMC, CITY CLERK

(SEAL)

CITY OF ONTARIO

Agenda Report

June 16, 2015

SECTION:
PUBLIC HEARINGS

SUBJECT: ANNUAL LEVY OF ASSESSMENTS WITHIN ONTARIO PARKWAY MAINTENANCE ASSESSMENT DISTRICTS NO'S. 1, 2, 3 AND 4 FOR FISCAL YEAR 2015-2016

RECOMMENDATION: That the City Council take the following actions pertaining to the levy of assessments within Ontario Parkway Maintenance Assessment Districts (OPMAD) No's. 1, 2, 3 and 4:

- (A) Conduct a combined public hearing on the levy of the annual assessments for each district;
- (B) Consider and adopt a resolution approving the Engineer's Reports relating to the levy of assessments for each district; and
- (C) Consider and adopt resolutions confirming the diagrams and assessments, and providing for the assessment levy within each District.

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

FISCAL IMPACT: As proposed, special assessment revenue will be generated in the amount of \$283,774 from OPMAD Nos. 1, 2 and 3, and \$298,747 from OPMAD No. 4 during Fiscal Year 2015-16. The total cost of \$563,743 for operation and maintenance within OPMAD Nos. 1, 2 and 3 will exceed the assessment revenues by \$279,969. The differential will be funded from the General Fund. If approved, the General Fund portion will be included in the City's proposed budget for Fiscal Year 2015-16. The total proposed special assessment for OPMAD No. 4 is sufficient to pay all expenses within this service area. The special assessments for OPMAD Nos. 1, 2, and 3, Zone 2000-1, are capped, so there are no proposed changes from the FY 2014-15 special assessments. The recommended special assessment rate for OPMAD No. 3, Zone 2000-2, includes an increase of .5%. As proposed, there is no increase in the assessed rates for OPMAD No. 4 areas 99-1 and 99-2, and the

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

Prepared by: Bob Chandler
Department: Management Services

City Manager
Approval: 

Submitted to Council/O.H.A. 06/16/2015

Approved: _____

Continued to: _____

Denied: _____

10

average increase in the recommended special assessment rates for the remaining maintenance areas in OPMAD No. 4 is .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 costs and administers the 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 Nos. 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 \$283,774 from OPMAD Nos. 1, 2 and 3. The maximum and proposed Fiscal Year 2015-16 special assessment rates for OPMAD Nos. 1, 2 and 3, along with last year’s special assessment rates, are as follows:

	Prior Year 2014-15	Proposed 2015-16	Maximum 2015-16
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	\$ 169.17 per lot	\$ 170.08	\$ 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 \$298,747. OPMAD No. 4 will generate sufficient revenue to pay all expenses within the service area. The maximum and proposed Fiscal Year 2015-16 special assessment rates for OPMAD No. 4 along with last year’s special assessment rates are as follows:

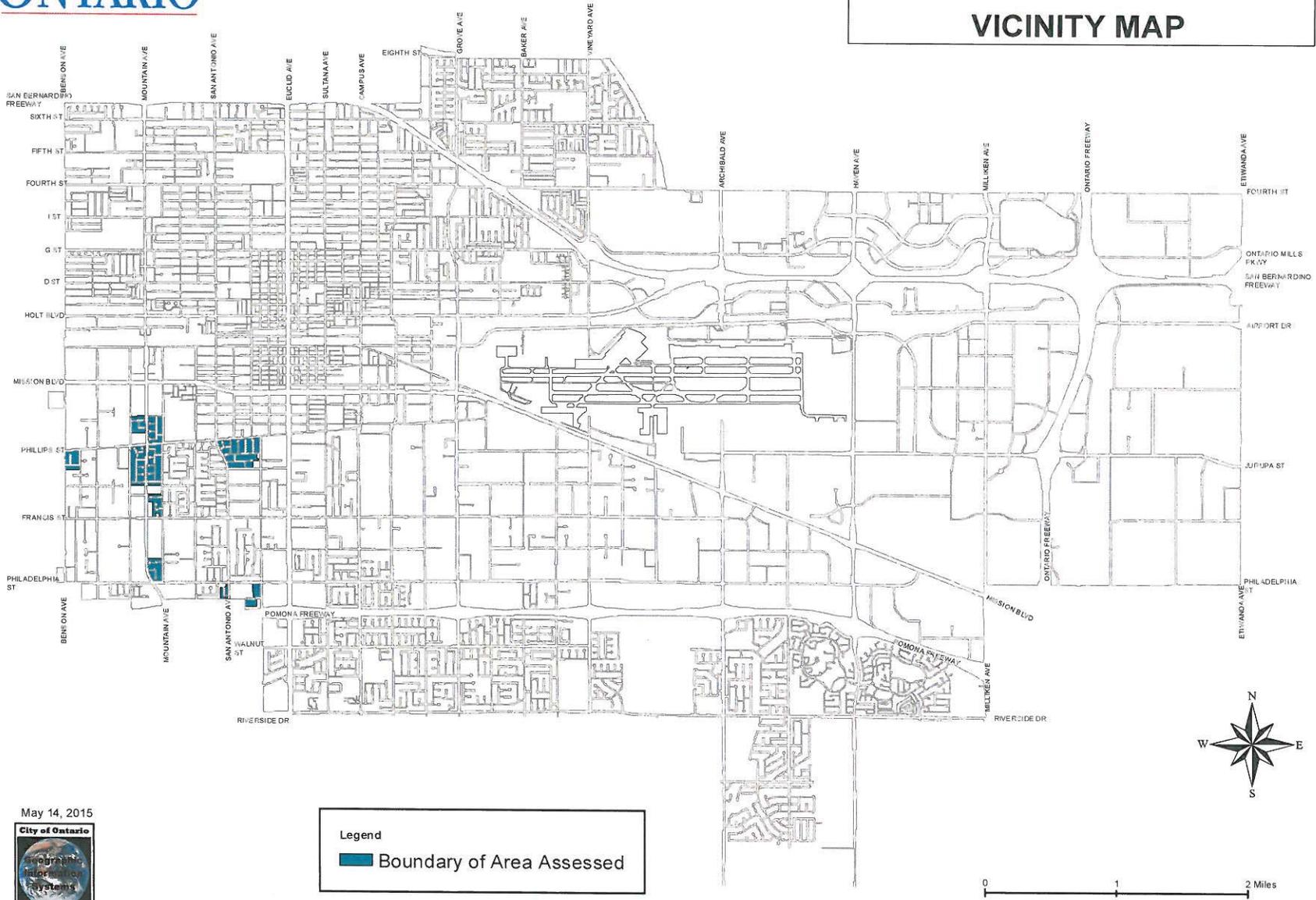
	Prior Year 2014-15	Proposed 2015-16	Maximum 2015-16
MA# 99-1	\$ 50.58 per lot	\$ 50.58	\$ 50.58
MA# 99-2	\$ 319.06 per lot	\$ 319.06	\$ 319.06
MA# 99-3	\$ 979.27 per acre	\$ 984.53	\$ 1,145.67
MA# 00-1	\$ 240.57 per lot	\$ 241.71	\$ 314.24
MA# 04-1	\$ 972.84 per lot	\$ 977.65	\$ 2,001.58
MA# 05-1	\$ 1,323.67 per lot	\$ 1,330.01	\$ 2,481.06

On June 2, 2015, the City Council adopted resolutions which ordered the preparation of Engineer's Reports for the annual levy of assessments within each District, preliminarily approved the Engineer's Reports, declared Council's intention to levy and collect assessments within the Districts for the referenced fiscal year, and set tonight as the date for the public hearing for each district. Notices of the public hearings have been published and proof of publication is on file in the Records Management Department.

The Engineer's Reports, which have been prepared for each district pursuant to the 1972 Act, 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.



Ontario Parkway Maintenance Assessment District No. 1 VICINITY MAP



Legend
■ Boundary of Area Assessed



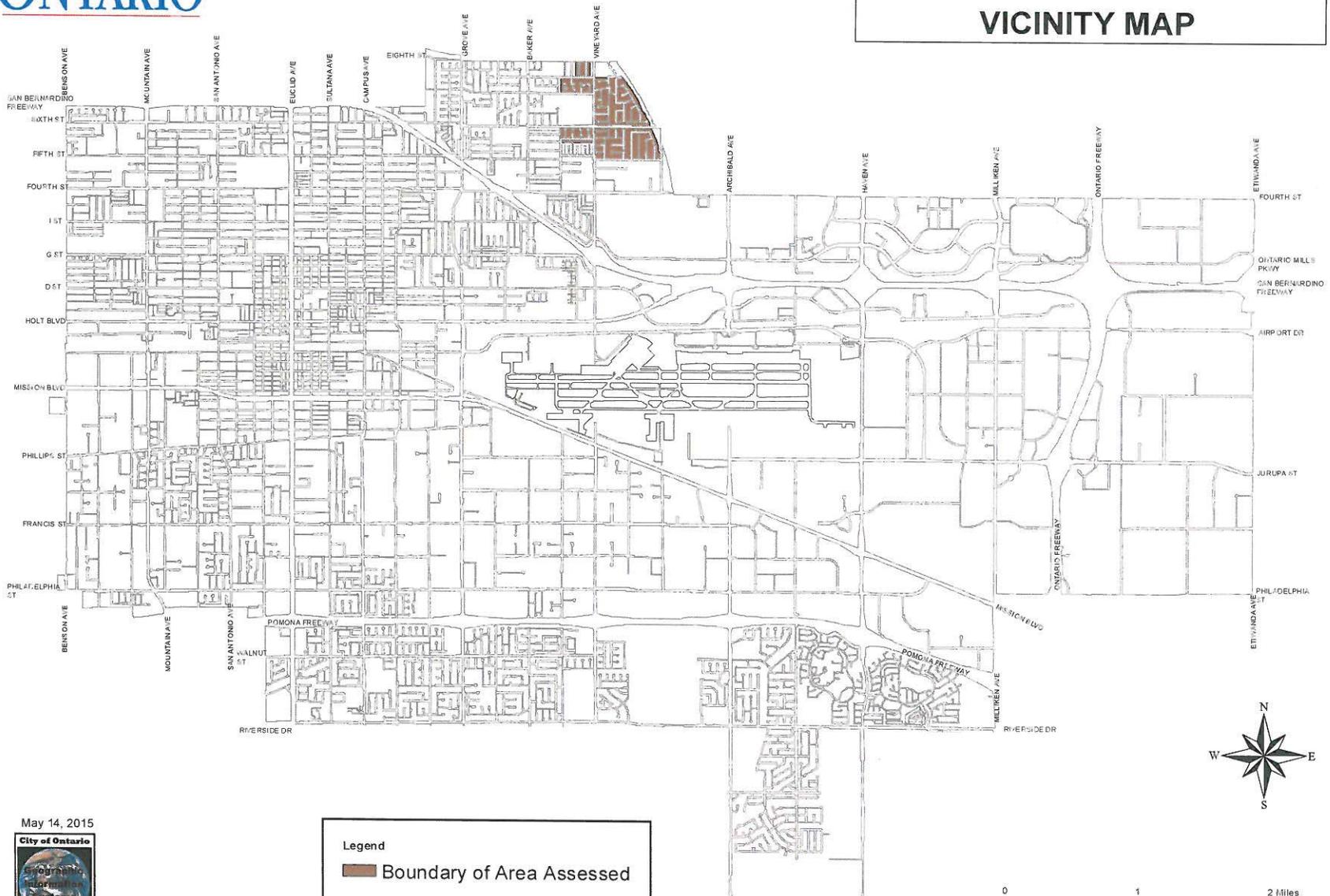
May 14, 2015



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Ontario Parkway Maintenance Assessment District No. 2 VICINITY MAP



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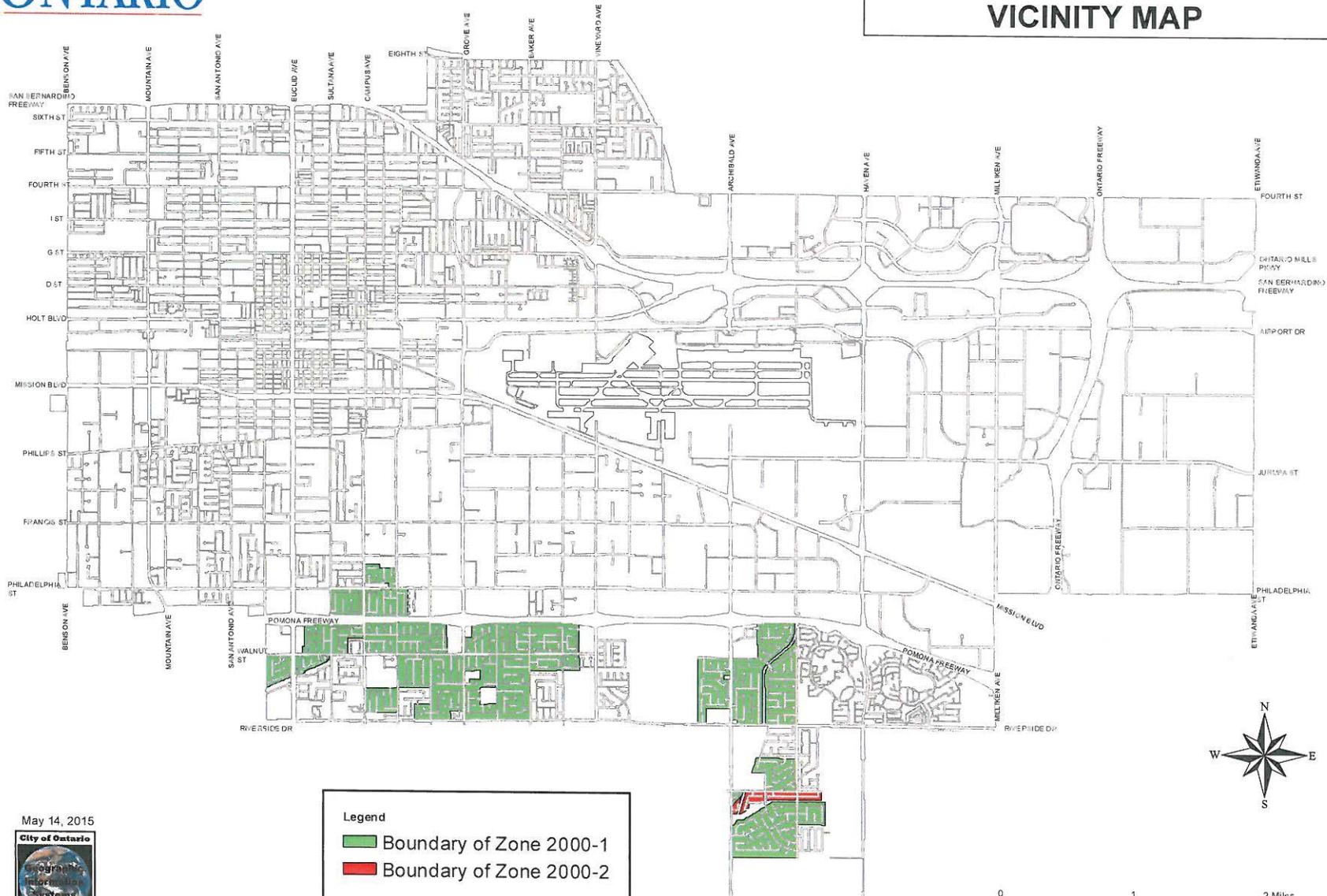
May 14, 2015



Legend
■ Boundary of Area Assessed

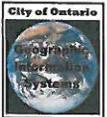


Ontario Parkway Maintenance Assessment District No. 3 VICINITY MAP



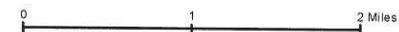
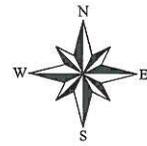
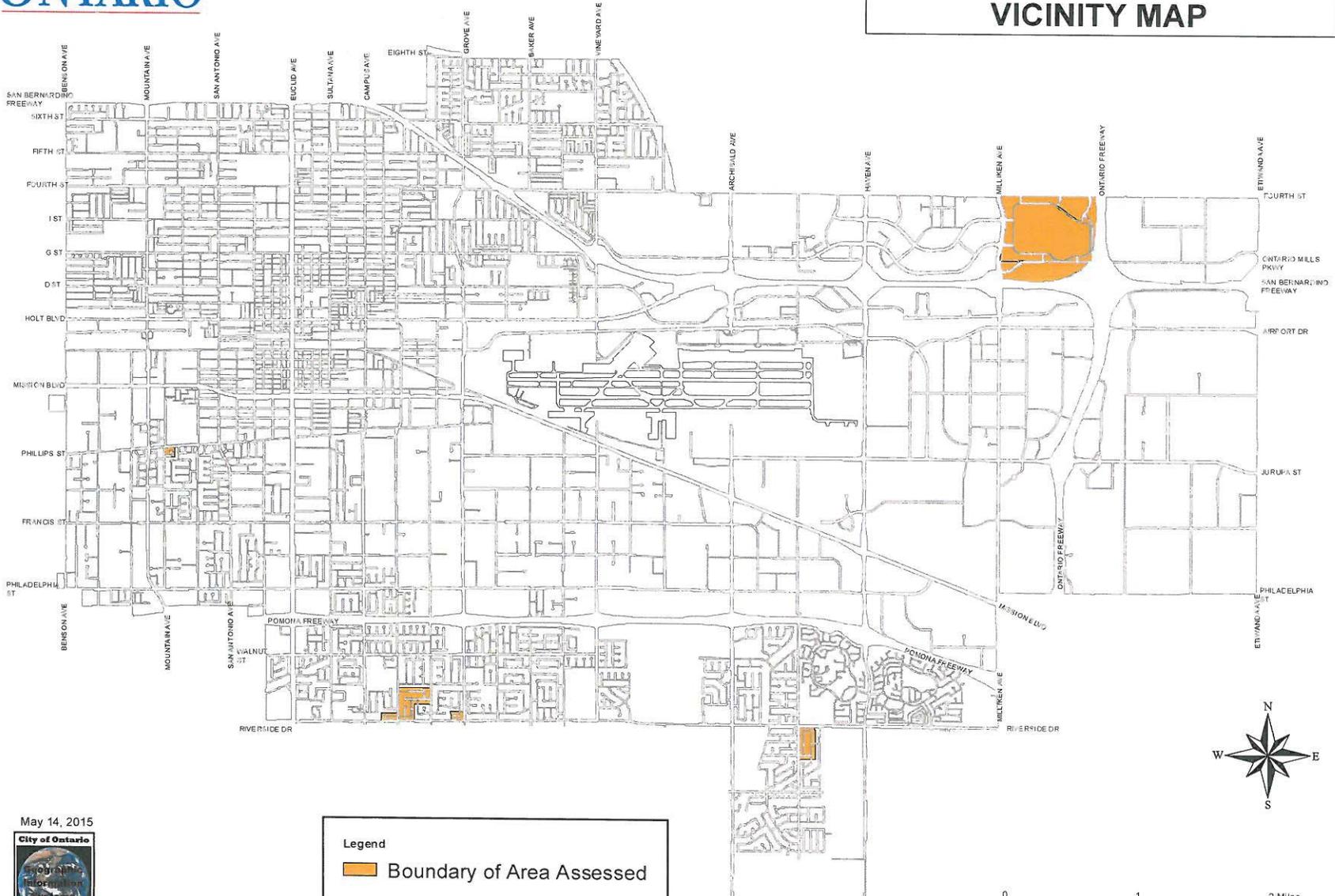
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May 14, 2015





Ontario Parkway Maintenance Assessment District No. 4 VICINITY MAP



Legend

 Boundary of Area Assessed

May 14, 2015



RESOLUTION NO. _____

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF ONTARIO, CALIFORNIA, APPROVING THE ENGINEER'S REPORTS FOR THE ANNUAL LEVY OF ASSESSMENTS WITHIN ONTARIO PARKWAY MAINTENANCE ASSESSMENT DISTRICTS NO. 1, 2, 3 AND 4 FOR FISCAL YEAR 2015-16.

WHEREAS, the City Council of the City of Ontario, California, pursuant to the 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, did, by previous Resolution, order the preparation of Engineer's Reports for the annual levy of assessments, consisting of plans and specifications, cost estimates, diagrams of the districts, and the assessment relating to what are now known and designated as

CITY OF ONTARIO
PARKWAY MAINTENANCE ASSESSMENT DISTRICTS NO. 1, 2, 3 and 4

(hereinafter referred to as the Districts); and

WHEREAS, there have now been presented to this City Council the Reports as required by said Division 15 of the Streets and Highways Code and as previously directed by Resolution; and

WHEREAS, this City Council has approved on a preliminary basis the Reports by a previous Resolution, and ordered the Reports to be filed in the Records Management Department to be open to public inspection; and

WHEREAS, this City Council has now examined and reviewed the 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 have been spread in accordance with the benefits received from the maintenance to be performed as set forth in said Reports.

NOW, THEREFORE, IT IS HEREBY RESOLVED AS FOLLOWS:

SECTION 1. That the above recitals are all true and correct.

SECTION 2. That the Reports as presented, consisting of the following:

- A. Plans and Specifications,
- B. Estimates of cost,
- C. Diagrams of the Districts, and
- D. Assessment of the estimated cost

are hereby approved, and are ordered to be filed in the Records Management Department, as a permanent record and to remain open to public inspection.

SECTION 3. That the City Clerk shall certify the passage and adoption of this Resolution, and the minutes of this meeting shall so reflect the presentation of the Engineer's Reports.

PASSED, APPROVED, AND ADOPTED this 16th day of June 2015.

PAUL S. LEON, MAYOR

ATTEST:

MARY E. WIRTES, MMC, CITY CLERK

APPROVED AS TO LEGAL FORM:

BEST BEST & KRIEGER LLP
CITY ATTORNEY

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

I, MARY E. WIRTES, City Clerk of the City of Ontario, DO HEREBY CERTIFY that foregoing Resolution No. 2015- was duly passed and adopted by the City Council of the City of Ontario at their regular meeting held June 16, 2015 by the following roll call vote, to wit:

AYES: COUNCIL MEMBERS:

NOES: COUNCIL MEMBERS:

ABSENT: COUNCIL MEMBERS:

MARY E. WIRTES, MMC, CITY CLERK

(SEAL)

The foregoing is the original of Resolution No. 2015- duly passed and adopted by the Ontario City Council at their regular meeting held June 16, 2015.

MARY E. WIRTES, MMC, CITY CLERK

(SEAL)

RESOLUTION NO. _____

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF ONTARIO, CALIFORNIA, CONFIRMING THE DIAGRAMS AND ASSESSMENTS, AND PROVIDING FOR THE ANNUAL ASSESSMENT LEVY WITHIN ONTARIO PARKWAY MAINTENANCE ASSESSMENT DISTRICTS NO. 1, 2 AND 3 FOR FISCAL YEAR 2015-16.

WHEREAS, the City Council of the City of Ontario, California, has initiated proceedings for the annual levy of assessments in special 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 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, the City Council has ordered the preparation of the Engineer's Reports, and the Engineer's Reports have been prepared and filed with this City Council pursuant to law for its consideration, and subsequently thereto this City Council did adopt its Resolution of Intention to levy and collect assessments for the referenced fiscal year relating to the above referenced Districts, and further did proceed to give notice of the time and place for a Public Hearing on all matters relating to said annual levy of the proposed assessments; and

WHEREAS, at this time this City Council has heard all testimony and evidence and is desirous of proceeding with said annual levy of assessments.

NOW, THEREFORE, IT IS HEREBY RESOLVED AS FOLLOWS:

SECTION 1. That the above recitals are all true and correct.

SECTION 2. That upon the conclusion of the Public Hearing, written protests filed and not withdrawn are hereby overruled and denied.

SECTION 3. That the estimates of costs, the assessment diagrams, the assessments and all other matters, as set forth in the Engineer's Reports pursuant to said "Landscaping and Lighting Act of 1972," as submitted, are hereby approved, adopted by this City Council, and hereby confirmed.

SECTION 4. That this City Council hereby confirms and orders the annual levy of the assessments for the referenced fiscal year in the amounts as set forth in the Engineer's Reports, and as referred to in the Resolution of Intention as previously adopted relating to said annual assessment levy.

SECTION 5. That the adoption of this Resolution constitutes the levy of the assessments for the referenced fiscal year.

SECTION 6. That the maintenance work of improvements contemplated by the Resolution of Intention shall be performed pursuant to law.

SECTION 7. That the County Auditor shall enter on the County Assessment Roll the amount of the Assessment, and said Assessment shall then be collected at the same time and in the same manner as the County taxes are collected. After collection by said County, the net amount of the assessment shall be paid to the City Treasurer of said City.

SECTION 8. That the City Treasurer has previously established a special fund into which the City Treasurer shall place all monies collected by the Tax Collector pursuant to the provisions of the Resolution and the law, and said transfer shall be made and accomplished as soon as said monies have been made available to said City Treasurer.

SECTION 9. That the City Manager is hereby ordered and directed to file, or cause to be filed, the assessment roll with the County Auditor, together with a certified copy of this Resolution upon its adoption.

SECTION 10. That a certified copy of the assessments and diagrams shall be filed in the Office of the City Manager, with a duplicate copy on file in the Records Management Department and open for public inspection.

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

PASSED, APPROVED, AND ADOPTED this 16th day of June 2015.

PAUL S. LEON, MAYOR

ATTEST:

MARY E. WIRTES, MMC, CITY CLERK

APPROVED AS TO LEGAL FORM:

BEST BEST & KRIEGER LLP
CITY ATTORNEY

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

I, MARY E. WIRTES, City Clerk of the City of Ontario, DO HEREBY CERTIFY that foregoing Resolution No. 2015- was duly passed and adopted by the City Council of the City of Ontario at their regular meeting held June 16, 2015 by the following roll call vote, to wit:

AYES: COUNCIL MEMBERS:

NOES: COUNCIL MEMBERS:

ABSENT: COUNCIL MEMBERS:

MARY E. WIRTES, MMC, CITY CLERK

(SEAL)

The foregoing is the original of Resolution No. 2015- duly passed and adopted by the Ontario City Council at their regular meeting held June 16, 2015.

MARY E. WIRTES, MMC, CITY CLERK

(SEAL)

RESOLUTION NO. _____

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF ONTARIO, CALIFORNIA, CONFIRMING THE DIAGRAM AND ASSESSMENT AND PROVIDING FOR THE ANNUAL ASSESSMENT LEVY WITHIN ONTARIO PARKWAY MAINTENANCE ASSESSMENT DISTRICT NO. 4 FOR FISCAL YEAR 2015-16.

WHEREAS, the City Council of the City of Ontario, California, has initiated proceedings for the levy of the annual assessment in a special maintenance district created pursuant to the terms 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 "Landscaping 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 Landscaping Act, Article XIIID and the Implementation Act may be referred to collectively herein as the "Assessment Law"), in a special maintenance district known and designated as

CITY OF ONTARIO
PARKWAY MAINTENANCE ASSESSMENT DISTRICT NO. 4

(hereinafter referred to as the "District"); and

WHEREAS, the City Council has ordered the preparation of an Engineer's Report, and such a report (the "Assessment Engineer's Report") has been prepared and filed with this City Council for its consideration pursuant to Assessment Law, and subsequently thereto this City Council did adopt its Resolution of Intention to levy and collect assessments for the referenced fiscal year relating to the above-referenced District, and further did proceed to give notice of the time and place for the Public Hearing on all matters relating to said annual levy of the proposed assessment; and

WHEREAS, at this time this City Council has heard all testimony and evidence and is desirous of proceeding with said annual levy of assessments.

NOW, THEREFORE, IT IS HEREBY RESOLVED AS FOLLOWS:

SECTION 1. That the above recitals are all true and correct.

SECTION 2. That upon the conclusion of the Public Hearing, written protests filed and not withdrawn are hereby overruled and denied.

SECTION 3. That based upon the Assessment Engineer's Report and the testimony and other evidence presented at the public hearing, the City Council hereby makes the following determinations regarding the assessments proposed to be imposed for the referenced Fiscal Year:

- A. The proportionate special benefit derived by each individual parcel assessed has been determined in relationship to the entirety of the cost of the operations and maintenance expenses.
- B. The assessments do not exceed the reasonable cost of the proportional special benefit conferred on each parcel.
- C. Only the special benefits have been assessed.
- D. There are no publicly owned parcels within the District.
- E. The assessments do not exceed the maximum annual assessments previously authorized to be levied pursuant to the Assessment Law.

The estimates of costs, the assessment diagram, the assessments and all other matters, as set forth in the Assessment Engineer's Report pursuant to the Assessment Law as submitted, are hereby approved, adopted by this City Council, and hereby confirmed.

SECTION 4. That this City Council hereby confirms and orders the annual levy of the assessments for the referenced fiscal year in the amounts as set forth in the Assessment Engineer's Report, and as referred to in the Resolution of Intention as previously adopted relating to said annual assessment levy.

SECTION 5. That the adoption of this Resolution constitutes the levy of the assessments for the fiscal year.

SECTION 6. That the maintenance work of improvements contemplated by the Resolution of Intention shall be performed pursuant to law.

SECTION 7. That the County Auditor shall enter on the County Assessment Roll the amount of the Assessment, and said Assessment shall then be collected at the same time and in the same manner as the County taxes are collected. After collection by said County, the net amount of the assessment shall be paid to the City Treasurer of said City.

SECTION 8. That the City Treasurer has previously established a special fund into which the City Treasurer shall place all monies collected by the Tax Collector pursuant to the provisions of the Resolution and the law, and said transfer shall be made and accomplished as soon as said monies have been made available to said City Treasurer.

SECTION 9. That the City Manager is hereby ordered and directed to file, or cause to be filed, the assessment roll with the County Auditor, together with a certified copy of this Resolution upon its adoption.

SECTION 10. That a certified copy of the assessment and diagram shall be filed in the Office of the City Manager, with a duplicate copy on file in the Records Management Department and open for public inspection.

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

PASSED, APPROVED, AND ADOPTED this 16th day of June 2015.

PAUL S. LEON, MAYOR

ATTEST:

MARY E. WIRTES, MMC, CITY CLERK

APPROVED AS TO LEGAL FORM:

BEST BEST & KRIEGER LLP
CITY ATTORNEY

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

I, MARY E. WIRTES, City Clerk of the City of Ontario, DO HEREBY CERTIFY that foregoing Resolution No. 2015- was duly passed and adopted by the City Council of the City of Ontario at their regular meeting held June 16, 2015 by the following roll call vote, to wit:

AYES: COUNCIL MEMBERS:

NOES: COUNCIL MEMBERS:

ABSENT: COUNCIL MEMBERS:

MARY E. WIRTES, MMC, CITY CLERK

(SEAL)

The foregoing is the original of Resolution No. 2015- duly passed and adopted by the Ontario City Council at their regular meeting held June 16, 2015.

MARY E. WIRTES, MMC, CITY CLERK

(SEAL)

CITY OF ONTARIO

Agenda Report

June 16, 2015

SECTION:
PUBLIC HEARINGS

SUBJECT: ANNUAL LEVY OF ASSESSMENTS WITHIN STREET LIGHTING MAINTENANCE DISTRICTS NO. 1 AND 2 FOR FISCAL YEAR 2015-2016

RECOMMENDATION: That the City Council take the following actions pertaining to the levy of assessments within Street Lighting Maintenance Districts (SLMD) No. 1 and 2:

- (A) Conduct a combined public hearing on the levy of the annual assessments for each district;
- (B) Consider and adopt a resolution approving the Engineer's Reports relating to the levy of assessments for each district; and
- (C) Consider and adopt resolutions confirming the diagrams and assessments, and providing for the assessment levy for each District.

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

FISCAL IMPACT: As proposed, special assessment revenue will be generated in the amount of \$383,266 from SLMD No. 1 and \$93,035 from SLMD No. 2 during Fiscal Year 2015-16. 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 \$15,672. The total of the recommended assessments is increasing by .2% for the two Benefit Zones within SLMD No. 1, and by 3.8% 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 (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

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

Prepared by: Bob Chandler
Department: Management Services

City Manager
Approval: 

Submitted to Council/O.H.A. 06/16/2015

Approved: _____

Continued to: _____

Denied: _____

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 2014-15 was \$382,535 in SLMD No. 1, and \$89,649 in SLMD No. 2. The proposed total assessments for tax year 2015-16 are \$383,266 in SLMD No. 1, and \$93,035 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 the general benefit is \$15,672.

		Assessed 2014-15	Proposed 2015-16	Maximum 2015-16
SLMD No. 1, Zone 2000-1	per AU	\$ 134	\$ 134	\$ 134
SLMD No. 1, Zone 2000-2	per AU	\$ 66	\$ 67	\$ 110
SLMD No. 2, MA# 99-1		\$ 3,983	\$ 4,134	\$ 9,583
SLMD No. 2, MA# 99-2		\$ 2,058	\$ 2,136	\$ 4,765
SLMD No. 2, MA# 99-3		\$ 4,112	\$ 4,267	\$ 7,940
SLMD No. 2, MA# 99-4		\$ 1,376	\$ 1,428	\$ 3,180
SLMD No. 2, MA# 99-5		\$ 1,256	\$ 1,303	\$ 2,982
SLMD No. 2, MA# 99-6		\$ 12,314	\$ 12,779	\$ 27,828
SLMD No. 2, MA# 99-7		\$ 374	\$ 388	\$ 860
SLMD No. 2, MA# 99-8		\$ 2,744	\$ 2,848	\$ 6,352
SLMD No. 2, MA# 00-1		\$ 2,625	\$ 2,724	\$ 2,923
SLMD No. 2, MA# 00-2		\$ 1,376	\$ 1,428	\$ 1,950
SLMD No. 2, MA# 00-3		\$ 7,539	\$ 7,824	\$ 10,720
SLMD No. 2, MA# 00-4		\$ 49,891	\$ 51,776	\$ 61,384

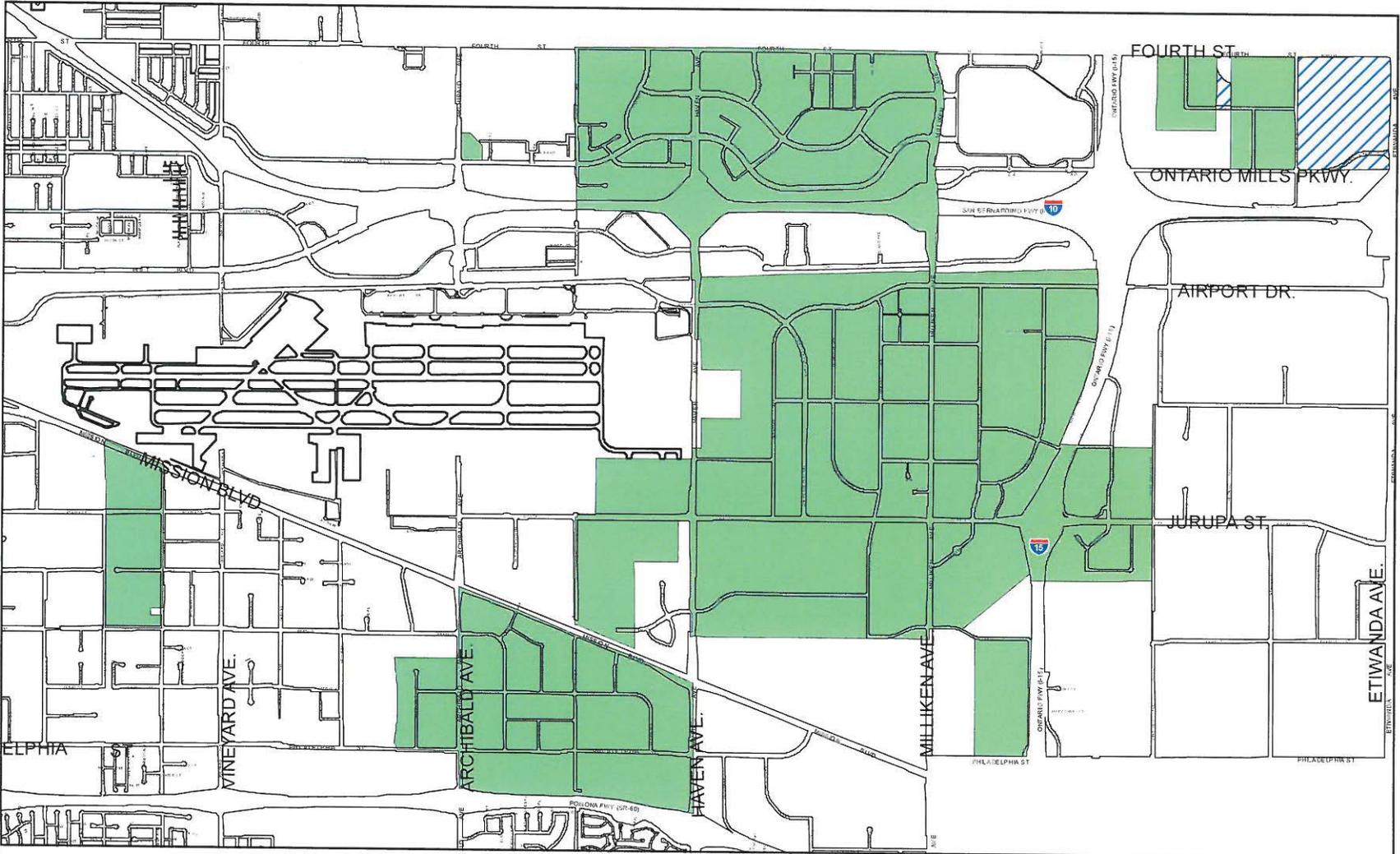
AU-Assessment Unit (e.g. – Zone 2000-1: 1 vacant acre = 0.25 AU; Zone 2000-2: 1 vacant acre = 1 AU)

On June 2, 2015, the City Council adopted resolutions which ordered the preparation of Engineer's Reports for the annual levy of assessments within each district, preliminarily approved the Engineer's Reports, declared City Council's intention to levy and collect assessments within the districts for the referenced fiscal year, and set June 16, 2015 as the date for the public hearing for each district. Notices of the public hearings have been published, and proof of publication is on file in the Records Management Department.

The Engineer's Reports, which have been prepared for each district pursuant to the 1972 Act, 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.

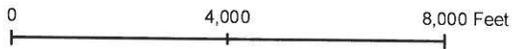


Street Lighting Maintenance District No.1 VICINITY MAP



P:\users\scot\ADMIN\Sves\2014\SL\MD_1_vicinity.mxd

May 14, 2015



Legend

- Zone 2000-1
- Zone 2000-2

Note:
Reference is hereby made to the Maps of The Assessor of the County of San Bernardino, California, for a detailed description of the lines and dimensions of the parcels shown hereon.

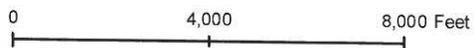


Street Lighting Maintenance District No.2 VICINITY MAP



P:\users\scot\ADMIN Svcs\2014\SLMD_2_vicinity.mxd

May 14, 2015



Legend

- Street Light Maintenance District 2

Note:
Reference is hereby made to the Maps of The Assessor of the County of San Bernardino, California, for a detailed description of the lines and dimensions of the parcels shown hereon.

RESOLUTION NO. _____

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF ONTARIO, CALIFORNIA, APPROVING THE ENGINEER'S REPORTS FOR THE ANNUAL LEVY OF ASSESSMENTS WITHIN STREET LIGHTING MAINTENANCE DISTRICTS NO. 1 AND 2 FOR FISCAL YEAR 2015-2016.

WHEREAS, the City Council of the City of Ontario, California, pursuant to the 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, did, by previous Resolution, order the preparation of Engineer's Reports for the annual levy of assessments, consisting of plans and specifications, cost estimates, diagrams of the districts, and the assessments relating to what are now known and designated as

CITY OF ONTARIO
STREET LIGHTING MAINTENANCE DISTRICTS NO. 1 AND 2

(hereinafter referred to as the Districts); and

WHEREAS, there have now been presented to this City Council the Reports as required by said Division 15 of the Streets and Highways Code and as previously directed by Resolution; and

WHEREAS, this City Council has approved on a preliminary basis the Reports by a previous Resolution, and ordered the Reports to be filed in the Records Management Department to be open to public inspection; and

WHEREAS, this City Council has now examined and reviewed the 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 have been spread in accordance with the benefits received from the maintenance to be performed as set forth in said Reports.

NOW, THEREFORE, IT IS HEREBY RESOLVED AS FOLLOWS:

SECTION 1. That the above recitals are all true and correct.

SECTION 2. That the Reports as presented, consisting of the following:

- A. Plans and Specifications,
- B. Estimates of cost,
- C. Diagrams of the Districts, and
- D. Assessment of the estimated costs

are hereby approved, and are ordered to be filed in the Records Management Department, as a permanent record and to remain open to public inspection.

SECTION 3. 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 Engineer's Reports.

PASSED, APPROVED, AND ADOPTED this 16th day of June 2015.

PAUL S. LEON, MAYOR

ATTEST:

MARY E. WIRTES, MMC, CITY CLERK

APPROVED AS TO LEGAL FORM:

BEST BEST & KRIEGER LLP
CITY ATTORNEY

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

I, MARY E. WIRTES, City Clerk of the City of Ontario, DO HEREBY CERTIFY that foregoing Resolution No. 2015- was duly passed and adopted by the City Council of the City of Ontario at their regular meeting held June 16, 2015 by the following roll call vote, to wit:

AYES: COUNCIL MEMBERS:

NOES: COUNCIL MEMBERS:

ABSENT: COUNCIL MEMBERS:

MARY E. WIRTES, MMC, CITY CLERK

(SEAL)

The foregoing is the original of Resolution No. 2015- duly passed and adopted by the Ontario City Council at their regular meeting held June 16, 2015.

MARY E. WIRTES, MMC, CITY CLERK

(SEAL)

RESOLUTION NO. _____

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF ONTARIO, CALIFORNIA, CONFIRMING THE DIAGRAM AND ASSESSMENT AND PROVIDING FOR THE ANNUAL ASSESSMENT LEVY WITHIN STREET LIGHTING MAINTENANCE DISTRICT NO. 1 FOR FISCAL YEAR 2015-2016.

WHEREAS, the City Council of the City of Ontario, California, has initiated proceedings for the levy of the annual assessment in a street lighting maintenance district created pursuant to the terms 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 "Lighting Act"), Article XIID of the Constitution of the State of California ("Article XIID") and the Proposition 218 Omnibus Implementation Act (Government Code Section 53750 and following) (the "Implementation Act") (the Lighting Act, Article XIID and the Implementation Act may be referred to collectively herein as the "Assessment Law"), in a special maintenance district 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 ordered the preparation of an Engineer's Report, and such report (the "Assessment Engineer's Report") has been prepared pursuant to the Assessment Law and filed with this City Council for its consideration, and subsequently thereto this City Council did adopt its Resolution of Intention to levy and collect assessments for the referenced fiscal year relating to the above-referenced District, and further did proceed to give notice of the time and place for the Public Hearing on all matters relating to said annual levy of the proposed assessment; and

WHEREAS, at this time this City Council has heard all testimony and evidence and is desirous of proceeding with said annual levy of assessments.

NOW, THEREFORE, IT IS HEREBY RESOLVED AS FOLLOWS:

SECTION 1. That the above recitals are all true and correct.

SECTION 2. That upon the conclusion of the Public Hearing, written protests filed and not withdrawn are hereby overruled and denied.

SECTION 3. That based upon the Assessment Engineer's Report and the testimony and other evidence presented at the public hearing, the City Council hereby makes the following determinations regarding the assessments proposed to be imposed for the referenced fiscal year:

- A. The proportionate special benefit derived by each individual parcel assessed has been determined in relationship to the entirety of the cost of the operations and maintenance expenses.
- B. The assessments do not exceed the reasonable cost of the proportional special benefit conferred on each parcel.
- C. Only the special benefits have been assessed.
- D. All parcels within the District that are owned or used either by a local government, the State of California or the United States and which specially benefit from the improvements to be maintained are being assessed.
- E. The assessments do not exceed the maximum annual assessments previously authorized to be levied pursuant to the Assessment Law.

The estimate of costs, the assessment diagram, the assessments and all other matters, as set forth in the Assessment Engineer's Report pursuant to the Assessment Law as submitted, are hereby approved, adopted by this City Council, and hereby confirmed.

SECTION 4. That this City Council hereby confirms and orders the annual levy of the assessments for the referenced fiscal year in the amounts as set forth in the Assessment Engineer's Report, and as referred to in the Resolution of Intention as previously adopted relating to said annual assessment levy.

SECTION 5. That the adoption of this Resolution constitutes the levy of the assessments for the fiscal year.

SECTION 6. That the maintenance work of improvements contemplated by the Resolution of Intention shall be performed pursuant to law.

SECTION 7. That the County Auditor shall enter on the County Assessment Roll the amount of the Assessment, and said Assessment shall then be collected at the same time and in the same manner as the County taxes are collected. After collection by said County, the net amount of the assessment shall be paid to the City Treasurer of said City.

SECTION 8. That the City Treasurer has previously established a special fund into which the City Treasurer shall place all monies collected by the Tax Collector pursuant to the provisions of the Resolution and the law, and said transfer shall be made and accomplished as soon as said monies have been made available to said City Treasurer.

SECTION 9. That the City Manager is hereby ordered and directed to file, or cause to be filed, the assessment roll with the County Auditor, together with a certified copy of this Resolution upon its adoption.

SECTION 10. That a certified copy of the assessment and diagram shall be filed in the Office of the City Manager, with a duplicate copy on file in the Records Management Department and open for public inspection.

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

PASSED, APPROVED, AND ADOPTED this 16th day of June 2015.

PAUL S. LEON, MAYOR

ATTEST:

MARY E. WIRTES, MMC, CITY CLERK

APPROVED AS TO LEGAL FORM:

BEST BEST & KRIEGER LLP
CITY ATTORNEY

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

I, MARY E. WIRTES, City Clerk of the City of Ontario, DO HEREBY CERTIFY that foregoing Resolution No. 2015- was duly passed and adopted by the City Council of the City of Ontario at their regular meeting held June 16, 2015 by the following roll call vote, to wit:

AYES: COUNCIL MEMBERS:

NOES: COUNCIL MEMBERS:

ABSENT: COUNCIL MEMBERS:

MARY E. WIRTES, MMC, CITY CLERK

(SEAL)

The foregoing is the original of Resolution No. 2015- duly passed and adopted by the Ontario City Council at their regular meeting held June 16, 2015.

MARY E. WIRTES, MMC, CITY CLERK

(SEAL)

RESOLUTION NO. _____

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF ONTARIO, CALIFORNIA, CONFIRMING THE DIAGRAM AND ASSESSMENT AND PROVIDING FOR THE ANNUAL ASSESSMENT LEVY WITHIN STREET LIGHTING MAINTENANCE DISTRICT NO. 2 FOR FISCAL YEAR 2015-2016.

WHEREAS, the City Council of the City of Ontario, California, has initiated proceedings for the levy of the annual assessment in a street lighting maintenance district created pursuant to the terms 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 "Lighting Act"), Article XIID of the Constitution of the State of California ("Article XIID") and the Proposition 218 Omnibus Implementation Act (Government Code Section 53750 and following) (the "Implementation Act") (the Lighting Act, Article XIID and the Implementation Act may be referred to collectively herein as the "Assessment Law"), in a special maintenance district known and designated as

CITY OF ONTARIO
STREET LIGHTING MAINTENANCE DISTRICT NO. 2

(hereinafter referred to as the "District"); and

WHEREAS, the City Council has ordered the preparation of an Engineer's Report, and such report (the "Assessment Engineer's Report") has been prepared pursuant to the Assessment Law and filed with this City Council for its consideration, and subsequently thereto this City Council did adopt its Resolution of Intention to levy and collect assessments for the referenced fiscal year relating to the above-referenced District, and further did proceed to give notice of the time and place for the Public Hearing on all matters relating to said annual levy of the proposed assessment; and

WHEREAS, at this time this City Council has heard all testimony and evidence and is desirous of proceeding with said annual levy of assessments.

NOW, THEREFORE, IT IS HEREBY RESOLVED AS FOLLOWS:

SECTION 1. That the above recitals are all true and correct.

SECTION 2. That upon the conclusion of the Public Hearing, written protests filed and not withdrawn are hereby overruled and denied.

SECTION 3. That based upon the Assessment Engineer's Report and the testimony and other evidence presented at the public hearing, the City Council hereby makes the following determinations regarding the assessments proposed to be imposed for the referenced fiscal year:

- A. The proportionate special benefit derived by each individual parcel assessed has been determined in relationship to the entirety of the cost of the operations and maintenance expenses.
- B. The assessments do not exceed the reasonable cost of the proportional special benefit conferred on each parcel.
- C. Only the special benefits have been assessed.
- D. All parcels within the District that are owned or used either by a local government, the State of California or the United States and which specially benefit from the improvements to be maintained are being assessed.
- E. The assessments do not exceed the maximum annual assessments previously authorized to be levied pursuant to the Assessment Law.

The estimate of costs, the assessment diagram, the assessments and all other matters, as set forth in the Assessment Engineer's Report pursuant to the Assessment Law as submitted, are hereby approved, adopted by this City Council, and hereby confirmed.

SECTION 4. That this City Council hereby confirms and orders the annual levy of the assessments for the referenced fiscal year in the amounts as set forth in the Assessment Engineer's Report, and as referred to in the Resolution of Intention as previously adopted relating to said annual assessment levy.

SECTION 5. That the adoption of this Resolution constitutes the levy of the assessments for the fiscal year.

SECTION 6. That the maintenance work of improvements contemplated by the Resolution of Intention shall be performed pursuant to law.

SECTION 7. That the County Auditor shall enter on the County Assessment Roll the amount of the Assessment, and said Assessment shall then be collected at the same time and in the same manner as the County taxes are collected. After collection by said County, the net amount of the assessment shall be paid to the City Treasurer of said City.

SECTION 8. That the City Treasurer has previously established a special fund into which the City Treasurer shall place all monies collected by the Tax Collector pursuant to the provisions of the Resolution and the law, and said transfer shall be made and accomplished as soon as said monies have been made available to said City Treasurer.

SECTION 9. That the City Manager is hereby ordered and directed to file, or cause to be filed, the assessment roll with the County Auditor, together with a certified copy of this Resolution upon its adoption.

SECTION 10. That a certified copy of the assessment and diagram shall be filed in the Office of the City Manager, with a duplicate copy on file in the Records Management Department and open for public inspection.

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

PASSED, APPROVED, AND ADOPTED this 16th day of June 2015.

PAUL S. LEON, MAYOR

ATTEST:

MARY E. WIRTES, MMC, CITY CLERK

APPROVED AS TO LEGAL FORM:

BEST BEST & KRIEGER LLP
CITY ATTORNEY

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

I, MARY E. WIRTES, City Clerk of the City of Ontario, DO HEREBY CERTIFY that foregoing Resolution No. 2015- was duly passed and adopted by the City Council of the City of Ontario at their regular meeting held June 16, 2015 by the following roll call vote, to wit:

AYES: COUNCIL MEMBERS:

NOES: COUNCIL MEMBERS:

ABSENT: COUNCIL MEMBERS:

MARY E. WIRTES, MMC, CITY CLERK

(SEAL)

The foregoing is the original of Resolution No. 2015- duly passed and adopted by the Ontario City Council at their regular meeting held June 16, 2015.

MARY E. WIRTES, MMC, CITY CLERK

(SEAL)

CITY OF ONTARIO

Agenda Report

June 16, 2015

SECTION:
PUBLIC HEARINGS

SUBJECT: A PUBLIC HEARING REGARDING THE ECONOMIC DEVELOPMENT SUBSIDY REPORT AND AN OPERATING COVENANT AGREEMENT BETWEEN THE CITY OF ONTARIO AND QVC, INC. PURSUANT TO GOVERNMENT CODE SECTION 53083; CONSIDERATION OF RESOLUTIONS ACCEPTING THE ECONOMIC DEVELOPMENT SUBSIDY REPORT, APPROVING THE OPERATING COVENANT AGREEMENT, AND MAKING RELATED FINDINGS

RECOMMENDATION: That the City Council take the following actions:

- (A) Hold the public hearing;
- (B) Adopt a resolution accepting the Economic Development Subsidy Report prepared pursuant to Government Code Section 53083 regarding an Operating Covenant Agreement by and between the City of Ontario and QVC, Inc., a Delaware Corporation (on file with the Records Management Department);
- (C) Adopt a resolution approving the Operating Covenant Agreement between the City of Ontario and QVC, Inc. (on file with the Records Management Department), authorizing the City Manager to execute the Operating Covenant Agreement and making related findings; and
- (D) Direct City staff to file a Notice of Determination based upon the City Council's finding that the impacts of this project were analyzed in conjunction with the Meredith International Centre Specific Plan Amendment Environmental Impact Report (SCH #2014051020) that was certified by the City Council on April 7, 2015.

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

STAFF MEMBER PRESENTING: John P. Andrews, Economic Development Director

Prepared by: Nicholas Gonzalez
Department: Economic Development

City Manager
Approval: 

Submitted to Council/O.H.A. 06/16/2015

Approved: _____

Continued to: _____

Denied: _____

12

FISCAL IMPACT: The operating covenant payment between the City and QVC is calculated based on QVC's sales tax revenue during a computation quarter in an amount equal to: (a) the sum of 55% of QVC's sales tax revenues attributable to annual taxable sales for the computation quarter up to \$500,000,000, and (b) the sum of 60% of QVC's sales tax revenue attributable to annual taxable sales for the calendar year over \$500,000,000, as determined on a cumulative basis for each calendar year. In addition, (c) 60% of the Sales Tax Revenues attributable to Owner's self-accrual of use tax which is directly allocated to the City, including, without limitation, in connection with Owner's purchase of machinery and equipment from outside of California during such Computation Quarter; plus (d) 60% of the Sales Tax Revenues attributable to Sales Tax generated as a result of the development and construction of the Distribution Center and Warehouse in the City of Ontario. Following the occurrence of certain trigger events, QVC may receive additional covenant payments equal to certain potential increases in business license taxes. Entering into the Agreement ensures that sales tax, property, and other related tax generated by QVC, will remain in the City for the forty-one (41) year contract term.

BACKGROUND: QVC is a retailer of consumer products with distribution in the United States and is considering locating a new distribution center and warehouse within the City. The new facility will be approximately 1,053,234 square feet to be located in the proposed project by Sares-Regis Group, between Vineyard Avenue and Archibald Avenue south of Fourth Street and north of Interstate 10. The facility will primarily operate as a warehousing location with ancillary support, distribution and administrative services. Although there may be additional supportive business activity conducted at the proposed site, the primary purpose of the facility will be warehousing of goods for future distribution. Based upon the currently described and intended use of the Distribution Center and Warehouse, the new facility would be classified as a "Warehouse" for purposes of assessing business license taxes pursuant to the Ontario Municipal Code provisions regarding the licensing of businesses.

Staff has determined that the establishment of the new QVC warehouse and distribution center within the City will generate substantial revenue for the City, create new jobs, revitalize an area of the City which has suffered a loss of jobs and businesses during the economic downturn of the mid-2000's, and result in community and public improvements that might not otherwise be available to the community for many years.

The establishment of the new warehouse and distribution center serves the additional public purpose of fostering a business and civic environment that may attract additional businesses and investment in the community due to the availability of the increased public and private services and economic activity resulting there, which assists the City in its goal of furthering the development of the community. To incentivize QVC to remain in the City, the City and QVC will enter into an Operating Covenant Agreement ("OCA"). The OCA provides for certain covenant payments which are calculated based upon certain sales tax generation thresholds. The City may use any funds legally available to it to satisfy the covenant payments.

In exchange for the covenant payments, QVC has covenanted to operate and use the site consistent with the restrictions in the OCA, to designate the City as the point of sale for certain transactions; to maintain the property throughout the forty-one (41) year period in good condition; and to not seek or accept financial incentives from a public or private entity that may result in a breach of the OCA, such as moving out of the facility in Ontario.

If approved, the operating covenant payments between the City and QVC will be calculated based on QVC's sales tax revenue during a computation quarter in an amount equal to (a) an amount equal to the sum of 55% of QVC's sales tax revenues attributable to annual taxable sales for the computation quarter up to \$500,000,000, and (b) an amount equal to the sum of 60% of QVC's sales tax revenue attributable

to annual taxable sales for the calendar year over \$500,000,000, as determined on a cumulative basis for each calendar year. In addition there are potential additional payments as described in the Fiscal Impact Section above. Computation quarters means each calendar quarter beginning on January 1, April 1, July 1, or October 1, as applicable. If approved, July 1, 2015 will be known as Computation Quarter 1, with each succeeding Computation Quarter within the eligibility period being consecutively numbered, concluding with Computation Quarter 164.

Additionally, during the three-year period following the effective date of the OCA, QVC agrees that it will not acquire, lease or construct any new distribution center and warehouse within the State of California or outside the City of Ontario. However, if a new warehousing facility is acquired during that period QVC has made certain commitments through the OCA to ensure the City receives sales tax revenue of at least \$3,250,000.

The construction and operation of the new warehouse and distribution center within the City is anticipated to result in approximately 922-1,022 new jobs; an approximate increase of sales tax revenue by \$5,000,000 annually (minus the covenant payments to be paid to QVC); as well an increase in other taxes including business license tax and real property taxes, estimated between \$225,000 and \$275,000 per year.

RESOLUTION NO. _____

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF ONTARIO, CALIFORNIA, ACCEPTING THE ECONOMIC DEVELOPMENT SUBSIDY REPORT PREPARED PURSUANT TO GOVERNMENT CODE SECTION 53083 REGARDING AN OPERATING COVENANT AGREEMENT BY AND BETWEEN THE CITY OF ONTARIO AND QVC, INC.

WHEREAS, QVC, Inc. ("QVC"), a Delaware Corporation, is a retailer of consumer products with distribution in the United State of America and its territories is considering locating a new distribution center and warehouse within the City of Ontario, California ("City"); and

WHEREAS, QVC will be building and operating within the City of Ontario a new facility of approximately 1,053,234 square feet to be located in the proposed SRG/Meredith International Centre project by Sares-Regis Group, between Vineyard Avenue and Archibald Avenue. The facility will primarily operate as a warehousing location with ancillary support, distribution and administrative services; and

WHEREAS, the City and QVC desire to enter an Operating Covenant Agreement ("Agreement") for an economic development subsidy based on QVC's sales tax revenue; and

WHEREAS, on June 16, 2015, the City Council of the City of Ontario conducted a public hearing to consider the Agreement and concluded said hearing on that date; and

WHEREAS, if the Agreement is approved by the City Council, the start date of the economic development subsidy will be on the first day of Computation Quarter 1, as defined in the Agreement, which is anticipated to occur on July 1, 2015. The end date will be no later than 41 years after the start date, on or around June 30, 2056; and

WHEREAS, the economic development subsidy will be paid quarterly (every three (3) months), within 120 days of the end of each Computation Quarter; and

WHEREAS, The economic development subsidy is calculated based on QVC, Inc.'s sales tax revenue during a Computation Quarter in an amount equal to (a) an amount equal to the sum of (1) fifty-five percent (55%) of QVC, Inc.'s sales tax revenue attributable to annual taxable sales for the calendar year which includes such Computation Quarter up to five hundred million dollars (\$500,000,000.00), as determined on a cumulative basis for such calendar year, and (2) sixty percent (60%) of QVC, Inc.'s sales tax revenue attributable to annual taxable sales for the calendar year which includes such Computation Quarter over five hundred million dollars (\$500,000,000.00), as determined on a cumulative basis for such calendar year, plus (b) provided that the business license tax payable by QVC, Inc. exceeds the amount due in the previous calendar year by ten percent (10%) or more, an amount equal to any increase in business license taxes payable to City by QVC, Inc. as a result of City

imposing an aggregate business license tax on QVC, Inc. in an amount greater than the applicable business license taxes computed as if QVC, Inc.'s operations solely consisted of "warehousing" activities within the meaning of Section 3-1.216 of the City of Ontario Municipal Code (and any successor law thereto), plus (c) an amount equal to sixty percent (60%) of QVC, Inc.'s sales tax revenue attributable to QVC, Inc.'s self-accrual of use tax which is directly allocated to the City, including, without limitation, in connection with QVC, Inc.'s purchase of machinery and equipment from outside of California during such Computation Quarter; plus (d) an amount equal to sixty percent (60%) of QVC, Inc.'s sales tax revenue attributable to sales tax generated as a result of the development and construction of QVC, Inc.'s Distribution Center and Warehouse in the City; plus (e) if the City adopts a new tax assessed against 10 or fewer persons or entities which results in an increase in tax paid by QVC, Inc. to City in excess of \$100,000 in any calendar year, an amount equal to the new tax payable by QVC, Inc. in respect of such Computation Quarter; and

WHEREAS, based on information provided by City staff, and other such written and oral evidence as presented to the City, the City finds and determines that the economic development subsidy to QVC pursuant to the Agreement is reasonably related to a legitimate governmental purpose in that the Agreement will ensure that QVC sales tax revenues remain in the City over the next forty-one years, and that the City has determined that the establishment of the new QVC warehouse and distribution center within the City will generate substantial revenue for the City, create new jobs, revitalize an area of the City which has suffered a loss of jobs and businesses during the economic downturn of the mid-2000's, and result in community and public improvements that might not otherwise be available to the community for many years; and

WHEREAS, in accordance with Government Code Section 53083, the City provided certain information in written form to the public and on its website, a copy of which is attached hereto as Exhibit A and incorporated herein by this reference, and held a noticed public hearing on June 16, 2015 to consider all written and oral comments on the Economic Development Subsidy Report; and

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

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

SECTION 1. Incorporation of Recitals. The foregoing recitals are true and correct, and are incorporated herein and made an operative part of this Resolution.

SECTION 2. Findings. The City Council additionally finds and determines that (a) there are identifiable public purposes fulfilled by the Operating Covenant Agreement, as set forth in the Recitals, that outweigh the benefit to private persons; and (b) the findings set forth in this Resolution are based upon substantial written and oral evidence presented to the City Council.

SECTION 3. CEQA. Pursuant to the California Environmental Quality Act (“CEQA”) (Pub. Res. Code, § 21000 et seq.) and the State CEQA Guidelines (Cal. Code Regs, tit. 14 § 15000 et seq.), City staff has reviewed the environmental impacts of the location for this facility in conjunction with the Meredith International Centre Specific Plan Amendment Environmental Impact Report (SCH #2014051020) that was certified by the City Council on April 7, 2015.

SECTION 4. Acceptance of Economic Development Subsidy Report. The City Council finds and determines that this Economic Development Subsidy Report is in compliance with applicable law and specifically Government Code Section 53083.

SECTION 5. Severability. If any provision of this Resolution is held invalid, the remainder of this Resolution shall not be affected by such invalidity, and the provisions of this Resolution are severable.

SECTION 6. Effective Date. This Resolution shall become effective immediately upon its adoption.

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

PASSED, APPROVED, AND ADOPTED this 16th day of June, 2015.

PAUL S. LEON, MAYOR

ATTEST:

MARY E. WIRTES, MMC, CITY CLERK

APPROVED AS TO LEGAL FORM:

BEST BEST & KRIEGER LLP
CITY ATTORNEY

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

I, MARY E. WIRTES, City Clerk of the City of Ontario, DO HEREBY CERTIFY that foregoing Resolution No. 2015- was duly passed and adopted by the City Council of the City of Ontario at their regular meeting held June 16, 2015 by the following roll call vote, to wit:

AYES: COUNCIL MEMBERS:

NOES: COUNCIL MEMBERS:

ABSENT: COUNCIL MEMBERS:

MARY E. WIRTES, MMC, CITY CLERK

(SEAL)

The foregoing is the original of Resolution No. 2015- duly passed and adopted by the Ontario City Council at their regular meeting held June 16, 2015.

MARY E. WIRTES, MMC, CITY CLERK

(SEAL)

EXHIBIT A
ECONOMIC DEVELOPMENT SUBSIDY REPORT

[Attached behind this cover page]

**ECONOMIC DEVELOPMENT SUBSIDY REPORT
PURSUANT TO GOVERNMENT CODE SECTION 53083**

**FOR AN OPERATING COVENANT AGREEMENT
BY AND BETWEEN
CITY OF ONTARIO
AND
QVC, INC.**

Pursuant to Government Code Section 53083, the City Council of the City of Ontario must hold a noticed public hearing and, prior to the public hearing, provide all of the following information in written form and available to the public and through the City's website, regarding a proposed economic development subsidy to be provided by the City pursuant to an Operating Covenant Agreement by and between the City of Ontario and QVC, Inc. ("Agreement"). Notice was published in the local newspaper for a public hearing to be held on June 16, 2015.

The purpose of this report is to provide the information required pursuant to Government Code Section 53083 in regards to the Agreement. This report shall remain available to the public and posted on the City's website until the end date of the economic development subsidy, as further described in number 2 below.

1. The name and address of all corporations or any other business entities, except for sole proprietorships, that are the beneficiary of the economic development subsidy.

The Agreement is with QVC, Inc., a Delaware corporation. QVC, Inc. is the sole beneficiary of the economic development subsidy.

QVC, Inc.
1200 Wilson Drive MC 131
West Chester, PA 19380

2. The start and end dates and schedule, if applicable, for the economic development subsidy.

If the Agreement is approved by the City Council, the start date of the economic development subsidy will be on the first day of Computation Quarter 1, as defined in the Agreement, which is anticipated to occur on July 1, 2015. The end date will be no later than 41 years after the start date, on or around June 30, 2056.

The economic development subsidy will be paid quarterly (every 3 months), within 120 days of the end of each Computation Quarter. Computation Quarters run from January 1 to March 31, April 1 to June 30, July 1 to September 30, and October 1 to December 31.

3. A description of the economic development subsidy, including the estimated total amount of the expenditure of public funds by, or of revenue lost to, the local agency as a result of the economic development subsidy.

The economic development subsidy is calculated based on QVC, Inc.'s sales tax revenue during a Computation Quarter in an amount equal to (a) an amount equal to the sum of (1) fifty-five percent (55%) of QVC, Inc.'s sales tax revenue attributable to annual taxable sales for the calendar year which includes such Computation Quarter up to five hundred million dollars (\$500,000,000.00), as determined on a cumulative basis for such calendar year, and (2) sixty percent (60%) of QVC, Inc.'s sales tax revenue attributable to annual taxable sales for the calendar year which includes such Computation Quarter over five hundred million dollars (\$500,000,000.00), as determined on a cumulative basis for such calendar year, plus (b) provided that the business license tax payable by QVC, Inc. exceeds the amount due in the previous calendar year by ten percent (10%) or more, an amount equal to any increase in business license taxes payable to City by QVC, Inc. as a result of City imposing an aggregate business license tax on QVC, Inc. in an amount greater than the applicable business license taxes computed as if QVC, Inc.'s operations solely consisted of "warehousing" activities within the meaning of Section 3-1.216 of the City of Ontario Municipal Code (and any successor law thereto), plus (c) an amount equal to sixty percent (60%) of QVC, Inc.'s sales tax revenue attributable to QVC, Inc.'s self-accrual of use tax which is directly allocated to the City, including, without limitation, in connection with QVC, Inc.'s purchase of machinery and equipment from outside of California during such Computation Quarter; plus (d) an amount equal to sixty percent (60%) of QVC, Inc.'s sales tax revenue attributable to sales tax generated as a result of the development and construction of QVC, Inc.'s Distribution Center and Warehouse in the City; plus (e) if the City adopts a new tax assessed against 10 or fewer persons or entities which results in an increase in tax paid by QVC, Inc. to City in excess of \$100,000 in any calendar year, an amount equal to the new tax payable by QVC, Inc. in respect of such Computation Quarter

The City estimates that the total amount of the expenditure of public funds as a result of the economic development subsidy will be \$2,750,000 annually.

4. A statement of the public purposes for the economic development subsidy.

QVC, Inc. has agreed to establish a new warehouse and distribution center within the City, expand its operations within the City and remain in the City for a period of not less than 41 years. The new warehouse and distribution center shall primarily serve as a warehouse but may include all ancillary uses in support of QVC's warehousing of consumer products for distribution and sales including, but not limited to, office and administrative uses, digital photography and/or television broadcast studio operations, QVC's marketing activities, corporate meetings and employee appreciation events, and incidental services and uses for the benefit of QVC's employees, such as fitness facilities, cafeteria/food service operations, and an "employee store" for the purchase of QVC's consumer products by QVC's employees and, from time to time, members of the general public. Additionally, during the three (3) year period following the effective date of the

Agreement, QVC, Inc. agrees that it will not acquire, lease or construct any new distribution center and warehouse within the state of California but outside the City.

The City has determined that the establishment of the new warehouse and distribution center within the City, as described in the preceding paragraph, will generate substantial revenue for the City, create new jobs, revitalize an area of the City which has suffered a loss of jobs and businesses during the economic downturn of the mid-2000's, and result in community and public improvements that might not otherwise be available to the community for many years.

Further, the establishment of the new warehouse and distribution center serves the additional public purpose of fostering a business and civic environment that may attract additional businesses and investment in the community due to the availability of the increased public and private services and economic activity resulting therefrom, thereby assisting the City in its goal of furthering the development of the community.

5. The projected tax revenue to the local agency as a result of the economic development subsidy.

The City anticipates that the establishment and operation of a new warehouse and distribution center within the City will result in an approximate increase of sales tax revenue by \$5,000,000 annually, minus the covenant payments to be paid to QVC, Inc., as set forth in number 2 above.

There will also be an increase in other taxes including business license tax and real property taxes, estimated between \$225,000 and \$275,000 per year.

6. The estimated number of jobs created by the economic development subsidy, broken down by full-time, part-time, and temporary positions.

The construction and operation of the new warehouse and distribution center within the City is anticipated to result in approximately 922-1,022 new jobs, as follows:

- 522 full-time jobs
- 400-500 part-time jobs

RESOLUTION NO. _____

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF ONTARIO, CALIFORNIA, APPROVING THE OPERATING COVENANT AGREEMENT BETWEEN THE CITY OF ONTARIO AND QVC, INC. AND MAKING RELATED FINDINGS.

WHEREAS, QVC, Inc. ("QVC"), a Delaware Corporation, a retailer of consumer products with distribution in the United State of America and its territories, is considering locating a new distribution center and warehouse within the City of Ontario, California ("City"); and

WHEREAS, QVC will be building and operating within the City of Ontario a new facility of approximately 1,053,234 square feet to be located in the proposed SRG/Meredith International Centre project by Sares-Regis Group, between Vineyard Avenue and Archibald Avenue. The facility will primarily operate as a warehousing location with ancillary support, distribution and administrative services; and

WHEREAS, although there may be additional supportive business activity conducted at the site, the primary purpose of the facility will be warehousing of goods for future distribution; and

WHEREAS, Ontario Municipal Code Section 3-1.216 states that every person engaged in the business of warehousing in the City shall pay an annual business license tax to the City consisting of a flat tax of Fifty Dollar (\$50.00) plus an additional tax of Two Cents (\$0.02) for each square foot of warehousing space located in the City; and

WHEREAS, based upon the current intended use of the facility, the City believes the activity at the warehouse should be classified as a warehouse for purposes of business license tax assessment; and

WHEREAS, the environmental impacts of the location for this facility were reviewed in conjunction with the Meredith International Centre Specific Plan Amendment Environmental Impact Report (SCH #2014051020) that was certified by the City Council on April 7, 2015; and

WHEREAS, the incentives provide in the Operating Covenant Agreement ("Agreement"), a copy of which is attached to this Resolution as Exhibit A, are intended to ensure QVC establishes a new warehouse and distribution center within the City, expands its operation with the City as appropriate and remains in the City for not less than forty-one (41) years; and

WHEREAS, the City has determined that the establishment of the new QVC warehouse and distribution center within the City will generate substantial revenue for the City, create new jobs, revitalize an area of the City which has suffered a loss of jobs and businesses during the economic downturn of the mid-2000's, and result in community and public improvements that might not otherwise be available to the community for many years; and

WHEREAS, on June 16, 2015, the City Council of the City of Ontario conducted a public hearing to consider the Agreement and concluded said hearing on that date; and

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

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

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

SECTION 2. Findings.

(a) Business License Tax. Based upon the currently described and intended use, the City Council of the City of Ontario finds that the new facility is a 'warehouse' for purposes of assessing business license taxes pursuant to the Ontario Municipal Code provisions regarding the licensing of businesses.

(b) Public Purpose. Entering into this agreement serves a public purpose. As a result of this Agreement, an area of the City which suffered tremendous loss during the economic downturn of the mid-2000's will be revitalized. The development of this facility will assist the City in the development of its industrial space within the City and will result in additional businesses coming into and through the City who might not otherwise be exposed to Ontario. This development will act as a catalyst for other major retailers, distribution companies, and those companies that service retailers and distribution companies to locate in Ontario. By requiring a certain significant amount of goods to be routed through this facility, the City believes additional development and job opportunities will result for the City and its residents. By bringing a business entity of this size into the community there will be approximately 922-1,022 new jobs created, public and private improvements made, and the energy and synergistic effect on the surrounding community will likely stimulate additional growth and job opportunities within the community. Additionally, QVC is a good public partner who will improve the City through civic and community involvement. Based upon these and other public benefits the City Council finds that the public purposes of the Agreement outweigh any private benefit to private persons or entities.

(c) Contingent Obligations. The City finds that each City obligation is contingent upon separate consideration by QVC including but limited to annual sales tax generation.

SECTION 3. Approve Agreement. The City Council hereby approves the Operating Covenant Agreement in the form attached to this Resolution as Exhibit A. The City Council hereby authorizes the City Manager, with the concurrence of the City Attorney, to execute said Agreement. City Manager is hereby authorized to take any additional steps necessary to facilitate the intent of this action. .

SECTION 4. CEQA Compliance. Pursuant to the California Environmental Quality Act ("CEQA") (Pub. Res. Code, § 21000 et seq.) and the State CEQA Guidelines (Cal. Code Regs, tit. 14 § 15000 et seq.), City staff has reviewed the environmental impacts of the location for this facility in conjunction with the Meredith International Centre Specific Plan Amendment Environmental Impact Report (SCH #2014051020) that was certified by the City Council on April 7, 2015.

SECTION 5. Implementation. The City Manager or his or her designee is hereby authorized and directed to, on behalf of the City, execute any and all documents in accordance with this Resolution and applicable law.

SECTION 6. Severability. If any provision of this Resolution or the application of any such provision to any person or circumstance is held invalid, such invalidity shall not affect other provisions or applications of this Resolution that can be given effect without the invalid provision or application, and to this end the provisions of this Resolution are severable. The City declares that it would have adopted this Resolution irrespective of the invalidity of any particular portion of this Resolution.

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

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

PASSED, APPROVED, AND ADOPTED this 16th day of June, 2015.

PAUL S. LEON, MAYOR

ATTEST:

MARY E. WIRTES, MMC, CITY CLERK

APPROVED AS TO LEGAL FORM:

BEST BEST & KRIEGER LLP
CITY ATTORNEY

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

I, MARY E. WIRTES, City Clerk of the City of Ontario, DO HEREBY CERTIFY that foregoing Resolution No. 2015- was duly passed and adopted by the City Council of the City of Ontario at their regular meeting held June 16, 2015 by the following roll call vote, to wit:

AYES: COUNCIL MEMBERS:

NOES: COUNCIL MEMBERS:

ABSENT: COUNCIL MEMBERS:

MARY E. WIRTES, MMC, CITY CLERK

(SEAL)

The foregoing is the original of Resolution No. 2015- duly passed and adopted by the Ontario City Council at their regular meeting held June 16, 2015.

MARY E. WIRTES, MMC, CITY CLERK

(SEAL)

EXHIBIT A
OPERATING COVENANT AGREEMENT

[Attached behind this cover page]

QVC OPERATING COVENANT AGREEMENT
between
THE CITY OF ONTARIO,
a California municipal corporation,
and
QVC, INC.,
a Delaware corporation

Dated as of [June 16, 2015], for reference purposes only

RECITALS

WHEREAS, QVC, Inc. (“QVC”), a Delaware corporation, a retailer of consumer products with distribution in the United States of America and its territories is considering locating and leasing a new distribution center and warehouse within the City of Ontario, California; and

WHEREAS, the incentives provided in this Agreement are intended to ensure QVC establishes a new warehouse and distribution center within the City, expands its operations within the City as appropriate and remains in the City for not less than 41 years; and

WHEREAS, the City has determined that the establishment of the new QVC warehouse and distribution center within the City will generate substantial revenue for the City, create new jobs, revitalize an area of the City which has suffered a loss of jobs and businesses during the economic downturn of the mid-2000’s, and result in community and public improvements that might not otherwise be available to the community for many years.

NOW, THEREFORE, in consideration of the mutual promises contained herein, and for such other good and valuable consideration, the receipt of which is hereby acknowledged, the City of Ontario and QVC agree as follows:

ARTICLE 1. EFFECTIVE DATE; PARTIES; DEFINITIONS

1.1 Effective Date of Covenant Agreement. This QVC Operating Covenant Agreement (“**Covenant Agreement**”) is dated June 16, 2015, for reference purposes only. This Covenant Agreement will not become effective (the “**Effective Date**”) until the later of (a) July 1, 2015 or (b) the date on which all of the following are true:

1.1.1 This Covenant Agreement has been approved and executed by the appropriate authorities of Owner, as defined herein, and delivered to the City;

1.1.2 Following all legally required notices and hearings, this Covenant Agreement has been approved by the City Council; and

1.1.3 This Covenant Agreement has been executed by the appropriate authorities of the City and delivered to Owner.

If all of the foregoing conditions precedent have not been satisfied by August 1, 2015, then this Covenant Agreement shall not thereafter become effective and any prior signatures and approvals of the Parties will be deemed void and of no force or effect.

1.2 Parties to Covenant Agreement.

1.2.1 The City. The address of the City is 303 East B Street, Ontario, California 91764, Attention: Al C. Boling, City Manager, 303 East B Street, Ontario, CA 91764; telephone (909) 395-2396; facsimile (909) 395-2189; with copies to John Brown, City Attorney,

2855 East Guasti Road, Suite 400, Ontario, CA 91761, Telephone: (909) 989-8584.

The City represents and warrants to Owner that:

(a) The City is a public body, corporate and politic, exercising governmental functions and powers and organized and existing under the laws of the State of California;

(b) The City has taken all actions required by law to approve the execution of this Covenant Agreement;

(c) The City's entry into this Covenant Agreement and/or the performance of the City's obligations under this Covenant Agreement does not violate any contract, agreement or other legal obligation of the City;

(d) The City's entry into this Covenant Agreement and/or the performance of the City's obligations under this Covenant Agreement does not constitute a violation of any state or federal statute or judicial decision to which the City is subject;

(e) There are no pending lawsuits or other actions or proceedings which would prevent or impair the timely performance of the City's obligations under this Covenant Agreement;

(f) The City has the legal right, power and authority to enter into this Covenant Agreement and to consummate the transactions contemplated hereby, and the execution, delivery and performance of this Covenant Agreement has been duly authorized and no other action by the City is requisite to the valid and binding execution, delivery and performance of this Covenant Agreement, except as otherwise expressly set forth herein; and

(g) The individual executing this Covenant Agreement is authorized to execute this Covenant Agreement on behalf of the City.

The representations and warranties set forth above are material consideration to Owner and the City acknowledges that Owner is relying upon the representations set forth above in undertaking Owner's obligations set forth in this Covenant Agreement.

As used in this Covenant Agreement, the term "City's actual current knowledge" shall mean, and shall be limited to, the actual current knowledge of the office of the City Manager as of the Effective Date, without having undertaken any independent inquiry or investigation for the purpose of making such representation or warranty and without any duty of inquiry or investigation.

All of the terms, covenants and conditions of this Covenant Agreement shall be binding on and shall inure to the benefit of the City and its nominees, successors and assigns.

1.2.2 Owner. The address of QVC (“**Owner**”) for purposes of this Covenant Agreement is 1200 Wilson Drive MC 131, West Chester, PA 19380; telephone (484) 701-8084; facsimile (484) 701-1551.

Owner represents and warrants to the City that:

(a) Owner is a duly formed Delaware corporation, qualified and in good standing to do business under the laws of the State of California;

(b) The individual(s) executing this Covenant Agreement is/are authorized to execute this Covenant Agreement on behalf of Owner;

(c) Owner has taken all actions required by law to approve the execution of this Covenant Agreement;

(d) Owner’s entry into this Covenant Agreement and/or the performance of its obligations under this Covenant Agreement does not violate any contract, agreement or other legal obligation of Owner;

(e) Owner’s entry into this Covenant Agreement and/or the performance of its obligations under this Covenant Agreement does not constitute a violation of any state or federal statute or judicial decision to which Owner is subject;

(f) There are no pending lawsuits or other actions or proceedings which would prevent or impair the timely performance of Owner’s obligations under this Covenant Agreement; and

(g) Owner has the legal right, power and authority to enter into this Covenant Agreement and to consummate the transactions contemplated hereby, and the execution, delivery and performance of this Covenant Agreement have been duly authorized and no other action by Owner is requisite to the valid and binding execution, delivery and performance of this Covenant Agreement, except as otherwise expressly set forth herein.

The representations and warranties set forth herein are material consideration to the City and Owner acknowledges that the City is relying upon the representations set forth above in undertaking the City’s obligations set forth above.

As used in this Covenant Agreement, the term “actual current knowledge of Owner” shall mean, and shall be limited to, the actual current knowledge of James Reid, Vice President of Distribution/Operations, and Bryce C. Mason, Vice President of Work Place Services, as of the Effective Date, without having undertaken any independent inquiry or investigation for the purpose of making such representation or warranty and without any duty of inquiry or investigation.

All of the terms, covenants and conditions of this Covenant Agreement shall be binding on and shall inure to the benefit of Owner and its permitted nominees, successors and assigns. Wherever the term “Owner” is used herein, such term shall include any permitted nominee,

assignee or successor of Owner.

The qualifications and identity of Owner are of particular concern to the City, and it is because of such qualifications and identity that the City has entered into this Covenant Agreement with Owner. No voluntary or involuntary successor-in-interest of Owner shall acquire any rights or powers under this Covenant Agreement except as expressly set forth herein. Notwithstanding the foregoing, Owner may voluntarily assign the rights, duties, and obligations under this Covenant Agreement subject to the consent of the City, which said consent shall not be unreasonably withheld, and/or as provided in Section 4.16 hereof.

1.2.3 The City and Owner are sometimes individually referred to as “Party” and collectively as “Parties.”

1.3 Definitions.

1.3.1 “BOE” means the California State Board of Equalization.

1.3.2 “City” means the City of Ontario, a California municipal corporation, and any nominee, assignee of, or successor to, its rights, powers and responsibilities.

1.3.3 “Computation Quarter” means each calendar quarter beginning on January 1, April 1, July 1, or October 1, as applicable, and ending on the succeeding March 31, June 30, September 30, or December 31, as applicable. The first Computation Quarter within the Eligibility Period, expected to commence on July 1, 2015, shall be referred to herein as “Computation Quarter 1,” with each succeeding Computation Quarter within the Eligibility Period being consecutively numbered, concluding with Computation Quarter 164.

1.3.4 “Covenant Payment(s)” means those contingent payments to be made by the City to the Owner pursuant to Section 3.2 of this Covenant Agreement in consideration of the Covenants and Owner’s timely and faithful performance thereunder.

1.3.5 “Covenant Term” means, a period of forty-one (41) years following the Effective Date (unless terminated sooner pursuant to specific provisions of this Covenant Agreement).

1.3.6 “Covenants” means those covenants described in Section 3.1 herein.

1.3.7 “Distribution Center and Warehouse” means that certain QVC corporate sales/administrative office and fulfillment/distribution center operated on the Property by Owner. For purposes of clarification, the Distribution Center and Warehouse shall primarily serve as a warehouse but may include all ancillary uses in support of QVC’s warehousing of consumer products for distribution and sales including, but not limited to, office and administrative uses, digital photography and/or television broadcast studio operations, QVC’s marketing activities, corporate meetings and employee appreciation events, and incidental services and uses for the benefit of QVC’s employees, such as fitness facilities, cafeteria/food service operations, and an “employee store” for the purchase of QVC’s consumer products by QVC’s employees and, from time to time, members of the general public.

1.3.8 “Eligibility Period” means the period commencing as of the first (1st) day of Computation Quarter 1 and ending the last day of Computation Quarter 164 (i.e., [_____]).

1.3.9 “Governmental Authority” means any nation or government, any federal, state, local, municipal or other political subdivision thereof or any entity exercising executive, legislative, judicial, regulatory or administrative functions of or pertaining to government.

1.3.10 “Law” means any law (including common law), constitution, statute, treaty, regulation, rule, ordinance, opinion, release, ruling, order, injunction, writ, decree, bond, judgment, authorization or approval, lien or award by or settlement agreement with any Governmental Authority.

1.3.11 “Liquidated Damages” means, for purposes of Section 3.6, as follows:

(a) If the breach occurs during Computation Quarters 1 through 20, an amount equal to the previous three (3) Computation Quarter Covenant Payments paid to Owner prior to the Computation Quarter in which the breach occurs.

(b) If the breach occurs during Computation Quarters 21 through 40, an amount equal to the previous two (2) Computation Quarter Covenant Payments paid to Owner prior to the Computation Quarter in which the breach occurs.

(c) If the breach occurs during Computation Quarters 41 through 164, an amount equal to the previous Computation Quarter Covenant Payments paid to Owner prior to the Computation Quarter in which the breach occurs.

1.3.12 “New Distribution Center and Warehouse” means a corporate sales/administrative office and fulfillment/distribution center operated outside of the City of Ontario but within the State of California by Owner.

1.3.13 “New Tax” means, after the effective date of this Covenant Agreement, any increase in tax adopted or imposed by the City which is payable directly to the City, or indirectly to the extent the City receives a direct financial benefit, as a result of any of the following: (a) the adoption or taking effect of any Law; (b) any change in any Law or in the administration, interpretation, implementation or application thereof by the City; or (c) the making or issuance of any request, rule, guideline or directive (whether or not having the force of Law) by the City.

1.3.14 “Owner” means and refers to QVC, a Delaware corporation, and its successors and assigns, cumulatively.

1.3.15 “Owner’s Sales Activities” means the commercially reasonable business practices and activities associated with Owner’s retail and wholesale sale of consumer products. “Owner’s Sales Activities” also include any of the above-described activities which are conducted by a subsidiary or wholly or partially owned affiliate of Owner, provided that such subsidiary or affiliate did not previously conduct such activities in the City.

1.3.16 “Penalty Assessments” means and refers to penalties, assessments, collection costs and other costs, fees or charges resulting from late or underpaid payments of Sales Tax and which are levied, assessed or otherwise collected from Owner.

1.3.17 “Property” means that certain real property commonly known as 853 Del Rio Place, Ontario, CA 91764, or any other property within the City of Ontario to which Owner may elect to relocate the Distribution Center and Warehouse during the term of this Covenant Agreement.

1.3.18 “Sales Tax” means and refers to all sales and use taxes levied under the authority of the Sales Tax Law attributable to the Distribution Center and Warehouse and/or Owner’s Sales Activities excluding that which is to be refunded to Owner because of an overpayment of such tax.

1.3.19 “Sales Tax Law” means and refers to: (a) California Revenue and Taxation Code Section 7200 et seq., and any successor law thereto; (b) any legislation allowing City or other public agency with jurisdiction in City to levy any form of local Sales Tax on the operations of Owner; and (c) regulations of the BOE and other binding rulings and interpretations relating to (a) and (b) of this Section 1.3.19.

1.3.20 “Sales Tax Revenues” means the net Sales Tax actually received by the City from the BOE pursuant to the application of the Sales Tax Law (as such statutes may hereafter be amended, substituted, replaced, re-numbered, moved or modified by any successor law) attributable to Owner’s Sales Activities and/or the Distribution Center and Warehouse in a particular Computation Quarter, inclusive of any offsetting revenues described in the last paragraph of Section 4.23 hereof. Sales Tax Revenues shall not include: (i) Penalty Assessments; (ii) any Sales Tax levied by, collected for or allocated to the State of California, the County of San Bernardino, or a district or any entity (including an allocation to a statewide or countywide pool) other than City; (iii) any administrative fee charged by the BOE; (iv) any Sales Tax subject to any sharing, rebate, offset or other charge imposed pursuant to any applicable provision of federal, state or local (except City’s) law, rule or regulation; (v) any Sales Tax attributable to any transaction not consummated within the Eligibility Period; or (vi) any Sales Tax (or other funds measured by Sales Tax) required by the State of California to be paid over to another public entity (including the State) or set aside and/or pledged to a specific use other than for deposit into or payment from the City’s general fund.

1.3.21 “Taxable Ontario Sales” means Owner’s taxable California sales transactions, including, but not limited to, sales through an internet website or phone sales, that result from both (i) Owner’s Sales Activities and (ii) for products shipped from the Distribution Center and Warehouse to addresses located in California.

1.3.22 “Trigger Event” means the adoption or implementation by the City of Ontario of a New Tax assessed to 10 or fewer persons or entities which results in an increase in tax paid by Owner to the City in excess of One Hundred Thousand Dollars (\$100,000) in any calendar.

ARTICLE 2. ADDITIONAL RECITALS; CITY COVENANTS

2.1 The previously stated Recitals are incorporated herein and made a part hereof as though fully set forth.

2.2 The City has determined that the long-term operation of the Distribution Center and Warehouse will result in substantial benefits to the City, and its citizens including, without limitation, the creation of significant new employment opportunities, property tax revenues, sales tax revenues and other ancillary benefits. Accordingly, the City has also determined that its entry into this Covenant Agreement and the purchase of the Covenants herein serve a significant public purpose, while providing only incidental benefits to a private party.

2.3 The Parties agree and acknowledge that Owner will be leasing and operating within the City a new facility of approximately 1,053,234 square feet. The facility will primarily operate for the warehousing of goods for future distribution with ancillary support, distribution and administrative services, all as described in Section 1.3.7 hereof. Based upon the currently described and intended use of the Distribution Center and Warehouse, the City Council has found that the new facility is a warehouse for purposes of assessing business license taxes pursuant to the Ontario Municipal Code provisions regarding the licensing of businesses and that the intended use is “warehousing” for purposes of Section 3-1.216 of the City of Ontario Municipal Code.

ARTICLE 3. OWNER COVENANTS RUNNING WITH THE LAND; COVENANT PAYMENTS; REMEDIES FOR BREACH.

3.1 Covenants Running with the Land.

3.1.1 Operating and Use Covenant. Subject to Section 4.9, Owner covenants and agrees that for the Covenant Term Owner shall operate, or cause to be operated upon the Property, the Distribution Center and Warehouse in a commercially reasonable business manner, consistent with all applicable Law. Owner will operate its business in a commercially reasonable and prudent manner. Owner’s obligations pursuant to the immediately preceding sentence include, without limitation, the obligation to obtain all federal, state and local licenses and permits required for the operation of the business and to advertise, market and promote the business in a commercially reasonable fashion.

3.1.2 Covenant to Designate City as a Point of Sale. Owner covenants and agrees that, for the term of the Operating and Use Covenant as described in Section 3.1.1, Owner shall maintain such licenses and permits as may be required by any governmental agency to conduct Owner’s Sales Activities related to the Distribution Center and Warehouse. Except as otherwise provided by applicable Law, Owner shall use commercially reasonable efforts to designate City as a “point of sale” and consummate at the Distribution Center and Warehouse all Taxable Ontario Sales. and the Owner shall identify the City as such in its reports to the BOE in accordance with the Bradley-Burns Uniform Local Sales and Use Tax Law (Revenue and Taxation Code 7200, et seq.), as it may be amended or substituted. Owner shall use commercially reasonable efforts to fulfill product sales to California residents from the Distribution Center and Warehouse. The Owner shall consummate all Taxable Ontario Sales transactions for Owner’s Sales Activities at the Distribution Center and Warehouse, consistent with all applicable statutory and BOE regulatory requirements applicable to Owner’s Sales

Activities and the designation of the City as the “point of sale” for all such Taxable Ontario Sales.

3.1.3 Owner’s Additional Obligations Regarding Repairs and Alterations to Distribution Center and Warehouse. Owner covenants and agrees that, for the term of the Operating and Use Covenant as described in Section 3.1.1, the Owner shall maintain, or cause to be maintained, the Distribution Center and Warehouse in good condition, ordinary wear and tear excepted, and free from the unreasonable accumulation of trash or other debris and agrees to promptly remove, or cause the removal of, all graffiti upon the Distribution Center and Warehouse. Owner shall also maintain or cause to be maintained the landscaping upon the Property in a good condition.

3.1.4 Covenant Against Solicitation and Acceptance of Economic Incentives During the Term of the Operating Use Covenant. Owner covenants and agrees that, for the term of the Operating and Use Covenant as described in Section 3.1.1, Owner will not directly or indirectly solicit or accept any “Financial Assistance” from any other public or private person or entity, if such Financial Assistance is given for the purpose of causing or would result in either Owner’s breach of any of the Covenants. For purposes of this Section 3.1.4 the term “Financial Assistance” means any direct or indirect payment, subsidy, rebate, or other similar or dissimilar monetary or non-monetary benefit, including, without implied limitation, payment of land subsidies, relocation expenses, public financings, property or sales tax relief, rebates, exemptions or credits, relief from public improvement obligations, and payment for public improvements to or for the benefit of Owner.

3.1.5 Use of Property. Owner covenants and agrees that the Property shall be put to no use other than those uses specified in the City’s General Plan, the Specific Plan, zoning ordinances, and this Covenant Agreement as the same may be amended from time to time. Nothing in this Section 3.1.5 shall limit, expand, modify or otherwise affect any right of the Owner to continue any legal nonconforming use upon the Property following changes in the City’s General Plan or zoning ordinances. For the term of this Operating Covenant, the Owner may use the Property only for the purposes of the operation of the Distribution Center and Warehouse and conducting Owner’s Sales Activities in accordance with this Covenant Agreement.

3.2 Covenant Payments.

3.2.1 Statement of Intent. The City’s obligations under this Section 3.2 are contingent on a Computation Quarter-to-Quarter basis and, for each Computation Quarter (hereinafter described), City’s obligations to make any payments hereunder are expressly contingent upon the Owner having, for the entirety of such Computation Quarter, completely fulfilled its material obligations under this Covenant Agreement, including, without limitation, the Covenants. The Parties hereto each acknowledge and agree that the intent of each such Party is that any payment made pursuant to Sections 3.2.2 shall be made from any available funds designated for payment by the City and shall not be a rebate, refund or abatement of the Taxes payable by Owner. Any reference to percentage of Sales Tax Revenues is for purposes of calculation and not a commitment of a specific revenue source.

3.2.2 Covenant Payment Amount. The consideration to be paid to the Owner in exchange for the Covenants and Owner's performance of its obligations set forth in this Covenant Agreement, and subject to satisfaction of all conditions precedent thereto, shall consist of City's payment to the Owner for each Computation Quarter during the Eligibility Period that the City receives Sales Tax Revenue, an amount equal to (a) an amount equal to the sum of (1) fifty-five percent (55%) of the Sales Tax Revenues attributable to annual taxable sales for the calendar year which includes such Computation Quarter up to five hundred million dollars (\$500,000,000.00), as determined on a cumulative basis for such calendar year, and (2) sixty percent (60%) of the Sales Tax Revenues attributable to annual taxable sales for the calendar year which includes such Computation Quarter over five hundred million dollars (\$500,000,000.00), as determined on a cumulative basis for such calendar year, plus (b) provided that the business license tax payable by Owner exceeds the amount due in the previous calendar year by ten percent (10%) or more, an amount equal to any increase in business license taxes payable to City by Owner as a result of City imposing an aggregate business license tax on Owner in an amount greater than the applicable business license taxes computed as if Owner's operations solely consisted of "warehousing" activities within the meaning of Section 3-1.216 of the City of Ontario Municipal Code (and any successor law thereto, plus (c) an amount equal to sixty percent (60%) of the Sales Tax Revenues attributable to Owner's self-accrual of use tax which is directly allocated to the City, including, without limitation, in connection with Owner's purchase of machinery and equipment from outside of California during such Computation Quarter; plus (d) an amount equal to sixty percent (60%) of the Sales Tax Revenues attributable to Sales Tax generated as a result of the development and construction of the Distribution Center and Warehouse in the City of Ontario; plus (e) after the occurrence of a Trigger Event, an amount equal to any New Taxes payable by Owner in respect of such Computation Quarter. Any such payment due pursuant to this Section shall not be due unless Owner has completely fulfilled its material obligations under this Covenant Agreement, including, without limitation, the Covenants. Should such condition precedent not be satisfied for each Computation Quarter, then City shall have no obligation under this Section 3.2 to make any Covenant Payments to Owner in such Computation Quarter.

3.2.3 Computation Quarter Covenant Payments. Within thirty (30) days following the end of each Computation Quarter, Owner shall submit to City copies of its quarterly reports to the BOE for the applicable Computation Quarter which sets forth the amount of Sales Taxes paid to the BOE during the Computation Quarter arising from Owner's Sales Activities and/or attributable to the Distribution Center and Warehouse. Within one hundred twenty (120) days following the end of each Computation Quarter, City shall pay to Owner any Computation Quarter Covenant Payment due for such Computation Quarter.

3.2.4 No Carry Forward or Back. The determination of the Covenant Payment(s) shall be determined and calculated on a Computation Quarter to Computation Quarter basis. Except as provided in Section 3.2.5 or 3.2.6, no Sales Tax Revenue which is generated in a Computation Quarter other than the Computation Quarter for which the Covenant Payment is being determined shall be used or considered in the calculation of any Covenant Payment which may be due for that Computation Quarter.

3.2.5 Adjustments to Covenant Payment Amounts. If after City makes a Covenant Payment to Owner hereunder City or Owner determines that the Covenant Payment

has been overpaid or underpaid and that an adjustment to a prior payment amount is warranted, City or Owner, as the case may be, shall have the right to provide a written notice to the other Party itemizing the information supporting the adjustment and either (a) requiring the City or Owner to pay the amount of the underpayment or overpayment, as applicable, within thirty (30) days from the date such notice is delivered or (b) deduct the amount of the overpayment from the next Covenant Payment otherwise owing to Owner. The Parties shall cooperate with one another and share such information as may be reasonably required to ensure that any required adjustments (either an additional payment to Owner or a refund or credit to City) can be promptly made.

3.2.6 BOE Determination of Improperly Allocated Local Sales Tax Revenues. If, at any time during or after the Eligibility Period of this Covenant Agreement, the BOE determines that all or any portion of the Sales Tax Revenues received by the City were improperly allocated and/or paid to the City, and if the BOE requires repayment of, offsets against future sales tax payments, or otherwise recaptures from the City those improperly allocated and/or paid Sales Tax Revenues, then Owner shall, within thirty (30) calendar days after written demand from the City, repay all Covenant Payments (or applicable portions thereof) theretofore paid to Owner which are attributable to such repaid, offset or recaptured Sales Tax Revenues. If Owner fails to make such repayment within thirty (30) calendar days after the City's written demand, then Owner shall be in breach of this Covenant Agreement and such obligation shall accrue interest from the date of the City's original written demand at the then-maximum legal rate imposed by the California Code of Civil Procedure on prejudgment monetary obligations, compounded monthly, until paid. Additionally, the City may deduct any amount required to be repaid by Owner under this Section 3.2.6 from any future Covenant Payments otherwise payable to Owner under this Covenant Agreement. This Section 3.2.6 shall survive the expiration or termination of this Covenant Agreement. The City immediately will contact Owner regarding any communication from the BOE pertaining to tax allocations associated with Owner's business. The City and Owner agree that, should the BOE question the correctness of the allocation or otherwise determine that there has been an improper allocation to the City, the City will engage legal counsel to use his or her best efforts to defend such allocation in all BOE administrative proceedings. Any cost or expense associated with such efforts will be borne by the Owner and the City equally. For purposes of this paragraph, administrative proceedings include all BOE meetings, conferences and appeals before BOE Board Members. Owner will reasonably cooperate with the City and its attorney. Additionally, Owner shall have the right, but not the obligation, to participate in any such administrative proceedings and may engage its own legal counsel or consultant, at its own cost.

3.2.7 Not a Pledge of Sales Tax. Owner acknowledges that the City is not making a pledge of Sales Tax Revenues, or any other particular source of funds; the definition of Sales Tax Revenues, as used herein, is used merely as a measure of the amount payment due hereunder and as means of computing the City's payment in consideration for the Covenants. It is acknowledged by Owner that the City's obligation to make payments is specifically contingent upon receipt by the City of the Sales Tax Revenues derived from operation of the Distribution Center and Warehouse.

3.3 Default.

3.3.1 Owner Default. City shall provide Owner with written notice of Owner's failure ("**Owner Default**") to strictly abide by any material provision of this Covenant Agreement, including, without limitation, the Covenants. Owner shall have thirty (30) days from the date of such notice to either cure such Owner Default, or, if such Owner Default cannot be reasonably cured during such thirty (30) day period, to commence to cure within said thirty (30) day period and diligently prosecute such cure to completion thereafter.

3.3.2 City Default. Owner shall provide City with written notice of City's failure ("**City Default**") to strictly abide by any material provision of this Covenant Agreement. City shall have thirty (30) days from the date of such notice to either cure such City Default, or, if such City Default cannot be reasonably cured during such thirty (30) day period, to commence to cure within said thirty (30) day period and diligently prosecute such cure to completion thereafter.

3.4 General Remedies for Default. Upon either a City Default, after expiration of all applicable notice and grace periods, or an Owner Default, after expiration of all applicable notice and grace periods (as defined in Section 3.3), Owner or City (as applicable) shall have the right to seek all available legal and equitable remedies, unless otherwise expressly provided to the contrary herein. Notwithstanding anything in this Covenant Agreement to the contrary, (a) neither Party shall be liable to the other Party for consequential damages and (b) in no event shall the City have the right of specific performance or other mandatory injunctive relief to compel the Owner to operate the Distribution Center and Warehouse. Unless prohibited by law or otherwise provided by a specific term of this Covenant Agreement, the rights and remedies of the City and the Owner under this Covenant Agreement are nonexclusive and all remedies hereunder may be exercised individually or cumulatively, and either Party may simultaneously pursue inconsistent and/or alternative remedies. Either Party may, upon the Default of the other Party, after expiration of all applicable notice and grace periods, and in addition to pursuing all remedies otherwise available to it, terminate this Covenant Agreement and all of its obligations hereunder without cost, expense or liability to itself.

3.5 The City's Rights to Terminate its Obligations under Section 3.3. The City's obligations under Section 3.2 shall automatically terminate without cost, expense, or liability to City, upon the occurrence of any one or more of the following: (a) Owner Default, as to which any applicable cure period provided for herein has expired; or (b) the end of the Eligibility Period; or (c) upon the final determination by a court of competent jurisdiction that any one or more of the Covenants are void, voidable, invalid, or even unenforceable for any reason whatsoever, including, without limitation, legal infirmity.

3.6 Liquidated Damages.

3.6.1 Owner Default With Respect to Obligations Under Sections 3.1.1 and 3.1.2. The Parties acknowledge that the consideration to the City for its entry into this Covenant Agreement and the performance of its obligations hereunder include the City's receipt of Sales Tax Revenues, employment and other payroll taxes, property taxes, and other direct and indirect financial and non-financial benefits arising from Owner's Sales Activities and the operation and

location of the Distribution Center and Warehouse in the City in accordance with Article 3 of this Covenant Agreement. Owner agrees that the City will suffer damages if Owner commits any Owner Default with respect to any of its obligations arising under Sections 3.1.1 and 3.1.2. The Parties agree that the exact determination of such damages would be impracticable and extremely difficult to quantify. Accordingly, the Parties have determined that Liquidated Damages (as determined pursuant to Section 1.3.11) represents a reasonable estimate of the damages which would be suffered by the City if Owner commits any Owner Default with respect to any of its obligations set forth in Sections 3.1.1 and 3.1.2. Accordingly, as its sole and exclusive monetary remedy for an Owner Default with respect to any of its covenants and obligations set forth in Sections 3.1.1 and 3.1.2, the City shall be entitled to (1) terminate this Covenant Agreement and the entirety of its obligations hereunder, including any accrued and unpaid Covenant Payments, and (2) receive from Owner the applicable amount of Liquidated Damages as provided by Section 1.3.11.

3.6.2 ACKNOWLEDGEMENT OF REASONABLENESS OF LIQUIDATED DAMAGES. UPON AN OWNER DEFAULT WITH RESPECT TO ANY OF ITS OBLIGATIONS SET FORTH IN SECTIONS 3.1.1 AND 3.1.2, FOLLOWING NOTICE AND OPPORTUNITY TO CURE PURSUANT TO SECTION 3.3.1, THE CITY AND OWNER ACKNOWLEDGE AND AGREE THAT IT WOULD BE EXTREMELY DIFFICULT AND IMPRACTICAL TO ASCERTAIN THE AMOUNT OF DAMAGES THAT WOULD BE SUFFERED BY THE CITY WITH RESPECT TO SUCH DEFAULT. HAVING MADE DILIGENT BUT UNSUCCESSFUL ATTEMPTS TO ASCERTAIN THE ACTUAL DAMAGES THE CITY WOULD SUFFER, THE PARTIES AGREE THAT THE LIQUIDATED DAMAGES AMOUNT AS DETERMINED IN ACCORDANCE WITH SECTION 1.3.11 REPRESENTS A REASONABLE ESTIMATION OF THOSE DAMAGES. THEREFORE, UPON AN OWNER DEFAULT WITH RESPECT TO ANY OF ITS OBLIGATIONS SET FORTH IN SECTIONS 3.1.1 AND 3.1.2, AS ITS SOLE AND EXCLUSIVE REMEDY FOR SUCH DEFAULT, THE CITY SHALL BE ENTITLED TO (1) RECEIPT OF THE LIQUIDATED DAMAGES AMOUNT CALCULATED IN ACCORDANCE WITH SUBSECTION 1.3.11, WHICH OWNER SHALL PAY WITHIN TEN (10) DAYS FOLLOWING WRITTEN DEMAND FROM THE CITY, AND (2) TERMINATE THIS AGREEMENT AND THE ENTIRETY OF ITS OBLIGATIONS HEREUNDER, INCLUDING ANY ACCRUED BUT YET UNPAID COVENANT PAYMENTS.

Initials of Authorized
City Representative

Initials of Authorized
Owner Representative

3.7 LIQUIDATED DAMAGES FOR LOSS OF SALES TAX. The Parties acknowledge and agree that that the consideration to the City for its entry into this Covenant Agreement and the performance of its obligations hereunder include the City's receipt of Sales Tax Revenues, employment and other payroll taxes, property taxes, and other direct and indirect financial and non-financial benefits arising from the operation Owner's Sales Activities and the location of the Distribution Center and Warehouse in the City. During the three (3) year period following the Effective Date, Owner shall not acquire, lease or construct any New Distribution Center and Warehouse. Notwithstanding the foregoing, Owner may acquire an operating business with a pre-existing fulfillment/distribution center provided the Sale Tax Revenue

received by the City is Three Million Two Hundred Fifty Thousand Dollars (\$3,250,000) by the third anniversary of the Effective Date or City shall be entitled to receipt of the Liquidated Damages amount calculated in accordance with Section 1.3.11, which owner shall pay within thirty (30) days following written demand from the City. If, after the third anniversary of the Effective Date, Owner acquires, leases constructs, owns or operates a New Distribution Center and Warehouse and Owner's Sales Tax Revenue received by City from annual taxable sales attributable to the Distribution Center and Warehouse is less than Three Million Two Hundred Fifty Thousand Dollars (\$3,250,000), the City shall be entitled to receipt of the Liquidated Damages amount calculated in accordance with Subsection 1.3.11, which Owner shall pay within thirty (30) days following written demand from the City. For the avoidance of doubt, the Liquidated Damage amount payable pursuant to this Section 3.7 shall be (1) a one-time payment, (2) the sole remedy for City arising from, or with respect to, Owner's acquisition, construction, ownership or operation of any New Distribution Center and Warehouse and (3) not entitle the City to terminate this Covenant Agreement and its obligations hereunder.

ARTICLE 4. GENERAL TERMS

4.1 Tax Consequences. Owner acknowledges that it may experience tax consequences as a result of its receipt of the payments provided for in this Covenant Agreement and agrees that it shall bear any and all responsibility, liability, costs, and expenses connected in any way therewith.

4.2 Rights Not Granted Under Covenant Agreement. This Covenant Agreement is not, and shall not be construed to be, a Development Agreement under Government Code Section 65864 *et seq.* This Covenant Agreement is not, and shall not be construed to be, an approval or an agreement to issue permits or a granting of any right or entitlement by the City concerning the Distribution Center and Warehouse, Owner's Sales Activities or any other project, development, or construction by the Owner in the City. This Covenant Agreement does not, and shall not be construed to, exempt Owner from the application and/or exercise of the City's or City's power of eminent domain or its police power, including, but not limited to, the regulation of land uses and the taking of any actions necessary to protect the health, safety, and welfare of its citizenry.

4.3 Consent. Whenever consent or approval of any party is required under this Covenant Agreement, that party shall not unreasonably withhold, delay or condition such consent or approval unless otherwise allowed by a specific provision of this Covenant Agreement.

4.4 Notices and Demands. All notices or other communications required or permitted between the City and Owner under this Covenant Agreement shall be in writing, and may be (i) personally delivered, (ii) sent by United States registered or certified mail, postage prepaid, return receipt requested, (iii) sent by telecopier, or (iv) sent by nationally recognized overnight courier service (e.g., Federal Express), addressed to the Parties at the addresses provided in Article 1, subject to the right of either party to designate a different address for itself by notice similarly given. Any notice so given by registered or certified United States mail shall be deemed to have been given on the second business day after the same is deposited in the United States mail. Any notice not so given by registered or certified mail, such as notices

delivered by telecopier or courier service (e.g., Federal Express), shall be deemed given upon receipt of the same by the party to whom the notice is given.

4.5 Nonliability of Officials and Employees. No board member, official, contractor, consultant, attorney or employee of the City shall be personally liable to Owner, any voluntary or involuntary successors or assignees, or any lender or other party holding an interest in the Property, in the event of any default or breach by the City, or for any amount which may become due to the Owner or to its successors or assignees, or on any obligations arising under this Covenant Agreement. No board member, officer, contractor, consultant, attorney or employee of the Owner shall be personally liable to the City, any voluntary or involuntary successors or assignees, or any lender or other party holding an interest in the Property, in the event of any default or breach by the Owner, or for any amount which may become due to the City or to its successors or assignees, or on any obligations arising under this Covenant Agreement.

4.6 Conflict of Interests. No board member, official, contractor, consultant, attorney or employee of the City or City shall have any personal interest, direct or indirect, in this Covenant Agreement nor shall any such board member, official or employee participate in any decision relating to this Covenant Agreement which affects his/her personal interests or the interests of any corporation, partnership or association in which he/she is directly or indirectly interested.

4.7 Pledge or Hypothecation of Covenant Payments. Owner may assign any Covenant Payment(s) due in accordance with the terms of this Covenant Agreement (but not any other right or obligation of this Covenant Agreement) upon thirty (30) days' prior written notice to City as collateral for any loan or financing obtained by the Owner in connection with the Distribution Center and Warehouse; provided that nothing in this Section 4.7 shall be deemed to limit the operation of Section 4.16. Without limiting the general applicability of the foregoing, Owner acknowledges that Owner's lender and any transferee of Owner's lender shall be subject to the transfer restrictions of Section 4.16.

4.8 Entire Agreement; Good Faith Negotiations. This Covenant Agreement contains all of the terms and conditions agreed upon by the Parties and supersedes any previous agreements between the Parties concerning the subject matter of this Covenant Agreement. No other understanding, oral or otherwise, regarding the subject matter of this Covenant Agreement shall be deemed to exist or to bind any of the parties hereto. All prior written or oral offers, counteroffers, memoranda of understanding, proposals and the like are superseded by this Covenant Agreement.

The Parties acknowledge that this Covenant Agreement is the product of mutual arms-length negotiations and that each party has been, or has had the opportunity to have been, represented by legal counsel in the negotiation and drafting of this Covenant Agreement. Accordingly, the rule of judicial construction which provides that ambiguities in a document are to be construed against the drafter of that document shall have no application to the interpretation or enforcement of this Covenant Agreement. In any action or proceeding to interpret and/or enforce this Covenant Agreement, the trier of fact may refer to extrinsic evidence not in conflict with any specific provision of this Covenant Agreement to ascertain and give effect to the intent of the Parties hereto.

4.9 Time Deadlines Critical; Extensions and Delays; No Excuse Due to Economic Changes. Time is of the essence in the performance of the City's and Owner's obligations under this Covenant Agreement. In addition to specific provisions of this Covenant Agreement providing for extensions of time, times for performance hereunder shall be extended where delays or defaults are due to war; insurrection; any form of labor dispute; lockouts; riots; floods; earthquakes; fires; acts of God or of third parties; third party litigation; acts of a public enemy; initiative or referenda; acts of governmental authorities (except that the failure of the City to act as required hereunder shall not excuse its performance); moratoria (except those imposed or enacted by the City); epidemics; quarantine restrictions; and freight embargoes (collectively, **"Enforced Delays"**) provided, however, that the Party claiming the extension notify the other Party of the nature of the matter causing the default; and, provided further, that the extension of time shall be only for the period of the Enforced Delays. However, deadlines for performance may not be extended as provided above due to any inability of the Owner to obtain or maintain acceptable financing for the operation of the Distribution Center and Warehouse.

ANYTHING IN THIS COVENANT AGREEMENT TO THE CONTRARY NOTWITHSTANDING, OWNER EXPRESSLY ASSUMES THE RISK OF UNFORESEEABLE CHANGES IN ECONOMIC CIRCUMSTANCES AND/OR MARKET DEMAND/CONDITIONS AND WAIVES, TO THE GREATEST LEGAL EXTENT, ANY DEFENSE, CLAIM, OR CAUSE OF ACTION BASED IN WHOLE OR IN PART ON ECONOMIC NECESSITY, IMPRACTICABILITY, FRUSTRATION OF PURPOSE, CHANGED ECONOMIC CIRCUMSTANCES OR SIMILAR THEORIES.

OWNER EXPRESSLY AGREES THAT ADVERSE CHANGES IN ECONOMIC CONDITIONS, EITHER OF OWNER SPECIFICALLY OR THE ECONOMY GENERALLY, OR CHANGES IN THE MARKET CONDITIONS OR DEMANDS, SHALL NOT OPERATE TO EXCUSE OR DELAY THE STRICT OBSERVANCE OF EACH AND EVERY OF THE OBLIGATIONS, COVENANTS, CONDITIONS AND REQUIREMENTS OF THIS COVENANT AGREEMENT. OWNER EXPRESSLY ASSUMES THE RISK OF SUCH ADVERSE ECONOMIC OR MARKET CHANGES, WHETHER OR NOT FORESEEABLE AS OF OWNER'S EXECUTION OF THIS COVENANT AGREEMENT.

OWNER'S INITIALS _____

4.10 Attorneys' Fees. In the event of the bringing of an arbitration, action or suit by a Party hereto against another Party hereunder by reason of any breach of any of the covenants or agreements or any intentional inaccuracies in any of the representations and warranties on the part of the other Party arising out of this Covenant Agreement or any other dispute between the Parties concerning this Covenant Agreement or the Property, then, in that event, the prevailing party in such action or dispute, whether by final judgment or arbitration award, shall be entitled to have and recover of and from the other Party all costs and expenses of suit or claim, including actual attorneys' fees. Any judgment, order or award entered in any final judgment or award shall contain a specific provision providing for the recovery of all costs and expenses of suit or claim, including actual attorneys' fees (collectively, the **"Costs"**) incurred in enforcing, perfecting and executing such judgment or award. For the purposes of this Section 4.10, **"Costs"** shall include, without implied limitation, attorneys' and experts' fees, costs and expenses

incurred in the following: (i) post judgment motions and appeals, (ii) contempt proceedings, (iii) garnishment, levy and debtor and third party examination, (iv) discovery; and (v) bankruptcy litigation. This Section 4.10 shall survive any termination of this Covenant Agreement.

4.11 Amendments to This Covenant Agreement. Any amendments to this Covenant Agreement must be in writing and signed by the appropriate authorities of both the City and Owner. The City Manager is authorized on behalf of the City to approve and execute minor amendments to this Covenant Agreement, including, but not limited to, the granting of extensions of time to Owner, not to exceed ninety (90) days in the aggregate.

4.12 Jurisdiction and Venue. Any legal action or proceeding concerning this Covenant Agreement shall be filed and prosecuted in the appropriate California state court in the County of San Bernardino, California. Both Parties hereto irrevocably consents to the personal jurisdiction of that court. The City and Owner each hereby expressly waive the benefit of any provision of federal or state law or judicial decision providing for the filing, removal, or change of venue to any other court or jurisdiction, including, without implied limitation, federal district court, due to any diversity of citizenship between the City and Owner, due to the fact that the City is a party to such action or proceeding or due to the fact that a federal question or federal right is involved or alleged to be involved. Without limiting the generality of the foregoing, the City and Owner specifically waive any rights provided to it pursuant to California Code of Civil Procedure Section 394. Owner acknowledges that the provisions of this Section 4.12 are material consideration to the City for its entry into this Covenant Agreement, in that the City will avoid the potential cost, expense and inconvenience of litigating in a distant forum.

4.13 Interpretation. The City and Owner acknowledge that this Covenant Agreement is the product of mutual arms-length negotiation and drafting and that both Parties have been represented by legal counsel in the negotiation and drafting of this Covenant Agreement. Accordingly, the rule of construction which provides that ambiguities in a document shall be construed against the drafter of that document shall have no application to the interpretation and enforcement of this Covenant Agreement. In any action or proceeding to interpret or enforce this Covenant Agreement, the finder of fact may refer to any extrinsic evidence not in direct conflict with any specific provision of this Covenant Agreement to determine and give effect to the intention of the Parties.

4.14 Counterpart Originals; Integration. This Covenant Agreement may be executed in duplicate originals, each of which is deemed to be an original, but when taken together shall constitute but one and the same instrument. This Covenant Agreement and any exhibits represent the entire understanding of the Parties and supersedes all negotiations, letters of intent, memoranda of understanding or previous agreements between the parties with respect to all or any part of the subject matter hereof.

4.15 No Waiver. Failure to insist on any one occasion upon strict compliance with any of the terms, covenants or conditions hereof shall not be deemed a waiver of such term, covenant or condition, nor shall any waiver or relinquishment of any rights or powers hereunder at any one time or more times be deemed a waiver or relinquishment of such other right or power at any other time or times.

4.16 Successors and Assigns. The terms, covenants and conditions of this Covenant Agreement shall be binding upon and inure to the benefit of the Parties hereto and their successors and assigns. Except as provided in this Section 4.16, Owner shall neither transfer nor convey Owner's interest in the Property or the Distribution Center and Warehouse without the express written consent of the City, which shall not be unreasonably withheld, conditioned or delayed. In determining whether to approve of such a sale, transfer, conveyance or assignment of the Owner's interest in the Property, the City shall evaluate: (i) the financial ability of the proposed transferee to own and operate the Distribution Center and Warehouse, or portion so transferred, and to meet the Owner's obligations under this Covenant Agreement; (ii) the fitness and experience of the proposed transferee and its managerial personnel to own and operate the Distribution Center and Warehouse or portion so transferred thereof; and (iii) the ability of the proposed transferee to maintain a level of quality and service comparable to that maintained by the Owner for the Distribution Center and Warehouse. Notwithstanding anything to the contrary contained in this Covenant Agreement, however, Owner may assign, without the City's consent, this Covenant Agreement, its interest in the Property and/or the Distribution Center and Warehouse to any assignee provided that: (a) such assignment is pursuant to a sale of all or substantially all of Owner's assets; and (b) the applicable assignee has a credit rating (as determined by Moody's Investor Service) equal to or better than Owner's as of the time of the Effective Date. Upon the permitted sale, transfer or conveyance by Owner of its interest therein, such owner shall thereupon be relieved of its obligations under this Covenant Agreement from and after the date of sale, transfer or conveyance except with respect to any defaults in the performance of its obligations hereunder or thereunder which occurred prior to such sale, transfer or conveyance, and the transferee shall thereafter be solely responsible for the performance of all of the duties and obligations of Owner under this Covenant Agreement.

4.17 No Third Party Beneficiaries. The performance of the respective obligations of the City and Owner under this Covenant Agreement are not intended to benefit any party other than the City or Owner, except as expressly provided otherwise herein. No person or entity not a signatory to this Covenant Agreement shall have any rights or causes of action against any party to this Covenant Agreement as a result of that party's performance or non-performance under this Covenant Agreement, except as expressly provided otherwise herein.

4.18 No Effect on Eminent Domain Authority. Nothing in this Covenant Agreement shall be deemed to limit, modify, or abridge or affect in any manner whatsoever the City's or City's eminent domain powers with respect to the Property, the Distribution Center and Warehouse, or any other property owned by Distribution Center and Warehouse.

4.19 Warranty Against Payment of Consideration for Covenant Agreement. Owner warrants that it has not paid or given, and will not pay or give, any third party any money or other consideration for obtaining this Covenant Agreement. Third parties, for the purposes of this Section 4.19, shall not include persons to whom fees are paid for professional services if rendered by attorneys, financial consultants, accountants, engineers, architects and the like when such fees are considered necessary by Owner.

4.20 Severability. The City and Owner declare that the provisions of this Covenant Agreement are severable. If it is determined by a court of competent jurisdiction that any term, condition or provision hereof is void, voidable, or unenforceable for any reason whatsoever, then

such term, condition or provision shall be severed from this Covenant Agreement and the remainder of the Covenant Agreement enforced in accordance with its terms.

4.21 Further Acts and Releases. The City and Owner each agree to take such additional acts and execute such other documents as may be reasonable and necessary in the performance of their obligations hereunder.

4.22 Estoppels. At the request of Owner, the City shall promptly execute and deliver to Owner or such holder a written statement of the City as to any of the following matters as to which Owner or such holder may inquire: (i) that no default or breach exists, or would exist with the passage of time, or giving of notice, or both, by Owner pursuant to this Covenant Agreement, if such be the case; (ii) the total amount of Covenant Payments made by the City to Owner pursuant to this Covenant Agreement prior to the date of such written statement; (iii) the amount of any Covenant Payments earned by or due and owing to Owner pursuant to this Covenant Agreement as of the date of such written statement; (iv) the Covenant Payments for a particular Computation Quarter; (v) if the City has determined that Owner is in default or breach hereunder, the nature of such default and the action or actions required to be taken by Owner to cure such default or breach; and (vi) any other matter affecting the rights or obligations of Owner hereunder as to which Owner or such holder may reasonably inquire. The form of any estoppel letter shall be prepared by Owner or such holder at its sole cost and expense and shall be reasonably acceptable in form and content to the City and Owner. The City may make any of the representations described above based on the actual current knowledge of the then-current City Manager.

4.23 Indemnity. Each Party shall defend, indemnify and hold harmless the other Party, its elected officials, officers, employees and agents from and against any and all third party claims, losses, proceedings, damages, causes of action, liability, cost and expense (including reasonable attorney's fees) arising from, in connection with or related to this Agreement or the functions or operations of the Distribution Center and Warehouse (other than to the extent arising as a result of the other Party's active negligence or willful misconduct). The Party's shall fully cooperate in the defense of any such actions and upon written request of the other Party shall provide such documents and records that are relevant to such actions and not otherwise protected by law. Notwithstanding the foregoing, should any third party bring any such action or proceeding Owner shall have the right to terminate this Agreement, and as of such date of termination, all unaccrued liabilities of the parties under this Agreement shall cease except for Owner's obligation of indemnity owed to the City as provided in this Section 4.23. For purposes of clarification, should Owner exercise its termination right as provided in this Section 4.23, the same shall not be considered a Default and the City shall have no claims against Owner for liquidated damages. Notwithstanding the foregoing, any costs, including reasonable attorney fees and related litigation costs, incurred by the City to defend from or against any and all third party claims, losses, proceedings, damages, causes of action, liability, cost and expense arising from, in connection with, or related to this Agreement or the functions or operations of the Distribution Center and Warehouse shall be shared equally by the Parties.

4.24 State of California Legislation Impact on Covenant Payment. Owner acknowledges that the California legislature has in the past adopted certain legislation which diverted to the State of California a portion of the Sales Tax Revenues which were otherwise

payable to the City. Owner acknowledges that it is possible that the legislature may enact similar legislation in the future which would cause a corresponding reduction of and/or delay in the payment of the Sales Tax Revenues and that such reduction will cause Owner a corresponding reduction and/or delay in the payment of the Covenant Payments due to Owner during such time as such legislation is in effect. Furthermore, Owner acknowledges that it is possible that the legislation described above, or some variant thereof, may be enacted and effective during one or more subsequent times during the Eligibility Period and may materially and negatively impact the amount of Sales Tax Revenues and, accordingly, Covenant Payments. The City does not make any representation, warranty or commitment concerning the future actions of the California legislature with respect to the allocation of Sales Tax Revenues to the City. Owner agrees that it is undertaking its obligations under this Covenant Agreement after having considered, and is expressly assuming the risk of, the possibility of the enactment of such legislation.

The foregoing paragraph notwithstanding, City acknowledges that the California legislature may provide for the payment to City of other revenues for the purpose of offsetting any losses in Sales Tax Revenues resulting from the enactment of legislation of the type described in the immediately preceding paragraph. City agrees that, should the California legislature provide for such offsetting revenues, then for purposes of this Covenant Agreement and the computation of any Covenant Payments which may become due to Owner hereunder, City will consider any such offsetting revenues which are (i) indexed to Sales Tax and offset the loss of Sales Tax Revenues to the City on a dollar for dollar basis, (ii) actually received by the City, and (iii) not subject to any restrictions on use beyond those which are otherwise generally applicable to sales tax revenues received by California municipalities, to be Sales Tax Revenues within the meaning of this Covenant Agreement.

[Signatures on the following pages]

**SIGNATURE PAGE TO THE
QVC OPERATING COVENANT AGREEMENT**

CITY OF ONTARIO
a California municipal corporation

By: _____

ATTEST:

By: _____

APPROVED AS TO FORM:

By: _____
John Brown
City Attorney

**SIGNATURE PAGE TO THE
QVC OPERATING COVENANT AGREEMENT**

QVC, INC.,
a Delaware Corporation

By: _____
Signature

Name (Print)

Title (Print)